

Hon Chi Wan Colman v Public Prosecutor
[2002] SGHC 190

Case Number : MA 7/2002
Decision Date : 26 August 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Abdul Rashid Gani and PE Ashokan (Khattar Wong & Partners) for the Appellant;
Ravneet Kaur (Deputy Public Prosecutor) for the respondent
Parties : Hon Chi Wan Colman — Public Prosecutor

Criminal Law – Offences – Criminal breach of trust – Entrustment of dominion over property – Whether sole dominion necessary – Essence of offence – Whether element of entrustment of dominion proved – Degree of control over property required to prove entrustment of dominion – ss 109 & 408 Penal Code (Cap 224)

Evidence – Admissibility of evidence – Accomplice evidence – Whether court must presume such evidence unworthy of credit – Court to treat such evidence with caution – Whether accomplice's evidence reliable in circumstances – s 116 illustration (b) Evidence Act (Cap 97, 1997 Ed)

Evidence – Witnesses – Inconsistencies in testimony – Whether court can accept part of testimony and reject others

Judgment

GROUNDS OF DECISION

This was an appeal against the decision of district judge Hoo Sheau Peng where she convicted the appellant on two counts of abetment by conspiracy to commit criminal breach of trust, an offence punishable under s 408 read with s 109 of the Penal Code (Cap 224). The appellant was sentenced to 18 months' and ten months' imprisonment respectively on the two charges, which were to run concurrently. The appellant appealed against his conviction. I dismissed the appeal and now give my reasons.

The charges

2 The amended charges against the appellant read as follows:

First Charge

DAC 10260/2001

You, Hon Chi Wan, Colman, Male/37 years, NRIC No: S2674125D, are charged that you, sometime in the month of May 2000, in Singapore, being a servant, namely the Service Logistics Manager, of Philips Electronics Singapore Pte Ltd ("the Company"), did engage with one Donald Puah Boon Leng, the Company's Service Delivery Manager, in a conspiracy to do a certain thing, that is to commit criminal breach of trust of the items specified in Annex A, dominion over which had been entrusted to you in your capacity as a servant, and in pursuance of the said conspiracy and in order to the doing of that thing, an act took place on the 17th day of May 2000, whereby the said Donald Puah Boon Leng sold the items specified in Annex B to one Chia Kin Boon Anthony, which

act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 408 read with Section 109 of the Penal Code Cap 224.

Second Charge

DAC 10261/2001

You, Hon Chi Wan, Colman, Male/37 years, NRIC No: S2674125D, are charged that you, sometime in the month of May 2000, in Singapore, being a servant, namely the Service Logistics Manager, of Philips Electronics Singapore Pte Ltd ("the Company"), did engage with one Donald Puah Boon Leng, the Company's Service Delivery Manager, in a conspiracy to do a certain thing, that is to commit criminal breach of trust of the items specified in Annex A, dominion over which had been entrusted to you in your capacity as a servant, and in pursuance of the said conspiracy and in order to the doing of that thing, an act took place on the 17th day of May 2000, whereby the said Donald Puah Boon Leng sold the items specified in Annex B to one "Johan", which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 408 read with Section 109 of the Penal Code Cap 224.

3 Annex A, which is common to both charges, is as follows:

Annex A

S/No	Description	Quantity
1	Philips Genie (handsets only)	200 sets
2	Philips Xenium 939 standard set (w transceiver, one battery and one traveller charger)	200 sets of each
3	Philips Xenium 929 standard set (w transceiver, one battery and one traveller charger)	200 sets of each
4	Xenium Batt, 800 mah	180 sets

5	Xenium 1200 Batt Vibra	200 sets
6	Savvy Charger (UK)	200 sets
7	Savvy Charger (US)	100 sets
8	Savvy Battery 1200mah	62 sets
9	Savvy Battery Slim AAA700 C12	8 sets
10	Savvy User Manual (English)	69 books
11	Savvy C12 (Transceivers only)	200 sets

4 Items in Row 1 to 5 are contained in Annex B to the first charge as goods sold to Anthony. The remaining items, listed in rows 6-11 are contained in Annex B to the second charge as goods sold to "Johan".

Background facts

5 The brief background facts are that the appellant is a Singaporean PR, originally from Hong Kong. He was employed by Philips Electronics Singapore Pte Ltd ("the Company") in 1998 as the Regional Service Logistics Manager of Philips Consumer Communications Service ("PCC"). In March 2000, the appellant was additionally appointed as Accessories Sales and Marketing Manager, PCC. Donald Puah Boon Leng ("Donald"), aged 36, was the Service Delivery Manager of PCC , responsible for overseeing field data operations. He and the appellant came into frequent contact during the course of work.

6 The appellant was responsible for logistic management of service in the Asia Pacific region. This included the requisitioning of inventories for either stock support to service centres in the region or quality assurance testing.

7 The procedure for drawing inventories is that PCC would need to requisition it from JSI Shipping Pte Ltd ("JSI"), a third party logistics provider for the Company. Any PCC staff could initiate the requisition from JSI by giving them a requisition form. When JSI received a requisition form, it would send or fax a Picking List to the requestor for confirmation. Upon return of a signed Picking List by the requestor, JSI would then arrange delivery of the goods. A PCC staff who received the goods had to acknowledge receipt on a delivery order ("DO") provided by the JSI's forwarder. PCC employees in the service logistics department reported to the appellant and each of them could requisition for goods from JSI.

8 All the stocks in JSI's warehouse are goods belonging to the Company, which were under the eventual management responsibility of the appellant, within the scope of his job as Regional Service Logistics Manager. Equally, goods moved from JSI to PCC would also come under the management responsibility of the appellant, since they came under the management control of the appellant's department. Besides the appellant, another person responsible for the goods was one MC Wong ("Wong"), to whom he reported and who had the overall responsibility for service in the Asia Pacific region.

Prosecution's version

9 I now move to the transactions which are the subject matter of the charges faced by the appellant. Sometime between 1 to 6 May 2000, the appellant had approached Donald in the office and asked him to find buyers for some transceivers and handphone accessories. The appellant said that the goods were ready in JSI and that they were not in the inventory records. Donald and the appellant agreed to split the proceeds of the sale equally.

10 From 7 to 13 May 2000, Donald agreed with two persons – Anthony Chia Kin Boon ("Anthony"), who had met him while working with Motorola, and 'Johan', an Indonesian businessman who had met Donald when Donald went there for a business trip, to sell them the items as laid out in Annex B.

11 The price and quantities were agreed after Donald had consulted with the appellant. Anthony agreed to pay \$173,500 and 'Johan' agreed to pay \$26,500.

12 Thereafter, Donald was instructed by the appellant to liaise with one Agnes Yup Mei Li ("Agnes"), an employee in PCC who worked under the appellant, regarding the transfer of the needed quantities of items to PCC from JSI. Donald also got one Teo Eng Chye ("Teo"), who was employed as an engineering assistant in PCC and reported to Donald, to count and pack the items into smaller cartons and prepare corresponding delivery orders.

13 Between 8 May to 17 May 2000, Agnes requisitioned large quantities of transceivers and accessories from JSI on the instructions of the appellant. An email dated 8 May 2000 was sent to JSI requesting for 20 transceivers each of Genie, Xenium 15, Xenium 16 and Savvy to be delivered daily from 8 May to 12 May 2000, making a total of 80 transceivers in all. A copy of this mail was sent to the appellant. In addition, she also requested another 100 each of the transceivers listed above, making a total of 400 transceivers in all.

14 Similarly, Agnes sent another email dated 12 May 2000 requesting 100 transceivers each of Genie, Xenium 15, Xenium 16 and Savvy. Added to her earlier requests, that made 800 transceivers in all requested from JSI. All the transceivers were delivered by 12 May 2000.

15 Agnes also requested for accessories such as chargers, batteries and user manuals on four separate occasions – 11, 12, 15 and 17 May 2000 via emails. As before, four picking lists were signed by her, and she acknowledged receipt of the items by signing the delivery orders, save for the last delivery order dated 16 May 2000 which was signed by one Fu Yock Buay@Fu XueMei ("Charmaine") on her behalf. Not all accessories ordered were delivered.

16 When the requested transceivers and accessories arrived, Agnes informed the appellant and was told by him to hand them over to Donald, who in turn requested that she pass them to Teo for unpacking.

17 On 17 May 2000, Donald contacted Anthony and asked him to proceed to the Company to collect the items. A Delivery Order dated 17 May 2000 was prepared by Teo. The DO was to allow Anthony to be able to transport the goods out of the Company. The goods taken were the property of the Company.

18 The items were taken out by Anthony's assistant. That evening, Donald met Anthony to sort out the discrepancies between what Anthony had brought out and what he had ordered. Donald testified that he had earlier removed quantities of some of the ordered items from the Company, thus he was able to make up the shortfalls. After settling matters with Anthony, Donald then delivered the items ordered by "Johan" to a member of his staff that same night.

19 Donald collected the payment for the goods from 'Johan' and Anthony on 21 May 2000 and 22 May 2000 respectively. Both paid him in cash. After receiving payment from 'Johan', Donald put \$10,000 into an envelope, being the appellant's share of the money, on the same night.

20 On 23 May 2000, Donald passed the envelope to the appellant at about 8.30 am. He noticed the appellant putting the envelope into his drawer. Later that day, the appellant and Donald were called up for internal investigations unrelated to the transactions. The appellant was called up in the morning and did not return to his office until 5 – 6 pm. He packed his things and was then escorted out of the office. Donald himself was also called up soon after on the same day and both he and the appellant were subsequently suspended from their duties.

21 On 24 May 2000, before he left for work in the morning, one Alvin Lim Eng Boon ("Alvin"), a former employee of PCC, received a call from the appellant. The appellant asked Alvin to help him retrieve an important document from the drawer of his desk in his office. He also asked Alvin to get the key from one Ekajanty Alamsjah ("Eka"), an employee in the logistics department, or Teo since his door was locked. The appellant mentioned that he and Donald had been suspended.

22 Shortly after, Alvin received a call from Donald asking him to meet Donald at the carpark of Toa Payoh Driving Range after retrieval of the document.

23 On arrival at the office, Alvin told Teo that he needed to retrieve something from the appellant's office and asked Teo for the key, which Teo could not provide. He then got the key from Eka. Alvin went into the room and retrieved the envelope. He told Eka that he was meeting Donald, and returned the key to her.

24 While driving to meet Donald, Alvin opened the envelope and found a thick stack of \$1,000 notes. He resealed the envelope and then passed it to Donald at Toa Payoh. He did not discuss the incident again after that day with anyone.

25 Subsequently, on 24 November 2000, the appellant called Alvin and asked him not to tell the Commercial Affairs Department (CAD) that he saw cash in the envelope. Alvin refused. He received a few more calls from the appellant that morning, but refused to pick it up after one or two times. Later that evening, the appellant called Alvin again. They subsequently met up at White Sands, Pasir Ris, where the appellant again asked Alvin not to reveal that Alvin had retrieved the envelope filled with cash. Alvin refused and left. The appellant was subsequently charged with the present offences.

Appellant's version

26 The appellant denied all involvement in the transaction and disputes many of the facts above. He claimed that he had relinquished his post as Service Logistics Manager at the relevant time

and further that there was a conspiracy to frame him.

27 He denied approaching Donald in the office to suggest that they sell the goods. With regards to the ordering of goods by Agnes, the appellant denied having ever given her such instructions.

28 The appellant claimed no knowledge of the existence of the envelope in his office. He claimed that he had locked his drawers on 23 May 2000. He further denied making any calls to Alvin on 24 November 2000. According to him, he had bumped into Alvin on that day in the evening and they had chatted for a while.

The discrepancy in quantities

29 I digress here to highlight a key feature in this case, which is the discrepancy between the quantities of goods ordered by Agnes and delivered by JSI and the quantities of these goods eventually sold to Anthony and "Johan". In the proceedings below, this discrepancy was pointed to repeatedly by counsel for the appellant and it was again raised on appeal as casting doubt on the prosecution's version of events.

30 The quantities of certain items delivered by JSI in response to Agnes' request did not match what Donald sold to Anthony and "Johan" in certain cases. Nor did the quantities correspond to the DO prepared by Teo. This is set out in the table below:

S/No	Description	Ordered by Agnes	Delivered by JSI	DO	Sold to Anthony	Sold to "Johan"
1	Genie transceivers	200	200	642	700	
2	X15 transceivers	200	200	40	200	
3	X16 transceivers	200	200	40	200	
4	X15/X16 chargers	480	480	400	400	
5	X15/X16 batteries	380	380	400	400	
6	Savvy C12 transceiver	200	200	40		200
7	Savvy C12 chargers	300	300	128		400
8	Savvy C12/C13 manuals	111	100	69		69
9	Savvy C12 batteries	100	70	200		200

31 As can be seen, the quantities listed in DO were more than what was delivered in some cases and less in others. The quantities also showed divergence from the amount sold to Anthony and "Johan" and those ordered by Agnes and delivered by JSI.

32 Neither Donald nor Agnes were able to explain where the excess goods not ordered by her came from. The differences in quantities affected the charge fundamentally, since the prosecution evidence proved only that the appellant was entrusted with dominion over *Philips goods stored in JSI*. Hence, at first instance, the prosecution was ordered to amend the charges to reflect the fact that only the quantities of each item ordered by Agnes could be reflected in the charge against the appellant. Any other goods in excess of what was ordered by Agnes (in terms of quantity) sold by Donald to Anthony and "Johan" were deleted from the particulars of the charge.

Decision of the trial judge

33 The learned trial judge made the following findings of fact:

The appellant was the Service Logistics Manager at the time

34 The trial judge relied in making this finding on the evidence of both Charmaine and Ng Lu Ping ("Lu Ping"), who was the Assistant Service Logistics Manager in PCC, who were unequivocal that the appellant was still the boss in the logistics department and that they still reported to him.

35 The appellant was also unable to provide any evidence of his relinquishment of position, save for the testimony of one Linda Tan Leng Leng ("Linda"), who was not even an employee of PCC.

The appellant was entrusted with dominion over Philips' goods stored in JSI

36 The trial judge relied on the evidence of Alan Sparks ("Sparks"), the Senior Vice President of PCC, Asia Pacific to arrive at this finding. Sparks gave evidence to the effect that in his capacity as Service Logistics Manager, the appellant had eventual responsibility for the goods in JSI and their movement. She further found that this would fulfil the requirement of exercise of dominion.

There was a conspiracy to sell goods belonging to Philips, stored in JSI, which the appellant abetted

37 The trial judge found Donald's version of the events to be credible and cogent, as well as supported in various aspects by evidence from other witnesses such as Anthony, Agnes, Teo and Alvin. She therefore found, in reliance on Donald's evidence, that the appellant had abetted Donald by conspiring with him to sell the goods belonging to Philips which were entrusted to his dominion.

That the goods delivered were the same ones that had been delivered from JSI

38 The appellant had argued that the discrepancies in quantity and evidence given by Donald and Anthony suggesting that the goods sold were not new meant a break in the chain of evidence linking the goods sold to those under the appellant's dominion. As already mentioned, the particulars of the charges were amended in response to this problem.

39 In coming to her finding, the trial judge found that Donald's and Anthony's evidence were not conclusive as to whether the goods were new or not. She also relied on evidence given by both Donald and Teo that prior batches of goods ordered by Agnes were packed and removed before 17 May 2000, which could explain the difference in quantities between what was listed in DO and what was sold. As to goods whose quantities ordered were in excess of that listed in the DO, the trial judge accepted on Teo's evidence that there were excess goods still lying around the office after 17 May 2000.

There was no conspiracy between Donald, Agnes, Teo and Alvin to frame the accused

40 The trial judge dismissed this part of the appellant's defence as without basis in fact.

The appeal

41 The appellant appealed against his conviction on the following grounds: a) that entrustment of dominion as stated in the charge had not been proven by the prosecution; b) that the property over which he had been entrusted with dominion had not been proven to be the same property that was sold to Anthony and "Johan"; and c) that the credibility of prosecution witnesses was suspect and a conviction based on their evidence was unsafe. I shall deal with them each in turn.

Entrustment of dominion not proven by prosecution

42 This ground of defence had already been put before the judge at first instance, and was rejected.

43 The argument revolves around two aspects – factual and legal. The factual aspect is whether at the material time of the offences the appellant was still holding on to his position as a Service Logistics Manager; corollary to this is whether the responsibility of such a position entailed management responsibility over the relevant goods.

44 The legal aspect is on whether management responsibility for the goods could be equated to entrustment of dominion over them. It was also the submission of counsel for the appellant that sole dominion was necessary for the purposes of criminal breach of trust.

45 With regards to the first aspect, the trial judge had found that the appellant had not relinquished his position at the time the offences were committed. Evidence given by all of the employees of PCC at the trial confirmed that the appellant was still acting as Service Logistics Manager then, despite his added appointment in March 2000. His argument that his duties had been relinquished to Lu Ping was facetious since clear evidence was given by Lu Ping and Agnes that they still reported to the appellant. The only evidence to support the appellant's contention was given by an employee of JSI, an outsider. I found that the trial judge was plainly right in her finding.

46 The appellant also questioned the accuracy of Spark's evidence on the responsibilities of Service Logistics Manager since Sparks was not certain in other parts of his evidence. This, in my view, is totally without merit. Sparks was clear and firm in his description of the appellant's job scope. His uncertainty was only with regard to his memory of recent changes in appointments within PCC.

47 As to the legal aspect, the question to be answered is whether the appellant could be said to be entrusted with dominion over the goods simply because he had management responsibility for them, and, if so, whether sole dominion over the goods was a necessary element of criminal breach of trust.

48 In *Criminal Law in Singapore and Malaysia* (Koh, Clarkson and Morgan, 1989), the learned authors opined at page 588 that "the factor which effectively determines whether there is entrustment of dominion is the degree of control exercised by the accused".

49 In *Birmala Charan Roy* (1913) 35 All 361, a water inspector who was under a duty to check and supervise the distribution of water from the water works was held to have dominion over the water belonging to his employers. Further, in *State of Rajasthan v Kesar Singh* [1969] Cri L J 1595, the court held that where a person had dominion in the sense of "general control and supervision" over property entrusted to him in his position as an employee, he could be liable for criminal breach of

trust if he misappropriated the property or was party to a criminal breach of trust by another person.

50 Both the above cases plainly support the proposition that a general degree of control can amount to dominion over a property.

51 I turn next to consider whether sole dominion is necessary for an offence of criminal breach of trust to be made out. Such a requirement does not appear within the provision itself. In *Criminal Law in Singapore and Malaysia*, the authors stated that it is possible to convict an accused for criminal breach of trust even if there is concurrently another person in overall control of the operations or day-to-day running of operations.

52 In *Kesar Singh* itself, the accused was an employee of a palace with supervisory power over its staff and affairs. The alleged offence was in relation to grain stocks not under his direct control. Another employee was in charge of the delivery and receipt of grain, but had to tender a report to the accused on each delivery or receipt of grain, which the accused would endorse. The grain was found to be short and the accused was charged with criminal breach of trust.

53 Although the accused was found not guilty in that case, this was due solely to the fact that there was a lack of evidence connecting him to the pilferage of the grain. As such, the case shows clearly that sole dominion is not a necessary condition to establishing criminal breach of trust.

54 In my opinion, this is plainly right. The essence of the offence lies in the entrustment of property to an employee and his subsequent betrayal of that trust. Whether or not there is sole dominion over the property is irrelevant; what is important is only the fact that the trust was breached, and this is so equally whether or not dominion of the property was entrusted solely to a specific employee or to a number of employees, one of whom subsequently misappropriates the property. It would be ludicrous to say that the latter could not have committed criminal breach of trust simply by reason of the fact that others were *also* entrusted with dominion over said property.

55 On the facts of the case, the job scope of the appellant clearly involved supervisory and general control over the goods stored in JSI. He could request for the goods whenever he wanted and have it sent where ever he wished. He was responsible for their movements and was the overall head of the department which managed the movement of the goods – the logistics department.

56 Based on the foregoing, I accordingly found that once the fact of the appellant's position as Service Logistics Manager was established at the material time of the transactions, entrustment of dominion over the relevant property was established.

Property entrusted with dominion over was not the same property which was misappropriated

57 It was argued by the appellant that that there was a break in the chain of evidence to show that the goods the appellant was entrusted with dominion over was not the same as those sold by Donald. He relied on evidence given by Donald and Anthony to the effect that the subject matter of the transactions were second-hand refurbished phones. Teo, who had packed the goods for sale, also admitted under cross-examination that he was unsure if the goods were new. The learned trial judge had accepted that the goods ordered by Agnes for the purposes of the transactions were all brand new.

58 The trial judge dismissed this as neither Donald nor Anthony had actually examined all the goods sold. She found that Anthony's belief that the goods were second-hand came solely from his conversation with Donald when negotiating the transaction and prices. Agnes had given all the goods

she received to Teo, who had packed them personally. Donald's evidence on the goods being second-hand was in the context of the prices that he had negotiated for them, that is, the price he had sold the goods at were the prices a second-hand version of the goods would fetch. It is highly plausible that Donald told Anthony the goods were second-hand in order to alleviate any suspicions of illegality Anthony might have.

59 Teo had given evidence that, from what he could see, the goods were new. He also gave evidence that goods given to him by Agnes were packed by him into cartons, and he personally witnessed the delivery of the carton of goods to Anthony on 17 May 2000. The trial judge had found that the goods sold by Donald were the same as those over which the appellant had been entrusted dominion. Having examined the evidence, I see no reason to conclude that she had clearly reached a wrong decision.

The credibility of prosecution witnesses was suspect and a conviction based on their evidence was unsafe

60 The crux of this submission was that the reliability of the evidence given by three prosecution witnesses – Donald, Agnes and Alvin; was suspect.

Donald's evidence

61 Donald's evidence directly implicated the appellant in the conspiracy. The defence challenged his credibility on many grounds, which include:

i It is implausible that the appellant would have approached him to suggest the conspiracy since they were not on close terms.

ii Donald's evidence that the appellant approached him in the office to suggest the conspiracy from 1 to 6 May 2000 was implausible since there was only one day during that period when this would have been possible.

iii It is highly likely on the evidence that Donald could have fulfilled the transactions on his own

iv Donald's evidence was riddled with other inconsistencies which rendered his evidence suspect.

v That the fact of Donald being an accomplice coupled with the many inconsistencies in his evidence meant that he should be presumed unworthy of credit via exercise of the court's discretion under s116(b) of the Evidence Act (Cap. 97)

62 These had all been argued before the trial judge, who rejected all of these contentions. I agree with her findings. Donald's job scope enabled him to travel widely and meet many people, a fact known to the appellant. Thus it was not unlikely that he should have been chosen. The appellant would also have known Donald well enough to seize him up and have an idea of his suitability as a partner in crime, given that they had been colleagues for over a year.

63 I found the submission in (ii) to be totally without merit. Donald's recollection of the appellant's approach was clear and unambiguous. The appellant's absence from office during five of the six days in the period simply meant that he must have approached Donald in the office on the day

he was present, which was 3 May 2000. This by itself does not cast any reasonable doubt on Donald's testimony, especially since there was no evidence that the appellant could not have approached Donald on that day.

64 With regard to Donald's ability to perform the transactions on his own, the evidence clearly showed that Donald did not have the power to requisition such large quantities of goods as for the transaction. Only with the appellant's, or someone from the logistics department, help would the goods have been able to be requisitioned. Furthermore, there was also independent evidence which implicated the appellant in the transactions.

65 The appellant had sought to use the discrepancy in quantities which I have highlighted earlier to support his contention that Donald was engaged in his own private dealings and that his allegations against the appellant were false. However, I was of the opinion that the problems raised by the discrepancy had already been fully dealt with by the trial judge in her findings and I saw no reason to disturb them.

66 Various other inconsistencies were raised, all of which were fully dealt with by the trial judge in coming to her decision. I could see no fault in her finding that Donald's evidence was generally cogent, believable and supported by evidence from other prosecution witnesses.

67 With regard to the submission in (v), the trial judge had borne in mind provision 116(b) of the Evidence Act (Cap 97) when she scrutinised the Donald's evidence and explicitly cautioned herself as to this fact. In *Jimina Jacee d/o CD Athanasius v PP* [2000] 2 SLR 205, I held that s116(b) of the Evidence Act did not mean that an accomplice's evidence *must* be presumed to be unworthy of credit. The correct approach should be:

Whether or not the accomplice's evidence is reliable will depend on all the circumstance of each case. *All that the court is required to do is to scrutinise such evidence carefully* [italics added]

68 In the present case, the trial judge had correctly directed herself in examining Donald's evidence. Furthermore, the fact that Donald had already been charged and sentenced for his part in the transactions was another factor for believing in the truth of his evidence. The defence contention that Donald's testimony was inherently improbable is unsupportable, and I found their suggestion that he had fabricated his evidence to get a lighter sentence by minimising his role without any merit, especially since Donald freely admitted to playing a major part in the transactions.

69 Furthermore, Donald's evidence was supported in many respects by evidence of other witnesses. For instance, his description of the arrangement for collecting the goods for sale pursuant to his agreement with the appellant was supported by both Agnes and Teo. The strongest supporting evidence for the existence of the conspiracy comes from the evidence of Alvin in his narration of the phone calls to him by the appellant, requesting for his aid in covering up evidence of the appellant's wrong-doing. In view of all this, I found that the trial judge was correct in accepting the evidence of Donald and relying on it to prove the existence of the conspiracy.

Agnes' evidence

70 Evidence provided by Agnes helped linked the appellant to the goods which were sold. Agnes gave evidence that the goods were all ordered on the instructions of the appellant; this, coupled with Teo's evidence that the goods sold were taken from Agnes, as well as the correspondence of the items ordered to those sold, clearly implicated the appellant.

71 The trial judge had found that Agnes was edgy and had difficulty in expressing herself. Although there were material discrepancies in evidence given by Agnes, these related to other incidents in the sequence of events leading to the transaction, for example, Agnes had stated that she kept the delivered goods in a locked cupboard. This was contradicted, however, by Teo and Charmaine, both of whom asserted that the goods were lying around.

72 With regards to her evidence on the appellant's instructions, however, Agnes' was found by the trial judge to be reliable. In respect of both her ordering of the goods and the communications with Donald, the trial judge found that Agnes was clear that she was acting on the appellant's instructions. This was consistently held to by her despite vigorous cross-examination.

73 In *PP v Gan Lim Soon* [1993] 3 SLR 261, the court stated:

As with so many cases, where the lapse of time has caused memories to blur and fade, and result in throwing up many discrepancies in evidence, it is vitally important that courts do not lose sight of the wood for the trees.

In *Ng Kwee Leong v PP* [1998] 3 SLR 942, I also held that a court can decide to accept one part of a witness' testimony while rejecting the other.

74 Applying this approach, I found nothing wrong in relying on Agnes' evidence in part. The actual dates and circumstances of the appellant giving instructions to her are immaterial; what was important was that these instructions were in fact given. On this, Agnes' evidence was cogent and reliable. The fact that she had copied one of her emails ordering the goods to the appellant lends more weight to her testimony, as he would surely have suspected something was amiss if he had truly not been involved in the transactions. I found it hard to believe the appellant's explanation that he had not seen the email. The same approach was adopted by the trial judge, who relied only on the parts of Agnes' evidence which proved that the goods were ordered on orders from the appellant. She was entitled to do so.

Alvin's evidence

75 Alvin's evidence concerning the envelope containing the money is strong circumstantial evidence of the appellant's involvement in the conspiracy, as well as supporting Donald's version of events.

76 In relation to the retrieval of the envelope, Alvin's version of events was corroborated in various aspects by Eka, Teo and Lu Ping. The defence's suggestion that the envelope was planted is far fetched as Donald would have had to know some six months in advance (he was investigated for these offences in November 2000) that the transactions would be found out.

77 Further, when coupled with the evidence of the phone calls by the appellant, I found that a strong inference arises of the appellant's guilt.

78 The appellant denied ever making the alleged phone calls to Alvin. He pointed out that Alvin's phone records on 24 May 2000, when he claims the appellant called him numerous times to ask for his help, showed no trace of the appellant's handphone number.

79 The trial judge accepted that the appellant called from an unregistered number – marked as "ex-directory" in the phone records. I examined the evidence, and in my opinion she was right in finding this part of Alvin's evidence to be credible.

80 Counsel for the appellant argued strenuously that Alvin's readiness to assist Donald and the appellant in retrieving the envelope, even though he had known or must have suspected there something was amiss, was not normal behaviour. The appellant's counsel further pointed out that even after Alvin opened the envelope and saw the money, he continued to keep in contact with Donald on a regular basis. It was submitted that these actions when viewed together cast doubt on Alvin's portrayal of himself as an innocent party to the transactions in this case, and hence his credibility should be suspect as well.

81 I found this submission to be without merit. The only way Alvin's evidence can be excluded would be if one were to accept that he was part of a plot to frame the accused. However, the appellant could not offer any reason why Alvin would wish to frame him. Furthermore, the Alvin's retrieval of the envelope (on 24 May 2000) happened a full six months before the appellant and Donald were investigated in relation to transactions in issue (24 November 2000). It is hard to imagine that a plot to frame the appellant would have been hatched so long beforehand. The trial judge had already found Alvin to be a reliable witness. Having considered the above factors, I found that she was entitled to rely on Alvin's evidence.

Alleged conspiracy

82 The appellant suggested the existence of a plot to frame him, involving Donald, Teo, Agnes and Alvin. He raised the following points in support:

i That he had had a few incidents at work in which unhappiness arose between him and Donald – in particular, the appellant had once told Donald that he would be laid off if Donald went for an operation. According to the appellant, Donald had thought he was lying and swore to "get him" if he was. The appellant alleges that this caused Donald to bear a grudge against him.

ii That Agnes bore a grudge against him as he was a harsh taskmaster and had once scolded her to tears.

iii That there was general ill-will towards him as he was from Hong Kong and a harsh taskmaster

83 These allegations were dismissed by the trial judge. She found the appellant's version of events to be unsubstantiated. Donald denied that he had a grudge against the appellant, and Agnes denied that the incident in (ii) even occurred. She found the third ground to be without any basis in fact.

84 In my opinion, the appellant's allegation here is plainly fallacious. Supporting evidence pointing to the appellant's guilt in some fashion or another had been given by other prosecution witnesses. To suggest that Donald could have planned such an intricate web of deception beggars belief, and the trial judge was right in dismissing this.

Conclusion

85 It is settled law that an appellate court should be slow to disturb a trial judge's finding of fact. Reference can be made to *PP v Victor Rajoo s/o Pitchay Muthu* [1995] 3 SLR 417, where the Court of Appeal stated:

The learned trial judge, who had the benefit of seeing and hearing the

complainant and the accused giving evidence made findings of fact based on the veracity and credibility of their respective evidence. Due regard must be given to the learned judge's findings, and such findings should not be disturbed unless we are satisfied that he has clearly reached a wrong decision.

Having reviewed all the evidence, I see no reason for me to conclude that the trial judge has clearly reached a wrong decision. She had the opportunity to observe the demeanour of all the relevant witnesses in trial, and there is nothing to suggest to me that her findings were wrong in any way.

86 For the reasons stated above, I dismissed the appeal against conviction.

Sgd:

YONG PUNG HOW

Chief Justice

Copyright © Government of Singapore.