MALAYSIA

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

BAHAGIAN JENAYAH

PERBICARAAN JENAYAH NO.: WA-45A-12-04/2019

& WA-45-20-09/2019

ANTARA

PENDAKWA RAYA

DAN

LAW HENG MUN

PENGHAKIMAN

[1] Law Heng Mun (OKT) telah dipertuduhkan dengan tiga (3) pertuduhan iaitu dua (2) pertuduhan di bawah Seksyen 39B, Akta Dadah Berbahaya 1952 dan satu (1) pertuduhan di bawah Seksyen 30(3) Akta Racun 1952.

[2] Pihak pendakwaan telah memanggil seramai sembilan (9) orang saksi. Di akhir kes pendakwaan, Mahkamah ini membuat dapatan dengan memberikan penilaian maksimum ke atas kes pendakwaan bahawa suatu kes *prima facie* berjaya dibuktikan terhadap OKT. Seterusnya, selaras dengan peruntukan di bawah seksyen 180 Kanun Prosedur Jenayah, Mahkamah memerintahkan OKT untuk membela diri terhadap ketiga-tiga pertuduhan yang dituduhkan ke atasnya. OKT diberikan tiga pilihan sama ada untuk memberi keterangan bersumpah di mana dia boleh diperiksa-balas atau untuk memberi pernyataan dari kandang pesalah di mana dia tidak boleh diperiksa-balas atau untuk berdiam diri. Selanjutnya, OKT membuat pilihan untuk memberi keterangan bersumpah.

[3] Di akhir kes pembelaan, Mahkamah berpuashati bahawa pihak pendakwaan telah berjaya membuktikan kesnya melampaui keraguan yang munasabah dan pihak pembelaan telah gagal membangkitkan apa-apa keraguan yang munasabah terhadap kes pendakwaan. Justeru, Mahkamah mensabitkan OKT bagi kedua-dua pertuduhan terhadapnya (ekshibit P 3(a&b)) dan menjatuhkan hukuman mati ke atasnya di mana dia digantung dari lehernya sampai mati. Bagi pertuduhan pindaan ketiga pula (ekshibit P3(c)), Mahkamah mensabitkan OKT dan menjatuhkan hukuman penjara selama dua (2) tahun bermula dari tarikh tangkap (10 Oktober 2018).

[4] Ketiga-tiga pertuduhan yang dipertuduh ke atas OKT adalah seperti berikut:-

Pertuduhan Pindaan Pertama (ekshibit P3(a)):

> "Bahawa kamu pada 10/10/2018, jam lebih kurang 8.30 malam, di No VR3-07-12, V Residence, Lingkaran SV1, Sunway Velocity, dalam Daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memiliki dadah berbahaya iaitu Ketamine berat bersih 85.29 gram. Dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 39(B)(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B (2) Akta yang sama."

Pertuduhan Pindaan Kedua (ekshibit P3(b)):

> "Bahawa kamu pada 10/10/2018, jam lebih kurang 8.30 malam, di No VR3-07-12, V Residence, Lingkaran SV1, Sunway Velocity, dalam Daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah memiliki dadah berbahaya iaitu 3,4-Methylenedioxymethamphetamine (MDMA) berat bersih 640.21gram. Dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 39(B)(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B (2) Akta yang sama."

Pertuduhan Pindaan Ketiga (ekshibit P3(c)):

> "Bahawa kamu pada 10/10/2018, jam lebih kurang 8.30 malam, di No VR3-07-12, V Residence, Lingkaran SV1, Sunway Velocity, dalam Daerah Cheras, Wilayah Persekutuan Kuala Lumpur, telah didapati dalam milikan kamu 2088.2gram Etizolam. Dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 30(3) Akta Racun 1952 dan boleh dihukum di bawah Seksyen 30(5) Akta yang sama."

[5] Huraian fakta kes yang dikemukakan oleh pihak pendakwaan adalah seperti berikut: -

[6] Pada 10 Oktober 2018, jam lebih kurang 8.30 malam, pegawai serbuan, SP1 (Inspektor Muhamad Amirullah bin Othman) dan pasukannya telah membuat serbuan di alamat No VR3-07-12, V Residence, Lingkaran SV1, Sunway Velocity, dalam Daerah Cheras, Wilayah Persekutuan, Kuala Lumpur. Setelah sampai di alamat tersebut, SP1 mendapati pintu kayu utama premis tersebut berkunci. SP1 telah mengarahkan anggotanya untuk memecahkan pintu tersebut. Setelah berjaya, SP1 bersama pasukannya telah masuk ke dalam premis tersebut dan didapati lampu di ruang tamu sedang menyala, di mana pintu bilik pertama berkunci manakala pintu bilik lain tidak berkunci. Seterusnya,

SP1 telah mengarahkan anggotanya untuk memecahkan pintu bilik pertama dan mendapati OKT berada di dalam bilik tersebut.

[7] SP1 memperkenalkan diri sebagai pegawai kanan polis dan telah menjalankan pemeriksaan badan OKT dan premis, di mana pemeriksaan premis dengan disaksikan oleh OKT dan saksi polis telah menjumpai di dalam bilik pertama tempat OKT berada sewaktu serbuan adalah seperti berikut: -

a) 1 kotak berwarna coklat bertulis living world (ekshibit P6) di dalamnya mengandungi 44 ikatan getah aluminium foil warna merah/silver setiap ikatan mengandungi 25 keping aluminium foil warna merah/silver setiap kepingan mengandungi 10 biji pil disyaki dadah jenis Eramin 5 (anggaran jumlah 11,000 biji) (ekshibit P7);

b) 1 kotak berwarna coklat bertulis grapes juice (ekshibit P9) di dalamnya terdapat 13 bungkusan bertulisan juice warna biru/putih (ekshibit P10) di dalamnya mengandungi serbuk warna ungu disyaki dadah jenis Ketamin (anggaran berat: 13,277 gram);

c) 1 bungkusan plastik lutsinar (ekshibit P16) di dalamnya terdapat 6 bungkusan plastik lutsinar/hijau bertulis “happy

glucose” (ekshibit P17) di dalamnya mengandungi serbuk putih disyaki glukosa (anggaran berat 2,463 gram);

d) 1 kotak berwarna coklat bertulis minuman energi kuku bima (ekshibit P12) di dalamnya terdapat 15 ikatan bungkusan peket plastik warna hijau bertulis caution super strong incense (ekshibit P13). Setiap ikatan terdapat 10 peket plastik warna hijau bertulis caution super strong incense dan 1 ikatan mengandungi 4 peket plastik warna silver (ekshibit P14) di dalam peket-peket tersebut mengandungi serbuk disyaki dadah jenis Ketamin (anggaran berat: 3,476 gram);

e) 1 bungkusan plastik lutsinar (ekshibit P19) di dalamnya terdapat 5 kotak warna ungu (ekshibit P20) di dalam setiap kotak terdapat 6 peket plastik warna ungu bertulis kuku bima (ekshibit P21) di dalamnya mengandungi serbuk warna ungu disyaki glukosa (anggaran berat: 197 gram);

f) 1 bekas plastik putih bertudung biru (ekshibit P23) di dalamnya mengandungi serbuk warna ungu disyaki dadah jenis Ketamin (anggaran berat: 185 gram);

g) 1 bekas plastik putih bertudung merah jambu (ekshibit P25) di dalamnya mengandungi serbuk warna merah jambu disyaki dadah jenis Ketamin (anggaran berat:753 gram);

h) 1 bekas plastik putih bertudung merah jambu (ekshibit P27) di dalamnya mengandungi serbuk warna ungu disyaki dadah jenis Ketamin (anggaran berat: 2,485 gram);

i) 1 bungkus plastik lutsinar (ekshibit P29) di dalamnya terdapat ketulan dan serbuk kristal disyaki dadah jenis Ketamin (anggaran berat: 1,008 gram);

j) 1 bungkus plastik lutsinar (ekshibit P31) di dalamnya ketulan dan serbuk kristal disyaki dadah jenis Ketamin (anggaran berat:694 gram);

k) 1 plastik berwarna hitam (ekshibit P33) di dalamnya terdapat 3 bungkusan plastik lutsinar (ekshibit P34, P35 dan P36), iaitu 1 bungkusan plastik lutsinar di dalammnya mengandungi pil pelbagai bentuk, warna dan logo, 1 bungkusan plastik lutsinar di dalamnya mengandungi pil warna oren (anggaran berat 260 gram), 1 bungkusan plastik lutsinar didalamnya mengandungi pil warna kelabu. Kesemuanya pil disyaki dadah jenis Ecstasy (anggaran berat:1,640gram);

l) 1 mesin pengisar elektrik berwarna putih berjenama Panasonic (ekshibit P58);

m) 2 jug pengisar aluminium (ekshibit P59);

n) 1 mesin pengisar elektrik berlogo GiM (ekshibit P60);

o) 1 balang pengisar plastik (ekshibit P60A);

p) 1 sealer berwarna putih jenama Kubei (ekshibit P61);

q) 1 sealer berwarna hitam jenama bluberry bleuets (ekshibit P62);

r) 1 corong plastik warna hijau (ekshibit P63);

s) 1 corong plastik warna merah jenama best ware (ekshibit P64);

t) 1 sudu besi (ekshibit P65);

u) 1 sudu plastik warna hitam (ekshibit P66);

v) 1 penimbang digital warna silver (ekshibit P67);

w) 21 mangkuk plastik lutsinar (ekshibit P68); dan

x) 1 peti sejuk mini berwarna hitam jenama Fuxin (ekshibit P69) didalamnya mengandungi 45 botol kaca warna hitam (ekshibit P37) bertulis ufo didalamnya mengandungi cecair disyaki dadah jenis Ketamin.

[8] SP1 kemudiannya telah menahan OKT serta merampas semua barang kes tersebut di atas dan menyerahkan OKT bersama-sama barang kes kepada pegawai penyiasat, SP9 (Inspektor Kalidasan a/l Rajakumar).

[9] Pada 12 Oktober 2018, pegawai forensik, SP5 (Inspektor Mohd Azran bin Rahmat) telah hadir ke tempat kejadian dan merampas dari bilik pertama di mana barang kes disyaki dadah dijumpai ekshibit-ekshibit seperti berikut:

a) Berus gigi jenama Oral B berwarna hijau putih (ekshibit P41A);
b) Pisau cukur jenama Gillette (ekshibit P42A);
c) Tuala kecil berwarna hijau (ekshibit P43A);
d) Berus gigi jenama Oral B berwarna ungu (ekshibit P44A);
e) Sarung bantal berwarna ungu bercorak bunga (ekshibit P45A);
f) Bantal kecil bergambar kartun (ekshibit P46A);
g) Bantal kecil berbentuk U (ekshibit P47A); dan
h) Tuala mandi berwarna hijau (ekshibit P48A).

[10] Pada tarikh yang sama, SP9 juga telah ke tempat kejadian dan melakukan beberapa rampasan lain iaitu ekshibit P83, P84 dan P85. Sekali lagi pada 22 Oktober 2018 SP9 telah hadir ke tempat kejadian dan melakukan beberapa lagi rampasan iaitu ekshibit P86-P102 yg merupakan pakaian yg dijumpai di tempat kejadian. Pada 15 Oktober 2018, SP9 telah menghantar barang-barang tersebut ke makmal kimia untuk dianalisa. Hasil analisa Ahli Kimia, SP2, (Encik Nasir Kunju bin

Abdul Karim) terhadap kesemua barang kes telah mengesahkan seperti berikut: -

a) Dadah jenis Ketamin seberat 85.29 gram;

b) Dadah jenis 3,4-Methylenedioxymethamphetamine (MDMA) seberat 640.21 gram; dan

c) Dadah jenis Etizolam seberat 2088.2 gram.

[11] Pada 15 Oktober 2018, barang rampasan forensik pula telah di hantar ke makmal kimia. Pada 27 Mac 2019, setelah dianalisa oleh Ahli Kimia DNA, SP3 (Puan Wan Zaliha binti Wan Faizal) barang rampasan forensik beserta laporan (ekshibit P51) telah diserahkan kembali kepada SP9.

Tugas Mahkamah di akhir Kes Pendakwaan

[12] Seksyen 180(1) Kanun Prosedur Jenayah memperuntukkan bahawa di akhir kes pendakwaan, Mahkamah hendaklah membuat suatu pertimbangan sama ada pihak pendakwaan telah berjaya membuktikan kes *prima facie* terhadap OKT. Seksyen 180(1) Kanun Prosedur Jenayah menyebut:

"Procedure after conclusion of case for prosecution.

180(1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a prima facie case against the accused.

(2) If the Court finds that the prosecution has not made out a prima facie case against the accused, the Court shall record an order of acquittal.

(3) If the Court finds that a prima facie case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.

(4) For the purpose of this section, a prima facie case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction."

[13] Dalam kes **Balachandran v. Public Prosecutor [2005] 1 CLJ 85; [2005] 2 MLJ 301; [2005] 1 AMR 321** Mahkamah Persekutuan berpendapat bahawa OKT boleh disabitkan berdasarkan atas bukti *prima facie*, dan ia haruslah mencapai standard yang mampu untuk menyokong sabitan sebelum keraguan munasabah ditimbulkan oleh pihak pembelaan. Mahkamah Persekutuan dalam kes tersebut menyatakan seperti berikut:-

"[21] Section 180(1) makes it clear that the standard of proof on the prosecution at the close of its case is to make out a *prima facie* case while s 182A(1) enunciates that at the conclusion of the trial the court shall consider all the evidence adduced and decide whether the prosecution has proved its case beyond reasonable doubt. The standard of proof on the prosecution at the end of its case and at the end of the whole case has thus been statutorily spelt out in clear terms. The submission made must therefore be ratiocinated against the background of the meaning of the phrase '*prima facie* case' in s 180. Section 180(2) provides that the court shall record an order of acquittal if a *prima facie* case has not been made out while s 180(3) provides that if a *prima facie* case has been made out the accused shall be called upon to enter his defence. A *prima facie* case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. The phrase '*prima facie case*' is defined in similar terms in *Mozley and Whiteley's Law Dictionary* 11 *th* Ed as:

A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side.

[22] The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand if a *prima facie* case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier. In order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established. As the trial is without a jury it is only with such a positive evaluation can the court make a determination for the purpose of s 180(2) and (3). Of course in a jury trial where the evaluation is hypothetical the question to be asked would be whether on the evidence as it stands the accused could (and not must) lawfully be convicted. That is so because a determination on facts is a matter for ultimate decision by the jury at the end of the trial. Since the court, in ruling that a *prima facie* case has been made out, must be satisfied that the evidence adduced can be overthrown only by evidence in rebuttal it follows that if it is not rebutted it must prevail. Thus, if the accused elects to remain silent he must be convicted. The test at the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the

affirmative then a *prima facie* case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case for the prosecution. If there is any such doubt there can be no *prima facie* case.

[23] As the accused can be convicted on the *prima facie* evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. However, it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt. Proof beyond reasonable doubt involves two aspects. While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case. Therefore a case can be said to have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided by s 182A(1) of the Criminal Procedure Code. That would normally be the position where the accused has given evidence. However, where the accused remains silent there will be no necessity to re-evaluate the evidence in order to determine whether there is a reasonable doubt in the absence of any further evidence for such a consideration. The *prima facie* evidence which was capable of supporting a conviction beyond reasonable doubt will constitute proof beyond reasonable doubt."

[14] Seterusnya, Mahkamah juga merujuk kepada kes di peringkat Mahkamah Rayuan iaitu kes **Looi Kow Chai v. Public Prosecutor [2003] 1 CLJ 734; [2003] 2 MLJ 65; [2003] 2 AMR 89** yang menyatakan seperti berikut: -

> "In our respectful view, the correct test to be applied in determining whether a prima facie case has been made out under s 180 of the CPC (and this would apply to a trial under s 173 of the CPC) is that as encapsulated in the judgment of Hashim Yeop Sani FJ (as he then was) in *Dato' Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 at p 270:
>
> 'To summarize, it would therefore appear that having regard to the prosecution evidence adduced so far, a prima facie case has not been established against Nordin Johan and Aziz Abdullah, the second accused and the fourth accused which, failing their rebuttal, would warrant their conviction. In other words if they elect to remain silent now (which I hold they are perfectly entitled to do even though they are being tried under the Emergency Regulations) the question is can they be convicted of the offence of section 302 read with section 34 of the Penal Code? My answer to the question is in the negative.'
>
> We are confident in the view we have just expressed because we find nothing in the amended s 180(1) of the CPC that has

taken away the right of an accused person to remain silent at the close of the prosecution case. Further we find nothing in the legislative intention of Parliament as expressed in the language employed by it to show that there should be a dual exercise by a judge under s 180 when an accused elects to remain silent as happened in *Pavone v Public Prosecutor* [1984] 1 MLJ 77. In other words, we are unable to discover anything in the language of the recently formulated s 180 that requires a judge sitting alone first to make a minimum evaluation and then when the accused elects to remain silent to make a maximum evaluation in deciding whether to convict or not at the close of the prosecution case.

It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the CPC has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal."

[15] Selain itu, langkah-langkah mantap yang perlu dipertimbangkan oleh Mahkamah ini sebelum membuat suatu pertimbangan sama ada pihak pendakwaan berjaya membuktikan kes *prima facie* terhadap OKT juga telah diperjelaskan dengan mampan di dalam kes **Public Prosecutor v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2005] 6 AMR 203** dan kes **Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1**.

Pemerhatian Mahkamah di akhir Kes Pendakwaan

[16] Adalah menjadi tugas pihak pendakwaaan untuk memastikan suatu kes *prima facie* bagi pertuduhan mengedar dadah terhadap OKT berjaya dibuktikan. Oleh itu, pihak pendakwaan hendaklah membuktikan tiga elemen utama yang diperuntukkan di bawah Seksyen 39B Akta Dadah Berbahaya 1952. Pertama, dadah tersebut adalah dadah berbahaya yang dinyatakan dalam Jadual Pertama akta tersebut. Kedua, dadah tersebut berada dalam milikan OKT dan akhir sekali, OKT mengedar dadah tersebut. Bagi pertuduhan di bawah Seksyen 30(3) Akta Racun 1952 pula, pihak pendakwaan mempunyai kewajipan untuk membuktikan bahawa racun tersebut berada dalam milikan OKT dan akhir sekali racun tersebut tersenarai di dalam Akta Racun.

Sama ada rantaian barang kes telah terputus dan wujud keraguan dalam analisa kimia

[17] Pihak pembelaan memulakan penghujahannya dengan membangkitkan isu bahawa SP9 telah gagal memberikan penjelasan terhadap rantaian pengendalian barang kes khususnya bagaimana barang kes dikendalikan dan disimpan. Oleh itu, atas alasan tersebut, satu kelompangan serius berlaku dan rantaian barang kes adalah terputus.

[18] Selanjutnya, pihak pembelaan juga berhujah bahawa wujud keraguan yang munasabah kerana SP2 gagal menunjukkan bahawa Seksyen 37(j) Akta Dadah Berbahaya telah dipatuhi. Pihak pembelaan meneruskan penghujahannya bahawa SP2 tidak dapat mengesahkan bahawa pil-pil di dalam keseluruhan aluminium foil tersebut adalah sama sifat dan jenis seperti yang diperuntukkan di bawah Seksyen 37(j) Akta Dadah Berbahaya dan sekaligus SP2 gagal memberikan keterangan berkenaan kuantiti sampel perwakilan yang digunakan dalam analisis beliau dalam keterangan lisan dan laporan kimia. Oleh itu, keterangan SP2 haruslah ditolak oleh Mahkamah.

[19] Bagi isu pertama, Mahkamah membuat dapatan bahawa rantaian barang kes tidak pernah terputus setelah mengambil kira tandaan-tandaan yang dibuat ke atas barang kes dan pergerakan barang kes itu sendiri daripada SP1 kepada SP2, SP3, SP9 dan seterusnya pergerakan balik barang kes itu kepada SP9 sehinggalah ia dikemukakan semasa dalam perbicaraan di Mahkamah. SP9, dalam pemeriksaan semula telah menjelaskan dengan baik bahawa barang kes disimpan, dijaga, dikawal dan dikeluarkan pada ketika barang kes berada dengan beliau. Keterangan saksi-saksi SP1, SP2, dan SP9 yang juga jelas menyatakan di mana masing-masing telah mengecamnya melalui penandaan-penandaan yang dibuat ke atas ekshibit tersebut dan tidak terdapat apa-apa kekeliruan mengenai pengecamannya.

[20] Maka, Mahkamah ini berpuas hati dan berpendapat bahawa barang kes yang dikemukakan sebagai ekshibit P6-P36 adalah barang kes yang dirampas oleh SP1 sewaktu serbuan dibuat dan oleh itu tiadalah isu berbangkit mengenai rantaian barang kes adalah terputus.

[21] Seterusnya, Mahkamah membuat penilaian bahawa tidak wujud sama sekali keraguan yang munasabah bahawa seksyen 37(j) ADB telah tidak dipatuhi oleh Ahli Kimia, SP2. Berkenaan dengan keraguan analisa yang dilakukan oleh SP2 terhadap dadah tersebut, SP2, dalam

keterangan bersumpahnya (Penyata saksi WSSP2) dan Laporan Kimia (ekshibit P39) telah mengesahkan bahawa dadah tersebut mengandungi dadah jenis Ketamine seberat 85.29 gram, 3,4-Methylenedioxymethamphetamine (MDMA) seberat 640.21 gram dan Etizolam seberat 2088.2 gram.

[22] SP2 juga telah memberikan keterangan bahawa beliau telah membuat analisa bagi keseluruhan barang kes yang dirampas oleh SP1. Memandangkan analisis di sini adalah 100% atas keseluruhan kuantiti dadah tersebut, tiada persoalan patut timbul di mana terdapat satu kegagalan untuk mengambil sampel-sampel wakilan tersebut mengikut beratnya. Adalah disahkan juga oleh SP2, bahawa dadah jenis Ketamine, 3,4-Methylenedioxymethamphetamine (MDMA) dan Etizolam dikategorikan sebagai jenis dadah berbahaya yang termaktub dalam Seksyen 2 dan disenaraikan di Bahagian I dan/atau Bahagian II dalam Jadual Pertama Akta tersebut. Dalam keadaan ini, Mahkamah tiada keraguan sedikitpun bahawa SP2 adalah seorang yang berkelayakan yang mempunyai pengetahuan, kemahiran serta pengalaman yang diiktiraf dan dipercayai dan mempunyai pengetahuan dan kepakaran yang mencukupi untuk menganalisis dadah tersebut. Mahkamah bersetuju bahawa SP2 telah melakukan kaedah metodologi analisis tepat bagi

menentukan identiti dan berat dadah tersebut menurut peraturan dan prosedur yang ditetapkan oleh Jabatan Kimia.

[23] Dengan merujuk kepada kes termasyhur **Gunalan Ramachandran & Ors v. Public Prosecutor [2004] 4 CLJ 551; [2004] 4 MLJ 489; [2004] 6 AMR 189** Abdul Hamid Mohamed, HMR (ketika itu), menyatakan seperti berikut:

> "[41] First, by way of a general observation, I am of the view that, in a drug trafficking case what is important is that it must be proved that it is the substance that was recovered that was sent to the chemist for analysis and it is that same substance that is found to be heroin or cannabis etc and it is in respect of that substance that an accused is charged with trafficking. So, the chain of evidence is more important for the period from the time of recovery until the completion of the analysis by the chemist. Even then it does not necessarily mean that if the exhibit is passed from one person to another, every one of them must be called to give evidence of the handing over from one person to another and if there is a break, even for one day, the case falls. There should be no confusion between what has to be proved and the method of proving it. What has to be proved is that it is the substance that was recovered that was analysed by the chemist and found to be heroin, cannabis

etc, and it is for the trafficking of that same substance that the accused is charged with.

[42] The proof of the chain of evidence is only a method of proving that fact. 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. There may be a gap in the chain of evidence. But, if for example, during that 'gap' the exhibits are sealed, numbered with identification numbers, there is no evidence of tempering, there is nothing that would give rise to a doubt that that exhibit is the exhibit that was recovered in that case and that was analysed by the chemist, the fact that there is a gap, in the circumstances of the case, may not give rise to any doubt of that fact.

[43] The second period is from the time that it was received back from the chemist until it is produced in court. In my view, the chain of evidence is less important during this second period. This is because, as far as I am aware, there is no law that the exhibit recovered must be produced in court and if not the prosecution's case must necessarily fall. It may or it may not, again depending on the facts and the circumstances of each case. Even in a murder trial, the dead body is not produced in court. In *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195 (FC) the body of the victim was not even recovered,

yet the accused was convicted of murder. What the prosecution has to prove is that a particular person had died and the accused had caused his death. The death of the victim is not proved by looking at his remains in court, but by evidence of witnesses, the medical report, the identity card, the photographs and so on. Similarly, in a drug trafficking case, the drug may be lost or destroyed subsequent to it having been analysed by the chemist, there may be a gap in the chain of the people keeping custody of it subsequent to it having been analysed by the chemist until the date of trial, but so long as there is no doubt that the drug analysed by the chemist was the same one that was recovered in the case and it is in respect of that drug that the accused is charged, and there is a reasonable explanation as to how it was lost or destroyed or the reason for the gap, there is no reason why the prosecution's case should fall."

[24] Mahkamah ini juga merujuk kepada kes Mahkamah Persekutuan **Chu Tak Fai v Pendakwa Raya [2006] MLJU 459** yang menbincangkan isu analisa kimia yang dijalankan terhadap dadah seperti berikut: -

"On the sufficiency of the evidence of the chemist, we wish to reiterate that the court is entitled to accept the evidence of the chemist on its face value without the necessity for him to go into details of what he did in the laboratory step by step unless

the evidence is so inherently incredible that no reasonable person can believe it to be true or the defence calls evidence in rebuttal by another expert (see Balachandran, supra; Munusamy v PP (1987) 1 MLJ 492;PP v Lam San (1991) 3 MLJ 426; Khoo Hi Chiang v PP (1994) 2 CLJ 151).

[21] With regard to the chemist's evidence in Leong Bon Huat, Abdul Hamid Mohamad JCA (as he then was) said in Gunalan a/1 Ramachandran, supra, at p 516:

"With greatest respect, I find that the judgment of the Supreme Court in that case is not an authority for saying that the law requires that 10% of the total weight of the drug must be tested. No reference was also made to Public Prosecutor v Lam San. With respect, the judgment seems to focus on the interpretation of the words 'more than 10%' used by the chemist as if it is a statutory provision or a clause in a contract. The point is, there is no provision whatsoever in the Act which requires at least 10% of the total weight of the substance in question to be taken out for the purpose of analysis. As seen in Public Prosecutor v Lam San the 10% is nothing more that the practice among chemists."

The above view was shared by Abdul Aziz Mohamad JCA (as he then was) in a separate judgment in the same case at p 527 when he said:

"No law or statute has laid down the process which a chemist is bound to use in order to prove the nature of a substance as being or as containing a particular dangerous drug or the weight of the dangerous drug in a bulk of the substance. The process belongs to the realm of science and is devised according to the discipline and principles of science."

It is to be noted that the above observations of the learned judges have since received approval sub silentio from the Federal Court (see Gunalan a/l Ramachandran & Ors. v Public Prosecutor (2006) 2 MLJ 197; (2006) 2 AMR 465). With respect, we agree with the views of both the learned judges. It is clear therefore that there is no requirement for the amount or the weight of the samples of the drug to be taken for the purpose of analysis by the chemist. It is up to the chemist to carry out the analysis scientifically. It is also for the chemist to determine the adequacy of samples for the purpose of analysis. If the defence wishes to challenge the sufficiency of the weight of the drug analysed the chemist's evidence must be challenged and evidence in rebuttal must be led, if necessary."

[25] Justeru, berpandukan nas-nas di atas, Mahkamah ini berpendapat bahawa, daripada keterangan saksi-saksi pendakwaan, tidak wujud sama sekali keraguan dalam pengendalian atau kawalan barang kes yang dirampas oleh SP1, bermula dari masa serbuan tersebut sehinggalah pengemukaan barang kes oleh SP9 di Mahkamah ini yang boleh membuatkan rantaian barang kes terputus. Dengan itu, rantaian barang kes adalah mantap dan tiada keraguan terhadap analisa kimia yang telah dijalankan terhadap barang kes tersebut. Mahkamah berpendapat bahawa elemen pertama bagi kesalahan ini telah dibuktikan di tahap penilaian maksimum oleh pihak pendakwaan.

Sama ada pihak Pendakwaan telah berjaya membuktikan elemen milikan

[26] Pihak pendakwaan menyatakan bahawa OKT berseorangan di dalam bilik pertama dalam rumah tersebut sewaktu tangkapan dibuat. Ini disahkan melalui keterangan SP1 (Penyata saksi WSSP1). SP1 juga telah menjelaskan bahawa kesemua barang kes (ekshibit P6-P36) dijumpai di atas lantai dalam bilik pertama tempat OKT berada ketika itu, yang mana barang-barang tersebut berada dalam jarak yang dekat dengan OKT dan boleh dilihat dengan mata kasar. Maka, ini menunjukkan bahawa OKT mempunyai kawalan dan jagaan terhadap barang kes tersebut. Selain itu,

keterangan bersumpah SP1 menyatakan barang kes dapat dilihat dengan jelas dengan mata kasar membuatkan inferen bahawa OKT mempunyai pengetahuan mengenai barang kes tersebut selain keadaan OKT dalam keadaan takut dan cemas ketika serbuan dibuat jelas menunjukkan OKT mempunyai pengetahuan mengenai barang kes tersebut.

[27] Pihak pembelaan pula berhujah bahawa keterangan bersumpah SP1 yang menyatakan bahawa pintu bilik pertama berkunci dan anggota serbuan telah memecahkan tombol pintu bilik pertama tersebut adalah merupakan pemikiran semula (*after thought*). Pihak pembelaan menyatakan versi pembelaan adalah OKT berada di bilik kedua dan pintu bilik kedua telah dipecahkan oleh anggota serbuan seperti yang boleh dilihat dalam gambar ekshibit P55. Selanjutnya, pihak pembelaan berhujah bahawa keterangan SP1 semasa perbicaraan yang menyatakan bahawa jarak di antara OKT dengan barang kes adalah lebih kurang dua meter adalah juga suatu keterangan pemikiran semula (*after thought*) kerana tidak sama sekali dinyatakan dalam laporan polis SP1 (ekshibit P77).

[28] Selanjutnya, pihak pembelaan berhujah bahawa keadaan OKT yang gelisah dan pucat ketika itu adalah merupakan perkara yang subjektif dan bergantung kepada keadaan memandangkan semua

anggota pasukan serbuan adalah berpakaian preman dan membawa senjata. Secara rumusan, pihak pembelaan menegaskan bahawa pihak pendakwaan telah gagal membuktikan OKT mempunyai milikan terhadap kesemua barang kes yang dijumpai dalam premis tersebut.

[29] Seperti yang semua telah sedia maklum, elemen milikan dengan berpanjang madah dan telah dikupaskan dengan penuh teliti oleh Hakim Thomson di dalam kes termasyur **Chan Pean Leon v. PP [1956] 22 MLJ** di muka surat 237, seperti berikut:

> "Possession" itself as regards the criminal law is described as follows in *Stephen's* Digest (9th Edition, page 304):-
>
> "A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need."
>
> To put it otherwise, there is a physical element and a mental element which must both be present before possession is made out. The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table.

It must also be shewn that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so, in other words, that he had some *animus possidendi*. Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case. If a watch is in my pocket then in the absence of anything else the inference will be clear that I intend to deal with it as if it were my own and accordingly I am in possession of it. On the other hand, if it is lying on a table in a room in which I am but which is also frequently used by other people then the mere fact that I am in physical proximity to it does not give rise to the inference that I intend to deal with it as if it belonged to me. There must be some evidence that I am doing or having done something with it that shews such an intention. Or it must be clear that the circumstances in which it is found shew such an intention. It may be found in a locked room to which I hold the key or it may be found in a drawer mixed up with my own belongings or it may be found, as occurred in a recent case, in a box under my bed. The possible circumstances cannot be set out exhaustively and it is impossible to lay down any general rule on the point. But there must be something in the evidence to satisfy the Court that the person who is physically in a position

to deal with the thing as his own had the intention of doing so. It is true that in prosecutions under the Dangerous Drugs Ordinance a lack of evidence in this connection may be made good by the statutory presumptions contained in that Ordinance. But there are no such presumptions in the Common Gaming Houses Ordinance nor are there any such presumptions in relation to possession of stolen property.

Once possession is proved then before the accused person can be convicted it is necessary in addition to prove *mens rea*. And for this purpose as was pointed out by Gordon-Smith Ag. C.J. in the case of *Toh Ah Lam and Mak Thim v Rex* (1949) MLJ 54, *supra,* it is necessary to prove that the person in possession knows the nature of the thing possessed.

If the thing, as in *Toh's* case, is in a box which itself is in the possession of the accused it must be proved that he knew what was in the box. If, as in *Lee's* case, it was a lottery document it must be proved that he knew it was a lottery document. Here again knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances which will support such an inference is infinite. There may be something in the accused's behaviour that shews knowledge, or the nature of the thing may be so obvious that it is possible to say "he must have known what it

was" or, again in cases under the Dangerous Drugs Ordinance, there may be a statutory presumption which fills a gap in the evidence."

[30] Selain itu, kes utama **Leow Nghee Lim v Reg [1956] 1 MLJ 28,** di mana Hakim Taylor juga telah menjelaskan dengan mendalam maksud frasa kawalan, jagaan dan milikan seperti berikut:

"The word "possession" is one of the most difficult of English words. It is derived from *posse* to be able and *sedere* to sit or occupy. The fundamental concept is power of occupation; primarily this referred to land and later the meaning was extended to power of user of a chattel. The primary lay meaning of possess is to hold as property, to own. The primary legal meaning of possess is to have possession, as distinct from ownership. This is well illustrated by the popular phrase for a sheriff's agent, "A man in possession," who really has only custody. Shakespeare more accurately called him a bum bailiff. In this Ordinance custody is distinguished, and I think "possession" means possession irrespective of whether the possessor is the beneficial owner. Probably the most helpful definition of possession is:-

"The relation of a person to a thing over which he may at his pleasure exercise such control as the character of the thing admits, to the exclusion of other persons."

This definition does not express, but it does imply that the meaning of the word includes some element of knowledge. A man must know of the existence of a chattel and have some idea of its whereabouts before he can exercise any control over it. The word possession therefore implies some knowledge but not necessarily full or exact knowledge. The patriarch Benjamin, *Genesis 44,* was clearly in possession of his sack of corn but he was not, in truth, in possession of the silver cup which had been "planted" in it, entirely without his knowledge. The prisoner *Sleep* (1861) 8 Cox CC 472; Le & Ca 44 had a mixed lot of copper bolts, some of which bore the Queen's mark. He knew he had copper bolts and therefore he was in possession of the whole lot. The question was whether he knew that some of them were so marked. How much a man knows about things in, or apparently in, his possession is a matter of fact, to be inferred from all the circumstances.

In some of the cases it has been said that without knowledge there can be no possession. In others, "in possession" has been read as "knowingly in possession" by application of the doctrine of *mens rea*. In some instances either view leads to

the same result but not in all. The dicta do not make clear what degree of knowledge is meant. Also, in some of the statutes, "possession" and "knowledge" have been treated separately and much confusion has resulted.

The word "possession" is a vague and general word which cannot be closely defined. Without at least general knowledge there cannot be possession but there can be possession without full and exact knowledge. This is recognised in the present Drugs Ordinance which provides, by the presumption already cited, that if a man has custody or control of a drug the onus of proving, first that he did not have possession, and secondly that he did not know the nature of the drug, shall be shifted to him. The Ordinance deals both with opium and with other drugs. Possession of opium is prohibited absolutely. Possession of drugs in general is not prohibited absolutely because many drugs are familiar household articles; it is only dangerous drugs which are prohibited. The special presumption as to knowing the nature will therefore seldom apply to opium; it will more frequently apply to other drugs. A man might know that he had a white powder, and therefore be in possession of a drug, but he might not know whether it was bicarbonate, a common household drug, or heroin, a dangerous drug of similar appearance. Such a case would resemble that of *Sleep* (1861) 8 Cox CC 472; Le & Ca

44 *supra*. The distinction is not applicable in the present case but is mentioned here because counsel argued that the word "possession" is used in different senses in the Ordinance. I do not think that is so. I think the word possession is used consistently in the Ordinance in its ordinary, but imprecise, sense.

It has also been said that intention to exercise the power of disposal is a necessary element of possession. This cannot be supported as part of a general definition. A woman is undoubtedly in possession of her wedding ring but as a rule she does not intend to dispose of it; many are buried wearing it. But she can pawn it, in case of need. Similarly with guilty possession. In general a thief intends to dispose of his loot but the rich collector who filched a rare stamp and the crazy artist who took the Mona Lisa, in order to gloat over them in private, were equally thieves. Intention is a separate matter.

The dictionary definition brings in the idea of exclusiveness. It is often said that "possession must be exclusive." This is ambiguous. Possession need not be exclusive to the accused. Two or more persons may be in joint possession of chattels, whether innocent or contraband. The exclusive element of possession means that the possessor or possessors have the

power to exclude other persons from enjoyment of the property.

Custody likewise may be sole or joint and it has the same element of excluding others. The main distinction between custody and possession is that a custodian has not the power of disposal. The statement that "possession must be exclusive" is often due to confusion of the fact to be proved with the evidence by which it is to be proved. It is essential to keep this distinction clearly in mind, especially when applying presumptions."

[31] Justeru, berbalik kepada kes semasa, barang kes telah dijumpai di dalam bilik pertama dan ketika itu OKT juga berada di dalam bilik yang sama sewaktu serbuan dilakukan. Atas fakta tersebut, Mahkamah tanpa ragu-ragu membuat dapatan bahawa OKT semestinya mempunyai milikan terhadap barang kes tersebut. Mahkamah menerima penuh dan mempercayai keterangan SP1 sebagai Pegawai Serbuan yang mengendalikan serbuan waktu kejadian itu yang menyatakan bahawa hanya OKT satu-satunya orang yang berada di dalam bilik itu. Mahkamah berfikir tiada alasan untuk SP1 mereka-reka keterangan beliau atau berniat ingin memerangkap OKT dalam kes ini. Mahkamah berpendapat SP1 adalah seorang saksi polis yang boleh dipercayai dan berintegriti

(merujuk kepada kes **PP v Mohamed Ali [1962] 28 MLJ 257**). Oleh itu, Mahkamah ini menolak versi pembelaan bahawa OKT berada di bilik kedua sewaktu serbuan dibuat. Anggapan bahawa jarak dua meter itu adalah pemikiran semula juga adalah ditolak kerana SP1 telah mengangkat sumpah dan memberikan keterangan di Mahkamah dan menyatakan fakta bahawa barang kes adalah dalam jarak yang dekat dengan OKT waktu ketika itu. Oleh itu, tiada keraguan terhadap keterangan SP1 untuk Mahkamah ini menerimanya secara menyeluruh.

[32] Seterusnya, isu pengetahuan adalah penting untuk dibuktikan dalam elemen milikan yang mana telah dipertimbangkan dengan teliti di dalam kes **Warner v. Metropolitan Police Commissioner [1968] 2 All ER 356, [1969] 2 AC 256; [1968] 2 WLR 1303** di mana Lord Wilberforce mengatakan antara lainnya:

> "In all such cases, the starting point will be that the accused had physical control of something - a package, a bottle, a container - found to contain the substance. This is evidence - generally strong evidence - of possession. It calls for an explanation: the explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what

it did contain or such guilty knowledge with regard to it as to make up the statutory possession. Of course it would not be right, or consistent with the terms of the Act, to say that the onus of showing innocent custody rests upon the accused. The prosecution must prove the offence, and establish its ingredients. But one starts from the point that the Act itself has exempted the great majority of cases of innocent possession so that once the prosecution has proved the fact of physical control in circumstances not covered by an exemption and something of the circumstances in which this was acquired or held, this, in the absence of explanation, may be sufficient to enable a finding of possession to be made. On the other hand, the duty to submit the question of possession to the jury in this way does give the opportunity of acquittal to innocent carriers and custodians, who can put forward an explanation of the physical fact which a jury accepts."

[33] Mahkamah ini bersetuju dengan hujahan pihak pendakwaan bahawa OKT dalam keadaan takut dan cemas ketika serbuan adalah jelas menunjukkan OKT mempunyai pengetahuan mengenai barang kes tersebut (merujuk kepada kes **Parlan Dadeh v PP [2009] 1 CLJ 717**). Keterangan SP1, saksi material juga tanpa sangsi menyatakan bahawa barang kes tersebut ditemui di atas lantai dan dilihat dengan jelas oleh mata kasar di dalam bilik pertama dengan OKT sendiri tanpa kehadiran

pihak ketiga yang lain. Dengan itu, menerima pakai nas-nas tersohor yang telah dikemukakan di atas, Mahkamah ini membuat dapatan bahawa OKT mempunyai pemilikan terhadap barang kes (ekshibit P6-P36) yang dirampas oleh SP1 sewaktu serbuan dibuat ke atas premis tersebut. Dengan ini, Mahkamah membuat dapatan bahawa elemen milikan telah berjaya di buktikan dengan mantap pada tahap penilaian maksimum oleh pihak pendakwaan. Justeru itu, Mahkamah juga memutuskan bahawa bersandarkan kepada anggapan di bawah seksyen 37(d) Akta Dadah Berbahaya, OKT adalah mempunyai milikan dan pengetahuan terhadap barang kes tersebut.

[34] Seterusnya bagi elemen ketiga, Mahkamah ini bersetuju dengan hujahan pihak pendakwaan bahawa dadah yang dijumpai adalah suatu jumlah yang besar dan dijumpai dalam keadaan berpeket, disimpan dalam bilik tertutup serta penemuan alat penimbang (ekshibit P67) menunjukkan bahawa OKT memiliki dadah tersebut untuk tujuan pengedaran. Mahkamah membuat rujukan terhadap kes Mahkamah Rayuan dalam kes **Mohamad Yazri Minhat v. PP [2003] 2 CLJ 65** yang telah menerimapakai prinsip dalam kes **Ong Ah Chuan v. PP [1981] 1 MLJ 64,** di muka surat 69, menyatakan seperti berikut:-

"Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an expressed admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act on conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible- even if there were no statutory presumption such as in contained in section 15 of the Drugs Act.

As a matter of common sense, the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it."

Sama ada terdapat keraguan terhadap keterangan forensik yang dikemukakan

Sama ada premis tersebut telah diusik dan dialihkan oleh pihak ketiga

[35] Merujuk kepada gambar ekshibit P55, pihak pembelaan membangkitkan isu bahawa pihak pendakwaan gagal untuk menjelaskan gambar tersebut yang dirakam pada 12 Oktober 2018, telah menunjukkan barang-barang telah dialihkan dan tidak berada dikedudukan asalnya sebelum ini. Lantas, ini memudaratkan keseluruhan bukti forensik yang telah dipungut oleh SP5. Selanjutnya, terdapat juga percanggahan ketara mengenai baju untuk ujian fitting yang dirampas oleh SP9 kerana dinyatakan oleh SP9 lima helai baju hitam dirampas namun, ekshibit P55 (35) dan (37) menunjukkan hanya tiga helai baju hitam dirampas. Pihak pembelaan juga mempersoalkan tindakan SP5 kerana tidak memungut beberapa ekshibit lain untuk analisa DNA dan kegagalan tersebut telah memudaratkan siasatan dan memprejudiskan OKT.

[36] Bagi isu di atas, Mahkamah menolak penghujahan yang telah dibangkitkan oleh pihak pembelaan. Mahkamah meneliti keterangan SP5 yang menyatakan bahawa ekshibit P41A, P42A, P43A, P45A, P46A, P47A dan P48A telah dijumpai di bilik pertama premis tersebut dan ketika

serbuan dibuat, OKT berada berseorangan dalam bilik tersebut. Laporan kimia (ekshibit P51) juga telah mengesahkan terdapat DNA OKT pada barang-barang yang dirampas. Mahkamah ini merasakan untuk pihak pembelaan memfokuskan isu barang-barang telah dialihkan oleh pihak ketiga selepas serbuan dan terdapat percanggahan keterangan bagi ujian fitting adalah tidak material. Mahkamah berpendapat barang kes telah dijumpai di bilik pertama, seterusnya, Mahkamah menerima dan mempercayai keterangan SP5 yang menyatakan bahawa beliau hanya memfokuskan rampasan di bilik pertama sahaja kerana disitu dadah dijumpai dan bukan di ruang tempat lain. SP5 dalam Pemeriksaan Semula menyatakan seperti berikut: -

> "S: Tadi Peguam ada tanya, ada barang-barang yang tidak dirampas, kenapa tidak dirampas?
>
> J: Saya telah diberikan taklimat dari IO kes, IO hanya menunjukkan ruang satu bilik itu di mana rampasan telah dilakukan dan saya tidak mengumpulkan ekshibit di bahagian luar itu, di mana serbuan dilakukan oleh satu pasukan. Saya percaya bahagian luar terdapat ekshibit yang dikhuatiri tercemar apabila serbuan oleh satu pasukan yang mempunyai keanggotaan yang ramai akan mencemarkan kawasan. Jadi, fokus yang diutamakan di ruang, di satu bilik di mana dadah dijumpai."

[37] Mahkamah berpendapat tindakan SP5 tidak memungut beberapa ekshibit lain di luar bilik pertama untuk analisa DNA tidak sama sekali memudaratkan siasatan dan memprejudiskan OKT. Oleh itu, Mahkamah berpendapat isu yang dibangkitkan adalah tidak relevan dan tidak perlu dikupaskan dengan lebih mendalam lagi.

[38] Maka, berdasarkan kepada apa yang telah diperjelaskan bagi setiap satu elemen yang perlu dibuktikan, Mahkamah ini berpendapat bahawa di peringkat akhir kes pendakwaan, terdapat satu kes *prima facie* telah berjaya dibuktikan oleh pihak pendakwaan. Mahkamah telah memberi penilaian maksimum sepertimana menurut panduan di bawah seksyen 180, Kanun Prosedur Jenayah dan dalam penentuan kes *prima facie* itu telah mengambil langkah-langkah yang telah diputuskan dalam kes Mahkamah Persekutuan, **PP v. Mohd. Radzi Abu Bakar** *(supra).* Seterusnya, dalam kes Mahkamah Persekutuan **Balachandran v. PP** *(supra)* telah menyebut: -

> "a 'prima facie case' is therefore one that is sufficient for the accused to be called upon the answer. This in turn means that the evidence must be such that it can be overthrown only by evidence in rebuttal…In order to make a finding either way the court must, at the close of the case for the prosecution,

undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine the elements of the offence have been established."

[39] Selaras dengan peruntukan di bawah Seksyen 180 Kanun Prosedur Jenayah, Mahkamah memerintahkan OKT untuk membela diri terhadap ketiga-tiga pertuduhan yang dipertuduhkan ke atasnya.

Kes di peringkat Pembelaan

[40] OKT dalam keterangan bersumpahnya telah membentangkan pembelaannya seperti berikut:

a) OKT telah menyewa sebuah bilik dengan kawannya bernama Sam Chong Chee Wah (Sam) di VR3-07-12, V Residence, Lingkaran SV1, Sunway Velocity, dalam Daerah Cheras, Wilayah Persekutuan Kuala Lumpur (premis tersebut);

b) OKT merupakan penghuni bagi bilik kedua di premis tersebut;

c) Sam pula menghuni di bilik pertama di premis tersebut dengan teman wanitanya bernama Pham Thi My Chi (Pham)

sebelum berlaku pergaduhan dan Pham berpindah keluar pada bulan September 2018;

d) Pada hari kejadian, OKT sedang tidur di dalam biliknya. Tiba-tiba dan secara mengejut OKT terdengar suara di pintu utama premis tersebut dipecah masuk dan kemudian diikuti oleh pintu bilik OKT dipecah masuk oleh sekumpulan orang yang berpakaian preman;

e) Pada kesemua masa yang material, OKT tidak memiliki sebarang dadah berbahaya pada badan beliau mahupun dalam bilik kedua yang dihuni olehnya;

f) OKT kemudian nampak sekumpulan orang tersebut memecah masuk ke dalam bilik Sam dan menjumpai kotak-kotak yang mengandungi dadah berbahaya di sebelah lantai bilik;

g) Dua hari selepas serbuan, SP9 dan SP8 telah membawa OKT ke tempat kejadian semula untuk tujuan siasatan lanjut dan rakaman gambar;

h) Apabila sampai di premis tersebut, OKT nampak pintu utama premis adalah tidak berkunci dan keadaan ruang tamu telah menjadi kacau bilau;

i) OKT berasa terkejut apabila nampak barang-barang yang tidak diketahui seperti air bungkusan air, rokok dan beg

muncul di sekeliling ruang tamu dan bilik pertama premis tersebut;

j) OKT juga mendapati bahawa barang-barang peribadi kepunyaannya termasuk tiga bantal, pisau pencukur, berus gigi dan tuala telah diusik dan dialihkan dari bilik kedua ke atas katil bilik pertama;

k) Semasa di premis, OKT disuruh masuk dan menunggu di bilik kedua dengan berseorangan dan pintu bilik ditutup. OKT tidak tahu apa yang berlaku pada ketika itu dan hanya terdengar suara orang-orang bercakap di luar bilik;

l) Tidak berapa lama kemudian, OKT dibawa keluar dari bilik dan disuruh mengambil dua penyangkut baju, satu baju hitam (ekshibit P83) dan satu seluar pendek bercorak bunga (ekshibit P84) dari almari bilik kedua ke almari bilik pertama untuk tujuan rampasan, rakaman gambar dan ujian fitting.

m) Pada 22 Oktober 2018, SP9 membawa OKT balik ke tempat kejadian sekali lagi untuk tujuan rakaman gambar dan ujian fitting lanjut. SP9 menyuruh OKT mengambil pakaiannya dari almari bilik kedua dan bercampur dengan pakaian yang digantung di dalam almari bilik pertama. OKT kemudiannya disuruh untuk membuat ujian fitting ke atas semua pakaian untuk tujuan rampasan dan rakaman gambar.

Pemerhatian Mahkamah di akhir kes Pembelaan

[41] Mahkamah mendapati pihak pembelaan menghujahkan bahawa OKT telah berjaya menimbulkan keraguan yang munasabah ke atas kes pendakwaan atas alasan yang sama sewaktu dibangkitkan di akhir kes pendakwaan iaitu bahawa rantaian keterangan mengenai barang kes telah terputus dan melumpuhkan kes pendakwaan, selain membangkitkan isu kredibiliti dan kebolehpercayaan saksi-saksi material pendakwaan sebagai saksi yang boleh dipercayai tergugat akibat kewujudan percanggahan jelas dan ketara dalam keterangan mereka dan akhir sekali, pihak pembelaan berhujah bahawa penyiasatan SP9 adalah tidak sempurna.

[42] Selain itu, pihak pembelaan juga menegaskan sekali lagi bahawa pihak pendakwaan telah gagal membuktikan OKT mempunyai milikan jenayah ke atas barang kes yang dijumpai atas alasan terdapat pihak ketiga menghuni premis tersebut terutama di dalam bilik pertama dan menghujahkan bahawa terdapat keraguan terhadap keterangan dan bukti forensik yang telah dikemukakan oleh pihak pendakwaan.

[43] Mahkamah ini mengulangi dapatan di peringkat akhir kes pendakwaan (di perenggan 17 hingga 24) bahawa, daripada keterangan saksi-saksi pendakwaan, tidak wujud sama sekali keraguan dalam pengendalian atau kawalan barang kes yang dirampas oleh SP1, bermula dari masa serbuan tersebut sehinggalah pengemukaan barang kes oleh SP9 di Mahkamah ini yang boleh membuatkan rantaian barang kes terputus. Dengan itu, rantaian barang kes adalah mantap dan sekaligus membuatkan penyiasatan SP9 secara keseluruhan adalah sempurna. Mahkamah ini juga mengulangi pendapat di peringkat akhir kes pendakwaan (di perenggan 35 hingga 37) bahawa tidak terdapat keraguan terhadap bukti forensik yang dikemukakan oleh pihak pendakwaan yang boleh melumpuhkan siasatan serta memprejudiskan OKT.

Sama ada OKT berjaya menimbulkan keraguan munasabah terhadap kes Pendakwaan atas alasan penama Sam mempunyai akses kepada premis tersebut

[44] Secara rumusan, versi pihak pembelaan adalah OKT tinggal di premis tersebut bersama dengan seorang kawan bernama Sam dan teman wanitanya, Pham sebelum Pham meninggalkan premis itu pada bulan September 2018. Bagi mengukuhkan pembelaan OKT, pihak

pembelaan menyatakan bahawa ejen rumah (SP6) telah mengesahkan bahawa seorang lelaki yang saiz badan lebih tinggi dan lebih besar telah berjumpa dengan SP6 sebanyak dua kali bagi tujuan urusan sewa dan lelaki tersebut bukan OKT. Sekali lagi, pihak pembelaan menegaskan bahawa OKT merupakan seorang penghuni di bilik kedua dan barang kes tersebut telah dijumpai di bilik pertama yang dihuni oleh penama Sam dan teman wanitanya.

[45] Adalah tugas Mahkamah ini untuk membuat penelitian penuh dan memperhalusi satu persatu pembelaan yang dikemukakan oleh OKT bagi menentukan sama ada pihak pembelaan berjaya menimbulkan keraguan munasabah terhadap kes pendakwaan. Dapatan Mahkamah adalah diperturunkan seperti berikut: -

a) Penama Sam sebagai penyewa premis dan bilik pertama adalah tidak boleh dipercayai dan pemikiran semula (*after thought*);
b) Tiada maklumat berkenaan individu bernama Sam ini diberikan oleh OKT sewaktu siasatan dijalankan oleh SP9;
c) OKT tidak memanggil saksi lain yang mana dapat membuktikan kewujudan penama Sam;

d) Keterangan mantap dari SP1 dan SP9 mengesahkan di premis tersebut hanya bilik pertama tempat barang kes dijumpai sahaja yang diduduki dan satu lagi bilik berfungsi sebagai stor;

e) Pembelaan OKT hanya satu penafian kosong dan rekaan OKT sendiri untuk membebaskan dirinya daripada pertuduhan. Pembelaan OKT gagal menimbulkan sebarang keraguan yang munasabah terhadap kes *prima facie* pihak pendakwaan;

f) OKT berada di bilik pertama dimana barang kes dijumpai dan telah dibuktikan mempunyai milikan, kawalan dan jagaan serta pengetahuan salah terhadap barang kes yang dirampas pada hari serbuan;

g) Tiada sebarang alasan untuk SP1 dan SP9 memberi keterangan hanya untuk menganiaya OKT; dan

h) Keterangan SP1 dan SP9 adalah kredibel dan tiada alasan untuk menolak keterangan SP1 dan SP9. Tiada alasan untuk SP1 dan SP9 untuk mengenakan atau memerangkap OKT dalam kes ini.

[46] Setelah meneliti secara keseluruhan versi yang dikemukakan oleh pihak pembelaan, Mahkamah berpendapat bahawa OKT telah gagal untuk membuktikan bahawa penama Sam adalah penyewa dan menghuni bilik pertama premis tersebut. Disini, Mahkamah mengambil kira keterangan bersumpah SP1 yang menegaskan bahawa semasa serbuan, hanya OKT sahaja, dan tiada pihak ketiga yang berada di bilik pertama dalam premis tersebut. Barang kes dijumpai di dalam bilik pertama dan OKT berada dalam jarak yang dekat dengan barang kes tersebut. Mahkamah meneliti keterangan bersumpah OKT dengan sangat berhati-hati dan mendapati OKT sama sekali gagal untuk menunjukkan sebarang bukti kukuh atau keterangan saksi lain bagi menunjukkan bahawa penama Sam atau pihak ketiga lain mempunyai akses kepada premis tersebut terutama di bilik pertama.

[47] Seterusnya, Mahkamah ini mengambil maklum bahawa SP6, ejen rumah tersebut dalam pemeriksaan balasnya mengesahkan bahawa seorang lelaki yang saiz badan lebih tinggi dan lebih besar berjumpa dengan SP6 sebanyak dua kali bagi tujuan urusan sewa dan lelaki tersebut bukan OKT. Namun, dalam pemeriksaan balas yang sama, SP6 **tidak bersetuju** dan **tidak dapat mengingati** nama lelaki tersebut adalah Sam kerana mempunyai terlalu ramai pelanggan. Walau bagaimanapun, SP6 dalam keterangannya ada mengesahkan bahawa hanya melihat OKT

berada dalam premis tersebut dan tiada individu lain ketika hadir untuk menghantar sofa ke premis tersebut.

[48] Justeru, Mahkamah membuat dapatan bahawa versi pembelaan OKT yang dibangkitkan hanyalah satu penafian kosong dan rekaan OKT sendiri untuk membebaskan dirinya daripada pertuduhan yang dipertuduhkan keatasnya. Pembelaan OKT telah sama sekali gagal menimbulkan sebarang keraguan yang munasabah terhadap kes *prima facie* pihak pendakwaan.

[49] Selain itu, Mahkamah juga melihat OKT sangat bersungguh-sungguh dalam pembelaannya menyatakan sekali lagi isu berkenaan bahawa OKT mendapati bahawa barang-barang peribadi telah diusik dan dialihkan dari bilik kedua ke atas katil bilik pertama dan OKT dibawa keluar dari bilik dan disuruh mengambil dua penyangkut baju, satu baju hitam (ekshibit P83) dan satu seluar pendek bercorak bunga (ekshibit P84) dari almari bilik kedua ke almari bilik pertama untuk tujuan rampasan, rakaman gambar dan ujian fitting. Pada 22 Oktober 2018, OKT mengatakan bahawa SP9 membawa OKT balik ke tempat kejadian sekali lagi untuk tujuan rakaman gambar dan ujian fitting lanjut. SP9 menyuruh OKT mengambil pakaiannya dari almari bilik kedua dan bercampur dengan pakaian yang digantung di dalam almari bilik pertama. OKT kemudiannya

disuruh untuk membuat ujian fitting ke atas semua pakaian untuk tujuan rampasan dan rakaman gambar.

[50] Mahkamah mengambil kira pengataan atau tuduhan OKT itu adalah amat kasar terhadap SP9, sebagai pegawai penyiasat dalam kes ini, yang mempunyai amanat dan tugas yang sangat berat bagi memastikan siasatan yang lengkap dan sempurna telah dibuat dan dijalankan secara adil terhadap OKT. Setelah memperhalusi kesemua keterangan SP9 secara keseluruhan, Mahkamah membuat dapatan bahawa pengataan OKT tersebut adalah rekaan semata-mata kerana tiada alasan kukuh untuk SP9 memperlakukan OKT sebegitu. Adalah tidak logik dan tidak diterima akal untuk SP9 membawa OKT semula ke premis tersebut sebanyak dua kali jika beliau mempunyai niat jahat terhadap OKT atau ingin menganiaya OKT. Oleh itu, tidak wajar untuk Mahkamah ini menolak keterangan SP9 sepenuhnya sebagai keterangan yang kredible dan boleh dipercayai.

[51] Maka, Mahkamah ini menyatakan bahawa versi pembelaan OKT telah gagal untuk menyangkal anggapan yang diperuntukkan di bawah Seksyen 37(d) berdasarkan imbangan kebarangkalian. Sekali lagi Mahkamah ini merujuk kepada kes utama **Chan Pean Leon v. PP** *(supra)* di perenggan 28 di atas.

[52] Dalam kes **Tang Teck Seng & Anor v Public Prosecutor [2018] 10 CLJ 315; [2018] 4 MLJ 617,** Hakim Mohd Zawawi Salleh (kini HMP) telah membincangkan dengan mendalam isu kawalan seperti berikut: -

> "[24] It is trite that the word 'possession' includes actual as well as constructive possession, and also sole and as well as joint possession. A person who has direct physical control of something on or around his person is in actual possession of it. A person who is not in actual possession, but who has knowledge of the presence of something and has the authority or right to maintain control of it either alone or together with someone else, is in constructive possession of it. If one person alone has possession of something, possession is sole. If two or more persons share possession, possession is joint.
>
> [44] Our courts have consistently held that possession must be exclusive. The term 'exclusive possession' is not defined in the DDA 1952. Nevertheless, the courts have elucidated 'exclusive possession' as follows:
>
> 'Thus, to sum up, the common usage, plain, natural and ordinary meaning of 'exclusive' is 'excluding or to exclude all others; not shared or divided'. In the context of drug possession, 'exclusive possession' can be construed to mean that the place where the drugs are found must be exclusive to the accused. However, possession of the drugs need not be

exclusive. Possession may be joint, that is, two or more persons may jointly have possession of the contraband, exercising custody and control over it. In that case, each of these persons is considered to be in possession of that contraband (per Mohd Zawawi Salleh JC (as he then was) in *Public Prosecutor v Tukiman bin Demin* [2008] 4 MLJ 79).'

[45] Thus, exclusivity must be proved by the prosecution. It is, therefore, incumbent on the prosecution to discharge this burden, and if here are gaps, the prosecution must close the gaps. It not the defence duty to supplement the case for the prosecution."

[53] Mahkamah juga membuat rujukan kepada kes Mahkamah Persekutuan iaitu kes **PP v. Denish Madhavan [2009] 2 CLJ 209 FC; [2009] 2 MLJ 194; [2008] 3 MLRA 116; [2009] 2 AMR 757**, di mana Abdul Aziz Mohamad, Hakim Mahkamah Persekutuan (pada ketika itu) mengatakan mengenai pemilikan yang merangkumi seperti berikut: -

"[17] The idea of exclusivity features in the meaning of 'possession' in criminal law as one of the elements necessary to constitute possession. As Taylor J said in *Leow Nghee Lim v Reg* [1956] MLJ 28:

'… It is often said that 'possession must be exclusive'. This is ambiguous. Possession need not be exclusive to the accused. Two or more persons may be in joint possession of chattels, whether innocent or contraband. The exclusive element of possession means that the possessor or possessors have the power to exclude other persons from enjoyment of the property.'

Custody likewise may be sole or joint and it has the same element of excluding others. The main distinction between custody and possession is that a custodian has not the power of disposal. The statement that 'possession must be exclusive' is often due to confusion of the fact to be proved with the evidence by which it is to be proved. It is essential to keep this distinction clearly in mind, especially when applying presumptions."

[54] Tidak lupa juga, Mahkamah membuat rujukan kes yang diputuskan oleh Hakim Zabariah Mohd Yusof, HMR (ketika itu) di Mahkamah Rayuan, kes **Henry Chan Kok Loon v. PP [2017] 1 LNS 1174; [2017] MLJU 1191**, yang menyebut: -

"[57] Section 37 (d) of the DDA, already provided a "deemed state of affairs" (i.e. deemed possession and deemed knowledge). There is no longer the necessity for the

prosecution to prove how these possession or knowledge were derived at. So long as there is already a finding of custody and control, the presumption is triggered. Since the learned Judge had already made a finding of custody and control of P66 and its contents, the Accused is deemed to have possession and knowledge. This has been illuminated by Chong Siew Fai CJ (Sabah and Sarawak) in *Muhammed Hassan v P.P.* [1998] 2 MLJ at page 273, delivering the judgment of the Federal Court:

"The 'deemed state of affairs in s. 37 (d) (i.e. deemed possession and deemed knowledge) is by operation of law and there is no necessities to prove how the particular state of affairs is arrived at. There need only be established the basic or primary facts necessary to give rise to that state of affairs i.e. the finding of custody or control. Such presumptions as under s. 37 (d) (and, for that matter, the one under s. 37 (da) are sometimes described as "compelling presumptions" in that upon proof of custody or control in s. 37 (d) by the prosecution), the court must in law draw a presumption in its favour (i.e. presumptions of possession and knowledge) unless the other party proves the contrary. Such a presumption has the compelling force of law. It is a deduction which the law requires the trial court to make."

[55] Sehubungan dengan itu, untuk keadaan di atas, Mahkamah menolak sepenuhnya versi pembelaan yang dibentangkan dan dibangkitkan oleh OKT. Mahkamah sangat konsisten dengan membuat dapatan bahawa barang kes tersebut dijumpai dalam bilik pertama di mana OKT berada dalam bilik tersebut sewaktu serbuan dibuat. Tanpa ragu-ragu, pihak pendakwaan telah membuktikan OKT adalah penghuni bilik pertama dan premis tersebut. Mahkamah juga berpendapat bahawa keterangan SP1, SP2, SP5, SP9 adalah keterangan boleh dipercayai dan sekaligus pihak pembelaan telah gagal menimbulkan keraguan munsabah terhadap kes pendakwaan.

Tugas Mahkamah di akhir kes Pembelaan

[56] Adalah sedia maklum bahawa tugas Mahkamah di akhir kes pembelaan telah dinyatakan di bawah Seksyen 182A (1) Kanun Prosedur Jenayah seperti berikut: -

> "Procedure at the conclusion of the trial
>
> (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.

(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal."

[57] Dalam kes Mahkamah Persekutuan **Balachandran v. Public Prosecutor** *(supra)*, Augustine Paul, Hakim Mahkamah Rayuan (ketika itu) membuat keputusan seperti berikut di muka surat 316:

"[23] As the accused can be convicted on the *prima facie* evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. However, it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt. Proof beyond reasonable doubt involves two aspects. While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case. Therefore a case can be said to have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided by s

182A(1) of the Criminal Procedure Code. That would normally be the position where the accused has given evidence. However, where the accused remains silent there will be no necessity to re-evaluate the evidence in order to determine whether there is a reasonable doubt in the absence of any further evidence for such a consideration. The *prima facie* evidence which was capable of supporting a conviction beyond reasonable doubt will constitute proof beyond reasonable doubt."

[58] Mahkamah juga mengambil maklum dan membuat rujukan kepada kes utama **Mat v. Public Prosecutor [1963] MLJ 263** yang telah disahkan oleh Mahkamah Tertinggi dalam **Mohd Radhi bin Yaakub v. Public Prosecutor [1991] 3 MLJ 169** di mana Hakim Suffian memutuskan seperti berikut di muka surat 263-264:

"If you accept the explanation given by or on behalf of the accused, you must of course acquit. But this does not entitle you to convict if you do not believe that explanation, for he is still entitled to an acquittal if it raises in your mind a reasonable doubt as to his guilt, as the onus of proving his guilt lies throughout on the prosecution. If upon the whole evidence you are left in a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon it."

[59] Kedudukan seperti di atas boleh dinyatakan dengan selesanya seperti berikut: -

(a) If you are satisfied beyond reasonable doubt as to the accused's guilt	Convict.
(b) If you accept or believe the accused's explanation	Acquit.
(c) If you do not accept or believe the accused's explanation	Do not convict but consider the next steps below.
(d) If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt	Convict.
(e) If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt	Acquit.

[60] Justeru, adalah dapat disimpulkan di sini, Mahkamah memutuskan, melalui keseluruhan bukti yang telah dibentangkan dan dikemukakan, serta hujahan kedua-dua pihak serta mengambil kira nas-nas rujukan, Mahkamah mendapati pihak pendakwaan telah berjaya membuktikan kes diluar keraguan munasabah terhadap ketiga-tiga pertuduhan yang dipertuduhkan terhadap OKT. Atas sebab-sebab yang dinyatakan di atas, Mahkamah mendapati OKT telah gagal menimbulkan keraguan yang munasabah dan sekaligus gagal menyangkal anggapan dalam imbangan kebarangkalian. Maka, Mahkamah ini mensabitkan OKT bagi Pertuduhan Pindaan Pertama dan Pertuduhan Pindaan Kedua (ekshibit P3(a&b)) dan OKT dihukum digantung dari leher sampai mati. Bagi Pertuduhan Pindaan Ketiga (ekshibit P3(c)), Mahkamah ini mensabitkan OKT dan menjatuhkan hukuman penjara selama dua (2) tahun bermula dari tarikh tangkap (10 Oktober 2018).

[61] *Ergo verbum sap.*

BERTARIKH: 5 FEBRUARI 2021

ASLAM B ZAINUDDIN
PESURUHJAYA KEHAKIMAN
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Senarai Rujukan: -

Kes-kes yang dirujuk:

1. Balachandran v. Public Prosecutor [2005] 1 CLJ 85; [2005] 2 MLJ 301; [2005] 1 AMR 321
2. Looi Kow Chai v. Public Prosecutor [2003] 1 CLJ 734; [2003] 2 MLJ 65; [2003] 2 AMR 89
3. Public Prosecutor v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457; [2005] 6 AMR 203
4. Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1
5. Gunalan Ramachandran & Ors v. Public Prosecutor [2004] 4 CLJ 551; [2004] 4 MLJ 489; [2004] 6 AMR 189

6. Chu Tak Fai v Pendakwa Raya [2006] MLJU 459
7. Chan Pean Leon v. Public Prosecutor [1956] 22 MLJ 237
8. Leow Nghee Lim v Reg [1956] MLJ 28
9. PP v Mohamed Ali [1962] 28 MLJ 257
10. Warner v. Metropolitan Police Commissioner [1968] 2 All ER 356; [1969] 2 AC 256; [1968] 2 WLR 1303
11. Parlan Dadeh v PP [2009] 1 CLJ 717
12. Mohamad Yazri Minhat v. PP [2003] 2 CLJ 65
13. Ong Ah Chuan v. PP [1981] 1 MLJ 64
14. Tang Teck Seng & Anor v Public Prosecutor [2018] 10 CLJ 315; [2018] 4 MLJ 617
15. Pendakwa Raya v. Denish Madhavan [2009] 2 CLJ 209 FC; [2009] 2 MLJ 194; [2008] 3 MLRA 116; [2009] 2 AMR 757
16. Henry Chan Kok Loon v. PP [2017] 1 LNS 1174; [2017] MLJU 1191
17. Mat v. Public Prosecutor [1963] MLJ 263
18. Mohamad Radhi bin Yaakob v. Public Prosecutor [1991] 3 MLJ 169

Undang-undang yang dirujuk:

1. Akta Dadah Berbahaya 1952
2. Kanun Prosedur Jenayah
3. Akta Keterangan 1950