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

**[2025] SGHC 238**

Magistrate's Appeal No 9245 of 2024

Between

Islam Mohammad Khabirul

… *Appellant*

And

Public Prosecutor

… *Respondent*

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# JUDGMENT

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[Criminal Law — Statutory offences — Work Injury Compensation Act]

# Islam Mohammad Khabirul
# v
# Public Prosecutor

**[2025] SGHC 238**

General Division of the High Court — Magistrate's Appeal No 9245 of 2024
Vincent Hoong J
13 August, 3 December 2025

3 December 2025 Judgment reserved.

**Vincent Hoong J:**

## Introduction

1 Mr Islam Mohammad Khabirul ("the Appellant") is a Bangladeshi male who was employed by Vigour Technologies Pte Ltd ("VTP"). Under VTP's employ, he worked on a vessel called the Heerema Sleipnir ("the Vessel") at Sembcorp Marine Tuas Boulevard Yard ("the Yard").

2 On 1 March 2019, the Appellant was found lying on the tween deck of the Vessel. He claimed to have been injured in an accident. On 11 April 2019, he submitted an application form for work injury compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA"). He was then investigated by the Ministry of Manpower ("MOM") for allegedly making a false application and gave the investigation officer ("IO") two statements, dated

11 April 2019 and 27 June 2019.

3 The following charges were tendered against the Appellant:

(a) The first charge ("1st charge") was for fraudulently making a claim for compensation under the WICA ("the WICA Claim") which he knew to be false, in order to induce his employer, VTP, into making payment of compensation to him for personal injuries allegedly sustained by an accident arising out of and in the course of employment. This is an offence under s 35(2)(*f*) of the WICA, punishable under s 35(2)(iv) of the WICA.

(b) The second and third charges were for making statements to an IO under the WICA which he knew were false in a material particular. This is an offence under s 35(2)(*c*) of the WICA, punishable under s 35(2)(ii) of the WICA.

(i) The second charge ("2nd charge") concerned the Appellant's averment that he was working onboard a vessel at the Yard under the employment of VTP when he was hit in his left leg by a bundle of insulation while he was walking up the stairs, which caused him to fall backwards and roll down the stairs, as a result of which he sustained injuries to his neck, back, right shoulder, left thigh, and knee.

(ii) The third charge ("3rd charge") concerned the Appellant's averment that on 28 February 2019, an employee of VTP, Mr Chowdhury Mohammad Nasu ("Nasu"), did not speak to him about collecting his yard access card from him, and he did not hear the instructions of Ms Sengani Sadasivam ("Sengani"),

the director of VTP, not to enter the Yard for work the next day (*ie*, 1 March 2019).

4 The Appellant was convicted of all three charges after a trial. He was sentenced to eight weeks' imprisonment for the 1st charge and five weeks' imprisonment for each of the 2nd and 3rd charges. The sentences for the 1st and 3rd charges were ordered to run consecutively, resulting in an aggregate sentence of 13 weeks' imprisonment. The Appellant filed a notice of appeal against his conviction and sentence. However, he later clarified that he was only appealing against his conviction.[1]

**The decision below**

5 The trial judge's grounds of decision are set out in *Public Prosecutor v Islam Mohammad Khabirul* [2025] SGMC 8 ("GD"). I summarise below the portions of the GD dealing with the Appellant's conviction.

6 The trial judge found that the following sequence of events occurred on 28 February 2019:

(a) On that day, Sengani phoned an employee, Mr Miah Muhammad Mohosin ("Mohosin"), and instructed him to collect the yard access cards from five workers whom she wished to speak to. The five workers were the Appellant, Mr Shah Sahan ("Shah"), Mr Robin Md ("Robin"), Mr Hossan Saddam ("Saddam") and Mr Rahman Mohammad Kofilur ("Kofilur").[2]

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1 Appellant's Written Submissions dated 13 August 2025 ("AWS") at para 4.

2 Grounds of Decision ("GD") at [18] and [27].

(b) Later that day, Mohosin suggested to Sengani that Nasu should collect the cards from the five workers instead, as he stayed at the same dormitory as them. Sengani agreed and sent a WhatsApp message to Nasu containing the names of the five workers. That evening, Nasu asked the Appellant and Saddam to give him their cards, but they refused.[3]

(c) Later that evening, on Sengani's instructions, Nasu assembled the five workers, and Sengani spoke to them through the speaker of Nasu's phone. She instructed the workers not to work the next day (*ie*, 1 March 2019) and to remain in the dormitory as she wanted to speak to them.[4] I will refer to this phone call as the "Group Call".

7 In the trial judge's assessment of the evidence, he considered the evidence of Sengani, Nasu, Mohosin, and Robin to be consistent on the material aspects of the events that occurred on 28 February 2019. Their evidence was also corroborated by contemporaneous WhatsApp messages between Sengani and Mohosin (P1),[5] Sengani and Nasu (P22),[6] and Sengani and Mr Hon Kin Wah ("Hon"), an operations executive who managed the dormitory (P19).[7] These messages showed that Sengani intended for the five workers to not go to work on 1 March 2019, and had intended for the five workers to surrender their yard access cards. The trial judge considered that the evidence showed that Nasu had informed the five workers (including the Appellant) to return their yard

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3 GD at [27]–[29].

4 GD at [30]–[32], [40(b)] and [93(b)]–[93(c)].

5 P1, Record of Appeal ("ROA") at pp 3773–3781.

6 P22, ROA at p 3853.

7 P19, ROA at pp 3848–3849.

access cards and that Sengani was heard by the five workers instructing them not to go to work the following day on 1 March 2019.[8] In contrast to the evidence of the Prosecution's witnesses, the trial judge rejected the evidence of the Defence witnesses, which he considered unreliable or equivocal.[9]

8 The trial judge found that the following sequence of events occurred on 1 March 2019:

(a) The Appellant entered the Yard at 4.43am, even though his usual routine was to enter the Yard only after 6.45am.[10]

(b) The Appellant did not attend the toolbox meeting ("TBM"), which was conducted by his supervisor, Mr Subuj Mohammad ("Subuj"). The TBM is a daily routine that typically starts at 7.30am. It begins with morning exercise, followed by a safety briefing by the supervisor, during which work instructions would be given. It ends with the workers and supervisors signing a form called the Risk Assessment and Environmental Impact Assessment Acknowledgment Form ("RA Form"). As the Appellant was absent from the TBM that day, he did not sign the RA Form or receive work instructions.[11]

(c) While the TBM was happening but before the workers were given work instructions, Subuj received a phone call from a shipyard safety supervisor who informed him that one of his workers was lying on the tween deck corridor of the Vessel. That worker's helmet had the

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8 GD at [33]–[35].

9 GD at [66]–[67], [69]–[70], [73], [76]–[78] and [88].

10 GD at [99].

11 GD at [104]–[108].

words "VTP" and "Khabirul" on it. After receiving the call, Subuj instructed two workers under his charge, Mr Mia Md Nasir ("Nasir") and Mr Mohammad Lal Badsha ("Lal Badsha"), to take over the briefing of the workers. Subuj then left the TBM and attended to the Appellant, who was lying on the tween deck of the Vessel.[12] Mr Shaik Arif Hussain ("Shaik") – a Health, Safety, and Environment ("HSE") patrolman – and Mr Velasco Cojuanco Anas ("Velasco") – a paramedic – also attended to the Appellant when he was lying there.[13]

9 The trial judge made these findings based on the yard entry records of the Subcontractor Access Control System (P20),[14] the RA Form dated 1 March 2019 (P18B),[15] and the evidence of Subuj, Shaik, and Velasco. Conversely, the trial judge rejected the evidence of the Defence witnesses, which he considered unreliable or unhelpful.[16] He also rejected the Defence's contention that the RA Form dated 1 March 2019 (P18B) was not the RA Form signed at the 1 March 2019 TBM, but a fabricated document.[17]

10 Based on these findings, the trial judge determined that the charges were made out.[18]

(a) The 3rd charge was made out because the evidence showed that Nasu spoke to the Appellant about collecting his yard access card from

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12 GD at [109].

13 GD at [167]–[169].

14 P20, ROA at p 3850.

15 P18B, ROA at pp 3846–3847.

16 GD at [138] and [161].

17 GD at [139]–[146].

18 GD at [153].

him, and the Appellant heard Sengani's instructions not to enter the Yard for work on 1 March 2019. The Appellant's statement to the MOM was therefore false, and he knew that it was false.[19]

(b) The 1st charge was made out even if the Appellant had met with an accident on 1 March 2019 aboard the Vessel and the accident had caused him to sustain injuries. This is because any such injuries would not have been work-related injuries for which the Appellant could make a valid compensation claim. Based on the findings canvassed above, the Appellant was expressly told by Sengani not to go to work on 1 March 2019. He also did not attend the TBM or receive work assignments or instructions. Accordingly, he must have known that any injury he suffered in these circumstances would not be work-related. This must in turn mean that his claim for compensation was deliberately, falsely, and fraudulently made.[20]

(c) Similarly, the 2nd charge was made out because the Appellant would not, in any event, have been injured in the course of working on the Vessel, making his statement to the MOM one that he made when he knew it was false.[21]

11 Even though the trial judge considered the reasons above to be dispositive of the case, he proceeded to assess the evidence concerning the accident and injuries that the Appellant had allegedly suffered.[22]

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19 GD at [152(d)].

20 GD at [151]–[152(a)].

21 GD at [152(b)]–[152(c)].

22 GD at [154].

(a) The trial judge found that no accident befell the Appellant on 1 March 2019. There were inconsistencies between the Appellant's evidence at trial, the case his counsel put to Subuj in cross-examination, and the Appellant's statements to the MOM.[23] He considered the Appellant's description of how the accident occurred to be inherently unbelievable and found it suspicious that there were no eyewitnesses to the alleged accident.[24] Subuj, who was present when the Appellant was lying on the floor on the tween deck of the Vessel, did not observe any blood or visible injuries and also did not see any insulation material where the Appellant was found.[25]

(b) The trial judge also thought that the medical evidence cast serious doubt on the Appellant's claims that he had suffered injuries as a result of the alleged accident. This was because he exaggerated the seriousness and extent of his injuries and the pain he was experiencing. He also did not take his medication and refused treatment, tests, and examinations, as well as a review by a medical social worker.[26]

12 Finally, even if the alleged incident had occurred, the trial judge held that s 3(4) of the WICA did not apply and the alleged accident was not deemed to have arisen out of and in the course of employment. That provision reads:

> An accident happening to an employee shall be deemed to arise out of and in the course of his employment notwithstanding that he was at the time of the accident acting in contravention of any written law or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his

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23 GD at [157] and [159].

24 GD at [160].

25 GD at [162].

26 GD at [174]–[177].

> employer, if —
>
> (a) the accident would have been deemed so to have arisen had such act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and
>
> (b) such act was done for the purposes of and in connection with the employer's trade or business.

The trial judge held that s 3(4) did not apply to this case because any injury the Appellant may have suffered would not have been sustained due to an accident arising while he was acting "for the purposes of and in connection with [his] employer's trade or business". This was because he was expressly told not to go to work, did not attend the TBM, and was not given work instructions.[27] Section 3(4) thus did not save the Appellant's claim from being "false".

**Issues to be determined**

13 The Appellant's appeal focuses on the soundness of the trial judge's findings of fact, and the way these findings affect his conviction. The following factual issues arise for determination:

(a) Issue 1: Did Nasu speak to the Appellant about collecting his yard access card from him?

(b) Issue 2: Did the Appellant hear Sengani instruct him not to enter the Yard for work on 1 March 2019?

(c) Issue 3: Did the Appellant attend the TBM on 1 March 2019?

(d) Issue 4: Did the Appellant meet with an accident that caused him to sustain injuries aboard the Vessel on 1 March 2019?

14 I will first assess the trial judge's findings in respect of these issues

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[27] GD at [189].

before considering whether the charges are made out on the facts. I bear in mind the principles governing appellate intervention in a trial judge's finding of facts (*ADF v Public Prosecutor* [2010] 1 SLR 874 at [16]; *Haliffie bin Mamat v Public Prosecutor* [2016] 5 SLR 636 at [31]):

> (a) Where the finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of the witness, the appellate court will interfere only if the finding of fact can be shown to be plainly wrong or against the weight of evidence. An appellate court may also intervene, if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable.
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> (b) Where the finding of fact by the trial judge is based on the inferences drawn from the internal consistency (or lack thereof) in the content of witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a position as the trial court to assess the veracity of the witness's evidence. The real tests are how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case. If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.
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> (c) An appellate court is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case.

**Issue 1: Did Nasu speak to the Appellant about collecting his yard access card from him?**

15 I begin by assessing the trial judge's findings on whether Nasu spoke to the Appellant about collecting his yard access card from him. I will first summarise the parties' submissions on this issue.

***Parties' submissions***

*Appellant's submissions*

16 First, the Appellant argues that the trial judge erred in failing to disregard P1 (*ie*, the screenshot of WhatsApp messages between Sengani and Mohosin) as it was edited by Sengani. The Appellant points to D1,[28] which is a screenshot taken on Sengani's laptop of the WhatsApp messages between Sengani and Mohosin. Several text messages that are present in P1 are absent in D1. Therefore, the Appellant submits that the trial judge ought to have concluded that Sengani had edited P1 so that messages on 28 February 2019 (regarding which workers were to return their access cards on 28 February 2019 and not go to work the next day) were altered to refer to the Appellant, when they originally did not. The Appellant argues that the trial judge wrongly disregarded this discrepancy by accepting a benign explanation for the missing text messages,[29] and finding the discrepant messages irrelevant, filling a lacuna in the Prosecution's case in the process. He argues that these discrepancies suggest that the Prosecution's exhibits featuring messages from Sengani to Mohosin, Nasu, and Hon (*ie*, P1, P19 and P22) are unreliable and cast doubt on Sengani's credibility as a witness.[30] The Appellant argues, although he did not do so below,

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28 D1, ROA at pp 4379–4383.

29 GD at [52(d)(i)].

30 AWS at paras 16–49, 52–55.

that P19 and P22 had also been amended by Sengani.[31]

17 Second, the Appellant argues that the trial judge erred in rejecting the evidence given by Shah and Nasir for the following reasons:

(a) The trial judge was wrong to find Shah's credibility impeached and should not have substituted his testimony in 2024 (when he was recalled) with his account in his MOM statements. The Appellant also notes that even in Shah's testimony in 2022, Shah testified that he did not speak with Sengani. This differs from the trial judge's finding that Sengani spoke on Nasu's phone to the five workers, including Shah.[32]

(b) The trial judge wrongly considered it suspicious that Nasir could remember details that were supportive of the Appellant's defence when he could not remember other basic facts.[33]

18 Third, the Appellant highlights inconsistencies in the evidence of Nasu and Robin and argues that they raise a reasonable doubt in the Prosecution's case. These inconsistencies include the following:

(a) Nasu's evidence on which workers he spoke to, in what sequence, and at what time differed across his testimony at the Appellant's trial, his MOM statements, and his testimony at Saddam's trial.[34]

(b) Robin gave different accounts of what time Nasu spoke to him

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31 AWS at paras 35–40.

32 AWS at paras 193–210.

33 AWS at paras 116–177.

34 AWS at paras 220–221.

individually and in a group setting. His evidence also differed on whether the Appellant and Saddam were present when Nasu spoke to them in a group setting.[35]

*Prosecution's submissions*

19 First, the Prosecution submits that the Appellant's claim regarding the WhatsApp messages' reliability is speculative, as neither party has produced expert evidence to determine if the discrepancies were due to tampering. The Appellant's claim that "software hacks" were used is an unsubstantiated opinion from the bar, and there was no evidence to show that Sengani was capable of editing the messages in this way.[36] Moreover, the Appellant only challenged the reliability of P1 at the trial, and not P19 and P22. His arguments concerning P1 cannot be automatically extended to P19 and P22.[37]

20 Second, the Prosecution argues that the trial judge's assessment of the Prosecution witnesses' evidence was sound. He had correctly assessed that the discrepancies in Nasu's and Robin's evidence were immaterial and attributable to human fallibility in observation, retention, and recollection. Moreover, the testimonies of Sengani, Mohosin, Shah, Robin, and Nasu were internally consistent and externally consistent with each other on the material aspects of the events that occurred on the evening of 28 February 2019.[38]

21 Third, the Prosecution submits that the trial judge's assessment of the Defence witnesses' evidence was sound.

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35 AWS at para 224.

36 Respondent's Written Submissions dated 6 August 2025 ("RWS")at para 89.

37 RWS at para 92.

38 RWS at paras 99–107.

(a) The trial judge was right to disbelieve Shah's claim that pressure from Sengani had caused him to lie in his MOM statement and in court, as Sengani was not present when the statements were recorded, and Shah was no longer working for Sengani when he testified in court in 2022.[39]

(b) The trial judge rightly considered it implausible that Nasir could claim such poor memory of basic facts due to the passage of time, and yet simultaneously provide detailed testimony about specific, nondescript events from four years ago.[40]

***Appellant's claim that the WhatsApp chatlogs were edited***

22 I begin by addressing the Appellant's arguments concerning the WhatsApp messages between Sengani and Mohosin (P1), Sengani and Hon (P19), and Sengani and Nasu (P22). The Appellant's position is that P1 "was likely doctored, given that Sengani controlled the source, and the 'restored' messages conveniently bolstered her narrative",[41] and thus P1 could not be accepted at "face value". The Appellant did not make it entirely clear whether the Appellant's position was that Sengani had tampered with the screenshots (*ie*, images of the chats – P1)[42] or that Sengani had tampered with the WhatsApp data that underlies the screenshots. The Appellant bears the burden of proving that evidence had been tampered with, as he who asserts ought to prove (*Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [157]). The Appellant argues that the discrepancies between P1 and D1 serve as evidence that "specific messages" were "edited out and then reintroduced" and that P1 should be

39 RWS at paras 111–113.

40 RWS at para 121.

41 AWS at para 18.

42 AWS at para 9, footnote 3.

disregarded in its entirety.[43]

23 I reject this argument. The discrepancies between P1 and D1 do not necessarily show that Sengani edited the chatlogs depicted in P1. The Appellant's reliance on ss 108 and 116 of the Evidence Act 1893 (2020 Rev Ed) ("EA")[44] is misguided. The Appellant submits that it is for Sengani to prove the authenticity of the chatlogs because how they were created was a fact within her knowledge, and that a failure of the Prosecution to adduce evidence of the authenticity of chatlogs justifies the drawing of an adverse inference against the Prosecution. Presumably, this is because Sengani, Mohosin, Nasu and Robin all had a motive to collude and alter P1, P19 and P22 altogether to create a consistent narrative implicating the Appellant. However, a mere assertion of a motive to implicate the Appellant is not sufficient, and the accused must adduce sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case (see *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP*") at [21]).

24 On the contrary, Sengani's evidence had shown that:

(a) First, Sengani had no ostensible motive to tamper with P1 or D1. The Appellant claims that Sengani's motive behind these edits was to cover up the Appellant's genuine workplace accident in order to avoid regulatory scrutiny over the number of workplace accidents linked to VTP. The Appellant has not adduced evidence to prove such a motive, beyond making speculations that Sengani was attempting to minimise

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43 AWS at paras 23 and 450.

44 AWS at paras 29 and 34.

the number of reported workplace injuries nearing the Vessel's christening date.[45]

(b) Second, the alleged instances of editing do not support the Appellant's case that there was any such cover-up. The Appellant alleged that Sengani deleted certain messages in D1 that reappeared in P1. If the Appellant's theory is that the messages were deleted as part of a cover-up, it is plainly illogical that the deleted messages related to matters completely unconnected to the Appellant's compensation claim or alleged accident. It was also a leap of logic to conclude that if D1 contained missing messages, then P1 must have been edited too, and a further leap of logic that edits were made to P1, P19, and P22 in one fell swoop to incriminate the Appellant.[46]

(c) Third, there is no evidence that Sengani had the capabilities to edit the chat logs. The Appellant claims that "software hacks" that can be used to edit WhatsApp chats are available online,[47] but there is no evidence that Sengani was familiar with such "hacks". On the contrary, Sengani had given evidence, corroborated by IO Seng Jiehan Ewan ("IO Ewan"), that she even required IO Ewan's assistance with taking screenshots of her WhatsApp messages when she was interviewed by the MOM.[48] Subsequently, upon IO Ewan's request for certain screenshots to be retaken, Sengani required the assistance of her

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45 AWS at para 13.

46 AWS at para 40.

47 AWS at para 9.

48 Notes of Evidence ("NE") of 3 October 2023 at p 81 (lines 9–13), ROA at p 2163; NE of 19 July 2023 at p 85 (lines 1–14), ROA at p 2058.

daughter to take the screenshots.[49] I did not see any basis to call into question the trial judge's assessment that Sengani was unlikely to have had the skills or knowledge to tamper with her WhatsApp chatlogs, or to manipulate screenshots to make WhatsApp messages disappear.

(d) Finally, Sengani's phone was available for production at the trial, and the trial judge had queried whether the Appellant would be making submissions that Sengani's phone ought to be produced pursuant to a court order made under s 235 of the Criminal Procedure Code 2010 (2020 Rev Ed).[50] The Appellant ultimately chose not to pursue this avenue, by declining to establish the proper legal basis for compelling the production of Sengani's phone to then examine the contents of the chatlogs (and whether they were discrepant from the screenshots). Having made the tactical decision, the Appellant cannot now seek the drawing of an adverse inference against the Prosecution for the non-availability of evidence, *viz*, the phone in which the WhatsApp chatlog is stored.

25 The Appellant produced no evidence, beyond mere speculation, that Sengani edited the chatlogs represented by P19 and P22. Unlike P1, the allegation that P19 and P22 had been manipulated appeared to be no more than an afterthought, canvassed for the first time on appeal. The Appellant's counsel did not put to Sengani that P19 and P22 were edited by Sengani at the trial, and thus, this assertion was bereft of any evidential basis.

26 Rather, P19 and P22 showed that P1 did not contain any material

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49 NE of 3 October 2023 at p 95 (line 24)–p 96 (line 13), ROA at pp 2177–2178.

50 NE of 21 June 2022 at p 66 (line 23)–p 67 (line 14), ROA at pp 216–217.

alterations to its contents, as they contained messages forwarded by Sengani to Hon and Sengani to Nasu respectively on 28 February 2019, stating the names of the five workers named by Mohosin in P1. The testimonies of Sengani, Hon, Nasu and Mohosin established that the five names were forwarded in the context of Sengani's conversations with Hon and Nasu on the steps to be taken to ensure that the workers should not be allowed to go to the Yard for work on 1 March 2019.[51] Sengani had requested Hon to disable the five workers' yard access cards, and with respect to Nasu, to collect the yard access cards from the five workers.

***Assessment of the evidence***

27 Next, I consider the trial judge's assessment of the evidence given by the witnesses for this issue. The following pieces of evidence suggest that, on 28 February 2019, Nasu spoke to the Appellant about collecting his yard access card from him:

(a) Nasu's testimony at the Appellant's trial and his MOM statements:

(i) Nasu testified that Sengani called him at about 9.28pm, telling him to collect the cards from the five workers. He then met Saddam and the Appellant individually in Room 06-08 and asked each of them to give him their cards, but both refused to hand their cards over.[52] Nasu then received a call from Mohosin

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51 NE of 22 February 2023 at p 40 (line 30)–p 41 (line 16), ROA at pp 1507–1508; NE of 20 June 2022 at p 26 (line 28)–p 27 (line 11), ROA at pp 66–67; NE of 15 June 2023 at p 9 (lines 10–16) and p 12 (lines 20–21), ROA pp 1838 and 1841; NE of 4 October 2023 at p 83 (lines 14–26), ROA at p 2405.

52 NE of 15 June 2023 at p 5 (line 25)–p 6 (line 10) and p 33 (lines 15–17), ROA at pp 1834–1835 and 1862.

at about 9.30pm, during which Mohosin queried whether Nasu had collected the cards from the workers, and Nasu told Mohosin about the two workers' refusal to hand over their cards.[53] During the same call, Mohosin told Nasu not to collect the cards from the remaining three workers. Nasu then called Sengani at about 9.40pm to inform her of the same, and Sengani then instructed Nasu to gather the five workers in one place for a phone call with Sengani.[54] Nasu did not ask Robin, Saddam, or Kofilur for their cards.[55]

(ii) Nasu stated in his MOM statements that he tried to collect the cards from the five workers, but they refused to hand their cards over.[56]

(b) P1: The following messages represented in P1 suggest that Nasu tried to collect the Appellant's card from him:[57]

> [Mohosin's message at 9.28pm:] Sister,,can ask Nasu to Collect they are smart card.
> Because I am not going now correct
>
> [Sengani's message at 9.28pm:] Ok
>
> …
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> [Mohosin's message at 10.02pm:] 15-Saddam he don't give his card
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> …
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> [Mohosin's message at 10.14pm:] 239-Khabirul also

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53 NE of 15 June 2023 at p 24 (lines 28–31), ROA at p 1853.

54 NE of 15 June 2023 at p 24 (line 31)–p 25 (line 2), p 30 (lines 8–17), p 42 (line 26)–p 44 (line 31) and p 53 (lines 18–21), ROA at pp 1853, 1859, 1871–1875 and 1882.

55 NE of 15 June 2023 at p 38 (line 30)–p 39 (line 18), ROA at pp 1867–1868.

56 D18C at A5, ROA at p 4477; D18D at A3, ROA at p 4479.

57 P1 at pp 3–6, ROA at pp 3775–3778.

> same
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> [Mohosin's message at 10.15pm:] Another 3 I tell Nasu don't ask.

(c) Sengani's and Mohosin's testimony: Sengani and Mohosin testified to the following sequence of events. Sengani told Mohosin to collect the cards from the five workers,[58] but Mohosin suggested that Nasu could collect the cards instead.[59] Sengani agreed and instructed Nasu to collect the cards.[60] Nasu later called Mohosin to tell him that the Appellant and Saddam did not hand over their cards. Under cross-examination, Sengani accepted that she was unable to recall whether Nasu specifically named any of the workers who refused to hand over their cards.[61]

(d) Robin's testimony: Robin testified that Nasu approached all five workers at about 7.30pm in the corridor outside Room 06-09. He then asked them all to hand over their cards, but all of them refused.[62]

(e) Shah's testimony before he was recalled by the Defence: Shah initially testified that between 8.00pm and 10.30pm, Nasu asked the five workers for their cards in the "passageway" on the sixth floor of the dormitory, but they all refused to hand their cards over.[63] Shah later

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58 NE of 5 October 2023 at p 70 (lines 17–19) and p 91 (lines 1–3), ROA at pp 2152 and 2413.

59 NE of 3 October 2022 at p 85 (lines 7–15), ROA at p 2167.

60 NE of 4 October 2023 at p 53 (lines 6–15), ROA at p 2250; NE of 13 February 2024 at p 9 (lines 19–32), ROA at p 2444.

61 NE of 20 June 2022 at p 30 (line 25)–p 31 (line 13), ROA at pp 70–71; NE of 21 June 2022 at p 28 (lines 23–30) and p 33 (lines 6–24), ROA at pp 178 and 183.

62 NE of 23 June 2022 at p 75 (line 23)–p 76 (line 13), ROA at pp 414–415.

63 NE of 22 June 2022 at p 51 (line 18)–p 52 (line 22) and p 57 (lines 27–32), ROA at pp 301–302 and 307.

changed his evidence, saying that Nasu first "came and asked others for their smartcard[s]" in his absence. Shah identified these "others" as the Appellant, Saddam, and Kofilur,[64] but testified that he "d[id] not know what was the conversation [*sic*] between them and Nasu". After this, Nasu asked Shah for his card and he refused to hand it over.[65] The Appellant was not present when Nasu spoke to Shah.[66]

*Nasu's evidence*

28 The trial judge had correctly held that Nasu's credit was not impeached. The Appellant had highlighted a material inconsistency between Nasu's evidence at the Appellant's trial, and Nasu's evidence at Saddam's trial. At Saddam's trial, Nasu testified that he had first asked Kofilur and Saddam to hand over their cards, but they refused. Subsequently, he received a call from Mohosin, who told him that he did not need to collect the cards from the remaining three workers (including the Appellant), and so he did not ask them for their cards.[67] Nasu's evidence at Saddam's trial and the Appellant's trial also differed from his account in his statements recorded by the MOM during investigations (D18C and D18D). In those statements, Nasu said that he spoke to all five workers about collecting their access cards. Nasu's explanation for the inconsistencies was essentially that the events of 28 February 2019 were a long time ago, and he had difficulty remembering the precise sequence that conversations and messages were had and sent.[68] Nasu's evidence at this trial was corroborated by Sengani's and Mohosin's evidence about the phone

64 NE of 23 June 2022 at p 41 (lines 17–18), ROA at p 380.

65 NE of 23 June 2022 at p 33 (lines 7–14 and 28), ROA at p 372.

66 NE of 23 June 2022 at p 40 (lines 18–25), ROA at p 379.

67 D18B at p 16 (lines 1–17), ROA at p 4471.

68 NE of 18 July 2023 at p 32 (line 28)-p 40 (line 29), ROA at pp 1936-1942.

conversations and WhatsApp chat messages exchanged with Nasu at the material time (see [31]–[36] below). Seen in context of the overwhelming evidence in this regard, the trial judge's conclusion that Nasu had asked the Appellant to return his yard access card cannot be said to be against the weight of the evidence. On the contrary, it is unclear from the record adduced by the Appellant what the context was in which Nasu had mentioned Kofilur's and Saddam's names in his evidence concerning the persons to whom he requested the return of the yard access cards at Saddam's trial, or whether there was any subsequent clarification of Nasu's evidence in the same proceedings.

29 What was apparent from the notes of evidence of Saddam's trial (P18B) was that the Defence had put to Nasu that he had attempted to collect the cards from *the Appellant* and Saddam but they had refused to hand over their cards, *and Nasu had agreed with this suggestion under cross-examination.*[69] Yet, this was not mentioned at all by the Appellant's counsel at the Appellant's trial. At the Appellant's trial, Nasu had explained clearly why he thought that he may have made a mistake in his evidence-in-chief in Saddam's trial:[70]

> Q Okay. But you actually did mention Kofilur in Saddam's trial. So, what is it that you're talking about, "I don't remember about Kofilur"?
>
> A That was probably a mistake.
>
> Q It doesn't appear to be a mistake, given your evidence---your other evidence because you were very sure---or, at least, from what I understand, you were quite sure it was Kofilur. You were able to separate Kofilur from Khabirul in Saddam's trial.
>
> A To say something with absolute certainly is very difficult because Kofilur, Khabirul and Saddam all were in the same room---Saddam and Khabirul, they were in the same room. Saddam and Khabirul, they were in the same room, so I

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69 D18B at lines 30–32, ROA at p 4474.

70 NE of 18 July 2023 at p 34 (lines 6–23), ROA at p 1938.

> remember that I told them. About Kofilur, it might be my mistake.
>
> Q It isn't a mistake. It is---sorry. It is a mistake because you don't remember what you were told to say as a lie. Do you agree or disagree?
>
> A I do not agree.

30 The Appellant's case at trial concerning whether Nasu had conversed with the Appellant and Saddam before gathering all five workers along the corridor to speak to them was also contradictory. The Appellant's counsel had put to Nasu that while he may have looked for certain workers individually to gather the five workers at the corridor, he did not speak to any of them before they were gathered in a group of five, and further, that he was instructed by Sengani to lie that Nasu had asked for the return of the yard access cards after all five workers were gathered.[71] In contrast, the Appellant's counsel put to Sengani that Nasu had first asked Robin and Shah (instead of the Appellant and Saddam) to give up their cards, but was unable to collect them. The Appellant's counsel went further and suggested that Sengani had altered WhatsApp chatlogs as depicted in P1 to replace Robin's and Shah's names in messages from Mohosin informing Sengani that the Appellant and Saddam refused to hand over their cards.[72] In my view, the Appellant's attempt to rebut the Prosecution's overwhelming and consistent evidence that Nasu had asked the Appellant for his card by the putting of inconsistent cases (at best) cannot possibly succeed.

*Sengani's and Mohosin's evidence and P1*

31 Sengani's and Mohosin's evidence and the messages in P1 apparently corroborate Nasu's account at the Appellant's trial that he spoke only to Saddam

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71 NE of 18 July 2023 at p 38 (lines 2–32), ROA at p 1942.

72 NE of 13 February 2024 at p 26 (line 29)–p 27 (line 7), ROA at pp 2461–2462.

and the Appellant about collecting their cards from them.

(a) Sengani's and Mohosin's testimony that Sengani asked Nasu to collect the cards from the five workers is corroborated by Mohosin's message at 9.28pm, saying, "Sister,,can ask Nasu to Collect they are smart card … [*sic*]", Sengani's reply, "Ok", and Mohosin's follow-up message, "Please call him. …"

(b) Likewise, Mohosin's messages at 10.12pm: "15-Saddam he don't give his card. [*sic*]" and 10.14pm: "239-Khabirul also same [*sic*]" corroborate Sengani's and Mohosin's testimony that Nasu called Mohosin to tell him that Saddam and the Appellant did not give Nasu their cards when Nasu asked for them, and Mohosin conveyed this to Sengani.

32 The messages were exchanged contemporaneously with the phone conversations between Sengani and Mohosin. Mohosin had relayed what he understood from Nasu to Sengani, *viz*, that Nasu said that Nasu had tried, unsuccessfully, to collect Saddam's and the Appellant's cards from them. There was no suggestion that there was any motivation or reasonable likelihood for the messages to be sent in these circumstances to create the impression that the events had transpired as described by Sengani, Mohosin, and Nasu.

33 I turn to consider the possibility that Nasu could have been mistaken when he told Mohosin that he tried collecting the Appellant's card from him. If Nasu's evidence-in-chief at Saddam's trial was accurate, Nasu had tried to collect the card from *Kofilur*, instead of the Appellant. This means that Nasu would have been mistaken *both* during the recording of his MOM statements D18C and D18D, as well as at the Appellant's trial. In my view, the trial judge's

assessment could not be faulted for being against the weight of the evidence. Given the time that had elapsed from the date of the incident to Saddam's trial, it was much more probable that Nasu's recollection, that he had asked the Appellant to return his card, was the version of events to be preferred.

34 At the Appellant's trial, Nasu testified that he first tried to collect Saddam's and the Appellant's cards from them because Saddam and the Appellant stayed in the same dormitory room (06-08), while the other workers stayed in other rooms. Room 06-08 was the first room Nasu visited. After Saddam and the Appellant refused to hand over their cards, Nasu did not ask the remaining three workers for their cards when he went to visit them in their respective rooms.[73] Shah's evidence corroborates the claim that the Appellant stayed in Room 06-08 while Kofilur stayed in a different room.[74]

35 It was unlikely that Nasu tried to collect Saddam's card in Room 06-08 but did not try to collect the Appellant's card when he was in the same room, before going elsewhere to collect Kofilur's card from him. It was more likely that Nasu tried to collect Saddam's and the Appellant's cards from them because they stayed in the first room he visited, Room 06-08. Accordingly, it was unlikely that Nasu was mistaken in his WhatsApp message to Mohosin about who he tried to collect the cards from.

36 The testimony of Sengani and Mohosin, together with P1, corroborates Nasu's testimony at the Appellant's trial that he tried to collect the cards from Saddam and the Appellant.

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73 NE of 15 June 2023 at p 4 (line 18)–p 7 (line 7), ROA at pp 1833–1836.

74 NE of 23 June 2022 at p 17 (lines 15–18), ROA at p 356.

*Robin's evidence*

37 Robin's evidence corroborates Nasu's evidence at the Appellant's trial save for some discrepancies. In my view, the trial judge's assessment that these discrepancies did not undermine the veracity of Robin's account on material issues cannot be faulted. These related to the fact that the Group Call with Sengani had occurred after the five workers including the Appellant were gathered at the corridor. However, as Robin was not present at Room 06-08 when Nasu spoke to Saddam and the Appellant before the five workers were gathered at the common corridor, Robin's evidence was of little assistance concerning the issue of whether Nasu had asked the Appellant to return his access card in Room 06-08. Nevertheless, I elaborate on these discrepancies in turn.

(a) First, Robin testified that Nasu asked all five workers to hand over their cards at about 7.30pm, in the corridor of the sixth floor. Conversely, Nasu testified that he only asked the Appellant and Saddam to hand over their cards after 9.28pm, in Room 06-08. Robin's estimate of the time at which Nasu spoke to the five workers at the dormitory was clearly inaccurate, as Nasu, Mohosin, and Sengani's evidence and P1 clearly indicated that the conversation took place later. The trial judge's assessment that the difference in timing did not detract from the overall consistency of his evidence on key issues cannot be said to be erroneous as this could be explained by imperfect recollection of events after the passage of time.

(b) Second, Robin testified that Nasu had asked all five workers to hand over their cards to Nasu at the common corridor. After they had refused, Nasu phoned Sengani using his handphone. Sengani then spoke to Robin and the other four workers through the speaker of Nasu's

handphone, during which Nasu informed Sengani that the five workers refused to hand over their cards. Sengani then informed the workers that they may retain their cards but they were to remain in their dormitories and not go to work the next day. I note that Robin's evidence that Nasu spoke to all five workers to request the return of their cards was materially different from Nasu's evidence that he had only asked the Appellant and Saddam for the return of their cards. The discrepancy between Robin's and Nasu's account can be explained by the fact that Robin did not reside in Room 06-08, the location where Nasu said that he had spoken to the Appellant and Saddam regarding the return of the duo's cards. I do not find any reason to disturb the trial judge's finding that Robin was a credible witness in view of the general consistency of his evidence regarding Issue 2, *viz*, the Group Call, with the evidence given by the other Prosecution witnesses involved. Though Robin appeared to have an imperfect recollection or perception of details of events that transpired years ago, he did not come across as unreliable or unworthy of credit on all issues.

*Shah's evidence*

38 Shah was one of the five workers with whom Sengani and Nasu had conversed on 28 February 2019. During the Appellant's trial, Shah had given two versions of events. The first was given during the Prosecution's case on 22 and 23 June 2022 (see [27(e)] above) and was materially consistent with Sengani's, Nasu's, and Robin's evidence, on the material events of 28 February 2019. However, like Robin, Shah was not present in Room 06-08 and his evidence shed little light on the issue of whether Nasu had asked the Appellant to return his card in Room 06-08, before gathering all five workers to have a conversation at the corridor of the dormitory. Shah's initial testimony was also

consistent with his statements recorded by IO Ewan at the MOM on 16 May 2019 and 23 May 2019.[75] Shah was recalled on the application of the Defence on 6 August 2024, during the Defence's case. Shah then gave his second version, *viz*, that on 28 February 2019, he did not meet Nasu at the dormitory or speak to Nasu. Instead, when he was at the open space in the dormitory area and was returning to the dormitory, he received a call from someone who informed him that Nasu was asking for his yard access card.[76] Shah responded that he would not be able to enter his dormitory room if he did not have his card. In Shah's second version, he said that there was no phone conversation with Sengani and no instruction from Sengani not to go to the Yard for work on 1 March 2019.[77]

39 Shah's explanation for his inconsistent accounts was that Sengani had instructed him to lie and align his account with the other workers' accounts to the effect that there was a group meeting where Nasu had asked the five workers for their access cards, and there was a group conversation with Sengani after. Shah claimed that Sengani instructed him to lie when she met him at the premises of the MOM on 23 May 2019. Despite there being no articulated threat by Sengani, Shah claimed that he understood that if he did not follow her instructions, he would face difficulties and could be sent back to Bangladesh by Sengani without notice.[78]

40 The trial judge had correctly, in my view, disbelieved Shah's second version of events, as Shah's reason for changing his story beggars belief. As

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75 P31, ROA at pp 3906–3911; P32, ROA at pp 3912–3915.

76 NE of 6 August 2024 at p 7 (lines 8–28), ROA at p 3469.

77 NE of 6 August 2024 at p 8 (lines 14–18), ROA at p 3470.

78 NE of 6 August 2024 at p 16 (lines 3–17) and p 19 (lines 1–31), ROA at pp 3478 and 3481.

highlighted in the GD at [84], during the Prosecution's case, on 23 June 2022, Shah had vehemently denied under cross-examination that he was offered any incentive or that pressure was exerted on him by a supervisor or a person of authority to lie about the events of 28 February 2019. By 2022, Shah was no longer working for Sengani at VTP. Thus, the Appellant's submission that Shah was pressured into lying simply made no sense, *viz*, "defying her could result in adverse consequences, such as losing his job or being sent back to Bangladesh, was based on Sengani's 'normal' conduct toward workers, effectively conceding the opportunity to influence Shah".[79]

***Conclusion on Issue 1***

41 The trial judge did not err in finding that Nasu had spoken to the Appellant about collecting his yard access card from him. Nasu has satisfactorily explained his seemingly inconsistent accounts about the sequence in which he spoke to the various persons involved in short succession. While the time that has elapsed from 28 February 2019 had affected his recollection, Nasu was clear and consistent that he had spoken to the Appellant together with Saddam about the return of their cards because they resided in the same dormitory room. His account of his contemporaneous conversations with Mohosin and Sengani was broadly consistent with P1 and P22, which were WhatsApp chatlogs between Sengani and Mohosin as well as between Sengani and Nasu at the material time. In addition, his evidence was broadly consistent with the oral conversations had by Sengani with Mohosin and Nasu almost contemporaneously.

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[79] AWS at para 74.

42 While Nasu had trouble recalling the precise sequence in which he spoke to Mohosin and the five workers, the trial judge did not err in finding that the evidence established that Nasu was not mistaken in his recollection that he had indeed asked the Appellant to return his yard access card. Nasu's evidence was corroborated by P1, specifically, WhatsApp messages which show that Nasu had tried to collect the Appellant's card, but the Appellant refused to surrender it. Nasu's account at the Appellant's trial was also corroborated by Mohosin's testimony that Nasu called him to tell him that the Appellant refused to hand over his card. Given the contemporaneity of these messages and calls, and the consistency of the evidence given by Nasu, Mohosin, and Sengani in this regard, there is no basis to disturb the trial judge's finding that Nasu had attempted to collect the Appellant's yard access card, but the Appellant refused to hand it over.

**Issue 2: Did the Appellant hear Sengani instruct him not to enter the Yard for work on 1 March 2019?**

43 I now turn to consider whether the Prosecution has proved that the Appellant heard Sengani instruct him not to enter the yard for work on 1 March 2019. The parties' submissions on this issue are broadly similar to those set out at [16]–[21] above for Issue 1.

***Production of WhatsApp call records***

44 The Prosecution's case hinged on the fact that Sengani spoke to the five workers through Nasu's phone on the evening of 28 February 2019, over the Group Call. The Appellant's case was that the Group Call did not occur. As Sengani's or Nasu's WhatsApp call records were not adduced by the Prosecution in evidence, I directed the parties to address the court on whether any inferences ought to have been drawn under illus (*g*) to s 116 of the EA,

which provides that the court "may presume … that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it".

45 The Appellant submits that the non-production of the call records should weaken the Prosecution's case that the Group Call took place. The Prosecution submits that the court should not draw an adverse inference based on the non-production of the call records because there was nothing sinister about the Prosecution's decision not to produce them. It had proved that the call occurred by using other evidence, such as the testimony of the Prosecution's witnesses and WhatsApp messages which corroborate this testimony.

46 *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*") at [20] summarises the principles for drawing an adverse inference based on the failure to call a witness or give evidence. While these principles were propounded in the context of the absence or silence of a witness, they apply equally to the non-production of evidence:

> … (a) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.
>
> (b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and

> credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

47 *Sudha Natrajan* also states that the presumption underlying the drawing of an adverse inference does not apply if "the failure to produce evidence is reasonably attributable to reasons other than the merits of the case or the issue in question" (at [21]).

48 An adverse inference should not be drawn in respect of the non-production of the call records. While the call records would have been direct and probative evidence of a critical fact in issue, their non-production did not appear to be due to the merits of the case. Instead, the Prosecution had chosen to advance its case by relying on other pieces of evidence that attested to the call taking place. Moreover, even if the Prosecution's reliance on WhatsApp chat records suggests that the WhatsApp call records would have been available at the time the chat records were extracted, there is no conclusive indication that the call records were extracted by the IO and available for production at the time of the trial. The non-production of Sengani's or Nasu's call records thus did not attract an adverse inference.

***Assessment of the evidence***

49 I now turn to assess the trial judge's analysis of the evidence given by the witnesses on this issue.

*Evidence for the Prosecution*

50 The evidence given on behalf of the Prosecution was materially consistent. Sengani and Nasu testified to the following sequence of events:

(a) Sengani instructed Nasu to gather the five workers, as she

wanted to talk to them over a WhatsApp call.[80]

(b) Nasu testified that he gathered four of the five workers – the Appellant, Saddam, Shah, and Robin – in the corridor outside Nasu's room and made a WhatsApp call to Sengani, which was put on loudspeaker. Kofilur, the last of the five workers, joined the other workers midway through the call.[81]

(c) Over the call, Sengani told the five workers not to report to work the next day (*ie*, 1 March 2019) and said that she would come to the dormitory to meet them.[82]

Sengani's and Nasu's accounts differed in their recall of some details, namely, whether Saddam uttered anything during the call[83] and whether Nasu was asked to translate Sengani's instructions.[84] But I considered these discrepancies to be minor and understandable in light of the lapse of time since the events. The material portions of Sengani's and Nasu's testimony regarding the call were otherwise aligned.

51 Robin's testimony also corroborated the testimonies of Sengani and Nasu on the sequence of events. He testified that Nasu gathered the five workers in the corridor and Sengani spoke to them through Nasu's phone on

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80 NE of 15 June 2023 at p 5 (lines 22–24), p 6 (lines 11–16), ROA at pp 1834 and 1835; NE of 3 October 2023 at p 71 (lines 18–22), ROA at p 2153.

81 NE of 15 June 2023 at p 6 (line 17)–p 7 (line 26), ROA at pp 1835–1836.

82 NE of 15 June 2023 at p 6 (lines 27–29), ROA at p 1835; NE of 3 October 2023 at p 72 (lines 4–9), ROA at p 2154.

83 NE of 15 June 2023 at p 8 (lines 12–13), ROA at p 1837; NE of 3 October 2023 at p 72 (lines 14–22), ROA at p 2154.

84 NE of 15 June 2023 at p 8 (line 18)–p 9 (line 2), ROA at pp 1837–1838; NE of 5 October 2023 at p 103 (lines 9–14), ROA at p 2425.

loudspeaker. She told them not to go to work the next morning and that she would come to the dormitory to speak to them.[85] While Robin testified that this call occurred at about 7.30pm to 7.35pm,[86] this discrepancy in timing did not substantially reduce the corroborative weight of Robin's account, as all other factual details were materially consistent with Sengani's and Nasu's accounts. Inconsistencies in a witness's recall of the timing of events do not necessarily undermine a witness's account if their testimony is otherwise coherent and consistent (see *eg*, *Ng Kwee Leong v Public Prosecutor* [1998] 3 SLR(R) 281 at [12(b)] and [13]; *Loh Siang Piow v Public Prosecutor* [2023] SGHC 74 at [135(c)] and [136]).

52 The testimonies of Sengani, Nasu, and Robin are further corroborated by the WhatsApp messages between Sengani and Nasu (P22) and the MOM statements of Nasu[87] and Shah.[88]

(a) P22 shows that the five workers were identified, and their names were sent to Nasu. This supports Sengani's and Nasu's evidence that Sengani had identified the five workers to Nasu and asked him to collect their yard access cards and arrange for them to speak with her.

(b) In the MOM statements, Nasu and Shah stated that Sengani spoke to the five workers through Nasu's phone and told them not to go to work on 1 March 2019.

The Prosecution's case on this issue was therefore largely consistent and amply

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85 NE of 23 June 2022 at p 77 (line 8)–p 78 (line 25), ROA at p 416–417.

86 NE of 23 June 2022 at p 78 (lines 18–21), ROA at p 417.

87 D18C at A5, ROA at p 4477; D18D at A4, ROA at 4479.

88 P31 at A8 and A9, ROA at p 3907; P32 at A6, ROA at p 3913.

corroborated by the testimony of multiple witnesses and the documentary evidence. Accordingly, the Prosecution had, on the whole, adduced credible and consistent evidence which proved that the Appellant had heard Sengani instruct him not to enter the Yard for work on 1 March 2019.

*Evidence for the Appellant*

53 I reject the Appellant's argument that the trial judge erred in his assessment of the evidence given by Shah (after he was recalled by the Defence) and Nasir (see [17] above).

54 The Appellant's case is that the evidence Shah gave before he was recalled was untruthful because he was colluding with Sengani to give false information to the MOM.[89] As discussed above, the Appellant bears the initial burden of proving that Sengani had a motive to falsely implicate the Appellant, but he has not discharged this burden (see [24(a)] above). The Appellant alleges that Sengani masterminded a conspiracy to cover up a genuine workplace accident and avoid regulatory scrutiny. However, the Appellant has not produced any evidence to show Sengani's supposedly sinister motivations, beyond speculations based on the Vessel's christening date.[90] Moreover, a critical part of the alleged cover-up is that Sengani lied about having instructed the Appellant not to go to work through the Group Call. But there is corroborative documentary evidence in the form of WhatsApp messages (*ie*, P1, P19, and P22) showing that Sengani intended to prevent the five workers from entering the Yard for work. These messages were sent on 28 February 2019, the day before the alleged accident occurred. Accordingly, absent any evidence of

89 AWS at para 74.

90 AWS at para 13.

digital manipulation (which the Appellant did not produce), these messages could not have been concocted as part of a cover-up for the accident that occurred on 1 March 2019.

55 As for Nasir's evidence, the trial judge did not err in considering that limited weight ought to be placed on Nasir's evidence. It was suspicious that Nasir could recall precise details of events on 28 February 2019 and 1 March 2019 that uncannily echoed the Appellant's account, including the fact that the Appellant was lying down when Nasir returned to the dormitory and appeared sick,[91] with whom Nasir and the Appellant had dinner in the evening of 28 February 2019,[92] and that Nasir supposedly saw the Appellant lie down on his bed after dinner and that he did not leave the room until Nasir went to sleep.[93]

56 It was not seriously disputed that Nasir is a friend of the Appellant, and I do not think that the trial judge had fallen into error in recognising that friendship was a possible incentive for Nasir's alignment of his evidence to the Appellant's benefit. In addition, there was no ostensible reason why Nasir would recall the events of 28 February 2019 in great detail, considering Nasir's difficulty in recalling other facts about his days working with VTP that he could have been expected to recall with greater ease, such as the team members he worked with in that period and the number of levels on the Vessel.[94] The same analysis applies, in my view, to Nasir's evidence pertaining to Nasir's supposed recollection that there was typically no handwriting on each day's RA Form

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91 NE of 22 February 2024 at p 78 (lines 22–23), ROA at p 3092.

92 NE of 22 February 2024 at p 79 (lines 21–24), ROA at p 3093.

93 NE of 22 February 2024 at p 83 (lines 21–25), ROA at p 3097.

94 GD at [64]–[65].

when he received it to sign.[95]

***Conclusion on Issue 2***

57 The trial judge rightly found that the Group Call occurred and, consequently, the Appellant had heard Sengani instruct him not to enter the Yard for work on 1 March 2019. The testimony of multiple witnesses attests to this, and the oral evidence is corroborated by documentary evidence in the form of WhatsApp messages and MOM statements. The Appellant's argument that the evidence of certain witnesses was fabricated in furtherance of a conspiracy masterminded by Sengani lacks any objective basis and cannot raise a reasonable doubt in the Prosecution's case.

**Issue 3: Did the Appellant attend the TBM on 1 March 2019?**

58 I now turn to assess the trial judge's analysis of the evidence on whether the Appellant attended the TBM on 1 March 2019. I begin by summarising the parties' submissions.

***Parties' submissions***

59 The Appellant argues that two pieces of documentary corroborative evidence – the RA Form dated 1 March 2019 (P18B) and the entry records for the Yard (D15) – were fabricated.[96] He further submits that the trial judge erred in his assessment of Lal Badsha's and Nasir's evidence that the Appellant attended the TBM on 1 March 2019.[97] He also contends that the trial judge erred

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95 NE of 22 February 2024 at p 15 (lines 9–12), ROA at p 3029.

96 AWS at paras 102–115, 182–189 and 283–305.

97 AWS at paras 70–84 and 232–268.

in accepting Subuj's account that he had conducted the TBM.[98]

60 Conversely, the Prosecution argues that the trial judge did not err in his assessment of P18B and the evidence of the relevant witnesses. The Prosecution submits that the trial judge rightly found that the Appellant entered the Yard at 4.43am (suggesting deliberate evasion of Sengani's planned intervention) and did not attend the TBM or receive work instructions.[99]

***Assessment of the evidence***

61 The Appellant stated in his MOM statement of 11 April 2019 that Subuj conducted the TBM and gave him work instructions.[100] The Appellant claimed, inconsistently at the trial, that Lal Badsha had conducted the TBM because Subuj was going to be late.[101] The trial judge rightly found that the Appellant did not attend the TBM (see [104]–[148] of the GD). In my view, the trial judge did not fall into error in preferring the evidence of Subuj over Lal Badsha as the latter was less than forthcoming. I now explain my reasons.

(a) Lal Badsha's MOM statement stated that Subuj conducted the TBM and that the Appellant was absent.[102]

(b) The trial judge rightly found that Lal Badsha's credit as a witness was impeached. Lal Badsha's claim that he had to conduct the TBM on 1 March 2019 in place of Subuj (as Subuj had called Lal Badsha to inform the latter that he would be delayed) was contradicted by the oral

98 AWS at paras 227–229.

99 RWS at paras 131–163.

100 P27 at A3, ROA at pp 3878–3879.

101 NE of 14 February 2024 at p 40 (lines 26–32), ROA at pp 2604.

102 P29 at A9 and A10, ROA at p 3897.

testimonies of a number of witnesses, including Subuj, Mr Nallathambi Arumugam, Mohosin, Nasu, and Sengani. On the contrary, the weight of the evidence indicated that Subuj had arrived at the dormitory and the Yard early in the morning of 1 March 2019.

(c) Lal Badsha's testimony that he had quickly conducted a TBM (which the Appellant attended) before dispersing the workers to their workstations without work instructions and any safety briefing at 7.40am[103] was inconsistent with his MOM statement, P29. In P29, Lal Badsha stated that the TBM was conducted from 7.30 to 8.00am, that the Appellant was not in attendance, and that Subuj had received a call during the TBM informing him about an injured worker, following which Subuj left the TBM and Lal Badsha took over conduct of the TBM.[104] The timing of the TBM in Lal Badsha's testimony was also inconsistent with the Appellant's testimony that the TBM ended at about 7.50 to 7.55am. The timing of the TBM given by the Appellant was more consistent with the timing stated in P29, casting doubt on Lal Badsha's testimony that he had ended the TBM early without the typical briefings. Work could not have started without work instructions from Lal Badsha.

(d) Lal Badsha had no good explanation for the multiple lies told, beyond the mere assertion that Subuj had asked him to make the false statements in P29.[105] It was unclear why Lal Badsha would comply with Subuj's request, even if it was made.

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103 NE of 23 July 2024 at p 21 (line 17)–p 22 (line 10) and p 32 (lines 23–30), ROA at pp 3228–3229 and 3230.

104 P29 at A7, A9 and A13, ROA at p 3897–3898.

105 NE of 23 July 2024 at p 38 (lines 18–19), ROA at p 3245.

(e) Lal Badsha had also claimed that Sengani had requested, one or two days after 1 March 2019, that he provide the information in P29 falsely to the MOM and that she would, in exchange, increase his hourly wage from $2.00 to $2.50.[106] There was no suggestion that Lal Badsha had been moved by this offer as he had remained in the employ of VTP notwithstanding that his salary was only increased by $0.10 or $0.14 instead of $0.50 per hour,[107] until 2021, when he was dismissed for an unrelated infraction at work.[108]

62 The Appellant's narrative was contradicted by the objective evidence, which the Appellant sought to discredit. The Appellant claimed, without any basis, that the entry records for the Yard were fabricated. The Appellant claims that Sengani had fabricated the Yard entry records to create the impression of collusion amongst Saddam, Kofilur, and the Appellant, as the trio had entered the Yard at 4.43am on 1 March 2019, and all three workers had allegedly encountered accidents subsequently in the morning of 1 March 2019.[109] I note that the trial judge did not base any of his findings at the trial on the Yard access entries pertaining to Kofilur and Saddam, and was in no part influenced by any alleged accident which befell Kofilur and Saddam on 1 March 2019. I am of the view that the trial judge did not err in finding that there was no basis to suggest that the Yard access entry pertaining to the Appellant had been fabricated, for two main reasons. First, the assertion of fabrication was made belatedly at the trial, notwithstanding the Appellant's admission in his MOM statement that he

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106 NE of 23 July 2024 at p 29 (lines 11–14), ROA at p 3236.

107 NE of 23 July 2024 at p 29 (lines 11–21), ROA at p 3236.

108 GD at [136(b)]; NE of 23 July 2024 at p 69 (line 22)–p 70 (line 10), ROA at pp 3276–3277.

109 AWS at paras 283–305.

had entered the Yard at 4.43am when confronted with the Yard entry records,[110] which is the same entry time stated in the records. Second, the Appellant's evidence at trial also revealed that the entry record was accurate, as the Appellant had admitted that he had entered the Yard at 4.43am.[111]

63 The Appellant also challenged the authenticity of P18B (*ie*, the RA Form dated 1 March 2019 containing the attendance sheet for the TBM which showed that the Appellant did not attend),[112] which the trial judge had rightly dismissed. The trial judge's finding that there was no evidence that P18B was fabricated was not against the weight of the evidence. As a starting point, the Appellant bore the legal burden of adducing some *prima facie* evidence that P18B was forged.

(a) The Appellant is not assisted by his argument about the so-called "chain of custody" of P18B being compromised.[113] Even if RA Forms were not always signed at the TBMs, this was equivocal and irrelevant to the authenticity of P18B in particular. Specifically, in relation to the RA Form for 28 February 2019, the mere fact that Sengani or Subuj had collected P18B from Sembcorp Marine at IO Ewan's request did not raise doubt in and of itself, let alone a reasonable doubt, about P18B's authenticity. The logical leap which the Appellant asks this Court to make, is to infer therefrom that Sengani or Subuj had doctored P18B before handing the same to IO Ewan to obliterate traces of the Appellant's attendance at the TBM on 1 March 2019. As I had explained

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110 P28 at Q4 and A4, ROA at p 3885.

111 NE of 14 February 2024 at p 33 (line 19)–p 35 (line 23), ROA at pp 2597–2599.

112 P18B, ROA at p 3846.

113 AWS at paras 113–115 and 182–189.

at [54] and [24(a)] above, the Appellant has not produced any evidence to suggest that P18B was forged.

(b) The Appellant's other arguments did not assist him either. He relied on the following evidence from Defence witnesses to argue that P18B was doctored:

(i) the fact that the signatures on P18B were not in their usual order;[114]

(ii) Nasir's evidence that he was asked to sign a blank RA Form ten to 15 days after 1 March 2019;[115] and

(iii) Lal Badsha's evidence that he had collected the RA Form for 1 March 2019 and signed it first, and P18B was not that form.[116]

The order of the signatures on the form is neither here nor there and does not serve as evidence that P18B was forged. Nasir's evidence does not assist the Appellant because he testified that the form he signed ten to 15 days after 1 March 2019 was undated, such that he could not be sure whether it was P18B.[117] Finally, Lal Badsha's evidence was rightly rejected by the trial judge. His prior inconsistent statement to MOM, in which he said that Subuj had conducted the TBM instead of himself, casts serious doubt on his credibility.

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114 AWS at paras 102–103, 109 and 111.

115 AWS at paras 102 and 105.

116 AWS at paras 106–108.

117 NE of 6 March 2024 at p 11 (lines 6–21), ROA at p 3123.

### *Conclusion on Issue 3*

64 I therefore affirm the trial judge's finding that the Appellant was absent from the TBM on 1 March 2019.

## Issue 4: Did the Appellant meet with an accident that caused him to sustain injuries aboard the Vessel on 1 March 2019?

65 I turn to assess the trial judge's analysis of the last factual issue – whether the Prosecution has proved that the Appellant met with an accident that caused him to sustain injuries aboard the Vessel on 1 March 2019. I begin by summarising the parties' submissions.

### *Parties' submissions*

*Appellant's submissions*

66 First, the Appellant argues that the medical evidence supports his claimed injuries. He also argues that, in assessing the medical evidence, the trial judge erred in placing undue weight on his refusal to seek help from a medical social worker, and in giving insufficient consideration to the language barrier between him and the medical personnel who examined him.[118]

67 Second, the Appellant submits that the trial judge misallocated the burden of proof and misapplied the standard of proof needed to discharge this burden. The Appellant claims that the trial judge essentially placed the burden on him to prove that he did not meet with an accident and suffer injury.[119] Moreover, the Appellant contends that the trial judge erred by filling a gap in the Prosecution's case, by finding that no accident occurred when the

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118 AWS at paras 306–321.

119 AWS at paras 322–359.

Prosecution did not pursue this point as a substantial part of its case.[120]

*Prosecution's submissions*

68 First, the Prosecution submits that the trial judge rightly found that the Appellant did not meet with an accident and did not sustain the injuries as alleged. The Prosecution submits that the accident did not occur, relying on the inherent improbability of the accident as described by the Appellant and the lack of witnesses or physical evidence.[121] The Prosecution refers to the medical experts' observations of the Appellant and argues that the medical evidence showed that the Appellant was diagnosed with contusions at best, contradicting his claim that he was injured in his neck, back, right shoulder, left thigh, and knee.[122]

69 Second, the Prosecution submits that the trial judge did not misallocate the burden of proof, as it is clear from the GD that the trial judge's findings were anchored in testimony and documentary evidence.[123]

***Did the trial judge fill a gap in the Prosecution's case?***

70 Preliminarily, I address the Appellant's argument that the trial judge filled a gap in the Prosecution's case on his own motion. The Appellant argues that the Prosecution "never seriously advanced the contention that the Appellant had not been injured", and so the trial judge erred in making extensive findings that the Appellant did not meet with an accident. The Appellant refers to *Mui*

120 AWS at paras 360–392.

121 RWS at paras 32–40.

122 RWS at paras 48–68.

123 RWS at paras 168–172.

*Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 ("*Mui Jia Jun*"). In that case, the Court of Appeal noted that the Prosecution did not seek to advance any explanation for a particular issue, and so the trial judge was not entitled to fill this gap in the Prosecution's case even if there was some evidential basis to do so (at [71]).

71 In the present case, the trial judge did not fill a gap in the Prosecution's case. The Prosecution's case as put to the Appellant was that the accident was staged (meaning that there was no genuine accident)[124] and the Appellant did not suffer injuries because of the alleged accident.[125] The trial judge was alive to the fact that the legal burden rested on the Prosecution and clarified the Prosecution's case on whether an accident had occurred at all, and whether there was any injury arising from such an accident.[126] The trial judge, having understood the Prosecution's case, proceeded to assess whether the evidence adduced by the Prosecution was sufficient to prove that the Appellant did not meet with an accident in the course of his employment, and even if he did, whether the injury was sustained by the Appellant.

### *Assessment of the evidence*

*Evidence concerning the occurrence of the accident*

72 I now consider whether the Prosecution has proved beyond a reasonable doubt that the Appellant did not meet with an accident in the course of employment and suffer injury as a result.

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124 NE of 21 February 2024 at p 31 (lines 5–7), ROA at p 2946.

125 NE of 21 February 2024 at p 39 (lines 15–16), ROA at p 2954.

126 NE of 15 November 2024 at p 11 (line 5)–p 14 (line 9), ROA at pp 3573–3576.

73 The Prosecution has adduced positive evidence which suggests that the alleged accident did not occur because it was staged by the Appellant. As canvassed in the analysis of Issues 2 and 3 above, the Prosecution adduced sufficient evidence to prove that the Appellant was told not to go to work on 1 March 2019, and that he did not attend the TBM or receive work instructions on that day. These facts lead to the inference that the Appellant had no reason to be on board the Vessel on 1 March 2019. In turn, this supports the Prosecution's case that the Appellant was only on board the Vessel to stage an accident, so that he could make a false claim for compensation. The present case is analogous to *Mia Mukles v Public Prosecutor* [2017] SGHC 252 ("*Mia Mukles*"). In *Mia Mukles*, the offender claimed to have fallen while climbing up a ladder (at [2]). The court found that the offender was not instructed to do any work on the second level as he claimed, and so, on his own evidence, he had no reason to use the ladder and consequently did not fall while climbing up the ladder (at [15]–[16]). Similarly, in the present case, the Appellant was told not to go to work and was given no work instructions, and so had no reason to be on the Vessel. The Appellant did not provide any other credible reason for why he was on the Vessel, beyond asserting that he was really working. These facts lead to the inference that the Appellant was only on the Vessel to stage an accident, and no such accident actually occurred.

74 In addition, the Appellant's lies in his out-of-court statements bolster the Prosecution's case. Lies are not evidence of guilt but may corroborate other evidence that in turn establishes an offender's guilt (*Kamrul Hasan Abdul Quddus v Public Prosecutor* [2011] SGCA 52 at [54]). Lies can be used to corroborate evidence of guilt if the following requirements are met (*Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [153]):

(a) the lie told out of court is deliberate;

(b) it relates to a material issue;

(c) the motive for the lie is a realisation of guilt and a fear of the truth; and

(d) the statement must clearly be shown to be a lie by independent evidence.

75 The Appellant told the following relevant lies in his MOM statements:

(a) On 1 March 2019, he finished his breakfast at 6.30am and took an hour to walk to the work location. He reported for work at 7.30am ("Lie 1").[127]

(b) He arrived at the Yard at 4.43am to borrow money from his uncle, a worker at the Yard named Samidul ("Lie 2").[128]

(c) He attended the TBM and signed on the RA Form ("Lie 3").[129]

(d) He was instructed by Subuj to apply silicon on the doors at the intermediate deck of the Vessel ("Lie 4").[130]

76 Lie 1 is false because the entry records of the Yard show that the Appellant entered the Yard at 4.43am and not 7.30am. Lies 3 and 4 are false because of the findings for Issue 3 – the evidence shows that the Appellant did not attend the TBM, sign the RA Form, or receive work instructions at the TBM.

77 Lie 2 is also false. The Appellant initially said that he had entered the

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127 P27 at A3, ROA at p 3878.

128 P27 at A11, ROA at p 3880; P28 at A4, ROA at p 3885.

129 P27 at A3 and A12, ROA at pp 3878–3879.

130 P27 at A3, ROA at p 3879.

Yard at 7.30am and only told Lie 2 when he was confronted with the yard entry records. This suggests that Lie 2 was concocted to explain away the discrepancy between Lie 1 and the yard entry records. Lie 2 is also contradicted by the evidence adduced at the trial.

(a) In elaborating upon Lie 2, the Appellant claimed that he had to borrow money from Samidul because he had not been paid for two months and was short of money.[131] But the Appellant's bank statements contradicted this claim, as they showed that he was paid for his work in December 2018 and January 2019. On 1 March 2019, the Appellant had almost $500 in his bank account.[132] The Appellant testified that there was an automated teller machine in the dormitory canteen that allowed him to check his account balance and withdraw money.[133] It was illogical that the Appellant did not check how much money he had before meeting Samidul to borrow money.

(b) The Appellant's explanation for why he needed to borrow money from Samidul in the early hours of the morning was also unconvincing. He testified that he wanted to buy fruits after work because he had been feeling unwell since the previous day, when he had taken half a day off work.[134] However, the Appellant had no good reason for not seeking medical attention (which he would not have had to pay for), and instead chose, illogically, to forgo rest to wake up and enter the Yard almost three hours earlier than usual, just to borrow money to buy

131 P27 at A4, ROA at p 3885.

132 D22, ROA at p 4490.

133 NE of 19 February 2024 at p 23 (lines 6–7), ROA at p 2758.

134 NE of 19 February 2024 at p 26 (lines 4–6), ROA at p 2761.

> fruits. Such behaviour is especially unlikely considering that regular meals and water were provided to the Appellant, and he had sufficient money in his bank account to buy fruits without borrowing from Samidul.

78 Beyond being false, the four lies were told deliberately. The lies could not have been attributable to lapses in memory because they contained extensive details that must have been contrived by the Appellant rather than misremembered (*eg*, Subuj's specific instruction to apply silicon at the TBM, and the Appellant's detailed movement in the early morning of 1 March 2019 from the dormitory to the Yard, from the Yard to the canteen, and from the canteen to the Vessel).

79 The lies also related to material issues. They all concerned the key question of whether the Appellant had any business being on the Vessel on 1 March 2019. The Appellant meant for Lies 1, 3, and 4 to show that he carried out his normal working routine on the morning of 1 March 2019 before he met with the accident. Similarly, Lie 2 is an attempt by the Appellant to maintain a veneer of regularity by explaining away the anomalous fact that he had entered the Yard at 4.43am.

80 The implications of the lies and the circumstances in which they were told suggest that the Appellant came up with these lies because of a realisation of his guilt and a fear of the truth. The Appellant told the lies during an investigative interview with an IO who was investigating the Appellant's making of the WICA Claim. The IO explicitly told the Appellant that he may be subject to legal action if he was found to have made a fraudulent claim.[135] In

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135 P27, ROA at p 3878; P28, ROA at p 3884.

these circumstances, the Appellant would have known that he was suspected of an offence and, knowing that he was guilty of making a fraudulent claim, he told lies to give the impression that the claim was legitimate. Specifically, he told lies that were meant to show that he was working on board the Vessel on 1 March 2019 as usual, which would mean that his claim was for a legitimate workplace injury, and it was not a fraudulent claim.

81 These lies corroborate the Prosecution's evidence that the Appellant had been told not to go to work by his employer and was not given work instructions, such that he had no business being on the Vessel on 1 March 2019. The lies strengthen the inference that the alleged accident was staged because they show the Appellant's consciousness of guilt when he was investigated for the WICA Claim.

82 The Appellant's account of the accident was also inherently improbable.

(a) The Appellant testified that near where the accident occurred, he saw neatly stacked rolls of insulation beside a door, and that "the Indian worker" had thrown the rolls of insulation from the upper deck to the lower deck of the vessel as an efficient way of moving the heavy rolls.[136] The Appellant had also testified that after he fell and landed at the foot of the stairs, the roll of insulation that was thrown down by "the Indian worker" rested on his body.[137] Yet, no one who arrived at the scene attested to seeing any insulation rolls at the scene, or that insulation rolls were moved in this manner. The Appellant also suspiciously claimed that the Indian worker had informed him that he had thrown down the

136 NE of 20 February 2024 at p 32 (lines 19–22 and 26–30) and p 33 (lines 6–9), ROA at pp 2859–2860.

137 NE of 20 February 2024 at p 36 (lines 1–4), ROA at p 2863.

insulation rolls but removed them after the Appellant's alleged accident.[138]

(b) The Appellant did not mention in his MOM statements that his right shoulder hit the railing of the staircase or that his left foot was stuck between the steps of the staircase when he fell. But he testified to these two facts at the trial.[139] It is implausible that the Appellant did not recall these facts when the MOM statements were taken but could remember them at the trial. The two MOM statements were taken within a few months after the alleged accident, but the Appellant's trial testimony was given some four years after the accident.

(c) The trial judge's view that the Appellant had provided an improbable account of how the insulation roll was thrown, hit the Appellant's left leg, caused his right shoulder to hit the railing and as he fell down the stairs, and then his left foot to be stuck under a step of the staircase cannot be faulted. To add to the improbability of this entire sequence of events, the Appellant asserted in his evidence at the trial that the insulation roll landed on top of the Appellant's body and remained there after he fell down the stairs.[140] The staircase was wide enough for only two persons to walk side by side.[141] The Appellant was first knocked from the middle of the staircase (where he was walking),[142] all the way to the right side of the staircase (where his shoulder struck

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138 NE of 20 February 2024 at p 17 (lines 3–7) and p 35 (lines 16–17), ROA at p 2844 and 2862.

139 NE of 20 February 2024 at p 43 (lines 1–28), ROA at p 2870.

140 NE of 20 February 2024 at p 36 (lines 1–11), ROA at p 2863.

141 NE of 20 February 2024 at p 11 (lines 16–22), ROA at p 2838.

142 NE of 20 February 2024 at p 14 (lines 21–25), ROA at p 2841.

the railing). The Appellant had described his fall as either a rolling or slipping motion down the flight of stairs,[143] which made it difficult to understand how his foot was caught between the steps when he landed at the bottom of the stairs. During this time, the insulation roll, the girth of which was so wide that the Appellant would not have been able to wrap his arms around it,[144] and which was heavy as it was made of metal,[145] was sliding down the narrow staircase, and somehow landed on the Appellant and remained resting on the Appellant's body until he was discovered by another person. Conveniently, this person could not be located to give evidence at trial, and there were no other witnesses or footages of this incident.

*Evidence concerning whether the Appellant sustained injuries as a result*

83 The finding that the Appellant had staged the accident is strengthened by the evidence concerning the Appellant's exaggeration of his injuries, if any were sustained. It was not seriously disputed that no visible injuries were sustained by the Appellant and that he was conscious after the incident.

(a) Velasco testified that, when he attended to the Appellant, the Appellant pretended to be unconscious when he was actually conscious. The Appellant closed his eyes and did not respond to verbal stimuli. But when Velasco tried to open the Appellant's eyes, the Appellant tried to resist Velasco opening his eyes. Additionally, when Velasco lifted the Appellant's arm and leg and let them fall to the ground, the Appellant

143 NE of 20 February 2024 at p 14 (lines 15–20) and p 28 (lines 3–7), ROA at pp 2841 and 2855.

144 NE of 20 February 2024 at p 12 (lines 8–14), ROA at p 2839.

145 NE of 21 June 2022 at p 78 (lines 21–23), ROA at p 228.

tried to break the fall of his limbs by slowly lowering his limbs himself.[146] While Velasco conceded the possibility that he could have confused the Appellant with two other workers who he was attending to at the time under cross-examination,[147] Velasco clarified under re-examination that he had meant that he could have confused Velasco's affect with the other workers he was attending to at the same time.[148] Velasco maintained that he could recall that the Appellant appeared to have been keeping his eyes closed and refused to obey commands,[149] which is why Velasco had to perform checks such as shining a light into the Appellant's eyes and lifting and dropping his arm to ascertain if he was indeed unconscious. No visible injuries were detected by Velasco.[150]

(b) Subuj, who attended to the Appellant while he was still lying on the ground after the alleged accident, testified that he did not see any blood or injuries on the Appellant.[151] The Appellant was conversant and could communicate that he had sustained injury on his back. He also described the Appellant's demeanour as "normal".[152]

(c) Velasco's and Subuj's evidence was not contradicted by Shaik, an HSE patrolman who was called as a Defence witness. Shaik testified that he could not remember whether the Appellant had suffered any

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146 NE of 13 June 2023 at p 8 (line 4)–p 11 (line 8), ROA at pp 1619–1622.

147 NE of 13 June 2023 at p 72 (lines 18–27), ROA at p 1683.

148 NE of 14 June 2023 at p 65 (lines 19–29), ROA at p 1821.

149 NE of 14 June 2023 at p 65 (lines 30–31), ROA at p 1821.

150 NE of 13 June 2023 at p 86 (lines 6–8), ROA at p 1697.

151 NE of 16 February 2023 at p 19 (lines 26–30), ROA at p 1113.

152 NE of 16 February 2023 at p 19 (lines 23–30), ROA at p 1113.

visible injuries, as he was focused on crowd control duties at the time.[153]

84 Apart from the testimony of the persons who first responded to the alleged accident, the evidence of the doctors who examined the Appellant also suggests that he did not suffer genuine injuries but was faking or exaggerating his pain and continued to do so after the incident to bolster his claim.

(a) Dr S B M Darshana Chandrakumara ("Dr Darshana") testified that he suspected that the Appellant's complaints of pain were motivated by a "secondary intention", such as financial benefit.[154] Dr Darshana observed that the pain displayed by the Appellant was disproportionate to his supposed injuries. The Appellant was examined by Dr Darshana three months after the alleged accident. In this timeframe, Dr Darshana would have expected the Appellant to get better, but he did not show any improvement in his level of pain,[155] While Dr Darshana also stated that part of the reason for his suspicion that the Appellant was motivated by a secondary intention was because he would expect the X-ray scans to turn up a fracture had the Appellant indeed fallen from a height of 4m (which he had understood was the height from which the Appellant fell at the time of preparing his medical report) recorded from the history taken from the Appellant,[156] Dr Darshana's observation remained pertinent. In Dr Darshana's view, it was far more pertinent that it was contrary to the ordinary course of things that by 6 May 2019, the Appellant's pain and contusions were not improving, and that the

153 NE of 24 July 2024 at p 48 (lines 20–23), ROA at p 3339.

154 NE of 19 July 2022 at p 44 (lines 14–30), ROA at p 550.

155 NE of 19 July 2022 at p 51 (lines 10–22), ROA at p 557.

156 NE of 19 July 2022 at p 82 (line 19)–p 84 (line 10), ROA at pp 588–590.

presentation of the Appellant when he walked into the clinic limping[157] and complaining of pain was not consistent with the severity of the injury sustained.

(b) Dr Yii Chau Ang Anthony also testified that he "advised [the Appellant] not to inadvertently make a fraudulent work injury claim". This was because the Appellant did not complete his medical assessments at his previous visit to the Accident and Emergency department, and he needed to attend all his appointments and tests to substantiate any such claim.[158]

(c) Although some other doctors, including Dr Ang Peck Har, Dr Abigail Lee Ern Jia, and Dr Kuo Chung Liang, testified that the Appellant had muscle spasms in his back that were consistent with the alleged accident,[159] their opinions were inconclusive as the doctors said that the muscle spasms could also be attributed to causes other than an accident, such as overuse of the back muscles.[160] Moreover, the doctors' diagnosis of the Appellant was based on the Appellant's responses to the doctors' palpation of his body parts,[161] meaning that their opinions were based on the Appellant's self-report, rendering them less reliable.

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157 NE of 19 July 2022 at p 38 (lines 17–19), ROA at p 544.

158 NE of 27 July 2022 at p 13 (lines 15–21), ROA at p 745.

159 NE of 21 June 2022 at p 83 (lines 9–15), ROA at p 233; NE of 28 July 2022 at p 53 (lines 7–16), ROA at p 848; NE of 20 July 2022 at p 35 (line 29)–p 36 (line 2), ROA at pp 630–631; NE of 21 July 2022 at p 44 (lines 24–31) and p 55 (lines 6–18), ROA at pp 704–715.

160 NE of 21 June 2022 at p 42 (lines 24–30), ROA at p 232; NE of 20 July 2022 at p 42 (lines 14–21), ROA at p 642; NE of 21 July 2022 at p 52 (lines 11–19), ROA at p 712.

161 NE of 21 June 2022 at p 82 (lines 10–20), ROA at p 232; NE of 20 July 2022 at p 5 (line 30)–p 6 (line 12), ROA at pp 600–601; NE of 21 July 2022 at p 53 (lines 16–21), ROA at p 713.

(d) As the trial judge noted, the Appellant also refused treatment, tests, and examinations that were offered to him by the doctors.[162] The Appellant's refusal to undergo treatment or diagnostic tests suggests that whatever injuries he may have had were not as serious as he claimed. This refusal cannot entirely be explained by the Appellant's lack of funds, because the Appellant also refused help from a medical social worker, who could have helped him with financial assistance.[163]

85 Accordingly, in totality, the evidence given by the doctors suggested that it was highly doubtful that the Appellant was being truthful about suffering injuries resulting from the alleged accident as described by him.

***Conclusion on Issue 4***

86 The Prosecution has proved that the Appellant did not meet with an accident aboard the Vessel on 1 March 2019 that caused him to sustain injuries as a result. The evidence suggests that it is more likely that the Appellant had staged the accident and feigned his injuries – he had no reason to be on the Vessel when the alleged accident occurred, lied about key circumstantial facts surrounding to the accident, and provided a doubtful account of the accident. Furthermore, some of the first responders and doctors who attended to him described his behaviour as being suggestive of feigning injuries. The Prosecution has thus discharged its burden of proof for this issue.

**Summary of findings**

87 In summary, the trial judge did not err in finding against the weight of

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162 GD at [177].

163 NE of 19 July 2022 at p 36 (lines 12–28), ROA at p 542.

the evidence that the Prosecution proved the following facts:

(a) Issue 1: Nasu spoke to the Appellant about collecting his yard access card from him.

(b) Issue 2: The Appellant heard Sengani instruct him not to enter the Yard for work on 1 March 2019.

(c) Issue 3: The Appellant did not attend the TBM on 1 March 2019.

(d) Issue 4: The Appellant did not meet with an accident that caused him to sustain injuries aboard the Vessel on 1 March 2019.

88 Accordingly, the Prosecution has made out all three charges beyond a reasonable doubt, as I will explain below.

**The 1st charge**

89 Because the trial judge rightly found that no accident occurred on 1 March 2019 and the Appellant suffered no injury as a result, the Appellant's WICA Claim was false. The Appellant knew that the claim was false because he knew that he had staged the accident and it did not really occur.

90 Additionally, the Appellant knew that Sengani had told him not to go to work on 1 March 2019, and he did not receive work instructions for that day because he was absent from the TBM. Any business he had on the Vessel would have been his own, instead of for his employer's business and operations. The Appellant therefore knew that any work injury compensation claim made was false as he was expressly informed not to go to work on 1 March 2019.

91 The first *mens rea* element – knowledge that the claim was false – was thus made out. From this, the second *mens rea* element – fraudulent intention to

induce VTP to pay compensation – was also made out. The Appellant knew that he was not entitled to compensation for non-existent injuries arising out of an accident that he had staged. The trial judge did not err in finding that the Appellant was motivated by a dishonest intention to induce his employer to pay him compensation that he knew he was not entitled to. Accordingly, the 1st charge was made out.

**The 2nd charge**

92 The 2nd charge was also made out. I first set out the salient parts of the charge:

> … you … did make a statement … which you knew was false in a material particular, *to wit*, you stated in the statement that … on 1 March 2019, **you were working onboard a vessel at Sembcorp Marine Tuas Boulevard Yard … under the employment of Vigour Technologies Pte Ltd … when you were hit in your left leg by a bundle of insulation while you were walking up the stairs, which caused you to fall backwards and roll down the stairs, as a result of which you sustained injuries to your neck, back, right shoulder, left thigh and knee** … [emphasis in original in italics; emphasis added in bold]

The portion of the charge emphasised in bold reflects the particulars of the Appellant's statement to MOM that he is charged with having stated, knowing that it was false.

93 The Appellant knew that the accident did not occur because it was staged by him. The 2nd charge was thus made out.

**The 3rd charge**

94 Finally, the 3rd charge was also made out. I set out the salient parts of the charge:

> … you … did make a statement to an investigation officer … which you knew was false in a material particular, *to wit*, you stated in the statement that … **on 28 February 2019, Chowdhury Mohammad Nasu did not come to speak to you about collecting your yard access card from you**, and <u>you had not heard the instructions of Sengani Sadasivam … not to enter the Sembcorp Marine Tuas Boulevard Yard … for work on 1 March 2019</u> … [emphasis in original in italics; emphasis added in bold and underline]

The portion of the charge emphasised in bold and underline are the particulars of the Appellant's MOM statement that he is charged with having stated, knowing that it was false. The bolded portion relates to Issue 1 and the underlined portion relates to Issue 2.

95 The Prosecution has proved that Nasu spoke to the Appellant about collecting his card from him, and the Appellant heard Sengani's instructions in the Group Call for the Appellant not to work on 1 March 2019. The Appellant knew that he was making a false statement when he denied that these events occurred in his MOM statement. The 3rd charge was therefore made out.

**Conclusion**

96 Accordingly, I dismiss the appeal.

Vincent Hoong
Judge of the High Court

Anil Narain Balchandani (Red Lion Circle) for the appellant;
Zhou Yihong (Attorney-General's Chambers) for the respondent.