Public Prosecutor v Yen May Woen
[2003] SGHC 60

Case Number : CC 2/2003

Decision Date : 21 March 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Janet Wang, Benjamin Yim and Laura Liu (Deputy Public Prosecutors) for the Public Prosecutor; Goh Siok Leng (Christina Goh & Co) and Morris Yow (David Chong & Co) for the accused

Parties : Public Prosecutor — Yen May Woen

1 The accused, a female by the name of Yen May Woen, was charged with the offence of trafficking in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185) ("the Act") on 8 May 2002 at or about 7.40pm in a taxi bearing registration number SHB 1851Z near a taxi-stand at Blk 179 Toa Payoh Central, Singapore by having in her possession for the purpose of trafficking not less than 30.16 g of diamorphine without any authorisation under the Act or regulations made thereunder. The alleged offence was under s 5(1)(a) read with s 5(2) of the Act. It is a capital offence. At the time of the alleged offence, the accused was 35 years of age.

2 On 8 May 2002, officers from the Central Narcotics Bureau ("CNB") proceeded to Blk 179 Toa Payoh Central to look out for a female Chinese known as Yen May Woen at a taxi stand near Blk 179. They had a photocopy of a photograph of Ms Yen.

3 At about 7.35pm, a white Mercedes Benz taxi SHB 1851Z ('the Taxi') stopped along Toa Payoh Central about 50 m from the taxi stand. A female Chinese was seen alighting from the Taxi and identified by Senior Staff Sergeant ("SSSgt") Tan Yian Chye (PW 11) as Yen May Woen, the accused. There was no dispute about the identity of the person identified by him.

4 SSSgt Tan saw the accused place a black briefcase into the boot of the Taxi and close the boot. The black brief case was also described during the trial as a black sling bag and I will henceforth refer to it as "the sling bag". The accused then walked towards the taxi stand while the Taxi remained where it was with hazard lights on. A short while later, the accused met up with a male Chinese near the taxi stand. The male Chinese and the accused were then arrested.

5 After the arrest, Woman Sergeant ("W/Sgt") Tan Poh Hoon handed to SSSgt Tan a packet containing a cyrstallised substance. She told SSSgt Tan that the accused had thrown away the packet during the arrest. W/Sgt Tan also handed to SSSgt Tan various items including cash of $300 and a cash cheque.

6 The taxi driver Ke Hock Seng was also arrested. SSSgt Tan then escorted the accused to the boot of the Taxi which was opened by Ke. SSSgt Tan saw the sling bag in the boot of the Taxi and posed some questions in Hokkien to the accused. The English version of his questions and answers were:

Q: This bag, does it belong to you?

A: (Accused nods here head)

Q: What is inside the bag?

A *Inside the bag contained more than 30 packets of heroin*. [Emphasis added]

7 SSSgt Tan summarised the answers in his pocket book in the morning of the next day ie 9 May 2002 by stating:

> … she admited [*sic*] to me the briefcase which she placed behind the taxi back containing more than 30 packets of heroin …
>
> (the entries from three pages in his pocket-book were admitted and marked P78)

8 SSSgt Tan denied that the accused had said that the sling bag was hers and she had lent it to her friend who had returned it to her. He also denied that the accused had said there was nothing inside the sling bag.

9 Sergeant ("Sgt") Ler Puay Soon (PW 12) said he was present when SSSgt Tan posed questions to the accused. His evidence was the same as the evidence of SSSgt Tan (para 6 of Sgt Ler's statement at PS 13, NE 95 to 97, 99). Sgt Ler had recorded the arrest and what the accused had said in his pocket book the next day ie 9 May 2002 (NE 98 and 99). Although at one stage during cross-examination he agreed that the accused had said that she had lent the bag to a friend who returned it to her (NE 102), he said during re-examination that he had made a mistake and he did not hear the accused say this (NE 105, 106 and 107).

10 W/Sgt Tan Poh Hoon (PW 13) said she was also present when SSSgt Tan posed questions to the accused. Her evidence was also the same as SSSgt Tan's evidence (para 6 of her statement at PS 14, NE 111, 116). She had recorded the arrest and what the accused had said in her pocket book at about 11am of the next day ie 9 May 2002 (NE 113). She also said that during the arrest, she spotted the accused throwing a packet of crystallised substance onto the ground (PS 14 para 5). She instructed Corporal ("Cpl") Mak Weng Chuen (PW 14) to pick it up which he did and handed to her. W/Sgt Tan also seized various items from the accused which she then handed to SSSgt Tan. The items seized included cash of $300 and a cash cheque.

11 Cpl Mak's evidence was that he was told by W/Sgt Tan to pick up a packet of crystallised substance on the ground which he did and he handed it to her (PS 15 para 5).

12 His evidence about what the accused had told SSSgt Tan (para 5 of his statement at PS 15, NE 123, 127) was the same as SSSgt Tan's evidence. Cpl Mak had recorded the events mentioned in his statement in his pocket book at about 9.05pm of the same day ie 8 May 2002 (NE 125).

13 Station Inspector ("SI") See Su Khoon also known as Ronnie See (PW 19) arrived at Toa Payoh Central in front of Blk 179 at about 8pm of 8 May 2002. He saw the accused who was handcuffed. The boot of the Taxi was open and he saw the sling bag in it. SSSgt Tan informed him about the accused's arrest and that during the arrest the accused was seen throwing away a sachet of crystalline substance suspected to be "Ice". SSSgt Tan also handed over various items seized from the accused including cash of $300 and a POSB cash cheque of $3,700.

14 SI See then retrieved the sling bag from the boot of the Taxi and handed it to Woman Corporal ("W/Cpl") Tay Sie Siz. He then instructed Sergeant Nicholas Neo to drive a CNB staff car, with the accused and W/Cpl Tay inside, and follow the Taxi. He then instructed the driver of the Taxi to drive it into a car park at Blk 178 Toa Payoh Central. He sat beside the driver of the Taxi.

15 In the car park, SI See seized a paper bag from the rear seat of the Taxi. Also, W/Cpl Tay

informed him that she had found a red packet containing nine sachets of crystalline substance suspected to be "Ice" and six "Erimin 5" tablets in a black handbag belonging to the accused. W/Cpl Tay handed the items to him.

16 At the car park, SI See informed the accused that he was going to record a statement from her and asked her what language she would like to use. The accused said Hokkien. The English version of the questions and answers, according to SI See (see NE 302 to 303), were:

SI Ronnie See: What language do you speak and understand as I want to ask you questions?

Accused: Hokkien.

SI Ronnie See: This black colour bag belongs to whom?

Accused: It's mine.

SI Ronnie See: What is inside?

Accused: *Heroin*.

SI Ronnie See: How much heroin?

Accused: I don't know.

[Emphasis added]

17 At this juncture, SI See opened the sling bag and in the centre compartment, there was a red plastic bag containing what he described as two "envelopes". The items were actually two paper bags and were brown in colour. He then opened them and counted the items in the presence of the accused. In each of the two paper bags were 30 sachets of heroin (P6, P7 and P8).

18 In the back compartment inside the sling bag, there were:

(a) A pouch or a small sack containing 30 sachets of heroin (P9);

(b) A white plastic bag containing an open brown paper bag with 30 sachets of heroin (P10).

19 In order to count the items, SI See said he stepped out of the car, opened the paper bags and poured the items onto the car seat (NE 176). SI See continued with his questions:

SI Ronnie See: The heroin here belongs to who?

Accused: *It's mine*.

SI Ronnie See: What are this heroin meant for?

Accused: Consume.

SI Ronnie See: Whom you obtained the heroin from?

[Accused shook her head.]

SI Ronnie See: Do you have anything else to say?

[Accused shook her head.]

[Emphasis added]

SI See then read the statements and explained them to the accused in the Hokkien dialect and she was invited to make any correction, alteration or amendment but she declined to do so. She was then invited to sign. When the accused was asked to sign on his pocket book, she scribbled on it. W/Cpl Tay then signed on SI See's pocket book.

20 Thereafter, SI See left with W/Cpl Tay and the accused in the CNB staff car for CNB headquarters. There he instructed W/Cpl Tay to further search the handbag of the accused. W/Cpl Tay did so and handed to SI See various items:

(a) a sachet of yellow granular substance suspected to be heroin

(b) a green pouch containing an "Erimin 5" tablet

(c) a green pouch containing a "Rolex" wristwatch

(d) cash of $12,270 and USD20.

21 SI See denied that he had told the accused that the sling bag was hers. He also denied that when the accused was asked whether anything was inside the sling bag, she had said, "Nothing" (NE 180). He also denied that he had opened the sling bag, pointed to the contents inside and asked the accused whether the contents were hers (NE 182). He also disagreed that he took out one item only from the sling bag and stressed that he had counted all the sachets therein in the presence of the accused (NE 184 to 185). He denied that he had asked the accused to sign on his pocket book without explaining to her what he had written and that she was not asked to make any correction, alteration or amendment (NE 185). He further refuted the suggestion that the accused did not tell him that the contents in the sling bag was "peh hoon" which is the Hokkien street jargon for heroin (NE 185 and 173). The literal translation is "white powder". I would add that "heroin" is the common name by which diamorphine is called. SI See disagreed that the questions recorded in the English transliteration of Hokkien in his pocket book had not been asked or that the answers, as recorded, had not been given (NE 185 and 186).

22 W/Cpl Tay was seated beside the accused in the CNB staff car when it was driven to the car park of Blk 178 Toa Payoh Central and when SI See joined them in the car, at the car park. Her evidence as to what she had found in the accused's black handbag and the questions and answers between SI See and the accused (see her statement at PS 21 and NE 200 to 202) were the same as SI See's. W/Cpl Tay also signed on the pocket book of SI See but did not read it before signing it. Her evidence on the questions and answers were based on her memory (see NE 201 to 202 again). She also said that SI See had taken bundles out of the sling bag and poured out the sachets therein onto the car seat and counted them in the presence of the accused (NE 204 to 205, 208).

23 Woman Assistant Superintendent ("W/ASP") Neo Ling Sim (PW 25) said she posed questions to the accused at about 10.10pm of 8 May 2002. At that time W/ASP Neo was holding the rank of Inspector. She had asked the accused whether she understood English and she nodded. The questions and answers which she recorded in her field book were:

Q1: Does the taxi driver who drove you to Toa Payoh have any knowledge of the drugs inside his taxi?

A1: *I didn't tell anybody*.

Q2: Does he know or not?

A2: No.

Q3: Does the Chinese guy who was arrested with you have any knowledge about the drugs inside the taxi?

A3: He don't know.

Q4: What do you call the Chinese guy who was arrested with you?

A4: 'Tua Kang'.

Q5: Does 'Tua Kang' know about the drugs?

A5: No.

[Emphasis added]

Thereafter, the questions and answers were read back to the accused in English and the accused confirmed they were true and correct. The accused also signed beneath the questions and answers and wrote down her identity card number.

24 At about 3.40am on the next day, W/ASP Neo read a type-written charge under s 5(1)(a) read with s 5(2) of the Act in English to the accused. This was interpreted in Hokkien by an interpreter Mr Wu Nan Yong. The accused then signed at the bottom of this charge.

25 W/ASP Neo then wrote the same charge on a piece of paper and read it to the accused in English. Again Mr Wu interpreted it in Hokkien to the accused. The accused signed below this charge.

26 Thereafter W/ASP Neo wrote out the Notice of Warning under s 122(6) of the Criminal Procedure Code. She read it in English and Mr Wu interpreted it in Hokkien to the accused. The accused signed below the Notice of Warning.

27 At about 4am, W/ASP Neo served the duplicate copy of the hand-written charge and Notice of Warning to the accused. At about 4.02am, the accused volunteered a statement in Hokkien. Mr Wu interpreted it into English and ASP Neo recorded it. The accused's statement was:

"I did not know there was *so much* heroin. That is all." [Emphasis added]

28 Mr Wu corroborated W/ASP Neo's evidence regarding his presence and interpretation.

29 W/ASP Neo also explained that she caused various items to be marked and photographed. The 120 sachets were marked as:

(a) B1A - 30 sachets from one brown envelope (meaning a brown paper bag) marked as B1

(b) B2A - 30 sachets from one brown envelope (meaning a brown paper bag) marked as B2

Both the brown paper bags were found in a red plastic bag marked as B.

(c) C1 - 30 sachets from a Louis Cardini cloth bag marked as C

(d) D1A - 30 sachets from a brown envelope (meaning a brown paper bag) marked as D1 which was in turn found in a white plastic bag marked as D.

30 Dr Lui Chi Pang (PW 17) analysed the contents of B1A, B2A, C1 and D1A, in addition to other items. His findings were:

(a) B1A contained 220.5 g of granular/powdery substance which was found to contain not less than 6.71 g of diamorphine, at a confidence level of 99.9999%

(b) B2A contained 220.6 g of granular/powdery substance which was found to contain not less than 6.36 g of diamorphine, at a confidence level of 99.9999%

(c) C1 contained 221.9 g of granular/powdery substance which was found to contain not less than 8.33 g of diamorphine, at a confidence level of 99.9999%

(d) D1A contained 220.8 g of granular/powdery substance which was found to be not less than 8.76 g of diamorphine, at a confidence level of 99.9999%.

The aggregate weight of the granular substance from the 120 sachets was therefore 883.8 g. The aggregate diamorphine content was not less than 30.16 g which was the subject of the charge.

Accused's case

31 The accused was the only witness for the defence.

32 In her oral testimony, she said she was working part time as a hairdresser and part-time as a receptionist before her arrest. Initially she said that she earned less than $1,000 a month and then she said she earned between $1,200 to $1,500 per month. She said she did not complete secondary one education but then said she did complete secondary one but not secondary two.

33 She said that on 8 May 2002, a person by the name of "Ah Chwee" (or spelt "Ah Chui") had telephoned her. Ah Chwee is also known as "Jack". She was asleep and said she would call him back. When she awoke, she called him and he said that he wanted to borrow $4,000. She hesitated but decided to lend him the money. Before the conversation ended, she reminded him to return the sling bag she had lent him. This was the sling bag in which drugs was found. However in cross-examination, she said she had left the sling bag behind at a Nasi Lemak stall in Lorong Ah Soo when she was with Ah Chwee and a group of friends in late April 2002. She then telephoned Ah Chwee to ask him to keep the bag for her. When the inconsistency was pointed out to her, she said that thereafter, he had asked and she had agreed to lend the sling bag to him.

34 The accused claimed that she was asked by Ah Chwee on 8 May 2002 to go to Thomson Plaza to hand him the money he wanted to borrow. When she reached there, she could not see him and went to look for him. Thereafter, she saw him in a car with a male passenger beside him. She opened the rear left door and handed the cash to him. She noticed the sling bag at the back of the

car and took it.

35 She claimed that all along she did not know there were drugs inside the sling bag. When she took it, she did not pay attention whether it felt heavy or not.

36 The accused's evidence was that after she was arrested, a man took the sling bag from the boot of the Taxi and asked her whether the sling bag was hers. The accused said she replied it was and had told the man that a friend had borrowed it from her and returned it to her. The man then asked the accused whether there was anything in the sling bag and she said, "Nothing". Subsequently, she was asked to get into a car with a girl and sent to a car park. At the car park, a male officer came into the car. He took the sling bag and asked her whether it belonged to her. She said ,"Yes". He then asked her whether anything was inside and she said, "Nothing". The officer then opened the sling bag and took out a packet and she saw that it contained heroin. The officer also asked her whether the packet belonged to her and she said, "No". He then put the packet back (into the sling bag). She said she was asked to sign something. She did so but no explanation was given to her.

37 Unfortunately for the accused, her testimony that she did not know what was inside the sling bag was inconsistent with what she had told various CNB officers including her statement after she was charged (see paras 6,16, 19, 23 and 27 above).

38 Moreover, it was also inconsistent with a long statement she had given on five separate occasions between 10 May 2002 and 21 August 2002 (Exhibit P80A to E) during investigations. I set out below those parts of her long statement which contradicted her oral testimony:

> 3. At about 4 pm, I called my drug supplier 'Jack' and asked him for one week supply of heroin. He then told me to meet him at Thomson Plaza to pick up the stuff. I then went to meet 'Jack' in a taxi. I ordered 20 to 30 sachets of heroin from 'Jack' for about $4,000/-. I met 'Jack' subsequently at about 4.30 pm to 5pm at Thomson and he gave me a bag containing the drugs and I gave him about $4,000 cash. I then took a taxi to Toa Payoh Central …
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> 4 Arriving at Toa Payoh Central, I alighted from the taxi and proceeded to look for 'Tua Kang'. I was then carrying my handbag. I met up with 'Tua Kang' at the 'mama' store. He handed over some cash and thereafter, I was placed under arrest by CNB officers. When I was placed under arrest, I threw away one sachet of 'ICE'. That sachet of 'ICE' had belonged to me. At the same time, 'Tua Kang' was also placed under arrest. After my arrest, I was brought to witness a search of the taxi that I had took to Toa Payoh. The officers then recovered a bag from the boot of the taxi. They found some drugs.
>
> 8 I remembered that I had ordered two weeks supply of heroin comprising approximately twenty sachets and one sachet of 'ICE' from 'Jack' prior to my arrest. I paid him $4,000 when I collected the drugs contained in a plastic bag. He also told me that he would settle the balance of money with me on another day. As I was feeling 'high', I did not check the amount of drugs that 'Jack' had passed to me. Therefore I was surprised when the officers recovered so much drugs in my bags.
>
> 12 I have known 'Tua Kang' for several months. … On the day that I was going to meet him, I did not tell him that I was to collect drugs from 'Jack' on the same day.
>
> 13 After collecting the drugs from 'Jack' at Thomson, I flagged a taxi to go to Toa Payoh and meet 'Tua Kang'. …

19 I mentioned earlier that I had ordered 20 to 30 sachets of heroin from 'Jack' prior on the day of my arrest. These 20 to 30 sachets of heroin were meant for my consumption. If I were not arrested, and I found out that there were 120 sachets of heroin, I would have called 'Jack' and asked him about it. I would ask him how come there were so many extra sachets of heroin and I would return the extra sachets of heroin to him. There were previous occasions when 'Jack' gave me extra 5 to 10 sachets of heroin when I ordered 20 to 30 sachets of heroin from him. 'Jack' insisted that I keep the extra sachets and pay him later. I believed that 'Jack' gave me the extra sachets of heroin because he wants to get rid of them. 'Jack' would always call me on my handphone. I do not know his handphone number as his number is shown as 'private number' on my handphone caller id. …

24 I wish to say that 'Mat Din' [another person] has nothing to do with the drugs that were found on me on the day of my arrest. He was not aware that I went to collect the heroin from 'Jack'. 'Mat Din' does not know 'Jack'.

39 When the accused was asked to explain the contradictions, the accused said that when she was arrested, she truly did not know the sling bag contained heroin. When she realised there was so much heroin, she was very frightened and at a loss. If she said the heroin did not belong to her, she would not be believed. As she had given a loan of $4,000 to Ah Chwee she admitted that 20 to 30 sachets out of the 120 sachets belonged to her. She thought that by admitting to these sachets, she would escape the death penalty. She never expected the accusation that the 120 sachets belonged to her. She also claimed that another reason for her untrue assertions was because the interpreter, Mr Wu, had been passing snide remarks at her although she did not make any such allegation about the Investigating Officer, W/ASP Neo. The accused claimed that she only came to know there were so many sachets in the sling bag when she arrived at the CNB office at Cantonment Road.

40 She also said that as she had not been taking heroin for the few days before her arrest, she felt lousy.

41 As for the cash of $12,570 (comprising the $300 and $12,270 referred to in paras 13 and 20 above) found in the accused's possession, she said that she would ask for money from her mother from time to time. She thought it was not safe to leave money in the rented flat where she was staying with a friend. She did not want to put it in a bank as she was afraid that her mother or younger brother would check her bank account. Most of her bank accounts were joint accounts. When asked why she was carrying so much money around, she said she was intending to buy a car.

Submission of the Defence

42 Ms Goh Siok Leng, Counsel for the defence, accepted that there was a presumption, under s 17 of the Act, that the accused was in possession of the drugs for the purpose of trafficking. She submitted that this presumption could be rebutted on a balance of probabilities, citing *Lu Lai Heng v PP* [1994] 2 SLR 251.

43 She submitted that as the accused was merely collecting the sling bag from Ah Chwee, there was no reason for her to suspect that there may be drugs in it. She relied on the accused's evidence that the accused had said nothing was in the sling bag when she was questioned. When a packet from the sling bag was shown to the accused and she was asked whether it was hers, the accused had replied it was not. As for the accused' scribble of a signature in the pocket book of SI See, the accused had said the contents were not explained to her. W/Cpl Tay Sie Siz also did not read the pocket book of SI See when she signed it. Accordingly, her testimony could not be relied upon regarding whether the statement recorded by SI See was accurate.

44 As for the statements made by the accused to W/ASP Neo Ling Sim at CNB's office at Cantonment Road, the accused had said certain things in a mixture of English and Hokkien and did not understand English well.

45 Ms Goh summarised the accused's evidence as follows:

(a) The accused had lent the sling bag to Ah Chwee.

(b) On 8 May 2002, Ah Chwee called to borrow $4,000 from her.

(c) On the same date, she lent Ah Chwee the $4,000.

(d) On the same date, she went to collect the bag which Ah Chwee returned to her.

Ms Goh submitted that it was not put to the accused that such evidence was untrue.

46 As for the accused's cautioned statements and her long statement given over five occasions, Ms Goh relied on the accused's explanation as to how she was frightened and thought that she would not be believed if she asserted that all the drugs did not belong to her.

47 Ms Goh cited *Somwang Phattanasaeng v PP* [1992] 1 SLR 850 for the proposition that:

> A previous statement made by an accused, which has been used to impeach his credit, is only admissible for that limited purpose, and not as substantive evidence of the content thereof.

48 Ms Goh also cited *PP v Hla Win* [1995] 2 SLR 424 for the proposition that:

> It was not the law that by reason of the [accused's] knowledge of the illicit nature of the contents of his bag, his evidence that he did not know the contents were drugs could not and should never be believed.

49 Ms Goh further submitted that there was a break in the chain of evidence relying on various cases. I quote from her written submissions:

> 19. The defence is contending that there is a break in the chain of evidence, calling into doubt the identity of the 120 sachets. In this case, there is failure by the prosecution to adduce evidence to provide the necessary link in the chain of evidence and is fatal to the prosecution case.
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> 20. In **Teoh Hoe Chye v. P.P. (1987) 1 M.L.J. 220**
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> **TAB E :** Defence Bundle of Authorities
>
> **The Court held**: *It is unnecessary to call evidence to ensure that there is no break in the chain of evidence but where a doubt as to the identity of an exhibit arises, a failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution case.*
>
> **Summary of case (on pg 228-229):** Supt Low, a member of Customs ambush party, upon arrest of the accused, took possession of the brown bag. He examined the bag and found 10 packages wrapped in brown paper. While in his office, he handed the bag which was believed to contain the drugs to Supt Lum. Supt Low then left the office. But what was more crucial is how and in what manner the exhibits came back to Supt Low's custody.

The following questions may be asked : what did Supt Lum do with the exhibits after he received them from Supt Low; where did he keep them; were they kept under lock and key; and did Supt Lum return to Supt Low the very same exhibits he received from Supt Low. The answers to these questions are highly pertinent to a proper determination of the identity of the exhibits.

A very vital link in the prosecution case seems to be missing.

The Court held: In this regard, it behoves us to reiterate that the requirement of strict proof in a criminal case cannot be relaxed to bridge any material gap in the prosecution evidence. Irrespective of whether the Court is otherwise convinced in its own mind of the guilt of innocence of an accused, its decision must be based on the evidence adduced and nothing else ….

21. In SSSgt Tan Yian Chye (*paragraph 5 of Pg 55 of PI bundle*) statement, he said "*I saw a black leather briefcase in the boot of the taxi. At about 8.10 p.m. a party of CNB officers led by SI Ronnie See arrived at the scene. I also pointed out to SI Ronnie See the black leather briefcase that was still inside the boot of the taxi*".

22. In Sgt Ler Puay Soon (*paragraph 6 on Pg 57 of PI Bundle*) statement: "*I saw a black leather briefcase in the boot. I also saw SSSgt Tan pointed out to SI Ronnie See the black briefcase inside the boot of the taxi*".

23. From the evidence adduced [by both of them], the only time that Neither SSSgt Tan nor Sgt Ler saw the black briefcase was in the boot of the taxi.

24. In SI Ronnie See (*paragraph 8 on Pg 79 of PI Bundle*) statement, he said "*the boot of the taxi was open and I saw a black bag in it. I also retrieved the black sling bag and handed to W/Cpl Tay Sie Sz. At about 8.15 p.m., I instructed Sgt Nicholas Neo to drive the CNB staff car (with the accused and W/Cpl Tay inside) and follow the taxi. I then instructed the male Chinese (Ke Hock Seng) to drive the taxi to the carpark at Blk 178 Toa Payoh Central. I then went inside the taxi*".

25. In *paragraph 9 on Pg 79 of PI Bundle*, SI Ronnie See stated:

"*Subsequently, W/Cpl Tay informed me that she found a red packet containing 9 sachets of crystalline substance suspected to be "ICE" and 6 'Erimin 5' tables in the black handbag belonging to the accused. She handed the items over to me*".

26. In *paragraph 10 on Pg 80 of PI Bundle*, SI Ronnie See stated "At this juncture, I opened the black sling bag and found the following items …….

27. In *paragraph 11 on Pg 81 of PI Bundle*, SI Ronnie See stated: "*At about 9.00 p.m., I left with W/Cpl Tay and the accused in the CNB staff car. At about 9.20 p.m. we arrived at CNB Hq*"

28. In *paragraph 12 on Pg 81 of PI Bundle, SI Ronnie See* stated: "In office, I instructed W/Cpl Tay to further search the **black handbag** of the accused and … W/Cpl informed me that she had found the following items (which she handed to me):

a) *A sachet of yellow granular substance suspected to be heroin*

b) *A green pouch containing an 'Erimin 5' tablet*.

….

29. In *paragraph 13 on Pg 81 of PI Bundle*, SI Ronnie See stated "*At about 10.05 p.m., I briefed the investigating officer, W/ASP Neo Ling Sim about the case and handed the **drug exhibits** over to her*".

30. From his statement and his testimony in Court, there was no evidence from SI Ronnie See that he handed over the **black sling bag** to W/Insp Neo. He merely said he handed the drug exhibits handed over to W/Insp Neo. Looking at paragraphs 9 and 12 of his statement, SI Ronnie See stated that W/Cpl Tay handed over to him some drug items namely 9 sachets of crystalline substance suspected to be 'ICE', 6 'Erimin 5' tablets, a sachet of yellow granular substance suspected to be heroin and a green pouch containing an 'Erimin 5' tablet. There was no evidence from SI Ronnie See that the black sling bag was with him from the carpark at Toa Payoh to the CNB Hq at Cantonment. What were the drug exhibits handed over to W/Insp Neo? Where was the black sling bag after it was taken away from the CNB car?

31. After SI Ronnie See had taken the black sling bag from the boot of the taxi, and handed over to W/Cpl Tay, it was no longer in his sight. The question to be asked is: From the carpark at Toa Payoh to CNB Hq at Cantonment, who had the black sling bag? From SI Ronnie See's evidence and statement, it is very clear that he did not have the black sling bag.

32. In W/Cpl Tay Sie Sz [*sic*] statement (paragraph 4 on Pg 91 of PI Bundle), she stated, "*he handed over a black sling bag to me*".

33. No evidence was adduced to show what W/Cpl Tay did with the black sling bag after it was handed over to her by SI Ronnie See.

34. In paragraphs 6 and 8 of her statement, W/Cpl Tay stated that she handed over some drug items to SI Ronnie See namely a red packet containing 9 sachets of crystalline substance suspected to be 'ICE', 6 'Erimin 5' tables, a sachet of yellow granular substance suspected to be heroin and a green pouch containing an 'Erimin 5' tablet.

35. From her statement and evidence in Court, it is also clear that W/Cpl Tay did not have the black sling bag, from the time they left the carpark to the time they arrived at CNB Hq.

36. In W/Insp Neo Ling Sim statement (*paragraph 3 on pg 104 of PI Bundle*), she stated "*At about 10.05 p.m., in CNB room B0329, SI Ronnie See briefed me on the facts of the case and handed over the **drug exhibits** to me*". No evidence has been adduced to show that she received the black sling bag either from SI Ronnie See or from any of the other witnesses.

37. From *paragraph 4 of her statement*, W/Insp Neo recorded a statement in English language from the *accused (Pg 114 of PI Bundle*), which concluded at 10.20 p.m. At about 11.05 p.m. (**about 45 minutes later**) the accused was escorted to Basement 4 carpark of CNB Hq. At about 11.15 p.m, W/Insp Neo directed the photographer to take photographs, of the taxi, … a black sling bag, …

38. Where was the accused between 10.20 p.m. (conclusion of the recording of the statement) and 11.05 p.m. when she was escorted to Basement 4 carpark of CNB Hq? The question is how who brought the black sling bag to Basement 4 carpark for photographs to be taken?

39. In her examination-in-chief, the accused was asked:-

(Questioning by SI Ronnie See inside the CNB car at the carpark in Toa Payoh)

Q: Did he explain to you what he asked you to sign?

A: He did not.

…

…

Q: After appending your signature, what happened next?

A: **They then took away my belonging, including my handbag and the black bag**.

This was **not challenged** by the prosecution - that the black bag was taken away from the CNB car.

40. Therefore, there is evidence from the accused that the black sling bag was taken away (i.e from the CNB car). The question is who took away the black sling bag and who had possession of the black sling bag thereafter? From the accused's testimony, it is clear that the black sling bag was not in the CNB car, when the car was driven (with SI Ronnie See, W/Cpl Tay Sie Sz [*sic*] and the accused inside) from the carpark at Toa Payoh to the CNB Hq at Cantonment?

41. From the above, the defence contends that there is a break in the chain of evidence (the black sling bag) affecting the identity of the exhibits i.e. 120 sachets which were eventually sent for analysis.

42. No evidence has been adduced by the prosecution to provide the necessary link in the chain of evidence. And it is the defence submission that this is fatal to the prosecution case.

43. In ***Abdul Rashid v P.P. (1994) 1 SLR 119***

TAB F: Defence Bundle of Authorities

Summary of case: After seizing the package, SNO Chew testimony was that it was in his possession (be it actual or constructive) right until the time he labelled it.

The Court held: At page 120 -

The prosecution bears the burden of proving beyond reasonable doubt that the package seized by the CNB from the first appellant's car was the substance eventually analyzed by the Scientific officer. Where there is a break in the chain of possession and a doubt arises as to the identity of these exhibits, the court will hold that the prosecution has not discharged the burden.

Present case: There is no evidence from any of the witnesses called that the black sling bag was in his/her possession right until the time it was photographed.

44. In ***Lai Kam Loy v. P.P. (1994) 1 SLR 787***

TAB G: Defence Bundle of Authorities

Summary of case (at page 796) Sgt Sivakumaran had properly labeled the give [*sic*] packets of drugs before he handed them over to SNO Johnny Ho so as not to create a doubt as to whether they were the same five packets he collected from SNO Johnny Ho the following day. There was therefore no need on the prosecution's part to call SNO Johnny Ho as a witness.

Present case: Here, there is no evidence that the black sling bag was handed over to W/Insp Neo. There is no evidence as to the whereabouts of the black sling bag from the car park to the CNB Hq.

(The accused's unchallenged testimony was that it was taken away from the CNB car).

45. In ***Satli Bin Masot v. P.P. (1999) 2 SLR 637***

TAB H: Defence Bundle of Authorities

Summary of case: Drugs found in a flat. Who actually carried it from the flat to the CNB car? There were 3 officers. Insp Cindy Goh testimony was that although she did not personally carried [*sic*] the large plastic bag from the flat to the car, she remembered it was one of the 2 officers with her and she had the drugs in her view all the time. The prosecution did not call the 2 officers to testify. The defence did not contend that there was any further breaks at any other period of time.

The Court held: <u>At page 638</u>:

In cases where a break in the chain of evidence was alleged, the issue for the court's determination was whether, on the evidence adduced before the court, any doubt had been raised on the identity of the drug exhibits …. Only when such a doubt had arisen would it be necessary for the prosecution to call al [*sic*] **necessary witnesses so as to provide the necessary links in the chain of evidence**.

Present case: No evidence here as to whether W/Cpl Tay Sie Sz [*sic*] had the black sling bag with her when she traveled in the CNB car with the accused. No evidence as to where was the black sling bag after it was taken away from the CNB car. No evidence that it was handed over to W/Insp Neo. No evidence as to who carried the black sling bag to Basement 4 carpark of CNB Hq.

46. The defence humbly submits that there is a break in the chain of evidence and the prosecution had not called witnesses to provide the necessary link in the chain of evidence. Following the case of Abdul Rashid v. P.P. (1994) 1 SLR 119, the prosecution bears the burden of proving beyond reasonable doubt that the exhibit seized was the substance eventually sent for analysis. And if a doubt arises as to its identity, the court will hold that the prosecution has not discharged the burden.

47. We humbly submit that a doubt has arisen as to the identity of the exhibits and hence the prosecution has failed to discharge the burden. If the court does not hold that a doubt as to the identity of the exhibits has arisen, we humbly submits [*sic*] that the accused had through her testimony in Court rebutted the presumption on a balance of probabilities and humbly urge this Honourable Court to discharge and acquit her accordingly.

Submission of the prosecution

50 Mr Benjamin Yim for the prosecution relied on *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 for the proposition that ignorance simpliciter was not enough. In that case, the charge was under the Drugs (Prevention of Misuse Act) Act 1964 and the House of Lords had to consider the meaning of "possession" under that legislation. At p 305 to 306, Lord Parker said:

> The situation with regard to containers presents further problems. If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been "planted" in his pocket without his knowledge, so I do not think he is in possession of contents which are quite different in kind from what he believed. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its

contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

51 Mr Yim submitted that the accused knew about the drugs in the sling bag because:

(a) There was reason for the accused to be suspicious of the contents in the sling bag as she had just lent it to her drug supplier, a shady person to say the least;

(b) The bag, with the 120 sachets of drugs, must surely weigh more than what an empty bag would feel - and surely draw her attention to the fact that it was containing things;

(c) As owner of the bag, the accused had the right to examine its contents; and

(d) The accused had ample opportunities to examine the contents of the bag, having travelled in the Taxi (from Thomson Plaza) to Causeway Point before going to Toa Payoh Central where she was subsequently arrested.

52 As for apportionment, Mr Yim submitted that since the accused was not taking the position that some of the heroin was for her own consumption, there was no need to engage in an exercise to identify which part of the heroin was for the accused's consumption and which was not.

53 As regards the self-confessed lies of the accused in a long statement, Mr Yim submitted that they amounted to corroboration of her guilt citing *PP v Yeo Choon Poh* [1994] 2 SLR 867 which adopted the criteria in *R v Lucas (Ruth)* [1981] QB 720, namely:

(a) The lie must be deliberate

(b) It must relate to a material issue

(c) The motive for the lie must be a realisation of guilt and a fear of the truth, and

(d) The statement must be clearly shown to be a lie by independent evidence.

54 Mr Yim also relied on the failure of the Defence to put various matters to the prosecution witnesses, relying on *Browne v Dunn* [1894] 6R 67. He also relied on *Browne v Dunn* in response to Ms Goh's submission about a break in the chain of evidence meaning that at no time did Ms Goh make any suggestion to any of the witnesses for the prosecution about the sling bag or that the drugs which were analysed were not in fact the drugs seized from the accused.

My decision

55 The presumption under s 17 of the Act arose only if the prosecution had established that the accused was in possession of the heroin that was analysed. If there was a doubt as to whether the heroin analysed was the same as the drugs that were seized from the accused, then the prosecution would not have proved its case.

56 In *Teoh Hoe Chye v PP* [1987] 1 MLJ 220, the Supreme Court disagreed with the High Court of

Penang and concluded that there was a serious break in the chain of evidence relating to the identity of the exhibits. In doing so, the Supreme Court posed various questions as reflected in Ms Goh's submission. It then cited the decision of the Federal Court in *Su Ah Ping v PP* [1980] 1 MLJ 75 to state that the law is clear in that "it is unnecessary to call evidence to ensure there is no break in the chain of evidence". However, it went on to say that where a doubt as to the identity of an exhibit arose, a failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution case.

57 In *Abdul Rashid v PP* [1994] 1 SLR 119, Chief Justice Yong Pung How, delivering the judgment of the Court of Appeal said (at p 127 of the report) that the prosecution bore the burden of proving beyond reasonable doubt that the package seized by CNB officers from the first appellant's car was the substance eventually analysed. He also said that where there was a break in the chain of possession and a doubt arose as to the identity of the exhibits, then the prosecution had not discharged its burden, citing *Su's* case and *Teoh*'s *case.*

58 However, in *Lai Kam Loy & Others v PP* [1994] 1 SLR 787, Yong CJ elaborated (at p 796 of the report):

> *Chain of possession*
>
> ….
>
> Mr Kumar referred us to the Malaysian case of *Teoh Hoe Chye v PP* in support of his contention. In our view, the critical passages in *Teoh's* case appear at p 299 where Abdul Hamid Omar CJ (as he then was) observed:
>
> We would observe at this point that 'it is unnecessary to call evidence to ensure there is no break in the chain of evidence' (*Su Ah Ping v PP* [1980] 1 MLJ 75) *but where a doubt as to the identity of an exhibit arises*, a failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution case. [Emphasis added.]
>
> We accept the proposition of law in *Teoh*'s case, but when questions of this nature are raised, the guiding principle is provided by the words 'where a doubt as to the identity of an exhibit arises'. In other words, it cannot be that in every drug case it lies on the prosecution to laboriously call every single witness to establish the chain of possession of the seized drugs. The need to do so only arises where a doubt as to the identity of an exhibit has arisen. This may arise for instance where it has been established that there was a shortfall in numbers or a failure to mark the exhibits. …

59 In *Satli bin Masot v PP* [1999] 2 SLR 637, Yong CJ, again delivering the judgment of the Court of Appeal, said:

> *The appeal*
>
> Defence of break in the chain of evidence
>
> ….
>
> 14 However, it does not follow that in order to establish the identity of the drug exhibits, all persons who have handled the drugs must be called as witnesses. The Malaysian Federal Court in *Su Ah Ping v PP* [1980] 1 MLJ 75 thus remarked:

> The complaint before us was not that there had been no proof that the exhibits were serviceable, but simply that there was a 'break in the chain of evidence', and the prosecution should have called as witnesses all the officers through whose hands the exhibits passed from Inspector Takbir to the armourer and back to the Inspector. We do not think there is merit in this point. *The question was whether the exhibits the Inspector produced were the guns and ammunition he found at the scene, and as when he produced them as those very guns and ammunition there was no objection by the defence, it would have been a waste of judicial time to call all the intervening handlers. In our experience much judicial time is spent unnecessarily, notably in subordinate courts, in ensuring no break in the chain of evidence. In our judgment, if the officer who picked up an object at the scene produced it and identified it as that very object, that is enough, and there is no need to call every other officer who handled it.*
>
> For this reason it is desirable for a police officer who picked up an object that is easily marked such as a gun, to mark it well, in case it may be needed later on as an exhibit. There are, however, objects such as blood samples and the like that cannot be easily marked; it is only in the case of such objects that it may be necessary to call everybody who has handled it - *then only if there is doubt as to identity.* [Our emphasis.]
>
> 15 As we have pointed out in the case of *Lai Kam Loy & Ors v PP* [1994] 1 SLR 787, the guiding principle is 'whether a doubt as to the identity of the exhibit has arisen'. …
>
> 16 Applying the above principles to our case, we respectfully agreed with the trial judge that no doubt had arisen as to the identity of the drug exhibit analysed by Dr Lee. Although Insp Goh could not point out during cross examination whether it was S/Sgt Tai or Sgt Phao who in fact carried the drug exhibits from the flat to the CNB staff car, and although this point was further not clarified at trial by calling two officers as witnesses, we were of the view that this at most only raised a doubt as to *who actually carried the drug exhibits* during the transfer from the flat to CNB staff car. However, what *Lai Kim Loy*'s case requires is that there must be a doubt as to the *identity of the exhibits* before it is necessary for the prosecution to adduce further evidence to ensure that there was no break in the chain of evidence. Whether such a doubt exists must be judged in light of all relevant circumstances surrounding the transportation of the drugs from the flat to the car. The relevant circumstances here, according to Insp Goh's testimony, were that although she did not carry the drug exhibits from the flat to the CNB staff car herself, she was certain that one of the male officers accompanying her (viz S/Sgt Tai or Sgt Phao) did so. In fact all three of them walked to the staff car together, during which time, Insp Goh had the drug exhibits within her view throughout. In the circumstances, the drug exhibits could be said to have been in her de facto possession (be it actual or constructive) during the relevant time. Since we had no reason to disbelieve Insp Goh, there was clearly no doubt that the drugs that were placed in the boot of the CNB staff car by either of S/Sgt Tai or Sgt Phao were the very drugs that were seized from the flat. The drug exhibits were accounted for at all times while they were being transported down to the CNB staff car. Calling S/Sgt Tai and Sgt Phao at trial so as to establish the identity of the actual carrier of the drug exhibits would in the circumstances have been totally unnecessary since Insp Goh's testimony in the circumstances had already sufficiently established the continuity of the chain of evidence during the relevant time. The appellant's contention that a break in the chain of evidence occurred during the transportation of the drug exhibits from the flat to the car was, in our view, clearly without merit.

60 I would add that the principle that there must be a doubt as to the identity of the exhibit refers to a reasonable doubt. This is consistent with the burden on the prosecution to prove its case beyond a reasonable doubt. As was demonstrated in *Satli*'s case, the mere fact that questions may be posed unanswered does not necessarily mean that a reasonable doubt in the prosecution's case has arisen.

61 Coming now to Ms Goh's submission on a break in the chain of evidence, I did not agree that no evidence had been adduced to show what W/Cpl Tay Sie Siz did with the sling bag after it was handed over to her by SI See. In my view, Ms Goh had referred to para 4 of W/Cpl Tay's statement in isolation. I will now refer to that para 4 and other evidence on this point.

62 Paragraph 4 of W/Cpl Tay's statement stated that at about 8pm (of 8 May 2002), W/Cpl Tay was instructed to take over custody of the accused. SI See then handed over to W/Cpl Tay the sling bag and instructed her to escort the accused into the CNB staff car, SCV 7312C.

63 Paragraph 5 stated that at about 8.15pm, Sgt Nicholas Neo drove the CNB staff car, with the accused and W/Cpl Tay inside, to a car park at Blk 178 Toa Payoh Central.

64 Paragraph 6 stated that when they reached the car park, SI See came into the staff car and instructed W/Cpl Tay to search through the accused's handbag and upon doing so, W/Cpl Tay found some other drugs which she handed to SI See.

65 Coming now to SI See's statement, para 10 thereof stated clearly that at about 8.20pm at the car park he was inside the CNB staff car and after asking the accused some questions, he opened the sling bag and counted the sachet of drugs in the presence of the accused.

66 Therefore, all W/Cpl Tay was saying in her para 4 was that she received the sling bag from SI See before she and the accused were driven to the car park at Blk 178. It is clear from the statement and oral evidence of SI See, and also from the oral evidence of W/Cpl Tay as well, that when W/Cpl Tay and the accused were in the CNB staff car at the car park, SI See came into the CNB staff car, asked questions of the accused, opened the sling bag, opened various bags found inside the sling bag, poured out the sachets inside and counted them in the presence of the accused.

67 On another point, paras 39 and 40 of Ms Goh's submission asserted that when the accused said that, "They then took away my belonging, including my handbag and the black bag" this meant that the sling bag (which was black in colour) was taken away from the CNB staff car. To me, this was a quantum leap. Just because the sling bag was taken away from the accused did not mean that it was no longer in the CNB staff car and no longer in the possession of SI See or W/Cpl Tay.

68 From para 11 of SI See's statement and para 7 of W/Cpl Tay's statement, it is clear that SI See, W/Cpl Tay and the accused left the car park together in the CNB staff car and arrived at CNB headquarters (at Cantonment Road). While it is true that there was no specific mention as to who was holding the sling bag then, or whether it was in the boot of the car, this did not, in my view, raise any reasonable doubt as to the identity of the drugs analysed.

69 Furthermore, although it is true that SI See did not specifically say in his statement or oral evidence that he handed the sling bag to W/ASP Neo Ling Sim upon arrival at CNB's office and she also did not specifically say so, SI See did identify the sling bag which was exhibit P44 as the one he was referring to in his statement (NE 165). Likewise, SSSgt Tan Yian Chye identified P44 as the sling bag which he saw in the boot of the Taxi (NE 71 and 72). Neither of these witnesses were challenged on this aspect of their evidence.

70 In addition, the accused herself identified P44 as the sling bag she had purportedly lent to Ah Chwee and took back from him, and P4 as the photo of the sling bag (NE 355).

71 It seemed to me that it was not so much the identification of the sling bag which was in question but rather whether the break in the chain of evidence regarding the sling bag affected the

identification of the drugs which were eventually analysed. Indeed, that is how Ms Goh summarised her argument in her oral closing submission (NE 436). In other words, was there a break in the chain of evidence which would raise a reasonable doubt as to whether the drugs analysed were the same as the drugs seized from the sling bag?

72 On this point, I have to refer again to SI See's statement in some detail.

73 Paragraph 4 of SI See's statement stated that SSSgt Tan had informed him that during the arrest the accused was seen throwing (away) a sachet of crystalline substance suspected to be 'ICE'. It implied that this was handed to SI See as the rest of para 4 said "SSSgt Tan *also* handed over to me 6 items which were listed in the said paragraph 4". [Emphasis added]

74 Paragraph 9 of his statement stated that W/Cpl Tay had informed him that she had found a red packet containing nine sachets of crystalline substance suspected to be "ICE" and six "Erimin 5" tablets in the accused's handbag and handed them to him.

75 Paragraph 10 mentioned how SI See opened the sling bag and counted 120 sachets containing a yellow granular substance suspected to be heroin in the presence of the accused.

76 Paragraph 12 stated that SI See instructed W/Cpl Tay to further search the accused's handbag and W/Cpl Tay found and handed to SI See the following:

(a) a sachet of yellow granular substance suspected to heroin,

(b) a green pouch containing an "Erimin 5" tablet,

(c) a green pouch containing a "Rolex" wristwatch,

(d) total cash of $12,270 and USD20.

77 Paragraph 13 of his statement stated:

At about 10.05 pm I briefed the Investigating Officer, Woman Assistant (W/ASP) Neo Ling Sim about the case *and handed the drug exhibits over to her* …. [Emphasis added]

78 Paragraph 14 stated that at about 11.15pm, W/ASP Neo directed photographs of the Taxi and the drug exhibits to be taken in the presence of the accused. During the photographing, the sling bag was found to contain seven other exhibits.

79 Paragraph 15 stated that on 9 May 2002 at about 1.10am, together with W/Cpl Tay, SI See "handed over the rest of the exhibits to W/ASP Neo Ling Sim".

80 It was clear to me that para 15 was not referring to the drug exhibits because the handing over of drug exhibits by SI See to W/ASP Neo was already stated in para 13. It was also clear to me that the "drug exhibits" mentioned in para 13 were those already mentioned in all the earlier paragraphs i.e paras 4, 9, 10 and 12 of SI See's statement. The words "drug exhibits" were not confined only to the drug exhibits stated in para 12 of SI See's statement. The use of the words "drug exhibits" was to obviate the need to itemise the drugs mentioned in the earlier four paragraphs all over again in para 13 although, with the benefit of hind-sight, they should have been itemised all over again in that paragraph. Also, this was not a situation where the prosecution had failed to call a witness. SI See was a witness. So was W/ASP Neo. At no time did Ms Goh suggest to SI See or W/ASP Neo that the drugs analysed were different from those found in the sling bag.

81 In summary, while SI See omitted to mention specifically that he had handed over the sling bag to W/ASP Neo, he did not omit to mention that he had handed the drugs to her and, in stating this, he meant all the drugs mentioned in his statement.

82 Paragraph 3 of W/ASP Neo's statement stated that at about 10.05pm (of 8 May 2002), SI See briefed her on the facts of the case and handed over the drug exhibits to her. Although she too did not itemise the drug exhibits in her para 3, she corroborated SI See's statement that he did hand over drugs to her at about 10.05pm. As I have said, I was satisfied that "drug exhibits" in his para 13 included the 120 sachets found in the sling bag.

83 I noted also that in para 5 of W/ASP Neo's statement, she said that she directed a photographer to take a photo of the sling bag marked as "A" and she took out the contents of "A" and marked them. From the sling bag:

(a) there was a red plastic bag containing two brown paper bags. Inside each brown paper bag were 30 sachets of yellow granular substance

(b) there was a Louis Cardini cloth bag or sack. Inside were 30 sachets of yellow granular substance

(c) there was a white plastic bag containing a brown paper bag. Inside the brown paper bag were 30 sachets of yellow granular substance.

84 I have already said that when SI See handed "the drug exhibits" to W/ASP Neo, "the drug exhibits" included the 120 sachets in the sling bag. In my view, the 120 sachets were handed over by SI See to W/ASP Neo in the sling bag, although there was some doubt as to whether the sling bag, with the 120 sachets, was with SI See or W/Cpl Tay, or in the boot of the CNB staff car, as they brought the accused to the CNB office at Cantonment Road.

85 As there was no suggestion of any further breaks in the chain of evidence at any other time, I had no reasonable doubt that the drugs from the 120 sachets analysed by Dr Lui Chi Pang were those found in the sling bag.

86 Coming now to the accused's oral testimony that she did not know there was heroin in the sling bag, it was obvious that portions of her long statement contradicted her oral testimony. I did not accept the accused's evidence that those portions were untrue in the sense that she was truly ignorant of the existence of the heroin in the sling bag. In my view, they were untrue in a different sense i.e that she knew both about the existence of the heroin and the quantity thereof. If she was truly ignorant of the existence of the heroin, she would have expressed alarm as soon as she learned about its existence. She never did. Instead she claimed in her long statement that she had ordered only 20 to 30 sachets of heroin. I accept that this was a calculated move by her in an attempt to avoid the death penalty but not for the reason she had given i.e that she thought she would not be believed if she had said she was ignorant about the contents in the sling bag.

87 I did not accept the accused's evidence that she made the long statement while she was tired, because she had not taken heroin for a few days before her arrest, as a sufficient explanation for the contradiction. Even if she was tired, she had the presence of mind to throw away a sachet of drugs when she was arrested. Besides, the five occasions when she gave her long statement was on 10 May 2002, 17 May 2002 (twice), 20 May 2002 and 21 August 2002. By 21 August 2002, when she said that Mat Din was not aware that she had gone to collect the heroin from Jack (Ah Chwee), she

would not have been still suffering tiredness from not taking drugs.

88. I was also of the view that the accused's reference to snide remarks having been made by the interpreter was untrue and a red herring. She was not able to explain how the snide remarks had caused her to make untrue statements.

89 The long statement of the accused also corroborated what she had told officers like SSSgt Tan Yian Chye and SI See (see paras 6 and 16 above) in that she knew there was heroin in the sling bag. Their evidence was corroborated by other CNB officers and I accept their evidence. All these statements of the accused belied her oral testimony.

90 In any event, the case before me was not one where, apart from the positive assertions in the statements of the accused, there was no evidence to contradict the accused's allegation of ignorance.

91 First, if only the sling bag was being returned to the accused, then it should have been empty. When she took the sling bag she could not have failed to note that it was not empty. According to Dr Lui's findings, the weight of the granular substance from the 120 sachets totalled 883.8 g which is about 31 pounds. This was also not a case where the accused had thought that the contents of the sling bag were something else.

92 Secondly, surely Ah Chwee must have known that the accused was taking the sling bag from his car on that fateful day. If she was not supposed to take the drugs, he would have stopped her or at least have told her that there were drugs inside the sling bag and told her what to do with them or ask for their return. In other words, Ah Chwee would not have remained silent.

93 Thirdly, the accused never expressed any surprise at the existence of drugs in the sling bag when she purportedly learned about the existence thereof. Her purported surprise when she gave a statement after she was charged was directed at the quantity of heroin in the sling bag and not at the very presence of heroin.

94 Fourthly, she also could not explain why, if she was ignorant of the drugs in the sling bag, she did not mention Ah Chwee's name or his telephone number to any of the CNB officers at the material time except to say that she was in a daze and sleepy. Up till the time of her oral evidence during the trial, she still had not provided his telephone number, even though she had claimed that she had called him back on 8 May 2002 after she awoke from her sleep.

95 Fifthly, I did not accept the accused's evidence as to how she used to get money from her mother. She failed to call her mother to testify on her behalf. I also did not accept that the cash of $12,570 found on her was entirely her own money and that she had carried it around partly because she was afraid to leave it in a flat she rented, partly because she did not want to put it in a bank account because of inquiries by her mother and younger brother and partly because she was thinking of buying a car. The money could have easily been kept in a bank in her sole name without disclosing it to her mother and younger brother, who, in any event, did not give evidence on her behalf. The reason about buying a car came later and did not adequately explain why she should walk around with such a large sum of money when she had not even actually decided to buy a car. In my view, most, if not all, the cash was drug money to purchase heroin and/or was from the sale of heroin.

96 I was also satisfied that although the prosecution should have put its case to the accused in a more comprehensive manner, without being verbose, it had nevertheless put the crux of its case to the accused which was that at all material times on 8 May 2002, the accused knew the sling bag

contained 120 sachets of heroin and these were for the purpose of trafficking.

97 In the circumstances, I was of the view that the accused had failed to discharge the presumption under s 17.

98 As regards the point whether an accused's previous statements should be restricted to impeaching his credit alone, this point is not relevant to the facts before me. If, as I have found, the oral testimony of the accused before me was not credible, whether because of her statements and/or other evidence, then she would have failed to discharge the presumption against her. There was no need to go on and consider whether her statements or her lies from her oral testimony would also corroborate other evidence to establish that she was in fact trafficking in drugs.

99 However, as Ms Goh had relied on a passage from the case of *Somwang* for the proposition that an accused's previous statements should be restricted to impeaching his credit alone, and not as substantive evidence of the content thereof, I should mention that in *Ukthunthod v PP* [1994] 1 SLR 225, L P Thean JA said that that passage from *Somwang* was orbiter dictum and, secondly, that s 147(3) of the Evidence Act was not cited to and considered in *Somwang*. Section 147(3) states:

> (3) Where in any proceedings a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of this section, that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

100 As the accused had failed to discharge the presumption, I found her guilty, convicted her and sentenced her according to the law.

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