Public Prosecutor v Teo Yeow Chuah
[2003] SGHC 306

Case Number : CC 26/2003

Decision Date : 06 December 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Jaswant Singh and Terence Tay (Attorney-General's Chambers) for prosecution; S S Dhillon (Dhillon Dendroff and Partners) [briefed] and Chen Chee Yen (Tan Peng Chin LLC) [assigned] for accused

Parties : Public Prosecutor — Teo Yeow Chuah

Criminal Procedure and Sentencing – Charge – Particulars – Whether charge must state fact of death penalty where capital punishment was involved – Whether accused was aware he was facing capital punishment.

Criminal Procedure and Sentencing – Statements – Admissibility – Whether accused's long statements were fabricated – Whether accused's long statements accurately represented what he had said – Whether accused suffering from withdrawal symptoms when statement pursuant to s 122(6) Criminal Procedure Code (Cap 68, 1985 Rev Ed) was taken.

Introduction

1 The accused Teo Yeow Chuah was charged with various offences under the Misuse of Drugs Act, Cap 185. The prosecution proceeded on the first charge which read:

> That you, Teo Yeow Chuah, on or about the 29th day of January 2003, at about 7.30 p.m., at the rooftop outside unit #04-01 Fragrance Court, No. 12 Yew Siang Road, Singapore, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, 2 big packets and 89 small packets of substance containing not less than 55.29 grams of diamorphine at the said place, without any authorisation under the said Act 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, Chapter 185, and punishable under section 33 of the Misuse of Drugs Act.

Evidence for the prosecution regarding the arrest of the accused

2 The evidence for the prosecution was that on 29 January 2003, officers from the Central Narcotics Bureau ("CNB") were instructed to conduct a surveillance on the accused who was known to be driving a gold-coloured BMW bearing registration number SBR 4X. The accused did not own this car and I will refer to it as "SBR 4X". The CNB had received information that the accused and one Lee Siong Lim knew each other and drugs were stored at Fragrance Court (NE 312 to 314). Fragrance Court is a low-rise four-storey apartment block.

3 The accused's address was Block 515 West Coast Road #12-527. On the way to Block 515, the CNB officers spotted SBR 4X at an Esso petrol kiosk along West Coast Road at about 3.30 pm.

4 At about 5.20 pm, the accused got into SBR 4X and drove off. The CNB officers tailed him to a multi-storey carpark at Block 10 Everton Road/Cantonment Close. The accused parked at deck 2B and proceeded to Block 16 and took a lift upstairs. A while later, he came down with another person (later ascertained to be one Lim Beng Wah) and they walked towards the multi-storey carpark. At a staircase of the multi-storey carpark, the CNB officers arrested the accused and Lim.

5 The accused was searched and the CNB officers recovered, inter alia, the following items:

(a) Cash of $2,115

(b) One red packet containing cash of $12

(c) One "Nokia" 8250 handphone

(d) One "Nokia" 8850 handphone

(e) One bunch of six keys with a "Secura" type key

(f) One "Louis Vuitton" wallet containing, inter alia, cash of $152

(g) One plastic bag containing jeans and cargo pants

(h) One car key with remote control

(i) A "Marlboro" cigarette box which contained:

(i) a sachet of heroin

(ii) a straw of heroin

(iii) a rolled-up piece of paper, and

(iv) a piece of tin foil

(see Photo P31).

6 Station Inspector ("SI") Ang Oon Tho, also known as Jimmy Ang, then questioned the accused in Hokkien as to whether he had any drugs in SBR 4X. The accused admitted he had drugs which were at the driver's door. The accused was then brought to SBR 4X and ten sachets of heroin wrapped in paper were recovered from the side pocket of the driver's door. An "Elsema" remote control was also recovered from the car. The accused said this was for opening the main gate to Fragrance Court.

7 The CNB officers then escorted the accused to Fragrance Court. They arrived there at about 7.30 pm. The accused led the CNB officers to the unit at #04-01. On entering the unit, SI Ang asked the accused whether there was any drug inside his bedroom and he replied "No". The accused led the CNB officers to his bedroom which was on the second level of #04-01. I will refer to his bedroom as "the Bedroom". The door to the Bedroom was not locked.

8 SI Ang then conducted a search of the Bedroom and found the following:

<u>Inside, but at the top, of the wardrobe (see the location marked B in Photo 7)</u>

(a) A white plastic bag containing some empty sachets

(b) A red plastic bag containing some rubber gloves

(c) an empty sealer box

Inside a drawer beneath the platform bed

(d) a plastic container and spoon believed to be stained with heroin

On the floor

(e) A "Ghostbusters" magazine with several pages missing.

9 Thereafter SI Ang climbed out of the Bedroom through a window which had no lock and which led to the rooftop of Fragrance Court. He searched the rooftop and found a knotted black plastic bag (which is sometimes referred to as a trash bag). This plastic bag was found almost at one end of the rooftop behind a pillar. It was below the eves of a tiled roof. It was found at a location marked 'A' (see Photo P3 and P4 and the sketch plan, P33, drawn by Staff Sergeant Chua Yue Meng).

10 Inside the plastic bag was a black Oakley sports bag (see Photo P14 and P15). The zip of the Oakley bag was secured with a padlock.

11 SI Ang then brought the plastic bag with the Oakley bag into the Bedroom and showed these items to the accused. When questioned, the accused admitted that the Oakley bag belonged to him.

12 SI Ang's conditioned statement (paragraph 15) stated that he had asked the accused for the key to the padlock securing the zip of the Oakley bag and the accused informed him that the key was among the bunch of six keys recovered from him earlier. SI Ang then recollected and brought out the bunch of six keys seized from the accused earlier and he then tried the keys in turn until one of them opened the padlock.

13 After the padlock was opened, the contents of the Oakley bag were checked in the presence of the accused. They were:

Main compartment

(a) A bundle of substance wrapped in paper. The substance was believed to be heroin.

(b) A "Soda" brand plastic bag containing two bundles of substance wrapped in paper. The substance was believed to contain heroin.

(c) An "M1" brand paper bag containing:

(i) Eight packets, each containing ten sachets of substance wrapped in paper. The substance was believed to be heroin.

(ii) One packet containing nine sachets of substance wrapped in paper. The substance was believed to be heroin.

(d) A white plastic bag containing:

(i) A brown envelope containing a weighing scale

(ii) A black plastic bag containing a second weighing scale

(iii) A blue-colour bag containing a third weighing scale

(e) A sealer

Side pocket

(f) A metal spoon

(g) A pincer

(h) A cutter

(i) Some empty sachets

(j) Some empty plastic bags

(k) A roll of scotch tape

(l) A plastic container

(m) A pair of pliers

(n) A blade

(o) A white envelope containing three yellow-colour and one blue-colour tablet believed to be "Ecstasy".

14 SI Ang said he questioned the accused about the ownership of the drugs and items found in the Oakley bag. The accused admitted that the drugs and items all belonged to him.

15 Then, at about 8 pm, SI Ang asked the accused a few questions. At this time, Mandarin was used. The questions and answers were recorded in SI Ang's pocket book in Chinese with an English translation. The English translation read:

Q1: All the "Peh Hoon" found in your body belong to whom

A1: Mine

Q2: The 10 sachets of "Peh Hoon" found inside your vehicle belong to whom

A2: Mine

Q3: The 10 sachets of "Peh Hoon" is for what purpose

A3: For my own consumption

Q4: All the "Peh Hoon" found inside the bedroom belong to whom

A4: Mine

Q5: How much "Peh Hoon" are there

A5: About 4 bundle

Q6: All the "Peh Hoon" is for what purpose

A6: For selling

Q7: Who is the male Chinese in red T-shirt

A7: Ah Siong

Q8: Does "Ah Siong" related to the drugs found inside the room

A8: No related

Q9: What relationship you and "Ah Siong"

A9: Friend

Q10: Did you sell "Peh Hoon" to "Ah Siong"

A10: Yes

Q11: When is the last time you sold "Peh Hoon" to "Ah Siong"

A11: Yesterday

Q12: How many sachets

A12: Twenty

Q13: How much

A13: Five hundred per sachet

16 The accused denied that his answers to Questions 4 and 6 were made voluntarily and so a voir dire or trial within a trial was conducted to determine the admissibility of these answers.

The Voir Dire (Trial within a trial)

17 The accused claimed that his answers to Questions 4 and 6 were the result of a threat or inducement.

18 Prior to the recording of the accused's statement, he was brought to the door of the Bedroom and asked to identify a person who had been arrested. This was his friend Lee Siong Lim, also known as Ah Siong. From the accused's long statements, which I will come to subsequently, Ah Siong is also known as Roger. I will refer to this person as "Ah Siong" or "Roger". Ah Siong was at the first floor of the unit in the living room and he was handcuffed, as was the accused.

19 Also, prior to the recording of the accused's statement, SI Ang had asked one of the officers, Sgt Jack Foo, to leave the Bedroom leaving only S/Sgt Tony Ng, SI Ang and the accused in the Bedroom.

20 When SI Ang was giving evidence for the voir dire, the accused's position was as follows. When Question 4 was asked, the accused had hesitated and looked at SI Ang because Question 4 was "All the "Peh Hoon" found inside the bedroom belong to whom" whereas in fact no drugs were found inside the Bedroom. Then, SI Ang said to the accused "All the "Peh Hoon" in the bedroom is yours right?" in a threatening manner. The accused again looked at SI Ang and had a confused expression. SI Ang then told him that he had already admitted to the drugs in the first three questions and if he did not admit to those in the Bedroom, SI Ang would also charge everybody who had been to the Bedroom. SI Ang also told the accused that the accused had earlier seen Ah Siong handcuffed and threatened to charge Ah Siong, Ah Siong's wife, the accused's girlfriend and the accused's entire family if the accused did not admit that the heroin in the Oakley bag belonged to him. The accused then responded, "OK, it's mine" (NE 261 to 264).

21 SI Ang denied:

(a) that the accused had hesitated or showed any confused expression,

(b) that he (SI Ang) had said that all the "Peh Hoon" in the Bedroom was the accused's,

(c) that he had told the accused that he had already admitted to the drugs in the first three questions and if the accused did not admit to the drugs in the Bedroom, he would charge everyone who had been to the Bedroom,

(d) he had told the accused he had earlier seen Ah Siong handcuffed and threatened to charge Ah Siong, Ah Siong's wife, the accused's girlfriend and the accused's entire family if the accused did not admit that the heroin in the Oakley bag belonged to him, and

(e) that, in response to SI Ang's threat, the accused said, "OK, it's mine"

(NE 261 to 264).

22 However, SI Ang accepted that in fact no drugs were found in the Bedroom. He explained that he meant to refer to the drugs found on the rooftop which had since been brought into the Bedroom and he had pointed to the Oakley bag when he asked Question 4 (NE 264 to 265). Accordingly, the accused knew that SI Ang was referring to the drugs in the Oakley bag.

23 As for the answer to Question 6, the accused's position was that when the question was posed to him, he again hesitated. SI Ang then said, "So much of 'Peh Hoon', must be for selling. Don't tell me it is not for selling". The accused then replied, "OK, for selling".

24 Again, SI Ang denied:

(a) that the accused had hesitated before answering Question 6,

(b) that he (SI Ang) had suggested that the 'Peh Hoon' must be for selling, and

(c) that the accused had responded "OK, for selling"

(NE 275).

25 SI Ang had also said that it was his superior ASP Xavier Lek who had called him to instruct him to see if the accused could identify Ah Siong and this instruction was received before he recorded

the statement of the accused. Accordingly, he did as he was instructed (NE 256 and 257). On this point, ASP Xavier Lek gave evidence which corroborated SI Ang's evidence that it was ASP Xavier Lek who had instructed SI Ang to see if the accused could identify Ah Siong and it was he who instructed SI Ang to record a statement from the accused after Ah Siong had been identified (NE 307 to 308, 315 to 316).

26 In addition, SI Ang said he did not know whether the accused's parents were still living or whether the accused had siblings or a girlfriend although he knew that Ah Siong had a wife (NE 279 to 280).

27 Staff Sergeant Tony Ng Tze Chiang also gave evidence. He was in the Bedroom guarding the accused when the accused's statement was recorded by SI Ang. S/Sgt Tony Ng confirmed that the questions and answers were in Mandarin which he (S/Sgt Tony Ng) understood. He could not recall the exact questions and answers nor each and every detail of the recording session but the accused was acting normally and SI Ang's tone of voice was normal as well (NE 291 to 292, 298 and 302). He said that SI Ang did not threaten the accused during the session nor tell the accused that his girlfriend, Ah Siong's wife and the accused's entire family would be charged if he did not admit to a particular question (NE 291 to 292). He accepted that he was not observing the accused throughout the recording (NE 303).

28 The accused was the only witness for the defence in respect of the voir dire. He left school when he was ten years old and had fended for himself since (NE 350). He referred to Ah Siong as a friend (NE 323) and then a good friend, (NE 324) and also, a close friend (NE 372). They had known each other for a couple of years (NE 324). He confirmed that when he was brought to the Bedroom, a search was conducted of the Bedroom. Thereafter, SI Ang climbed out of the window of the Bedroom and subsequently returned with the Oakley bag inside the plastic bag. SI Ang asked him some questions and he had said that the Oakley bag was his. He denied that he had told SI Ang that the key to the padlock was among the six keys seized. SI Ang then opened the Oakley bag and took out its contents and showed them to the accused, as wrapped (NE 327 to 329). Then SI Ang brought him to the entrance of the Bedroom to identify Ah Siong who was downstairs in the living room and was handcuffed. He said he did not know why Ah Siong was shown to him for identification (NE 346, 347 and 363). The accused was then brought back into the Bedroom. Previously there were two other officers in the Bedroom, besides SI Ang and S/Sgt Tony Ng. One had left the Bedroom earlier and the other, Sgt Jack Foo, was asked by SI Ang to leave before the recording of the accused's statement. SI Ang then began recording the accused's statement and the remaining officer S/Sgt Tony Ng took no part in this exercise (NE 333).

29 The accused said that when Question 4 was posed to him, he stared at SI Ang blankly because no drugs were found in his Bedroom (NE 335). He did not initially realise that SI Ang was asking about the drugs in the Oakley bag (NE 365). SI Ang then told him that since he had already admitted to the first three questions, it was better for him to admit to Question 4 as well. SI Ang added that if the accused did not admit to Question 4, he would charge Ah Siong, Ah Siong's wife, the accused's girlfriend, his family as well as those who had come to the unit at Fragrance Court (NE 337). The accused then replied, "All right, OK, it's mine".

30 The accused claimed that when SI Ang posed Question 4 to him and told him he might as well admit to it and threatened him about charging others, he (the accused) was very confused and afraid because he did not know what SI Ang was referring to as no drugs were found in his Bedroom. SI Ang was fierce and he was very frightened (NE 337). However, he also said that when he gave his response, he knew that SI Ang was referring to the drugs in the Oakley bag (NE 375, 383 and 385). He also said that when he gave his response, he did so as he was the one who consumes drugs and

he did not want the drugs to implicate his family and friends. He said he believed SI Ang would charge others as SI Ang was a policeman (NE 337 to 338).

31 As for Question 6, the accused said that when this question was asked, he just stared blankly and SI Ang then told him that as so much heroin was found, it must definitely be for sale. SI Ang told him not to tell SI Ang otherwise and the accused replied by saying that they were for sale. He said he was still very confused and frightened that his family would be implicated. SI Ang was still very fierce (NE 343). After the statement was recorded, the accused was lying on the bed but was not asleep as he was craving for drugs (NE 379, see also 704).

32 In submission, the defence sought to make much out of the fact that the accused was shown Ah Siong before his statement was recorded. The suggestion was that this was done so that the sight of Ah Siong being handcuffed would remain in the accused's mind to intimidate him into giving such answers as SI Ang wanted from him. Accordingly, the accused did feel threatened when SI Ang subsequently uttered the threat to charge everyone and in particular Ah Siong, Ah Siong's wife, the accused's girlfriend and his entire family and all else who had been to #04-01 at Fragrance Court.

33 I was mindful that certain aspects of SI Ang's evidence were not satisfactory. He had said he could remember every question and answer for the arrests he was involved in between January 2003 to July 2003. He could also remember the questions he had posed for the last 23 years he had been with CNB (NE 224). It seemed to me that that was a gross exaggeration. However, the accuracy of his notes was not in question and also I considered his evidence in totality. I also considered the evidence of ASP Xavier Lek, S/Sgt Tony Ng and the accused, as well as the background circumstances leading to the accused's responses to Questions 4 and 6.

34 It was clear to me that when SI Ang posed Question 4, the accused knew that SI Ang was referring to the drugs in the Oakley bag which had since been brought into the Bedroom from the rooftop outside. I did not believe that the accused did not know what SI Ang was referring to initially or that the accused stared blankly at SI Ang when Question 4 was posed to him. It was clear to me that the accused was seeking to take undue advantage of the manner in which Question 4 was framed.

35 I also did not accept that SI Ang even uttered the threat suggested or that the accused had been frightened by it. There was no reason for SI Ang to utter the threat because the accused had not yet denied that the drugs in the Oakley bag belonged to him. Up to the time just before Question 4 was asked, the accused had been co-operative, a point which the defence itself had stressed. He had already admitted readily that the drugs found in one of his trouser pockets and in SBR 4X were his.

36 Secondly, SI Ang did not even know that the accused had a girlfriend or whether the accused's family was still alive and who comprised the family. How then could he have mentioned the accused's girlfriend and family in the threat?

37 Besides, unlike the case of *Poh Kay Keong v PP* [1996] 1 SLR 209, the drugs in the Oakley bag were not found in premises occupied by any member of the accused's family, or occupied by Ah Siong for that matter. Indeed, no drugs were found at the accused's mother's residence at West Coast Road and to the best of the accused's knowledge, no one else in his family consumed drugs (NE 368). So he would not have expected drugs to be found in any of the homes of his siblings. Taking this into account, and the accused's demeanour in court, I was of the view that the accused would not have been intimidated even if the threat had been made.

38 As for the accused's identification of Ah Siong, it was clear to me that the defence had been trying to make too much out of it. In the first place, SI Ang undertook the identification exercise on the instructions of ASP Xavier Lek. Unless the defence was suggesting that ASP Xavier Lek had planned or conspired with SI Ang to put pressure on the accused, the exercise of identifying Ah Siong before the accused's statement was taken was quite innocent. On this point, I noted that while Mr S S Dhillon, Counsel for the defence, sought to question ASP Lek as to why he had given such an instruction, Mr Dhillon stopped short of making the suggestion I have mentioned. Besides, even the accused said he did not know why he was asked to identify Ah Siong (NE 346, 347 and 363). The accused did not suggest that Ah Siong was shown to him in order to intimidate him. There was also no suggestion by Mr Dhillon to SI Ang or S/Sgt Tony Ng that the accused had become intimidated after he was shown Ah Siong in handcuffs.

39 Although the defence also sought to make something out of the fact that SI Ang asked Sgt Jack Foo to leave the Bedroom before the statement was recorded, the fact of the matter was that there was still one other officer present i.e. S/Sgt Tony Ng who was guarding the accused. Indeed, I was impressed by the honest answers from S/Sgt Tony Ng. Initially, some changes in his evidence made him appear an unreliable witness but it gradually became apparent that he was changing his evidence to be as accurate as he could when he realised his earlier evidence might have given the wrong impression. As I have said, he admitted candidly that he could not remember every question and answer exactly nor was he observing the accused all the time throughout the recording of his responses to SI Ang's questions. However, he maintained that SI Ang did not make the alleged threat to the accused about charging the accused's girlfriend and others. I also accepted his evidence that SI Ang's tone of voice was normal instead of the accused's evidence that SI Ang was fierce.

40 Lastly, although the accused said that he subsequently realised the drugs in the Oakley bag caused him to face a capital charge, he did not complain about the alleged threat to any other police officer. The accused's reason for this omission was that he felt that he would not be believed. He said he told his cell-mate and his lawyer about it but no evidence was given to establish that he did do so at the earliest opportunity.

41 In all the circumstances, I was satisfied beyond a reasonable doubt that the accused's answers to Questions 4 and 6 had been given voluntarily and I ruled accordingly.

Other evidence for the Prosecution

42 It was not disputed that the Oakley bag contained, inter alia, the following:

(a) One plastic wrapper marked A2a containing one big packet (or bundle) of white powdery substance marked A2ad. The white powdery substance did not contain diamorphine, as was initially thought before the results of an analysis was known. It turned out to be caffeine.

(b) A black or dark grey SODA bag marked A2b which contained 2 big packets (or bundles) of substance believed to be and later ascertained to contain diamorphine.

(c) An M1 bag marked A2c which contained nine small packets wrapped with magazine paper. Eight of these packets contained 10 sachets, each, of substance and the 9th contained nine sachets. The total number of sachets was 89. The substance was later ascertained to contain diamorphine.

(d) A white plastic bag marked A2e containing one brown paper bag, one digital weighing scale bag and one plastic bag. Three digital weighing scales were found in these bags.

(e) A sealer marked A2f.

43 As I have mentioned, an empty sealer box was found at the top of the wardrobe in the Bedroom (see para 8(c) above). The sealer box was of the Impulse brand. It was not disputed that the sealer found in the Oakley bag could fit into this sealer box and was also of the Impulse brand.

44 The prosecution adduced an analyst's evidence of the diamorphine content and weight of the substance found in the 2 big packets and 89 sachets mentioned in paragraphs 42(b) and (c) above. The weight and content were 55.9 grams of diamorphine, which was the subject of the charge. This aspect of the charge was not disputed.

45 I would add that after the voir dire, SI Ang accepted that one part of paragraph 15 of his conditioned statement was not correct. He had not tried the six keys in turn to find out which would open the padlock to the Oakley bag because the accused had told him the three identical small keys would do so (NE 478 to 482). Also, S/Sgt Tony Ng added that while he thought the accused had been sleeping while lying on the bed with his eyes closed, the accused might not have been in fact sleeping (NE 515 to 516).

46 The Investigating Officer ("IO") was Inspector Abdul Halim Bin Abdul Rahman. His evidence was that at about 1.45 am on 30 January 2003 at CNB's office, he weighed all the drugs seized from the accused's body, from SBR 4X and from the Oakley bag in the presence of the accused. He then did the following together with the help of an interpreter Tan Chee Leong. At about 5.16 am of 30 January 2003, he read and explained a typed-written charge of trafficking in diamorphine to the accused. He then wrote out the charge by hand, read and explained it to the accused. I will refer to each of these charges as "the s 122(6) charge". Each time the accused acknowledged that he understood the charge and appended his signature below the charge. The IO then proceeded to read out the Notice of Warning under s 122(6) to the accused and the accused again said he understood the Notice and appended his signature below it. A copy of the Notice of Warning was then served on the accused who acknowledged receipt by signing on the original.

47 The s 122(6) charge read:

> You,
>
> TEO YEOW CHUAH, MALE/30 YEARS
>
> NRIC NO : S7237580-G
>
> are charged that you, on or about the 29th day of January 2003 at about 7.30 pm, at the rooftop outside unit no : #04-01, No : 12, Fragrance Court, Yew Siang Road, Singapore, did traffic in a controlled drug specified in Class A to the First Schedule to the Misuse of Drugs Act, Cap 185, to wit, by having in your possession for the purpose of trafficking, a black bag containing 3 big packets and 89 small packets believed to be diamorphine weighing about 1973.42 grams, at the aforesaid place, Singapore, without any authorisation under the said Act or the regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the said Act and punishable under Section 33 of the Misuse of Drugs Act, Cap 185.

48 The accused's s 122(6) statement was "I have nothing to say in relation to the charge."

49 The IO said he could not remember the accused telling him that he was feeling cold (NE 615). The IO denied that the accused was shocked when the s 122(6) charge was read to him or that he

had told the accused he should know what to do before the accused's s 122(6) statement was given (NE 580 and 615).

50 The IO also said that although the s 122(6) charge he had read out did not specifically state that the offence was punishable with or attracted the death penalty he had informed the accused that if, upon analysis, the drugs were found to contain more than 15 grams of diamorphine and if the court found him guilty, he would face the death penalty (NE 581 and 582). The IO could not remember if he had told the accused categorically that he was facing the death penalty but he disagreed that the accused was never informed of the consequence of the charge, namely, the death penalty.

51 I would add that below the typed charge the IO had written the following:

The nature and consequence of the charge was explained to the accused in Hokkien by Mr Bennett Tan. The accused affirmed he understood it.

The accused and the interpreter, who is also known as "Bennett", had signed below this hand-written statement.

52 The accused gave three long statements which were recorded in a narrative form. Two were given on 5 February 2003 and a third was given on 8 February 2003. The IO said that the recording sessions were in question and answer form and the narration of the accused was in answer to the IO's questions. The IO also said that while asking questions he might or might not have put forward certain facts to the accused.

53 The IO did not agree that the accused was in a daze when his first long statement was read to him (NE 605).

54 The interpreter Tan Chee Leong, also known as Bennett Tan, gave evidence too. Although he could not remember specifically what was said by the IO to the accused, given the lapse of some 8 or 9 months between the date of each statement of the accused and the date he (Mr Tan) was giving evidence, he said it was normal or standard practice for an IO to make known the prescribed punishment to an accused person after a capital charge was read out (NE 644 and 645).

55 When the hand-written words, stating that the nature and consequence of the charge was explained to the accused in Hokkien by Mr Tan, were drawn to Mr Tan's attention, Mr Tan said that he told the accused that he was facing a capital charge and would possibly face the death penalty if the purity of the drugs was analysed to be 15 grams or above (NE 667).

56 Mr Tan also said that the long statements of the accused were in a question and answer format before they were recorded down in a narrative form.

57 Mr Tan could not remember the accused telling the IO that he was feeling cold or not well (NE 661). He also said that the accused appeared normal to him and was not feeling any discomfort. If the accused had been unwell, this would definitely have caught his attention (NE 665). He did not agree that the accused was not paying attention when the first long statement was read back to him (NE 666).

58 In the first two long statements, the accused gave details, inter alia, as to:

(a) how he had picked up the drugs which were the subject of the charge before me and transferred

the drugs into the Oakley bag which he referred to as his black sports bag;

(b) how he had packed the sachets (which he referred to as "packets") with magazine paper.

59 The two long statements confirmed that he was the one who put the drugs inside the Oakley bag and used a small padlock to lock it. He was also the one who placed the Oakley bag at the rooftop after gaining access to the rooftop through the window of the Bedroom. They also elaborated as to how he came to rent the Bedroom and why i.e. the Bedroom offered him more privacy since he was involved in illegal drug activities.

60 The third long statement said, at paragraph 34, that he seldom stayed at the Bedroom. He only went there to pack or store drugs (heroin) and he never brought any friend there except on one occasion when Roger (i.e. Ah Siong) came to visit him on the eve of his arrest. I would add that heroin is the street name for diamorphine.

61 There was also evidence from the main tenant of the unit at #04-01 Fragrance Court, one Wang Shu Zhen. She had initially rented a room to the accused at the lower level and subsequently the Bedroom. She said she had given him a key to the Bedroom. She was puzzled when cross-examined on this point as in her mind when she rented out a room, a key to the room would be given (NE 80). She said she was sure she had given the accused a key to the Bedroom (NE 81), as well as a key to the iron grille gate of the unit. However, when it was stressed to her during cross-examination that neither a key to the Bedroom nor the key to the iron grille gate was found on the accused, she said she could not recall clearly (NE 88).

62 There was also evidence from one of the occupants of the unit that he had seen Ah Siong and a girl and also the accused and a girl at the unit (NE 39 and 40).

Evidence of the Accused

63 The accused was the only witness for the Defence.

64 He said that he initially rented a room on the first level of #04-01 Fragrance Court and subsequently the one on the second level i.e. the Bedroom. The Bedroom was rented by him when his landlady, who was the main tenant of #04-01, offered it to him at a rent lower than what he had been offered previously as she wanted to rent out the room he had been occupying on the first level to someone else. So, he agreed to rent the Bedroom after discussion with his girlfriend Jessie Lim. He had rented a room at Fragrance Court to spend time alone with his girlfriend who could not get along with his mother with whom he was residing at Block 515 West Coast Road #12-527. They would spend three to four days a week at the Bedroom. However, he claimed that he was not given a key to the Bedroom although he had been given one for the room on the first level, nor a key to the iron grille gate of the unit. However, if he wanted to, he could lock the Bedroom from the inside by pressing a button on the Bedroom door (NE 781).

65 The accused admitted that the drugs found on his body and in SBR 4X were his. He said they were for his own consumption but if his friends required some, he would sell them some (NE 683 and 684).

66 After the accused's arrest at Everton Close, he brought the CNB officers to the unit and to the Bedroom which was not locked.

67 Thereafter the Bedroom was searched and no drugs were found therein. However SI Ang

Oon Tho then went to the rooftop and recovered the black plastic bag which contained the Oakley bag which in turn contained the drugs I have mentioned.

68 As the parties had agreed that the evidence for the voir dire be part of the evidence at the main trial, I need not reiterate the accused's evidence as to what he had told SI Ang about the Oakley bag and the drugs inside, or the reason or reasons for what he had said.

69 It was not disputed that the magazine paper which was used to wrap the 9 packets which contained the 89 sachets came from a "Ghostbusters" magazine lying on the floor in the Bedroom. However, the accused said that that magazine was not his and it was already there when he moved up to the Bedroom.

70 The accused also said that he did not use the top cupboards as they were quite high. It will be recalled that the sealer box, some empty sachets and rubber gloves were found in one of the top cupboards.

71 After the search at Fragrance Court, the accused was brought to his residence at West Coast Road and another search was conducted there. However, no drugs or drug paraphernalia were found there.

72 The accused was then brought back to CNB office at Police Cantonment Complex where the drugs were weighed in his presence one packet at a time. He said that the IO did not say the weight of the drugs aloud nor was he told the gross weight of all the drugs (NE 705).

73 However, the accused accepted that when the s 122(6) charge was read to him, he was informed that it referred to 1973.42 grams of diamorphine. Nevertheless, he asserted that neither the IO nor the interpreter had told him he was facing the death penalty then. Neither was he informed of this before, during or after the first long statement was recorded (NE 707, 708 and 728). Likewise in respect of the second and third long statements (NE 744).

74 The accused explained that when he said he had nothing to say to the charge, this was because he was shocked by the weight of the drugs as stated in the charge. He did not admit to the charge (NE 708). The accused also said he had been suffering from withdrawal symptoms (NE 824) and he did tell this to the doctor who had examined him for the purpose of his s 122 (6) statement (NE 825 and 868).

75 The accused said that before the first of his long statements was recorded, he was wondering how the drugs came to be inside the Oakley bag and why he had been asked to admit to them at Fragrance Court (NE 710). The accused also said that he had still not fully recovered from withdrawal symptoms and the CNB office was extremely cold. He asked for and was given another T-shirt to wear. When he told the IO that the office was very cold, the IO said he could not control the temperature and told him to give him a good statement quickly and then the IO would send him to Queenstown Remand Prison which was not so cold (NE 712).

76 The accused then went on to say that most of the first and second long statements and part of the third long statement were untrue. I should therefore set out each of these statements and his evidence thereon.

77 The first long statement, recorded from 10.05 am to 1.20 pm of 5 February 2003, states:

I am also known as Ah Tee to my family members and as Ricky among my friends.

2 I would like to give an account of my drug activities.

3 About one week before I was arrested on 29 Jan 2003, I made an order for 5 "liap" of heroin from a Malaysian supplier known as "Moh Eh". One "liap" refers to one pound of heroin. The price for one "liap" of heroin is S$20,000. Therefore, the total price for 5 "liap" of heroin will be S$100,000. I made the order when the Malaysian supplier called me on my handphone number 98129928. During the conversation, no date for delivery was fixed but he told me that one of the "liaps" was of inferior quality. He added that the one that was of inferior quality was in powdery form while the rest were in granular forms. "Moh Eh" then suggested that I mixed the inferior type of heroin with the good ones when I do the repacking. Before hanging up the phone, "Moh Eh" told me that he would contact me again on my handphone when he arrived in Singapore.

4 On 24 Jan 2003 at about 12 plus in the afternoon, the Malaysian supplier called me on my handphone and told me that he had arrived in Singapore. He told me to pick up the heroin at a Shell Petrol kiosk in Mandai Road. He asked me how long I took to arrive at the petrol kiosk. I told him I could be there in half an hour's time and he told me to wait for another call from him when I arrived at the petrol kiosk. After I hanged up the call, I immediately took a taxi and proceeded to the arranged place. On that day, I brought along a black sport bag with me. The black bag was meant to be used for keeping the heroin. This was the same black bag that was recovered by CNB officer at Fragrance Court.

5 When I arrived at the Shell Petrol kiosk in Mandai Road, "Moh Eh" was no where to be sighted. I waited and took a puff of cigarette. About ten minutes later, at about one plus in the afternoon, "Moh Eh" called me again on my same handphone and told me that he had placed the 5 "liap" of heroin in a small brown carton box. He told me that the carton box was placed outside a toilet at the petrol kiosk and asked me to pick it up from there.

6 I was still on the phone with "Moh Eh" when I went to search for the said brown carton box. When I eventually found the brown carton box outside the toilet, I opened up to inspect. I confirmed that the quantity was correct with "Moh Eh" before terminating my phone conversation with him. I took out a grey plastic bag containing the 5 "liap" of heroin from the brown carton box and transferred them into my black sport bag. I then left the brown carton box outside the toilet at the petrol kiosk. There was no one around near the toilet when I took out the heroin from the brown carton box and transferred them into my black sport bag.

7 After collecting the 5 "liap" of heroin, I took a cab to Fragrance Court and stored it in a rented room at the said place. I had rented a room in Apartment unit #04-01, Fragrance Court.

8 In total, I had obtained heroin from "Moh Eh" on 3 occasions. On the first and second occasions, the order was only for one "liap" of heroin. It was only on the last occasion that I ordered 5 "liap" of heroin. There was no specific reason for the increase in the order of quantity. "Moh Eh" simply told me he had more stock in hand and asked me if I was interested in buying more from him. I acceded to his request. There was an undertaking between "Moh Eh" and I that payment will only be made after I had sold the drugs to my customers. My drug dealings with "Moh Eh" was absolutely based on trust. "Moh Eh" would call me on every 2 to 3 days to check if I had money for payment. If I had the money, he would send someone to Singapore to collect the payment from me.

9 I got to know "Moh Eh" through a Malaysian friend of mine known as "Ah Loh" who worked in Singapore previously. I have never met "Moh Eh" before. We only corresponded with each other with phone calls. He was the one who usually called me on my handphone as I do not have his contact number.

10 On the same day, 24 Jan 2003, I immediately opened up two "liap" of heroin for repacking after returning to my rented room in Fragrance Court. The drug paraphernalia such as weighing scales and sealer were supplied to me by "Moh Eh" on my first transaction with him. As for the rest of the items, I bought it myself.

11 On 24 Jan 2003, I cut the big packets containing the "liap" of heroin, one at each time, and poured them into a small plastic container with a snoopy label printed on it. I then used a small plastic spoon to scoop the heroin and poured them into small plastic packets. After that, I used a sealer to seal the opening of the small packets of heroin. I repacked about 120 small packets from the two "liap" of heroin. The small packets were in different quantities weighing from between 3 to 8 grams. Those weighing between 3 to 5 grams were considered as half a packet, while a full packet would weigh around 8 grams.

12 After I repacked about 120 small packets, I wrapped them with magazine papers. Each of the wrappings contained 10 small packets of heroin but there was one which contained only 9 small packets of heroin. I could not recall how many wrappings I had done altogether. After I had finished the wrappings, I put aside 3 of them and dumped the rest into a "M1" paper bag. I then placed this "M1" paper bag inside my black coloured sports bag. I put the 3 wrappings of heroin inside a drawer under my bed so that it was easily within reach.

13 On the same day, I also placed the black coloured sports bag on the rooftop outside my bedroom window. I left the black coloured sports bag at the far right end corner of the rooftop to avoid detection. I put the black sports bag standing against the wall so that it could not be seen easily. Besides heroin, in the bag itself were also 3 digital weighing scales, one sealer and a few long empty straws and 4 Ecstasy tablets in an envelope. There were also other paraphernalia like penknives, pincer, a bundle of small empty plastic packets and other items in the side pocket of the black coloured sports bag. I was the one who put all those mentioned items there. After placing all those items in the black coloured sports bag, I used a small padlock to lock it.

14 I also placed a few bundles of empty plastic packets and a plastic bag of gloves on top of a cupboard in my bedroom.

78 The accused said that he did not say what was actually stated in paragraph 2 of the first long statement.

79 As for paragraph 3, he said he had fabricated the contents thereof. He did not know any person by the name of "Moh Eh". He had never bought one "liap" or one pound of heroin before. He did not have $100,000. "Moh Eh" did not suggest to him to mix up the inferior heroin in powdery form with the good ones in granular form. The accused claimed he had said this because the IO had asked him what he was going to do with the powdery heroin (NE 714 and 715).

80 As it turned out, the powdery substance did not contain heroin. As I have mentioned, it was caffeine. The accused said he did not know this at the time the first long statement was recorded.

81 The accused said that the first five sentences of paragraph 4, ending " After I hanged up the call, I immediately took a taxi and proceeded to the arranged place", had also been fabricated by him. He had given these explanations in response to the IO's questions. In court, the accused argued that as he had had the use of SBR 4X, there was no reason for him to take a taxi to the alleged Shell petrol kiosk in Mandai Road, the existence of which he did not know (NE 717).

82 As for the last three sentences of paragraph 4 in which the accused had said that he had

brought the Oakley bag with him to keep the heroin, the accused denied he had brought the Oakley bag with him. He said the IO had asked him what he had used to contain the heroin and whether he had used the Oakley bag found at Fragrance Court, and he said "Yes" (NE 717 and 718).

83 The accused said paragraph 5 was fabricated by him. In court, he presented his argument that no one would place heroin at a public place (NE 718).

84 As for paragraph 6, the accused said that this too was fabricated by him. As for the grey plastic bag, he had mentioned it only because the IO had asked him about it (NE 718 and 719). Paragraphs 7 and 8 were also fabricated by him.

85 The accused also said that paragraph 9 was a fabrication. He also did not know a person by the name of Ah Loh. Paragraphs 10 to 12 were also fabricated (NE 721 to 724) although in cross-examination he accepted the weight of the small packets mentioned in paragraph 11.

86 As for paragraph 13, the accused alleged that he was asked whether he had put the Oakley bag at the rooftop and he responded "Yes". Also, he alleged that he did not say that he had left the Oakley bag at the far right end corner of the rooftop to avoid detection (NE 725).

87 The accused further alleged that he knew nothing about the Oakley bag such as the digital weighing scales, sealer, penknives and empty plastic packets. He presented his argument that even if he did put the items in the Oakley bag, he would not have been able to remember them so as to itemise them for the purpose of his statement (NE 726).

88 Although the accused accepted that the first long statement was read back to him after it was recorded, he said he did not suggest the amendments found thereon. I would add that the amendments were not significant but the Defence's point was that it was not the accused who initiated the amendments.

89 The accused also said that he was not paying attention when the first long statement was read back to him because of three reasons.

90 First, he had not fully recovered from his withdrawal symptoms. Secondly, he was feeling very cold. Thirdly, in his mind, he had already admitted to the drugs when he was at Fragrance Court and he believed he would be expected to admit again.

91 As he thought that this was an ordinary trafficking case only, he was prepared to admit to the drugs found in the Oakley bag. Otherwise he believed his family and girlfriend would be charged (NE 727 and 728).

92 The accused also said that it took more than three hours to record the first long statement because he needed time to fabricate his story (NE 730).

93 The accused accepted that when the recording of the second long statement began at 3 pm of 5 February 2003, his first long statement was again read back to him. The written notes state that the accused was invited to make any correction, deletion or amendment but he declined to do so.

94 The second long statement states:

> 15 I wore the hand gloves when I was doing the packing of heroin. The reason for wearing the hand gloves was to avoid leaving behind fingerprints marks on the plastic packets. However, I do

not always use the hand gloves as I found it troublesome after sometime.

16 After opening up 2 "liaps" of heroin for repacking into smaller packets, I have 3 more "liaps" of heroin left in the black coloured sports bag. I could identify the "liap" of heroin that was of inferior quality by pressing on it. It was much softer than the rest as it was in powdery form. I took this "liap" of inferior heroin out from the grey plastic bag and placed it inside the black sports bag as I wanted to separate the inferior heroin from the good ones.

17 Before I was arrested on 29 Jan 2003, I had already sold 20 small plastic packets of heroin to my drug customer named Roger on the eve of my arrest. I sold Roger at $500 for each small packets of heroin on that day when I asked him to come over to my rented room in Fragrance Court. He had earlier told me that he was interested in buying 20 small packets of heroin from me. Roger is also known as Ah Siong. In total, I charged him $10,000 for the 20 small packets of heroin. He paid me $1000 first and told me that he would pay the balance amount after the Chinese New Year. These 20 small packets were from the 2 wrappings of heroin which was kept in a drawer under my bed initially. The other wrapping with ten small packets of heroin was also in the drawer initially. I later transferred them to my car on 28 January 2003. I put the 10 small packets of heroin in the side compartment on the driver's side of the car so that I could retrieve it easily when customers want it. If no one place any order with me, I would use those heroin for my own consumption.

18 When I was arrested on 29 January 03, I was found with a cigarette box containing one small packet and a straw of heroin, one rolled-up paper meant for smoking heroin and one aluminium foil. The heroin were meant for my consumption. The other items that were also seized from my possession include keys to my rented Apartment at Fragrance Court, to my personal residential home at West Coast, a remote sensor key for accessing a small gate meant for residents of the Apartment and the padlock keys for my black sports bag. There are 3 padlock keys altogether.

19 Besides the above-mentioned, I also had inside my car, a remote control meant for access to the main gate of the Apartment at Fragrance Court. I was issued with the remote control and the remote sensor key to the small gate when I rented a room from the owner of unit #04-01, Fragrance Court. All these items were also seized from me.

20 Slightly more than 2 months before my arrest, I browsed the Classified Ads on the newspaper and contacted the owner of unit number #04-01, Fragrance Court at Yew Siang Road. I roughly know where the location was as I lived nearby in West Coast area. The Ads specified that there was rooms available for renting. I called the telephone number that was stated in the Classified Ads and a China women[sic] picked up the call. She claimed that she was the co-owner of the unit and agreed to sublet one room to me at a rental fee of $550 per month.

21 After making the call, I went down immediately to meet the co-owner of the unit. I could not recall her name now but I used to address her as "Da Jie" which means elder sister in English. She is in her mid forties. She told me that there were 2 rooms available in the unit for renting, one on the lower and the other on the upper floor. I inspected both the rooms and decided on renting the 3rd room on the lower floor from her. This room is located next to the common toilet. I paid her 1 month rental fee of $550 and a deposit of another $550 on the spot. The owner raised the option of signing the rental agreement with me but I told her that it was [not] necessary to do so. She has no objection. The co-owner gave me a remote control for access via the main gate, the sensor key for the residence gate and a key for the rented room. I moved into the room 2 to 3 days later. However, I normally do not lock the door of my rented room because I do not think that anyone would go into my room. Furthermore, whatever heroin that I have with me were

safely kept inside the black sport bag and padlocked.

22 I did not want to sign a formal rental agreement with the co-owner because I can easily be traced if I run foul of the law. The reason why I wanted to rent a room at Fragrance Court was because the place was at a secluded location. Therefore, it would not be easily discovered by the authorities. My purpose of renting a room at Fragrance Court was to have a place for storage and packing of heroin.

23 A month later, the co-owner asked me if I wished to move to the empty room on the upper floor. She mentioned that someone else was interested in renting the room that I was occupying at that point in time. I agreed to her proposal and moved to the room at the upper floor. She told me that I had to pay a higher rental fee of $680 per month. I did not mind paying a higher rental fee for the upper room as it offered me more privacy since I was involved in illegal drug activities. With other tenants around in 2 other rooms on the lower floor, there was a lack of privacy.

24 Sometimes in mid December 2002, I shifted to the upper room in the Apartment unit. There is only one room on the upper floor. Upon moving over to the room on the upper floor, I paid a rental fee of $680 to the co-owner. I checked the room to ensure that everything was in order. The room was totally empty when I moved in. I checked the drawers, the cupboards, the wardrobe and nothing was in it. The co-owner did not give me the key to the upper room and I did not ask from her as I do not have the habit of locking my room door.

25 After I moved into the room on the upper floor, I discovered a good spot to place my sports bag containing the heroin. This spot was at the far right corner of the rooftop outside the window. The only access to the spot which I placed the sports bag was via the window in my rented room. One cannot get access to the rooftop without climbing out from the window in my rented room. I felt that the spot would be a better place to hid the sports bag with heroin in it as no one would discover them.

26 I believed the co-owner has no knowledge of my drug activities. I hardly speak to the tenants and I believed they also have no knowledge of what I was doing. The other occupants in unit #04-01, Fragrance Court were the co-owner herself, 2 male Chinese Nationals and the co-owner's nephew and son which I used to see them around. I do not know and have never seen the main owner of the unit at all.

27 I sell heroin because I was in need of money to meet daily expenses for food and clothing. Furthermore, during the Chinese New Year festive season, I intended to give some money to my mother. The odd-job which I was doing was not on a regular basis. Normally I worked only 1 to 2 days in a week. Hence, my income was low. My daily wage was about $50 to $60 a day. I did only simple painting work as I was not trained in other forms of odd-jobs.

95 The accused said paragraphs 15 and 16 were fabricated by him. Paragraphs 17 to 21 were true except for the last sentence, "Furthermore, whatever heroin that I have with me were safely kept inside the black sports bag and padlocked" (NE 730 to 736).

96 As for paragraph 22, the accused said he did not say that he did not want to sign a formal rental agreement because he could be easily traced if he ran foul of the law. As for the last sentence of paragraph 22, when he said his purpose of using a room at Fragrance Court was to store and pack heroin, he said he had meant putting heroin into a straw for his own consumption (NE 736 and 737).

97 As for paragraph 23, the accused denied saying that he had paid a higher rent for the

Bedroom as it offered him more privacy since he was involved in illegal drug activities. What he had said was that he found it more convenient as he consumed drugs as well (NE 738).

98 Paragraph 24 was true but he disputed that paragraph 25 accurately recorded what he said. As regards the sentence "The only access to the spot which I placed the sports bag was via the window in my rented room", the accused said that he was asked whether that was the only access to the rooftop and he nodded his head (NE 738 and 739). As regards the next sentence "I felt that the spot would be a better place to hide the sports bag with heroin in it as no one would discover them", the accused alleged that he did not say this. He alleged that he was asked whether the spot would be a good place to hide the drugs and he had said, "OK, yes" (NE 739).

99 As for paragraph 26, he said that part of it did not reflect what he had said accurately. He had not mentioned his drug activities but rather that the owners did not know that he consumed drugs (NE 740).

100 The accused admitted that paragraph 27 was accurate (NE 740).

101 The accused did not dispute that the second long statement was also read back to him after it was recorded and that it was read to him again when the third statement was recorded on 8 February 2003. His third long statement states:

> Accused's statement consisting of paragraphs 15 to 27 were read back to him in Hokkien dialect by Mr Bennett Tan. Accused was invited to make any correction, deletion or amendment. He declined the offer.
>
> 28 I sell heroin in both packets and in the form of sets. A set consisted of 10 packets each. I sold one packet of heroin to my customers at $500 and one set at the price of $5000. At times, I also sold heroin in half packet form and I charged customers a price of $250. A half packet of heroin weighs slightly over 3 grams.
>
> 29 I do not have any fixed customers. As long as there are buyers, I would sell the heroin to them. I do not operate in a fixed place. My customers were from all over the places in Singapore. Usually my customers would come to me to pick up the heroin. Depending where I was, I do not have a fixed place for drug transaction. But they were all carried out in public places. Except for the one occasion which I sold 20 packets of heroin to Roger at my rented room in Fragrance Court on the eve of my arrest, I have never dealt with any other customers at my rented room.
>
> 30 I am shown a photograph of a male person. I identified him as Roger or 'Ah Siong'. (Recorder's note : Accused is shown a polaroid photograph of a male Chinese in red tee-shirt).
>
> 31 Roger is my main drug customer. He runs a Rojak stall at Aljunied Crescent. I do not have any share in his Rojak business.
>
> 32 Roger is not an associate or partner in my drug activities. He is only a customer to me.
>
> 33 I am shown a photograph of a male person. (Recorder's note : I showed accused the polaroid photograph of Lim Beng Wah, IC : 1573149-D). I identified this person as 'Ah Wah'. 'Ah Wah' was also arrested on the same day as me when I went to look for him to collect jeans from him. 'Ah Wah' is helping someone else to sell jeans. I bought 4 to 5 pairs of jeans from 'Ah Wah' at $200 over dollars. 'Ah Wah' has no connection with my drug activities.

34 I seldom stay at the rented room at Fragrance Court. I only went there to pack or store drugs (heroin). Most of the times, I stay at my own house at Blk 515, West Coast Road, #12-527. I have never brought any friends to my rented room in Fragrance Court except for that one occasion where Roger came to visit me on the eve of my arrest.

35 The car that was seized during my arrest belonged to my friend named 'Ah Soon'. He is the registered owner of the car. The car is still currently under hire purchase financing. 'Ah Soon' was unable to support the hire purchase car instalments. Hence he allowed me to use the car on condition that I helped him to pay for the car instalment on a monthly basis of $1020. I have been in possession Ah Soon's car for about a month.

36 I only have one main door key to the rented Apartment at Fragrance Court. I have never given the key to anyone else before.

37 I am the second child in a family of 3 siblings. I have an elder brother and a younger sister. They all have their own families and are staying separately. My father has already passed away. I am the only child staying together with my mother at my West Coast home.

38 I am educated up to primary eight level in the Chinese stream at Sian Meng Primary School at Bukit Ho Swee. The school has since closed down. The school is a Chinese medium one.

39 At the time of my arrest, over $2000 cash money were seized from me. $500 were from friends of mine who had asked me to buy jeans for them. Another $400 were my money from the economic restructuring shares. The rest were proceeds obtained from drug sales.

40 I consumed about 1 small packet of heroin each day. I used the 'chase the dragon' method to consume heroin. Normally I consumed heroin at my own house at West Coast Road. I also consumed heroin at my rented room in Fragrance Court occasionally. The last time I consumed heroin was on the morning prior to my arrest. I also consumed cough mixture on that same day because I was suffering from persistent cough.

102 The accused sought to explain paragraph 34 away. He alleged that although he had stated that he seldom stayed at the Bedroom, he had actually stayed there three to four days a week. Also, when he had mentioned "packing" he meant that he had used a straw to pack drugs. Furthermore, he did bring friends to the Bedroom. He asserted that the other tenants had verified this (NE 742). He claimed that he did not want to say that he had brought friends to the Bedroom because SI Ang had threatened to charge his girlfriend, friends and family (NE 742).

103 The accused said that he had implicated himself in the three long statements because at Fragrance Court he had already admitted to the drugs in the Oakley bag and also because SI Ang had threatened to charge his girlfriend, friends and family (NE 744). As I have said, he alleged he was not told that he would be facing the death penalty.

104 As regards the Oakley bag, the accused said that he had used it to pack his clothing when he moved to Fragrance Court. He last used it when he moved from the room on the first floor to the Bedroom (on the second floor).

105 The accused said that on 27 Jan 2003, a Malaysian friend of his by the name of Eric, also known as Ah Tua, had telephoned him at night. They went out together for a meal and Eric had spent the night with him at the Bedroom. In the morning of 28 Jan 2003 he had told Eric he was going out for a while. This was between 10 am and 11 am. Eric said he wanted to sleep longer. The accused

left the Bedroom.

106 At between 4 pm to 5 pm, Eric called the accused who said he was at his mother's flat at Block 515, West Coast Road. Eric then arranged to meet the accused at a coffeeshop at Block 516. At the coffeeshop at past 5 pm, Eric handed the accused three packets and told him that inside were 10 small packets (or sachets). Eric then told the accused that he had left behind three keys at Fragrance Court and asked the accused to keep them for him. The accused then went back to his mother's flat. At about 8 pm or 9 pm, the accused met Roger at Fragrance Court to hand him two of the packets he had received from Eric. The remaining packets were found in SBR 4X.

107 The three keys left in the Bedroom were the keys to the padlock of the Oakley bag. Eric did not tell the accused what the three keys were for (NE 758). The accused attached the three keys to his key chain when he returned to Fragrance Court. He did not notice the Oakley bag was missing from the wardrobe. The accused argued that if the three keys were his, there was no need for him to carry all three with him (NE 767). He believed that Eric had schemed and used the Bedroom and the Oakley bag to pack his drugs and asked the accused to keep the three keys for him (NE 767 to 771). Eric must have brought and left the drugs in his car initially when Eric drove to Fragrance Court on 27 January 2003 and spent the night there (NE 747 and 795). Eric had also used the magazine in the Bedroom to wrap the drugs (NE 773 and 777).

108 The accused said that after his arrest, he did ask his elder brother to telephone Eric but the elder brother was not able to contact Eric. The accused did not know Eric's address in Malaysia although the accused had known Eric for some years. He had known Eric as they were in the same industry. The accused was a painter and Eric was a mosaic layer (NE 776, 755 and 788).

109 The accused accepted that although he was angry with Eric he did not tell the IO about Eric or ask his elder brother to mention Eric to the IO. The accused also alleged that he did not tell his elder brother why he wanted Eric to be contacted (NE 789).

110 The accused said he did not mention Eric's name to the IO because even if Eric was found, Eric would not admit to the drugs in the Oakley bag (NE 776). The accused was also afraid of SI Ang's threat and the accused felt he could not prove that the items in the Oakley bag belonged to Eric (NE 803).

111 As regards why he did not mention his girlfriend in any of his statements to the IO, the accused said that when the IO had asked him whether his girlfriend also smoked heroin, he had said "No". When asked, the accused had also said she did not have any previous conviction. The accused alleged that the IO then said that if that was the case, there was no need to mention her (NE 806).

Rebuttal evidence by the prosecution

112 The prosecution called Dr Andrew Y H Tang as a rebuttal witness. He examined the accused on 30 Jan 2003 at 3.42 am, i.e. before the accused's s 122(6) statement was given, and at 6.03 am, i.e. after the accused's s 122(6) statement was given.

113 Dr Tang's evidence was that the police request form had stated that the accused had requested examination as he was suffering from withdrawal symptoms (NE 869, 877 and 878).

114 Dr Tang also said that from his observation of a lot of accused persons, they would initially feel cold because of air-conditioning and being nervous (NE 874).

115 In the context of the accused, Dr Tang did not observe him to be feeling cold (NE 875) nor did the accused show signs of withdrawal symptoms (NE 871). However he accepted that it was possible that the accused might have mild pain and was feeling cold without any symptom (NE 877).

116 Significantly, Dr Tang said that although he did not specifically ask the accused whether he was suffering from withdrawal symptoms, he did ask the accused whether he had any complaint and the accused said he had none (NE 870). Dr Tang explained that he did not specifically ask about withdrawal symptoms as he did not want to put any suggestion in his question (NE 870 also). In addition, the accused did not tell Dr Tang that he was having bodily pains or drug withdrawal symptoms (NE 869 and 879). I would add that the report dated 24 April 2003 PRO 1396/2003 prepared by Dr Tang in respect of the pre-statement examination, said, inter alia, "The patient denied having any neither[sic] medical or surgical problems". Also, "There were no complaints or signs and symptoms of withdrawal noted on examination".

117 In the next report also dated 24 April 2003 but numbered PRO 1397/2003 in respect of the post-statement examination, Dr Tang said, inter alia, "He denied having any significant medical problems".

The submissions, my conclusion and reasons

118 Section 18(1)(b) of the Misuse of Drugs Act states:

> 18. - (1) Any person who is proved to have had in his possession or custody or under his control -
>
> …
>
> (b) the keys of anything containing a controlled drug;
>
> …
>
> shall until the contrary is proved, be presumed to have had that drug in his possession.

119 It was not disputed that the accused was in possession of the keys that could open the padlock of the Oakley bag and the drugs were found in the Oakley bag. Accordingly, I was of the view that s 18(1)(b) applied and that unless the accused could rebut that presumption, then the presumption under s 17(c) would also apply. Section 17(c) states:

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

120 Mr Dhillon submitted that the accused's conduct on the day of his arrest demonstrated that

he knew nothing about the Oakley bag being on the rooftop of Fragrance Court and its contents. He stressed that the accused had on his own accord informed the CNB officers about the Bedroom and led them to Fragrance Court and then to the Bedroom. The CNB officers had no idea about the Bedroom at the time of the arrest.

121 However, according to ASP Xavier Lek, they had already received information, prior to the arrest, that drugs could be found at Fragrance Court although they did not know who had access to the unit involved (NE 312 to 314), and probably also did not know which unit was involved. Their main targets were the accused and Ah Siong (NE 309). Furthermore, it was not as though the accused had initiated the disclosure of information about #04-01 Fragrance Court. It was upon questioning that the accused disclosed that the Elsema remote control found in SBR 4X and one of the keys, out of the six keys recovered, were for access to Fragrance Court and #04-01 Fragrance Court (see paragraph 10 of SI Ang's conditioned statement and NE 215). In any event, the fact that the accused did not lie about the Elsema remote control or one of the keys being for access to #04-01 was only one of the factors to be considered.

122 Mr Dhillon submitted that the accused did not show any reaction when SI Ang had climbed out of the window to search the rooftop. This demonstrated that the accused knew nothing about the Oakley bag. I was of the view that the absence of anxiety on the accused's part was equivocal. It could equally mean that he was hoping that SI Ang would not find the Oakley bag which was tucked away at almost one end of the rooftop behind a pillar. Also, it was out of sight if one only stands outside the window of the Bedroom, without turning round a bend and looking further. The absence of anxiety could also equally mean that the accused knew that any sign of anxiety would give him away or he was prepared to face the consequence even if the Oakley bag was found.

123 What was significant was the absence of any surprise by the accused when SI Ang returned from the rooftop with the plastic bag and opened it to reveal the Oakley bag. In my view, the accused did not express any surprise in seeing his Oakley bag because he knew all along that the Oakley bag was in the plastic bag. Furthermore, even if the accused did not tell SI Ang that the three small keys could open the padlock to the Oakley bag, it was surprising that he did not mention that the keys belonged to Eric immediately after one of the three keys was used to open the padlock and the contents in the Oakley bag were taken out and shown to him. At that time, the accused had not yet been asked to identify Ah Siong and the alleged threat by SI Ang had not yet been made.

124 If the accused's evidence about Eric was true, it must have immediately dawned on him that Eric had used his Oakley bag to keep the drugs and that he was going to take the blame for Eric as the three keys were found on him, unless he quickly disclosed that the keys were not his. There was no reason for the accused to remain silent about Eric then unless Eric was a fabrication or he was in cahoots with Eric.

125 Mr Dhillon submitted that the accused had been forthright in his evidence. The accused had admitted that he had sold drugs and had admitted that the Oakley bag was his. In my view, the accused admitted that he had sold drugs because there were ten sachets found in SBR 4X. He admitted the Oakley bag was his only in response to a question by SI Ang and because he knew the three keys found on him could open the padlock. Besides, the accused did not have time to come up with a fabrication at the time of his arrest.

126 Mr Dhillon also submitted that the accused also gave a consistent, believable and reasonable explanation as to how the Oakley bag came to be placed at the rooftop of Fragrance Court. He added that the accused had said that if he wanted to hide the drugs, he could have easily hidden the drugs in the Bedroom. Also the rooftop was not the safest place to hide the drugs as other persons in

neighbouring high-rise flats could see the accused and there was always the possibility that someone else might come onto the rooftop. Also, if the three keys had belonged to the accused, the accused had said he would not need to carry all three identical keys with him.

127 However, the accused's evidence at trial about Eric and why he rented the Bedroom and the use thereof were all contradicted by his long statements and his statement to SI Ang. In addition, he did not mention such points when he gave his s 122(6) statement, when he should have done so.

128 From the evidence about the accused lying on the bed in the Bedroom after he had given a statement to SI Ang and the information in the police request form to Dr Tang, I was prepared to accept that the accused was suffering from withdrawal symptoms at the time his s 122(6) statement was given. However, they must have been mild as Dr Tang did not notice any such symptoms, nor, as I found, did the accused tell Dr Tang about them. In the circumstances, the withdrawal symptoms were not such as to interfere with the accused's understanding of the s 122(6) charge and its consequences. Indeed, the accused did not specifically assert that he could not understand the same or his long statements because of his condition.

129 As regards the question as to whether the accused was told that he was facing a capital charge at the time the s 122(6) charge was read to him, I preferred the evidence of the IO and the interpreter to that of the accused. The IO maintained steadfastly at trial that he had told the accused that if the heroin was more than 15 grams, and if the court was to find him guilty, he would face the death penalty. The interpreter said that while he could not remember exactly what the IO said, it was standard practice for investigation officers to inform accused persons that they were facing the death penalty, when this was the case. The interpreter did not suggest that anything extraordinary had happened in respect of the present accused person. Furthermore, the IO had specifically written down that the nature and consequence of the charge had been explained to the accused by the interpreter, although there was no specific mention of words like "death penalty".

130 As for Mr Dhillon's closing submission that the omission by the IO to specifically state the capital punishment in the s 122(6) charge was contrary to practice (see paragraph 72 of that submission), I would say that there was no evidence of this. The evidence from the IO was only that for lesser charges, the minimum and maximum sentences were stipulated in the charge. Indeed his evidence was that it was not his practice to specifically state the capital punishment in the charge. He also added that he was not informed that he should do so for capital cases (NE 583 to 587). The interpreter corroborated the IO's evidence that it was not the practice to specifically state the death penalty in the charge (NE 645). I would add that whether the practice should be changed is another matter.

131 The accused himself admitted at trial that he knew that trafficking above a certain weight of diamorphine would carry the death penalty, although he said he did not know what the threshold was (NE 827). He said he was aware that the s 122(6) charge pertained to 1973.42 grams of diamorphine and he was shocked. Yet he thought it was an ordinary trafficking case (NE 707, 708 and 728). Although he wondered what the penalty was, he did not ask how long a jail sentence he would serve as he was not feeling well (NE 829). It seemed to me that if the accused did not know what the threshold was, he had no basis for thinking that this was an ordinary trafficking case especially given that he had repeatedly asserted he had been shocked at the heavy weight of 1973.42 grams. I did not accept that the accused was the simpleton that he had portrayed himself to be. True, he did not have a high formal education but he was street-smart, having had to fend for himself from a young age. As I have elaborated, he was even able to present arguments for himself while he was on the witness stand. Accordingly, I found that the accused knew that he was facing a capital charge at the time when his s 122(6) statement was given, and also when his long statements were given.

132 As for the long statements, the accused's position at trial was that most of his long statements were untrue. I have set out at length his position, but, in summary, they were untrue in the following respects:

(a) He had fabricated some parts.

(b) As regards other parts, they did not represent accurately what he had said.

(c) Thirdly, he denied outright what was attributed to him.

As the accused did not deny that the statements had accurately recorded what he had said in respect of category (a), I will deal with categories (b) and (c).

133 As regards category (b), the accused's position was that he did not use the words attributed to him but that he merely agreed with what the IO had suggested to him. In my view, even if he had merely agreed with what the IO had suggested to him, the substance of what had been recorded would still be correct. It was not as though he was tricked into agreeing. The long statements did not pretend to be a verbatim record of what the accused had said. It seemed to me that the Defence had sought to take undue advantage of the fact that the statements were not a verbatim record. Thus, for example, Mr Dhillon sought to make much out of the fact that paragraph 2 of the long statement was not a verbatim record because no witness would give a sentence like that. Paragraph 2 states, and I reiterate: "I would like to give an account of my drug activities". I was of the view that what probably happened was that the accused was told that the IO wanted him to give an account of his drug activities and he agreed. However, this was set out in paragraph 2 in the terms I have stated. The substance of the accused's response remained the same, although one could argue that the flavour was slightly different.

134 More importantly, I noted that paragraph 2 was the only paragraph which Mr Dhillon questioned the IO and the interpreter specifically on. Mr Dhillon carefully steered away from the important paragraphs of the long statements. He left it to the accused to state which of the important paragraphs fell into categories (a), (b) or (c). Accordingly, as regards both categories (b) and (c), Mr Dhillon did not challenge the IO or the interpreter on specific and important parts of the statements. He only put or suggested the accused's case generally.

135 Furthermore, I did not accept that the accused could remember after so many months exactly which parts of his statements were merely his responses to the IO's questions and which were those which he did not even say or respond to. I also reiterate that the long statements had been read back to the accused after each had been recorded and he did not object to the same.

136 Accordingly, I was of the view that the long statements did accurately record what the accused had said to the IO and the interpreter. It bears repeating that on the accused's own evidence, he took some time to give his long statements not because of withdrawal symptoms or cold or because the IO was trying to wear him down (as belatedly suggested in paragraph 248 of Mr Dhillon's closing submission) but because the accused was trying to fabricate his statements (NE 730). Paragraph 247 of Mr Dhillon's closing submission also submitted that the accused was denied extra clothing but I did not accept that he had told the IO or interpreter that he was cold. If the accused had fabricated the statements, it was for him to demonstrate that they were fabrications and why he had come up with such fabrications.

137 For example, the accused said that as he had had the use of SBR 4X, it was unnecessary for him to have taken a taxi to collect the drugs. That may be so, but that did not necessarily make this

part of his statement untrue. It is not so illogical for a person to take a taxi even though he owns a car. As another example, Mr Dhillon submitted that it was shocking for the IO to record statements to the effect that the accused had opened up drugs when they were recovered unopened (see paragraph 246 of his closing submissions). In my view, this depended on one's interpretation of the facts. It was undisputed that some of the drugs in the Oakley bag were found in the 89 sachets. Someone must have opened up the drugs before packing the drugs into these sachets. Besides, the IO had said he was simply recording the accused's statements and not challenging them.

138 Furthermore, even if some of the details as to how the accused had come into possession of the drugs found in the Oakley bag had been fabricated, the fact of the matter was that the accused had admitted to being in possession of the drugs for the purpose of trafficking.

139 As the accused had believed that Eric was responsible for the predicament he was facing, it would only be natural for the accused to mention to the IO Eric's role as soon as possible. Yet the accused took responsibility for the drugs in his long statements and mentioned Eric for the very first time only when he was giving evidence at trial.

140 I also noted the following points against the accused. First, he did not call Ah Siong or Roger to corroborate the existence of Eric or to corroborate his evidence as to how Eric came to supply him with drugs one or two days before the arrest and for which Roger came to owe Eric, not the accused, $9,000 for the drugs Roger received.

141 Secondly, the accused did not mention his girlfriend in his long statements. I did not accept his evidence that the omission was because the IO had said that there was no need to mention her. This point was not suggested or put to the IO or the interpreter. Furthermore, the accused did not call his girlfriend to corroborate his evidence as to why he had rented the Bedroom. I would add that the photograph of the Bedroom did not reveal any female clothing or toiletries for females only. Two bottles in the bathroom, seen in photo P12, could have been used by the accused himself or the previous occupant. The accused's assertion of the existence of a toothbrush and toothpaste which could not be seen in P12 did not advance his allegation regarding his girlfriend any further.

142 Thirdly, the accused did not call his elder brother to corroborate his evidence that he had asked the brother to contact Eric. Neither did he provide the court with the telephone number of Eric. I also found the accused's evidence contradictory when he said he had asked his elder brother to contact Eric but yet he did not believe Eric would own up.

143 I would add that the line of questions posed by Mr Dhillon to prosecution witnesses as to how the rooftop was accessible from other units at the top floor of Fragrance Court and whether the rooftop was accessible from either of two ladders at the top floor leading to openings at the rooftop was irrelevant given the accused's implied position that it was Eric who must have gone to the rooftop through the window of the Bedroom.

144 In the circumstances, I was also of the view that the accused knew the consequences of his long statements and had fabricated his evidence at trial about Eric. As I was of the view that the alleged threat by SI Ang did not exist, it could not continue to operate on the mind of the accused when he was giving his long statements.

145 As an aside, I would add that Mr Dhillon should have challenged the admissibility of the long statements if he was going to take the position that the alleged threat continued to operate on the mind of the accused then.

146 In the circumstances, the accused's assertions that he could have hidden the drugs elsewhere in the Bedroom and need not have carried all three keys to the padlock with him, if the drugs really belonged to him, were neither here nor there.

147 As for the suggestion by Mr Dhillon that the rooftop was not the safest place to hide the drugs as persons in neighbouring high-rise buildings could have seen the accused if he had been on the rooftop and someone else might have come onto the rooftop, the fact of the matter was that the drugs were found there. Furthermore, the argument about visibility also suggested that the accused's version about Eric was unlikely to be true. If the rooftop was visible from neighbouring high-rise buildings, it would be likely that the person who placed the Oakley bag there would have done so in the night. Yet, according to the accused's version, Eric would have placed the Oakley bag at the rooftop between about 11 am and about 5 pm of 28 January 2003.

148 The point about one other tenant seeing Ah Siong and a girl and the accused and a girl was also neither here nor there as the girls were not identified and, as I have said, the accused's girlfriend did not give evidence.

149 Mr Dhillon had also raised the point about the omission by the IO to try and obtain fingerprint evidence. The IO had assumed that the rubber gloves found had been used and did not try to obtain fingerprint evidence. He had agreed that fingerprint evidence would have been a great help for the trial (NE 569). In any event, as there was no fingerprint evidence before me, I had to reach my conclusion without such evidence.

150 I should also cover the point about the accused's ignorance that one of the big packets contained caffeine instead of heroin. I was of the view that this did not mean that he was unaware of the existence of the heroin in the Oakley bag . He had believed that all the three big packets and the 89 sachets contained heroin.

151 As for the question as to whether the accused had been given a key to the Bedroom, this became irrelevant. Even if he did not have the key, it did not advance his case any further since it was no longer his position that some unknown person had gained access to the Bedroom without his knowledge and thereafter to the rooftop. According to him, it was Eric who had done so after he had let Eric stay in the Bedroom.

Summary

152 In the circumstances, I found that the accused had failed to discharge the presumption under s 18, 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.

153 Accordingly, I convicted the accused on the charge and sentenced him according to the law.

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