IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 147

MA 195/1996

Between

Public Prosecutor

… *Appellant*

And

Tan Kim Seng Construction Pte Ltd
Another

… *Respondent*

GROUNDS OF DECISION

Criminal Law — Statutory offences; Immigration — Employment — Illegal foreign worker; Criminal Procedure and Sentencing — Statements

Version No 1: 29 Oct 2026 (23:45 hrs)

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Public Prosecutor v Tan Kim Seng Construction Pte Ltd and Another

[1997] SGHC 147

MA 195/1996
Yong Pung How CJ
03 June 1997

1 The respondents were acquitted by the magistrate of charges relating to the employment of illegal foreign workers. The prosecution appealed. After hearing arguments from the prosecution, this court dismissed the appeal. As the issues raised were of some importance, I set out below my reasons for dismissing the appeal.

2 The first charge against the first respondents was as follows:

> *You, Tan Kim Seng Construction Pte Ltd of 163 Ang Mo Kio Ave 4, [num]01-480 S 560163 are charged that you, from on or about mid-October 1994 to mid-December 1994 at Lorong M, Telok Kurau, Singapore, did employ a foreign worker, namely one Lim Kim Teah (MBIC No: 550725-08-5387) when you had not obtained in respect of the said Lim Kim Teah a valid work permit allowing him to work for you, and you have thereby committed an offence under s 5(1) of the Employment of Foreign Workers Act (Cap 91A) punishable under s 5(4) of the same Act.*

3 The second charge was in the same terms, save that it involved another foreign worker, one Lee Wooi Sang. The second respondent, the managing director of the first respondents, was charged as follows:

> *You, Tan Kim Seng, NRIC No SS180509F, of Blk 114 Yishun Ring Road [num]04-579 S 760114, are charged that you on or about 23 September 1994 were a managing director of Tan Kim Seng Construction Pte Ltd of 163 Ang Mo Kio Ave 4 [num]01-480 S 560163 which had from on [sic] or about mid-October 1994 to mid-December 1994 committed an offence of employing a foreign worker, namely one Lim Kim Teah (MBIC No: 550725-08-5387) without having obtained a valid work permit allowing him to work for the said company under s 5(1) of the Employment of Foreign Workers Act (Cap 91A), and the commission of which offence was attributable to your neglect, and you have thereby by virtue of s 5(6), committed an offence under s 5(1) of the Employment of Foreign Workers Act (Cap 91A) punishable under s 5(4) of the same Act.*

4 The facts

5 The two workers, Tan and Lim, gave evidence that they had sought and obtained work from one Ang Lye Thiam (Ang) in October 1994. Ang assigned them to paint at a house at Lorong M Telok Kurau. There, the two worked seven hour days, six days a week until December 1994. They were paid by Ang, whom they considered their `boss`. Ang himself gave evidence that the two were indeed employed by him. However, Ang claimed that he was not an employee of the first respondents, but a sub-contractor. The respondents were not consulted by him on the employment of the workers nor did they pay the workers` salaries.

6 The prosecution sought to impeach Ang`s credit using a statement given by him earlier. The inconsistent portions of that statement disclosed that Ang had employed the workers on behalf of the second respondent, and that the second respondent would apply for work permits for them if he found them suitable. Ang`s explanation for the statement was that it was made in relation to another occasion when the workers had been working at the National University of Singapore. He had also meant to say in the statement that he sought the

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second respondent`s help in trying to obtain permits for the workers as he himself could not do so.

7 The second respondent was the only witness for the defence. He testified that the work at Telok Kurau had been sub-contracted by the main contractor to the first respondents, who in turn sub-contracted it, without any profit, to Ang. The second respondent said that he had no say in the employment of the workers, nor had he met them. A number of vouchers recording payments made to Ang were put in by the defence.

8 **The decision**

9 The magistrate could not accept that all the work had been sub-contracted to Ang, without any profit for the first respondents. The vouchers tendered as evidence of payment to Ang only totalled about $29,000, while the contract value was actually $120,000. There was no reasonable basis for such a transaction. Be that as it may, the untruthfulness of the respondents about this did not show that Ang was their employee or agent. Neither did it show any neglect on the second respondent`s part.

10 Ang was the only available link between the workers and the respondents. The workers themselves considered Ang as their `boss`. Ang`s evidence was not satisfactory, particularly as he seemed unable to answer adequately and was unclear about the relationship between the respondents and him. His credit was impeached but no reliance could be placed on his prior inconsistent statement as the statement was made about a year after the employment, and Ang was shown to be a rather easily confused person: **Foong Seow Ngui & Ors v PP** [1995] 3 SLR 785 [distd] .

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11 No link between the workers and the respondents having been established, the prosecution failed to prove the case beyond a reasonable doubt, and the respondents were thus acquitted.

12 **The petition of appeal**

13 The prosecution contended that the magistrate failed to draw the appropriate inferences from the evidence. He ought to have given sufficient weight to the prior inconsistent statement: **PP v Sng Siew Ngoh** [1996] 1 SLR 143 . Ang`s failure to explain that statement was not caused by any confusion. Rather it was an attempt to prevaricate. Ang`s explanation that it was a reference to work at NUS could not stand: the statement was simple, and was recorded with the assistance of an interpreter. It was noteworthy that mention was made in the statement of the worksite being at Telok Kurau. Although the statement was recorded a year after the period of employment, such employment could not be subject to the vagaries of memory. In any event, both workers also stated that they had worked at Telok Kurau during the material time. And in the end, the magistrate ought to have looked at the evidence as a whole to determine how much weight to attach to the statement: s 147(5) Evidence Act (Cap 97, 1990 Ed) referred to.

14 At the conclusion of the trial, the magistrate had sufficient evidence before him to convict the respondents. It was shown that the respondents were the real employers of the workers. The second respondent`s claim that he had sub-contracted the work to Ang was incredible as it gave no profit. Ang claimed that he had obtained the sub-contract and paid the workers, but there were no written records of these. An employment inspector, one Jason Ang, gave evidence that Ang admitted to him that he had employed the workers on behalf

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of the second respondent. Jason Ang also concluded from the second respondent`s statement that he had employed the workers through Ang. This was not challenged by the respondents. Though payments were supposed to have been received by Ang for the sub-contract, the receipts did not correspond with the amount received. Additionally, these receipts were in-house documents of the first respondent, and were not independent evidence. The second respondent testified in court that he had informed Ang not to hire illegal foreign workers as the project belonged to the second respondent. He also admitted that he told the investigating officer that Ang and he were partners.

15 The magistrate ought not to have found as he did that the statement did not record what Ang actually said. Ang himself did not disclaim the statement, and the investigating officer`s testimony as to what Ang had told him was not challenged. The statement itself was simple and nothing showed that Ang did not understand its contents, particularly as the statement had been recorded through an interpreter.

16 **The appeal**

17 The commission of the alleged offence occurred from October to December 1994. The relevant edition of the Act was that of 1991; subsequent amendments introduced in 1995 and that came into force in 1996 did not apply. Section 5 of the 1991 Act reads:

> (1) No person shall employ a foreign worker unless he has obtained in respect of the foreign worker a valid work permit which allows the foreign worker to work for him.
>
> …

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> (4) Any person who fails to comply with or contravenes subsection (1) shall be guilty of an offence and shall -
>
> (a) be liable on conviction to a fine of an amount of not less than 24 months` levy and not more than 48 months` levy or to imprisonment for a term not exceeding one year or to both;
>
> …
>
> (5) For the purpose of subsection (4) -
>
> (a) `levy` means the monthly rate of levy applicable to the foreign worker at the date when he was found to be working without a valid work permit, and a certificate issued by the Controller and tendered in court shall be prima facie evidence of such rate;
>
> …
>
> (6) When any offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18 In order to succeed against the first respondent, the company, the prosecution needed to show that the elements of the offence were made out, namely (i) employment of a worker, and (ii) the absence of a valid work permit. There was no dispute that no permits were issued for either of the two workers in question here. As for the second respondent, the prosecution had to establish (i) that the company committed the offence, (ii) he was a director of the company at that time and (iii) the employment occurred as a result of his neglect.

19 **Employment**

20 Section 6 provides for a presumption of employment:

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> *A person found working in any premises or found in possession of any tool or implement or engaged in any activity which may give rise to the inference that he is doing any work shall be presumed, until the contrary is proved, to have been employed by the occupier of the premises.*

21 However, on the facts of this case, there was no evidence that the workers were found working in the premises, with any tools or engaged in anything which would have led to the inference that the workers were doing any work. Indeed, the evidence seemed to be that the investigations arose some time later since the Employment Inspector, Jason Ang, testified that the investigations conducted arose out of a referral by the police.

22 Since no presumption operated, the prosecution had to prove employment by the respondents beyond a reasonable doubt. There is no definition of employment in the 1991 Act. Some guidance may however be derived from the consideration of the concept in the context of the Immigration Act (Cap 133), which was discussed in **Lee Boon Leng Joseph v PP** [1997] 1 SLR 445 , a decision of this court. The version of the Immigration Act under consideration there provides a definition of the term `employ`:

> *... to engage or use the service of any person and to pay such person for services rendered or work done or to remunerate such person on a piece rate or on a commission basis.*

23 The court then said:

> *In **PP v Heng Siak Kwang** [1996] 2 SLR 274 , I had occasion to consider this definition. In the course of that judgment, I said at p 280:*
>
> *`The manner of remuneration and control over the workers would often be of great significance. If an employer merely paid the foreman a lump sum for the workers, and left it to him to decide how much to pay the workers and how many workers to employ, it is a strong indication that the foreman was a sub-contractor if the foreman was permitted to keep the excess. This suggests that*

> *it was the foreman who employed the workers. If the employer decided how much to pay each worker and merely used the foreman as a conduit, then it might well be the case that the foreman was not a sub-contractor even if he might have physically recruited the workers ... What was, however, reasonably clear in the present case, was that in order for the respondent to be said to have employed the workers, there must be a contract of some sort between him and the workers.`*
>
> *The manner of remuneration and the degree of control of the workers are therefore two significant considerations in determining the existence of an employment relationship for the purposes of the Act. This is so even in the case of the amended legislation which came into effect on 1 March 1996 (see* ***Ramli Bin Daud v PP*** *[1996] 3 SLR 225) although the amended legislation dispenses with what seems to be a strict requirement of remuneration under the old definition. It is further important to recognise that the inquiry is always one into the substance of the relationship and not its form (see* ***PP v Baby Yap*** *[1993] 3 SLR 633).*

24 While that was in the context specifically of a statutory definition of the term referring clearly to engagement and remuneration as relevant factors, the approach may provide some guidance generally. It is noted as well that the amended Immigration Act definition was also incorporated into the Employment of Foreign Workers Act in 1996, but this cannot control the meaning of the term as used in the Act before 1996.

25 The approach taken in ***Lee Boon Leng Joseph*** examines factors similar to those considered in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497 where it was held that in determining whether a person is an independent contractor or an employee, regard should be had to the control over the worker, the distribution of risk of loss, the provision of equipment and the method of payment. The approach there referred explicitly to more factors than the Immigration Act requires. In the view of this court, as presently advised, the Immigration Act mandates that greater

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consideration be given to the notions of control and remuneration than the other criteria listed in ***Ready Mixed Concrete*** .

26 Bearing in mind the obvious purpose of the Employment of Foreign Workers Act, which is the regulation of foreigners working in Singapore, the offence creating section is clearly targetted at those having a direct say in whether such foreigners are able to work here; in that respect, both control and remuneration would be the most crucial factors indicating employment. Such control has to be real and substantial. It will not be absent simply because a layer of contracts or corporations is interposed between the putative employer and employee. But neither will it be present simply because the putative employer happens to have some say in the affairs of an intermediary, for example, if that intermediary is a subsidiary. The prosecution has to establish that real and substantial control beyond a reasonable doubt. As advised at present, this approach applies equally in the wake of the 1996 amendments to the Act in cases where the presumption introduced then is not operative.

27 The prosecution`s case here was that Ang was an employee or an agent of the respondents. The reasoning was that, if he were either, his retention of the workers would also make these workers employees of the respondent. But this did not necessarily follow. The hidden assumption in this reasoning was that Ang acted within the scope of his employment or agency. The prosecution had to prove that beyond a reasonable doubt as well. As it was, because of the findings made, the primary consideration here was the question of Ang`s employment.

28 **The evidence of employment**

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29 Ang`s testimony

30 Ang`s own evidence was unclear about his relationship with the respondents. Ang at various points referred to the second respondent as both his `boss` as well as his partner. It seemed that in some situations he would be a sub-contractor of the work, and in others he would be brought in to assist the second respondent`s work. However, in his testimony, Ang was adamant that he was not employed by the second respondent:

> Q: [The second respondent] is your `boss`, what do you mean by that?
>
> A: He is the one who `sub`s` the project ... and I `sub` it from him.

31 And he disclosed that he had sub-contracted the Lorong M work:

> A: Lorong M is not a big project and I sub it from him.

32 Ang further indicated that he paid the workers himself out of the money he obtained from the sub-contract:

> Q: You get the money as sub-contractor and pay the workers salary?
>
> A: Yes.

33 In these circumstances, it did not seem material that at other times he referred to the money received from the second respondent as a salary.

34 The thrust of Ang`s testimony was that there was some form of informal arrangement between Ang and the second respondent; in some situations he

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would work alongside the respondents, and in others, he and his workers would work alone. In either situation, legally speaking there would be a sub-contract of some sort, but Ang restricted the use of that term to the latter.

35 Ang`s testimony did not support the prosecution`s case. It did not indicate any control by the second respondent over either Ang or the workers. For that reason, the prosecution sought to rely on the inconsistent statement made by Ang. The only sufficient evidence to support the contention that he was employed by the respondents was contained in the prior inconsistent statement.

36 **The prior inconsistent statement**

37 The introduction of the prior inconsistent statement

38 This was a statement recorded in October 1995, about a year after the material time. The magistrate found that the statement was only inconsistent in parts and only allowed those parts into evidence. The statement, in so far as it was possibly inconsistent with Ang`s testimony in court, was as follows:

> 1 I want to amend para 1 of my previous statement on 2 October 1995 because I remember the facts wrongly. I did not recruit `Wei Seng` to work at the construction site at Tampines but I had employed him to work another construction site at Lorong M. Besides recruiting `Wei Seng`, I also recruited `Ah Bee` to work at the construction site at Lorong M somewhere in mid-October 1994. The construction site is located at Telok Kurau and is used for the construction of one block of four-storey private housing.
>
> …
>
> 3 At the construction site at Lorong M, my employer, `Jin Chen` [the second respondent] had subcontracted painting works at the said site from Sum Keong Construction Pte Ltd. My

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> employer, `Jin Chen` had a written contract with Sum Keong Construction Pte Ltd. For the subcontract painting works at the construction site at Lorong M, `Jin Chen` did not further subcontract the painting works to any other company or to any other person(s). The entire contract for the painting works at the Lorong M construction site is handled by Tan Kim Seng Pte Ltd ...
>
> ...
>
> 5 After `Wei Seng` and `Ah Bee` had started working for two to three days, I told my employer, `Jin Chen`, that there were two Malaysians that wanted to work at the Lorong M site. `Jin Chen` told me to let them work first and if they are found suitable for the job, he would try to apply work permit for them.
>
> ... ...
>
> 11 My employer, `Jin Chen`, gave me the authority to employ Singaporean and Malaysian workers. However, if I recruit Malaysian workers, I have to inform `Jin Chen` within a few days of their recruitment. `Jin Chen` would then make the final decision as to whether to employ them further. I do not need to inform `Jin Chen` whenever I recruit Singaporean workers.
>
> 12 I admit recruiting `Wei Seng` and `Ah Bee` on the behalf of my employer, `Jin Chen` to work as painter at the construction site at Lorong M without any valid work permits. Both `Jin Chen` and myself were aware that `Wei Seng` and `Ah Bee` were Malaysians when they were employed to work as painters at the construction site at Lorong M.

39 The prosecution`s contention was in essence that [para ] 3, 5, 11 and 12 were materially contradictory in that they might indicate, through the reference to the second respondent as Ang`s employer, a relationship between Ang and him, and thus between him and the workers. The magistrate however, thought that only [para] 5 and 12 contained material contradictions. This court accepted that these paragraphs were contradictory, but so was [para] 11. The magistrate thought it was not because no evidence of authority had been given by Ang. Though that was true, Ang`s testimony was that there was no relationship of employment, and that no consultation was made about the employment of the workers. Paragraph 11 stated that Ang was so employed, and that authority was

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conferred through that employment. There were thus two conflicting versions of events. They could not exist alongside each other. Hence they were contradictory. But as found by the magistrate, [para] 3 was not contradictory as it dealt only with the relationship between the second respondent and the main contractor.

40 By virtue of s 157, Evidence Act (Cap 97, 1990 Ed), Ang`s credit could be impeached by the prosecution using the prior inconsistent statement, provided there was consent of the court. Such impeachment would require that the contradictions materially affected the witness` credibility. It did not necessarily however mean that the whole of the witness` evidence was rejected: **Garmaz s/o Pakhar & Anor v PP** [1995] 3 SLR 701 . Here the contradictions concerned the precise nature of the relationship between Ang and the second respondent. It hinged on the use of the term `employ` by Ang in his statement. However, no explanation was given by Ang which indicated that the term was used in any other sense. Ang also explained that he had made the statement in respect of another period of employment, but, given the specificity of the reference to Telok Kurau, this could not be true. In view of all of this, the contradictions were material and affected Ang`s credibility as a witness.

41 In addition to the impeachment of Ang`s credit, the prosecution sought to use the prior statement for the truth of the facts stated. The use of prior inconsistent statements for the truth of the facts stated was approved by this court in **PP v Sng Siew Ngoh** [1996] 1 SLR 143 . The statutory basis for it is s 147 of the Evidence Act, which reads:

> (1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is

> cross-examined, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
>
> …
>
> (3) Where in any proceedings a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of this section, that statement shall by virtue of this subsection be admissible of any fact stated therein of which direct oral evidence would be admissible.
>
> (4) Where a person called as a witness in any proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in those proceedings; and where a document or any part of a document is received in evidence by virtue of this subsection, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.
>
> (5) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.
>
> (6) Notwithstanding any other written law or rule of practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement which is admissible in evidence by virtue of this section shall not be capable of corroborating evidence given by the maker of the statement.

42 Ang accepted that he made the statement.

43 That statement could be used for the truth of the facts stated in regard to: (i). Ang`s labelling of the relationship; and

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44 (ii). The control exerted over Ang.

45 However, (i) was not relevant. Though Ang used the term `employer` in his statement, and the indications were that Ang knew of the implications of the term, all that such use went to show was that Ang labelled the relationship between him and the second respondent as employment. This was not enough. The prosecution had to prove beyond a reasonable doubt that in substance the relationship was indeed one of employment.

46 The statement was only useful then as evidence of control by the second respondent. In weighing the evidence, consideration was given to s 147(5) as noted by this court in ***PP v Sng Siew Ngoh*** , at p 157:

> *The dangers of falsification and inaccuracy, to which all out of court, evidence is prone, are recognised and highlighted. So long as these are borne in mind, there is nothing inherently wrong in admitting inconsistent statements for the truth of the facts stated contained in them.*

47 Factors to be considered

48 The contemporaneity of a statement with an incident is important for it guards against inaccuracy. However, the degree of contemporaneity that is required will vary with the facts in question. The recollection of the details of particular events, particularly where these occur quickly, is easily susceptible to error with time. However, the recollection of the existence of a relationship, such as of employment, is not so malleable.

49 Subsection (5) refers as well to the possibility of misrepresentation by the maker of the statement. There can be little guidance on this; the court must be astute in weeding out such instances.

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50 In addition to the above matters, which are explicitly referred to, the weight to be accorded to a prior inconsistent statement will be affected materially by an explanation of the inconsistency, and why that statement is an inaccurate representation of the facts.

51 Regard should be had to the context of the statement. Subsection (5) does not restrict consideration to only the making of the statement, but requires consideration of all the circumstances affecting its accuracy. Thus, the court must consider the context of the inconsistent portions, which requires that the whole of the statement be examined. Reliance cannot be placed on a portion of a statement that is taken out of context. In practice, it is necessary for the defence to be given a copy of the whole statement, so that counsel may assist the court in putting the portion used in context.

52 Finally, the cogency and coherence of the facts to be relied upon has to be noted. An ambivalent statement does not attract much weight.

53 The weight that should be accorded

54 In this appeal consideration had to be had of all the factors above as they applied generally as well as specifically to certain paragraphs. Taking all the inconsistent portions together first, it was noted that the magistrate found that the circumstances warranted that little weight should be attached to the statement as it was made about a year after the incident in question, and was not contemporaneous with the occurrence of the events. However, whether Ang was an employee of the respondents was a fact which could not have been affected by difficulties in recollection. It followed that the passage of a year after the relationship ended before the making of the statement could not have affected

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its accuracy. And no allegation of misrepresentation was raised by Ang, nor was there any evidence of it.

55 Ang offered an explanation that the statement was made in respect of another occasion. Since this reference raised issues of similar fact evidence if it was true, the admission of the statement would have had to be measured against the likelihood of prejudice against the accused persons. The initial consideration though had to be whether the statement was in fact in relation to the events which were the subject matter of the charge. The statement contained several references to the site being at Lorong M, and to the period being October to December 1994. In view of this, Ang`s explanation could not be accepted. Ang attempted a further explanation, saying that all that he had meant to say in the statement was that he had requested the second respondent to get work permits for the workers as he himself could not do so. But this went against the literal meaning of the statement that he gave, particularly in [para] 12.

56 Turning then to specific paragraphs, in [para] 5 of the statement, Ang stated that he informed the second respondent that he had two workers. Allegedly, the second respondent instructed that they were to be tried out first, and that he would seek permits for them if found suitable. This could have indicated that the second respondent had some control over the employment of the workers. However, it could not go so far, for it could have equally indicated only that the second respondent would have been willing to apply for permits on Ang`s behalf. That this may be an offence was irrelevant in this appeal.

57 As for [para] 11, that disclosed that Ang had authority from the second respondent to recruit workers. If true, this showed that the second respondent, and hence the first respondents as well, exerted some control over the activities

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of Ang. However, the weight to be placed on this part was very much reduced by the context from which it was taken. The evidence in the rest of the statement indicated that Ang was the one who paid the workers and supervised them. There was no indication in the statement that Ang`s supervision was under the control of the respondents. Thus any authority Ang had to recruit was largely negatived by the absence of any evidence that Ang`s supervision of the workers was ultimately subject to the respondents` control.

58 In view of the circumstances affecting the statement as noted above, the weight to be accorded to the inconsistent parts concerning the control exerted over Ang by the second respondent was minimal. It was noted that the prosecution submitted in court that the magistrate had wrongly considered that the statement did not record what Ang said because Ang was in his view an easily confused person. In view of the findings above, this was immaterial.

59 **Other evidence**

60 Ang`s credit being impeached, the other direct evidence in the case came only from the workers and the second respondent. The workers however showed no knowledge of the second respondent, and indicated that all of their activities were controlled by Ang, and that it was Ang who paid them their wages.

61 Evidence was given by the second respondent that he had sub-contracted the project to Ang without providing for any profit for his company. That was odd, and it raised the likelihood that the second respondent was being less than honest about his relationship with Ang, and how their transactions were arranged. However, even if the second respondent had lied about this, the lie did not by itself show that the second respondent had employed either Ang or the

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workers. A lie may amount to corroboration of contrary evidence: **R v Lucas** [1981] QB 720 . It must be shown that the lie is deliberate, that it relates to a material issue, and that it is made out of a realisation of guilt. However, the lie here, if it was one, was about the precise amount paid out to Ang. That by itself would not indicate the nature of the relationship between the second respondent and Ang, which was the material issue. Something more was required.

62 The prosecution relied on the evidence of Jason Ang, the employment inspector. That witness had testified in cross-examination as follows:

> Q: How did you find out who`s the employer?
>
> A: In the statement of the two workers, they claimed to be recruited by Ang Lye Thiam. Ang claimed that he had done so on behalf of the defendant [the second respondent]. He said that whenever he recruit Malaysian worker he needs to consult his boss Mr Tan Kim Seng and he said that he told Tan Kim Seng about the recruitment of the two workers. Mr Tan admits employing the two workers in his statement.
>
> Q: What else?
>
> A: I took a statement from Mr Tan himself to ascertain the facts.
>
> Q: Did you call Tan again for a statement?
>
> A: Yes I did.
>
> Q: What did you find out?
>
> A: I concluded from the statement that Mr Tan had employed the worker through Mr Ang Lye Thiam.

63 Anything said by Ang to Jason Ang was hearsay, and inadmissible for the truth of the facts stated. Similarly as regards anything said by the second respondent to Jason Ang. If there was a confession by the second respondent, that should have been sought to be admitted in the normal way. As noted by the

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magistrate, there was no attempt to admit it and the prosecution could not rely on Jason Ang`s testimony in order to do so by the back door.

64 **Whether the elements were made out**

65 The prosecution had to show that there was a relationship of control and payment between the respondents and Ang, and between Ang and the workers. The former was the crucial relationship, for if that was not established, the latter did not arise for discussion.

66 In the end there was insufficient evidence of control. The only evidence which remotely supported the prosecution`s case was the prior inconsistent statement made by Ang. Some parts indicated that there was some control exerted by the second respondent over Ang, but only minimal weight could be given to them. No other evidence was available. It being found that Ang`s credit was impeached, it followed that his evidence in court about the relationship was immaterial The workers did not give any evidence in support of the prosecution`s case, and neither did the second respondent.

67 The prior inconsistent statement failed to indicate any evidence that the second respondent was responsible for Ang`s remuneration as an employee. Even if the second respondent and Ang lied in court about the payment for the subcontract, this did not supply evidence which would have supported the prosecution`s case. The payment vouchers adduced by the second respondent did not indicate payment to Ang of any salary. Ang`s evidence that he kept the excess of money paid to him by the respondent over payment to the workers could not be accepted because of the impeachment; if it could have been considered, it would have indicated that Ang was a sub-contractor: **PP v Heng**

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Siak Kwang [1996] 2 SLR 274 . Be that as it may, in the end, the prosecution still did not adduce any evidence of payment by the second respondent to Ang of any salary.

68 Finally, there was no evidence anywhere of any relationship directly between the workers and the second respondent. There was no evidence of direct control by the second respondent of the workers, and there was nothing to indicate that the second respondent paid the workers using Ang as a conduit. It was true that on Ang`s own testimony he only paid the workers after receiving money from the respondents. Even if this part of the testimony was not impeached, it went no further than to show that Ang had an inadequate cash flow. This was not sufficient to show that Ang was a mere conduit.

69 The various submissions made by the prosecution that the second respondent and Ang were lying about their relationship did not advance the prosecution`s case at all; they did not establish the elements of the offence. Even if accepted, these submissions merely negatived the evidence of the second respondent and Ang.

70 The prosecution had not therefore proven its case beyond a reasonable doubt. The charge against the first respondent was not established; consequently that against the second respondent also failed.

71 **Conclusion**

72 In the circumstances, there was no case made out that the workers were in the employ of the respondents. Accordingly the appeal was dismissed.

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Public Prosecutor v Tan Kim Seng Construction Pte Ltd and Another [1997] SGHC 147

Yong Pung How CJ

Amarjit Singh (Deputy Public Prosecutor) for the appellant
R Palakrishnan and Dominic Nagulendran (Palakrishnan & Partners) for the respondents

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