

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

[2024] SGHC 159

Magistrate's Appeal No 9203 of 2022/02

Between

Gan Hsiao Ching Elizabeth
(Yan Xiaoqing Elizabeth)

... Appellant

And

Public Prosecutor

... Respondent

GROUNDS OF DECISION

[Criminal Law — Offences — Documents]

[Criminal Law — Offences — Property]

[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Gan Hsiao Ching Elizabeth (alias Yan Xiaoqing Elizabeth)

v

Public Prosecutor

[2024] SGHC 159

General Division of the High Court — Magistrate's Appeal No 9203 of 2022/02

See Kee Oon JAD

3 May 2024

24 June 2024

See Kee Oon JAD:

Introduction

1 This was the Appellant's appeal against her conviction and sentence in relation to 157 charges under s 477A read with s 109 of the Penal Code, with 49 of the charges under the 2008 Revised Edition and 108 of the charges under the 1985 Revised Edition. The 157 charges concerned two sets of conspiracies allegedly masterminded by the Appellant while she was employed as the General Manager of the Sales Division in Epson Singapore Pte Ltd ("Epson") from October 2007 to 1 July 2009. The charges related to falsified invoices for the supply of goods or services which were used to facilitate the siphoning of moneys from Epson. The Appellant received S\$598,342 as a result.

2 After a 72-day trial, the District Judge (the "DJ") convicted and sentenced the Appellant to a global sentence of 52 months' imprisonment. The

DJ's grounds of decision are set out in *Public Prosecutor v Gan Hsiao Ching Elizabeth (Yan Xiaoqing Elizabeth)* [2023] SGDC 68 (the "GD").

3 I dismissed the appeal on 3 May 2024 after hearing the parties' submissions. The grounds of my decision are set out below.

The proceedings below

4 In summary, the Prosecution's case at trial was as follows. For the first conspiracy, which involved 133 charges, the Appellant conspired with her subordinates in Epson's Sales Division ("ESD") to submit falsified invoices to Epson. Using these falsified invoices, the Appellant siphoned moneys from a fund in Epson that was earmarked for advertising and promotional activities (the "A&P Fund"). The moneys were either paid out as unauthorised rebates to Epson's sales channel partners or moved into "parked" funds held by two of Epson's third-party marketing agencies (respectively, Design & Marketing Pte Ltd ("D&M") and Concept Alliance Asia Pte Ltd ("CAA")). By way of these false invoices, Epson's channel partners were able to subvert the "channel sales structure" that Epson had put in place and effectively claim additional rebates from the A&P Fund which they were otherwise not entitled to.

5 The conspiracy involved the use of the unauthorised rebates to induce Epson's channel partners to make larger purchases of Epson products. This caused an exponential uptick in Epson's local sales, which led to higher remuneration and reputational benefits for the Appellant. Sellers of Epson products from other countries began to see a sudden proliferation of parallel imports of Epson products from Singapore. This phenomenon, among other developments, triggered an internal investigation by Epson which led to the Appellant's dismissal from Epson in June 2009.

6 For the second conspiracy, which involved 24 charges, the Appellant conspired with Mr Aaron Lee Wai Loong (“Aaron”), a director of a third-party firm named Innovez Solutions Pte Ltd (“Innovez”), to create and submit falsified invoices to third-party marketing agencies (*ie*, D&M, CAA and Ino Group Inc Pte Ltd) in order to facilitate disbursement of the “parked” funds held in those agencies to the Appellant’s personal bank accounts. The Appellant used some of the “parked” funds for her personal purposes. It was undisputed that the Appellant received S\$598,342 from the “parked” funds under this alleged conspiracy.

7 The Appellant did not dispute that the goods or services supplied in the falsified invoices were either fictitious, or that inflated prices were stated where goods or services were, in fact, supplied (GD at [28]). The Appellant’s primary defence at trial was that she did not act with any intent to defraud because Epson’s senior management (collectively referred to by the DJ as the “Japanese management”), whom she reported to, had known of and approved her actions (GD at [28]–[29]). According to the Appellant, she was made a “scapegoat” by the Japanese management who had been pressured by distributors into providing surreptitious incentives and rebates (GD at [33]–[35]). In relation to the second conspiracy, the moneys were allegedly held by her on behalf of Mr Patrick Peng (“Patrick”), a director of C20 Corporation Pte Ltd (“C20”), which was one of Epson’s channel partners pursuant to the agreement between Patrick and a member of Epson’s Japanese management to issue to C20 a surreptitious additional rebate of 2.5% of their total sales of Epson products.

The decision below

8 The DJ rejected the Appellant’s defence and found that the schemes were not authorised by Epson’s Japanese management. The DJ also found that

the Appellant had systematically siphoned S\$598,342 from the “parked” funds to her own bank accounts for her own use, which included redeeming her housing and car loans, and paying towards a condominium purchase (GD at [273]–[275]). The DJ thus concluded that the Appellant had acted wilfully with intent to defraud Epson, and convicted the Appellant of all 157 charges. The DJ sentenced the Appellant to a global sentence of 52 months’ imprisonment, with individual sentences for the respective charges ranging from seven to 17 months’ imprisonment (GD at [391]–[392]).

Parties’ cases on appeal

Appellant’s arguments

9 On appeal, the Appellant contended that the s 477A charges were defective in law since the Prosecution had failed to establish any intent to defraud on the part of the relevant employees of the companies that *issued* the falsified invoices. The Appellant and her co-conspirators were not employees of these companies to whom the invoices belonged.¹ The companies in question were Epson’s channel partners (such as C20) or the marketing agencies, and their employees are collectively referred to hereinafter as the “third-party representatives”. This argument was not pursued below and was canvassed for the first time on appeal.

10 The Appellant also maintained her defence that she had no intention to defraud Epson because the Japanese management had known and approved of the schemes. Even if the court were to find that the Japanese management did not know or approve of the schemes, the Appellant’s primary motivation was to

¹ Appellant’s Written Submissions dated 18 November 2023 (“AWS”) at paras 126–130.

generate sales through a “creative way” of using the A&P funds, and not to defraud Epson.²

11 As for sentence, the Appellant submitted that a global sentence of 52 months’ imprisonment was manifestly excessive.³ For the 133 charges regarding the first conspiracy, three months’ imprisonment for each of the charges would have been sufficient (as opposed to seven months’ imprisonment per charge).⁴ For the 24 charges regarding the second conspiracy, the Appellant submitted for six months’ imprisonment on each charge (as opposed to the 12 to 17 months’ imprisonment imposed by the DJ).⁵ The Appellant submitted that a global sentence of 12 months’ imprisonment was fair.⁶

Respondent’s arguments

12 The Prosecution submitted that the Appellant had relied on a technical argument that the elements of the s 477A charges were not made out. The Appellant had conspired with her subordinates to instruct the third-party representatives to falsify their invoices and have them submitted to Epson. The third-party representatives themselves knew that the documents were either false or contained inflated sums. Moreover, it was trite law that not every co-conspirator must know all the facts of the conspiracy as long as they knew the general objects and purpose.

² AWS at para 131.

³ AWS at para 135.

⁴ AWS at para 144.

⁵ AWS at para 145.

⁶ AWS at para 146.

13 The Appellant’s co-conspirators took instructions from her but they knew that the invoices were false and that the Japanese management had not given approval. The co-conspirators knew enough to have the intent to defraud. If the Japanese management had indeed approved the schemes, there would be no need to present falsified documents, let alone lie to Epson’s own Accounts Department when there was push-back on certain invoices. The co-conspirators could have simply informed the Accounts Department personnel that there was a secret rebate scheme which the Japanese management had approved.

14 The DJ thus correctly found that the Appellant had intent to defraud. The sentences imposed by the DJ were also not manifestly excessive and were consistent with case law.⁷

My decision

15 It was common ground that the question as to whether the Appellant had the intent to defraud was the sole issue for determination in the appeal against conviction. I agreed with the DJ’s finding that the Appellant had the intention to defraud in respect of the first and second conspiracies.

Preliminary point: whether the s 477A charges relating to the first conspiracy were defective

16 The Appellant argued that the elements of s 477A of the Penal Code were not made out in law in relation to the 133 charges where the Appellant abetted Ms Kimberly Ong Kim Tin (“Kimberly”), Mr Terry Lee Khok Tong (“Terry”), Mr Lawrence Tan Seng Kiat (“Lawrence”) and Mr Peter Lim Kok Siong (“Peter”) in creating the false invoices. Section 477A of the Penal Code (Cap 224, 2008 Rev Ed) reads as follows:

⁷ Respondent’s Written Submissions (“RWS”) at paras 157–174.

Falsification of accounts

477A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, *or wilfully and with intent to defraud makes or abets the making of any false entry in*, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

[emphasis added]

For completeness, the only material difference between the two versions of the Penal Code that were engaged by the charges is that the earlier 1985 Revised Edition carried a shorter maximum imprisonment term of seven years.

17 In the 133 charges, the Appellant is named as having abetted the commission of a s 477A offence to make false entries in papers belonging to the channel partners or marketing agencies (as the case may be).⁸ For instance, the first charge reads:⁹

You, ...

the General Manager of the [ESD], did abet the commission of an offence by engaging in a conspiracy with Kimberly ... to wilfully and with intent to defraud make false entries in papers belonging to [D&M], and in pursuance of that conspiracy and in order to the doing of that thing, acts took place, *to wit*, on or about 12 November 2007, either you or Kimberly instructed D&M to falsely state in Invoice Number 90124/11/07EP that a sum of S\$14,980/- was payable by Epson to D&M for a “Direct Mailer Campaign”, which entries you knew to be false, and which false entries D&M made and which invoice D&M submitted to Epson, and you have thereby committed an

⁸ ROA at pp 37–169.

⁹ ROA at p 37.

offence under section 477A read with section 109 of the Penal Code (Cap 224, 1985 Rev Ed).

[emphasis in italics in original]

18 The Appellant pointed out that s 477A of the Penal Code requires that the “subject individuals (*sic*) ... has to be an officer or servant or employee of the company to whom the papers belonged”. However, the third-party representatives, rather than the named co-conspirators (in particular Kimberly, Terry, Peter and Lawrence) were the actual employees of the companies that *issued* the falsified invoices, and to whom the papers “belonged” (*eg*, the third-party marketing agencies, such as D&M or CAA).¹⁰ An intention to defraud could not be attributed to any of the third-party representatives, as they were acting on the instructions given by the ESD personnel.¹¹

19 The Appellant’s principal contention thus appeared to be two-pronged: first, that the Prosecution had failed to establish that the third-party representatives had the same intent to defraud Epson and, second, that the falsified documents in question had to “belong” to Epson rather than any third-party. In support of the Appellant’s arguments, reference was made to *Public Prosecutor v Li Weiming and others* [2014] 2 SLR 393 (“*Li Weiming*”) (at [82]) as well as *Public Prosecutor v Lim Lee Eng Jansen* [2001] SGDC 188 (at [15]) for the proposition that the person who did the act of falsification must have done it with intent to defraud, otherwise the s 477A offence is not complete. The Appellant thus submitted that she was wrongly convicted under s 477A.

20 I did not accept the Appellant’s contention that the 133 s 477A charges in respect of the first conspiracy were defective in law. The amended charges

¹⁰ AWS at paras 126–127.

¹¹ AWS at paras 128–130.

which the Appellant was eventually convicted on specified that the Appellant had abetted her *co-conspirators* (ie, Kimberly, Terry, Peter and Lawrence) to instruct the third-party representatives to submit falsified invoices with intent to defraud (Epson). The crux of the offences as particularised in the 133 charges was the falsification of the invoices with intent to defraud. On the Prosecution's case based on the amended s 477A charges, it was not a necessary element of the charges that the false invoices must also have been created by the third-party representatives with intent to defraud. In any event, there was no authority whatsoever for the interpretation that was advanced on behalf of the Appellant. The cases cited (above at [19]) to support the Appellant's argument did not go any further than to make the general and well-established observation that intent to defraud must be proved in order to establish an offence under s 477A of the Penal Code.

21 The Appellant's argument is not borne out by a plain reading of s 477A of the Penal Code itself. The *mens rea* requirement in s 477A is concerned with the fraudulent intent of the person charged, who must be an employee acting in the capacity of a "clerk, officer or servant". Where the person is charged with falsification of accounts by *abetment*, the fraudulent intent of the person abetted (who also must be an employee acting in the capacity of a "clerk, officer or servant") will have to be established as well. This interpretation of s 477A is in line with the observations of Tay Yong Kwang J (as he then was) in *Phang Wah and others v Public Prosecutor* [2012] 1 SLR 646 at [58]:

I do not think it is necessary to invoke s 109 in a charge under s 477A ... when abetment is alleged in the circumstances here. *This is because s 477A already makes reference to the offence of abetting the falsification of accounts ...* However, the addition of s 109 in the s 477A charges does not change the meaning of the charges in any case and no injustice of any sort has been occasioned.

[emphasis added]

This view is also supported by commentaries on the Indian Penal Code 1860 (Act 45 of 1860) (the “IPC”). For context, s 477A of the IPC formed the basis of s 477A of the Penal Code, and it was intended that s 477A of the Penal Code be construed in conformity with its equivalent in the IPC (*Li Weiming* at [73]). In Shrinivas Gupta and Preeti Mishra, *Ratanlal & Dhirajlal’s Law of Crimes* (Bharat Law House, 27th Ed, 2013) vol 2 at p 2941, the word “abets” in s 477A of the IPC is explained by directing the reader to the section on s 107 of the IPC (*ie*, the offence of abetment). In *Ratanlal & Dhirajlal: The Indian Penal Code* vol 2 (LexisNexis, 34th Ed, 2018) at p 3205, the section on “Abetment to falsification by a partner” in relation to s 477A states that “the *substantive offence* under s 477A can be committed only either by a clerk, officer, or servant or by any person in such capacity [emphasis added]”.

22 The Appellant’s argument, as I understood it, purported to extend the requirement such that the Prosecution would also have to prove the *mens rea* of fraudulent intent on the part of *third-party individuals* who are not named in the charge as the principal offender and not even employed by Epson as a “clerk, officer or servant”. With respect, this cannot be correct. There is no principled basis for such an extension.

23 In addition, it bears noting that in *Li Weiming*, the s 477A charge related to an alleged conspiracy between the respondents to issue an invoice from a British Virgin Islands company (“Questzone”) to a Chinese company (“ZTE”). The invoice falsely purported to seek payment to Questzone as a subcontractor under a fictitious subcontract. In that case, the first respondent, who was an employee of ZTE, was found guilty and convicted on the s 477A charge, even though the invoice had been prepared by a director of Questzone (*Li Weiming* at [3] and [7]).

24 Pertinently, s 477A of the Penal Code requires that the falsified document “belongs to” *or* be “in the possession of” the subject individual’s employer. These are not technical terms or terms of art. Consistent with a plain reading and common-sense understanding of these terms, there is no requirement that the document in question has to originate from or be issued by the said employer. Similarly, in *Abdul Azeez v State of Madras* (1953) Mad WN 772 at 774, Ramaswami J made the following observations about s 477A of the IPC (see *Indian Penal Code* vol 3 (All India Reporter Limited 1980) at p 676):

This section is enacted to punish the falsification of accounts by a clerk, officer or servant or one acting as such. The falsification made punishable is stated to be of any ‘book, paper writing, valuable security or account’. *These must belong to the employer, though it is then immaterial in whose custody they were at the time of their falsification ...*

[emphasis added]

On the facts in the present case, even though the falsified invoices were issued by the third-party channel partners or marketing agencies, they were submitted to Epson pursuant to the first conspiracy. They were meant to (and did) physically come into Epson’s possession. Correspondingly, they would belong to Epson once they were in Epson’s possession. These are objective and indisputable facts. On the Prosecution’s case, these facts came about through the Appellant and her co-conspirators having acted wilfully and with intent to defraud by giving instructions to the third-party representatives to make false statements in the invoices, as envisaged under the first conspiracy. Hence, all the necessary elements of the s 477A offence were satisfied. The 133 s 477A charges were therefore not defective in law.

25 Conversely, assuming that the Appellant’s argument was accepted, this would potentially lead to the absurd result that any “clerk, officer or servant” of employer “X” can easily evade liability under s 477A of the Penal Code by

simply hoodwinking unknowing third parties to create and submit false documents at their behest, on the pretext that this practice was condoned by employer “X”. Such a convenient means of circumventing s 477A cannot be consistent with the legislative intent behind s 477A.

26 I turn next to address the DJ’s findings of fact in relation to the two conspiracies.

The first conspiracy

27 The DJ reviewed: (a) the Appellant’s evidence; (b) the evidence of the Japanese management; (c) the evidence of the Accounts Department personnel; (d) the evidence of the Appellant’s co-conspirators; and (e) the evidence of the third-party representatives. He then assessed whether all the elements of the offence in s 477A of the Penal Code were made out for the charges and concluded that the Prosecution’s case had been proved beyond reasonable doubt.

The Appellant’s evidence

(1) The Appellant’s recruitment interviews

28 On appeal, the Appellant maintained that she was acting under authorisation from the Japanese management in carrying out her scheme. She emphasised her recruitment interviews with Epson’s Japanese management, which she claimed supported her argument that there was at least implicit approval for the scheme.

29 The Appellant claimed that Mr Etsuo Fujita (“Fujita”), the former Executive Director and Head of Epson’s Regional Office, specifically informed her that he wanted to “reach out to” and “deal directly with the resellers”, and

this supported her case that he later authorised her scheme.¹² Fujita admitted to wanting to change the channel partner system in place at the time, in order to “sell directly to the tier 2 or to cut some of the layers from Epson to end users or maybe to increase the sales channel”. In fact, he had done so when he was with Epson’s India office.¹³ However, Fujita also testified that this could not be achieved here in Epson.¹⁴ He explained that “to implement this model will take time ... However, from ... year to year we can slowly apply this to achieve”.¹⁵

30 The Appellant also testified that Fujita knew that selling Epson products directly to resellers was “not possible within the current Epson organisation”, as this would upend the channel partner system.¹⁶ In my view, Fujita’s desire to reform the channel partner system and his understanding that this was not possible are neutral factors as to whether he would authorise the Appellant to subvert the system and give unauthorised rebates to resellers. It may even be argued that his intention was to work within Epson’s policies, and he was content to gradually reform the channel partner system.

31 In addition, the Appellant submitted that Fujita demonstrated great interest in her scheme during her recruitment interviews. During an interview, she shared with Fujita about how, when she was previously with Hewlett-Packard (“HP”), she provided a similar scheme of engaging third-party agencies to pay out rebates to channel partners. According to the Appellant, Fujita responded that “this is a good way to handle because it actually saves a lot of

¹² AWS at paras 14, 22 and 23.

¹³ Transcript (14 May 2018) at p 107 ln 8–19; ROA at p 1182, also see ROA at pp 1218, 1275.

¹⁴ Transcript (15 May 2018) at p 79, ln 5–6; ROA at p 1267.

¹⁵ Transcript (15 May 2018) at p 78, ln 8–10; ROA at p 1268.

¹⁶ Transcript (26 September 2019) at p 66 ln 21–23; ROA at p 4884.

internal resource and improves efficiency”.¹⁷ Under cross-examination, Fujita accepted that he had some discussion with the Appellant about how HP increased their sales revenue. However, he claimed that, at the time, he felt that HP’s system would merely increase sales revenue but decrease overall profit.¹⁸ Therefore, it was doubtful that he would have responded so positively to HP’s channel partner system. Therefore, Fujita’s testimony contradicted the Appellant’s claim that he “certainly appeared very interested in this scheme” and would therefore endorse its implementation.¹⁹

32 Finally, the Appellant claimed that, during these interviews, Fujita proposed giving other forms of discounts, rebates and incentives to resellers, and said that this was permissible in Epson.²⁰ The Appellant also testified that, in a subsequent interview with both Fujita and Mr Shimizu Hisashi (“Shimizu”), then Epson’s Managing Director, and on Fujita’s behest, she shared about HP’s sales system with Shimizu. Thereafter, Shimizu said that he would “support the initiative if that works for the organisation”.²¹ This was hardly an unqualified statement of approval of the scheme.

33 Ultimately, however, it must be emphasised that the Appellant’s account of her recruitment interviews, and the Japanese management’s purported authorisation of the scheme, are largely based on her own self-serving testimony. In my view, the DJ was correct to give little weight to the Appellant’s evidence. Her evidence was generally internally inconsistent. For instance, as

¹⁷ AWS at paras 24 and 25.

¹⁸ Transcript (14 May 2018) at p 90 ln 20 to p 91 ln 11; ROA at pp 1165–1166.

¹⁹ AWS at para 32.

²⁰ AWS at paras 19 and 20.

²¹ Transcript (26 September 2019) at p 91, ln 9–12; ROA at p 4909.

observed by the DJ, the Appellant provided a shifting account of who exactly constituted the Japanese management that had approved the scheme (GD at [218]).²² Prior to the criminal proceedings, and during Epson’s disciplinary inquiry, following its internal investigations, she also made an unconditional admission of wrongdoing in a statement dated 30 June 2009, wherein she apologised and admitted that she “violated the sales policy”.²³ Nowhere in this statement did the Appellant state or suggest that her actions had been sanctioned by the Japanese management.²⁴ She then sent an appeal letter to the Chairman of Epson and Shimizu on 1 July 2009, containing an admission of “folly negligence”.²⁵ Both of these documents make no mention of her defence, which is particularly odd, given that Shimizu had purportedly approved the scheme.

34 These accounts by the Appellant were at odds with her defence at trial that her actions were authorised by the Japanese management.²⁶ In addition, her evidence was contradicted by all the other witnesses, including the Japanese management who denied authorising the Appellant’s scheme. I therefore found that the DJ was correct to disbelieve this aspect of the Appellant’s evidence.

(2) The Appellant’s remuneration

35 According to the Appellant, Fujita also stated in an interview that Epson would give her a guaranteed bonus of 4.5 months’ salary to match her previous salary.²⁷ This was conveyed in the Appellant’s letter of appointment, which

²² RWS at paras 64–68, 99.

²³ ROA at p 8774.

²⁴ RWS at para 100.

²⁵ Appellant’s letter of appeal to Mr Ide and Shimizu dated 1 July 2009; ROA at p 10104.

²⁶ RWS at paras 100–102.

²⁷ Transcript (26 September 2019) at p 97, ln 14 – 22; ROA at p 4915.

stated that “[f]or the first year of [the Appellant’s] employment, [she would] receive a start-up variable bonus of 4.5 months”.²⁸ The Appellant claimed that Fujita suggested this salary structure to circumvent Epson’s policy on the permissible salary threshold, and this provided insight into Fujita’s willingness to bypass company procedures, and support her “creative” ideas for the usage of A&P funds.²⁹

36 I found this argument to be tenuous and unsupported by the evidence. First, Fujita was not cross-examined on whether he had proposed this salary structure. Second, I recognised that Mr Nicholas Tan, the former general manager for human resources at Epson,³⁰ gave evidence that the guaranteed bonus of 4.5 months’ salary was not ordinary.³¹ However, Mr Bobby Sim (the Appellant’s predecessor at Epson) also gave evidence that on average, Epson paid “a pretty good annual bonus” of “about 3-over months”.³² Therefore, a bonus of 4.5 months’ salary does not appear to deviate beyond the norm. Third, the Appellant’s submissions elide the fact that this was a one-time “start-up” bonus. For subsequent years, the letter of appointment stated that the Appellant’s bonus was subject to performance, as was the norm. Fourth, even if Fujita had flouted company procedure by structuring the Appellant’s salary in such a manner, it did not mean that, *by extension*, he would also authorise the Appellant to pay out bonuses or rebates that would violate Epson’s extant sales policy.

²⁸ Appellant’s Letter of Appointment dated 25 September 2007, Schedule 1 at s/n 9; ROA at p 8194.

²⁹ AWS at paras 36–40.

³⁰ Transcript (22 May 2018) at p 2 ln 14; ROA at p 1588.

³¹ Transcript (22 May 2018) at p 6 ln 5 to p 7 ln 12; ROA at pp 1592–1593.

³² Transcript (7 February 2018) at p 162, ln 14 to 16; ROA at p 593.

The Japanese management's evidence

37 First, the Appellant submitted that the DJ “was influenced by the *vehement* manner in which the Japanese management gave evidence”.³³ The DJ had therefore adopted the wrong yardstick to assess the credibility of their evidence. In my view, this submission had no merit. The DJ had explained how he took into account various considerations in finding that the account of the Japanese management was credible. Aside from the Japanese management’s categorical denials of the Appellant’s assertions, the DJ considered the following points: (a) the Appellant’s scheme was detrimental to Epson’s longer-term and regional commercial interests, which the Japanese management had responsibility over (GD at [220]–[222]); (b) the invoices, which were for internal processing, appeared to be designed to avoid arousing the suspicion of the Japanese management and Epson’s Accounts Department (GD at [173]); and (c) the scheme would subvert the ESD’s internal sales policy of prohibiting sales for parallel export, which was approved by Fujita, Shimizu and Mr Takara Katsuyoshi (“Takara”), who was then Finance Director of Epson.³⁴

38 Second, the Appellant submitted that the DJ did not sufficiently consider the weakness of Fujita’s reasons for opposing the use of third-party marketing agencies to pay rebates.³⁵ I disagreed as Fujita’s reasoning was logical and internally consistent. I endorsed the DJ’s cogent reasoning at [156]–[158] of the GD.³⁶

³³ AWS at paras 49–50, 82–83.

³⁴ RWS at paras 69–81.

³⁵ AWS at paras 52–54, 59–64.

³⁶ RWS at paras 52 and 53.

39 Third, the Appellant took issue with the fact that Shimizu did not give evidence in person and that his evidence was not subject to cross-examination. As a result, the Appellant claimed that no weight should be given to Shimizu's statement recorded by SSI Robin Lee on 4 July 2012.³⁷ For context, in that statement, Shimizu confirmed that he had never given any approval to the Appellant or any person from the ESD to submit fictitious invoices to Epson. In my view, the DJ was not wrong to give due weight to Shimizu's statement. His statement had been admitted by consent between the parties pursuant to s 32(1)(k) of the Evidence Act (Cap 97, 1997 Rev Ed). There was also no basis to suggest that the statement had been recorded inaccurately. Further, his evidence was internally consistent. Finally, Shimizu's statement was corroborated by the evidence of the other members of Epson's Japanese management and the ESD co-conspirators.³⁸

40 Fourth, the Appellant disagreed with the DJ's finding that Takara "had held true to this conviction that the proper course was to alert the Audit Department" (GD at [165]). The Appellant argued that Takara did not alert the Audit Department; it was the other way round.³⁹ However, the point remained that when Ms Lena Saw (Division Head of the Audit Department) ("Lena") reported the suspicious invoices to Takara, *he* authorised the commencement of an internal investigation. If Takara was part of the scheme to pay unauthorised rebates using false invoices, it would be illogical for him to commence an investigation into the same, as this would invite scrutiny towards a crime which he himself was implicated in.⁴⁰ Instead, given that the Japanese management

³⁷ AWS at para 76–80.

³⁸ RWS at paras 59–63.

³⁹ AWS at paras 86–89.

⁴⁰ RWS at para 57.

“wielded immense power” (as the Appellant claimed),⁴¹ Takara would more likely have convinced Lena to drop the matter. In the alternative, the Appellant submitted that, when Lena reported to Takara, the investigations had already commenced. Therefore, Takara had no choice but to commence the investigations. However, in the same transcript that the Appellant made reference to,⁴² Takara stated clearly that investigations only commenced after his authorisation.⁴³ Prior to that, Ms Aw Jing Jing (then a Senior Accountant of Epson) (“Aw”) and Lena had merely conducted their own informal investigations.

41 To sum up, the consistent evidence of the Japanese management was that they would not have given approval to issue fake or inflated invoices in order to issue additional rebates, as this was inappropriate and contrary to Epson’s internal policy.⁴⁴ In addition, Fujita explained that he would have rejected this manner of paying rebates to channel partners as it was ineffective, unreliable and against the auditors’ rules.⁴⁵ The DJ was entitled to find that their evidence was credible, and take into account the corroborative evidence of the co-conspirators who also maintained that the Japanese management was unaware of the scheme. He also gave due consideration to the Appellant’s inconsistent accounts as to how the Japanese management had ostensibly authorised the scheme.

⁴¹ AWS at para 67.

⁴² AWS at para 87.

⁴³ Transcript (30 July 2018) at p 32 ln 16 to p 33 ln 14; ROA at pp 1958–1959.

⁴⁴ Record of Appeal (“ROA”) at p 8675 para 11.

⁴⁵ RWS at para 52.

Evidence of Epson's Accounts Department personnel

42 The Appellant posited that the Japanese management must have told the Accounts Department personnel to blindly and unquestioningly approve the impugned invoices. Otherwise, the invoices, which were not accompanied with sufficient supporting documents, would not have been approved.⁴⁶ However, this claim was not borne out by the evidence.

43 First, three members of the Accounts Department testified that they were not aware of any plan to approve false invoices. Second, the ESD personnel found it necessary to lie to the Accounts Department personnel about whether the transactions in the invoices were genuine. For example, Terry admitted that, when Aw made inquiries whether a roadshow stated in a submitted invoice had taken place, he lied to Aw that it was carried out when no such event had taken place (GD at [67]). Aw also gave evidence that Kimberly “once spent an hour just trying to explain to [her] about one of the D&M invoice (*sic*) ... why it cost so much for a distributor trip”.⁴⁷ Similarly, Lawrence testified that if he did not come up with fake marketing events in the invoices, “the [Accounts Department would] not allow for the rebate to be paid out to the customer”.⁴⁸ Such acts would have been completely unnecessary if the Accounts Department had been instructed to blindly process the invoices. Third, the Appellant submitted that the Accounts Department was “supposed to ask for supporting documents such as photographs, event reports, newspaper clippings and anything else that could verify the subject matter of the invoice”.⁴⁹ However, the Appellant did not substantiate this claim. Conversely, Aw testified that she relied “heavily on ESD

⁴⁶ AWS at paras 69–71, 110–114.

⁴⁷ Transcript (8 February 2018) at p 131 ln 25 to p 132 ln 3; ROA at pp 760–761.

⁴⁸ Transcript (23 January 2019) at p 17 ln 9–10; ROA at p 2397.

⁴⁹ AWS at para 111.

member[s] to verify the invoices and to make sure that ... all the goods or service[s] [had] been done”.⁵⁰ According to Aw, the ESD would “ensure that they [had] received the goods or services before forwarding” “their invoices, together with their purchase order” to the Accounts Department. Thereafter, she would verify that there was “proper approval in the system.”⁵¹ In my view, it was not unreasonable for the Accounts Department to have relied on the ESD to verify the legitimacy of the invoices. Further, at the time, there was no procurement policy for submitting documents to the Accounts Department for verification.⁵² In any event, when Aw experienced sufficient disquiet from the pervasive run of presented invoices, she *did* investigate whether the specific events cited in an invoice had truly occurred. Fourth, I agreed with the DJ’s finding that the presence of the word “FAKE” on two of the invoices⁵³ (out of 158) were mere aberrations and did not indicate that the Accounts Department personnel were aware of the false invoices. That word did not appear on any of the other 156 invoices. A visual inspection showed that the words were inconspicuous, as they were: (a) non-bolded; (b) in fairly small print; and (c) on the right side of each of the two invoices.⁵⁴ Therefore, the evidence of the Accounts Department personnel did not assist the Appellant.

The co-conspirators’ evidence

44 Next, I turn to the evidence of the Appellant’s co-conspirators. They worked under the Appellant and gave evidence that they received instructions from the *Appellant* to perpetrate the two schemes. The Appellant was also

⁵⁰ Transcript (8 February 2018) at p 129 ln 5–7; ROA at p 758.

⁵¹ Transcript (9 February 2018) at p 7 ln 15–21; ROA at p 772.

⁵² Transcript (9 February 2018) at p 39 ln 25 to p 40 ln 22; ROA at pp 804–805.

⁵³ Invoice No. C22406 and Invoice No. C22407; ROA at pp 7319 and 7320.

⁵⁴ RWS at paras 95–97.

implicated as the *sole* individual responsible for incepting the secret rebate scheme (GD at [74]). The co-conspirators gave evidence that they never witnessed any interaction between the Appellant and the Japanese management which would have concretely indicated the latter's support of the scheme.⁵⁵ They also testified that they were aware the Japanese management disapproved of unauthorised discounts.⁵⁶

45 The Appellant raised various arguments. First, the Appellant relied on Kimberly's evidence that she was "under the impression" that the Japanese management had authorised the Appellant's scheme.⁵⁷ However, this claim did not withstand scrutiny. The DJ carefully analysed that the sole basis for her impression was that the Appellant enjoyed some rapport with the Japanese management (GD at [209]–[211]).⁵⁸ Second, the Appellant relied on Kimberly's claim that Mr Junkichio Yoshida (who succeeded Fujita after the latter was recalled to Japan) "wanted to find a local scapegoat". However, Kimberly subsequently clarified that this was mere hearsay and "just a guess". She did not know for sure that the Japanese management were "looking for a scapegoat".⁵⁹ Third, the Appellant submitted that it was incomprehensible that the ESD personnel would have conspired with her so soon after she joined Epson, unless the Appellant had received authorisation from the Japanese management. For context, the first charge took place on 12 November 2007, a month after the Appellant assumed her post.⁶⁰ In my view, the sequence of events made sense

⁵⁵ RWS at para 82.

⁵⁶ RWS at para 83.

⁵⁷ AWS at para 93.

⁵⁸ RWS at para 84.

⁵⁹ Transcript (15 March 2019) at p 86 ln 2–19; ROA at p 3176.

⁶⁰ AWS at paras 97–98.

when considering how the Appellant had imposed unsustainable sales targets on the ESD personnel, and which exceeded the capacity of the local market (GD at [131]). Furthermore, in 2008, a commission system was instituted, replacing the fixed wage system of the ESD personnel. The financial incentive and sales pressures would have galvanised the ESD personnel to be part of the Appellant's scheme, in order to generate more sales (GD at [224]). This point was borne out in Lawrence's testimony, where he explained that he generated false invoices to "hit the numbers" that he had to achieve to keep his job.⁶¹ Fourth, I disagreed with the Appellant's characterisation that the "ESD team went about implementing the scheme" with "*openness*".⁶² As stated above, members of the ESD team testified that they had *lied* to the Accounts Department personnel for the purposes of approving the invoices.

46 Finally, I considered whether the ESD members had any motive to frame the Appellant for "self-preservation". I agreed with the Prosecution's submissions that: (a) the vast majority of the Appellant's former colleagues had moved on with their lives and worked in different industries; (b) they had been subject to harsh disciplinary action and would therefore have no incentive to protect the Japanese management or Epson; and (c) by the time the co-conspirators took the stand in 2018 and 2019, none of them would be liable to any civil action from Epson (GD at [213]–[215]). I also queried whether it was reasonable to expect the co-conspirators to be familiar with the statute of limitations. It is possible that, at the time of the criminal proceedings, they feared further civil litigation (*eg*, defamation claims) from Epson. However, on balance, against the weight of the evidence, the DJ was not wrong to accept the evidence of the co-conspirators.

⁶¹ Transcript (23 January 2019) at p 16 ln 22, ROA at p 2396.

⁶² AWS at paras 94 and 95.

The second conspiracy

47 In relation to the second conspiracy, the Appellant put forward two arguments. First, the Appellant repeated her argument that Shimizu’s evidence should be disregarded because he did not give evidence on the stand. As noted above (at [39]), I rejected this argument. The DJ was right to give due weight to Shimizu’s statement that there was no arrangement with the Appellant and Patrick (Director of C20) for an additional 2.5% rebate to be given to C20 in the form of cash (GD at [262]).

48 In my view, the alleged 2.5% Rebate Agreement was unsupported by the evidence. Both Patrick and Shimizu expressly denied the existence of this agreement (GD at [260]–[262]). I also agreed with the DJ’s finding that there was a pattern between the issuance of the invoices, the crediting of cheques from moneys held by the marketing agencies, and payments for various personal expenditures from the Appellant’s bank accounts (GD at [266]). The fact that all the moneys claimed under the Innovez invoices went towards the benefit of the Appellant also militated against the existence of the alleged 2.5% Rebate Agreement.⁶³ The only logical conclusion was that the Appellant had perpetrated the second conspiracy in order to siphon funds for her own personal gain, such as to partially redeem her housing and car loans, and as downpayment for the purchase of a condominium (GD at [273]–[274]).

49 Second, the Appellant also argued that the elements of the s 477A Penal Code offence were not made out for 22 of the 24 charges in the second conspiracy.⁶⁴ This was premised on the point that the Appellant herself was the maker of the Innovez invoices and the invoices did not “belong to” Epson. For

⁶³ RWS at paras 113–118.

⁶⁴ AWS at para 134.

the same reasons that I have outlined above in relation to the 133 charges (at [20]–[25]), I found no merit in this argument. The invoices did not have to “belong to” or originate from her employer; it was sufficient that they came to be in Epson’s possession and were created and used with the intent to defraud.

Sentence

50 I agreed with the DJ’s finding that there were few mitigating factors warranting a downward calibration of the sentence. The DJ found that the Appellant’s mitigation plea added little value as there was no expression of regret or remorse for the considerable reputational and financial harm suffered by Epson (GD at [375]). The Appellant also raised the hardship that would be caused to her family, which was dismissed by the DJ on the authority of *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 (GD at [376]).

51 In particular, I did not accept the Appellant’s claim that she had merely worked to benefit Epson. Personal gain was *not* an incidental benefit. As discussed by the DJ, any short-term gain in local sales would be outweighed by the chaotic situation of an influx of parallel exports from Singapore into other regional markets. The scheme also risked reputational damage for Epson, if it was discovered that the company had been sidelining their first-tier channel partners.⁶⁵ Instead, it was the Appellant, concerned only with the local market and her own sales targets, that stood to gain from granting the unauthorised rebates.

52 Second, the Appellant submitted that the DJ erred in considering that the Appellant had siphoned a *substantial* portion of the A&P fund (*ie*, S\$1,534,679.59), as the amount involved constituted payment for legitimate

⁶⁵ RWS at para 147.

underlying transactions.⁶⁶ This argument conceals the reality that the moneys were used for unauthorised purposes. Further, a substantial sum was spent by the Appellant for her personal use.

53 Third, I disagreed with the Appellant’s suggestion that the conspiracies were not premeditated, as the Appellant’s scheme was “rudimentary” and merely a “creative but simple way of ensuring that underlying transactions were paid”.⁶⁷ The Appellant’s scheme involved a diverse range of parties within Epson and outside, including the third-party marketing agencies and five implicated channel partners, which would require sufficient planning to operationalise (GD at [294]).

54 Finally, the fact that the Appellant had reached a settlement with Epson in a civil claim arising from the same background facts is of little mitigatory weight. The Appellant had to be compelled by law to pay back what she had wrongfully obtained from Epson.

55 In my view, the global 52 months’ imprisonment term was not manifestly excessive. Each of the individual sentences was consistent with past precedents. The individual sentences comprised:

(a) Seven months’ imprisonment for each of the 133 charges related to the first conspiracy, with three of these sentences to run consecutively (*ie*, a total of 21 months’ imprisonment) (GD at [393] and [395]).

(b) A range of 12 months’ to 17 months’ imprisonment for each of the 24 charges related to the second conspiracy (GD at [394]). The DJ

⁶⁶ AWS at paras 136 and 137.

⁶⁷ AWS at paras 138–141.

reasoned that a longer imprisonment term for the second conspiracy charges was warranted as the second conspiracy involved the Appellant misappropriating the funds obtained for her own personal benefit (GD at [366] and [372]). The two charges bearing the highest quantum misappropriated were ordered to run consecutively – one at 17 months’ imprisonment and the other at 14 months’ imprisonment (*ie*, a total of 31 months’ imprisonment) (GD at [365], [394]–[395]).

56 The 12-month global imprisonment sentence proposed by the Appellant was considered and rejected by the DJ for being irreconcilable with the most relevant precedents (GD at [392]). The 71-month global imprisonment term advocated by the Prosecution was also considered and rejected by the DJ for being unprecedented (GD at [392]). In the circumstances, I accepted that the DJ did not err in imposing the global imprisonment term of 52 months’ imprisonment.

Conclusion

57 In my assessment, the DJ had evaluated the evidence correctly and concluded that the Appellant had acted wilfully with intent to defraud Epson. His decision to convict her on all 157 charges was not plainly wrong or against the weight of the evidence. I saw no reason to differ from the DJ’s reasoning and his findings of fact, or his calibration of the sentences for the respective charges. The sentence in totality was neither manifestly excessive nor disproportionate to the gravity of the offences. For the reasons set out above, I dismissed the appeal.

58 Pursuant to an application by the Appellant’s counsel, I allowed a six-week deferment of her sentence and extended her bail to 14 June 2024. The Appellant’s counsel indicated that he would take instructions as to whether to

file an application for permission to bring a criminal reference to the Court of Appeal in the meantime. As such, in the event that such an application was filed, bail would be extended until the hearing and determination of that application by the Court of Appeal.

See Kee Oon
Judge of the Appellate Division of the High Court

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