Public Prosecutor
v
Manogaran s/o R Ramu

[1996] SGCA 64

Court of Appeal — Criminal Appeal No 27 of 1996
Yong Pung How CJ, M Karthigesu JA and L P Thean JA
26 September; 21 October 1996

Constitutional Law *— Fundamental liberties — Protection against retrospective criminal laws — Principle of* nullum crimennulla poena sine lege *— Whether courts precluded from retrospectively reversing previous interpretation of statutory provision — Article 11 Constitution of the Republic of Singapore (1985 Rev Ed, 1992 Reprint)*

Criminal Law *— Statutory offences — Misuse of Drugs Act (Cap 185, 1985 Rev Ed) — Offences — Controlled drugs — Cannabis mixture — Definition — Whether vegetable matter was "cannibis mixture" according to definition — Section 2 Misuse of Drugs Act (Cap 185, 1985 Rev Ed)*

Criminal Procedure and Sentencing *— Appeal — Whether law in previous Court of Appeal decision should be subject to prospective or retrospective overruling*

Words and Phrases *— "Cannabis mixture" — Misuse of Drugs Act (Cap 185, 1985 Rev Ed)*

Facts

The respondent was charged with having 3,488.91g of cannabis mixture in his possession for the purpose of trafficking. At the trial, the Prosecution's expert testified that the substance could not be certified as cannabis as it did not satisfy all the tests recommended under the United Nations Testing Manual. No other vegetable matter was found and the expert certified the substance as "cannabis mixture". The trial judge held that he was bound by the ruling of the Court of Appeal in *Abdul Raman bin Yusof v PP* [1996] 2 SLR(R) 538 that "cannabis mixture" as defined in the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) ("MDA") meant "a mixture of two or more separate vegetable matters" and acquitted the respondent at the close of the prosecution case.

On appeal, the Prosecution contended that the primary meaning of the term "cannabis mixture" would be a mixture of pure cannabis vegetable matter. The definition in the MDA had widened it to include any mixture of cannabis and non-cannabis vegetable matter but this extended meaning should not be allowed to displace the primary meaning. It could not have been the intention of Parliament to do so and the court was invited to overrule the decision in *Abdul Raman*. In reply, the respondent submitted that the construction of "cannabis mixture" placed by the court in *Abdul Raman* was correct as Parliament was seeking to discourage the trafficking of cannabis which had been camouflaged by mixing with another vegetable substance.

Held, overruling the decision in Abdul Raman with prospective effect and remitting the case to the trial judge for defence to be called on a new charge:

(1) A restrictive construction would operate to preclude a block composed of various parts of the same cannabis plant from being characterised as "cannabis mixture". Such a construction could not have been intended by Parliament. It would clearly omit to give effect to the ordinary or primary meaning of the term "cannabis mixture". In its literal sense, the term clearly contemplated an unadulterated mixture of vegetable matter of entirely cannabis origin: at [43].

(2) The primary meaning of "cannabis mixture" should not be displaced by its "extended" meaning. This court's construction in *Abdul Raman* was erroneous in giving sole and exclusionary effect to the extended meaning of the term "cannabis mixture". Both the primary and the extended meanings had to be recognised: at [45].

(3) In view of Art 11(1) of the Constitution and the principle of *nullum crimen nulla poena sine lege* and having regard to the circumstances of the present case, a prospective ruling was mandated. All acts done subsequent to the delivery of this judgment would be governed by the law as stated herein and acts done prior to this date would be governed by the law as stated in *Abdul Raman*: at [86].

(4) The respondent's acquittal of the charge of trafficking in cannabis mixture was upheld. A new charge was to be framed in substitution, averring that the respondent was in unauthorised possession of controlled Class A drugs, namely cannabinol and tetrahydrocannabinol, contrary to s 8(*a*) of the MDA: at [88] and [89].

[Observation: Where Art 11(1) of the Constitution and the principle *nullum crimen nulla poena sine lege* were brought into operation, the courts were precluded from retrospectively reversing a previous interpretation of a criminal statutory provision where the new interpretation created criminal liability for the first time, and where it would operate to the prejudice of an accused. The same prohibition against retrospective overruling had to apply equally where the new interpretation represented a reversal of the law as previously interpreted and effectively extended criminal liability: at [75].]

Case(s) referred to

Abdul Raman bin Yusof v PP [1996] 2 SLR(R) 538; [1996] 3 SLR 15 (overd)

Anderton v Ryan [1985] AC 560; [1985] 1 All ER 138 (refd)

Babaniaris v Lutony Fashion Pty Ltd (1987) 71 ALR 225 (refd)

Bradley v Baylis (1881) 8 QBD 195 (refd)

Chicot Country Drainage District v Baxter State Bank 308 US 371 (1940) (refd)

George Robinson v The Local Board for the District of Barton-Eccles (1883) 8 App Cas 798 (refd)

Golak Nath v State of Punjab AIR (54) 1967 SC 1643 (refd)

Great Northern Rly Co v Sunburst Oil & Refining Co 287 US 358 (1932) (refd)

Linkletter v Walker 381 US 618 (1965) (refd)

Ong Ah Chuan v PP [1979–1980] SLR(R) 710; [1980–1981] SLR 48 (refd)

PP v Abdul Raman bin Yusof [1996] SGHC 111 (refd)

R v The Commissioners under the Boiler Explosions Act, 1882 [1891] 1 QB 703 (refd)

R v Shivpuri [1987] AC 1; [1986] 2 All ER 334 (refd)

Reference re ss 193 and 195.1(1)(c) of the Criminal Code 56 CCC (3d) 65 (refd)

Teo Tiang Hoe v PP Criminal Appeal No 25 of 1995 (refd)

Legislation referred to

Constitution of the Republic of Singapore (1985 Rev Ed, 1992 Reprint) Art 11 (consd);
Art 2

Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 163(1)

Interpretation Act (Cap 1, 1985 Rev Ed) s 9A(2)(*a*)

Misuse of Drugs Act (Cap 185, 1985 Rev Ed) s 2 (consd);
ss 8(*a*), 17, First Schedule

Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) s 54(1)

Criminal Attempts Act 1981 (c 47) (UK) s 1

Public Health Act 1875 (c 55) (UK) ss 4, 157

Chan Seng Onn, Sunari bin Kateni and Thomas Koshy (Deputy Public Prosecutor) for the appellant;
Surian Sidambaram, Goh Lam Chuan and Ranjit Singh (K S Chia Gurdeep & Param) for the respondent.

[Editorial note: This was an appeal from the decision of MPH Rubin J in the High Court. See [1996] SGHC 204.]

21 October 1996 Judgment reserved.

Yong Pung How CJ (delivering the judgment of the court):

1 This is the Public Prosecutor's appeal against a decision of the High Court, acquitting the respondent on a charge of having 3,488.91g of cannabis mixture in his possession for the purpose of trafficking. This order was made at the close of the prosecution case.

2 The "cannabis mixture" was recovered from the rubbish chute at the foot of Block 79 Indus Road on 16 April 1996. The Prosecution had been informed by one Amir bin Abdullah that he would be purchasing *ganja* (cannabis) from the respondent in the vicinity of Block 79 Indus Road. The Central Narcotics Bureau ("CNB") subsequently managed to trace the respondent's residential address to Block 79 Indus Road #02-479 ("the flat"). The CNB then organised a raid on the flat.

3 The evidence of one Sgt Leong Wai Wah, a member of the CNB raiding party, was that he saw the respondent and one Ramalingam Rajasegar throw something into the rubbish chute of the flat when the CNB officers were outside the flat waiting to gain entry. Narcotics Officer Kharudin bin Sukaimi, who was stationed at the ground floor,

somewhere behind the kitchen window of the flat, also testified that he saw the respondent throwing a black object into the rubbish chute. He immediately checked the rubbish container and noticed a black bag lying on top of other matter. He also noticed that there were several other bags under the black bag.

4 Following that, the respondent was arrested. The rubbish container was immediately checked and a total of six bags, including the black bag, was retrieved by the CNB. Three of these six bags contained substances believed to be cannabis. In particular, from the black bag, 2,825g of highly fragmented greenish vegetable matter was recovered. The total weight of the substances believed to be cannabis which were recovered was 3,488.91g.

5 During the trial, the Prosecution called Dr Jyothi Mary Ipe ("Dr Ipe") of the Department of Scientific Services ("DSS") to testify on the scientific analysis of the seized substances. From her analysis, she had determined that they were "fragmented vegetable matter which was … found to contain tetrahydrocannabinol and cannabinol". She concluded that "[t]he vegetable matter was therefore cannabis mixture as defined in s 2 of the Misuse of Drugs Act (Cap 185) (MDA)".

6 This appeal is primarily concerned with one question: what constitutes "cannabis mixture"? The trial judge held that he was bound by the recent ruling of the Court of Appeal in *Abdul Raman bin Yusof v PP* [1996] 2 SLR(R) 538 on this question. Consequently, the judge accepted the defence submission that the Prosecution had failed to establish an essential element of the charge, in that the vegetable matter in question was not "cannabis mixture" according to the definition as construed in *Abdul Raman's* case.

***Abdul Raman*'s case**

7 In *Abdul Raman*'s case, the appellant was charged with trafficking in 852.35g of cannabis and 119.38g of cannabis mixture. Dr Lee Tong Kooi ("Dr Lee") of the DSS provided the scientific evidence for the Prosecution. Dr Lee said that he had to analyse a block of compressed greenish vegetable matter which had been seized from the possession of the accused. He had to "prise open" the compressed matter into "several thin slabs of compressed vegetable matter". He managed to separate the vegetable matter into two groups. One comprised "intact branches" including stems and leaves, and the other comprised "dry and brittle" broken pieces which he classified as "fragmented vegetable matter". There was a very small quantity of "extraneous matter" which he could not classify as either "intact branches" or "fragmented vegetable matter".

8 Dr Lee certified that the intact branches weighed 852.35g, which he classified as "cannabis", while the fragmented portion weighed 119.38g of "cannabis mixture". He explained that the fragmented portion did not

conclusively satisfy him from macroscopic and microscopic examinations that they exhibited the characteristic features of cannabis, although he detected the presence of tetrahydrocannabinol and cannabinol on chemical analysis. He testified that all three tests – macroscopic and microscopic examination and chemical analysis – had to be satisfied before the DSS would certify the plant material to be cannabis. As the fragmented portion satisfied only the chemical test, he certified it to be cannabis mixture.

9 At the close of the prosecution case, defence counsel submitted that it was not permissible in law to separate the two groups of vegetable matter to make two offences out of what was in effect one block of vegetable matter. It was argued that the quantities of "cannabis" and "cannabis mixture" should be amalgamated into one, and considered as a whole as 982.38g of "cannabis mixture". On account of this weight falling below 1000g, a charge of trafficking in cannabis mixture would not attract the death penalty upon conviction. The trial judge rejected this submission. Instead, the judge amended the charge of trafficking in cannabis to specify that only 590.23g were involved, as it was only this quantity that satisfied all the requisite three tests to enable classification as "cannabis". At the conclusion of the trial, both accused persons were convicted on this charge and sentenced with the mandatory death penalty.

10 Counsel for the Defence repeated the submission as to amalgamation of "cannabis mixture" before the Court of Appeal. In the opinion of the court, the primary question in the appeal was whether the compressed block of greenish vegetable matter ought to have been classified as cannabis mixture having regard to Dr Lee's certification in which case the proper charge against both appellants would have been trafficking in 982.38g of cannabis mixture. This was a mixed question of law and fact. The court went on to examine Parliament's rationale for introducing trafficking in cannabis mixture as an offence under the MDA. Reference was made to the following statements of the Minister for Law at the second reading of the bill which introduced these amendments:

> Next, cannabis mixture. The Central Narcotics Bureau has detected some cases in which cannabis was trafficked in mixed form, *ie* the plant is broken up and mixed with other vegetable matter such as tobacco. Currently, this does not attract the death penalty.
>
> To deter traffickers from trafficking in large amounts of cannabis in this form, a new capital offence will be created for this type of drug. As the amount of cannabis in such a mixture does not usually fall below 50%, it is proposed that for the purpose of capital offences, trafficking in a cannabis mixture should be in amounts of more than 1,000g (as compared to more than 500g in the case of cannabis alone) …

11 The court observed that, from the evidence, the question of a "mixture" did not arise. It is necessary to refer to the court's reasoning in its entirety ([6] *supra* at [32]–[36]):

It is clear to us that what Parliament was seeking to deter was the camouflaging of cannabis by mixing the cannabis in broken form with another vegetable matter such as tobacco. This is the example the Minister gave. 'Mixing' as used by the Minister in his speech in Parliament and by dictionary meaning involves two separate substances; in the instant case two separate vegetable matter. Indeed the dictionary meaning of 'mixture' referred to us by Mr Ismail Hamid was 'the mechanical mixing of two substances involving no change in their character'. Hence, the crucial words in the definition of cannabis mixture are: '*any mixture of vegetable matter*' and this can only mean two or more separate vegetable matters. This then leads us to the evidence, to assess the factual aspect of the mixed question of law and fact.

The evidence of Dr Lee does not show that the compressed greenish vegetable matter he analysed to be a mixture of two separate vegetable matter. It does not even suggest it. His evidence properly understood was that since the greenish vegetable matter he received for analysis was in a compressed form, he had first to 'prise open' the compressed matter into 'several thin slabs of compressed vegetable matter'. He did this by using a screw driver. Having done this he then separated the 'thin slabs of compressed vegetable matter' into individual branches with his fingers. Some separated into whole branches with stems and leaves. These he classified as 'intact branches' but some, because the vegetable matter was 'dry and brittle', broke into 'small pieces'. These he classified as 'fragmented vegetable matter'. It is clear from this evidence that the block of compressed greenish vegetable matter was composed of one and only one vegetable matter and no more. As a matter of fact the question of 'mixture' or 'mixing' does not arise.

It will be remembered that Dr Lee said in his evidence that plant material satisfying the macroscopic and microscopic features of cannabis cannot unequivocally be considered to be cannabis, unless the presence of tetrahydrocannabinol and cannabinol were detected in them by chemical analysis, notwithstanding that the definition of 'cannabis' in the Act makes no reference to the presence of these alkaloids, whereas for cannabis mixture, the Act requires the presence of these two alkaloids. In this connection what the Minister said in Parliament in moving the amendment Bill referred to is instructive. He said:

> Next cannabis. Cannabis is currently defined under the Act to mean "any part of any plant of the genus Cannabis from which the resin has not been extracted, by whatever name it may be designated".
>
> In practice, the DSS relies on three types of tests to prove that the substance seized is cannabis as defined. First, there is a visual examination to establish the physical appearance and characteristic odour of cannabis. Next, a microscopic examination is carried out to detect the presence of resin, cystolithic trichomes and non-cystolithic trichomes which are

> unique to cannabis. Lastly, chemical tests are carried out to detect the presence of tetrahydrocannabinol and cannabinol. These are the two main alkaloids, I am told, which distinguish cannabis from other hallucinogenic drugs. We have been informed by DSS that they are also the psycho-active ingredients in the plant which causes hallucination. These alkaloids can be found in other parts of the plant (except the roots) which do not contain resin. In view of this and on the advice of the DSS, my ministry proposes to amend the definition of cannabis to remove the misconception that cannabis is a controlled drug only if resin is present in that part of the plant. Clause 2(a) of the Bill seeks to amend the definition of "cannabis" as follows:
>
> > 'Cannabis' means any plant of the genus Cannabis, or any part of such plant, by whatever name it is called.
>
> It is not necessary to provide for tetrahydrocannabinol and cannabinol to be included in the definition because, according to DSS, the plant material cannot be considered as being of the 'genus cannabis' without their presence.

The 'fragmented vegetable matter' being small broken pieces from the whole branches (intact branches), as Dr Lee explained in his evidence, did not conclusively satisfy him from the macroscopic and microscopic examinations that they exhibited the characteristic features of cannabis, but on chemical analysis, he detected the presence of tetrahydrocannabinol and cannabinol. All three tests must prove satisfactory to qualify the plant material as cannabis. As the 'fragmented vegetable matter' had satisfied only the chemical test, Dr Lee certified it to be cannabis mixture, although strictly speaking the 'fragmented vegetable matter' was not a '*mixture of vegetable matter*', as we have already explained the scientific evidence clearly showed. It was composed of the same vegetable matter as the 'intact branches' but failed to satisfy the macroscopic and microscopic examinations for cannabis. In all correctness Dr Lee should not have certified the 'fragmented vegetable matter' as 'cannabis mixture' and in our view should have certified that the 'fragmented vegetable matter' did not satisfy all three tests he carried out for cannabis, although he found the presence of tetrahydrocannabinol and cannabinol in the 'fragmented vegetable matter'. However this does not and could not detract from his evidence that 590.23g of the 'intact branches' satisfied all three tests for cannabis.

For the sake of completeness, we should mention that our understanding of Dr Lee's evidence was that faced with a compressed block of vegetable matter, he was endeavouring to break down the compressed vegetable matter into individual branches to enable him to carry out the macroscopic and microscopic examinations, both of which are visual. It was in doing this, as we have already said, some of the branches broke into small pieces. He was not engaged in separating one vegetable matter from another vegetable matter. To speak of a 'mixture' and 'separating' in the sense spoken of by counsel and in the

> context of the scientific evidence is to misunderstand the scientific evidence.
>
> [emphasis in original]

12 In the event, the court found it clear that Parliament had introduced the term "cannabis mixture" into the MDA in order to deter the camouflaging of cannabis by mixing it in broken form with some other vegetable matter such as tobacco. Hence, when s 2 of the MDA refers to "any mixture of vegetable matter", "this can only mean two or more separate vegetable matters".

13 From Dr Lee's evidence, it was clear that 590.23g of the "intact vegetable matter" had satisfied all three tests for cannabis. On that premise, the trial judge's decision was upheld.

The scientific evidence in the present case

14 The key points to note from Dr Ipe's evidence were summarised by the trial judge as follows. Dr Ipe testified that macroscopically she was unable to say conclusively that the vegetable matter in the exhibits examined by her was herbal cannabis. Nevertheless, her microscopic examination led her to believe that the vegetable matter originated from the cannabis plant. Her chemical analyses confirmed the presence of tetrahydrocannabinol and cannabinol. She did not find any other vegetable matter in the exhibits. However, she did not certify the substance as cannabis. It was not the practice of DSS to do so unless all three tests – macroscopic, microscopic and chemical – were satisfied. This was in line with the *UN Testing Manual (Recommended Methods for Testing Cannabis – Manual for Use by National Narcotics Laboratories* (UN 1987)) ("the UN Manual").

15 Dr Ipe said that she could not conclusively confirm that every single fragment in the exhibits was of cannabis origin. She "preferred" to certify the substance as being cannabis mixture. In her opinion, this certification was in accordance with the definition of "cannabis mixture" provided under s 2 of the MDA.

The submission of no case to answer

16 At the close of the prosecution case, counsel for the respondent rested his submission of no case to answer solely on the argument that the respondent was not in possession of "cannabis mixture" as alleged. Counsel contended that the Court of Appeal had unambiguously stated in *Abdul Raman* that cannabis mixture meant a "mixture of two or more separate vegetable matters". Thus, inasmuch as Dr Ipe did not and could not find any other vegetable matter in the exhibits she analysed, the seized exhibits could not be correctly termed "cannabis mixture", as they appeared to contain only one uniform type of vegetable matter.

17 The deputy public prosecutor's primary focus was on characterising the ruling on "cannabis mixture" in *Abdul Raman* as being *obiter dicta*. The deputy public prosecutor sought to distinguish *Abdul Raman*'s case on the premise that it concerned "fragmented vegetable matter", being small broken pieces from the whole (intact) branches of the cannabis plant. As there was no suggestion that the exhibits in the present case contained fragments from intact branches, "it would not be inaccurate to call the fragmented vegetable matter a mixture of vegetable matter".

18 The deputy public prosecutor submitted that the meaning given to "mixture" in *Abdul Raman* was "unduly restrictive and should not be adopted as it would lead to an unintended result whereby it is merely the absence of some (potentially not even a controlled drug) vegetable matter different from cannabis that allows the accused person to escape conviction". The deputy public prosecutor therefore contended that the term "mixture of vegetable matter" was wide enough to include "an inseparable mass of vegetable matter, most or all of which cannot be clearly identified to ascertain whether the mass is uniform or is composed of different vegetable matter". It would also include "an inseparable mixture of different plant parts (*ie* leaves/seeds/stems *etc*)".

19 Initially, there was also an alternative submission by the deputy public prosecutor that the vegetable matter in the exhibits was in fact cannabis. He argued that although due to DSS protocol Dr Ipe would not testify that the exhibits were "cannabis", it was nevertheless open to the court to find, based on the evidence adduced, that the exhibits did fall within the MDA definition of cannabis. However, the deputy public prosecutor eventually abandoned this alternative submission.

The decision below

20 The trial judge opined that it would not be open to him to depart from the ruling of the Court of Appeal in *Abdul Raman*. He noted that the Court of Appeal was laying down the *ratio decidendi* of the case in its expressed views on what constituted "cannabis mixture". It was immaterial that the facts in *Abdul Raman* involved the question of separability of cannabis from fragmented vegetable matter. The judge considered that he was bound to hold that the Prosecution had not established a vital legal element of the charge in regard to the respondent's alleged possession of "cannabis mixture".

The appeal

21 Before us, the deputy public prosecutor advanced various arguments. His first and primary submission was that the interpretation placed on "cannabis mixture" by this court in *Abdul Raman* was erroneous, and should be overruled. Alternatively, he submitted that, even if the reasoning in *Abdul Raman* was correct, the Prosecution had proved that the drugs

seized were cannabis mixture in the present case. Finally, he contended that, in any event, the Defence should have been called on alternative charges of trafficking in cannabis and trafficking in cannabis mixture.

22 In his written submissions, the deputy public prosecutor also suggested that the relevant portions of *Abdul Raman*'s case cited above were *obiter* and therefore not binding on the trial judge. In our view, this court's pronouncements in *Abdul Raman* on the meaning of "cannabis mixture" clearly formed part of the *ratio decidendi*. In *Abdul Raman*, the question as to what "cannabis mixture" meant was raised squarely by the defence submission that the single block of compressed vegetable matter could only be properly classified as "cannabis mixture" and that it would be wrong to divide it into component parts of "cannabis" and "cannabis mixture". The Defence proceeded on the premise that "cannabis mixture" encompassed a mixture of two "components" of "cannabis" and "cannabis mixture". The trial judge rejected this argument. On appeal, this court held that "this very question is the principal argument in this appeal".

23 We are of the opinion that the trial judge had no recourse but to hold that he was bound by the decision in *Abdul Raman*. Nevertheless, we do not see why we should desist from reconsideration of the question, in view of the serious and far-reaching implications of the issues raised in this appeal.

The submissions

24 It is apparent that in *Abdul Raman* the court proceeded on the premise that the ordinary and natural meaning of the phrase "mixture of vegetable matter" contemplates a mixture of two or more different types of vegetable matter. More specifically, it would have to comprise two or more types of vegetable matter of both cannabis and non-cannabis origin. Before us, the deputy public prosecutor took issue with this construction. In his submission, he argued that there is nothing in the phrase which stipulates that the mixture must refer to a mixture of vegetable matter from different species. The definition merely requires a mixture of any vegetable matter. It is far broader than a reference to "vegetable species". Thus, the phrase "mixture of vegetable matter" can accurately describe a block composed of various parts of the same plant.

25 The deputy public prosecutor postulated two alternate and mutually exclusive paths of analysis for this argument. First, he submitted that separate plant parts constitute separate ingredients or components, which, when put together, could still be properly called a "mixture of vegetable matter". Secondly, he submitted that since the separate ingredients comprising the "mixture" in the present case were not identifiable individually, the mass of vegetable matter was a blend. As such, it would fall within the meaning of "mixture". In any event, the deputy public prosecutor emphasised that the definition of "cannabis mixture" should not be qualified by reading in a mandatory requirement that the vegetable

matter should originate from "different species". To interpose these qualifying words would not accord with accepted principles of statutory interpretation.

26 Accordingly, the deputy public prosecutor submitted that the phrase "mixture of vegetable matter" is not limited to a mixture of two vegetable species in its natural and ordinary meaning. If the resin, leaves, stems, roots, flowers, seeds, fruits *etc* from the cannabis plant species have been ground into small pieces and then mixed together, this "mixture" would clearly fall within the natural and ordinary meaning of the phrase. As these parts of the plant bear distinctly different physical characteristics and chemical compositions, they must be regarded as different kinds of vegetable substances which are capable of being mixed together to constitute a "mixture of vegetable matter".

27 In the deputy public prosecutor's submission, the term "cannabis mixture" would inherently indicate that it is a mixture of pure cannabis vegetable matter. This would be the primary or core meaning of the term. However, the definition adopted in the MDA has widened it to include any mixture of cannabis and non-cannabis vegetable matter. By stipulating the key requirement that tetrahydrocannabinol and cannabinol should be present in the "cannabis mixture", the definition would even include instances where entirely non-cannabis vegetable matter has been "spiked" *eg* by the addition of synthesised tetrahydrocannabinol and cannabinol. These would come within the extended meaning of "cannabis mixture". In the present exercise, both the primary and extended meanings of the term had to be considered. The extended meaning should not be allowed to displace the primary meaning.

28 The deputy public prosecutor also argued that the Minister's speech in Parliament confirmed that an extended meaning of "cannabis mixture" was also intended, taking into account its context in the MDA and the purpose or object underlying the Act, as provided under s 9A(2)(*a*) of the Interpretation Act (Cap 1). After all, the Minister could not have intended to oust the primary meaning of what a "cannabis mixture" was comprised of, by mere omission. Parliament's espoused intention was to enlarge the scope of the MDA in controlling the trafficking of cannabis and not to curtail its scope or application.

29 In the circumstances, the deputy public prosecutor invited this court to overrule the decision in *Abdul Raman* on the construction of "cannabis mixture". He urged this court to adopt a construction that would give effect to both the primary and the extended meanings of the term, being consistent with the policy and purpose of the MDA.

30 In reply, counsel for the respondent quite properly supported the trial judge's decision that he was bound by the ruling in *Abdul Raman*. He submitted that the construction of "cannabis mixture" placed by the court

in *Abdul Raman* was the only proper definition of the term. The intention of Parliament in introducing "cannabis mixture" could be gleaned entirely from the Minister's speech during the second reading of the Amendment Bill. In amending the MDA in 1993, Parliament was seeking to discourage the trafficking of cannabis which had been camouflaged by mixing with another vegetable substance. What the deputy public prosecutor had referred to as the "primary" meaning, *ie* a mixture of vegetable matter purely of cannabis origin, would clearly contravene the ordinary dictionary meaning of the word "mixture".

31 Counsel emphasised the fact that there was no evidence that the vegetable matter in the present case was in fact a mixture of cannabis and some other vegetable matter, or, alternatively, that the vegetable matter was "pure" cannabis. After all, Dr Ipe had clearly refused to classify the vegetable matter as cannabis. The onus remained on the Prosecution to establish that the vegetable matter was "cannabis mixture". But the Prosecution had clearly failed to establish that there were two different vegetable matters in the alleged "mixture".

32 It was also argued that, if Parliament had intended to rely solely on the presence of tetrahydrocannabinol and cannabinol as determinative of what was "cannabis mixture", the definition in s 2 MDA would have been couched differently. For example, Parliament could simply have defined cannabis mixture as "any vegetable matter containing tetrahydrocannabinol and cannabinol". The use of the phrase "mixture of vegetable matter" clearly implied that Parliament had intended for there to be more than one type of vegetable matter co-existing with the vegetable matter of cannabis origin.

33 Counsel agreed that the Court of Appeal could overrule and depart from its own previous decisions. Nonetheless, he submitted that the construction of "cannabis mixture" adopted by this court in *Abdul Raman* was correct and consonant with Parliament's intention, and thus it should not be departed from. He further submitted that, if this court should be disposed to a contrary view, the matter was one for the Legislature to rectify.

The decision of the court

34 The cardinal rule in statutory construction is to construe the statutory provision in question according to the intention expressed in the provision itself. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense.

35 We are conscious that the use of interpretation clauses frequently met with judicial disapproval in the previous century. It was said that such devices suffered from failure to observe the valuable rule never to enact

under the guise of definition. For instance, in *R v The Commissioners under the Boiler Explosions Act, 1882* [1891] 1 QB 703, and *Bradley v Baylis* (1881) 8 QBD 195, Lord Esher MR was unreservedly critical of legislative drafting which attempted to enact that a word should mean something which in fact it did not. This criticism does not arise in the present case. The interpretation clause in question states that "cannabis mixture means any mixture of vegetable matter containing tetrahydrocannabinol and cannabinol in any quantity". This definition is explanatory and *prima facie* restrictive. The only difficulty, which we note with some irony, is that the construction of the interpretation clause itself now arises for reconsideration.

36 In *Abdul Raman*, this court took what the deputy public prosecutor has now characterised as the "extended" meaning of "cannabis mixture" to be an exhaustive definition. No arguments on the point were canvassed before the court in *Abdul Raman*, although it must be said that the court was cognisant of the problem which fell to be addressed. Having now had the benefit of hearing extensive and cogent arguments from both the deputy public prosecutor and counsel, we are of the unanimous opinion that this is a proper case for us to exercise our powers to depart from the decision in *Abdul Raman*. In our opinion, this course is open to us on account of the Practice Statement on Judicial Precedent issued on 11 July 1994 ([1994] 3 SLR(R) 1109). We recognise the importance of ensuring certainty and coherence in the law. Against this, the potential injustice which may be caused by continued adherence to a mistaken decision has to be weighed. We turn now to elaborate on our reasons for allowing the appeal.

37 On being invited to re-examine the construction of "cannabis mixture" and exercise our powers under the Practice Statement, it would be appropriate for us to keep out of mind what was initially expressed in *Abdul Raman*. We propose to approach the issue in the first place as an exercise in statutory construction, as if the matter were *res integra*. This was the approach adopted by Lord Bridge of Harwich in *R v Shivpuri* [1987] AC 1 at 18, from whose judgment we would respectfully draw guidance.

38 At the outset, it is useful to recall the scientific evidence adduced by the Prosecution in the present case. The entire tenor of Dr Ipe's evidence was that the exhibits were comprised wholly of "fragmented vegetable matter". As the exhibits were in crushed form, all the exhibits failed the macroscopic test, *ie* when visually examined, the characteristics of the cannabis plant could not be discerned. Nonetheless, she was able to detect quantities of tetrahydrocannabinol and cannabinol in the exhibits. Coupled with the microscopic examinations, she was thus able to infer the presence of vegetable matter of cannabis origin. Accordingly, since s 2 of the MDA defines "cannabis mixture" simply as meaning "any mixture of vegetable

matter containing tetrahydrocannabinol and cannabinol in any quantity", she certified the exhibits as "cannabis mixture".

39 Dr Ipe was only prepared to say that there was a "possibility" that some other vegetable matter was present in the exhibits. She opined that it was improbable that there was vegetable matter other than cannabis in the exhibits. She explained that the DSS' main concern was to look for cannabis in the vegetable matter received. She did not specifically look for any other type of vegetable matter and did not notice any other type of vegetable matter therein. All the available evidence therefore pointed to there being no other type of vegetable matter in the alleged "mixture", other than homogeneous vegetable matter containing tetrahydrocannabinol and cannabinol. Applying the reasoning from *Abdul Raman*'s case, the Prosecution would have failed to establish a *prima facie* case that the exhibits could be properly classified as being "cannabis mixture".

40 We also note that at various points in her evidence, Dr Ipe testified that her tests indicated the "presence of cannabis". Inasmuch as this suggests that she had found cannabis to be present in the exhibits, this stands in complete contradiction with her stand that the exhibits could not be classified as "cannabis", on account of the requirements stipulated in the UN Manual not having been met. With respect, the only conclusive inference that could be made in the circumstances was that Dr Ipe had affirmatively detected the presence of tetrahydrocannabinol and cannabinol. It is incontrovertible that the exhibits were not properly classifiable as "cannabis". Strictly speaking, they should not have been described as "cannabis" at all. The term "cannabis" may well have been used only as a matter of convenience, but we must emphasise that it is lacking in precision and, indeed, misleading. For this reason, therefore, we see no merit in the deputy public prosecutor's submission that alternative charges of trafficking in cannabis and trafficking in cannabis mixture could have been brought against the respondent.

41 The statutory definition of "cannabis mixture" lays down the specific scientific test which the DSS has to satisfy. The following extracts from the Minister's speech during the second reading of the Amendment Bill must be considered:

> [T]etrahydrocannabinol and cannabinol are the two main alkaloids distinguishing cannabis from other hallucinogenic drugs. Detection of these two substances by the DSS chemist is sufficient scientific proof that the substance is cannabis mixture.

42 This lends justification to the DSS practice of treating anything under analysis which fails to qualify strictly as "cannabis" as being "cannabis mixture", provided the mixture of vegetable matter under analysis contains tetrahydrocannabinol and cannabinol in any quantity. There is nothing in s 2 MDA which suggests that scientific proof in any other respect is needed

before a substance can be called "cannabis mixture". Nor is there any requirement for a mixture of vegetable matter from different species. As the deputy public prosecutor quite rightly emphasised, the definition simply requires a mixture of any vegetable matter.

43 A restrictive construction of the phrase "mixture of vegetable matter" would operate to preclude a block composed of various parts of the same cannabis plant from being characterised as "cannabis mixture". In our opinion, such a construction could not have been intended by Parliament. It would clearly omit to give effect to the ordinary or primary meaning of the term "cannabis mixture". In its literal sense, the term clearly contemplates an unadulterated mixture of vegetable matter of entirely cannabis origin. This mixture may or may not be capable of being classified by the DSS as "cannabis". By way of illustration, the "mixture" could well be a mixture of different grades or purity levels of cannabis, or a mixture of various parts from different cannabis plants. Alternatively, it could be a mixture of what has been loosely termed "crushed cannabis", which is not susceptible to visual examination to detect the characteristics of the cannabis plant. Having regard to the primary meaning of the term, all the above "mixtures" would still be "mixture[s] of vegetable matter containing tetrahydrocannabinol and cannabinol in any quantity".

44 We acknowledge that to take this view of the primary meaning of "cannabis mixture" involves recognising a degree of overlap between the definitions of "cannabis" and "cannabis mixture". However, this does not give rise to any real cause for concern. Overlapping definitions, and indeed overlapping offences, are not anathema to enacted legislation.

45 Moreover, we are persuaded by the deputy public prosecutor's submission that the primary meaning of "cannabis mixture" should not be displaced by its "extended" meaning. It was primarily on this count that this court's construction in *Abdul Raman* was erroneous, in giving sole and exclusionary effect to the extended meaning of the term "cannabis mixture". By the "extended" meaning, "any mixture of vegetable matter" contemplates the co-existence of vegetable matter of cannabis origin as well as non-cannabis vegetable matter. The term "cannabis mixture" would clearly embrace a mixture of two or more separate vegetable matters. Seen from this perspective, there is no real ambiguity in the definition of "cannabis mixture". Both the primary and extended meanings have to be recognised. This appears to us to be entirely consistent with Parliament's intention in introducing the offence of trafficking in "cannabis mixture" into the MDA in 1993.

46 The Minister's speech in Parliament confirms that an extended meaning of "cannabis mixture" was intended, taking into account its context in the MDA and the purpose or object underlying the MDA. No doubt, the Minister made no express reference to both the primary and extended meanings which we have attached to the term "cannabis mixture".

He was obviously directing his explanatory speech solely to the extended meaning of the term. This would be an instance where the criticism might potentially have been levelled that the term "cannabis mixture" was being made to mean something it did not ordinarily suggest, namely, a mixture of cannabis with some other non-cannabis vegetable matter. It is evident that it was in seeking to address this potential criticism that the Minister considered it necessary and appropriate to explain the extended meaning of "cannabis mixture". As the Minister emphasised, the term was intended to capture the cases of "camouflaging" cannabis by mixture with some other vegetable matter, *eg* tobacco.

47 From our perusal of the Minister's speech, we note that the Minister did not suggest that once non-cannabis vegetable matter did not co-exist with vegetable matter of cannabis origin, the resultant substance would cease to be a "mixture of vegetable matter" within the meaning of the MDA. In explaining the reason for the extended meaning of "cannabis mixture", the Minister could not have intended to oust its primary meaning. If there had been any such intention, we do not see how it should have been achieved by what was apparently a casual omission of explicit reference in the Parliamentary debates. There is no reason why the maxim of construction *expressio unius* must apply to the Minister's speech.

48 It may also be noted that in s 17 MDA there was already a provision dating from Act 38/89 referring to cannabis or cannabis resin "whether or not contained in any substance, extract, preparation or mixture". As a consequence of the 1993 amendment introducing "cannabis mixture", the provision now contains a dual reference to "mixture":

> Any person who is proved to have had in his possession more than —
>
> …
>
> (*da*) *30 grammes of cannabis mixture*;
>
> …
>
> whether or not contained in any substance, extract, preparation *or mixture* shall be presumed to have had that drug in possession for the purpose of trafficking …
>
> [emphasis added]

49 At first blush, the above provision may appear tautologous, insofar as it mentions "30 grammes of cannabis mixture … whether or not contained in any … mixture". However, on closer scrutiny, it may be said that this supports the deputy public prosecutor's construction of what constitutes "cannabis mixture". The term can bear the primary meaning of "any mixture of cannabis vegetable matter", as well as the secondary meaning of "any mixture of cannabis and non-cannabis vegetable matter". The latter scenario is clearly contemplated by the concept of a "mixture within a mixture".

50 The court's primary function in construing statutes is to give effect to the legislative intent. Mason J (as he then was) rightly pointed out that, if the court is convinced that a previous decision does not truly reflect the legislative intent of an enactment, it should correct the mistake and not perpetuate the error (*Babaniaris v Lutony Fashion Pty Ltd* (1987) 71 ALR 225 at 232). *A fortiori*, the error should be rectified as soon as practicable where the previous decision has distorted the law as intended by Parliament (*per* Lord Bridge and Lord Hailsham LC in *R v Shivpuri* at 11, 23). We were persuaded that the reasoning in *Abdul Raman* was clearly erroneous and should therefore be overruled. Accordingly, we so order.

Prospective or retrospective overruling

Background

51 The trial judge noted that, if this court were to hold that the exhibits were indeed "cannabis mixture", then "based on circumstantial evidence it would have been in order to call for the defence of the accused for the whole amount stated in the charge". However, it must be noted that, at the time when the respondent allegedly committed the offence *ie* 16 April 1996, there was no definitive judicial interpretation of the meaning of "cannabis mixture". At first instance in *Abdul Raman* (*PP v Abdul Raman bin Yusof* [1996] SGHC 111), the trial judge had left the question open. The judge had referred to the Minister's speech in Parliament during the second reading of the amendment bill. Having done so, the judge stated (at [115]–[116]):

> It is clear from the foregoing speech that the intention in introducing the new definition of cannabis mixture was to further refine the law with a view to deterring drug traffickers peddling drugs in mixed form, that is, by breaking up the plant and mixing it with other vegetable matter such as tobacco. In the case at hand, the seized substance did not contain any tobacco or any other vegetable matter. At any rate, Dr Lee was easily able to separate and identify the intact branches from the others and was able to confirm by macroscopic and microscopic examination that they possessed the features of cannabis. The chemical analysis carried out by him on 590.23g of the intact branches also revealed that they contained sufficient quantities of tetrahydrocannabinol and cannabinol, so as to confirm his finding that the analysed portion was indeed cannabis.
>
> The contention by defence counsel, that so long as the cannabis was found to be mixed with or intermingled with any other foreign matter, the whole matter should be regarded as cannabis mixture, is not in accord with the intention of the legislature in enacting the new provision adverted to. *In my opinion, so long as the cannabis whose stalks are not broken up could be separated from foreign matter and such matter can be identified by visual, microscopic and chemical analysis as cannabis, the fact that it was in a bundle with other substance does not render it to be classified as cannabis mixture. In the*

> *circumstances, the contention by counsel that the whole slab should be correctly classified as cannabis mixture was rejected.*
>
> [emphasis added]

52 The above passages demonstrate that the trial judge did not quite traverse the same territory charted by this court when judgment was delivered on appeal in *Abdul Raman* on 29 July 1996. The question before us now is whether the law as stated by this court on 29 July 1996 should apply to the respondent. Essentially, this requires us to consider whether *Abdul Raman*'s case should be made subject to prospective or retrospective overruling.

The deputy public prosecutor's submissions

53 It is apparent from the deputy public prosecutor's submissions that a decision from this court having retrospective effect is sought. Unfortunately, we were unable to glean much assistance in this respect from the submissions put forward by counsel for the respondent. We set out the deputy public prosecutor's written arguments on this point *verbatim*:

> It is submitted that if the finding of this court is that the definition in *Abdul Raman v PP* of 'any vegetable matter' was not correct, this opportunity should be taken to review the definition [of cannabis mixture] for the following reasons:
>
> …
>
> (b) … there would be no adverse effect on accused persons in that no ambiguity would be created by deviating from the definition in *Abdul Raman v PP*. There can be no doubt that the Singaporean public is well aware of the severe punishment that is attached to trafficking in drugs. The suggestion that drug traffickers might be misled into believing that trafficking in crushed cannabis is no crime (flowing from the decision in *Abdul Raman v PP*) is easily countered by the fact that the trafficker, *being aware that he was trafficking in pure cannabis*, would not need to concern himself with the definition of cannabis mixture. *His actions would constitute the crime of trafficking in cannabis*. The only misconception that the trafficker might be under is that he would be able to evade prosecution because of the difficulties that the prosecution would have in proving the content of the vegetable matter. I submit that *this uncertainty as to whether the crime can be proved or not, where the accused is himself sure that he is committing a crime, is not one that the Court should concern itself with.*
>
> (c) It follows from (b) above that '… it would seem impossible that anyone could have acted to his detriment in reliance on the law as stated in the decision' (*per* Lord Hailsham in *R v Shivpuri* [1987] 1 AC 1 House of Lords at p 11, which was

> the first case in UK where the House of Lords reversed its own previous decision). In the same case Lord Bridge in the leading judgment of a unanimous House of Lords said, in giving his reasons for departing from the previous House of Lords decision in *Anderton v Ryan* said (at p 23), '… I cannot see how, in the very nature of the case, anyone could have acted in reliance on the law as propounded in *Anderton v Ryan* in the belief that he was acting innocently and now find that, after all, he is held to have committed a criminal offence'. The statement applies with equal force to the present appeal.
>
> [emphasis added]

54 The deputy public prosecutor's submissions rest on the hypothesis that an agglomeration of vegetable matter which has been loosely labelled "crushed cannabis" is in fact "pure cannabis". He reasoned that a person in a position similar to that of the respondent could therefore be charged for trafficking in cannabis. Such a person would be conscious that he was in fact committing a crime.

55 With respect, as we have stated earlier, we do not agree with the deputy public prosecutor's reasoning. The "crushed cannabis" cannot be properly classified as "cannabis" by the DSS unless all three tests laid down by the UN Manual are satisfied. It is apparent that once the cannabis is crushed or pulverised, the visual or macroscopic examination for parts of the cannabis plant invariably fails. There can therefore be no crime of trafficking in "cannabis". This has always been the state of the law. The DSS methods of testing for "cannabis" have been alluded to even before 1996: see the decision of this court in *Teo Tiang Hoe v PP* Criminal Appeal No 25 of 1995.

56 As for the deputy public prosecutor's reference to *R v Shivpuri*, it will be useful to examine the decision of the House of Lords in further detail. This was a case where their Lordships overruled their previous decision in *Anderton v Ryan* [1985] AC 567, in which it was held that by s 1, UK Criminal Attempts Act 1981, attempts to commit offences which were, on their true facts, impossible, were not criminal offences as they were "objectively innocent". The power to overrule previous decisions was derived from the 1966 Practice Statement (Judicial Precedent) [1966] 1 WLR 1234. By their decision in *Shivpuri*, the House of Lords affirmatively established that an attempt to commit an impossible offence could still be a criminal offence. On the facts in *Shivpuri* itself, the accused was therefore held to have been correctly convicted of attempting to traffic in controlled drugs, despite the fact that what he had had in his possession was, in reality, either snuff or some harmless vegetable matter.

57 The leading judgment of the House of Lords was delivered by Lord Bridge, who stated at 23:

> I am thus led to the conclusion that there is no valid ground on which *Anderton v Ryan* can be distinguished. I have made clear my own conviction, which as a party to the decision (and craving the indulgence of my noble and learned friends who agreed in it) I am the readier to express, that the decision was wrong. What then is to be done? If the case is indistinguishable, the application of the strict doctrine of precedent would require that the present appeal be allowed. Is it permissible to depart from precedent under the Practice Statement (Judicial Precedent) [1966] 1 WLR 1234, notwithstanding the especial need for certainty in the criminal law? The following considerations lead me to answer that question affirmatively. First, I am undeterred by the consideration that the decision in *Anderton v Ryan* was so recent. The Practice Statement is an effective abandonment of our pretension to infallibility. If a serious error embodied in a decision of this House has distorted the law, the sooner it is corrected the better. Secondly, *I cannot see how, in the very nature of the case, anyone could have acted in reliance on the law as propounded in Anderton v Ryan in the belief that he was acting innocently and now find that, after all, he is to be held to have committed a criminal offence*. Thirdly, to hold the House bound to follow *Anderton v Ryan* because it cannot be distinguished and to allow the appeal in this case would, it seems to me, be tantamount to a declaration that the Act of 1981 left the law of criminal attempts unchanged following the decision in *R v Smith* [1975] AC 476. Finally, if, contrary to my present view, there is a valid ground on which it would be proper to distinguish cases similar to that considered in *Anderton v Ryan*, my present opinion on that point would not foreclose the option of making such a distinction in some future case.
>
> [emphasis added]

58 Evidently, their Lordships' key reason for overruling *Anderton v Ryan* was that it was not possible for any person who had attempted to commit an impossible offence to be retrospectively disadvantaged by the decision in *Shivpuri*. The change in the law which criminalises an attempt to commit an impossible crime would have no bearing on his belief that he was acting innocently or otherwise. There was no element of reliance on the law of criminal attempts when the offender was committing an impossible crime. His own misguided beliefs rendered the state of the law irrelevant.

59 Hence, *Shivpuri* stands on a separate footing, because of the unique nature of the offence of impossible attempts in criminal law. We do not agree with the deputy public prosecutor that the views of Lord Bridge which he has cited would apply "with equal force to the present appeal". His Lordship's statements must be read in the proper context of that case.

Article 11 and the principle of nullum crimen nulla poena sine lege

60 Article 11 of the Constitution of the Republic of Singapore states:

> (1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall

> suffer greater punishment for an offence than was prescribed by law at the time it was committed.
>
> (2) A person who has been convicted or acquitted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was convicted or acquitted.

61 Article 11(1) embodies the basic principle of criminal jurisprudence of *nullum crimen nulla poena sine lege*: "conduct cannot be punished as criminal unless some rule of law has already declared conduct of that kind to be criminal and punishable as such". The *nullum* principle denies the validity of retrospective declaration of the criminality of any kind of conduct, and also the justifiability of a court or judge declaring to be criminal anything not previously declared criminal (*The Oxford Companion to Law* (Oxford, 1980) at p 895).

62 In *Reference re ss 193 and 195.1(1)(c) of the Criminal Code* 56 CCC (3d) 65, Lamer J (as he then was), who delivered the leading judgment of the Supreme Court of Canada, stated at 86:

> [T]he ancient Latin maxim *nullum crimen sine lege, nulla poena sine lege* [establishes] that there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and not retroactive. The rationale underlying this principle is clear. It is essential in a free and democratic society that citizens are able, as far as possible, to foresee the consequences of their conduct in order that persons be given fair notice of what to avoid, and that the discretion of those entrusted with law enforcement is limited by clear and explicit legislative standards: see Professor L. Tribe, *American Constitutional Law* (2nd Ed) (1988), p1033. This is especially important in the criminal law, where citizens are potentially liable to a deprivation of liberty if their conduct is in conflict with the law.

63 Article 2 of our Constitution defines the word "law" as follows:

> 'law' includes written law and any legislation of the United Kingdom or other enactment or instrument whatsoever which is in operation in Singapore and the common law in so far as it is in operation in Singapore and any custom or usage having the force of law in Singapore.

64 Article 2 provides an "inclusive" definition. Constitutional provisions should be liberally construed to advance their intent and to prevent their circumvention. This is a well-settled principle of construction. In *Ong Ah Chuan v PP* [1979–1980] SLR(R) 710 a decision of the Privy Council on appeal from Singapore, Lord Diplock observed at [23]:

> [T]he way to interpret a Constitution on the Westminster model is to treat it not as if it were an Act of Parliament but 'as *sui generis*, calling for principles of interpretation of its own, suitable to its character …

> without necessary acceptance of all the presumptions that are relevant to legislation of private law'.

65 Even if the definition of "law" in Art 2 had to be construed according to the ordinary canons of statutory construction, the use of the word "includes" indicates that the definition is extensive. Although various "inclusive" meanings of "law" are contained in Art 2, they do not derogate from the ordinary meaning of the word "law". As Lord Selborne said in *George Robinson v The Local Board for the District of Barton-Eccles* (1883) 8 App Cas 798 (at 801), in discussing the meaning of the term "street" as used in s 157 of the Public Health Act 1875, as interpreted in an "inclusive" fashion in s 4 of the same Act:

> An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some thing to which it would not ordinarily be applicable.

66 We are of the view that the word "law" contained in Art 2 and Art 11(1) must be read in its "ordinary, popular and natural sense" to include judicial pronouncements, or judicial interpretation of statutory provisions which create criminal liability. In expounding the declaratory theory of law, Sir William Blackstone (*Commentaries on the Laws of England*, Book I (1765, 1992 reprint, New York) opined, in effect, that judges did not "make law" by way of judicial pronouncements. Rather, according to Blackstonian doctrine (at pp 69–70):

> [T]he law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments … [The judge is] not delegated to pronounce a new law, but to maintain and expound the old one.

67 Blackstone further observed that where judges overrule their previous decisions:

> … even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, *it is declared, not that such a sentence was bad law, but that it was not law*; that is, that it is not the established custom of the realm, as has been erroneously determined. [emphasis added]

68 The logical implication of Blackstone's declaratory theory is that a judicial pronouncement can always be overruled retrospectively simply on the basis that "it was not law". In our opinion, the better view is to acknowledge the fiction of the declaratory theory. Indeed, in modern times, Blackstonian theory has had to make way for the concession that judges do

in fact make law (see *eg* Lord Reid, *The Judge as Law Maker* (1972–1973) 12 JSPTL 22, 23). As suggested by Daniel Seng (*Of Retrospective Criminal Laws and Prospective Overruling: Revisiting Public Prosecutor v Tan Meng Khin & 24 Ors* (1996) 8 SacLJ 1, at 13):

> [W]hen judges overrule previous decisions, they always have to consider the retroactive effect of these judicial pronouncements. The slate of the past cannot just simply be wiped clean of its chalk marks.

69 In *Chicot County Drainage District v Baxter State Bank* 308 US 371 (1940), Hughes CJ, delivering the opinion of the US Supreme Court, stated at 374:

> The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree ... It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. *The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration*. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects – with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an *all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified*. [emphasis added]

70 The above observations were made by Hughes CJ in response to arguments relating to judicial pronouncements on the constitutionality of certain statutory provisions. Nonetheless, they are equally applicable to the present discussion. As Hughes CJ quite aptly put it, "the past cannot always be erased by a new judicial declaration" and "a principle of absolute retroactive invalidity cannot be justified".

71 The doctrine of prospective overruling evolved in American jurisprudence in order to address the problem of retrospective reversal of past acts and decisions, where a statute (or part thereof) is declared unconstitutional: see *Great Northern Rly Co v Sunburst Oil & Refining Co* 287 US 358 (1932). Its applicability beyond the sphere of constitutional law has since been recognised in the leading US Supreme Court decision of *Linkletter v Walker* 381 US 618 (1965).

72 In contrast, in *Golak Nath v State of Punjab* AIR 1967 SC 1643, the Indian Supreme Court chose to restrict its application of the doctrine of prospective overruling to issues arising under the Constitution. Subba Rao CJ explained (at 1669) that the court "would like to move warily in the beginning" since that was the first time it had been "called upon to apply the doctrine evolved in a different country under different circumstances".

73 Like the Indian Supreme Court in *Golak Nath*, this is the first occasion that this court has been called upon to consider applying the doctrine of prospective overruling. It would undoubtedly be advisable to approach the matter with a measure of circumspection. Even so, we do not propose to follow the narrow path marked out in *Golak Nath*. There is no compelling reason why prospective overruling must be confined only to issues arising under the Constitution. In any event, while certain of the issues arising in the present case may be characterised broadly as "constitutional issues", the primary task before us involves statutory construction.

74 By judicial overruling of a previous decision, new law may be pronounced for the first time. The rule of law requires adherence to the maxim *ignorantia juris neminem excusat*: ignorance of the law excuses no one. However, if a person organises his affairs in accordance with an existing judicial pronouncement about the state of the law, his actions should not be impugned retrospectively by a subsequent judicial pronouncement which changes the state of the law, without his having been afforded an opportunity to reorganise his affairs. This seeks to protect his reasonable and legitimate expectations that he did not act in contravention of the law. In addition, as in the case of new enacted legislation which creates criminal liability, proper notification (by way of publication) must be given prior to its commencement. In the words of Lamer J from *Reference re ss 193 and 195.1(1)(c) of the Criminal Code*, the *nullum* principle requires that citizens must be "able, as far as possible, to foresee the consequences of their conduct in order that persons be given fair notice of what to avoid". These principles of legitimate expectation and notification are the foundations for Art 11(1) and the *nullum* principle.

75 In our opinion, where Art 11(1) and the *nullum* principle are brought into operation, the courts are precluded from retrospectively reversing a previous interpretation of a criminal statutory provision where the new interpretation creates criminal liability for the first time, and where it would operate to the prejudice of an accused. The same prohibition against retrospective overruling must apply equally where the new interpretation represents a reversal of the law as previously interpreted and effectively extends criminal liability.

Applying the doctrine of prospective overruling

76 The effect of our decision to overrule *Abdul Raman* is to extend the scope of criminal liability in respect of trafficking in cannabis mixture, where *Abdul Raman* had previously attached a narrow construction to it. It is clear that if any persons had been caught in possession of what we will refer to loosely, if somewhat imprecisely, as "crushed cannabis" in the interval spanning 29 July 1996 and the delivery of this court's decision in the instant case, it would be wholly unfair and unjust to prosecute them now with the capital offence of trafficking in "cannabis mixture". The fact that there is a change in the law which extends criminal liability cannot provide justification for such an approach. These persons would have a legitimate expectation that *Abdul Raman* had authoritatively construed the law as not contemplating any capital offence of trafficking in "crushed cannabis", where the "crushed cannabis" can neither be classified as "cannabis" nor as "cannabis mixture". Article 11(1) and the *nullum* principle must operate to protect them from a retrospective imposition of criminal liability.

77 If liability is imposed retrospectively, the guilt or innocence of accused persons may well be affected, if not wholly determined, by such factors as the administrative efficiency of the prosecuting agencies or their discretion as to when to commence prosecution. These factors can be arbitrary and can operate to the prejudice of accused persons, including those in a position similar to that of the respondent. The following discussion amply illustrates this argument.

78 It would not have been difficult to foresee that persons who, like the respondent, were caught in possession of "crushed cannabis" and who have already been prosecuted and tried for trafficking in "cannabis mixture", would have ended up in a position akin to the respondent at first instance. They would have been acquitted of the capital charge on the strength of this court's ruling in *Abdul Raman*, pending any decision to overrule it. As far as these persons are concerned, their reasonable and legitimate expectations of how the law would have applied to them would have been vindicated.

79 However, complications may arise as there may still be pending similar cases to be tried or prosecuted, as the deputy public prosecutor has indicated. There can be no legal basis for drawing a distinction between one group of persons who have been acquitted of the charge, and the other whose cases await prosecution or trial, simply because of the relative dispatch with which the Prosecution has operated, whether by conscious choice or otherwise. But for this court's decision to overrule *Abdul Raman*, and in the absence of any grounds for distinguishing that case, the construction of "cannabis mixture" adopted in *Abdul Raman's* case would have applied to the respondent, and any other persons who are brought before the court.

80 On 16 April 1996, when the offence was allegedly committed by the respondent, the state of the law as regards the definition of "cannabis mixture" was, to say the least, uncertain. There was no authority prior to 16 April 1996 which interpreted "cannabis mixture" as positively requiring the Prosecution to prove the existence of two or more different types of vegetable matter (of cannabis and non-cannabis origin) in the mixture. It may be argued, therefore, that an individual who was caught in the respondent's position could not be said to have harboured any legitimate expectation that the law would be as decided by this court in *Abdul Raman*.

81 On the other hand, it cannot be gainsaid that an individual has a legitimate expectation that his actions are legal unless the law has expressly and clearly criminalised those actions. In this connection, it would be pertinent to see how the law has criminalised the respondent's conduct in the present case. In view of the prevailing law on 16 April 1996, could he have been charged for possession of cannabis or cannabis mixture for the purpose of trafficking? As regards the former, it is clear from the scientific evidence that such a charge could not be sustained. As for the latter, we are of the opinion that, in the absence of an affirmative judicial interpretation which confirms what "cannabis mixture" means and includes, any uncertainty in the state of the law should *prima facie* be resolved in the respondent's favour.

82 A further point must be considered. The primary question before this court in *Abdul Raman* was one of statutory construction. A ruling on the meaning of "cannabis mixture" was laid down by this court on 29 July 1996. However, there were no arguments raised as to whether the ruling should apply prospectively or retrospectively, nor was there any express direction by this court along either line. It follows, therefore, that the decision in *Abdul Raman* would have retrospective effect, and would apply to all conduct regardless of whether it takes place before or after 29 July 1996.

83 After this court's ruling in *Abdul Raman* on 29 July 1996, and pending any decision to overrule it, any individual who has been charged with trafficking in cannabis mixture, regardless of when the offence was allegedly committed, would have expected that the law in *Abdul Raman* would apply to him. He would have expected that there was no capital offence known in law of trafficking in "cannabis mixture" which was comprised of "crushed cannabis", unless the "crushed cannabis" had contained two or more different types of vegetable matter of both cannabis and non-cannabis origin. This was precisely the scenario in the respondent's case. He was acquitted by the judge below, who rightly held that *Abdul Raman* was binding on him.

84 The decision of this court in *Abdul Raman* would have affirmed the respondent's legitimate expectation that he would not have been charged with a capital offence of drug trafficking. The only offence which the respondent could be alleged to have committed was one of unauthorised

possession of controlled drugs under s 8(*a*) MDA. The position in law on 16 April 1996 was that the "crushed cannabis" could not be properly classified as either "cannabis" or "cannabis mixture". Hence, at the highest, the respondent could only have been charged with being in unauthorised possession of cannabinol and cannabinol derivatives (*ie* tetrahydrocannabinol). He must be taken to have known that even if the "crushed cannabis" could no longer be classified as "cannabis", or as "cannabis mixture", it would nevertheless still be correctly characterised as a controlled Class A drug falling within the First Schedule of the MDA, since cannabinol and tetrahydrocannabinol would inevitably have been detected.

85 Article 11(1) expressly states that "no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed". It follows that the respondent cannot be made to suffer any punishment in excess of the maximum punishment prescribed in relation to s 8(*a*) MDA, which is punishable with up to ten years' imprisonment or a fine of $20,000 or both, in the case of first offenders.

86 On our understanding of Art 11(1) and the *nullum* principle, and having regard to the circumstances of the present case, prospective overruling is mandated. In our opinion, all acts done subsequent to the delivery of this judgment will be governed by the law as stated herein. It follows that acts done prior to this date will be governed by the law as stated in *Abdul Raman*.

87 We should make it clear that the application of prospective overruling is only confined to the Court of Appeal, as the Practice Statement is not intended to affect the operation of the doctrine of precedent other than in this court. In this regard, we would adopt the approach of the Indian Supreme Court in *Golak Nath*.

88 We will order that the respondent's acquittal of the charge of trafficking in cannabis mixture be upheld, on the premise that the applicable law at the time when he allegedly committed the offence was as stated in the decision of this court in *Abdul Raman*. It would nevertheless be appropriate to frame a charge against the respondent of having been in unauthorised possession of controlled Class A drugs. The Prosecution has clearly adduced sufficient *prima facie* evidence to support such a charge. This court may exercise any power which the trial court might have exercised: s 54(1) of the Supreme Court of Judicature Act (Cap 322). Section 163(1) of the Criminal Procedure Code (Cap 68) provides:

> The trial court may alter any charge or frame a new charge, whether in substitution for or in addition to the existing charge at any time before judgment is given.

89 In the circumstances, we direct that a new charge against the respondent be framed in substitution for the capital charge of trafficking in

cannabis mixture. The new charge avers that the respondent was in unauthorised possession of controlled Class A drugs, namely cannabinol and tetrahydrocannabinol, contrary to s 8(*a*) of the MDA. Accordingly, we remit the case to the trial judge for the respondent's defence to be called on this charge.

Headnoted by Yeo Hung Hee.