Lim Teck Chye v Public Prosecutor
[2004] SGHC 72

Case Number : MA 198/2003

Decision Date : 14 April 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Davinder Singh SC and Tey Tsun Hang (Drew and Napier LLC) for appellant; Eddy Tham and James Lee (Deputy Public Prosecutors) for respondent

Parties : Lim Teck Chye — Public Prosecutor

Criminal Law – Abetment – Abetment by conspiracy – Elements of offence – Section 107 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Power of appellate court to reverse findings of fact – Applicable principles – Discrepancies in evidence – Whether any reason to interfere with trial judge's findings of fact

Criminal Procedure and Sentencing – Sentencing – Principles – Whether principle of equal culpability between giver and receiver in corruption offence breached – Whether corruption in commercial context warranted custodial sentence

14 April 2004

Yong Pung How CJ:

1 The appellant was charged and convicted in the Subordinate Courts by District Judge Kow Keng Siong on six counts under s 6(b) read with s 29 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). He was found guilty after trial of having abetted, by conspiracy, one Henry Low Chee How ("Henry Low") and other employees of Coastal Bunkering Services Pte Ltd ("CBS") to corruptly pay gratification to marine surveyors to falsely certify that CBS had supplied the correct quantity and quality of marine oil to vessels of CBS's customers. The appellant was sentenced to a total of six months' imprisonment and ordered to pay $240,000 in fines. Each of the six offences carried a $40,000 fine and two months' imprisonment; three of the imprisonment sentences were ordered to run concurrently. He appealed against his conviction and sentence. I dismissed the appeals and now give my reasons.

Background

2 The appellant was a director of CBS, a company controlled by his family, and was in charge of its operations and financial matters. CBS's business included the trading of bunker oil, marine diesel oil, and marine gas oil. He was assisted by a cargo manager, one William Ng, and a team of cargo supervisors, which included Henry Low. As cargo supervisor, Henry Low directly oversaw the bunkering (or supply) of oil to customers' vessels.

3 I shall briefly describe how a typical CBS bunkering transaction was conducted. Upon receiving a bunkering order, CBS would dispatch one of its barges to the customer's vessel. A CBS bunker clerk (who reported directly to either William Ng or Henry Low) stationed on the barge would have a master requisition form ("MRF") stating the quantity and quality of oil to be supplied. The bunker clerk would be responsible for discharging the cargo of oil to the receiving vessel and for preparing the relevant documentation. This included a bunker delivery receipt ("BDR") and a stock movement report ("SMR"). The BDR was meant to reflect the amount and quality of oil CBS had

supplied to the customer's vessel and was also used as an invoice for payment. The SMR recorded all the bunkering transactions carried out by the particular barge. Occasionally, CBS customers would engage a marine surveyor to verify that the nominated quantity and quality of oil had been supplied to their vessel. The marine surveyor would witness the bunkering process and thereafter submit a survey report.

4 The appellant's conviction below involved the payment of corrupt gratification to four marine surveyors in relation to six bunkering transactions for the following motor vessels (one charge for each was brought against the appellant):

(a) the *Hanjin Elizabeth* (bunkered on 22 April 2002);

(b) the *El Greco* (bunkered on 24 April 2001);

(c) the *Ocean Ranger* (bunkered between 14 May 2001 and 15 May 2001);

(d) the *Madre Deus* (bunkered between 23 May 2001 and 24 May 2001);

(e) the *Hanjin Kwangyang* (bunkered on 9 June 2001); and

(f) the *Geopotes X* (bunkered on 10 April 2001).

According to the BDRs and the supposedly independent marine surveyors' reports for each of these bunkering transactions, CBS had supplied the full amount of cargo nominated in the respective MRFs. CBS had accordingly invoiced and received payment from its customers for the full amount of the nominated cargo of oil.

The law

5 Section 6(b) of the PCA provides that it is an offence if any person:

> … corruptly gives or agrees to give or offers any gratification to any agent 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.

This is punishable by a fine not exceeding $100,000 and/or an imprisonment term not exceeding five years. Anyone who abets such an offence shall be deemed to have committed the offence pursuant to s 29 of the PCA, and would be liable to the same punishment.

6 Abetment involves the complicity of an abettor towards the commission of an offence. The abettor, self-evidently, need not participate directly in the commission of the offence, although he may do so. The abetment is itself the offence. Abetment by conspiracy is one of three categories of abetment under s 107 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC"). Section 107(b) of the PC provides that a person abets the doing of a thing where that person:

> … engages with one or more other person or persons in *any conspiracy* for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. [emphasis added]

In the case of *PP v Yeo Choon Poh* [1994] 2 SLR 867, the Court of Appeal provided the definition of a "conspiracy" at 873, [19] and [20]:

> The essence of a conspiracy is agreement and in most cases the actual agreement will take place in private in such circumstances that direct evidence of it will rarely be available. …
>
> One method of proving a conspiracy would be to show that the words and actions of the parties indicate their concert in pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand. These actions and words do not of themselves constitute the conspiracy but rather constitute evidence of the conspiracy.

I expanded on this in *Ang Ser Kuang v PP* [1998] 3 SLR 909 at [30] and [31], where I stated that:

> There need not be communication between each conspirator and every other, provided that there be a common design, common to each of them.
>
> What is essential is that there must be *knowledge of a common design*, and it is not necessary that all the co-conspirators should be equally informed as to the details.
>
> [emphasis added]

7 Abetment by conspiracy has three essential elements. First, the person abetting must engage, with one or more persons, in a conspiracy (as defined above). Second, the conspiracy must be for the doing of the thing abetted; and third, an act or illegal omission must take place in pursuance of the conspiracy in order to the doing of that thing. This was stated by the Court of Appeal in *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25.

8 In order to succeed on the six charges brought against the appellant, therefore, the Prosecution had to show the district judge two things:

> (a) That the marine surveyors in question were corruptly given gratification in order to facilitate illicit "buy-back" transactions (see [9] *infra*); and
>
> (b) That the corrupt gratification so given was pursuant to a plan devised by, or in concert with, the appellant.

The district judge was satisfied that the Prosecution had done so upon considering the following evidence.

The Prosecution's case

9 According to the Prosecution, the relevant BDRs and survey reports falsely represented that the full quantity of oil nominated was delivered to each of the six vessels. The respective chief engineers of each vessel had wrongfully sold, at a price substantially below market rates, a portion of the nominated quantity of oil back to the CBS bunker clerks and Henry Low. The marine surveyors facilitated these illicit "buy-back" transactions by providing false certifications in their survey reports, and were paid "commissions" for doing so by Henry Low and one Kmas Koh, a CBS bunker clerk. I shall term these illicit short supplies as "the buy-back(s)" for convenience. CBS bunker clerks then *further* short-changed CBS's customers by surreptitiously supplying even less oil than they were supposed to, and these additionally retained amounts were known as "gains" for CBS. These "gains", although not directly pertinent to the six charges in question, were relevant to show the appellant's dishonest intention generally, as the Prosecution had contended that all of these illicit transactions (both the buy-backs and gains) were pursuant to his directions, which resulted in substantial illegal profits for

CBS.

The buy-backs

10 The Prosecution adduced evidence from the parties directly involved in each of the six alleged buy-backs. They included Henry Low as well as the respective bunker clerks and marine surveyors. Their evidence revealed that the *modus operandi* was identical for the subject matter of all six charges. Together, they testified that for each buy-back, the chief engineer and the bunker clerk would have come to an agreement for CBS to deliberately short supply the vessel in question. The marine surveyor would be made aware of this agreement, and would proceed to falsely certify in his survey report that the correct amount of oil had been supplied. Afterwards, Henry Low would board the vessel and pay its chief engineer the agreed price for the buy-back. Later, the marine surveyor would be paid his "commission" (based on the amount of cargo short supplied) for his role in the buy-back by Henry Low (and in one case, Kmas Koh).

11 According to the testimony of one Jeremy Tan (a bunker clerk), the bunker clerk concerned for the buy-backs and gains would prepare three different SMRs:

(a) An internal SMR which reflected all the buy-backs and gains;

(b) A sanitised SMR which would be prepared for the purposes of Maritime Port Authority ("MPA") inspections; and

(c) A formal SMR (also sanitised) for the customer.

The bunker clerk would also receive a commission based on the amount of buy-backs and gains, and all the said commissions paid out were pegged to the quantity of oil short supplied.

The appellant's role

12 The bunker clerks gave evidence that the appellant was personally responsible for these practices. The appellant not only knew about the buy-backs and gains – but had also pegged the work performance of the bunker clerks to the amount they could short supply. For instance, it was CBS policy that its bunker clerks were to secure 2% worth of illicit gains from all their bunkering transactions. If they could not achieve these targets, they might lose their jobs. Jeremy Tan also gave evidence that the appellant had engaged him specifically for the purpose of carrying out these transactions.

13 Henry Low, Kmas Koh, and Jeremy Tan recalled that sometime in mid-2001, after the Corrupt Practices Investigation Bureau ("CPIB") had commenced investigations against another bunkering company, Navi Marine, the appellant held a meeting with the bunker clerks where he taught them how to approach chief engineers and marine surveyors about buy-backs. At this meeting, the appellant cautioned them to be careful when dealing with unfamiliar faces as they could be undercover CPIB officers. The appellant also advised the bunker clerks to be sensible when "stealing" cargo and to ensure that the vessel had sufficient fuel to reach its next destination.

14 Henry Low testified that the appellant had employed him as a cargo supervisor to ensure that there would be more buy-backs and gains for the company, and to ensure that the bunker clerks did not sell, for themselves, the short supplied cargo to others. The appellant had taught him the mechanics of the buy-backs and gains, and periodically gave him cheques as well as cash to pay the chief engineers and marine surveyors for the buy-backs. In the course of his duties at CBS, Henry

Low had prepared documents (which were produced in court as PE31 and PE32) in order to keep the appellant up to date with the illicit transactions. According to Henry Low, the appellant knew of and had approved all the buy-backs and gains in the six charges.

15 To support his account, Henry Low produced two audiotape recordings of conversations between the appellant and himself (marked as PE35 and PE36). Henry Low had made these recordings in order to "cover" himself when he perceived the appellant beginning to distance himself from the illicit transactions. According to Henry Low, PE35 recorded the appellant:

(a) giving directions as to how bunker clerks should make sure that only sanitised SMRs should be shown when the MPA conducted spot checks on their barges;

(b) cautioning that only the appellant, Henry Low, and some others should know about the buy-backs and gains, and that bunker clerks should not disclose these figures to any other persons;

(c) reviewing bunker clerks' performance for buy-backs and gains and expressing concern that they were under-reporting buy-backs and gains at the expense of the company;

(d) asking whether Henry Low paid the chief engineers directly or through the marine surveyors; and

(e) expressing concern that a bunker clerk was taking excessive gains and that the receiving vessel might not be able to reach its next port as a result.

Henry Low gave evidence that PE36 recorded the appellant:

(a) instructing him to feign ignorance about the illicit transactions when questioned by the CPIB and to claim that CBS only bought off-specification oil from the vessels;

(b) instructing him to explain to the CPIB that a short supply of 0.5% to 2% was an acceptable variance;

(c) warning him that there were many cases under CPIB investigation; and

(d) saying that bunker clerks should secure more buy-backs and gains.

The Defence

16 The appellant flatly denied all these allegations and contended that CBS had supplied the entire nominated quantity of cargo to the six vessels in question. He pointed to the BDRs and survey reports as evidence of this. According to the appellant, neither CBS nor its employees ever entered into any of the alleged buy-backs with the chief engineers of these vessels. The appellant had expressly instructed his employees not to enter into buy-backs. There would have been no incentive for CBS to do so in any case because:

(a) CBS was legitimately buying a different product from the chief engineers;

(b) CBS customers had specific compliance procedures; and

(c) CBS would not be able to arrest the vessel according to the amount nominated (but only the amount supplied to the receiving vessel) should the customer default on payment.

17 The appellant claimed that there were legitimate purchases of oil from the vessels. These involved either purchases of off-specification oil already in the receiving vessels or excess cargo that the receiving vessels were unable to accept during the bunkering process. The cheques given to Henry Low, who in the appellant's view was an independent trader and not a CBS employee, were for these purchases. As for the gains, the appellant claimed that they were legitimate and industry-accepted variances inherent in the bunkering process.

18 In the alternative, the appellant claimed that even if the CBS bunker clerks, Henry Low, the chief engineers and the marine surveyors had wrongfully short supplied cargo in the manner alleged by the Prosecution, it was done without the appellant's knowledge, consent or connivance as he was totally uninvolved in the actual bunkering process.

19 The appellant also disagreed with Henry Low's interpretation of the conversations taped in PE35 and PE36, highlighting that there were no explicit references to any illicit buy-backs or gains, false SMRs, or the appellant coaching Henry Low on how to deal with MPA or CPIB queries. It was his case below that Henry Low had given false evidence against him to divert attention from the fact that he had attempted to extort money from CBS. The appellant produced evidence that such an extortion bid had been made by Henry Low sometime in August 2001. The other prosecution witnesses (*ie* the bunker clerks) were Henry Low's friends and therefore similarly had an interest in falsely implicating the appellant.

The decision below

20 The district judge found that the buy-backs had indeed occurred, that the marine surveyors were bribed to facilitate these transactions, and that the appellant had been their chief promoter. I must commend the district judge for having exhaustively considered the cases of both the Prosecution and the Defence, given the keenly contested versions of events. His grounds of decision showed that he had considered the probabilities arising from the circumstances of the case, and that he was aware of his "basic duty to lay down in a detailed and clear way how, why, the factors, evidence and considerations that he has taken or refused to take into account, the weight he has attached to them, in arriving at his findings of fact": *Kwan Peng Hong v PP* [2000] 4 SLR 96 at [58]. I recently explained in *Shamsul bin Abdullah v PP* [2002] 4 SLR 176 that the standard required of the district judge's scrutiny of the evidence and the witnesses before him is extremely demanding in order to justify the leeway given to the trial court to rely on demeanour evidence.

21 The district judge had rightly reminded himself to be extremely careful given that the Prosecution's case hinged on the testimonies of witnesses who were directly involved in respect of the actual crime charged; and he referred to the case law on this issue: *Kwan Peng Hong v PP*, *Tay Huay Hong v PP* [1998] 3 SLR 926, *Chai Chien Wei Kelvin v PP* ([7] *supra*). He nevertheless found the prosecution witnesses to be credible as they had testified with candour, even on matters involving their own wrongdoings. Their testimonies, in his view, were not in any way slanted or embellished against the appellant. In contrast, he found the appellant's key witnesses to be partisan, untruthful, contradictory and incapable of giving evidence objectively. The appellant himself was incoherent and vacillating in court, and his defence inherently incredible and disingenuous. Further, the appellant's version was unsubstantiated even by his own evidence and was contradicted by his witnesses.

22 The district judge was satisfied that the documentary evidence amply corroborated the case put forth by the Prosecution although he acknowledged that the case had ultimately turned on the credibility of witnesses. He found PE31 and PE32 to be genuine records of the illicit transactions, considering their detail and the manner in which they were recorded. They clearly suggested that

Henry Low was accounting to the appellant for the illicit transactions. As for the taped conversations in PE35 and PE36, the district judge found that they pointed reasonably to the appellant's culpability, although there were no express references to the illicit transactions, having considered their context as well as the manner and tone in which the appellant had spoken.

The appeal against conviction

23 The appellant argued that his conviction below was erroneous on three main grounds, namely:

(a) that there was insufficient evidence from CBS customers and their chief engineers to support the finding that cargo was short supplied;

(b) that the district judge had erred in preferring the evidence of Henry Low and the other prosecution witnesses; and

(c) that the district judge had erred in impeaching the credit of defence witness William Ng.

I considered each of these in turn.

Whether there was insufficient evidence from CBS customers and their chief engineers to support the finding that cargo was short supplied

24 Before me, counsel for the appellant, Mr Davinder Singh SC, submitted that the district judge did not fully appreciate the fact that there were no complaints of any sort from the customers of CBS who were purportedly short supplied. These customers included the international oil majors, such as British Petroleum and Exxon-Mobil, which have stringent internal auditing procedures that would have detected the buy-backs if they had indeed occurred. The appellant had attempted to bolster this argument in his written arguments by asserting that CBS had a system in place to oversee and supervise every bunkering transaction. Apparently, CBS's cargo officers go through an MPA-mandated course, and were regularly reminded that short supply was disallowed through internal circulars and monthly meetings.

25 Mr Davinder Singh highlighted to me that none of the chief engineers of the vessels were called to testify on the allegation of short supply. He submitted that the chief engineers were material witnesses, as they were the ones who signed off on the BDRs indicating receipt of the nominated amount of cargo. Given that there was no indication of short supply or buy-backs on the BDRs, he argued that it should *prima facie* be taken that there were no such buy-backs. To debunk this and prove the charges against the appellant, it was incumbent upon the Prosecution to call the chief engineers concerned to testify.

26 These points had been raised at trial. The district judge had considered the absence of any complaints by customers of CBS and concluded in his grounds of decision ([2004] SGDC 14 at [149]) that:

> In regards to the *cheated CBS customers*, it is not inconceivable that they were *unaware of the buyback transactions* that had occurred. After all, these parties were not on the vessels at the material time and would not have known what actually transpired. In any event, even if the relevant CBS customers had been called as witnesses, their evidence would at most be *hearsay*. It is important to note that these parties acted through their masters/chief engineers and relied on the certification provided by marine surveyors to ensure that the nominated quantity of cargo

had in fact been bunkered. If the chief engineers and marine surveyors had (a) received illicit gratification from the short supply of cargo and (b) falsely certified that the correct amount of cargo had been delivered, it is *most unlikely that the customers would have been able to independently detect the scam*. Under the circumstances, it was not surprising that these customers did not lodged [*sic*] any letter of protest against a short supply. [emphasis in original]

I was of the opinion that the fact that these customers had stringent internal audits (if they did) was one that did not assist the appellant. In light of the district judge's reasons, the appellant did not demonstrate beyond a bare assertion how these "stringent internal auditing checks" would "easily expose any short supply or unsatisfactory delivery of bunkers".

27 The supposed integrity of CBS itself was a bare and self-supporting assertion and likewise did not take the appellant very far. First, the MPA courses the bunker clerks attended were *mandatory*. Second, the appellant had produced the mentioned company circulars at trial, but a number of the bunker clerks had never seen them on their barges. The district judge even considered that some of these circulars could have been sham documents.

28 I was satisfied that the reasons given by the district judge for not having placed much weight on the lack of complaints by CBS customers were adequate, and the appellant failed to convince me otherwise.

29 In relation to the chief engineers, the Defence was essentially asking the court below to exercise its discretion to draw an adverse inference against the Prosecution's case pursuant to s 116 illustration (g) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"), which provides that:

> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations:*
>
> The court may presume —
>
> ...
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;
>
> …

I had explained in *Chua Keem Long v PP* [1996] 1 SLR 510 that the courts are generally reluctant to draw such an adverse inference against the Prosecution. What the Prosecution has to do is to prove its case, and it has the discretion in the calling of witnesses to do so. It is not obliged to go out of its way to allow the Defence any opportunity to test its evidence. It is not obliged to act for the Defence. My observations in *Chua Keem Long v PP* at 523, [72], noted by the district judge, were relevant in explaining this position:

> Such arguments are commonly made. Commonly too, such arguments are without merit. The court must hesitate to draw any such presumption unless the witness not produced is essential to the prosecution's case. Any criminal transaction may be observed by a number of witnesses. It is not necessary for the prosecution to produce every single one of those witnesses. All the

prosecution need do is to produce witnesses whose evidence can be believed so as to establish the case beyond a reasonable doubt. Out of a number of witnesses, it may then only be necessary to bring in one or two; as long as those witnesses actually produced are able to give evidence of the transaction, there is no reason why all of the rest should be called, nor why any presumption should be drawn that the evidence of those witnesses not produced would have been against the prosecution. Where the witnesses not produced are not material, no presumption operates against the prosecution (*Lahvinder Singh v State* [1988] Cri LJ 319). Neither would s 116 illustration (g) apply where the evidence to be given is largely redundant (*Waisuddin v State* [1991] Cri LJ 134). It was not shown that, in this appeal, the evidence of the witnesses not called was not immaterial or redundant.

30 In any case, it was my opinion that the chief engineers were not such material witnesses that their absence would have led to a demolition of the Prosecution's case. This was made clear from the following paragraph ([150]) of the district judge's grounds of decision:

> As for the *chief engineers*, I was unable to accept that their absence from the trial created a lacuna in the Prosecution's case. In my view, the relevant *short supplies* were sufficiently proved through the evidence of –
>
> a. the bunker clerks who *bunkered the vessels* in question and *prepared the very BDRs relied upon by the Defence* to prove that there was no short supply,
>
> b. the marine surveyors who were responsible for *overseeing the bunkerings* and who subsequently *prepared the survey reports* (similarly relied upon by the Defence), and
>
> c. Henry Low who negotiated with the chief engineers and *paid the gratification* for the illicit short supplies.
>
> [emphasis in original]

31 Ultimately, the crucial question was whether the district judge's finding of fact that the buy-backs had indeed occurred was one that was *clearly reached against the weight of the evidence* so as to require appellate intervention: *Lim Ah Poh v PP* [1992] 1 SLR 713. I held in *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 that it is trite law that an appellate court is reluctant to overturn a trial judge's findings of fact, especially where it hinges upon an assessment of the credibility and veracity of the witnesses, as it does here. The appellate court does not have the advantages of seeing and hearing the witnesses, and as such it will defer to those findings: *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113, *Kong See Chew v PP* [2001] 3 SLR 94. The district judge had based his finding that cargo was short supplied in the six transactions on the evidence of the persons directly involved in the alleged buy-backs. The appellant's arguments here failed to show that the district judge's finding was against the weight of the evidence.

32 As such, I affirmed the finding below that the buy-backs had indeed occurred.

Whether the district judge had erred in preferring the evidence of Henry Low and the other prosecution witnesses

33 To establish the appellant's guilt, the district judge had found that the corrupt gratification given to the marine surveyors was pursuant to a plan devised by or in concert with the appellant. The district judge had based this finding on the evidence of Henry Low and a number of bunker clerks that implicated the appellant. He preferred their evidence to that of the appellant's. I have already

mentioned, in brief, the reasons for this (see [21] *supra*). In considering the appellant's submission here, I kept in mind that where the trial judge had to decide which amongst different versions of events was true, and his findings were not clearly against the weight of the evidence, the appellate court should not interfere with his findings: *Chua Yong Khiang Melvin v PP* [1999] 4 SLR 87.

The credibility of key prosecution witness Henry Low

34 Of all the prosecution witnesses, it was Henry Low's evidence that had implicated the appellant most directly. The district judge had observed his demeanour in court and found him to be a witness of truth. To challenge this finding, the appellant had the heavy burden to show that the district judge was *plainly wrong* in his assessment of the credibility and veracity of Henry Low: *Syed Jafaralsadeg bin Abdul Kadir v PP* [1998] 3 SLR 788. To this end, the appellant contended that Henry Low had concocted evidence about how he (Henry Low) had a Malaysian friend, "Simon", type a complaint letter for him at the seaside at night using a typewriter for his purported extortion bid.

35 Henry Low had testified that he was not happy working at CBS at the material time and had indicated his intention to resign to one Lilian Lim, the appellant's sister. He had asked for outstanding commissions he claimed were owing to him but the appellant and Lilian Lim had refused to pay him. In retaliation, Henry Low sent the appellant documents and exhibits which claimed to expose CBS's misdeeds in relation to some bunkering transactions. He also sent the appellant copies of "complaint letters" that were addressed to CBS customers disclosing that CBS had tampered with oil samples and documents, as well as illicit gains and buy-backs, and a tape containing the appellant's instructions to Henry Low on what to say to CPIB. Henry Low admitted that his motive in sending these items was to get back his unpaid commissions and to injure the commercial interests of CBS. The appellant subsequently brought this matter to the police.

36 The district judge gave the purported extortion bid by Henry Low serious consideration, as he was mindful that Henry Low's evidence was pivotal in the case against the appellant. In the end, he came to the conclusion that there was no basis in the defence's contention that Henry Low had acted to falsely implicate the appellant. Henry Low had been open about his actions and candidly admitted that he was not motivated by altruistic intentions in wanting to expose the appellant. The appellant's own witness, Mr Sathiabalan (the investigating officer for the extortion bid), corroborated Henry Low's testimony that Henry Low was not promised a waiver of prosecution in relation to his actions in return for implicating the appellant. The district judge had also found Henry Low's version of events relating to the purported extortion bid to be more believable than the appellant's account.

37 The appellant took issue with Henry Low's explanation of how the "complaint letters" were prepared. Mr Davinder Singh contended that:

(a) Henry Low's account of how the "complaint letters" had been typed on a manual typewriter by the beach was an incredible one; and

(b) "Simon", who according to Henry Low had helped him to type the letters, was a fabrication given Henry Low's inability to give an account of this person in court.

The appellant contended that given these "concoctions", Henry Low's testimony should have been rejected in whole.

38 The district judge had considered these two contentions, which were also raised at trial, and had found, correspondingly, that:

(a) the circumstances in which the "complaint letters" were prepared were not inherently incredible; and

(b) the appellant had no reason to testify in the manner that he did regarding "Simon" unless it was the truth.

I re-examined the physical evidence before me and it was clear that a typewriter had indeed been used to create one of the "complaint letters". The manner in which some words were "erased" had left a slight shadow caused by imprints on the paper from the teeth of a typewriter. The district judge had also noticed this. It was also in the evidence that the appellant had instructed Henry Low to have a typewriter with him when discharging his duties as a cargo supervisor. In light of this evidence, I found that a typewriter had indeed been used.

39 I turned to consider the appellant's contention that "Simon" was a fabrication by Henry Low given his inability to satisfactorily give an account of this person in court despite his claim that "Simon" was the one who helped him to type the "complaint letters". Mr Davinder Singh highlighted to me several aspects of Henry Low's testimony relating to "Simon" that he submitted were suspicious. These were, *inter alia*:

(a) the fact that Henry Low only addressed "Simon" as such, and did not know his full name;

(b) that Henry Low only had a defunct Malaysian phone number, which he could not recall, to prove the existence of "Simon"; and

(c) that there was no way that Henry Low could contact "Simon" at the time of the trial, and the best that he could do was to wait for "Simon" to call.

As such, Mr Davinder Singh contended that "Simon" was an "absurd yarn" and therefore the district judge was not justified in finding that Henry Low was a credible witness.

40 It was true that Henry Low's account of his friend "Simon" left much to be desired. The district judge had adverted to this. He noted, however, that it was quite clear that Henry Low's level of participation in his version of the extortion bid was not in any way lessened by the fact that "Simon" had prepared the "complaint letters" in question. Henry Low had stated during cross-examination that if he had wanted to keep a distance from the origin of the documents, he would not have admitted that he had asked "Simon" to assist him in the preparation of the documents. The district judge therefore felt that the presentation of a less than immediately believable version lent Henry Low more credence as a witness. The district judge's comment that he "was of the view that the manner in which these letters came about was not really material" must be read in this context. As such, I was of the opinion that it was a defensible assumption by the district judge that Henry Low was less concerned to be believed than to tell the truth.

41 I noted that the courts have always taken a fairly broad approach in assessing the credibility of witnesses, and that any assessment of the veracity of a witness's testimony must be viewed in its totality. The case of *De Silva v PP* [1964] 1 MLJ 81 stands for the proposition that contradictions, discrepancies and falsehoods in the evidence of a witness are not sufficient reasons for rejecting the whole of the evidence of such a witness. The question was therefore whether the alleged falsehoods or discrepancies would be sufficient to undermine the credibility of Henry Low. In *Leo Fernando v R* [1959] 1 MLJ 157, Rose CJ considered discrepancies in the accounts given by various prosecution witnesses as "a matter which might well be thought to be in favour of their truthfulness rather than

the reverse". In any event, even if a witness is found to have lied on a matter, it does not necessarily affect his credibility as a whole: *Khoon Chye Hin v PP* [1961] 1 MLJ 105, *Samad bin Kamis v PP* [1992] 1 SLR 340, *PP v Kalpanath Singh* [1995] 3 SLR 564 and *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464.

42 I considered the approach taken in the cases of *Triptipal Singh v PP* [1974] 1 MLJ 59 and *R v Panayiotou* [1973] 3 All ER 112. Commentators have said these cases stand for the proposition that if an appellant seeks to reverse a judgment below by challenging findings of credibility on the ground that there are discrepancies in the testimonial evidence, the appellate court will consider that if the trial judge had drawn attention to the discrepancies and considered them, there can be no further ground for complaint. This is given that the appellate court does not have the advantages of seeing and hearing the witnesses. I did not, however, take these cases as expressions of a hard and fast rule although they were indicative of the high threshold that the appellant has to meet. The appellant may still incline an appellate court to re-assess a finding of credibility even if the trial judge had adverted to the discrepancies, but only if he can show that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain and justify the trial judge's conclusions as to credibility, thus rendering the verdict against the weight of the evidence: *Syed Jafaralsadeg bin Abdul Kadir v PP* ([34] *supra*), *PP v Victor Rajoo* [1995] 3 SLR 417. This could not be said of the assessment of Henry Low's credibility below.

43 In *Vinit Sopon v PP* [1994] 2 SLR 226, I held that discrepancies in the evidence are inevitable in cases involving complicated factual details and that immaterial discrepancies ought to be disregarded if these are not of such a nature as to impair the strength of the prosecution case. Some of the discrepancies raised by the appellant fell into this category, and I disregarded them.

44 The weight of the evidence was therefore not against the district judge's finding of credibility, nor was it plainly wrong. The appellant claimed that Henry Low had lied when he asserted in court that the complaint letters did not mention the buy-backs or gains. This was not my reading of the said letters. Although the letter in question (PE48) had mentioned "a dishonest conspiracy and cheating" by CBS, it had alleged *a supply of poorer quality cargo to customers than what was ordered* rather than any *deliberate short supplies*. I turned to consider the taped conversations in PE31 and PE32. The district judge had, in his diligence, listened to the taped conversations and read the transcripts before concluding that Henry Low's version was the one to be believed. Contrary to the appellant's allegation, it was apparent from the district judge's grounds of decision that he had *fully* appreciated their context and the industry practice before reading something sinister into the conversations despite the fact that there were no direct references to the illicit transactions in them.

45 In light of these observations and principles articulated in the preceding paragraphs, I declined to interfere with the district judge's assessment that Henry Low was a credible witness.

The credibility of the appellant

46 Mr Davinder Singh took the opportunity, while on the subject of the extortion bid by Henry Low, to advance the following argument on the appellant's behalf. The appellant was a credible and trustworthy witness because he had essentially invited a police investigation into the affairs of CBS by alerting the police to Henry Low's misdeeds. This, he contended, was inconsistent with a guilty mind and the appellant should therefore have been considered a credible witness. I was unable to accept this argument. The credibility of the appellant was adjudged upon the entirety of his testimony and the district judge's assessment of him rested upon various factors – including his demeanour in court, the inconsistencies and contradictions that arose in the course of trial, and the inherent improbability of his version of events. The fact that the appellant reported Henry Low to the

police for extortion did not outweigh the other factors militating against his credibility as a witness.

The testimony of the marine surveyors and bunker clerks

47 The appellant contended that the district judge failed to give proper consideration to the fact that the testimony of the marine surveyors and the bunker clerks did not directly implicate the appellant in the buy-backs. The appellant's argument here hinged on the fact that none of the marine surveyors actually received money physically from the appellant and that in the case of the bunker clerks, they did not actually see the marine surveyors being paid the "commissions". The bunker clerks had merely assumed that the marine surveyors had to be paid for the "buy-back" transactions and their evidence was therefore unsatisfactory. The appellant further contended that the district judge had failed to fully appreciate the impact of the marine surveyors' pleas of guilt to the various corruption charges on the appellant's trial. I was of the view that these arguments were without merit.

48 The fact that the marine surveyors did not receive the bribes from the appellant personally did not advance his case at all, since it was *not* the Prosecution's case that the appellant had made the payments to the marine surveyors himself. The Prosecution had contended all along that the illicit payments were made *through* the appellant's subordinates – Henry Low and Kmas Koh, and the evidence from the marine surveyors went towards proving the fact that the illicit transactions had indeed occurred, rather than the appellant's role in them.

49 In his skeletal arguments, the appellant highlighted that the bunker clerks who gave evidence for the Prosecution did not actually see any money change hands and therefore the district judge was in error when he held that "their [the bunker clerks'] testimonies directly implicated the Accused". I saw no merit in this argument. The district judge had based his finding on the bunker clerks' evidence, which had unequivocally implicated the appellant with the ingredients of abetment by conspiracy of an offence under s 6(b) of the PCA. The fact that three of them did not see any money change hands, in the circumstances and the totality of the evidence, did not render such a finding plainly wrong or against the weight of evidence to warrant appellate intervention.

50 I therefore saw no reason to interfere with any of the district judge's assessments of the witnesses.

Whether the district judge had erred in impeaching the credit of William Ng, whose testimony supported the appellant's version

51 I considered the reasons given by the district judge in his decision toimpeach William Ng's credibility. One was that William Ng had dogmatically suggested that there could *never* be a short supply during bunkering. This was understandably seen to be an unreasonable assertion. The district judge also noted material inconsistencies between William Ng's evidence in court and his earlier investigation statement (PE55) recorded on 19 November 2001 by Senior Station Inspector Bay Chun How ("SSI Bay). PE55 described the buy-back transactions carried out at CBS and the appellant's involvement in them, and was fully consistent with the Prosecution's version. At trial, William Ng categorically denied the existence of any practice of buy-back transactions at CBS. The district judge concluded that PE55 was properly recorded and that William Ng had failed to provide a reasonable explanation for the irreconcilable conflict between the two versions he had provided. The district judge therefore impeached William Ng's credibility as a witness pursuant to s 157(c) of the EA.

52 The appellant attempted to challenge the impeachment of William Ng by questioning the propriety of the circumstances under which PE55 was recorded and alleged that SSI Bay had

somehow "fashioned" PE55's contents. Significantly, the appellant stopped short of alleging that there was any inducement, threat, or promise made to William Ng in the recording of PE55. William Ng had not disputed that the contents of PE55 were voluntarily made. It was therefore clear to me that there was no question that PE55 was not admissible in evidence. Given this, the district judge was fully entitled to impeach William Ng's credit pursuant to s 157(c) of the EA, which provides:

> The credit of a witness may be impeached … by the adverse party or, with the consent of the court, by the party who calls him by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

53 An impeachment is essentially a finding of a witness's lack of credibility. It serves to disparage or undermine a witness's character and reliability and worth, and reminds the court to carefully scrutinise the whole of the evidence given by the impeached witness to determine which aspect might be true and which should be disregarded. A conclusion as to credibility (or the lack thereof), as I have stated above in relation to the testimony of Henry Low, can only be disturbed on appeal if it was against the weight of the evidence or plainly wrong: *Syed Jafaralsadeg bin Abdul Kadir v PP* ([34] *supra*). The appellant failed to show that the district judge's finding that PE55 was recorded properly, and the concomitant impeachment of William Ng's credibility, was either plainly wrong or against the weight of evidence such that appellate intervention was warranted.

Appeal against conviction dismissed

54 I was not convinced by any of the three submissions raised by the appellant and dismissed his appeal against conviction accordingly. I turned to consider the appellant's submissions on sentence.

The appeal against sentence

55 The district judge had sentenced the appellant to a total of six months' imprisonment and $240,000 in fines. Each of the six offences carried a $40,000 fine and two months' imprisonment; three of the imprisonment sentences were ordered to run concurrently. In his sentencing decision, the district judge noted that there were no mitigating factors but there were, on the other hand, a number of aggravating factors. The aggravating factors were:

(a) The fact that the appellant's conspiracy to bribe the marine surveyors was part of a larger scheme to defraud CBS customers by inducing them to pay for cargo they did not receive.

(b) The offences were easy to commit but extremely difficult to detect.

(c) The appellant was driven by pure greed and profited immensely from the illicit transactions.

(d) The appellant was a senior executive who abused the trust reposed in his position, and fostered a work culture founded on deceit and corruption at CBS. This was particularly reprehensible given that the appellant was a prominent member of the bunkering industry.

(e) The appellant showed no remorse for his actions, sought to mislead the court during the trial, and made baseless allegations against the Prosecution's witnesses.

(f) The appellant's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry.

56 I recently reiterated in *Ong Ah Tiong v PP* [2004] 1 SLR 587 that an appellate court may only interfere with sentence if it is satisfied that (a) the sentencing judge made the wrong decision as to the proper factual basis for sentence; (b) there was an error on the part of the trial judge in appreciating the material placed before him; (c) the sentence was wrong in principle; or (d) the sentence imposed was manifestly excessive or inadequate: *Tan Koon Swan v PP* [1986] SLR 126, *Lim Poh Tee v PP* [2001] 1 SLR 674. The appellant argued that the sentences passed by the district judge were in breach of limbs (c) and/or (d), on the following grounds:

(a) The district judge had failed to apply the general principle that the giver of gratification bears equal culpability as the receiver in a case involving corruption in a commercial context;

(b) The district judge had failed to appreciate that the sentencing norm for corruption offences committed in a commercial context does not carry a custodial sentence; and

(c) The district judge had erred in not having appreciated that all the aims of sentencing, including the public interest, would have been adequately served by the imposition of fines and the revocation of licences in these circumstances.

I proceeded to consider each of these arguments in turn.

Whether the district judge had failed to apply the general principle that the giver of gratification bears equal culpability as the receiver in a case involving corruption in a commercial context

57 The appellant cited the following passage from *Chua Tiong Tiong v PP* [2001] 3 SLR 425, where I held at [21] that:

> [I]n most cases the giver of gratification bears equal culpability to that of the receiver. Sentences meted out should therefore be similar in terms. There are cases where a giver will not warrant a similar punishment as that of the receiver, such as when a giver was under compulsion or some form of pressure to give. In that situation, it is reasonable to punish the receiver more harshly than the giver. Conversely, there are instances where a giver bears equal, if not more, culpability than the receiver, and this is where the giver intends to corrupt the establishment of law and order for his private gain, and/or gives or offers bribes to pervert the course of justice. In these cases, the giver deserves more punishment.

This was a statement of general principle and the exceptions therein were non- exhaustive examples of when it did not apply. The appellant recognised this and argued that a giver would only bear more culpability and be justifiably given a harsher sentence than the receiver in a situation where the *same rationale* for the second example in the passage above exists, that is, where the integrity of public service and the administration of justice would be jeopardised by the act of corruption involved. For convenience, I shall term this concern the "public service rationale". It was my concern for the public service rationale that led me to state in *Chua Tiong Tiong v PP* at [17] that:

> I accepted the grave issue of public interest at stake in the present case. Eradicating corruption in our society is of primary concern, and has been so for many years. This concern becomes all the more urgent where public servants are involved, whose very core duties are to ensure the smooth administration and functioning of this country. Dependent as we are upon the confidence in those running the administration, any loss of such confidence through corruption becomes dangerous to its existence and inevitably leads to the corrosion of those forces, in the present case the police force, which sustain democratic institutions. I highlighted this in *Meeran bin Mydin*

v PP [[1998] 2 SLR 522], approving the words of the trial judge in that case (at [18]):

> Acts of corruption must be effectively and decisively dealt with. Otherwise the very foundation of our country will be seriously undermined.

58 Mr Davinder Singh highlighted that none of the marine surveyors who were charged and convicted received custodial sentences and that the present circumstances involved corruption offences in a commercial context. According to the appellant, the public service rationale was not relevant in a commercial context. Since the public service rationale was absent, the appellant could not have intended to compromise the public service rationale for his private gain. Mr Davinder Singh opined that therefore, the appellant should not have received a custodial sentence, otherwise the equal culpability principle would be breached. I was of the opinion that it was not a necessary result that the absence of a public service rationale coupled with the fact that the receivers of the corrupt gratification in this case did not receive custodial sentences should lead to the appellant not receiving a custodial sentence by virtue of the equal culpability principle.

59 Mr Davinder Singh's argument, though eloquently presented, was premised upon a misunderstanding of the passage cited from *Chua Tiong Tiong v PP* above and a misapplication of the equal culpability principle. What the principle does is to provide a starting point, and the position is that there is no qualitative difference between a giver and a receiver in a corruption offence. The fact that one is a giver or a receiver does not, as such, affect his degree of culpability for the corrupt transaction in question. The public service rationale underpinning the example given in *Chua Tiong Tiong v PP* applies to both the giver and the receiver. It amplifies the culpability of both parties. This method of analysis is consistent with the principle of equal culpability. The second example from the passage cited from *Chua Tiong Tiong v PP* above is an instance where the giver would be deemed *more culpable* than the receiver, because he *intended* to corrupt the public service for his private gain. Although the public service rationale would also have warranted a custodial sentence in all likelihood for the receiver contemplated in that example, I had in mind a giver who had a higher degree of malice than the receiver. The giver would then have received a heavier custodial sentence. I did not mean that a giver in a corruption transaction that undermines the public service rationale would be more culpable *per se* than the receiver. There may well be situations where the reverse is true, for example, where the public servant or officer in question unreservedly abuses his office to extort corrupt gratification.

60 On the other hand, the absence of a public service rationale (if it was indeed absent) does not operate to equalise culpability between the parties. The particular circumstances of the persons involved in the corruption would be determinative of their relative degrees of culpability.

61 The pertinent question in the instant appeal was therefore whether culpability was equal as between the marine surveyors and the appellant. I accepted all the aggravating factors the district judge detailed (at [56], *supra*) as having been present, and was therefore of the opinion that culpability was not equal as between the marine surveyors and the appellant. The first ground of appeal against sentence therefore failed, as the principle of equal culpability was not breached by the fact that the appellant received a custodial sentence while the marine surveyors did not.

Whether the district judge failed to appreciate that the sentencing norm for corruption offences committed in a commercial context does not carry a custodial sentence

62 The appellant contended that corruption offences that occur in a commercial context generally attract non-custodial sentences. As such, the district judge had erred in having departed from established benchmarks by sentencing the appellant to custodial sentences for the charges

here. Two unreported judgments reproduced in *Sentencing Practice in the Subordinate Courts* (2nd Ed, 2003), at 864, were cited by the appellant: *Lee Keng Hong v PP*, District Arrest Cases Nos 9311 and 9344 of 1996, and *Ching Wai Leng v PP*, District Arrest Case No 30027 of 1996. In those cases the offenders were both fined for corruption offences committed under s 6(b) of the PCA. The appellant also cited *PP v Lim Kim Huat*, District Arrest Case No 61355 of 2002, where the offender (a bunker supplier as well) was fined for an offence committed under s 6(b) of the PCA as a result of a similar buy-back transaction. These cases did not involve public servants or officers of public bodies; none of the offenders were imprisoned.

63 There are two closely related strands to the arguments of the appellant in this portion of his submissions. First, that corruption offences committed in the commercial context should attract non-custodial sentences. Second, that the courts have recognised this and it would therefore be a mistake to depart from the established sentencing benchmarks. I considered these two strands together, but for the sake of clarity I shall deal with them in turn.

64 The appellant cited the case of *PP v Chew Suang Heng* [2001] 1 SLR 692 at [9], where I stated:

> There is no doubt that attempting to bribe a law enforcement officer and interfering in the proper course of police investigations is a serious offence. Generally, corruption offences involving law enforcement officers or other public servants attract harsher penalties and custodial sentences as compared to similar offences committed in commercial dealings and in the private sector.

65 The appellant had also cited *PP v Yeoh Hock Lam* [2001] SGDC 212, unreported judgment dated 9 July 2001. The district judge presiding in that case had juxtaposed corruption in the public arena with that in the private sector (at [22] and [24]):

> This was not a typical corrupt transaction where one party obtains a bribe which rewards or conduces to unlawful conduct interfering with the administration of justice … But in the final analysis, the transactions had taken place in a 'commercial' context.
>
> Where the amount of gratification received is relatively low, and where it is not in excess of $30,000, a substantial fine will *usually be adequate* punishment. The offender will have to forfeit his ill-gotten gratification as well. This is the established sentencing practice where the offenders are not public officers and there is no taint on the integrity of the public service. I did not see any justification to impose a different sentence on the accused.
>
> [emphasis added]

It was clear that the district judge's statements above did not stand for the proposition that corruption in a commercial context *cannot* be punished with imprisonment, although it *usually* is adequate. Indeed, the PCA expressly provides for the imposition of imprisonment sentences regardless of whether the offence was committed in the public arena. Of course, whether a custodial sentence is warranted in a particular case is determined upon a careful consideration of sentencing principles such as the public interest and other policy considerations, as well as the gravity of the offence including the particular facts and circumstances thereof: *PP v Tan Fook Sum* [1999] 2 SLR 523.

66 The distinction drawn by the appellant between corruption offences in the context of the private sector and/or commercial dealings *vis-à-vis* corruption offences involving government servants and officers of public bodies was stiff and artificial. The general statement that I made in *PP v Chew Suang Heng* was based on the presumption that public servants and officers of public bodies who

commit a corruption offence in the course of their duties would have breached the public service rationale articulated in *Chua Tiong Tiong v PP*. This presumption was adopted by the Legislature in s 8 of the PCA, which provides:

> Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

67 It cannot, however, be said that only corruption offences committed by public servants or officers of public bodies run afoul of the public service rationale. Corruption offences committed in the private sector may do so as well, although there is no similar presumption that they do. Private corporations today provide many public service functions; the direct and indirect impact that these private sector organisations have on the lives of our citizens as well as the smooth running and administration of this country can be palpable. An example where a private sector organisation can have a direct impact on such matters is where it is awarded the tender for a government contract for the provision of public services and/or utilities. The impact of corruption offences on the public service rationale, as articulated in *Chua Tiong Tiong v PP*, may therefore be similarly applied to include instances where it is directly or indirectly infringed by private sector organisations. Of course, there will be cases where corruption offences in the private sector have little, if any, bearing on the public service rationale, and these cases will naturally be treated more leniently. These considerations make it untenable to draw a strict line between corruption offences committed in the private sector and those committed in the public arena.

68 I was of the view that the corrupt actions of the appellant, although in the context of the private sector, had a negative bearing upon the public service rationale. As the district judge found, the appellant's actions had the potential to adversely affect public confidence in the independence of marine surveyors and Singapore's bunkering industry. His actions were particularly reprehensible given that the appellant was a prominent member of the bunkering industry. Further, as I had noted, corruption offences such as those committed by the appellant have been escalating in number. The prevalence of an offence is an important consideration in deciding upon an appropriate sentence in furtherance of the public interest, and brings to the fore the sentencing principle of general deterrence. I was therefore of the opinion that a custodial sentence was warranted.

69 I turned to deal with the related question of whether the custodial sentences meted out below were in line with previous sentencing benchmarks. I found the following passage from *Soong Hee Sin v PP* [2001] 2 SLR 253 at [12] to be of assistance:

> [T]he regime of sentencing is a matter of law which involves a hotchpotch of such varied and manifold factors that no two cases can ever be completely identical in this regard. Whilst past cases are no doubt helpful and sometimes serve as critical guidelines for the sentencing court, that is also all that they are, *ie* mere guidelines only. This is especially so with regard to the unreported cases, in which the detailed facts and circumstances are hardly, if ever, disclosed with sufficient clarity to enable any intelligent comparison to be made. At the end of the day, every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances, and counsel be kept constantly and keenly apprised of the fact that it is just not possible to categorise cases based simply on mere numerals and decimal points.

The three unreported cases (at [62] *supra*) cited by the appellant as sentencing benchmarks must be seen in this light.

7 0 *Lee Keng Hong v PP* involved the managing director of a company, who attempted twice to pay illegal gratification of around $400 to an auditor (who had discovered a discrepancy in his company's products during the course of an inspection) in the hope that the auditor would be lenient in his inspection. The offender was fined $3,000 on each of the two charges.

71 In *Ching Wai Leng v PP*, the offender was the managing director of a company who had submitted his company's waterproofing product for the proposed Singapore Arts Centre. He agreed to give an engineer in charge of the project a commission of between 1% and 5% of the contract value of a waterproofing project as a reward for considering his product for submission to the Public Works Department. He was fined $25,000.

72 In *PP v Lim Kim Huat*, the offender, a bunker supplier, pleaded guilty to a charge of corruptly giving illegal gratification amounting to US$15,000 to the chief engineer of a vessel for a buy-back transaction. He was fined.

73 The district judge in *PP v Yeoh Hock Lam* held that in the context of commercial dealings barring exceptional circumstances, offences involving amounts below $30,000 given as illegal gratification are usually dealt with by the imposition of substantial fines. Mr Davinder Singh referred me to the above three cases and contended that since the total amount of corrupt gratification in all six charges totalled $6,300, the custodial sentences given diverged from the sentencing benchmark. However, for the reasons canvassed above, as well as all the aggravating factors detailed by the district judge, I felt that exceptional circumstances were present in the instant case which warranted the district judge's departure from the sentencing norm and the imposition of a custodial sentence. I turned to the next submission from the appellant, which raised the question of whether a custodial sentence was necessary in this case.

Whether the district judge had erred in not having appreciated that the public interest would have been adequately served by the imposition of fines and the revocation of licences in these circumstances.

74 The appellant referred me to *PP v Tan Fook Sum* ([65] *supra*), where I examined the various principles a sentencing court has to consider. These included the objectives of retribution, deterrence, rehabilitation, and prevention. All these may be included under the all-encompassing public interest principle, which concerns itself with a wide range of other competing policy considerations. The following remarks of Hilbery J in *R v Ball* (1951) 35 Cr App R 164 at 165–166 were cited by me in *PP v Tan Fook Sum*, and I find it useful to refer to them again here:

> In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life.

75 I had also held in *PP v Tan Fook Sum* at [20] that:

In another sense the public interest principle often means the protection of the public. For instance, it varies in proportion to the prevalence of the offence in question. Where an offence is prevalent, a more severe sentence may be meted out to mark the court's disapproval and to acknowledge the seriousness of the offence. … Perhaps, in the final analysis, the public interest principle can be reduced to this (Tan Yock Lin, *Criminal Procedure*, Ch XVIII at paras 655-701):

> The truth is that the public interest principle is all encompassing, as for instance is the view in one place: "Public interest varies according to the time, place and circumstances of each case including its nature and prevalence. What may be public interest in one place may differ from another." *In this all encompassing sense, sentencing boils down to striking the "true" balance between the public interest and the interest of the offender*.

[emphasis in original]

76 The same reasons I had articulated in explaining the departure from the sentencing benchmarks apply equally to answer the appellant's argument that fines, in this case, would be sufficient to serve the public interest. I was of the view that the potential negative repercussions of corruption offences of this nature, as well as their prevalence of late, necessitated a strong message to be sent to the appellant and other would-be offenders by the imposition of a custodial sentence. I was also mindful of the fact that the appellant, and others like him, had profited handsomely from these corruption offences. It was therefore clear to me the public interest necessitated a custodial sentence to be imposed on the appellant. I was not convinced otherwise by the following arguments made by the appellant.

77 The appellant argued that the public interest in this case was mainly concerned with the preservation of Singapore's attractiveness as a leading bunkering port. He admitted that corruption offences such as these would give rise to a risk that the integrity of the bunker trade in Singapore would be undermined. This would, in turn, adversely affect the economy. However, he maintained that there was "compelling evidence" that these negative consequences could and had already been fully redressed *via* the imposition of fines and the revocation of the relevant licences, such that a custodial sentence was wholly unnecessary. The appellant cited reports from newspapers and a speech from a Senior Minister of State to the effect that Singapore's bunkering industry was still healthy given the effectiveness of "a no-nonsense approach to corruption", and that "a number of bunker surveyors were prosecuted in court for taking bribes". There were three problems with the above arguments.

78 First, although the public interest rationale of sentencing in the present case included the preservation of Singapore's bunkering industry, it was by no means the only consideration taken into account by the district judge. The impact of the appellant's actions on the bunkering industry was one of many aggravating factors listed by the district judge, which in their totality pointed to the suitability of a custodial sentence. The appellant's argument also rested on the assumption that the culpability of the surveyors who were prosecuted was equal to his. This was certainly not true.

79 Second, it was by no means clear that the newspapers reports and the various statements were "compelling evidence" of his proposition. It was pure conjecture on the part of the appellant to say that the fines and revocation of licences were by themselves determinative factors of the continued health of Singapore's bunkering industry. The relevant government bodies have taken other qualitative measures (*eg* enhancing bunker survey services through accreditation schemes and improved sampling methods) that must have contributed to the continued competitiveness of the bunkering industry.

80 Third, it was patently clear to me that fines and the revocation of licences alone as punishment would certainly be insufficient here. In view of the handsome but illegal profits made by the appellant as a result of the offences, an offender like him could conveniently pay off his fines (and lose his licence) without much hardship. This would make our criminal justice system and its penalties susceptible to a cost benefit analysis and be perceived by offenders (such as the appellant) as an allowable risk in their criminal endeavours. This would be highly inimical to the principle I had expressed, in the context of a cheating offence, in the recent case of *Rupchand Bhojwani Sunil v PP* [2004] 1 SLR 596 at [28]:

> Likewise, when a court is faced with a charge of cheating involving a sum of money akin to that in this appeal, it has to impose a sentence that has the potential to deter future similar offences. In that respect, a fine, though appropriate in other situations, would not have a deterrent effect in cases that are similar to this appeal. A potential offender should never be afforded the opportunity to ponder that he could cheat others of large sums of money and still "get away lightly" by being fined up to only a certain statutory limit. The criminal law should never become a "business" of sorts.

81 I turned to consider the appellant's mitigation plea.

Mitigation plea

82 The appellant raised two new matters in mitigation for my consideration. First, he asked me to consider the fact that he was diagnosed with an acute eye disease sometime in 2003. Sufferers of this disease experience pain and visual impairment due to inflammation, and the disease may eventually cause blindness. The appellant also suffers from secondary diseases and low vision. The ill health of the offender is only considered as a mitigating factor in exceptional cases as an act of mercy: *PP v Ong Ker Seng* [2001] 4 SLR 180. An example is where the offender suffers from a terminal illness. The present status of the appellant's ailment was not sufficiently serious for me to consider it an exceptional case.

83 Second, the appellant asked for due consideration to be given to his generous contributions to good causes in society. He adduced evidence that he had contributed generously to his church, a hospital for the aged, and various other worthy causes. This was a factor that I considered together with appellant's lack of antecedents as a mitigating factor rather than as a discrete category. I was of the view that these matters were not of sufficient weight to offset the aggravating factors present and the fact that the appellant had been convicted of multiple offences: *Wan Kim Hock v PP* [2003] 1 SLR 410, *Chen Weixiong Jerriek v PP* [2003] 2 SLR 334. In any case, the appellant has not provided such distinguished public service or services of substantial value to the community that should stand him in any better stead here: *Knight Glenn Jeyasingam v PP* [1992] 1 SLR 720.

Appeal against sentence dismissed

84 In the result, I dismissed the appeal against sentence. On the appellant's request, I allowed for a determent of the commencement date of the custodial sentence.

Appeals against conviction and sentence dismissed.