IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 162

Magistrate's Appeal No 9055 of 2018

Between

Goh Chin Soon

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Passports Act]
[Criminal Procedure and Sentencing] — [Trials]
[Criminal Procedure and Sentencing] — [Charge] — [Alteration]
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v
Public Prosecutor

[2020] SGHC 162

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30 July 2020

Hoo Sheau Peng J:

Introduction

1 Mr Goh Chin Soon ("the appellant") is a 65-year-old Singapore citizen who travelled into and out of Singapore on a total of 46 occasions between 20 March 2011 and 7 September 2012 using a Philippine passport ("the Passport"). It transpired that this was a false passport. On the 46th occasion, the appellant was arrested while passing through the departure immigration checkpoint at Changi Airport.

2 The appellant claimed trial to 23 charges for making false statements in disembarkation forms under s 57(1)(*k*) of the Immigration Act (Cap 133, 2008 Rev Ed) ("the Immigration Act charges") and 46 charges for using a foreign travel document not issued to him under s 47(3) of the Passports Act (Cap 220, 2008 Rev Ed) ("the s 47(3) charges"). As I shall set out below, and as narrated

in the grounds of decision of the District Judge in *Public Prosecutor v Goh Chin Soon* [2018] SGDC 129 ("GD"), the trial was fairly eventful.

3 To summarise, after considering the closing submissions of the parties, the District Judge convicted the appellant on all the Immigration Act charges: GD at [3]. However, pursuant to s 128(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the District Judge amended the s 47(3) charges to 46 charges of possession of a false foreign travel document under s 47(6) of the Passports Act ("the s 47(6) charges"): GD at [53]. This was because the charges under s 47(3) related to the use of a "foreign travel document" not issued to the appellant, but the Passport was in fact a "false foreign travel document". In doing so, the District Judge disagreed with the Prosecution that the amended charges should be framed under s 47(1) of the Passports Act.

4 Thereafter, the District Judge allowed the Defence to recall a number of Prosecution witnesses for further cross-examination. However, the District Judge refused to allow the Defence to call further witnesses who had not previously taken the stand: GD at [87]. At the end of the proceedings, the District Judge found the appellant guilty of the s 47(6) charges: GD at [98].

5 Then, the District Judge sentenced the appellant to two months' imprisonment for each of the Immigration Act charges (with two of these sentences to run consecutively), and 12 months' imprisonment for each of the s 47(6) charges (with a further two of these sentences to run consecutively): GD at [119]–[120]. Thus, the appellant was sentenced to a total of 28 months' imprisonment.

6 The appellant appealed against his conviction on the s 47(6) charges, and against his sentence in relation to all the charges.[1]

7 In relation to his appeal against conviction, the appellant argued that the District Judge had descended into the arena and prejudged his guilt by her conduct leading up to her decision to amend the s 47(3) charges, that the s 47(3) charges should not have been amended to the s 47(6) charges, that his application to call further witnesses was wrongly rejected, and that he was not guilty of the s 47(6) charges.

8 Having considered these arguments and the Prosecution's submissions, I was of the view that there should only be *one charge* (*not 46 charges*) under s 47(6) of the Passports Act. Accordingly, I further amended the first of the s 47(6) charges to reflect the entire period the appellant was in possession of the Passport, and set aside the conviction on the remaining s 47(6) charges. I did not agree with the other issues raised by the appellant, and convicted him on the further amended s 47(6) charge.

9 As for his appeal against sentence, the appellant argued that his ill-health warranted the exercise of judicial mercy, and that in any event, his culpability for the offences was such that only fines were warranted. I rejected these arguments. However, I allowed the appellant's appeal against sentence. I sentenced him to 18 months' imprisonment for the further amended s 47(6) charge and six weeks' imprisonment for each of the Immigration Act charges (with two of these sentences to run consecutively with the sentence for the s 47(6) charge), for a total of 18 months and 12 weeks' imprisonment.

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[1] Petition of Appeal at paras 16, 18.

10 These are the full reasons for my decision.

Background

The parties' cases at trial

11 The appellant, a Singaporean, was born on 19 July 1955 in Singapore. The Passport with which he travelled on the 46 occasions reflected the bearer's name as "Ngo Boris Jacinto", a Philippine national born on 27 August 1967 in San Juan, Rizal.[2] However, the Passport bore the appellant's photograph. On each of the 23 occasions when the appellant entered Singapore using the Passport, he produced a disembarkation form which reflected the particulars stated in the Passport, and contained the declaration that he had never "used a passport under [a] different name to enter Singapore".[3]

12 The appellant did not dispute the facts above: GD at [34]–[37]. According to him, in 2004, his passport was detained by the Chinese authorities while he was in China on business. As a result, he could not leave China. In 2009, one "Mr Tsai" from the Huashin Group, the company the appellant worked for, asked him to go to Taiwan to attend to some business matters. Eventually, in March 2010, "Mr Tsai", who was anxious for the appellant to go to Taiwan, introduced him to one "Mr Huang". The latter told the appellant that he could obtain an investment passport from the Philippines for the appellant. The appellant claimed that at this time, his mother was also very sick, and he wanted to visit her in Singapore. Therefore, the appellant agreed to pay US$250,000 to "Mr Huang" to buy a company in the Philippines. Subsequently, in March 2011, the appellant received the Passport.

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2 ROP902 (P2 at p 3).

3 ROP91–113 (Statement of Agreed Facts ("SOAF") at Tab B).

13 The appellant's defence was that he believed the Passport to be a genuine Philippine passport although the date and place of birth were wrong: GD at [38]–[41]. He asserted that the information stated in the disembarkation forms accordingly was also not false. According to the appellant, he had given "Mr Huang" his personal particulars, photograph, and fingerprints for the purposes of the passport application.[4] Furthermore, the appellant said that he had successfully used the Passport on 188 occasions without encountering any problems.

14 The appellant claimed that he was also known as "Boris", that "Ngo" was the Filipino equivalent of his surname, *ie*, Goh, and that "Jacinto" was the middle name which "Mr Huang" provided for the purposes of the passport application. This was because the Philippines was a matrilineal society which required the appellant's mother's name to be reflected in the passport, and "Jacinto" was the Filipino equivalent of the appellant's mother's name.

15 As for the incorrect particulars in the Passport, such as the date and place of birth, the appellant said that he had pointed these problems out to "Mr Huang", but "Mr Huang" said that the appellant would need to go to the Philippines to reapply for the passport to get them rectified. As the appellant urgently needed to travel, he did not do so.

16 According to the Prosecution, the appellant was made a bankrupt in Singapore sometime in 2001, and was discharged from bankruptcy in June 2015.[5] During this period, the appellant required the permission of the Official

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4 NEs, 12 June 2017, page 39, lines 5–22.

5 NEs, 6 June 2017, page 59, lines 21–25.

Assignee to travel out of Singapore. However, the appellant had no such permission until 7 September 2012, which was the day of his arrest: GD at [30].

17 Based on the records of the Immigration and Checkpoints Authority ("ICA"), on 28 April 2010, the appellant had submitted an application for a Singapore passport at the Consulate-General of Singapore in Xiamen, China. This application was rejected due to "outstanding issues" with the Insolvency and Public Trustee's Office and ICA's Identification Card Unit.[6] At this time, the appellant was in possession of a Singapore passport expiring in November 2010. Subsequently, in January 2012, the appellant submitted another application for a Singapore passport. This time, the application was approved. ICA's records showed that the appellant collected this Singapore passport on 17 February 2012 in person at the Consulate-General of Singapore in Xiamen.[7] However, the appellant disputed this, and claimed that his Singapore passport was collected by his agent. He only received this passport sometime in December 2012: GD at [45].

18 The Prosecution called the Consul-General of the Philippine Embassy in Singapore, Mr Victorio Mario M Dimagiba Jr ("Mr Dimagiba"), as a witness. Mr Dimagiba testified that the Philippine authorities had no record of any passport being issued to a "Boris Jacinto Ngo" under the passport number stated in the Passport.[8] In other words, the Passport was false.

19 As such, on the Prosecution's case, the appellant travelled in and out of Singapore using the Passport because he did not have the Official Assignee's

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6 NEs, 15 December 2016, page 66, lines 14–23.

7 NEs, 15 December 2016, page 74 line 15 – page 75 line 29.

8 NEs, 29 May 2017, page 8, lines 17–23; page 15, lines 23–29.

permission to travel until 7 September 2012, and wished to avoid detection: GD at [30]–[31]. However, despite the evidence of Mr Dimagiba, the trial proceeded on the basis that the Passport was a genuine foreign travel document which was not issued to the appellant.

The amendment of the charges

20 In the Defence's closing submissions, it was pointed out for the first time that the *actus reus* of the s 47(3) charges was not made out: GD at [44]. This was because s 47(3) of the Passports Act did not apply to the use of a false foreign travel document, which is what the Passport was (an issue I discuss in detail at [40]–[42] below). In response, the Prosecution argued that the District Judge ought to amend each of the s 47(6) charges to a charge under s 47(1) of the Passports Act, and convict the appellant accordingly: GD at [47].

21 Sections 47(1), (3) and (6) provide:

> (1) If —
>
> > (*a*) a person makes a *false foreign travel document* in Singapore, or furnishes a false foreign travel document to another person in Singapore;
> >
> > (*b*) the person does so with the intention of dishonestly inducing another person to use or accept the false foreign travel document as if it were a genuine foreign travel document; and
> >
> > (*c*) by reason of the other person so using or accepting the false foreign travel document as genuine, the person dishonestly —
> >
> > > (i) obtains a gain (whether for himself or someone else);
> > >
> > > (ii) causes a loss to the other person or someone else; or
> > >
> > > (iii) influences the exercise of a public duty,

> the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.
>
> …
>
> (3) If —
>
> > (*a*) a person uses in Singapore a *foreign travel document* in connection with travel or identification;
> >
> > (*b*) the foreign travel document was *not issued to that person*; and
> >
> > (*c*) the person *knows or ought reasonably to have known* that the foreign travel document was not issued to him,
>
> the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.
>
> …
>
> (6) If —
>
> > (*a*) a person has possession or control of a document; and
> >
> > (*b*) the person *knows or ought reasonably to have known* that the document is a *false foreign travel document*,
>
> the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 10 years or to both.
>
> [emphasis added]

22 The District Judge declined to frame charges under s 47(1) of the Passports Act: GD at [54]. The District Judge explained that s 47(1) required proof that the offender had furnished the false foreign travel document with the intention of dishonestly inducing another person to accept it as though it were genuine, and thereby influenced that person as to the exercise of a public duty. However, none of the ICA officers who dealt with the appellant on the 46 occasions he entered or left Singapore using the Passport was called to testify that they were influenced in this manner.

23 Instead, the District Judge amended the s 47(3) charges to the s 47(6) charges. Due to the significance that the reasons given by the District Judge in making the amendments have assumed in these proceedings, I set out the material portions of these remarks (which I shall refer to as "the amendment remarks") in full:[9]

> On the facts, the accused person was in possession of the Philippines passport on each of these 46 occasions as stated in the charges. In relation to the *mens rea* element, I'm of the view that he ought reasonably to have known that this passport was not issued by the Philippines government. The facts showed that he had obtained it through dubious means and although his photograph was affixed to this passport, the particulars therein were not his. …
>
> … The facts as a whole show that he must be wilfully blind to the circumstances under which he obtained this passport. It was certainly not as if he did check with the Philippines authorities … whether the passport was indeed issued by them.
>
> He had paid US$250,000 to one ["Mr Huang"] to obtain this passport for him. This time, on a blank form, he did not go to any Philippines government office and when he received this passport, it was clearly evident that it contained false details and had, in fact, been issued in March 27, months before he even gave ["Mr Huang"] his personal information to apply for the passport. In relation to the US$250,000 which he paid [] for an investment scheme, I disbelieve his evidence. This claim came about belatedly and there was no mention of it in any of his statement[s]. It was also ludicrous to expect the Court to believe that he had paid US$250,000 to buy over a company whose name was coincidentally that of the initials of the false name in the Philippines passport.
>
> … [T]he evidence that has already been produced in the trial is sufficient to make [out] these charges. …

24 Therefore, the District Judge amended each of the s 47(3) charges along the following lines:[10]

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9 NEs, 1 February 2018, page 4 line 7 – page 5 line 10.

10 ROP12.

> You … are charged that you, on [*date*], at [*location of checkpoint*], did have possession of a Philippines passport … which you ought reasonably to have known was a false foreign travel document, and you have thereby committed an offence punishable under Section 47(6) of the Passports Act … .

25 At this point, the District Judge also convicted the appellant of the Immigration Act charges.[11]

The proceedings subsequent to the amendment of the charges

26 Following the amendment of the s 47(3) charges to the s 47(6) charges, the appellant's counsel for the trial applied for the District Judge to recuse herself on the basis that her remarks amounted to prejudging the amended charges: GD at [57]–[58]. The District Judge declined to recuse herself, explaining that she was required to explain why she was satisfied that there was sufficient evidence for her to amend the charges.

27 At that juncture, the Prosecution confirmed that it did not intend to recall any witnesses in relation to the s 47(6) charges. The District Judge adjourned the proceedings for a week to allow the Defence to decide whether it wished to recall any witnesses. When the trial resumed, the Defence confirmed that it would recall four Prosecution witnesses, which the District Judge allowed accordingly: GD at [59]. All four witnesses were ICA officers. The appellant did not, however, recall himself to the stand.

28 The Defence also applied to call two new witnesses, Huang Yueh Chao and Tsai You Cang: GD at [62]–[63]. I will refer to them as Mr Huang and Mr Tsai respectively, without quotation marks. In short, they were alleged to be the "Mr Huang" and "Mr Tsai" said to have been involved in the procurement

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11 NEs, 1 February 2018, page 1 line 22 – page 2 line 24.

of the Passport (see [12] above). The District Judge dismissed this application, holding that what was crucial was the appellant's own state of mind, including his knowledge of what Mr Huang and Mr Tsai had done, and this evidence would come from the appellant himself.

The District Judge's decision

29 Subsequently, the District Judge convicted the appellant on the s 47(6) charges. She rejected the Defence's submission that the *mentes reae* of the s 47(3) charges and the s 47(6) charges were mutually exclusive, since s 47(3) was predicated on the involvement of a genuine foreign travel document, and s 47(6), a false foreign travel document: GD at [75]–[78]. Instead, the District Judge found that the appellant was "wilfully blind to the circumstances under which he obtained [the Passport]" (GD at [76]), since the circumstances under which the appellant had obtained it, as well as the particulars stated on the Passport itself, were both deeply problematic. Also, he had made no checks with the Philippine authorities. The appellant's mental state was therefore compatible with the *mens rea* under both the s 47(3) charges as well as the s 47(6) charges. The District Judge also disbelieved the appellant's claim that he had acquired the Passport under a genuine investment scheme: GD at [80]–[83] and [88]. She found that even if the appellant had believed that he could obtain a genuine Philippine passport in this manner, it would have been clear to him that this was not the case when he actually saw the Passport.

30 I note that the Defence had further submitted that in any event, the appellant had a reasonable excuse for using the Passport, which was a defence under s 47(7) to offences under ss 47(2)–(6) of the Passports Act. This was because ICA had wrongly denied him a Singapore passport in 2010, and he therefore had no choice but to use the Passport.

31 The District Judge found that the appellant had no reasonable excuse in relation to the s 47(6) charges: GD at [95]–[97]. The appellant did not follow up with the relevant authorities when ICA rejected his passport application in 2010, and he also made no attempt to ask the Singapore authorities for help in travelling out of China, especially since he never told them that his existing Singapore passport had, as he alleged, been taken away from him by the Chinese authorities.

32 The District Judge also rejected the Defence's submission that the appellant's *actus reus* could only constitute a single charge under s 47(6), since the offence was one of possession, and his possession of the Passport was continuous.[12] She found that there was no evidence to either confirm or deny the appellant's continuous possession of the Passport. Instead, the evidence related only to his possession of the Passport on each of the 46 occasions: GD at [74].

33 In relation to the Immigration Act charges, the District Judge explained that she had convicted the appellant on them as she did not accept his explanation of how the name "Ngo Boris Jacinto" came about, and it was undisputed that the remaining details on the disembarkation cards which reflected the particulars of the Passport, as well as the declaration that the appellant had never entered Singapore using a passport under a different name, were also false: GD at [69].

34 Following the appellant's conviction, the Defence submitted that he should be sentenced to a fine in relation to both the s 47(6) charges and the Immigration Act charges: GD at [109]. On the other hand, the Prosecution sought a sentence of eight weeks' imprisonment for each Immigration Act

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12 NEs, 23 February 2018, page 6, lines 3–31.

charge, and 12 months' imprisonment for each s 47(6) charge. Further, the Prosecution submitted that the sentences for one Immigration Act charge and three s 47(6) charges should run consecutively, for a global sentence of 36 months and eight weeks' imprisonment:[13] GD at [100], [105] and [108].

35 The District Judge agreed that the Prosecution's sentencing position for each charge reflected the usual starting point for the appellant's respective offences: GD at [111]. She rejected the appellant's contentions that ICA was to blame for his decision to travel on the Passport, and that there was no public interest or need for general deterrence in his case owing to the fact that he was a Singaporean entitled to enter Singapore: GD at [113] and [116]. The District Judge also rejected the appellant's contention that his "risk of sudden cardiac death and a sudden onset of stroke"[14] justified a reduction in his sentence, because the prison authorities were able to care for diverse medical ailments and there was no specific contention that the appellant was unfit to go to prison: GD at [118].

36 However, the District Judge differed from the Prosecution on the appropriate sentences to run consecutively. She ordered two sentences in relation to the s 47(6) charges and two sentences in relation to the Immigration Act charges to run consecutively, for a global sentence of 28 months' imprisonment.

The appeal against conviction

37 In the appeal against conviction, the parties' arguments revolved around the following matters raised by the appellant:

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13 ROP1725 (Prosecution's sentencing submissions at para 26).

14 ROP1684 (Defence's sentencing submissions at para 10).

(a) The appellant submitted that the District Judge descended into the arena when questioning the appellant at the end of his cross-examination because she pursued fresh lines of inquiry to build her own case against him, and cross-examined him excessively to that end.[15] The appellant further submitted that the District Judge's amendment remarks amounted to prejudging his guilt.[16] The appellant therefore contended that the District Judge ought to have recused herself when his then counsel made the application for her to do so.[17] The Prosecution submitted that the District Judge was entitled to have asked the questions that she did,[18] and that she was justified in making the amendment remarks.[19]

(b) The appellant submitted that having heard the submission from the Prosecution that the s 47(3) charges ought to be amended to charges under s 47(1) Passports Act, the District Judge was usurping the prosecutorial function by rejecting the Prosecution's suggested amendment and amending the charges *suo motu*.[20] The appellant further submitted that the District Judge should have given him notice of her intention to amend the charges before asking him questions relating to the amended charges and making the amendments, in line with the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*").[21] The appellant

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15 Appellant's subs at paras 46–47, 77, 84.

16 Appellant's subs at para 99.

17 Appellant's subs at para 179.

18 Prosecution's subs at para 72.

19 Prosecution's subs at paras 82–83.

20 Appellant's subs at para 140.

21 Appellant's subs at paras 167, 170–171.

said that as a result, he was prejudiced in conducting his defence. Relatedly, the appellant submitted that by virtue of s 134(6) of the Evidence Act (Cap 97, 1997 Rev Ed), the District Judge was precluded from taking into account evidence given by him in relation to the s 47(3) charges once the charges were amended to those under a different provision.[22] The Prosecution submitted that the appellant was given adequate notice in so far as the elements of the s 47(6) charges were covered in his cross-examination,[23] and that s 134(6) Evidence Act did not apply.[24] In any case, there was sufficient evidence to convict the accused on the s 47(6) charges.[25]

(c) The appellant submitted that the District Judge erred in refusing to allow the Defence to call Mr Huang and Mr Tsai after the amendment of the s 47(3) charges. The appellant argued that their evidence was "essential to making a just decision in the case" under s 283(2) CPC.[26] The Prosecution responded that the evidence of Mr Huang and Mr Tsai would merely have corroborated evidence that was already on the record, and was thus not "essential" within the meaning of s 283(2) CPC.[27]

(d) The appellant submitted that it was in any case wrong for the District Judge to have framed and convicted him on 46 charges under s 47(6) Passports Act, as he was in continuous possession of the

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22 Appellant's subs at para 94.

23 Prosecution's subs at para 65.

24 Prosecution's reply subs at para 13.

25 Prosecution's subs at paras 56–59.

26 Appellant's subs at para 197.

27 Prosecution's subs at para 89.

Passport.[28] The Prosecution adopted the District Judge's argument that each of the 46 offences was distinct and separate, and it had not been proven that the appellant's possession was continuous.[29] In the alternative, the Prosecution renewed its submission below for the court to amend the s 47(6) charges to 46 charges under s 47(1) Passports Act.[30]

38 When the parties made their reply and oral submissions, a number of fresh points of contention emerged. I therefore gave leave for the parties to make further submissions on those issues:[31]

(a) The appellant submitted that when a trial judge amends a charge under s 128(1) CPC, the appropriate standard for the evaluation of the evidence is the *prima facie* test set out in *Haw Tua Tau and others v Public Prosecutor* [1981–1982] SLR(R) 133 ("*Haw Tua Tau*"), which I will refer to as the "*Haw Tua Tau* test".[32] According to the appellant, the low standard which the trial judge ought to apply when considering the amendment of the charge underscored the fact that District Judge had prejudged the appellant's guilt in her amendment remarks.[33] On the other hand, the Prosecution submitted that when a trial judge amends the charge at the close of the Defence's case, the trial judge must be satisfied that the amended charge is made out beyond reasonable doubt.[34] The

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28 Appellant's subs at para 217.

29 Prosecution's subs at para 96.

30 Prosecution's subs at para 98.

31 Appeal NEs, 18 April 2019, page 156 line 19 – page 157 line 1.

32 Appellant's subs at para 107; appellant's further reply subs at para 6.

33 Appellant's subs at para 118; appellant's further reply subs at para 23.

34 Prosecution's further reply subs at para 4.

Prosecution therefore argued that the District Judge was right to have reached her views on the evidence in her amendment remarks.[35]

(b) After making the submissions based on s 283 CPC (see [37(c)] above), the appellant further argued that the correct provision entitling the Defence to call further witnesses following the amendment of a charge is s 230(1)(*p*) CPC.[36] Applying s 230(1)(*p*), there should not have been a need for the Defence to demonstrate the necessity of the further witnesses' evidence.[37] The Prosecution's position was that s 283 CPC was the applicable provision in this context, and not s 230 CPC.[38] The Prosecution further argued that even under s 230, the reasons given by the District Judge for not calling Mr Huang and Mr Tsai would still stand.[39]

(c) The parties also disagreed as to what course of action this Court should direct in the event that I found that evidence (namely, the testimony of Mr Huang and Mr Tsai) was improperly excluded by the District Judge.

(i) The appellant submitted that this Court was not well-placed to hear the excluded evidence under s 392 CPC.[40] An additional reason for this submission was based on a letter sent to the court by his solicitors on 8 May 2019, stating that the

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35 Prosecution's further reply subs at para 16.

36 Appellant's reply subs at paras 38–39; appellant's further reply subs at para 43.

37 Appellant's further reply subs at para 65.

38 Prosecution's further reply subs at para 20.

39 Prosecution's further reply subs at para 31.

40 Appellant's further reply subs at para 85.

appellant may wish to locate and call several additional witnesses (beyond Mr Huang and Mr Tsai).[41] The appellant submitted that he should therefore be acquitted, as the only other alternative would be to order a retrial, which would be unduly prejudicial to him.[42]

(ii) The Prosecution submitted that this court could hear Mr Huang and Mr Tsai under s 392 CPC, if it so wished.[43] The Prosecution argued that any application by the appellant to call additional witnesses beyond Mr Huang and Mr Tsai should in any event be rejected.[44] In the event that s 392 was not relied upon, the Prosecution submitted that a retrial would be more appropriate than an acquittal.[45]

39 In my view, these various arguments and points fall into four main issues as follows:

(a) Whether the District Judge should have amended the s 47(3) charges to the s 47(6) charges under s 128(1) of the CPC.

(b) Whether the District Judge should have allowed the Defence to call witnesses following the amendment of the charges.

(c) Whether the District Judge's conduct deprived the appellant of a fair trial.

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41 Appellant's further reply subs at para 89.

42 Appellant's further reply subs at para 97.

43 Prosecution's further reply subs at para 43.

44 Prosecution's further reply subs at para 51.

45 Prosecution's further reply subs at para 55.

(d) Whether the appellant was guilty of any s 47(6) offence.

Preliminary Issue: The relationship between the offences under ss 47(3) and 47(6) of the Passports Act

40 Before dealing with the main issues, I make some observations about the relationship between the offences under ss 47(3) and 47(6) Passports Act. The provisions have been set out in full at [21] above. Indeed, an argument which cuts across the various facets of the appellant's appeal was that the differences between the ss 47(3) and 47(6) offences meant the appellant was prejudiced by having run a defence against the s 47(3) charges, only to be convicted on the s 47(6) charges.[46] This presupposed that the appellant's defence would have been meaningfully different had he faced the s 47(6) charges from the start. It is therefore worth examining the elements of the ss 47(3) and 47(6) offences in greater detail.

Elements of the ss 47(3) and 47(6) offences

41 Section 47 of the Passports Act sets out a series of six related offences involving the use of foreign passports. The s 47(3) offence involves the use of a "foreign travel document" not issued to the offender, whereas the s 47(6) offence involves the possession or control of a "false foreign travel document". Section 2 of the Passports Act draws a dichotomy between these two kinds of travel document as follows:

> (1) In this Act, unless the context otherwise requires —
>
> …
>
> "*foreign travel document*" means —
>
> (*a*) a passport; or

[46] See, *eg*, appellant's subs at paras 66, 166, 214; appellant's reply subs at para 17.

> (*b*) a document issued for travel purposes (whether or not also issued for another purpose),
>
> that is *issued by or on behalf of the government of a foreign country* or such international organisation as the Minister may approve;
>
> …
>
> (3) A reference in this Act to a *false foreign travel document* shall be a reference to —
>
> (*a*) a document that purports to be a passport, or a document for travel purposes, issued by or on behalf of —
>
> (i) the government of a foreign country; or
>
> (ii) such international organisation as the Minister may approve for the purposes of the definition of "foreign travel document" under subsection (1),
>
> but that *was not issued by or on behalf of that government* or international organisation; or
>
> (*b*) a document that *is a foreign travel document* that has been *altered by a person who is not authorised* to alter that document.
>
> [emphasis added]

42 According to its definition, a "foreign travel document" is necessarily a genuine document issued by the proper authorities, whereas a "false foreign travel document" is a document which was either not issued by the proper authorities or was originally issued by the proper authorities but had been improperly altered thereafter.

43 From the above, and from a plain reading of s 47(3), the elements of the offence are as follows:

> (a) The offender must use a foreign travel document in Singapore in connection with travel or identification. As a matter of fact, the foreign travel document must not have been issued to the offender.

(b) The offender must know or ought reasonably to have known that the foreign travel document was not issued to him.

44 Meanwhile, the elements of the s 47(6) offence are as follows:

(a) The offender must be in possession or control of a document.

(b) The offender must know or ought reasonably to have known that the document was a false foreign travel document.

The distinction between the offences

45 As the present case aptly demonstrated, whether a foreign travel document is genuine or false is not always readily apparent. If the forgery is sufficiently convincing, the only way to conclusively determine whether a passport is a genuine or false document is for the foreign authority which purportedly issued it to check its own records or conduct its own analysis. If the passport started off as a genuine document, the question could also turn on whether the person who subsequently altered it was authorised to do so. The authorities in Singapore are not necessarily in a position to confirm these matters. In such cases – and as in the present case – the determination of whether a document is a foreign travel document or a false foreign travel document under the Passports Act could turn solely on the evidence of the representative of the foreign authority in question.

46 Thus, the distinction between the two offences may be fairly narrow. Indeed, it is conceivable that the same evidence could point towards either offence being committed, even though these offences are mutually exclusive. For example, an accused person uses a document which appears credibly to be a foreign passport, but which bears a name that is not his own. The accused

person cannot be sure precisely how this passport was created, but the circumstances are suspicious in that he did not go through official channels to obtain the passport. In this scenario, the *mens rea* for either offence could be satisfied: the accused person ought reasonably to have known that the passport in question was a false foreign travel document, *or* he ought reasonably to have known that it was not issued to him. This is because the accused person may be put on inquiry as to both those possibilities owing to the same suspicious circumstances (see [91] below), and the matter would simply turn on which of these possibilities turns out to be true.

Alternative charges or amendment of charges

47 Although it may seem unsatisfactory at first blush that the distinction between whether an offence is committed under ss 47(3) or 47(6) turns on such a narrow ground as the nature of the foreign passport, it is also worth noting that the CPC amply caters for such a scenario.

48 First, where the Prosecution foresees such a difficulty, it may proceed on multiple alternative charges under s 138 of the CPC against an accused person (see *Public Prosecutor v Wee Teong Boo and another appeal and another matter* [2020] SGCA 56 ("*Wee Teong Boo*") at [106]–[109]):

> **If it is doubtful what offence has been committed**
>
> **138.** If a single act or series of acts is such that it is doubtful which of several offences the provable facts will constitute, the accused may be charged with all or any of those offences and any number of the charges may be tried at once, or he may be charged in the alternative with any one of those offences.

49 Second, where the Prosecution has not preferred alternative charges under s 138 CPC, it remains open to the court to convict the accused person on

an alternative charge under s 139 of the CPC provided the necessary prerequisites and safeguards are met (see *Wee Teong Boo* at [115]):

> **When person charged with one offence can be convicted of another**
>
> **139.** If in the case mentioned in section 138 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under that section, he may be convicted of the offence that he is shown to have committed although he was not charged with it.

50 In a case where convicting the accused person of the alternative charge immediately under s 139 without giving him the opportunity to respond to the alternative charge would be prejudicial, the court may exercise its general discretion to amend the charge under s 128(1) of the CPC (see *Wee Teong Boo* at [102]) – which is precisely what the District Judge did in the present case.

51 That being said, it was not entirely clear to me why the Prosecution did not anticipate the difficulty with the s 47(3) charges from the outset when its own witness, Mr Dimagiba, was to testify (based on letters he had sent to ICA in 2013[47]) that his government did not issue the Passport. Indeed, at any rate this problem ought to have been readily apparent once Mr Dimagiba had given his testimony at the trial. At that point, the Prosecution ought to have applied to amend the s 47(3) charges under s 128(1) CPC. Be that as it may, the question I had to decide in the appeal was whether the District Judge ought to have done so at the end of the trial, there having been no such application from the Prosecution at any earlier stage.

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47 ROP997–999 (Exhibits P14–P16).

52 It is clear that the hypothetical scenario posed at [46] above closely resembled the facts of the present case. In such a scenario, the close relationship between ss 47(3) and 47(6) would necessarily inform the analysis of the prejudice caused to the accused person when a charge under one of those provisions is amended to a charge under the other. The key question was whether the evidence adduced by the appellant before the District Judge in the present case amounted to substantially the same defence that the appellant would actually have run had he known all along that he would be facing charges under s 47(6). With this in mind, I turn to the first main issue.

Issue 1: Whether the s 47(3) Passport Act charges should have been amended

Requirements for the exercise of the discretion to amend charges

53 Section 128 of the CPC states:

> **Court may alter charge or frame new charge**
>
> **128.**—(1) A court may alter a charge or frame a new charge, whether in substitution for or in addition to the existing charge, at any time before judgment is given.
>
> (2) A new or altered charge must be read and explained to the accused.

54 In *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 ("*Sharom bin Ahmad*"), the Court of Appeal, discussing the predecessor provision to s 128(1) CPC, held (at [25]):

> … Whilst it is true that in the present case the substitution of the fresh charges were made at a rather late stage in the trial, after the Defence had already presented its case and both sides had delivered their closing submissions, we would point out that *the power conferred by [s 128(1)] CPC, exists at every stage of the trial, so long as judgment has not been given yet.* Hence, the trial judge was clearly empowered to substitute the original joint charge with new separate charges *if he was of the view*

> *that the evidence did not support the original charge but may found others*. … [emphasis added]

55 *Sharom bin Ahmad* is therefore clear authority for the proposition that the trial judge has a discretion to amend an existing charge *suo motu* at any stage of the trial, provided that the existing charge is not made out. The trial judge's discretion to amend the charge *suo motu* is rightly predicated upon the charge being legally or evidentially deficient, because to amend the charge on any lesser basis would be to usurp the exercise of prosecutorial discretion (see *Sarjit Singh Rapati v Public Prosecutor* [2005] 1 SLR(R) 638 at [46] and [49]).

56 There is a second stage to the process when the trial judge amends the charge *suo motu*, and that is the framing of the amended charge. In my view, the trial judge should only frame an amended charge *suo motu* if (*a*) the offence reflected in the intended amended charge is readily apparent from the evidence before the court; (*b*) there is sufficient evidence against the accused person on the intended amended charge; and (*c*) the amendment would not prejudice the accused person.

57 The reason for the first criterion is apparent from the High Court's comment in *Public Prosecutor v Tan Khee Wan Iris* [1994] 3 SLR(R) 168 ("*Iris Tan*") at [7] that the trial judge need not "*search the law for offences which an accused person may have committed*" [emphasis in original]. Indeed, to do so would encroach on the Prosecution's responsibilities. Therefore, the trial judge should not contrive to fit the facts within the scope of some other offence merely because the existing charge is not made out.

58 The appellant and the Prosecution disagreed on the second criterion. The appellant contended that regardless of the stage of the trial, the trial judge merely needs to be satisfied that the amended charge is *prima facie* supportable under

the *Haw Tua Tau* test – in other words, "whether there is some evidence (not inherently incredible) which, if [accepted] as accurate, would establish each essential element in the alleged offence" (*Haw Tua Tau* ([38(a)] *supra*) at [17]).[48] On the other hand, the Prosecution argued that when amending the charge at the close of the Defence's case, the trial judge must be satisfied that the amended charge is proven beyond reasonable doubt on the existing evidence.[49]

59 In support of his position, the appellant submitted that the Indian authorities established that a *prima facie* standard applied in India whenever a judge decides whether to amend a charge. The relevant provision of the Code of Criminal Procedure 1973 (No 2 of 1974) (India) ("the Indian CrPC"), s 216(1), provides that "[a]ny Court may alter or add to any charge at any time before judgment is pronounced." The appellant cited the decision of the Supreme Court of India in *Central Bureau of Investigation v Karimullah Osan Khan* (2014) 11 SCC 538 ("*Karimullah Osan Khan*"), where the court commented (at [18]):

> … Needless to say, the courts can exercise the power of addition or modification of charges under [s 216 of the Indian CrPC], *only where there exists some material before the court, which has some connection or link with the charges sought to be amended*, added or modified. In other words, alteration or addition of a charge must be for *an offence made out by the evidence* recorded during the course of trial before the court. … [emphasis added]

60 It is worth noting that in *Karimullah Osan Khan*, the trial court had inadvertently failed to frame all the charges tendered by the prosecution; the prosecution noticed this omission after the close of the evidence in the trial and

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48 Appellant's subs at paras 108–109.

49 Prosecution's further reply subs at para 8.

applied to the trial court under s 216 of the Indian CrPC to add the omitted charges (*Karimullah Osan Khan* at [6]). This was therefore not precisely the scenario with which I was concerned, where the trial judge had amended the charge *suo motu* at the end of the trial on the basis that the charge was not made out. More importantly, there appeared to be a significant difference between Indian and Singapore criminal procedure so far as the framing of the charge is concerned. In India, it is primarily the duty of the *court* to frame the proper charge against the accused, with the assistance of the Public Prosecutor: see Chandramauli Kumar Prasad & Namit Saxena, *Ratanlal & Dhirajlal: The Code of Criminal Procedure* (LexisNexis, 21st Ed, 2018) at p 1073, and ss 228(1) and 240(1) of the Indian CrPC. I therefore did not consider the Indian authorities to be of great assistance on this point in Singapore law.

61 In my view, after the close of the Defence's case, a trial judge should only amend a charge if satisfied that, were the Defence to adduce no further evidence, the accused person ought to be convicted of the amended charge. This is not the same as the test that the Prosecution contended for, which was to the effect that the legal standard of proof beyond reasonable doubt had to be discharged before the amendment could be made. Although the sufficiency of evidence required to amend the charge after the close of the Defence's case is akin to the cogency of evidence required to sustain proof beyond reasonable doubt, it is important not to collapse the distinction between the two tests.

62 To elaborate, this is the well-known distinction between the legal and evidential burdens of proof. The evidential burden of proof refers to the gap between the state of the evidence at a particular point and the legal standard of proof. If there is already overwhelming evidence before the court in support of the Prosecution's case, then the evidential burden of proof lies upon the Defence to introduce evidence to cast a reasonable doubt, even though the legal burden

of proof remains on the Prosecution throughout: see Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 2015) ("Pinsler") at paras 12.007–12.008. As pointed out in Pinsler at para 12.010, "the evidential burden can shift throughout the trial … so that at one moment the prosecution's case is strong enough to satisfy the standard of proof … and at another, it is not." On this analysis, the trial judge when considering an amendment to the charge on her own motion at any point during the trial must assess whether the Prosecution has met the evidential burden of proof on the amended charge given the state of the evidence at that point.

63 It also follows that where the trial judge is considering an amendment of the charge *suo motu* at the close of the Prosecution's case, the *Haw Tua Tau* test should apply. At that stage, the evidential burden upon the Prosecution is only to introduce *prima facie* evidence to support the charge: see Pinsler at paras 12.008, 12.010. It would not be proper to require any more stringent an evaluation of the evidence by the trial judge at this stage. In fact, it is impermissible for the trial judge to apply a higher standard at this point (see *Haw Tua Tau* ([38(a)] *supra*) at [16]–[17]).

64 The appellant argued that it was essential to apply the *Haw Tua Tau* standard to the amendment of charges at any point during the trial so as to preserve fairness and due process, by ensuring that the accused person has a full opportunity to meet the amended charge against him.[50] In fact, it is evident from the foregoing that the opposite is true. The standard for amendment after the close of the Defence's case is a higher standard than that for amendment at the close of the Prosecution's case. By constraining the trial judge's amendment of the charge *suo motu* at the end of the trial only to cases where the amended

[50] Appellant's further reply subs at paras 7, 12.

charge is made out on the existing evidence, the accused person is not exposed to the risk of meeting a radically different – or deficient – case against him.

65 Requiring the evidential burden of proof for that stage to be met ensures that the trial judge's exercise of discretion at the close of the Defence's case does not amount to helping the Prosecution make good deficiencies in its case on the court's own initiative. Otherwise, it could mean that the trial judge is presupposing the existence of evidence to support the amended charge which the Prosecution has not yet adduced, even though the trial was meant to have drawn to a close. Notably, the Prosecution cannot supplement its evidence upon the amendment of the charge as of right, other than in recalling witnesses who have already taken the stand: s 131 CPC. It may only call additional witnesses, if at all, by applying to the court under s 283 CPC.

66 Crucially, applying this test does not mean that the trial judge commits to convicting the accused person immediately upon amendment. Indeed, such a course of action is already contemplated elsewhere in the CPC, in the specific situation where s 139 applies (see [49] above). By contrast, s 128 CPC, and ss 129 and 131 which flow therefrom, clearly envisage on the other hand that the accused person will have the opportunity to meet the amended charge, at least by recalling witnesses (s 131). I do not touch on s 130, as it deals with a stay of proceedings if the Public Prosecutor's consent is required to proceed on the amended charges. For present purposes, I set out ss 129 and 131:

> **Trial after alteration of charge or framing of new charge**
>
> **129.**—(1) If a charge is altered or a new charge framed under section 128, the court must immediately call on the accused to enter his plea and to state whether he is ready to be tried on this altered or new charge.
>
> (2) If the accused declares that he is not ready, the court must duly consider any reason he gives.

> (3) If the court thinks that proceeding immediately with the trial is unlikely to prejudice the accused's defence or the prosecutor's conduct of the case, then it may proceed with the trial.
>
> (4) If the court thinks otherwise, then it may direct a new trial or adjourn the trial for as long as necessary.
>
> **Recall of witnesses on trial of altered or new charge**
>
> **131.** If a charge is altered or a new charge is framed by the court after the start of a trial, the prosecutor and the accused must, on application to the court by either party, be allowed to recall or re-summon and examine any witness who may have been examined, with reference to the altered or newly framed charge only, unless the court thinks that the application is frivolous or vexatious or is meant to cause delay or to frustrate justice.

67 As I will explain at [127] below, the accused person can also apply to call additional witnesses under s 283 CPC. All that is meant by the threshold for amendment at this stage is that if no further evidence is heard after the amendment, the trial judge would find the amended charge proven beyond reasonable doubt and convict the accused person. Any additional evidence may, however, prove pivotal. As I have explained, this is a safeguard, not a penalty, for the accused person when the trial judge amends the charge *suo motu*.

68 A further safeguard for the accused person lies in the third criterion of prejudice to the accused. This is a well-established requirement for the amendment of charges which applies regardless of whether the amendment is pursuant to an application by the Prosecution or is of the trial judge's own motion: see, *eg*, *Iris Tan* ([57] *supra*) at [7] and *Sharom bin Ahmad* ([54] *supra*) at [27]. I discuss this issue of prejudice in greater detail at [76]–[84] below.

69 In sum, I held that the following requirements must be met before a trial judge should amend the original charge on his or her own motion:

(a) the original charge must be legally or evidentially deficient;

(b) the offence reflected in the intended amended charge must be readily apparent from the evidence before the court;

(c) the Prosecution must have discharged its evidential burden of proof on the intended amended charge given the state of the evidence and the stage of the trial; and

(d) the amendment must not prejudice the accused person.

To be clear, I do not address the case where the Prosecution applies to amend the charge under s 128(1) CPC.

Other prerequisites for the amendment of charges

70 The appellant argued that there are two further procedural safeguards for the accused person which were engaged in the present case: the rule in *Browne v Dunn* ([37(b)] *supra*), and s 134(6) Evidence Act (see [37(b)] above). However, it was clear that neither safeguard applied.

71 The appellant did not cite any authority which would suggest that an amended charge must be put to the accused person before the amendment may be made. For my part, I was unable to see why the rule in *Browne v Dunn* should be extended in this manner. The amendment of the charge is not the same as a conviction on the amended charge. There is no reason why the amended charges must be put to the accused person before the amendment, since the accused person can assert his defence *after* the amendment. Upon the amendment of the charge under s 128(1) CPC, the accused person will always have the opportunity to take the stand by recalling himself under s 131 CPC if he wishes to do so. If the accused person declines to retake the stand under s 131, he cannot complain that he has lost the opportunity to have the Prosecution's case put to him. This would become obvious if we consider a case where there is no amendment of

the charge. The accused person cannot complain on the basis of the rule in *Browne v Dunn* if he has elected to remain silent throughout the trial. The same is true by analogy for the amended charge. It is only if the accused person takes the stand under s 131 CPC that the Prosecution's case on the amended charge must be put to him, to the extent that it differs from that which has been previously put.

72 Section 134(4)(*b*) of the Evidence Act provides that the accused person may not refuse to answer any question (except a question relating mainly to his credibility) on the ground that the answer would incriminate him for another offence. Section 134(6) provides:

> (6) No answer which an accused … shall be compelled to give under subsection (4)(*b*) … shall —
>
> > (*a*) expose the accused to any proceedings for some other offence … or be proved against him in any such proceedings …

Contrary to the appellant's submission, it was clear to me that s 134(6) does not have the effect of preventing evidence adduced at a trial before the amendment of the charges from being relied on in relation to the amended charges. This was because both ss 128–131 and 139 CPC are predicated on the possibility that evidence adduced at a trial may still be relied upon if the charges are amended or in order to convict the accused person of an alternative charge. The appellant's reading of s 134(6) Evidence Act would require the trial to restart in every such case, thereby upending the procedure set out in those provisions. I agreed with the Prosecution's submission that s 134(6) is intended to protect the accused person from prosecution in relation to factually distinct offences at a different trial.[51]

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[51] Prosecution's reply subs at para 11.

Whether the requirements are met

73 Applying the four requirements set out at [69] above to assess whether the District Judge was right to amend the s 47(3) charges to ones under s 47(6), these are my views.

Whether the s 47(3) charges were deficient

74 It was not disputed that the first requirement was met. The s 47(3) charges were not made out, because the Passport was a false foreign travel document (see [41] above). It was also important to note that the District Judge rejected the Prosecution's submission to amend the charges to ones under s 47(1), on the basis that there was insufficient evidence to support all the elements of the s 47(1) offence (see [22] above). Indeed, it was the appellant's case that the District Judge was right to do so.[52] However, the appellant argued that once the District Judge rejected the Prosecution's submission on the amendment of charges, she then had to acquit him.[53] I did not see any basis for this submission. The trial judge's discretion to amend the charges *suo motu* under s 128(1) CPC was not extinguished simply because the Prosecution had proposed a different amendment which was found to be untenable.

Whether the s 47(6) offences were readily apparent from the evidence

75 The second requirement was also met. The s 47(6) offences were readily apparent from the evidence before the court. Given the close relationship between ss 47(3) and 47(6) which I have explained at [46] above, the District Judge cannot be said to have been "search[ing] the law for offences" to substitute for the s 47(3) charges (*Iris Tan* ([57] *supra*) at [7], quoted at [57]

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52 Appellant's reply subs at para 72.

53 Appellant's subs at para 151.

above). Instead, "the evidence available pointed so obviously" to offences under s 47(6) that the District Judge "should have exercised her discretion so as to amend the charge accordingly, unless the proposed amendment prejudiced the [appellant]" (*Iris Tan* at [7]). I discuss this question of prejudice next.

Whether the amendment prejudiced the appellant

76 The appellant's contention was that the risk of prejudice would increase the later the amendment of the charges is made in the course of trial. This is because the accused person would by then have started the conduct of his defence in relation to the original charges, when he may have chosen to present his defence differently had he known he would be facing the amended charges instead.[54]

77 Indeed, in *Chin Siong Kian v Public Prosecutor* [2000] 1 SLR(R) 239 ("*Chin Siong Kian*") at [28], the Court of Appeal held that when it came to the amendment of charges, "the earlier the better", and in any case the best opportunity for the trial judge to consider the need to amend the charges would be at the close of the Prosecution's case. In a number of cases, the courts have pointed to the amendment of charges being made before the start of the Defence's case as a factor pointing to the lack of prejudice: see *Chin Siong Kian* at [29], *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 at [22], and *Public Prosecutor v Annamalai Pillai Jayanthi* [1998] 1 SLR(R) 305 at [18].

78 As I said earlier at [51], the Prosecution ought to have applied to amend the charges earlier. In fact, as soon as Mr Dimagiba had testified, the

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[54] Appellant's subs at paras 156, 164.

Prosecution should have realised the problem with the s 47(3) charges. Here, I would add that at the close of the Prosecution case, the District Judge should have been more alert to this evidential difficulty with the Prosecution's case, and the appropriate amendments to the charges could have been made then.

79 However, as the appellant rightly recognised, the notion that the amendment of charges should, as far as possible, be made before the start of the Defence's case is not a rule in itself, but merely reflects the fact that prejudice to the accused person in the context of the amendment of charges derives from the accused person's lack of a sufficient opportunity to meet and to rebut the amended charges against him. That the amendment of charges is made before the start of the Defence's case would therefore be a compelling factor against there being prejudice to the accused person. But the converse is not necessarily true – it does not follow that the amendment of charges at a late stage would inevitably prejudice the accused person. The amendment of charges by the trial judge after the close of the Defence's case has been upheld in cases such as *Oh Teh Hwa v Public Prosecutor* [1993] 3 SLR(R) 543 (at [9]). In another such case, *Sharom bin Ahmad* ([54] *supra*), the Court of Appeal held at [27]:

> … [W]e failed to see how the joint trial of the two substituted charges caused any prejudice to [the accused person] at all. It was clear that *the substitution of the original charge was made by the trial judge after he assessed the existing evidence that had been presented by both sides and was not based on the introduction of any new facts or evidence*. Furthermore, the trial judge had clearly taken the necessary precautionary safeguards when he made the substitution. … *All the parties were given the opportunity to recall any witnesses for further examination and call new witnesses as well as to make submissions on the new charges*. It was pertinent to note that the trial judge also took care to ensure that defence counsel were not taken by surprise and were prepared to submit on the new charges … [emphasis added]

80 Furthermore, there is a long-established principle that the appellate court can also amend the charge and immediately convict the accused person on the amended charge (see *Lee Ngin Kiat v Public Prosecutor* [1993] 1 SLR(R) 695 ("*Lee Ngin Kiat*") at [42]) – now codified by ss 390(4)–(8) of the CPC, which preserves this power (see in particular ss 390(7)(*b*) and 390(8)(*a*)). *A fortiori*, prejudice to the accused person does not follow mechanistically from the amendment of charges at a late stage.

81 The discretion of the appellate court to convict immediately on an amended charge also provides the context in which many of the pronouncements in the cases must be understood. For example, the appellant relied on the comment by the High Court in *Public Prosecutor v Koon Seng Construction Pte Ltd* [1996] 1 SLR(R) 112 ("*Koon Seng Construction*") at [21] that "[t]he court must be satisfied that the proceedings below would have taken *the same course*, and the evidence recorded would have been *the same*" [emphasis added], a safeguard which must be "rigorously observed".[55] This was said in the context of the High Court convicting the accused person on an amended charge upon a criminal revision. A similar level of rigour would apply to other instances where the court is prepared to convict on a different charge without giving the accused person the opportunity to meet that charge, such as under s 139 CPC (see *Wee Teong Boo* ([47] *supra*) at [98(c)]). On the other hand, where the trial judge amends the charge under s 128(1) CPC, even after the close of the Defence's case, the accused person retains the right to recall any witness, including himself, under s 131 CPC. As I will explain at [127] below, he can also apply to call additional witnesses under s 283 CPC. Furthermore, the court must adjourn the trial for as long as necessary for the accused person

[55] Appellant's subs at para 156.

to prepare his defence, if proceeding immediately with the trial would prejudice the accused person: ss 129(2) and 129(4) CPC. The standards in cases such as *Koon Seng Construction* thus do not necessarily apply with their full rigour in such contexts (see *Chin Siong Kian* ([77] *supra*) at [30]).

82 The appellant strenuously contended that the fact that he had already run his defence when the charges were amended made all the difference in the present case.[56] In this regard, the appellant relied on the Malaysian case of *Public Prosecutor v Salamah Binte Abdullah and Public Prosecutor v Ong Eng Kiat* [1947] 1 MLJ 178 ("*Ong Eng Kiat*"). In *Ong Eng Kiat*'s case, the accused person was charged with dishonestly receiving stolen property, but in the course of the accused person's testimony it emerged that the accused person himself had taken the objects in question from their owner. The trial judge therefore amended the charge and convicted the accused person of theft in dwelling. On appeal, the court held that the amendment of the charge to a much more serious one was improper as "the new charge was *based on the evidence of the accused himself* and it offends against the principle that the prosecution must prove their case" [emphasis added]. The appellate court instead substituted the charge with that for retaining stolen property.

83 It was clear that *Ong Eng Kiat* did not apply in the present context. In *Ong Eng Kiat*, the appellate court found that the Prosecution had adduced no admissible evidence to prove the amended charge of theft in dwelling, and the accused person had therefore inadvertently constructed the entire case for a much more serious charge against himself during his testimony. Had he been charged for theft in dwelling from the start, he may therefore well have elected to remain silent. *Ong Eng Kiat* must be understood in this light. There is

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[56] Appellant's subs at para 166

otherwise no general rule that the defence cannot be held to its case or to the accused person's own testimony once the charges are amended. On the contrary, running a defence on the amended charges that is inconsistent with the original defence may lead to the inference that the new defence is not credible: see *Public Prosecutor v Goh Hock Huat* [1994] 3 SLR(R) 375 at [27].

84 Drawing together the threads above, the trial judge in amending the charges against the accused person at a late stage in the trial should ensure that the defence that the accused person has run in relation to the original charges is likely to be substantially similar to the defence that the accused person may run in relation to the amended charges (*cf Lee Ngin Kiat* ([80] *supra*) at [44] and [46]). In so doing, the trial judge is entitled to assume that the accused person's new defence will not be factually inconsistent with his original defence. Since the accused person will have the opportunity to supplement his defence if necessary whenever the charges are amended by the trial judge under s 128(1) CPC, he will not be prejudiced merely by the need to adduce a limited degree of additional evidence (especially if it relates to only one element of the offence which has changed or been added or subtracted) or to clarify the existing evidence.

85 Turning back to the present case, as I have explained at [45] above, whether the charges should be framed under ss 47(3) or 47(6) turned entirely on the evidence of the Prosecution's witness, Mr Dimagiba. All the elements of the offence under s 47(6) either were proven or could be inferred from the evidence adduced in the Prosecution's case, notwithstanding what the appellant characterised as "concessions"[57] elicited from him on the stand. I discuss the

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57 See appellant's subs at para 14.

evidence in greater detail at [92]–[103] below. In the present context, it would suffice for me to focus on the thrust of the appellant's defence at the trial.

86 The appellant's defence was made clear by the testimony he gave at the trial. *The appellant claimed that he was under the justified impression that he was in possession of a genuine Philippine passport issued to him*. He made this claim knowing the evidence that Mr Dimagiba had given in relation to the nature of the Passport. This characterisation of the appellant's defence is not simply the result of amalgamating two different defences to the two different sets of offences. In fact, although the appellant's position had two facets, they both rose from the same foundation. He believed that the Passport was genuine *and* that it was issued to him. This was because on his case he had submitted an application for a Philippine passport which would ultimately have been processed by the Philippine authorities in the proper manner. His position thus amounted to a single unified defence against both the s 47(3) charges and the s 47(6) charges.

87 This analysis was amply supported by the appellant's evidence at the trial as follows:

(a) In his evidence-in-chief, the appellant asserted that he had a genuine Philippine passport issued to him, and that there was no reason for him to think otherwise:[58]

> Tan: Okay, can I ask him in particular about one sentence in paragraph 22 where he says, "I admit that I had used a Philippines passport which was issued under Ngo Boris Jacinto which are not my actual particulars"?
>
> A This sentence is inaccurate.

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58 NEs, 31 May 2017, page 46 lines 3–12; page 47 line 27 – page 48 line 3.

> Q Why do you say this?
>
> …
>
> A *This passport is meant for me* with my photograph and my thumbprint and fingerprints.
>
> …
>
> Q Aside from the incident on 7th September 2012, did [you] encounter any difficulties using this passport?
>
> A No.
>
> …
>
> A I have used this passport on 94 occasions to various countries. In and out of the country for about 188 times. *I'm very sure that this passport has no problem.*
>
> [emphasis added]

(b) In cross-examination, the appellant maintained that he had obtained the Passport by going through a proper application process:[59]

> Q … Isn't it correct when you presented this passport to the Singapore immigration officers that you knew that the information that is stated in this particular passport was incorrect?
>
> …
>
> Interpreter: Your Honour, he claims that the names are correct but two other things are not correct. Photo is correct as well, with 10 thumbprints. …
>
> Q Okay, Mr Goh, I'm putting prosecution's case to you, putting to you that on the 46 occasions that you presented this Philippines passport to immigration offended---officers, *you knew that the Philippines passport contained false information in respect of your name, date of birth, place of birth and nationality*. You can agree or disagree.

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[59] NEs, 6 June 2017, page 50 line 13 – page 51 line 6; 12 June 2017, page 4 line 25 – page 5 line 6.

A *I disagree.*

Q Now, Mr Goh, this Philippines passport, you did not apply for this Philippines passport personally at any Philippines passport office. Isn't that correct?

A *My agent applied for me.*

[emphasis added]

(c) The appellant further claimed that any unusual features of the Passport were not irregularities. For example, the appellant's evidence was that when he first received the Passport he had noticed that it already contained a Taiwan visa and an exit stamp from the Philippines.[60] It is worth noting that the appellant's explanation in such matters presupposed not only that the Philippine passport was issued to him, but also that it was properly processed by the Philippine authorities:[61]

Q I'm suggesting to you that when you received this Philippines passport and you saw that there was an exit seal on this passport, you knew that someone else had used this passport to exit the Philippines. Is that correct?

A Disagree. I already said this is some special arrangement.

Q Now, Mr Goh, what kind of special arrangement would require somebody to use a passport that you claim is yours?

A Because when I applied, I was at Xiamen, so they have to make this kind of arrangement.

Q Arrangement to do what?

A There must be exit things in the passport.

Court: Why?

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60 NEs, 31 May 2017, page 27, lines 8–11.

61 NEs, 6 June 2017, page 54, lines 2–14.

> Witness: I have no idea. That's the regulation by the Philippines. I think many country has such regulations.

(d) Indeed, the appellant doubled down on his eligibility to receive a Philippine passport in cross-examination, when he claimed that he had obtained Philippine citizenship:[62]

> Q Now, Mr Goh, have you applied for any Philippines citizenship?
>
> A Yes.
>
> Q And when was this?
>
> A 2010.
>
> Q And do you have a Philippines citizenship certificate?
>
> A It was applied by the agent.
>
> Q Okay, but if you are telling this Court, Mr Goh, that you … have Philippines citizenship, are you producing any documentary evidence to prove that?
>
> A Because I have invested in the company so I---eventually I could get a status and then I get a passport.
>
> …
>
> A If I did not have the citizenship, I then---I would not have the passport.
>
> …
>
> Q Putting to you that when you received the Philippines passport and realised that the Philippines passport did not make any reference to you or your particulars, you also knew that you had not been granted any Philippine citizenship.
>
> A I disagree.

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62 NEs, 6 June 2017, page 2 line 24 – page 3 line 3; 12 June 2017, page 5, lines 2–6.

(e) The appellant reiterated his position in response to questions from the District Judge at the end of his cross-examination:[63]

> A … At that time, I did not think so much. I merely wanted to get a passport and leave China as soon as possible. *As long as this is a proper passport, an investment passport*, I wanted to leave the country and go to Taiwan to meet the higher officials.
>
> …
>
> Court: No, Mr Goh, my point is that [Mr Dimagiba's] evidence is that this passport, which you used, which bore the name, Boris Jacinto Ngo, was not issued by the Philippine authorities. Is that right?
>
> Witness: Yes. *I don't believe that this passport has some problem. I'm very sure that this is a genuine passport.* I have used this said---used the said passport, in many countries. My fingerprints, my thumbprints, my photographs were taken. There was no problem with the Filipino passport. I have been using the passport in an[d] out of the country on 188 occasions.
>
> [emphasis added]

88 It was clear to me that the appellant's defence to the s 47(6) charges would have to be substantially, if not entirely, the same as his defence to the s 47(3) charges. The amendment of the charges thus simply required him to refocus his attention on one out of two facets of his existing defence, *ie*, that he believed the passport was a genuine one, which facet had in fact been canvassed significantly in the pre-amendment evidence. Furthermore, after amending the charges, the District Judge gave the appellant sufficient time to prepare the next steps in his defence (see [27] above). I therefore did not consider the amendment to have prejudiced the appellant's defence.

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63 NEs, 12 June 2017, page 47, lines 1–5; page 48, lines 14–22.

Whether the evidential burden was met in relation to the s 47(6) charges

89 I then turn back to the third requirement at [69] above, which is whether the Prosecution had discharged its evidential burden of proof to the relevant standard on the s 47(6) charges on the basis of the evidence before the District Judge at the point of the amendment. The District Judge appeared to direct herself to the same test during the trial when considering whether to amend the charges, before concluding that "the evidence that has already been produced in the trial is sufficient to make [out] these charges"[64] (and see GD at [90]). I note that the appellant also challenged the language used by the District Judge in reaching this conclusion, on the basis that it showed that she had prejudged his guilt. I address this aspect of the appeal at [146]–[153] below.

90 It was not disputed that the appellant was in possession of the Passport with the requisite *mens rea* for possession, although the appellant contended that this should only constitute one charge for continuous possession, not 46 separate charges – an argument which I address at [104]–[115] below. The only remaining element of the s 47(6) offence (see [44] above) in contention was whether the appellant knew or ought reasonably to have known that the Passport was not a genuine one. In my view, the District Judge was correct to have ruled that there was sufficient evidence to find that the appellant ought reasonably to have known that he was in possession of a false foreign travel document.

91 The phrase "ought reasonably to have known" in s 47(6) imports a standard of constructive knowledge. As the High Court held in *Highway Video Pte Ltd v Public Prosecutor and other appeals* [2001] 3 SLR(R) 830 at [49], interpreting the phrase "ought reasonably to know" in a different offence-

64 NEs, 1 February 2018, page 5, lines 9–10.

creating provision, it "contemplates a state of mind where the knowledge of the circumstances would put an honest and reasonable man on inquiry" (citing *Public Prosecutor v Teo Ai Nee* [1995] 1 SLR(R) 450). In *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [135], the Court of Appeal endorsed the similar view that constructive knowledge as embodied in the phrase "ought to have known" refers to "neglecting to make such inquiries as a reasonable and prudent person would make" (*per* Devlin J in *Roper v Taylor's Central Garages (Exeter), Limited* [1951] 2 TLR 284, quoted in *Tan Kiam Peng* at [116]).

92 In her GD (at [77]), the District Judge highlighted the following facts which the appellant would have been well aware of at the relevant time:

(a) The appellant only signed on a blank passport application form which he gave to "Mr Huang", and never went to any Philippine government office.

(b) The appellant paid "Mr Huang" US$250,000.

(c) The Passport which the appellant received contained incorrect details, including a date of issue which predated his giving his personal details to "Mr Huang" for the application.

(d) The Passport also included a name which was not the appellant's, and the wrong date and place of birth.

(e) Despite this, the Passport contained the appellant's photograph.

93 In particular, the juxtaposition of the facts in (c), (d) and (e) above would have caused a reasonable person in the appellant's position to suspect that the Passport was not a legitimate document, regardless of how convincing it

appeared and despite the appellant's ability to travel unimpeded in other countries using it. Were the appellant to receive a passport which contained none of his details, he might be justified in thinking that it was a genuine passport issued to another person. However, the Passport the appellant received bore his photograph. This was therefore either (i) a genuine passport, issued to the appellant, but with many incorrect particulars; (ii) an entirely forged passport; or (iii) a genuine passport which had been modified to include the appellant's photograph (and fingerprints).

94 Either the situation in (ii) *or* (iii) above would entail the Passport being a "false foreign travel document", given its statutory definition (see [41] above). If not, then in the circumstances the only other possibility, logically and factually speaking, was (i) above. However, this was obviously not a likely possibility. Leaving aside the different name reflected in the passport (which the appellant alleged was his Filipino name), this would require the Philippine authorities to have inserted the wrong date and place of birth on the Passport. By the appellant's own account, these were erroneous particulars: see [13] above. Even less believably, it would also require the Philippine authorities to have inserted the wrong date of issue, which was a matter entirely within their control. Since it was inherently unlikely that the Passport the appellant received was issued by the Philippine authorities in that state, any reasonable person in the appellant's position would have strongly suspected that the truth of the matter lay elsewhere, even if he may not have known it for certain – and the only other possibilities were the scenarios (ii) and (iii). In other words, any reasonable person in these circumstances would have been put on inquiry that the Passport was a false foreign travel document. To be clear, this did not require any appreciation of the intricacies of the Passports Act, but rather constructive knowledge of the facts underpinning the falsity of the Passport – namely, that it

was either not issued by the proper authorities, or had been improperly altered (see [42] above).

95 The problems with the particulars on the Passport were not all there would have been to arouse a reasonable person's suspicions. The process by which the appellant procured the Passport through "Mr Huang" would also have put a reasonable person on inquiry as to its legitimacy. In this regard, the appellant's case at trial was that the US$250,000 he had paid "Mr Huang" went towards an investment scheme which could yield a legitimate Philippine passport for the investor.[65] However, in his investigative statements, all the appellant had said was that he had to pay "Mr Huang" "a *fee* of USD $250,000" for the "*arrangements*" [emphasis added] the latter would make to obtain a Philippine passport.[66] In my view, both the meaning of the appellant's words here, and his failure to mention any investment scheme throughout his investigative statements, suggested that no investment scheme existed. The District Judge likewise reached this conclusion in reliance on the appellant's investigative statements (GD at [80]), and there was no challenge against the reliability of these statements on appeal. Once the appellant's account of the investment scheme was disbelieved, the circumstances in which he obtained the Passport became *even more* suspicious, since it included the payment of a "fee" of US$250,000 for an undisclosed purpose.

96 Relatedly, the appellant asserted at the trial that he was a Philippine citizen (see [87(d)] above). This, too, was contradicted by his investigative statements, in which he expressly stated that he had never applied for Philippine

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65 See NEs, 29 May 2017, page 30, lines 7–14; 31 May 2017, page 19, lines 19–24.

66 ROP924 (P11 at para 6).

citizenship.[67] Moreover, no documentary evidence of the appellant's Philippine citizenship was produced at the trial. In my view, the appellant's assertion that he held Philippine citizenship was a lie told to explain away the fact that his Philippine passport also stated the Philippines as his country of nationality. Correspondingly, when the appellant first received the Passport, this discrepancy would have only heightened his suspicions as to its authenticity.

97 Yet another factor which would have put the appellant on inquiry when he received the Passport was the fact that it had already been used, and already contained a Taiwan visa and an exit stamp from the Philippines (see [87(c)] above). He asserted that the exit stamp was a necessary and legitimate arrangement for passports collected overseas. This claim was made for the first time during the appellant's cross-examination.[68] In my view, the suggestion that a passport collected overseas would come furnished with an exit stamp from the country of issue was sufficiently unusual that it called for an explanation and some supporting evidence, such as documentary evidence of the purported government policy requiring this. The appellant's belated and unsupported assertion was not credible. Even if it were plausible, I would nevertheless consider it to be another factor which would have put the appellant on inquiry.

98 In short, there were numerous factors which would have put the appellant, not to mention an honest and reasonable person in his position, on inquiry as to the fact that his Philippine passport was a false foreign travel document.

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67 ROP925 (P11 at para 8).

68 See NEs, 6 June 2017, page 53, lines 14–16.

99 The appellant further argued that "Mr Huang" and "Mr Tsai" may have made representations to him which may have led him to reasonably believe that the Passport was genuine.[69] I did not accept this argument. First, although the appellant sought to justify his belief in the authenticity of the Passport during his testimony (see [87(a)] and [87(e)] above), he never suggested that "Mr Huang" and "Mr Tsai" had played a role in reassuring him of this. Second, the appellant also never indicated that he had in fact asked "Mr Huang" or "Mr Tsai" about the authenticity of the Passport.

100 In fact, by the appellant's own testimony in examination-in-chief, "Mr Huang" was of very limited use in clarifying the reasons for the various discrepancies in the Passport:[70]

> Q Okay. What about the other particulars that were different?
>
> A Date of birth and … place of birth.
>
> Q *Did he explain why they are different?*
>
> A He said that if I needed to change the particulars, he would have to go back to the Philippines to get those particulars amended. In that case, I will have to reapply the passport and it may take a longer time.
>
> Q And therefore, you would---you just accepted the passport as it was?
>
> A At that time, I had no choice. My Singapore passport had expired. I have no form of identification. …
>
> [emphasis added]

101 It was notable that in response to his counsel's question in examination-in-chief, the appellant provided no explanation from "Mr Huang" as to why his date and place of birth were incorrect. Instead, "Mr Huang" specifically told the

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69 Appellant's subs at para 200.

70 NEs, 31 May 2017, page 28, lines 13–21.

appellant that only the Philippine authorities could address this issue. In other words, the appellant's own evidence only underlined what would already have been obvious from the circumstances: the only reasonable means of inquiry an honest and reasonable person in these circumstances would have taken up was to inquire with the Philippine authorities. The appellant did not do so.

102 The appellant's refrain that he "had no choice" but to use the Passport rang particularly hollow when considered in the light of the fact that he had continued using the Passport from March 2011 until the date of his arrest in September 2012. Even if one were to accept that the appellant had his reasons for not checking the Passport with the Philippine authorities immediately upon receipt, this did not explain why he did not do so for another year and a half.

103 As a result, I considered there to be ample evidence to find that the appellant ought reasonably to have known that the Passport was a false foreign travel document. Since the appellant did not dispute possession of the passport, there was sufficient evidence before the District Judge to amend the s 47(3) charges to the s 47(6) charges.

Whether there should have been one charge or 46 charges under s 47(6) Passports Act

104 However, in both his investigative statements and in cross-examination, the appellant had confirmed that from the day that he received the Passport to the day of his arrest, he did not hand it over to anyone else.[71] This was clear evidence that the appellant had been in continuous possession of the Passport across the dates of the s 47(3) charges, from 20 March 2011 to 7 September 2012. Despite this, the District Judge held that "[t]here was *no* evidence

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[71] ROP928 (P11 at para 21); NEs, 6 June 2017, page 17, lines 19–27

produced during the trial to either confirm or deny" the appellant's continuous possession [emphasis added] (GD at [74]). With respect, the District Judge erred in this regard.

105 The Prosecution appeared to take the position that even if the evidence may suggest that the appellant was in continuous possession of the passport, it would still be permissible to prefer 46 s 47(6) charges against him. This was because the various occasions on which the appellant used the Passport to enter and exit Singapore were on different days, at various different checkpoints, in the presence of different immigration officers, and for different purposes.[72] The Prosecution submitted that this would be in line with the factors which the courts have consistently endorsed in order to determine whether or not offences are "distinct" (see, *eg*, *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [141] and the cases cited therein).[73]

106 Against this, the appellant argued that the act of possession was necessarily a continuing state of affairs starting from the gaining of possession and ending with the loss of possession.[74] The appellant cited the Malaysian decision of *Lee Teng Tai v Public Prosecutor* [1953] MLJ 2 ("*Lee Teng Tai*") in support of this argument. On the other hand, Mr Mohamed Faizal SC ("Mr Faizal"), appearing for the Prosecution, submitted at the hearing of the appeal that both the majority and minority judgments in *Lee Teng Tai* could in fact be read as giving the Prosecution the discretion to prefer separate charges

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72 Prosecution's subs at para 96.

73 Prosecution's subs at para 93.

74 Appellant's subs at para 217.

for the possession of the same item, so long as the Prosecution does not advance the case that the evidence supports continuous possession.[75]

107 In *Lee Teng Tai*, the accused person was convicted of a single charge for the possession of ammunition across the span of three years, specifying five different locations. Mathew CJ, delivering the majority judgment upholding the conviction, said:

> Although the charge contains particulars of five places in the district of Kinta, it is clear from the record that the prosecution case from the outset was that over a long period the appellant had been continuously in possession of ammunition in the form of a hand grenade. The places mentioned in the charge were no more than an indication to the appellant that possession would be proved at five places. *The view of the prosecution on the statements of the witnesses was that the evidence disclosed a continuing act of possession.* On this view it would have been improper to allege five offences when only one had been committed.
>
> … ***Possession is of its nature continuous, and so long as possession continues the offence continues.*** There can be no doubt that it was open to the prosecution to charge a continuous act of [possession] over a period exceeding 12 months, and *it would have been artificial and wrong for the prosecution, taking the view it did of the statements of witnesses, to break up a continuous offence into five separate offences*.
>
> [emphasis added in italics and bold italics]

Murray-Aynsley CJ, dissenting, held that he would have overturned the conviction on the basis that the charge, framed as taking place at five discrete locations, was duplicitous.

108 It was clear to me that neither judgment should be read in the manner that Mr Faizal contended for. While it is certainly up to the Prosecution to decide what and how many charges to prefer based on its view of whether the

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[75] Appeal NEs, 18 April 2019, page 87 line 13 – page 89 line 18.

evidence supports the fact of continuous possession, the Prosecution is not entitled to have its view accepted by the court at face value. If, at the trial, the evidence in fact shows that the possession in question is continuous, the court certainly ought to amend the charges into a single charge. I did not think Mathew CJ's words could be understood in any other way.

109 Mr Faizal argued that if this were the law, an accused person could defeat a possession charge extending across a period simply by proving isolated instances where he lost possession.[76] That is correct – an accused person cannot be convicted of a possession charge which covers periods where he is proven not to be in possession. But the proper response is a simple one: the court should amend the charge to account for the breaks in possession under either s 128(1) or s 139 CPC.

110 In my view, Mathew CJ's statement in *Lee Teng Tai* that "so long as possession continues the offence continues" governs the number of charges that can be preferred in offences where the *actus reus* consists solely of possession. In such cases, the question of whether the offences alleged are "distinct" in the sense of time, place, persons, and nature (see *ADF* ([105] *supra*) at [141]) barely enters into the picture.

111 It may appear arbitrary at first blush that the number of possession charges will depend on the number of breaks in possession, which may occur at random. This is particularly since s 307(1) CPC requires the court to impose at least two consecutive sentences if an accused person is convicted on at least three charges at one trial: see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [24]. However, when sentencing for such offences, the

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[76] Appeal NEs, 18 April 2019, page 85 line 26 – page 86 line 5.

court will be careful to ensure that the total sentence imposed for an act or series of acts of possession accords with the totality of the criminality of those acts. It does so by applying the "single transaction" rule and the totality principle, as it does in every sentencing decision: see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [98].

112 In the present case, the gravamen of the s 47(6) offence lay in the harm caused by the use, actual and potential, of false travel documents for travel and identification during the period of possession. As such, whether the appellant was charged with 46 s 47(6) offences on each instance he used the Passport to enter or exit Singapore, or a single s 47(6) offence spanning across all those instances, there was no meaningful difference in his overall criminality as captured by either of these two sets of charges. It followed that all else being equal, the total sentence imposed for either of the two sets of charges should also be the same.

113 The Prosecution submitted, however, that if I found that the 46 distinct charges under s 47(6) of the Passports Act could not be sustained, I should instead amend the 46 s 47(6) charges to 46 charges under s 47(1) of the Passports Act.[77] Here, it was important to bear in mind that s 47(1) is a significantly different offence from s 47(6). I agreed with the District Judge that convicting the appellant under s 47(1) would require evidence that the ICA officers accepted the Passport as though it were genuine, and that by this reason they were influenced in their exercise of a public duty. The intuitive appeal of this proposition was insufficient on its own. The Prosecution also appeared to appreciate the need for evidence on this point, as it sought to rely on the Statement of Agreed Facts adduced at the trial, which stated that each ICA

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77 Prosecution's submissions at para 98.

officer in question would not have allowed the appellant entry into Singapore by issuing him a Visit Pass "but for the documents that were furnished to him or her".[78] This statement of causation, however, still fell short of proof that the ICA officers accepted the Passport as though it were genuine. I therefore did not consider it appropriate to amend the s 47(6) charges to charges under s 47(1), especially at the appellate stage, when the Prosecution had not appealed against the District Judge's decision on this issue.

114 More importantly, since a precise flaw in the s 47(6) charges had been identified – namely, that multiple charges had been preferred in respect of a continuous act of possession – those charges should *prima facie* be amended in a manner that directly remedied that flaw. This could be done by amending one of the s 47(6) charges to cover the entire period of time, and setting aside the convictions on the remaining 45 s 47(6) charges.

115 In sum, the District Judge ought to have amended the 46 s 47(3) charges into a single s 47(6) charge covering the same period of time. The further amended charge is set out at [154] below, after I explain why I rejected the appellant's remaining submissions.

Issue 2: Whether the Defence should have been allowed to call witnesses following the amendment of the charges

116 As I have noted at [28] above, after the s 47(3) charges were amended, the appellant sought to call Mr Huang and Mr Tsai as additional witnesses, but the District Judge refused this application. The parties' contentions on the calling of additional witnesses took the form of three sub-issues: (a) the appropriate procedure under which such witnesses are to be called; (b), whether

78 ROP85 (SOAF at para 9); Prosecution's submissions at para 105.

the District Judge ought to have allowed the application to call Mr Huang and Mr Tsai; and (c) what the appellate court should do.

The appropriate trial procedure post-amendment

117 The appellant submitted that s 230(1)(*p*) CPC governs the calling of witnesses after the amendment of the charge (see [38(b)] above). He argued that this followed by analogy with ss 230(1)(*g*)–(*i*), which provide that where the charge is amended at the end of the Prosecution's case, and the accused person does not plead guilty to the amended charge, "the court must proceed in accordance with the procedure set out hereinafter" (*ie*, ss 230(1)(*j*)–(*x*)).[79] In essence, the appellant was contending that following the amendment of the charge at any stage after the Defence is called, the trial should restart from the beginning of the Defence's case with the accused person giving or calling evidence in his defence, *ie*, *in accordance with s 230(1)(*p*) CPC*. This would mean that the accused person would have the right to call any relevant witness for his defence at that stage.

118 The relevant provisions in s 230 state:

> **Procedure at trial**
>
> **230.**—(1) The following procedure must be complied with at the trial in all courts:
>
> …
>
> (*g*) the court may alter the charge or frame a new charge before calling on the accused to give his defence and if the court does so, the court must follow the procedure set out in sections 128 to 131;
>
> …
>
> (*i*) if the accused refuses to plead or does not plead or claims trial to the altered or new charge, the court

[79] Appellant's reply subs at para 39.

> must proceed in accordance with the procedure set out hereinafter;
>
> (*j*) if after considering the evidence referred to in paragraph (*e*), the court is of the view that there is some evidence which is not inherently incredible and which satisfies each and every element of the charge as framed by the prosecutor or as altered or framed by the court, the court must call on the accused to give his defence;
>
> …
>
> (*p*) if the accused is giving evidence in his own defence, the evidence shall be taken in the following order:
>
> (i) the accused shall give evidence …;
>
> (ii) any witness for the defence of the accused shall give evidence …;
>
> (iii) where there are other co-accused persons, they and their witnesses shall then give evidence …;
>
> …

119 I was unable to accept the appellant's submission. Sections 230(1)(*g*)–(*i*) apply to the amendment of the charge at the end of the Prosecution's case. It is for that reason that s 230(1)(*i*) provides for the remainder of the s 230(1) procedure to be followed, since that is what would happen in any case even if the charge were not amended at that point. Likewise, although s 230(1)(*g*) expressly provides for the court to follow the procedure in ss 128–131 CPC, there is no reason to think that the procedure in ss 128–131 would otherwise not have applied. Indeed, sections 230(1)(*g*)–(*i*) appeared to be little more than clarificatory provisions which restate the powers of the court and the appropriate procedures which would have been apparent in any case.

120 I also did not see any reason in general why the trial should effectively restart from the start of the Defence's case upon an amendment of the charge at the end of the trial. Sections 128–131 CPC already provide for a set of

procedures to follow upon the amendment of the charge: see [66] above. In particular, ss 129(3)–(4) draw a distinction between "proceeding immediately with the trial" and directing "a new trial" (or an adjournment). This strongly suggests that in the former case, the trial continues along its previous course, rather than reverting to s 230(1)(*p*) or any earlier stage.

121 In addition, since the court in allowing an amendment to the charge is always concerned with prejudice to the accused person (see [68] above), it is likely that in every case involving an amendment to the charge at a late stage, the Defence's case would not be radically affected by the amendment (specifically, in the case of the trial judge amending the charge *suo motu*, see [84] above). This would explain why s 131 CPC provides that the parties are entitled only to recall witnesses who have already taken the stand, and only "with reference to the altered or newly framed charge": see [66] above.

122 Since I have held that the trial would not revert to any earlier stage under s 230(1) CPC, any need for the Defence to call additional witnesses after the amendment of the charge at a late stage would fall within the scope of s 283 CPC, which states:

> **Power of court to summon and examine persons**
>
> **283.**—(1) A court may, on its own motion or on the application of the prosecution or the defence, at the close of the case for the defence, or at the end of any proceeding under this Code, summon a person as a witness or examine a person in attendance as a witness, whether or not summoned, or recall and re-examine a person already examined.
>
> (2) The court must summon and examine or recall and re-examine such a person if it thinks his evidence *is essential to making a just decision in the case*.
>
> (3) The exercise by a court of its power under subsection (1) is not a ground for appeal, or for revision, unless the appellant, or the applicant, as the case may be, shows that the examination has led to a failure of justice.

[emphasis added]

Whether the District Judge should have allowed the witnesses to be called

123 From the above, it is clear that the provision gives the court a wide measure of discretion to allow the calling of any witness, existing or additional, at the end of a trial. However, there are two dimensions to the calling of witnesses under s 283 – the calling of witnesses is mandatory in the scenario set out under s 283(2) (where the evidence is "essential to making a just decision in the case"), and is otherwise at the court's discretion where s 283(2) does not apply (see *Mohammad Ali bin Mohd Noor v Public Prosecutor* [1996] 2 SLR(R) 692 ("*Mohammad Ali bin Mohd Noor*") at [51]–[53]). The question that arose for my consideration concerned the mandatory aspect *ie,* whether the District Judge's refusal to allow Mr Huang and Mr Tsai to be called made the appellant's conviction unsafe by falling afoul of s 283(2) (see [37(c)] above, and see also *Mohammad Ali bin Mohd Noor* at [56]–[57]).

124 In my view, the appellant's conviction remained safe despite the absence of Mr Huang and Mr Tsai's evidence. I agreed with the District Judge that the evidence which the appellant suggested Mr Huang and Mr Tsai would give would not have been of significance to her findings against him: GD at [88]. The circumstances of the appellant's dealings with Mr Huang and Mr Tsai, even on his own evidence, were sufficiently dubious that he would have been put on inquiry about the legitimacy of what they were procuring for him from the outset: see [95] above. Even if Mr Huang and Mr Tsai had given the appellant some reason to believe that they would procure a genuine Philippine passport for him, the appellant's suspicions as to the authenticity of the Passport would only have intensified when he actually received it: see [93]–[94], [96]–[97] above. Whether the appellant "ought reasonably to have known" was a matter of his own state of mind. To that end, anything which Mr Huang or Mr Tsai said

or did would only be relevant to the appellant's guilt to the extent that they had influenced the appellant's state of mind. If so, those matters should have been mentioned by the appellant in his testimony, but they were not. In the absence of such testimony, any assertion by Mr Huang or Mr Tsai of any reassurances they had made to the appellant would be of minimal probative value.

125 Furthermore, and relatedly, the evidence suggested considerable doubt as to the veracity of the evidence which Mr Huang and Mr Tsai would have given. This was because the appellant's own account of the roles played by Mr Huang and Mr Tsai appeared to shift constantly. In his investigative statement, the appellant said that his friend "Mr Chen" had introduced him to "Mr Wang" to get the appellant a passport so that he could travel to Singapore to visit his sick mother.[80] However, at the trial, "Mr Chen" had transformed into "Mr Tsai" (who was the appellant's boss),[81] and "Mr Wang" into "Mr Huang" (whom the appellant had already known for some years).[82] The purpose for "Mr Tsai" procuring a passport for the appellant had also changed to an urgent business trip that "Mr Tsai" wanted the appellant to take to Taiwan.[83] This suggested that the appellant might use Mr Huang and Mr Tsai as convenient persons to convey whatever evidence he thought would benefit his case.

126 Given what I have explained at [123] above, it followed that my role was not to decide whether the District Judge should have exercised her general discretion to call Mr Huang and Mr Tsai, but whether the District Judge was obliged to do so under the mandatory provision in s 283(2) CPC. My conclusion

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80 ROP924 (P11 at para 6).

81 NEs, 6 June 2017, page 55, lines 19–28.

82 NEs, 6 June 2017, page 55 line 31 – page 56 line 27.

83 NEs, 31 May 2017, page 17 line 5 – page 18 line 22.

was therefore that there was no basis to intervene in the District Judge's refusal to allow Mr Huang and Mr Tsai to be called as witnesses.

127 Nevertheless, I would add that in the context of the trial judge's general discretion under s 283(1) CPC, it would normally be prudent for a trial judge to err in favour of allowing the Defence to call additional witnesses following the amendment of the charge after the end of the Defence's case. In such cases, the trial judge would be anxious to ensure that the accused person nevertheless has a full opportunity to present his defence to the amended charges. The trial judge should not reach a settled view on the accused person's guilt at this stage, but must keep an open mind that any additional evidence adduced thereafter may weigh in favour of a different conclusion, or may merit a reassessment of the existing evidence (see [66] above). For the trial judge, a premature commitment to a particular view of the evidence risks calcifying that view and hindering the processes which I have just described. Despite the high evidential threshold for the trial judge to amend the charge *suo motu* at this stage, the decision reached is in this sense only a tentative one.

128 The trial judge should therefore readily allow the calling of evidence that appears relevant to the parties' cases, even if the evidence does not appear to be dispositive. This is particularly since, had the charge been amended at an earlier stage of the trial, the Defence would have been able to call any relevant witnesses of its own volition as part of its case. That being said, I do not for a moment suggest that the trial judge should close her mind to the state of the evidence and the parties' cases – the trial judge would be entirely justified to refuse the calling of a clearly irrelevant (or frivolous, vexatious or dilatory) witness.

129 In the present case, the District Judge's reasoning (both in the GD at [88] and during the proceedings[84]) suggested that she did not allow Mr Huang and Mr Tsai to give evidence because she found that their intended evidence would not be dispositive. However, Mr Huang and Mr Tsai's evidence was clearly not entirely irrelevant to the case, in that it was intended to corroborate the appellant's account of how he obtained the Philippine passport.[85] The District Judge's point was that even if she were to believe every aspect of the appellant's evidence that Mr Huang and Mr Tsai were intended to corroborate, she would still have found the appellant to have insufficient reason to believe that he had received a genuine passport. This reasoning was clearly correct so far as whether such evidence was "essential to making a just decision in the case" (as I have explained at [124] above), but I would suggest that the District Judge did not fully appreciate the need to also consider whether the relevance of Mr Huang and Mr Tsai's evidence would nonetheless justify her exercising her general discretion under s 283(1) CPC to allow them to be called. However, as I have explained, this was not the ground relied on for appellate intervention.

The role of the appellate court

130 Although my conclusion on the District Judge's refusal to allow the Defence to call additional witnesses made it strictly unnecessary to deal with this point, I would nevertheless note that even if I were to take the view that the District Judge had erred in excluding evidence which she should have allowed, this would not have been dispositive of the appellant's appeal. This is made clear by s 169 of the Evidence Act, which provides:

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84 NEs, 14 February 2018, page 5 line 16 – page 6 line 29.

85 NEs, 14 February 2018, page 6, lines 16–19.

> **No new trial for improper admission or rejection of evidence**
>
> **169.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

131 Likewise, the Court of Appeal in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") has set out a measured framework for the appellate court's approach in cases where there are irregularities in the conduct of the trial or the nature of the evidence. In short, an acquittal should be ordered where "the evidence adduced at the original trial was insufficient to justify a conviction", and the conviction should be upheld where "the evidence adduced at the original trial was so strong that a conviction would have resulted" anyway (*AOF* at [296]). In cases that fall in between these two extremes, such as those where the passage of time is prejudicial to the accused person or where the fairness of the trial is compromised, the appellate court must weigh all the factors to determine whether a retrial should be ordered (*AOF* at [297]–[298]).

132 In my view, whether under s 169 of the Evidence Act or under the framework set out in *AOF*, the evidence amply justified upholding the appellant's conviction, even if I were to find that the District Judge had improperly excluded Mr Huang and Mr Tsai from giving evidence, or if any other aspect of the amendment of the charges had prejudiced the appellant.

Issue 3: Whether the District Judge's conduct deprived the appellant of a fair trial

133 Next, I address the appellant's submissions that the District Judge's conduct deprived him of a fair trial, as she had descended into the arena in

questioning him, and had made remarks which showed that she had prejudged his guilt. I take these two sets of complaints in turn.

Whether the District Judge had descended into the arena

134 The Court of Appeal extensively reviewed the principles of judicial interference in *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 ("*Mohammed Ali bin Johari*"). It summarised them as follows (at [175]):

> …
>
> (b) [T]he judge must be careful *not* to descend (and/or be perceived as having descended) into the arena, thereby clouding his or her vision and compromising his or her impartiality as well as impeding the fair conduct of the trial by counsel and unsettling the witness concerned.
>
> (c) However, the judge is not obliged to remain silent, and can ask witnesses or counsel questions if (*inter alia*):
>
> (i) **it is necessary to clarify a point or issue that has been overlooked or has been left obscure** …
>
> (ii) it enables him or her to follow the points made by counsel;
>
> (iii) **it is necessary to exclude irrelevancies and/or discourage repetition and/or prevent undue evasion and/or obduracy by the witness concerned** (or even by counsel);
>
> (iv) it serves to assist counsel and their clients to be cognisant of what is troubling the judge, provided it is clear that the judge is keeping an open mind and has not prejudged the outcome of the particular issue or issues (and, *a fortiori*, the result of the case itself).
>
> **The judge, preferably, should not engage in sustained questioning until counsel has completed his questioning of the witness on the issues concerned.** Further, any intervention by the judge during the *cross-examination* of a witness should *generally* be *minimal*. In particular, **any intervention by the judge should not convey an impression that the judge is predisposed towards a particular outcome** in the matter concerned …
>
> (d) What is crucial is not only the quantity but also the qualitative impact of the judge's questions or interventions. The

> ultimate question for the court is whether or not there has been the possibility of a denial of justice to a particular party …
>
> …
>
> (f) Each case is both *fact-specific as well as context-specific*, and no blanket … set of rules can be laid down.
>
> (g) **The court will only find that there has been excessive judicial interference if the situation is an *egregious* one.** Such cases will necessarily be *rare*.
>
> [emphasis in original in italics; emphasis added in bold]

These principles were recently endorsed and expanded upon by the Court of Appeal in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") at [165]–[181].

135 The appellant's complaints in the present case concerned in particular the District Judge's questioning of him on the witness stand. In this regard, the High Court said in *Ng Chee Tiong Tony v Public Prosecutor* [2008] 1 SLR(R) 900 ("*Tony Ng*") at [22]:

> … In my view, while it is entirely proper for a trial judge to ask questions to clarify an unclear answer, or even to establish a crucial point (which I should add must be done with circumspection and in a neutral manner), what was done in the present case went past that. It is the duty of the Prosecution to bring out the evidence to prove its case; it is not the judge's duty to do so, and certainly not to take over the cross-examination to make up for any shortfall in the conduct of the case by the prosecutor. And it is certainly not for a trial judge to test the credibility of a witness by sustained questioning. Quite apart from the problem of giving a perception of bias to a reasonable observer, it is well known that witnesses often respond differently to a judge as compared with cross-examining counsel. …

136 The appellant submitted that the District Judge's questioning of him violated the standards set out in the cases above. He made this submission with particular reference to three lines of questioning undertaken by the District Judge. At the outset, it is worth noting that these questions were asked at the

end of the Prosecution's cross-examination, and not at an earlier stage (see *Nabill* at [173], [175] and [180]). The questions asked by the District Judge which the appellant specifically took issue with in his submissions[86] are reproduced below (as underlined).

(a) In relation to when the appellant supplied "Mr Huang" with his personal particulars for the passport application:[87]

> Court: I want to clarify some aspects of your evidence, Mr Goh. <u>When did you first start taking steps to obtain the Philippines passport?</u>
>
> Witness: When Huang Yue Zhao came to look for me at---in Xiamen, China, he told me the whole process and I agreed to his suggestion. I believe it was sometime towards the end of May.
>
> Court: <u>What year?</u>
>
> Witness: 2010.
>
> Court: <u>So that was the first time you heard about this Philippine passport?</u>
>
> Witness: He explained to me---
>
> Court: No. Was that---
>
> Witness: ---the process of---
>
> Court: ---the first time? Listen to my question.
>
> Witness: Yes, I think so.
>
> Court: So, Mr Goh, you have given evidence and you have been cross-examined over a period of time. Okay. I am not here to cover anything new. I just want to clarify aspects of your evidence. So I will appreciate if you just listen to my question and answer it as I have framed it. <u>So is it that the first time you took</u>

86 Appellant's subs at paras 69–75.

87 NEs, 12 June 2017, page 38 line 2 – page 41 line 3.

steps to obtain the Philippines passport was in May 2010?

Witness: Yes.

Court: Who did you liaise with to obtain this passport?

Witness: Huang Yue Zhao.

Court: What information did you provide to him to obtain the passport?

Witness: Initially, we talked about investment---

Court: Yes.

Witness: ---by buying over a company.

Court: Yes.

Witness: The passport issue was only raised in August 2010. After buying over the company---

Court: Yes.

Witness: ---we were then allowed to apply for a passport.

Court: Alright. Okay. So, again, what information did you provide to him to obtain the passport?

Witness: **In August 2010**, I had given him many---I have given him a lot of information.

Court: Yes.

Witness: He---I have given him my thumbprints and fingerprints---

Court: Yes.

Witness: ---and I signed a form and given him photographs.

Court: Yes.

Witness: He asked for my family background, my fam---information of my parents, my family and all that **in May 2010**.

Court: May 2010 or August 2010?

Witness: In May 2010. He got my family background and information. But in August 2010, I

provided my information for the passport application. I had given my thumbprints and fingerprints, my photograph and I have signed a form.

Court: So this was for the passport application in August 2010?

Witness: Yes.

Court: So it was only in August 2010 that you gave him information specifically for the passport, is it?

Witness: Yes.

Court: Did you give him your date of birth and where you were born?

Witness: Yes.

Court: This was in August 2010?

Witness: No. I've given him the information in May 2010 because, at that time, he was going there to buy over the company.

Court: So when you say---moving to the company, this company, when you say "buy over", it's a pre-existing company, is it?

Witness: Yes.

Court: So it is not a situation where you were setting up a new company?

Witness: That's right. We wanted to do this fast because he told me that setting up a new company would take a very long time.

Court: When did you eventually receive the Philippines passport?

Witness: Sometime in March 2011.

Court: Look at the issue date of the passport, exhibit P3, second page. What is the date the passport was issued?

Witness: It's stated here "17th March 2010."

Court: Can you explain how this is the---how this can be when you only provided the information to obtain the passport in August

2010 and this issue date on the passport predates it?

Witness: At that time, I was very---I did not understand why this is so.

Court: No, I'm not concerned with the stamps in the passport. I can obtain a passport in 2010 but I don't travel until 2012. There's nothing wrong with that. Okay? I'm not asking you about when it was first used. That is undisputed. It's in---all---it's---all the stamps are there. Okay, Mr Goh? What I'm asking you is how the issue date of this passport can be March 2010 when you only provided information to obtain it in August 2010? And this issue date of the passport predates that.

Witness: That's right. I could not understand this part as well when I received the passport and this is the state of the passport.

Court: Okay. Okay, stop.

Witness: I do not know how they got this passport. I have applied for the passport. I do not know how the process---

Court: Okay, stop. I'm not asking you about the approval. So, not only is the issue date inexplicable, alright, your date of birth and your place of birth is also clearly wrong. Correct? It's also clearly wrong. Is that right?

Witness: That's right.

Court: And, according to you, you knew this the moment you received the passport. Correct?

Witness: Yes.

[emphasis added in underline and in bold]

(b) In relation to the Philippine company which the appellant had allegedly bought:[88]

Court: Okay. I want to refer you to something else. Defence documents. Give me a moment.

[88] NEs, 12 June 2017, page 41, lines 4–31.

What is the name of the company which you bought over in the Philippines?

Witness: It's a tyre shop.

Court: What is the name of the company you bought over in the Philippines?

Witness: I can't remember now.

Court: You can't remember? Refer to the document, D9. What is the name of the company?

Witness: BJN Tire Supply.

Court: The initials of the company are the same as your Philippines name. Is that not? Yes?

Witness: BJN, yes.

Court: It is the same as your Philippines name, right? The initials, Boris Jacinto Ngo, right?

Witness: Yes.

Court: Isn't it a **huge coincidence** that a company, which you are buying over, has got the same name as your Philippines name?

Witness: I have no idea how they process this matter. How they acquire this company and how they use the company to apply for the passport, I really do not know. My main objective was to get an investment passport so that I could leave China. That was my main objective. Secondly, I have to go to Taiwan to settle some important matters. And how they process the whole application, I have no idea. It is not possible. And how they used my initial to buy over the company, it's not possible for me to do all this.

[emphasis added in underline and in bold]

(c) In relation to the evidence of Mr Dimagiba:[89]

Court: Okay. So, Mr Goh, you heard the evidence of the Philippines Embassy representative, right?

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89 NEs, 12 June 2017, page 47, lines 6–20; page 48, lines 7–30.

Witness: Yes.

Court: He has given evidence that this is not a genuine Philippine passport. You recall that?

Witness: He said that it was not---he was not sure, he has to go and investigate.

Court: No, they are investigating how this fake Philippines passport came to be produced.

Witness: I only head [*sic*] that he mentioned that the MDI form was fake. The green form.

Court: Okay, wait.

Witness: There were three green forms here---

Court: Please stop, wait. I asked him---I'm talking only about the passport. …

…

Court: Alright. So let me rephrase. He has given evidence that no such passport was issued by the Philippine authorities. You heard that, right?

Witness: Yes. He was asked whether this is a genuine passport or a fake passport. He dare not answer the question. He said that he has to go back and investigate. The ICA had already asked him to investigate the matter about 3 to 4 years ago.

Court: No, Mr Goh, my point is that his evidence is that this passport, which you used, which bore the name, Boris Jacinto Ngo, was not issued by the Philippine authorities. Is that right?

Witness: Yes. **I don't believe that this passport has some problem. I'm very sure that this is a genuine passport.** I have used this said---used the said passport, in many countries. My fingerprints, my thumbprints, my photographs were taken. There was no problem with the Filipino passport. I have been using the passport in an out of the country on 188 occasions.

Court: Okay. So, alright, let me ask you this then, alright. Okay. And this will be my last question. So I just want to clarify this point.

> So despite the fact that this Philippines passport bears your photo and what is allegedly your Filipino name, but it has your date of birth and your place of birth wrong, you are still taking the position that this was a passport which was issued to you?
>
> Witness: Yes.
>
> [emphasis added in underline and in bold]

137 A quick perusal of the questions relied upon by the appellant would show significant differences between the District Judge's questioning in the present case and what the courts have considered excessive in cases such as *Tony Ng*. In *Tony Ng*, Lee Seiu Kin J quashed the accused person's conviction on the basis that the trial judge had "taken a position and pursued it" in questioning the accused person (at [23]). Lee J placed the most emphasis, however, not on the length and persistence of the trial judge's questioning of the accused person, but rather on the fact that the trial judge relied liberally on evidence adduced from her own questioning of the accused person to determine the key issues in the case (*Tony Ng* at [6], [25]).

138 In the present case, the questions asked by the District Judge which the appellant sought to impugn were not directed to the purpose of obtaining further evidence on which to convict the appellant (see *Nabill* at [171]). In fact, in respect of the questions at [136(b)] and [136(c)] above, no new evidence was elicited at all. As for the questions at [136(a)] above, the District Judge obtained clarifications from the appellant that he provided his date and place of birth to "Mr Huang" in May 2010, and his photograph and fingerprints in August 2010. Yet even this was essentially evidence which the appellant had already given in his examination-in-chief, where he said that he had given "Mr Huang" his

"personal particulars" in May 2010,[90] and that he had given "Mr Huang" his photograph and fingerprints in August 2010.[91] Indeed, it was apparent from the District Judge's questions that she was focused on confirming the appellant's existing evidence, and not on eliciting further evidence. The transcript shows that it was in fact the rambling manner in which the appellant tended to answer questions which led to confusion and necessary follow-up questions. This was a recurring theme in the transcripts, and a point which I return to at [141] below. In addition, for what it is worth, the District Judge's questioning of the appellant in the present case amounted to only a fraction of the questions asked by the Prosecution in cross-examination, especially when compared with the situation described in *Tony Ng* at [24].

139 In a similar vein, the other exchanges at [136(b)] and [136(c)] above also began with prefatory questions in which the District Judge reminded the appellant of the evidence which she intended to ask about. There was nothing objectionable about these questions.

140 Following the prefatory questions, each of the exchanges at [136] above then continued with the District Judge bringing to the appellant's attention matters which were already in evidence before the court: the date of issue of the Passport, the company name "BJN" compared with the name on the Passport, and Mr Dimagiba's testimony, respectively. This was not the District Judge building up her own case against the appellant. Rather, she was bringing these matters to the appellant's attention so as to offer him a chance to explain his position on each of these matters. Since these materials were already in evidence, the mere fact that the District Judge brought them up could not in

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90 NEs, 31 May 2017, page 19, line 14; lines 25–27.

91 NEs, 31 May 2017, page 20 line 28 – page 22 line 4.

itself be prejudicial to the appellant. In fact, the opposite was true. These questions offered a further opportunity for the appellant to state his defence, and in each instance the appellant attempted to provide his explanation, even if his answer was that he did not have any.

141 A persistent feature of the appellant's testimony at the trial was that he was frequently an evasive and incoherent witness – even when under examination-in-chief by his own counsel.[92] This is also evident from the excerpts above. As I have pointed out at [138] above, the effect of the manner in which the appellant gave his evidence was to prolong the questioning required to elicit even simple details, given his tendency to digress into irrelevant topics. This called to mind the comments made by the High Court when faced with a similar situation in *Tan Kim Hock Anthony v Public Prosecutor and another appeal* [2014] 2 SLR 795 at [25]:

> … Upon closer inspection, I have found that the particular exchange here had progressed in the way that it did largely due to the fact that the appellant's explanations had shifted during the course of the questioning and because he had struggled to give a plausible explanation to satisfy the trial judge's queries. This is certainly not a case in which the trial judge had, or looked as if he had, embarked on his own line of questioning upon which an adverse case was then constructed against the appellant.

142 Having dealt with the substance of the questions set out at [136] above, I now turn to consider whether the language used by the District Judge showed what the Court of Appeal in *Mohammed Ali bin Johari* ([134] *supra*) at [175(c)] called "an impression that the judge is predisposed towards a particular outcome" . For example, the District Judge said:

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92 See Appeal NEs, 18 April 2019, page 24 line 12 – page 27 line 31.

(a) "So, not only is the issue date *inexplicable*, alright, your date of birth and your place of birth is also *clearly wrong*. Correct?" [emphasis added] ([136(a)] above).

(b) "Isn't it a *huge coincidence* … ?" [emphasis added] ([136(b)] above).

(c) "So *despite* the fact that this Philippines passport bears your photo … but it has your date of birth and your place of birth wrong, *you are still taking the position* that this was a passport which was issued to you?" [emphasis added] ([136(c)] above).

143 First, it is worth noting that these questions did not present an inaccurate view of the appellant's *actual* position. In fact, the appellant essentially agreed with each of those propositions. The District Judge was entitled to call a spade a spade. Second, given that these were clearly difficulties with the appellant's position, these questions assisted in informing him as well as his counsel "of what is troubling the judge" (*Mohammed Ali bin Johari* at [175(c)(iv)]). In this regard, the District Judge had asked these questions just before the appellant was re-examined by his own counsel, hence giving an opportunity for the appellant's counsel to adduce any further evidence that was necessary to buttress the appellant's case. Third, even if the District Judge could have been more moderate in her language, these instances could not remotely amount to the "egregious" case where appellate intervention would be justified (see *Mohammed Ali bin Johari* at [175(g)]).

144 Finally, I address the appellant's contention that in questioning him, the District Judge intended to "lay the foundation" for her to amend the s 47(3) charges into the s 47(6) charges, which was hitherto not contemplated by either

party.[93] I accepted Mr Faizal's submission[94] that what the District Judge said convincingly showed that at that point she had not yet applied her mind to the distinction between "foreign travel document" and "false foreign travel document". For example, the District Judge commented that while Mr Dimagiba had testified that the passport was not issued by the Philippine authorities, she was "not sure if he went on to say that it is not genuine".[95] The District Judge therefore could not have been planning to set up a case against the appellant under s 47(6), as the appellant insidiously alleged.

145 I therefore concluded that the District Judge did not impermissibly descend into the arena in questioning the appellant. Her questions sought clarifications and were confined to the evidence already before the court. The length and persistence of the District Judge's questioning was also in large part a product of the appellant's own obduracy. And even if the District Judge's questioning could be said to be intemperate, it could hardly amount to an egregious case which called for appellate intervention.

Whether the District Judge had prejudged the appellant's guilt

146 The appellant sought to impugn the following portions of the amendment remarks (which I have set out in greater detail at [23] above) as being indicative of the fact that the District Judge had already come to a conclusive decision on the appellant's guilt at that point:[96]

> … In relation to the *mens rea* element, I'm of the view that *he ought reasonably to have known that this passport was not issued by the Philippines government*. …

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93 Appellant's subs at para 67.

94 Appeal NEs, 18 April 2019, page 38 line 23 – page 39 line 25.

95 NEs, 12 June 2017, page 47, lines 27–32.

96 Appellant's subs at para 119; NEs, 1 February 2018, page 4 line 9 – page 5 line 7.

> … As far as the accused person was concerned, it was immaterial to him. *The facts as a whole show that he must be wilfully blind to the circumstances* under which he obtained this passport. …
>
> … [W]hen he received this passport, *it was clearly evident that it contained false details* and had, in fact, been issued in March 27, months before he even gave ["Mr Huang"] his personal information to apply for the passport. In relation to the US$250,000 which he paid was for an investment scheme [*sic*], *I disbelieve his evidence*. … It was also *ludicrous* to expect the Court to believe that he had paid US$250,000 to buy over a company whose name was coincidentally that of the initials of the false name in the Philippines passport.
>
> [emphasis added in italics]

147 The appellant's submission that the District Judge prejudged his guilt was premised upon his contention that the threshold for her to have amended the charges at that point was the *prima facie* standard.[97] Since I have held that the relevant standard is whether there is sufficient evidence to discharge the Prosecution's evidential burden (see [62] above), much of the force in the appellant's submission was blunted.

148 Where the trial judge amends the charges *suo motu* after the close of the Defence's case, the trial on the original charges would be over. At this stage, all the evidence that both parties had planned to present to the court to meet the original charges would already have been adduced. As I have explained at [84] above, the trial judge would also have to be satisfied that the accused person's defence to the amended charges would be substantially similar to that which he has run so far. Here, the trial judge is entitled to assume that the accused person's defence before and after amendment will be factually consistent. By this token, it would not necessarily amount to prejudging the accused person's guilt for the trial judge to cite the accused person's credibility as a reason to

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97 Appellant's reply subs at para 31; appellant's further reply subs at para 23.

think that the Prosecution had discharged its evidential burden at the amendment stage.

149 A similar point could be made in relation to the amendment remarks in the present case. The District Judge commented, for example, on the particulars in the appellant's Passport, the claim that he had paid US$250,000 under an investment scheme, and the initials of the Philippine company which he had purportedly acquired. These were all facets of the appellant's defence that he had acquired the Passport by making an application through the proper channels. As I have explained at [86] above, these were aspects of the unified defence both to the s 47(3) charges and to the s 47(6) charges. Whether these aspects of the appellant's defence were credible or not did not depend on whether he was facing the s 47(3) charges or the s 47(6) charges. It therefore could not be said to be prejudging the appellant's guilt for the District Judge to have indicated her assessment of these matters at the close of the appellant's defence to the s 47(3) charges.

150 That said, it is also important for the trial judge to bear in mind that despite the high threshold for such an amendment, the trial would continue once the charges are amended, and the trial judge must always keep an open mind as to the ultimate findings to be made (see [127] above). This means that although the District Judge would have been correct to briefly explain why she took the view that the existing evidence was capable of proving the amended charges beyond reasonable doubt, it would also have been prudent for her to express these views in appropriately temperate language. For example, there was no need for the District Judge to have described the appellant's assertion relating to the company he had allegedly bought over as "ludicrous" at that point.

151 In the same vein, it would also have been preferable for the District Judge to have avoided convicting the appellant on the Immigration Act charges until the end of any further proceedings relating to the s 47(6) charges. This is because the commonality in the evidence between these sets of charges gave rise to the risk of appearing to prejudge the appellant's guilt in relation to the s 47(6) charges if the District Judge first explained her definitive views on his guilt under the related Immigration Act charges.

152 The appellant asserted that because he felt that the District Judge had made up her mind about his credibility, it was meaningless for him to give any further evidence after the amendment of the charges.[98] Given that the District Judge had refused to recuse herself at that point (a decision which I see no reason to fault as I did not think it was a meritorious application), it was for the appellant to weigh the risks of deciding not to give any further evidence. I did not see any basis for concluding that the appellant was prejudiced in this regard.

153 In closing, I recognise that when the trial judge amends the charge *suo motu* after the close of the Defence's case, the law as set out in the present judgment would require her to tread a fine line between ensuring that she makes the amendment on the basis of sufficient evidence, but also that she does not thereby end up prejudging the accused person's guilt. In the present case, although I took the view that the District Judge could have spoken with more moderation in amending the charges, I did not consider her to have prejudged the appellant's guilt or otherwise conducted herself so as to compromise the fairness of the appellant's trial in a way that merited appellate intervention.

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98 Appellant's subs at para 190.

Issue 4: Whether the appellant was guilty of the further amended charge

154 As such, I decided each of the appellant's grounds of appeal against conviction against him, with the exception of his appeal against the framing of 46 distinct s 47(6) charges. I informed the parties of my decision and framed the following single amended charge against the appellant under s 390(4) CPC ("the further amended charge"):

> You, Goh Chin Soon, are charged that you, from 20 March 2011 to 7 September 2012, did have possession of a Philippines passport bearing serial number WW0538286 and the name "Ngo Boris Jacinto", which you ought reasonably to have known was a false foreign travel document, and you have thereby committed an offence punishable under s 47(6) of the Passports Act (Cap 220, 2008 Rev Ed).

155 The procedure which must be followed upon the amendment of a charge under s 390(4) CPC is set out in ss 390(6)–(8):

> (6) After the appellate court has framed an altered charge, it must ask the accused if he intends to offer a defence.
>
> (7) If the accused indicates that he intends to offer a defence, the appellate court may, after considering the nature of the defence —
>
> > (*a*) order that the accused be tried by a trial court of competent jurisdiction; or
> >
> > (*b*) convict the accused on the altered charge (other than a charge which carries the death penalty) after hearing submissions on questions of law and fact and if it is satisfied that, based on its findings on the submissions and the records before the court, and after hearing submissions of the accused, there is sufficient evidence to do so.
>
> (8) If the accused indicates that he does not intend to offer a defence, the appellate court may —
>
> > (*a*) convict the accused on the altered charge (other than a charge which carries the death penalty) if it is satisfied that, based on the records before the court, there is sufficient evidence to do so; or

> (*b*) order that the accused be tried by a trial court of competent jurisdiction, if it is not satisfied that, based on the records before the court, there is sufficient evidence to convict the accused on the altered charge.

156 Counsel for the appellant, Mr Davinder Singh SC ("Mr Singh"), confirmed that the appellant intended to offer a defence to the further amended charge. However, Mr Singh clarified that this defence was encapsulated in the submissions which the Defence had already made, which I have addressed earlier in this judgment. From the discussion at [89]–[103] above, it was clear that the Prosecution had discharged its evidential burden of proving the elements of the charge. This is because the further evidence adduced after the amendment of the charges did not cast any reasonable doubt. As such, the Prosecution had ultimately proved beyond reasonable doubt that the appellant was guilty of the charge.

157 I should add that in the course of the appeal, I had considered the same circumstances which supported the finding of constructive knowledge in the present case to come very close to making out a finding of wilful blindness, which is the legal equivalent of actual knowledge: see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [93]. In my view, there were grounds on which a court could potentially find that the appellant had a clear, grounded and targeted suspicion of the falsity of the Passport, and that he deliberately refused to pursue the reasonable means of inquiry available to him to discover the truth because he wished to avoid gaining such knowledge. After considering the further submissions of the parties, however, I did not think it appropriate for me to amend the *mens rea* of the single s 47(6) charge to that of actual knowledge on account of wilful blindness. Neither party submitted that the District Judge's framing of the *mens rea* of these charges ought to be disturbed. Relatedly, it was also notable that the Prosecution did not run a case of wilful

blindness against the appellant. Further, I accepted the appellant's contention that an elevation of the *mens rea* from constructive knowledge to actual knowledge might in principle affect sentencing.[99] Nevertheless, it seemed to me that the impact of this change on sentencing would not have been significant. When it comes to sentencing, what matters is the entirety of the circumstances surrounding the offence.

158 For completeness, I note that the appellant did not contend on appeal that the District Judge was wrong to have rejected his defence of reasonable excuse under s 47(7) of the Passports Act. Indeed, even without going into the precise parameters of the defence of reasonable excuse under s 47(7), it was clear that the appellant had no reasonable excuse for the reasons given by the District Judge and which I have outlined at [30] above.

159 Since I had found the appellant's submissions challenging his conviction to be without merit, I convicted the appellant on the further amended charge pursuant to s 390(7)(*b*) CPC.

The appeal against sentence

160 I now turn to the appellant's appeal against sentence on both the s 47(6) charges (which have now been replaced by the further amended charge) and the Immigration Act charges.

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[99] Appellant's submissions on the proposed altered charge at paras 26, 33, 100.

The appellant's ill health

161 I first considered the appellant's submission that his medical conditions warranted the exercise of judicial mercy.[100] To this end, the appellant relied on numerous doctor's reports, which are listed below in summary form:

(a) A report dated 20 February 2018 by Dr Michael Lim ("Dr Lim's report"),[101] stating that the appellant was "at an increased risk for heart attack and sudden cardiac death" and "at a high risk of stroke". It advised that the appellant must "avoid all physical exercise", required "regular specialist care", and must be "monitored regularly to avoid sudden onset of stroke or heart attack". This report was submitted for the purposes of mitigation before the District Judge.

(b) A report dated 31 March 2020 by Dr Paul TL Chiam ("Dr Chiam"),[102] stating that the appellant was at high risk of a myocardial infarction (heart attack) and cardiovascular death. It also stated that the appellant would require various angiography and angioplasty procedures.

(c) A report dated 6 April 2020 by Dr Chiam,[103] stating that the appellant was at high risk of a myocardial infection (including sudden cardiac death) and of a stroke ("the appellant's conditions"). It reported that a coronary angioplasty conducted on 2 April 2020 was unsuccessful.

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100 Appellant's sentencing subs at para 4.

101 Appellant's subs at para 264, citing ROP 1715–1716.

102 Letter from Lee & Lee dated 31 March 2020.

103 Letter from Lee & Lee dated 8 April 2020.

(d) A report dated 20 April 2020 by Dr Chiam,[104] stating that the appellant's conditions were unchanged, and that a further angioplasty procedure had been scheduled.

(e) A report dated 11 June 2020 by Dr Chiam,[105] effectively restating the appellant's conditions.

(f) A report dated 22 June 2020 by Dr Chiam,[106] again restating the appellant's conditions. It added that the procedural risk involved in the appellant undergoing a coronary angioplasty was three times more than in a standard case, and that the chance of success was 70–80%.

(g) A report dated 25 June 2020 by Dr Chiam,[107] stating that the planned coronary angioplasty was ultimately not carried out due to the chance of success being lower than previously thought, and that there were "no further treatment options" for the appellant. It likewise restated the appellant's conditions.

162 Initially, the Prosecution brought High Court Criminal Motion No 3 of 2019 ("CM 3"), seeking to introduce evidence from the Singapore Prison Service ("SPS") as to its ability to cater to the appellant's medical conditions while he is imprisoned. However, it subsequently decided to withdraw CM 3,[108]

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104 Letter from Lee & Lee dated 22 April 2020.

105 Letter from Lee & Lee dated 12 June 2020.

106 Letter from Lee & Lee dated 23 June 2020.

107 Letter from Lee & Lee dated 26 June 2020.

108 Prosecution's letter dated 5 December 2019 filed in CM 3.

and further indicated that it would not be adducing any formal response from SPS on this issue.[109]

163 In *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*"), the High Court explained that ill health could be relevant to sentencing in two ways:

> 38 … First, it is *a ground for the exercise of judicial mercy*. Judicial mercy is an exceptional recourse available for truly exceptional cases and which will likely result in an exceptional sentence. Where mercy is exercised, the court is compelled by humanitarian considerations arising from the exceptional circumstances to order the minimum imprisonment term or a non-custodial sentence where appropriate. Secondly, it exists *as a mitigating factor*. The cases where ill health will be regarded as a mitigating factor include those which do not fall within the realm of the exceptional but involve markedly disproportionate impact of an imprisonment term on an offender by reason of his ill health. The court takes into account the fact that ill health may render an imprisonment term that will not otherwise be crushing to one offender but may be so to another, and attenuates the sentence accordingly for the latter offender so that it will not be disproportionate to his culpability and physical condition.
>
> 39 In all other cases, ill health is irrelevant to sentencing. …
>
> [emphasis added]

164 As for what would constitute "truly exceptional cases" deserving of judicial mercy, the court did not set out an exhaustive definition, but indicated that there were at least two situations which may warrant the exercise of judicial mercy: first, where the offender is suffering from a terminal illness; and second, where the offender is so ill that a sentence of imprisonment would carry a high risk of endangering his life (*Chew Soo Chun* at [22]). It will be apparent that judicial mercy in the second situation is based on an exceptional instance of the

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109 Prosecution's letter dated 19 June 2020.

kind of ill health that would also be capable of constituting a mitigating factor in sentencing. In such cases, what is critical is the connection between the offender's ill health and the effects of being in the prison environment. As the court went on to explain (*Chew Soo Chun* at [39]):

> … It may be that the offender has a condition or several conditions, but unless he can satisfy the tests for exercising judicial mercy or for mitigating a sentence because of disproportionate suffering or decreased culpability, there is no proper basis to vary the sentence. Hence, *it will be insufficient for an offender to merely show that he is ill. Even if the contention is that imprisonment would have a significantly adverse impact on an offender due to his ill health, the following conditions would have fallen short*:
>
> > (a) Conditions that can be addressed by certain procedures, such as surgery or treatment. *If the prison has the capability of addressing the conditions to an acceptable standard* (and by that, it means that the prison need not meet the best medical standard), they would be a neutral factor. This is because the conditions, once addressed, will no longer result in a greater impact on the offender.
> >
> > (b) Conditions that carry only the normal and inevitable consequences in the prison setting. *If the consequences will transpire independently of whether the offender is in or outside of prison or the risk of them transpiring is not significantly enhanced by the imprisonment*, then they are also a neutral factor as imprisonment would make no difference to the offender's state of health or the suffering he will sustain in prison.
>
> [emphasis added]

165 It is clear from this passage that in order to rely on ill health for a reduction in sentence, the offender must do more than "merely show that he is ill". This suggests that the burden is on the offender to present at least *some* evidence directed towards suggesting specifically that *imprisonment* would have a significantly adverse impact on his health. This would therefore normally be a matter that should be addressed in the medical evidence adduced on the

offender's behalf. This would involve some articulation on the part of medical professionals who are familiar with the offender's medical conditions as to the basis they may have for believing or fearing that imprisonment would adversely affect the offender's health. Only then would the evidential burden shift to the Prosecution to adduce evidence to the contrary, such as by showing that SPS is fully capable of addressing the medical issues raised on the offender's behalf while he is in prison.

166 In the present case, the appellant did not contend that he deserved judicial mercy because of a terminal illness, and rightly so. Instead, he contended that imprisonment would carry a high risk of endangering his life.[110] In my view, however, the medical reports relied upon by the appellant did little more than to merely show that he was ill. The only report which could plausibly be understood to go further than this was Dr Lim's report (see [161(a)] above), which was also the most dated report. Even the advice provided in this report, that the appellant had to avoid all physical exercise and required regular specialist care and regular monitoring, did not in my view suggest particular difficulties in the prison setting that called for a response from SPS or the Prosecution. As such, even though the appellant was undeniably in ill health, I did not find it likely that imprisonment would have a significantly adverse impact on his health, compared to his situation outside of prison, such that he would suffer disproportionately from imprisonment. The appellant's ill health therefore did not constitute a mitigating factor, much less a basis for the exercise of judicial mercy. Having arrived at this conclusion, I did not see any other exceptional circumstances which merited judicial mercy in the present case.

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110 Appellant's submissions on the medical reports at para 21.

The appropriate sentence for the further amended charge under s 47(6) Passports Act

167 I next turn to the appropriate sentence for the further amended charge under s 47(6) of the Passports Act. The Prosecution and the District Judge both relied on the High Court's decision in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 ("*Kathleen Luong*") at [21], where the court alluded to a benchmark sentence of 12 months' imprisonment for the misuse of foreign travel documents under s 47(3) of the Passports Act (see GD at [106], [111]).[111] The appellant, on the other hand, contended that his offence under s 47(6) was one of "neglect", which justified treating the applicable range of punishments as being subject to a "notional maximum" so as to distinguish such wrongdoing from offending which involved actual knowledge.[112] He further contended that his culpability was low because he was entitled to enter Singapore as a Singapore citizen, and the Official Assignee ultimately decided to compound his offence of travelling out of Singapore without permission.[113] The appellant therefore submitted that he should be sentenced to a fine for the s 47(6) charge, even without considering his medical condition.[114]

168 I did not find that the sentence must necessarily be lower simply because the *mens rea* of the s 47(6) charge is framed as "ought reasonably to have known". This was also the conclusion reached by the High Court in *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*") at [72]–[74], undertaking a similar analysis in relation to a different offence which similarly prescribed alternative *mentes reae* of "knowing" and "having

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111 Prosecution's sentencing subs at para 16.

112 Appellant's sentencing subs at paras 25–26, 32–33.

113 Appellant's sentencing subs at paras 42–43.

114 Appellant's sentencing subs at para 19.

reasonable grounds to believe". While there may be a "distinction in culpability" between the two states of mind, this should be treated "only as a factor in the round" and the appropriate sentence must depend on all the relevant facts (*Huang Ying-Chun* at [74]), such as those which I have pointed to in convicting the appellant. These facts pointed inexorably towards a high level of consciousness in the appellant.

169 I was also mindful of the aggravating factors endorsed by the High Court in *Kathleen Luong* (at [23]). The comment in *Kathleen Luong* that "when money is involved, the actions of the accused would contribute to the illegal sale and purchase of travel documents" applied with particular force in the present case, where the appellant paid US$250,000 for the Passport.

170 The appellant certainly also used the Passport for personal gain. To this end, it was irrelevant that the Official Assignee had eventually compounded the appellant's offences, since there was no indication of why this was done. The fact that the appellant had the right to enter Singapore as a Singapore citizen did not detract from his obvious willingness to bypass the legal system for his own convenience. That being said, the fact that the appellant had the right to enter Singapore meant that some of the worst harms that could result from passport misuse – namely, the entry into Singapore of persons who may otherwise not have been admitted, most of all "criminal and terrorist elements" (see *Kathleen Luong* at [13]) – were not realised.

171 Owing to the long period of time over which the appellant committed the offence under s 47(6), and his repeated use of the Passport on 46 occasions during this period, I considered a significant uplift on the starting point of 12 months' imprisonment to be warranted. However, I did not consider the actual or potential harm caused by the appellant's acts to be so serious as to warrant

the overall sentence of 24 months' imprisonment imposed by the District Judge for the Passports Act offences. In my view, 18 months' imprisonment was an appropriate sentence for the s 47(6) charge in all the circumstances.

The appropriate sentences for the Immigration Act charges

172 Finally, I turn to the 23 Immigration Act charges. In sentencing the appellant to two months' imprisonment per charge, the District Judge relied on the benchmark sentence referred to in *Lin Lifen v Public Prosecutor* [2016] 1 SLR 287 ("*Lin Lifen*") (GD at [103], [111]). The appellant contended that he should instead be sentenced to a fine for these offences, again on the basis that he was a Singapore citizen entitled to enter Singapore.[115]

173 In *Lin Lifen*, the High Court held as follows (at [66]):

> In the precedents I have considered involving the same false statement in disembarkation forms, *sentences of two months' imprisonment were thought to be appropriate* ***where the offender had been barred from entering the country***. Taking reference from this, I consider that in a case such as the present one, ***where the offender is not barred from entering but is the subject of an outstanding arrest warrant****, the starting sentencing range for the offence would be in the region of five to six weeks' imprisonment.* … [emphasis added in italics and bold italics]

The court in *Lin Lifen* drew a distinction between two kinds of situations in which the offender committed the s 57(1)(*k*) offence in order to evade the law: where the purpose is to enter the country illegally, two months' imprisonment would be appropriate; whereas if the purpose is to evade some other legal

115 Appellant's subs at paras 280–281.

regime controlling one's movements, the sentencing range would be five to six weeks' imprisonment.

174 It followed from the analysis in *Lin Lifen* that the starting point of two months' imprisonment applied by the District Judge could not be appropriate. Likewise, the Prosecution's attempt to equate the appellant with an offender who has been barred from entering Singapore[116] was untenable. Instead, it was evident that the appellant's case fell squarely within the latter category in *Lin Lifen* – his purpose was to evade the Official Assignee's control over his movements as an undischarged bankrupt. Although the appellant was not an illegal immigrant, his case was aptly described by the words of Yong Pung How CJ in *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 at [26]: "a fine would merely represent a slap on the wrist, a cynically calculated cost of breaking the law for personal profit".

175 In my view, the appropriate sentence for each of the Immigration Act charges in the present case was six weeks' imprisonment, given the appellant's higher culpability compared to the offender in *Lin Lifen*, who was sentenced to five weeks' imprisonment per charge. Given the appellant's persistent offending across an extended period, I was of the view that the sentences for two of Immigration Act charges ought to run consecutively with the sentence for the s 47(6) charge.

Conclusion

176 I therefore set aside the appellant's conviction on 45 of the s 47(6) charges, but convicted him of the further amended charge under s 47(6) of the

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116 Prosecution's subs at para 117.

Passports Act for the entire period of his possession of the Passport. I allowed his appeal against sentence, and sentenced him to 18 months' imprisonment for the further amended charge, and six weeks' imprisonment for each of the Immigration Act offences (with two of these sentences ordered to run consecutively with the sentence for the further amended charge). The total sentence imposed was 18 months and 12 weeks of imprisonment.

Hoo Sheau Peng
Judge

Davinder Singh SC, Navin S Thevar, David Fong and Rajvinder Singh Chahal (Davinder Singh Chambers LLC) (instructed counsel until 3 June 2020), Quek Mong Hua and Yik Shu Ying (Lee & Lee) for the appellant;
Mohamed Faizal SC, Shahla Iqbal, Jane Lim, Jarret Huang, Rebecca Wong and Chong Kee En (Attorney-General's Chambers) for the Prosecution.
