Loh Kim Lan and Another v Public Prosecutor
[2001] SGHC 3

Case Number : MA 197/2000, 207/2000, Cr M 21/ 2000

Decision Date : 03 January 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Wee Pan Lee (Wee, Tay & Lim) for the appellants; Lee Sing Lit and Toh Yung Cheong (Deputy Public Prosecutors) for the respondent

Parties : Loh Kim Lan; Another — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Whether fresh evidence previously unavailable – Whether fresh evidence relevant

Criminal Procedure and Sentencing – Identification parade – Failure to conduct identification parade – Whether probative value of identification evidence adversely affected – Whether identification evidence of good quality – Whether accused correctly identified

Immigration – Employment – Illegal foreign worker – Abetment of employment of immigration offender by intentional aiding – Whether accused knowingly aids employment of immigration offender

Immigration – Employment – Illegal foreign worker – Presumption of employment and knowledge – Whether presumptions rebutted – s 57(8) Immigration Act (Cap 133)

Words and Phrases – "Employ" – s 2 Immigration Act (Cap 133)

: The first appellant was charged with abetting, by intentionally aiding, the second appellant in the employment of an immigration offender under s 57(1)(e) of the Immigration Act (Cap 133) (`the Act`) read with s 109 of the Penal Code (Cap 224), while the second appellant was charged with the principal offence of employing an immigration offender. At the end of the trial, both appellants were convicted. The trial judge sentenced the first appellant to seven months` imprisonment and ordered the second appellant to pay a fine of $100,000. I dismissed both appellants` appeals against their convictions and affirmed the sentences imposed. I now give my reasons.

The background facts

The first appellant worked as a part-time cashier-cum-mamasan in the second appellant company. The second appellant was at all material times the occupier of the premises located at 116 Middle Road [num]01-01-04, which premises were known as the Golden Crystal Nightclub (`the Nightclub`).

At or around 12.57am on the morning of 5 September 1999, a party of police officers from the Central Police Division conducted a raid on the second appellant`s premises. One Ling Hui Wen (PW1) (`Ling`), a female People`s Republic of China (`PRC`) national, was arrested during the raid.

On 13 September 1999, Ling was convicted under s 6(1)(c) of the Act for illegal entry into Singapore. She was sentenced to one month`s imprisonment and fined a sum of $2,000. At the time of the hearing of the trial of this case, Ling had finished serving her sentence and was waiting to return home to the PRC.

The prosecution`s case

Ling gave evidence that she entered Singapore illegally by boat on 1 September 1999. One `Xiao Ming`, a PRC national, had arranged for her entry. When she arrived, he gave her a namecard bearing the name and address of the Nightclub and told her that she could work there as a hostess and earn the tips which the customers gave.

On 3 September 1999, Ling visited the Nightclub`s premises at Middle Road to see if there was business. She did not speak with anyone there on this occasion.

The next day on 4 September 1999, Ling went to the Nightclub again at around 11.30pm. Upon entering the premises, she was approached by the first appellant who asked her if she wanted to work. When she replied in the affirmative, the first appellant led her into one of the karaoke rooms in the Nightclub and gestured for her to sit beside one of the male patrons.

Throughout the next two hours or so, the first appellant returned to the room at least twice. Each time, she would sit and chat with the customers for at least five to ten minutes before leaving the room.

In court, Ling positively identified the first appellant as the person who had asked her whether or not she wanted to work and who had brought her into the karaoke room on the night in question. She admitted however that she had not seen the first appellant since the time of her (Ling`s) arrest on 5 September 1999. Thus, at no time between then and the commencement of the trial on 7 April 2000 did Ling see the first appellant again. She further testified that no identification parade was ever conducted by the police and that a photo-identification carried out in the police station was conducted only after Ling had been released from prison. She was certain nevertheless that the appellant was the same woman who had approached her on the night of 4 September 1999 at the Nightclub.

The prosecution also called one Ghor Ah Hock (PW2) (`Ghor`) to testify. Ghor gave evidence that he went to the Nightclub on the night in question with his friends for a karaoke session. The first appellant was the mamasan who attended to them that evening. After they ordered drinks, the first appellant brought in a hostess, whom Ghor identified in court to be Ling, and gestured for her to sit with him which she did. Thereafter, Ghor continued singing with his friends until the police came and arrested Ling.

It was accepted that, as with the case of Ling, no identification parade was carried out for Ghor to identify the first appellant. The only time after 5 September 1999 that Ghor saw the first appellant again was during the trial itself when the first appellant was the only person sitting in the dock. Nevertheless, Ghor maintained that he was very certain that the first appellant was the mamasan who had gestured for Ling to sit with him that evening.

One Ee Bong Lian (PW3) also gave evidence for the prosecution. Her evidence however, added little to the facts in issue. As such, I do not propose to deal with it.

The defence

The first appellant gave evidence that the Nightclub employed four mamasans and over ten hostesses. As a mamasan, her job was to ask hostesses to accompany the patrons.

On the night in question, the first appellant was the mamasan on duty. Her job was to check on the patrons in the karaoke rooms regularly to see if hostesses were required. If so, she would return to

the counter outside and press the button which bore the number assigned to the relevant hostess. This would inform that particular hostess that her services were required and she would then approach the counter. From here, the mamasan would lead her into one of the karaoke rooms and direct her to sing and chat with the customers.

The first appellant gave evidence that every hostess at the Nightclub had to have a number assigned to her. The assignment of numbers would take place only after the hostess had undergone an interview with the management of the club and no one could just come in and work without first going through the proper procedure.

On the night of 4 September 1999, the first appellant entered the room which Ghor and his friends were in to see how many men there were. As there were already women there, she merely greeted the patrons and left. She denied bringing any hostess into the room. She also claimed that she did not return to the room again as there were already women there.

Under cross-examination, the first appellant was vague when questioned about the salary of the hostesses. She admitted that the girls could keep the tips from customers but did not know if the second appellant paid them a salary. She also denied that she had asked Ling to sit with Ghor. She claimed that, by the time she went to the room to check on the patrons, Ling was already in there.

One Eng Beng Hwee (`Eng`) gave evidence on behalf of the second appellant. She was a director of the second appellant at the time of the incident.

Eng confirmed that four mamasans were employed by the second appellant at the material time. Aside from the mamasans, the second appellant also employed hostesses, all of whom had to first undergo an interview either with the manager or herself before she was employed. During the interview, the girl`s identity cards and other particulars would be checked and she would also have to fill up a form. Thereafter, a number would be assigned to her if she was hired. Those hostesses who were foreigners would be paid a salary by the second appellant while the local ones earned on a per-bottle or per-room commission basis.

The third witness called by the defence was one Lim Kok Siong alias `Ah Xiong` (DW3) who was located only after closing submissions had been directed to be filed.

Ah Xiong`s evidence was that he was the one who had brought Ghor and his party of friends to the Nightclub that evening. According to him, one Ah Cat, whom he knew previously from another karaoke joint, namely the Apollo KTV lounge, had asked him to patronise the second appellant`s Nightclub. When they first arrived at the club, a waiter showed them to a room. Thereafter, the first appellant and another mamasan came in to ask if hostesses were required. Ah Xiong`s party declined. About five minutes later, Ah Cat came into the room and brought with her a Chinese female, whom Ah Xiong alleged to be Ling, and asked the latter to sit with Ghor. Ah Xiong admitted however that he had not seen Ah Cat since the night of 4 September 1999.

The decision below

The judge accepted the identification evidence of both Ling and Ghor and held that the first appellant had indeed brought Ling into the karaoke room on the night in question. She did not believe Ah Xiong`s story that Ah Cat was the one who had brought Ling into the room as that evidence was uncorroborated and Ah Cat could not in any event be located to verify it.

With respect to the question of employment, the judge held that Ling had indeed served as a hostess to Ghor that evening. As such, it could be said that the second appellant had used and engaged Ling`s services as a hostess. This alone was sufficient to satisfy the definition of `employment` in s 2 of the Act. The judge further found that the first appellant was acting within the scope of her duties when she offered the job to Ling.

As for the question of mens rea, the judge found that the first appellant had reason to believe that Ling was an immigration offender when she offered employment to her. Her failure to conduct any checks or verification was the result of wilful blindness on her part, in that she had deliberately shut her eyes to the obvious for fear of having her suspicions confirmed. The first appellant was thus convicted as charged.

In relation to the second appellant, the judge held that the presumption of employment in s 57(8) of the Act arose which obviated the need for the prosecution to prove mens rea. Instead the duty fell on the second appellant to rebut the presumption that Ling was in its employment or that it had knowledge that she was an immigration offender. After reviewing the evidence, the judge found that the second appellant had failed to rebut the presumption and convicted it accordingly.

The appeal

Before me, counsel for the appellants raised six broad grounds of appeal. It was not stated clearly by counsel which ground related to which appellant. It appeared therefore that the submissions were intended to apply to both appellants jointly as no clear distinction was made in the arguments between each appellant. I found this to be rather unsatisfactory as the charge against the first appellant was one of abetment while that against the second appellant was for the principal offence of employment itself. The offences were thus distinct and the elements to be proved in respect of each of them not entirely overlapping. In the circumstances, the proper way in which counsel should have conducted the appeal was to have presented his arguments in respect of each appellant separately. Nevertheless, as the joint submissions had already been prepared by the time of the hearing before me, I allowed counsel to proceed with his arguments in respect of both appellants jointly.

Counsel`s first argument was that the district judge had erred in accepting Ling`s identification evidence of the first appellant when no identification parade had been carried out. He contended that the photo-identification which was carried out at the police station should not have been relied upon by the judge as the photographs used in that identification were not tendered in court. Next, counsel submitted that Ah Xiong`s evidence about Ah Cat should have been accepted by the trial judge as it was not impeached. Third, he urged that, even if the first appellant had in fact approached Ling, she did not in any event have the `subjective knowledge` required under the Act nor did she have reason to believe that Ling was an immigration offender. It was next argued that the judge erred in rejecting the evidence of Eng that there was a system in place for the engaging of hostesses by the Nightclub, and that Ling had not been put through that system. To this end, reference was made to a letter from the Ministry of Manpower dated 26 November 1999 (`the MOM letter`) stating that Ling was only a freelance hostess at the Nightclub to support the argument that she was not in the employ of the second appellant at the relevant time. Finally, it was submitted that the first appellant had no authority to engage hostesses on behalf of the second appellant.

The law

The provisions in the Act which are relevant to this appeal provide as follows:

57	(1)	Any person who -
	(e)	employs any person who has acted in contravention of section 6(1), 15 or 36 or the regulations;
	shall be guilty of an offence and -	
	(ii)	subject to subsection (1A), in the case of an offence under paragraph ... (e), shall be punished with imprisonment for a term of not less than 6 months and not more than 2 years and shall also be liable to a fine not exceeding $6,000; ...
	(2A)	Where a body corporate is guilty of an offence under this Act for which a period of mandatory imprisonment or mandatory caning is prescribed, the body corporate shall, in lieu of imprisonment or caning, be liable on conviction to a fine of not less than $100,000 and not more than $200,000.
	...	
	(8)	Where an immigration offender is found at any premises or place, other than premises used solely for residential purposes, the occupier of the premises or place shall be presumed, until the contrary is proved, to have employed him knowing that he is an immigration offender.
	(9)	In any proceedings for an offence under subsection (1)(d) or (e), it shall not be a defence for the defendant to prove that the person harboured or employed by him was in possession of a pass or permit issued to the person under this Act or the regulations unless the defendant further proves that he had exercised due diligence to ascertain that the pass or permit was at the material time valid under this Act or the regulations.

The meaning of the term `employ` as used in s 57(1)(e) is in turn set out in s 2 which defines the

term as being:

> ***to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration****;*

This definition came into effect on 1 March 1996, and is also found in s 5(8)(a) of the Employment of Foreign Workers Act (Cap 91A). With the amendment to the definition of `employ` in the Act, the previous requirement that the prosecution must prove the existence of a contract of service or any payment before the alleged employer can be charged under s 57(1)(e) is no longer necessary: see **Tamilkodi s/o Pompayan v PP** [1999] 1 SLR 702 . Nevertheless, several factors will still be taken into consideration by the court when deciding whether or not the test of `employment` has been satisfied in each case. These factors, which I set out in ***Tamilkodi s/o Pompayan v PP*** (supra), include the manner of remuneration and the degree of control exercised by the alleged employer over the workers. I made it clear in that case, however, that these factors are non-exhaustive and each case must still be looked at in entirety when determining the existence of an employment relationship.

Identification

The main thrust of the defence both before me and at the trial appeared to be one of mistaken identity. The argument was that the first appellant was not the mamasan who had brought Ling into the karaoke room that evening and that both Ling and Ghor were mistaken in their identification of the first appellant. After hearing counsel`s submissions, I found that there was absolutely no basis for this contention by the appellants. Both Ling and Ghor positively identified the first appellant as the woman who had gestured for Ling to sit with Ghor at the Nightclub on the night in question. Admittedly, no identification parade was ever carried out for either of the prosecution witnesses. While the failure to conduct an identification parade may in certain circumstances render the identification evidence of the eyewitness suspect, it is not every failure which adversely affects the probative value of an eyewitness` evidence. Ultimately, the quality of an eyewitness` evidence ought to be assessed in accordance with the guidelines laid down in **R v Turnbull** [1977] QB 224 which were adopted by the Court of Appeal in **Heng Aik Ren Thomas v PP** [1998] 3 SLR 465 and similarly followed in **Awtar Singh s/o Margar Singh v PP** [2000] 3 SLR 439 . Essentially, the material question for the court should be whether or not the identification evidence was of good quality, taking into account the circumstances in which the identification was made. The non-exhaustive list of factors which the court should consider include the length of time that the witness observed the accused, the distance at which the observation was made, the presence of obstructions, the frequency with which the witness saw the accused, the length of time which had elapsed between the original observation and the subsequent identification to the police. After perusing the record of proceedings in the court below, I was satisfied that there was nothing which seriously cast doubt on the district judge`s reliance on the identification evidence of both Ling and Ghor in this case. Their testimony was generally consistent and any discrepancy was minor and of little consequence. The judge accepted the evidence of both of the prosecution witnesses and found that neither had any reason to implicate the first appellant. Having had the benefit of observing their demeanour in court, I saw no reason to disturb the trial judge`s assessment of the witness` credibility.

Before me, counsel for the appellants also sought to make much of the fact that the first appellant sported longer hair at the time of the incident than she did at the trial and that this somehow cast doubt on the prosecution witnesses` identification evidence. I found this contention to be completely without merit. A perusal of the notes of evidence in the court below showed that the change in the first appellant`s hairstyle was brought up for the first time, unled, by Ling herself, whose observation

in the circumstances turned out to be correct. This showed that she was clearly conscious of the fact that the first appellant had cropped her hair since the incident, which in my view rendered her identification evidence even more compelling as it showed that she was fully aware even of the minutest details of the first appellant`s appearance, and this despite the less than ideal lighting in the Nightclub at the relevant time as alleged by the appellants. As such, there was nothing which suggested that Ling`s identification of the first appellant was unsatisfactory. In any event, only seven months had elapsed since the time of Ling`s maiden encounter with the first appellant and her subsequent identification of the latter in the court below. In my view, this time-frame was not so long as to render Ling`s recollection of the first appellant`s appearance unworthy of credit.

In connection with the above matter, the first appellant also applied by way of motion to adduce fresh evidence in the form of copies of the front and back of her National Registration Identity Card (`NRIC`) before the High Court. The purpose for this was to show the court that the photograph on her NRIC showed her with short, cropped hair, the point being that, as this was the photograph shown to Ling during the photo-identification at the police station, Ling could not have been able to identify the first appellant from it as the woman who had approached her at the Nightclub had sported longer hair. I found this submission to be completely ludicrous and rejected it without hesitation. In the first place, under the guidelines on the adduction of fresh evidence on appeal as laid down in **Ladd v Marshall** [1954] 3 All ER 745 and followed in **Juma`at bin Samad v PP** [1993] 3 SLR 338 , it must first be shown that the evidence sought to be adduced could not have been obtained with reasonable diligence for use at the trial. Clearly the copies of the first appellant`s NRIC which she sought to admit before me could hardly be said to have been unavailable or unobtainable at the time of the trial, and for this reason alone I was satisfied that the motion ought to be dismissed. In any event, I found it difficult to see what influence, let alone an important one, the photograph on the NRIC could have had on the case, even if it was admitted. Just because the woman who approached Ling on the night in question had since changed her hairstyle did not mean that Ling would or could never be able to recognise her again. Likewise, there was no reason why Ling should not have been able to correctly identify the first appellant from her National Registration Office photograph despite the difference in hairstyles. After all, it was not as if nor was it ever suggested that the first appellant had undergone extensive plastic surgery and changed her appearance completely or drastically. It is not uncommon for persons, and particularly women, to change their hairstyles all the time. Yet this does not mean that they become unrecognisable every time they step out of a hair salon. It is hardly rocket science to realise that a person`s hairstyle is not the only thing which sets him apart from others. Other more distinguishing features on a person`s face, such as his facial structure, eyes, nose and mouth, are equally important where identification and recognition are concerned. In the circumstances, I saw no reason to interfere with the finding of the trial judge on identification.

Ah Xiong`s evidence

This point can be disposed of briefly. Apart from Ah Xiong`s bare assertion, there was no other corroborative evidence of the existence of the elusive Ah Cat. Although the defence had ample opportunity to substantiate Ah Xiong`s testimony, they failed to do so. For example, Ah Xiong claimed that Ah Cat used to work at the Apollo KTV Lounge which was where he had first come to know her, yet no one from that Lounge was called to verify that this was the case. Next, it was also not put to Ghor whether or not Ah Cat was in fact one of the ladies who had accompanied them that evening, despite Ah Xiong`s assertion that Ah Cat had come in to sit with them for a while. It was further telling that no question was ever asked either of the first appellant or of Eng as to whether or not Ah Cat was in the employ of the second appellant at the relevant time. In any event, the first appellant herself had admitted that she was the only mamasan on duty at 11pm on the evening of 4 September

1999 and the defence was thus hard put to explain why anyone else should have been introducing hostesses to the customers at that time. Taking all these circumstances into account, the irresistible inference to be drawn was that Ah Cat was merely a fictitious creature spun by the defence in a last-ditch attempt to shift the blame away from themselves.

Mens rea

It will be recalled that the charge against the first appellant was one of abetment by intentionally aiding under s 107(c) of the Penal Code (Cap 224). In **PP v Datuk Tan Cheng Swee & Ors** [1979] 1 MLJ 166 , it was said that to constitute the offence of aiding and abetting, the prosecution must prove an intention on the part of the abettor to aid and he must be shown to have known the circumstances constituting the crime at the time when he voluntarily does a positive act of assistance. I cited this case with approval recently in ***Awtar Singh s/o Margar Singh v PP*** (supra) in which I added that the burden on the prosecution is to prove that the accused knowingly facilitated in the act of employing illegal workers.

With respect to the first appellant therefore, what needed to be shown was a dominant intention on her part to assist the second appellant in committing the offence of employing illegal workers under s 57(1)(e), with knowledge of the circumstances constituting that offence.

In my view, there was no doubt that the actions of the first appellant - her approaching Ling and offering her work, gesturing for her to sit and drink with the patrons - on the night of 4 September 1999 taken collectively, clearly evinced a dominant intention on her part to aid or to facilitate the second appellant in engaging the services of Ling as one of its hostesses. But that was not the end of the matter. What needed to be determined further was whether or not the first appellant had intended for the second appellant to engage Ling, knowing that the latter was an illegal immigrant. The case against the first appellant was one in which the prosecution did not have the benefit of any presumption of knowledge. As such, the burden was on them to show beyond a reasonable doubt that the circumstances of the case were such that the first appellant ought to have made the necessary enquiries and that by failing to do so, she had wilfully shut her eyes to the obvious - that Ling was an immigration offender.

Turning now to the question of whether the first appellant knew that Ling was an immigration offender. In my view, there was no question that, if she did not know, it was only because she had deliberately shut her eyes from that patent fact. Firstly, it must have been obvious to the first appellant that Ling was almost certainly a foreigner. This, she could have told, not only from the latter`s fair-complexioned skin and other facial features, but presumably also from her accent, which without doubt would have been quite easily distinguishable from the mandarin spoken by local Singaporeans and one that is easily recognisable as being foreign. Next, the circumstances in which Ling was offered the job and her eagerness to accept should also have led the first appellant to inquire further. Having been granted a licence to operate the Nightclub, it was the duty of the first appellant, as an officer of the second appellant, to ensure that the persons whose services the Nightclub engaged held valid work permits. In my view, the first appellant`s lack of curiosity in Ling`s identity and background gave rise to the ineluctable inference that she deliberately refrained from inquiry as she suspected the truth but was wary of having her suspicions confirmed. It is after all not uncommon for foreigners to seek jobs in places like the second appellant`s Nightclub, and both the first appellant and Eng had admitted in any event that the Nightclub did in fact employ foreign hostesses. As such, the first appellant ought to have carried out the necessary checks on Ling`s status before offering work to her. A bare assertion of ignorance alone was not sufficient to excuse the first appellant`s conduct in this case.

Looking at all the evidence in totality, I found that the first appellant was deliberately and wilfully blind to the immigration status of Ling. The problem of illegal immigrants in Singapore is not an uncommon one. It was a problem which is real, rampant and one which has attracted widespread publicity in all the local media. In these circumstances, the first appellant was, to say the least, extremely foolish not to check on the status of the persons to whom she offered work. It is in fact truly amazing that anyone could have offered a job to a complete stranger without making any inquiry whatsoever about her identity or status. Unfortunately, sheer foolishness itself was not a defence in this case, for to accept it would mean that all employers would henceforth be able to circumvent the provisions in the Act relating to the checking of their employees` status with impunity. The law imposes stringent obligations on persons who engage or assist in engaging the services of others to ensure that the person engaged is not an illegal worker. That obligation was clearly not discharged in this case. In my view, the prosecution had more than proven beyond reasonable doubt that the first appellant knowingly abetted the employment of an immigration offender and, for the reasons set out, I dismissed the appeal against the first appellant.

The remaining heads of appeal

The remaining grounds of appeal appeared to relate more to the second appellant and can be dealt with together.

With respect to Eng`s evidence on the purported system of recruiting hostesses only after the girls had undergone an interview with the management of the second appellant, this was again uncorroborated by independent witnesses. While both the first appellant and Eng gave similar accounts of such a system of recruitment, it was telling that the defence did not call any other hostess or mamasan employed by the Nightclub at the material time to verify this story. In addition, the forms which every applicant for the job of hostess had to fill out during her interview were also not produced and shown to the court. As a result, the district judge could hardly be faulted for giving little weight to the evidence of Eng with respect to the purported system of recruitment practised by the second appellant.

As for the MOM letter describing the hostesses as freelance, I found that this piece of evidence was also neither here nor there. Clearly it did not alter the fact that Ling was indeed in the employ of the second appellant at the time of her arrest. Firstly, it was not elaborated in the MOM letter what exactly was meant by the term `freelance`. For my part, I would venture to suggest that the term merely means that the hostesses worked at various nightclubs and were not contractually bound to work at any one particular place. While this arrangement may, under the civil law of contract, have the effect of rendering the hostesses independent contractors rather than employees, the new criminal law definition of `employ` as used in s 2 of the Act, which has been set out earlier in this judgment, is nevertheless wide enough to encompass the sort of `freelance` arrangement in place here. Under the current definition of `employ`, the prosecution need no longer prove the existence of a formal contract of service nor any remuneration or payment to the so-called `employee`. This change in the law in 1996 was clearly brought about by social and public policy, and the overriding need to prevent such `loose` or informal forms or schemes of `employment` from cleverly escaping the consequences of the law on mere technicalities. To my mind, there was no doubt that, on the facts here, Ling`s relationship with the second appellant more than amply satisfied the current definition of `employ` in s 2 of the Act. She had essentially carried out all the duties which a hostess was required to carry out, albeit only for a short two hours, such as accompanying the patrons and singing and drinking with them, a fact adverted to by Ghor and even Ah Xiong, a witness for the defence. Further, the first appellant herself never denied that Ling was indeed in the karaoke room

entertaining customers that evening, for it will be recalled that her only defence was that she was not the one who had brought Ling into the room. As has been seen however, this defence was disbelieved by the trial judge who found that the first appellant had indeed instructed Ling in her duties that evening, thus subjecting the latter to the control or directions of the second appellant. That there was no discussion on her remuneration or salary was, in my view, inconsequential as firstly, such remuneration or payment is not required under the existing definition of `employ`, and second, the first appellant had herself admitted that hostesses were allowed to earn the tips from the customers, while Eng gave evidence that most of the hostesses were paid on a per-bottle or per-room commission basis. In my view, all these factors taken together showed that Ling`s services had in fact been engaged and used by the second appellant in the running of the Nightclub`s business. Regardless of whatever formal procedure there might have been in place for the recruiting of hostesses, the second appellant clearly qualified as the `employer` of Ling at the material time within the current, extended meaning of the word under the Act.

In any event, the prosecution had in this case, vis-Ã -vis the second appellant, the aid of the presumption laid down in s 57(8) of the Act. This section provides that where an immigration offender is found at any non-residential premises or place, the occupier of those premises shall be presumed to have employed him knowing that he is an immigration offender. The effect of s 57(8) of the Act is to shift the burden of proof onto the defence to disprove, on a balance of probabilities, both the presumption of employment and the presumption of knowledge: see **Mohamed Lukman bin Amoo v PP** [1999] 4 SLR 292 . It was conceded in the present case that Ling was indeed within the second appellant`s premises at the time when she was arrested. The presumptions of both employment and knowledge under s 57(8) were thus triggered and the burden shifted to the second appellant to show that it did not employ Ling and that it did not know that Ling was an immigration offender. The fact of employment, as I have shown above, was clearly irrefutable. As for the presumption of knowledge, I was of the view that the second appellant did nothing to rebut it. It was patent in this case that no checks whatsoever were conducted on Ling`s background at the time when she was offered the job of hostess. In fact, an attempt to this end was not even made and the defence itself rightly did not advance its case on this footing. If there was a system in place for the interviewing and screening of applicants, Ling was not put through it at all. This showed that there was obviously a flaw in the system of management adopted at the second appellant`s Nightclub, from which it could not escape responsibility. In my view, the argument that the hiring of Ling by the first appellant was outside the scope of the latter`s authority was also a tenuous one which could not be accepted. Clearly it was the second appellant who had put the first appellant in the position in which she was in, which position enabled her to do as she did on the evening of 4 September 1999. That the first appellant was allowed to simply approach and offer a job to any woman who walked into the Nightclub showed that the second appellant was lax in its control and supervision of its employees who were obviously given a free reign in hiring hostesses to work for the company. If anything, I was inclined to subscribe to the view that this was most probably the practice throughout the Nightclub anyway during the material time, as the purported systematic procedure of recruitment described by the first appellant and Eng was, as shown above, short on credibility and not independently corroborated. In these circumstances, the second appellant should be held as being equally blameworthy and should not be allowed to escape liability simply by claiming that one of its staff had acted without authority. If this seems harsh, then regard need only be had to the policy of the law to combat the rising trend of illegal immigrants together with its concomitant problems to understand the need for such strictness. If the second appellant were allowed to escape criminal liability in this case on the ground advanced by the defence, then no corporate entity could ever be convicted of the offence of employing illegal workers. This is because the hiring of immigration offenders can never legitimately be within the scope of any employee`s duties. As such, adopting the appellants` argument, whenever a company is charged for having employed such offenders, it would be able to escape punishment simply by arguing that the officer who hired the worker acted beyond his authority since that authority did not include

the hiring of illegal workers. On this argument, s 57(2A) which provides for the punishment of a body corporate found guilty of hiring illegal workers would then be rendered completely superfluous which surely cannot be the case. In my view, every employer, be it a sole proprietorship or a company should always be diligent in ensuring that no immigration offenders are in its employ. The duty cast is thus one of constant vigilance. If necessary, strict in-house checks should be in place to ensure, as far as is reasonably practicable, that little opportunity is given for the hiring, whether unwitting or otherwise, of illegal workers.

In my view, the presumption of knowledge was clearly not rebutted in this case for the reason that the second appellant had not shown that it could not reasonably have known that Ling was an immigration offender, having failed to conduct any checks on the latter whatsoever.

For the foregoing reasons, I dismissed both appeals accordingly. I affirmed the sentences passed in the court below, but, with the DPP`s consent, allowed the second appellant a time-frame of one month within which to pay the fine of $100,000.

Outcome:

Appeals dismissed.