Yusof bin A Samad v Public Prosecutor
[2000] SGHC 181

Case Number : MA 341/1999

Decision Date : 04 September 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : M Amaladass (M Dass & Co) for the appellant; Jennifer Marie and Aedit Abdullah (Deputy Public Prosecutor) for the respondent

Parties : Yusof bin A Samad — Public Prosecutor

Criminal Law – Offences – Corruption – Police hearse driver receiving gratification from undertaker for confidential information on deceased persons – Whether supply of confidential information a "showing of favour" in relation to principal's affairs' – s 6(a) Prevention of Corruption Act (Cap 241, 1993 Rev Ed)

Criminal Procedure and Sentencing – Statements – Admissibility – Voluntariness – Accused subject to persistent questioning – Accused told to get counsel to write to CPIB superiors – Whether statements voluntary – Whether objectively there was threat – Whether subjectively accused felt threatened – Whether objectively there was inducement or promise – Whether subjectively accused felt induced

Criminal Procedure and Sentencing – Trials – Procedural Irregularity – No ruling made on impeachment of a witness – Whether failure of justice occasioned – s 396 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Proof of evidence – Confessions – Admissibility – Statements to non-police officers – Statements to CPIB officers investigating corruption offences – Whether statements were confessions

Evidence – Proof of evidence – Confessions – Two separate statements amounting to confessions conflicting – Confessions retracted – Whether trial judge right in according weight to second statement – Whether retracted confessions can be relied upon

: ***Introduction***

The appellant, a former police officer, was convicted in the district court under s 6 (a) of the Prevention of Corruption Act (Cap 241) (`PCA`) on 14 counts of corruption. He was sentenced to nine months` imprisonment on each charge, with the first two sentences running consecutively. Being dissatisfied with his conviction and sentences, he appealed to me. I dismissed his appeal, and I now set forth my reasons.

Background

The prosecution alleged that on 14 occasions, between August 1995 and March 1997, the appellant had corruptly accepted gratification amounting to some $10,900 from one Roland Tay Hai Choon (`DW2`), in return for supplying the latter with confidential information which he had obtained in the course of his duties as a police hearse driver. At the relevant times, the appellant was a corporal in the Singapore Police Force, and also the designated police hearse driver. When the police hearse was required, the Police Activation Division would radio him with the necessary information relating to the location of the dead bodies. His duties were to transport workers, engaged by the police to remove bodies, to the given location, and then to convey the bodies to the mortuary. The confidential information which he had allegedly released to DW2 were the names and addresses of the deceased

persons that he transported in the police hearse, and the contact numbers and names of those deceased persons` next-of-kin (`the relevant information`). The relevant information enabled DW2, who owned an undertaking business, to solicit business from the next-of-kin.

To establish their case, the prosecution relied heavily on two pre-trial statements (`the statements`) which the appellant had made to the Corrupt Practices Investigation Bureau (CPIB). The first statement, made on 17 May 1999, was recorded by a CPIB investigating officer, PW4. In that statement, the appellant gave the following account of his dealings with DW2: sometime in August 1996, he had fallen into dire financial straits, and had asked an acquaintance, PW1, to introduce him to DW2 in order to borrow money from the latter. On their first meeting, DW2 lent him $1,000. DW2 also asked to be supplied with information as to the location, names and addresses of the deceased persons that the appellant transported in the police hearse, as well as the contact numbers and names of the deceased persons` next-of-kin. DW2 wanted to solicit business from the deceased persons` family members. The appellant agreed to this. On an average, he supplied DW2 with about two to three cases a week. He claimed that he had not received any commission for the arrangement. In January or February 1997, he borrowed another $2,000 from DW2, and subsequently a further $2,000 between July to September 1997. In addition, during the 1997 Chinese New Year period, he received a `red packet` of $200 from DW2. He supplied the relevant information to DW2 mainly because DW2 did not press him to repay the loans. As of the date of the statement, the loans remained unpaid.

A few days after making his first statement, the appellant attempted to retract that statement by making a statutory declaration which stated:

> *On 17 May 1999 I made a statement to SSI Chin at CPIB Office (Rm 208). I was afraid and confused at that time and what I`ve said in that statement is not true. In fact I did not take any loan or other gifts from one Roland Tay. I also did not provide any information that will benefit him in his business.*

About a month later, on 22 June 1999, the appellant made a second statement to CPIB. The investigating officer who recorded this second statement was PW5. In that second statement, the appellant gave a more detailed account of his dealings with DW2. He stated that he had first been introduced to DW2 by PW1 as early as August 1995. On that occasion, DW2 gave him $500, but said that he did not want to `discuss the details` with PW1 around. A few days later, DW2 contacted him and they met up. DW2 proposed that he would pay the appellant $600 a month in return for the relevant information. The appellant accepted this proposal and started giving DW2 the relevant information soon after this. Under this arrangement, he received sums of moneys from DW2 on 14 occasions ranging from $200 to $2,000 in the period between September 1995 and March 1997. In early September 1995, he received his first payment of $600. He gave details as to the places he recalled meeting DW2 to collect payments. He also gave details as to several dates which he could recall receiving money from DW2, and the amounts that he had received on each occasion. In addition, he referred to the `loans` which he had mentioned in his first statement, and stated that those sums of money were actually not `loans` at all, but payments from DW2 in February 1996 and September 1996 for the relevant information.

The prosecution called PW1 as a witness. PW1 had become acquainted with the appellant around 1995 in the course of his employment as a mortuary attendant at Tan Tock Seng Hospital and as a part-time undertaker in a private undertaking company. He testified that sometime in 1995, the appellant was in financial trouble, and had asked him to approach moneylenders on his behalf. At the appellant`s request, he had pointed DW2 out on one occasion at a coffee shop. At the trial, PW1

denied that he had any knowledge of the dealings or arrangements which took place thereafter between the appellant and DW2. However, the prosecution successfully impeached his credit with a previous inconsistent statement, in which he had stated:

> *It is true that Yusof had provided Roland Tay with information on location of dead body found or the address of the deceased family. I came to know this when I was working as a part-time undertaker for former boss Mr Ang of Tiong Aik Undertaker. ... When the police hearse was activated, I would follow the police hearse driven by Yusof to the scene. Sometimes I saw him making telephone calls after picking up the dead body. He told me that he was calling Roland Tay to provide him with the information so that his men could approach the decease family for business.*

At the trial, the appellant denied all the charges against him. DW2 was called as a defence witness, and he also denied ever having extended monies to the appellant, or having received any of the relevant information from the appellant. The defence challenged the admissibility of the appellant`s two pre-trial statements, on the basis that they had had been fabricated and had not been made voluntarily. They maintained that the truth was to be found in the appellant`s statutory declaration.

The district judge conducted a voir dire to determine the voluntariness of the statements. PW4 and PW5, the investigating officers who had recorded the appellant`s two pre-trial statements, gave evidence in the voir dire as to the circumstances in which those statements had been recorded. The district judge found no evidence to indicate that the making of the statements had been caused by a threat, inducement or promise. Consequently, he admitted them as evidence in the trial. At the end of the trial, having considered all the evidence before him, he found the appellant guilty of all 14 charges, and sentenced him accordingly.

Issues in the appeal

Counsel for the appellant raised four issues before me in the appeal. First, it was argued that the district judge should not have admitted into evidence the appellant`s two pre-trial statements, as these statements had not been given voluntarily; secondly, even if the statements were correctly admitted, the district judge had erred in his assessment of the inherent reliability and accuracy of the statements; thirdly, the district judge had erred in his assessment of the veracity and credibility of the witnesses; fourthly, even if the appellant had supplied the relevant information to DW2, that did not constitute `a showing of favour in relation to his principal`s affairs`, as was required under s 6(a) of the PCA.

The appeal

The law on admissibility of statements made to non-police officers

I shall start with the admissibility of the appellant`s two pre-trial statements to the CPIB, since those statements contained evidence that was central to both the prosecution`s case, as well as the decision below. Notably, in this case, the statements had not been made to police officers but to CPIB officers. In addition, the CPIB officers in this case were investigating corruption offences under the PCA, and not Penal Code offences. Therefore, they were not `deemed to be police officers`, as

the proviso in s 17 of the PCA was not applicable. Being a case where the statements were made by an accused person to non-police officers, s 122 of the Criminal Procedure Code (CAP 68) (`CPC`) did not apply (**Sim Ah Cheoh v PP** [1991] SLR 150 ; **Tan Siew Chay v PP** [1993] 2 SLR 14 ; **Chai Chien Wei Kelvin v PP** [1999] 1 SLR 25). Instead, the Evidence Act (Cap 97) (`EA`) governed the admissibility of the statements. As the law stands, the appropriate test for determining admissibility of a statement, made by an accused person to a non-police officer, depends on whether that statement amounts to a confession or not.

If the statement amounts to a confession, that statement must satisfy s 24 of the EA before it is admissible as evidence in the trial. This section sets out what is commonly known as the `voluntariness test`. The same test is set out in s 122(5) of the CPC, in relation to statements made by an accused person to police officers.

Neither s 122(5) of the CPC, nor s 24 of the EA, apply to a statement not amounting to a confession, made by an accused to a non-police officer. There is, in fact, no statutory provision subjecting the admissibility of such a statement to the requirement of voluntariness: see **Choo Pit Hong Peter v PP** [1995] 2 SLR 255 . Thus, if such a statement is relevant, it would prima facie be admissible (see ss 5-16 of the EA). In general, the question of whether that statement was made voluntarily goes towards the weight to be attributed to it, rather than its admissibility. However, the court retains a residual discretion to exclude an illegally obtained statement if it is of the view that the prejudicial effect of that statement outweighs its probative value: ***Choo Pit Hong Peter v PP*** . Strictly speaking, where a court is faced with a statement made by an accused person to a non-police officer, which is relevant and admissible, and the court is certain that the statement does not amount to a confession, a voir dire need not be conducted. In principle, the question of voluntariness of such a statement, going to its weight, can be determined in the course of the trial through examination-in-chief and cross-examination. However, as a matter of prudence and good practice, a court should still conduct voir dires to determine the voluntariness of such statements. The voir dire would assist the court in deciding whether or not to exercise its residual discretion to exclude the statement.

It is pertinent, at this point, to repeat the observations which I made in the recent case of **PP v Heah Lian Khin** [2000] 3 SLR 609 . In that case, I was concerned with a similar situation, of statements made by a witness (as opposed to an accused person) to a CPIB officer investigating a non-Penal Code offence. The prosecution in that case sought to adduce previous inconsistent statements of a witness for the purpose of impeachment and cross-examination. The witness in question was not a mere witness but an accomplice who was not an accused person in those proceedings. Those statements, being statements made by a witness to a non-police officer, also fell outside the ambit of s 122 of the CPC and s 24 of the EA. I noted, per incuriam, that there were no statutory provisions which subjected the admissibility of a witness`s statement to the requirement of voluntariness. However, as was recognised in **Cheng Swee Tiang v PP** [1964] MLJ 291 , although a statement which has been unlawfully obtained from a witness is admissible if relevant, there is still a judicial discretion to disallow such evidence, if its reception would operate unfairly against an accused. Thus, I observed in ***PP v Heah Lian Kin*** :

> *84 ... To be consistent with [the] policy consideration [in Cheng Swee Tiang v PP], and as a prudent measure, the court will generally have to be satisfied as to its voluntary nature before it allows the admission of previous inconsistent statements of such witnesses.*
>
> *85 The practice of the courts in several previous cases has been to conduct voir dires to ascertain the voluntariness and admissibility of the witness`s statement: see **Rajendran s/o Kurusamy & Ors v PP** [1998] 3 SLR 225 at*

[para] 103-110 and ***Chua Poh Kiat Anthony v PP*** *[1998] 2 SLR 713 at [para] 12-14. In the latter case, I described the voir dire as being a `preliminary examination by the judge to seek to discover if the witness is telling the truth`. The voluntariness of the witness statements was also a consideration in* ***Tang Keng Boon v PP*** *[2000] 1 SLR 535 and* ***Tan Khee Koon v PP*** *[1995] 3 SLR 724 at p 740.*

86 I fully recognise that there was no specific discussion in those cases, of the legal basis for the requirement of voluntariness, no apparent objection having been raised to the decision to convene a voir dire. In the ultimate analysis, however, I was not prepared, at this stage, to disturb what appeared to me to be an accepted practice in the absence of full arguments by parties.

These observations apply equally when the court is faced with a statement, made by an accused to a non-police officer, which does not amount to a confession.

Whether the appellant`s pre-trial statements to CPIB officers amounted to `confessions`

During the trial, neither the prosecution nor the defence counsel raised the issue of whether the pre-trial statements made by the appellant to CPIB officers, PW4 and PW5, amounted to confessions. They assumed that the voluntariness test applied in determining the admissibility of those statements. The district judge also proceeded on that assumption, and convened a voir dire. Whether the two statements amounted to confessions was an important question in their admissibility, and I will consider this issue first.

Section 17(1) of the EA states:

An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

Section 17(2) of the EA states:

A confession is an admission made at any time by a person accused of any offence, stating or suggesting the inference that he committed that offence.

The meaning to be attributed to the word `confession` was considered in the locus classicus case of **Anandagoda v R** [1962] MLJ 289 [1962] 1 WLR 817 where Lord Guest, delivering the judgment of the Privy Council, stated:

The term `admission` is the genus of which `confession` is the species. It is not every statement which suggests any inference as to any fact in issue or relevant fact which is a confession, but only a statement made by a person accused of an offence whereby he states that he committed that offence or which suggests not any inference but the inference that he committed that offence.

...

The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstances in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts ... It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession although the accused at the same time protests his innocence ... The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?

The above dicta has been consistently applied in Singapore (see **Chin Seow Noi v PP** [1994] 1 SLR 135 ; ***Chai Chien Wei Kelvin v PP*** , supra). In the case of **PP v Abdul Rashid** [1993] 3 SLR 794 (cited with approval in **Lim Young Sien v PP** [1994] 2 SLR 257), the court applied the ***Anandagoda*** test, and went further to observe as follows:

... what s 17(2) [of the Evidence Act] purports to import, and what ***Anandagoda*** *purports to signify, is that a confession need not be an unqualified expression of guilt. Under our law, it is no more than a person`s statement admitting to his involvement in the offence charged in any manner or form. Be it minor or major, direct or indirect, explicit or inferential and whether in exculpation or in earnest, irrespective of its object, so long as the statement connects the accused in some way with the offence charged, it would be deemed a confession under s 17(2).*

In the present case, the appellant faced charges under s 6(a) of the PCA, which states:

If -

any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal`s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal`s affairs or business;

he 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.

Applying the objective test enunciated in ***Anandagon v R*** , each of the appellant`s two pre-trial statements would amount to a `confession` of the allegations against him only if it stated or

suggested an inference that he had corruptly accepted gratification, as an inducement or reward for releasing the relevant information to DW2.

I found that the appellant`s first statement fell within the meaning of the word `confession`, for it contained an admission suggesting the inference that he had committed the offence for which he was charged. In that statement, he admitted that he had released the relevant information to DW2. He claimed that he had not received any commission for doing so, but admitted that he had taken several loans from DW2, and also that he had received a `red packet` of $200 from DW2 in February 1997. Moreover, he said that he had released the relevant information to DW2 mainly because DW2 had not chased him to repay the loans, and that those loans remained unpaid even at the date of the statement. The term `gratification`, as defined under s 2 of the PCA, includes the following:

> *(a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;*
>
> *...*
>
> *(c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;*
>
> *...*

Clearly, the benefits which the appellant admitted to having received from DW2 fell within the definition of `gratification` under the PCA. Notably, a reasonable man reading the statement on its own, without regard to extrinsic facts, would not say that the statement stated that the appellant was guilty, for that statement did not contain an admission of the requisite mens rea for an offence under s 6(a) of the PCA, which was corrupt intent. Nonetheless, the statement, taken as a whole without reference to extrinsic facts, still suggested the inference that he had corruptly received gratification from DW2 in return for releasing the relevant information to the latter. In ***Anandagoda*** `s case itself, where the appellant was charged with murder by running over the deceased with a motor car, his statements, considered by themselves, contained no admission that he was driving the car in question or that if he was driving it he ran over the deceased deliberately. Nonetheless, they were held to amount to a `confession` as they suggested the inference that he was guilty of the allegations against him.

I also had no doubt that the appellant`s second statement amounted to a `confession`. In that second statement, he admitted that he had released the relevant information to DW2 in return for money. He gave details as to some dates when he met DW2, and the sums of money which he had received from DW2, as well as some of the secret locations at which he had met DW2 to collect the money. From an objective point of view, the statement contained an inference that he had corruptly accepted gratification from DW2 in return for releasing the relevant information to the latter. Clearly, it amounted to a confession.

Given my finding that both of the appellant`s statements amounted to `confessions`, it followed that s 24 of the EA applied to both statements. Under that section, the court must determine, first, whether the confession was made as a consequence of any inducement, threat or promise, and second, whether in making that confession, the accused did so in circumstances which, in the opinion of the court, would have led him reasonably to suppose that he would gain some advantage for

himself or would avoid some evil of a temporal nature to himself.

Voluntariness of the appellant`s first pre-trial statement

In relation to the first statement, the evidence led by the prosecution was as follows: the appellant had made the statement in the course of an interview with PW4 on 17 May 1999. PW4 commenced the interview with the appellant at 11.50am. At 12.50pm, they stopped for a 20 minute break. They resumed at 1.10pm and stopped again at 1.25pm. At 1.44pm, they started recording the statement and ended at 4.45pm. The appellant was served with lunch of Briyani rice and Coke at 2pm in the course of his statement being recorded.

According to the appellant, he was subjected to persistent questioning by PW4, and he had made the statement when he was `stressed and down`, just to please PW4. Based on this, the appellant`s counsel submitted before me that the appellant had been threatened and oppressed into making the first statement, and that the district judge should not have admitted it. I did not accept this submission. In my judgment, the interview conducted by PW4 was clearly not oppressive, either in its duration or its intensity. In coming to my conclusion, I was mindful of the principle that the test for voluntariness must be applied in a manner which is partly objective and partly subjective. A statement is considered to have been made involuntarily if there is objectively a threat, inducement or promise, and, if the threat, inducement or promise operates subjectively on the mind of the particular accused through hope of escape or fear of punishment connected with the charge: **Dato Mokhtar bin Hashim v PP** [1983] 2 MLJ 232 ; **Md Desa bin Hashim v PP** [1995] 3 MLJ 350 ; ***Chai Chien Wei Kelvin v PP*** , supra. In the present case, I found that the first statement was `voluntary` under the objective limb of the voluntariness test. There was no evidence that oppressive cross-examination techniques had been employed during the interview which took place on 17 May 1999. The only allegation was that the appellant had been subjected to PW4`s `persistent questioning in a rough voice`. However, the courts have consistently held that persistent questioning, or even robust interrogation, is necessary for the police process and does not, without more, amount to oppression (**Sim Ah Cheoh & Ors v PP** [1991] SLR 150 ; **Seow Choon Meng v PP** [1994] 2 SLR 853 ; **Panya Martmontree v PP** [1995] 3 SLR 341). The same can be said for investigations by CPIB. The first statement was also `voluntary` under the subjective limb of the voluntariness test. The appellant himself had served as a police officer for some 16 years. I agreed with the district judge that it was hardly probable that the appellant, being well-acquainted with the police process and police investigations, would have been oppressed or threatened by PW4`s persistent questioning into making an involuntary statement. The burden was on the prosecution to prove beyond a reasonable doubt that the confession was made voluntarily: **Koh Aik Siew v PP** [1993] 2 SLR 599 . To do so, it was only necessary for the prosecution to remove a reasonable doubt of the existence of the threat, inducement or promise. It was not necessary for the prosecution to remove every lurking shadow of influence or remnants of fear: **Panya Martmontree v PP** [1995] 3 SLR 341 .

Counsel for the appellant also made much of the fact that the appellant had been given lunch one hour after the normal lunch hour, at 2pm, and `only after he had given favourable answers`. The suggestion made before me was that lunch had been withheld from the appellant for an hour, and then only given as a sort of `reward` for the favourable answers given by the appellant. I saw no merit in this submission. There was no evidence to suggest that lunch had been deliberately withheld until the appellant had given favourable answers. Whenever an allegation of this nature arises, the issue is whether a defendant was under such degree of discomfort as to have caused him to make an involuntary and unreliable statement (***Panya Martmontree v PP*** , supra). In the present case, I had no doubt that the appellant was not under that extent of discomfort. The interview commenced at 11.55pm. Shortly after, at around 1.44pm, the appellant decided to provide information as to his

activities and dealings with DW2. Between 11.55am and 1.44pm, the appellant had no less than two breaks from the questioning, one lasting 20 minutes and the other 15 minutes. Clearly, it had not taken much effort on the part of PW4 to get the appellant to co-operate. PW4 started recording the appellant`s statement at 1.44pm. At 2pm, the appellant was given lunch. This was clearly not a case where the accused was subjected to prolonged and intense interrogation, and was deliberately deprived of food and drink until he broke down and gave favourable answers to the investigating officers. Counsel for the appellant failed to raise a reasonable doubt as to whether the appellant`s first statement had been made voluntarily. I agreed with the district judge that, in relation to the first statement, the voluntariness test had been satisfied and that the statement was admissible as evidence in the trial.

Voluntariness of the appellant`s second pre-trial statement

As for the second statement, counsel for the appellant argued that the appellant had made it whilst labouring under an inducement or promise held out by the investigating officer, PW5, that he would not be prosecuted if he gave evidence against DW2. This allegation had already been denied by PW5 at the trial. PW5 maintained throughout his testimony and cross-examination that he had never given such an impression to the appellant, whether expressly or by implication. Instead, he had told the appellant several times that he was likely to be charged for corruption by CPIB.

Notably, the district judge found PW5 to be a truthful and reliable witness. Nonetheless, the appellant`s counsel argued before me that the appellant was induced to believe he would benefit when he saw PW5 in the period between making his first statement and his second statement. Apparently, the appellant had sought PW5 and repeatedly asked for some `assurance` from CPIB. In particular, he had gone to PW5`s office on 27 May 1999 and had asked PW5 for an assurance that he would not be charged for corruption if he were to stand as witness against DW2. PW5 testified that he had told the appellant that he would be charged, and it was not CPIB`s practice to give a written assurance to anyone. PW5 also told the appellant to get his counsel to write formally to PW5`s superiors in CPIB to make any representations. The following day, PW5 received a letter from the appellant (D2), which stated:

> *1 With reference to my statement dated 17 May 1999 and my discussion with you on 26 May 1999 and 27 May 1999, I am willing to assist you further in your investigation into the affairs of one Roland Tay.*
>
> *2 As discuss with you, if you can assist me, from being prosecuted. If you can given me a letter saying that I will not be prosecuted for any offence in connection with this investigation, I am prepared to assist you as a witness.*

The appellant`s counsel argues that the above exchange and letter indicated clearly that the appellant had been induced by PW5 to believe that he would benefit from making a statement, and therefore that the second statement had been made involuntarily. I did not accept this argument. First, considering the exchange that had taken place between the appellant and PW5 from an objective point of view, I found that PW5 had not held out any inducement or promise to the appellant. All that he did, was to tell the appellant to get his legal counsel to write formally to PW5`s superiors in CIPB. That was, at best, a neutral reply, and was too vague to amount to an inducement rendering the subsequent statement involuntary and unreliable. Notably, in **Sim Cheng Yong v PP** [1994] 1 SLR 722 , it was alleged that the police officer had told the accused that if the accused co-

operated he would assist the accused. Even that was held to be too vague to amount objectively to `inducement`, because it was not specified in what way the police would assist the accused.

Secondly, the evidence indicated that at the time he made the second statement to CPIB, the appellant could not have held the subjective belief that he would benefit from making the statement. He had persistently sought some written assurance from CPIB that he would not be prosecuted if he gave evidence against DW2. He never received such written assurance. All he had been told, was to make formal written representations to PW5`s superiors in CPIB. Other than that, he had been told nothing else that could have amounted to an oral assurance. He wrote to PW5 on 28 May 1999, but received no reply. One month later, he gave his second statement. Even if he had previously held the subjective belief that he would benefit from making that statement, that belief was clearly non-existent at the time he made statement, for he stated in the statement itself that:

> *I am now giving the following detailed statement concerning my involvement of corrupt practices with Roland Tay. It is also understood that I may be prosecuted for the offences committed by me.*

The appellant did not dispute that he had read over the statement after it was recorded. He had signed and verified the truth of its contents. As such, I did not believe that he was labouring under any subjective belief, that he would benefit from making the statement.

Thus, having applied the objective and subjective limbs of the voluntariness test, I agreed with the district judge that the second statement was voluntarily made. In my judgment, the second statement was properly admitted as evidence in the trial.

The weight accorded by the district judge to the pre-trial statements

The next question was the weight which the district judge had accorded to the appellant`s pre-trial statements, and in particular, the second statement. Counsel for the appellant contended that even if the statements had been rightly admitted, the district judge was wrong to have based his findings of fact on the second statement. He pointed out to me that the appellant`s two pre-trial statements were inconsistent in material aspects, and that the appellant had also retracted his statements at the trial. In the light of this, he submitted that the district judge had erred in his assessment of the inherent reliability and accuracy of the second statement.

As a starting point, it is important to bear in mind that there are many reasons other than unreliability that makes an accused person retract his confession. Under the law, so long as the court is satisfied of its truth, a retracted confession can be relied upon for the truth of the facts stated therein. In fact, it is not necessary for a retracted confession to be corroborated before it can be relied upon: **Ismail bin UK Abdul Rahman v PP** SLR 232 [1974] 2 MLJ 180 ; **Mohamed Bachu Miah & Anor v PP** [1993] 1 SLR 249 . Therefore, although the appellant had attempted to retract his statements at the trial, the district judge was entitled to rely upon the statements.

After assessing all the evidence before him, the district judge decided that the appellant`s second statement contained the true version of events, and should be accorded more weight than his other evidence. I fully agreed with him on this. In the first place, I did not see the two statements as being totally irreconcilable. In his first statement, the appellant said that he had only taken out loans from DW2, and that he had not received any commission in return for supplying DW2 with the relevant information. In his second statement, the appellant admitted that he did receive payment in return for

releasing the relevant information to DW2. In that respect, the second statement could be said to be contradictory to the first statement. Other than that, however, the second statement merely clarified some inaccuracies in the first statement, and contained a more detailed account of the appellant`s dealings with DW2, which he had already admitted to in his first statement. In particular, the second statement contained details as to the amounts of money that he had received from DW2, as well as the dates and the locations of his meetings with DW2. Like the district judge, I was of the opinion that the second statement contained the true version of evidence. The appellant had neither reason nor motive to fabricate such an elaborate and meticulous story incriminating himself. Moreover, he had never repaid the so-called `loans` that he had mentioned in his first statement, and DW2 never pressed him for repayment of the same. These factors indicated strongly that he had not borrowed the moneys at all, but had in fact received those sums as payment for supplying the relevant information to DW2. Counsel for the appellant provided no explanation as to these issues. Thus, I saw no merit in their submission that the district judge was wrong when he ruled that the second statement contained the true version of evidence, and there was no reason for me to disturb the findings of fact that he made, based on the second statement.

The district judge`s assessment of the veracity of the witnesses

The third issue raised before me was that the district judge had erred in his assessment of the veracity of the witnesses. Counsel for the appellant argued that the district judge had wrongly impeached the credit of PW1. He also said that the district judge had no cogent reason to disbelieve the evidence given by appellant and DW2 during the trial. Furthermore, he submitted that the district judge had not given due regard to the evidence of a prosecution witness, PW3, which counsel for the appellant felt was favourable to the appellant. I will consider each complaint in turn.

PW1`s veracity

In relation to PW1, the district judge had ample grounds on which to impeach his credit. In PW1`s pre-trial statement to CPIB, he had stated that the appellant had told him personally that he was supplying DW2 with information on the location and address of dead bodies. Yet, in court, PW1 changed his testimony and disclaimed any knowledge of the dealings between the appellant and DW2. The learned judge referred to this material inconsistency in his written grounds, and he was entitled to impeach PW1`s credit.

The appellant`s veracity

Upon his two pre-trial statements being admitted, the appellant came face to face with the glaring inconsistencies and discrepancies in his own evidence. Initially, in his first statement to CPIB, he admitted that he had supplied DW2 with the relevant information, but denied having received any commission for the arrangement. He claimed that he had taken loans from DW2. A few days after making that statement, he made a statutory declaration retracting all that he had said previously in the first statement. Following this, he gave a second statement to CPIB, giving a detailed account of the occasions when he had received payment from DW2 in return for the information, as well as some of their meeting places and the amounts that he had received. He also admitted that the two so-called `loans` of $2,000 each ($4,000 in total) were in fact payments which he received in February 1996 and September 1996 for information that he had supplied to DW2. Finally, at the trial itself, he reverted to the stance in the statutory declaration, and denied everything. He had fluctuated between confessions and complete denials of the allegations against him - his credit was clearly

called into question. Thus, the district judge had ample grounds to conclude that the appellant was an unreliable witness, and he was entitled to reject the appellant`s evidence in court.

DW2`s veracity

At the trial, DW2 stated that the appellant had never given him any specific addresses or names of the deceased persons, but had merely confirmed the locations of some of the dead bodies. He said that he had discovered the locations of those bodies from other sources, and after confirming the same with the appellant, he would go to the location and track down the next-of-kin through his own efforts. He also denied ever having extended monies to the appellant, whether by way of a loan or in payment for any information.

At the appeal, counsel for the appellant raised a procedural objection that the district judge had failed to make a clear ruling as to DW2`s credit at the trial. The prosecution had made an application under s 147 of the EA to impeach DW2`s credit. Following **Kwang Boon Keong Peter v PP** [1998] 2 SLR 592 at p 604, the district judge should have made a ruling on the impeachment, if not at the end of the impeachment exercise, then at the close of the case together with the rest of the evidence tendered. Thus, the procedural objection raised by the appellant`s counsel was well-founded. Nevertheless, this procedural irregularity was a minor one, and it did not cause any prejudice to the appellant. Section 396 of the CPC states:

> *Subject to the provisions hereinbefore contained, no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of -*
>
> *(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;*
>
> *...*

In addressing the question whether there was any failure or miscarriage of justice or whether a conviction was unsafe, the court will ask itself the subjective question of whether it was content to allow the verdict to stand, or whether there was some lurking doubt that an injustice had been done to the appellant: **Tan Choon Huat v PP** [1991] SLR 805 . I had no doubt whatsoever that the procedural irregularity had not occasioned a failure of justice in the present case. As such, it was appropriate for me to overlook it.

Evidence of PW3

Counsel for the appellant submitted before me that the district judge had erred, in that he had not given any consideration to the evidence of PW3. At the trial, PW3 testified as follows: her father had died at home on 21 March 1997 and that she had called the police. Two police officers came to her place, followed by two medical officers, then an inspector and a photographer. Shortly thereafter, two undertakers arrived, and then two more. She was unable to identify any of these persons at the trial, as they were all strangers to her and the incident had taken place so long ago. She had not been told how the undertakers had learnt of her father`s death so quickly. All she could establish,

was that she had met her friend, one Sally Ho, at the mortuary the following day, and had learnt from Sally that two of the undertakers who had sought her out actually worked for Sally`s company. The link which the prosecution was trying to establish via PW3`s evidence was simply that at the relevant time, Sally Ho was helping DW2 in his undertaking business, and that they had received the requisite information pertaining to PW3`s father`s death and were able to quickly solicit PW3`s business. The allegation was that the appellant had been the police hearse driver in charge of transporting PW3`s father`s body, and that he had released the information pertaining to that police case to DW2. Beyond that, PW3`s evidence added nothing more to the case at hand. The fact that she could not identify the appellant was, in my judgment, neither favourable nor unfavourable to him. Consequently, the district judge had not erred in not alluding to PW3`s evidence in his written grounds. Her evidence was largely superfluous anyway.

Whether the supply of the relevant information constituted a `showing of favour in relation to the principal`s affairs`

The last issue raised in the appeal was that the prosecution had not shown an essential element of the charges against the appellant, namely that he had `shown favour in relation to his principal`s affairs`. To establish the charges against the appellant under s 6(a) of the PCA, the prosecution had to show (i) that there was an acceptance of gratification by the appellant, (ii) as an inducement or reward, (iii) that there was an objective corrupt element in the transaction, and (iv) that there was a subjective corrupt intent in the transaction in that the appellant had accepted the gratification with guilty knowledge (**Kwang Boon Keong Peter v PP** [1998] 2 SLR 592 ; **Tan Tze Chye v PP** [1997] 1 SLR 134 ; **PP v Har Su Meng** [1997] 3 SLR 332). Based on the findings of fact made by the district judge, the prosecution had clearly established beyond reasonable doubt that the appellant had accepted gratification from DW2 as a reward in return for releasing the relevant information to the latter. Counsel for the appellant argued before me that, even if the appellant had supplied the relevant information to DW2 for a monetary reward, this act did not constitute the `showing of favour` in relation to the Police Force`s affairs. He argued that this act had nothing to do with the appellant`s job as a police hearse driver, and that the appellant had not thereby compromised his official duties.

In effect, the point being canvassed by the appellant`s counsel, was that there had been no objectively corrupt element in the transaction. Whether a transaction is tainted with an objectively corrupt element is an inquiry based on the ordinary standard of the reasonable man, keeping in mind the natural and ordinary meaning of the word `corrupt` (**Chan Wing Seng v PP** [1997] 2 SLR 427). Each case turns on its own particular facts. Counsel for the appellant drew my attention to the case of **PP v Low Tiong Choon** [1998] 2 SLR 878 . In that case, the accused, who was a police officer on duty at the Subordinate Courts, had introduced a client to a lawyer (who happened to be an ex-district judge), and had received $500 in return. The client he introduced was a person charged with drunk driving and whom he had met in the course of his duties. The district judge found that the accused`s conduct was clearly improper and in breach of the Police Code, and probably the subject of internal disciplinary action by the police. However she held that the conduct in question, although improper, did not constitute corruption. Her decision was upheld on appeal.

The case of ***Low Tiong Choon*** was clearly distinguishable from the present case on its facts. In the first place, that case involved a one-off incident. Secondly, it was the client who had approached the accused and asked the accused to help him by recommending a lawyer to him. There was no evidence to indicate that the accused had actively solicited clients for the lawyer. Moreover, it was found that the accused had not actually compromised the performance of his official police duties, for he had not shown either favour or disfavour to the client despite having introduced him to a lawyer.

Thus, there was no objective corrupt element in the accused`s actions, although his conduct involved the potential for abuse of his position. In contrast, the facts of the present case were very different. This was not a case where a police officer committed a one-off incident of `harmless moonlighting`, by merely seizing an opportunity to make money that had come his way. Based on the findings of fact made by the district judge, the appellant had approached DW2 on his own accord, and specifically because he was in need of financial aid. He had released the relevant information to DW2 on no less than 14 occasions, over a period of about one and a half years. By accepting money from DW2, he had placed himself in a position beholden to DW2. The information was confidential, and the appellant knew this - he stated in the course of his cross-examination that he knew such information to be confidential. He had clearly abused his position and he knew it. Counsel for the appellant pointed out that the prosecution had failed to adduce any documentary evidence, in the form of internal rules or Police Standing Orders, to support their allegation that the relevant information was confidential. Notably, the district judge had believed the evidence of PW2, who was the officer-in- charge of the Patrol Unit attached to Tanglin Police Division. PW2 testified that the information received by hearse drivers in the course of their duty, such as the names and addresses and locations of the deceased persons and the contact numbers and names of the next-of-kin, was all confidential information, and was not to be disclosed unless clearance from superiors had been obtained. He had no reason to lie on oath and his evidence was not challenged by the defence counsel at the trial. In any event, the appellant had himself admitted in the course of his cross-examination that he knew such information to be confidential. In the light of this, it was not open for the appellant`s counsel to say at the appeal that the relevant information was not confidential, or indeed, that the appellant had not been aware that he was releasing confidential information.

In the case of **Mohamed Ali bin Mohamed Iqbal v PP** SLR 447 [1979] 2 MLJ 58 , the appellant, who was an Immigration Officer attached to the Singapore Airport, was charged and convicted for offences under s 6(a) of the PCA. As an Immigration Officer, his duties included the checking of incoming passengers` passports and their Disembarkation Forms. In return for a fee, he supplied two lists containing confidential information about the name, place of stay and duration of stay of incoming passengers to a sales promotion officer employed by a shopping centre. At the appeal, the argument was that the appellant`s acts, namely, copying the information contained in the Disembarkation Forms and passing the information to a third party who had no dealings with the appellant`s principal, the Government, could not amount to acts done by the appellant in relation to his principal`s affairs. It was argued that what the appellant did was something wholly outside the affairs or business of his principal, and that accordingly he had been wrongly convicted under s 6(a) of the PCA. This argument was rejected as being unsound, and his appeal dismissed. The former Chief Justice, Wee Chong Jin, pointed out in his written judgment that the words `in relation to his principal`s affairs` fell to be widely construed, and for a conviction under s 6(a) of the PCA, it need not be proved that the acts done by a person were done by him as an agent on behalf of his principal. He stated that the conditions precedent to an offence under that section was proof, inter alia, that the person charged was an agent as defined and what he did was in relation to his principal`s affairs or business. Reverting to the case before me, I found that the appellant fell squarely within the meaning of the word `agent`, which is defined in s 2 of the PCA to mean any person employed by or acting for another, including, inter alia, a person serving the Government or under any public body. The appellant`s act of releasing confidential information obtained in the course of his official duties were clearly acts which were in relation to the Police Force`s affairs. I also found that the appellant had clearly shown favour to DW2 - by releasing the relevant information in police cases to DW2, he was in effect supplying DW2 with a constant flow of clients (ie the family members of deceased persons in police cases) in return for a fee.

As a police officer, the appellant`s duties were part of the whole police process. The nature of police work, especially cases involving deceased persons, is extremely sensitive, and there is great public

interest in ensuring that the information pertaining to the deceased persons should remain confidential until such time as the police deems fit to release the information into the public domain. I had no doubt that the appellant had compromised his duties as a police officer. By his conduct of trading confidential information for a fee, he enabled the undertakers to rapidly descend on the scene of the police case, and this was surely detrimental to the police`s efforts to carry out their tasks. For example, in the case of PW3`s father`s death, it had apparently taken only an hour for the undertakers to arrive at PW3`s home, and according to PW3, the undertakers had arrived at the scene when the police were still around. The appellant`s conduct undermined the investigative system of the Police Force. Without question, this was a case that went beyond mere internal police disciplinary action for improper conduct. Criminal sanction was warranted. Thus, I dismissed the appellant`s appeal against conviction.

Sentence

Under s 6(a) of the PCA, the appellant could have been imprisoned for a term of up to five years, or fined up to $100,000, or both. The district judge sentenced him to nine months` imprisonment on each of the 14 charges, with only the first two sentences running consecutively.

I dismissed the appellant`s appeal against sentence, as the sentence passed by the district judge was not manifestly excessive in the circumstances. Indeed, there were aggravating factors in this case, which justified the term of 18 months` imprisonment that he had received. First, his culpability was exacerbated by the fact that he was a law enforcement officer. Secondly, he had released information which he himself knew to be confidential, and which he had obtained in the course of public duty, and which related directly to his official duties as a police hearse driver. Thirdly, he had committed the offences over a lengthy period of time, spanning some one and a half years. He had ceased to continue committing the offence, not out of a realisation of guilt, but because he had been promoted to the rank of Police Sergeant and was no longer the designated police hearse driver privy to the relevant information. Fourthly, the amount of gratification involved was alleged to be in the range of about $10,900. This was a substantial amount. This sum was not actually proved concretely by the prosecution, but it was based on the appellant`s own admissions in his second pre-trial statement to CPIB. In view of these factors, an adequate term of imprisonment must be passed in order to deter other police officers from acts of the same nature.

Outcome:

Appeal dismissed.