Tan Puay Boon v Public Prosecutor
[2003] SGHC 186

Case Number : MA 306/2002, Cr M 13/2003

Decision Date : 18 August 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : M Ravi (M Ravi & Co) and Vinit Chhabra (C H Chan & Chhabra) for the appellant; David Chew Siong Tai and Tan Wen Hsien (Deputy Public Prosecutors) for the respondent

Parties : Tan Puay Boon — Public Prosecutor

Criminal Law – Offences – Documents – Falsification of accounts – s 477A Penal Code (Cap 224)

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – When additional evidence may be adduced – Threefold test – s 257(1) Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Principles – Falsification of documents – Applicable principles when determining appropriate sentence

Evidence – Principles – Expert evidence – Purpose of admitting expert evidence – Whether opinion of expert necessary in present case

1 The appellant was tried and convicted in the district court on eight charges under s 477A of the Penal Code (Cap 224). Another 109 similar charges were not tried. The first four charges relating to false entries made on salary rolls were that the appellant, being an officer of A-P Engineering Pte Ltd ("APE") had wilfully and with intention to defraud: -

(a) made false entries of the name "Wan Yoke Kee" and salary of $1,278.50 to a salary roll dated 28 April 1994 ("Charge A");

(b) made a false entry to a salary roll dated 28 April 1994, by entering her payable salary as $2,511.00 ("Charge B");

(c) made false entries of the name "Wan Yoke Kee" and the salary of $1,020.50 in a salary roll dated 29 June 1994 ("Charge C"); and

(d) made false entries of the name "Lim Boon Hua" and salary of $1,020.50 in a salary roll dated 29 June 1994 ("Charge D").

2 The remaining four charges concerning false entries made to APE payment vouchers were that the appellant had: -

(a) made a false entry "Yann Dung" in the "Pay to" column of a payment voucher dated 18 July 1994 ("Charge E");

(b) made a false entry of "Yann Dung Co Ltd" in the "Pay to" column of a payment voucher dated 8 February 1996 ("Charge F");

(c) made a false entry of "Yann Ding Co Ltd" in the "Pay to" column of payment voucher dated 15 March 1996 ("Charge G"); and

(d) made a false entry of "Yann Ding Co Ltd" in the "Pay to" column of payment voucher dated 2 August 1999 ("Charge H").

3 The appellant was sentenced to imprisonment terms of 18 months (charge E), 12 months (charge F), 6 months (charge G) and 3 months for each of the five remaining charges. The first three sentences were to run consecutively and the others were to run concurrently with the sentence for charge E, aggregating a total of 36 months. The appellant appealed against her conviction and her sentences. I dismissed the appeal and now give my reasons.

Background

4 One Hsu Tien Fou ("Hsu") set up APE in 1984. He had since been both the managing director and majority shareholder. The appellant joined as a clerk and was tasked with finance and administrative work. After A-P Precision Plastics Ptd Ltd ("APP") was set up in 1991, Hsu invited her to be a shareholder. In or around 1995, she was promoted to Finance and Administration Executive in APE and was appointed a director of APP. In mid-2000, Asia-Micro Holdings Ltd ("Asia-Micro"), a shareholder of APE, uncovered some accounting irregularities and, together with Hsu, confronted the appellant. The appellant then resigned on 19 June 2000.

5 It was not disputed that the appellant prepared the false salary rolls and payment vouchers. For charges A and B, the prosecution submitted that the appellant prepared two different salary rolls, such that an inflated salary was credited to her bank account. The second page of one roll had entries of $1,278.50 and $1,232.50 paid to one Wan Yoke Kee ("WYK") and herself, while the other roll had the combined sum of $2,511 paid to the appellant. In similar fashion, the prosecution argued that for charges C and D, two salary rolls were used. The second page of one roll listed payments of $1,236.50 and $1,237.40 made to one Wan Kok Cheng ("WKC") and one Ng Chong Huat ("Ng"), while the other roll recorded payment of $1,020.50 and $2,511 to the appellant's husband one Lim Boon Hua, and herself respectively.

6 Hsu claimed there were no such employees as WYK, WKC and Ng. Neither did he know the appellant's husband though he had met him. The prosecution's case was that Hsu, having trusted the appellant, did not check the second pages of the salary rolls before signing. Hence the appellant could have substituted the second page of the rolls with the false records after Hsu had signed the cover page. The appellant however denied any intention to defraud, claiming that Hsu instructed her to use fictitious names so that the other employees would not know of her high salary. Her husband's name was used to enable APE to increase the number of local employees on the payroll and hire more foreign workers. She testified that her salary was increased from $2,900 to $3,200-$3,500 in 1994, then to $4,000 in mid 1995 and finally to $6,000-$6,500 in 1996. In contrast, Hsu's evidence was that in 1994, her gross salary was $1,500. She then drew a gross salary of $2,500 in 1997 which was only increased to $4,000 in February or March 2000.

7 The payment vouchers for charges E to H, which were all unsigned, were made in favour of Yann Ding Pte Ltd ("YD") from "creditor account". The prosecution argued that they were in reality payable to the appellant. APE dealt with the Taiwanese subcontractor YD, but Hsu denied authorising these payments. The $22,200 cheque (Charge E) was not noted in the small cash book maintained by the appellant. In her defence, the appellant testified that she, her mother and sister had made loans to APE from time to time. Hsu had taken a loan from her mother and was repaying it from the YD account. She also said that Hsu had told her he had personally paid the creditor YD on APE's behalf, so she understood that he would draw sums from that account whenever he needed to.

8 While the payment voucher for $11,000 (Charge F) was unsigned, a cash cheque for this

same date and amount was signed by Hsu, with the appellant's initials and IC number written on the reverse side. Hsu had no impression of authorising this large payment, but the appellant alleged that Hsu needed money for a trip to China, and he had driven her to the bank where she cashed the cheque for him. This cheque was recorded in the cash book under payment to "Yann Dung".

9 The next payment voucher of $4,719.05 (Charge G) was paid to UOB Card Centre for the appellant's UOB credit card bill. Hsu denied authorising payment for the appellant's expenses. He might have signed the cheque thinking it was for payment of his own UOB credit card bill. The appellant's version was that Hsu had applied for a UOB Visa business card for her in 1993 or 1994, and had occasionally paid her bills since she had worked in APE for sixteen years and had received no pay for her APP work. Documents were adduced to show that he had paid for her OCBC credit card bill, other UOB credit card bills, HDB season carpark fees and for an overseas trip with her husband. This cheque was reflected in the small cash book as made to "Yann Dung".

10 A cheque of $2,500, corresponding to the last payment voucher (Charge H) was paid to the appellant. Hsu explained that he had probably signed it thinking that it was a salary cheque to the appellant. This payment was recorded in the small cash book as payment to "Ding Yann". The appellant refuted by saying that Hsu took a loan from her around end July 1999, and instructed her to prepare the voucher under YD account from which he would repay her.

11 Hsu's evidence was that he did not check accounting records or cash books, since he did not know English and trusted the appellant to handle it. The appellant kept the cheque books, and Hsu often left pre-signed blank cheques with her before going overseas. Payment vouchers and supporting documents were occasionally shown to him before signing, but the appellant would verbally explain what payments were for. The appellant denied these claims, but testified that there were no blank cheques and that Hsu would not sign cheques without seeing supporting documents. In fact, it was Hsu who first taught her to perform her duties in finance. To bolster these claims, one Francis Chan ("Chan"), who used to be Engineering and Marketing Manager of APE, testified that he had seen Hsu and the appellant going through the small cash books many times, and he had not seen Hsu signing blank cheques. Additionally, one Toh Eng Seng ("Toh"), a previous director and shareholder of APP, stated that Hsu was a shrewd man, and that Hsu would check everything before signing APP cheques.

The Decision Below

12 The trial judge dismissed the defence. She was satisfied beyond reasonable doubt that the appellant's gross salary was only $1,500 instead of the alleged $3,200, and hence the argument that Hsu wanted to hide her high salary gave way regarding charges A to D. With regard to charges E, F and H, the judge accepted Hsu's evidence that he was not shown the payment vouchers, and rejected the appellant's account of the loans made to APE. The claim of cashing the $11,000 cheque was also rejected as not being convincing as the expenses could have easily been attributed as a business expense. The appellant, she concluded, had deliberately exploited the dormant YD creditor account to mask unauthorised payments to herself. Finally, for charge G, the trial judge accepted Hsu's evidence that the company did not pay for the appellant's credit card or her bills. It was unlikely that he would reward her in such a haphazard manner, especially in paying for supposedly business expenses.

The Law

13 All eight charges were under section 477A of the Penal Code, which states:

> Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

14 Since it was not disputed that the appellant as finance and administrative executive was an "officer" of APE and that she committed the alleged acts, the crucial issue was proof of the requisite mens rea. The falsifications had to be done wilfully and with intent to defraud. This element would not be fulfilled if the appellant did the acts under Hsu's instructions or with his permission.

The motion to adduce fresh evidence

15 Before me, the appellant sought to adduce the following evidence:-

(a) documents from Inland Revenue Authority of Singapore ("IRAS") verifying the appellant's income assessable for tax for the years 1993 to 2000;

(b) copies of the appellant's CPF statements for the period January 1994 to December 2002;

(c) various allegations from a statement of claim of a related civil suit filed by Asia-Micro against Hsu and the appellant; and

(d) a copy of a letter from APE's solicitor stating that an independent audit report was being prepared.

16 The threefold test to determine the admission of fresh evidence pursuant to section 257(1) of the Criminal Procedure Code had been set out in *Juma`at bin Samad v PP* [1993] 3 SLR 338 and recently followed by *Soh Lip Hwa v PP* [2001] 4 SLR 198. Those cases adopted the following test from *Ladd v Marshall* [1954] 3 All ER 745 of: -

(a) Non-availability: it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;

(b) Relevance: the evidence must be such that, if given at trial, it would probably have an important influence on the result of the case; and

(c) Reliability: the evidence must be apparently credible although it need not be incontrovertible.

17 It was also held that in exceptional cases the court might allow fresh evidence to be adduced even if the evidence was available at the time of the trial, if it could be shown that a miscarriage of justice had occurred. Notwithstanding this possibility, I qualified in *Chung Tuck Kwai v PP*[1998] 2 SLR 693 that such circumstances were extremely limited. Otherwise, aggrieved parties could easily fill in a lacuna with afterthoughts or reconstruction after failing at trial.

The IRAS forms and CPF statements

18 The appellant claimed that these documents verified her salary and the CPF contribution,

showing as well that there was no attempt to conceal anything from the authorities. I denied admission of these documents as the first two requirements had not been fulfilled. Since the appellant's IR8A forms for the corresponding years were tendered during the trial, there was no reason why the documents in question were unavailable and not requested from the relevant agencies.

19 It was also my opinion that this evidence was not relevant. The income tax statements were based on the appellant's submitted IR8A forms, which the trial judge found had been manipulated by her to declare an inflated salary. They clearly shed no new light on whether the higher salary was authorised by Hsu or whether the appellant intentionally defrauded APE. Similarly, the CPF statements did not cast any doubts on the trial judge's earlier findings that the appellant was given a 20% employer's CPF contribution in 2000 when others had received only 10%. Granted that she might not have concealed this higher sum from the authorities, the statements still did not prove that the contribution was given pursuant to Hsu's instructions. In short, these documents had no discernible influence on the outcome of the trial.

The statement of claim of a related civil action

20 Asia-Micro in the civil suit alleged that Hsu was responsible for many financial irregularities, had overpaid himself and had breached his fiduciary duties as managing director. This statement of claim, having been filed only after the conclusion of the trial did not flout the first rule of non-availability. It could also be relevant if Hsu had indeed, as claimed, colluded with the appellant and was aware of the falsification of records.

21 Nonetheless, I refused admission of it as it was unreliable evidence. It contained bare allegations of Asia-Micro, which being a shareholder of APE, had every reason to portray Hsu as being in breach of his directoral duties. This was not objective evidence that could be safely relied on by the court, as it had to be further verified at the civil trial. In fact, any fresh evidence to be used for the civil suit should have been sought to be admitted, not the statement of claim. It was risky to rely on the unverified assertions of a pleading, which contained no evidence and which invariably tended to be biased, to reverse the conviction on a criminal charge.

The independent audit being prepared

22 There was no utility in admitting this evidence as it was not ready and the contents were unknown. The trial judge found that the appellant had made all the financial records. Since the appellant herself knew the reasons for the falsifications, the trial judge did not need any additional audit to assess these reasons and the appellant's credibility. Moreover, the crucial 1994 accounts (which featured the YD payments) could not be found and any audit without these records would not yield any relevant results.

23 There was no miscarriage of justice in denying the motion as all the evidence was not relevant. On the contrary, the evidence of the statement of claim, if accepted, could lead to an unjust result based on tenuous facts. For these reasons, I denied the appellant's motion.

The Appeal

24 The main bone of contention was disagreement with the trial judge's factual findings. Before me, counsel for the appellant submitted that the decision was reached against the weight of evidence and the probabilities. In particular,

(a) Hsu's evidence was self-serving and should not have been accepted;

(b) the appellant's evidence should have been believed; and

(c) Chan and Toh were non-interested witnesses, and the judge failed to give sufficient weight to their evidence.

25 Additionally, it was argued that the trial judge failed to rely on a handwriting expert to conclude that the appellant forged Hsu's signature. The appellant also raised issues of public importance, arguing that these should affect the outcome. Finally, the appellant submitted that the custodial sentence should be reduced.

Whether Hsu's evidence was self-serving and flawed

26 Since this appeal hinged on factual disagreements, the frequently-reiterated principle should be once again enunciated, that an appellate court will be slow to overturn findings of fact and assessments of witnesses' credibility by the trial judge. As I held in *Ang Jwee Herng v PP* [2001] 2 SLR 474 and recently affirmed in *PP v Hendricks Glen Conleth* [2003] 1 SLR 426, interference is only warranted where the judge's assessment was plainly wrong or against the weight of the objective evidence before the court.

27 My opinion was that the trial judge's careful assessment of Hsu was far from "plainly wrong". She did expressly acknowledge that Hsu, having pending civil suits against him, was an interested witness and accordingly applied caution in her analysis. In fact, both the appellant and Hsu were interested witnesses, but even while treating Hsu's evidence with circumspection, I was of the view that his evidence was more credible than the appellant's.

28 It was undisputed by Hsu, the appellant and other witnesses like Chan and Toh that the former two had a close relationship. Two possibilities arise from this - either that Hsu trusted her and gave her a free hand in all financial matters of APE, or Hsu had immense influence on her and instructed her to conceal information. I found the latter less convincing. To substantiate the appellant's claim that Hsu initiated the falsifications, it must first be established that he had some knowledge of finance to give the detailed instructions. The evidence showed the contrary, however- that he was not proficient in English and had a background in technical studies. Hsu himself testified to this background, while Toh and Goh confirmed it. Although Chan was eager to state that Hsu knew English, he conceded later that Hsu was not used to speaking English. The available evidence also showed that Hsu did not handle the financial aspects of APE. The auditors, one Mdm Tan Ai Ming ("Mdm Tan") and one Lim Chong Huat ("Lim"), testified to liasing directly with the appellant, not Hsu, for the audits. Other witnesses' accounts like Goh's affirmed that Hsu did not scrutinise the cash books or financial statements. The appellant's evidence that Hsu first taught her to perform her duties therefore lacks credibility. Furthermore, it was far-fetched that Hsu could have instructed her to make various alterations which only a person familiar with finance would be capable of.

29 The appellant relied heavily on Chan and Toh in seeking to discredit Hsu. I noted that, while they initially echoed the appellant's evidence that Hsu was familiar with finance, they could not offer actual facts to substantiate their claims. Chan, for instance, had no personal knowledge of Hsu analysing statements and accounts, and could only confirm that he discussed the overall cash flow, not the cash book, with Hsu. Toh's evidence was similarly unconvincing. He only discussed the cash position of APP, not APE, with Hsu, and the focus was on the end result, cash balance, for the purpose of settling payments. Yet, Toh made the incredible claim that sometimes after discussions about APP payments, even though they were discussing unrelated matters, he stayed behind and saw

Hsu looking at the APE cash book.

30 The close relationship between Hsu and the appellant, far from reflecting Hsu to be manipulative towards an impressionable employee, reflected a high degree of trust of the appellant. I found that it was reasonable to conclude that Hsu did leave pre-signed cheques with the appellant, did not check bank statements and left the appellant to make the necessary accounting records. I agreed with the trial judge's decision that, for charges A to D, Hsu only checked the total sum and not the details of the salary rolls, before signing the cover letter to the bank. It also defied logic to agree with the appellant that Hsu, with his limited financial knowledge, gave meticulous instructions on ascribing payment to Yann Ding (YD) in the official cash book and payment vouchers. Although Hsu's practices were criticised by the appellant as contrary to customary standard operational procedures and the duties of a managing director, the unusual nature of his ways was not relevant once the evidence on the whole established that this unusual system existed.

Whether the appellant's evidence should have been accepted

31 There was no reason to overturn the trial judge's decision to reject the appellant's evidence. In stark contrast to Hsu's testimony, the appellant's account was shrouded in suspicious circumstances. Firstly, there was strong suggestion that the appellant deliberately started the YD account anew in 1995 and initiated a switch in company auditors, so that the unauthorised payments in 1993 and 1994 could escape scrutiny. The last two payments of $55,361 and $15,818 in December 1994, which named the appellant's mother and the appellant respectively as payees, effectively brought the YD balance to zero. Fresh outstandings of $245,300 then appeared in the 1995 general ledgers. In a most incredible coincidence, the appellant arranged a sudden and unexplained change of auditors to David Chew & Co. This was after the previous auditor, Mdm Tan started querying the YD payment by sending a third party confirmation to YD, to which there was no reply. The relatively inexperienced auditor Lim (having just graduated and joined David Chew & Co) could not recall any discrepancy concerning YD payments, as the audit company had lost the 1994 audited accounts. It was most telling that these crucial audited accounts could not be found at the APE premises either. They could not even be requested from the Registry of Companies and Businesses, as there was an application for exemption of filing in that year. That the appellant initiated this switch of auditors and liased with them incriminated her greatly. There was an irresistible inference that she intentionally concealed the YD payments.

32 I noted too that there was inconsistent recording of the YD payments and the alleged payment of the appellant's bills in the small cash book. Whenever the appellant's name was missing under the list of salaries paid, "Yann Ding", or multiple variations of it- "Yann", "Yann Dung" (charge F) and "Ding Yann" (charge H)- emerged. In instances when her name did surface, there were likewise variations like "Tan P. Boon" and "Tan P.B". Such deliberate variation strongly suggested that the appellant sought to conceal occasions when she was paid inflated salaries under the guise of YD. Otherwise, as the trial judge observed, "it could not be that the accused was repeatedly and regularly denied her salary month after month." Similarly, some payments for the appellant's personal bills were disguised by cash book entries of "Yann" or "Yann Dung" (Charge G), but at other times they were simply recorded as "UOB Card Entertainment account", "OCBC" or "HDB". I did not accept the appellant's explanation that it was Hsu who instructed her to make these varied records, as there was no discernible logic in deciding to camouflage certain payments under YD and not conceal other payments. In short, the appellant's defence that she acted under Hsu's instructions was wholly untenable. She had manipulated the records to prevent detection of unauthorised drawings.

33 Another point that cast grave doubt on the appellant's evidence was the finding that she

had forged Hsu's signature or signed without authority in her IR8A forms lodged with IRAS. From 1992 to 1994, there were crammed Chinese characters which were evidently different from Hsu's normal signature. It was most anomalous that, for all the other employees' IR8A forms, Hsu's signature was consistently in evenly spaced Chinese characters and only the appellant's forms had such varied manifestations of his signature. In 1995, Hsu's signature appeared in English instead of the usual Chinese characters. While the appellant claimed that one Hsu Ching Hwa, Hsu's son signed it, he denied it and also said that it was not his brother's signature. The appellant's signature then appeared in the forms for 1996 and 1997. She explained that for these two consecutive years, Hsu had driven her to the IRAS office to sign on his behalf as Hsu forgot to sign her forms. That argument totally lacked credibility as it was improbable that Hsu neglected only her form (not the other employees) two times. I agreed with the trial judge's conclusion that the appellant had been manipulating her income tax forms to justify her inflated salary.

34 Apart from these suspicious circumstances, the appellant's testimony was also far from watertight due to many inconsistencies. One particularly damaging discrepancy was the deviation from her previous statements. The appellant had produced nine cash cheques with Hsu's signature and his initials on the reverse, that were recorded in the small cash book as payments to "Yang Ding" or "Yann Dung". She then alleged during the trial that Hsu had encashed these cheques himself as she would initial them if she were encashing them. In marked contrast, she said in two earlier statements that she had cleared the cheques personally and handed the cash to Hsu. My review of the Notes of Evidence showed that the appellant paused for a long while when confronted with this inconsistency. It was recorded that she was also emotional at this juncture. Having been given no explanation of this inconsistency, the trial judge was correct to conclude that the appellant was attempting to tarnish Hsu's credibility and to show that he had been taking funds from the YD account for himself.

35 There were more inconsistencies in one of the appellant's main defences, that Hsu had repaid loans from her, her mother and her sister. The appellant affirmed that there were only three loans- $60,000 from her sister in April 1998, $22,000 from her mother in 18 November 1994 (Charge E) and $2,500 in end July 1999 (Charge H). Yet, when questioned on the $55,351 and $15,818 cheques paid to her mother and herself respectively, she conceded that the first sum could be repayment of a loan made before. It was difficult to believe that she would have so easily forgotten the second largest loan of $55,351, especially when it was returned not long after the $22,000 cheque (18 July 1994) on 30 December 1994. The trial judge observed that after an adjournment, the appellant explained that the $15,818 was not another repayment of a loan, but was a cash-out requested by Hsu. It was more than coincidental that the repayment of loan, followed by the cash-out, would so conveniently write down the YD account in 1994 to zero. In her attempt to convince the court of the loans made, the appellant could not explain the inherent inconsistencies, and her answers appeared to be afterthoughts lacking coherence. The final blow to the appellant's argument was that Hsu was not in Singapore from 3 to 11 April 1998 during the alleged deposit of the $60,000 loan on 4 April and repayment of it to the appellant's sister on the same day. In fact, contrary to her testimony, the cheque was dated 15 April 1998, not corresponding to the entries of 4 April 1998 in the cash book and payment voucher. It was undoubtedly clear to me therefore that, on various counts, the primary defence of the appellant was devoid of credibility.

Whether the trial judge had ample justification to accept Hsu's evidence and reject the appellant's.

36 The appellant contended that the trial judge had relied on Hsu's testimony considerably and not heeded the appellant's denials. In this respect, *Teo Keng Pong v PP* [1996] 3 SLR 329 was cited for the proposition that the appellant could not be faulted for not being able to explain her bare

denials. It was also submitted that according to *Khoo Kwoon Hain v PP* [1995] 2 SLR 767, in situations of one person's word against another's during a trial, it was not for the accused to show why the complainant was falsely accusing the accused, but for the prosecution to show that the complainant had no reason to falsely accuse.

37 In my opinion, however, these principles were quoted out of context. Both these cases concerned sexual offences. In *Teo Keng Pong,* I explained that the nature of such offences was that they were often committed when no one else was around. Just as it was difficult for the prosecution to produce corroborative evidence, it was equally difficult for an innocent accused to produce anything more than a bare denial. The proposition that the bare denial should not be discounted was therefore confined to cases of such a genre. Likewise, in *Khoo Kwoon Hain*, I explained that since there could be reasons for a complainant to make false allegations, it was not enough for the prosecution to argue that the complainant ought to be believed since there was no reason to lie. Instead, separate evidence must be adduced to show why there was no reason to lie.

38 On the facts presented to me here, there was no situation analogous to a sexual offence, in which the appellant had little evidence to rely on or there were no other witnesses to call. In fact, documentary evidence was aplenty. The trial judge had not dismissed the bare denials of the appellant without considering the reliability of other supporting witnesses and documents tendered to support her defence. It also was not the prosecution's case that Hsu had no reason to lie and that his version should therefore be accepted. In fact, the judge acknowledged that Hsu was an interested witness, but noted that there was other evidence that demonstrated that Hsu ought to be believed and, in contrast, there was evidence that showed the appellant to be lying. The appellant was therefore inaccurate in asserting that the principles had general application.

39 The appellant had also alleged that the prosecution relied almost entirely on circumstantial evidence, which according to *Nadasan Chandra Secharan v PP* [1997] 1 SLR 723 could only be relied on if it led to one inference and one only. I did not accept this argument. My view was that the trial judge relied on Hsu's evidence, not merely circumstantial evidence. His testimony was also bolstered by evidence from other witnesses like Goh, Toh and the auditors.

Whether the trial judge gave sufficient weight to the evidence of Chan and Toh.

Chan's evidence

40 The appellant submitted that the trial judge gave no reason for rejecting his testimony, but there was a conspicuous section in the grounds of decision devoted to analysing Chan's credibility. I agreed with the judge that Chan did not appear to be an objective and impartial witness, as his answers that implicated Hsu were often based on assumptions without personal knowledge of the relevant issue. For example, in response to the statement that Hsu was unfamiliar with the cash books, Chan refuted by asking how that could be if Hsu were the boss. Similarly, the evidence he proffered to show that Hsu signed blank cheques was that he himself would not do that, even though Chan himself was not tasked with issuing cheques and had not personally seen Hsu signing cheques. In trying to show that Hsu was familiar with finance, he claimed that Hsu had shown him a trial balance. Yet he later admitted that they had never discussed the trial balance but Hsu merely waved a piece of paper at him. Chan's presumptions about Hsu, coupled with the trial judge's observation of his aggression and hostility towards his former employer, rendered his testimony unreliable. I also found it ludicrous that, when questioned on his pay increments, Chan said he could not remember his handphone number and therefore he could not be faulted for not remembering his pay increments. With this retort, Chan effectively diminished the weight of all his evidence in which he agreed with the appellant about her high salary; I clearly could not safely rely on the short memory of Chan.

Toh's evidence

41 Likewise I agreed with the trial judge that there were inconsistencies in Toh's testimony. Bearing in mind the unhappy circumstances of the termination of his employment and also that at one juncture during the trial, Toh was instructed to cease looking at the appellant, I believed that Toh's evidence was not objective. I could detect presumptions in some of his replies. To him, it was impossible that Hsu did not check supporting documents before signing cheques, did not look at payees and amounts before signing and did not understand English. Like Chan, he was merely airing personal views. As I earlier pointed out, Toh had also said that Hsu looked at the APE cash book even while they were discussing unrelated matters, which was unconvincing. Above all, there was a major contradiction between his evidence and the appellant's. He claimed that the small cash book was given to the auditors and he had even discussed it with the auditors, but the appellant clearly stated that the small cash book was for internal reference only.

42 I reached the conclusion therefore that these weaknesses in Chan's and Toh's evidence were more than failure in recollection, or harmless embellishment, as the appellant put it. They were put on the stand to support the appellant's major argument, that Hsu knew English, was a shrewd person and understood finance. Yet they could offer no concrete evidence to concur with the appellant. In fact Toh even contradicted the appellant. It was not surprising then that the trial judge did not accept their evidence. All findings of fact were definitely not against the weight of evidence and were thus not reversed.

Whether the trial judge committed an error of law in not relying on a handwriting expert

43 Section 47(1) of the Evidence Act stipulates that, when an opinion as to identity or genuineness of handwriting has to be formed, expert opinion is relevant

44 Nonetheless, this has been qualified by settled law that expert opinion is only required for matters outside the ordinary experience and knowledge of the court, and should not substitute the court in drawing inferences that a layman can draw : *Chou Kooi Pang v PP* (1998) 3 SLR 593

45 Having personally examined the signatures in dispute, I found that there were indeed crammed Chinese characters in contrast to the usual evenly spaced characters of Hsu in other documents, as the trial judge observed. This difference was readily apparent to any layman and the court did not require the added assistance of an expert. Besides, the finding of forged signatures was not the only fact which cast doubt on the accuracy of the salaries in the IR8A forms. As mentioned above, there were also English signatures, which Hsu and his son denied belonged to them. Ample suspicion was aroused regarding the truth of the appellant's claims of her high salary.

Whether issues of public importance should be taken into account

46 The appellant forwarded the argument that Hsu as managing director should not be allowed to blame his employee for actions which were part of his non-delegable duty, as it would lead to officers of the company escaping obligations imposed by the Companies Act. My view was that this public policy argument was not relevant to the matter at hand, which was the determination of the criminal liability of the appellant, and chiefly, whether she had the mens rea of intention to defraud. Whether Hsu properly discharged his duties was relevant in so far as his lack of surveillance of the appellant demonstrated that she was likely to have manipulated the financial statements without his awareness. If indeed, he did not fulfil his duty well, that issue could be appropriately addressed in the civil suits against him. These issues should not distract the court from objectively assessing the appellant's liability.

Appeal against sentence.

47 I turned next to the appellant's alternative submission. There are few precedents for this particular section of the Penal Code. In the latest cases, *PP v Lim Lee Eng Jansen* (MA 154/2001/01), *Sabastian s/o Anthony Samy v* PP (MA 343/85) and *Gan Tion Keng v PP* (MA 141/81), all concerning falsification of documents, custodial sentences were meted out. Two important factors to be considered could be distilled from these cases, namely, whether there was deviousness or surreptitious planning; and whether the falsifications were committed for one's personal gain.

48 In *Sabastian*, the accused persons had resorted to various means to cover up or recover massive losses caused by their unauthorised fund transfers, using active concealment and falsification of documents. Though direct pecuniary gain was not the main motivation, the international reputation and recognition of one of the accused as an expert in the gold trading market were at stake. They were sentenced to three years and two years respectively for two charges under section 477A, with 140 other charges being taken into consideration. In *Gan Tion Keng*, there were theft, corruption and destruction of documents in order to assist a customer who had incurred heavy losses in trading in gold. Though the accused was not promised any gain, he was later given sums and presents. Taking into consideration 27 other charges under section 477A, the district judge sentenced him to a 12-month jail term for each of the three charges under section 477A (to run consecutively) together with a six-month jail term for theft. In contrast, the accused in *Lim Lee Eng* was sentenced to six weeks jail for each of the four charges since the offences were unsophisticated and unsurreptitious, with the main intention of conferring benefit on a bank customer.

49 On the facts here, both these factors were present. The appellant had systematically concealed her unauthorised drawings by utilising fictitious names, deliberately varying entries in the company's books, manipulating income tax forms and forging Hsu's signature, using false payment vouchers and salary rolls, initiating change of auditors and extensively exploiting a dormant creditor's account. A sophisticated scheme to deceive was unequivocally present. Unlike the facts in *Lim Lee Eng* and *Gan Tion Keng*, in which the accuseds had falsified records to aid their clients, the appellant's acts here were clearly motivated by personal pecuniary gain or gain to her family members.

50 The abuse of Hsu's trust was an aggravating factor that could be taken into consideration. The trial judge observed the striking similarity between sections 477A and 408 of the Penal Code, breach of trust by a servant. In particular, *Golpalkrishnam Vanitha v PP* [1999] 4 SLR 307, was treated as a case in point. There, a secretary had misused pre-signed cheques to overpay herself and the court held that where large sums like $30,000 were involved, the tariff should be between nine and 15 months' imprisonment. The amount of money diverted from APE was therefore a correct additional factor to consider in sentencing.

51 The custodial term aggregating 36 months was far from excessive as the culpability of her deeds was more serious than the above section 477A cases. The remaining 109 charges were not taken into consideration, as no decision was made on how they would be dealt with. However, the presence of active concealment and the prominent motive of personal gain, coupled with the fact that the appellant abused the trust reposed in her, rendered the sentence justified. I noted that the trial judge had given graduated jail terms corresponding to the amount of money siphoned from APE, the highest custodial term being 18 months for charge E (the false entry of $22,000 on the July 1994 payment voucher). That was a fair sentence.

52 In the event therefore, I denied the criminal motion and dismissed the appeals against conviction and sentence.

Motion denied; appeal dismissed.