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

**[2025] SGHC 56**

Magistrate's Appeal No 9033 of 2024/01

Between

See Kian Kok

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 18 of 2025

Between

See Kian Kok

… *Applicant*

And

Public Prosecutor

… *Respondent*

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# *EX TEMPORE* JUDGMENT

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[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Criminal Law — Statutory Offences — Penal Code]

# See Kian Kok
# v
# Public Prosecutor and another matter

## [2025] SGHC 56

General Division of the High Court — Magistrate's Appeal No 9033 of 2024/01, Criminal Motion No 18 of 2025
Vincent Hoong J
1 April 2025

1 April 2025

**Vincent Hoong J (delivering the judgment of the court ex tempore):**

## Introduction

1 The Appellant claimed trial to a charge of engaging in a conspiracy to cheat and dishonestly induce a delivery of property, an offence under s 420 read with s 109 of the Penal Code 1871 (the "PC").[1] At the close of trial, the District Judge ("DJ") convicted the Appellant of the charge and sentenced him to three months' imprisonment.[2]

[1] Grounds of Decision ("GD") at [5], Record of Appeal ("ROA") at pp 304–305

[2] GD at [2], ROA at p 304

2 HC/MA 9033/2024/01 ("MA 9033") is the Appellant's appeal against conviction and sentence.[3] HC/CM 18/2025 ("CM 18") is his application to admit further evidence in support of MA 9033. I shall first deal with CM 18.

**The application to admit further evidence**

3 In CM 18, the Appellant applies to adduce the police statement of one Le Hong Diem ("Diem"), dated 14 September 2021 ("Diem's statement").[4] For context, Diem is named in the charge as the Appellant's co-conspirator.[5]

4 Under s 392(1) of the Criminal Procedure Code 2012 (2020 Rev Ed), an appellate court may admit fresh evidence in a criminal appeal if it thinks the evidence is "necessary". In *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*"), this court held that whether fresh evidence is "necessary" is to be determined by applying the three criteria of "non-availability", "relevance", and "reliability" (at [14]). It was also observed in *Soh Meiyun* that additional evidence favourable to the accused person should be admitted so long as it fulfils the conditions of relevance and reliability (at [20]). Thus, I shall apply these two criteria first.

5 The criterion of "relevance" is satisfied if the evidence, when admitted, would probably have an important influence on the result of the case, though it need not be decisive (*Soh Meiyun* at [18]). In this regard, the Appellant contends that Diem's statement would exculpate him, on the basis that in her statement, Diem denied any knowledge of vice activities in the condominium unit, denied

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[3] Petition of Appeal dated 26 December 2024 ("POA") at p 2, ROA at p 22

[4] Appellant's Written Submissions dated 21 March 2025 at p 4

[5] 1st Charge (DAC-900958-2022), ROA at p 7

the allegation that the Appellant taught her to lie to the landlord, and denied the allegation that she told the landlord's agent, Ms Pearlie Tan ("Pearlie") that she was the sole occupant of the condominium unit.[6]

6 This contention is misguided. I agree with the Prosecution that Diem's statement, if admitted into evidence, would further incriminate the Appellant.[7] Indeed, in Diem's statement, she admitted to telling the Appellant that she was renting the condominium unit for her friends to stay.[8] This corroborates the Appellant's admission in his own statement to the police, that he recommended the condominium unit to Diem after she told him she wished to rent a place for her friends to stay.[9]

7 Crucially, this also supports the DJ's finding that the Appellant knew that Diem was not going to be the sole occupant of the condominium unit.[10] Therefore, even if I were to admit Diem's statement and accord it full weight, this would not affect the DJ's finding that both the Appellant and Diem had the common design to deceive the landlord into believing that Diem intended to occupy the condominium unit. All things considered, I find that Diem's statement fails to satisfy the criterion of "relevance".

8 I next turn to assess the criterion of "reliability", which is satisfied if the evidence is presumably to be believed, though it need not be incontrovertible (*Soh Meiyun* at [19]). I agree with the Prosecution that the account in Diem's

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[6] Appellant's Written Submissions dated 21 March 2025 at pp 2–5

[7] Respondent's Written Submissions dated 21 March 2025 at [31] and [33]

[8] Appellant's Written Submissions dated 21 March 2025 at p 11, A6.

[9] Exhibit P13 (Statement of See Kian Kok dated 4 August 2021) at A10, ROA at p 739

[10] GD at [98]–[100], ROA at pp 348–349

statement is contradicted by her own evidence.[11] As I alluded to above, Diem asserted in her statement that she did not tell Pearlie that she was the sole occupant of the condominium unit. However, in Diem's conditioned statement dated 1 December 2022, which was admitted into evidence at trial, she stated that she would be the sole occupant.[12] Similarly, in the tenancy agreement signed by Diem, she was listed as the sole occupant of the condominium unit.[13] Taken together, I find that Diem's statement cannot be believed and therefore fails to satisfy the criterion of "reliability".

9 For completeness, I shall assess the criterion of "non-availability", which is satisfied if the evidence could not have been obtained with reasonable diligence for use in the trial below. Plainly, Diem's statement was disclosed to the Appellant prior to the commencement of the trial, and thus, he could have adduced it at any point during the trial.[14] In *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 ("*Mohd Ariffan*"), the Court of Appeal observed that "non-availability" also encompasses evidence that a party could not reasonably apprehend to be necessary at trial (at [68]). I find that the Appellant ought reasonably to have been aware, during the trial, that the evidence of his alleged co-conspirator could have a bearing on his charge of conspiracy to cheat.

10 Having weighed the limited significance of Diem's statement against the need for the expeditious conduct of this appeal, I find that it would be

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[11] Respondent's Written Submissions dated 21 March 2025 at [37]

[12] Exhibit P12 (Conditioned Statement of Le Hoang Diem dated 1 December 2022) at [9], ROA at p 734

[13] Exhibit P10 (Tenancy Agreement), ROA at pp 725–730

[14] Respondent's Written Submissions dated 21 March 2025 at [40]

disproportionate to allow the application and admit fresh evidence (*Mohd Ariffan* at [72]).

11 For these reasons, I dismiss CM 18 of 2025.

**The appeal against conviction**

12 I now turn to address the Appellant's appeal against conviction. The Appellant advances two arguments. First, he contends that there is insufficient evidence to ground a conviction.[15] Second, he asserts that the landlord was not cheated, but had instead consented to there being a second tenant.[16] I shall address these in turn.

13 First, the Appellant contends that there is no objective evidence which points towards the existence of a conspiracy between Diem and himself.[17] In this regard, he argues that none of the text messages exchanged between the two of them disclosed any plan to deceive the landlord. The Appellant also argues that there is no evidence which proves that he had taught Diem how to lie to the landlord. Further, he argues that there is no evidence to show that he knew the condominium unit would be used for vice activities.

14 On the point concerning text messages, I find that this is a non-starter, as the presence of communication between conspirators is not required for a charge of cheating with conspiracy to be made out. In *Ang Ser Kuang v Public Prosecutor* [1998] 3 SLR(R) 316, the High Court held that communication

[15] Appellant's Written Submissions dated 21 March 2025 at p 2

[16] Appellant's Written Submissions dated 21 March 2025 at p 5

[17] Appellant's Written Submissions dated 21 March 2025 at p 2

between each conspirator is not required, and that awareness of the general purpose of the unlawful plot is sufficient to disclose a conspiracy (at [31]).

15 In this regard, the DJ was right to find that the Appellant was generally aware of the plan to deceive the landlord. As noted by the DJ, the Appellant had represented Diem in the rental of another property four months before the tenancy agreement for the condominium unit in the instant appeal was signed.[18] I should point out here that it should have been four months and eight days as the first tenancy agreement was signed on 31 October 2020 and the second on 8 March 2021. Nevertheless, this is not a material discrepancy. There was also no evidence to suggest that the former tenancy agreement was prematurely terminated before the latter was signed.[19] Thus, the DJ was right to conclude that the Appellant knew that Diem did not intend to live in the condominium unit at all when he represented to Pearlie that this was so.[20]

16 As for whether the Appellant had taught Diem how to lie, I find this contention to be a non-starter. For context, the Appellant, throughout these proceedings, has maintained that he did not know Diem and one "Lee" were different persons.[21] The DJ rejected this contention in the court below. I similarly reject it, as it is undisputed that the Appellant had represented "Lee" and Diem to conclude two distinct tenancy agreements.[22] Therefore, the Appellant is right to say that he did not teach Diem how to lie. Instead, he had

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[18] Exhibit P10 (Tenancy Agreement), ROA at p 725; Exhibit P5 (WhatsApp Transcripts), S/N 915–918, ROA at p 434

[19] GD at [62], ROA at p 329

[20] GD at [66], ROA at p 330–331

[21] Appellant's Written Submissions dated 21 March 2025 at p 4

[22] Respondent's Written Submissions dated 21 March 2025 at [51]

taught "Lee" how to lie. Indeed, the WhatsApp chats extracted from the Appellant's mobile phone shows that he taught "Lee" to lie to potential landlords.[23] Thus, the DJ was right to have considered this in the course of finding that the Appellant made the false representations with dishonest intent. After all, "Lee" is also named as a conspirator in the charge against the Appellant.[24]

17 For completeness, I accord no weight to the Appellant's contentions regarding vice activities, as whether the condominium unit was used as a brothel is irrelevant to make out the charge.

18 Second, the Appellant asserts that the landlord was not cheated, but had instead consented to there being a second tenant.[25] In this regard, the Appellant contends that he had informed Pearlie via WhatsApp that there would be two tenants.[26] In the alternative, he contends that the landlord had given such consent impliedly, as he had requested from Pearlie (and had received) two sets of keys for the condominium unit. In support of this, the Appellant points to an instance where Pearlie used the pronoun "they" when referring to the tenant, suggesting that she knew there were two tenants.[27]

19 The DJ was right to reject these assertions. I examined the entire WhatsApp transcript of the text messages between the Appellant and Pearlie

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[23] GD at [67]–[69], ROA at pp 331–333; Exhibit P5 (WhatsApp Transcripts), S/N 1023–1043, ROA at pp 440–441

[24] 1st Charge (DAC-900958-2022), ROA at p 7

[25] Appellant's Written Submissions dated 21 March 2025 at p 5

[26] Appellant's Written Submissions dated 21 March 2025 at p 5

[27] Appellant's Written Submissions dated 21 March 2025 at p 5; P7 (WhatsApp Transcripts) at S/N 404, ROA at p 696

and could not find any such message.[28] Although it is true that the Appellant's initial enquiry to Pearlie specified two tenants,[29] the subsequent messages between them referred to only one tenant. This is consistent with the evidence of both Pearlie and the landlord that no such consent was sought or given.[30] This is also consistent with the tenancy agreement for the condominium unit, where Diem was named as the sole tenant.[31] Pertinently, Pearlie testified that had the Appellant informed her that the intention was for someone else to occupy the condominium unit, she would not have struck off the "List of Occupants" portion in the tenancy agreement, but would have instead left it blank so that it could be updated subsequently.[32] As the DJ rightly noted, if the Appellant was under a mistaken impression that the sole tenant could add on new tenants subsequently, he inexplicably did not mention this in any of his statements to the police.[33] In addition, Pearlie's evidence on the "List of Occupants" portion was unchallenged in the court below and was effectively unchallenged in this appeal.

20 As for implied consent, I agree with the DJ that the provision of two sets of keys could not amount to consent for there to be two tenants.[34] The DJ was right to observe that Pearlie would not wilfully enable the Appellant to bypass the landlord's approval for an unknown person to stay in the condominium unit

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[28] P7 (WhatsApp Transcripts), ROA at pp 669–700

[29] P7 (WhatsApp Transcripts) at S/N 16, 28 and 29, ROA at p 671–672

[30] Notes of Evidence ("NEs") (Day 1, PW4 EIC), p 28, lines 16–23, ROA at p 60; NEs (Day 1, PW5 XX), p 91, lines 12–19, ROA at p 123

[31] Exhibit P10 (Tenancy Agreement), ROA at p 725

[32] NEs (Day 1, PW5 XX), p 91, lines 12–19, ROA at p 123

[33] GD at [93], ROA at p 346

[34] GD at [91], ROA at p 345

simply by the act of passing him another set of keys.[35] In addition, I find Pearlie's evidence on this point to be compelling. It would only be logical for a single tenant to request another set of keys in case of emergencies or to facilitate entrance by service providers.[36] As for the point on the pronoun "they" in Pearlie's text, I find her explanation credible. Indeed, Pearlie testified that she was referring to Diem and a boyfriend of hers, as the Appellant had told her that Diem's employer would be paying rent on her behalf,[37] and she had formed an impression that they were romantically involved. On that basis, Pearlie assumed that he would assist her to move into the condominium unit.[38] In any event, as I observed previously, aside from the Appellant's initial enquiry to Pearlie,[39] the subsequent messages between them referred to only one tenant and used singular pronouns.[40]

21 Accordingly, I dismiss the Appellant's appeal against conviction.

**The appeal against sentence**

22 I now turn to address the Appellant's appeal against sentence. He argues that a sentence of three months' imprisonment is manifestly excessive and asserts that a fine would be appropriate.[41]

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[35] GD at [116], ROA at p 350

[36] NEs (Day 1, PW5 RE), p 92, lines 5–17, ROA at p 124

[37] P7 (WhatsApp Transcripts) at S/N 28, ROA at p 671

[38] NEs (Day 1, PW5 EIC), p 79, lines 6–21, ROA at p 111

[39] P7 (WhatsApp Transcripts) at S/N 16, 28 and 29, ROA at p 671–672

[40] See generally P7 (WhatsApp Transcripts), ROA at pp 675–700 ("tenant", "she", "her")

[41] Appellant's Written Submissions dated 21 March 2025 at p 7

23 In support of this argument, the Appellant seeks to distinguish his own case from the precedent of *Woo Haw Ming v Public Prosecutor* [2023] 3 SLR 1041 ("*Woo Haw Ming*"), where I upheld a sentence of three months' imprisonment which was imposed on a property agent who had facilitated a brothel scam similar to the present one.[42] Specifically, the Appellant contends that the offender in *Woo Haw Ming* was aware that the property in that case would be used as a brothel, whereas in this case, he disclaims any knowledge that the condominium unit would have been used for unlawful purposes.[43]

24 I am unable to accept this argument. The DJ, in the court below, had found that the Appellant had some awareness that the unit would be used for illegal activities, on the basis that the covert nature in which the tenancy agreements were secured and handed over should have alerted the Appellant to this.[44] I agree. I find that this case is on all fours with the facts in *Woo Haw Ming*.

25 I also note that the Appellant has tendered three precedents from the Council of Estate Agents Disciplinary Committee where property agents were fined for facilitating brothel scams.[45] The High Court, or any court for that matter, is not bound by these precedents, and I accord them no weight.

26 In *Woo Haw Ming*, I declined to establish a presumptive sentence for offenders who enter into fraudulent tenancies (at [28]). I similarly decline to do

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[42] GD at [144], ROA at p 370

[43] Appellant's Written Submissions dated 21 March 2025 at p 7

[44] GD at [143], ROA at p 369

[45] Appellant's Written Submissions dated 21 March 2025 at pp 7–8

so now, as parties did not submit on this issue. Nonetheless, in light of the gulf between parties' submissions on sentence, I find it apposite to provide some guidance.

27 In line with the observations made by this court in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814, I find that general deterrence is presumptively the dominant sentencing consideration for fraudulent tenancy offences under s 420 of the PC ([24(c)]). This is appropriate in light of the clear public interest in deterring the creation of such fraudulent tenancies. As I observed in *Woo Haw Ming*, the provision of unregulated sexual services, in residential areas no less, generates significant public disamenity (at [31]). Similarly, such fraudulent tenancies are difficult to detect and hamper the anti-vice efforts of law enforcement authorities (at [33]).

28 For completeness, the Appellant advances additional arguments on why his sentence is manifestly excessive. These can be briefly summarised as follows:

(a) the offence did not cause monetary loss to the landlord;

(b) the landlord did not make a police report;

(c) the Appellant had suffered hardship due to the offence, such as being unable to travel out of jurisdiction and having to pay for legal counsel;

(d) the Appellant is untraced;

(e) the Appellant formerly held a management position in a publicly listed company; and

(f) the Appellant had undergone five kidney surgeries in 2024 and is on a daily regime of medication.[46]

29 None of these points are relevant and were adequately addressed by the DJ in the court below. Briefly, as I observed in *Woo Haw Ming*, to construe harm caused as being confined to the landlord's pecuniary loss unjustifiably elides any consideration of the fact that the landlord did not consent to having his property exploited for vice and fails to account for how such an offence hampers vice-suppression efforts by law enforcement (at [31]). Relatedly, hardship by way of financial loss occasioned by conviction and imprisonment is not relevant where it arises from an offender's own acts, as is the case here (*Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [109]). As for the fact that the Appellant is untraced, this is a neutral factor, as it is not positive evidence of good character that could in turn be considered a valid mitigating factor (*Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 at [65]).

30 Lastly, I agree with the DJ that the Appellant's medical conditions are irrelevant for the purpose of sentencing. Indeed, there is nothing which suggests the Appellant's health would be exacerbated by the imprisonment sentence, or that the Appellant's medical condition would cause the term of imprisonment to have a markedly disproportionate impact on him. The prison authorities would have the means to address the Appellant's health needs.

31 Accordingly, I dismiss the Appellant's appeal against sentence.

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[46] Appellant's Written Submissions dated 21 March 2025 at p 8

**Conclusion**

32 In summary, I dismiss CM 18 and MA 9033.

Vincent Hoong
Judge of the High Court

The appellant in person;
Colin Ng (Attorney-General's Chambers) for the respondent.