Othman Bin Abdullah

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 16 of 2004)

Power, P; Mortimer and Davies, JJ.A.
5th December, 2007.

Admissibility of cautioned statements: application of Judges Rules: allegations of impropriety must be supported by evidence at trial.

Mr Chan Choong Fatt of Messrs. K. Lim & Company for the Defendant/Appellant.
DPP Aldilah Bte Hj Mohd Salleh for the Public Prosecutor/Respondent.

Cases cited in the Judgment:

Burut v Public Prosecutor 1952 AC 579 at p. 591.
Panya Martmontree & Ors v Public Prosecutor [1995] 3 SLR 341.
R. v Prages [1972] 1 all ER 1114.
R v Priestly [1965] 51 Cr. App.

Power, P.:

Othman Bin Abdullah ("the Appellant") was found guilty on 2nd May 2000 after trial before Sir Denys Roberts and Justice Steven Chong ("the Court") of a charge under s. 3A of the Misuse of Drugs Act (Cap 27) and was sentenced to death. He now appeals against that conviction.

The Appellant originally faced 3 charges:

1st Charge:

That you, on the 23rd day of July 1999 at about 0640 hours at No. 57E, Kampong Bolkiah B, Bandar Seri Begawan in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder did have in your possession ***301.2863 grams*** *of a* ***Class A*** *controlled drug to wit,* ***METHYLAMPHETAMINE****, for the purpose of trafficking in contravention of Section 3A of the Misuse of Drugs Act and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.*

2nd Charge:

That you, on or about the 23rd day of July 1999 in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder did consume a ***Class A*** *controlled drug to wit,* ***METHYLAMPHETAMINE****, in contravention of Section 6(b) of the Misuse of Drugs Act, Chapter 27, and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.*

3rd Charge:

That you, on the 23rd day of July 1999 at about 0640 hours at No. 57E, Kampong Bolkiah B, Bandar Seri Begawan in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder did have in your possession apparatus, to wit,

1. *A clear drinking plastic bottle labeled 'PEPSI', equipped with four pieces of long rubber/plastic tubing and a piece of small clear glass tube at its top,*
2. *A flat-bottom clear glass flask connected at its top to a clear glass tubing, a clear short drinking straw, a clear runner tubing and a red/white drinking straw,*
3. *A small clear glass tube,*
4. *A glass tube equipped with 2 pieces of short drinking straw and*
5. *A clear Coca-Cola bottle which has attached to it one rubber/metal tubing and a long green plastic tubing*

Intended for the consumption of a controlled drug in contravention of section 7 of the Misuse of Drugs Act and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act."

He pleaded guilty to the 2nd and 3rd charge and not guilty to the 1st. He was in the outcome found guilty of the 1st charge.

The Prosecution Case

It was the prosecution case that on the morning of 23rd July 1999 a police party led by Hj Ahmad Bin Metassan, the Assistant Director, Head of Enforcement and Intelligence of the Narcotics Control Bureau forcibly entered the home of the Appellant. A person, later identified as the Appellant ran out of the back door of the house which is in the Kampong Ayer and jumped into the water. Assistant Director Metassan said that he drew his revolver, pointed it at the Appellant and shouted in a loud voice not to run away or he would shoot. The Appellant was apprehended and handcuffed and a black waist pouch floating nearby was recovered from the water. His evidence was "I saw one black waist pouch floating in the water not far from where Othman jumped. I asked Othman *"What*

was that you throw?" at the same time pointing to the floating bag. Othman replied "*No Sir"*. I asked again *"What is it?"* Othman replied "*Ice"*. I asked *"Why did you throw it?"* Othman replied *"It is mine."* When opened it was found to contain 11 $1 pieces, 9 plastic packets of what was later found to be Methylamphetamine, which is commonly known as both Ice and Shabu, and some empty plastic packets. The Appellant admitted that he had got the money from selling Ice.

In the sitting room of the house 2 plastic packets of suspected Methylamphetamine were found, some utensils for consuming drugs and some weighing scales. In another room, which the Appellant admitted was his, utensils for the consumption of drugs, several mobile telephones and a passport in the name of Abdul Rahman were found. The Appellant admitted that the passport was security for a debt owed to him from the sale of Shabu. The living room was searched and the Appellant when asked if there were any drugs in the room indicated a box which contained 2 plastic packets of suspected Methylamphetamine and a glass test tube. The Appellant admitted that they were his. Nearby a black pouch was found containing a large amount of cash which the Appellant admitted he had obtained from the sale of Shabu. Shortly after the Appellant handed over another black bag which he admitted also contained Shabu. It held seven large plastic packets of suspected Methylamphetamine and some coins. Finally the Appellant handed over some utensils used for the consumption of dangerous drugs.

Also arrested on this morning was Gani bin Ibrahim ("Gani"), who admitted that he had been involved in packing and selling some of the dangerous drugs.
Mahmud Kashfi Bin Mahmud Shahrani, an Assistant Narcotics Officer gave evidence that he had recorded all that occurred in the raid in his diary and that after the party had returned to the Narcotic Office the Appellant, when asked to do so, had signed the diary.

Senior Narcotics Officer Hj Sabtu Bin Sidup took a cautioned statement (Ex. P17) from the Appellant at 3.25 pm on 23rd July 1999. He said that the Appellant did not look scared and that he did not threaten him; that he told the Appellant that he would be hanged if he was convicted; that he did ask him if he was comfortable and he said that he was; that he had read the charge and the warning to the Appellant. It does not appear to have been put to him in cross examination that there was any irregularity during the taking of the statement. The officer said in cross-examination that:

> *"The statement was taken in a narrative from followed by question and answer. When the defendant made the statement I did not assist him. He remembered everything that is in the statement."*

No challenge was made to this evidence. In evidence in the voir dire the Appellant said:

> *"I did give a statement that day. I gave it because the NCB wanted my statement. I can't remember it I was told that I must make a statement…..when I made my*

statement I admitted that the drugs in the house were mine because I was scared, though the drugs found there were not mine."

Nowhere in this evidence is there any suggestion that the statement was dictated to him or that it came other than from his own mind.

In his evidence in the trial he did seek to clarify some matters in his cautioned statement but made no suggestion that it had not come from him. He made no mention at all of the ordinary statement made on 4th August 1999 to which reference is made hereunder.

Narcotics Officer Pg Othman Bin Pg Hj Ali gave evidence that he was present during the taking of the cautioned statement and that no force was used or threat or inducement made. He said that the statement was read back and signed by the Appellant. The preamble to the statement was as follows:

"Date : 23RD JULY 99
Time : 1545hrs
Place : NARCOTICS CONTROL BUREAU

*I read a charge under Section 3A MDA CAP 27 to OTHMAN BIN HJ ABDULLAH (the accused). Interpreter _____ (name) interpreted the charge to the accused in Malay (language/dialect)*_____ _____ (accused) understood the charge. I then proceeded to administer to him the warning under Section 117(3) of the Criminal Procedure Code Chapter 7.*

NOTICE

"You have been charged with/informed that you may be prosecuted for:-*
(set out the charge)

That you, on the 23rd July 1999 at about 6.40 a.m. at No. 57E, Kampong Bolkiah B, Bandar Seri Begawan, Negara Brunei Darussalam not being a person authorized under the Misuse of Drugs Act, Cap. 27 or the Regulations made thereunder did have in your possession for the purpose of trafficking a Class A drug to wit, 418.93g METHYLAMPHETAMINE in contravention of Section 3A of the Misuse of Drugs Act, Cap. 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the same.

Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you fail to do so before your trial, the court may draw such inferences, adverse to you, as it may think proper. If you wish you mention any fact now, and you would like it written down this will be done."

(Serve a copy of the above notice to the accused)

Delete if not applicable

A copy of the above charge and Notice under Section 117(3) of the Criminal Procedure Code Chapter 7, was served on OTHMAN BIN HJ ABDULLAH (the accused). It was then read back and explained to the accused in Malay (language/dialect) with _____ (name) as interpreter. Having understood the charge and Notice, OTHMAN BIN HJ ABDULLAH (accused) was invited to sign below to acknowledge receipt and explanation of the charge and Notice."*

The Appellant, SNO Sidup and NO Hj Ali then signed.

The Appellant's statement reads as follows:

"On 23rd July 1999 at about 0640 in the morning a raid was conducted at my house at No. 57E Kg Bolkiah B, NBD. At that time I was in my room and when I heard a loud noise at the front I went out through the kitchen door immediately opening the door and jumped out. At that time I was carrying a black bag (waist pouch) which contained in it 9 sets of shabu. I headed towards the bottom of the house and headed towards the relevant officer and my hands were then handcuffed and then brought up to the bridge and the house. I was searched. The waist pouch was also searched and 9 sets of shabu was found. Then the wallet was searched and cash totaling B$2442 was found being the proceeds from the sale of drugs. After the search, I was brought inside the said house into a room used for my activity of packaging drugs and 3 packets of shabu were found. After that we moved to my bedroom where mobile telephones were found a total of 8 pieces held as bonds upon exchange or purchase of drugs. We then moved to the living room where I pointed out a black bag which contained a white plastic containing 7 bars of shabu belonging to me and Malaysian monies amounting to $2500 and Brunei monies totaling $2600 on a table. All the monies are the proceeds form the sale of shabu. I admit that I have been involved in it for 3 – 4 months. The last time I had consumed shabu before my arrest on 23.7.99 at about 11.00 p.m. to 2.00 a.m.

1. Q: Where do you get your supply and the manner in which you get it?
A: I get my supply from a Filipino national by the name of Zulman. I, myself would go to Pulau Sukan Besar next to Labuan.

2. Q: What is the price and total amount of the shabu that you get?

A: The total amount of shabu is 10 bars at a price of $75.000 Malaysian Ringgit per bar therefore costing $7500 Malaysian.

3. Q: What is the purpose of your getting this much amount of shabu?

A: My purpose is to sell it.

4. Q: Do you understand that what you are doing is against the law?
A: Understand it is against the law.

I am giving this statement voluntarily without any inducement or force from the relevant parties."

It also was signed by the Appellant and the Recorder.

Ex. P17 then shows that the statement was read back to the Appellant and that he wrote *"I am not going to add or amend my statement".*

Senior Narcotic Officer Abdul Manaf Bin Hj Lampoh gave evidence that on 4th August 1999 he took what is known as an "ordinary statement" from the Appellant. Such a statement is an uncautioned statement made by a person, including a person in custody, whether before or after he is charged and is by virtue of s.117 of the Criminal Procedure Code admissible as long as the court is satisfied that it is voluntary. He said that he did not use any force threat or inducement when taking the statement.

In this statement the Appellant admitted that the passport of Abdul Rahman was surrendered to him in exchange for $500 worth of Shabu.

Gani gave evidence stating that he had arrived at the home of the Appellant at 0630 hours on 23rd July 1999 and that at 0640 hours officers of the Narcotics Bureau conducted a raid on the premises. He said that he was at the premises to give the Appellant the proceeds of the sale of Shabu amounting to $500 and to return unsold Shabu; that he was arrested and that he surrendered cash and the unsold Shabu. He told of the price at which Shabu was sold and said that the prices were fixed by the Appellant. This evidence does not appear to have been subject to any challenge in cross-examination.

There was then evidence from narcotics Officer Saiful Bahrin Bin Hj Metali who said that he took part in the raid. Under cross-examination he denied holding the Appellant by the trousers and telling him to make admissions and denied telling the Appellant that he had seen him throwing a pouch in the river and that he should admit that the pouch was his.

There was finally evidence from Mr Lim Swee Chin, a Laboratory Technician, identifying the powder seized in the black pouch and the house as 301.2863 grammes of Methylamphetamine and identifying traces of the same drug on the articles seized.

Before admitting the cautioned statement the judges followed the alternative procedure and at the conclusion of the prosecution evidence heard the evidence of the Appellant. Only then did his defence become fully apparent.

He said that he had jumped into the water when the raid was in progress and that the black pouch, which was not his, was found floating nearby; that when he refused to admit that the pouch was his a Narcotic Control Bureau Officer took hold of his trousers from behind and asked him to admit that it was his; that he did then admit that it was his because he was scared and was threatened by the actions of the officer.

He said that, at the time of the taking of the cautioned statement, he was not told that he need not make it if he did not wish to and was not warned. He said that he was scared because of what had happened previously at his house and that prior to the taking of the cautioned statement an officer whom he could not identify had said "Admit it" and that he did not, at that time, realize how serious the case was.

After submissions in the course of which the prosecution stated that it was not pressing that the verbal admissions and the admissions recorded in the diary of events be admitted the Court held that it was satisfied that the SANW (cautioned statement) had been proved beyond reasonable doubt to be voluntary and it was admitted into evidence.

The Appellant then gave evidence in the trial in which he said that:

he jumped into the water because the raiders could have been an enemy;
he surrendered after an officer had called "Don't run or I'll shoot";
he did not own the black pouch which was found in the water;
the back of his trousers was grabbed and he was asked to admit;
the Shabu in the house except for that in Bedroom 2 belonged to Gani who used a room in the house to pack the Shabu;
the Shabu found in Bedroom 2 belonged to HAN (this was a reference to Mulkan Bin Haji Mohd Deli, a male who was found on the premise);
he had made a false admissions, because he was scared;
he had been consuming Shabu for 3 to 4 months;
he had bought Shabu for his own consumption;
he told the NCB Officer that the money found in the house was from the rental of 3 boats which he owned;
the house at No. 59E belongs to him.

The Court appears to have been satisfied that some of the admissions recorded in the events diary were admissible however as the prosecution did not wish any of the statements made at the scene of the arrest to be admitted the Court did not admit them. The Court did, however, admit the ordinary statement made by the Appellant on 4 August 1999. This was a clear admission that the passport of Abdul Rahman had been surrendered to the Appellant as a form of security in exchange for Shabu. The Court specifically rejected the evidence of the Appellant to the contrary and was satisfied from this evidence that the Appellant was a dealer in Shabu and, because of the amount involved (24,000 times the average daily dose), that the Shabu found must have been intended for sale and not personal use.

Having examined the evidence of the Appellant, in which he stated that the cautioned statement was untrue and was made because he was scared, the Court was satisfied that the proper procedure had been followed, that the appellant had been warned, that what he said was accurately recorded, that it was voluntary and that it should be admitted in evidence.

The Court went on to state that they had no doubt that the Appellant had thrown the black pouch containing Shabu into the water and that the evidence established that the exhibits seized were Methylamphetamine. The Court found the Appellant to be an unimpressive witness and rejected his evidence where it was in conflict with that of the prosecution witness.

The Court acknowledged that Gani could properly be described as an accomplice but were satisfied nonetheless that he was telling the truth when he said that he was selling Shabu on behalf of the accomplice.

The Court in the outcome made the following findings:

> *"We are satisfied that the prosecution has established beyond a reasonable doubt that –*
>
> *(a) the defendant had the quantity of 301.2863 grammes of Methylamphetamine in his possession;*
> *(b) Methylamphetamine is a controlled drug, as specified in part I of the Schedule to the Act;*
> *(c) The controlled drug was in the defendant's possession for trafficking (i.e. selling);*
> *(d) The defendant should be convicted of the first charge; and we convict him accordingly."*

The Appellant now appeals against both conviction and sentence.

He takes issue with:

A. The admission of the statements
B. The finding that the evidence established that that the Appellant was in possession of the dangerous drugs as charged
C. The finding that the evidence established that the appellant was trafficking

Before referring us to the facts Mr Chan Choong Fatt who appeared for the Appellant referred us to a number of cases. We need refer only to *R. v Prager* [1972] 1 all ER 1114 where Edmund Davies L.J. delivering the judgment of the court said at page 8:

> *"The only reported judicial consideration of 'oppression' in the Judges' Rules of which we are aware is that of Sachs J in R v Priestly [1965] 51 Cr. App. Rep where he said:*

> *'…….to my mind, this word in the context of the principles under consideration imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary….Whether or not there is oppression in an individual case depends upon many elements. I am not going into all of them. They include such things as the length of time of any individual period of questioning, the length of time intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world.'*

In an address to the Bentham Club in 1978[d], Lord MacDermott described 'oppressive questioning' as –

> *'questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the suspect that his will crumbles and he speaks when otherwise he would have stayed silent.' "*

In that matter the Appellant went voluntarily to the police station and was then questioned from 9.15 am to 12.30 pm and then from 5.45 pm to about 7.40 pm at which point he was cautioned. The questioning then went on from 7.40 pm to about 11.30 pm. The Appellant gave evidence that his admissions were untrue, that he wanted to leave the police station, that he had asked in vain to see a lawyer and his wife, that by 7.30 pm he was feeling terrible and his mind was a blank, that, thereafter, he told the police what they were expecting to hear and that he had made up his confession from the form of questions put to him.

The trial court was clearly here dealing with specific and detailed evidence of oppressive conduct. The question of admissibility was determined upon the basis of the evidence before the court.

Most importantly, the court must look to the evidence when making its determination.

Mr Chan acknowledged in the course of his submissions that if this Court was satisfied that the Appellant's statements were properly admitted his arguments on B and C fell away. To put it another way that he would only be in a position to argue that there was no sufficient evidence to establish possession of and trafficking in dangerous drugs, if he could satisfy this Court that the statements should not have been admitted.

A. The admission of the statements

Issue 1: Voluntariness of the appellant's statements

(a) The Cumulative Effect of Surrounding Circumstances

It is argued that the court failed to consider that the cumulative effect of surrounding circumstances before the statement was recorded was oppressive and that this oppression continued so to operate on the mind of the appellant that his will had "crumbled" when his cautioned statement was recorded.

The "oppressive circumstances" suggested are (i) the early morning raid, (ii) the forced entry, (iii) the presence of the officers in the house, (iv) the drawing of the revolver and shouting, (v) the prolonged handcuffing of the appellant, (vi) the lapse of time between arrest and interrogation, (vii) the seizing of the appellant's trousers and demand to admit, (viii) the demand to admit at NCB Headquarters, (ix) the targeting of the appellant.

The court was not satisfied that (vii) and (viii) occurred. As to the other matters, all were set out when the court recited the evidence in their judgment and we have no doubt that the Judges had them in mind when coming to their conclusions thereon.

Indeed we are unable to see how these matters, which did not go beyond what is routine in an arrest of this kind, could, individually or cumulatively, be said to be oppressive.

The contention that the appellant was targeted is undoubtedly true but there is nothing in the evidence to suggest that this blinded the officers to the possibility that others were involved.

(b) The Failure to Consider the Full Circumstances which led to the appellant being "scared"

When dealing with the appellant's evidence that he was "scared" the court referred to the allegation that N.O. Metali had seized his trousers at the back and told him to admit and that another officer had told him to admit at NCB Headquarters. It is submitted that the court dealt only with these matters and failed to take into account all of the other "oppressive circumstances" when making the finding that *"he may have been apprehensive, but not that it was induced by any conduct of the NCB officers or that it caused him to make a statement that was not voluntary."*

The appellant's evidence that he was scared appears at p. 99 of the Record of Appeal. He states that he was scared because he "*thought that I would be threatened again, as I had been at the house when the back of my trousers was seized"* and was at that time told to admit that the black pouch was his. The other matter of which he made mention was the allegation that *"someone else in the NCB OFFICE told me to admit it."*

The court properly, in our view, dealt with the matters of which specific complaint was made. Further we have no doubt that the court was mindful of the other alleged "oppressive circumstances" which we have dealt with in (a) above.

(c) A Failure to Consider the State of Mind of the appellant

It is argued that the court failed to consider adequately the state of mind of the appellant "with all its foibles and fortitude …"

The argument goes on to submit that at *"the material time the appellant was subjected to enormous pressure, be it physical or psychological from the various oppressive circumstances that he was subjected to from the time of the raid and until his statements were recorded".* It is further submitted *"that he was tired, hungry and thirsty and in a state of shock and confusion, exhaustion and fatigue…"*

These wholly argumentative submissions founder upon the fact that they find no support in the evidence given at trial. A court must try the case upon the evidence. This argument has no substance.

(d) The Recording of the Cautioned Statement

It is submitted that the court was wrong to accept the evidence of the recording officer and to reject that of the appellant.

It is first argued under this head that the cautioned statement nowhere records that the appellant was informed that he was to be charged with a capital office and that if this had been done "he would not have given a damning statement that would take his life away."

It is correct that the cautioned statement does not anywhere make mention of the seriousness of the offence but this submission fails in limine as it was the evidence of SNO Sidup, which was accepted by the court, that, before the taking of the cautioned statement:

> *"I told the defendant what the charge was and that he would be hanged if he was convicted of it."*

It is next submitted that there was no evidence that the appellant had requested that his statement be recorded and no evidence that he need not give a statement unless he wished to do so.

That seems to be factually correct. The failure to do so was a breach of the *Judges Rules*, in particular, Rule III which provides:

> *"Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:*
>
> > *"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be used in evidence"*

There is a similar provision in Rule III relating to the answering of questions.

The Judges Rules appear to be part of the common law of Brunei in the following way. They were drawn up by judges of the common law in 1919 as rules of conduct for police in the investigation and prosecution of suspected offences. They then became part of an administrative direction from government. Thereafter they were applied by common law judges, primarily in assisting in determining whether a confession was voluntarily made. If it was not voluntarily made it was inadmissible after 1896 by reason of the *Criminal Law Amendment Act.*

It was still part of the common law of England at the time of the passing of the *Application of Laws Act* in Brunei in 1951. These rules were replaced in England in 1984 by the enactment of the *Police and Criminal Evidence Act.*

The *Judges Rules* did not render a confession obtained in breach inadmissible. They were relevant only as a factor in determining whether a confession was voluntarily made. They later came to be used to support a discretion to exclude evidence on the ground of fairness. This discretion had only limited application to confessional evidence, possibly only where obtained by a trick.

The *Criminal Law Amendment Act 1896* did not define what rendered a confession involuntary. However it was said at common law that a confession was involuntary if it was made in fear of harm or hope of reward. It is defined somewhat more widely in section 117(2) of the Criminal Procedure Code as "obtained by violence, inducement, threat or oppression by a person in authority".

It is moreover to s.117 (2) that a court in Brunei must look when dealing with the admissibility of cautioned statements and not to s.24 of the Evidence Act. This was made clear in the speech of Lord Steyn delivering the judgment of the Court in *Burut v Public Prosecutor* 1952 AC 579 at p. 591 where he said *"There is an overlapping provision in the Evidence Act of the Laws of Brunei, which does not contain any reference to "oppression:" section 24. That does not matter: section 117(2) of the Criminal Procedure Code governs the matter. In order to be admissible the statements must not have been obtained by oppression. It is common ground that the burden of proof is on the prosecution to prove the voluntariness of the statements. The standard of proof required was proof beyond reasonable doubt."*

The breach of the Judge's Rules does not assist the appellant in establishing that the confession was involuntary because the factual findings are to the contrary.

It is next submitted that the caution was not explained to the appellant. This submission is not sustainable as the cautioned statement, which is set out above, states that it *"was then read back and explained to the accused in Malay"* and that the appellant signed *"to acknowledge receipt and explanation of the charge and notice."*

The next matter of weight under this head is a submission that the cautioned statement was based on the verbal admissions made by the appellant during the raid.

It is submitted that *"the recording officer practically dictated to the appellant the admissions that he gave to the NCB officers at the house during the raid".* These submissions also founder upon the evidence. Indeed not only upon the evidence of the prosecution, which the court accepted, but also upon the evidence of the appellant himself as it was never his evidence that he had not made the cautioned statement or that it had been dictated to him. What he said was *"I would not have made the SANW (cautioned statement) if I had not been scared."*

It is next argued that the narrative form of the cautioned statement and the detailed information it contains indicate that the appellant was not its author. This submission must also fail for the reasons set out immediately above - it finds no support in the evidence even of the appellant himself.

(e) The Voluntariness of the Ordinary Statement made on 4th August 1999

It is submitted that when the Appellant made this statement he was still scared and that he was not cautioned before making it. We have already dealt with the submission that the appellant was overborne by oppressive circumstances. It is true that he was not cautioned however s.117 of the Criminal Procedure Code makes such a statement admissible and what we have said in relation to a similar objection to the cautioned statement applies equally to the ordinary statement.

(f) Admission of Statements Prejudicial as it filled gaps in Prosecutor's Case

It is submitted that the admission of the cautioned and ordinary statements was gravely prejudical to the Appellant as they filled gaps and omissions in the prosecution evidence. It is difficult to understand this submission. It must mean that if they were wrongly admitted they would be prejudicial to the Appellant. This is certainly so but for the reasons we have given we are satisfied that they were rightly admitted and were quite properly used to prove the prosecution case.

(g) Adverse Inference should have been drawn from failure to call Abdul Rahman

It is next submitted that the court was wrong not draw an adverse inference from the prosecution's failure to call Abdul Rahman to rebut the appellant's evidence that the passport was a bond for a loan and not security for moneys owed for drugs. It is true that he might have been called but it was not incumbent upon the prosecution to do so nor upon the court to draw any such adverse inference. The court was entitled to be satisfied from the admission of the appellant that the passport was security.

(h) Verbal Admission Obtained by Trick

This submission arises out of the evidence of ANO Metassan who challenged the Appellant by asking him what he had thrown into the water when the fact of the matter appears to have been that none of the officers actually saw that happen. Nothing, however, can be made of this as the admission was not admitted in evidence.

As we indicated at the outset Mr Chan conceded that if this court was satisfied that the statement of the appellant were rightly admitted his arguments on B and C fell away.

We are so satisfied and the appeal must therefore be dismissed.

Appeal dismissed.