

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

[2025] SGHC 57

Magistrate's Appeal No 9055 of 2024/01

Between

Kok Chiang Loong

... Appellant

And

Public Prosecutor

... Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Appeal]
[Criminal Law — Statutory offences — Immigration Act]

TABLE OF CONTENTS

INTRODUCTION.....	1
THE PROCEEDINGS BELOW	2
THE DJ’S DECISION	4
THE PARTIES’ CASES.....	6
ISSUES TO BE DETERMINED	8
WHETHER THE CHARGE WAS LEGALLY DEFECTIVE.....	8
WHETHER THE DJ WAS WRONG TO FIND THAT THE MARRIAGE WAS A MARRIAGE OF CONVENIENCE.....	13
CONCLUSION.....	22

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Kok Chiang Loong

v

Public Prosecutor

[2025] SGHC 57

General Division of the High Court — Magistrate's Appeal No 9055 of 2024/01

See Kee Oon JAD

14 February 2025

21 April 2025

See Kee Oon JAD:

Introduction

1 The appellant was convicted after a trial in the District Court of abetting the commission of an offence under s 57C(1) of the Immigration Act (Cap 133, Rev Ed 2008) (the “Immigration Act”). This was itself an offence under s 57C(1) of the Immigration Act read with s 109 of the Penal Code (Cap 224, Rev Ed 2008) (the “Penal Code”). The appellant was sentenced to ten months’ imprisonment by the learned District Judge (the “DJ”), whose grounds of decision are set out in *Public Prosecutor v Kok Chiang Loong* [2024] SGDC 259 (“GD”).

2 The appellant initially appealed both against his conviction and his sentence. However, he did not pursue the appeal against his sentence in his written submissions and eventually sought leave before me for its withdrawal. I

allowed the withdrawal of the appellant's appeal against his sentence and dismissed the appeal against his conviction on 14 February 2025, giving brief oral remarks. I now furnish the full grounds of my decision.

The proceedings below

3 The detailed background facts may be found in the GD. I first set out s 57C of the Immigration Act for ease of reference before providing a brief account of the proceedings below:

Marriage of convenience

57C.—(1) Any person who contracts or otherwise enters into a marriage —

(a) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and

(b) where any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

(2) Any person who arranges or otherwise assists in arranging a marriage between 2 other persons, with the intention of assisting one of the parties to the marriage to obtain an immigration advantage, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

(3) This section shall apply to a marriage entered into whether in Singapore or outside Singapore.

(4) In any proceedings for an offence under subsection (1) or (2), it shall be a defence for the person charged with the offence to prove that, although one purpose of the marriage was to assist a party to the marriage to obtain an immigration advantage, the defendant believed on reasonable grounds that the marriage would result in a genuine marital relationship.

(5) For the purposes of subsection (4), what constitutes a genuine marital relationship is a question of fact and the court

shall have regard to all the circumstances of the case in determining the question.

(6) In this section —

‘gratification’ includes —

(a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; and

(d) any other service, favour or advantage of any description whatsoever;

‘immigration advantage’, in relation to a party to a marriage, means the grant or extension of the validity of any visa, pass, permit or re-entry permit under this Act or the regulations or any order made thereunder for that party or for a child or parent of that party.

In what follows, I refer to a marriage within the meaning of s 57C(1) as a “marriage of convenience”.

4 The appellant was charged under s 57C(1) of the Immigration Act read with s 109 of the Penal Code with abetting by instigating one Goh Khoon Beng (“Goh”), a male Singapore citizen, to enter into a marriage of convenience with one Akhalkatsi Maia (“Maia”), a female Georgia national, by instructing Goh to do so. It was alleged that, in consequence of the appellant’s abetment, Goh had married Maia on 2 February 2016 to assist her to obtain an immigration advantage in the form of a Visit Pass. In turn, Maia had given gratification to Goh in the form of free lodging as a reward for entering into the marriage. The appellant claimed trial to the charge.

5 Goh and Maia were each also charged with an offence under s 57C(1) of the Immigration Act for entering into a marriage of convenience with each other. Both claimed trial and were jointly tried with the appellant in the District Court. However, midway during the trial, Maia elected to plead guilty and was sentenced to six months' imprisonment. Further, Goh's counsel subsequently discharged themselves while the trial was still underway. Goh represented himself from that point onwards but, in the DJ's words, despite "formally continuing to claim trial, ... effectively ceased to actively contest the prosecution's case": GD at [8]. These, among various other developments during the course of the proceedings below, contributed to a protracted trial that spanned over five years.

6 It was undisputed during the proceedings below that Goh and Maia had married each other on 2 February 2016, solemnising the marriage at the appellant's grandmother's residence. Goh was then working at a Vietnamese restaurant which was run by the appellant. After the marriage, Goh and Maia resided at a condominium unit rented by Maia.¹ Further, between 4 February 2016 and 11 October 2016, Maia submitted a total of 18 applications for a Visit Pass under Goh's sponsorship, all of which were approved.²

The DJ's decision

7 At the conclusion of the trial, the DJ convicted the appellant and Goh of their respective offences. Beginning with Goh, the DJ was satisfied that all three elements of the offence under s 57C(1) of the Immigration Act had been proven against him:

¹ Statement of Agreed Facts ("SOAF") at para 6 (Record of Proceedings ("ROP") at pp 8–9).

² SOAF at para 7 (ROP at p 9).

(a) First, there was no dispute that Goh and Maia had married each other on 2 February 2016: GD at [123].

(b) Second, Goh had reason to believe that the purpose of the marriage was to assist Maia to obtain an immigration advantage. Goh and Maia had both admitted, especially in their investigative statements, that the marriage was not a genuine one. It was instead transacted for the purpose of providing Maia with an immigration advantage and Goh with free lodging. Goh honoured this understanding after the marriage by sponsoring each of Maia’s applications for a Visit Pass: GD at [123].

(c) Third, Goh had received gratification from Maia as a reward for entering into the marriage. Maia not only provided him with shelter but subsequently also rented an adjacent room for him at the expense of \$800 to \$1,000 a month. This was significant because Goh previously had no place at which to stay: GD at [124].

8 The DJ was also satisfied that the appellant had abetted Goh by instigating him to commit the offence. The DJ accepted Goh’s and Maia’s evidence that the appellant was the “progenitor” of the proposed marriage. He introduced Maia to Goh and arranged the marriage without Goh’s consent. When Goh expressed unhappiness at this proposal, citing his ongoing romantic involvement with a Vietnamese girlfriend, the appellant applied “a high degree of pressure to overcome [Goh’s] initial reluctance”. The appellant did so by promising Goh that, unlike his Vietnamese girlfriend who was unable to provide for him from overseas, Maia would provide shelter to him and take care of his well-being: GD at [127]–[130]. Similarly, the appellant persuaded Maia to marry Goh despite her initial opposition. He said that he could arrange to improve Goh’s appearance and later left Goh at Maia’s residence without her

consent. Maia was finally persuaded when informed by the appellant that marrying Goh was the only way to extend her stay in Singapore: GD at [134].

9 The DJ also considered whether the appellant had made out the statutory defence under s 57C(4) of the Immigration Act. In his view, however, the appellant could not be said to have believed on reasonable grounds that the marriage between Goh and Maia would result in a genuine marital relationship. The DJ found it particularly significant that the appellant had prepared a draft Statement of Particulars for divorce proceedings between Goh and Maia, but was unable to satisfactorily explain why he had done so: GD at [135].

10 The DJ sentenced the appellant to ten months' imprisonment and Goh to six months and three weeks' imprisonment, accounting in Goh's case for time earlier spent in remand. In distinguishing between their respective levels of culpability, the DJ observed, among other things, that the appellant was the "prime mover and instigator" [emphasis in original omitted] of the marriage while Goh's role was relatively passive: GD at [148] and [158]. Unlike the appellant, Goh also did not seriously contest the charge against him: GD at [157]. Moreover, the appellant had previously been convicted of a related offence under s 57(1)(k) of the Immigration Act. In fact, he had committed the present offence while his appeal in relation to the earlier offence was still pending. This justified a measure of specific deterrence against him: GD at [165]–[167].

The parties' cases

11 On appeal, the appellant did not appear to deny having instigated Goh to marry Maia. He instead challenged his conviction on the following two grounds:

(a) First, the appellant submitted that the charge against him contained a prejudicial “statutory defect”.³ This was because it failed to allege that he had instigated *both* Goh and Maia to enter into the marriage of convenience. In addition, it should have been framed instead under s 57C(2) of the Immigration Act.

(b) Second, the appellant submitted that the DJ was wrong to find that the marriage between Goh and Maia was a marriage of convenience. He argued, citing apparent acts of intimacy between Goh and Maia, that the marriage was in fact a genuine one.⁴

12 The Prosecution submitted for the following reasons that the appellant’s conviction should be upheld:

(a) First, the Prosecution denied that the charge was legally defective. In its submission, the charge was permissibly framed under s 57C(1) of the Immigration Act read with s 109 of the Penal Code.

(b) Second, the Prosecution submitted that the DJ was correct to find that the marriage was a marriage of convenience. This finding was amply supported by Goh and Maia’s own evidence as well as by the documentary evidence.⁵ Moreover, Goh and Maia themselves did not regard the apparent acts of intimacy cited by the appellant as indicia of a genuine marriage.⁶

³ Appellant’s Written Submissions dated 11 February 2025 (“AWS”) at paras 5–12.

⁴ AWS at paras 17–26, 34–36, 39, 41 and 50–52.

⁵ Prosecution’s Written Submissions dated 4 February 2025 (“PWS”) at paras 27–35.

⁶ PWS at paras 49–58.

Issues to be determined

13 The following two issues, corresponding to the appellant’s two main arguments on appeal, thus arose for my determination. The first issue was whether the charge was legally defective. The second issue was whether the DJ was wrong to find that the marriage between Goh and Maia was a marriage of convenience.

Whether the charge was legally defective

14 I first considered the appellant’s complaint that the charge was legally defective. This submission had not been made during the proceedings below but was advanced for the first time in the appellant’s written submissions on appeal. Further, as I observed during the hearing to counsel for the appellant, Mr Rajwin Singh Sandhu (“Mr Singh”), it was not specifically raised in the appellant’s petition of appeal as required by s 378(2) of the Criminal Procedure Code 2010 (2020 Rev Ed), which states that the petition of appeal “must contain sufficient particulars of any points of law ... in respect of which the appellant claims the trial court was in error”. Mr Singh candidly admitted that the submission had been raised “on hindsight”. Notwithstanding this procedural default, as the Prosecution was prepared to respond orally, I proceeded to consider the appellant’s submission on the merits.

15 The appellant’s submission appeared to be founded upon two distinct lines of argument, which I considered in turn. First, the charge only alleged that he had instigated Goh, rather than both Goh and Maia, to enter into the marriage of convenience. The appellant suggested that this “may be a statutory defect in the charge”, casting doubt on its “legal and factual plausibility”, because

“[m]arriage inherently requires bilateral meeting of the minds and participation of both parties”.⁷

16 This argument was entirely unmeritorious. The short answer, evident from its plain language, was that the primary offence under s 57C(1) of the Immigration Act could be committed by “[a]ny person” who enters into a marriage of convenience. Indeed, Goh and Maia had each committed a primary offence under s 57C(1) in their own right. Accordingly, for secondary liability to arise, it was sufficient that the offender had abetted either party to enter into the marriage of convenience. It was certainly not necessary for the secondary offender to have abetted both parties to do so.

17 Second, the appellant also objected to the charge having been framed under s 57C(1) of the Immigration Act read with s 109 of the Penal Code. This, he claimed, was legally impermissible because s 57C(2) of the Immigration Act already establishes a discrete offence of arranging or otherwise assisting in arranging a marriage of convenience. The charge should therefore have been framed under s 57C(2) of the Immigration Act.⁸

18 This argument was equally unsustainable. In the first place, the offence of arranging or otherwise assisting in arranging a marriage of convenience (under s 57C(2) of the Immigration Act) is clearly not identical in scope to the offence of abetting by instigation a party to enter into a marriage of convenience (under s 57C(1) of the Immigration Act read with s 109 of the Penal Code). The latter offence can be committed by the provision of “active suggestion, support, stimulation or encouragement” (see *Mohamed Affandi bin Rosli v Public*

⁷ AWS at para 5.

⁸ AWS at para 10.

Prosecutor and another appeal [2019] 1 SLR 440 (“*Affandi*”) at [60]) to a party to enter into a marriage of convenience. There is simply no necessity for the offender to arrange or otherwise assist in arranging the marriage of convenience itself. In the present case, based on the findings made by the DJ (see [8] above), the appellant appeared indeed to have arranged the marriage of convenience between Goh and Maia. However, it could not be said that this would invariably be the case for all offenders who instigate a party to enter into a marriage of convenience.

19 In any event, even if there was some overlap between the two offences, the law is clear that the framing of charges is ultimately a matter of prosecutorial discretion: see, eg, *Public Prosecutor v Tan Teck Leong Melvin* [2023] 5 SLR 1666 at [47]. Accordingly, in the present case, the Prosecution was wholly entitled in its discretion to prefer a charge under s 57C(1) of the Immigration Act read with s 109 of the Penal Code. This was so even if the appellant’s conduct had also disclosed an offence under s 57C(2) of the Immigration Act. In *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240, the Court of Appeal implicitly accepted at [123] that the Prosecution has a “discretion in choosing between offences which have different elements and attract different punishments”, including in cases of “*overlapping* offences where the offences in question contain one or more identical *actions* or intentions, but one of the offences requires an additional fact or element to be proved and therefore carries a more severe punishment” [emphasis in original]. This proposition must be equally applicable in cases such as the present, where the different offences are subject to the same prescribed punishment. It was not even open to the appellant to complain that he had been charged with a more serious offence instead of a less serious alternative. If he had been charged under s 57C(2) of the Immigration Act, he would equally have been liable to a fine

not exceeding \$10,000 or to imprisonment for a term not exceeding ten years or to both. This is the same prescribed punishment for an offence under s 57C(1) of the Immigration Act read with s 109 of the Penal Code.

20 The appellant nonetheless claimed that he had been prejudiced by the Prosecution’s framing of the charge. According to him, had the charge been framed under s 57C(2) of the Immigration Act, he would have been entitled to rely on the statutory defence under s 57C(4). It would thus have sufficed for him to prove that “he had reasonable grounds to believe the marriage of Goh and Maia would result in a genuine marriage”.⁹ On this footing, the appellant alleged that the Prosecution deliberately framed the charge under s 57C(1) of the Immigration Act read with s 109 of the Penal Code instead as part of a “tactical strategy to shift the inquiry of the lower Court into the relationship between the [a]ppellant and Goh”.¹⁰

21 I did not accept that the appellant had suffered any prejudice whatsoever from the framing of the charge. During the proceedings below, he was clearly cognisant of the case he had to meet. Moreover, he had expressly sought to rely on the statutory defence under s 57C(4) of the Immigration Act.¹¹ The DJ gave due consideration to this defence and, although he did not agree that it was ultimately made out on the facts (see [9] above), he appeared to accept that it was available in principle to the appellant. The appellant’s claim that he had been disentitled from relying on the statutory defence was therefore plainly erroneous.

⁹ AWS at paras 6 and 8–9.

¹⁰ AWS at para 6.

¹¹ Defence Closing Submissions dated 18 October 2023 at paras 4 and 11 (ROP at pp 3429 and 3431).

22 I should add parenthetically that the DJ may not, with respect, have been entirely correct to regard the statutory defence as available in principle to the appellant. On its face, s 57C(4) only applies “[i]n any proceedings for an offence under subsection (1) or (2)” and, as the Prosecution observes, neither Goh nor Maia had sought themselves to rely on s 57C(4).¹² However, this was ultimately immaterial. The requisite *mens rea* for abetment by instigation is the “knowledge of all essential matters constituting the primary offence” (see *Public Prosecutor v Andi Ashwar bin Salihin and others* [2019] SGHC 44 at [80]) or “the intention for the primary offender to carry out the conduct abetted” (see *Affandi* at [60]). Accordingly, had the appellant successfully demonstrated a reasonable belief on his part that the marriage would result in a genuine marital relationship, the charge would not even have been made out for lack of the required *mens rea*. It would not have been necessary for the appellant to rely on the statutory defence, the availability of which would have been entirely beside the point.

23 In *Phang Wah and others v Public Prosecutor* [2012] 1 SLR 646 (“*Phang Wah*”), the High Court commented at [58] that it was unnecessary for the Prosecution to have framed the charges under s 477A read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) because “s 477A already makes reference to the offence of abetting the falsification of accounts”. The appellant cited this remark in support of his position that it was legally impermissible to frame the charge under s 57C(1) of the Immigration Act read with s 109 of the Penal Code.¹³ However, the appellant’s reliance on *Phang Wah* was entirely misconceived. In the first place, s 477A of the Penal Code (Cap 224, 1985 Rev Ed) expressly includes the offence of abetting the falsification of accounts.

¹² PWS at para 47.

¹³ AWS at para 8.

Conversely, s 57C(2) of the Immigration Act is not concerned with the abetting of an offence under s 57C(1) but with the arranging or assisting in arranging of a marriage of convenience. As I have explained earlier, at least as far as abetment by instigation is concerned, the two concepts are not identical in scope (see [18] above). In any event, notwithstanding this remark, the High Court in *Phang Wah* went on to state at [58] that “the addition of s 109 in the s 477A charges does not change the meaning of the charges in any case and no injustice of any sort has been occasioned”. In view of my earlier conclusion that the appellant had not suffered any prejudice on account of the framing of the charge (see [21] above), *Phang Wah* was of no assistance whatsoever to him. Contrary to his submission, that case certainly did not stand for the proposition that “[t]he Court may remove s 109 [of the Penal Code] if its presence in a charge is not necessary”.¹⁴

24 For the reasons above, I rejected the appellant’s submission that the charge was legally defective. In my view, the charge was properly framed and not defective in any way. There was no need for an allegation that the appellant had abetted both Goh and Maia to enter into the marriage of convenience. The Prosecution was also entitled in its discretion to frame the charge under s 57C(1) of the Immigration Act read with s 109 of the Penal Code. In any event, the framing of the charge had caused no prejudice to the appellant.

Whether the DJ was wrong to find that the marriage was a marriage of convenience

25 I next considered the appellant’s challenge to the DJ’s finding of fact that the marriage between Goh and Maia was a marriage of convenience. The appellant began by advancing the legal argument that “[t]he law desists from

¹⁴ AWS at para 8.

identifying what are the proper motives of marriage”.¹⁵ He then submitted that the DJ had fallen afoul of this admonition by examining Goh and Maia’s motives for entering into the marriage.¹⁶ According to him, the DJ should instead have adopted an “objective approach”.¹⁷

26 I rejected this argument. Section 57C of the Immigration Act clearly enjoins the court to consider the parties’ motives in entering into the marriage. It would not otherwise be possible to determine whether a party knew or had reason to believe that the purpose of the marriage was to assist one of the parties to the marriage to obtain an immigration advantage (s 57C(1)(a) of the Immigration Act) or whether, notwithstanding this, the party believed on reasonable grounds that the marriage would result in a genuine marital relationship (s 57C(4) of the Immigration Act). Before me, Mr Singh ultimately conceded that the parties’ motives were “not irrelevant” in the context of an offence under s 57C(1) of the Immigration Act.

27 Further, none of the authorities cited by the appellant stood in support of the proposition that it is impermissible, in the context of s 57C of the Immigration Act, to consider the parties’ motives in entering into the marriage. The appellant relied on *Tan Ah Thee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957, *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 and *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737. But all three cases were decided before the introduction of s 57C of the Immigration Act by way of the Immigration (Amendment) Bill on 13 August 2012 and could not have been

¹⁵ AWS at paras 2, 27–30 and 37–38.

¹⁶ AWS at paras 31–32 and 34.

¹⁷ AWS at paras 15 and 33–34.

commenting on that provision. These cases were concerned instead with the validity of a marriage under the civil law, which is a wholly different question from whether the entering into of a marriage may attract criminal liability. In any event, I add that a marriage of convenience would now indeed be void under s 11A of the Women's Charter 1961 (2020 Rev Ed).

28 For these reasons, contrary to the appellant's submission, the DJ was entitled and, indeed, obliged to consider Goh and Maia's motives in entering into the marriage. In undertaking this exercise, the DJ regarded Goh and Maia as sufficiently reliable and credible witnesses whose evidence showed that the marriage was a marriage of convenience. In my view, the DJ's findings in this regard could not be said to have been plainly wrong.

29 Beginning with Goh, his evidence was that he was initially very unhappy and angry with the appellant for arranging the marriage without his approval.¹⁸ He informed the appellant that he did not want to go through with the marriage because he already had a Vietnamese girlfriend.¹⁹ Although Goh eventually agreed to marry Maia, this was "just to have a shelter"²⁰ because he was homeless, "low in finances" and had "[n]o other alternate option".²¹ Goh's relationship with Maia after the marriage was akin to that between siblings and he regarded her only as a sister.²² Ultimately, Goh was unequivocal in saying that, "to me, it's a sham marriage".²³

¹⁸ Notes of Evidence ("NEs") (17 September 2021) at p 6 ln 17 to p 8 ln 17 and p 24 lns 21–24 (ROP at pp 1701–1703 and 1719).

¹⁹ NEs (17 September 2021) at p 9 lns 27–28 (ROP at p 1704).

²⁰ NEs (17 September 2021) at p 59 lns 3–4 (ROP at p 1754).

²¹ NEs (2 August 2022) at p 65 lns 23–28 (ROP at p 1929).

²² NEs (17 September 2021) at p 49 lns 2–21 (ROP at p 1744).

²³ NEs (17 September 2021) at p 35 ln 21 (ROP at p 1730).

30 The appellant submitted for the following reasons that the DJ was wrong to accept Goh’s evidence. I did not agree:

(a) The appellant first claimed that Goh’s participation in the trial was motivated by a desire to “sabotage” or “bring ... down” the appellant, citing a message Goh had sent to a “common friend” saying: “[The appellant] will definitely deny wat [*sic*] he has done but I take my firm stand and if I go down ... he will get it eventually”.²⁴ In a similar vein, the appellant referred to DW7 (Lim Wee Ming)’s testimony to the effect that Goh had told him that he “hated” the appellant and wanted to “drag [him] down”.²⁵ I did not accept the appellant’s submission. In the first place, read fairly, Goh’s message to an unspecified “common friend” only showed his resolve to maintain his account in the face of an expected denial by the appellant. It certainly did not suggest that he was prepared to perjure himself and give false evidence in court to incriminate the appellant. This was indeed the thrust of Goh’s explanation for the message under cross-examination,²⁶ which was not challenged either in cross-examination or in the appellant’s closing submissions below. Notably, the appellant did not even contend in his closing submissions below that Goh was motivated by a desire to falsely implicate him. In any event, the DJ was entitled to regard Goh as a sufficiently credible witness after carefully considering his evidence in its totality, noting in particular the consistency between his testimony and investigative statements: GD at [63]–[78].

²⁴ Petition of Appeal dated 25 October 2024 (“POA”) at para 4; D7 (WhatsApp Conversation between Goh Khoon Beng and unspecified individual on 8 August 2022) (ROP at p 3344).

²⁵ AWS at para 25; NEs (4 April 2023) at p 60 lns 12–32 (ROP at p 2361).

²⁶ NEs (3 August 2022) at p 57 lns 7–24 (ROP at p 1993).

(b) The appellant further attacked Goh’s credibility by observing that he had repeatedly changed his position to the charge against him.²⁷ It was true that, despite his initial election to claim trial,²⁸ he had at various junctures explored the possibility of pleading guilty²⁹ and, following the discharge of his counsel, ceased to offer a substantive defence to the charge. However, the DJ was plainly alive to these changes in Goh’s position: see GD at [8], [59] and [143]. In my judgment, he was entitled nonetheless to accept Goh’s evidence, especially on account of its consistency with his investigative statements.

(c) The appellant finally submitted, citing illustration (b) to s 116 of the Evidence Act 1893 (2020 Rev Ed) (the “EA”), that Goh’s evidence should have been treated with greater circumspection because he was an accomplice of the appellant. I disagreed. Whatever the merits of this argument at a general level, the specific question here was whether the marriage was a marriage of convenience. On that issue, Goh’s evidence was clearly adverse to himself and incriminated him of an offence under s 57C(1) of the Immigration Act. There was therefore no reason to regard Goh’s evidence, at least on this specific issue, with heightened suspicion. In this regard, the law is clear that the presumption in illustration (b) to s 116 of the EA is “not mandatory but permissive or discretionary and depends on all the circumstances”: *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [61].

²⁷ POA at para 3.

²⁸ NEs (16 April 2019) at p 1 lns 28–29 (ROP at p 37).

²⁹ NEs (1 August 2022) at p 17 lns 2–20 (ROP at p 1858).

31 Turning to Maia, her evidence was that she had first sought the appellant's assistance to apply for a Student's Pass in November 2015.³⁰ When this was unsuccessful, she left Singapore on 21 November 2015 as her Visit Pass was about to expire. She contacted him again, saying that she needed to find a job in Singapore but that this was difficult without a visa. In response, the appellant suggested simply getting married instead, adding that she could subsequently obtain a divorce if necessary. He then placed her in contact with Goh.³¹ Thereafter, he undertook arrangements for her to return to Singapore and she did so on 7 January 2016: GD at [21].

32 Maia was at first unwilling to marry Goh. At their first meeting, far from "[feeling] anything toward him", she "found him very unpleasant looking" and was "repelled" by "[t]he way he looked, ... the way he smelled".³² Goh apparently did not shower regularly. Such was the intensity of her opposition that the marriage, which was first scheduled for 23 January 2016, was initially called off.³³ Maia later sought the appellant's assistance again when her Visit Pass was about to expire. The appellant then informed her that the "only way" to extend her stay in Singapore was to marry Goh.³⁴ Maia then relented because, in her words, "I didn't see I had any other option".³⁵ However, she would not have married Goh if she had secured a job allowing her to extend her stay without the need to marry him.³⁶

³⁰ NEs (29 March 2021) at p 17 ln 13 to p 19 ln 21 and p 24 ln 19 to p 25 ln 3 (ROP at pp 1115–1117 and 1122–1123).

³¹ NEs (29 March 2021) at p 25 ln 24 to p 26 ln 18 (ROP at pp 1123–1124).

³² NEs (29 March 2021) at p 32 lns 8–11 (ROP at p 1130).

³³ NEs (29 March 2021) at p 36 lns 5–24 (ROP at p 1134).

³⁴ NEs (29 March 2021) at p 46 lns 20–28 (ROP at p 1144).

³⁵ NEs (29 March 2021) at p 48 lns 10–16 (ROP at p 1146).

³⁶ NEs (29 March 2021) at p 55 lns 5–10 (ROP at p 1153).

33 The appellant sought to place a different construction on Maia's evidence. Citing two extracts of her testimony,³⁷ he submitted that she had in fact affirmed the genuineness of the marriage. I disagreed with the appellant's interpretation of both these extracts:

(a) In the first extract, Maia attested: "I always wanted a real marriage, a real relationship, a real husband, but in the end, I—I did not see him as such."³⁸ This did not assist the appellant. As the Prosecution observed, in context, Maia was merely explaining certain efforts she had made after the marriage, including an attempt at consummation, to improve the state of her relationship with Goh.³⁹ These subsequent efforts did not undermine the conclusion that the marriage was *ab initio* a marriage of convenience. Moreover, Maia had stated that she ultimately did not regard Goh as a "real husband".

(b) In the second extract, Maia attested: "My thinking was, I marry him, if it works out—if it—it works out, if it doesn't work out, at least I would have gotten my visa issue solved, and I would be able to find a job more easily."⁴⁰ Again, this did not assist the appellant. If anything, it showed that Maia's ultimate and real objective in marrying Goh was to solve her "visa issue". This explained why, despite being clearly alive to the possibility that the marriage would not "work out", she was prepared nonetheless to enter into it.

³⁷ AWS at paras 40–41.

³⁸ NEs (29 March 2021) at p 90 lns 16–18 (ROP at p 1188).

³⁹ PWS at para 30(b).

⁴⁰ NEs (29 March 2021) at p 16 lns 1–5 (ROP at p 1190).

34 The appellant then submitted that limited weight should have been given to the statement of facts to which Maia admitted in her plead-guilty proceedings. This was because Maia could have pleaded guilty for reasons of expedience, especially considering that she was pregnant and her mother was unwell. Accordingly, notwithstanding Maia’s admission to it, the truth of the statement of facts could not simply be taken for granted.⁴¹ I did not think it was necessary to disagree with the appellant on this point at all. It suffices to say that the DJ did not uncritically accept the truth of Maia’s statement of facts. Rather, he carefully considered Maia’s evidence in totality, noting that the statement of facts was consistent with the first two statements she had earlier provided to the authorities (GD at [26]–[32] and [37]) as well as her testimony in court: GD at [38]–[57]. It was only against the backdrop of this holistic appraisal of Maia’s evidence that the DJ concluded that Maia was an objective witness: GD at [58]. There was no basis for the appellant’s claim that the DJ had “misapplied the amount of weight to put into Maia’s PG Statement of Facts”.⁴²

35 In the face of Goh’s and Maia’s own admissions that the marriage was not a genuine one, the appellant’s assertions to the contrary could not be seriously maintained. For example, he cited several acts of apparent intimacy between Goh and Maia, placing special emphasis on the undisputed fact that they had attempted to consummate the marriage.⁴³ However, this by itself was neither here nor there. The short answer was that Goh and Maia themselves did not regard these acts of intimacy as indicia of a genuine marriage. Thus, taking their attempt to consummate the marriage as an example, Maia’s evidence was that she nonetheless did not regard Goh as a “real husband” (see [33(a)] above).

⁴¹ AWS at paras 40–47.

⁴² AWS at para 40.

⁴³ POA at paras 5, 12, 13 and 14; AWS at paras 34–36, 50–51 and 53.

Goh similarly stated that he did not ever have sex with Maia because the “relationship between me and Maia ... after the marriage ... is solely siblings relation”.⁴⁴ In any event, as the DJ observed, it was not unnatural for “two people living together for some eight months ... to seek to effect an evolution of their relationship, to improve on the nature and tenor of their cohabitation”. This did not, however, “change the fact of their union bearing clear signs of being *ab initio*, a marriage of convenience”: GD at [132]. As for the other acts relied upon by the appellant, I saw no reason to disagree with the DJ’s assessment that these were “isolated acts of kindness that did little to dispel the impression of the transactional nature of their association” [emphasis in original omitted]: GD at [132].

36 Much the same point could be made about the appellant’s reliance on the evidence of third parties to substantiate his claim that the marriage was a genuine one.⁴⁵ I agreed fully with the DJ that “these were, if at all accurate, merely subjective impressions on the part of these witnesses, which were flatly contradicted by the testimonies of the *actual* protagonists, Mr Goh and Ms Maia” [emphasis in original]: GD at [136]. To illustrate, the appellant cited the testimony of DW3 (Be Thi Mai Chang) to the following effect:⁴⁶

I saw that the two are in love. They might not fall in love passionately from the beginning but after the marriage then they will slowly develop more into it. It’s the same as my parents’ case. They did not fall in love passionately in the beginning.

However, this did not assist the appellant. First, DW3 was obviously in no position to confirm, based solely on her own perception, whether Goh and Maia

⁴⁴ NEs (17 September 2021) at p 48 lns 2–13 (ROP at p 1743).

⁴⁵ AWS at paras 17–26.

⁴⁶ NEs (4 August 2022) at p 110 lns 8–11 (ROP at p 2146).

were truly “in love”. It was implausible for her to assert that they were in love when they had themselves denied the genuineness of the marriage. Second, DW3 had undermined this assertion immediately afterwards by qualifying that Goh and Maia were not passionately in love “from the beginning”. That was again based on her own perception. Third, DW3 had no way of knowing that Goh and Maia would somehow “slowly develop more into it” serendipitously, simply because this had happened in her parents’ case. Moreover, even if this were to happen subsequently, it did not detract from the conclusion that the marriage was *ab initio* a marriage of convenience.

37 For the above reasons, the DJ was entitled to consider Goh and Maia’s motives in entering into the marriage. In doing so, he was also entitled to find, based on their evidence, that the marriage was a marriage of convenience. Moreover, even if the appellant was correct that the DJ should have adopted an objective approach, the DJ had clearly given appropriate regard to the objective factors. These included the acts of apparent intimacy between Goh and Maia. The DJ was entitled, notwithstanding these, to conclude that the marriage was a marriage of convenience.

Conclusion

38 For the above reasons, I concluded that the charge was not legally defective. The DJ was also entitled, in my view, to find that the marriage was a marriage of convenience. The weight of the evidence supported the DJ’s

findings that the elements of the charge were proven beyond a reasonable doubt.
I therefore dismissed the appellant's appeal against his conviction.

See Kee Oon
Judge of the Appellate Division

Rajwin Singh Sandhu (Rajwin & Yong LLP) for the appellant;
Zhou Yihong (Attorney-General's Chambers) for the respondent.