Lin Lifen *v* Public Prosecutor
[2015] SGHC 273

Case Number : Magistrate's Appeal No 68 of 2015 and Criminal Motion No 57 of 2015

Decision Date : 26 October 2015

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Davinder Singh SC, Pardeep Singh Khosa, Navin S Thevar and Nicholas Beetsma (Drew & Napier LLC) for the appellant; Sandy Baggett and Joshua Lai (Attorney-General's Chambers) for the respondent.

Parties : Lin Lifen — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Immigration offences – False statement supported by use of forged document in application for permanent residence – False statement on disembarkation form

26 October 2015 Judgment reserved.

Chao Hick Tin JA:

1 The appellant, a female Chinese national, pleaded guilty in the court below to four immigration-related charges. Two of these charges concerned falsehoods she perpetrated in relation to her educational qualifications in applications for permanent resident ("PR") status that she made more than a decade ago. The other two charges concerned false statements that she made more recently in disembarkation forms which she presented to immigration officers on her arrival at the airport. Four other charges, all of which were similar in nature to the latter two charges, were taken into consideration for the purposes of sentencing.

2 A more detailed summary of the four charges to which the appellant pleaded guilty is as follows:

(a) One charge (listed as the eighth charge) for having, in 2001, fraudulently or dishonestly used a forged document as genuine in an attempt to obtain PR status in Singapore, this forged document being a fake degree certificate purportedly issued by the Foreign Economics and Trade University in Beijing – an offence under s 471 of the Penal Code (Cap 224, 1985 Rev Ed) ("Penal Code");

(b) One charge (the seventh charge) for having, in 2002, made a false statement in an "Application for an Entry Permit" form in an attempt to obtain PR status in Singapore, the false statement being that she had a "B.A Economics" qualification from "the Foreign Economics and Trade University China" – an offence under s 57(1)(*k*) of the Immigration Act (Cap 133, 1997 Rev Ed); and

(c) Two charges (the second and sixth charges) for having, on one occasion in 2009 and on another in 2014, made false statements in disembarkation forms in order to obtain visit passes when entering Singapore, the false statement on both occasions being that she had never previously used a passport under a different name to enter Singapore – an offence under s 57(1)(*k*) of the Immigration Act (Cap 133, 2008 Rev Ed). It will be noted that the seventh charge

involves the 1997 edition of the statute whereas the second and sixth charges involve the 2008 edition, but since the relevant provisions are identical in both editions I shall use the same term "Immigration Act" to refer to both editions.

3 The District Judge sentenced the appellant to eight weeks' imprisonment on each of the four charges to which she pleaded guilty. The sentences for the sixth and eighth charges were ordered to run consecutively for a total sentence of 16 weeks' imprisonment. The District Judge's written grounds of decision have been published as *Public Prosecutor v Lin Lifen* [2015] SGDC 104 ("the GD"). The appellant now appeals against sentence.

Facts

4 The appellant first entered Singapore on a short-term social visit pass in 1996. She came in from China on a Chinese passport bearing the name "Lin Lifen". Between 1997 and 2000, she entered Singapore on numerous occasions with her Chinese passport bearing that name. In the year 2000, the appellant married a Canadian national by the name of Daniel Grayston. They have since separated.

5 Mr Grayston was then present in Singapore under an employment pass. Under Mr Grayston's sponsorship, she was, on 16 September 2000, issued by the Singapore immigration authority with a dependent pass valid from 5 December 2000 to 22 August 2002. However, she wanted to reside permanently in Singapore as she then had a spa business here. With a view to obtaining a PR status, she sought the assistance of one "Linda". The appellant said that Linda told her that her application for PR status would be viewed more favourably if she listed university degree-level educational qualifications in the application. Thus she obtained from Linda a fake degree certificate stating that she had a Bachelor of Arts in Economics from the Foreign Economics and Trade University in Beijing. The appellant was well aware that this was a forged document: she had been educated up to Primary 5 level only.

6 On 2 March 2001, the appellant and Mr Grayston both submitted applications for PR status. She submitted the fake degree certificate obtained from Linda as proof that she had a university education. This gave rise to the eighth charge against her, *ie*, the charge for the Penal Code offence of fraudulently or dishonestly using a forged document as genuine. Her duplicity was discovered by the authorities on 22 May 2001 when the Foreign Economics and Trade University wrote to confirm that the university certificate was fake.

7 The following year, on 30 April 2002, the appellant submitted another application for PR status. Part of the application form required her to state details pertaining to her university degree. She filled in this part of the form by stating that she had obtained a "B.A Economics" from the "Foreign Economics and Trade University, China". She knew that this information was false. This was the subject of the seventh charge.

8 In the meantime, given that the authorities had discovered that the degree certificate she presented in 2001 was fake, she was in 2002 charged with offences under s 57(1)(*k*) of the Immigration Act. She claimed trial to the charges and applied to leave Singapore while out on bail. The application was granted on condition that she would appear before the court on 28 October 2002 to answer the charges. She did not turn up. A warrant of arrest was duly issued against her.

9 Sometime between 2005 and 2006, the appellant obtained Canadian citizenship. On 15 January 2009, she used a Canadian passport under the name "Shuting Lin Grayson" to enter Singapore. On the disembarkation form that she filled in, she declared that she had "never used a passport under a different name to enter Singapore" even though she knew this to be false. She was duly granted a

30-day visit pass by the immigration officer. This was the subject of the second charge. I would add that the appellant also entered Singapore on four other occasions in 2009, and on each occasion she made the same false declaration in the disembarkation form.

10 In the middle of 2013, with the charges from 2002 still outstanding, the appellant engaged lawyers to write to the Singapore authorities in an attempt to resolve the matter of those charges. A number of letters were written by her lawyers. In one, dated 14 May 2013, her lawyers stated that she "now wishe[d] to make amends"; in another, dated 15 August 2013, her lawyers asked the authorities to "withdraw both charges against her in lieu of a stern warning or alternatively to issue a composition fine", and to have her "cleared to return back to Singapore". The authorities, however, took the position that there would be no resolution of the matter until the appellant returned to Singapore.

11 The appellant did return to Singapore on 21 March 2014. On this occasion she used a diplomatic passport from the Central African Republic which was in the name of "Charlize Lin" – according to her, she had obtained this passport sometime at the end of 2012 or the beginning of 2013 because she had the intention of investing in diamond mining and oil exploration in that country. As she had done in 2009, she declared that she had "never used a passport under a different name to enter Singapore" in the disembarkation form despite knowing this to be false. This was the subject of the sixth charge. On that occasion, she was detained because of documentation irregularities and subsequently charged for the various offences she committed from 2001 onwards.

The prescribed punishments

12 To reiterate, the appellant pleaded guilty to one charge for the offence of using as genuine a forged document under s 471 of the Penal Code – this was the eighth charge – and to three charges for the offence under s 57(1)(*k*) of the Immigration Act, which were the second, sixth and seventh charges. The maximum punishment for an offence under s 471 of the Penal Code in 2001/2002 was, as prescribed by the then s 465 of the same statute, two years' imprisonment and a fine with no stated limit. The maximum punishment was enhanced by the Penal Code (Amendment) Act 2007 (Act 51 of 2007) to four years' imprisonment and a fine with no stated limit. For convenience I reproduce the relevant provisions here:

> **Punishment for forgery**
>
> **465**. Whoever commits forgery shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.
>
> …
>
> **Using as genuine a forged document or forged electronic record**
>
> **471**. Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or forged electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

13 As for the offence defined by s 57(1)(*k*) of the Immigration Act, the maximum punishment is 12 months' imprisonment and a $4,000 fine. I also reproduce the relevant provisions here:

> **Offences**

57.—(1) Any person who —

...

(*k*) by making a false statement obtains or attempts to obtain an entry or a re-entry permit, pass, Singapore visa or certificate for himself or for any other person;

…

shall be guilty of an offence and —

…

(vi) in the case of an offence under paragraph (*f*), (*g*), (*h*), (*i*), (*j*), (*k*) or (*l*), shall be liable on conviction to a fine not exceeding $4,000 or to imprisonment for a term not exceeding 12 months or to both; …

The decision of the District Judge

14 In the GD, the District Judge provided (at [74]) a helpful summary of his reasons for imposing a sentence of eight weeks' imprisonment on each charge. In relation to the charge under the Penal Code, he considered that he should take guidance from a precedent, *Maria Eloisa L Slorach v PP* (Magistrate's Appeal No 14 of 1996, unreported) ("*Maria Eloisa*"), in which the offender was sentenced to two months' imprisonment and a $2,000 fine in the context of a similar "factual matrix" (at [17]–[19]).

15 In relation to the charges under the Immigration Act, the District Judge applied the analytical framework articulated in the High Court decision of *Abu Syeed Chowdhury v Public Prosecutor* [2002] 1 SLR(R) 182 ("*Chowdhury*"). He found that the appellant's false statements in the disembarkation forms were "material" as she would have been denied entry into Singapore had she indicated that she had previously travelled under the name of "Lin Lifen" (at [30]–[32] of the GD); that she had "acted in conscious defiance of the authorities" and gone to "great lengths to deceive them", and in this connection he said that he had "difficulty" accepting her claim that the different names she had used, "Shuting Lin Grayson" and "Charlize Lin", were "not fake names" (at [33]–[38]); and that the appellant's false statements were a "very serious matter" as they had an impact on Singapore's "national security" (at [39]). I note that, although the District Judge considered that he was addressing all three Immigration Act charges, his reasoning appears to be directed only towards the second and sixth charges and not the seventh charge which concerned the false statement she had made in an application form for PR status that she had obtained a "B.A Economics" from the "Foreign Economics and Trade University, China".

16 The District Judge proceeded to explain his rejection of the various mitigating factors advanced by the defence. He did not consider her a first-time offender as she had committed multiple offences in Singapore from 2002 to 2014 (at [41]–[46] of the GD); he did not think that she had shown "genuine remorse and willingness to take responsibility" for her past offences by engaging lawyers to write to the Singapore authorities in 2013 (at [47]–[50]); and he rejected her claim that the "primary purpose" for her re-entering Singapore was to spend time with her son, finding instead that she had been drawn back by the "powerful pull of profit, rather than familial bonds" (at [52]–[58]). Finally, he noted that it was an aggravating factor that the appellant had re-offended after absconding while on bail (at [66]–[69]).

The appellant's contentions

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17 Mr Davinder Singh SC, counsel for the appellant, contends that the District Judge did not draw a sufficient distinction between the seventh and eighth charges on one hand, which concerned events in 2001 and 2002, and the second and sixth charges on the other hand, which pertained to events in 2009 and 2014. Mr Singh submits that the District Judge wrongly assumed that all the charges were connected, with the result that he applied the same aggravating factor – the appellant's having absconded while on bail – to all four charges, when it was in truth irrelevant to the second and sixth charges. He argues more generally that the seventh and eighth charges should be analysed separately from the second and sixth charges.

18 In relation to the seventh and eighth charges, both of which concerned the appellant's attempt to deceive the authorities as to her educational qualifications in applications for PR status in 2001 and 2002, Mr Singh submits that the appellant's culpability is not that grave because the consequences of her deception were not substantial. He points out that she was someone whom the authorities were prepared to allow to reside in Singapore, as evidenced by the fact that she was on a dependent pass valid until August 2002, and she would have been eligible, in any event, to apply for PR status on the basis that her then husband Mr Grayson had himself become a PR. This, says Mr Singh, distinguishes the appellant's case from those cases in which the offenders deceived the authorities in order to live here in circumstances where, but for the deception, the authorities would not have permitted that. As for *Maria Eloisa*, the precedent relied on by the District Judge and the prosecution, Mr Singh submits that it should be given little weight because the absence of a written decision in that case renders it impossible to ascertain the reasons for the sentence imposed there. The sentence could very well be explicable on the basis of facts or context that are peculiar to it, and given the lack of information as to those facts or that context it is not safe to rely on it.

19 As for the second and sixth charges, both of which concerned the appellant's false statement that she had never previously used a passport under a different name to enter Singapore, Mr Singh argues that the District Judge erred in finding that the appellant had used "fake names" to enter Singapore and had thus overstated her culpability. He contends further that the District Judge also erred in finding that the appellant was drawn back to Singapore by the prospect of financial profit, the true position being that she returned in order to see her son. She was therefore not an "economic migrant", to use a phrase from *Chowdhury* (at [26]). All this meant that there was no need to impose a harsh sentence on her.

20 In all the circumstances, says Mr Singh, non-custodial sentences should be imposed on the appellant for all the charges. In the event that I am nonetheless minded to impose custodial sentences, he submits that the terms of imprisonment should not exceed one week per charge and two weeks in total.

21 To support his contentions Mr Singh put in an application to adduce further evidence by way of Criminal Motion No 57 of 2015. The further evidence consisted of an affidavit affirmed by the appellant in which she states, among other things, that (i) the names "Shuting Lin Grayson" and "Charlize Lin" which she used to enter Singapore were not fake names but were names that she had used in Canada and the Central African Republic, (ii) she was misled by Linda into thinking that the only way to apply for PR status was to forge her educational qualifications, and (iii) she entered Singapore in order to see her son, and in particular, when she entered Singapore on 21 March 2014 her intention was to be with her son on his 12th birthday which fell on the following day. The prosecution resisted Mr Singh's application, and, in so doing, placed before me an affidavit affirmed by the investigation officer in the appellant's case. Mr Singh, in turn, took objection to parts of that affidavit on the ground that they contained irrelevant and prejudicial material.

22 I decided that I would admit both the appellant's and the investigation officer's affidavits, subject to Mr Singh's right to object to those parts of the latter affidavit which he considered prejudicial. The prosecution subsequently indicated that it would not be relying on those portions said to be prejudicial to the appellant and agreed to Mr Singh's request that those portions not be read out in open court. The hearing proceeded on that basis and in the circumstances I need say no more about this matter.

Distinct offences

23 I agree with Mr Singh's submission that the seventh and eighth charges should be considered separately from the second and sixth charges. This is because the essential nature of the wrongdoings in the two set of charges is not the same. I shall take them in turn, beginning with the seventh and eighth charges as they concern events which occurred earlier.

The fake university degree qualifications

24 Although the seventh and eighth charges are all concerned with the fake certificate, I would reiterate that even those two charges are distinct and different offences. The seventh charge concerned s 57(1)(*k*) of the Immigration Act whereas the eighth charge concerned s 471 of the Penal Code. The Immigration Act offence relates to the making of false *statements* whereas the Penal Code offence relates to forged *documents*. In the present case, the seventh charge pertains to a false statement made by the appellant in her 2002 application while the eighth charge pertains to her use of a forged document in relation to her 2001 application. The prescribed punishments for the two offences are different. As at 2001/2002, for the Immigration Act offence, the maximum punishment was 12 months' imprisonment and a $4,000 fine, but for the Penal Code offence the maximum punishment was two years' imprisonment and a fine with no specified limit.

Relationship between Immigration Act and Penal Code offences

25 Despite this difference in the prescribed maximum punishments for the said Immigration Act and Penal Code offences, I must observe that it is not unusual to find that in an application to the immigration authorities the applicant could have offended both statutes when he makes a false statement in his application and supports it with a forged document. In such a case, the prosecution could charge the offender with either the Immigration Act offence or the Penal Code offence. Admittedly, that is the prerogative of the prosecution. As a result, different punishment ranges would be attracted. It seems to me that this is a circumstance which the court has to bear in mind when it determines the appropriate sentence in a case where the offender is being charged under the Penal Code. There must be a semblance of fairness having regard to all the circumstances of each case.

26 In the present case, the appellant submitted a forged degree certificate in an application for PR status made in 2001, and then falsely stated in a second application for PR status, made in 2002, that she had a Bachelor's degree from a Chinese university. If the forged degree certificate was also submitted in 2002 in support of the false statement as to her educational qualifications, which one would imagine would ordinarily be the case, the nature of the appellant's criminality in the 2001 and 2002 offences would be obviously identical, and it would be anomalous and wrong to impose different sentences for both offences. It is not clear from the available material whether the forged certificate was also submitted in 2002, but in my view, even if it was not, it would be reasonable to infer that no certificate needed be tendered then because the "certificate" was already in the file in relation to the 2001 application. If the immigration authorities had insisted that the "certificate" be presented again, she would have tendered the fake certificate to prove her claim of being a graduate. There is some merit in the contention that the nature of the wrongdoing in both instances is the same, namely,

claiming that the appellant is a graduate for the purposes of obtaining PR status.

27 Another way of putting it is that the 2001 and 2002 offences effectively formed one transaction and were two manifestations of what was essentially a single criminal enterprise, *viz*, a scheme to deceive the immigration authorities into thinking that she was better-qualified than she actually was with the aid of a forged document. In these circumstances, I should consider that her culpability in making the false statement in 2002 is indistinguishable from her culpability in using the forged document in 2001.

28 Having determined that the sentences for the seventh and eighth charges ought really to be the same, I turn now to consider whether the District Judge's sentence of eight weeks' imprisonment per charge is manifestly excessive. In this connection, I consider that I am not limited either to precedents involving s 471 of the Penal Code or to precedents involving s 57(1)(*k*) of the Immigration Act, but may instead draw from precedents of both kinds.

Precedents involving applications for PR status

29 The precedent relied on by the District Judge and the prosecution is *Maria Eloisa*, and that was a case concerning s 471 of the Penal Code. It appears that there is an unpublished written decision in that case – it was placed before me by the prosecution, and so I rely on the decision rather than the summary of the case in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) ("*Sentencing Practice*"), at p 1015. The offender in *Maria Eloisa* was a holder of a student's pass who subsequently married a Singapore PR. Shortly after the marriage, she applied for PR status, and in so doing submitted a forged certificate stating that she had completed a secondary course in a Philippine university. She said in mitigation that she wanted to be a PR to be with her husband and two stepchildren, and that she was pregnant. The prosecution produced statistics to show that there "had been 48 such cases" in the latter half of 1995; there was no indication of what "such cases" referred to. She was sentenced at first instance to three months' imprisonment but the High Court reduced this to two months' imprisonment and a $2,000 fine.

30 Mr Singh contended that, notwithstanding the similarities between the facts of *Maria Eloisa* and those of the present case, that case had very limited precedential value owing to the lack of detailed grounds or reasoning there. He referred me to the remarks of Chan Sek Keong CJ in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 (at [21]–[22]) cautioning against placing undue reliance on unreported cases. The force of this submission has been reduced to some extent by the present availability of the unpublished written decision, but I would not say that the submission has been eclipsed completely because the written decision is fairly brief and short on analysis. I therefore think that undue emphasis should not be placed on *Maria Eloisa*. Rather, the sentence in that case should be compared with sentences imposed in other cases that involved similar facts and in which the court's reasoning was more fully articulated. There are a number of other precedents on point which bear a striking similarity to the present case in that they all concerned offenders who made false statements as to their educational qualifications in applications for PR status and submitted forged documents in support of those false statements. The main difference between all these precedents and *Maria Eloisa* is that they involved charges for the offence under s 57(1)(*k*) of the Immigration Act, whereas *Maria Eloisa* involved the offence under s 471 of the Penal Code. But, as I have endeavoured to explain, where there are two cases in which the criminal behaviour of the offenders is very similar, the sentences to be imposed generally ought not to diverge to a substantial degree, regardless of whether the charge brought against each offender is for the Immigration Act offence or the Penal Code offence. In any event, the present case involves both the Immigration Act and Penal Code offences. I now turn to consider those precedents involving the Immigration Act offence.

31 In *Shi Rongping v Public Prosecutor* [2010] SGHC 61 ("*Shi Rongping*"), a decision of Choo Han Teck J, the offender was a female Chinese national who married a Singaporean. A few months after their marriage, she applied for PR status, and in so doing she falsely stated that her highest academic qualification was "Senior High" from a middle school in China. Choo J noted that she had "produced a forged certificate" in support of that false statement (at [4]). The true position was that she had left the school a year before she would have attained that "Senior High" qualification. She pleaded guilty to a single charge for the offence under s 57(1)(*k*) of the Immigration Act. Choo J decided that the sentence of four weeks' imprisonment imposed at first instance was "too harsh" and he imposed a fine of $3,000 instead (see *Shi Rongping* at [6]). He considered it relevant that the offender had spent five days in remand, and that the offender had in fact attended the school which she claimed she attended, except that she did not spend as much time there as she said she had done (at [5]).

32 In the present case, the appellant had also spent time in remand, and a longer period of three weeks at that, but she did not even complete primary school, let alone graduate from university – her highest educational qualification being the Primary 5 level. Besides that being a point of distinction between *Shi Rongping* and the present case, there is the further fact that the appellant here fled the jurisdiction while out on bail and did not voluntarily return for the purpose of facing the charges against her.

33 I next turn to examine four precedents which are different from *Shi Rongping* and the present case in one respect, *viz*, the offenders in those precedents were not married to Singapore citizens or PRs. Despite this difference I consider that some measure of guidance may be obtained from these precedents given the similarity between them and the present case in all other respects.

34 In *Public Prosecutor v Sandar Aye* [2006] SGDC 126 ("*Sandar Aye*"), the offender falsely stated in an application for PR status that her highest academic qualification was a Bachelor of Science in mathematics from a university in Myanmar, and submitted a forged degree certificate in support of the statement. She did in fact have a Bachelor of Science degree from that university but it was in physics rather than mathematics. She pleaded guilty to one charge under s 57(1)(*k*) of the Immigration Act, and to one other charge under the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) also involving a false statement concerning her academic credentials. Two other charges relating to similar false statements were taken into consideration. She was sentenced to six weeks' imprisonment on the Immigration Act charge, and four weeks on the other charge, both sentences to run concurrently. Her appeal by way of Magistrate's Appeal No 85 of 2006 was dismissed.

3 5 *Prima facie* it is difficult to reconcile *Sandar Aye* with *Shi Rongping*. In both cases, the offender's false statements were of a lower degree of falsity in that they had in fact attended the schools they claimed to have attended, but there is a significant disparity in the sentences imposed. It is clearly arguable that the offender in *Sandar Aye* was less culpable than the offender in *Shi Rongping* in that she had in fact obtained a Bachelor's degree as claimed, except in a different academic discipline. Given that the offender in *Sandar Aye* faced a larger number of charges, that could be the reason why the total sentence imposed in her case was higher than that in *Shi Rongping*; it could also be that, since the application for PR status in *Shi Rongping* was made in the context of the fact that the offender was married to a Singaporean, the false statement could be thought to be less material and so deserving of a less severe sanction as compared to a case in which the offender did not have the benefit of spousal ties with a Singapore citizen or PR. Even so, the difference in the sentences in the two cases is fairly stark, and it may well be that the sentence in *Sandar Aye* was on the high side in light of *Shi Rongping*. I express no concluded opinion on this.

36 In *Public Prosecutor v Lin Shuliang* [2009] SGDC 249, the offender falsely stated in two

separate applications for PR status that his highest academic qualification was "middle school" and produced a forged certificate in support of those statements. He pleaded guilty to two charges under s 57(1)(*k*) of the Immigration Act. His application for PR status was made under the scheme for professionals, technical personnel and skilled workers, as opposed to the scheme for spouses of Singapore citizens and PRs, and it seemed to be undisputed that an applicant's educational qualifications were a "prime" consideration for applications under that scheme (at [16]). The District Judge sentenced the offender to two weeks' imprisonment for each of the two charges, with the two sentences to run concurrently for a total sentence of two weeks' imprisonment. In so doing, she took into account the offender's "contributions to the economy as well as the community with his business operations" (at [27]). The offender's appeal by way of Magistrate's Appeal No 182 of 2009 was dismissed.

37 In *Public Prosecutor v Ramasamy Alagu Pandian* [2008] SGDC 27, the offender falsely stated in an application for PR status that he had graduated with a diploma in mechanical engineering from an institution in India, and produced a forged diploma certificate in support of the statement. He pleaded guilty to one charge for the offence under s 57(1)(*k*) of the Immigration Act, and to two other charges involving false statements in his and another person's applications for an employment pass. Three other Immigration Act charges were taken into consideration. He was sentenced to four weeks' imprisonment for the charge involving the application for PR status, and the total sentence imposed was eight weeks' imprisonment. His appeal by way of Magistrate's Appeal No 4 of 2008 was dismissed.

38 In *Public Prosecutor v Thangarasu Sabapathi* [2009] SGDC 399 ("*Thangarasu Sabapathi*"), the offender falsely stated in an application for PR status that his highest academic qualification was a "Degree in Bachelor of Science" from a university in India, and produced a forged certificate in support of the statement. In fact he had never attended that university. He pleaded guilty to a single charge for an offence under s 57(1)(*k*) of the Immigration Act. He was sentenced to two months' imprisonment. He lodged an appeal by way of Magistrate's Appeal No 340 of 2009 but subsequently withdrew it. It is apparent that the sentence imposed in this precedent was substantially higher than the sentences imposed in the other precedents I have considered, with the possible exception of the sentence in *Sandar Aye* which, as I have said, could perhaps also be considered to be on the high side. Given that the offender in *Thangarasu Sabapathi* withdrew the appeal before it could be heard on the merits, and given that the sentence imposed by the District Judge seems unusually high when compared to the other precedents, I would view this precedent with caution.

Precedents involving applications for employment passes

39 The precedents considered so far involved false statements in applications for PR status. There is also a line of four cases involving false statements in applications for employment passes. Just as in the present case, the false statements in those four cases concerned the offenders' educational qualifications and were supported by forged documentary credentials. In all those cases, the offenders were charged for the offence under s 57(1)(*k*) of the Immigration Act only, even though it appears that they could also have been charged for the offence under s 471 of the Penal Code given their use of forged documents. In two of the cases fines were imposed, but terms of imprisonment were imposed in the other two. I describe them briefly:

(a) In *Chowdhury*, a decision of Yong Pung How CJ which I previously referred to at [15] above, the offender faced three charges for having made false statements in three applications for an employment pass, the false statements all being that he held a Bachelor of Science degree from a Bangladesh university when this was not true. All the applications were supported by copies of a forged graduation certificate, as Yong CJ noted (at [7]). He thought that a substantial sentence was warranted for a number of reasons, one of which was that the

offender's deceit had "deprived a better-qualified candidate of entry into the country" (at [33]). Yong CJ thus enhanced a total sentence of eight weeks' imprisonment to two months' imprisonment per charge, with two sentences to run consecutively for a total of four months' imprisonment.

(b) In *Public Prosecutor v Prasanna Ananthakrishnan* [2003] SGDC 204, the offender falsely stated that he had graduated from an Indian university with a Bachelor of Science in computer science and a Master of Computer Science, when in fact his highest educational qualifications were the Indian equivalent of the GCE 'A' Levels. The District Judge noted that the offender had come to Singapore only after he had been asked to run a company of which he was the main shareholder and into which he had invested $100,000 of his own money (at [4]). The District Judge considered that this company "had suffered no detriment as a result of the false declaration", and that the offender "had not deprived a potentially better qualified efficient [*sic*] of a job opportunity or put anyone at risk of adverse consequences by performing a job without the requisite skill" (at [16]). Given these circumstances, the District Judge thought that a $4,000 fine was sufficient punishment.

(c) In *Public Prosecutor v Lai Yu Jing* [2003] SGDC 98, the offender falsely stated that she had graduated with a Bachelor's degree from a Chinese university when in fact her highest educational qualification was a higher secondary school certificate. The District Judge considered that the offender's culpability was reduced by the fact that she had not made this false statement "to gain entry into Singapore or to secure a job which she did not qualify for". She was already in Singapore on a 6 months social visit pass but she wanted a longer term pass. Her "main motive" in making the false statements was to rent an apartment near the school which her son attended (at [14]). The District Judge imposed a sentence of three weeks' imprisonment, but this was reduced on appeal to a $2,000 fine.

(d) In *Rivera Eleazar P v Public Prosecutor* (Magistrate's Appeal 308 of 1997, unreported), the offender made one false statement in his application for an employment pass, this statement being that he had a Bachelor's degree in Commerce (Marketing). This false statement was supported by a forged degree certificate. He had previously made the same false statement in a separate application for an employment pass. He was charged for the second offence he committed. He was sentenced to two months' imprisonment. There was no appeal against sentence. It appears that there is no written decision available but there is a summary of the case in *Sentencing Practice*, at p 1541.

40 I mention these four cases involving applications for employment passes because they were referred to by the parties in their submissions, but in my view, I need not and do not place reliance on them for purposes of determining the appropriate sentence in the present case. This is because the considerations in employment pass cases may well be different from those in PR cases. It might be thought that PR status is generally more valuable than an employment pass and hence deceit in the context of applications for PR status should be viewed more seriously. On the other hand it could be thought that one's educational qualifications may be more pertinent to the immigration authorities' decision whether to grant an employment pass than to a decision as to whether to grant PR status, such that misrepresenting one's educational qualifications in the context of employment pass applications should merit harsher sanction. In the absence of full arguments on the applicability of these precedents to the present case, I consider that it would be prudent not to rely on them if it is unnecessary to do so. Indeed there is no need to rely on these precedents here because there is no shortage of precedents involving applications for PR status.

The appropriate sentence in the present case

41 Returning to the facts of the present case, Mr Singh argues, as I have noted, that the appellant's falsehoods in her applications for PR status in 2001 and 2002 should be seen in the light of the fact that the authorities were willing to allow her to live in Singapore until August 2002 on a dependent pass, as well as the fact that her then husband was a PR at the time of her 2002 application, such that she would have been eligible to apply for PR status as the spouse of a PR. Mr Singh suggests that the appellant's criminal behaviour was akin or analogous to perpetrating a falsehood in order to achieve something that she would have been entitled to on another basis, and in this connection he referred to the case of *Public Prosecutor v Teng Siong Wei* [2009] SGDC 465 ("*Teng Siong Wei*"). The offender there faced four charges under s 471 of the Penal Code by reason of his having forged four bills of lading in respect of 48 used vehicles, which he then submitted to the Land Transport Authority ("LTA") for the purpose of claiming COE rebates.

42 In order to claim these COE rebates, the offender needed to show the LTA the export documents containing the engine and chassis numbers of the relevant used vehicles. The difficulty for him was that the used vehicles had been dismantled at various packing yards and exported without their engine and chassis numbers stated in the export documents. Hence, he obtained the forged bills of lading which stated that the 48 used vehicles, with their engine and chassis numbers specified, had been packed on board a certain vessel and shipped to various countries. He was sentenced to a $6,000 fine per charge for a total fine of $24,000. In imposing a non-custodial sentence, the District Judge took into account the fact that there had been no "fraudulent or exaggerated claim" for COE rebates (at [11]); he thought that this was *not* a case in which the LTA was deceived into giving the rebates "when the eligibility condition had not been fulfilled", and this was instead a case where the offences had been committed "in the process of claiming a legitimate entitlement" (at [12]). In other words, the offender did not use the forged bills of lading to claim rebates which he would not otherwise have been entitled to; the fact is that he was entitled to those rebates, except that technical documentation requirements had not been met.

43 In my judgment, *Teng Siong Wei* does not assist the appellant. Her then husband's PR status meant only that she was eligible to apply for PR status, and not that she was entitled to PR status; and the authorities' willingness to allow her to reside in Singapore on a dependent pass hardly equates to a readiness to grant her PR status because, as Mr Singh accepted, PR status confers upon a person more rights and privileges than a dependent pass does. Thus, in making the false statement and using a forged document in her application for PR status, the appellant was not seeking to obtain something that she was already entitled to, and this puts a great deal of distance between *Teng Siong Wei* and the present case so that I cannot see how one could say that the two cases are akin or analogous.

44 I should mention that Mr Singh advanced the argument premised on *Teng Siong Wei* in tandem with an argument based on certain passages in *Chowdhury*, and this latter argument merits some comment. In *Chowdhury*, Yong CJ said (at [27]) that "four considerations should prevail on the judicial mind in applying the sentencing norm" for cases involving an offence under s 57(1)(*k*) of the Immigration Act. One consideration is the offender's "personal mitigating factors" (at [31]); the other three are (at [28]–[30]):

(a) The materiality of the false statement on the mind of the decision-maker;

(b) The nature and extent of the deception; and

(c) The consequences of the deception.

45 Mr Singh's submission seemed to be that these three considerations from *Chowdhury* are meant

to function as cumulative requirements, such that a custodial sentence is called for only if (a) the false statement is material in the decision-maker's mind, (b) the nature and extent of the deception was significant, and (c) the consequences of the deception were substantial. Hence, if the false statement was material and the extent of the deception was significant, but the consequences of the deception were not substantial in that the offender did not gain anything he would not otherwise have been entitled to – as was the case in *Teng Siong Wei*, according to Mr Singh – a custodial sentence would not be warranted.

46 However, I have my doubts that this is how the considerations in *Chowdhury* are meant to be applied. I do not see them as conditions that are, in binary all-or-nothing fashion, either met or not met. On the contrary, these considerations were expressed in an open-ended manner by Yong CJ and I would view them as essentially identifying the important factors that a sentencing judge should look out for in a given case, and nothing more. So, for instance, given a case in which the false statement is material and the extent of the deception significant, but the consequences of the deception are not substantial, I would not say categorically that a custodial sentence should never be imposed, even if a non-custodial sentence would be appropriate in the vast majority of cases answering that description. It must depend on the circumstances of each case.

47 I accept that the immigration authorities' preparedness to let the appellant reside in Singapore until August 2002 on a dependent pass demonstrates that her falsehoods had no impact on "national security", contrary to what appears to have been the District Judge's view. But it is difficult to see how that fact of the authorities' willingness to let her live here is of much mitigating value beyond this, given that, as I have already mentioned, PR status carries with it substantially greater rights and privileges than a dependent pass does.

48 The appellant also says that she was misled by Linda into thinking that the only way in which she could obtain her PR status was to misrepresent her educational qualifications, when in fact she would have been eligible to apply for PR status on the basis that her then-husband was a PR. But I see little mitigating value in this. Even if I accept that Linda instigated the appellant to make the false statement and submit a fake certificate, the fact is that she fully participated in the fraud and her culpability is not reduced to any substantial extent just because this was done on someone else's prompting. She would have known it was wrong. Further, as I have mentioned, the appellant was merely eligible to apply for PR status on the strength of her spousal ties and had no automatic entitlement to become a PR.

49 In my judgment, there is nothing exceptional in the present case that would warrant a non-custodial sentence. While I broadly agree with Mr Singh's submission that I should not place much reliance on *Maria Eloisa*, there are other precedents which suggest that a custodial sentence would be appropriate, *Shi Rongping* notwithstanding. Having regard to those precedents involving false statements as to educational qualifications in applications for PR status supported by forged credentials, which involved terms of imprisonment ranging from two to eight weeks in duration, and keeping in mind what I have said about *Thangarasu Sabapathi* (at [38] above), I am of the view that the proper starting point for the seventh and eighth charges in the present case would be two to four weeks' imprisonment per charge.

50 That is but the starting point: there remains an important aggravating factor to be taken into account, which is the fact that the appellant absconded while out on bail. To reiterate, she was initially charged in 2002 for having made the false statements in her applications for PR status but was released on bail and permitted to travel out of the jurisdiction. However, she did not return to answer the charges. This justifies enhancing the sentence beyond the starting point on the principle of retribution, in that her blameworthiness is greater given her manifest intention to frustrate the

proper operation of the law in Singapore, as well as on the principle of general deterrence, in that it should be made known to all accused persons that they will be dealt with more harshly, if they deliberately breach their bail undertakings.

51 Taking the fact of the appellant's absconding into account, I am unable to say that a sentence of eight weeks' imprisonment for each of the seventh and eighth charges is manifestly excessive, even if it might be thought to be on the higher end of the acceptable range. I am therefore of the view that the sentences for the seventh and eighth charges should stand.

The false statements in disembarkation forms

52 I turn now to consider the second and sixth charges, which concerned the appellant's false statements in disembarkation forms that she had never used a passport under a different name to enter Singapore. I shall first survey a number of precedents that I consider to be pertinent before addressing the facts of the present case.

Precedents

53 There are a number of precedents that are similar to the present case in that those cases also involved false statements in disembarkation forms that the offender had never used a passport under a different name to enter Singapore. I consider these precedents pertinent. That said, some of these precedents involve offenders who had previously been barred from entering Singapore altogether unless they obtained express permission from the authorities, and this fact could, to an extent, distinguish those precedents from the present case.

54 Before I address the relevant precedents, I should say that I do not find particularly helpful a precedent cited by the appellant, *Public Prosecutor v Nguyen Thi Thanh Dong* [2013] SGDC 339. The offender there was married to a Singaporean and she put in an application for a long-term visit pass. In this application she made a false statement indistinguishable from the one in the present case, *viz*, that she had never entered Singapore using a different passport or name. She pleaded guilty to a charge for the offence under s 57(1)(*k*) of the Immigration Act, and to two other charges, specifically, carrying on an unlicensed remittance business and being a self-employed foreigner without a valid work pass. Seven other charges under s 57(1)(*k*) of the Immigration Act were taken into consideration. She was sentenced to four weeks' imprisonment and her appeal by way of Magistrate's Appeal No 226 of 2013 was dismissed.

55 I do not consider this case to be very useful because the false statement was made in an application for a long-term visit pass rather than a disembarkation form, and different considerations might apply when sentencing offenders in the two different situations. For instance, it might be argued that a false statement in a disembarkation form would result in nothing more than a visit pass of relatively limited duration, whereas a long-term visit pass might, as the name suggests, confer on a person the permission to remain in Singapore for a longer period of time, such that, all things being equal, a false statement in an application for a long-term pass should be viewed more seriously than the same false statement in a disembarkation form. On the other hand, it might be argued that a false statement in a disembarkation form could result in the entry of a person who ought not to be able to enter Singapore at all, whereas false statements in long-term visit pass applications would involve only offenders whose eligibility to enter Singapore is not in doubt. In the absence of proper argument along these lines which would help in determining the applicability of this precedent, I would hesitate to rely on it when there are more precedents directly on point involving false statements made in disembarkation forms.

56 The prosecution referred me to *Public Prosecutor v Jennet Aligado Simsuango @ Emilyn Mertin Salpon* (Magistrate's Arrest Case 2758 of 2009 and others, unreported). The offender there falsely stated in a disembarkation form that she had never entered Singapore using a different passport and she pleaded guilty to a charge under s 57(1)(*k*) of the Immigration Act. It seems that the offender had been lawfully removed from Singapore a number of years ago such that it would be an offence for her to re-enter Singapore without written permission from the authorities. The offender also faced another charge for throwing a beer bottle and beer mug at a hawker stall owner, and she had a previous conviction for unlawful return to Singapore. She was sentenced to four months' imprisonment for the Immigration Act charge and that was also the total sentence imposed on her. She did not appeal. There was no written decision in this case; neither was there even a summary of the case in *Sentencing Practice*. Hence I consider that I should exercise caution in relying on this case.

57 I would refer to three other precedents. In *Public Prosecutor v Abul Basher Md Khabiruddin* [2007] SGDC 58, the offender claimed trial to seven charges for the offence under s 57(1)(*k*) of the Immigration Act. He was found to have made false statements on seven occasions in disembarkation forms that he had never used a passport under a different name to enter Singapore. It does not appear that he was barred from entering Singapore at the time he made these false statements. He was sentenced to six weeks' imprisonment per charge, with three sentences ordered to run consecutively for a total sentence of 18 weeks' imprisonment. He appealed by way of Magistrate's Appeal No 237 of 2006 but this was dismissed.

58 In *Public Prosecutor v Duong Bao Ngoc* [2010] SGDC 178, the offender claimed trial to four charges under s 57(1)(*k*) of the Immigration Act, the allegation being that she had on four occasions falsely stated in disembarkation forms that she had never used a passport under a different name to enter Singapore. She was convicted on these charges and eight other immigration-related charges. The District Judge noted (at [3]) that a removal order had been issued against her such that she would have had to obtain permission from the authorities to enter Singapore. He sentenced her to two months' imprisonment for each charge involving a false statement on the disembarkation form. The total sentence imposed on the offender (with the sentences in respect of five charges being ordered to run consecutively) was 10 months' imprisonment and a $4,000 fine. The offender appealed by way of Magistrate's Appeal No 158 of 2010 but it was dismissed.

59 In *Public Prosecutor v Mohammad Ali Mohammad Monsur Ali* [2013] SGDC 133, the offender claimed trial to two charges under s 57(1)(*k*) of the Immigration Act, the allegation being that he had on two occasions falsely stated in disembarkation forms that he had never used a passport under a different name to enter Singapore. A removal order had been issued against him that banned him from entering Singapore and thus he also faced charges for returning to Singapore in spite of the removal order. He was convicted and sentenced to two months' imprisonment for each charge under s 57(1)(*k*) of the Immigration Act. The total sentence imposed on him (with sentences in respect of three charges being ordered to run consecutively) was two years and two months' imprisonment and eight strokes of the cane. He lodged an appeal by way of Magistrate's Appeal No 82 of 2013 but subsequently withdrew it.

The appropriate sentence in the present case

60 In the present case, the appellant was under no removal order and she was not barred from entering Singapore. This fact distinguishes her case from most of the precedents just alluded to. But the appellant did have an outstanding arrest warrant against her when she entered Singapore in 2009 and 2014, and her false statements in disembarkation forms should be seen in that context. By declaring untruthfully that she had never used a passport bearing a different name to enter Singapore, the appellant avoided disclosing the fact that she had entered Singapore using a Chinese

passport bearing the name "Lin Lifen", which was the name stated in the arrest warrant, and thereby reduced the likelihood that the authorities would discover her fugitive status. Viewed in that light, the offences concerning the appellant's false statements in disembarkation forms could be said to be aggravated.

61 However, Mr Singh submits that the District Judge erred in believing that the appellant had used fake names in her Canadian and Central African Republic passports; he says that those were names she actually used in those countries for legitimate reasons. This submission is not without some basis but I think it is unnecessary to come to a firm view on whether the names were fake because that is not the important point. The important point, rather, is that the appellant used those other passports to avoid detection in view of the outstanding arrest warrant against her, and further minimised the risk of detection by making false statements that she had never used a passport under a different name to enter Singapore. Given this situation, I cannot see how establishing that the names she used in the other passports were not "fake" would reduce her culpability to any substantial degree.

62 Mr Singh says that the fact that the appellant engaged lawyers to write to the Singapore authorities in 2013demonstrates her desire to take responsibility for her unlawful actions in 2001 and 2002. I am not persuaded that I should accord this factor much mitigating weight. I say this for two reasons. One is that, in her lawyers' letter of 15 August 2013, it was asserted that she had "to date not returned to Singapore" – this was patently untrue as she did enter Singapore on five occasions in 2009. The other is that, after getting her lawyers to write to the authorities in 2013, she persisted in her attempts to avoid detection by entering Singapore using a different passport and suppressing the fact that she had previously entered Singapore with a Chinese passport bearing the name "Lin Lifen". In short, her apparent contrition was undermined by her surrounding subterfuge.

63 However, in my judgment, Mr Singh is right to say that the District Judge erred in finding that the appellant returned to Singapore in 2009 and 2014 in order to obtain financial profit and not to see her son. The District Judge arrived at this conclusion on the basis of the contents of the 14 May 2013 and 15 August 2013 letters from her lawyers. In the 14 May letter, her lawyers indicated that she wishes to return to Singapore to "start up a business here and also to make some investments". As for the 15 August letter, I reproduce here the relevant parts:

> 10. Unfortunately our client [*ie*, the appellant] and her husband have been separated since 2008. The husband and our client's child currently live in Singapore.
>
> 11. Our client misses the child and wishes to seek reconciliation with her husband. Our client would also like to move all her business interests to Singapore and open an office in Singapore to make Singapore the head office for her oil business.
>
> 12. Further our client also wishes to set up roots in Singapore and if given a chance, she would like to make Singapore her permanent home. She currently plans to invest 2 million dollars in an apartment and business in Singapore.

64 The District Judge took the view that, since these letters focussed on the appellant's economic interests and mentioned her son only briefly, the inference to be drawn was that her real reason for entering Singapore was financial profit and not familial relations. I am, however, unable to agree with this perception. I accept Mr Singh's submission that, in endeavouring to persuade the authorities to permit the appellant to return, it should not at all be surprising that her lawyers would opt to appeal primarily to the head rather than the heart by emphasising the economic benefit that she could bring to Singapore. Thus the stress placed on that economic aspect does not suggest that she did not also have a genuine desire to see her son. Moreover, the very fact that her lawyers mentioned her son in

the 15 August 2013 letter suggests that that was something very much on her mind, not a mere afterthought. It was not disputed that the day after she attempted to enter Singapore on 21 March 2014 was the 12th birthday of her son.

65 In my view, even if the desire to see her son was not the only reason for the appellant's return to Singapore in 2009 and 2014, it was undoubtedly one of the reasons. While I cannot quite accept the proposition that a non-custodial sentence is invariably or even generally warranted where an offender makes false statements in disembarkation forms in the context of returning to Singapore for reasons of familial relationships, the court must still consider each case on its merits to determine whether it warrants the exercise of some compassion.

66 In the precedents I have considered involving the same false statement in disembarkation forms, sentences of two months' imprisonment were thought to be appropriate where the offender had been barred from entering the country. Taking reference from this, I consider that in a case such as the present one, where the offender is not barred from entering but is the subject of an outstanding arrest warrant, the starting sentencing range for the offence would be in the region of five to six weeks' imprisonment. Taking into account the fact that the appellant entered Singapore partly to be with her son, a sentence at the lower end of this range, five weeks' imprisonment, would not be inappropriate. Hence I think that the sentences imposed by the District Judge of eight weeks' imprisonment for each of the second and sixth charges was manifestly excessive.

67 But that is not the end of the inquiry as I should also take into account the fact that the appellant has spent three weeks in remand. Where an offender is convicted of multiple charges such that a number of individual sentences are imposed, some of which are to run consecutively and others concurrently, I think it would be right to factor in the time spent in remand by reducing one or more of the individual sentences that are to run consecutively. There is no reason to interfere with the District Judge's order that the sentences for the sixth and eighth charges should run consecutively, and thus the sentence for the sixth charge should, taking into account the three weeks the appellant spent in remand, be reduced to two weeks' imprisonment. Since the sentence for the second charge is to run concurrently, it is not necessary, nor would it make a difference, for me also to reduce the sentence for that charge to take into account time spent in remand.

Conclusion

68 I therefore allow the appeal to the extent that I reduce the sentence for the second charge to five weeks' imprisonment (that being the appropriate sentence for the offence) and the sentence for the sixth charge to two weeks' imprisonment (taking into account the three weeks already served in remand). But I do not disturb the sentences for the seventh and eighth charges, which is eight weeks' imprisonment per charge. As ordered by the court below, the sentences for the sixth and eighth charges are to run consecutively, making for a global sentence of 10 weeks' imprisonment.