Wong Loke Cheng v Public Prosecutor
[2002] SGHC 299

Case Number : MA No 127 of 2002, CM No 11 of 2002

Decision Date : 11 December 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jimmy Yim SC and Eugene Quah (Drew & Napier LLC) for the appellant; Winston Cheng Howe Ming (Deputy Public Prosecutor) for the respondent

Parties : —

Criminal Procedure and Sentencing – Appeal – Findings of fact – Approach of appellate court – Whether any reason to interfere with trial judge's findings of fact – Applicable principles – Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 261

Criminal Procedure and Sentencing – Sentencing – Whether acts of receiving gratification on several different occasions constitute one composite offence – Penal Code (Cap 224, 1985 Rev Ed) s 71(1)

Judgment

GROUNDS OF DECISION

The appellant, Wong Loke Cheng, was tried and convicted in the district court on nine amended charges of corruption pursuant to s 6(a) of the Prevention of Corruption Act (Cap 241) ('the Act'). The first amended charge read:

> You, Wong Loke Cheng, Male 44/years, NRIC No: S1246390A, are charged that you, on or about the 14th day of July 2000, at the Basement One Foodcourt at Chinatown Point Complex, Singapore, being an agent, namely, an Executive Director in the employ of Sea Consortium Pte Ltd, Singapore, did corruptly obtain from one Yu Yong Jun, Managing Director of Fortune Glory Pte Ltd, a gratification in the form of a sum of US$8,687 (US Dollars Eight Thousand Six Hundred And Eighty Seven), equivalent to S$15,067.60 (Singapore Dollars Fifteen Thousand Sixty Seven and Cents Sixty), as a reward for having done an act in relation to your principal's affairs, to wit, having recommended to your principal in or about June 2000 the charter of the vessel 'Da Fu' from Da Lian Marine Shipping Corp, and you have thereby committed an offence punishable under Section 6(a) of the Prevention of Corruption Act, Cap 241.

The other eight amended charges were the same in all material respects, save only for the amounts of the gratification obtained and the locations at which the offences were alleged to have taken place. The total gratification, paid out between July 2000 and May 2001, amounted to US$90,377.

2 The district judge sentenced the appellant to pay a penalty of S$157,255.98, which penalty he paid before I heard this appeal, and to a total of 10 months' imprisonment for the nine amended charges. The appellant appealed against both conviction and sentence. I dismissed both appeals, and

now give my reasons. The appeal against sentence was initially withdrawn, but as counsel made oral submissions on that point before me, I shall address the points he raised herein.

3 At the same time, the appellant filed Criminal Motion No. 11 of 2002 seeking to adduce new evidence at the appeal, which counsel for the appellant then sought leave to withdraw at the hearing before me. I granted such leave, and the criminal motion was duly withdrawn.

The proceedings below

The case for the prosecution

4 The prosecution's case was essentially this: that the appellant, as executive director of Sea Consortium Pte Ltd ('Sea Consortium'), had received US$90,377 in bribes from one Yu Yong Jun ('Yu'), in return for procuring Sea Consortium's charter of the vessel Da Fu from her owner, Da Lian Marine Shipping Corp ('Da Lian').

5 Sea Consortium provides scheduled container feeder services from four hub ports, Singapore, Colombo, Dubai and Malta, to minor ports within those regions. In order to provide such services, Sea Consortium charters various vessels. Yu is the managing director of Fortune Glory Pte Ltd ('Fortune Glory'), which was the Da Fu's shipping agent at the material time. Together with Da Lian and Far Glory Holdings Pte Ltd ('Far Glory'), it is a subsidiary of the China-based Da Lian Shipping Group.

6 Yu was the key witness for the prosecution. He testified that in early June 2000 he knew that the Da Fu would be in Colombo in mid-June without any business. However, he wanted to bring the Da Fu back to Singapore for dry dock repairs and it was dangerous for the vessel to sail without any cargo. In these circumstances, he called the appellant, with whom he had been acquainted since 1994 through certain shipping industry events, although they only began working closely together from June 2000 onwards. He asked the appellant if he could charter the Da Fu so that it could be brought back to Singapore for repairs. The appellant said he would consider the matter, and call him back.

7 The appellant called Yu one or two days later. The appellant proposed that Sea Consortium charter the Da Fu for the journey back to Singapore ('the voyage charter'), and enter into a one-year time charter of the same vessel thereafter ('the time charter'). The proposed rate for the voyage charter was US$3,000 to US$3,200 per day, while that for the time charter would be US$5,000 to US$5,100 per day. The appellant added that he required 'some personal benefits' of US$300 per day for both charters. Yu told him that he could arrange for this. On the same day, he spoke by telephone to the chairman of the Da Lian Shipping Group, one Men Hong Sheng ('Men'), who was in China. That night, Yu faxed Men setting out the details of the arrangement, which was then approved.

8 The faxed reply from China was not admitted at the trial below as no-one from China came to testify. The prosecution indicated that Men had been willing to come, but had then fallen ill and decided against travelling to Singapore. However, the defence sought to have and did have the faxed reply admitted as Exh D6 for the fax transmission details contained therein. Yu testified that the original faxes had been lost.

9 Subsequently, there were two meetings between Yu on the one hand, and the appellant and his associates on the other, to discuss the voyage charter and the time charter. The first meeting was on 7 June 2000 at Sea Consortium's office. The appellant's associates at this meeting were one Vico Lew ('Capt Vico') and one Surajdeep Singh ('Capt Suraj'), a line manager at Sea Consortium. A charter rate of US$3,200 was agreed on. No formal agreement was signed. Instead, Yu tied up the

details with the appellant via e-mail. The second meeting was on 15 June 2000. The appellant telephoned Yu asking him to come to his office. At this meeting, Sea Consortium's chartering manager and head of the fleet management department, one Yong Lin Kong ('Yong'), was present in addition to the appellant and Yu. At this meeting, a rate of US$5,100 per day was agreed on for the time charter. A formal agreement was signed. At neither meeting was the US$300 per day 'personal benefit' mentioned. Yu said that this was because he understood it to be a confidential matter between himself and the appellant.

10 The modus operandi for the payment of the bribes to the appellant was as follows. Yu calculated the first amount due to the appellant. For subsequent payments, he instructed his subordinate Zhang Li Qin ('Zhang'), who was in charge of the financial affairs of Far Glory and Fortune Glory, to calculate the amounts and prepare the cash for him. Zhang would draw up a payment voucher and a cash cheque for each amount. In the payment vouchers, the payments were described as 'commission' for Sea Consortium. Yu paid the appellant in US dollars, cash, to avoid leaving evidence behind. He made a total of nine payments. Yu met the appellant at the Chinatown Point Foodcourt and the Amara Hotel coffee house to make the first two payments. For the remaining seven payments, Yu parked his car at Duxton Road, near Sea Consortium's office, and handed the appellant the cash in the car. Yu said that they would then go for drinks or some food, but could not remember where they went each time. He also could not remember the precise dates on which the payments were made. The dates provided to the court below were mainly based on the dates of the payment vouchers and the cash cheques.

11 Yu would place the cash in envelopes to hand over to the appellant. One such envelope was Exh P13. This was the envelope used for the second payment. It was recovered from the appellant's residence when it was raided by officers from the Corrupt Practices Investigation Bureau ('CPIB'). The dates on the envelope, '10 Aug – 9 Sep 2000', were written in Yu's handwriting and represented the period for the second payment. However, Yu made an error of a day when writing those dates down. They should have been 9 August to 8 September 2000.

12 Yu created five sham receipts for some of the payments. In them, one 'LC Wong' was stated to have received 'address commission' from Fortune Glory for Sea Consortium's charter of the Da Fu. Yu said that he did not ask the appellant to sign the receipts as he knew that the appellant would not have done so. Yu did not prepare receipts for the remaining payments as he was busy with his work and did not have the time to do so.

13 Sea Consortium had previously chartered the Da Fu's sister ship, the Da Fa. In April or May 2001, this charter ended and was not renewed by Sea Consortium. However, Yu discussed the charter of another vessel, the Da Lian, with the appellant around this period. Sea Consortium did eventually charter this vessel at US$6,300 per day. The appellant did not ask for any 'personal benefits' this time.

14 Two CPIB officers, one Soh Kin Wai and one Lim Yong Seng Vincent, testified that on 25 June 2001 they raided the appellant's residence and found four envelopes containing substantial amounts of US dollars in cash, including Exh P13. They testified further that, when asked, the appellant told them that he was keeping the money to invest in a ship.

15 Apart from his executive directorship at Sea Consortium, the appellant was also involved in two other companies, namely, Joint Fun Investments Pte Ltd ('Joint Fun') and Royal Ship Brokering Services ('RSS'). The appellant was a part-time consultant for Joint Fun, giving advice on ships' suitability for the feeder market. He had set up RSS jointly with one Chan Yew Thong, an ex-classmate. RSS provided boarding, checker and ship planning services to Sea Consortium. When the

appellant's superior at Sea Consortium, one Timothy Hartnoll ('Hartnoll'), asked him directly if he was involved in RSS, he denied it.

The defence

16 In his defence below, the appellant denied that the corrupt payments ever took place. It was Capt Suraj's idea, in early June 2000, to charter the Da Fu following his encounter with Yu on board the Da Fa during a routine inspection. Capt Suraj was the line manager in charge of the Singapore-Colombo-Chittagong service. Yu told Capt Suraj that he had a ship due for redelivery from the last charterer, and asked if Sea Consortium required a ship. Upon Capt Suraj's return to Sea Consortium's office, he asked the appellant and Capt Vico whether they were interested. The appellant asked Capt Suraj to invite Yu to the office to discuss the matter. The telephone call from Yu to the appellant, and the subsequent call from the appellant to Yu to arrange for the US$300 per day 'personal benefit' on top of the two charters, never took place.

17 At the meeting on 7 June 2000, Capt Suraj offered a charter rate of US$3,200 per day. Yu accepted this rate even though it was well below the daily market rate of US$5,100 to US$5,500. This was probably because he was desperate and could not find any other charterers for the Da Fu. It was already early June and the vessel had to be brought back by mid-June to undergo repairs. However, it would not be particularly dangerous for the Da Fu to be brought back without any cargo despite the monsoon.

18 Capt Suraj was also present at the meeting of 15 June 2000 with the appellant, Yu and Yong. Yong joined towards the end of the meeting. The main terms of the time charter were subsequently set out in an email. The charter rate of US$5,100 was well within market range.

19 With respect to the dates on the envelope Exh P13, the appellant's version of events was that they were dates for the laycan period of a vessel for potential charter by Sea Consortium. According to the evidence of the appellant, Capt Suraj and one Ananda Kumar ('Capt Kumar'), Yu met with them at the Elvis Pub near Sea Consortium's office on 21 July 2000 for an informal meeting to discuss possibilities for Sea Consortium's new Singapore-Surabaya route. Yu took out Exh P13, which contained ship specifications, and asked the appellant for advice on them. The appellant mentioned the laycan period dates required for the Singapore-Surabaya service. Yu wrote them down on Exh P13. The appellant took Exh P13 home with him.

The decision of the district judge

20 As it was clear to me that this appeal involved two completely conflicting bodies of evidence – that of the prosecution, and that of the defence – I now set out in some detail the district judge's reasoning as to her findings on the credibility of the witnesses who testified in the proceedings below.

21 In evaluating the evidence of the key prosecution witness, Yu, the district judge bore in mind her prior ruling that his role in the factual milieu went beyond that of a mere payor, and consequently fell outside the scope of s 25 of the Act. Section 25 reads:

> Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in section 24, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an agent…

The district judge found Yu's account cogent and consistent, and not incredible in any aspects. It fitted in with the surrounding circumstances at the time, and was in accord with the undisputed factual matrix. Further, she was of the view that Yu had been candid in court. He had not sought to hide his own role as an accomplice in the matter, and had implicated himself fully in the transactions. His evidence was supported by the documentary evidence, namely, the fax transmission (Exh P22) and the envelope (Exh P13), and corroborated by Zhang's oral testimony. The district judge concluded:

> Having considered all the aspects, *and bearing in mind the caution with which to treat his evidence*, I found Mr Yu credible, and his testimony reliable. [Emphasis added.]

22 On Zhang's testimony, the district judge had this to say:

> On the whole, Ms Zhang's evidence was factual in nature, and she gave a clear account of what happened, without any embellishments. I considered the possibility that Ms Zhang was protecting Mr Yu or herself. However, in her evidence, she had clearly implicated Mr Yu in the transactions, and she also admitted to her knowledge of the bribes. I found that she was a reliable witness, and that her evidence was to be given full weight.

23 In contrast, the district judge rejected the defence version of events as portrayed in the accounts of the main defence witnesses, namely, the appellant, Capt Suraj and Capt Kumar. She noted that while the appellant's evidence was consistent both internally and with the evidence of the other defence witnesses, she did not rely much on that in weighing his evidence. Instead, what was critical was that the appellant's version was unbelievable. While quick to dissociate himself from Yu and any wrongdoing, the appellant's own conduct showed that they shared a close relationship. The appellant was quick to portray Yu as an untrustworthy person out to frame him when there was no basis for doing so. The district judge therefore found the appellant's version implausible, and rejected it.

24 She also rejected the evidence of Capt Suraj and Capt Kumar. She found that they both had clear motives to assist the appellant, in that Capt Suraj was his subordinate and worked closely with him, and Capt Kumar was dependent on Sea Consortium for business and was an old subordinate of the appellant's. Capt Suraj's account of the negotiations for the two charters of the Da Fu was rejected, as was Capt Kumar's version of the meeting at the Elvis Pub and how the appellant came into possession of Exh P13.

25 As such, the district judge found that the prosecution had proved its case beyond a reasonable doubt and convicted the appellant accordingly.

The appeal against conviction

The crux of the appeal

26 Before me, the appellant raised the following issues:

> a whether the district judge was correct in finding that Yu was a credible and reliable witness;

> b whether the district judge erred by failing to give proper weight to undisputed facts which rendered improbable Yu's version that the appellant had asked for and received the bribes;
>
> c whether the district judge erred in not giving proper weight to the evidence of Capt Suraj;
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> d whether the district judge erred in not giving proper weight to the evidence of Yong;
>
> e whether the district judge erred in rejecting the evidence of Capt Kumar; and
>
> f whether the district judge erred in not treating Zhang's evidence with sufficient caution.

27 The nub of this appeal, therefore, was this: whether the district judge was correct in accepting the evidence of the prosecution witnesses, principally Yu, and rejecting the evidence of the defence witnesses. This was a near-classic case of oath against oath, namely, Yu's bare allegation, given that no-one save he himself had actually seen the appellant accepting the bribe monies, as against the appellant's bare denial, corroborated only by witnesses who appeared to risk bias given that, as his subordinates and business associates, they apparently stood to gain if they testified in his favour.

The law

28 Fundamentally, this appeal involved an attack by the appellant on the findings of fact made by the district judge. As such, I found it appropriate to revisit the settled principles of law relating to overturning the trial judge's findings of fact on appeal. The threshold that must be reached in order to justify overturning those findings is very high. Section 261 of the Criminal Procedure Code (Cap 68) ('CPC) provides:

> No judgment, sentence or order of a District Court or Magistrate's Court shall be reversed or set aside *unless it is shown to the satisfaction of the High Court that the judgment, acquittal, sentence or order was either wrong in law or against the weight of the evidence*, or, in the case of a sentence, manifestly excessive or inadequate in the circumstances of the case. [Emphasis added.]

In *Lim Ah Poh v PP* [1992] 1 SLR 713, FA Chua J stated:

> An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, *an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges' findings and their reasons therefor.* [Emphasis added.]

29 I endorsed this principle in an entire line of subsequent cases: see for example *Shamsul bin Abdullah v PP* (MA No. 145/2002), *Chua Yong Khiang Melvin v PP* [1999] 4 SLR 87, *Soh Yang Tick v PP* [1998] 2 SLR 42 and *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464. In *Soh Yang Tick v PP*, I held, specifically in relation to situations where findings of fact depend on the credibility and veracity of witnesses, that an appellate court should be reluctant to overturn the trial judge's findings. This is simply because the appellate court is in a less advantageous position as compared to the trial judge, who has had the benefit of hearing the evidence of the witnesses in full, and observing their demeanour. I then summarised the effect of the governing jurisprudence as follows:

> The upshot of these cases is that factual findings of fact [*sic*] are prima facie correct and will not be lightly disturbed in the absence of good reasons. To do so would be contrary to the function of an appellate court, for its duties lie in correcting errors, and not in the reviewing of facts.

30 With these principles borne firmly in mind, I now turn to examine each of the six grounds of appeal, all of which centre on the district judge's findings of fact with respect to the credibility of the witnesses and the weight to be accorded their evidence. As the issues relating to grounds (c), (e) and (f) are essentially the same, I will deal with them together.

The grounds of appeal

(a) Whether the district judge erred in finding Yu a credible and reliable witness

31 Before me, counsel for the appellant asserted that Yu could have been the actual offender. He had fabricated the faxes, and his actual forgery of the receipts showed that he had no qualms about fabricating evidence to pervert the course of justice. Some of his evidence contradicted that of Zhang's; for example, while he had said that he did not count the money that she gave him, she had stated that he would do so sometimes. Further, his inability to recall where he went with the appellant after the Duxton Road meetings called into doubt his evidence that he had actually paid the appellant the bribe monies.

32 After thoroughly reviewing both the Notes of Evidence of the proceedings below, as well as the district judge's grounds of decision, I concluded that the district judge had clear and cogent reasons for making her findings. First, in relation to treating Yu's evidence with caution, she had firmly kept in view the fact that Yu himself was not completely absolved of wrongdoing. To make a direct assertion that Yu was siphoning funds off from Fortune Glory and/or Da Lian in this way was to cast aside completely the district judge's careful consideration of Yu's evidence, and the demeanour with which he gave that evidence, at first instance. The allegation that Yu forged the faxes was but a bare allegation given that the appellant's criminal motion was subsequently withdrawn.

33 Second, Yu stated in his testimony that he did not ask the appellant to sign the receipts because he knew that he would not have done so. I did not see that this was such an implausible explanation. In addition, given the fact that Yu was bribing the appellant in the first place, it would have been ludicrous at the very least to expect him to obtain the appellant's signature on those receipts.

34 As to Yu's inability to recall where he and the appellant went after the Duxton Road meetings, I found that the district judge had directed her mind to this aspect of his testimony too. She noted that the payments stretched over almost a year, and that 'in such circumstances, it was reasonable that Mr Yu could not remember where exactly they went to after meeting up at Duxton

Road.' As the DPP submitted in his written arguments, even if this were an issue, it was not material to the commission of the offence. The DPP cited the following passage from *Ng Chiew Kiat v PP* [2000] 1 SLR 370, where I stated:

> … the mere fact that the complainant was unable to say with certainty when the offences took place would not without more render her entire testimony unreliable. Unlike the appellate court, the district judge had the advantage of observing the complainant's demeanour at the stand as she gave her evidence. She found her to be a truthful witness. Having perused the records of appeal thoroughly, I could not say that the district judge was plainly wrong in her assessment of the veracity of the complainant. As such, I would not interfere with her findings.

The same reasoning could be applied to the appellant's contention on the inconsistency of Yu's evidence with Zhang's on the point of whether or not he counted the money before handing it to the appellant. It was in no way material to the offence for which the appellant was convicted.

35 I therefore saw no valid reason for overturning the district judge's findings with regards to Yu's credibility and reliability as a witness.

(b) Whether the district judge had failed to give proper weight to undisputed facts which rendered Yu's allegations that the appellant had asked for and received bribes improbable

36 The appellant argued before me that the fact that he did not ask for bribes when the Da Fa's charter came up for renewal and for the charter of the Da Lian showed that it was improbable that he had asked for bribes for the two charters of the Da Fu. I reiterate that the district judge expressly stated that she found that Yu's testimony 'fitted with the surrounding circumstances at the time, and was in accord with the undisputed factual matrix.' It could not be said, then, that she did *not* give proper weight to the other evidence in making her assessment of Yu's credibiltiy and his account of the events that took place. Whether or not the appellant asked for bribes for the charter of the Da Lian and the possible renewal of the Da Fa's charter is entirely irrelevant to whether or not he committed *this* offence.

37 The appellant further submitted that the bribes did not make commercial sense. He also contended that there would have been no necessity for Yu to bribe him for the time charter of the Da Fu, since there was no evidence that Yu was hard-pressed to find a charterer for the vessel after its return to Singapore, and given that Hartnoll stated in his evidence that market demand for vessels of the Da Fu's specifications was in fact rising. I was satisfied from my review of the notes of evidence that it was clear, given the monsoon season and the potential danger to the Da Fu if she sailed without cargo, that Yu was prepared to accept a loss. In those circumstances, the bribe was not exorbitantly high. Also, the bribe for the time charter was part of Yu's private agreement with the appellant, concluded over the telephone in early June 2000.

38 With specific regard to whether or not it was actually dangerous to sail in the Bay of Bengal during the monsoon season, the district judge chose to reject Capt Suraj's evidence that it was not, and accepted the version presented by the prosecution that it was. She was perfectly entitled to do so, and there was nothing in the notes of evidence that persuaded me otherwise. As such, I also found no reason to disturb the district judge's findings of fact on this issue. I will deal with Capt Suraj's evidence in further detail under heading (d) below.

(c) Whether the district judge erred in failing to consider Yong's evidence

39 I found it was true that the district judge did not consider Yong's evidence at length in her grounds of decision. However, I was not convinced, after carefully perusing the Notes of Evidence in relation to his testimony at the trial, that he could be of any help to the defence. He could only testify as to the tail-end of the meeting of 15 June 2002 at which the time charter of the Da Fu was finalised. I set out this extract from Yong's cross-examination to demonstrate how little he actually knew of the events in this case:

> Q. When you joined the meeting, had parties already agreed on charter rate?
>
> A. Yes.
>
> Q. Did you get to listen to any of the negotiations on charter rate?
>
> A. No.

The appellant had therefore shown no valid reason, apart from the mere fact that the district judge did not dwell at length on Yong's evidence in her grounds of decision, why her findings should be disturbed. Simply put, Yong's evidence contributed nothing to the defence case.

(d) The district judge's treatment of the evidence of Capt Suraj, Capt Kumar and Zhang

40 Counsel for the appellant submitted at length in their written arguments on certain factual aspects of Capt Suraj's and Capt Kumar's evidence that they contended showed why the district judge should have preferred the defence case to that of the prosecution. The root of the dispute here was in fact, once again, witness credibility.

41 The appellant's submissions with respect to the district judge's findings on the evidence of these three witnesses could be summarised thus. The district judge rejected the evidence of Capt Suraj and Capt Kumar on the grounds that their evidence was designed to corroborate the appellant's own testimony and the defence version of events in general, and that they had some motive to generate favourable testimony for the appellant because of their respective relationships with him. Capt Suraj was the appellant's subordinate at Sea Consortium, while Capt Kumar was a former subordinate who now depended on Sea Consortium for business. He also continued to be a regular golf buddy of the appellant's. The appellant also took issue with the district judge's findings on the reliability of Zhang's evidence, pointing out that the district judge did not apply the same reasoning to Zhang's evidence and that she 'was, after all, Yu's subordinate and would, by a parity of reasoning, tailor her evidence to favour Yu.'

42 I did not see any merit in these arguments. In her grounds of decision, the district judge did consider Zhang's position in relation to Yu, and the possibility that she might have an incentive to protect either herself or Yu. She found that despite that, Zhang had been frank on the witness stand and she chose to accept her testimony. As for the evidence of Capt Suraj and Capt Kumar, my perusal of the notes of evidence disclosed a somewhat rehearsed nature to their testimony. Capt Kumar, for one, appeared very confident that Yu had written laycan dates on the envelope Exh P13:

> Q. You said sometime after this, Yu wrote something on it?

A. Yes.

Q. Did you notice what he was writing?

A. I didn't go close to see. But at that time, the discussion was laycan of Singapore/Surabaya Service. So he wrote the laycan mentioned by Captain Wong.

Q. Did you see him write down the laycan dates? Are you sure he wrote down the laycan dates?

A. Yes. I am sure he was writing the laycan dates stated by Wong.

Q. Did you see him write down laycan dates?

A. As Captain Wong spoke, he was writing down laycan dates.

Q. Would I be correct to say you assumed he was writing the laycan?

A. No.

43 It is apparent even here that this exchange seems not to ring true. Moreover, I did not have, as the district judge did, the additional benefit of observing these witnesses give testimony during the trial. Coupled with the fact that in his statement to the CPIB, the appellant claimed not to know what the dates were for, and the appellant's own performance on the stand during trial, the district judge's finding that Capt Suraj and Capt Kumar both gave testimony designed to corroborate the appellant was perfectly reasonable. Again, I saw absolutely no reason to disturb the district judge's findings.

Conclusion on the appeal against conviction

44 There was no denying the fact that Yu was not devoid of wrongdoing on his own part in giving the appellant the bribes and, *inter alia*, forging receipts in furtherance of that enterprise. However, I found the district judge's conclusions to be perfectly sound. In the absence of any compelling indications to the contrary, and in view of the fact that the district judge had the distinct advantage , as I did not, of observing the witnesses at trial, I was not persuaded that I should disturb any of the district judge's findings of fact.

The appeal against sentence

45 At the hearing before me, counsel for the appellant raised the following argument against the sentence imposed by the district judge. This argument was not canvassed in the proceedings below. Counsel argued that the sentence of 10 months' imprisonment for the nine amended charges had been wrongly imposed as a matter of law, as s 71(1) of the Penal Code (Cap 224) ('PC') applied in this case so that a *single* sentence should be imposed for what was in reality a composite offence. Section 71(1) reads:

> Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall

> not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

46 In support of this contention, counsel cited my judgment in *Zeng Guoyuan v PP (No. 2)* [1997] 3 SLR 883. Relying, in the main, on these authorities, counsel sought to persuade me that the appellant's receipt of the bribe monies on nine different occasions really constituted the reward for a single act of recommending the charter of the Da Fu to Sea Consortium.

47 I found that this argument had no merit whatsoever. This was not a case where s 71(1) was applicable. In the premises, counsel's argument that the district judge would have imposed a lesser sentence had she been apprised of s 71(1) was wishful thinking on his part. She was entitled in law to sentence the appellant to a total of 10 months' imprisonment for the nine amended charges, and in my view she had correctly exercised her discretion to do so. The total gratification received by the appellant, amounting to US$90,377, was not a paltry figure.

48 As such, I dismissed the appeal against sentence.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore