Amir Hamzah Bin Berang Kuty v Public Prosecutor
[2002] SGHC 307

Case Number	: MA 133/2002
Decision Date	: 14 December 2002
Tribunal/Court	: High Court
Coram	: Yong Pung How CJ
Counsel Name(s)	: K Mathialahan (Guna & Associates) for the appellant; Sia Aik Kor (Deputy Public Prosecutor) for the respondent
Parties	: Amir Hamzah Bin Berang Kuty — Public Prosecutor

Criminal Law – Abetment – Whether necessary to prove accused mastermind of conspiracy – Penal Code (Cap 224, 1985 Rev Ed) s 107

Criminal Law – Offences – Property – Criminal breach of trust – Distinction between entrustment with doing of job and entrustment with property – Penal Code (Cap 224, 1985 Rev Ed) s 408

Criminal Procedure and Sentencing – Sentencing – Effect of sentencing precedents – Whether value of property involved in criminal breach of trust cases relevant

Criminal Procedure and Sentencing – Sentencing – Relevance of accomplice's sentence – Whether secondary offender should be given heavier sentence than principal offender

Evidence – Witnesses – Prosecution's failure to call witness – Whether witness material – Whether failure to call witness prejudicial to accused

Evidence – Witnesses – Weight given to evidence – Treatment of evidence from accomplice with caution

Judgment

GROUNDS OF DECISION

Introduction

The appellant was tried and convicted in the district court on the following two charges:

> DAC 55982/2001 –
>
> You, AMIR HAMZAH BIN BERANG KUTTY, M/28 yrs, NRIC
>
> No.: S7320354F, are charged that you, in the month of April 2001, in Singapore, did engage with one Saravanan A/L Kaliannan, in a conspiracy to commit criminal breach of trust as a servant, and in pursuance of that conspiracy and in order to commit criminal breach of trust as a servant, an act took place between April and September 2001, at M/s Seagate Technology International located at No. 16 Woodlands Loop, Singapore, to wit, Saravanan A/L Kaliannan, employed as a servant with Seagate Technology International, entrusted in that capacity with 48 pieces of used 'Heraeus' platinum targets with a total value of about US$469,800, committed breach of trust by dishonestly

misappropriating the said property, which act was committed in pursuance of your abetment, and you have thereby committed an offence punishable under section 408 read with section 109 of the Penal Code, Chapter 224.

DAC 57462/2001 –

You, AMIR HAMZAH BIN BERANG KUTTY, M/28 yrs, NRIC No.: S7320354F, are charged that you, in the month of March 2001, in Singapore, at Woodlands Central MacDonald's, Singapore, did dishonestly retain stolen property, to wit, two pieces of 'Tosoh' platinum targets valued at a total of US$7,000, belonging to M/s Seagate Technology International, having reason to believe the same to be stolen property, and that you thereby committed an offence punishable under Section 411 of the Penal Code.

2 Six other charges against the appellant were initially stood down but the DPP applied for them to be taken into consideration later in the trial. For the first charge, the trial judge sentenced him to five years' imprisonment and for the second charge, he was sentenced to 18 months' imprisonment. The trial judge ordered the sentences to run consecutively, bringing the total imprisonment period to six and a half years. The other six charges were taken into consideration for the purposes of sentencing.

3 The appellant appealed against both conviction and sentence. After hearing counsels' arguments, I dismissed both the appeal against conviction and sentence. I now give my reasons.

The case for the prosecution

4 At the trial below, the prosecution led evidence from six witnesses through conditioned statements as well as by oral testimony. The most crucial evidence against the appellant came from PW1 Saravanan A/L Kaliannan ("Saravanan") and PW3 Kumar s/o Srinivasan ("Kumar").

Saravanan's statements

5 At the material time, Saravanan was working in Seagate Technology International ("Seagate") as an assistant technician. His job scope included the operation of a sputter machine (used to sputter media discs used in the production of hard disks). As part of his job, he was in charge of sending the used targets to the vendor to be reclaimed. The vendor to Seagate at the material time was Heraeus Precision Engineering Pte Ltd ("Heraeus").

6 Saravanan testified that, sometime in March 2001, the appellant had contacted him and asked him to steal used platinum targets from Seagate, which would then be shipped to Japan. The appellant promised to pay Saravanan $250 for each target. At this point, Saravanan refused to take part in the scheme.

7 Two days later, the appellant approached Saravanan with the same suggestion. Instead, Saravanan came up with a counter proposal and offered to sell to the appellant two used platinum targets from another manufacturer, Tosoh ("'Tosoh' targets") which he had misappropriated sometime in November 2000. The appellant agreed to buy the 'Tosoh' targets for $200 each and the two

arranged to meet up in two days' time at the Woodlands Central McDonald's restaurant.

8 At the meeting, the appellant accepted the two 'Tosoh' targets and paid Saravanan $400. (It was agreed at trial that the value of each of these 'Tosoh' targets referred to in DAC 57462/2001 was US$3,500 each.) On this occasion, the appellant once again brought up the idea of stealing used Heraeus targets. Saravanan stated that the appellant managed to convince him that he (Saravanan) would not get caught, so Saravanan agreed to the plan.

9 A week later, the appellant called Saravanan at work and asked if there were extra targets for him. Saravanan confirmed that there were and the appellant went to Seagate. Two used targets were passed over to him. Saravanan stated that subsequently he would pass the used Heraeus targets to Kumar, Heraeus's driver. On these occasions, he would get a white envelope from Kumar, which contained money that the appellant had asked Kumar to pass to him.

10 Sometime in November 2001, when it became evident to Seagate that targets had been stolen, Saravanan met the appellant at one Farmart Seafood Restaurant where Saravanan was paid a final $1,000 and was assured by the appellant that all the targets had been shipped to Japan.

11 Saravanan pleaded guilty to the charge of committing criminal breach of trust as a servant by dishonestly misappropriating 48 used platinum targets. He was convicted on 4 March 2002 and sentenced to four years' imprisonment. Another charge of criminal misappropriation of two 'Tosoh' used platinum targets was taken into consideration. Saravanan was serving sentence when he gave evidence for the prosecution against the appellant.

Kumar's statements

12 At the material time, Kumar was a driver for Heraeus. His job scope at that time included sending new targets to, and collecting used targets from, Seagate. He gave evidence that from around March 2001, Saravanan would give him a few used targets that were not registered or recorded in the returned targets invoice. He also gave evidence that on some of these occasions, the appellant would inform him just before the collection that there would be targets for experiments and that he was to collect them from Saravanan.

13 He stated that he made about ten such trips where he collected used targets that were not registered or recorded in the returned target invoice. On each occasion, there would be between two to four such extra targets.

14 More importantly, he stated that on a few occasions, before he left for Seagate, the appellant would pass him a white envelope bearing the company's letterhead and that the appellant instructed him on these occasions to hand over the envelope to the appellant. He stated that he delivered them to Saravanan as he was told.

15 Kumar stated that, upon returning to the office from such trips, he would deliver the used targets either to the storeman, one Thanabal, or to the appellant personally. He also stated that on two such occasions, upon returning to the office with the used targets, the appellant taught him how to weigh the used targets. The appellant then asked him to switch them with heavier used targets (scheduled to be returned to the United States) which had been properly recorded in the invoice. However, he could not remember exactly how many of such targets he had switched on the appellant's instructions.

16 Sometime in October 2001, Kumar received a phone call from the appellant while he was in

the office. He stated that the appellant told him to take six pieces of the used targets which the appellant was keeping under the table and to put them on the false ceiling in his office. When asked why he needed to do this, the appellant told Kumar that he did not want the representatives from Seagate to find out that the six targets were in the company.

Statements from other witnesses

17 Apart from Saravanan and Kumar, three other prosecution witnesses gave evidence which implicated the appellant. PW6 Tan Wee Kiat ("Tan"), a Seagate investigator, gave evidence that he lodged a police report on 30 November 2001 when he noticed that there were 48 used targets missing from Seagate's inventory. PW7 Senior Investigating Office Javier Neo ("Neo") was assigned to the case. On 3 December 2001, Neo was informed by Kumar that the appellant had instructed him to hide the six platinum targets in the false ceiling. Neo acted on the information and raided the Heraeus office where the six targets were recovered. Tan confirmed that the serial numbers of these six targets matched those of the platinum targets missing from Seagate.

18 PW2 Perabu A/L Natarajan ("Perabu") gave evidence that the appellant had asked him to photocopy certificates of analysis for the used targets which had been collected. It was also Perabu's evidence that this was not the usual practice. The prosecution also adduced evidence from PW4 Krishnamoorthy Ramesh ("Ramesh") who gave evidence that sometime in October 2001, when the Seagate investigators had asked for documents pertaining to the lost platinum targets, the appellant asked him to cover all the pen markings on the used target logsheets before photocopying them. He also confirmed that the used platinum targets were handed directly to the appellant on a number of occasions. Tan stated that, had he seen the handwritten markings on the used target logsheets which Ramesh was asked to cover up, he would have immediately concluded that someone in Heraeus was involved in the theft.

The defence

19 The appellant's defence on both charges in the court below was that he was not the mastermind of the conspiracy. Rather, he was merely carrying out the instructions of his superior, one Ramachandran Viswanathan ("Ram"). Ram was a director of Heraeus at the material time. In his examination-in-chief, he alleged that he met with Saravanan at the McDonald's restaurant on instruction from Ram. However, he did not call on Ram to give evidence to support his case.

20 He also denied that he had called Saravanan at the latter's office to check on the quantity of used targets for collection. He insisted that the standard procedure was for Seagate to send an e-mail to Heraeus regarding the number of targets to be collected. Hence, there was no need for him to call Saravanan. However, he admitted that he was aware of used targets being taken out by Saravanan and being passed to Heraeus but he alleged once again that this was done on the instruction of Ram.

21 As for his conduct vis--vis Kumar, he admitted that he did ask Kumar to weigh the used targets and to switch the heavier ones meant to be shipped to the US and replace them with lighter ones passed over by Saravanan. Yet again, he alleged that he did this on the instructions of Ram, who was not called to substantiate his allegations.

22 As for explaining why he had asked Kumar to move the six targets to the false ceiling, he claimed that that was done on the instructions of his new boss, one Dan Holland. As was the case with Ram, the appellant did not call Dan Holland as a witness. More importantly, he failed to mention the Dan Holland's involvement in this episode in his statement to the police. When asked to explain his

inconsistency during cross-examination, he said that he had lied to the police in his earlier statement because he was under a Non-Disclosure Agreement with the company and he did not want to reveal anything which might be in contravention of that agreement.

23 The appellant called on DW2 Veeravalli Raghavan ("Raghavan"), a director of Nishtha Engineering Pte Ltd, a company dealing with electrical and electronic components. He gave evidence that he had received 42 used targets from Ram and that Ram had given him instructions to cut those targets into smaller parts. However, he gave evidence to the effect that he did not check the serial numbers of the targets that Ram had handed over to him. The appellant's contention was that these 42 targets were the ones which had been stolen from Seagate.

24 However, during cross-examination of Raghavan, the DPP sought to admit a list (obtained from Heraeus' records) containing the serial numbers of the 42 targets that had been handed over to Raghavan. This list was admitted without objection from defence counsel. It was the DPP's submission that none of those serial numbers matched those that were missing from Seagate. As such, the 48 targets handed over to Raghavan could not have been part of the 48 stolen targets.

The decision of the trial judge below

25 In examining Saravanan's statements, the trial judge was mindful of the fact that Saravanan was an accomplice and thus scrutinised his statement with caution. He conceded that there were some inconsistencies in Saravanan's statements but found these inconsistencies to be minor and that they did not discredit his entire evidence. He noted that Saravanan had already been dealt with for the offences that he had committed. He also observed that the defence did not advance reasons as to why Saravanan should implicate the appellant if what Saravanan had stated was not the truth. On those two counts, he accepted the evidence of Saravanan.

26 He also chose not to accept the appellant's defence. He found difficulty in accepting various parts of his evidence in cross-examination where he merely gave a series of 'I do not know' answers to pertinent questions. For example, he was asked whether it would be very suspicious for an assistant technician like Saravanan to sell two used Tosoh targets to him without any proper documentation. His reply was, "I do not know." He noted that the appellant was not a nave person but was an experienced person in this line of business. Thus, the trial judge found his ambivalent answers to be a mere pretence in an attempt to avoid answering those questions. More importantly, he found that although the appellant had claimed that he was acting on the instructions of Ram and Dan Holland, he did not call them to substantiate his bare allegations.

27 Consequently, he convicted the appellant on both charges and sentenced him to a total of six and a half years imprisonment after taking into account the appellant's mitigation plea. The notes of evidence showed that the trial judge took into account the following factors in sentencing the appellant:

> (a) The seriousness of the offences committed by the appellant and the penalty prescribed by law for such offences;
>
> (b) The facts of the case as revealed by the evidence, including the nature and the value of the property involved and the period over which the offences were committed;
>
> (c) The six charges taken into consideration for the

purposes of sentence;

(d) The sentence meted out to his accomplice, Saravanan;

(e) The mitigation plea made by counsel, in particular that the appellant had no antecedents;

(f) That the appellant appeared to be the mastermind of the conspiracy and that he did not appear to be remorseful for what he had done during the conduct of his defence. Moreover, he noted that the appellant blamed his company's management for his various activities.

The appeal against conviction

28 Counsel for the appellant raised the following issues on appeal against conviction:

(a) Whether the prosecution had proved beyond reasonable doubt that Saravanan dishonestly appropriated 48 pieces of used Heraeus targets as stated in the charge;

(b) Whether the trial judge had erred both in law and in fact in his finding that the appellant had engaged in a conspiracy with Saravanan to commit criminal breach of trust; and

(c) Whether the prosecution failed to prove that the 48 targets which were stolen were entrusted to Saravanan.

(d) As for the second charge, whether the trial judge had erred in law by failing to give the appellant the benefit of doubt since it was Ram who gave instructions for the collection of the stolen targets from Seagate.

Whether the prosecution had proven the exact number of targets in the charge beyond reasonable doubt

29 Counsel argued that the prosecution did not manage to prove all 48 targets had been misappropriated. He painstakingly tried to show that, from the statements of the witnesses, nobody could be sure that there were exactly 48 targets involved in the whole transaction. For example, he pointed out that Kumar, in his oral evidence, said that the total number of targets could have been about 35.

30 I was of the view that the discrepancy involved here was immaterial. This was particularly so because Saravanan, the principal offender, in his cautioned statement, stated:

> In total I have stolen <u>at least 40</u> used platinum targets from the company and <u>I had sold all of them to Amir</u> [the accused]. (emphasis added)

31 I was also mindful of the fact that Saravanan, the principal offender, had pleaded guilty to a charge under s 408 of the Penal Code involving exactly 48 targets. This was very strong evidence

that the number of targets in the charge had been proven beyond reasonable doubt. Further, the defence did not raise any evidence both here and in the trial below to show that some of those 48 targets had been passed to a person other than the appellant. Therefore, I rejected this argument from the appellant's counsel and found that the prosecution had proven the number of targets in the charge beyond reasonable doubt.

Whether the appellant had engaged in a conspiracy with Saravanan to commit criminal breach of trust

32 Next, counsel argued that the trial judge erred in law and in fact in finding that the appellant had engaged in a conspiracy with Saravanan to commit criminal breach of trust. For this argument, he relied on a number of contentions.

Whether the appellant had to be the mastermind of the conspiracy

33 First, he tried to show that the appellant was not the mastermind of the conspiracy but merely carrying out the instructions of Ram. He relied on the evidence from Kumar where he stated that on one of the occasions, he had passed the targets to Ram instead of the appellant.

34 I found this contention to be unmeritorious. For the charge of abetting Saravanan in committing criminal breach of trust by conspiracy, the prosecution had to establish the following elements under s 107(b) of the Penal Code:

> (a) the person abetting must engage with one or more other persons in a conspiracy;
>
> (b) the conspiracy must be for the doing of the thing abetted; and
>
> (c) an act or illegal omission must take place in pursuance of the conspiracy.

Section 107(b) of the Penal Code not require the accused person to be the mastermind before a charge for abetment by conspiracy can be proved. The fact that the appellant may not have been the mastermind was therefore irrelevant.

35 In any case, I found that the allegations that Ram was the mastermind to be completely unsubstantiated. The appellant did not call Ram as a witness to support his allegation and the trial judge was correct in disbelieving the appellant's allegations in the absence of corroboration from Ram. I saw no reason to disturb that finding.

Accomplice evidence

36 Counsel proceeded to argue that Saravanan's testimony was highly unbelievable and should not form the basis of the appellant's conviction. I found that there was little merit in this argument as well. An issue arose here because Saravanan was the appellant's accomplice. However, I found that the trial judge's approach to Saravanan's testimony was beyond reproach.

37 The law on the treatment of evidence of accomplices in Singapore is very well settled. In *Tan Hung Yeoh v PP* [1999] 3 SLR 93, I held that the court may convict an accused person based on the uncorroborated evidence of an accomplice: see, for example, ***Chua Poh Kiat Anthony v PP* [1998] 2 SLR 713 and *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592**. The corroboration warning against

an accomplice's evidence is no longer mandatory in law: s 135 Evidence Act (Cap 97). All that the court is required to do is to treat the evidence of an accomplice with caution as the accomplice may, not must, be presumed to be unworthy of credit: see s 116 illustration (b) Evidence Act and ***Chua Poh Kiat Anthony v PP***, ***Kwang Boon Keong Peter v PP***.

38 Here, it was evident that the trial judge had cautioned himself that Saravanan was an accomplice and he had meticulously perused the evidence before him before coming to the conclusion to believe Saravanan's testimony. It is trite law that an appellate court will not disturb a trial judge's findings of fact, particularly when they are based on the assessment of credibility of witnesses. This is so because the appellate court does not have the opportunity of examining the witnesses: see *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 4 SLR 111. Further, I could see no reason or incentive for Saravanan to implicate the appellant in a bid to reduce his own complicity in the affair. Before the appellant's trial, Saravanan had pleaded guilty to a charge under s 408 of the Penal Code and was sentenced to four years' imprisonment. At the time of the appellant's trial, Saravanan gave evidence while he was serving his sentence. Like the trial judge, I could see no reason to disbelieve his testimony and I rejected counsel's argument on this ground.

Whether the targets sold to Raghavan by Ram could have been part of the 48 misappropriated targets

39 Next, counsel sought to distance the appellant from the crime by asking the court to draw an inference that the 42 targets which Ram sold to Raghavan for cutting formed part of the 48 targets that had been misappropriated from Seagate. I saw no merit in this argument. This argument was highly speculative and counsel adduced no evidence to substantiate the veracity of his allegation.

40 On the contrary, the prosecution adduced a list of serial numbers of targets that had been sold to Raghavan from Heraeus' records (Exhibit P24). Raghavan testified that P24 was indeed a list of serial numbers of the targets that had been sold to his company but he stated that he did not check to see if the serial numbers of the targets matched those that were given in the list. The prosecution then pointed out that none of the serial numbers in P24 matched those of the targets that were missing from Seagate. I found the evidence adduced by the prosecution in P24 to be sufficiently convincing to rebut the inference that counsel sought to draw.

41 Further, counsel tried to argue that the list in P24 contained a list of fictitious numbers cooked up by Ram in order to cover up the whole scheme. I found this argument to be extremely unmeritorious. It has to be noted that in the trial below, P24 was admitted with the counsel's consent after a copy of the exhibit had been served on him. Therefore, under s 60(1) of the Evidence Act, P24 was deemed to be admitted without the need of proof. Section 60(1) of the Evidence Act states:

> No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which before the hearing they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

42 Having consented to the admission of the document, I found that counsel was precluded from challenging the veracity of that document on appeal. Consequently, I found his allegation that P24 contained a list of fictitious numbers to be a display of counsel's lack of adequate preparation of the case prior to the appeal.

Failure to call Thanabal the storeman as a witness

43 Counsel proceeded to argue that the failure to call on Thanabal the storeman prejudiced the case for the appellant. He sought to argue that Thanabal would have been material in demonstrating that Ram was also involved in the conspiracy because Ram had given Thanabal certain instructions to keep the stolen targets. It appeared to me that counsel was trying to argue that an adverse inference should have been drawn against the prosecution's failure to call on Thanabal under s 116 illustration (g) of the Evidence Act.

44 It appeared to me that this was but another one of counsel's many valiant attempts at raising issues in the hope that he would end up with a meritorious ground. Unfortunately, this was not one of them. I failed to see how the prosecution's failure to call on Thanabal as a witness could have possibly prejudiced the appellant's case. It is trite law that the prosecution is entitled to decide which witnesses it wishes to call. If the prosecution does not call on a particular material witness, the prosecution bears the risk that the case against the appellant is not proven beyond reasonable doubt.

45 After a perusal of the evidence and the circumstances under which this case arose, I was of the view that Thanabal's testimony would have added little to the case. As I have observed above, in a charge of abetment by conspiracy, it is not necessary for the prosecution to prove that the appellant was the mastermind in the conspiracy. Consequently, so long as there was sufficient evidence (from Saravanan) to show that there had been an abetment by conspiracy between the appellant and Saravanan, the charge would have been proven.

46 In any case, I was of the opinion that an adverse inference should not be drawn against the prosecution for the failure to call on Thanabal as a witness. As the Court of Appeal held in *Yeo Choon Huat v PP* [1998] 1 SLR 217, an adverse inference should only be drawn if it is shown that the prosecution had withheld certain evidence which it possesses. Here, it was a simple case of Thanabal having left the jurisdiction prior to the investigations and therefore the police were unable to obtain statements from him. It was an issue of unavailability rather than deliberate withholding of evidence.

47 Moreover, I was also of the view that if the appellant considered Thanabal to be a material witness, then the burden lay on him, and not the prosecution, to call him as a witness. I noted that Thanabal and the appellant were once colleagues at Heraeus. Surely, if the appellant felt strongly about calling on Thanabal, it would not have been unreasonable for him to call Thanabal as his witness. Consequently, I found that the failure of the prosecution to call on Thanabal did not cause did not materially prejudice the appellant's case.

Whether the prosecution had proven that the targets had been entrusted to Saravanan

48 Counsel then proceeded to argue that the prosecution had failed to prove that there was entrustment of the targets to Saravanan. For this proposition, counsel argued that Saravanan was only one of the assistant technicians who worked on the machine and that there were other assistant technicians who came into contact with the targets during the course of their work. Further, he tried to show, somewhat convolutedly, that after the targets were used in the bomb room, they were supposed to be kept in the drawers there. Therefore, nobody was specifically entrusted with the task of collecting the used targets from the bomb room and returning them to the storeroom, which was where Saravanan had misappropriated the targets. Counsel further tried to rely on the following passage in Gour's *Penal Law of India* (11th ed), Volume IV at p 3957:

> Being entrusted with the doing of a job is not the same thing as being entrusted with any property within the meaning of s 405 and other cognate sections of the Indian Penal Code, even though some money or other property may come into the hand of the person in the course of his doing

such job.

Counsel tried to show that, even though Saravanan may have been entrusted with the job, he could not be said to have been entrusted with the targets.

49 I found this argument to be completely without merit. It was convoluted, confusing and wholly unnecessary. The short answer to counsel's argument was that Saravanan had already pleaded guilty to a charge under s 408 of the Penal Code and had been sufficiently dealt with by the law. As the prosecution rightly pointed out, that was the best evidence to show that Saravanan had indeed been entrusted with the targets which he had misappropriated. Counsel's allegation that other assistant technicians were also entrusted with the property, and therefore the targets could have been misappropriated by them, was yet another baseless allegation for which he provided no evidence in support. Finally, the distinction between the movement of the targets between the bomb room and the storeroom at Seagate was extremely superfluous and was not of any assistance to the appellant.

50 In any case, I wish to take this opportunity to clarify counsel's attempt at drawing a distinction between entrustment with the doing of a job and entrustment with property. In *Gopalakrishnan Vanitha v PP* [1999] 4 SLR 307, I recognised and upheld the distinction between entrustment with the doing of a job and entrustment with property. There, the appellant was a confidential secretary cum office administrator who was charged with criminal breach of trust by using blank cheques signed by her boss to make payments to overpay her own salary. I found her letter of appointment entrusted her with being responsible for petty cash and other relevant payments but I found that these did not extend to the appellant there becoming entrusted with the funds of the company. On the facts of that case, I found that the entrustment of the property came with her boss's careless act of handing over signed blank cheques to the appellant and not by virtue of her job as a secretary.

51 I was of the opinion that the facts of *Gopalakrishnan Vanitha v PP* could be distinguished from the facts of the present case. Here, Saravanan's job specifically required him to be entrusted with the targets which he misappropriated. Therefore the distinction between entrustment of a job and the entrustment of property did not have any scope for operation on the facts of this case, because here the entrustment of the former necessarily led to the entrustment of the latter. Consequently, I rejected counsel's arguments on this point.

Whether the second charge had been proven beyond reasonable doubt

52 The appellant's defence on the second charge was similar to his defence on the first charge, viz. that he had merely received the two stolen 'Tosoh' targets from Saravanan on the instructions of Ram. For the reasons similar to those cited above on the first charge, I did not think that there was much merit in the appellant's defence vis--vis the second charge. For a charge under s 411 of the Penal Code, the prosecution has to prove that the appellant had dishonestly retained the said 'Tosoh' targets and that the appellant had reason to believe that they were stolen. In order to ascertain what is the meaning of 'reason to believe', one may refer to s 26 of the Penal Code which states:

> A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

53 Here, there was ample evidence from Saravanan's statements which implicated the appellant with regard to the two 'Tosoh' targets. Moreover, the trial judge found that the appellant was not a nave person but rather a person who was experienced in this line of business. I saw no reason to disagree with the trial judge on this point. Further, like a charge under s 109 read with s 408 of the

Penal Code, a charge under s 411 does not require the prosecution to prove that the accused person was the mastermind behind the conspiracy. The fact that the appellant may or may not have been the mastermind was therefore irrelevant. It is trite law that an appellate court will not disturb the findings of a trial judge unless the findings were against the weight of the evidence: see *Lim Poh Eng v PP* [1992] 1 SLR 713. On the facts, I saw no reason to disturb the findings of the trial judge in convicting the appellant on the second charge and therefore, I dismissed his appeal against conviction on the second charge as well.

The appeal against sentence

54 On the appeal against sentence, counsel submitted that the sentence was manifestly excessive on the following grounds:

> (a) The prosecution failed to prove that the value of the property involved was US$469,800;
>
> (b) Saravanan, as the principal offender, was merely sentenced to four years' imprisonment and there was no reason why the appellant should be given a substantially heavier sentence than Saravanan; and
>
> (c) The sentence was manifestly excessive in light of similar cases where the accused persons were given lighter sentences even though the amounts involved were higher.

Value of the property involved

55 First, counsel argued that the sentence should not have been as harsh because the prosecution had not managed to prove beyond reasonable doubt that 48 targets were involved. Since I found that the charge had been proven beyond reasonable doubt and had dismissed the appeal against conviction, I saw no ground for entertaining this contention.

Sentence meted out to accomplice

56 Secondly, counsel pointed out that Saravanan, the principal offender, was only sentenced to four years' imprisonment and the appellant, being only a secondary offender, should not be given a substantially heavier sentence than Saravanan.

57 This argument was too nave and simplistic. Admittedly, consistency in sentencing is a desirable goal. However, the fact remains that each case must be looked at on its own special facts. The sentence meted out to an accomplice is but one of the myriad of factors that a sentencing court can take into account for the purposes of sentencing. In *PP v Ng Tai Tee Janet & Anor* [2001] 1 SLR 343, I was not fettered by the sentence meted out to the accomplice when I was deciding on the appropriate sentence for the accused persons. There, even though the accomplice was merely given a fine, I nevertheless sentenced the accused persons to a custodial sentence. I found that to be appropriate because the accused persons played a more active role in the syndicate than the accomplice.

58 Similarly, on the facts of the present case, I saw no reason why the trial judge's sentencing discretion should have been fettered by the sentence meted out to Saravanan. Here, in the absence of any evidence to support the appellant's allegation that Ram was indeed the mastermind, it

appeared to me that it was the appellant himself who was the mastermind of the conspiracy. In that light, the fact that a harsher sentence was meted out to the appellant was appropriate. It was also clear from the notes of evidence that the trial judge had taken into account a whole host of factors, including the other six charges taken into consideration against the appellant. I found this approach of the trial judge to be correct and accordingly I saw no reason for me to disturb the sentence on this ground.

Sentence meted out in other criminal breach of trust cases

59 Thirdly, counsel diligently brought up a number of cases which involved criminal breach of trust to show that lighter sentences were imposed in those cases, even though the amounts involved were higher. While I congratulated counsel for his diligence in bringing up those cases, the short answer to this argument of his could be found in my judgment in *Soong Hee Sin v PP* [2001] 2 SLR 253. There, I observed:

> With respect, I found counsel's attempt to reduce the law of sentencing into a rigid and inflexible mathematical formula in which all sentences are deemed capable of being tabulated with absolute scientific precision to be highly unrealistic. If the appropriate sentence in each case was indeed nothing more than a computation of numbers and figures, then judges are better off delegating the task of sentencing to their secretaries and clerks who I venture to think are possibly more adept at these things than judges. In my view, the regime of sentencing is a matter of law which involves a hotchpotch of such varied and manifold factors that no two cases can ever be completely identical in this regard. While past cases are no doubt helpful and sometimes serve as critical guidelines for the sentencing court, that is also all that they are, i.e. mere guidelines only. This is especially so with regard to the unreported cases, in which the detailed facts and circumstances are hardly, if ever, disclosed with sufficient clarity to enable any intelligent comparison to be made. At the end of the day, every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances, and counsel be kept constantly and keenly apprised of the fact that it is just not possible to categorise cases based simply on mere numerals and decimal points.

60 I found counsel's attempt in drawing from other similar cases to be a similar attempt in reducing the law of sentencing into a rigid and inflexible mathematical formula. I take this opportunity to reiterate that in sentencing accused persons on charges of criminal breach of trust, the court's discretion is never restricted by the amount involved. Each case must be looked at on its own facts. While guidelines and benchmark sentences do give some aid to ensure consistency in sentencing, the value of the property cannot, and will never, be the sole factor in determining the sentence. To do so would constrain the judges' ability to give effect to the four general principles of retribution, deterrence, prevention and rehabilitation when passing out a sentence: see *Chua Tiong Tiong v PP* [2001] 3 SLR 425, *PP v Tan Fook Sum* [1999] 2 SLR 425 and *R v Sargeant* (1974) 60 Cr App R 74.

Conclusion

61 For the above reasons, I dismissed the appeal against conviction and affirmed the sentence meted out by the trial judge.

Appeal dismissed.

Sgd:

YONG PUNG HOW

Chief Justice

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