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Thank you for reading Tochi's story yesterday.

Today I'd like to talk about Rozman bin Jusoh, a Malaysian arrested in #Singapore in 1993. He was 22 years old.

He was charged w/ trafficking 1040.8g + 943.3g of cannabis. Under the law, 500g or more = mandatory #deathpenalty.

On 24 November 1993, Rozman was approached by two men who later turned out to be an undercover officer from the Central Narcotics Bureau, and an agent-informant. The agent asked him if he had cannabis. He said no. The agent pressed him further, so he said, "We'll see tomorrow." **https://t.co/eMaDHjKVj1**

50 The purpose of the approach soon became evident. The acquaintance of the first accused whom he referred to as `kawan', meaning friend, enquired from him whether he had any barang. As he was aware that kawan was in the habit of selling cannabis, he understood what kawan meant by the term barang. He replied that he did not have any cannabis. Kawan was not deterred by the reply and insisted that he look for it, thereupon the first accused responded tentatively: `We will see tomorrow.' Kawan had also asked him at that time about the price of cannabis and he replied that it was $1,800 for one kilogram as he had known from his friends its estimated cost. The other male Chinese (NO Tan) also spoke to the first accused, the substance of which could not be accurately recalled by the first accused. At about 6.00pm the first accused left the coffeeshop and returned to his quarters at Beach Road.

The next day, he met up with the undercover cop at a KFC, with a bag containing cannabis. When the cop went up to the counter to get a drink, Rozman followed, leaving the bag on the table unattended. The undercover cop gave the signal and CNB officers appeared to arrest Rozman. **https://t.co/0ye7FAXIJA**

53 Subsequently, the first accused met NO Tan at a bus-stop at seventh milestone, Bukit Timah, and requested him to accept delivery of the cannabis which was then on the motorcycle belonging to the second accused. Earlier, the second accused had ridden his motorcycle to the seventh milestone, Bukit Timah, with the first accused as the pillion rider. NO Tan was unwilling to take delivery at the bus-stop. He advised the first accused to bring the cannabis to the KFC situated opposite the bus-stop. The first accused complied and subsequently carried the bag containing the cannabis to KFC and placed it on a chair at the table where NO Tan was seated. Again NO Tan did not accept the goods but instead walked up to the service counter to order a drink. The first accused too, strolled up to the counter to ask for a drink. Officers from the CNB then appeared and apprehended him. The bag which he had placed on the chair was also seized. A short while later, the second accused who was at the bus-stop near the motorcycle was also arrested. According to the first accused, there was one other bag in the motorcycle but he had no knowledge of its contents, neither did he know whom it belonged to.

The bag Rozman had contained 1040.8g of cannabis. CNB later also arrested another guy who'd been seen with Rozman. A search of his motorcycle came up w/ a bag w/ 943.3g of cannabis. This triggered the presumption in S17 of the Misuse of Drugs Act.

(Screencap from 1993 version.) **https://t.co/3jDCm5Nrog**

**Presumption concerning trafficking**

**17.** Any person who is proved to have had in his possession more than —

(*a*) 100 grammes of opium;

(*b*) 3 grammes of morphine;

(*c*) 2 grammes of diamorphine;

(*d*) 15 grammes of cannabis;

(*da*) 30 grammes of cannabis mixture;

*[Act 40/93 wef 10/12/1993]*

(*e*) 10 grammes of cannabis resin; or

(*f*) 3 grammes of cocaine,

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 unless it is proved that his possession of that drug was not for that purpose.

*[Act 40/93 wef 10/12/1993]*
*[Act 38/89 wef 15/02/1990 vide S 48/90]*

Rozman, from #Kelantan in #Malaysia, only spoke Malay. During the trial, the certified interpreter who'd translated for him when he gave statements to the police brought up the observation that Rozman "could not even answer simple questions", such as how many siblings he had. **https://t.co/Y4EQBhFETd**

30 In his evidence, the CNB interpreter, Abdul Razak, who had assisted in recording the statements from the first accused, testified that he had found him to be extremely slow. He added that whilst he did not consider the first accused to be evasive, he said that he could not even answer simple questions, such as how many brothers and sisters he had. When I asked Abdul Razak whether he had found the first accused to be subnormal, Abdul Razak replied that he felt so.

This was a revelation that only came up as the interpreter gave evidence — the issue of Rozman's mental capacity/IQ hadn't originally been part of his defence. But because of what the interpreter said, the prosecution applied for Rozman to undergo a psychiatric examination.

Rozman was assessed by a government psychologist from the prisons department. He was not a clinical psychologist. He administered one non-verbal test w/ no sub-tests. He had no clinical notes, only a brief report saying Rozman wasn't

mentally subnormal and knew right from wrong. **https://t.co/0L3mqdwP92**

32 A written report prepared by Mr Foo was submitted. It was somewhat brief and reads as follows:

Rozman had no difficulty understanding instructions on and responding to the intelligence test which he completed. His performance indicated Average range mental abilities. He showed normal comprehension on reasoning skills and should know right from wrong. Mental subnormality was therefore excluded.

83 In his oral testimony Mr Foo said that the accused possessed an IQ of just above 90. I noted that Mr Foo had employed a culture-free test known as the Raven's Progressive Matrices test. In this test - comprising 60 items in five sets (A to E) - the subject would be given a series of designs with a missing part each and is required to select the missing item from six answers given at the bottom of each page. Apart from this test, Mr Foo did not attempt to give him any verbal sub-tests (such as (a) general information; (b) comprehension; (c) arithmetic; (d) similiarities; (e) vocabulary; or (f) digit span) or any performance sub-tests (such as (a) digit symbol; (b) picture completion; (c) block design; (d) picture arrangement; or (e) object assembly) as done under the WAIS- R method. Mr Foo was also unable to produce any working sheets to support his conclusions, as there were apparently none made. Mr Foo mentioned in passing, that he was not a clinical psychologist.

84 In view of such a brief report, and unsupported by any clinical notes, defence counsel applied for the first accused to be subjected to a second test by a clinical psychologist - preferably one from the government. However, I was informed that his attempts to secure the services of a state psychologist were stone-walled as none of the experts approached were willing to undertake the tests on the grounds that one of their counterparts had already examined the first accused and they therefore would not wish to add any postscripts to it (see pages 647, 648, 937 and 938 of the verbatim notes).

The defence got a private clinical psychologist to examine him. She administered tests and found that his IQ was a borderline 74. She also said that he "could easily be misled and could get into difficulty" and "might not be able to discern right from wrong." **https://t.co/1sBd2SkqYs**

85 Left with no alternative, the defence was constrained to seek the services of a private clinical psychologist, Ms Gerrian Wuts, who interviewed the first accused and conducted an IQ test using the WAIS-R method. Her findings showed that the full scale IQ of the first accused was 74, which according to her, indicated that the cognitive capacity of the first accused was borderline. She said that the accused could easily be misled and could get into difficulty; independent living might not always be possible and a person of his ilk would often require supervision. She revealed that the first accused did not even know what a thermometer was and when asked the direction from where the sun rises, he was reported to have replied: `in the north' (page 844D of the verbatim notes). The central part of her conclusion was that the first accused might not be able to discern right from wrong. Ms Wuts produced her clinical notes and stood fast by her conclusions.

The trial judge also made his own observations of Rozman in the witness box: "he often looked plainly confused, sometimes even by straightforward questions."

"...my perception was that the first accused was a
guileless simpleton without any gift for contrivance." **https://t.co/4J5eFdqdrO**

101 Having observed the accused in the witness box, it cannot be gainsaid that he gave evidence in an unshrinking manner. There was never a trace of squirming, twisting or shifting. His evidence was, however, punctuated with frequent pauses, sometimes long, yet there was no sign that he was taking his time to contrive, concoct or improvise. In fact, he often looked plainly confused, sometimes even by straightforward questions.

102 This case was also notable for another extraordinary feature. It was really ironical that the accused whilst claiming trial to the charges, was blithely admitting to each and every condemnatory feature against him. In fact, the printed words in the verbatim notes do not adequately capture his demeanour, inflexion and his swaying body movements, which at times suggested that he was apparently oblivious to the seriousness of the charges facing him.

103 Another significant feature in this case was that the issue based on `intent' was not something the first accused brought it up himself; neither did it appear to have been thought about beforehand. In fact, the subject of his being slow and questions relating to his intelligence and his discerning power sprung up suddenly and abruptly midway through the testimony of the CNB interpreter, Abdul Razak, (pages 135 and 136 of the verbatim notes) and confirmed later by S/S/Sgt Shah Ni (pages 295 and 296 of the verbatim notes). Having observed him throughout the proceedings in the witness box, my perception was that the first accused was a guileless simpleton without any gift for contrivance. It must be so, for which trafficker would leave the drugs unguarded on a chair in a public place and walk up to the counter and ask for a drink (see NO Tan's evidence).

The trial judge also found that the undercover officer and agent had "undertaken a substantially active role in persuading the first accused to sell them drugs" and that Rozman would not have done this "if not for his feeble mind which seemed to have been overborne" by the CNB. **https://t.co/PA6aVsnMPy**

131 The evidence, which was not challenged in any measure, was that the accused could be easily manipulated. It was also clear from the evidence that the CNB agent and the undercover CNB officer were more than mere agents, and had, in fact, undertaken a substantially active role in persuading the first accused to sell them drugs. It was also of some concern to the court that inasmuch as NO Tan's proficiency in Malay was less than basic, it was unsafe to give too much credence to the so-called conversation that took place with the first accused. The claim by NO Tan that the first accused spoke Hokkien was not put to the first accused. Neither was the first accused challenged on his assertion that he spoke neither English nor Hokkien. To my mind, the first accused was a person without guile and would not have embarked upon this expedition for a mere $100 ($50 from the supplier and another $50 from NO Tan) if not for his feeble mind which seemed to have been overborne by the CNB agent and the CNB operative. More significantly, there was no rebuttal evidence from the prosecution with respect to the psychological assessment of the first accused.

The judge felt that, given Rozman's intellectual disability, it would be unsafe to convict him of trafficking, which carries the *mandatory* #deathpenalty (ie. if found guilty, the judge would have no choice but sentence him to death). He found him guilty of possession instead. **https://t.co/PULRGlPjS2**

132 It was not so much a case here of the evidence of the agent provocateur being excluded as being unfair if admitted; the presumption of trafficking under s 17 of the MDA remained operative as there was possession of a quantity of cannabis far exceeding the stipulated amount. The focus was instead on the degree of guilt of the first accused with respect to the charge of trafficking. There was a grave doubt raised as to whether he could be criminally responsible to warrant the mandatory death sentence, in light of his intellectual disability and the real possibility of being manipulated. In such circumstances, it would be unsafe for the court to proceed to convict him on the charge of trafficking.

The prosecution appealed the case. In 1995, the Court of Appeal overturned the trial judge's decision and convicted Rozman of drug trafficking.

He was therefore sentenced to the mandatory #deathpenalty.

The Court of Appeal said that the reasons the trial judge had pointed to could only be considered as mitigating factors when considering punishment. But since the law stated that the #deathpenalty was mandatory, "such considerations would only be relevant elsewhere." **https://t.co/A4zPVsid5Q**

overborne by the CNB agent and the CNB operative". Having made these findings, he held that these factors affected or lessened "the degree of guilt" of Rozman with respect to the charge of trafficking and as a result "a grave doubt arose as to whether he could be criminally responsible to warrant the mandatory death sentence". With the utmost respect, we think that the learned judge has confused the presence of *mens rea*, which is an essential element in a criminal offence, with the mitigating factors in the punishment for the offence. These factors however cogent or strong cannot play a part in the consideration whether Rozman had the *mens rea* when he committed the act of drug trafficking. They are only relevant in the consideration of the punishment to be meted out to him, and in this case as the sentence is mandatory, such considerations would only be relevant elsewhere.

The Court of Appeal stated that, even if Rozman really did have a borderline IQ, it wasn't enough to be a defence. They said the psychologist's opinion that he might not have been able to discern right from wrong was "inconclusive" and "neither here nor there". **https://t.co/Ve4OpUXyed**

Now, even accepting the assessment of Rozman as given by Ms Wuts, Rozman was not really so intellectually disabled as to be incapable of knowing the nature of his act or of discerning that the act was either wrong or contrary to law. True, Ms Wuts expressed the opinion that Rozman might not have been able to discern right from wrong. But this opinion is itself inconclusive; it seems to be neither here nor there. On the contrary, on the evidence, including his own evidence, Rozman knew it was contrary to law to sell drugs; he knew the consequences that would be visited on him if he sold drugs. In our judgment, Rozman's "low intellect" and his disposition of being easily susceptible to manipulation by others is not a defence to a criminal charge. Nor can such low intellect and malleable disposition diminish or eradicate the presence of *mens rea*.

Rozman was hanged on 12 April 1996.

(In writing this thread, I have relied on the High Court and Court of Appeal judgments, which are unfortunately not publicly available. @tocsg ran an article in 2010: **https://t.co/iZjFHfBA8U**)

If you're a Singaporean who wishes for the #deathpenalty to be abolished, you can register your position by signing this petition here: **https://t.co/2W98NdBkHk**

For ease of reference I've also collated Tochi and Rozman's stories in this Moment: **https://t.co/wS1U2l5VDB**