

Vignes s/o Mourthi and Another v Public Prosecutor and Another Case
[2003] SGCA 2

Case Number : Cr App 13/2002, CC 25/2002
Decision Date : 22 January 2003
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Subhas Anandan, Anand Nalachandran (Harry Elias & Partners) for the first Appellant; Mr Lee Teck Leng, Michael Soo Chia (Tan Peng Chin LLC) for the second Appellant; David Chew Siong Tai, Leong Wing Tuck (DPP's) for the Respondent
Parties : Vignes s/o Mourthi; Moorthy a/l Angappan — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs – Trafficking in controlled drugs – Defence of lack of knowledge that substances were drugs – Abetment of trafficking

Criminal Procedure and Sentencing – Alibi – Whether defence of alibi should be called at end of Prosecution's case

Criminal Procedure and Sentencing – Statements – Whether statement of accused amount to confession – Whether presumption in Misuse of Drugs Act can be relied upon – s 17(2) Evidence Act (Cap 97, 1997 Rev Ed)

Delivered by Chao Hick Tin JA

1 The first appellant (Vignes) was convicted of a capital charge of trafficking in controlled drugs by delivering a packet containing a net weight of 27.65 g of diamorphine to Sergeant (Sgt) S Rajkumar, who was an officer of the Central Narcotics Bureau (CNB), in exchange for \$8,000. The second appellant (Moorthy) was convicted of a capital charge of abetting Vignes to traffic in the said drugs and in pursuance of their conspiracy, Moorthy handed the drugs to Vignes in order to enable the latter to deliver the drugs to Sgt Rajkumar. Both appellants were sentenced to suffer death. They appealed. Their appeals were heard on 25 November 2002. This is now our judgment which was reserved.

The prosecution's case

2 About a week before 20 September 2001, Sgt Rajkumar was informed that a Malaysian syndicate, the members of which were Indians, was looking for heroin buyers in Singapore. He arranged, through his informer, for a deal to be done, with him posing as a potential buyer of heroin. He gave his handphone number to his informer so as to enable the syndicate members to contact him.

3 At about 11.00am on 20 September 2001, Sgt Rajkumar learnt that the syndicate had one pound of heroin for sale for S\$8,000. He was asked to proceed quickly to the Marsiling MRT Station to wait for the seller's call. Sgt Rajkumar informed his superior, ASP S Krishnan, who immediately summoned eight officers and briefed them on his plan to arrest the suspected trafficker or traffickers.

4 The CNB officers arrived at the Marsiling MRT Station at about 12.20pm. Sgt Rajkumar met his informer there as the seller of the drugs was only willing to call the informer's mobile phone. Ten minutes later, Sgt Rajkumar received a call on the informer's mobile phone and the person at the other end of the line identified himself as "Vignesh", who then told Sgt Rajkumar that the place to effect the transaction had been changed to Admiralty Road, in front of the An-Nur Mosque. Sgt Rajkumar told "Vignesh" that his name was "Segar" and that he would be coming in a silver-coloured car bearing the

licence plate number 9073. After the call, Sgt Rajkumar informed his colleagues of the change of venue for the transaction.

5 Sgt Rajkumar then left the Marsiling MRT station for the Mosque, with Sgt Daniel Gan at the wheel. When they arrived near the Mosque, Sgt Rajkumar noticed that a person was staring at his car and approaching it. He got out of the car and walked towards the person. The conversation in Tamil between the person (later established to be Vignes) and Sgt Rajkumar was subsequently recorded in English by Sgt Rajkumar in the field book at Clementi Police Division. That entry reads:-

Raj : Hi

Vignesh : U Segar right

Raj : Yes.

Vignesh : I'm Vignesh

Raj : How

Vignesh : Where's the money

Raj : With my partner (pointing to Sgt Daniel Gan who was in the driver's seat).

Raj : Where's the stuff.

Vignesh : I've put it in front, near the Mosque. Take the money and follow me.

Raj : OK (took the money from Sgt Daniel Gan and followed Vignesh).

Vignesh : How, can u trust the male Chinese in the car.

Raj : Don't worry, he's my financier. Without him, I can't deal.

Vignesh : (After stopping in front of the Mosque, after the gate of the Mosque). The stuff is with me. Take out the money. You know how much is it right.

Raj : \$8,000 right.

Vignesh : Yes.

Raj : Where's the stuff.

Vignesh : (Handed over the white plastic bag from his maroon helmet). Is the money correct.

Raj : Yes (Handed the money to him).

Raj : Is the stuff good.

Vignesh : It's very good. U watch and see. You are sure to come back to deal with me again.

6 As pre-arranged, at that point Sgt Rajkumar gave the thumbs-up signal. Vignes was arrested by the other CNB officers who were lying in ambush. Vignes was then made to sit at the rear seat of the CNB staff car. Whilst in the car, Sgt Rajkumar questioned Vignes, who told him that his "annai" (which means "elder brother" in Tamil) had given the packet to him and that his brother was somewhere in the vicinity, waiting to collect the money from him. The substance in the packet was later established to contain not less than 27.65 grams of diamorphine. As requested, Vignes called his "brother" using the handphone of one of the CNB officers. After the telephone conversation, Vignes said that his "brother" was in the vicinity of a fruit shop along Woodlands Centre Road and was on a motorcycle. The CNB officers then drove near to a spot, overlooking the fruit shop, for Vignes to point out his "brother". Vignes duly identified a man in a grey shirt as his "brother". That person was later established to be Moorthy.

7 This information was immediately passed on to ASP Krishnan and another CNB officer, who had positioned themselves in the vicinity. They approached Moorthy and, after identifying themselves, asked Moorthy what he was doing at the fruit shop and the latter replied that he was waiting for a friend. When asked for the name of the friend, Moorthy did not answer. He was then placed under arrest. Instead, Moorthy asked, "What happened, what happened" several times and also questioned why was he being arrested.

8 Both Vignes and Moorthy were brought back to the Clementi Police Station. At about 2.00pm, ASP Krishnan started to question Vignes in the presence of Sgt Rajkumar. The questions and answers were recorded in ASP Krishnan's field book as follows:-

Q1: Pointing to a red plastic bag containing the exhibit, I asked the accused, "What is this?"

B1: "Kallu" (stone in Tamil).

Q2: Who gave it to you?

B2: He, Moorthy, gave it to me.

Q3: What did he ask you to do with it (exhibit).

A3: Moorthy asked me to hand it over to Thayiru. He also asked me to collect \$8,000 from Thayiru.

Q4: Showing the accused a passport with photograph, I asked him, is this

Moorthy? Passport no. H581957 of Moorthy A/L Angappan was shown to the accused.

A4: Yes, this is Moorthy.

9 Vignes signed against the above recording after it was read to him. Though invited, he did not make any corrections. However, he later denied there was such a conversation.

10 Both Vignes and Moorthy were sent for various tests. But no morphine was present in their urine samples.

11 Later that day, at about 8.00pm, a s 122(6) statement was taken from Vignes, where he stated –

"The stuff do not belong to me. It belonged to the male Indian outside this office. His name is Moorthy. He was arrested after my arrest. Moorthy passed the stuff to me at my house in Johor Bahru, Malaysia. After he passed the stuff to me, he asked me to hand it over to Tahir and also gave me a phone number to call Tahir. I rang up Tahir and I asked him to wait for me in front of the mosque in Woodlands. Moorthy also asked me to collect S\$8,000 from Tahir after passing the stuff to Tahir. I went to the mosque and handed the stuff to Tahir. Tahir handed the money to me and I was arrested by the same person whom I believed to be Tahir. I do not know that the stuff was heroin. Moorthy told me the stuff were stones. I have not seen heroin before. When I was arrested, then only I knew it was some sort of drugs."

12 Subsequently on 24, 26 and 27 September 2001, three further statements were obtained from Vignes which explained in detail how the drugs came into his possession.

Vignes's defence

13 We shall now turn to consider the defences of both appellants. As they each sought to shift blame to the other, we shall deal with their defences separately.

14 Vignes testified in his own defence at the trial. What he said is as follows. He lived in Johor Bahru but worked in Singapore. On 15 September 2001, five days before the fateful day, he met with an accident while riding on his motorcycle, and was injured. He was on medical leave until 19 September 2001. He had to get back to work the next day. He made an arrangement with a friend, Jayacelan, to

come and pick him up on the friend's motorcycle.

15 On the evening of 19 September 2001, at about 8.30pm, Moorthy came to Vignes's house. Vignes was out visiting a temple at the time. His wife, sister and uncle were at home. Moorthy waited for his return. We ought to mention that there is a discrepancy here. In Vignes's evidence in court he said that his wife was with him at the temple but in his statements he said that his wife was at home. Shortly, about half an hour later, Vignes returned. Because Vignes was returning to work in Singapore the next day, Moorthy wanted him to carry something, "sambrani kallu", to a friend, Tahir, in Yishun in Singapore. Vignes was also asked to collect \$8,000 from Tahir. Moorthy told Vignes that the latter could call Tahir who would come to Woodlands to collect the things from Vignes. Vignes was agreeable to doing this favour for Moorthy who then said that he would bring the things later.

16 There was no sign of Moorthy until 2.00am when Vignes's wife woke him up. In his statements he said that Moorthy brought a white plastic bag with another red plastic bag inside it. In his oral testimony, he said Moorthy gave him a red plastic bag which was tied up. When Moorthy knocked on the door, it was Vignes's wife who heard it and woke him up. Moorthy also gave Vignes a piece of paper, with Tahir's handphone number written on it. Upon being asked by Vignes, Moorthy said that inside the plastic bags were incense stones. So, as far as Vignes was concerned, they were only incense stones. Vignes said he thought the \$8,000 was a loan from Tahir to Moorthy to enable the latter to start up some businesses. However, we should add that in his statements he said he thought Tahir owed Moorthy that sum. In his mind, the \$8,000 could not have been to "purchase" the incense stones. Vignes claimed that he left the plastic bag in the hall and went back to sleep without, at any time, opening the plastic bag to check its contents.

17 At 4.30am Vignes woke up and at 5.15am, he was on Jayacelan's motorcycle as a pillion rider heading for Singapore. He arrived at his place of work at about 6.30am.

18 At about 8.00am, Vignes managed to contact Tahir, who agreed, if he could borrow a car, to come over and collect the stuff at Vignes's place of work during the lunch break. About an hour later, Vignes informed Moorthy of the arrangement made with Tahir. After working for a while, Vignes felt pain in his injured leg and decided to take a half day leave and return home. He borrowed a motorcycle from a relative and colleague, Vijayapuri (Vijay). Vignes also called Tahir about the change of plan and told Tahir to meet him at the Mosque at Woodlands in 30-45 minutes' time.

19 As Vignes was riding along the Seletar Expressway, his motorcycle had a puncture. He waited at the side of the road until a motorcyclist offered him a lift to Woodlands. When Vignes arrived at the Mosque, no one in the vicinity matched the description of Tahir. He used a public phone to call Tahir, who said that he would be arriving in 10 to 15 minutes time, in a silver coloured car with a certain registration number. After this call, Vignes made another call to Moorthy, asking the latter to come down from Johor Bahru to deliver the stuff himself to Tahir. Moorthy instructed Vignes to stay put and that he would be coming over to Woodlands and fetch Vignes back to Johor.

20 A while later a silver coloured car with the specified number plate arrived at the scene and an Indian man with long hair stepped out. The Indian man walked towards him. After identifying themselves, Vignes took the plastic bag out of his helmet and gave it to Sgt Rajkumar whom he thought was Tahir. He then asked Sgt Rajkumar for the \$8,000. Sgt Rajkumar took out a bundle of notes and gave it to Vignes. Moments later, Vignes was arrested. Vignes said that he told the officers that the things were "sambrani kallu" (a substance used as incense for religious purposes), not just "kallu".

21 While seated in the CNB car, Vignes also told the officers that it was Moorthy who asked him to deliver the plastic bag of "sambrani kallu" to Tahir.

Moorthy's defence

22 Moorthy's defence essentially was that he had nothing to do with the drugs which Vignes had delivered to Sgt Rajkumar. He said that he never went to Vignes's house on 19 and 20 September 2001 and that he came down to Woodlands on 20 September 2001 because Vignes had asked him to come to Singapore and fetch Vignes back to Malaysia. Moorthy did that as a favour because Vignes's father had previously done him a good turn.

23 According to Moorthy, on 18 September 2001, Vignes called him and asked whether he could lend Vignes a motorcycle, as Vignes was planning to return to work in Singapore on 20 September 2001 and his own motorcycle was damaged in the accident on 15 September 2001. However, Moorthy could not lend Vignes his motorcycle, as he had not paid road tax on it. Moorthy told Vignes that he would try to borrow a motorcycle from a friend.

24 At about 10.00am on 19 September 2001, Moorthy's younger sister, Arasakumari, and her husband, Ragu, came to his house. Subsequently, Moorthy, his elder brother, Ponnusamy, and Ragu went to a government department to make inquiries about the businesses of rearing quails and producing duck eggs, as Moorthy and Ragu wanted to engage in these businesses. They returned to Moorthy's house at about 2.00 to 3.00pm and Ragu and his wife soon left after that.

25 At about 6.00 pm that day, Moorthy and his wife and two children went to his elder sister Puspah's house, as he wanted to give a birthday present to his seven year old nephew, Ganesan, whose birthday fell on 2 September 2001. He explained that in fact, a birthday party for the nephew was held on 2 September, which Moorthy attended. But on that occasion he did not bring a gift as he did not have any money to buy a present.

26 When they arrived at Puspah's house, she was not at home as she was working in Singapore. Puspah's husband, Chandran, was also not there. When Moorthy gave Ganesan the birthday present, the boy asked him for a treat and Moorthy agreed to do so. He then called Ragu and told him to come over to Puspah's house as he was giving Ganesan a treat. He also asked Ragu to call Kumar, who was the husband of Moorthy's younger sister, Jayanthi.

27 Chandran subsequently returned home from work. When he learnt about the treat, he asked Moorthy to buy some liquor. While he was out buying food and drinks, Vignes called Moorthy to ask him about the motorcycle that Moorthy had said that he would try to borrow for Vignes. He told Vignes that he would give the latter a final answer after 8.00 pm. Following that, Moorthy called a friend, Sashi, who refused to lend his motorcycle to Vignes.

28 At about 7.30pm, Moorthy returned to Puspah's house, having bought the food and drinks. The people whom he called had all arrived. Ragu had also bought some food from Kentucky Fried Chicken. At about 8.30pm, Moorthy called Vignes to inform the latter of his unsuccessful efforts to borrow a motorcycle for him. As the background was rather noisy, Moorthy asked Vignes where the latter was and was told by Vignes that he was at a temple. In turn, Moorthy informed Vignes that he was at his sister's place and was having a kind of birthday get-together at her house.

29 Soon, the four men gathered to play cards while the women talked and watched television. At about 11.00 pm the party ended. Moorthy and his family went straight home. He watched some television programmes before going to bed at around midnight. He slept through the night and did not wake up in the middle of the night to go anywhere. He did not know anyone by the name of Tahir.

30 The above version of the events given by Moorthy was that he did not visit Vignes's house on the evening of 19 September 2001. Neither did he bring the plastic bag, with the drugs, over to the house in the wee hours of the morning of 20 September 2002. Nor did he ask Vignes to collect money from anyone.

31 On 20 September 2001, between 9.00am and 10.00am, Vignes called Moorthy from his place of work, asking the latter to give him a lift from Singapore to Vignes's house in Johor. Moorthy told Vignes that he could not do so immediately as he might have to make a delivery for a customer. As agreed, Vignes called again at about 12.30pm and he told Moorthy about his painful leg and the punctured tyre and asked Moorthy to come and fetch him back from the fruit shop at Woodlands. Moorthy said that he would try to borrow a motorcycle from a friend to go over to Singapore. That was why he came over to Woodlands. In fact, when he was at the Singapore checkpoint at about 1.00pm, Vignes called again to find out where he was. But when he arrived at the fruitshop, Vignes was nowhere in sight. Soon, two CNB officers came from behind and arrested him. Upon interrogation he told them that he was waiting for a friend. He could not remember whether the officers asked for the friend's name or whether he had mentioned any. The officers also searched his motorcycle and found nothing. In turn, he also asked them why he was being arrested.

32 Moorthy explained that he was willing to do the favour for Vignes because the latter's father had in 1998 done a kind deed to his family, namely, Vignes's father had come down all the way from Perak to Seremban to render assistance when Moorthy's then pregnant wife, his mother and his younger brother were involved in an accident. The occurrence of this event was not disputed.

33 In support of his evidence as to what occurred on 19 and 20 September 2001, Moorthy called his wife, Satyabama, his sister, Arasakumari and her husband, Ragu to testify. They substantially corroborated his version of events and confirmed that Moorthy was with them on the evening of 19 September 2001 and could not have visited Vignes's house at about 8.30pm.

Consideration of Vignes's defence

34 It would be seen that the defence of Vignes was one of lack of knowledge. He asserted that he did not know that the things he was delivering on behalf of Moorthy were drugs. He thought they were "sambrani kallu". He claimed to have been made use of by Moorthy.

35 The trial judge did not believe that Vignes was the innocent carrier that he claimed to be. The facts giving rise to his arrest as recounted by the prosecution witnesses and he himself were largely the same. In the view of the trial judge, the following aspects of the case pointed to the guilt of Vignes:-

(i) At about 12.30pm that day, Sgt Rajkumar received a call from one "Vignesh" who also informed the former that the place of transaction had been changed from the Marsiling MRT Station to Woodlands as his motorcycle had broken down. Sgt Rajkumar informed "Vignesh" of the colour and the number of the vehicle he would be travelling in to arrive at Woodlands. And when Sgt Rajkumar arrived at the appointed place, Vignes was staring at the car and the transaction was effected. This clearly showed that Vignes was the person who spoke to Sgt Rajkumar at about 12.30pm.

(ii) The conversation that took place between Sgt Rajkumar and Vignes when they met to effect the transaction was very telling. This has been quoted at ¶15 above. Why should Vignes be so careful as to ask Sgt Rajkumar "How, can u trust the male Chinese in the car" if the things which Vignes was delivering to Sgt Rajkumar were indeed incense? The question was entirely out of place. Furthermore, when Sgt Rajkumar asked Vignes if the stuff was good, his answer was "It's very good. U watch and see. You are sure to come back to deal with me again." Clearly, this answer was wholly inconsistent with Vignes's claim that he thought he was delivering "sambrani kallu" to Tahir on behalf of Moorthy.

(iii) Vignes was asked to deliver the stuff and also to collect \$8,000. In Vignes's statement of 24 September 2001, he stated that "(Moorthy) also did not explain to me why I (had to) collect so much money for the stones." By this statement Vignes was suggesting that he was to collect \$8,000 for the stones. He would have known that the stones (if they were incense) would not be of such a high value. Moreover, even if that statement was meant to suggest that he was not told what the \$8,000 payment was for, it was inconsistent with what he stated in court where he explained that the \$8,000 was a loan from Tahir to Moorthy to enable the latter to start up some chicken and duck businesses. Vignes never mentioned this in any of his statements. This seemed like an *ex-post facto* concoction. Here again, it would be pertinent to refer to the conversation which took place between Vignes and Sgt Rajkumar when they first met at Woodlands –

"V: Where's the money.

Raj: With my partner (pointing to Sgt Daniel
Gan who was in the driver's seat).

Raj: Where's the stuff.

V: I have put it in front, near the mosque.

Take the money and follow me."

Clearly, from this conversation, the \$8,000 was meant to be in exchange for the drugs.

36 We have carefully considered the arguments made on behalf of Vignes that the trial judge should have accepted his explanation that he did not know that the things in the plastic bag given to him by Moorthy were drugs. Vignes's counsel also contended that the written recording made by Sgt Rajkumar of the oral conversation between Vignes and Sgt Rajkumar at the place of transaction was not accurate, as it was not made contemporaneously and neither did Vignes sign against it. But in none of his written statements did Vignes ever refer to the stuff in the plastic bag as "sambrani kallu", meaning incense. This is most significant. He merely referred to "kallu", meaning stones, and which in street jargon means sachets of heroin in granular form.

37 It is clear that the trial judge accepted the evidence of Sgt Rajkumar as to his conversation with Vignes when they first met at the Mosque at Woodlands. The trial judge had the benefit of hearing the witnesses. There is no basis for us to take a different view.

38 Looking at the totality of the evidence, we endorse the finding of the court below that Vignes knew that he was transporting drugs for sale. His appeal is dismissed.

Issues raised by Moorthy

39 At the close of the prosecution's case, Moorthy submitted that there was no case for him to answer. Counsel for Moorthy reiterated this same point before us that the trial judge erred in calling upon Moorthy to enter on his defence.

40 The second issue raised by Moorthy is that the trial judge was wrong in not accepting his defence of alibi.

Should Moorthy's defence have been called?

41 At the close of the prosecution's case, the only "evidence" that implicated Moorthy was Vignes's statements. The contention of Moorthy on this issue is that Vignes's statements did not amount to confessions, and, if the trial judge were to disregard the statements as he should have, there would not have been any sufficient basis to call upon Moorthy to enter on his defence. Under s 30 of the Evidence Act a statement of an accused person can be used as evidence against a co-accused only if it amounts to a confession against the maker.

42 Moorthy contended that Vignes's statements did not amount to a confession because Vignes stated that what he had agreed to deliver on Moorthy's behalf to Tahir were not drugs but were some innocuous "stones". Thus, Vignes did not admit to any wrongdoing or to the charge preferred against him.

43 Section 17(2) of the Evidence Act provides that "a confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence."

44 The test to be applied in determining whether a statement is a confession was elucidated by the Privy Council in *Anandagoda v The Queen* (1962) 28 MLJ 289 as follows:-

The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts ... It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to

consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession although the accused at the same time protests his innocence."

45 This Court had the occasion to examine this very question in the case *Abdul Rashid v PP* [1994] 1 SLR 119 where an accused made a similar sort of statement to the present. There this Court clarified that for a statement to amount to a confession it need not be of an unqualified nature. The important thing is that the statement must connect the accused in some way with the offence.

46 Counsel for Moorthy sought to narrow the scope of the decision in *Abdul Rashid* arguing that it should be confined to the facts of that case where the first appellant was charged with trafficking drugs and the second appellant with abetting the first appellant, and, while the first appellant stated that he did not know the package handed over to him by the second appellant contained drugs, he knew that he was involved in smuggling activities as he was being paid for the job. Furthermore, he was told to hide it under the dashboard of the car. He also did not state what he thought the substance was. Counsel submitted that in such circumstances it was correct for the court in that case to find that the statement amounted to a confession.

47 We think that the distinction sought to be drawn by Moorthy's counsel between *Abdul Rashid* and the present case is wholly without merit. In *Abdul Rashid*, the first appellant denied knowledge that what he was carrying were drugs. The circumstances in that case might well be suspicious, or they might suggest that he had committed some other offences, but the fact remained that he denied knowledge of the drugs, very much like the case here. Moreover, this argument of Moorthy's counsel would run counter to one very critical stricture laid down in *Anandagoda*, that the statement must be considered on its own terms without reference to extrinsic facts.

48 We would also mention that in the later case *Tong Chee Kong v PP* [1998] 2 SLR 843, the approach adopted in *Abdul Rashid* was followed. There, the two appellants, Tay and Tong, were charged that, in furtherance of their common intention, they had in their possession for the purpose of trafficking a packet of diamorphine. Tay admitted in his statements that he received the drugs from Tong, but claimed that he needed a supply of heroin for his own consumption and that Tong had sold him a pound of heroin for \$3,000. The Court of Appeal agreed with the trial judge that Tay's statements amounted to confessions, as he had admitted in the statements that he had taken delivery of the drugs and was in possession of the drugs and this unequivocally connected him with the offence. The court came to this conclusion notwithstanding that Tay denied that he possessed the drugs for the purpose of trafficking. The confession was subsequently used against Tong in convicting him of the offence charged.

49 Moorthy further submitted that the trial judge was wrong to have applied the minimum evaluation test enunciated in *Ng Theng Shuang v PP* [1995] 2 SLR 36 in determining whether Vignes's statements amounted to confessions. This was what the trial judge said (at ¶94):-

"Bearing in mind that only a minimum evaluation of the evidence was required at the close of the Prosecution's case (*Ng Theng Shuang v PP* [1995] 2 SLR 36), I was of the view that B2's (Moorthy's) defence should be called upon. B1's (Vignes's) statement amounted to confessions. They revealed an agreement that B1 (Vignes) would deliver a packet to one Tahir, collect S\$8,000 from him and hand the money over to B2 (Moorthy). The essence of a conspiracy is agreement. They also showed that B2 (Moorthy) did hand over the packet to B1 (Vignes) who subsequently travelled to Singapore, delivered it to SGT Rajkumar and collected what he thought was a bundle of notes amounting to S\$8,000. They also showed that B2 (Moorthy) then travelled to Singapore to meet B1 (Vignes) and to receive the money from him."

50 In our opinion, the first sentence in the above paragraph of the judgment was merely a re-statement of the law as enunciated in *Haw Tua Tau v PP* [1981] 2 MLJ 49, i.e., that the court should not at the close of the prosecution's case go into a detailed evaluation of the evidence. As for Vignes's statements, the trial judge stated quite clearly in the next sentence that the statements amounted to confessions.

51 The next criticism levelled by Moorthy's counsel relates to the trial judge's reliance on the presumption under the Misuse of Drugs Act to determine that the statements of Vignes were confessions (at ¶95):-

B2's (Moorthy's) counsel expressed his concern that a man accused of molesting a woman could be held to have confessed to the offence simply because he said he did come into contact with the woman but claimed that it was accidental. However, offences falling under the Misuse of Drugs Act are different from other offences in that there are presumptions in the Act which assert a certain state of facts or of knowledge until it is proved to the contrary by the defence. Therefore, since B1 (Vignes) had admitted he was in possession of the plastic bag containing the drugs, he was presumed to be in possession of the drugs and to have known the nature of the drugs despite his protestations to the contrary in the same statements."

Counsel submitted that such a reliance was wrong.

52 Vignes's statements clearly showed that he delivered the plastic bag containing drugs to Sgt Rajkumar, whom he thought was Tahir. While in accordance with *Anandagoda* the court must ignore extrinsic facts to determine whether a statement amounted to a confession, it does not mean that it should not be viewed in the light of the applicable law, i.e., the presumptions laid down in the Misuse of Drugs Act. In our opinion, the effect of a statement must be viewed within the framework of the law. By virtue of the Act, Vignes was presumed to have known the nature of the substance he was carrying notwithstanding his protestation to the contrary. As declared by the Privy Council in *Anandagoda*, protestation of innocence did not mean that a statement could not be a confession. Accordingly, his statements clearly came within the scope of "stating or suggesting the inference that (Vignes) committed that offence" laid down in s 17(2) of the Evidence Act. Thus, they connected him with the offence for which he was charged and were confessions.

Defence of alibi

53 Turning to the second issue, counsel for Moorthy submitted that the trial judge should have accepted his evidence and that of his witnesses that he never visited Vignes's home on 19 September 2001 and that he never handed any packages to Vignes for delivery to Tahir. He contended that the trial judge gave undue weight to certain discrepancies between what he stated in his statements and in court:-

(i) In his statements, Moorthy said he was at his sister's home between 6.00pm to 11.00pm on 19 September 2001. He did not state that he left the sister's house to buy food for some 30-45 minutes. Instead, he stated that he did not go anywhere else. Counsel argued that this omission is wholly insignificant bearing in mind that his going to buy food and drinks was in relation to the merry-making in the sister's home. He was not really going anywhere as such.

(ii) In his statement, Moorthy said he "was helping in the preparation of his (sister's) son's birthday dinner". Counsel submitted that there was nothing very inaccurate in that. Moorthy did go out and buy food to have a casual birthday treat for his nephew. It was only a matter of language used in the course of interpretation in taking down the statement.

There was nothing unusual about gathering a few close families together at short-notice for an impromptu meal just to make a young nephew happy.

54 Next, Counsel submitted that Vignes's evidence was incredible in some respects. First, why should Moorthy come to his house in the presence of so many people to request for such a favour? The request could have been made over the phone. Why didn't Vignes call Moorthy when the latter did not return with the things before Vignes went to sleep?

55 Second, it was most unusual that when Moorthy knocked at the door of the house at 2.00 am, it was not the two sisters of Vignes, who slept in the hall, who heard it but Vignes's wife who was sleeping with him in a room with the door closed.

56 Third, in his statement, Vignes said Moorthy handed to him a white plastic bag. In court, he stated it was a red plastic bag and explained that the red plastic bag was inside the white plastic bag.

57 Fourth, according to Sgt Rajkumar the deal to buy the one pound of drugs at \$8,000/- was only struck on 20 September 2001 and yet, on Vignes's evidence, Moorthy had, on 19 September 2001, asked Vignes to collect \$8,000 from the buyer.

58 Fifth, according to Jayacelan, who gave Vignes the ride on 20 September 2001 from Johor to Vignes's work place in Singapore, Vignes carried only one red plastic bag to work that morning and not a white plastic bag. In Jayacelan's mind that red plastic bag would have contained food. Vignes's wife also said that she had prepared food for him. This evidence contradicted Vignes's evidence that Moorthy gave him a white plastic bag in the wee hours of 20 September 2001. Furthermore, the CNB officers testified that a white plastic bag containing drugs was seized from Vignes. So the white plastic bag could not have been brought into Singapore on 20 September 2001. It must have been brought into Singapore much earlier. In this regard, it must be borne in mind that it was a week earlier that Sgt Rajkumar was told by his informer that a Malaysian syndicate of Indians was looking to sell a pound of heroin.

59 Sixth, if it were true that it was Moorthy who made use of Vignes to deliver the drugs to Tahir, why should he expose himself so willingly by coming over to Singapore just because Vignes said that his leg had become painful?

60 Seventh, Vignes testified that he told Sgt Rajkumar at the encounter outside the Mosque that "Moorthy annai" was on his way. But Sgt Rajkumar's account of that conversation contained no reference to "Moorthy annai". Vignes also claimed that after his arrest and while in the CNB car he told Sgt Rajkumar of "Moorthy annai". But Sgt Rajkumar's evidence was that the name "Moorthy" was not mentioned by Vignes.

61 Counsel for Moorthy also pointed to one other piece of evidence of Vignes to show that the latter was not a reliable witness. Vignes said that while he and Moorthy were at Clementi Police Station, Moorthy had asked him not to implicate him. Vignes also said that Sgt Rajkumar permitted them to speak to each other. This could not be true as law enforcement agencies never allow suspects to talk to each other.

62 Counsel for Moorthy accepted that where an alibi defence is raised, the accused has the evidential burden of proof. However, this burden is not on a balance of probabilities but only to raise a reasonable doubt. In our view, this submission is correct. This Court had in *Ramakrishnan s/o Ramayan v PP* [1998] 3 SLR 645 stated (at p.653) that "an acquittal must follow from reasonable doubt that the appellant might have been elsewhere at the material time."

63 Counsel further criticised the trial judge for saying "it was incredible that (Vignes) could not even take public transport across the Causeway that day." He said that Singapore taxis were not allowed into Johor. If Vignes were to take a bus back he would have to get off the bus and walk through the Singapore and Malaysian immigration checkpoints. This would be something Vignes would want to avoid in view of the fact that his leg was hurting. If Vignes were to be travelling as a pillion rider on a motorcycle he would be able to clear the checkpoints of both countries while remaining seated. Counsel said that Moorthy was, by nature, a helpful person. He even came to Singapore on 16 September 2001 with an uncle of Vignes to retrieve Vignes's motorcycle which was damaged in the 15

September 2001 accident. So it was entirely in line with Moorthy's desire to help that he came over upon Vignes's request.

64 In our judgment, all the above arguments do not necessarily suggest that Moorthy was innocent of the drug trafficking transaction that Vignes was involved in. For example, taking the second point, the evidence was that the hall of Vignes's home was small. The door of Vignes's room opened to the hall. Ordinarily, one would agree that the person sleeping in the hall should hear the knocks rather than a person sleeping in a room with the door closed. But the fact is that some people sleep like a log while others wake up at the slightest vibration. One of the sisters, Kogilam, testified that she was a deep sleeper. She found it very difficult to wake up. She also said that the sister who slept with her in the hall was also a deep sleeper.

65 Next, taking the fifth point regarding what Jayacelan saw as to the colour of the plastic bag which Vignes was holding while the latter was the pillion rider on the morning of 20 September 2001, it must be remembered that Jayacelan said that he was quite sleepy that morning and he did not notice whether Vignes was carrying any bag with him when Vignes left his own home and approached Jayacelan. In fact, he did not pay any attention to what Vignes was carrying until the upper portion of the red plastic bag touched his head when Vignes was boarding the motorcycle. In fact, he did not know if there was a tupperware container in the plastic bag. Neither did he feel that there was something hard inside the bag. In truth, he did not know what was in the bag.

66 Taking another example, the sixth point mentioned above, if it were true that Moorthy was making use of Vignes to deliver the drugs for him even though Vignes was at that point of time suffering pain from an injured leg, that might well be the reason why he felt morally compelled to answer Vignes's call for help. Furthermore, perhaps he thought it was safe for him to come over as he was not in possession of the drugs. As they were quite close and he was kind to Vignes in the past, he probably did not anticipate that, when the heat was on, Vignes would point a finger at him.

67 At the end of the day the question before the trial judge was one of fact: did Moorthy give the drugs to Vignes for the latter to pass on to Tahir? Thus the alibi issue became crucial. The trial judge, having carefully weighed the evidence adduced by Moorthy and his witnesses, came to the conclusion that it was highly unlikely that there was a sort of birthday celebration on 19 September 2001 in the home of his sister Puspah. Moorthy's statement of 27 September 2001 seemed to suggest that a birthday celebration was held on 19 September 2001. Instead, it was really only an impromptu treat for the young nephew. Moreover, in his statement of 7 March 2002, instead of indicating the precise date of the nephew's birthday, he stated that the birthday was "a few days prior to 19 September 2001". That was really stretching the expression "a few days". He seemed to be trying to give the impression that this was a slightly delayed birthday celebration. But there was already a birthday celebration for the nephew on 2 September 2001. We cannot fault the finding of the trial judge on this point. Indeed, the judge was conscious that the family witnesses for Vignes and Moorthy would naturally want to help their own man and had weighed the evidence carefully.

68 Another fact which the trial judge took into account against Moorthy was his reluctance to give to the CNB officers the name of the friend he was waiting for outside the fruitshop at Woodlands. If his purpose of being there was wholly innocent, as he claimed it to be, then there should have been no difficulty in providing the name. At the time he would not have known the status of the transaction that Vignes was asked to undertake. His silence could only mean that he did not want to give any information which might prejudice either himself or Vignes.

69 Before we conclude, we should mention that, in Moorthy's counsel's submission, the theory was advanced that the person who probably gave the drugs to Vignes was Vijay who, as stated above, is a relative of Vignes and whose motorcycle Vignes had, on 20 September 2001, borrowed to get to Woodlands. Vijay was called by Vignes to testify but his evidence was rejected by the trial judge as being unreliable. Unfortunately, apart from this assertion there is nothing else to link Vijay to the drugs. The theory is no more than a conjecture.

70 In the result, the trial judge was satisfied that Moorthy was the person who handed the drugs over to Vignes for delivery to Tahir. There is really no basis for us to conclude that the finding of guilt by the trial judge on the part of Moorthy is wrong. We would accordingly also dismiss Moorthy's appeal.