Roy S Selvarajah
v
Public Prosecutor

[1998] SGHC 272

High Court — Magistrate's Appeal No 33 of 1998
Yong Pung How CJ
16 July; 11 August 1998

Criminal Law *— Abetment — Intentionally aiding commission of offence of overstaying — Whether appellant could be prosecuted for abetment when overstayer had not been tried*

Criminal Procedure and Sentencing *— Charge — Particulars — Whether sufficient information in charge for appellant to be put on notice as to case against him — Whether charge of abetment rendered defective by Prosecution's failure to provide particulars of intentional aiding — Sections 158, 159 and 160 Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

Criminal Procedure and Sentencing *— Public Prosecutor — Whether appellant prejudiced by Prosecution's choice not to proceed against accomplice — Whether Prosecution having ulterior motive in not calling certain witnesses*

Criminal Procedure and Sentencing *— Sentencing — Deterrence — Abetting of illegal overstayers to remain in Singapore — Reprehensibility of appellant's conduct in keeping overstayer in Singapore although she wanted to return to India*

Evidence *— Admissibility of evidence — Hearsay — Whether computer records with Data Processing Centre at Immigration Department admissible — Whether information contained in records might be adduced solely through oral evidence of investigating officer — Section 380 Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

Immigration *— Criminal offences — Abetting overstayer in remaining in Singapore — Sections 15(1) and 15(3)*(b) *Immigration Act (Cap 133, 1997 Rev Ed) — Section 109 Penal Code (Cap 224, 1985 Rev Ed)*

Facts

The appellant, Selvarajah, was convicted of abetting one Nagammal to remain unlawfully in Singapore after the expiry of her visit pass, an offence under s 15(1) of the Immigration Act (Cap 133, 1995 Rev Ed) ("the Act"), punishable under s 15(3)(*b*) of the Act read with s 109 Penal Code (Cap 224, 1985 Rev Ed). Selvarajah was originally charged with Nagammal but at the commencement of the trial, the Prosecution applied to stand down the charge for overstaying against Nagammal and instead proceeded against the appellant. Nagammal then became a material prosecution witness against Selvarajah. The Prosecution led evidence from an investigating officer ("PW1") and from an officer from the Ministry of Labour ("PW2") to show that Nagammal was an overstayer.

The appellant objected to the admissibility of the evidence of PW1 and PW2 on the ground of hearsay and the objection was rejected by the district judge.

Selvarajah appealed against conviction on the grounds that: (a) that the charge was defective; (b) the principal offence of overstaying under s 15(1) of the Act was not made out; (c) the principal offender was not dealt with; (d) the principal offence was not shown to be committed as a result of Selvarajah's abetment; (e) the conviction was not supportable; and (f) the manner in which the trial was conducted was prejudicial to the appellant. He also appealed against the sentence on the ground that it was manifestly excessive.

Held, dismissing the appeal:

(1) There was sufficient information in the charge for Selvarajah to be put on notice as to the case against him. There was no need for the Prosecution to state in the charge how Selvarajah intentionally aided Nagammal to overstay in Singapore. It was sufficient for the Prosecution to lead evidence, through its witnesses, of how he had intentionally aided her to overstay: at [36].

(2) PW1's evidence that she checked the records with the Data Processing Centre in the Immigration Department which showed that Nagammal's social-visit pass expired on 7 January 1995 was admissible via an exception to the hearsay rule. Whilst it was desirable to prove the statement in a document by the production of the document or a copy of the document within s 380 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), there was no reason why the document could not be proved by direct oral evidence of what the document contained. PW1 was stating facts concerning the occurrence of the record itself, not about the truth of anything contained in the record: at [44] and [45].

(3) PW1's evidence that she was informed by the Work Permit Department that no work permit was ever issued to Nagammal was hearsay and inadmissible. She relied entirely on a document issued by the Comptroller of Work Permits that was hearsay because it was made out of court and was relied on to prove the truth of the contents of the document. The document could not be admitted under s 380 of the CPC without leave of court since it was prepared in contemplation of criminal proceedings: at [47].

(4) PW2's evidence that the Work Permit Department had sent an automatically-generated letter to inform the employers that their in-principle approval had expired was admissible to show that Nagammal did not turn up at the Work Permit Department and, accordingly, no work permit was ever issued: at [48].

(5) The fact that the principal offender, Nagammal, was not yet tried was not a bar to the conviction of Selvarajah who was alleged to have intentionally aided her. The evidence showed that the principal offence of overstaying was committed as a result of Selvarajah's abetment. Selvarajah brought Nagammal into Singapore to work and was under a legal obligation to follow up with the documentation with the Work Permit Department but failed to do so. The evidence of all the employers was damning to Selvarajah who supplied Nagammal to work in their households. Nagammal's testimony of how Selvarajah sent her to numerous homes was corroborated in material respects by the former employers: at [51] to [53].

(6) It was a matter of discretion for the trial judge whether to exclude an accomplice's evidence on the ground that there was an obvious and powerful

inducement for him to ingratiate himself with the Prosecution and the court. Further, there was no prejudice to Selvarajah in the manner in which the Prosecution was conducted especially in view of the strong corroborative evidence from no less than ten prosecution witnesses; there was no danger that Selvarajah was convicted based on the evidence of Nagammal alone: at [59] to [61].

(7) Selvarajah's reprehensible conduct warranted a deterrent sentence. After bringing Nagammal to Singapore, he had no qualms about sending her to various households and in keeping her in Singapore for more than two years, despite her pleas to be allowed to return to India. Given the need to protect the public interest in deterring would-be offenders from abetting illegal overstayers to remain in Singapore, the sentence imposed was not excessive: at [67].

Case(s) referred to

Aw Kew Lim v PP [1987] SLR(R) 443; [1987] SLR 410 (folld)

Daw Aye Aye Mu v PP [1998] 1 SLR(R) 175; [1998] 2 SLR 64 (refd)

Govindarajulu Murali v PP [1994] 2 SLR(R) 398; [1994] 2 SLR 838 (distd)

Lim Woon Cheng Anthony v PP [1997] 3 SLR(R) 123; [1998] 1 SLR 14 (distd)

Lim Young Sien v PP [1994] 1 SLR(R) 920; [1994] 2 SLR 257 (folld)

Ong Ah Yeo Yenna v PP [1993] 1 SLR(R) 349; [1993] 2 SLR 73 (distd)

Pipe v R (1966) 51 Cr App R 17 (refd)

PP v Annamalai Pillai Jayanthi [1998] 1 SLR(R) 305; [1998] 2 SLR 165 (folld)

Public Prosecutor v Datuk Tan Cheng Swee [1979] 1 MLJ 166 (folld)

R v Patel [1981] 3 All ER 94 (distd)

Subramaniam v Public Prosecutor [1956] 1 WLR 965 (folld)

Tay Kok Poh Ronnie v PP [1995] 3 SLR(R) 545; [1996] 1 SLR 185 (folld)

Turner v R (1975) 61 Cr App R 80 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Rev Ed) ss 158, 159, 160, 380 (consd); ss 378, 379, 380(2)(iv), 380(4), 381, 382, 383

Employment of Foreign Workers Act (Cap 91A, 1991 Rev Ed) s 5(1)

Evidence Act (Cap 97, 1990 Rev Ed) ss 5, 116 illus (*g*), 157

Immigration Act (Cap 133, 1995 Rev Ed) ss 15(1), 15(3)(*b*) (consd); ss 6(1), 15(3), 57(1)(*e*)

Penal Code (Cap 224, 1985 Rev Ed) s 109 (consd); s 107(*c*)

Civil Evidence Act 1968 (c 64) (UK)

B Ganesh (Ganesha & Partners) for the appellant;
Amarjit Singh (Deputy Public Prosecutor) for the respondent.

11 August 1998 Judgment reserved.

Yong Pung How CJ:

1 The appellant was tried and convicted of the following amended charge:

> DAC 13213/97
>
> You, Roy Selvarajah (M/1/3/61) SNRIC (P) S 1467915D are charged that you, between 8 January 1995 and 21 May 1997, in Singapore, did abet to wit by intentionally aiding one Meyyanathan Nagammal (F/12/4/59), an Indian national, in the commission of an offence of remaining in Singapore unlawfully after the expiry of the visit pass on 7 January 1995, which offence was committed in consequence of your abetment, and you have thereby abetted an offence under s 15(1) Immigration Act (Cap 133) which is punishable under s 15(3)(b) of the said Act read with s 109 of the Penal Code (Cap 224).

2 He was sentenced to six months' imprisonment and nine strokes of the cane. He was also charged with harbouring the same foreigner in DAC 13214/ 97 but was acquitted of that charge. The appellant has appealed against the conviction and sentence in respect of the abetment charge. The Prosecution is not appealing in respect of the harbouring charge.

The Prosecution's case

3 The Prosecution's case was essentially that Meyyanathan Nagammal ("PW10") remained in Singapore unlawfully for a period of two years after the expiry of her social visit pass on 7 January 1995, in contravention of s 15(1) Immigration Act (Cap 133, 1995 Ed), and that the appellant had abetted her to commit the offence by intentionally aiding her. At the trial below, the Prosecution called a total of 20 witnesses. PW1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 13 gave evidence in respect of the abetment charge. PW10 was originally tried jointly with the appellant. At the commencement of the trial, the Prosecution applied to stand down the charge of overstaying under s 15(1) of the Immigration Act against PW10. Instead it proceeded with the two amended charges against the appellant and turned PW10 into a material prosecution witness against the appellant.

4 There was no dispute that PW10, the alleged overstayer, was sponsored by the appellant to enter into Singapore to work as a domestic maid. PW10 entered Singapore on 24 December 1994 and was given a 14-day social-visit pass which expired on 7 January 1995. It was also not disputed that the appellant had, prior to her arrival, applied for in-principle approval from the Work Permit Department for her to work in Singapore, which was granted on 2 December 1994. The in-principle approval was a prerequisite for PW10 to enter Singapore for the purpose of employment and the approval was only valid for three months.

5 The Prosecution led evidence by M Thevarani ("PW1") and Sandor Wong ("PW2") to show that PW10 was an illegal overstayer. PW1 was an investigating officer in the case attached to the Immigration Field Division, Investigation Department. Her investigations revealed that PW10 entered Singapore on 24 December 1994 and was granted a 14-day social-visit pass. Her checks with the Data Processing Centre in Immigration Department showed that PW10 did not extend her social-visit pass. She also testified that, based on a letter from the Work Permit Department dated 16 October 1997 ("Exh P4"), the in-principle approval granted to PW10 was cancelled when PW10 did not turn up to collect her work permit.

6 PW2 was a representative from the Ministry of Labour. PW2 explained the procedure that was applicable if an employer wished to employ a foreign domestic maid in Singapore. First, the employer was required to apply for a work permit for the maid. If Ministry of Labour approved the application, it would send an in-principle approval letter to the employer. The employer would then be required to execute a security bond and undertake a banker's or insurance guarantee to support the bond. Once these procedures were complied with, Ministry of Labour would make an endorsement on the in-principle approval letter. It was only with such a letter that the maid would be granted entry into Singapore. The in-principle approval was valid for three months. After the worker had arrived in Singapore, the employer was required to submit the worker's passport, in-principle approval letter, her medical report and other immigration forms to the Work Permit Department within 14 days of her arrival. If the employer failed to follow up on these procedures within the three-month period, the Work Permit Department would assume that the worker did not arrive in Singapore. It would then send a cancellation letter to the employer within one month of the expiry of the in-principle approval, stating that the in-principle approval had been cancelled. In the same letter, the Work Permit Department would also inform the employer to return the in-principle approval letter so that they could discharge the security bond.

7 In her evidence-in-chief, PW2 relied on Exh P4 and confirmed that in-principle approval was issued to M Thavamalar ("PW5"), for the purpose of employing PW10, and it was subsequently cancelled on 1 April 1995 when PW10 did not turn up to collect her work permit. PW2 testified that the file on PW10 had been destroyed and all the information was obtained from the computer database. Subsequently, when PW2 was recalled on the stand, he stated that the record in the database showed that a letter, informing the employer of the cancellation of the in-principle approval, was sent out on 1 April 1995. During the course of the testimony of PW1 and PW2, counsel for the appellant raised no objection to the admissibility of Exh P4 or the evidence relating to P4. In his closing submission, however, he argued that P4 was inadmissible as hearsay and the evidence on PW10's overstaying given by PW1 and PW2 was hearsay and

inadmissible. The district judge held that P4 was inadmissible hearsay but ruled that the evidence of PW1 and PW2 was admissible.

PW3

8 Kalichivi d/o Admoolam ("PW3") was the appellant's neighbour. She testified that the appellant was her employment agent who arranged for a new maid for her. PW3 was supposed to meet her new maid at the airport and the appellant requested her to fetch PW10 from the airport at the same time. PW3 met PW10 at the airport where the latter handed over her passport and visa to her. PW3 then brought PW10 to her house where the appellant later came to fetch PW10. PW3 handed over PW10's passport and visa to the appellant. She did not have anything to do with PW10 or the appellant after that.

PW4 and 5

9 Murugamoorthy s/o Ponnambalam Balasingham ("PW4") and PW5 were husband and wife. There was no dispute that the Ministry of Labour had given in-principle approval to PW5 to employ PW10 as her domestic maid, and that the appellant was his employment agent who handled all the documentation in respect of PW10 on their behalf. PW4 testified that the appellant brought PW10 to his mother's place where she worked for a period of two weeks. According to PW5 this was from the end of December 1994 to the beginning of January 1995. The appellant did not hand PW10's passport to PW4 and he presumed that the passport was still with the appellant to complete the necessary documentation. After two weeks, PW4 called the appellant, expressing his dissatisfaction with PW10, and asked him to take her away. The appellant then came and took PW10 away.

PW6 and 11

10 Varatharajullu s/o Thiruvengadom ("PW6") and Kelyani Sinnakkalani Ramasamy ("PW11") were husband and wife. PW11 had known the appellant since 1990. PW6 testified that the appellant was his employment agent and PW10 was the second maid which the appellant had supplied to PW6. PW6 said that PW10 worked for them for less than a month as a temporary maid until their proper maid arrived. PW6 said that she was unsure if PW10 had a work permit as she left the entire matter to the appellant. The appellant did not show PW10's passport to PW6. PW6 also said that they did not pay any foreign worker's levy in respect of PW10. PW11 paid PW10 her salary personally.

11 PW11 confirmed that the appellant supplied PW10 to her household. Although PW6 said that PW10 only worked for them for less than a month, PW11 testified that PW10 worked for them for about two and a half to three months, starting from the end of March or early April 1995. She also confirmed that they had applied for another maid but the appellant brought

PW10 to their house and told them to keep PW10 until their proper maid arrived. PW11 said that she did not pay the appellant for PW10. She said that it was PW6 who dealt with the appellant. She confirmed that she paid three months' salary to PW10 at $250 for each month. Out of this, $500 was given to the appellant.

12 PW11 said that she did not know whether PW10 had any work permit as PW6 handled the documentation. She had also not seen PW10's passport. Each time she asked PW10 for her passport, PW10 would say that it was with the appellant. PW11 became suspicious when there was no giro deduction made for PW10's foreign worker's levy. On 5 June 1990 she started to question PW10 who became emotional and attempted suicide. PW6 and 11 then asked the appellant to take away PW10. The appellant did so accordingly. The couple did not question the appellant about PW10's work permit in view of the tantrum thrown by PW10.

PW9

13 Raju Krishnaveni ("PW9") was a friend of the appellant and she had known the appellant for 15 years as an old friend. She testified that the appellant had arranged two maids to work for her, one of whom was PW10. PW9 said that the appellant introduced PW10 to her. PW10 worked for PW9 for about one and a half months between May and June 1995. At the time when the appellant brought PW10 to PW9's house, PW9 asked the appellant whether all the documents were in order and the appellant assured her that everything was in order. PW10 also told PW9 that the appellant was keeping her passport. After one and a half months, PW9 decided to send PW10 back to the appellant when she found PW10 to be unsatisfactory. She tried to page and contact the appellant but was not able to get in touch with him. Finally she called his home and told one of his family members to fetch PW10 from the temple. She then left PW10 at the temple.

PW7

14 Thanesh s/o Vallipuram ("PW7") testified that PW10 worked for him as a maid for 15 months roughly from the middle of 1995 to early February or March 1997. He testified that PW10 was supplied by the appellant. PW7 asked PW10 if she was in possession of a valid work permit and she claimed that she had one but it was with the appellant. The appellant also told PW7 that he had PW10's work permit and passport. PW7 also confirmed that during the period when PW10 worked for him, he did not pay any foreign worker's levy.

PW13

15 Arumugam Kalyrani ("PW13") testified that her sister who, at the time of the trial was in the United States, had employed PW10 as a maid

from around December 1996 or January 1997 to 14 February 1997. At that time PW13 was moving house and required PW10 to help her.

PW14

16 P Suntharambal ("PW14") was a machine operator. She first met PW10 at PW13's house. After that PW10 would call her once a week. In the middle of 1997, PW10 stayed at PW14's house for three or four days. She told PW14 that she had no place to stay. PW10 also said that, if PW14 could allow her to stay for a while, she would call her agent, the appellant, who would then come and take her away. PW10 paged for the appellant who came to PW14's house and told PW14 that he would take PW10 with him the next day. The next day, someone else who introduced himself as the appellant's brother-in-law came to fetch PW10.

PW16

17 P Lakshmanan ("PW16") testified that he and his wife used to stay at Telok Blangah Heights. PW10 was then working at their neighbour's house. He said that PW10 used to visit him and his wife. Even when PW10 left to work somewhere else, she continued to call his wife. PW10 told him and his wife that she wanted to go back to India, but could not do so because her passport was with the appellant. His wife then tried to get the passport from the appellant. When they could not get the passport, PW10 decided to surrender herself to the police in order to get her passport back. He then brought PW10 to the police station where he told the police of her predicament.

PW12

18 PW12 testified that he met PW10 through Guntur Suryadinata ("PW7"). PW7 had asked him to send him and PW10 to the appellant's house. Subsequently the appellant asked him to bring PW10 to Outram Park. He said that he had given two statements to the Immigration Department. In the first statement, he stated that he had not seen PW10's passport. Before he gave his second statement, he accompanied PW1 and the prosecutor to the prison to visit PW10. During the visit, PW10 said that PW12 had seen her passport. The prosecutor told PW12 that if he did not admit this, he would not let him off until he got to the bottom of the case. PW12 then told the learned prosecutor that he would give PW10 the benefit of the doubt. When they returned to the Immigration Office, he gave his second statement in which he stated that he had seen PW10's passport. PW12 testified in court that in fact he had not seen PW10's passport. He clarified that he had not been to Ruby Plaza and he only helped PW10 to carry her bags from the appellant's house to Outram Park. He did not know that she was an overstayer.

PW10

19 PW10 was the chief witness for the Prosecution. She testified that she came to Singapore in December 1994 for the purpose of working as a domestic maid. She was met by PW3 at the airport and was then brought to her home. She gave her passport to PW3. Later that day, the appellant came to PW3's house to fetch her. PW10 said that PW3 handed over her passport to the appellant. The appellant then brought her for a medical check-up. Later he brought her to PW4's house.

20 PW10 testified that she worked for PW4 for a period of one month and ten days. During this period, she was working at PW4's house and at his mother's house. She was next brought to PW6's house sometime in February 1995. She was later taken to PW9's house, where she stayed for one month and ten days. By that time she had been in Singapore for six months. She was then brought to PW7's house where she stayed for 15 months.

21 PW10 testified that she had repeatedly asked the appellant for her work permit when she was brought to various households. When she raised the matter with the appellant again when she was with PW7, the appellant told her that she had a valid work permit. She expressed her desire to return to India as her son had called her to say that he was not well. PW7 and PW12 then brought her to the appellant's house where she stayed for two days. During the two days, she told the appellant that she wanted to go home and the appellant said that he would arrange for the air ticket. After the two days, the appellant brought her to a house in Thomson belonging to one Das. Das had since passed away on 18 December 1997.

22 At the Das house, she again expressed her desire to return to India to both the appellant and Das. Das then sent her back to the appellant's house. She next stayed with one Meena who stayed in Outram Park and with one Senkuttvan Malar, Meena's daughter. She then stayed with one Punitha in her house in Hougang. The appellant subsequently brought her to PW13's house at Jurong West to work as a domestic maid for a period for four and a half months. By then she had been in Singapore for more than two years. During the period of time when she left PW7's household, she repeatedly asked the appellant to send her back to India and to return her passport.

23 After she left PW13's household, she went to stay with PW14 without the appellant's knowledge for five days. On 25 April 1997, the appellant who was accompanied by PW12 brought her to apartment #08-03 at Ruby Plaza. On the way there, the appellant showed her passport and it was the first time for more than two years that she saw her passport. She testified that PW12 saw the passport as well. She stayed at the apartment until 21 May 1997. She was very concerned as her son was not well and she feared that, if she had any valid work permit, it would have expired after two years. On 21 May 1997, she surrendered herself to the police.

24 After she surrendered to the police, she was in remand. On 25 October 1997, an unknown person bailed her out. The unknown person and another stranger took her away by car and her unknown bailor then alighted. The other stranger bought her food and brought her to a room to stay and gave her some money. The following day, at about midnight, the same stranger brought her to another place to stay and gave her some more money. PW10 produced $3,910 in court. She said that out of this amount, $60 was her salary. The stranger gave the rest of the money to her on those two days, half the amount on the first day and the balance on the second day. The stranger also told her not to turn up in court. Nevertheless, she came to court.

***Prima facie* case**

25 At the end of the prosecution case, counsel for the Defence submitted that there was no case to answer because the Prosecution had not adduced evidence to support each and every essential ingredient of the charge which, if unrebutted, would warrant a conviction. His arguments were as follows: (a) the Prosecution had not stated the particulars as to how the appellant had intentionally aided PW10, the principal offender in the charge; (b) the principal offender had not been convicted; (c) the principal offence had not been proved; and (d) there was no evidence that the principal offence was committed as a result of the appellant's abetment. The district judge found that the Prosecution had established a case for the Defence to answer and accordingly called for the defence.

The defence

26 The appellant was a freelance trader. His defence was that he had no knowledge that PW10 was an overstayer and hence there was no "intentional aiding" of the commission of the offence. He testified that he obtained her particulars from PW3 and arranged for her to work for PW4. He helped PW4 to apply for the in-principle approval to employ her as his maid and applied for an entry visa to enable her to leave India. He also arranged for a $5,000 security bond to be executed by PW4. The appellant sent her for a medical check-up, and then sent her to PW4's household. After the 14-day period from her arrival, he applied for an extension of one month to regularise her documents, as her medical report was not ready.

27 PW4 complained that PW10 was a poor worker and was untruthful. The appellant told PW4 that he could either transfer her to another employer or cancel her work permit and send her home. The appellant consulted PW10 but she refused to go back to India as she had incurred expenses in coming to Singapore. The appellant accordingly requested PW4 to sign the transfer papers for PW10. Meanwhile, he met a friend called Gunasekaran ("Guna") who was also an employment agent. Guna told the appellant that he could obtain an employer for PW10. The

appellant handed PW10 and the documents to Guna. During this one-month extension, he handed the documents to Guna together with the authorisation letter and consent from PW5 to transfer PW10. Since the appellant had handed all the documents to Guna, he took it that a work permit had been issued. Subsequently PW5 told him that the work permit had been cancelled. He could not, however, give the particulars of Guna and Guna was not called as a witness.

28 The appellant admitted that he continued to have dealings with PW10 even after handling the documents to Guna. She used to call him regularly. Once PW7 and PW12 brought her to his house. He denied that the evidence given by the various employers was true. The appellant testified that after the two weeks with PW4 and PW5, she was then with Guna and working with an expatriate employer. Since PW5 had received the cancellation letter, he believed that the transfer had been effected correctly.

29 The appellant claimed that there was one occasion in April 1997 when he brought her to Ruby Plaza. She had called him and told him that she had excessive baggage and she wanted to send it by cargo. She asked the appellant if he could help her keep the bags. The appellant agreed to store them at an apartment at Ruby Plaza where PW17, a friend of his, was staying. When the appellant fetched her to that apartment, he did not tell her that she could stay there. He gave her a key to the apartment only so that she could gain access to her things. The appellant denied that PW12 was in the car when he drove her to Ruby Plaza and he denied showing her passport in the car while on the way to Ruby Plaza. He had nothing to do with her passport since he had handed it over to Guna.

30 The appellant called one other witness, DW2, who was the son of the "Das" whom PW10 referred to in her evidence. DW2 testified that the Immigration Department questioned him about the employment of PW10. He told them that he did not know PW10 and that, as far as he knew, they did not employ her.

The decision below

31 In closing submissions, counsel for the appellant objected for the first time to the admissibility of the evidence of PW1 and PW2 relating to PW10's alleged overstay in Singapore, on the ground that it was objectionable hearsay. He argued that their evidence was based entirely upon Exh P4, a document from the Controller of Work Permits, and it was inadmissible as hearsay since the maker of the document was not called to testify. This objection was rejected by the district judge and she found that the evidence of PW1 and PW2 were admissible to prove that PW10 was an illegal overstayer. She held that the charge for abetment was proved beyond reasonable doubt. She accepted the evidence of the prosecution witnesses that it was the appellant who had knowingly supplied PW10 to the various households and disbelieved the appellant that he had no knowledge that she

was an overstayer. She thought it was incredible that PW10 would devise a scheme with her former employers and friends to frame the appellant. She dismissed the allegations that the prosecutor had intimidated PW12 and other prosecution witnesses into lying when giving evidence.

The appeal

32 The appellant's counsel challenged the decision of the district judge in holding that the Prosecution had made out a case for the Defence to answer. In any event, he argued that the finding of guilt by the district judge was against the weight of evidence and that the conviction was unsafe and unsatisfactory because the manner in which the Prosecution had been conducted was prejudicial to the appellant. The issues raised in this appeal were:

(a) whether the charge was defective because of the omission of material particulars of how the appellant had intentionally aided PW10 to overstay in Singapore;

(b) whether the principal offence of overstaying under s 15(1) Immigration Act had been made out;

(c) the consequences for not dealing with the principal offender;

(d) whether the principal offence was committed as a result of the appellant's alleged abetment;

(e) whether the conviction was supportable by the evidence; and

(f) whether the manner in which the trial was conducted was prejudicial to the appellant.

Prosecution's failure to state material particulars of how the appellant had intentionally aided PW10 to overstay

33 Section 15(1) Immigration Act states that:

> A person shall not remain in Singapore after the cancellation of any permit or certificate, or after the making of a declaration under section 14(4) or after the expiration or notification to him, in such manner as may be prescribed, of the cancellation of any pass relating to or issued to him unless he is otherwise entitled or authorised to remain in Singapore under the provisions of this Act or the regulations.

34 Section 107(*c*) Penal Code reads:

> A person abets the doing of a thing who —
>
> …
>
> (*c*) intentionally aids, by any act or illegal omission, the doing of that thing.

35 In respect of the charge under s 15(1) Immigration Act read with s 109 Penal Code, the Prosecution was required to prove the following ingredients in the charge: (a) PW10 overstayed in Singapore for the period stated in the charge after the expiry of her social-visit pass; (b) the appellant abetted her in overstaying in Singapore, in this case by intentionally aiding her; and (c) PW10 committed the offence of overstaying as a result of the appellant's abetment.

36 The appellant's counsel argued that the charge was defective because it failed to provide any particulars of intentional aiding. This argument is really without merit. Section 160 Criminal Procedure Code (Cap 68) ("CPC") provides that where the particulars provided in ss 158 and 159 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Section 158 requires the name of the offence to be set out and s 159 provides that the particulars of the time and place of the alleged offence have to be set out as well. In this case, there was sufficient information in the charge for the appellant to be put on notice as to the case against him. The name of the person whom the appellant was alleged to have intentionally aided, as well as the offence alleged to have been abetted, were all set out in the charge. There was no necessity for the Prosecution to state in the charge how the appellant had intentionally aided PW10 to overstay in Singapore. It was sufficient for the Prosecution to lead evidence, through its witnesses, of how he had intentionally aided PW10 to overstay.

37 Counsel for the Defence relied on *Ong Ah Yeo Yenna v PP* [1993] 1 SLR(R) 349, *Lim Woon Cheng Anthony v PP* [1997] 3 SLR(R) 123 and *Govindarajulu Murali v PP* [1994] 2 SLR(R) 398. However, in all these cases, as in the present case, the charges merely provided that the accused had intentionally aided the principal offender without specifying the particulars of how the intentional aid came about. No objection was taken to the charges, so they did not provide any support for counsel's contentions. In *Ong Ah Yeo Yenna*, the statement of facts to which the petitioner had pleaded guilty did not address the petitioner's intention to aid the principal offender in committing the offence of criminal breach of trust. The High Court quashed the conviction, as the averment in the charge that she abetted by intentionally aiding the principal offender was not proved. The High Court did not hold that the charge was in any way defective.

Whether the principal offence of overstaying within section 15(1) Immigration Act was made out

38 In *Ong Ah Yeo Yenna*, the High Court held that the court which tries an abettor on a charge of intentional aiding of an offence must direct its mind towards making a finding as to whether or not the whole *actus reus* of

the offence he is alleged to have aided is in fact committed; and the court must do so even where the principal has not been convicted of that offence by the time the alleged intentional aider is tried. The reason is that the accused cannot be said to have intentionally aided that offence unless the whole *actus reus* of the offence itself is proved to have been committed.

39 The evidence of PW10's overstaying in Singapore came principally from PW1 and PW2. The difficulty the Prosecution had was that the Work Permit Department destroyed its records on PW10 and was only relying on the testimony of PW1 and PW2. Counsel contended that their testimony was inadmissible as hearsay only in closing submissions. The fact that an objection is raised at such a late stage is not a bar to admissibility: *Aw Kew Lim v PP* [1987] SLR(R) 443.

40 It is trite law that the evidence of a statement made to a witness by a person who is not himself called as a witness is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement: *Subramaniam v PP* [1956] 1 WLR 965. It is not hearsay if the statement is tendered to show the fact that it is made. The Evidence Act does not formulate the rule against hearsay evidence. Rather it adopts an inclusionary rule, stating what may be admitted in evidence. Under s 5 of the Evidence Act, evidence may be given in any proceedings of fact in issue or relevant fact. The common law definition of hearsay corresponds with the terminology of the Evidence Act. Statements of relevant facts are hearsay and inadmissible unless they fall within an exception to the hearsay rule since they are adduced to prove the facts to which they refer. However, where the statement itself is relevant, then it is the fact that the statement was made which is in issue.

41 I first considered the evidence of PW1. PW1 testified that: (a) she checked with the computer records with the Data Processing Centre in the Immigration Department and had ascertained that PW10 did not extend her social-visit pass; (b) she was informed by the Work Permit Department that no work permit was issued to PW10 but what was issued was only an in-principal approval letter for her to work as a domestic maid in Singapore, and this was subsequently cancelled without a work permit being issued.

42 I think it is of fundamental importance to distinguish between the admissibility of the computer records and the oral evidence of the investigating officer of what the records contain. Only the latter was adduced in this case. In this context, *R v Patel* [1981] 3 All ER 94 is instructive. In *R v Patel*, an immigration officer testified that he examined the Home Office records which showed that the accused's name was not in the records as being entitled to a certificate of registration in UK and that therefore he was an illegal entrant. It was held that the immigration officer's testimony was hearsay. It would have made no difference if the records themselves had been produced. The Home Office records were hearsay

evidence as they were adduced to prove the truth of the statements in the records made by the compiler. An officer responsible for their compilation and custody should have been called by the Prosecution to give evidence that the method of compilation was such that, if the accused's name was not in the records, he must be an illegal entrant. Applying the reasoning in *Patel*, the computer records in the Data Processing Centre were hearsay and inadmissible unless it fell within one of the exceptions.

43 The position in Singapore differs from the common law position in *Patel* in that we have statutory exceptions to the hearsay rule for criminal proceedings in ss 378 to 383 CPC. These provisions were modelled after the UK Civil Evidence Act 1968, which ironically only applied to civil proceedings. Section 380 CPC provides for the admissibility of certain records as evidence of facts stated where the conditions are satisfied. Section 380 reads:

> (1) Without prejudice to section 35 of the Evidence Act, in any criminal proceedings a statement contained in a document shall, subject to this section, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if —
>
> > (*a*) the document is, or forms part of a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty; and
> >
> > (*b*) the conditions specified in subsection (2)(*a*) or (*b*) or any of the conditions specified in subsection (2)(*c*) is satisfied as regards the person who originally supplied the information from which the record containing the statement was compiled
>
> (2) The conditions referred to in subsection (1)(*b*) are the following:
>
> > …
> >
> > (*c*) that it is shown with respect to the person in question —
> >
> > > …
> > >
> > > (iv) that, having regard to the time which has elapsed since he supplied the information and to all the circumstances, he cannot reasonably be expected to have any recollection of the matters dealt with in the statement.
>
> …
>
> (4) Where a document setting out the evidence which a person could be expected to give as a witness has been prepared for the purpose of any pending or contemplated proceedings, whether civil or criminal, and that document falls within subsection (1)(*a*), then in any

> criminal proceedings in which that person has been or is to be called as a witness a statement contained in that document shall not be given in evidence by virtue of subsection (2)(*a*) or (2)(*c*)(iv) without the leave of the court; and the court shall not give leave under this subsection in respect of any such statement unless it is of the opinion that, in the particular circumstances in which that leave is sought, it is in the interests of justice for the witness's oral evidence to be supplemented by the reception of that statement or for the statement to be received as evidence of any matter about which he is unable or unwilling to give oral evidence.
>
> (5) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

44 There is no doubt that the records are admissible as evidence of the facts stated in them by virtue of s 380. The records form part of the database records compiled by an immigration officer acting under a duty from information which was supplied by a person who had or reasonably been supposed to have had personal knowledge of matters dealt with in that information. Such a person would be the immigration officer who records the names of the immigrants into Singapore, whether they were granted work permits, in-principle approvals or any extensions of social-visit passes. More importantly s 380 also covers the case where the information is not supplied by that person to the compiler directly but is supplied to the compiler of the record indirectly through one or more interested persons each acting under a duty. The supplier of information need not act under a duty. In such a case, the court can take judicial notice that, having regard to the time which has elapsed since he supplied the information and to all the circumstances, he cannot reasonably be expected to have any recollection of the matters dealt with in the statement within s 380(2)(*c*)(iv). The prohibition in s 380(4) does not apply because such a record is not prepared for the purpose of any pending civil or criminal proceedings, but are administrative measures.

45 However, in this case, the information from the database records is not actually abstracted in, say, the form of a computer printout and tendered in court. For some reason, the Prosecution only led evidence of the investigation officer's account of what he saw when he inspected the database. Defence counsel objected to the admissibility of his evidence as to what he saw in the records as hearsay. This requires very careful consideration. Again referring to the definition of hearsay, the evidence of a statement to a witness by a person who is not called as a witness is not hearsay and is admissible when it is proposed to establish by evidence not the truth of the statement, but the fact that it was made: *Subramaniam v PP* ([40] *supra*). Whilst it is desirable to prove the statement in the document by the production of the document or a copy of the document within s 380

CPC, there is no reason why the document could not be proved by direct oral evidence of what the document contains. Section 381 says that the document may be proved by the production of the original or a copy that is duly authenticated, and does not go as far as saying that these are the only two modes of proof. In such a situation, the investigating officer is stating facts concerning the occurrence of the record itself, not about the truth of anything contained in the record. This principle applies because the record is directly relevant and can be introduced under s 380 CPC. Section 380 makes the record relevant and admissible as an exception to the hearsay rule.

46 Hence the evidence of PW1 that she checked the records at the Immigration Department which showed that PW10 entered Singapore on a 14-day social-visit pass which expired on 7 January 1995 and was not granted an extension was relevant and admissible to show that PW10 was an overstayer.

47 In respect of PW1's evidence that she was informed by the Work Permit Department that no work permit was ever issued to PW10, this was clearly hearsay and inadmissible. PW1's evidence in this regard had relied entirely on Exh P4, a document issued by the Comptroller of Work Permits, stating that no work permit was ever issued. The DPP rightly conceded that P4 was hearsay since it was made out of court and was relied on to prove the truth of the contents of the document. P4 could not be admitted under s 380 CPC since it was prepared in contemplation of criminal proceedings and could not be admitted except with the leave of the court. Of course leave was never granted since the point was not even raised until the submissions stage. For some unknown reason, the Prosecution did not call upon the maker of P4 to testify and adopt the contents of P4. PW1's evidence adopting P4 was clearly hearsay as he was giving evidence as to what another person had said were her findings on her inspection of the records at the Immigration Department.

48 PW2 gave evidence that P4 was generated by his office, though signed by his colleague. He gave evidence of how applications for foreign maids to work in Singapore are made and processed. PW2 confirmed that PW10 was never issued with a work permit. If he had relied entirely on P4 to reach his conclusion that PW10 was an overstayer, his evidence would be hearsay and inadmissible unless it falls within one of the exceptions. He had no personal knowledge of the contents of P4. However PW2 did not only rely on P4 to reach the conclusion. When he was recalled to clarify the kind of letters they sent to employers when the work permit is cancelled, he testified that the system would automatically generate letters to inform employers that the in-principle approval had expired and the worker had not arrived in Singapore. The court asked PW2 whether the computer system in the Immigration Department had a record of whether such a letter was sent out and PW2 answered yes. When asked what the record

showed, PW2 replied that the system informed them that such a letter was sent out on 1 April 1995. PW2 was testifying from his own knowledge and finding that a letter of cancellation of the in-principle approval was sent, evidencing that PW10 did not turn up at the Work Permit Department and accordingly no work permit was ever issued.

49 PW4 testified that it was only after he signed a consent to transfer PW10 that they received a letter from the Work Permit Department cancelling PW10's work permit. The Defence relied on his evidence to prove that PW10 was issued with a work permit. In my view, the district judge rightly took into account that PW4 was not an unbiased witness, as he could possibly be prosecuted for employing PW10 illegally and hence could have given evidence that was self-serving. She preferred the evidence of PW2 to that of PW4 as PW2 was an independent witness from an administrative agency with no interest in the outcome of the case against the appellant. There is no reason to disturb her finding.

50 The evidence of PW1 and PW2 was not seriously challenged in cross-examination. Taking the undisputed evidence that PW10 entered Singapore on a 14-day social-visit pass which expired on 7 January 1995, with PW1's evidence that her social-visit pass was not extended and PW2's evidence that no work permit was ever issued, since the department assumed that the worker did not turn up, I find that it was proved beyond reasonable doubt that PW10 had remained unlawfully in Singapore as from 8 January 1995.

Principal offender not dealt with

51 In *Ong Ah Yeo Yenna* ([37] *supra*) the High Court held that the conviction of the principal offender was not a condition precedent to the conviction of the abettor. I explained the rationale as follows at [13] and [16]:

> 13 … The fact that the act intentionally aided must have been committed does not mean that the principal should of necessity have been convicted prior to the alleged abettor in order that the latter may be found liable for aiding him. The sequence in which the principal and the intentional aider are tried is frequently a matter of chance; and indeed, on occasion it may not be possible to try the principal at any time at all, for example, where he dies before trial or where he cannot be found. It is quite unacceptable that in these cases the intentional aider should also be immune from liability.
>
> …
>
> 16 In my view, the court which tries an abettor on a charge of intentionally aiding an offence must direct its mind towards making a finding as to whether or not the whole *actus reus* of the offence he is alleged to have aided was in fact committed; and the court may, indeed must, do so in all cases, including those where the principal has not

> been convicted of that offence by the time the alleged intentional aider is tried.

52 Thus it is clear that the fact that the principal offender was not yet tried was not a bar to the conviction of the appellant who was alleged to have intentionally aided the principal offender. Hence whilst PW10 was not convicted under s 15(1) Immigration Act, it is clear that the *actus reus* of her overstaying in Singapore illegally has been committed.

Evidence that the principal offence of overstaying in contravention of section 15 was committed as a result of the appellant's abetment

53 Counsel argued that the Prosecution did not adduce any evidence to show that the principal offence of overstaying in contravention of s 15 was committed as a result of the appellant's abetment. The notes of evidence plainly indicated otherwise. There was the undisputed evidence that the appellant had sponsored PW10's entry into Singapore and obtained the in-principle approval letter from Ministry of Labour for her to work as a maid in Singapore. PW 4, 5, 6, 9, 11 and 13 identified the appellant as the person who was PW10's agent and the person by whom they had been supplied with PW10. The evidence showed that the appellant had brought PW10 into Singapore to work and was under a legal obligation to follow up with the documentation with the Work Permit Department but failed to do so. All the prosecution witnesses who employed PW10, except for PW13, PW4, 5, 6, 7, 9 and 11 were persons who were known to the appellant and clearly, in several instances, close to him. The evidence of all the employers was clear and damning to the appellant. It was the appellant who supplied PW10 to work in their households. PW10's testimony of how the appellant sent her to numerous homes was corroborated in material respects by the former employers.

54 It was true that there were a number of inconsistencies in the evidence of the employers as to the dates in which they employed PW10 and PW10's evidence as to when she had worked in the various households but the district judge found that they were not material as they did not touch on the issue of whether the appellant intentionally abetted PW10 to overstay. She was entitled to reach such a finding. She was fully entitled to come to the conclusion that PW10 committed the offence of overstaying in consequence of the appellant's abetment.

The evidence

55 It is clear that before the appellant can be held to have abetted PW10 by intentional aiding within s 107(*c*), he must have the necessary intention to commit the offence. The Prosecution must prove that he knew the circumstances constituting the crime when he voluntarily did an act of positive assistance: *Public Prosecutor v Datuk Tan Cheng Swee* [1979] 1 MLJ 166. It was argued that the district judge's finding of the appellant's guilt

was against the weight of evidence. I am unable to accept this submission. The appellant's main defence, that he had no knowledge that PW10 was an illegal overstayer, was disbelieved by the district judge. The appellant claimed that he handed PW10 and the relevant documents to another employment agent known as Guna so that the latter could not follow up on her application for a work permit and arrange for her to be transferred to another employer. He could not, however, give the particulars of Guna and Guna was not called as a witness. He said that Guna had relatives in Singapore but was unable to produce any of them in court. Nor did he produce any other witness who could attest to the existence of Guna. The learned judge was perfectly entitled to conclude that Guna was a fiction created by the appellant. It remained a fact that the appellant had the legal obligation to apply for a work permit for PW10.

56 I agree with defence counsel that there appears to be no reason why the appellant would not obtain a work permit or supply PW10 to various employers to work as a domestic maid. However this was not a defence. At the highest, it only showed a lack of motive to commit the offence.

57 Counsel for the appellant argued that the appellant should be charged for abetting an employer and not a charge for abetment of an illegal overstayer, relying on *PP v Annamalai Pillai Jayanthi* [1998] 1 SLR(R) 305 and *Daw Aye Aye Mu v PP* [1998] 1 SLR(R) 175. The cases do not stand for his proposition. In *Annamalai Pillai Jayanthi*, the accused was charged with abetting the commission of an offence under s 57(1)(*e*) Immigration Act by intentionally aiding J to employ a S, domestic maid, who had entered Singapore illegally in contravention of s 6(1) of the Act. It was conceded that there was no evidence that S contravened s 6(1) Immigration Act. The High Court held that the charge should be amended to one of abetting by intentionally aiding J to employ S without a valid work permit contrary to s 5(1) Employment of Foreign Workers Act, Cap 91A. J had already pleaded guilty to a charge under the Employment of Foreign Workers Act, for having employed S without obtaining for her a work permit. In *Daw Aye Aye Mu*, the accused was charged with intentionally aiding N in committing the offence of employing SL, who was an illegal overstayer. It was argued that the charge should be amended to one of aiding SL to be employed. The High Court held that whom the accused actually aided would depend on his dominant intention at the time she did the act which led to SL's employment by N. The Prosecution had the discretion in deciding the charge to prefer in all cases but in the cases involving abetment, with two possible principals, the Prosecution should determine the most appropriate charge based on the facts of each case.

58 It is trite law that it is the prerogative of the Prosecution to prefer which charges to bring against an accused where a given set of facts gives rise to a number of different charges: *Govindarajulu Murali v PP* [1994] 2 SLR(R) 398. The two decisions do not in any way detract from this

proposition. In *Annamalai Pillai Jayanthi*, the Prosecution should not have proceeded on the original charge when it failed to adduce any evidence that S contravened s 6(1) Immigration Act. In *Daw Aye Aye Mu*, the principle in *Govindarajulu* was reaffirmed.

Manner in which the prosecution was conducted

59 First, the appellant's counsel argued that he was seriously prejudiced when the prosecutor, instead of trying the case together with PW10 as was originally intended, chose to stand down the charge against PW10 and used her as a prosecution witness. Counsel objected strongly that this amounted to a "deterrent and an inducement" for PW10. Presumably the basis of the appellant's argument was the common law rule of practice found in *Pipe v R* (1966) 51 Cr App 17 and *Turner v R* (1975) 61 Cr App R 80 that it is desirable that, before an accomplice gives evidence against the accused, the Prosecution should take one of the following courses: remove him from his indictment, take his plea of guilt, or before calling him, either offer no evidence and permit his acquittal or to enter a *nolle prosequi*. However, this is a matter of discretion for the trial judge (and not an invariable rule) whether to exclude the accomplice's evidence on the ground that there is an obvious and powerful inducement for him to ingratiate himself with the Prosecution and the court: *Turner*. There is also a countervailing public interest that criminals must be brought to justice. The district judge was fully entitled to take into account PW10's evidence.

60 Moreover, the district judge did take into account that the testimony of PW10 could be self-serving and had to be carefully scrutinised. She explained that she accepted the evidence of PW10 because it was corroborated in material respects by numerous other prosecution witnesses for whom PW10 had worked as a domestic servant, namely PW3, 4, 5, 6, 7, 9, 11, 12 and 13 and even PW14 and 16. In view of the strong corroborative evidence from no less than ten prosecution witnesses, there was no danger that the appellant was convicted based on the evidence of PW10 alone.

61 The second argument that there was serious prejudice when the district judge directed that only a deleted statement of PW7 would be given to the appellant's counsel. In examination-in-chief, PW7 testified that PW10 worked from the middle of 1995 to 1997. Defence counsel applied to impeach his testimony under s 157 Evidence Act, on the ground that he made a previous statement to the Immigration Department in which he said that he had employed PW10 from October 1995 to January 1997. PW7 explained that he had made a mistake when he made the statement to the Immigration Department. The district judge ruled that only part of the statement containing the material inconsistencies should be disclosed to counsel. It is desirable for the entire statement to be disclosed to counsel conducting the cross-examination to ascertain the context in which the statement was made: *Tay Kok Poh Ronnie v PP* [1995] 3 SLR(R) 545. The

entire statement ought to be admitted and marked in evidence. However there was really no prejudice faced by the appellant. PW7 readily admitted that he made the mistake in a state of panic and did not dispute the previous statement. The district judge held that the credit of PW7 was not impeached because PW7 was obviously taking a risk by exposing himself to the possibility of a more serious illegal employment charge.

62 The third argument was that adverse inferences against the Prosecution should be drawn pursuant to s 116 illus (*g*) Evidence Act in failing to call the wives of PW7 and PW16 as witnesses and failing to offer them to the Defence. This argument had no merit at all. It is well settled that in a criminal case, the Prosecution has a discretion whether to call a particular witness, provided that there is no ulterior motive and the witness, who is available to, but not called by, the Prosecution is offered to the Defence: *Lim Young Sien v PP* [1994] 1 SLR(R) 920. There was no suggestion of an ulterior motive. The Prosecutor had explained that PW7's wife was overseas and PW16's wife was in the family way. The prosecutor inadvertently overlooked to offer them to the Defence but the Defence knew all along who those witnesses were and could have easily reminded the Prosecution to offer the witnesses to them if they were so desirous of calling. However they did not do so and could not now complain.

63 The fourth argument was that the evidence of PW12 should be disregarded because he had allegedly admitted that he was intimidated by the prosecutor. PW12 said that, if he did not change his statement, he would not let him off until he got to the bottom of the case. Witness intimidation is a very serious allegation, and the statement hardly supports an admission of PW12 that he had changed his evidence because he was intimidated. There is bound to be a level of tension when a witness is being questioned by a law-enforcement officer in the course of his investigations and this is nothing more than an attempt to get PW12 to co-operate with the investigation. Telling a witness during investigation that he should tell the truth, without more, cannot possibly amount to witness intimidation.

64 Finally, it was argued that the evidence of PW10 receiving a sum of $3,910 was prejudicial and should have been excluded by the district judge. The evidence of PW10 receiving a sum of money just prior to trial and being told not to turn up in court was relevant as an attempt being made to subvert the course of justice. However, the Prosecution did not prove that it was the appellant or anyone else acting on his behalf who offered the money. The district judge did not consider this evidence in reaching her decision, apart from narrating it as a part of PW10's evidence, and there really was no prejudice to the appellant.

65 In all the circumstances there was no reason to differ from the district judge's conclusion that the charge had been proved beyond reasonable doubt.

Appeal against sentence

66 The appellant was sentenced to the maximum term of imprisonment of six months and was given nine strokes of the cane. The appellant, being the abettor, faced the same punishment as that prescribed for the overstayer under s 109 Penal Code. Under s 15(3) of the Immigration Act, the appellant was liable for an imprisonment for a term not exceeding six months and subject to caning with not less than three strokes.

67 The appellant argued that the sentence was manifestly excessive. The district judge considered that a deterrent sentence was called for since the conduct of the appellant was reprehensible. After bringing PW10 to Singapore, he had no qualms about sending PW10 to various households and in keeping her in Singapore for more than two years, despite her pleas to be allowed to return to India. Eventually she was driven to seek the assistance of the police even though she suspected that she was then guilty of overstaying. Having regard to the factors considered by the district judge, and also the need to protect the public interest in deterring would-be offenders from abetting illegal overstayers to remain in Singapore, the sentence imposed was not excessive. As such, it should stand. The appeal is accordingly dismissed.

Headnoted by Darius Chan.