

Public Prosecutor v Yee Cheung Wai Philip
[2007] SGDC 127

Case Number : DAC 19009/2006, MA 78/2007

Decision Date : 26 April 2007

Tribunal/Court : District Court

Coram : Toh Yung Cheong

Counsel Name(s) : Robert Tan (Assistant Public Prosecutor) for the Prosecution; Derek Kang (Rodyk & Davidson LLP) for the accused

Parties : Public Prosecutor — Yee Cheung Wai Philip

26 April 2007

Judgment reserved.

District Judge Toh Yung Cheong

1 The accused claimed trial to the following charge of employing an immigration offender:

You Philip Yee Cheung Wai are charged that you, from March 2005 to the 16th day of November 2005 in Singapore, did employ one Gulam, male 35 years old, FIN No. G90302614-M, Bangladeshi National, as a renovation worker and he being a person who had acted in contravention of Section 6(1) of the Immigration Act, Chapter 133, and whom you had reasonable grounds for believing to be a person who had acted in contravention of section 6(1)(c) of the Immigration Act, and you have thereby committed an offence under section 57(1)(e) of the Immigration Act, Chapter 133 and punishable under Section 57(1)(ii) of the same Act.

2 On 16 April 2007, I delivered a brief oral judgment outlining the reasons for my decision. I now reproduce these reasons.

Prosecution's case

3 The prosecution's case centred around the evidence of:

- (a) PW2 Gulam, the immigration offender.
- (b) PW1 William Thern, a former manager of Farrer Court Condominium.
- (c) PW3 Mdm Seah Whee Siam, the person who had admitted to harbouring PW2 Gulam in her Farrer Court Condominium Unit.

4 Basically, PW2 Gulam testified that he worked for the accused in Farrer Court, PW1 William Thern testified that he saw PW2 working in Farrer Court and saw him with the accused, and PW3 Mdm Seah testified that she had seen PW2 working in Farrer Court and allowed him to stay in her flat because PW2 was the accused's worker.

5 In addition, the prosecution called the following witnesses to round off its case:

(a) PW4 Ang Soon Hiang, a foreman with Pools Construction Pte Ltd, to testify about the his work Badal Ansal Ali, since PW2 Gulam was found in possession of a photocopied work permit belonging to the said Badal.

(b) PW5 Cher Hiang Meng Charles, an officer with the Ministry of Manpower who testified that the accused had never sent in an online request for screening of a work permit.

(c) PW6 Sgt Ho Bee Kiat, the investigation officer, to testify that PW2 Gulam had brought her around Farrer Court to show her the pedestrian walkway that he claimed he constructed for the accused.

Evidence of PW2 Gulam

6 PW2 Gulam [note: 1] was arrested by the police on 16 November 2005 at Farrer Court Court Condominium, Blk 151D #25-15. He had no identification documents save for a photocopied work permit (exhibit P13) in the name of Badal Ansal Ali.

7 According to PW2, he first arrived in Singapore in February or March 2005. [note: 2] He was introduced by a Bangladeshi agent to one Mr Lim at Geylang who gave him a photocopied work permit. Mr Lim brought PW2 to Apartment #25-15 in Farrer Court where they met an old lady. Mr Lim had a conversation with her and thereafter, Mr Lim showed PW2 to a small room [note: 3]. PW2 observed that the flat had been subdivided into 17 to 18 makeshift rooms. Before Mr Lim left, he told PW2 to call a handphone number 90910099. PW2 did so and spoke to the accused Philip Yee. He asked the accused if he could arrange work and the accused asked him to go to the void deck of Blk 151 Farrer Court.

8 The next morning, the accused went to the void deck and met the accused who was with 5 other Bangladeshi workers. He could not understand the accused well but one of the other workers spoke to him and told him that he would receive salary twice a month and his salary was either \$50 or \$35, depending on whether he did a good job. Subsequently, the workers brought PW2 to a storeroom where they took some tools and started work. Prior to starting work, he received no training [note: 4] and back in Bangladesh, he had only worked as a farmer [note: 5]. He was also given a blue coloured t-shirt as workclothes. Subsequently, he was given a white coloured t-shirt with blue wordings.

9 Initially, the other workers were the ones that gave him instructions. Subsequently, the accused gave him instructions directly. Some of the jobs he did were painting, casting cement, welding and pipe cutting. PW2 did work not only in the public areas of the condominium but also renovations inside flats. PW2 claimed that he was only a worker and had never been promoted to a supervisory role [note: 6]. The accused also worked outside Farrer Court. He even helped to renovate the accused's home by fixing the water heater, changing the lights and painting it. In addition, he also helped to renovate the accused's girlfriend's home. [note: 7]

10 PW2 was aware that the other Bangladeshi workers employed by the accused were staying illegally in Singapore [note: 8]. As PW2 was a hard worker, he had a good working relationship with the accused. Sometimes the accused would even bring PW2 to a nearby coffeeshop to buy him coffee or tea and also increased his salary from \$35 to \$50 per day [note: 9].

11 As PW2 was residing in Farrer Court, he claimed that he did not need to change for a security pass at the guardroom unlike the other Bangladeshi workers [note: 10]. During cross-examination, he clarified that he did in fact exchange his photocopied work permit for a security pass during the first three to four months [note: 11].

12 When PW2 started work, the covered walkway project for Farrer Court had already begun. When he was detained, he claimed that work on the walkway was still ongoing [note: 12] and that in fact, on the day of his arrest, he had been doing some painting work on the walkway [note: 13]. However, he changed his evidence during cross-examination and claimed that work on the walkway started four to five months after he started working for the accused [note: 14].

13 PW2 would work seven days a week except for some Sundays. If the weather was bad, they would stop work. PW2 was paid on the 5th and 20th of each month. The first time, he received \$350 and the second time he received more than \$400. He would always receive his salary directly from the accused.

14 PW2 recognised PW1 Thern as a condominium manager working for the management office. However, he had never had any work-related conversations with him. At most, PW2 would exchange pleasantries with PW1 Thern. As for the managers that preceded William Thern, PW2 said he did not know any of them ^[note: 15].

15 After PW2 was released from prison, he tried to call the accused but the accused told him not to call any more. As the accused owed PW2 some outstanding salary, PW2 called one of the other Bangladeshi workers employed by the accused, one Osman. Osman subsequently handed him \$350 and said that it was from the accused ^[note: 16]. Osman also told him not to call the accused any more.

16 During cross-examination, PW2 gave evidence of additional meetings after he was released from prison. In particular, he claimed he met the accused the day after he was released in prison though this was never mentioned in his examination-in-chief.

17 About six months later, the accused called PW2 and informed him that he had been called up by police officers. The accused asked when PW2 was leaving Singapore and PW2 replied that he did not know. The accused then asked PW2 to keep him informed.

18 On 30 July 2006, PW2 called the accused and informed him that his departure date was fixed for 4 August. The accused was happy and subsequently called him on a few occasions. PW2 met the accused at Serangoon Road, shook his hand and told him that on 4 August, the accused or one of his men would accompany him to the airport and then give him \$3,000. The accused told PW2 that he had worked for him for a long period and if PW2 left Singapore, the authorities could not impose a fine on the accused. However, the following day, PW2 was informed by the immigration office that he would not be allowed to leave the country.

19 On 1 August 2006, the accused called PW2 and PW2 revealed that he would not be leaving Singapore. The following day, the accused came to PW2's flat at Commonwealth Drive with three other persons. The accused asked him to get into the accused's lorry but PW2 refused and threatened to call the police. The accused grabbed PW2's hands and told him "don't kill me." PW2 started to walk towards a police post and the accused left.

Evidence of PW1 William Thern Liak Meng

20 PW1 William Thern Liak Meng ("William Thern") was an estate manager for Farrer Court Condominium between 2 August 2004 and 1 April 2006. His duties included overseeing the maintenance, housekeeping, and security of the Condominium.

21 According to William Thern, after he started work at Farrer Court, he became aware of a resolution passed earlier by the Management Committee ("MC") to erect covered walkways to the residents' blocks. However, the works for this project only started in 2004 (prior to August 2004) and the accused's company, World Tiger, was engaged to carry out this project. World Tiger was the only company engaged to work on this project. The walkway project ended in November 2004. William Thern claimed that in 2005, the accused did not carry out any further work on the walkway and was not given any project in 2005. ^[note: 17] In fact, he was able to give details of the major projects in 2005 and the names of the contractors given those project.

22 William Thern observed that the accused had four to five Bangladeshi workers. William Thern recognised PW2 as one of them. As William Thern's actual observations of PW2 are critical, I will list them out:

(a) During the construction stage, William Thern did a walkabout and inspected the progress of the work. PW2 was present though his exact role or presence was not explained ^[note: 18].

- (b) He called PW2 the foreman of the project.
- (c) He always saw PW2 wearing a World Tiger T-shirt [note: 19] .
- (d) He did not see PW2 speaking to the accused in Farrer Court very often, only between two to seven times [note: 20] .
- (e) When William Thern was asked who PW2 was working for he answered:
- Q: Did you establish who this Badal was working for?
- A: To my best knowledge, he worked for the accused.
- Q: How did you know this?
- A: Besides the t-shirt he wore, I can confirm that he's actually working for Mr Yee. My security guard can confirm this [note: 21] .
- (f) The accused told William Thern to look for PW2 if there was any problem during the construction stage. [note: 22] In fact, PW2 had relayed such messages to the accused before.
- (g) In some situations, William Thern would give instructions directly PW2 if it was within the capability of PW2 to carry out these works. He gave specific examples of situations where he instructed PW2 on changes to be made, such as rectifying the shape of the reinforced concrete footing, rectifying the screed on the handicapped access ramp, and asking him to clear construction debris left by the roadside [note: 23] .
- (h) William Thern performed inspections in the mornings and evenings and would spend 10 to 30 minutes each time observing. William Thern witnessed PW2 constructing the frames and putting up the perspex cover of the walkways together with his co-workers [note: 24] . He also saw PW2 preparing trenches for the reinforced concrete footing to support the metal frame and weld the metal frames together. He also saw PW2 laying the electrical cable for the lighting [note: 25] .
- (i) In 2005, William Thern saw PW2 performing repair works on the perspex cover by applying sealant and also repairs on the foot of the support frame. All repairs were completed by May 2005 [note: 26] .

Evidence of PW3 Seah Whee Sian

23 Mdm Seah Whee Sian (Mdm Seah) is a 66 year old housewife who resides at Blk 151D #25-15 of Farrer Court together with her husband. By the time of the trial, she had since pleaded guilty to a charge under s.57(1)(d)(iii) of the Immigration Act for harbouring PW2.

24 In 2003, Mdm Seah was having some leakage problems in her top floor flat. The manager brought the accused to Mdm Seahs home and Mdm Seah pointed out the problems to him. One or two days later. The accused returned to Mdm Seah's flat together with PW2. PW2 then proceeded to work on the leakage. Mdm Seah clarified that work was done on the wall below the window and not the ceiling [note: 27] .

25 A few days later, the accused returned to view the completed work. Mdm Seah told the accused that there was some leakage but the accused explained why the problem was not his fault. However, he assured Mdm Seah that she could call him if there was any problem so he gave her his business card (exhibit P16).

26 Between 2003 and 2005, PW2 did not come to Mdm Seah's home again, but Mdm Seah ^[note: 29] saw him working in the common areas every day [note: 28]. He would usually be working in tandem with other workers. Sometime around February or March 2005, PW2 approached Mdm Seah to rent a room in her flat. PW2 showed her his permit but Mdm Seah did not pay much attention to it since she knew that PW2 had been a contractor in Farrer Court for a long period of time.

27 Initially Mdm Seah was reluctant to rent out a room but PW2 explained that his flat was far away in Woodlands ^[note: 30]. Thereafter, Mdm Seah agreed to rent out a room. PW2 gave her the accused's namecard and Mdm Seah wrote the Mandarin words "Ma Lu", "black person" and "worker" and his phone number onto the card (exhibit P15). PW2 also mentioned that he had been working for the accused for 12 years and that his work permit would expire in December which gave Mdm Seah the impression that the lease would only be for a short period ^[note: 31].

28 Mdm Seah saw the accused once in a while around Farrer Court but did not have much conversation with him. On one occasion, after PW2 moved in, Mdm Seah asked the accused "do you know if your worker is staying at my place" and the accused said "yes." ^[note: 32]

Evidence of PW4 Ang Soon Hiang

29 PW4 Ang Soong Hiang ("Mr Ang") is a foreman with Pools Construction Pte Ltd. Between 1998 and 2004, Pools Construction employed one Badal Ansar Ali ("Badal"), a Bangladeshi, as a construction worker. Mr Ang was Badal's supervisor.

30 As far as Mr Ang was concerned, during the period of Badal's employment, Badal resided at premises provided by the company and worked for 7 days a week except for off days when the company had no work for him. On average, Badal might get one rest day every three months ^[note: 33].

Evidence of PW5 Cher Hiang Meng

31 Mr Cher Hiang Meng ("Mr Cher") is a customer management manager with the Ministry of Manpower. He has been with MOM since the beginning of 2002. He confirmed that work permits are issued to foreign workers for one employer at a time. If a new employer wants to take over the worker, the approval of the current employer and MOM has to be obtained.

32 Mr Cher also explained that MOM had an online system for checking the validity of work permits. After someone makes an online query, the result will be e-mailed to person making the query. From September 2004 till end of November 2005, there was no evidence that any query was made from someone with the accused's e-mail address.

Close of prosecution's case

33 After considering the evidence adduced during the prosecution's case, I was of the view that the prosecution had made out a prima facie case against the accused and I called upon him to enter his defence. The accused elected to give evidence in his own defence.

Evidence of the accused

34 The accused explained that his company World Tiger did not employ any workers at the material time. If he was awarded a contract, he will use subcontractors to do the work. He was not involved in the hiring of his subcontractor's workers and their salaries would be paid by the subcontractor. After engaging a subcontractor, the accused would nonetheless conduct daily inspections at the project site to ensure that things are running smoothly.

35 In 2002, the accused was awarded a contract for waterproofing works in Farrer Court. This included work on Mdm Seah's flat. The accused claimed that he subcontracted this work to Leck Kee Construction.

36 In 2002, the accused was awarded an excavation project in Farrer Court. He subcontracted this work to "Ah Lai" who had some Bangladeshi workers. The Condominium manager at that time, Christina, told the accused to ensure that the workers were legal so the accused went to the worksite to look at their work permits and jotted down the work permit numbers and names in order to verify them with the MOM. The accused claimed that he went in person to MOM but was advised to do the verification over the website and that in fact, he received a reply from MOM.

37 In 2004, the accused was awarded a contract to construct a covered pedestrian walkway in Farrer Court. He subcontracted this work to Chuan Fa Aluminium and Construction ("Chuan Fa Aluminium"). Chuan Fa Aluminium employed a Chinese foreman who would be accompanied by a few local Malay workers. The project was executed by one skilled workman and the rest were merely helpers [note: 34]. The accused had never seen any Indian or Bangladeshi workers working on the walkway project [note: 35]. The walkway project began in July 2004 and ended in May 2005. This was the last project that the accused had with Farrer Court.

His relationship with PW2

38 Sometime in July 2002, the accused received a call on his handphone. The person said "Boss, I'm Badul." The accused asked "Who Badul?" and he replied "Badul work for you." The accused assumed that the person on the line was Badal Ansar Ali, or "Ah Lai's worker." This person was in fact PW2 Gulam. Gulam asked "how are things, boss got work or not" and the accused replied that he did not employ workers. Despite this refusal, PW2 Gulam continued to call the accused on other days but the accused turned down his request for a job.

39 One day, after yet another phone call from Gulam asking for work, Gulam asked where the accused was and the accused replied that he was at Farrer Court. Sometime around noon, Gulam approached the accused at a void deck of one of the blocks and said "boss, I'm Badul." The accused was surprised that PW2 could recognise him but put it down to his shirt with the words World Tiger embossed above the chest pocket. Pleasantries were exchanged but PW2 did not ask for a job at the first meeting. [note: 36]

40 After this first meeting, the accused began to encounter PW2 almost daily at Farrer Court. Even though the accused had rejected PW2's request for a job, they became friends as he could talk to PW2 about many things that he could not reveal to his business associates. PW2 would follow the accused around and even ride in his lorry and they would converse during the whole journey. The accused would also have coffee and breakfast with PW2 at the market next to Farrer Court after his morning site inspections.

41 The accused had even visited PW2's flat in Woodlands for a meal. In return, the accused had also brought PW2 for a meal in Jalan Kayu. Sometime in 2004, the accused learnt that PW2 moved to a flat in Commonwealth. Thereafter, PW2 moved to Farrer Court sometime before 1 September 2004 [note: 37]. Over time, the accused found out that PW2's former employer had made a lot of money and out of gratitude continued to renew PW2's work permit to allow him to stay in Singapore as he did not have any work for him. The accused also found out that during the period that they were friends, PW2 acted as a subcontractor or labour supplier who deployed workers to worksite in return for a commission. [note: 38]

42 The accused admitted that as he was together with PW2 so often in Farrer Court, it was entirely possible that residents or condominium managers could have seen them together.

Interaction after PW2 was released from Prison

43 The accused claimed that PW2 called him from prison on one occasion to ask for an airticket. The accused said he would do so as a friend but he wanted to speak to the Prison officer but the Prison officer refused to speak to him.

44 After PW2 was released from Prison, they met at Tampines Industrial Park and PW2 asked for \$550 for an airticket. The accused agreed and gave him \$550.

45 After this meeting, they met the next day at Farrer Court by chance as PW2 was there to collect his belongings from the flat. There was nothing else mentioned in this meeting. From this point on, the accused did not have any further contact with PW2 until after the accused was charged in May 2006.

46 On a day after May 2006, PW2 called the accused on the handphone and the accused informed PW2 that he had been charged. According to the accused's handphone records, he received a call from PW2 on 26 May at 3.49pm. This surprised the accused who thought that PW2 was no longer in Singapore. ^[note: 39] PW2 wanted to meet with him and the accused replied that he would call him back. The accused then consulted his lawyer who advised him to record the conversation.

47 The accused then drove to Commonwealth and picked PW2 up. They then drove around while the accused recorded their conversation. The tape was tendered as a defence exhibit (D20).

48 Thereafter they had various phone conversations where PW2 called the accused to ask him about his next court date, whether he is fighting the case or pleading guilty. PW2 also assured him that he would not incriminate the accused in court. ^[note: 40]

49 Eventually PW2 asked the accused for \$2,000 to buy a fake passport to leave Singapore and \$3,000 in spending money. The accused said that he did not agree but proposed to meet him at the airport just before he left to give him a small amount for his expenditure ^[note: 41].

50 On 30 July 2006, after another Pre-trial conference, the accused had another meeting with PW2 in the Serangoon Road area. This was supposed to be their last meeting as PW2 was supposed to collect a forged passport later that evening and fly off before 4 August 2006. This meeting lasted for an hour though the accused did not elaborate on what there was to discuss.

51 There were a few more phone calls and the accused learnt that PW2 had not obtained the forged passport. Instead, PW2 asked for \$1,500 so that he could cross over the border to Malaysia. The accused felt that he had been taken for a ride and told PW2 not to call him again. In response, PW2 threatened to surrender to the police and say that he worked for the accused.

52 The accused claimed that he subsequently received word through one of PW2's friends that PW2 was planning to tell all the illegal workers in Singapore that if they were caught. The accused was worried and called his lawyer who advised him to make a police report. However, the accused decided instead to look for PW2 in Commonwealth. He waited at the foot of Block 98 and at 6.40pm, PW2 appeared. The accused confronted PW2 but nothing came out of the conversation except for threats by both sides to call the police.

Evidence of DW2 Christina Chan

53 DW2 Christina Chan was working as a condominium manager in Farrer Court between 2001 and September 2003. Ms Chan met the accused after she started work at Farrer Court. The accused was one of the contractors and was good at waterproofing works.

54 Ms Chan testified that she had also seen PW2 together with the accused. However, PW2 would not be involved whenever Ms Chan had work-related discussions with the accused.

55 According to Ms Chan, PW2 would follow the accused when he was conducting site inspections but PW2 would be dressed in casual clothes and not the World Tiger T-shirt ^[note: 42].

56 For the first project that Farrer Court awarded to the accused, Ms Chan recalled asked the accused to check that his workers were legal workers. The accused reverted saying that they were all legal workers.

Evidence of DW3 Liew Yoke Lian

57 DW3 Mdm Liew is the accused's wife. Her testimony mainly concerned previous occasions when their family had dinner with PW2.

Evidence of DW4 Lum Chee Kiong

58 DW4 Lum Chee Kiong was the person who lent the accused a tape recorder to tape record the conversation with PW2. He had also seen PW2 together with the accused in 2004 at Mayflower Condominium. Lum was doing a job for the accused at Mayflower when the accused came to inspect the job. PW2 accompanied the accused on that occasion.

My decision

General approach to the assessment of credibility

59 The trial court is in a privileged position as it can observe the demeanour of the witnesses and can make findings on the credibility of a witness based on this. However, the trial court must also take into account whether the content of the evidence of a witness is internally consistent and whether this evidence is also consistent with extrinsic evidence: *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610.

Assessment of the evidence of PW2 Gulam

60 The glaring problem with PW2 Gulam's evidence was his claim that he first arrived in Singapore in either February or March 2005. This was inconsistent with the evidence of two other prosecution witnesses, PW1 William Thern and PW3 Mdm Seah, and two defence witnesses, the accused and Ms Chan, who gave evidence that Gulam was around as early as 2003 (in the case of William Thern, 2004, since he only joined Farrer Court in 2004).

61 Given the fact that PW2 was arrested in November 2005 and statements recorded from him then, I found it hard to believe that he could have forgotten the year if not month that he first arrived in Singapore. The only conclusion that I could draw from the weight of the evidence is that PW2 had deliberately lied about when he first came to Singapore.

62 Even if PW2 was lying about when he arrived in Singapore, this did not necessarily mean every part of his evidence had to be automatically rejected. Instead, the court still had a duty to carefully scrutinise his evidence to see which parts could be accepted and which parts had to be rejected.

63 First, I looked at PW2's account of how he first came to Farrer Court. According to PW2, he was brought to Mdm Seah's flat in Farrer Court by one Mr Lim in February or March 2005 and the very next morning he met the accused. PW2's account was false as there was ample evidence to show that he had met the accused very much earlier. Furthermore, PW2's account of how he met Mdm Seah was contradicted by Mdm Seah.

64 Secondly, I looked at PW2's account of his first meeting with the accused and how the accused's workers were the ones that briefed him on the work and how he started work immediately without any prior training. Again, this could not have happened in March 2005 since PW2 was already around earlier.

65 In the circumstances I found that I had to reject this entire portion of his evidence. In particular, it was simply not possible for me to find that PW2 was telling the truth how he met the accused except that he got the date wrong.

66 Next, I looked at his evidence concerning how he constructed the walkway. His dates for the walkway construction were obviously incorrect and he even contradicted himself during his evidence on when the walkway construction began. Nevertheless, if he did not witness the construction of the walkway, how was he able to describe it? The defence explanation for this was that PW2 was always around Farrer Court and would follow the accused when he inspected the ongoing works, therefore, it was no surprise that he could describe the walkway project and bring IO Ho around Farrer Court to point out the works that he did. On the other hand, the prosecution's contention was that PW2 could describe the walkway project because he was involved in its construction.

67 In view of the weaknesses of PW2's evidence concerning the date of the walkway project, it would not be safe to accept the remainder of his evidence concerning his involvement in the project without independent corroborative evidence.

68 Similarly, given that the charge alleges that PW2 was employed by the accused between March 2005 and November 2005, I had to see if there was independent evidence which corroborated this since I found it unsafe to rely on PW2's uncorroborated evidence. I will turn to the issue of corroboration when I assess the evidence of PW1 William Thern and PW3 Mdm Seah.

Reason to frame the accused

69 Despite the unreliability of his evidence concerning the date he came to Singapore and the date of the walkway project, I found that such inaccuracies were not motivated by any desire on the part of PW2 to frame the accused. In fact, it appeared to be the very opposite as PW2 tried to deny knowing the accused even when brought face to face with the accused in the police station.'

70 PW2 had nothing to gain personally by denying that he knew the accused. As PW2 explained, he did this as he wanted to protect the accused who had treated him well and paid his salary. ^[note: 43] However, he was forced to admit after he was placed in the same room as the accused and the accused admitted that he knew PW2.

71 Therefore, PW2's initial conduct where he denied knowing the accused did not gel with the defence case theory that PW2 claimed that the accused was his employer in order to remain in Singapore to work while the case against the accused was proceeding. Furthermore, by the time of the trial commenced, he would already have achieved his aim of working in Singapore for a longer period and he knew that he would be deported after his trial. In the circumstances, he had every opportunity during the trial to change his story and exculpate the accused but he did not do so.

72 The next issue I had to consider was whether the accused's proven lies were a result of his desire to frame the accused. For example, PW2 lied about when he met the accused and the walkway project being in 2005 instead of 2004. I was of the view that these lies were actually the result of PW2 wanting to minimise any sentence he received for the immigration offence. It is not unreasonable to assume that PW2, having stayed in Singapore for so many years, had interacted with other illegal immigrants including those released after serving their sentence. As a result, he may have formed an impression that the sentence imposed for an immigration offence was related to how long he had been working illegally in Singapore and tailored his story to the police accordingly.

73 In view of the inherent weaknesses of PW2's evidence, I did not find that the prosecution had proven beyond a reasonable doubt that PW2 had no reasonable to frame the accused as the defence case theory remained a logical possibility. On the other hand, there was some evidence that the weaknesses in PW2's evidence were the result of him trying to protect himself by understating the length of his stay in Singapore and not due to a plan to frame the accused. All this reinforced the need to look for independent evidence that could corroborate either side's version.

Conduct after his release from prison

74 The accused conceded that he had instructed his lawyers to ask for multiple adjournments for his case ^[note: 44]. In fact, prior to the trial, he had already instructed and discharged two previous sets of lawyers. However, he claimed that he delayed the case because he had a 'soft spot' for PW2 who was on the run and trying to leave Singapore:

Q: What do you know?

A: He has been telling me all this while that he was on the run, he refused to pay for the airticket, so he has to be on the run, he encouraged me to delay and drag on so that he has more opportunity to move around to arrange. I realised now that he was on special pass and given special work permit, so by working on my soft spot for him, to delay, to ask for postponement of court adjournment, he would have more opportunity to work on to collect his income. Why not as an illegal immigrant, he can have a special pass, where he's so much better off than a legal foreign worker having to pay their way in to get a legal pass, so I realised now that I was manipulated by him.

75 If PW2 was on the run from the authorities and wanted to leave Singapore, what did this have to do with the accused seeking adjournments for his own court case? Logically speaking, if PW2 was on the run, whether or not the accused's trial proceeded would have no impact on PW2's success in leaving Singapore. Therefore, the accused, by delaying his case, was not doing PW2 any favours and the only person who stood to benefit was himself.

76 The only inference that could possibly be drawn was that the accused was hoping that PW2 left Singapore before trial dates were fixed as this would ensure that he would receive at least a discharge not amounting to an acquittal. If PW2 had not left the country and trial dates were fixed, there was always a chance that PW2 could be arrested if he was on the run and brought to court to testify against the accused.

77 There was of course some dispute about who initiated these conversations, but the fact remained that after the accused had been charged, he remained in regular contact with PW2, a material prosecution witness and they discussed matters like the date of the next pre-trial conference. The accused, admitted that told PW2 that he would give him a sum of money at the airport just before he left, though of course, this had nothing to do with the case but was a token of their friendship.

78 I found the accused's behaviour and frequent interactions with PW2 after the accused was charged very suspicious. The fact that the bulk of the conversations were about arrangements for PW2 to leave Singapore before trial dates were fixed was even more suspicious. It was not as if the accused was an innocent babe in the woods who did not know that what he was doing was inappropriate as he was represented by Counsel at all material times. However, in the final analysis, this was not a significant factor in my decision.

The tape recording

79 The defence produced a tape recording and a transcript of the recording drafted by the accused. The prosecution put the defence to strict proof as PW2 claimed that he did not say most of what was on the tape. The prosecution's objections were two-fold. First, they objected to the authenticity of the tape. Secondly, they objected to the accuracy of the accused's transcription as the accused himself admitted that he tried to send the tape to an official transcription agency which was unable to transcribe most of the tape as most of it was unintelligible, yet the accused was able to decipher the unintelligible parts of the conversation.

80 Be that as it may, I found that the accused's version of the transcript, even if accepted as accurate, added little to the defence case. At best, it showed that the accused and PW2 knew each other.

81 One point I noted from the transcript was the most of PW2's responses were more or less non-committal or vague. It was the accused who was asking the 'leading questions' in order to elicit a response, but all he got was a vague response. Another point I noted was that PW2's English was not particularly good, which made me wonder if PW2 had the language facility to describe the process of using forged passports to get out of the country as claimed by the accused.

82 On 26 May 2006, the accused knew that his lawyer did not think that meeting PW2 was a good idea but if he insisted, he should tape record the conversation. If that was the case, one would have expected the accused to follow his lawyer's advice and tape record all subsequent conversations with PW2. Yet strangely, all we have the recording of only the first of many conversations. Where, for example, is the recording of the conversation where PW2 allegedly asked the accused for \$5,000 in order to leave the country?

If PW2 was not working but hanging around Farrer Court every day, how did he support himself?

83 According to the accused, PW2 was hanging around Farrer Court every day. PW2 would follow the accused around when he inspected the Farrer Court worksite. After this, they would go to the nearby market for coffee. Therefore, PW2 appeared to be leading a life of leisure or maybe he just worked half a day in the afternoon. According to the accused, PW2 didn't need to work hard. He was a labour supplier that simply lived off commissions earned from deploying workers to various worksites. After PW2 was released from prison, why did he not return to this easy and lucrative job? Instead, he became a dishwasher where the working hours were probably longer with no time for morning coffee with his friends.

84 According to the accused, PW2 had previously resided in flats in Woodlands and Commonwealth. Why was there a need to move to Farrer Court, a private condominium in District 10? In fact after his release from prison, he had moved back into a flat at Commonwealth. PW2's move to Farrer Court was certainly consistent with his account that he was working for accused at Farrer Court and being on location facilitated PW2's work on the walkway project.

85 The question of why PW2 would be at Farrer Court if he was not working there also ties in with Mdm Seah's evidence. In Mdm Seah's case, the question is why would she rent a room in her District 10 Condominium to a Bangladeshi worker unless he was someone who was familiar to her?

Evaluation of Mdm Seah's evidence

86 It is not disputed that Mdm Seah was charged and convicted of what is commonly called "negligent harbouring" and given a non-custodial sentence. The defence submitted that when Mdm Seah was investigated for harbouring PW2, she had falsely incriminated the accused in order to lessen her own culpability and received a reduced charge as a result.

87 The defence referred to the plea in mitigation submitted by Mdm Seah's lawyer and pointed out certain inconsistencies with her evidence in court. After scrutinising these inconsistencies, I was of the view that they were minor and did not adversely affect Mdm Seah's credibility. In relation to the internal consistency of her testimony, I noted that from the moment investigations began, Mdm Seah's position was that PW2 was a worker working for a contractor in Farrer Court and that ultimately, the contractor she pointed to was the accused.

88 Certainly, I recognised that when Mdm Seah was being investigated by the police, she may have had an incentive to deflect the blame from herself. However, since she had already pleaded guilty and had been dealt with, there was less reason for her to continue to give false testimony against the accused in court. A careful scrutiny of her evidence showed that she not only maintained her account that the accused had acknowledged that 'his worker' was residing in her unit but took pains to emphasise how certain she was of this. This was certainly not the behaviour of a witness who was simply going along with what she said in her police statement in order to avoid being prosecuted for giving false evidence.

89 It is curious that she picked the accused as scapegoat. After all, there was no evidence that she had a grudge against the accused and she did not know the accused all that well. What is more curious is that her claim that PW2 was the accused's worker coincided with the evidence of PW1 Thern and PW2 Gulam. There was no assertion by the defence that Mdm Seah had discussed the case with PW1 Thern and PW2 Gulam before pinning the blame on the accused, so how did this remarkable coincidence come about? After all, the accused was not the only contractor with workers in Farrer Court. Furthermore, unlike PW1 William Thern, Mdm Seah did not testify that she would always see the accused and PW2 walking around together. Instead, she saw PW2 working in the common areas every day and the accused 'once in a while.'

90 I found one further aspect of Mdm Seah's evidence to have a ring of truth to it. Mdm Seah and her husband stay in a private condominium in the upmarket District 10 area. She appeared reasonably well-off as she goes to Canada often to visit her children and leaves the Condominium in the care of her tenants. Therefore, one would expect her to only rent rooms to persons she considered reliable since she could not be around all the time. In fact, according to her, she would normally rent rooms to students and this is corroborated by PW2 who confirmed that some of the other tenants told him they were students^[Note: 45]. She was emphatic in her assertion that she would not rent a room to just any random Bangladeshi worker:

Q: What are the nationalities of the other tenants?

A: Most of them are Chinese from Malaysia and other countries. This was the first time I rented a room to a black man. Because he's a worker in Farrer Court that's why I helped him.

91 Therefore, I found that the reason why Mdm Seah rented a room to PW2 Gulam was that she had actual and specific knowledge that PW2 was the accused's worker (and not the worker of some other Farrer Court contractor). Otherwise, there was no reason why she would want to rent out a room to him instead of foreign students who formed the majority of her tenants. The only way she would have obtained this knowledge was because one or both of her assertions was true:

(a) That the accused had brought PW2 to her flat to do some waterproofing work.

(b) That she had mentioned to the accused that his worker was staying in her flat and the accused acknowledged this.

Evaluation of PW1 William Thern's evidence

92 I now turn to William Thern's evidence. In my view, William Thern was a honest witness who gave answers to the best of his recollection and did not embellish them. He was also able to explain in a detailed manner his basis for saying that PW2 was an employee of World Tiger:

Suggest: You came to the conclusion that Badal was an employee of World Tiger because you saw him wearing World Tiger clothes, saw him on some of your occasional rounds to inspect the walkway, saw him doing some work, and because the accused asked you to relay messages regarding the walkway to Badal if you could not contact the accused.

A: Yes [note: 46].

93 William Thern's evidence was internally consistent and painted a clear and detailed picture of PW2's role during the Farrer Court walkway project. William Thern recalled some interaction between the accused and PW2. He testified that he had seen the accused giving work related instructions to PW2 [note: 47] and further, the PW2 had relayed work-related messages to the accused on William Thern's behalf.

94 Added to these interactions were William Thern's observations that PW2 had actually worked on the walkway project and was wearing a World Tiger T-shirt when doing so. Though Christina Chan said that she never saw PW2 with a World Tiger T-shirt or actually working at the worksite (as opposed to simply accompanying the accused around while dressed in casual clothes), it is critical to note that Christina Chan was testifying about her observations in 2001-2003 and not 2004 when the walkway started. If I accepted that PW2 was not working for the accused in 2001-2003, it was still logically possible that PW2 could have started working for the accused in 2004.

Whether William Thern's testimony is the result of incomplete information and flawed surmise

95 The defence did not dispute that PW2 was often with the accused or that the accused had given World Tiger T-shirts to him (out of friendship). However, the defence explained that all this was the result of their friendship. Because William Thern did not know that PW2 and the accused were good friends, the defence submitted that William Thern misinterpreted the closeness of the accused and PW2 as that of an employer-employee relationship. So for example, even if PW2 passed messages to the accused on behalf of William Thern, he may have been doing so out of friendship and not because PW2 was the accused's employee.

96 The main problem with the defence submission is that William Thern actually saw PW2 working on a walkway project and dealt with him regularly, from asking him to fix the screed on a concrete ramp, to clearing away the construction debris, matters within the scope of the accused's contract with Farrer Court. I was of the view that this aspect of William Thern's evidence was very reliable (and consistent [save for the issue of dates] with PW2 and PW3 Mdm Seah's evidence) and I accepted that PW2 had worked on the walkway project.

Who was PW2 working for?

97 The accused claimed that PW2 was not working on the walkway project though PW2 was present at Farrer Court and accompanied the accused on his worksite inspections. DW5 Johnny Ong, the person claiming to be the subcontractor for the walkway project also claimed that he did not employ PW2.

98 However, as indicated above, I found that PW2 was in fact working at the Farrer Court worksite. There were therefore three logical possibilities:

- (a) PW2 was employed by the accused.
- (b) PW2 was employed by the subcontractor.
- (c) PW2 was not working for anyone but decided to help construct the Farrer Court walkways anyway.

99 First off, I rejected as inherently improbable any suggestion that PW2 was simply working there on his own accord without being employed by anyone. There was no reason for PW2 to work for free on the worksite. Furthermore, it was not a huge project with so many workers that PW2 could have sneaked into the worksite and starting working without the accused noticing. According to PW1 William Thern, the accused had at most 4 to 5 workers. [note: 48]

100 This left either the subcontractor Johnny Ong or the accused. If I accepted that Johnny Ong was the subcontractor, then was it possible that he employed PW2 and not the accused? Given the fact that all the witnesses had never seen PW2 together with the accused, while PW1 William Thern had seen the accused and PW2 discussing work-related matters, it was more probable the accused was the employer. To reinforce this conclusion, I turned to the evidence of PW2 who implicated the accused and not Johnny Ong. If Johnny Ong was PW2's true employer why did PW2 instead falsely implicate the accused who was his friend? If his motive was to stay in Singapore as a witness, surely the same objective would have been served by implicating Johnny Ong?

101 Another aspect of Johnny Ong's evidence I found doubtful was his claim that the senior worker in charge of the walkway project was a Chinese Malaysian known as "Shao Xi." [note: 49] This was inconsistent with William Thern's evidence that PW2 was the foreman. [note: 50] Surely William Thern would be able to figure out who the site foreman was since he conducted regular if not daily inspections of the walkway project. Furthermore, if Johnny Ong's evidence was true, why did PW1 Thern communicate and convey instructions regarding the walkway project to PW2 instead of this Chinese Malaysian? Given PW2's weak command of English, it would have been far easier for William Thern to communicate with a Chinese Malaysian.

102 I would add that even if PW2 was in fact working for Johnny Ong, I was of the view that the accused would still be guilty of employing PW2 in view of the definition of 'employ' under the Immigration Act and the arrangements for the walkway project. Section 2 of the Immigration Act defines the term "employ" as:

to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration

103 In order to determine whether there is an employment relationship, several factors will be taken into account by the court including the manner or remuneration and the degree of control exercised by the alleged employer: *Tamilkodi s/o Pampayan v PP* [1999] 1 SLR 702 and *Loh Kim Lan and Another v Public Prosecutor* [2001] 1 SLR 552.

104 Johnny Ong stated that:

- (a) He had no uniform for his workers.
- (b) He would only go down "occasionally" to supervise his workers [note: 51]. On the other hand, the accused would be there almost every day to conduct inspections. PW1 was aware of the accused's inspections but appeared to have no impression that Johnny Ong had gone down to supervise the workers.
- (c) The accused supplied all the materials for the walkway project. [note: 52] It seemed odd that Johnny Ong's company "Chuan Fa Aluminium" did not supply any aluminium fixtures for the walkway project.
- (d) He did not know whether aluminium was used in the walkway project [note: 53] until he was shown a photograph of the walkway in court whereupon he confirmed that aluminium was used.

(e) He did not obtain any measurements or specifications for the walkways. Instead the accused provided them directly to the workers [note: 54].

(f) There were no invoices or quotations for this project as he only charged for workmanship and not materials [note: 55].

(g) The accused supervised Johnny Ong's workers for the walkway project [note: 56].

105 In my view, Johnny Ong's role appeared to be limited to the supply of workers to the accused. He did not even have any specifications for the walkway and it was the accused who told the workers how to build the walkway and the main supervision of the workers came from the accused. In the circumstances, even if there was a possibility that PW2 was Johnny Ong's worker, I was of the view that the accused was nevertheless also his employer under the Immigration Act. I would add that this analysis is restricted to the period when PW2 was working on the walkway project.

Evaluation of the defence

Evaluation of the accused's evidence

Impeachment

106 I will begin with the application by the prosecution to impeach the accused's credit. After carefully scrutinising the statement, I did not feel that the inconsistencies were significant. For example, the accused stated in his statement that he had workers while in court he said they belonged to his subcontractors. I accepted his explanation that when he referred to 'his workers', it was a loose term encompassing the workers of the subcontractors as well. This is also in line with my earlier finding concerning the degree of supervision the accused had over the subcontractor's workers.

His beliefs concerning PW2

107 What was a former Bangladeshi work permit holder doing hanging around Farrer Court every day? Why did he not seem to have any work and why was he so free that he could follow the accused around?

108 The accused claimed:

(a) That he accepted without question PW2's story that PW2's former employer had made so much money that out of gratitude, he extended PW2's work permit to allow PW2 to remain in Singapore [note: 57].

(b) That he when he first met PW2, he assumed he was "Ah Lai's" worker and that PW2 had worked for Ah Lai on the excavation project subcontract in 2002 [note: 58].

(c) That when he first met PW2, PW2 was apparently out of work already and looking for a job.

109 Putting the above pieces of evidence together, it suggests that PW2's former employer 'Ah Lai' was the one who had made so much money and was extending PW2's work permit out of gratitude. This allowed PW2 to go around asking the accused repeatedly for work while having a valid work permit at the same time. Of course, 'Ah Lai' died in 2004 or 2005 so one wonders how PW2's permit was renewed after that.

110 I found PW2's story so unlikely that any reasonable person would have suspected that something was amiss concerning PW2's actual immigration status. The accused was not some naïve simpleton but an experienced businessman who had previously employed his own workers and also possessed a Master's degree. He would surely have known that work permits for construction workers are not easy to obtain and if 'Ah Lai' (or whoever his former employer was) had gotten a valid work permit for PW2, both Ah Lai and PW2 would have both been better off if a transfer could be arranged. This would allow Ah Lai

to save on the work permit levy and would also allow PW2 to work as opposed to remaining in Singapore without any work (PW2's repeated calls to the accused for work showed that he needed work). After all, the fact that PW2 had a work permit did not entitle him to work anywhere except for Ah Lai and so he could not have been legally employed anywhere else. In the circumstances, I rejected this aspect of the accused's evidence.

111 I would add that even if there was evidence that the accused and PW2 were friends, for example, the evidence that they went out for meals together, this was not inconsistent with an employment relationship:

- (a) It may well be that the accused and PW2 were friends first and out of friendship, the accused offered PW2 a job.
- (b) PW2 performed his job well and was even given a more important role in the project insofar as he acted as a liaison by taking instructions and messages from William Thern on the accused's behalf.

112 I am aware that a lot of time was spent by both the prosecution and the defence on the evidence of the accused concerning his relationship to PW2. In view of my finding that it would be unsafe to rely solely on PW2's uncorroborated evidence, I did not find it necessary for me to dwell further on the accused's own version of events. The key issue in this case was not whether the accused's version of his relationship with PW2 should be preferred, but ultimately, whether or not there was evidence which corroborated PW2's assertion that he was employed by the accused.

Conclusion

113 I found PW1 Thern to be a reliable witness. His evidence provided key corroboration for the evidence of PW2 Gulam. PW3 Mdm Seah's evidence also lent support to prosecution's case.

114 Be that as it may, the defence attempted to raise a reasonable doubt by pointing out that even if William Thern had given an accurate recollection of what he saw, such facts could be reinterpreted in another way and were equally consistent with there being no employment relationship but merely one of friendship.

115 However, after careful consideration, I rejected the defence and found that on the totality of the evidence, the irresistible conclusion was that the accused had employed PW2 in respect of the walkway project.

116 Regarding the issue of *mens rea*, the presumption under s.57(8) did not apply as PW2 was arrested in Mdm Seah's flat. Nonetheless, I found that there was ample evidence to show that the accused had the requisite *mens rea*. The accused also knew PW2 was a foreigner and did not conduct any checks on his immigration status or for that matter, did not even bother to verify his identity. The accused was an experienced businessman who had been a contractor for some time and knew the importance of conducting such checks. The fact that he did not do so showed that he being at least wilfully blind to the fact that PW2 was an immigration offender. Be that as it may, the charge only requires proof that the accused had 'reason to believe' that the accused was an immigration offender.

117 Finally I turn to the question of the period of the offence. Even though there was evidence to suggest that PW2 may have been working in 2005, I was of the view that such evidence was not reliable enough. In particular, William Thern was unable to provide much details of PW2's role in 2005 and I could not accept PW2's evidence that the main construction of the walkway took place in 2005. However, as William Thern's evidence concerning the main phase of the walkway project between August and November 2004 was clear and detailed, I was of the view that the prosecution has proven beyond a reasonable doubt that the accused had employed PW2 between August and November 2004.

118 In the circumstances, I exercised my discretion to amend the dates in the charge and I convict the accused on this amended charge. I am of the view that this did not cause any injustice to the accused as all along, the prosecution's case was that PW2 was involved in the construction of the walkway. Therefore, the accused knew that he had to rebut the allegation that PW2 was involved in the construction of the walkway and he also knew all along when the walkway was constructed.

Sentence

119 The prosecution did not submit on sentence but pointed out that in light of cases such as *RAlagiyasolan v Public Prosecutor* [2006] 2 SLR 427 the “benchmark sentence” was 12 months’ imprisonment.

120 The defence on the other hand, while appearing to acknowledge that the usual sentence for cases of this type was 12 months’ imprisonment, nonetheless submitted that mitigating factors that justified a lower sentence.

121 After careful consideration, I sentenced the accused to 10 months’ imprisonment and the Public Prosecutor and the accused have not appealed against the sentence. In the circumstances, I do not propose to set out my reasons in full. However, I wish to highlight that one of the factors which I took note of was the fact that there was some evidence to suggest that the accused and PW2 were friends first and that the accused may have given PW2 a job out of friendship. This was shown by DW2 Christina Chan’s evidence that PW2 and the accused were seen together regularly in 2003 though PW2 did not appear to have started working for the accused at that point. It was only later that PW2 was observed by PW1 William Thern to be working at Farrer Court.

122 At the time of preparing this judgment, the accused is on bail pending the hearing of this appeal.

[note: 1] Hereinafter referred to as “PW2” instead of “Gulam” to avoid confusion as parties never referred to him as Gulam and instead called him “Badul” or “PW2.”

[note: 2] NE @ 31

[note: 3] NE @ 50

[note: 4] NE @ 36

[note: 5] NE @ 49

[note: 6] NE @ 37

[note: 7] NE @ 61

[note: 8] NE @ 65

[note: 9] NE @ 68

[note: 10] NE @ 34

[note: 11] NE @ 54

[note: 12] NE @ 35

[note: 13] NE @ 93

[note: 14] NE @ 57

[note: 15] NE @ 92

[note: 16] NE @ 40

[note: 17]NE @ 5

[note: 18]NE @ 6

[note: 19]NE @ 22

[note: 20]NE @ 22

[note: 21]NE @ 7

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[note: 23]NE @ 17

[note: 24]NE @ 8

[note: 25]NE @ 16

[note: 26]NE @ 15

[note: 27]NE @ 191

[note: 28]NE @ 187

[note: 29]NE @ 197

[note: 30]NE @ 217

[note: 31]NE @ 219

[note: 32]NE @ 190

[note: 33]NE @ 233

[note: 34]NE @ 276

[note: 35]NE @ 276

[note: 36]NE @ 283

[note: 37]NE @ 302

[note: 38]NE @ 301

[note: 39]NE @ 311

[note: 40]NE @ 319

[note: 41]NE @ 322

[note: 42]NE @ 476

[note: 43]NE @ 71

[note: 44]NE @ 320

[note: 45]NE @ 51

[note: 46]NE @ 21

[note: 47]NE @ 9

[note: 48]NE @ 584

[note: 49]NE @ 582

[note: 50]NE @ 6

[note: 51]NE @ 568

[note: 52]NE @ 571

[note: 53]NE @ 573

[note: 54]NE @ 574

[note: 55]NE @ 577

[note: 56]NE @ 581

[note: 57]NE @ 300

[note: 58]NE @ 293

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