Yunani bin Abdul Hamid v Public Prosecutor
[2008] SGHC 58

Case Number : Cr Rev 5/2008

Decision Date : 11 April 2008

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Abraham S Vergis and Darrell Low Kim Boon (Drew & Napier LLC) for the applicant; Lawrence Ang Boon Kong, Lau Wing Yum and Christopher Ong Siu Jin (Attorney-General's Chambers) for the respondent

Parties : Yunani bin Abdul Hamid — Public Prosecutor

Courts and Jurisdiction – High court – Exercise of revisionary powers – Exercise of revisionary powers where there is a plea of guilty – Section 23 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Sections 266, 267, 268, 269, 270 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Revision of proceedings – Appropriate course of action after exercise of revisionary powers – Whether matter should be remitted back for trial or stayed – Section 23 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Sections 266, 267, 268, 269, 270 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Revision of proceedings – Exercise of revisionary powers – Exercise of revisionary powers where there is a plea of guilty – Whether there was serious injustice which would warrant exercise of revisionary power – Presence of serious injustice if pressures faced by accused to plead guilty are such that accused did not genuinely have freedom to choose between pleading guilty and pleading not guilty – Presence of serious injustice if additional evidence before reviewing court casting serious doubts as to guilt of accused – Section 23 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Sections 266, 267, 268, 269, 270 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

11 April 2008 Judgment reserved.

V K Rajah JA:

Introduction

1 This was an application for criminal revision in which Yunani bin Abdul Hamid ("the Applicant") sought to set aside a conviction based on what appeared to be an unqualified plea of guilty that he had earlier tendered through counsel in the District Court on 26 November 2007. The Applicant's guilty plea related to an amended charge ("the Amended Charge") of trafficking in not less than 329g of cannabis, a Class A controlled drug under the First Schedule of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA"), together with one Abdul Aziz bin Idros ("Aziz"). The Amended Charge read as follows:

> You [the Applicant] …
>
> are charged that you, on or about 12 August 1992, at about 3.20 p.m., at the Port of Singapore Authority Gate No. 1 off Keppel Road, Singapore, together with … [Aziz] and 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 (Cap 185), to wit, by having in your possession not less than 329 grams of cannabis for the purpose of trafficking, without any authorisation under the Misuse of Drugs Act (Cap 185) or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act

(Cap 185) and section 34 of the Penal Code (Cap 224) and punishable under section 33 of the Misuse of Drugs Act (Cap 185).

Pursuant to s 33 (read with the Second Schedule) of the MDA, the offence set out in the Amended Charge is punishable with a minimum sentence of five years' imprisonment and five strokes of the cane and a maximum sentence of 20 years' imprisonment and 15 strokes of the cane.

2 The Applicant was sentenced in the District Court on 27 November 2007 to nine years' imprisonment and six strokes of the cane. Dissatisfied with the sentence, the Applicant initially appealed against the sentence to the High Court (via Magistrate's Appeal No 249 of 2007). Upon receiving further advice, however, the Applicant subsequently filed the present application for criminal revision and sought to quash his conviction (and, thus, the sentence). At the end of the hearing, I set aside the Applicant's conviction and ordered that the case should be remitted to the Subordinate Courts for re-trial on the Amended Charge on an urgent basis. The appeal against sentence was then withdrawn. I now set out the detailed grounds for my decision, having earlier provided only brief grounds at the hearing.

The facts of the case

3 At the time of the alleged offence, the Applicant and Aziz were both working as lashers at the Port of Singapore Authority ("PSA") Container Port.

4 On 12 August 1992 at about 3.20pm, the Applicant (then aged 18) was riding out of the PSA Container Port Gate No 1 on his motorcycle when he was stopped for a routine check. At that time, Aziz (then aged 25), the Applicant's pillion passenger, was carrying a knapsack. The inspection was conducted by one Corporal Nasiran bin Somadi ("Cpl Nasiran"). When Cpl Nasiran examined the knapsack which Aziz was carrying, he found, concealed in a side compartment of the knapsack, a block of what was described as "greenish vegetable matter"[note: 1] wrapped in a transparent polythene bag (that substance was subsequently found to be cannabis (see [7] below)). Immediately after the discovery, the Applicant suddenly sped off on his motorcycle with Aziz, leaving the knapsack and the block of greenish vegetable matter behind in the hands of Cpl Nasiran.

5 Eventually, the Applicant stopped at Telok Blangah Rise, where he parted company with Aziz and abandoned the motorcycle. The Applicant subsequently returned home, where he recounted the incident to his parents. The Applicant's father later called the Central Narcotics Bureau ("CNB") at about 5.00pm, claiming that the Applicant had not been aware of the presence of the greenish substance found in the knapsack carried by Aziz. In due course, the Applicant decided to heed his parents' advice and duly surrendered himself at the PSA police station on the same day at about 6.30pm. Upon turning himself in, the Applicant was arrested and handed over, together with the block of greenish vegetable matter, to CNB Investigating Officer John Cheong ("IO Cheong") at CNB's headquarters. The Applicant's urine was promptly tested and was found to be negative for controlled substances. Various items were also seized from the Applicant's residence, including a pair of blue overalls, a pair of brown shoes and two motorcycle helmets.

6 On 13 August 1992, IO Cheong recorded a statement from the Applicant pursuant to s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") with the assistance of a Malay interpreter. In that statement, the Applicant denied being involved in any drug trafficking offence and vigorously asserted his innocence. He claimed that Aziz had asked him for a lift. At the PSA Container Port Gate No 1, the Applicant panicked and sped off when he saw the greenish substance in the knapsack that was searched. He eventually stopped at the junction of Telok Blangah Road and Mount Faber Road after hitting a kerb and chided Aziz for getting him involved in a drug offence. He then

abandoned his motorcycle and took a taxi home. He also said that he did not know Aziz's address or contact details.

7 On 14 August 1992, the Applicant was produced in Court No 26 of the Subordinate Courts and formally charged with the capital offence of trafficking in approximately 933g of cannabis "together with an unknown male Malay"[note: 2]. This was the weight of the cannabis as recorded in the Applicant's presence on the day of his arrest. A report (dated 31 August 1992) of an analysis done by the Department of Scientific Services later showed that the block of greenish vegetable matter discovered by Cpl Nasiran contained approximately 913.1g of cannabis. No bail was offered as the Applicant was facing a capital charge.

8 On 17 August 1992, IO Cheong recorded a statement from the Applicant pursuant to s 121 of the CPC with the assistance of a Malay interpreter. In the statement, the Applicant maintained his innocence. He stated that he had only agreed to give Aziz a lift to a bus stop and had no knowledge whatsoever of the block of cannabis in the knapsack that Aziz had been carrying. He had sped off upon seeing Cpl Nasiran find the block of cannabis inside the knapsack as he was frightened. He further explained that after he returned home on 12 August 1992, his mother had accompanied him to retrieve his abandoned motorcycle (which he rode back to his flat, where it was later seized by CNB's officers) before he turned himself in at the PSA police station.

9 On 19 August 1992, IO Cheong recorded a further statement from the Applicant pursuant to s 121 of the CPC with the assistance of a Malay interpreter. Continuing his statement of 17 August 1992, the Applicant stated that he knew Aziz on a casual basis and had given Aziz a lift on three previous occasions. He maintained that he would not have given Aziz a lift on the day of the incident if he had known that the latter had cannabis in his possession. He explained that he knew what "ganja" looked like as his brother had previously been arrested for drug consumption and he had also seen it on television. He reiterated that he had been frightened when he saw Cpl Nasiran holding the block of cannabis and had sped off without thinking.

10 In the meantime, efforts were made to apprehend Aziz. Based on particulars obtained from PSA, CNB's officers raided Aziz's home on 12 August 1992 at about 8.40pm. However, Aziz was nowhere to be found. A second raid was conducted a week later, but this too was to no avail. Aziz's parents subsequently lodged a police report on 18 August 1992 claiming that Aziz had been missing since 12 August 1992. On 20 August 1992, IO Cheong applied for the issuance of a police gazette for the arrest of Aziz. This was issued on 27 August 1992.

11 On 2 October 1992, representations to the Prosecution were made on behalf of the Applicant by his then solicitor, Mr Mahadi Abu Bakar ("Mr Mahadi") of M/s Mahadi Abu Bakar & Partners. The representations requested the withdrawal of the charge against the Applicant and emphasised both the innocence of the Applicant as well as his ignorance of the cannabis in the knapsack carried by Aziz. The representations were rejected. Notwithstanding that, the Prosecution accepted, at that juncture, that it was unjust to keep the Applicant in remand, given the apparent disappearance of Aziz and the gaps in the case against the Applicant. On the other hand, the Applicant's involvement in the offence could not be entirely dismissed given that he was the rider of the motorcycle at the material time and had promptly fled upon the discovery of the cannabis. As a compromise, a discharge not amounting to an acquittal was acceded to by the Prosecution on 11 December 1992.

12 After his release, the Applicant recommenced work as a lasher at the PSA Container Port and started a family. In the ensuing years, he kept a clean record. Routine urine tests, to which he was periodically subjected, proved negative. When his marriage broke down, he was awarded care and control of his elder son. He was just about to remarry when his life and his peace of mind were

suddenly shattered, without warning, some 15 years after the incident of 12 August 1992. It is common ground that during the intervening 15 years, the Applicant maintained a blemish-free record, behaved responsibly and held a steady job.

13 On 10 April 2007 at about 4.25am, Aziz was stopped at a police roadblock along Newton Road for a routine check. When stopped, he produced a driver's licence belonging to one Hamzah bin Harith. The police officers manning the roadblock noticed that Aziz was not the person pictured in the licence and placed him under arrest for giving false particulars under s 16(1)(*b*)(i) of the National Registration Act (Cap 201, 1992 Rev Ed) and for fraudulent possession of the licence under s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed). Aziz was brought to Tanglin Police Division Headquarters, where it was discovered that he was "wanted" for drug trafficking. His urine, when tested, was found to be positive for cannabis. He was subsequently handed over to CNB Investigating Officer Hasshim bin Hassan ("IO Hasshim") on the same day at about 5.15pm.

14 IO Hasshim immediately proceeded to record a statement relating to the events of 12 August 1992 from Aziz pursuant to s 121 of the CPC. In the statement, Aziz admitted his role and implicated the Applicant as well. He stated that when he learnt that the Applicant had turned himself in, he (Aziz) became a fugitive and managed to evade arrest for 15 years. He had secretly procured his brother-in-law's identity card and had used it to hide his true identity. He also used a false name when necessary and relied on part-time jobs to support himself.

15 Aziz professed unequivocally that the knapsack which he had been carrying on 12 August 1992, including the cannabis discovered inside, belonged to the Applicant. This was effectively the first time that evidence explicitly implicating the Applicant in the offence had emerged in the course of the investigations. Aziz further stated that he was prepared to testify against the Applicant. For completeness, Aziz's statement made on 11 April 2007 pursuant to s 122(6) of the CPC is reproduced here. It states:

> I want [the Applicant] to bear the consequences on [*sic*] the charge on [*sic*] me. I want the drug found on us be [*sic*] shared equally if I am found to be guilty, I want [the Applicant] also be [*sic*] guilty of the offence. This idea of bringing the drug out of PSA was [the Applicant's] idea as he need [*sic*] cash badly.

As a result of these developments, the Applicant was re-arrested at his home on 10 April 2007 at about 11.25pm. His urine, when tested, was once again found to be negative for controlled drugs.

16 On 11 April 2007 at about 9.00am, both the Applicant and Aziz were produced in Court No 26 of the Subordinate Courts and formally charged with the capital offence of trafficking in cannabis, in furtherance of their common intention, by reason of possessing approximately 913.1g of cannabis. Because this was a capital charge, no bail was offered. While the Applicant was in remand, his family engaged Mr Noor Mohamed Marican ("Mr Marican") of M/s Marican & Associates on his behalf.

17 After a consideration of all the circumstances of the case – including the length of time that had elapsed since 12 August 1992 – a decision was made by the Prosecution, in concurrence with recommendations by CNB, to amend both the charge against the Applicant and that against Aziz to a non-capital charge, *viz*, that of trafficking in not less than 499g of cannabis, which would be punishable upon conviction with a minimum sentence of 15 strokes of the cane and 20 years' imprisonment and a maximum sentence of 15 strokes of the cane and 30 years' imprisonment. The Prosecution informed the court, Mr Marican and counsel for Aziz of this decision at a pre-trial conference in the High Court on 4 September 2007. As a consequence, the cases against the

Applicant and Aziz were de-listed from the High Court. The reduced charges (of trafficking in not less than 499g of cannabis) were formally tendered in Court No 26 of the Subordinate Courts on 11 September 2007. Aziz, in addition, was charged with the offence of consumption of controlled drugs under s 8(*b*) of the MDA as a result of his positive urine test for cannabis after his arrest (see [13] above). Thereafter, subsequent pre-trial conferences were held in the Subordinate Courts.

18 On 3 October 2007, Mr Marican made representations to the Prosecution on behalf of the Applicant to withdraw the charge against him. As the Applicant was unable to recollect the precise events pertaining to the incident on 12 August 1992, Mr Marican decided to base his representations entirely on the Applicant's previous representations made by Mr Mahadi dated 2 October 1992 (in which the Applicant's alleged innocence had been unequivocally declared (see [11] above)). The Prosecution rejected all such representations in a reply dated 29 October 2007.

19 At this stage of the proceedings, both the Applicant and Aziz indicated that they would be claiming trial. However, after a further consideration of the circumstances of the case, including the fact that both the Applicant and Aziz had not committed any further crimes in the intervening 15 years (apart from Aziz having remained on the run), the Prosecution once again decided to amend both the charge against the Applicant and that against Aziz further to one of trafficking in not less than 329g of cannabis provided that they pleaded guilty. This amendment would have brought the charge within the lowest sentencing bracket for the offence of trafficking in cannabis.

20 At a pre-trial conference on 1 November 2007, the Prosecution's offer was conveyed to counsel for Aziz (who was also mentioning on behalf of Mr Marican on that occasion). Thereafter, counsel for Aziz made written representations (dated 9 November 2007) in which he requested that the Prosecution proceed against Aziz only on the drug trafficking charge (to which Aziz would plead guilty), with the drug consumption charge to be taken into consideration for the purpose of sentencing. The Prosecution eventually acceded to this request in a reply to Aziz's counsel dated 13 November 2007. At a subsequent pre-trial conference on 14 November 2007, a date was fixed for Aziz to plead guilty. The Applicant, however, maintained his decision to claim trial. His case was fixed for trial from 26 November 2007 to 28 November 2007.

Proceedings in the District Court

Aziz's guilty plea

21 On 15 November 2007, Aziz pleaded guilty before a district judge and admitted unreservedly to the statement of facts tendered by the Prosecution. According to the statement of facts:

(a) On or about 11 August 1992, the Applicant, who was in need of cash, had approached Aziz for help.

(b) Aziz told the Applicant that he might be able to help the latter, but that it would involve dealing with drugs. The Applicant told Aziz that he did not mind so long as he was able to get money.

(c) Aziz then introduced the Applicant to a male Malay, who also worked at the PSA Container Port, known as "Pa Hitam". Aziz was aware that "Pa Hitam" dealt in cannabis as he had previously purchased cannabis from the latter for his own consumption.

(d) On or around 12 August 1992, while Aziz was taking a nap, the Applicant went to meet "Pa Hitam" and later returned to the workplace carrying a knapsack.

(e) Aziz knew that the knapsack contained cannabis and agreed to help the Applicant transport the cannabis out of the PSA Container Port.

(f) The Applicant passed the knapsack to Aziz to carry. The two men then proceeded on the Applicant's motorcycle to the PSA Container Port Gate No 1, where the cannabis was discovered by Cpl Nasiran.

I need say no more about this particular version of events save to observe that it may not be internally consistent.

22 In Aziz's plea in mitigation, defence counsel emphasised that Aziz had no antecedents and regretted his involvement in the matter as well as his failure to turn himself in earlier. Counsel also made reference to the statement which Aziz had made to CNB pursuant to s 122(6) of the CPC (set out earlier at [15] above) and stated that the statement reflected "the fear in [Aziz's] mind all these years"[note: 3]. Counsel emphasised that when the drugs were discovered, the Applicant rode off suddenly and Aziz, as a pillion passenger, had no choice but to follow. When the Applicant and Aziz went their separate ways later, Aziz's instincts were that the Applicant would put all the blame on him. Aziz feared that the Applicant would be believed in this regard as the latter was younger than him, and this caused him to panic and lie low. Counsel also elaborated in the mitigation plea on how Aziz had become acquainted with the Applicant. According to counsel, although both Aziz and the Applicant worked at the PSA Container Port, they worked at separate areas and only became acquainted with each other about three months before the incident of 12 August 1992 through the introduction of another worker. As the Applicant had a motorcycle, Aziz would sometimes ask him for a lift home, but did not do so on a regular basis. Aziz, so his counsel emphasised, was not part of any syndicate and had agreed to be a witness for the Prosecution (in the criminal proceedings against the Applicant) as he wanted to "put the record straight"[note: 4].

23 After considering Aziz's plea in mitigation, the district judge sentenced him to 12 years' imprisonment and eight strokes of the cane. No appeal against sentence was filed by Aziz.

The Applicant's guilty plea

24 On the first day scheduled for his trial, the Applicant decided to plead guilty to the Amended Charge pursuant to the Prosecution's offer. This was despite the fact that he had steadfastly maintained his innocence for the previous 15 years. In pleading guilty, the Applicant also admitted unreservedly to the statement of facts tendered by the Prosecution. According to that statement of facts:

(a) The Applicant and Aziz were former colleagues who, in August 1992, were working as lashers at the PSA Container Port.

(b) Investigations revealed that, on 12 August 1992, the Applicant had approached Aziz for help in transporting cannabis out of the PSA Container Port. When Aziz agreed to help the Applicant, the latter passed the knapsack containing the cannabis to Aziz to carry. The Applicant and Aziz then boarded the Applicant's motorcycle and proceeded to the PSA Container Port Gate No 1, where the cannabis was discovered by Cpl Nasiran.

25 After considering the Applicant's plea in mitigation, the district judge sentenced him to nine years' imprisonment and six strokes of the cane. In her grounds of decision (*PP v Yunani bin Abdul Hamid* [2007] SGDC 345 ("the GD")), the district judge explained that she could not ignore the fact that a large quantity of drugs had been involved, and that it was the Applicant who had played a

central role in the matter by asking Aziz to help him transport the cannabis out of the PSA Container Port and by initiating the getaway when the cannabis was discovered by Cpl Nasiran (see the GD at [23]). The district judge noted, however, that there were some strong mitigating factors in the Applicant's favour and emphasised two points in particular (at [27] of the GD). The first was that the Applicant had kept out of trouble with the law since his discharge not amounting to an acquittal in December 1992, and the second was that it was not the Applicant's fault that his prosecution had been delayed for 15 years. The district judge also considered the Applicant's youth at the time of the offence, the fact that the Applicant had pleaded guilty and the fact that it was prejudicial for the Applicant to have been re-arrested, charged and tried after the long lapse of time, having carried on with his life after his discharge (see the GD at [27]–[28]). For these reasons, the district judge took the view that the Applicant's situation was sufficiently distinguishable from Aziz's situation such that a sentence similar in severity to that meted out to Aziz need not be imposed. She also held, however, that the mandatory minimum sentence was not warranted due to the Applicant's role and the quantity of cannabis involved, and thus sentenced the Applicant to nine years' imprisonment and six strokes of the cane.

The appeal against sentence

26 The Applicant subsequently appealed against the sentence imposed by the district judge. The appeal was scheduled to be heard on 12 February 2008. The Applicant, by the date of the hearing, had discharged Mr Marican as his counsel due to a lack of funds and was to appear in person.

27 At the hearing of the appeal on 12 February 2008, Mr Abraham S Vergis ("Mr Vergis") of M/s Drew & Napier LLC, at the request of the court, offered his services *pro bono* to the Applicant. The Applicant agreed to instruct Mr Vergis and the matter was adjourned to 28 March 2008. At the hearing on 12 February 2008, I also made certain observations and raised certain queries. In particular, I wanted to know why the matter had not been proceeded with for 15 years despite the fact that the Applicant had surrendered himself a few hours after the incident of 12 August 1992. In this regard, the Prosecution was asked to explain the sequence of events that led to the Applicant's eventual renewed prosecution in 2007. Further, I observed that the matter had been treated rather mechanically by those involved – both the Defence as well as the Prosecution. Finally, I emphasised that all the relevant facts – both positive and negative – should be placed on record.

28 At a pre-hearing conference on 4 March 2008, Mr Vergis informed me that there were sufficient grounds for seeking a quashing of the Applicant's conviction. As such, an application for criminal revision seeking the quashing of the conviction (*ie*, the present application) had been duly filed a day earlier (on 3 March 2008). This application was scheduled to be heard together with the appeal against sentence on 28 March 2008. I informed the Prosecution that if it intended to refute any of the facts put forth by the Defence in the affidavits filed in support of the application for criminal revision, it ought to file an affidavit in response. Liberty was given to the Prosecution to file an affidavit by 11 March 2008. However, the Prosecution chose not to file an affidavit. Instead, by written submissions filed on 24 March 2008, the Prosecution provided what it said was "a full account of the circumstances relating to the prosecution of the [Applicant]"[note: 5] as well as its reply to the Applicant's application for criminal revision, contending "there [was] no basis in law or in fact for the [Applicant's] conviction to be quashed"[note: 6].

The application for criminal revision

29 The main issue *vis-à-vis* the application for criminal revision was whether I should exercise the High Court's revisionary power and quash the Applicant's conviction despite his earlier plea of guilty in the lower court. Both the Prosecution and the Applicant (in particular) raised a myriad of arguments in

their respective written submissions and at the hearing on 28 March 2008. While I appreciate the effort made by both sides, upon closer analysis, I am of the view that I need only distil and address the more salient arguments.

The Applicant's case

30 The Applicant, through Mr Vergis, argued (essentially) that he had steadfastly maintained his innocence for 15 years – right from the day when he was first arrested up to the day of his trial in the District Court – and that he had a full and convincing explanation for his eventual plea of guilty. Mr Vergis, at the hearing on 28 March 2008, explained that the Applicant had unwillingly decided to plead guilty on the first day of the trial in the District Court for two main reasons. I quote from the written submissions tendered by Mr Vergis:[note: 7]

> (a) [The Applicant] found himself on the horns of a terrible dilemma. He was caught between the *Scylla* of claiming trial on a more serious charge and risk[ing] a minimum of 20 years' imprisonment and 15 strokes of the cane if he was wrongly convicted, and the *Charybdis* of pleading guilt[y] to a lesser charge for a crime he did not commit and [facing] a mandatory minimum sentence of five years' imprisonment and five strokes of the cane.
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> Leaving aside completely the question of his innocence, the rationale [*sic*] choice and first priority in such invidious circumstances would be to avoid the risk of a 20-year imprisonment term at all costs. This was especially so when his [then] own lawyer was not entirely confident about discrediting Aziz's version sufficiently to secure an acquittal. In addition, [the Applicant] had no independent witness testimony or physical evidence to contradict Aziz or to corroborate his [the Applicant's] version.
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> (b) Neither [the Applicant] nor his family had the financial wherewithal to pay his defence counsel's legal fees for defending [the Applicant] at trial.
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> [emphasis in original]

Mr Vergis reiterated time and again during the hearing that the Applicant had consistently maintained his innocence from the beginning of the matter in 1992 up to the day when he pleaded guilty, and that the Applicant had been entirely consistent and unwavering in his version of the material events. Mr Vergis also argued that the Prosecution, apart from the Applicant's guilty plea, possessed no real evidence implicating the Applicant *vis-à-vis* the block of cannabis found in the knapsack carried by Aziz at the material time, except for "a flimsy film of uncorroborated allegations by a co-accused [*ie*, Aziz] who had been arrested by chance after being a fugitive from the law for 15 years"[note: 8]. Mr Vergis summed up that the combined effect of all these circumstances would clearly render the Applicant's conviction, if it was based solely on his plea of guilty, unsafe.

The Prosecution's case

31 The Prosecution, on the other hand, forcefully maintained that the Applicant's plea of guilty should stand as the records clearly indicated that it had been an unequivocal and informed plea. The Applicant, as the Prosecution took pains to emphasise, had been advised by counsel (Mr Marican) when making his plea of guilty and had acknowledged the veracity of the statement of facts tendered by the Prosecution without any qualification. Quite fairly, the Prosecution stated that it would "make no comments on the truth or falsity"[note: 9] of the various statements which the Applicant had given CNB. It also accepted that if the matter had gone for trial in 1992, it would have "relied substantially"[note: 10] on Aziz's testimony in its case against the Applicant.

Evidential evaluation of the parties' arguments

32 I felt that it was more appropriate to evaluate the factual allegations made by both parties at the outset to clarify the circumstances in which the High Court's revisionary power was being invoked in the instant case. In fairness, it must be pointed out that most of the additional facts produced before me by the Applicant and the Prosecution were not brought to the district judge's attention when she accepted the Applicant's plea of guilty. At the time of the trial in the District Court, the Applicant's plea of guilty would have appeared to be totally informed and unequivocal, therefore amply justifying its acceptance by the court. It is, however, abundantly clear, based on the evidence that has since surfaced, that each and every one of the factual allegations made by the Applicant through Mr Vergis (see [30] above) has been made out.

33 Turning firstly to the affidavits filed by the Defence in support of the present application, the following passage from the affidavit filed by the Applicant is especially pertinent:

> 22. Following the PTC on 1 November 2007 and 14 November 2007, the DPP wrote to my Counsel on 14 November 2007 with the following offer. If I chose to claim trial, the DPP would … [proceed] with the "*charge of trafficking with common intention in not less than 499.99 grams of cannabis, which carries a mandatory minimum sentence of 20 years' imprisonment and 15 strokes of the cane upon conviction*". On the other hand, if I agreed to plead guilty at the pre-trial stage, the DPP would proceed on the reduced charge "*of trafficking with common intention in not less than 329 grams of cannabis, which carries a mandatory minimum sentence of 5 years' imprisonment and 5 strokes of the cane upon conviction*".
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> …
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> 2 3 . ***The DPP's offer put me in a very difficult position.*** On the one hand, if I wished to maintain my innocence, my Counsel would need to prove at trial that Aziz was lying. ***My Counsel told me that Aziz was going to be the 'crown prosecution witness' in my case and would testify against me. However, I did not know precisely what Aziz would say and it would have been difficult to prove that he was lying because I would not at that stage have any evidence to contradict his version of events, 15 years after the fact. My Counsel was not certain whether he could shake Aziz's credibility under cross-examination under those circumstances and could not say with certainty whether I would succeed at trial. On the other hand, if I accepted the Prosecution's offer to reduce the charge in exchange for me pleading guilty to the [A]mended [C]harge, I would be facing at minimum a 5-year imprisonment term for a crime I did not commit. I was in a terrible dilemma.***
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> 24. Initially, I decided to claim trial. The trial was fixed for 3 days from 26 November 2007 till 28 November 2007.
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> 25. ***However, on the first day of the trial, I decided that it would be too much of a risk to claim trial as I could not bear the thought of being sent to jail for more than 20 years if I was wrongly convicted. In addition, my mother said she could not afford to pay the required sum of legal fees if I chose to claim trial. I did not have the financial wherewithal either to bear my lawyer's fees. Accordingly, I reluctantly agreed to plead guilty to a lesser charge.***
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> 26. Therefore, on 26 November 2007, I pleaded guilty to the re-amended charge [*ie*, the Amended Charge] of being in possession of not less than *329 grams* of cannabis with the common intention of trafficking the drug with Aziz. …

27. That same day, the Prosecution also prepared a statement of facts … which was presented to the court. … The [statement of facts] stated that "*investigations revealed*" the following:

a. On or around 12 August 1992, I had approached … Aziz for help in transporting the cannabis out of the PSA.

b. I had passed … Aziz the knapsack containing the cannabis for him to carry.

28. The [statement of facts] depicted a version of events that completely contradicted what I had consistently been telling the police as reflected in my statement to the police dated 13 August 1992 … and then my Counsel's representations to the DPP dated 2 October 1992 …

[emphasis added in bold italics]

34 The Applicant's mother and the Applicant's former counsel, Mr Marican, also filed affidavits in support of the application for criminal revision. The Applicant's mother, in her affidavit, emphasised that the Applicant had wanted to claim trial, but that the legal costs if he had done so would have been beyond the means of both him as well as his family. Mr Marican, in his affidavit, stressed that the Applicant had consistently maintained his innocence and had wanted to claim trial. Certain passages from Mr Marican's affidavit are crucial for a better understanding of the Applicant's predicament and are now reproduced in full:

4. Throughout my dealings with him, [the Applicant] has ***consistently maintained his innocence*** with regards to the capital charge that had been preferred against him. ***Initially, he wished to claim trial*****.** The matter was set down for a 3-day trial commencing on 26 November 2007.

5. On or around 14 November 2007, the Deputy Public Prosecutor made an offer to further reduce the charge against [the Applicant] by amending the weight of the cannabis in the charge from *499 grams* to *329 grams*, provided [the Applicant] agreed to plead guilty. The Prosecution's offer gave rise to a stark choice. Conviction on a charge for trafficking 499 grams of cannabis would attract an imprisonment term of more than 20 years and 15 strokes of the cane, while the charge of trafficking 329 grams of cannabis would result in a minimum sentence of 5 years' imprisonment and 5 strokes of the cane.

6 . ***Given the tremendous difference in outcome, [the Applicant] was left with a very difficult choice. If he chose to claim trial, it would have been an uphill task to disprove Aziz's testimony against [the Applicant] and to show up Aziz to be an unreliable witness whose testimony should be disbelieved. There would have been little evidence available to contradict Aziz's version of events as memories would have faded and relevant witnesses or documentary evidence would have been difficult to locate.***

7. I confirm that I did not advise [the Applicant] to consider making a preliminary application to the District Judge at the outset to stay the criminal proceedings on the grounds that the 15-year delay in prosecution ha[d] prejudiced his defence and a fair trial was no longer possible.

8 . ***Initially [the Applicant] wanted to claim trial as he believed he was innocent, but finally on the first day of trial, he relented and agreed to accept the Prosecution's offer to plead guilty on a substantially reduced charge [ie, the Amended Charge]. I confirm that right to the end, [the Applicant] maintained his innocence and he pleaded guilty simply to avoid the risk of being imprisoned for over 20 years if he was wrongly convicted for a***

crime that he said he did not commit.

[emphasis added in bold italics]

35 The affidavit evidence given by the Applicant, his mother and Mr Marican amply corroborated every material point of fact made by Mr Vergis in his arguments on why a conviction based solely on the Applicant's plea of guilty would be unsafe (see [30] above). Mr Marican, in particular, could be seen to have confirmed that even though the Applicant had eventually agreed to plead guilty and had admitted unreservedly to the statement of facts tendered by the Prosecution, the Applicant had continued to vehemently insist (to Mr Marican) that he was innocent.

36 At the hearing on 28 March 2008, the Prosecution was unable to rebut the affidavit evidence adduced by the Defence. The Prosecution could not deny that the Applicant was caught in a terrible dilemma, being torn between the prospect of going to trial and facing a minimum sentence of 20 years' imprisonment and 15 strokes of the cane on the one hand, and pleading guilty and facing a minimum sentence of five years' imprisonment and five strokes of the cane on the other. It also could not deny that, leaving aside the question of the Applicant's innocence, the logical choice and foremost priority for the Applicant in the prevailing circumstances would be to avoid the risk of a 20-year imprisonment term at all costs.

37 The Prosecution further confirmed, as Mr Vergis had pointed out, that the Applicant had consistently maintained his innocence from the beginning of the matter in 1992 right up to the day when he had pleaded guilty in the District Court, and that the Applicant had been consistent and unwavering in his version of the material events. Not once did the Prosecution attempt to cast aspersions or doubts over the Applicant's unequivocal denial of his involvement in the offence. Indeed, as pointed out at [31] above, the Prosecution in its written submissions for this application "ma[d]e no comments on the truth or falsity"[note: 11] of the Applicant's various statements to CNB.

38 Nor was the Prosecution at all able to rebut Mr Vergis's argument that apart from the Applicant's plea of guilty, the Prosecution had no objective evidence implicating the Applicant *vis-à-vis* the block of cannabis found by Cpl Nasiran on 12 August 1992, except for uncorroborated allegations by Aziz, the alleged accomplice and a fugitive from the law for 15 years who had been arrested entirely by chance. Not a single shred of objective evidence to pin the Applicant to the offence was placed before me. The polythene bag which contained the block of cannabis was dusted for fingerprints, but revealed only smudges. Neither the polythene bag nor the knapsack were sent by CNB for deoxyribonucleic acid ("DNA") analysis, despite the fact that DNA laboratories at the predecessor body of the present Health Sciences Authority ("HSA") had been set up in 1990. Indeed, the Prosecution acknowledged that it was only in 2006 that CNB began regularly sending the packaging in which drugs were found (*eg*, plastic bags) to HSA for DNA analysis, even though the police had already been regularly sending items for DNA analysis for more than a decade before that.

39 It became incontrovertible, in the course of the hearing on 28 March 2008, that the Prosecution's entire case against the Applicant rested lock, stock and barrel on Aziz's testimony. *Ex facie*, however, the evidence of Aziz, as reflected in the statement of facts which he accepted when he pleaded guilty on 15 November 2007 (see [21] above), was far from watertight. For example, turning to the passage from that statement of facts where it is stated that Aziz knew that the knapsack contained cannabis and agreed to help the Applicant when the latter asked for assistance in transporting the cannabis out of the PSA Container Port, one might enquire why Aziz's help was required to transport the cannabis if the knapsack could just as easily have been carried by the Applicant himself. Further, it seemed odd and dubious that Aziz was entreated to do nothing other than carry the knapsack; how could one, for instance, be entirely certain that Aziz was not going to

be roped in to sell the cannabis as well? If the Applicant did not even know where to get cannabis, how would he know how to dispose of it so as to raise the money which he allegedly needed? Suffice to (simply) say that Aziz's evidence, as it was placed before me, was clearly far from irreproachable and compelling. It could not by any account establish a case against the Applicant beyond a reasonable doubt.

40 That aside, the guilt of the Applicant was questionable simply on a cursory scrutiny of the other materials before me. For instance, the Applicant, in his affidavit filed in support of the present application, stated that upon his arrest at CNB's headquarters, the contents of the knapsack which Aziz had carried were removed in front of him. The knapsack contained one set of overalls and a cap. The Applicant told CNB's officers at that time that the overalls could not be his, given that he was still wearing his own overalls when he was detained at the PSA Container Port Gate No 1. This strikes one as plausibly being the truth when one considers the statement in the Prosecution's written submissions that the Applicant, following his arrest on 12 August 1992, was brought back to his family home, where various items, *including a pair of overalls*, were seized. The logical inference to be drawn in regard to this would be that the knapsack belonged to Aziz and not to the Applicant. Unfortunately, CNB, from what the Prosecution stated in court, appeared to have made no real efforts to ascertain the actual owner of the overalls and the cap found in the knapsack. CNB could have, but did not, for example, send the overalls and the cap for DNA analysis. Another telling fact was that the Applicant's urine was tested periodically during the 15-year intervening period and was found to be consistently negative for controlled substances. Aziz, however, tested positive for *cannabis* when he was arrested in 2007. This can quite plausibly allow for the inference that it was Aziz, and not the Applicant, who was an abuser of cannabis and who would therefore have been familiar with the trade of cannabis. Who, then, of the two was more likely to be involved in the trafficking of cannabis? Finally, there was nothing at all in the statement of facts which the Applicant accepted when he pleaded guilty (see [24] above) that referred to the source of the cannabis. If the Applicant was the primary trafficker, where did he obtain the cannabis from? It is to be noted that Aziz, in contrast, admitted in the statement of facts tendered by the Prosecution in his case that he had previously obtained cannabis from "Pa Hitam" (see [21] above).

41 Returning to the Applicant's plea of guilty, all in all, I was satisfied that the Applicant had, at the time of making that plea, faced *very real and substantial pressures* created by very exceptional circumstances. One stark illustration would be the lapse of 15 years between his first arrest (on 12 August 1992) and his re-arrest (on 10 April 2007), which would have contributed in no small measure to both the uncertainty regarding the strength of his defence as well as the serious paucity of evidence in support of his case. This, in all likelihood, coalesced and culminated in the Applicant's ultimate plea of guilty on 26 November 2007. Given the circumstances, the Applicant had, in my opinion, given *a plausible and reasonable explanation* for making such a plea. Moreover, the totality of the evidence (or rather the lack thereof) raised *serious doubts* in my mind relating to the Applicant's guilt.

42 That having been said, the next issue, then, was whether the pressures faced by the Applicant to plead guilty and the doubts relating to his guilt could justify and warrant the exercise of the High Court's power of revision to quash his conviction. This would involve a legal evaluation, *viz*, a consideration of whether it would be correct in law for this court, given the two factors just mentioned, to exercise its power of revision.

Legal evaluation of the parties' arguments

General principles of law relating to criminal revision

43 In *Ng Kim Han v PP* [2001] 2 SLR 293 ("*Ng Kim Han*"), Yong Pung How CJ held (at [15]) that the fact that an accused applying for criminal revision had pleaded guilty of his own accord ought not to be a bar to the exercise of the High Court's revisionary power. Rather, the fact that a plea of guilty had been entered simply meant that the accused had lost his right to appeal against his conviction pursuant to s 244 of the CPC. In such a situation, an application by way of criminal revision would be the only means by which the accused could have a wrongful conviction set aside.

44 The High Court's power of criminal revision is provided for in s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which states:

> **Revision of criminal proceedings of subordinate courts**
>
> **23.** The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with the provisions of any written law for the time being in force relating to criminal procedure.

This provision is supplemented by ss 266–270 of the CPC, which are as follows:

> **Power to call for records of subordinate courts.**
>
> **266.**—(1) The High Court may call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.
>
> (2) Orders made under sections 105 and 106 and proceedings under Chapter XXX are not proceedings within the meaning of this section.
>
> **Power to order further inquiry.**
>
> **267.** On examining any record under section 266 or otherwise the High Court may direct the Magistrate to make, and the Magistrate shall make, further inquiry into any complaint which has been dismissed under section 134 or into the case of any accused person who has been discharged.
>
> **Power of court on revision.**
>
> **268.**—(1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.
>
> (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction.
>
> **Permission for parties to appear.**
>
> **269.** No party has any right to be heard either personally or by advocate before the High Court when exercising its powers of revision:

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall be deemed to affect section 268(2).

Orders on revision.

270. When a case is revised under this Chapter by the High Court it shall certify its decision or order to the court by which the finding, sentence or order revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

The superior courts of Malaysia and India are accorded similar revisionary jurisdiction by their respective criminal procedure codes (see ss 323–327 of the Criminal Procedure Code (FMS Cap 6) (M'sia) and ss 397–405 of India's Code of Criminal Procedure 1973 (Act No 2 of 1974)).

45 Essentially, the High Court's revisionary jurisdiction can be described as a kind of paternal or supervisory jurisdiction. In Tan Yock Lin, *Criminal Procedure* (LexisNexis, 2007) ("*Criminal Procedure*"), the object of this jurisdiction is described as such (at vol 2, para XIX.3904):

> [T]he revisionary jurisdiction, which otherwise functions to all intents and purposes as an appeal, is a paternal jurisdiction. The High Court exercises the jurisdiction as the guardian of … criminal justice, anxious to right all wrongs, regardless [of] whether [they are] felt to be so by an aggrieved party.

46 At first blush, it would appear that the CPC confers an extraordinarily wide power of revision upon the High Court as a superior court and, thus, judges *should not* seek to lay down "rules which confine that discretion in a manner in which the legislature has not seen fit to confine it" (*per* Beaumont CJ in the Bombay High Court in *Shankarshet Ramshet Uravane v Emperor* 1933 AIR Bombay 482 at 482.) Nonetheless, "while it is not desirable to crystallise or restrict the revisional powers of a [superior court], these powers are to be exercised with *circumspection* and *care*" [emphasis added] (*per* Lobo JC in the Sind Judicial Commissioner's Court in *Emperor v Jumo Machhi* (1940) 41 Cr LJ 568 at 570). The revisionary jurisdiction is undoubtedly discretionary in its nature, but "that discretion has to be exercised on *judicial* principles" [emphasis added] (*per* Rahman J in the Lahore High Court in *Siraj Din v The Crown* (1950) 51 Cr LJ 773 at 775). As astutely noted in *Mallal's Criminal Procedure* (Andrew Christopher Simon ed) (Malayan Law Journal Sdn Bhd, 6th Ed, 2001) at p 5084:

> Exercise of discretion means according to the *rules of reason and justice*, not private opinion; according to law and not humour; it is to be, not arbitrary, vague or fanciful, but *legal and regular*; to be exercised not capriciously, but on *judicial grounds and for substantial reasons*. The discretion must be exercised without taking into account any reason which is not a legal one. This discretion must be *exercised carefully*, with regard to all the circumstances of each particular case, since the circumstances in each case will vary greatly. [emphasis added]

The revisionary jurisdiction must not be exercised in such a way that a right of appeal may practically be given whenever such right is definitely excluded by the statutory provisions on criminal procedure (*per* Piggott J in the Allahabad High Court in *Ahsan-ullah Khan v Mansukh Ram* 1914 (36) ILR Allahabad 403 at 405). It is not the purpose of criminal revision to become a convenient form of "backdoor appeal" against conviction for accused persons who have pleaded guilty to the charges against them (*per* Yong CJ in *Teo Hee Heng v PP* [2000] 3 SLR 168 at [7]). The courts have therefore

formulated certain principles to guide the prudent exercise of this extraordinary power.

47 The starting point in Singapore, according to Yong CJ in *Ma Teresa Bebango Bedico v PP* [2002] 1 SLR 192 ("*Ma Teresa*"), is that the High Court's power of revision is to be exercised "sparingly" (at [8]), *viz*, not all errors by a lower court should lead to a revision of that court's decision. The threshold requirement, according to Yong CJ in *Ma Teresa*, is that of "serious injustice" (*ibid*). This proposition was earlier stated in *Ang Poh Chuan v PP* [1996] 1 SLR 326 ("*Ang Poh Chuan*") at 330, [17] as follows:

> [V]arious phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some *serious injustice*. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. *But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below*. [emphasis added]

In *Ang Poh Chuan* (which was approved by the Court of Appeal in *Ng Chye Huey v PP* [2007] 2 SLR 106), Yong CJ distilled the above approach from, *inter alia*, *dicta* found in a trinity of Indian cases. In *State of Orissa v Nakula Sahu* 1979 (66) AIR SC 663, Jaswant Singh J, who delivered the judgment of the Supreme Court of India, stated the following (at 666):

> [I]t is now well settled that normally the jurisdiction of the High Court under [the Indian equivalent of s 266 of the CPC] is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice.

In *Akalu Ahir v Ramdeo Ram* 1973 (60) AIR SC 2145, I D Dua J, who delivered the judgment of the Supreme Court of India, stated the following (at 2147):

> Now adverting to the power of revision conferred on a High Court … it is an extraordinary discretionary power vested in the superior Court to be exercised in aid of justice; in other words, to set right grave injustice. The High Court has been invested with this power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that the subordinate Courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of [India's Code of Criminal Procedure] does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice.

And, in *Amar Chand Agarwala v Shanti Bose* 1973 (60) AIR SC 799, C A Vaidialingam J, who delivered the judgment of the Supreme Court of India, stated the following (at 804):

> Even assuming that the High Court was exercising jurisdiction under [the Indian equivalent of s 266 of the CPC], in our opinion, the present was not a case for interference by the High Court. The jurisdiction of the High Court is to be exercised normally under [the Indian equivalent of s 266 of the CPC], only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

48 According to the learned author of *Criminal Procedure* ([45] *supra*), the requirement of "some serious injustice … something palpably wrong in the decision that strikes at its basis as an exercise of judicial power" laid down in *Ang Poh Chuan* (at 330, [17]) is a higher standard for the exercise of the

High Court's revisionary power in comparison to the approach taken by the Malaysian courts, whose recent statements of principle indicate that the power of criminal revision is to be "sparingly exercised and only when there is a miscarriage of justice or a perverse and unreasonable decision or sentence" (see *Criminal Procedure* at vol 2, para XIX.4405).

49 I agree with the cautious and limited exercise of the High Court's revisionary power as stated in [46]–[47] above. This extraordinary judicial power must not be regarded or exercised as an alternative appellate route (a point which I mentioned earlier at [46] above). However, it also has to be kept in mind that Parliament has conferred this power on the High Court so as to ensure that no potential cases of serious injustice are left without a meaningful remedy or real redress. A court would fail in its constitutional duty to oversee the administration of criminal justice if it remains impassive and unresponsive to what may objectively appear to be a potentially serious miscarriage of justice. With the general legal principles on criminal revision having been set out, the legal principles on criminal revision which are specifically relevant to the Applicant's case will now be addressed.

Specific principles of law relating to the present application

50 The requirement of serious injustice likewise applies in cases where criminal revision is sought to overturn a conviction flowing from a plea of guilty. In *Ng Kim Han* ([43] *supra*), where Yong CJ held (at [15]) that the fact that an accused had pleaded guilty of his own accord would not be a bar to the exercise of the High Court's revisionary power, it was also emphasised (at [6]) that this power was to be exercised sparingly and only if the court was satisfied that there had been some serious injustice which warranted the exercise of its power of revision. The *crucial* question for present purposes would thus be whether the pressures faced by the Applicant to plead guilty and/or the doubts raised as to truth of the Applicant's guilt should be construed as "serious injustice" which would warrant an exercise of the High Court's power of revision.

51 Some initial guidance can be found in the decision of *Mohamed Hiraz Hassim v PP* [2005] 1 SLR 622, where Yong CJ gave illustrations of situations where "serious injustice" could be found. These included (at [9]):

> … cases where a judge exceeded his powers: PP v Nyu Tiong Lam [1996] 1 SLR 273; where there was inconsistency in sentencing for two or more offenders participating in the same offence: PP v Ramlee [1998] 3 SLR 539; and where the [s]tatement of [f]acts did not disclose all the necessary elements of the offence but the petitioner pleaded guilty anyway: Abdul Aziz bin Ahtam v PP [1997] 2 SLR 96; see also Chen Hock Heng Textile Printing Pte Ltd v PP [1996] 1 SLR 745. In addition, the court's powers of revision were exercised when the petitioner pleaded guilty to a wrong charge and was erroneously convicted of a charge which attracted a heavier punishment: PP v Koon Seng Construction Pte Ltd [1996] 1 SLR 573.

None of the examples set out above apply to the present case, where the circumstances now show that the Applicant felt pressurised to plead guilty and, furthermore, that serious doubts now exist as to the Applicant's guilt. There are other local cases, nevertheless, which indicate that the presence of these two factors could justify this court's exercise of its power of revision in the instant case.

52 On the issue of the presence of pressure on an accused to plead guilty as a basis for criminal revision, the case of *Chua Qwee Teck v PP* [1991] SLR 857 ("*Chua Qwee Teck*") is instructive. That case involved an offender who had pleaded guilty to two charges of cheating, admitting without qualification to the statement of facts presented to the court, and who had then been convicted and sentenced to a term of five months' imprisonment. The offender subsequently filed a petition for revision of his conviction, claiming, *inter alia*, that his counsel had put him under pressure to plead

guilty and had advised him erroneously that if he pleaded guilty and made restitution, the court would only impose a fine. Chan Sek Keong J dismissed the petition as the offender was unable to demonstrate that he had been under pressure at the material time or that the circumstances surrounding the pressure which he allegedly faced were such that he could not genuinely make a choice on how to plead. In respect of the former, Chan J held that the offender had not established that he had been under any pressure to plead guilty in the first place. He gave two reasons for this finding. Firstly, the offender did not think that the alternative to pleading guilty was a heavier sentence (at 865, [21]):

> There was no threat or pressure on him to plead guilty since he was not told and did not think that the alternative was a heavier sentence if he were found guilty.

Secondly, the offender could have discharged his counsel and there was nothing preventing him from doing so (*ibid*):

> Since he had maintained his innocence all along, and this is confirmed by his own counsel, he could have rejected his counsel's advice and fought on in the hope of obtaining an acquittal. He could have discharged his counsel for lacking confidence in putting up a successful defence.

53 The approach taken by Chan J is similar to the approach taken by the English courts in the exercise of their *appellate* power to quash convictions following from pleas of guilty. The cases in which this appellate power has been considered have some value for the purposes of this application in so far as this power serves a similar objective to that which underlies the High Court's *revisionary* power under the CPC. It has been emphasised similarly that this appellate power of the English courts should be exercised with the same circumspection as that applicable to the revisionary jurisdiction which I am being asked to exercise in the present application (see *Walter Lucas* (1908) 1 Crim App R 61 and *Eric Henry Dodd* (1982) 74 Crim App R 50 at 57, amongst others). It has also been observed in England that the court has an inherent jurisdiction to order a new trial if the pressure which an offender faces when he makes his plea of guilty causes him to lose his power to make a voluntary and deliberate choice (see *Regina v Turner* [1970] 2 QB 321). John Sprack, *Emmins on Criminal Procedure* (Blackstone Press Limited, 8th Ed, 2000) notes (at para 16.3.3):

> Not only must the plea of guilty come from the lips of the accused, but his mind must go with his plea. In other words, where a guilty plea is extracted from the accused by pressure and the circumstances are such that he cannot genuinely choose between pleading guilty and pleading not guilty, then that plea is a nullity. If he appeals, the [English] Court of Appeal will quash the conviction and order a retrial. The pressure necessary for a plea of guilty to be rendered a nullity may come either from the judge or from counsel.

As stated in the above extract, pressure on an accused to plead guilty may come from a number of sources: the court, defence counsel or even other sources (see *Blackstone's Criminal Practice 2008* (Meredith Hooper & David Ormerod eds) (Oxford University Press, 2007) at para D12.93). Whether there has been sufficient pressure on an accused for his guilty plea to be considered a nullity in a particular case would depend on the particular facts and circumstances (see *R v Peace* [1976] Crim LR 119). The English courts, it would seem, quite rightly take the view that this is not an area of law where it would serve any useful purpose in strait-jacketing the exercise of judicial discretion.

54 A broadly similar view has also been adopted by the courts in Canada in their (also cautious) exercise of their *appellate* power to quash convictions following guilty pleas. In *Lamoureux v R* (1984) 40 CR (3d) 369; 13 CCC (3d) 101 ("*Lamoureux*"), a decision of the Court of Appeal of Quebec, the accused pleaded guilty to a charge of theft in the lower court. At the sentencing hearing which

followed soon after, defence counsel acknowledged that he had pressured the accused to plead guilty and moved to withdraw the latter's plea of guilty. The trial judge, however, felt that the accused had not been taken by surprise, that he had known what was happening and that his plea of guilty had been made freely and voluntarily. Represented by different counsel, the accused then appealed to the Court of Appeal of Quebec. The court allowed the appeal for the following reasons (*per* Rothman JA):

> 14 I recognize that this court should not lightly interfere with the decision of the trial judge who refused to allow the change of plea. The circumstances in the present case are unusual and troubling, however, and, with respect, I do not think the trial judge paid sufficient attention to the conduct of defence counsel in inducing the accused to plead guilty.
>
> 15 This is not one of those cases where an accused, after receiving a sentence that was more severe than he expected, complains that he was misled as to the nature and consequences of the plea of guilty that he had offered. Even the pre-sentence report gives no indication that the accused knew that he could expect a more severe sentence. In this case, the accused tried to change his plea before sentence, contending that he had been subject to pressure from his lawyer and that he did not wish to admit guilt.
>
> 16 While there may be some difference between the version of the accused and the version of his counsel as to the reason for the pressure, both versions indicate that the plea of guilty was induced by pressure from counsel and that the accused did not wish to plead guilty.
>
> 17 Now, counsel has, not only a right, but a duty to advise an accused as to the weaknesses of his case, as to the probable outcome of the trial and as to the nature and consequences of a plea. Sometimes that advice must be firmly given. But counsel certainly has no right to pressure an accused into anything, least of all into pleading guilty. A plea of guilty must always be a free and voluntary act by the accused himself, untainted by any threats or promises to induce the accused to admit that he committed the offence when he does not wish or intend to do so. Whether or not counsel specifically told the accused that he had made an agreement with the Crown to obtain a suspended sentence if he pleaded guilty, he admits that he did pressure the accused to plead guilty.
>
> …
>
> 21 In order to justify a change of plea, an accused must satisfy the trial judge and, on appeal, he must satisfy the Court of Appeal that there are valid grounds for his being permitted to do so: *Adgey v. R.* [[1975] 2 SCR 426] … [at] p. 431; *R. v. Bamsey*, [1960] S.C.R. 294, 32 C.R. 218, 30 W.W.R. 552, 125 C.C.C. 329. Where an accused, as in this case, is represented by counsel, his burden in requesting a change of plea is a particularly heavy one: *Brosseau v. R.* [[1969] SCR 181, 65 WWR 751, 2 DLR (3d) 139], … *R. v. Sode* (1974), 22 C.C.C. (2d) 329, 10 N.S.R. (2d) 250 (C.A.).
>
> 22 But where it was established that improper pressure from counsel was the reason for the guilty plea I believe that burden is discharged. In my opinion, the integrity of the process requires that a change of plea be granted in such cases.

Unfortunately, the court in *Lamoureux* did not elaborate on the details of the pressure exerted by counsel on the accused. *Lamoureux*, however, was applied in *R v Sampson* (1993) 112 Nfld & PEIR 355; 350 APR 355, a decision of the Newfoundland Supreme Court, where the accused pleaded guilty to a charge of sexual assault. The accused subsequently applied, before sentence, to have the conviction set aside, his plea changed to not guilty and a new trial ordered.

O'Regan J allowed the accused's application, observing as follows:

> 5 It is well settled that the onus for such an application is on the accused. The application requires the exercise of judicial discretion after considering all the circumstances. The exercise of the judicial discretion will not be lightly interfered with. In hearing the application the judge can also consider evidence on the application itself. …
>
> 6 In the present case a transcript of the evidence was not available due to a malfunction with the recording equipment. The minutes and court notes show, however, that the accused was represented by counsel, re-elected and entered his guilty plea. These circumstances place [a] heavy … onus on the applicant and I find that he can only be successful if he can show the court that he was under a misapprehension as to the effect of his plea or does not admit an essential ingredient. …
>
> …
>
> 7 At the inquiry in supporting the application the accused retained new counsel. I had the benefit of the accused's evidence as well as counsel who appeared for him at trial. Counsel at trial said that he only met the accused for 45 minutes on the morning of trial and again for about one hour before changing his plea [presumably, what O'Regan J meant here was that defence counsel met the accused again one hour before the latter indicated that he wished to change his plea]. It was his understanding that the accused could not remember the offences and his only explanation for the charges was that one of the complainants had "a grudge" towards him. Trial Counsel discussed with the accused the advantage of entering a guilty plea to one charge and thus minimizing the sentence. He suggested that the accused follow his advice and indeed urged him to do so. Trial Counsel informed the court that although he urged his client to plead guilty the final decision was left with his client. This action by defence counsel is not improper. Indeed counsel for an accused not only has a right but a duty to firmly show his client the weaknesses of his case. See *Lamoureaux v. R.* 40 C.R. (3d) p. 369 at p. 373. I find that counsel for the accused acted properly under the circumstances considering the information he possessed. He felt that the accused had a full appreciation of the options and advised him accordingly. The begging question, however, is whether or not the accused had the same appreciation when he accepted his lawyer's advice.
>
> 8 The accused says it was not a question of "not remembering" the offences but rather he thought he told his lawyer they didn't happen.
>
> 9 To fully appreciate the state of mind of the accused the background and the circumstances of the plea must be carefully viewed.
>
> 10 The accused is a young married man with two children. He comes from a small community on the Labrador coast and has little education. When first charged with the offence[s] the accused was represented by a legal aid lawyer. He says he was never interviewed concerning the offences. This lawyer appeared for him at the preliminary [inquiry] but had little or no discussion with him as he was pressed for time due to travel on the Labrador coast where the preliminary [inquiry] was held. The file was subsequently transferred to the lawyer who appeared for him at trial.
>
> 11 Before the trial he [the accused] was contacted by his lawyer who told him he would meet him a day before trial and plan their defence. As his trial lawyer stated, because of other commitments he could not meet the accused until the day of his trial and only met with him for a

total of one and one half hours. In fact the only real meeting between the accused and his lawyer was for 45 minutes on the morning of the trial because undoubtedly the time spent before [the] plea [was entered] in the afternoon consisted mainly of negotiating the change of plea and other related matters. Both meetings were at the Court House.

12 The accused says that when he told the lawyer that the offences never happened he was left with the impression that it would be "practically impossible" to be found not guilty. The accused says that the hopelessness of the situation, the lack of time to consider and the pressure of the trial made him "plead to the sentence" rather than the offence. He simply stated that if his lawyer said "he didn't have a chance" then he might as well "go for the lesser time" as "he wanted to see his family again as soon as possible". Supporting the accused's testimony in this regard we had the benefit of evidence from a person he phoned prior to changing his plea. That individual described to the court the feeling of helplessness that the accused had as well as his intent to plead guilty because he would get less time.

…

13 Although I find no improper conduct by his counsel I am satisfied that the *accused was under tremendous pressure due to all the circumstances and subjectively believed there was no other way out other than for him to plead guilty and get a short term in jail. Circumstances of each case must determine the outcome and in this case I find that the interests of justice will be best served by permitting the accused to withdraw the plea*. …

14 In summary I find that the applicant has met the onus and I therefore exercise my discretion in allowing him to withdraw his guilty plea. I find that he subjectively felt he didn't have a defence or any real possibility of acquittal and therefore did not appreciate the effect of the plea.

[emphasis added]

Another relevant case in which *Lamoureux* was cited is *R v Ceballo* (1997) 14 CR (5th) 15 ("*Ceballo*"), a decision of the Ontario Court of Justice (Provincial Division). The accused in that case had pleaded guilty to assaulting his former girlfriend and threatening her with death. He was represented by counsel when he pleaded guilty. The accused subsequently denied having assaulted the victim in the pre-sentence report prepared by a probation officer and indicated on the date set for sentencing that he wished to withdraw his guilty pleas. He retained new counsel, who filed an application to strike down the accused's guilty pleas on the grounds that the accused's understanding of the consequences of his pleas had been "clouded by other considerations" (*id* at [12]) and that the available evidence brought into question the accused's guilt. The accused testified that he originally intended to claim trial. However, as the trial date approached, he simply "gave up" (*id* at [14]) in the face of the pessimism of his previous counsel concerning the likely outcome of the trial, the latter's dismissal of the material which he (the accused) had presented to prove his innocence and the latter's complaints about working on a legal aid certificate. According to the accused, his previous counsel had pushed him into pleading guilty, telling him that because domestic violence was such a "hot issue" (*ibid*), he would not have a fair trial and the best solution would be to "work out a deal" (*ibid*). Fairgrieve Prov J, in allowing the accused's application to have his guilty pleas struck out, held:

33 Despite the record which, I think it fair to say, establishes on its face the voluntary and unequivocal nature of the accused's guilty pleas, the truth, I am satisfied, is otherwise. I accept that Mr. Ceballo [the accused] maintained his innocence for the year that preceded his guilty pleas and that he re-asserted it immediately afterwards. I accept that he pleaded guilty not

because he considered himself guilty of the offences, but because he had been led to believe that it was the best way to put the matter behind him and to minimize the potential consequences for himself. As a result of the advice he received from his lawyer, I accept that Mr. Ceballo had no confidence that a trial would ascertain the truth of the matter or produce a just disposition.

…

35 The evidence called on this application made it apparent that Mr. Ceballo was subjected to pressures that interfered with the exercise of appropriate judgment by him. It is unfortunate that his previous counsel had conveyed, perhaps unwittingly, that because he had been retained by way of a Legal Aid certificate, the accused could not expect the same attention or vigorous defence that another client might receive. I accept that Mr. Ceballo, knowing that his lawyer had not prepared for trial, felt at the climactic moment that there was, as he put it, "no one in [his] corner".

36 Mr. Ceballo's feelings of frustration at his previous counsel's evident failure to appreciate the significance of the material provided to him is similarly understandable. In my view, the complainant's repeated recantations and explanation of why she had misled the authorities went well beyond what one often encounters in the domestic violence context. Taken with the other material suggesting prior discreditable conduct on the part of the complainant which impugned her reliability generally, let alone the accused's repeated denials, it is very difficult to understand why counsel would not have identified the case as one that clearly required a trial.

…

38 I also think it is regrettable that the [accused's] previous counsel managed to convey to his client, again perhaps inadvertently, that because the case involved allegations of domestic violence, he could not expect a fair trial. I am inclined to believe [counsel's] testimony that he did not make that statement explicitly, but I do accept that his reference to the "current climate" and the severity with which offences of that nature were invariably treated managed to create that impression with his client. If that was the genuine belief of counsel, then it was undoubtedly appropriate for him to advise his client in accordance with it. For these purposes, though, the significant point is that it had the predictable result of increasing the pressure on the accused to resolve the matter by pleading guilty, regardless of the weaknesses of the Crown's case or the defences potentially available.

39 I might add that even if the lawyer's recommendation reflected his own honest belief, it was clearly mistaken. Recently published statistics would seem to confirm the anecdotal experience of most of the participants in the specialized "domestic violence" court that operates here at the Old City Hall. Of the charges that proceed to trial, the number of acquittals evidently approximates the number of convictions … It is obviously essential that people caught up in such cases realize that the adversarial process is no less important as the means of ascertaining the truth in this context than it is in any other criminal case. Defence counsel clearly have a crucial role to play, and I do not think it is unfair to suggest that that may have been forgotten at an earlier stage of the proceedings in this case.

40 In view of the circumstances that led Mr. Ceballo to plead guilty, I am satisfied that he should be permitted to withdraw his plea*s. There is reason to believe that his pleas were neither unequivocal nor voluntary in the required sense. While he said nothing in court at the crucial moment to suggest any uncertainty or qualification, the evidence called in support of the*

application establishes that the accused's pleas were reluctant and at variance with his own belief concerning the facts and his own responsibility. Moreover, I accept that he felt pressured by his previous counsel, who was unprepared for trial and who had led his client to believe that he could not expect a fair trial. As a result, while Mr. Ceballo understood his options and the consequences of a guilty plea, he made the wrong choice based on the improper pressures that had been placed on him.

[emphasis added]

55 In *Ceballo*, a further reason given by Fairgrieve Prov J as justifying the setting aside of the accused's guilty pleas was that the evidence adduced before the court showed that there was serious reason to doubt the accused's guilt (at [41]):

The other reason for permitting the withdrawal of Mr. Ceballo's guilty pleas is that, based on the evidence adduced here, there is serious reason to doubt his guilt. Without an opportunity to hear the current version of events that might be given by the complainant, it would be wrong to conclude that her testimony would inevitably be rejected. At the same time, it is difficult to think that her evidence could ever provide a safe basis for conviction. It would be fundamentally wrong to proceed with the imposition of sentence in such circumstances. [emphasis added]

The view of the court in *Ceballo* might, at first blush, appear to go further than what Yong CJ stated in *Knight Glenn Jeyasingam v PP* [1999] 3 SLR 362 ("*Glenn Knight*") at [19] and [22]:

19 … The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice.

…

22 *The authorities demonstrate that the revisionary jurisdiction of the High Court is not to be ordinarily invoked merely because the court below had taken a wrong view of [the] law or [had] failed to appreciate the evidence on record. Even if a different view is possible, there will be no revisionary interference where the court below has taken a view of the evidence on record and no glaring defect of procedure or jurisdiction has taken place*: *Narayan Sahu v Sushama Sahu* (1992) Cri LJ 2912 where no interference was ordered with the lower magistrate's finding of fact because the order suffered from no legal infirmity. [emphasis added]

The approach evinced by Yong CJ in *Glenn Knight* could be said to suggest that the High Court should not intervene if there was no defect in procedure or jurisdiction in the court below even if a different view of the evidence on record could have been taken. However, in the present case, as was mentioned earlier (see [32] above), it has to be emphasised that the evidence on record before me was fundamentally different from the evidence before the lower court (that appears to have been the position in *Ceballo* as well in terms of the evidence tendered in support of the accused's application to withdraw his guilty pleas as compared to the (earlier) evidence available when the accused pleaded guilty). The approach taken in *Glenn Knight* should *not* be taken as precluding the exercise of the High Court's power of revision where there is a serious doubt as to the accused's guilt if the evidence giving rise to such doubt has not been placed before the lower court. At the end of the day, it must be emphatically declared that criminal revision is an area of law that requires the eschewing of technicalities for robust common sense. In every application for criminal revision that seeks to set

aside an earlier plea of guilty, the reviewing court ought to ask itself this question: Are the circumstances such that the reviewing court entertains a serious doubt as to the guilt of the applicant, the latter's guilty plea notwithstanding? In short, the actual attainment of substantive justice always trumps the consideration of complying with procedural justice in cases such as this.

56 It would be helpful, for the purposes of giving clearer guidance to the legal community, to now draw the various threads of analysis together and set out the principles for criminal revision which are relevant to the present application. I must caution, however, that this is not an attempt to exhaustively restate the law on criminal revision; the principles which I shall go on to set out below are confined to the ones which are salient in the present context. These principles are as follows. Firstly, the High Court's power of revision is to be *exercised sparingly* and the possible existence of a *serious injustice must be present* before the High Court will exercise such power (*Ang Poh Chuan* ([47] *supra*)). Secondly, there would be a serious injustice if the pressures faced by an offender to plead guilty are such that the offender did not *genuinely* have the freedom to choose between pleading guilty and pleading not guilty (see *Chua Qwee Teck* ([52] *supra*), as well as the English and the Canadian cases cited in [53]–[54] above). Whether the requisite pressure is present would of course depend on all the particular facts and circumstances of the case (*R v Peace* ([53] *supra*)). Furthermore, it stands to reason that if the evidence before the High Court indicates that the applicant's defence if the matter goes to trial is hopeless or is doomed to fail, the court ought to decline to exercise its power of revision. This brings me to the third principle, *viz*, even where a plea of guilty is made without any operative pressures on the accused, there would be a serious injustice if the *additional* evidence before the reviewing court casts serious doubts as to the guilt of the accused (see *Ceballo* ([54] *supra*) at [41]).

My decision

Whether the Applicant's conviction should be set aside

57 The facts and circumstances of the present case establish that the Applicant, unlike the offender in *Chua Qwee Teck*, faced real, concrete and, indeed, overwhelming pressures which culminated in his plea of guilty. To recapitulate, the following factors featured in this case:

(a) the Applicant, after a lapse of 15 years, was faced with the stark choice of either pleading guilty and facing a lower mandatory minimum sentence on the one hand, or, on the other hand, not pleading guilty and facing a far higher mandatory minimum sentence if convicted;

(b) due to the time which had lapsed since the date of the alleged offence (*ie*, 12 August 1992), the Applicant's lawyer was not confident about his client's chances of securing an acquittal;

(c) the Applicant had no independent witness's testimony or physical evidence to support his defence and his chances of obtaining any such evidence had diminished greatly as 15 years had passed since the time of the alleged offence; and

(d) the Applicant had insufficient finances to secure legal representation if the case proceeded to trial.

All these would undoubtedly have placed the Applicant under overwhelming pressures that plainly vitiated his ability to make a genuine, free and informed decision to plead guilty. Also, the Applicant, unlike the offender in *Chua Qwee Teck*, could not discharge his counsel (Mr Marican) and instruct a new counsel as he did not have sufficient funds. He was in no position to seek a second opinion on

the advice given to him by Mr Marican. Indeed, the Applicant could not even afford to retain Mr Marican to act for him in his appeal against sentence (see [26] above); the court had to arrange for counsel to represent him.

58 Moreover, the totality of the evidence (or the lack thereof) before me (as mentioned earlier at [33]–[40] above) raised *serious doubts* as to the Applicant's guilt.

59 For the foregoing reasons, I was persuaded that I should set aside the Applicant's conviction. It is plain that, in *substance*, the Applicant's plea of guilty was not unequivocal – his mind could not and did not follow that plea. Further, it must be stressed, as has been rightly pointed out in, *inter alia*, *Ng Kim Han* ([43] *supra*), that the presence of a plea of guilty (and the accused's acceptance of the Prosecution's statement of facts) is not always conclusive and is not an immovable obstacle blocking the path of a reviewing court. In *PP v Liew Kim Choo* [1997] 3 SLR 699, Yong CJ explained the *procedural* (as opposed to substantive) nature of a guilty plea and a statement of facts in criminal proceedings as follows (at [84]):

> When a court presumes upon the facts stated, the accused's plea of guilt and admission to the statement of facts operate in a way as an estoppel *in those proceedings only* – and I wish to emphasise that I use that word for convenience without any intention to refer to the legal doctrine associated with it. The accused is not permitted to appeal against his conviction but only his sentence, although a court exercising its revisionary jurisdiction may acquit him of the offence in certain circumstances … In both India and Singapore, the guilty plea and [the] statement of facts are not formal evidence against the accused. They are ***merely devices relied upon by the court in convicting the accused***. Provided the accused is aware of the nature and consequences of his plea, no investigation into the truth of the plea of guilt or the statement of facts is undertaken. The truth of the statement of facts is uncontrovertibly presumed for the purpose of convicting the accused. ***This does not, however, 'estop' the accused from denying that statement in separate proceedings.*** [emphasis added in bold italics]

Yong CJ also noted at [89] that:

> (i) There [are] reasons why a person might plead guilty and admit to a statement of facts even though he [is] innocent and the statement of facts untruthful. These reasons include[:] (a) a very strong prosecution's case which might be premised on evidence that is difficult to rebut; (b) a belief that it is better to plead guilty in the hope of a light sentence rather than to risk conviction and a heavier sentence; (c) his having been advised by his lawyers to plead guilty because they believe the likelihood of his conviction to be strong although he is not actually guilty; and (d) the accused falling outside of the category of persons eligible for legal aid and yet being unable to afford expensive legal representation, especially in complex cases.
>
> (ii) The statement of facts is not in fact prepared by the accused or even prepared based on an interview with him. It is made by the investigation officer or [the] Public Prosecutor based on the evidence they have against the accused. The accused person does not sign the statement of facts. The statement of facts cannot therefore be accorded the same weight as a statement made to the police. Furthermore, a suspect is unlikely to make a false confession to the police unless he was under duress or threat. This contingency is provided for by statutory provisions excluding the proof of such confessions. However, a suspect may falsely plead guilty for the reasons I have set out. As a false guilty plea can only be reversed by revision, the only safeguard is to subject such pleas to careful scrutiny so that their

proper weight can be determined.

60 The circumstances set out above are by no means exhaustive, but they do helpfully illustrate that a multitude of considerations may prevail in any matter and eventually precipitate a plea of guilty by an accused. Harking back to first principles, *viz*, that the power of revision has been conferred on the High Court for the purpose of ensuring that justice is not only seen to be done but actually done, it was plain to me that the Applicant's plea of guilty ought not to be allowed to stand in this instance.

61 In the present case, the exceptional circumstances highlighted earlier (at [57] above) unfortunately conspired to pressurise the Applicant to plead guilty. All of these factors culminated in fashioning an overwhelming and irresistible pressurising force which inexorably influenced the Applicant's plea of guilty. I should add that, save in extraordinary cases, alleged pressure on an accused to plead guilty will be difficult to establish. The restrained exercise of the High Court's power of revision to quash a conviction following a plea of guilty will not lead to a glut of criminal revision applications. In this regard, the legal fraternity should always be mindful that this power will be exercised only sparingly.

62 The same principles apply in cases where serious doubts exist as to an accused's guilt. This factor similarly affords a basis for criminal revision. In the present case, the serious doubts as to the Applicant's guilt were not brought about by dint of the fact that the testimony of an accomplice (*ie*, Aziz) was being relied upon to implicate the Applicant in the offence (which is a common occurrence). Instead, the serious doubts were engendered by the cumulative effect of the lack of objective real evidence implicating the Applicant coupled with the many questions, contradictions, and blemishes present in the evidence that was placed before me (see the earlier discussion at [33]–[41] above).

Whether the matter should be remitted to the Subordinate Courts or stayed

63 The next issue would be the appropriate course of action to be taken. Specifically, the question was whether the prosecution of the Applicant in respect of the incident of 12 August 1992 should be stayed or whether the matter should be remitted back to the Subordinate Courts for a re-trial. Mr Vergis invited me to stay further prosecution, relying on the decision in *PP v Saroop Singh* [1999] 1 SLR 793. In that case, the court, following English, Australian and Privy Council authorities, stayed further criminal proceedings because of the prejudicial effect occasioned by the lapse of time between the date of the alleged offence (which occurred in 1981) and the date of the Prosecution's appeal against the accused's acquittal of that offence (which appeal was heard in 1998). I note, however, that the court in that case did not consider whether Art 35(8) of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"), under which "[t]he Attorney-General … [has] power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence", precluded such an approach. There is no similar provision in England or the other jurisdictions from which the authorities cited in *PP v Saroop Singh* emanated from. It can be said, with some force, that the Constitution, by expressly conferring absolute prosecutorial discretion on the Attorney-General, does not contemplate any judicial oversight over the exercise of such discretion. This is a matter of such fundamental constitutional importance that I prefer to leave it open for further argument and consideration at a more appropriate juncture, given that the Prosecution, in responding to Mr Vergis, failed to even raise this as a relevant legal consideration in the present proceedings.

64 While I appreciate that there are real difficulties standing in the way of the presentation of the Applicant's defence after the lapse of time in the present case, these are also difficulties which now stand squarely in the way of the Prosecution, which bears the burden of proving the Applicant's guilt beyond a reasonable doubt. While, quite possibly, the Applicant's position may have been prejudiced

by the delay, the fact remains that there is a strong public interest in prosecuting all drug offences regardless of the lapse of time. In the final analysis, I am not satisfied that the delay in the present case will cause irreversible or irremediable prejudice to the Applicant if a re-trial were to take place. Indeed, it is also in his interest, if he is truly innocent, to have this Damocles' sword that has been hanging over him all these years permanently sheathed. I am confident that the judge hearing the matter will give serious and anxious consideration to the issues of delay and prejudice in determining whether the Prosecution can establish the ingredients of the offence by relying primarily on the uncorroborated evidence of Aziz.

65 The prejudicial effect that the delay in this case will have on the reliability of the oral testimony, as opposed to the objective evidence, placed before the trial court cannot be downplayed. I can do no better than reproduce the incisive remarks of Lord Salmon in *Birkett v James* [1978] AC 297 at 327, as follows:

> *When cases (as they often do) depend predominantly on the recollection of witnesses delay can often be most prejudicial to defendants and to plaintiffs also. Witnesses' recollections grow dim with the passage of time and the evidence of honest men differs sharply on the relevant facts.* ***In some cases it is sometimes impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred*** … [emphasis added in italics and bold italics]

In a similar vein, Lord Hailsham of St Marylebone LC in *Regina v Lawrence (Stephen)* [1982] AC 510 observed (at 517):

> *[I]t is a truism to say that justice delayed is justice denied. But it is not merely the anxiety and uncertainty in the life of the accused, whether on bail or remand, which are affected. Where there is delay the whole quality of justice deteriorates. Our system depends on the recollection of witnesses, conveyed to a jury by oral testimony. As the months pass, this recollection necessarily dims, and juries who are correctly directed not to convict unless they are assured of the reliability of the evidence for the prosecution, necessarily tend to acquit as this becomes less precise, and sometimes less reliable.* This may also affect defence witnesses on the opposite side. [emphasis added]

The lack of reliability of oral testimony as time passes is one of the principal considerations underpinning the formulation of limitation periods in civil claims. As correctly noted in the Law Reform Committee, Singapore Academy of Law, *Report on the Review of the Limitation Act (Cap 163)* (February 2007) at para 41 (Chairman: Charles Lim Aeng Cheng):

> Policy arguments [underlying laws on limitation periods] fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as "statutes of peace"*. The second looks at the matter from a more objective point of view. It suggests that a time-limit is necessary because with the lapse of time, proof of a claim becomes more difficult – documentary evidence is likely to have been destroyed and memories of witnesses faded.* The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. [emphasis added]

The wider public interests dictate that limitation periods currently have no place in the criminal justice system in Singapore. Despite unavoidable delays, matters can often be prosecuted because of the availability of objective and/or corroborative evidence. Unfortunately, there are also, from time to

time, matters in respect of which the Prosecution can only rely on the oral testimony of a single witness whose evidence cannot be objectively calibrated. In the latter scenario, there is no gainsaying that there is an iron rule that the greater the delay, regardless of how it has been occasioned, the less reliable the witness's oral testimony will be; hence, my emphasis on not just the desirability, but also the pressing need for objective evidence in cases such as the present.

Conclusion

66 In the result, I directed that the conviction of the Applicant by the District Court on 26 November 2007 be set aside and that he be re-tried in the Subordinate Courts on the same charge (*ie*, the Amended Charge).

67 Having considered the Prosecution's explanation for the lengthy period taken to proceed with the prosecution of the Applicant in respect of the incident on 12 August 1992, I accept without qualification that there has been no undue delay on the Prosecution's part. What concerns me about this case, nevertheless, is that although the Prosecution now claims that it acceded in 1992 to granting the Applicant a discharge not amounting to an acquittal on the basis that "CNB was confident that it would secure incriminating evidence against the [Applicant]"[note: 12], there was absolutely no evidence before me as to what steps were taken at that point in time to secure objective evidence of the Applicant's guilt or, just as importantly, proof of absence of the evidence just described. I reiterate that despite my invitation to file an affidavit setting out all the relevant circumstances of what had transpired, the Prosecution declined to file any affidavit, let alone fully explain what had been done in 1992 to thoroughly investigate the offence.

68 The Prosecution also stated that to charge only Aziz but not the Applicant in the present matter would have been a "purely arbitrary decision"[note: 13]. That is one way of approaching and assessing the matter. On the other hand, it could perhaps also be fairly said that to charge both men without properly sifting through the evidence was merely a mechanical decision on the part of the Prosecution. The trauma that the initiation of a prosecution will cause to an accused and those close to him is palpably real and often severe. While this may not create legitimate concerns *vis-à-vis* the factually guilty, it does raise serious issues and considerations apropos those who may be innocent, and all the more so if a prosecution is launched 15 years after an alleged offence, when the likelihood of the Defence securing relevant evidence would have all but vanished. The Prosecution asserts that its decision to prosecute both Aziz and the Applicant was "just and correct"[note: 14]. My short response to this, on the basis of the submissions before me, is that the apparent omission on the investigating authorities' part to secure as much relevant objective evidence as possible in 1992 cannot make the decision to prosecute the Applicant in 2007 "just and correct". Given also the lapse of time, I reiterate that the Applicant has been quite palpably disadvantaged in procuring evidence that might support his version of the material events.

69 One final point: the same unbending rules on evidence apply to both the Prosecution and the Defence alike in all criminal revision proceedings. When either party intends to rely on additional facts in criminal revision proceedings, that party must file affidavits attesting to those facts. I found it quite surprising that, in the instant case, the Prosecution seemed to view this obligation as dispensable or perhaps even inapplicable to it. Given the urgency in resolving the Applicant's status, I did not press this issue during the hearing. I cannot, however, in fairness to the Applicant, let this issue pass without further comment. Having invited the Prosecution to file an affidavit to attest to the relevant circumstances, I remain puzzled as to why it declined to accept the invitation and instead sought to rely solely on facts alleged in its written submissions for the present application. When, therefore, the re-trial takes place in the Subordinate Courts, I have to assume that the Prosecution will rely on the same facts. This would serve to ensure that the Applicant is not unduly

disadvantaged at the re-trial by the omission of the Prosecution to file any affidavit in the present proceedings.

[note: 1]See para 2 of the statement of facts dated 26 November 2007.

[note: 2]See the charge dated 12 August 1992.

[note: 3]See para 8 of the mitigation plea dated 15 November 2007 by Aziz's counsel.

[note: 4]See para 11 of the mitigation plea dated 15 November 2007 by Aziz's counsel.

[note: 5]See para 3 of the Prosecution's written submissions dated 24 March 2008.

[note: 6]*Ibid*.

[note: 7]See para 104 of the Defence's written submissions dated 25 March 2008.

[note: 8]See para 103 of the Defence's written submissions dated 25 March 2008.

[note: 9]See para 21 of the Prosecution's written submissions dated 24 March 2008.

[note: 10]See para 78 of the Prosecution's written submissions dated 24 March 2008.

[note: 11]*Supra* n 9.

[note: 12]See para 28 of the Prosecution's written submissions dated 24 March 2008.

[note: 13]See para 37 of the Prosecution's written submissions dated 24 March 2008.

[note: 14]See para 45 of the Prosecution's written submissions dated 24 March 2008.

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