IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 187

Magistrate's Appeal No 9068 of 2019/01

Between

Parti Liyani

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Property] — [Theft]

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Parti Liyani
v
Public Prosecutor

[2020] SGHC 187

High Court — Magistrate's Appeal No 9068 of 2019/01
Chan Seng Onn J
1 November 2019, 17 February 2020, 11 August 2020

4 September 2020 Judgment reserved.

Chan Seng Onn J:

Introduction

1 This is an appeal against the conviction and sentence of a foreign domestic worker pertaining to four theft-related charges. The appellant, Ms Parti Liyani ("Parti"), a 45-year-old female Indonesian national, claimed trial to one charge of theft as a servant under s 381 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and three charges of theft in dwelling under s 380 of the Penal Code. One charge under s 35(1) of the Miscellaneous Offences (Public Order & Nuisance) Act (Cap 184, 1997 Rev Ed) was stood down at the start of the trial.

2 At the end of the trial, the trial judge (the "Judge") convicted Parti on all four charges and sentenced her to a total of 26 months' imprisonment: see *Public Prosecutor v Parti Liyani* [2019] SGDC 57 (the "Judgment"). The Judge

also exercised her discretion under s 128 of the CPC (Cap 68, 2012 Rev Ed) and amended the 2nd charge DAC 931428-2017. Thereafter, Parti filed an appeal against her conviction and sentence for all four charges.

3 For reasons which I will explain in this judgment, I find that the Prosecution has failed to prove its case against Parti beyond a reasonable doubt in relation to all the charges that were brought against her. Accordingly, I acquit Parti of all the four charges brought against her and overturn her convictions.

Background facts

The parties

4 The Liew household residing at 49 Chancery Lane ("49 CL") comprised Mr Liew Mun Leong ("Mr Liew"), his wife, Mdm Ng Lai Peng ("Mdm Ng"), their daughter Ms Liew Cheng May ("May"), their son Mr Karl Liew ("Karl") and Karl's wife, Ms Heather Lim ("Heather"). Karl, Heather and their children lived in 49 CL until they moved to 39 Chancery Lane ("39 CL") on 1 March 2016.

5 Parti was employed as a foreign domestic worker in the Liew household for approximately nine years from March 2007 to 28 October 2016. On 28 October 2016, her employment was terminated by Mr Liew, who was Parti's formal employer, when he suspected that Parti was stealing from various members of the Liew family.

The charges

6 The complainants for the four charges are Mr Liew, May, Karl and Heather and the particulars of the four proceeded charges (post-amendment by the Judge) are summarised as follows (Judgment at [3]):

Charge	Description of Items
DAC 931427-2017 (the "1st Charge") Section 381 of the Penal Code	one Pioneer DVD player valued at $l,000 one Brown Longchamp bag valued at $200 one Blue Longchamp bag valued at $200 in the possession of **Mr Liew**
DAC 931428-2017 (the "2nd Charge") Section 380 of the Penal Code	115 pieces of clothing valued at $150 each one blanket valued at $500 three bedsheets valued at $100 each one "Philips" DVD player valued at $150 an assortment of kitchenware and utensils valued at $300 one "Helix" Watch valued at $50 one damaged "Gerald Genta" watch valued at $10,000 two white iPhone 4 with accessories valued at $2,056 in the possession of **Karl**
DAC 931429-2017 (the "3rd Charge") Section 380 of the Penal Code	one leather "Vacheron Constantin" watch with unknown value one white-coloured "Swatch" watch with orange-coloured design valued at S$75 one silver-coloured ring with blue shiny stones valued at $150 one pair of silver-coloured earring with white opaque stone valued at $150

Charge	Description of Items
	one yellow-coloured earring with one white opaque ball valued at $75 an assortment of fashion accessories valued at $400 one pair of black "Gucci" sunglasses valued at $250 in the possession of **May**
DAC 931430-2017 **(the "4th Charge")** Section 380 of the Penal Code	one purple "Prada" bag valued at $1,000 one black "Gucci" sunglasses with red stains valued at $500 in the possession of **Heather**

The parties' relationship

7 Parti had a cordial relationship with the Liew family. They often gave her generous red packets on special and festive occasions.[1] During her nine years of employment with the Liew family, her monthly salary increased from $300 to $600 in 2016.

8 However, this is not to say that Parti's relationship with *all members* of the Liew family was harmonious at all times during her period of employment.[2] At times, there were disputes between Parti and Karl over her household chores.[3] Parti also alleged that there was a dispute over her employment with the Liew family. She threatened to lodge a complaint with the Ministry of

1 ROP at p 1822.

2 ROP at p 1190.

3 ROP at p 1859.

Manpower ("MOM") after her employment was terminated because she had previously been instructed to clean not only 49 CL, but also 39 CL and Karl's office on multiple occasions, which was in contravention of certain MOM regulations. I will elaborate on this point further in the judgment, but for present purposes it suffices to say that this is relevant in assessing the credibility of the Prosecution's witnesses.

The Prosecution's case

Termination of Parti's employment on 28 October 2016

9 Sometime in October 2016, Mr Liew decided to terminate Parti's employment. According to Mr Liew, he discovered that items had gone missing in the household at 49 CL over the years and suspected that Parti had stolen the missing items, including a power bank, a Longchamp bag and some shoes.[4] Mr Liew was overseas at the time of the decision and gave instructions to Mdm Ng to arrange for Parti's termination and for members of the Liew household to be present in order to serve the notice of termination on Parti.[5]

10 On 28 October 2016 at about 11.00am, Karl served the termination notice and informed Parti that her employment was terminated at 49 CL. Karl was present with two representatives from the employment agency and Mdm Ng was also present.[6] Parti demanded for a reason for her termination.[7] However, Karl simply reiterated that she had to go home without giving any

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4 ROP at pp 1189-1193.

5 ROP at p 1190.

6 ROP at p 1743.

7 ROP at p 198.

reasons.[8] Parti pleaded with Karl and said, "if you do not want me, don't send me home".[9] Parti got upset with Karl and allegedly accused him of being a very bad person and said that God would punish him.[10] Karl informed her that she had *two hours* to pack up her things.[11]

11 Thereafter, Parti packed in a rush. She brought out all her things from her room and laid them out on the floor right outside her room (location marked Y in Exhibit D1).[12] Parti admitted that she was the only one who went into her room to remove her belongings and any contents that she wanted.[13]

12 Parti asked Karl for big boxes to send her belongings back to Indonesia. She enlisted the help of one of the drivers of the Liew family, Ismail, to collect the boxes ordered from the company on Mdm Ng's instructions.[14] Parti also brought out a black bag of clothing (the "Black Bag"). Karl had given the Black Bag to the Liew household's previous maid, Jane, who had left a couple of months before Parti's termination.[15] Parti showed the Black Bag to Karl and told him that the Black Bag contained clothes that he had originally given to Jane, which Jane did not want and had subsequently passed it on to Parti. Parti looked at the contents of the Black Bag and decided that she also did not want any of

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8 ROP at p 1743.

9 ROP at p 1744.

10 ROP at p 198

11 ROP at p 1744.

12 ROP at p 1744, 1864, 3211 (Exhibit D1).

13 ROP at p 1864.

14 ROP at p 1744.

15 ROP at p 211.

the clothes inside the Black Bag.[16] Karl told her to leave the Black Bag next to the mirrored pillar, on the floor.[17] The existence of the Black Bag is noteworthy as it relates to a likelihood of contamination of evidence. I elaborate on this point further in the judgment (see below at [125]). This occurred approximately 15 to 30 minutes after Karl had informed Parti that her employment had been terminated.[18]

13 About 30 minutes after Parti was informed of her termination, Ismail returned with the three jumbo boxes that were meant for storing Parti's items to be sent back to Indonesia.[19] The three boxes were all folded up when they arrived. Ismail together with Robin, who was Mr Liew's other chauffeur, unfolded them and started to set up the three boxes in the dining area.[20] After the boxes were set up, the employment agency's representative informed Parti that she had only about two to three hours to put all her things in the boxes and Parti had to leave at around 2.00pm.[21]

14 The packing process was as follows. Ismail and Robin helped Parti to transfer her items from outside the bedroom to the three jumbo boxes. Parti would pass the items to Robin, who would then pass the items to Ismail, who would then place them into the three jumbo boxes.[22] The same process was

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16 ROP at p 1864.

17 ROP at p 212.

18 ROP at p 211.

19 ROP at p 1744.

20 ROP at pp 2879 (Exhibit P-25) and 1052.

21 ROP at p 1051.

22 ROP at p 1053.

carried out for all three jumbo boxes.[23] Parti also packed her own luggage bag and hand-carry bag herself.[24] Mdm Ng was present at the dining area during that period of time.[25]

15 During the packing process, Mdm Ng saw an unopened piece of thermal wear in its packaging in the box and asked Parti if the item belonged to Mr Liew, to which Parti replied that the item was bought as a second-hand good at the price of $1.[26] Mdm Ng did not pursue it further.

16 After the boxes were packed, Parti sealed the first box using many rounds of tape as the boxes were "very fully packed".[27] Parti only wrote her address on the first box.[28] However, before the second and third boxes were sealed, the representative from the employment agency returned and informed Parti that the time was up and that she had to leave.[29] At that point in time, Robin and Ismail *sealed the covers* of the second and third boxes in Parti's presence and "did not use much tape".[30] Parti asked Mrs Liew to send the three boxes to the address on the first box.[31] Robin testified that at the time when Parti was informed by the agent to leave, there was a mess on the floor around the dining

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23 ROP at p 1053.

24 ROP at p 1865.

25 ROP at p 1744.

26 ROP at p 2462.

27 R`OP at p 1054.

28 ROP at p 1054.

29 ROP at p 1055.

30 ROP at p 1055.

31 ROP at p 1055.

area and the fridge area.[32] After the boxes were sealed, Parti demanded that Karl pay for all three boxes to be shipped back to Indonesia.[33] Karl initially refused but he subsequently agreed to do so after being advised by the employment agency representative to resolve the issue amicably.[34]

17 Thereafter, Parti left the house with the employment agency representatives and returned to Indonesia.

Events Post-28 October 2016

18 After Parti left, Mdm Ng told Karl about her suspicion regarding Parti's alleged theft of the thermal wear that ostensibly belonged to Mr Liew.[35] Heather also voiced her concern to Karl that it was not prudent for them to be shipping three large jumbo boxes to Parti without being aware of the contents of said boxes. This is because by shipping the boxes to Parti, they would have to declare what items were being shipped. The items could potentially be illegal.[36]

19 Based on these suspicions and concerns, Mdm Ng, Karl and Heather checked the contents of the jumbo boxes at 49 CL on 29 October 2016. They opened the three boxes and discovered items in the boxes that allegedly belonged to members of the Liew household. They spent approximately two hours taking out and sorting through the items from the boxes.[37] A 21-second video was recorded of the items that they had taken out, which was admitted

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32 ROP at p 1110.

33 ROP at p 199.

34 ROP at p 199.

35 ROP at p 214.

36 ROP at p 1006.

37 ROP at p 1628.

into evidence as Exhibit P28 ("the Video").[38] The Video footage showed Karl, Heather and Mdm Ng examining the contents of the three jumbo boxes. Grinis, the Liew family's new domestic helper, was also present at the time when the boxes were opened.[39]

20 Thereafter, Mr Liew returned to Singapore on 30 October 2016. He discussed with the rest of the Liew family regarding Parti's termination and the subsequent discovery of items in the three boxes. Mr Liew, who was accompanied by Karl, proceeded to file a police report on 30 October 2016.[40]

21 On 2 December 2016, Parti returned to Singapore and was arrested upon her arrival at the airport.[41] She was found in possession of the following items that allegedly belonged to the complainants (Judgment at [14]):[42]

(a) two Longchamp bags (P1-2 and P1-3);

(b) one Gerald Genta watch (P1-19);

(c) one Helix watch (P1-18);

(d) two white iPhones with accessories (P1-20, P1-21 and P1-22);

(e) one black Braun Buffel wallet (P1-17);

(f) one black Gucci wallet (P1-16);

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38 ROP at p 2928.

39 ROP at pp 215-216, 252.

40 ROP at pp 385, 1196, 1639.

41 ROP at p 32,

42 ROP at pp 1871-1873.

(g) one Prada bag (P1-42); and

(h) one Gucci sunglasses with red stains (P1-43).

These items formed part of the subject of the proceeded charges (see [6] above).

Parti's defence

22 Parti's defence is, in essence, a denial that any of the items listed in the four charges had been stolen. Her explanation for each of the items can be grouped broadly as follows:

(a) Some of the items were *purchased* by her;

(b) Some of the items were *given* to her;

(c) Some of the items were *discarded and found* by her; and

(d) Some of the items were *not packed by her* in the three jumbo boxes.

The specifics of her defence for each item will be further discussed and evaluated in the respective sections of this judgment.

23 Additionally, when Parti was packing her things before she left on 28 October 2016, she expressed an intention to lodge a complaint with the MOM. She did not elaborate about the details of her intended complaint. This statement was heard by both Mrs Liew and Karl.[43] It is important to note that Parti had

[43] ROP at p 1167 ln 10–13; ROP at 1578 ln 13–32.

expressed her intention to complain to the MOM ***before*** Mr Liew filed the police report on 30 October 2016.

24 Parti's defence is that the belated discovery of the aforementioned items in the jumbo boxes was a convenient avenue to pre-empt any complaint made by her against the Liew family. This is because a formal complaint or accusation against Parti of having committed an offence (such as through the lodging of a police report) would jeopardise the possibility of her future employment in Singapore.[44] The Defence submits that the Liew family had falsely alleged that Parti was a thief in a bid to prevent her from returning to Singapore and thereby stymie her future attempt to make a formal report to MOM about her illegal deployment as a maid in Karl's office and his home at 39 CL.[45]

The trial judge's decision

Credibility of the witnesses

25 The Judge found the Prosecution witnesses to be largely credible and found their evidence to be clear, compelling and consistent even under lengthy cross-examination by counsel for the Defence, Mr Anil Narain Balchandani ("Mr Anil"). The Judge noted that while the witnesses might have had slightly different recollections of the details of what had happened to the items, she did not find any reason to disbelieve their testimonies. The Judge found that the victims' account were credible as they were able to (a) identify the items that belonged to them; (b) provide details as to how they came into their respective possession; (c) provide estimates of how much they purchased each item for;

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44 AS at para 357.

45 AS at para 230.

and (d) detail whether they had ever discarded or given the items away (Judgment at [17]).

26 Parti called a number of factual witnesses, one of whom was her friend, Diah, who testified to having given Parti the two black wallets (Judgment at [29]). The Judge found the evidence of Parti's friend, Diah, to be generally consistent though there were some minor details in her evidence which differed from Parti, such as *when* she gave the wallets to Parti (Judgment at [19]).

27 Finally, the Judge found material inconsistencies between Parti's evidence in court and her statements, noting that the Prosecution had impeached Parti's credibility based on these inconsistencies (Judgment at [21]). The Judge found that Parti had recounted various versions of events when giving evidence on various items, *inter alia,* the Pioneer DVD player, the Vacheron Constantin watch, the white Swatch watch and the purple Prada bag, in her statements, examination-in-chief ("EIC") and cross-examination ("CX") (Judgment at [21]).[46]

Conviction

28 The Judge found that the Prosecution had proven the four charges beyond a reasonable doubt and convicted Parti on all four charges (Judgment at [61]). For the sake of brevity, I will not enumerate the Judge's reasons for each individual item in all four charges in this section but shall analyse them in my decision in relation to each item in their respective sections. The Judge found that Parti's *modus operandi* involved her taking a variety of items from different

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46 ROP at pp 3064-3076 (Prosecution's Closing Submissions in Trial below at Annex B).

family members thinking that these acts would go unnoticed by them. (Judgment at [60]).

Sentence

29 The Judge sentenced Parti to an aggregate sentence of 26 months' imprisonment. The Judge sentenced Parti to six months' imprisonment for each of the 1st, 3rd and 4th charges and 20 months' imprisonment for the 2nd charge based on the total value of the items taken for each charge. She ran the sentences for the 1st and 2nd charge consecutively (Judgment at [75]–[77]).

My decision

30 In explaining my decision to overturn Parti's convictions, I will first explain the relevant legal principles for appellate intervention. Thereafter, I will address several broad issues that affect the four charges, namely (a) the alleged collusion of the complainants, (b) Parti's failure to inquire about the three jumbo boxes, (c) the chain of custody of evidence; and (d) the accuracy of the recorded statements used to impeach Parti. Finally, I will deal with the evidence in relation to each allegedly stolen item in the four charges.

Relevant legal principles

31 It is trite law that an appellate court has a limited role when asked to assess findings of fact made by the trial court. In particular, where findings of fact hinge upon the trial judge's assessment of the credibility and veracity of witnesses, the appellate court will only interfere if the finding of fact can be shown to be *plainly wrong or against the weight of the evidence*: *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16]. Should the appellate court wish to reverse the trial judge's decision, it must not merely entertain

doubts as to whether the decision is right but *must be convinced that it is wrong*: *Public Prosecutor v Azman bin Abdullah* [1998] 2 SLR(R) 351 at [21].

32 Nevertheless, while an appellate court should be reluctant to interfere with a finding of fact, it is always free to form an independent opinion about the proper inference to be drawn from a finding of fact: *Sahadevan s/o Gundan v Public Prosecutor* [2003] 1 SLR(R) 145 at [17].

33 In *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983, VK Rajah JA observed that the court should approach the criminal evidential standard of proof of beyond a reasonable doubt in the following terms at [79]:

> This definition mandates that all doubt, for which there is a reason related to and supported by the evidence presented, must be excluded. Reasonable doubt might also arise by virtue of the lack of evidence submitted, if such evidence is necessary to support the Prosecution's theory of guilt.

Collusion amongst the complainants

34 I start with the Defence's allegation of collusion amongst the complainants to fabricate the present allegations against Parti.

35 It is undisputed that Parti was paid some token sums of money to do extra work by cleaning Karl's office and Karl's home at 39 CL after he and his family moved out of 49 CL. The parties dispute the regularity and time span of this extra work. On one hand, it is Mdm Ng's testimony that she had instructed Parti to go to 39 CL to help with chores on three occasions and paid Parti a sum of $20 each time. Parti was also instructed by Mdm Ng to clean Karl's office on two to three occasions.[47] It was further admitted by Mr Liew, Karl and Heather

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47 ROP at p 1376.

that Parti was asked to clean Karl's office.[48] On the other hand, Parti testified that she cleaned Karl's office once a week for about a year.[49] Karl agreed that Parti was asked to clean his office once a week or once a fortnight, though he denied that it was for a period of one year.[50] Regardless of the frequency and the adequacy of the amount paid (if any) for the amount of work done by Parti, the undisputed fact is that Parti did perform cleaning work *outside* of 49 CL, namely at Karl's home at 39 CL and also at Karl's office.

36 This formed the factual basis for Parti's defence in relation to the complainants' motive behind framing her: in essence, the Liew family brought the present allegations against her in order to prevent her from returning to Singapore and lodging a complaint to MOM about her illegal deployment in breach of Condition 3 in Pt II of the Fourth Schedule to the Employment of Foreign Manpower (Work Passes) Regulations 2012 (Cap 91A, Rg 4, 2009 Rev Ed). Condition 3 provides that a foreign domestic worker should perform only household and domestic duties at the residential address stated in the work permit or any other residential address approved in writing by the Controller.

37 When Parti was informed about her termination on 28 October 2016, Mdm Ng testified that Parti was angry and unhappy because she was not given sufficient notice and time to send the boxes back home.[51] Most critically, Parti expressed an intention to lodge a complaint with the MOM. Parti uttered this

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48 ROP at pp 947, 1360.

49 ROP at p 1737.

50 ROP at p 554.

51 ROP at pp 1166-1167.

threat when she was packing her things before she left on 28 October 2016. Both Mrs Liew and Karl heard the said statement.[52]

38 The Defence alleges that this formed the motivation amongst the witnesses in the Liew family to collude and stymie Parti's attempt to make a formal report to the MOM in relation to their illegal deployment of a foreign domestic helper.[53] For a foreign migrant worker such as Parti, any documentary complaint or accusation of committing an offence (such as a police report) could seriously jeopardise any possibility of Parti's future employment. This, the Defence submits, prevents Parti from pursuing a complaint with a former employer since she is without a job.[54]

39 The Judge held that there was no reason why the Liew family and their driver, Robin, would conspire to frame Parti for the theft especially after they had employed her for a number of years. In particular, the Judge placed weight on the fact that the Liew family had compensated Parti for terminating her employment and Karl was willing to pay for the shipping of her items back to Indonesia (Judgment at [60]).

40 On appeal, the Defence submits that the DJ failed to rule on this issue of a possibility of collusion since the Prosecution was not held to the burden of proof required to establish that there was "*no collusion*" by the complainants.[55] The Defence also cites the fact that in particular, Karl had a motive to frame Parti because Karl testified that he was relieved when Parti was "out of his hair".

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52 ROP at p 1167 ln 10–13; ROP at 1578 ln 13–32.

53 AS at para 230.

54 AS at paras 232.

55 AS at para 233.

This was in reference to the relief he experienced when he moved out from 49 CL to 39 CL.[56] The Defence also cites Karl's attempt to "include ladies' clothing" in the 2nd charge as some items contained therein as belonging to him. This, the Defence submits, was intended to incriminate Parti and Karl subsequently tried to cover this up by averring that he sometimes wore ladies' T-shirts (see below at [115]).[57]

41 On the other hand, the Prosecution submits that the Defence's failure to put to all the victims that they colluded with each other breached the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"), cited in *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 at [68]. The rule operates on the proposition that an individual should be confronted with any contradictory evidence that is being relied upon (and intended to be adduced) by the cross-examiner.[58]

42 At trial, only Karl and Mr Liew were cross-examined on their alleged motives in relation to filing a *false police report* to create difficulties for Parti to secure a job in Singapore.

(a) Karl was cross-examined as follows:[59]

> Q: I put it to you that you realise Parti had the desire or the intention of coming back to Singapore to work because she asked you to allow her to transfer.
>
> A: I have said instructions for Mr. Liew, I don't have ultimate authority to tell her whether I can grant her permission to work in Singapore or not. So, no I di---I disagree.

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56 ROP at pp 275; 730 (for the accurate transcription); AS at para 162.

57 AS at para 234.

58 Transcript 17 Feb 2020 at pp 12, 73.

59 ROP at pp 634-636

> Q: *I put it to you that you were in favour of making this police report to falsely accused Parti of theft of several items.*
>
> A: I disagree, Your Honour. The police report was really my father's decision. As far as I'm concern, it was really hassle to report to the police these items because what does it matter since we have recovered these items and we actually don't wish for Parti Liyani to go to jail. If she- --
>
> …
>
> Q: I put it to you that such an accusation would create difficulties for Parti to secure a job in Singapore.
>
> A: Actually, such an action to report to the police have put tremendous stress on me and my family. So it was not- --in our---
>
> …
>
> A: interest.
>
> Q: agree or disagree?
>
> A: Disagree.
>
> Q: I put it to you that you wanted Parti or you wanted to prevent Parti from returning to Singapore and filing a complaint for illegal deployment as a maid at your office or at your home---
>
> …
>
> Q: at 39 Chancery Lane.
>
> …
>
> A: I---I disagree.
>
> [emphasis added]

(b) Mr Liew was cross-examined as follows:[60]

> Q: Let's not focus on other items for a little while. Let's just look at this DVD player. I apologise for that, if it distracted you. My question to you was, you saw it, there was a big smile on your face, correct? That here is a

[60] ROP at pp 1316, 1350.

stolen item. That is mine. And I have finally caught Parti Liyani in the act. Correct?

…

Q: okay. … You saw this DVD player, right?

A: Right.

Q: On---let's say when you---after your return. And you said, "This is what I need to make sure Parti Liyani is labelled as a thief."---

A: No---

Q: correct?

A: I don't jump to that conclusion.

Q: You didn't even ask anybody.

A: No.

…

A: No, negative. I saw 3 boxes of thing where s---many stolen goods. Many, many stolen goods. Whether there is, uh, assumption that is broken, whether there's assumption that my wife give it to her, there's no need to me to search. There were stolen articles together in the boxes.

…

A: I don't use that as, uh, assumption to fix people. I don't need to fix anybody. Get it clear.

…

Q: You know accusing somebody of steeling [sic] is a serious problem or matter, serious matter, correct?

A: That's why we are here.

Q: And that is why, we are trying to establish, why you or your family after discarding items, would want to say, "Wait a second. Now I want that back."

A: No, I don't want it back. I want to report a crime. As the citizen a crime happens in my household, if it happened in the household, you don't need to be a lawyer to say report it.

…

> Q: And would you further like to concede that you trumped-up certain parts of this Police Report?
>
> …
>
> Q: Trumped-up.
>
> A: Negative.
>
> Q: So, that the police can take action immediately.
>
> A: Negative.
>
> Q: Why do I say that?
>
> A: I don't do these things. I have no---
>
> Q: Because---
>
> *A: I no motivation to come up anything, to accuse anybody whose [sic] innocent.*
>
> …
>
> A: I have no reason to go and fix anybody up. I'm making a statement to the State, a State witness for a crime, yah? There is no vicious attempt to do anything. If you want to fix it, think about that.
>
> Q: Did you---did you say earlier you didn't want her to come back?
>
> A: Yes---no, I think that, did we want her to come back in case she will come and steal again. Logical deduction.
>
> [emphasis added]

43 However, I observe that the Defence neither (a) put the specific allegation of *collusion* between the members of the Liew family to all the complainants nor (b) put to Heather and May their *improper motives* for false allegations in relation to the 3rd and 4th charge that Parti stole their items in order to stymie her complaint to MOM. In fact, the first time that the Defence alleged that *the entire Liew family* harboured an improper motive (*ie*, to ensure Parti would not be able to return to work in Singapore and lodge a complaint to MOM

about being asked to work outside her approved place of employment at 49 CL) arose during the Defence's closing submissions:[61]

> 57. The Prosecution has made several references in its closing submissions to the Liew family having little motivation to "frame" Parti. It is not the Defence's case, however, that the Liews "banded together to frame" (para 83) Parti *due to some deep-seated "personal vendetta"* (para 84).
>
> 58. … the filing of the initial police report ("FIR") by Mr Liew, accompanied by Karl Liew, was likely a *pre-emptive move. The discovery of items that formerly belonged to the Liews allowed them to confidently pursue this defensive manoeuvre to ensure that Parti would have difficulties returning and finding employment in Singapore.* Parti, who was dismissed suddenly after nine years of loyal service, had left visibly disgruntled and had stated an intention to file a complaint at the Ministry of Manpower.
>
> …
>
> 60. … As the Prosecution has highlighted, *Mr Liew and his family would have to contend with unwanted media attention* and potential reputational risk; exposure of their private lives to public scrutiny; and disruption to their busy professional schedules … *It would be scandalous and extremely embarrassing for Mr Liew and his family to be implicated in charges of exploiting their domestic worker…*
>
> 61. That *the Liews levelled accusations against an FDW is a known defensive measure used by employers against FDW's who have been aggrieved.*
>
> [emphasis added]

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61 ROP at p 3526 at paras 57, 58, 60, 61.

44 The rationale underpinning the *Browne v Dunn* rule is so that a witness is granted the opportunity to explain and clarify his or her position or version of facts before any contradictory version is put forth to the court as one of fact. The gist of the rule is summarised by Professor Jeffrey Pinsler SC in *Evidence, Advocacy and the Litigation Process* (LexisNexis, 3rd Ed, 2010) at para 20.98:

> If the cross-examiner has adduced, or intends to adduce, evidence which in any respect contradicts the evidence of the witness being cross-examined, he should put the contradictory facts to the witness so that the evidence of the witness is put into contention (officially challenged), and the latter is given the opportunity to respond. If the cross-examiner fails to put his case to the witness, the court is free to regard the witness' evidence as undisputed regardless of the nature of the cross-examiner's case.

45 Because of the omission of the Defence to cross-examine (a) all witnesses on the alleged collusion and (b) Heather and May on their improper motives for testifying, it is now not open to the Defence to allege that *all* members of the Liew family *colluded* through false testimony to level these accusations against Parti in order to prevent her from returning to Singapore and filing a complaint to the MOM. In the light of the circumstances, the Defence's specific allegation of collusion by *all members* of the Liew family cannot stand by virtue of the rule in *Brown v Dunn*.

46 That said, the rule in *Brown v Dunn* does not bar this court from taking into consideration the fact that a reasonable doubt may be raised arising from an improper motive on the part of Mr Liew and Karl to lodge a police report against Parti in order prevent her from lodging a future complaint to MOM. After all, this aspect of the evidence was adequately surfaced at trial and was sufficiently put to Mr Liew and Karl (see above at [42]).

47 In my view, there was in fact ample basis for Parti to make a complaint to the MOM. It is clear to me based on the evidence at the trial below that Parti

was *in fact* made to do illegal cleaning work at Karl's residence at 39 CL and at Karl's office. Parti's evidence is that she received $10 for two to three days of work, and the payment was not regular.[62] In fact, there was a prior dispute between Parti and the Liew family over the cleaning of the toilet in 39 CL: when Mdm Ng requested Parti to do so, she refused.[63] There was also another incident where Parti refused to cook extra food for Karl.[64] Further, when Karl told Parti that her employment was terminated, her immediate response to him was "I know why. You angry because I refused to clean up your toilet."[65] It is significant that at some time *prior* to her termination, Parti had expressed unhappiness for being made to do additional cleaning work at Karl's home in 39 CL and at his office, probably without adequate compensation. It demonstrates Parti's prior unhappiness in relation to such an arrangement, which was illegal and an offence against the MOM regulations. One must bear in mind that expressly stating that she would complain to MOM about this illegal work would most likely have meant that Parti would immediately lose her job and hence she might have been in a dilemma as to whether she should make such a complaint or even tell the Liew family that she intended to do so should she be made to continue doing cleaning work outside of 49 CL. Nevertheless, it appears that Parti had given hints to the Liew family that she ought not to be doing cleaning work elsewhere beyond 49 CL.

48 In my judgment, there is reason to believe that the Liew family, upon realising her unhappiness, took the pre-emptive first step to terminate her

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62 ROP at p 2133.

63 ROP at p 1823.

64 ROP at p 1823.

65 ROP at p 1743.

employment suddenly without giving her sufficient time for her to pack, in the hope that Parti would not use the time to make a complaint to MOM. Once she made express her desire to complain to MOM after her sudden termination on 28 October 2016, the Liew family followed up with the police report to ensure her return would be prevented. In my view, the Liew family might not have made a police report had Parti not made her *express* threat on 28 October 2016 to report the matter to MOM.

49 I observe that no evidence was adduced of any new items that were recently discovered to be missing *ie,* the period around 28 October 2016, which necessitated the immediate and sudden termination of Parti by the Liew family during the period when Mr Liew was overseas. Instead, Mr Liew's decision for Parti's sudden termination was based on items that went missing "over the years". In my view, this is not believable and it is more likely that the fear of Parti's complaint to MOM rendered her termination urgent, at least in the eyes of the Liew family.

50 Further, I note that after Parti's termination, Mr Liew returned to Singapore from abroad on the night of 29 October 2016[66] and testified having spent only a "few minutes" or "half an hour" looking through the jumbo boxes.[67] On 30 October 2016, he was updated on the events on 28 October 2016 by his family over lunch and lodged the police report with Karl that same afternoon.[68] In the First Information Report ("FIR") dated 30 October 2016, Mr Liew identified the allegedly stolen items found in the three jumbo boxes, including

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66 ROP at p 1195

67 ROP at p 1331.

68 ROP at pp 270-271.

hard disks worth $500, towels worth $100, gadgets worth $1,000.[69] However, these items were eventually not listed in the charges brought against Parti and no police photographs were taken of them when the police visited the Liew's household on 3 December 2016. Some of these items were in fact items that Mr Liew had suspected Parti had stolen from him over the years (see above at [9]). The inconsistencies between the charges/police photographs and the FIR point towards the fact that Mr Liew made the police report concerning hundreds of allegedly stolen items after spending a relatively short amount of time looking through the jumbo boxes without proper documentation of the allegedly stolen items, even though there was no ostensible need for an urgent police report given that Parti had already left Singapore. There was more than sufficient time for Mr Liew to have properly documented the stolen items before making the FIR. Indeed, that would have been crucial contemporaneous evidence of the items discovered by the Liew family in the three jumbo boxes allegedly stolen by Parti. It is also curious that the police report was stated to have been made only "*for record purposes as I'm afraid that her boyfriends might cause a nuisance or break into my apartment*" [emphasis added].[70]

51 In the light of the above circumstances, the Defence has sufficiently demonstrated an underlying factual basis in support of its allegation of an improper motive on the part of Karl and Mr Liew.

52 The Prosecution must show beyond a reasonable doubt that no such improper motive existed in relation to why the police report was made just *two days* after Parti made explicit to two members of Liew's family of her intention

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69 ROP at p 2865.

70 ROP at p 2865.

to lodge a complaint to the MOM about being required to work illegally at Karl's residence at 39 CL and at Karl's office. Given the seriousness of the consequences that might follow from what Parti said she would do, I have reason to believe that the Liew family would be very concerned that Parti would carry out her threat to report the matter to MOM. On the totality of the evidence, I find that the Prosecution has failed to dispel the reasonable doubt raised by the Defence and show that there was no improper motive by Mr Liew and Karl in making the police report.

Parti's failure to inquire about the three jumbo boxes

53 The Judge also took into account the fact that despite having returned to Indonesia for more than a month, Parti never showed any interest in finding out why she had not received her three jumbo boxes, if those items in the boxes were truly hers. The Judge observed that Parti's purpose of returning to Singapore was to find new employment instead of following up on the jumbo boxes (Judgment at [60]).

54 However, in my judgment, the Judge placed undue emphasis on this factor in her decision. The reasoning is internally inconsistent as the jumbo boxes contained many of Parti's items as well. It was not the case that the jumbo boxes only contained the Liew family's items *exclusively*. The fact that Parti ostensibly displayed the same amount of or lack thereof interest in relation to the jumbo boxes that *also contained her items* puts paid to the contention that Parti's lack of interest toward her jumbo boxes supported the Prosecution's case that the items in the boxes were not "truly hers".

55 There was also no evidence adduced at trial to show how long it would actually take to have the jumbo boxes shipped to Parti's hometown in Indonesia, whether Parti knew the time needed for the shipment and that there was

therefore an inordinate delay when the jumbo boxes did not arrive within a month or so such that she should be sufficiently concerned to make enquiries for the delay in the shipment. Thus, Parti's lack of interest as to Mr Liew's failure in delivering the three jumbo boxes is at best, an equivocal indicia.

Chain of custody of evidence

56 I now turn to the issue of the break of chain of custody of the evidence found in the three jumbo boxes. The Defence submits that there was a break in the chain of custody of evidence in respect of the three jumbo boxes after Parti left the house on 28 October 2016 to the time when the evidence was taken into custody by the police.

57 After the Video was taken on 29 October 2016, Mdm Ng testified that she put Parti's belongings back into the boxes and *took out the Liew family's belongings* from the boxes for daily use.[71] This aspect of the evidence is crucial because these exhibits were not seized by the police immediately – the complainants took back their belongings that were allegedly stolen by Parti in three jumbo boxes and handled them for their daily use. This means that not every item from the three boxes at the point of discovery was placed back into the three jumbo boxes.

58 This creates a real possibility of a mix up of the items: items were removed from the three jumbo boxes for the Liew family's daily use over a period of time and then items used daily were put back into the boxes, with no clarity if the returned items are the same items that have been removed earlier. This is especially so if there were no special markings made on those items

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[71] ROP at p 1176.

when they were first removed from the boxes to identify them and no proper record kept of how many and what type of items were removed from the jumbo boxes for their daily use. These items may well look similar to other items used daily in Liew household. Over a period of time, it would be difficult to recall exactly what number of and which items were taken out of the boxes. The Defence rightly submits that there was no contemporaneous evidence of the specific items, save for the Video recording, to determine with any level of certainty or precision as to what exact items were found inside the three boxes at the point in time which Parti left 49 CL. The Defence contends that given the sheer number of items alleged to be stolen by Parti, other items (that were not in fact from the jumbo boxes) could have been mistakenly added to the items that were in the boxes. In support of this reasonable doubt, Karl was only able to identify 34 specific pieces of items from the Video footage, leaving many items unaccounted for with reference to the items alleged to be stolen from Karl in the 2nd charge.[72] Three exhibits (pieces of clothing) could not be located by 18 April 2018 for the purposes of the trial.[73] Further, the items allegedly stolen by Parti as reported in the FIR, which was vital contemporaneous evidence, were different from the items listed in the charges brought against Parti.

59 Even though the police report was made on 30 October 2016, the only action taken by the police was to issue a Warrant of Arrest against Parti.[74] Investigation Officer Tang Ru Long ("IO Tang") did not attend or view the scene of the offences (*ie*, 49 CL) until some *five weeks* later on 3 December

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72 ROP at p 3484 at para 449.

73 ROP at p 59.

74 ROP at p 32.

2016.[75] This was one day after Parti returned to Singapore on 2 December 2016 and was arrested. Further, throughout the period of five weeks between the police report on 30 October 2016 and 3 December 2016, IO Tang informed the Liew family that they were free to use the items that were found in the jumbo boxes (save for discarding the said items).[76] The items in the three jumbo boxes which were the subject of the charges were not personally seized or taken into custody by IO Tang as he did not wish to result in the "re-victimising" of the complainants.[77] The complainants were allowed to use the items because they were "daily use items".[78] The items from the three jumbo boxes allegedly belonging to Karl and Heather were also brought back to 39 CL.[79]

60 Only the exhibits that were found in Parti's possession when she was arrested at the airport on 2 December 2016 (see above at [21]) were immediately seized by the police.[80] On 3 December 2016, IO Tang and Mr Goh See Kiat, the crime scene photographer, visited 49 CL and 39 CL to take photographs of the exhibits.[81] The alleged stolen items from the three jumbo boxes were only received into police custody on 18 April 2018.[82]

61 In my judgment, the police's delay in (a) visiting the crime scene and taking photographs of the allegedly stolen items and (b) seizing the items,

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75 ROP at pp 32, 104.

76 ROP at p 110.

77 ROP at p 58.

78 ROP at p 58.

79 ROP at p 58.

80 ROP at p 32.

81 ROP at pp 48, 59.

82 ROP at p 59.

coupled with the mishandling of the exhibits by the complainants for their daily use created a clear break in the chain of custody of the evidence from their discovery on 29 October 2016 to 3 December 2016 when the photographs of the alleged exhibits were taken. This means that apart from the Video footage, there is a lack of *contemporaneous evidence* of the specific items that were found in the three jumbo boxes allegedly stolen by Parti. The photographs taken by the police on 3 December 2016 would have been (a) premised on the complainants' memory some five weeks later of the many items which they had retrieved and identified as theirs from the three jumbo boxes and (b) subjected to the complainants' daily use of the items. The break in the chain of custody of evidence creates a reasonable doubt as to whether certain of the allegedly stolen items that were first discovered by the Liew family on 29 October 2016 were accurately documented by the photographs taken of the allegedly stolen items from the three jumbo boxes some five weeks later on 3 December 2016. Accordingly, I find that Parti's conviction in relation to a number of the items allegedly found in the three jumbo boxes cannot stand.

The recorded statements

62 I turn now to the ancillary issue of the accuracy of Parti's recorded statements. In their further submissions on appeal, the Prosecution submits that weight should be accorded to Parti's confessions and admissions in the recorded statements, arguing that the Judge correctly relied on them for Parti's convictions.[83] In her submissions in the trial below and on appeal, Parti challenged the accuracy of the statements recorded from her which the Judge relied on in her decision and submits that the Judge should not have relied on the contents of the statements at all. I observe that in the Judgment, the Judge

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83 Prosecution's Further Submissions dated 26 June 2020 ("PFS") at paras 2 and 4.

did not consider the accuracy of the statements, or even if she did, she did not make any observations or finding on the accuracy of the statements.

63 In *Public Prosecutor v Parthiban Kanapathy* [2019] SGHC 226, I observed that while it is not strictly necessary, it makes good sense and is good practice that an ancillary hearing ought to be called when the accuracy or authenticity of a statement is being challenged, even if the accused does not explicitly challenge the voluntariness and/or admissibility of the said statement (at [33] and [38]). However, no ancillary hearing was held in relation to the accuracy of the statements in question in the trial below even though the accuracy of the statements was in question. I also note that the testimonies by the statement recorders, ASP Lim Hui Shan ("ASP Lim")[84] and Investigation Officer Amirudin bin Nordin ("IO Amir"),[85] in relation to the recording of the statements were given *prior* to the admission of the statements by the Prosecution for the purposes of impeachment.[86] ASP Lim and IO Amir were also not recalled as rebuttal witnesses to give further evidence on the accuracy of the recording of the statements after the said documents were adduced by the Prosecution for the purposes of impeachment.

64 The following three recorded statements were adduced at trial to impeach Parti's credibility:[87]

(a) a statement recorded under s 22 of the CPC dated 29 May 2017 from 2.45pm to 7.00pm ("P31");

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84 ROP at p 863.

85 ROP at p 1127.

86 ROP at p 1929.

87 AS at para 282.

(b) a statement recorded under s 22 of the CPC dated 3 December 2016 from 7.00pm to 9.58pm ("P32") by; and

(c) a statement recorded under s 22 of the CPC dated 4 December 2016 from 1.44am to 5.57am ("P33").

65 The Defence submits that the details of P31, P32 and P33 are unreliable or problematic due to the circumstances under which the statements were recorded,[88] *inter alia*: (a) Parti was interviewed in languages other than her native tongue, Bahasa Indonesia and without an official interpreter; (b) there was a lack of opportunity to view the large number of physical items referred to during the statement-taking;[89] and (c) Parti was instead provided with poorly-taken photographs during the statement-taking. I now turn to examine the respective statements.

P32 and P33

66 Four statements, including the statements P32 and P33, were recorded by IO Amir over the period spanning 3 December to 19 December 2016. IO Tang was also present during the recording of some statements, although IO Amir could not recall how many instances IO Tang was present for.[90] Both P32 and P33 were recorded in English and translated in Bahasa Melayu.[91] The interviews were conducted in a mix of English and Bahasa Melayu, although Parti spoke Bahasa Indonesia. At times, IO Tang would ask the questions in

88 Appellant's Submissions ("AS") at para 284.

89 ROP at p 1146.

90 ROP at p 1128.

91 ROP at p 1128.

English and IO Amir would translate the questions in Bahasa Melayu to Parti.[92] No Bahasa Indonesian interpreter was present for the recording of the statements.[93]

67 In relation to the recording of the statements, IO Amir's testimony was that after recording down Parti's statement, he read it out in English, translated it to Parti in *Bahasa Melayu* and found no difficulties in communicating with Parti in Bahasa Melayu.[94] However, this is directly contradicted by the statement at the end of P32, which states that the statement was read back to Parti in *English*, which was not her native language. If IO Amir's version of events were truly the case, it is simply inexplicable that the express statement in P32 would have indicated otherwise. Moreover, the end of P33 states that the statement was recorded in English and read back to Parti in *Bahasa Melayu*.[95]

68 The Prosecution also places emphasis on IO Amir's testimony and submits that Parti never put to IO Amir that he and Parti had problems understanding each other.[96] However, IO Amir was in fact cross-examined on the differences in languages of Bahasa Melayu and Bahasa Indonesia. IO Amir conceded that *there was a difference* between Bahasa Melayu and Bahasa Indonesia and he could have interpreted some of the Bahasa Indonesian words in a different way than it had been intended.[97]

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92 ROP at p 1129.

93 ROP at p 2142.

94 ROP at p 1129.

95 ROP at p 2977.

96 PFS at para 14.

97 ROP at p 1136-1137.

69 Given that IO Amir admitted that he could have understood Parti's statements in Bahasa Indonesia differently from what she had meant, the likelihood similarly exists that Parti could have understood (a) IO Amir's questions which were in Bahasa Melayu; and (b) the recorded statements read back to her in English (for P32) and Bahasa Melayu (for P33) *differently* from what IO Amir had meant.[98] P32 and P33 were not read back to her in *Bahasa Indonesia* for her confirmation. I am thus satisfied that a reasonable doubt in relation to the accuracy of the translation for P32 and P33 exists.

70 This must be considered in the light of the contradictory statements in the first paragraph of P32 which states that "I am comfortable in providing my statement in [B]ahasa [Melayu] and do not require an interpreter" and the bottom of P32 which states that "I affirm [this statement] to be correct and true".[99] In relation to her affirmation in P32 that P32 was true and correct, Parti explained that "there was no Indonesian interpreter. I did not really understand what this is about".[100] Parti testified that she did not feel comfortable speaking in *Bahasa Melayu* because IO Amir never gave her any choice in relation to an interpreter. She also did not know that she could request for a Bahasa Indonesia interpreter in the lock-up.[101] She admitted that in her years of working in Singapore, she had picked up "a little" Bahasa Melayu but testified that she did not understand all Bahasa Melayu words as there was a "big gap between Bahasa Indonesia and Bahasa Melayu".[102]

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98 AS at para 285.

99 ROP at pp 2966, 2969.

100 ROP at p 2142.

101 ROP at p 2099.

102 ROP at p 2100.

71 While I am cognisant of some similarity between the languages of Bahasa Indonesian and Bahasa Melayu, it cannot be assumed that some similarity in and of itself can eradicate any reasonable doubt in relation to the accuracy of the said statements in P32 and P33. In the absence of an expert witness who could give evidence on the differences between both languages in relation to the Bahasa Melayu words used during the statement taking, which were translated and recorded in English, both languages must be assumed to be sufficiently different such that it can create reasonable doubt as to the complete accuracy of the statement recording in order to avoid unfair prejudice to the accused. This is especially pertinent in the light of the voluminous quantity of items in which Parti was questioned on in specific detail. Further, Parti was questioned not with reference to the actual physical items which were the subject of the proceeded charges, but instead with reference to the photographs of the numerous items annexed to the statement.[103] Where the statements recorded are highly predicated on their details, the accuracy and precision of language translated to Parti would have been of paramount importance in the statement recording process.

72 The Prosecution's emphasis on the fact that the answers in P32 and P33 were "not incriminating" and hence disposes of any suggestion that the recorders had not chosen to record what Parti had stated but instead recorded something else is also largely irrelevant.[104] The issue is one of *unintentional errors* that arise during translation because of the differences in languages, which IO Amir conceded to, rather than of *intentional fabrication* by the recorders of the statements.

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103 ROP at p 1146.

104 PFS at para 17.

73 I now turn to consider whether P32 and P33 should have been excluded as admissible evidence. Procedural irregularities may be a cause for a finding that a statement's prejudicial effect outweighs its probative value. *Halsbury's Laws of Singapore* vol 10 (LexisNexis, 2006 Reissue) at para 120.138 as cited in *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*") at [56] states the following:

> If the breach of procedure or impropriety casts serious doubts on the accuracy of the accused's statement that has been recorded, the court may exclude evidence of the statement on the ground that its prejudicial effect outweighs its probative value.

In this regard, a court should take a firm approach in considering its exercise of the exclusionary discretion in relation to statements recorded by the police in violation of the relevant requirements of the CPC and the Police General Orders and the court should not be slow to exclude statements on the basis that the breach of the relevant provisions in the CPC and the Police General Orders has caused the prejudicial effect of the statement to outweigh its probative value: *Kadar* at [60].

74 The present breach pertains to a breach of the procedural requirement in s 22(4) of the CPC, which provides:

> **Power to examine witnesses**
>
> **22.**—(4) Where a statement made by a person examined under this section is recorded in writing, the statement must —
>
> (a) be read over to the person;
>
> (b) *if the person does not understand English, be interpreted for the person in a language that the person understands*; and
>
> (c) be signed by the person.

[emphasis added]

75 The present breach cannot be said to be a flagrant violation of the procedural requirements of s 22(4) of the CPC such that its prejudicial effect outweighs its probative value. I accept that Parti understood *some* Bahasa Melayu, although the extent of which is unclear based on the evidence before the court. Accordingly, P32 and P33 remain admissible evidence in my judgment.

76 However, non-compliance with the procedures under s 22 of the CPC can nevertheless diminish the weight of the statements (*Public Prosecutor v Tan Kiam Peng* [2007] 1 SLR(R) 522 at [45]). In this regard, appropriate weight must be accorded to the statements when considering the specific answers in P32 and P33 relied on by the Judge for the conviction of the proceeded charges. Furthermore, the use of some poor quality black and white photographs during the taking of the statement P33 made the identification of some of the items difficult for Parti. This would have correspondingly increased the chances of mistakes being made in her answers to the questions posed by ASP Lim on certain specific items. I elaborate on this further in my analysis for the conviction on each item, where appropriate.

P31

77 I now turn to P31. P31 contained 68 questions and the recording of P31 was done by ASP Lim with the assistance of an interpreter Ms Siti Fauziah Jamal, and was conducted over a period of four hours.[105] On the stand, Parti testified that the interpreter translated the statement back to her in *a mixture of*

105 ROP at p 867.

Bahasa Melayu and Bahasa Indonesia and hence there may have been some aspects of which she did not understand.[106] Parti also made various allegations, *inter alia,* that there were differences between what she had explained and what was recorded,[107] and the interpreter was "talking too fast" such that Parti could not "understand everything".[108] This was directly contradicted by P31 which states at the end of the statement that it was read over back to Parti in *Bahasa Indonesia* and she had affirmed it to be correct and true, which puts paid to her allegations.[109]

78 Additionally, the Defence submits that the accuracy and thoroughness of the P31 should be questioned because of the following mistakes in recording:[110]

(a) Parti's identification number was recorded incorrectly.[111]

(b) When documenting her questions and answers, ASP Lim wrongly referenced photographs on four instances (Q11, Q64, Q65 and Q66).[112]

I agree with the Defence's submission in this regard. As ASP Lim was also not recalled as a rebuttal witness to explain these inaccuracies in the statements, due

106 ROP at p 1943.

107 ROP at p 1948.

108 ROP at p 1950.

109 ROP at p 2936 (FIN No).

110 AS at para 301.

111 ROP p 2931.

112 AS at para 307; ROP at pp 2932, 2935-2936.

weight will be accorded to P31 in respect of the possibility of errors in recording.

79 With the above in mind, I examine the parties' submissions and the evidence in relation to each charge in turn.

1st Charge (DAC 931427-2017 - Mr Liew's items)

Pioneer DVD player (P19)

80 In relation to the Pioneer DVD Player, Parti's defence is that sometime in 2012 or 2013, Mdm Ng wanted to throw the DVD player away and it was to be "given to the *karang guni* man" as it was broken.[113] Parti asked for the Pioneer DVD player as she intended to bring it back to Indonesia to fix it and Mdm Ng agreed.[114] On the other hand, the Prosecution's case is that the said Pioneer DVD player did not break down and Mdm Ng had never given it to Parti.[115]

81 According to the Judge, the crux of the issue was not whether the said DVD player was working, but whether it had been taken *without permission* (Judgment at [23]). The Judge found that the Pioneer DVD player had been taken without permission as Parti had admitted it in P33, referencing Q18/A18:[116]

> Q14) Did you put the two DVD players in one of the three boxes?
>
> A14) Yes. While Robin was putting in the clothes into the boxes. I just placed the two DVD players into one of the boxes.

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113 ROP at pp 1689-1690.

114 ROP at p 1690.

115 ROP at p 3064 (Annex B of PP Closing Submissions).

116 P33 at Q18 and A18.

> Q15) None of the family members claims to have given you the DVD players which is owned by your employer's stand. What do you have to say?
>
> A15) *My employer (Ma'am) did told me to throw away the DVD players if it is spoilt.*
>
> Q16) Do you whether the DVD players are spoilt? [*sic*]
>
> A16) No.
>
> Q17) Then why did you take it?
>
> A17) Because I thought I [*sic*] was spoilt and decided to take it back to Indonesia with intention to fix it.
>
> *Q18) Did you tell anyone if you are taking the DVD players?*
>
> *A18) No.*
>
> [emphasis added]

Additionally, the Judge also noted (a) Mr Liew's testimony that the Pioneer DVD Player was placed in Karl's room and had never been given away or discarded[117]; and (b) Mdm Ng's testimony that the Pioneer DVD player did not break down, was not discarded and was not given to Parti (Judgment at [22]).[118]

82 In my judgment, the Judge erred in convicting Parti by focusing on the issue of whether *permission* had been given to Parti to take the Pioneer DVD player on the basis of Q18/A18 in P33 (Judgment at [23]). I say so for the following reasons.

83 First, the Judge wrongly inferred that Parti made an admission in P33 as Q18/A18 does not by itself demonstrate that no permission had been granted to Parti to take the Pioneer DVD player. The substance of Q18/A18 focuses on

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117 ROP at p 1199.

118 ROP at p 1379.

whether Parti had *informed anyone* (including Mdm Ng or Mr Liew) that she was taking the said DVD player.

84 The Judge's focus on Q18/A18 wrongly premises the element of "no consent" on a requirement that Parti had to inform her employers that she was taking an item that they had decided to throw away. It could well have been possible for Parti to have taken the Pioneer DVD player after Mdm Ng instructed her to throw the DVD player away and she decided to keep it without informing anyone instead. This would not have constituted dishonest taking of the Pioneer DVD player. In my judgment, the offence of theft as a servant is equally not made out if Parti had appropriated an item that her employers decided to throw away.

85 Additionally, when Q18/A18 is read in context with the rest of P33, it is unclear how the Judge could have interpreted Q18/A18 as an admission by Parti to satisfy the element "without that person's consent" for the offence of theft as a servant under s 381 of the Penal Code. A close reading of Q18/A18 with Q15/A15 and Q17/A17 reveals the plain inference to be drawn from Parti's statement to be that (a) Parti was instructed by Mdm Ng to throw away the Pioneer DVD player if it was spoilt; (b) Parti thought that the Pioneer DVD player was spoilt and decided to take it back with her to Indonesia with the intention to fix it; and (c) she did not inform anyone that she was taking the "DVD players". It is significant to note that Parti's answers in P33, a statement taken from Parti just two days after her arrest, are entirely consistent with her defence that Mdm Ng had asked her throw away the Pioneer DVD player on the condition that it was spoilt (Q15/A15). Since Parti thought it was spoilt (Q17/A17), there was no dishonest taking of the said DVD player. Further, I also observe that Q16 makes absolutely no sense due to obvious grammatical or accuracy errors made by IO Amir. Any retrospective attempt to now imply any

meaning to Q16 through the implantation of possible words (*eg*, "know", "test", "inform your employers that" or "know if your employers knew") in the context of the preceding and latter questions would be an entirely speculative and fruitless exercise.

86 Second, the Judge failed to consider the circumstances under which P33 was recorded, where a reasonable doubt exists as regards the accuracy of the answers in P33. P33 was recorded in English and read to Parti in Bahasa Melayu. This, the Defence submits, renders it conceivable that the particulars of P33 had been misheard or mistranslated.[119] Parti testified that an example of this is at Q14/A14 of P33, where her answer was inaccurately recorded as her having said that she had placed the Pioneer DVD player "into" one of the three boxes, when she had actually placed it "near" the boxes and was not sure if Robin had put it inside the box.[120] While nothing material turns on this alleged error, this is an example of how the mistranslation could have occurred in the statement recording process. Additionally, the existence of obvious errors in Q16 and A17 (*ie*, missing words or letters) supports the likelihood that IO Amir made errors in accurately recording P33 itself, especially given the fact that the statement was recorded at 1.44am to 5.57am on 4 December 2016.[121] With the likelihood of inaccuracies in the recording of P33 itself, I find that it is unsafe to convict Parti primarily based on her "admission" based on Q18/A18 of P33.

87 Third, in the light of the above, the examination of the evidence regarding the working condition of the said DVD player is crucially relevant to Parti's defence, contrary to the Judge's observation at [23] of the Judgment. If

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119 AS at para 325.

120 ROP at p 2144.

121 ROP at p 2970.

the Pioneer DVD player was indeed found to be spoilt, this would lend greater credibility to Parti's defence as it was not a mere fabrication on her part, and in particular that Parti had in fact been instructed by Mdm Ng to throw away the Pioneer DVD player if it was spoilt. With that, I turn now to examine the evidence in this respect.

88 I start by addressing the Judge's observations in relation to the working condition of the Pioneer DVD player. The Judge referenced Mdm Ng's testimony that the Pioneer DVD player did not break down for the purposes of contradicting Parti's version of events that Mdm Ng had wanted to throw the said DVD player away. Thereafter, the Judge observed that Mr Anil accused the Prosecution of using a "sleight-of-hand" technique to demonstrate in court that the Pioneer DVD player was working (Judgment at [22]). The Judge then commented on Mr Anil's attempt to introduce evidence from the bar by giving an explanation of how the Pioneer DVD player could not be played, noting that such evidence should have been elicited from Parti in examination-in-chief or re-examination if she had wanted to retract her concession that the DVD player was working, or alternatively introduced through an expert witness (Judgment at [23]).

89 At the trial below, Parti was cross-examined on the working condition of the Pioneer DVD player.[122] The Prosecution proceeded to link the said DVD player to a monitor via a HDMI cable, powered on the DVD player and demonstrated that images were shown on the monitor which came from the

122 ROP at p 1827.

DVD player.[123] The Judge further clarified that the Prosecution did not insert any disc into the Pioneer DVD player before the demonstration:[124]

> Q: So if you don't know what is wrong with this player, how do you know that you'll be able to get it fixed?
>
> A: *Because Mrs. Liew said this is spoiled so I just think it can be repaired.*
>
> Q: And you didn't ask Mrs. Liew for further details?
>
> A: No.
>
> …
>
> Q: Mrs. Liew has said in Court that the DVD player was working the last time she saw it. What do you have to say?
>
> A: Disagree.
>
> …
>
> [DPP]: Your Honour---Your Honour, we will now be referring to the actual exhibit of the DVD player.
>
> …
>
> [DPP]: With Your Honour's indulgence, I will just link it to the monitor here, if that is suitable?
>
> Court: Yes.
>
> [DPP]: Okay.
>
> Court: No, I don't think you can turn it the other way but what's--- what's your point? You want to show what it works, is it?
>
> [DPP]: Yes.
>
> Q: Ms. Liyani, the---sorry, for the record, the DVD player is connected to the monitor at the---oh, sorry, at the Prosecution's desk area. You---
>
> …
>
> Q: So you are able to see the picture on the screen, Ms. Liyani?
>
> A: Yes, I can see.

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123 ROP at p 1829.

124 ROP at p 1829.

> …
>
> [DPP]: … For the record we have connected P19 to the monitor via a HDMI cable and we have then powered on the DVD player and we pressed play and there were images which were shown on the monitor which came from this P19.
>
> Balchandani: But where is it---what is playing?
>
> Court: Okay, well, perhaps put it the other way. You didn't insert anything into the DVD player before this, is that right?
>
> [DPP]: No, Your Honour.
>
> Court: Okay, right. Okay.
>
> [DPP]: Alright---and Your Honour, I am---okay, so, okay.
>
> *Q: So, you agree---I mean, so you see that the DVD player is working, isn't it?*
>
> *A: Only now I realised, before that, I wouldn't know.*
>
> Q: So I put it to you that you were lying that Mrs. Liew gave you this DVD player and told you that it was spoilt.
>
> A: Disagree.
>
> Q: I put it to you that you stole P19.
>
> A: I did not steal this---I have---I am a poor person but my mother never teach me to steal. Even my deceased father never teach me to steal. If I steal, I would have already brought it home, why is it still around?
>
> [emphasis added]

The Prosecution employed the above demonstration to confront Parti. This resulted in a concession from her that the Pioneer DVD player was actually working, contrary to her defence. She testified to realising this fact only at trial but had no knowledge before the trial that it was working.[125]

90 At the appeal hearing, I acceded to Mr Anil's request for the said exhibit to be brought before this court to establish the true working condition of the

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125 ROP at p 1829.

Pioneer DVD player in the interest of justice, given the clear relevance of the working condition of the DVD player. After the demonstration of the workability of the Pioneer DVD player before this court, it was noted that when the DVD player was switched to the "DVD player mode" with a DVD inserted into the DVD player, the error message "could not initialise disc" was displayed.[126] On appeal, the Prosecution conceded and agreed with the Defence that during the trial below, there were already difficulties with the functionality of the Pioneer DVD player in playing the DVD disc but not in playing the recorded clip in the hard drive of the DVD player.[127] The fact that there were such difficulties with the functionality of the Pioneer DVD player was however neither disclosed to the accused prior to the cross-examination of Parti on the working condition of the Pioneer DVD player nor to the Judge in the trial below. If the Prosecution had known of this defect in the Pioneer DVD player during the trial below, it should have fully disclosed it. The trial court could be misled into thinking that the Pioneer DVD player was in a good working condition when questions were (and unfairly) put to Parti was on the basis that the DVD player was still in a good working condition after an incomplete demonstration of its important functionalities during the trial.

91 I agree with the Judge's observation against the introduction of evidence from the bar: the evidence on the working condition of the Pioneer DVD player should ideally be introduced via witnesses – particularly from expert witnesses where technical issues are concerned such as the working condition and functionalities of the DVD player. However, I should also emphasise that in the conduct of judicial proceedings, the rule against introducing evidence from the

126 Transcript 1 Nov 2019 at p 9.

127 Transcript 1 Nov 2019 at pp 9-12.

bar should apply *equally* to both the Prosecution and the Defence. In the Judgment, the Judge did not address the veracity of Mr Anil's allegations against the Prosecution's "sleight-of-hand" technique to demonstrate in court that the Pioneer DVD player was working (Judgment at [23]). In my view, the technical evidence of the functionality of the Pioneer DVD should have been adduced by way of a witness who would then be subject to cross-examination by the Defence. The fact that the said Pioneer DVD player was only *partially functioning* (*ie*, it was able to play videos from the hard disk component, but not able to play a DVD) was not disclosed or clarified by the Prosecution during their cross-examination of Parti at the trial below. I observe that this is particularly prejudicial to the accused since Parti was never given an opportunity to test the Pioneer DVD player until the day of the trial itself.[128]

92 This aspect of the evidence by way of a "lengthy explanation of how the DVD player could not be played" was instead classified by the Judge as a mere attempt by Mr Anil to introduce evidence from the bar (Judgment at [23]) even though the Judge ostensibly had no issue with the Prosecution doing the same during its cross-examination of Parti. The conduct of the proceedings below illustrates the dangers of introducing technical evidence directly from the bar and not through an expert witness who would have done a comprehensive assessment of the whole functionality of the Pioneer DVD player and consequently be subject to cross-examination.

93 I re-emphasise that it is generally inappropriate to introduce evidence from the bar. That being said, in fairness to the accused, I find that the agreed positions adopted by the Prosecution and the Defence on the *partial*

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128 Transcript 1 November 2019 at p 14.

functionality of the Pioneer DVD player after the demonstration at the appeal hearing before me would be far more reliable than the evidence adduced in the trial below by way of evidence from the bar with a demonstration in court of only one functionality of the DVD player and then concluding that it was therefore in a working condition.

94 As its name suggests, a DVD player's main function is to play a DVD. Notwithstanding its ability to play from its hard disk, a DVD player that is unable to play a DVD can reasonably be described as "spoilt". This fact directly contradicts Mdm Ng's testimony that the Pioneer DVD player did not break down. Additionally, I note that the Judge failed to consider an aspect of Mr Liew's testimony where he conceded that it was possible that the Pioneer DVD player was not working and if so, would be of no use to him:[129]

> Q: Yes. And a DVD player like this, doesn't last very long, correct?
>
> A: It last long but *it doesn't work as well.*
>
> Q: That is a problem with Pioneer, right, correct? Yes or no?
>
> A: Yah, no---it last long but it doesn't work
>
> …
>
> Q: *And that's actually what was wrong with the DVD player, it was not working, correct?*
>
> *A: Yah.*
>
> Q: Your wife, Mrs. Liew, respectfully, realised that, correct?
>
> A: I don't know whether she realised that.
>
> Q: Your wife, Mrs. Liew, wanted to throw the DVD player away because it was not working. And na---when I mean by throw, discard it, give it to the karang guni man, agree or disagree? Yes or no? Possible?
>
> *A: Possible but I don't know.*

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129 ROP at pp 1313-1315.

> …
>
> Q: *Yes. And because it was not working, it was probably no use to you, correct?*
>
> *A: No use to me.*
>
> Q: Because you are not the kind of person who fixes---
>
> A: Yah---
>
> Q: things.
>
> A: right.
>
> [emphasis added]

Mr Liew's evidence in fact corroborates Parti's defence that the Pioneer DVD player was not working and could have been thrown away since it would no longer be of any use to Mr Liew. This bolsters the observation I made above at [83] that it matters not that Parti had not informed Mr Liew or Mdm Ng that she would be taking the Pioneer DVD player, which the Judge seemed to wrongly focus on.

95 Finally, I turn to consider Parti's answers in relation to the Pioneer DVD player in her statements, P31 (made on 29 May 2017 about six months after her arrest) and P32 (made on 3 December 2016 just one day after her arrest), which the Judge did not take into consideration in her decision. I note that Parti's answers given soon after her arrest were partially consistent with her present defence, reproduced as follows:[130]

> [P31]
>
> Q32: With reference to Annex 4 Page 7, can you tell me how you obtained these 2 DVD players (Philips and Pioneer)?
>
> A32: … For the Pioneer DVD player, ***I was told it was spoilt*** *(7 years ago) so I wanted to bring it back to Indonesia to fix it. They did not explicitly give them to me.*

130 ROP at p 2933.

> [P32]
>
> Q28) There are 2 DVD player[s] (Pioneer and Phillips) amounting to $150/- found inside the box. Who does it belong to?
>
> A28) Both of the DVD players were placed outside the house where all the unused items were place[d] and to be thrown away. *I took it as both were spoilt and I planned to bring it back to Indonesia to have it fixed.*
>
> [emphasis added]

While I observe that there were slight inconsistencies in the details in which Parti was given the Pioneer DVD player (*eg*, Mdm Ng agreed to give Parti the player (in Parti's EIC) as opposed to Parti's admission that her employers did not *explicitly* give it to her (in P31)), Parti's statements, evidence at trial, Mr Liew's testimony and the parties' agreed positions on appeal regarding the *partial functionality* of the Pioneer DVD player are materially consistent with Parti's defence. On balance, I find it likely to be the case that Parti's employers no longer wanted the Pioneer DVD player as it was partially spoilt and Parti intended to bring it back to Indonesia to fix it.

96 Accordingly, I overturn Parti's conviction for the 1st charge in relation to the Pioneer DVD player.

Brown Longchamp bag (P2) and Blue Longchamp bag (P3)

97 I now deal with the two Longchamp bags[131] collectively in this section.

98 Mr Liew's evidence was that he had purchased several foldable Longchamp bags from overseas for travel.[132] Mr Liew also testified that several

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131 Photographs of which are at ROP at pp 2791-2792.

132 ROP at pp 1199-1202.

of these bags went missing.[133] Mr Liew was however unable to recall when or where he bought both Longchamp bags.[134] He only testified that he would not have discarded the bags because they were very durable.[135]

99 On the other hand, Parti's evidence, as stated in P31, was that these Longchamp bags were found by her in an *abandoned suitcase* near the rubbish area outside of the neighbouring 49D Chancery Lane.[136] In her EIC, Parti's testimony was that she found it in *a "big bag"* near the rubbish bin at 49D Chancery Lane at the end of 2010.[137]

100 The Judge preferred Mr Liew's evidence over Parti's. The basis for the conviction was that she did not accept that Parti was able to chance across two Longchamp bags of the same style as the bags used by Mr Liew that had been discarded by his neighbours (Judgment at [24]).

101 In this respect, I find Mr Liew's evidence affirming the ownership and possession of the two Longchamp bags to be lacking. On appeal, the Defence argues that Mr Liew was unable to *specifically and positively identify* the particular individual bags which were the subject of the 1st charge as being two of the several Longchamp bags that he had previously purchased. I accept this submission. This element is necessary in proving that the Longchamp bags found in Parti's were indeed the same ones *possessed by Mr Liew*. All that was adduced at trial was that Mr Liew had bought and owned a number of such bags,

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133 ROP at p 1192.

134 ROP at pp 1199-1201.

135 ROP at p 1201.

136 ROP at p 2934 Q41 and A41.

137 ROP at p 1711.

but could not give details on how his possession of the two Longchamp bags came about. He also could not recall when he bought each of them.[138] Further, no evidence was adduced in relation to how Mr Liew could identify that those two *specific* Longchamp bags were indeed his, despite the Judge's acknowledgement that "a Longchamp bag is a common bag that is available in Singapore" (Judgment at [24]). There were no particularly unique features of the two bags that could tie the said bags to Mr Liew's ownership/possession or which Mr Liew could identify as markers to indicate to him that they were the same ones bought by him previously.

102 Additionally, I note that the Judge had failed to consider the fact that Parti was carrying the brown Longchamp bag on the day her employment was terminated on 28 October 2016.[139] This was done in the presence of Robin, Karl and Mdm Ng. There was no conduct on her part showing any attempt to hide it at all. It would be unlikely for Parti to have carried a bag allegedly stolen from Mr Liew so openly and in front of members of the Liew family if it had truly belonged to Mr Liew. Further, Robin's testimony is that he had never noticed Mr Liew carrying these particular two bags throughout the course of his employment.[140] If these two particular Longchamp bags were indeed Mr Liew's, there would be a good chance of Robin, his driver, noticing Mr Liew carrying either one of these bags at some point of time during his employment.

103 The Defence submits that the Judge did not provide concrete evidence as to why Mr Liew's testimony was to be preferred over Parti's, beyond her personal doubt that Parti would be able to find discarded Longchamp bags of

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138 ROP at pp 1199 and 1200.

139 ROP at p 1772.

140 ROP at p 1087.

the same style as that used by Mr Liew. In its supplementary submissions, the Defence provided many articles in the mainstream media and online blogs on dumpster diving to support its contention that high-end branded items (*eg*, of brands like Prada, Louis Vuitton, Coach, and Gucci) are found in trash bins in Singapore. Longchamp bags are classified as accessory luxury items that are ubiquitous. It is therefore not improbable for other persons living in or renting houses in the Chancery Lane area to also own them, and to discard them when decluttering or moving out.

104 I note that these articles and online blogs should have been admitted by way of a criminal motion to adduce fresh evidence on appeal. The articles and online blogs are from the internet and their reliability might be suspect at times. As such, I did not specifically rely on the contents of the articles and online blogs. I nevertheless took judicial notice of the general fact that there are some people who do look for a myriad of discarded items, including luxury items, at trash bin areas or disposal points and there is much force in the Defence's submissions, which I have set out in some detail in [103] above. On the whole, I agree with the Defence that the Judge erred in simply jumping to the conclusion that Parti would not have been able to chance on two discarded Longchamp bags of the same style as the bags used by Mr Liew as a basis for her conviction on the 1st charge in respect of the two Longchamp bags

105 As for the inconsistency in Parti's evidence highlighted by the Prosecution between Parti finding the two Longchamp bags near the rubbish bin or rubbish area at 49D Chancery Lane in an "*abandoned suitcase*" (as stated in her statement in P31) as opposed to finding them in a "*big bag*" (as stated in her EIC), I do not find this inconsistency to be material as both instances of Parti's evidence do refer to some form of repository to store the two Longchamp bags.

Furthermore, I am cognisant that during the recording of P31, Parti spoke in Bahasa Indonesia and what she said had to be interpreted into English.

106 For the above reasons, I find that the Prosecution has not proved beyond a reasonable doubt that these two specific Longchamp bags in the charge in fact belonged to and were in the possession of Mr Liew.

"Employed in the capacity of a servant"

107 I also observe that the element of "being a clerk or servant, or being employed in the capacity of a clerk or servant" in the offence under s 381 of the Penal Code is also not made out since the end date of Parti's employment was on 27 October 2016, as was reflected in her Foreign Domestic Worker Employment History (Exhibit D9).[141] The particulars of the 1st charge state that the act of theft being employed in the capacity of a servant was committed *on 28 October 2016 at about 1.00pm*, which was when Parti was no longer employed as a servant.[142] In this respect, the Judge should have amended the 1st charge under s 381 of the Penal Code to a charge of theft in dwelling-house charge under s 380 of the Penal Code instead.

108 For all of the above reasons, I find that there is a reasonable doubt as to whether Parti had committed theft by a servant of all three items contained in the 1st charge. I accordingly allow Parti's appeal and overturn her conviction on the 1st charge

141 ROP at p 3221.

142 ROP at p 6.

2nd Charge (DAC 931428-2017 – Karl's items)

Amendment of the 2nd charge

109 At the conclusion of the trial below, the Judge amended the 2nd charge by removing five items of clothing from the original 120 items of clothing that allegedly belonged to Karl. The Judge found sufficient reasonable doubt whether some of the items were indeed Karl's because of (a) his inability to recall if some items had ever been in his possession or whether he had worn them; and (b) the items were smaller-sized female clothing (Judgment at [2] and [26]). In particular, the Judge also excluded Item 29/120 as it was a quilt cover and could not be classified as an "item of clothing" (Judgment at [27]). The Judge also removed two black wallets, namely one Gucci and one Braun Buffel wallet, from the 2nd charge as Karl was unable to recall much about the items, apart from claiming that his wallets were gifts from his family. There was no evidence that Karl had used these wallets as he was unfamiliar with the wallets and the condition that they were in (Judgment at [28]). More pertinently, the style of the wallets did not appear to be men's wallets and the Judge found it likely that Karl was "mistaken about these two wallets having been gifted to him" (Judgment at [29]). Parti's evidence was that these two wallets were given to her by her friend, Diah (Judgment at [29]). Finally, the Judge amended the value of the Gerald Genta watch from $25,000 in the original charge to $10,000, as the Prosecution had invited the Court to do (Judgment at [30]).

Karl's Credibility

110 As elucidated above at [16], where findings of fact hinge upon the trial judge's assessment of the credibility and veracity of witnesses, the appellate court will only interfere if the findings of fact can be shown to be *plainly wrong* or *against the weight of the evidence*.This court remains entitled to ascertain (a)

whether the Judge's assessment of Karl's credibility is plainly wrong or against the weight of evidence; and (b) if the Judge's decision is inconsistent with the material objective evidence on record, bearing in mind that an appellate court is in as good a position to assess the internal and external consistency of the witnesses' evidence, and to draw the necessary inferences of fact from the circumstances of the case: *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [55], citing *Haliffie bin Mamat v PP* [2016] 5 SLR 636 at [32].

111 The Judge described the Prosecution's witnesses (which includes Karl) as "largely credible" and found their evidence to be clear, compelling and consistent even under lengthy cross-examination and did not find any reason to disbelieve them (Judgment at [17]).

112 Having evaluated the evidence, I am troubled by various aspects of Karl's evidence that the Judge appears not to have considered. In my judgment, these cast serious doubts on Karl's credibility and I find that the Judge's assessment of Karl as largely credible with clear, compelling and consistent evidence (Judgment at [17]) is plainly wrong and against the weight of the evidence. In particular, the Judge failed to fully appreciate the reasoning behind her decision to remove the seven items from the 2nd charge, which should have had a material effect on her assessment of Karl's credibility. The alleged items were mostly removed from the 2nd charge because there existed a reasonable doubt as to whether some of the items in the original 2nd charge were Karl's. Once the Judge found on that basis that the conviction in relation to the seven items allegedly in Karl's possession could not be sustained, it was incumbent on her to reappraise the entirety of Karl's credibility in that light, instead of simply justifying Karl's ostensible lack of credibility with his inability to recall if some items (including smaller-sized female clothing) had ever been in his possession or if he had ever worn them (Judgment at [26]).

113 I now turn to examine these items in further detail.

114 In relation to the two black wallets (P4 and P5), Karl testified in the trial below that these two black wallets were his and *insisted* that was so under cross-examination.[143] Karl testified that he could identify the Gucci wallet in particular as he was always using this wallet.[144] However, Karl was unable to give details on whether he used the wallets and when he used the wallets.[145] The Judge observed that the two black wallets did not appear to be men's wallets (Judgment at [29]). The Judge also assessed that Karl was "not able to recall much about the items apart from saying that all his wallets were gifts from his family" and that "there was no evidence that Karl had used these wallets either as he was unfamiliar with the wallets or the condition that they were in" (Judgment at [28]). Further, Karl's own evidence was contradicted by the Liew family who testified that they did not gift Karl these wallets.[146] The plain inference to be drawn from the Judge's above conclusion is that Karl was not telling the truth in claiming possession over what appears to be women's wallets. It is unclear how the Judge could have arrived at the conclusion that it was likely that Karl was "*mistaken*" about these two women's wallets having been gifted to him (Judgment at [28]).

115 Additionally, Karl's evidence in relation to the four items of clothing that were removed from the charge demonstrates that Karl was not a credible witness. Karl's initial allegation that smaller-sized, female clothing belonged to

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143 ROP at pp 227, 257.

144 ROP at p 106.

145 ROP at p 410.

146 ROP at p 941.

him could not be explained away as a mere mistake or an inability to recall if the items were in his possession. I explain further.

(a) In relation to the black dress (P1A-10), Karl originally claimed that it belonged to him based on a photograph of it.[147] When he was confronted with the physical item, he claimed that he had been looking at a different photograph and the wrong item.[148] This was despite his earlier clarification on the stand on the photograph number as well as the colour of the item that was being referred to during cross-examination.[149]

(b) In respect of the women's cream polo t-shirt (P1A-5) and the red blouse (P1A-9), Karl admitted that they were not his when confronted with the physical items and agreed that they were women's clothing.[150] Further, Heather and Mdm Ng both denied that the red blouse belonged to either of them.[151] Yet, these items were framed as part of the 2nd charge which were allegedly in Karl's possession. A reasonable inference can be drawn that the basis for including these pieces of women's clothing in the 2nd charge (which pertained to stolen items in Karl's possession) must have been supported by evidence from Karl that those women's clothes were previously in his possession.

(c) When confronted with the question if he had a "habit of wearing women's clothes", Karl replied that he sometimes wore women's T-

147 ROP at p 770.

148 ROP at p 775.

149 ROP at p 770.

150 ROP at pp 759-760, 768-769.

151 ROP at pp 1004 and 1640.

shirts.[152] This assertion is highly unbelievable, especially in the light of the concessions Karl made at trial regarding the women's clothing removed from the 2nd charge.

116 Further, Karl's testimony on his valuation of the alleged stolen items is also questionable and evidences a lack of credibility.

(a) Karl claimed that the damaged Gerald Genta watch (P7) was valued at $25,000 based on his "impression",[153] even though Karl admitted that the watch had never been sent for any proper evaluation.[154] This is despite the fact that the strap was broken and the watch had a missing button-knob.[155] This valuation was also contrary to Karl's treatment of the watch as he placed the watch under his study table.[156] When confronted about why he did not place such an allegedly expensive item in his safe-box instead, he gave an excuse that the safe-box ran out of batteries.[157] Yet, Heather, gave a contradictory testimony that the safe-box was functioning.[158] Additionally, Karl claimed that the watch was of sentimental value because his father gave it to him. However, Mr Liew testified that the watch was just another watch that Mr Liew had given to him and Karl had never told him that the watch

152 ROP at p 738.

153 ROP at p 258.

154 ROP at p 379.

155 ROP at p 261.

156 ROP at p 375.

157 ROP at p 379.

158 ROP at p 922.

was sentimental to him.[159] The Judge eventually found that the value of the Gerald Genta watch was overestimated at $25,000 and amended its value instead to $10,000 based on the original guide price listed in 2002.[160]

(b) As for the Helix watch (P1-18), Karl testified that it was given to him by Mr Liew.[161] This was despite Mr Liew's denial on the stand of having owned such an item.[162] When Karl was asked on the stand how he came to the valuation of the Helix watch to be of $50, he replied as follows:[163]

> Q: Okay, now the item at 1-18 is a Helix Watch. What is the value of this item?
>
> A: $50.
>
> Q: How do you identify that this item belongs to you?
>
> A: You can see my father's room and it's really ugly watch that I do not want that was passed upon me to take it.
>
> Q: So, how do you arrive at the value of $50?
>
> A: No, it was---was something and, uh, *even it costs you is $100 now. So if I take a really ugly looking watch, I divide into 2 (laughing), I mean it's really possible that it will be $50 right because [inaudible] online is already a $100.*
>
> [emphasis added]

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159 ROP at p 1271.

160 ROP at p 2585; PP Closing Subs at paras 73-74 (ROP at p 3048).

161 ROP at p 258.

162 ROP at p 1204.

163 ROP at p 258.

117 In the light of the above evidence, Karl was a witness who was not only lacking in credibility but also did not take the process of giving testimony seriously. Karl's evidence was internally inconsistent and contradicted by the other witnesses. Karl's testimony that he had in his possession multiple female items that Parti allegedly stole from him is also highly suspect. It is unclear how the Judge could have arrived at the conclusion that this was a result of Karl's "inability to recall if some items had ever been in his possession", especially when some of the items were observed by the Judge to be "smaller-sized female clothing" and wallets that "did not appear to be men's wallets" (Judgment at [26] and [29]).

118 I find that the Judge's eventual finding that the Prosecution's witnesses (which includes Karl) were largely credible with clear, compelling and consistent evidence (Judgment at [17]) is simply unjustified and is in my judgment, against the weight of the evidence. Karl's dishonesty on the stand was plainly evident from his testimony and the Judge failed to fully appreciate her decision to amend the 2nd charge in relation to Karl's lack of credibility. The fact that Karl lied about particular items in the 2nd amended charge does not only taint his credibility as a witness but also affects the convictions for the items in the 2nd charge that are premised on Karl's testimony alone. This also bolsters my earlier finding in relation to Karl's improper motive to file the police report against Parti.

119 With that in mind, I now turn to analyse the conviction for the items that remained in the amended 2nd charge.

115 pieces of clothing (P24)

120 In her decision to convict Parti on the 2nd charge for having stolen the 115 items of clothing that were in Karl's possession, the Judge did not find the

need to delve into the details of each and every item (Judgment at [37]). Instead, it would appear that the Judge based the conviction on the fact that Karl "confirmed that he had never given [Parti] any clothes" and Mdm Ng only gave Parti clothes that were hers (meaning, Mdm Ng's), and not anyone else's (Judgment at [35]).

121 Parti's defence is that some of the shirts were given to her by May's husband, Robin and Mdm Ng while the rest of the clothing were purchased by her. Parti also denied that she wanted to pack Karl's clothes into the boxes and testified that these clothes must have been packed into the boxes by Robin and Ismail. Parti also argued that she did not put that many clothes into the three jumbo boxes and that all of the items that comprise the original 120 items of clothing in the 2nd charge came from the items in the Black Bag which Karl had given to Jane, who then passed it to Parti.[164]

122 In my judgment, it is most concerning that there is a serious risk of contamination of the clothing listed in the 2nd charge with the clothing in the Black Bag that featured in the termination of Parti and her packing process (see above at [12]) that renders Parti's conviction on the 2nd charge unsafe.

123 The Black Bag contained Karl's used clothes (*eg*, suits, jackets and pants) that he had given to his previous domestic worker, Jane, who had then given it to Parti. This shows that Karl had no issues even with discarding and giving away his expensive clothing such as suits and jackets after he had used them. The Black Bag was returned to Karl on the morning that Parti's employment was terminated. These facts are undisputed. The Black Bag was

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164 AS at para 270.

left next to the mirrored pillar on the floor even after the three jumbo boxes were sealed.

124 The potential contamination of evidence occurred *after* Parti had left the house when Mdm Ng, Heather and Karl opened the three jumbo boxes on 29 October 2016. In the trial below, no evidence was led on how the members from the Liew household dealt with the items from the Black Bag, separated the clothing found in the jumbo boxes and the Black Bag or ensured that the clothing from both sources were not mixed up when they first discovered that their items where allegedly found in the jumbo boxes. Indeed, the Prosecution fairly conceded this point.[165] Further, the 115 pieces of clothing were returned to Karl for his daily use. In the light of the absence of the witnesses' testimony available before the court, reliance must be placed on the Video footage taken on 29 October 2016 as objective contemporaneous evidence of the unpacking process of the jumbo boxes.

125 The footage of the Video shows that the Black Bag was next to one of the opened jumbo boxes and it was almost collapsed and emptied out,[166] demonstrating that the clothing from the Black Bag had been taken out and sprawled all around the place on 29 October 2016. The clothing from the Black Bag would have been mixed with the clothing that was taken out of the jumbo boxes.[167] Therein lies the high probability of contamination of the clothing from the Black Bag with the pieces of clothing that Parti had allegedly stolen from Karl. The likelihood of contamination is further bolstered by the fact that the Prosecution conceded that some of the 115 pieces of clothing contained in the

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165 Transcript 17 February 2020 at pp 70-71.

166 At 11 second mark of the Video.

167 Transcript 17 February 2020 at p 73.

2nd charge were in fact *office clothing* that matched the description of the used clothing that Karl had given away to Jane in the Black Bag.[168]

126 Further, the Video footage only demonstrates that there were piles of items scattered across the room after the three jumbo boxes were open and the Black Bag had been nearly emptied out. It does not capture the state of the boxes *before* the jumbo boxes were open and the taking of the items out of the boxes thereby documenting what clothing had been in fact been packed in the boxes. Therefore the items that were lying in the vicinity of the boxes (that Parti did not pack into the three boxes, such as from the Black Bag) could easily have been mixed with items from inside the jumbo boxes.

127 At the appeal hearing, the Video (with its audio) was played in the court. It could be heard at the start of the Video that Mdm Ng commented, "the *karang guni* man help me to move", to which Karl replied "... you cannot get the *karang guni* man here. It's still her things, Mum".[169] The conversation, as crucial contemporaneous evidence at the time of the Liew family's discovery of the items in the three jumbo boxes, indicated that the Liew family had the intention to throw the items away and did not have the habit of hoarding items. This is buttressed by the photographs taken of the interior of the Liew's family house at 49 CL, which shows the house to be in a very neat and tidy condition. I do not get any impression that the Liew family would have the habit of keeping old, unwanted or spoilt items in the house and not discard them.[170] As captured in the Video, Mdm Ng's initial reaction was not to salvage the items but to engage the help of the *karang guni* man to remove the items. These items

168 Transcript 17 February 2020 at p 71 to 72.

169 0:00–0:02 of the Video.

170 ROP at pp 2883-2924.

included numerous pieces of clothing sprawled on the floor captured in the Video, which included some of the 115 pieces of clothing that Parti was alleged to have stolen. If the clothing had not been earlier discarded or given away by Karl's and Karl still wanted them, there was no reason for Mdm Ng to have suggested engaging the help of a *karang guni* man to remove them. Further, if the clothing had truly been stolen from Karl, one would expect Karl to have claimed that they were his clothes, not Parti's. Instead, Karl replied to Mdm Ng that the items could not be moved since they were still Parti's items.

128 Additionally, I note that Parti testified that a blue t-shirt identified as P21/120[171] was a worn t-shirt that Mdm Ng had previously instructed Parti to use it as a cleaning rag in the Liew household. This cleaning rag was included as one of the items in one of the 115 pieces of clothing valued at $150 each for the purposes of the 2nd charge. In my view, the fact that a cleaning rag was found in the jumbo boxes supports the Defence's contention that there was contamination of the clothing contained in the 2nd charge with clothing from the Black Bag of clothes that Jane herself did not want. There is no conceivable reason for Parti to have taken a used t-shirt that had previously been used as a cleaning rag back to Indonesia. Coupled with the issues in relation to the chain of custody mentioned above, I find that there is contamination of the evidence in relation to the 2nd charge with clothing from the Black Bag.

129 Because of the manner in which the primary evidence was handled by the Prosecution witnesses, there is no way of ascertaining which of the 115 pieces of clothing alleged to be stolen by Parti were from the three jumbo boxes

171 ROP at p 2836 (P1A-6).

or from the Black Bag. I thus find that this renders the conviction of the 2nd charge in relation to all 115 pieces of clothing unsafe.

Blanket (P23, in photograph P1-11) and three bedsheets (P22, in photographs P1-11 and P1-12)

130 As for Parti's conviction on stealing the blanket and three bedsheets, the Judge relied primarily on Karl's testimony (Judgment at [40]). Karl testified that he had bought the blanket (P23) from the UK for $500 when he was a student there and that he had purchased one of the bedsheets (photographed in P1-11) from Habitat.[172] As for the other two bedsheets (photographed in P1-12), Karl merely claimed ownership without providing any details as to how he came into possession of them.[173] Karl also valued the bedsheets at $300 without any basis.[174]

131 However, the bedsheet (photographed in P1-11) has the same pattern as the quilt cover which was removed from the 2nd charge by the Judge (see above at [109]), which is highly suggestive that both items came as a set. The quilt cover had a label "IKEA",[175] which contradicts Karl's testimony that the accompanying bedsheet with the same pattern was from Habitat in UK. The Judge oddly observed that whether Karl had bought the bed cover from Habitat or elsewhere, she found no reason to doubt that he had purchased it from the UK (Judgment at [41]). It is unclear how the Judge could arrive at such a conclusion, especially when one takes into account Karl's evident lack of credibility. More importantly, Parti was able to testify with some detail that she

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172 ROP at pp 254, 498 and 762.

173 ROP at p 225.

174 ROP at p 255

175 Transcript 1 November 2019 at p 76; ROP at p 501.

bought the bedsheet from "IKEA at Alexandra" for $49,[176] which is consistent with the label of the quilt cover that had the matching pattern as the said bedsheet (photographed in P1-11). On the other hand, Karl's testimony regarding the blanket (P23) and the three bedsheets (P22, in photographs P1-11 and P1-12) is uncorroborated. Karl's wife, Heather, testified that she had never seen the bedsheet (in photograph P1-11) in her room or on her bed in 49 CL[177], which suggests that Karl did not purchase the bedsheet (in photograph P1-11) as he had alleged. This would explain why Heather never saw the bedsheet (in photograph P1-11) before. On a totality of the evidence, and in particular, the objective evidence which strongly suggests that the bedsheet was from IKEA, I find that Karl fabricated his testimony about having purchased the bedsheet from Habitat in the UK. Instead, I believe Parti's evidence that she purchased the bedsheet (in photograph P1-11) together with the quilt cover as a set from IKEA. Clearly, the conviction for theft of the bedsheet (in photograph P1-11) is against the weight of the evidence and is not sustainable.

132 For the remaining items, Parti's defence is that the blanket (P23) and the other two bedsheets (in photograph P1-12) were given to her by May.[178] However, May testified that she had never seen the blanket (P23) and the two bedsheets (in photograph P1-12) before.[179] Since Karl gave no evidence as to how the blanket (P23) and the two bedsheets (in photograph P1-12) came into his possession, and May had never seen the blanket (P23) and the two bedsheets (in photograph P1-12) before, the Prosecution has nothing to rely on but a bare

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176 ROP at p 1722.

177 ROP at pp 939 and 940.

178 AS at pp 159 and 160.

179 ROP at p 1025.

assertion by Karl that he owned the blanket (P23) and the two bedsheets (in photograph P1-12) to support the conviction in relation to them.

133 Given that the conviction of Parti in relation to the blanket (P23) and the two bedsheets (in photograph P1-12) is premised primarily on the uncorroborated testimony of Karl and having regard to Karl's poor credibility and the break in chain of custody, I find that the conviction in relation to these remaining items (*ie*, the blanket (P23) and the other two bedsheets (in photograph P1-12)) is unsafe.

134 I also note that May contradicted Parti's evidence of May's gift in respect of the two bedsheets (in photograph P1-12) and the blanket (P23). The Judge relied on this to reject Parti's defence (Judgment at [41]). However, I do not give May's evidence on the blanket (P23) and two bedsheets (in photograph P1-12) much weight because of May's lack of credibility as a witness. Karl's testimony in relation to the ownership of the blanket and three bedsheets was likely motivated by an improper motive as explained in detail above in [34] to [51]. Given the situation, May might not have been objective in her evidence as she is a member of the Liew family as Karl's sister and Mr Liew's daughter. Her credibility is tainted by the improper motive on the part of Karl and Mr Liew when she gave evidence to support Karl's testimony. Further, there are other issues concerning May's credibility as a witness which I elaborate below at [187]. My conclusion is that the conviction in relation to the blanket (P23) and the two bedsheets (in photograph P1-12) under the 2nd charge remains unsafe. It must always be borne in mind that the burden of proof lies in the Prosecution to prove all the elements of the charge beyond a reasonable doubt. I find that it has failed to discharge the burden in this instance.

Philips DVD player (P20)

135 In relation to the Philips DVD player, Parti testified that the Philips DVD player had been "given" to her by Mdm Ng during her employment in 2010 when she requested for a television and DVD player to use in her room. Parti testified that she used the Philips DVD player every day.[180] She subsequently clarified under cross-examination that Mdm Ng did not *give* the Philips DVD player to her as a gift, but had merely *permitted* Parti to use it.[181] This was contradicted by Mdm Ng's testimony that there was no such television or Philips DVD player in Parti's room and that she had never given these items to Parti to use in her room.[182] This was corroborated by Heather's testimony that she never seen such a DVD player in Parti's room.[183]

136 Parti's defence is that she had left the DVD player under the network box on the day of her termination (*ie,* on 28 October 2016) and had *not dishonestly taken* the DVD player out of the possession of Karl.[184] She had no idea why the said DVD player was found in her jumbo boxes.[185] Parti testified that she had no intention to bring the Philips DVD player back to Indonesia since it was only for her use at 49 CL.[186]

137 The Judge based Parti's conviction on the fact that "Karl identified the Philips DVD player as his and Heather confirmed that it was purchased and used

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180 ROP at pp 1690-1691.

181 ROP at p 1890.

182 ROP at pp 1607-1608.

183 ROP at p 991.

184 ROP at pp 1749, 1889.

185 ROP at p 1750, 2318.

186 ROP at p 1889.

when they were both based in China" (Judgment at [42]). On the other hand, the Judge rejected Parti's version of events because (a) it was contradicted by Mdm Ng's testimony; and (b) if the Philips DVD player had been left under the network box, there was no reason for the Philips DVD player to have been packed into the jumbo boxes; and (c) there was no mention of DVDs being found in Parti's possession or in the jumbo boxes (Judgment at [42]).

138 However, given the chain of custody issue and that there was no cataloguing of items that were removed from the three jumbo boxes as previously chronicled (see above at [61]), there is a reasonable probability that the DVD player could have been left in Parti's room and the Liew family simply added it as one of the items allegedly stolen by Parti. This must be considered in the light of (a) the absence of any contemporaneous evidence that the DVD player did in fact come out of the three jumbo boxes; and (b) an improper motive on the part of Mr Liew and Karl (elaborated above at [46] to [51]).

139 The Defence also submits that Heather's testimony demonstrates that possession and ownership of the Philips DVD player was in fact Heather's and not Karl's. The element of the 2nd charge "in the possession of Karl" was thus not made out for the Philips DVD player. I agree. In the trial below, Heather claimed ownership of the Philips DVD player and testified that the Philips DVD player (photograph at P1-13) was hers as she bought the said DVD player in Shanghai from Yongle Electronics Shop.[187] Heather also testified that she was with Karl in Shanghai at that point in time.[188]

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187 ROP at p 890.

188 ROP at p 890.

140 However, it was not evident from Heather's testimony that the Philips DVD player *jointly belonged to* or was ever *in the possession* of Karl. Neither was evidence adduced at trial that the Philips DVD player *had been given* to Karl. At trial, Karl gave oscillating testimony in this regard. He first claimed that both he and Heather bought the Philips DVD player when they were in China.[189] He then testified that before 2009, the Philips DVD player was in his room.[190] Thereafter, he clarified that he did not believe that he had ever used the Philips DVD player.[191] He subsequently changed his testimony that he had used it in China but not in Singapore.[192]

141 Although Karl claimed to have joint ownership and possession with Heather over the Philips DVD player, given my assessment of Karl's credibility, his evidence on this issue must be given its due weight. Finally, I observe that a conviction against Parti for theft in relation to the Philips DVD player had not been framed as part of the 4th charge as part of the items that were in Heather's possession. There was sufficient evidence pointing towards the fact that the DVD player was in the possession of Heather who bought the DVD player. However, for reasons unknown, this item was framed as part of the 2nd charge and not the 4th charge. It is trite that it must be clear to the accused person exactly what is alleged against him and what is the case that he must meet: see *Viswanathan Ramachandran v Public Prosecutor* [2003] 3 SLR(R) 435 at [24]. In order to ensure that the accused person is not unfairly prejudiced and to ensure that the Prosecution does not run shifting or inconsistent cases against

189 ROP at p 256.

190 ROP at p 806.

191 ROP at p 806.

192 ROP at p 806.

the accused person (which includes the person in whose possession the item was allegedly stolen from), I decide against exercising the power of an appellate court to frame an altered charge pursuant to s 390(4) of the CPC.

142 In the light of the above, I find that the Prosecution has not proven beyond a reasonable doubt that (a) the Philips DVD player was in fact found inside one of the three jumbo boxes and had therefore not been left behind by Parti in her room; and (b) the Philips DVD player was an item in Karl's possession. I therefore find the conviction against Parti under the 2nd charge in respect of the Philips DVD player unsafe.

Assortment of kitchenware and utensils (P21)

143 I now turn to the assortment of kitchenware and utensils, which includes four pots (stainless steel, ceramic and glass), two cups and saucers, two knifes (a pink knife and a knife with a black handle), twelve forks, twelve spoons and a pair of chopsticks.[193]

144 Karl testified that the kitchenware and utensils were his items from his student days and some of them were bought in the UK while others were bought in Singapore.

145 On the other hand, Parti testified that the utensils were purchased by her from a variety of places, providing some level of detail as to the price and the provenance of each item, including the following:[194]

(a) utensils from a store named Hock Siong at Jalan Ampang;

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193 ROP at pp 2803-2804.

194 ROP at pp 1702-1707.

(b) a large stainless steel pot from Toa Payoh Cash Converters for $39 (in EIC) and $49 (under CX); and

(c) a ceramic pot from NTUC with a mixture of cash and points.

This was however contradicted by Mdm Ng's testimony that Parti had told her that the pots were given to her by Parti's friend.[195]

146 The Judge preferred Karl's and Heather's testimony and found that it was "consistent and compelling". She did not think that Parti would allow the Liew family to use kitchenware that she had bought personally or obtained from her friend. The Judge also noted that no reason was proffered as to why Parti required multiple sets of utensils or she needed to purchase chopsticks (Judgment at [44]). The Judge also took into consideration the fact that Heather corroborated Karl's evidence because "they had used the stainless steel pot whenever they went to buy *prata* in order to get more curry" (Judgment at [43]).

147 The Defence argues that the Judge erred in scrutinising the evidence of Karl and Heather as the stainless steel pot was *only* used by them *after* the items were discovered when the boxes were opened on 29 October 2016.[196] While evidence was led at the trial that Karl and Heather used the stainless steel pot *after* the boxes were open on 29 October 2019,[197] in my judgment, it is unclear from the witnesses' testimony as to whether Karl's and Heather's use of the stainless steel pot was limited to *only after* 29 October 2016 (*eg*, Heather's

195 ROP at p 1431.

196 ROP at p 777 and 891.

197 ROP at p 1012.

testimony that "sometimes we go and buy"[198] or Karl's testimony that "I used the pot to get curry for my *roti prata*").[199] In that respect, the testimonies of Karl and Heather in relation to their use of the stainless steel pot do not necessarily corroborate Karl's evidence that the steel pot was his, there being no clear evidence that they had also used the stainless steel pot *before* the boxes were opened.

148 As for the other items, the Defence submits that there was no mention of the use of the other utensils and kitchenware from 2002 (when Karl returned back from his studies abroad) to 2016 based on the testimonies of Karl and Heather.[200] In my view, the Defence correctly highlights that Karl was unable to provide any details in relation to where the kitchenware was stored or put to use and Karl could not recall where he kept them in 49 CL after shipping them back to Singapore in 2002 from his studies abroad.[201] Save for Heather's testimony that the large stainless steel pot was used to collect curry from Casuarina Curry, of which it is unclear whether this occurred *before* or *only after* 29 October 2016,[202] Karl's testimony regarding his ownership of the other utensils and kitchenware was essentially uncorroborated.

149 Additionally, the Judge failed to consider an important aspect of Karl's evidence in relation to the pink knife (photograph exhibit P1-14).[203] Karl testified that the utensils and kitchenware, including the pink knife, were items

198 ROP at p 891.

199 ROP at p 777.

200 AS at para 21.

201 ROP at pp 490, 496.

202 ROP at pp 777 and 891.

203 ROP at p 2803.

that he had used in the UK when he was in university.[204] He returned to Singapore and brought back the items (which included the pink knife) in 2002.[205] Most crucially, Karl admitted under cross-examination and reconfirmed this under re-examination that the pink knife was a modern knife because of its design and could not have been in production at the time when he was studying in the UK before 2002.[206] It would simply have been impossible for Karl to have owned the pink knife in 2002 during his university studies if, on his own admission, it had not been in production by that time. This is another example of Karl's internally inconsistent evidence that went against both his claim of ownership of the pink knife and his credibility, which the Judge failed to address in the Judgment. Further, Karl testified that he could not remember using the pink knife at any time in the UK or in Singapore.[207]

150 In contrast, I note that Parti was able to testify to some level of detail in relation to the price and origin of the various kitchenware and utensils. Even though I note that there were slight differences in Parti's accounts for each item, I did not find them to be materially different such that it would cast doubt on her testimony.

151 In any case, it appears that the Judge had misapplied the legal and evidential burdens of proof. The Judge considered the fact that many items were purportedly purchased from the thrift shop, Hock Siong and yet no representative from Hock Siong was called by the Defence to confirm if Parti was indeed a visitor of the shop or if the shop sold a wide range of second-hand

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204 ROP at pp 421-422.

205 ROP at pp 417-418.

206 ROP at p 794.

207 ROP at pp 425-426.

items (that included kitchenware). The Judge essentially drew an adverse inference (though not explicitly stated as such) against the Defence for its failure to call a witness from Hock Siong to the stand to verify the veracity of Parti's alleged patronage of Hock Siong. In my judgment, this constitutes an impermissible reversal of the burden of proof on the accused. It appears that the same standard of proof was not demanded or required of the Prosecution. No adverse inferences were drawn against the Prosecution for failing to call witnesses who could corroborate or support Karl's internally contradictory testimony regarding his alleged ownership of the pink knife. It is clear that the Prosecution is unable to prove its case beyond a reasonable doubt solely on the basis of Karl's testimony due to his evident lack of credibility. I emphasise that an accused person is presumed innocent and this presumption is not displaced until the Prosecution has discharged its burden of proof: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [59] and [61]. Simply put, it is not the responsibility of the Defence to disprove the Prosecution's case.

152 Finally, the Judge considered the fact that "[t]here was also no evidence led as to why the accused would have needed to purchase chopsticks. Did she ordinarily use chopsticks to eat during meal times?" (Judgment at [44]). In my judgment, it is unclear how this factor is relevant to Parti but does not equally apply to Karl. If this adverse inference drawn against Parti but not Karl is premised on a preconceived notion that Parti's need to purchase chopsticks calls for an explanation, this is an assumption that is unreasonably held and without basis. In fact, the logic of this reasoning applies both ways. Assuming that it is accepted that Parti had no need to purchase the chopsticks because she did not use chopsticks to eat during meal times, there would equally have been no

explicable reason for Parti to have stolen the chopsticks which she did not use for her meals and which were valued only at $2.[208]

153 In my judgment, the Prosecution has failed to prove its case on the basis of Karl's uncorroborated testimony alone. For the reasons explained above, Karl's testimony at trial was internally inconsistent and insufficient evidence has been provided to demonstrate that the utensils and kitchenware were purchased by Karl in the manner he had described. Accordingly, a reasonable doubt exists as to whether the kitchenware and utensils were truly owned by Karl. On balance, I am more inclined to accept Parti's evidence that she was the one who actually bought the kitchenware and utensils. As such, I overturn Parti's conviction on the 2nd charge in relation to the kitchenware and utensils.

Helix Watch (P6), damaged Gerald Genta watch (P7) and two white iPhone 4 with accessories (P8)

154 I turn to deal with the Helix Watch, the damaged Gerald Genta watch and two white iPhone 4 hand phones ("iPhone 4") with accessories in this section collectively. Parti's defence for these items were similar: (a) she found the Helix watch in Karl's rubbish bin when he was moving out of the house for renovations in 2009; and (b) she found the Gerald Genta watch and the two iPhone 4 with accessories in the trash bags placed outside of 49 CL on 2 March 2016, the day after Karl and Heather moved to 39 CL from 49 CL on 1 March 2016 (Judgment at [47], [49] and [51]).

155 Parti testified that on the day of moving from 49 CL to 39 CL, there were two black trash bags at the entrance of 49 CL. Parti asked Karl if the two trash

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208 ROP at p 2126.

bags were to be brought to the new house, to which Karl replied in the negative and informed her that they were "rubbish to be thrown away".[209] When Parti separated the rubbish to be thrown away, she testified that she found the Gerald Genta watch, the two iPhone 4, newspapers and shampoo bottles.[210]

156 In particular, she noted that the Gerald Genta watch had its strap separated and was without a button.[211] She decided to keep it because its exterior was still in a good condition and thought that a new strap could be purchased.[212] She also tried to use the two iPhone 4 but they were not responsive and not working. She decided to keep them anyway since the two iPhone 4 had been thrown away.[213] However, she admitted that in relation to the accessories for the two iPhone 4 (photographed in P1-22), she did not find them in the trash bags and did not know how they got into her possession.[214]

157 I start with the Helix watch. Karl testified that this had been given to him by Mr Liew which Karl found to be ugly (Judgment at [46]). However, both Mr Liew and Heather did not recognise the watch.[215] In fact, Karl did not deny that the Helix watch might have been discarded and admitted that he could not remember if he had discarded this watch when he moved out of 49 CL when renovations were being conducted for 49 CL.[216] Karl testified that this was

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209 ROP at p 1727.

210 ROP at p 1730.

211 ROP at p 1729.

212 ROP at p 1729.

213 ROP at p 1730.

214 ROP at p 1730.

215 ROP at pp 1204-1205, 944-945.

216 ROP at p 414.

because he had a car accident and was not involved in the packing at the time.[217] The Judge found that it was implausible for Karl to have thrown things out if he was hospitalised and instead, found that it was more likely that Karl's absence gave Parti the opportune time to take the Helix watch (Judgment at [47]).

158 In my judgment, the Judge failed to give due weight to Karl's admission that he could not recall if he had thrown out a watch that he himself had found to be ugly. In the light of the above, the conviction is rendered unsafe by the very fact that Karl was unable to positively confirm that he had not in fact discarded the Helix watch. This failure creates a reasonable doubt whether Parti had dishonestly moved the watch out of Karl's possession. On balance, I am inclined to believe that Parti had merely retrieved something that Karl had discarded. Additionally, the Judge also did not consider the fact that the said Helix watch was a free gift from Shell according to the evidence of the horologist, Mr Eric Ong ("Mr Ong"), which only bolsters the likelihood that Karl had thrown this "ugly" free gift away.[218] Accordingly, I find that the Prosecution has failed to prove its case beyond a reasonable doubt in relation to the Helix watch.

159 I now turn to deal with the Gerald Genta watch. Mr Liew passed it to Karl as he no longer wished to use it.[219] Karl testified that he did not throw away the Gerald Genta watch. Karl initially testified that he only realised that the Gerald Genta watch was missing when Parti returned to Singapore from Indonesia[220] and was found in possession of the Gerald Genta watch after 2

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217 ROP at p 415.

218 ROP at p 2577.

219 ROP at pp 75 and 77.

220 ROP at p 384.

December 2016.[221] This was more than a month after the day when Mr Liew made the police report against the accused on 30 October 2016.[222] He later changed his testimony, claiming that by sometime after 2 April 2016, he was already aware that the Gerald Genta watch was missing and he was trying to "uncover the watch" by that time.[223] However, despite the fact that the Gerald Genta watch, which was allegedly worth $25,000 and of purported significant sentimental value to him (see above at [116(a)]), Karl did not inform anyone that it was missing.[224]

160 The Defence submits that it is precisely Karl's inaction and failure to alert anyone about the loss of an item that had such great sentimental value and was valued at $25,000 that makes his story unbelievable.[225] I agree. On top of Karl's ostensible exaggeration of the monetary and sentimental value he gave to the Gerald Genta watch (see above at [116(a)]) and his lack of credibility, Karl's inaction and his rather delayed claim in relation to the said watch only after 2 December 2016 (which was more than a month after Mr Liew's police report) points towards the likelihood that this allegation was an afterthought and a likely further fabrication by Karl.

161 The Judge considered that there was no reason for Karl to discard such an expensive watch despite its broken strap and missing knob (Judgment at [50]). While I do accept the fact that the Gerald Genta watch was one of a high value and hence agree that that would make it less likely that it was discarded,

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221 ROP at pp 385, 1268

222 ROP at p 385.

223 ROP at p 386.

224 ROP at p 384.

225 AS at para 44.

I do note that the many of the items alleged to be stolen by Parti, including the Gerald Genta watch, do display some form of dysfunctionality. Mr Ong testified that the Gerald Genta watch had a broken strap and a missing chronograph pusher.[226] It is rather unusual, to say the least, for Parti to mostly steal items that were ostensibly spoilt, broken or lacking in value to their alleged owners. If anything, the dysfunctionality of the Gerald Genta watch marshals in favour of a finding that it was discarded by Karl.

162 The Prosecution highlights that Karl testified that he did not discard any items during the move from 49 CL to 39 CL.[227] Hence, this contradicts Parti's defence that she found the items in the trash outside 49 CL.[228] Yet, Karl's testimony was directly contradicted by Mr Liew's testimony that when Karl and his family moved from 49 CL to 39 CL, the entire process involved "a lot of boxes" and "*there was a lot of trash*" [emphasis added].[229] This bolsters the likelihood that Parti's version of events is true.

163 Even if the movers were paid by the hour as claimed by Karl, I fail to see how *no trash* would be generated during the entire moving process. It is not unimaginable for a family moving to a new place of residence to pack and in the packing process, decide to discard certain items which are spoilt, broken, old or of little remaining use or value to them. Simply put, Parti's explanation is neither unbelievable nor uncommon, especially when one considers this in the light of the affluence of the Liew household, Karl's willingness to give away the Black Bag containing suits, jackets and pants, the neatness and tidiness of

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226 ROP at pp 2554, 2569.

227 ROP at pp 265-266.

228 PS at para 46(a).

229 ROP at p 1360.

the interior of the house at 49 CL as can be seen from the photographs and the audio of the Video indicating that the Liew family were not hoarders (see above at [127]). Most crucially, Parti's conviction in relation to the damaged Gerald Genta watch was based primarily on the testimony of Karl, whom I have assessed to be far from credible as a witness. Coupled with Karl's delayed reporting and inaction (see above at [160]), I find that the Prosecution has not proved its case beyond a reasonable doubt. On balance, I prefer the evidence of Parti over that of Karl that she had found the Gerald Genta watch in the manner that she had described after Karl and his family moved from 49 CL to 39 CL.

164 I now turn to the evidence adduced in relation to the two iPhone 4 with accessories. Karl testified that he would not discard these mobile phones as they were spare phones that could come in handy when travelling.[230] Heather also testified that she and Karl had "iPhones lying around in the house because when [they] get the new models, [they] would then leave [their] old models in the room, in the drawer".[231] Heather also testified that they would typically keep their old iPhones as hard drives for photographs.[232] Heather also claimed that Parti had previously offered to buy their old models of iPhones but they refused to sell it to her.[233]

165 It is the Prosecution's case that there were many iPhones in Heather's possession, of which Parti took two of them.[234] Crucially, Heather admitted that

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230 ROP at pp 263-264.

231 ROP at p 892.

232 ROP at p 892.

233 ROP at p 892.

234 Transcript 17 February 2020 at p 41.

she could not identify if the two iPhone 4 did belong to her *or* Karl:[235] The 2nd charge however specifies these two iPhone 4 as belonging to Karl and not Heather.

> Q: Can you tell who these phones belong to?
>
> A: I mean, the iPhones look very generic. I cannot tell if it belongs to me or Karl...

As much as there appears to be some evidence of Parti's motive to take Karl's or Heather's iPhone 4 because of her previous offer to Heather to buy their old iPhones, the fact remains that no clear evidence was adduced at the trial that positively identified Karl's or Heather's possession of those two specific iPhone 4 that were found in Parti's possession. The Prosecution witnesses also did not give evidence on the specific models of their "old" iPhones.

166 In fact, the evidence led on the SIM cards of the two iPhone 4 pertained only to what the Prosecution *believed* and what Karl *thought* the SIM cards were from:[236]

> Q: Mr. Liew, I believe there are sim cards in the packaging.
>
> A: Yes, Your Honour.
>
> Q: And, can you tell me which Telco company these sim cards are from?
>
> A: China, Zhongxing, I mean, Zhong is a major one---it is major China Telecom.

For reasons unknown, objective evidence that could have verified the registered owners, numbers or the Telco companies as alleged by Karl of those SIM cards in the iPhones was not adduced. In my judgment, such objective evidence would

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235 ROP at p 892.

236 ROP at p 114.

have demonstrated either Karl's or Heather's ownership of those two specific iPhone 4 found in Parti's possession. For instance, evidence of telephone calls or messages between other family members' hand phones and the numbers registered to the SIM cards would have proved that the SIM cards (and hence the two iPhone 4 in that connection) did belong to Karl and not Heather. A forensic examination of the two iPhone 4 and SIM cards might also reveal the content of the messages to show whether the two iPhone 4 had been used by Karl or Heather and thus, the ownership of the two iPhone 4 could be more clearly inferred.

167 There was no clear indication that those two specific iPhone 4 belonged to Karl and not Heather, much less proof beyond a reasonable doubt required for a conviction on a charge that specified that the two iPhone 4 were in the possession of Karl and not Heather.

168 Given that Parti's defence is that she found the two iPhone 4 from the trash bags outside of 49 CL when Karl and Heather moved to 39 CL, the ownership of the two iPhone 4 either by Karl or Heather is not seriously disputed. Hence, I accept that the 2nd Charge could be readily amended to resolve the technical issue of the person(s) (*ie*, from "Karl" to "either Karl or Heather") in actual possession of the two iPhone 4 without prejudice to Parti. The more important anterior issue is whether the two iPhone 4 were truly discarded by Karl or Heather, and thereafter found by Parti in the trash bag. The Judge observed that it was inconceivable that Karl and Heather would refuse to sell the two iPhone 4 to Parti, and yet discard the two iPhone 4 with the SIM cards still intact (Judgment at [51]). In this regard, I observe that no evidence was adduced as to whether the SIM cards were pre-paid or post-paid. It is unclear what value the SIM cards could still have had if (a) they were pre-paid and had run out of value or had expired; or (b) they were post-paid with expired

contracts. In this respect, I do not find the fact that the two iPhone 4 were discarded with their SIM cards still intact to be a material consideration.

169 I observe that Parti's version of events is not unbelievable. Having taken judicial notice of the fact that the iPhone 4 model was first released in Singapore on 30 July 2010,[237] the said iPhones would have been outdated by approximately six years at the alleged time of the offence. Parti said that after she found the two iPhone 4 in the trash bag placed outside 49 CL, she tried to use the two iPhone 4 but they were not responsive and not working. Being old iPhones, I am not surprised that the batteries would not hold the electrical charge well after some years and that the two iPhone 4 were not responsive and not working when Parti found them. This makes it entirely plausible for the two iPhone 4 to be discarded when Karl and Heather moved to their new place of residence. Had the two iPhone 4 been newer or more recent models of iPhones that were released closer in time to 2016, this would have made Parti's defence much less believable. The fact that the iPhone 4 model was outdated at the alleged time of the offence lends support to my observation above at [161] that many of the alleged items stolen by Parti appear to be old or dysfunctional and serve to reinforce Parti's defence that she had in fact found these items in the trash and therefore she had not stolen the items. This creates a reasonable doubt as to whether or not the two iPhone 4 were discarded when Karl and Heather moved to their new place of residence and Parti found them subsequently in the trash bag.

170 For all the above reasons, I find that the Prosecution has not proven the elements of the 2nd charge beyond a reasonable doubt in relation to all the items

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237 Transcript 1 November at pp 85-86.

listed therein. Accordingly, I allow the appeal and overturn Parti's conviction for the 2nd charge.

3rd Charge (DAC 931429-2017- May's items)

171 I now turn to the 3rd charge, which relates to the items that were in May's possession.

Vacheron Constantin watch (P12) and white coloured Swatch watch with orange coloured design (P13)

172 May's evidence is that she purchased the Vacheron Constantin watch in Shanghai in the early 2000s,[238] whilst the Swatch watch was last seen by her in 2004 when she left Singapore but she could not recall where she purchased it from.[239] I note however that May had previously informed IO Tang that she bought it from a Swatch boutique.[240] May testified that she had neither discarded the said watches nor gave them to Parti.[241] She first discovered that they were in Parti's possession when she was called to the police station to identify the items.

173 Parti's defence for the Vacheron Constantin watch is that she found the watch in the rubbish bin (during her EIC)[242] and that the watch was picked up from May's dustbin in her room after sorting out the items that were brought back from the storage facility (during her CX).[243] The Judge observed that there was an inconsistency between Parti's testimonies in her EIC and CX. However,

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238 ROP at p 1020.

239 ROP at p 1030.

240 ROP at p 136.

241 ROP at p 1019.

242 ROP at p 1694.

243 ROP at pp 1891-1892.

I agree with the Defence's submissions that there was no material contradiction as they both point towards the same fact that Parti had retrieved the watches from May's rubbish bin.

174 Parti's defence for the Swatch watch is that she found the Swatch watch in May's trash in 2012 and assumed that she could take it.[244] She saw that the watch was no longer working and kept it.[245]

175 I do note however that Parti's testimony at trial was inconsistent with Q69/A69 and Q70/A70 of her statement (P33), where she stated that both watches were given to her by Diah.[246] Under cross-examination, Parti clarified that she was given blurry photographs of the items during the statement recording and did not recognise the items clearly, and chose to stick to the version of events that she gave on the stand instead.[247] Indeed, having viewed the poor quality of the black and white photograph in P33 of the two watches,[248] I accept Parti's explanation for not having recognised the two watches out of four watches that were captured in the same photograph. Overall, given the limited weight that should be accorded to P33 taking into account the fact that (a) it was read back to Parti in Bahasa Melayu; (b) Parti was not shown the physical items; and (c) numerous photographs were shown and many questions were asked in P33 in the wee hours of the morning, I would not give much weight to the inconsistency between Parti's statement in P33 and her testimony in court. In my view, Parti has given an acceptable explanation for the

244 ROP at pp 1694, 1893.

245 ROP at pp 1695.

246 ROP at p 2974.

247 ROP at p 2213.

248 ROP at p 2999.

inconsistency in her statement (P33) that Diah had given both the Swatch watch and the Vacheron Constantin watch to her.

176 Given the fact that Parti's testimony in court was that she retrieved the watches from May's trash, and May could recognise the watches and testify as to when she bought them, albeit a long time ago, both their testimonies point unequivocally towards May's previous ownership of the two watches. There is in fact no dispute on this point. Therefore, the only crucial point of dispute is whether or not May had *discarded these watches*.

177 In that light, the evidence on the quality and authenticity of the watches is crucial. I take into consideration the fact that the Vacheron Constantin watch, which May had purchased from Shanghai, was from a street vendor.[249] This watch was assessed by the horologist, Mr Ong, as a counterfeit because Vacheron Constantin does not make the said model of the watch and it was of "such a low quality".[250] Additionally, Mr Ong gave expert evidence that the Vacheron Constantin watch was "in quartz" and was not working.[251] Similarly, for the Swatch watch, Mr Ong testified that the Vacheron Constantin watch was also counterfeit having physically examined it.[252]

178 The Judge failed to consider the *unchallenged* expert evidence on the authenticity and the working condition of the above two watches. Even if the Judge had assessed that Mr Ong's evidence "was not always objective" and on occasions "turned defensive when questioned on the basis of his valuation"

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249 ROP at p 1029.

250 ROP at p 2580.

251 ROP at p 2580.

252 ROP at p 2581.

(Judgment at [18]), it was not open to the Judge to have entirely ignored Mr Ong's assessment of the authenticity of the watches. It would have been erroneous for the Judge to reject Mr Ong's expert evidence in its entirety. The duties of a court in dealing with expert opinion is restricted to electing or choosing between conflicting expert evidence or accepting or rejecting the proffered expert evidence. The court should not, when confronted with expert evidence which is *unopposed* and appears *not to be obviously lacking in defensibility*, reject it nevertheless and prefer to draw its own inferences: *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 at [26] – [27], citing *Halsbury's Laws of Singapore* vol 10 (Butterworths, 2000) at para 120.257.

179 Further, given the fact that May admitted to the fact that she had purchased the Vacheron Constantin watch from a street vendor in Shanghai and that she had informed IO Tang previously that it was not authentic[253], this corroborates Mr Ong's evidence that it was in fact a counterfeit watch. It therefore cannot be said that Mr Ong's evidence was obviously indefensible. Further, it is IO Tang's evidence that he brought the Vacheron Constantin watch to ION Orchard to verify in its authenticity in "the boutique", where he was informed that the said Vacheron Constantin watch was "not an original".[254] As a result, IO Tang was unable to value the Vacheron Constantin watch and therefore stated in the 3rd charge that the Vacheron Constantin watch was "with *unknown value*" [emphasis added]. Mr Ong's testimony in relation to the authenticity of the Vacheron Constantin and Swatch watches was also unchallenged by the Prosecution. In the light of the above, I accept in entirety the evidence of Mr Ong, who had given cogent reasons why both were

253 ROP at p 136.

254 ROP at p 126.

counterfeit watches. As I observed earlier, the fact that the allegedly stolen items tended to be of low value and in this instance, counterfeit, marshals in favour of a finding that both watches could have in fact been discarded by May. Further, the Defence rightly submits that as an investment banker from an affluent family, it makes it probable that May had discarded these counterfeit watches given her "social status" by 2012.[255]

180 For the above reasons, I find that more than a reasonable doubt exists as to whether May had in fact discarded these two counterfeit watches. I believe Parti's evidence and find it more likely than not that she found the Vacheron Constantin watch and the Swatch watch in May's trash. I do not believe May's testimony that she had not discarded the two counterfeit watches that she had purchased. Accordingly, I overturn Parti's conviction on the 3rd charge in relation to the theft of the two counterfeit watches.

Assorted jewellery and fashion accessories (P14, P 15, P 16 and P17)

181 As for the assorted jewellery and fashion accessories, the Judge observed that May was able to identify the items as hers, the circumstances of how and why she purchased them, without delving into the details (Judgment at [54]). May testified that she last saw the items in a drawer in her bedroom at 49 CL in 2004 before she left Singapore for the United States from which she returned at the end of 2010[256] and she had never discarded them.[257] Her evidence is that she only realised that the items were not in her possession when she was

255 ROP at p 3368 at para 202.

256 ROP at p 1018.

257 ROP at pp 1035-1036.

called down to the police station to identify the items sometime in 2017.[258] At the very least, it is quite remarkable to say that May could have paid so much attention to so many of the items in the drawer and could remember at the police station, some 13 years later, of having seen *each* and *every one* of these items of assorted jewellery and fashion accessories in the drawer (amongst possibly many other items) way back in 2004 and therefore claim that all the items belonged to her.

182 Parti's defence was that she found all the jewellery items and fashion accessories (save for the pearl hook earrings (P1-33), a single earring (P1-38)), in May's rubbish bin sometime in 2011 or 2012.[259] Parti bought the pearl hook earrings (P1-33) from Taka Jewellery for $10 in 2011 at a discount when the original price was at $90;[260] and the single earring (P1-38) from Lucky Plaza in 2010 in a set of $10 for three pairs.[261]

183 The Defence submits that in relation to the assorted jewellery and fashion accessories, May could only substantiate her evidence that she had purchased those items with bare assertions that the shape, style, motif or colour of the items were ones that she favoured (*eg*, dangling, pearl, turquoise, Disney, animated, rose shaped and heart shaped).[262] The Defence submits that these descriptions of her preferences were not particularly useful in individuating or

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258 ROP at p 1019.

259 ROP at pp 3071-3075.

260 ROP at pp 3059-3062.

261 ROP at p 1700.

262 ROP at pp 1020-1022.

specifying women's fashion accessories.[263] Further, May was not able to give an account of the provenance of the items.[264]

184 On balance, there is good reason to prefer Parti's evidence that she had purchased the pearl hook earrings (P1-33) and the single earring (P1-38), which was originally in a pair and these items did not belong to May, contrary to what May had claimed. Accordingly, I overturn her conviction on the 3rd charge with respect to the pearl hook earrings (P1-33) and the single earring (P1-38). This in turn casts doubt on whether May was telling the truth with respect to her claim that she had not discarded the *other* items, which Parti said was retrieved from May's rubbish bin.

185 As for these other jewellery items and fashion accessories (save for the pearl hook earrings (P1-33) and a single earring (P1-38)), both the testimonies of May and Parti indicate that May's ownership of these items and their provenance are not disputed. The key question in contention is whether May threw out these jewellery items and fashion accessories and whether there is a reasonable doubt raised by the Defence that she had not discarded the said items.

186 In this respect, Mrs Liew testified that in or around early 2012, before Karl's first child was born in March, May's room was cleared out to make room for Karl's family.[265] This room was where May's belongings were still stored.[266] There is a reasonable possibility that these jewellery items and fashion accessories were indeed discarded during the cleaning exercise in 2012.

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263 AS at para 174.

264 ROP at p 1035.

265 ROP at p 1585.

266 ROP at p 1585.

187 May failed to mention the cleaning exercise conducted in 2012 in her testimony, which would necessarily have been relevant to an allegation of Parti's theft of the items that were left in her room in 2004. Even if May had not bothered looking through her items during the cleaning exercise in 2012, I agree with the Defence that the fact that she had never referred to it or brought it up in her evidence, even when she must have been aware of it, is highly telling of her lack of credibility.[267] The Defence rightly points out that it is also convenient that May only remembered events of 2004 more clearly than the events of 2012.[268]

188 Further, May returned to Singapore in late 2010 and moved out of 49 CL in 2011.[269] This means that she must have stayed at 49 CL for a period of time and yet during that interim period May never realised that these items, which she distinctly recalled being left in her drawer in 2004, were missing during that period of time. This points to a reasonable possibility that May had indeed disclaimed possession of the assorted jewellery and fashion accessories since she did not notice that they were missing during that period of time when she stayed at 49 CL.

189 Further, May displayed a lack of interest in ascertaining whether the items, which she claimed were left in the drawer at 49 CL in 2004, were allegedly stolen by Parti. May testified that she was aware of Mr Liew's intention to make the police report even though she was "slightly discouraging" of the police report as she did not believe that Parti stole from them.[270]

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267 ROP at p 3368 para 203.

268 ROP at p 3368 para 203.

269 ROP at p 1018.

270 ROP at p 1027.

According to May, she had expressed such reservations during the family's discussion *before* Parti's termination.[271] Yet after the discovery of the alleged stolen items found in the three jumbo boxes, May displayed no interest in identifying any of the allegedly stolen assorted jewellery and fashion accessories that were retrieved from the three jumbo boxes. This was despite May being aware of the family's discussions relating to their prior suspicions of Parti's theft. At the very least, it seems odd to say that she only first realised that the jewellery and fashion accessories had been removed from her possession when she identified them at the police station in 2017. This means that May made no effort whatsoever to check what assorted jewellery and fashion accessories found in the three jumbo boxes belonged to her. This also points to the same reasonable possibility that May had discarded these items.

190 Finally, I observe that the FIR did not include the assorted jewellery and fashion accessories as part of the list of items that Parti allegedly had stolen. These assorted jewellery and fashion accessories had been belatedly added as items that Parti allegedly had stolen.

191 For all of the above reasons, I find that the Prosecution has not proven beyond a reasonable doubt that May had not discarded the assorted jewellery and fashion accessories (save for the pearl hook earrings (P1-33) and a single earring (P1-38), which I have already addressed at [184]) above). I accordingly overturn Parti's conviction on the 3rd charge in relation to the remaining assorted jewellery and fashion accessories, which Parti testified as having retrieved from May's rubbish bin in 2011 or 2012.

Black Gucci sunglasses (P18)

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271 ROP at p 1495.

192 May testified that the pair of black Gucci sunglasses were hers because of its particular shape and that she last saw the item in a drawer in her bedroom in 2004.[272] There were other maids working at 49 CL. Parti had only started working for the Liew family much later in 2007.

193 May denied having given the sunglasses to a previous domestic helper working at 49 CL.[273] If May had done so and the previous domestic helper had left it behind, it would have explained why Parti said that she saw this pair of sunglasses in her room when she started working for the Liew family in 2007.

194 Parti's testified that she found this pair of sunglasses in her room when she started working for the Liew household at 49 CL in 2007 and as such, decided to keep it in her cupboard.[274] Her defence is that she did not have the dishonest intention to bring the said sunglasses back to Indonesia as she was in a rush during the packing process.[275]

195 In assessing Parti's defence, I must have regard to her state of mind, her emotions at that time, the stress she faced given the suddenness of her termination, the very limited time to pack and the immediate repatriation to Indonesia within two hours of being notified. Given the fact that she simply gathered the things in her room in a rush, it would be fair to give her the benefit of a reasonable doubt that she might have inadvertently packed this item together with many of the other items eventually into the three jumbo boxes.

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272 ROP at p 2781.

273 ROP at p 1044.

274 ROP at p 1701, 1897.

275 ROP at p 2284.

Coupled with the issue on the break in chain of custody of evidence, I find that the conviction in relation to the black Gucci sunglasses is unsafe.

196 For the above reasons, I allow Parti's appeal in relation to the 3rd charge and acquit Parti of the conviction in relation to the 3rd charge.

4th Charge (DAC 931430-2017 – Heather's items)

197 I now turn to the 4th charge, which relates to the items that were in Heather's possession.

Purple Prada bag (P9) and Black Gucci sunglasses with red stains (P10)

198 Heather testified that she had not given away or discarded either of these items.[276] In particular, Heather recognised that the purple Prada bag was hers because she had used it to go to the gym and upon examining the physical exhibit, found the bag distinctive because of the frays at the edges.[277] Heather also recognised that the Gucci sunglasses were hers because of the distinctive red stains. Heather testified that while on a holiday, she failed to put the sunglasses in its protective case and the red stains resulted from the rubbing of the sunglasses frame against her bag.[278] Once again, I observe the poor condition of the items allegedly stolen by Parti in the 4th charge. In this regard, the poor condition of the items lends support to the Defence's position that the purple Prada bag and stained Gucci sunglasses were in fact discarded items.

199 As for Parti's defence in relation to the purple Prada bag, the Judge observed that there were material inconsistencies in her statements, EIC and

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276 ROP at pp 893 and 896.

CX. In her statement (P31), Parti claimed that she found the purple Prada bag in an *abandoned suitcase* near the rubbish corner outside *49D CL*.[279] Parti subsequently testified in her EIC that she picked out the purple Prada bag from *the black trash bag* at *49 CL on the evening* of Heather's and Karl's move to 39 CL,[280] but then testified under CX that she took the purple Prada bag from *the rubbish bin within 49 CL* the *day after* Heather's and Karl's move to 39 CL.[281] I do not find these inconsistencies to be particularly material – they pertained only to specific details of the exact day and the type and location of the trash that Parti had retrieved the item from, bearing in mind that Parti had been retrieving a number of items from various rubbish bins and trash locations. ASP Lim, who recorded P31, admitted that during the four hour period of questioning, she and the interpreter went through the 70 questions and answers "in a quick manner" and also admitted to a number of errors in her statement recording.[282] If the statement recorder had made mistakes over the four hour period of statement recording of 70 questions and answers, it is not inconceivable that Parti could not remember the specific details so vividly in the very same session.

200 On the other hand, I find that Heather's credibility was tainted by her evidence that there were no trash bags on the day of the move to 39 CL because there was "no time to discard anything" and she did not do any sorting prior to

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277 ROP at p 893.

278 ROP at p 895.

279 Q41/A41 of P31 (ROP at p

280 ROP at p 1731.

281 ROP at p 1871.

282 ROP at pp 868 and 869.

the move.[283] This is not something that could be easily forgotten as a fact. In fact, Heather's account was squarely contradicted by Mr Liew's account that there was *a lot of trash generated* as a result of the move.[284] It is also implausible that nothing was discarded during a family's moving process from 49 CL to 39 CL, for the reasons that I have already elucidated above at [162]–[163]. Heather's motivations behind embellishing her evidence that *no* trash bags were used at all during the move in order to corroborate Karl's evidence are rather suspect.

201 Additionally, the Defence also submits that Heather's testimony was defective and unreliable in relation to her evidence that none of the three jumbo boxes were moved to 39 CL.[285] This was contradicted by the crime scene photographer, Mr Goh See Kiat ("Mr Goh"), who testified that there was one box in 39 CL, which was "[m]aybe in the living room".[286] Mr Goh admitted that when he drew his sketch plan (P25), he portrayed three boxes at 49 CL but at trial testified that it could have been *two* or three boxes.[287] The Defence emphasises this as being not only a mistake on Heather's part in relation to one jumbo box in her living room but also indicative that Heather had "created" and "persisted in a backstory" to that inaccurate account.[288]

202 The Judge failed to take into consideration the above defects in Heather's credibility and her motivation to corroborate Karl's evidence, as well

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283 ROP at p 927.

284 ROP at p 1360.

285 ROP at p 1010.

286 ROP at p 183.

287 ROP at p 190.

288 AS at para 170.

as the poor condition of the allegedly stolen items that supports Parti's defence. In the light of the above, I find that the Prosecution has not proved beyond a reasonable doubt that Heather had not in fact discarded the Prada bag with frays at the edges and the Gucci sunglasses with red stains together with a lot of other trash when they were moving house.

203 For the above reasons, I overturn the Judge's conviction on the 4th charge and allow Parti's appeal against her conviction.

Conclusion

204 In the above circumstances, I allow Parti's appeal against all four charges against her. I first observe that in the present case, which involved a voluminous number of items, the proper handling of the evidence by the police and recording of the allegedly stolen items is crucial in order to preserve the chain of custody of the items. Coupled with the existence of an improper motive by members of the Liew family for mounting the allegations against Parti, I find that the convictions against Parti are unsafe and accordingly acquit her of all the charges.

205 Finally, I would like to commend Mr Anil for the pro-bono services that he has rendered for this case: the trial itself took 22 days with extensive cross-examination of the Prosecution witnesses; his trial submissions for both conviction and sentence totalled 279 pages (excluding authorities and other attachments); the appeal hearing stretched over 3 days; his submissions for the appeal totalled 221 pages (excluding authorities and other attachments); his written submissions were detailed and well-footnoted; his arguments were persuasive; he explored carefully every aspect of the Prosecution's case and scrutinised the voluminous evidence in the transcripts in order to mount his client's defence both at the trial and the appeal with clarity; he analysed the

grounds of decision of the trial judge in great detail to submit on areas where the trial judge had erred in her findings; he handled all these matters single-handedly and had shown much dedication in his pro-bono work for this case.

Chan Seng Onn
Judge

Anil Narain Balchandani (Red Lion Circle) for the appellant;
Marcus Foo Guo Wen, Tan Yan Ying and Goh Sue Jean (Attorney-General's Chambers) for the respondent.