Han Yung Ting v Public Prosecutor
[2003] SGHC 268

Case Number : MA 48/2003

Decision Date : 30 October 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) for appellant; Eddy Tham (Deputy Public Prosecutor) for respondent

Parties : Han Yung Ting — Public Prosecutor

Criminal Law – Statutory offences – Appellant implicated by prosecution witness as drug supplier – Whether appellant guilty of trafficking – s 5(1)(a) Misuse of Drugs Act

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Conditions to be fulfilled to justify acceptance of additional evidence – Whether conditions satisfied – s 257(1) Criminal Procedure Code

Evidence – Weight of evidence – Whether trial judge erred in placing more weight on witness' prior statements to police than on his oral testimony in court – Whether trial judge gave undue weight to witness' retracted statements – s 147(6) Evidence Act (Cap 97)

1 This was an appeal against conviction. On 12 March 2003, the appellant claimed trial and was convicted on two charges of drug trafficking under s 5(1)(a) of the Misuse of Drugs Act (Cap 185). He was sentenced to a total of six years imprisonment and eight strokes of the cane. I dismissed his appeal and now give my reasons.

Agreed facts

2 At about 10.25pm on 16 October 2002, one Tan Kian Ming ("Tan") was arrested by a party of Central Narcotics Bureau ("CNB") officers along Bedok North Avenue 1. The CNB officers conducted a search on his person. 60 tablets and five packets of crystalline substances, suspected to be controlled drugs, were found and seized. Tan admitted that he had received the drugs from a male Chinese in a white car at the car park of Block 36 Chai Chee Avenue 1. He was to deliver the drugs on behalf of this male Chinese, and would collect $1,070 in payment. Upon analysis, the Health Sciences Authority confirmed that the said drugs contained 0.5 grams of Methamphetamine, a Class A controlled drug, and Ketamine, a Class B controlled drug.

Prosecution's case

3 Tan was the prosecution's main witness. Tan said that he first met the person who supplied the drugs to him about a month before his arrest. This person asked Tan to deliver ecstasy and ketamine for him. Prior to 16 October 2002, Tan met him on four occasions to collect and deliver drugs for him. On 16 October 2002, as prearranged, he picked Tan up at the Bedok Interchange in a white car, and drove Tan to Block 40 Chai Chee Avenue 1. He instructed Tan to alight and deliver the drugs to a contact at the playground of Block 40, and to collect $1,070 in payment.

4 Whilst waiting for his contact to arrive, Tan was arrested at about 10.30pm, and the drugs were found on him. He was questioned by a CNB officer, one ASP Mathew Lim ("ASP Lim"), in the presence of another CNB officer, at 11.00pm. Tan told the CNB officers that the white car was waiting for him behind Block 36 Chai Chee Avenue 1.

5 After recording the statement, ASP Lim received a call from one of his officers, Inspector Richard Soh ("Insp Soh"), who reported that he had seen Tan alight from a white sports car prior to his arrest. In court, Insp Soh also testified that the car had a blue light when the door was opened. He was not able to see the driver of the white car clearly. After Tan's arrest, Insp Soh instructed the other CNB officers to look out for a white sports car.

6 The white sports car was later spotted by another officer, one Staff Sergeant Justin Fong ("SSgt Fong"), at Block 36. Upon notification of this, Insp Soh proceeded to the carpark of Block 36 with a few other officers. There were three white cars in the carpark, but the engines of the other two cars were cool. The appellant was subsequently seen walking towards the white car. When he opened the door, the light was blue. The appellant was then arrested. Upon arrest, he claimed that he had been visiting a friend on the 11th floor of Block 36. When the officers visited the unit on the 11th floor, they found a transvestite, Chia Hock Leong Michelle ("Michelle"), who said that she had just performed oral sex on the appellant.

7 Tan was brought in a van to Block 36, where he identified the white car as being the white car that he had alighted from after collecting the drugs. He was then escorted to the 11th floor of Block 36. Insp Soh also gave instructions for the appellant to be brought to the 11th floor for identification by Tan. On the 11th floor, with the appellant standing about two to five metres away, Tan identified him as the person who had earlier handed the drugs to him in the white car. He then made a further statement at 11.50pm to ASP Lim. In this statement, Tan identified the appellant as the person who had handed the drugs to him in a car, referring to him as "Ah Goh". He also identified a white Subaru Impreza bearing registration number SCN 3128L as the car. Another officer, one Sergeant Cherynn Lim ("Sgt Lim"), was present, and signed the statement as a witness.

8 In a second statement given on the following day to the investigating officer of the case, Staff Sergeant Mohd Ferdhouse ("SSgt Ferdhouse"), Tan again admitted that the appellant was the person who had handed him the drugs. Referring to the appellant as "Ah Goh", Tan agreed to testify against him, saying he was positive that it was the appellant who had given him the drugs.

The defence

9 The appellant denied both charges against him. He claimed that he had become acquainted with a person by the name of Michelle through a chatline prior to 16 October 2002. On 16 October 2002, he spoke to Michelle on the phone and agreed to go to her place after 10.00pm. At about 10.00pm, he left his home to meet Michelle, telling his mother that he was going to meet a friend. He drove his car, a white Subaru Impreza, arriving at Block 36 Chai Chee Avenue 1 at about 10.25 to 10.30pm. Since this was his first visit to the area, he decided to drive around in order to determine whether there was a carpark nearer to Block 36. After driving to Block 40, he realised that the other carpark at Block 36 was nearer, and so drove back to Block 36.

10 After making a phone call to Michelle to ascertain her actual address, he went to her flat, staying there for about 30 to 45 minutes. When he returned to his car, he was arrested by the CNB officers, and brought to the 11th floor of Block 36 where he saw Tan for the first time in his life. He saw a few officers questioning Tan aggressively, and also heard hitting sounds as he was standing besides the lift.

11 The appellant was placed under arrest and brought to Clementi Police Station, where he met Tan in the lock-up. He demanded to know why Tan had implicated him, but Tan remained silent. He

met Tan at the Cantonment Police Station the next day, where he spoke to him on two occasions, telling Tan not to accuse him falsely. Tan again remained silent. The following day, he again met Tan and questioned him. This time, Tan apologised, saying that he was shocked and frightened on the day of his arrest because the officers had assaulted him. Tan assured the appellant that he would tell the truth in court.

The trial below

12 Once he was on the stand, Tan asserted that the appellant was not "Ah Seng", the person who had supplied him with the drugs. He claimed that he had only identified the appellant as Ah Seng because he had been assaulted by about ten police officers and was high on drugs at the time. He explained that he had concocted the person of "Ah Goh" when giving his statements to SSgt Ferdhouse, because he had been assaulted and was afraid of further assault by other police officers if he said that his statements to ASP Lim were untrue.

13 Upon cross-examination, Tan denied that he had been offered money to testify for the appellant, or that he had changed his evidence in order to save the appellant from prosecution. He had not met the appellant before 16 October and had not spoken to the appellant when he was at the Clementi Police Station. However, he had met the appellant in the lock up of the Subordinate Courts, whereupon the appellant had asked him why he had identified the wrong person. Tan then told the appellant that he had done so because he was high on drugs when he gave his statement.

14 In light of the inconsistencies between Tan's evidence in court and his statements to the CNB officers, the trial judge granted the prosecution's application to impeach Tan's credit. Consequently, Tan's two statements to the CNB officers were admitted as substantive evidence under s 147(3) of the Evidence Act (Cap 97).

Criminal motion to adduce fresh evidence

15 At the initial hearing before me, counsel for the appellant requested an adjournment of the hearing so as to file a criminal motion seeking to adduce fresh alibi evidence from the appellant's parents. I allowed the adjournment, but subsequently dismissed the motion.

16 In dismissing the motion, I was mindful of the principles governing the power of the High Court to take fresh evidence on appeal. This power is conferred by s 257(1) of the Criminal Procedure Code (Cap 68)(the "CPC"), which reads:

> In dealing with any appeal under this Chapter the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a District Court or Magistrate's Court.

17 Section 257 of the CPC provides that additional evidence should only be accepted if *necessary*. In exercising this power, our courts have applied the three principles of non-availability, relevance and reliability, as encapsulated in Denning LJ's statement in *Ladd v Marshall* [1954] 3 All ER 745:

> In order to justify the reception of fresh evidence for a new trial, three conditions must be fulfilled: first it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the

evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

I found that the motion to adduce fresh evidence failed to satisfy the third condition, and as such should be dismissed.

18 There is nothing in law preventing family members and relatives from being competent witnesses for the accused. Their credibility depends on whether or not the court finds them to be entirely disinterested witnesses, or otherwise reliable: *Liow Siow Long v PP* [1970] 1 MLJ 40. In *Thirumalai Kumar v PP* [1997] 3 SLR 434, the appellant before me sought to rely on alibis provided by his wife and mother to prove that he was at home at the time the offences were committed. However, I found his defence, which appeared to be mounted on his own instructions, absolutely unworthy of credit. Once his testimony was rejected, the evidence of his wife and mother was of no value, as both were interested witnesses, and there was every reason to treat their evidence with caution.

19 I found the scenario in this case similar to that in *Thirumalai Kumar*. I agreed with the trial judge that Tan's evidence was unreliable and inconsistent, and that there was substance to the prosecution's submission that the appellant might have bribed him. As such, the defence was unworthy of credit. The appellant's parents were unlikely to be entirely disinterested witnesses, since they would have a strong interest in their son's acquittal. As such, their evidence was unreliable and of no value to this court.

20 As in *Chung Tuck Kwai v PP* [1998] 2 SLR 693, I further considered the additional problem of credibility should their evidence be admitted at this stage. The prosecution would not have the opportunity of cross-examining them to determine their credibility. Their evidence was of such a nature that it should not be accepted as credible without putting them to cross-examination.

21 The circumstances in which an application to adduce fresh evidence will be allowed are extremely limited. After a careful evaluation of the facts, I did not consider that this case fell within such exceptional circumstances as to justify this court taking additional evidence.

The appeal

22 Before me, the appellant contended that the trial judge erred in four main areas in coming to her findings. It is useful at this stage to reiterate the principles governing an appellate court when reviewing the decision of a trial judge. It is trite law that an appellate court should be slow to disturb a lower court's findings of fact unless they can be shown to be clearly wrong, reached against the preponderance of the evidence, or unless it is shown that the trial judge has not taken proper advantage of his having seen and heard the witness. This principle has been articulated in *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, *Ng Soo Hin v PP* [1994] 1 SLR 105 and *PP v Hla Win* [1995] 2 SLR 424. This is especially so when, as in the present case, a finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at 664. Should the appellate court wish to reverse the decision of the trial judge, it must not merely entertain doubts as to whether the decision is right, but must be convinced that it is wrong: *PP v Poh Oh Sim* [1990] SLR 1047, followed in *PP v Azman bin Abdullah* [1998] 2 SLR 704. With these principles in mind, I turn to the appeal proper.

The weight attributed to Tan's statements to the officers as opposed to his oral testimony in court

23 Although Tan identified the appellant as the person who passed the drugs to him in a white sports car and made statements to this effect to the CNB officers after arrest, he recanted this evidence at trial. Upon cross-examination, Tan explained that the statements were made after he had been assaulted by the CNB officers and was in fear of further assault. He implicated the appellant in order that the case be settled as soon as possible. Moreover, he was high on drugs at the time he made the statements, as borne out by his subsequent conviction for drug consumption over this incident. The appellant thus contended that the trial judge was unjustified in relying solely on Tan's statements to convict him.

24 The trial judge ruled that Tan's claims of assault and of being high on drugs at the time of his arrest were "incredible". I found no reason to disturb this ruling.

Allegations of assault

25 I found no extraneous evidence to substantiate Tan's claims of assault. Tan claimed that he "did not know" how to report the assault to the CNB officers. Even if I accepted this excuse for his silence, it failed to explain why he did not ask to see a doctor. If his recital of the facts was true and he was assaulted by about ten police officers who used their hands, legs and metal implements to deliver blows to his body and chest, he must have sustained substantial injuries requiring medical attention. Moreover, even if Tan failed to mention the assault to his parents so as to avoid causing them worry, they would surely have seen the bruising and wounds when they visited him. Tan also conceded that the officer who recorded his statement on the day after his arrest, SSgt Ferdhouse, did not assault him, but treated him well. Even so, Tan did not mention the assault to SSgt Ferdhouse or retract his statement. Instead, he gave a more detailed statement confirming his identification of the appellant. His explanation, that he was afraid of further assault, if he did not confirm the appellant's involvement in handing him the drugs, rings hollow.

26 Tan also testified that, when he met the appellant at the lock-up of the Subordinate Courts, he told the appellant that he had implicated him because he was high on drugs at the time. He did not mention the assault by the officers. I agreed with the trial judge's finding that, if the assault was a substantial reason for Tan's false implication of the appellant, Tan would have raised it in his defence when speaking to the appellant. Furthermore, Tan's version of events was inconsistent with the appellant's testimony. The appellant claimed that when he confronted Tan in the lock-up of the Clementi Police Station, Tan remained silent. The appellant was then brought to a different lock-up by the police officers. However, upon cross-examination, the appellant claimed that he saw red marks and bloodstains upon Tan's face when they met in the lock-up of Clementi Police Station. He asked Tan about the injuries and was told that the officers, including a lady officer, had assaulted him. This was inconsistent with both their testimonies, and difficult to credit. Further, by the appellant's account, he did not urge Tan to report the matter or ask him to see a doctor because he was "furious" with Tan for harming him. I found it only logical that the appellant would have urged Tan to report the assault and have it documented, so that he would have official substantiation for his claims that Tan implicated him under duress.

27 I also found that Tan contradicted himself during cross-examination when questioned about the number of CNB officers who had assaulted him. He initially said that "about ten of them assaulted me", but later changed the number to "about two or three". This only undermined the reliability of his testimony in court.

28 The trial judge further observed there was no reason for the CNB officers to assault Tan just to compel him to identify the appellant. They had already found the drugs on Tan's person and had ample reason to arrest him. The officers who sighted the car admitted that they could not see the

driver of the car clearly, even when the lights in the car were on. They also admitted that they could not identify the car's registration number. If they were intent on finding a scapegoat for the crime, it would have been far easier for them to testify that they recognised the appellant as the driver of the white car, than for ten of them to beat up a 19-year-old boy in order to force him to implicate an innocent man and then lie about it in court. I found this reasoning to be beyond reproach.

29 For these reasons, I found that the trial judge was correct in arriving at the conclusion that Tan's account of the assaults was fabricated.

Allegation of being high on drugs

30 I found no reason to reject the trial judge's determination that there was no merit in Tan's assertion that his statements to the CNB officers were vitiated by the effect of the drugs on him.

31 I accepted the evidence of ASP Lim, who has three years experience as a CNB officer, and of Sgt Lim, that Tan was alert and responsive when questioned, answering ASP Lim's questions immediately. He did not display any symptoms of being high on drugs, such as blood-shot eyes. Instead, he gave accurate and detailed answers when questioned, stating the nature and quantity of drugs in his possession, the intended sale price of the drugs and the amount he was to be paid for delivering the drugs. I found it unlikely that his mind would have functioned with such clarity, or that he would have been so lucid, if he was really high on drugs. It also follows that, if I allowed his claim that he concocted the name of "Ah Goh" on the spot, then he was alert enough to do so through his alleged haze of drugs and fear.

32 In addition, I noted that when Tan gave his statement to SSgt Ferdhouse the day after his arrest, he was not high on drugs. By his own admission, he gave it voluntarily. If he had been "high" the previous day, it is curious that he should remember the contents and details of the statement he gave to ASP Lim with such clarity, including the elements he had supposedly concocted on the spot, so as to replicate it for SSgt Ferdhouse and embellish it with further details. Moreover, he was able to remember the face of a supposed stranger, the appellant, and identify the appellant's photograph before SSgt Ferdhouse.

33 Accordingly, I was satisfied that the trial judge was correct in rejecting Tan's claim that he implicated the appellant because he was high on drugs as "incredible".

Whether the trial judge erred in accepting Tan's statements over his oral testimony, and giving undue weight to the retracted statements of an impeached witness

34 The appellant contended that the trial judge should not have accepted Tan's statements to the CNB officers over his oral testimony in court. This court noted in *PP v Sng Siew Ngoh* [1996] 1 SLR 143 that, in addition to their use for impeachment of the witness' credit, previous inconsistent statements made by a witness to a police officer in the course of a police investigation are also admissible as evidence of any fact stated therein. As such, when Tan failed to give a satisfactory explanation for the inconsistencies in his statements, the trial judge was entitled to impeach his credit and admit Tan's statements to the CNB officers as substantive evidence.

35 As for the appellant's argument that the trial judge attached undue weight to Tan's statements to the CNB officers, I was not convinced that this claim was of any merit. The trial judge correctly followed the decision in *Sng Siew Ngoh*, which held that there is no requirement for corroboration of a previous inconsistent statement. Conviction can be determined on the evidence of previous inconsistent statements, provided that the court, in assessing the weight to be accorded to

the inconsistent statements, has regard to the factors listed in s 147(6) of the Evidence Act, namely:

> … all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question of whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

36 Further guidance on the application of this provision has been given in *PP v Tan Kim Seng Construction Pte Ltd & Another* [1997] 3 SLR 158, as affirmed by the Court of Appeal in *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25, *Selvarajan James v PP* [2000] 3 SLR 750 and *Thiruselvam s/o Nagaratnam v PP* [2001] 2 SLR 125. First, the contemporaneity of a statement with the occurrence or existence of the facts stated is important, since it guards against inaccuracy. Second, there can be little guidance on the possibility of misrepresentation by the maker of the statement, but the court must be astute in spotting such instances. Third, the weight to be accorded to a prior inconsistent statement will be affected materially by an explanation of the inconsistency and why that statement is an inaccurate representation of the facts. Regard should also be had to the context of the statement, which requires that the whole of the statement be examined. Finally, the cogency and coherence of the facts to be relied upon should be noted.

Contemporaneity

37 The first statement was taken almost immediately after Tan's arrest. Tan was arrested at 10.25pm. The statement was taken at 11.00pm, and later at 11.50pm, while the facts were still fresh in Tan's mind. Tan had the opportunity of seeing the appellant twice – first, in the car park of Block 36 from a distance of about eight metres and again, when the appellant was brought up to the 11th floor for identification, from a distance of about two metres. Similarly, identification of the appellant's car was made when Tan was in the police van and again, when Tan was on the eighth floor. The second statement was taken just a day after the arrest. In both statements, Tan was consistent in implicating the appellant as the supplier of the drugs. The trial judge found this consistency to be a strong indication that the statements were closer to the truth than Tan's oral testimony, which was given after the passing of a period of time, during which he came into contact with the appellant. I had no difficulty in accepting this to be the case.

Incentive to conceal or misrepresent facts

38 The prosecution postulated, and the trial judge accepted, that the appellant must have offered Tan some monetary inducement to exonerate him in court. Tan testified that he only spoke with the appellant at the lock-up of the Subordinate Courts on 15 January 2003. The appellant, on the other hand, said that after their arrest, he spoke to Tan on four occasions. These contradictions in their testimonies were telling. From the circumstances, I agreed with the trial judge that there was sufficient reason to believe that the appellant was trying to give the impression of a wronged man who had spoken repeatedly to Tan in an effort to clear his name, whilst Tan was taking pains to give the impression that he had had minimum contact with the appellant, and that his retraction was purely voluntary.

Explanation of the inconsistency

39 As I accepted that Tan's allegations of assault and being high on drugs rang hollow, I found that he had no incentive to misrepresent facts in his statements to the CNB officers. As such, the accuracy of his statements was not diluted. On the contrary, such an incentive did exist by the time

he appeared in court to give testimony, which affected the weight to be attached to his testimony.

Context, cogency and coherency of the statements

40 I noted that, apart from Tan's insistence that he had wrongly identified the appellant as the supplier of drugs, all the other details in his oral testimony were largely consistent with those in the statements he gave to the CNB officers. His statements to the CNB officers were clear and to the point. The officers testified that he was active and alert when he gave the statements. This militated in favour of placing more weight on these statements.

Weight to be accorded to Tan's statements

41 Section 135(2) of the Evidence Act provides that the court can convict an accused person on the uncorroborated testimony of an accomplice. Nevertheless, the trial judge treated Tan's evidence with caution. She scrutinised the contents of Tan's prior statements, testing the alleged facts against the evidence of the CNB officers, before concluding that they were accurate. She applied the s 147(6) factors when assessing the amount of weight to attribute to the prior statements. As such, I found no reason to overturn her decision to give more weight to Tan's statements to the CNB officers than to his oral testimony and to use them as a basis for the appellant's conviction.

Whether identification of the vehicle and its driver was tainted

42 The appellant canvassed the argument that the trial judge failed to adequately consider that none of the CNB officers could identify the vehicle or its driver, relying instead on Tan's tainted identification. I was not convinced by this argument. The trial judge did recognise that none of the CNB officers could identify the appellant as the driver of the white sports car that dropped Tan, and that they could not identify the car. I also doubted that Tan's identification of the car or its driver was tainted. The appellant premised this argument on the already discredited basis that Tan made the identification when he was high on drugs and in fear of further assault by the officers. Upon cross-examination, Tan admitted that he had "no difficulty" in recognising the appellant and that, even when he was "high" on drugs, he was still aware of who the driver of the car was.

43 Furthermore, I accepted the collective evidence of the CNB officers that they saw Tan alighting from a white car at Block 40. This car had a bluish light inside it. A white car was later seen in the car park of Block 36. This is consistent with the appellant's own evidence that he drove from Block 40 to Block 36. It is also consistent with what Tan told SSgt Fong – that he had been dropped at Block 40 and that the supplier was waiting for him at the car park of Block 36. When the officers rushed there, the appellant's car was the only white car in the car park with a hot engine. Moreover, it had a blue internal light.

44 I found that Tan's identification of the appellant was far from tainted, since he had the chance to identify him more than once, when they were in close proximity. Given that the appellant did not deny ownership of the car, I found that Tan's identification of the appellant alone was sufficient to link him to the case.

Whether an adverse inference should have been drawn against the appellant for his failure to provide an alibi witness

45 The appellant further criticised the trial judge for drawing an adverse inference against him for his failure to provide his mother as an alibi witness after seeking leave of the court to call her.

46 The general rule is that no adverse inference can be drawn against the defence if it chooses not to call any witnesses, as was held in *Goh Ah Yew v PP* [1949] 1 MLJ 150, followed in *Abu Bakar v R* [1963] 1 MLJ 288. Illustration (g) to s 116 of the Evidence Act supplies an important qualification to this rule: the court is entitled to presume that "evidence which could be and is not produced would if produced be unfavourable to the person who holds it". This was elaborated upon in *PP v Nurashikin bte Ahmad Borhan* [2003] 1 SLR 52 at para 24:

> … if the prosecution has made out a complete case against the defendant, and yet the defence has failed to call a material witness when calling such a witness is the only way to rebut the prosecution's case, illustration (g) of the Evidence Act then allows the court to draw an adverse inference against the defendant: *Choo Chang Teik v PP* [1991] 3 MLJ 423, *Mohamed Abdullah s/o Abdul Razak v PP* [2000] 2 SLR 789. This is based on the commonsense notion that if the only way for the defence to rebut the prosecution's case is to call a particular witness, then her failure to do so naturally raises the inference that even that witness's evidence will be unfavourable to her.

47 The appellant sought leave of the court to call his mother as witness in order that he might establish that he left his home in Bukit Batok at 10.00pm or 10.05pm. If so, it would have been physically impossible for him to be in Chai Chee, pick Tan up, pass him the drugs, and drop him at Block 40 by 10.25pm, the time of Tan's arrest. The appellant's mother was not in court when called on 14 February 2003. Court was adjourned and the defence was given ample time to search for her, but she was still not present when court resumed on 12 March 2003.

48 Relying on *Nurashikin*, the trial judge drew an "irresistible inference" that, had the appellant's mother been called, her evidence would have been disadvantageous to him. I found that the trial judge was fully entitled to do so. It was established at the trial below that the appellant had driven Tan in a white car and had given him drugs to traffic. The CNB officers saw Tan alighting from a white car with a bluish light in it at Block 36 at about 10.15pm. The appellant himself admitted that he was driving a white car with a bluish light in it, and that he drove to Block 36, albeit at 10.25pm, before going to Block 40. As such, a complete case was made out against the appellant, and the only way he could rebut the evidence stacked against him was to call his mother to the stand. The trial judge was therefore correct in drawing an adverse inference against him for his failure to produce his mother in court.

49 In any event, I considered that even if the adverse inference had not been drawn, this would have had little or no effect upon the determination of the case. Given the other evidence upon which the trial judge based her decision, coupled with the finding that the appellant's defence was absolutely unworthy of credit, it was highly unlikely that the mother's evidence, if given, would have carried enough weight so as to reverse the verdict in the court below.

Conclusion

50 In essence, the appellant premised his appeal on the grounds that the prosecution had failed to prove its case against him beyond a reasonable doubt. I found this appeal, and the arguments canvassed in its support, absolutely untenable for the foregoing reasons. As such, I dismissed the appeal against conviction.

Appeal dismissed.