

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

[2024] SGHC 83

Magistrate's Appeal No 9213 of 2022

Between

Neo Siew Teng

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Law] — [Statutory offences] — [Penal Code]
[Criminal Law] — [Appeal]

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Neo Siew Teng
v
Public Prosecutor

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General Division of the High Court —Magistrate's Appeal No 9213 of 2022
Vincent Hoong J
21 March 2024

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Vincent Hoong J:

Introduction

1 Ms Neo Siew Teng (“the Appellant”) was the director of Metallon Recycling Pte Ltd (“Metallon”). Ms Foo Yoke Jin Fonda (“Foo”) was the director of Qi Fa Hardware & Trading Pte Ltd (“Qi Fa”) and she worked with Mr Seah Thiam Heng (“Seah”). Qi Fa won a bid to purchase cables from Siemens Pte Ltd (“Siemens”) at \$6,580 per tonne. Qi Fa later agreed to sell the same cables to Metallon for \$5,700 per tonne, which included a commission of \$600 per tonne to Seah personally.

2 Foo and Seah arranged for the cables from Siemens to be delivered to Metallon’s yard for weighing. There were two sets of weight tickets generated by the Appellant: the six weight tickets containing the accurate weights of the

cables from Siemens (“the Accurate Weight Tickets”) and six corresponding weight tickets which contained inaccurate weights of the cables from Siemens (“the Falsified Weight Tickets”). The Falsified Weight Tickets under-declared the total weight of the cables from Siemens as 27.05 tonnes instead of their actual total weight of 66.3 tonnes.

3 The Appellant claimed trial to six charges of engaging in a conspiracy with Foo and Seah, wilfully and with intent to defraud, to falsify weight tickets belonging to Metallon under s 477A of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”). The Appellant was convicted in a joint trial with Seah. Foo had pleaded guilty at an earlier instance. The Appellant was sentenced to a fine of \$20,000 per charge, for an aggregate fine of \$120,000. The Appellant now only appeals against her conviction.

4 To prove the charges, the Prosecution must show that (1) the entries made in the Falsified Weight Tickets were false, (2) the accused persons abetted each other by engaging in a conspiracy to make the false entries and (3) in engaging in the conspiracy, the accused persons were aware that the entries were false and possessed an intention to defraud (*PP v Lam Leng Hung and other appeals* [2017] 4 SLR 474 (“*Lam Leng Hung*”) at [319]).

5 The first element is undisputed. The Appellant generated the Falsified Weight Tickets which she knew did not reflect the actual weight of the cables from Siemens. In the present appeal, the Appellant argues that, contrary to the District Judge’s findings, the second and third elements are not made out.

My decision

The Appellant possessed intent to defraud

6 While the Appellant knew that the Falsified Weight Tickets under-declared the weights of the cables, she argues that she did not possess the intent to defraud. The Appellant submits that she was under the impression that the Falsified Weight Tickets were only going to be used for Qi Fa’s internal purposes. She also received no benefit for preparing the Falsified Weight Tickets.

7 I am unable to accept these arguments. The Appellant knew that the Falsified Weight Tickets were intended to be misrepresentations to Siemens. The Appellant’s claim that the Falsified Weight Tickets were only for Qi Fa’s internal purposes was untenable. I agree with the District Judge’s finding that it was simply unbelievable that the Appellant would generate false records with her company’s letterhead for Qi Fa’s record keeping. In fact, according to the Appellant’s own evidence, the Accurate Weight Tickets were generated for the arrangement between Metallon and Qi Fa. The Accurate Weight Tickets reflected the price of \$5,100 per tonne, which was not the agreed price between Qi Fa and Siemens but the agreed price between Qi Fa and Metallon.

8 The Appellant clearly possessed the guilty knowledge that the Falsified Weight Tickets were to be used to misrepresent the weight of the cables to Siemens:

- (a) The Appellant knew that Siemens was interested in the results of the cable-weighing. She knew that the cables being weighed belonged to Siemens, and there were representatives from Siemens present at the

weighing. Tue, an employee of Siemens, was present to witness the delivery and weighing of the cables.

(b) Both sets of weight tickets generated by the Appellant contained the same information, save for the indicated weight of the cables: identical ticket numbers, identical vehicle numbers, identical date and time in, identical date and time out.

(c) The Appellant knew that the Accurate Weight Tickets were not for Siemens. She accepted that the Accurate Weight Tickets were purely for the arrangement between Metallon and Qi Fa. I thus agree with the Prosecution that the Appellant knew that the Falsified Weight Tickets were the only documents that Qi Fa could have shown to Siemens.

9 “Intent to defraud” may be defined as “practicing a deception with the aim of causing an injury, loss or detriment or obtaining an advantage, even if [the accused] is indifferent as to who the object of his fraudulent intent is” (*PP v Li Weiming and others* [2014] 2 SLR 393 at [84]). The essence of intent to defraud is the *aim* of causing loss or obtaining an advantage, which is distinct from the consequence of actually causing loss or obtaining an advantage. Whether benefit was actually derived by the Appellant is thus irrelevant to establishing an intent to defraud. In any case, I find that the Appellant did benefit from the scheme. The Appellant was able to purchase the cables from Qi Fa at a lower price than Metallon’s losing bid to Siemens, even after taking into account Seah’s commission.

10 As outlined above, the Appellant had practiced deception by preparing the Falsified Weight Tickets, and she knew that Siemens would rely on the Falsified Weight Tickets to their detriment since they grossly under-declared

the weight of the cables. I thus find that the Appellant possessed the intent to defraud Siemens.

The Appellant engaged in a conspiracy with Seah and Foo

Foo’s and Seah’s testimonies

11 In *PP v Yeo Choon Poh* [1993] 3 SLR(R) 302 (“*Yeo Choon Poh*”) at [19], it was held that the essence of conspiracy was an agreement between parties. The Appellant submits that she was not party to the conspiracy between Seah and Foo. In this regard, the Appellant highlights Foo’s evidence which purportedly showed that there was an agreement to falsify the weight tickets only between Foo and Seah.

12 I find that Foo’s lack of direct communication with the Appellant does not show that the Appellant was not part of the conspiracy. It is clear from the evidence that Seah, and not Foo, was the main liaison between Qi Fa and Metallon. Explanation 5 to s 108 of the Penal Code states that it is unnecessary for parties of the conspiracy to concert with every other conspirator:

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with *B* a plan for poisoning *Z*. It is agreed that *A* shall administer the poison. *B* then explains the plan to *C*, mentioning that a third person is to administer the poison, but without mentioning *A*’s name. *C* agrees to procure the poison, and procures and delivers it to *B* for the purpose of its being used in the manner explained. *A* administers the poison; *Z* dies in consequence. Here, though *A* and *C* have not conspired

together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

13 The Court of Appeal held that “it is clear that there need not be communication between each conspirator and every other, provided that there be a common design common to each of them all” (*Yeo Choon Poh* at [19], citing *R v Chew Chong Jin* [1956] MLJ 185 at 186 with approval). The key question is whether each conspirator “must have conspired with one or more of the others” (*Yeo Choon Poh* at [21]).

14 The Appellant also submits that Foo’s testimony revealed that Qi Fa’s loss-making commercial terms with Metallon was the trigger for the conspiracy and not a result or part of the conspiracy itself. The conspiracy arose because Seah and Foo locked Qi Fa into unfavourable pricing terms with Metallon.

15 This argument is clearly a non-starter. There is no evidence that Qi Fa was *forced* into an unfavourable agreement with Metallon. Even if the commercial terms between Qi Fa and Metallon had put the conspiracy into motion, it does not follow that the Appellant was therefore removed from the conspiracy. In fact, as it will be explained later, the key finding is that the Appellant knew that the agreed price of \$5,100 per tonne between Metallon and Qi Fa was unfavourable for Qi Fa who purchased the same cables for much higher. Taken together with her subsequent conduct, it is clear the Appellant was aware of the common design and acted in pursuance of the conspiracy.

16 The Appellant also argues that Seah’s testimony revealed that the Appellant was not part of the conspiracy. However, Seah’s testimony was plainly unreliable. Seah played the primary role in the conspiracy and clearly

had the motive to distance himself from the scheme entirely. His evidence was contradicted at multiple points by other witnesses and the objective evidence. Seah's denial that the Appellant was involved in the conspiracy was part of his defence that there was no plan at all to defraud Siemens. As such, I place no weight on Seah's evidence in this regard.

17 In my view, based on the Appellant's conduct, it is clear that the Appellant was aware of the common design and acted in pursuance of the conspiracy. In most cases, the agreement would take place in private such that there was no direct evidence of it. As such, a conspiracy may be proven by the oral and circumstantial evidence, as well as the conduct of the accused both before and after the alleged commission of the crime (*Yeo Choon Poh* at [20]).

18 The Appellant knew that Qi Fa had entered into an unfavourable agreement with Metallon by selling the cables to Metallon at \$5,100 per tonne. Qi Fa purchased the cables from Siemens at a higher unit price than Metallon's losing bid to Siemens, which was \$6,300 per tonne. A week or less later, the Appellant then paid Qi Fa for the same cables at a substantially lower price than Metallon's own losing bid. The parties also knew that price was the determining factor for the winning bid. The offered price for the cables was the material term in both Qi Fa's and Metallon's quotations to Siemens. Tue, the representative from Siemens, also confirmed that the bid was awarded to Qi Fa who gave the highest offer.

19 While knowing that Qi Fa had to provide an account of the weight of the cables to Siemens, the Appellant generated the Falsified Weight Tickets which bore almost all the same information as the Accurate Weight Tickets save for

the under-declared weights of the cables. The Accurate Weight Tickets were then purely used for the arrangement between Metallon and Qi Fa.

20 The Appellant’s argument that the Falsified Weight Tickets were generated “in the spur of the moment” was also unsustainable. There were six such falsified tickets generated over the course of two days.

Tue’s testimony

21 The weight of the lorries and the cables were recorded in a computer inside a small office in Metallon. Tue testified that the Appellant never stopped him from entering the office in Metallon. In fact, Tue and an officer from the Land Transport Authority (“LTA”) did enter the office to observe the numerical weight recorded on the computer and verified that it matched the weight recorded in the ticket. As such, according to the Appellant, Tue’s testimony suggests that the Appellant was transparent about the weighing process and subjectively thought there was nothing illicit about the Falsified Weight Tickets.

22 I find that Tue’s testimony was taken out of context. Tue had confirmed that when he entered Metallon’s office during the last weighing session, he saw the weight of *a lorry without the cables* on the computer screen. Tue had simply verified that the numerical weight on the computer screen matched the weight of the empty lorry recorded on the ticket. Hence, Tue’s testimony is not evidence that the Appellant was “transparent” about the entire weighing process. There was nothing to hide at this point since the falsity of the Falsified Weight Tickets related to the weight of the cables, and not the weight of the empty lorries.

23 The Appellant also relies on Tue's evidence that Tue only required the signatures of the LTA officer and a representative from Qi Fa for the weight tickets. In this regard, the Appellant also highlights the delivery notes to Siemens which bore the signatures of Tue himself, the LTA officer and a Qi Fa representative. In my view, these were neutral factors for establishing the Appellant's involvement in the conspiracy or lack thereof. Siemens sold the cables to Qi Fa and it was thus only natural for the weight tickets and delivery notes to not bear Metallon's signature. From Siemens' perspective at the time, Metallon's involvement was limited to providing their yard and weighing station for the cables. In any event, the delivery notes did feature the under-declared weights of the cables based on the Falsified Weight Tickets generated by the Appellant.

The unsigned weight tickets

24 The Falsified Weight Tickets were not signed by the Appellant. The Appellant submits that Foo and or Seah intentionally omitted asking the Appellant to sign off on the Falsified Weight Tickets because they knew that the Appellant would not have done so:

Q: ...you did not ask Ms Neo to sign P16 to P21 under "Weighed by", because you knew that Ms Neo would not sign the fake weighing tickets, do you agree or disagree?

[Foo]: Yes.

25 I am unable to accept this argument. Foo was not in direct communication with the Appellant and would not have been able to testify to the Appellant's state of mind at the time. Foo was also not asked to explain what gave her the impression that the Appellant would not have signed the Falsified Weight Tickets.

26 I also note that both the Falsified Weight Tickets and the Accurate Weight Tickets were unsigned by the Appellant. The fact that the Falsified Weight Tickets were unsigned by the Appellant was thus unhelpful in illuminating the Appellant's state of mind at the material time.

27 Finally, I notice that there is no explicit reference to s 109 of the Penal Code in the Appellant's charge sheets. Nonetheless, no amendment of the charges to include an explicit reference to s 109 of the Penal Code is necessary in this case. The nature and wording of the charges preferred are undisputed, and the charges are clearly worded according to those for abetment by engaging in a conspiracy. Section 109 of the Penal Code does not affect the punishment prescribed for the offences either. I thus find that there is no prejudice to the Appellant, and this discrepancy has no effect on the Appellant's conviction.

Conclusion

28 For the above reasons, I dismiss the appeal against conviction.

Vincent Hoong J
Judge of the High Court

Wendell Wong, Andrew Chua and Victoria Chin (Drew & Napier
LLC) for the Appellant;
David Menon (Attorney-General's Chambers) for the Respondent.
