Public Prosecutor v Lee Kwee Siong and Another
[2008] SGHC 117

Case Number : CC 10/2008

Decision Date : 21 July 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Hay Hung Chun and Karen Ang (Deputy Public Prosecutor) for the prosecution; Ahmad Nizam Abbas (Straits Law Practice LLC) and Jeeva Joethy Arul (Bernard & Rada Law Corporation) for first accused; Cheong Aik Chye (A C Cheong & Co) and Chong Thian Choy Gregory (Loo & Chong) for second accused

Parties : Public Prosecutor — Lee Kwee Siong; Lee Siaw Foo

Criminal Law

Evidence

21 July 2008

Tay Yong Kwang J:

Introduction

1 The first accused, Lee Kwee Siong, a Singaporean national, faced the following charge:

> That you, … on the 7th day of May 2007, at or about 10.45p.m., at the corridor outside Block 181 Jelebu Road #11-06, Singapore, did traffic in a "Class A" controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185), to wit, by having in your possession for the purpose of trafficking, two (02) packets of granular substance with a gross weight of 449.2 grams which was analysed to contain not less than 38.49 grams of diamorphine, without any authorisation under the Misuse of Drugs Act (Chapter 185) or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the Misuse of Drugs Act.

2 The second accused, Lee Siaw Foo, a Malaysian national, was alleged to have passed the two packets of the diamorphine (or heroin) in question to the first accused. He faced the following charge:

> That you, … on the 7th day of May 2007, sometime between 10.35 p.m. and 10.45 p.m., at a staircase on the 9th floor of Block 181 Jelebu Road, Singapore, did traffic in a "Class A" controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185), to wit, two (02) packets of granular substance with a gross weight of 449.2 grams which was analysed to contain not less than 38.49 grams of diamorphine, to wit, by handing the said two (02) packets of granular substance to one Lee Kwee Siong (NRIC No. S1529850B), without any authorisation under the Misuse of Drugs Act (Chapter 185) or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the Misuse of Drugs Act.

3 Having considered the evidence and the submissions given by the prosecution and the defence, I was convinced beyond reasonable doubt that the charges were made out and convicted the first

accused and the second accused accordingly.

Facts of the case

4 On the evening of 7 May 2007, intelligence officers from the Central Narcotics Bureau ("CNB') conducted operations in and around the vicinity of Block 181 Jelebu Road ("Block 181") pursuant to information obtained on a possible drug transaction taking place there that evening between a Singaporean and his Malaysian supplier.

5 At about 10.35pm, a green Malaysian-registered Proton Saga vehicle with the registration number JGJ 1202 was spotted along Jelebu Road. The vehicle proceeded towards the direction of Block 181 and was seen entering Block 181A Jelebu Road ("Block 181A"), which was a multi-storey carpark located next to Block 181. The vehicle eventually parked at Deck 3 of Block 181A.

6 Subsequently, the second accused and one Yong Ket Wui ("Yong"), a Malaysian national, were seen alighting from the vehicle. They proceeded towards Block 181 and were seen entering the lift at the ground floor lift lobby. The second accused had a black "Nike" sling bag with him. Both the second accused and Yong were later seen coming out of the lift on the 9th floor of Block 181. There, the second accused passed a pink plastic bag with floral imprints ("the pink plastic bag") to the first accused. In exchange, the first accused passed the second accused a packet containing $10,000 in Singapore currency. This transaction was not denied by both accused in their evidence.

7 After the transaction took place, the first accused was seen at the common corridor on the 11th floor of Block 181. He was seen carrying the pink plastic bag and walking towards unit #11-06. Before he could enter the unit, however, a team of CNB officers, who had been hiding at a stairwell, moved in and placed him under arrest. The pink plastic bag was seized and was found to contain the two packets, *i.e.*, the heroin in question, one packet of a crystalline substance (which was later analysed by the HSA and found to contain not less than 83.40 grams of ketamine), and 410 tablets of Erimin-5.

8 After arresting the first accused, the CNB officers proceeded to raid unit #11-06. The CNB officers were able to gain entry after the first accused revealed the keys (from a bunch of keys which had been found in his possession) for the lock and the wooden door of the unit. The owner of the unit, one Lye Chee Hoong Mark ("Lye"), and his girlfriend, one Mavis Tay Su Ying ("Tay"), both of whom were found inside the unit, were placed under arrest.

9 In the unit, the CNB officers came across a room with a locked door. This room was later established to be rented by the first accused from Lye. The first accused initially refused to allow the CNB officers to have entry to the room. Upon looking under the door to the room, one of the CNB officers saw smoke and this led to the CNB officers trying to forcefully gain entry into the room. Their attempts were unsuccessful, however, and they eventually only managed to gain entry by using a key which was found in the possession of the first accused (this being from the same bunch of keys which had the keys to the lock and wooden door of the unit). Once inside, the CNB officers saw fire on a rack near the window. The fire was immediately put out. None of the CNB officers could later give a conclusive opinion on the source of the fire. A search of the room was subsequently conducted. Numerous items, including substances which were later found to be controlled drugs (3.09 grams of diamorphine in several packets and straws, 38.58 grams of ketamine in several packets, 25.79 grams of Ice in several packets, 33 tablets of Ecstasy and 320 tablets of Erimin-5) and other drug-related paraphernalia were found and seized. In addition, cash amounting to $24,511 in Singapore currency, one DBS ATM card, and one UOB ATM card were found and seized.

10 At about the same time as the arrest of the first accused, another team of CNB officers, who were in position at the lift lobby at the ground floor of Block 181, placed both the second accused and Yong under arrest as they were about to step out of the lift. The packet containing $10,000 in Singapore currency was found and seized by the CNB officers. In addition, a tablet of Erimin-5 was found in the coin pocket of the second accused's jeans and was seized.

11 At about 10.50pm, the second accused and Yong were escorted to Deck 3 of Block 181A. In the presence of the second accused and Yong, a search was conducted on the vehicle JGJ 1202. At about 11.15pm, some packets were found in the gear box compartment of the vehicle. The contents of the packets were later ascertained to include 24.14 grams of ketamine in 24 small sachets, 35 tablets of Ecstacy, and 14 tablets of Erimin-5. These packets were extracted from the vehicle after it had been brought back to CNB Headquarters.

12 Both the first accused and the second accused, together with Yong, Lye and Tay, were brought back to CNB headquarters where they were investigated for drug offences. The first accused and second accused were eventually charged for drug trafficking. Yong initially faced a joint trafficking charge with the second accused but was eventually granted a discharge not amounting to acquittal. Lye was charged and convicted of the offences of possession and consumption of drugs and Tay was referred to the Drug Rehabilitation Centre for treatment after testing positive for the consumption of drugs upon her arrest.

Statements

13 The prosecution's evidence, in the main, consisted of the testimony of the CNB officers involved in the operations on 7 May 2007 and that of the doctors who attended to the first accused in the course of investigations, an oral statement made by the second accused to Staff Sergeant Jory Lim ("SSgt Lim") and the statements made by the first accused and the second accused to Assistant Superintendent Herman Hamli ("the IO"), the CNB Investigating Officer (who had resigned from the CNB in February 2008). The admissibility of the statements was not challenged and all of the statements were duly admitted into evidence.

Statements made by the first accused

Cautioned statement

14 On 11 May 2007, the IO recorded a cautioned statement from the first accused pursuant to s 122(6) of the Criminal Procedure Code (Cap 85, 1985 Rev Ed), with the assistance of an interpreter, Mr Kam Kan Hing ("Mr Kam"), as the first accused chose to speak in Hokkien. In the cautioned statement, the first accused stated:

> I have nothing to say to this charge. All the stuff was for my own consumption. I got nothing more to say.

Investigation statement dated 13 May 2007

15 On 13 May 2007, the IO recorded an investigation statement from the first accused with the assistance of Mr Kam. In the statement, the first accused stated that his true place of residence was a rented apartment at Jalan Minyak, for which he paid close to $100 a month in rental. His other monthly expenses would include about $200 for his father's medical fees (to which his wife would contribute about $100), $50 for light and water, $300 for all telephone bills (including three mobile phones and one land line), $300 to $400 for provisions (to which his wife would contribute about

$100).

16 The first accused also stated that in addition to the apartment, he rented a room at #11-06 (the room referred to earlier) for about $300 to $400 a month from Lye mainly for the purpose of consuming drugs, as Lye had no drug records. He would share the bill for water and lights with Lye and this would come out to about $200 per person.

17 The first accused stated that he did not have a regular job but was an odd job worker doing jobs such as sweeping roads and being a petrol pump attendant. His last job was as a cleaner at a condominium, for which he would work from 9am to past 3pm for six days a week, and for which he was paid about $1,000 a month. This job was recommended by a friend and he worked at this job from March 2007 to the beginning of May 2007. Prior to this job, he had been working as a petrol pump attendant at an Esso Petrol Station in Telok Blangah, working from 8am to 3pm for six days a week, and for which he was paid about $900.

18 The first accused stated that on 7 May 2007, he was consuming heroin and Ice in his rented room at #11-06 when he received a phone call from a Malaysian man named "Lawrence", who said that he would be delivering a stash of heroin, Erimin-5 and ketamine to him at a cost of $12,000. The delivery was made by a male Malaysian (which the first accused identified as the second accused in his further investigation statement dated 16 May 2007) that same day. In return for the drugs, which were contained in the pink plastic bag, the first accused handed the second accused $10,000 wrapped in paper. He paid only $10,000 as he had told Lawrence that he would pay this amount upfront and the balance later. After the transaction, he retraced his steps to #11-06 but was arrested before he could reach the unit.

19 The first accused had known Lawrence for about two years but it was only a month before his arrest that Lawrence offered to sell drugs to him. The first such transaction took place a few days after Lawrence made his offer. The drugs bought in the first transaction consisted mainly of heroin (20 packets) and came at a cost of $6,000. The person who delivered the drugs was the same person who delivered the drugs on 7 May 2007 (*i.e.*, the second accused). Other than Lawrence, he would buy drugs from Singaporeans in small amounts for his own consumption.

20 The first accused claimed that it was only after Lawrence told him that he (Lawrence) could supply him (the first accused) with drugs that he began to think of selling drugs to others. The first time he sold drugs was about a month before his arrest. He sold heroin, Ice and ketamine. He sold heroin at $400 a packet, Ice at $200 per gram, and ketamine at $2,000 per 100 grams. He did not sell Erimin-5 and Ecstasy but bought these drugs only for his own consumption.

21 The first accused claimed that the cash seized from his room at #11-06 were the "proceeds of sale of heroin and other drugs". He had accumulated the money from the last month of his daily sales. He claimed that he had customers calling him every day. Five or six regular customers would occasionally order between $2,000 and $4,000 worth of drugs. He concluded the statement by stating that he was "deeply addicted to drugs" and he needed to sell drugs to "feed [his] own addiction".

Further investigation statement dated 16 May 2007

22 On 16 May 2007, the IO recorded a further investigation statement from the first accused with the assistance of Mr Kam. In the statement, the first accused stated that he smoked about two or three packets of heroin a day. He had been smoking heroin at this rate for about one month before his arrest. Before this, he had not been smoking heroin heavily. Over a period of four or five months,

he smoked about one packet a day or one packet in two days. Slowly, he increased his rate to two or three packets a day. Before this, he was only smoking up to one straw of heroin and less frequently as well. His heroin consumption habits changed because he was handling larger quantities of heroin. While he was buying from his Singapore suppliers, he could only buy heroin in small quantities, but when he started buying heroin from Lawrence, he could buy larger quantities as Lawrence would allow him to buy on credit. He also bought a larger amount of drugs in order to sell some to others to feed his own addiction. In addition to smoking heroin, he would also smoke about 2 to 3 grams of Ice a day, consume about 10 tablets of Erimin-5 a day, and consume about 2 to 3 tablets of Ecstasy on alternate days.

23 Having discussed his drug addiction, the first accused confirmed that the person who passed him drugs on 7 May 2007 and the first time he had ordered drugs from Lawrence was the second accused. On both occasions, they did not speak to each other. Both of them walked away after the transaction.

24 The first accused further stated that the drugs received from Lawrence would be in big packets. He would repack the drugs into small packets when necessary. Each packet would weigh approximately 7 or 8 grams. He did not have a weighing scale but knew how to repack the drugs from experience. He would estimate the weight by holding the packets in his hands. One pound of heroin would make between 55 to 60 packets. He would "consume about half that number" and "sell the rest".

Statements made by the second accused

Oral statement

25 On 7 May 2007, SSgt Lim, a member of the CNB team which had arrested the first accused and the second accused, recorded an oral statement from the second accused. In the statement, the second accused stated that he came to Singapore to hand over a "plastic bag containing some stuff in it". He said that he did not know what was in the plastic bag and was instructed to make the delivery by a male Chinese Malaysian. When asked for the name of this male Chinese Malaysian, the second accused stated that he would "only address him as "Lau Ban" (meaning "boss"). "Lau Ban" instructed him to bring the "stuff" to Singapore and collect money in exchange for the "stuff". In return for his work, "Lau Ban" would have paid the second accused a few thousand ringgit. The "stuff" was hidden in the front console compartment near the gear box and was passed to a "guy" at Bukit Panjang. He had met the "guy" sometime in the previous month to pass him "some stuff which was instructed by 'Lau Ban'". He did not know the name of the "guy".

26 The second accused was then asked about the drugs found in the vehicle JGJ 1202. His reply was that the drugs belonged to him but were taken from "Lau Ban". The drugs were meant for someone else in Malaysia but he was rushing for time and so he "took the risk bringing in to Singapore".

Cautioned statement

27 On 8 May 2007, the IO recorded a cautioned statement from the second accused pursuant to s 122(6) of the Criminal Procedure Code, with the assistance of an interpreter, Ms Low Sau Hing ("Ms Low"), as the second accused chose to speak in Mandarin. In the cautioned statement, the second accused stated:

> I helped people to deliver goods here. I did not sell drugs. This thing does not belong to me. I do

not know that the two packets contain white powder. I only know that after delivering the two packets, I will get some rewards. I am the only child in the family. My mother is a bankrupt. My father just had an operation lately. After operation, he suffered a heart attack. I am the only breadwinner in the family. Because my father needed to go for another operation, I am unable to raise the money for the operation. Our house was repossessed. We have no place to stay. I have to look for another place for my mother to stay. Since someone wanted to pay me money to deliver the goods here, I did it. I was not aware of the contents of the goods. If I knew that if it was white powder, I would not bring it into Singapore. I am aware that the punishment for bringing in white powder is death.

Investigation statement dated 10 May 2007

28 On 10 May 2007, the IO recorded an investigation statement from the second accused with the assistance of Mr Kam. In the statement, the second accused stated that he stayed at a shared rented place in Skudai, for which he paid RM 100 to RM 200 a month. He worked as waiter at a chicken rice stall in the day and as a waiter in a lounge pub at night. His work in the day, for which he was paid RM 30 a day, was not regular, while his work at night, for which he would work 6 days a week and for which he would be paid approximately RM 1,800 a month, was his regular job. He owned the vehicle JGJ 1202. This vehicle was bought second-hand at RM 21,000 on a hire purchase scheme with monthly payments of RM 250. He still had six years before completion of the repayment. Part of the deposit, which amounted to a few thousand dollars, was paid with money borrowed from his cousins and a friend.

29 The second accused stated that on 7 May 2007, he received a call on his mobile phone from his "friend", one "Ah Long". Ah Long informed him that he (Ah Long) had a job for him. Ah Long told him to go and collect "something" somewhere in Johor Bahru and deliver it to someone in return for RM 2,000. Ah Long did not say what that something was. He did not ask Ah Long what he was to collect and deliver although he felt "suspicious". He did "not have any idea what that thing is and it did not occur to [him] that thing it is something illegal". He did have "the faint feeling that it was something illegal but [he thought] it has something to do with illegal gambling". Notwithstanding his feelings, he agreed to do Ah Long's job. Ah Long then told him to proceed to a certain shophouse in the Pelangi district after 7pm that day to pick up the "thing". He was to proceed to Singapore with the "thing" where he should then call somebody at a certain telephone number.

30 After receiving Ah Long's instructions, the second accused went to have some food with Yong, Yong's girlfriend, and Yong's girlfriend's elder sister. After eating, he drove the two ladies to Permas Jaya, following which, he proceeded with Yong to Pelangi. At Pelangi, he went alone to the shophouse as instructed by Ah Long and picked up the "thing" (the pink plastic bag). He opened the bag and had a look, and saw "two white things" which were "longish" (the two packets). At that time, he did not think that those things were anything other than something "related to illegal gambling or illegal betting slips". He then went back to his car and put the pink plastic bag into his Nike sling bag. He subsequently drove to a pub to have a drink with his friends. The sling bag was left in the back seat of his car when he went into the pub. After having a few bottles of beer, he asked Yong to accompany him to Singapore.

Further investigation statement dated 11 May 2007

31 On 11 May 2007, the IO recorded a further investigation statement from the second accused with the assistance of Mr Kam. In the statement, the second accused stated that between 8pm to 9pm on 7 May 2007, he drove to a petrol station and filled up his car's petrol tank. He then asked Yong to take over the wheel as he had taken one or two tablets of Erimin-5 on the way to the petrol

station. Yong then drove to the Causeway where they cleared the immigration checkpoint.

32 After clearing the checkpoint, the second accused told Yong to drive to Jelebu Road. At Jelebu Road, they parked at a multi-storey carpark and proceeded to Block 181. He took his Nike sling bag from the rear passenger seat and carried it along with him as he had to hand over the pink plastic bag contained therein to someone at Block 181. He clarified, at this juncture, that when Ah Long called him, Ah Long also told him to deliver the "something" to someone in Bukit Panjang at Block 181.

33 The second accused then called the number given to him by Ah Long and told the person who answered that he had arrived. He was told to go to the 9th floor. He then went to Block 181 with Yong and went to the 9th floor. On the 9th floor, they waited for "Boss" (whom the second accused identified to be the first accused in his second further investigation statement dated 14 May 2007) to arrive. When Boss arrived, he handed over the pink plastic bag and was given a bundle in a plastic bag in return. He and Yong then took the lift back to the ground floor where they were arrested.

34 When his car was searched, the officers found Erimin-5, Ecstasy tablets and ketamine in the box in front of the gear box (referred to collectively as the "drugs found in the car"). He was a heavy abuser of Erimin-5 and would also consume Ecstasy, ketamine and Ice. The drugs found in the car were obtained from a male Chinese at a disco called Platinum disco in Johor Bahru. He (the second accused) stated that all the drugs found in the car were for "own consumption" and were put in the car for his own convenience. He later stated that the drugs found in the car were meant to be handed over to somebody in Johor Baru as instructed by the male Chinese at Platinum disco. The drugs were put in the car just one day before he (the second accused) left for Singapore (6 May 2007). Before that, they were kept in his room in his house at Skudai.

35 The second accused emphasised that Yong did not know anything about what he (the second accused) was going to do. Yong was "not involved in the whole business of collecting the plastic bag from Johor and bringing it into Singapore to be delivered to someone". Yong did not even hear the conversation between him (the second accused) and Boss. Yong was asked along because he (the second accused) needed company. If Yong had been told about "bringing in this into Singapore", Yong would not have agreed to come along.

Further investigation statement dated 14 May 2007

36 On 14 May 2007, the IO recorded a second further investigation statement from the second accused with the assistance of Mr Kam. In the statement, the second accused stated that he knew that the anti-drug laws of Singapore were very strict but still transferred the drugs found in the car from his room to the car as he was probably under the influence of drugs and was not thinking properly. He did not deliver the drugs found in the car as he was not able to contact the man who was supposed to receive the drugs.

37 The second accused also stated that the delivery on 7 May 2007 was the second time he had delivered things to "Boss", whom he identified to be the first accused. The first delivery made was a month before where he delivered a "plastic bag of things" to Boss. Another plastic bag was in that plastic bag but he could not recall what it contained because it was a long time ago and he had only taken a glance at it. The first delivery was made after Ah Long had asked him to collect "something" and to deliver it to somebody in Bukit Panjang in return for RM 1000 or RM 2000. He agreed to do so although he was suspicious. He did not think that it was drugs, however, but thought that it was "illegal gambling documents". Even though he felt it was "suspicious and illegal", he still agreed to do it as he was in need of money. After returning to Johor Baru, Ah Long told him to go to a certain coffeeshop in Pelangi where he was to look for an envelope placed on a table beside a child with a

woman. The envelope was to contain his payment for the delivery. In exchange, he was to place on the same table the package that he collected from Boss after delivering the "things" to him.

38 The second accused further stated that he got to know Ah Long from a friend in the month before his arrest. Ah Long subsequently called him and offered him work after hearing that he was in need of money. Ah Long mentioned that all that he needed to do was to carry something into Singapore for somebody and then come back to Johor Baru but did not say how much he would be paid. He agreed to work for Ah Long. At that time it did not occur to him that what he was doing might be illegal. When Ah Long called a second time, he did a bit more thinking but his mind was more occupied with the need for money.

39 Despite a need for money, the second accused said that he had virtually quit his job at the pub and had not turned up for work for about a few days already. He explained that he needed money as his family was in need of money. His mother wanted to move to Penang to live. She needed the money for her personal expenses, which would have amounted to between RM 2,000 and RM 3,000. She also needed money for accommodation as her house in Sabah was going to be seized by the bank. His stepfather in Singapore also needed money as he was not working and there was no one to look after him. His stepfather had heart problems and he had to have regular medical treatment.

Further investigation statement dated 15 May 2007

40 On 15 May 2007, the IO recorded a third further investigation statement from the second accused with the assistance of Mr Kam. In the statement, the second accused reiterated that Yong was not involved in the delivering of "things" from Johor Baru to Singapore. Yong would only consume drugs. He would sell Yong drugs at cost because Yong was his friend and he was "not a drug trafficker".

Further investigation statement dated 16 May 2007

41 On 16 May 2007, the IO recorded a fourth further investigation statement from the second accused with the assistance of Mr Kam. In the statement, the second accused stated that he had entered Singapore with Yong on four other previous occasions, namely, on 24 April 2007, on 27 April 2007, on 2 May 2007, and on 6 May 2007.

Applicable law

42 Both the first accused and the second accused were charged for the commission of an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2004 Rev Ed). These provisions state:

> **Trafficking in controlled drugs**
>
> **5.** —(1) 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 —
>
> (a) to traffic in a controlled drug;
>
> …
>
> (2) 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.

Due to the amount of diamorphine in question being more than 15 grams, *viz*, 38.49 grams, the offence would be punishable with death, pursuant to s 33 of the Misuse of Drugs Act (read with the Second Schedule of the Misuse of Drugs Act).

43 In order for the offence of drug trafficking against the first accused to be made out, it was incumbent on the prosecution to prove beyond a reasonable doubt that: (a) there was possession of a controlled drug; (b) there was possession of the drug in question for the purpose of trafficking; and (c) there was knowledge of the nature of the drug (*Wong Soon Lee v Public Prosecutor* [1999] SGCA 42 ("*Wong Soon Lee*") at [27]).

44 The Misuse of Drugs Act contains several presumptions which aid the prosecution in its task of proving its case beyond reasonable doubt. The first presumption is found in s 17(c) of the Misuse of Drugs Act, which states:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his possession more than —
>
> …
>
> (c) 2 grammes of diamorphine;
>
> …
>
> whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

Two other presumptions are found in ss 18(1) and 18(2) of the Misuse of Drugs Act, which state:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.** —(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (a) anything containing a controlled drug;
>
> …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) 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.
>
> …

45 It is trite law that when a statute provides for the operation of a presumption "unless the contrary is proved", this means that an accused carries the burden of disproving the presumption on a balance of probabilities. As stated in *Wong Soon Lee* by Yong Pung How CJ, who delivered the judgment of the Court of Appeal (at [31]–[32]):

> 31. These presumptions are however not irrebuttable. In *Van Damme Johannes v PP*

[1994] 1 SLR 246, the Court of Appeal stated that

> It is accepted that the onus is always on the prosecution to prove its case beyond a reasonable doubt but, in the context of the [Misuse of Drugs Act], the law has provided the prosecution with presumptions and the court must have regard to them. Once the presumptions were triggered in this case the onus was on the accused to discharge the presumptions. It would then be up to the court to decide whether or not to believe him; to assess his credibility and veracity; to observe his demeanour; to listen to what he had to say; to go through the evidence and determine whether his story was consistent; and finally to make a judicial decision.

32. Hence, once these presumptions are brought into play, the burden is on the appellant to show on a balance of probabilities that he is not in possession or he has no knowledge of the nature of the drugs or he is not in possession of controlled drugs for the purposes of trafficking.

With reference to s 18(2) of the Misuse of Drugs Act in particular, the following was stated in *PP v Virat Kaewnern* [1993] 2 SLR 9 by Warren LH Khoo J, who delivered the judgment of the Court of Appeal (at [17]):

> As stated above, there was in this case the presumption in s 18(2) of the Act that the respondent, having in his possession a controlled drug, knew the nature of it. This was of course a rebuttable presumption, and the burden was on the respondent to prove on a balance of probabilities that he did not know that it was a controlled drug that he had in his possession.

Case against the first accused

46 The first accused did not deny that he was in possession of the heroin in question in his statements to the CNB and in his evidence before this court. Indeed, he did not even dispute the ownership of the various drugs found in the unit #11-06. Due to the presumption set out in s 17(c) of the Misuse of Drugs Act, the first accused had the burden of proving on a balance of probabilities that he did not have possession of the heroin in question for the purpose of trafficking.

47 Counsel for the first accused submitted that the first accused would have trafficked less than 15 grams out of the 38.49 grams of diamorphine found in his possession. This submission, if accepted, would have meant that the first accused would not face the mandatory death penalty as stipulated by law. The main basis of this submission was the testimony of the first accused in court that about two-thirds of the heroin in question were for his own consumption. On this evidence, the first accused would have trafficked in only one-third of the 38.49 grams of diamorphine found in the heroin in question, which would have amounted to less than 15 grams.

48 The testimony of the first accused that about two-thirds of the heroin in question were for his own consumption was in itself supported, according to counsel for the first accused, by evidence that he had a high heroin consumption rate of two to three packets of heroin a day, and that he therefore needed most of the heroin in question for his personal consumption. Counsel for the first accused pointed out that the first accused had "been consuming heroin since 1977" and listed out the numerous heroin consumption antecedents of the first accused. He explained that the consumption rate of the first accused had increased over time and had increased to two to three packets a day by the date of his arrest.

49 The evidence of the high drug consumption rate was also supported, according to counsel for the first accused, by evidence that the first accused could have easily afforded to feed his drug

consumption habit. Counsel for the first accused pointed out that the first accused testified that he sold Ice at $200 per gram and ketamine for $2,000 per 100 grams. He further pointed out that the first accused, in the investigation statement dated 13 May 2007, stated that he had customers calling him every day. These would include his five to six regular customers who would sometimes order about $2,000 to $4,000 worth of drugs. The bulk of his income, according to counsel for the first accused, however, came from selling contraband or illegal cigarettes. The first accused testified that he had been selling contraband cigarettes for about a year in 2006/7, making some $300 to $400 a day on average. His monthly income from this was between a few thousand dollars to $12,000.

50 Counsel for the first accused further submitted that the existence of drug trafficking paraphernalia is relevant to establishing whether a person is a drug trafficker. He emphasised that the fact that there were no drug trafficking paraphernalia such as weighing scales or weighing devices in the room of the first accused in unit #11-06 should be taken into consideration in determining whether the first accused was truly a trafficker of heroin in the quantities alleged.

51 According to the prosecution, the consumption rates claimed by the first accused should be rejected. The prosecution pointed, firstly, to the inconsistencies in the evidence of the first accused. In his cautioned statement, the first accused stated that *all* of the heroin in question was for his own consumption. Later, in the investigation statement dated 16 May 2007, the first accused claimed that about *half* the heroin in question was for his own consumption and would sell the rest. Finally, in his testimony before this court, the first accused, as mentioned earlier, claimed that about *two-thirds* of the heroin in question were for his own consumption.

52 Counsel for the first accused attempted to explain away the inconsistency arising from the investigation statement dated 16 May 2007 by arguing that the contents of the statement should be viewed with caution as the IO's recording of the statement was haphazard. Also, the physical and mental state of the first accused (he was, tired, confused, and craving for drugs) and his extremely limited education must have led him to erroneously describe his heroin consumption in the cautioned statement and the investigation statement dated 16 May 2007. Counsel for the first accused emphasised that the first accused had been speaking "colloquially" when he said that about half the heroin in question was for his own consumption. In other words, according to counsel for the first accused, what the first accused "meant by about half was a 'region' and there was no difference to him between 'about half' and 'two-thirds'.

53 Even if the inconsistencies in the evidence of the first accused and his self-professed uncertainty as to the amount of heroin meant for consumption were ignored, more importantly, there was independent evidence given by the doctor, who examined the first accused at the Changi Medical Centre ("CMC") the day after his arrest, Dr Choo Shiao Hoe ("Dr Choo"), which refuted the claim of the first accused that he had a high consumption rate of heroin. Dr Choo's evidence, from a medical report he produced, was that the first accused claimed that he had smoked *one packet* of heroin daily for the past one year and that he was of the opinion that the first accused was suffering from "*mild* drug withdrawal syndrome consistent with addiction to opiates" [emphasis added]. When asked by the prosecution to elaborate on what was meant by "mild", Dr Choo said that drug withdrawal can be broadly categorised into three types, "mild", "moderate" and "severe", with "mild" being the least severe type. He then proceeded to explain the symptoms associated with the three types of withdrawal:

> Okay. Withdrawal symptoms, the patient would have decreased alertness. He may appear sleepy, drowsy. He may have goose pimples, tearing of the eyes, running nose, hand tremors, muscle twitching, redness of the eyes. And moderate, if we're talking about moderate withdrawal, the symptoms would be similar but it will be a little bit more severe in their presentation. In moderate

withdrawal, there could be more symptoms like nausea, vomiting and even diarrhoea. Generally in mild withdrawal, you don't have diarrhoea or vomiting, in severe withdrawal, the symptoms are more---of course more severe, the---the withdrawal symptoms are more severe plus the vital signs like blood pressure may be very low. Chaps, sometimes their life may be in danger in a severe withdrawal.

The symptoms associated with mild withdrawal were similar to what Dr Choo had written in his medical report concerning the first accused's condition, *viz*:

> On examination, subject was drowsy and sleepy. He had decreased mental alertness. He was yawning. His eyes were teary and the pupils were pin-point. The eyes were also slightly red. He had piloerection of his skin and there was a slight tremor of his hands. There were also occasional muscle twitches.

Dr Choo confirmed in court that the first accused had only mild withdrawal and was not given any treatment other than what is commonly known as "cold turkey" treatment. When asked about whether the symptoms experienced by the first accused were consistent with his claim that he smoked one packet of heroin a day, Dr Choo averred that a person who suffers from mild withdrawal would have smoked about 10 or less straws of heroin a day and he did not know how many straws the one packet mentioned by the first accused would translate into. The evidence of the first accused did not shed light on how many straws would come from one packet of heroin. The first accused, however, insisted in his evidence before the court that he experienced diarrhoea and vomiting and that no doctor attended to him while he was suffering from these symptoms. There was no other evidence proffered in support of this, however, and Dr Choo testified to the contrary that the withdrawal symptoms experienced by the first accused started to abate from the second day onwards and he was fit to be discharged by the fourth day. Dr Choo also added that no complaint was made by the first accused during the four days he was warded at CMC about any vomiting, nausea or diarrhoea. Counsel for the first accused also pointed to the medical report of another doctor, Dr Chong Soon Thye ("Dr Chong"), who conducted the pre-statement medical examination of the first accused on 11 May 2007 and who noted in the report that the first accused had complained of "crampy abdominal pain". Dr Choo, however, testified that such pain was unlikely to have been caused by drug withdrawal:

> *Q So if I were to say that he had crampy abdominal pain on the 11th of May, would that be related or could that have changed your opinion as to from mild to moderate withdrawal?*
>
> *A Probably not, because if he had, he would have displayed these symptoms in the initial few days when we saw him, as generally, once they reached the peak of their drug withdrawal, the symptoms will manifest itself.*
>
> Q But it cannot be discounted?
>
> A *This is not my experience. It'll be very, very unusual.*
>
> Q But not impossible; right?
>
> A That's nothing is impossible in the medicine, to be frank.
>
> [emphasis added]

Dr Choo, it should be noted, when asked about his experience in these matters, testified that he had

eight years of experience in the medical service in the prisons and had seen a few thousand patients in his time. I found no reason to doubt the veracity and accuracy of Dr Choo's opinion.

54 Counsel for the first accused also raised a number of arguments on Dr Choo's evidence in an attempt to discredit the evidence and also establish that the evidence showed that the first accused was in truth a heavy heroin abuser; as taken from the submissions, these arguments would be as follows:

(a) Dr Choo admitted that he did not examine the first accused daily;

(b) Dr Choo stated that he did not examine the first accused on the last day of his stay at the CMC;

(c) Dr Choo stated that if the first accused had a high tolerance, that meant he needed a lot more heroin in order to satisfy his craving;

(d) Dr Choo confirmed that the first accused had not totally recovered when he was released; and

(e) Dr Choo's evidence that the first accused claimed he smoked only one packet of heroin a day was unreliable because Dr Choo himself stated that the first accused could not respond to his questions during the time he was seen on or about 6.33am on 8 May 2007.

55 Turning first to arguments (a) and (b) above, Dr Choo's evidence was that he examined the first accused on the first day of his admission and his colleague Dr Imran examined the first accused on the subsequent days. The medical report and Dr Choo's evidence in court were based on the medical notes that both Dr Choo and Dr Imran had made. Accordingly, the fact that Dr Choo had not examine the first accused daily, should not be taken as an indication that his evidence was not reliable. Turning to argument (c), while Dr Choo did make the statement referred to by counsel for the accused, the statement should be viewed in the context of the series of questions put by counsel for the first accused to Dr Choo in cross-examination:

Q Now would you agree that the withdrawal symptoms would also depend on the tolerance level of the patients?

A In terms of?

Q Meaning the [first accused], if I were to tell you or if you were to refer to his drug records, that he has a long history of drug consumption, would you not want to check the records and verify his tolerance level?

A Tolerance to---you're talking about tolerance to heroin?

Q Heroin.

A Tolerance got nothing to do with drug withdrawal. In fact if he has a high tolerance that means he need a lot more heroin in order to satisfy his craving.

Q Yes.

A And if that is true, his drug withdrawal will generally be moderate or even severe or rather he---he will probably have moderate or severe withdrawal correspondingly.

[emphasis added]

What counsel for the first accused was clearly driving at with this argument was that because the accused had a long history of drug abuse, that meant that he would have had a high tolerance to heroin and would need a higher amount of heroin to satisfy his craving. Dr Choo's evidence, however, as can be seen, was that if the first accused had a high tolerance to heroin, he would need more heroin to satisfy his craving, and this would correspondingly result in moderate or severe withdrawal symptoms. This would in no way support the claim of the first accused that he was a heavy abuser of heroin.

56 Turning next to argument (d), counsel for the first accused used the following passage of cross-examination as a basis for the argument:

> Q Now, generally, how long of**lll**as in how many days would a**lll**the withdrawal symptoms last or be apparent?
>
> A Withdrawal symptoms would be apparent from 36 to 42 hours onwards since he last smoke the**lll**the**lll**the last straw.
>
> Q Now, bear with me because I'm a lay man. Okay. Now, because he was with you or he was in your centre for 4 days; right?
>
> A Right, yes.
>
> Q So if**lll**if it last for 36 to 48 hours, why is there a need to hold him for 4 days?
>
> A We want to ensure that he is totally well before being released back to the police officers.
>
> Q Okay. But his symptoms could still be apparent after 3 or 4 days?
>
> A You're talking about specific for him or in general?
>
> Q For**lll**for him. Okay, in general first and then him.
>
> A In**lll**in general, depending on the drug withdrawal. Someti**lll**some drug withdrawal can last for 3 days, even 4; it's possible, yes.
>
> Q All right.
>
> A For him specifically, from the medical notes, his symptoms have more or less started to abate on the second day onwards. By the fourth day, he was assessed to have no more symptoms and was thus discharged.
>
> Q Yes. So at paragraph 5 of your medical report, you used the word "improved".
>
> A That's right.
>
> Q Right? And not that he has been cleared; any reason for this?
>
> A His symptoms when they**lll**when he improved from**lll**sorry. Drug withdrawal, when they improve, is also a gradual thing. That is why I used the word "improved".

Q So would I be right to say that they were not cleared?

A From the**lll**you mean totally?

Q Yes, totally.

A Yes. That's right.

Counsel for the first accused argued that the exchange gave credence to the stand of the first accused that he was not a mild addict. However, it was clear that Dr Choo's evidence was that the symptoms started to subside from the second day and that the first accused was fit for discharge by the fourth day. This would, accordingly, give credence to the prosecution's stand that the first accused was a mild addict.

57 Argument (e) was that, Dr Choo's evidence that the first accused claimed he smoked only one packet of heroin a day was unreliable because Dr Choo himself stated that the first accused could not respond to his questions during the time he was seen on or about 6.33am on 8 May 2007 because the first accused was very drowsy. Counsel for the first accused pointed out that this exchange corroborated the evidence of the first accused that he could not remember his encounter(s) with Dr Choo. As noted earlier, the first accused could not, in this court, while completely lucid, give an answer to the question of how many straws could be made from one packet of heroin. If he could not give an answer in a lucid state, it would surely be unlikely that he could have given an answer in a drowsy state. It was thus as likely that the true reason why he could not answer Dr Choo was also because he did not know the answer to the question. However, even if this statement by the first accused to Dr Choo was disregarded, the evidence of Dr Choo that the first accused only suffered from mild withdrawal symptoms would still stand.

58 The prosecution also argued that the evidence by the first accused that he was involved in the sale of illegal or contraband cigarettes should not be believed. The prosecution pointed out firstly, in this regard, to the evidence of Assistant Superintendent Zoey Chew ("ASP Chew") from the Financial Investigations Team of the CNB, who investigated into the $24,511 which was seized from the room of the first accused. ASP Chew testified that the first accused had claimed, during investigations, that out of the sum of $24,511, $8,000 belonged to his wife while the remaining was profit derived from the sale of heroin and Ice. Later, however, the accused testified that part of the sum of money belonging to him was derived from the sale of contraband cigarettes. When questioned by the prosecution on why he had neglected to tell ASP Chew about the money being partly from his sale of contraband cigarettes, the first accused did not have any convincing explanation. His explanation, in the main, was that he did not tell ASP Chew as he was arrested for drug trafficking and not for sale of contraband cigarettes. But, logically, as the prosecution argued, there was no good reason for him to omit the mention of the sale of contraband cigarettes when he readily admitted to trafficking drugs unless the sale of contraband cigarettes in fact never took place.

59 As the prosecution argued, there was another reason to disbelieve the claim of the first accused that he sold contraband cigarettes. If such a claim was true, there would have been no incentive whatsoever to work as a cleaner and as a pump attendant as he testified he had been doing till shortly before his arrest. As seen earlier, the first accused testified that his profits from the alleged sale of contraband cigarettes were about $300 to $400 daily, which would add up to approximately profits of $10,000 to $12,000 a month. During the period of time the first accused was selling contraband cigarettes, as he testified, he was working as a cleaner at a condominium and, before that, he was working as a pump attendant at a petrol kiosk. As a cleaner, the first accused

earned about $1,000 a month for rendering six days of service a week from 9am to 3pm, and as a pump attendant, he was paid $900 a month for working six days a week from 8am to 3pm. If the first accused was indeed selling contraband cigarettes, there would be absolutely no reason to work at either the petrol kiosk or at the condominium, especially, as he agreed when cross-examined, that it would have been easier to quit his job and sell cigarettes from the comfort of his own home.

Decision of the court (First Accused)

60 The first accused had the onus of rebutting the presumption of trafficking set out in s 17 of the Misuse of Drugs Act on a balance of probabilities. The first accused therefore bore the burden of proving on a balance of probabilities that two-thirds of the heroin in question were meant for his own consumption. The following principles enunciated by the Court of Appeal in *Khalid Bin Abdul Rashid v PP* [2000] SGCA 64 are pertinent (at [18]):

> To rebut the presumption of trafficking and to establish that a portion of the drugs in his possession was for consumption and not for trafficking, an accused had to adduce credible evidence to show that part of the offending substance was intended for self-consumption and in this regard a mere casual declaration by the accused would not suffice. He would have to, in addition to the history of his addiction and consumption habits, also satisfy the trial court of the rates of his consumption. If all that the accused could conjure up was a bare allegation bereft of details, the trial judge would be well entitled to reject his evidence as unworthy of belief and an appellate court would be most reluctant to disturb any such finding: *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 3 SLR 29 at 39; *Fung Choon Kay v Public Prosecutor* [1997] 3 SLR 564 at 572. Another factor which would weigh in the mind of the court is the financial means or the ability of the accused to pay for the drugs: *Public Prosecutor v Dahalan bin Ladaewa* [1996] 1 SLR 783 at 814.

61 Turning to the evidence considered, firstly, it was observed that the first accused's own evidence was that he could not even be certain whether or not he would have consumed two-thirds of the heroin in question. He could not, as was apparent from his testimony, be sure as to what was for sale and what was for consumption as everything would depend on his own estimation. Secondly, his stand that he was a heavy abuser of heroin, needing up to three packets of heroin a day, was not supported by any other evidence other than his own evidence, which itself fluctuated. Pertinently, the evidence of Dr Choo that the first accused suffered mild drug withdrawal symptoms went against the grain of the story of the first accused that he was a heavy abuser of heroin. The evidence of the first accused that he had suffered symptoms corresponding to moderate or severe drug withdrawal symptoms was wholly unbelievable. His evidence that he could not make a single complaint to the medical staff of the CMC throughout his four-day stay was not believable. Furthermore, his alleged "crampy abdominal pains" were also described by Dr Choo as being not likely to be related to drug withdrawal. Counsel for the first accused raised the case of *Public Prosecutor v Dahalan bin Ladaewa* [1996] 1 SLR 783 ("*Dahalan*"), where S Rajendran J held the following (at [123]):

> Withdrawal symptoms last for a relatively short time. If the symptoms are not immediately monitored, then that evidence is lost and this could be highly prejudicial to the defence.

However, the present case can be distinguished from *Dahalan*, where the prosecution relied on evidence of an investigating officer that an accused person appeared normal as evidence that the accused could not be a severe addict. The prosecution, in the present case, relied on the evidence of an experienced medical officer whose incontrovertible evidence was that the first accused was not a severe addict as seen from his mild withdrawal symptoms.

62 The high costs of heavy heroin abuse made the story of the first accused that he was a heavy abuser of heroin all the more unbelievable. During cross-examination by the prosecution, the first accused admitted that he would have needed to spend approximately $14,000 a month on a conservative estimate to feed his allegedly extreme drug habit. The first accused had, earlier, tried to explain in his evidence before the court that he would be able to afford this expenditure as he had a substantial income from the sale of contraband cigarettes. However, it would appear that the accused was attempting, as the prosecution argued in its submissions, to concoct a source of income for his seemingly extravagant drug habit. He had, as mentioned earlier, failed to mention this source of income to ASP Chew and could not give a reasonable explanation for this failure to do so. The first accused, in any case, appeared to be uncertain when questioned about the details of his cigarette selling business.

63 For these reasons, it was clear that the first accused had failed to rebut the presumption of possession of the heroin in question for the purpose of trafficking on a balance of probabilities. For the sake of completeness, it would be recalled that counsel for the first accused argued that the existence of drug trafficking paraphernalia should be relevant to establishing whether a person is a drug trafficker. It would appear, however, that this was a misconceived argument on the evidence, as a number of empty plastic packets were found in unit #11-06 and these would have been used to contain drugs which would then be sold. Also, there was no need for any weighing apparatus, as the first accused said that he would use a "sample" plastic bag of heroin and fill up empty plastic bags of heroin accordingly.

Case against the second accused

64 It was not disputed that the second accused had committed the *actus reus* of trafficking, which is defined in s 3 of the Misuse of Drugs Act to be to "sell, give, administer, transport, send, deliver or distribute". It was the presence of the requisite *mens reas*, whether or not the second accused knew that he had delivered heroin to the first accused, which was disputed.

65 There are several ways in which knowledge of drugs for the purpose of the offence of trafficking may be established by the prosecution. The first method is by establishing that a person had actual knowledge of possession of the drug in question. The second method is by establishing that a person was wilfully blind to the fact that he may have been in possession of the drug in question, which is the legal equivalent of actual knowledge (*Tan Kiam Peng v PP* [2008] 1 SLR 1 ("*Tan Kiam Peng*") at [123]). Whether or not there is wilful blindness would depend on the factual matrix of any given case. The third method is by relying on the presumption set out in s 18(2) of the Misuse of Drugs Act, where a person, by virtue of his possession of the drug in question, is presumed by law to have known of the nature of the drug in question in his possession. Where there is reliance on the presumption, the defence will have to prove on a balance of probabilities that there was no actual knowledge of the nature of the drug in question and no wilful blindness as to the nature of the drug in question.

66 Counsel for the second accused submitted that the second accused had no knowledge that the pink plastic bag he delivered to the first accused contained heroin. He had no actual knowledge of the contents of the pink plastic bag and neither was he wilfully blind to the contents of the pink plastic bag.

67 The second accused testified that he believed the two packets found in the pink plastic bag contained illegal gambling/betting slips. The second accused had, for example, stated in the investigation statement dated 10 May 2007 that the items in the pink plastic bag "related to illegal gambling or illegal betting slips".

68 Counsel for the second accused also pointed out that other evidence of the second accused also supported a finding that the second accused had thought that the pink plastic bag contained illegal gambling/betting slips. The second accused testified that he had met Ah Long only once and had learnt from his friend that Ah Long was dealing in illegal gambling activities such as horse betting, soccer, Toto and the like. Prior to the first delivery to the first accused, when he retrieved the plastic bag containing the drugs he was to deliver, he had checked its contents and saw that there was a white packet wrapped in plastic, the contents of which looked like "a rolled paper". Based on the background of Ah Long, he came to the conclusion that it contained illegal gambling/betting slips. Subsequently, on 7 May 2007, when he retrieved the pink plastic bag, he did not do a thorough check as he had done on the first occasion, as when he looked into the pink plastic bag, he saw two white longish things (the two packets referred to) which looked more or less the same as the white packet he saw on the first occasion. He never suspected that the packets were drugs. In any event, he had never seen heroin because he was not a heroin abuser.

69 The second accused, however, conceded that he did not ask anybody whether the two packets contained illegal gambling slips or anything else for that matter and nobody told him what the contents were. Counsel for the second accused pointed out that HSA analyst Dr Angeline Yap ("Dr Yap") testified that she could not tell the contents of the two packets found in the pink plastic bag by visual examination to see whether they were granular powdery or crystalline substance without the benefit of touching and feeling the contents. It was also pointed out that Deputy Superintendent Ong Pang Tong ("DSP Ong"), the leader of the CNB arresting team, also testified that he could not see the contents of the two packets without opening them up. The prosecution, however, pointed out that Dr Yap had, in truth, testified that she could see the contents of the two packets but not clearly and DSP Ong had, in truth testified that he could see the "granular shape" of the contents and would only have to open up the two packets to see *exactly* what was inside. The second accused had failed to mention his belief that the two packets contained illegal gambling/betting slips in his oral statement when he was asked whether he knew what was in the pink plastic bag (to which he replied that he did not know) and in his cautioned statement. The first instance when the second accused mentioned that he thought the pink plastic bag contained illegal gambling/betting slips was three days after his arrest when the investigation statement dated 10 May 2007 was recorded.

70 The second accused also admitted that the circumstances in which he obtained the pink plastic bag were suspicious. He admitted that he had thoughts that he was participating in illegal activities. The amount of money he would have received for delivering the pink plastic bag, he conceded, made the work "fairly easy money". However, he insisted that he was of the view, at that time, that the illegal activities had to do with gambling. He did not dare ask Ah Long about the contents of the two packets as he felt that Ah Long was "the boss".

71 The second accused also indicated that he would have been willing to deliver drugs other than heroin. When questioned about the drugs found in the car, which he claimed were passed to him by one "Alex" and which were to be delivered to someone else, he stated the following:

Court	:	So when you said you were going to pass the drugs given to you by Alex, you are saying therefore that you are willing to deliver any drugs other than heroin?
Interpreter	:	Other than heroin, Sir?

Court : Other than heroin, yes.

Witness : Yes, Sir.

His evidence as to the identity of the person who passed to him the drugs found in the car was unclear. The second accused referred to this person in his oral statement as "Lau Ban" (or "boss"). This was not challenged by defence counsel when the statement was read out in court. The second accused also referred to the person who sent him to deliver the pink plastic bag (*i.e.*, Ah Long) as "Lau Ban". It would therefore appear, as the prosecution submitted, that the person who passed the second accused the drugs found in the car and the person who had engaged the second accused to deliver the pink plastic bag were the same person. The second accused attempted to explain away this possibility by stating that he had a "habit" of calling people "boss". Counsel for the second accused also submitted that the oral statement should be taken in the light that it was given by the second accused when he was tired, confused and frightened by the arrest and under the influence of Erimin-5 (for which he had tested positive on arrest). The prosecution submitted, however, that it was clear from the oral statement that the second accused had coined another name for the name "Lau Ban" in his testimony (*i.e.*, "Alex") so as to dissociate himself from the fact that he had been working for the same person in the delivery of the drugs found in the car.

Decision of the court (Second Accused)

72 The thrust of the defence of the second accused was that he was not wilfully blind to the presence of the heroin in question in the pink plastic bag. When considering whether a person has been wilfully blind, the court should determine whether the person had a *suspicion* that would have warranted further investigation. Whether there was suspicion that would have warranted further investigation would depend on the precise factual matrix of any given case. As Andrew Phang JA, who delivered the judgment of the Court of Appeal, stated in *Tan Kiam Peng* (at [125]):

> *[S]uspicion is* legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye. *However*, that suspicion must, as Lord Scott perceptively points out in [*Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469], "be firmly grounded and targeted on specific facts". Mere "untargeted or speculative suspicion" is insufficient.... A decision in this last-mentioned instance not to make further inquiries is, as the learned law lord correctly points out, tantamount to negligence, perhaps even gross negligence, and is as such insufficient to constitute a basis for a finding of wilful blindness. As Lord Scott aptly put it ..., "[s]uspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts". It is important to note that the (unacceptable) negligence which the Judge referred to in the court below relates to the *level* of *suspicion* required before a decision not to make further inquiries will be considered to constitute wilful blindness. It is equally – if not more – important to emphasise that the Judge was therefore *not* stating that suspicion *per se* would not be sufficient to ground a finding of wilful blindness. On the contrary, *suspicion is a central as well as integral part of the entire doctrine of wilful blindness*. However, the caveat is that a *low level* of suspicion premised on a factual matrix that would *not* lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries. What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the *precise facts* before the court. It is equally important to note that in order for wilful blindness to be established, the appropriate level of suspicion (as just discussed)

> is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge"

Where a person takes no steps whatsoever to investigate his or her suspicions, the court would be likely to find that there was wilful blindness. As Andrew Phang JA went on to say in *Tan Kiam Peng* (at [129])

> Nevertheless, one obvious situation is where the accused takes no steps whatsoever to investigate his or her suspicions. The court would naturally find that there was wilful blindness in such a situation. Where, for example, an accused is given a wrapped package and is told that it contains counterfeit currency when it actually contains controlled drugs, we would have thought that, absent unusual circumstances, the accused should at least ask to *actually view* what is in the package. Even a query by the accused coupled with a false assurance would, in our view, be generally insufficient to obviate a finding of wilful blindness on the part of the accused under such circumstances. Indeed, if an accused is told that the package contains counterfeit currency and the package is then opened to reveal that it contains packets of what are obviously drugs, that ought then to prompt the accused to make further inquiries. And, where, in fact, only token efforts are made to investigate one's suspicions, this would be insufficient. But might it not be argued that the accused in the example just given (relating to a wrapped packaged) has done all that could reasonably have been done to investigate further? Much will, of course, depend on the precise facts before the court but it would appear, in principle, that merely asking and receiving answers in situations such as that presently considered would be insufficient simply because the accused concerned would certainly be given false answers and assurances. Further, denials of knowledge by the accused are also to be expected and must, in the circumstances, be (in the words of the Judge in the court below) "scrupulously analysed and warily assessed for consistency and credibility".... As the [trial judge] aptly put it ...:
>
> > It is only too easy to disingenuously claim "I did not know". Associated with the plea of "I did not know" are often belated claims of "I did not inspect" or "I was told it was something else". These pleas are more often than not flimsy fabrications of last resort without an atom of credibility.
>
> However, to the extent that the Judge later suggests that it would be wrong to convict accused persons *solely* on the basis that they had failed to make proper inquiries ..., we would respectfully disagree with such a suggestion. His analysis to the effect that such an approach would equate wilful blindness with mere negligence or recklessness fails, with respect, to recognise that a key threshold element in the doctrine of wilful blindness itself is that of suspicion followed by (and coupled with) a deliberate decision not to make further investigations. To be sure, and as we have emphasised above, the level of suspicion ought to be properly grounded ..., this being an intensely factual issue .... Wilful blindness *cannot* be equated with virtual certainty for, as already explained above, this would be to equate wilful blindness with actual knowledge in its purest form. The result would be to erase the doctrine of wilful blindness from the legal landscape altogether.

Similarly, Choo Han Teck J, who delivered the judgment of the Court of Appeal, held in *Iwuchukwu Amara Tochi v PP* [2006] 2 SLR 503 (at [6]) that while s 18(2) of the Misuse of Drugs Act did not impose a positive legal duty on an accused to inspect and determine the nature of the thing in his or her possession, the question of whether or not the presumption is rebutted depends on the facts of each case and the fact that an accused failed to inspect what he was carrying "may strongly disincline a Court from believing an "absence of knowledge" defence".

73 The second accused admitted that he had suspicions that he was doing something illegal. These suspicions would have merited further investigation as he was to receive "fairly easy money" for the activity and had no confirmation that what he was carrying was merely illegal gambling slips. On the latter, he was not told by Ah Long as to whether the two packets contained illegal gambling slips and he was not told by Ah Long that he (Ah Long) was involved solely in illegal gambling activities. Indeed, the evidence indicated that Ah Long could have been the person who passed the drugs found in the car to the second accused.

74 The evidence also showed that the second accused was a risk taker where the delivery of drugs was concerned. As stated in the evidence of the second accused, he was willing to deliver drugs other than heroin. Moreover, he was willing to blindly carry out instructions, so long as he was asked to do something by "bosses" (and, in particular, Ah Long, whom he would not have questioned even if he suspected that Ah Long had given him drugs to deliver).

75 It was clear beyond reasonable doubt that the explanation of the second accused was not believable and should be rejected.

76 The second accused failed to rebut the presumption set out in s 18(2) of the Misuse of Drugs Act on a balance of probabilities. This view would be enforced by other evidence, such as the evidence of Dr Yap and DSP Ong, which indicated that the second accused could well have seen the granular shape of the contents of the two packets even on a cursory inspection, and also the fact that the second accused failed to mention that he believed that the two packets contained illegal gambling slips in his oral statement and cautioned statement.

Conclusion

77 It was for the foregoing reasons that I found that the prosecution had proved its case against the first accused and the second accused beyond reasonable doubt. I therefore convicted them on their charges and sentenced them to suffer the mandatory death penalty.