Tan Sai Tiang v Public Prosecutor
[2000] SGHC 4

Case Number : MA 144/1999; Cr M 10/1999

Decision Date : 10 January 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : KS Rajah SC and Chua Sui Tong (Harry Elias Partnership) for the appellant; Kan Shuk Weng (Deputy Public Prosecutor) for the respondent

Parties : Tan Sai Tiang — Public Prosecutor

Criminal Procedure and Sentencing – High court – Revisionary powers of High Court to accept additional evidence on appeal – Conditions to be satisfied before accepted fresh evidence – ss 257(1) & 268(1) Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Appeals – Whether fresh evidence may be adduced in mitigation

Criminal Procedure and Sentencing – Sentencing – Appeals – Factors considered in sentencing – Application of 'clang of prison gates' principle – Restitution as mitigating factor – Relevance of when restitution made

Criminal Procedure and Sentencing – Sentencing – Appeals – Power of appellate court to interfere with sentence – Circumstances when appellate court will interfere

: Introduction

The appellant pleaded guilty to ten charges of cheating under s 420 of the Penal Code (Cap 224) in the court below. She was sentenced to six months` imprisonment on each of these charges, the first four of which were ordered to run consecutively and concurrently with the rest, resulting in a total of two years` imprisonment. The appellant appealed against her sentence and requested the High Court to exercise its revisionary powers to overturn some of her convictions.

Except for the dates on which the offences were committed and the amounts involved, the charges were worded similarly. The first charge read as follows:

> *DAC 884/1999*
>
> *You,*
>
> *Tan Sai Tiang, F/47 yrs NRIC No S0149438D DOB: 11.4.1950*
>
> *are charged that you on or about 6 January 1997, at about 6pm, at the Singapore Swimming Club located at 45 Tanjong Katong Road Singapore, did cheat Francisco Lachica, a cashier with the said Club, to wit, by submitting a jackpot payment voucher No 27086 dated 6.1.97, for payment of $400 cash in jackpot wins, for the purpose of deceiving the said Francisco Lachica into believing that the contents of the said payment voucher were true when you knew that they were not, and by such manner of deception, you dishonestly induced the said Francisco Lachica into paying you cash of $400, and you have thereby committed an offence punishable under s 420 of the Penal Code (Cap 224).*

Nine other charges worded in the same vein were proceeded with. The salient details of the charges are as follows:

a) DAC 886/99: 6 January 1997 for the sum of $220

b) DAC 894/99: 8 January 1997 for the sum of $300

c) DAC 922/99: 16 January 1997 for the sum of $760

d) DAC 1031/99: 25 February 1997 for the sum of $300

e) DAC 1085/99: 10 March 1997 for the sum of $460

f) DAC 1086/99: 10 March 1997 for the sum of $771.20

g) DAC 1126/99: 21 March 1997 for the sum of $700

h) DAC 1154/99: 30 March 1997 for the sum of $300

i) DAC 1155/99: 30 March 1997 for the sum of $220

The appellant was also charged with 390 other charges for the offence of cheating under s 420. These offences which arose in similar circumstances as the charges proceeded with were taken into consideration by the district judge for the purposes of sentencing.

The appellant had committed the offences in respect of all the charges with the help of two jackpot officers at the Singapore Swimming Club (`the club`), Chia Ah Soon (`Chia`) and Choy Swee Mun (`Choy`). Chia and Choy pleaded guilty to similar offences and were sentenced to a total of 12 months` and 18 months` imprisonment respectively.

Background facts

The appellant was a member of the club and a regular fixture at the jackpot room. She spent many hours playing the jackpot machines. Invariably, she lost a fair bit of money at the machines.

The jackpot machine system at the club worked in this manner. When a player struck a jackpot, the jackpot machine would pay out a maximum of 200 coins as wins. If the amount won exceeded 200 coins, the player had to claim excess winnings from the cashier by way of a payment voucher. The machine meter recorded these extra winnings as `Cancel Credits`. As jackpot officers, Chia and Choy were required to issue payment vouchers to certify that the excess wins were genuine. This was carried out by writing the winning jackpot combination, the sum of 200 coins paid out by the machine and the additional sum to be claimed. The player`s membership card would be embossed on the voucher and the player would have to sign this voucher and present it to the cashier of the club in order to claim these winnings. The cashier`s duty was to ensure that the voucher was duly filled up but not to verify the winnings.

Sometime in January 1997, the appellant, Chia and Choy came up with a scheme to cheat the club. The offences were carried out in the following way. Either Chia or Choy would issue the appellant a

payment voucher that was purportedly for an excess win above 200 coins struck on a particular machine. This was obviously not the case as the particular machines did not record any excess wins. The vouchers were duly embossed with the appellant`s membership card and signed by her after which she would claim the extra cash from the club`s cashier.

These amounts were then split equally between the appellant and either Chia or Choy depending on who had issued the payment vouchers. In this manner, the appellant managed to cheat the club and cause it to pay to her the sum of about $102,959.80 as revealed by the 400 charges brought against her.

The decision below

The only issue before the district judge was the appropriate sentence to impose on the appellant as she had pleaded guilty unequivocally to the ten charges proceeded with against her in the court below. In coming to his decision to sentence the appellant to six months` imprisonment on each of the charges proceeded with, four to run consecutively and the rest to run concurrently, resulting in a custodial sentence amounting to a total of two years, the district judge considered several factors.

The district judge was of the view that there were some mitigating factors in the appellant`s favour. These were the fact that she had pleaded guilty and showed genuine remorse and shame from the outset. At the time of sentencing, the appellant was aged 49 years and had no previous antecedents. Her married life was in a state of shambles. Both her mental and physical health were not good. After a fall from the balcony of her house in 1985, the appellant suffered from amnesia, poor concentration and impaired hearing. The psychometric report relating to her mental health indicated that she had a poor sense of judgment, was guilible, had low self-esteem and was easily swayed by people. She indulged in playing the jackpot machines for comfort, relief and solace from the sorry state of her married life. Furthermore, it was said that it was her accomplices who had initiated the scheme after they found out about her losses. The appellant also did not keep the entire sum cheated, retaining only 50% of it whilst the other 50% was shared by Chia and Choy. The district judge also noted that the appellant had made full restitution of all the sums she had received.

However, the district judge commented that restitution only took place after the appellant had been caught and charged for the offences. The district judge also pointed out that Chia and Choy had committed far fewer offences than the appellant. Chia had 147 charges brought against him, eventually pleading guilty to the five charges that were proceeded with. Choy was charged with 254 offences and pleaded guilty to eight of them. Comparatively, the appellant had committed 400 offences and pleaded guilty to ten charges. As such, this was a factor to be taken into account when passing sentence.

The district judge was also cognisant of the fact that the appellant had deceived the cashier of the club on 400 separate occasions. On each of these occasions, the appellant had carried out a separate and deliberate deception. This was not a case where the appellant had given in to temptation on the spur of the moment and she was likely to have continued committing the offences had she not been discovered.

Based on all these factors, the district judge felt that the appropriate sentence was a global term of two years` imprisonment.

The criminal motion

The appellant filed a motion to adduce further evidence consisting of a report made by the Principal Scientific Officer at the Department of Scientific Services, Ms Lee Gek Kwee (`the DSS report`), two statements made by the appellant to the police under s 122(6) of the Criminal Procedure Code (Cap 68) (`CPC`), a letter dated 27 April 1999 from her previous solicitors to the Attorney General`s Chambers and two jackpot vouchers signed by one Neo Guat Choo and one Wee Hock Kee respectively pursuant to s 257(1) of the CPC. The appellant sought to introduce this evidence for the purpose of asking this court to exercise its revisionary powers to quash her convictions on five charges (DAC 894/99, DAC 1031/99, DAC 1086/99, DAC 1154/99 and DAC 1155/99) despite her having pleaded guilty to these charges in the court below. In the alternative, the appellant also asserted that this evidence should be taken up in the appeal as mitigation.

The principles relating to s 257(1) of the CPC

The power of the High Court in its revisionary capacity to take additional evidence is governed by ss 257(1) and 268(1) of the CPC which read:

> *257(1) In dealing with any appeal under this Chapter the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a District Court or Magistrate`s Court.*
>
> *268(1) The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.*

In **Juma`at bin Samad v PP** [1993] 3 SLR 338 , I considered in great detail how this power was to be exercised. This case is particularly relevant to the present circumstances as the appellant in that case had also pleaded guilty in the court below and was seeking to adduce additional evidence in his criminal motion asking the High Court to exercise its revisionary powers to inquire into his conviction.

In ***Juma`at bin Samad v PP*** , the appellant sought to adduce additional evidence to show that he was in fact entitled to the defence of intoxication and was therefore not guilty of the charge of housebreaking in order to commit theft. I followed the authority of **Rajendra Prasad v PP** [1991] 2 MLJ 1 and held that the principles relating to the application of s 257(1) of the CPC were to be found in Denning LJ`s judgment in **Ladd v Marshall** [1954] 3 All ER 745. This reads:

> *In order to justify the reception of fresh evidence for a new trial, three conditions must be fulfilled: first it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.*

The reception of fresh evidence is thus subject to these three conditions, broadly - non-availability, relevance and reliability - conditions similar to those stated by Lord Parker in **R v Parks** [1961] 3 All ER 633.

In relation to the first condition of non-availability of the evidence at trial, I concluded that if the evidence was available at the time of the trial this fact generally prohibited the appellant from adducing it on appeal. On the facts of ***Juma`at bin Samad v PP*** , the issue of whether to tender such evidence was considered by counsel at the trial but rejected because it was thought to be unnecessary or inappropriate or of doubtful assistance to the defence. It was held that unless the decision of counsel amounted to flagrantly incompetent advocacy, this would not be a reasonable explanation for the failure to call this evidence at trial.

The additional evidence in that case was a medical report indicating that the appellant was undergoing treatment for his addiction to alcohol. While strictly speaking the medical report was not available as it did not exist at the time of the trial, this was simply because a medical person had not been consulted until after the trial when he or somebody equally competent could have been consulted before it; **Mohamed bin Jamal v PP** [1964] MLJ 254 . If the court felt that there would be a miscarriage of justice otherwise, the additional evidence could be taken up on appeal as this forms the core principle in s 257 of the CPC. However, it was only in the most extraordinary circumstances that such a situation would arise. I added:

> *Admittedly, there have been isolated instances where in an effort to correct glaring injustice, evidence which was in fact considered at trial has been allowed to be introduced in an appeal. But this is warranted only in the most extenuating circumstances, which may include the fact that the offence is a serious one attracting grave consequence and the fact that the additional evidence sought to be adduced was highly cogent and pertinent and the strength of which rendered the conviction unsafe (see for example* ***Mohamed bin Jamal v PP*** *and* ***R v Latimore****). The circumstances in the present case fall far short of that mark.*

In **Tan Tze Chye v PP** [1997] 1 SLR 134 , it was said that the appellant had to give a good explanation as to why the evidence could not be made available in the court below. Thus, it is only in limited circumstances that evidence not adduced below may be admitted where it can be shown that a miscarriage of justice has resulted.

In ***Mohamed bin Jamal v PP*** , the appellant was convicted of three charges of murder. The defence of diminished responsibility had been rejected by the trial judge. On appeal, the appellant sought to adduce evidence of a medical report made when he went for a medical examination after he had been convicted. This medical report showed that he suffered from arrested or retarded development which impaired his mental responsibility for his acts. His counsel swore that he had not sent his client for a medical examination earlier as he was ignorant of the defence of diminished responsibility. The court allowed the introduction of this evidence despite the fact that it was available at the time of the trial due to the exceptional circumstance that this was a capital case and a man`s life was at stake. Only this would satisfy the interests of justice.

On the other hand in **R v Lomas** [1969] 1 All ER 920, the English Court of Appeal allowed the introduction of fresh evidence by way of an expert contrary to the opinion of the prosecution`s expert on appeal even though there was no challenge to that opinion during the trial. However, the background circumstances were peculiar as the defence had actually obtained an expert opinion on the matter, but did not seek the opinion of a more experienced expert. The court held that it was reasonable for the defence not to ask for an adjournment to do so, given that the long court vacation was about to begin. The defence could not reasonably foresee that when the time came, the expert evidence would be contrary to that of the prosecution`s expert. The application to introduce the

additional evidence was allowed.

As for the second and third conditions of relevance and reliability, I pointed out in ***Juma`at bin Samad v PP*** that an appellant has to satisfy the court that the additional evidence is apparently credible and if believed, establishes on the balance of probabilities his entitlement to a defence. The evidence has to be plausible. In relation to the third condition, **R v Ng Guan Thong** [1935] MLJ 25 also indicates that the additional evidence must at least raise the probability that the verdict might have been reversed.

The DSS report

The DSS report related to an analysis of what appeared to be the appellant`s signatures on 40 of the payment vouchers on which 40 charges brought against the appellant were based. The handwriting analysis was carried out by Ms Lee Gek Kwee who concluded that there was no evidence to show that the signatures on these 40 vouchers were written by the appellant. Out of these 40 charges, five charges were proceeded with against the appellant. The other 35 were taken into consideration by the district judge for the purposes of sentencing. The appellant submitted that the DSS report revealed that her signature on these 40 vouchers had been forged. As such, her convictions for those five charges should be overturned and the other 35 offences should not have been taken into consideration by the district judge.

I was of the view that the DSS report could not be introduced as additional evidence in this appeal. The first condition of non-availability at the time the appellant`s case was heard in the court below was not fulfilled. The DSS report fell into the same category of evidence as the medical reports in ***Juma`at bin Samad v PP*** and ***Mohamed bin Jamal v PP*** as it was only made after the appellant had pleaded guilty and been sentenced. The fact that the appellant`s signature had been forged by someone else was never raised by the appellant`s previous counsel in the court below even though he had actually written a letter to the prosecution citing this possibility. There is nothing in the record to show why the appellant`s previous counsel did not consider sending the 40 payment vouchers to the DSS for testing before advising the appellant to plead guilty to the charges relating to these payment vouchers. The appellant`s explanation that this was not done on the basis of the advice of her then solicitors is not a reasonable one given that it was not alleged to be flagrantly incompetent advice.

The appellant submitted that it would be necessary nonetheless in the interests of justice for this court to take the DSS report into evidence. However, the present case is very similar to the situation in ***Juma`at bin Samad v PP*** . As such, only the most extenuating circumstances would warrant allowing the appellant to tender this evidence on appeal as well as pursuant to her request for the High Court to exercise its powers of revision. This is the meaning of the phrase `necessary in the interests of justice`. The appeal before me was not a capital case, unlike ***Mohamed bin Jamal v PP*** , or related to an offence that attracted very severe consequences. There was a lot less at stake as a result. It was also not alleged that the appellant`s previous counsel was flagrantly incompetent for not pursuing the matter further. There was thus no good reason for the appellant not tendering this evidence in the district court.

Furthermore, the DSS report also had to meet the conditions of relevance and reliability. While the credibility of the DSS report is probably not in question given the stringency with which the officers at the Department of Scientific Services carries out their work, I did not think the evidence would have made a significant difference to the appellant`s convictions on the five charges or the number of offences taken into consideration. The DSS report did not conclusively indicate that the appellant did

not sign those 40 payment vouchers. All it stated was that there was no evidence to indicate that the signatures were made by the appellant. This is not the same as a finding by the person carrying out the analysis that the signatures were forged. The lack of evidence that the appellant had made those signatures could well have been due to other reasons such as a change in handwriting style. Given that the DSS report was not evidence that the appellant`s signatures were forged on those 40 vouchers, I decided not to allow it to be adduced as further evidence at this stage.

The appellant`s statements made to the police under s 122(6) of the CPC

The appellant sought to adduce two of her s 122(6) statements as evidence in the appeal on the ground that these statements represented a denial of responsibility for some of the charges brought against her. The content of these statements was essentially the same. A sample statement read as follows:

> *The winnings are not all mine. Some of them were signed for guests. Some of them were for members who did not bring their membership cards for winnings. So the jackpot officer asked me to sign for them. During the jackpot winning the alarm will ring and the officer would come and clear the winning. He will issue the winning voucher and with that, I will go to the cashier to claim the winnings. The cashier, after checking the voucher will give me the cash.*

The same principles as set out above applied to whether this court should have allowed the appellant to adduce her cautioned statements in the appeal. This portion of the criminal motion was quite clearly not in favour of the appellant. The first condition of non-availability of the statements at the time the appellant was sentenced were not met and again, there was no sufficiently extenuating circumstances to make it absolutely necessary for the evidence to be taken up on appeal. The appellant`s cautioned statements were within the possession of her counsel at the time and it was obvious that the evidence could have placed before the district judge if counsel had exercised reasonable diligence.

In any event, the second and third conditions of relevance and credibility were also not met. The s 122(6) statements contained the appellant`s own assertions that she had signed the payment vouchers on behalf of guests and members who had not brought their own membership cards. These statements by themselves were obviously not weighty enough on the balance of probabilities to establish the appellant`s innocence in respect of some of the charges brought against her, particularly in the light of her own decision to plead guilty to some of them subsequently, admit liability for the others and agree to have them taken into consideration for the purposes of sentencing.

As such, the appellant`s statements to the police under s 122(6) of the CPC were not allowed to be adduced as evidence at this stage.

Counsel`s letter to the Attorney General`s Chambers

The letter of 27 April 1999 was written by previous counsel for the appellant and purportedly made reference to the possibility that the appellant`s signature had been forged on some of the payment vouchers. Clearly, this letter was within the possession of the appellant and therefore available at the time of the hearing before the district judge. In any case, the evidence was not sufficiently relevant

or reliable as this was the appellant`s own assertion that the payment vouchers were forged. The letter clearly constituted less reliable and even more insignificant evidence than the DSS report.

The two jackpot payment vouchers signed by Neo Guat Choo and Wee Hock Kee

The last piece of evidence that the appellant wished to tender before this court were two jackpot payment vouchers embossed with the membership cards of two other members on which two of the 400 charges brought against the appellant were based. The same problem of availability at the time of the hearing before the district judge affected these vouchers. One wonders why the appellant did not object to these charges being included for the purposes of sentencing at the material time.

The vouchers also had no significant effect on the appellant`s convictions as the charges which were based on these vouchers were not included in the ten charges that were eventually proceeded with against her. At best, the inclusion of the two charges only affected the number of offences taken into consideration against the appellant. Having 388 instead of 390 charges taken into consideration would have had the most minute of effects on the sentence imposed by the district judge. I therefore did not allow her application to adduce these vouchers as evidence on appeal.

Use of additional evidence as mitigation

The appellant submitted that even if this court chose not to exercise its revisionary powers to quash her convictions for some of the charges she pleaded guilty to, the additional evidence could also be taken up at this stage for the purposes of mitigation. For the reasons stated above, I did not allow the additional evidence to be admitted as it failed the conditions of non-availability, relevance and reliability. Even if this was not the case, I was of the opinion that the appellant should not be allowed to adduce the evidence as mitigation.

The reason for this is founded in the proposition that when an accused pleads guilty to certain charges and admits to other charges which are then taken into consideration for sentencing purposes, the accused cannot then say in mitigation that he or she was not actually guilty of some of those offences and the sentence should thus be reduced accordingly. There would be a direct contradiction between the accused`s plea of guilt and admission to the other charges, which necessarily entails admitting responsibility for the offence, and raising as a mitigating circumstance the fact that he or she did not commit those offences. The additional evidence was therefore not allowed to be admitted for the purposes of mitigation in the appellant`s appeal against sentence. Accordingly, the criminal motion was dismissed.

The appeal

Leaving aside the additional evidence, the appellant also appealed against her sentence of two years` imprisonment meted out to her by the district judge. The appellant drew attention to certain mitigating factors that she felt were not taken into account or not given sufficient weight by the district judge.

The appellant`s state of mind and her unblemished record

The appellant averred that the district judge did not accord enough weight to her weak mental health and her previously unblemished record in passing sentence. Counsel highlighted a portion of a medical

report produced before the district judge by a psychologist who commented that the appellant, being incapable of understanding and forming proper judgments, was a person who could be easily deceived and misled. The appellant was also said to be suffering from chronic depression for many years given the breakdown of her marriage. This affected her character, social relationships and psychological functioning. As such, she did not fit the psychometric profile of someone who would form the intention and plan to commit these offences and instead was more likely to be the victim. The appellant also submitted that the district judge did not give enough weight to the fact that she was a first time offender and that the fact of a custodial sentence was already punishment in accordance with the authority of **Siah Ooi Choe v PP** [1988] SLR 402 [1988] 2 MLJ 343 .

In my opinion, the district judge had sufficiently taken these considerations into account when deciding the term of imprisonment appropriate in this case. He noted that the appellant`s married life was not ideal and that as a result of her fall from the balcony of her house in 1985, suffered from a whole host of mental and physical injuries. The district judge also gave accorded credit to the fact that the appellant was a first offender. The appellant was unable to show that the district judge failed to take these factors into consideration.

The `clang of the prison gates` principle that was articulated by LP Thean J (as he then was) in ***Siah Ooi Choe v PP*** was adopted from the English decision of ***R v Jones*** (1980) 2 Cr App R (S) 134. This principle states that when an older person in his or her 40s or 50s is convicted for the first time, the mere fact that he goes to prison at all is a very grave punishment indeed. The closing of the prison gates behind him or her, for whatever length of time, is grave punishment by itself. In conjunction with the fact that the convicted party is of good character and there are comparatively small sums of money involved, a short prison term would suffice. In ***Siah Ooi Choe v PP*** , the accused was convicted of an offence under the Companies Act for inducing a bank through deceitful means to extend credit to his company. His sentence of nine months` imprisonment was reduced to three months. However, the accused in that case was only convicted on one charge and had three other similar charges taken into consideration. The learned judge also pointed out that the circumstances in the case were highly exceptional and there were very strong extenuating circumstances in the appellant`s favour which included his contributions to country and society through his scientific innovations.

Now, the underlying premise of the `clang of the prison gates` principle is not that where first time offenders are concerned, the mere fact that a jail sentence has been imposed is punishment enough. The actual basis for the application of this principle is that the shame of going to prison is sufficient punishment for that particular person convicted. As such, in order for the principle to be applicable, the convicted person must have been a person of eminence who had previously held an important position or was of high standing in society. In other words, it would hardly ever apply in most cases dealing with members of society who had never held an important post or were persons of sufficient standing in the eyes of society. The appellant in this case could not be said to fall into this exceptional category of persons to whom the principle would apply. As such, there was no need for the district judge to take this principle into consideration in this particular situation.

The appellant`s plea of guilt

The appellant contended that the district judge only made a passing reference to her plea of guilt. This seemed to indicate that he did not place much weight on her plea.

There was clearly not much merit in this argument. It is evident from the district judge`s grounds of decision that he was of the opinion that her plea of guilt was a mitigating factor. Apart from a bare allegation, the appellant did not show why she was of the opinion that the district judge did not

accord sufficient weight to the plea. Additionally, her contention that the district judge had no opportunity of seeing the evidence of the fact that she was not guilty of a number of the charges that she had pleaded guilty or admitted to cannot be sustained in light of the fact that the additional evidence was not taken on appeal under s 257(1) of the CPC. Furthermore, as mentioned above, claiming that one is innocent of certain offences that one had already pleaded guilty to could not be a mitigating factor.

The appellant`s making full restitution of the moneys cheated

The appellant submitted that the district judge erred in commenting that the mitigating effect of her offer to make restitution was diminished by the fact that this was only done after she had been caught and charged for the offences. Furthermore, the appellant claimed that she made restitution over and above the amounts received by her.

I pointed out in **Krishan Chand v PP** [1995] 2 SLR 291 that the making of restitution is generally a relevant mitigating factor where the appellant`s act of doing so reveals on his part genuine remorse and basic good character. This authority was of some use to the appellant`s submission that the district judge had erred in placing too little weight on the fact that she had made full restitution of the sums. The appellant`s act along with her early plea of guilt and the fact that this was the first time she had committed such offences reflected sincere remorse and her basic good character. That she did so after being caught and charged should have less bearing in light of the more important fact that she subsequently made full restitution of the moneys. However, the appellant`s contention that she made restitution over and above the amount she had gained was unsustainable as this court would have had to first accept that she was not guilty of some of the charges she had pleaded guilty or admitted to. This could not be done for the reasons set out above. Accordingly, I came to the conclusion that the district judge did not give sufficient credit for the fact that the appellant had made full restitution of the moneys and the consequent guilt and sincerity that this act revealed.

The appellant`s role in the scheme to cheat the club

Finally, the appellant contended that her role and therefore culpability in the scheme to cheat the club was to a much lesser degree than the district judge thought it to be. She alleged that Chia and Choy played a more important part in the scheme as they were the jackpot officers at the club and were more well-acquainted with the operation of the jackpot machines and the club`s security procedures. This information enabled them to devise the scheme. Furthermore, it was not really disputed by the prosecution that Chia and Choy had approached the appellant to ask her to participate in the scheme, explained the mechanics of the plan to her and told her that her assistance was required as a member to sign the vouchers.

The district judge on the other hand, while acknowledging that the degree of culpability of Chia and Choy was greater as they were employees of the club, appeared to have taken into account the fact that the number of offences committed by the appellant was more than double that of Chia and 1.6 times more than Choy. He therefore accepted that this was a factor to be considered when sentencing the appellant.

In relation to this, the appellant again raised the argument that she was not in actual fact guilty of all the offences that she had either pleaded guilty to or admitted to for the purposes of sentencing. The additional evidence sought to be admitted by the appellant to establish this should not be considered for the reasons dealt with above.

While strictly speaking, the prosecution correctly pointed out that on the face of it, the appellant was

liable for about double the number of offences that Chia was and 1.6 times more offences than Choy, this could not be the crucial factor in deciding that the appellant necessarily deserved a longer sentence of imprisonment than Chia and Choy although it was of some relevance. This appeared to be the rationale behind the district judge`s decision to sentence the appellant to a global term of two years` imprisonment. The circumstances revealed that the appellant would not have been able to carry out the offences without Chia and Choy`s participation in the scheme. Thus, while it is a factor to be taken into consideration, I took the view that the district judge may have placed too much emphasis on this point in light of the circumstances surrounding the roles of the appellant, Chia and Choy in the scheme.

Appropriateness of the sentence

It is well-settled, on the authority of **Tan Koon Swan v PP** [1986] SLR 126 [1987] 2 MLJ 129 , that the appellate court can and will interfere in a sentence imposed by the lower court if it is satisfied that:

(a) the sentencing judge has made a wrong decision as to the proper factual basis for sentence;

(b) there has been an error on the part of the trial judge in appreciating the material placed before him;

(c) the sentence was wrong in principle; and

(d) the sentence imposed was manifestly excessive.

Given that the district judge appeared to have erred in his approach towards the fact that the appellant had made full restitution of the moneys gained and over emphasis on the fact that she had admitted to more offences than Chia and Choy, without balancing it against the other mitigating factors in her favour that were not present in the cases of Chia and Choy, I came to the conclusion that her overall sentence should be reduced to 18 months` imprisonment. This was on the basis that the district judge had erred in appreciating the material placed before him. This provided sufficient ground for me to reduce the appellant`s sentence even though her sentence could not be said to be manifestly excessive: **Tham Wing Fai Peter v PP** [1989] SLR 448 [1989] 2 MLJ 404 .

Conclusion

In the circumstances of the case, I dismissed the criminal motion and allowed the appeal against sentence. I ordered that the appellant be sentenced to a total term of 18 months` imprisonment. The appellant`s convictions and individual sentence of six months` imprisonment on all ten charges proceeded with against her were not changed. However, only three terms of imprisonment for DAC 884/1999, DAC 886/1999 and DAC 894/1999 ran consecutively. These terms were to run concurrently with the terms in the remaining seven charges.

Outcome:

Motion dismissed; appeal allowed.