IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 220

Magistrate's Appeal No 9044/2018/01

Between

Nur Jihad bin Rosli

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Property] — [Criminal Trespass]
[Criminal Law] — [Offences] — [Property] — [Theft]

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Nur Jihad bin Rosli
v
Public Prosecutor

[2018] SGHC 220

High Court — Magistrate's Appeal No 9044/2018/01
See Kee Oon J
3 August 2018

5 October 2018

See Kee Oon J:

Introduction

1 The Appellant was convicted after claiming trial to one charge under s 454 punishable under s 458A of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). After his conviction on the s 454 charge, the Appellant also pleaded guilty to two charges under s 420 read with s 34 of the Penal Code ("the s 420 charges") and consented to having three charges under s 3(1) of the Computer Misuse and Cybersecurity Act (Cap 50A, 2007 Rev Ed) taken into consideration for the purposes of sentencing. For the s 454 charge, the Appellant was sentenced to 42 months' imprisonment and three strokes of the cane. For the s 420 charges, the Appellant was sentenced to three months' and four months' imprisonment respectively. The total sentence was 45 months' imprisonment and three strokes of the cane, with effect from 9 November 2016.

2 The Appellant filed the present appeal only against his conviction and sentence in respect of the s 454 charge. However, the Appellant did not raise any ground of appeal on sentence in his Petition of Appeal or submissions. At the hearing of the appeal on 3 August 2018, counsel for the Appellant confirmed that the present appeal was solely on conviction.

3 After hearing the parties' submissions, I dismissed the appeal against conviction. I now set out the full grounds of my decision.

The charge

4 The s 454 charge reads as follows:

> You … are charged that you, on the 6th day of November 2016, sometime between 9.00 a.m. and 9.59 a.m., at Block 1, Spooner Road, #08-74, Singapore ("the Unit"), a building which is used as a human dwelling, did commit house-breaking, in that you effected your entry into the Unit, *to wit*, by using your hands to insert a bamboo pole into the Unit through an opened window, which was a passage not intended by any person, other than yourself, for human entrance, with the intention to, and in order to commit theft of the following items … in the possession of Hamirul and Nurul, who were the residents of the Unit, and you have thereby committed an offence punishable under section 454 of the Penal Code (Cap. 224, 2008 Rev Ed) ("PC").
>
> And further that you, before committing the said offence, that is to say, on the 19th day of November 2009 had been convicted in Court No. 19 of the Subordinate Courts of Singapore, for an offence under sections 454 read with 458A and 34 of the PC, which conviction has not been set aside, and you are now liable to enhanced punishment under s 458A of the PC.

Facts

5 The facts are set out in the Statement of Agreed Facts, which the Appellant had admitted to without qualification. The First Information Report, the Arrest Report, and four statements recorded from the Appellant were annexed to the Statement of Agreed Facts and admitted in evidence. None of

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the witnesses were called to testify. The salient parts of the Statement of Agreed Facts are set out below.

6 The victims, Mohd Hamirul Hasraff bin Mohd Yusoff ("Hamirul") and Nurul Shaheda binte Ishack ("Nurul"), were residing at Block 1, Spooner Road, #08-74, Singapore ("the Unit"). On 5 November 2016, Hamirul and Nurul were shifting and discarding items from the Unit until about 5.00am to 6.00am the next day. Before retiring to bed, Nurul closed the main door and the window louver in the living room. The main gate was also padlocked. At about 9.30am, Nurul woke up to find the main door and the window louver ajar. As she did not suspect anything was amiss, she closed the main door and the window louver before returning to sleep.

7 Later, when Hamirul and Nurul woke up at about 4.30pm, Hamirul realised that his black sling bag ("the bag"), which had been placed on a table near the main door, was missing. The bag contained various items, including cash and a POSB debit card in Hamirul's name. Upon checking his bank account, Hamirul discovered that unauthorised transactions had been made using his POSB debit card. This led to Nurul calling the police to report the incident.

8 During the course of investigations, the Appellant admitted that sometime between 9.00am and 9.59am on 6 November 2016, he saw a bamboo pole near the Unit, which he decided to use to steal items from the Unit. He stood at the corridor outside the Unit and spotted the bag inside when he looked in through the opened window louver. Thereafter, he used his hands to insert the bamboo pole through the opened window louver to hook the bag and dishonestly remove it from the Unit. The Appellant retained the cash and

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Hamirul's POSB debit card, but discarded the bag and the remaining items. None of the stolen items were recovered.

The relevant statutory provisions

9 Before turning to the proceedings at trial below, it would be useful to first set out the statutory provisions in the Penal Code that form the backdrop to the present case. Section 454 provides the punishment for the offence of lurking house-trespass or house-breaking in order to commit an offence punishable with imprisonment. The offence of house-breaking is set out in s 445 of the Penal Code. It reads as follows:

> **House-breaking**
>
> **445**. A person is said to commit "house-breaking", who commits house-trespass if he effects his entrance into the house or any part of it in any of the 6 ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such 6 ways:
>
> (a) if he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass;
>
> (b) if he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building;
>
> (c) if he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened;
>
> (d) if he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass;
>
> (e) if he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault;

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> (f) if he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.
>
> *Explanation*.—Any outhouse or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.
>
> *Illustrations*
>
> (*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
>
> (*a*) A commits house-trespass by creeping into a ship at a porthole between decks, although found open. This is house-breaking.
>
> (*a*) A commits house-trespass by entering Z's house through a window, although found open. This is house-breaking.
>
> (*a*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
>
> (*a*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
>
> (*a*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
>
> (*a*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
>
> (*a*) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

10 The offence of house-trespass is set out in s 442 of the Penal Code. It reads as follows:

> **House-trespass**
>
> **442.** Whoever commits criminal trespass by entering into, or remaining in, any building, tent or vessel used as a human dwelling, or any building used as a place for worship or as a

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> place for the custody of property, is said to commit "house-trespass".
>
> *Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

The proceedings below

11 In the court below, the Prosecution's case was that the s 454 charge was made out on the basis of the Statement of Agreed Facts. The Prosecution submitted that the Appellant had committed "house-trespass" within the meaning of s 442 of the Penal Code by inserting the bamboo pole into the Unit to remove the bag, even if no part of the Appellant's body entered the Unit. In this regard, the Prosecution relied on various authorities including English cases decided before the Indian Penal Code was enacted. Given that the opened window louver was "a passage not intended by any person, other than himself or an abettor of an offence, for human entrance", the Appellant committed "house-breaking" by committing house-trespass through effecting his entrance into the Unit in one of the six ways described in s 445 of the Penal Code. Finally, as the Appellant had committed "house-breaking" in order to commit theft of the bag, the offence under s 454 was made out.

12 On the other hand, the Defence argued that the Appellant's use of a bamboo pole did not constitute "entry" into the Unit under s 442 of the Penal Code because no part of his body had entered the Unit. Even if the Appellant could be said to have effected "entry" into the Unit, inserting the bamboo pole through the opened window louver did not constitute "breaking" into the Unit. The Defence further contended that, on the basis that no part of the Appellant's body entered the Unit, none of the six ways described under s 445 of the Penal Code applied, therefore the s 454 charge could not be made out.

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The District Judge's decision

13 The District Judge's grounds of decision are reported at *Public Prosecutor v Nur Jihad Bin Rosli* [2018] SGDC 56 ("the GD"). The District Judge found that the Prosecution had proved its case beyond a reasonable doubt and convicted the Appellant accordingly. At the outset, the District Judge noted that the Defence did not dispute that the Appellant had committed theft of the bag by using a bamboo pole to remove it from the Unit, therefore the decision turned on whether the Appellant had committed house-trespass, and consequently, house-breaking (at [25] of the GD).

14 With respect to whether the Accused had committed house-trespass, the District Judge held that the word "entering" in s 442 of the Penal Code would include a situation where an offender inserted an instrument held in his hands(s) into a building for the purpose of removing any goods, without any part of his body entering the same (at [29] of the GD). In this regard:

(a) The District Judge relied on the principles stated in *Ratanlal & Dhirajlal's Law of Crimes,* vol 2 (Bharat Law House, 27th Ed, 2013) at p 2834 ("*Ratanlal & Dhirajlal*") on the Indian Penal Code provisions that are *in pari materia* with ss 442, 445 and 453 of the Penal Code. She noted that these principles were taken from Article 390 of Sir James Fitzjames Stephen's *A Digest of the Criminal Law (Indictable Offences)* (Sweet & Maxwell, 8th Ed, 1947) ("*Stephen's Digest*") and had been adopted by the commentators of the Indian Penal Code.

(b) The District Judge reasoned that the question whether s 442 of the Penal Code was breached should not depend on the length of the instrument used by an offender (at [30] of the GD). Otherwise, it would lead to an anomalous situation where an offender would escape with a

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less severe charge of theft-in-dwelling by using a longer instrument to commit the offence even though he could have reached for the items using his hands.

(c) The District Judge agreed with the Prosecution that *Public Prosecutor v Mohammad Faisal bin Nordin* [2005] SGDC 236 ("*Faisal*") did not support the Defence's case that the insertion of a bamboo pole did not constitute "entry" under s 442 of the Penal Code (at [31] of the GD). The accused in *Faisal* had in fact inserted his hand, which was holding a broomstick, into the complainant's unit.

15 With respect to whether the Appellant had committed house-breaking, the District Judge agreed with the Prosecution's submission that the opened window louver was not ordinarily meant for human entrance, therefore limb (*b*) of s 445 of the Penal Code was made out (at [33] of the GD). She rejected the Defence's argument that there was no "breaking" (at [34] of the GD) and observed that s 445 of the Penal Code had made it clear from the second and third illustrations that the offence could be established without signs of forced entry or broken pieces of glass that would ordinarily suggest that there had been a breaking in (at [34] of the GD).

The appeal

16 I now summarise the parties' submissions, which will be examined in further detail in the course of my analysis below.

The Appellant's submissions

17 The Appellant raised several grounds of appeal in his Petition of Appeal regarding the District Judge's decision. However, it became clear from the Appellant's written submissions and oral submissions at the hearing of the

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appeal that the Appellant subsequently reformulated his grounds of appeal. The reformulated grounds of appeal are summarised below.

18 The Appellant argued that the District Judge erred in her interpretation of the word "entering" in s 442 of the Penal Code. Applying the purposive approach to statutory interpretation as set out by Sundaresh Menon CJ in *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*"), the Appellant submitted that (a) the ordinary meaning of "entering" is restricted to the physical entry of a person into a building; and (b) the legislative purpose of s 442 is to prevent "unlawful intrusion into habitations in which men reside", which must entail physical intrusion of the offender's body, as the drafters indicated in their Explanation to s 442 of the Penal Code. It was also contended that simple theft of property deposited in the building without physical entry of the offender's body, as in the present case, more properly falls under the offence of theft-in-dwelling under s 380 of the Penal Code.

19 Further, the Appellant argued that the District Judge erred in permitting the consideration of extraneous materials. Of the three situations set out in s 9A(2) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act") for which consideration may be had to extraneous materials, the Appellant submitted that only the situations under ss 9A(2)(*b*)(i) and (ii) were relevant. However, it was contended that s 9A(2)(*b*)(i) did not apply because the provision was not "ambiguous or obscure", and that s 9A(2)(*b*)(ii) did not apply because adopting the ordinary meaning of the text would not lead to a "manifestly absurd or unreasonable" result.

20 The Appellant also argued that the District Judge erred in placing undue weight on the extraneous materials tendered by the Prosecution. In particular,

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the Appellant took issue with the old English case law that the Prosecution relied on to show that the definition it offered was supported by the historical underpinnings of the Indian Penal Code and the concept of "entry" in English common law that existed at the time of the enactment of the Indian Penal Code. The Appellant also took issue with Article 390 of *Stephen's Digest*, arguing that the Court ought to look at the legislative intentions of the drafters of Indian Penal Code instead. The Appellant then cited *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*") for the proposition that the Court's decision to assign weight to extraneous materials would be guided by s 9A(4) of the Interpretation Act and submitted that the Court must have particular regard to the desirability of ordinary persons being able to rely on the ordinary meaning conveyed by text of the provision. It was contended that the reasonable and prudent man lacks access to old English case law and commentaries on the drafting of the Indian Penal Code and would rely on the express wording of s 442 and thus perceive entry as the physical entry of a person or any part of his body onto the property.

21 Finally, the Appellant argued that because neither a strict nor purposive interpretation supported the Prosecution's position on the meaning of "entering" in s 442, the District Judge erred in not giving due weight to the rule of strict construction of penal provisions and not according the Appellant the benefit of the doubt in the interpretation of s 442. If there is a lacuna in the law on house-trespass, this ought to be addressed by Parliament and not the Court.

The Prosecution's submissions

22 Applying the purposive interpretation approach as set out by Menon CJ in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"), the Prosecution submitted that (a) the ordinary meaning of "entering" includes

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the use of an instrument to enter into premises, even without the introduction of the offender's body; and (b) the mischief targeted by s 442 of the Penal Code is the deliberate and uninvited intrusion upon premises, regardless of its degree. The District Judge's interpretation best fulfils the object of s 442 because it captures any intrusion into premises, whether by an offender's body or by an instrument functioning as an extension of his body.

23 In addition, the Prosecution submitted that this interpretation was supported by the historical underpinnings of the Indian Penal Code and the concept of "entry" in pre-existing English common law at the time of the enactment of the Indian Penal Code. In this regard, the Prosecution argued that given the lack of local authorities on this point of law, it was permissible to refer to old English common law to confirm the meaning of what constituted "entering" under s 442 of the Penal Code.

24 As regards the Appellant's argument that the present case would be covered under s 380 of the Penal Code, the Prosecution argued that it would not address intrusion into the house, which was the primary mischief in this case.

My decision

The issues on appeal

25 The central issue that emerged from the parties' submissions and at the hearing of the appeal is a question of law, namely, whether the Appellant's insertion of a bamboo pole through the opened window louver to remove the bag, without introducing any part of his body into the Unit, constitutes "entering" under s 442 of the Penal Code. I shall also examine the Appellant's arguments on the District Judge's consideration of extraneous materials and assignment of weight to these materials as part of my analysis on this issue.

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Following this, I shall consider whether the strict construction rule is applicable on the facts.

Purposive approach to statutory interpretation

26 Given that the central issue before me is a question of statutory interpretation, I shall first set out the legal principles for the purposive approach to statutory interpretation, as mandated by s 9A of the Interpretation Act.

27 The approach towards purposive interpretation was recently summarised by Menon CJ in *Ting Choon Meng* as follows (at [59]):

> …
>
> *(a) First, ascertaining the possible interpretations of the text, as it has been enacted.* This however should never be done by examining the provision in question in isolation. Rather, it should be undertaken having due regard to the context of that text within the written law as a whole.
>
> *(b) Second, ascertaining the legislative purpose or object of the statute.* This may be discerned from the language used in the enactment; … it can also be discerned by resorting to extraneous material in certain circumstances. In this regard, the court should principally consider the general legislative purpose of the enactment by reference to any mischief that Parliament was seeking to address by it. In addition, the court should be mindful of the possibility that the specific provision that is being interpreted may have been enacted by reason of some specific mischief or object that may be distinct from, but not inconsistent with, the general legislative purpose underlying the written law as a whole…
>
> *(c) Third, comparing the possible interpretations of the text against the purposes or objects of the statute.* Where the purpose of the provision in question as discerned from the language used in the enactment clearly supports one interpretation, reference to extraneous materials may be had for a limited function – to confirm but not to alter the ordinary meaning of the provision as purposively ascertained…
>
> [emphasis added]

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28 The first step requires the Court to ascertain the possible interpretations of the provision by determining the ordinary meaning of the words of the legislative provision in question understood in the context of the written law as a whole (*Tan Cheng Bock* at [38]; *Ting Choon Meng* at [65]). In *Lam Leng Hung*, Andrew Phang JA expounded on what is meant by ordinary meaning as follows (at [76]):

> … we are of the view that "proper and most known signification" suitably conveys the idea that the ordinary meaning of a word or phrase is that which *comes to the reader most naturally* by virtue of its ***regular or conventional usage*** *in the English language* and in the light of the ***linguistic context*** *in which that word or phrase is used.*
>
> [emphasis in original]

29 After identifying the ordinary meaning, the Court will then ascertain the legislative purpose. In seeking to draw out the legislative purpose behind a provision, primacy should be accorded to the text of the provision and its statutory context over any extraneous material (*Tan Cheng Bock* at [43]). As the law enacted by Parliament is the text which Parliament has chosen in order to embody and to give effect to its purposes and objects, the meaning and purpose of a provision should, as far as possible, be derived from the statute first, based on the provision(s) in question read in context of the statute as a whole (*Tan Cheng Bock* at [43]).

30 Extraneous materials refer to "any material not forming part of the written law [which] is capable of assisting in the ascertainment of the meaning of the provision", as set out in ss 9A(2) to 9A(3) of the Interpretation Act. Even though the list of examples of extraneous materials in s 9A(3) is non-exhaustive, the potential range of such material is not unlimited (*Ting Choon Meng* at [63]). Reading s 9A(2) in context with s 9A(1), the use of such extraneous materials is limited to situations where they are "capable of helping to ascertain the

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meaning of the provision by *shedding light on the objects and purposes of the statute as a whole, and where applicable, on the objects and purposes of the particular provision in question*" [emphasis in original] (*Ting Choon Meng* at [63]).

31 There are only three situations in which the Court may consider extraneous materials. These situations are set out in s 9A(2) of the Interpretation Act and they were outlined by Menon CJ in *Ting Choon Meng* as follows (at [65]):

> (a) under s 9A(2)(*a*), to *confirm* that the ordinary meaning deduced as aforesaid is, after all the correct and intended meaning having regard to any extraneous material that further elucidates the purpose or object of the written law;
>
> (b) under s 9A(2)(*b*)(i), to *ascertain* the meaning of the text in question when the provision on its face is *ambiguous or obscure*; and
>
> (c) under s 9A(2)(*b*)(ii), to *ascertain* the meaning of the text in question where having deduced the ordinary meaning of the text as aforesaid, and considering the underlying object and purpose of the written law, such ordinary meaning is *absurd or unreasonable*.
>
> [emphasis in original]

32 In other words, s 9A(2) of the Interpretation Act allows extraneous materials to be considered either to confirm or to clarify the meaning of a provision. There is therefore no requirement for any ambiguity or absurdity to be found before recourse may be had to extraneous materials (*Planmarine AG v Maritime and Port Authority of Singapore* [1999] 1 SLR(R) 669 at [22]).

33 Consideration of extraneous materials is further tempered by s 9A(4) of the Interpretation Act. This provision states that in determining whether consideration should be given to any extraneous material, or in determining the weight to be assigned to such material, the Court shall have regard to the

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desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision (taking into account its context in the written law and the purpose or object underlying the written law); and the need to avoid prolonging legal or other proceedings without compensating advantage. In *Ting Choon Meng*, Menon CJ added two further considerations that the Court should have regard to, namely, whether the material was "clear and unequivocal" in the sense that it must "disclose the mischief aimed at [by the enactment] or the legislative intention lying behind the ambiguous or obscure words" (citing *Pepper v Hart* [1993] AC 593 at 634); and whether the material is directed to the very point of statutory interpretation in dispute (*Ting Choon Meng* at [70]; *Tan Cheng Bock* at [52] – [54]; *Lam Leng Hung* at [72]).

Purposive interpretation of s 442 of the Penal Code

34 At this juncture, it would be useful to set out again s 442 of the Penal Code. It states as follows:

> **House-trespass**
>
> **442.** Whoever commits criminal trespass by entering into, or remaining in, any building, tent or vessel used as a human dwelling, or any building used as a place for worship or as a place for the custody of property, is said to commit "house-trespass".
>
> *Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

The ordinary meaning of the word "entering" in s 442

35 The Appellant argued that the ordinary meaning of "entering" is restricted to the physical entry of a person into the premises. In support of this, the Appellant relied on the usage of the word "whoever", which he took to refer to the entry of a person and not the introduction of any inanimate object or instrument, and the fact that the Explanation to s 442 is explicit that "the

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introduction of any part of the trespasser's *body* is entering sufficient to constitute house-trespass" [emphasis added].

36 On the other hand, the Prosecution submitted that there are two possible interpretations of the word "entering" under s 442. Under the broad definition, the use of an instrument to enter into premises is sufficient to constitute entry, even without the introduction of the offender's body. Under the narrow definition, the offender's body must enter the premises in order to constitute entry.

37 The Prosecution considered the Appellant's reliance on the word "whoever" to be misplaced. The Appellant's usage of the word "whoever" was unsupported by other uses of the word in the Penal Code. Two examples were provided in this regard:

(a) An offence of voluntarily causing hurt punishable under s 323 of the Penal Code could be made out when "[w]hoever" uses a ruler to "[do] any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person".

(b) An offence under s 509 of the Penal Code could be made out without physical intrusion when "[w]hoever, intending to insult the modesty of any woman … intrudes upon the privacy of such woman" by setting up a camera.

38 The Prosecution further submitted that, if Parliament had intended the narrow definition to apply, the Explanation to s 442 would have stated that it is "necessary" or "required" that the offender's body part be introduced into the premises to constitute "entering". The absence of such restrictive words and the

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usage of the word "sufficient" implies that there is a wider class of actions that constitutes "entering", including entry by an object held by the offender.

39 I agree with the Prosecution's submissions. I find that the word "whoever" denotes the offender as the target of liability under s 442 and does not impose limits on what must enter the premises in order to constitute "entering". The examples provided by the Prosecution, particularly in respect of s 509, are illustrative in this regard.

40 With respect to the Appellant's reliance on the Explanation to s 442 of the Penal Code, as I stated in *Shaikh Farid v Public Prosecutor and other appeals* [2017] 5 SLR 1081 ("*Shaikh Farid*"), one must bear in mind the role and utility of explanations in the Penal Code (at [25]). As explained in Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) (at paras 1.50 – 1.51):

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> [1.50] The [Penal] Code commonly adopts the technique of laying down the rule (which we will call the 'substantive provision') and then providing explanations and illustrations. *Explanations expand on the meaning of words and phrases*… For example, the offence of cheating under s 415 is defined, in part, to be where the accused 'by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person'. Explanation 1 to s 415 then states that a 'dishonest concealment of facts is a deception within the meaning of this section'…
>
> [1.51] *Explanations are generally intended to clarify the substantive provision, not to expand or limit it. They aim to avoid confusion and to avert arguments as to the scope of the law* (in the above example, whether deception goes beyond a positive lie). Explanations often consist of propositions that, in the common law, would be for the courts to resolve. Explanations therefore form part of the law.
>
> [emphasis added]

41 The Explanation to s 442 should not be read so as to "unduly circumscribe the plain meaning of the statutory provision in question" (*Shaikh Farid* at [25]). By stipulating that "[t]he introduction of *any part* of the criminal trespasser's body is entering sufficient to constitute house-trespass" [emphasis added], it appears to me that all the Explanation seeks to do is to clarify and to avert arguments on whether the offender's entire body must enter the premises in order to make out the offence of house-trespass.

42 Further, as the Prosecution argued (at [38] above), it was open to Parliament to adopt restrictive language if it intended that only the entry of the offender's physical body or body part(s) would constitute "entering". Given that restrictive language was not adopted, and in light of the usage of the word "sufficient", I find that the ordinary meaning of "entering" is that set out in the broad definition identified by the Prosecution. Moreover, as I demonstrate in the sections below, such ordinary meaning of the word "entering" finds support in the legislative purpose of s 442.

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The legislative purpose of s 442

43 I now turn to consider the legislative object of s 442 of the Penal Code as gleaned from the text.

44 The relevant text would be the language of s 442 of the Penal Code and the schema of criminal trespass provisions set out in ss 441 to 462 of the Penal Code. Section 442 has been reproduced at [34] above. It provides that house-trespass is criminal trespass involving specific kinds of premises, namely, a building, tent or vessel used as a human dwelling, or a building used as a place of worship or as a place for the custody of property ("certain premises"). As the Prosecution highlighted in written submissions, the fact that the Explanation to s 442 provides that the introduction of *any part* of the offender's body is entering sufficient to constitute house-trespass indicates that the offence of house-trespass addresses intrusions upon premises, regardless of degree.

45 The schema of criminal trespass provisions sets out three main types of offences, namely, criminal trespass, house-trespass and house-breaking, as well as the various sub-types of these offences. It is clear from ss 447 and 448 that the punishment for house-trespass is more severe than that for criminal trespass.

46 In my judgment, what can be gleaned from the text summarised above is that the legislative purpose of s 442 is to provide for an aggravated form of criminal trespass that addresses intrusion upon certain premises, regardless of degree.

The extraneous materials

47 At this juncture, it would be appropriate to address the Appellant's argument (as set out at [19] above) that the District Judge erred in permitting

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the consideration of extraneous materials. I am of the view that the ordinary meaning of the word "entering" based on its text, the statutory context of s 442, and the legislative purpose of s 442 is clearly the broad definition of "entering". It follows that s 442 of the Penal Code is not ambiguous or obscure on its face, and the ordinary meaning does not lead to a result that is manifestly absurd or unreasonable in the light of the underlying legislative purpose. Accordingly, s 9A(2)(*b*) of the Interpretation Act would not apply to the present case. Instead, this is a case falling within s 9A(2)(*a*) of the Interpretation Act, where the Court may rely on extraneous materials to *confirm* the ordinary meaning but not to alter it (*Tan Cheng Bock* at [106]).

48 I now turn to consider the extraneous materials cited by the parties. To determine the legislative purpose of s 442, both the Appellant and the Prosecution relied on an excerpt from the Indian Penal Code drafters' explanatory notes on the criminal trespass and house-trespass provisions. I set out below the relevant portion of the explanatory notes in full (Thomas Macaulay, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Pelham Richardson, Cornhill, 1838) at Note (N), p 125):

> *We have given the name of trespass to every usurpation,* ***however slight****, of dominion over property.* ***We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person.*** Even then, we propose to visit it with a light punishment, unless it be attended with aggravating circumstances.
>
> These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed. It may also be aggravated by the end for which it is committed.
>
> *There is no sort of property which is more desirable to* ***safeguard against unlawful intrusion*** *as the habitations in which men*

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> *reside, and the buildings in which they keep their goods. The offence of trespassing on these places* ***we designated as house-trespass and we treat it as an aggravated form of criminal trespass****.*
>
> [emphasis added]

49 The Prosecution submitted that the last paragraph from the excerpt cited above made it clear that the legislative purpose of s 442 of the Penal Code is "to address the deliberate and uninvited intrusion upon premises *regardless of degree*" [emphasis in original]. The Appellant on the other hand, submitted that the legislative purpose is to prevent "unlawful intrusion into the habitations in which men reside", and that such intrusion "must entail *physical* intrusion of the offender's body onto the property, as the drafters clearly indicated in setting out their explanation in section 442" [emphasis in original].

50 I find these explanatory notes to be relevant and useful extraneous material. Section 442 of the Penal Code was enacted as a provision of the original Indian Penal Code, which was brought into force in Singapore with the enactment of Ordinance 4 of 1871 (Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-legal Perspectives* (Butterworths, 1990) at p 180, as cited in *Lam Leng Hung* at [172] in the context of s 409 of the Penal Code). Therefore, the explanatory notes can help to shed light on the objects and purposes of the Indian Penal Code provision, and consequently, s 442.

51 The explanatory notes are clear and unequivocal in disclosing the legislative intention behind the criminal trespass and the house-trespass provisions. Although they do not specifically address the point of statutory interpretation in dispute, they began with the observation that trespass encompasses "every usurpation, *however slight*, of dominion over property" [emphasis added], and followed by stating that they only criminalised trespass

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committed for the purpose of committing some offence injurious to some person interested in the property, or for the purpose of causing annoyance to such a person. This indicates that the drafters had intended to safeguard against any degree of unlawful intrusion upon premises, which is consistent with the legislative object that I derived through textual analysis.

52 I turn next to consider the Prosecution's reliance on English cases decided before the enactment of the Indian Penal Code, namely, *The King v John Hughes and others* (1785) 1 Leach 406 ("*Hughes*") and *R v O'Brien* (1850) 4 Cox 400 (as cited in JW Cecil Turner, *Russell on Crime* vol 2 (Stevens & Sons, 12th Ed, 1964) at p 824) ("*O'Brien*"). As set out above (at [23]), the Prosecution argued that it was permissible in the absence of local case law to refer to the old English common law to confirm the meaning of what constituted "entering" under s 442. It was the Prosecution's case that a clear principle had emerged from these cases that a person "enters" a building if he inserts an instrument held in his hand(s) into that building for the purpose of removing any goods, even if no part of his body had intruded the same, and that s 442 of the Indian Penal Code, which is *in pari materia* with s 442 of the Penal Code, was intended to embody the meaning of "enter" under the old English law. On the other hand, the Appellant disputed that there was a clear authoritative principle in the English cases. The Appellant also submitted that the Court should not give undue weight to these cases cited because of their considerable vintage, the lack of parallels to the present case, the fact that they pertained to the common law offence of burglary, and none of them had been cited by local courts.

53 In *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119, the Court of Appeal endorsed the Privy Council's comments in *Barendra Kumar Ghosh v Emperor* AIR 1925 PC 1 on the approach to

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construing Indian Penal Code provisions. In particular, the Court of Appeal noted (at [86]) that the Privy Council had indicated that reference to English cases on criminal law was not irrelevant where the Indian Penal Code provisions were unclear on their face, and further stated that the same approach applies *mutatis mutandis* in respect of our Penal Code provisions.

54 In this case, recourse to the old English case law is not made for the purpose of resolving ambiguity over the meaning of the word "entering" under s 442 of the Penal Code, but to confirm the ordinary meaning of the word "entering".

55 I agree with the Prosecution that *Hughes* and *O'Brien* show that the position prevailing in English common law at the time of the enactment of the Indian Penal Code was that it was sufficient to constitute "entry" for a person to insert an instrument into the premises for the purpose of removing property, even if no part of his body entered the premises. In *Hughes*, the Court referred to earlier cases, including one where it was decided that the insertion of "a hook or other instrument through the broken pane of a window" was sufficient to constitute entry for establishing the offence of burglary. Based on those cases, the Court distilled the general principle that there would be entry if an instrument that was capable of removing the property was introduced after the act of breaking. Likewise, in *O'Brien*, which examined whether the entry of a hand to lift a sash of a window was sufficient to constitute entry, Patteson J observed that the law recognised a distinction between entry by an offender's body part, and entry by an offender using an object, and noted that it was sufficient to constitute entry for a hook to be introduced for the purpose of taking away goods.

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56 In my view, both cases are clear and unequivocal, and they address the very point of statutory interpretation in dispute. They confirm and do not call into question the ordinary meaning of the word "entering" as ascertained above.

57 For completeness, I also consider the Appellant's broader argument (summarised at [20] above) that the District Judge erred in placing undue weight on the extraneous materials tendered by the Prosecution. The Appellant's objections to the reliance on old English case law have been dealt with above. In respect of Article 390 of *Stephen's Digest*, the Appellant acknowledged that it was adopted by the authors of *Ratanlal & Dhirajlal*, but took the view that the Court ought to look at the legislative intentions of the drafters of the Indian Penal Code instead. The drafters of the Indian Penal Code would not have had reference to *Stephen's Digest* as it was only published nearly three decades after the enactment of the Indian Penal Code. At the hearing of the appeal, the Prosecution responded that *Stephen's Digest* was a digest consolidating the old English common law.

58 I note that in the proceedings below, parties did not make arguments on the purposive approach to statutory interpretation as set out in *Ting Choon Meng* and *Tan Cheng Bock* before the District Judge. As such, the arguments on the use of or weight to be assigned to extraneous materials were not canvassed before the District Judge. On appeal, the Prosecution did not address the Court on how commentaries on the Indian Penal Code, such as *Ratanlal & Dhirajlal* and *Stephen's Digest*, should feature in the purposive interpretation exercise, if at all. Without the benefit of arguments on this matter, I decline to express any opinion on the weight that should have been assigned. In any event, even if I find that the District Judge had erred in placing undue weight on Article 390 of Stephen's Digest, it would not have a bearing on the outcome of this appeal.

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59 In conclusion, the extraneous materials that I have considered confirm the ordinary meaning of s 442. Therefore, the use of an instrument to enter into premises, even without the introduction of any body part, is sufficient to constitute "entering" under s 442.

Concluding observations on purposive interpretation of s 442

60 To recapitulate, the legislative object of s 442 is to provide an aggravated form of criminal trespass that protects against unlawful intrusions upon certain premises, regardless of degree. I have earlier expressed my view that the broad definition of "entering" furthers this legislative object and should be preferred to the narrow definition. I now expand on this analysis.

61 In my view, adopting the narrow definition would give rise to absurd results that were unlikely to have been intended by the drafters of the Penal Code. It bears repeating that a person who inserts any body part, including a finger or toe, into the premises would be liable under s 442. However, if the narrow definition is correct, as the District Judge rightly observed (at [30] of the GD), a person who used a long instrument to commit the offence or who used an instrument to commit the offence even though he could have reached for the items with his hand would escape with a less severe charge of theft-in-dwelling under s 380 of the Penal Code. This is an anomalous result because the instrument may in fact be more effective at removing the items and may represent a greater degree of intrusion into the premises than the entry of the person's body part. The absurdity of this result is even more apparent when one considers that whether the person used his body part or an instrument may be a matter of fortuitous circumstance. For instance, an offender may use a pole because the window was fitted with metal grilles that prevented his hand from slipping through or the items were located further inside the premises and could

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not have been reached by the offender stretching his hand over the window sill (as was the case here). By allowing the person who uses an instrument to escape with a lesser charge for the same, if not greater, degree of intrusion, the narrow definition would undermine the legislative object of s 442 to protect against any degree of unlawful intrusion.

62 On the other hand, such an anomalous result would not arise if the broad definition was adopted. The legislative object would instead be advanced by the broad definition which captures any intrusion into the premises, whether by the offender's body or by an instrument that is effectively an extension of the offender's body.

63 I would mention in passing that the question then is whether the insertion of an instrument that cannot be taken to be a literal extension of the offender's body would be sufficient to constitute entry under s 442. In this regard, I find the comments of the authors of *Smith's Law of Theft* in the context of the English common law rules equally relevant here (David Ormerod & David Huw Williams, *Smith's Law of Theft* (Oxford University Press, 9th Ed, 2007) at paras 8.08 – 8.09):

> 8.08 Even if the courts are willing to follow the common law in holding that the intrusion of any part of the body is an entry, they may be reluctant to preserve these technical rules regarding instruments, for they seem to lead to outlandish results. Thus it seems to follow from the common law rules that there may be an entry if a stick of dynamite is thrown into the building or if a bullet is fired from outside the building into it. *What then if a time bomb is sent by parcel post? Has D 'entered', even though he is not on the scene at all?—perhaps even being abroad and outside the jurisdiction? Yet this is hardly an 'entry' in the 'simple language as used and understood by ordinary literate men and women' in which the [Theft] Act is said to be written. Perhaps a restriction may be read into the approach so that D must be present at the scene, or 'on the job'.*

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> 8.09 There is, however, a cogent argument in favour of the common law rules being applied which may be put as follows. If D sends a child, under the age of 10, into the building to steal, this is obviously an entry by D, through an 'innocent agent', under ordinary principles. Suppose that, instead of a child, D sends in a monkey. It is hard to see that this should not equally be an entry by D. But if that point be conceded, it is admitted that the insertion of an animate instrument is an entry; and will the courts distinguish between animate and inanimate instruments? Unless they will, the insertion of the hooks, or the use of a remote controlled robotic device etc, must also be an entry.
>
> [emphasis added]

64 The question did not arise in the present appeal and was not argued before me. Therefore, I will say no more about it.

Application to the facts

65 It was not disputed that the Appellant had committed theft of the bag by using a bamboo pole to remove it from the Unit. In the light of my views on the proper interpretation of the word "entering" in s 442 as set out above, I agree with the District Judge's holding on the Appellant's liability under s 442.

The strict construction rule

66 Finally, I turn to the Appellant's argument that the District Judge erred in not applying the strict construction rule in his favour. As the Appellant acknowledged, this rule applies only in cases where penal provisions remain ambiguous even after all attempts at purposive interpretation pursuant to s 9A(1) of the Interpretation Act have been properly made and proven unilluminating (*Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [57]).

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67 Having applied the purposive interpretation approach to s 442 of the Penal Code, I conclude that the word "entering" has a clear ordinary meaning and that the extraneous materials referred to also confirm that this was the intended meaning. Accordingly, my view is that no "genuine ambiguity" persists and I do not think that the strict construction rule is applicable in the present case.

Conclusion

68 Taking all the circumstances into account, I was not persuaded by the Appellant's arguments. I therefore dismissed the Appellant's appeal against conviction.

See Kee Oon
Judge

Gino Hardial Singh (Abbots Chambers LLC) for the Appellant;
Tan Wee Hao & Chan Yi Cheng (Attorney-General's Chambers) for the Respondent.

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