Sim Bok Huat Royston v Public Prosecutor
[2001] SGHC 67

Case Number : MA 323/2000

Decision Date : 02 April 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Howard Cashin (Howard Cashin & Lim) and Intekhab Khan (J Koh & Co) for the appellant; Ong Hian Sun (Deputy Public Prosecutor) for the respondent

Parties : Sim Bok Huat Royston — Public Prosecutor

Criminal Law – Offences – Corruptly receiving gratification – Whether offence proven beyond reasonable doubt – s 6(a) Prevention of Corruption Act (Cap 241, 1993 Ed)

Criminal Procedure and Sentencing – Appeal – Accused committed offence while an inspector in police force – Whether sentence of nine months' imprisonment manifestly inadequate on facts of case – Need for deterrent sentence

Criminal Procedure and Sentencing – Voir dire – Admissibility of statements – Whether witness' police or other statement to be voluntary in order to be admissible as evidence in trial – Whether trial judge correct in ordering voir dire to determine voluntariness of witness' statements – Admission of previous inconsistent statement under s 147 of Evidence Act (Cap 97, 1997 Ed) – s 147 Weight to be accorded to such statements once admitted – Evidence Act (Cap 97, 1997 Ed)

Evidence – Admissibility of evidence – Whether witness' police or other statement to be voluntary in order to be admissible as evidence in trial – Admission of previous inconsistent statement under s 147 of Evidence Act (Cap 97, 1997 Ed) – Whether s 147 required voluntariness for admission – s 147 Evidence Act (Cap 97, 1997 Ed) – Weight to be accorded to witnessÂ' previous inconsistent statement governed non-exhaustively by factors in s 147 (6)- s 147 Evidence Act (Cap 97, 1997 Ed)

: This was another in a series of cases involving the now infamous Geylang moneylender Chua Tiong Tiong, otherwise known as `Ah Long San`, which have perplexed the courts in recent months. At the end of the hearing, I dismissed the appeal and now give my reasons.

Salient facts

The facts of this case are relatively straightforward. The appellant, who was a police officer, was charged with one count of having accepted an unspecified sum of money from Chua Tiong Tiong (`Chua`) through one Tan Yuek Theng (PW2) (`Tan`) outside the M3-KTV Lounge in Geylang sometime in January 1998. The charge under s 6(a) of the Prevention of Corruption Act (Cap 241, 1993 Ed) (`the PCA`) alleged that the appellant accepted the moneys as gratification in return for using his position as a police officer to assist Chua in his affairs.

The prosecution`s case

The prosecution for its case relied mainly and in fact primarily on the evidence of Tan. Prior to the trial, Tan had given, inter alia, two statements to two senior special investigators from the Corrupt Practices Investigating Bureau (`CPIB`) separately: P4, which was recorded by SSI Liew Khee Yat (PW6) (`SSI Liew`) in the early morning of 2 January 1999; and P3, recorded by SSI Jacqueline Foo (PW5) (`SSI Foo`) some 22 days later on 24 February 1999. The gist of what Tan had said in these statements, particularly in P4, was that he had been a runner for Chua between 1997 and 1998, and

had assisted the latter in passing envelopes of cash to the appellant, as well as several other police officers, including Kelvin Fong and William Fong. He was previously acquainted with Kelvin who subsequently introduced him to William in 1995. Thereafter, he was further introduced to the appellant by Kelvin some time in 1998 at a drinking session. With respect to the appellant, Tan said that he had, on one night in January 1998, been given an envelope of cash by Chua at the back of a coffeeshop in Geylang with the instruction that he should pass the envelope of cash to the appellant, who would be waiting for him at the M3-KTV Lounge several streets away. The envelope was sealed and Tan did not open it. From his experience of having handled cash as a loanshark before, however, he was able to tell that there were two stacks of S$50 notes inside the envelope. He proceeded to the M3-KTV Lounge where he saw one Lim Hock Gee, whom he knew to be Chua`s personal driver, waiting there. About five minutes later, the appellant arrived in his car, following which Tan handed the envelope of cash to him after telling him that it was from Chua. The appellant accepted the envelope and drove off.

In court, under examination-in-chief by the Deputy Public Prosecutor (DPP), Tan did a complete turnaround and retracted the essence of what he had said in his statements to the CPIB officers. He denied having worked for Chua or having ever delivered envelopes of money for the latter to the appellant. He claimed that SSI Liew had threatened him as well as conducted other oppressive acts on him when recording P4, as a result of which Tan had given the statement randomly and its contents were thus his own concoctions and did not contain the truth.

At this juncture, the DPP applied for a voir dire to determine the voluntariness of P4 and P3. Several CPIB officers who had been involved in recording statements from Tan were called during the voir dire, including SSI Liew and SSI Foo. SSI Liew denied the allegations made against him by Tan to the effect that he had stripped the latter to his underwear, turned on the air-conditioner to full-blast and refused his request to visit the washroom when recording P4. He further testified that he met up with Tan again subsequently on 23 March 1999 whereupon Tan was requested to furnish a witness bond of $25,000 as compulsion for him to testify at trials against several police officers investigated by the CPIB, including the appellant. When Tan replied that he could not afford the amount, SSI Liew pleaded with his Assistant Director on Tan`s behalf for the amount to be reduced to $5,000, which it eventually was. As for the other recording officers, the substance of their evidence was to the effect that none of them had held out any threat, inducement or promise to Tan during the recording of his statements, nor had Tan complained to them about Liew`s alleged mistreatment. All the recording officers were offered to Tan himself for cross-examination, although defence counsel was not afforded the same opportunity. Under cross-examination by the DPP, Tan agreed that P4 and P3 were made by him voluntarily. He maintained this stand again in his own re-examination by withdrawing his allegations of oppressive conduct by SSI Liew.

At the end of the voir dire, the district judge ruled, based on the evidence adduced in the trial-within-a-trial, that both P4 and P3 were made by Tan voluntarily.

Upon the resumption of the main trial, Tan again confounded the court with his erratic and conflicting testimony. While he admitted that he had indeed worked as a runner for Chua between 1997 and 1998, he denied having ever handed any envelope containing cash to Kelvin, William Fong or the appellant. He said that he had given the appellant a loan of $1,000 once, at the Changi Government Chalet, but that that was a personal loan given by himself and not on behalf of Chua. He claimed that he had stated otherwise in P4 and P3 out of fear.

At this point, the prosecution applied to impeach Tan`s credit under ss 157(c) and 147(1) of the Evidence Act (Cap 97, 1997 Ed), which application was granted by the court. When confronted with the material discrepancies between his assertions in P4 and P3, and his testimony in court, Tan`s

characteristic replies were that he had given the statements contained in P4 and P3 out of fear, that he had said them thoughtlessly, and that SSI Liew had threatened him. Under cross-examination by defence counsel, Tan again asserted that the conflicting statements in P4 and P3 were either suggested to him by SSI Liew or a figment of his own imagination and further claimed that SSI Liew had hit him with a document sometime during the recording of P4. He agreed with defence counsel that Chua had never given him envelopes of money to pass to the appellant. Upon re-examination by the DPP, Tan again maintained that the inconsistencies in P4 which implicated the appellant were thought up of by himself and that he was forced into saying what he did to SSI Liew.

At the end of the prosecution`s case, the defence made a submission of no case to answer which was rejected by the trial judge. The appellant elected to give evidence in his defence in consequence.

The defence

The appellant`s defence was simply that he had never received any envelope of cash from Tan. He also denied having ever been to the M3-KTV Lounge in Geylang. Under cross-examination, he admitted that he had known Tan since the beginning of 1997, having been introduced to the man by Kelvin. He agreed that he had gone out with Tan before, either to coffeeshops or KTV Lounges but always with Kelvin or William around. At these outings, the appellant always left the party first so he did not know who eventually footed the bill. But he maintained that he always paid back his share of the bill to either Kelvin or William. It was not disputed that the appellant was also acquainted with Chua. He testified that he had met Chua through the latter`s brother, one Chua Tiong Chye (`CTC`), whom he had known in his army days, at a coffeeshop in Geylang. He denied knowing that Chua was the infamous illegal moneylender `Ah Long San`, and testified that he only knew him as `Ah San`. He later met Chua or `Ah San` at the Deluxe Lido Palace Nite Club in the Concorde Hotel on two separate occasions. He claimed, however, that the meetings were chance meetings and both men had gone there separately with their own groups of friends. As before, he maintained that he paid back his share of the bill on both occasions to his colleagues and did not know if Chua had paid for the appellant`s group. He admitted when pressed, however, that Chua had arranged to meet him once at the Sakura Finger Pressure Fitness Centre (`Sakura`) in Geylang on 17 December 1998 to confide in him about the legal processes concerning CTC, who had been arrested in June 1998.

It was revealed during cross-examination that the appellant had made a status enquiry into one Lim Chin Boon on Chua`s request some time in December 1998. He disclosed that he had called up one SSG Ong Hock Leong from the Secret Societies Branch to find out if Lim Chin Boon had been arrested. He denied, however, that the information given by SSG Ong on Lim Chin Boon`s status was confidential in nature or that his act in making the enquiry was against the law, asserting that members of the public themselves could personally call up to find out if a particular person had been arrested. The appellant also did not ask Chua why he wanted this information for he simply assumed that Lim Chin Boon was either Chua`s relative or friend.

With regard to a certain blue Sunpage pager in his possession, the appellant admitted that Tan, to whom the pager belonged, had passed it to him for safekeeping sometime in late 1998. Tan had allegedly bought the pager for one of his workers but had trouble locating him and as such, requested the appellant to keep the pager in his custody for the time being. The appellant agreed to do so as he felt it was prestigious to be carrying two pagers.

At this juncture, the DPP applied to impeach the appellant`s credit by reference to a document entitled `Statement of Facts`, which was admitted by the trial judge as exh P7. I noted at the

outset that P7 was not a document signed by the appellant but was instead signed by the DPP. It contained brief descriptions written in the third person of the facts surrounding several other charges against the appellant under the Police Force Act, Films Act and Computer Misuse Act respectively. The appellant agreed with the DPP that he had seen the document P7 before and had previously admitted to its contents unreservedly. He explained that the statement in P7 to the effect that he had accepted free drinks from Chua at the Deluxe Lido Palace Nite Club in 1997 referred only to the period when Chua had, as a matter of courtesy, invited the appellant over to join his party after they happened to chance upon each other at the lounge. The appellant maintained that he paid for the drinks of his own group himself and that Chua had never specifically invited him out for drinks. As for the status enquiry into Lim Chin Boon, the appellant stated that he did not know, at the time he made the enquiry, that it was against the Police General Orders or that it amounted to conduct prejudicial to good order.

The decision below

At the end of the trial, the district judge disbelieved the appellant`s testimony and convicted him accordingly. He also found that Tan`s oral evidence was unreliable, choosing instead to rely on what he had said in P4 and P3, which the learned judge held contained the truth of events. He was satisfied, after a consideration of the factors in s 147(6) of the Evidence Act, that adequate weight could be accorded to the evidence contained in P4 and P3, which on their own was sufficient to sustain the appellant`s conviction.

The appeal

The main issue on appeal before me, as was the case at the trial, was the question whether or not the fact of gratification had been proven by the prosecution beyond reasonable doubt. Counsel for the appellant advanced in essence two main lines of argument before me. He contended firstly that his client was prejudiced as he was denied the opportunity to cross-examine the recording officers during the voir dire. Next, counsel further submitted that P4 itself raised serious doubts as to whether or not the envelope which Chua had handed to Tan to pass to the appellant even contained cash, and if so, exactly how much cash it contained.

The law

Section 6(a) of the PCA states as follows:

> *If -*
>
> *(a) any agent corruptly accepts or obtains, or agrees to accept or attempt to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal`s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal`s affairs or business,*
>
> *...*

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or both.

I held in the case of **Kwang Boon Keong Peter v PP** [1998] 2 SLR 592 that in order to sustain a conviction under s 6(a), the prosecution needs to prove the following four elements beyond a reasonable doubt (at p 613):

(i) that there was an acceptance of gratification;

(ii) that the gratification was accepted as an inducement or reward;

(iii) that there was an objectively corrupt element in the transaction; and

(iv) that the appellant accepted the gratification with a guilty knowledge.

As alluded to, the only element in dispute in this appeal was limb (i) of the offence as enunciated above.

Analysing the appeal

Tan`s evidence

It was not disputed that Tan was the prosecution`s sole material witness in this case, one who also turned hostile during his examination-in-chief. As a result, the prosecution sought to impeach his credit by highlighting the material discrepancies between his testimony in court, and his prior statements to the CPIB. When oppressive acts by SSI Liew were alleged by Tan in the recording of P4, the district judge allowed the prosecution`s application to conduct a voir dire in order to determine the voluntariness of Tan`s statements.

With respect, I found that the course taken by the trial judge was procedurally erroneous. Nowhere is it stated either in the Criminal Procedure Code (Cap 68) (`the CPC`) or the Evidence Act that a witness`, as opposed to an accused`s, statement to the police or a CPIB officer is subject to any test of voluntariness. In other words, there is nothing in the statute law which states that a witness` police or other statement has to be voluntary before it may be admitted as evidence in a trial. It will be seen that the voluntariness tests espoused in s 122(5) of the CPC for police statements and s 24 of the Evidence Act for confessions made to non-police officers, apply only to statements given by an accused person. Witness` statements whether to police officers or otherwise do not fall within the same category and, as such, are not subject to any test of voluntariness. As such, it was unnecessary and procedurally incorrect for the district judge to have ordered a voir dire to determine the voluntariness of P4 and P3. The Court of Appeal has recently endorsed this view in the case of **Thiruselvam s/o Nagaratnam v PP** [2001] 2 SLR 125 , in which it was said with regard to previous inconsistent statements of witnesses which are sought to be admitted via s 147 of the Evidence Act, as P4 and P3 undoubtedly were in this case, that all that is required to be proved is that those statements were in fact made by the witness. There is no further requirement under s 147 to prove that the witness made the statement voluntarily. The Court of Appeal agreed with the trial judge in

that case that, if a statement had been involuntarily extracted from a witness, then the weight of that statement admitted for the purpose under s 147 may be significantly reduced but its admissibility per se remains unaffected. In my view, that must be the correct position at law for in the absence of any statutory direction enjoining the conducting of voir dires for witness` statements, to hold that the admissibility of a witness` statement is conditioned upon it being found to have been given voluntarily would be tantamount to judicial legislation.

Following from the above, I found that the admission of P4 and P3 as evidence in this case was governed solely by ss 147 and 157(c) of the Evidence Act, which I reiterate do not stipulate a separate requirement of voluntariness. The relevant portions provide as follows:

> *147(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.*
>
> *...*
>
> *(3) Where in any proceedings a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of this section, that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.*
>
> *...*
>
> *(6) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.*
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> *157 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:*
>
> *...*
>
> *(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; ...*

Section 157 thus allows for the credit of a witness to be impeached upon proof of the previous consistent statement and its material discrepancies not being satisfactorily explained. Section 147 too was originally drafted as an impeachment provision, intended to permit cross-examining counsel to demolish the credibility, and hence testimony of a witness who had previously given a statement which was inconsistent with his evidence in court. The function of s 147 was, therefore, limited or

restricted to impeaching the credit of the witness in question. It did not allow the previous inconsistent statement to be correspondingly admitted into the case as evidence. In 1976, however, the Evidence Act was amended to introduce the current s 147(3), which effectively lifted the restriction on the purpose for which previous inconsistent statements might be used. Following the amendments, a previous statement made by a witness may now be used not only to impugn his credibility as a witness, but as evidence of the facts stated therein as well. I had earlier settled and documented this point in the landmark case of **PP v Sng Siew Ngoh** [1996] 1 SLR 143 , in which I held further that a conviction may be sustained solely on the evidence contained in a witness` previous inconsistent statement.

Returning to the facts of the present case, it was not disputed on either side that Tan`s testimony in court was vastly different from his statements in P4 and P3. Since the signatures on P4 and P3 belonged to Tan and he in any event admitted to making them, there was no question that the statements P4 and P3 were formally proved. What was in contention was the question whether or not P4 and P3 contained the truth or had been voluntarily made. As I explained earlier however, this question does not affect the admissibility of P4 and P3. They being but mere witness` statements, are admissible via s 147 of the Evidence Act irrespective of the voluntariness or lack thereof with which they were made. But are the statements then to be accorded their full weight? Surely this cannot be the case. While P4 and P3 are clearly admissible whether in cross-examination or as evidence of the facts stated therein by virtue of s 147, the weight to be accorded to such evidence has to be separately determined. As held in ***Thiruselvam*** `s case (supra), it is only at this stage that questions relating to the circumstances in which the statements were made become relevant and not earlier, as the trial judge appeared to me to have mistakenly thought in acceding to the prosecution`s request to hold a voir dire. The difference between considering questions of voluntariness at the weight stage as opposed to the admissibility stage is that in the former, a separate trial-within-a-trial need not be held to determine the question of voluntariness for the evidence is already admitted. Any question concerning the circumstances surrounding the recording of the statements is thus put to the recorders as part of the main trial itself, rightfully opening them to cross-examination by defence counsel in a case where it is the voluntariness of a prosecution witness` statement that is in contention. What took place in the present case on the other hand was that the district judge had called for a voir dire to determine the voluntariness of P4 and P3, but had excluded defence counsel from cross-examining the recorders of P4 and P3 in the voir dire because it was the voluntariness of a prosecution witness` statement that was being impugned. I accepted counsel`s point that clearly this could not be right, for the thrust of the prosecution`s case, as it turned out, hinged solely on P4 and P3, and as such, it was in every interest of the appellant that he be permitted to cross-examine the recorders of those statements on the circumstances in which the recordings were made. The failure to let defence counsel cross-examine the recorders might thus well have rendered the proceedings below a mis-trial warranting a rehearing altogether. Fortunately however, the recorders of P4 and P3 were called to give evidence again in the main trial of the circumstances surrounding the recording of the statements so as it turned out, defence counsel was not after all precluded from cross-examining them on this point. As a result, I found counsel`s contention that his client was prejudiced because Tan was unrepresented during the voir dire to be wholly without merit. While it may have been improper for the trial judge to have asked Tan to undertake the cross-examination of SSI Liew and SSI Foo during the voir dire himself, no prejudice accrued to the appellant since defence counsel was subsequently allowed to cross-examine the recorders when the main trial resumed. Certainly, the position may well be different in other cases where the recorders are not called as part of the main trial which is in fact often the case. In that situation, the accused would effectively have been denied the opportunity to confront the persons best acquainted with the circumstances surrounding the recording of the incriminating statement against him, resulting in an affront to all common sense notions of fairness. No such unfairness however was present in the case before us since the recorders were in fact called as witnesses again in the main trial. In addition, I found that

there was also nothing to support counsel`s suggestion that Tan should have been offered separate representation for himself, the latter not being a defendant or co-accused in the trial.

The result of the examination of the recording officers is thus one of the instrumental factors influencing the proper weight to be given to the statement in question. In **Chai Chien Wei Kelvin v PP** [1999] 1 SLR 25 , guidance was given by the Court of Appeal in respect of the other factors listed under s 147(6) to be considered when determining the proper weight to be accorded to a previous inconsistent statement of a witness admissible in evidence by virtue of s 147(3):

> *First, the contemporaneity of a statement with the occurrence or existence of the facts stated is important for it guards against inaccuracy, though the degree of contemporaneity required will vary with the facts in question. The recollection of the details of particular events, particularly where these occur quickly, is easily susceptible to error with time but the recollection of the existence of a relationship is not so malleable. Second, there can be little guidance on the possibility of misrepresentation by the maker of the statement but the court must be astute in spotting such instances. Third, in addition to the above matters, the weight to be accorded to a prior inconsistent statement will be affected materially by an explanation of the inconsistency and why that statement is an inaccurate representation of the facts. Fourth, regard should be had to the context of the statement. Subsection (6) does not restrict consideration to only the making of the statement but requires consideration of all the circumstances affecting its accuracy. Thus the court must consider the context of the inconsistent portions, which requires that the whole of the statement be examined. Reliance cannot be placed on a portion of the statement that is taken out of context. Finally, the cogency and coherence of the facts to be relied upon has to be noted. An ambivalent statement does not attract much weight.*

Applying the above factors first to P4, which in any event was the more incriminating of Tan`s two statements, the most pertinent consideration was of course Tan`s allegation of the several oppressive acts that SSI Liew had supposedly carried out on him. While I have shown that this does not go towards the admissibility of the statement, it nevertheless affects the weight to be given to it. A perusal of the notes of evidence of the court below showed, however, that any accusation of oppressive acts committed by SSI Liew on Tan could not have been anything more than a figment of his own imagination, dreamt up of by him for reasons best known to himself. Firstly, despite the obviously harsh treatment which he described he received from SSI Liew, it is telling that Tan made absolutely no complaint about it to the other officers whom he encountered subsequently - SSI Phua Meng Ghee (PW4) (`SSI Phua`), who took over the recording of P4 from SSI Liew in the evening of the same day, and SSI Foo who recorded P3 from Tan some 22 days later. He claimed to have made a complaint to one SSI Raymond Wee, yet it is telling that SSI Wee was not called by the defence though it was open to them to do so. Next, it was both SSI Phua and SSI Foo`s evidence that they had read back P4 over to Tan before commencing the recording of their own statements and at no time did Tan complain of any errors, mistakes or untruths in P4. Thirdly, SSI Liew testified, and this was admitted to by Tan himself, that subsequently, Tan had even confided in him about his financial and business problems in China, thus diminishing the possibility that SSI Liew could have subjected Tan to the type of callous treatment which he alleged since it appeared that the two men obviously got along well-enough for the latter to share his personal problems with the former. Nor was Tan able to proffer any explanation why SSI Liew would have later bothered to negotiate for a lower witness bond for the former if the two men had indeed had a bad episode between them just several months earlier. Finally, it is pertinent that Tan was not even under arrest nor was it suggested that he was a suspect at the time when his statements were recorded. If anything, it appeared that he was all

along treated as a witness only by the CPIB. As such, there was no fathomable reason why SSI Liew should have subjected him to the type of treatment which he described. As regards P3, it was clear that there was nothing questionable about the circumstances in which it was recorded. No allegation of oppression was made against SSI Foo who recorded that statement 22 days after the alleged harsh treatment by SSI Liew. As such, any fear which might have been operating on Tan`s mind, even if it had existed, as a result of SSI Liew`s alleged oppressive conduct would clearly have ceased to operate by the time P3 was recorded.

As for the noticeable absence of contemporaneity, given that the statements were only given in February 1999 while the alleged incident occurred in January 1998, I found that the district judge had already adequately dealt with this point. He noted, rightly, that the passing of the envelope of moneys from Tan to the appellant was but a simple, one-off concrete event. It was not part of a complicated factual matrix which, if it was, might have provided an excuse for a genuine failure of memory. As such, it was unlikely that Tan`s recollection of the event in his statements could have been eroded by the passage even of one year. Perhaps if he had been mistaken as to the person whom he passed the moneys to outside the M3-KTV Lounge, he being a regular runner for Chua, that might have been a credible explanation, but his testimony in court was not that he had been mistaken as to the identity of the recipient of the moneys, but that he had never passed envelopes of moneys for Chua to anyone at all! Indeed, I found it difficult to see why or how he could have spun those stories concerning the passing of moneys to the appellant in front of the M3-KTV Lounge and to Kelvin Fong at the void deck of his block of flats, together with all their specifics and details if not even a semblance of these events had ever taken place.

Moving on to the possibility of misrepresentation, I found that there was no reason why Tan should implicate the appellant nor was defence counsel able to suggest one to the court. While Tan, though not necessarily an accomplice, was clearly a participant or abettor to the offence, and his words should thus be treated with caution, this was not however a case in which Tan had sought to minimise his own role in the transaction by seeking to push the blame wholly onto someone else. Here, Tan had clearly fully incriminated himself in P4, admitting without qualification that he was the middleman who had delivered the moneys from Chua to the appellant. As such, astute as I was to such instances, I found no reason or motive for him to misrepresent the facts in his statements.

With respect to the cogency and coherence of the statement, I had no doubt that the incriminatory portions of P4 were clear and unambiguous for they unequivocally identified the appellant as the person to whom Tan had passed the envelope of moneys. Nitty-gritty details on the other hand, such as his knowledge of the denomination of the currency or the exact amount contained in the envelope, even if somewhat nebulous and unclear, did not affect the main purport of the statement which clearly incriminated the appellant. It will be recalled that the charge, after its amendment by the district judge, defined the gratification received as being an `unspecified sum of money` only and as such, counsel`s contention that the prosecution was unable to prove from P4 the exact amount of money contained in the envelope did not advance his client`s case in any way whatsoever.

It followed from the above that there was nothing which warranted that little weight be given to Tan`s previous statements as contained in P4 and P3. On the contrary, I formed the view that substantial and considerable weight should be given to them for the reasons set out above. His failure to proffer any satisfactory explanation of the material discrepancies between his CPIB statements and his testimony in court meant further that his credit had been impeached and he had clearly been shown to be one who was incapable of speaking the whole truth under oath: see ***Kwang Boon Keong Peter v PP*** (supra). What the court was left with were thus his statements in P4 and P3, which I have shown should be accorded substantial weight. In the light of the now well-settled pronouncement in ***PP v Sng Siew Ngoh*** (supra) elucidated above that a conviction may be sustained

solely on the evidence contained in a witness` previous inconsistent statement even if uncorroborated, a fortiori, I had no hesitation that such evidence on its own amply satisfied the minimum evaluation test espoused in **Haw Tua Tau v PP** [1980-1981] SLR 73 [1981] 2 MLJ 49 that is necessary to justify calling upon of an accused to enter on his defence at the end of the prosecution`s case. As a result, I found that the decision by the district judge to reject the submission of no case to answer by the defence and to call upon the appellant to enter on his defence was unimpeachable.

At this juncture, I pause for a moment to mention that I am aware of the dangers of relying solely on a previous inconsistent statement of a witness to found a prima facie case for the prosecution, let alone sustain an entire conviction. Admittedly, the evidence contained in such a statement is potentially unreliable on three counts: first, it is obviously hearsay, being an out-of-court and hence unsworn assertion, second it is, at least in this case, the word of a participant in the offence itself who may thus be seen to have had a motive to lie or frame the accused, and lastly, it is almost always extracted under custodial and interrogative conditions which greatly increase the risk of false statements. Nevertheless, I was of the view that these concerns did not fair strongly in the present case. With respect to the objection by reason of hearsay, this is dealt adequately with by s 147(3) of the Evidence Act which specifically creates a statutory exception to the hearsay rule. The legislature has obviously thought it fit, for reasons of practicality (since they felt it artificial to draw a distinction between using a statement to impeach and treating its contents as substantive evidence), to make statements admitted via s 147(3), an exception to the rule. In any event, the appellant in this case was not precluded from cross-examining the maker of the statement, Tan, who unlike a co-accused in a joint trial, was a compellable witness. As regards the fact that Tan himself was a participant, I have shown that there was no logical reason nor has defence counsel suggested one, why he should frame the appellant after he had already fully implicated himself in the statement. Clearly any temptation to narrate the story in a way most favourable to himself was not succumbed to by Tan in giving the statement in P4. Finally, it was also pertinent that Tan was not under arrest nor was he even a suspect at the time when the statements were taken from him. As such, the statements could not be said to have been recorded under custodial conditions. As for whether the conditions were interrogative, it too has been shown that Tan`s allegation of oppressive conduct by SSI Liew was simply unbelievable. While implicating a third party in one`s statement hardly qualifies as an admission against one`s own self-interest and does not generally have the same guarantee of reliability as one`s own confession damning oneself, I had no doubt in this case after taking all the above circumstances into account in totality, that P4 and P3 were not so inherently incredible as to be incapable of belief. As such, I rejected counsel`s submission that the district judge had erred in calling upon the appellant to enter on his defence based on the evidence in P4 and P3 alone.

The allegation of hearsay and opinion contained in P4

Before moving on to consider the appellant`s defence, I ought to deal briefly with counsel`s allegation in his written case that several portions of P4 contained hearsay which should have been excluded. If counsel`s allegation was correct, then those portions of the evidence should rightly have been excluded since s 147(3) of the Evidence Act only permitted the admission of facts of which direct oral evidence by the maker would have been admissible. With respect then to the allegation of hearsay, the impugned portions of P4 read as follows:

(a) `... Ah San had asked me personally to hand the envelopes of money to Kelvin, William and Royston.`

(b) `... I was asked by Ah San to hand an envelope of money to Royston.`

(c) `[Ah San] said that Royston would be waiting for me at M3-KTV Karaoke ...`

With respect to `a` and `b` above, the argument ran that since Tan never opened the envelope, he did not have personal knowledge of its contents, and as such, the fact that the envelope contained money could only be proved by Chua`s statement to Tan that it did, which was clearly hearsay since Chua was not called to testify. I found that contention to be wholly without merit. I think it was clear that the fact that the envelope contained money could be and was indeed proved by evidence other than the portions `a` and `b` in P4 as set out above. As the district judge rightly pointed out, numerous other factors contributed to the irresistible inference that the envelope contained money. Firstly, it was not disputed that Chua was a moneylender and the appellant a police officer. Second, the surreptitious circumstances surrounding the passing over of the envelope - at night, in front of a KTV Lounge in Geylang with no other witnesses present, and through a middleman - strongly suggested that the envelope contained cash. Finally, and most importantly, the defence was never advanced along the line that Tan had passed something else contained in the envelope to the appellant but had always been a complete denial of the appellant having received anything at all in the first place! As such, the attempt to impugn the evidence of what was contained in the envelope clearly did not assist the appellant in his defence at all. With respect to portion `c` set out above, I had no doubt that the prosecution was not attempting to prove the truth of what was said by Chua there, but merely the fact that it was said, thus taking that portion of the statement out of the realm of inadmissible hearsay. In any case, Tan was fully capable of testifying as to his own personal encounter with the appellant outside the lounge subsequently, so it did not matter whether what Chua had said to him was true.

Moving on to counsel`s other contention that P4 also contained opinion evidence, the impugned portions read as follows:

(d) `I had felt the envelope and I believed that there were 2 stacks of new $50 notes inside the envelope.`

(e) `I could not confirm that there were exactly $10,000 inside the envelope but based on my experience of handling cash before (I was a loan shark before), I could feel that it was 2 stacks of $50 inside the envelope.`

In my view, the trial judge was here perfectly entitled to draw on his own common and normal human experience in reaching his own conclusions as to what was contained inside the envelope given all the other surrounding and undisputed circumstances. Whether or not the envelope contained money was clearly not a matter for which special skill or knowledge is required for its ascertainment. As such, this was not a case in which expert evidence was required in order for the court to form an opinion. As for the exact amount contained in the envelope, or the denomination of the notes therein, this was, as previously explained, no longer relevant once the charge was amended to one where the gratification was stated simply as being `an unspecified sum of money`. It was thus unnecessary for the prosecution to prove beyond reasonable doubt the exact amount of money contained in the envelope and counsel`s submissions in this regard were plainly misconceived.

The appellant`s testimony

Moving on to the appellant`s defence, it will be seen that the testimony given by the appellant was simply riddled with too many loopholes and ludicrous explanations to retain any measure of credibility whatsoever. First, it was clear that the appellant was not a truthful witness. He sought to downplay his relationship with Chua by first saying that they never had pre-arranged meetings and that the only times they met were when they happened to bump into each other at a coffeeshop in Lorong 30,

Geylang. Later, however, he effectively retracted from this position but only when quizzed and prompted by the DPP specifically on whether he had run into Chua at KTV Lounges on two separate occasions and, again, at Sakura which, as it turned out, was in fact a pre-arranged meeting between the two men. The attempt by the appellant to conceal the true depth of his relationship with Chua thus lent a highly suspicious complexion to his testimony that he and Chua were merely casual acquaintances. Next, he admitted to having made a status enquiry into Lim Chin Boon on behalf of Chua. It was not disputed that neither the appellant nor the division he was in at that time was concerned in the investigations into Lim`s matter. Being a person of rank and seniority in the Force, one would have expected the appellant, an inspector at the time, to know better than to open himself to the risk of improper conduct by undertaking the enquiry when he could simply have directed Chua to the Secret Societies Branch to make the enquiry himself. The fact that the appellant did not bother to ask a single question of Chua to find out why he wanted the information, or how the latter was related to Lim showed that he was somehow beholden to the man and had no hesitation whatsoever in doing his bidding. The deeper than surface relationship between the men could also be gleaned from the fact that the appellant had taken the trouble to go down to Sakura immediately to meet him at his behest to discuss CTC`s troubles with the law. If indeed he and Chua were but just casual acquaintances, one would expect that any problems concerning CTC could simply have been discussed over the telephone instead. It is telling from the appellant`s enthusiasm in rushing to meet Chua at a location specified by the latter that they could hardly be casual acquaintances only. A further loophole came from the fact that, while the appellant clearly admitted to meeting Chua to discuss the legal processes concerning CTC, he claimed that he only knew that CTC was arrested after he saw Tan`s statement to that effect in P4 during the course of the trial. I found this to be strangely puzzling to say the least, since if he did not know that CTC had been arrested, then exactly what sort of legal processes concerning him did the appellant and Chua speak about when they met at Sakura way back in December 1998?

But perhaps the most revealing aspect of the appellant`s testimony was his absurd explanation of how he came to be in possession of Tan`s blue Sunpage pager. It will be recalled that he disagreed with Tan`s statement in P4 to the effect that Tan had loaned him the pager in order that Chua`s pages to him which had hitherto been made to the appellant`s own existing pager would not be traced. He claimed instead that Tan had bought the pager for one of his workers who had suddenly gone missing. As a result, Tan requested the appellant to keep custody of the pager temporarily while Tan sought to locate the missing worker. Tan himself did not wish to carry the pager on him as in the appellant`s own words, he often wore `tight pants or jeans`. Indeed I found the appellant`s account to be a likely story which was absolutely incapable of belief. If it was true that Tan had bought the pager for a worker whom he could not subsequently locate, he could simply have left it at home till he found his worker rather than carry it around in his `tight pants or jeans`, especially if he found this uncomfortable as the appellant appeared to be suggesting by his reply. His explanation that he found it ***prestigious*** to be carrying two pagers was similarly incredible, the gadget being such a common and easily obtainable item these days. In any event, it was difficult to see why that any normal person would require to be contactable through two pagers plus a handphone, when one pager more than sufficiently serves that purpose, and in this case especially when the appellant had obviously got along fine with using just one pager previously. Next, I also saw no reason why Tan would gratuitously let the appellant use the pager, the subscriptions for which Tan continued to foot from late 1998 till the time of the trial in September 2000, if it was not for some other more imperative purpose, especially when Tan was someone whom the appellant would meet with only when he was together with Kelvin and William. In my view, the above circumstances, taken in toto, showed unreservedly that the appellant`s explanation of how he came to be in possession of the pager was but a pathetic and feeble attempt on his part to disassociate himself with Chua and Tan. In any case, his version was not put to Tan in cross-examination and as such, remained but an uncorroborated bare assertion on his part.

Finally, it was pertinent that the appellant could not proffer any convincing reason why Tan might wish to frame him in his statements to the CPIB save for the baseless speculation that Tan was assaulted or threatened by the recording officers who took those statements. The appellant was clearly not present during the recording sessions with Tan, and in any event, Tan`s evidence of being threatened during his interviews was completely demolished by the contrary testimony of the recording officers which was in my view rightly believed by the trial judge.

The prosecution`s failure to call Lim Hock Gee and Chua Tiong Tiong

With respect to the attack on the prosecution`s failure to call Lim Hock Gee and Chua, it suffices for me to say but a brief word on this. With regard to Lim Hock Gee, there was no evidence to show that his evidence, if called, would have affected the outcome of the case in any way. All that Tan had stated in P4 was that he saw Lim Hock Gee outside the M3-KTV Lounge on the night when he passed the envelope of money to the appellant. Nowhere was it mentioned that Lim Hock Gee even saw, noticed or spoke to Tan, let alone witnessed the handing over of the envelope. As such, no adverse inference could be drawn against the prosecution for their failure to call him as a witness. As for Chua, I accepted the defence`s submission that the mere fact that a person is medically certified as being unfit to attend court is hardly a good reason not to put him on the stand since the party wishing to call him could well have applied for an adjournment or otherwise taken a deposition from the witness outside of court. Nevertheless, I found that the failure to call Chua was not fatal to the prosecution`s case as there was ample evidence in Tan`s CPIB statements to show that he was a runner for Chua, and that the latter had asked him to pass the envelope of moneys to the appellant. Further, the appellant himself never denied that he was acquainted with Chua, and even had drinks with him and his party of friends at KTV lounges before. As such, it did not appear that Chua`s evidence, had it been called, would have added anything to the evidence which was already before the court.

Conclusion

In the light of the foregoing, I found that the appellant had clearly not succeeded in casting a reasonable doubt on the prosecution`s case. His only defence was really nothing more than a bare denial of having received the envelope of moneys. He did not offer any alibi as to his whereabouts on the evening in question, nor give any other evidence to that end. In the face of the compelling evidence against him as contained in Tan`s CPIB statements, the appellant had plainly not discharged his evidential burden of proof. While I am conscious that in the earlier reported cases involving Chua Tiong Tiong, such as **Hassan bin Ahmad v PP** [2000] 3 SLR 791 and **Fong Ser Joo William v PP** [2000] 4 SLR 77 , the fact of the receipt of moneys was admitted to unreservedly by the respective appellants, thus distinguishing those cases from the present. I also had no doubt that this fact, though disputed by the appellant in this case, was nevertheless satisfactorily proven by the prosecution beyond all reasonable doubt. I thus saw no reason to disturb the trial judge`s finding of guilt and dismissed the appeal accordingly.

Sentence

The appellant was sentenced to nine months` imprisonment by the district judge. Although there was no appeal by the DPP on this, I took it upon myself to review the sentence as I found it to be manifestly inadequate on the facts. Firstly, the offence in question is one which by its nature is extremely difficult to detect, especially when the gratification received is in the form of cash since

there is then almost always no or little material or documentary evidence of the crime. In this case for instance, a large part of the evidence for the prosecution, save for Tan`s testimony which itself was entirely discredited, was circumstantial, rendering it extremely difficult to obtain a conviction. Then there is also the added problem of the givers of the gratification, who if they have not already escaped or disappeared from the face of the earth before the law catches up with them, are naturally unwilling to co-operate with the authorities, making the prosecution`s job even more difficult. All these factors strongly support the policy that a commensurate sentence must be meted out in order to deter would-be offenders from accepting that first bribe, for, human nature being such that a man`s greed can only get the better of him, it then becomes progressively more difficult for him to stop accepting moneys in future. Most pertinently, however, is the fact that the appellant in this case was not merely an ordinary civilian, but an inspector in the police force who, being a public servant, should be held to higher standards in the discharge of his duties than the ordinary man in the street. It is important that the courts dish out a sentence that will deter similarly-placed individuals from acting in disregard of the fundamental tenet of their calling, which is to uphold the law with utmost standards of honesty and integrity. The appellant had here clearly fallen short of those standards, and I had no doubt that a more severe punishment was warranted to emphasise the courts` as well as society`s disapproval and abhorrence of his actions, which not only had the effect of bringing the public service of which he was an integral part into disrepute, but also gravely injures the impartial workings of our criminal justice system. To lightly condone the offence in the present case would no doubt undermine the efficacy of our public service as a whole, not only diminishing the public`s trust in the country`s law-enforcement agencies but also setting back the government`s efforts at establishing Singapore in the international community as a safe and corruption-free city state. Finally, I would add the point that police officers like the appellant, by virtue of their office alone are extremely susceptible to becoming recipients of monetary inducements in return for the disclosure or suppression of relevant information and evidence relating to criminals and their offences leading to serious repercussions which surely do not bear repeating here.

Having regard to the above circumstances, I had no doubt that the sentence of nine months` imprisonment was manifestly inadequate for someone of the appellant`s standing. I thus enhanced the sentence to 18 months` imprisonment instead.

Outcome:

Appeal dismissed.