Sarjit Singh Rapati v Public Prosecutor
[2005] SGHC 28

Case Number : MA 86/2004

Decision Date : 02 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Vinit Chhabra (Vinit Chhabra Partnership) for the appellant; Imran bin Abdul Hamid (Deputy Public Prosecutor) for the respondent

Parties : Sarjit Singh Rapati — Public Prosecutor

Courts and Jurisdiction – Jurisdiction – Appellate – Power of appellate court to reverse findings of fact – Whether appellate court's interference with trial judge's findings required under circumstances

Criminal Law – Offences – Property – Extortion – Accused threatening to keep person in wrongful confinement unless paid money – Whether victim must experience fear specifically contemplated by charge – Section 384 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – First information report – Lodging first information report in circumstances of urgency – Complainant's material omissions in report – Whether report must contain elaborate details of offence

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Accused impersonating immigration officer – Accused keeping person in wrongful confinement – Accused threatening to keep person in wrongful confinement unless he was paid money – Whether sentences manifestly excessive

Criminal Procedure and Sentencing – Charge – Accused charged and convicted of extortion – Whether court at liberty to amend charge where court disagreeing with exercise of prosecutorial discretion – Nature of prosecutorial discretion – Article 35(8) Constitution of the Republic of Singapore (1999 Reprint), s 336(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Weight of evidence – Discrepancies between prosecution witnesses' testimonies – Whether discrepancies material

Evidence – Witnesses – Examination – Accused's long statement inconsistent with testimony in court – Whether trial judge exercising discretion correctly in refusing to allow Prosecution to call rebuttal witness – Sections 180(l), 399 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

2 Feburary 2005

Yong Pung How CJ:

1 In the district court below, Sarjit Singh Rapati ("Sarjit"), stood accused of the following three offences together with one Paramjit Singh s/o Buta Singh ("Paramjit"):

(a) extortion under s 384 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed);

(b) wrongful confinement under s 342 read with s 34 of the Penal Code; and

(c) false impersonation of an immigration officer under s 170 read with s 34 of the Penal Code.

2 After a joint trial, the district judge ("the judge") convicted both accused persons on all

three charges (see [2004] SGDC 238). The judge sentenced Sarjit and Paramjit to 36 months' imprisonment and six strokes of the cane for the s 384 offence, four months' imprisonment for the s 342 offence and four months' imprisonment for the s 170 offence. The judge ordered the imprisonment for the ss 384 and 342 offences to run consecutively, meaning that each accused person would have to serve a total of 40 months' imprisonment and suffer six strokes of the cane. The judge, however, agreed to grant Sarjit a stay of execution pending appeal.

3 Both accused persons appealed against their convictions and sentences. However, Sarjit was the only one who proceeded with his appeal because Paramjit decided to withdraw his appeal. At the hearing before me, I granted Paramjit leave to withdraw his appeal and proceeded to hear the arguments against Sarjit's conviction and sentence. At the end of the hearing, I dismissed Sarjit's appeal against his conviction but allowed the appeal against his sentence in part. I also exercised my powers of criminal revision under s 268 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") to reduce Paramjit's sentence. I now give my reasons.

Facts

The charges

4 The charges against Sarjit read as follows:

> **DAC 33828/2003**
>
> You are charged that you on 10 July 2003 at about 12.30 pm, at Newton Hawker Centre car-park, together with one Paramjit Singh s/o Buta Singh (M/43 yrs, NRIC No. S1436488-I) and in furtherance of the common intention of you both, did extort cash of $200/- from one Mohammad Sharful Islam ["Sharful"], M/27 yrs by intentionally putting him in fear that you would continue to keep his cousin, one Md Faruq Ahmed ["Faruq"], M/23 yrs, in wrongful confinement and you have thereby committed an offence punishable under Section 384 of the Penal Code, Chapter 224 read with Section 34 of the same Act.
>
> **DAC 35081/2003**
>
> You are charged that you on 10 July 2003 at about 11.00 am, between Rowell Road and Newton Hawker Centre car-park, together with one Paramjit Singh s/o Buta Singh (M/43 yrs, NRIC No. S1436488-I) and in furtherance of the common intention of you both, did wrongfully confine one Md Faruq Ahmed, M/23 yrs, in a motor vehicle bearing registration number SDY 5552 L, and you have thereby committed an offence punishable under Section 342 of the Penal Code, Chapter 224 read with Section 34 of the same Act.
>
> **DAC 35082/2003**
>
> You are charged that you on 10 July 2003 at about 11.00 am, at a coffeeshop along Rowell Road, together with one Paramjit Singh s/o Buta Singh (M/43 yrs, NRIC No. S1436488-I) and in the furtherance of the common intention of you both, did pretend to hold the office of an Immigration Officer, a public servant, knowing that you do not hold such office, and in such assumed character did inspect the work permit of one Md Faruq Ahmed Md Ibrahim Kuhallil, M/23 yrs, a Bangladeshi National, under colour of such office and you have thereby committed an offence punishable under Section 170 of the Penal Code, Chapter 224 read with Section 34 of the same Act.

The undisputed facts

5 Since the Prosecution and the Defence did not agree on a Statement of Facts, the judge found it necessary to distinguish the undisputed facts from the disputed ones. The judge found that the following facts were not in dispute:

(a) Both Sarjit and Paramjit met Faruq for the first time on 10 July 2003 at Medina Restaurant. At that time, Faruq was not working for Ablution Pte Ltd as stated in his work permit, but was working as a stall helper at Medina Restaurant. He was therefore working illegally in breach of the condition of his work permit.

(b) Either one or both accused persons identified themselves to Faruq (the Prosecution's evidence was that they had identified themselves as immigration officers; the Defence claimed otherwise). After checking the work permit, both accused persons knew that Faruq was in breach of the condition in his permit. Faruq also did not provide the contact number of his employer despite being asked.

(c) Thereafter, Faruq left Medina Restaurant together with the two accused persons. Paramjit drove Sarjit's vehicle to the car park at Newton Hawker Centre.

(d) At Newton Hawker Centre, calls were made to the handphone of Faruq's cousin, Sharful. A fee for whatever that was to be done in respect of Faruq was also decided. Sharful was to meet the two accused persons at Newton Hawker Centre.

(e) Before 12.00pm that day, Sharful and his friend, Alamgir Bapari ("Alamgir"), went to the Rochor Neighbourhood Police Post, where Sharful informed Sergeant Hari Ram that something had happened to Faruq. Sergeant Hari Ram saw Sharful marking several $50 notes. After Sharful and Alamgir left the police post, Sergeant Hari Ram lodged the first information report. Earlier, Sergeant Hari Ram had told Sharful that he would send the police to Newton Hawker Centre.

(f) There was no dispute that Sarjit expected to be paid for the transaction involving Faruq and that Paramjit was aware of this. Subsequently, both of them met Sharful and Alamgir at Newton Hawker Centre. Shortly thereafter, Paramjit left in Sarjit's vehicle. Sarjit was arrested and the marked notes amounting to $200 were found on him.

The disputed facts

6 What was in dispute was the Prosecution's contention that Sarjit and Paramjit had identified themselves as immigration officers. According to the judge's summary of Sarjit's evidence, Sarjit testified that he and Paramjit had merely identified themselves as security officers. Paramjit, however, claimed that he did not identify himself. Sarjit was a partner of a security firm, KJK Security Agency, which supplied guards and repatriated foreign workers. Paramjit was a freelance marketing manager with the agency. Sarjit claimed that as security officers, both he and Paramjit were entitled to conduct checks and it was under these circumstances that they asked Faruq for his work permit. Sarjit claimed that when he and Paramjit checked Faruq's work permit and found that he was in breach of the condition in the permit, they decided to return Faruq to his employer in return for a fee. Paramjit testified that as an employee of Sarjit, he followed whatever Sarjit did.

7 On the issue of wrongful confinement, the Defence's version of events was that Faruq did not resist when Sarjit and Paramjit told him that they were going to bring him back to his employer. The Defence claimed that Faruq was brought to Newton Hawker Centre for the purpose of returning

him to his employer. Both accused persons alleged that either Sharful or Alamgir, or both of them, had planted the $200 that was later found in Sarjit's shirt pocket.

8 Lastly, there was disagreement over whether Sarjit was very intoxicated at the time of the alleged offences. While the Defence did not rely on the defence of intoxication under s 86(2) of the Penal Code, it argued that the evidence of intoxication would explain why Sarjit was able to remember some things that happened, but not others.

The decision by the trial judge

False impersonation

9 On the issue of false impersonation, the judge disbelieved Sarjit's claim that he had identified himself as a security officer. The judge found that Sarjit would not have identified himself as a security officer because he knew that he was not one. Sarjit was aware that he did not possess an identification document that was issued to security officers under reg 9 of the Private Investigation and Security Agencies Regulations (Cap 249, Rg 1, 2000 Rev Ed). Neither did Sarjit declare that he was a security officer named in a list of security officers employed by KJK Security Agency. He knew that the licensing authority had never issued a licence to him to act as a security officer.

10 Bearing in mind that Faruq had breached the condition in the work permit, the judge found that it would make more sense for Sarjit to portray himself as an immigration officer because that would enable him to get Faruq to submit to his direction. In any case, the judge found Faruq to be a credible witness because he was not shaken on his testimony that Sarjit had impersonated an immigration officer despite very lengthy cross-examination.

11 The judge acknowledged that the Defence had called one Mohamed Rafi in support of its version that the accused persons had taken Faruq away to see his employer. Mohamed Rafi testified that he had only heard the words "boss, permit", "see my boss", "security boss or officer" being spoken on the occasion that he saw Faruq with both accused persons. Mohamed Rafi testified that he had not heard the words "immigration officer" being uttered. The judge, however, refused to attach any weight to his evidence because he did not regard Mohamed Rafi as an independent witness. He found Mohamed Rafi's account of what had transpired to be vague and that his testimony did not stand up to scrutiny. The judge considered it suspicious that Mohamed Rafi's memory should centre on the words "boss, permit", "see my boss", "security boss or security officer", when the words would have had no significance for him. The judge also found it curious that Mohamed Rafi was able to clearly remember that the words "immigration officer" were not mentioned but was not able to be more forthcoming on what had happened.

Wrongful confinement

12 The judge disbelieved the Defence's version that Faruq had agreed to accompany the two accused persons so that he could be returned to his rightful employer. It would not make any sense for Faruq to want to be returned to his employer when he had already made the decision to work with someone other than the employer named in the work permit. Indeed, Faruq did not appear helpful when he was asked for the contact number of his employer.

13 Further, the evidence did not support Sarjit's claim that he was entitled as a security officer to escort Faruq back to his employer in return for payment. In a letter addressed to one of his clients, Kurihara Kogyo Co Ltd, Sarjit acknowledged that KJK Security Agency was not entitled to escort foreign workers back to their employers without prior authorisation from the Singapore Police Force.

Indeed, KJK Security Agency had been informed by the Licensing Division as early as 8 December 1998 that repatriation services by security agencies were not sanctioned, as such activities might amount to an offence of wrongful restraint under s 341 of the Penal Code.

14 The judge acknowledged that the Defence had called one Muhd Ameen and one William Anak Akom to testify that their companies had engaged KJK Security Agency to find and repatriate their missing workers. However, the judge considered their evidence to be irrelevant. Neither Muhd Ameen nor William Anak Akom was present when the relevant events on 10 July 2003 took place. Their evidence did not show that both accused persons had represented themselves as security officers on 10 July 2003, and that the accused persons were sending Faruq back to his employer because Faruq had breached the condition in his work permit.

Payment of $200

15 The judge accepted the evidence of the prosecution witnesses that the money that was given was for the release of Faruq. Sarjit's behaviour at the scene of the alleged crime belied his assertion that the money had been planted on him. If Sarjit's story were true, one would have expected him to protest that the notes were not his and that they could have been planted on him when the money was first found on his person. Instead, he told the police officer at the scene, Staff Sergeant Ong Cheow Long ("SSgt Ong"), that Faruq had given him the money in return for his agreement to help Faruq look for a job. SSgt Ong's testimony that Sarjit was nervous ran counter to the Defence's version that there was nothing improper in the acts of both accused persons. In fact, Sarjit started to deny that he had taken the money after SSgt Ong informed him that the notes were marked. Further, Sarjit himself admitted in his long statement that the $200 had not been planted but had been given to him by Alamgir.

16 The judge acknowledged that Sarjit had alleged that some parts of his long statement were not accurately recorded by the investigating officer, Senior Staff Sergeant Gurcharn Singh ("the IO"), and that he had signed the statement without reading it as a result of a threat by a police officer by the name of Thanabalan. However, he considered these allegations to be more of an afterthought rather than the truth. In his opinion, Sarjit had concocted these allegations after he realised that parts of his statement were not consistent with his testimony in court. In the circumstances, the judge ruled that it was not necessary for the Prosecution to call the IO as a rebuttal witness.

17 Having found that the IO had faithfully recorded whatever Sarjit had wanted to say, the judge noted that certain portions of the statement bore a close resemblance to what had happened on 10 July 2003 as described by Faruq, Sharful and Alamgir, and that they went to show that these prosecution witnesses were telling the truth on the material aspects of the charges against Sarjit.

Sarjit's intoxication

18 On the issue of Sarjit's intoxication, the judge found that the evidence did not support Sarjit's contention that he was heavily intoxicated. He acknowledged that one Dr Lim Yun Chun ("Dr Lim") had given his opinion that at the time of the alleged offences, Sarjit's mental state was influenced by the effect of alcohol, and that it was probable that under the disinhibiting effect of alcohol, he would be displaying symptoms of euphoria, overt confidence, talkativeness, impaired judgment and lack of insight. He described that condition as slipping in and out of the state of awareness. However, the judge did not attach any weight to Dr Lim's report because the doctor did not interview Sarjit until approximately five months after the incident. Further, the doctor's opinion was based on information that Sarjit and his wife had given him. The doctor admitted that his opinion would not have been the same if different information had been given to him. When he was shown

Sarjit's long statement, as well as his three cautioned statements, Dr Lim even said that he was prepared to change his opinion.

19 The judge noted that none of the prosecution witnesses observed that Sarjit was intoxicated on the day of the alleged offences, or when Sarjit gave his police statements. Indeed, if Sarjit had been intoxicated, he would not have been able to give the details that he did of the incident. In his long statement, he was also able to narrate in a fair amount of detail his version of the events.

The appeal

The appeal against conviction

20 In arriving at his decision, the judge clearly preferred the evidence of the prosecution witnesses to that of the Defence witnesses. Generally speaking, he found that the Defence witnesses were not truthful, reliable or independent. It is trite law that an appellate court will be slow to disturb a lower court's findings of fact unless they are plainly wrong or against the weight of the evidence. This is because the appellate court does not have the advantage of hearing the witnesses and observing their demeanour in court: *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32]; *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464 at [36]; *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]; *Dong Guitian v PP* [2004] 3 SLR 34 at [27]. An appellate court may reverse such findings only if it is convinced that the findings were wrong, and not merely because it entertains doubts as to whether the decision was right: *PP v Azman bin Abdullah* [1998] 2 SLR 704 at [21].

21 In so far as the inferences to be drawn from the findings of fact are concerned, it has been said that an appellate judge is as competent as any trial judge to draw the necessary inferences of fact from the circumstances of the case: *Soh Yang Tick v PP* [1998] 2 SLR 42 at [40]; *PP v Choo Thiam Hock* [1994] 3 SLR 248 at 253, [12]. However, this does not mean that an appellate court has free rein to substitute its view for that of the trial judge as and when it pleases. There must be strong objective facts that weigh so strongly against the decision of the trial judge that intervention on appeal is required: *PP v Tubbs Julia Elizabeth* [2001] 4 SLR 75 at [22].

22 On appeal, the Defence advanced a whole litany of complaints against the judge's decision, many of which overlapped with each other. The bulk of its submissions either raised inconsequential points or were easily defeated by the judge's reasoning as set out above. I therefore found it necessary to focus on only two major issues that the Defence raised and three others that the judge did not develop in his grounds of decision. These are:

(a) whether the judge erred in finding that the elements of the offence of extortion had been met;

(b) whether the judge erred in finding that it was not necessary for the Prosecution to call the IO as a rebuttal witness;

(c) whether Sharful had concocted the allegation that Sarjit and Paramjit had identified themselves as immigration officers;

(d) whether the judge had failed to take into account Sarjit's testimony that he had identified himself as a security officer or a security boss; and

(e) whether the extortion charge should be substituted with a charge of corruption under s 5(a) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed).

Whether the elements of the offence of extortion had been met

23 To make out the offence of extortion, the Prosecution bore the burden of proving that:

(a) Sarjit and Paramjit had intentionally put Sharful in fear that they would continue to keep Faruq in wrongful confinement; and

(b) they thereby dishonestly induced Sharful to deliver $200 to them.

To support the offence of extortion, it was essential that Sarjit and Paramjit had induced Sharful to experience the fear specifically contemplated by the charge. It was not sufficient that he might have experienced some other fear: *Lee Choh Pet v PP* [1972–1974] SLR 40 at 48–49.

24 The Defence contended that the charge of extortion was not made out because the evidence did not show that Sarjit and Paramjit had intended to induce any fear that they would not release Faruq unless Sharful paid them money. Throughout his time on the stand, Sharful did not allege that the men had personally made this threat. Sharful was not even afraid that the men would cancel Faruq's work permit because he suspected that Sarjit and Paramjit were in fact not immigration officers or that they were corrupt ones. What Sharful did fear was that the men would stab Faruq, beat him up or throw him into the forest. However, by his own admission, this fear was induced by his own imagination.

25 Although the Defence had also advanced these arguments before the judge below, the judge did not deal with them in his grounds of decision. In explaining his decision to call for the Defence, all that he said at [33] was that:

> There was evidence that the two accused persons clearly intended to cause fear in the minds of Sharful and Faruq that Faruq would be kept in wrongful confinement and would only be released unless money was paid.

In explaining his decision to convict Sarjit on the offence of extortion, he stated that he:

> … accepted the evidence of Faruq, Sharful and Alamgir that the money that was given was for the release of [Faruq]. All of them were subjected to very lengthy cross-examination by both counsel for the accused but they were not broken down on this material aspect of their evidence.

26 Although the judge did not specifically explain why he had rejected the Defence's submissions on the charge of extortion, I found that the evidence did support his finding that Sarjit and Paramjit had intentionally put Sharful in fear that they would not release Faruq.

27 In his examination-in-chief, Sharful testified that on 10 July 2003 at about 11.00am, he received a phone call from someone who told him that he was an immigration officer and that he had arrested his cousin as he had run away from his company. Faruq then spoke to Sharful and told him that immigration officers had arrested him and that he would only be released if he could pay the men $500. If he did not, the immigration officers would bring him to the immigration office and cancel his work permit. Faruq then passed the phone back to the person who had spoken to Sharful earlier. This person told Sharful that they were at Newton Hawker Centre. During the course of that morning, Sharful had another three telephone conversations with either Sarjit or Paramjit concerning where to meet and the fee that should be paid.

28 While it may be true that neither Sarjit nor Paramjit had personally threatened Sharful with Faruq's continued confinement, it is not the law that the offence of extortion is not made out unless the accused conveyed the threat himself. In the present case, Faruq was in the custody of both Sarjit and Paramjit when they communicated with Sharful. It was with their knowledge and consent that Faruq spoke to Sharful and it was in those circumstances that Faruq informed Sharful that immigration officers had arrested him and that he would only be released if he could pay the men $500. Since neither Sarjit nor Paramjit did anything to disabuse Sharful of that notion, it must be the case that Faruq represented the two men's will and intent.

29 Further, a perusal of the notes of evidence indicated that Sharful's concern that the men would attack his cousin was only one of his fears. In cross-examination, Sharful agreed that he was worried and afraid for Faruq and that he wanted to secure his release immediately. This showed that he *also* laboured under the fear that Sarjit and Paramjit would continue to keep his cousin in wrongful confinement.

Whether the Prosecution should have called the IO as a rebuttal witness

30 In the court below, the Defence submitted that the Prosecution should have called the IO as a rebuttal witness because Sarjit had made certain allegations in his cross-examination and re-examination that the IO had not addressed in his testimony for the Prosecution. Specifically, Sarjit alleged that the IO did not accurately record certain portions of his long statement and that the IO had fabricated the disputed portions. Since the Prosecution did not put the IO back on the stand to rebut these allegations, the Defence contended that these allegations must be true.

31 The judge below rejected a similar submission from the Defence because he considered its allegations against the IO to be more of an afterthought than the truth. Sarjit initially agreed that the IO had written down whatever he had wanted to say. It was also his position that the IO had behaved appropriately and professionally towards him during the police investigations. In the judge's opinion, the only reason why Sarjit had alleged that the long statement was not accurate was because he had found that parts of the statement were not consistent with his testimony in court. Indeed, it was apparent to the judge that Sarjit raised the objection only after he realised that parts of the statement were not favourable to his case.

32 In so far as the allegation of fabrication was concerned, the judge concluded that the IO did not fabricate the disputed portions. If the IO had intended to frame Sarjit, he would have written an incriminatory account. He could also have done the same to the other three cautioned statements of Sarjit that he recorded, the accuracy of which was never disputed by Sarjit. To his mind, the objection that Sarjit had raised was but a feeble attempt on his part to explain away the different versions.

33 In the circumstances, the judge considered that it would entail a waste of the court's time for the Prosecution to call the IO as a rebuttal witness. He considered that the situation would be analogous to the following situation referred to by the Court of Appeal in *Nadunjalian v PP* [1993] 2 SLR 682 at 690, [33]:

> We do not think that [*Ajodha v The State* [1982] AC 204] was intended to stand for the broad proposition that a trial judge is required to convene a trial-within-a-trial wherever and whenever some mote of doubt is raised by the accused as to the voluntariness of his statement. The consequences would be ludicrous. It would mean that even though no objection was taken to the voluntariness of a confession when the proper opportunity arose, an objection could be taken at a later stage in the trial if the accused happened to say that he had been coerced into making

the confession. To convene a voire dire at that stage would be to waste the court's time in recalling witnesses who could very well have been questioned on the same issues earlier.

34 In my opinion, there was no reason to disagree with the judge on this point. On appeal, the Defence's main point was that the long statement must be inaccurate because it was not consistent with Sarjit's evidence in court. If the long statement did contain the truth, it should have provoked the IO into asking follow-up questions.

35 I found this argument to be a circular one. The long statement could not be inaccurate simply because it was inconsistent with Sarjit's testimony in court: *Anbuarsu v PP* [1995] 1 SLR 719 at 725–726. After all, it is not uncommon for an accused person to give the wrong version of events, to hold back certain facts or to embellish facts to downplay his role in the offence. The fact that there may be inconsistencies between the Prosecution's case and the accused's statements does not, in and of itself, undermine the accused's conviction.

36 The Defence also complained that it was not able to cross-examine the IO on the long statement because the document was not admitted into evidence until Sarjit took the stand. The Defence submitted that the Prosecution should have rectified this by calling the IO as a rebuttal witness.

37 In my opinion, this argument had no merit. If the Defence had been seriously desirous of cross-examining the IO, it could easily have applied under either s 180(l) or s 399 of the CPC to recall him. Section 180(l) permits the accused to recall and cross-examine any witness present in the court or its precincts at any time while he is making his defence. Section 399 gives the trial court the discretion to summon or recall a witness at any stage of the proceedings. The Defence was certainly aware of the existence of s 399 because it relied upon this section to recall its witness, Muhd Ameen.

Whether Sarjit and Paramjit had introduced themselves as immigration officers to Sharful

38 The Defence argued that Sharful must have concocted the allegation that Sarjit and Paramjit had identified themselves as immigration officers. The Defence constructed its argument in the following way. When Sharful took the stand, he testified that he had told the police officer at the entrance of the Rochor Neighbourhood Police Post that his "brother" had been taken away by two immigration officers. The "brother" that Sharful was referring to was his cousin, Faruq. He subsequently spoke to Sergeant Hari Ram ("Sgt Hari") and gave a first information report to another officer. However, when Sgt Hari took the stand, he did *not* say that Sharful had told him that two men had claimed to be immigration officers. Neither did the first information report contain such an allegation. All that it said was:

> My brother was pulled into a car and two M/Indian believed to be Singaporean asked me to give them $500 if not they send my brother to immigration and cancel work permit. Subj h/p: 93868427

The Defence submitted that such an omission existed because Sarjit and Paramjit had never introduced themselves as immigration officers to Sharful. If Sharful's allegation was indeed true, the Defence argued, one would have expected him to mention it repeatedly.

39 In my opinion, there was no merit to this argument. The Defence appeared to be somewhat confused about what took place at the police post. Sharful did *not* speak to three different police officers. A perusal of the notes of evidence indicated that the officer who met him at the entrance of the police post and the officer who recorded the first information report were one and the same. This

officer was Sgt Hari. According to the officer, Sharful said that his "brother" had accidentally bumped into people seated at a coffeeshop at Rowell Road. Two males, believed to be locals, had caught hold of his "brother" and had put him into a car. Sharful also said that he had received a call on his handphone and that the caller had asked him to go to Newton Hawker Centre with $500, failing which his "brother" would be handed over to the immigration office for his work permit to be cancelled.

40 Although Sgt Hari did not say that Sharful had claimed that Sarjit and Paramjit had identified themselves as immigration officers, I considered that the discrepancy between Sharful's and the officer's testimonies was too minor to be material. Adequate allowance must be given to human fallibility in observation, retention and recollection: *Ng Kwee Leong v PP* [1998] 3 SLR 942 at [17]. As Abdul Hamid J put it in *Chean Siong Guat v PP* [1969] 2 MLJ 63 at 64:

> Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court.

41 In so far as the first information report was concerned, the law does not require the report to contain the entire case for the prosecution. Its main purpose is merely to give information of a cognisable offence to the police so as to set them in motion: *Tan Pin Seng v PP* [1998] 1 SLR 418 at [27]. While the existence of a material discrepancy between the report and the complainant's testimony in court is relevant, the circumstances in which the report was lodged must be borne in mind. As the court put it in *Herchun Singh v PP* [1969] 2 MLJ 209 at 211:

> … it is wrong to hold up the first information report as a sure touchstone by which the complainant's credit may invariably be impeached. It can only be used for that purpose with discrimination, in much the same way as previous statements by the witness are used, so that irrelevant errors in detail are not given exaggerated importance, nor omissions, objectively considered in the light of surrounding circumstances.

42 In the present case, the first information report was hurriedly lodged before Sharful proceeded to Newton Hawker Centre to secure Faruq's release. At this point, Faruq's safety would have been of utmost priority and it would not be fair to expect the report to contain as many details as one lodged after cool calculation.

Sarjit's testimony that he had identified himself as a security officer or a security boss

43 According to the judge's summary of Sarjit's evidence at [37] and [58] of his Grounds of Decision, Sarjit had testified that he and Paramjit had merely identified themselves as security officers. The Defence submitted that the judge fell into error because what Sarjit had said was that he had identified himself as a security officer and a security boss. The Defence argued that this point was material because as a partner of KJK Security Agency, Sarjit would have had every reason to represent himself as a security boss.

44 A perusal of the notes of evidence and Sarjit's cautioned statements revealed that Sarjit did claim that he had identified himself as a security officer and a security boss. Nevertheless, I was of the view that the judge's error did not undermine his reasoning on the issue of false impersonation. Regardless of whether Sarjit had identified himself as a security officer or a security boss, the fact remained that he was not entitled in law to escort Faruq back to his employer. To do so would have constituted illegal detention. As the judge found, it would have made much more sense for Sarjit to portray himself as an immigration officer. This would have made it easier for him to get Faruq to show

him his work permit, to leave Medina Restaurant and to follow both Paramjit and him to Newton Hawker Centre.

The corruption charge under the Prevention of Corruption Act

45 Finally, the Defence cited *PP v Chua Boon Teck* [1995] 3 SLR 551 ("*Chua Boon Teck*") and submitted that even if the evidence *did* support the conviction on the extortion charge, I should nevertheless substitute the charge with one under s 5(a) of the Prevention of Corruption Act. This section states:

> **Punishment for corruption.**
>
> 5. Any person who shall by himself or by or in conjunction with any other person —
>
> (a) corruptly solicit or receive, or agree to receive for himself, or for any other person;
>
> …
>
> any gratification as an inducement to or reward for, or otherwise on account of —
>
> (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
>
> (ii) any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned,
>
> 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 to both.

The only reason why the Defence advanced this submission was because the offence of corruption carries a more lenient sentence than the offence of extortion. While the offence of extortion is punishable with a term of imprisonment of two to seven years and caning, the offence of corruption is punishable with a term of imprisonment not exceeding five years or a fine not exceeding $100,000 or both.

46 I found the Defence's argument to be plainly untenable. Article 35(8) of the Constitution of the Republic of Singapore (1999 Rev Ed) and s 336(1) of the CPC give the Attorney-General of Singapore the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. The Court of Appeal case of *Govindarajulu v PP* [1994] 2 SLR 838 is direct authority for the proposition that this Court is not in a position to overturn a conviction, even if it may disagree with the exercise of prosecutorial discretion.

47 In *Govindarajulu v PP*, the second appellant was charged with abetting the first appellant in the commission of the offence of drug trafficking. On appeal, the second appellant argued that he should have been charged under s 5(b) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) for offering to traffic by selling not less than 325.7g of heroin, and that the first appellant should have been charged with abetting the second appellant in the sale of that quantity of heroin. In rejecting this ground of appeal, the Court of Appeal held:

> [W]hether or not the facts in the present case could also give rise to charges under s 5(b) of the MDA [Misuse of Drugs Act] and whether the prosecution should have charged the second

appellant under that section was irrelevant. *A trial court must concern itself with the charge at hand and decide at the end of the day whether the prosecution has proved beyond a reasonable doubt each and every element of the charge.* Counsel appeared to suggest that, since the prosecution had presented the second appellant as the 'mastermind' of the whole affair, it was wrong to charge him with abetment and treat the first appellant as the principal offender. *In our view, it is not for a court of law to consider the moral complicity of each accused person and question the prosecution's absolute discretion in deciding what charge to prefer.* [emphasis added]

48 In so far as the case of *Chua Boon Teck* is concerned, that authority is easily distinguishable. In that case, the respondents had been jointly charged under s 385 read with s 34 of the Penal Code, of attempting to extort $3,000 from one Low. The district judge ruled that the offence of attempted extortion was not established, and that there was no "injury" or "harm illegally caused" to Low, having regard to s 383 read with ss 44 and 43 of the Penal Code. He therefore amended the charge to one of attempted corruption under s 6(a) of the Prevention of Corruption Act. Both respondents pleaded guilty to the amended charge and were convicted and sentenced accordingly. The Prosecution appealed against the district judge's decision to amend the charges against the respondents.

49 In rejecting the appeal in that case, I found that the offence of attempted extortion had not been made out and upheld the district judge's decision to amend the charge to one of attempted corruption. The case of *Chua Boon Teck* is therefore very different from the present case, where the original charge of extortion *had* been made out. It is certainly not authority for the proposition that the courts are at liberty to amend the charges simply because they may disagree with the manner in which the Prosecution has exercised its discretion.

The appeal against sentence

50 The sentences prescribed by the Penal Code for each of the three different offences for which Sarjit was charged are as follows:

(a) for the offence of extortion under s 384 of the Penal Code, a term of imprisonment of not less than two years and not more than seven years and caning;

(b) for the offence of wrongful confinement under s 342 of the Penal Code, a maximum of one year's imprisonment, or a fine of up to $1,000, or both; and

(c) for the offence of false impersonation of an immigration officer under s 170 of the Penal Code, a maximum of two years' imprisonment, or a fine, or both.

51 In sentencing Sarjit to a total of 40 months' imprisonment and six strokes of the cane, the judge found nothing significant in Sarjit's mitigation plea that dealt with his age, family, occupation and medical condition. Although Sarjit had previous convictions, the judge did not consider this fact to be aggravating because the previous convictions were not similar to the present offences, being traffic and theft offences. The theft was also committed some time ago before 1985.

52 However, the judge refused to give Sarjit a lenient sentence because Sarjit had preyed upon a vulnerable victim. Foreigners like Faruq were vulnerable targets as they were not likely to report any wrongdoing to the authorities. Both accused persons took advantage of Faruq's situation, hoping to gain some financial benefit from it. In the present case, it was simply fortuitous that Faruq had the backing of his cousin, Sharful. In the judge's opinion, foreigners working in Singapore should be protected from acts such as those perpetrated by Sarjit and Paramjit.

53 In the present case, the Defence did not challenge the judge's order that the sentences for the ss 384 and 342 offences should run consecutively. What it did say was that the sentence for each individual offence was manifestly excessive. For the offence of extortion, the Defence submitted there was nothing to warrant a sentence of more than the mandatory minimum sentence of two years' imprisonment. For the offences of wrongful confinement and false impersonation, the Defence simply submitted that the judge should have imposed a more lenient sentence.

Extortion

54 The sentence of 36 months' imprisonment and six strokes of the cane certainly fell within the normal sentencing tariff for the offence of extortion. In *Saw Teck Kiong v PP* (unreported, Magistrate's Appeal No 257 of 1993), the accused was convicted of three offences of extortion under s 384 read with s 34 of the Penal Code. The accused had obtained cash of $600 and $400, as well as a cheque of $500 from his victims. On appeal, his sentence on each charge was enhanced from two years and three months' imprisonment and four strokes of the cane to three years and six months' imprisonment and four strokes of the cane. In *Ng Chee Bing v PP* [2001] SGDC 266, the accused pleaded guilty to two charges of extortion under s 384 read with s 34 of the Penal Code. The victim was a 13-year-old boy. The accused had previous antecedents under the Road Traffic Act (Cap 276, 1997 Rev Ed). The accused was sentenced to three years' imprisonment and three strokes of the cane on each charge. There was therefore no reason to disturb Sarjit's sentence on the extortion charge.

Wrongful confinement

55 I found, however, that the sentence of four months' imprisonment clearly exceeded the normal sentencing tariff for the offence of wrongful confinement. In *Kuai Cheng Yan v PP* (unreported, Magistrate Appeal No 109 of 1998) ("*Kuai Cheng Yan*"), a case with rather similar facts to those of the present case, a fine of only $1,000 was imposed. In that case, the co-accused had falsely identified himself as a police officer to the female victim. He handcuffed her to himself and brought her to his car where the accused, his girlfriend and a colleague of the victim, were waiting. The victim's handcuffs were removed and she was pushed into the rear seat of the car. The co-accused drove the car off with the accused and the victim in the rear seat. As a condition of her release, the victim was forced to sign a note admitting that she had made nuisance calls to the accused. She did so and was released unharmed. The two accused persons pleaded guilty to a charge under s 342 of the Penal Code. The accused was sentenced to two weeks' imprisonment and a fine of $1,000, while the co-accused was sentenced to one month's imprisonment with a fine of $1,000. On appeal, the terms of imprisonment were set aside, with the $1,000 fines to remain.

56 In contrast, a sentence of three months and above is normally imposed only where aggravating factors are present: see *eg Karthi Kesan s/o Raja Gopal v PP* (Magistrate's Appeal No 83 of 1994) ("*Karthi Kesan*") in which three accused persons were convicted on a charge of wrongful confinement under s 342 read with s 34 of the Penal Code. The victim had borrowed money from the first accused but had defaulted on the loan. At about midnight, the first accused waited with some others (including the second and third accused) for the victim. When he saw the victim, he approached him and grabbed him by the collar. He assaulted the victim and asked for the return of his money. The first accused kicked and pushed the victim into a lorry driven by the third accused. In the lorry, the victim was further assaulted by the first accused and elbowed by the third accused. He was forced to hand over his belongings and asked to strip to his underwear. The victim was ordered to raise the money or else he would be "finished off" and his body thrown away. The victim called his mother. She told him that she only had $800. The first accused then spoke to her and told her, "Auntie, it is better for you to give the money tonight or else your son will die." All three accused persons were sentenced to three months' imprisonment. Their sentences were upheld on appeal.

57 In my view, the present case bore more similarity to the situation in Kuai *Cheng Yan* than *Karthi Kesan*. Although Sarjit and Paramjit did force Faruq into their car and had scolded him whilst he was in the car, they did not assault, humiliate and threaten Faruq to the extent that the accused persons did in *Karthi Kesan*. I therefore found it appropriate to reduce Sarjit's sentence on the charge of wrongful confinement to one month's imprisonment.

False Impersonation

58 In so far as the charge of false impersonation was concerned, I was of the view that the facts did not warrant a custodial sentence of four months. In *Tan Seng Kwee v PP* (unreported, Magistrate's Appeal No 227 of 2000), a case with similar features to the present case, the accused was sentenced to only one month's imprisonment. In that case, the accused approached a Thai prostitute and offered to be her pimp. They then went into a hotel room together. The accused prevented her from leaving the room and kicked her a few times. He pulled her handbag away from her and told her that he was a police officer. The accused had a previous conviction under s 22(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed). In sentencing the accused to one month's imprisonment, the district judge noted that the accused had chosen a victim who was easy prey because she was not likely to report him to the authorities.

59 In contrast, significant aggravating factors should be present before a sentence of four months' imprisonment is imposed: see *eg Iskandar bin Abdul Rahim v PP* (unreported, Magistrate;s Appeal No 38 of 2001). In this case, the accused had impersonated a police officer and conducted a check on the victim. He took her identity card and requested her to follow him in his car to the police station to verify her identity. Whilst in the car, he asked the victim to unbutton her shirt and molested her, claiming that he was merely "doing his job" as a police officer. In sentencing the accused to four months' imprisonment, the district judge noted that this was his third offence under s 170 of the Penal Code and that he had assumed a position of authority to take advantage of the victim. Further, the accused had insisted on claiming trial despite the fact that the evidence against him was overwhelming. The accused's sentence was upheld on appeal.

60 I therefore allowed Sarjit's appeal against sentence with respect to the charge of false impersonation and reduced it to one month's imprisonment.

Criminal revision of Paramjit's sentence

61 In so far as Paramjit was concerned, the judge imposed upon him the same sentence as Sarjit. He found nothing significantly mitigating in his mitigation plea that dealt with his family and medical condition. Although Paramjit had a previous conviction for the offence of disorderly behaviour under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act, the judge considered that it was not similar to the offences of extortion, wrongful confinement or false impersonation. The judge noted that Paramjit had been an active participant in the commission of the offences. Although he had not punched Faruq, he had threatened Faruq into showing him his work permit and had forced Faruq into Sarjit's vehicle. Further, Paramjit had committed the offences voluntarily and stood to gain financially from them.

62 Since I had allowed Sarjit's appeal against his sentence in part, I found it appropriate that I should exercise my powers of criminal revision under s 268 of the CPC to reduce Paramjit's sentence as well.

63 It is a well-established principle that the courts should strive towards parity in sentencing. As I observed in *PP v Ramlee* [1998] 3 SLR 539 at [7]:

> Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances: see Archbold (1998), para 5-153. An offender who has received a sentence that is significantly more severe than has been imposed on his accomplice, and there being no reason for the differentiation, is a ground of appeal if the disparity is serious. This is even where the sentences viewed in isolation are not considered manifestly excessive: see *R v Walsh* (1980) 2 Cr App R (S) 224. In *R v Fawcett* (1983) 5 Cr App R (S) 158, Lawton LJ held that the test was whether 'right-thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence consider that something had gone wrong with the administration of justice?' *The same should apply by analogy when the court is exercising its revisionary powers. Right-thinking members of the public, with full knowledge of the relevant facts and circumstances, would consider that something had gone wrong since the offenders whose culpability are not significantly different, should receive the same sentence.* [emphasis added]

64 Reverting to the facts of the present case, I found little difference between Sarjit's and Paramjit's levels of culpability. Right-thinking members of the public, with full knowledge of the relevant facts and circumstances, would therefore consider that something had gone wrong if Sarjit's sentence was reduced but not Paramjit's. I therefore ordered that Paramjit's sentences for the offences of wrongful confinement and false impersonation should also be reduced to one month each.

Conclusion

65 For the reasons above, I dismissed Sarjit's appeal against conviction but reduced the sentences for the offences of wrongful confinement and false impersonation to one month each. I ordered the imprisonment for the two offences to run concurrently, but consecutively to that for the offence of extortion. To ensure parity in sentencing, I exercised my powers of criminal revision to reduce Paramjit's sentence to the same extent. Each accused person would therefore have to serve a total of 37 months' imprisonment and suffer six strokes of the cane.

66 At the end of the hearing, the Defence asked that I postpone the commencement of Sarjit's sentence by two weeks to give Sarjit some time to attend to the affairs of his security agency. I was of the view, however, that Sarjit had had more than sufficient time to settle his affairs because he had enjoyed a stay of execution pending appeal since his conviction on 10 June 2004. I therefore refused to accede to this application and ordered that Sarjit's sentence should commence immediately.

Appeal against conviction dismissed; appeal against sentence allowed in part; Paramjit Singh s/o Buta Singh's sentence reduced on court's own motion.