Ramalingam Ravinthran *v* Public Prosecutor
[2011] SGCA 14

Case Number	: Criminal Appeal No 28 of 2009
Decision Date	: 11 April 2011
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Suresh Damodara, Leonard Hazra (Damodara, Hazra, K Sureshan LLP) and Jeyapalan Ayaduray (Jeya & Associates) for the appellant; Mark Tay, Prem Raj s/o Prabakaran and Kevin Yong (Attorney-General's Chambers) for the respondent.
Parties	: Ramalingam Ravinthran — Public Prosecutor

Criminal Law

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2009] SGHC 265.]

11 April 2011

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by Ramalingam Ravinthran ("the appellant") against the decision of the trial judge ("the Judge") in Criminal Case No 29 of 2007 (see *Public Prosecutor v Ramalingam Ravinthran* [2009] SGHC 265 ("the GD")) convicting him of two charges of trafficking in a controlled drug (*ie*, respectively, 5,560.1g of cannabis and 2,078.3g of cannabis mixture), an offence under s 5(1)(*a*) read with s 33 of and the Second Schedule to the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the MDA").

2 The two charges arose in the same transaction. A sports bag ("the sports bag") containing eight blocks of vegetable matter, each wrapped in aluminium foil and transparent plastic cling wrap, was recovered from the rear left passenger seat of a motor car when the appellant was arrested after a car chase. The eight blocks of vegetable matter were put in three separate plastic bags inside the sports bag. At the time of his arrest, the appellant was alone in the car. The eight blocks of vegetable matter, upon analysis, were found to contain cannabis and cannabis mixture, both controlled substances under the MDA. This gave rise to two distinct charges, one for trafficking in cannabis and the other for trafficking in cannabis mixture, as cannabis and cannabis mixture are classified as different drugs for the purposes of the MDA.

3 At the conclusion of oral submissions before us, we dismissed the appeal. We now give our reasons.

Background

4 The undisputed facts set out in the statements given by the appellant to the Central Narcotics Bureau ("CNB") were as follows. The appellant, a Singapore citizen, was in the business of supplying workers to the refinery, oil rig and marine industries, a business he set up in 1982. According to the

appellant's statements, he was introduced in 2001 to four labour supply contractors in Malaysia, two of whom were Anand and Kumar. The appellant would use their services when he had contracts in Malaysia.

5 Sometime in 2005 or 2006, the appellant met Anand and Kumar in a restaurant near a temple in Johor Bahru, Malaysia. With them were one Tamby, who was their foreman, and some other men. Tamby introduced one or more of them to the appellant, including one "Rajoo" (whose real name was Sundar Arujanan). Subsequently, Sundar Arujanan ("Sundar") would telephone the appellant from time to time to ask if the appellant had work opportunities for him. They would also meet socially from time to time in Singapore, sometimes by chance and sometimes by arrangement over the telephone.

6 Sometime in April or May 2006, Anand and Kumar invited the appellant to a nightclub in Johor Bahru, where they had drinks and women for company. The appellant drank a glass of beer, which he later suspected to have been laced with drugs as he felt giddy after drinking it, even though, ordinarily, he could drink up to fifteen glasses of beer without difficulty. When he asked Kumar what was in the beer, Kumar replied, "party things" which were "good for the women". After that, the appellant attended similar social events with Anand and Kumar weekly. On two or three such occasions, Anand gave the appellant cigarettes to smoke, which the appellant also suspected contained drugs.

7 On one of these social occasions, Kumar told the appellant that there were three or four incidents when people had "cheated him" in Singapore. He then told the appellant that he trusted him, and asked him to help him. When the appellant asked what kind of help Kumar meant, Kumar replied that it involved transportation of something, but had "nothing to do with drugs or explosives". The appellant told Kumar that he would help him if he had the time.

8 Sometime in May or June 2006, the appellant received a telephone call from Kumar asking him to help transport a bag from the Sri Arasakesari Sivan Temple ("the SAS Temple") at 25 Sungei Kadut Avenue, Singapore, to the "Sungei Kadut canteen" (properly known as the Hawkerway Food Court) at 16A Sungei Kadut Way. The appellant was told to go to the SAS Temple in his car, leave the car door unlocked and then go inside the temple to pray. Upon receiving the bag, the appellant was to bring it to the Hawkerway Food Court, although he was not told whom he should deliver it to. On a pre-arranged day in June 2006, the appellant drove to the SAS Temple, parked his car at the temple grounds and left the door unlocked as instructed. He then went inside the temple to pray. When he came out 20 minutes later, he saw that a bag had been placed on the back seat of his car. He drove to the Hawkerway Food Court with the bag, parked his car nearby and had a meal there. When he returned to his car 25 minutes later, the bag was no longer inside the car. The appellant entered his car and drove off. After about 10 minutes of driving, Kumar telephoned the appellant and informed him that the bag had been collected. Kumar told the appellant further that he thought the appellant would have looked into the bag, which contained safety boots. During a social outing with Kumar after this incident, the appellant asked Kumar why the bag had to be left in and taken from his car, and why he could not have received it and delivered it face-to-face. Kumar replied by telling the appellant not to worry about it.

9 On the morning of 13 July 2006, the appellant received a telephone call from Tamby (see [5] above), who told him that Kumar or Sundar would call him in the afternoon. That afternoon, Kumar telephoned the appellant at his office at around 2pm and told him to meet Sundar at the SAS Temple at 3.30pm. Sundar himself telephoned shortly after to confirm this. The appellant drove to the SAS Temple at around 3.30pm, but found the gates closed. He then telephoned Sundar, who said he would take some time to get there. The appellant replied that he had work to do and was not sure if he would wait; he then drove off.

10 While he was driving, the appellant received another telephone call from an unknown person telling him to go to "the canteen", whereupon the appellant drove to the Hawkerway Food Court at Sungei Kadut Way. The appellant did not recognise the voice of the caller at the time, but, later, it occurred to him that the caller was a person called Abang who had been introduced to him at Kumar's office in Malaysia sometime at the end of 2005.

11 The appellant arrived at the Hawkerway Food Court at around 3.45pm, parked his car nearby and went to the food court to use the restroom. When he was in the restroom, a person approached him. The appellant addressed him as "Abang", but did not immediately recognise him. However, he later recalled that it was the same Abang whom he had met at Kumar's office in late 2005. Abang then asked the appellant, "Hasn't the book arrived?", to which the appellant replied, "No." Abang then gave the appellant a bundle of currency notes and told him to give the money to whoever brought the book, saying that it was "workman's money". After Abang left the restroom, the appellant entered a toilet cubicle to count the money, which amounted to $4,000. The appellant then left the restroom, had a meal at the food court and left the food court.

12 Between 4.15pm and 5.00pm on the same day, the appellant drove around the Sungei Kadut area on work-related errands and had coffee at a coffee shop. He then drove to the SAS Temple, arriving at around 5.15pm. As the gate was open, he parked in the compound and got out of the car. Sundar then approached the car, opened the door and placed the sports bag (*ie*, the sports bag defined at [2] above) on the back passenger seat. Both men then got into the car. The appellant gave the $4,000 which he had received from Abang to Sundar, saying that it was "workman's money". Both men then left the SAS Temple in the appellant's car at about 5.20pm.

13 The Judge's findings in relation to what happened at the SAS Temple are summarised at [3]–[5] of the GD as follows:

> 3 Officers of the Central Narcotics Bureau ("CNB") had kept the [appellant] on surveillance on the date of his arrest on 13 July 2006. He was observed to have driven his car SBR 4484 ("the car") into the compound of Sri Arasakesari Sivan Temple ("the temple") along Sungei Kadut Avenue at about 5.15 pm. The [appellant] parked the car and went out of it. He then met up with another man, Sundar Arujunan ("Sundar") in the compound. Sundar was carrying a red and blue bag ("the [sports] bag"). Sundar placed the [sports] bag into the back seat of the car. The [appellant] and Sundar then went into the car, with the [appellant] driving and Sundar in the front passenger's seat. He drove the car out of the temple compound and proceeded to Woodlands Road where Sundar alighted, leaving the [sports] bag in the car.
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> 4 The CNB officers continued to keep surveillance on the [appellant]'s car. They trailed the car as it made its way to Kranji Expressway, Sungei Tengah Road, Bricklands Road, KJE, Pioneer Road North, Jurong West Streets 91, 92 and 93, Upper Jurong Road, Pioneer Road North, Pioneer Circle and Pioneer Road where the journey ended with the arrest of the [appellant].
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> 5 The route taken by the [appellant] showed that he was driving around in no particular direction. The officers noted in their pocket books after the arrest that the [appellant] was driving at a high speed, that he drove through two red traffic lights and made two turns around Pioneer Circle.

14 The appellant made no mention of the car chase in his statements to the CNB. The arresting CNB officers gave a full account of it and of the manner in which the appellant was arrested. When asked about it in cross-examination, the appellant did not dispute the route taken or the manner of his arrest; however, he denied that he had driven at a high speed at the material time, had driven

through two red traffic lights or had been trying to elude the cars following him to avoid being caught with something illegal. The following was undisputed: while travelling along Pioneer Road towards Benoi Road, the appellant's car was travelling in the left lane. When he reached the front of the ExxonMobil Refinery at 18 Pioneer Road, the appellant switched to the right lane and stopped at a red light. At this moment (about 5.40pm), a car driven by Senior Staff Sergeant Lim Yee Chong overtook the appellant's car on the right side, going against the flow of traffic along Pioneer Road, before swerving left in front of the appellant's car at a 45-degree angle. A second car driven by Staff Sergeant Lim Kim Hock stopped on the left side of the appellant's car, while a third car driven by Woman Sergeant Chan Jee Yeng ("W/Sgt JY Chan") stopped behind the appellant's car. These manoeuvres all happened within about 10 to 20 seconds. Three CNB officers, Senior Station Inspector Tan Yian Chye ("SSI YC Tan"), Senior Staff Sergeant Rahmat bin Toleh ("SS/Sgt Rahmat") and Station Inspector M Subramaniam ("SI Subramaniam"), emerged from the first, second and third cars respectively and ran towards the appellant's car. The appellant then reversed his car, whereupon W/Sgt JY Chan (who was in the car behind the appellant's car) drove forward and stopped the appellant from reversing his car. SI Subramaniam then smashed the windshield of the appellant's car with a hammer, while SSI YC Tan smashed the passenger-side window with some instrument. SS/Sgt Rahmat then opened the passenger-side door and handcuffed the appellant's left hand. The appellant was then brought out of his car by other CNB officers.

15 After he was arrested, the appellant was brought to a trailer park along Pioneer Road, about 200 to 300 metres away. At around 5.55pm, a group of CNB officers from the CNB Special Task Force ("STF") arrived at the trailer park to take custody of the appellant. At about 6.20pm, two STF officers recorded a statement from the appellant. Senior Staff Sergeant David Ng ("SS/Sgt Ng") acted as recording officer, while Sergeant Chelliah Vijay ("Sgt V Chelliah") acted as a Tamil interpreter. The relevant part of the statement recorded by SS/Sgt Ng was in the form of questions (from SS/Sgt Ng) and answers (from the appellant) as follows:

Q1: The sport [*sic*] bag that found inside the car belong to who?

A1: My friend 'Rajoo' [*ie*, Sundar].

Q2: What is inside the bag [*ie*, the sports bag]?

A2: Something inside.

Q3: What 'something' are you referring?

A3: I'm not very sure.

Q4: Why 'Rajoo' leave his bag inside your car when he alighted?

A4: 'Rajoo' said later, he will take his bag.

Q5: After opened the bag in front of you, do you know what is inside there?

A5: Yes. I know.

Q6: What is inside the bag?

A6: The 'Grass'.

Q7: How do you know is the 'Grass' whereby I did not tear opened the aluminium wrapper?

A7: I knew it because the officers said so.

Q8: What exact words did the officers said?

A8: 'Grass'.

In recording the last answer, SS/Sgt Ng instructed Sgt V Chelliah to spell out the words "grass" and "glass" to the appellant to confirm that he had answered "grass". The appellant confirmed that he had answered "grass".

16 The sports bag in the appellant's car was searched, and was found to contain eight blocks of vegetable matter (placed in three separate plastic bags) wrapped in aluminium foil and transparent plastic cling wrap. The eight blocks of vegetable matter were handed over to analysts at the Health Sciences Authority ("HSA") on the next day, 14 July 2006. The analysis showed that the vegetable blocks were found to contain 5,560.1g of cannabis and 2,078.3g of cannabis mixture. Two out of three urine samples taken from the appellant on 13 July 2006 were also handed over to the HSA (one to Analyst Lim Cheng Min and the other to Analyst Moy Hooi Yan) on 14 July 2006. The samples were analysed and certified (by Lim Cheng Min on 25 July 2006 and Moy Hooi Yan on 24 July 2006 respectively) to contain tetrahydrocannibinol (or "THC"), the main intoxicating substance in cannabis. Searches were made at the appellant's workplace at 53 Shipyard Road, a building at 11 Warwick Road and the appellant's home at Block 64, #02-196, Telok Blangah Drive, but nothing incriminating was found at any of those places.

Statements of Sundar and the appellant to the CNB

17 Several statements from Sundar and the appellant, taken in the course of investigations, were admitted in evidence at the trial below. At the appellant's trial, Sundar was a prosecution witness. However, he turned hostile, and the Prosecution was given leave under s 156 of the Evidence Act (Cap 97, 1997 Rev Ed) to cross-examine him as a hostile prosecution witness under s 147 of the Evidence Act as he had previously given inconsistent statements to the CNB. Three investigation statements made by Sundar as well as the statement of facts which Sundar admitted to at his own trial for drug trafficking were admitted for this purpose.

18 We now set out the material portions of the statements made by Sundar and the appellant.

Sundar's statements

19 The material parts of the statement recorded from Sundar on 17 July 2006 on what had happened after the appellant had driven out of the SAS Temple on 13 July 2006 at about 5.20pm read as follows:

> 37 We turned out from the carpark into the main road. I was in a happy mood then, thinking that I would be getting my work permit. But after travelling for about 5 to 6 minutes, [the appellant] *suddenly asked if I knew what was inside the [sports] bag and I replied negatively. He then told me that it was ganja. I did not know whether he was telling the truth but I immediately told him that I want to get out of the car*. [The appellant] did not utter another word, he just stopped the car and let me alight. I wished to add that while I was in the car, I did not see [the appellant] opening up the [sports] bag[.]
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> 38 … After that, I went to buy some fruits from a fruit stall and then went to a nearby bus

stop to take bus no. 170.

39 At about 5.30pm to 6pm, while I was waiting at the bus stop, a group of about 6 to 7 men in plain clothes came and identified themselves to be police. They asked me to kneel down and conducted a search on me. They found the roll of money and asked me how much was there. I replied that there was S$4000. I was then handcuffed and escorted to a police station.

[emphasis added]

20 On 20 July 2006, a further investigation statement was taken from Sundar, in which he said:

52 The statement given by me on 13/07/2006 at 8.10 pm in a police station was read back to me in Tamil and I confirmed it to be mine. I wished to add that I had told the police officers then that the [sports] bag contained ganja because I was informed by [the appellant], while I was in the car, that the [sports] bag contained ganja. I thought the police couldn't have arrested me without any reason and so I just repeated to them that there was ganja in the [sports] bag.

21 On 6 July 2007, Sundar pleaded guilty to two charges of trafficking in cannabis in a quantity that made it a non-capital offence. At that hearing, Sundar admitted to a statement of facts dated 5 July 2007, which stated, *inter alia*, as follows:

11 The accused [*ie*, Sundar] agreed. He took over the red and blue sports bag [*ie*, the sports bag] containing the 8 drug exhibits from "Sashi". The accused thought that the red and blue sports bag contained "ganja"; but he did not open the red and blue sports bag to verify that there was "ganja" inside.

...

15 Shortly, both the accused and [the appellant] left the Sri Arasakesari Sivan temple in the car SBR 4484 S. [The appellant] was driving the said car. *After travelling for about 5 minutes, [the appellant] said to the accused that there was "ganja" inside the red and blue sports bag*.

[emphasis added]

Sundar was convicted on both counts of trafficking in a controlled substance and sentenced to a total of 20 years' imprisonment and 24 strokes of the cane.

22 After Sundar's conviction, a further investigation statement was taken from him on 17 July 2007. In this statement, he said the following:

10 Inside the car, [the appellant] asked me whether I wanted to have a drink. I said I got no money. He said I was a stingy fellow and said I was a "kanjappaya" (Recorder['s] notes: Accused said the "kanjappaya" meant stingy fellow). [The appellant] was not going to Tekka so I got out of the car to go to Tekka. I did not know where [the appellant] was going.

11 *I mistaken "kanjappaya" as "ganja" because back at CNB, the officers told me the [sports] bag contained 'ganja', I got the impression that [the appellant] has told me about the 'ganja'*. I am now saying its "kanjappaya" when [the appellant] told me this word in the car and not 'ganja'. I was confused when I was arrested.

[emphasis added]

The appellant's statements

23 A cautioned statement was recorded from the appellant under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) on 18 July 2006. The statement read:

> Rajoo [*ie*, Sundar] rang me at around two something to three and told me to come to Sivan Temple at Sungei Kadut Road to meet him at 3.30 pm. At about 3.30 pm, I went to the temple and no one was around. The gate was closed. He called me again and told me to go to a food centre nearby and asked me to wait there. I parked my car near the food centre and went inside the food centre. I viewed the food stalls and then went to the toilet. I was in the toilet for about 7 minutes and then I came out. Ah Bang, who was a truck driver I knew previously, came into the toilet and confronted me. *Ah Bang asked me whether the book had arrived. I did not know what is the book he referred but whenever Rajoo brought in something, they would refer to as book. I told Ah Bang the book had not arrived*. He then gave me $4000 and asked me to pass to Rajoo. I called Rajoo later and I went to a coffeeshop later at Choa Chu Kang. Rajoo rang me up on my phone and asked me to meet at the temple. At 5 something, I arrived at the temple. The gate was opened and I parked my car inside. Rajoo arrived then. He was carrying a [sports] bag [*ie*, the sports bag defined at [2] above]. Rajoo asked me to open up the boot but I had other things in the boot, so he opened up the rear passenger door to put the [sports] bag on the seat.
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> Rajoo came and sat in the car. He told me to drive off. While driving along Bukit Timah Road towards city, suddenly Rajoo asked me to stop the car. He dropped off and told me either Ah Bang or himself would call me later. I then drove off. Police arrested me later in the car. *They asked me what was in the [sports] bag and I told them I don't know*. I did not commit the offence. I helped them because I am obligated to them. They used me because I am a soft man. I will fully cooperate and tell all the truth.
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> [emphasis added]

24 On 20 July 2006, another investigation statement was recorded from the appellant. We set out below those portions that recount what happened after the appellant and Sundar left the SAS Temple on 13 July 2006 at about 5.20pm:

> 40 While 'Rajoo' [*ie*, Sundar] was putting the [sports] bag down, I boarded my car as well. I then told 'Rajoo' to come into the front passenger seat so that I could pass him the S$4000. As I did not want to stay in the temple compound, I started the car and drove off. I was going in the direction towards my workplace in Jurong. While driving, I took out the money from my right pants pocket and gave to 'Rajoo'. I could not remember if he counted the money then, but I told him that it was workman's money. 'Rajoo' then asked me where I was going and I told him that I was going to my workplace. Suddenly he told me to stop the car, which was just before the bus stop, along Bukit Timah Road, in the direction towards the city. 'Rajoo' then alighted from the car.
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> 41 I drove off and headed for Jurong with the intention to go to my workplace then. Afterwhich I would wait for 'Abang' to call me and arrange for a meeting place to pick up the [sports] bag. *During this entire time, I did not touch the [sports] bag at all. I did not notice whether the [sports] bag was locked but I had no intention to see the content inside. I did not want to check the [sports] bag as I thought it was better not for me to see. I suspected that something was not right, and the [sports] bag might contain something illegal. I had this suspicion because if the content was legal, they would not need to be so discreet. Only then I realized that they were using me*.

42 While traveling, I could not remember the exact time then, I came to a stop at a traffic light along Pioneer Road, at the Esso Refinery and Petrol Kiosk. 3 cars then came by. 1 car stopping in front of my car, 1 behind my car and 1 at the passenger's side. I saw several men in plain clothes coming out of the car. They smashed my windscreen and the side windows. They brought me out of the car and made me sit on the road. Afterwhich, they then handcuffed me. I did not struggle during the arrest.

43 I realized then that the men in plain clothes should be police officers. They then escorted me to a trailer carpark nearby. Shortly, another team of 4 officers took over me from the officers who arrested me. After about 15 minutes, everyone left the carpark expect [*sic*] the 4 new officers. 2 of the officers then spoke to me. One of them acted as the Tamil interpreter and the other recorded a statement from me.

44 The statement given by me at the carpark on 13/07/06 at 6.20pm was read over to me in Tamil. I confirmed that it was mine, true and correct. In the statement, I told the officers that 'Rajoo' would take the [sports] bag later. I wished to clarify that the [sports] bag was actually meant for 'Abang'. I had mentioned 'Rajoo' instead because I was in a confused state then, from all the earlier commotion.

45 *When I was asked what was in the [sports] bag, I had replied that it was 'grass' because I had overheard officers mentioning the term 'glass' or 'grass' earlier*. I did not know the context in which the term was used because I did not hear the entire conversation. *I only heard the word 'glass' or 'grass'. I had answered the officers that it was 'grass' in the [sports] bag because I overheard the term earlier and I just replied as such*.

[emphasis added]

The appellant's defence

25 The appellant's defence is summarised at [40]–[44] of the GD as follows:

40 The [appellant] did not know what was in the [sports] bag and thought that it may be some industrial articles or a book. He also thought that Sundar was going with him to deliver the [sports] bag. He gave the money he received from Abang to Sundar, and told him that it was money for workers, and then they drove out of the temple compound. When they were at Bukit Timah Road, Sundar suddenly asked him to stop at a bus stop. When he stopped there, Sundar got off, leaving the [sports] bag in the car. He asked Sundar about it, and Sundar told him that he or Abang will be calling him.

41 At that time, the [appellant] realised that there was a car in front and another car at the rear of his car, and he was suspicious about these cars. He drove off and kept observation on them. He drove for about 20 minutes with the cars trailing him. When he stopped at a traffic light junction along Pioneer Road, the other cars blocked his car and persons (the CNB officers) went to his car and arrested him.

42 After he was arrested, he was taken to a trailer park nearby, and was made to sit on the side of the road. He said that at the trailer park, he heard some CNB officers mention "grass" and "glass" in relation to the contents of the [sports] bag and he knew that "grass" referred to *ganja*.

43 The prosecutor cross-examined the [appellant] at some length. The [appellant] confirmed that he had asked Sundar to buy him a meal, and had called Sundar a *kanjan* or *kanjappaya* (a

miser) when Sundar declined. He had said that as a joke, and they would both laugh over it.

44 The prosecutor also questioned him on the statement he made at the trailer park. The [appellant] clarified that he heard the officers talking, "they were talking among themselves, and I overheard the word 'grass'", and when his statement was recorded, he was asked in Tamil what the content of the [sports] bag was and he replied that it was "grass".

The Judge's findings

26 The Judge began his evaluation of the evidence by focusing on the critical issue as to whether the appellant had actual knowledge that the sports bag contained cannabis and cannabis mixture. After considering the appellant's statements, Sundar's statements and their respective testimonies, the Judge made the following findings of fact:

(a) "… I find as a fact that the [appellant] had answered 'grass' in English (which he knew to refer to *ganja* [*ie*, cannabis]) and that he had not said 'glass'" (at [59] of the GD);

(b) "… that the [appellant] had [not] said *kanja payal* to [Sundar] rather than *ganja*, and I impeached [Sundar's] credit …" (at [61] of the GD);

(c) "… that Sundar had said that the [appellant] had told him that the [sports] bag contained *ganja*, and that he was not mistaken or deliberately lying when he made the statement. Consequently, I find that Sundar's statement that the [appellant] told him the [sports] bag contained *ganja* is admissible, and is truthful …" (at [64] of the GD); and

(d) that "[t]he [appellant] was in possession of the [sports] bag containing the cannabis and the cannabis mixture. The prosecution had proved that after his arrest, he acknowledged that the [sports] bag contained *ganja*, and that he had also told Sundar that the [sports] bag contained *ganja*, a term which covers cannabis and cannabis mixture" (at [65] of the GD).

27 The Judge also made an alternative finding against the appellant. He found on the evidence that the appellant was wilfully blind as to what was contained in the sports bag. The Judge referred to the decision of the Court of Appeal in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*"). The Judge was a member of the panel of the Court of Appeal in that case. In making that finding, he rejected the appellant's evidence that he (the appellant) had not had any opportunity to see what was in the sports bag (see the GD at [68]–[69] (reproduced at [40] below)).

28 On the basis of these findings of fact, the Judge held (at [70]–[71] of the GD) as follows:

70 In view of the quantities of cannabis and cannabis mixture in the [sports] bag (which were not disputed), a presumption arose under s 17 of the [MDA] that the [appellant] had those drugs for the purpose of trafficking, as "traffic" being defined in s 2 to be:

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

and the [appellant] has not rebutted the presumption that the drugs were in his possession for the purpose of trafficking as his case is that he was keeping the [sports] bag for Sundar or Abang, ie, that he intended to send or deliver the [sports] bag to either of them. With those elements established, the [appellant] had trafficked in the drugs under s 5(2) of the [MDA]:

a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

71 Consequently, I find the [appellant] guilty and convict him on the two charges that he faces, and I impose the death sentence on him for each charge.

The appellant's grounds of appeal

29 The appellant's grounds of appeal were that the Judge erred as follows:

(a) in believing that Sundar was telling the truth when he claimed that the appellant had told him that the sports bag contained *ganja* (*ie*, cannabis);

(b) in finding that the appellant knew that the sports bag contained *ganja*, when the question as to his knowledge of the contents of that bag was never put to him by the Prosecution;

(c) in finding that the appellant was wilfully blind as to what was in the sports bag; and

(d) in relying on the presumption in s 17 of the MDA ("the s 17 presumption") against the appellant.

30 With respect to ground (a), the appellant's counsel contended that Sundar's statement was a classic case of accomplice evidence where the accomplice sought to deflect blame from himself to another so as to establish his (the accomplice's) own innocence. Sundar, so counsel submitted, wanted the CNB officers to believe that he did not know that the sports bag contained cannabis, and that it was the appellant who had told him of the bag's contents when he was in the appellant's car. Counsel contended that the Judge did not consider Sundar's statement in its entirety, and that if he had done so, he would have found Sundar's motivation to be clear.

31 Counsel further contended that other evidence also militated against a reasonable finding that part of Sundar's statement (*ie*, that portion relating to what the appellant allegedly told Sundar about the sports bag containing *ganja*) was true. Sundar's oral testimony supported the appellant's evidence that he (the appellant) had no knowledge of what was in the sports bag. Sundar did not implicate the appellant until he made his sixth statement on 17 July 2006, *ie*, until after four days of investigation following his arrest (and also the appellant's) on 13 July 2006. For this reason, counsel contended, Sundar's statement was an afterthought. In his s 122(6) statement, Sundar also did not mention that his knowledge that the sports bag contained cannabis came from the appellant. This was an important statement – Sundar could have exonerated himself if he established that his knowledge of the contents of the sports bag came from the appellant.

32 With respect to ground (b), the appellant's counsel contended that the Prosecution never put it to the appellant that he had not derived his knowledge of what could be in the sports bag from the CNB officers at the scene of the arrest, and that when the appellant was first asked what was in the sports bag, he had said that he was not sure. Counsel also contended that the Prosecution made no attempt to verify whether the CNB officers at the scene had indeed said that "grass" was inside the sports bag. In the event, the identities of these officers (if any) could not be identified.

33 With respect to ground (c), the appellant's counsel contended that the Judge had relied on para 41 of the appellant's 20 July 2006 statement (reproduced at [24] above) to find that the appellant was wilfully blind as to what was in the sports bag, and had rejected the appellant's evidence that he did not have any opportunity to inspect the sports bag on the ground that he had

not mentioned that fact (*ie*, the lack of opportunity to inspect the bag) in any of his statements to the CNB officers. Counsel argued that the Judge was wrong to reject the appellant's statement that he had no opportunity to check what was in the sports bag as no consideration had been given to the "mindset" of the appellant.

34 With respect to ground (d), it was contended that the Judge was wrong to have relied on the s 17 presumption as he had failed to consider every aspect of the defence with respect to the appellant's lack of knowledge of what was in the sports bag, including, once again, the appellant's mindset in relation to the finding that he was wilfully blind.

35 As to the appellant's mindset in relation to the material facts, counsel contended that:

(a) as soon as Sundar entered the appellant's car with the sports bag and placed it at the back, Sundar was in charge of it, *ie*, it was Sundar, and not the appellant, who was in possession of the sports bag;

(b) there was no allusion to a pre-arranged transaction of a sinister nature involving the appellant when Sundar, upon alighting from the car, responded to the appellant's query on what to do with the sports bag by saying that he (Sundar) or Abang would pick it up later; and

(c) the appellant's mental state after Sundar suddenly alighted was one of panic and suspicion, and given the circumstances after Sundar had alighted and considering that the appellant was then in the midst of driving the car, it could not be argued that the appellant had a reasonable opportunity to inspect the sports bag or make any inquiries as to its contents.

36 Counsel also argued that except for Sundar's statement that incriminated the appellant, there was no evidence to hint or suggest that the delivery undertaken by the appellant had anything to do with anything illegal, let alone drugs generally or cannabis specifically. Counsel referred to the factual background that led to Sundar getting into the appellant's car and putting a sports bag (*ie*, the sports bag) containing cannabis on the back seat, *ie*: the appellant's previous dealings with Anand and Kumar, Kumar's assurance that he did not intend the appellant to deliver anything illegal, the fact that the first delivery made by the appellant was of industrial safety boots, the appellant's meeting with Abang at the restroom of the Hawkerway Food Court on 13 July 2006, Abang's giving the appellant $4,000 to give to Sundar for workmen's pay, *etc* (see [4]–[11] above). Counsel's contention was that the Judge did not give these facts any consideration or thought for the purposes of understanding the appellant's mindset in determining the issues of knowledge and in applying the s 17 presumption.

The Prosecution's response to the appellant's case

37 The Prosecution's response to the appellant's arguments may be summarised as follows:

(a) As the Judge's decision was based on findings of fact, it was trite that an appellate court would not disturb such findings unless they were plainly wrong or clearly arrived at against the weight of the evidence, or unless there was a misdirection as to the law (citing *Public Prosecutor v Victor Rajoo* [1995] 3 SLR(R) 189, *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 and *Tan Kiam Peng*).

(b) The appellant had physical control, and, therefore, physical possession of the sports bag when Sundar alighted from the appellant's car: the appellant was transporting the sports bag back to his workplace to wait for Sundar or Abang to collect it.

(c) The appellant had actual knowledge of what was in the sports bag as he had admitted in his statement made at the trailer park shortly after his arrest that the sports bag contained "grass". His explanation that he had no knowledge of the contents of that bag (and that he had said "grass" when asked about the sports bag's contents merely because he had earlier heard the CNB officers say that the bag contained "grass") was rejected by the Judge: if the appellant had not known what was in the sports bag, he should have maintained his earlier answer to the CNB officers that he was unsure what was in the sports bag (see [15] above). Further, when asked what was in the sports bag, the appellant had not replied that it contained "books" or "safety shoes" or "industrial things", although those were the kinds of things that he was expected to transport for Kumar on 13 July 2006.

(d) The Prosecution had put to the appellant the proposition that he knew for a fact that the sports bag contained cannabis, which was why he replied "grass" when asked what the bag contained (which proposition the appellant denied).

(e) The appellant led the CNB officers on a prolonged car chase with a view to avoiding arrest. His explanation that he had thought he was being followed by "gangsters or thugs" in broad daylight on busy public roads was an affront to common sense as he could have called the police on his handphone for assistance if that had indeed been the case.

(f) Sundar implicated the appellant as to the latter's knowledge of what was in the sports bag four days after his arrest. In contrast, he resiled from that statement implicating the appellant (by recalling that the appellant had said "*kanjapayya*" and not "*ganja*") more than a year after his arrest, and only after he had been charged with and convicted of a non-capital drug offence in connection with his role in the material events. Accordingly, the Judge was entitled to rely on Sundar's first statement, rather than on his testimony in court, to find that the appellant had informed Sundar that the sports bag contained *ganja*.

(g) The Judge was correct in finding that the appellant was wilfully blind about the sports bag containing cannabis on the basis of the appellant's own statements in para 41 of his 20 July 2006 statement, where he said that he had "no intention to see the content inside", that he "did not want to check the [sports] bag as [he] thought it was better not for [him] to see" and that "[he] suspected that something was not right, and the [sports] bag might contain something illegal". What was admitted in this passage constituted wilful blindness as laid down by this court in *Tan Kiam Peng*.

(h) Furthermore, the factual matrix showed that the appellant had such a level of suspicion about what was in the sports bag that he should have inquired about or inspected its contents. The appellant's previous interactions with Kumar and Anand, the surreptitious manner of the receipt and delivery of the items alleged to be "industrial boots" or "books" on the first and second occasions, the appellant's acting on a call from an unidentified person to go to the Hawkerway Food Court, the appellant's failure to clarify with Abang what he meant by "books" and the appellant's agreeing to hand over $4,000 to someone who would deliver a bag to him, taken together, all showed that despite the presence of suspicious circumstances which should have prompted the appellant to look into the sports bag to find out what was in it, he did not do so.

Our decision

Actual knowledge

38 We dismissed this appeal because, having regard to the totality of the evidence adduced at the trial, the Judge was entitled to find that the appellant had actual knowledge that he was trafficking in cannabis and cannabis mixture. In particular, the Judge accepted as voluntary and true the appellant's reply, "The 'Grass'", when the appellant was asked by a CNB officer what was in the sports bag. The Judge rejected the appellant's explanation as to why he had answered "The 'Grass'", instead of maintaining his previous reply that he was not sure what was in the sports bag. The fact that the appellant had replied "The 'Grass'" was not disputed by his counsel *after taking instructions from him* (see the GD at [54]). The appellant's defence was that he answered "The 'Grass'" because he had heard the CNB officers talking among themselves and saying that "grass" was inside the sports bag.

39 The Judge, in evaluating the truth or otherwise of this piece of evidence, also took into account the statement of Sundar made on 20 July 2006, which implicated the appellant. Counsel for the appellant contended that that was a self-serving statement made by Sundar to the CNB officers with a view to exonerating himself from the offence of trafficking. In his testimony given after he had been charged and convicted of a lesser offence, Sundar tried to explain away this statement by saying that what the appellant had said was "*kanjapayya*" and not "*ganja*" in order to tease Sundar. This explanation was also rejected by the Judge – in our view, rightly.

Wilful blindness

40 The Judge found the appellant guilty of the offences charged on the alternative ground that he had the equivalent of actual knowledge that he was transporting cannabis and cannabis mixture because he was wilfully blind to that fact. In making this finding, the Judge referred to para 41 of the appellant's 20 July 2006 statement (reproduced at [24] above), where the appellant explained why he had not wanted to look into the sports bag. The Judge's findings are set out at [66]–[69] of the GD as follows:

> 66 The prosecutor argued that independently of the [appellant's] admission and Sundar's evidence, the [appellant] must be taken to have knowledge of the contents of the [sports] bag because he had deliberately kept a blind eye to that, and that was the effect of actual knowledge, as explained in *Tan Kiam Peng v PP* [2008] 1 SLR 1.
>
> 67 The prosecutor referred to para 41 of the [appellant's] statement of 20 July 2006 where he stated:
>
> > I drove off and headed for Jurong with the intention to go to my workplace then. Afterwhich I would wait for 'Abang' to call me and arrange for a meeting place to pick up the [sports] bag. During this entire time, I did not touch the [sports] bag at all. I did not notice whether the [sports] bag was locked but I had no intention to see the content inside. I did not want to check the [sports] bag as I thought it was better not for me to see. I suspected that something was not right, and the [sports] bag might contain something illegal. I had this suspicion because if the content was legal, they would not need to be so discreet. Only then I realized that they were using me.
>
> 68 Although the [appellant] said in court that he had no opportunity to inspect the [sports] bag as he was trying to flee from the suspected gangsters and thugs in the cars which trailed him. I reject this explanation because he had not mentioned [it] in that statement. In addition to that, a further statement was recorded from him on 7 August 2006 after the statement of 20 July 2006 was read back and explained to him. In this later statement, he made two clarifications to the statement of 20 July 2006, but he again did not mention that he could not examine the [sports] bag because he was fleeing from those persons.

> 69 I therefore find that even if the [appellant] did not have actual knowledge of the contents of the [sports] bag, his wilful blindness has the same legal effect as actual knowledge.

41 We accepted that the circumstances in which the appellant received and took control and custody of the sports bag were highly suspicious. Besides the car chase mentioned at [14] above (which we found did indeed happen, based on the evidence of the CNB officers), there were all the other circumstances mentioned above at sub-para (h) of [37] above. Further, there was another cogent piece of evidence which the Judge did not mention, namely, that at no time while Sundar was in his car did the appellant ask Sundar what was in the sports bag that Sundar put on the back seat.

42 All these circumstances in totality would support a rational inference that the appellant had actual knowledge that the sports bag contained cannabis. This approach would be consistent with the following statement of the law laid down by the Court of Appeal (per Wee Chong Jin CJ) in *Tan Ah Tee and another v Public Prosecutor* [1979–1980] SLR(R) 311 ("*Tan Ah Tee*") at [19] as follows:

> 19 With regard to the question of possession of the contents of the plastic bag it is submitted that the trial judges should have drawn the inference from her evidence that *she did not in fact know* what was contained inside the plastic bag. In our opinion there was no plausible evidence before the trial judges to require them to draw the inference that she was an innocent custodian of the contents of the plastic bag. Indeed, *even if there were no statutory presumptions available to the Prosecution*, once the Prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances in which this was acquired by and remained with the second appellant, *the trial judges would be justified in finding that she had possession of the contents of the plastic bag within the meaning of the Act* [*ie*, the then equivalent of the MDA] unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act. [emphasis added]

43 By "possession … within the meaning of the Act" in the above passage, the court was referring to possession of a bag with knowledge of the contents of that bag. At [23] of *Tan Ah Tee*, the court quoted the speech of Lord Pearce in *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*") at 304–306. Lord Pearce continued at 307–308 of *Warner* to say:

> … There is a very strong inference of fact in any normal case that a man who possesses a parcel also possesses its contents, an inference on which a jury would in a normal case be justified in finding possession. A man who accepts possession of a parcel normally accepts possession of the contents.
>
> But that inference can be disproved or shaken by evidence that, although a man was in possession of a parcel, he was completely mistaken as to its contents and would not have accepted possession had he known what kind of thing the contents were. ... [I]f, though unaware of the contents, he did not open them at the first opportunity to ascertain (as he was entitled to do in his case) what they were, the proper inference is that he was accepting possession of them. (It would be otherwise if he had no right to open the parcel.) Again, if he suspected that there was anything wrong about the contents when he received the parcel, the proper inference is that he was accepting possession of the contents by not immediately verifying them. …

44 In our view, the inference of actual knowledge raised by the strong circumstantial evidence in this case – including, in particular, the appellant's failure to ask Sundar what was in the sports bag and to see what was in the sports bag when he had many opportunities to do so – was consistent

with the appellant's reply that the sports bag contained "grass" (at [38] above). We agreed with the Judge's finding (see [40] above) that the appellant had the opportunity to see what was in the sports bag. The evidence showed beyond any reasonable doubt that he had many opportunities to see what was in the sports bag, if he had wanted to. The first occasion was at the SAS Temple when Sundar brought the sports bag to the appellant's car. Sundar asked the appellant whether he should put the sports bag in the boot, whereupon the appellant told him to leave it on the back seat (see para 39 of the appellant's 20 July 2006 statement (reproduced at [14] of the GD)). The appellant could have inspected the sports bag before Sundar put it on the back seat or before driving off. Another occasion arose when, according to him, Sundar suddenly wanted to get out of his car, which caused him to be suspicious of Sundar's conduct. Instead of looking inside the sports bag at this point, the appellant drove off to his destination by taking a circuitous (and potentially risky) route. At any time during his car journey thereafter, the appellant could have stopped the car to see what was in the sports bag (since on his own account there was no car chase by the CNB officers). His stated reason that he dared not stop because he thought he was being tailed by gangsters or thugs obviously was not credible to the Judge, or to us.

Conclusion

45 For the reasons given above, we dismissed the appellant's appeal as we were satisfied with the Judge's finding that the appellant had actual knowledge that the sports bag contained cannabis and cannabis mixture.