

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

[2024] SGHC 168

Magistrate's Appeal No 9061 of 2023

Between

Public Prosecutor

... Appellant

And

Lin Haifeng

... Respondent

GROUNDS OF DECISION

[Criminal Law — Appeal]

[Criminal Law — Criminal conspiracy]

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Public Prosecutor

v

Lin Haifeng

[2024] SGHC 168

General Division of the High Court — Magistrate's Appeal No 9061 of 2023
Vincent Hoong J
21 September 2023, 21 February 2024

1 July 2024

Vincent Hoong J:

Introduction

1 This was an appeal by the Prosecution against the acquittal of Mr Lin Haifeng (“the Accused”).

2 The Accused claimed trial to nine charges under s 6(b) read with ss 7 and 29(a) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (“PCA”) (the “corruption charges”) and nine charges under s 477A read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”) (the “falsification charges”). Following the trial, the District Judge (“DJ”) acquitted the Accused of all charges. The Prosecution argued on appeal that the District Judge (“DJ”) erred in acquitting the Accused.

3 On 21 September 2023, I set aside the acquittal and convicted the Accused of the nine charges under the PCA and the nine charges under the PC.

By way of an oral judgment, I provided brief reasons for my decision to allow the Prosecution’s appeal.

4 Parties were then asked to submit on the appropriate individual sentences and aggregate sentence. Following parties’ submissions, on 21 February 2024, I imposed an aggregate sentence of 21 weeks’ imprisonment and a fine of \$9,000 (with an in-default sentence of nine weeks’ imprisonment). By way of an oral judgment, I provided brief reasons for my decision on sentence.

5 I now set out the detailed grounds for my decision to allow the Prosecution’s appeal against the Accused’s acquittal as well as my decision on sentence.

Facts

Background facts

6 The Accused was a Senior Project Manager employed by Newcon Builders Pte Ltd (“Newcon”). The Accused had been employed by Newcon since around December 2010.¹

7 On 23 September 2016, Newcon was awarded a contract to be the main building contractor for the Customs Operations Command Complex (“COCC”) project owned by Singapore Customs.²

8 The Accused was tasked with overseeing the construction of the COCC project and was the assigned Senior Project Manager. His duties included

¹ Record of Appeal (“ROA”) at p 27; Statement of Agreed Facts (“SOAF”) at para 1.

² ROA at p 27; SOAF at para 3.

overseeing the project management and operations, management of sub-contractors and liaising with consultants and authorities regarding the project matters.³ *Inter alia*, this included ensuring that the project timelines were met without delay.

9 The Accused was assisted by one Mr Guo Jiaxun (“Guo”), a Deputy Project Manager of Newcon who directly reported to the Accused.⁴ Guo was the assigned Deputy Project Manager and Mechanical and Electrical (“M&E”) Coordinator of the COCC project.⁵ Subsequently, one Mr Rajendran Thiagarajan (“Rajendran”) joined Newcon in November 2017 as an M&E Coordinator, and assisted Guo.⁶

10 In the course of the COCC project, regular inspections were conducted on the mechanical construction works done by Newcon to ensure that they were in accordance with the contractual requirements. To this end, one Mr Lee Mun Cheng (“Lee”), who was employed by CPG Consultants Pte Ltd (“CPG”) as a Resident Technical Officer, was deployed to inspect and approve Newcon’s mechanical construction works. Lee’s approval was necessary for Newcon’s works to progress to the next stage.⁷

11 The correct procedure involved Lee physically inspecting the works done together with Newcon representatives on a scheduled date and time. Lee would then record the results of his inspection in an “Inspection Form”. After the inspection was completed, the Inspection Form would be signed by Lee as

³ ROA at p 28: SOAF at para 6.

⁴ ROA at p 27: SOAF at para 2(a).

⁵ ROA at p 28: SOAF at para 6.

⁶ ROA at pp 27 and 28: SOAF at para 2(b) and 6.

⁷ ROA at pp 27 to 28: SOAF at para 4.

well as the Newcon representative involved in the inspection. Where Lee did not approve Newcon's mechanical construction works, he would record that failure in the Inspection Form. Rectifications and/or further inspections would then follow.⁸

12 Given that Lee's ordinary working hours were between 8.30am and 5.30pm on weekdays and between 8.30am and 12.30pm on Saturdays, there would be times where inspections would need to be conducted outside of Lee's working hours. To this end, there was a procedure in place to submit claims for overtime fees. The correct procedure was as follows:

- (a) Where there was a need for inspection to be done outside of working hours, a request needed to be submitted in advance by Newcon representatives to CPG. This request was to be submitted by way of a form called the "Request for Overtime Supervision for RTO Form".⁹
- (b) If CPG approved the request for inspection outside of working hours, Lee would be deployed to physically inspect the works outside of office hours.¹⁰
- (c) Lee would be entitled to claim an overtime fee for each occasion where he conducted an inspection outside of working hours. This was to be done by preparing and signing an Overtime List Claim Form ("OT List Claim Form") each month, compiling Lee's claims for overtime fees for all the inspections done outside of working hours in that month.¹¹

⁸ ROA at p 28: SOAF at para 7(c).

⁹ ROA at p 28: SOAF at para 7(a).

¹⁰ ROA at p 28: SOAF at para 7(b).

¹¹ ROA at p 28: SOAF at para 7(d).

- (d) The OT List Claim Form would be countersigned by Newcon's representatives and submitted to CPG.¹²

Corrupt scheme between Guo, Rajendran and Lee

13 It was not in dispute that there had been a corrupt scheme between September 2017 and September 2018. The Accused's contention was that he was unaware of and was not involved in this corrupt scheme.

14 As part of the corrupt scheme, Guo and Rajendran (when he joined Newcon) allowed Lee to claim overtime fees for occasions where Lee was not physically present for inspections. This was done to induce Lee to be more lenient in his inspections. To this end, OT List Claim Forms were prepared, falsely stating that Lee had done work outside of office hours on various occasions. Guo and Rajendran pleaded guilty to charges under s 6(b) read with ss 7 and 29(a) of the PCA and charges under s 477A read with s 109 of the PC. Lee also pleaded guilty to various charges, including charges under s 6(a) read with s 7 of the PCA and s 477A read with s 109 of the PC.¹³

Charges which the Accused claimed trial to

15 As stated at [2] above, the Accused claimed trial to the nine corruption charges and the nine falsification charges. In essence, the conspiracy charges alleged that the Accused had engaged in a conspiracy with Guo to corruptly agree to give Lee gratification on various occasions in the form of endorsed overtime work that did not occur so as to induce Lee to be more lenient in his

¹² ROA at pp 28 to 29; SOAF at paras 7(d) to (e).

¹³ ROA at p 1256: *Public Prosecutor v Lin Haifeng* [2023] SGDC 93 ("GD") at [20] to [21]; ROA at pp 1614 to 1741: Exhibits P9 to P11 (plead guilty papers of Lee, Rajendran and Guo).

inspections of the mechanical construction works for the COCC project. Meanwhile, the falsification charges alleged that the Accused engaged in a conspiracy with Guo and Lee to wilfully falsify OT List Claim Forms by allowing Guo to sign OT List Claim Forms on the Accused's behalf stating that overtime work had been done by Lee on various occasions when Lee was not present for such overtime work.

16 I reproduce below one of the corruption charges and one of the falsification charges describing one occasion where the Accused was alleged to have agreed to giving Lee gratification:

(a) The corruption charge (DAC-913242-2020):¹⁴

You, LIN HAIFENG ...

are charged that you, in September 2017, in Singapore, did abet by engaging in a conspiracy with one Guo Jiaxun, a Deputy Project Manager of Newcon Builders Pte Ltd, to corruptly agree to give to an agent, to wit, one Lee Mun Cheng, a Resident Technical Officer (Mechanical) in the employ of CPG Consultants Pte Ltd, gratification in the form of endorsed overtime work that did not occur, resulting in an amount of SGD\$144.76/- being paid to Lee Mun Cheng, as an inducement for showing favour to you in relation to his principal's business, to wit, by the said Lee Mun Cheng being more lenient in his inspections for the mechanical construction works in the Customs Operations Command Complex and you have thereby committed an offence under Section 6(b) read with Section 7 and Section 29(a) of the Prevention of Corruption Act, Chapter 241.

(b) The falsification charge (DAC-913241-2020):¹⁵

You...are charged that you, on or around end of September 2017, in Singapore, did abet by engaging in

¹⁴ ROA at p 10: DAC-913242-2020.

¹⁵ ROA at p 9: DAC-913241-2020.

a conspiracy with one Guo Jiaxun, a Deputy Project Manager of Newcon Builders Pte Ltd, and one Lee Mun Cheng, a Resident Technical Officer (Mechanical) in the employ of CPG Consultants Pte Ltd, to wilfully and with intent to defraud, falsify a paper which belongs to CPG Consultants Pte Ltd, and in pursuance of the conspiracy and in order to the doing of that thing an act took place, to wit, the said Guo Jiaxun signed an overtime list claim form belonging to CPG Consultants Pte Ltd for the month of September 2017 on your behalf, which falsely stated that the said Lee Mun Cheng did overtime work on 23 September 2017, when the said Lee Mun Cheng was not present for overtime work during the stated period, and you have thereby committed an offence punishable under Section 477A read with Section 109 of the Penal Code, Chapter 224, 2008 Rev. Ed.

Parties' cases on the Accused's involvement in the corrupt scheme

17 I next briefly set out below the Prosecution's case in the court below on the Accused's involvement in the corrupt scheme, as well as the Accused's case in the court below.

The Prosecution's case

18 The Prosecution's case in the court below was as follows:

(a) Sometime in August 2017, there was a discussion between the Accused and Guo at their office (the "August 2017 Discussion"). Guo told the Accused that Guo was facing difficulties dealing with Lee because Lee was "constantly giving him troubles during inspections, causing delay in the project works" (based on the Accused's own words in his investigative statement recorded on 3 January 2019 at 5.25pm). Guo proposed to the Accused at the August 2017 Discussion that Guo would give Lee "more overtime" (*ie*, allow Lee to submit more claims for overtime fees), which would result in Lee being able to earn more overtime fees. This was done with the hope that Lee would be more

lenient in his inspections. According to the Prosecution, the Accused agreed to Guo's proposed scheme, and even went further to expressly tell Guo that he should give Lee more overtime to speed up the COCC project works.¹⁶

(b) Therefore, based on the Prosecution's case, at the August 2017 Discussion, the Accused and Guo contemplated and agreed to a corrupt scheme where Guo would allow Lee to submit claims for overtime fees after working hours even when it was not required and even if Lee was not present to conduct the inspection works.¹⁷

(c) Thereafter, on 23 September 2017, an opportunity arose for Guo to implement the corrupt scheme. This was because, on 23 September 2017, Guo had made an urgent request to Lee to conduct an inspection that same day. However, Lee was unable to conduct such an inspection as he was travelling to Batam. In view of this circumstance, Guo proposed that he send photographs of the construction works via WhatsApp to Lee, and Lee conduct the inspection remotely by reviewing on the photographs which were sent. Guo also allowed Lee to submit a claim for overtime fees. This was referred to in the court below as a "remote inspection". Such remote inspections were not contemplated or allowed based on the procedure in place given that inspections had to be conducted physically (see [11]–[12] above).¹⁸

¹⁶ ROA at pp 1257 to 1258: GD at [24(a)]; Prosecution's Submissions dated 13 September 2023 ("Prosecution's 13 September Submissions") at para 20(a).

¹⁷ ROA at pp 1257 to 1258: GD at [24(a)]; Prosecution's 13 September Submissions at para 20(a).

¹⁸ ROA at pp 1258 to 1259: GD at para 24(b); Prosecution's 13 September Submissions at para 20(b).

(d) This arrangement of remote inspections continued until September 2018 and formed the subject matter of the charges. Though remote inspections were not discussed at the August 2017 Discussion and the Prosecution accepted that the Accused did not have detailed knowledge about the remote inspections which were conducted or the specific falsified overtime claims, the Prosecution took the position that the arrangement which was put in place from 23 September 2017 onwards was entirely in line with the general criminal purpose approved by the Accused at the August 2017 Discussion.¹⁹

(e) According to the Prosecution, the Accused knew the corrupt scheme was ongoing and allowed his subordinates (*ie*, Guo and, later, Rajendran) to carry out the scheme, including by allowing Guo to sign off in the Accused's name as the approving officer in the falsified OT List Claim Forms despite knowing that there were some claims made by Lee where Lee was not present for inspection works conducted outside of working hours.²⁰ As set out by the DJ in his grounds of decision in *Public Prosecutor v Lin Haifeng* [2023] SGDC 93 (the "GD"), the Prosecution relied on various pieces of evidence in support of its position that the Accused knew the corrupt scheme was ongoing.²¹

The Accused's case

19 The Accused denied any knowledge of or involvement in the corrupt scheme. According to the Accused, the corrupt scheme had been carried out by

¹⁹ ROA at pp 1258 to 1259: GD at para 24(b); Prosecution's 13 September Submissions at para 20(b).

²⁰ ROA at pp 1259 to 1261: GD at [24(c)]; Prosecution's 13 September Submissions at para 20(c).

²¹ ROA at pp 1259 to 1261: GD at [24(c)].

Guo, Rajendran and Lee without his knowledge. The key arguments made by the Accused at the close of trial were as follows:

(a) First, the Accused submitted that the Prosecution’s case was “totally flawed” as the Accused could not have agreed to remote inspections since this was not contemplated at the August 2017 Discussion. Rather, the idea of remote inspections only arose on 23 September 2017 because of Lee being unavailable to conduct an urgent physical inspection due to his travel plans. Since the Accused could not have agreed to remote inspections at the August 2017 Discussion and there was no other reported conversation during which the Accused could have agreed to remote inspections, the Prosecution’s case was based on an “impossible timeline”.²²

(b) Second, the Accused submitted that the incriminating parts of his investigative statements were inserted by the statement recorders, Senior Special Investigator Jeryl Kong (“SSI Kong”), despite the Accused’s objections. The Accused stated that he did not think he had a right to insist on amendments and felt that doing so might get him punished.²³

(c) Third, while the Prosecution had sought to rely on the contents of the investigative statements of Guo and Rajendran at the trial, the Accused argued that these should be accorded limited weight given that they had not testified at the trial.²⁴

²² ROA at pp 5103 to 5104: Defence’s Closing Submissions dated 16 January 2023 (“DCS”) at paras 8 to 11.

²³ ROA at p 5105: DCS at para 15.

²⁴ ROA at p 5106: DCS at para 20.

Decision below

20 As stated at [2] above, the DJ acquitted the Accused of all charges following the trial. The DJ’s reasons for acquitting the Accused of the 18 charges were as follows:

(a) First, the DJ considered whether there was an agreement between the Accused and Guo to grant more overtime fee claims to Lee, and whether this agreement included the approval of claims for overtime work which did not actually occur. In this regard, the DJ made the following findings:

(i) While there was some agreement between the Accused and Guo at the August 2017 Discussion, this discussion only related to Guo stating that Lee was being difficult and suggesting that Lee be granted more overtime fees so that Lee would be more lenient. The August 2017 Discussion did not amount to an agreement on the Accused’s part for remote inspections which would amount to false overtime fee claims.²⁵

(ii) Further, the sequence of events showed that there could have been no agreement for remote inspections by Lee which would amount to false overtime fee claims at the August 2017 Discussion. Here, the DJ pointed to the fact that it was undisputed that the idea of allowing Lee to conduct inspections remotely by reviewing images sent over by Newcon representatives to Lee only came about on or about 23 September 2017. This idea of remote inspections only arose in Guo’s mind due to *exigent* circumstances when Lee was

²⁵ ROA at pp 1270 to 1271: GD at [55] to [56].

unable to conduct an *urgent* inspection outside of office hours on 23 September 2017. Therefore, the DJ found that it was not possible that the August 2017 Discussion included the Accused contemplating or agreeing to Lee being allowed to claim overtime fees for remote inspections.²⁶

(iii) As an aside, the DJ had doubts over whether there was any “real agreement” between the Accused and Guo concerning the granting of extra overtime claims, much less false overtime claims. According to the DJ, the August 2017 Discussion appeared to be largely, if not entirely, one-sided conversation. According to the DJ, it did not appear that the Accused had agreed to Guo’s suggestion to grant extra overtime claims to Lee. Rather, it appeared as if the Accused simply had not objected to Guo’s suggestion. This appeared to be the case even when reading Guo’s investigative statements as a whole. While Guo had suggested at some portions of his investigative statements that the Accused had expressly approved the arrangement, Guo was not available as a witness and so, little weight was accorded to his statements.²⁷

(b) Second, given that it was impossible for remote inspections amounting to false overtime claims to have been contemplated at the August 2017 Discussion, the DJ found that the Accused’s investigative statements (referred to as his “long statements”) were unreliable. In particular, the DJ found that the Accused’s confession in his

²⁶ ROA at pp 1271 to 1272: GD at [57] to [62].

²⁷ ROA at pp 1269 to 1270: GD at [51] to [54].

investigative statement recorded on 30 May 2019 at 1320hrs (“the Accused’s second long statement”) was illogical. The Accused’s second long statement contained a confession that he had agreed to allowing Lee to claim overtime fees even if Lee was not present:²⁸

25. ... I wish to state that during the discussion with [Guo] Jiaxun [in August 2017], I knew that in order for [Lee] to be more lenient in his inspections and make inspections smoother, we could give [Lee] OT claims even if [Lee] was not present for the OT to conduct inspection works. I agreed with and told [Guo] Jiaxun and allowed [Lee] to claim OTs even if [Lee] was not present for the OTs to conduct inspection works. ...

In finding that this confession was illogical, the DJ preferred the Accused’s explanation of how this confession in his second long statement came about – that it was SSI Kong, the statement recorder, who inserted this confession after repeatedly pushing an incriminating case theory on the Accused when recording his statements. The DJ found that this was done despite the Accused’s objection. The DJ also rejected the account provided by SSI Kong that the confession arose after SSI Kong verbally challenged the Accused to come clean about his offending conduct.²⁹

(c) Third, as Guo and Rajendran were unavailable to attend trial, their investigative statements were what the Prosecution had relied on in support of its case. However, in the DJ’s view, the statements did not show any discussion between the Accused and Guo which related to false overtime fee claims or falsifying of the OT List Claim Forms. The totality of their statements also did not point to the Accused having

²⁸ ROA at pp 1394 to 1395: Statement of the Accused recorded on 30 May 2019 at 1320hrs at para 25.

²⁹ ROA at pp 1273 to 1279: GD at [66] to [79].

knowledge of and agreeing to the corrupt scheme. Given that Guo and Rajendran were unavailable at trial, this also meant that their statements could not be clarified.³⁰

(d) Finally, the DJ considered and placed weight on various issues with the recording of the statements as well as lapses in procedures by the officers from the Corrupt Practices Investigation Bureau (“CPIB”). These included: (i) alleged copying and pasting of contents between statements of a witness;³¹ (ii) copying and pasting of contents across statements of different witnesses;³² and (iii) improper recording of the Accused’s cautioned statements.³³

Parties’ cases on appeal

21 The Prosecution made the following key arguments on appeal:

(a) First, the Prosecution argued that the DJ had erred in finding that the Accused’s long statements were not reliable as this finding was against the weight of the evidence. The Prosecution submitted that it was not “impossible” for the Accused to have agreed to the corrupt scheme at the August 2017 Discussion. This was because the DJ had wrongly equated false overtime fee claims to claims arising from remote inspections. According to the Prosecution, the Accused approved generally the use of endorsed overtime claims as a bribe to induce Lee to be more lenient, regardless of the requirements of the project and even

³⁰ ROA at pp 1301 to 1307 and 1320 to 1322; GD at [131] to [144] and [176] to [181].

³¹ ROA at pp 1282 to 1287; GD at [87] to [94].

³² ROA at pp 1287 to 1291; GD at [95] to [102].

³³ ROA at pp 1292 to 1298; GD at [105] to [123].

if Lee was not present. The fact that the Accused had not contemplated “remote inspections” specifically at the August 2017 Discussion was irrelevant as long as it fell within the general purpose of the plot which the Accused had approved in August 2017. Further, the Prosecution argued that the DJ had erred in preferring the account of the Accused over the evidence of SSI Kong on the circumstances surrounding the recording of the long statements.

(b) Second, the Prosecution argued that the DJ had erred in his treatment of the investigative statements of Guo and Rajendran. According to the Prosecution, Guo’s and Rajendran’s investigative statements were reliable and accurate. While they did not testify at the trial, this was because it was not reasonably practicable to secure their attendance as they had repeatedly indicated their unwillingness to testify.

(c) Third, the Prosecution argued that the DJ had erred in his understanding of the scope of the agreement between the Accused and Guo at the August 2017 Discussion, and in his understanding of the Accused’s involvement in the corrupt scheme. According to the Prosecution, unlike what the DJ had found, the general purpose approved by the Accused was not simply to grant more regular or legitimate overtime fee claims to Lee. Rather, the general purpose approved by the Accused at the August 2017 Discussion was to allow the use of endorsed overtime claims as a bribe to induce Lee to be more lenient, regardless of the requirements of the project and even if Lee was not present. Further, the Accused was sufficiently involved in the corrupt scheme to be liable for abetment by conspiracy. This was clear from the fact that the Accused, as Guo’s supervisor, had approved Guo’s

proposal and had allowed his subordinates, Guo and Rajendran, to execute the scheme from September 2017 and September 2018. This also included authorising Guo to sign off in the Accused's name as the approving officer in the falsified OT List Claim Forms.

22 The Accused made the following arguments on appeal:

(a) First, the Accused submitted that the DJ had correctly found that there could not have been any agreement to endorse false overtime fee claims during the August 2017 Discussion since such a practice only took shape from September 2017 onwards when Lee was unable to conduct an urgent inspection due to his travel plans.

(b) Second, the Accused submitted that the DJ had correctly decided not to give weight to the Accused's confessions in his long statements given the flaws in the statement-taking process which included, *inter alia*, copying and pasting of contents between statements of a witness, copying and pasting of contents across statements of different witnesses, improper recording of the Accused's cautioned statements and procedural breaches such as failing to read back to the Accused his long statements. In this regard, the Accused submitted that the DJ had correctly preferred his account over the testimonies of the CPIB officers.

(c) Third, the Accused submitted that the DJ had correctly ascribed limited weight to the statements of Guo and Rajendran, given that they were not at trial to testify and their allegations were therefore not tested under cross-examination.

(d) Fourth, the Accused submitted that the DJ had made no error in finding that there was no evidence of any agreement reached during the

August 2017 Discussion, much less an agreement to endorse false overtime fee claims. According to the Accused, the evidence (including evidence of the Accused's conduct following the August 2017 Discussion) did not show any conspiracy or agreement.

Issues which arose for determination

23 The following issues arose for determination on appeal:

- (a) whether the DJ erred in his treatment of the Accused's long statements;
- (b) whether the DJ erred in his treatment of the statements of Guo and Rajendran;
- (c) whether the totality of the evidence showed that the Accused did play some role in the corrupt scheme such that he was liable for the charges as framed by the Prosecution;
- (d) whether there were any issues arising from the conduct of the CPIB officers and the alleged lapses in procedure during statement recording and, if so, whether this had any bearing on the Prosecution's case against the Accused; and
- (e) the appropriate sentences to be imposed in relation to the Accused's charges in view of my decision to allow the Prosecution's appeal against the Accused's acquittal.

My decision

24 On the Prosecution's appeal against the Accused's acquittal, having considered the parties' submissions and the evidence before me, I agreed with

the Prosecution that the DJ had erred in acquitting the Accused of the 18 charges.

Whether the DJ erred in finding that the Accused's long statements were not reliable

25 The Prosecution first submitted that the DJ had erred in his treatment of the Accused's long statements. Having considered the arguments of the Prosecution as well as the Accused on appeal, I agreed with the Prosecution's submission.

The Accused's confessions in his second long statement were not illogical or based on an "impossible" timeline

26 The DJ found that there was an *impossibility* in the timeline which made the confession in the Accused's second long statement illogical. This was the position that the Accused also took in the court below and similarly adopted at the appeal. In particular, the DJ noted that the idea of conducting inspections remotely only came about sometime on or about 23 September 2017. This idea came about due to exigent circumstances as Lee was unavailable to attend to an urgent inspection outside of working hours. In the DJ's view, this necessarily meant that Guo and the Accused could not have contemplated or agreed to remote inspections by Lee which would amount to false overtime fee claims at the August 2017 Discussion.

27 I was, however, unable to agree with the DJ's reasoning. It was undisputed that the specific idea of asking Lee to conduct inspections remotely whilst allowing him to claim overtime fees only took shape on or about 23 September 2017 due to exigent circumstances. However, it did not follow that the confessions in the Accused's second long statement were necessarily illogical.

28 In the Accused's second long statement, the Accused stated that he knew that the granting of more overtime fees to Lee meant allowing Lee to claim overtime fees even if Lee was not present to conduct inspections:

25. ... I wish to state that during the discussion with [Guo] Jiaxun [in August 2017], I knew that in order for [Lee] to be more lenient in his inspections and make inspections smoother, *we could give [Lee] OT claims even if [Lee] was not present for the OT to conduct inspection works.* I agreed with and told [Guo] Jiaxun and allowed [Lee] to claim OTs even if [Lee] was not present for the OTs to conduct inspection works.

[emphasis added]

29 This was not, however, the same as remote inspections. Respectfully, the DJ wrongly conflated the two distinct concepts and operated on the basis that the Accused was referring to remote inspections when he stated in the second long statement that he and Guo had agreed for Lee to be given overtime fee claims even when Lee was not present. But this could be not correct. Beyond remote inspections, there could have been *other* means of allowing Lee to claim overtime fees even when Lee was not present. Remote inspections were merely *one* way of satisfying the general purpose of allowing Lee to claim overtime fees even if Lee was not present to conduct inspections.

30 While the Accused argued that this was not the case which the Prosecution had advanced in the court below, I did not find this to be the case. Based on the record, it was evident the Prosecution had carefully framed its case in the court below such that it was clear that the Prosecution's case was that the Accused had *only* agreed to the general idea of allowing Lee to claim overtime fees even when it was not required and even when Lee was not physically present. This was seen in at least two points of the trial:

(a) At the beginning of its cross-examination of the Accused, the Prosecution made clear that their case was not that the Accused had

specifically agreed to remote inspections, but only that the scheme was one to allow Lee to claim overtime fees even when Lee was not physically present.³⁴

Q Okay. And, so, now I'm just going to give you a bit of explanation, just listen to what I'm saying and then I'll ask you the question. So, the charges of corruption and falsification of OT claims against Guo, Rajen and Collin Lee arose from a scheme and what they pleaded guilty to was that the scheme was as follows. Guo and Rajen *allowed Lee to claim OT even when Lee was not physically present and they did this so, that Lee would be more lenient in his ex-- inspections*. So, you understand that first part?

A Yes.

Q Okay. Sorry, you have to say yes or no.

A Yes, yes.

Q Okay. And to facilitate that scheme, they also falsified the OT list claim forms to indicate that Collin Lee did the OT even though he was not physically present. So, you understand that part of the scheme as well?

A Yes.

[emphasis added]

(b) Later, when the Prosecution put its case to the Accused in relation to the August 2017 Discussion, the Prosecution once again made clear that its case was one of the Accused agreeing *in general* to Lee being allowed to claim overtime fees even when he was not physically present.³⁵

Q Okay. Alright. So, yesterday in Court, you gave an account of the discussion where all you told

³⁴ ROA at pp 968 to 969: Notes of Evidence ("NE") for 9 November 2022 at p 6, line 25 to p 7, line 10.

³⁵ ROA at p 1090: NE for 9 November 2022 at p 128, lines 10 to 31.

Guo was that there would not be much OT at that time but later on, there will be more OT.

A Yes.

Q Agree that is an important part of your defence?

A Yes.

Q But you agree it's nowhere in your statements?

A No.

Q And it's not in Guo's statements also.

A No.

Q And you only first provided this account in August 2020, again, after you engaged a lawyer and after you had been charged. Do you agree?

A Yes, after I was charged.

Q So, I put it to you that this account that you have been providing at this trial is an afterthought and not true.

A Disagree.

Q And that in August, *you did, in your capacity as the senior project manager, agree with Guo that Collin should be given more OT, even if he is not physically present, so that he would become more lenient.*

A Disagree.

[emphasis added]

31 Notably, from the above, the Prosecution had not framed its case in a manner which suggested that the Accused had agreed to inspections being conducted remotely. Rather, their case was simply that the Accused had broadly agreed to allowing Lee to claim overtime fees when he was not physically present. For the purposes of its case against the Accused on the August 2017 Discussion, whether this meant that inspections were conducted remotely or, perhaps, not conducted at all, was irrelevant.

32 While the Accused sought to argue that the Prosecution had shifted its position at the trial and that the Prosecution had been referring to remote inspections when it questioned the Accused about the August 2017 Discussion, I did not agree with this suggestion. The record made clear that the Prosecution did not frame a narrow case of the Accused agreeing specifically to remote inspections at the August 2017 Discussion.

33 Therefore, the fact that the idea of remote inspections only came about on or about 23 September 2017 did not make it impossible or illogical for the Accused and Guo to have contemplated or for the Accused to have agreed to allowing Lee to claim overtime fees *even when Lee was not present*. This would have, in fact, been in line with the discussion taking place at the August 2017 Discussion: (a) that Lee was constantly giving Guo trouble during inspections; and (b) how this could be resolved such that Lee would be more lenient in his inspections and cause less delay in the construction works of the COCC. For this reason, I disagreed with the DJ that the Accused's confessions in his second long statement were illogical or based on an impossible timeline.

The DJ erred in preferring the Accused's account on how the confessions arose in his long statements

34 I also agreed with the Prosecution that the DJ had erred in preferring the Accused's account on how the confessions arose in his long statements.

35 The Accused's account was that the statement recorder, SSI Kong, had inserted the confession on his own initiative by repeatedly pushing an incriminating case theory on the Accused. The Accused also stated that when he objected to the inclusion of the confession, SSI Kong replied that the Accused ought to have known. Ultimately, the Accused stated that he agreed to sign the statement despite the confession as he felt that he had no other choice

and did not want to offend SSI Kong. As I had explained to the parties, I found this narrative hard to accept for the following reasons:

(a) As the Prosecution correctly set out in detail in its submissions, the Accused's account on how the confession came to be in his statement as well as his allegations against the CPIB officers were inconsistent and had changed on multiple occasions. Having reviewed the record, I was satisfied that the Accused was prepared to shift his account each time he was presented with a fact which contradicted his narrative. This was glaringly seen when the Accused shifted in his account of a CPIB officer who purportedly came into the interview room and asked him questions in a threatening manner. During the Accused's cross-examination of SSI Kong, this CPIB officer was supposedly an "older Indian gentleman".³⁶ However, when it became apparent that *all* the male CPIB officers who were involved in the Accused's matter were Chinese, the Accused's allegation shifted and he stated that there was a "darker skin IO" who was "a bit threatening".³⁷

(b) Further, the Accused was aware of the importance of ensuring that his statements were accurate and the consequences that incriminating statements may carry, given the previous occasions on which he had given formal investigative statements to the authorities.³⁸

(c) More significantly, in relation to his second long statement, he took about 51 minutes to review the statement and made multiple amendments. Even in relation to paragraph 25 containing the

³⁶ ROA at p 606: NE for 2 November 2022 at p 76, lines 26 to 28.

³⁷ ROA at pp 917 to 918: NE for 8 November 2022 at p 56, line 19 to p 57, line 17.

³⁸ ROA at p 991: NE for 9 November 2022 at p 11, lines 27 to 28.

confession, the Accused had made a handwritten amendment – while the original sentence stated that the Accused had “agreed *and told* [Guo] to allow [Lee] to claim OTs even if [Lee] was not present”, the amended sentence stated that the Accused had “agreed *with* [Lee] and allowed [Lee] to claim OTs even if [Lee] was not present” [emphasis added].³⁹ This was not an insignificant amendment, since it effectively shifted the Accused’s involvement from one of *actively instructing* Guo to allow Lee to claim overtime fees even if Lee was not present to one of the Accused simply *agreeing* to Guo’s proposal.

(d) As seen in his subsequent long statements, the Accused went further to explain why he had agreed to allowing Lee to claim overtime fees even if Lee was not present, as well as justify that the inspections by Lee were not crucial inspections which impacted the safety of the building. The nature of information contained in the statements could only have originated from the Accused.

36 In contrast to the Accused’s account which I had difficulties accepting, I found the account of SSI Kong to be more believable. SSI Kong explained that the Accused had provided him with information at the start of the recording of the Accused’s second long statement that he had moved home to be closer to his daughter’s school. This prompted SSI Kong to urge the Accused to confess in order to be a good role model to his daughter.⁴⁰ This account by SSI Kong was consistent with the contents of the Accused’s second long statement, which

³⁹ ROA at pp 1394 to 1395: Statement of the Accused recorded on 30 May 2019 at 1320hrs at para 25.

⁴⁰ ROA at p 1027: NE for 9 November 2022 at p 65, lines 8 to 25.

shows that he had provided information about his change of home address at paragraph 24 *before* he provided a confession at paragraph 25.⁴¹

37 The DJ found SSI Kong’s account to be unbelievable because it was “incredulous” that the Accused would be suddenly moved to confess by nothing more than a bare verbal challenge from SSI Kong.⁴² I did not agree with this. First, there are a variety of triggers which may lead to accused persons providing confessions. Second, this was also not a “bare verbal challenge” – as seen from SSI Kong’s account below, SSI Kong had used the fact that the Accused cared about his daughter to the point that he was willing to move his home to be closer to her school to encourage him to be a good role model to his daughter:⁴³

Q Okay. Now, going to 25, and this is quite crucial, this is information that was not contained in the first statement. And in your words, you said he confessed. So, can you elaborate on how this amendment came about?

A So, this amendment came about when I was having the interview process with him in the---with Mr Lin in the morning. I did talk to him about the case, asking---because as an IO, I have to ask him certain questions to conduct our investigations. When eventually he was still denying that he have any knowledge on this. However, then I told him that, okay, if I may just explain how I did---how---what happened on that day. I told him that let’s put this case aside, and then I actually told him---because I understood from when he told me he shifted his address so that his daughters if I can remember correctly, can stay closer to the school. And then, I told him that, I believe you have brought up your daughters well and teach them to be responsible for their actions and I said in Chinese, *gan zhuo gan dang*, which means, of I can translate it, is “if you dare to do it, you dare to admit it”. And he agrees that this is what he teaches his

⁴¹ ROA at p 1394: Statement of the Accused recorded on 30 May 2019 at 1320hrs at para 24.

⁴² ROA at pp 1274 to 1275: GD at [69] to [70].

⁴³ ROA at p 551: NE for 2 November 2022 at p 21, lines 1 to 27.

daughters as well. And I did tell him that if that's the case, you might not have been a good role model to your daughters, because you are probably not practising what you're doing---what you have taught them to do. He then thought about it for a while, maybe about 2 minutes or so, it was a quiet moment, and then he told me that, yes, actually, I was aware, he did tell me, and that's how he actually confessed to this knowledge of the agreement.

38 Ultimately, compared to the account of the Accused, SSI Kong's account was cogent and supported by the contents of the Accused's second long statement. In my view, given the issues with the Accused's account as well as the cogency of SSI Kong's account, the DJ ought not to have preferred the Accused's account. I therefore found that the DJ erred in this regard.

While SSI Kong failed to read over the long statements to the Accused, this was not a reason to prefer the Accused's account

39 Next, I recognised that there was also the issue of SSI Kong's failure to read over the long statements to the Accused. Rather than reading over the long statements to the Accused, SSI Kong made the Accused read over the long statements himself.

40 I agreed with the DJ's finding that there was a technical breach of the requirement under s 22(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). However, as the DJ recognised, this did not, in and of itself, affect the admissibility of the statements. Rather, the question was one of the appropriate weight to be accorded to the statements. In my view, the evidence clearly showed that the Accused had the opportunity to review his statements which he made use of as seen in the length of time he took to review and amend parts of his second long statement.

41 Therefore, the technical breach was not a reason to prefer the Accused's account on how his second long statement and subsequent statements came to contain the confessions.

Whether the DJ erred in his treatment of the statements of Guo and Rajendran

42 Next, the Prosecution argued that the DJ erred in his treatment of the statements of Guo and Rajendran.

43 I agreed that the court had to be cautious in deciding the weight to be placed on the statements of Guo and Rajendran, given that they were unavailable at trial and their evidence could not, therefore, be tested.

44 However, in my view, there was nothing particularly ambiguous about the co-accused persons' statements unlike what the DJ found. Rather, their statements contained details which could *only* have originated from them:

(a) In the case of Guo, his statements contained an extensive amount of details about each occasion on which Guo allowed Lee to claim overtime fees even though Lee had only conducted a remote inspection. Such level of detail could only have emerged from Guo.

(b) In the case of Rajendran, his statements similarly contained intimate details about his state of mind as well as instances where Lee ought not to have approved the construction works but did so anyway. This could have only originated from Rajendran. I set out one example

of this from his statement recorded on 3 January 2019 at 1525hrs below:⁴⁴

11 It was during the same month in March 2018, during one of the inspections, [Lee] was not physically present to conduct his inspections as he was not at site when I put up the overtime request for him the day before to work overtime. I cannot recall the exact date. I knew that it was not the correct procedure and I informed [Guo] in person at the site that [Lee] was not present to conduct the inspection. [Guo] mentioned that if [Lee] was not around, just carry on the work by sending the photographs to [Lee] for him to conduct the inspection. I knew that since [Lee] was supposed to come for work and yet he claimed overtime despite him not being there at work was wrong.

12 I wish to state that sometime in April 2018, however I am not able to confirm the exact month or day, [Lee] passed to me the monthly overtime claim sheet for [Guo] to approve. This was when I realised that [Lee] had been claiming overtime through [Guo] on days even when he was not present at site. I believed that by allowing [Lee] to claim overtime pay when he was not at work, it was so that [Lee] would show leniency in his inspection on the works that needed to be rectified. However, I did not question on why or how did this agreement come about because [Guo] was my reporting officer and I was only taking instructions from him by putting up the overtime request form when required. [Guo] did not tell me the reason for doing so nor did I asked him. I wish to state that I did not benefit from this. I was only following instructions.

...

13 With reference to paragraph 12, I am asked by the recording officer why did I believe that [Guo] allowed [Lee] to claim overtime pay when he was not at work. I wish to state that this was so that in return for allowing [Lee] to claim overtime pay when he was not at work was so that he would show leniency in his inspection. I wish to explain that during the casting stages of the construction work, before the laying of cement, [Lee] had to make sure that the M&E inspection is cleared. As we were behind schedule, we had to rush and make sure

⁴⁴ ROA at pp 2345 to 2346: Statement of Rajendran recorded on 3 January 2019 at 1525hrs at paras 11 to 14.

that the work is completed so that the work can progress. Based on the photographs that were sent to [Lee], the site work would not be an accurate description of the work that was done, but [Lee] would still approve the inspection.

14 This showed that [Lee] would perform slight deviations from the construction plan while he performed the inspection with leniency especially when he should be doing it proper as professional RTO. One such example is when the sewage pipe had to be cleaned and ensure that there should not be any soil on it before casting. However, after looking at the photographs that I sent to him, [Lee] still gave the go ahead for ordering concrete for the casting work to be done even though it was not cleaned. He should not have given approval to go ahead and proceed the inspection work.

...

45 Further, while there always remained the risk of co-accused persons falsely implicating another accused person, the DJ's finding in the present case that Guo had every incentive to attribute liability to the Accused was speculative. As was clear from Guo's statements, Guo did not minimise his *own involvement* or make significant efforts to implicate the Accused. Rather, he candidly accepted that he was the individual who planned remote inspections because he had observed that Lee "became more lenient in his sections and would pass inspections based on photographs" and this was because Lee knew that Guo would "reward him by not cancelling the OT request form and allowing [Lee] to claim OT when [Lee] did not turn up for OT".⁴⁵

46 Seen in totality, the statements of Guo corroborated the Accused's own incriminating statements on the corrupt scheme which was contemplated and agreed to at the August 2017 Discussion.

⁴⁵ ROA at pp 2192 to 2193: Statement of Guo recorded on 30 May 2019 at 1330hrs at paras 66 to 67.

Whether the evidence showed that the Accused did play some role in the corrupt scheme

47 Next, the Prosecution argued that the evidence showed that the Accused did play some role in the corrupt scheme. Having reviewed the evidence, I agreed that the Accused did play some role in the corrupt scheme.

48 Here, the context of the August 2017 Discussion was important to highlight. Guo approached the Accused in the context of the Accused being Guo's *supervisor*. It was the Accused's agreement to the corrupt scheme proposed by Guo at the August 2017 Discussion that provided Guo with the mandate to proceed with the corrupt scheme.

49 The evidence also showed that the Accused had allowed the OT List Claim Forms to be signed under his name despite knowing that there were at least *some* claims which were false. In fact, the Accused had also admitted in his statements to knowing that the recipient list in the emails relating to Lee's overtime claims had been shortened to avoid scrutiny of Lee's overtime claims.

50 While the Accused may not have been aware of the *specific* manner in which the corrupt scheme was executed and the specific overtime claims which related to instances where Lee was not physically present, this did not mean that the Accused was not liable for the corruption charges and the falsification charges. As the Prosecution had correctly emphasised in the court below and in the course of the appeal, it was not necessary for all the co-conspirators to have decided on or been equally informed as to the specific details of the conspiracy. It was sufficient if the co-conspirator (in this case, the Accused) was aware of the general purpose of the plot (*ie*, to allow Lee to claim overtime fees even when Lee was not present), with the specific method executed by other co-conspirators: *Nomura Taiji v Public Prosecutor* [1998] 1 SLR(R) 259 at [105]

to [110]. Neither was there a legal requirement for each co-conspirator to play an active role in the execution of the conspiracy. The Accused's agreement to the corrupt scheme proposed by Guo at the August 2017 Discussion was, therefore, sufficient for the Accused to be held liable for the corrupt scheme.

The conduct of the CPIB officers and the lapses in procedure during statement recording

51 Next, I considered the conduct of the CPIB officers and the lapses in procedure during statement recording.

52 To begin, I dealt with SSI Kong's failure to read over the statements to the Accused at [39]–[41] above. While there was a technical breach of the requirement under s 22(4) of the CPC, this should not have been a reason to prefer the Accused's account on how his second long statement and subsequent statements came to contain the confessions. The evidence showed that the Accused was given the opportunity to read over his long statements, and multiple amendments were made by him in his own handwriting.

53 Second, allegations arose in the court below of the recording officers engaging in copying in two ways: (a) reproducing parts of a statement of a witness in a subsequent statement provided by the same witness; and (b) reproducing parts of a statement of one witness in the statement of another witness. I found that both of these allegations were unfounded. I explain below:

- (a) First, in relation to the allegation that parts of a statement of a witness were reproduced in subsequent statements provided by the *same witness*, I found nothing untoward about this on the facts of the present case. The testimonies of the CPIB officers had clarified that this type of reproducing only took place when the witness in question provided

similar responses on issues which arose across multiple statements. Given that the witnesses were given the opportunity to read over their statements and make amendments, and the record does in fact show instances where amendments were made to sections of a statement which may have been reproduced from a previous statement, I did not see how this necessarily undermined the reliability of the statements. While it would have been desirable for the CPIB officers to record what was being said exactly by the witness at the time of the recording, this had to ultimately be balanced alongside the resource constraints which investigative authorities face when recording statements. What was crucial, in my view, was that the witnesses were given the necessary space to review their statements and make amendments if they wished to do so. This was complied with in the present case.

(b) In relation to the allegation that parts of a statement of one witness were reproduced in the statement of another witness, I am of the view that the record did not contain any example which clearly supported this serious allegation. While certain paragraphs across witnesses' statements may have contained similar content, there was no clear evidence of reproduction. The only instance which possibly pointed to such reproduction was a sentence within a paragraph of the Accused's second long statement and a sentence within a paragraph of Guo's investigative statement recorded on 30 May 2019 at 1330hrs:

(i) paragraph 31 of the Accused's second long statement:⁴⁶

31 ... There were also times that the construction works are not completed during the day due to down time or delay, which would lead

⁴⁶ ROA at pp 1396 to 1397: Statement of the Accused recorded on 30 May 2019 at 1320hrs at para 31.

to inspections could only be conducted after working hours. ...

- (ii) paragraph 49 of Guo's investigative statement recorded on 30 May 2019 at 1330hrs:⁴⁷

49 ... Based on the project construction progress, sometimes mechanical construction works were not completed during the Collin's working hours due to delays or downtime, and therefore the inspection could only be performed after Collin's working hours. ...

As would be apparent from the above, the words used were different and the sentences were phrased differently. As such, it could not be said that the CPIB officers had acted in any untoward manner in relation to the recording of this sentence. I also found that it would be absurd to expect that statements of co-accused persons would not contain similar phrases in certain instances where they are being investigated in relation to the *same incident*.

54 Third, there was an allegation in relation to the recording of the cautioned statements of the Accused. Here, I agreed with the DJ that there was cause for concern in the manner of recording of the cautioned statements. While the Accused had initially provided cautioned statements denying the offences, these were subsequently amended to state that he was “sorry for mistake”, that he “will not do it again” and that he pleaded “for leniency”. This represented a dramatic shift in the Accused's position. Further, the amendments to the cautioned statements were recorded by an officer that was different from the officer who had recorded the original cautioned statements. There was also *no indication* on the amended cautioned statements that the amendments were

⁴⁷ ROA at p 2186: Guo's investigative statement recorded on 30 May 2019 at 1330hrs at para 49.

recorded by a different officer. I agreed with the DJ that the manner in which the amendments to the cautioned statements were recorded was clearly inappropriate.

55 However, as the Prosecution acknowledged, the amended cautioned statements were not relied upon by the Prosecution since they contained brief apologies and had no probative value. Further, while there may have been lapses with the cautioned statements, I did not find that this had any bearing on the confessions contained within the Accused's long statements. As I explained above, the Accused's long statements were reliable and the DJ erred in his treatment of the long statements. In this regard, I agreed with the Prosecution that the cautioned statements were not evidence of any widespread impropriety on the part of the CPIB officers in the present case.

Conclusion on Prosecution's appeal against acquittal

56 For all the reasons above, I found that the DJ had erred in acquitting the Accused of the 18 charges. I therefore allowed the Prosecution's appeal and convicted the Accused of the 18 charges.

My decision on sentence

Parties' cases

57 I first summarise both parties' positions on the appropriate sentence:

Charges	Prosecution	Accused
Nine corruption charges	Eight to nine weeks' imprisonment for each charge	Four weeks' imprisonment for each charge and for

	and for three of the sentences to be ordered to run consecutively	all the sentences to be ordered to run concurrently
Nine falsification charges	Fine of \$1,500 to \$2,000 for each charge	Fine of \$700 for each charge
Aggregate sentence	24 to 27 weeks' imprisonment and a fine between \$13,500 to \$18,000	Four weeks' imprisonment and a fine of \$6,300

The Prosecution's case

58 With respect to the corruption charges, the Prosecution relied on the sentencing framework in *PP v Wong Chee Meng and another appeal* [2020] 5 SLR 807 (“*Wong Chee Meng*”) and submitted that the present case fell into the category of slight harm and low culpability. The harm caused was slight as Newcon suffered a low amount of loss at \$5,319.78, the benefit derived by the Accused from the corrupt scheme was Lee’s leniency in the project inspections, and there was no actual loss caused to third parties. However, the Prosecution highlighted that there was potential harm in view of Lee’s leniency and the fact the project inspections were conducted remotely which may have compromised the quality of the construction works.

59 The Accused’s culpability was low as the amount of gratification given to Lee pursuant to the corrupt scheme was admittedly low (\$5,319.78). However, even though the Accused was not involved in the planning and execution of the corrupt scheme, there was still a degree of planning and premeditation as the Accused had discussed and agreed with Guo that, to induce

Lee to be more lenient in his inspections, Lee was allowed to claim for overtime despite not being physically present for inspections. There was also a level of sophistication in the offending. Even though there was no evidence that the Accused was aware of the specific details of the corrupt scheme, the Accused was aware that steps were taken to falsify at least some of claims in the monthly overtime list claim forms. The Accused also abused his position of authority as the Senior Project Manager of the COCC project. This was a culpability-enhancing factor that was unique to the Accused and did not apply to the other co-accused.

60 Based on the sentencing framework in *Wong Chee Meng*, the indicative sentencing range was a fine or up to a year's imprisonment. The Prosecution submitted that an appropriate starting point within the range was eight to nine weeks' imprisonment for each corruption charge, which was on par with the sentences imposed on the co-accused persons for similar corruption charges (between six to 10 weeks' imprisonment).

61 With respect to offender-specific factors, the Prosecution highlighted that the Accused had no relevant antecedents and no charges taken into consideration for sentencing. However, a significant aggravating factor was the Accused's evident lack of remorse. He provided an untrue account to the court of his knowledge and involvement in the corrupt scheme as well as a false narrative of how the confessions in his long statements arose. There were also multiple aspects of his evidence which were demonstrably false and absurd. There were no mitigating factors to take into account.

62 Finally, at least three of the sentences should be ordered to run consecutively in view of the multiplicity of offences committed over an extended period of time. The Respondent was convicted of nine corruption

offences committed over the course of a year, and these nine corruption offences related to 34 different occasions that Lee claimed for overtime fees despite not being physically present for the inspections. The one-transaction rule did not operate since the offences were not committed simultaneously or close together in time (*Mohamed Shouffee bin Adam v PP* [2014] 2 SLR 998 (“*Shouffee*”) at [32]) and general deterrence warranted running at least three of the sentences consecutively. The aggregate sentence of 24 to 27 weeks’ imprisonment also could not be said to be crushing or disproportionate.

63 With respect to the falsification charges, the Prosecution acknowledged that the Accused’s culpability was low as he was not directly involved in the execution of the falsification charges and the amounts involved were relatively low. Nonetheless, the Accused played an instrumental role in the offences by authorising Guo to sign and approve the falsified overtime claims. The Accused abused the trust repose in him as the approving officer for these claims. A fine of \$1,500 to \$2,000 per charge was appropriate and fell within the lower end of the range of fines imposed on the co-accused persons (between \$1,500 to \$3,000 per charge).

The Accused’s case

64 The Accused made two applications in his written submissions prior to addressing the court on the appropriate sentence:

- (a) An application for sentencing to be remitted to the trial court for hearing “so as not to deprive parties of a right to a round of appeal on any decision on sentence”.⁴⁸

⁴⁸ Defence’s Submissions dated 20 November 2023 (“Defence’s 20 November Submissions”) at para 2.

(b) An application to defer the hearing for sentencing until after the conclusion of two other criminal motions filed by the Accused. The Accused brought an application under s 394H of the CPC for permission to make a review application (the “s 394H Application”), and another application seeking my recusal from hearing the s 394H Application. However, at the time of the sentencing hearing before me, the former had been withdrawn, and the latter was dismissed.

65 The Accused agreed with the Prosecution that the present case fell into the category of slight harm and low culpability of the sentencing framework in *Wong Chee Meng*. However, the harm caused was lower than the Prosecution depicted it to be. There was no pecuniary loss as the Accused offered to make restitution of \$5,320 to CPG on behalf of Newcon. The actual loss to CPG should also be lower than \$5,319.78 due to the difference between Lee’s normal rate and overtime rate for inspections, with “some allowance for the less thorough inspections”.⁴⁹ There was also no non-pecuniary loss since there was no evidence to show that Lee’s leniency compromised the quality of the inspections and the construction work. Furthermore, the Accused did not personally benefit from the corrupt scheme, nor was there any loss caused to third parties or public disquiet that arose as a result of the offending.

66 The Accused’s culpability was low as the amount of gratification to Lee was low and there was no planning or premeditation involved. According to the Accused, the corrupt scheme came together “by happenstance”, the Accused only agreed to the broad general purpose of the scheme and was unaware of the exact details.⁵⁰ The offending was unsophisticated since it mainly involved Guo

⁴⁹ Defence’s 20 November Submissions at para 15(b).

⁵⁰ Defence’s 20 November Submissions at para 63.

and Rajendran sending pictures of the construction works to Lee via WhatsApp and there was no manipulation or concealment. There was also no breach of trust or abuse of position in the present case since the Accused played a minimal role in the scheme and did not personally receive any bribes.

67 The appropriate indicative starting point should thus be four weeks' imprisonment for each corruption charge. The Accused argued that the public service rationale was not engaged in the present case since CPG was not a government entity and Lee was not a public servant. Furthermore, the Accused's overall criminality and complicity in the scheme were far lower than the co-accused persons which justified a lower sentence than the sentences imposed on the co-accused persons despite their guilty plea.

68 With respect to offender-specific factors, the Accused submitted that his decision to claim trial should not be treated as an aggravating factor. Furthermore, in light of the "clang of the prison gates" principle, a shorter custodial sentence of four weeks' imprisonment was warranted.

69 The Accused argued that *all* the sentences imposed for the corruption charges should be ordered to run concurrently since there was a single invasion of the same legally protected interest. Section 307(1) of the CPC was not applicable to the present case since the corruption charges were not distinct offences. Finally, the Accused's involvement in the scheme and overall criminality were so low that "his aggregate punishment should not even approach what Guo or Rajendran received on a per charge basis".⁵¹

⁵¹ Defence's 20 November Submissions at para 149.

70 With respect to the falsification charges, the Accused submitted that the aggregate fine to be imposed should be no more than \$6,300 in view of proportionality and the parity principle.

The two applications

71 I dealt first with the Accused’s application for the sentencing to be remitted to the trial court for hearing. At the sentencing hearing, counsel for the Accused clarified that they were no longer applying for sentencing to be remitted to the court below. I nonetheless dealt with this application for completeness. I agreed with the Prosecution that the application had no legal basis. It was also an abuse of process. As observed by the Court of Appeal in *Miya Manik v PP* [2021] 2 SLR 1169 at [72], “the criminal appeal process is typically and by design unidirectional” and therefore, “save in exceptional circumstances, an appeal should typically not be protracted and shunted back and forth between the trial and appellate courts”. There was nothing exceptional about the present matter which warranted remitting the case back to the trial court for sentencing.

72 With respect to the application to defer the hearing for sentencing, counsel for the Accused confirmed that he was not proceeding with the application for deferment since the two criminal motions were either concluded or withdrawn.

The corruption charges

73 I now deal substantively with the appropriate sentence to be imposed on the Accused. I first considered the appropriate sentence for the corruption charges. I agreed with parties that the present case fell within the slight harm

and low culpability category of the sentencing matrix in *Wong Chee Meng* at [84]. With respect to harm, I had regard to the following factors:

- (a) The low amount of loss of \$5,319.78 caused to the principal. I was unable to accept the Accused's argument that the amount of loss was any lower than \$5,319.78 because this was the amount that Newcon paid for remote inspections which were plainly not contemplated or allowed according to procedure. I noted that the Accused offered to make restitution to the principal, CPG, on behalf of Newcon but this was better considered as an offender-specific mitigating factor (*Wong Chee Meng* at [80]).
- (b) The benefit to the Accused was that Lee was induced to be more lenient in the inspections.
- (c) There was no actual loss to third parties. The Prosecution highlighted that there was potential harm due to Lee's leniency and that he conducted the inspections remotely, which may compromise the quality of the construction works. However, I agreed with the Accused that there was no evidence that the construction works actually fell short of the required standards as a result of the lenient inspections. As such, I placed no weight on this factor.

74 I also found the Accused's culpability to be low in view of the following factors:

- (a) The low amount of gratification received by Lee (\$5,319.78).
- (b) However, there was a degree of premeditation and sophistication to the offending. Prior to the execution of the scheme, the Accused had a discussion with Guo and agreed with Guo that Lee was allowed to

claim for overtime despite not being physically present for inspections to induce Lee to be more lenient in his inspections. I was mindful that the Accused was not involved in the planning and execution of the corrupt scheme itself. Nonetheless, the Accused was aware that steps were taken to falsify at least some of claims in the monthly overtime list claim forms and to ensure that the scheme was kept hidden from Lee's supervisors in CPG such as the shortening of the recipient list in the emails relating to Lee's overtime claims to avoid scrutiny.

(c) The Accused abused his position of authority as Senior Project Manager. The Accused submitted that his role in the scheme was not instrumental since the arrangement could have conceivably happened without him, and the most that can be said was that the Accused did not put a stop to the corrupt scheme. I disagreed with this reasoning. I found that the Accused's role was instrumental to the scheme as he was the Senior Project Manager and approving officer for the claims. The Accused's awareness of the scheme and failure to intervene, in his capacity as the co-accused persons' superior, provided the permission and approval to carry out the scheme.

75 I noted that the offences took place over the course of a year from September 2017 to September 2018. However, I did not consider the duration of offending as a separate aggravating factor when assessing the Accused's culpability since this may be addressed by running sentences consecutively instead (*Wong Chee Meng* at [76]). As such, based on the above factors, I agreed with parties that the applicable indicative sentencing range was a fine or up to a year's imprisonment.

76 The next step in the sentencing framework was to identify the appropriate indicative starting point within the abovementioned range. The court should also have regard to the consideration of the public service rationale at this step (*Wong Chee Meng* at [86]). I noted that an offence under s 7 of the PCA typically attracted a custodial sentence, with this only being departed from in exceptional cases (*Wong Chee Meng* at [86]). I found that a sentence of seven to nine weeks' imprisonment for each corruption charge was an appropriate starting point after considering the above offence-specific factors and the fact that a range of sentences of six to 10 weeks' imprisonment for each corruption charge was imposed on the co-accused persons.

77 The Accused argued that a lower starting point of four weeks' imprisonment was more appropriate as the public service rationale was not engaged since Lee was not a public servant and CPG was not a public body. I did not accept this argument. The public service rationale referred to the public interest in preventing a loss of confidence in Singapore's public administration and a custodial sentence was normally justified where there was a risk of this harm occurring (*PP v Ang Seng Thor* [2011] 4 SLR 217 at [33(a)]–[33(b)]). This sentencing principle was presumed to apply where the offender was a government servant or an officer of a public body, but it may also apply to offenders from the private sector where the subject matter of the offence involved a public contract or a public service (at [33(c)]). The principle applied squarely to the present case which involved a construction project by Singapore Customs.

78 The Accused also argued that his minor role in and lack of personal benefit from the scheme justified a significant downward adjustment from the sentences imposed on the co-accused. First, as I had found earlier, it was untrue that the Accused did not personally benefit from the scheme since the Accused

did obtain Lee's leniency in the inspections. Second, I found that the Accused's overall criminality was at least the same as Rajendran, who only joined the corrupt scheme midway in March 2018. The Accused was involved in the scheme from the outset, and discussed and agreed with Guo's proposal. Furthermore, the Accused abused his position as the Senior Project Manager who *both* Guo and Rajendran reported to. Rajendran was sentenced to six weeks' and eight weeks' imprisonment for two corruption charges, for an aggregate sentence of 14 weeks' imprisonment. Unlike Rajendran and the other co-accused persons who pleaded guilty, the Accused was not entitled to any reduction in sentence on account of a guilty plea. Consequently, there was no reason for a significant downward adjustment of the Accused's sentence from those imposed on the co-accused.

79 I then considered the offender-specific factors of the case:

- (a) The Accused had no relevant antecedents and there were no charges to be taken into consideration. For the avoidance of any doubt, I placed no mitigating weight on the Accused's untraced record as the lack of antecedents was merely the absence of an aggravating factor.
- (b) I agreed with the Prosecution that the Accused's evident lack of remorse during the trial was an aggravating factor to consider (*Trade Facilities Pte Ltd v PP* [1995] 2 SLR(R) 7 at [116]). However, I found that the weight to be attached to this factor was attenuated by the Accused's offer to make full restitution to the principal, which was indicative of some remorse (*Wong Chee Meng* at [80]).
- (c) Finally, I disagreed with the Accused that the "clang of the prison gates" principle applied to the case. That principle had been applied in some cases to mean that a reduction in sentence was merited

when the shame of going to prison was punishment enough, because of the eminence or high standing of the accused. However, this principle was not representative of the law and was not sound basis for a more lenient sentence (*Leong Sow Hon v PP* [2021] 3 SLR 1199 at [66]).

80 I thus found that the appropriate sentence was seven weeks' imprisonment for each corruption charge under the PCA.

81 I then considered which sentences were appropriate to run consecutively. The Accused submitted that s 307(1) of the CPC should not apply since he did not commit "distinct offences", which was not statutorily defined in the CPC. I was unable to agree with this argument. Section 307(1) of the CPC provided that, if at one trial, a person is convicted and sentenced to imprisonment for at least three distinct offences, the court which the person is convicted must order the sentences for at least two of those offences to run consecutively. Contrary to the Accused's argument, the phrase "distinct offences" was defined in s 132(1) of the CPC. It followed from s 132(1) that as long as the charges were correctly framed, each separate charge would have been brought in respect of a "distinct offence" for the purposes of s 307(1) of the CPC (*Shouffee* at [24]). As such, at least two of the sentences imposed must be ordered to run consecutively.

82 Although the corruption charges were part of the same corrupt scheme, I agreed with the Prosecution that at least three of the nine sentences should run consecutively due to the multiplicity of offences committed. The Accused was convicted of nine corruption charges over the course of a year, and these related to 34 different occasions that Lee was allowed to claim for overtime despite not being physically present for inspections. The offences were not committed simultaneously or close together in time such that the one-transaction rule

applied. I ordered the sentences in respect of DAC-913250-2020, DAC-913256-2020 and DAC-913258-2020 to run consecutively.

83 Finally, the aggregate sentence of 21 weeks' imprisonment was proportionate to the Accused's criminality. It was neither substantially above the normal level of sentences for such offences nor crushing on the Accused.

84 The Accused referred to the facts of *Wong Chee Meng* and *PP v Ro Sungyoung and another* [2021] SGDC 104 ("*Ro Sungyoung*") as sentencing precedents. I did not find these to be helpful precedents for sentencing as the two cases featured very different factual matrices from the present case. It was also undisputed that the levels of harm caused and culpability displayed by the Accused were lower than that of the offenders in *Wong Chee Meng* and *Ro Sungyoung*.

The falsification charges

85 With respect to the falsification charges, I similarly found that both the Accused's culpability and the harm caused were low after having regard to the relevant factors for sentencing for falsification offences (*Tan Puay Boon v PP* [2003] 3 SLR(R) 390 at [47]–[50]): (a) whether there was any deviousness or surreptitious planning; (b) whether the falsification was committed for personal gain or to confer benefit onto a third party; (c) whether the offence involved an abuse of trust; and (d) the amount of money involved. The amount of money involved was low and the Accused was not directly involved in the falsification charges. Nevertheless, the Accused knew the general purpose of the corrupt scheme and authorised Guo to sign the falsified overtime claims on his behalf. In doing so, the Accused abused his position as the approving officer for such claims.

86 I agreed with the Prosecution that a starting point of a fine of \$1,500 to \$2,000 for each falsification charge was appropriate, which was the lower range of the fines imposed on the co-accused (between \$1,500 to \$3,000 for each falsification charge). This would have brought the aggregate fine to a quantum between \$13,500 to \$18,000. However, even the lower end of this range, \$13,500, was more than double the aggregate fine that was imposed on Guo, which was \$6,000. Although Guo faced fewer proceeded charges and pleaded guilty to his charges, he was far more culpable than the Accused. As such, I adjusted the fine for each falsification charge downwards to \$1,000. The aggregate fine imposed on the Accused was thus \$9,000.

Conclusion

87 For the reasons above, I found that the DJ erred in acquitting the Accused of the 18 charges. Therefore, I allowed the appeal and convicted the Accused of the 18 charges. I imposed an aggregate sentence of 21 weeks' imprisonment and a fine of \$9,000 (with an in-default sentence of nine weeks' imprisonment).

Vincent Hoong
Judge of the High Court

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