Moganaruban s/o Subramaniam v Public Prosecutor
[2005] SGHC 147

Case Number : MA 9/2005

Decision Date : 16 August 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jimmy Yim SC and Abraham Vergis (Drew and Napier LLC) for the appellant; Han Ming Kuang (Deputy Public Prosecutor) for the respondent

Parties : Moganaruban s/o Subramaniam — Public Prosecutor

Criminal Law – Complicity – Criminal conspiracy – Appellant convicted of conspiring to defraud court and insurance companies – Appellant challenging district judge's findings of fact and assessment of veracity and credibility of witnesses – Whether procedural irregularities in recording of investigative statement automatically rendering statement inadmissible – Whether appellant's conviction should be overturned – Sections 109, 193, 420 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles – Appellant convicted of conspiring to defraud court and insurance companies – Whether sentence imposed manifestly inadequate – Whether harsh sentence necessary as deterrent – Factors to be considered in imposing sentence

16 August 2005

Yong Pung How CJ:

1 The appellant was convicted in the court below of:

(a) one charge (District Arrest Case No 26638 of 2004) under s 193 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) for conspiring to furnish false evidence for the purpose of obtaining a grant of letters of administration ("the first charge"); and

(b) three charges (District Arrest Cases Nos 26635, 26636 and 26637 of 2004) under s 420 read with s 109 of the Penal Code for conspiring to cheat three insurance companies into disbursing a total of $331,340.95 ("the second to fourth charges").

2 The appellant was sentenced to six months' imprisonment for the first charge and ten months' imprisonment for the second to fourth charges. The sentence for the first charge was ordered to run consecutively to the term imposed for the fourth charge. This amounted to a total of 16 months' imprisonment.

3 I dismissed the appeal against conviction and enhanced the appellant's sentence to a total of 26 months' imprisonment pursuant to my powers under s 256(*c*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed). I now set out my reasons.

Undisputed facts

4 This appeal concerned a conspiracy to cheat three insurance companies into disbursing a total of $331,340.95 in insurance moneys to one Renuga Devi d/o Sinnadury ("Renuga"), on the false premise that the appellant's brother, Gandaruban s/o Subramaniam ("Gandaruban"), had died. Gandaruban left Singapore sometime after 28 June 1987 to escape his business creditors. On 2 August 1988, Renuga petitioned to the High Court for a Grant of Letters of Administration. This claim was supported by a death certificate that had supposedly been issued by the Sri Lankan authorities. The

death certificate indicated that Gandaruban had died on 21 October 1987. In her petition, Renuga prayed that she and the appellant be allowed to jointly administer Gandaruban's estate. In fact, Gandaruban was alive at all material times and the death certificate was false.

5 Renuga also made claims on three life insurance policies that had been purchased by Gandaruban before his "death". The appellant accompanied her to make these claims, and when the insurance companies eventually disbursed the money by way of cheques made out to Renuga in May 1989, the appellant was present as well.

6 Renuga and the appellant opened a joint account on 3 July 1989 and deposited some of the insurance moneys therein. As either of them was entitled to make withdrawals from this account, the appellant subsequently made the following withdrawals:

(a) $129,525 on 13 November 1990 to pay for a Mercedes Benz for use in Advance Car Rental, which both the appellant and Renuga were involved in running (exactly what roles they played within the company was in dispute);

(b) $47,500 on 19 December 1991;

(c) $74,500 on 26 February 1992; and

(d) $50,000 on 29 January 1993.

On 2 November 1991, the appellant also deposited $147,500 into the joint account. This money was obtained from the sale of the Mercedes Benz bought on 13 November 1990.

7 After faking his death, Gandaruban assumed a false identity and lived in Sri Lanka. Renuga and their three children paid him several visits. On 22 March 1994, Renuga registered a marriage in Sri Lanka with Gandaruban under his assumed identity. Their fourth child was subsequently born.

8 On 12 May 2004, Renuga pleaded guilty to one charge of conspiring with Gandaruban and the appellant to cheat the insurance companies. The rest of the charges against her were taken into consideration, and she was sentenced to one-year's imprisonment. Gandaruban is still at large.

The trial and decision below

9 The trial below proceeded on the basis that Gandaruban and Renuga had committed the underlying principal offences of furnishing false evidence and making fraudulent insurance claims. The key issue in the trial was thus whether, at the material times in 1988 and 1999 (during the probate and insurance proceedings), the appellant knew that Gandaruban was still alive, and whether he had conspired with Gandaruban and Renuga to perpetrate the fraud.

10 The Prosecution's main witness was Renuga, who essentially testified that the appellant was aware of and complicit in the scam. The Prosecution also utilised the incriminating evidence of Renuga's sister, Ranchitha Devi d/o Sinnaduray ("Ranchitha"), and the statement of Mr Lim Teck Ser ("Lim"), a friend and former business associate of Gandaruban, taken by the Commercial Affairs Department ("CAD"). Lim's CAD statement was tendered pursuant to s 147(3) of the Evidence Act (Cap 97, 1997 Rev Ed).

11 The appellant argued that, at the material times, he believed that his brother was dead, and that he was neither aware of nor involved in the scam. At the trial below, defence counsel sought to

utilise Lim's sworn testimony, as well as the testimony of Gandaruban Gantha Ruby ("Ruby"), Gandaruban and Renuga's oldest daughter, in order to exculpate the appellant.

12 The district judge found that the Prosecution had proved beyond a reasonable doubt that the appellant had known of the scam and had actively participated in its perpetration. In essence, the district judge arrived at this conclusion by relying on the evidence of Renuga and Ranchitha, whom he found to be truthful and reliable witnesses. In particular, Renuga's evidence that the appellant had co-ordinated with Gandaruban to arrange for Renuga to give false evidence and submit false insurance claims was accepted, as was Ranchitha's corroborating testimony that the appellant had taken Renuga and the children to Johor Baru to visit Gandaruban on weekends preceding the insurance payouts.

The appeal

13 Before me, counsel for the appellant contended that the district judge had, firstly, made certain findings of fact without basis and had, secondly, failed to make other findings of fact that should have been made in the light of the evidence before him. The appeal against the district judge's findings was on the ground that:

(a) the district judge erred in finding Renuga a truthful and credible witness, placing undue emphasis on the parts of her testimony that incriminated the appellant;

(b) the district judge erred in rejecting the appellant's testimony and finding him an unreliable witness;

(c) the district judge erred in finding that Renuga's testimony had been corroborated by Ranchitha;

(d) the district judge erred by giving undue weight to the CAD statement of Lim in preference to Lim's sworn testimony; and

(e) the district judge erred in law and fact by finding that Ruby was a partial witness and that her testimony was non-material.

14 I was aware that most of the appellant's key arguments brought before me pertained to the district judge's findings of fact and his assessment of the veracity and credibility of the witnesses. Before adverting to these contentions, I reminded myself of the principle that since the district judge has had the benefit of hearing the evidence of the witnesses and observing their demeanour, an appellate judge must defer to the findings of fact made by the district judge which are based on the assessment of witnesses, unless they are clearly wrong or wholly against the weight of the evidence. Should the appellate judge wish to reverse the district judge's decision, he must not merely entertain doubts as to whether the decision was right, but must be convinced that it is wrong: *PP v Poh Oh Sim* [1990] SLR 1047 at 1050, [8]; *PP v Azman bin Abdullah* [1998] 2 SLR 704 at [21]. However, when it comes to inferences of facts to be drawn from the actual findings, the appellate judge is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: *PP v Choo Thiam Hock* [1994] 3 SLR 248 at 253, [12]; *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24].

15 Bearing in mind the more limited function that an appellate court may play in the fact-finding process, the appellant had to do more than highlight sporadic gaps and inconsistencies in the witnesses' testimonies. Rather, he had to convince me that the district judge had clearly made the

wrong findings of fact in the light of all the evidence. After hearing his submissions, I was of the view that the appellant had not provided me with sufficient reason to overturn the decision below. I now deal with each ground of appeal in turn.

Did the district judge err in finding Renuga a truthful and credible witness, placing undue emphasis on the parts of her testimony that incriminated the appellant?

Renuga's testimony

16 Renuga was the Prosecution's chief witness at trial and it was her testimony that was key in incriminating the appellant. Among other things, Renuga testified that:

(a) Sometime in or after June 1988, she received a telephone call from Gandaruban informing her that the appellant would be bringing some documents for her to sign. After this phone call, the appellant went to Renuga's house and she signed the documents.

(b) The appellant subsequently brought Renuga to the High Court to affirm an affidavit to various insurance companies to make claims and collect the insurance moneys. Before each trip, Gandaruban would call to inform her of what was happening. The appellant would then arrive at Renuga's house without her having to contact him.

(c) On a number of occasions, the appellant drove Renuga and the children to see Gandaruban for the weekend in Johor Baru. The appellant would sit and talk to Gandaruban before returning to Singapore. The appellant would return on Sunday to bring them home.

(d) The appellant and Lim had on occasion visited Gandaruban in Johor Baru together.

(e) After Renuga had collected the insurance payouts, Gandaruban instructed her to open a joint bank account with the appellant and deposit the moneys therein. Renuga did not make withdrawals from that account. Instead, she and the children were dependent on a monthly allowance of $1000 provided by the appellant. Gandaruban arranged for the allowance before he left Singapore in 1987.

(f) Renuga and the children first visited Gandaruban in Sri Lanka in December 1987, a few months after his supposed death. These visits resumed in 1993. Renuga also testified that the appellant had made all the arrangements for these trips and had himself visited Gandaruban in Sri Lanka.

Renuga's motives and the general tenor of her testimony

17 Counsel for the appellant spent much time before me averring that Renuga had the motive to falsely implicate the appellant. According to him, Renuga nursed a bitter hatred against the appellant's family, blaming them for creating a rift between her and the children. She also hated Gandaruban for having a child with his mistress in Sri Lanka. Additionally, by the time of the appellant's trial, Renuga had been sentenced to one year's imprisonment for her part in the conspiracy, and she wanted to drag the appellant down with her.

18 These arguments were also canvassed before the district judge, who found at [81] of his grounds of decision ([2005] SGDC 78) that:

[T]here is no basis for a submission that Renuga had given false evidence out of spite and

dissatisfaction against her husband, her in-laws and the Accused [the appellant]. Firstly Renuga had denied implicating the Accused on account of her unhappiness with Gandaruban for having a mistress and a child. As for her relationship with her in-laws, Renuga frankly admitted that (a) she did not get along well with them because of differences in thinking, (b) she felt that the Accused and the in-laws were unfair to her, and (c) she disliked the Accused and her in-laws for sowing discord between the children and her. However, Renuga stated affirmatively that falsely implicating the Accused was not the way to get her children back.

19 In accepting Renuga's evidence, the district judge was impressed by Renuga's candour, and noted that her testimony was not in any way embellished or slanted against the appellant. The district judge also observed at [82] that:

> If indeed Renuga had wanted to falsely incriminate the Accused, one would have expected her to portray the latter in a more sinister light … [yet] [i]t is clear from Renuga's evidence that the mastermind of the scam was Gandaruban, not the Accused.

20 After careful scrutiny of the notes of evidence, I was of the view that the district judge's findings should not be overturned. The notes of evidence revealed that at various points during Renuga's testimony, she readily admitted that, with regard to specific incidents, she was unsure of the extent of the appellant's involvement. For instance, under cross-examination with regard to the fake death certificate:

> Q: Did you know for a fact whether your husband communicated with the Accused about the death certificate?
>
> *A: No, we don't live in the same house.*
>
> Q: You have no knowledge if he talked to the accused about the fake death certificate?
>
> A: He did not tell me.
>
> Q: To your knowledge?
>
> *A: To my knowledge, no.*

At the time of the trial, Renuga had no way of knowing that the district judge would find her testimony sufficient proof that the appellant was involved in the scam. In my opinion, the district judge was not clearly wrong in noting that if Renuga had aimed to falsely implicate the appellant in the hope of minimising her own involvement, common sense would have dictated that she answer the questions put to her (highlighted above) differently. Thus, there was no evidence before me which satisfied the high threshold that must be surmounted before an appellate judge will overturn a finding of fact made by the district judge.

Was the first trip to Sri Lanka in June or December of 1987?

2 1 One of the key issues at trial was whether the trip by Renuga and the children to visit Gandaruban occurred before or after October 1987, the month of Gandaruban's supposed death. Since the appellant knew that Renuga and the children were going to visit Gandaruban and had even arranged their plane tickets, the appellant must have known that Gandaruban was alive if the trip had occurred in December 1987, after Gandaruban's supposed death.

22 It is clear from the district judge's grounds of decision (at [24]) that he understood Renuga as having testified that the trip had occurred in December 1987. Counsel for the appellant challenged this, contending that Renuga had in fact been unsure of whether the trip had occurred in June or December of 1987.

23 In my view, while Renuga could not at first recall whether the trip was during the June or December school holidays of 1987 (she had maintained throughout her testimony that the trip was during the school holidays), she concluded under cross-examination that the trip must have occurred in December. In the process of arriving at this conclusion, Renuga affirmed that because she had attended the appellant's wedding on 28 June 1987, the trip to Sri Lanka could not have taken place during the June holidays. Later on in the cross-examination, when defence counsel suggested to Renuga that she and the children left Singapore to meet Gandaruban in December 1987, Renuga answered in the affirmative. There was no reason to fault the district judge's finding of fact in this regard.

Absence of discussions between Renuga and the appellant

24 The testimonies of both Renuga and the appellant made it clear that the two never discussed the scam during the 1987–1989 period, while the probate and insurance proceedings were ongoing. Renuga's explanation for this was that Gandaruban had given all the instructions concerning the scam, and that there had never been a need to discuss it with the appellant. Additionally, Renuga testified that she had never read any of the documents that the appellant had brought for her to sign. The appellant, on the other hand, maintained that he had not discussed the scam with Renuga simply because he had not been privy to it.

25 The appellant attempted to utilise these portions of Renuga's testimony to cast aspersions on her honesty as a witness and doubts about her version of events. In my opinion, while it did seem unusual that Renuga and the appellant never discussed the scam at all, the district judge's conclusions were certainly plausible. In particular, the district judge noted in his grounds of decision (at [72]) that:

> Under the circumstances, it is not surprising that Gandaruban – the prime mover of the scam and someone, who according to the Accused, could command and control his wife – should be the one giving Renuga the relevant directions instead of the Accused.

To my mind, these conclusions were buttressed by the appellant's evidence that he and Renuga belonged to a household where the men and women did not generally interfere with each other's affairs.

26 As for the appellant's argument that it was incredible that Renuga never read any of the documents, while I found that this was again a rather unusual mode of behaviour, the district judge's findings at [73] of his grounds of decision were certainly plausible:

> She did not read the documents … because (i) Gandaruban had already given directions that she was to sign these documents and (ii) she was not keen to engage in her husband's illicit scheme in the first place. Renuga's reluctance to know further details about the scam … and thereby associate herself too closely with it is understandable; ...

Given the absence of any strong evidence indicating that the district judge's finding was plainly wrong or against the weight of evidence, I was of the view that this finding of fact should not be overturned.

27 In addition, I noted that the appellant made a number of contentions challenging the district judge's findings with regard to the usage of the insurance moneys as well as Renuga's relationship with Yogendran, the lawyer who first alerted CAD to the scam. After considering these arguments carefully, I found that they were without merit, and in any event non-material to the key issue at hand, which was whether the appellant knew of and was involved in the conspiracy between 1988 and 1989.

Did the district judge err in rejecting the appellant's testimony and finding him an unreliable witness?

The appellant's testimony

28 The appellant's evidence at trial contradicted many parts of Renuga's testimony, particularly those portions that incriminated him. He testified, among other things, that:

(a) He first learnt of his brother's death from his mother in early 1988.

(b) He did not prompt Renuga to petition for a grant of letters of administration or make claims on Gandaruban's insurance policies. However, he affirmed that he assisted Renuga in hiring Yogendran, a lawyer, to handle Gandaruban's estate matters. The appellant also accompanied Renuga to the High Court and the insurance companies to carry out the requisite proceedings;

(c) He did not take Renuga and the children to meet Gandaruban in Johor Baru. He had only driven the children from Renuga's residence to his mother's residence because the children spent the weekends with his mother.

(d) He had only visited Malaysia once with Lim, and that was to Genting Highlands. He had never travelled with Lim to see Gandaruban in Johor Baru;

(e) It was pursuant to Yogendran's instructions that he had opened the joint account with Renuga to deposit part of the insurance moneys. Yogendran had informed him that this was necessary as minority interests were involved. The withdrawals he had made from that account were in fulfilment of Renuga's requests. This included purchasing a Mercedes Benz that Renuga wanted for the car rental business. When the Mercedes Benz was sold about a year later, the proceeds were banked into the joint account.

(f) Although named as co-administrator of Gandaruban's estate, the appellant did not know whether the children received their shares of the insurance payout. Even after the moneys were received, he continued to give Renuga a monthly allowance. As he was only a technician at the time, his sister and wife had to chip in. Despite this, he never questioned Renuga about how she was using the insurance moneys. By the time of the trial, he had already expended more than $600,000 on Renuga and her children.

(g) He discovered Gandaruban was alive in 1995, when Renuga became pregnant with his brother's fourth child. In spite of being shocked and angry, he did not confront either Renuga or his brother about the deception.

Whether Renuga's first trip to Sri Lanka occurred in June or December 1987

29 The appellant began his evidence-in-chief on the issue by unequivocally stating that Renuga and the children had made the trip to Sri Lanka in December 1987. He even recalled helping them

obtain their air tickets. The next day, while continuing his evidence-in chief, he initially maintained that the trip had taken place in December, but then began to change this position, stating that "… [n]ow I think they left in 1987, one or two months after July". Once his counsel pointed out that the death certificate stated that Gandaruban had died in October of that year, the appellant immediately affirmed his changed position, stating that the trip must have occurred before October 1987.

30 I noted that the district judge placed significant weight on the appellant's shift in testimony in impeaching his credit. Counsel for the appellant challenged this before me, contending that the date of the trip was not a key issue at the point that the appellant was giving his testimony, and the appellant could not therefore have been expected to remember the exact date of an event that had occurred over 15 years before. However, in affirming the district judge's finding of fact in this regard, I kept in mind that a district judge has the discretion, upon examining the totality of the evidence, to accord varying weights to different parts of the appellant's testimony: *Ng Kwee Leong v PP* [1998] 3 SLR 942; *Hon Chi Wan Colman v PP* [2002] 3 SLR 558. I was cognisant of the fact that the appellant revealed in cross-examination that he had altered his position upon consulting his wife about when the trip to Sri Lanka had occurred. He had done so despite clear instructions from the district judge to those in court not to discuss evidence with potential witnesses. Given these circumstances, I found it understandable that the district judge made much of the appellant's shiftiness.

The appellant's actions upon viewing Gandaruban's false death certificate

31 Gandaruban's fake certificate was originally written in Tamil, and had been translated into English by a sworn interpreter of the Subordinate Courts. The certificate stated, among other things, that Gandaruban had been reported dead by one "Chellaya Dhaksnamoothy", who was identified as Gandaruban's brother-in-law. Under the "race" section, the English translation stated that Gandaruban "[h]ad acquired Singapore citizen". The district judge found that as the appellant knew that Gandaruban had been born in Singapore and did not therefore need to "acquire" citizenship, most people in his position would have found the death certificate suspicious and made inquiries. The appellant did neither, despite the fact that the death certificate was the only document he had giving details about Gandaruban's death. This led to the inference that the appellant knew Gandaruban was alive.

32 The appellant appealed against this finding, contending that the district judge erred in dismissing the appellant's explanation during trial that the original death certificate in Tamil stated that Gandaruban was a Singapore citizen.

33 Having applied my mind to the issue, it seemed to me that in any case, other elements of the appellant's behaviour with regard to the death certificate remained suspect. For example, the fake death certificate stated that "Chellaya Dhaksnamoothy" informed the Sri Lankan authorities of Gandaruban's "death" and this person was identified as being a brother-in-law of the deceased. Since the appellant knew that this relative was not from his side of the family, the relative had to be from Renuga's side of the family. Yet, it was the appellant's testimony that he never asked Renuga about this person, even when he allegedly travelled to Sri Lanka in 1991 to locate his brother's body. When cross-examined about this oddity, the appellant stated that he did not communicate with Renuga on the matter because he did not like to talk to her much and that he did not think that she would be of much help.

34 The district judge found this explanation unsatisfactory, and I agreed. Even if Renuga and the appellant had a bad relationship and did not communicate much, it seemed incredible that the appellant did not consult the only person who might have had pertinent information as to the identity of Chellaya Dhaksnamoothy before making the trip to Sri Lanka.

The appellant's provisions for Renuga and the children

35 The district judge used the undisputed fact that the appellant had been maintaining Renuga and the children over a period of 15 years (expending more than $600,000 in the process) to find that it was the appellant, not Renuga, who managed the insurance moneys. The district judge also found that Gandaruban did not want Renuga to hold on to the moneys, and that Renuga was in fact financially dependent on the appellant.

36 The appellant contended before me that these findings were erroneous as they went against the weight of objective evidence. However, a perusal of the district judge's grounds of decision clearly revealed to me that he had considered the evidence carefully. Furthermore, his grounds of decision documented the evidence he had relied upon in coming to his conclusion. In particular, he stated at [132] to [135]:

> The Accused's regular and substantial payments to Renuga and the children are indeed curious. If Renuga was in fact sitting on some $330,000 of insurance monies at the material time … why did the Accused and his family have to maintain [them]? …
>
> The Accused did not apparently question Renuga why her children came to him for money when she had already received the insurance payouts. …
>
> The Accused's explanation for his unusual conduct was that because Gandaruban had taken care of him since young … he felt duty bound to provide for Renuga and her children. …
>
> I found the Accused's explanation incongruent with the rest of his evidence. According to the Accused, Renuga did not have a harmonious relationship with his mother, wife, sister and himself … Given the acrimonious relationship … it is inconceivable that the Accused would have (a) so unquestioningly and obligingly given her substantial sums of monies over the years, and (b) allowed her to apply the insurance payouts in any way as she pleased, without asking her to account for it.

Given the evidence before me, I was inclined to believe that it was the appellant and not Renuga who had control of the insurance moneys, although it would clearly be impossible to determine this conclusively.

37 Overall, in order for me to interfere with the district judge's finding that the appellant was a manipulative and unreliable witness, counsel for the appellant had the onerous task of persuading me that the district judge had clearly reached the wrong conclusion. After listening to counsel for the appellant and examining the evidence before me, I concluded that he had not succeeded in his attempt to overcome the high threshold required.

Did the district judge err in finding that Ranchitha had corroborated Renuga's testimony?

3 8 Ranchitha is the sister of Renuga. Ranchitha, Renuga, their parents and Renuga's three children lived together in a flat in Marsiling. Ranchitha's testimony was material in several respects. Firstly, her evidence was that just before 6 April 1988, Gandaruban was not living with them, and Renuga had told her that Gandaruban was in Johor Baru. Ranchitha also testified that after Gandaruban had left Singapore, the appellant picked Renuga and the children up from the flat on Fridays and Saturdays in 1988, returning with them on Sunday evenings. Ranchitha believed they had gone to Malaysia, although Renuga never told her this.

39 The district judge found that Ranchitha's testimony corroborated her sister's claim that the appellant had brought Renuga and the children to Malaysia on weekends. The appellant appealed against this finding before me. He argued that since the appellant never went up to the flat (a fact which Ranchitha affirmed), Ranchitha could not have actually seen the appellant. He also argued that the district judge had not given sufficient weight to the fact that Ranchitha had seldom been aware of Renuga's affairs, and had never actually been told by Renuga or the children about the Johor Baru trips.

40 I found these arguments unmeritorious. The appellant himself had testified that he had travelled to the Marsiling flat to pick up the children on weekends. Thus, the fact that the appellant had driven to the flat was not in question. The issue was where the appellant had driven them. While the appellant testified that he had brought them back to his mother's house, Renuga and Ranchitha gave evidence that the trips had been to Johor Baru to see Gandaruban. With regard to this issue, it was Ranchitha's testimony that although Renuga had never told her that they were going to Malaysia, she had seen Renuga filling up pink immigration cards for entry into Malaysia. Despite Ranchitha's testimony that she and her sister had never been close, they had been living in the same flat at the material time. It was certainly likely to me that Ranchitha would have known of Renuga's preparations, including the filling up of the pink cards.

41 The appellant additionally averred that the district judge did not give sufficient weight to the fact that Ranchitha had downplayed the tensions between the families of Renuga and the appellant. To my mind, this was a non-material issue, as the relationship between the two families did not affect the main question of whether the appellant knew of and participated in the conspiracy. In any event, even if a witness is found to have lied on certain matters, it need not affect the witness's credibility as a whole. A trial judge is entitled to accept some of a witness's evidence without having to accept that witness's evidence in its entirety: *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464 at [44]; *Ng So Kuen Connie v PP* [2003] 3 SLR 178 at [34]. It was clear to me from [95] of the district judge's grounds of decision that even though he had been aware that Ranchitha had downplayed the tensions between the families, he had still chosen to accept Ranchitha's testimony. Therefore, I found no reason to overturn this finding of fact.

Did the district judge err in law and fact by giving undue weight to the CAD statement of Lim in preference to Lim's sworn testimony?

42 Lim was a friend of Gandaruban and became a partner in Gandaruban's car rental business to ensure repayment of the $30,000 debt that Gandaruban owed to him. In Lim's statement to the CAD, he stated, *inter alia*, that:

(a) In 1988, Lim met Gandaruban in Johor Baru and this was arranged by the appellant.

(b) The appellant and Lim had on one occasion travelled to Malaysia, and during that trip the appellant pointed out a house in Johor Baru that he claimed was rented by Gandaruban.

(c) Sometime in 1988 or 1989, the appellant told Lim that Gandaruban had a death certificate to prevent creditors from harassing his family and the car rental business.

43 Lim was presented as a prosecution witness, but in court, his testimony was favourable to the appellant, and differed materially from his previous statement given to the CAD. In particular, Lim gave evidence that:

(a) On the occasion that he had met Gandaruban in Johor Baru, Renuga had made the

arrangements and had met them both there. Lim also testified that on this occasion, Renuga had driven herself to meet them.

(b) The appellant did not bring Lim to Johor Baru and point out a house as belonging to Gandaruban.

(c) Lim testified that he only knew of Gandaruban's death certificate in 2002, when Lim found the certificate in his car workshop.

44 I reminded myself that under s 157(*c*) of the Evidence Act, a witness's credibility can be impeached by proof of former statements inconsistent with any part of his sworn evidence. Under s 147(3) of the Evidence Act, prior inconsistent statements can be tendered as substantive evidence of the facts therein. I observed that the district judge applied these provisions to impeach Lim's credit and draw substantive evidence from his previous inconsistent CAD statement instead.

45 The appellant appealed against the district judge's findings on the ground that the recording of Lim's CAD statement was riddled with irregularities. It was also argued that, according to Lim, the CAD officers had suggested crucial answers to him. In finding this argument wholly unmeritorious, I agreed with the district judge's observation that although there were some procedural irregularities in the recording of Lim's statement (such as the fact that the purpose of the statement and investigations were not reflected in the document), these irregularities did not materially undermine the evidence, nor did they suggest any impropriety on the part of the relevant CAD officers.

46 The appellant then contended that Lim's previous inconsistent statement should not be relied on, as the recording officer, Tan, had not allowed Lim to amend his statement when he had wanted to do so one month after giving the statement. Once again, I dismissed his argument, finding that the district judge was correct in noting that it was not evident, even on Lim's own testimony, that Tan had deliberately refused to allow him to amend the statement.

47 I noted that in considering the weight to be attached to a prior inconsistent statement, a trial judge should be guided by the factors stipulated in s 147(6) of the Evidence Act and elaborated upon by case law. These factors include the coherence and cogency of the statement, the possibility of misrepresentation and whether the statement was made contemporaneously with the occurrence or existence of the facts stated: *PP v Sng Siew Ngoh* [1996] 1 SLR 143; *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25. In his grounds of decision ([114] to [117]), the district judge applied these considerations to the current facts and found that full weight should be given to portions of Lim's prior inconsistent statement. I found no ground to overturn this finding of fact.

Did the district judge err by finding that Ruby was a partial witness and that her testimony was non-material?

48 Ruby, the daughter of Gandaruban and Renuga, gave testimony at trial that was aimed at discrediting Renuga, as well as contradicting aspects of the latter's evidence. The district judge held that Ruby's evidence was non-material, and that in any event she was a partial witness whose credibility had been shaken by a previous materially inconsistent CAD statement.

49 Counsel for the appellant petitioned against the district judge's findings on three grounds. Firstly, Ruby had not remembered visiting her father in Johor Baru with Renuga and the appellant, and this materially contradicted Renuga's testimony. Secondly, at the time that Ruby's CAD statement was taken, she was still recovering from a serious accident in which she suffered multiple injuries. Thirdly, the district judge erred in law by relying on the CAD statement even though the officer who

recorded the statement admitted that Ruby had never been given the statement to read for herself before signing it.

50 Once again, I was not minded to overturn the district judge's findings of fact. Beginning with the appellant's first contention, the fact that Ruby did not recall visiting Gandaruban in Malaysia did not necessarily contradict Renuga's statement as Ruby was only seven years old at the material time, and children of that age cannot be expected to remember incidents that happen around them. Indeed, during cross-examination, Ruby testified that she could not recall her father leaving in 1987, nor did she remember being informed by her mother about her father's death. These events had occurred only a year preceding the trips to Johor Baru. Thus, the fact that Ruby could not recall any of these incidents did not in any way disprove that the incidents had occurred.

51 I was not inclined to accept the appellant's second contention either. As the district judge noted, although Ruby was still suffering the effects of a serious accident during the time that the CAD statement was taken, she herself gave evidence that she had no trouble recognising relatives immediately after the accident had occurred. Besides, it seemed clear to me that in this CAD statement, Ruby provided detailed answers that were deliberately calculated at covering up the fact that her father was still alive. For instance:

> Question 5: Do you have a younger brother?
>
> Answer : Yes. And also a half brother.
>
> Question 6: What is your half brother's name and how old is he?
>
> Answer: Ganesha. He is six or seven years old.
>
> …
>
> Question 14: Who is your father?
>
> Answer : Gandaruban
>
> Question 15: Is he still alive?
>
> Answer: No. He passed away in 1987 or 1988 in the Jaffna bombing in Sri Lanka.

52 At the time that this statement was taken, Ruby had known for almost a decade that her father was alive. It was unlikely that the accident, however serious, had caused her to forget this fact. After examining the notes of evidence, I was inclined to believe that Ruby was far from confused when answering the questions highlighted above. In fact, she had the presence of mind to call Ganesha her "half-brother" (which would have been accurate had her mother really re-married, rather than marrying Gandaruban again under his assumed identity), as well as give the precise location in which her father supposedly passed away. Thus, the appellant's claim that Ruby's injuries had prevented her from giving a proper CAD statement did not stand up to scrutiny.

53 Furthermore, I did not find the appellant's third contention that the district judge erred by relying on the CAD statement persuasive. The procedural irregularity arose because the CAD statement did not reflect that the statement had been read back to Ruby before she signed it. However, as the district judge noted, Ruby did not challenge the accuracy and voluntariness of the

statement at trial. In any event, I was of the view that the procedural irregularity was non-material, as it was clear from the recording officer's testimony that the statement had been read to Ruby before she signed it. This argument is buttressed by *Foong Seow Ngui v PP* [1995] 3 SLR 785**,** where the Court of Appeal held at [47] that for investigative statements taken from witnesses by the police, an omission to state that the investigative statement had been read back to the witness does not render the statement inadmissible. What is important is not whether the clause has been included at the end of the statement, but whether the statement was read over to the maker and, after corrections if any, signed by him, as required by s 121(3) of the Criminal Procedure Code. CAD officers are police officers, and therefore the same reasoning should apply to statements recorded by CAD officers.

Sentence

54 The appellant was sentenced by the district judge to six months' imprisonment for the first charge and ten months' imprisonment for the second to fourth charges. The sentence for the first charge was ordered to run consecutively to the term imposed for the fourth charge. This amounted to a total of 16 months' imprisonment.

55 I found the district judge's sentence inadequate, and ordered the terms of imprisonment for the first, second and fourth charges to run consecutively, resulting in a total of 26 months' imprisonment for the appellant. In the absence of any elaboration from the district judge on the grounds behind his sentencing decision, I now set out the factors I took into account in enhancing the appellant's sentence.

56 In making my decision, I noted that the appellant had not appealed against sentence, and his counsel had submitted before me that the 16-month sentence imposed by the district judge was fair. I was also mindful that although an appellate court has the power under s 256(*c*) of the Criminal Procedure Code to reduce, enhance, or alter the nature of a sentence, an appellate court will not generally interfere with the sentence meted out by the lower court unless it is satisfied that (a) the trial judge made the wrong decision as to the proper factual basis of the sentence; (b) the trial judge erred in appreciating the material placed before him; (c) the sentence was wrong in principle; or (d) the sentence imposed was manifestly excessive or inadequate: *Tan Koon Swan v PP* [1986] SLR 126; *Yeo Kwan Wee Kenneth v PP* [2004] 2 SLR 45.

57 Given that the appellant was involved right from the beginning in this complex and premeditated conspiracy, it was my considered opinion that the district judge's sentence was manifestly inadequate. In *PP v Tan Fook Sum* [1999] 2 SLR 523 at [15], I quoted with approval Lawton LJ's observation in *R v Sargeant* (1974) 60 Cr App R 74 at 77 that:

> [I]t is … society, through the courts, [that] must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass.

The same applied here. Even though the appellant had not personally benefited from the scam, he had nevertheless been an integral part of a terrible and outrageous plot to defraud both the court and insurance companies. I also took account of the large sum of money involved.

58 It is axiomatic that deterrence may well be of considerable value when the crime is premeditated: *PP v Loo Chang Hock* [1988] 1 MLJ 316; *Meeran bin Mydin v PP* [1998] 2 SLR 522. To my mind, the appellant in this case was clearly involved in a carefully planned and well-orchestrated scheme. Furthermore, I took the view that although the factual matrix of this case was very unusual, a harsh sentence was necessary to educate and deter other like-minded members of the general

public from committing acts of deception against the courts and insurance companies.

59 Relatedly, I applied the oft-quoted proposition that "[i]n deciding the most appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest": *R v Ball* (1951) 35 Cr App R 164 at 165 as applied in *PP v Tan Fook Sum* ([57] *supra*) and *Ong Ah Tiong v PP* [2004] 1 SLR 587. I considered it paramount that the integrity of the courts be preserved. Besides, I noted the important role that insurance plays in our society, and foresaw the disastrous consequences should insurance fraud become widespread and commonplace.

60 Finally, I made note of the appellant's professional achievements, his status in the Indian/Hindu community and his active involvement in charitable works. However, I had to balance this against the severity of the offences that the appellant had committed. In fact, I felt that given the appellant's standing in society, he should have set a better example for those who looked up to him.

Conclusion

61 In an appeal which turned largely on the findings of fact made by the court below, the appellant had to convince me that those findings of fact were clearly wrong or against the weight of the evidence when looked at in its totality. It was my opinion that the appellant had failed to do so. Accordingly, I dismissed his appeal. Furthermore, I took the view that the sentence meted out in the District Court was inadequate. I therefore ordered that the sentences run consecutively in:

(a) the first charge – six months' imprisonment,

(b) the second charge – ten months' imprisonment,

(c) the fourth charge – ten months' imprisonment.

This resulted in a total of 26 months' imprisonment. The terms of imprisonment commenced on 27 July 2005.

Appeal against conviction dismissed. Sentences enhanced.