

Public Prosecutor v Tan Mui Teck
[2003] SGDC 94

Case Number : DAC 36793/2002, 36794/2002, 36795/2002, 36796/2002, 36797/2002, 36798/2002, MA 11/2003

Decision Date : 24 April 2003

Tribunal/Court : District Court

Coram : Kevin Ng Choong Yeong

Counsel Name(s) : Wee Pan Lee (M/s Wee, Tay & Lim) for the appellant; Derek Kang (DPP) for the Public Prosecutor

Parties : Public Prosecutor — Tan Mui Teck

1. The accused was found guilty on the following:

a) Three charges under section 193 of the Penal Code, Chapter 224, in that on or about the 24th day of November 1998, at the High Court, Singapore, he did give false evidence in a stage of a judicial proceeding, by asserting in an affidavit of evidence-in-chief that (respectively)

i) Tan Aik Hoe Ivan (the 1st charge, Exhibit P1)

ii) Wan Sum Cheng (the 2nd charge, Exhibit P2) and

iii) Kuan Boo Siong Edmond (the 3rd charge, Exhibit P 3)

had signed and entered into a Consultancy Agreement dated 7 January 1997 with one Ishida Technologies (S) Pte Ltd, which statement he knew to be false and which was intended to be used by him in support of the said company's claim against Tan Aik Hoe Ivan, Wan Sum Cheng and Kuan Boo Siong Edmond respectively, in a judicial proceeding, namely, Suit No. 465 of 1998.

b) Three charges under section 193 of the Penal Code, Chapter 224, in that on or about the 24th day of November 1998, at the High Court, Singapore, he did give false evidence in a stage of a judicial proceeding, by asserting in an affidavit of evidence-in-chief that (respectively)

i) Tan Aik Hoe Ivan (the 4th charge, Exhibit P4)

ii) Wan Sum Cheng (the 5th charge, Exhibit P5) and

iii) Kuan Boo Siong Edmond (the 6th charge, Exhibit P 6)

had signed certain payment vouchers (the particulars of which are stated in Exhibits P4, P5 and P6 respectively), which statement he knew to be false and which was intended to be used by him in support of the said company's claim against Tan Aik Hoe Ivan, Wan Sum Cheng and Kuan Boo Siong Edmond respectively, in a judicial proceeding, namely, Suit No. 465 of 1998.

2. I was satisfied that all the six charges were proven beyond a reasonable doubt and the accused was found guilty and convicted. He was sentenced to 8 months imprisonment on each charge, with three of the sentences to run consecutively for a total of 2 years imprisonment. The accused now appeals against the conviction and sentence. The prosecution appeals against the sentence.

Prosecution's Case

3. The accused had exhibited three Consultancy Agreements and three sets of payment vouchers, each allegedly signed by Tan Aik Hoe Ivan, Wan Sum Cheng and Kuan Boo Siong Edmond respectively. The prosecution's case is that none of the three signed the Consultancy Agreement or any payment vouchers. The three had believed they were salaried employees of Ishida Technologies (S) Pte Ltd, and not consultants. The accused, by stating otherwise in an affidavit made pursuant to a High Court suit, was guilty of offences under section 193 of the Penal Code, Chapter 224.

Toh Kok Soon (PW1)

4. SSgt Toh was the fourth investigating officer of this case. He took over the case from the previous investigating officer, Sgt Alan Lim. He tendered the first information report (Exhibit P7) made by Tan Aik Hoe Ivan.

5. SSgt Toh told the Court that in the course of his investigations, he tried to trace another witness, one Mr K K Chai, but was unable to locate him.

6. Under cross-examination, SSgt Toh confirmed that a total of five Health Science Authority (hereafter "HSA") reports were received in relation to the allegation that the signatures on certain documents were forged.

Insp Roy Shafiq (PW 2)

7. Insp Shafiq was the second investigating officer of the case. He handed over the case to Sgt Alan Lim. Insp Shafiq collected the affidavit (Exhibit P8), from the accused in the course of the investigation.

8. Insp Shafiq stated that he obtained the specimen signatures of the three complainants, i.e., Tan Aik Hoe Ivan (hereafter "Ivan Tan"), Wan Sum Cheng (hereafter "Sharon Wan") and Kuan Boo Siong Edmond (hereafter "Edmond Kuan") from their various police statements signatures and the resignation letter signatures. He also obtained the three respective Consultancy Agreements and numerous payment vouchers from the accused.

Tan Aik Hoe Ivan (PW 3)

9. Ivan Tan told the court that he had, to his mind, been offered a job on a permanent basis by the accused to work as an engineer with Ishida Technologies (S) Pte Ltd (hereafter "Ishida Technologies"), in particular, on a Compact Disc (CD) Vending Machine project. This was in the second week of November 1996. He would be paid \$1600 or \$1800, plus CPF payments. Ivan Tan said he did not sign an employment contract with the accused. He did ask the accused for an employment contract but was told by the accused that he (the accused) would get the employment contract done eventually.

10. CPF became an issue with Ivan Tan when he found out through his October – December 1996 CPF statement that the accused had not been paying him CPF for 1996. After the discovery, he mentioned this problem to the accused weekly. The accused said that he was busy and had no time, and that he would settle the CPF issue with the CPF Board.

11. In the course of working for the accused, the accused issued Ivan Tan a Letter of Employment dated 30 April 1997 (Exhibit P11). This was to assist Ivan Tan in his application for a HDB flat as he needed proof of employment.

12. Eventually, Ivan Tan tendered his resignation from Ishida Technologies through a letter to the accused dated 13 February 1998 (Exhibit P9). Ivan Tan's colleagues, Edmond Kuan and Sharon Wan, also tendered their letters of resignation on the same day.

13. Ivan Tan sent an inquiry to the CPF Board sometime in 1997 to inquire about the CPF accounts. After the three resigned on 13 February 1998, they formally complained to CPF Board.

14. Asked if he suspected the accused had not been paying his CPF contributions, Ivan Tan said that he did suspect that, but that the accused kept re-assuring him and his colleagues. They also gave him the benefit of the doubt.

15. On 3 March 1998, Ivan Tan, through his solicitors, M/s Jose Charles & Co. wrote a letter of demand to Ishida Technologies demanding payment of the outstanding CPF sums to Ivan Tan, Edmond Kuan and Sharon Wan. Ishida Technologies later responded by suing Ivan Tan, Edmond Kuan and Sharon Wan for breach of their respective Consultancy Agreements.

16. Ivan Tan denied ever signing a Consultancy Agreement with Ishida Technologies (A1 of Exhibit A), or initialling any of the payment vouchers (A2 of Exhibit A). On 4 April 1998, shortly after seeing the Consultancy Agreement bearing a likeness of his signature for the first time at his lawyer's office, Ivan Tan went with Edmond Kuan and Sharon Wan to lodge a police report (Exhibit P7).

17. Under cross-examination, Ivan Tan admitted to setting up a company called "Advanced Solutions Pte. Ltd." sometime in November 1997. He denied he had set up the company with a view to be a contractor to Ishida Technologies and take the project he had been working on for Ishida Technologies to the commercial market. He said his company was an educational software company, although according to the records of the Registry of Companies and Businesses, one of the initial principal activities was "systems integration" (Exhibits D6 & D7).

18. In cross examination, Ivan Tan also denied there had been a meeting between himself, Edmond Kuan, Sharon Wan and the accused on 7 January 1997 at the office of the accused. He further denied signing a Consultancy Agreement that day (A1 of Exhibit A), as there was no meeting in the first place. Ivan Tan also denied initialling any of the payment vouchers (A2 of Exhibit A)), saying that he was not been made to sign any acknowledgements by the accused on receiving his monthly cheque payments.

19. Further in cross-examination, Ivan Tan said he received \$1600 a month in the course of 1997. Ivan Tan stated that his salary for February 1997 to December 1997 was \$2000. The sum of \$1600 was correct taking into consideration employee CPF. Ivan Tan also said he had asked for a raise and a bonus in December 1997. The accused agreed to give him a raise of \$200, to \$2200 per month. Ivan Tan received \$1760 in January 1998 from the accused. This sum was correct if employee's CPF was taken into consideration.

Kuan Boon Siong Edmond (PW4)

20. Edmond Kuan told the Court that the accused asked him to join his company as an assistant engineer. The remuneration started with a gross pay of \$1600 and on confirmation, \$1800 per month. The accused was supposed to contribute employer's CPF on top of that amount. Edmond Kuan understood the job to be a permanent one. He did not sign an employment contract with the accused, although he did ask for one. The accused told him he was too busy and had no time for administrative work.

21. Edmond Kuan testified that no CPF was ever paid into his account by the accused. He had asked the accused for the reason, and was told by the accused that he could not handle the administrative work. Edmond Kuan subsequently resigned from Ishida Technologies via a letter dated 13 February 1998 (Exhibit P 12). Together with Ivan Tan and Sharon Wan, they

made a complaint to CPF Board after the resignation. Edmond Kuan recalls that the accused was outraged at his resignation, and demanded he return to work.

22. Edmond Kuan denied ever seeing the Consultancy Agreement he purportedly "signed" (C1 of Exhibit A). He also denied initialling the payment vouchers (C2 of Exhibit A). He does not remember that there was a meeting with the accused on 7 January 1997 at the office of the accused. Edmond Kuan testified that after seeing the likeness of his signature on the Consultancy Agreement, he and his colleagues Ivan Tan and Sharon Wan went to lodge a police report against the accused for forgery.

23. Edmond Kuan further testified that he had nothing to do with the company Ivan Tan formed. During the course of his employment with the accused, Edmond Kuan said he received two sets of name cards from the accused, a beige set (Exhibit P13) and a blue set.

24. Under cross-examination, Edmond Kuan denied that the accused had invited him to be a consultant for 18 months. Edmond Kuan said the terms were that he was to be an employee, and that there was no mention of 18 months. Edmond Kuan further denied signing any documents at the office of the accused. He does not recall any signing any document of an A4 size during his period of employment with Ishida Technologies.

25. In cross-examination, Edmond Kuan agreed that the sum of \$1280 as stated in the 38th – 40th payment vouchers of C2 of Exhibit A was what he expected as take home pay, based on a gross salary of \$1600 per month. He also admits to later taking home \$1400, although he is not sure what his gross salary was at that point.

Yap Bei Sing (PW5)

26. Yap Bei Sing (hereafter "Yap") is a document examiner attached to the HSA. He has been a document examiner there since January 1989. His CV is Exhibit P14. Yap examined the questioned signatures and questioned initials of Ivan Tan, Sharon Wan and Edmond Kuan as found in A1 & A2, B1 & B2, C1 & C2 of Exhibit A respectively. He compared them against the normal specimen signatures signed by those three individuals. The normal specimen signatures were obtained from resignation letters, police statements and other documents of the three individuals. No normal specimen initials of the three individuals were obtained.

27. Yap explained that there were 7 levels in relation to the degree of certainty with respect to the evidence observed between a questioned and specimen signature or initial. The explanatory document is Exhibit P16. "Level 1" indicates that the same person wrote both the questioned and specimen signatures. "Level 7" indicates that the person who wrote the specimen signature did not write the questioned signature.

28. For Edmond Kuan's questioned signature as found in C1, Yap was of the opinion (given in Exhibits P15 and P20) that there was no evidence to indicate that the writer of the normal specimen signature made the questioned signature, i.e., there is no evidence to show that Edmond Kuan wrote the questioned signature. This opinion would be known as a "level 6" degree of certainty.

29. For Edmond Kuan's questioned initials (in the shape of a "K") as found in C2, Yap found the initials to be totally different in design from the corresponding "K" in Edmond Kuan's normal specimen. Yap was unable to ascertain if the writer of the normal specimen signatures made the questioned initials (Exhibit P20, paragraph 6).

30. For Ivan Tan's questioned signature and initials as found in A1 and A2, Yap was of the opinion (given in Exhibits P18 and P19) that there was no evidence to indicate that the writer of the normal specimen signature made the questioned signature and questioned initials, i.e., there is no evidence to show that Ivan Tan wrote the questioned signature and questioned initials. This opinion would be known as a "level 6" degree of certainty.

31. For Sharon Wan's questioned signature as found in B1, Yap found the signature to be totally different in design from Sharon Wan's normal specimen signature. Yap was unable to ascertain if the writer of the normal specimen signature made the questioned signature (Exhibit P17). No examination was made of Sharon Wan's questioned initials.

32. Under cross-examination, Yap explained what the "level 6" degree of certainty meant in relation to the questioned signature of Edmond Kuan and the questioned signature and initials of Ivan Tan (NE pages 63-64):

Q: Look at P16, it gives an explanation to the various conclusion levels. (Reads level 6.) What does it mean?

A: The differences noted could be due to natural variations, or accidental variations or different authorship.

Q: Which is likely one of the three reasons?

A: For this case (referring to Edmond Kuan's signature), I have done twice for the same signature with different sets of specimens. I saw the consistency among all the normal specimen signatures of the two sets of specimens. Yet, I still found the 5 differences between the questioned signatures and the 2 sets of normal specimen signatures. Similarities noted with Edmond Kuan.

Q: Is there sufficient doubt from this explanation to suggest the possibility that the questioned signatures is authentic? Not a forgery?

A: Its possible. But due to the 5 differences, the possibilities are quite slim. The reason is those 5 differences I point out would not fall within the natural range of variations.

...

Q: You would use level 7 if you were satisfied beyond reasonable doubt?

A: Yes.

Q: Whereas in situations where there is some doubt, you would use level 6?

A: Yes.

Q: Is that doubt in level 6 reasonable doubt, that the authorship is the same person?

A: There is such a possibility, but it is not high.

...

Q: All that you explained about level 6 for Edmond Kuan, do they apply to Ivan Tan?

A: Yes.

33. In re-examination, Yap clarified that the reason why he could not give a "level 7" degree of certainty to the questioned signatures Ivan Tan and Edmond Kuan is because there was only one sample of the questioned signature. Yap said if he were given two or three questioned signatures of the same stroke quality, pen pressure, relative alignments, then his pointer would shift to level 7 of the scale. Level 7 indicates that the person who wrote the specimen signature did not write the questioned signature.

34. Yap further clarified in re-examination that in comparing the features of the questioned signatures for Ivan Tan and Edmond Kuan, there were similarities in the design and overall appearance. However, Yap testified that if one went into depth, and broke down point by point, stroke by stroke, feature by feature, there were observable differences between them.

Sharon Wan Sun Chang (PW6)

35. Sharon Wan testified that she had expected to work for the accused on a permanent basis, and she also expected to be paid CPF by her employer. Her salary was to be \$1300 per month. She stated that the accused never told her that she was engaged under a contract. She said she did ask the accused for an employment contract, but the accused kept delaying things and never responded to her. When queried about the CPF payments, Sharon Wan testified that the accused told her he had put the CPF payments into someone else's account when queried why she had not received any employer's CPF contributions.

36. Sharon Wan told the Court that she had not signed any agreement or acknowledgements at any time while employed by the accused. She denied signing the Consultancy Agreement (B1 of Exhibit A) and the various payment vouchers (B2 of Exhibit A). Sharon Wan said she also received two different sets of name cards from the accused in the course of her employment, a blue set (Exhibit P23) and a beige set (Exhibit P24). She denied the name cards were given only for the purpose of the project launch and of Comdex Asia 97.

37. Sharon Wan resigned from the employment of the accused by letter (Exhibit P22), because the accused kept delaying her pay and that of her two colleagues, failed to receive their year-end bonus and did not receive CPF contributions. She added that she had nothing to do with the company Ivan Tan had set up in November 1997, and had no job lined up after she resigned.

38. Under cross-examination, Sharon Wan denied attending a meeting on 7 January 1997 at the office of the accused. She agreed that she received cheques of \$1040 from the accused. This would be the correct amount based on a gross salary of \$1300.

39. Asked why she didn't resign from the employ of the accused in the second half of 1997 despite not receiving her CPF, Sharon Wan testified that she trusted the accused and wanted to wait for her year-end Annual Wage Supplement bonus.

Prima Facie Case

40. Defence Counsel did not make a submission of no case to answer. Based on the evidence of Ivan Tan, Edmond Kuan, Yap and Sharon Wan, there was a clear prima facie case established. I explained the courses open to the accused and the accused elected to give evidence. He called one witness.

Defence Case

41. Simply, the defence is that Ivan Tan, Edmond Kuan and Sharon Wan did sign the Consultancy Agreements and payment vouchers as exhibited in the affidavit (Exhibit P8), and that the accused witnessed the signing of all the documents in question. The accused told the truth in his affidavit.

James A Blanco (DW1)

42. James A Blanco (hereafter "Blanco") is a US based certified document examiner practicing under his own name. He has been in practice since 1988 and has also worked for various US law enforcement agencies including the California Department of Justice and US Treasury Department. His CV is at Exhibit D2.

43. Blanco examined the questioned signatures and initials of Ivan Tan, Edmond Kuan and Sharon Wan against two normal specimen signatures of each person.

44. He concluded that the questioned signature of Ivan Tan was made by Ivan Tan, and the questioned initials of Ivan Tan was probably made by Ivan Tan. (Exhibit D3, page 3).

45. For the questioned signature of Edmond Kuan, he concluded that it was made by Edmond Kuan. He could not come to a conclusion for the questioned initials of Edmond Kuan due to different styles of writing between them and the normal specimen signatures. (Exhibit D3, page 4).

46. For the questioned signature and initials of Sharon Wan, Blanco was unable to resolve them with Sharon Wan's normal specimen signature. (Exhibit D3, page 4).

47. Under cross-examination, Blanco testified he was approached by the accused personally to review the signatures.

48. Blanco conceded the possibility that having more samples of the questioned signatures would have helped Yap's analysis. He also conceded that in principle, Yap was in a better position to give a comprehensive analysis between the questioned and normal specimen signatures, although Blanco did not believe he did. (Blanco had 2 normal specimen signatures for each of three persons to work with. Yap had 24 normal specimen signatures for Ivan Tan and 14 for Edmond Kuan.)

Tan Mui Teck (DW2 – the accused)

49. The accused at the time in question was the Managing Director of Ishida Technologies. The accused testified that he temporarily employed Sharon Wan and Ivan Tan in September and November 1996 respectively to assist in the assessment of the viability of the CD vending machine, and the preparation of the technical specifications. The accused told the Court that he planned to engage a contractor to work on the machine once the machine was deemed suitable and specifications had been worked out.

50. The machine was deemed viable sometime in December 1996. According to the accused, in mid December 1996, he met with Ivan Tan, Edmond Kuan and Sharon Wan. The accused agreed with a proposal by Ivan Tan that the three could be independent contractors to the project until such time as Ivan Tan could set up his own company to take over the project. The accused and the three also worked out the main terms of the Consultancy Agreement at this meeting.

51. In cross-examination, the accused said he drafted the Consultancy Agreement in early January 1997, and had Ivan Tan typed it out for him. Ivan Tan also asked him some questions in relation to the terms and conditions of the Consultancy Agreement. The terms and conditions of each respective Consultancy Agreement were similar, except for the personal remuneration amounts, bonuses and liability amounts.

52. On 7 January 97, the accused said that he and the three met at his office in Ubi, where they signed their respective Consultancy Agreement (A1, B1 & C1 of Exhibit A). After the Consultancy Agreements were signed, the accused passed them to his brother, who went to a neighbouring office to make photocopies of them.

53. Also at the meeting on 7 January 1997, the accused paid Ivan Tan and Sharon Wan the employers CPF contribution that he owed them for their temporary employment in 1996. He said he had no time to open CPF accounts for them and he passed them the employer's CPF contribution so that Ivan Tan and Sharon Wan could go to CPF Board to deposit it themselves.

54. Subsequently, the accused said he paid the three of them their monthly fees in cash or by cheque, and every time he made payment, he made the recipient sign an acknowledgement. These would be the payment vouchers (A2, B2 & C2.).

55. The accused also pointed out the ticks made on the payment vouchers. He said these were made by his auditor when the auditor was auditing his accounts.

56. The accused, in relation to the Letter of Employment dated 30 April 97 (Exhibit P11) given to Ivan Tan, said he demanded the letter back from Ivan Tan. When Ivan Tan failed to return the letter and had it sent to HDB, the accused said he wrote a clarification letter to HDB explaining that Ivan Tan was not his employee, but a mere consultant.

57. After Ivan Tan formed his company in November 1997, the accused said that Ivan Tan wanted his company to take over the project. However, according to the accused, Ivan Tan quoted too high a price to take over the project. Ivan Tan asked for an increase in his consultancy fee, but the accused refused.

58. After Ivan Tan, Edmond Kuan and Sharon Wan resigned in February 1998, and after the he was sent a letter of demand by M/s Jose Charles to pay the CPF contributions of the three, the accused initiated a civil suit against the three. The accused stated in his affidavit that Ivan Tan, Edmond Kuan and Sharon Wan had signed their respective Consultancy Agreement and certain payment vouchers (Exhibit P8, paragraphs 15 & 22). The accused exhibited the Consultancy Agreements (A1, B1 & C1 of Exhibit A) and the payment vouchers (A2, B2 & C2 of Exhibit A) to his affidavit of Examination In Chief (duly made before a Commissioner of Oaths) dated 28 November 1998. Subsequently, a consent Order of Court (Exhibit D1) was entered into by the parties, although due to further disputes over the Order terms, it was never carried out.

Findings

59. In order for the prosecution to prove the charges against the accused, the following needs to be established:

- a) That the accused made the affidavit (Exhibit P8) in question;
- b) That the accused knew that the exhibits (the documents marked A1, A2, B1, B2, C1 & C2 of Exhibit A) to the affidavit were false and that the evidence he gave in the affidavit was false; and
- c) That the accused intended that the said affidavit be used in a stage of a judicial proceeding.

Whether Accused Made Affidavit?

60. It is in the Agreed Statement of Facts (Exhibit A) that the accused did make the affidavit (Exhibit P8) and that he did exhibit the Consultancy Agreements and the three sets of payment vouchers in question. The affidavit was affirmed before a Commissioner for Oaths on 24 November 1998.

Whether Accused Knew Exhibits And Affidavit Were False?

The Experts

61. Yap Bei Sing ("Yap") (PW 5), the HSA document examiner, was certain there was no evidence to show that it was Ivan Tan or Edmond Kuan who signed the respective Consultancy Agreement (A1 & C1). In addition, there was no evidence to show it was Ivan Tan who initialled the set of Payment Vouchers (A2).

62. James Blanco ("Blanco") (DW 1) was positive that the same signatures in A1 and C1 were made by Ivan Tan and Edmond Kuan respectively. In addition, Blanco said it was probable that Ivan Tan made the initials in A2.

63. With regard to whether Yap's conclusions raised a reasonable doubt in the prosecution's case as asserted by defence counsel, I find that Yap has much experience as a forensic document examiner. His general expertise was not challenged. I therefore accept Yap's opinion that there was only a slim chance, and not a high probability, that the signatures on A1 and C1

and the initials on A2 were authentic. I also accept Yap's clarification that had there been more samples of the questioned signature with the same characteristics; he would have concluded that the signatures were forgeries. Yap also alluded strongly to the questioned signatories being due to different authorship.

64. Looking at the HSA explanatory notes, (P16), Yap's conclusions were at "level 6". That is just one level below "level 7"- the level of absolute certainty that there is a forgery.

65. From all the evidence of Yap, I find, contrary to what defence counsel suggested in cross examination, that Yap's conclusion with regard to A1, A2 and C1 do not raise a sufficient doubt to suggest that those signatures and initials were authentic and not forgeries.

66. Yap and Blanco have given contrasting opinions as to Ivan Tan's and Edmond Kuan's signatures on the Consultancy Agreement (A1& C1) and Ivan Tan's initials on the Payment Vouchers. However, it is noted that Yap had 24 normal specimen signatures from Ivan Tan and 14 from Edmond Kuan. Blanco just had 2 normal specimen signatures of each person. Blanco had admitted, in principle, that Yap was in a better position to produce a more comprehensive analysis although he personally did not think so. I find that Yap did have more samples to work with and he still found sufficient differences in the signatures to conclude that there was no evidence to show Ivan Tan and Edmond Kuan made the signatures in the Consultancy Agreements (A1& C1).

67. Yap's evidence appears to be based on a far more comprehensive examination of the normal specimen signatures. I therefore prefer Yap's opinion with regard to the signatures of Ivan Tan and Edmond Kuan and Ivan Tan's initials. Yap's evidence lends support to the evidence of Ivan Tan and Edmond Kuan that they did not sign the Consultancy Agreements (A1& C1) and of Ivan Tan that he did not initial the Payment Vouchers (A2). However, neither expert could come to any real conclusions in order to assist the court as to the questioned signatures and initials of Sharon Wan, and the questioned initials of Edmond Kuan.

The Main Prosecution Witnesses

68. The 3 main prosecution witnesses, Ivan Tan (PW 3), Edmond Kuan (PW 4) and Sharon Wan (PW 6), were all consistent in their testimony and under cross-examination. They all believed that they were employees and were to be paid CPF contributions by the accused. They all stated that they never signed any Consultancy Agreement or initialled any Payment Vouchers.

69. There was nothing to support the allegation that Edmond Kuan and Sharon Wan were going to work for Ivan Tan's company, Advance Solutions Pte. Ltd., after they resigned.

70. I could find no evidence of collusion between the 3 witnesses to concoct an artificially consistent story for the court.

71. All 3 were consistent in their conduct with regard to the CPF issue; they frequently demanded from the accused their CPF contributions; they resigned from Ishida over not receiving their pay on time nor their bonuses nor CPF contributions; they made a formal complaint to CPF; they got their lawyer to write a letter of demand to Ishida to claim their CPF contributions due to them; and they made a police report immediately on seeing the Consultancy Agreements.

72. There are also indicators that the 3 witnesses were employees; they were all given name cards, Ivan Tan was given a Letter of Employment; and the accused gave Ivan Tan and Edmond Kuan pay raises at the end of 1997. More importantly, from their own accounts, the CD vending machine project was largely complete when they handed in their resignation letters in February 1998. If there had been a valid Consultancy Agreement for each of them, the trio would have lost their bonus entitlement and final payments. This would have amounted to tens of thousands of dollars for each person. Moreover, they would each have been exposed to liquidated damages, and indemnities as to losses and damages etc., including the expenses and fees in relation to engaging another consultant. It is almost unthinkable that the trio would have given up so much so close to project completion if they had been consultants. Their resignation indicates strongly that they were employees instead.

73. I found Ivan Tan, Edmond Kuan and Sharon Wan to be witnesses of truth. I accept their testimony. Coupled with the evidence before me, I have no doubt that the three were employees of the accused and more importantly, they did not sign the Consultancy Agreements or Payment Vouchers.

The Accused

74. The accused (DW 2) was inconsistent in his testimony. Under cross examination, he asserted that Ivan Tan had typed out the Consultancy Agreement for him and Ivan Tan had also asked him some questions regarding its terms and conditions. Yet, these significant facts were never raised in Examination in Chief of the accused and never put in the cross-examination of Ivan Tan. It would appear the accused made these facts up under the intense cross-examination.

75. The accused further asserted under cross-examination that if the project was not completed, Ivan Tan, Edmond Kuan and Sharon Wan would be responsible. This is at odds with the earlier testimony of the accused, who said that his intention to contract out the project to a third party and that the trio in signing the Consultancy Agreements would be a temporary measure until Ivan Tan set up his company to take over the project. Looking at the terms of the Consultancy Agreements, it would appear that far from being a temporary measure, the Consultancy Agreements had locked the trio into what was essentially a turnkey project.

76. On the issue of name cards, Defence Counsel had clearly put to Edmond Kuan that he had not been given any blue name cards by the accused. Yet in cross-examination, the accused admitted he did give blue name cards to Edmond Kuan. The accused explained that his instructions to defence counsel was that he had not given blue name cards to Edmond Kuan prior to the Comdex Asia 97 launch. However, these facts were clearly not borne out by the Defence Counsel in his cross-examination of Edmond Kuan. This explanation by the accused is flimsy at best. In addition, the accused said he didn't know if he had given name cards to Ivan Tan but when pressed in cross-examination, he finally admitted that he had. Further, in examination in chief of the accused, the accused was quite sure that he only gave Sharon Wan blue name cards for the September 1997 launch of the CD vending machine. Yet in cross examination, the accused admits that he gave a set of blue name cards to Sharon Wan around September 1996, as a form of identification in the Singapore Polytechnic. This is a strange and hard to swallow reason. The accused seems reluctant to admit to the giving of name cards to the trio, and there appears to be evasiveness on the part of the accused.

77. Defence Counsel also put to Ivan Tan that during the December 1997 meeting, that pending the formation of Ivan Tan's company to take over the project, the accused proposed to engage Ivan Tan, Edmond Kuan and Sharon Wan as consultants. In Examination in Chief, the accused claimed it was Ivan Tan who proposed such an arrangement.

78. In addition, Defence Counsel put to Ivan Tan that the accused would engage the trio for a period of 18 months, starting January 1997. Yet in cross examination, the accused said the project was for 24 months and only after the project started did the team decide, in June or July of 1997, to shorten the time frame to 18 months.

79. The accused claimed to have paid Ivan Tan and Sharon Wan their CPF in cash during the 7 January 1997 meeting at Ubi. This does not sound proper. The CPF Board requires all employers to register with the Board, and also to register their employees. So it is very odd that the accused would simply give cash to his employees and expect them to know how and in which account they are to deposit the employers CPF contribution into. I thus rejected the defence that the accused had personally paid Ivan Tan and Sharon Wan their CPF contributions on 7 January 1997.

80. The above inconsistencies in the testimony of the accused relate to the Consultancy Agreements and the business relationship of the accused with the trio; two critical aspects of the case. I thus found the accused to be a witness of very dubious credit.

81. Aside from his inconsistencies, elements of the testimony of the accused also did not sit well with the terms of the Consultancy Agreements that he allegedly drafted personally. The accused claimed he agreed to let Ivan Tan take over the project after Ivan Tan had set up his company. According to the accused, as a temporary measure, Ivan Tan suggested the trio be engaged by the accused until the company was up and running. However, the arrangement, in the form of the Consultancy Agreements, appeared to be a turnkey one. The trio were supposed to complete the project, whereupon they would receive most of their agreed upon remuneration. This amounted to close to 50% of their total remuneration package, with most of it

coming by way of a "completion bonus". The accused stated that this "completion bonus" was an incentive to complete the project. The accused had testified that if the project were handed over to a third party company, he would terminate the Agreements with three months notice. This would mean, under the terms of the Agreements, that the trio would not be entitled to their remuneration that was tied to the project completion. It is difficult to conceive that the trio would agree to terms like these. There also appears to be a lack of negotiations regarding the Agreement terms. The accused claimed the major clauses were discussed in the mid December 1996 meeting. But the fact is that the proposal for the consultancy had just been mooted at that meeting. How is it possible to come up with such a complex remuneration package so quickly? Over and above losing the remuneration upon completion, if the project was taken over, there is a question of what would happen to the monies the accused retained from the monthly payments of the trio. This 'retention monies' is discussed further below. In addition, there are no terms in the Agreements to cover the eventuality of the project being transferred to another party. If the project was to be transferred, it is conceivable that there should be proper assignment or novation type terms, or at least provisions alluding to a transfer of rights and obligations.

82. The basic thrust of the Consultancy Agreement would thus fly in the face of the original intent of the parties and not be logical, if indeed the original intent asserted by the accused is true. I thus rejected this aspect of the defence of the accused.

83. The retention of a certain sum of monies from the monthly payments to the trio is another baffling aspect of the testimony of the accused in relation to the Consultancy Agreements. The accused claimed he retained 20% to cover any damage to his equipment the trio were utilizing. 20% is a sizable chunk of each monthly payment and it would be conceivable that this would be drafted clearly into the Consultancy Agreement. It is not. Further, the accused testified that he verbally mentioned the matter to the trio and nothing further was made out of it. All this is quite surprising. If this were true, the trio would be giving up 20% of the monthly payments with no clear indication if they would get it back. The accused would also be open to a breach of contract allegation as he would not have made the full monthly payments. This retention of 20% of the trio's monthly payments sounds to be nothing more than a fabrication where in truth the 20% was deducted as employee's CPF contribution. I thus rejected this aspect of the defence of the accused.

84. Clause 5 of each Consultancy Agreement states clearly that "During the terms (sic) of this Agreement, the Company agrees to provide the Consultant with a set of name cards..." The accused testified under cross-examination that he did not anticipate giving the trio name cards because " They are not my employees, how to give them name cards?" This clearly contradicts clause 5, and it clearly illustrates the utter lack of familiarity with the Consultancy Agreement. If it is true that the accused drafted the Agreements himself, then this unfamiliarity is surprising.

85. Aside from the fact that the actual terms of the Consultancy Agreements and the testimony of the accused with regard to them couldn't be further apart, the accused made several assertions that are difficult to take at face value. Firstly, the accused's case was that the Consultancy Agreements were signed on 7 January 1997 by Ivan Tan, Edmond Kuan and Sharon Wan at the office of the accused at Ubi Avenue. After the documents were signed, the accused said he asked his brother to make copies of the signed Agreement at a neighbouring office. In addition, according to the affidavit (Exhibit P8), the brother of the accused, one Francis Tan, clearly saw the trio leave the office. The prosecution's case is that no such meeting or signing took place. Francis Tan would have been a very material witness for the accused. However, the brother was not called. The fact of the meeting and the signing of the Consultancy Agreements on 7 January 1997 remain a bare assertion of the accused.

86. Secondly, much was made by the defence of the auditor's tick marks on the payment vouchers. If the payment vouchers were genuine, this would probably mean the auditor had examined the vouchers in early 1998 (The accused had said that Ishida's accounts would have closed on 31 December 1997. He also testified that the 1996 accounts were given to the auditor sometime in early 1997). The implication would be that the payment vouchers had been signed before the trio resigned, and not forged after they resigned. The auditor would have lent some credible and contemporaneous evidence towards the case for the accused in relation to the payment vouchers A2, B2 and C2. The auditor would also have been a very material witness. Yet the auditor was not called. Again, the assertion that the payment vouchers had ticks allegedly made by the auditor is uncorroborated.

87. Thirdly, to refute the giving of the letter of Employment to Ivan Tan, the accused claimed to have had a friend type out a letter of retraction addressed to the HDB. Oddly, Defence Counsel never referred to this "letter of retraction". Nor was this "friend" called as a witness. This "retraction letter" thus remains as another bare assertion.

88. The brother of the accused, the auditor, and to a lesser extent the friend, could have given evidence that touched the very core of the charges against the accused. As it is, with these three persons mentioned explicitly but not called, the accused has failed in his chance to obtain corroboration for critical areas of his defence. As stated in Mohammed Abdullah s/o Abdul Razak v PP [2000] 2 SLR 789, "the defence failure to call a material witness will only affect its own ability to cast a reasonable doubt on the prosecution's case."

89. According to the accused, Ivan Tan typed out the Consultancy Agreements and formatted the Payment Vouchers for him. All this surfaced during the cross examination of the accused. Significantly, these points were never put to Ivan Tan when he was cross-examined, nor led in examination in chief of the accused. This is very odd, as these two points touch on critical aspects of the defence's case. By not putting these points to Ivan Tan, it gives Ivan Tan no opportunity to explain himself or deny them. The inference is that these two points were made up by the accused under cross-examination. I thus reject the allegation that Ivan Tan typed out the Consultancy Agreements and formatted the Payment Vouchers.

90. From the totality of the evidence before me, and having considered all the facts, I find that:

a) The main prosecution witnesses, Ivan Tan, Edmond Kuan and Sharon Wan, were all truthful and I accept their testimony, in particular, that they were employees of Ishida Technologies and that they never signed their respective Consultancy Agreements and payment vouchers as alleged;

b) The evidence of the HSA expert, Yap, supports the evidence of Ivan Tan and Edmond Kuan (insofar as his questioned signature is concerned).

c) I find the testimony of the accused to be inconsistent, illogical and devoid of credibility. His evidence failed to cast reasonable doubt on the prosecution's case.

91. As the accused had testified that he saw Ivan Tan, Edmond Kuan and Sharon Wan sign the respective Consultancy Agreement and every payment voucher that is the subject of the charges, I find that the accused knew the exhibits A1, A2, B1, B2, C1 and C2 were false. By stating in the affidavit that the trio had signed the respective Consultancy Agreement and payment vouchers in question, I find that the accused knew what he was stating in the affidavit to be false evidence.

Whether Accused Intended To Use The Affidavit In A Stage Of Judicial Proceedings?

92. The accused admitted to making the affidavit (Exhibit P8) dated 24th November 1998 pursuant to High Court Suit No. 465 of 1998. The obvious inference is that he must have intended to use the said affidavit in a stage of that judicial proceeding.

Conclusion

Has The Prosecution Proven Its Case Beyond Reasonable Doubt?

93. Having considered all facts and evidence before me, I was of the opinion that the defence failed to cast reasonable doubt on the prosecution's case and that the prosecution had proven its case beyond reasonable doubt. I found the accused guilty of the six charges he faced and I convicted accordingly.

Sentence

94. This offence under section 193 of the Penal Code falls within the limb that carries a term of imprisonment that may extend to 7 years. A custodial sentence is mandatory.

95. The accused is working as an executive with Kiosk Pte. Ltd. He is a bankrupt after Ishida failed. He is married with two children. A brief mitigation was made (Exhibit B). He has a clean record.

96. From my findings, the accused quite clearly knew the respective Consultancy Agreements and the payment vouchers did not bear the genuine signatures and initials of Ivan Tan, Edmond Kuan and Sharon Wan. The accused instituted a civil suit against the three of them and exhibited the said documents in his affidavit to deny the claim of the trio of their CPF contributions, among other things, and to sue them for breach of contract.

97. In determining sentence, I bore in mind that the civil suit was to have been settled via a consent Order of Court (Exhibit D1) that was not unfavourable to the trio. They would have been paid general damages that appear roughly equivalent to what they were owed by the accused. The trio would have to deliver up to the accused the source code for the CD vending machine.

98. However, I also kept in mind that the accused used the judicial process to further his own ends, and in doing so, spun an intricate web of deceit for the High Court back in 1998/1999, and for this court.

99. I had in regard the cases of PP v Ng Ai Tiong [2000] 1 SLR 454 and Choo Pheng Soon v PP [2001] 1 SLR 698. In the former case, the accused had instigated a person to commit an offence of giving false evidence in a stage of a judicial proceeding. For that, the accused was jailed for one year. In the latter case, the accused had actually manufactured the false documents, used in a stage of judicial proceedings, with skilled craftsmanship. The accused had also cast aspersions on several persons in the course of his trial, namely victim, the police investigating officer, a commissioner of oaths and his own lawyer. On appeal, he was sentenced to 3 ½ years imprisonment, up from the 2 years given by the court below, given the aggravating factors.

100. As stated in Rahman Pachan Pillai Prasana v PP, MA 286 of 2002, "The different degrees of culpability and the unique circumstances of each case played an equally, if not more, important role than sentencing consistency".

101. In the present case, it was not known who forged the signatures, and whether the accused actually manufactured the false Consultancy Agreements and payment vouchers himself. The prosecution did not lead any evidence in this regard. However, it is clear that the accused fabricated a story around the false documents.

102. I was of the belief that this case fell somewhere in between the Ng Ai Tiong and Choo Pheng Soon cases in terms of culpability. As such, I sentenced the accused to 8 months imprisonment on each charge. I ordered that three of the charges run consecutively, for a total of 2 years of imprisonment, which in my judgment was the appropriate sentence as a whole.

BACK TO TOP