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

[2023] SGHC 310

Magistrate's Appeal No 9108 of 2021

Between

Ching Hwa Ming (Qin Huaming)

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9109 of 2021

Between

Li Keng Wan (Liu Qingyuan)

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Appeal]
[Criminal Law — Statutory offences — Prevention of Corruption Act]

TABLE OF CONTENTS

Ching Hwa Ming (Qin Huaming)
v
Public Prosecutor and another appeal

[2023] SGHC 310

General Division of the High Court — Magistrate's Appeals Nos 9108 and 9109 of 2021
Kannan Ramesh JAD
28 April, 26 July 2023

30 October 2023

Kannan Ramesh JAD:

Introduction

1 The appellants, Ching Hwa Ming (Qin Huaming) and Li Keng Wan (Liu Qingyuan), faced two charges each of conspiring to corruptly gratify pursuant to s 5(*b*)(i) read with s 29(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") in the District Court. They were each convicted and sentenced to 16 months' imprisonment. The appellants filed their respective appeals against both conviction and sentence. At the hearing on 26 July 2023, I dismissed the appeals against conviction and allowed the appeals against sentence, lowering their sentences to 12 months' imprisonment, delivering a detailed oral judgment. These are my grounds of decision.

2 In these grounds, I will address the appellants in HC/MA 9108/2021/01 and HC/MA 9109/2021/01 – Ching Hwa Ming (Qin Huaming) and Li Keng

Wan (Liu Qingyuan) – as "Jason" and "David", respectively. I will address the respondent as "the Prosecution".

Facts

The false story

3 Jason and David were the director and manager, respectively, of Nam Hong Engineering Pte Ltd ("NHE"). Jason and David were close friends for more than 30 years. David had worked for Jason in Nam Hong Construction & Engineering Pte Ltd sometime in 2004 or 2005. Eventually, David introduced Jason to one Lian Cher Hong (Lian Zhihong), whom I will address as "Aloysius". Jason and Aloysius incorporated NHE, a construction company that specialised in air-conditioning works, in 2010.

4 Both Aloysius and Jason were equal shareholders in NHE and the only directors. Notably, the directors were joint signatories to NHE's bank account.

5 In September 2012, NHE secured a subcontract from Kurihara Kogyo Co Ltd ("KK") for the "Supply and Installation of Chilled Water and Condensate Drain Pipeworks c/w Testing and Commissioning" for the Fusionopolis Project (the "FP Project"). This contract was valued at $5.2m.

6 In 2013, NHE faced some cash flow issues. Aloysius's father-in-law loaned $300,000 to NHE. Aloysius sought repayment of the loan subsequently. However, Jason refused as he felt that NHE needed to conserve cash to prepare for "rainy days". In or around the middle of 2014 – about a year and a half after securing the FP Project – Aloysius told David that NHE needed to pay $300,000 to the then Assistant General Manager of KK, Mr Ng Boon Hwa ("Mr Ng") for

allegedly procuring KK to award the FP Project to NHE. Aloysius requested David to convey this to Jason.

7 Unbeknown to David, what Aloysius told him was false. There was no arrangement between Mr Ng and Aloysius as asserted. Aloysius had concocted the story purportedly for the purpose of repaying the loan to his father-in-law. Aloysius approached David because David was close to Jason, and Aloysius was not. Aloysius was hopeful that David would be able to persuade Jason to agree to make the payment to Mr Ng.

8 David conveyed the false story to Jason. Jason believed it and eventually, the appellants agreed to pay the $300,000 in two equal tranches. In accordance with NHE's internal processes, the appellants and Aloysius signed two payment vouchers for $150,000 each, and Jason and Aloysius signed on the corresponding cheques (dated 14 July 2014 and 29 September 2014) that drew on NHE's bank account. Notably, the cheques were cash cheques and the payment vouchers – payment voucher no. 2000 and no. 2149 – carried the descriptions "Entertainment" and "Contra A/C", respectively.

9 There was no need for David to sign the payment vouchers. However, he did so because he was the overall in-charge of operations in NHE and Jason trusted him. Unless David verified payment and signed the relevant payment voucher, Jason would not sign the payment voucher and authorise payment.

10 The cheques were handed over to Aloysius. However, the sum of $300,000 was never paid by Aloysius to his father-in-law. Nor was it paid to Mr Ng. Instead, unknown to Jason and David, Aloysius deposited the cheques into his personal bank account and used the money for his personal expenses.

Jason's 2017 CPIB report

11 In 2017, Jason made a report (the "Report") against Aloysius and David to the Corrupt Practices Investigation Bureau (the "CPIB"). In the Report, Jason alleged a conspiracy between David, Aloysius and various subcontractors of NHE to defraud and cheat him and NHE. There were almost $2m of unpaid invoices due from KK to NHE for work that had been long completed. Yet Aloysius and David took no steps to recover this sum from KK, and instead abandoned NHE leaving Jason to manage the affairs of the company.

12 Jason asserted that the only plausible explanation for this "completely illogical behaviour" was that David and Aloysius had conspired with KK and the subcontractors of NHE to attempt to wind up NHE before it was able to pursue a claim against KK for the $2m in unpaid invoices. He believed that the sum of $300,000 was used to further the conspiracy. It is notable that when the Report was filed, Jason was unaware that Aloysius's story was false and that the sum of $300,000 had been pocketed by Aloysius. The Report triggered investigations, and the subsequent prosecution of Aloysius and the appellants.

The status of Aloysius's prosecution

13 Aloysius initially faced two charges of corruptly receiving gratification of $150,000 for the benefit of Mr Ng. These charges were subsequently amended to two charges of cheating under s 420 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") by deceiving Jason and David into believing that NHE had to pay a bribe to Mr Ng to advance the NHE's business interests with KK. Aloysius was tried and convicted on the amended charges in separate proceedings and received a global sentence of 18 months' imprisonment.

14 His appeal against conviction and sentence was also dismissed on 22 February 2023.

Decision below

15 In convicting the appellants in *Public Prosecutor v Li Keng Wan (Liu Qingyuan) and another* [2021] SGDC 156 (the "GD"), the District Judge (the "DJ") placed weight on the appellants' long statement to the CPIB. He found that the long statements were voluntarily made and admissible in evidence (at [45] of the GD). The appellants, however, took issue with the accuracy of the long statements (at [47] of the GD). The DJ found that the recording officers were credible witnesses and did not have any reason to lie about the accuracy of the long statements and the manner in which they were recorded. On the other hand, David was found to be an unreliable witness because of the inconsistencies in his long statements and his evidence in court (at [73]–[74] of the GD).

16 Furthermore, the DJ held that the four elements for the corruption charge were made out for both appellants. First, the appellants had agreed to give the gratification to Mr Ng. Second, the sum of $300,000 was an inducement to advance NHE's business interests. Third, there was an objectively corrupt element in respect of the three purposes identified by the DJ (at [85] of the GD): (a) to pay Mr Ng for the award of the FP Project to NHE; (b) to avoid difficulties in receiving progress payments for the FP Project; and (c) to avoid Mr Ng causing NHE difficulties in relation to the Duo Ophir-Rochor Mixed Development ("Duo Ophir") and Changi Airport Terminal 4 ("Terminal 4") projects. Fourth, the appellants had the requisite guilty knowledge that their acts were corrupt. Relatedly, the DJ also found that it was not necessary for the

gratification to be received by the intended beneficiary for the charge to be made out.

17 Additionally, the DJ found that the appellants engaged in a conspiracy amounting to abetment to corruptly give a gratification of $300,000 to Mr Ng to advance NHE's interests with KK and approved the release of the said sums from NHE's bank account pursuant to this conspiracy (at [112] of the GD).

18 On sentence, the DJ found that the relevant sentencing considerations were deterrence and retribution. He held that a custodial sentence was warranted. The DJ applied the framework in *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166 ("*Romel*") (the "*Romel* framework") and imposed a global sentence of 16 months' imprisonment for each appellant.

The parties' cases on appeal

Jason's case on appeal

19 Jason raised three challenges on appeal against conviction. First, he took issue with the accuracy of his long statements. In particular, Jason alleged that the DJ erred in finding that he had the same understanding of the term "kopi money" in 2014 as he did in 2017 (when his long statements were recorded).

20 Jason made four further submissions on the DJ's reliance on his long statements. First, the DJ erred in finding that the police were inherently honest and unmotivated to lie. Second, the procedural requirements in s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "CPC") as set out in *Parti Liyani v Public Prosecutor* [2020] SGHC 187 ("*Parti Liyani*") were not satisfied. Third, the DJ erred in according full weight to the incriminatory portions of the long statements while rejecting Jason's allegations of a

conspiracy against him by David, Aloysius, KK and some other entities. Fourth, the DJ erred by refusing to admit Jason's affidavit filed in winding up proceedings against NHE, which was contrary to s 262 of the CPC. Section 262 permits the court to allow, *inter alia*, a sworn affidavit to be used as evidence in criminal proceedings in Singapore.

21 Second, Jason challenged each of the four elements for the offence under s 5(*b*)(i) of the PCA. Third, Jason challenged the DJ's finding of a conspiracy. In respect of sentence, Jason argued that the custodial threshold had not been crossed and sought a fine of $100,000 instead.

David's case on appeal

22 David raised five contentions on appeal against conviction. First, he argued that there were inaccuracies in his long statements. Specifically, the term "kopi money" was added to his long statements even though he did not use that term. Notably, he did not allege that he was not aware that it was not present in his long statements. In any event, even if David had used that term, he believed that it referred to money that had been used for entertaining clients.

23 Second, David alleged that he lacked proficiency in English and consequently his long statements could not be relied upon. Third, as he was a mere employee with no decision-making power in NHE, the requisite *actus reus* was not made out. Fourth, David had nothing to gain from the transaction. Finally, David argued that there was no inducement and no objectively corrupt element in the transaction.

24 In respect of sentence, David submitted that 16 months' imprisonment was manifestly excessive and the framework in *Goh Ngak Eng v Public*

Prosecutor [2022] SGHC 254 ("*Goh Ngak Eng*") should apply. David sought a fine not exceeding $50,000.

Prosecution's case on appeal

25 The Prosecution's case on conviction was that the long statements were accurately recorded and should be relied upon, the elements of the charge were established, and the appellants had conspired to corruptly gratify Mr Ng. On sentence, the Prosecution submitted that the *Romel* framework was applicable. Applying Category 1 of the *Romel* framework, the Prosecution urged the court to uphold the global sentence of 16 months' imprisonment imposed by the DJ.

Issues that were determined

26 There were four issues that arose in respect of both appeals:

(a) whether the appellants' long statements were accurately recorded and could be relied upon ("Issue 1");

(b) whether the four elements of the charges were made out ("Issue 2");

(c) whether there was a conspiracy to commit the corrupt acts ("Issue 3"); and

(d) if the appeals against conviction were dismissed, what the appropriate sentences should be ("Issue 4").

Issue 1: The appellants' long statements

27 I dismissed the appellants' challenges to their long statements.

28 As mentioned above at [19], Jason's main contention was that, in 2014 – when the alleged gratification took place – he did not understand "kopi money" to refer to a bribe. Instead, he was under the impression that "kopi money" was a refundable deposit that would eventually be returned to NHE. It was only in 2017 that Jason associated the term "kopi money" with a bribe. This realisation came when Jason was in the process of making the Report in 2017. Thus, he submitted that the DJ was incorrect to find on the basis of his long statements that he knew in 2014 that the sum of $300,000 was to be paid as a bribe.

29 However, the DJ's finding was not inconsistent with the material objective evidence, which is when appellate intervention is usually warranted: see *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [16(b)]. In his long statement dated 9 January 2018 ("P37"), Jason stated that the appellants knew at the material time that it was an offence to make the payments to Mr Ng as they were bribes. There was no reference to "kopi money" there. In fact, in the same long statement, Jason also stated that another reason for making the payments was that the FP Project was ongoing, and the appellants did not want to offend Mr Ng. They feared that if Mr Ng was not paid, he would hold back progress payments, or generally be difficult in relation to the operations of the FP Project and the other two projects that KK had awarded to NHE (*ie*, the Duo Ophir and Terminal 4 projects). I therefore saw no basis for appellate intervention. The DJ was entitled to rely on the long statements to support his finding that Jason was aware the payments were bribes.

30 The other contentions raised by Jason, as specified at [20] above, were also dismissed.

31 First, the DJ did not proceed on the basis that *every member* of the police was inherently honest and unmotivated to lie. Instead, he carefully assessed the internal and external consistency of the recording officers' evidence and found them to be credible witnesses; his finding was not against the weight of the evidence.

32 Second, there was no question of breach of s 22 of the CPC. Section 22(3)(*c*) of the CPC requires a statement to be interpreted in a language that the person making the statement understands. In *Parti Liyani*, the High Court found that the recording officer ought to have read back the relevant statements in Bahasa Indonesia, the language used by the accused person in that case, as opposed to Bahasa Melayu (at [71], [75] and [86]). The recording officers and Jason communicated in Mandarin and Jason accepted that he had no issue communicating in that language. Jason also made amendments to his first long statement, P31. This suggested that he could understand what was being interpreted to him. As Jason understood what was being explained to him in Mandarin, there was no breach of s 22.

33 Third, the DJ did not err by declining to accept Jason's allegations of a conspiracy against him that were made in the winding up proceedings against NHE. They were not relevant to the corruption charges he faced.

34 Finally, the DJ's refusal to admit Jason's affidavit filed in the winding up proceedings against NHE did not breach s 262 of the CPC. The plain language of s 262 indicates that it is permissive and not mandatory. At trial, counsel for Jason submitted that the affidavit was relevant to demonstrate that Jason had been consistent in his understanding of what the money would be used for. However, Jason testified on this very issue, and it was difficult to see what evidential value the affidavit would have had if Jason's direct testimony

on the same issue asserted the very same position set out in the affidavit. Thus, the DJ did not err in refusing to admit the affidavit.

35 David raised two points to challenge the accuracy of his long statements namely, that: (a) the term "kopi money" had not come from him, he did not understand what it meant, and it was written down by the recording officer in David's long statement dated 5 June 2017 ("P32") (see [22] above); and (b) he was not proficient in English, and this affected the accuracy of his long statements. I dismissed both allegations.

36 The first point did not bring David's case far. The fact that he did not use the term "kopi money" himself in P32 was not relevant. What was pertinent was that in the same long statement, he stated that he knew the payment of the money was wrong under the law and nonetheless went ahead to pay because he was told to do so. The accuracy of this part of P32 was not challenged on appeal. It also contradicted David's alternative submission that even if he had used the term "kopi money", he believed that it referred to expenses incurred in entertaining clients. Thus, regardless of the specific words used, the important point was that David knew that the payment was wrong in law.

37 As regards the second point, David accepted in P32 and at trial that he could understand and converse in English. Moreover, the DJ highlighted at [68] of his GD that David demonstrated his proficiency in English when he gave evidence in court. The DJ was therefore entitled to come to the view that David was sufficiently proficient in English to understand his long statements. There was no basis for appellate intervention.

38 Therefore, I dismissed the appellants' contentions in respect of Issue 1.

Issue 2: Elements of the corruption charge

Applicable law

39 The four elements of an offence under s 5(*b*)(i) of the PCA are as follows (see *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 at [32] and *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 ("*Michael Tan*") at [54]–[55]):

(a) The accused gave gratification to any person, whether for the benefit of that person or any other person.

(b) The gratification was given as an inducement (or reward) for doing (or forbearing to do) anything in respect of any matter.

(c) There was a corrupt element in the transaction.

(d) The accused gave the gratification with a guilty knowledge, *ie*, he knew that what he did was corrupt by the ordinary and objective standard.

40 The first element is the *actus reus* of the offence. The other three pertain to the *mens rea*: see *Public Prosecutor v Leng Kah Poh* [2014] 4 SLR 1264 at [20].

41 The second and third elements are part of the same factual inquiry. The question that must be answered is whether the appellants gave the gratification *believing* that it was a *quid pro quo* for a dishonest gain or advantage: see *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189 ("*Tey Tsun Hang*") at [17].

42 I assess each of the four elements in turn.

Element 1 – The giving of gratification

43 The first element was made out on the evidence. "[G]ratification" is defined broadly in s 2 of the PCA as follows:

> "gratification" includes —
>
> (*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;
>
> (*b*) any office, employment or contract;
>
> (*c*) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;
>
> (*d*) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
>
> (*e*) any offer, undertaking or promise of any gratification within the meaning of paragraphs (a), (b), (c) and (d); …

44 The appellants had signed the payment vouchers, Jason had signed the corresponding cash cheques (together with Aloysius), and the appellants' statements – P32 and P37 – showed that they agreed to have NHE pay the sum of $300,000 to Mr Ng. Jason's contentions that he was not involved in the day-to-day operations of NHE's business, and did not have a dishonest or guilty mind, were not relevant at this stage of the inquiry. The *actus reus* was established on the facts.

45 It was not necessary for the gratification to have been received by Mr Ng. In *Tang Keng Boon v Public Prosecutor* [2000] 1 SLR(R) 104, the appellant intended to pay money to police officers through two intermediaries in exchange for receiving information on impending police raids. The court found at [37] that it was not a defence that the intermediaries "never intended to pass the money on to police officers and that the whole scheme was said to be a fraud on the appellant". The fact that the gratification was not received by the police officers did not impact the assessment of whether the offence was made out.

46 Thus, the first element was made out.

Element 2 – Inducement

47 The second element was made out. This element relates to the causal, or consequential, link between the gratification and the act the gratification was intended to procure (or reward): see *Tey Tsun Hang* at [16].

48 The appellants contended that inducement was not proven on the facts. Jason argued that knowing that the sum of $300,000 would be used to advance NHE's interest did not mean that he knew that he was giving a bribe or engaging in some corrupt act. David argued that there was no inducement as all the projects were awarded through a legitimate tender process. However, the appellants' long statements contradicted their submissions.

49 As stated above, at [29], Jason said in P37 that one of the purposes of the payments was to avert the possibility of Mr Ng holding back progress payments owed to NHE or making things difficult for NHE's operations in the FP Project and other projects that had been awarded to NHE by KK. Similarly, in his long statement dated 9 January 2018 ("P34"), David said that he told Jason

that Aloysius had talked about Mr Ng requiring payment for procuring the award of the FP Project to NHE. He further said that Jason "definitely … told me that he is agreeable to pay this money". It was apparent therefore that the appellants had agreed to give gratification to induce Mr Ng to achieve the three purposes identified by the DJ (see [16] above) The appellants had agreed to give the gratification for the specified benefits; the second element was therefore made out.

Element 3 – A corrupt element

50 There was a corrupt element here. This is an "objective inquiry that is essentially based on the ordinary standard of the reasonable man": see *Chan Wing Seng* at [20]. The High Court in *Public Prosecutor v Low Tiong Choon* [1998] 2 SLR(R) 119 laid down a two-step test (at [29]):

(a) the first step is to ascertain the intention of the giver or receiver (as the case may be) to the transaction at the material time. This inquiry depends on the evidence of the parties as well as the surrounding circumstances; and

(b) the second step is to then ask whether such an intention tainted the transaction with an objectively corrupt element, given the factual matrix.

51 The first step could be answered with reference to the finding under the second element of the test. In that vein, the intention of the appellants was to achieve the three purposes as stated at [16] above.

52 On the second step, in light of the factual matrix of this case, the intention tainted the transaction with an objectively corrupt element. David referred to *Tjong Mark Edward v Public Prosecutor and another appeal*

[2015] 3 SLR 375 ("*Tjong Mark Edward*"), at [27] and [29], to contend that the evidence must at least allow the court to infer that the idea of giving gratification was already operating in David's mind at the time of the alleged favour (*ie*, the award of the FP Project to NHE). David's submission was that he was not involved in the agreement to give the gratification at the time the FP Project was awarded and so this element could not be made out. I did not accept his argument.

53 The principles that David cited from *Tjong Mark Edward* did not apply squarely to the facts of this case. I reproduce the relevant portions of the case here:

> 26 … *It is quite clear that the lack of an agreement does not prevent a finding of corruption.* The lack of a discussion is also not fatal in unusual cases like this. Corruption is often subtle and hard to detect. *It would be undesirable if the mere lack of a discussion or agreement is fatal to a finding of corruption, since many instances of corruption could then be disguised as rewards after the event.*
>
> 27 However, I doubt that the objective corrupt element would be satisfied if there was no agreement, discussion, contemplation or expectation of gratification when the allegedly corrupt conduct happened and if no favour was in fact shown. …
>
> 28 I believe that what I have suggested is consistent with the existing jurisprudence. Two local cases support the proposition that *it is not corrupt to reward someone for doing what he was already supposed to do*. …
>
> 29 It is also useful to recall the natural meaning of corruption, which is the "[p]erversion of a person's integrity in the performance of … duty or work by bribery etc" (*Chan Wing Seng* at [26]). To prove corruption in cases where gratification was received *after* the allegedly corrupt conduct had happened, the evidence must at least allow the court to infer that the idea of gratification was already operating in the accused's mind. There must be some "advantage gained or hoped to be gained

> by the giver" (see *Sairi bin Sulaiman v PP* [1995] 2 SLR(R) 794 at [40]). …
>
> 30 *I stress that the foregoing analysis assumes a one-off dealing.* It might still be corruption if, for example, Tjong and Mujibur continued to have dealings; the gratification might encourage Tjong to favour Mujibur in later dealings in derogation of his duties to STE. …
>
> [emphasis added]

54 The High Court in *Tjong Mark Edward* at [26] found that the mere absence of an agreement or discussion does not militate against the finding of corruption. In *Tjong Mark Edward* at [28], it was said that "it is not corrupt to reward someone for doing what he was already supposed to do". That was not what transpired here.

55 Although Aloysius had concocted the false story *after* the award of the FP Project, the motivation behind the payment of the sum of $300,000 was to gratify Mr Ng for awarding the FP Project in accordance with the purported arrangement between him and Aloysius – *ie*, the first purpose – and to further NHE's other business interests moving forward (*ie*, the second and third purposes). By doing so, the appellants had adopted and affirmed what they understood to be the arrangement between Aloysius and Mr Ng as regards the award of the FP Project (*ie*, the first purpose). Their concern was that the failure to keep to that arrangement would have downstream consequences both of which concerned the second and third purposes. As such, David's reliance on *Tjong Mark Edward* was misplaced.

56 Thus, the third element was made out.

Element 4 – Guilty knowledge

57 The fourth element was satisfied. This element poses a subjective test with an inherent objective element "in that the guilty knowledge was that of knowing or realising that what [the accused] did was corrupt by the ordinary and objective standard": see *Fong Ser Joo William v Public Prosecutor* [2000] 3 SLR(R) 12 at [33]. A surreptitious attempt to legitimise the gratification is indicative of guilty knowledge: see *Tan Tze Chye v Public Prosecutor* [1996] 3 SLR(R) 357 at [45].

58 Jason raised various contentions on appeal; they primarily related to the contention that he was not aware that it was corrupt to pay Mr Ng the sum of $300,000 so that Mr Ng would not make things difficult for NHE. Jason also contended that he thought it was not corrupt to give Mr Ng the said sum if NHE was going to receive money from KK which was legitimately owed to it. However, the facts did not support his contentions.

59 First, the appellants were aware that the gratification was a bribe. In P37, Jason said that the appellants knew that giving the sum of $300,000 was an offence but nonetheless went ahead to make the payment. Similarly, in P32, David accepted that he knew that it was not legal to pay the said sum but chose to do so anyway.

60 Second, the two payment vouchers signed by the appellants and Aloysius did not state the true purpose of the payments. As noted above at [8], payment voucher no. 2000 dated 14 July 2014 described the payment as "Entertainment". This was false. Payment voucher no. 2149 dated 29 September 2014 described the payment as "Contra A/C". Again, this was false. In P32, David accepted that genuine entertainment expenses would be

accompanied by receipts attached to the payment voucher. There were no receipts attached to payment voucher no. 2000 for an obvious reason: the payment was the gratification the appellants intended to pay Mr Ng. The false descriptions of the payments in the payment vouchers spoke to the appellants' guilty knowledge.

61 I make a further point. As noted earlier, the cheques were cash cheques. This ensured that the identity of the payee was not apparent from the cheques. No satisfactory explanation was offered by the appellants before the DJ as to why cash cheques were issued. That further underscored the conclusion that the appellants wanted to hide the true purpose of the payments.

62 Thus, the fourth element was made out.

63 Therefore, the four elements for the corruption charge under s 5(*b*)(i) of the PCA were made out. I turn to consider whether there was a conspiracy to commit the corrupt acts.

Issue 3: Conspiracy to commit the corrupt acts

64 The essence of a conspiracy is an agreement or a common design: see *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [19]. The conspirators do not have to be equally informed of all the details of the conspiracy. However, they must at the minimum be aware of the general purpose of the plot and that plot must be unlawful: see *Nomura Taiji and others v Public Prosecutor* [1998] 1 SLR(R) 259 at [110].

65 Jason submitted that the Prosecution did not establish that there was a conspiracy between the appellants with the same general purpose. Moreover, he submitted that he had believed that it was not corrupt to give the moneys to KK

if he was going to receive money which was legitimately owed to NHE. I note that the latter submission was made in the context of a conspiracy though it ought to have been made in relation to the element of a guilty knowledge. In view of this, I addressed this submission at [57]–[62] above. In any event, I did not accept both of Jason's contentions.

66 The evidence supported the conclusion that the appellants agreed to make the payments for the three purposes specified above (see [16] above). Thus, there was a conspiracy amounting to abetment to corruptly gratify Mr Ng within the meaning of s 107(1)(*b*) of the Penal Code.

67 Therefore, I dismissed the appeals against conviction. I turn to discuss the fourth issue – the appeals against sentence.

Issue 4: Sentence

Grounds for appellate intervention

68 An appellate court may intervene on sentence in four instances (see *ADF* at [17]):

(a) where the trial judge erred in respect of the proper factual basis for sentencing;

(b) where the trial judge failed to appreciate the material placed before the court;

(c) where the sentence imposed by the trial judge was wrong in principle; or

(d) where the sentence imposed by the trial judge was manifestly inadequate or manifestly excessive.

Here, the second and third grounds were salient grounds for appellate intervention on sentence.

69 With regard to the second ground, it may be said that a trial judge has failed to appreciate the material placed before the court if he or she makes a finding of fact which is not supported by the evidence: see *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [48] and [93]. I found that in applying the *Romel* framework, the DJ failed to appreciate the material placed before the court on David's case. As noted earlier, the transactions were made for the three purposes specified above at [16]. The DJ, at [142] of the GD, found that for the purposes of sentencing "it was *not in dispute* that the present case was a private sector corruption case which fell within the first category of cases stated in *Romel*" [emphasis added]. Contrary to the DJ's finding, this was a disputed issue at trial. In David's Sentencing Submissions dated 2 December 2020, he submitted that while the first purpose behind the transaction would rightly fall under Category 1 of the *Romel* framework, the second and third purposes ought to fall under Category 3 of the *Romel* framework. This was the same position taken by David during oral submissions on sentence. Indeed, for the reasons canvassed below at [81]–[85], I found that the second and third purposes did fall under Category 3 of the *Romel* framework. Thus, the DJ failed to properly appreciate the submissions on this issue.

70 Moreover, the sentence imposed was wrong in principle. A sentence would be wrong in principle when, amongst other reasons, the lower court incorrectly accords weight to aggravating and mitigating factors: see *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [76]. The concern in such cases is that the sentence imposed would breach the principle of consistency in sentencing: see *UI* at [75].

71 The DJ applied the wrong sentencing principle on two occasions: (a) by giving credit to the appellants for not having any related criminal antecedents (at [157] of the GD); and (b) in finding that the appellants' act of claiming trial suggested that they had no remorse which justified an uplift to their sentence (at [159] of the GD). I deal with each in turn.

72 First, it was wrong to discount the sentence simply because of the lack of related antecedents – this was merely a neutral factor: see *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 at [85]. Second, it was incorrect to treat the act of claiming trial as *ipso facto* grounds for finding a lack of remorse which could aggravate the sentence: see *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2020] 4 SLR 790 ("*Ridhaudin*") at [56]. In *Public Prosecutor v BLV* [2020] 3 SLR 166, at [135], the High Court held that "even in relation to sexual offences, an accused person's claiming trial does not in itself expose him to any additional uplift or increase in sentence, but rather connotes merely that he does not qualify for a discount for pleading guilty". In *Ridhaudin*, the High Court held, at [57], that "a relatively high threshold must be met for this to be an offender-specific aggravating factor, such as where the accused conducts his defence in an extravagant and unnecessary manner or makes scandalous allegations in respect of the victim". Here, the appellants claimed trial on the basis they had been deceived by Aloysius's false story. This was not a case that was extravagant or unnecessary such that an uplift was warranted. The DJ did not explain why the appellants claiming trial met this high threshold. Further, there was nothing in the manner in which the defence was conducted at trial that warranted an uplift. Indeed, the Prosecution did not make this submission before the DJ in their written or oral submissions.

73 Therefore, there were two grounds for appellate intervention on sentence: the DJ's failure to appreciate the material placed before the court, and

the imposition of a sentence which was wrong in principle. The next question is what the applicable sentencing framework ought to be.

Applicable sentencing framework

74 The Prosecution submitted that the *Romel* framework should apply. On the other hand, the appellants submitted that the framework in *Goh Ngak Eng* should apply. I briefly outline the two frameworks.

75 In *Romel*, the court categorised sentences into three broad and non-exhaustive categories (at [26]). Category 1 applies where the receiving party receives gratification or is paid a reward to confer on the paying party a benefit that is within the receiving party's power to confer, without regard to whether the paying party ought properly to have received that benefit. Category 2 applies where the receiving party receives gratification or is paid a reward to forbear from performing what he is duty bound to do, thereby conferring a benefit on the paying party. Category 3 applies where a receiving party receives gratification or is paid a reward so that he will forbear from inflicting harm on the paying party, even though there may be no lawful basis for the infliction of such harm. Under the *Romel* framework, the "court must correctly locate the facts of the case, including the circumstances of the offender that is before it within the continuum of the facts in previously decided cases before coming to a conclusion as to the appropriate sentence": see *Romel* at [31].

76 In respect of Category 1, whether the custodial threshold is crossed depends on the facts. Category 2 cases frequently attract custodial sentences. For Category 3 cases, the court in *Romel* explained that the receiving party, as opposed to the paying party, tends to have heightened culpability due to the presence of two factors: first, in seeking payment from the paying party; and

second, by threatening to inflict harm on the paying party if the bribe is not paid when there is no lawful basis for doing so. These factors result in the deprivation of the paying party's legitimate rights unless he pays a bribe: see *Romel* at [27]–[29].

77 In comparison, the framework in *Goh Ngak Eng* was for private sector corruption offences under ss 6(*a*) and 6(*b*) of the PCA. It is modelled after the two-stage, five-step framework in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 (see *Goh Ngak Eng* at [45]–[47]). At the first stage, the court arrives at an indicative starting point sentence for the offender which reflects the intrinsic seriousness of the offending act. This first stage involves three steps:

(a) the court identifies, by reference to factors specific to the particular offence under consideration, (i) the level of harm caused by the offence and (ii) the level of the offender's culpability;

(b) the court identifies the applicable indicative sentencing range by reference to the level of harm caused by the offence and the level of the offender's culpability; and

(c) the court identifies the appropriate starting point within the indicative sentencing range that was identified in step two.

78 At the second stage, the court makes adjustments to the starting point sentence identified under the first stage and arrives at a sentence that reflects the personal circumstances of the offender, by taking into account the relevant aggravating and/or mitigating circumstances unique to the offender and considering if the sentence arrived at is proportionate and consistent with the overall criminality of the offender. This stage consists of two steps:

(a) The court makes adjustments to the identified starting point as may be necessary to take into account factors personal to the offender's particular circumstances (*ie,* offender-specific factors).

(b) Where an offender has been convicted of multiple charges, the court considers if further adjustments should be made to the sentence for the individual charges to take into account the totality principle.

79 I found that the *Romel* framework applied in this case. The court in *Goh Ngak Eng* expressly limited the framework there to cases arising under s 6 of the PCA for the reasons expressed in the judgment. As the court in *Goh Ngak Eng* highlighted, ss 5 and 6 of the PCA are directed at distinct mischiefs and therefore engage different considerations in the sentencing exercise: see *Goh Ngak Eng* at [50]–[51]. Further, a sentencing matrix would ordinarily be calibrated based on sentences for the same offences in the past. It follows that the sentencing matrix in *Goh Ngak Eng* would have been based on data involving sentences under s 6 and not s 5 of the PCA. I did not have the data for offences under s 5 of the PCA and there was no evidence to suggest that the data sets in respect of both provisions were the same. It was, thus, not apparent why it was appropriate for the framework in *Goh Ngak Eng* to be mapped over to this case. Nevertheless, I accepted that the offence-specific factors going towards harm and culpability, as outlined in *Goh Ngak Eng* at [95], were relevant to cases under s 5 of the PCA.

80 Thus, I applied the *Romel* framework to the facts in this case.

The appropriate sentence

81 I found that the first purpose fell within Category 1, and the latter two purposes within Category 3 of the *Romel* framework. The first purpose – to pay Mr Ng for the award of the FP Project to NHE – involved paying Mr Ng a reward for a contract which was within his power to award. This purpose fell squarely within Category 1.

82 The latter two purposes evinced the appellants' concern that Mr Ng would act in a manner that would hurt NHE's interests (*ie*, by withholding progress payments already due to NHE and by making things difficult for NHE in relation to other projects). The Prosecution submitted that these purposes shaded into Category 2 since the gratifications were for the purpose of getting Mr Ng "to act in a manner that was derelict in his duty; i.e., to refrain from withholding progress payments to NHE regardless of whether there were grounds for KK to withhold them … and for [Mr Ng] not to make things difficult or to slacken in his oversight of NHE". However, this was not an accurate reflection of the circumstances.

83 Category 2 relates to paying the receiving party to forbear from performing what he is *duty bound* to do. There was no evidence to support the conclusion that the appellants' motivation was to get Mr Ng to avoid taking actions that he was duty bound to take. Rather, the concern appeared to be to avoid a situation where Mr Ng would go out of his way to (a) stop progress payments that were due and payable to NHE in relation to the FP Project, and (b) make things difficult for NHE's other projects. It must be remembered that the second and third purposes were tied to the first purpose in that the appellants were concerned that the failure to pay the sum of $300,000 to Mr Ng for the award of the FP Project (*ie*, the first purpose) would have downstream

consequences for NHE which they sought to avoid, namely the second and third purposes. This was supported by the objective evidence.

84 In P37, Jason stated that he and David "did not want to offend [Mr Ng]. If we did not give the money demanded by [Mr Ng], he could hold back our progressive payments [*sic*] or make things difficult in our operations". In P34, David stated that Aloysius told him that NHE could have "difficulty getting progress payments through [Mr Ng] and [Mr Ng] could also make things difficult for us for the other projects." These statements suggested that the appellants were concerned that Mr Ng might disrupt payments that were rightfully owed to NHE, and also make things difficult for NHE in respect of other ongoing projects. Indeed, as regards the second purpose (relating to the progress payments under the FP Project), the DJ found that the payments were to be made "to [Mr Ng] for him to *refrain from showing disfavour* to NHE by *withholding* progress payments to NHE in relation to the FP project" [emphasis added] (at [95] of the GD). Notably, most of the progress payments had been paid and the works for the FP Project were about to come to an end by the time Aloysius had concocted the false story of Mr Ng demanding the $300,000. This was not a case, as the Prosecution suggested, where the gratification was given to Mr Ng to, *inter alia*, procure him to forbear from going through the proper processes when assessing if progress payments were payable.

85 In view of the evidence, the first purpose for the gratification fell under Category 1 and the latter two purposes fell under Category 3 of the *Romel* framework.

86 I then considered the offence-specific factors going towards harm and culpability as set out in *Goh Ngak Eng* at [95]. The harm here was the public disquiet caused by the offence in that corrupt acts impact society's expectations

that transactions and decisions in both the private and public spheres will be carried out fairly and transparently: see *Public Prosecutor v Wong Chee Meng and another appeal* [2020] 5 SLR 807 at [67]. There was no harm caused to KK since the gratification was never paid to Mr Ng as Aloysius had concocted the story.

87 The factors relating to culpability were the quantum of the gratification, the degree of pre-meditation, and both the appellants' abuse of their respective positions within NHE. First, the quantum involved – the sum of $300,000 – was substantial. Second, there was a significant degree of pre-meditation. The appellants had consciously attempted to conceal the two transactions by miscrediting them as "Entertainment" and "Contra A/C" in the payment vouchers and using cash cheques (see [60]–[61] above). Moreover, by issuing cash cheques, the appellants had hidden the identity of the payee. In the circumstances, I found that there was a material degree of pre-meditation in giving the gratification. Lastly, the appellants had abused their respective positions in the company; Jason was a director who had signed on the payment vouchers and the corresponding cheques; David's signature on the payment vouchers led to Jason following his lead and agreeing to sign on them.

88 In assessing the appropriate sentence, I considered in particular the decisions of *Public Prosecutor v Geow Chwee Hiam* [2016] SGDC 139 ("*Geow Chwee Hiam*"), *Public Prosecutor v Soh Yew Meng* DAC-933429-2015 (7 February 2017) (District Court, Singapore) (*"Soh Yew Meng*"), and *Kannan s/o Kunjiraman and another v Public Prosecutor* [1995] 3 SLR(R) 294 ("*Kannan*"). I was cognisant that *Geow Chwee Hiam* and *Soh Yew Meng* involved s 6(*a*) of the PCA. However, they served as a useful guide to how the sentence should be calibrated as those cases applied *Romel* and not *Goh Ngak Eng*.

89 In *Geow Chwee Hiam*, the accused pleaded guilty to three charges under s 6(*a*) of the PCA and consented to five similar charges being taken into consideration in sentencing. The accused, the director and head of a company, Island Landscape & Nursery Pte Ltd ("ILN"), solicited gratification in exchange for furthering the business interests of the giver's company. The total quantum for the three proceeded charges was $80,000 and the remaining amount in the other five charges was $63,000. The accused received the payments on eight occasions between November 2008 and December 2010. The corrupt acts took place over a long timeframe; there were multiple payments; there was an abuse of power and authority by the accused in respect of ILN; there was planning and premeditation; and the entire case fell within Category 1 of *Romel*. The global sentence imposed was eight months' imprisonment.

90 The circumstances here were more serious than *Geow Chwee Hiam*. The two cases were analogous insofar as there was an abuse of power and authority, and planning and premeditation on the facts. Although the gratification took place over a longer period of time in *Geow Chwee Hiam*, the accused in that case had pleaded guilty and the quantum involved was significantly lower. Even including the charges taken into consideration, the total gratification was $143,000 there, which was less than half the amount in this case. Thus, the sentence here had to be greater than in *Geow Chwee Hiam*.

91 In *Soh Yew Meng*, the accused pleaded guilty to three charges under s 6(*a*) of the PCA for obtaining bribes of $150,000, $150,000, and $15,000. The global sentence imposed was 14 months' imprisonment. The accused was a Director of the Building Enhancement Department of Resorts World Sentosa Pte Ltd ("RWS"). He had sought gratification from different contractors that were seeking to be awarded projects from RWS. Regarding two of the charges, the accused received $300,000 (in two payments of $150,000 each) from the

managing director of one contractor in exchange for information on the bid that the contractor's competitors would submitting for a project. In respect of the third charge, the accused received $15,000 from the director of another contractor in exchange for awarding one of RWS's projects to that contractor. There was planning involved in *Soh Yew Meng*. There was also actual harm because RWS's tender process was compromised.

92 I agreed with the DJ's observation that *Soh Yew Meng* involved a more aggravated factual matrix than the present case (at [160] of the GD). Even accounting for the fact that the accused pleaded guilty in that case, the quantum there was higher, the accused had received bribes from two different sources, and there was a higher degree of sophistication in how the moneys were moved – in respect of the first charge, the accused's girlfriend had deposited part of the bribe in two of her bank accounts and used part thereof to purchase a condominium where she and the accused lived subsequently. Thus, the sentence in the present case had to be lower than that imposed in *Soh Yew Meng*.

93 In *Kannan*, amongst other charges, the accused faced a charge under s 5(*b*)(i) of the PCA for conspiring with one Rajendran to bribe Mr David Lee, Singapore's then national goalkeeper, to concede goals during a soccer match. The bribe was never paid to Mr David Lee. The quantum involved was significantly lower, at $80,000. The sentence was one year's imprisonment and a $40,000 fine (in default 4 months' imprisonment).

94 *Kannan* was relevant here because it was factually analogous in that there was a conspiracy to pay a bribe which did not reach the intended recipient. I noted that the quantum of the gratification in this case was higher than in *Kannan*. However, there were two points of distinction. First, *Kannan* pertained to a corruption offence with a strong public interest element. The High Court in

Kannan had noted that soccer was a sport with a wide following and offences of that nature attracted much public attention (at [24]). In contrast, the present case was one of private sector corruption. Although there is some public disquiet caused by corruption offences in the private sector, the public interest element is arguably not as compelling as in *Kannan*. The second point of distinction was that the second and third purposes fell under Category 3. This had to factor in the assessment of the appropriate sentence as well.

95 In view of the precedents, I found that the sentence in this case should lie between that in *Geow Chwee Hiam* and *Soh Yew Meng*. However, given that the quantum here was significantly higher than in *Kannan*, the sentence in the present case ought not to have been lower than that in *Kannan*. Considering the harm and culpability factors, as well as the fact that two of the purposes fell under Category 3 of the *Romel* framework, I sentenced each of the appellants to a global sentence of 12 months' imprisonment.

Conclusion

96 Therefore, I dismissed the appeals on conviction and allowed the appeals against sentence. The sentence in respect of each appellant was reduced from 16 months' imprisonment to 12 months' imprisonment.

Kannan Ramesh
Judge of Appellate Division

Balachandran Suren Jaesh (Bishop Law Corporation) for the appellant in HC/MA 9108/2021/01;
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