IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 101

Magistrate's Appeal No 9184 of 2021

Between

Abdul Aziz bin Mohamed Hanib

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9185 of 2021

Between

Yeo Siew Liang James

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9186 of 2021

Between

Chow Tuck Keong Benjamin

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Statutory offences — Prevention of Corruption Act]
[Criminal Procedure and Sentencing — Statements — Whether confessions of accused persons can be used against each other — Section 258(5) Criminal Procedure Code]
[Criminal Procedure and Sentencing — Statements — Admissibility]

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v
Public Prosecutor and other appeals

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Vincent Hoong J
9 March 2022

6 May 2022 Judgment reserved.

Vincent Hoong J:

Introduction

1 These appeals raise, among other issues, a novel question of whether an accused person's confession can be taken into consideration by the court as against his other co-accused persons in a joint trial where mirror charges are framed pursuant to s 258(5) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "CPC"), prior to its amendment by the Criminal Justice Reform Act 2018 (Act 19 of 2018) (the "CJRA").

2 The appellants in these three related appeals were convicted after a joint trial in the court below for their respective roles in an arrangement to provide gratification in the form of bribe moneys to the then Indonesian Embassy Labour Attaché, one Agus Ramdhany Machjumi ("Agus"). The District Judge's

(the "DJ's") grounds of decision can be found in *PP v Chow Tuck Keong Benjamin and others* [2021] SGDC 232 (the "GD").

3 In the present appeals, the first appellant, Abdul Aziz bin Mohamed Hanib ("Aziz") and the third appellant, Chow Tuck Keong Benjamin ("Benjamin") challenge both their conviction and sentence. The second appellant, Yeo Siew Liang James ("James") appeals against his conviction alone.

Background facts

4 The background to this alleged corrupt arrangement arose out of the imposition of a $6,000 performance bond ("PB") requirement by the Indonesian Embassy in Singapore (the "Embassy"), which was imposed on employers of Indonesian foreign domestic workers ("FDWs") in February 2018.[1]

5 For clarity, it is necessary to elaborate on the mechanics of the PB. The PB was meant to operate as a guarantee for the performance of every clause in the Embassy's standard employment contract for the FDWs. Essentially, employers hiring Indonesian FDWs would have to make a one-off $70 purchase of a performance guarantee (the "Guarantee") from insurance providers accredited by the Embassy. If an employer is found by the Embassy to be in breach of the terms of the employment contract issued by them, the respective insurers would have to make payment to the Embassy of a sum of up to $6,000. The amount paid to the Embassy by the insurers is fully claimable by the insurers from the employer in breach.[2]

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1 Exhibit P11, Record of Proceedings ("ROP") p 2433.

2 Exhibit P12, ROP pp 2435–2437.

The Prosecution's case

6 It is notable that the bedrock of the Prosecution's case rests on the confessions contained in the investigative statements recorded from the appellants. The admissibility and reliability of some of these statements were challenged by Aziz and James in the trial below and continue to be a live issue in the present appeals. I will return to address the appellants' arguments on this point below.

7 Nonetheless, I find that it is helpful to first set out the Prosecution's case at trial concerning the roles of the appellants and how they interacted with each other in the alleged corrupt scheme.

8 At the material time, Agus, in his capacity as the Embassy's Labour Attaché, oversaw the accreditation of insurers in respect of the PB. Aziz, who was assisting Agus with various work at the Embassy, was tasked by Agus to find insurance agents or companies which were agreeable to give bribes in return for receiving the accreditation to sell the Guarantees.[3]

9 Aziz did not personally know of any insurance agents, and so he turned to his friend Samad Salim ("Samad") for assistance. As Samad too did not know of any insurance agents, he reached out to Benjamin. Benjamin then introduced James to Aziz. At the time, James was an insurance agent representing two principals, namely, AIG Asia Pacific Insurance Pte Ltd ("AIG") and Liberty Insurance Pte Ltd ("Liberty").[4]

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3 Prosecution's Closing Submissions ("PCS") at [3], ROP p 3362.

4 PCS at [4], ROP pp 3362–3363.

10 James agreed to share the commission he would receive for every Guarantee sold with Agus, Aziz, Samad and Benjamin, in exchange for the accreditation of his principals. These were duly paid out after the accreditation of AIG and Liberty. AIG and Liberty provided James with an after-tax commission of 35% for each Guarantee. This was split between the parties in the following manner: James (6%), Aziz (6%), Samad (1.5%), Benjamin (1.5%) and Agus (20%).[5]

11 Aziz had also solicited the same arrangement from Tokio Marine Insurance Singapore Ltd ("Tokio Marine") when their representatives approached him to be accredited. However, nothing came of this.[6]

12 On these facts, Benjamin was charged with a single charge under s 5(*a*)(i) read with s 29(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "PCA") for introducing James to Aziz and in so doing, abetting by intentionally aiding Aziz to corruptly solicit bribes from James for Agus. James was charged with 18 charges under s 5(*b*)(i) of the PCA for corruptly giving bribes to Aziz and Agus (through Aziz). Aziz was similarly charged with 18 mirror charges under s 5(*a*)(i) of the PCA for corruptly accepting bribes for Agus and himself. Aziz additionally faced one further charge under s 5(*a*)(i) for soliciting the same bribery arrangement from a representative of Tokio Marine.

The ancillary hearings

13 As part of the Prosecution's case, the following statements by the appellants were sought to be admitted into evidence:

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5 PCS at [5], ROP p 3363.

6 PCS at [7], ROP p 3364.

(a) Five statements from Aziz;[7]

(b) Seven statements from James;[8] and

(c) Three statements from Benjamin.[9]

14 For ease of reference, I reproduce the salient details of each statement below:

Aziz		
Statement No	**Date and Time**	**Recorded by**
1st statement	30 June 2018, at about 2.20am	Chief Special Investigator Chris Lim Eng Cheung ("CSI Chris")
2nd statement	30 June 2018, at about 3.15pm	Chief Special Investigator Johnston Kan ("CSI Johnston")
3rd statement	3 July 2018, at about 12.50pm	CSI Chris
4th statement	19 July 2018, at about 11.10am	CSI Chris
5th statement	24 July 2018, at about 2.40pm	CSI Johnston
James		
1st statement	30 June 2018, at about 12.45am	Senior Special Investigator Mak Jia Yuan ("SSI Mak")

[7] Exhibits P20–P24, ROP pp 2531–2586.

[8] Exhibits P14, P27–P32, ROP pp 2503–2504 and 2657–2715.

[9] Exhibits P3–P5, ROP pp 2354–2380.

2nd statement	30 June 2018, at about 2.50pm	Principal Special Investigator Lam Wai Chong ("PSI Lam")
3rd statement	30 June 2018, at about 6.00pm	PSI Lam
4th statement	2 July 2018, at about 7.45pm	SSI Mak
5th statement	5 July 2018, at about 10.20am	PSI Lam
6th statement	19 July 2018, at about 10.30am	SSI Mak
7th statement	2 November 2018, at about 3.45pm	CSI Chris
Benjamin		
1st statement	30 June 2018, at about 3.00pm	Senior Special Investigator Lim Shu Hui ("SSI Lim")
2nd statement	19 July 2018, at about 10.30am	SSI Lim
3rd statement	19 July 2018, at about 2.45pm	SSI Lim

15 Aziz challenged the admissibility of the first four of his statements recorded by the officers from the Corrupt Practices Investigation Bureau (the "CPIB"), on the basis of oppression coupled with a threat by CSI Chris.[10] He did not contest the admissibility of his 5th statement.

[10] GD at [42], ROP p 2155; Exhibits P20–P23, ROP pp 2531–2577.

16 James challenged the admissibility of portions of all his statements, save for his first and last statements, recorded by the officers from the CPIB, on the basis of an inducement given to him by CSI Chris prior to the recording of his 2nd statement.[11]

17 Two ancillary hearings were convened by the DJ to consider the admissibility of these contested statements. Being satisfied that all the statements were made by Aziz and James voluntarily, the DJ allowed the Prosecution's application to admit them into evidence.[12] I will consider the DJ's findings below.

18 For completeness, I note that Benjamin did not contest the admissibility of any of his three statements and they were accordingly admitted into evidence by the DJ.

The Defence's case

19 At the close of the Prosecution's case, Aziz made a submission of no case to answer in relation to the charges involving payments from Liberty, as well as the 19th charge concerning the solicitation of a bribe from Tokio Marine (the "Tokio Marine charge").

20 Having considered the evidence, the DJ was of the view that a *prima facie* case had been made out against all three of the appellants on all the charges they were faced with.[13] She therefore called on the appellants to enter their defence.

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11 GD at [20], ROP p 2142; Exhibits P28–P32, ROP pp 2667–2715.

12 GD at [33] and [70], ROP pp 2150 and 2168.

13 GD at [105], ROP p 2185.

21 All the appellants elected to remain silent, and they did not call any witnesses or seek to tender any evidence in their defence.[14]

22 Although no formal defence was advanced by the appellants in the course of the main trial, James gave evidence during his ancillary hearing which appeared to outline a defence based on a claim that the moneys paid by him to Agus were for the purpose of furthering corporate social responsibility ("CSR") objectives, and not for a corrupt purpose. In essence, he claimed that AIG and Liberty made CSR contributions through a portion of his commission, which was meant to go towards organising events for the welfare of Indonesian FDWs.[15]

Decision below

23 At the conclusion of the joint trial, the DJ convicted the three appellants on all the charges brought against them.

24 The DJ held that full weight should be ascribed to the statements made by the appellants.[16] She also considered that the appellants' confessions could be used against each other pursuant to s 258(5) of the CPC.[17] Moreover, the DJ observed that in any event, each of the appellants' respective statements were enough to ground their individual convictions on all the charges.[18]

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14 GD at [112], ROP p 2187.

15 GD at [148], ROP p 2202.

16 GD at [115], ROP p 2188.

17 GD at [127]–[130], ROP pp 2192–2193.

18 GD at [131] and [134], ROP pp 2193–2195.

25 As the appellants had chosen to remain silent when their defence was called, the DJ found it appropriate to draw an adverse inference against them.[19] The DJ also considered and rejected James's alleged CSR defence outlined during his ancillary hearing.[20]

26 The DJ imposed the following sentences on the appellants:[21]

(a) Aziz: 17 months' imprisonment and a penalty of $18,299.82, in default one month's imprisonment.

(b) James: 15 months' imprisonment and a fine of $21,363.30, in default one month's imprisonment.

(c) Benjamin: One month's imprisonment and a fine of $4,574.96, in default one week's imprisonment.

The appeal

27 All three appellants presently appeal against their convictions.

28 As alluded to above, the gravamen of Aziz's and James's submissions is that their contested statements were made *involuntarily* and that the DJ had wrongly admitted them into evidence.[22] In the alternative, they argue that: (a) the DJ erred in failing to exercise her discretion to exclude their statements on the basis that their prejudicial effect outweighed their probative value;[23] and/or

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19 GD at [135]–[138], ROP pp 2195–2197.

20 GD at [149], ROP pp 2202–2204.

21 GD at [7], ROP p 2136.

22 Aziz's Skeletal Submissions ("ASS") at [25]–[58]; James's Skeletal Submissions ("JSS") at [6]–[24].

23 ASS at [59]–[85]; JSS at [33]–[36].

(b) little or no weight should have been accorded to their contested statements.[24] Additionally, both of them contend that the DJ had erred in law in finding that the appellants' statements could be used against one another pursuant to s 258(5) of the CPC.[25]

29 Aziz and James also argue that the Prosecution has failed to prove the corrupt element particularised in their respective charges. This was because of the Prosecution's failure to call Agus as a witness and its consequent inability to prove that Agus had the power to influence the accreditation process, or that he did materially influence the said process.[26]

30 Benjamin does not contest the admissibility of his statements. Instead, he argues that the elements of his sole charge under s 5(*a*)(i) read with s 29(*a*) of the PCA are not made out. In this regard, he submits that: (a) his role in the entire scheme, *ie*¸ introducing James to Aziz, did not amount to facilitation; and (b) he had no knowledge of the circumstances of the offence.[27]

31 Aziz and Benjamin are also appealing against the sentences imposed for their charges.

Issues to be determined

32 Based on the foregoing, the issues for my determination are:

(a) Whether Aziz's contested statements are admissible and reliable;

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24 ASS at [86]–[87]; JSS at [25]–[32].

25 ASS at [88]–[96]; JSS at [37]–[40].

26 ASS at [97]–[141]; JSS at [41]–[72].

27 Benjamin's Skeletal Submissions ("BSS") at [9].

(b) Whether James's contested statements are admissible and reliable;

(c) Whether the appellants' confessions can be used against each other pursuant to s 258(5) of the CPC;

(d) Whether the elements of the charges against the appellants are made out;

(e) Whether it is a requirement under s 5 of the PCA for the Prosecution to prove that Agus could have or did actually influence the accreditation process; and

(f) Whether the sentences imposed on Aziz and Benjamin are manifestly excessive.

My decision

Admissibility of Aziz's and James's contested statements

33 It is clear to me and it is undisputed by the parties that the main plank of the Prosecution's case rests on the confessions of the appellants in their investigative statements recorded by officers from the CPIB. In the court below and in these appeals, Aziz and James both dispute the voluntariness of some of their statements. It is thus appropriate to first assess the admissibility of these contested statements.

The law on admissibility

34 In *Sulaiman bin Jumari v PP* [2021] 1 SLR 557 ("*Sulaiman*") at [54], the Court of Appeal succinctly summarised the inquiry that the court should undertake when faced with a dispute as to the admissibility of a statement. I find this to be instructive and I accordingly reproduce it in full:

> 54 In summary, where there is a dispute as to the admissibility of a statement, the following questions should be considered:
>
> (a) First, was the statement given voluntarily based on the requirements set out in s 258(3) of the CPC?
>
> (i) If the statement was involuntary due to an inducement, threat or promise within the meaning of s 258(3) of the CPC, then it shall be excluded and that is the end of the admissibility inquiry.
>
> (ii) If the statement was voluntary, the enquiry proceeds to the second step.
>
> (b) Second, even if the statement was voluntary, would the prejudicial effect of the statement outweigh its probative value? This is a discretionary exercise and the court's foremost concern is in evaluating the reliability of the statement in the light of the specific circumstances in which it was recorded.

35 Thus, where the admissibility of a statement is contested, the court is concerned at the first step of the inquiry with whether the statement was made voluntarily. The starting point is that any statement given by an accused person in the course of investigations is admissible in evidence at his trial in accordance with s 258(1) of the CPC. However, this is subject to the requirement of voluntariness enshrined in s 258(3) of the CPC, which reads as follows:

> The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

36 It is settled law that the test for voluntariness under s 258(3) of the CPC is partly objective and partly subjective. In *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 at [53], the Court of Appeal held that the first stage of the inquiry corresponding to the objective limb considers whether there was any

inducement, threat or promise having reference to the charge against the accused. The second stage of the inquiry corresponding to the subjective limb examines whether the said inducement, threat or promise was such that it would be reasonable for the accused to think that he would gain some advantage or avoid any evil of a temporal nature (*ie*, adverse consequences) in relation to the proceedings against him by making the statement. This was also recently affirmed in *Sulaiman* at [39].

37 Furthermore, Explanation 1 to s 258(3) of the CPC also establishes that where a statement is procured from an accused person in oppressive circumstances, it is similarly inadmissible. The explanation reads as follows:

> *Explanation 1* — If a statement is obtained from an accused by a person in authority who had acted in such a manner that his acts tend to sap and have in fact sapped the free will of the maker of the statement, and the court is of the opinion that such acts gave the accused grounds which would appear to the accused reasonable for supposing that by making the statement, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, such acts will amount to a threat, an inducement or a promise, as the case may be, which will render the statement inadmissible.

38 In this connection, Woo Bih Li J ("Woo J") in *Tey Tsun Hang v PP* [2014] 2 SLR 1189 ("*Tey Tsun Hang*") at [90], held that the Court of Appeal's observations in *Seow Choon Meng v PP* [1994] 2 SLR(R) 338 ("*Seow Choon Meng*") at [33] continue to apply to s 258(3) of the CPC. It is useful to reproduce these observations at length:

> … Oppression in this context relates to the methods and manner of interrogation preparatory to and during the making of statements. *It has been said that oppressive questioning may be described as questioning which by its nature, duration or other attendant circumstances*, including the fact of custody, excites hopes, such as the hope of release, or fears, or so affects the mind of the person being interrogated that *his will crumbles and he speaks when otherwise he would have remained silent –*

> *questioning in circumstances which tended to sap and did sap, the free will of the person interrogated*: *per* Edmund Davis LJ in *R v Prager* [1972] 1 All ER 1114. At the same time, it has been said that *the court's approach should not be such so as to form a clog on the proper exercise by the police of their investigating function, and, indeed, on the administration of justice itself*: *per* Lord Hailsham in *DPP v Ping Lin* [1975] 3 All ER 175 at 183. *Robust interrogation is, in our opinion, an essential and integral aspect of police investigation.* However, as was observed by L P Thean J in *Sim Ah Cheoh* ([31] *supra*), if the questioning is too vigorous or prolonged, it becomes oppressive, with the result that a doubt arises as to whether the statement or the answers have been caused by any fear or threat so as to render the statements or answers to the questions inadmissible. [emphasis added]

39 In *Tey Tsun Hang* at [113], Woo J thus held that the litmus test for oppression is whether the investigation was, by its nature, duration, or other attendant circumstances, such as to affect the accused's mind and will such that he speaks when he would otherwise have remained silent.

40 It also bears repeating that where an accused person challenges the voluntariness of his statement, the burden is on the Prosecution to prove beyond a reasonable doubt that the statement had in fact been made voluntarily.

41 Subsequently, if the court is satisfied that the statement has been made voluntarily, it must then embark on the second step of the inquiry to determine whether to exercise its residual discretion at common law to nonetheless exclude the statement where its prejudicial value outweighs its probative value. At its core, the exclusionary discretion is concerned with the reliability of the statements as evidence to be admitted (see *Sulaiman* at [45], citing *Muhammad bin Kadar v PP* [2011] 3 SLR 1205 ("*Kadar*") at [55]). In *Sulaiman* at [47], the Court of Appeal explained that the probative value of any evidence relates to its ability to prove a fact in issue or a relevant fact. Its prejudicial effect refers to how its admission might be unfair to the accused person as a matter of process.

Some examples for evaluating prejudicial effect would include whether the accused person was under the influence of alcohol or drugs, his physical condition at the material time and his ability to understand the language used. Importantly, the court cautioned that where a voluntary statement is found to be highly probative, evidence of *significant* prejudice to the accused person would be required to justify the exclusion of the statement (see *Sulaiman* at [53]).

42 Having set out the fundamental principles concerning admissibility, I now proceed to consider whether Aziz's and James's contested statements were rightly admitted into evidence by the DJ.

Whether Aziz's contested statements are admissible

43 Aziz challenges the admissibility of his first four statements. His arguments largely reiterate his position during his ancillary hearing in the court below, and I summarise them as follows:

(a) In relation to his 1st and 2nd statements which were recorded from him whilst he was in custody between 29 June 2018 to 30 June 2018, he relies on two main grounds, namely, the presence of oppressive circumstances and an alleged threat directed at him by CSI Chris. As a result, he was stressed and weak, with no will left, leading him to sign on the statements even though he did not agree with the contents.[28]

(b) In relation to his 3rd statement, which was recorded a few days later on 3 July 2018, he argues that the DJ failed to appreciate the continuing and lasting effects of the oppressive circumstances prevailing

[28] GD at [57], ROP p 2162.

at the time his first two statements were recorded, and the threat communicated by CSI Chris.[29]

(c) In relation to his 4th statement, recorded on 19 July 2018, Aziz alleges that the circumstances in which it was recorded were oppressive, as he had a medical certificate for a swollen eye at the time. At trial, he argued that this resulted in him taking a long time to read and understand the statement that day, and he signed the statement because he was forced to do so.[30]

44 In this appeal, Aziz also argues that his contested statements should be excluded pursuant to the court's exclusionary discretion at common law, on the basis that their prejudicial effect outweigh their probative value. This is premised on alleged procedural irregularities in the statement recording process.

45 I first deal with the arguments concerning voluntariness before proceeding to consider whether the statements should be excluded based on their prejudicial effect.

(1) Whether Aziz's statements were voluntarily made

(A) NO PREVAILING OPPRESSIVE CIRCUMSTANCES AT THE TIME AZIZ'S FIRST TWO STATEMENTS WERE RECORDED

46 Aziz raises three main points to illustrate the oppressiveness of the circumstances he was labouring under at the time his first two statements were recorded, namely that: (a) he was deprived of food and sleep; (b) he was

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29 ASS at [52].

30 Notes of Evidence ("NE"), 25 November 2019, pp 27–28, ROP pp 519–520; ASS at [26].

disoriented from not being able to tell day from night; and (c) the CPIB officers refused to record anything he said unless it was what they wanted to hear.

47 First, in relation to his claim that he was deprived of food and rest while in the CPIB's custody, he alleges that at the time these two statements were recorded, he had not eaten for approximately 17 hours and 28 hours respectively, and that he only had three and a half hours of sleep the night prior to his arrest.[31]

48 In my view, Aziz's allegations are without merit. Aziz disputes the DJ's finding that he was served a McChicken burger for dinner at about 8.00pm on 29 June 2018. However, this was recorded in CSI Chris's investigation diary, which was consistent with what was recorded in Aziz's 1st statement (that he signed).[32] I find that there is no reason to doubt the reliability of these records. In any event, even if I accept that Aziz was not served the aforementioned burger, it is undisputed that when he later made a request for food, he was served cup noodles and biscuits at 1.00am on 30 June 2018.[33] While Aziz testified that he only consumed the biscuits and not the cup noodles, I am satisfied that this was wholly an exercise of his personal autonomy and it did not now lie in his mouth to make baseless allegations that the CPIB officers had deprived him of food. This is made clear by Aziz's candid admission that he made the conscious *choice* not to consume the cup noodles as he was "not used to eating that".[34] Aziz's ability to make such a choice demonstrates two things: first, that he was not so hungry to the point where his will was sapped, and second, that there was

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31 ASS at [28].

32 Exhibit P17, ROP p 2516.

33 GD at [55], ROP p 2162; NE, 25 November 2019, pp 15 ln 20–25 and16 ln 1–3, ROP pp 507–508.

34 NE, 25 November 2019, p 51, ln 7–8, ROP p 543.

no oppressive behaviour on the part of the CPIB officers as they had acceded to his request for food. Aziz also did not dispute that he was served a breakfast of Chinese-style noodles after the recording of his 1st statement and Malay chicken rice for lunch prior to the recording of his 2nd statement.

49 It is also notable that during his time in custody, Aziz had made multiple requests for toilet breaks, smoke breaks and prayer breaks. These too were accommodated by the CPIB officers.[35] The willingness of the CPIB officers to acquiesce to Aziz's various requests runs entirely contrary to the narrative of oppression that he seeks to present.

50 Although I accept that Aziz was short on sleep at the time his first two statements were recorded, I am nonetheless satisfied that this did not have any meaningful impact on his ability to provide his statements. In other words, his lack of sleep did not affect him to the extent where his will was sapped. It was unchallenged by him that he was given intermittent rest breaks while in custody. I also note that Aziz had the presence of mind to make not insignificant amendments to his 2nd statement. I return to elaborate more on this point later (at [58]).

51 Second, Aziz contends that he was kept in a windowless room with no clock, with his personal mobile phone and watch taken away from him, which resulted in him being unable to tell day from night.[36] This point can be disposed of shortly. The situation that Aziz found himself in was certainly not exceptional. It is trite that some discomfort is to be expected during investigations (see *Yeo See How v PP* [1996] 2 SLR(R) 277 at [40]). In fact, the

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35 NE, 25 November 2019, p 56, ln 6–13, ROP p 548.

36 ASS at [35].

DJ accepted that it was "natural that Aziz would have been anxious and stressed, not knowing who might be coming in next and when and with what further questions or information."[37] However, it must be observed that these stressors were *not* unique to Aziz. *Every* accused person under investigation is faced with a similar set of circumstances. It cannot be the case that the high threshold to satisfy an allegation of oppression is so easily met.

52 Third, Aziz submits that the CPIB refused to record anything he said unless it was something that they wanted to hear, and this wore him down to the point where he purportedly confessed. It is, however, important to bear in mind that robust interrogation is an essential and integral part of police investigation (see *Seow Choon Meng* cited above at [38]). That being said, I accept that in some situations where the questioning by investigators is so vigorous or prolonged, the threshold of oppression may very well be crossed (see *Sim Ah Cheoh and others v PP* [1991] 1 SLR(R) 961 at [41]). Therefore, in every case, it is a fact-sensitive inquiry as to whether the manner and the duration of the questioning would amount to oppression. Aziz urges the court to find that the threshold for a finding of oppression has been crossed in his case.

53 However, based on an examination of the evidence before me, I am unable to agree with Aziz's submission. A concise chronology of events which documented Aziz's activities while in custody, including his break timings and interview/statement recording timings, was helpfully set out by the DJ (GD at [47]).[38] With reference to this chronology, it is demonstrably clear that the manner and duration of Aziz's questioning was not oppressive by any measure.

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37 GD at [62], ROP p 2164.

38 GD at [47], ROP pp 2157–2159.

54 Aziz was provided with adequate and sufficiently lengthy breaks in between the interviews leading up to the recording of his statements. For example, prior to the recording of his 1st statement, three interviews were conducted by CSI Chris which lasted approximately 2 hours and 15 minutes, 1 hour and 2 hours and 20 minutes respectively. In between each of these interviews, Aziz was afforded rest/meal breaks of 30 minutes, 1 hour and 1 hour and 25 minutes. Crucially, although CSI Chris had intended to commence a fourth interview after this last break, Aziz was given an additional meal break of 1 hour and 20 minutes because he had requested for food.

55 Further, in my view, it was certainly not necessary for Aziz's statement recorders, namely CSI Chris and CSI Johnston, to accept Aziz's initial account at face value. Plainly, it is the job of investigators to conduct investigations, and it is not their job to blindly transcribe verbatim the words uttered by accused persons unquestioningly. It was thus entirely their prerogative to challenge Aziz's account on the basis of evidence obtained during investigations which pointed to the contrary. This was in fact CSI Chris's explanation for his refusal to record Aziz's initial account, which he assessed to be incompatible with the CPIB's preliminary evidence.[39] To this end, CSI Chris testified that during the interview with Aziz, he informed Aziz that "what he told [CSI Chris] isn't the truth because [the CPIB] have [*sic*] evidence to suggest otherwise."

56 However, I must caution that this does not give carte blanche to investigators to engage in all manner of questioning and/or for unreasonable durations. Once again, whether an allegation of oppression is supported must be assessed on the facts of each case.

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[39] NE, 6 November 2019, p 7, ln 1–7, ROP p 390.

57 Assessed as a whole, CSI Chris's refusal to accept Aziz's initial account over a period of about 5 hours and 35 minutes where Aziz was permitted multiple rest/meal breaks in between was clearly not oppressive.

58 My view that the threshold for oppression had not been crossed is further fortified by my observation that Aziz remained alert and had the presence of mind to make amendments to his 2nd statement, which were not insignificant. To illustrate this point, I highlight two of these amendments (with deleted words struck through, and inserted words underlined):

(a) The first amendment reads as follows: "The reason I asked for this advance was ~~I was having tight cash flow~~ to assist Agus for some operational work in relation to Agus work to protect maids and counselling."[40]

(b) The second amendment was an insertion made by Aziz that reads: "A4) ~~No.~~ Despite the fact that both me and James asked Agus for official proposal to justify the commission, Agus failed to do so."[41]

59 These amendments were made by Aziz when he was allowed to read his statement and it is undisputed that they were made in his own handwriting. The content of these amendments also shed light on Aziz's state of mind at the time. They sought to minimise his culpability and portray him in the best light possible. In particular, the second amendment is exculpatory in nature, as he sought to shift the blame onto Agus and distance himself from the entire corrupt scheme.

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40 Exhibit P21 at [41], ROP p 2544.

41 Exhibit P21 at [54], Q4–A4, ROP p 2549.

60 Pertinently, Aziz was subsequently given the opportunity to review his 2nd statement prior to the recording of his 3rd statement on 3 July 2018. At this time, he had already been released on bail. During this review of his 2nd statement, Aziz made a number of clarifications and amendments. I am satisfied that by this time, the effect of any alleged oppression based on the circumstances prevailing at the time his 1st and 2nd statements were recorded would have been removed, and there was thus no reason for him not to make substantial amendments to his earlier statements should they be inaccurate. However, he did not do so. Moreover, for the reasons I will elaborate below at [64], I find that there was no threat hanging over his head at the time of the recording of his 3rd statement.

61 Therefore, I am satisfied beyond reasonable doubt that no oppressive circumstances were prevailing at the time when Aziz's first two statements were recorded such that his mind and will were so affected that he spoke when he would otherwise have remained silent.

(B) NO THREAT WAS MADE BY CSI CHRIS TO AZIZ

62 Apart from his allegation of oppression, Aziz also claims that CSI Chris had threatened him prior to the recording of his first two statements.[42] According to Aziz, CSI Chris had said to him: "Our relationship with Malaysia is very bad. You trying to create problem for our government with Indonesian Government."[43] This, argues Aziz, was a threat which must be assessed against the backdrop of purported calls by the Ministry of Manpower (the "MOM") to the Embassy inquiring about his background, as well as an earlier e-mail from

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42 ASS at [31]–[34].

43 GD at [53], ROP p 2161; NE, 25 November 2019, p 10, ln 7–9, ROP p 502.

the MOM, which was forwarded to him by Agus via WhatsApp, allegedly "accusing the Indonesians of interfering with Singapore's sovereignty".[44] I reproduce here the material portion of the e-mail that Aziz relies on:[45]

> In addition, *we would like to remind* the Embassy that a State cannot purport to exercise or indeed exercise its powers in the territory of another State, unless it is permitted under international law. In this regard, *we trust* that the Indonesian embassy will take care not to implement terms in such a Bond, which would amount to Indonesia exercising sovereign power in Singapore in a manner that is contrary to international law. [emphasis added]

63 At this juncture, it is appropriate for me to remind counsel that it is important to exercise care and responsibility in framing and phrasing their submissions. This is especially so when sensitive issues are involved, such as in the present case. It is, in my view, a gross mischaracterisation of the MOM's e-mail to allege that they were "*accusing* the Indonesians" [emphasis added] of something. On a plain reading of the e-mail, it is evident that it was merely meant to serve as a general reminder to the Indonesian Embassy to exercise care when considering what terms to implement in the PB. This in *no way* could be interpreted as an accusation by the MOM.

64 In any event, I am unable to see how CSI Chris's statement could possibly amount to a threat having reference to any of the charges against Aziz. The alleged threat was exceedingly vague and did not specify any consequences should Aziz decline to provide a confession to the CPIB. Importantly, it simply defies logic for CSI Chris to threaten Aziz by telling him not to "create problem[s] for our government with [the] Indonesian Government" and then hope to extract a confession from him which would implicate Agus. This surely

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44 ASS at [32].

45 Exhibit B3-D1, ROP p 5041.

would contradict CSI Chris's apparent intention on the face of the alleged threat for Aziz not to create problems with the Indonesian government.

(C) AZIZ'S SWOLLEN EYE WAS NO IMPEDIMENT TO THE ADMISSIBILITY OF HIS 4TH STATEMENT

65 Finally, Aziz argues that at the time his 4th statement was recorded, he once again found himself labouring under oppressive circumstances.[46] This time he relies on a two-day medical certificate ("MC") issued to him stating that he was unfit for work due to the swelling in one of his eyes. I am not convinced that is sufficient in and of itself to amount to oppression.

66 The DJ accepted CSI Chris's evidence that Aziz had confirmed he was still able to proceed with the statement recording despite being issued an MC. She also observed that lunch was provided to Aziz, and he was allowed to take his medication.[47] Accordingly, she found that there were no oppressive conditions to speak of, and I see no reason to disturb this finding. Notably, Aziz was able to make substantial amendments to his 4th statement despite his condition.[48] To me, this indicates that he was clearly well enough to understand the statement he was making and read what was in front of him. Having taken the time to make amendments to his statement, it could not be said that his will was sapped to such an extent that he would sign anything placed before him.

67 While I accept that he may have experienced *some* discomfort because of his swollen eye, discomfort alone is insufficient to amount to oppression.

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46 ASS at [25]–[26].

47 GD at [69], ROP pp 2167–2168.

48 Exhibit P23, ROP pp 2565–2577.

(2) Whether Aziz's statements should be excluded pursuant to the court's residual discretion at common law to exclude prejudicial evidence

68 In the alternative, Aziz submits that the DJ erred in failing to exercise her discretion to exclude his contested statements on the basis that their prejudicial effect outweighed their probative value.

69 This common law discretion was discussed in *Kadar*. In particular, Aziz relies on the Court of Appeal's observation at [56] of *Kadar*, which states "procedural irregularities may be a cause for a finding that a statement's prejudicial effect outweighs its probative value." To this end, he argues that the CPIB's statement recording procedure was highly irregular for the same reasons proffered above at [52], coupled with the fact that "information from elsewhere" was allegedly "transplant[ed]" into his statements by the statement recorders.[49]

70 For the reasons set out above (at [55]), I find that there was nothing irregular about the CPIB's statement recording procedure. Additionally, unlike one of the appellants in *Kadar*, namely, Ismil bin Kadar, Aziz was permitted to read through all his contested statements and make amendments as he wished. He also signed on every page.

71 Further, there is simply no basis to assert that the statement recorders had "transplant[ed]" information into Aziz's contested statements. Specifically, Aziz relies on this particular extract from CSI Chris's cross-examination to support his assertion:[50]

> Q: Sorry, you say your colleagues who interviewed James gave an account so that you can put it into the recording?

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49 ASS at [68].

50 NE, 5 November 2019, p 90, ln 1–8, ROP p 333.

> A: No, I was saying what I have spoken to Aziz I have briefed my supervisors. Likewise, my colleague who had spoken to James had also briefed my supervisors on what James had said and then after counter-checking with each other we decided to put what they say into recording.

72 On a close examination of that extract, I am of the view that CSI Chris's answer was equivocal and does little to assist Aziz. The extract simply shows that the statement recorders had shared information between themselves on what Aziz and James had revealed during their respective interviews. CSI Chris did not go so far as to say that the information exchanged was then transplanted or amalgamated into each of their statements. For completeness, I note that neither Aziz's nor James's statements were so substantially similar in terms of either phrasing or substance to support an argument of blatant copying.

73 The DJ thus did not err in her decision not to exercise her discretion to exclude Aziz's contested statements on this basis.

(3) Weight to be placed on Aziz's statements

74 It is undisputed by Aziz that the contents of the contested statements were provided by him. His bone of contention is that he was oppressed and threatened into providing these statements, thus rendering them unsafe to rely on.

75 As I did not find that Aziz had been oppressed to the point where his will was overborne and no threat emanating from CSI Chris existed, I am of the view that the contents of the statements as provided by him are in fact true accounts of what had transpired. As the DJ noted, the statements were generally consistent and coherent, and were also corroborated partly by some of the phone

messages between the appellants.[51] The statements were self-incriminating and accordingly the DJ was correct in according full weight to them.

Whether James's contested statements are admissible

76 I now turn to address the admissibility of James's statements. James challenges the admissibility of portions of all his statements, save his 1st and 7th statements. In gist, James's submission is that CSI Chris had provided a promise or an inducement to him by informing him that he had "one chance" to "put things right" and that the CPIB only wanted to "send Agus back", and thereafter the "matter [would] just be swept under the carpet and [James would] get a stern warning".[52] This allegedly led him to believe that if he "played along" and allowed the statement recorders to "put words into his mouth" by replacing references of payments being made for "CSR/implementation costs" to "Agus", the CPIB would use his statements to repatriate Agus to Indonesia and he would be administered with a stern warning.[53]

(1) Whether James's statements were voluntarily made

(A) NO PROMISE OR INDUCEMENT WAS MADE BY CSI CHRIS TO JAMES

77 CSI Chris admitted to speaking with James for about 10 to 15 minutes prior to the recording of his 2nd statement. However, he categorically denied making any form of promise or inducement to him during their exchange. Instead, he testified that he had made a spontaneous decision to enter James's interview room as he was walking past, to have a word with him about certain

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51 GD at [115], ROP p 2188.

52 GD at [26], ROP p 2145; NE, 21 August 2020, p 35, ln 5–12, ROP p 1061.

53 JSS at [11].

discrepancies in the commission sharing percentages between James's and Aziz's accounts.[54]

78 While there was no record of what had transpired during this interaction between CSI Chris and James, I do not find this to be fatal after considering all the evidence in the round.

79 In this regard, I am in agreement with the DJ's views, which I summarise as follows:[55]

(a) First, CSI Chris denied James's claim of inducement that was put to him, and which denial there was no reason to doubt.

(b) Second, there was simply no reason for CSI Chris to make such an inducement. At the time of the alleged inducement (i) CSI Chris had already recorded a detailed statement from Aziz which incriminated the appellants and Agus; and (ii) James's 1st statement (which he did not contest) had already been recorded, wherein he admitted to sharing his commission with Aziz as he wanted him (Aziz) to "help to influence the officials at the embassy to use AIG, or accredit AIG as the insurance company for this performance bond."[56]

(c) Third, the contents of James's 1st statement and his subsequent statements were not so significantly different as to allow one to think that there might have been a "game changer" event in between the statements, such as CSI Chris issuing an inducement or promise.

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54 GD at [24], ROP pp 2143–2144.

55 GD at [31], ROP pp 2147–2149.

56 Exhibit P27 at [9], ROP p 2660.

(d) Fourth, the contents of the contested statements did not read well if one were to replace all references to "Agus" with "CSR/implementation costs".

(e) Fifth, and importantly, there was no reference to any promise of a stern warning in James's cautioned statements. At the time when James's cautioned statements were recorded, he would have been put on notice that he was in fact being *charged* for corruption offences. If CSI Chris had indeed made such an inducement regarding the offer of a "stern warning", any reasonable person in James's shoes would have sought to clarify matters either in the cautioned statement or seek to speak with CSI Chris. However, neither of this was done.

(f) Sixth, James's account that PSI Lam had spent a few hours deliberately ignoring all references to CSR during the recording of his 2nd statement did not sit well with the existence of his 3rd statement which was also recorded by PSI Lam and was entirely about CSR.

80 In response to the DJ's observation set out at [79(d)] above, James argues that the DJ took too literal an approach in her treatment of this point.[57] I am not persuaded by this argument. The DJ had explicitly observed in her GD that the replacement claim failed even if one were to consider a replacement of the "essence" of the statement as opposed to a literal word-for-word replacement.[58] I agree with this observation. What James meant by replacing the "essence" of the statement was amending whole paragraphs or chunks of paragraphs. If such a replacement had occurred, it would necessarily suggest an

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57 JSS at [22].

58 GD at [31(d)], ROP pp 2148–2149.

allegation that the statement recorders had fabricated large portions of James's statements. This is a serious allegation that was not put to the recorders. Moreover, in my view, there is nothing to suggest that the statement recorders had engaged in any such fabrication.

81 It is thus clear to me that James's allegation that CSI Chris had offered him an inducement or made him a promise was nothing more than an afterthought.

(2) Whether James's statements should be excluded pursuant to the court's residual discretion at common law to exclude prejudicial evidence

82 In a similar vein as Aziz's submission, James submits that there were procedural irregularities during the statement recording process which warranted the exercise of the court's common law discretion to exclude the contested statements on the basis that their prejudicial effect outweighed their probative value. James's main argument in this regard is that his statement recorders, PSI Lam and SSI Mak, had testified at trial to having paraphrased what James had communicated to them.[59] To this end, James argues that their paraphrasing took on two main forms: (a) the paraphrasing of his choice of words; and (b) the substitution of references he made to "CSR/implementation costs" to "Agus". I have addressed and rejected James's allegation of the latter form of paraphrasing. I therefore deal now only with his argument concerning the paraphrasing of his choice of words.

83 James relies on M Karthigesu JA's observations in *Taw Cheng Kong v PP* [1998] 1 SLR(R) 78 ("*Taw Cheng Kong*"), to support his argument that his

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[59] JSS at [26]–[30].

statements should be excluded on account of paraphrasing done by PSI Lam and SSI Mak:

> 108 … The process by which these "confessions" were made left much to be desired: being recorded not verbatim but in note form, in handwriting, then transcribed into typewritten form by paraphrasing the handwritten notes, with the insertion of facts from memory which were not referred to in the handwritten notes, and the omission altogether of references to other "key words" contained in the handwritten notes.
>
> 109 … [The typewritten transcripts] can, by no stretch of the imagination, be considered exclusively the appellant's statements since their contents may have been supplemented by Betty Khoo from her own personal knowledge, or suffered from a defect in her powers of recollection …

84 The above passage from *Taw Cheng Kong* must be understood in its proper context. In *Taw Cheng Kong*, the appellant's statements, which were recorded by a Government of Singapore Investment Corporation ("GIC") investigation officer (the "GIC statements"), were admitted at a *voir dire*. However, subsequent to this *voir dire*, new evidence surfaced indicating that the GIC investigation officer had made handwritten notes of the interviews and prepared a typewritten "transcript" of the interviews based on these. The appellant did not sign any of the handwritten or typewritten notes. It was the typewritten notes that constituted the GIC statements which were tendered in evidence as confessions.

85 The factual background to M Karthigesu JA's observations is thus starkly different from what has transpired here. It is undisputed that James's statements were recorded contemporaneously and that he was given the opportunity thereafter to read and amend these statements at will. He had also signed on every page of the statements. The significant procedural irregularities before the court in *Taw Cheng Kong* are thus not present in the instant case.

86 Hence, while it may not have been ideal that PSI Lam and SSI Mak had paraphrased the choice of words used by James during his statement recording, I am of the view that this was not a significant procedural irregularity such as to warrant the exercise of the court's common law discretion to exclude these contested statements, given that James had the opportunity to make corrections to his statements, as noted above. Having found also that there was no inducement or promise made by CSI Chris to James, there was consequently no reason for him not to make substantial amendments to his statements if they had been wrongly worded before appending his signature on every page.

87 In my view, the effect of any paraphrasing would go towards the determination of the weight to be placed on the statements. It is to this which I turn next.

(3) Weight to be placed on James's statements

88 I accept that caution ought to be exercised in assessing the weight to be placed on James's statements because of the paraphrasing involved. Nonetheless, upon considering the contents of the statements as well as the circumstances in which they were recorded, I did not find that any paraphrasing done had much impact on their reliability.

89 First, as I have observed earlier, James was given the opportunity to read through his statements and make amendments if he so desired. If PSI Lam and SSI Mak had paraphrased his words in a manner which materially altered the account he had provided to them during his statement recording, he could have easily made amendments to correct any discrepancy.

90 Second, I am mindful that the act of paraphrasing James's choice of words falls far short of re-writing or fabricating entire portions of James's

statements. I am satisfied that the contents of James's statements could only have come from him and any paraphrasing could only have been cosmetic in nature. For example, in his 2nd statement, James was referred to photographs of Laos Airlines airplane sickness bags, which he explained belonged to him and were used by him to hand over Aziz's and Agus's share of his commission earned from the sale of the Guarantees by AIG and Liberty.[60] Subsequently, during the recording of his 4th statement, James himself produced statements of accounts from Liberty and records documenting AIG's sales of the Guarantees. He went on to explain at length about how he relied on these documents to calculate his commissions and how he subsequently divided these between himself, Agus, Aziz, Benjamin and Samad.[61] More pertinently, James subsequently affirmed these calculations on the stand during his ancillary hearing.[62] In my view, the level of detail and the comprehensiveness of his explanations are strong indicators that the information could only have come from James himself. No amount of paraphrasing could have resulted in what was eventually recorded.

91 Thus, I find that the DJ rightly admitted James's statements and accorded them full weight.

Whether the appellants' confessions can be used against each other pursuant to s 258(5) of the CPC

92 As I find that both Aziz's and James's statements had been correctly admitted, I proceed to address the issue concerning the use of their statements against each other pursuant to s 258(5) of the CPC.

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60 Exhibit P28 at [47], ROP p 2670.

61 Exhibit P30, ROP pp 2677–2688.

62 GD at [139], ROP p 2197.

93 In the court below, the Prosecution initially submitted that s 258(5) of the CPC could apply. However, they subsequently conceded that this was not possible as the current iteration of the provision did not apply to the present case.[63] Nevertheless, the DJ took the position that she was not strictly prohibited by law from using the statements recorded from Aziz and James against one another in the present case in respect of their mirror charges under s 5 of the PCA.[64]

94 In these appeals, both Aziz and James take the contrary position that the version of s 258(5) of the CPC which applied at the material time did not permit the use of their statements in this manner.[65] The Prosecution however decline to express a view on the matter. Instead, they take the position that regardless of whether s 258(5) of the CPC applies in the instant case, the appellants' own confessions are sufficient to independently secure each of their convictions.[66]

The applicable law

95 Given that the investigations against the appellants began on 29 June 2018, in accordance with reg 4(2) of the Criminal Justice Reform (Saving and Transitional Provisions) (No. 2) Regulations 2018 (GN No S 728/2018), the applicable version of s 258(5) of the CPC ("pre-amendment s 258(5)") is as follows:[67]

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63 GD at [124], ROP p 2191.

64 GD at [127], ROP p 2192.

65 ASS at [88]–[96]; JSS at [37]–[40].

66 Respondent's Skeletal Submissions ("RSS") at [52].

67 Post-amendment s 258(5) of the CPC does not apply to a determination of whether the court may take into consideration a confession, made during an investigation of an offence, as against a person (other than the maker of the confession), if that investigation began before 31 October 2018.

> (5) When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.
>
> *Explanation* — "Offence" as used in this section includes the abetment of or attempt to commit the offence.

96 This is notably different from the current iteration of s 258(5) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("post-amendment s 258(5)"), which was amended by s 74 of the CJRA. The post-amendment s 258(5) provides as follows:

> (5) When 2 or more persons are tried jointly in any of the following circumstances, and a confession made by one such person affecting that person and any other such person is proved, the court may take into consideration the confession as against the other person as well as against the person who made the confession:
>
> (*a*) all of those persons are tried jointly for the same offence;
>
> (*b*) the proof of the facts alleged in the charge for the offence for which one of those persons (*A*) is tried (excluding any fact relating to any intent or state of mind on the part of *A* necessary to constitute the offence for which *A* is tried) would, for each of the rest of those persons, result in the proof of the facts alleged in the charge for the offence for which that person is tried (excluding any fact relating to any intent or state of mind on the part of that person necessary to constitute the offence for which that person is tried);
>
> (*c*) at least one of those persons is tried for an offence under section 411, 412, 413 or 414 of the Penal Code 1871 in respect of any property, and the rest of those persons are tried for one or more of the offences of theft, extortion, robbery, criminal misappropriation, criminal breach of trust or cheating under Chapter 17 of the Penal Code 1871 in respect of the same property.
>
> …
>
> (5B) In subsection (5), "offence" includes an abetment of, a conspiracy to commit, or an attempt to commit, the offence.

Illustrations

…

(*c*) *A* is charged with an offence of corruptly giving a gratification to *B* under section 5(*b*) of the Prevention of Corruption Act 1960. *B* is charged with an offence of corruptly receiving the same gratification from *A* under section 5(*a*) of the Prevention of Corruption Act 1960. *A* and *B* are jointly tried for those offences. If a confession made by *A* affecting both *A* and *B* is proved, and the same facts are alleged in the charges against *A* and *B*, the court may take into consideration the confession as against *B*, even though *A* and *B* are charged with offences that have different elements.

Interpretation of the pre-amendment s 258(5) of the CPC

97 The DJ was of the view that the acts of giving and receiving a bribe practically fall within the definition of a "same offence", notwithstanding that they are prosecuted under differing provisions, namely s 5(*b*) and s 5(*a*) of the PCA respectively.[68] She held that the mirror charges faced by Aziz and James related to the exact same payment transaction with the only difference being that the former was the recipient and the latter the giver. Therefore, the court must be able to refer to the statement by James for the purpose of finding that just as James had given, Aziz had received.[69]

98 I respectfully disagree with the DJ's interpretation of the pre-amendment s 258(5). I appreciate that there is an intuitive attraction to the reasoning behind the DJ's interpretation of the phrase "the same offence" in the pre-amendment s 258(5), and to read it as extending to the present offences which are for all intents and purposes mirror images of each other. However, to interpret the phrase in this manner is, in my view, to do violence to its plain meaning.

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[68] GD at [127], ROP p 2192.

[69] GD at [128], ROP pp 2192–2193.

99 Based on a literal reading of the provision, the mirror charges faced by Aziz and James *cannot* be regarded as constituting the "same offence". I find support for this view in the Court of Appeal's judgment in *Ramesh a/l Perumal v PP and another appeal* [2019] 1 SLR 1003 at [60]–[62], where the court endorsed the trial judge's conclusion that the provision would only apply if the "co-accused persons in question faced *precisely the same charges for identical crimes*, or if one of the co-accused persons was charged with abetting the other in the commission of the offence with which the other was charged, or if one of the co-accused persons was charged with attempting to commit the exact same offence as the other" [emphasis added].

100 These are the exhaustive circumstances in which the provision can be relied upon. In my view, the phrase "precisely the same charges for identical crimes" requires the coincidence of both *form* and *substance*. It is insufficient for the offences to simply concern the same set of facts for the provision to be invoked. As the form of the charges faced by Aziz and James are patently different, with the former facing charges under s 5(*a*)(i) and the latter facing charges under s 5(*b*)(i) of the PCA, the pre-amendment s 258(5) thus cannot apply.

101 My view is fortified by the subsequent amendments made by Parliament in the CJRA to s 258(5) read together with the accompanying illustrations. The post-amendment s 258(5) introduces two additional circumstances (reflected in ss 258(5)(*b*) and 258(5)(*c*)) in which a confession made by an accused person can be taken into consideration by the court as against his other co-accused persons where they have been jointly tried. The amendment however retained the original circumstance covered by s 258(5) in the form of s 258(5)(*a*).

102 For the present purpose, the most relevant amendment is the additional circumstance provided in s 258(5)(*b*) of the amended CPC which is reproduced

above at [96]. An example of this particular circumstance arising in practice can be found in illustration (*c*) which is directly relevant here. This illustration explicitly provides that where a giver and receiver are jointly tried for offences under ss 5(*b*) and 5(*a*) of the PCA, if a confession made by the giver affecting both him and the receiver is proved and the same facts are alleged in the charges against both of them, the court may take into consideration the giver's confession as against the receiver, *even though the giver and receiver are charged with offences that have different elements*.

103 It is thus evident from the language of illustration (*c*), that offences under ss 5(*a*) and 5(*b*) of the PCA are regarded by Parliament as separate offences which require proof of *different elements*. The expansion of the scope of s 258(5) in the amended CPC with the introduction of s 258(5)(*b*) and illustration (*c*) appears to be Parliament's response to a previous lacuna in the pre-amendment CPC, whereby only the confessions of co-accused persons jointly tried with the *same* offence could be taken into consideration by the court as against each of them. Therefore, I agree with both Aziz's and James's submissions[70] that the DJ had erred in her interpretation of the pre-amendment s 258(5).

104 That being said, for the reasons I will elaborate on later, I agree with the DJ that the appellants' convictions can stand on their own based on their respective confessions, despite the inapplicability of the pre-amendment s 258(5).

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70 ASS at [90]; JSS at [38].

Whether the elements of the charges against the appellants are made out

The applicable law

105 As stated above, Aziz faces 19 charges under s 5(*a*)(i) of the PCA, James faces 18 charges under s 5(*b*)(i) of the PCA and Benjamin faces one charge under s 5(*a*)(i) read with s 29(*a*) of the PCA.

106 For convenience, I set out the relevant provisions in full:

> **Punishment for corruption**
>
> **5.** Any person who shall by himself or by or in conjunction with any other person —
>
> (*a*) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
>
> (*b*) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,
>
> any gratification as an inducement to or reward for, or otherwise on account of —
>
> (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
>
> (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both.
>
> **Abetment of offences**
>
> **29.** Whoever abets, within the meaning of the Penal Code —
>
> (*a*) the commission of an offence under this Act; or
>
> (*b*) the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a

> principal residing in Singapore, which if committed in Singapore would be an offence under this Act,
>
> shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

107 It is well-settled that the four legal elements of an offence under s 5 of the PCA are as follows:

(a) Element 1: The giving or receipt of gratification.

(b) Element 2: As an inducement (or reward) for any person doing (or forbearing to do) anything in respect of any matter.

(c) Element 3: There was an objective corrupt element in the transaction.

(d) Element 4: The gratification was given or received with guilty knowledge.

108 While these well-established elements have often been cited in cases involving offences under s 6(*a*) of the PCA (see *PP v Leng Kah Poh* [2014] 4 SLR 1264 at [20]; *Tey Tsun Hang* at [12]; and *Kwang Boon Keong Peter v PP* [1998] 2 SLR(R) 211 at [32]). In my view, they apply *mutatis mutandis* to offences under s 5 of the PCA given that there is a substantial degree of overlap between the two provisions and s 6 is essentially a subset of s 5 with a narrower ambit (see *PP v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 ("*Michael Tan*") at [54]–[55]).

109 It is also uncontroverted that the first element, the giving or receiving of the gratification, is concerned with the physical criminal act, *ie*, the *actus reus*. The *actus reus* of the offence is complete even if the recipient has not yet had

any opportunity to show favour to the giver in relation to the recipient's affairs (see *Tey Tsun Hang* at [13]). It is the second to the fourth elements which are concerned with whether the giver or the recipient possessed a criminal intent, *ie*, the *mens rea*. Thus, Woo J in *Tey Tsun Hang* explains the relationship between these elements as follows:

> 16 The second element relates to the causal, or consequential, link between the gratification and the act the gratification was intended to procure (or reward). The third element relates to whether that act was objectively dishonest in the entire transaction.
>
> 17 Although the second and third elements are conceptually different, they are part of the same factual enquiry. The question is whether the recipient received the gratification believing that it was given to him as a *quid pro quo* for conferring a dishonest gain or advantage on the giver in relation to his … affairs. The court has treated these two elements together in its assessment of whether an offence is made out …
>
> …
>
> 20 … The objective corrupt element implies the feature of dishonesty. …
>
> …
>
> 26 The fourth and final element relates to knowledge … The High Court in *Chan Wing Seng* elaborated on the fourth element as follows (at [23]–[24]):
>
> > 23 I should clarify that 'corrupt intent' actually refers to whether the accused knew or realised what he did was corrupt by the ordinary and objective standard. This is a subjective test and a more accurate formulation of what this court meant when it stated in [*PP v Khoo Yong Hak* [1995] 1 SLR(R) 769] that 'the giving must be accompanied by a corrupt intent'. Thus, guilty knowledge is required.
> >
> > 24 Bearing in mind the aforesaid, it becomes apparent that the giver might have given, thinking and believing that his actions were corrupt, but unbeknown to him, the transaction was perfectly legitimate. Likewise, a transaction could have a corrupt element, but there was no guilty knowledge because the giver was operating under a mistaken belief that it was legitimate

> to give. In both cases, the offence would not be made out.

The appellants' statements as confessions

110 Before I consider whether the legal elements of the offences faced by the appellants are made out, I should address preliminarily the relevance and significance of the appellants' statements.

111 It is trite that an accused person can be convicted on the basis of his own confession if the court is satisfied that the confession was voluntary, true and reliable (see *Lim Thian Lai v PP* [2006] 1 SLR(R) 319 at [43]).

112 As I have found that all three appellants' statements were voluntarily made and were true and reliable, I am satisfied that they can be relied upon as the sole basis for their convictions, should they disclose all elements of the offences they have been charged with.

Whether the elements of the 18 mirror charges under s 5 of the PCA against Aziz and James are made out

113 First, I consider whether the elements of the 18 mirror charges faced by Aziz and James under s 5 of the PCA are made out.

(1) Whether it is a requirement under s 5 of the PCA for the Prosecution to prove that Agus could have or did actually influence the accreditation process

114 One of the common issues raised by both James and Aziz in their submissions concerns the Prosecution's failure to call Agus as a witness and its consequent inability to prove that Agus had the power to influence the

accreditation process, or that he did materially influence the said process.[71] They argue that this materially goes to proving the corrupt element particularised in their respective charges.

115 To my mind, the starting point of the analysis must be the four legal elements underpinning s 5 of the PCA, these being the *only* requirements that the Prosecution has to prove beyond a reasonable doubt in order to secure a conviction.

116 The question that must be asked is this: Is it a requirement under any of the elements to prove that the key recipient (Agus) had the power to influence the accreditation process, or that he did materially influence the said process? Having considered the relevant authorities, I am of the view that the answer to this is no.

117 First, it is well-established that the Prosecution need not prove this purported requirement in order to satisfy the first element of s 5 of the PCA pertaining to the *actus reus* of the offence. This was made abundantly clear in *Tey Tsun Hang* at [13], cited above at [109].

118 Second, it is also apparent that none of the *mens rea* elements import such a requirement. Where a charge is framed against the giver, it is the giver's intention that is crucial. Conversely, where a charge is framed against the recipient, it is the recipient's intention that is paramount. Likewise, where a middleman recipient is interposed between the key recipient and the giver, it is the middleman's intention as a recipient in his own right that is critical. In the present case, we are thus primarily concerned with the intention of the giver, James, and the middleman recipient, Aziz. Ultimately, the inquiry into whether

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[71] ASS at [97]–[98]; JSS at [41].

the *mens rea* elements are satisfied hinges on whether the accused in question gave or received gratification as an inducement or reward knowing or believing it to be for a corrupt purpose (*ie*, with dishonesty). In order to evaluate this, the court may have regard to all the surrounding circumstances – for instance, evidence from the recipient – when determining the guilt of the giver, and *vice versa*. However, this in no way mandates a requirement that in every case evidence from the giver/recipient *must* be obtained, in order to infer the intention of the recipient/giver.

119 Parliament could not have intended to mandate such an onerous evidentiary requirement for the Prosecution to establish the *mens rea* elements. This would be contrary to Singapore's tough stance against corruption, and it would stymie the prosecution of givers/recipients of gratification, regardless of the reason why the recipient/giver was indisposed.

120 I am well aware that the circumstances of the present case are unique. While investigations were ongoing, Agus was covered by diplomatic immunity. CSI Chris testified that the CPIB had sought a waiver from the Ministry of Foreign Affairs of this immunity. However, they were unsuccessful. This tied the hands of both the CPIB investigators as well as the Prosecution. The DJ was thus certainly correct not to draw an adverse inference against the Prosecution for not producing Agus in court.

121 While it would have been helpful to hear evidence from Agus, the absence of his evidence is not fatal to the Prosecution's case. For the reasons I consider below, I am satisfied that the evidence from the appellants' individual statements support the intention of both Aziz and James for the payments to be made as a reward to Agus for showing favour in the accreditation process and for Aziz to influence Agus in that regard. Agus's evidence was thus not necessary to establish their charges.

122 Moreover, as the DJ observed, there was ample reason for the appellants to think that Agus had shown favour such as to warrant the reward being given. Not only was Agus the Labour Attaché of the Embassy, but AIG and Liberty were also duly accredited in accordance with their agreement, and as it turned out, were the only ones ever accredited.[72]

123 Having answered the question posed at [116] in the negative, I now turn to consider whether the four legal elements under s 5 of the PCA are satisfied in respect of the 18 mirror charges faced by Aziz and James.

(2) Element 1: James gave, and Aziz received, gratification

124 There is no reason to disturb the DJ's finding that moneys were transacted between the parties. In particular, James had paid portions of his commission earned from the sale of the Guarantees by his principals, AIG and Liberty, to Aziz, Agus (through Aziz), Benjamin and Samad. These moneys clearly constituted "gratification" for the purpose of s 2 of the PCA. This was supported by James's testimony during his ancillary hearing, where he confirmed the calculations in his statements as well as the statements from the other two appellants.

125 I also accept the DJ's assessment as to the accuracy of the calculations in relation to the sums transacted between the parties, which she based on James's testimony and objective records, including the statements of accounts from Liberty and records documenting AIG's sales of the Guarantees.[73]

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72 GD at [157], ROP p 2207.

73 GD at [140], ROP p 2197–2198.

(3) Elements 2 and 3: James gave gratification to Agus as a reward for accrediting his principals, and to Aziz for arranging with Agus in respect of the same, these transactions being objectively corrupt

126 The DJ observed that it was clear from Aziz's and James's statements that:[74]

(a) James gave gratification to Agus as a reward for accrediting his principals, AIG and Liberty;

(b) James gave gratification to Aziz as a reward for arranging with Agus to grant accreditation to AIG and Liberty; and

(c) Aziz received gratification from James for himself and on behalf of Agus, for the same.

127 Having reviewed Aziz's and James's statements, I find no cause to disturb the DJ's findings. For this reason, I propose to deal only briefly with some of the evidence that was relied upon by the DJ in arriving at her position.

128 First, in relation to the charges against James for the payments made to Agus, the DJ concluded that James's statements clearly showed that he agreed to pay Agus a portion of his commission so that Agus would show favour in the accreditation of AIG and Liberty to sell the Guarantees. The subsequent payments made out to Agus thereafter were thus based on this agreement, and meant as a reward for the favour shown.[75] This is captured in James's 2nd statement:[76]

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74 GD at [144]–[146], ROP pp 2200–2201.

75 GD at [143]–[144], ROP 2199–2201.

76 Exhibit P28 at [50], ROP p 2671.

> Q1) During the initial discussion, why was it agreed that there will be a 20% to Agus?
>
> A1) So that *AIG can have a higher chance of being accredited* as the insurance company to issue the letter of Guarantee.
>
> Q2) Are you aware how can Agus help in getting AIG and Liberty to be accredited as the insurance company to issue to [*sic*] letter of Guarantee?
>
> A2) I am not sure but *since he is the Labour Attache, I thought that he could make certain decisions*.
>
> Q3) After you get the commission from AIG and Liberty, why did you have to give money to ~~*Azziz*~~ Aziz for him to pass 20% of it to Agus?
>
> A3) It was *given to Agus as per agreement and also as a thank you gift and token of appreciation because AIG and Liberty were the accredited companies issuing the Letter of Guarantee*.
>
> [emphasis added; strikethrough in original]

129 Second, in relation to the charges against James for the payments made to Aziz, the DJ similarly found that James's statements indicated that these were agreed to as he felt that Aziz would be able to help him "influence the officials at the Embassy to use AIG, or accredit AIG as the insurance company".[77] The payments to Aziz thereafter were also based on this agreement and were meant as a reward for his help in securing the accreditation of AIG and Liberty. This is reflected in James's 4th statement:[78]

> 69 … I am agreeable to give 6% to Aziz because I knew that Aziz was the person who knew Agus at the Indonesian embassy and without Aziz's help, this performance bond business will not be successful and will not be smooth-sailing. Aziz told me that he was in a position to influence Agus to accredit AIG and Liberty as the insurance company for the performance bond guarantee … Aziz had a lot of influence on Agus because Aziz was the local person and could speak English well. In a way, Agus needed Aziz to help make this performance bond business work and relied on Aziz's opinions and comments. I needed to

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77 GD at [145], ROP p 2201; Exhibit P27 at [9], ROP p 2660.

78 Exhibit P30 at [69], ROP pp 2681–2682.

> pay Aziz this 6% because he had convinced me that he will help me convince Agus to accredit AIG and Liberty.

130 Third, in relation to the charges against Aziz for receiving payments from James on behalf of Agus and also for himself, the DJ concluded that it was apparent from Aziz's statements that he was aware that these payments were meant for: (a) Agus as a reward for accrediting AIG and Liberty; and (b) him as a reward for arranging with Agus for the granting of the same.[79] The following portion of his 2nd statement is a clear testament to his knowledge in relation to the purpose stated in (a):[80]

> 33 … I told them [*ie*, James, Benjamin and Samad] that I had to pay a percentage of the premium to the labour attache in the Indonesian Embassy a percentage for every successful PB that signed up with AIG. At that time, I did not inform them the labour attache was Agus but I was referring to him.
>
> 34 During the discussion, all of them understand [*sic*] that we had to pay the labour attache of the Indonesian Embassy as he has the authority to recommend AIG, which was the company James was representing …
>
> 35 The reason why we gave a high percentage to the Labour Attache of Indonesia [*sic*] Embassy was because he has the power to recommend AIG for this PB at Indonesian Embassy.

His 3rd statement demonstrates his knowledge of the purpose stated in (b):[81]

> Q6) In relation to the 6% which you had received from James, why did James agree and give you 6% of the commission he received from AIG?
>
> A6) It was because I told James that I was affiliated to Agus and I could recommend him to Agus to accredit AIG to sell the PB in Indonesia Embassy.

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79 GD at [145], ROP p 2201.

80 Exhibit P21 at [33]–[35], ROP p 2542.

81 Exhibit P22 at [73], ROP p 2560.

131 Having ascertained that Aziz and James had intended to receive and give gratification respectively as a reward for securing the accreditation of AIG and Liberty, the next question is whether this was in itself objectively corrupt.

132 The DJ took the view that the intention to give money to the Labour Attaché in the Embassy for the purpose of the accreditation of AIG and Liberty to sell the Guarantees necessarily tainted the payment transactions with a corrupt element.[82] She went on to add that whether or not AIG or Liberty were accredited should be based on objective factors related to the purpose at hand, *eg*, the merit of the companies' proposals, their background and standing, *etc*. Their accreditation should not be based on how much they were willing to pay as a personal benefit to Agus.

133 With regard to the payments made to Aziz, the DJ was also of the view that they were objectively corrupt as they served no purpose other than to reward Aziz for influencing Agus to accredit AIG and Liberty.

134 I agree wholly with the DJ's observations summarised at [128]–[133]. I only have but one point to add. I note that it is trite that the furtiveness of the transaction may lend support to the argument that the transaction in question was objectively corrupt (see *PP v Mohamed Abdul Gofar* [1997] 1 SLR(R) 23 at [42]). Here, the parties transacted in *cash* only, which was surreptitiously concealed within airplane sickness bags/envelopes. There were also no records or receipts for the payments made. This, to me, was an obvious display of the corrupt nature of the transactions.

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82 GD at [169], ROP p 2211.

(A) JAMES'S CSR DEFENCE

135 At this time, I digress to consider the defence put forward by James during his ancillary hearing that the moneys paid by him to Agus were in fact CSR contributions, and not rewards for accrediting AIG and Liberty to sell the Guarantees. As mentioned earlier, this defence was not advanced by any of the appellants in the course of the main trial, including James. It was also not pursued at length in the appeal before me. Nonetheless, I propose to deal with it for completeness.

136 Quite apart from the fact that this alleged defence was not raised in the course of the main trial, I find that there is simply no credible evidence to commend it. It was thus entirely proper of the DJ to reject this defence.

137 First, given the very nature of CSR contributions, they are usually made through formal channels with proper documentation. However, no documentary evidence was adduced by James to show that the payments made to Agus were for the purpose of making CSR contributions. It is simply unbelievable that either AIG, Liberty or the Embassy would deal with CSR contributions in cash stashed away in airplane sickness bags, with no official record documenting this. Moreover, as pointed out by the DJ, the letters from the Embassy tendered by James in his Case for the Defence did nothing to support his CSR defence. Instead, the letters demonstrated that CSR contributions would be formally requested by the Embassy pertaining to specific events. Additionally, Low Hwee Huan Derek ("Derek"), the Executive Vice-President (Personal Lines) of Liberty at the time, testified that Liberty had only made one lump sum

contribution of $2,000 towards CSR which was paid by way of a cheque made out to the Embassy and did not come from the sale of the Guarantees.[83]

138 Second, Derek and Manik Bucha, the latter having care of individual personal insurance matters at AIG at the time, both denied that a part of the commission given to James was meant for CSR and confirmed that any contributions to CSR would have been made in a lump sum by way of bank transfer or cheque, and not by way of cash.[84]

139 Third, this CSR defence did not appear in any of the appellants' multiple statements.[85] In particular, this was conspicuously absent even from James's 1st statement, the admissibility of which he did not challenge. In fact, what can be gleaned from James's 1st statement is that he attempts to distance himself from any relationship with Agus. In this statement, he stated: "I wish to add that *I have never given money to Agus for any reason before*. Agus has never asked me for a share of my commission before."[86] As pointed out by the Prosecution, James also admitted during his cross-examination at the ancillary hearing that he sought to distance himself from payments to Agus by ensuring that he never handed the money to Agus directly, or even witnessed Aziz giving Agus the money.[87] If the payments to Agus were meant as innocent CSR contributions, why would James actively seek to distance himself from Agus?

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83 GD at [88] and [149(a)], ROP pp 2179 and 2202–2203.

84 GD at [83] and [149(b)], ROP pp 2176–2177 and 2203.

85 GD at [149(d)], ROP p 2204.

86 Exhibit P27 at [24], ROP p 2664.

87 RSS at [58(c)].

140 Fourth, there was also no mention of the payments being made towards CSR in any of the messages found in the appellants' seized mobile phones.[88]

141 To the contrary, during oral submissions before me, the Prosecution highlighted a series of WhatsApp messages between James and Agus, which they argue makes clear that the payments were not for the purpose of CSR. I set out the relevant messages here:[89]

> 14/03/2018, 10:55 – James: We have just crossed the 1000th PB milestone!
>
> 14/03/2018, 11:00 – Pak Agus Labour Attache: *whats rewards for me bro?...*
>
> 14/03/2018, 12:16 – Pak Agus Labour Attache: i want sending proposal for csr bro…
>
> 14/03/2018, 12:17 – Pak Agus Labour Attache: to who?
>
> [emphasis added]

142 The Prosecution submits that the message "whats rewards for me bro?..." sent by Agus to James, shows that he was seeking monetary rewards and not CSR contributions. His later message stating "i want sending proposal for csr bro…" and the follow-up question "to who?" was also consistent with the testimonies by the representatives from AIG and Liberty, that they were approached by the Embassy to make contributions to their CSR funded events. Thus, at this point on 14 March 2018, Agus was simply asking James for future reference whom he should refer the Embassy's legitimate requests for CSR to. This is in line with the idea that CSR requests should be made formally to the appropriate persons.

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88 GD at [149(e)], ROP p 2204.

89 Exhibit P2, ROP p 2320.

143 Based on a reading of these messages, it is evident that Agus had two distinct questions for James. The first related to what *personal benefit* he was to derive from the PBs and the second related to whom (from AIG and Liberty) he should send the Embassy's official proposals for CSR to. If Agus's first question had anything to do with CSR, he would not have asked what rewards there were for *him* specifically. Reading these messages together with Aziz's 4th statement further reinforces the point that the payments by James to Agus could not have been for the purpose of CSR. In Aziz's 4th statement, he stated that Agus frequently chased him to get payment from James in respect of the Guarantees sold, and once even threatened to "switch off the system if James … refused or delayed" in making payment.[90] If these payments were indeed CSR payments, it is certainly odd that Agus would ask Aziz to chase James personally for these payments (instead of the representatives from AIG and Liberty), and that any refused or delayed payments would be cause for the termination of AIG/Liberty's accreditation.

144 Considering the evidence in its totality, James's CSR defence quite simply has no legs to stand on.

(4) Element 4: The gratification was given by James, and received by Aziz, with guilty knowledge

145 Finally, the evidence in Aziz's and James's statements unequivocally demonstrate that they possessed the requisite guilty knowledge. I cite only a few examples to illustrate this. In Aziz's 1st statement, when he was asked why he thought James was uncomfortable giving money directly to Agus, he replied: "He [James] did not want to be seen bribing Agus. I was also not feeling

90 Exhibit P23 at [82], ROP p 2567.

comfortable to help him give as I did not want to get involved."[91] In James's 2nd statement, he admitted that he knew it was wrong to give part of his commission to Agus, an embassy staff, as a bribe for accrediting AIG and Liberty.[92]

146 In my judgment, the DJ correctly applied the law to the facts before her. Accordingly, Aziz's and James's convictions on these 18 mirror charges under s 5(*a*)(i) and s 5(*b*)(i) of the PCA should not be disturbed.

Whether the elements of the Tokio Marine charge against Aziz are made out

147 I turn to Aziz's conviction on the Tokio Marine charge under s 5(*a*)(i) of the PCA. This pertains to Aziz's act of allegedly soliciting gratification for Agus from one Loh Yeow Kwong David ("David") as an inducement to show favour to Tokio Marine in the accreditation process to sell the Guarantees. The DJ took the view that there was ample evidence supporting this charge based on the testimonies of David and one Choo Boon Siong ("Choo") as well as Aziz's statements.[93] At the material time, David was a business development manager at Tokio Marine, while Choo was a director at AVA Insurance Agency Pte Ltd ("AVA Insurance"). AVA Insurance was an insurance agent that had business relations with a number of principals, including Tokio Marine.

148 According to David, Aziz requested a 40% commission from the sale of each Guarantee for himself and Agus. David understood this to mean that Aziz was requesting for a bribe, in order for him to put in a good word with Agus to secure accreditation for Tokio Marine in respect of the PBs. Further, at a

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91 Exhibit P20 at [21], Q1–A1, ROP p 2537.

92 Exhibit P28 at [50], Q4–A5, ROP p 2671.

93 GD at [176], ROP p 2214.

subsequent internal meeting at Tokio Marine's office on 5 March 2018, where David, Choo, Cher Ah Kow (the Chief Executive of Tokio Marine), and some other staff were present, David and Choo testified that they knew Aziz was asking for a bribe and a decision was made not to accede to this request.[94]

149 Aziz too confirmed in his 3rd statement that he had asked for a commission of 40% on Agus's instruction. He knew that this "commission" was akin to the money which Agus was receiving from James. Aziz also admitted that he knew David had understood this 40% commission to be a form of bribe in order to obtain accreditation for Tokio Marine.[95]

150 However, the DJ also noted that Aziz went on to explain in his statement that Agus had asked for a high commission as he wanted to deter Tokio Marine from applying for accreditation. This was because AIG and Liberty were allegedly not on good terms with AVA Insurance, which was affiliated with Tokio Marine. Nonetheless, the DJ ultimately rejected this explanation by Aziz. She found that this did not sit well with the evidence from David and Choo that Aziz had followed up on his request after the meeting, even going so far as to message David while he was away on holiday to ask for updates.[96] Relying on *Chan Kin Choi v PP* [1991] 1 SLR(R) 111 at [34]–[35], the DJ accepted that she was entitled not to accept the contents of Aziz's statement wholesale, and she thus relied only on the incriminatory portion.

151 I agree with the DJ that the active steps taken by Aziz to follow up on his request were plainly inconsistent with any supposed intention to deter Tokio

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94 GD at [90], [93] and [176], ROP pp 2180–2181 and 2214.

95 GD at [177], ROP pp 2214–2215; Exhibit P22 at [66] and [68], ROP pp 2558–2559.

96 GD at [178]–[179], ROP p 2215.

Marine. I would add that Aziz's explanation is also incongruent with Choo's evidence on his subsequent meeting with Agus sometime in May 2018, where Agus had specifically communicated his requirement that any commission moneys to him were to be paid in cash, with no paper trail. Although Choo had explained then that official receipts had to be issued for audit purposes, Agus had insisted on cash payments. Agus even suggested that AVA Insurance find other ways to make payments to him, for example, by registering a new company.[97]

152 On the totality of the evidence, I am satisfied that Aziz's conviction on the Tokio Marine charge is sound. Aziz did solicit a 40% commission from the representatives of Tokio Marine as an inducement for Agus to grant accreditation to Tokio Marine. As established in respect of the 18 mirror charges above, the solicitation of payments of such a nature is invariably corrupt. Aziz also possessed the requisite guilty knowledge as evidenced from his admission in his 3rd statement that he knew the commission that Agus was seeking from Tokio Marine was akin to what they were receiving from James, which were bribes.

Whether the elements of the abetment charge against Benjamin are made out

153 Lastly, I deal with Benjamin's appeal against conviction. Benjamin did not contest the admissibility or the reliability of his investigative statements at trial, although he was represented by counsel at the time. Accordingly, I find that there is no reason not to admit them and to place full weight on their contents.

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97 RSS at [75(b)].

154 Benjamin's appeal against conviction is unmeritorious. In the main, he raises the following arguments in support of his appeal: (a) his role in the entire scheme, *ie*¸ introducing James to Aziz, did not amount to facilitation; and (b) he had no knowledge of the circumstances of the offence.[98]

155 I am unable to accept Benjamin's submission that his introduction of James to Aziz did not amount to facilitation. It cannot be controverted that Benjamin's introduction of James to Aziz clearly facilitated the commission of the offences which related to the payment of bribes from James to Aziz and Agus. This introduction was in fact the very catalyst that set the entire corrupt transaction into motion.

156 Further, Benjamin's belated denial of any knowledge regarding the circumstances of the offence directly contradicts his clear and unequivocal admissions in his investigative statements. At the time he introduced James to Aziz, he had full knowledge that whichever insurance agent or company that sought to be accredited would need to pay bribes to people in the Embassy. This is evident from Benjamin's 2nd statement:[99]

> 30 … James and I understood that if we wanted to get the deal, commissions have to be given.
>
> 31 … I knew that Aziz wanted a cut of this deal and gain from it. Aziz did tell me that he wanted commissions on the second meeting when I met him with Samad but he did not specify the amount that he wanted.
>
> …
>
> 35 I am now asked by the recording officer to explain the message "Will confirm mtg. For this deal..we are working at embassy level and party commission will need to be covered from insurer side.." … I wish to state that I was telling James

98 BSS at [9].

99 Exhibit P4, ROP pp 2364–2366.

> that this is a deal involving the Indonesia Embassy and the party commission I was referring to is commission to be paid to Aziz and the group of people he was working with at the Embassy …
>
> …
>
> 38 I am now asked by the recording officer if I knew that someone from the embassy was receiving commissions in exchange for allowing AIG and Liberty to be the appointed insurer for the Indonesia Embassy. I wish to state that yes, Aziz did tell me that someone from the embassy needed to be paid and I relayed the message to James. I recall telling James that it is common for people to cover each other in Indonesia. By covering each other, I meant giving money to do business in Indonesia. In this instance, it was giving money to someone from the Embassy to do business with the Embassy.

157 Benjamin also admitted that he knew that it was "wrong to give someone in the Indonesia Embassy money in exchange for awarding the accreditation to AIG and Liberty" and that it was "a bribe".[100]

158 In light of the compelling evidence from his statements, it is clear that Benjamin's conviction on this charge is unimpeachable.

Adverse inference to be drawn against the appellants for electing to remain silent

159 The appellants all chose to remain silent when their defence was called. This was so even in the face of their glaring admissions in the statements adduced at trial by the Prosecution. In my view, the DJ's decision to draw adverse inferences against the appellants for this reason was wholly justified.

160 First, Benjamin's statements were admitted into evidence without any challenge. Based on the admissions in his statements, his conviction is

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100 Exhibit P4 at [49], ROP p 2368.

unimpeachable. His choice to remain silent when confronted with his statements leads to the irrefutable conclusion that he simply had no defence.

161 Second, although Aziz had given evidence during his ancillary hearing that the statement recorders refused to record the initial version of events which he had provided to them, he chose not to take the stand to provide an account of what was, in his view, the correct account of what had transpired. I thus accept the DJ's inference that Aziz did not have any more innocuous explanation for the events that unfolded.[101]

162 Third, the DJ accepted that James had put up some defence during his ancillary hearing by explaining that 20% of the Guarantee payments were in fact payments made towards CSR. To this end, the only inference she drew was that there was no further evidence or explanation he could give for his defence, beyond what had already been canvassed during his ancillary hearing.[102]

Appeal against sentence

163 As I have upheld Aziz's and Benjamin's conviction on all the charges against them, I am left to consider their appeals against sentence. Their appeals are limited only to contesting the custodial sentences imposed. Aziz is not challenging the penalty sum imposed on him under s 13 of the PCA. Benjamin is also not challenging the fine amount imposed. Accordingly, I deal only with their appeals against the custodial terms meted out.

164 I preface my decision with some general observations on sentencing in corruption offences. In two recent High Court decisions, *Michael Tan* and

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101 GD at [137], ROP p 2196.

102 GD at [138], ROP pp 2196–2197.

PP v Wong Chee Meng [2020] 5 SLR 807 ("*Wong Chee Meng*"), this court had to consider the issue of whether to adopt a sentencing framework for PCA offences. In *Michael Tan*, the question was whether it would be appropriate to promulgate a general sentencing framework for corruption offences under ss 5 and 6 of the PCA. Hoo Sheau Peng J ("Hoo J") declined to do so. She observed that the wide variety of acts caught by ss 5 and 6 of the PCA would make the crafting of a single sentencing framework applicable to all such offences an extremely challenging task (see *Michael Tan* at [104]). In *Wong Chee Meng*, Sundaresh Menon CJ ("Menon CJ") declined to lay down a sentencing framework applicable generally to all offences under ss 5 and 6 of the PCA. One main reason for this was because the gravamen of the offences differed. In particular, he observed that the offence under s 6 of the PCA is rooted in the notion of *agents* who have allowed their loyalty to their *principal* to become suborned through the corrupt receipt of gratification. This differs in complexion from s 5 of the PCA, which targets corrupt transactions more generally. Given this, there is the distinct possibility of different sentencing considerations being relevant for offences under s 5 of the PCA (see *Wong Chee Meng* at [59]). However, Menon CJ nevertheless set out a sentencing framework applicable in the narrower context of offences under s 6 read with s 7 of the PCA. As the question of the appropriateness of promulgating a sentencing framework for offences under s 5 of the PCA is not before me in these appeals, I leave this open for consideration on a future occasion.

165 For now, I can do no better than to summarise the relevant factors set out in *Michael Tan* (at [99]), which serve as a useful reference point in the calibration of the appropriate sentence for corruption offences:

(a) The value of the gratification;

(b) The consequences of the corruption. This includes consideration of the type of policy considerations implicated, which vary depending on whether the corruption involved relates to: (i) public sector corruption; (ii) private sector corruption; or (iii) corruption involving a foreign public official;

(c) Motivation of the offender;

(d) The web of corruption or broader syndicate operations;

(e) The extent of premeditation and sophistication;

(f) Duration of offending;

(g) Role of the offender;

(h) Transnational nature of the offence; and

(i) Whether the corrupt conduct was endemic.

166 In the present case, the DJ correctly identified that the starting point for the offences was a custodial term as they involved the giving of gratification to a foreign public official (*ie*, Agus, the Labour Attaché from the Embassy).[103] This offence-specific aggravating factor, in my view, applies across all of the appellants' charges, and no distinction should be made even for the charges which did not specifically name Agus as an involved party. The reason for this is apparent once one considers that the entire corrupt transaction was premised on the single purpose of providing rewards to Agus in respect of his help in accrediting AIG and Liberty.

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103 GD at [217], ROP p 2228.

167 Having established that the relevant starting point for the sentences to be imposed should necessarily be a custodial term, I now turn to consider whether the lengths of the sentences imposed are manifestly excessive.

Aziz's appeal against sentence

(1) The 18 mirror charges

168 At the outset, I note that Aziz takes no issue with the DJ's reasoning and broad sentencing approach. His only quarrel is with the DJ's numerical calibration of the individual sentences based on the precedents she relied upon. Aziz thus submits that the following individual sentences are more appropriate (the sentences in s/n 4, 8, 12 and 18 were ordered by the DJ to run consecutively):[104]

S/N	**Bribe amount**	**Recipient**	**Sentence imposed**	**Sentence proposed by Aziz**
1	$6,902	Agus	5 months	3 months
2	$12,600	Agus	7 months	5 months
3	$2,357.60	Agus	3 months	2 months
4	$15,400	Agus	8 months	7 months
5	$9,739.80	Agus	6 months	4 months
6	$14,000	Agus	8 months	6 months
7	$8,000	Agus	6 months	4 months
8	$2,211.60	Agus	3 months	2 months
9	$2,070.60	Aziz	3 months	1 month

[104] ASS at [157].

10	$1,500	Aziz	2 months	1 month
11	$2,280	Aziz	3 months	1 month
12	$707.28	Aziz	1 month	2 weeks
13	$2,000	Aziz	3 months	1 month
14	$2,620	Aziz	3 months	1 month
15	$2,921.94	Aziz	3 months	1 month
16	$2,000	Aziz	3 months	1 month
17	$2,200	Aziz	3 months	1 month
18	$3,063.48	Aziz	3 months	1 month

169 Before I consider the precedents cited in the court below, I first address the relevant offence-specific factors that arise on these facts. In addition to the specific aggravating factor mentioned earlier concerning the giving of gratification to a foreign public official, I am also in broad agreement with the offence-specific factors identified by the Prosecution, namely:[105]

(a) The appellants (including Aziz) were motivated by self-interest and greed, with their monetary gains from the corrupt arrangement reflected in their individual charges.

(b) The offences were committed over a four-month period, which was not insubstantial, and they only ceased offending when they were arrested by the CPIB.

(c) The offences were premeditated and calculated to avoid detection. The appellants had discussed and planned out their individual shares of the commission. The eventual moneys flowing from this entire corrupt arrangement were also distributed in cash hidden away in

105 RSS at [83(c)]–[83(e)].

> airplane sickness bags/envelopes and there were no records documenting these transactions.

170 One other offence-specific factor relied on by the Prosecution was that the corruption involved prominent insurance institutions such as AIG and Liberty, which has the potential to impact Singapore's global financial standing.[106] Aziz disagreed with this. I am inclined to agree with Aziz's objection. There is no evidence that AIG and Liberty were complicit in the corrupt transaction. Based on the Prosecution's case, James acted unilaterally and paid out bribes from his own commission without the knowledge of his principals. Moreover, while there may have been some adverse impact, to my mind, this was not significant enough to constitute a standalone aggravating factor.

171 I also accept that Aziz may not have been the main force behind the corrupt arrangement, although I am nonetheless cognisant that he played a significant role in the co-ordination and facilitation of the entire scheme.

172 I now turn to the precedents relied on by the DJ and the parties in the court below. The DJ found guidance from two cases cited by the parties, *PP v Chew Hoe Soon* (DAC-916888-2017 and others) ("*Chew Hoe Soon*") and *Michael Tan*.

173 It bears repeating the caution against the reliance on unreported decisions (see *Luong Thi Trang Hoang Kathleen v PP* [2010] 1 SLR 707 at [21]). These decisions often lack sufficient particulars to paint the entire factual landscape required to appreciate the precise sentences imposed. The lack of

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106 RSS at [83(b)].

reasoned grounds also greatly diminishes the precedential value of these decisions. I therefore hesitate to place much weight on the case of *Chew Hoe Soon*. In any event, having considered the facts of the case as set out by the DJ (GD at [230]), it appears to me that the sentence imposed there was lenient.

174 The second precedent considered by the DJ was *Michael Tan*. In that case, the offender in the first appeal, Tan Kok Ming Michael, had pleaded guilty to one charge under s 5(*b*)(i) of the PCA, for giving a sum of $10,000 to one Owyong Thian Lai ("Owyong") for the purpose of bribing officers from the Malaysian Maritime Enforcement Agency ("APMM") to detain a vessel belonging to his competitor. Two further charges under the same provision involving amounts of $10,000 each were taken into consideration for sentencing ("TIC charges"). As this case involved the giving of gratification to Owyong for the benefit of APMM officers, Hoo J held that this triggered the relevant policy considerations surrounding corruption involving foreign public officials. Therefore, the custodial threshold had been crossed. The other relevant sentencing factors considered included: (a) the total sum of the gratification (including the gratification forming the subject-matter of the TIC charges) which amounted to $30,000; (b) the offender's motivation borne out of self-interest (namely to create a non-level playing field for himself); and (c) the two other TIC charges.

175 Having regard to the relevant offence-specific factors outlined above as well as the precedents cited, I am of the view that the DJ's calibration of the individual sentences cannot be considered to be manifestly excessive.

(2) The Tokio Marine charge

176 In relation to the Tokio Marine charge, the DJ relied on the case of *PP v Su Fengxian* [2018] SGDC 40, where the offender had tried to bribe an official from the Singapore Table Tennis Association and received a sentence of six weeks' imprisonment after trial. The DJ then applied an uplift to two months' imprisonment to take into account the fact that Aziz had solicited bribes for a foreign public official. Aziz submits instead that a sentence of six weeks' imprisonment is appropriate. He did not provide any grounds to support this submission, and I am unable see any cogent reason to depart from the sentence imposed by the DJ.

(3) The global sentence

177 For completeness, I note that Aziz rightly did not challenge the DJ's decision to run five sentences consecutively, namely the 4th, 8th, 12th, 18th and 19th charges. This was clearly commensurate with his culpability.

178 I therefore dismiss Aziz's appeal against sentence.

Benjamin's appeal against sentence

179 Benjamin did not provide any written submissions for his appeal against sentence. In his oral submissions, he merely reiterated that his role in the entire corrupt transaction was limited and pleaded for a lighter sentence. This limited role was in fact recognised by the DJ in her calibration of the appropriate sentence to impose.[107] However, the custodial threshold had nonetheless been crossed as the case concerned corruption involving a foreign public official.

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107 GD at [239], ROP p 2236.

180 In all, I am of the view that the sentence of one month's imprisonment is not manifestly excessive.

Conclusion

181 For the reasons above, I dismiss the appeals by Aziz, James and Benjamin against their conviction, and I dismiss the appeals by Aziz and Benjamin against their sentence. Finally, it leaves me to express my gratitude to counsel for all the parties for their assistance through their comprehensive oral and written submissions.

Vincent Hoong
Judge of the High Court

Andre Darius Jumabhoy and Wong Thai Yong (Peter Low & Choo LLC) for the first appellant;
Chia Boon Teck and Darryl Chew (Chia Wong Chambers LLC) for the second appellant;
The third appellant in person;
Alan Loh, Jasmin Kaur and Eric Hu (Attorney-General's Chambers) for the respondent.