

Gao Hua v Public Prosecutor
[2009] SGHC 95

Case Number : Cr Rev 12/2008
Decision Date : 20 April 2009
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Shashi Nathan and Lim Teck Yang Jansen (Harry Elias Partnership) for the applicant; Francis Ng (Attorney-General's Chambers) for the respondent
Parties : Gao Hua — Public Prosecutor

Criminal Procedure and Sentencing – Revision of proceedings – Exercise of revisionary powers where there was plea of guilt – Whether pressures faced by applicant to plead guilty should be construed as "serious injustice" – Whether applicant had been placed under very real and substantial pressures by her then-counsel – Credibility of applicant's evidence

20 April 2009

Lee Seiu Kin J:

Introduction

1 The applicant, Gao Hua, pleaded guilty on 13 March 2008 to a charge of corruptly giving gratification to one Chua Hong Keng ("Chua") as an inducement for him to assume criminal liability for operating a massage establishment without a valid licence under the Massage Establishments Act (Cap 173, 1985 Rev Ed) and a second similar charge of giving gratification for the same purpose to one Chong Ah Choy ("Chong").

2 The two charges to which the applicant pleaded guilty were for offences under s 5(b)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), which are both punishable with a fine not exceeding \$100,000 or imprisonment for a term not exceeding five years or both. The applicant consented to six other similar charges being taken into consideration for sentencing. Following the applicant's plea of guilt, the district judge sentenced her to imprisonment for a term of five months on each charge and ordered both terms of imprisonment to run consecutively, for a total of ten months' imprisonment.

3 The applicant subsequently filed an appeal against her sentence on the basis that it is manifestly excessive, as well as the present petition seeking to set aside her plea of guilt.

4 At the end of the hearing before me on 22 August 2008, I set aside the conviction and remitted the case back to the District Court for a retrial. I was satisfied that it was unsafe to uphold the conviction, and now give my grounds of decision.

Application for criminal revision

The applicant's case

5 The application for criminal revision was made on the following grounds:

(a) the applicant had pleaded guilty because she had been wrongly advised and/or misled by her then-counsel, Mr Tan Kay Bin ("Mr Tan"), that only a fine would be imposed on her if she did so;

(b) the applicant had been placed under very real and substantive pressures by Mr Tan prior to and at the time she pleaded guilty;

(c) the applicant's plea of guilt was neither valid nor unequivocal and therefore ought not to have been accepted by the district judge; and

(d) a serious injustice had occurred as a result of the applicant's invalid plea of guilt being accepted.

The applicant's allegations

6 In support of her application for criminal revision, the applicant filed a lengthy affidavit, deposing to the background facts leading to her being charged, and the circumstances through which she met her previous counsel, Mr Tan. In setting out the applicant's version of events hereafter I am fully aware that Mr Tan, although given a chance to respond to this application, may not have been accorded full opportunity to rebut the applicant's allegations against him. If appropriate at a later stage, such opportunity will no doubt be accorded to him. I approached the matter with a view to determining the merits of the application and any decision must necessarily be on the basis of the evidence before me. Therefore in setting out the applicant's case hereafter, I must emphasise that I have made no direct finding as to the veracity of the applicant's allegations.

7 Since we are not concerned here with whether the applicant was in fact guilty of the offences, I will not dwell on the applicant's version of events which led to her being charged (see below at [\[54\]](#)). Instead, I will deal only with the applicant's account of what transpired after her meeting with Mr Tan. According to the applicant, Mr Tan was a lawyer recommended to her by one Ah Shun. She first met Mr Tan in his office around early June 2007. During that first meeting, she confided in Mr Tan everything that had happened to date, including how she had previously been charged and fined in 2005 for operating a massage parlour without a licence. At this time, the applicant had yet to be charged with any offence, but she was concerned about what to do if Corrupt Practices Investigation Bureau ("CPIB") officers called her in for questioning. Mr Tan advised her not to admit anything at all.

8 Subsequently, the applicant was indeed called in by CPIB for questioning over the course of several days, but she did not admit to anything pursuant to Mr Tan's advice. After each interview, she would consult Mr Tan, who would repeat his instructions for her to keep silent and not admit to anything. One month after the CPIB interviews, the applicant and her husband went to see Mr Tan and it was during this meeting that they allegedly paid Mr Tan \$1,000, for which they were not issued a receipt. Mr Tan apparently promised to issue a receipt at the time they met, but had failed to do so. This formed one of the applicant's allegations of impropriety against Mr Tan, but since it has no impact on the issues before me, I will make no further comment.

9 The applicant stated that on 4 July 2007, during one of her interviews with CPIB, she was assaulted by one of her interviewing officers. She was sent to the hospital, where she was treated with painkillers and discharged on the same day. After the incident, the applicant went to see Mr Tan at his office, who very strongly urged her to report the incident. Though the applicant was extremely angry and upset over the assault, she was reluctant to report it because she did not wish to cause any unnecessary problems that might affect her ongoing investigation. However upon further exhortation by Mr Tan, the applicant made a police report.

10 After the applicant made the report, she went to visit Mr Tan again to inform him of what she had done. To her shock and dismay, Mr Tan laughed and said that everyone in the CPIB would hate her henceforth, and that they would all be looking to hurt her. The applicant then asked Mr Tan why he had insisted on her making the report, to which he replied that she should listen and do whatever he said. The applicant did not press matters because she felt that Mr Tan, as a lawyer with over 20 years' experience, would know better than her as to the best way to proceed with the case.

11 In the months between July and December 2007, the applicant admitted that relations between her husband and her were strained to breaking point and they were on the verge of filing for separation. It was during this vulnerable time that she began to view Mr Tan as a friend and advisor; their solicitor-client relationship was such that she could visit him at his office as and when she wanted. The applicant claimed that Mr Tan would always find time to talk to her, although he rarely ever spoke about her pending case with CPIB. On occasion, the applicant would even buy Mr Tan gifts to express her appreciation for his time and reassurance, even though she was struggling to make ends meet.

12 The CPIB formally charged the applicant with eight counts of corruption on 27 December 2007. Immediately after she was bailed out, the applicant and her husband went to see Mr Tan at his office to show him her charge sheet, and to seek his counsel. Mr Tan reassured them that fighting the charges would not be a problem, and that they should definitely contest the charges. In response to the applicant's questions about her court date the very next day, Mr Tan told her not to worry and that he would go to court to handle everything. Mr Tan added that since they knew each other so well, she should tell him how much she could pay him. The applicant tried to get Mr Tan to name a figure, but he refused. In the end, the applicant asked if \$5,000 was suitable, and Mr Tan agreed.

13 On 28 December 2007, the applicant and her husband met Mr Tan at his office and headed to the Subordinate Courts together. At the Subordinate Courts, she took the opportunity to explain to Mr Tan in greater detail the circumstances leading to her previous offence in 2005. After learning more about her antecedent, Mr Tan repeated that the applicant had nothing to worry about, as the two offences were not at all similar, and the previous offence was neither corruption nor theft.

14 After the applicant's charges were read in court, bail was set at \$10,000 and she was put into the lock-up. However, Mr Tan was very proactive in helping her that day, and she was released relatively quickly. Mr Tan then arranged with the applicant another payment of \$2,000 to be made to him later the same day. After this, Mr Tan left as he had other matters to attend to.

15 Between 28 December 2007 and 9 January 2008, the applicant visited Mr Tan at his office several times. During those visits, she brought him numerous documents that she thought might be relevant to her case. She also gave Mr Tan a number of typed accounts of events that had occurred. The applicant noticed that Mr Tan would take these documents, shuffle through them half-heartedly, and leave them haphazardly in a stack on his table. Over the course of her meetings with him during this period, she noticed that Mr Tan did not seem to have filed or looked through the documents given to him. The applicant began to suspect that he had not read any of them, but withheld

comment for fear of offending him. On her next court date on 9 January 2008, the applicant decided to claim trial because she believed she was innocent of the charges brought against her, and her belief was further fortified by Mr Tan's advice. The court then fixed the matter for trial on 12 March 2008.

16 It was during this time that the applicant's mother was warded in a hospital in China, having previously suffered a series of strokes from worrying about the applicant's legal problems. The applicant therefore asked Mr Tan to make an application for her to leave the jurisdiction so that she could visit her mother in China. Upon Mr Tan's application, the court gave leave, but the applicant's bail was raised by \$10,000 as a result. After the applicant discussed the matter with her husband, they concluded that they would not be able to afford the increased bail, and the applicant decided to postpone her trip to visit her mother. However, the applicant was comforted by Mr Tan's reassurance that her case would be over by March 2008.

17 From 9 January 2008 onwards, the applicant alleged that Mr Tan's attitude towards her changed perceptibly. Whereas he had always been warm and helpful towards her, he was now increasingly distant and aloof when she came to see him in his office. On many occasions, he would make excuses to leave, claiming he was busy or had another case to handle. During one of these meetings, the applicant asked Mr Tan what her best course of action would be in the upcoming trial. In response, Mr Tan allegedly told the applicant that she should somehow make two key prosecution witnesses, Chua and Chong, not attend court. He hinted that it would be beneficial for the applicant if she could somehow render their testimonies inadmissible in court. When the applicant asked Mr Tan what he meant, he said that the applicant should look for Chua and persuade him not to testify against her. From the context of the conversations and Mr Tan's demeanour, the applicant gathered that Mr Tan was telling her to bribe or threaten Chua to prevent his testimony.

18 On 9 and 10 March 2008, the applicant went to see Mr Tan at his office. She was still confused over what was going to happen at her trial, and sought some clarification from him. Mr Tan appeared reluctant to discuss the case. When the applicant asked Mr Tan directly how he intended to handle the case, he told her not to worry, and said that he would not have a problem fighting it. He added that even if all the prosecution witnesses showed up, her case would still be fought. The applicant was not uncomfortable with Mr Tan's evasiveness, but trusted Mr Tan to know better owing to his legal expertise and experience. When she asked Mr Tan what she was to do on the day of the trial, Mr Tan told her that she would not have to speak; the more she said, the more she would incriminate herself, and since she had a lawyer representing her, she would have no chance to speak anyway.

19 Because Mr Tan seemed less than forthcoming with information on how he was going to handle her case, and because she was increasingly anxious about the upcoming trial, the applicant sought out her husband to make an appointment to see Mr Tan together on 11 March 2008. The three of them met in Mr Tan's office. Mr Tan claimed that he had just received a call from the Deputy Public Prosecutor ("the DPP") prior to the applicant and her husband's arrival, and that the DPP had offered to reduce the number of charges against the applicant if she chose to plead guilty the next day. Mr Tan intimated that in the many years he had been in practice, he had rarely seen this happen, and that it was very likely that the prosecution had problems proving their case against the applicant. He then told the applicant that this meant that they should definitely contest the case the next day. During the rest of the meeting, Mr Tan still did not explain anything to the applicant. Moreover, the applicant alleged that when she discussed her case with Mr Tan, he seemed unable to recall a number of details about her case, and it appeared that he had not taken any notes of their previous meetings either.

20 The applicant then asked Mr Tan where the documents she had given him were, and added that

the information he was unable to recall had already been given to him during previous meetings. The applicant became very concerned that Mr Tan remained unfamiliar with the documents she had been passing to him. Mr Tan replied that he was quite busy that day, and acted distracted throughout, receiving phone calls and leaving and entering his office. He then dismissed the applicant's comments by stating that he would look through the documents later in the day.

21 On the day of the trial, the applicant reached Mr Tan's office at 7.40am, having arranged to meet him there between 8.00am and 8.30am the day before. Mr Tan's office was closed, although the lights were on. At around 8.40am, the applicant's husband, who had gone to the Subordinate Courts directly, called to inform her that Mr Tan was already there. By this time, the applicant was in a panic, as it was rapidly nearing the time she was due in court. She had to run to the Subordinate Courts from Mr Tan's office.

22 When the applicant and her husband reached Court 7, where they had been told by Mr Tan to wait, there was no one around. Eventually, Mr Tan showed up at Court 7 and informed them that the applicant's hearing had been shifted to Court 15. When they reached Court 15, Mr Tan asked the applicant and her husband to wait outside, and to their great surprise, he then left to take care of other matters. They waited anxiously outside Court 15 for Mr Tan, but when Mr Tan returned, he entered Court 15 without saying a word to them. After a short while, Mr Tan came out and spoke to the applicant's husband in English. Her husband then told Mr Tan to speak to the applicant directly in Mandarin, as she was the accused in the matter.

23 Mr Tan informed the applicant that the prosecution had shown him Chua's bank statements, and that the bank statements indicated that Chua had a sum of \$1,000 deposited into his account every month for a number of months, starting in July 2007. Mr Tan added that the DPP did not usually show the defence evidence like this, as he was not obliged to do so; this meant that the prosecution was confident of winning the trial. Mr Tan claimed further that the DPP was probably trying to be merciful by letting the applicant know how weak her case was, and that it would be in the applicant's best interests to plead guilty. Mr Tan placed further pressure on the applicant by saying that all the prosecution witnesses were present. The applicant retorted that there would be no point in the prosecution coming to court without any witnesses, and insisted on fighting her case.

24 Mr Tan appeared angered by the applicant's decision to proceed with the trial. He started questioning her brusquely, asking her how she intended to defend her case if the witnesses were all present, and even requested that she taught him how to proceed. At this point, Mr Tan informed the applicant that if she were to fight her case in court, she would have to fork out a huge sum of money, but that her case was a "small matter", and if she pleaded guilty, she would face a "\$3,000-\$5,000 fine at most". The prosecution had also agreed to proceed with only three charges against the applicant.

25 The applicant claimed to be very confused and anxious at that point. She told Mr Tan that she was under the impression that he had agreed to charge her a lump sum fee of \$5,000, which included his fees for trial. But Mr Tan ignored this, and maintained that pleading guilty would only benefit the applicant. He then told the applicant he only wanted her to pay the fine because he knew how much she wanted to visit her sick mother in China. The case had already dragged on for a year and caused the applicant's mother to suffer multiple strokes. A protracted trial would delay the applicant's visit to her mother. Mr Tan then reminded the applicant that he was a lawyer with more than 20 years' experience, and asked her who better she had to believe than him.

26 In response to the applicant's comment on his fees, Mr Tan said that for each day spent in trial, he would have to charge another \$1,500, and he knew that the applicant could not afford this,

so it was best for her to plead guilty and accept the fine, which would not exceed \$5,000. Feeling intensely pressured, the applicant discussed the options with her husband. She admitted that she was indeed very keen to return and visit her mother as soon as possible, and eventually, on the strength of Mr Tan's advice that she would receive only a fine, she agreed to plead guilty to the charges.

27 The applicant's husband then asked Mr Tan if he could get the charges reduced further. Mr Tan agreed to try, and finally emerged having successfully persuaded the DPP to reduce the number of charges against the applicant to two. Mr Tan informed the applicant that her plea of guilt would be taken on the next day. The applicant felt very confused about the sudden turn of events, especially now that she would have to plead guilty to offences she claimed she had not committed. She tried to speak to Mr Tan, but he was very curt and told her there was nothing to discuss, and that he would see her the next day instead.

28 The applicant spent the rest of the day mulling over Mr Tan's advice for her to plead guilty. Later that evening, she decided that she did not want to plead guilty. She then tried calling Mr Tan the rest of the night, but he did not answer the phone, leaving the applicant very frustrated. At 7.30am on the morning of 13 March 2008, Mr Tan called the applicant's husband and said he would be arriving at his office soon. Mr Tan showed up slightly past 8.00am. The applicant was highly agitated at all that had happened as well as Mr Tan's attitude towards her case. She asked Mr Tan why his attitude had changed so drastically, and why he had gone from saying that he could definitely fight her case to asking her to plead guilty. Mr Tan seemed reluctant to say very much, instead reiterating that the applicant would receive a small fine if she pleaded guilty, and would be able to return to China to visit her mother. He insisted that it was for the best that the applicant pleaded guilty.

29 Mr Tan added that if the applicant chose to fight the case, the prosecution would bring the eight existing charges against her in sets of two, as opposed to all eight at once, and it would cost her a lot of money to defend the multiple prosecutions, which she could not afford. Mr Tan then said that based on the applicant's current financial status and fragile psychological state, she would not have the strength to fight in court, and if she even made a single mistake, she would lose the case and it would cost her a lot of money. Mr Tan further stated that the applicant had no chance because she was not a "governmental official" and did not have the "necessary connections" to win a case like this; her inability to understand English and the fact that she was from China would further lessen her chances of winning.

30 The applicant felt extremely overwhelmed, but nevertheless told Mr Tan that she wanted to fight the case and not to plead guilty. She felt very strongly that she should not have to be punished because she had not committed the offences stated in the charges. Mr Tan then snapped at her and said that he had already reached an agreement with the DPP. He added that they had already done her a favour by further reducing the number of charges from three to two, and claimed that if the applicant were to change her mind, the judge and the DPP would make her case very difficult for her. Mr Tan reminded the applicant once more that he had been a lawyer for over 20 years, and was therefore very familiar with how the judge and prosecution worked. He maintained that he was telling her to plead guilty for her own good, and that she did not know as well as he did how hard it would be on her if she chose to fight. The applicant was overwhelmed and unhappy at this, but did not see how she had much of a choice, given all that Mr Tan was telling her. She then left with her husband, having agreed to meet Mr Tan at the Subordinate Courts at 2.00pm, half an hour before her hearing was due to begin.

31 That afternoon, the applicant and her husband waited outside the court for Mr Tan. By the time the latter showed up, it was already half an hour past the time her hearing was supposed to begin.

During the hearing proper, the court interpreter read out the prosecution's statement of facts to the applicant; to her surprise, the facts that were read were not even close to what had actually happened. When the court interpreter read that it was the applicant who had come up with the idea of setting up the massage parlour, and that she had approached Chua instead of the other way around, the applicant could not contain her surprise any longer. She spoke up, and clarified that it had been Chua who had approached her. Upon hearing the applicant's protestation, the district judge stood the matter down for the parties to sort things out.

32 Whereupon Mr Tan came over to the applicant and snapped at her, saying that it made no difference to the court whether she had approached Chua or *vice versa*. Mr Tan claimed the only salient fact was that the applicant had given money to Chua. Mr Tan added that he had warned the applicant before not to say anything in court, lest she incriminated herself further, and reprimanded her for having spoken up. When the learned judge reconvened, Mr Tan informed the court that he had conferred with the applicant and she had admitted that she was the one who had approached Chua.

33 The applicant claimed she was completely bewildered at this turn of events. The statement of facts suggested that the applicant had given Chua money in return for his registering the business under his name, but this was something she had never done. The statement of facts also alleged that she had given money to Chong in return for his taking over the business, and this confused the applicant further, because she had only seen Chong twice before, and had never paid him any money at all. However, in deference to what Mr Tan had instructed her, the applicant decided to keep silent as the rest of the statement of facts was read to her. When the court interpreter had finished reading the statement of facts, the applicant was asked whether she understood and admitted to the contents thereof. She did not understand what was going on, and nothing that Mr Tan had said in their numerous meetings before helped to shed any light on this. But again, in accordance with Mr Tan's instructions to her, she indicated her assent.

34 Immediately after the district judge had read out her sentence, the applicant saw Mr Tan packing up his notes in a hurry. He then came over and told her that she would only be in jail for six to seven months instead of the full ten months after deducting time off for good behaviour. Thereafter, Mr Tan left.

35 The applicant was put in jail on 13 March 2008 at around 4.00pm. She spent the next two days in prison, unable to understand what had happened, and wondering when Mr Tan and her husband would come and bail her out. During this time in jail, she thought about everything that had happened between Mr Tan and her. She felt that she had been tricked into pleading guilty, and that Mr Tan had betrayed her trust in him. Everything she had said and done during the hearing was based on Mr Tan's instructions, and the latter had reassured her that everything would be alright, and that her case would be fought and over by March 2008. His subsequent and severe change in position, on the first day of trial, therefore took her by complete surprise.

36 More significantly, even though Mr Tan had led the applicant to believe that she would only receive a fine for pleading guilty, she had wound up with a 10-month jail sentence instead. She also recalled how even on the day of her sentencing, Mr Tan appeared unable to locate the documents that he required. The applicant was very angry and upset, and she did not understand why Mr Tan had not stayed behind to give her husband advice on bailing her out as he had done before. Instead, he had practically run out of the court as soon as the district judge delivered the sentence.

37 The applicant was overwhelmed with worry and despair at this point. She felt she had been falsely tricked into taking a plea of guilt, and needed to bring Mr Tan's actions to light in order to exonerate herself. However, she realised that there had been no witnesses to the interactions

between Mr Tan and her, apart from her husband, and she did not think that anyone would believe her word against Mr Tan's, since he was a lawyer of over 20 years' standing. The applicant therefore decided to record a conversation between Mr Tan and her. She was reluctant to do it, as she was aware that making such a recording without Mr Tan's permission was not the right thing to do. But the applicant felt that she had no choice, as her back was against the wall and she was facing a jail sentence she was certain she did not deserve. She was also convinced that this was the only way in which a court would take her word over Mr Tan's.

38 On 17 March 2008, the applicant visited Mr Tan at his office with a recorder hidden in her bag. She claimed Mr Tan was taken aback to see her, and seemed cautious with his words that day compared to his demeanour during their previous interactions. He kept a distance from her, which the applicant said resulted in some indecipherable portions in the recording. The applicant subsequently got the conversation transcribed and translated from Mandarin to English, and a copy of this was annexed to the applicant's affidavit.

39 We will return to the contents of the conversation between the applicant and Mr Tan subsequently, but it suffices at this juncture to summarise the applicant's material accusations against her former counsel:

(a) Mr Tan had wrongly advised and/or misled the applicant that only a fine would be imposed on her if she pleaded guilty; and

(b) Mr Tan had placed the applicant under very real and substantive pressures prior to and at the time she pleaded guilty.

Mr Tan's response

40 Rule 71 of the Legal Profession (Professional Conduct) Rules (Cap 161, R1, 2000 Rev Ed) provides:

Allegations against another solicitor

71.—(1) An advocate and solicitor whose client has given instructions to include in an affidavit to be sworn whether by the client or his witness, an allegation made against another advocate and solicitor, shall give the other advocate and solicitor an opportunity to answer the intended allegations.

(2) In such a case, the answer of the other advocate and solicitor shall be included in the affidavit before the same is deposed to, filed and served.

[emphasis in original]

Accordingly, the applicant's new solicitors sent a letter dated 4 July 2008 to Mr Tan's firm, marked for his personal attention and enclosing *inter alia* a draft copy of the applicant's affidavit, inviting Mr Tan to make his response to the same (for the appropriate procedure when an appellate court investigates allegations of this nature, see *Thong Sing Hock v Public Prosecutor* [2009] SGHC 47 ("*Thong Sing Hock*") at [30]-[34].

41 Subsequently, Mr Tan's own solicitors sent a letter dated 7 August 2008 to the applicant's new counsel, which contained Mr Tan's response to the applicant's allegations. I will now briefly recount Mr Tan's version of events.

42 In his reply, Mr Tan stated that when the applicant first saw him prior to 28 December 2007, it was specifically made known to her that the outcome of her criminal liability would depend on her statements made to the investigating body and the evidence of Chua and Chong.

43 On 27 December 2007, the applicant informed Mr Tan she would be charged in court. The next day, he represented her in court, and ascertained that she was facing eight charges. The applicant did not give a plea to the eight charges and the case was fixed for pre-trial conference. Mr Tan said that based on the applicant's instructions, trial dates were requested and the case was consequently fixed for hearing from 12 March to 14 March 2008.

44 Mr Tan stated that he informed the applicant, following her enquiry, that each charge carried a penalty of a fine or imprisonment, and that the final decision on whether to contest the charges would depend on whether Chua or Chong would corroborate the CPIB's allegations.

45 On 12 March 2008, Mr Tan represented the applicant in court. After discussing with the DPP and upon a review of the evidence for the prosecution, Mr Tan advised the applicant that the prosecution had a strong case and that under the circumstances, she should consider taking "a certain course on the charges". If she did, Mr Tan would further negotiate with the prosecution to proceed only on two charges, with the other six taken into consideration for the purpose of sentencing. The applicant accepted Mr Tan's advice, and the court adjourned the case to the following day. On 13 March 2008, the applicant pleaded guilty to the two charges proceeded with. She was sentenced to five months' imprisonment on each of the two charges, with both sentences to run consecutively, despite Mr Tan's mitigation plea to the district judge to exercise leniency and impose fines on each of the charges.

46 Apart from the above account of events, Mr Tan gave a blanket denial to the applicant's allegations, and chose only to respond specifically to three aspects. The first was in relation to the applicant's accusation that she had paid Mr Tan \$1,000 sometime in June 2007, but was never issued a receipt (see [\[8\]](#) above). Mr Tan claimed that no payment was received in June 2007, but the applicant did pay him \$1,000 on 1 February 2008, for which she was issued a proper receipt. As I have said earlier (at [\[8\]](#)), the disposal of this application does not require me to make a determination on this point.

47 Second, Mr Tan referred to the applicant's allegation that he had pressured her into pleading guilty by assuring her that she would only be fined for the offences she was charged with. Mr Tan stated that he explained the possible penalties for each offence to the applicant, and that no promises were made nor pressure applied to get her to plead guilty. The applicant made her decision after Mr Tan had indicated to her on the morning of 12 March 2008 that in his opinion, the prosecution had a strong case against her, and her chances of succeeding were therefore rather slim.

48 Finally, Mr Tan denied the applicant's allegation that he had advised her to tamper with the two prosecution witnesses, Chua and Chong.

The prosecution's case

49 The prosecution, understandably, opposed the application. With respect to the applicant's allegations *vis-à-vis* Mr Tan, the prosecution urged me to treat the contents of the applicant's

affidavit, as well as the transcript of the conversation between the applicant and Mr Tan, with circumspection. It pointed out that Mr Tan had denied the allegations, and added that Mr Tan's seniority in the bar lent weight to his credibility. Nonetheless, the prosecution did admit that it was "in no position to ascertain the truth or otherwise of the [applicant's] claims".

50 Second, the prosecution argued that the applicant had not been placed under any real and substantive pressure. Instead, her decision to plead guilty had stemmed from her own desire to end proceedings quickly and her mistaken belief that she would only get a fine, and to that extent, was merely self-induced. In any event, the prosecution emphasised that the applicant could have rejected Mr Tan's advice and fought on in the hope of obtaining an acquittal by insisting her innocence; there was nothing to suggest that she could not have discharged Mr Tan and instructed new counsel if the matter proceeded to trial.

51 Third, the prosecution maintained that each of the three procedural safeguards meant to ensure the validity of a plea of guilt had been adhered to, and the applicant's plea of guilt had therefore been valid. It then followed that there was no serious injustice in this case that called for the exercise of the High Court's revisionary powers.

The applicable principles of law

52 The High Court's power of criminal revision is provided for in s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), and supplemented by ss 266-270 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed): see *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR 383 ("*Yunani*") at [44]. This power is to be exercised "sparingly"; in other words, not all errors by a lower court should lead to a revision of that court's decision: *Ma Teresa Bebango Bedico v Public Prosecutor* [2002] 1 SLR 192 ("*Ma Teresa*") at [8]; *Yunani* at [47]. The threshold requirement, according to Yong Pung How CJ (as he then was) (in *Ma Teresa* at [8]), is that of "serious injustice": see also *Yunani* at [47]-[49]. This requirement of "serious injustice" similarly applies in cases where criminal revision is sought to overturn a conviction flowing from a plea of guilt: *Yunani* at [50].

53 The crucial question in this case, as it was in *Yunani* (at [50]), is whether the pressures faced by the applicant to plead guilty and/or the doubts raised as to the truth of the applicant's guilt should be construed as "serious injustice" which would warrant an exercise of the High Court's power of revision. I must however emphasise that we are concerned here only with the first limb of the question, viz. whether the pressures faced by the applicant to plead guilty should be construed as "serious injustice". I am aware that an application of this nature necessarily proceeds on the basis that the accused was innocent of the offence(s) he was charged with (else any exercise of the court's revisionary power would be an exercise in futility), and the applicant's affidavit did set out in substantial detail the circumstances leading to her being charged, which if true, demonstrated her innocence. However, in the absence of corroborating evidence from other witnesses, or testimony from the investigating officers, I did not think it was appropriate to make an inquiry into whether there were doubts raised as to the truth of the applicant's guilt. Indeed, the applicant's counsel did not proceed on this limb either but instead, focused on the substantial pressures faced by the applicant to plead guilty.

Whether the applicant had been placed under very real and substantial pressures by Mr Tan

54 It was the applicant's case that her previous counsel, Mr Tan, had pressured her into pleading guilty, and this pressure was manifested in several forms. This included Mr Tan allegedly telling the applicant on the day of the trial that the DPP had shown him some evidence which revealed the prosecution's confidence in securing a conviction, and then advising the applicant to plead guilty (see

[23] above); telling the applicant on the same day that proceeding to contest the charges would cost her a huge sum of money, as compared to a \$3,000 to \$5,000 fine at most if she pleaded guilty (see [24] above); reminding the applicant of her desire to end matters and return home to visit her ill mother, and using his seniority and experience as a means of persuasion (see [25] above); informing the applicant that the prosecution would only proceed on three charges if she pleaded guilty, and then apparently successfully persuading the prosecution to reduce the three charges further to two (see [24] and [27]). The applicant alleged that Mr Tan continued to persuade the applicant to plead guilty the next morning, despite the applicant having expressed a desire to maintain her innocence, by suggesting that the prosecution could bring the eight existing charges against the applicant in sets of two and putting the applicant to considerable expense in defending the multiple prosecutions (see above at [29]). Another instance involved Mr Tan allegedly telling the applicant to ignore discrepancies in the statement of facts as being unimportant, after the statement of facts had been read to the applicant and she had sought to clarify parts of it (see [31] and [32] above).

55 The prosecution sought to draw a distinction between dispensing credible legal advice and pressuring one's client to plead guilty (see *Lee Eng Hock v Public Prosecutor* [2002] 1 SLR 364 at [10]), and painted Mr Tan's behaviour as the former. It also submitted that the applicant's decision to plead guilty stemmed in part from her desire to end proceedings quickly and return home to visit her sick mother, and this was not the result of counsel's pressure, but self-inducement. I was also reminded of VK Rajah JA's ("Rajah JA") pronouncement in *Yunani* at [61]:

I should add that, save in extraordinary cases, alleged pressure on an accused to plead guilty will be difficult to establish.

[emphasis added]

56 Nonetheless, I disagreed with the prosecution. I accept that seen in their singular contexts, each of the several alleged instances of pressure might not have amounted to such. But to determine whether pressure was indeed exerted on the applicant and whether the pressure must have weighed on her mind, resulting in her decision to plead guilty, one must have regard to the totality of the situation in evaluating the strength of that pressure.

57 The applicant, though not exactly a stranger in a foreign land, was certainly unfamiliar with English as a spoken language. This was proven by the fact that she required an interpreter during her court proceedings. The plight of the applicant's mother would also have played on the applicant's mind, and it would not have helped if it were true that Mr Tan repeatedly reminded the applicant of that circumstance. Mr Tan's alleged warning about the amount of money required to contest the charges would only have caused further stress to the applicant. Quite apart from these examples, Mr Tan's alleged conduct during the proceedings would probably left the applicant feeling even more cornered. First, there were the persistent referrals to his own experience and seniority. Second, Mr Tan gave his interpretations of the DPP's behaviour, all of which alarmed the applicant. These evaluations of the prosecution generally followed Mr Tan's interactions with the DPP, and from the point of view of the applicant, could only have served to unsettle her.

58 These circumstances, viewed in their complete context, supported my conclusion that the applicant could have faced real, concrete and overwhelming pressures that culminated in her plea of guilt. In the process, I did not forget the prosecution's caveat that the applicant's affidavit evidence, though sworn, should be viewed with some degree of circumspection. However, apart from the prosecution's legal submissions, the only other evidence I had before me was Mr Tan's letter in reply, which was lacking in details. While Mr Tan's response contained a categorical denial, he did not address specifically the applicant's allegations about remarks supposedly made by him to her, or about

his conduct during the trial. Consequently, the only relevant evidence I had on record was the applicant's affidavit, and the weight with which I should attribute to this evidence in turn rested on my assessment of its credibility in the light of the limited evidence before me.

Credibility of the applicant's evidence

59 The applicant's evidence is not devoid of credibility; in particular, the record corroborated several facets of the applicant's allegations. First, one of the allegations implicit in the applicant's affidavit was that Mr Tan had failed to conduct her case diligently; documents and information given by the applicant to Mr Tan in advance of the trial had apparently not been read or recorded. Specifically, the applicant stated in her evidence (see above at [\[16\]](#)) that her mother had suffered a series of strokes. In all likelihood this fact would have been communicated to Mr Tan for the purpose of preparing the applicant's mitigation plea. However, the district judge's notes of evidence recorded the following during the mitigation plea:

... To add to her financial woes, *[the applicant's] mother has contracted cancer and is now terminally ill.* [emphasis added]

The applicant tendered several medical reports from hospitals which had treated her mother, and those reports show symptoms of stroke rather than cancer. The corroborative value of this evidence certainly could not be easily dismissed.

60 Second, the applicant was adamant that the statement of facts contained details inconsistent with the truth, and it was her evidence that she had sought to clarify this discrepancy during the reading of the statement of facts in court. Again, this was corroborated by the district judge's notes of evidence, which stated:

[Applicant] pleads guilty to the charges.

[Applicant] admits to the offences set out in the charges without qualification.

[Applicant] understands the nature and consequences of guilty plea.

Statement of facts read by APP to the [applicant], translated into Mandarin.

[Applicant]: *Re paragraph 5 of statement of facts, it is not correct; it was Chua who came up with the idea and that arrangement would be fine.*

[emphasis added]

61 I note that during oral submissions before me, the prosecution had stated that an allegation made by the applicant in her transcribed conversation with Mr Tan, that the DPP and Mr Tan had approached her during a court intermission to persuade her to plead guilty, had been denied by the DPP (Assistant Public Prosecutor Kalidass) and the investigating officer. This assertion did not take the form of an affidavit, as the prosecution candidly admitted (though it was willing to file one if necessary), but even if I accept the denial at face value, it did not detract from the other evidence. Just because the applicant's allegation in this regard was untrue, it did not follow that her other statements were also false, and indeed, two of them were corroborated by supporting evidence.

Conclusion

62 As Rajah JA so eloquently espoused recently in *Thong Sing Hock* (at [\[1\]](#)):

The price for a credible criminal justice system is eternal vigilance. In paying that price, the various stakeholders can from time to time be considerably inconvenienced whenever efforts are made to verify an accused's complaints. Neither the courts nor the Prosecution should balk at inquiring into all apparently serious grievances made at any stage of the proceedings. In particular, when grave allegations such as improper pressure by counsel to plead guilty are raised, *the court should not, as a matter of course, dismiss such allegations outright unless they are inherently unbelievable or unsupportable on the facts.*

[emphasis added]

In the circumstances, I could not dismiss the applicant's allegations as inherently unbelievable or unsupportable on the facts. On the contrary, there was evidence to suggest that the applicant had been placed under real and substantial pressures to plead guilty.

63 I was satisfied that it would have been unsafe to uphold the applicant's conviction and therefore set aside the conviction and remitted the case back to the District Court for a retrial. Original bail pending trial was set at \$10,000 in one surety with the condition that the applicant surrendered her passport.

64 I noted further that the applicant has made serious allegations against Mr Tan, and that it would be in his interest to clear his name. Thus, I also ordered the applicant's counsel to send the applicant's affidavit and other affidavits filed in support of this application, along with a copy of the recording to the Law Society for the council to decide whether any further action is necessary.

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