IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 46

Criminal Reference No 1 of 2018

Between

Public Prosecutor

… *Applicant*

And

Soil Investigation Pte Limited

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Public Utilities Act]
[Statutory Interpretation] — [Construction of statute]

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Public Prosecutor
v
Soil Investigation Pte Limited

[2019] SGCA 46

Court of Appeal — Criminal Reference No 1 of 2018
Judith Prakash JA, Tay Yong Kwang JA, Quentin Loh J
13 May 2019

5 August 2019

Tay Yong Kwang JA (delivering the grounds of decision of the Court):

Introduction

1 This criminal reference concerns the interpretation of s 56A of the Public Utilities Act (Cap 261, 2002 Rev Ed) (the "Act"). Section 56A imposes secondary liability on a person for offences under the Act where the primary offender acted as an agent or employee of that person or was otherwise subject to the supervision or instruction of that person for the purposes of any employment. The said section is in the following terms:

> **Liability for offence committed by agent or employee**
>
> **56A.** Where an offence under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the same extent as if he had personally committed the offence

> unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.

2 The Prosecution brought this criminal reference pursuant to s 397(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") for the Court of Appeal to determine a question of law (the "Question") arising from the High Court's decision in *Soil Investigation Pte Ltd v Public Prosecutor* [2018] SGHC 91 (the "GD"), which was an appeal by the respondent from a decision of the District Court. The Question was:

> Does the third limb of s 56A of the [Act] limit liability for an offence under the Act committed by a primary offender to only "personnel" or the "directing mind and will" of the primary offender's principal or employer, who acts in a "supervisory capacity over" that primary offender?

3 After hearing the parties, we decided that the answer to the Question was "No". We now give the detailed grounds of our decision.

Background facts

4 The respondent is a company incorporated in Singapore. On 1 October 2014, the Public Utilities Board ("PUB") awarded the respondent a contract to carry out soil investigation works for the Deep Tunnel Sewerage System Phase 2 project. Among other things, the respondent was required to set out borehole locations and to carry out underground detection services. The respondent subcontracted part of the soil investigation works to Geotechnical Instrumentation Services ("GIS").

5 On 15 March 2015 an employee of GIS, Parvez Masud, began drilling at a borehole. At 6.5m below ground level, he encountered an obstruction. He stopped drilling and informed his supervisor, S Gam Shawng. S Gam Shawng consulted the respondent's project manager and was instructed to offset the

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location of the borehole by 600mm. The next day, Parvez Masud drilled 600mm from the borehole. When he reached a depth of 6.7m, he encountered an obstruction again and water began to gush out. Investigations revealed that a NEWater main of 900mm diameter was damaged by the drilling.

6 The respondent was charged with damaging the water main as follows:

> You … are charged that you, on or about 16 March 2015, did cause to be damaged a water main belonging to the Public Utilities Board, to wit, one S Gam Shawng and one P[a]rvez Masud who were subject to your instruction for the purpose of employment to carry out drilling works at the construction site located near to lamppost 96 Pioneer Road, Singapore, without determining the exact alignment and depth of one 900 mm in diameter NEWater main before commencement of the said works, and you have thereby committed an offence punishable under section 47A(1)(b) read with section 56A of the Public Utilities Act, Chapter 261.

At the time of the alleged offence in 2015, s 47A(1)(*b*) of the Act provided:

> **Damage to water mains and installations, etc.**
>
> **47A.**—(1) Any person who, whether wilfully or otherwise, removes, destroys or damages or causes or permits to be removed, destroyed or damaged, any water main belonging to or under the management or control of the Board, shall be guilty of an offence and shall be liable on conviction —
>
> …
>
> (*b*) if the water main is 300 mm or more in diameter, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both.

The respondent claimed trial and was subsequently convicted in the State Courts and sentenced to pay a fine of $50,000. The respondent then appealed to the High Court.

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Decision of the High Court

7 The High Court Judge (the "Judge") allowed the appeal and acquitted the respondent. As a consequence, he ordered the refund of the fine paid by the respondent.

8 The Judge found, on a plain reading of the text of s 56A, that secondary liability under the section extends to offences committed by three categories of individuals:

(a) a person acting as an agent of the accused ("first limb");

(b) a person acting as an employee of the accused ("second limb"); and

(c) a person being otherwise subject to the supervision or instruction of the accused for the purposes of any employment ("third limb").

As it was not disputed that the first and second limbs did not apply in this case, the Judge noted that the appeal turned on whether GIS fell within the third limb (GD at [41] and [43]).

9 The Judge considered that, on a plain reading, the third limb requires the accused's supervision or instruction of the primary offender to take place in the context of an employment. The third limb would thus apply to personnel of the principals and employers who are interposed between the primary offender and the principals or employers or the directing mind and will of the principals or employers. It therefore covers "managers, foremen and the like". Subcontractors are liable to main contractors and receive instructions or supervision from main contractors, if any, pursuant to contracts of services between the parties. The third limb would therefore not apply to main

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contractors because subcontractors are not subject to their supervision or instructions "for the purposes of any employment" (GD at [42] and [46]).

10 The Judge held that the legislative purpose of s 56A confirmed its ordinary meaning. In his opinion, the legislative purpose of s 56A is to create secondary liability for offences under the Act. Parliament intended for such secondary liability to be limited to persons with a certain proximity to the primary offender by virtue of the nature of their relationships with the primary offender, as reflected in the three limbs of s 56A. The Judge observed that if Parliament had intended to include offences by subcontractors in s 56A, Parliament would have included an explicit reference to subcontractors, especially given that hirers of independent contractors are generally excluded from liability under the tortious doctrine of vicarious liability (GD at [50]–[53]).

11 The Judge did not find the extraneous material relating to s 56A to be particularly useful in ascertaining the legislative purpose of the section. The Judge declined to consider parliamentary statements made in respect of similar provisions in other statutes as he was of the view that the difference in the background and context in which different statutes are drafted rendered it unhelpful to refer to such extraneous material. In his view, the explanatory statement to the bill which introduced s 56A, the Public Utilities (Amendment) Bill (No 7 of 2012) (the "Bill"), addressed the issue of which offences under the Act attracted secondary liability rather than to whom secondary liability extended (GD at [58] and [62]).

12 Based on his view on the correct statutory interpretation of s 56A, the Judge found that neither GIS nor Parvez Masud was instructed or supervised by the respondent for the purposes of employment. Accordingly, he acquitted the respondent on the charge and found it unnecessary to determine if the statutory

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defence provided in s 56A was satisfied (GD at [66]–[67]).

The parties' cases

The Prosecution's case

13 The Prosecution submitted that the requirements for a criminal reference, set out in s 397(1) of the CPC, were satisfied. This reference arose from the High Court's exercise of appellate jurisdiction and the Question before this Court is a legal question that would be directly dispositive of the appeal before the High Court. The Question will also have a bearing on other cases under s 56A and similar legislation. There is no other High Court decision, apart from the GD, on the interpretation of s 56A or similar provisions.

14 The Prosecution submitted that the Question should be answered in the negative. This is because the third limb of s 56A does not limit liability to only personnel or the directing mind and will of a primary offender's principal or employer, who act in a supervisory capacity over the primary offender.

15 The Prosecution contended that an ordinary reading of the third limb in s 56A reveals two layers of ambiguity. First, the word "employment" can refer to either: (i) a legal relationship in the sense of employment pursuant to a contract of service (the "technical meaning"); or (ii) engagement or use to do something whether or not there is a contract of service (the "broad meaning"). The Prosecution argued that "employment" in the third limb should bear the broad meaning as it is the meaning that comes most naturally to a reader. Further, the third limb of s 56A is prefaced with the word "otherwise", indicating that, unlike the first and second limbs, the third limb is concerned with supervision or instruction which does not arise from a technical legal relationship. The use of the phrase "any employment" similarly points towards

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the adoption of the broad meaning. It suggests that the third limb is meant to encapsulate all employment, regardless of type. If "employment" was intended to bear the technical meaning, the word "any" would be rendered superfluous and would have been replaced by another word such as "his".

16 Second, the third limb does not stipulate the identities of the parties to the requisite employment relationship. In other words, the secondary offender does not need to be the one who engages or uses the primary offender for a task. Instead, the secondary offender needs only to be a person who supervises or instructs the primary offender for the purposes of the primary offender's employment. According to the Prosecution, such an interpretation of the third limb complements the two other limbs of s 56A. The first and second limbs impose liability on those who are culpable as a matter of law pursuant to the principles of vicarious liability, whilst the third limb imposes liability on those who are culpable as a matter of fact. This would result in liability for all who should logically be held responsible.

17 The Prosecution submitted that the legislative purpose of s 56A matches its ordinary meaning. The legislative purpose of the Act is to provide for all matters pertaining to the PUB's role as the custodian of Singapore's water supply, a vital and strategic national resource. Through s 56A, Parliament intended to impose secondary liability based not only on the legal relationships between the primary and the secondary offenders but also on the presence of supervision and instruction.

18 The Prosecution further submitted that the extraneous material, such as the parliamentary debates on the Bill and the legislative history of the Act, also support the legislative purpose and the ordinary meaning of s 56A proffered by the Prosecution.

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19 The Prosecution therefore urged this Court to set aside the High Court's acquittal of the respondent and to uphold the respondent's conviction in the State Courts.

The respondent's case

20 The respondent argued that the Question does not reflect the Judge's findings (particularly at [42] and [46] of the GD) correctly. According to the respondent, the question in this reference should be reframed as follows:

> Does the third limb of s 56A of the [Act] extend liability for an offence under the Act committed by a primary offender to:-
>
> (a) the "personnel" of the primary offender's principal or employer who are interposed between the primary offender and the primary offender's principal or employer and who acts in a supervisory capacity over that primary offender; or
>
> (b) the "directing mind and will" of the primary offender's employer?

The respondent further argued that this reference does not satisfy s 397(1) of the CPC as the Question, whether as originally put forward or as revised above, is not a question of law of public interest.

21 The respondent contended that the Judge's interpretation of the third limb is correct. According to the respondent, supervision or instruction for the purposes of employment entails both the secondary offender supervising or instructing and the primary offender receiving supervision or instruction. There are only three scenarios in which this can occur. First, where the secondary offender is the primary offender's principal and there is a conterminous employment relationship. Second, where the secondary offender is the employer of the primary offender. Third, where the secondary offender is an employee (*ie*, personnel) or agent with a conterminous employment relationship (*ie*, directing mind and will) of a third party who supervises or instructs the

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primary offender, who is also an employee or agent with a conterminous employment relationship of the same third party. As the first two scenarios are encapsulated by the first and second limbs of s 56A, the respondent argued that the third limb must encapsulate the third scenario.

22 The respondent submitted that its interpretation is fortified by three other aspects of the third limb. First, the third limb contemplates that the secondary offender has the power to supervise or instruct the primary offender. Such power must be contractual in nature given that the first and second limbs apply to contractual relationships. The secondary offender's power to supervise or instruct must also be given to the secondary offender for the purposes of employment.

23 Second, the phrase "in the course of which the offence was committed" found in the third limb is borrowed from the tortious doctrine of vicarious liability. Given that vicarious liability is premised on a close connection between the offence committed by the tortfeasor and the defendant-employer, the third limb must likewise require a close connection between the offence committed by the primary offender and the secondary offender's supervision or instruction.

24 Third, the statutory defence in s 56A indicates that the three limbs of s 56A each require a direct relationship between the primary and secondary offenders. The statutory defence applies where the accused proves that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part. This requires a direct relationship between the primary and the secondary offenders as a secondary offender cannot be said to have withheld consent or to not have connived unless he is in a position to consent or connive.

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25 The respondent submitted that an accused must be interposed between the primary offender and the third party, either as the third party's personnel or its directing mind and will, to fall within the third limb. The respondent therefore argued that the Question should be answered in the affirmative.

Our decision

26 We shall explain briefly why we rejected the respondent's arguments on the reframing of the Question and whether this reference met the requirements under s 397(1) of the CPC.

27 We rejected the respondent's reframing of the Question as it would not lead to a determination of the dispute at hand. The Prosecution accepts that the third limb applies to personnel or the directing mind and will of a primary offender's principal or employer. What the Prosecution seeks to challenge is the Judge's finding that the third limb applies to such persons only, thereby excluding main contractors. The Prosecution's Question will enable this dispute to be determined.

28 We also did not accept that the Question is not a question of law of public interest. The Question concerns the interpretation of s 56A and is therefore a question of law: see *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859 at [18]. It is of public interest as there is no settled answer to the Question: see *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*") at [52]. Other than the Judge's decision, there is no High Court or Court of Appeal decision on the interpretation of the third limb of s 56A or similar provisions. The outcome of this reference will also affect numerous other prosecutions under s 56A and such similar provisions.

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29 Therefore, the sole issue which arose for determination was whether the third limb of s 56A applies only to personnel or the directing mind and will of a primary offender's principal or employer, who act in a supervisory capacity over the primary offender.

30 The principles of statutory interpretation are well-established. The court will first ascertain the possible interpretations of the text. It will then ascertain the legislative purpose or object of the statute, before comparing the possible interpretations with the legislative purpose or object. Extraneous material may be referred to in: (i) confirming the ordinary meaning of the provision; (ii) ascertaining the meaning of the provision where it is ambiguous or obscure; or when (iii) the ordinary meaning leads to a manifestly absurd or unreasonable result. See *Kong Hoo (Pte) Ltd and another v Public Prosecutor* [2019] 1 SLR 1131 at [72] and *Lam Leng Hung* at [67] and [71].

Ordinary meaning

31 We accept the Prosecution's argument that the word "employment" has two ordinary dictionary meanings: (i) a legal relationship in the sense of employment pursuant to a contract of service (*ie*, the technical meaning); or (ii) an engagement or use to do something whether or not there is a contract of service (*ie*, the broad meaning). In our opinion, the third limb imposes secondary liability on any person who supervises or instructs a primary offender for the purposes of any engagement, whether or not there is a contract of service. We therefore agree with the Prosecution that the word "employment" in the third limb bears the broad meaning.

32 We acknowledge that the words "employee" in the second limb and "employment" in the third limb share the same root word "employ". As this court observed in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan*

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Cheng Bock") at [58(c)(i)], where identical expressions are used in a statute, and all the more so when they are used in the same sub-clause of a section, the expressions are to be presumed to have the same meaning as a matter of simple logic. Following this, it might be said that "employment" in the third limb should be interpreted to mean employment pursuant to a contract of service as that would be in line with the meaning of "employee" in the second limb. However, as this court in *Tan Cheng Bock* went on to note, the rule of interpretation which presumes that identical expressions in a statute bear the same meaning is not an inflexible one and the court may conclude that the identical expressions mean different things upon construing the provision in context. The context surrounding s 56A leads us to conclude that "employment" in the third limb bears the broad meaning while "employee" in the second limb bears the technical meaning for two reasons.

33 First, the Act uses the root word "employ" in both broad and technical senses. For example, s 20(1A)(*f*) states:

> **Tariffs for supply of water and apparatus, etc., payable to Board**
>
> …
>
> (1A) Subject to section 14, for the purpose of determining the price to be charged for the supply of water by it, the Board may take into consideration all costs incurred in enabling it to so supply the water, including (but not limited to) the following:
>
> …
>
> (*f*) the maintenance of any system employed in the collection, storage, treatment or supply of water …

The word "employed" in s 20(1A)(*f*) is clearly used in its broad sense. In contrast, s 61 states:

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> **Transfer of employees**
>
> **61.**—(1) As from 1st April 2001, all persons employed immediately before that date by the Sewerage Department and the Drainage Department shall be transferred to the service of the Board on terms no less favourable than those enjoyed by them immediately prior to their transfer.
>
> (2) Until such time as terms and conditions of service are drawn up by the Board, the scheme and terms and conditions of service of the Government shall continue to apply to every person transferred to the service of the Board under subsection (1) as if he were still in the employment of the Government.

It is apparent that the words "employees", "employed" and "employment" in s 61 are used in the technical sense as s 61 refers to persons who have terms and conditions of service with the Government. The fact that the Act uses the root word "employ" in both its broad and its technical senses suggests that the word "employment" in the third limb could bear either the broad or technical meaning.

34 Second, we think the wording of s 56A indicates that "employment" in the third limb was intended to bear the broad meaning. As this Court stated in *Tan Cheng Bock* at [38], Parliament shuns tautology and does not legislate in vain. The court will therefore endeavour to give significance to every word in a statute. The third limb is prefaced with the word "otherwise" and was intended to be contrasted with the first two limbs of s 56A which apply to technical, legal relationships – agency and employment. Further, the use of the phrase "any employment" in the third limb suggests that the third limb was intended to have a broad scope, not one limited to the technical sense of employment. Given that the third limb was intended to apply to relationships other than technical, legal relationships, the word "employment" in the third limb cannot be said to bear only its technical meaning.

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35 In the light of the above, we think that the correct interpretation of the third limb is that it imposes secondary liability on any person who supervises or instructs a primary offender for the purposes of any engagement, whether or not there is a contract of service.

Legislative purpose

36 In our opinion, the meaning we have ascribed to the third limb aligns with the legislative purposes of the Act and with s 56A in particular. The legislative purpose of the Act is to manage and safeguard Singapore's water supply. This is apparent from its provisions which empower the PUB to supply water, regulate the provision of certain types of waterworks and prescribe water-related offences such as s 56A. In line with the Act's overall purpose of managing and safeguarding Singapore's water supply, the legislative purpose of s 56A is to extend secondary liability to those who are able to control actions which constitute offences under the Act. This can be gleaned from the three limbs of s 56A and the statutory defence provided in s 56A. By targeting principals and employers (who typically have control over their agents and employees respectively) and those who supervise or instruct the primary offenders, the three limbs of s 56A cumulatively impose secondary liability on those who are able to control the actions of others. Such a legislative purpose is reinforced by the statutory defence under s 56A, which absolves an accused from secondary liability where he was not in fact able to control the actions of others, *ie*, where the offence was committed without his consent or connivance and was not attributable to any neglect on his part.

37 Given that the legislative purpose of s 56A is to impose secondary liability on those who are able to control the actions of others, the third limb must be interpreted to apply to those who supervise or instruct a primary

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offender pursuant to an engagement, whether or not there is a contract of service. A contract of service is not a prerequisite for control. As an example, it is entirely possible for a main contractor to control the actions of his subcontractor through supervision or instruction, despite the lack of a contract of service between main contractors and subcontractors.

Extraneous material

38 As we will explain, the extraneous material on the Act and s 56A confirm both the ordinary meaning and the legislative purpose of s 56A that we have mentioned. We begin by tracing the legislative history of s 56A before turning to the conclusions that can be drawn from the extraneous material on the Act and s 56A.

Legislative history of s 56A

39 The legislative history of s 56A begins with s 65(3) of the Public Utilities Act (Cap 261, 1985 Rev Ed), introduced by the Public Utilities (Amendment) Act 1988 (No 16 of 1988). Section 65(3) imposed secondary liability for unlicensed water service works and provided:

> (3) Where an offence is committed against this section by any person who is the agent or employee of another person, that other person shall be liable under this Act in the same manner and to the same extent as if he had personally committed the offence unless he can prove that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

40 Secondary liability under the Public Utilities Act was then expanded in 1991 by the passing of the Public Utilities (Amendment) Act 1991 (No 28 of 1991) ("1991 Amendment Act"). The 1991 Amendment Act increased the number of offences which attracted secondary liability under the Public Utilities Act by the introduction of s 76(2A) of the Public Utilities Act (Cap 261, 1990

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Rev Ed). Section 76(2A) imposed secondary liability for damage to electricity cables and read:

> (2A) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless and until he shows to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

The parliamentary debates on the 1991 Amendment Act show that s 76(2A) was intended to impose secondary liability for damage to electricity cables caused by agents, employees and subcontractors. As the then-Minister for Trade and Industry, BG Lee Hsien Loong, stated (*Singapore Parliamentary Debates, Official Report* (29 July 1991) vol 58 at col 285):

> Section 76(2) provides for the conviction of any person who damages any PUB electricity cable. However, under the existing provisions, it is very difficult to prosecute successfully a contractor for damaging a PUB electricity cable when his subcontractor or his agent or employee damages the cable, because of the legal requirement to impute knowledge of damage to the contractor. The new section 76(2A) will close this loophole and ensure that contractors bear the responsibility for any damage caused to PUB electricity cables.

41 Secondary liability for unlicensed water works was similarly broadened in 1995 through the passing of the Public Utilities Act 1995 (No 26 of 1995) ("1995 Act"). The 1995 Act repealed the Public Utilities Act in force at the time (the Public Utilities Act (Cap 261, 1992 Rev Ed)) and introduced s 37(5) of the 1995 Act. Section 37(5) of the 1995 Act saw the expansion of secondary liability for unlicensed water works to include liability for offences committed by subcontractors:

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> (5) Where an offence is committed under this section by any person who is the agent, employee or sub-contractor of another person, that other person shall be liable under this section in the same manner and to the same extent as if he had personally committed the offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

42 Section 37(5) of the 1995 Act later became s 40(5) of the Public Utilities Act (Cap 261, 2001 Rev Ed) ("2001 Act"). The 2001 Act also saw the removal of provisions dealing with offences involving electricity cables. These provisions were eventually enacted as part of the Electricity Act 2001 (No 10 of 2001) ("Electricity Act 2001").

43 In 2012, the Public Utilities (Amendment) Act 2012 (No 9 of 2012) ("2012 Amendment Act") was passed. As explained in the parliamentary debates, one of the purposes of the 2012 Amendment Act was to better protect Singapore's water infrastructure against damage, in the light of the importance of water to Singapore (*Singapore Parliamentary Debates, Official Report* (9 April 2012) vol 89 at pp 31–34, *per* Dr Vivian Balakrishnan, Minister for the Environment and Water Resources):

> Water has always been of paramount importance for Singapore. With the limited land for both water catchment and storage, Singapore has been acutely aware of the need to provide a safe and reliable supply of water for its people since independence. In the early days, we faced and overcame drought, floods and water pollution as the city grew …
>
> We can all turn on our taps today and receive clean, safe drinking water at any time of the day, any day of the year. We often take this for granted, but behind each tap lies an integrated system comprising over 7,000 km of drains, 17 reservoirs, water catchment area which constitutes two-thirds of Singapore's total land area, seven water treatment plants, 5,400 km of water mains, 3,400 km of sewers, four water reclamation plants, and four NEWater factories. I cited a lot of numbers to give Members an idea of the amount of investment that has gone on over the past five decades …

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> The proposed amendments to both [the Public Utilities Act and the Sewerage and Drainage Act] will put in place safeguards to enable the expansion of our local water catchments, to protect our NEWater production, and to protect key infrastructure across our entire water loop …
>
> PUB's water treatment facilities are complemented by the many thousand kilometres of water mains and sewers to convey potable water, NEWater and used water. These networks require substantial investments, as exemplified by the Deep Tunnel Sewerage System, which was completed in 2008. This 48-km long used water superhighway costs more than $3 billion to develop.
>
> To better protect our water infrastructure against damage, the proposed amendments to both Acts will introduce higher penalties commensurate with the severity of the damage …
>
> Let me give you a sense of the consequences of such damage: a 900-mm diameter sewer typically serves a population of some 100,000 persons – that is equivalent to a Clementi or a Bishan town. Should it be damaged, a considerable amount of used water overflow will result until diversion or repair works can be completed. This will have serious consequences on the environment and public health.
>
> Higher penalties will also apply to damage caused to any of the water installations, for example, waterworks and desalination plants.
>
> Consistent with this pre-emptive approach to preventing damage, the proposed amendments to both Acts will make clear the extent of site investigations required of any person who intends to do any excavation, piling, or similar works, before starting such work. Not only must the person obtain the relevant site plans from PUB, trial trenches must also be carried out to physically ascertain the location of any water mains or sewers in order to avoid damaging them.
>
> Sir, it is essential that Singapore continues to secure a sustainable and resilient water supply to meet the long-term needs of a growing economy and a growing population and to cope with the long-term dangers of climate uncertainty.
>
> To achieve this, our water catchments will be progressively expanded. This will be complemented by expanding NEWater and desalination capabilities. It is, therefore, crucial to ensure the quality of catchment water and adequately protect our water infrastructure.
>
> The proposed amendments to both the Public Utilities Act and the Sewerage and Drainage Act will reinforce our current

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> safeguards to enhance the management of Singapore's water resources and ensure the reliability of our water supply for the long term.

44 The 2012 Amendment Act introduced s 56A of the Act, which expanded secondary liability under the Act by prescribing secondary liability for all offences under the Act. The introduction of s 56A led to the deletion of s 40(5) of the Act, as the explanatory statement to the 2012 Amendment Act explained:

> Clause 14 amends section 40 to delete the provision on vicarious liability as a consequential amendment to the insertion of the new section 56A *vide* clause 22.
>
> …
>
> Clause 22 inserts a new section 56A to make a principal or an employer liable for an offence committed by his agent or employee, unless the principal or employer proves to the satisfaction of the court that the offence was committed without his consent or connivance and was not attributable to any neglect on his part. This provision previously applied only in relation to section 40 (Licensing of water service worker) and is now applicable generally to all offences under the Act.

Conclusion on extraneous material

45 Our review of the extraneous material and legislative history of s 56A shows that Parliament has, over the years, consciously expanded the scope of secondary liability under the Act. This expansion occurred in three stages.

46 Parliament first expanded the type of offences to which secondary liability applied, from just offences related to unlicensed water works in 1988 to offences related to unlicensed water works and damage to electricity cables in 1991 (see [39]–[40]).

47 Parliament later expanded the categories of persons who have secondary liability for offences related to unlicensed water works from just principals and employers in 1988 to principals, employers and maincontractors in 1995 (see

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[39] and [41]). This expansion brought the scope of secondary liability for offences relating to unlicensed water works in line with the scope of secondary liability for offences relating to damage to electricity cables under s 76(2A). As the parliamentary debates on s 76(2A) show, s 76(2A) was intended to impose secondary liability for offences committed by *subcontractors*. Indeed, it is highly significant that the three limbs of s 76(2A), which are similar to the three limbs of s 56A, were explicitly said to apply to subcontractors during the parliamentary debates for the 1991 Amendment Act.

48 The last material extension of secondary liability under the Act occurred when Parliament introduced s 56A in 2012, thereby imposing secondary liability for all offences under the Act when there was previously only secondary liability for offences relating to unlicensed water works and, before the enactment of the Electricity Act 2001, damage to electricity cables.

49 In our opinion, Parliament's purpose in extending secondary liability for offences under the Act is clear. As the parliamentary debates show, it was done in order to better protect Singapore's water infrastructure, which is crucial for the functioning of our population and our economy. Provisions similar to s 56A are found in other statutes governing various essential services:

(a) Before its recent deletion pursuant to the Electricity (Amendment) Act 2018 (No 42 of 2018), s 85(3) of the Electricity Act (Cap 89A, 2002 Rev Ed) imposed secondary liability for offences relating to damage to property of electricity licensees. It stated:

> (3) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person,

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> be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

(b) Similarly, before its recent deletion pursuant to the Gas (Amendment) Act 2018 (No 43 of 2018), s 32A(3) of the Gas Act (Cap 116A, 2002 Rev Ed) imposed secondary liability for offences relating to damage to gas plants and gas pipes by providing as follows:

> (3) Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

(c) Section 67A of the Sewerage and Drainage Act (Cap 294, 2001 Rev Ed) imposes secondary liability for offences under the Sewerage and Drainage Act in the following terms:

> **Liability for offence committed by agent or employee**
>
> **67A.** Where an offence under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.

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(d) Section 49(3) of the Telecommunications Act (Cap 323, 2000 Rev Ed) imposes secondary liability for offences related to damage to telecommunication system licensees' installations and plants and states:

> (3) Where an offence under subsection (2) is committed by any person acting as the agent or employee of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

Cumulatively, the above provisions have the effect of safeguarding Singapore's various essential services and their respective infrastructure. As the parliamentary debates on the 2012 Amendment Act indicate, damage to such infrastructure can cause significant disruption to normal life and activities and must therefore be actively prevented.

Proper interpretation

50 In the light of the legislative purpose and the clear parliamentary intention to expand the scope of secondary liability under the Act, the third limb of s 56A cannot be interpreted to limit liability to only those who supervise or instruct in the context of a contract of service. As discussed earlier, Parliament's intention was to "better protect" Singapore's water infrastructure by expanding the scope of secondary liability under the Act to include all persons who are able to control the actions of others. Prior to the introduction of s 56A, the categories of relationships to which secondary liability applied already included main contractor-subcontractor relationships. If the third limb of s 56A is interpreted to limit liability to those who supervise or instruct in the context of

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a contract of service, liability pursuant to such main contractor-subcontractor relationships would be excluded. This would result in the narrowing of the scope of secondary liability under the Act and would go against Parliament's expressed intention to "better protect" Singapore's water infrastructure.

51 The proper interpretation of the third limb of s 56A is therefore that it applies to any person who supervises or instructs a primary offender for the purposes of any engagement, whether or not there is a contract of service. Such an interpretation would give effect to the legislative purpose of s 56A and Parliament's clear intention to better protect Singapore's water infrastructure by expanding the scope of secondary liability under the Act. The ambit of the third limb of s 56A is therefore not limited to personnel or the directing mind of a primary offender's principal or employer who act in a supervisory capacity over the primary offender.

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Conclusion

52 For the above reasons, we answer the Question in this criminal reference in the negative. We therefore set aside the High Court's acquittal of the respondent and remit this case to the Judge to decide if the respondent is able to invoke the statutory defence set out in s 56A, which, as stated above at [12], the Judge decided it was unnecessary to determine in view of his decision to acquit.

Judith Prakash	Tay Yong Kwang	Quentin Loh
Judge of Appeal	Judge of Appeal	Judge

Francis Ng Yong Kiat SC, Gabriel Choong Hefeng and Jane Lim Ern Hui (Attorney-General's Chambers) for the Prosecution;
Faizal Shah and Vigneesh s/o Nainar (Shah Eigen LLC) for the respondent.

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