R Alagiyasolan v Public Prosecutor
[2006] SGHC 40

Case Number : MA 137/2005

Decision Date : 08 March 2006

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Palaniappan S (Straits Law Practice LLC) for the appellant; April Phang (Deputy Public Prosecutor) for the respondent

Parties : R Alagiyasolan — Public Prosecutor

Evidence – Weight of evidence – Substitution of statements for oral evidence – Whether safeguards in s 147(6) Evidence Act followed – Whether trial judge placing undue weight on statements – Section 147(6) Evidence Act (Cap 97, 1997 Rev Ed)

Immigration – Employment – Overstayer – Appeal against conviction of offence under s 57(1)(e) Immigration Act for employing overstayer – Defence in s 57(9) Immigration Act not pleaded – Whether due diligence test in s 57(10) Immigration Act applicable – Whether conviction should be overturned – Sections 57(1)(e), 57(9), 57(10) Immigration Act (Cap 133, 1997 Rev Ed)

8 March 2006

Yong Pung How CJ:

1 The appellant was convicted on a charge of employing an illegal immigrant under s 57(1)(*e*) of the Immigration Act (Cap 133, 1997 Rev Ed) ("the Act") and sentenced to 12 months' imprisonment. The appellant appealed against conviction only. I dismissed the appeal and now give my reasons.

Background facts

2 The appellant had employed one Anthony Samy s/o Arokia Samy ("Anthony"), an Indian national who had entered Singapore on 21 August 2004 and remained here illegally after the expiry of his social visit pass. The charge against the appellant read as follows:

> You, … are charged that you, from October 2004 till 23 November 2004, at "The Madeira Condominium" located along Bukit Batok Street 31, Singapore, did employ one Anthony Samy S/O Arokia Samy, M/23 yrs, an Indian national, as a security guard, whom you had reasonable grounds for believing to be a person who had remained unlawfully in Singapore after the expiry of his social visit pass on 4 September 2004, in contravention of s 15(3) of the Immigration Act (Chapter 133), and you have thereby committed an offence under Section 57(1)(e) of the Immigration Act Chapter 133, punishable under Section 57(1)(ii) of the said Act.

3 At the material time, the appellant was the operations manager of Jacin Security Services ("JSS" or "the company"), a company licensed by the police to provide security services. Under its licence, JSS is permitted to employ Singaporean and Malaysian citizens as security guards. JSS is owned by one Ramani s/o Murugiah ("Ramani") and provides security services to, *inter alia*, The Madeira, a condominium located along Bukit Batok Street 31 ("the condominium"). Sivakami d/o Moorli ("Sivakami") was employed as a supervisor by JSS and was the supervisor in charge of the security guards at the condominium.

4 The appellant received a salary of $1,000 to $1,200 a month and his tasks included the

recruitment and deployment of manpower, liaising with clients and effecting salary payments to security guards. It was his duty to obtain an applicant's personal particulars, photograph, copies of educational papers and testimonials, so as to submit an application to the Licensing Division of the Singapore Police Force ("the Licensing Division") for approval to employ the applicant. An additional clearance certificate from the Malaysian government or work permit was required of applicants who were Malaysian citizens. Under reg 12(1)(*b*) of the Private Investigation and Security Agencies Regulations (Cap 249, Rg 1, 2000 Rev Ed) ("the Regulations"), only after approval had been obtained could the applicant be employed by the company as a security guard.

5 Anthony was introduced to Sivakami by a friend and subsequently stayed at Sivakami's flat in Choa Chu Kang Central for a rental fee of $150 a month. It was undisputed that Sivakami knew Anthony was an Indian national. Sivakami offered Anthony work as a relief security guard at the condominium and he started work on 11 October 2004. Anthony worked two to three days a week and was remunerated the sum of $35 a working day or $1,050 a month.

6 Anthony was arrested on 23 November 2004 when the police conducted a raid on Sivakami's flat. He pleaded guilty to an offence under s 15(3)(*a*) of the Act for unlawfully remaining in Singapore for 79 days and was convicted and sentenced to one month's imprisonment. Sivakami pleaded guilty to having abetted the appellant in employing Anthony and another illegal immigrant and agreed to have two other charges of harbouring Anthony and the other illegal immigrant taken into consideration for the purpose of sentencing. Sivakami was convicted and sentenced to serve a total of nine months' imprisonment.

Evidence at the trial below

Anthony's evidence

7 Anthony was the Prosecution's main witness at the trial below. In a statement to the police recorded on 29 November 2004 (P8), Anthony stated that he received his salary on three occasions:

(a) $100 on 20 October 2004;

(b) $550 on 4 November 2004; and

(c) $200 on 22 November 2004.

He received his salary from the appellant directly on the first two occasions and from Sivakami on the third. Anthony also stated that he had paid Sivakami rent on four occasions:

(a) $100 when he shifted in;

(b) $50 about four days later;

(c) $150 in November 2004 after he received his salary; and

(d) $175 after he received $200 from her.

8 The relevant question and answer portion in Anthony's statement (P8) is as follows:

Q 17: When did [the appellant] first meet you?

A 17: He met me about 3 days after I started work. It was sometime about 14 October 2004 in

the morning. He saw me at the guard house. He asked me whether I am the new worker brought in by [Sivakami]. … He also asked me to submit a copy of a Singapore IC and two photos.

…

Q 20: Does [the appellant] know that you are an Indian national?

A 20: Yes. He did ask me where I am from and I replied that I am from India. He told me not to identify myself as an Indian national.

9 The relevant portions of Anthony's further statement to the police recorded on 6 December 2004 (P8A) are reproduced below:

Q 5: Did [the appellant] tell [Ramani] anything about you?

A 5: [Ramani] asked [the appellant] whether I am an Indian national or local. [The appellant] replied that I am a younger brother of a Singaporean friend. I heard the conversation and understood it as it was in Tamil.

…

Q 8: Did you introduce yourself as a Malaysian to [the appellant]?

A 8: No.

…

Q 13: Does [the appellant] know that you are an Indian national?

A 13: Yes. I told him.

Q 14: Does [the appellant] know that you were staying at [Sivakami's] house?

A 14: Yes. [Sivakami] have spoken to [the appellant] asking for the rent amount to be paid directly to her from my salary. I told [the appellant] not to do so and that I would pay her once I received my salary.

Anthony twice testified that he had given both statements voluntarily.

10 At trial, however, Anthony's evidence was that he first met the appellant at the condominium on 13 October 2004, when the appellant asked him for his photograph and National Registration Identity Card ("NRIC"). He told the appellant that he did not have these documents with him and would hand them to the appellant in two days. Subsequently, neither the appellant nor Sivakami asked Anthony to produce the documents and Anthony did not see the appellant again. Anthony testified that since the appellant asked for his NRIC, the appellant must have assumed he was a Singaporean and therefore did not ask him what his nationality was. Anthony also testified that he did not say anything in reply to the question posed by the recorder of his statement (P8) as to whether the appellant knew that he was an Indian national. He explained to the court that he told Sivakami that he was an Indian national and wanted a job and thought Sivakami would have related this to the appellant.

11 Anthony further testified that he did not receive his salary directly from the appellant.

Sivakami would collect his salary on his behalf, deduct the rental moneys due to her and hand the balance to him. He said that his entire salary from the time he started work until his arrest was $550, and that he only received two payments from Sivakami totalling $325 after she deducted the rental moneys due to her. He denied saying in his statement (P8) that the appellant paid him directly on two occasions.

12 On further examination by the Prosecution, Anthony said that on 22 November 2004, the night before his arrest, he asked Sivakami how was it that he had not received any salary, and was told that his rental sum had been deducted from his salary. He then said he remembered that on the eve of his arrest, Sivakami collected $225 and paid him $40 after deducting the rental sum.

13 In view of the patent inconsistencies between Anthony's statements (P8 and P8A) and his testimony, the Prosecution applied to cross-examine Anthony after he was allowed, pursuant to s 161 of the Evidence Act (Cap 97, 1997 Rev Ed), to refer to his statements to refresh his memory. The application was allowed and after refreshing his memory, Anthony confirmed the three occasions on which he received his salary, namely, $100 on 20 October 2004, $550 on 4 November 2004 and $200 on 22 November 2004. Anthony clarified, however, that what he meant by the appellant paying him "directly" was that the appellant paid his salary over to Sivakami in his presence. Sivakami would immediately deduct the rent owed to her and give Anthony the balance on the spot. He repeated that the appellant had asked him where he was from and he reported that he was from India, whereupon the appellant told him not to identify himself as an Indian national.[note: 1] Anthony clarified that when the appellant *first* asked him for his NRIC and photograph, he thought that the appellant did not know that he was an Indian national.

14 On cross-examination by counsel for the Defence, Anthony testified that the appellant only spoke to him on the one occasion on 13 October 2004 when the appellant asked for his NRIC and photograph, and he agreed to give the documents to him two days later even though he had no valid identification documents. Anthony had also seen the appellant come by the guardroom on about three occasions; Anthony saw the appellant at close range on two occasions and at a distance on one occasion. On the occasions that Anthony saw the appellant at close range, the appellant had come to "hand over the salary to Sivakami".

15 Anthony also testified that he witnessed the proprietor of JSS asking the appellant who he was, remarking that he looked like someone from India, to which the appellant replied that he was the brother of a Singaporean friend. Both Ramani and the appellant subsequently testified, however, that such a conversation had never taken place.

16 Surprisingly, Anthony then testified that he had never told the appellant that he was an Indian national but had only assumed that the appellant knew he was an Indian national.[note: 2] Anthony explained his answers to Question 20 in his statement (P8) and Question 13 in his further statement (P8A) (see [8] and [9] above) by saying that on the two occasions in the guardroom when the appellant came to pay Sivakami Anthony's salary, the appellant had remarked to Sivakami in Anthony's presence that Anthony looked like an Indian national. On the first occasion, Anthony did not reply to the appellant's remark; on the second occasion, Anthony's reply that he was an Indian national was directed at Sivakami, not the appellant.[note: 3] He assumed that whatever remark he made to Sivakami "would be directed to the [appellant] somehow". Anthony affirmed, however, that he remembered the appellant directly telling him not to identify himself as an Indian national.[note: 4]

17 On further cross-examination, Anthony testified that the appellant had never told him not to identify himself as an Indian national. According to Anthony, it was Sivakami who told him not to identify himself as an Indian national but "I understood it as the [appellant's] view coming to me from

Sivakami".[note: 5] Anthony concluded at the end of his cross-examination that the appellant would not have known that he was an Indian national.

18 At the conclusion of Anthony's testimony, the court granted the Prosecution's application made pursuant to s 147(3) of the Evidence Act to substitute Anthony's oral evidence with the evidence in his statements (P8 and P8A).

The appellant's evidence

19 The Prosecution also adduced in evidence the appellant's statement to the police (P10) recorded on 1 December 2004 and further statement (P10A) recorded on 17 January 2005. It was not disputed that both statements had been voluntarily recorded. The appellant had stated in P10 that one "Syed" had recommended Anthony to him and that he interviewed Anthony for the post of security guard. The appellant then stated in P10A that it was actually Sivakami who had recommended both Anthony and Syed to him; Sivakami had previously asked the appellant not to tell the police that she had recommended them to him. In both statements, the appellant stated that Anthony had introduced himself as a Malaysian and that he had chased Anthony for his identification documents but Anthony kept delaying in giving them to him. The appellant did not send Anthony's particulars for screening with the Licensing Division as Anthony did not want to make Central Provident Fund ("CPF") contributions. The appellant stated that he had no idea that Anthony was an Indian national and would not have employed him had he known this. In his cautioned statement (D1) under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) adduced by the Defence, the appellant stated that he was unaware the Anthony was a foreign national who had overstayed.

20 In his defence, the appellant stated that his duties also required him to visit the various sites to which JSS provided security services. He visited each site about once or twice a week but gave the site supervisors the responsibility to run their sites. The supervisors were delegated with powers to recruit security guards and pay the guards' salaries on the appellant's behalf. Sivakami had called to inform him that Anthony had started working at the condominium on 11 October 2004 and that he was staying with her. The appellant stated that the only time he had spoken to Anthony was on 13 October 2004 at Rear Gate No 2 of the condominium. Anthony was wearing a security guard's uniform. The appellant spoke to Anthony in English and asked for two of his photographs, his NRIC and education certificates. He also explained the pay structure to Anthony and that JSS would pay his CPF contributions after he had been employed for three months according to the company's practice. The appellant did not ask Anthony for his NRIC again after 13 October 2004, attributing this omission to carelessness, busyness and having been under tremendous pressure as he was a one-man show at work and his wife was about to give birth to their second child. He nevertheless admitted that it was a simple procedure to ask an applicant for his NRIC, verify his identity and fill out the application form for the Licensing Division and that the entire process took all of five to ten minutes. He claimed that he had intended to submit Anthony's application to the Licensing Division at the end of November 2004.

21 The appellant denied having asked Anthony where he was from or telling him not to identify himself as an Indian national. He also denied the incident in the guardroom when he commented that Anthony looked like a foreigner or having heard Anthony's reply that he was an Indian national. The appellant testified that it was only upon being informed of Anthony's arrest that he realised that Anthony was an Indian national. He claimed that he had no reason to believe that Anthony was an illegal immigrant as he had offered Anthony the same salary of $1,050 paid to all guards. Anthony had worked as a relief security guard for about 15 to 20 days before his arrest. The appellant testified that he made the payments of Anthony's salary through Sivakami.

22 The appellant claimed he had believed Anthony to be a Singaporean because when he asked Anthony for his NRIC and photograph in English Anthony replied "okay" and said he would pass them to Sivakami. He was reinforced in his belief because of Anthony's behaviour and attire and because Anthony could understand and speak English and Malay. During the appellant's ten or more visits to the condominium, he had seen Anthony speaking in Malay to the residents at Rear Gate No 2 of the condominium. The appellant denied asking Anthony where he was from and whether he was an Indian national. He also denied telling Anthony not to identify himself as an Indian national. The appellant explained that he had said in his statements (P10 and P10A) that Anthony told him he was a Malaysian because Sivakami had pleaded with the appellant to help her by informing the police that he believed Anthony to be a Malaysian because the government would seize her flat. The appellant maintained that he had no idea that Anthony was an Indian national until Anthony's arrest.

2 3 The appellant admitted that he had not exercised due diligence in ascertaining the true identity of Anthony before allowing him to work as a security guard, but denied that he had reasonable grounds to believe that Anthony was an Indian national.

24 The Prosecution did not call Sivakami to testify and offered her as a witness to the Defence, but Sivakami was not called as a Defence witness.

The decision below

25 In view of the evidence, the trial judge noted that the only issue to be determined was whether, in employing Anthony as a security guard, the appellant either knew or had reasonable grounds to believe that Anthony was an immigration offender: *Assathamby s/o Karupiah v PP* [1998] 2 SLR 744; *Tamilkodi s/o Pompayan v PP* [1999] 1 SLR 702.

2 6 The trial judge further stated that the appellant as the operations manager of JSS was required under the Act to exercise due diligence before employing a (foreign) worker, as stipulated by s 57(9) of the Act, which reads:

> In any proceedings for an offence under subsection (1)(*e*), it shall not be a defence for the defendant to prove that the person employed by him was in possession of a pass or permit issued to the person under this Act or the regulations unless the defendant further proves that he had exercised due diligence to ascertain that the pass or permit was at the material time valid under this Act or the regulations.

Section 57(10) of the Act further provides:

> For the purpose of subsection (9), a defendant who is charged with an offence under subsection (1)(*e*) shall not be deemed to have exercise[d] due diligence unless the defendant —
>
> (*a*) has inspected the permit or pass issued to the person employed by him;
>
> (*b*) has checked the permit or pass to ascertain that the particulars on the passport of the person employed by him materially correspond with the particulars set out in the permit or pass; and
>
> (*c*) where the person employed by him is a holder of a visit pass, has reasonable grounds for believing that the person had, at the material time, in force a work permit issued under the Employment of Foreign Workers Act (Cap. 91A) or had obtained the written consent of the Controller.

2 7 The trial judge opined that if the appellant indeed believed Anthony to be a Singaporean, he should have insisted that Anthony produced his NRIC on the ten or so occasions that he had visited the condominium and seen Anthony working as a security guard. Alternatively, if he believed Anthony to be a Malaysian as he stated in his statements (P10 and P10A), he should have required Anthony to produce his NRIC and work permit to him in order to satisfy himself that Anthony could be legally employed. The appellant did neither. The trial judge thus found that Anthony had not exercised due diligence in the circumstances.

2 8 The trial judge held that the only reasonable inference to be drawn from the appellant not having insisted that Anthony produce his photographs and NRIC to him and not having submitted an application to the Licensing Division for approval of Anthony's employment as a security guard was that the appellant knew or had reason to believe that Anthony was an immigration offender who could not be legally employed. As Anthony could not produce any identification papers, it would have served no useful purpose to submit an application to obtain approval of Anthony's employment.

2 9 The trial judge further held that the appellant had evidently wilfully shut his eyes to the fact that Anthony was an immigration offender, as had he confronted Anthony and persisted in obtaining proper identification from him, he would have easily discovered that Anthony was an Indian national who had illegally overstayed in Singapore and could not be legally employed. Even Defence witness Selvarajah Janathan testified that when he sought employment as a security guard with JSS, he was required to and had produced his Singapore Permanent Resident NRIC to the appellant for inspection after working for about a week. The trial judge found it peculiar that the appellant did not see to it that Anthony produced the requisite documents to him to inspect, particularly when he knew that he would be contravening the Regulations.

30 The Prosecution's second witness, Ramani, had testified that, during the material time, it was possible for an applicant to commence work as a security guard pending approval as there was a grace period of two to four weeks to submit an application to the Licensing Division. JSS would be penalised by the Licensing Division if it employed a security guard after the grace period without approval. The trial judge however found the appellant's defence that he had a grace period of two to four weeks to submit Anthony's application to be unmeritorious as the appellant had exceeded the time allocated to him to do so. The trial judge found the appellant's excuses of being overloaded with work to be without merit. The appellant had acted in contravention of the Regulations by deliberately employing Anthony without the approval of the Licensing Division. Had Anthony not been arrested, he would probably still be working as a security guard without proper approval.

3 1 The trial judge disbelieved the appellant's defence that he believed Anthony to be a Singaporean as the appellant had in his own statement (P10) recorded on 1 December 2004 stated that Anthony told him that he was a Malaysian. The trial judge further disbelieved the appellant's oral explanation that Sivakami pleaded with him to lie to the police that Anthony was a Malaysian as she was not called by the Defence to testify that she had done so. If the appellant's explanation was to be believed, it would mean that he had deliberately lied to the police that Anthony told him he was a Malaysian and had kept up the lie when the further statement (P10A) was recorded from him more than six weeks later on 17 January 2005. Even upon being informed of the charge against him for an offence under s 57(1)(*e*) of the Act, the appellant did not mention in his cautioned statement (D1) that he believed Anthony to be a Singaporean or that Sivakami had told him to lie that Anthony was a Malaysian. The trial judge surmised that the only reasonable conclusion to be drawn from all this was that the appellant's defence that he believed Anthony to be a Singaporean could not be true.

3 2 As regards Anthony's evidence, the trial judge stated that having seen and heard Anthony testify, he was adequately satisfied that Anthony's explanations for the material contradictions

between his statements to the police and his oral testimony were but attempts to conceal the truth. Anthony had prevaricated in his testimony even on the payment of his salary. It was apparent to the trial judge that Anthony was evasive and minded to hide the truth from the court for reasons best known to himself. The trial judge was accordingly satisfied that what Anthony had stated in his statements (P10 and P10A) were closer to the truth than his oral testimony and should be taken as substantive evidence in substitution of his oral testimony, especially with regard to the fact that the appellant either knew or had reasonable grounds to believe that Anthony was an Indian national and yet still employed him as a security guard.

3 3 Having considered all the evidence, the trial judge was satisfied that the Prosecution had proved the charge against the appellant beyond a reasonable doubt. The trial judge thus found the appellant guilty and convicted him on the said charge.

The appeal

34 The presumption of knowledge in s 57(8) of the Act did not apply against the appellant as Anthony had been found in Sivakami's flat. The Prosecution thus had the burden of proving beyond a reasonable doubt that the appellant had reasonable grounds for believing that Anthony was an immigration offender.

35 Based on the appellant's inaction in not compelling Anthony to produce his photographs and NRIC or submitting an application to the Licensing Division for approval of Anthony's employment, the trial judge held that the only reasonable inference was that the appellant knew or had reason to believe that Anthony was an immigration offender who could not be legally employed. It is trite law that an appellate court ought to be slow to overturn the findings of fact made by the trial judge, especially where they hinge on the trial judge's assessment of the credibility and veracity of witnesses, unless they are clearly wrong or wholly against the weight of the evidence. Should the appellate court wish to reverse the trial judge's decision, it must not merely entertain doubts as to whether the decision is right, but must be convinced that it is wrong: *Lim Ah Poh v PP* [1992] 1 SLR 713; *PP v Poh Oh Sim* [1990] SLR 1047; *PP v Azman bin Abdullah* [1998] 2 SLR 704. However, the appellate court is as competent as any trial judge to draw any necessary inferences of fact from the primary facts and circumstances of the case: *PP v Choo Thiam Hock* [1994] 3 SLR 248; *PP v Rozman bin Jusoh* [1995] 3 SLR 317; *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

36 The appellant's contentions on appeal were that the trial judge erred in:

(a) placing weight on Anthony's statements (P8 and P8A) and failing to consider and apply the safeguards in s 147(6) of the Evidence Act; and

(b) applying the due diligence standard in ss 57(9) and 57(10) of the Act to the appellant and finding that the appellant possessed the requisite *mens rea* to warrant his conviction.

The weight to be attached to Anthony's statements

37 The appellant acknowledged that though the trial judge had not categorically stated that Anthony's credit had been impeached pursuant to s 157(*c*) of the Evidence Act by proof of former statements inconsistent with any part of his sworn oral evidence, it appeared from the general tenor of his grounds of decision that he considered Anthony's credit to have been impeached.

38 It is established law that when the credibility of a witness is sought to be impeached, there is no requirement that the trial judge must, at any stage of the trial, make a ruling on whether the

credit of the witness has been impeached. The court is only required to consider the discrepancies and the explanation proffered by the witness for the purpose of an overall assessment of his credibility. An impeachment of the witness's credit does not automatically lead to a total rejection of his evidence and the court remains under a duty to evaluate the evidence in its entirety to determine which aspect of it should be accepted or disregarded: see, *eg*, *Loganatha Venkatesan v PP* [2000] 3 SLR 677 at [56] and *Low Siew Hwa Kenneth v PP* [2003] 3 SLR 448 at [50].

3 9 The appellant contended, however, that the trial judge failed to adequately set out his reasoning as to his acceptance of Anthony's statements in preference to his evidence in court and as to the weight to be attached to Anthony's statements. The appellant argued that Anthony's statements were recorded in relation to the charges of harbouring against Sivakami and the appellant's offence of employment of an illegal immigrant was not being investigated at that time. Further, portions of Anthony's statements appeared unreliable – the conversation between Ramani and the appellant whereby the appellant purportedly told Ramani that the appellant was the younger brother of a Singaporean friend was denied by both Ramani and the appellant to have taken place. Anthony had explained the inconsistencies between his statements and his oral testimony, which explanations the trial judge found were made to conceal the truth without ascertaining why there was a need for Anthony to lie in court. The appellant further averred that as the Prosecution had relied on Anthony's statements, the Prosecution should have called Sivakami as a witness in order to establish the truth of the contents of the statement but they did not do so. The appellant submitted that, given these considerations, the trial judge had placed undue weight on the portions of Anthony's statements which were incriminating in respect of the appellant.

4 0 I found the appellant's contentions to be without merit. In admitting a witness' prior inconsistent statements as substantive evidence of the facts therein, the trial judge should look to the factors stipulated in s 147(6) of the Evidence Act and elaborated upon by case law for guidance in considering the weight to be attached to a prior inconsistent statement. These factors include the contemporaneity of the statement with the occurrence or existence of the facts stated, the possibility of misrepresentation, the explanation of the inconsistencies, the context of the statement and the cogency and coherence of the facts relied on: *PP v Sng Siew Ngoh* [1996] 1 SLR 143; *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25. The trial judge was cognisant of these factors and had applied these principles in admitting Anthony's statements and substituting the evidence therein for his oral evidence. The trial judge was clearly satisfied as to the truth of Anthony's statements.

4 1 After a thorough perusal of the notes of evidence, it was clear to me that Anthony's testimony was riddled with inconsistencies as well as attempts to formulate untruths and distort the evidence in order to protect the appellant. The Prosecution rightly pointed out in its submissions that Anthony's responses on examination and cross-examination were contrived to disassociate himself from the appellant as much as possible in respect of the crucial issues. Anthony persisted in his unconvincingly piecemeal attempts throughout the course of his testimony to persuade the court that no direct conversation had ever transpired between them. He even went as far as to say that it was actually Sivakami who related to him that the appellant remarked that he looked like an Indian national, but the appellant could not have heard his response to Sivakami that he was an Indian national despite having been present in the same small guardroom as the appellant was "checking on his walkie talkie" and there was noise coming from the nearby switchroom.[note: 6] The appellant himself subsequently claimed that he could not have heard the exchange that transpired between Sivakami and Anthony because there was no chance that Sivakami and Anthony would have been in the same guardroom as only one security officer was needed at the guardroom at any point in time.[note: 7] I agree with the Prosecution's deduction that the conversation between the appellant and Anthony in the guardroom as to Anthony's Indian nationality had in fact taken place, and the attempts of both Anthony and the appellant to hide this fact had only resulted in inconsistent and

inherently incredible accounts on their parts.

42 It was clear from his detailed grounds of decision that the trial judge had scrutinised the various testimonies and the objective evidence meticulously. As the trier of fact, the district judge was well-placed to observe the demeanour of the witnesses and to assess their evidence. In my opinion, the trial judge had clearly come to the right conclusion that "what Anthony had stated in his statements (P10 and P10A) were closer to the truth than his oral testimony and that his statements should substitute his oral testimony especially with regard to the fact that the [appellant] either knew or had reasonable grounds to believe that he was an Indian national and had employed him as a security guard" (see *PP v R Alagiyasolan* [2005] SGDC 253.)

43 The appellant's allegation that the Prosecution had failed to call Sivakami to substantiate its case was also without merit as Sivakami had been offered as a witness to the Defence. It had clearly been open to the Defence to call Sivakami as a witness to corroborate the evidence relied upon by the Defence, but it had chosen not to do so for reasons best known to itself.

Knowledge or reason to believe Anthony was an overstayer

4 4 The appellant submitted that the trial judge misdirected himself in applying the due diligence standard in ss 57(9) and 57(10) of the Act to the appellant. The appellant averred that ss 57(9) and 57(10) had no application to the present case as there was no issue as to whether Anthony had indeed shown a pass or permit to the appellant. The appellant thus argued that the trial judge erred in adopting a higher standard than necessary in applying the due diligence test in the appellant's case and concluding that the appellant's failure to exercise due diligence showed that he had wilfully shut his eyes to the obvious.

45 It was indeed unnecessary for the trial judge to apply the due diligence test as enumerated in s 57(10) of the Act to the appellant. Subsections (9) and (10) were inserted into s 57 of the Act by an amendment in 1993, which came into effect on 22 April 1994, following the decision in *Naranjan Singh s/o Ujagar Singh v PP* [1993] SGHC 38, to deal with cases where persons charged with employing immigration offenders were able to procure an acquittal by arguing that they had checked the employees' work permits even if the permits turned out later to have been forged: see, *eg*, *Kuek Ah Lek v PP* [1995] 3 SLR 252. Given that the appellant had not even pleaded the defence in s 57(9), the question of whether or not the appellant had exercised due diligence thus did not arise.

46 This ground of appeal, however, did not assist the appellant as he had not even bothered to check whether the appellant had valid identification documents, let alone any work permit. His sole defence was that of ignorance. As I emphasised in *Kuek Ah Lek v PP* at 262, [43]:

> In *Naranjan Singh*, the defendant had *neither inquired from his employee his employment status nor checked his passport. It was a case where the defendant did absolutely nothing to screen his employees. That being so, he was clearly negligent or reckless*. It was in this context that I said that there was a duty on the part of employers to screen their foreign workers. *If he had not done anything to screen the workers, then it would be no defence to say that he was ignorant of his workers' employment and immigration status.* [emphasis added]

I had also expressed in *Lim Gim Chong v PP* [1994] 1 SLR 825 at 831, [23] that:

> Conduct which Parliament has resolved to categorize as being criminal cannot be so readily absolved by blithe declarations of ignorance, unless distinct evidence is also adduced to that effect.

47 When cross-examined, the appellant had produced daily attendance sheets (D3 and D4) of the security guards working at the condominium in October and November 2004. An undated salary voucher (D2) that the appellant produced proved that Anthony had received a basic pay of $760 and was given an advance of $200. All these records proved that Anthony was properly employed as a security guard and was on the company payroll from October 2004 until his arrest on 23 November 2004. The appellant, however, relied on the fact that Anthony was paid the same salary as all the other guards as being inconsistent with the appellant having shut his eyes to the obvious, citing the cases of *Kuek Ah Lek v PP* ([45] *supra* at [33]) and *Mohamed Lukman bin Amoo v PP* [1999] 4 SLR 292 at [40]. The appellant further argued that although he had had two to four weeks to make Anthony's application to the Licensing Division and Anthony had worked for six to seven weeks, Anthony had only worked for 15 to 20 days and not the entire six-to seven-week period. Thus, the appellant's failure to make an application within the grace period did not in itself show that he knew Anthony was an illegal immigrant.

48 I rejected these arguments as wholly unmeritorious. The salary paid to an illegal immigrant worker was only one of the factors to be considered. Employers may recruit illegal immigrants not due to the lower costs but because they are in need of labour. Further, the duration for which Anthony had been employed or the exact number of days he had worked was irrelevant. Anthony should not have been employed in the first place.

49 It was undisputed that the appellant was ultimately responsible for the recruitment and management of the security guards employed by JSS. The appellant was aware of the requirements of the Regulations. Defence witness Selvarajah Janathan had testified that when he sought employment as a security guard with JSS, he produced his Singapore Permanent Resident NRIC to the appellant for inspection after working for about a week and had filled in an application form with his personal particulars and submitted it to the appellant. The appellant had had ample opportunity after 13 October 2004 when he asked Anthony for his NRIC and photographs to procure these documents from Anthony during his many subsequent visits to the condominium. Instead, the appellant was content to let things be until the date of Anthony's arrest on 23 November 2004. It is clear that it was no defence for the appellant to now claim that he had been ignorant of Anthony's immigration status.

50 In my view, the trial judge's disbelief of the appellant's defences was buttressed by the objective evidence and even the appellant's own testimony at trial. I had no hesitation in drawing the inference on the totality of the evidence that the appellant knew or had reason to believe that Anthony was an immigration offender. The appellant was in a position of responsibility and it was his duty to ensure that all security guards were legally employed. This, he failed to do. I therefore find that the Prosecution had proved beyond a reasonable doubt that the appellant was guilty as charged and dismissed the appeal accordingly.

[note: 1] Notes of Evidence ("NE") p 13A.

[note: 2] NE pp 34E to 35A.

[note: 3] NE pp 37B and 45D.

[note: 4] NE p 38A.

[note: 5] NE pp 45B and 46B.

[note: 6] NE pp 46D and 50A.

[note: 7] NE p 104E.