

Public Prosecutor v Pek Siew Gek and Tang Yudong
[2018] SGDC 290

Case Number : DAC 919522/16; DAC 919602/16

Decision Date : 08 November 2018

Tribunal/Court : District Court

Coram : Shaiffudin Bin Saruwan

Counsel Name(s) : DPP Gabriel Choong for the Prosecution; Mr Derek Kang for both Accused Persons

Parties : Public Prosecutor — Pek Siew Gek — Tang Yudong

[LawNet Editorial Note: The appeal in MA 9222/2018/01 against conviction and sentence was dismissed by the High Court on 10 June 2019. The appeal for deferred bail was heard on 28 June 2019 and the application was allowed. The appeal in MA 9223/2018/01 against conviction and sentence was dismissed by the High Court on 10 June 2019.]

8 November 2018

District Judge Shaiffudin Bin Saruwan:

INTRODUCTION

The two accused persons, Pek Siew Gek (“Pek”) and Tang Yudong (“Tang”) claimed trial to the offence of abetting the obstruction of the course of justice under s 204A read with s 116 of the Penal Code (2008 Rev Ed., Cap 224). The offence was committed on 10 Nov 14 at the premises of King’s International Business School (“KIBS”) located at Block 2, Bukit Merah Central #14-03.

2 The charges arose from an inspection of KIBS conducted by officers from the Council of Private Education (“CPE”) on 7 Nov 14. Both B1 and B2 were directors of KIBS. They were alleged to have instigated Pan Yoke Ee (“Pan”) into falsely admitting to the CPE inspectors that it was her idea to produce false documents to CPE during an inspection of KIBS. At the material time, Pan was working as an administrative assistant in KIBS.

THE UNDISPUTED FACTS

3 Sometime in April 2014, CPE received a complaint from the Maritime and Port Authority (“MPA”) that KIBS offered students Diplomas in Maritime Studies (“DMS”) without the need to attend classes or sit for examinations. As part of its investigations into the complaint, CPE officers conducted a surprise inspection of KIBS on 6 Nov 14 to observe if classes were in fact conducted. They found that no lessons were conducted although there were lessons scheduled for that day^[note: 1]. During the inspection, Pek and Tang were not at KIBS. The officers’ requested that Pan called Pek on her handphone and asked her to return to KIBS. Pan called and spoke to Pek. After that, she informed the officers that Pek was unable to return to the office that afternoon. The CPE officers then told Pan that they would return the next day, 7 Nov 14 at 10.00 am, to speak to Pek. Pan relayed this message to Pek. Later that same evening, Pan met up with Pek and Tang at a coffee shop near KIBS. After that they returned to KIBS to prepare for the inspection the next day. Pan went home after about five hours and after she had completed the tasks assigned to her by Pek. Pek and Tang stayed on in KIBS for seven and a half hours.

4 On 7 Nov 14, the CPE officers returned and handed a list of 15 names of DMS students who had graduated from KIBS to Pek, and requested for their documents including their examination scripts for inspection. 14 of the names in the list were disclosed in the course of CPE's investigation into the complaint by MPA. Later on the same day, KIBS submitted 10 falsified examination scripts to CPE. Essentially, Pan had used the examination scripts of other students and cut off the top part of the scripts thereby removing the names from the examination scripts. She then stapled a cover page to the cut examination scripts. The cover page contained the names of the students requested for by CPE. This was done to make it seem that these examination scripts belonged to the students requested for by CPE.

5 The ruse was discovered when the CPE officers found strips of cut portions in a drawer in one of the classrooms. They questioned Pan who admitted that the cut strips bore the names of the actual students who had written the examination scripts. She kept quiet when asked whether she had done the cutting. The CPE officers also questioned Pek about the cut examination scripts, and a statement was recorded from her.

6 On the morning of 10 Nov 14, Pan was informed to present herself at CPE in the afternoon for an interview and for a statement to be recorded. During the interview, when asked about the cut examination scripts, she had initially told the CPE officers that she had cut them on her own accord. When pressed, she confessed that Pek and Tang had asked her to take the blame for cutting the examination scripts. She revealed that Pek had instructed her to cut the examination scripts to make it appear that they were written by the students who were in the CPE list. She had merely followed Pek's instructions.

THE CASE FOR THE PROSECUTION

7 The prosecution, led by DPP Gabriel Choong, relied primarily on Pan's testimony. At the material time, she was the administrative assistant at KIBS. She started work at KIBS on 5 Aug 13, while concurrently studying part-time for two diplomas there. She completed her studies in November 2014.

8 On 6 Nov 14, when CPE conducted their surprise inspection, Pan testified that –

(i) No lessons were conducted although lessons were scheduled^[note: 2]. She asserted that both Pek and Tang had called in to the school posing as students and/or teachers to cancel the lessons^[note: 3]. They had done this after they had learned that CPE officers were in the school.

(ii) When she was asked for documents such as the students' attendance sheets, she falsely informed the CPE officers that she did not have access to these documents. She had done this because Pek had told her that these documents could not be shown to outsiders^[note: 4].

(iii) After the CPE officers left KIBS, Pan contacted Pek again and on arrangement, Pek, Pan and Tang met at a hawker centre nearby. At this meeting, Pan was bombarded with questions about the surprise inspection. The three then returned to KIBS. At KIBS, *inter alia*, Pek told Pan to prepare student attendance lists and she then forged signatures of students to fill the lists^[note: 5]. Pek and Tang remained in KIBS for seven and a half hours while Pan left for home much earlier.

9 On the second CPE inspection on 7 Nov 14, Pan testified –

(i) When the request for examination scripts were made, Pan immediately saw a problem because the students in the list did not go for examinations. Pan disclosed that it was a practice in KIBS for Pek to offer prospective students the option of not sitting for examinations, and that someone else would do the examinations for them^[note: 6].

(ii) When Pan consulted Pek about this problem, Pek replied that she would look for examination scripts of other students^[note: 7]. When Pan questioned whether this was allowed, Pek replied that this was necessary otherwise KIBS would be in trouble^[note: 8]. She then retrieved some examination scripts from her office. These were scripts of other students from past intakes. Pan explained that the examination scripts of present students were kept in cabinets located in the middle of the premises, and not in Pek's office.

(iii) Pan noticed that the examination scripts that she received from Pek did not bear the names of the students requested for. When she asked Pek about this, Pek told her to cut the names out. She cautioned Pan to make sure that she was not seen doing this by the CPE officers^[note: 9].

(iv) Separately, Pan printed cover pages bearing the names of the students requested for. She stapled these cover pages to the cut examination scripts. Pek then marked some of the scripts on the spot, using scores given to a different student as a guide^[note: 10]. She then wrote the grades on the cover pages in red ink^[note: 11].

(v) CPE subsequently discovered the strips that had been cut inside a drawer. Pan admitted that the cut strips bore the names of the students who had actually taken the examinations. When she was asked if she had cut the strips, she did not reply^[note: 12].

10 When Pan was interviewed and her statement recorded at the CPE office on 10 Nov 14, she testified –

(i) Before her interview, Pek had told her to tell CPE that the cutting was her own idea. If Pan agreed to say this, Pek would hire a lawyer to help her in the event of any trouble. Pek also told her that if she did not do this, then they would all be finished^[note: 13].

(ii) Separately, Tang also told her to tell CPE that the cutting was her own idea. However, he did not make any promises to her^[note: 14].

(iii) Initially, Pan followed what Pek and Tang had asked her to do. She told CPE that it was her idea to cut the examination scripts. Upon further questioning, she eventually admitted that it was not her idea, and that she had done so at Pek's instructions^[note: 15].

11 Pan also testified on the document dated 5 Dec 14 titled "Statement of KIBS Staff" (Exhibit P12). P12, which she signed, alleged certain improprieties on the part of the CPE officers on 6 Nov 14. Pan disclosed that P12 had in fact been prepared by Pek and it contained several inaccuracies with which Pan did not agree with. She signed P12 because she was told that she could go home after she had signed it. Immediately after she had signed it, she lodged a police report to record her disagreement with the contents in P12.

THE CASE FOR THE DEFENCE

12 Both Pek and Tang were represented by Mr Derek Kang. Pek was the Director of Students Affairs at KIBS. She had joined KIBS as a teacher and shareholder sometime in 2009. She then became the main shareholder in 2010 when two predecessor directors left the school. As Director of Student Affairs, she supervised the day to day operations of the school. She was also on the school's academic board since 2010. The board approves the assessment structure of the courses run in KIBS, including DMS. Pek was the course co-ordinator of DMS at the material time.

13 Tang was also a director at KIBS. He joined KIBS as a student and graduated in 2010/2011. One to two years after his graduation, at Pek's invitation, he became the majority shareholder of KIBS when he invested more than S\$100,000 into the school. As a director, he was involved in student recruitment.

14 With regard to the inspection on 6 Nov 14, Pek and Tang testified –

(i) Although there were classes scheduled on that day, one of which she was supposed to teach, these classes had been either rescheduled or merged a week beforehand. This was to allow her to visit the Marsiling area to recruit prospective students. This was why there was no classes held when CPE officers came to inspect. Pek denied calling KIBS posing either as a student or teacher to cancel classes^[note: 16].

(ii) During the seven and a half hours that she was in KIBS on the night of 6 Nov 14, Pek claimed that she had spent the time clearing her backlog of emails, outstanding paperwork, cleaning the premises and making certain that the school documents were in order for the inspection the next day^[note: 17]. Pek denied preparing any attendance lists of students.

(iii) Tang had only found out about the inspection on the night of 6 Nov 14. He denied calling the school in the late afternoon posing as a student or teacher to cancel classes. He admitted calling the school to look for Pek.

(iv) As regards the seven and a half hours that Tang was in KIBS on the night of 6 Nov 14, he claimed that he had spent one and a half to two hours doing cleaning. For the remainder of the time, he had spent reading and resting as he was not feeling well^[note: 18].

15 In respect to the inspection on 7 Nov 14, they testified –

(i) Pek did not give instructions to Pan to cut the examination scripts. She did not even know that Pan had cut the scripts until after she was shown the cut strips by the CPE officers. Although Pek had seen Pan earlier holding a penknife and some strips of paper, she had merely supposed that Pan was cutting something^[note: 19].

(ii) Pek had left Pan to prepare the documents requested for by CPE while she attended to other students in the school. She did not have the chance to check the documents prepared by Pan as Pan had submitted them to the CPE officers directly^[note: 20]. Although she was told to verify the documents before signing them off^[note: 21], she had only checked the number of pages by flipping the pages from the bottom right corner of each page without examining the pages^[note: 22].

(iii) Pek had no reason to instruct Pan to falsify examination scripts in relation to the students requested by CPE because since 2010, KIBS has a policy of returning examination scripts to their students^[note: 23]. Therefore it would not be unusual if KIBS did not have possession of some of the examination scripts of these students.

(iv) Pek and Tang denied telling Pan to say that cutting the examination scripts was her own idea. They had merely informed her to tell the truth, having established from her that she had cut the examination scripts on her own accord. Tang testified that Pan had confessed to him that she had cut the examination scripts on her own accord because she could not find the scripts requested for by CPE^[note: 24].

16 The defence case was that Pan had cut the examination scripts on her own volition, and that Pek and Tang were both unaware of this. Pan's likely motive was to cover up her own negligence in not maintaining proper records of the school's examination scripts. As administrative assistant, it was her responsibility to do so. This was why she had confessed to CPE about cutting the examination scripts. She had only implicated both Pek and Tang when she realised that she would likely be charged for her action, and her permanent residence status could be cancelled^[note: 25].

THE LAW ON CREDIBILITY OF WITNESSES

17 As highlighted earlier, the case for the prosecution rest mainly on the testimony of Pan. As Mr Kang rightly pointed out in his closing submissions, their case stands or falls on Pan's credibility. In the same submissions, he reminded the court of the applicable principles - which were trite law in any case – that I must apply when assessing Pan's credibility. I would now set out the relevant principles briefly.

18 There is no absolute prohibition or legal impediment in convicting an accused person on the evidence of a single witness. But in doing so, I must be mindful of the inherent danger of such a conviction. I must subject Pan's evidence to close scrutiny, and I must be satisfied that her evidence was so compelling to the extent that a conviction could be found entirely on it: *Jagatheesan s/o Krishnasamy v PP* [2006] SGHC 129 at [44].

19 In weighing Pan's evidence, I must be mindful that human fallibility in observation, retention and recollection are recognised by the courts. The question was whether the alleged discrepancies or inconsistencies in Pan's evidence were sufficient to destroy her credibility. If, after considering the discrepancies or inconsistencies, I found that they did not detract from the value of her testimony, it was proper for me to regard these discrepancies or inconsistencies as being trivial or non-material and I could disregard them. If on the other hand, I found that the discrepancies or inconsistencies related to a material point or points which would seriously affect the value of her testimony, then it was my duty to weigh the evidence carefully in arriving at the truth. Discrepancies or inconsistencies which were not material could destroy credibility, if there was a systematic and wide-spread pattern of many discrepancies or inconsistencies coming together to destroy that credibility.

20 There was also no rule of law that the testimony of a witness must be believed in its entirety or not at all. The court is entitled to determine which part of Pan's testimony remained credible despite its discrepancies.

21 With these principles in mind, I would now address the various alleged inconsistencies in Pan's evidence in the course of her testimony which spanned four days. Mr Kang submitted that as there was no other person present when the offending communications or instructions were made by Pek and Tang to Pan, the prosecution's case stood or fell on Pan's evidence. However, in assessing her credibility, the circumstances or incidents leading to those communications were relevant in so far as they gave context to the offences.

ANALYSIS OF THE EVIDENCE

The events on 6 Nov 14

22 I would like to highlight the backdrop to the first inspection conducted by CPE on 6 Nov 14. This was because it gave the context of the whole incident; and context was critical in a proper assessment of the evidence. The last inspection which KIBS had undergone was sometime in early 2014. The 2014 inspection was in conjunction to KIBS's application for a renewal of their licence. The outcome of that inspection was that KIBS was granted a licence to operate for four years. This duration was the industry norm^[note: 26]. As such, the inspection on 6 Nov 14 was a wholly unexpected one.

23 As set out above, the catalyst for the 6 Nov 14 inspection was a complaint received by CPE from MPA^[note: 27]. Khalid Bin Abdul Samad, the IO of the case, disclosed that MPA had complained that KIBS was suspected of offering students DMS without having to attend classes or sit for examinations^[note: 28]. MPA's interest in this was because anyone who wanted to become an MPA licensed surveyor has to have a DMS before they are allowed to sit for the MPA surveyor examinations. The complaint was lodged when MPA found that DMS holders from KIBS had shown marked inadequacies in their knowledge of the subject-matter in which they were given diplomas.

24 I would now address the evidence on the events on 6 Nov 14 primarily by addressing the discrepancies in Pan's evidence in relation to that day as highlighted by Mr Kang. As already stated in [3] above, Pan was the only staff present in KIBS when the CPE officers came. Pek and Tang were not in the office. Pek was informed about the surprise inspection when Pan called her on her handphone.

(i) Did Pek and Tang call KIBS posing as students/teachers?

25 Mr Kang pointed out that during examination-in-chief Pan had testified that both Pek and Tang had called back in the afternoon separately posing as students who wanted to cancel their classes scheduled for that evening.^[note: 29] Mr Kang then pointed out that Pan had changed her evidence on this issue in cross-examination. She now said that both Pek and Tang had called back posing as students and teachers of the school. She was unsure whether both or one of them had posed as a teacher. The reason for the calls was the same, which was, to cancel classes scheduled for that evening. When asked why she did not mention that they had also posed as a teacher during her examination-in-chief, her response was that she had suddenly recalled this fact.

26 Mr Kang latched onto this discrepancy to throw doubt on the reliability of her evidence on this fact. In addition to this, Mr Kang also highlighted an internal inconsistency in Pan's evidence in relation the phone calls. When she was asked if she had called the other students in the class about the cancellation of class, her curious reply was, "...in my impression, no, because

there were no lessons on Thursday. There was no need to call the students to inform them of this"^[note: 30]. He argued that if this was her impression, then there was no reason for Pek and Tang to call KIBS posing as students and/or teacher to cancel a non-existent class. Further, he argued that, apart from her oral testimony, she did not produce any documentary evidence of these calls, despite Pan claiming that she had recorded the calls ie she had taken down the names of the persons who made the calls, and the reason why they were unable to attend class. She was unable to recall if they were written down or typed into her computer^[note: 31]. For these reasons, he submitted that Pan's evidence on this issue was a fabrication.

27 Pan's "impression" that there were no classes scheduled on 6 Nov 14 must be assessed in the context of her overall evidence relating to the scheduling and the conduct of lessons in KIBS. The essence of her evidence on this important issue was that the school prepared schedules of classes for each week. According to the schedule, there were classes fixed for the evening of 6 Nov 14. However, in reality, KIBS only conducted lessons one day a week; on every Wednesday^[note: 32]. This explained Pan's 'impression' that there were no lessons on 6 Nov 14. It also explained her earlier testimony about classes on 6 Nov 14 in her examination-in-chief –

"Q Were there any lesson conducted at the school on 6th November 2014?

A No, Your Honour.

Q Were there supposed to be lessons on 6th November 2014?

A Yes, there should be lessons."^[note: 33]

When she said there should be lessons on 6 Nov 14, she was referring to the schedule. But as the school only conducted lessons on Wednesdays, that was why she said there were no lessons on 6 Nov 14.

28 Interestingly, Pan's testimony was corroborated by Pek herself. Pek conceded that there were three classes scheduled that evening. She had to concede this point because this was corroborated by the document 'Teacher Reporting Chart' (Exhibit P17). Co-incidentally, all three classes did not go on as scheduled^[note: 34]. Pek was hazy in her explanation of the reasons why. At best, she could only hazard the guess that they had either been merged with other classes or re-scheduled. I found her explanation unconvincing. In any event, given that there were classes in the schedule for that evening, it was wholly possible that Pek and Tang had called KIBS posing as students or teachers to cancel the classes. A possible motive was to provide the lie to the CPE officers on why these classes were not conducted, and to cover up the fact that the class schedules were merely a facade.

29 The fact that Pan did not mention that Pek and Tang had posed as teachers in her examination-in-chief and had only done so in cross-examination was not significant. The material fact was that she had maintained that both Pek and Tang had called in and their reasons in doing so were to cancel the classes scheduled for that evening. Similarly, I also found that the lack of documentary evidence of these calls was not so significant such that Pan's evidence should be rejected.

(ii) *Did Pek instruct Pan to prepare the student attendance list for Pek to forge the students' signatures?*

30 The next purported inconsistency related to Pan's testimony that on the night of 6 Nov 14, when she, Pek and Tang had gone back to KIBS, Pek had instructed her to print out the entire set of student attendance lists for Pek to forge the students signatures^[note: 35]. But in cross-examination, Pan claimed suddenly that she could not be sure if she had printed out all the attendance lists for all the modules for the on-going courses because she had to go home^[note: 36]. Mr Kang argued that this inconsistency was significant and the conclusion must be that her evidence on this issue must be disbelieved. Mr Kang argued that there was no necessity for Pek to give such instructions and for her to forge the signatures because the students' class attendance accounted for only 30% towards the total marks. Further, Pek would not want to jeopardise the school's four year registration which was obtained earlier that year.

31 I would set out Pan's testimony on this issue. In examination-in-chief, Pan testified that Pek had asked her "...to print out the student attendance list for her to sign as CPE officers will come back for inspection the next day"^[note: 37]. When asked how long she had stayed back to prepare the attendance list, she replied that she was "...unable to recall what time I left but it was

quite late. But those two [Pek and Tang], they stayed behind"^[note: 38]. That was the sum total of her evidence on this issue in examination-in-chief. In cross-examination, her testimony was as follows –

“Q Now, you said that Denise signed the attendance sheets, right, the ones that you printed out?

A Yes, for the attendance list that I printed out, she signed on them. By right, it should be signed by the students.

Q So you printed out all attendance sheets for all modules, for all ongoing courses at that point in time?

A I cannot remember if I had printed out everything because it was already pretty late and I went home.”^[note: 39]

(Emphasise mine)

32 I failed to see the inconsistency alluded to by Mr Kang. Nowhere in her testimony did Pan say that she had printed out all the attendance lists. In examination-in-chief, she confirmed that Pek had instructed her to print out the student attendance list for Pek to forge the students’ signatures. In cross-examination, she said she was unable to recollect whether she had printed out all the list, but she was able to recollect that she had printed out some and for those that she had printed out, Pek had signed on them. There was no discrepancy in this part of Pan’s testimony.

(iii) *Did KIBS offer students the option of not sitting for examinations/do assignments/attending classes?*

33 Pan had testified that prospective students were told by Pek about an option of not sitting for examinations or do assignments or attend classes when they signed up for courses at KIBS. The course fees if this option was taken was different. Payment was made by cash, cheque or fund transfer. However, Pan did not know whether the payments were made to the school account as Pek would give the relevant account number to the students.^[note: 40]

34 Mr Kang argued that her evidence was incredible on several levels. First, if Pek had indeed offered this option and extracted additional payments for it, then it was illogical for her to require the payments to be made via modes which were easily traceable by the authorities or easily discoverable in an audit. Further, Pek had in her testimony, and which were corroborated by some of the students who were called to give evidence, shown the length in which she had conducted multiple supplementary examinations and assignments for the students who missed the scheduled ones. As such, Mr Kang argued that Pan’s testimony on this issue should be dismissed as being far-fetched and could not hold water.

35 I disagreed with Mr Kang’s submission. Pan’s testimony on this issue was corroborated by a number of DMS graduates from KIBS. Their names were on the list requested for by CPE. Four of them were Yap Yew Yoong (“Yap”), Leong Chee Siang (“Leong”), Ong Seng Chuan (“Ong”) and Ng Thian Wee (“Ng”). Their testimonies were as follows –

(i) Yap testified that Pek had told him he need not take examinations, and all he had to do was to pay the monthly school fees and sign the attendance sheet. He was also offered an option to pay extra for an express diploma, which offer he took up. He went through the course without sitting for any examination, or do any assignment. He signed the attendance sheet although he did not attend any classes^[note: 41].

(ii) Leong testified that Pek had offered him a package to get someone to do his assignments for him. Pek also told him that it was easier for him not to do his examination, which he was supposed to, as he only needed the DMS to apply for his bunker surveyor’s licence^[note: 42].

(iii) Ong testified that Pek had told him he need not attend the examination and he just had to “wait for the exam to finish”. All he had to do was to sign attendance and wait for the diploma to be issued^[note: 43].

(iv) Ng testified that he was told by Pek that he could obtain his diploma without doing assignments or sit for examination^[note: 44].

36 Three other DMS graduates from KIBS, Low Kim Chai ("Low"), Lee Peter ("Lee") and Danny Chow Chee Seng ("Danny"), disclosed that they had graduated without doing any assignments or examinations –

(i) Low testified that he did not do any assignments or sit for examinations^[note: 45].

(ii) Lee testified that he had informed Pek that he attended three or four substitute classes arranged by Pek because he was unable to attend the scheduled classes. However, as he had not attended the scheduled classes, KIBS did not followed up with him on the issue of examinations and so he did not sit for any^[note: 46].

(iii) Danny testified that he had tried to take one examination at KIBS, but he was turned away by a staff so he did not take it in the end^[note: 47].

37 These testimonies of the DMS graduates from KIBS clearly and emphatically corroborated Pan's evidence that students were indeed offered the option of not doing assignments or sitting for examinations and even attending classes in order to get their diplomas. Their evidence on this point was not shaken and I accepted their evidence. Therefore, I accepted Pan's evidence that Pek had communicated and offered this option to the students.

38 In order to bolster her case that these DMS graduates had attended substituted and revision classes and taken practise examination papers, Pek produced eight documents titled "Attendance of Substitute/Revision Classes for Diploma in Maritime Studies" which were signed by them. It was pertinent to note that none of these students agreed with the documents that they had signed in their entirety –

(i) Yap testified that he had not attended substitute or revision classes or taken any examination practice papers. He had signed the document because Pek had insisted that he did so^[note: 48].

(ii) Ong testified that he had not attended substitute or revision classes or took examination practice papers. He had signed the document because Pek had told him that he would avoid trouble if he signed^[note: 49].

(iii) Low testified that he had not attended substitute or revision classes or done any examination practice paper. He had signed the document as Pek had told him that the other students had signed the same document^[note: 50].

(iv) Lee testified that he had signed the document because he had attended substitute and revision classes. But he maintained that he did not do any examination practice paper^[note: 51].

(v) Danny testified that he had not attended any substitute or revision classes and he had not taken any examination practice paper^[note: 52].

(vi) Lye Yong Long (Lye) testified that he had not attended any revision classes or taken examination practice paper^[note: 53].

(vii) Ng testified that he had not attended any revision classes or taken examination practice paper in class. He said he did not read the document before he signed it^[note: 54].

39 It was also pertinent to note that when Pek approached these students to sign the documents, CPE investigations against KIBS had already commenced. The impropriety of her action here was exemplified by Leong's reaction when she asked him to sign the document. He refused to sign and he contacted CPE to inform them of her approach to him. The evidence overwhelmingly pointed to an attempt by Pek to instigate these ex-students to falsely declare that they had attended lessons and/or sat for examination, which not by co-incidence were crucially related to the investigations at hand. It was clear that these documents had been concocted by Pek to bolster her case. Rather than doing so, the evidence further strengthened Pan's credibility.

40 Mr Kang submitted that Yap's credibility was in doubt because his position on whether he had attended substitute classes or revision classes had shifted three times in the course of his examination-in chief, cross-examination and re-examination. Also, DPP Choong's assertion that KIBS had offered the option to students to graduate without taking any examinations or assignments had been turned on its head because Leong had to complete an assignment while Lye had gone to KIBS to take an examination. In my mind, in making these submissions, the defence was either being extremely disingenuous or extremely obtuse, because the contexts of these evidence were either inadvertently or deliberately ignored. I would deal with the issues individually.

41 In relation to Yap's purported change of stance, an examination of his evidence in its totality showed that this was not the case. In examination-in-chief, he categorically confirmed that he had not sat for any examination, had not done any assignment, and had not attended any scheduled, substituted or revision class^[note: 55]. He maintained this position in cross-examination. He had also disagreed with the suggestion that Pek had met him a few times to help him go through the course materials for his revision^[note: 56]. It was only in Mr Kang's last question in cross-examination when it was put to him that he had some substitute or revision classes with Pek where they had discussed some practice examination papers, he answered "Agree"^[note: 57]. Significantly, he re-asserted in re-examination by maintaining that he had not attended any substitute or revision classes and clarified that he had agreed with Mr Kang's last question in cross-examination was because he was not very sure of the question asked^[note: 58]. I accepted his clarification. I have no reason to doubt his overall credibility.

42 On Leong's purported evidence that he had completed an assignment, I think that the defence had missed the point entirely. It was true that Leong confirmed that he had gone to KIBS to complete one assignment. But, this had merely entailed him copying down a prepared answer script. The answer script was supplied by KIBS. He went on to say that he had to complete seven to eight such 'assignments' but after copying two to three answer scripts, he got tired of writing and stopped. When Pek asked him if he wanted someone to do the rest of the 'assignments' for him, he agreed. Leong confirmed that he did not personally complete the rest of his 'assignments'^[note: 59]. Contrary to Mr Kang's submission, Leong's evidence corroborated in the strongest term, the prosecution's assertion that KIBS offered diplomas without the need to undergo the usual academic rigours.

43 Lye's evidence was that he had sat for eight DMS examinations at KIBS and he had submitted his answer scripts at the front desk. However, and more significantly, he confirmed that the examination scripts which were submitted to CPE under his name were not his. I did not think that his evidence would go so far as to discredit the other evidence concerning the practice in KIBS of offering diplomas without taking examinations, doing assignments and/or attending classes. It was not the prosecution's case that all the students taking DMS had taken up that option.

(iv) What happened to the answer scripts after a student had completed his examination/assignment?

44 Mr Kang next turned on the discrepancies in Pan's evidence in relation to what happened to the answer script after a KIBS student had finished his assignment and/or examination. Mr Kang alleged that Pan had given two inconsistent versions on this issue. The first version was that she (Pan) would collect the answer scripts from the students and then subsequently passed them to Pek for marking^[note: 60]. The second version, which was made during her further cross-examination, was that she was in possession of the answer scripts and she would inform Pek of the same. After that, she would file the answer scripts in the students' files without them being marked. Mr Kang then alleged that she then changed her evidence the third time when she said she was unable to recall giving the first version the day before^[note: 61].

45 Mr Kang compared Pan's two versions against Pek's version, which was that KIBS would collect these answer scripts from the students and passed them to the relevant teachers for marking. If a teacher is not available, then Pek would do the marking. Thereafter, Pek would pass the marked scripts to Pan to collate the results in an Excel spreadsheet. Pan would also file the marked scripts in the students' files before Pek released the results. The scripts would then be returned to the students. In this regard, the school would inform the students to collect their examination scripts. If the students did not want them, KIBS would decide whether to dispose the scripts or not.

46 There was an apparent inconsistency in Pan's evidence on this issue as highlighted by Mr Kang. However, I disagreed that she had changed her evidence three times over this issue. When she answered that she was unable to recall during the trial on 7 Jun 17, it was in response to Mr Kang's question whether she could recall her answer to his question the day before. She was not changing her evidence again. Notwithstanding the inconsistency, I did not find it to be so significant that it dented her overall credibility.

(i) Were there students who did not have to sit for examinations to obtain their diplomas?

47 Mr Kang attacked Pan's evidence in relation to the request by CPE for documents in relation to a list of past students of KIBS. Pan had testified that when she was handed the list so that she could prepare the documents requested for, she had asked Pek about what she should do for those who did not have any examination script in their files. Mr Kang argued that this was illogical and disingenuous because she was in no position to allege that there were students who had not taken examinations. This was because she was not present in the school at all times when these examinations and supplemental examinations were conducted.

48 I disagree with Mr Kang's argument. Her evidence was logical and cogent when viewed in the context of her knowledge about how KIBS conducted its affairs during the material time. As already highlighted in the preceding paragraphs, there was sufficient credible evidence to show that there was a practice in KIBS of offering students the option of obtaining their diplomas without sitting for examinations and/or attending classes. There was credible evidence that some of the DMS students did not sit for any examination. On these two significant aspects, Pan's testimony showed an external consistency. So this was Pan's knowledge at the material time. That was why she immediately saw a problem with complying with the CPE request for the examination scripts^[note: 62]. She knew that some, if not all the students requested for, would not have any examination scripts. She sought Pek's instructions on the matter. Pek said that she would search for and use other students' examination scripts. When Pan asked Pek how they were going to account for the different names written on these scripts, Pek instructed her to cut off the names, with the reminder to be careful not to let the CPE officers see her do this^[note: 63].

(ii) Instruction to cut only for DMS students and not for other courses?

49 Mr Kang next attacked Pan's evidence that Pek had specifically highlighted the DMS students as being problematic in relation to missing examination scripts, and that Pek had instructed her to leave these out and concentrate on collating the documents in relation to the students of other courses first. He said this was illogical given that Pan herself had admitted in court that she had also encountered the same problems in compiling the documents of students from other courses. Mr Kang argued that it made no sense for Pek to ask Pan to cut away the examination scripts of DMS students but not for the other courses if the same problem accrued for all.

50 I failed to see how Pan's evidence was illogical. As DPP Choong countered, the obvious reason was that a larger proportion of DMS students, as compared to the other courses, did not take examinations, and so would be without examination scripts. It was logical to collate those of the other courses first and submit to the waiting CPE officers. This would prevent suspicion on the part of the CPE officers if the submissions were delayed unreasonably. I also failed to see the basis for Mr Kang's argument that it made no sense for Pek to tell Pan to cut the examination scripts of the DMS students only. An examination of Pan's evidence on this issue as a whole showed that this argument was misconceived. It was clear that Pan's evidence that Pek's instructions on using the examination scripts of other students, and on cutting these scripts to remove the names of the actual owners of the scripts, applied not just to DMS students but to all students in the CPE list.

(iii) Failure by Pan to disclose Pek's involvement?

51 Mr Kang also argued that Pan's failure to disclose Pek's alleged involvement in the cut examination scripts when the CPE officers confronted her was telling. As she had no special relationship with Pek and had no reason to protect her, there was no conceivable motive for her to withhold Pek's involvement. Mr Kang argued that it was the natural thing for anyone in Pan's position to have implicated Pek. Pan's failure in doing so was a clear indication that her testimony about Pek's alleged involvement was an afterthought and a lie.

52 It was critical to look at the evidence on this issue. During the submissions of the documents requested for, CPE officer Khalid Bin Abdul Samd ("Khalid") noticed that something was amiss when they spotted that the examination scripts and cover pages submitted to them were smaller than the usual A4 size paper. And on some of the scripts, they saw names which did not match those on the cover pages. They searched the classrooms and found the strips that had been cut off from the examination scripts in a drawer in one of the classrooms. They then brought Pan into the classroom.

53 The conversation that transpired became a matter of some contention. The relevant testimonies of the actors were as follows –

Pan's examination-in-chief

"... I went into the room. I then---they then opened a drawer and they asked me what are these papers inside the drawer. And I told them that these are the papers of---that I have cut which contains the names on the examination scripts. They asked me, did I did---did I did this. I was very afraid at the time and I did not tell them---and I did not reply to them. Sorry. After a while, they called Denise [Pek] into the room but before they called Denise into the room, I had left the room. And I heard them ask Denise, what are these." [note: 64]

Khalid's examination-in-chief

"A ... In one of the rooms, in one of the drawers, we saw a lots of cut-up paper – top part of a script. I then brought Ms Pek to the room, showed her the drawer and asked her what is that in the drawer.

...

Q How about anybody else from [KIBS]?

A From Kings, before I brought Ms Pek in, I actually brought Ms Pan in.

Q What was said between you and Ms Pan, if any?

A I asked her what is that in the drawer and there was no reply." [note: 65]

54 In cross-examination, it was suggested to Khalid that his recollection was incorrect in that Pan had testified that she had admitted to cutting the examination scripts and had remained quiet when asked why she had done it. Khalid's answer was, "I don't remember she saying that" [note: 66], that is to say, he was sure that she did not tell him that she was the one who had cut the examination scripts. This would be consistent with Pan's evidence that she had remained quiet when asked "did [she] did this". It is inconceivable that the CPE officers would have asked her this question if she had already told them that she had cut the scripts. For this reason, Mr Kang's argument that Pan's failure to disclose Pek's involvement was fatal to her credibility could not stand. Pan had failed to disclose Pek's involvement at that point of time simply because this issue had not arisen yet.

(iv) Evidence of Oh Jiayi

55 The elephant in the room in relation to the incident on 7 Nov 14, in the defence's view, was Pan's testimony that a former student, Oh Jiayi (Oh), had been present in KIBS during the inspection and was asked to help cut some of the examination scripts. Oh was called as a defence witness, and she testified that she was very sure that she had never cut any documents at KIBS [note: 67]. Mr Kang argued that this and together with Pan's inability to recall details such as how many scripts were given to Oh to cut, who had passed the scripts to Oh, and what happened after Oh had cut the scripts, threw Pan's overall credibility into serious question.

56 I respectfully disagreed with Mr Kang on this. Pan's inability to remember these details could be explained not just by the passage of time, but also the fact that Pan was herself busy cutting the examination scripts and collating all the documents requested for. Therefore, it was reasonable for Pan not to know or remember these details. In any event, Oh's evidence was not in itself impeccable. She could not remember a substantial amount of details concerning her time studying in KIBS generally, and of the events on 7 Nov 14 specifically. Notwithstanding this general inability to recall, I found it interesting that she readily gave very direct - as opposed to equivocal - answers to certain questions, especially when the answers seemed geared to be helpful to Pek. She only retracted, albeit reluctantly, when confronted with evidence to the contrary. As example was on the important issue of the time Pek had spent with her when she was doing her assignment in one of the classrooms from 5.00 pm to 6.00 pm [note: 68]. She boldly asserted that Pek had checked on her periodically during this time. She also boldly asserted that

Pek had not been absent from the classroom for a whole interval of one hour. However, when DPP Choong asked her if the evidence showed that Pek had spent a whole hour with the CPE officers in another classroom which meant that she could not have checked in on her, Oh maintained that Pek could still have just come in to check on her. It was only when DPP Choong told her of Pek's evidence that she resiled and agreed that she might have recalled wrongly-

Cross-examination:

Q Were there any long periods of time, say, about 1 hour, where she wasn't present?

A No.

...

Q But she certainly wasn't away the whole 1 hour, correct?

A No.

Q Now, if I told you that Denise was actually--Ms Pek was actually attending to the CPE officers from about 5.00pm to 6.00pm, and that you actually remembered wrongly, she wasn't in the room during 5.00pm to 6.00pm, would you agree you might have reminded (sic) wrongly?

A She might just come in to check in on me.

...

Q But if I were to tell you that she spent a full period of time, 5.00pm to 6.00pm, only with CPE officers, that means she never checked on you, will you agree that maybe you might have remembered wrongly?

A Yes."

(Emphasise mine)

57 Therefore it could not be said that Oh's objectivity in this case was beyond reproach. However, even if her evidence was accepted and that she had not cut any document at KIBS on 7 Nov 14, I did not think that this inconsistency affected or dented Pan's credibility in any significant way.

The events on 10 Nov 14

58 Mr Kang argued that Pan's evidence that Pek and Tang had told her to take the sole blame for cutting the examination scripts was illogical. His submission was as Pan had already been caught in the act, and had confessed to Khalid that she was responsible for cutting the scripts, it made no sense for Pek and Tang to ask her to take the blame. Secondly, it also made no sense for them to think that Pan would take the blame for them because Pan had no special loyalty to KIBS or them. As evidence of the lack of loyalty, Mr Kang pointed out the episode where Pan tried to resign because of her unhappiness and stress over her job at KIBS but was convinced to stay on by Pek. Therefore, Mr Kang submitted that it was more likely that Pan had lied to the CPE officers on that day by implicating Pek and Tang and thus minimising her own culpability because she was concerned whether she would be charged, and whether her permanent residency status would be cancelled.

59 Firstly, Mr Kang was misconceived when he submitted that Pan had been caught in the act on 7 Nov 14. As set out in [54] above, Mr Kang has misread the evidence adduced on this point. Even if she had admitted that she had cut the scripts on 7 Nov 14, it was not illogical for Pek and Tang to try and suborn her in relation to asking her not to disclose the fact that Pek had given her the instruction to cut to the CPE officers when she gave her statement. As to the lack of any loyalty on Pan's part, as

rightly pointed out by DPP Choong, this argument cut both ways. As Pan did not have any loyalty or affinity to KIBS, then there was no conceivable reason for her to have taken it unto herself to find examination scripts and cut them and presented them as those written by the students requested for by CPE. I find that this conclusion held true even if the situation arose because of an administrative negligence on Pan's part. In other words, she had nothing to lose. The only parties that had a lot to lose in this case were Pek and Tang.

The lodging of the police report (P13) by Pan on 5 Dec 14

60 Mr Kang also sought to attack Pan's overall credibility by way of the police report that she lodged on 5 Dec 14^[note: 69]. Mr Kang pounced on the fact that in P13, she had omitted to mention the allegation about Pek instructing her to cut the examination scripts and thereafter both Pek and Tang had tried to talk her into taking the blame. In Mr Kang's view, the omission was a critical one, and it significantly dented Pan's credibility.

61 This argument was made without any attempt to put P13 in its proper context. P13 was lodged one day after Pan was asked to sign a complaint letter^[note: 70] drafted by Pek. This letter alleged wrong-doings, *inter alia*, abuse of power and the use of threats by CPE officers on 6 Nov 14. Pan's motive in lodging P13 was to put on record that the complaint letter was prepared by Pek, and that Pek had cajoled her into signing it^[note: 71]. As far as Pan was concerned she had already given her statement to CPE in relation to the issue in relation to the examination scripts. Under these circumstances, I accepted that she did not feel it was necessary to repeat in P13 what she had already stated in her statement to CPE. P13 was a reaction to her being asked to sign P12. This explained her failure to mention the examination scripts issue in P13.

Conclusion on Pan's Credibility

62 All considered, I was satisfied and I found that Pan was a credible and truthful witness. She had displayed candour in her testimony. Admittedly there were some inconsistencies in her evidence, but given the lapse of time, and the fact that she had endured three and a half days of rigorous cross-examination, the inconsistencies were inevitable and expected. However, these inconsistencies were not material and did not affect my assessment of her truthfulness and credit-worthiness. Her evidence was in the whole cogent and has the ring of truth in them. Her candour in her testimony, her frankness in revealing things which had also placed her in a bad light, the absence of embellishment and exaggeration in her recounting of the events were testimonies of her truthfulness.

Pek's Credibility

(i) No knowledge that Pan had cut the examination scripts

63 It was the main key aspect of the defence that Pek had no knowledge that Pan had cut the examination scripts until after the fact. Pek claimed that she had only found out about what Pan had done after the cut examination scripts had been submitted to the CPE officers. However, her assertion was contradicted by her own statement^[note: 72] made to the CPE officer Khalid on the same day. In this statement P42, Pek had stated that she had seen Pan cutting the names off the examination scripts. Pek did not stop her because, as she claimed, the scripts had already been cut.

64 This was a material contradiction. Therefore, it was not unexpected that Pek embarked on a concerted attack designed to impugn the accuracy and the integrity of P42. When P42 was first shown to her, she denied telling Khalid, the recorder of the statement, that she had seen Pan cutting the examination scripts. She alleged that this part of the statement was inaccurately recorded. She also alleged that she had refused to sign P42 until after she had spoken to Pan. But she was told that if she did not sign P42, she would be issued with a warning letter. She was therefore forced to sign P42^[note: 73].

65 DPP Choong then produced a video footage (Exhibit P41) of that statement recording which distinctly showed that the allegations made by Pek were demonstrably false. The video recording recorded Pek as clearly saying that she had seen Pan cutting the examination scripts^[note: 74]. She was also seen signing P42 with question after it was read back to her by Khalid. There was no request by her to speak to Pan first before she signed her statement. There was no mention of any warning letter if she refused to sign^[note: 75].

66 Confronted with the damning video evidence, Pek changed course, not unlike a dinghy trying to take advantage of the changing wind. She now claimed that she had said the wrong thing because she was under stress at the time^[note: 76]. She however obstinately maintained her earlier evidence that she had refused to sign. I found this bizarre given the video evidence. It showed that Khalid had asked her to sign P42 after he had read it back to her and after she had acknowledged its contents. And when Khalid asked her to sign, he pointed to a spot on the statement. Pek was then seen moving the pen in her hand on the statement and scribbling something down. After which, Khalid had thanked her and took the statement away. When the video footage was replayed, she only reluctantly relented partially and would only agree that she had signed P42 “[i]f based on the video”^[note: 77].

67 The video footage did not show a threat to issue a warning letter if she refused to sign P42. As she had admitted that the video had not been edited or altered, she decided to make a 360 degree change in position and claimed that the threat to issue a warning letter was made before the statement recording even began^[note: 78]. DPP Choong led evidence from Khalid, who recorded P42 from Pek, and Tay High Wide, the recorder of the video. Both witnesses rebutted Pek’s false claims and allegations. On the basis of P42, Pek’s claim that she was ignorant of Pan’s action in cutting the examination scripts was clearly rebutted.

68 Pek claimed that she did not have the time to supervise Pan in the collation of the requested documents because she was busy attending to clients. However, a closer examination of the timings in which these clients visited KIBS revealed that her claim was greatly exaggerated. There was in fact a three-hour period in which Pek was not occupied. The CPE inspection was a big deal to KIBS. It was therefore puzzling that Pek did not seem to want to at least verify and confirm that the documents collated by Pan for submission were in order first before. This casual attitude was wholly inconsistent with the concern that she and Tang had showed the day before, where she had interrogated Pan on every detail of the inspection by the CPE officers on 6 Nov 14, and the seven hours that they spent in KIBS preparing for the inspection the next day. Her claim that she had no time to supervise Pan was patently false.

69 Pek’s claim of ignorance was further perplexing given that there were red flags in relation to these documents. The examination scripts all bore very low scores ie in the thirties. They also belonged purportedly to students whose class attendance rate was also low ie about 22%^[note: 79]. Given these two set of underwhelming statistics, it was remarkable that the students had graduated. Despite these red flags, Pek did not verify these scores and instead she made a perplexing leap of logic by assuming that the students had done well for their other modes of assessments^[note: 80]. Another red flag was when Pek saw Pan in one of the classrooms with the door closed, holding a penknife and strips of paper. She admitted that this sight had made her suspicious. But interestingly, she did not seek to verify that the documents which Pan had collated were in proper order^[note: 81].

(ii) KIBS policy of returning the examination scripts to the students

70 Another key aspect of the defence was that KIBS has a long-standing policy of returning examination scripts to the students. This was to support the defence that there was no reason for the school to falsify examination scripts to account for missing scripts. If this was so, then it further bolstered the defence’s contention that Pan had done the cutting on her own accord.

71 Significantly, this point was never raised by Pek with the CPE officers on 7 Nov 14. Pek herself had admitted that it had crossed her mind that the examination scripts requested for by CPE might have been returned to the students and therefore were unavailable for submission^[note: 82]. When pressed why she did not inform the CPE officers about this alleged policy, she claimed that she had wanted to check first if the scripts had been returned. However, she did not check and she did not ask for the opportunity to check for the entire duration of the inspection on 7 Nov 14 which spanned seven hours^[note: 83]. Inexplicably, she left the entire responsibility of retrieving the examination scripts to Pan. Pertinently, her claim was debunked by the KIBS students who testified in court. They all did not corroborate her evidence on this issue. On the contrary, seven of the eight students had testified that they had not sat for any examination. In addition, if it was true that KIBS had this long standing policy, then Pan would have been aware of it. And if she was aware of this policy, then there was similarly no reason for her to resort to the drastic, desperate and rather tedious act of cutting examination scripts. She could just have taken the matter up with either Pek or CPE if the requested examination scripts were not in the student’s file. She was also not surprised when all the students requested for by CPE had examination scripts.

72 For all the above reasons, I rejected Pek’s evidence on this issue.

73 Pek's excuse for not being able to return to KIBS on 6 Nov 14 as requested by CPE was contrived. She claimed that, she was at a meeting with a company in the Marsiling area. The purpose of the meeting was to canvass for potential students for KIBS. So actually this was not really a meeting but a marketing drive. Her excuse for not being able to return to KIBS that same afternoon was because Marsiling was out of the way and it was raining heavily that day. These two factors made it very difficult for her to find transportation back.

74 I agreed with DPP Choong that her account was not cogent and credible. Her evidence was that she had arranged one meeting. I did not think that the meeting or marketing drive would take the whole afternoon. There was ample time for her to return given that she would have been informed by Pan about the presence of CPE officers at the school soon after 1.52 pm. In fact the CPE officers had waited at KIBS until 6.00 pm to 7.00 pm. On the inaccessibility of the place and bad weather, she could have easily telephoned for a taxi to pick her up and drive her back to KIBS. She had deliberately chosen not to return to KIBS and had conjured up this account to give the impression that she was unable to return rather than did not want to return to KIBS. A pertinent point to note was that on her return, she had not gone to KIBS but instead had arranged to meet Pan at a coffee shop first. All these led to the inexorable conclusion that she had wanted to avoid meeting the CPE officers that day.

75 All considered, I did not find Pek to be a credible witness.

Tang's Credibility

76 Tang was the main shareholder of KIBS. By his own admission, he had expended more than S\$100,00/- into the school. In spite of this, he tried to give the impression that he was not at all bothered nor concerned about the surprise inspection by CPE. This was because, he claimed, he did not know the seriousness of the impending CPE inspection the next day, and therefore he was unafraid of any possible adverse consequences that might result from it^[note: 84]. However, this alleged belief or state of mind was not consistent with his action and the actions of both Pek and Pan. Despite his entreaties to the contrary, Tang had thought the matter important enough to go down for the meeting at the coffee shop that evening with Pek and Pan, and elicit further details about the CPE officers' visit that afternoon from Pan. This was pertinent especially when he confessed that he had been unwell that day and for several days before that. And despite being unwell, he thought it important enough to return to the school with Pek and Pan, and stayed there from 9.00 pm to 4.23 am the next day. This was more interesting as he was not even involved in the preparation of the documents for the impending inspection. In his own words, he had spent one and half to two hours 'cleaning', and the next five hours resting in the school. Even when DPP Choong suggested to him that he should have realised that the inspection was important and could have adverse consequences because Pek had stayed for seven and a half hours while Pan had stayed for about five hours preparing for it, he disagreed saying that they had merely wanted to check that their work was perfect^[note: 85]. I found his evidence on this issue contrived and lacked the ring of truth.

77 Tang was also less than candid in his evidence on the phone call that he made to the school on 6 Nov 14. He denied that he had called KIBS that afternoon posing as a student or a teacher and pretended to cancel a class which was scheduled that evening. Tang admitted that he had called the school but it was to find out where Pek was, as Pek had not answered his calls earlier. He had not explained why it was so urgent for him to get in touch with Pek. In any event, it would seem that he had finally managed to get in touch with Pek because he was present for the meeting with Pan and Pek that night.

78 Tang had also been less than truthful in material portions of his testimony. He had given a unequivocal statement to the police stating that the students involved in the present case had taken their examinations before they were issued with their diplomas^[note: 86]. When pressed about how he could possibly have known this, given that he was not involved in the academic side of things at the school, he made vague references to 'administrative documents' and 'school policy'^[note: 87]. But he had not made specific references to the relevant provisions. When it was pointed out to him that the school's academic policy (Exhibit D10) actually allowed a student to graduate without taking examinations because examination was given low weightage, he tried to explain the incongruity away by baldly asserting that the statement that he made to the police was based on his own understanding of the school's policy^[note: 88].

79 Tang wanted the court to accept his evidence that he had believed Pan's alleged confession that it was her own idea to cut the examination scripts at face value. He did not seek to find out why she had not consulted Pek before doing what she did. He did not find her confession strange. Instead he made the immediate assumption that she had done that because she wanted

to cover up the mistakes in her administrative work^[note: 89]. His lack of interest in exploring further was inconsistent with his awareness that tampering of the school's documents was a serious matter and would have serious adverse consequences. The shifts in his evidence on his lack of interest was telling. His initial stand was that Pek had told him that cut examination scripts had been submitted to CPE officers. He said this was told to him on the night of 7 Nov 14^[note: 90]. Despite being told this, and keeping his mind about his awareness that this was a serious matter with serious adverse consequences, he claimed not to have placed much thought on whether CPE would investigate this, or whether the school's licence would be affected^[note: 91]. When pressed to explain why he had treated this so lightly, he changed his position, and said that on the night of 7 Nov 14, he had only been told that Pan had cut some scripts but he did not know if these scripts had been submitted to CPE^[note: 92]. He then further embellished his account, stating that he could not recall whether Pek had told him that there was an inspection that day^[note: 93]. If true, then it begged the question why Pek had called and informed him that Pan had cut the examination scripts, without any context. I disbelieve his evidence on this point. It was inexplicable for Pek not to have mentioned the inspection because it gave the all-important context to Pan's action of cutting the examination scripts.

80 All considered, I did not find Tang to be a credible witness.

COURT'S DECISION ON THE TRIAL

81 On the totality of the evidence, I was satisfied that DPP Choong had made out a case against both Pek and Tang beyond reasonable doubt, and I duly convicted both of them on their respective charges.

82 Both Pek and Tang were first offenders.

SUBMISSIONS ON SENTENCE

83 Citing the *Sentencing Practice in the Subordinate Courts* (LexiNexis, 3rd Ed, 2013 Rev Ed), DPP Choong said that the sentencing philosophy underpinning the commission of an offence under s 204A is an offence against the institution of justice and it contaminates the rule of law. For this reason, the default starting sentence should be imprisonment.

84 DPP Choong then listed out the factors that would affect culpability. These were –

- (i) The gravity of the predicate matter in which justice was sought to be obstructed;
- (ii) The manner in which justice was sought to be obstructed;
- (iii) The duration of the misconduct, including whether the offender ceased his conduct at an early stage, or voluntarily disclosed his misconduct;
- (iv) The potential harm that could arise from the misconduct;
- (v) Whether and how the offender stood to gain from obstructing justice.

85 DPP Choong highlighted that for bullet points (iv) and (v), the potential for harm and gain were still relevant to sentence, even if no such harm or gain was accentuated: *PP v Koh Thiam Huat* [2017] 4 SLR 1099 at [41] ("*Koh Thiam Huat*"). DPP Choong clarified that while *Koh Thiam Huat* dealt with offences under the Road Traffic Act, the observation was of general application in matters of sentence, given that offences bearing greater potential harm or gain were of higher relative severity compared to offences bearing a lesser form of these two traits.

(i) Gravity of the predicate matter

86 DPP Choong submitted that the predicate matter in the present case involved serious offences ie, submitting false documents to an investigative authority. The aim was to derail a serious inquiry into whether KIBS should have its private education licence revoked. Two strong public policy concerns underlie the predicate matter at hand.

87 First, enforcement of PEA is an integral part of a wider effort to strengthen the private education sector in our country to bolster our reputation as a global education hub. When a black sheep operator like KIBS is not held to account for its actions, the whole sector would suffer from a loss of public confidence.

88 Second, general deterrence applied with great force in the present case as the diplomas involved were DMS. Work in the maritime industry is hazardous and the accused persons' actions have the potential of both putting lives at stake, and tarnishing Singapore's reputation as a marine hub. It was apparent that the DMS graduates from KIBS lacked the requisite training, so much so that the Maritime and Port Authority of Singapore ("MPA") which highlighted the practices at KIBS to CPE. MPA also furnished MPA with a list of students who had displayed their woeful lack of knowledge despite attaining their DMS.

(ii) Manner and duration of the misconduct

89 DPP Choong submitted that the conduct of the accused persons should not be looked at in isolation. It should be viewed in the context that it was the final desperate attempt at frustrating CPE investigations after a series of previous attempts had failed. He argued that the court was entitled to, and in fact should, consider aggravating circumstances which contained sufficient nexus to the charges before it: *Chua Siew Peng v PP* [2017] 4 SLR 1247 at [81] to [84].

90 The accused persons' attempts to frustrate CPE investigations began in the afternoon of 6 Nov 14. They had both called in posing as students and/or teachers to cancel classes. They also avoided coming in to the school in order to avoid speaking to the CPE officers. They only returned to KIBS in the late evening, after the officers had gone, and Pek undertook the momentous effort to forge the student attendance lists, enlisting Pan's assistance in this. The next day, 7 Nov 14, Pek instructed Pan to prepare still more forged documents, this time by falsifying students' examination scripts. When this was discovered by the CPE investigators, the accused persons resorted to instructing Pan to make a false admission to CPE that it was her idea to falsify the examination scripts, in order to absolve them of blame.

91 In relation to the relative culpabilities of the accused persons, DPP Choong conceded that Pek was the more culpable of the two. She was more involved in the incidents on 6 and 7 Nov 14. She was also the initiator of the offence on 10 Nov 14. Tang had only come in to put additional pressure on Pan to help them obstruct the course of justice.

(iii) Potential harm and gain

92 KIBS was a profitable enterprise. Each student's enrolment brought in upwards of S\$6000. For this lucrative sum, the school had to do little more than dispense printed material. It did not even have to conduct classes or administer examinations. The 10 students involved in this case represented income in excess of S\$60,000. Therefore the potential gain for Pek and Tang in committing the offences were two-fold; one, to avoid penal consequences under the PEA for submitting falsified documents to the CPE, and two, being able to continue their lucrative business as a diploma mill.

93 Of greater severity was the potential harm in this case. The charges entailed having Pan playing the scapegoat in the accused persons' scheme to frustrate CPE investigations. Pan was not a willing party. Neither did she profit from it. She was in a sense beholden to the accused persons, both as an employee and as a former student at KIBS. Pek and Tang were not just her bosses, but were also her teacher, mentor. Both Pek and Tang had taken advantage of her vulnerability and applied pressure on her to take the fall for them.

94 DPP Choong highlighted the principle enunciated in *PP v GS Engineering & Construction Corp* [2017] 3 SLR 68 at [53], that a sentencing judge should consider the full range of sentences provided for under the relevant penal provision. In the present case, s 204A of the PC provided for imprisonment of up to seven years, or a fine or both. And where s 116 of the PC was applicable, as it was in this case, the imprisonment sentence may extend to one-fourth the longest term provided by the offence, or with such fine as is provided for that offence, or both. Therefore, the longest imprisonment sentence that could be imposed on the present charges was 21 months' imprisonment. Based on this, DPP Choong suggested a sentencing framework (on the basis of a claim trial situation) as follows –

- (i) Low culpability - up to three months' imprisonment;

(ii) Medium culpability - up to seven months' imprisonment; and

(iii) High culpability - up to 14 months' imprisonment.

95 DPP Choong submitted that on the facts, Pek's culpability was medium, and Tang's culpability was low. Therefore, Pek should be sentenced to at least four months' imprisonment, while Tang should be sentenced to not less than three months' imprisonment.

96 DPP Choong also highlighted the accused persons' conduct during the trial as aggravating. The manner in which the defence was conducted showed a clear lack of remorse. They had launched baseless attacks on Pan's credibility. Pek had also defiantly and obdurately maintained a wholly untenable position in relation to the signing of her statement. Pek had also accused, without any basis, Pan and four of her former students of fabricating their evidence about how she offered diplomas to the students without having to take examinations, attend classes and do assignments.

DEFENCE SUBMISSIONS

(i) Mitigation Plea

97 Mr Kang highlighted that Pek was a highly motivated and capable individual. Throughout her professional career, she has excelled in a wide spectrum of roles; from a trainer at a local IT learning hub to a Knowledge Management research associate with DSO National Laboratories where she handled sensitive and top-secret Defence Science projects. She has always been highly regarded, not just by her colleagues, but also by her students at KIBS, as evidenced by the many glowing character references and testimonials.

98 Mr Kang disclosed that Tang was a gifted musician who came to Singapore from China in 2008 as a music major at LASALLE College of the Arts. He has attained the highest piano grade level for classical music. His first job in Singapore was as Director of Marketing at KIBS. He showed himself to be an extremely dedicated and hardworking employee. He sought to improve himself at every opportunity by enrolling in classes conducted by KIBS. Tang was highly regarded by those who knew him, as evidenced by the numerous character references he received.

99 Mr Kang submitted that there was no pre-meditation to deceive CPE. The offence was committed on the spur of the moment. Neither was the scheme a complex one in which multiple or active steps were taken to deceive. He pointed out that Pek and Tang were convicted of 'attempting' to pervert the course of justice i.e. there was no false statement made by Pan in furtherance of her being instigated to do so by them.

100 Mr Kang presented to the court the general good character of the accused persons and their positive influences on society as strong mitigating factors. The multitudes of testimonials and character references showed them to be caring, meticulous and responsible employees and bosses. They were also greatly involved in charity work as shown by the testimonials from the Singapore Red Cross and the Red Cross Society of China.

101 They were also first offenders. The offences were uncharacteristic aberrations and were completely out of character for both of them. Also as they were no longer in the private education business, there was no real risk of re-offending.

(ii) Submission on Sentence

102 Mr Kang submitted that the fact that they had claimed trial should not be taken against them. They had not conducted their defence in an inappropriate manner or egregiously. Also the courts retained a discretion to impose a fine. Mr Kang argued that a fine was appropriate in the present case for the following reasons -

(i) The offences were committed on the spur of the moment;

(ii) There was little or no personal gain that accrued to them. KIBS's registration would have been cancelled in any event on account of the falsified examination scripts;

(iii) There was no serious consequences. This was because CPE had caught Pan in the act and stopped the matter then and there. The only 'evil' that the accused persons could be said to have sought was the implication of Pek's role in what Pan did.

103 Mr Kang cited cases where the courts had imposed fines in respect of a s 204A offence -

(i) PP v Tay Su Ann Evangeline [2011] SGDC 57: the accused had claimed trial to one s 204A charge. She had instructed the co-accused to assume criminal liability on her behalf for a traffic violation which she had committed. Upon convicted she was fined S\$2,000.

(ii) PP v Lim Ah Hwa [2010] SGDC 469: As in the case above, the accused had arranged for someone to assume criminal liability for a traffic violation which he had committed. He was sentenced to four weeks imprisonment which was substituted for a fine of S\$5,000 on appeal. The High Court had considered as significant that he was a first offender. In addition, it had also considered the fact that the accused person was a single parent with three young daughters, and that he had pleaded guilty.

(iii) PP v Ng Ang Heng [2016] SGDC 340 ("Ng Ang Heng"): the accused person had attempted to contact a prosecution witness to tamper with her testimony prior to her taking the stand. He pleaded guilty and was fined S\$6,000. He had a previous conviction of making a false statement to the Employment Inspector under s 22(1)(d) of the Employment of Foreign Manpower Act for which he was fined S\$4,500. The District Judge, while mindful of the sentencing philosophy for s 204A, was of the view that a high fine constituted a sufficient deterrence.

104 Therefore, Mr Kang submitted that the factual matrix of the offences and the accused persons' good character were strong persuasive reasons to lean in favour of a non-custodial sentence. The courts give more weight to good character if there was positive evidence as to character rather than the negative inference from the absence of allegations of other convictions: Xia Qin Lai v PP [1999] 3 SLR(R) 257; and an offender who has provided services of substantial value to the community would stand in good stead: Knight Glenn Jeyasingam v PP [1992] 1 SLR(R) 1.

105 Mr Kang also submitted that an offence under s 204A must be viewed in the context of the seriousness of the predicate offence: Seah Hock Thiam v PP [2013] SGHC 136 at [9]. The consequences which Pek and Tang was trying to avoid when they pressured Pan into taking the rap for them was essentially regulatory offences under the PEA such as failure to keep proper records or administering the school in a manner contrary to public interest. Mr Kang submitted a table of case precedents which showed that for such regulatory breaches under the PEA, the offenders have consistently been imposed with fines, cancellation of the school's registration and/or a stern warning in lieu of prosecution. As such, Mr Kang argued that Pek and Tang should not be held to the same level of culpability as people who sought to avoid liability for more serious offences that in themselves warranted custodial sentences.

THE SENTENCE

106 In my view, the custodial sentence threshold has been crossed for both Pek and Tang. I agreed with and accepted the submissions made by DPP Choong which were set out in [83] to [96] above.

107 I wish to address the cases cited by Mr Kang where the courts have imposed fines for a s 204A offence. The distinguishing feature in those cases was that the predicate offence involved traffic violations, which were minor offences. And in Ng Ang Heng, which involved an attempt to commit a s 204A offence ie, read with s 511 of the Penal Code, the accused person had committed the offence with the view of taking the responsibility for the predicate offence himself.

108 In the present case, the predicate offence involved the submission of false and/or forged documents to an investigative authority. The aim was to derail a serious inquiry into whether KIBS should have its private education licence revoked. There were two strong public policy concerns that underlie the predicate matter. One was Singapore's reputation as a global education

hub. Effective compliance and enforcement of the Public Education Act formed an integral part of a wider effort to strengthen the private education sector in our country. A diploma mill like KIBS would cause a loss of public confidence on the sector if it was not checked and held accountable for its actions. Second, the diplomas involved in this case concerned the maritime industry, which was a hazardous industry. By dispensing diplomas in maritime studies to the unqualified and untrained, there was a potential of endangering life and tarnishing Singapore's reputation as a marine hub. The DMS graduates from KIBS were so clearly woefully lacking in the requisite training that the MPA lodged the complaint to CPE about the diploma mill that was KIBS.

109 Therefore, although I agreed with Mr Kang that a s 204A offence encompassed a wide spectrum of unlawful behaviour, but the unlawful behaviour complaint of in the present case, in relation to culpability and the harm or potential harm, meant that the custodial sentence threshold was crossed. In terms of culpability, I agreed with both parties that Pek played a more active role in the offence than Tang and rightly her culpability should be higher.

110 In their favour, I have considered their clean record. Some weight would also be accorded to their good character. However, these would only go towards the quantum of the imprisonment sentence.

111 All considered, I sentenced Pek to three months' imprisonment, and Tang to two months' imprisonment.

112 Both accused persons have appealed against their conviction and sentence. They are both on bail pending the hearing of their appeals.

[note: 1]NE, 21 Aug 17, page 50 at lines 7-26.

[note: 2]NE, 5 Jun 17, page 5 lines 12 to 15.

[note: 3]NE, 5 Jun 17, page 7 lines 15 to 18 and 23 to 24; 6 Jun 17, page 33 line 4 to page 34 line 33.

[note: 4]NE, 6 Jun 17, page 15 lines 9 to 10 and 13 to 16.

[note: 5]NE, 5 Jun 17, page 8 lines 9 to 10 and 18 to 19.

[note: 6]NE, 5 Jun 17, page 8 line 26 to page 10 line 25.

[note: 7]NE, 5 Jun 17, page 11 lines 1 to 3.

[note: 8]NE, 7 Jun 17, page 17 lines 6 to 12.

[note: 9]NE, 5 Jun 17, page 10 line 29 to page 11 line 8; NE, 5 Jun 17, page 17 lines 14 to 16.

[note: 10]NE, 6 Jun 17, page 51 lines 30 to 32.

[note: 11]NE, 5 Jun 17, page 18 lines 2 to 11.

[note: 12]NE, 5 Jun 17, page 18 lines 16 to 28.

[note: 13]NE, 5 Jun 17, page 31 lines 14 to 29.

[note: 14]NE, 5 Jun 17, page 32 lines 1 to 4.

[note: 15]NE, 5 Jun 17, page 32 lines 22 to 29.

[note: 16]NE, 27 Nov 17, page 10 line 31 to page 11 line 3.

[note: 17]NE, 27 Nov 17, page 11 lines 16 to 20.

[note: 18]NE, 29 Nov 17, page 24 lines 23 to 26.

[note: 19]NE, 28 Nov 17, page 62 lines 11 to 28.

[note: 20]NE, 27 Nov 17, page 16 lines 16 to 20.

[note: 21]Exhibit P18 – "Record of Articles Collected".

[note: 22]NE, 27 Nov 17, page 16 lines 24 to 30.

[note: 23]NE, 27 Nov 14, page 24 line 30 to page 25 line 6.

[note: 24]NE, 29 Nov 14, page 35 lines 18 to 27.

[note: 25]NE, 27 Nov 14, page 20 lines 3 to 6.

[note: 26]NE, 22 Aug 17, page 38 line 1 to page 39 line 30.

[note: 27]See [3] above.

[note: 28]NE, 21 Aug 17, page 47 lines 1 to 28.

[note: 29]NE, 5 Jun 17, page 7 lines 9 to 24.

[note: 30]NE, 6 Jun 17, page 35 lines 1 to 5.

[note: 31]NE, 6 Jun 17, page 34 lines 17 to 23.

[note: 32]NE, 6 Jun 17, page 30 lines 23 to 32.

[note: 33]NE, 5 Jun 17, page 5 lines 12 to 15.

[note: 34]NE, 27 Nov 17, page 85 line 21 to page 89 line 30.

[note: 35]NE, 5 Jun 17, page 8 lines 8 to 10.

[note: 36]NE, 6 Jun 17, page 20 lines 3 to 17.

[note: 37]NE, 5 Jun 17, page 8 lines 8 to 10.

[note: 38]NE, 5 Jun 17, page 8 lines 20 to 23.

[note: 39]NE, 6 Jun 17, page 18 lines 15 to 22.

[note: 40]NE, 5 Jun 17, page 9 lines 21 to 27; 6 Jun 17, page 49 line 5 to page 50 line 30.

[note: 41]NE, 23 Aug 17, page 26 line 24 to page 27 line 19; page 28 lines 24 to 28.

[note: 42]NE, 24 Aug 17, page 4 line 9 to page 6 line 4.

[note: 43]NE, 24 Aug 17, page 14 line 9 to 11; page 25 lines 24 to 26.

[note: 44]NE, 25 Aug 17, page 27 line 30 to page 28 line 23.

[note: 45]NE, 25 Aug 17, page 23 lines 21 to 26.

[note: 46]NE, 25 Aug 17, page 36 lines 1 to 11.

[note: 47]NE, 25 Aug 17, page 49 lines 11 to 18.

[note: 48]NE, 23 Aug 17, page 30 lines 4 to 15; page 34 lines 16 to 17.

[note: 49]NE, 24 Aug 17, page 17 line 18 to page 18 line 12.

[note: 50]NE, 25 Aug 17, page 26 line 11 to page 27 line 2.

[note: 51]NE, 25 Aug 17, page 39 lines 13 to 15.

[note: 52]NE, 25 Aug 17, page 51 lines 7 to 16.

[note: 53]NE, 25 Aug 17, page 61 lines 9 to 15.

[note: 54]NE, 25 Aug 17, page 70 lines 1 to 2; page 71 lines 19 to 29.

[note: 55]NE, 23 Aug 17, page 27 lines 10 to 20; page 30 lines 4 to 21.

[note: 56]NE, 23 Aug, page 33 lines 30 to 32; page 34 lines 6 to 9.

[note: 57]NE, 23 Aug 17, page 35 lines 25 to 28.

[note: 58]NE, 23 Aug 17, page 36 lines 3 to 28.

[note: 59]NE, 25 Aug 17, page 10 line 3 to page 11 line 23.

[note: 60]NE, 6 Jun 17, page 51 lines 11 to 32.

[note: 61]NE, 7 Jun 17, page 6 line 19 to page 7 line 10.

[note: 62]NE, 5 Jun 17, page 9 lines 12 to 14.

[note: 63]NE, 5 Jun 17, page 10 line 29 to page 11 line 8; page 17 lines 14 to 16.

[note: 64] NE, 5 Jun 17, page 18 lines 16 to 28.

[note: 65]NE, 22 Aug 17, page 9 line 16 to page 10 line 12.

[note: 66]NE, 22 Aug 17, page 29 lines 21 to 30; page 15 lines 6 to 10.

[note: 67]NE, 30 Nov 17, page 4 lines 22 to 30.

[note: 68]NE, 30 Nov 17, page 13 line 22 to page 14 line 11.

[note: 69]Exhibit P13.

[note: 70]Exhibit P12.

[note: 71]NE, 21 Aug 17, page 20 lines 14 to 31.

[note: 72]Exhibit P42.

[note: 73]NE, 28 Nov 17, page 49 lines 5 to 26.

[note: 74]Exhibit P41T (transcript of the video recording) at lines 1, and 10 to 13.

[note: 75]Exhibit P41T at lines 99 to 111.

[note: 76]NE, 28 Nov 17, page 64 lines 27 to 30.

[note: 77]NE, 28 Nov 17, page 55 line 12.

[note: 78]NE, 29 Nov 17, page 7 lines 12 to 15.

[note: 79]NE, 28 Nov 17, page 1 line 13 to page 2 line 3.

[note: 80]NE, 28 Nov 17, page 14 lines 23 to 28.

[note: 81]NE, 28 Nov 17, page 27 line 8 to page 28 line 4,

[note: 82]NE, 28 Nov 17, page 23 lines 19 to 21.

[note: 83]NE, 28 Nov 17, page 24 lines 19 to 31; page 32 lines 5 to 38.

[note: 84]NE, 29 Nov 17, page 25 line 20 to page 26 line 10.

[note: 85]NE, 29 Nov 17, page 26 lines 5 to 32.

[note: 86]Ne, 29 Nov 16, page 46 line 6 to page 47 line 7.

[note: 87]NE, 29 Nov 17, page 47 lines 26 to 29.

[note: 88]NE, 29 Nov 17, page 48 lines 4 to 16.

[note: 89]NE, 29 Nov 17, page 40 lines 3 to 13.

[note: 90]NE, 29 Nov 17, page 27 lines 2 to 15.

[note: 91]NE, 29 Nov 17, page 27 lines 16 to 24.

[note: 92]NE, 29 Nov 17, page 28 lines 27 to 29.

[note: 93]Ne, 29 Nov 17, page 30 lines 11 to 13.

BACK TO TOP