# Ng Beng Siang and Others v Public Prosecutor
# [2003] SGCA 17

**Case Number** : Cr App 17/2002

**Decision Date** : 17 April 2003

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

**Counsel Name(s)** : Lawrence Wong, Daniel Chia (Lawrence Wong & Co) for the first Appellant; S. S. Ramli Salehkhon (Dhillon Dendroff & Partners) , S.S Dhillon Salehkhon (Ramli & Co) for the second Appellant; Ram Goswami, Boon Khoon Lim (Ram Goswani & Co) for the third Appellant; Ng Cheng Thiam, Jared Pereira (DPP's) for the Respondent

**Parties** : Ng Beng Siang; Rosdi Bin Pungot; Rosely Bin Sidin — Public Prosecutor

*Criminal Law – Complicity – Common intention – Penal Code (Cap 224, 1985 Rev Ed) – Whether common intention to traffic established.*

*Criminal Law – Statutory offices – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) s 18 – Conspiracy to traffic and trafficking with common intention.*

*Criminal Procedure and Sentencing – Statements – Voluntariness – Allegations of threat and inducement by officers of the Central Narcotics Bureau.*

*Evidence – Admissibility of evidence – Whether similar fact evidence and evidence unrelated to the charge admissible.*

***Delivered by Chao Hick Tin JA***

1 The three appellants ("Ng", "Rosdi" and "Roseley" aged 35, 37 and 42 respectively) were tried together and convicted by the High Court of two separate capital charges. Ng was charged with conspiring with Rosdi and Roseley in trafficking 48.21 grams of diamorphine. Rosdi and Roseley were charged that they, in furtherance of their common intention, had trafficked in the said quantity of diamorphine. They were found guilty and each was sentenced to suffer the punishment of death.

2 On 27 March 2002, on information received, officers of the Central Narcotics Bureau ("CNB") were deployed in the Sembawang area to observe the movements of two vehicles, one bearing registration number SCG 5421M and the other SBP 6331 Y.

3 At about 12.55pm, the CNB officers spotted SBP 6331Y coming from Admiralty Drive into Sembawang Drive, in the direction of Admiralty link. It then turned right into the driveway in front of Block 406A, which is a multi-storey car park ("the m/s car park"), and onto a side road between Blocks 412 and 415. It stopped at a loading bay in that vicinity. A person (later established to be Roseley) came out of the car and walked to Block 411 where he met another person (later established to be Rosdi) and together they walked to the adjacent Block 410 and sat on a bench at the void deck.

4 At about 1.15pm, a vehicle, bearing registration number JFY 5311, drove into the m/s car park and

parked in a lot on the first level. The driver (later established to be Ng) alighted from the car and walked away. Soon afterwards Rosdi entered into the car park and walked towards JFY 5311. He opened the car door of the front passenger seat and took a haversack out of the car. He shut the car door and walked towards Block 410 where Roseley was waiting. Both of them then walked towards Block 418 Canberra Road.

5 At that juncture, the CNB officers were instructed to arrest Rosdi and Roseley. As the officers approached them, the duo ran and Rosdi either dropped or threw the haversack he was carrying (Rosdi said later that it slipped off his shoulder). They were caught after a short chase. The haversack was also recovered and in it there were 20 wrapped bundles which were later established to contain not less than 48.21 grams of diamorphine, which constituted the subject matter of the charge against both of them.

6 In the meantime, Ng returned to his car and drove it out of the car park. He was trailed. At the junction of Sembawang Drive and Sembawang Crescent, when he stopped his car at the traffic lights, he was arrested.

***Voir Dire***

7 In the course of investigations, a number of statements were obtained from the three appellants. Rosdi and Roseley did not object to their statements being produced in evidence at the trial. However, Ng objected (except in respect of his cautioned statement) and a trial-within-a-trial was held to determine the admissibility of Ng's statements, three in all, apart from his cautioned statement.

8 Basically, what Ng alleged was that he did not make any of the three statements voluntarily. The first was an oral statement made on the day of his arrest to Station Inspector See ("SI See") while seated in a CNB car. He said it was made out of fear. Ng explained that on that day, at the traffic junction where he was arrested, one S/Sgt Subramaniam had pointed his gun at his head twice and that had frightened him. S/Sgt Subramaniam admitted that, at the junction of Sembawang Drive/Sembawang Crescent, he pointed his gun at Ng when the latter refused to open his car door as requested by the officers who were trying to arrest him. But he denied that there was a second occasion, a while later when Ng was opening the boot of his car for the officers to inspect, when he pointed his gun at Ng.

9 In relation to the other two investigation statements recorded on 1 and 5 April 2002, Ng said that, on 1 April 2002, while the interpreter was out of the room to fetch some water for him, the Investigating Officer ("IO") told Ng that he would have a chance to escape the death penalty if he were to testify against the other two. It was because of that inducement that Ng gave the statements to the IO.

10 The trial judge, without deciding whether there was in fact a second incident where S/Sgt Subramaniam pointed his gun at Ng, held that the oral statement made by Ng was not in any way affected by the threat, if any. SI See, whom Ng spoke to in the car, never threatened or did anything to him. As regards the allegation that the IO made a promise to entice Ng to make the two investigation statements, the trial judge, after reviewing all the evidence, found that Ng had made them voluntarily.

11 This finding of the trial judge, that all the statements of Ng were made voluntarily, was clearly a finding of fact, based on the evidence before him and the demeanour of the witnesses. However, counsel for Ng argued that the trial judge did not give sufficient consideration to a number of factors and the main ones were –

(i) That there was contradictory evidence from other prosecution witnesses which showed that S/Sgt Subramaniam was present at the boot of the car when the alleged second incident of gun pointing took place.

(ii) On the day before the statement of 1 April 2002 was taken, Ng was not well and had seen a doctor. His lips were cracked. So it was not unlikely that he could have asked for a drink of water, even though the interpreter denied that he had got out of the room to get some water for Ng.

(iii) In his cautioned statement of 27 March 2002, Ng denied any involvement with the drugs. But he changed that position in the two investigation statements. This was wholly consistent with Ng's assertion that the IO had offered him an inducement. The IO needed Ng's cooperation to nail Rosdi and Roseley who up to that point had denied knowledge of the drugs.

(iv) There was conflict in some aspects of the evidence of the IO with that of the interpreter.

12 It is settled law that an appellate tribunal should not disturb a finding of fact by the trial court, based on the testimony of witnesses, unless it is clearly against the weight of the evidence and is not supportable. The determination by the trial judge that the statements made by Ng were voluntary was such a finding of fact. We were unable to hold, in spite of the criticisms made by the counsel, that the trial judge was clearly wrong as there was available evidence to support that finding. The trial judge was conscious of these aspects.

**Ng's statements**

13 We now set out in gist what each of the appellants stated in their statements. Unless essential, we do not propose to set out each statement in *extenso*.

14 In Ng's oral statement made to SI See in the car, he said he gave "twenty balls of heroin" to two Malays at Block 406 Sembawang, as arranged over the telephone, by leaving the stuff in the car for them to pick up. However, in his cautioned statement he said –

> "I do not admit to the charge. The 20 bundles of heroin were not seized from my car. It was taken away by the 2 male Malays."

15 Ng said that the two Malay persons, whom he saw as he turned his car into the m/s car park, were the persons to whom the bundles were to be delivered. The day of 27 March 2002 started for Ng at about 7.00am. As agreed with his supplier, one Ah Ken ("Ken"), Ng left his car unlocked at Taman Jaya, Johore Bahru, and went for some coffee so that Ken could place the heroin in the car. He had met Ken some time earlier through friends at a night spot in Johore Bahru and knew that Ken was a drug dealer. He had previously asked Ken for jobs and that was how he got this assignment. He was told by Ken to go to the m/s car-park at Block 406A, Sembawang, leave the car unlocked on the first level, go for a drink and then come back to the car when instructed.

16 After the drugs had been properly concealed in his car, Ng returned to it and drove to Singapore. After clearing the Woodlands Checkpoint, Ken called him and, as instructed, Ng drove to a nearby car park, left the car unlocked and went to a shop to buy a bag. He bought a black haversack. He understood that in the meantime someone would come to his car and take out the heroin from where it was concealed. Half an hour later, upon receipt of a call on his hand phone, he returned to the car and saw 25 bundles lying on the floor of the front passenger seat as well as on the back seat of the car. Again, as instructed, he placed 20 bundles into the haversack. The remaining five bundles were put into an empty red plastic bag which was on the back seat. The haversack was then placed by Ng on the front passenger seat and the red plastic bag (with the five bundles) was put into the car boot. He then drove to Block 406A.

17 Ng was familiar with the m/s car park, having made a similar trip two weeks earlier. As he was about to turn into the car park he saw Rosdi and Roseley at the edge of the void deck of a block opposite the car park. They were the same persons he saw on his first trip. He parked the car, left it unlocked and walked away.

18 As far as Ng was concerned, his role was just that of a courier. He did not need to bother about collecting payment. That was a matter between Ken and the buyer. It was also Ken who would contact the customer to collect the drugs. However, Ng did not have the contact number of Ken. It was always Ken who contacted him.

**Rosdi's statements**

19 As regards Rosdi, he gave his first statement to Inspector Xavier Lek shortly after his arrest. In this statement, he admitted obtaining the haversack from a car parked at the m/s car park, but denied knowing what was in the 20 bundles found inside the haversack. He was supposed to deliver

the bundles to someone.

20 The next statement made by Rosdi was his cautioned statement, the substance of which consisted of three sentences:-

> "My intention of going there was not to traffic. I do not know the haversack contained drugs. Roesley also does not know anything about this matter."

21 Rosdi also made two investigation statements. What he said may be summarized as follows. On the fateful morning, a friend called Rahman telephoned him and arranged to meet him at the AZ Restaurant, along Sembawang Road, to talk about work. He had first met Rahman in early March 2002 at the Turf Club. They became friends because of their mutual interest in horse betting. However, Rosdi did not know how to contact Rahman as he did not have his address or contact number. Rosdi drove to the appointed place, arriving before 12 noon. Fifteen minutes later, Rahman arrived. Rahman wanted him to collect a bag of gold and deliver it to another person called "Boy" who would be coming to Block 416 in a taxi. Before that, a Malaysian car would be coming into the m/s car park. Rahman told him that the way in which the gold had been brought into Singapore rendered it contraband. Hence the need for such clandestine means of delivery.

22 While he was walking towards Block 416, he "bumped into a friend", Roseley. At his request, Roseley walked with him towards the m/s car park and sat on a bench at the void deck of a block opposite the car-park. Roseley told him that he was checking out a food stall in that vicinity. He also told Roseley why he was there. Soon, a light grey or brown Malaysian car drove into the m/s car park. This was followed by a telephone call from Rahman saying that the Malaysian car had arrived and that he was to get the things from the car. Rosdi asked Roseley to wait while he walked into the car park.

23 His account of the subsequent events was substantially as described above. When he slung the haversack over his shoulder, he found that it was heavy. But he never opened it to see what was inside. He thought they were gold bars and white gold nuggets as sometime earlier Rahman had shown him a small gold bar and a white gold nugget and asked him to source out buyers. As he walked towards Roseley, the latter was talking on the phone. At his request, Roseley walked with him to the main road. As the haversack appeared to be heavy, Roseley asked what was inside. Rosdi answered that he did not know.

24 Rosdi explained that at that point in time he ran because he was shocked at seeing five or six people chasing him and Roseley. The haversack slid off his shoulder and fell to the ground. Upon his arrest, he told the CNB officers that he did not know how many bundles there were in the haversack.

25 Rosdi asserted that his meeting Roseley that day was purely coincidental although the day before he had called Roseley on the handphone to enquire if the latter was going to Kallang Stadium on 27

March to watch the Hong Kong horse racing. He did not use his handphone to contact Roseley or anyone else on 27 March.

**Statements of Roseley**

26 Roseley made a number of statements to the CNB officers. In the first statement, which was made immediately after his arrest, he said that he bumped into Rosdi by chance as he was there to check out a coffeeshop. He did not know what was in the bag Rosdi was carrying. He repeated this in his cautioned statement.

27 The gist of Roseley's four investigation statements was as follows. On that fateful day, at 12.30pm, he left his food stall at Seiko factory canteen at Marsiling Lane and drove to Sembawang, arriving at 1.00pm at a coffeeshop which was in the vicinity of the m/s car park. He parked along the main road. He intended to open a second food stall there. He had learnt of this business opportunity from a friend called Azman, whose telephone number he did not have. Having sat in the coffeeshop for about half an hour and realizing that his car might receive a traffic summons, he moved his car and parked it at a nearby loading bay (between Blocks 412 and 415). He did not park in the m/s car park because he thought it would be full, as he had seen many cars entering and leaving it. He then walked back towards the coffeeshop, intending to continue observing the crowd there.

28 On the way, he saw Rosdi standing near a staircase of the m/s car park, carrying a haversack over his shoulder. He stopped and chatted with Rosdi, who said he was waiting for a friend. Later, Rosdi indicated that he would be going in the direction where Roseley had parked his car. Roseley chose not to go back to the coffeeshop but decided instead to accompany Rosdi, as the lunch hour would soon be over. Although Rosdi took a longer route, Roseley followed him and they were arrested near Block 417.

29 Roseley said that during the entire period he was with Rosdi, he never asked or said anything about the haversack. Neither had he been to the area near the m/s car park. That day had been his first visit to the area. On that day he did not telephone Rosdi; neither did Rosdi call him.

30 We should also add that both Rosdi and Roseley said that they were, for a period, partners in the food stall business at the Marsiling canteen.

**Defences of the appellants**

31 At the trial, the defence of Ng was that he did not know that the haversack contained heroin. He retracted what he had stated in his statements and claimed that he thought Ken was engaged in

smuggling jewellery and gold bars and not drugs. On the first transaction which he undertook for Ken, he had only seen Rosdi and not Roseley. He did not know that the 20 bundles contained drugs although he admitted that he could have opened them to see what they contained.

32 Rosdi admitted having, before the fateful day, carried out a similar transaction for Rahman. He had believed that he was transporting gold bars and jewellery on behalf of Rahman. On each occasion he did not have an opportunity to check what was in the bundles. Regarding the question as to whether calls were made on his handphone that day, and contrary to what he said in his statements, he admitted, in the light of the call tracing record, that between 12.32pm to 1.15pm, he had received four calls from Roseley. He gave various accounts (talking about horse racing and picking up a friend) of what the four calls were about. He explained that he did not refer to these calls in his statements because he was confused.

33 Roseley's defence was that, although he had known Rosdi for about a year, he knew nothing of the transactions between Rosdi and Ng. That day, after removing his car from the main road (where there were double yellow lines), he decided to drive around to look at the area generally. Thus, he did not drive directly to the nearest place to park his car but instead went on a somewhat longer drive from Sembawang Drive to Admiralty Drive and into Canberra Road, and at a certain point he made a U-turn and came back to Sembawang Drive in the opposite direction from where he had started and finally parked his car at the loading bay area. Roseley also corrected what he said in his statements about making or receiving no calls that day. He explained that as he could not remember at the time the statement was recorded, whether calls had been made or received, he had simply stated that no calls were made or received.

34 Roseley also made another correction. Contrary to what was in his statements, he said that when he first met Rosdi, the latter was not carrying a haversack. Rosdi went to collect the haversack only after they had met and sat on the bench at the void deck at Block 410 to chat for a while. He tried to shift the blame for this error in the statements to the recording officer.

**Decisions below**

35 In the light of the statements made by Ng, which were ruled by the court to have been voluntarily made, the trial judge held that the defence of ignorance claimed by Ng failed. In the alternative, he held that Ng had not rebutted the presumption under s 18 of the Misuse of Drugs Act.

36 Rosdi's defence of ignorance of the nature of the contents in the haversack was also rejected by the trial judge. The trial judge noted that Rosdi did not know Rahman well and yet he had been prepared to carry out Rahman's bidding in a suspicious manner. Rosdi did not even ask Rahman what things he was supposed to collect. Neither did he examine the contents of the haversack. He was paid a handsome sum of $3,000/- for his services on the first occasion. The trial judge held that he had failed to rebut the presumption of knowledge under the Act.

37 As regards Roseley, the trial judge rejected his evidence that he had just happened to be where Rosdi was that day and that he had no part in Rosdi's scheme. The judge held that Roseley had in his statements told a number of material lies evidencing guilt. The statements were recorded many days after the event. The judge found that Roseley was obviously trying to distance himself from Rosdi. The judge was thus satisfied that Roseley was acting in concert with Rosdi.

**Issues raised by Ng**

38 Before us, counsel for Ng raised two main arguments. First, the trial judge erred in admitting Ng's statements (other than the cautioned statement). Second, prejudicial evidence, unrelated to the charge, was erroneously admitted at the trial.

39 We have earlier dealt with the first argument. What remains is the second argument. Here, what counsel objected to was the admission at the trial of the evidence relating to the five bundles of drugs found in the boot of his car (which formed the subject matter of a charge against Ng and which was stood down) and of the evidence relating to a previous incident of drug trafficking alluded to by Ng in his statement. Counsel contended that such similar fact evidence should not have been admitted as its prejudicial effect far outweighed its probative value.

40 The rationale for the rule against similar fact evidence, as well as the circumstances where such evidence may be admissible, were enunciated by this court in *Tan Meng Jee v PP* [1996] 2 SLR 422 as follows:-

> The underlying rationale for the rule excluding similar fact evidence is that to allow it in every instance is to risk the conviction of an accused not on the evidence relating to the facts but because of past behaviour or disposition towards crime. Such evidence without doubt has a prejudicial effect against the accused. However, at times, similar facts can be so probative of guilt that to ignore it via the imposition of a blanket prohibition would unduly impair the interests of justice.

Obviously, if the strength of inference to be drawn from similar facts is weak and the effect of the evidence too prejudicial, then such evidence should be disregarded and not be admitted.

41 In our judgment, it was clear that the previous incident had more probative value than its prejudicial effect for two reasons. First, the defence of Ng to the present charge was that he did not know the bundles contained drugs. Thus evidence on the previous occasion where Ng did a similar errand for Ken, and the unusual manner in which the things were to be delivered, went to show that Ng could not be ignorant of what he was conveying for Ken. Second, Ng recognised Rosdi and Roseley because he had seen them on his first trip. This went to establish that Rosdi and Roseley were the two persons to whom Ng was to pass the haversack. The similar fact evidence was clearly connected with the issues before the court. We would also add that in the course of the trial, the judge had

made it clear that he would not take into account the potentially prejudicial effect of this similar fact evidence as suggesting that Ng had the propensity to commit the offence of drug trafficking.

42 As regards the evidence relating to the five packages found in the red plastic bag in the boot of Ng's car, it seemed clear to us that this evidence was adduced as a matter of completeness. Ng stuffed twenty bundles into the haversack and the remaining five into the red plastic bag and put them into the boot. That was the complete story as to what happened when Ng returned to the car after buying the haversack. More importantly, in the course of the trial the judge expressly said that aside from the limited purpose of providing the court with a complete account of the facts, the evidence on the five bundles would be disregarded by him in considering the charges preferred against the three appellants.

43 The charge brought against Ng was one of conspiracy. More often than not, evidence of a conspiracy is to be inferred from acts or conduct. Seldom is there direct evidence of a conspiracy. As this court observed in *Lai Kam Loy & Ors v PP* [1994] 1 SLR 787:-

> … The essence of a conspiracy is agreement and in most cases the actual agreement will take place in private such that direct evidence of it will rarely be available. A frequent method of proving a conspiracy is to show that the words and actions of the parties indicate their concert in the pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand. We emphasize that these acts do not of themselves constitute the conspiracy but constitute evidence of the conspiracy.

The fact that there was no direct communication between Ng on the one hand and Rosdi and Roseley on the other did not mean that there could not have been any conspiracy. A conspiracy could very well have existed through third party intermediaries.

44 On the totality of the evidence, we had no doubt that Ng acted in concert with Rosdi and Roseley in leaving the twenty bundles of heroin in his unlocked car parked at the m/s car park to be picked up by Rosdi and/or Roseley.

**Issues raised by Rosdi**

45 The primary contention of Rosdi was that the trial judge had erred in holding that Rosdi had failed to rebut the presumption of knowledge as to what was in the haversack. It was contended that the trial judge:-

> (i) erred in finding that Rosdi was engaged in a suspicious transaction, having regard to the fact that he was paid $3,000 for a simple job in relation to the previous errand and the unusual manner of taking delivery;

(ii) failed to appreciate that there was no evidence of any direct communication between Ng and Rosdi;

(iii) erred in not believing that the meeting that day between Rosdi and Roseley was purely coincidental. The fact that there were a number of telephone conversations between them did not necessarily suggest otherwise as they were friends;

(iv) erred in not believing Rosdi that he thought the errands he did for Rahman were in connection with gold bars and jewellery and that Rosdi's task was to deliver them to a person called "Boy" along the main road;

(v) erred in thinking that Rosdi's failure to check the haversack meant that he knew the nature of its contents; and

(vi) failed to appreciate that, apart from what were in the haversack, there was no evidence, either from Rosdi's car or his residence, that he was involved in drugs.

46 The fact of the matter was that the trial judge had carefully considered all the evidence before rejecting Rosdi's claim that he did not know that the errand he carried out for Rahman involved drugs. Rosdi's defence was that he thought the haversack contained gold bars. The burden was on Rosdi (pursuant to s 18 of the Act) to satisfy the court on a balance of probabilities that he did not know that the 20 bundles in the haversack contained drugs. The trial judge, in disbelieving his claim, said:-

> (Rosdi) did not know Rahman well at all .. did not know his full name, address or telephone number … He thought that they were gold bars and silver nuggets because Rahman had given him samples for him to look for buyers and he in turn asked the third accused to look for buyers for the gold bars without informing him the selling price or the quality.
>
> He must have realised that he was not engaged in a normal transaction. On the previous occasion, he was paid $3,000 for his services. From the exceptional manner of taking a bag from an unlocked car to the delivery to someone in a taxi, he must have known or suspected something surreptitious was going on. Yet he did not ask Rahman what was being collected and delivered and did not examine the bundles when he had them in his possession.

47 We agreed with the trial judge that the circumstances stank to high heaven. Rosdi must have known what he was involved in. On his own evidence, he said he was paid $3,000 (in respect of the first errand) for the simple task of taking something from an unlocked car and passing it on to another person a short distance away. It would be fair to assume that he would also be paid a similar sum for the present errand. The reward was clearly out of all proportion to the effort required of him. In truth, Rosdi was really being paid handsomely for the risks he assumed. This explained why he did not bother to look into the haversack. As this court stated in *Yeo Choon Huat v PP* [1998] 1 SLR 217 (at ¶22):-

> Ignorance is a defence only when there is no reason for suspicion and no right and opportunity of examination; ignorance simpliciter is not enough.

**Issues raised by Roseley**

48 The arguments raised by counsel for Roseley were that there was no evidence whatsoever to link Roseley to what Rosdi did on the day of their arrest. Counsel submitted that there was clear evidence from both Rosdi and Roseley that their meeting that day near to the m/s car-park was wholly by chance. Counsel asserted that, while it was true that there were some discrepancies and contradictions between Roseley's testimony in court and what he stated in his statements, most of the discrepancies and contradictions had been explained.

49 Counsel also contended that the trial judge was wrong to have treated certain evidence of Roseley, which was established to be untrue, as corroborative evidence of guilt.

50 The significant lies told by Roseley in his statements were the following:-

(i) In his statements, he said he had never been to the coffeeshop before 27 March 2002 and that he only knew of the stall's availability on that day itself when Azman told him of it. But his wife, Masrina bte Awi, said that they had been to see the coffeeshop on 24 March 2002. On 26 March 2002, he told her a stall was available in the coffeeshop.

(ii) In his statements he said he left his stall at the Marsiling canteen at 12.30pm. In court, he claimed it was 12.15pm. He blamed the IO for the mistake. But his wife said it was 12.45pm when he left the canteen. Even though in cross-examination by Roseley's counsel she said she determined the time based on the fact that the last batch ($4^{th}$) of workers at the factory, released at 12.15pm, would have had their lunch, Roseley could not have left the canteen at 12.15pm. He had to help at the stall in view of the crowd.

(iii) In his statements he said that when he first met Rosdi, the latter was carrying the haversack over his shoulder and he could see that the sack was full and heavy. The truth was that, when they first met, Rosdi was not carrying anything. Rosdi went to collect the haversack from the car after they met and chatted a while at Block 410. Roseley admitted that this was an error.

(iv) Both Roseley and Rosdi said that on 27 March 2002, they did not telephone each other. With the production of the call tracing record, Roseley had to admit that this was a lie. So did Rosdi. He explained that, being in fear on account of his arrest, and as he could not remember what happened on 27 March, he simply gave the answer that there were no calls.

51 As the trial judge rightly found, to distance himself from Rosdi, Roseley had to explain why he was in the vicinity of the m/s car park. Thus, Roseley created the story of going to check out a stall in a coffeeshop in that neighbourhood with a view to expanding his business. He claimed to have been told of the availability of the stall only on that very day by Azman (who was not called by Roseley to corroborate what he said). Thus, after his arrest and upon being asked by Insp Lek what was he doing there, he said that he "wanted to see shop". But as his wife testified, they had been to see the stall three days earlier. He also knew of the availability of the stall the day before. His wife also said

he left the canteen that day at about 12.45pm. He was spotted driving his car at 12.55pm in the vicinity of the m/s car park. So to corroborate his assertion that he had already been to the coffeeshop to observe the crowd there for some 20-30 minutes, and that he had parked his car along the main road illegally, which necessitated him moving it, and to explain why, when he was seen at 12.55pm his car was coming from the opposite direction of Sembawang Drive from where he had allegedly parked his car illegally, he had to claim that he left the canteen at 12.15pm. Otherwise, there would not be sufficient time to do all that. Moreover, to show that he had no part in the doings of Rosdi he claimed that when he first met Rosdi, the latter was carrying the haversack on his shoulder. Furthermore, to establish that their meeting was purely by chance, he had also to claim that they did not speak to each other at all on that day.

52 The trial judge had considered the *locus classicus, R v Lucas* [1981] QB 720, as well as some local cases, namely, *PP v Yeo Choon Poh* [1994] 2 SLR 867, *Tan Hung Yeoh v PP* [1999] 3 SLR 93 and *Heng Aik Peng v PP* [2002] 3 SLR 469, and was very much aware that a distinction should be drawn between lies which were evidence of guilt and lies which merely touched on creditworthiness, as an accused person might lie for a variety of reasons not connected with guilt of the offences. The following celebrated passage of Lord Lane in *Lucas* was quoted by the trial judge:-

> To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

53 In our judgment, in the light of the totality of the evidence, the following findings of the trial judge were amply justified –

> I found that the third accused told these lies because he was fearful that the truth about his visit to Sembawang Drive and his involvement with the second accused would incriminate him.
>
> The truth was that he did not go to Sembawang Drive because Azman told him that morning about a stall that was available. I did not believe that he had been to the coffeeshop on 27 March at all. His car was seen going along Sembawang Drive towards the loading bay from the opposite direction of the coffeeshop. The drive along the long route to recce the area was not mentioned in his statements. When he arrived at the loading bay and parked his car he did not go to the coffeeshop as he said he had intended to do.
>
> The second and third accused's claim that they met by chance was incapable of belief. If it was a chance meeting, the natural thing for them to do would be to exchange greetings then get on with what each had set out to do. For the third accused it was to go to check the coffeeshop as a business prospect. The second accused's assignment was to collect a bag from an unlocked car in a car park and to deliver it to someone coming in a taxi. He would not want any one not involved in the arrangements

to witness his activities and to accompany him for the delivery. The telephone calls between them shortly before they met also suggested that there was an arrangement.

The irresistible inference drawn from all the circumstances was that they had arranged to do what they did; to meet, to take possession of the haversack from the car and deliver it. These acts were done pursuant to their common intention.

**Common intention**

54 Before we conclude, we must address the issue of common intention, an essential element in the charge preferred against both Rosdi and Roseley. They argued that this element had not been established by the prosecution and therefore their convictions for the offence should be set aside.

55 Section 34 of the Penal Code provides that "when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone." In *Mahbub Shah v Emperor* (1945) AIR PC 120, the Privy Council said –

To invoke the aid of s 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all. If this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.

56 Roseley argued that merely being in the company of Rosdi could not give rise to an inference of a common intention with the latter. Moreover, there was no evidence as to what role Roseley was to play pursuant to the common intention. There would have been no point in Roseley being there, risking his own life too. His counsel submitted that the circumstances were consistent with Roseley's explanation that their meeting was purely by chance and that he had no part in what Rosdi was doing.

57 It is settled law that, for the purpose of s 34, a common intention between two or more accused persons may be inferred from the facts and circumstances of the case: see *Abdul Rahman bin Yusof & Anor v PP* [1996] 3 SLR 15. Counsel for Roseley conceded as much. It should surprise no one that it is often difficult to procure such direct evidence, unless one of the co-offenders should squeal. It has invariably to be inferred from acts or conduct and surrounding circumstances.

58 Bearing in mind the finding of the trial judge that Roseley's meeting with Rosdi that day was not coincidental, but pursuant to an arrangement, and that one of the calls made by Roseley to Rosdi was when the latter had gone into the car park to pick up the things from the car of Ng, it was reasonable for the trial judge to infer that they were there pursuant to a plan to obtain drugs through a supplier in Johore Bahru for the purpose of trafficking. The fact that Roseley was not at the car when Rosdi took possession of the haversack was not critical. Counsel asked what role Roseley could possibly

have played as he did not follow Rosdi into the car park. He need not have been there and risk being implicated. For the purpose of the present case there was no necessity to answer this question. If one were to venture a guess, he could well have been the look-out man. This would explain why Roseley called Rosdi when the latter went into the car park to collect the stuff. The essential question was whether Roseley took part in the scheme with Rosdi to obtain the drugs from Ng's car and to pass them off to another. In view of the trial judge's findings, the answer to that question was a clear yes. By virtue of s 34, Roseley was liable for the act of possession of the drugs by Rosdi as if he was in possession of the same for the purpose of delivering them to another. There was simply no basis for us to interfere with the trial judge's verdict.

**Judgment**

59 For all the above reasons, we held that there were no merits in the appeals of the three appellants and we therefore dismissed all the appeals.