

Raman Selvam s/o Renganathan v Public Prosecutor
[2004] SGCA 1

Case Number : Cr App 11/2003
Decision Date : 09 January 2004
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Choo Han Teck J; Yong Pung How CJ
Counsel Name(s) : Peter Fernando and Raymond Lim Kuan Yew (Leo Fernando) for appellant; Eddy Tham (Deputy Public Prosecutor) for respondent
Parties : Raman Selvam s/o Renganathan — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) – Conditions of law necessary for conviction for offence under Act

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) – Whether Prosecution required to prove when drugs placed on premises for presumption under s 18(1) of Act to operate – Whether Prosecution proved that drugs in appellant's possession were for trafficking – Sections 17 and 18 Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

Choo Han Teck J (delivering the judgment of the court):

1 The appeal arose from a decision dated 16 September 2003 by Tay Yong Kwang J in Criminal Case No 33 of 2003. The appellant Raman Selvam s/o Renganathan (“the appellant”) was found guilty of an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) (“MDA”) and s 34 of the Penal Code (Cap 224, 1985 Rev Ed) and sentenced to suffer death under s 33 of the MDA. He appealed against his conviction.

Facts

2 The appellant was tried and convicted on the following charge:

That you, Raman Selvam s/o Renganathan together with one Dhanabalan s/o A Gopalkrishnan, on the 24th day of February 2003, at about 8.35pm, at Block 52 Teban Gardens Road #13-588, Singapore, in furtherance of the common intention of you both, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, 27 blocks of vegetable matter, containing not less than 2715.6g of cannabis, without any authorisation under the Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act, Chapter 185 and section 34 of the Penal Code, Chapter 224 and punishable under s 33 of the Misuse of Drugs Act.

A second charge, relating to 794.4g of cannabis mixture, a non-capital charge, was withdrawn upon the conviction on the first charge.

3 The events that led to the appellant’s arrest were as follows. Just after noon on 24 February 2003, a Central Narcotics Bureau (“CNB”) team was briefed on a case concerning two Indian males suspected to be cannabis traffickers. They were the appellant and one Dhanabalan (named in the charge above and who also goes by the name “Bala”). They were believed to have stored a large quantity of cannabis in a flat in one of three blocks along Teban Gardens Road – namely Blocks 52, 53 and 54. The two were said to be working in the vicinity of Teban Gardens – the appellant ran a flower shop with his wife and Bala ran a *roti prata* shop with two other workers.

4 The CNB operation to ambush and capture the two suspects was divided into two teams. The first team was tasked to capture the appellant and the second team was tasked to capture Bala. The two teams set off on their mission at 12.45pm on 24 February 2003. The first team went to the appellant's flat in Block 24 Teban Gardens Road. The CNB officers knocked on the main door of the flat and identified themselves but there was no response. The officers then decided that it would be more effective to find the appellant's wife since she would be able to help the officers gain access to the flat. They knew that she would be working at the flower shop that was within the vicinity. She was duly found, and thereafter agreed to follow the officers back to the flat. She opened the door with her set of keys. The door, however, could still not be opened because it was latched shut from the inside. The team of officers then kicked the door open, entered the flat and arrested the appellant. A thorough search of the flat was conducted and a Dunhill cigarette box containing two rolled-up papers of vegetable matter was found on top of the basin in the toilet. The Health Sciences Authority certified on 6 June 2003 that the vegetable matter contained tetrahydrocannabinol and cannabinol.

5 In the meantime, the second team searched for Bala. They believed that he might be at his *roti prata* shop. He was indeed found there and duly arrested. A bunch of four keys was found in his pocket. Bala was then escorted to Block 52. CNB officers believed that the drugs would be hidden in a flat in that block although they were not sure which flat in the block it would be. When questioning Bala on a staircase landing in Block 52, an Indian lady walked up the staircase. When she saw the team of officers questioning Bala, she turned and attempted to walk away. The CNB officers instructed her to proceed to her destination. It was later ascertained that the Indian lady's name was Indra d/o K Ramasamy ("Indra"), the owner of #13-588 (a flat in Block 52) and that Bala was her tenant. She brought the CNB officers to her flat. The officers then used the bunch of keys found on Bala's person to unlock the padlock and the main door of the flat. The officers entered the flat and soon ascertained that Bala occupied the room next to the corridor. Indra did not rent out the other two bedrooms. The officers, together with Bala, then waited for the appellant's arrival.

6 In the meantime, the appellant was escorted to flat #13-588 of Block 52 by the first team of officers. When they arrived at the flat, the CNB officers unlocked the room occupied by Bala using one of the keys they had earlier found on Bala's person. This was done in the presence of both the appellant and Bala.

7 The CNB officers found packets of cannabis in the top left shelf and in the bottom right drawer of the wardrobe in Bala's room. They were left in their original positions until the Investigating Officer and members of the Forensic Management Branch of the Criminal Investigation Department arrived to take the necessary photographs and to seize the exhibits from the room. It was ascertained that there were nine large blocks of cannabis in the top left shelf of the wardrobe. In a drawer of the wardrobe, the officers found nine small blocks of vegetable matter, one small block in a black bag, a plastic packet containing nine small blocks and a stained chopper. The officers searched the bedside drawers and found a large and a small weighing scale, one stained chopping board, four paper cutters and a lighter. Rolls of masking tape were also found in the room.

8 The investigating officer weighed the seized bundles of vegetable matter at CNB headquarters in the presence of Bala and the appellant. The blocks of cannabis and the smaller portions of vegetable matter found in the room were then sent for analysis to the Health Sciences Authority and were found to contain a total of not less than 2,715.6g of cannabis.

9 Bala pleaded guilty in a separate court to the offences which the appellant was charged with, but with the amount of cannabis in the first charge reduced to below 500g. The trial judge sentenced Bala to 20 years' imprisonment and ordered the maximum 24 strokes of the cane. Bala then testified on behalf of the Prosecution in the trial of the appellant.

The Prosecution's case at trial

10 It was the Prosecution's case that the appellant was the "gatekeeper" of the room where the drugs were found and that Bala was merely an occupier. It was the appellant who had control of Bala's access to the flat and to the said room. Every time Bala wanted to use the room, he had to get the keys from the appellant. After Bala had used the room, he had to return the keys to the appellant. The appellant's control of the keys was therefore an important fact, which the Prosecution needed to prove. If the keys to the flat and the room were proved to be in the appellant's possession, custody or control at the material times, s 18(1)(c) of the MDA would apply and the appellant would be presumed to be in possession of the cannabis found in the rented room. Section 18(2) of the MDA would then apply to a second presumption, that is, that the appellant would be presumed to know the nature of the drug (*ie* that it was cannabis).

11 It was also the Prosecution's case that the appellant was the mastermind who rented the room. It was the appellant who negotiated with Indra for the room. It was the appellant who secured the rent of \$300 per month. It was also the appellant who paid the monthly rent. The appellant was the one who quizzed Indra about the security of the rented room and it was he who sought Indra's assurance that the room, if rented, would be secure enough for Bala's expensive computer. Thus, the Prosecution contended that it was the appellant (and not Bala) who was testing the waters to assess if the room was a safe enough haven to conduct his drug trafficking activities.

12 The Prosecution further contended that it was the appellant who offered Bala a way out of his (Bala's) financial difficulties. Bala was in debt as a result of the money he borrowed to set up his *roti prata* stall in the coffee shop nearby and to purchase a car. The appellant took advantage of Bala's vulnerability when Bala came to ask the appellant for a loan. The appellant had previously worked with Bala at a company called Natferrous and they had become fast friends. Evidence was adduced at trial to show that the two had progressed from just being fellow employees to buddies. Some of the activities the two did together included social smoking of cannabis and drinking beer. It was shown that their friendship went beyond just the social level – the appellant had offered to be a guarantor for Bala's car loan and Bala had secured some contracts for the appellant's flower business. When Bala asked him for a loan in the last week of January 2003, the appellant said that he could not lend him cash. However, he said that he would give Bala some money if Bala would work for him.

13 Bala asked the appellant what sort of work he had in mind. The appellant said that he would show him and instructed Bala to meet him at the void deck of Block 24. Bala complied and the appellant arrived shortly after with a plastic bag in hand. The appellant took Bala to his flat in Block 24. When inside the flat, the appellant showed Bala the contents of the plastic bag he had been carrying. These included a block of cannabis wrapped in aluminium foil and plastic, a small weighing scale, a chopper, a cutting board and some masking tape. The appellant then proceeded to show Bala how to cut the block weighing one kilogram into 20 smaller pieces. The appellant then offered Bala \$100 for every block he cut and packed. Bala was at first hesitant to cut and pack cannabis for money. However, because of his financial strain, he agreed to do so a few days later, before the Chinese New Year, when the appellant asked him to cut and pack some cannabis. By this time, the equipment needed for cutting and packing had been transferred, with the cannabis which needed to be cut on that occasion, to the rented room.

14 Up to the time when the appellant had asked Bala to cut cannabis and to use the rented room for that purpose, Bala was genuinely under the belief that the appellant had rented the room because he needed it to store some goods from his flower shop. The initial agreement (before the appellant suggested that Bala cut cannabis for him) was that since the room was vacant, Bala could go there to rest when taking breaks from his work at the *roti prata* stall, which was nearby. But when

Bala asked the appellant for a loan, the appellant suggested that he could use the rented room to earn some money cutting and packing the appellant's cannabis.

15 Indra, the landlady who rented the room to Bala, was called as a prosecution witness. She testified that she knew the appellant as the man who ran the flower shop. She was on speaking terms with him and in December 2002 she asked him if he knew of anyone who was interested in occupying a room in the vicinity since her last set of tenants, an Indian couple, had left. The appellant said he would keep this in mind. Indra testified that it was the appellant who had introduced Bala to her. She was also absolutely clear that it was the appellant and not Bala who negotiated the rent. It was also the appellant who sought her assurance that the rented room was secure. She testified that the appellant was the one who took possession of the keys and it was he who paid the monthly rent. In fact, it was the appellant who instructed her to collect rent on the 15th of every month from him and not from Bala. Indra also testified that the appellant had shown her a bunch of keys that the appellant said included duplicate keys. It was clear from the record of proceedings and the statements given that Indra was not an interested party to the proceedings. It was beyond doubt that she was absolutely unaware of the presence of drugs in the room. Therefore, we were of the opinion that Indra's testimony greatly supported the Prosecution's case because it corroborated, largely, the account of Bala – ie that the appellant was the true mastermind behind the renting of the room.

16 The Prosecution contended that when the appellant was having some drinks with Bala on the morning of 23 February 2003, which was a Sunday, the appellant gave Bala the keys to the flat with the instruction that he would call him later to do something. At about 6.00pm the same day, the appellant called Bala on his handphone and told him that "the thing was already up there". He then instructed Bala to cut one block and said that Bala would be paid for this the next day. Between 7.00pm and 8.00pm the same day, the appellant called Bala to check if he had done as told. Bala replied that he had not and the appellant then stressed that one block of cannabis had to be cut by the next morning. The appellant then called Bala the next morning, 24 February 2003 between 10.00am and 11.00am and asked if he had done so. The appellant again emphasised the urgency of the order. Bala then called his brother-in-law to relieve him at the *roti prata* stall and went to the rented room at 12.30pm. Bala found 10 blocks of cannabis in a black bag that was left in the rented room. He put nine of the blocks away on the top shelf of the wardrobe and cut the remaining block into 19 small packets. He wrapped ten of these packets in plastic and put them in the black bag that he placed in the bottom right drawer of the wardrobe. He wrapped the remaining nine packets in plastic and masking tape and threw the wrapped packets next to the black bag. He was extremely angry to find such a large quantity of cannabis in the rented room. Bala took nearly an hour to cut and wrap the kilogram of cannabis. After completing the task, he returned to his food stall where he was arrested at about 6.00pm.

The Defence's case at trial

17 The thrust of the Defence's case was that Bala was an extremely unreliable witness who was deliberately attempting to distance himself from the rented room where the drugs were found. The Defence argued that the appellant had nothing to do with the drugs. Counsel contended that Bala played the principal role in negotiating the rental agreement. The appellant stated that Indra was lying when she said that it was he who brokered the agreement to rent the room. At all times, according to the Defence, the appellant was not the prime negotiator of the rental agreement. The Defence's argument was that if the appellant was merely a bystander in the procuring of the rented room, then it followed that it would be highly unlikely that he would have planned to use the room to store cannabis.

18 The Defence also contended that there were four distinct disputes between the appellant and Bala which could have prompted Bala to falsely incriminate the appellant. The first dispute stemmed from the orders which Bala's father had placed with the appellant's flower shop. It transpired from the evidence that Bala had introduced his father, who was working for the Indian Casket Company, to the appellant. Bala's father, Mr M S Gopal, had subsequently placed orders with the appellant for funeral flowers. Unfortunately, Mr Gopal did not honour his payments and the appellant, not having enough money to buy new produce due to the money spent on supplying flowers to Mr Gopal, soon hounded Mr Gopal for the money. Bala was unhappy with the fact that his father's name, which had been accorded a certain level of respect in the local temple, was being defamed by allegations that his father owed the appellant money.

19 The second dispute concerned the car loan which Bala had taken out. The appellant had been the guarantor for the loan and was extremely upset with Bala when he received a letter from Hong Leong Finance Ltd stating that he was equally liable for the outstanding sum owed by Bala. The appellant took Bala to task for this and urged him to settle the loan.

20 The third dispute arose from the occasion when the appellant insulted Bala after Bala had been stabbed by a man on 16 February 2003, eight days before Bala's arrest. The injuries sustained by Bala were not serious. As far as the Defence was concerned, the stabbing was totally at random and unrelated to the case at hand except for the fact that the appellant had teased Bala that "even a cat would know how to protect himself from such an attack". This teasing was done in front of Bala's family. The Defence sought to show that the appellant's insensitive remarks caused Bala to develop a resentment towards the appellant. This resentment, in counsel's view, was sufficiently deep to make Bala bear false testimony against the appellant. After all, the appellant embarrassed Bala in front of Bala's family who had come to patronise his *roti prata* stall.

21 The fourth dispute concerned the assertion that the appellant had usurped Bala's position at Natferrous (the company they had worked for). The implication by the appellant here appeared to be that Bala was therefore likely to harbour ill feelings towards the appellant and that the usurpation had increased Bala's desire to incriminate him.

22 The Defence advanced a third type of argument. It contended that Bala had actually used the rented room on a very regular basis. It challenged the Prosecution's argument that Bala had used the room merely as a resting point away from the business of his food stall. When cross-examining Bala, counsel for the Defence stressed the fact that Bala had been on very bad terms with his wife, due to the financial difficulties that the couple were in. Following from this, counsel argued that it was therefore unlikely that Bala would return each night to his home when he had the convenient option of spending the night in the rented room. The Defence contested the Prosecution's evidence that Bala had only spent three nights in the rented room. The purpose of this argument was to establish that Bala had a stronger association with the rented room than he cared to admit.

23 Bala testified that the appellant had called him several times on Sunday 23 February 2003 to remind him that he had to cut and wrap one block of cannabis. When asked by the Prosecution why he made these numerous calls to Bala, the appellant replied that he was only exchanging horse racing tips.

The decision of the trial court

24 Tay J took into account the fact that the accomplice, Bala, had pleaded guilty to the same charges, albeit for a lesser amount of cannabis. Thus, he was absolutely correct in reminding himself of Illustration (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) which states:

The court may presume that an accomplice is unworthy of credit and his evidence needs to be treated with caution.

Nonetheless, Tay J found Bala to be a credible witness and his evidence to be dependable. Tay J believed Bala's evidence that the room in question was rented by the appellant. He was also convinced that Bala had to obtain the keys from the appellant every time he wanted to use the room and had to return the keys every time he was done with the room.

25 Tay J stressed the fact that Bala was in financial difficulties. He had been sent letters of demand from the finance company, his car had been re-possessed, his wife often had arguments with him over unpaid bills, he had borrowed money to set up his food stall, and he had pawned jewellery and sold his New Singapore Shares to make ends meet. It was extremely unlikely that, when in such straits, Bala would have thought of renting a room to rest during working hours. Tay J emphasised that Bala's home was only ten to fifteen minutes away by taxi or motorcycle.

26 Tay J found that Bala's evidence as to the appellant's leading role in the acquisition of the rented room was corroborated by Indra, a witness who had no reason to implicate the appellant. It was clear, in Tay J's mind, that it was the appellant who was lying to Indra about the status of Bala and that Bala was the one who was concerned about others having access to the rented room. Tay J also found that the appellant paid the rent for January and February when he had otherwise no reason to do so.

27 Tay J found that the set of keys handed to the appellant by Indra had been duplicated. The duplication of keys was mentioned by both Bala and Indra. Tay J found that, because the appellant was clearly in possession of the keys to Indra's flat, it made good sense that Bala would hand him the room key as well. Tay J accepted Bala's testimony that all the keys for gaining access to Indra's flat and the rented room were in the possession, custody or control of the appellant.

28 As to whether Bala treated the rented room as his second home, Tay J found that it was clear that he did not. He only had some T-shirts in the room which Tay J was convinced he had brought there only to prepare himself for the three nights which he stayed away from home. There was no underwear in the house. Not even a pair of trousers was found. Tay J was convinced that the appellant was the true tenant of the rented room and that he had had unrestricted access to it.

29 As regards the Defence's argument that there were various disputes between Bala and the appellant which could have caused the former to frame the latter, Tay J did not believe that the disputes mentioned had caused such a vindictive response from Bala. With regard to the appellant usurping Bala's position at Natferrous, Tay J was of the view that any ill-feeling that Bala might have harboured would have ceased by the time Bala encouraged his father to buy flowers from the appellant's shop. The appellant was also close enough to Bala as a friend to inform him of the availability of stall space and to advise him to try his hand in the food business. Bala trusted the appellant enough to accept the advice. Where the teasing incident over the stabbing was concerned, Tay J had no doubt that Bala was "made of much sterner stuff than to be so easily hurt by such remarks".

30 The trial judge was convinced that at least one set of keys to Indra's flat and the rented room was proved to be in the appellant's possession, custody or control at all material times. Section 18(1)(c) of the MDA was therefore applicable and the appellant was consequently presumed to be in possession of the cannabis found in the room. Tay J ruled that when one set of keys was handed over by the appellant to Bala on Sunday 23 February 2003 the appellant was in possession of, or at least had access to, the second set of keys. Tay J accepted Bala's evidence that the accused

left in a car and returned later on foot and that the accused called Bala later that evening to say that the "thing" (*ie* the cannabis) was already "up there" (*ie* in the rented room). This fortified the judge's view that there was also a duplicate made of the room key since the evidence was that the rented room would be locked by the user when he left.

31 Bala was left in no doubt as to what "the thing" meant since he had been told in certain terms that he would be paid \$100 for each block of cannabis he cut and packed. Tay J was satisfied that the appellant had given a demonstration of how the cannabis was to be cut, and that Bala had also, on an earlier occasion (before 24 February 2003), cut and packed cannabis for the appellant. He also found that the cutting board, the chopper and the small weighing scale were similar to those Bala had seen in the appellant's flat during the demonstration.

32 The trial judge was satisfied that the large amount of cannabis seized was not meant for the appellant's personal consumption. As the judge held:

The cutting, weighing and packing paraphernalia also showed beyond doubt that the cannabis in the rented room was meant for trafficking and not for personal consumption. Clearly, by their actions and their words, the accused and Bala were acting in concert in possessing the cannabis for the purpose of trafficking.

33 It transpired at the trial that the appellant's wife had telephoned Indra at home. She asked Indra to tell the CNB officers that the appellant had paid the rent only once. To this Indra replied that the CNB officers had already asked her and she had already told them that the appellant paid her twice, that is, for January and February 2003.

34 Having considered all the circumstances of the case, Tay J had no doubt that the appellant was guilty as charged and convicted him accordingly. The mandatory death sentence was passed on him.

The law

35 The conditions of law necessary for a conviction for this offence, and other similarly applicable offences under the MDA, flow along a path of seven steps.

Step One: The presumption of possession

Section 18 (1)(c) of the MDA states:

Any person who is proved to have had in his possession or custody or under his control the keys of any place or premises or any part thereof in which a controlled drug is found shall, until the contrary is proved, be presumed to have had that drug in his possession.

Step Two: The presumption of knowledge of the nature of the drug

Section 18(2) of the MDA states:

Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

Step Three: The need to prove that possession was for the purpose of trafficking

Low Kok Wai v PP [1994] 1 SLR 676 is the authority for the following proposition:

By omitting the two words “or presumed” in the 1991 version of s 17 of the MDA, Parliament must have intended that the presumption of trafficking therein was only to apply where a person was proved to be in possession of a controlled drug and not merely presumed to be in possession of a controlled drug. The presumption in the amended provision could not be applied where the fact of possession is not proved independently but presumed by virtue of s 18 of the Act.

Therefore, the burden is on the Prosecution to prove that the possession of drugs was for the purpose of trafficking the drugs. Section 17 of the MDA has not relieved the Prosecution of this duty.

Step Four: The trafficking of drugs must not be authorised

Section 5(1)(a) of the MDA states:

Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore, to traffic in a controlled drug.

Step Five: The crystallisation of the trafficking offence

Section 5(2) of the MDA states:

For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

Step Six: The requisite punishment (the empowering provision)

Section 33(1) of the MDA states:

Except as provided in subsection (4) or under section 33A, the Second Schedule shall have effect, in accordance with subsections (2) and (3), with respect to the way in which offences under this Act are punishable on conviction.

Step Seven: The requisite punishment (the reference provision)

The Second Schedule of the MDA states that where the quantity of cannabis being trafficked without authorisation is more than 500g, the punishment shall be death.

The appeal

36 The appellant argued that it was in fact Bala who rented the room from Indra. The objective behind such an argument was to distance the appellant from the room and therefore from the drugs found therein. This argument lacked merit. It was clear that it was the appellant who negotiated the agreement for the rented room. Indra, a witness who had no reason to lie, testified that the appellant played the leading role in securing the room for rent. The following evidence from the verbatim notes illustrated this point. Here, Indra was recounting the conversation she had with Bala and the appellant about the rented room in her flat:

Indra’s examination by the DPP

Q: Were you told who was to stay in your flat?

A: I was told that Bala would be staying in my flat.

Q: Who told you that Bala would be staying in your flat?

A: Selvam [the appellant] told me.

Q: Were you told if any belongings would be brought into the flat?

A: They told me they will be bringing a computer.

Q: Who told you that a computer would be brought in?

A: Selvam.

Q: Were you told if the computer was valuable?

A: Yes.

...

Q: Mdm Indra, how long do you remember the two of them being in your flat that evening?

A: A short while, Sir, about half an hour or so.

Q: Now there were two persons there; there was Bala and there was Selvam. Who did most of the talking?

A: It was Selvam.

It was absolutely clear that the evidence of Indra corroborated the evidence of Bala that it was Selvam (the appellant) who rented the room from Indra. This was further substantiated by Indra's evidence that the appellant had asked her to pass him (and not Bala) the keys to the flat and had requested Indra to collect the rent from him (the appellant). The verbatim notes illustrated this point:

Indra's examination by the DPP

Q: Now, the next day, on the 14th of January 2003, did you go to Selvam's flower shop?

A: I did, Sir.

Q: What happened in the shop?

A: Selvam asked for the key to the main door of my flat.

Q: Now, did he ask for a single key or did he just ask for the keys to your home?

A: He asked for a set of keys.

Q: Did you bring the set of keys for him?

A: I told him that I had forgotten.

Q: What did Selvam say?

A: He said – He asked me, Sir, to bring the set of keys the next day and that he would pay me rental. Sir, I went the next day, Sir, and he did pay me \$300. I gave him two keys.

...

Q: Were you curious why, if Bala was going to stay in the room, then why did Selvam offer to pay the rent?

A: It was Selvam who told me not to ask Bala for the rental, that any rental would be paid by Selvam himself.

The evidence as recorded in the verbatim notes clearly showed that the appellant was at all times the dominant party in the procurement and the administration of the tenancy. He had even gone so far as to pay the monthly rent to Indra. In addition to this, Indra testified that when she met the appellant at his flower shop a few days later, the appellant arranged with Indra that she was to collect the \$300 rent from him on the 15th of every month. The trial judge was therefore entitled to find that the appellant was the true tenant of the room. The Defence's attempt to disassociate him from the room failed.

37 The appellant further argued that Tay J erred in fact and in law when he found that "all the keys for gaining access to Indra's flat and the rented room were in the possession, custody or control of the accused". We saw no merit in this argument. It was clear from the evidence at trial that the appellant was in possession of duplicate keys to the flat. Indra corroborated Bala's evidence in this regard. The following evidence was clear on the point:

Indra's examination by the DPP

Q: So you say that you became aware that he [Selvam] had a duplicate set of keys. Can you describe what happened please.

A: He showed me the duplicate keys, Sir, on that occasion and I asked him why he had made these duplicate keys, he said that he has to paint *the room* which was being rented out to Bala. [The "occasion" referred to was when Indra met the appellant at the nearby provision shop towards the end of January 2003.]

Q: Did he give you any other reason for making a duplicate set of keys?

A: To clean *the room* as well. He said it's better to have this as a spare key in case if it is lost or misplaced or if he forgot to bring the key.

[emphasis added]

Indra's evidence showed that the appellant was clearly in possession of a duplicate set of keys. In Bala's statement, which he gave at Tanah Merah Prison, he said:

... [Indra] told that she had already passed the keys to Selvam [the appellant] ... I then left for the flower shop and Selvam then passed me two keys for Indra's flat and told me to duplicate

them. I duplicated the keys somewhere near my home, and handed the original two keys and the duplicates to Selvam the next day...each time I went to the rented room to rest, I went to get the keys from Selvam first. After I had rested I would return the keys to Selvam.

In light of the evidence above, we were of the view that Tay J was entitled to find that "the [appellant] was the true tenant of the room and that he had unrestricted access to it while Bala had access to it only upon request made to the [appellant]".

38 There was one more point about the keys that needed clarification. Defence counsel argued that, if Bala was telling the truth about the appellant handing him the keys on Sunday 23 February 2003, it must follow that the appellant would not have had access to the flat on the Sunday. Therefore, counsel argued, the appellant could not have placed the ten blocks of cannabis in the room on the Sunday. This was, superficially, an attractive argument. However, the evidence showed that there was in fact a duplicate set of keys which the appellant kept for himself:

Bala's cross-examination by defence counsel

Q: I'm asking you whether you will agree with my proposition that if I don't have the keys to somewhere, I can't gain entry into it, would you agree with that proposition?

A: I believe that he [Selvam] has a spare key, Sir.

Bala's re-examination by the DPP

Q: ...On the occasions that you got the set of keys from Selvam to go to Mdm Indra's flat, were you always given this particular set of keys or have you been given another set of keys?

A: There was another one, Sir.

Q: How many keys were on the other set?

A: Also four, Sir.

Q: When you were given the other set, were you able to open the padlock on Mdm Indra's gate?

A: Yes, Sir.

Q: *Were you able to open the rented room?*

A: *Yes, Sir.*

[emphasis added]

39 In light of this evidence, we were of the opinion that there was no room to argue that the appellant did not have another set of keys on Sunday 23 February 2003. The evidence suggested strongly that the appellant did have the ability (namely access to the flat) to put the ten blocks of cannabis there on the said Sunday. In any event, it was not the Prosecution's case that the cannabis was placed there that day. Tay J made this important observation in his grounds of decision:

The duplication of the first set of keys was mentioned by both Bala and Indra. The accused clearly was in possession of the keys to Indra's flat. It therefore made good sense that Bala

would hand him the room key as well when that was handed over by Indra to Bala. *No evidence was adduced as to whether there was a duplicate room key made by the accused except the statement by Bala that a fellow inmate had heard the accused say he flushed his keys away.* It made sense that if the accused wanted duplicates of the keys to the main door and the padlock, he would also make a duplicate of the room key. In any event, the evidence showed that he must have had a duplicate room key as well. I accepted Bala's evidence that all the keys for gaining access to Indra's flat and the rented room were in the possession, custody or control of the accused. [emphasis added]

40 It was an uncontested fact that no keys were found on the appellant's person. Thus, there was only the evidence of Bala that the appellant had possession of the room key. The paramount question to ask was this: Was the trial judge correct to find that the appellant had possession, custody or control of the room key, such as to allow s 18(1)(c) to operate? We were of the view that the trial judge was justified in coming to his conclusion.

41 In *Nadasan Chandra Secharan v PP* [1997] 1 SLR 723, the Court of Appeal clarified the law regarding convictions based on circumstantial evidence. Delivering the judgment of the court, the Chief Justice at [85] quoted the case of *Shepherd v R* (1990) 97 ALR 161 at 165:

... the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact – every piece of evidence – relied upon to prove an element by inference must itself be proved beyond reasonable doubt ... Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.

The Chief Justice then put the quote in perspective and stated at [86]:

The question before us is simply this: Does the cumulative evidence drive one inevitably and inexorably to the one conclusion and one conclusion only, that it was the appellant who intentionally caused the death of the deceased? Or is there some other reasonably possible explanation of the facts connecting the appellant to the murder? (See *Ang Sunny v PP*).

42 Applying the law to the context of the current case, we were of the unanimous opinion that:

- a) the appellant was in the possession and control of the key to the flat as well as the key to the room;
- b) the appellant was the gatekeeper of the room in that Bala had to gain the appellant's permission before using the room and had to return the room keys to the appellant after he (Bala) had completed his use of the room;
- c) Indra, an independent witness who had no reason to lie, offered testimony which further substantiated the above two findings.

43 Thus, the circumstantial evidence led "inevitably and inexorably to one conclusion and one conclusion only": that for the purposes of s 18(1)(c), which was the first of the seven steps to conviction, the appellant was in possession and control of the keys to the flat and the said room. There was no other permutation of the evidence to persuade us that the appellant was not in possession and control of the relevant keys. For these reasons, we were convinced that Tay J had correctly found that the presumption under s 18(1)(c) applied.

44 The defence counsel raised a pertinent point as regards the Prosecution's uncertainty over the timing as to when the drugs were put in the room. Since it was not the Prosecution's case that the drugs were placed in the room on 23 February 2003, the important question that this court, on appeal, had to decide was: Was the Prosecution obliged to prove *when* the drugs were put in the room for the sake of invoking s 18(1)(c) of the MDA? It was important to examine the provision in question. Section 18(1)(c) states:

Any person who is proved to have had in his possession or custody or under his control the keys of any place or premises or any part thereof in which a controlled drug is found shall, until the contrary is proved, be presumed to have had that drug in his possession.

45 On a strict interpretation of the section, there is no requirement that the Prosecution need prove *when* the drugs were put in the room or relevant premises. However, we would stress that, where the Prosecution has the evidence to prove the timing of the installation of the drugs, it should, as a matter of sound practice, adduce that evidence at trial. Section 18(1)(c) is the first presumption, followed by s 18(2), and thus must be invoked with circumspection and care. We were of the opinion that on the facts of this case, the Prosecution had proven its case sufficiently. In this regard, the evidence of Indra was crucial. Had there been no independent witness, no direct evidence of the key on the appellant's person and no evidence as to when, no matter how rough an estimate, the drugs were put in the room, the Prosecution might not have discharged its s 18(1)(c) burden. The s 18(1)(c) gate in the MDA must be appropriately guarded. We were convinced that s 18(1)(c) was applied correctly in this case. What s 18(1)(c) does is to impose a presumption on a keyholder.

46 In addition to our main grounds discussed above, we also took into account some of the other aspects found by the trial judge. Firstly, the appellant's wife telephoned Indra to ask her to tell the CNB officers that the appellant had paid the rent only once. Such a request was designed to distance the appellant from the rented room. Indra then informed the appellant's wife that she had already told the CNB that the appellant had paid the rent twice. Secondly, the CNB officers found one Dunhill cigarette box containing two rolled-up papers of vegetable matter in the toilet of the appellant's flat. The Health Sciences Authority certified on 6 June 2003 that the vegetable matter contained tetrahydrocannabinol and cannabinol. This showed that the appellant was privy to the underworld of drugs. Thirdly, the appellant's wife thought it odd that the appellant had latched the door from the inside when she had attempted to unlock the main door to let the CNB officers in. The CNB officers then had to kick the door in. Tay J himself found the appellant's reasons for latching the door difficult to believe.

47 Fourthly, the call-tracing records confirmed that calls were made between Bala and the appellant in the evening of 23 February 2003 and in the morning of 24 February 2003. The timing of these calls substantiated Bala's evidence that the appellant kept on calling him to remind him that he was to cut one of the blocks by Monday morning. This evidence was not affected by the fact that Bala himself had called the appellant at the said period of time. The call records showed that between 23 and 24 February 2003 the appellant called Bala 11 times in all. In comparison, Bala called the appellant only twice. Fifthly, Tay J found that it was beyond any doubt that the appellant had called Bala on Sunday 23 February 2003 to tell him that the "thing" was already "up there" and that he was to cut one block up and have it packed by the next day. Bala was left in no doubt that the appellant was referring to cannabis. Bala later found out, when he visited the room, that the cannabis was of a large amount – ten blocks in total. Sixthly, the evidence given by the appellant in his attempt to distance himself from the rented room was incredible. In particular, when the Prosecution asked him why he paid the rent to Indra, the appellant replied,

Sir, [Bala] is a fraud, Sir. It was not that I was concerned whether Bala had paid or not, but this

woman, I took pity on her.

The appellant's attempt to disassociate himself from the room where the drugs were found was held not to be credible by the trial judge, and we agreed with that view.

Conclusion

48 We were of the view that Tay J was correct to have convicted the appellant. Firstly, the Prosecution had proved that the appellant had in his possession and control the keys to the flat and to the rented room. Thus, s 18(1)(c) of the MDA applied and the appellant was presumed to have had the drugs in his possession. Secondly, because he was presumed to have had a controlled drug in his possession, s 18 (2) of the MDA applied. Thus, he was then presumed to have known the nature of the drugs (*ie* cannabis). Thirdly, the Prosecution proved that the drugs in the appellant's possession were meant for the purposes of trafficking. The sheer quantity of the drugs (not less than 2,715.6g of cannabis) and the drug trafficking paraphernalia found in the flat went to prove that the drugs were meant for the purposes of trafficking. Fourthly, as regards s 5(1)(a) of the MDA, the trafficking of the drugs was not authorised. Fifthly, by virtue of s 5(2) of the MDA, the appellant had committed the offence of trafficking in a controlled drug since he had in his possession that drug (*ie* the cannabis) for the purpose of trafficking. Lastly, s 33 of the MDA, in conjunction with the Second Schedule, provides that where the quantity of cannabis being trafficked without authorisation is more than 500g, the punishment shall be death. Because the appellant and Bala were acting in concert in possessing the cannabis for the purpose of trafficking, s 34 of the Penal Code was correctly applied. For the reasons above we dismissed the appeal.

Appeal dismissed.