

ABDULBASIT BADDUN

**v.
PP**

Court of Appeal, Putrajaya
Ravinthran Paramaguru, Collin Lawrence Sequerah, Ahmad Kamal Md
Shahid JJCA
[Criminal Appeal No: S-05(SHM52-04/2023)]
21 July 2026

Case(s) referred to:

Balachandran v. PP [2004] 2 MLRA 547; [2005] 2 MLJ 301; [2005] 1 CLJ 85;
[2005] 1 CLJ 851; [2005] 1 AMR 321 (refd)
Gunalan Ramachandran & Ors v. PP [2004] 2 MLRA 180; [2004] 4 MLJ 489;
[2004] 4 CLJ 551; [2004] 6 AMR 189 (refd)
Looi Kow Chai & Anor v. PP [2002] 2 MLRA 383; [2003] 2 MLJ 65; [2003] 1
CLJ 734; [2003] 2 AMR 89 (refd)
Mat v. PP [1963] 1 MLRH 400; [1963] 1 MLJ 263 (refd)
Munusamy Vengadasalam v. PP [1986] 1 MLRA 292; [1987] 1 MLJ 492; [1987] 1
CLJ 250; [1987] CLJ (Rep) 221; [1987] CLJ Rep 221 (refd)
PP v. Lam San [1991] 1 MLRA 219; [1991] 3 MLJ 426; [1991] 3 CLJ 2410; [1991]
1 CLJ (Rep) 391; [1991] 1 CLJ Rep 391 (refd)
PP v. Mohd Radzi Abu Bakar [2005] 2 MLRA 590; [2005] 6 MLJ 393; [2006] 1
CLJ 457; [2006] 1 CLJ 467; [2005] 6 AMR 203 (refd)
PP v. Muhamad Nasir Shahrudin & Anor [1992] 2 MLRH 390; [1994] 2 MLJ
576; [1992] 4 CLJ 2028; [1992] 3 CLJ (Rep) 408 (refd)
Wei Hong Ping v. PP [2023] 1 MLRA 508; [2022] 6 MLJ 643; [2022] 10 CLJ 708
(refd)

Legislation referred to:

Criminal Justice Act 1953, s 3
Criminal Procedure Code, s 182A
Dangerous Drugs Act 1952, ss 39B(1)(a), (2A)
Evidence Act 1950, s 8

Counsel:

For the appellant: Evan Chee Vui Seong; M/s Chee & Co
For the respondent: Zander Lim Wai Keong; AG's Chambers

[Dismissing the appeal.]

Case Progression:

High Court: [2023] MLRHU 611

JUDGMENT



Collin Lawrence Sequerah JCA:**A) Introduction**

[1] The Appellant was charged for trafficking 129.40 grams of methamphetamine in front of an unnumbered house in Kampung Rangu in Tawau pursuant to s 39B(1)(a) of the Dangerous Drugs Act 1952,

[2] The charge read as follows:

"That you, on the 11th of February 2021, at about 10.45 am, located in front of an unnumbered house at Kampung Rangu in the district of Tawau, in the state of Sabah, did on your own behalf traffic in a dangerous drug to wit 129.40 gram of Methamphetamine and that you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act, 1952 (Act 234) and punishable under s 39B(2) of the same Act."

[3] After a full trial, the learned High Court Judge convicted the Appellant under s 39B(1)(a) of the Dangerous Drugs Act 1952 and sentenced him to thirty (30) years of imprisonment commencing from the date of arrest (11 February 2021) and also imposed fifteen (15) strokes of whipping. The Appellant appealed against both conviction and sentence to the Court of Appeal.

[4] At the conclusion of the appeal, we unanimously found the conviction to be safe and dismissed both the appeal on conviction and sentence. These are the grounds for our decision.

B) Pertinent Facts

[5] The prosecution narrative unfolded when it was revealed that on 11 February 2021, PW4 received information regarding some drug trafficking activity, said to occur in the vicinity of Kampung Rangu. PW4 then assembled his team and conducted a briefing at I PD Tawau Sabah. There were total often (10) members in this operation team including PW4.

[6] The same day at approximately 10.45 am, PW4 and his team conducted surveillance in the Kampung Rangu area. During the operation, PW4 and his team observed a man, later identified as the Appellant, sitting suspiciously on a blue-black Yamaha LC 150 motorcycle bearing registration number SWB 4601, in front of an unnumbered house at Kampung Rangu.

[7] PW4 observed the Appellant from a distance of approximately 15 to 20 meters for about 20 minutes, during which no other person was seen in the vicinity of the said house. PW4 and his team then approached the Appellant.

[8] After PW4 introduced himself as a police officer, the Appellant attempted to flee by running behind the house. A scuffle ensued, during which PW4 arrested the Appellant. As a result of the scuffle, the Appellant sustained



injuries.

[9] PW4 conducted a body search on the Appellant but found nothing incriminating. However, the Appellant was carrying a dark blue Champion backpack (P10), and upon conducting a search, PW4 found a pink plastic bag (P6) containing four (4) transparent plastic packets (P6(a-d)) suspected to contain Methamphetamine.

[10] PW4 also discovered the Appellant's personal belongings in P10, including a brown envelope (P11) containing a copy of his birth certificate and a letter from Sekolah Kebangsaan Bukit Quoin dated 3 May 2003.

[11] The Appellant was then arrested, and PW4 seized P10 along with its contents. The Appellant and the seized items were brought to IPD Tawau, and at all material times, the said items remained in PW4's custody.

[12] Upon arrival at IPD Tawau, PW4 examined the seized items, including the impugned drugs and proceeded to mark each exhibit. The markings were as follows:-

- (i) Dark blue Champion backpack ("MF");
- (ii) One (1) pink plastic bag ("MF1");
- (iii) Four (4) transparent plastic packets ("MF2 - MF5");
- (iv) One (1) brown envelope containing the Appellant's birth certificate ("MF6");
- (v) One (1) Yamaha Motorcycle ("MF7"); and
- (vi) One (1) key to the Yamaha Motorcycle ("MF8").

[13] After completing the necessary procedures, PW4 weighed and marked the seized items in the presence of the Appellant and prepared a search list (P16), which was duly signed by the Appellant

[14] Later the same day, at approximately 5.30 pm, PW4 handed over the Appellant, the seized items and the relevant documents and images (P14, P15, P16&P17) to PW5, the Investigating Officer (IO). Upon receiving the said exhibits from PW4, PW5 examined and re-marked the seized items, including the impugned drugs and proceeded to photograph the exhibits (P14).

[15] At approximately 6.30 pm, PW5 handed over the seized items namely P10, P6, P6(a-d) and P11 to PW3 for safekeeping in the police store.

[16] The remaining seized items were retained by PW5 in a locked steel cabinet in his office, to which only he had sole custody and access, except for the motorcycle, which was kept at the Narcotics Division Yard.



[17] On 12 February 2021, at approximately 8.00 am, PW5 instructed D/Sjn Awang Bin Abdi to conduct a finger dusting exercise on P6(a-d) in PWS's presence. However, no fingerprints were detected on the said exhibits.

[18] On 13 February 2021, at approximately 12.00 pm, PW5, together with PW4 and another police personnel, visited the scene of the incident.

[19] On 17 February 2021, at approximately 9.00 am, PW5 placed the drugs exhibits into an envelope marked "MSAR" and sealed it with the PDRM 545 chop (P5) for submission to the Chemistry Department, Kota Kinabalu, for analysis.

[20] On 18 February 2021, at approximately 9.29 am, PW5 handed over P5 to PW1 (Chemist) at the Chemistry Department, Kota Kinabalu, together with the request for analysis (P4(1-2)). Upon receipt, PW1 issued a receipt bearing the unique serial number 21-FR-S-00338 to acknowledge receipt of P5 and its contents.

[21] PW1 testified that she stored P5 in a metal cabinet located in the Chemistry Department's storage room, to which she alone had access and custody to the said cabinet.

[22] After completing the analysis, PW1 sealed the envelope "MSAR" with "Jabatan Kimia Malaysia" security label before she kept the said envelope containing the drug exhibits into the storage room.

[23] On 27 April 2021, PW5 instructed PW2 to collect the drug exhibits and the chemist report (P8), which PW2 did at approximately 10.20 am at the Chemistry Department, Kota Kinabalu.

[24] The same day, at approximately 6.00 pm, PW2 handed over the envelope and P8 to PW5 at IPD Tawau. PW5 initially kept the exhibits in his office, where he alone had access and custody. At approximately 9.00 pm, PW5 handed the exhibits over to PW3 for safekeeping in the police store.

C) Our Analysis Of The Findings And Decision Of The High Court

[25] At the end of the prosecution case, the learned High Court Judge (HCJ) held that in order to establish a *prima facie* case against the Appellant, the prosecution had to establish; (i) the identity and weight of the drugs, viz, 129.40 grams of methamphetamine'; (ii) the Appellant had possession of the drugs; and (iii) the Appellant was trafficking the drugs on the date, and at the time and place as particularised in the charge.

i) Identity and weight of the drugs

In respect of proving the identity and weight of the drugs, the HCJ referred to the evidence of PW1 whose academic credentials include a Bachelor's, and Master's degree in Science (Forensic Science) from the University of Science Malaysia. The HCJ also alluded to the fact that



PW1 had been in the service of the Jabatan Kimia Malaysia since 18 July 2005 and that PW1 had given evidence of her attendance at various courses, seminars, conferences and workshops on the analysis of dangerous drugs and related subjects, and that she had testified on more than 200 occasions in court without any adverse comments.

[26] The HCJ also in his Grounds of Judgment ("GOJ"), said that PW1 had carried out the Marquis and Simon's tests as well as the Gas Chromatography-Mass Spectrometer and the Gas Chromatography-Flam Ionization Detector instrumental tests and from which PW1 had ascertained that there was a nett weight of 129.40 grams of methamphetamine in the crystalline substances which had a gross weight of 192.85 grams

[27] The HCJ then referred to the attempt on the part of learned Counsel for the defence in assailing the evidence of PW1 in respect of the identity of the drugs, namely, that there was no evidence adduced of the expiry dates of the chemicals used in the Marquis and Simon's tests.

[28] The HCJ however, cited *Munusamy Vengadasalam v. PP* [1986] 1 MLRA 292; [1987] 1 MLJ 492; [1987] 1 CLJ 250; [1987] CLJ (Rep) 221; [1987] CLJ Rep 221 and *PP v. Lam San* [1991] 1 MLRA 219; [1991] 3 MLJ 426; [1991] 3 CLJ 2410; [1991] 1 CLJ (Rep) 391; [1991] 1 CLJ Rep 391 respectively, which held that the court is entitled to accept the opinion of the expert on its face value, unless it is inherently incredible or the defence calls evidence in rebuttal by another expert to contradict the opinion and that so long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into details of what he did in the laboratory, step by step.

[29] The HCJ stated that it was not shown and there was no reason to hold that the chemicals or reagents used had passed their expiry dates and, in any event, there was no evidence that the results would be affected if at all the chemicals or reagents used had passed their expiry dates. PW1 had further affirmatively stated that as a result of the chemical tests performed, there was colour reaction indicating the presence of methamphetamine which was also confirmed by the instrumental Gas Chromatography- Mass Spectrometer as well as the Gas Chromatography- Flam Ionization Detector tests.

[30] In respect of the attack by the defence with regard to the weight of the drugs, the HCJ referred to the testimony of PW1 that "the nett weight of the crystalline substances was obtained by subtracting the weight of empty plastic packets from the gross weight of crystalline substances and plastic packets" which he opined to be sufficient in proving the weight of the impugned drugs.

[31] The defence further alleged a break in the chain of evidence. The HCJ addressed this by stating that the Court could accept PWS's testimony that he had kept the drug exhibits in a locked steel cabinet in his office, only he had the key to the cabinet, and he had taken them out for fingerprint dusting the very next day at 8am. There was no evidence that the drug exhibits - which by that time had the markings made by PW4 and PW5 - had been tampered with or mixed up, as both witnesses identified the drug exhibits with their markings



during the trial.

[32] The HCJ also dealt with the allegation that due to a notation made in exhibit P9(a) after the drug exhibits had been analysed, there was a period of 12 hours during which the evidence was unaccounted for, by referring to the evidence of PW2 which was that after he collected the drug exhibits from PW1 in Kota Kinabalu, he drove back to Tawau between 10. 20am and 6pm.

[33] The HCJ concluded thus that there could not be an unexplained gap of 12 hours between 9am and 9pm on 27 April 2021 when the whereabouts of the drug exhibits could not be accounted for.

[34] The HCJ stated that in any event, the drug exhibits had already been analysed by that time and referred to the case of *Gunalan Ramachandran & Ors v. PP* [2004] 2 MLRA 180; [2004] 4 MLJ 489; [2004] 4 CLJ 551; [2004] 6 AMR 189, which held that the chain of evidence is more important for the period from the time of recovery until the completion of the analysis by the chemist.

[35] That case also held that the fact that there is 'a gap', does not necessarily mean that that fact is not proved. It depends on the facts and circumstances of each case. The HCJ in any event found as a fact that there was no break in the chain of evidence.

[36] Upon a perusal of the GOJ of the HCJ, we found that he had evaluated each and every ingredient with regard to the identity and weight of the drugs and came to the rightful conclusion that they were proven to the hilt. The HCJ alluded to the qualifications and the proven expertise of PW1 as well as the fact that PW1 had testified numerous times without any adverse comments.

[37] The HCJ had also alluded to all the necessary tests and methods which were employed by PW1 in analysing the impugned drugs and came to the conclusion that as a result, the type and quantity of the drugs were established,

[38] The HCJ had further referred to the evidence of PW1 with regard to the colour reagents used to confirm the identity of the drugs as well as the method adopted to ascertain the weight of the drugs.

[39] The HCJ had also evaluated the evidence relating to the allegation that there was a break in the chain and came to the conclusion that there was no break in the chain of evidence.

[40] We find that the HCJ was extremely meticulous in his analysis in respect of this ingredient and cannot see any manner in which he can be faulted.

ii) Possession

The HCJ made reference to the fact that the Appellant was under surveillance and observation by PW4 for 20 minutes. The HCJ said therefore that there could not arise any mistaken identity of the



Appellant and that the back pack he was observed carrying contained the impugned drugs as well as documentation of a personal nature belonging to the Appellant.

[41] The HCJ also made certain well-founded inferences from the documentation recovered from the backpack as well as the conduct of the Appellant in attempting to flee and came to the conclusion that direct evidence of possession was proven.

[42] With regard to the allegation put forth by the defence that the Appellant was framed by the police, the HCJ had properly remarked that in the absence of any evidence of animosity between PW4 and the other police officers and the Appellant, he accepted the testimony of PW4 that the drugs were found in the backpack of the Appellant.

[43] In our considered view, the HCJ had carefully analysed the evidence before concluding that there was proven direct possession against the Appellant.

[44] The HCJ cited the case of *PP v. Muhamad Nasir Shaharuddin & Anor* [1992] 2 MLRH 390; [1994] 2 MLJ 576; [1992] 4 CLJ 2028; [1992] 3 CLJ (Rep) 408 which established that in order for possession to be proven, knowledge and some form of control or custody must be established.

[45] The HCJ had also gone on to find that knowledge and custody or control could be inferred from the circumstances of the case, namely, from the copy of the Appellant's birth certificate and school letter which was found together with the impugned drugs in P10 as well as the evidence of the Appellant's conduct of fleeing the scene and the scuffle and injuries sustained in the process, which he found to be relevant under s 8 of the Evidence Act 1950.

[46] In all the circumstances, the HCJ had considered and evaluated the evidence thoroughly and was correct to find that the ingredient of actual possession was proved under the circumstances. Once again, we see no good reason to fault the reasoning and conclusion of the HCJ in respect of this ingredient of the offence.

iii) Trafficking

With regard to trafficking, the HCJ very correctly in our considered view, invoked the statutory presumption of trafficking under s 37(da)(xvi) of the Dangerous Drugs Act 1952 ("DDA") based upon the proven weight of the drugs.

iv) Conclusion of the prosecution case

In his GOJ the HCJ stated that the court's duty is to subject the evidence to maximum evaluation in order to ascertain whether there is a *prima facie* case against the accused which requires him to enter his defence.



[47] The HCJ referred to the decisions of the apex court in *PP v. Mohd Radzi Abu Bakar* [2005] 2 MLRA 590; [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2006] 1 CLJ 467; [2005] 6 AMR 203 and *Balachandran v. PP* [2004] 2 MLRA 547; [2005] 2 MLJ 301; [2005] 1 CLJ 85; [2005] 1 CLJ 851; [2005] 1 AMR 321 which held that a *prima facie* case is established where the prosecution has adduced such evidence of the essential elements of the charge as are sufficient to convict the accused, if he were to keep silent, and the evidence is left unexplained or unrebutted. The HCJ further cited the case of *Looi Kow Chai & Anor v. PP* [2002] 2 MLRA 383; [2003] 2 MLJ 65; [2003] 1 CLJ 734; [2003] 2 AMR 89, to similar effect.

[48] Having evaluated the prosecution evidence on a maximum basis in respect of the necessary ingredients to be proved, the HCJ had rightfully determined that the prosecution had successfully made out a *prima facie* case against the Appellant and accordingly called for the defence of the Appellant.

[49] We agree with the findings made by the HCJ as well as his reasoning in arriving at the finding that the prosecution had successfully made out a *prima facie* case against the Appellant, and accordingly called for his defence, for the reasons given.

[50] After having been given the options available, the Appellant elected to give sworn evidence.

The Defence

[51] The Appellant gave evidence that prior to his arrest, he worked as a labourer for the cocoa division of a company called Teek Guan for 8 years. At 8am on 11 February 2021 which was the day he was arrested, the Appellant was at his house at Sri Balung PPRT.

[52] The Appellant was asked by his friend Somo to go to the unnumbered house at Kampung Rangu which was owned by Soma's friend named Acho. He had known Somo for 10 years as they hailed from the same village (kampung). He only got to know Acho on the day he was arrested.

[53] The Appellant had wanted to go to Rangu to harvest oil palm fruits ("menyabit kelapa sawit"). He went to the unnumbered house using his motorcycle. On arrival, Acho opened a small gate beside the main gate to let him in with his motorcycle.

[54] The Appellant parked his motorcycle underneath the unnumbered house on stilts, after which he sat on the steps. At that point in time, his friend Somo was sitting on the steps to his right while Acho was in the far-left area of the house.

[55] Within 10 minutes, the Appellant saw a policeman getting out of a Proton Wira car who identified himself as a policeman in a loud voice, and fired 3 shots. The Appellant asked for the 2 policemen who were on standby to be



produced in Court for identification. He pointed at one of them who produced his warrant card and identified himself as D/Kpl Hediansah Bin Uding.

[56] When D/Kpl Hediansah arrived at the scene, both Somo and Acho escaped but he did not pursue them. The Appellant said D/Kpl Hediansah then handcuffed, and asked him "mana itu barang?" He in turn asked the policeman what he meant, following which his backpack P10 was opened. The Appellant said he was sitting on the steps, and did not run off after the gunshots as D/Kpl Hediansah had identified himself as a policeman.

[57] Then D/Kpl Hediansah's friend came, and hit the Appellant who sustained injuries to his toe, lip and brow. The Appellant identified the other policeman produced in Court (D/Kpl Arman Bin Ujam) as the one who inflicted these injuries while he was handcuffed.

[58] The Appellant testified that D/Kpl Arman Bin Ujam asked "mana itu barang," to which he asked what was meant. The policeman continued to hit him and tried to force him to produce the "barang." According to the Appellant, "semasa itu dalam beg saya tidak ada barang terlarang kecuali di dalam beg saya handphone, surat lahir saya, surat lepasan sekolah saya dan kad kereta dan kunci kereta dan surat pelepasan masa PKP untuk perjalanan dan report kad sekolah saya."

[59] According to the Appellant, he had his backpack with him at that time and he saw "1 bungkusan berwarna merah dan saya tidak tahu itu barang apa dan pihak polis mengisi dalam beg."

[60] The Appellant testified that "Tuan Firdaus" (PW4) had planted the drugs in his backpack P10. PW4 had asked him whose "barang" it was, to which the Appellant asked "barang dari mana?" but PW4 did not answer.

[61] The Appellant said he was not told the reason for his arrest. After he was arrested, he was taken to his home in Sri Balung where a search was conducted but to no avail. At that time, his wife, one of his children and his friend wan were present.

Analysis Of The Defence

[62] At the conclusion of the whole case, the HCJ recognised the legal duty upon him when, in his GOJ he alluded to s 182A, Criminal Procedure Code that the Court is required to take into account the whole of the evidence.

[63] The HCJ further said that even if the Court disbelieves the version of the Appellant whose defence is primarily that he was framed by the police who had planted the drugs in P10, it has to go one step further and decide whether the evidence nonetheless casts a reasonable doubt over the prosecution's case and cited *Mat v. PP* [1963] 1 MLRH 400; [1963] 1 MLJ 263 in support.

[64] We find that the HCJ was guided by the correct legal principles in evaluating the defence of the Appellant.



[65] In the course of analysing the defence of the Appellant, the HCJ made several key findings.

[66] The HCJ observed that PW4 was steadfast and credible in his testimony that the accused was alone, and the accused had been told of the reason for his arrest, contrary to the defence version to the contrary.

[67] The HCJ said that there was no credible or tangible evidence that Somo or Acho exists as their names were not put to PW4 or PW5 when they were testifying. No particulars of Somo and Acho were provided (such as the full name, address or telephone number). In particular, the HCJ noted that there was a conspicuous lack of information about the alleged friend of the Appellant named Somo although the Appellant claimed to have known him for 10 years.

[68] The HCJ said that PW4's testimony that he was unarmed was credible and it was not put to him that D/Kpl Hediensah had fired 3 shots prior to the Appellant's arrest.

[69] The HCJ also found the version of the Appellant less than convincing that allegedly PW4 and the Appellant had made a detour anywhere before going to the Bahagian Siasatan Jen ayah office as it was not put to PW4 that the raiding team and the Appellant had gone to the latter's home to carry out a search in the presence of his family members and his friend Iwan. In any event, reasoned the HCJ, PW4 had credibly denied the allegation.

[70] With regard to the allegation that the Appellant was assaulted, the HCJ stated that it was not put to PW4 that D/Kpl Arman Bin Ujam, a member of the raiding team, had hit and injured the Appellant, despite the fact that the Appellant had listed out the injuries inflicted on him by the said D/Kpl Arman. The HCJ further observed that the Appellant was evasive when questioned as to whether he had lodged a police report in respect of the alleged injuries sustained.

[71] In pursuit of his defence that the police had framed him up, the HCJ stated that the Appellant said that he got to know PW4 when he went to see him at the Narcotics Division office within a week ("dalam 1 minggu") before his arrest, but did not explain the reason for his visit until he was re-examined when he said that he went to make an inquiry whether his friend Iwan could be released on bail in relation to his "kes urine."

[72] The HCJ however, observed that it was not put to PW4 that the Appellant had gone to see him at his office to ascertain if Iwan could be released on bail, or that there was ever such a visit.

[73] The HCJ thus found that there was no reason to suppose that because of the alleged visit or for some other undisclosed reason, PW4 had planted the drugs in the accused's backpack which was on his person at the time of his arrest.



[74] The HCJ still further had astutely observed that although it was put to PW4 that the Appellant had only attempted to flee because he did not have "dokumen pengenalan diri," the Appellant himself, when giving evidence in his defence, asserted that he did not attempt to flee, unlike Somo and Acho, as D/Kpl Hediansah had identified himself as a policeman.

[75] The findings made by the HCJ were findings of fact, which the HCJ was well entitled to make as well as his findings in respect of the demeanour of the witnesses who testified.

[76] It is trite that these findings of fact are not lightly disturbed without good reason. We find no such reason to impugn these findings of fact made by the HCJ.

[77] In the final analysis, after having evaluated all the evidence, as was required, the HCJ concluded that there were contemporaneous documents giving PW4's testimony the ring of truth such as PW4's police report, and the seizure list P16 which the Appellant signed.;

[78] The HCJ further alluded to the fact that it was stated in P16 that the backpack (P10) was found on the Appellant's person, the pink plastic packet (P6) and the 4 transparent plastic packets - P6(a-d)- were found inside P10 together with the Appellant's documents P12(a) and P12(b).

[79] After detailed analysis and evaluation the HCJ finally concluded that the defence of frame up alleged by the Appellant was not credible.

[80] As can be discerned from an examination of the HCJ's GOJ, he had fully evaluated the evidence and had given cogent reasons as to why the main defence that the Appellant was framed up was not capable of belief, unable to raise a reasonable doubt as to possession or otherwise unable to rebut the presumption of trafficking on a balance of probabilities,

[81] We therefore are of the unanimous view that the HCJ was entirely correct in finding that the Appellant had failed to rebut the presumption of trafficking on a balance of probabilities, or to cast a reasonable doubt on the prosecution's case in other material respects and in convicting the Appellant of the charge.

Decision In Respect Of Conviction

[82] We therefore in the premises, unanimously dismiss the appeal against the conviction which we find is safe for the reasons given. The conviction by the High Court is affirmed.

Sentence

[83] In respect of sentence, we note that the HCJ had stood guided by s 39B(2A) of the Dangerous Drugs Act 1952 and the decision of the Court of Appeal in *Wei Hong Ping v. PP* [2023] 1 MLRA 508; [2022] 6 MLJ 643; [2022]



10 CLJ 708.

[84] The HCJ very correctly reasoned that since there was no evidence of buying and selling at the time the Appellant was arrested, the Court exercised its discretion to sentence the Appellant to life imprisonment with effect from date of his arrest, and the minimum 15 strokes of whipping and further had observed that pursuant to s 3 of the Criminal Justice Act 1953, a sentence of life imprisonment means a term of 30 years.

Decision In Respect Of Sentence

[85] We find that there was no error in law or principle on the part of the HCJ in passing the sentence that it did against the Appellant. We therefore find no good reason to disturb the sentence passed and we unanimously dismiss the appeal against sentence and affirm the sentence passed by the High Court upon the Appellant.

