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

[2024] SGHC 303

Magistrate's Appeal No 9150 of 2023/01

Between

Lim Tion Choon (Lin Changchun)

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Appeal]

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Lim Tion Choon (Lin Changchun)
v
Public Prosecutor

[2024] SGHC 303

General Division of the High Court — Magistrate's Appeal No 9150 of 2023/01
Dedar Singh Gill J
2, 26 July 2024

29 November 2024 Judgment reserved.

Dedar Singh Gill J:

1 This is an appeal against the Appellant's conviction and sentence imposed by the District Judge ("DJ"). In the proceedings below, the Appellant faced a single charge under s 6(*b*) read with s 29(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). He was convicted on this charge after a 34-day trial and sentenced to six weeks' imprisonment. Having reviewed the evidence in the light of the parties' submissions, I allow the appeal and acquit the Appellant for the reasons that follow.

Background facts

2 The charge alleged that, on 10 January 2013, the Appellant had engaged in a conspiracy with one Wu Yipeng ("Wu") to corruptly give a gratification of US$12,000 to a marine surveyor, Seah Seng Chuan ("Seah"), as a reward for under-declaring the opening sounding of the marine fuel oil ("MFO") on board

the vessel MV Sakura Princess (the "Sakura Princess") (collectively, the "Buyback Scheme"). The charge also alleged that, in pursuance of the conspiracy, US$40,000 was given to one Tan Shin Yam Tommy ("Tommy Tan").

The parties

3 The Appellant, Lim Tion Choon (Lin Changchun), was an employee of Costank (S) Pte Ltd ("Costank"). Costank provided barging services to oil companies, *ie*, it would assist oil companies to supply bunkers to vessels that called into Singapore.[1] The Appellant was initially employed as a bunker trader in Costank in June 2012.[2] He subsequently assumed the additional role of a "programmer" in Costank in November 2012.[3] This was because he had been asked by Costank's management to assist Tan Hoon Peng Johnny ("Johnny Tan") in his programming works.

4 The Appellant worked as a programmer on a rotational basis with Johnny Tan.[4] As a programmer, the Appellant supported the operations of Costank by making arrangements for barges to supply bunker fuel to various vessels.[5] Programmers often had to liaise with other stakeholders, such as surveyors and bunker clerks, in the course of their work.[6] The Appellant communicated with such stakeholders through the use of Costank's operations phone line (the "Operations Phone"), which Costank provided him for his work

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1 Record of Appeal (Amendment No. 1) dated 17 April 2024 ("ROA") at p 2097.

2 ROA at p 2096.

3 ROA at p 2096.

4 ROA at p 2097.

5 ROA at pp 2099 and 2115.

6 ROA at pp 2099–2100.

as a programmer.[7] The phone records for Costank's Operations Phone indicate that it was registered with Singapore Telecommunications Pte Ltd ("Singtel").[8] Two phones were connected to Costank's operations phone line – one phone was kept with the Appellant while the other was kept with Johnny Tan.[9] At any point of time, only one person could activate the operations phone line.[10] The Appellant averred that while incoming calls and text messages would only be received by the activated phone, both phones could still be used to make outgoing calls.[11] This was supported by the testimony of Mr Shawn Lew Min Yeow, a technical specialist employed by Singtel, who testified that, under Singtel's Multi-SIM plan, only one device could receive incoming calls but all devices could make outgoing calls on the same phone line.[12]

5 Tommy Tan was a bunker clerk who was employed by Heng Tong Fuels & Shipping Pte Ltd ("Heng Tong").[13] Heng Tong delivered bunkers to vessels. As a bunker clerk, Tommy Tan prepared documentation for cargo transferring operations, monitored such operations from the start to the end, and assured the quantity of cargo transferred.[14]

6 As a programmer, the Appellant gave instructions to ten bunker clerks who worked for Heng Tong.[15] Costank had an arrangement to liaise with Heng

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7 ROA at pp 2118–2119.

8 ROA at p 5868, Exhibit D12.

9 ROA at p 2109.

10 ROA at p 2119.

11 ROA at pp 2119

12 ROA at pp 761–762.

13 ROA at pp 147–148.

14 ROA at p 159.

15 ROA at p 2102.

Tong's bunker clerks during the supply of bunker fuel[16] as Costank had chartered the bunkering barges from Heng Tong.[17] The bunker clerks would report to the programmer so that the programmer: (a) would know whether a bunkering job would be completed on time; and (b) could plan for the next bunkering job.[18]

7 Wu was an "Operation Executive" in the employ of Heng Tong.[19] As an Operation Executive, Wu did miscellaneous work such as managing the crew and measuring how much cargo was left on board the supplying barge, if necessary.[20]

8 Seah was a bunker surveyor who was employed by Alpha Nautilus Marine Surveyor Pte Ltd.[21] As a bunker surveyor, Seah had to accurately record and report the opening and closing sounding during bunkering operations so as to ensure that the correct quantity of MFO was supplied.[22]

The parties' arguments below

9 The Prosecution's case at trial was that on 10 January 2013, Tommy Tan, Seah, Wu, and the Appellant were involved in the transfer of MFO from the supplying barge, the Coastal Saturn, to the Sakura Princess. It is undisputed that the Appellant was the programmer on duty at the material time.

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16 ROA at p 2102.

17 ROA at p 2118.

18 ROA at pp 2117– 2118.

19 ROA at p 1042.

20 ROA at p 1045.

21 ROA at p 852.

22 ROA at p 855.

10 The Appellant had contacted Tommy Tan that morning to instruct him to carry out a legitimate bunkering operation on the Sakura Princess.[23] Tommy Tan then headed to Marina Pier and boarded the Sakura Princess. While Tommy Tan was on board the Sakura Princess, the chief engineer of the Sakura Princess, Pittis Stavros ("Pittis"), initiated a buyback transaction of 200 mega tonnes of MFO. According to the Prosecution, Tommy Tan then informed Wu about the Buyback Scheme and told him to prepare to travel to the Sakura Princess.[24] Tommy Tan then called Costank's Operations Phone and told the Appellant about Pittis' offer.[25] The Appellant said that he would check and get back to Tommy Tan. During a subsequent phone call with Tommy Tan, the Appellant purportedly negotiated with Seah on the amount that the latter was to receive from the Buyback Scheme. The Appellant then allegedly gave Tommy Tan permission to proceed with the Buyback Scheme. After this call, the Appellant called Wu and instructed the latter to deliver the money for the Buyback Scheme to Tommy Tan.[26] Later that day, Tommy Tan, Wu, and Seah were arrested on board the Sakura Princess and the Coastal Saturn. For completeness, I note that Pittis was convicted for his role in the Buyback Scheme following a trial. Wu had also been convicted for his role in the Buyback Scheme after pleading guilty.

11 For ease of reference, the Prosecution contends that the Appellant was involved in the Buyback Scheme in the following manner:

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23 ROA at p 5160 at paras 24–26.

24 ROA at p 5163 at para 34.

25 ROA at p 5163 at para 34.

26 ROA at p 5165 at paras 37–39.

(a) Tommy Tan had informed the Appellant about Pittis' offer over a phone call;

(b) the Appellant had negotiated with Seah over a phone call on the amount of money Seah would be given from the Buyback Scheme;

(c) the Appellant had given Tommy Tan permission to proceed with the Buyback Scheme; and

(d) the Appellant had called Wu to instruct him to deliver the money to Tommy Tan in order to pay Pittis and Seah in accordance with the Buyback Scheme.

12 During the trial, the Appellant denied any awareness or involvement in the Buyback Scheme. He alleged that he had only spoken to Tommy Tan through Costank's Operations Phone about legitimate bunkering processes and did not give any permission to proceed with the Buyback Scheme. The Appellant also denied ever having spoken to Seah about the Buyback Scheme. The Appellant averred that he only called Wu once on 10 January 2013, after he had known of the estimated completion time of the bunkering operation. The Appellant had purportedly told Wu to go down to the Coastal Saturn to check on the remaining MFO onboard the vessel.

13 The Appellant also raised the following arguments: (a) there were various inconsistencies in the testimonies of Seah, Wu, and Tommy Tan; (b) the Prosecution had taken inconsistent positions in Pittis' trial, Wu's plead guilty mention, and the Appellant's trial as to the parties who were involved in the Buyback Scheme; (c) the Prosecution's case theory was inconsistent with the testimonies of various officers from the Corrupt Practices investigation Bureau ("CPIB"); and (d) the Appellant's evidence had been consistent and cogent. The

Appellant also highlighted that the CPIB officers who were called as Prosecution witnesses did not maintain a consistent position as to who had been a party to the Buyback Scheme. For instance, while an investigating officer averred that the CPIB was of the view that various companies were also involved in the Buyback Scheme,[27] a Senior Special Investigator testified that he could not determine whether the companies were indeed involved in the Buyback Scheme.[28]

Decision below

14 In convicting the Appellant, the DJ held that all four elements of the charge had been established by the Prosecution. These four elements are: (a) that the Appellant had engaged in a conspiracy with Wu; (b) that such a conspiracy was to corruptly give gratification of US$12,000 to Seah; (c) the gratification was a reward for Seah under-declaring the opening sounding of the MFO on the Sakura Princess; and (d) in pursuance of the conspiracy and in order to corruptly give gratification to Seah, US$40,000 was given to Tommy Tan. In relation to the first and second element of the conspiracy involving Wu and the Appellant, the DJ held that the conspiracy could be inferred from the totality of Wu's evidence. The DJ also relied on the fact that Wu had pleaded guilty to a statement of facts which had implicated the Appellant in the Buyback Scheme. The evidence showed that the Appellant had made the material telephone communications with Wu, Tommy Tan, and by inference Seah. Further, the testimonies of Wu, Tommy Tan, and Seah had implicated the Appellant and should be believed as they were self-incriminating.

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27 ROA at p 7465 at paras 162–164; ROA at p 1963.

28 ROA at p7463 at paras 156–159; ROA at p 1757.

15 As for the third element of an under-declaration of the opening sounding on board the Coastal Saturn and Sakura Princess, the DJ was satisfied that there was sufficient evidence to establish that Seah had indeed made such an under-declaration.

16 The DJ also held that the fourth element, which was that a sum of US$40,000 had been given to Tommy Tan, had been established. The DJ opined that this element would be established so long as the other elements were established. As the other elements of the charge were made out, the fourth element had similarly been proven.

17 The DJ sentenced the Appellant to six weeks' imprisonment. The custodial threshold had been crossed. While the Appellant had not received any personal gain or monetary benefit and the offence was an isolated incident, those mitigating factors were counterbalanced by the fact that Wu had been sentenced to four weeks' imprisonment. Since the Appellant had played a greater role in the Buyback Scheme than Wu, an uplift to the Appellant's sentence was warranted.

The parties' cases

The Appellant's Case

18 The Appellant argues that the Prosecution had failed to prove its case beyond a reasonable doubt and the DJ erred in convicting the Appellant.[29] The Appellant also argues that the sentence of six weeks' imprisonment is manifestly excessive in the circumstances.[30]

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29 Appellant's Written Submissions dated 21 June 2024 ("AWS") at para 5.

30 AWS at paras 116–118.

19 As a preliminary point, the Appellant argues that the DJ had failed to give a reasoned decision for the Appellant's conviction. According to the Appellant, the DJ had not dealt with numerous issues of fact relating to the elements of the charge against the Appellant despite the complexity of the case.[31] In support of this, the Appellant points to various examples of the DJ's "sweeping, cursory remarks".[32] The Appellant also cites various examples of the DJ making broad conclusions without identifying and dealing with the evidence leading to those conclusions.[33]

20 The Appellant contends that the DJ had erred in concluding that the elements of the charge had been established. First, the Appellant argues that the element of conspiracy is not established. The DJ failed to consider the Prosecution's concession that there was no direct evidence of a conspiracy between the Appellant and Wu.[34] The DJ also failed to consider the implications of certain pieces of evidence:

(a) the evidence in Wu's investigative statements and evidence given by Wu at Pittis' trial that exculpated the Appellant of any conspiracy to under-declare;[35]

(b) the evidence given by Seah that the person he spoke to on the phone to discuss the Buyback Scheme was a "complete stranger",

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31 AWS at paras 8–10.

32 AWS at para 13.

33 AWS at para 20.

34 AWS at paras 24–28.

35 AWS at paras 37–38.

despite having spoken to the Appellant in four separate phone calls earlier that morning;[36]

(c) the fact that Seah negotiated the price of the buyback with a person other than the Appellant;[37]

(d) Tommy Tan's lies in respect of how many mobile phones he had;[38] and

(e) Tommy Tan's and Wu's plans to make illegal moneys.[39]

21 Second, the Appellant argues that the object of the conspiracy had not been established by the Prosecution. There was no documentary proof that there was a short supply of 200MT of MFO to the Sakura Princess on 10 January 2013.[40] The only piece of documentary evidence that the Prosecution sought to adduce in this context was held to be inadmissible pursuant to a Newton Hearing.[41] The barge crew of the Coastal Saturn, who could have confirmed the short supply, were not called up as part of the investigations.[42] Accordingly, the Appellant argues that the evidence on this element of the charge is insufficient to meet the requisite standard of proof.

22 Third, the DJ erred in failing to give regard to the fact that the sum of US$40,000 given to Tommy Tan that was specified in the charge was not

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36 AWS at paras 40–48.

37 AWS at paras 49–53.

38 AWS at paras 54–58.

39 AWS at paras 54–61.

40 AWS at para 69.

41 AWS at para 70.

42 AWS at para 71.

recovered by the authorities.[43] The Appellant also argues that the DJ did not consider the following matters: (a) the material inconsistencies in Wu's evidence on the source and quantum of the moneys given to Tommy Tan;[44] and (b) the impact of Wu's depression/adjustment disorder on the reliability of Wu's evidence.[45] The Appellant further argues that the DJ erred in not considering the prejudice that the Appellant suffered as a result of inadequate investigations resulting in key evidence, including the US$40,000 and other key electronic data, being lost.[46]

23 Fourth, the DJ failed to consider and rule on the impeachment applications made by the Prosecution on the Prosecution's key witnesses, Tommy Tan and Wu.[47] In contrast, the Appellant takes the position that his evidence was honest, unimpeached and uncontradicted.[48]

24 The Appellant also argues that the DJ failed to consider the prejudice suffered by the Appellant in having to contend with the Prosecution's multiple case theories and multiple evidential settings relating to the elements and particulars of the charge.[49] Relatedly, the Appellant contends that the DJ did not address the fact that the Prosecution had run inconsistent cases in three sets of legal proceedings, namely in the proceedings against Pittis, Wu and the Appellant.[50] In his further submissions, the Appellant reiterates that the

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43 AWS at paras 75–80, 92–94.

44 AWS at paras 81–83.

45 AWS at paras 88–91.

46 AWS at paras 95–103.

47 AWS at paras 106–110.

48 AWS at paras 111–114.

49 AWS at paras 31–36.

50 AWS at paras 62–67.

Prosecution's case theory in respect of the element of conspiracy was an evolving one. This was prejudicial to the Appellant as he did not know the case that he had to meet.[51]

25 The Appellant also highlights the fact that the Prosecution had suggested, without more, for the charge to be amended from one relating to a conspiracy to one relating to instigation.[52] Although the DJ adjourned the hearing for three hours to allow the Prosecution to consider whether it should apply to amend the charge, the Prosecution ultimately decided not to apply for such an amendment.[53]

26 Finally, the Appellant submits that the sentence of six weeks' imprisonment imposed by the DJ is manifestly excessive. The DJ did not specify which facts he relied on to impose an uplift on the Appellant's sentence.[54] To this end, the Appellant stresses that he received no financial benefit and had no pre-arrangement with anyone to do buyback transactions.[55]

The Prosecution's Case

27 The Prosecution argues that the DJ had given a reasoned decision. It points to the fact that the DJ had set out the components of the charge against the Appellant, his finding that there was sufficient evidence to support each element of the charge, and his explanations for finding the Appellant guilty as

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51 Appellant's Further Written Submissions dated 16 July 2024 at paras 8–17.

52 AWS at paras 25–27.

53 AWS at para 28.

54 AWS at para 116.

55 AWS at para 118.

charged.[56] The Prosecution also disagrees with the Appellant's characterisation of the case as being complex, as all the alleged acts of involvement of the Appellant took place within the afternoon of 10 January 2013.[57] As the heart of the trial concerned the credibility of the witnesses, the DJ had sufficiently explained his decision when he gave reasons for his preference of the testimonies of Wu, Tommy Tan and Seah over the Appellant's.[58]

28 The Prosecution submits that the DJ had not erred in concluding that all the elements of the charge had been established. First, in relation to the element of conspiracy, the Prosecution argues that the DJ correctly accepted its witnesses' testimonies and rejected the Appellant's testimony. The testimonies of Tommy Tan, Seah and Wu provided a coherent and congruent account of how and why the Appellant was involved in the Buyback Scheme.[59] The DJ was right to consider that Tommy Tan, Seah and Wu had no reason to lie, considering that the evidence given in court by them could possibly open each of them up to further criminal sanctions.[60] The Prosecution submits that the DJ correctly found that the evidence pointed towards an agreement between the Appellant and Wu to bribe Seah.[61]

29 Regarding the inconsistencies in Wu's testimony, the Prosecution submits that Wu gave good reasons for lying in his previous testimony. First, Wu did not want to implicate the Appellant because doing so might implicate

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56 Respondent's Submissions dated 21 June 2024 ("RWS") at para 11.

57 RWS at para 12.

58 RWS at para 13.

59 RWS at paras 28–36.

60 RWS at paras 37–38.

61 RWS at paras 45–46.

his relatives.[62] The Prosecution points to the fact that Wu was prepared to maintain his subsequent account that implicated the Appellant, even though he could face a perjury charge for his testimony in Pittis' trial.[63] The Prosecution submits that the inconsistencies in Tommy Tan's testimony do not relate to the Appellant's involvement in the Buyback Scheme.[64]

30 Second, the Prosecution argues that the DJ correctly found that there was sufficient evidence of an under-declaration of the opening sounding of MFO on the Sakura Princess. The Prosecution relies on both Tommy Tan and Seah's testimonies, that they had provided false readings on the bunkering documents, to establish this.[65]

31 Third, the Prosecution argues that the DJ had correctly concluded that Wu had handed US$40,000 to Tommy Tan based on the evidence adduced at trial. The Prosecution relies on Tommy Tan and Wu's evidence that Wu gave US$40,000 in cash to Tommy Tan for the purpose of paying Pittis and Seah.[66] The Prosecution argues that the Appellant's complaint, that the money was not found by the authorities, ignores operational constraints faced by the authorities.[67] The Prosecution also argues that the Appellant has not shown how he has been prejudiced by the fact that the money was not found, given that both persons who handled the cash had testified to its existence.[68] Additionally, the

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62 RWS at para 41.

63 RWS at para 42.

64 RWS at para 44.

65 RWS at para 48.

66 RWS at para 49.

67 RWS at para 51.

68 RWS at para 52.

Appellant did not suffer any prejudice from any inadequate investigation in relation to the electronic data in the mobile phones featured in this case.[69]

32 Fourth, the Prosecution argues that the Appellant has no credibility as he shifted his position on a number of issues and could not explain the shifts when confronted. The Prosecution lists two instances of this,[70] and submits that the shifts in position were motivated by his guilty conscience.[71] The Prosecution argues that the Appellant's insinuations that Johnny Tan had given the instruction to proceed with the illegal buyback transaction must fail as it contradicts other pieces of evidence.[72]

33 Fifth, The Prosecution also contends that it ran a single case theory throughout the trial in respect of the charge against the Appellant. The Prosecution ran the consistent case that the Appellant had engaged in a conspiracy with Wu to bribe Seah on 10 January 2013 in relation to a buyback transaction on board the Sakura Princess.[73] The Prosecution acknowledged that it had a difficult witness in Wu, who had vacillated between different positions to avoid implicating his uncle.[74] However, the Prosecution argues that whether there were other persons or companies involved in the conspiracy does not detract from the issue of whether the *Appellant* was involved in the conspiracy. Therefore, the Appellant at all times knew the case he had to meet.[75] In its

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69 RWS at paras 65–66.

70 RWS at paras 54–60.

71 RWS at para 61.

72 RWS at paras 63–64.

73 RWS at para 16.

74 RWS at para 18.

75 RWS at paras 19–20.

further submissions, the Prosecution similarly argues that it is not required to exhaustively name in the charge all parties involved in the conspiracy.[76] It is sufficient to prove beyond reasonable doubt that the co-conspirators named in the charge had knowledge of a common design or were aware of the general purpose of the unlawful plot.[77]

34 Sixth, the Prosecution submits that the sentence of six weeks' imprisonment imposed on the Appellant is not manifestly excessive, considering that the dominant sentencing consideration for corruption cases is deterrence.[78] The DJ had correctly imposed an imprisonment term that was longer than Wu's as the Appellant's culpability was higher than that of Wu,[79] Wu had pleaded guilty,[80] and the Appellant had conducted his defence unreasonably at the trial.[81]

Issues to be determined

35 It is clear that the Appellant has raised various issues on appeal. In my judgment, however, the appeal can be resolved through a determination of the following concise issues:

(a) Whether the DJ failed to discharge his judicial duty to give a reasoned decision.

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76 Respondent's Further Submissions dated 26 July 2024 ("RFS") at para 3.

77 RFS at para 6.

78 RWS at para 71.

79 RWS at paras 72–74.

80 RWS at paras 75–76.

81 RWS at para 77.

(b) If so, whether in the light of the DJ's decision, a review of the evidence establishes that there was a conspiracy between the Appellant and Wu.

36 In my judgment, the first issue should be answered in the affirmative for the reasons at [41]–[46] below. This court is thus entitled to weigh the evidence on the record and, having done so, I am of the view that the evidence does not establish, beyond reasonable doubt, that the Appellant was involved in a conspiracy with Wu. This suffices to dispose of the appeal. It is unnecessary for me to consider the other issues highlighted by the Appellant, such as whether the Prosecution had run inconsistent cases or whether the sum of US$40,000 had indeed been passed to Tommy Tan.

Issue 1: Whether the DJ failed to discharge the judicial duty to give a reasoned decision

37 A judge must ordinarily give adequate reasons for any decision made, and this duty encompasses decisions on matters of law and/or fact: *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 ("*Thong Ah Fat*") at [15]. The standard of explanation required will correspond with the requirements of the case. The more profound the consequences of a decision, the greater the necessity for detailed reasoning: *Thong Ah Fat* at [30] and [33]. In this connection, the judge should explicate how he arrived at a particular conclusion: *Thong Ah Fat* at [37]. The law ordinarily requires the judge to explain his assessment of *witness testimony*, such as where oral evidence is accepted even though it is contradicted by contemporaneous writing by the witness: *Thong Ah Fat* at [38]. A formulaic reliance on demeanour, without more, to justify a finding of credibility is today often questionable: *Thong Ah Fat* at [38]. Instead, objective reasoning is always preferred.

38 In the present case, the Appellant submits that the DJ failed to discharge his duty to give a reasoned decision for his conviction.[82] The Appellant argues that the DJ relied on sweeping and cursory remarks to justify broad conclusions without dealing with the evidence adduced at trial.[83] For instance, the DJ had not identified the evidence which justified the following findings of fact: (a) that there had been an agreement between the Appellant and Wu to carry out the acts stated in the charge;[84] and (b) that the Appellant had made the material telephone communications with Wu, Tommy Tan and Seah.[85]

39 In response, the Prosecution argues that the DJ had discharged his duty to give a reasoned decision. The DJ had given his reasons for convicting the Appellant:

> (a) The DJ stated that the evidence showed that the Appellant had made the material telephone communications with Wu, Tommy Tan, and Seah.[86]
>
> (b) The DJ stated that the testimonies of Wu, Tommy Tan, and Seah incriminated the Appellant. Their testimonies pointed to the Appellant being the one relaying instructions by telephone, with the clear knowledge of the Buyback Scheme. Further, the testimonies of Wu, Tommy Tan, and Seah could possibly open each of them up to further criminal sanctions.[87]

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82 AWS at paras 8–9.

83 AWS at para 13.

84 AWS at paras 20(e) and 20(f).

85 AWS at paras 20(g) and 20(h).

86 RWS at para 11(c).

87 RWS at para 11(c).

40 The Prosecution argues that the case ultimately turned on the credibility of Wu, Tommy Tan, and Seah.[88] As the DJ had given his reasons for preferring their testimonies over that of the Appellant, he had sufficiently explained his decision. It was unnecessary for the DJ to set out the witness testimonies in detail when the Appellant's defence was a bare denial.[89] The Prosecution argues that the simplicity of the state of the evidence is such that the mere statement of the DJ's conclusion will sufficiently indicate the basis of his decision.[90]

The judicial duty to give a reasoned decision in the present case

41 I accept the Appellant's submissions on this issue. The Appellant's conviction is premised on, amongst other elements, the finding that there had been a conspiracy between the Appellant and Wu. This, in turn, is based on the incriminating testimonies of Tommy Tan, Wu, and Seah. However, the analysis of the witnesses' testimonies is vague and conclusory in nature. The relevant extracts of the DJ's reasoning are set out below:[91]

> 15 … So, I come back to that major point which I have left to the last to comment on and that was "Was is [*sic*] sufficient to only mention Wu in this particular case?" The short answer to that would be yes. The evidence suggests, when taken as a whole, that because of how Wu had conducted himself, the inference can be drawn. And again, a [*sic*] case law does suggest that in many of these cases, you're not going to be able to find, so to speak, the smoking gun. You're not going to find any document, any text that shows that parties have agreed to an illegal act or an illegal act should other conditions favourably arise. It could well be that there may have been some form of agreement beforehand. The evidence in this particular case suggests that there had been an agreement at least between the accused Lim and Wu to carry out the acts as stated in the

88 RWS at para 13.

89 RWS at para 14.

90 RWS at para 14.

91 ROA at pp 2214–2215.

> charge in the order that they appeared to have been committed on that particular day.
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> Wu had pleaded guilty. … The SOF that Wu admitted, without qualification to, does implicate the accused in the present case and the other points in evidence, as the prosecution have stated and which I now accept, do show that the accused, despite his pleas of innocence to the contrary, was aware of what was going on, was a material player in this process and that the evidence showed that this had occurred on a previous agreement and understanding at least with Wu …
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> …
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> 17 In the analysis leading to the determination that Lim was guilty as charged, I was persuaded by the Prosecution's submissions that the evidence showed that Lim had made the material telephone communications with Wu, Tan and (by inference) Seah. …
>
> 18 The evidence given in Court by Wu, Tan and Seah could possibly open each of them up to further criminal sanctions. Seen in that light (and there being, in the final analysis, no evidence that Lim was being framed by any of the trio…), the evidence ultimately pointed to Lim being the one relaying instructions by mobile telephone, with the clear knowledge of the buyback transaction and what it entailed, and the scheme's illegality.

42 Such an analysis may have sufficed if the testimonies of Tommy Tan, Wu, and Seah were devoid of inconsistencies and the court merely had to choose between two accounts of events. Where the court is faced with two irreconcilable accounts given by two eye-witnesses without other corroborating evidence, it may have little to say other than that one witness is more credible than the other: *Thong Ah Fat* at [37]. However, this conclusory analysis is unsatisfactory as various issues were raised regarding the testimonies of the three witnesses at trial, which the DJ should have addressed.

43 First, Wu had given conflicting accounts of the Appellant's involvement in the illicit Buyback Scheme in his CPIB statements. This inconsistency, as

well as Wu's explanation for the inconsistency, was not acknowledged or addressed by the DJ. The law ordinarily requires the judge to explain his assessment of *witness testimony*, such as where oral evidence is accepted even though it is contradicted by contemporaneous writing by the witness: *Thong Ah Fat* at [38].

44 Second, Seah's evidence at trial was that he was unable to recognise the voice of the person who spoke to him during the telephone call. He conceded during cross-examination that the person's voice was "completely unfamiliar" to him and that it was the voice of a "total stranger".[92] This was despite the fact that he had spoken to the Appellant about routine bunkering matters over the course of several phone calls earlier that day.[93] While Seah asserted that he could not confirm whether the person that he spoke to on the phone to discuss the Buyback Scheme was the Appellant, he concluded that the person was a stranger.[94] The DJ did not explain how this testimony led to the inference that the *Appellant* was involved in the conspiracy. Even if the DJ accepted the Prosecution's submission that the call records of Tommy Tan's phone line meant that Seah had necessarily spoken to the Appellant, the DJ did not address the issue that had arisen regarding the completeness of the call records. The issue is that Tommy Tan had two mobile phones and two phone lines at the material time, but he was unable to explain the provenance of the additional phone line.[95]

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92 ROA at pp 954 and 958.

93 ROA at pp 955–956.

94 ROA at p 957.

95 ROA at pp 774–775.

45 Third, Tommy Tan had been inconsistent as to his involvement in the Buyback Scheme. In the Pittis trial, Tommy Tan testified that *he* had negotiated with Pittis on the price of the MFO. However at the trial below, Tommy Tan asserted that it was the surveyor (and not Tommy Tan) that had negotiated the price of the MFO for the Buyback Scheme with Pittis.[96] The Prosecution applied to impeach Tommy Tan and substitute his evidence regarding his role in the scheme on the basis of this material inconsistency.[97] It was also alleged by the Prosecution that through this inconsistent position, Tommy Tan was trying to downplay his role in the transaction to make himself less culpable.[98] The DJ did not address the allegation that Tommy Tan was trying to downplay his role in the Buyback Scheme. While this allegation was made in the context of Tommy Tan's role in the Buyback Scheme, it would also affect the weight to be placed on his testimony which implicated the Appellant as the mastermind of the Buyback Scheme. This allegation assumed greater importance in the light of the revelation that: (a) Tommy Tan owned two phones and two phone lines at the material time, and he was unable to account for the additional phone line that was associated with his name; and (b) Tommy Tan had an unexplained phone call with Johnny Tan a few hours before the buyback transaction, despite the fact that Johnny Tan was not on duty as a programmer at the material time.

46 In my view, the abovementioned issues were not sufficiently addressed by the DJ's analysis in the grounds of decision. The DJ had even observed that the trial involved "an over-abundance of evidence"[99] – the trial involved 22 Prosecution witnesses who gave evidence over the course of 34 days. However,

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96 ROA pp 428–429.

97 ROA at p 429.

98 ROA at p 429.

99 ROA at p 2210 at para 10.

the grounds of decision, which spanned 10 pages, did not sufficiently grapple with the various inconsistencies that had been raised at trial.

The effect of a failure to give a reasoned decision

47 I turn to consider the consequence of the failure to give a reasoned decision. An acquittal does not automatically follow from this finding. In *Lim Chee Huat v Public Prosecutor* [2019] 5 SLR 433 ("*Lim Chee Huat*"), Justice Xu considered the effect of a failure to discharge the judicial duty to give reasons. As noted by Justice Xu, s 390(1)(*b*) of the Criminal Procedure Code allows an appellate court which hears an appeal from a conviction to: (a) order a retrial or remittal to the trial court; or (b) dispose of the matter itself: *Lim Chee Huat* at [56]. Justice Xu then applied the principles set out by the Court of Appeal in *AOF v Public Prosecutor* [2012] 3 SLR 34 in relation to the law governing acquittals, retrials and remittance to the trial judge:

> (a) At one extreme, where the evidence adduced at trial was insufficient to justify a conviction, an acquittal and not a retrial should ordinarily be granted.
>
> (b) At the other extreme, where the evidence against the accused at trial was so strong that a conviction would have resulted, the *prima facie* appropriate course is to dismiss the appeal and affirm the conviction.
>
> (c) When a case falls between the two extremes, the appellate court should weigh the following non-exhaustive factors to determine if a retrial should be ordered: (i) the seriousness and prevalence of the offence; (ii) the expense and length of time required for a fresh hearing; (iii) the extent to which a fresh trial would be an ordeal for the accused;

and (iv) whether the evidence that would have supported the accused at the original trial would still be available.

48 In my view, neither a remittal nor a retrial is appropriate in the present case. A remittal should only be ordered in limited circumstances, such as where the trial court must consider new material and thereby reach a final decision: *Lim Chee Huat* at [57]. No such circumstance exists in the present case. Neither is a retrial appropriate. There is sufficient evidence for this court to decide on the Appellant's conviction. Much like in *Lim Chee Huat*, the evidence in the present case does not turn on the demeanour of the witnesses. Instead, the internal and external consistency of the witnesses' testimonies is of greater importance in the light of the various inconsistencies raised above. In this connection, an appellate court is as competent as the trial judge to draw any necessary inferences of fact from the circumstances of the case: *Lim Chee Huat* at [59], citing *Yap Giau Beng Terrence v Public Prosecutor* [1998] 2 SLR(R) 855 at [24]. For completeness, I note that my decision to weigh the evidence and determine the issue of the Appellant's conviction will not prejudice either party – both the Prosecution and the Appellant made extensive submissions on the veracity of Tommy Tan, Seah, and Wu's testimonies on appeal.

Issue 2: Whether there was a conspiracy between the Appellant and Wu

49 To establish the charge as framed, the Prosecution must prove that the Appellant had engaged in a conspiracy with Wu to corruptly give a gratification of US$12,000 to Seah as a reward for Seah under-declaring the opening sounding of the MFO on the Sakura Princess. The issue is whether the Prosecution had proved, beyond a reasonable doubt, that the Appellant was a party to the conspiracy.

50 The essence of a conspiracy is an agreement, and direct evidence of such an agreement will rarely be available as such agreements tend to be made in private: *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [19]. Establishing a conspiracy is generally a matter of inference, which is deduced from certain acts of the accused parties: see the decision of Yong Pung How CJ in *Er Joo Nguang and another v Public Prosecutor* [2000] 1 SLR(R) 756 ("*Er Joo Nguang*") at [35]. Nonetheless, an inference of conspiracy will be justified only if it is inexorable and irresistible, and accounts for all the facts of the case: *Er Joo Nguang* at [35]. With this principle in mind, I turn to consider the testimonies of Wu, Tommy Tan, and Seah which allegedly implicate the Appellant in the conspiracy.

Wu's evidence

51 At trial, Wu testified that the Buyback Scheme included Wu, Tommy Tan, the Appellant, and Heng Tong.[100] According to Wu, the Appellant had "confirmed" the Buyback Scheme with Wu[101] and asked Wu to deliver the money to Tommy Tan.[102]

52 The Prosecution submits that Wu's testimony is consistent with the earliest statement that Wu had given to the CPIB on 11 January 2013. In that statement, Wu averred that the Appellant had: (a) informed him *via* a telephone call that the Buyback Scheme had been agreed upon; and (b) asked Wu to deliver the money to Tommy Tan.[103] While Wu subsequently gave statements to the CPIB exculpating the Appellant, the Prosecution argues that the retraction

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100 ROA at p 1185 ln 27–32.

101 ROA at p 1197 ln 3–6.

102 ROA at p 1208 ln 17–25.

103 ROA at pp 2408–2409, Exhibit P41 at para 3.

was a lie as Wu did not want to implicate Heng Tong and his relatives in Heng Tong.[104] The Prosecution also highlights that Wu had pleaded guilty to an identical charge in relation to the same conspiracy. In the statement of facts for Wu's guilty plea, Wu agreed that the Appellant was part of the Buyback Scheme.[105]

53 In response, the Appellant emphasises the fact that Wu had exculpated the Appellant in his other statements to the CPIB.[106] In Wu's statement dated 15 January 2013, Wu was expressly asked whether the Appellant knew about the Buyback Scheme. Wu answered: "I do not know whether he knows. *I have never communicated with him on this*" [emphasis added].[107] Wu also alleged in his statement that when the Appellant called him on 10 January 2013, the Appellant only said the phrase "there is something" in Mandarin. Wu then abruptly ended the call before the Appellant could continue.[108] The Appellant also highlights the fact that, in the Pittis trial, Wu testified that the Appellant was not involved in the Buyback Scheme.[109]

54 It is apposite to consider Wu's explanation for his change in position. At the trial, Wu explained that he told the CPIB that he had not communicated with the Appellant on the Buyback Scheme because he wanted to avoid implicating Heng Tong.[110] Wu did not want Heng Tong to be implicated in the scheme as he

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104 RWS at para 33.

105 RWS at para 19.

106 AWS at para 37.

107 ROA at p 2426.

108 ROA at p 2416 at para 19.

109 ROA at p 3249; AWS at para 38.

110 ROA at p 1236.

did not want his uncle, Tan Sing Hwa, to be implicated.[111] Tan Sing Hwa was a director of Heng Tong, whom Wu felt beholden to for giving Wu a job at Heng Tong.[112] According to records from the Accounting and Corporate Regulatory Authority that were adduced at trial, Tan Sing Hwa was a director of both Heng Tong and Costank.[113]

55 In my view, this explanation is puzzling for several reasons.

56 First, no reason was given as to why Wu no longer wanted to protect his uncle in Heng Tong. I note that Wu had repeatedly changed his position on the Appellant's involvement in the Buyback Scheme:

(a) Wu had initially contended, in his CPIB statement on 11 January 2013, that the Appellant was a party to the Buyback Scheme as he had told Wu about the scheme.[114]

(b) Wu resiled from this position just a few days later in his CPIB statement that was recorded between 14 and 15 January 2013. In that statement, Wu averred that he did not know whether the Appellant knew about the Buyback Scheme as Wu had never communicated with the Appellant about the scheme.[115]

(c) Wu later testified during the Pittis trial, on 20 November 2013, that the Appellant was not involved in the Buyback Scheme.[116] Wu's

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111 ROA at p 1211.

112 ROA at p 1211.

113 ROA at pp 2684–2699; RWS at para 5.

114 ROA at p 2409 at para 3.

115 ROA at p 2426 at para 43.

116 ROA at p 3249.

credit was subsequently impeached, and the trial judge preferred the evidence in Wu's CPIB statement on 11 January 2013.[117] Nonetheless, Wu's *testimony* at the Pittis trial was that the Appellant was not involved in the Buyback Scheme. Further, when Wu was queried at the Pittis trial about an inconsistency between his testimony and a prior CPIB statement where he had implicated the Appellant, Wu explained that "all [he] did was to push the blame to [the Appellant]" since the Appellant had already been implicated in the case.[118] At the Appellant's trial, Wu was questioned about what he meant by this statement at the Pittis trial. Wu was unable to recall what his answer meant.[119]

(d) On 23 July 2019, Wu pleaded guilty to a similar charge under s 6(*b*) read with s 29(*a*) of the PCA for his role in the events of 10 January 2013. The statement of facts that Wu pleaded guilty to averred that the Appellant was involved in the Buyback Scheme.[120]

(e) During the Appellant's trial on 30 July 2021, Wu initially testified that he could not recall and did not know whether the Appellant was a party to the Buyback Scheme.[121] He claimed that the Appellant called him to ask him to collect a sample of fuel from the Sakura Princess after the bunkering operation had concluded.[122] The relevance of this is that programmers would routinely ask Wu to obtain samples of fuel from

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117 ROA at pp 3892–3893 at paras 93–95.

118 ROA at p 3272.

119 ROA at p 1232.

120 ROA at p 2450 at paras 9–10 and 13–14.

121 ROA at pp 1110 and 1113.

122 ROA at p 1138.

vessels in the ordinary course of bunkering operations.[123] When the Prosecution suggested that Wu had been inconsistent regarding the Appellant's involvement in the Buyback Scheme to prevent Heng Tong from being implicated, Wu disagreed as he did not "know how the whole thing operates".[124] However, Wu subsequently agreed to this explanation.[125] Wu also agreed during his re-examination that the Appellant had been a party to the Buyback Scheme.[126]

57 It is clear from the sequence of events that Wu had only arrived at his latest position regarding the Appellant's involvement after he had switched his position on the issue *four* times over the course of approximately eight years. In my view, this protracted inconsistency leaves serious doubt about Wu's testimony.

58 Crucially, Wu's explanation does not cohere with the fact that he had initially claimed, during the Appellant's trial on 30 July 2021, that he did not know whether the Appellant was a party to the Buyback Scheme even though he had already pleaded guilty to a statement of facts which had implicated the Appellant on 23 July 2019. If Wu was indeed concerned about implicating Heng Tong and Tan Sing Hwa by implicating the Appellant, this concern would have ceased to exist on 23 July 2019 when Wu *did* implicate the Appellant in the scheme. There would have been no reason for Wu to vacillate even further on the Appellant's involvement in the Buyback Scheme at the Appellant's trial.

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123 ROA at p 1238.

124 ROA at pp 1209–1210.

125 ROA at pp 1210–1211.

126 ROA at p 1185.

59 Second, Wu explained that the Appellant was the operations manager and that incriminating the Appellant may have incriminated Heng Tong as the company may have asked the Appellant to "do this managing work".[127] However, this explanation is unsatisfactory as Wu was unable to substantiate this belief when questioned during re-examination:[128]

> Q: So, my question is can you explain to the Court clearly, how does implicating [the Appellant] implicate the company for this buyback deal.
>
> A: Because---maybe because company asked [the Appellant] to do this managing work.
>
> …
>
> Q: So, how does the fact that [the Appellant] is the one doing the order, he is the one processing, and the whole bunkering process is being done by him? How does that lead you to agree that Heng Tong is part of the buyback scheme?
>
> A: Because [the Appellant] told me "got buyback". Then I went to get money.
>
> Q: Okay. I'll move on ---
>
> A: The top---the top level have their things. I'm not involved.
>
> Q: When you say top level, who are you referring to?
>
> A: Whatever the---the other matters, I don't know. My job is just to listen to them, whatever they ask me to do, I do.

While Wu appeared to have suggested that the "top level" of Costank and Heng Tong might have known about the Buyback Scheme, this explanation was

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127 ROA at p 1303 ln 24–28; RWS at para 33.

128 ROA at pp 1303 and 1305–1306.

speculative – Wu conceded that he was "not involved" in and did not know about such matters.

60 Further, it is unclear how Wu could have thought that implicating the Appellant would, in turn, implicate Tan Sing Hwa. While Tan Sing Hwa was a director of the Appellant's employer (Costank), Wu did not appear to have known of this fact. Wu explained during the trial that he did not know how the Appellant and Tan Sing Hwa were connected.[129] While Wu knew that his uncle, Tan Sing Hwa, was the "boss" of Heng Tong, he was unsure as to whether his uncle held any position in Costank.[130] Further, Wu *did not know* if the Appellant was an employee of Heng Tong; he only knew that the Appellant was "stationed at Costank".[131] It is thus unclear how Wu could have thought that implicating the Appellant would have implicated his uncle in Heng Tong, given that: (a) Wu had only associated the Appellant with Costank; and (b) Wu was unsure as to whether his uncle held any position in Costank.

61 While the Prosecution relies on the fact that Wu had readily conceded that he would have committed perjury at the Pittis trial,[132] I place little weight on this fact. This is because, in Wu's 15 January 2013 statement to the CPIB, he expressly denied the allegation that he was trying to protect the management of Heng Tong by making himself and Tommy Tan the masterminds of the Buyback Scheme. He was informed at the time that giving false information to the CPIB was a serious offence.[133]

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129 ROA at pp 1211 ln 32 to p 1212 ln 2.

130 ROA at p 1303 ln 29–32.

131 ROA at p 1234.

132 RWS at para 42.

133 ROA at p 2426 at para 43.

62 In my view, Wu's evidence should be approached with circumspection given the abovementioned issues that I have identified.

Seah's evidence

63 I next turn to consider the testimony of Seah. Seah's testimony at trial was that on 10 January 2013, he spoke to Tommy Tan's "office people" *via* Tommy Tan's mobile phone to negotiate the amount that Seah would be paid under the Buyback Scheme.[134]

64 The Appellant highlights the fact that Seah had claimed that the person he discussed the price with over the phone was a "complete stranger".[135] This indicated that the Appellant was not the person who had spoken to Seah over the phone, as Seah had already spoken to the Appellant over the course of several phone calls earlier that day and, if Seah had truly spoken to the Appellant at the material time, he would have recognised the latter's voice.[136]

65 In response, the Prosecution argues that Seah's testimony corroborates Tommy Tan's account that the Appellant had spoken to Seah during the phone call.[137] The Prosecution also acknowledges that Seah could not confirm whether the person he spoke to was the Appellant. Nonetheless, it submits that the account by Seah is broadly consistent with the call tracing records of Tommy Tan's mobile phone.[138]

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134 ROA at p 870.

135 AWS at para 41.

136 AWS at paras 45–48.

137 RWS at para 31.

138 RWS at paras 35–36.

66 In my view, Seah's evidence cannot form the basis for the inference that the Appellant was involved in the conspiracy. This is because Seah was unable to identify the person with whom he spoke to on the phone:[139]

> Q: Yes, but either way, you cannot confirm if it's the same person, correct?
>
> A: Yes, I cannot confirm.
>
> Q: And you confirm that the person you negotiated price with was a stranger, correct?
>
> A: Yes.

67 Seah's characterisation of the person on the other end of the phone call as a "stranger" is important, as it is undisputed that Seah had several phone calls with the Appellant earlier that day where the pair discussed legitimate bunker operations.[140] In my view, Seah should have recognised the Appellant's voice in the subsequent call as he had spoken to the Appellant five times just a few hours prior. While the Prosecution argues that the prior phone calls were very short, I do not agree. The prior phone calls consisted of the following: (a) a call at 11.46am which lasted for 29 seconds;[141] (b) a call at 11.51am which lasted for one minute and 49 seconds;[142] (c) a call at 12.18pm which lasted for 12 seconds;[143] (d) a call at 12.20pm which lasted for seven seconds;[144] and (e) a call at 2.19pm which lasted for seven seconds.[145] The time taken for the first and second calls would have been sufficient for Seah to recognise the Appellant's

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139 ROA at p 957.

140 ROA at p 956.

141 ROA at p 956; p 5888 s/n 16.

142 ROA at p 5888 s/n 10; p 955.

143 ROA at p 5887 s/n 19; p 956

144 ROA at p 5887 at s/n 15; p 956

145 ROA at p 5886 s/n 1; p 956

voice just a few hours later. During the Pittis trial, Seah had also maintained, without challenge, that he did not know who had spoken to him on the phone.[146]

68 The Prosecution also argues that Seah's account is broadly consistent with the call tracing records of Wu's mobile phone, Tommy Tan's mobile phone, and the Operations Phone used by the Appellant.[147] Tommy Tan had identified a phone call at 3.15pm as the phone call where he had let Seah speak to the Appellant on his mobile phone.[148] The call tracing records reflect this call as one made from Tommy Tan's mobile phone to the Operations Phone used by the Appellant and Johnny. The implication of this argument appears to be that even if Seah could not identify the person whom he had spoken to on the phone, the necessary inference must be that Seah had spoken to the Appellant.

69 In my judgment, the probative value of this evidence is diminished by the fact that Tommy Tan had *two* mobile phones. Further, the Prosecution adduced Singtel phone records which revealed that Tommy Tan had an *additional* phone number that was operative at the material time.[149] Tommy Tan was unable to explain the provenance of this additional phone number,[150] which contradicted his earlier claim that he only had one phone number in 2013.[151] This phone number was only registered by Tommy Tan on 1 January 2013, which was a mere nine days before the events of 10 January 2013. While Tommy Tan alleged that both mobile phones were connected to the same phone

146 ROA at p 3213; AWS at para 45(a).

147 RWS at para 36.

148 ROA at p 396.

149 ROA at p 812

150 ROA at p 813.

151 ROA at p 743.

number, this explanation made little sense given his assertion that he used one mobile phone for work-related matters and the other for his personal matters. If both mobile phones shared the same phone number, Tommy Tan would have had no way to differentiate between work-related calls and/or messages and those related to his personal life.[152] The Investigating Officer who recorded Tommy Tan's statement was unable to recall whether both of Tommy Tan's mobile phones corresponded to the same phone number.[153] This left open the possibility that Tommy Tan's second mobile phone was connected to his second phone number. As such, it could not be said that Seah had invariably spoken to the Appellant as the call could have been made on Tommy Tan's second phone number on his second mobile phone.

70 Pertinently, the CPIB had conducted its investigations from January 2013 to March 2021 on the basis that Tommy Tan only had *one* mobile number.[154] Given this lapse of time, the CPIB was unable to extract text messages or the call tracing records of Tommy Tan's second phone number.[155] Neither was the Prosecution able to retrieve any records about whether Tommy Tan was a subscriber of his telecommunications service provider's multi-SIM service, which would have allowed him to use the same phone number for multiple mobile phones.[156] In the light of this, I am of the view that the phone trace records adduced at trial are not conclusive of *all* possible calls and/or messages that were made to and from Tommy Tan on 10 January 2013. As such,

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152 ROA at p 769.

153 ROA at p 1781.

154 ROA at p 1992.

155 ROA at p 1993.

156 ROA at p 1871.

I am unable to conclude that Seah had necessarily spoken to the Appellant on Tommy Tan's phone on 10 January 2013.

Tommy Tan's evidence

71 Having dealt with the testimonies of Wu and Seah, I turn to consider Tommy Tan's evidence. Tommy Tan testified at trial that the Appellant was involved in the Buyback Scheme. On 10 January 2013, Tommy Tan dialled the Operations Phone. The Appellant, who was on duty that day, answered Tommy Tan's call. Tommy Tan informed the Appellant that Pittis was selling oil, and the Appellant inquired about the sum that the surveyor and Pittis wanted in the transaction. The Appellant then replied that he would "check and come back to [Tommy Tan]" and ended the phone call.[157]

72 The Appellant called Tommy Tan 15 minutes later and asked Tommy Tan if the sum could be negotiated.[158] Tommy Tan replied that he would check and ended the second phone call.[159]

73 Tommy Tan then discussed the matter with Seah, who said that he wanted to speak to "the office".[160] Tommy Tan used his phone to call the Operations Phone.[161] Tommy Tan then passed his phone to Seah and allowed him to speak to the Appellant.[162] The Appellant and Seah had a discussion over the phone and Seah eventually passed the phone back to Tommy Tan. Tommy

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157 ROA at p 254.

158 ROA at p 256.

159 ROA at pp 257–258.

160 ROA at p 258.

161 ROA at p 259.

162 ROA at p 260.

Tan then spoke to the Appellant, who told Tommy Tan that they had agreed on a price of US$ 200 per metric tonne of MFO.[163] Thereafter, Tommy Tan ended the phone call with the Appellant and proceeded to the Coastal Saturn to commence the operation.[164]

74 The Appellant subsequently called Tommy Tan to provide the latter with an estimated timing for the arrival of money involved in the Buyback Scheme.[165] The Appellant told Tommy Tan that Wu would deliver the money, and that Tommy Tan should contact Wu to inform him of Tommy Tan's location.[166]

75 Tommy Tan then called Wu and asked the latter if the Appellant had informed him about the buyback transaction. Wu replied that the Appellant had done so.[167] The call ended soon after.

76 The Prosecution relies on Tommy Tan's testimony, which implicates the Appellant in the Buyback Scheme.[168] The Prosecution submits that Tommy Tan had no reason to lie and, by admitting to his participation in the Buyback Scheme, had effectively given self-incriminating testimony that may be used against him in the future if he is prosecuted for his role in the scheme.[169] The call trace records from the Operations Phone and Tommy Tan's phone also broadly support Tommy Tan's testimony.[170] Lastly, the Prosecution argues that

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163 ROA at p 260.

164 ROA at p 265.

165 ROA at p 272.

166 ROA at p 273.

167 ROA at p 273.

168 RWS at paras 28–30.

169 RWS at para 38.

170 RWS at para 25.

the inconsistencies in Tommy Tan's testimony do not relate to the Appellant's involvement in the scheme, and merely relate to Tommy Tan's attempt to downplay his own role in the Buyback Scheme.[171]

77 In response, the Appellant argues that there is a "clear possibility" that Tommy Tan was lying about the Appellant's involvement.[172] The Appellant emphasises that Tommy Tan had multiple mobile phones and phone numbers at the material time.[173] The Prosecution was unable to obtain the call trace records of Tommy Tan's second phone number.[174] Curiously, Tommy Tan had received a phone call from Johnny Tan on 10 January 2013 at 1.23pm. This was odd as Johnny Tan was not on duty as a programmer at the material time. Johnny Tan did not provide a satisfactory explanation for this phone call.[175] The Appellant also highlighted the fact that the Prosecution had applied to impeach the credit of Tommy Tan during the trial. In this connection, the Appellant argues that Tommy Tan's material inconsistencies undermined his credibility and that little weight should be accorded to his testimony implicating the Appellant.[176]

78 Tommy Tan's testimony is questionable for several reasons. First, Tommy Tan's testimony is inconsistent with the call trace records associated with his first phone number. Tommy Tan asserted at trial that his first call with the Appellant, wherein he told the latter about Pittis' offer for the Buyback

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171 RWS at para 44; RWS Annex B.

172 AWS at para 58.

173 AWS at para 54.

174 AWS at para 56.

175 AWS at para 57.

176 AWS at para 109.

Scheme (see [71] above), was made at 3.08pm.[177] Tommy Tan then asserted that the third call, where he had let Seah speak to the Appellant (see [73] above), was made at 3.15pm.[178] However, the call trace records for Tommy Tan's first phone number reveal that there were no other calls between the 3.08pm call and the 3.15pm call.[179] This is incongruent with Tommy Tan's testimony, where he averred that there was an additional call between Tommy Tan and the Appellant between the two calls, during which the Appellant had purportedly asked Tommy Tan to check if the price of the Buyback Scheme could be negotiated (see [72] above). This raises the possibility that Tommy Tan made and received the phone calls relating to the Buyback Scheme on his second phone number instead. In my view, there is no conclusive evidence to support Tommy Tan's testimony that he had spoken to the *Appellant* during the phone calls as: (a) the records of Tommy Tan's first phone number, which list his phone calls with the Appellant, are incongruent with his account of his calls with the Appellant about the Buyback Scheme; and (b) the phone records of Tommy Tan's second phone number could not be recovered and were not adduced at trial.

79 Second, the call trace records that were adduced at trial do not necessarily support Tommy Tan's allegation that the Appellant had called him to discuss *the Buyback Scheme* on 10 January 2013. The Appellant testified that he and Tommy Tan were supposed to call each other to discuss legitimate bunkering matters on 10 January 2013. Tommy Tan, as a bunker clerk, was supposed to inform the programmer of the following: (a) that Tommy Tan had reached the Sakura Princess, so that the Appellant could keep track of Tommy Tan's whereabouts; (b) that the pumping crew had made arrangements to

177 ROA at p 394.

178 ROA at p 396.

179 ROA at p 224 s/ns 4 and 7.

connect the relevant hoses for pumping; (c) that the pumping had started; (d) the pumping rate at various points in time; (e) the estimated time of completion; and (f) when the pumping operation had ended.[180] The Appellant testified that in the ordinary course of bunkering operations, a bunker clerk would normally need to make four to six phone calls to the programmer during the pumping operation.[181] While the Prosecution alleged that the Appellant's phone call at 3.08pm was related to the Buyback Scheme,[182] it did not challenge the Appellant's general averment that bunker clerks would ordinarily need to communicate with programmers multiple times during pumping operations. In my view, the calls between Tommy Tan and the Appellant at or around 3.00pm on 10 January 2013 are equivocal as they could either have related to legitimate bunkering operations or the Buyback Scheme.

80 Third, Tommy Tan was the subject of impeachment proceedings. While the trial judge need not make a ruling on whether the credit of a witness is impeached at any stage of the trial, the judge must consider the discrepancies and explanation offered by the witness for the purpose of the overall assessment of his credibility: *Loganatha Venkatesan and others v Public Prosecutor* [2000] 2 SLR(R) 904 at [56]. The Prosecution argues that the areas of impeachment largely related to issues such as whether Tommy Tan was involved in the negotiation of the price of the Buyback Scheme. As such, it is said that these areas of impeachment only related to Tommy Tan's attempts to downplay his role in the Buyback Scheme, and do not affect Tommy Tan's implication of the Appellant in the Buyback Scheme.[183] However, this argument

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180 ROA at pp 2106–2107.

181 ROA at p 2107.

182 ROA at p 2122.

183 ROA at p 5283; RWS Annex B s/n 2.

overlooks the point that if Tommy Tan was indeed interested in downplaying his role in the Buyback Scheme and reducing his culpability, he would have a vested interest in naming someone else – such as the Appellant – as the mastermind behind the scheme. This much was recognised by the Prosecution in its written submissions.[184] In my view, Tommy Tan had clearly vacillated from his initial position in the Pittis trial, where he testified that *he* was involved in negotiating the price of the Buyback Scheme with Pittis. While Tommy Tan asserted during the Appellant's trial that *the surveyor* had negotiated the price of the Buyback Scheme with Pittis, no explanation was given as to how he had made such a fundamental mistake in his earlier testimony.[185] In my judgment, this inconsistency affects Tommy Tan's credibility and his evidence should be approached with a degree of circumspection.

81 Fourth, the totality of the evidence suggests that it was possible that Tommy Tan had spoken to another person (instead of the Appellant) over the phone about the Buyback Scheme on 10 January 2013.

(a) Tommy Tan had two phones and two phone numbers at the material time (see [69] above). Tommy Tan could not explain the provenance of his second phone number, which was only registered nine days before the bunkering operation on 10 January 2013. As the CPIB had conducted its investigations from January 2013 to March 2021 on the basis that Tommy Tan had only *one* mobile number, it was unable to obtain the call trace records of Tommy Tan's second phone number. Tommy Tan's explanation, that both mobile phones were connected to the same phone number, is also incongruent with his assertion that he

184 RWS at para 39.

185 ROA at pp 427–428.

used one phone for work-related matters and the other for his personal matters. Further, the Investigating Officer who recorded Tommy Tan's statement was unable to recall whether both of Tommy Tan's mobile phones corresponded to the same phone number.[186] This left open the possibility that Tommy Tan's second mobile phone was connected to his second phone number. The significance of this is that Tommy Tan could possibly have made the calls relating to the Buyback Scheme with his second phone number on his second mobile phone, which could explain why the call records adduced at trial (which did not include records of Tommy Tan's second phone line) did not align with Tommy Tan's account of the phone calls (see above at [78]). In the light of this, there exists a reasonable doubt as to whether Tommy Tan had communicated with *the Appellant* during the phone calls relating to the Buyback Scheme, as the call records at trial were inconclusive and did not represent *all possible calls* that Tommy Tan could have made and received on 10 January 2013.

(b) Tommy Tan had also received a phone call from Johnny Tan's office phone at 1.23pm on 10 January 2013, even though Johnny Tan was not rostered as a programmer on that day. Johnny Tan and Tommy Tan were unable to explain whether they had spoken to each other during this phone call and, if so, what they had spoken about. While Johnny Tan speculated that someone from his office could have used his office phone to make this call, I do not find this explanation convincing as Johnny Tan was unable to state whether his staff even had a practice of using his office phone.[187] This phone call was not noted or

186 ROA at p 1781.

187 ROA at pp 1032–1033.

investigated by the CPIB during the course of investigations.[188] In my view, this call is suspicious as there would have been no need for Johnny Tan to call Tommy Tan about official bunkering related matters when the former was off-duty.

(c) Further, Tommy Tan and Johnny Tan gave inconsistent evidence as to whether they knew each other. Johnny Tan gave evidence that he had met Tommy Tan in the course of his work[189] and had interviewed Tommy Tan before the latter went on board the Coastal Saturn.[190] In contrast, while Tommy Tan averred in his CPIB statement that an individual named "John" had interviewed him in person[191] for his role as a bunker clerk in Heng Tong,[192] Tommy Tan did not identify Johnny Tan as "John" during an identification exercise in court.[193] Tommy Tan's failure to identify Johnny Tan as "John" is at odds with: (a) Johnny Tan's own evidence that the pair had met each other before; and (b) IO Chia's testimony that he had concluded at the end of his investigations that "John" was in all likelihood Johnny Tan.[194]

82 Fifth, Tommy Tan's evidence is at odds with Seah's evidence that the latter had spoken with a *complete stranger* during the phone call with Tommy Tan's "office people". As I have concluded above, Seah would have recognised

188 ROA at p 1996.

189 ROA at p 983.

190 ROA at pp 6524–6525.

191 ROA at pp 149–150.

192 ROA at p 148.

193 ROA at p 804.

194 ROA at p 1997.

the Appellant's voice as he had spoken to the Appellant over the course of five phone calls earlier that day.

The Prosecution has not established that there was a conspiracy between the Appellant and Wu

83 In my judgment, the Prosecution has not adduced sufficient evidence to establish that there was a conspiracy between the Appellant and Wu. In coming to this conclusion, I bear in mind the principle that an inference of conspiracy will be justified only if it is inexorable and irresistible, and accounts for all the facts of the case: *Er Joo Nguang* at [35]. The testimonies of Wu, Seah, and Tommy Tan cannot support such an inference. First, the testimony of Wu is incongruent with his earlier testimony at the Pittis trial and his CPIB statements which exculpate the Appellant. No convincing reason has been given for Wu's change in position in the present proceedings.

84 Second, Seah could not ascertain the identity of the person that he had spoken to on the phone and had even testified that he had spoken to a "complete stranger". The call records that were adduced at trial are also inconclusive as they do not account for Tommy Tan's second phone number, which was only registered nine days before the Buyback Scheme. Third, Tommy Tan's testimony is affected by several issues that I have identified above (at [78]–[82]). The issues in Tommy Tan and Seah's testimonies have cast doubt as to the identity of the person whom they had spoken to over the phone about the Buyback Scheme on 10 January 2013. The evidence adduced at trial, which is inconclusive and – in some respects – incomplete, raises more questions than it answers. No explanation was given for Tommy Tan's second phone number, which the investigators were unaware of for eight years. Certain facts, such as the unexplained phone call from Johnny Tan to Tommy Tan on 10 January 2013

when Johnny Tan was not rostered as a programmer, were not accounted for either.

Conclusion

85 The evidence, in its totality, does not lead to the inexorable and irresistible inference that the Appellant was involved in the conspiracy. As a critical element of the charge has not been proved beyond a reasonable doubt, I acquit the Appellant of the charge.

Dedar Singh Gill
Judge of the High Court

Suresh s/o Damodara, Carmen Lee Jia Wen and Sun Lupeng Cedric (Damodara Ong LLC) for the Appellant;
Magdalene Huang (Attorney-General's Chambers) for the Respondent.