Loganatha Venkatesan and Others v Public Prosecutor
[2000] SGCA 42

Case Number : CA 6/2000

Decision Date : 15 August 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Luke Lee (Luke Lee & Co and N Kanagavijayan (K Krishna & Partners) (assigned) for the first appellant; NK Rajah (Rajah Velu & Co and Nicholas Cheong (Lim Soo Peng & Co) (assigned) for the second appellant; Palakrishnan and R Thrumurgan (Palakrishnan & Partners) (assigned) for the third appellant; Bala Reddy, Anandan Bala and Peter Koy (Deputy Public Prosecutor) for the respondent

Parties : Loganatha Venkatesan — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Findings of existence of conspiracy to commit murder – Whether trial judge's findings supportable

Evidence – Admissibility of evidence – Use of accused's police statements – Whether court permission required for use of accused's police statements – s 122(5) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Witnesses – Discrepancies in evidence of eye witness – Whether such evidence should be accepted

Evidence – Witnesses – Whether witness or accomplice's evidence to be treated with caution – Whether such evidence should be accepted

Evidence – Witnesses – Impeaching witnesses' credibility – Whether court must rule on whether credit of witness impeached

(delivering the grounds of judgment of the court): Loganatha Venkatesan (`Venkatesan`) and Chandran s/o Rajagopal (`Chandran`) were charged for the murder of one Madavamani s/o Thuraisamy Thangavelu @ T Maniam (`Maniam`), a retired police inspector from the Criminal Investigation Department. Maniam was battered to death near his residence on 21 April 1999 at about 7am. Maniam`s widow, Julaiha Begum (`Julaiha`), was charged for abetting Venkatesan and Chandran in the commission of the offence by conspiring with them to murder her husband. All three of them were tried together and were convicted and sentenced to death. They appealed against their respective convictions. We dismissed their appeals and now give our reasons.

Background

Julaiha`s first husband was one Abdul Kareem s/o Mohamed Shariff, and they have four children from that marriage: two sons and two daughters. They were divorced in 1981, and Julaiha had custody of the daughters, Sairah and Fairos, and the second son, while Abdul Kareem had custody of the elder son. At that time, Julaiha was living in a flat at Dover Crescent. Maniam came to know Julaiha at about this time and became very close to her. He subsequently moved in to live with her. Sairah and Fairos were then about five and eleven years old respectively. Maniam was himself married at that time. He later divorced his wife and married Julaiha in 1991. In the meantime, Julaiha sold her flat at Dover Crescent and moved into a terrace house at Jurong Kechil, which Maniam had purchased in his sole name. In 1993, Maniam sold that house and purchased 86 Phoenix Garden with Julaiha as the joint owner. In the same year, he retired from the police force and started his own security business. While Sairah and Fairos got along very well with Maniam, the relationship between the three of them

and Julaiha was very strained. Their relationship began to deteriorate sometime in the mid-1990s and there were frequent domestic fights and quarrels in the household.

It was in those unsettled times in 1996 that Julaiha first came to know Venkatesan. Venkatesan lived a few houses away from 86 Phoenix Garden together with other Indian workers and he befriended Julaiha sometime in 1996. There was grave suspicion entertained by Maniam and his step-daughters that the two of them had an affair. Fairos claimed that she saw them behaving rather intimately towards each other. This was vehemently denied by both Venkatesan and Julaiha. On 28 October 1996, Maniam and the two sisters saw Julaiha and Venkatesan walking hand-in-hand in Teck Whye. This encounter ended with a scuffle between the two men. Venkatesan and Julaiha denied that they were holding hands and said that she met him at Teck Whye to collect some food which he had brought for her. The very next morning, Julaiha went to 86 Phoenix Garden to gather her belongings to move out of the house permanently. She was accompanied by her friend Sellamal, Sellamal`s daughter, and son-in-law, Moghan Perisamy (`Moghan`). Maniam refused to let Moghan into the house and a quarrel ensued between them. The police arrived and Moghan and Sellamal were advised to stay outside, while Julaiha was escorted into the house to collect her belongings. According to Sairah and Fairos, Julaiha threatened Maniam that she would `take care` of him before she left the house. After leaving the matrimonial home, Julaiha first stayed with Sellamal; so did Venkatesan. But eventually they rented two separate rooms in a flat at Block 325, Tah Ching Road. Their landlady was one Juliyah bte Ramlee (`Juliyah`).

Venkatesan took up a private summons against Maniam and the two sisters for the assault at Teck Whye and the case was heard in April 1998. Sairah and Fairos were acquitted, but Maniam was convicted and fined $500. Following that, Venkatesan commenced civil proceedings against Maniam claiming damages for the personal injuries he suffered from the incident. The matter remained pending at the time of Maniam`s death. Another outstanding matter was a private summons taken out by Venkatesan against Maniam arising from a later incident in which Venkatesan alleged that Maniam sent two men to beat him up. The summons was scheduled to be heard on 24 April 1999.

There was also a long-standing dispute between Maniam and Julaiha regarding the ownership of 86 Phoenix Garden. In March 1996, a negotiation for a settlement was conducted at the office of the lawyer, John Abraham, a friend of Maniam. Julaiha asked for 50% of the property but Maniam was only prepared to give her 40%. Julaiha rejected the offer. The matter was eventually taken to the High Court. On 18 November 1998, Tay Yong Kwang JC ordered the property to be sold no later than June 1999 and the proceeds of sale were to be apportioned between Maniam and Julaiha in the proportions of 80% to Maniam and 20% to Julaiha.

The attack

At about 7 am on 21 April 1999, Maniam left his house for work. As he walked towards his car which was parked outside the gates of a military compound diagonally opposite his house, he was viciously attacked by two men. At the end of the assault, Maniam collapsed outside the gates of his neighbour`s house at 71 Phoenix Garden, a short distance away from his car. He was pronounced dead at 7.25am.

Dr Teo Eng Swee, a pathologist with the Department of Scientific Services, testified that Maniam died from severe head injuries. In his opinion, there were at least four blows to the left side of the head, one to the right side, and one to the neck. The base of the skull was cracked from ear to ear. Part of Maniam`s right middle finger was amputated and this was described by Dr Teo as one of the various defensive injuries found on Maniam`s hands and arms. No other similar injuries were found on other

parts of the body, thus suggesting that the assailants concentrated their attack mainly on the head. No murder weapon was recovered by the police.

The prosecution`s case

The prosecution`s case was that Venkatesan and Chandran attacked and killed Maniam while an accomplice waited in a get-away truck, and that Julaiha had abetted them in the commission of that offence by conspiring with them. The evidence which implicated Julaiha, Venkatesan and Chandran in the conspiracy was given by one Govindasamy Ravichandran (`Ravichandran`).

Conspiracy

In so far as material, Ravichandran`s evidence was as follows. He knew Venkatesan and Chandran from his childhood days in an Indian village known as Pudukuppam. Ravichandran first came to know about their plan on 14 April 1999. Venkatesan and Chandran approached him and brought him to a quiet spot at a block of flats in Geylang Avenue East. Venkatesan said that he had a court case with Maniam and that he was unlikely to win, so they would have to `finish off that man [Maniam]`. This was understood by Ravichandran to mean that they were to kill Maniam. Chandran provided details of a previous attempt to kill Maniam. He told Ravichandran that Julaiha had earlier paid some men to kill Maniam, but the men ran away with the money without completing the task.

After that, Venkatesan and Chandran brought Ravichandran to meet Julaiha at the void deck near her rented premises at Block 325 Tah Ching Road. During this meeting, Julaiha told him to `finish that man [Maniam]`. Ravichandran expressed his reservations about carrying out the plan, since he was married with a one year old daughter. Julaiha assured him that she would pay him any amount he wanted and that once he `had finished off` the man, she would get the house and could sell it. She also said that since Venkatesan would be recognised in that area, as he used to live there, Ravichandran and Chandran were to attack Maniam instead. Ravichandran eventually acceded to her request after her repeated pleadings. The meeting ended at about 2.30am on 15 April.

In the evening of the same day, Venkatesan, Chandran, Ravichandran and another man referred to by Venkatesan as `Mani` met for drinks and thereafter they proceeded to 86 Phoenix Garden. There, Venkatesan pointed out to them the car which belonged to Maniam. He told them that Maniam would leave for work at about 6.30am and they could surprise him when he opened the boot of his car. He added that if Maniam did not die from a heart attack, they were to `beat him and finish him off`. According to Ravichandran, Venkatesan went to a field in Geylang East to pick up a broad bladed knife known in Tamil language as `aruval` and left it in the pick-up truck. Venkatesan told them that they were to carry out the plan the next morning on 16 April. After that, all of them rested in Chandran`s room at Changi Road.

The first attempt on Maniam`s life took place in the early hours of the morning on 16 April 1999. Four persons were involved: Venkatesan, Chandran, Ravichandran and Mani. After collecting a blue pick-up truck, all four of them arrived at Phoenix Garden and they stopped at some distance away from the house. There, Venkatesan told them to try and `finish off the man` and then left in a taxi. The other three remained in the truck and Mani drove to see if Maniam`s car was there and having done that he drove back to the original spot, and they waited. A short while later, Mani drove the truck nearer to Maniam`s house. Chandran told Ravichandran that he would go out and wait for Maniam, and that upon Chandran giving a signal indicating that Maniam was leaving the house, Ravichandran was to bring him an iron pipe. However, when Chandran eventually gave the signal, Ravichandran was too

frightened to hand over the iron pipe. Instead he took the iron pipe and walked away from Maniam. In consequence, that attempt was aborted. After the first abortive attempt, Ravichandran began to have second thoughts about executing the plan and he decided to cheat them of their money instead, should they call upon him again.

On the following day, 18 April (which was a Sunday), Ravichandran met Venkatesan and Chandran on his way to his friend VJ Velu`s home. Venkatesan invited him to meet Julaiha at her flat. So he, Venkatesan, Chandran and also his brother, Rajesh went to her flat that afternoon. Juliyah and her husband were away at Batam at that time. They watched television and ate some snacks prepared by Julaiha. Venkatesan also showed Rajesh some of his paintings. The party ended at about 7pm. This visit was corroborated by Rajesh.

After that Ravichandran retired to his room. Later that evening, Venkatesan and Chandran visited Ravichandran. They later gathered at Chandran`s room. Venkatesan told Ravichandran that he had to `finish him [Maniam] off` and that he was to get some number plates for the pick-up truck. He also instructed him to run Maniam down with the vehicle and that if he survived the collision, they should alight and assault him. Venkatesan also told Mani that he should change the licence plate after running Maniam down. Venkatesan then left with Mani to get the number plates, while Ravichandran remained with Chandran in the latter`s room. At that time, Chandran`s room-mate, Tamilvanan was also in the room. When Venkatesan returned he brought the three of them, Chandran, Ravichandran and Mani, to Maniam`s house in a taxi to check if Maniam was at home. They saw Maniam`s car and concluded that he must be at home. It was then about 12.30am on Monday, 19 April. Venkatesan said that they should `finish him off today`. The four of them then returned to Chandran`s room to rest.

At about 4am they were awakened by Venkatesan and they started making preparations for the assault. On Venkatesan`s instructions, Chandran handed to Ravichandran $3,000 and told him that he would get more money from Julaiha after Maniam was killed. Again, the four of them, Venkatesan, Chandran, Mani and Ravichandran, travelled to Phoenix Garden in the pick-up truck and arrived there between 5.50am and 6am. At the vicinity near Maniam`s house, Vanketesan got off and left. Ravichandran decided to delay the act, and he therefore asked Chandran to get some beer from a coffeeshop nearby. They went to have some beer and by the time they returned, Maniam`s car was gone. Hence, this attempt was again unsuccessful.

After that, Ravichandran began to make plans to leave for India. He notified his employer of his impending departure and also made a request to the Ministry of Manpower for an expedited payment of his wages. Later in the evening while he was with his friends Saravanan Vasudevan (whom he called `Shanmugam`) and VJ Velu having a drink at a coffee shop at Joo Chiat, he confided in them that Venkatesan and Chandran had given him some money to kill a person. He said that Saravanan Vasudevan advised him not to get involved in the scheme. On 20 April, he gave one Segar, his wife`s relative who was working in Singapore, a sum of $3,400 for him to remit the money back to India on his behalf. When queried as to why he had so much money, he said that Venkatesan and Chandran paid him to kill someone.

At 12.30am on 20 April, Mani told Ravichandran that Venkatesan and Chandran were waiting for him in Chandran`s room. They proceeded there and they rested until about 4am when they were awakened by Venkatesan. When Chandran was in the toilet, Ravichandran seized the opportunity and stole $3,000 from his wallet. Venkatesan, Chandran and Ravichandran then took a taxi to Lorong 13, Geylang. Venkatesan told them that he would fetch Mani, while Ravichandran was dropped off near his room to get a change of clothes. He pretended to head towards his room, but he subsequently left for `Tekka` to take a meal. After bidding farewell to his employer, he bought himself an air ticket

and left for Madras that day.

The prosecution adduced evidence to show that the sum of $6,000 in Chandran`s possession originated from Julaiha. One Peer Mohamed s/o Mohamad Hassan was introduced to Venkatesan sometime in February 1998. Venkatesan called on him whenever he needed to find work. Peer Mohamed first met Julaiha when she borrowed $2,500 from him in July 1998. In March 1999, Julaiha requested for a loan of $8,000 to $9,000, claiming that she needed the money to pay her lawyers. He decided to help her raise the money. He asked his friend, one John Tan Tai Poh, to lend Julaiha the sum of $7,500 but John Tan would only be prepared to make the loan if Peer Mohammed would accept the loan as being made to him. Peer Mohamed agreed and arranged for John Tan to meet Julaiha on 7 April 1999. Two cash cheques totalling the sum of $7,500 were given to Julaiha and it was not disputed that the entire sum was then given to Venkatesan, who in turn gave $6,000 to Chandran.

There was also adduced the evidence of Chandran`s room-mate Narayanasamy Tamilvanan (`Tamilvanan`). His evidence was that on the day before the murder, he overheard Chandran telling Venkatesan that Ravichandran had absconded to India after stealing the money. Chandran told Venkatesan that he did not have money for his expenses and Venkatesan replied `Madam [Juliaha] will not give any money now. After we have finished the job, you can ask her for money.`

Killing

It was the prosecution`s case that Venkatesan and Chandran attacked Maniam with weapons in the morning of 21 April 1999 while `Mani` waited for them in their get-away truck. Three prosecution witnesses gave their account of the fatal attack on Maniam. They were Fairos, Aurea David who was a maid working at 73 Phoenix Garden, and her employer Geraldine Tan Poh Choo.

Fairos testified that she woke up at about 7am on the fateful morning, when she heard some noises outside her bedroom window facing Geraldine Tan`s house across the road. She saw two Indians struggling with another man. That man was wearing a long sleeve shirt whom she subsequently identified as Maniam. One of the assailants was about one head taller than the other. Both of them were wearing T-shirts and Bermuda shorts. It then occurred to her that the victim might be her stepfather. Her suspicion was confirmed when she ran to her sister`s room, which had a view of where Maniam usually parked his car, and she discovered that Maniam`s car was still there. By the time she went back to her room, Maniam was already on the ground and the assailants were `kicking and stamping` him. She saw the shorter assailant raised his arm and brought it down very quickly, hitting Maniam`s head. The pick-up truck began reversing and both assailants approached the truck. Before reaching the pick-up truck, the taller assailant turned back and walked towards Maniam again. He kicked and stamped Maniam. After that, he walked back to the pick-up truck and jumped on board.

Even though she did not have a clear look at the faces of the assailants, she confirmed that Venkatesan as the taller assailant and identified Chandran as the other assailant during two separate identification parades held on 12 May 1999. At first, she could not recognise the assailants at all but when she saw the side profile of the taller man during the attack, she recognised him as Venkatesan because of his distinctive slouch. She made the same observation to the police when they first arrived at the scene. As for Chandran, she identified him during the identification parade after he was asked to turn around with his back facing her. She observed during the attack that the shorter assailant had a unique haircut which she said resembled a `mushroom head`. He was asked to turn around because she saw the assailants` back most of the time during the attack and was therefore more familiar with that view.

Aurea David testified that a blue pick-up truck was parked outside her employer`s house at about 5.40am when she was carrying out her household chores. At about 7am, she heard a commotion outside the house. From her bedroom window, she saw an Indian man hitting another Indian man with a pole. Immediately, she woke up Geraldine Tan and alerted her to the fight outside the house. Geraldine Tan looked out of her window and saw two Indian men running towards a blue pick-up truck which had since moved past her front gate and was heading towards the front gate of Maniam`s house. Both of them were carrying an object with them. She said the taller one was carrying something which looked like an axe and the other was carrying a pole. Like Fairos, she also testified that one assailant was a head taller than the other. The prison records also supported the identification evidence; it was there recorded that the height of Venkatesan was 1.795 m and that of Chandran was 1.61 m.

Events after the killing

It was also the evidence of Tamilvanan that sometime in the evening after the murder, Venkatesan looked for Chandran in his room and said to him, `Well, the problem was over`. Chandran then asked for money but Venkatesan said that Madam would give them the money in two days` time. The next evening, Venkatesan visited Chandran again and the latter asked for money once more. Venkatesan said that it would take another four to five days.

On 21 April, Juliyah told Julaiha that someone was killed at Phoenix Garden. After watching the news, Julaiha said that Maniam was the victim. According to Juliyah, she looked shocked but she did not appear upset or distressed. The next day, Julaiha told Juliyah that the police might be looking for her. She wanted Juliyah to tell the police that Venkatesan and herself (Julaiha) were having breakfast together on the morning of 21 April 1999. Juliyah was puzzled and said that there was no reason to lie if there was nothing to hide. However, Julaiha pleaded with her saying that Venkatesan was a good person and that if they helped him, one day he might help them in return. Juliyah relented and agreed. Julaiha thanked her profusely. She then left the house, saying that she wanted to go and see her lawyer to determine if she could get the house now that Maniam was dead.

The defence

Both Venkatesan and Chandran denied the existence of a conspiracy between themselves and Julaiha to kill Maniam. Venkatesan also denied that he had an affair with Julaiha. However, both Venkatesan and Chandran admitted that they were present at the scene on the morning of 21 April 1999 together with Mani, but they denied that they were there to carry out a murder plan. The thrust of their defence was that Chandran and Mani were asked by Venkatesan to negotiate a settlement with Maniam and it was for this reason that they approached Maniam on that morning. In addition, they claimed that Mani acted on his own accord and attacked Maniam with an instrument.

They gave evidence that Venkatesan`s father was very ill and Venkatesan badly needed some money to return to India to see him. Therefore, Venkatesan wanted to procure an out-of-court settlement with Maniam in respect of the civil claim for the assault at Teck Whye. As there was bad blood between the two men, Venkatesan had to rely on others to negotiate on his behalf. Eventually he enlisted the help of Ravichandran, Chandran and Mani. However, Ravichandran ran off with $6,000 which Venkatesan had given to Chandran. According to him, the sum was given to Chandran for safe-keeping and he intended to send the money back home in India. Eventually, Venkatesan asked Chandran and Mani to take over the conduct of the negotiations instead.

Their account of the events on 21 April was this. The trio arrived at Phoenix Garden in the pick-up truck. Mani drove the pick-up truck there but Venkatesan subsequently took over the driver`s seat. When Maniam was standing next to his car, Venkatesan drove the pick-up truck right up to the back of Maniam`s car. Chandran and Mani alighted from the pick-up truck. Chandran asked Maniam, `Sir, are you Maniam?` To which he replied, `Yes, so what?` Chandran went on to tell him that Venkatesan wanted some money to settle the claim as his father who was ill would like to see him in India. Maniam hurled verbal vulgarities at them. Chandran alleged that he said, `You ***pundeh*** from India. What do you think you are? I will pay you if you will get your mother and his mother to sleep with me!` After throwing a bunch of keys and newspapers at Chandran, Maniam ran. Chandran followed him but Mani pushed Maniam to the ground and hit him with something which looked like a piece of wood or pipe. All the while, Chandran pleaded with Mani to stop hitting Maniam. After Maniam collapsed on the ground, Chandran and Mani ran back to the pick-up truck and Venkatesan drove off.

Julaiha`s defence was one of denial of the conspiracy to kill Maniam. She denied that she met Ravichandran or his brother Rajesh; that she raised any money to pay Ravichandran, Mani and Chandran; and that she tried to set up a false alibi defence for Venkatesan. The crux of her defence was that Ravichandran was not a reliable witness and that his testimony of a conspiracy should not be believed.

The decision below

The learned judge accepted the evidence of the three eye witnesses of the incident, namely, Fairos, Geraldine Tan Poh Choo and Aurea David. He found that they were forthright and truthful. He fully appreciated the discrepancies in their evidence in relation to what they each saw on that morning, but he did not consider that these discrepancies affect the prosecution`s case because the witnesses were `recalling different aspects of a quick and traumatic event` which they saw from different angles.

The learned judge accepted Ravichandran`s evidence in respect of Julaiha`s involvement and the previous attempts to kill Maniam which were undertaken by Chandran, Venkatesan, Mani and Ravichandran himself. He found Ravichandran to be a convincing witness because many aspects of his evidence were corroborated by independent witnesses.

He rejected Venkatesan`s and Chandran`s evidence that they were at Phoenix Garden on the morning of 21 April 1999 solely for the purpose of negotiating with Maniam for compensation. He found it unbelievable. In his view, it was also unbelievable that Mani would go berserk and attack Maniam on his own accord. Further, it was inexplicable why there was no prior discussion as to the minimum amount acceptable to Venkatesan. It was an added paradox that Venkatesan, who did not want to see Maniam to avoid any hostile reaction, would drive so close to Maniam`s car. The forensic evidence showed that the broken plastic pieces found near the back of Maniam`s car matched the broken plastic cover of the front right signal light of the pick-up truck, indicating that it hit the car in a front-to-rear collision. This was more consistent with the prosecution`s submission that Venkatesan drove his pick-up truck to collide into the car to prevent Maniam from escaping. He held that the cut-out photograph of Maniam and the registration numbers of Maniam`s car and motorcycle were given to Chandran to assist him in identifying Maniam. In his view, even the description of the encounter by Venkatesan and Chandran `vividly fits the picture of any ambush`. Accordingly, he held that both of them had gone to Phoenix Garden with the common intention of killing Maniam and that both of them inflicted injuries on Maniam.

With respect to Julaiha, the learned judge held that sometime in April 1999, she conspired with Venkatesan and Chandran to kill Maniam in order to get the house at Phoenix Garden. He accepted the evidence of Ravichandran that Julaiha gave him instructions to `finish off` Maniam during their first meeting in the early hours of 15 April 1999. He took into account the fact that she told Juliyah in the middle of March 1996 that the property was hers and that she wanted to get it back, sell it and return to India. This corroborated the evidence of Ravichandran that she had said the same thing to him. Her obsession for getting the house was also evident from her attempt to get the house through the courts and her statement to Juliyah on the day after Maniam died that she was going to consult her lawyer to see if the house belonged to her, now that Maniam was dead.

The appeal

In this case, the evidence of Ravichandran was most crucial. First, it established the conspiracy which took place between Julaiha, Venkatesan and Chandran to kill Maniam. Secondly, it debunked the defence of Venkatesan and Chandran that they intended to negotiate an amicable settlement with Maniam and that they went to Phoenix Garden to meet him for that purpose on 21 April 1999. Counsel for all the three appellants devoted substantial portions of their respective arguments towards challenging the reliability and veracity of Ravichandran`s evidence. We propose to deal with their arguments together.

First, it was argued on behalf of the appellants that Ravichandran was an accomplice and that the learned judge had failed to treat his evidence with caution. They relied on the illustration (b) to s 116 of the Evidence Act (Cap 97). On the other hand, the prosecution argued that Ravichandran could not be regarded as an `accomplice`, because he did not participate in the commission of the crime with which the appellants were charged, and relied on the definition of an accomplice given by Lord Simonds in **Davies v DPP** [1954] AC 378 at p 400 as:

> *persons who are **participes criminis** in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours).*

It was further submitted that even if he had participated in the conspiracy to murder Maniam, his participation was limited to the planning stage and that he clearly did not follow through with the execution of the murder plan once he pulled out of the conspiracy.

In our judgment, it was not necessary to decide the issue of whether Ravichandran was an accomplice. All that the illustration to s 116 of the Evidence Act says is that an accomplice may be presumed to be unworthy of credit and that his evidence may be treated with caution: **Chua Keem Leong v PP** [1996] 1 SLR 510 . However, whether the presumption is applicable or not would depend on the circumstances of the case. It is open to the trial judge to accept an accomplice`s evidence, if he finds that it is reliable. Whether or not the court should believe the evidence of the accomplice would depend on all the circumstances of the case, and the evidence must be tested against the objective facts as well as its inherent probabilities and improbabilities. Where, however, the court does not discern any attempt by the accomplice to minimise materially his own involvement or exaggerate that of the accused and his evidence is found to be consistent as a whole and reliable on a review of the whole evidence, there is no reason why the evidence should be treated as unreliable: **Chai Chien Wei Kelvin v PP** [1999] 1 SLR 25 at pp 55-56.

The arguments advanced by counsel seeking to cast doubts on the reliability and veracity of Ravichandran`s evidence had been considered by the trial judge. It was pointed out that he entered Singapore in 1991 using a passport bearing the name Govind Ravi as opposed to his full name and that later when he entered Singapore in 1997, his full name was reflected in the passport. It was therefore suggested that Ravichandran had to use a different name in his passport to enter Singapore in 1997 in order to obtain a work permit because he was convicted and sentenced to imprisonment for overstaying in Singapore in 1991 under the name Govind Ravi. And Ravichandran did not give a coherent explanation for this. All he said was that his old passport was taken away at Madras airport and was never returned to him. Ravichandran had also lied to his friends when he told them that Venkatesan and Chandran paid him $6,000 to kill a man when he was only paid $3,000. Ravichandran was a thief; he stole $3,000 from Chandran. In summary, Ravichandran was a cheat, a thief and a liar, and his evidence ought not to have been accepted.

It was apparent that the learned judge had taken into account the flaws in Ravichandran`s character. Having done that, he considered Ravichandran`s evidence on the material aspects of the case reliable and he accepted such evidence. He said at [para] 50 of his grounds of judgment:

> *In this case, I find that Ravichandran spoke with the assuredness that comes only from a person who has been where he said he has been, and done what he said he has done. His tale was detailed and complete. Wherever corroboration was possible evidence was called. Thus, when he said that after the first aborted attempt he visited a doctor at Boon Lay but was not given a medical certificate, evidence was adduced from the doctor and his clinic staff to verify that part of his evidence. Even the manager of the cinema at Sultan Plaza testified that during the material time in mid-April 1999 his cinema was indeed screening the film,* ***Padaiappa****. When he referred to things said in the presence of Chandran`s room-mate Tamilvanan, Tamilvanan corroborated that evidence. His evidence of the visit to Julaiha`s rented abode on Sunday, 18 April, was supported by Rajesh. I have no difficulty finding Tamilvanan, notwithstanding his mild speech defect, and Rajesh, to be forthright and truthful witnesses.*

On the evidence before the learned judge he was plainly entitled to make this finding on the veracity of Ravichandran`s evidence.

It was argued on behalf of the appellants that Ravichandran had incentives to give evidence implicating the appellants. True, it could be inferred that there was some personal incentives to Ravichandran for him to come forward and give evidence at the trial. True also that there were various aspects of his evidence which were not wholly satisfactory as pointed out by counsel for the appellants. Bearing these in mind, the question is whether the evidence he gave was nevertheless reliable and truthful. In this connection, it is important to note that several material aspects of his evidence on the conspiracy involving Julaiha, Venkatesan and Chandran either were not disputed or were corroborated. His evidence that he was enlisted by Venkatesan and Chandran to help in a matter concerning Maniam was not disputed. The dispute centred on the matter in question. Ravichandran`s evidence was that Venkatesan and Chandran persuaded him to help them kill Maniam, whereas both Venkatesan`s and Chandran`s evidence was that they enlisted Ravichandran`s help to negotiate a settlement with Maniam. Next, it was not disputed that Venkatesan handed a sum of $6,000 to Chandran, and the latter either in the presence or with the knowledge of Venkatesan paid $3,000 to Ravichandran for the part he was to play, and that further Ravichandran stole the other sum of $3,000 from Chandran. Nor was it disputed that the whole of the sum of $6,000 came from Julaiha. It was proved in evidence that Julaiha raised a loan of $7,500 from or through Peer Mohamed, and having received this sum handed it to Venkatesan. We noted also that Ravichandran informed his

friend, Saravanan Vasudevan, that Venkatesan and Chandran enlisted his help to kill a person. That was corroborated by Saravanan Vasudevan himself. That, of course, was not evidence of the truth of that statement but was evidence that he did say such a thing.

Ravichandran`s evidence of the first meeting with Julaiha where he said that Julaiha asked him to `finish off` Maniam and that she would pay him money for so doing was not corroborated. But the fact remained that he did receive $3,000 from Chandran, and that, was part of funds borrowed by Julaiha from or through Peer Mohamed. His evidence that on 18 April 1999 he was brought along by Venkatesan to meet Julaiha at the flat where Venkatesan and Julaiha were living was corroborated by his brother Rajesh.

Quite apart from Ravichandran`s testimony, in our judgment, the circumstantial evidence was consistent with the existence of a conspiracy: First, Julaiha raised a loan of $7,500 from or through Peer Mohamed and handed the money to Venkatesan, and the latter paid $6,000 to Chandran who in turn paid $3,000 to Ravichandran. Second, Julaiha attempted to create a false alibi for Venkatesan by asking Juliyah to lie to the police officers.

On the evidence before the court, the learned judge`s finding of conspiracy was wholly supportable. The learned judge said at [para] 58:

> *The charge against Julaiha is that of the abetment of murder by conspiracy. By this charge it is not envisaged that she should have been present at the scene of the murder and participated in the slaughter of Maniam. If conspiracy is proved it would be as if her hand was there, adding weight to the force of every blow that fell him. The evidence that I have reviewed draws me to conclude that sometime in April 1999 Julaiha participated in a conspiracy with Venkatesan and Chandran to kill Maniam. The evidence suggests that there must have been other discussions each amounting to a criminal conspiracy sufficient to meet the charge, but the prosecution has sufficiently proved the conspiracy that took place at the void deck of Juliyah`s flat in the early hours of 15 April 1999 when Ravichandran was brought by Venkatesan and Chandran to meet Julaiha and receive her exhortation to finish Maniam.*

Eyewitnesses` testimonies

The attack on Maniam was seen by Fairos, Geraldine Tan Poh Choo and Aurea. Fairos saw two Indian men using weapons and attacking a third Indian man, who she later found was her stepfather. Fairos later identified the assailants as Venkatesan and Chandran. Geraldine Tan saw two Indian men running away and boarded a pick-up truck. Of the two Indians, both Fairos and Geraldine Tan testified that one of them was a head taller than the other. This description matched Venketasan and Chandran; the height difference between them was about 18.5 cm. Aurea saw an Indian man holding a long pole and swinging it hard against the head of another Indian man.

There were discrepancies in the evidence of the three witnesses of the incident, and these discrepancies were relied upon by counsel to show that their evidence was not reliable. The trial judge, however, took into account the discrepancies in accepting their evidence. He said at [para] 46:

> *In my judgment, I do not think that these discrepancies affect the prosecution`s case. The witnesses were watching what was to them a horrible scene, viewed from different angles, each recalling different aspects of a quick*

> *and traumatic event. Fairos`s identification of Venkatesan and Chandran at the police identification parade was attacked by counsel as being unreliable. The incontrovertible facts are that Fairos gave Venkatesan`s identity to the police even before he was arrested, and both men accept that they were present at Phoenix Park at the material time.*

We agreed with the trial judge. The discrepancies in their evidence were obviously due to a difference in their perception of an unexpected fast moving incident. They were not witnessing the attack at the same point in time, and they each saw a different part of the attack from different angles commencing from different times. Each was watching a quick and traumatic incident. In giving evidence, each was recalling different aspects of the incident, and understandably each gave a slightly different version. These discrepancies in their evidence of the incident were really not material.

The crucial fact here was that both Venketesan and Chandran admitted that they were at the scene at the material time. They said that their reason for being there was to speak to Maniam and negotiate a settlement with him and that they did not participate in attacking Maniam. The attack was carried out by one Mani who acted on his own. This version of the event was rejected by the learned judge who held that it could not possibly be true. The learned judge said at [para] 48:

> *This account fails to persuade me that it could possibly be true. I do not believe that Mani, a stranger just two weeks previously, went berserk and attacked Maniam on his own accord. I am inclined to the view that the circumstances at the time were such that the prevailing mood was hardly conducive to any amicable settlement, and certainly not one that was to be carried according to Venkatesan`s terms. Further, on his own evidence (supported by Chandran and Ravichandran) he was afraid that the very sight of him might invoke a hostile reaction by Maniam. That was why he did not present himself in the early attempts to catch Maniam. He became directly involved, in my view, by necessity when his main hired killer backed out. It is an obvious paradox that Venkatesan who was afraid to show his face to Maniam then became (on his own evidence) the driver of the truck who daringly drove right up to Maniam.*

We agreed.

If the intention of Venkatesan was to negotiate with Maniam, it was extremely odd, to say the least, that he and his party should go and seek out Maniam at such an early hour in the morning, and that they were at Phoenix Garden before 6am and waited for about an hour before Maniam came out of his house. Secondly, neither Venkatesan nor Chandran really explained why the pick-up truck in which they travelled should have collided with Maniam`s car. The forensic evidence showed that the broken plastic found at the scene indicated that the pick-up truck hit Maniam`s car in a front to rear collision. Thirdly, there was the undisputed evidence that at the time of arrest of Chandran, a cut-out photograph of Maniam was found in his wallet. Together with this photograph was found also a piece of paper with the registration numbers of Maniam`s car and motor cycle. Chandran`s explanation was that the photograph was given to Meesai and subsequently handed to him for safe keeping. Meesai was the man who allegedly asked Venkatesan to pay him $10,000 before he would negotiate with Maniam. But no plausible explanation was given to account for the presence of that piece of paper with the vehicle numbers. Venkatesan said that he recorded the vehicle number sometime ago when he was under the impression that Maniam was stalking him after the court hearing. These explanations were inherently incredible in the circumstances. In our view, the only inference one could

draw in this case was that the photograph and the numbers of the vehicles were given to Chandran for identifying Maniam for the purpose of killing him.

There was also the evidence of Chandran`s room-mate Tamilvanan which supported the finding of murder. His evidence was to the effect that when Ravichandran absconded with the money, Venkatesan assured Chandran that Julaiha would pay them more money once the job was completed. The same assurance was repeated when Chandran asked Venkatesan for money after Maniam`s death.

Impeachment of Julaiha`s credit

The final point which we need to discuss relates to the `impeachment proceedings` against Julaiha, on which the prosecution sought a ruling from this court. In the court below, based on the discrepancies between her evidence in court and her statements made to the police under s 121 of the Criminal Procedure Code (Cap 68) (`CPC`), the prosecution applied for leave for these statements to be used with a view to impeaching her credit. One discrepancy related to whether she entered Venkatesan`s room on the morning of 21 April 1999, at or about the time when Maniam was killed. In her evidence in court, she said that she did not enter Venkatesan`s room at that time and did not know if he was there, and that she never entered his room when he was sleeping. However, in her statement to the police she said that she entered the room, swept the floor and woke him up to do his painting but did not know whether he woke up or not. The other discrepancy concerned the purpose of a promissory note of $50,000 payable on 9 May 1999, which she made in favour of Venkatesan on 29 May 1998. In her evidence in court, she said that this note was made to deceive Venkatesan`s creditors in India into believing that he had money coming to him, and was not meant to be paid. In her statement to the police, she said that she promised Venkatesan that she would pay him $50,000 and that she might sell her property in India to pay him. The learned judge found that there were discrepancies and allowed the prosecution to cross-examine her with a view to impeaching her credit. Julaiha was then cross-examined on the previous inconsistent statements she had made. The learned judge in coming to his decision concluded thus at [para] 61:

> *I have taken these into account, as part of the evidence overall, when deciding whether or not her evidence has raised a reasonable doubt in my mind.*

Before us, in the written submissions, the prosecution argued that the learned judge should have made a ruling that Julaiha`s credit was impeached upon her failure to give a credible explanation for the discrepancies. Mr Palakrishnan for Julaiha, on the other hand, argued that the absence of this ruling supported his argument that Julaiha`s credit before the learned judge was not impeached. Both arguments were premised on a supposedly legal requirement that at a certain stage of the trial the learned judge ought to make a ruling whether Julaiha`s credit was or was not impeached by reason of the previous statements being permitted to be used.

The prosecution relied on the oft-cited case of **Muthusamy v PP** [1948] MLJ 57 and submitted that the court ought to make a ruling in its judgment on the credit of the witness as a result of the impeachment exercise. We do not think that ***Muthusamy*** supports such a conclusion. That case concerned the application of the then s 124, which is now s 122(2) of the CPC, which allowed a statement made to the police by a ***witness*** (who is not the accused) to be used only for the purpose of impeaching the credit of the witness. Taylor J there laid down the steps which the court should take when a party, be it the accused or the prosecution, seeks to show that the witness has made a previous statement to the police which is inconsistent with or contradictory to his evidence given in

court with a view to impeaching his credit. The use of such statement is only allowed, `if the court thinks it expedient in the interest of justice`. Hence, he said that before allowing the statements to be used, the court must first be satisfied that the discrepancies between the former statement and the evidence in court were so serious or material as to suggest that the witness is unreliable. If so, the court may permit the witness to be asked whether he made the alleged statement. If he denied having made it, the matter must be dropped or the document must be formally proved. Taylor J then went on to say at p 59:

> *If the witness admits making the statement or is proved to have made it, then the two conflicting versions must be carefully explained to him; preferably by the court, and he must have a fair and full opportunity to explain the difference. If he can, then his credit is saved, though there may still be doubt as to the accuracy of his memory. This procedure is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue.*

The learned judge certainly did not say anything to the effect that the court must make a ruling whether the credit of the witness is saved or impeached.

In **Somwang Phatthanasaeng v PP** [1992] 1 SLR 850 , at p 861, this court said:

> *The appellant was referred to the statements he made and since he did not appear to admit them, the trial judges conducted a trial-within-a-trial and at the conclusion determined that the statements were made by the appellant voluntarily. Thereafter cross-examination of the appellant continued, after which his counsel re-examined him. For some inexplicable reason, at that point of time counsel for the appellant strenuously urged the trial judges to make a ruling whether the credit of the appellant had been impeached. The trial judges declined, and in our view, rightly, and held that they would determine that issue at the close of the case. There is no reason whatsoever why the trial judges should make any ruling at that stage as requested by counsel. In our opinion, counsel was in error. The use of the s 121 statements to impeach the credit of the appellant was part of the cross-examination by the prosecution and does not call for any special ruling at that stage.*

The prosecution submitted that the above pronouncement is only an authority for the proposition that there was no requirement to make a specific ruling on impeachment only at that stage, namely, at the end of the `impeachment exercise`. However, such ruling was required to be made, and should be made, at the end of the trial. The prosecution relied on **Kwang Boon Keong Peter v PP** [1998] 2 SLR 592 , where Yong Pung How CJ made some observations with regard to the ruling on the impeachment of credit of a witness. The learned Chief Justice said at p 605:

> *At the close of the impeachment proceedings, the judge is not obliged to make a ruling on the matter immediately. As a matter of fact, the impeachment proceedings are part of the cross-examination process and do not call for any special ruling at that stage (ie at the close of the impeachment proceedings). This has been pointed out by the Court of Appeal in **Somwang Phatthanasaeng v PP** [1992] 1 SLR 850 . In Malaysia, the Federal Court in **Dato Moktar bin Hashim & Anor v PP** [1983] 2 MLJ 232 held that the witness`s credit stands to be assessed as a whole together with the rest of the evidence at the appropriate stage, that is to say, at the close of the case for the prosecution or for the defence, as the case may be. Therefore, in my judgment, it is apt for the court to make a ruling on the impeachment proceedings at the close of the case together with the rest of the evidence*

tendered.

This concluding sentence was relied upon by the prosecution as laying down the rule that the court must make a ruling whether the credit of the witness has been impeached. With respect, this is not so. The last sentence must be read in the context of the whole judgment, and in our view does not lay down any such a rule as contended on behalf of the prosecution. Even if such a rule was there laid down, it is not an immutable rule in the evaluation of the evidence.

It seems to us that there has been some confusion in the submissions made before us. In this case, s 122(2) of the CPC is not applicable for the simple reason that the witness, who was being cross-examined on the previous statements made to the police, was Julaiha herself, the accused. Instead, it is s 122(5) of the CPC which is applicable, and under this section any statement made by her `to or at the hearing of any police officer above the rank of sergeant` was admissible at her trial, and, as she herself was a witness, the prosecution was entitled to use it in the cross-examination and for the purpose of impeaching her credit, provided that such statement was made voluntarily. By reason of this subsection, which was not in existence at the time of ***Muthusamy*** , the prosecution is not required to go through the `cumbersome and slow` procedure laid down by Taylor J. There was no need for the prosecution to apply to court for permission to use the statements made by Julaiha, as appeared to have been done here. Section 122(5) does not require any such permission to be sought.

We now turn to the relevant provisions of the Evidence Act (Cap 97, 1997 Ed). Section 147 sets out the procedure to be followed in cross-examining a witness with respect to previous statements made by him. That section, in so far as relevant, provides as follows:

> *(1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.*
>
> *(2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.*

Next, there is s 157 of the Evidence Act which prescribes the ways in which the credit of a witness may be impeached. So far as relevant, that section provides:

> *The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him:*
>
> *(a) ...*

(b) ...

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(d) ...

We also do not find in these provisions of the Evidence Act any procedure such as that laid down by Taylor J which is required to be followed.

It should be remembered that impeaching the credit of a witness is not confined to previous inconsistent statements made to the police under the CPC. Statements made by a witness in other situation, verbal or written, which is inconsistent with or contradictory to his evidence given in court, upon proof of such statements, may be used by counsel for the opposing side to impeach his credit. A witness` credit may also be impeached by reference to evidence the witness has given at the trial, say in the examination in chief, which is inconsistent with or contradictory to his evidence in cross-examination. Such a manner of impeaching the credit of a witness is no different from that adopted in impeaching the credit of a witness in cases falling under s 122(2) or of an accused under s 122(5) of the CPC (as the case may be) with respect to a previous statement made by the witness or accused to the police. To impeach his credit is to attack the credibility of his evidence. In ***Kwang Boon Keong Peter*** (supra) at p 602, Yong Pung How CJ said:

> *To impeach a witness`s credit is to disparage or undermine his character and moral reliability and worth. The purpose of impeachment of a witness`s credit is to undermine his credibility by showing that his testimony in court should not be believed because he is of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath and should not be relied on.*

In our opinion, there is no requirement that the trial judge must, at any stage of the trial, make a ruling on whether the credit of the witness is impeached. All that is required is that the court must consider the discrepancies and the explanation proffered by the witness for the purpose of an overall assessment of his credibility. In this regard, it is important to bear in mind that an impeachment of the witness`s credit does not automatically lead to a total rejection of his evidence. The court must carefully scrutinize the whole of the evidence to determine which aspect might be true and which aspect should be disregarded: see **PP v Somwang Phatthanasaeng** [1992] 1 SLR 138 (HC) and ***Kwang Boon Keong Peter*** (supra). Thus, regardless of whether his credit is impeached, the duty of the court remains, that is, to evaluate the evidence in its entirety to determine which aspect to believe. Reverting to the present case, the learned judge was clearly correct when he said that he took into consideration the two discrepancies in deciding whether to accept Julaiha`s evidence. There was absolutely nothing wrong with this approach.

Conclusion

For the foregoing reasons, we dismissed the appeal.

Outcome:

Appeal dismissed.