

Public Prosecutor v Lim Beng Soon and Another
[2000] SGHC 85

Case Number : CC 56/1999
Decision Date : 10 May 2000
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Jaswant Singh, Toh Yung Cheong and Lim Keng Seong (Deputy Public Prosecutors) for the prosecution; Peter Fernando (Leo Fernando) (briefed) and Yeo Chee Teck (AC) (Ang Jeffrey & Partners) (AC) (assigned) for the first accused; S S Dhillon (Dhillon Dendroff & Partners) (briefed) and Laurence Goh (Laurence Goh Eng Yau & Co) (AC) (assigned) for the second accused
Parties : Public Prosecutor — Lim Beng Soon; Henry Tan Kok Hwa

JUDGMENT:

GROUND OF DECISION

1 Lim Beng Soon, the first accused and Henry Tan Kok Hwa, the second accused, two Singapore nationals aged 47 and 42 respectively, were jointly tried before me on the following charges:

That you, LIM BENG SOON (the 1st accused) on or about the 11th day of April 1999, at or about 6.50am, at the entrance of Jalan Kukoh, Singapore, in a motor car bearing registration number SBA 9598D, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking 32 slabs of substance containing 49,168 grams of opium containing not less than 990.05 grams of morphine at the aforesaid place without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) and punishable under Section 33 of the Misuse of Drugs Act, Chapter 185.

That you, HENRY TAN KOK HWA (the 2nd accused) sometime in April 1999, in Singapore, did engage with one Lim Beng Soon and others unknown in a conspiracy to traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, namely, 32 slabs of substance containing 49,168 grams of opium containing not less than 990.05 grams of morphine by the said Lim Beng Soon, and in pursuance of the said conspiracy and in order to the doing of the thing, one of you arranged for 32 slabs of the drugs to be delivered to the said Lim Beng Soon in order that he be put in possession of the said drugs for the purpose of trafficking and, in particular, one out of the 32 slabs of the drugs was to be delivered to one Ang Boon Seng on 11 April 1999, without any authorisation under the said Act or the regulations made thereunder, and you have thereby abetted the commission of the offence by the said Lim Beng Soon of having the said drugs in his possession for the purpose of trafficking and you have thereby committed an offence under Section 5(1)(a) read with Section 12 and punishable under Section 33 of the Misuse of Drugs Act, Chapter 185.

2 The prosecution evidence against the two accused persons can be summarised as follows.

3 On 11 April 1999, a group of officers from the Central Narcotics Bureau (CNB) kept surveillance on a flat at Blk 31 Dover Road, #03-111. At about 6.30am, the officers spotted the first accused driving his vehicle SBA 9598D into the car park next to the said block. The first accused was seen emerging from his vehicle and walking up to the said block. A little later he returned to his car, arranged something in the trunk of his vehicle and drove off.

4 The trailing of the first accused by the CNB officers continued. At about 6.50am along Jalan Kukoh, he was observed stopping his vehicle to allow one Ang Boon Seng to get into the front passenger seat. Before the vehicle could move off, CNB officers moved in and placed the first accused and Ang Boon Seng under arrest. Altogether 32 slabs of opium housed in several bags were seized from the vehicle.

5 Scientific analysis carried out by the Department of Scientific Services (DSS) showed that the 32 slabs seized contained not less than a total of 990.05 grams of morphine.

6 At about the time the first accused was being apprehended, another team of CNB officers kept a look out for the second accused and his vehicle as well as a white van bearing registration number GL 3087 driven by one Lim Chew Heng, at Blk 915 Tampines Street 91.

7 The CNB operatives observed the second accused and Lim Chew Heng meet at a coffee shop called Delicious Food Centre at about 6.15am on 11 April 1999 at Block 915 Tampines Street 91. They saw Lim Chew Heng use a public telephone at the said coffee shop making a number of calls. According to the CNB officers, both the second accused and the said Lim Chew Heng were seen turning around and appeared anxious. The second accused and Lim Chew Heng then left in the vehicle SCG 7292E belonging to the second accused. The officers trailed them to a hawker centre at Block 59 Upper Changi Road and there too Lim Chew Heng was seen making several calls from a public telephone located at one Gim Lee Eating House. All this while, the accused remained seated. After that the second accused and Lim Chew Heng walked up to another coffee shop known as 'First Stop F & B Station'. Here again Lim Chew Heng made a number of telephone calls. Shortly thereafter at about 7.25am that day, both the first accused and Lim Chew Heng were arrested. After the arrest, both of them were led to the nearby Block 63. There the first accused was searched and nothing incriminating was found on him or in his possession. A thorough search was conducted on his vehicle SCG 7292E and again nothing incriminating was found. A further search was then conducted in his house at Block 915 Tampines Street 91, #05-53 where nothing incriminating was discovered.

8 One of the most important witnesses for the prosecution was a 67-year-old self-confessed opium addict, Ang Boon Seng, also known as Ah Seng (PW-28). He was one of the persons arrested on the morning of 11 April 1999 together with the first accused moments after he had boarded the vehicle of the first accused at Jalan Kukoh, admittedly for the purpose of taking delivery of one liap ie, one packet containing about two kilograms of opium. He was, as the records showed, initially jointly charged with the first accused for trafficking in 32 slabs of opium. However he had since been, upon the application of the prosecution, given a discharge not amounting to an acquittal at the Subordinate Courts and had been made a prosecution witness. His evidence insofar as was material was as follows.

9 He was jobless at the time of his arrest. He had known the second accused through the introduction of one "Kopi Tee", who had since passed away about two to three years before his arrest. Since then he had dealings with the second accused whom he referred to as "Ah Tan" on a number of occasions. He said Ah Tan had also supplied him with opium and gave the second accused his home telephone number as 8380223.

10 He claimed that on Saturday, 10 April 1999, the night before his arrest, the second accused paged him at about 10.00pm. He returned the call from a public telephone and spoke to the second accused. The second accused told him that the 'thing' (meaning opium) could be collected only on Sunday and Ang Boon Seng would have to pick it up from the foot of his block after receiving his page. Ang Boon Seng for his part told the second accused that he wanted one liap for his consumption. He said that no payment was discussed during that conversation although one liap which was roughly about two kilograms of opium would cost about \$4,000.

11 It must be presently remarked that there was a measure of ambivalence in the testimony of Ang Boon Seng. Having claimed twice that on the night of 10 April 1999, the second accused had paged him only once (page 423, line 8 and page 426, line 2 of the verbatim notes), he varied his evidence and claimed that the second accused had paged him twice on 10 April 1999 (page 426, lines 17 to 21 of the verbatim notes).

12 He further testified that on 11 April 1999 at about 6 or 7am, his pager beeped. He then called the number which appeared on his pager and spoke with a person and discussed how he could take delivery of the opium on Sunday morning (page 430, line 3 of the verbatim notes). Subsequently he left his flat, approached the vehicle of the first accused and asked him whether he was delivering the goods (page 431, lines 1 to 3 of the verbatim notes). The first accused replied in the affirmative and before Ang Boon Seng could say anything else, he was apprehended by CNB officers.

13 During cross-examination by counsel for the first accused, Ang Boon Seng clarified that on the morning of 11 April 1999 when his pager beeped, he returned the call from a public phone and spoke to a person who told him that he was on the way and he would be arriving soon (page 438, lines 19 to 21, pages 440 to 443 of the verbatim notes as well as page 651, lines 18 to 21). The substance of Ang Boon Seng's evidence in relation to the events of 11 April 1999 was that he was in communication with the first accused and not the second accused that morning. However, documentary evidence produced at the trial showed that after a call made at about 6.38am on 11 April 1999 from the handphone number 9-7456608 which belonged to the first accused to the pager of Ang Boon Seng which was 9-4951544, there appeared to be only one call at 6.44am on 11 April 1999 made from the public phone number 7371145 at Block 8 Jalan Kukoh, #01-00 (Chin Swee Post Office) to the handphone of the second accused ie, 9-7950943. There was something therefore incongruent between the claim of Ang Boon Seng that he spoke to the first accused from a public telephone near his flat at Jalan Kukoh and the documentary evidence which showed that there was no trace of any calls from a public phone situated around Jalan Kukoh to the first accused's handphone. All calls to the first accused's handphone since he paged for Ang Boon Seng seemed to have originated from the public phones situated at two different coffee shops at Tampines and Changi.

14 It is useful at this stage to refer to the following call-tracing records produced by the prosecution:

Number	Subscriber	Prosecution's Case
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97456608	Handphone of Lim Beng Soon	<u>10.4.99</u> On 10.4.99 at 10.15pm, someone from the Tampines Coffeeshop called his handphone 40 minutes after Henry Tan spoke to Ang Boon Seng at 9.35pm (infra) <u>11.4.99</u> He used the handphone to page Ang Boon Seng at 6.38am on 11.4.99 Lim Chew Heng at the Tampines Coffeeshop called him at 6.27am, 6.34am and 6.38am. Lim Chew Heng at the Changi Coffeeshops tried to call him on 11.4.99 between 6.58am and 7.24am. A CNB officer tested the handphone on 11.4.99 at 8.25am by using it to page Ang Boon Seng's pager.
97950943	Handphone used by Henry Tan Kok Hua	<u>10.4.99</u> He used the handphone to page for Ang Boon Seng at 9.33pm. At 9.35pm, Ang Boon Seng, using his home phone, called Tan Kok Hua on his handphone.
94951544	Ang Boon Seng's pager	Paged by Henry Tan on 10.4.99 at 9.33pm
8380223	Ang Boon Seng's home phone number	Called Henry Tan's handphone on 10.4.99 at 9.35pm.
5339058	Public telephone at Blk 52 Chin Swee Road #01-00	Someone called Henry Tan's handphone on 10.4.99 at 10.43 pm and they spoke for 1 min 6 sec.

7847329	Lim Chew Heng's home phone number	Someone using Lim Chew Heng's home telephone called the 2 nd accused at 6am and the 1 st accused at 6.01am on 11.4.99
7371145	Public telephone at Blk 8 Jln Kukoh #01-00 Chin Swee Post Office	Someone called Henry Tan's handphone on 11.4.99 at 6.44am.
7841864	Coinaphone at Delicious Food Centre, Blk 915 Tampines	Calls to Lim Beng Soon's handphone on 11.4.99
7858843	Coinaphone at Delicious Food Centre, Blk 915 Tampines	Calls to Lim Beng Soon's handphone
4491296	Coinaphone at Gim Lee Blk 59 New Upper Changi Road	Calls to Lim Beng Soon's handphone
4431490	Coinaphone at Gim Lee Blk 59 New Upper Changi Road	Calls to Lim Beng Soon's handphone
4431490	Coinaphone at Gim Lee Blk 59 New Upper Changi Road	Calls to Lim Beng Soon's handphone
4421993	Coinaphone at 1 st Stop F & B Blk 59 New Upper Changi Road	Calls to Lim Beng Soon's handphone
4483957	Coinaphone at 1 st Stop F & B Blk 59 New Upper Changi Road	Calls to Lim Beng Soon's handphone

15 The testimony of Ang Boon Seng was by and large a mangle of minor as well as major inconsistencies. At one point he claimed that the second accused had supplied him one liap of opium sometime during February 1999. Later he changed it to October/November 1998. His preliminary inquiry statement (exh D-2/P-55) admitted in evidence at the behest of counsel for the second accused also showed a number of variations between that statement and his claims in court as to his previous contacts and communications with the second accused.

16 The claim by Ang Boon Seng was that ever since he was introduced to the second accused by the late Kopi Tee, he had been in touch with Ah Tan only a few times before 11 April 1999. He said that apart from the few occasional contacts he did not know much about the second accused. He was also emphatic that he did not know the second accused's father or anyone else in his family. He also said that after he was introduced to the second accused sometime in 1995 or 1996, the second accused had not called him until October/November 1998 (pages 559 and 560 of the verbatim notes).

17 Ang Boon Seng was then confronted with a search made at the Singapore Registry of Companies which showed that his son Ang Meng Kim also known as Ah Teck and the second accused had been business partners from 14 November 1994 until 7 February 1995 in a firm known as New Eng Hup Leck Foodstuff. Ang Boon Seng testified that he was unaware of that relationship since his son had not mentioned this to him.

18 Much of the cross-examination of Ang Boon Seng by counsel for the second accused and re-examination by the prosecution centred on the aspect whether Ang Boon Seng had told the second accused on 10 April 1999 that he wanted one liap of opium. In fact this was his assertion in para 2 of his preliminary inquiry statement (see page 428 of the preliminary inquiry notes). He was emphatic during cross-examination by counsel as well as during clarification by the court that he had never mentioned to the second accused that he wanted one liap of opium. The clarification sought by the court and the answer given by him (see pages 634 and 635 of the verbatim notes) during re-examination reads as follows:

His Honour: Now, during re-examination, you mentioned that you did not tell "Ah Tan" how much opium you wanted. Then the DPP asked you, "If you did not tell 'Ah Tan' how much you wanted, how would 'Ah Tan' know how much to deliver to you?" Then you replied, "I had intended to tell the driver, the fact is that they wouldn't know how much I wanted to take." And you also said "I wanted to tell the driver I wanted one liap". Now it would appear to me that your statement in paragraph 2 as well as your evidence-in-chief do not tally with the answers given a few moments ago. Could you clarify?

Witness: I admit that I had given a different version in my statement, Sir, I must say that I didn't tell "Ah Tan" I wanted one liap of opium and I had intended to tell the driver on that particular morning when I was arrested but I didn't get to tell him.

19 Since the charge against the second accused as amended on 1 November 1999 by the prosecution with the leave of court contained the averment that "one out of the 32 slabs of the drugs was to be delivered to ... Ang Boon Seng on 11 April 1999", the answers by Ang Boon Seng that there was no mention of one liap by him to the second accused jolted the prosecution. Attempts by the learned DPP to redeem the situation did not bear fruit. So much so, the learned DPP applied to the court to cross-examine and impeach his star witness Ang Boon Seng (page 668 of the verbatim notes). At this point, Ang Boon Seng turned once again. He said this time that he did tell the second accused that he wanted one liap for his consumption (page 671, lines 2 to 13; also at page 681, lines 5 to 8).

20 Having been appeased by the latest answer, the learned DPP backed down on his application to discredit Ang Boon Seng. All the same, the damage was telling.

21 The prosecution's other evidence comprised statements recorded from the first and second accused after their arrests. Altogether there were seven statements from the first accused and two from the second accused. All of them were admitted in evidence as being made voluntarily without any threat, inducement or promise from any of the recording personnel. There was however an objection from counsel for the second accused in relation to two short segments in the statements of the second accused recorded on 22 April and on 23 April 1979 (exhs P-128 and P-129 respectively). The parts objected to were: (a) the first two sentences in para 7 of the second accused's statement (exh P-128) and para 14 of his statement (exh P-129, pages 323 and 326 of the preliminary inquiry notes). Counsel for the second accused contended that those parts were prejudicial in that they made reference to the second accused's previous dealings. He said that the prejudicial nature of the parts objected to though made voluntarily, outweighed their probative value. Reliance was placed by him on the pronouncements by the Singapore Court of Appeal in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR 422 where the Court of Appeal held:

... The relevance of evidence relating to the appellant's previous acts of supplying a circle of addict friends with drugs was to be determined according to

the principles applicable to similar fact evidence. This evidence was relied upon to reach a finding that the appellant had the requisite mental element when he transported the drugs. It was thus potentially relevant under ss 14 and 15 of the Evidence Act (Cap 97, 1990 Ed). However, the balancing test propounded by the House of Lords in DPP v Boardman applied under the Evidence Act. Under the Boardman test, the probative value of the similar fact evidence had to outweigh its prejudicial effect before that evidence can be relevant. The nature of similar fact evidence was such that it was always prejudicial. Whether the probative force of the evidence outweighed this prejudicial effect depended, inter alia, on the cogency of the evidence, the strength of inference that could be drawn from it and its relevance (see pp 432F, H; 434E, I, 436A-C); DPP v Boardman [1975] AC 421 followed. In the present case, the fact that the appellant had supplied his addict friends with drugs in the past was not evidence strong enough from which to infer that the appellant was trafficking drugs to the Malaysian at the Ghim Moh car park. Such evidence epitomized the sort of evidence the exclusionary rule was developed to deal with. Its effect was too prejudicial to the appellant and should not have been relied upon (see p 437B-C); Boardman v DPP [1975] AC 421 applied.

22 The learned DPP in his submission said that the parts objected to were not intended to introduce any previous transaction by the second accused but were for the purpose of giving the background in relation to a conversation between the second accused and Ang Boon Seng before delivery.

Ruling at the end of the trial within a trial

23 Having considered the arguments, I concluded that the objected parts were indeed relevant and held that their probative value outweighed their prejudicial aspects. In fact, on reflection, the parts subsequently admitted contained a few exculpatory segments which if believed, stood to assist the second accused rather than to prejudice his defence.

Statements

24 As regards the first accused, in his very first statement (P-157, pages 361 to 363 of the preliminary inquiry notes) he said that he was asked by one Ah Shiao (referred also as Ah Seow) to deliver the 'things' seized from his vehicle. He did not know what those things were. He said that Ah Shiao only asked him to deliver some mia kai and for that he would receive \$500.

25 His second statement (P-158, pages 364 to 366 of the preliminary inquiry notes) made reference to a piece of paper containing some delivery particulars that was seized from him (exh P-215 and P-215T, pages 384 and 385 of the preliminary inquiry notes). The first accused's clarification on the said piece of paper was:

This piece of paper was given to me by "Ah Shiao". I believe this paper is for delivery, "Ah Shiao" said when he confirmed that he want (sic) to make any delivery, he will call me "Ah Shiao" said this list is not confirmed. ...

26 In his next statement (P-159, pages 367 to 369 of the PI notes), the first accused when shown a

photograph of the second accused, disclaimed any knowledge of the second accused. He also said in that statement he did not know Lim Chew Heng save that he had seen him about 1 to 2 months prior to his arrest at a motor car repair shop at Sungei Kadut. He asserted in that statement that neither the second accused nor Lim Chew Heng was Ah Shiao.

27 In his cautioned statement recorded pursuant to s 122(6) of the Criminal Procedure Code (CPC) on 11 April 1999 at about 5.58pm (exh P-161), the first accused stated (page 373 of the preliminary inquiry notes):

Someone asked me to deliver things for him and he will pay me \$500 after I have made the delivery. I did not know that the things in my car is (sic) opium. I have never smoked opium before that is why I do not know the things are opium.

28 In his next three statements recorded over three days ie, on 13, 20 and 29 April 1999 (pages 374 to 383 of the preliminary inquiry notes) the first accused claimed that he was an innocent courier and that he did not know that the goods he was asked to transport and deliver were opium. Paragraphs 6, 9, 10 and 11 of his statement (pages 376 to 380) read as follows:

6 On 11.4.99 at about 6 a.m. "Ah Seow" called me on my handphone and asked me to get ready to deliver the goods. So I got ready and went down to my car. Inside my car, I waited for "Ah Seow" to call. A while later "Ah Seow" called. He asked me to send to the first person written on the piece of paper. The address was Block 30 Dover Road. I then drove to Dover Road. When I was about to reach Dover Road, "Ah Seow" called again and asked me where I was. I said I am reaching soon. "Ah Seow" then gave me a telephone number. He told me to call this telephone number and identify myself as code 6 as written on the piece of paper. He said someone would answer my call. I was supposed to ask which floor I have to place the goods. He also asked me to deliver the torn bag and a red plastic bag beside it to this person. After I hanged (sic) up, I immediately called the number and a woman answered in Hokkien. I said I am "Ah Lak". The woman asked me to go the third storey and placed (sic) the goods at the staircase. When I reached Block 30 Dover Road, I parked the car and went to the boot and took a torn bag and the red plastic bag beside it. I saw some packets inside the torn bag and the red plastic bag. The packets were chocolate in colour. I then walked up the staircase to the third storey and placed the torn bag and the red plastic bag on the staircase landing. I saw a woman coming out from a flat. But I just walked down the staircase without talking to this woman whom I do not know. At that time it was about 6 plus in the morning. ...

9 After I did the first delivery to Dover, I walked down the staircase and walked back to my car. "Ah Seow" called me on the hand phone, he asked in Hokkien whether I had made the delivery. I said I did. "Ah Seow" then told me to get a dark coloured bag from the right side of the boot and placed it at the rear seat of my car. He then told me to drive to Block 8 Jalan Kukoh and gave me a pager number which I have to page when I was about to reach Jalan Kukoh. I was told to page and put a code 88 or 888, and an old man will come and meet me at the ground floor. "Ah Seow" told me to ask the old man "where I was supposed to bring this one to?" When "Ah Seow" mention (sic) "this one", he did not specifically referred "this one" to the bag he asked me to place at the rear seat. However, I guess the bag at the rear seat was for the old man. This is because "Ah Seow" asked me to transfer the bag from the boot to the rear seat before

meeting the old man. I was also told to drive the old man to wherever he wanted to go. According to the piece of paper I was supposed to put the code as 18, but since "Ah Seow" told me to put 88 or 888, I did as I was told. I cannot remember the pager number now. When "Ah Seow" gave me the pager number, I keyed in my hand phone first and when I want to call, I will just activate the phone. After "Ah Seow" hunged up, I went to the boot to take a bag from the right side of the boot and placed it on the rear seat of my car and then I drove off.

10 When I was about to reach Jalan Kukoh, I paged the number and placed the code 888. When I reached Block 8, Jalan Kukoh, I saw one old man standing at the pavement. I stopped the car and the old man walked towards my car. The old man then opened the front passenger door, he asked me whether I am "Ah Seow's" man and whether I was the one who paged him. I said yes and then he then sat next to me and I asked him where he wanted to go. As he was seating (sic) down, the old man looked at the bag at the rear seat and said "you drive me to", before he could complete the sentence, a number of male persons rushed to my car. I was told to come out of my car and I was handcuffed to my back. I was told to squat down besides my car. I cannot remember whether those men identified themselves. After I was handcuffed, I guess they were government men as they have handcuffs, but I do not know which department they are from.

11 Those officers then searched my car in my presence. They recovered some packets and asked me whether I knew what those packets were, I said I do not know. Later, I overheard the officers said (sic) that those packets were opium. One officer then asked whether these things were mine, I said no and that I was paid to deliver them. He then asked me who paid me to deliver. I said that person is "Ah Seow". I was driven to one office. Later I saw one officer removing those things from my car. Then there were dogs who (sic) sniffing inside my car. I know the dogs did not detect anything. Then the officers tested my urine. I was not told of the results of my urine test. Later, I was made to witness the taking of photographs of those things taken from my cars. I saw some black substance inside those packets. I heard the officers mentioning opium. I have never seen opium before and I do not consume any kinds (sic) of controlled drugs. However, I ever heard people mentioning that opium is black in colour.

29 As respects the second accused's two statements recorded from him on 22 and 23 April 1999 (pages 321 to 326 of the preliminary inquiry notes), the following require reproduction and they read as follows:

Second accused's statement dated 22 April 1999

4 I am now shown a photograph of a male Chinese. (Recorder's note : Accused is shown a photograph of Lim Beng Soon, NRIC :S0002284E) I have never seen him and I have never heard the name Lim Beng Soon at all.

5 I am now shown a photograph of a male Chinese. (Recorder's note : Accused is shown a photograph of Ang Boon Seng, NRIC :S2140943Z) I know this man as he

was my father's friend. I call him 'Ah Seng'. Ah Seng and my father were opium addicts and I came to know him through my father. Ah Seng lives at Jln Kukoh near the hawker's center. When my father was alive, Ah Seng bought a small amount of opium from my father to smoke. I do not know how much my father charged him but I have seen the small packets of opium which are about 1 cm by 2 cm and wrapped in cellophane paper. My father passed away in 1997 of cancer ... But we have spoken to each other over the phone. Our last conversation was before Chinese New Year 1999. I called Ah Seng and I intended to borrow a few thousand dollars from him but in the end I did not ask him for a loan as I was embarrassed. ...

9 The next morning at about 6.00 am, I paged Ah Heng and asked him to have breakfast with me. Ah Heng's pager number is 94901159. I asked Ah Heng to meet me at the coffeeshop of my block. While I was having my coffee, Ah Heng joined me at the coffeeshop. We then had a cup of coffee before leaving for a hawker's centre at Bedok. We took my car to Bedok. Upon arrival, we went to a coffeeshop and we ordered food from the hawker's centre. We ordered fishball mee and had our breakfast. I did not make any phone calls using my handphone or public phone. Ah Heng left the table twice without telling me anything while we were eating. I did not see Ah Heng make any telephone calls while he was gone. While we ate, we had a casual conversation of our poker game the night before. After we had finished eating, I left the table once to go to the toilet. Some men then came and arrested both of us. At the time of my arrest, I believe that some people were arrested for opium and the reason for my arrest was because they were implicating me. They implicate me because last time, they have ever taken opium from me but this time I did not deal in opium. I did not know who are the persons implicating me.

10 After our arrest, we were taken to my car and the officers searched my car and nothing was found. I was later brought to my house where a search was conducted and again nothing was found. I was later brought to CNB office where my urine was taken. Thereafter, I was brought to another CNB office where I saw a large quantity of opium being weighed. In this office I saw an unknown male Chinese and 'Ah Seng' who was also arrested. ...

Second accused's statement dated 23 April 1999

11 My statement recorded on 22.4.99 was read back to me in Hokkien by the interpreter, Mr Wu Nan Yong. I confirm that the facts given by me in the statement read back is correct.

12 ... The last time I called Ah Seng on my own accord was sometime before Chinese New Year 1999 to borrow money. After that I never called him again but Ah Seng used to page me and I used to return his call. When I returned his call, Ah Seng would ask me if I had any opium and I would tell him that I did not have any opium. The last time Ah Seng paged me and I returned the call was sometime about 4.4.99. When I returned the call, Ah Seng asked if I had any opium and I said that I did not have any and did not want to deal in opium anymore. I am now informed by the Investigating Officer, ASP Rebeira, that I had

made phonecalls to Ah Seng on 10.4.99 and that Ah Seng had also said that I had called him. I called Ah Seng because I told him that the opium would be coming in a few days time but I was no longer dealing in opium. When Ah Seng called again later me, I told him that I was no longer dealing in opium but if he wanted opium, the seller would contact Ah Seng on his own. I did not mention this telephone conversation I had with Ah Seng on 10.4.99 because I forgot about it. This is the same male Malaysian who I mentioned the day before

14 This male Malaysian who called me over my handphone three or four days before my arrest just asked me if I wanted any opium. I said, "No". But I gave the male Malaysian Ah Seng's pager number to him. This is because ... Ah Seng kept asking me for opium and I did not deal in opium anymore. I also gave ... Ah Seng's contact numbers to the male Malaysian so that ... Ah Seng would not bother me for opium any longer. The male Malaysian who spoke in the Hokkien dialect said that he would call ... Ah Seng directly. This is the first time I have recommended ... Ah Seng to the Malaysian supplier 30 Lim Chew Heng, who was arrested together with the second accused on the morning of 11 April 1999, who had given evidence at the preliminary inquiry and whose name appeared on the witness list of the prosecution was not called by the prosecution to give evidence. The court learnt that he was initially, like Ang Boon Seng charged with the second accused for conspiracy but had been, on the application of the prosecution, given a discharge amounting to an acquittal. He was however offered to the defence.

31 At the close of the prosecution's case, counsel for the first accused did not make any submission. Counsel for the second accused however submitted that the prosecution had failed to make out the requisite ingredients of the charge and that there was insufficient evidence to call upon the accused to enter his defence. He contended that one of the main elements of the charge ie, that the second accused was engaged with the first accused in a conspiracy to traffic in 32 slabs of opium, had not been established. He argued that the prosecution's reluctance to produce Lim Chew Heng, most certainly weakened the prosecution's case and urged the court to draw an adverse inference against the prosecution as provided under s 116 illustration (g) of the Evidence Act. 32 Counsel for the second accused also highlighted a number of inconsistencies in the evidence of the prosecution's principal witness, Ang Boon Seng. The court's attention was particularly invited to his admission:

I admit that I have given a different version in my statement, Sir. I must say that I didn't tell "Ah Tan" I wanted one liap of opium and I had intend to tell the driver on that particular morning when I was arrested but I didn't get to tell him.

33 Counsel added that apart from Ang Boon Seng's wavering and fumbling evidence, there was no other evidence to link the second accused to the charge which he faced.

Ruling at the close of the prosecution case

34 As regards the first accused, there was in my opinion sufficient evidence which warranted his defence being called. As respects the second accused, the statements recorded from him seemed to indicate that the second accused in fact had been in touch with Ang Boon Seng on 10 April 1999. In fact in the final paragraph of the statement (exh P-129) of the second accused, there was a reference to a Malaysian supplier of opium and the second accused giving him Ang Boon Seng's

telephone number. Having decided that any inference to be drawn as regards the prosecution's omission to call Lim Chew Heng was a matter to be evaluated at the close of the whole case and not at the close of the prosecution's case, and having been satisfied that the evidence thus far presented by the prosecution had made out a case against both the accused persons on the respective charges they faced, I called for their defence and explained the courses available to them. In the event both elected to give evidence from the witness box and their evidence thus given can be summarised as follows.

Evidence of the first accused

35 The evidence of the first accused can be summarised as follows.

36 He is 47 years old. He is presently divorced. He has two children and is the joint owner of a HDB flat at Woodlands Circle, Singapore, where he lives with his son who is currently doing National Service. Since his divorce, he has been living with a woman in Johor Bahru and visits her almost on a daily basis.

37 Before his arrest he was engaged in the general contracting business which included house redecoration and removal and delivery of goods. For this purpose he had purchased a Nissan lorry, though it had been registered in the name of 'TNL Renovations', a firm with which he had business dealings. For one lorry trip he usually charged between \$80 and \$100 for house removals. He also owned a Honda Accord bearing registration number SBA 9598D. His cellular phone number was 97456608 and his pager number: 94152009.

38 Sometime around Chinese New Year 1999, the first accused was engaged in some renovation work at No 18 Ford Avenue, off Holland Road, Singapore. One day during that period when the accused was having lunch at a hawker centre nearby, one Thomas Seow whom he had not met before happened to occupy a seat at his table. In the ensuing casual conversation, the first accused related to him the nature of his work. Thomas Seow then asked him how much the first accused charged for delivery work. The first accused replied that it was between \$80 and \$100 per trip depending on the quantity to be delivered. Thomas Seow then asked for and obtained the name card of the first accused. Thomas Seow, however, did not hand over his name card to the first accused since the former did not have one with him then. The first accused learnt that Thomas Seow was doing some important business. Soon, Thomas Seow left after telling the first accused that he would contact the first accused should he require his services. The first accused introduced himself to Thomas Seow as "Ah Lim".

39 The second occasion the first accused met Thomas Seow was at about 9.30pm on 10 April 1999. The circumstances which led to this meeting were described by the first accused as follows.

40 Sometime at the end of March or beginning of April 1999, Thomas Seow telephoned the first accused. Unfamiliar with the voice of the caller, the first accused wanted to know the caller's identity. The caller identified himself as "Ah Seow" and reminded the first accused that they met at Holland Road Hawker Centre previously. Ah Seow, in the event expressed his intention to engage his services to deliver some goods and asked for the rates. The first accused informed him that his charges would be between \$80 and \$100 per trip. After some bargaining, the first accused told Ah Seow that it would cost \$500 since Ah Seow wanted him to deliver goods to 5 or 6 persons. Ah Seow responded that it was expensive. The first accused replied that if Ah Seow was sincere in engaging his services they could talk about the rates later. Ah Seow hung up the phone after telling the first

accused he would contact him if he wanted his services.

41 On 10 April 1999 at about 9.00pm when the first accused was at the Woodlands Shopping Centre, Ah Seow telephoned him again. Ah Seow asked the first accused whether he could deliver some goods for him that night itself but the first accused declined stating that it was late and his workers had already left for home.

42 Ah Seow then asked him if he could help deliver the goods the following morning. The first accused asked Ah Seow what goods he was expected to deliver and Ah Seow informed him that they were 'dry goods'. The first accused agreed to deliver the goods the next morning. Ah Seow informed him that he had the goods ready nearby and asked the accused whether he could collect them shortly. He told him that the goods were ready for collection at 12 milestone Woodlands Road, somewhere near the fruit shop where the accused was. The first accused in fact intended to bring his lorry for the collection of goods but Ah Seow persuaded him to use his motor car as the goods were not bulky. The first accused gave Ah Seow the registration number and the colour of his vehicle and soon left for the car park nearby to retrieve his vehicle and thereafter proceeded to the designated place at 12 milestone Woodlands Road. It was then 9.30pm.

43 Soon the first accused arrived at his destination, pulled up his vehicle along the kerb and waited for Ah Seow. About ten minutes later Ah Seow appeared. The goods pointed out by Ah Seow were lying on the pavement some 30 feet away from where the accused had parked his vehicle. Ah Seow directed him to move the vehicle nearer to the goods. The first accused did as requested and opened the trunk of the vehicle.

44 The first accused watched as Ah Seow started to load the goods into the trunk of the vehicle. There were about five to six travelling bags and about four plastic bags. The travelling bags were all zipped. Some of the plastic bags were tied and others open. The first accused noticed that inside those plastic bags were a few bundles. They were in light brown in colour. After closing the lid of the trunk, Ah Seow handed to the first accused a slip of paper describing it as the delivery list (exh P-215). There were a few names written on it. Ah Seow briefed the first accused as to which packet was to be delivered to which person. As there were no addresses included in the list, the first accused asked Ah Seow for the addresses. Ah Seow told him that he would telephone the first accused after he had confirmed with his customers about the times of delivery.

45 The first accused kept the delivery list beside a note book in his vehicle. After paying the first accused \$500 for delivering the goods, Ah Seow instructed him to deliver the goods between 6.00 and 7.00am the following morning. When the first accused wanted to know the reasons for delivery at such early hours, Ah Seow replied that some of the customers were doing business and they had to leave their homes very early. Soon Ah Seow departed promising the first accused that he would call him later with the addresses. He did not however give the first accused his contact number. The first accused had in fact asked for his contact number but Ah Seow would not respond.

46 Shortly thereafter, the first accused left for Bukit Timah Shopping Centre. He wanted to look for one Allan but could not locate him there. Shortly thereafter, he chanced upon one of his other friends Kelvin from whom he had borrowed \$500 sometime ago. The first accused returned \$200 to him; At the shopping centre he also gambled for a short time and lost about \$100. 47 Whilst the first accused was still at the shopping centre, Ah Seow telephoned him and gave him the addresses and telephone numbers of those persons listed in the delivery list. He wrote them down on another slip of paper and transferred those details into a diary he had with him when he returned to his vehicle.

48 Ah Seow also briefed him as to whom the goods should be delivered first. He told him that the first

delivery was to be made to a person living at Dover Road. The first accused was told that one of the travel bags and another tied-up plastic bag should be delivered to the person living at Dover Road. Ah Seow also instructed him to call the persons before arriving at their places. He was directed to tell the person to whom the delivery was to be made first and if asked, to mention that the goods were from 'Ah Lak'.

49 The first accused after having a meal opposite the shopping centre returned to the shopping centre to see whether his friend Allan was there. Allan could not, however, be found. Soon he decided to leave for home and returned to the car park to retrieve his vehicle. As he was planning to leave for his house at Johor, being afraid that he would be taxed for the goods if he took the goods with him in his vehicle to Johor, he transferred all the goods from his motor car to his Nissan lorry which was also parked at the basement car park of Bukit Timah Shopping Centre. In the event he transferred the goods to the rear open compartment of his lorry. He believed that the goods he was going to deliver were herbs and dry goods.

50 He then left the shopping centre and eventually drove up to Johor Bahru, reached his girlfriend's residence between midnight and 1.00am and spent the night with her. Then early in the morning of 11 April 1999 he left Johor Bahru and crossed the Woodlands Checkpoint at about 5.00am. He then went straight to the car park at Bukit Timah Shopping Centre and after transferring the goods from his lorry into the boot of his other vehicle, slept inside the vehicle for a brief period. A little later Ah Seow telephoned him and instructed the first accused to go to Block 31 Dover Road first. He told him to telephone the person living at Dover Road before he reached the place.

51 When the first accused had reached Block 31 Dover Road, Ah Seow telephoned him again. The first accused confirmed that he had reached his destination. Immediately upon arrival, the first accused telephoned the person living at Dover Road. A female voice answered the phone. She then asked for his identity. The first accused said 'Ah Lak'. At once, she then asked him to bring the things to the first staircase landing of level 3, Block 31. He then took out the bags ear-marked for Dover Road and after placing them at the staircase landing, left. As he was about to step down, he could see a female opening the door of a flat but he did not have any conversation with her.

52 When the first accused was making his way to his vehicle, Ah Seow telephoned him again. He told him to take out one of the travel bags from the trunk of the vehicle and place it on the rear passenger seat. Ah Seow then instructed the first accused to proceed to Jalan Kukoh and to page a number. The number was recorded in his diary. Ah Seow also told him to put the code '88' or '888' after the pager number. Ah Seow informed the first accused that the person paged would come down and wait for him along the road off Jalan Kukoh.

53 The first accused followed the instructions and drove his vehicle to Jalan Kukoh. When he eventually arrived at Jalan Kukoh near Havelock Road, he saw a man waiting. As the accused pulled up his vehicle, the man who was waiting walked up and opened the door of the front passenger seat. He asked the first accused whether he was Ah Seow's man and the first accused affirmed that he was. The man then entered the vehicle and sat beside him. The first accused then asked the man where he would want the goods to be delivered. However, before anything could be said further, both of them were arrested.

54 He maintained that from the time he took delivery of the drugs until his arrest, he thought that the bags loaded in his vehicle contained dry goods and because of the smell which emanated from them he surmised that they were herbs.

55 He said that Lim Chew Heng was not the Ah Seow who had delivered the drugs to him. He also

said that he had never seen the second accused before. His counsel referred to his s 121 statements and asked him to clarify why in those statements he had not mentioned his going to Johor Bahru after he had collected the goods. The first accused's explanation was that he did not think it necessary then to mention it and in any event at that time, he had only responded to questions posed to him. During cross-examination he mentioned that when he initially transferred the goods from his vehicle to the lorry before he departed for Johor Bahru, he in fact covered the goods with a sheet of canvas. As respects the diary reportedly kept by the first accused which was left in his vehicle, the prosecution put to him that there was no such diary. The first accused insisted, however, that there was such a diary.

Evidence of the second accused

56 The evidence of the second accused was as follows.

57 He is 42 years of age, married with one daughter who is currently doing an undergraduate degree in Pharmacy in UK. Prior to his arrest he was a businessman dealing in foodstuff and in the export of fish to Malaysia, Thailand, Indonesia and Hong Kong, operating under the name and style of New Eng Hup Leck Foodstuffs, currently a sole-proprietorship. Between 14 November 1994 and 7 February 1995 he had a partner by the name of Ang Men Kin, who is the son of prosecution witness Ang Boon Seng.

58 He had been a hardworking businessman, paying his taxes every year. Lim Chew Heng was one of his casual acquaintances. The former lived just a few blocks away from his residence. Although he had known Lim Chew Heng for a long time they hardly socialised with each other initially. Later, they started to meet up for drinks and since then they had been meeting occasionally.

59 Speaking about Ang Boon Seng, the second accused claimed that he was introduced to him by his late father. The second accused used to send his father to Block 52 Chin Swee Road for opium sessions and during those times he had sometimes given Ang Boon Seng rides in his vehicle. Ang Boon Seng and the second accused's father who died sometime in 1997 were friends. They were amongst a group of opium addicts. After Ang Boon Seng was introduced to him sometime in 1994, Ang Boon Seng's son Ang Meng Kim joined the second accused as a partner in his business in November 1994. Ang Boon Seng was well aware of their relationship and had seen his son and the second accused having coffee near his residence at Jalan Kukoh Food Centre.

60 Ang Boon Seng used to contact him occasionally when the second accused's father was alive to ask how he was. Even after his father's demise, Ang Boon Seng used to contact him sometimes to enquire about his father's friends for the purpose of obtaining opium. Although the second accused had made it known to Ang Boon Seng after his father's death that he did not touch opium Ang Boon Seng nevertheless used to pester him.

61 He recalled one such conversation between him and Ang Boon Seng on 4 April 1999. That day Ang Boon Seng contacted him and asked him whether he had 'mi kia' (the things). The second accused immediately told Ang Boon Seng that he did not have them and reiterated that he did not touch those things after his father's death. He advised Ang Boon Seng not to pester him anymore.

62 About three or four days before his arrest, the second accused received a telephone call. The caller claimed to be a Malaysian friend of his late father. When the second accused informed the caller that his father had passed away, the caller enquired if the second accused knew his father's group of friends who smoked opium. The caller particularly asked him if he knew Ah Seng referring to

Ang Boon Seng and obtained the telephone as well as the pager numbers of Ang Boon Seng. After providing him with the numbers, the second accused advised the Malaysian caller not to contact him anymore and to deal with Ang Boon Seng directly. The Malaysian who was making enquiries identified himself also as Ah Seng. The second accused had not known him or seen him before. In the course of the conversation, the Malaysian Ah Seng informed the second accused that the 'thing' (opium) would arrive in three to four days' time. The second accused told the Malaysian Ah Seng not to bother him further and to deal directly with Ang Boon Seng. In that conversation the Malaysian Ah Seng did not mention the quantity or the price of the opium which he said would be arriving in three to four days' time.

Events of 10 April 1999

63 On 10 April 1999 between 9.00 and 10.00pm, the second accused suddenly realised that he had not mentioned to Ang Boon Seng what the Malaysian Ah Seng had told him about the 'thing'. He then tried calling Ang Boon Seng first at his residence but the call was unsuccessful since the telephone line had been cut off. Later he paged for Ang Boon Seng and the latter promptly returned his call. In that conversation the second accused said to Ang Boon Seng that the Malaysian Ah Seng would contact him directly about the 'thing'. He further advised Ang Boon Seng not to contact or pester him in future. Ang Boon Seng thanked the second accused profusely for the information.

64 Later that night the second accused paged for Ang Boon Seng again, this time for the purpose of obtaining a small quantity of opium to offer to the Chinese deity 'Tua Ya Peh'. He said he wanted to offer opium to the deity with a view to obtaining the deity's favours for a good future and for success in striking a lottery prize. He explained how the offering was done to the said deity. The second accused added that Ang Boon Seng however did not return his call.

65 On 11 April 1999 the second accused got up at about 5.00am. After he had showered, he made a few calls to his friends Lim Chew Heng and one 'Ah Gong' to join him for breakfast. Ah Gong did not return his call. Even Lim Chew Heng returned his call only after he had paged him for two or three times. In the event, Lim Chew Heng joined him for coffee at the coffee shop known as Delicious Food Centre located at the ground level of his block of flats. Later he decided to go to Block 50 or thereabouts at Bedok, to have breakfast and to buy some vegetables at the market nearby. Both of them then left for Bedok in the second accused's vehicle. Whilst he was there he suddenly developed a stomach cramp and therefore repaired to the washroom a few times. Shortly thereafter Lim Chew Heng and the second accused were arrested.

66 Shortly thereafter, he was taken to a block of flats beside the First Stop F & B. One of the CNB officers gave him some medicated oil to rub on his stomach. Later, he was taken to his house where a search was conducted. However, no incriminating material or evidence was found there. He confirmed that he said in his cautioned statement that he had known Lim Chew Seng but did not know Lim Beng Soon, the first accused and he had nothing whatsoever to do with the opium.

67 He denied that on 10 April 1999 he had arranged with Ang Boon Seng to deliver to him one liap of opium. He also said that he had never known the first accused prior to his arrest.

68 During cross-examination, the second accused said that on the night of 10 April 1999 till about 2.00am the following day, he was at Lim Chew Heng's flat gambling with a number of persons. When asked by the learned DPP whether Lim Chew Heng was present at that time, he replied that he did not pay attention and that he had not seen Lim Chew Heng then. Under further cross-examination, he

confirmed making quite a number of pager and telephone calls to the owner of a foodstall at Dover Road and an auntie also from the same stall. Those calls, according to him, were made during the gambling session and its purpose was to get in touch with the foodstall owner to order a buffet for his wife's forthcoming birthday. He also confirmed making ten calls to one Ah Gong which he said were for the purposes of obtaining racing tips. He added that he also received a number of calls, mostly from those gambling, when he went downstairs for a while to obtain some food, beverage and some ice.

69 The most significant aspect during the cross-examination was in relation to two slips of paper (exhs P-228A and P-228B) found in the wallet seized from the second accused. These slips were not produced by the prosecution during its case but was disclosed by the second accused in reply to a question by the DPP whether he had in fact written the telephone number of Ang Boon Seng on any slip of paper. The second accused claimed then that they were in his wallet (pages 1484 to 1487 of the verbatim notes).

70 The two slips of paper (exhs P-228A and P-228B) admitted to be in the handwriting of the second accused and consequently produced, contained apparently some damaging piece of evidence. They contained amongst other things the following numbers:

P-228A:

Taxi 5486063 97456608 Lim 7456608 95486063

P-228B:

Taxi 5486063 97456608

71 It was not disputed that the telephone number of the first accused was 97456608 and the number 95486063 was the pager number of the first accused. It could be seen that the preceding number '9' was omitted in some places. When the second accused was questioned as to how he came to have the number of the first accused when he had averred that he did not know him, the second accused, whilst maintaining his earlier stand, claimed that those numbers were supplied to him by one Taxi Seng, a taxi driver, in case the second accused required the services of the owner of the said numbers for moving office equipment which he was contemplating at that point in time. He said that at the time the said numbers were given to him, he did not know that the 'Lim' mentioned therein referred to Lim Beng Soon the first accused, and in any event he had never called those numbers. 72 The slip of paper marked P-228B also contained some suspicious entries as follows (page 2):

Ho Seng	1	8
Ah Suan	3	6
Ah Seng	4	12
Ah Ong	7	6
Ah Soon	6	3
Ah Pa	5	2
Ah Gong	2	3
2.8.5.4.8.4.10		<u>40</u>

73 As to the figures appearing in the right hand column totalling 40, the accused when questioned explained that they represented the number of mooncake boxes ordered by his friends named in the list. According to him the figures in the middle column represented the number of bean paste biscuit boxes also to be delivered to them. He said that all the details were written in the course of 1998 when he had imported mooncakes and bean paste biscuits about ten days before the eighth lunar month that year. As for the figures 2.8.5.4.8.4.10, his explanation was they were horse-racing tips.

74 As to the names listed in P-228B (page 2), the particulars given by him could be summarised as

follows:

Ho Seng - Not the same Ho Seng as in P-228A. Used to live in Clementi but had since passed away.

Ah Suan - He was also known as Ah Suat.

Ah Seng - This person lived at Clementi.

Ah Ong - The same 'Ong' mentioned in P-228A. The second accused later claimed that 'Ong' mentioned in P-228A and 'Ah Ong' mentioned in P-228B were different persons.

Ah Soon - A drinking friend.

Ah Pa - Another drinking friend from Tampines.

Ah Gong - Another drinking friend from Tampines.

Closing speeches

For the first accused

75 As regards the first accused, the submission by his counsel was that he was an unwitting courier and what he did was nothing more than delivering goods at the behest of a customer for a fee of \$500, believing that those goods he was entrusted with were no more than Chinese herbs or dried goods. A repeating theme in the submission of counsel was that many of the details narrated by the first accused as to his meeting Thomas Seow ('Ah Seow'), Ah Seow's enquiries and consequent handing over of the goods at Woodlands and the accused's subsequent visit to Bukit Timah Shopping Centre were not specifically challenged by the prosecution. He submitted that the evidence of the first accused had not been shaken in cross-examination nor had any material part of his evidence been proven untruthful in any material aspect. In the concluding part of his submission counsel for the first accused reiterated:

We humbly submit that the 1st accused honest belief that the goods were dried herbs are goods quite different in kind from those he was found of possession of ie. raw opium and hence, in our humble submission, bearing in mind his status as a bailee of the packages he was to deliver, the 1st accused had, by his evidence rebutted the presumption on a balance of probabilities and we urge Your Honour to acquit and discharge the 1st accused of this charge which carries the ultimate penalty of death.

Conclusion and findings as respects the first accused

76 The fact that the first accused was found to be in possession of 32 slabs of the prohibited drugs as stated in the charge was not disputed by the defence; nor was there any contest as regards the DSS analysis thereto. What was in issue was whether the first accused had on balance of probabilities, rebutted the presumption which arose by virtue of s 18(2) of the MDA.

77 In *Warner v Metropolitan Commissioner of Police* [1969] 2 AC 256 at 305 to 306 Lord Pearce observed:

If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been planted in his pocket without his knowledge, so I do not think he is in possession of contents which are quite different in kind from what he believes. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had no reasonable opportunity since receiving the package of acquainting himself with its actual contents.

78 In *Yeo Choon Huat v Public Prosecutor* [1998] 1 SLR 217, the Singapore Court of Appeal had to deal with a defence similar to that raised by the first accused. In dismissing the appellant's contentions, the Court of Appeal, after re-affirming what Lord Pearce had observed in *Warner*, went on to comment at page 226I, that ignorance would be a defence only when there was no reason for suspicion and there was no right nor an opportunity of examination. The Court of Appeal was emphatic that ignorance simpliciter was not enough.

79 Likewise, in *Law Chaw Won v Public Prosecutor* (CA No 2 of 1999, unreported), the accused's conviction on a charge of trafficking in a substantial amount of diamorphine found in a plastic bag he was proved to be in possession of was upheld. The accused in that case also denied knowledge that the bag advertised to contained the offending substance and claimed that he thought it contained Viagra which he believed was illegal in Singapore. The Court of Appeal in *Law Chaw Won* after making reference to the cases of *Lee Yuan Kwang v Public Prosecutor* [1995] 2 SLR 349, *Yeo Choon Huat* (supra) and *Warner* (supra), distinguished the case of *Public Prosecutor v Hla Win* [1995] 2 SLR 424 commented:

43 In order to rebut the presumption in s 18(2), a lot more has to be done than in the present case. This is shown by the case of *PP v Hla Win* [1995] 2 SLR 424 where the trial judge had been able to make a finding of fact that the accused in that case had truly not known that the bag contained heroin as he was able to prove on a balance of probabilities that he had believed that he was smuggling precious gems through Singapore. This was done by hard evidence corroborating the accused's story in material respects that also raised enough reasons to believe the accused's evidence on a balance of probabilities. The trial judge in that case had also borne in mind the difficulty that the accused had in rebutting the presumption, saying: 'Where a person found in possession of (say) heroin claims that he did not know it was heroin that claim may well be true, but because the onus is on the defence the mere possibility that the claim may be true is not sufficient, more is required: the court must be satisfied that the claim is more likely to be true than not.' As such, the Court of Appeal by a majority decision did not feel compelled to overturn the judge's finding of fact in that case.

44 The present case was however of a different nature. Here, the appellant was

not able to tender sufficient evidence to rebut the presumption in s 18(2). The trial judge in this case had made a finding of fact that was in accord with the prosecution's strong case against the appellant. According to PP v Hla Win itself, the trial judge must be shown to have made a finding that was clearly against the weight of evidence and unsupportable before the appellate court will interfere with the trial judge's finding of fact based on the credibility and veracity of the witnesses whose demeanour he had the opportunity to observe. In our opinion, the appellant was not able to show that the trial judge did so. The trial judge was clearly correct in making the finding of fact on which he based his decision that the appellant had not rebutted the presumption of knowledge in s 18(2). This was due to the consistent evidence given by the CNB officers and the appellant's subsequent embellishments of his evidence that went to the root of the issue of his alleged belief that the drugs were Viagra.

Conclusion

45 The appellant failed to show that the trial judge was wrong to hold that the presumption of knowledge in s 18(2) of the Act was not rebutted by the evidence of the defence. We therefore dismissed the appeal and confirmed the sentence of death.

80 Reverting to the case at hand as mentioned earlier by me, neither the fact of possession of the drugs nor the analysis thereof was put in issue by the defence. The only issue for decision was whether the presumption under s 18(2) had been rebutted on a balance of probabilities by the first accused.

81 Let me now deal with the material aspects in the defence of the first accused.

82 He claimed that Ah Seow who met him by chance at the Holland Village Hawker Centre around Chinese New Year in 1999 called him at the end of March or beginning of April 1999 as well as on 10 April 1999 at about 9.00pm and made him deliver some goods. He averred that he then thought that they were nothing but herbs as they gave out an unpleasant smell. But strangely the belief bespoken and the smell adverted to did not at all feature in any of his earlier statements. In fact what he said in his statement (exh P-164) appeared to disaffirm his present claim. He said in para 21 of his statement:

When the goods were inside the boot of my car, I did not sense any strong odour. I did not have any suspicion on the goods that "Ah Seow" asked me to deliver ... I only know that the packets that I mentioned ... were chocolate in colour. At that time, I do (sic) not know the contents of the packets and was not interested in it as well. ... [Emphasis added.]

83 That was not all. When he was asked by ASP Paul Ang (exh D-1) what he was asked to send, his immediate reply was 'I don't know what thing'. Later also at the CNB, when ASP Vincent Teoh asked him (page 214 of the PI notes) whether he knew what was in his car, again his reply was: 'I do not know what is inside the bag.' 84 In my evaluation, the first accused having first maintained that he did not know the contents of the packages he was asked to deliver, was trying to gloss over and embellish his defence by claiming that he thought he was delivering dried goods and herbs. In my view, his evidence in court lacked candour and credibility.

85 A further incoherent aspect in his defence was in relation to the alleged payment of \$500 to him

by Ah Seow. He testified in court that the said sum was paid to him on the night of 10 April 1999. However in his 122(6) statement (page 373 of the PI notes) he appeared to have said:

Someone asked me to deliver things for him and he will pay me \$500 after I have made the delivery [Emphasis added.]

86 It was significant that the 122(6) statement of the first accused was admitted in evidence as being made voluntarily and without any objection from his counsel. But when the first accused was asked by the learned DPP to explain the inconsistency between his claim in court and the statement referred to, he hastily beat a retreat and disowned the authorship of the segment referred to. His present story was:

What I told the IO was that I delivered the goods ... for this person and he paid me \$500 (page 1347, lines 3, 6 and 7 of the verbatim notes).

...

... I did not tell the IO that the payment would be made after I had made the delivery. Well, I did tell the IO that I collected \$500 for the delivery work (page 1348, lines 14 to 17 of the verbatim notes).

87 In my opinion, the belated disclaimer by the first accused particularly when the statement was admitted in evidence without any qualification from his very able counsel, cast a heavy shadow on the credibility of the first accused.

88 Another important feature of the defence related to the mode and manner in which the deliveries were to be made. In addition to the aspect that Ah Seow who entrusted the first accused with the goods, did not give him the addresses of those to whom the goods had to be delivered, the reported silence of Ah Seow when the accused asked him for his contact number, as well as the so-called instructions to use cryptic code numbers and false names at the delivery point would have immediately raised the suspicion of any reasonable man. In my finding, if the first accused were to be engaged as a regular delivery service man for regular goods, there was no reason for him to agree to use cryptic codes, fictitious names and proceed to leave the goods at staircase landings. In my opinion, the compelling inference was that the first accused knew that he was delivering illicit substance on the day in question.

89 Counsel for the first accused repeatedly argued at various stages of his closing speech that inasmuch as the prosecution did not specifically challenge many a claim by the first accused, the court should accept his claim in full. To my mind, this submission owed everything to wishful thinking and none to logic. It was not in dispute that the gravamen of the charge against the first accused was that he was in possession of 32 slabs of opium for the purpose of trafficking. The prosecution having proved possession, the onus shifted to the first accused to rebut the presumption on balance of probabilities. Moreover, the prosecution's challenge to the evidence had been adequately put to the first accused at the end of his cross-examination. In this regard, suffice it if I referred to the concluding question by the DPP which reads:

I am putting it to you that your evidence you did not know that you had opium in your car is not the truth (see page 1366 lines 10 to 12 of the verbatim notes; see also pages 1365 to 1366 of the verbatim notes).

90 Having reviewed all the evidence, I found the defence of the first accused that he was an

unwitting courier and that he did not know that the substance he had in his vehicle was opium, untenable. In my finding, the explanations offered by him did not have and did not appear to have any impress of truth. In my determination, he had not rebutted the presumption under s 18(2) of the MDA and that the prosecution had discharged its ultimate burden in proving the case against him. Consequently I found him guilty of the charge, convicted him accordingly and imposed the only sentence prescribed under the law.

Closing speeches - second accused

91 The important segments of the learned DPP's final speech as regards the second accused appear in paras 55, 56, 57, 58, 59, 60 and 65 and they read as follows:

55. At the time of his arrest, the 2nd accused was in possession of P228A. It contained a list of names, written by himself. The pager and handphone numbers of the 1st accused were there. They were written there two times. The 2nd accused testified that he was aware of the name (Lim) and that this Lim had a lorry which could be used to make deliveries. In P228A, the names "Ong", "Ho Seng" and "Seng" also appeared. The 2nd accused knew that they were opium addicts. "Seng" was Ang Boon Seng (Ang). "Ho Seng" was the boss of a seafood stall and stayed in Dover Road.

56. At the time of his arrest, the 2nd accused also had in his possession a delivery list, P228B. The handphone and pager numbers of the 1st accused were written by him at pg 1 of P228B. On pg 2 of P228B, was the delivery list. The names appearing there were same as that in P228A, ie "Ho Seng", "Ong" and "Seng" there were also found in P228A. Further, P228B bore a striking resemblance to P215, the delivery list recovered from the 1st accused at the time of his arrest. The total number of items listed therein were 40. The names "Seng", "Ong", "Soon", "Pak" in P215 also appeared in P228B as "Ah Seng", "Ah Ong", "Ah Soon" and "Ah Pa". The word "Ah Suah" in P228B referred to "Ah Suat". The Hokkien translation of "Snow" in P215 was "Ah Suet". Thus, the "Snow" in P215 referred to the "Ah Suah" in P228B. Further, the delivery list P228B had times (6 or 8.30am and 10.30am) written next to 2 of the names therein. The 1st accused testified that the deliveries in P215 were to be done in the morning of the 11 April. It is submitted that P228B was the delivery list for the opium found in the 1st accused's car on 11 April.

57. There was also the evidence of Ang. Ang was known to the 2nd accused as "Ah Seng" and the 2nd accused had Ang's pager number. The 2nd accused also knew that Ang was an opium addict. Ang testified that he obtained supplies of opium in loose form and in liap form. Ang testified that on 10 April, the 2nd accused had informed him that the opium would arrive the next morning and that he was to go downstairs after his pager beeped to meet a driver. The call records, P118, show that the 2nd accused paged Ang at 21.33pm on 10 April using his handphone and that Ang responded to this paging by calling the 2nd accused at 21.35pm. The conversation lasted for 26 sec. The 2nd accused paged Ang the second time at 22.41pm. Ang testified that he received a second page from the 2nd accused at about 10 pm. At that time he was walking in the vicinity of Blk 51/52 of Chin Swee Road. He testified that he responded to this

page by calling the 2nd accused from a public phone there. P118 shows that a call was made from a public phone at Blk 52 Chin Swee Road at 22.43pm to the 2nd accused's handphone. This call lasted for 1 min 6 sec. It is submitted that Ang did make the call as he claimed. This evidence came out during cross examination and Ang was never in any position to concoct such evidence without the benefit of the call tracing records. Ang testified that in this second conversation with the 2nd accused he was informed that the opium would be arriving the next morning and how and when it will be delivered. It was unlikely that Ang would not have returned the second page from the 2nd accused as he testified that in the first conversation, the 2nd accused told him that the opium had yet to arrive. Thus, the second page from the 2nd accused was important to Ang as it related to opium which he was waiting for. Even going by the 2nd accused's version of events, it is unlikely that Ang never returned the call as Ang had been (according to the 2nd accused) pestering him for opium and the first conversation was related to opium.

58. There is evidence that the next morning, at 6.38am, Ang was paged by the 1st accused. He proceeded downstairs as instructed by the 2nd accused. He met the 1st accused in his car and asked if he was delivering goods. Shortly thereafter he was arrested. 32 slabs of opium were found in the car of the 1st accused. Ang also testified that after he received the page at 6.38am but before he met the 1st accused, he made a phone call from a public card phone using a phone card at the foot of his block. P118 shows that a call was made from the number 7371145 to the 2nd accused handphone at 6.44am. This number belonged to the public card phone located at the foot of Blk 8 Jalan Kukoh. When Ang was arrested, a valid phone card was seized from him. Although Ang claimed that he spoke to the driver, it is submitted that he could be mistaken or confused as to one call made 7 months ago. The driver (1st accused) stated that he did not receive any call from Ang that morning. The call records (P117) support this. The 2nd accused claimed that this call was made by one "Panjang". He could not provide any other detail of this person save that he was staying in Chin Swee Road area. He surmised that this call was made from the vicinity of "Panjang's" home. He claimed that Panjang had asked if "we" had won the previous night. This seemed an incredulous piece of evidence judging from the fact the "Panjang" was not even (to the 2nd accused's knowledge) at the gambling session the previous night and that he had called him so early on a Sunday morning to enquire about such a game and nothing else. It is submitted that the 2nd accused was distancing himself from the call made by Ang to him that morning by attributing it to someone who could not be traced.

59. There was also evidence that the 2nd accused made contact with Lee Lye Hoe at telephone number 7750549 at 23.18pm on 10 April (P118). The 1st accused paged this number at 6.30am the next morning (P117), some 7 hours later, just prior to making the first delivery. The 1st accused testified that he called this number as directed by "Ah Seow" and left a travel bag and a red plastic bag containing opium (containing 8 slabs of opium) on the 3rd floor staircase landing on Blk 31 Dover Road. This was where Lee Lye Hoe stayed. 60. There was the evidence of the 2nd accused himself that 3 to 4 days before his arrest he was informed that opium would be arriving in 3 to 4 days time. In para 14 of P129, he claimed that the Malaysian had informed him during a conversation 3 or 4 days before his arrest if he wanted opium. At the same time,

Ang had been pestering him for opium. The name list, P228A, contained names of 3 opium addicts. The same names appear in the delivery list, P228B. It is submitted that the second accused was aware of the opium arriving in Singapore and the demand by addicts. He then arranged for the 1st accused to deliver various quantities of opium to the persons listed in P228B.

...

65. The similarities between P215 and P228B show that they referred to the same thing, ie the delivery of opium on 11 April. It is not required of the prosecution to prove exactly how much were to be delivered to whom on the list. It would be an impossible burden on the prosecution to explain the entries on the delivery lists, P215 and P228B. Even, the 1st accused who had P215 in his possession was unable/refused to explain it sufficiently. What was evident was that the entire 40 slabs were meant to be distributed to various persons by the 1st accused. While there were differences between the two lists, these differences could be explained.

...

92 As respects the prosecution's decision not to call Lim Chew Heng, the learned DPP urged the Court not to draw any adverse inferences against the prosecution. In this connection, the prosecution's arguments and their concluding remarks were as follows:

77. It is submitted that Lim Chew Heng's role in the matter was limited to the morning of 11 April when he made the calls to the 1st accused from the coinaphones at the various food centres. He did not figure in the conspiracy that had been (sic) hatched. He was not "Ah Seow" who gave the drugs and spoke to the 1st accused on 10 April and who gave him the directions, addresses, contact numbers and codes that same night. He did not figure in the conversation between the 2nd accused and the Malaysian Ah Seng when the arrival of the opium was discussed. He did not figure in the conversation between the 2nd accused and Ang when the delivery of 1 liap was discussed. The 2nd accused had the 1st accused's contact numbers himself and the delivery list P228B.

78. Thus, his materiality was limited to a short span after the conspiracy had been hatched and after the 1st accused was put into possession of the opium for delivery. The prosecution did not call him as he was going to be an untruthful witness. He was thus offered to the defence. He was produced in Court and the defence counsel for the 2nd accused interviewed him. If Lim was going to give unfavourable evidence against the prosecution, then the defence could have called him. He was not withheld from the defence. This case differed from the facts in *Lau Song Seng*. There, an adverse inference was drawn against the prosecution for failing to call a witness "Ah Heng" on the basis that any direct evidence of a conspiracy in that case, if it existed, would only be known to "Ah Heng" and as such he became very crucial. In the present case, Lim was not material to the hatching of the conspiracy or to the delivery of the opium to the 1st accused. His only role was to be with the 2nd accused on the morning when the deliveries were already decided upon. As such, no adverse inference could be drawn against the prosecution for failing to produce him.

79. In conclusion, it is humbly submitted that the prosecution has proven its case beyond reasonable doubt against both the accused persons.

Closing speech by counsel for the second accused

93 The relevant segments in the closing speech of counsel for the second accused were as follows:

4. Elements of the offence

In the present case, the prosecution has to prove the following essential elements of the charge namely:-

- a. That the 2nd Accused was engaged with Lim Beng Soon and others in a conspiracy to traffic 32 slabs of opium.
- b. That in pursuant (sic) to that conspiracy, the 2nd Accused had arranged for the 32 slabs of opium to be delivered to Lim Beng Soon and thus putting him in possession of the said drugs for the purpose of trafficking and in particular, one of the 32 slabs was to be delivered to Ang Boon Seng on 11th April 1999.
- c. That the 2nd Accused had abetted Lim Beng Soon in trafficking 32 slabs of opium by putting the latter in possession thereof.

(1) That the 2nd Accused was engaged with Lim Beng Soon and others in a conspiracy to traffic 32 slabs of opium

The prosecution in the course of the trial has adduced the following evidence to try to prove conspiracy between the 2nd Accused and Lim Beng Soon:-

- i The telephone calls made by Lim Chew Heng to Lim Beng Soon on the morning of 11th April 1999
- ii The meeting between the 2nd Accused and Lim Chew Heng on the morning of 11th April 1999 where the 2nd Accused was also present whereby Lim Chew Heng made calls to Lim Beng Soon.
- iii Exhibits P228 and P228B which were recovered from the wallet of the 2nd Accused as a result of his admitting in his evidence.

The prosecution has tendered PS 127 (page 67) the toll records of the handphone of Lim Beng Soon to show the calls made by Lim Chew Heng to Lim Beng Soon namely:-

a. 11/4/99 from 0601 hours to 0724 hours. It has to be noted that the first call at 0601 hours received by Lim Beng Soon was made from the home of Lim Chew Heng. There is no evidence to show that the 2nd Accused was present with him then. Anyway, although the 2nd Accused had called Lim Chew Heng at 6.00 am in the morning that day, the conversation between the two only lasted for 10 seconds. The 2nd Accused gave evidence that he had asked Lim Chew Heng to join him for breakfast and that Lim Chew Heng had agreed to meet him at Delicious Food Centre. This conversation would take approximately 10 seconds when spoken in the hokkien dialect.

b. 2 calls were made from Delicious Food Centre by Lim Chew Heng when the 2nd Accused was present with him.

c. Thereafter 6 calls were made from Gim Lee Eating House by Lim Chew Heng when the 2nd Accused was present with him.

d. Following, 2 calls were made from First Stop F & B by Lim Chew Heng when the 2nd Accused was present with him.

We humbly submit that the fact that these calls which were allegedly made by Lim Chew Heng to Lim Beng Soon does not by itself prove at all that there was a conspiracy between the 2nd Accused and Lim Beng Soon. We urge the court to take into account the following:-

(i) The first call was made at 0601 before Lim Chew Heng met up with the 2nd Accused. This was made from his home and at that material time the 2nd Accused was at home.

(ii) As for the other calls made from 3 different locations in coffee shops, one highly important fact is that the 2nd Accused himself made neither of these calls to Lim Beng Soon. During cross-examination, all the CNB officers involved in the surveillance testified that they did not see the 2nd Accused making these calls. As a matter of fact, although Lim Chew Heng had his mobile handphone with him, he had gone some distance away from where the 2nd Accused was seated to use the public telephones to allegedly call Lim Beng Soon. If in fact there has been a conspiracy or arrangement between Lim Chew Heng and the 2nd Accused, it would not have had been necessary for Lim Chew Heng to make the calls from the public phones as he could have easily made the same from his handphone in the presence of the 2nd Accused. The fact that Lim Chew Heng did not use his handphone but made his calls out of hearing range of the 2nd Accused goes to supplement the defence case that the 2nd Accused was not aware of the transactions or telephone conversations or contents of the

calls made by Lim Chew Heng.

(iii) In anyway, there has been no evidence led to show the contents of the calls made by Lim Chew Heng to substantiate the Prosecution's case that the calls were made pursuant to the alleged conspiracy. The contents of the conversation were never proven by the Prosecution and the Prosecution has only raised the presumption that they were so.

(iv) We humbly submit that the court should draw an adverse inference against the prosecution's case in their failure to call Lim Chew Heng to give evidence on their behalf in support of their contentions especially when Lim Chew Heng was supposed and in all likelihood one of their key witnesses to link the 2nd Accused to the charge against him. Their failure to produce Lim Chew Heng, we submit, is an important and crucial omission has caused a serious break and severance in the chain of evidence which the prosecution were attempting to prove:-

...

(2) That in pursuant (sic) to that conspiracy, the 2nd Accused had arranged for the 32 slabs of opium to be delivered to Lim Beng Soon and thus putting him in possession of the said drugs for the purpose of trafficking and in particular, one of the 32 slabs was to be delivered to Ang Boon Seng on 11th April 1999.

(i) There has been no iota of evidence at all procured by the prosecution that 2nd Accused had arranged for 32 slabs of opium to be delivered to Lim Beng Soon other than the fact the opium was found in the possession of Lim Beng Soon. ...

(3) That the 2nd Accused had abetted Lim Beng Soon in trafficking 32 slabs of opium by putting the latter in possession thereof.

(i) We repeat the contentions as set out above. There has been no iota of evidence to show that the 2nd Accused communicated with Lim Beng Soon and vice versa. The toll records of their pagers, home phones and mobile phones clearly shows that they were not in communication with each other. Both their Section 121(2) statements proved that they did not even know each other. Most importantly, Inspector Cindy Goh and ASP Paschal Rebeira, the investigating officers confirmed that their investigations could not link the two of them at all.

(ii) Therefore there is no evidence produced by the prosecution that the 2nd Accused had abetted with Lim Beng Soon to arrange for the possession of 32 slabs of

opium to be put in his possession.

(iii) As to the elements of trafficking, exhibit P215, the delivery list and the fingerprint analysis clearly show that the 2nd Accused was not connected to the drugs or any delivery. In either way, there was no communication between them nor was there any evidence available to show that there was a pre-arranged plan between them.

(iv) The Prosecution has not led any evidence to show how the 2nd Accused was involved in putting the 1st Accused into possession of the 32 slabs of opium. Lim Beng Soon gave evidence that the 32 slabs of opium were given to him by "Ah Seow". He clearly maintained in his statement and throughout the court proceedings that he does not know the 2nd Accused or have any acquaintance with him in any way whatsoever. As for the conspiracy with others unknown, there has been no evidence led by the Prosecution to show that the 2nd Accused was involved in any manner with any other person or persons or for that matter, "Ah Seow" in the dealing of opium.

(v) As for the exhibit P2228A and exhibit P228B as highlighted above, they cannot be linked or matched and the 2nd Accused has given his explanation and in fact revealed about them voluntarily. Even though the phone numbers of Lim Beng Soon were found therein, this by itself is not sufficient in law to prove that a conspiracy existed between them and as a matter of fact the toll records prove otherwise and in fact exonerates the 2nd Accused of any conspiracy. ...

... It is conceded that the only possible evidence produced by the prosecution at the close of its case to show that the 2nd Accused has any involvement with drugs is the shaky evidence of Ang Boon Seng who had been applied to be impeached by the prosecution themselves. Therefore he is to be treated as a untruthful witness. Further, in his own evidence, Ang Boon Seng had admitted that he had lied. The court cannot attach any weight to his testimony. ...

...

Accordingly, we humbly pray that this Honourable Court acquit the 2nd Accused of the present charges he faces in the interest of justice.

Conclusion and findings as regards the second accused

94 There was no denying from the outset that the case against the second accused was woven primarily around the evidence of Ang Boon Seng and the inferences to be drawn from the role played by Lim Chew Heng. Very much later, midway through the cross-examination of the second accused, the prosecution having been made aware of the two slips of paper (exhs P-228A and P-228B) by the

second accused, also latched its case onto those documents.

95 Dealing with the evidence of Ang Boon Seng, much to the dismay and discomfiture of the prosecution, he failed to live up to his star role. He did not support the prosecution's declared position that there was an agreement on his part to purchase one liap of opium from the second accused. The court was made aware that in para 2 of his PI statement admitted at the trial as D-2/PS-55, he had said that he told the second accused that he wanted one liap of opium for his consumption. But during his testimony in court, he began to prevaricate. His answers to some clarifications sought by the court (pages 633 to 635 of the verbatim notes) require reproduction and were as follows:

His Honour: [To Interpreter] Can you give him an interpretation or translation of paragraph 2 of his statement.

Interpreter: Yes. [Interpreter interprets para 2 of D2 to witness]

His Honour: Now, in your evidence-in-chief in reply to questions by the learned DPP, you testified to the following effect. You said "Ah Tan" is in Court today"; you identified "Ah Tan". You told the Court that, "He paged me and when I returned his paging, he told me that he was 'Ah Tan'."

Witness: Yes.

His Honour: You also said, "When I called him, 'Ah Tan' told me that the thing could be collected only on Sunday and I was to go down to collect after my pager had beeped."

Witness: That's correct. His Honour: Then, by the word "thing", you referred to opium. Then later you said, "I told him," which means you told "Ah Tan", "I wanted one liap for my consumption."

Witness: Yes.

His Honour: You also said, "One liap is worth about \$4,000/-."

Witness: Yes.

His Honour: And, "One liap is about 2-odd kilograms."

Witness: Yes.

His Honour: Now, during re-examination, you mentioned that you did not tell "Ah Tan" how much opium you wanted. Then the DPP asked you, "If you did not tell 'Ah Tan' how much you wanted, how would 'Ah Tan' know how much to deliver to you?" Then you replied, "I had intended to tell the driver, the fact is that they wouldn't know how much I wanted to take."

His Honour: And you also said "I wanted to tell the driver I wanted one liap". Now, it would appear to me that your statement in paragraph 2 as well as your evidence-in-chief do not tally with the answers given a few moments ago. Could you clarify?

Witness: I admit that I had given a different version in my statement, Sir. I must

say that I didn't tell "Ah Tan" I wanted one liap of opium and I had intended to tell the driver on that particular morning when I was arrested but I didn't get to tell him. [Emphasis added.]

96 Having failed at damage control and being dissatisfied with the foregoing answers which apparently went against the super-structure of the prosecution case, the learned DPP applied to the court to cross-examine Ang Boon Seng with a view to impeaching his credit (pages 664 to 668 of the verbatim notes). But just in time, Ang Boon Seng did an about-turn and claimed presently that he had in fact told the second accused he wanted one liap of opium. His latest answer indeed soothed the prosecution and their application to impeach was therefore abandoned.

97 Apart from the visible twisting and turning of Ang Boon Seng in respect of this so-called 'one liap issue', there was another detail which appeared to bedevil his credibility. In para 8 of his statement dated 21 April 1999 (exh P-224) he had claimed once that the second accused's father and he were friends and opium addicts for many years; he had visited him at the former's residence; it was there he met the second accused and that the second accused's father passed away about five years ago owing to some illness. But later Ang Boon Seng retracted his foregoing assertions and said in para 10 of his PI statement dated 1 October 1999, that he did not know the second accused's father at all and the earlier statement was made by him at the instigation of the second accused whilst under remand. This retraction, nonetheless raised another question mark over his credibility.

98 Ang Boon Seng sprang further surprises. A company search produced by the defence showed that his son Ang Meng Kim was a business partner of the second accused between 14 November 1994 and 7 February 1995. This revelation made yet another dent in Ang Boon Seng's testimony he had little to do with the second accused except in relation to the purchase of opium.

99 The overall impression I formed of Ang Boon Seng was that his evidence lacked the requisite degree of cogency and consistency. Whilst I was mindful that peripheral and immaterial inconsistencies ought not to weigh much in the court's judgmental process, the endeavour by the prosecution to impeach him considerably weakened the prosecution's case, not to mention the rule of prudence that an accomplice's testimony required a fair measure of scrutiny in the interests of justice although under s 135 of the Evidence Act it was no longer obligatory for the courts in Singapore to warn themselves about convicting the accused on the uncorroborated testimony of an accomplice.

100 The next aspect concerned the absence of the evidence of Lim Chew Heng. As mentioned by me earlier, the prosecution both in its opening and in its submission at the close of the prosecution's case suggested in no uncertain terms that he was a vital link in the conspiracy between the first and the second accused. The relevant segments of the prosecution's opening speech as well as its submission at the close of the prosecution require reproduction. They read as follows:

(a) Paragraph 14 of the prosecution's opening speech

14. The Prosecution will lead evidence that at about 6.45 am, Lim Chew Heng and the 2nd accused got into the latter's Lexus and drove off. They were tailed by CNB officers to a food centre at Blk 58 New Upper Changi Road. The CNB officers continued their surveillance of the pair and noticed Lim Chew Heng making phone calls from coin phones in different coffee shops at Blk 59 New Upper Changi Road. The CNB officers will also testify that Lim Chew Heng and the 2nd accused appeared anxious.

(b) Paragraph 24 (2.9) of the prosecution's submission at the close of the

prosecution case

2.9 Evidence of communication or attempted communication between the 2nd accused and the 1st accused. It is submitted that the evidence adduced shows that Lim Chew Heng was anxiously trying to contact the 1st accused on the morning of 11 April 1999. It is further submitted that the 2nd accused, who was with Lim Chew Heng, must have been aware of what Lim Chew Heng was doing.

101 That was not all. In fact, Lim Chew Heng was a deponent at the preliminary inquiry; he was on the prosecution's witness list and the indication right up to the point the prosecution was about to close its case was that he was going to be called to establish that Lim Chew Heng made all those calls attributed to him on his behalf as well as on behalf of the second accused in connection with the conspiracy bespoken. Furthermore, the prosecution had also earlier underscored the point that someone from the residence of Lim Chew Heng called the second accused at 6.00am and the first accused at 6.01am on 11 April 1999.

102 In addition, the records referred to and highlighted by the prosecution also showed that Lim Chew Heng had telephoned the first accused at 97456608 at 6.27am, 6.34am and 6.38am and further tried to call the first accused at the said telephone number at 6.58am and 7.24am. Yet, the prosecution for some reason decided not to call him to throw light on the very conspiracy it set out to prove amongst other things.

103 The court was referred to a number of authorities by the prosecution to reiterate the principle that the prosecution had a discretion not to call a particular witness. My attention was invited particularly to the cases of **Lim Young Sien v Public Prosecutor** [1994] 2 SLR 257; **Yeo Choon Huat v Public Prosecutor** [1998] 1 SLR 217; **Satli bin Masot v Public Prosecutor** [1999] 2 SLR 637 which made reference to **Lau Song Seng v Public Prosecutor** [1998] 1 SLR 663 as well as **Khoon Chye Hin v Public Prosecutor** (1961) 27 MLJ 105.

104 In **Lim Young Sien**, the Singapore Court of Appeal stated at page 266:

In our judgment, the law is well settled that, in a criminal case, the prosecution has a discretion whether or not to call a particular witness, provided that there is no ulterior motive and the witness, who is available to, but not called by, the prosecution, is offered to the defence. There was, in the present case, no suggestion of any ulterior motive. In the premises, the trial judge was right in refusing to draw any adverse inference against the prosecution for their failure to call the two witnesses who had, rightly, been offered by the prosecution to the defence.

105 In **Yeo Choon Huat v Public Prosecutor** [1998] 1 SLR 217, the Singapore Court of Appeal said that it would draw an adverse inference when the prosecution's failure to call a witness amounted to a withholding of evidence. At page 230-231 it was stated:

The prosecution's failure to call a witness does not therefore give rise to a presumption under s 116(g) of the Evidence Act unless it constitutes a withholding of evidence from the accused or the court. In the instant case, the prosecution had not offered Koh to the defence. However, the existence of Koh was clearly known to the appellant. The prosecution had identified Koh and the part that he had played in the case against the appellant. The appellant would have had no difficulty in tracing Koh as he was in remand, pending trial. It was clearly open to the appellant to call Koh as a defence witness after the prosecution had closed its case without calling upon Koh to testify. In our view,

the prosecution had not in any way withheld evidence from the appellant or from the court, and the trial judge was right in refusing to draw an adverse inference under s 116 illustration (g) of the Evidence Act.

106 **Yeo Choon Huat's** case was followed in the recent case of **Satli bin Masot v Public Prosecutor** [1999] 2 SLR 637. In addition at pages 646 to 657 of **Satli's** case, the court also considered the factors that would be relevant in deciding whether an adverse inference should be drawn from the failure to call a witness. It commented:

The materiality of the persons not called by the prosecution is an important factor which the courts would take into account in deciding whether an adverse inference should be drawn against the prosecution for failing to call such persons as witnesses. In *Lau Song Seng & Ors v PP* [1998] 1 SLR 663, this court adopted the following observation which I made in *Chua Keem Long v PP* [1996] 1 SLR 510, as a judge of the High Court, as laying down the correct approach in dealing with issues of whether an adverse inference should be drawn in light of the prosecution's failure to call certain witnesses:

It must be emphasized that s 116 illustration (g) is not mandatory. That provision merely states that the court may draw a presumption, not that it must. In determining whether or not that presumption ought to be drawn the court will have regard to all the circumstances, but particularly and importantly the materiality of the witnesses not produced. The adoption of any other approach would be to encourage the adducing of unnecessary evidence, prolonging the trial and confusing the issues.

Indeed case law abounds with examples where the courts have declined to draw an adverse inference against the prosecution where the witnesses they have failed to call were not material or indispensable to the prosecution's case. This is particularly so where the prosecution's case has been sufficiently proved by other independent evidence and where the failure to call the particular witnesses left no gaps in the prosecution's case - see for example *Osman bin Din v PP* [1995] 2 SLR 129, *Vinit Sopon & Ors v PP* [1994] 2 SLR 226 and *Lai Kam Loy v PP* (supra). In *Lai Kam Loy's* case for instance, it was argued that the failure of the prosecution to call the informer 'Ah Hai' who was present throughout the drug transaction resulted in a serious gap in the prosecution case and that an adverse inference should consequently be drawn against the prosecution under s 116 illustration (g). The argument was rejected by this court on the basis that the informer was not indispensable to the prosecution case which had been proved by other independent evidence. This court said at p 794:

We will summarily deal with the failure of the prosecution to call 'Ah Hai' the informer as a witness. Quite apart from the statutory protection of anonymity afforded to informers under s 23 of the Act, it is our view that [the informer] was not indispensable to the prosecution case which could have been proved through ... other independent evidence. The failure to call on him did not result in any gap in the prosecution case as such.

In contrast, in the case of ***Lau Song Seng & Ors v PP***, the second and third appellants were charged with the offence of criminal conspiracy to traffic in drugs. In that case, we drew an adverse inference against the prosecution for failing to call one 'Ah Heng' on the basis that any direct evidence of a conspiracy in that case, if it existed, would only be known to 'Ah Heng'. In the circumstances 'Ah Heng' was a material witness in connection with the charge and the failure on the prosecution's part in calling him justified the drawing of an adverse inference against the prosecution."

107 In the Malaysian case of ***Khoon Chye Hin v Public Prosecutor*** (1961) 27 MLJ 105, Thomson CJ stated at page 109 that:

It is, of course, well settled that in a criminal case prosecuting counsel, provided there is no wrong motive, has a discretion as to whether or not to call any particular witness and in particular has a discretion not to call in support of his case a witness whom he does not believe to be a witness of truth.

108 The principle that the prosecution had a discretion not to call in support of its case, a witness whom it did not believe to be a witness of truth, had been well-entrenched in our law. All said, the question that fell for consideration before me was not so much as to whether any adverse inference was justified against the prosecution for not calling Lim Chew Heng, but the real issue was in relation to the standard of proof required of the prosecution in proving the element of conspiracy between the persons named in the charge. Having outlined and emphasised the alleged clandestine role played by Lim Chew Heng in relation to the telephone calls he made or attempted to make just before his arrest and worse still the call from his residence to the second accused as well as the first accused at about 6.01am on 11 April 1999; his non-production as well as a somewhat contradictory statement from the learned DPP that Lim Chew Heng's calls could well have been innocent (page 1087, lines 16 to 24); the prosecution's case was significantly hurt and created a large and distinct shadow on the 'link' element in the conspiracy belaboured by the prosecution.

109 I was mindful that the element of conspiracy would always be difficult for the prosecution to prove by direct evidence and that in a case involving conspiracy where there had been no direct evidence, inferences from proven circumstances must form the basis of the court's conclusions. However, where there existed factors which would appear to be inconsistent with the charge, the charge was likely to fail (see Ratanlal and Dhirajlal's Law of Crimes, 23rd Edn, page 392).

110 Having reviewed all the arguments, I concluded that the several unsatisfactory features in the evidence of the prosecution's key witness Ang Boon Seng, added to the prosecution's decision not to put Lim Chew Heng to the test, had dealt a serious blow to the prosecution's case against him.

111 Lest it is suggested that I had overlooked it, the slips of paper discovered in the second accused's wallet midway through the cross-examination of the second accused (exhs P-228A and P-228B) indeed raised a substantial question mark on the credibility of the second accused. First, the slips bore the name and contact numbers of the first accused whom the second accused claimed he did not know. Second, there were a number of cryptic entries and figures which suggested that the second accused was indeed involved in the delivery of some goods. The explanations by the second accused that the entries were in relation to the delivery of bean paste biscuits and mooncakes sounded hollow. Nevertheless, the details on the reverse of exh P-228B (found in the wallet) when compared with the delivery list (exh P-215) seized from the first accused, did not seem to match both as regards the quantity to be delivered as well as the names of persons to whom they were earmarked for. It must be presently observed that the statement of the second accused made on 22

April 1999 admitted in evidence (at the instance of the prosecution that it was for the sole aim of assisting the court to have a full picture) seemed to suggest that the second accused had in the past dealt with opium (para 14 of exh P-128). Consequently, whether this list (P-228B) was in relation to his previous dealings or the current one was a matter for conjecture and in my evaluation, by itself was insufficient to prove that the second accused conspired with the first accused in regard to the 32 slabs of opium mentioned in the charge.

112 As in ***Lau Song Seng v Public Prosecutor*** [1998] 1 SLR 663 at 665F-H, the prosecution's failure to call Lim Chew Heng was extremely unfortunate as he was in a very advantageous position to throw considerable light on the developments which unfolded on the morning of 11 April 1999. Although I declined to draw any adverse inference against the prosecution, I was in the end not satisfied that the prosecution had discharged its ultimate burden in proving its case against the second accused beyond a reasonable doubt. I was in this connection guided by the principles and reasoning adopted in ***Lau Song Seng*** (supra) as well as ***Don Promphinit v Public Prosecutor*** [1994] 3 SLR 193. In the result, the second accused was discharged and acquitted of the charge for which he was tried. Against my decision, there is no pending appeal.

113 In the result, the first accused was found guilty of the charge, convicted and sentenced to the only penalty prescribed by law and the second accused discharged and acquitted of the charge for which he was tried before me.

Dated this 10th day of May 2000.

MPH RUBIN

Judge

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