Chan Mei Yoong Letticia v Public Prosecutor
[2002] SGHC 92

Case Number : MA 283/2001

Decision Date : 30 April 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Quek Mong Hua and Julian Tay Wei Loong (Lee & Lee) for the appellant; Ng Cheng Thiam (Deputy Public Prosecutor) for the respondent

Parties : Chan Mei Yoong Letticia — Public Prosecutor

Immigration – Employment – Illegal immigrant – Appellant charged with employing immigration offender – Whether prosecution discharged burden of proving illegal entry of immigrant – Whether appellant employer of immigrant – Whether appellant exercised due diligence to ascertain validity of work permit – ss 6(1)(c), 57(1)(e), 57(1)(ii), 57(9), 57(10) Immigration Act (Cap 133, 1997 Ed)

Evidence – Weight of evidence – Illegal entry – Arrest of immigrant possessing no valid travel documents – Conviction for illegal entry – Appellant charged with employing immigration offender – Immigrant as prosecution witness testifying to legal entry – Whether trial judge's finding of illegal entry against weight of evidence

Evidence – Weight of evidence – Employment of immigrant – Prosecution witnesses testifying appellant employer of illegal immigrant – Appellant challenging credibility of prosecution witnesses – Testimonial of appellant's good character – Whether court should overturn trial judge's assessment of witnesses' credibility – Whether testimonial of assistance – Whether trial judge's finding that appellant employer against weight of evidence

Courts and Jurisdiction – Jurisdiction – Appellate – Findings of fact by trial judge – Whether appellate court should overturn findings

Criminal Procedure and Sentencing – Sentencing – Penalties – Employment of immigration offender – Whether sentence of 12 months' imprisonment manifestly excessive – s 57(1)(e) Immigration Act (Cap 133, 1997 Ed)

Judgment

GROUNDS OF DECISION

The appellant, Chan Mei Yong Letticia was charged with an offence under s 57(1)(e) of the Immigration Act, Cap 133 ("the Act") and punishable under s 57(1)(ii) thereof for employing one Kamruzman @ Farouk, an immigration offender. The district judge convicted her of the charge and sentenced her to 12 months' imprisonment. The appellant has appealed against her conviction and sentence.

The undisputed facts

2. The appellant was the managing director of a company known as Yuen Catering Services Pte Ltd ("Yuen Catering"), which operated a restaurant along Upper East Coast Road. Previously, she had been a chef at Goodwood Park Hotel from 1985 to about 1994. In the course of her work as a chef, she got to know a subordinate, Rosalind Yeo Good Lian ("Rosalind") with whom she became good friends.

3. In 1998, the appellant was introduced to one Mr Teo Hock Seng ("Mr Teo"), the managing

director of Komoco Holdings Pte Ltd ("Komoco") by a friend, Margaret Chong Yin Fun ("Margaret") who worked as a sales manager at Komoco. Mr Teo offered the appellant the opportunity to operate a canteen at Komoco's premises situated at 253, Alexandra Road, Komoco Property Building ("the canteen").

4. Subsequently, the appellant met Rosalind by chance at the carpark of Goodwood Park Hotel. Rosalind told the appellant that she was unhappy working at the hotel and wanted a change of environment. The appellant informed her of the opportunity to operate a canteen business at Komoco.

5. In due course, a licence was obtained by Yuen Catering to run the canteen at Komoco. In or about October 1998, the canteen commenced its operations, with both Chinese and Muslim food being available. Rosalind was working at the canteen right from the beginning. In January 1999, the appellant started working at the canteen as a cook for the Chinese food and remained until 19 October 2000. A Muslim cook, Jamaldin Miah Bin Brahim Miah ("Jamal") was hired sometime in December 1999. During the period from October 1999 to 19 October 2000 one Kamruzman @ Farouk ("Farouk"), a Bangladeshi, was working at the canteen as a cleaner. He was arrested on 19 October 2000 by officers from the Ministry of Manpower when he was found without valid travel documents. He pleaded guilty and was convicted of the charge of entering into Singapore illegally, in contravention of s 6(1)(c) of the Act. A sentence of one month's imprisonment and four strokes of the cane was imposed on him and he had since served the sentence.

The case for the prosecution

6. It is the prosecution's case that the appellant was the owner or operator of the canteen and that she had employed Farouk, an immigration offender, without ever having seen either a passport or a genuine work permit.

7. During the trial, Farouk testified that he had gone to the canteen on a Friday in the afternoon at about 2-3 pm, though he could not remember exactly which date it was, to enquire about a job advertised in the newspaper. When he arrived, Rosalind was at the cash counter and asked him to take a seat first, as she was busy. When she was free, she came over to where he was seated and queried whether he knew what the job was about. Then Rosalind went into the kitchen to call the appellant. Both the appellant and Rosalind were present at the interview even though it was the appellant who did most of the talking. The appellant asked Farouk whether he had a work permit, to which he replied 'yes'. After the interview, the appellant told Farouk to leave behind his contact number and that she would call him if she needed him. The following Monday, Farouk received a page asking him to go down to the canteen. When he arrived, he reported to Rosalind, who confirmed that someone had paged him to go to work and directed him to the kitchen. On the same day, he showed a photocopy of a work permit to Rosalind who took down some particulars. This work permit was not shown to the appellant. He further testified that it was the appellant who told him that his salary was to be $900 a month and about his duties which involved cutting the vegetables, washing the dishes and cleaning the canteen at the end of every working day. She was also the one who later raised his salary to $1000 a month. In his opinion, the appellant was the person in charge of the canteen. She would be at the canteen from 8.00 – 8.30 am in the morning to about 3 – 3.30 pm in the afternoon. In many matters pertaining to work, she was to be approached. In fact, he had seen Rosalind approaching the appellant several times for instructions. He considered Rosalind the manager who tended to the cash counter and dealt with workers' salaries.

8. Rosalind gave evidence of her duties at the canteen, which involved fronting the cash counter and sometimes serving food. She was also responsible for taking stock and ordering through suppliers.

Her responsibilities, however, did not involve any hiring or firing of staff. The agreement with the appellant initially with respect to the canteen business was that Rosalind was to have a salary of $2000 and a 50%-50% profit sharing arrangement. Her employer was Yuen Catering and she received CPF contributions. Although Rosalind considered herself a part-owner of the canteen at the beginning, subsequently, she found that she was not a part-owner as she did not have the final say and the appellant had to be consulted for her approval on matters pertaining to the canteen. The vegetable and meat suppliers had to be approved by the appellant. Two employees were dismissed at the direction of the appellant. Advertisements for workers were also put up in accordance with the appellant's wishes. Rosalind further testified that, when Jamal came looking for work in response to an advertisement, Rosalind had to interview him because the appellant was busy in the kitchen. When Jamal had asked for a higher salary than that of the previous Muslim cook, Rosalind had to go to the kitchen and ask the appellant, who agreed to pay the higher salary.

9. According to Rosalind, the staff at Komoco would pay using coupons while non-staff had to pay in cash. She would collect the coupons, compile them, put up a claim and pass them to the accounts department of Komoco so that they could make a cheque payment to Yuen Catering. As for the cash, she would collect it and keep it until the end of every month, before doing up the accounts and statements and passing the cash to the appellant. The $800 she collected every month from the Muslim stall at the canteen for use of premises and cleaning services would be put in monthly accounts and given to the appellant. Subsequently, the handling of accounts was taken over by the appellant.

10. On the day that Farouk approached her for a job, she had asked him whether he knew what he was supposed to do in the job. When she asked him for his IC and he replied that he was not a local, she went to look for the appellant who later interviewed him. After the interview, she was informed by the appellant that Farouk would be hired. Rosalind could not recall whether Farouk showed her any documents on the day he reported for work. Nevertheless, she recalled that she had seen a photocopied work permit sometime in October 2000. At that time, the appellant wanted her to check on Farouk's work permit. Rosalind took down particulars and asked for his agent's telephone number. She tried calling his agent several times but to no avail. Before she could follow up on the matter, Farouk was arrested on 19 October 2000.

11. Mr Teo confirmed that, as far as the company was concerned, the operator of the canteen was the appellant. He would deal with the appellant if there were complaints about food quality and service. In the early stages of the canteen's operations, he would go there regularly to see if everything was in order. The appellant introduced him to Rosalind and told him that Rosalind was to be in charge if she was not around. Fortunately, the appellant was around most of the time. As operations went on, he checked with the appellant as to how the canteen was doing as he did not want them to be out of pocket. When the appellant informed him that a lot of staff were not using the canteen, he and the appellant decided to give food coupons to the staff to encourage them to eat at the canteen. Payments were to be made out by cheque by Komoco to Yuen Catering in exchange for the coupons.

12. Two other prosecution witnesses were the officers from the Ministry of Manpower who arrested Farouk, Mr Chang Kwee Huan ("Mr Chang") and Mr Law Boon Seng ("Mr Law"). On the day of the arrest, when the two officers were at the canteen, Farouk had identified the appellant as his boss. When they asked for the owner/operator of the canteen, the appellant stepped forward and identified herself as such. When asked whether Farouk was her worker, she replied that he was. Mr Chang rejected the suggestion that they had asked merely for a representative of Yuen Catering. Mr Law could not recall whether the phrase 'licensed operator' was used that day but recalled clearly that he had used either the term 'owner' or 'operator'. Upon the officers' request to see the particulars of

Farouk, the appellant had instructed Rosalind to get the relevant clear folder for the information.

13. The prosecution also relied on two statements of the appellant recorded by Sgt Chua Ban Kheng ("Sgt Chua"). The first was a long statement recorded on 23 October 2000 and 21 February 2001 pursuant to s121 of the Criminal Procedure Code. In the statement, the appellant acknowledged herself to be the "assigned operator" of the canteen and that she had employed Rosalind as her canteen manager and Farouk as her cleaner. Her cautioned statement recorded on 21 March 2001 read as follows :

> I am sorry for committing the offence. I should have check the worker myself than to rely on my assistance to do it. I know that I was wrong and hope for leniency.

The defence

14. The defence's arguments were mainly that the prosecution had failed to discharge its burden of proof in respect of the charge and, secondly, that the appellant was not the owner of the canteen but Rosalind was. The first argument arose as a result of Farouk giving evidence at the trial that he had entered into Singapore legally with a passport and a pass although he could not remember how many days were given to him in the pass. The defence alleged that, as a result of Farouk's testimony, the charge that the appellant employed a person who had entered into Singapore without being in possession of a valid pass had no underlying or supporting factual basis.

15. The appellant gave evidence that she was not really interested in running the canteen when approached by Mr Teo as she was not in good health. She had always been very close to Rosalind and treated her like a daughter. When she met Rosalind by chance in 1998 and was told that she was unhappy working at the hotel, she wanted to help Rosalind out by getting her started in the canteen business. She herself would only be in charge of getting the licence since Rosalind could not obtain a licence on her own. In the first few months, she would go to the canteen once or twice a week so that she could see that the canteen was clean and that there would not be any complaints about her licence with the Ministry of Environment. She did not get any part of the takings in those months. Subsequently, when Rosalind could not find a suitable cook to replace the previous one, the appellant stepped in as their cook and agreed to a salary of $2000 offered by Rosalind. Subsequently Rosalind offered 50% of the takings of the canteen to Yuen Catering. The appellant's role was mainly that of the cook and, as the cook, she would list the supplies needed for the next day so that Rosalind could order them. Rosalind, on the other hand, took care of everything else such as finances, staff, and supplies. Some of the invoices of the suppliers were in fact addressed to Rosalind. When cheques from Komoco were banked in by the appellant, she would give Rosalind the money minus any deductions required for CPF contributions, licence fee and anything else to be paid by Yuen Catering. Rosalind would consult the appellant on various matters such as whether the salaries for the workers were suitable. This was because, as the appellant had her own restaurant, she would be familiar with the market rates. Other than coming out of the kitchen occasionally to view the suitability of a cook in terms of cooking skills and how well he could get along with her, the appellant was not involved with any interviews conducted by Rosalind. Mr Teo's constant liaison on matters of the canteen with the appellant was caused by his impression of her as the person running the canteen.

16. The advertisement for a cleaner was not put up at the appellant's direction. Rather, it was a suggestion from her when Rosalind ran into difficulty in getting a kitchen helper verbally. The appellant insisted that she was not around on the day that Farouk was interviewed. She first saw him only on the first day that he reported to work. Rosalind had mentioned that a new kitchen helper was coming

and, since the appellant was the only one around that early in the morning when he came, he asked her for instructions as to what to do. When Rosalind arrived to work later that morning, the appellant mentioned to her "Bangledeshi eh? Got work permit or not?". Rosalind then showed her a green-coloured card with Farouk's photo. The appellant cautioned Rosalind to check on the green card. Rosalind would normally check the identity cards of Singaporeans who came to ask for work. The appellant left it to Rosalind to conduct the checks. Apart from working as a cook, the appellant was not concerned with other aspects of the canteen and would usually leave the canteen between 12 – 1 pm as she was needed at her own restaurant along Upper East Cosat Road as a nonya cook.

17. On the day of Farouk's arrest, the appellant was in the kitchen. She came out upon being asked by one of the Komoco staff. The officers asked who was the licensed operator and the appellant replied that it was her. She recalled that Farouk pointed her out as the boss but could not remember much else as she was feeling very disturbed.

18. As for the police statements, the appellant maintained that there were many inaccuracies. She had highlighted the portions which were inaccurate to the court below. The appellant's explanation for the inaccuracies was that she had wanted to help Rosalind. Rosalind was very worried and had pleaded with the appellant not to get her into trouble. The appellant had thought that the punishment for the offence would only be a fine and, as such, she would be in a better position to own up to the offence and just pay the fine. It was only after speaking to a lawyer that she discovered the severity of the offence and she wanted the truth to be out.

19. The rest of the defence witnesses called were Margaret and Jamal. Margaret bore witness that she was introduced to Rosalind by the appellant. The appellant had also informed her that Rosalind would be the one who would be running the daily affairs of the canteen. Even though she did not know the exact relationship between the appellant and Rosalind, her impression was that, at the very least, Rosalind was a partner who could decide on operational matters. Rosalind was the contact person to her, which was why she dealt with Rosalind personally on a number of matters, such as the prices and format of staff coupons and the occasional tea arrangements to cater for finger food, coffee and tea. As for Jamal, he testified that he considered Rosalind his boss and the appellant as his colleague. Rosalind was the one who gave him his salary and granted his salary advances. When he first came looking for a job, it was Rosalind who interviewed him. During the interview, he had asked for a higher salary and Rosalind went somewhere else first before coming back and agreeing to the higher salary that he had asked for.

The decision below

20. The prosecution had sought to admit the cautioned statement of the appellant to cross-examine her on inconsistencies in the statement with her evidence in court. Based on certain allegations made by the appellant against Sgt Chua regarding the recording of the cautioned statement, such as Sgt Chua not having explained the punishment provision to her and telling her that she would get a jail sentence if she did not sign the statement, the district judge ordered a voir dire to determine its admissibility. At the end of the voir dire, the statement was admitted as the district judge was satisfied as to the voluntariness of the statement.

21. Farouk had already been convicted of a charge under s 6(1)(c) of the Act for illegal entry into Singapore. In the district judge's view, even though Farouk stated during the trial that he had entered Singapore with a Bangladeshi passport, there was no evidence that the passport actually belonged to him, was valid and consequently a valid pass was issued to him. Doubt could not be thrown on his conviction as he did not even know the length of the alleged pass issued to him, and no

longer possessed his passport. As such, it was held that his conviction stood as proof beyond reasonable doubt of his immigration status at that time.

22. At the conclusion of the trial, the district judge was convinced that the evidence showed that it was the appellant who controlled the business and that Rosalind was an employee of Yuen Catering, despite the profit sharing arrangement. The appellant was the one who was offered the opportunity to operate the canteen by Mr Teo. Then Yuen Catering obtained the licence for the canteen and cheques were made out monthly by Komoco to Yuen Catering. The appellant was at the canteen for substantial periods of time each day and her advice and approval were sought on matters relating to the canteen. The district judge found it unbelievable that the appellant who was more experienced in doing business, certainly more so than Rosalind, would allow Yuen Catering to be used solely in name only, without any agreement as to the returns and without any control over the business at all. The evidence of Margaret and Jamal was also dismissed by the district judge as not going very far to support the appellant's version of the facts but only showing that Rosalind was very much involved in the operations of the canteen, a point which was not in dispute.

23. In holding that the control over Farouk clearly constituted employment by the appellant within the meaning of the Act, the district judge accepted the evidence of the two main prosecution witnesses, namely Farouk and Rosalind that it was the appellant who interviewed Farouk, decided to hire him, briefed him about his duties and decided the amount of his salary. The appellant was also the one who gave Farouk instructions and orders about his work.

24. The district judge found supporting evidence for holding that the appellant was the employer of Farouk in the appellant’s statements to the police and in her reaction when confronted by Mr Chang and Mr Law on the day of Farouk's arrest. The district judge disbelieved that the appellant had all along thought that the punishment was merely a fine since the punishment provision was set out after the charge, and the appellant was able to read it. There was also much publicity in the local media regarding the severity of employing illegal immigrants and the appellant could not have been oblivious to it, considering that she was experienced in doing business. Furthermore, if she had indeed thought all along that only a mere fine would be imposed, she could have offered simply to pay the fine for Rosalind, instead of adopting such a convoluted manner of 'confessing' and lying to the police about her committing the offence.

25. When Mr Chang and Mr Law had asked who was the owner/operator, she had stepped forward and identified herself as the owner/operator, even though Rosalind was present. The district judge did not believe that the appellant had only stepped forward upon hearing the term 'licensed operator'. First, it would be strange for the officers to use such an 'unwieldy' term as ‘licensed operator’ and, secondly, it was indeed surprising that the appellant could remember this term so clearly, especially since she could not give a clear account of the events and provided an unsatisfactory explanation that she was confused. When asked for Farouk's details, she had instructed Rosalind to retrieve a clear folder containing the information, showing that she had authority over Rosalind.

26. The appellant had conceded that she knew that a foreigner's status in Singapore must be legal before he could be employed. The district judge concluded that this meant that the appellant knew that she must be careful about Farouk's immigration status as he was clearly a foreigner. She should have been put on the alert as to why Farouk should need to seek alternative employment with the work permit. Yet, at all times, there was a photocopied work permit that the appellant could have seen, and it did not even bear the name of 'Farouk'. The district judge was of the view that, at the very least, there were reasonable grounds for the appellant to believe that Farouk was an immigration offender. The appellant should have asked for an original work permit, passport or any other original documents, quite apart from knowing about or seeing a photocopied work permit. Even if the

appellant's claim that she had seen the original work permit could be accepted, the district judge held that the appellant's evidence still fell far short of what was required to mount a successful defence in law.

The appeal

27. Before me, counsel for the appellant raised broadly two grounds of appeal : first, the district judge had erred in not appreciating that the prosecution had failed to prove an essential ingredient of the charge, namely, that Farouk had entered into Singapore without being in possession of a valid pass and, secondly, based on the evidence, the district judge was wrong to find that the appellant was the owner of the canteen and the employer of Farouk.

Whether the prosecution had discharged its burden of proof with respect to an essential ingredient of the charge

28. The appellant was charged with employing a person who had entered Singapore without being in possession of a valid pass in contravention of s 6(1)(c) of the Act. The main thrust of the appellant's argument was that since Farouk, a prosecution witness himself, had given evidence at the trial below that he in fact entered Singapore legally through Changi Airport with a Bangladeshi passport and a social visit pass, the charge against the appellant was not made out by the prosecution. The district judge was wrong, to prefer, without more, the prosecution's reliance on the mere fact of Farouk's conviction in an earlier and separate proceeding.

29. With respect, I am unable to agree with counsel for the appellant. It is pertinent to note that, even though Farouk had mentioned that he entered Singapore with a Bangladeshi passport, there was no further elaboration other than he could not remember the length of his pass. There was no evidence that the passport and the pass were actually valid and belonged to Farouk. In the absence of such evidence, the district judge was entitled to draw the appropriate inferences that he had entered into Singapore illegally, having regard to other evidence available to her, namely his conviction and the fact that he was found without *any* valid documents whatsoever in his possession on the day of his arrest. Besides, there is no rule of law which requires the testimony of a witness to be believed in its *entirety* or not at all : *Jimina Jacee d/o CA Athananasius v PP* [2001] 1 SLR 205 and *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464. The district judge was clearly entitled, for good and cogent reasons, to reject this part of Farouk's testimony that he had entered Singapore legally, while accepting the rest of his evidence. I should add that Farouk's bare assertion of a legal entry into Singapore should not be allowed to override his conviction, as this would be tantamount to bringing a proper conviction by a court of law into question as being wrong and bad in law through the back door. Since the district judge's finding that Farouk had entered Singapore illegally was not against the weight of evidence and had been correctly arrived at, I am not minded to interfere with such a finding.

Whether the appellant was the owner of the canteen and the employer of Farouk

30. It was contended by counsel for the appellant that the overall evidence pointed towards Rosalind as the owner of the canteen instead of the appellant. The district judge had not given due consideration to the explanations of the appellant regarding her role in the canteen and her police statements. Challenges were also made to the district judge's assessment of the credibility of the two main prosecution witnesses, Farouk and Rosalind. It was argued that the district judge was wrong to

accept their evidence that it was the appellant who employed Farouk as there were material inconsistencies in their testimony. It was further argued that the district judge was wrong in not placing sufficient weight on a testimonial bearing out the appellant's good character.

31. It is trite law that an appellate court will generally be reluctant to overturn a trial judge's findings of fact unless they are clearly reached against the weight of the evidence as the trial judge has the benefit of seeing and hearing the witnesses in court: *Cheong Choon Bin v PP* [2001] 4 SLR 190, *PP v Ng Ai Tiong* [2000] 1 SLR 454 and *Lim Ah Poh v PP* [1992] 1 SLR 713. I see no reason to overturn the assessment by the district judge as to the credibility of either the two main prosecution witnesses or the appellant.

32. First, in this case, the district judge had, under the heading "Credibility" in her grounds of decision, stated carefully her assessment of the witnesses in court. The district judge found Rosalind to be honest and forthright, even though it could not have been easy for her to testify against the appellant, who was a mentor and friend. As for Farouk, he did not deny that Roslind paid him his salary, gave him advances and instructed him from time to time. He had already served his sentence and had no reason to frame the appellant rather than Rosalind. The district judge found him to be a reliable witness. On the other hand, although the district judge appreciated that the appellant was generally of good character and was willing to help her friends, the appellant was found to be an unreliable witness in her feeble attempts to dissociate herself entirely from the canteen and to shift the blame on Rosalind.

33. Secondly, as for the alleged material inconsistencies in Farouk's and Rosalind's testimony which were highlighted to me, I am of the view that the district judge had put her mind to the inconsistencies and had rightly satisfied herself that the inconsistencies did not affect the credibility of either witness. As for the sighting of the work permit, it was Farouk's testimony that he showed the photocopied work permit to Rosalind on the first day of work while Rosalind only recalled seeing the work permit in October 2000 shortly before his arrest. The district judge accepted that Rosalind could have been mistaken about two similar incidents, considering that the interview took place almost two years before the trial. In fact, the district judge was of the view that such a discrepancy showed that the witnesses did not collude in any way to frame the appellant. I might add that the corroboration of the two prosecution witnesses that there was at all times only a photocopied work permit made them out to be more reliable witnesses than the appellant whose insistence on seeing a green-coloured work permit was not in accordance with the objective facts and which, to me, was but a feeble attempt to bolster her defence. It was most unlikely that Farouk would not have handed over the green-coloured work permit to the officers from the Ministry of Manpower, if there was indeed such a work permit in his possession. As it was, he had stated that he was never in possession of such a green-coloured work permit and all that he had was the photocopied work permit bearing the name 'Islam Abdul Hai'.

34. Besides challenging the credibility of the prosecution witnesses, the appellant was able to produce an impressive testimonial of good character from a very distinguished and highly respected senior civil servant, who had known her for 40 years, stating that it was totally out of character for the appellant to have done anything illegal. Counsel for the appellant contended that the district judge had erred in not placing adequate weight on the testimonial and cited the case of *Tsang Kai Mong Elke v Public Prosecutor* [1994] 1 SLR 651 in support of the principle that evidence of good character is generally relevant to the credibility of an appellant as a witness. While I did not doubt that the appellant was generally of good character, she had been less than truthful and forthright with respect to a number of matters such as the alleged green-coloured work permit and her statements to the police. As such, the evidence of good character was rendered of little assistance to the appellant in this case. I was of the view that the district judge, in assessing the credibility of

the appellant, was correct in attaching little or no weight to the testimonial, so far as her credibility was concerned.

35. After having examined the evidence, I am of the view that there is also no reason to overturn the district judge's finding that the appellant was the owner of the canteen who had employed Farouk as it had not been reached against the weight of the evidence.

36. In my opinion, the appellant's version of the story that she was in poor health and did not want to run the canteen nor have anything to do with it did not accord with the actual circumstances. The licence for the canteen was obtained by the appellant in Yuen Catering's name. In the first few months, the appellant was also at the canteen, sometimes once or twice a week. I am not inclined to believe that this was because the appellant had merely wanted to see that the canteen business got off to a right start for Rosalind and that there would not be any complaints about the licence over cleanliness. The actual fact remained that the appellant did not relinquish control over the canteen business. When there were complaints about the quality of the food, the appellant herself decided to take over as cook at the canteen. Mr Teo had given testimony that it was the appellant that he was liasing with on matters pertaining to the canteen. When Mr Teo was informed by the appellant that the staff were not patronizing the canteen, both of them came up with the idea of using coupons to encourage the staff to eat at the canteen. Both Rosalind and Farouk had to take instructions from the appellant and the appellant's approval was sought on many matters from the amount of salaries to be paid right to who could be the meat and vegetable suppliers for the canteen.

37. There was also objective evidence of Rosalind receiving CPF contributions from Yuen Catering and cheques being made out by Komoco to Yuen Catering. No satisfactory explanation was given as to why the cheques were made out to Yuen Catering instead of Rosalind if indeed Rosalind was the owner of the canteen business as the appellant claimed. The control that the appellant had over Rosalind was obvious from the evidence of Mr Chang and Mr Law in that the appellant stepped forward and acknowledged herself as the owner of the canteen, even in the presence of Rosalind. When asked for Farouk's particulars, the appellant had ordered Rosalind to retrieve the relevant folder.

38. Even though Margaret gave evidence that the appellant had told her that Rosalind was running the daily affairs of the canteen, she confirmed that she was not told further of the appellant having nothing to do with the operations. Her impression was that Rosalind was at least a partner in the operations. As with the district judge, I find that Margaret's testimony did no more than to confirm that Rosalind was at the canteen, managing the day to day affairs of the canteen, a role which was undisputed and in accordance with Farouk's consideration of Rosalind as the manager of the canteen. As for Jamal, his consideration of Rosalind as his boss and of the appellant as his colleague could be caused by the impression that the appellant was working alongside him in the kitchen, while Rosalind was manning the cash counter and paying out the salaries. In any case, his evidence that Rosalind had gone off somewhere before returning and agreeing to his request for a higher salary corroborated Rosalind's testimony that she had gone to ask the appellant for approval to pay the higher salary. The handing out of salaries and the granting of salary advances were consistent with Rosalind's role as a manager while it was the appellant as the overall person in charge who approved the amounts of salaries to be paid.

39. As for the appellant's explanations for her categorical assertions in the police statements that she was the owner of the canteen and that Farouk was a cleaner who had been employed by her, counsel for the appellant urged me to consider and construe them in their proper perspective. While I appreciated the fact that Rosalind had spoken to the appellant and conveyed her worries about getting into trouble, I am unable to believe that the appellant, in stating that she was the employer

of Farouk, was motivated by her desire to help Rosalind. The statements given to the police were not entirely incriminatory and there were some portions which appeared to be implicating Rosalind in the offence, therefore such an explanation could not hold any water. As for the appellant's alleged mistaken impression that the offence merely involved a fine, I find that to be even more unbelievable. Farouk was arrested on 19 October 2000. The appellant's statements were recorded at three different times over a period of about five months. It is unthinkable that in this period of over five months, the appellant did not even bother to find out what might be the consequences for employing illegal immigrants. In any event, as the district judge stated, and I agree, the problem of illegal immigrants has attracted widespread publicity in the local media and the appellant who had been operating her own business for quite a number of years could not have been ignorant about the severity of the offence. An examination of the charge would also reveal that the appellant had put her signatures above as well as below the provisions setting out the punishment in bold. The appellant should have been able to read the provisions for herself. In any case, Sgt Chua gave evidence in court that he had explained the punishment provisions to her. And yet all that the appellant could say in her cautioned statement was that she was sorry for committing the offence and that she knew she was wrong and hoped for leniency.

40. As the employer of Farouk, it is beyond doubt that the appellant fell far short of the standard of due diligence required by ss 57(9) and (10) of the Act which provide as follows :-

> (9)In any proceedings for an offence under subsection (1) (d) or (e), it shall not be a defence for the defendant to prove that the person harboured or employed by him was in possession of a pass or permit issued to the person under this Act or the regulations unless the defendant further proves that he had exercised due diligence to ascertain that the pass or permit was at the material time valid under this Act or the regulations.
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> (10) For the purposes of subsection (9) —
>
> (a) a defendant who is charged with an offence under subsection (1)(d) shall not be deemed to have exercised due diligence unless the defendant —
>
> > (i) requires the person harboured by him to produce for his inspection the original copy of the pass or permit or, where the pass or permit is endorsed on the passport or travel document, that person"s passport or other travel document;
> >
> > (ii) checks the pass or permit to ascertain that the particulars on the passport of the person harboured by him materially correspond with the particulars set out in the pass or permit; and
> >
> > (iii) where the name of the employer of the person harboured by him is specified in the pass or permit, checks with the employer to verify that the person is employed by the employer and that the particulars of that person correspond with the records of the employer;
>
> (b) a defendant who is charged with an offence under subsection (1)(e) shall not be deemed to have exercised due diligence unless the defendant —

> (i) requires the person employed by him to produce for his inspection the original copy of the pass or permit or, where the pass or permit is endorsed on the passport or travel document, that person"s passport or other travel document;
>
> (ii) checks the pass or permit to ascertain that the particulars on the passport of the person employed by him materially correspond with the particulars set out in the pass or permit; and
>
> (iii) where the person employed by him is a holder of a visit pass, has reasonable grounds for believing that the person had, at the material time, in force a work permit issued under the Employment of Foreign Workers Act (Cap 91A) or had obtained the written consent of the Controller to work in Singapore.

41. Farouk had told the appellant that he had a work permit but she had never even asked to see it once. If the appellant had viewed the photocopied work permit, she would have realised that the work permit bore the name of 'Islam Abdul Hai' instead and that the holder of the work permit was permitted to work only as a construction worker. On one hand, she conceded that she knew that a foreigner's status must be legal before he could be employed and, on the other hand, she did not bother at all to perform the necessary checks on his immigration status by asking for original documents and verifying particulars. Even if she had relied on Rosalind to perform the checks for her, this would not exonerate her of any liability because the duty imposed by the Act on an employer to exercise due diligence to ensure that his employee is not an illegal worker is a non-delegable responsibility : *Cheong Choon Bin v PP* [2001] 4 SLR 190.

Conclusion

42 In my view, the case against the appellant was made out beyond a reasonable doubt, having regard to the totality of the evidence. As for the sentence, the district judge, in imposing a sentence of 12 months' imprisonment, took into account the impressive testimonial of the appellant's good character but had to be mindful of the current robust sentencing approach to cases under s 57(1)(e) of the Act. I do not think that the sentence imposed was manifestly excessive, having regard to the tariff sentence usually imposed in cases of this nature, even for a first offender. Accordingly, I dismiss the appeal and affirm the conviction and sentence.

Sgd:

YONG PUNG HOW
Chief Justice