Mohammad Azanul Haqimi bin Tuan Ahmad Azahari v Timbalan Menteri Dalam Negeri, Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05(HC)-134–05 OF 2018(B)
DAVID WONG CJ (SABAH AND SARAWAK), BALIA YUSOF, TENGKU MAIMUN, ABANG ISKANDAR AND NALLINI PATHMANATHAN FCJJ
17 JUNE 2019

Evidence — Adverse inference — Withholding of evidence — Detainee under two-year detention order ordered by Home Minister sought release from detention claiming he was denied right to engage counsel to make representations to Advisory Board under Dangerous Drugs (Special Preventive Measures) Act 1985 — Detainee contended Advisory Board denied him adjournment to enable his counsel to appear and proceeded with hearing in counsel's absence — Detaining authorities filed rebuttal affidavit giving different version of events — High Court dismissed habeas corpus application on ground conflicting evidence did not affect detainee's detention — Federal Court at appeal hearing asked detaining authorities to produce minutes of board hearing to confirm their version of events — Whether refusal to produce minutes amounted to wilful withholding of material evidence and raised presumption that contents of minutes if produced would have been unfavourable to detaining authorities — Whether adverse inference had to be invoked against detaining authorities — Whether breach of mandatory provisions of the law warranted detainee's immediate release from detention

This appeal was against the High Court's refusal to grant the appellant's application for a writ of habeas corpus for his immediate release from a two-year detention at the Pusat Pemulihan Akhlak, Machang, Kelantan, ordered by the first respondent following the appellant's arrest under the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The appellant's sole ground for his application was that he was denied of the right, under r 4(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, to have a lawyer make representations on his behalf to the Advisory Board ('the board') under s 9(1) of the Act. The first hearing before the board was postponed for a month to enable the appellant to appoint counsel. What happened at the adjourned hearing date was disputed. The appellant contended that since he only managed to appoint counsel at the eleventh hour, he sought a further adjournment to enable his lawyer to prepare his case but the board denied the request and proceeded with the hearing without his counsel. The respondents, on the other hand, claimed that the appellant did appear with his lawyer before the board on the adjourned hearing

A date but then indicated that he no longer wanted a lawyer to represent him and chose to continue with the proceedings after refusing an offer of an adjournment. The High Court held that although there was conflict in the affidavit evidence as to what happened on the adjourned hearing date it did not affect the validity of the appellant's detention.

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Held, unanimously allowing the appeal, setting aside the High Court's decision, granting a writ of habeas corpus and ordering the appellant's immediate release from detention:

C (1) Whether the appellant was allowed the right to counsel was unclear from the conflicting affidavit evidence. It had always been the case in our criminal law that where there were two inferences open, especially in the face of conflicting evidence, the one most favourable to the accused should be preferred. That approach should not be any different in respect D of detainees in habeas corpus cases as laws which deprived a subject of his right to personal liberty ought to be accorded the same strict construction as penal laws (see paras 17–18).

(2) During the appeal hearing, the court asked the respondents whether they E could adduce the minutes of the board hearing to support their version of the events but the response was that the minutes were 'rahsia'. This argument did not hold water as the court could have viewed the evidence in camera and, in any case, the court only needed to read that portion of the minutes that proved that the respondents' version of the story was F accurate. Since the burden to justify the detention lay on the respondents, their failure to adduce the said minutes amounted to a wilful withholding of material evidence. This not only called for an inference favourable to the appellant to be made but also for an adverse inference to be made against the respondents. The court had to presume G that had the respondents adduced the contents of the minutes of the board hearing, it would have been unfavourable to them (see paras 19–21).

(3) The High Court judge ought to have resolved the conflict in the evidence H in the appellant's favour as the material evidence capable of corroborating the respondents' version was within their control, yet they did not see it fit to produce it. The High Court judge failed to appreciate the settled principles of law. Had he considered them, he would have found that there was clear non-compliance with the mandatory provisions of the law I entitling the appellant to a writ of habeas corpus (see paras 23–25).

(4) The detaining authority did not meet its burden of satisfying the court that the strict requirements of the law had been met. The appellant's detention was therefore unlawful (see para 26).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keengganan Mahkamah Tinggi untuk membenarkan permohonan perayu untuk writ habeas corpus untuk pembebasan segera beliau dari penahanan dua tahun di Pusat Pemulihan Akhlak, Machang, Kelantan, yang diperintahkan oleh responden pertama berikutan penangkapan perayu di bawah Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 ('Akta tersebut'). Satu-satunya alasan perayu di dalam permohonannya adalah bahawa dia dinafikan hak, di bawah k 4(3) Peraturan Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) (Kaedah-Kaedah Penasihat Lembaga) 1987, untuk seorang peguam bagi membuat representasi bagi pihaknya kepada Lembaga Penasihat ('lembaga tersebut') di bawah s 9(1) Akta tersebut. Perbicaraan pertama di hadapan lembaga tersebut ditangguhkan sebulan untuk membolehkan perayu untuk melantik peguam. Apa yang terjadi pada tarikh pendengaran yang ditangguhkan itu dipertikaikan. Perayu menghujahkan bahawa kerana dia hanya dapat melantik peguam pada waktu yang suntuk, dia memohon penangguhan lanjut untuk membolehkan peguamnya menyediakan kesnya tetapi Lembaga menolak permohonan tersebut dan meneruskan pendengaran itu tanpa peguamnya. Sebaliknya responden mendakwa bahawa perayu hadir dengan peguamnya di hadapan Lembaga pada tarikh pendengaran yang ditangguhkan iut tetapi kemudiannya memberikan indikasi bahawa dia tidak lagi mahu peguam tersebut mewakilinya dan memilih untuk meneruskan prosiding setelah menolak tawaran untuk penangguhan. Mahkamah Tinggi memutuskan bahawa walaupun terdapat konflik dalam keterangan afidavit tentang apa yang berlaku pada tarikh pendengaran yang ditangguhkan, ianya tidak mempengaruhi keesahan penahanan perayu.

Diputuskan, dengan sebulat suara membenarkan rayuan itu, menolak keputusan Mahkamah Tinggi, membenarkan writ habeas corpus dan memerintahkan pelepasan segera perayu daripada tahanan:

(1) Sama ada perayu dibenarkan hak untuk peguam tidak jelas berdasarkan kepada bukti afidavit yang bertentangan. Ianya biasa dalam kes undang-undang jenayah kita di mana terdapat dua keterbukaan inferens, terutamanya terhadap bukti yang saling bertentangan, yang paling memihak kepada tertuduh haruslah diutamakan. Pendekatan itu tidak sepatutnya berbeza terhadap tahanan di dalam kes-kes habeas corpus kerana undang-undang melarang seseorang terhadap haknya untuk kebebasan peribadi harus diberikan asas kukuh sama seperti undang-undang jenayah (lihat perenggan 17–18).

(2) Semasa pendengaran rayuan, mahkamah meminta responden sama ada mereka boleh mengemukakan minit pendengaran Lembaga untuk menyokong versi mereka tetapi responnya adalah bahawa minit itu adalah 'rahsia'. Hujah ini adalah tidak munasabah kerana mahkamah

boleh melihat bukti dalam kamera dan, dalam mana-mana hal, mahkamah hanya perlu membaca bahagian minit yang membuktikan bahawa versi responden mengenai cerita itu adalah tepat. Memandangkan beban untuk mewajarkan penahanan terletak pada responden, kegagalan mereka untuk mengemukakan minit-minit tersebut terjumlah dengan penolakan bukti material yang disengajakan. Ini bukan sahaja memberikan inferens yang memihak kepada perayu untuk dibuat tetapi juga untuk inferens sebaliknya terhadap responden. Mahkamah beranggapan bahawa sekiranya responden mengemukakan kandungan minit pendengaran Lembaga, ia tidak akan memihak kepada mereka (lihat perenggan 19–21).

(3) Hakim Mahkamah Tinggi sepatutnya telah menyelesaikan konflik berkenaan bukti terhadap perayu sebagai bukti material yang mampu membuktikan versi responden adalah di dalam kawalan mereka, namun mereka tidak merasakan sesuai untuk mengemukakannya. Hakim Mahkamah Tinggi gagal menghargai prinsip undang-undang sedia ada. Sekiranya beliau mempertimbangkannya, beliau akan mendapati bahawa terdapat ketidakpatuhan yang jelas terhadap peruntukan mandatori undang-undang yang memberikan hak perayu kepada writ habeas corpus (lihat perenggan 23–25).

(4) Pihak berkuasa yang membuat penahanan tidak memenuhi bebannya untuk memuaskan hati mahkamah bahawa syarat kukuh undang-undang telah dipenuhi. Oleh itu, penahanan perayu adalah menyalahi undang-undang (lihat perenggan 26).]

Notes

For a case on withholding of evidence, see 7(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 563.

Cases referred to

Lui Ah Long v Superintendent of Prisons, Penang [1977] 2 MLJ 226 (refd)

Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 3 MLJ 285; [1994] 4 CLJ 47, SC (refd)

Roshidi bin Mohamed, Re [1988] 2 MLJ 193 (refd)

SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors [2010] 1 MLJ 149; [2009] 6 CLJ 705, FC (refd)

Takaka Sakao (f) v Ng Pek Yuen (f) & Anor [2009] 6 MLJ 751, FC (folld)

Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia [1975] 2 MLJ 279 (refd)

Yusoff bin Kassim v PP [1992] 2 MLJ 183, SC (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 4(3)
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 9, 9(1)
Evidence Act 1950 s 114(g)

Sivananthan Nithyanantham (Jay Moy Wei Jiun with him) (Sivananthan) for the appellant.
Muhammad bin Sinti (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

David Wong CJ (Sabah and Sarawak) (delivering judgment of the court):

INTRODUCTION

[1] This appeal stemmed from the decision of the High Court refusing to issue the appellant a writ of habeas corpus. We heard the appeal on 12 February 2019 and after careful consideration, unanimously allowed it. We set aside the order of the High Court, allowed the appellant's application for a writ of habeas corpus and ordered that he be released from detention with immediate effect. These are our written reasons.

BACKGROUND

[2] The appellant was arrested on 21 February 2017 under s 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). Upon investigation and submission of the various reports to the first respondent, the first respondent exercised his discretion to issue a detention order ('the detention order') dated 19 April 2017 detaining the appellant at Pusat Pemulihan Akhlak Machang, Kelantan for two years effective from the date of issuance.

[3] At the High Court, the appellant argued that he was entitled to a writ of habeas corpus citing at least 22 procedural errors. However, at the hearing of his application, the appellant narrowed down his complaints into a single issue. He argued that he was denied his right to be represented by counsel.

[4] The complaint arose in the following way. Under s 9 of the Act, a copy of every order of the Minister permitting detention must be served on the detainee and such detainee has the right to make representations to the Advisory Board ('the board') on his detention. The evidence indicated that the appellant wanted to be represented by counsel during his representation before the board.

[5] The hearing before the board was fixed on 6 June 2017. This was communicated to the appellant on 22 May 2017. It was undisputed in the court below that come 6 June 2017, the appellant had not yet appointed counsel. The hearing was therefore duly rescheduled to 11 July 2017.

[6] Come 11 July 2017, the appellant appeared again before the board. Upon reading all the affidavits, we are faced with two conflicting versions of the rest of the story.

[7] The appellant claimed that he had only met and appointed his counsel on the date of the said hearing. But, his counsel advised him to seek an adjournment so that he may be prepared — having of course, then just been appointed. The appellant claimed that his request for a second adjournment was denied and the hearing proceeded without his counsel. He claimed this was a denial of his right to be represented by counsel.

[8] The respondents in turn took the position that on the date of the hearing, the appellant appeared with his lawyer. They said that the appellant indicated his intention not to be represented by a lawyer, refused the offer of an adjournment, and chose to continue with the proceedings.

THE DECISION OF THE HIGH COURT

[9] The pertinent part of the High Court's decision may be gleaned from the following two paragraphs of its judgment:

> [13] Isu di sini ialah percanggahan di dalam affidavit Ahmad Lazimi sendiri dan bertentangan dengan affidavit Pemohon. Ahmad Lazimi mengatakan pada 11 July 2017 Pemohon tidak mohon penangguhan dan apabila ditanya Pemohon mengatakan dia tiada peguam dan ingin meneruskan representasinya.
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> [14] Sungguhpun terdapat percanggahan di dalam affidavit Ahmad Lazimi, bagi saya, ianya tidak menjejaskan penahanan Pemohon. Fakta kes ini berbeza dengan kes *SK Tangakaliswaran* yang jelas sekali pertentangan atau percanggahan di antara dua deponen. Pemohon pula tidak menyatakan alasan kepada Lembaga Penasihat mengapa penangguhan diminta kerana penangguhan telahpun diberi pada masa pendengaran pertama dan masa yang mencukupi telah diberikan daripada mula tarikh perintah tahanan dikeluarkan. Malah jarak masa di antara pendengaran pertama dan kedua lebih daripada sebulan.

OUR DECISION

[10] The law on habeas corpus is trite. It is not a discretionary remedy. The writ must be issued if the court finds that the detenu is illegally or improperly detained, see *Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia* [1975] 2 MLJ 279 where at p 281, Abdoolcader J (as he then was) said as

follows:

> The grant of habeas corpus is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as certiorari, prohibition and mandamus. It is a writ of right against which no privilege of person or place can be of any avail (*R v Pelf And Offly* 84 ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personalliberty of an individual in the form of habeas corpus and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of State ex ref *Evans v Broaddus* 245 Mo 123 140 that at least in times of peace every human power must give way to the writ of habeas corpus and no prison door is stout enough to stand in its way.

[11] Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal. In *SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 MLJ 149; [2009] 6 CLJ 705, Gopal Sri Ram FCJ held as follows at p 710:

> It is settled law that on an application for habeas corpus the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v The Minister of Home Affairs & Ors and other appeals* [1989] 1 MLJ 69; [1988] 1 LNS 162. In *Mohinuddin v District Magistrate, Beed* AIR [1987] SC 1977, the Supreme Court of India observed as follows in the context of art 22 of the Indian Constitution from which is drawn our art 151:
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> > It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the State to satisfy the court that the detention of the petitioner/detenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the constitutional safeguards embodied in Art 22(5).

[12] Even if a detention was originally made in exercise of valid legal power, it may subsequently become invalid over a passage of time, see *Lui Ah Long v Superintendent of Prisons, Penang* [1977] 2 MLJ 226 where at pp 227–228 Arulanandom J said:

> The second limb of the argument merits greater consideration, ie whether a detention which at its inception was legal could become illegal as a result of passage of time or for other reasons. The answer to this question will necessarily determine the result of this application ... In view of this it is quite obvious that the authorities have exhausted all avenues and are unable to remove the applicant to his place of embarkation or his country of citizenship. The powers of detention under s 34(1) are clearly and unambiguously limited to detention for the purposes of removal to one of two places, ie the place of embarkation or country of citizenship and therefore the moment the detaining authorities have failed or found themselves in a position where the object of detention cannot be fulfilled, then it cannot be argued

that further detention remains lawful. The purpose of the detention having been frustrated, continued detention a fortiori becomes unlawful.

[13] Further, the applicant is entitled to take advantage of any technical defect which has the effect of invalidating his detention, see *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285; [1994] 4 CLJ 47 where at p 55, Wan Yahya SCJ held as follows:

> [I]n cases of this nature the appellant is nevertheless entitled to take advantage of any technical imperfection which has the effect of invalidating the restrictive order; or to use the precise words of Regby J in *Ex Parte Johannes Choeldi & Ors* [1960] MLJ 184 at p 186:
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> > The distinction, no doubt, is a highly artificial one. But this is an application for a writ of habeas corpus, and the applicants in matters which concern their personal liberty, are entitled to avail themselves of any technical defects which may invalidate the order which deprives them of that liberty.

[14] Was there a technical defect here? Section 9(1) of the Act mandatorily entitles any detainee the right to make representations before the board. Rule 4(3) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the 1987 Rules'), enables the detenu to make representations either personally or through his representative.

[15] Some detainees may think that counsel can make better representations than they can themselves make. So to us, it is a logical conclusion that where a detenu is denied the right to representation via counsel, he would effectively be denied his entire right to make representations.

[16] The above statutory requirements are mandatory and so must be complied with strictly. This is because we were here dealing with the crucial subject of the liberty of a person detained without trial. All the more we considered that his right to make representations could not have been superfluous, meaningless or a mere fagade. It has been held that failure to comply with strict requirements may render a detention unlawful, see *Re Roshidi bin Mohamed* [1988] 2 MLJ 193 at p 196.

[17] Now, whether the appellant was allowed the right to counsel was unclear from the conflicting affidavit evidence. The appellant cited to us the decision in *SK Tangakaliswaran* which decision we think is on all fours. In that case, this court at p 710 dealt with the subject of conflicting affidavit evidence in a habeas case as follows:

> It is for the respondents to prove that the constitutional and statutory safeguards embodied in art 151 and s 6(1) were strictly complied with. The liberty of an individual should not be infringed upon even to the slightest extent without proof

> that the impugned infringement is in accordance with the Constitution and statute ... And where that evidence is by way of affidavit the court is not spared the task of subjecting its contents to the same tests as in any other case, if not to stricter scrutiny since the case concerns the violation of a constitutionally guaranteed protection ... Further, where a party upon whom the onus of proof lies adduces conflicting or contradictory evidence, a court assessing that evidence is in the usual way entitled to rule that the burden has not been discharged. And in a matter as important as individual liberty, where contradictory averments are made on oath, the detenu is entitled to rely on the version that is most favourable to him. Put a little differently, where as in circumstances present here, more than one inference may be drawn from the evidence presented by the detaining authority, the inference most favourable to the detenu must be drawn.

[18] It has always been the case with our criminal law that where there are two inferences open against the accused, especially in the face of conflicting evidence, the one most favourable to the accused is to be preferred, see generally *Yusoff bin Kassim v Public Prosecutor* [1992] 2 MLJ 183 (SC). We did not see why the approach should be any different in respect of detainees in habeas corpus cases. After all, laws which deprive a subject of his right to personal liberty ought to be accorded the same strict construction as penal laws. In *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285 at p 294; [1994] 4 CLJ 47 at p 55, Wan Yahya SCJ had this to say:

> Laws which deprive the subjects of their rights to personal liberty are subject to strict construction in the same way as penal laws — see *Nagin Singh v L Jagan Nath* AIR 1944 Lah 422.

[19] In all fairness to the respondents, during the hearing of this appeal, we asked them whether they could adduce the minutes of the board hearing to support their version of the events. The said minutes constituted material evidence solely within the respondents' custody. We were met with the response that said minutes were 'rahsia'. To us, this argument did not hold water.

[20] Firstly, this court could have viewed that evidence *in camera.* Secondly and in any case, we need only to read the alleged portion proving that the respondents' version of the story was accurate. Nothing more.

[21] Since the burden to justify the detention lies on the respondents, we considered their failure to adduce the said minutes amounted to a wilful withholding of material evidence. Thus, to us, this case not only called for an inference favourable to the appellant, it also called for an adverse inference against the respondents. Simply, we presumed that had the respondents adduced the contents of the minutes of the board hearing, the contents of those

minutes would have been unfavourable to them. See generally s 114(g) of the Evidence Act 1950 and the judgment of this court in *Takaka Sakao (f) v Ng Pek Yuen (f) & Anor* [2009] 6 MLJ 751 where at para 5 Gopal Sri Ram FCJ held as follows:

> Where, as here, the first respondent being a party to the action provides no reasons as to why she did not care to give evidence the court will normally draw an adverse inference. See *Guthrie Sdn Bhd v Trans-Malaysian Leasing Corp Bhd* [1991] 1 MLJ 33. See also *Jaafar bin Shaari & Anor (suing as Administrators of the Estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693 ...
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> In *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, Brooke LJ when delivering the judgment of the Court of Appeal quoted from a number of authorities including the following passage from the speech of Lord Diplock in *Herrington v British Railways Board* [1972] AC 877:
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> > The appellants, who are a public corporation, elected to call no witnesses, thus depriving the court of any positive evidence as to whether the condition of the fence and the adjacent terrain had been noticed by any particular servant of theirs or as to what he or any other of their servants either thought or did about it. This is a legitimate tactical move under our adversarial system of litigation. But a defendant who adopts it cannot complain if the court draws from the facts which have been disclosed all reasonable inferences as to what are the facts which the defendant has chosen to withhold.
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> Brooke LJ then went on to say this:
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> > From this line of authority I derive the following principles in the context of the present case:
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> > (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
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> > (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
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> > (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
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> > (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

[22] Granted that *Takaka* was a civil case and that it dealt with the failure to call a material witness, we think the general effect of drawing an adverse

inference was lucidly explained and that it is of universal application. We considered it applicable in the context of the present case.

[23] The court below appeared to have faulted the appellant for not explaining why he needed the second adjournment. We thus arrived at the view that the learned judicial commissioner failed to appreciate the legal principles borne out in *Tangakaliswaran*.

[24] The learned judicial commissioner ought to have resolved the conflict in the evidence in favour of the appellant. In any event, the material evidence capable of corroborating the respondents' version was within their control, yet they did not see if fit to produce it.

[25] We were accordingly of the view that the learned judicial commissioner fell into error in failing to appreciate these settled principles of law. Had he considered them, we thought he would have been minded to find that there was clear non-compliance with the mandatory provisions of the law entitling the appellant to a writ of habeas corpus.

CONCLUSION

[26] Based on the foregoing, we considered this an appropriate case for appellate intervention. In our considered view, the detaining authority did not meet its burden to satisfy us that the strict requirements of the law were met. We therefore considered the detention to be unlawful and so we allowed the appeal. We, accordingly issued a writ of habeas corpus and ordered that the appellant be released forthwith.

Order accordingly.

Reported by Ashok Kumar