Bijabahadur Rai s/o Shree Kantrai
v
Public Prosecutor

[2017] SGHC 161

High Court — Magistrate's Appeal No 9186 of 2016/01
Chan Seng Onn J
17 March 2017

Criminal law — Statutory offences — Common Gaming Houses Act (Cap 49, 1985 Rev Ed)

Criminal law — Elements of crime — Actus Reus — Assists in the carrying on of a public lottery

Criminal law — Abetment

10 July 2017

Chan Seng Onn J:

Introduction

1 This was an appeal by the appellant, Bijabahadur Rai s/o Shree Kantrai ("the Appellant") against the conviction and sentence imposed by the District Judge in respect of one charge under s 5(*a*) of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("the CGHA") ("the Charge"):

> are charged that you, on or about 26 June 2014, in Singapore, did assist in the carrying on of a public lottery, by receiving from one Jasbir Singh s/o Jail Singh, a bet of S$30/- for an illegal "TOTO" public lottery, and you have thereby committed an

> offence punishable under Section 5(a) of the Common Gaming Houses Act, Chapter 49.

2 The Appellant was sentenced to two weeks' imprisonment and a fine of $20,000, in default two months' imprisonment. The decision of the District Judge was reported at *Public Prosecutor v Bijabahadur Rai s/o Shree Kantrai* [2016] SGMC 41 ("the GD").

3 Having considered the District Judge's GD, the submissions of the parties, and the evidence, I allowed the Appellant's appeal against his conviction on the Charge and set aside the sentence imposed by the District Judge. I nevertheless found the Appellant guilty of a lesser offence under s 9(1) of CGHA read with ss 107 and 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") and convicted him accordingly. I now provide my detailed reasons.

Background facts

4 The following background facts were undisputed.[1] On 2 July 2014, sometime around 1.15am, officers from the CID, acting on information received, conducted a raid at the Appellant's residence. They searched the premises and seized a greyish black "Nokia" handphone amongst other items. The Appellant admitted to the possession of the said handphone, and to the fact that it had been used in connection with illegal soccer betting activities.

5 Another party of CID officers conducted a simultaneous raid at the residence of one Jasbir Singh s/o Jail Singh ("Jasbir"). The officers seized from his premises a blue "Nokia" handphone amongst other items.

---

[1] Record of Proceedings ("ROP"), vol 2, p 3.

6 A forensic examination of both handphones revealed that on 26 June 2014, at about 4.33pm, the following message was sent from Jasbir's handphone to the Appellant's handphone: "05 15 ten dollars 02 42 ten dollars 10 45 ten dollars tks" ("Jasbir's text"). On the same day, at about 5.44pm, the following message was sent from the Appellant's handphone to Jasbir's handphone: "05, 15. 02,42. 10,45. Each $10. Thurs. Ok. $30. Good luck." These messages concerned the placement of an illegal TOTO bet by Jasbir.

7 The Appellant and Jasbir had known each for about 15 years at the material time.[2]

8 On 1 September 2015, Jasbir pleaded guilty to a charge under s 9(1) of the CGHA, for placing a bet of $30 on an illegal TOTO lottery on 26 June 2014, amongst other offences. In respect of this charge, Jasbir was sentenced to a fine of $1,000, in default one week's imprisonment.

The trial below and the GD

9 At the trial below, the Appellant did not deny that the bet that Jasbir had placed was for an illegal TOTO lottery. However, he claimed that he was not the person administering the lottery, whom I shall call "the Bookie", which is the common shorthand for "bookmaker". The Appellant claimed to have merely forwarded Jasbir's text to a bookie, one Kenny.

10 The Prosecution, who is now the Respondent, argued that the Appellant assisted in the carrying on of a public lottery by receiving the illegal bet from Jasbir. It was not the Respondent's case that the Appellant was the Bookie. Instead, the Respondent's case was that the Appellant's actions of accepting the

[2] NE dated 7 June 2016, p 7.

bet from Jasbir and forwarding the bet to the Bookie for placement of an illegal bet amounted to assisting in the carrying on of a public lottery in contravention of s 5(*a*) of the CGHA.[3]

11 Notwithstanding the Respondent's case, the District Judge rejected the Appellant's testimony (as well as Jasbir's testimony) that the Appellant was not a bookie and that he was merely helping Jasbir to place a bet with Kenny.[4] The District Judge considered whether the Charge was made out even if the Appellant was not the Bookie and the Appellant was only placing an illegal bet on behalf of Jasbir with the Bookie.[5] On this issue, the District Judge agreed with the Respondent that the mere fact that the Appellant had placed an illegal bet for Jasbir with the Bookie would amount to assisting in the carrying on of a public lottery.[6] The District Judge also agreed with the Respondent's submission that the small value of the bet and the fact that it amounted to only a single instance of assistance were not relevant to the issue of whether the Appellant assisted in the carrying on of a public lottery.[7]

12 On the issue of sentence, the District Judge took note of the small value of the bet and the fact that there was only a single transaction. In light of this, he was of the view that an appropriate sentence was two weeks' imprisonment and a fine of $20,000, in default two months' imprisonment.[8]

---

3 ROP, vol 2, p 222.

4 GD at [39]–[45].

5 GD at [34].

6 GD at [34].

7 GD at [34].

8 GD at [47].

My decision

13 The central issue in this case was the meaning of the word "assists" in s 5(*a*) of the CGHA. At the end of the hearing for this appeal, I concluded that s 5(*a*) did not extend to the Appellant, who was merely helping his friend place a bet with the Bookie, without there being any evidence whatsoever of an arrangement of some kind, whether for commission or otherwise, between the Bookie and the Appellant, to collect bets on the Bookie's behalf. Accordingly, I allowed the Appellant's appeal against conviction on the Charge and set aside the sentence imposed by the District Judge. I nevertheless found the Appellant guilty of a lesser offence under s 9(1) of CGHA read with ss 107 and 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") and convicted him accordingly. My detailed reasons follow.

Whether the Appellant was the Bookie?

14 Before the primary question of whether the Appellant had assisted in the carrying on of a public lottery could be determined, there was a preliminary issue as to whether the Appellant was the person administering the illegal TOTO lottery, *ie*, the Bookie. This issue arose because the District Judge had disbelieved both the Appellant's defence as well as Jasbir's oral testimony that Kenny, and not the Appellant, was the Bookie of the illegal TOTO lottery. This suggested that Jasbir had placed the bet directly *with* (as opposed to *through*) the Appellant and that the Appellant was the one carrying on the illegal TOTO lottery.

15 However, this finding is inconsistent with the Charge, as framed by the Respondent. The Charge requires someone other than the Appellant to be the Bookie of the illegal TOTO public lottery, and requires the Appellant to have assisted this person in the carrying on of this lottery. If the Appellant was the

Bookie, he could not possibly have been *assisting* in the carrying on of a public lottery. He would in fact be the person providing for and operating the public lottery, which would then be inconsistent with the particulars of the Charge as framed, which state that the Appellant *assisted* in the carrying on of a public lottery (see above at [1]).

16 I thus agreed with the Appellant's submission that if the Appellant was indeed the Bookie for the illegal TOTO lottery, the proper charge should be a charge for an offence of acting as a bookmaker under s 5(3)(*a*) of the Betting Act (Cap 21, 2011 Rev Ed).[9] However, that was not the offence for which the Respondent had charged the Appellant. Neither was it the Respondent's case at trial that the Appellant was the Bookie of the illegal TOTO lottery (see above at [10]).

17 In the circumstances, in order for the Appellant's conviction on the Charge to have stood, the Appellant could not himself be the Bookie. Therefore, the only question was whether the Appellant had assisted the Bookie in the carrying on of a public lottery. The Respondent similarly proceeded on this basis during the appeal and did not make any arguments based on the District Judge's finding that the Appellant was the Bookie instead. This was entirely understandable given that, as the Respondent conceded, there was no evidence, other than the text messages referred to at [6] above, that the Appellant was the primary operator of the illegal TOTO lottery. The appeal thus turned on the single issue as to whether the Appellant assisted the Bookie in the carrying on of a public lottery.

---

9 Appellant's Submissions at para 17.

Whether the Appellant assisted in the carrying on of a public lottery

Interpretation of "assists" in s 5(a) CGHA

18 Section 5 of the CGHA provides:

> **Assisting in carrying on a public lottery, etc.**
>
> **5.** Any person who —
>
> (*a*) assists in the carrying on of a public lottery;
>
> …
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years.

19 The Appellant submitted that he did not commit the offence in s 5(*a*) of the CGHA because it cannot be said that he assisted in the carrying on of a public lottery by simply receiving a bet from a punter and then forwarding the bet to the Bookie. Some further degree of participation of the Appellant was an essential ingredient of the offence under s 5(*a*) of the CGHA.[10]

20 In response, the Respondent submitted that the mere act of helping Jasbir place a bet with the Bookie amounted to assistance for the purposes of s 5(*a*) of the CGHA. This was because but for the Appellant, the Bookie would not have been able to carry on a public lottery for Jasbir and Jasbir similarly could not have participated in the public lottery carried on by the Bookie.[11]

21 Both the Appellant and Respondent accepted that there was no local decision from the High Court or the Court of Appeal on the meaning of "assists"

---

10 Appellant's Submissions at paras 9–10 and 20–21.

11 Respondent's Submissions at paras 37–42.

in s 5(*a*) of CGHA. Thus, they relied on lower court decisions as well as foreign cases. The majority of these cases however concerned decisions where the accused person had pleaded guilty to the charge and were thus not helpful on the interpretation of the word "assists".[12] For instance, the Respondent submitted and the District Judge agreed[13] that based on the unreported case of *Public Prosecutor v Pak Lian Choon* (MAC 906051/2015),[14] the fact that the punters involved may have been friends of the accused offered no defence to the charge of assisting in the carrying on of a public lottery.[15] The accused in that case helped his friends place bets, and his placing and acceptance of the bets were similarly carried out through handphone messages. However, given that he had pleaded guilty to the offence under s 5(*a*), the case offered little support for the Respondent's contention.

22 The only local case cited in the GD that offered some guidance on the issue was the decision of the Magistrate's Court in *Public Prosecutor v Lim Yong Meng* [2007] SGMC 12 ("*Lim Yong Meng*").[16] In that case, the accused claimed trial to a charge under s 5(*a*) of the CGHA for accepting bets from friends and placing them with an illegal 4D lottery syndicate operated by a bookmaker named "Ah Gau". District Judge Eugene Teo in *Lim Yong Meng* made the following observations on s 5(*a*) (at [35] to [36]):

> What constitutes 'assistance' is not defined in the [CGHA]. However, it is clear from a reading of section 5 itself that subsection (a) is meant as a "catch-all" provision. This is because some specific examples of assistance are set out in

---

12 Appellant's Bundle of Authorities at Tab A.

13 GD at [34].

14 Respondent's Bundle of Authorities at Tab G.

15 Respondent's Submissions at paras 38–40.

16 Respondent's Bundle of Authorities at Tab E; Respondent's Bundle of Authorities at Tab H.

> subsections (b) to (d). Assistance can be rendered in a manner beyond those set out there, and in such situations, subsection (a) would potentially apply.
>
> Some guidance on the interpretation of the scope of the provision is provided in the case of *Lee Hwa Liang* v *PP* [1964] MLJ 172. This case involved a shop-keeper who displayed tikam boards for sale. Charged with assisting in the carrying on of a public lottery, he appealed after he was convicted before the Magistrate's Court. In allowing the appeal, Ong J stated:
>
> > The ordinary meaning of "assist" is "to aid or help". "Carrying on a public lottery" is self-explanatory. ... ***In my opinion the demarcation line between assisting and not assisting is to be found in the nexus, or absence thereof, between the party alleged to be assisting and the party carrying on a lottery***. Common sense provides the answer. The vendor of any game or device capable of being used for a public lottery cannot in my view, be said to assist the purchaser in carrying on such lottery merely by reason of the sale. Further participation of the vendor in the purchaser's activities is a necessary ingredient of the offence. This is because they had no further connection one with the other after sale and delivery.
>
> [emphasis in original]

23 Eugene Teo DJ then applied the "nexus" test to the facts before him in *Lim Yong Meng*, and in doing so, took into account, *inter alia*, the following facts:

(a) The accused knew Ah Gau and his activities. The accused's punter friends also knew that the accused had a contact who was carrying on an illegal 4D lottery.

(b) The accused agreed to help his friends place bets on their behalf with Ah Gau. In particular, the accused took details of their bets, after which he collected the wagers and passed them to Ah Gau. He would also help his friends who had won to make the winning claims with Ah Gau and also collect their winnings on their behalf.

24 In light of these facts, Eugene Teo DJ then concluded (at [37] to [38]):

> … In this context, *if we were to then remove the accused from the equation, what would the result be? Would Ah Gau be able to carry on a public lottery for those punters? Would those punters be able to participate in the public lottery carried on by Ah Gau?* The answers to these questions would serve to show that the accused had a closer connection to Ah Gau than he cared to admit; one which went beyond being just another punter …
>
> Common sense provides the answer; and in my judgment, the accused was intimately involved in assisting Ah Gau to carry on a public lottery for those punters – even if he did so without reward. On this basis, I determined that the present charge [brought under s 5(*a*) of the CGHA] still applied to the facts, and there was no need to consider possible alternative charge/s under section 8(4) of the Act.
>
> [emphasis added]

25 It was this passage which probably inspired the Respondent to submit that since the Bookie and Jasbir could not have dealt with each other but for the Appellant, the Appellant must have assisted the Bookie within the meaning of s 5(a) of the CGHA (see above at [20]). In my view, however, this argument—and the reasoning which inspired it—was flawed. While I agreed with the outcome in *Lim Yong Meng* (as the accused had been intimately involved in the public lottery ran by Ah Gau), I disagreed with the test adopted there because it cast the net too widely. This was because the test as framed would cover *any* instance of an accused's involvement in the transaction between the punter and the bookie as long as the transaction in question could not have taken place without the accused's involvement. This would thus also cover instances where the accused was only assisting the punter as his casual agent (see s 9(1) of the CGHA which references the buying of a ticket by a punter through an agent) as opposed to assisting the bookie in the running of his public lottery.

26 Taken to its logical conclusion, this test would also catch an accused where the punter merely asks the accused to place a bet as his casual agent, with

any bookie with the highest returns (which is conceivable as most punters are not as interested in the identity of the bookie as compared to the rewards they can potentially receive) and the accused, after some research, decides to place the punter's bet with a particular bookie. In such a situation, the accused may have no prior relationship whatsoever with the bookie with whom he eventually places the bet, but yet would be seen as assisting that bookie under the test laid down in *Lim Yong Meng*. That would be an absurd conclusion to reach because the accused was clearly not placing the bet with the bookie for the purpose of assisting him. Even though technically the accused had indirectly "assisted" the lottery by getting it one extra ticket, the assistance was rendered for the purpose of helping the punter secure the highest returns and not the bookie. It cannot be the intention of s 5(*a*) to cover such acts of assistance.

(1) Assistance rendered to the bookie with the purpose of assisting the bookie

27 In my judgment, only assistance rendered to the bookie in the bookie's public lottery operations is caught under s 5(*a*) of the CGHA. Implied from this is the requirement that the impugned conduct must have been for the purpose of assisting the bookie, though that may not be the only purpose behind the conduct. I take this interpretation of s 5(*a*) for four reasons.

28 First, the concept of assistance ordinarily presumes some end or purpose to which the act of assistance is directed. The end or purpose which s 5(*a*) prohibits is "the carrying on of a public lottery". The words "carrying on" clearly mean the administration or running of a public lottery, not the mere participation in it. This rules out conduct which assists only the punter, who is a mere participant in the lottery. Even if such conduct may ultimately bring the bookie more business, that would not be a case of the accused assisting the bookie, but the bookie simply benefiting from the accused's act of assisting the

punter. Hence, s 5(*a*) on a plain reading in my view requires the accused to act with the purpose of assisting the bookie. To be sure, I accept that to fall under s 5(*a*), the accused can have that purpose concurrently with a purpose of assisting the punter or any other purpose; but the latter cannot be the only purpose which the accused has if the offence in s 5(*a*) is to be made out.

29 Second, my reading of s 5(*a*) is supported by s 11(1) of the CGHA, which provides:

> **Presumptions**
>
> **11.**—(1) A person selling, offering for sale, giving, delivering or collecting lottery tickets or found in possession of 10 or more lottery tickets or counterfoils or duplicates of lottery tickets or of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary is proved to be assisting in a public lottery then in progress.

30 Section 11(1) presumes that a person is assisting in an existing public lottery when any fact stated therein is proved. It is telling from this section that the acts envisioned by Parliament as constituting assistance are acts performed by an accused to assist the *bookie* in the carrying on of a public lottery. Only a bookie (not a punter) would be concerned with acts of "selling, offering for sale, giving, delivering or collecting lottery tickets" in the course of carrying on a public lottery and may require the assistance of persons for such acts. Possession of counterfoils or duplicates of lottery tickets also relates to possession of materials likely to be used by or found on a bookie or the bookie's runners than a punter or one merely assisting a punter. Therefore, persons who commit such acts for a bookie or who are found in possession of counterfoils or duplicates of lottery tickets are presumed to be assisting a bookie in a public lottery conducted by the bookie. None of the acts stated in s 11(1) concern actions where the assistance is rendered to a punter in punting.

31 Third, although Parliament has not expressly stated the type of offenders s 5(*a*) of the CGHA is intended to catch, some evidence of legislative intent may be discerned from the debates on amendments to the CGHA. During the Second Reading of the Common Gaming Houses (Amendment) Bill, Dr Goh Keng Swee remarked (State of Singapore, *Legislative Assembly Debates, Official Report* (13 May 1960), vol 12 ("*1960 Debates*") at col 717 (Dr Goh Keng Swee, Minister for Finance)):

> Now [the Member for Tanglin] is obviously either unaware of or unimpressed by the great harm, which has been done by *illegal bookmakers* and *private lottery syndicates*, which are going on on a very large scale. These are major problems which we have to tackle, because they are one of the sources of income for *secret society gangsters*, and the whole underground apparatus of a gambling organisation strikes at the root of society and demoralises a large number of people.
>
> [emphasis added]

32 During the same debates, the then-Law Minister observed that "[t]he organisers of public lotteries are those who *promote* games…" [emphasis added] (*1960 Debates* at col 721 (K M Byrne, Minister for Labour and Law)).

33 Subsequently, in 1971, when the punishment for the offence of assisting in the carrying on of a public lottery was enhanced, it was observed that (*Singapore Parliamentary Debates, Official Report* (2 December 1971), vol 31 (Prof Wong Lin Ken, Minister for Home Affairs) at cols 443 to 444):

> This Bill seeks … to increase the penalty provided for the offence of assisting in carrying on a public lottery and all other offences relating to public lotteries; …
>
> … It is felt that [the existing] punishment is grossly inadequate to assist the police in their efforts to suppress the *operation* of illegal lotteries in Singapore …
>
> These lotteries are persistent in Singapore and the police have found it extremely difficult to eradicate them. Running public lotteries is very profitable. They are so profitable that their *promoters* are not deterred by fines imposed presently. … At

> present the maximum fine of $6,000 is "chicken feed" to the *big-time promoters* and hardly serves as a deterrent.
>
> It is a well-known fact that invariably promoters pay the fines imposed on the *runners* and *collectors*, and it is very rare that anyone is imprisoned for non-payment of a fine.
>
> [emphasis added]

34 It was clear to me from these debates that the offence under s 5(*a*) of the CGHA is meant to catch those who organise, promote or otherwise assist in the *operation* of the public lottery as runners, collectors or otherwise. This necessarily means that the accused must have the purpose of assisting the bookie in the carrying on of the public lottery. It did not appear from these debates that Parliament also intended the offence to cover an accused who only assisted a punter and not the bookie.

35 Fourth, I was fortified in this conclusion by the decision of Ong J in the Malaysian case of *Lee Hwa Liang* v *PP* [1964] MLJ 172[17] (which was cited in *Lim Yong Meng*: see above at [22]). To recapitulate, Ong J stated that "the demarcation line between assisting and not assisting is to be found in the *nexus*, or the absence thereof, between the party alleged to be assisting *and the party carrying on a lottery*" [emphasis added]. Thus, a nexus or link between the accused, alleged to be assisting in the carrying on of a public lottery, and the bookie, must be shown in order for a charge under s 5(*a*) of the CGHA to be made out. In my judgment, this nexus refers to the accused's purpose of assisting the bookie.

36 Such a purpose may be inferred from a variety of circumstantial evidence. The most common would of course be evidence of an arrangement

---

[17] Appellant's Bundle of Authorities at Tab I; Respondent's Bundle of Authorities at Tab F.

between the bookie and the accused, whether for commission or otherwise, to collect bets or to perform some other act connected with the carrying on a public lottery on the bookie's behalf. Such an arrangement may in turn be inferred from the circumstances of the case such as the collection of bets from all and sundry on behalf of the bookie, text messages between the bookie and the assistor, or evidence of any commissions or other benefits received by the assistor from the bookie in connection with the assistance rendered.

(2) Requirement of an overt act in connection with the carrying on of a public lottery

37 Not only must it be proved that the accused had the purpose of assisting the bookie, the Prosecution must also prove that the accused committed an overt act in connection with the carrying on of a public lottery. This is borne out in the language of s 5(*a*) of CGHA: "assists in the *carrying* on of a public lottery" [emphasis added]. Before tracing the genesis of this requirement, I should say that the relationship between act and purpose is a necessary and logical requirement. Where for example there is an arrangement between the accused and the bookie, there could very well be no acts committed by the accused pursuant to this arrangement. Where that is the case, it cannot be said that the accused has assisted the bookie. Or consider acts performed that have nothing or little to do with the operation of the public lottery. For instance, a bookie's domestic helper, who only helps to do household chores in the bookie's household, although is assisting the bookie, is not assisting the bookie in the carrying on of a public lottery. Such persons are clearly not caught by s 5(*a*) of the CGHA.

38 This view is consistent with the case law (some even binding decisions from the Court of Appeal of the Straits Settlements) on the predecessors of s 5(*a*). These cases are relevant because the offence under s 5(*a*) has not been

substantively amended ever since its introduction. Before turning to these cases, it would be helpful to first set out the legislative history of the CGHA. In this regard, I found the following commentaries by Roland Braddell in *Common Gaming Houses: A Commentary on Ordinance No 45 (Common Gaming Houses)* (2nd Ed, Kelly and Walsh, Limited, 1932) ("*Common Gaming Houses*") and Choor Singh, *Gaming in Malaya: A Commentary on the Common Gaming Houses Ordinance, 1953 of the Federation of Malaya and the Common Gaming Houses Ordinance (Cap. 114) of the State of Singapore* (Malayan Law Journal Ltd, 1960) ("*Gaming in Malaya*") to be illuminating.

39 In *Common Gaming Houses*, it was observed at pp 1 to 2:

> The first legislation against gaming houses in the Colony appears to have been contained in the Police Act, XIII of 1856 sections 56, 57, 58, 61, 62 and 63 and section 15 of the Indian Act XLVIII of 1860. Indian Act V of 1814 dealt with lotteries. All these were repealed and replaced by Ordinance XIII 1870 which dealt with the whole subject, *i.e.*, both gaming houses and lotteries, under one Ordinance. Next followed Ordinance IX of 1876, XIII of 1879 and V of 1888. Ordinance V of 1888 remained in force untouched until amended by Ordinance XXXVII of 1919 …
>
> When the Revised Edition of the Laws of the Straits Settlements came into operation the Ordinance was renumbered No. 45 but otherwise remained the same and only a few unimportant alterations have been made to it by the Revised Edition of the Laws of the Straits Settlements which came into force in 1926.

40 Similar observations were later made in *Gaming in Malaya* at p 9:

> What is a "common gaming house"? The expression is of English origin. Gaming houses were common enough in England as early as the 16th century but they were not regarded as public nuisances until the 18th century. … In 1845 was passed the Gaming Houses Act. This Act is the foundation of the successive Ordinances dealing with gaming in Singapore from the Indian Police Act XIII of 1856, through Ordinance XIII of 1870, Ordinance IX of 1876, Ordinance XIII of 1879 to Ordinance V of 1888 which has remained substantially

> unchanged and appears now as the Common Gaming Houses Ordinance (Cap. 114).

41 Subsequently, the Common Gaming Houses Ordinance 1953 (No 26 of 1953) was repealed and replaced by the Common Gaming Houses Act 1961 (No 2 of 1961) on March 1961, which then underwent further amendments before standing in its current form as the CGHA.

42 For the purposes of this discussion, I note that the specific offence of assisting in the carrying on of a public lottery was first introduced in s 5(*c*) of the Common Gaming Houses 1888 (SS Ord No 5 of 1888) ("the CGH Ordinance 1888") and read as follows:

> **5.** Whoever—
>
> …
>
> (*c*) has the care or management of or in any manner assists in the management of a place kept or used as a common gaming house or *assists in carrying on a public lottery*;
>
> …
>
> shall be punishable with a fine not exceeding three thousand dollars or with imprisonment of either description for a period not exceeding twelve months.
>
> [emphasis added]

43 In the 1888 Legislative Council Proceedings of the Straits Settlements held on 1 March 1888, there was no express indication or any reasons provided by the Legislative Council for creating this offence other than to state that "they were not altering the present law; it was as in the Ordinance of 1879" (Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council* (1 March 1888) at B42 (Cecil C Smith, Governor of the Straits Settlements)). Apart from being re-numbered in subsequent legislation, this provision stood unchanged until 1971 when ss 2 and 3 of the Common Gaming Houses (Amendment) Act 1971 (No 25 of 1971) deleted the words "or assists in

carrying on a public lottery" in the provision above and created it as a standalone offence, as it now appears in s 5(*a*) of the CGHA. Thus, in the absence of any council or parliamentary debates as to why this change was made, it seems to me that this amendment was probably made to introduce clarity in setting out the offences since substantively the offence stood unchanged.

44 In fact, as is evident from the above, the offence of assisting in the carrying on of a public lottery has remained substantively unchanged ever since its introduction in 1888 to the present. All the amendments relate only to changes in syntax and in the ordering of the sections, which do not affect the substance of the offence. Thus, the cases on these predecessor provisions remain relevant to interpreting s 5(*a*) of the CGHA, which I now turn to address.

45 In *Leong Yeok v Regina* [1893] SSLR 117 ("*Leong Yeok*"), the accused was charged under s 5(*c*) of the CGH Ordinance 1888 (see above at [42]). The evidence disclosed that he had in his possession papers relating to the Wai Seng lottery, which was an illegal public lottery. The Court of Appeal of the Straits Settlements unanimously quashed his conviction on the basis that there was no evidence of an overt act by the accused in connection with the carrying on of a public lottery.

46 This was not only the only decision from that court to reach this conclusion (see *Common Gaming Houses* at p 90):

> In *Regina* v. *Koh Si* decided on June 6, 1893, Bonser, C.J., quashed a conviction … because there was no evidence of any overt act committed within the Colony and in *Regina* v. *Yeo Ong Leng* … the same ruling was given by another full court. The matter therefore is beyond all doubt.

47 Relatedly, in interpreting a provision identical to s 5(*c*) of the CGH Ordinance 1888, it was observed in the Malaysian case of *Chong Chee Pak v Public Prosecutor* [1948] supp MLJ 45:

> I interpret assisting in the carrying on as some overt act directly connected with the promotion of the lottery; whereas assisting in the management might extend to the printer who sells the paper or the workman who maintains the premises.

48 These cases stand for the proposition that there will only be criminal liability where an "overt act" is performed by the accused *in connection with the operation of a public lottery*.

49 The next obvious question is: What constitutes an "overt act"? Few cases have considered this question. As observed in *Common Gaming Houses* at p 90:

> In *Rex* v. *Ng Eng* and *Rex* v. *Liong Thy Hye*, Fisher, J., deals with the doctrine and in the latter case explains the meaning of the expression:
>
> > There is no magic about the word 'overt'. An overt act is an open act which is evidence of the commission of the offence charged and which must be proved in an ordinary way.
>
> Collecting money on a lottery ticket is not such an overt act. In *Reg* v. *Leong Yeok* … Wood Ag. C.J. [in the lower court], held this and Fisher, J., adopted this ruling in *Rex* v. *Ng Eng* …

50 In my judgment, an overt act is simply an open act committed by the accused in connection with the operation of the public lottery which he is alleged to have assisted. These acts must be related to the carrying on of the public lottery. They exclude acts that only tangentially relate to the public lottery, such as the buying of meals for the staff of the public lottery and the selling of goods at market value to the bookie that are used to run the public lottery. Examples of overt acts (which I provide here non-exhaustively) include promoting the lotteries, recording bets, collecting bets, paying out the dividends, chasing the punters for payment and financing or sponsoring the operations of

the public lottery. In order to provide sufficient notice for the accused to meet his charge, the Prosecution must particularise this overt act of assistance in the carrying on of a public lottery in the charge faced by the accused, and the overt act must be proved to have been committed by the accused beyond a reasonable doubt.

51 As an aside, I found troubling the point made by the lower court in the case of *Leong Yeok* that collecting money on a lottery ticket did not constitute an overt act. As reported in the headnotes of *Leong Yeok*:

> The appeal was argued before Wood, A.C.J. on the 24th October 1892, who considered that these papers "showed the Defendant to be a collector to collect money["], but not in any "other way assisting in the carrying on of the lottery," and "quashed the conviction["] on the ground that, "though the collecting" of money was useful to the lottery, it required something "more to prove that the man assisted in carrying on the lottery"; but subsequently reserved the case for the Court of Appeal.

52 Although the Court of Appeal of the Straits Settlements in *Leong Yeok* appears to have approved these grounds stated by Wood ACJ, their approval was not clearly addressed in its reported decision. In making this observation, I am aware that decisions made by the Court of Appeal of the Straits Settlements are binding on me (*Ng Sui Nam v Butterworths & Co (Publishers) Ltd and others* [1987] SLR(R) 171 at [50]). In any event, the point on whether collecting money on a lottery ticket is sufficient to constitute an offence under s 5(*a*) of the CGHA did not strictly arise on the present facts because the Appellant did not collect any cash from Jasbir; he had only electronically received Jasbir's instructions to place a bet for him with the Bookie.

53 Having made these qualifications, I would respectfully disagree, as a matter of principle, with the view that collecting money from a punter, being the punter's payment for a lottery ticket to a bookie, is insufficient to constitute

an overt act in the carrying on of a public lottery. In my judgment, such an act is an overt act as it relates directly to the operation of the public lottery by the bookie. In fact, this was expressly contemplated by Parliament (see above at [33]), when it referenced the punishment received by *collectors* and runners for assisting in the carrying on of a public lottery. Collecting money from the various punters is in fact a quintessential element of any public lottery – a public lottery cannot exist and operate if moneys are not collected from punters.

54 In my judgment, what Wood ACJ probably meant in *Leong Yeok* (see above at [51]) was that there was insufficient evidence in that case that the collection of the money by the accused had anything to do with assistance rendered to the bookie, *ie*, there was insufficient evidence to show that the accused had the purpose of assisting the bookie. The accused could have merely been given the money by a punter, who had asked the accused to help him in placing the bet with the bookie. In such a case, the accused would not have been acting with the purpose of assisting the bookie in collecting bets. The accused was merely placing a bet and paying the bookie, as an agent for and on behalf of the punter, and he was not collecting bets on behalf of the bookie. Accordingly, analysing *Leong Yeok* based on the first requirement of purpose, I read this case as failing on that requirement instead – even though there was an overt act, there was insufficient evidence adduced to show that the accused had the purpose of assisting the bookie.

55 To summarise, for the offence in s 5(*a*) of the CGHA to be made out, two elements must be proved beyond reasonable doubt. First, the accused must have had the purpose of assisting the bookie in the carrying on of a public lottery. That purpose may inferred from, amongst other things, evidence of an arrangement or understanding between the two that the accused would assist the

bookie in doing so. Second, the accused must have performed an overt act of assistance in the carrying on of a public lottery.

56 Accordingly, s 5(*a*) of the CGHA does not extend to an accused who merely helps a punter to place bets with a bookie (even though it constituted an overt act) in the absence of any evidence to demonstrate the accused's purpose to assist the bookie. Instead, the accused's conduct in helping to place bets would be caught under a different provision of the CGHA (see below at [69] to [70]).

The Appellant did not assist in the carrying on of a public lottery

57 In my judgment, the Appellant did not assist in the carrying on of a public lottery under s 5(*a*) of the CGHA. Whilst the Appellant performed an overt act in connection with the illegal TOTO lottery by receiving instructions from Jasbir for placing a bet, the first requirement of the requisite purpose to assist the Bookie in the illegal lottery was not satisfied. There was no evidence of any arrangement between the Appellant and the Bookie for the Appellant to collect bets on the Bookie's behalf or do any other act in connection with the running of the public lottery to assist the Bookie. The Appellant was merely helping his good friend, Jasbir, to place a bet with the Bookie. In the circumstances, the Appellant cannot be said to have acted with the purpose of assisting the Bookie in the carrying on of a public lottery by collecting bets on behalf of the Bookie.

58 I agreed with the Appellant's submission that the District Judge erred in finding that there was a "strong nexus" between the Appellant and the Bookie.[18]

---

[18] Appellant's Submissions at para 20(b).

The District Judge reached this conclusion on the basis that both the Appellant and the Bookie were "very good friends and that [the Bookie] had stayed in [the Appellant's] house in Singapore on various occasions".[19] It is not clear from the GD what role this fact played in his reasoning. It is an obvious leap of logic to say that the Appellant must have assisted the Bookie in the carrying on of a public lottery since they were good friends. But the District Judge could also be read as suggesting that since the Appellant and the Bookie were good friends, the Appellant must have known about the Bookie's illegal lottery and consciously rendered assistance to the Bookie's carrying on of that lottery by collecting bets from Jasbir. The District Judge did not, however, expressly make this inference. Neither did he have sufficient evidence to do so since this point was not put to the Appellant at trial. I therefore hold that the District Judge erred in deciding that there was a "strong nexus" between the Appellant and the Bookie.

59 In any event, I was not convinced that there was sufficient evidence of the Appellant's purpose to assist the Bookie in the carrying on of the illegal TOTO lottery. Little to no evidence was adduced of any arrangement between the Appellant and the Bookie for the Appellant to assist the Bookie in his illegal public lottery operations. The Bookie was not called as a witness to testify for obvious reasons. In the absence of the Bookie's testimony, there was also no evidence of any benefit received by the Appellant from the Bookie in connection with the bet placed by Jasbir, whether by way of a sum of money, commission, discount or otherwise.[20] Further, despite the fact that *three*

---

19 GD at [34].

20 NE dated 17 June 2016, p 31.

handphones belonging to the Appellant were seized,[21] there was no evidence from those phones to show that bets were collected from other persons or to indicate any other form of involvement on the Appellant's part in the illegal TOTO lottery operated by the Bookie. There was *only one* text message, *ie*, Jasbir's text that evidenced the assistance by the Appellant to Jasbir in placing with the Bookie a *single bet*. It was also important to note here that Jasbir and the Appellant were very close friends, which suggests the latter may have simply done a favour for the former. I was thus not able to discern any evidence that convinced me that the Appellant acted with the purpose of assisting the Bookie in the operations of the illegal TOTO lottery by collecting Jasbir's bet for the Bookie. If anything, the Appellant had merely helped his friend to place a bet.

60 Additionally, the oral testimony of the Respondent's own witness, Jasbir, confirmed that the Appellant's assistance was to Jasbir and not to the Bookie. According to Jasbir, the Appellant merely "helped [him] to buy" the TOTO ticket from the Bookie.[22] Jasbir asked the Appellant to place the bet on his behalf only because he could not do so himself.[23] Jasbir testified that he was working on that day and was unable to leave work in order to meet the Bookie to directly place the bet with him. He was also unable to contact the Bookie himself *via* a text message because he did not have the Bookie's handphone number.[24] Seen in this light, the Appellant was merely a messenger or a "postman", *ie*, passing on the message for placement of the bet from Jasbir to

---

21 ROP, vol 2, pp 153–154; NE dated 16 June 2016, pp 8, 13, 18–19 and NE dated 14 July 2016, p 24.

22 NE dated 7 June 2016, p 11.

23 NE dated 7 June 2016, p 11.

24 NE dated 7 June 2016, p 11.

the Bookie. Further, Jasbir testified that if he had won the bet he placed through the Appellant on 26 June 2014 (hypothetically speaking because Jasbir did not win the bet), he would have personally collected the winnings from the Bookie if he was free to do so after work.[25] This meant that the Appellant was unlikely to have played any further role in the transaction between the Bookie and Jasbir after he had conveyed Jasbir's bet to the Bookie.

61 To complete the analysis, I would say that the position would have been different if there had been evidence of any arrangement between the Appellant and the Bookie for the Appellant to collect bets on the Bookie's behalf. If there had been such an arrangement, the fact that Jasbir asked the Appellant to place a bet (even though they were good friends) would have been sufficient to secure a conviction under the Charge. This is because the court would have been entitled to draw the inference that the Appellant was not merely helping Jasbir as a friend but was also collecting a bet from a punter for the purpose of assisting the Bookie. This would be sufficient to constitute an offence under s 5(*a*) of the CGHA even though the punter happened to be his friend and he incidentally was also assisting his friend to place a bet with the Bookie. In the present case, there was of course no arrangement of the kind I have just described or any other evidence to demonstrate the Appellant's purpose to assist the Bookie. Therefore, I found that the Appellant did not assist in the carrying on of a public lottery within the meaning of s 5(*a*) of the CGHA.

62 In view of this finding, it was not necessary for me to address the Appellant's alternative argument that the illegal TOTO lottery in the present case did not constitute a public lottery under s 2(1) of the CGHA.[26]

---

[25] NE dated 7 June 2016, pp 16–17.

[26] Appellant's Submissions at paras 22–25.

Mere receipt of instructions to bet from a punter insufficient for a charge under s 5(b) CGHA

63 At the oral hearing, the Respondent made an eleventh-hour attempt to amend the Charge to one under s 5(*b*) of the CGHA. This was premised on an alternative submission that the conduct of the Appellant contravened s 5(*b*) because he had received a bet from Jasbir. The Respondent argued that unlike the other provisions of s 5 of the CGHA, s 5(*b*) did not limit its prohibition only to situations where the accused was assisting the bookie but also covered the situation where the accused simply received a bet from a punter (even as the punter's agent) in connection with a lottery ticket. In other words, the Respondent interpreted s 5(*b*) not to require a finding that the accused performed the prohibited act in assistance of the bookie in order for the offence in that provision to be made out.

64 After considering s 5(*b*) in its context, I rejected this submission.

65 Section 5 of the CGHA provides:

> **Assisting in carrying on a public lottery, etc.**
>
> **5.** Any person who —
>
> (*a*) assists in the carrying on of a public lottery;
>
> (*b*) receives, directly or indirectly, any money or money's worth for or in respect of any chance in any event or contingency connected with a public lottery or sells or offers for sale or gives or delivers or collects any lottery ticket;
>
> (*c*) draws, throws, declares or exhibits, expressly or otherwise, the winner or winning number, ticket, lot, figure, design, symbol or other result of any public lottery; or
>
> (*d*) writes, prints or publishes or causes to be written, printed or published any lottery ticket or list of prizes or any announcement of the result of a public lottery or any announcement or riddle relating to a public lottery,
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000

> and shall also be punished with imprisonment for a term not exceeding 5 years.

66 It can be seen from the various components of s 5 that the mischief which it intends to address is the assistance in the carrying on of a public lottery. For example, s 5(*a*), as I have found above, requires the accused to assist the *bookie* in the carrying on of a public lottery. Sections 5(*c*) and (*d*) similarly contemplate the accused's assistance rendered to the *bookie*, through either deciding or publishing the results of the lottery (see also *Lim Yong Meng* at [35], cited above at [22]). The title of the section (see s 6 of the Interpretation Act (Cap 1, 1997 Rev Ed)) expressly provides that the section concerns "assisting in carrying on a public lottery". It follows that the prohibited act in s 5(*b*) must also be performed in assistance of the carrying on of a public lottery in order for the offence in that provision to be made out. The Respondent's suggestion otherwise is inconsistent with the context of s 5 and therefore flouts the interpretive maxim *noscitur a sociis*, or "a word is known by the company it keeps".

67 Further, s 5(*b*) of the CGHA cannot be read as dispensing with the element of assistance rendered to the bookie, such that it can include the conduct of passing on bets on behalf of a punter to a bookie, without more. This is because that act is already caught by the offence of abetting the placement of an illegal bet under s 9(1) of the CGHA read with ss 107 and 109 of the Penal Code. The Respondent's interpretation of s 5(*b*) is therefore inconsistent with the rule against surplusage. Further, that lesser offence is more appropriate as the culpability of a person who only assists a punter is generally lower than that of a person who assists a bookie. This is indicated by the lower maximum punishment for abetting the punter to place an illegal bet under s 9(1) of the CGHA read with the abetment provisions, *ie* six months' imprisonment and a $5,000 fine, compared to the heavier maximum punishment for assisting in the

carrying on a public lottery under s 5 of the CGHA, *ie* five years' imprisonment and a $200,000 fine.

68 Given that the offence under s 5(*a*) of the CGHA was not made out, I allowed the Appellant's appeal and set aside his conviction and sentence in respect of the Charge.

Conviction for a lesser charge under s 9(1) CGHA

69 My decision to acquit the Appellant of the Charge did not mean that the Appellant was entirely innocent of any offence. The Appellant helped Jasbir to procure an illegal TOTO bet and he had to be punished for this act. Pertinently, the Appellant himself admitted at the trial below to committing the offence of abetting Jasbir to place an illegal TOTO public lottery bet.[27] On appeal, the Appellant similarly asked to be convicted of this lesser charge instead.[28]

70 I thus decided to amend the Charge from s 5(*a*) to one under s 9(1) of the CGHA read with ss 107 and 109 of the Penal Code, which is essentially one of abetting Jasbir in placing an illegal TOTO bet with the Bookie.

71 With regard to the sentence, although the Appellant claimed trial to the Charge under s 5(*a*) of the CGHA, he had from the commencement of the proceedings against him accepted that he would be guilty of the offence under s 9(1) of the CGHA. He only disputed that he had assisted in the carrying on of a public lottery. In the circumstances, I accorded him the leniency in sentence normally shown to one who pleads guilty.

---

27 NE dated 17 June 2016, p 35.

28 Appellant's Submissions at para 34.

72 Having regard to the fact that the Appellant was untraced for similar offences, the range of fines between $1,000 to $2,000 imposed on first-time offenders pleading guilty for placing bets on illegal lotteries, and the fact that his accomplice, Jasbir, had been fined $1,000, I sentenced the Appellant to a fine of $1,000 and in default, one week's imprisonment.

Conclusion

73 For these reasons, I allowed the Appellant's appeal and set aside his conviction and sentence in respect of the Charge. I amended the Charge to a lesser charge of abetting the placement of an illegal bet under s 9(1) of the CGHA read with ss 107 and 109 of the Penal Code. Accordingly, I found him guilty of the lesser charge and sentenced him to a fine of $1,000 (in default one week's imprisonment).

Chan Seng Onn
Judge

Wee Pan Lee and Phipps Jonathan (Wee, Tay & Lim LLP) for the Appellant;
Terence Chua and Christine Liu (Attorney-General's Chambers) for the Respondent.