Public Prosecutor v Selvakumar Pillai s/o Suppiah Pillai
[2004] SGHC 186

Case Number : MA 43/2004

Decision Date : 26 August 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Khoo Oon Soo and Jill Tan (Deputy Public Prosecutors) for appellant; Subhas Anandan (Harry Elias Partnership) for respondent

Parties : Public Prosecutor — Selvakumar Pillai s/o Suppiah Pillai

Criminal Law – Offences – Property – Theft – Theft by servant – Section 381 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Mitigation – First-time offender and hardship suffered by family – Whether compelling mitigating factors preventing imposition of imprisonment sentence – Appropriate sentence

Criminal Procedure and Sentencing – Sentencing – Conviction – Whether cumulative effect of circumstantial evidence leading to inexorable conclusion that respondent committed theft

Criminal Procedure and Sentencing – Voir dire – Whether trial judge erred in finding that respondent's confession was inadmissible as evidence

26 August 2004

Yong Pung How CJ:

1 The respondent was acquitted by the District Court after being tried on the following charge in *PP v Selvakumar Pillai s/o Suppiah Pillai* [2004] SGDC 84:

> You Selvakumar Pillai s/o Suppiah Pillai (M/34 Yrs) NRIC No S6939745Z are charged that you, on 30 June 2003, some time after 6.15pm, at the Bukit Merah Branch office of the Housing & Development Board ("HDB"), located at Block 166 Bukit Merah Central, #03-3529, Singapore, being a servant of HDB, namely an Administrative Assistant with HDB, did commit theft of cash amounting to $199,575.78 (one hundred and ninety-nine thousand, five hundred and seventy-five Singapore dollars and seventy-eight cents) in the possession of HDB, and you have thereby committed an offence punishable under section 381 of the Penal Code (Chapter 224).

I allowed the Prosecution's appeal against the order of acquittal and now set out my reasons.

Background facts

2 The respondent was a cashier with the finance section of the Housing and Development Board ("the HDB"), Bukit Merah Branch. On 30 June 2003, he committed theft of $199,575.78 in the possession of the HDB's Bukit Merah Branch.

The workings of HDB's Bukit Merah Branch

3 The finance section of HDB's Bukit Merah Branch receives daily payments for car park fines, season parking tickets, housing loan instalments, rental payments and late payment charges. At the end of each working day, the daily collection is counted, the figures are tallied and the cash is placed in a Commercial and Industrial Security Corporation ("CISCO") money bag. The money bag is sealed

and placed in a safe located in the strong room of the finance section. The strong room is secured by a key lock and an electronic alarm system. The alarm system is armed and disarmed by the same four-digit code. The safe is secured by both key and combination locks.

4 The keys to the safe and the strong room are placed in an unlocked plastic container on the desk of Tan Chuan Juan ("Tan"), the Finance Supervisor. Tan's workstation has no door and most of the finance section staff know where the keys are kept.

5 The official policy is that no staff member should know both the four-digit code for the strong room and the combination for the safe. Thus, one group of employees in the finance section officially knows the four-digit code for the strong room. They are Tan and three assistant finance supervisors, including Chua Keng Hoon ("Chua"). Another group officially knows the combination for the safe and they comprise cashiers in the finance section – the respondent, Ho Choo Tong ("Ho"), Lee Chin Chong ("Lee") and Soo Thoo Fok Loy ("Soo Thoo"). Strictly speaking, no person should have knowledge of both codes. However, it transpired that certain staff members including the respondent were apprised of both codes.

6 When the CISCO money bag is placed in the safe at the end of each day by one of the cashiers, the Finance Supervisor or one of the assistant finance supervisors is supposed to witness the money bag being placed in the safe before locking the safe with the key, and locking and arming the strong room. However, this procedure was not always followed. Additionally, Tan testified that he would leave the strong room door unlocked during the day so that the cashiers could have easy access to the strong room to obtain loose change as and when it was needed.

The events leading to the theft

7 On 30 June 2003, the respondent was on leave but he returned to the Bukit Merah Branch in the afternoon and assisted in the counting of the day's cash collections. After the cash had been tallied, Ho placed the day's takings in the CISCO money bag and put it in the safe. Chua entered the strong room only after Ho had closed the safe. Chua then locked the safe, and locked and armed the strong room. Ho testified that the cash collection for that day was $199,575.78. The breakdown of the cash denominations was as follows:

(a) 35 pieces of $1,000 notes;

(b) 104 pieces of $100 notes;

(c) 2,840 pieces of $50 notes;

(d) 1,085 pieces of $10 notes;

(e) 12 pieces of $5 notes;

(f) 351 pieces of $2 notes;

(g) nine pieces of $1 notes; and

(h) $554.78 worth of mixed coins.

8 Once the day's takings had been safely stored, Chua, Ho, Lee and Soo Thoo ("the group") prepared to leave the office. They had earlier arranged with the respondent to have dinner that evening and celebrate Soo Thoo's retirement as it was Soo Thoo's last day of work. As the group

prepared to leave for dinner, they realised that the respondent was not in their midst. They eventually left the office at about 6.15pm without the respondent as Chua told the rest of them that the respondent had mentioned earlier that he intended to get a farewell gift for Soo Thoo at the nearby supermarket.

9 At the appointed venue, the group started dinner without the respondent. At about 7.20pm when they had finished their dinner, the respondent showed up with a bottle of liquor for Soo Thoo. He told them that he had gone home to get the liquor for Soo Thoo instead and it had been difficult to hail a cab. Soo Thoo testified that he had told the respondent previously that he did not drink but the respondent knew that Soo Thoo's father did so. Chua, Ho and Lee also testified that it was common knowledge that Soo Thoo was a teetotaller. Ho and Lee left soon after the respondent's arrival while Chua and Soo Thoo accompanied the respondent as he ate. After he had finished dinner, the three of them left together and the respondent gave Chua a lift home in a cab.

10 The next morning, 1 July 2003, Tan disarmed the strong room when Ho reported for work. Tan then went to answer a telephone call, leaving Ho to open the safe. Ho discovered that the CISCO money bag was missing. He immediately notified Tan and a police report was eventually made. There were no signs of a break-in.

The Prosecution's case

11 The Prosecution alleged that the respondent had the motive, knowledge and opportunity to commit the theft. First, the Prosecution surmised that the respondent was in need of money. His monthly salary of $1,200 went towards supporting his wife who was a homemaker, his two children and his father-in law. Many of his bills were also unpaid. The respondent had installed an alarm system in his home and his security services bills were unpaid from January to June 2003. His Starhub Internet account was terminated on 26 June 2003 for non-payment. His Singapore Power bills from January to May 2003 were not paid until 30 May 2003.

12 Second, the Prosecution submitted that the respondent had easy access to the safe as several of the staff members had testified that the respondent knew both the code to the safe as well as the code to the strong room. The respondent had told Chua that he knew the code to the strong room and Ho had heard the former Finance Supervisor, the late Paul Foo ("Paul"), ask the respondent to arm the strong room. Moreover, the keys to the strong room and the safe were freely available.

13 Third, the Prosecution argued that once the group had left the office and the Bukit Merah Branch was locked up for the day, the respondent, having hidden himself in the office, had the means and opportunity to commit the theft.

14 At the same time, the Prosecution asserted that the respondent and his family members had a show of sudden wealth from 30 June 2003 onwards, the source of which was not satisfactorily explained. It averred that this newfound wealth was the spoils from the theft and cited the following incidents as proof of the respondent's unexplained wealth:

(a) On the night of 30 June and on 1 July 2004, the respondent deposited $1,600 into his POSB accounts which previously had little or no money in them.

(b) On the morning of 1 July, instead of attending a scheduled medical appointment, the respondent went to two pawnshops and redeemed jewellery amounting to $21,000. At the first pawnshop, Thai Thong pawnshop, he paid about $12,000, out of which $11,000 was made up of

$10 notes, $400 was made up of $50 notes and $600 was made up of both $2 and $5 notes. On the same day, the respondent paid his June 2003 Singapore Power bill. It was the first time in 2003 that he had paid his Singapore Power bill promptly.

(c) On 2 July, the respondent's father-in-law, Murugaiyah Thiruvengadam ("Murugaiyah"), deposited $16,400 into his own bank account.

(d) On 4 July 2004, the police seized $2,000 in $50 notes from the respondent's home.

(e) On the same day, the respondent was offered $50,000 bail for his release. That night, his wife, Rajaswari d/o Thiruvengadam ("Rajaswari"), went to two cash deposit machines and deposited $5,000 cash in a hundred $50 notes into her United Overseas Bank Ltd ("UOB") account at Bedok. At Tampines, she deposited another $9,000 in eighty $50 and fifty $100 notes into the same account slightly past midnight on 5 July 2004.

(f) Later that day on 5 July, Murugaiyah transferred $15,000 from his account into Rajawasri's. Rajaswari also deposited $21,000 in sixteen $1,000 notes and a hundred $500 notes into her account. This brought her account balance to $50,000 which she used to bail the respondent out of jail.

According to the Prosecution, the fact that all the denominations of notes used by the respondent and his family members were consistent with the HDB's tally cast greater suspicion on the source of the money in the possession of the respondent and his family members.

The Defence's case

15 The respondent denied having committed the theft. Contrary to the Prosecution's accusations that he was hard-pressed for money, he claimed that he always had substantial cash savings in his possession. He asserted that he had savings of between $22,000 and $25,000 at home which were meant for emergencies. This sum comprised of his savings from working with the HDB and from part-time jobs, Rajaswari's savings, the leftover of an insurance payout of $35,000 he had received in 1999, and the leftover from a $30,000 loan to Paul which the latter had repaid. After Paul had repaid him by cheque, he had cashed the cheque and kept the money at home. Therefore, his savings had been amassed before June 2003. The respondent also testified that he had installed an alarm system in his home before 30 June 2003 as he kept substantial amounts of cash and jewellery in his home.

16 The respondent claimed that he had deposited money into his Post Office Savings Bank ("POSBank") accounts because he had received a letter from POSBank threatening to terminate one of his accounts unless funds were deposited into it. He was afraid that he had missed the warning letter for the other account and thus decided to deposit money into it as well. The money which was deposited into his accounts and which was used to redeem the jewellery was from his savings. He had redeemed his jewellery because the pawn receipts were about to expire, and because his family was going to India in August 2003 with his mother for one to two months and Rajaswari wanted to use the jewellery in India. He had given Thai Thong pawnshop $11,000 in $10 notes because Rajaswari always had a habit of saving $10 notes in her piggy bank.

17 In respect of the $50,000 bail put up by Rajaswari, the respondent said that Rajaswari had borrowed $35,000 from his mother. Rajaswari then raised another $10,000 by pawning her jewellery and obtained $6,000 from her sister who had also pawned her jewellery. The respondent did not know about the $16,400 which Murugaiyah deposited into his own account.

18 The respondent averred that he was not cash-strapped. He regularly pawned his jewellery despite his savings because he preferred to have money at home. He had many unpaid bills because he had the habit of waiting till the last minute before paying them. He had paid the June 2003 Singapore Power bill promptly because he happened to be at the post office on 1 July 2003 and it was convenient to pay the bill then.

19 As for the allegations that he had the knowledge, means and opportunity to commit the theft, the respondent asserted that he did not know the access code to the strong room. He claimed that he returned to the Bukit Merah Branch on 30 June 2003 to help his colleagues even when he was on leave as he was a helpful person. In court, Chua and Soo Thoo agreed that he was indeed a very helpful person.

20 Thereafter, he had made his way to the nearby supermarket to buy Soo Thoo a gift even though he had already shared in a present with his other colleagues for the latter. This was because he had known Soo Thoo for a long time and wanted to get him something personally. He then remembered that he had a bottle of whisky at home and went home to get it. As Soo Thoo drank beer and Soo Thoo's father drank alcohol, the respondent did not think that the liquor was an inappropriate gift. He had difficulties getting a cab and thus turned up late for dinner. After dinner, he gave Chua a lift before returning home. He was also on leave on 1 July 2003 and had no knowledge of the theft until the police visited his home on that day.

21 Rajaswari was the only other witness called by the Defence. She corroborated the respondent's evidence that they had cash savings of between $22,000 and $25,000 at home and that she had the habit of saving $10 notes in her piggy bank. Though she had stopped working in 1997, she had continued to save part of her husband's salary each month. She had borrowed $35,000 from her mother-in-law to raise the bail money. In this regard, she had written an IOU at her mother-in-law's behest. Rajaswari testified that of the $16,400 in Murugayiah's UOB account, her father's friend had given him $15,000 for safekeeping. She returned the $15,000 in cash to her father's friend from the $35,000 that her mother-in-law had lent her. Her father then transferred that sum from his UOB account to her account. As for the $1,400, it was her father's money which had been intended for her mother's death anniversary prayers. Since the prayers had been cancelled, the money was no longer needed. Thus, her father had deposited it into his account.

The *voir dire*

22 At trial, the Prosecution sought to admit into evidence the respondent's cautioned statement recorded under s 122(6) of the Criminal Procedure Code (Cap 168, 1999 Rev Ed) in which the respondent had confessed to the theft. Counsel for the respondent objected to its admission on the basis that it was not voluntarily made and that it had been made as a result of inducement, threat or promise. A *voir dire* was conducted. In this regard, the respondent, Rajaswari, three doctors, the police officers involved in interviewing the respondent as well as the lockup officers gave evidence in court.

23 The investigating officer, Razali bin Razak ("Razali"), testified that the respondent was first interviewed on the evening of 2 July 2003. Thereafter, he was kept in the lockup and interviewed a second time in the morning on 3 July 2003. The third interview with the respondent was at about 8.35pm on 3 July. Other than Razali, officers Sahlan bin Osman ("Sahlan"), Then Yen Loong ("TYL") and Kothandom Vasanthan ("Vasanthan") were present at the third interview. SSgt Jason Ng ("Jason") joined them at about 9.10pm. Jason was a former member of the Property Offences Squad ("POS") to which the other officers belonged, but he had been transferred to the Violence Squad three months earlier. Razali said that Jason had not been assigned to assist him in the investigations

unlike the other officers. None of the POS officers knew why Jason had helped in the interview. They testified that they spoke in a normal or firm tone to the respondent while Jason spoke in a normal tone.

24 The POS officers testified that the respondent seemed responsive to Jason's questioning. As such, they left the room and left the respondent alone with Jason. TYL however said he was certain that Razali did not leave the interview room. According to Razali, when he re-entered the room a few minutes later, he heard the respondent admit that he had committed the crime. Razali then brought the respondent up to his workstation in the POS office together with Jason, whereupon Razali recorded the cautioned statement of the respondent. The POS officers denied that any inducement, threat or promise was made to the respondent at any time.

25 Jason testified that it was his former officer-in-charge, Insp Richard Lim, who told him that the POS officers were interviewing the respondent and suggested that Jason assist them. When Jason entered the interview room, he observed the proceedings before asking the respondent questions. He recalled asking the respondent if he had stolen the money and to think of his family members. Jason stated that he spoke in a normal tone while the other officers spoke in a firm tone. The respondent began to nod in response to his questions after a while. When the other officers saw this, they left the room.

26 According to Jason, when he was alone with the respondent the latter did not really respond to his questions. Razali then re-entered after a few minutes, whereupon the respondent nodded in response to Jason's questions. The two of them then brought the respondent to Razali's workstation where Jason continued the questioning, but the respondent was not very responsive. Jason claimed that he was not present when Razali was recording the cautioned statement. He could not remember who else was at the POS office then or if he spoke to anyone. He denied that he had assaulted the respondent or that he had followed the respondent to Razali's office to make sure that the respondent signed the cautioned statement.

27 The respondent testified that at the first interview, Razali had shouted at him when he denied committing the offence and had threatened to involve his family. He claimed that Sahlan had placed him in an arm lock and punched him in the stomach at the second interview. At the third interview, the POS officers had shouted at him and threatened to involve his family. Sahlan then stripped him and left him naked in the air-conditioned interview room. When he still denied committing the offence, Sahlan took a cloth, wrapped it around his fist and threatened to punch him. Sahlan then used the respondent's T-shirt to cover his head so that he could not see. He was then pushed around the room until he felt dizzy. He also claimed to have been pinched on his nipples and assaulted. When the T-shirt was removed, the respondent began to cry.

28 The respondent also alleged that he had been punched by Jason when the latter joined in the interview. When they were alone, Jason had threatened to involve his family as well. Jason had then punched him in the stomach and slapped him. As the respondent could not take it any longer, he had told Jason that he would sign whatever was written. He was then brought to Razali's office where he was told by Jason to sign whatever Razali showed him or risk being beaten up. The respondent claimed that he had signed the cautioned statement without reading it or knowing its contents.

29 He was released on bail on 5 July 2003 and fell asleep upon reaching home as he was very tired. He went to the hospital on 7 July 2003 when blood was found in his urine. There, he had told the doctor that he had fallen down the steps and injured himself. He had not dared to reveal the assaults by the police as he was afraid that he would be assaulted again during the recording of further statements. When he told Rajaswari about what had happened, she encouraged him to tell the

doctors the truth so that he could be properly examined. Thus, the respondent returned to the hospital on 8 July 2003 and told another doctor that he had been assaulted while in custody. The respondent denied committing the theft at the subsequent recording of his long statements.

30 The collective evidence of the three doctors who examined the respondent on 7 and 8 July 2003 was that they did not find any bruises or fractures on him but that he had tenderness in his lower rib cage area and on his abdomen, *ie*, he showed signs of pain by wincing. One of the doctors testified that the fact that there were no bruises did not mean that the respondent had not been assaulted as he had seen cases of assault without bruises. The respondent was eventually diagnosed with a urinary tract infection.

31 At the end of the *voir dire*, the trial judge ruled that the confession was not admissible as evidence in the main trial. With the resumption of the main trial, the Prosecution conceded that there was no direct evidence that the respondent had committed the theft. It therefore sought to rely solely on the circumstantial evidence mentioned above to prove its case.

The decision below

32 With regard to the *voir dire*, the trial judge found that the Prosecution had failed to prove beyond a reasonable doubt that the confession was made voluntarily. She observed the demeanour of the police witnesses in court and found their stories and explanations suspect. Thus, she did not allow the confession to be admitted into evidence.

33 The trial judge went on to find that the circumstantial evidence before her was not such that she was prepared to draw an irresistible inference of guilt. In her view, the version of events propounded by the respondent and Rajaswari was believable and the series of coincidences raised by the Prosecution did not lead inexorably to the one conclusion that the respondent had committed the offence.

The appeal

34 The Prosecution raised two issues on appeal: first, whether the trial judge had erred in finding at the end of the *voir dire* that the respondent's confession was inadmissible as evidence in court; and, second, whether the trial judge had failed to place sufficient weight on the cumulative effect of the circumstantial evidence.

35 I shall now deal with each of these issues in turn.

The voir dire

36 It is trite law that an appellate court is reluctant to overturn a trial judge's findings of fact, especially where it hinges upon an assessment of the credibility and veracity of the witnesses: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]. The appellate court does not have the advantages of seeing and hearing the witnesses and will defer to those findings: *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113 at [42]; *Kong See Chew v PP* [2001] 3 SLR 94 at [28]. It is also important to note that where the voluntariness of a confession is challenged, the burden is on the Prosecution to prove beyond a reasonable doubt that the confession was made voluntarily: *Koh Aik Siew v PP* [1993] 2 SLR 599 at 606, [23]; *Gulam bin Notam Mohd Shariff Jamalddin v PP* [1999] 2 SLR 181 at [53].

37 In the instant case, the trial judge found the police witnesses' stories and explanations

suspect upon observing their demeanour. She was unable to conclude that the Prosecution had discharged its burden of proof and did not allow the respondent's cautioned statement to be admitted into evidence. The Prosecution now contends that even though the trial judge purported to base her findings on her observations of the police witnesses' demeanour, those findings were based on erroneous inferences drawn from the evidence. It argues that there was little basis for the judge's observation that the conduct of the police witnesses was dubious. Therefore, the critical issues here are whether the trial judge was plainly wrong in her assessment of the witnesses and whether she had drawn inferences from the evidence that no reasonable judge would have drawn. In this regard, I turn to three aspects of the judge's findings.

Circumstances under which the respondent confessed to the offence

38 The trial judge found the events leading up to the confession to be very troubling. It was incredible that the respondent would simply open up to Jason when he had denied committing the crime from the time of his first interview till his third interview. It was also highly suspicious that all the POS officers who were specifically assigned to interview the respondent would leave him alone with Jason and that the respondent was all ready to confess when Razali re-entered the interview room. Jason had no cause to join in the interview and it was inconceivable that the officer-in-charge would have so casually told Jason to assist in the investigations.

39 The Prosecution conceded that it might be perceived as unusual that the respondent opened up to Jason after meeting him for about ten minutes whereas he had not responded to the POS officers who had interviewed him for two days. However, it surmised that the respondent was simply tired and was thus responsive to an officer who spoke in a civil manner to him. It was not unbelievable that the POS officers had decided to leave the Jason alone with the respondent when they saw that the latter was responding to Jason. The Prosecution further argued that the trial judge had placed undue weight on the fact that Jason helped in interviewing the respondent although he was no longer part of POS.

40 I was unconvinced by the Prosecution's arguments in this regard. There was no evidence to show that Jason had superior skills in interviewing suspects as compared to the POS officers. It thus appeared strange that the officer-in-charge would instruct him to assist in the investigation when at least four POS officers had already been specifically tasked to do so. It defied logic that a senior officer would deploy the human resources of the police force in such a haphazard manner. Furthermore, the unequivocal evidence of the POS officers was that they did not know why Jason had assisted in the interview. Some of the POS officers even seemed surprised that he had done so.

41 Seen in this light, it was also doubtful that Razali, as the investigating officer, would have left Jason alone with the respondent even though he did not know why Jason, who was not part of POS, had joined them. What rendered this chain of events even stranger was that TYL, who had no reason to lie, emphatically averred under cross-examination that Razali never left the interview room and stayed with the respondent the whole time.

Circumstances surrounding the recording of the cautioned statement

42 The trial judge found contradictions in Razali's and Jason's testimonies which cast doubt on the veracity of their evidence. She deemed it highly suspicious that Razali had given the impression that he alone dealt with the respondent at his workstation during the recording of the cautioned statement whereas Jason said that he had continued to question the respondent even when he was at the POS office. The trial judge noted that although Jason had initially remembered Razali preparing and administering the charge to the respondent, Jason had later claimed that he was elsewhere in the

POS office when the charge was administered. Jason had also been evasive in court as to who had been at the POS office and the identities of the officers whom he had spoken to.

43 In response, the Prosecution averred that the contradiction in Razali's and Jason's evidence was more apparent than real because the mere fact that Jason had known that the cautioned statement was being prepared and administered did not mean that he must have been present at Razali's desk. In fact, he had known the statement was being recorded and thus stayed away. The fact that Jason could not remember whom he spoke to was also not material as his most important involvement in the matter was in obtaining the respondent's co-operation.

44 I was unable to agree with the Prosecution's contentions on this part of the appeal. While it was reasonable that Jason did not have to be present at Razali's desk to know that the cautioned statement was being prepared and administered, the Prosecution's submission that he stayed away because the statement was being recorded was unpersuasive. If Jason had been instructed to assist in the investigations, if Razali had trusted Jason so much that he left Jason alone with the respondent, and if Jason was so adept at handling the respondent, it would then be implausible that Jason should have had to keep away at the stage of the recording of the statement. Moreover, Jason testified that even when he continued questioning the respondent at Razali's workstation, the respondent still "held back". Thus, it appeared that Jason should, all the more, have remained with Razali when he recorded the statement. It was also strange that Jason could remember vividly the events that took place in the interview room, even to the most minute of details, yet failed entirely in recalling what he did at the POS office and to whom he spoke.

The medical evidence

45 The trial judge found that even though no bruises were found on the respondent, he was diagnosed with mild tenderness on his abdomen and bilateral flank. She also noted that one of the doctors confirmed that he had seen assault cases where there was no apparent bruising. In this regard, she found that the Prosecution had failed to challenge the respondent's claim that he experienced pain, which it should have done robustly if its position was that the respondent had faked the pain.

46 On this point, I was of the view that undue emphasis had been placed by the trial judge on these factors. The Prosecution had put to the respondent at trial that he had never been assaulted by the police officers and that he had lied to the doctors when he told them that he had been assaulted. Accordingly, the Prosecution had clearly challenged the respondent's allegation that he had sustained injuries while in custody. The judge also failed to place sufficient weight on the fact that the respondent never complained to the lock-up officers that he had been assaulted and that the doctors did not find any bruises or fractures on him even after conducting examinations and x-rays. At best, the respondent experienced mild tenderness, which was inconclusive as he merely showed signs of wincing in pain.

47 Nonetheless, I found that the first and second aspects of the judge's findings were sufficient in raising a reasonable doubt that the respondent made his confession voluntarily. Against that background, I was unable to find that the judge misapplied the law or misapprehended the facts, or that her decision was plainly wrong or against the weight of the evidence. It then followed that the trial judge's finding that the respondent's confession was inadmissible should not be interfered with since the Prosecution failed to reach the high threshold required to convince me that the trial judge's findings of fact should be disturbed.

48 I now turn to the second issue raised by the Prosecution.

The circumstantial evidence before the court

49 The Prosecution acknowledged that if the confession were inadmissible, the remaining evidence would be wholly circumstantial. It averred, however, that the circumstantial evidence as a whole showed that the respondent had committed the theft. It further claimed that the trial judge had failed to accord sufficient weight to the cumulative effect of the circumstantial evidence.

The law on circumstantial evidence

50 It was laid down in *Ang Sunny v PP* [1965–1968] SLR 67 at 72, [14], that when the Prosecution is relying entirely on circumstantial evidence, the effect of all such evidence must lead the court "inevitably and inexorably" to one conclusion and one conclusion only: the accused's guilt. Further, any notion that *Ang Sunny v PP* laid down a higher standard of proof for cases where prosecution evidence is wholly circumstantial was dispelled in *PP v Oh Laye Koh* [1994] 2 SLR 385, at 392, [19], where the court stated that the same principle of guilt beyond reasonable doubt applies equally to cases where the prosecution evidence is wholly circumstantial as it does in those where direct evidence is adduced: *PP v Nurashikin binte Ahmad Borhan* [2003] 1 SLR 52 at [18].

51 In applying the principle of guilt beyond reasonable doubt, the court is concerned with whether there is any other reasonably possible conclusion other than that the accused had committed the offence. The court is not concerned with "fanciful possibilit[ies]": *Nadasan Chandra Secharan v PP* [1997] 1 SLR 723 at [89]. In *Miller v Minister of Pensions* [1947] 2 All ER 372, Denning J, as he then was, pertinently stated at 373:

> If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable," the case is proved beyond reasonable doubt, but nothing short of that will suffice.

52 Applying the above principles to the present facts, it was for me to decide, in light of the totality of the circumstantial evidence presented, whether an inevitable and inexorable inference could be drawn that the respondent committed the offence.

Whether the series of coincidences made the respondent's defence impossible

53 The Prosecution argued that the respondent's explanations for his sudden unexplained wealth were all fabrications because of the incredible series of coincidences that took place. To this end, it raised the following coincidences that were similarly canvassed before the trial judge:

(a) The respondent was in the office until closing time when he disappeared for an hour. He gave Soo Thoo a bottle of whisky when it was common knowledge that the latter was a teetotaller.

(b) On the night of 30 June 2003, the respondent suddenly decided to take the bank's letter seriously and deposit money into his POSBank accounts.

(c) On 1 July 2003, it was convenient for the respondent to pay his Singapore Power bill promptly for the first time since January 2003.

(d) On 1 July 2003, he decided to redeem jewellery from the two pawnshops, and much of the money used comprised $10 notes, which tallied with HDB's collection on 30 June 2003.

(e) Rajaswari was in the habit of saving $10 notes.

(f) Murugaiyah had a "friend" who gave him $15,000 for safekeeping on 2 July 2003, and it happened that that was also the day Murugaiyah decided that his late wife's death anniversary prayers would be called off and he would deposit $1,400 into his account.

(g) The respondent's mother had $35,000 to spare for his bail when Rajaswari needed that amount.

(h) The denominations of notes used by the respondent and his family members in all the transactions were within that of the HDB's tally.

(i) The respondent and Rajaswari did not generally keep track of the amount they keep at home but they knew for the purposes of the trial that they had about $22,000 to $25,000 at the time of the theft.

(j) Although the respondent and Rajaswari had seven bank accounts between them, they preferred to keep their money at home.

(k) The respondent preferred to pay the pawnshops interest rather than earn interest by depositing his money with the banks.

(l) Although the respondent had over $20,000 in cash savings at home, he had his Internet connection terminated and almost never paid his bills on time in 2003.

54 Despite this series of coincidences, the trial judge found the explanations offered by the respondent and Rajaswari to be reasonably possible. In her view, it was conceivable that the respondent and Rajaswari could have been in possession of substantial amounts of cash from the respondent's receipt of $35,000 from an insurance payout and $30,000 from Paul Foo in repayment of a loan. Together with Rajaswari's savings of $10 notes over the years, which had resulted in the accumulation of a sum of money comprising $11,000 in $10 notes, the trial judge thought it eminently possible that the respondent had $22,000 to $25,000 in his house on 30 June 2003. The trial judge also accepted Rajaswari's detailed account of how she had obtained the $50,000 required to bail out the respondent as believable.

55 Furthermore, the trial judge also found that there could be a variety of reasons why the respondent was not prompt in his bill payments. His tardiness did not necessarily mean that he was cash-strapped. The respondent had managed to pay his outstanding Singapore Power bills in May 2003. Thus, he was not so cash-strapped that he could not pay his bills at all. The installation of the security system in the respondent's house also backed up his testimony that he kept large sums of cash and jewellery in his house.

56 I was unable to see how the respondent's receipt of an insurance payout in 1999 could materially relate to his financial status four years later. This was especially so when the respondent was clearly short of money in 2003. On the same reasoning, since the respondent was unable to recall the period when he received the repayment of the $30,000 from Paul, it followed that this $30,000 was equally irrelevant to the respondent's financial status in 2003. As for Rajawari's savings of $10 notes, I noted that she had stopped working as early as 1997. It was thus incredible that her savings amounted to $11,000 as at July 2003, which was a sum that substantially coincided with the number of $10 notes stolen from the Bukit Merah Branch.

57 In my opinion, Rajaswari's detailed account of how she acquired the $50,000 required to bail out the respondent merely played up the shady nature of the respondent's and his family's financial dealings after the theft. I found it hard to believe that it was a mere coincidence that the respondent's mother had $35,000 cash in her possession when that was the amount Rajaswari needed to borrow. Rajaswari had also claimed that her father had cancelled the death anniversary prayers for her mother on 2 July 2003. Thus, he deposited the money meant for the prayers on the same day. However, it seemed far-fetched that Rajaswari's father would decide to cancel his wife's death anniversary prayers in early July when the latter's death anniversary was in November.

58 I also found that the respondent's unusual habits of living off pawnshops, leaving his bills unpaid and his affairs unsettled rendered his defence highly suspicious. It was simply inconceivable that the respondent who allegedly hoarded his money painstakingly would opt to pay interest to pawnshops rather than earn interest from banks, especially when the respondent and Rajaswari had seven bank accounts between them. It defied logic that the respondent should have to pawn jewellery every time he was in need of money if he was as cash-rich as he claimed. He was clearly not flush with money even if he had installed an alarm system in his house. Moreover, seen against the fact that large sums of money were deposited into various accounts belonging to the respondent and his family members just hours after the money from the HDB went missing, his laborious attempts at explaining away the numerous coincidences rang hollow.

59 The trial judge found that the weakest part of the Prosecution's case was that it did not address the issue of how the respondent had stolen the money without triggering the alarm or the motion detector in the Bukit Merah Branch. In my opinion, it was difficult to see how the non-triggering of the alarm was materially connected to the plain fact that money had been stolen from the HDB without any signs of a break-in. Based on the mass of evidence before me, it was clear that an irresistible inference of guilt on the respondent's part could be drawn. In this light, it was pointless to consider the degree and probability of each item of evidence separately.

60 While the trial judge conceded that the respondent's behaviour was suspicious, she held that the Prosecution had failed to adduce more incriminating evidence that could remove doubts from her mind. In my view, the trial judge had placed unnecessary emphasis on certain factors while she failed to accord due weight to the probative force of the circumstantial evidence as a whole. It was clear that the series of undesigned and unexpected coincidences were not only suspicious, but were so damning that they collectively made the respondent's defence a very fanciful possibility, if not impossible. Upon examining the cumulative effect of the circumstantial evidence, there was little doubt in my mind that no conclusion could be drawn other than that the respondent had committed the theft. Accordingly, I allowed the appeal and convicted the respondent on the charge.

The appropriate sentence to be passed

61 Having found that the respondent should rightfully be convicted of the offence, I turned to examine the appropriate sentence to be passed. Section 381 of the Penal Code (Cap 224, 1985 Rev Ed) states:

> Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine.

62 The offence attracts a mandatory imprisonment term. In *Abdul Rahim bin Ali v PP* Magistrate's Appeal No 269 of 1996, the accused claimed trial and was convicted of a charge under s 381 read

with s 109 of the Penal Code. He had conspired to steal 168mt of plastic resin worth $581,000 from his employer. He had also arranged for the resin to be transported to his co-conspirator, and for a buyer for the resin. He had a clean record. He was sentenced to five years' imprisonment. On appeal, the accused's appeal against sentence was abandoned: see [1997] 2 SLR 249.

63 In *Rajaynthran s/o Kasinathan v PP* Magistrate's Appeal No 98 of 1995, the accused originally claimed trial to a charge under s 381 before pleading guilty to three charges under s 381 for stealing computer equipment in the possession of Singapore Airport Terminal Services Pte Ltd for whom he worked as a cargo assistant. The equipment in question was valued at about $570,000 and $900,000 for the first and second charges respectively. The offences were committed over a three-month period by the accused and two accomplices. The accused received $204,000 for his part in the theft but failed to make any restitution. He was a first-time offender. Two other charges were taken into account in sentencing. The trial court sentenced the accused to five years' imprisonment on the first charge and six years' imprisonment on the second charge. On appeal, the accused's sentence on the first charge was reduced to four years' imprisonment while the sentence on the second charge was reduced to five years' imprisonment.

64 In *Toh Chwee Yong v PP* Magistrate's Appeal No 282 of 1995, the accused pleaded guilty to two charges under s 381 for stealing shares whilst employed as a clerk in the risk management unit of Citibank NA Singapore. The shares were valued at about $1.1m (the third charge) and about $74.8m (the fourth charge) respectively. The accused was responsible for accepting and verifying the lodgment of share scrips pledged to the bank. The share scrips were kept in an office safe. The accused knew the combination code to the safe and also had access to the key of the safe.

65 The accused stole the share scrips at her boyfriend's instigation. Her boyfriend shared the sale proceeds from the shares with other accomplices. The accused did not receive any financial benefit or help in the disposal of the shares. The shares stolen amounted to over $75m in value and only about $50m worth of shares was recovered. The accused had a clean record. Two other charges were taken into account in sentencing. The trial court sentenced the accused to two years' imprisonment on the third charge and five years' imprisonment on the fourth charge. On appeal, the accused's sentence was affirmed.

66 In the present case, the respondent had stolen about $200,000 cash in the HDB's possession. This was not a small amount. It was also the entire takings of the HDB's Bukit Merah Branch for the day in question. While the respondent was not in a senior position, he had abused the trust reposed in him by the HDB where, as a banking cashier in the finance section, he was officially equipped with knowledge of the combination code of the safe and ostensibly given the access code to the strong room. As offences under s 381 of the Penal Code generally involve the offender abusing his employer's trust, it is axiomatic that the greater the betrayal of trust, the more serious the offence will be.

67 In court, counsel for the respondent urged me to take into consideration the fact that the respondent was a first-time offender and that he had two children to support as the sole breadwinner. In my view, even if this was the respondent's first conviction and given that an accused's status as a first-time offender is generally accepted as having mitigating value (*Krishan Chand v PP* [1995] 2 SLR 291), the above precedents have shown that a previous clean record is not of such compelling mitigating value as to prevent an imprisonment sentence of between two to five years for thefts of amounts between $570,000 to $1.1m from being imposed.

68 Additionally, any hardship to an accused's family caused by his imprisonment is unavoidable and is not usually a factor that can affect what will otherwise be the right sentence: *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305. Counsel for the respondent did not show me that this was a case so

unusual on its individual facts as to justify a departure from the general principle.

69 In the circumstances, bearing in mind that the regime of sentencing is a matter of law which takes into consideration a hotchpotch of such varied and manifold factors that no two cases can ever be completely identical in this regard (*Soong Hee Sin v PP* [2001] 2 SLR 253), I sentenced the respondent to two years' imprisonment.

Appeal allowed; respondent sentenced to two years' imprisonment.