Tang Hai Liang *v* Public Prosecutor
[2011] SGCA 38

Case Number	: Criminal Appeal No 26 of 2010
Decision Date	: 02 August 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Luke Lee Yoon Tet (Luke Lee & Co) and Wong Seow Pin (S P Wong & Co) for the appellant; Mohamed Faizal, Han Ming Kuang and Joel Chen (Attorney-General's Chambers) for the respondent.
Parties	: Tang Hai Liang — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2011] SGHC 1.]

2 August 2011

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 The appellant, Tang Hai Liang ("the Appellant"), a 33-year-old Singaporean, was convicted in the High Court of one charge of trafficking in a controlled drug and sentenced to the mandatory death sentence under s 33 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"). The charge against him ("the Charge") stated that at the material time, he had 136 packets of granular substance containing not less than 89.55g of diamorphine (a controlled drug specified in Class A of the First Schedule to the Act) in his possession for the purpose of trafficking, and that he had thereby committed the offence of trafficking under s 5(1)(*a*) read with s 5(2) of the Act. [note: 1]

2 The Appellant appealed to this court against his conviction and sentence. The main ground of appeal stated in the Appellant's petition of appeal dated 7 March 2011 was that the trial judge ("the Judge"), whose grounds of decision are set out in *Public Prosecutor v Tang Hai Liang* [2011] SGHC 1 ("the High Court GD"), had misdirected his mind when he applied the presumptions in ss 17(*c*) and 18(2) of the Act ("the ss 17(*c*) and 18(2) presumptions") conjunctively and, thus, the Appellant's conviction was, in the circumstances, flawed. However, at the hearing of the appeal, counsel for the Appellant stated that although the Judge had made a fundamental error in his application of the ss 17(*c*) and 18(2) presumptions, he (counsel for the Appellant) had to concede on the evidence that there was, nevertheless, no miscarriage of justice and that the Appellant's conviction ought to stand. This was because the Judge had expressly stated that even without the aid of any of the presumptions in ss 17 and 18 of the Act, there was ample evidence to prove that the Appellant: (a) was in possession of the 136 packets of granular substance referred to in the Charge ("the 136 Packets"); (b) knew the nature of the granular substance in those packets; and (c) intended to sell the granular substance. Counsel for the Appellant further confirmed that he made this submission with the Appellant's consent.

3 We appreciated the candour of counsel for the Appellant. On our part, we had examined the High Court GD and the evidence before the Judge, and were satisfied that the evidence was clear as

to the Appellant's: (a) possession of the diamorphine contained in the 136 Packets; (b) knowledge of the diamorphine; and (c) intention to traffic in the diamorphine. Thus, even without the aforesaid concession by the Appellant's counsel, we would have dismissed this appeal because there was sufficient evidence to sustain the Appellant's conviction beyond a reasonable doubt. These grounds of decision are issued primarily to clarify some parts of the High Court GD in so far as they relate to the application of the ss 17(*c*) and 18(2) presumptions. Specifically, we will address the issue of whether the Judge erred in his application of these presumptions ("Issue 1"). For completeness, we will also examine whether the Judge was right in finding that the Prosecution had proved the Charge against the Appellant beyond a reasonable doubt ("Issue 2").

4 We should, at this juncture, explain that "diamorphine" is also otherwise known as "heroin", and the Central Narcotics Bureau ("CNB") officers involved in the present case used the two terms interchangeably. We will do the same in these grounds of decision.

The facts

The Appellant's arrest

5 The Judge accepted (at [2] of the High Court GD) that the Prosecution's closing submissions accurately encapsulated the facts surrounding the Appellant's arrest on 15 April 2009. Those facts were not disputed because the testimonies of the CNB officers regarding the circumstances of the Appellant's arrest as well as the seizure of the 136 Packets and other drug paraphernalia from the Appellant's residence were not challenged by the Appellant at the trial. The Appellant elected to remain silent at the close of the Prosecution's case and did not call any evidence in his defence.

6 The facts surrounding the Appellant's arrest are as follows. On 15 April 2009, at or about 1.05pm, a party of CNB officers, acting on information received, set out on an operation that led to the arrest of the Appellant and one Lim Kee Wan. The party of CNB officers comprised:

(a) Assistant Superintendent Teng Jit Sun ("ASP Teng");

(b) Inspector Tan Jun Hao Eugene ("Insp Eugene Tan");

(c) Senior Staff Sergeant Heng Chin Kok ("SSSgt Heng");

(d) Woman Staff Sergeant Khoo Feng Yen ("W/SSgt Khoo");

(e) Staff Sergeant Ong Teng Wei ("SSgt Ong");

(f) Staff Sergeant Desmond Tan Leong Poh ("SSgt Desmond Tan");

(g) Sergeant See Lin Shan ("Sgt See");

(h) Staff Sergeant Lee Keng Hiang; and

(i) Sergeant Derek Wong ("Sgt Derek").

7 Upon his arrest, the Appellant was searched by SSgt Ong, who found five blue tablets (believed to be Dormicum) and one bunch of keys on him. The Appellant was thereafter escorted by some of the aforesaid CNB officers (namely, ASP Teng, Insp Eugene Tan, W/SSgt Khoo, Sgt See, Sgt Derek, SSgt Desmond Tan and SSgt Ong (collectively, "the Raid Party")) to his residence at Block 133 Lorong Ah Soo, #02-428 ("the Flat"). The Raid Party gained access to the Flat by using one of the keys in the bunch of keys found on the Appellant.

The drugs found in the Flat

The Appellant's bedroom

8 Having entered the Flat, the Appellant, as requested, led the Raid Party to his bedroom ("the Bedroom"). In the presence of the Appellant, Sgt Derek searched the air-conditioner in the Bedroom and found (*inter alia*): (a) one Ziploc bag containing two packets of granular substance believed to be heroin; (b) one Ziploc bag containing five packets of granular substance believed to be heroin; and (c) one digital weighing scale. [note: 2] Upon being queried by Sgt Derek, the Appellant confirmed in Mandarin that the items were his. [note: 3] Sgt Derek then handed the items over to SSSgt Heng for safekeeping and informed ASP Teng of what he had found. [note: 4]

The kitchen

9 Shortly after, the Appellant was brought into the kitchen of the Flat ("the Kitchen"). ASP Teng searched the Kitchen in the presence of the Appellant and recovered a vacuum cleaner stored in a kitchen cabinet. [note: 5] In the vacuum cleaner, five big packets, each containing 20 smaller packets of granular substance, and one big packet containing 19 smaller packets of granular substance were found.

10 At this point, SSgt Ong entered the Kitchen and ASP Teng instructed him to take over the duty of escorting the Appellant in the Kitchen. [note: 6] SSgt Ong then asked the Appellant if he had anything else to surrender. [note: 7] After thinking for a while, the Appellant told SSgt Ong that there was another packet and pointed to the cooker hood in the Kitchen. SSgt Ong searched the cooker hood and a packet fell onto the kitchen stove. [note: 8] This packet contained ten smaller packets of granular substance. [note: 9]

11 In total, 136 packets of granular substance suspected to contain heroin (*ie*, the 136 Packets defined at [2] above) were found in the Flat. The 136 Packets were safeguarded by SSSgt Heng. At 4.10pm, the investigation officer, Inspector Aaron Tang Zhixiong ("I/O Aaron Tang"), assisted by Inspector Chee Tuck Seng and Senior Staff Sergeant Stanley Tan Beng Guan ("SSSgt Stanley Tan"), arrived at the Flat. SSSgt Heng handed the 136 Packets to SSSgt Stanley Tan, who in turn safeguarded them until he handed them to I/O Aaron Tang at the Police Cantonment Complex ("PCC") at about 7.25pm. At about 8.15pm, the Appellant was brought to the PCC Exhibit Management Room.

The 136 Packets were weighed in the Appellant's presence and then placed in a safe.

The analysis results from the Health Sciences Authority

12 All the 136 Packets were sent to the Health Sciences Authority ("HSA") for analysis. Analyst Lim Jong Lee Wendy ("Analyst Lim") conducted the analysis and reported (via a series of nine certificates issued under s 16 of the Act ("Analyst Lim's s 16 certificates")) [note: 10] that the 136 Packets contained not less than 89.55g of diamorphine (as reflected in the Charge). At the trial, the Appellant did not contest the findings set out in Analyst Lim's s 16 certificates. Also adduced in evidence at the trial was another certificate issued by Analyst Lim under s 16 of the Act stating that the digital weighing scale found in the air-conditioner of the Bedroom was stained with diamorphine. [note: 11]

13 A blood sample taken from the Appellant and various items seized from the Flat, including the 136 Packets, were sent for DNA testing. Some of the items were found to contain the Appellant's DNA, in particular: (a) the Ziploc bag containing Exhibit P162 (one of the five big packets, each containing 20 smaller packets of granular substance, recovered from the vacuum cleaner in the Kitchen (see [9] above)); (b) the grill of the cooker hood where Exhibit P164 (the packet containing ten smaller packets of granular substance mentioned at [10] above) was hidden; and (c) the paper bag which contained Exhibits P77 and P78 (the two Ziploc bags found in the air-conditioner of the Bedroom (see [8] above)). [note: 12] For completeness, we ought to mention that the DNA tests carried out by HSA could not confirm the presence of the Appellant's DNA in many of the items tested. However, in re-examination, Dr Christopher K C Syn ("Dr Syn"), a senior forensic scientist at HSA, testified that the lack of the Appellant's DNA in those items was not conclusive evidence that the Appellant did not have contact with those items. [note: 13]

The Appellant's statements

14 In total, six statements were taken from the Appellant after his arrest. There was one relatively contemporaneous statement taken by a CNB officer (*viz*, Insp Eugene Tan) on the day of the arrest (*viz*, on 15 April 2009) itself. The other five statements were taken by I/O Aaron Tang between 16 April 2009 and 30 October 2009. Of those five statements, one was a "cautioned" statement recorded under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"), while the other four were what we will term "s 121(1) long statements" (*ie*, statements recorded under s 121(1) of the CPC). The table below tabulates the chronology of the six statements taken from the Appellant:

No	Statement	Date and Time Recorded
1	"Contemporaneous" statement taken by Insp Eugene Tan [note: 14]	On 15 April 2009 at or about 3.20pm
2	"Cautioned" statement taken by I/O Aaron Tang pursuant to s 122(6) of the CPC [note: 15]	On 16 April 2009 at 1.30am
3	First s 121(1) long statement taken by I/O Aaron Tang [note: 16]	On 20 April 2009 at 8.44pm
4	Second s 121(1) long statement taken by I/O Aaron Tang [note: 17]	On 21 April 2009 at 10.40am

5	Third s 121(1) long statement taken by I/O Aaron Tang [note: 18]	On 21 April 2009 at 3.10pm
6	Fourth s 121(1) long statement taken by I/O Aaron Tang [note: 19]	On 30 October 2009 at 11.35am

15 Having set out the material facts, we now turn to discuss the two issues outlined at [3] above, beginning with Issue 1 (*viz*, whether the Judge erred in his application of the ss 17(*c*) and 18(2) presumptions).

Issue 1: Did the Judge apply the ss 17(*c*) and 18(2) presumptions wrongly?

The Appellant's argument

16 The Appellant argued that the Judge, in coming to his finding of guilt, applied the ss 17(*c*) and 18(2) presumptions conjunctively and, thus, wrongly. Hence, the Appellant's conviction was improper in the circumstances.

The relevant provisions of the Act

17 The relevant parts of ss 17 and 18 of the Act for the purposes of the present appeal read as follows:

> **Presumption concerning trafficking**
>
> **17**. Any person who is proved to have had in his possession more than —
>
> …
>
> (*c*) 2 grammes of diamorphine …
>
> …
>
> … shall be presumed to have had that drug in [his] possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.
>
> **Presumption of possession and knowledge of controlled drugs**
>
> **18**.—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> (*b*) the keys of anything containing a controlled drug;
>
> (*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; or
>
> (*d*) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, unless the contrary is proved, be presumed to have had that drug in his possession.

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

…

Under s 17(*c*) of the Act, when a person is proved to have had in his possession more than 2g of diamorphine, he is presumed to have had that drug in his possession for the purpose of trafficking unless he proves that his possession of the drug was not for that purpose. Under s 18(2) of the Act, a person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of the drug unless the contrary is proved.

The law on the constraints in applying the ss 17(c) and 18(2) presumptions

18 The Appellant is correct to contend that *in law*, the ss 17(*c*) and 18(2) presumptions *cannot* be applied conjunctively. The position regarding the relationship between these two presumptions was decisively and clearly stated by this court in *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 ("*Mohd Halmi*") at [8] (in relation to ss 17 and 18 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the 2001 MDA"), which are *in pari materia* with ss 17 and 18 of the Act) as follows:

> ***The presumption in s 17 applies only in situations where a person is, in the words of this court in*** Lim Lye Huat Benny v PP ***[1995] 3 SLR(R) 689, "proved" to be in possession of controlled drugs, but apart from mere possession, had not done any of the acts constituting trafficking as set out in s 2*** . *It is contrary to the principles of statutory interpretation, and even more so, the interpretation of a criminal statute, especially one in which the death penalty is involved, to combine presumptions from two sections in an Act each serving a different function* – in this case, shifting the burden of proof in one with regard to possession and the other, in regard to trafficking. Possession and trafficking are distinct offences under the [2001 MDA], although possession may lead to the more serious charge of trafficking, while … trafficking itself might conceivably be committed without actual possession. *The danger of mixing the s 17 and s 18 presumptions was anticipated by this court in some of its previous decisions which were not brought to the attention of the trial judge below* because this was not an issue before him. The decision of this court in *Lim Lye Huat Benny v PP* expressed the view that ***for the s 17 presumption to apply, it must first be proved that the accused knew that he was in possession of the drugs*** . [emphasis added in italics and bold italics]

19 The Court of Appeal further stressed at [10] of *Mohd Halmi* that the presumption in s 17 of the 2001 MDA (the then equivalent of s 17 of the Act):

> … must be read strictly. It is a provision to facilitate the application of s 5(2), whereas s 18 concern[s] presumptions in respect of the possession of controlled drugs, which (possession) is another principal (though not capital) offence under the [2001 MDA]. *The Legislature would have made it clear had it wanted s 5(2) to be further reinforced by means of s 18(2). In the absence of such an express intention, we think it best to keep the presumptions under s 18 separate from that in s 17, as has always been the case*. [emphasis added]

Therefore, to convict an accused of a charge of trafficking by possessing a controlled drug for the purpose of trafficking (*ie*, a charge of trafficking under s 5(1)(*a*) read with s 5(2) of the Act), a trial judge can only apply either the presumption under s 17(*c*) of the Act ("the s 17(*c*) presumption") or

the presumptions under s 18 thereof, but not both. If the presumption under s 18(2) of the Act of knowledge of the nature of a controlled drug ("the s 18(2) presumption") is to be applied, there must first be evidence sufficient to prove trafficking in the controlled drug in question on the part of the accused within the meaning of s 2 of the Act. Alternatively, if the presumption of trafficking under s 17 is to be applied, there must first be evidence sufficient to *prove possession and knowledge* on the part of the accused without having to rely on the presumptions in, respectively, s 18(1) (*vis-à-vis* possession) and s 18(2) (*vis-à-vis* knowledge).

Assessment of the Judge's approach

20 Regarding the s 18(2) presumption, the Judge stated at [8] of the High Court GD:

> There was no question that the [Appellant] was in possession of the packets of drugs seized. *Pursuant to s 18(2) of the [Act], the presumption therefore arose that he knew the nature of the drug. In any event, the [Appellant] clearly knew the nature of the controlled drug he was in possession of*. The [Appellant] had admitted that the packets contained heroin when questioned by the CNB officers. [emphasis added]

21 Furthermore, regarding the s 17(*c*) presumption, the Judge held at [9] of the High Court GD:

> As the packets seized [from the Flat] were found to contain far more than 2 grams of diamorphine, *the presumption under s 17(c) of the [Act] would also arise* that the [Appellant] had the drug in his possession for the purposes of trafficking … *Even in the absence of the presumption, I would find that the [Appellant] was trafficking in diamorphine within the meaning of s 2 of the [Act]*. [emphasis added]

22 In the above two passages of the High Court GD, the Judge alluded to the ss 17(*c*) and 18(2) presumptions. But, he did not explicitly state that the two presumptions were not to be applied conjunctively. This omission was the sole basis upon which the Appellant sought to argue that the Judge erred in his application of those two presumptions and, accordingly, the conviction recorded against the Appellant was unsafe. While we recognised that the Judge could have been clearer in his treatment of the ss 17(*c*) and 18(2) presumptions, we were satisfied, reading the two aforesaid passages of the High Court GD in their proper context, that the Judge *did not* in fact rely on either the s 17(*c*) presumption or the s 18(2) presumption in finding the Appellant guilty of the Charge. It would be noted that at [8] of the High Court GD, the Judge, after alluding to s 18(2) of the Act, stated that "*[i]n any event*, the [Appellant] clearly knew the nature of the controlled drug he was in possession of" [emphasis added]. Similarly, at [9] of the High Court GD, the Judge, after referring to s 17(*c*) of the Act read with s 2, stated that "*[e]ven in the absence of the [s 17(*c*)] presumption*, [he] would find that the [Appellant] was trafficking in diamorphine within the meaning of s 2" [emphasis added]. Thereafter, the Judge referred to various statements of the Appellant to show that the latter had intended to sell the diamorphine found in his possession. All things considered, what the High Court GD showed was that the Judge only recognised the applicability of the ss 17(*c*) and 18(2) presumptions, but did not actually apply them in convicting the Appellant of the Charge. From the High Court GD, it was obvious to us that the Judge clearly found that the evidence before him was strong enough to prove – *without reliance on either the s 17(*c*) presumption or the s 18(2) presumption* – both the fact that the Appellant knew the nature of the controlled drug in his possession, as well as the fact that the Appellant intended to traffic in that drug within the meaning of s 2 of the Act.

23 By way of comparison, we would refer to the case of *Public Prosecutor v Teo Yeow Chuah* [2003] SGHC 306 ("*Teo Yeow Chuah*"), where the trial judge dealt with the then equivalent of ss 17

and 18 of the Act in this manner (at [152]):

> In the circumstances, I found that *the accused had failed to discharge the presumption under s 18 [of the 2001 MDA], and the consequent presumption under s 17 applied*. I add that, in my view, the prosecution would have proved its case beyond a reasonable doubt even without the aid of the presumptions in the light of the overwhelming evidence against the accused. [emphasis added]

Unlike the present case, it is clear that in *Teo Yeow Chuah*, the trial judge erroneously applied the then equivalent of the ss 17(*c*) and 18(2) presumptions conjunctively. Notwithstanding that error, this court, on hearing the appeal against the trial judge's decision, dismissed the appeal as there was overwhelming evidence to conclude that the accused was in possession of the drugs in question for the purpose of trafficking in them (see *Teo Yeow Chuah v Public Prosecutor* [2004] 2 SLR(R) 563 at [34]–[36]).

24 From our examination of the High Court GD, we were satisfied that the Judge was conscious that he could not apply the s 17(*c*) presumption in conjunction with the s 18(2) presumption. Given that the Judge did not have to rely on either of these presumptions at all, he might have thought it unnecessary to say more. In this regard, this case illustrates the need for a trial judge to be more explicit when he discusses the operation of ss 17(*c*) and 18(2) of the Act. We are of the view that in order to avoid the unnecessary controversies which arose in the instant case, it would be advisable for a trial judge, in discussing the ss 17(*c*) and 18(2) presumptions in his written judgment or grounds of decision, to expressly refer to the principle established in *Mohd Halmi* that these two presumptions are not to be applied conjunctively, or to at least use words to indicate that he is conscious of that principle.

Issue 2: Was the Judge correct in finding that the Prosecution had proved the Charge against the Appellant beyond a reasonable doubt?

25 We now turn to Issue 2, *viz*, whether the Judge was right in finding that the Prosecution had proved the Charge against the Appellant beyond a reasonable doubt. For this question to be answered in the affirmative, the Prosecution must have proved beyond a reasonable doubt the three main elements of the offence set out in the Charge, namely: (a) the Appellant's possession of the diamorphine recovered from the Flat; (b) the Appellant's knowledge of the diamorphine; and (c) the Appellant's possession of the diamorphine for the purpose of trafficking. We were satisfied that the Prosecution had discharged this burden in view of the following factors:

(a) the statements taken from the Appellant, as listed at [14] above;

(b) the Defence's cross-examination of the Prosecution's witnesses at the trial; and

(c) the Defence's closing submissions at the trial.

We will now elaborate on each of these factors *seriatim*.

The Appellant's statements

The Appellant's "contemporaneous" statement taken by Insp Eugene Tan

26 The Appellant's "contemporaneous" statement mentioned at [14] above was recorded by a CNB officer (*viz*, Insp Eugene Tan) during the second half of the search of the Flat at around 3.20pm on

15 April 2009. The questioning was carried out in the Kitchen, with SSgt Ong acting as the escorting officer. [note: 20] In the court below, the Appellant contested the admissibility of his "contemporaneous" statement on the ground that CNB officers had no power in law to take statements from him. The Judge rightly dismissed this argument (at [11] of the High Court GD) because a CNB officer is clearly endowed, pursuant to s 32 of the Act, with all the powers that a police officer has under the CPC in relation to an investigation into a seizable offence. These powers include the power to take statements from an accused person pursuant to s 121 of the CPC (see *Public Prosecutor v Azman bin Mohamed Sanwan and others* [2010] SGHC 196 at [22]).

27 The Appellant's "contemporaneous" statement was recorded in English even though Insp Eugene Tan questioned the Appellant in Mandarin. We noted, however, that the answers given by the Appellant were read over to him in Mandarin, and he affirmed the contents of his "contemporaneous" statement to be true. The substance of that statement was as follows: [note: 21]

> Q1) What are these? ([The Appellant] shown numerous packets containing white granular substances and some tablets in red and silver packaging)
>
> A1) The white granular substance in the packets is Heroin and the tablets in silver and red packaging are Erimin-5.
>
> Q2) Who does it belong to?
>
> A2) They belong to me.
>
> Q3) How many packets of Heroin and Erimin-5 are there?
>
> A3) I have roughly 137 packets of Heroin and 50 slabs of Erimin-5.
>
> Q4) What are they meant for?
>
> A4) They are meant for selling as well as for my own consumption.
>
> Q5) How much do you sell for each packet of Heroin and each slab of Erimin-5?
>
> A5) I sell for S$220 per packet of Heroin and S$50 per slab of Erimin-5.

It would be noted that in the "contemporaneous" statement, the Appellant clearly admitted to the three main elements of possession of the diamorphine found in the Flat, knowledge of the diamorphine and possession of the diamorphine for the purpose of trafficking. In fact, the Judge was particularly cognisant of the fact that the Appellant had "estimated with accuracy the number of packets of drugs in the [Flat] before these were discovered, seized and counted by the CNB officers" (see [8] of the High Court GD). Specifically, the Appellant had estimated that he had 137 packets of heroin in the Flat, as compared to the actual total of 136 packets.

28 As Insp Eugene Tan did not inform the Appellant about his right to remain silent (a requirement when recording a statement under s 121(1) of the CPC), this could affect the weight that should be accorded to the Appellant's "contemporaneous" statement. However, the reliability of that statement was corroborated by the Appellant making the same admissions consistently in his subsequent "cautioned" statement and s 121(1) long statements. The Appellant also affirmed again the contents of his "contemporaneous" statement in his third s 121(1) long statement. Indeed, even if the Appellant's "contemporaneous" statement were disregarded altogether, the evidence from the

Appellant's subsequent "cautioned" statement and s 121(1) long statements was, as we will show below, more than sufficient to prove the Charge beyond a reasonable doubt.

The Appellant's "cautioned" statement and s 121(1) long statements taken by I/O Aaron Tang

29 We would first underscore the point that the Appellant did not contest the voluntary nature of the "cautioned" statement and the four s 121(1) long statements taken by I/O Aaron Tang. All those statements were clearly admissible under s 122(5) of the CPC. They were taken with the Appellant speaking in Hokkien through the interpretation of an interpreter attached to the CNB, Wong Png Leong ("Interpreter Wong"). Interpreter Wong's statement dated 23 June 2010 ("Interpreter Wong's statement") described the process of how the aforesaid statements were recorded, explained to and confirmed by the Appellant. Significantly, the Appellant did not contest Interpreter Wong's statement; neither did he cross-examine Interpreter Wong at the trial. [note: 22]

30 In his "cautioned" statement and s 121(1) long statements, the Appellant consistently admitted that: (a) the packets of granular substance found in the air-conditioner in the Bedroom as well as in the vacuum cleaner and the cooker hood in the Kitchen belonged to him; (b) he knew that those packets of granular substance contained heroin; and (c) he kept the packets of granular substance for the purpose of selling them (*ie*, for the purpose of trafficking as defined in s 2 of the Act). As the Judge noted at [9] of the High Court GD, the Appellant "[gave] a detailed explanation as to how [the aforesaid air-conditioner, cooker hood and vacuum cleaner] served different functions in his drug supply chain and [stated] that he had some regular customers".

31 Furthermore, in its closing submissions at the trial, the Prosecution quite rightly pointed out that: [note: 23]

> … [T]he [Appellant] *did not advance even a single question* against either [I/O] Aaron Tang or [Interpreter Wong] … that would, in any way, question or raise any conceivable doubt as to the *weight* that should be placed on the statements given [to I/O Aaron Tang]. [emphasis in original]

Therefore, the Appellant's "cautioned" statements and s 121(1) long statements were sufficient (indeed, more than sufficient, as we stated at [28] above) to prove the Charge against the Appellant beyond a reasonable doubt. Moreover, the DNA test results in respect of some of the items sent to HSA for DNA testing (such as the cooker hood grill (see [13] above)) and Analyst Lim's certificate confirming the presence of diamorphine on the digital weighing scale (set [12] above) corroborated what the Appellant said in his statements. As the Appellant chose not to call any evidence in his defence, the Prosecution's case stood unrebutted.

The Defence's cross-examination of the Prosecution's witnesses

32 Turning now to the Defence's cross-examination of the Prosecution's witnesses at the trial, although defence counsel cross-examined 13 out of the Prosecution's 28 witnesses, the cross-examination of those witnesses was extremely brief – only around three to ten questions were posed to each of the witnesses, and the questions asked did not challenge the truth of their statements. The cross-examination of the HSA officers involved in the present case – namely, Wong Hang Yee [note: 24] (the senior forensic scientist who carried out the DNA test on the blood sample taken from the Appellant (see [13] above)), Dr Syn [note: 25] and Analyst Lim [note: 26] – consisted largely of questions that clarified the nature of the analysis which these officers carried out and did not challenge the veracity of their findings at all. For the cross-examination of the CNB officers who made up the Raid Party, [note: 27] the questions posed similarly did not challenge the truth of these officers'

testimonies. Strangely, most of the questions centred on whether CNB officers had the power to take statements from the Appellant, which were questions of law.

33 At [12] of the High Court GD, the Judge addressed one of the sharper exchanges that took place during the Defence's cross-examination of the Prosecution's witnesses. This related to the cross-examination of I/O Aaron Tang in relation to his conditioned statement dated 20 June 2010 which contained his sworn evidence of his conduct of the investigation. [note: 28] In our view, the Judge rightly dismissed the Defence's suggestion that "it was crucial that [I/O] Aaron Tang did not include in his own conditioned statement the weights of the [drug] exhibits that he recorded in his investigation diary" (see [12] of the High Court GD). The Judge accepted that I/O Aaron Tang's explanation for this omission (namely, that the weights of the drug exhibits recorded in his investigation diary were not as accurate as the weights recorded in HSA's reports) was reasonable. The Judge also pointed out that in any event, I/O Aaron Tang had rectified the omission by providing (during cross-examination) the weights of the drug exhibits recorded in his investigation diary. In addition, the Judge noted (likewise at [12] of the High Court GD) that "[c]ounsel did not highlight any particular aspect of [I/O] Aaron Tang's evidence that ought to be given less weight as a result of his omission".

34 In our view, there was a further reason why the Judge was right to dismiss the aforesaid argument of the Defence. As this court noted in *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 ("*Nguyen Tuong Van*"), there may be discrepancies between the weight of drugs recorded by a CNB investigation officer and that recorded by a HSA officer due to the difference in "the purpose of the weighing by each officer and the different levels of their expertise" (at [38]). For a CNB investigation officer, scientifically acceptable accuracy is not required. Instead, "what is crucially important is to ensure that there [is] no mixing of the drug exhibits or … tampering of the contents" (see likewise *Nguyen Tuong Van* at [38]). Significantly, in the present case, the Appellant did not make any allegation that the 136 Packets had been tampered with, and also did not challenge the CNB officers' testimonies regarding the chain of custody of those packets.

The Defence's closing submissions at the trial

35 Finally, we would highlight the fact that the Defence, in its closing submissions at the trial, did not make any substantive challenge to the Prosecution's case against the Appellant. Quoted below are the Defence's written closing submissions in their entirety: [note: 29]

> This is a case where Defence Counsels [*sic*] face great difficulty in preparing submissions.
>
> At the trial there were formal witnesses whose evidence [was] admitted (by agreement) and whose attendance [was] dispensed with.
>
> The members of the CNB raiding party [*ie*, the Raid Party] gave evidence. The evidence was properly documented.
>
> Statements were recorded from the [Appellant]. *The [Appellant] did not challenge the voluntariness nor the truth of the statements*. The quantity of the drugs found at the [Flat] was also not challenged. (No instructions were ever given to Defence Counsels [*sic*] to challenge despite several visits to the [Appellant] at Changi [Prison].)
>
> At the end of the Prosecution['s] case the Court found [the Appellant] had a case to answer and read him his rights. The [Appellant] elected not to give evidence.

> The [Appellant] in his statements had admitted he was a heavy consumer of drugs and that he only had a handful of clients to whom he sold drugs.
>
> Defence Counsels [*sic*] would plead [with] the Court [to] weigh this point and the fact that the [Appellant] is a young person and consider exercising a discretion to give the [Appellant] a prison term.
>
> [emphasis added]

36 While the Defence's closing submissions mentioned that the Appellant was "a heavy consumer of drugs", [note: 30] there was no attempt by the Defence to make out a case that all or most of the diamorphine in the 136 Packets was for the Appellant's own consumption. In fact, the picture which emerged from the Appellant's four s 121(1) long statements taken by I/O Aaron Tang was that the Appellant would consume only a small portion of the heroin stored in the Flat and would sell the bulk of the heroin. Moreover, as mentioned earlier (see [5] and [31] above), the Appellant elected not to give evidence when called upon to enter his defence at the trial.

37 The Judge did not draw any adverse inference against the Appellant for remaining silent at the trial. In our view, there was hardly any need for the Judge to do so. The Prosecution's evidence against the Appellant effectively stood unchallenged and it amply proved the Charge against him beyond any reasonable doubt.

Conclusion

38 In conclusion, we would reiterate that our examination of the High Court GD shows that the Judge did not apply the ss 17(*c*) and 18(2) presumptions in convicting the Appellant of the Charge. In any event, on the evidence, we found that the Prosecution had proved the Charge against the Appellant beyond a reasonable doubt without having to rely on either of the aforesaid presumptions. We therefore dismissed this appeal.

[note: 1] See the Record of Proceedings ("ROP") vol 2, p 1.

[note: 2] See para 8 of Sgt Derek's statement dated 21 June 2010 ("Sgt Derek's statement") (at ROP vol 2, p 225).

[note: 3] See para 9 of Sgt Derek's statement (at ROP vol 2, p 225).

[note: 4] See para 10 of Sgt Derek's statement (at ROP vol 2, p 225).

[note: 5] See para 12 of ASP Teng's statement dated 21 June 2010 (at ROP vol 2, p 203).

[note: 6] See para 10 of SSgt Ong's statement dated 21 June 2010 ("SSgt Ong's statement") (at ROP vol 2, p 219).

[note: 7] See para 11 of SSgt Ong's statement (at ROP vol 2, p 219).

[note: 8] See para 10 of SSSgt Heng's statement dated 21 June 2010 (at ROP vol 2, p 211).

[note: 9] See, *inter alia*, para 7 of the Prosecution's opening address dated 8 November 2010 (at ROP vol 2, p 9) and the photograph at ROP vol 2, p 31.

[note: 10] See ROP vol 2, pp 88–96.

[note: 11] See ROP vol 2, p 97.

[note: 12] See ROP vol 2, pp 100–113.

[note: 13] See the certified transcript of the notes of evidence ("the NE") for Day 1 of the trial at p 32 (in ROP vol 1).

[note: 14] See ROP vol 2, pp 123–125.

[note: 15] See ROP vol 2, pp 126–129.

[note: 16] See ROP vol 2, pp 130–136.

[note: 17] See ROP vol 2, pp 153–159.

[note: 18] See ROP vol 2, pp 180–183.

[note: 19] See ROP vol 2, p 184.

[note: 20] See para 13 of SSgt Ong's statement (at ROP vol 2, p 219).

[note: 21] See ROP vol 2, pp 123–124.

[note: 22] See p 12 of the NE for Day 3 of the trial (in ROP vol 1).

[note: 23] See para 12 of the Prosecution's closing submissions dated 19 November 2010 (at ROP vol 2, p 287).

[note: 24] See pp 15–22 of the NE for Day 1 of the trial (in ROP vol 1).

[note: 25] See pp 25–29 of the NE for Day 1 of the trial (in ROP vol 1).

[note: 26] See pp 4–9 of the NE for Day 3 of the trial (in ROP vol 1).

[note: 27] *Vis-à-vis* the cross-examination of ASP Teng, see pp 43–50 of the NE for Day 1 of the trial; *vis-à-vis* the cross-examination of Insp Eugene Tan, see pp 53–54 of the NE for Day 1 of the trial; *vis-à-vis* the cross-examination of W/SSgt Khoo, see pp 4–6 of the NE for Day 2 of the trial; *vis-à-vis* the cross-examination of SSgt Ong, see pp 9–12 of the NE for Day 2 of the trial; *vis-à-vis* the cross-examination of Sgt Derek, see pp 16–17 of the NE for Day 2 of the trial; and *vis-à-vis* the cross-examination of Sgt See, see pp 20–22 of the NE for Day 2 of the trial (all the aforesaid pages of the NE are in ROP vol 1). The last member of the Raid Party, SSgt Desmond Tan, was not cross-examined at all (see p 18 of the NE for Day 2 of the trial, which is likewise in ROP vol 1).

[note: 28] See pp 19–30 of the NE for Day 3 of the trial (in ROP vol 1); see also ROP vol 2, pp 256–281 for I/O Aaron Tang's conditioned statement dated 20 June 2010.

[note: 29] See ROP vol 2, pp 301–302.

[note: 30] See ROP vol 2, p 302.