

Public Prosecutor v Ng Ai Tiong
[2000] SGHC 1

Case Number : MA 113/1999

Decision Date : 03 January 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Mohammad Nizam bin Ismail and Eugene Teo (Deputy Public Prosecutor) for the appellant; S Magintharan and Y Suriamoorthy (Netto Tan & S Magin) for the respondent

Parties : Public Prosecutor — Ng Ai Tiong

Criminal Law – Abetment – Abetment by instigation – Instigation to give false evidence in civil suit – Inchoate offence – Person abetted does not commit act abetted

Criminal Law – Abetment – Abetment by instigation – Element of "instigation" – Whether instigation proved – Whether person abetted need to have same knowledge as abettor – s 108 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Appeal – Appellate court overturning findings of fact by trial court – Applicable principles

: This was an appeal by the prosecution against the acquittal of the respondent, who was charged with the offence of abetting one Ong Soon Chye, by instigating him to commit an offence of giving false evidence in a stage of a judicial proceeding. After hearing counsel from both sides, I allowed the appeal and convicted the respondent. I now give my reasons.

The charge

The respondent, Ng Ai Tiong (‘Ng’), who was also known as Francis Ng, had claimed trial to the following charge:

DAC 28311/98

You, Ng Ai Tiong, m/49 years, NRIC No 10706049/F are charged that you, on or about 24 March 1997, at Plaza Hotel Singapore, did abet one Ong Soon Chye (bearer of NRIC No 0050101/H) by instigating Ong Soon Chye to commit an offence of giving false evidence in a stage of judicial proceeding, to wit, you instigated Ong Soon Chye to agree to state that he had taken a loan from one Yong Pin Khing Jeremy (‘Jeremy Yong’) (bearer of NRIC No S 0409692/D), which statement and circumstance you knew to be false, and which false statement and false circumstance was intended by yourself to be used in the course of your defence in a judicial proceeding, namely, MC Suit No 10427 of 1997, which offence was not committed as a result of your abetment, and you have thereby committed an offence punishable under s 116 read with s 193 of the Penal Code (Cap 224).

I noted the trial judge’s observation that the date of the meeting between the respondent and Ong Soon Chye at Plaza Hotel was erroneously stated in the charge as 24 March 1997 when the intended date was 24 March 1998. The error did not, however, cause any confusion or prejudice to either the prosecution or the respondent as the actual date of the meeting was clear to all parties concerned

and there was no dispute over this fact. As such, there was no necessity for the court to exercise its powers to make any amendment to the charge.

The facts

Before going into the facts proper, a summary of the background of the relationship between the relevant parties involved would be useful here. There were three main parties concerned with the proceedings, Ng, Jeremy Yong Pin Khing (‘Yong’) and Ong Soon Chye (‘Roger Ong’). They were all businessmen who were acquainted with each other and were friends. It was undisputed that Yong and Roger Ong were closer friends with each other than either were with Ng. All three of them were customers of Club 5, a lounge located at the ground floor of Plaza Hotel, which they would patronise from time to time.

The \$25,000 loan and the civil suit

On 5 February 1997, Ng, who was the managing director of Transcity Cargo System Pte Ltd, borrowed a sum of \$25,000 from Yong. The purpose of the loan and the actual amount received by Ng were matters disputed by the parties. According to Yong, Ng had told him that he needed a loan to pay for the release of Ng’s German client’s cargo which had been detained by the Johor customs for under-declaration. The loan was an interest-free loan which was meant to be repaid within a few days. Ng, on the other hand, alleged that the money was for his company’s project in Terminal One of the Changi Airport and an interest of \$1,500 was charged on the loan, with repayment of the sum borrowed to be made within three months. The parties were, however, able to agree that the loan was advanced in cash and that Ng had given Yong a collateral in the form of a cash cheque, dated 5 February 1997, of the amount \$25,000.

Ng subsequently failed to repay the loan despite repeated demands by Yong to do so. The cash cheque given by Ng was also dishonoured when it was presented. On 2 June 1997, Yong brought civil proceedings, MC Suit 10427/97 (‘the civil suit’), against Ng to recover the amount owed. In the course of the proceedings, Yong applied for summary judgment and an affidavit was filed in support of it. In the affidavit filed in response, Ng raised the defence that Yong was an illegal moneylender. It was alleged by Ng in this affidavit, that Yong ‘had previously over a few drinks mentioned to me that [Yong] had lent money to various people, one of whom I knew’. Yong then filed a further affidavit in reply, in which he denied all of the allegations relating to him being involved in illegal moneylending.

Sometime in October 1997, Yong met up with Roger Ong at the Asia Hotel. During this meeting, Yong mentioned to Roger Ong the problems he was having with Ng and that he was going to sue Ng for failing to repay the money that Yong had lent him. On 5 February 1998, interrogatories were served on Yong by Ng’s solicitors, which included the following questions:

2 Have you given loans to other people?

3 If yes,

(a) What are the particulars of these people?

(b) Was interest charged?

4 Did you get (sic) a loan to one Roger Ong?

5 If yes,

(a) give particulars of the loan;

(b) was interest charged.

On 11 March 1998, Ng affirmed his affidavit of evidence in chief for the civil suit in which he deposed, inter alia, that:

*5 On 4 February 1997 when I was facing some financial problems I decided to approach [Yong] for a loan. Previously [Yong] had told me that he had lent money to various people. **One of them was someone I knew called Roger Ong, a regular patron of Club 5.** [Yong] had told me that he had a lot of shares in listed companies especially Plaza Hotel and lots of spare cash to invest ... [Emphasis mine.]*

This affidavit was filed only later on 30 March 1998 and served on Yong`s solicitors on 31 March 1998.

The alleged abetment by Ng

On the evening of 24 March 1998, there was a brief encounter between Ng and Roger Ong which started in a toilet next to Club 5 and continued into the corridor outside which led to the club. It was the statements made and questions asked by Ng in the conversation that took place during this occasion that led to the present charge being brought against him. Slightly different versions of what exactly took place were proffered by Roger Ong and Ng. The general gist of Roger Ong`s account was that Ng had asked him whether Yong had lent him (Roger) money with interest, that Ng mentioned that Yong had told Ng about the loan to Roger and that Roger need not worry about admitting to taking such a loan. It was Roger Ong`s evidence that Ng persisted in asking him to say yes to his question despite the fact that Roger Ong had clearly replied in the negative. Roger Ong said that he was under the impression that Ng needed him to say that he had taken a loan from Yong. Roger Ong also said that Ng mentioned that Yong was suing him. On Ng`s part, he did not deny that he asked Roger Ong whether Yong had lent Roger Ong money and that he repeated this question. Ng also admitted that he said that Yong had mentioned to him about the loan to Roger Ong. Ng further remarked that he had borrowed money from Yong and that Yong was after him. Ng, however, disagreed that he insisted on Roger Ong giving him a positive reply to his question. Ng`s explanation was that he repeated the question so that Roger Ong could understand it and Roger Ong had replied that he would talk to Yong for Ng. Ng denied that he volunteered information to Roger Ong about the civil suit and that when he said that Yong was `after him`, what he meant were the demands that Yong had made on the telephone to Ng for the repayment of the loan, and this was not intended as a reference to the civil suit.

Soon after the incident, on 27 March 1998, Roger Ong telephoned Yong on his handphone to inform him that he had met Ng outside Club 5. Yong had immediately replied that he needed to meet Roger Ong and show him some documents. This was a short telephone conversation as Yong was in China at that time. Yong and Roger Ong met up a couple of days later on the morning of 30 March 1998 at

Yong`s office. Yong said he took out the documents relating to the civil suit and showed them to Roger Ong. Roger Ong recalled that he was shown selected parts of the affidavit affirmed by Ng on 21 August 1997 and the interrogatories where his name appeared. Roger Ong was concerned that he would become involved in the civil suit between Ng and Yong and he was shocked and angry at the way Ng had made use of his name. Roger Ong was also frightened and worried for himself and his family as he feared that loan sharks may be involved and he was afraid that Ng may use his name in other cases where Ng had also borrowed money. Roger Ong thus decided to file a police report as he wanted to clear his name and dissociate himself from Yong and Ng on this matter. Roger Ong then went to the nearby Jalan Besar Neighbourhood Police Post and made a police report at about 10am on the same day. The police report made was in the following terms:

On 24/3/98 at 2130 hrs at Plaza Hotel, I met (1) Francis Ng.

Which he mention that whether Jeremy Yong Pin Khing has lend me money with interest.

Which I told him `No such thing`.

But he force me to say yes and do not worry.

Which I do not understand his intention.

On the 27/3/98 I called my friend Mr Yong (2) on his handphone and told him what happen the night I met Francis Ng, and Mr Yong suggested we meet on 30/3/98 to show me document regarding his civil case against Mr Ng.

I am shock to see my name used by Mr Ng in his defence, without my knowledge.

I will further take civil action against Mr Ng for wrongfully using my name for his cheating of my friend money.

The particulars of persons included:

(1) Francis Ng Ai Tiong I/C 1076049/F

(2) Yong Pin Khing, Jeremy I/C 0409692/D

That`s all

After Roger Ong made the police report, he went with Yong to see Yong`s lawyer. Roger Ong spoke to Yong`s lawyer and sought advice on how he should deal with this matter. Roger Ong was advised by the lawyer to make an affidavit of evidence in chief which he affirmed the next day on 31 March 1998. He was, however, not advised as to the nature of the interrogatories as well as the fact that, in making the affidavit, he would be a witness for Yong if the civil suit went to trial. As for Yong, he was present during this meeting between Roger Ong and Yong`s lawyer. He too made his own

affidavit of evidence in chief on the same day, 30 March 1998.

The civil suit in question did not eventually proceed to trial. On 9 July 1998, the first day scheduled for the commencement of the trial, the parties managed to reach a settlement and a consent judgment was entered against Ng in the following terms:

1 The defendant do pay the plaintiff the sum of \$25,000 and costs of \$7,000 in full and final settlement of this suit by way of instalments of \$1,500 per month payable on the 1st day of every month commencing 1 August 1998, by direct payment into such bank account as shall be nominated by the plaintiff.

2 In the event of default of payment of any instalment, the balance debt becomes due and payable immediately in which event, the plaintiff is entitled to commence enforcement or such other relevant proceedings immediately.

3 The defendant shall file an affidavit within one (1) week from the date hereof which shall depose as follows:

'I withdraw the contents of all my affidavits filed in respect of this suit for the purpose of an amicable settlement.'

In accordance with para 3 of the consent order, Ng filed an affidavit containing the required deposition. However, Ng immediately defaulted in his payments and did not pay Yong anything at all. Upon the petition of Yong, Ng was made a bankrupt.

Ingredients of the charge

The principal offence which Ng was charged with abetting was the offence of giving or fabricating false evidence for use in any stage of a judicial proceeding, which is punishable under s 193 of the Penal Code (Cap 224). As for the charge that Ng was facing, it was for an inchoate offence since the person alleged to be instigated, Roger Ong, did not give any false evidence or statement which Ng had allegedly wanted him to give. The trial judge correctly pointed out that this was immaterial, however, since an offence of abetment could still be made out even if the act abetted was not committed. Section 108, Penal Code, makes this clear by providing, inter alia, that:

A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor....

Explanation 2

To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

On the present facts, in order to establish the guilt of Ng under the charge, the prosecution must

prove beyond a reasonable doubt the following ingredients:

- (i) the statement that Roger Ong had taken a loan from Yong was false;
- (ii) Ng knew such statement to be false;
- (iii) Ng instigated Roger Ong to make the false statement; and
- (iv) Ng intended to use such false statement in the civil suit.

Whether the statement was false

The statement that Roger Ong was alleged to have been abetted by Ng to make was that he (Roger) had taken a loan from Yong. Other than the oral testimonies of Yong, Roger Ong and Ng, there was no evidence before the court to prove the truth of the statement. This being the case, the inquiry here was essentially an examination of one party's word against the other's. At the outset, I would state that the affidavit filed by Ng in accordance with para 3 of the consent judgment given for the civil suit, the terms of which have been reproduced earlier, whereby he withdrew the contents of all his affidavits filed in respect of the suit, did not amount to an admission by Ng that the statements and allegations he made therein were untrue. I agreed with the trial judge's view that the withdrawal was made only 'for the purpose of an amicable settlement' and thus I was not inclined to draw any adverse inferences against Ng on this basis alone.

The evidence given by both sides at the trial below was understandably conflicting. The existence of such a loan was adamantly denied by both Yong and Roger Ong. On the other hand, Ng alleged that he knew of Yong's loan to Roger Ong as both of them had told him about it. It was Ng's evidence that Yong had previously mentioned over some drinks that he had given loans to other persons. During his cross-examination, Ng further gave an account of how Roger Ong had told him about the loan and the amount involved. In the court below, the trial judge noted that Ng's assertions on Roger Ong telling him about the loan were never put to Roger Ong, who therefore had no opportunity to respond to the allegations made. This seriously undermined Ng's assertions and led to the trial judge concluding that Roger Ong did not tell Ng that he had borrowed money from Yong. On the weight of the evidence before him, the trial judge found that Roger Ong did not in fact take a loan from Yong and that any statement to that effect would be false.

The question of whether Roger Ong had indeed taken a loan, interest bearing or otherwise, from Yong was one involving a finding of fact. At this juncture, it would be appropriate to set out briefly the well-established principles governing an appellate court's decision to overturn findings of facts made by the trial judge. It is trite law that an appellate court will generally be reluctant to overturn the trial judge's findings of fact, especially where they turn on the trial judge's assessment of the credibility and veracity of witnesses. In the recent case of **Tan Hung Yeoh v PP** [1999] 3 SLR 93, I had summarised the relevant principles as follows [at [para] 23]:

*The principles governing an appellate court's role in reviewing a trial judge's findings of fact are well settled. In **Lim Ah Poh v PP** [1992] 1 SLR 713, FA Chua J, delivering the judgment of the Court of Criminal Appeal, held at p 719:*

'An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges' findings and their

reasons therefor. '

*This principle has been endorsed repeatedly in numerous local High Court and Court of Appeal decisions: see for eg **Soh Yang Tick v PP** [1998] 2 SLR 43, **Sundara Moorthy Lankatharan v PP** [1997] 3 SLR 464, **Yap Giau Beng Terence v PP** [1998] 3 SLR 656, **Ng Soo Hin v PP** [1994] 1 SLR 105 and **Lee Tiaw Chwee v PP** [1998] 3 SLR 563.*

It is thus clear that a trial judge's findings of fact will only be overturned by the appellate court if they are clearly wrong. [Emphasis added.]

Bearing in mind the fact that the respondent, Ng, did not dispute this finding in the appeal since the ultimate decision reached by the trial judge was in his favour, and that there was no suggestion that the judge was clearly wrong in reaching this conclusion, I was satisfied that the finding was not made against the weight of the evidence and therefore there was no reason to disturb it.

Whether Ng knew that the statement was false

Having reached his earlier conclusion by accepting the evidence of Yong and Roger Ong, and rejecting that of Ng, the trial judge went on to hold that Ng must also have known that any such statement that Roger Ong had taken a loan from Yong was false. In view of my determination on the earlier finding of fact and that the respondent was similarly not disputing this part of the decision by the trial judge, I did not see any reason or necessity to disturb this factual finding.

Instigation

Next, I considered the question of whether there was any instigation by Ng, an inquiry which was the main focus of the parties' arguments as the decision below turned essentially on this particular finding. To summarise briefly, it was the prosecution's case that the events that took place on the evening of 24 March 1998, outside Club 5, showed that Ng had abetted Roger Ong by instigating him to admit to a falsehood, namely, that Roger Ong had taken a loan from Yong.

Considering that the determination of this point could be pivotal to the result of this appeal, it was imperative to carefully examine the law on 'instigation'. The applicable principles of law on what amounts to abetment by instigation are well-settled. The question of what constitutes 'instigation' was considered in the local case of **PP v Lim Tee Hia** n [1992] 1 SLR 45, where Lai Kew Chai J held:

*The offence of abetment by instigation was considered in at least two Malaysian cases dealing with abetment by instigation under s 107 of the Penal Code (FMS Cap 45) which is in pari materia with the equivalent kind of abetment under s 107 of our Code. In **PP v Datuk Haji Harun bin Haji Idris & Ors** [1977] 1 MLJ 180, Abdooldader J (as he then was) stated at p 196:*

'Instigation consists of acts which amount to active suggestion or support or stimulation for the commission of the main act or offence. Advice can become instigation if that advice is meant to actively suggest or stimulate the commission of an offence: **Ragunath Das v Emperor** [1920] 21 Cr LJ 213.'

In my view, mere acquiescence or silence is not sufficient to constitute the offence of abetment by instigation. That the prosecution must show that there has been active suggestion, support, stimulation or encouragement to make good the offence of abetment by instigation was affirmed by Raja Azlan Shah CJ (as he then was) in ***Haji Abdul Ghani bin Ishak & Anor v PP*** [1981] 2 MLJ 230 at p 248 in the following terms:

*`In fact it is an essential ingredient in a prosecution for abetment that **there must be some evidence to show that the abettor actively suggested or stimulated the principal offender to the act by any means or language, direct or indirect, in the form of "expressed solicitation" or of "hints, insinuations or encouragement". ... The word "instigates" in s 107 of the Penal Code does not merely mean placing of temptation to do a forbidden thing but actively stimulating a person to do it ...**` [Emphasis added.]*

In ***Gour`s Penal Law of India*** (10th Ed) Vol I at p 937-940, the learned authors wrote:

*11 Instigation - ... **The word `instigate` literally means to goad, or urge forward or to provoke, incite, urge or encourage to do an act,** by usage now an evil act. So the words abetment, procurement, helping, maintaining and counselling have been used in the English statutes as if they were synonymous and conveyed the same meaning. Abetment is there described by the words `command, counsel or hire`, or more loosely by use of the words `comfort, aid, abet, assist, counsel, hire or command`. But in all these varied expressions, there is, however, one important element present, namely, that the abettor aids the offender in the commission of the crime. And when he aids him he is said to instigate him in popular parlance, and to abet him in the language of law. **Such aids must be something more substantial than mere advice. Advice is not necessarily abetment. Instigation necessarily indicates some active suggestion, or support or stimulation to the commission of the act***

....

*13 What instigation is abetment - **There must be then a direct incitement to crime. If it is so intended the instigation is complete, though it may have produced no effect upon the person abetted.** Nor is it necessary that the latter should have concurred in the proposal. ... **In its lowest form, then, instigation may amount to a mere encouragement given in words or by conduct.** [Emphasis added.]*

Under the charge as framed, the prosecution must be able to establish that Ng instigated Roger Ong to admit to a falsehood, ie that Roger Ong had loaned money from Yong before. In the decision below, the trial judge was of the view that the element of `instigation` had not been made out on the facts. He held that there was no instigation by Ng of Roger Ong to either give evidence in the civil suit or to make a statement, such as an affidavit, for Ng`s use in the civil proceedings. The trial judge appeared to place much emphasis on the fact that Roger Ong himself had admitted as much that Ng never expressly asked him to give evidence as a witness or make any statement for Ng to use in the civil suit. The trial judge opined that it was unlikely for Ng to have done so anyway since he was well aware that Yong and Roger Ong were good friends and it would have been silly of Ng to ask Roger

Ong to give false evidence against Yong. I observed that the fact that Ng did not directly express to Roger Ong his intention, if any, to make use of the statement in the civil suit was crucial to the trial judge's finding as he seemed to be of the opinion that, in order for the element of 'instigation' to be established on the present facts, it must be shown that Roger Ong had either the intention or knowledge of the use of the statement, had he been willing to admit to it, in the civil suit.

A query thus arose as to whether it was necessary for the prosecution to prove that the person abetted, Roger Ong in this case, had the requisite intention or knowledge for the commission of the principal offence. Or to put it in a different manner, must it be shown that the abettor had expressly made known his criminal intention to the person abetted. It was submitted by the prosecution that the answers to the above questions must be in the negative. The prosecution referred to s 108 of the Penal Code (Cap 224) to support their proposition that a person could be guilty of abetting an offence even though the person abetted did not have the same extent of knowledge or intent as the abettor. The relevant portion of s 108 reads as follows:

Explanation 3

It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

...

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Relying on the above provision, the prosecution contended that the intention and/or knowledge of Roger Ong was actually immaterial to the question of whether there was any instigation by Ng. The relevant fact that ought to be investigated should instead be the intention of Ng when he persistently pressed Roger Ong for an affirmative reply to his questions on the night of 24 March 1998.

In the attempt to counteract the above assertion, Ng's counsel referred to an interpretation of the word 'instigate' as advocated in the Indian case of **Baby John v State** [1953] Cri LJ 1273 where the court had held, at p 1274:

*In interpreting the meaning of the word 'instigate' in the case that is reported in **Emperor v Amruddin Salebhoy Tyabjee** [1923] AIR 44, the learned Chief Justice Macleod CJ in the course of his judgment quotes an extract from **Russell on Crimes** where the word 'instigation' is explained. The learned judge quotes the following passage:*

`A person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means or language direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement`

*Applying the meaning of the word `instigate` as explained in **Russell on Crimes**, it is not necessary that express and direct words should be used to indicate what exactly should be done by the persons to whom directions are given by a person in the position of the first accused. [Emphasis added.]*

The words of an Act of Parliament must be given effect to and, having heard the arguments of both sides on this particular issue, I found that I must agree with the submissions of the prosecution. The query was evidently answered by reference to the plain words of Explanation 3 of s 108 of the Penal Code, which removes any doubt that one may have on this matter. However, I must add that inasmuch as I fully agreed with the meaning of the word `instigate`, as adopted in the Indian case which Ng`s counsel cited, I failed to see how such a definition assisted the respondent`s case. The interpretation was expressed in very wide terms and the part of the extract which I have highlighted earlier made it patently clear that it was not necessary for the abettor to express directly to the person abetted what exactly was to be done. From the above conclusion, it was thus immaterial that Ng did not expressly tell Roger Ong to assist him in the civil suit by admitting to the false statement or of his intentions to rely on the false statement from Roger Ong to his benefit in the civil suit. It was also immaterial whether or not Roger Ong had any knowledge of Ng`s true intentions in asking him those questions on 24 March 1998. As contended by the prosecution, the focus of the court`s inquiry should instead be on the intention of the abettor himself at the time of the alleged instigation.

Having examined in detail the facts and evidence put forward by the parties, I was convinced that Ng`s intention and motive, during the encounter with Roger Ong outside Club 5, was undoubtedly to extract an admission to a falsehood from Roger Ong, which he would rely on to buttress his defence in the civil suit. There was no question that such a false statement would certainly have been most useful in substantiating Ng`s defence in the civil suit that Yong was engaged in illegal moneylending. In fact, Ng himself had also admitted that, had Roger Ong agreed that he had taken a loan from Yong, Ng would have informed his lawyer about this and would have used such a statement in the civil suit. Just shortly before the 24 March 1998 incident outside Club 5, Ng had affirmed his affidavit of evidence in chief for the civil suit where he had reiterated his allegations that Yong had told him that he (Yong) lent money to various people and one of them was Roger Ong. Judging from the topic of conversation that Ng chose to harp on during that brief encounter with Roger Ong, the civil suit and his defence were obviously on Ng`s mind when he met Roger Ong outside Club 5. The most telling piece of evidence here was the fact that, in order to get Roger Ong to admit to the falsehood, Ng lied to Roger Ong about Yong having told him about the loan to Roger Ong. The cunning nature of Ng did not escape the court`s notice as to how he concocted a story in the trial below of Roger Ong telling him about the loan and the amount involved. As pointed out earlier, this fabrication was dismissed by the trial judge.

Hence, the trial judge was manifestly wrong in holding that all that Ng had done was to question Roger Ong in a robust manner and nothing more. With respect, I found the trial judge`s reasoning to be misconceived. Although I had earlier concluded that it was not necessary to show that Roger Ong had the guilty intention or knowledge with respect to the use of the false statement, I nonetheless found on the facts that Roger Ong was clearly aware of the existence of the civil suit and the relevance that his conversation with Ng might have on the civil proceedings. During the incident outside Club 5, Ng had in fact begun the conversation by mentioning the loan that he had taken from

Yong and that Yong was after him for it. Prior to this, Roger Ong had already been informed by Yong that Yong was going to sue Ng for the return of the sum loaned. All this and coupled with Roger Ong's reaction to the incident by anxiously contacting Yong to notify him about the encounter with Ng, showed that Roger Ong was conscious of the significance of Ng's questioning and its relation to the civil suit between Ng and Yong. This being the case, then Roger Ong would certainly have been guilty of giving false evidence in any stage of a judicial proceeding if he had given in to Ng's relentless prodding and had admitted to the false statement.

In the result, I was satisfied that the element of 'instigation' had been established by the prosecution beyond a reasonable doubt. Ng's persistence in continuing to question Roger Ong despite the unequivocal reply and his attempt to trap Roger Ong into making the false statement by lying about what Yong had said, all went beyond active suggestion to Roger Ong to admit to the falsehood. In the light of all the incontrovertible evidence, I was persuaded that Ng's actions on 24 March 1998, outside Club 5, amounted to an instigation of Roger Ong to admit to a falsehood which Ng had intended to use in the civil suit, albeit that this ultimately turned out to be an unsuccessful venture by Ng.

Conclusion

As all the ingredients of the charge were established on the evidence, I allowed the appeal. Since full proceedings had been conducted in the court below, I saw no necessity to send the case back to trial and there was no prejudice caused to the accused in not doing so. Accordingly, I found Ng to be guilty as charged and, taking into account all the circumstances, sentenced him to a term of one year's imprisonment.

Outcome:

Appeal allowed.