Public Prosecutor v Wong Teck Long
[2005] SGDC 44

Case Number : DAC 55036/2003, MA 024/2005

Decision Date : 24 February 2005

Tribunal/Court : District Court

Coram : Tan Boon Heng

Counsel Name(s) : Derek Kang (Deputy Public Prosecutor) for the prosecution; Edmond Pereira and Benjamin Choo (Edmond Pereira and Partners) for the accused

Parties : Public Prosecutor — Wong Teck Long

24 February 2005

District Judge Tan Boon Heng:

A. Introduction

1. The accused is Wong Teck Long, (NRIC S2178800G), alias James Wong (JW), Singaporean Male, 43 years old, residing at Block 106 Towner Road, #06-434 Singapore 322106. He is currently working as a Manager (Private Banking) in Royal Canada Bank Pte Ltd (RBC). The Accused is charged that on a day in 1997, in Singapore, being an agent to wit, an Assistant Vice-President and a Manager (Private Banking) in the employ of Bayerische Landesbank Girozentrale (BL), he did corruptly obtain for himself from one Kong Kok Keong (KKK), an Executive Director of Innosabah Securities Sdn Bhd, Sabah, Malaysia, a gratification of a sum of about RM 300000/- to RM 400000/-, as a reward for doing an act in relation to his principal's affairs, to wit, recommending the grant of RM 14.5 million in Revolving Short-Term Multi Currency Loans each to the said KKK and the persons referred by him, and thereby committing an offence under Section 6(a) of the Prevention of Corruption Act, Cap 241 ('the Act').

B. Agreed Facts

2. Prior to that, the accused was working as an Assistant Vice-President and a Manager (Private Banking) with Bayesrische Landesbank Girozentrale (as it was then known, now known as BL) from 22 November 1994 to 3 February 1998. Part of his duties in BL was to source for high net worth private individuals in the Asia Pacific region who wished to get advice for investments.

3. The procedure for the loan application for the Revolving Short-Term Multi-Currency Loans is such that after the accused had sourced for private individuals in the Asia Pacific Region who wished to get advice for investments, if the individuals request for temporary loans, he would have to put up a Credit Proposal to his immediate superior, Richard Yong (Head, Private Banking). Richard Yong would then submit the said Credit Proposal to the rest of the management comprising another two General Managers, namely Clive Butcher and Michael King, for approval. If Richard Yong or his deputy was not around, the accused could submit the Credit Approval proposal directly to Clive Butcher and Michael King. The accused and Richard Yong did not have the authority to approve of any loan or credit facility.

4. Clive Butcher and Michael King would then have to assess the credit-worthiness of the applicants and if they were also satisfied that the applicants were credit-worthy, then they had the authority to jointly approve of the loan or credit facilities up to a value of DEM 10 million. If either Clive Butcher or Michael King were not around, then the individual approval of the other would suffice for loan or credit facilities up to a value of DEM 10 million. Loan or credit facilities with a value above DEM 10 million could only be approved by the BL Head Office in Munich, Germany.

5. After approval had been given, Richard Yong and one of his assistants would sign on behalf of BL on the Facility Letter which was also signed by the applicants to acknowledge their acceptance of the loan or credit facilities and the terms and conditions thereof.

C. The Prosecution's case

6. When the accounts of KKK and the 6 other persons referred by him to BL were opened and credit facilities applied for, the accused was an Assistant Vice-President and Account Relationship Manager ("ARM") in the Private Banking ("PB") department of BL. Specifically, the accused was the ARM for KKK and the 6 other persons, Loke Mei Ping ("LMP"), Kong Kok Hooi ("KKH"), Chow Yu Tea ("CYT"), Chong Fui Li ("CFL"), Chung Khing Chung ("CKC") and Wong Lai Han ("WLH"). LMP was KKK's wife, KKH was KKK's brother, CYT was KKH's wife and the other 3 were brokers in Innosabah where KKK was the Managing or Executive Director.

7. The accused, as the ARM for KKK and the 6 others, had processed their applications for credit facilities after processing the opening of their accounts. Though the charge makes specific technical reference to 'Revolving Short-term Multi-Currency Loans', these have been referred to generally as 'credit facilities' throughout the trial and understood as such by all parties and witnesses.

Background to the opening of the accounts

8. The opening of the 7 accounts preceded the application for the credit facilities. The reason behind the opening of 7 accounts is simple – KKK could not get the M$100 million loan quickly if he were to apply for it through a single BL account. This is because the individual account credit limit that could be approved locally was DEM10 million or about M$14.5 million (as of 1997). As such, 7 accounts, each applying for M$14.5 million in credit facilities (in total M$101.5 million), were opened.

9. According to KKK, he wanted about M$100 million in credit because one Joseph Ambrose Lee ("JAL"), had asked him if he was interested in buying a large amount of NBT shares for around that sum. The mechanics of the deal was such that after KKK bought the said NBT shares, he had an option to sell it back to JAL for a fixed sum higher than what he paid for it or at the prevailing market rate, which ever was higher. KKK agreed as NBT was a 'hot' share at the time and he was confident of making money. JAL and/or the NBT share-owners whom he was helping to organise the deal would get in effect a loan of about M$100 million to pursue other interests at that time. As a condition to the deal, KKK required JAL to help him obtain financing for the deal.

10. JAL eventually introduced KKK in person to a number of bankers in Singapore in April 1997. One of those bankers was the accused. According to KKK, he was introduced to the accused by JAL at a hotel lobby (that he remembers as the Ritz-Carlton). KKK also met Celina Lin ("Celina") for the first time at this meeting – she was there as an acquaintance of JAL and was not involved in or aware of the discussion. Following the introductions, JAL broached the topic of a RM 100 million loan being arranged. During the ensuing discussion, the accused explained the restrictions on the amount of loan that could be locally approved and on the requirement to deposit 3 different share counters for each borrower. KKK asked the accused how to overcome the 2 restrictions and the accused replied that firstly, small quantities of a counter could be deposited and secondly, that a number of additional accounts in the names of other persons (so-called 'nominees') could be opened – each to be operated by the accused as an authorised third party. However, as the accused was in PB, these persons, like KKK, had to be 'high net-worth individuals' before BL would consider their applications.

11. In principle, there would be nothing wrong with this side-stepping of BL's restrictions, provided the account holders were all in agreement. However, KKK told the accused that though he had 'nominees' in mind, they were all not high net-worth persons. According to KKK, the accused indicated that that would not be a problem and any figures of personal net worth could

be filled in the necessary forms. As a PB officer of BL who knew that BL was only interested in high net-worth parties, this acknowledgement by the accused that he would not have a problem in dealing with persons who were not high net-worth, was a precursor to an actual breach of duty.

12. Subsequently, the accused gave KKK some Account Opening Forms to be filled in and submitted. KKK made sure that his own as well as the forms for the other 6 persons were duly filled and returned them quickly to the accused. At the same time, Estimated Net-Worth ("ENW") forms were filled in and faxed to the accused. The accused informed KKK that the ENW figures for the forms were too modest for the credit facilities that were being applied for. KKK subsequently re-submitted the ENW forms with larger fictitious figures that the accused had suggested would be appropriate for the purposes of the approval of the credit facilities. In the mean time, the accused prepared Credit Application Forms (as seen in P6) wherein the 'Remarks' information was concocted together with KKK and submitted the Forms to the management of BL for approval. After the management approved of the credit facilities and KKK and the others and all of the facility letters were signed and returned to BL, collateral was deposited with BL's custodian bank and draw down on the credit facilities was effected.

Accused was aware that the other account holders were not high net-worth

13. According to KKK, he had told this to the accused when they first met, so the accused must have been aware of this. The scheme was for KKK to operate his 'nominees' accounts as the authorised third party, such that the credit facilities applied for in their names was effectively under his control and he could use them for his RM 100 million NBT shares deal. As such, the Letters of Authority were filled in (as part of the Account Opening Forms) before the Account Opening Forms were returned to the accused. If so, then the accused must have been aware that KKK was the authorised 3rd party to operate all of the other 6 accounts, as he had received the Account Opening Forms, verified them and submitted them to BL's Operations Department ("Ops Dept") along with some other documents (P10).

14. An innocuous matter at the start of the trial, the date and extent that the Account Opening Forms had been filled in became an issue when it became apparent that the Letters of Authority that had been filled-in that were physically part of the Account Opening Forms. If these had been filled in at the time that the accused verified the Account Opening Forms (through his signatures on Page 3 of each Form), then his claim that he did not know that the other 6 accounts and the credit facilities applied for through those accounts were controlled by KKK would clearly be untrue.

The accused was in a position to and did recommend the grant of the loans

15. It is clear that the Credit Application Forms in P6 were prepared by the accused. Each of the forms had substantial remarks drafted by the accused about the respective applicants. The remarks focused on the source of the applicant's income and wealth, and also noted the ENW of the respective applicants.

16. According to Manfred Wolf, the act of endorsing and supporting a Credit Application from the accused to the higher management was considered a 'recommendation'. Even the accused admitted that he had a duty to ensure that undesirable potential clients (e.g. those who were not high net-worth or those with dubious sources of wealth) did not open BL accounts. He admitted that he was in a position to stop a Credit Application and not submit it to his superiors. In the circumstances, the Prosecution submitted that it is clear that the accused, as an ARM with the power to endorse and to prepare the contents of a Credit Application form, was in a position to and did recommend the grant of the loans to KKK and the 6 persons referred by him.

Why recommending the grant of the 7 credit facilities was a breach of duty to BL

17. According to KKK, he made it clear to the accused at their first meeting that the 6 other persons he would refer to open accounts with BL and apply for credit facilities under his control as the authorized third party, would not be high net worth individuals.

18. The accused conceded that an ARM who drafted remarks stating that a client was high net-worth in the Credit Application Form, when he knew otherwise, would be in breach of his duty to BL. Similarly, the submission of attached ENW forms that painted a client as high net-worth when an ARM knew otherwise, would also be deceitful to the BL management and also a breach of duty.

19. It is the prosecution's case that the accused was aware that the 6 persons referred by KKK to him were not high net-worth individuals. Recommending that these 6 persons receive credit facilities – regardless of whether such facilities are secured loans – and blatantly stating fictitious sums of high net-worth in their credit application forms, was clearly a corrupt act in relation to BL's affairs. It was a demonstration of improper bias towards these 6 persons and was potentially damaging to BL in the event that these persons could not pay back their loans – a risk to BL that the accused, as an officer of BL, had no right to take. This potential damage became a reality when, due to the Asian financial crisis of 1997, these 6 persons were indeed unable to repay the credit facilities extended to them.

20. Further, according to Manfred Wolf, an ARM had to obtain supporting documents such as land title deeds or share certificates, company annual reports, etc. to ascertain if a client was as rich as claimed in the ENW Form. This requirement could be seen in the 'Credit Administration – Establish, Review and Advise Facilities and Obtain Securing Document' sub-document of the PB Procedure Manual (P4) at Para 4.5 (reference to obtaining 'securing documents') and Page 1 where it was stated that "*all credit facilities and transactions are processed in a controlled environment*". DW6 Ong See Ming corroborated this requirement.

21. The requirement of documentary proof of a client's ENW was to ensure that the client was actually in a position to repay any loans extended to him, as the ENW figure would be used as a gauge by the management to see how much credit could be extended to the client (as stated before, ENW had to be twice or more of the total value of any credit sought). The Prosecution submitted that this is only logical – BL, like other banks, is not charity but a business and could not have been so careless as to be prepared to extend large credit facilities to persons merely on the basis that the figures claimed in their ENW Forms were to be taken at face value.

22. The accused did not obtain any of these supporting documents to prove the ENW of KKK or the persons referred by him. The Prosecution submitted that the accused did not do so despite being under a duty to do so because he was prepared to close an eye to the actual ENW of the persons referred by KKK. The accused's failure to obtain the securing documents was in itself, a breach of his duty to BL.

23. It is the Prosecution's case that the accused in breaching his duties to BL, he had done an act in relation to BL's affairs by recommending the loans to the management of BL in the knowledge that the information cited to the management in the Credit Application and ENW Forms was false.

The accused obtained gratification as a reward from KKK amounting to M$300,000-M$400,000

24. According to Section 2 of the PCA, "gratification" includes "money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable" and also "any offer, undertaking or promise of any gratification (within the above meaning of gratification)".

25. Evidence of the accused obtaining gratification comes from KKK. Both the Prosecution and the Defence were unable to locate corroborative documentary evidence from Malaysian banks or Innosabah that could have shed light on the receipt or non-receipt of such gratification. As such, it falls to the credibility of the witnesses to determine this issue.

The gratification was a reward

26. According to KKK, at the first meeting he had with the accused, it was made known to the accused that the loan was needed urgently – within a week if possible. The accused replied that the tight timelines would make things difficult and it would take a lot of hard work to open the accounts and process the credit applications as quickly as desired. At this time, JAL was not around. KKK explained that he took this remark to mean that the accused was asking to be rewarded if he managed to help KKK get the quick financing he wanted. KKK admitted that this was purely an assumption on his part. KKK replied to the accused that he was aware of the effort required and that everybody would be properly rewarded at the end – a hint to accused that he too, would be rewarded. In response to this, the accused gave KKK a nod but added that he was not asking for anything. KKK told him that he knew what to do.

27. In the circumstances, the Prosecution submitted that any gratification obtained by the accused after the accused had helped KKK get the credit facilities he wanted would clearly be a 'reward'.

Accused obtained gratification from KKK

28. After the draw down was effected and the M$100 million NBT deal concluded, KKK spoke to the accused on the phone and told the accused that he had "*allocated a certain amount for him*" and the accused replied that he would leave it to the accused. This reward was a particular sum between M$300,000 to M$400,000, based on a percentage of the total loan obtained by KKK through the 7 credit facilities. KKK and the accused planned for the reward to be given to the accused through the Innosabah account of a third party representative of the accused so that there would not be a direct link between KKK and the accused. To that end, Tay Siew Choo (TSC) was asked by the accused to open an Innosabah trading account that was for the accused. The accused then instructed KKK to buy a certain quantum of a particular counter which was roughly what the agreed particular reward was. KKK did so.

29. Once shares purchased through that account were paid for by KKK, it is the Prosecution's case that the accused had 'obtained' the gratification, notwithstanding that the shares were in name owned by TSC. This is because the paying by KKK of shares brought in TSC's account was the agreed vehicle through which the reward for the accused's help was to be given and received. What happened thereafter to the shares – whether the sales proceeds were given to the accused after the said shares were sold or not – should not be of concern, just as the manner in which a cheque constituting a bribe is used after it is received should not.

The obtaining of the gratification was 'corrupt'

30. This element of the charge refers to the subjective knowledge of the accused that the reward he obtained was done so corruptly. According to *Low Tiong Choon's* case the "surreptitiousness or furtiveness of the transaction, the size of the gratification, relationship of the parties, breaking of rules or code may, as far as relevant, form part of that surrounding circumstances which, together with all the other evidence, will point towards the proper intention to be inferred".

31. Taking the remarks by the accused that it would be difficult to process the credit facility and the accused's nod of head in isolation, the Prosecution agreed that there was admittedly no clear *solicitation* of a bribe inferable on the accused's part. However, the Prosecution contended that what we would be concerned with was a *reward* that only came after the accused did an act in relation to BL's affairs and what happened at the first meeting would merely be the background to the gist of the charge i.e. *obtaining* gratification.

32. As pointed out by KKK, the proof would be in the pudding. If the accused accepted gratification from KKK after the financing was obtained for the NBT shares deal, then it would all but confirm that he had been hinting for a corrupt reward when he first met KKK. The Prosecution submitted that when the accused told KKK that he was "*not asking for anything*", he was merely telling KKK that he was not explicitly asking for a reward in general and/or a specific sum, to avoid appearing as if he was actively soliciting for a bribe.

Evidence of the corrupt nature of the transaction and corrupt knowledge of the accused

33. Prosecution contended that there are several pieces of evidence from which the *objectively* corrupt nature of the transaction and the *subjective* knowledge of the accused that the transaction was corrupt can be inferred:

(a) BL's Code of Conduct and Staff Handbook make it clear that receipt by BL officers of gifts from customers was frowned upon and personal conflict situations were to be avoided. The accused also agreed that it would be wrong for an ARM (such as himself) to accept large gifts from his customers. Hence, any receipt by the accused of substantial gratification from KKK would be a clear breach of BL's rules;

(b) The size of the gratification in this case was huge, between M$300,000 – M$400,000, and this precludes it from being an innocuous, friendly gesture on the part of KKK, such as a basket of fruits or a hamper during Chinese New Year. The timing of the giving and the large size of the gratification clearly showed that it was meant by KKK as a corrupt

reward for the accused's help in the processing of the credit applications. Similarly, the receipt of such large gratification alone must impute that the accused knew the corrupt nature of the gratification. No man on the street could possibly think that this was a simple gesture of appreciation from a grateful customer; and,

(c) Notably, the *manner* in which the gratification was given, also betrays the corrupt intent behind it. The Innosabah account was ostensibly in TSC's name but in reality, it was the accused's account for the purpose of receiving shares purchased by KKK. There was absolutely no need for the accused and KKK to have used such a surreptitious vehicle to convey the gratification, unless there was something wholly improper about the gratification that it could not be given openly and directly. Thus a clear corrupt intent and knowledge on the accused's part can be inferred from the disguised payment of the reward through TSC's Innosabah account.

34. Applying the objective standard, the Prosecution submitted that a reasonable man would readily conclude from the above that the M$300,000 – M$400,000 gratification paid to the accused through TSC's account was a corrupt transaction. The Prosecution further submitted that the evidence also points to the accused obtaining the gratification from KKK with the requisite subjective knowledge of its corrupt nature.

D. At the end of the Prosecution case

35. On the totality of the Prosecution's evidence adduced in court, I was satisfied that the prosecution had made out a prima facie case in support of each and every element of the charge which if unrebutted would warrant the accused's conviction. The defence had no submissions to make at this juncture. Accordingly, I administered the standard allocution to the accused and called for his defence. He elected to give evidence and the defence called a total of six witnesses.

E. The trial within the trial

36. On Day 37 of the trial, in the midst of the accused being cross-examined, the DPP sought to impeach the accused's credibility by cross-examining him on five of his pre-trial statements recorded by the CPIB, on the basis that the contents therein contained material inconsistencies with his evidence in court. The accused claimed that there were parts of the five statements (marked C1 to C5 for identification) that were involuntarily made. The Prosecution called four witnesses (the three recorders and interviewers) as part of their case and the Defence had five witnesses (the accused, his father, his brother and two medical doctors who examined him some time after the recording of the statements).

37. Having considered the evidence adduced in the trial within the trial and the closing submissions in writing from the Prosecution and the Defence, I made the following findings at the end of the trial within the trial.

Whether the pre-trial statements C1 to C5 amounted to confessions

38. I was guided by the principles laid down in *Yusof bin A Samad v PP* (2000) in the hearing of a trial within the trial. The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt. See *Anandagoda v R* [1962] cited with approval in *Yusof's* case.

39. Though I was of the view that C1 has no confession or admission made to the charge, out of prudence and good practice, the trial within the trial was aptly conducted to determine the voluntariness of C1. As a general rule, where a statement is made to a non-police officer and does not contain a confession, the statement will be admitted and any challenges go to weight only. Though no confession is contained, the court still reserves the right to set aside the statement based on its residual discretion if the prejudicial effect outweighs the probative value. In this regard, the accused's challenge of the voluntariness of C1 is neither under s 122(5) of the CPC nor s 27 of the Evidence Act. The trial within the trial is conducted pursuant to the court's residual discretion. See C*hoo Pit Hong Peter v PP* [1995] cited with approval in *Yusuf's* case.

40. I was able to identify portions of C2, C3 and C4 read with C5 containing confessions and admissions where directly or indirectly relating to the charge. Given my decision that C2 to C5 amounted to confessions, the voluntariness of the statements would be governed under s 27 of the Evidence Act considering that CPIB officers are not police officers.

41. In coming to my conclusions, I was mindful of the principle that the test for voluntariness must be applied in a manner which is partly objective and partly subjective. A statement is considered to have been made involuntarily if there is objectively a threat, inducement or promise and if the threat, inducement or promise operates subjectively on the mind of the particular accused through hope of escape or fear of punishment connected with the charge. See *Dato Mokhtar bin Hashim v PP* [1983] cited with approval in *Yusof's* case.

Admissibility of C1

42. On the evidence, I was not persuaded that the representations of PSI Tin, even if they were made to the accused, were sufficient to induce the accused to sign C1 containing untruth. The accused claimed that through PSI Tin's representations, he was under the belief that he would be allowed to go home and would be given an opportunity to explain himself in another statement which the accused claimed that Tin would be recording from him the following day.

43. I was not persuaded that the alleged representations, if made, were sufficient to induce the accused to sign untrue statements. In fact, Tin's alleged promise was never brought up again. It is inconceivable that an educated man like the accused could have not raised the matter with PSI Tin or even highlighted it to SSI Elvin Lim and SSI Pan when they were recording C2 and C3 respectively on 23 May 2003. Given the gravity of the implications to the accused in signing C1 containing full of untruths, the accused could not have forgotten PSI Tin's promise over night. If C1 were indeed full of untruths, no reasonable person would have forgotten the promise made and no reasonable person would have inadvertently omitted to bring up PSI Tin's promise to him that he could amend C1. Further, there was no mention of any such promise to record a new statement or to allow the accused to go home in his letter of complaint to CPIB. For the reasons given, I was satisfied that C1 was voluntarily made.

Admissibility of C2

44. On a balance of probabilities, I accepted the accused's evidence that SSI Elvin Lim threatened to throw the accused into the Alpha Cell if the accused did not sign C2. Under those circumstances, it would be unsafe to admit C2. The burden was on the prosecution to prove beyond a reasonable doubt that the confession was made voluntarily: *Koh Aik Siew v PP* [1993] cited with approval in *Yusuf's* case. I was mindful that to do so, it was only necessary for the prosecution to remove a reasonable doubt of the existence of the threat, inducement or promise. It was not necessary for the prosecution to remove every lurking shadow of influence or remnants of fear: *Panya Martmontree v PP* [1995] cited with approval in *Yusuf's* case. Applying the legal principles to the evidence adduced, I was satisfied that the accused has raised a reasonable doubt by SSI Elvin Lim's threat of throwing the accused to the Alpha Cell if the accused refused to sign C2. In these circumstances, I held that the prosecution had not proved beyond a reasonable doubt that the confession was made voluntarily. Accordingly, C2 was not admitted.

Admissibility of C3

45. On the evidence, I was not persuaded that SSI Pan's actions of getting the accused to contact his father while the statement was being recorded were capable of inducing the accused to sign C3 allegedly containing untrue confessions. If anything at all, the inducement could have been self-induced. In other words, the alleged inducements failed the objective part of the test. C3 was accordingly admitted.

Admissibility of C4 and C5

46. Both C4 and C5 should be dealt with together since C5 was intended to be part of C4 but for an inadvertent omission to immediately clarify what was said in C4. On a balance of probabilities, I accepted the accused's evidence that SSI Pan threatened to throw the accused into the Alpha Cell if the accused refused to sign C4. Under those circumstances, it would have been unsafe to admit C4 and C5. I repeat my analysis above for not admitting C2 as my reasons for the non-admissibility of C4 and C5.

Alleged acts of oppression

47. The accused also complained of lengthy and robust interrogation, lack of proper sleep (for C1 to C2), meals not provided and toilet needs were inconvenienced. Having evaluated the evidence, I was not satisfied that those complaints, even if true, were sufficient to sap the will of the accused such that he made and signed the statements involuntarily. Despite the alleged deprivation of some of his basic needs, I found that the accused remained very alert even at the conclusion of the signing of C3.

48. While the accused may have been hungry, his evidence was that he was not in such a state that he had no will to resist making a statement which he did not wish to make. In fact, he was clear minded enough to underline words such as 'gratitude' and made marginal markings in paragraph 21 of C3 either to draw the attention of SSI Pan or his own. Indeed, from the accused's own evidence, he was alert enough to elect to drive away from CPIB on 23 May 2003 instead of depending on his brother to ferry him to McDonalds' at Potong Pasir and thereafter to his residence.

Outcome of the trial within the trial

49. For reasons given above, I admitted C1 and C3 only as evidence. C1 and C3 were accordingly admitted and marked as P12 and P13 respectively as evidence for the main trial.

F. The Defence case

50. The Defence's position is that the accused did not receive any gratification from KKK. He performed his duties efficiently without granting any favour to KKK. At the close of the trial, the Defence submitted that it had succeeded in establishing that the Innosabah account was opened by TSC and WTC for legitimate purposes i.e. to facilitate their trading in Malaysian shares. The Defence argued that the Prosecution had failed to prove that any sums of money, ill-gotten or otherwise, was transferred from the Innosabah account to the accused.

The accused's background

51. The accused graduated from NUS in 1994 with a Bachelors of Business Administration degree. He worked as a financial analyst with Singapore Bus Services for 3 years and thereafter worked as a Private Banker in various established financial institutions. He lives in a 5-room HDB flat, which he was also living in 1997 and drives a car with an estimated value of $60,000 (less loan and COE). He also bought a condominium at Trellis Tower sometime in 2001. The down payment for the purchase was borrowed from his parents and the remainder was financed by a mortgage from DBS, which he repays with his CPF account. In 1997, his annual income was more than $124,000 (excluding bonuses) and he had savings of between $10,000 – 30,000. There was no evidence that he was in any form of debt, other than his home and car loans.

52. The accused commenced appointment as Manager 1 – Private Banking (First Senior Assistant Vice President) of BL on 22 November 1994. He worked with BL, reporting directly to the Head of Private Banking Asia Pacific, Mr Richard Yong, until 1998. Thereafter he joined the Royal Bank of Canada and continues in their employ, in the capacity of Assistant Director. While at BL, the accused's duties as an ARM covered marketing to high networth individuals, servicing existing high networth clients of BL, giving advice and comments on financial products to customers of BL. In 1997, he recalled that he had about 50 – 60 clients under his care and also assisted Richard Yong ("RY") in advising his client base of 50 – 60 clients. There were 2 other private bankers in the department who between them had about 30 – 50 clients. However, the accused and RY were the main persons dealing with share secured transactions.

53. In Examination-In-Chief (EIC), RY was asked to describe the accused's work performance. RY related that he has known the accused since 1990. The accused was then working with DG Bank when RY joined as Associate Director – Investments. He described the accused as a very quiet person but very skilful at marketing and knowledgeable with the products. However, he added that that the accused's administrative work was at times, sloppy. Despite, the accused's failings at administrative tasks, RY recognised the accused's contribution to the banks' profits and on an occasion rewarded him with the highest performance bonus. Obviously aware of the allegations against the accused, RY testified that the accused is an honest person with a good character.

54. The Defence submitted that the Prosecution had to prove beyond reasonable doubt that the accused had recommended the loans to KKK and the others. The Defence argued that there was no evidence before this court that the accused had handled the application for account opening and credit of KKK and the others any differently from the rest of his customers and thus it cannot be said that he strongly wanted these clients to have the facility.

The accused's version of the initial meetings with KKK in Singapore

55. The accused testified that prior to meeting KKK, he knew KKK as a very senior director of the only broking house in Sabah and that "*he was also known as an active player in the industry*". The accused recalled that Celina had called him and asked him if he was interested in meeting KKK who would be travelling to Singapore. Celina was a broker with Kim Eng Securities and BL had been using both her and her company for several years. Prior to introducing KKK, Celina had also introduced several other clients to BL through the accused and RY. The accused testified that he vaguely recalls speaking with KKK over the phone wherein it was confirmed that KKK would be coming to Singapore and staying at the Pan Pacific Hotel.

56. The accused recounted that his first meeting with KKK was in Singapore at the lobby of the Pan Pacific Hotel, a fact also in his statement recorded on 22 May 2003 (P12). In P12, it is also recorded that it was Celina who had introduced KKK to the accused. He recalled that he arranged to meet KKK at the reception area of the Pan Pacific. At this brief meeting, mutual introductions were exchanged and there was some casual chat. The accused did not recall if they had discussed any other issues but recalls extending an invitation to KKK to visit BL's office. The accused testified that he would make it a point to invite potential customers to visit BL's premises to give them an impression of the bank that he may be dealing with in future.

57. The accused's account of this first meeting differed from KKK's version. KKK had claimed that the meeting took place at the Ritz Carlton Hotel where JAL and Celina were also present. The Defence submitted that JAL's testimony corroborated the accused's account that there was never a discussion where all 4 persons were present. The Prosecution's case was based on KKK's version of events that the meeting at the Ritz Carlton was arranged by JAL, who had also introduced the accused to him (KKK). However not only did the accused disagree with this version of events, JAL also testified that he had never introduced any bankers to KKK in Singapore. It is pertinent to note that JAL and KKK were business associates for a number of years and there is no reason for JAL to give evidence contradicting KKK's testimony, unless it was simply stating the truth.

58. At the meeting between KKK and the accused at the premises of BL, the accused gave an introduction of the background and the services offered by BL. He recalls that KKK had asked whether BL could use him as a broker for trading in Malaysian shares and in return he would introduce customers to BL. He added that in his business, he would come across customers who were interested in opening bank accounts in Singapore and he could introduce such customers to BL but they had to appoint him as a broker so that share commissions could go back to Innosabah. Apart from giving a brief run through of his networth, KKK also mentioned that he required credit facilities from the bank. The accused told him that the credit limit for individual accounts was DEM 10 million. However if a larger credit line was needed, approval could be sought from the BL head office in Germany. This was a fact that KKK agreed with although he disagreed with the venue where the information was conveyed. The accused further recalled that KKK indicated that he wished to apply for the maximum credit line. In response to the Court's query, the accused admitted that he did not ask KKK how much credit he was actually intending to obtain as it was not standard practice. He explained that he was aware that KKK was interested in a share margin account and any utilisation of the facility would be subject to the amount of assets pledged. The accused added that KKK did not tell him what the total value of the transaction was and what KKK was hoping to be engaged in.

59. The accused recalled that, at the meeting, he handed more than 7 sets of blank account opening forms to KKK for his use as well as to pass to potential customers that he intended to introduce to BL. In EIC, the accused mentioned that it was possible that KKK had completed his own set of account opening forms and returned the same at the said meeting. In cross-examination, the accused clarified that he received the forms for KKK and the 6 other persons at a later date through Celina.

The accused's handling of the accounts of KKK and the 6 others

60. The accused testified that after receiving the forms, he submitted the same to RY and also prepared the respective Credit Applications for each of the applicants. In cross-examination, the accused admitted that he had only spoken to 4 out of the 7 applicants prior to his submitting the account opening forms to RY but added that he had spoken to all of them when he was preparing the credit applications. After receiving the forms from the respective applicants, the accused prepared the Credit

Application and completed the Client Information Form. The accused testified that he obtained the information for the above 2 forms from the information that the customers had provided in their Account Opening Form and ENW form and also from the conversations he had with them and KKK. The Credit Applications and Client Information Form were subsequently submitted to RY but only the Credit Application would be forwarded to the General Managers for their approval. The accused conceded that some portions of information contained in the Client Information Form were not accurate. In particular, the accused was grilled about the entries in the column "Years known to ARM". However, the Defence submitted that the latter did not lend much weight to the Prosecution's case as the Client Information Form was not one of the documents that formed part of the credit application process.

Evidence of Richard Yong and Ong See Ming on Procedures in BL Private Banking in 1997

61. RY testified that by the time he was appointed as Head of Private Banking, Asia Pacific at BL in 1994, he had been involved in private banking for over 12 years. RY said that he was responsible for setting up the Private Banking operations in BL. He prepared P4 - one of the private banking manuals used by BL. In light of the above, the Defence submitted that RY would be the best person to provide evidence on the procedures at BL Private Banking Department in 1997.

62. RY testified that clients of BL were high net worth, meaning that their net worth was at least S$1 million. Even then, BL did not take walk-in clients but persons had to be referred by BL's existing clients or associates. At Appendix 1 of P 4, specifically at page 10, the documents required for an account to be opened with BL are stated. The applicant was required to complete and execute (i) Account Opening Form; (ii) Specimen Signature Card; and (iii) Private Banking Services Agreement. The applicant was also required to provide a photocopy of the proof of identity. The ARM would then be expected to prepare the Client Information Form (as seen in P10) before all the documents listed would be handed to RY, or in his absence to his deputy, Ong See Ming, for his perusal. An account would then be opened if RY was satisfied that the applicant could be a Private Banking Client. RY elaborated that although the Client Information Form was mandated, it was essentially a profiling tool for marketing purposes. It was not a form which was submitted to management for purposes of application of credit.

63. On occasions where the client intends to apply for credit facilities, the client would also have to complete the ENW Form. Thereafter, the ARM would prepare the Credit Application Form for submission to RY, who would then go through and discuss the applications with the ARM. RY testified that in his absence, the ARM could discuss the matter with Ong. Should both RY and Ong not be present, the ARM could submit the credit applications directly to the 2 general mangers for their evaluation and approval.

64. RY stated unequivocally that there was no requirement for the client to prove or produce proof of their net worth. RY confirmed that this was also not stated in the relevant section of P4, governing Credit Administration. When referred to paragraph 4.5 of the said section, he disagreed with Manfred Wolf's view that "securing documents" meant evidence to give a clear picture of customer and risk involved. RY stated that if that was what he wanted, he would have stated it clearly in P4. Rather, securing documents meant that the ARM had to have a complete set of Account Opening Forms, Credit Application Forms and the related forms. RY testified that BL did not require these "supporting documents" as they expected the clients to be truthful when making declarations to the bank, such as in the ENW Form. He explained that in Private Banking, the clients are very reluctant to give proof of their assets. Most importantly, the facility could only be drawn down only upon the provision of sufficient security. However the ARMs were expected to perform their own checks through their own network of business associates and bankers.

65. Both RY and Ong agreed that the signatures of the applicants and the authorised third party in the Account Opening Forms, Letters of Authority and Signature Cards had to be verified by the ARM. In the forms that were tendered in court, the accused had appended his signature in the verification column following the signatures of the applicants. However, his signature was not appended to columns following the signatures of the authorised third party. RY testified that if such forms i.e. those where the ARM had not appended his signature to the verification column, had come to his attention, he would have asked the ARM to verify the signatures before sending the forms to the Operations Department for the accounts to be opened. RY testified that there had been a few occasions where Operations did come back to alert him as Head of Private Banking that the signatures of the third party had not been verified. He stressed that in those instances, he was not the one who was responsible for verifying or checking for he would never have missed such an omission.

66. Ong had signed off on the cover sheet (Appendix A) for the documents pertaining to the Account Opening and Credit Applications of KKK, Loke Mei Ping, Kong Kok Hooi, Chow Yu Tea and Chong Khing Chung, which were handed from BL Private Banking Department to the Operations/ Settlements Department. In the remaining 2 sets of forms, there was no signature on the cover page. Ong explained that even if he had noticed that the ARM's signature was absent, he would nevertheless have forwarded the forms to the Operations Department as he did not want to delay the process of the opening of the accounts. He explained that the ARM's signature could be obtained at the next stage i.e. as soon as possible when the ARM is around. He added that even if he had made a slip-up, Operations Department would chase the ARM to sign the form. In the present instance, the Operations Department never did so. Given the checks within the system, it is probable that the authorised third parties' signatures were not appended on the forms when BL had received them.

67. The Defence submitted that it would be a possibility that the signatures of the authorised third parties were appended after the accounts had been opened, perhaps at the same time when KKK and the 5 others transferred the shares they had pledged to BL to Loke Mei Ping or perhaps when the 6 account holders made MCD declarations that KKK was the beneficial owner of the said shares. The Defence argued that the Prosecution has not proved beyond a reasonable doubt that the forms contained the signatures of the authorised third party at the time when they were received by the accused, on behalf of BL. The situation would have been much clearer if the Prosecution had led evidence from the relevant staff in the Operations Department. Such witness would have been able to provide independent evidence on the practical procedures and requirements of the Operations Department in 1997 and possibly testify if the forms had been removed and amended at a later date.

Defence version of the events leading to TSC opening the Innosabah account and the trades done therein

68. The Defence led evidence from the accused's father, Wong Yong Foo ("WYF"), stating that the Wong family had been trading in shares, including Malaysian counters, for over 10 years. He testified that he gave money to TSC for her to buy shares for him. He estimates that, in all, he had given her about RM 200,000 to 300,000 and amounts in Singapore dollars for the specific purpose. WTC estimated his father's investments in shares to be more than S$300,000. In cross-examination, WTC added that WYF did not have a share trading account, a fact not disputed by the Prosecution, and if WYF wished to trade in Malaysian shares, he would usually ask TSC to buy the shares for him or would go through WTC.

69. TSC and WTC were, in their own right, also active in the share markets. In the past 10 years, they had invested in Singapore, Malaysian, Indonesian and US counters. TSC and WTC started trading in Malaysian shares in 1996 as the Malaysian share market was good. In 1996, he estimates his profits to be in the region of RM240,000. WTC testified that "*when trading in Malaysian shares, most of the time I would make use of my wife's accounts to trade... I did not wish to use my own name for the following reasons, firstly, I am in the civil service, secondly those shares are not solely for myself but also for other members in my family.*" WTC also testified that he had trading accounts in Malaysia in his own name and used them when purchasing shares solely for himself.

70. WTC added that he derived his information on which counters to purchase from conversations with the accused, his younger sister, who used to be a broker, Malaysian newspapers and also from the brokers in Malaysia. WTC recalled that shortly after the discussion, he received the account opening forms for Innosabah from the accused and handed it to TSC, instructing her to complete the forms and sending it off. Thereafter, TSC testified and also told WTC, that she had received a call from KKK informing her that the Innosabah account had been opened.

71. WTC recalled that the first trade with the Innosabah Account was for a purchase of 40 lots of YCS shares. He had placed the order through phonecalls with KKK. The 40 lots of shares were worth more than M$500,000. While the amount is considerably large, WTC testified that this was not his biggest trade. He had bought Renong and UEM shares worth between M$700,000 to M$900,000. WTC was certain that he had paid for the YCS shares. WTC continued to state that he had remitted the funds through one of the moneychangers and explained that he had done so as KKK had informed him that he could use the services of moneychangers to remit the funds and having used moneychangers previously, WTC was aware that it was a faster route and the exchange rate was lower than that of the banks.

72. As for the remaining amounts, WTC testified that after receiving the trading notes and after knowing that KKK had purchased the YCS shares, he remitted another M$200,000 into the account and thereafter made a third remittance for the balance to KKK. WTC's testimony in court clearly showed that the Innosabah account was used for lawful trading purposes and that the YCS shares were fully paid for by WTC, utilising his own funds as well as that of his father's. He further testified that it

was likely that the sale proceeds of the YCS shares were credited into his RHB account and was clear that there was no transfer of funds to the accused. WTC had asked TSC to help him draft a letter to RHB asking for a record of the transactions in their account from 1997 to 1999. This letter dated 7 May 2004, was marked as D7. RHB's reply of 10 May 2004 (also exhibited at D7) stated that they were unable to furnish the required information as they no longer had the records. The Defence submitted that WTC was certain enough that no funds had been transferred to the accused that he was willing to ask for these records, which could very well have revealed incriminating information.

Meeting in JB

73. WTC also testified that prior to the eve of Chinese New Year 2000, the accused had informed him that he had a customer, KKK, who had wanted to meet up urgently. WTC suggested to the accused to bring a recorder along as he could not understand why KKK had insisted on meeting up so urgently, i.e. on Chinese New Year's eve. The accused testified that KKK had called him and requested to meet up as he required the accused's help. KKK refused to tell the accused over the phone what help he needed but did mention that KKK and the other account holders had been sued by BL. The accused agreed to meet thinking that KKK just wanted advice on how to speak to the bank to get more time and a discount on the interest payable. In the past, the accused had had such conversations with other ex-customers. The accused added that "*he repeatedly asked me to help him many times and he said that only I could help him and so I had to go and see him. I felt that as a previous RM for his account, I should see him. I did not feel that there was anything wrong if I could help him since I was his ex-RM.*" The accused testified that he had decided to bring along a recorder as he was concerned why KKK was so insistent and also partly at WTC's suggestion.

74. The meeting at Holiday Inn, JB started out with some catching up as they had not been in contact after a long time. The accused said that KKK then went on to say that he was sued by BL and that he had lost his job. He then said that he went to BL and told them that some of the accounts he referred to BL were his nominees. He said that the bank had made him make some statutory declarations that these were his accounts and allowed him to transfer the shares to his account. KKK then added that JAL was the one who had given him a lot of problems. Throughout the conversation, KKK persisted in asking the accused to provide a letter stating that most of BL's staff and the German bosses were aware that the other persons whom BL was suing were his nominees. The accused made it clear to KKK that he did not want to get involved. The accused even said that he did not derive any benefit. KKK did not refute the accused's statement but also never insisted that the accused was aware the persons he had introduced were actually his nominees. The Defence submitted that the absence of these statements from the transcripts further strengthens the Defence position that the accused was not aware of this "nominee arrangement".

75. The Defence further submitted that the JB meeting revealed the devious and sinister nature of KKK. At his wits end and unable to repay the loans, he made many allegations against the accused in the court documents seen in D1–4. However at this meeting, he did not inform the accused that he had done so and in fact attempted to get the accused into more trouble by insisting that the accused should provide him with the letter. In fact, KKK admitted that he did not tell the accused about the documents filed in the civil suit as he wanted to induce the accused into giving the letter.

76. After the meeting, the accused testified that he held onto the digital recorder used and did use it to tape other meetings with clients. He did also lent the digital recorder to WTC for WTC's own use. Thereafter the digital recorder was retrieved from WTC and handed to the CPIB on 22 May 2003. After the matter was brought to court, the accused instructed his lawyers to get the recorded conversation with KKK transcribed and the recorder was then sent to M/s Antoine Secretarial Services. Ms Yzelman Virginia Nee Rappa of M/s Antoine Secretarial Services provided a conditioned statement, admitted and marked as DS 1, and also testified in court on 10 December 2004. She testified that she had prepared the transcript seen in D5 and it also accurately reflects the contents of the recording to the best of her knowledge and ability.

G. Impeaching the credibility of the accused

77. In addition to P12 and P13, the DPP also applied to admit the 6th CPIB pre-trial statement recorded from the accused on 14 July 2003. The accused did not challenge the voluntariness of the making of the statement and that statement was admitted and marked as P11. The DPP then applied under s 157(c) of the CPC to impeach the credit of the accused on the ground that his pre-trial statements were inconsistent with his oral evidence adduced in court. I reviewed the alleged inconsistent parts and gave leave for the DPP to proceed with the application to impeach.

78. The DPP highlighted the following parts of the accused's pre-trial CPIB statements to be inconsistent with his evidence in court: paragraphs 3, 4, 8, 9, 13 and 14 of P12; paragraphs 21, 22, 24 and 26 of P13; and paragraphs 41, 42, 44 and 48 of P11.

79. In relation to the inconsistent parts from P12 and P13, the accused's maintained his bare assertion that those parts of the statements were not voluntarily made by him. He alleged that the IOs had put words in his mouth and wrongfully recorded the statements as such. He also alleged that he attempted to amend those parts of the statements but he was not allowed to. Simply put, the parts in contention relate to the following aspects which the accused denied them all in his oral evidence:

(a) The accused is in a position to recommend credit facilities to clients.

(b) Information on Client Estimated Net Worth must be submitted for consideration in support of the credit proposal.

(c) The accused was told by KKK that the 6 others wanted KKK to manage the share trading for them.

(d) KKK personally delivered all 7 completed Client Estimated Net Worth forms to the accused.

(e) The accused approached TSC and asked her whether he could make use of her name to open a share trading account with Innosabah.

(f) KK approached the accused to open an account with Innosabah to trade shares and share the profits with the accused in gratitude to the accused for recommending his credit facility

(g) The accused was handed profits ranging from RM $100,000 to RM $400,000 (figures differed from P12 and P13) by KKK from trading using TSC's Innosabah account.

(h) The accused expressing remorse for receiving such rewards from KKK.

80. As per the trial within the trial, I rejected the allegations of the accused against the IOs recording of P12 and P13. I was of the view that those statements were voluntarily made. I was satisfied that there was no threat, inducement or promise to avoid any evil of a temporal nature or any oppression exerted on the accused to sign the untrue statements. In fact, the accused's evidence is totally incredible and out of the ordinary. If the IOs were determined to wrongfully frame the accused up and incriminate him, there is no reason why they would elect to record differing amounts of the gratification monies given by KKK in one statement from another. In P12, the amount was stated to be RM $100,000 to RM $200,000. In P13, the amount was increased from RM $300,000 to $400,000. If the IOs had schemed to incriminate the accused, it would have been less fanciful if the amount of the gratification recorded in both statements were identical, if not similar. In addition, if the IOs did intend to incriminate the accused, the receipt of the gratification sums would have been in accordance with KKK's affidavits in the civil suits or KKK's oral evidence in court (which CPIB may have earlier obtained in the form of a pre-trial statement). As it turned out, the accused's version reflects neither of those. It is also inconceivable that the IOs would choose to concoct something inconsistent with available information as that would render it even more difficult to implicate the accused. Seen in this light, P12 and P13 would surely be the accused's voluntary statement, the truth aside. Accordingly, on P12 and P13 alone, the DPP succeeded in impeaching the accused's credit.

81. Moving on to P11, the DPP pointed out the following inconsistencies:

(a) <u>At paragraph 41</u>:

P11 stated that, '*In actual fact, Bernard Kong (KKK) was referred to me by one of the brokers in BLB (BL) to ask for a banking relationship*'.

The accused oral evidence stated that, 'Celina introduced him to KKK'.

The DPP contended that P11 excluded Celina.

The accused responded that Celina was 'one of the brokers in BL' and that would not render his statement inconsistent with his oral evidence.

(b) At paragraph 42:

P11 stated that, *'I wish to add that in all applications, the customers must confirm their own net worth in our net worth form'*.

The accused oral evidence stated that the net worth form need not be submitted together with the credit proposal for approval.

The DPP contended that P11 reflects the truth and is inconsistent with the accused's oral evidence.

The accused responded that his statement merely stated the clients should complete the net worth form but there was no requirement to submit together with the credit proposal to management for approval.

(c) At paragraph 44:

P11 stated that, *'Tay's (TSC) account was opened on the request of Bernard (KKK) in respond to so many clients he introduced to BLB (BL)'*.

The accused oral evidence was to the effect that KKK did not specifically ask for TSC to open an account.

The DPP contended that P11 stated that it was KKK who specifically needed a relative of the accused to open an account and hence, the accused chose TSC to do so.

The accused responded that his statement merely indicated that he reciprocated KKK by asking interested persons to open an account with Innosabah and TSC did so.

(d) At paragraph 48:

P11 stated that, *'Mdm Tay is aware of Bernard Kong's (KKK) trading for her account'*.

The accused oral evidence is that TSC's Innosabah account was hers and KKK never traded using TSC's account.

The DPP contended that P11 indicated that TSC knew that KKK was trading using her Innosabah account.

The accused responded that the statement merely showed that TSC was aware that KKK was her assigned broker and that she was aware that KKK would carry out the trade instructions on her behalf.

82. In relation to the alleged inconsistencies in P11, having regard to the accused's clarifications, I must say that he had skilfully explained away the inconsistencies giving a plausible explanation for what was recorded in P11 such that they would be consistent with his oral evidence. Having come to that opinion, I did not think that the DPP succeeded in impeaching the credibility of the accused on P11. However, as concluded earlier, the accused's credibility was successfully impeached on P12 and P13.

H. Assessment of the credibility of the key witnesses

83. The witnesses in the *main trial* for both the Prosecution and Defence were as follows:

Prosecution

PW1 **Celina Lin** – a broker who has dealt with the accused

PW2 **Manfred Wolf** – current General Manager of BL

PW3 **Tay Siew Choo (TSC)** – the accused's sister in law

PW4 **Bernard Kong Kok Keong (KKK)** – alleged giver of the gratification

PW5 **SSI Elvin Lim** – CPIB Officer

PW6 **PSI Tin Yeow Cheng** - CPIB Officer

PW7 **SSI Yeo Keng Heng** - CPIB Officer

PW8 **SSI Pan Chia Chyuan -** CPIB Officer

PW9 **PSI Ong Seng Hock** - CPIB Officer

Defence

DW1 **James Wong Teck Long** (the accused or JW)

DW2 **Wong Yong Foo** – the accused's father

DW3 **Joseph Ambrose Lee (JAL)** – an involved businessman

DW4 **Wong Teck Chong** – the accused's brother

DW5 **Richard Yong** – the accused's former superior in BL

DW6 **Ong See Ming** – the accused's senior colleague in BL

DW7 **Yzelman Virginia Juliana nee Rappa** – the transcriber

Credibility of Celina Lin

84. KKK alleged that Celina was present at the Ritz Carlton meeting in April 1997 together with KKK, JAL and the accused while the accused alleged that it was Celina who arranged for him to meet KKK. In her evidence, Celina was equivocal about being present at the alleged Ritz Carlton meeting and denied having arranged any meeting for the accused to meet KKK.

Re-exam

Q When you said you had many meetings with other bankers, brokers, businessman and you cannot recall a specific occasion when JAL, KKK, JW, JAL's assistant and you were together, do you mean that there might have been such a meeting 7 years ago but you cannot recall if there was one.

A There may be a possibility and there might have been others at the meeting. However, I cannot recall if all these people named were at a specific meeting at any one point of time.

Q When you say you do not recall having introduced KKK to JW but you can't recall whether you did introduce but you may have.

A I might have made some reference by name in a telephone conversation but I did not arrange for a meeting to introduce them to one another.

85. Be that as it may, Celina's evidence in court was brief and uneventful. She came across as a heavily guarded witness who was not prepared to divulge too much. Her evidence was mostly equivocal and of little assistance. The fact that the crucial events happened in 1997 i.e. 7 years before the trial made it very convenient for Celina to adopt answers such as, 'I cannot recall'. Besides her straight denial of having arranged any meeting for the accused to be introduced to KKK, which contradicts the accused's evidence, Celina's testimony is of negligible assistance.

Credibility of Manfred Wolf

86. Manfred Wolf is the current General Manager (GM) of BL. He is also the Principal Officer of BL (Singapore). This appointment is equivalent to the CEO. He first came to work for the Singapore branch in September 1998 and started as the Operations Manager. He was concurrently the Deputy GM. However, it is pertinent for me to point out that at the material time i.e. in 1997, Manfred Wolf had yet to serve in the Singapore branch. He came across as helpful and objective. There was no reason for him to take a biased stand. His evidence was useful to the extent of having an objective third party to explain to the court the procedures and practice of BL as he had known it, for instance, the below.

Q If KKK and the other customers filled in the 7 Letters of Authority after they had filled in and submitted the first 3 pages of each of the account opening forms, then that would mean that the forms must have been sent back to each of the 7 account holders for them to fill them in before returning them to the bank.

A These forms cannot be sent back to customers. If subsequent signing of the same form is required, customers must come to our office to sign.

15. Further, the Defence's own witness, DW6 Ong See Ming, concurred with critical parts of Manfred Wolf's evidence on the proper procedure for BL credit applications, namely:

(a) That the Estimated Net Worth (ENW) was a factor to be considered when management was deciding whether to approve of a credit facility, hence the ENW Form had to be submitted to management along with the Credit Application Form;

(b) That proof of a client's ENW had to be obtained to minimise risk to BL when credit facilities were applied for;

(c) That the Letter of Authority was part of the Account Opening Form, thus it did not have to be reflected in Appendix A of the Account Opening Documents submitted to Ops Dept; and,

(d) Blanks in the Letter of Authority had to be cancelled out before submission of the Account Opening Form.

Credibility of Tay Siew Choo (TSC)

87. Tay Siew Choo (TSC) is the elder sister-in-law of the accused. She was a highly emotionally charged witness who broke out into tears in court at several junctures. It is the Prosecution's case that the accused used TSC's name, with her consent, to open an account with Innosabah under her name for the accused's benefit. As the accused is her relative and her name is intimately intertwined in the matter, she was understandably in a difficult position.

88. Though TSC was the Prosecution's witness, she turned hostile against the Prosecution's case. Her oral evidence was to the effect that the Innosabah account under her name was not for the benefit of the accused but for herself, her husband and her father-in-law to trade in. This aspect of her evidence wholly contradicted with her first pre-trial statement recorded by the CPIB on 22 May 2003. In view of TSC becoming a hostile witness, the DPP applied to cross-examine her under s 147(3) of the CPC. Having considered her oral evidence which contradicted with her pre-trial statements, I gave the DPP leave to cross-examine TSC.

89. The crucial part of TSC's first pre-trial statement dated 22 May 2003 (P8) at paragraph 3 is as follows:

> "I recall that there was one occasion sometime in 1997, James (the accused) approached me at my mother's house in Geylang Bahru and asked me if he could use my name to open a trading account with a company called Innosabah. … I would like to say that I have never invested any money into this account that James had opened on my behalf with Innosabah."

The above statement was reinforced by PSI Tin's (PW 6) evidence in his EIC:

> Q After Pan told you that TSC had arrived and that he had brought her to the interview room, what did you do?
>
> A I proceeded to the interview room and spoke to her.
>
> Q What did you speak to her about?
>
> A I asked her whether she has a share account with Innosabah. Her reply was no. Then I told her that JW had told me that she had an account with Innosabah. She replied that it was his account. I asked her what was her relationship with JW. She told me that she was her sister in law. After that, I was interrupted by Elvin. I went out of the interview room. Elvin told me that he had retrieved the tape and I brought Elvin back to my room to keep the cassette. I told Elvin that I was assigning him to interview TSC and record her statement. I told Elvin that TSC had told me that the share trading account under her name was in fact JW's and that she is the sister in law of JW. After this, both of us went back to the interview room where we asked TSC questions.
>
> Ct How did you arrive at the impression that TSC's trading account was for the benefit of JW based on what TSC had told you?
>
> A When I first interviewed her alone, I asked her if she had any share trading account with Innosabah. She said no. I then told her that JW said she had one. She said that it was his account.

From the extracts above, TSC had initially indicated to CPIB that the Innosabah trading account in her name belonged to the accused instead of her.

90. TSC was cross-examined by the DPP at length on her inconsistent oral evidence. She sought to explain that her first pre-trial statement was incorrect as she was not entirely clear of the facts relating to the account, she gave evidence that she spoke under pressure and her mind was a blank:

> Q You only remembered the name when the CPIB officer refreshed your memory.
>
> A I recalled that I opened an account in Sabah with KKK but not the name of the company.

Q You have not explained the inconsistency i.e. that James Wong who had approached you if he could use your name to open a trading account with Innosabah. All along, you had been telling the court over the last 2 days that it was an account recommended by JW but for your and your husband's use.

A On 22 May, they called me and I rushed down. When I reached there, there was an officer Elvin Lim asked me questions about JW. I was in a blank what was happening. I totally could not recall. When they asked me a question, I was not given a chance to speak what I know. They just kept telling me that I did not know what was happening. I told them that I received the statements and all the correspondence except that I did not know the name of the company. There was a senior officer who came and he raised his voice. He then told me that if I admitted that I knew what the account was about, I would get into trouble. I then started crying.

(witness cries)

Q How many times did the senior CPIB officer enter the room to talk to you?

A Twice.

Q What did he say when he entered the first time?

A He asked if I was sure what the account was opened for. But he said I had nothing to do with Indosabah right? He said I do not know anything and told me not to get into trouble. He said he is helping me. He said JW was in trouble and that he was helping me. He asked me not to be involved. I was worried and I kept quiet. He said I must understand that I have nothing to do with the account.

Q What did he say when he entered the 2nd time? Was it essentially the same thing?

A Not the same. He said that JW had admitted that all these accounts belonged to him and why I was insisting that the account Innosabah belonged to me and why I was trying to cover up for things that I did not know.

91. TSC had a tendency of being inconsistent and contradictory in giving her oral evidence in court. At most times, when cross examined, her evidence was extremely difficult to comprehend. Despite repeated reminders, she spoke very quickly and was very emotionally charged. Her evidence was simply incomprehensible. Besides attributing to the fact that she was unclear, she also maligned the CPIB officer recording her statement for fabricating untrue facts in her statement. Seen in this light, very little weight can be accorded to TSC's evidence. It would be most unreliable to do so. In view of the peculiarity of TSC's evidence, it is in my view, absolutely necessary for me to set out at some length an extract of TSC's perplexing evidence to illustrate the convoluted way in which she responded to questions:

Q How can you be not sure when in the earlier part of the interview you knew that the officer was referring to your trading account in Sabah? Even if you did not know the name, you knew he was talking about Sabah. Today, you told us that you traded in 2 counters with the Sabah account. Yet one year ago, you told us that you could not recall that you had used the account.

A At that moment, I did not know which company they were talking about. When I went back, I spoke to my husband and realised that it was the Innosabah with KKK. You can see that in the first statement, my answers were to the effect that I did not know.

Q Are you telling us that throughout the first statement, you were not certain that it was the Innosabah account. Is that what you are saying?

A I told the officer that I received the statements from the Sabah company but I could not recall what transactions took place.

Q I repeat again. Are you telling us that throughout the first statement, you were not certain that it was the Innosabah account. Is that what you are saying?

A No. I knew it was about Innosabah.

Q So you were aware that you were talking about Innosabah and there was one KKK working there. There and then, you also remembered that KKK worked there.

A Yes.

…..

Q I asked you about the 2nd underlined statement at para 3 at P8-2. I asked you how was it that you could not recall that you had used the account at all. You said that you could not understand which company that was. Now you admit that you know which company you were talking about. What then is your reason for not being able to recall that you had used the account?

A At the first interview, I did not know what they were talking about. It was only at the later stage that I understood the whole thing, it was only after the first interview that I had spoken to my husband that I knew of the transactions with Innosabah.

Q You are now going back to your old position. Did you or did you not know that they were talking about the Innosabah account?

A I knew. I gave that answer in the first statement as I did not know what transactions took place.

Q Why could you not recall?

A I could not recall as I was pressured. It was far back for many years. I was also pressured. I could not even think. I could not recall or think properly. I then gave a lot of answers that I did not know.

Q In summary, for the parts underlined in red in paragraph 3 of your 1st statement on 22 May 2003 @ 5.38 pm, what you had told CPIB investigator was not recorded instead he created facts of his own accord. Is that your evidence?

A Yes.

92. On the evidence, it is abundantly clear that TSC is a witness lacking in credibility and that the prosecution has successfully impeached her credibility. Further, little weight should be attributed to TSC's testimony as she is a close family member of the accused, being married to the accused's brother Wong Teck Chong ("WTC"). In fact, TSC admitted in court that she was not only grateful to the accused for his help in the stock market, but she was close to the accused "as family" and that it was "natural" for them to help each other.

Credibility of Bernard Kong Kok Keong (KKK)

93. KKK was the alleged giver of the gratification to the accused. At the material time i.e. in 1997, he was then the Executive Director of Innosabah Securities. As Joseph Ambrose Lee (DW 4) put it, KKK was then widely regarded as the 'biggest' man in Sabah (referring to KKK's net worth). In court, KKK estimated his net worth to be about RM$240 m at its

peak. However, with the 1997 Asian Financial Crisis, KKK has not only lost his wealth but got embroiled in several civil actions both in Singapore and in Sabah. He is currently a freelance business developer.

94. I was very impressed with KKK as a witness in court. He was lucid, clear minded, organised, logical and candid as a witness. His evidence of the events was chronological, coherent and realistic. The ring of truthfulness in his testimony was the only compelling conclusion that I could draw. He came to court with the sole intention of assisting the court to state the facts as he knew it. He had nothing to gain but everything to lose as he could be incriminated by his own evidence.

Q Are you aware that giving of bribes or commissions is an offence in Singapore?

A Yes.

Q Are you aware that by your testimony over the last 2 days, you would have admitted to giving a bribe to JW?

A Yes.

Q Are you aware that you can be charged in Singapore for this?

A Yes.

95. KKK came across as a very honest, forthright and sincere witness. At no time did he appear evasive even if it meant he had to embarrass himself by stating the true facts as they were. In fact, KKK did not attempt to conceal in court that he had exaggerated in some of the court documents pertaining to his civil actions so that he may not be found liable to BL. In this connection, I am mindful of the High Court's decision in Lim Ek Kian v PP [2003] SGHC 58. Yong Pung How CJ ruled that the fact that a witness admits to lying to clients in the past did not automatically affect his credibility as a witness. His Honour ruled that a person who has lied in his personal capacity is not ipso facto a lying witness. A court of law need only be concerned with determining the latter.

96. While KKK may have been disappointed and angry with the accused for not agreeing to help him write a letter to BL stating that the accused was aware that the other 6 account holders were nominees of KKK, he was not about to wreck vengeance on the accused for not offering a helping hand when he was in need. When cross-examined by the Defence, in his characteristically candid self, KKK admitted that he was both disappointed and angry with the accused. Be that as it may, KKK testified that he came to court because he had to and not because he wanted to frame up the accused. In any event, taking KKK's evidence as it is, there can only be one conclusion - his evidence is not a concoction of lies. If KKK had intended to spin a web of lies to punish the accused, he would not have elected the difficult way to achieve it.

(a) There was no need for KKK to lie about a meeting at Ritz Carlton in April 1997 involving more persons than the accused where the gratification was first raised i.e. JAL, JAL's assistant and Celina. If he were lying, it would be so convenient for the other alleged participants of the meeting to deny KKK's version. A simpler way for KKK to lie would be to make-up a private meeting between the accused and him only. In that way, apart from the accused, no one else can contradict his version of the events.

(b) There was no need for KKK to make up a very elaborate method of channelling the gratification since that would make his evidence more complicated. If KKK had intended to frame up the accused, he could have simply said that he passed cash or equivalent simple modes. But KKK did not. Instead, KKK gave an extremely convincing and coherent account of why and how the gratification sum was channelled to the accused using the Innosabah trading account of TSC where KKK paid for the shares purchased by the accused using that said account.

(c) The usual mode of payment of the gratification monies was not all. In KKK's evidence, he also testified of how there was an over payment on his part and the accused needed to reimburse him. It is inconceivable that KKK was lying. If he were lying, it seems ludicrous to suggest that KKK would elect such a complicated lie to testify in court. There was absolutely no need for KKK to have fabricated these extra details if he was lying. They would only expose him to lengthier and trickier cross-examination and KKK must have known that:

Q After you paid between RM300,000 to RM400,000 on JW's behalf for the purchase of these shares, were you ever reimbursed by anyone?

A There was subsequently some small reimbursements to adjust for differences.

Q Explain.

A The amount that I paid more was more than what should be due. I got a cheque from Tay Siew Choo if I am not wrong.

…..

Q Can you be sure that it was Tay Siew Choo who reimbursed you the small amount?

A I can't be very sure. But I think it was. The reimbursement was in ringgit. It was either by cheque or by draft. When the shares were sold, the proceeds were banked into a Malaysian bank account.

97. It would, of course, have been very helpful if KKK had retained all the relevant documents in 1997. However, as these were documents 7 years ago and he had thought that the matter was completed to fruition, there was no necessity for him to retain the documents. In addition, KKK had also satisfactorily explained that he chose to destroy those documents when he moved from KK to KL as he wanted to put all the unpleasant memories behind him. Little did KKK know that in the ensuing years, he would be confronted with civil litigation and also spin off the accused's corruption trial.

Q Do you have the put option in writing?

A Yes. In 1999, when I moved from KK to KL, I was in a very depressed mood and I destroyed a lot of documents. I felt that they were not documents necessary for me to keep and bring back to KL.

…..

Q Were you able to procure you bank records for 1997 as requested by the court.

A No. I've not been able to. I had closed 3 of my accounts from Kota Kinabalu. When I moved to KL, much was destroyed.

Q Were you also tasked by CPIB to trace records from Innosabah on Tay Siew Choo's account?

A Yes. I tried. They were not very co-operative.

98. Despite a very extensive and intensive cross-examination by an able and experienced Defence Counsel, KKK's evidence was unshakened at the end of cross-examination. He easily withstood the test for he was speaking only the truth as he knew it. He was calm, composed and assured of his own evidence. This was in stark contrast with the accused's performance on the stand. In view of my assessment of KKK's evidence, I am satisfied that KKK's evidence is credible, reliable and trustworthy.

99. While there may be some minor inconsistencies in the evidence of KKK, they are not material inconsistencies as to the key issues. In *Ng Kwee Leong v PP [1998] 3 SLR 942 at 948*, it was held that immaterial discrepancies which have no bearing on the facts in issue will not detract from the general veracity of a witness on the material issues. This was again reinforced in *Sundara Moorthy Lankatharan v PP [1997] 3 SLR 464* at paragraph 40 that there was no rule of law that the testimony of a witness must be believed in its entirety or not at all. So long as the inconsistencies were minor in nature, or related to minor issues, it did not undermine his evidence in respect of the key issues.

The CPIB officers (PW 5 – 9)

100. In the main trial, PW 5 to PW 8 gave evidence largely on the recording of TSC's pre-trial statements, P8 to P10. They also gave evidence in the trial within the trial on the 5 pre-trial statements recorded by the CPIB officers. In so far as their evidence in the main trial, I was satisfied that they recorded the statements from TSC in accordance with law. In any event, TSC did not challenge P8 to P10 as involuntary statements. PSI Ong Seng Hock (PW 9) was called for the main trial for the accused's 6th pre-trial statement dated 14 July 2003 admitted and marked as P11. The accused did not challenge the voluntariness of this statement. The evidence of PW 9 was not significant and largely uneventful. As it was not material to the charge at hand, I do not propose to deal with his evidence in any detail here

James Wong Teck Long's credibility (DW 1) – the accused

101. Regrettably, the accused is one of the worst witnesses I have ever come across. When he was in the dock and others were giving evidence, he would disrupt the hearing by shouting out that the Prosecution's witnesses were lying. Despite the court's warning, he repeated this two to three times. Other than such outbursts, he was otherwise respectful towards the court. However, when it was his turn to give evidence, he could not even clearly and cogently give evidence on what only he would know of such as his work processes at BL etc. He would frequently not be intently listening to the questions that he needed to answer even in EIC.

> Ct Could trades be done even before the account documents are submitted to the operations / settlement department?
>
> A Yes.
>
> Q See P10. Why do you submit these documents to the Operations / Settlements Department?
>
> A We submit these documents for them to open the account and for safe custody. The operations will also process the trades being done and liaise with the custodian bank and do the funding, payment of brokers, settle the trades, update the accounts, send out the letters of confirmation to customers.
>
> Q Could trades be done before the account documents are submitted to the Ops / Settlement department?
>
> A It cannot be done because the account would not have been opened. The customers' details would not have been put into the system. If the account is not opened by the system, the business cannot be done. Generally, the Ops must open the account first before trades are done.
>
> Q Earlier, the court asked you the same question as to whether trading can be done before documents are submitted to the Ops / Settlement Department. Your answer was 'yes'.
>
> A I did not think about the question carefully. My answer should be 'no' i.e. the account should be opened first by Ops before any trade can be done.

His answers were frequently irrelevant. Quite frequently, the accused would seem so distracted that I had to remind him several times to stay focused. Besides his incoherence, he came across as non-committal and always evasive even in EIC:

> Ct Are there any exceptions in your experience as best you know?
>
> A Yes.
>
> Ct Why are there exceptions or why are these exceptions granted?

A We have many customers who come to us any also done in the same way. There is therefore no special treatment.

Ct Why did you not tell us earlier that trades are done even before documents are sent to the Ops / Settlement Department all the time?

A I have no intention to hide anything. I may not have looked at the dates carefully because there were so many documents. It was from what I was aware.

102. The accused is capable of changing his evidence according to what he thinks he should be saying. He gave me an impression that he had a total disregard for the truth. His answers in court were a matter of convenience. There were numerous examples of such. The classic one is his evidence on a particular field, "No. of Years known to ARM" in the Client Information Form. The plain meaning of that field clearly refers to the number of years in which the Account Relationship Manager would have personally known of the client in question. In this case, the accused filled in periods ranging from 1 to 4 years for KKK and the 6 others even though the accused had not even met or spoken to most of them. In my view, the answers of the accused below clearly reflect his lack of credibility:

Q When you put here 'No. of years known to ARM' and you put there 4 years, what do you mean?

A Yes. Because I had known him in the industry for 4 years.

Q In the case of the other 6 applicants, against the field, no. of years known to ARM, the period written there, what is that period of time referred to?

A That period referred to was the referring party's comment on the customer's background and other information given to me. For e.g. in Chong Khing Chung's form, the entry says 1 year. That means the impression that I got from Bernard about the customer i.e. how long Bernard knows the customer. It is like my personal subjective evaluation about how long Bernard knows the customer. It was KKK who gave me the impression that it was 1 year. I got the figure from him.

Ct Since your answer above is as such, let me tell you what KKK said about how long he knew Chong Khing Chung at that time of the application. In the light of KKK's evidence produced below, do you wish to change your evidence?

Q See Chong Khing Chung's typed application form. What position did Chong Khing Chung hold in your company at that time?

A Head of Finance & Treasury.

Q How many years had you known him at that time?

A Also about 3 to 4 years.

A Since it has been more than 7 years, it is difficult for me to recall. It could be that I made a mistake and heard wrongly over the phone.

103. When the accused realised that as a matter of fact, he could not sustain his explanation for the incorrect number of years he had stated in that field, he affirmatively changed his evidence by attributing those figures as 'mistakes' on his part:

Q According to you, you made mistakes in the numbers of years known to ARM field for Wong Lai Han, Kong Kok Hooi, Chong Khing Chung and Chow Yu Tea. Correct?

A I made a mistake.

Q Are you sure you made a mistake?

A Sure. I made the mistakes.

Ct 4 out of 6 mistakes (excluding Loke's form) in the same field in 6 different applications. How do you explain that uncanny co-incidence?

A I was busy. I did not take this form seriously. I just filled in the details that came to my mind. It was not a document that I needed to submit for credit application. I can just correct the error if I spot one. It is an area which I restrict to myself. However, for the credit application which I submitted, I would take the trouble to go through it myself.

Q You were aware that when you just filled in the Client Information Form, you were well aware that you just got to know the other 6 applicants?

A Yes.

104. When the accused was put to the test and pressed for an explanation as to how he could make so many mistakes in those forms belonging to KKK and the 6 others, characteristically of the accused, he changed his evidence a third time. This time round, he said that the fictitious figures were there to make him look good that he had good marketing contacts. Even though he prefixed his answer below as a mistake, it is no longer a mistake but a conscious decision to mislead or misrepresent regardless of his intention.

Q You could not have known the 5 of them for at least 1 year and you only knew of them at the point of application, why did you have to put in the entry for the no. of years that you've known them?

A I might have made this mistake because I told myself that from the marketing point of view, it might look good and any one who reads this internal file and may not be the management. I felt good about it that I had good marketing contacts. After all, I also thought that it was not a material piece of information to the management but more for the ARM to service the customers ……

105. Interestingly, Richard Yong (DW 5), the former Head of Private Banking in BL was asked whether he would have been impressed if he found out that the accused had known the seven persons for periods ranging from 1 to 4 years, Richard Yong replied that he would have been more impressed with the accused if he had simply put down as 'just introduced' for all 7 clients. I trust the accused should have realised by now that stating the truth is always the best.

Ct Would your opinion of JW's marketing profile and clientele base differ if under the field, "No. of years known to ARM" had been "Just introduced" for all 7 applications as opposed to what JW had filled in ranging from 1 year to 4 years for the 7 applications if you happen to refer to the relevant Client Information Forms?

A If he put down 'just introduced', I would think that he was getting new clients and if it was put as known for many years I would presume that they were his ex clients or someone he has known. I would feel personally that he has good marketing skills if it were put as 'just introduced', I would be more impressed with JW if it was put down as 'just introduced' for all 7 applications.

106. Besides the above instance where the accused was openly caught lying in court, there was yet another example of the accused's propensity to withhold the truth for personal benefit. In the course of him giving evidence, he revealed that he had approached Celina to complain to her about the investigations by CPIB. When he realised he could have breached CPIB's instructions administered to him prohibiting him from discussing the evidence with others, he quickly added that he was not in a position to confirm that he had communicated to Celina.

Ct Do you confirm that you called Celina whether to meet up with her or over the telephone to talk about your CPIB case after the CPIB investigation started whether or not the conversation or the meeting was solely for this purpose whether or not in the capacity of her as your client or otherwise?

A I do not wish to confirm.

Ct What do you mean when you do not wish to confirm?

A What I meant was I do not confirm that there was any conversation with Celina on the CPIB matter after the CPIB investigation started.

Thereafter, the accused tried to explain why his evidence was so conflicting. However, the more he explained, the worst it became. It merely confirmed my finding that he is an unreliable witness:

Q After the court had highlighted that you may have breached CPIB's instructions not to contact witnesses, why did you earlier tell us that you could not confirm if you had contacted Celina about this case?

A When the court told me that I could have breached CPIB's instructions, my very first reaction was on the possible breach and I naturally became very worried about it. It was a natural reaction to breaching CPIB's instructions. At that moment, I was also confused. …

Q What were you confused about?

A I told the court the truth that I did meet Celina. Yet, the instruction from CPIB was not to meet her.

Q How would that confuse you?

A According to CPIB instruction, to meet her is also a breach. That confused me.

Q What do you mean by 'confused'?

A If I did not follow CPIB instruction, in my mind, it would be a breach of the law. But I already told the court the truth that I did meet Celina and that was why I was confused. In actual fact, I was disturbed by CPIB's instruction. The truth was what I told the court earlier. I honestly and sincerely at this moment informed the court from my heart that what I told the court earlier is true and I was disturbed and affected by a possible breach of the CPIB's instructions. I did not sincerely and honestly want to lie to the court. There was no need to lie. The truth was that the meeting was there. I could have very quickly responded to the court when I was asked on the CPIB's instructions and I was disturbed.

In the face of his dubious evidence, when pressed further, he admitted to lying in court to save his own skin. There was no other way to read his evidence except that he had chosen to lie in court.

Ct To put it simply, were you deciding whether to lie or not to lie in court when confronted with the question on whether you had breached CPIB's instructions?

A Yes.

Ct Did you decide to lie in court at any stage in handling this point as to whether you had a conversation with Celina on the CPIB case after CPIB investigation?

A Yes, at one stage.

Ct Do you confirm that you chose to lie in court today on this point?

A Yes.

107. At the end of the accused's evidence, I was convinced that he was not a credit worthy witness. He was caught lying in court twice and on each of those two occasions (as illustrated above), he admitted to lying. Each time, he lied to avoid an evil falling upon him. He had exhibited such a propensity not to tell the truth in court. Though he strenuously denied so many times, he obviously had something to hide. He encountered the greatest difficulties whenever he had to explain the information he had entered into the account opening and credit application documents. Some of the information there betrayed his lies. He must have entered false information about the 7 clients in questions to give the management an impression that he was well acquainted with them such that their applications with the bank would go through without a glitch. Little did he know that those forms completed by him with several untruths are like 'a picture that speaks a thousand words'.

108. The untruths were not limited to just one field such as 'Years known to ARM' but include others such as 'Frequency of contact' and 'How was the client introduced?'. Fictitious details were included for the majority of the 7 applicants. The conduct of such a bank officer only reveals his lack of credit worthiness. He has never personally known any of the 7 clients and there was no reason for him to risk his career by fabricating false information into the banking forms. His excuse was that there was no requirement to submit those forms to the management for approval purposes. That is a red herring. Regardless of whether they had to be submitted, those were the official forms of the bank. As a bank officer, he was duty bound to ensure that he must be satisfied that the information must be accurate.

109. Taking the accused's evidence as a whole, I find that he was incoherent and vacillating in court. I am compelled to conclude that the accused had something to hide. He was far from forthright. He was blatantly selective in speaking the truth in court. The accused clearly lacked credibility in court.

Credibility of Wong Yong Foo (DW 2)

110. Wong Yong Foo (WYF), in his late 60s, is the father of the accused. He is a retiree and he used to work as a contractor. He testified that he gave money to TSC to buy shares for him. Though they would discuss what shares to buy, he claimed that he left it to TSC as a matter of trust. As the events happened more than 7 years ago, he also could not recall. In this regard, his evidence was not very useful.

Q Do you know how many share trading firms TSC has accounts with?

A She has accounts in Malaysia.

Q So she has accounts in Singapore and Malaysia?

A Yes.

Q Do you know how many accounts in total?

A Not sure.

Q Do you know the names of the share trading firms that TSC has?

A I don't know.

Q You have never seen any of the statement of accounts that TSC has?

A I think so. But quite some time back.

Q Even if you did see any statements, you would not be able to fully understand what they stated since you cannot read English.

A That's correct.

111. DW 2 did not come across as an objective witness. He appeared very defensive. I agree with the DPP that he was not prepared to admit to the obvious. Taking his evidence as a whole, I am reluctant to give much weight to his evidence.

Q You do not actually know for a fact if TSC bought shares that you gave her money?

A I know for a fact that she did so.

Q How did you know?

A She told me she bought the shares.

Q You trust her though technically she could have lied to you.

A I don't think she'll lie to me.

Q Do you admit the obvious that TSC like anyone else could have lied to you?

A She told me how much she spent on the shares.

…..

Q Don't you agree that she may not have wanted to take the risk or out of laziness she put the money in the bank to earn interest?

A No such thing.

Q I put it to you that you are not prepared to admit to the obvious.

A I disagree. No such thing.

Credibility of Wong Teck Chong (DW 4)

112. Wong Teck Chong (WTC) is the accused's elder brother and the husband of TSC. He has been working as a Technical Officer in the Civil Aviation Authority of Singapore for the last 24 years. He is an active trader of shares in Singapore, Malaysia, Indonesia, Thailand and the United States. In his evidence, he confirmed that he does trade through TSC's accounts and he does trade for his father (DW 2) too. He has traded in shares for more than 20 years.

113. Though probably less educated, Wong Teck Chong is by far a more effective witness than his younger brother, the accused. Wong Teck Chong came across as clear and confident. He also handled details very well. By any standards, he was a firm and steady witness. Wong Teck Chong's evidence indeed offered a counter to KKK's evidence of the payment of the buying

of YCS shares. According to KKK, he paid for the YCS's shares as gratification monies given to the accused through TSC's Innosabah account. In contrast, Wong Teck Chong's evidence was that he had personally arranged for payment of the YCS shares through remittance by money changers at the Arcade.

114. The Prosecution pointed out that Wong Teck Chong was curiously able to remember perfectly almost every single detail about the YCS shares purchase through Innosabah, yet not so for his two largest ever purchases of Malaysian shares – his M$700,000 and M$900,000 purchases of Renong and UEM shares.

Q How much was the 40 lots of YCS shares worth?

A More than MYR 500,000 ringgits.

Q Would this be considered a large purchase?

A Not my biggest trading. I have bought shares worth MYR 700,000 and MYR 900,000. If I can remember, shares from Renong and UEM.

Q Which was the one for MYR 900,000?

A Should be Renong and UEM. I traded quite extensively in these 2 shares.

.....

Q Were you holding on to large quantities of Renong and UEM shares at that time?

A I cannot recall.

.....

Q How many lots of Renong shares did you buy in the MYR 900,000 Renong purchase?

A Can't recall.

.....

Q These Renong shares were bought by contra?

A Yes.

Q How much of the MYR 900,000 purchase was sold within the 10 day contra?

A Cannot remember.

Q How much did you have to settle with RHS at the end of the 10 day contra period?

A I cannot remember.

115. The Prosecution submitted that Wong Teck Chong was able to recall the extensive details of YCS shares and yet not the UEM and Renong largest transactions because Wong Teck Chong had chosen to fabricate his evidence about trading in YCS shares using the Innosabah account. Wong Teck Chong explained that he could recall the details of the YCS transaction because he spent time thinking about the transaction relating to the YCS shares since it concerned his brother's trial. As for the transactions relating to UEM and Renong, he had not previously spent time trying to recall the details. While I must say that Wong Teck Chong offered a plausible explanation, it was not entirely convincing. In fact, I found it to be contrived. In all likelihood, the explanation offered by Wong Teck Chong was a convenient afterthought.

Q How is it that your memory about every aspect of the YCS purchase through the Innosabah account and yet you are unable to tell us about the Renong or UEM purchases which were your 2 biggest purchases ever and which took place around the same period in 1996 or 1997?

A For YCS shares, the broker was someone recommended to me by JW. He was also a well known broker. Because I went through the procedure of approaching the money changer for YCS shares, I can remember.

.....

Q What about the number of lots for your largest ever purchases i.e. UEM and Renong or the respective shares for you and your family members?

A In respect of YCS shares, it involves KKK and the trial that JW is facing. I was thinking through it and therefore I can remember. As for UEM and Renong shares, the questions were asked suddenly, I cannot recall.

116. Notwithstanding Wong Teck Chong's unshakened evidence, I must be mindful that he is the elder brother of the accused. The substance and nature of his evidence may be motivated to exonerate the accused. While I would bear that in mind, I was conscious that I should not be biased against Wong Teck Chong's cogent evidence and simply reject it on the basis of his relationship to the accused.

Q You are close to and trust JW.

A Yes.

Q You would not want to see him convicted of the present charge.

A Of course, since he is my younger brother.

117. Bearing in mind Wong Teck Chong's relationship with the accused, I must weigh his evidence in the light of all other oral and documentary evidence surrounding this case. Simply put, I must not be hasty to accept Wong Teck Chong's evidence as raising a reasonable doubt. His evidence may have been generally uncompromised on the stand but seen in the light of all the evidence, his evidence may no longer be as compelling as one would think to be capable of raising a reasonable doubt in the Prosecution's case.

Credibility of Joseph Ambrose Lee (DW 3)

118. Joseph Ambrose Lee (JAL), a Malaysian residing in Kota Kinabalu, is a businessman and a trained lawyer. He was conferred the title of a Datuk by the Malaysian Government. At the peak of his wealth, he said that his net worth was estimated at RM$1 billion.

119. JAL's evidence largely attempted to discredit KKK's version of the events. In brief, the following are the main points of his evidence contradicting KKK's evidence:

(a) There was never a meeting at Ritz Carlton in Singapore in April 1997 where KKK, JAL, Celina and the accused were present.

(b) He did not introduce KKK to the accused. It was Celina who did so.

(c) He denied the Put Option that KKK testified in relation to the 6,000 lots of North Borneo Timber (NBT) shares worth about RM$100 m.

(d) He believed that the accused would not accept gratification monies since his previous experience with the accused gave him that impression. For instance, the accused declined accepting S$10,000 red packet money as expenses from him when the accused was in Kota Kinabalu for an official function.

120. As a matter of fact, KKK had implicated JAL in the court documents that KKK had filed in relation to his civil suits by and against the bank commenced both in Singapore and Sabah. KKK had alleged that JAL had arranged for a deal in which KKK would purchase a total of 6,000 lots of NBT shares from JAL and there was an agreement in writing for a Put Option for KKK to sell to the person(s) who had sold him those NBT shares the same NBT shares back to them for a price higher than what he had paid for them. In addition, KKK had even alleged that JAL was at all material times his principal when he applied for the credit facility with BL. Seen in this light, JAL would not be very pleased with KKK. As such, the fact that JAL may have an axe to grind against KKK is a relevant factor that I should take into consideration when assessing JAL's evidence.

121. There were some aspects of JAL's evidence that seemed a little inherently incredible. It was JAL's evidence that he did not know KKK's financing needs and that he was not involved in the scheme as KKK had alleged. If the scheme that KKK referred to in connection with JAL was untrue, one is hard put to find the reason why JAL would go all the way to introduce KKK to Celina, a broker in Singapore, in the hope that Celina would introduce a private banker to KKK to provide KKK with the credit facilities that KKK needed. In any event, granted that JAL could have been widely networked in Singapore, given KKK's appointment in Innosabah Securities, KKK was probably none the less. The DPP had suggested that JAL must have known of KKK's financing needs and that was why, JAL made arrangements for KKK to seek financing from Singapore rather than Malaysia. As can be seen from the questioning by the DPP on this point, JAL was fairly defensive, if not evasive.

Q Would you agree that there would have been no reason for you to introduce KKK to brokers in Singapore if KKK could have easily obtained the financing he wanted in Malaysia?

A I have no idea.

…..

Q I suggest to you that you knew or believed that Malaysian banks would not give KKK such amount of financing, hence you introduced KKK to Singapore where the banks would be more liberal with financing.

A I disagree

122. JAL could have exposed himself that he was giving biased evidence in favour of the accused towards the tail end of his evidence when I asked him a series of related questions. Having known that the accused had openly admitted lying in court on at least two occasions, I asked JAL whether he thought that the accused would lie in court. He did not think so. However, when asked similar questions on KKK and Celina, he thought one would lie and the other would evade. Interestingly, KKK and Celina had never had to confess to lying in court or found to be evasive but it was the accused who exhibited both.

Ct Based on what you know of JW, what is your opinion as to whether JW is capable of lying in court to protect himself or not?

A I do not believe that he is capable of lying in court. It can be seen straight away.

Q What do you mean that he can be seen straight away?

A From the little that I know him, I can read him straight away.

Ct Based on what you know of KKK, what is your opinion as to whether KKK is capable of lying in court or not?

A Possible. If KKK lies, I can also see.

Ct Based on what you know of Celina, what is your opinion as to whether Celina is capable of lying in court or not?

A She is a very smart woman. She probably did not want to be involved in anything. She would probably not lie in court but she will evade.

123. A careful scrutiny of JAL's evidence would also reveal inconsistencies and contradictions in his evidence. When asked by the DPP on Day 54 on 25 November 2004 as to whether he knew of the name of his brother's private banker in BL, JAL said that it could have been the accused:

Q Did you know who your brother's private banker in BL was?

A It was handled through Celina and it could be JW (i.e. the accused).

However, on Day 63 on 13 December 2004 during cross examination, JAL's evidence on whether he had known that his brother's private banker was the accused, he was sure that it was not James Wong (JW) i.e. the accused. Though this discrepancy is not a material piece of evidence, however, it reflects JAL's lack of credibility and reliability as a witness. Unlike KKK, I am not persuaded that JAL is truthful in court.

Q So JW was the first BL banker that you knew?

A My brother was dealing with BL but I did not know specifically who was the officer. And for JW, no.

Q Was JW your brother's private banker?

A No.

Q Are you sure?

A Yes. I am sure.

124. Having considered his evidence in totality, I found JAL to be an unreliable witness. While he remained firm of his version of events, some aspects of his evidence were inherently incredible. In my view, he came to court to refute KKK for the sake of refuting him and disregarding the truth altogether. His evidence appeared to be motivated to distance the accused from the charge. Seen in this light, I would choose either to reject JAL's evidence or accord little weight to it.

Credibility of Richard Yong (DW 5) and Ong See Ming (DW 6)

125. Both Richard Yong and Ong See Ming were the former superiors of the accused in BL. Richard Yong was the Head of Private Banking while Ong See Ming was the Deputy Head and also the Senior Account Relations Manager (SARM). Richard Yong currently undertakes consultancy work and one notable appointment that he still holds is the appointment as President and Chairman of National Kidney Foundation, Singapore. Ong See Ming is currently working as a private banker in another financial institution.

126. I found both of them to be very credit worthy and reliable witnesses. They were in court not just as Defence witnesses but to assist the court in plainly testifying to the rules, practice and procedures of private banking in BL at the material time. Though they had left BL in about the same number of years as the accused did, their memory and recollection of the procedures were far superior to that of the accused. They spoke of what they knew.

127. In relation to this case, especially in construing P10 (discussed later), Ong See Ming's evidence would be more critical and directly relevant than that of Richard Yong's since Ong See Ming was the one who approved the opening of the new private banking accounts for 4 out of 7 of the account opening forms of KKK and his 6 nominees.

Credibility of Yzelman Virginia Juliana nee Rappa (DW 7) and the weight to be accorded to the transcript of the recording

128. Yzelman Virginia Juliana nee Rappa (DW 7) is a chartered secretary and sole proprietor of Antoine's Secretarial Services. She is a formal witness called for the purpose of giving evidence to the court as to how the transcript, D5, was prepared. D5 is a transcript of the surreptitious recording of the accused of the conversation he had with KKK sometime around Chinese New Year in 2001, at the coffee house of Holiday Inn, Johore Bahru, Malaysia. DW 7 gave evidence clearly and objectively. I have no doubt that her evidence is reliable.

129. DW 7 gave evidence as to how the content of the recording from the digital recorder was transferred from the digital recorder to CD-Roms with the help of another and she then eventually downloaded them to audio cassette tapes where she eventually transcribed from. She also testified on the lack of clarity and poor quality of the recording.

Q When you heard the audio cassette tape recording whilst you were transcribing, did you find the quality of the recordings to be poor?

A Yes. I did.

Q So you were not able to hear clearly everything that was said by the person speaking?

A Yes.

Q Can you explain to us what the phrase 'inaudible' in the transcripts that you had made would mean?

A It means that I am unable to hear what is being spoken and unable to transcribe.

Q Is that because the recording is too soft for you to catch what was said or is that because you can hear something being said but you cannot make out what the word or words are?

A Both.

In addition, and interestingly, DW 7 also confirmed that she heard an unexpected sound of toilet flushing being captured in the recording when the entire conversation was supposed to have taken place in a coffee house between KKK and the accused. I must point out that the Defence did not lead any evidence that the recording also took place in a toilet. This may suggest that the recording could have been tampered with such that alien background sounds were also captured in the recording.

Q See the 2nd transcript at p 3. At one stage, you even noted a toilet flushing sound as reflected in the transcript?

A Yes.

130. Having heard the evidence of DW 7, I am persuaded that little or no weight can be accorded to the transcript of the recording of the conversation. In DW 7's own evidence, she would not even confirm, and rightly so, that the final recording of the conversation was complete, accurate and tamper free.

Cross-exam

Q You are not in a position to tell if the start of the second CD-Rom / tape / transcript follows immediately from the end of the first CD-Rom / tape / transcript?

A No. I am not.

Q You are also not in a position to tell how / where / when the audio recording was made on the digital recorder?

A No. I am not.

Q You are also not in a position to tell if the recording in the digital recorder was altered in any way before you received from Edmond Pereira & Partners?

A That's correct.

Re-exam

Q If there had been any deliberate interference in the recording, would one be able to pick it up?

A No. I am not able to tell.

Q What about if the recording had been tampered with?

A No. I am not able to tell.

Q When you were hearing the recording, was it a continuous conversation that was recorded?

A I am not able to tell.

I. Whose version of events to believe?

131. The Prosecution's case is predominantly based on KKK's version of the events from 1997.

Evidence of the Prosecution's key witness

132. It is KKK's evidence that JAL had entered into a Put Option with him in relation to the 6,000 lots of NBT shares amounting to about M$100 m. KKK needed financing and JAL recommended KKK to seek financing from Singapore. That was when JAL introduced KKK to the accused and Celina was also in the loop. It is KKK's evidence that the accused, JAL, Celina and him met in Ritz Carlton, Singapore, in April 1997. At that meeting, JW was given to understand that KKK needed M$100 m. Since the local limit for BL (Singapore) to approve for credit financing was about M$14.5 m (or DEM 10 m), the accused proposed to KKK to use 6 other nominees such that with 7 of them, they could obtain a loan of M$100 m in total.

133. KKK was also very specific and lucid about the details of the accused indirectly soliciting for a gratification at Ritz Carlton and I can do no better than to set out the evidence given by KKK in court:

Q Was there any suggestion by anyone as to what could be done about the tight timelines making things difficult?

A Somewhere around this time, JAL left JW and I alone, that was when JW made a comment that *a lot of work* needs to be done to make the application as well as the draw down successful.

Q Did he make any other comments?

A At that point in time, I then made a comment that we were aware of the amount of work required but everybody would be properly rewarded for that or something to that effect.

Q What did you mean by that?

A Being a businessman for so many years, we have developed the instinct to understand when someone is implying 'disbursement for extra work involved'.

Q Is 'disbursement for extra work involved' also understood as coffee money or commission?

A Yes.

Q When you said that everyone would be properly rewarded, what was JW's response?

A He said something to the effect that he would take care of his part and I should take care of mine.

Q What did you say then?

A I told him I would know what to do.

……

Ct If he did not directly mention to you at Ritz that he accepted your offer of additional consideration and he told you in express words that he was not asking for anything, how did you come to the conclusion that you correctly caught the hint that a bribe was sought and you would be giving the bribe.

A It was more that after I made the statement that everyone will be rewarded and there was a nod of head by JW and myself which to me indicated that it was an agreement.

Ct Are you certain that your understanding that JW would have liked a bribe was not a unilateral understanding on your part?

A As a businessman, I was certain that my assessment was correct.

Ct The reason why you interpreted JW's nod as wanting a bribe was because you had the mindset that JW needed a bribe and the nod happened to make you think that JW indeed was seeking a bribe.

A I agree.

134. As it turned out, the 7 sets of documents for opening the private banking accounts and seeking credit facility were completed, processed and approved. Accordingly, RM$100 m was drawn down when the required collateral was deposited with BL. All these happened in less than a week. It was also KKK's evidence that after successful draw down, he asked the

accused to open an account with Innosabah Securities so that he could make payment of the gratification monies to the accused. It transpired that the accused arranged for TSC to open the account. KKK candidly stated that this method of payment of gratification monies was often used by him. Eventually, he paid for YCS shares that the accused had bought using TSC's Innosabah account and the purchase price amounted to about RM$300,000 to RM$400,000.

Q Did JW know that the main purpose of opening the trading account was to facilitate the paying of the commission or was this purpose tapped on later?

A This account was opened specifically for the payment of the commission.

Ct Is this your usual mode?

A Yes.

Q Subsequently JW instructed you to buy a certain number of shares at a certain price and you calculated that the purchase price would roughly equate to what you had agreed to pay him as commission i.e. RM$300,000 to RM$400,000.

A That's correct.

…..

Q When you told him that, did he express any surprise or objection?

A No.

…..

Q This instruction to buy shares came from JW after the account was opened in Tay Siew Choo's name.

A Yes.

135. Unfortunately, the documents evidencing the payment were no longer available. However, the latter is not a reason to doubt KKK's evidence. His evidence is detailed and generally complete. It is sophisticated, cogent and logical. There was surely a ring of truth in it. Because it is sophisticated, it is highly unlikely a pack of lies. If KKK wanted to lie to get the accused into trouble, it would have been natural for KKK to keep it simple. Few liars have the courage to make it so complicated for fear of being contradicted by other truthful witnesses later on. In addition, when evaluating his answers below as to why he did not retain the official receipt for the payment of the gratification sum, it is clear that KKK was not trying to fudge the truth. He was candid and forthright to agree that the retention of the official receipt would have been the best evidence of him paying the gratification sum to the accused through TSC's Innosabah account.

Ct In your mind, what do you think is the best proof you can offer us that JW must have accepted gratification from you?

A The best proof would be to find the official receipt for the payment to Tay Siew Choo's account and to confirm that the payment came from me.

Ct Since you pleaded in your SOC for the Sabah action on JW's receipt of the gratification and that the action is pending, even though you were depressed and frustrated with all that had happened, surely you would have wanted to retain that official receipt so that you can substantiate in the Sabah High Court a serious allegation you made against JW. Is that reasonable to assume?

A Yes. I could not retain it because I could not recall where the official receipt went but I was fairly confident that if I were to conduct a search for it in Innosabah at my expense, I would be able to find it.

The denials of the accused

136. As for the Defence, the accused denies the meeting at Ritz Carlton in Singapore in April 1997 where the accused, KKK, JAL and Celina were present. The accused and JAL firmly denied such a meeting. Celina's evidence of the existence of such a meeting was equivocal. The accused denied suggesting that KKK used 6 other nominees to obtain the RM$100 m credit facility. He denied knowing that the other 6 account holders were the nominees of KKK. He denied seeing that all the 6 other account holders had executed Letters of Authority authoring KKK to operate their respective accounts as third party. He denied soliciting for a gratification sum in return for the work and effort to process the loan applications. While he did recommend to TSC to open a trading account with Innosabah, he denied that he was using TSC's name to open the account for his benefit to receive the gratification sum. Of course, he denied receiving any gratification sum from KKK.

Numerous inconsistencies in the evidence of TSC, WYF and WTC seeking to exonerate the accused

137. Wong Yong Foo ("WYF") and Wong Teck Chong ("WTC") gave evidence relating to alleged share transactions made using the Innosabah account. They supported Tay Siew Choo's ("TSC") claim that the account was opened only on the accused's recommendation and that they had used the account to trade in shares of their own accord. A careful scrutiny of their testimonies would reveal some key inconsistencies between their evidence which are inexplicable. As such, I am of the view that it would not be prudent to rely on either of the accounts on the share trades done through it. The following are some of the inconsistencies between WYF's and WTC's evidence:

(a) WYF claimed that he had invested some of his money in Malaysian shares over the years, including through the Innosabah account, and that it had been done specifically through TSC, and not WTC. However, WTC claimed that it was he who did the trading and that TSC "*knows nothing about shares*";

(b) WYF claimed that he had only invested at most M$100,000 in Malaysian shares over a period of several years. In contrast, WTC claimed that there was a purchase of YCS shares in 1997 through the Innosabah account that was alone worth more than M$500,000 and that WYF's share of that was the largest as WTC himself only invested about M$100,000. All in all, WTC estimated WYF's Malaysian share investments to have amounted to several hundred thousand ringgits.

(c) WTC also claimed that he had two other large Malaysian share purchases in the 1990s worth M$700,000 and M$900,000 and that WYF held the largest share. WTC also said that WYF made more than 10 Malaysian share trades in the last 10 years. However, WYF claimed that he had only made 2- 3 investments in Malaysian shares in that period and he always gave the money to TSC; and,

(d) WYF claimed that WTC had told him that he would use a specific money-changer as recommended by a friend for the purchase of shares through the Innosabah account. However, WTC stated that he did not say such a thing and he in fact went around Change Alley to look for the best currency exchange rates for the YCS shares purchase.

138. From TSC's evidence, there was no mention of WTC being present when the accused first approached her to open an account in Innosabah. In fact, according to TSC, she had been approached at her home in Geylang Bahru rather than her father-in-law's home at Towner Road, where WTC and the accused claimed the discussion about Innosabah had taken place. According to TSC, it was only a few days later that WTC told the accused that they were interested in opening an Innosabah account – again, this contradicts WTC's and the accused's evidence that they had agreed on the spot to open an Innosabah account.

139. WTC's allegations that he had called KKK several times to give share trading instructions and to receive advice on Malaysian shares and that KKK had advised him to use money changers as they were more efficient were never put to KKK. In fact, contrary to WTC's claims that KKK had called *him* to give advice on YCS shares, it had been put to KKK by the Defence

Counsel that KKK had called TSC to advise her to buy YCS shares quickly and that he wanted cash payment as payment had to be made quickly.

140. WTC also alleged that KKK asked him to put down a deposit for the YCS purchase as he was a first-time client of Innosabah, which is in stark contrast to the 'put' to KKK that he had paid in advance some M$450,000 to M$500,000 for the YCS shares on behalf of TSC before receiving the money back in tranches. The allegation that WTC did transfer by way of money-changer large sums of money to a bank account named by KKK is unbelievable as no reasonable person would do so when he hardly knew his new broker. Moreover, the said broker was based overseas.

141. WTC also stated that even though the accused had recommended Malaysian brokers and trading firms to them, they had no reason to give share trading instructions through the accused and they always went directly to the respective brokers. This calls into question TSC's claim to have told KKK after the Innosabah account was opened that if she had anything for him, she would go through the accused. However, it must be pointed out that there was nothing so special about the Innosabah account that TSC had to go through the accused instead of directly going through KKK, her named broker. It would be reasonable to assume that no reasonable person would go through a third party when giving instructions to buy shares, especially if that third party was not authorised to operate the share trading account (and the accused was not). Even if true, TSC's remarks clearly reflect that the Innosabah account was not really opened for her's and WTC's use, but the accused's.

142. As mentioned earlier, WTC was curiously able to remember perfectly almost every single detail about the YCS shares purchase through Innosabah, yet not so for his two largest ever purchases of Malaysian shares – his M$700,000 and M$900,000 purchases of Renong and UEM shares. Given the above circumstances, even if WTC had performed well as a witness, in the light of the conflicting evidence of TSC, WYF and WTC in support of the Defence, it would not be prudent to accept WTC's evidence as true.

Treating KKK's evidence with caution

143. KKK, being the giver of the gratification, is seen as the 'accomplice'. Further, as KKK's evidence cannot be corroborated by another witness, the court must receive such evidence with caution as the accomplice may be presumed to be unworthy of credit. Be that as it may, it is now established that the combined effect of s 135 and illustration (b) to s 116 of the Evidence Act that the court may still convict an accused based on the uncorroborated evidence of an accomplice but must treat it with caution. See *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592.

144. In light of the above principle, I am mindful that I must examine and scrutinise KKK's evidence with extreme caution and circumspect. Over the span of days that KKK was on the stand, I had carefully observed his demeanour at the witness stand and painstakingly considered his evidence especially when he came under intense and rigorous cross examination. I will not hesitate to state that KKK is one of the best witnesses I had ever come across. In court, he was very clear, cogent, forthright, comprehensive, patient and coherent at all times. Where he had been tainted with blemishes outside court, he does not attempt to conceal. He admitted to lying previously in court documents and from time to time gave gratifications to persons in business dealings. He was extremely candid in court. He chose to make those direct admissions in the way he did without wasting the court's time. He was certainly most co-operative as a witness in court. I was impressed with KKK's credibility.

145. The material aspects of KKK's evidence are wholly consistent, logical and coherent. The original documentary evidence supplied by the bank support KKK's version of the events for e.g. the account opening and credit application forms of KKK and his 6 nominees. The accused's vehement denial of his prior knowledge that the 6 other account holders were the nominees of KKK run counter against the original documentary evidence as produced by BL. All these evidence help to fortify my finding that KKK's evidence is true and correct while the accused was lying to exculpate himself. There is absolutely no basis for me to disbelieve KKK. KKK's evidence was simply compelling.

146. Having found KKK's evidence to be credible and the lack of it in the Defence witnesses, I am satisfied beyond reasonable doubt that KKK's version of the events ought to be accepted.

J. Would the accused have known that the other 6 account holders were the nominees of KKK?

147. It is KKK's evidence that the accused ought to have known that the 6 other account holders were his nominees as each of their Letter of Authority and the Third Party Specimen Signature Card ('the third party instruments') were completed together with the Account Opening Form. Interestingly, the accused denied seeing the completed third party instruments when he received the Account Opening Form. It is the accused's evidence that the third party instruments were never completed at the point of submission of the Account Opening Forms. In view of the divergent evidence between KKK and the accused, this finding of fact as to whether the third party instruments were executed together with the Account Opening Form becomes a critical finding of fact for the following reasons:

(a) If the third party instruments were executed at the same time as the Account Opening Form as per KKK's evidence, then the accused ought to have known that the 6 other account holders were the nominees of KKK. If that is so, the accused having denied vehemently that he was aware of such a fact obviously had something to hide and was concealing a material fact from the court. His concealment also amounts to lying in court and the court should be entitled to draw an adverse inference against the accused i.e. he is guilty of the charge and his denial of any knowledge of the 6 other account holders is an attempt of the accused to distance himself from KKK's evidence such that a reasonable doubt is raised.

(b) If the third party instruments were not executed at the same time as the Account Opening Form as per the accused's evidence, then it lends credence to the accused testimony and it would corroborate the allegation that KKK is framing the accused.

148. On a plain examination of the third party instruments together with the Account Opening Forms in P10, the following will be noted:

(a) 1st category. Black Ink from felt tip pen used to sign the Account Opening Form and third party instruments in respect of KKK, Loke Mei Ping and Kong Kok Hooi.

(b) 2nd category. Black ball point pen used to sign the Account Opening Form and third party instruments in respect of Chong Khing Chung, Wong Lai Han and Chong Fui Li.

(b) 3rd category. Blue ball point pen used to sign the Account Opening Form and third party instruments in respect of Chow Yu Tea.

149. Mindful that the court has no expertise in ink dating, a plain visual inspection using the naked eye would reveal that the Account Opening Forms for all 7 persons named show that the signatures on the third party instruments were filled in with the same ink as that of the signatures on page 3 of the Account Opening Form. This is consistent with KKK's evidence that he had filled in or gotten his 6 nominees to fill in and sign their respective third party instruments before he had returned the forms to the accused. If that is so, the accused ought to have known that the 6 other account holders were the nominees of KKK.

150. Assuming if the accused is to be believed, then KKK must have ensured that each of the 7 of them made a concerted effort to refer to the ink used for signing the Account Opening Form and consciously used back the same ink type to sign the third party instruments. Based on the accused's version, the Account Opening Forms and third party instruments could have been returned to KKK to complete the third party instruments when he met up with another officer of BL sometime in 1998, also by the name of James, to transfer the collateral of the 6 others to KKK as they were his nominees. This is an inconceivable and absurd suggestion. There would have been no reason for KKK to think in 1998 that problems would have arisen in relation to the account since he was only sued by BL in 2001. Even if KKK may have anticipated that he may be involved in litigation over the credit facilities, he would not have thought of ensuring the same ink type to be used by all 7 account holders when executing the third party instruments. If the allegation is that the completed forms were returned to KKK to execute the third party instruments, he had no reason to ensure that they be executed in such a surreptitious way to give the impression that the third party instruments were signed together with the Account Opening Forms. In all likelihood, the allegations of the accused were an afterthought since the third party instruments were not verified by the accused.

151. I am reinforced in my view as I noted that Manfred Wolf's (PW 2) undisputed evidence was that once the original forms were completed and received by BL, they could not be sent out to overseas clients for them to complete the third party instruments even if overseas clients wanted to authorise third parties to operate their accounts at a later date. In such

instances, only blank loose-leaf copies of the third party instruments would be sent out to the overseas clients or they had to attend in person at the BL office in Singapore to execute the third party instruments. As to whether Manfred Wolf is qualified to give evidence on this point, I note that though Manfred Wolf was not the GM at BL at the material time, at the material time, he was the Operations Manager in BL (Singapore) and he would be in the best position to give evidence on such matters of BL practice and procedure which was directly under his purview.

152. KKK's evidence that the other 6 persons had never come to Singapore for anything related to the BL accounts was also not challenged. As such, the only possible scenario is that they must have all filled in the original third party instruments at the very beginning i.e. in April 1997 when they completed the forms for the Account Opening.

153. In addition, the Defence submitted that the Prosecution ought to have called the 6 nominees of KKK to testify as their evidence on when they signed the third party instruments would be the most direct evidence on the issue - since the Prosecution did not, an adverse inference ought to be drawn against that failure to do so. It is trite law that the courts are generally reluctant to draw such an adverse inference against the Prosecution. What the Prosecution has to do is to prove its case, and it has the discretion in the calling of witnesses to do so. It is not obliged to go out of its way to allow the Defence any opportunity to test its evidence. It is not obliged to act for the Defence. In this regard, it is useful to set out the relevant passage in *Chua Keem Long v PP* [1996] 1 SLR 510 at 523,

> Such arguments are commonly made. Commonly too, such arguments are without merit. The court must hesitate to draw any such presumption unless the witness not produced is essential to the prosecution's case. Any criminal transaction may be observed by a number of witnesses. It is not necessary for the prosecution to produce every single one of those witnesses. All the prosecution need do is to produce witnesses whose evidence can be believed so as to establish the case beyond a reasonable doubt. Out of a number of witnesses, it may then only be necessary to bring in one or two; as long as those witnesses actually produced are able to give evidence of the transaction, there is no reason why all of the rest should be called, nor why any presumption should be drawn that the evidence of those witnesses not produced would have been against the prosecution. Where the witnesses not produced are not material, no presumption operates against the prosecution (*Lahvinder Singh v State* [1988] Cri LJ 319). Neither would s 116 illustration (g) apply where the evidence to be given is largely redundant (*Waisuddin v State* [1991] Cri LJ 134). It was not shown that, in this appeal, the evidence of the witnesses not called was not immaterial or redundant.

154. The Prosecution clarified that the plan was to have all 6 nominees of KKK to come to Singapore from Malaysia to testify. However, all 6 of them did not think it was necessary as they were indeed the nominees of KKK and had left everything to KKK. Hence, only KKK came to Singapore to testify in the trial. In the circumstances, the DPP submitted that there was no good reason to draw an adverse inference against the absence of the evidence of the 6 nominees of KKK. Having considered parties' contentions and the legal position set out in Chua Keem Long v PP, I agree with the Prosecution that the evidence of KKK and the original documents in P10 are sufficient for me to come to my inevitable findings even without the benefit of the direct evidence of the 6 nominees of KKK. It is not proper for me to draw an adverse inference against the Prosecution for its failure to call the 6 nominees as witnesses.

155. It was patently obvious to me that the Defence was hard put to explain the state of the third party instruments in the Account Opening Forms at P10. The only observation made by the Defence submission was that 'there were differences in some of them'. The Defence also attempted to skirt the issue by inviting the court to draw an adverse inference against the Prosecution for its failure to call the alleged 6 nominees as witnesses. That attempt to skirt the issue would not help the Defence to detract from their responsibility to explain how the originals of P10 could gel with the accused's repeated assertions that he had never known that the other 6 account holders were the nominees of KKK at the account opening stage.

156. The original P10 clearly supports the version of events as testified by KKK i.e. that the accused not only knew of it, the accused was also the one who suggested KKK to use the 6 nominees to obtain the M$100 m loan in total. Once again, the original P10 documents betrayed the persistent lies of the accused in court denying any knowledge at the first instance that the 6 other account holders were the nominees of KKK. The truth is that the accused knew it at the onset. He withheld the truth so as to further distance himself from the loan arrangement that KKK testified about. In my opinion, the original state of P10 is the lynchpin of the Prosecution's case and the Archilles' heel of the Defence.

K. Is the absence of the ARM's verification conclusive of the fact that the third party instruments could not have been executed upon submission of the account opening forms?

157. The strongest attempt that the Defence could make at the trial was the absence of the accused's signatures to verify each and every third party instrument being executed whereas the accused's signature to verify the main account holders' signature was present. The Defence sought to adduce the absence of the former as evidence that the third party instruments were not executed at the point of submission of the account opening forms and as such, the accused could not have known that the 6 other account holders were KKK's nominees.

158. Richard Yong (DW 5) gave evidence on the importance of the ARM verifying the signatures of the third party instruments since the account holder authorised only that third party to operate the account, besides the account holder. He stressed that if he had spotted an unverified third party instrument, it was his practice to return the third party instrument to the ARM to verify before submission. Richard Yong also highlighted that the Operations Department was very strict in expecting compliance with the verification of third party instruments. He emphasised that unless the third party signatures were verified, the Operations Department would not allow requests or instructions by third party to be carried out. However, Richard Yong's evidence was not directly helpful to P10 as he was not the person who reviewed and approved the account opening forms in P10. Out of the 7 sets of account opening forms at P10, 4 sets were approved by Ong See Ming (DW 6), the Deputy Head of Private Banking and 3 sets were approved by the accused. In the absence of the Head and Deputy Head, the accused, as ARM, could approve the opening of private banking accounts.

Q Do you confirm that your signature is not appended in any of the Appendix A covers for these 7 clients?

A I confirm that in all 7 sets of Appendix A, my signature is not there.

Q Only Ong See Ming's signatures are in Appendix A as Head of PB and even then, only in 4 out of 7 are his signatures there.

A Correct. As I see it now.

Q Since Ong See Ming's signatures are on 4 of the 7 Appendix A covers, would you agree with me that he should have been the one to counter check for those 4 sets that the documents listed on their covers were all there and were complete?

A He should have and as stated in Appendix A, it is written there that 'I confirm having reviewed this account opening request and satisfied that the customer is suitable to maintain a Private Banking Account with us.' He must have gone through the documents and that they are complete.

Q Would you agree that Ong See Ming should have been the one who had approved the opening of these 4 accounts?

A It must be Ong See Ming and it had nothing to do with me.

159. As a result of the confirmation that it was Ong See Ming who had approved 4 out of the 7 sets of account opening forms, the Defence decided to locate and call Ong See Ming (DW 6) to give evidence for the Defence at the eleventh hour. Interestingly, the evidence of DW 6 did not assist to further the Defence on this point. DW 6 testified that he could not remember seeing P10 i.e. in relation to those 4 sets of account forms that he had approved. He also could not remember if the third party instruments in those forms were completed and left unverified. More importantly, his evidence from the ground was that even if he had spotted the unverified third party instruments, he would in any event, approved the applications to open the accounts as the Operations Department would ensure that those third party instruments be verified. He added that his role was only to ensure that the customers were suitable applicants to open a private banking account with the bank.

Ct Assuming if the Letter of Authority was completed, and the ARM did not verify the Third Party signature as at the time you were perusing the account opening forms, would you be surprised?

A I would not delay the processing of the account because I know that if I make any slip up, the Ops would revert back. I would not pass an opinion because his signature can be attached later on.

Ct Why do you say that his signature to verify can be attached later on?

A It is a fact. Here is a real life example. These forms are placed on my desk for approval. I read through them. JW is not in the office. I go through the forms and I would still sign and pass it through to the Ops Dept. It is not for me to scrutinise the account. I would not delay the opening of the account. I would sign where required and pass it through the Ops account and who would then request him to sign.

160. Ong See Ming gave evidence that he would have approved of the opening of the accounts even if the third party instruments were not verified as these could be regularised at a later date. Unlike Richard Yong's evidence, Ong See Ming stated that there was no need for the third party instruments to be reflected as a separate document on Appendix A of each set of account opening forms as the Letter of Authority was part of the account opening form.

Q You told the court that it is important for the ARM to verify the signature of the Third Party at p 4. Although you would have noticed that the third party signatures had not been verified, you would still pass it to Ops.

A Yes. I would still approve and pass to Ops.

161.Ong See Ming also stated that in the event of the discovery of the failure to verify the third party instruments, the Operations Department would inform the ARM or the Head of Private Banking and request that the omission be 'regularised'. However, there was no evidence of any deadline for this regularisation and the Operations Department would invariably have to wait for the ARM to actually observe the third party give a specimen signature or obtain a copy of another official document containing the third party's signature.

Q If Ops noticed that the ARM had not verified the signature of the authorised third party, would they reflect that to you or Richard Yong or directly to the ARM?

A Direct to the ARM.

Q Would they pass the forms back to the ARM?

A Yes.

Q Thereafter, Ops would have to wait for the ARM to verify the signatures?

A Correct.

Q On the ARM's part, he would have to wait for an opportunity to observe the third party signing or receive a document containing the third party's signature?

A Yes.

162. It is, therefore, entirely possible that even after the Operations Department noticed the failures to verify and notified the accused since he was the ARM, the accused never got back to the Operations Department with the verified third party instruments before the accused left BL. Alternatively, as Richard Yong first deduced, the verifications also could have been negligently missed by the Operations Department, resulting in the present unverified state of affairs.

Ct Based on 4 sets of the forms from Appendix A, we know that Ong See Ming was the one who approved the 4 new accounts and the fact remains that the L/A and the Third Party Specimen Signature Cards were not verified by the ARM. As the Hd of PB, what insights can you offer to the court in the light of your evidence above to assist the court to come to a more likely than not correct assessment of what must have happened?

A Looking at the whole scenario, I would assume that the carelessness of the ARM not verifying the third party signatures which I think would be unlikely unless he was so reckless. From that point, if the document goes to the Ops, if they had missed it, the person who is looking through the documents must also be equally or more reckless. I would assume that that could happen being human beings. It is a case of gross negligence.

Ct Besides the scenario you've painted above and in the light of your evidence on how sticky Ops Department would be in requiring third party signatures to be verified, are there other scenarios that would be equally probable if not more so?

A I can't think of any.

Ct Would you still say so if all 7 sets of account opening forms had the same problem i.e. that the Ops Department did not point out that the L/A and the Third Party specimen signature cards were not verified by the ARM, although you knew them to be sticky in requiring such compliance.

A I can't imagine 7 sets of such forms being missed out. I still feel that they were grossly negligent and they must all have been sleeping.

.....

Q See P10 - the Account Opening Forms. The fact that the L/A and the Third Party Specimen Signature Card were not verified by the ARM was attributed to the recklessness of the ARM, the SARM and the Ops. Is there another scenario as to why they would not have seen it?

A Unless the L/A and Third Party Specimen Signature Card were not completed at the point of submission of the Account Opening Form.

163. The accused's own evidence is that he had received instructions for the draw down by phone (though he claimed to have obtained it from each of the 7 account holders and not KKK alone). Ong See Ming confirmed that this was possible and practical as the share market could move by the time written instructions were received by the ARMs. The accused never stated that he had requested for or received any confirmatory written instructions for the draw down from the 7 account holders.

164. As can be seen, it was not fatal to the opening of the accounts or draw down of the credit facilities even if the third party instruments were not verified by the ARM at the time of submission of P10 to the Operations Department. The fact that the third party instruments were not verified is equivocal and does not necessarily support the accused's contention that they were not filled in and signed when he received them in April 1997. My judgment is that the accused's evidence on this point is a plain and convenient afterthought. While this contention of the accused may have seemed valid at first instance, however, when considered against the use of identical ink colours for the third party instruments in each of the 7 account opening forms and Ong See Ming's unrebutted evidence, I have no doubt that the absence of the ARM's verification of the third party instruments is but a red herring. While the accused may not have actually signed to indicate that he had verified those third party signatures, it did not preclude the reality that he must have seen those duly executed third party instruments in P10 at the account opening stage and hence knew that the 6 account holders were KKK's nominees.

L. Other contentions of the Defence

165. This part seeks to address the various significant contentions made by the Defence in support of why the Prosecution had not proven the charge beyond reasonable doubt.

Could the accused have gone all out to assist KKK even before gratification was discussed?

166. The Defence was of the view that KKK's testimony that the accused had brought the Estimated Net Worth Form ("ENW") to his attention and told him that the form must show that the applicant has substantial assets to be in a position to repay such a sum. It is KKK's evidence that the accused mentioned a specific amount which would be in the region of tens of millions but KKK replied that none of his nominees would be able to comply with such requirements. It is also KKK's evidence that the accused told him that KKK could fill in any figure because the bank would not be verifying the forms. The Defence argued that this claim of KKK is so ludicrous, not just because it happened at the very first meeting between the accused and KKK but also because no amounts of gratification had been discussed for the accused to go out of his way to assist KKK.

167. It must be pointed out that the fact that the accused was prepared to assist KKK even before gratification was raised in no way renders the claim by KKK 'ludicrous'. As stated by KKK, he had hinted that there would be a reward for the accused if he managed to obtain from BL the financing required and the accused had acknowledged KKK's hint by nodding his head.

168. The prospect of a general reward in store could easily have been incentive enough for the accused to have wanted to help KKK. Even without a reward, the accused would have wanted to help KKK as the stock market was then very active and there was then no fear on anyone's part that the loans would not be repaid since shares were deposited as collateral. In the circumstances, the accused could have easily been prepared to take what he thought was a small risk and in return beef up his clientele and impress his bosses.

Prosecution had not produced a shred of evidence that the gratification sum, if paid through the Innosabah account, was transferred to the accused

169. The Defence contended that the Prosecution had not produced a shred of evidence that the gratification sum, if paid through the Innosabah account, was indeed transferred to the accused. This contention of the Defence is inaccurate. It is true that no documentary evidence has been produced by the Prosecution to prove payment of the gratification sum from KKK to TSC's Innosabah account and thereafter transferred to the accused. Neither has the Defence been able to adduce documentary evidence to the contrary. As the events took place more than 7 years ago, none of the parties were in possession of any documents relating to the gratification sums. Even the banks that the Defence approached were unable to provide any of the required documents.

170. Given the above circumstances, it would be too onerous to expect the Prosecution to produce such documentary evidence to prove the giving and receipt of the gratification sum. Since attempts by both the Prosecution and Defence found that the relevant bank records were unavailable, it fell to the credibility of the witnesses to determine the issue. In any event, the monies did not have to be transferred to the accused's account for him to be regarded as having 'obtained' it through TSC's account. The court should not be concerned with what a recipient does with the bribe after he has obtained effective control of it.

171. If such documents were available, that would, of course, strengthen the Prosecution's case. However, KKK's reliable evidence had amply addressed his giving of the gratification sum and the due receipt thereof by the accused – even the evidence on the refund of excessive payments were adduced in court by KKK. Such oral evidence sustained rigorous cross examination. There was a resounding ring of truth in the detailed and comprehensive evidence. As a trial judge, I needn't have asked for more. It is hence inaccurate for the Defence to state that the Prosecution had not produced a shred of evidence that the gratification sum, if paid through the Innosabah account, was transferred to the accused. The Prosecution had done so through KKK's credible oral evidence, albeit, not documentary evidence.

The Defence's attempt to seek documents from the relevant banks reveals its non-culpability in the receipt and transfer of the gratification sum to the accused

172. The Defence submitted that the accused's brother, Wong Teck Chong, (WTC) was certain enough that no funds had been transferred to the accused that he was willing to ask for the records from Malaysian banks such as RHB. As these documents, if any, could have very well revealed incriminating information, the Defence's attempt to seek such documents reveals the accused's non-culpability on the charge. This submission can be easily rejected on the basis that the actions of Defence are at best equivocal. Upon the giving of the gratification by KKK to finance the purchase of the YCS shares, the conversion of the sums from stocks to cash or for reinvestments and eventual withdrawals are best known to the accused and

his family members only. Any one knowingly involved is at liberty to make self-serving attempts to ask for records from a non-relevant bank to serve as a disguise. As I have no evidence one way or the other, I am not at liberty to draw any useful conclusions from WTC's efforts in writing to RHB for bank records.

Absence of KKK's statement from the transcript that the accused was aware of his nominees further strengthened the Defence position that the accused was not aware of KKK's 'nominee arrangement'

173. The Defence pointed out that throughout the conversation at JB, KKK persisted in asking the accused to provide a letter stating that most of BL's staff and the German bosses were aware that the other persons whom BL suing were his nominees. Defence stated that the accused made it clear to KKK that he did not want to get involved and the accused reiterated that he did not derive any benefit. Defence contended that KKK not only did not refute the accused's statement but also never insisted that the accused was aware the persons he had introduced were actually his nominees. This submission of the Defence that the absence of KKK's statement from the transcript that the accused was aware of his nominees further strengthened the Defence position that the accused was not aware of KKK's 'nominee arrangement' can again be easily dismissed.

174. First of all, I have ruled that little weight can be placed on the transcript. I am mindful that the transcriber gave evidence that she was also not in a position to confirm if the recording had been tampered with. The transcript is hence not a piece of reliable evidence for the court to draw any critical conclusions on any issue. The conversation at JB was surreptitiously recorded by the accused. His equipment was used and he had ample time to review the recording. It is not for me to speculate what he may have done to the recording suffice for me to conclude that based on the evidence adduced on the transcript, it would be unsafe to rely on it as good evidence. Second, KKK had offered an explanation as to why he may not have refuted the accused's statement that the accused did derive any benefit. KKK gave evidence that at the JB meeting, his objective was to seeking help from the accused to write the letter to BL. The last thing in his mind was to agitate and provoke the accused into rejecting his request. I accept KKK's plausible explanation.

Why didn't KKK ask for a person not related to the accused to open the Innosabah account?

175. WTC and TSC gave evidence that the Innosabah account was used by them for their own trades and the accused never had the opportunity to use the account. The Defence submitted that if the accused had wanted to cover his tracks, it would have been simpler to have asked KKK to open a trading account under a totally unrelated person's name. The Defence argued that if KKK had the ability to make his staff take on liabilities for loans of almost M$14.5m, surely it would have been possible for him to get another staff to agree to allow him to trade in the staff's account. The Defence added that such an approach would have been simpler and more difficult to detect. Once again, this submission of the Defence may be easily dismissed. The issue here is whether an offending act took place. Whether the offending act took place surely does not depend on whether the simplest or best way was used to commit the offending act. And if the simplest way is not used, the argument is that the offending act could not have taken place. Such a reasoning is illogical. How an offending act may take place depends on many factors, one of which is the involved person's previous practice.

176. In this case, KKK gave evidence that the *modus operandi* used to pay the gratification sum to the accused was previously adopted by him in other cases, hence this method. It is not necessary for me to speculate why JW chose to use TSC's name. Why not his best friend? Why not his subordinate? Why not his grand aunt? There are endless possibilities. In any event, there is nothing strange about the accused choosing to use TSC's name. Indeed, that was quite a safe and obvious choice. TSC, being the accused's sister-in-law, does not share any similarities in their family name and may not invite unwanted suspicions. It is also logical for the accused to use the name of a person whom he can entrust the gratification sum with. If the name is a total stranger to the accused, the accused may have to contend with the fear that the stranger can simply abscond with the handsome gratification sum.

Possibility that the signatures of the authorised third parties were appended after the accounts had been opened

177. The Defence submitted that there was a possibility that the signatures of the third parties were appended after the accounts had been opened, perhaps at the same time when KKK and his nominees transferred the shares they had pledged to BL to Loke Mei Ping or perhaps when the account holders made declarations that KKK was the beneficial owner of the said shares. The Defence contended that the Prosecution has not proved beyond a reasonable doubt that the forms contained the signatures of the authorised third party at the time when they were received by the accused. The Defence argued that the situation would have been much clearer if the Prosecution had led evidence from the relevant staff in the Operations

Department since such witnesses would have been able to provide independent evidence on the practical procedures and requirements of the Operations Department in 1997 and possibly testify if the forms had been removed and amended at a later date. On this point, I wholeheartedly agree with the Prosecution's rebuttal that the possibility of the Letters of Authority being filled in after the accounts were opened may theoretically exist, but is only fanciful, given that: (a) only KKK had ever come to Singapore to deal with BL on the accounts; and (b) the fact that a visual inspection of the original Account Opening Forms shows that the signatures for the 3rd page (i.e. for the opening of the account) and the 4th page (for the Letter of Authority) for each Account Opening Form shows the ink to be practically identical. For the above reasons, this contention of the Defence is easily dismissed too.

178. As analysed and reasoned above, it is patently clear that the contentions raised by the Defence submissions are without merit in the light of the overwhelming evidence against the accused.

M. Final analysis

179. In discharging its burden of proof, I am mindful that the Prosecution cannot merely point to the inadequacies of the Defence, for an acquittal could follow either from successfully arguing an affirmative Defence case, or by casting reasonable doubt over the Prosecution case (see *Ang Kah Kee v PP* [2002] 2 SLR 104. The principle, as enunciated in *Teo Keng Pong v PP* [1996] 3 SLR 329, is as follows,

> 68. … the burden on the prosecution is to prove its case beyond reasonable doubt. It is not to prove the case beyond all doubts. That standard is impossible to achieve in the vast majority of cases. In almost all cases, there will remain that minutiae of doubt. Witnesses, apparently independent, could have conspired to "frame" an accused. Alternatively, an accused could be the victim of some strange, but unfortunate, set of coincidences. The question in all cases is whether such doubts are real or reasonable, or whether they are merely fanciful. It is only when the doubts belong to the former category that the prosecution had not discharged its burden, and the accused is entitled to an acquittal.

KKK's evidence for the Prosecution is credible, cogent and consistent

180. As in almost every case, the credibility of the witnesses played an extremely vital role in the present case. In this connection, the prosecution's key witness, KKK, impressed me with his candour in speaking the truth in court. He testified in a matter-of-fact manner without any reservation. I found his testimony to be credible, cogent and consistent in the material aspects.

The Defence is wholly unpersuasive

181. On the other hand, the accused's evidence was totally unreliable. He was caught lying in court twice and he actually admitted to lying to protect himself. His evidence was mostly incoherent and incredible. The accused further compounded and exposed the frailty of his Defence by vacillating in his evidence. His key witness, JAL, to counter KKK's evidence was of no help at all. JAL struck me as being overly guarded. I must add, for reasons given earlier, that JAL's evidence was totally connived and calculated to discredit KKK. In the circumstances, I am compelled to reject JAL's evidence.

182. Like TSC, WYF and WTC are close family members of the accused. They had every reason to lie in court to protect the accused. In the light of all other evidence, I am persuaded to find that they were not truthful in their testimonies. WYF, in particular, showed that he was unwilling to even agree that it was *possible* for TSC to have not invested his money in shares (as opposed to keeping the money in a fixed deposit account, unit trusts, etc.) or that the accused may have taken a bribe. It would thus not be prudent for much weight to be attached to such bare testimonies. Notwithstanding that WTC performed relatively well on the stand and attempted to raise a reasonable doubt, in the light of all the evidence adduced by both Prosecution and Defence, WTC's evidence would not sit well. I am inclined to hold that WTC chose to conceal the truth from the court in order to protect the accused, his younger brother. Accordingly, I reject the evidence of WTC as untrue. As a result, the Defence is wholly unpersuasive, especially in the light of the incontrovertible documentary evidence.

KKK's reliable evidence contains all the incriminating evidence against the accused to prove the charge

183. In the final analysis, KKK's evidence contains all the incriminating evidence against the accused in relation to the charge. KKK's evidence is not alone. His evidence is supported by the documentary evidence as found in BL's account opening and credit application documents in relation to KKK and his 6 nominees. KKK's evidence is also confirmed by what the IOs heard from TSC when she first arrived at CPIB on 22 May 2003 to give evidence that the Innosabah account in her name was not hers but the accused (though she retracted what she had said subsequently). Taking KKK's testimony as a whole, there is clear evidence pointing to the accused's expectation of a gratification, an acknowledgement by KKK that a gratification would be given and the eventual giving of the gratification by KKK and the receipt of the same by the accused. The facts leading to the accused's acceptance of the gratification is also mapped out in some detail through KKK's sustained evidence.

N. Was it 'corrupt' within the meaning of the Act?

184. It is not enough to show that a gratification was received by the accused from KKK. For there to be a corruption offence under ss 5 and 6 of the PCA, what follows on is the need to show that the gratification was given and received 'corruptly'. The approach to be adopted in dealing with corruption cases is now well settled. In *PP v Low Tiong Choon* [1998] 1 SLR 300, the court held that corruption exists where there is both a corrupt element in the transaction and accompanying guilty knowledge. The law is set out as follows:

> "25 There must be first a **corrupt element in the transaction** according to the ordinary and objective standard, followed by the **accused's guilty knowledge** that what he was doing was, by that standard, corrupt. Both limbs must be fulfilled beyond a reasonable doubt. And, the question of 'corrupt' would be determined on the facts of the individual case. ….
>
> 29 Corruption is a question of intention (see *PP v Datuk Haji Harun bin Haji Idris (No. 2)*[1977] 1 MLJ 15 at 22), and from the passage above, it is apparent that there are *two parts to establishing an objectively corrupt element under the first limb*. The first part is to **ascertain the intention of the giver** or receiver (as the case may be) behind the transaction at the material time, an inquiry which depends on the evidence of the parties concerned as well as the surrounding circumstances. The second part is then to **ask whether such an intention tainted the transaction with an objectively corrupt element, given the factual matrix**.
>
> In my view, to avoid potential confusion, it will be helpful if prosecution and counsel applied this two-part approach when addressing the first limb in future cases.
>
> 30 It is of course an evidential exercise, sometimes a difficult one, when the court has to infer the accused's intention behind the transaction - what was the accused's intention or reason for giving or receiving the gratification? In this respect, the surrounding circumstances of the case will no doubt assist the judge in inferring what this intention or ulterior motive (if any) is. Hence, surreptitiousness or furtiveness of the transaction, the size of the gratification, relationship of the parties, breaking of rules or code may, as far as relevant, form part of that surrounding circumstances which, together with all the other evidence, will point towards the proper intention to be inferred.
>
> 31 Once the inference is drawn, the next question is to place such an intention or ulterior motive (as ascertained by the court) within the factual matrix and ask whether it infected the transaction with a corrupt element *by the ordinary and objective standard*. In this regard, I stated in *Chan Wing Seng* (supra at 434) that it is useful to keep in view the natural and ordinary meaning of the word 'corrupt' as a working guide in this inquiry, albeit with the qualification that it is not exhaustive
>
> 33 However, assuming that an objectively corrupt element in the transaction can be established and proved beyond a reasonable doubt, the next stage for the court will be to ascertain **whether the accused knew that what he or she did was corrupt according to this objective standard**. **In other words, whether the accused possessed the relevant guilty knowledge."**

The first limb – is there a corrupt element in the transaction?

185. I will now proceed to examine the first limb i.e. whether there was a corrupt element in the transaction. Under the first limb, there are two parts to the analysis. The first part of the first limb is to ascertain the intention of the giver or receiver (as the case may be) behind the transaction at the material time. It is an inquiry which depends on the evidence of the parties concerned as well as the surrounding circumstances. Having ascertained the intention of the accused in the first part of the first limb, the second part of the first limb is to ask whether such an intention tainted the transaction with an objective corrupt element, given the factual matrix.

186. I shall begin to consider the first part of the first limb i.e*. to ascertain the intention of the accused* i.e. the receiver, in this case, in relation to the gratification sum. From the testimony of KKK, which in my judgment is a true account of what had happened, the accused implicitly sought for gratification from KKK at the meeting at Ritz Carlton in April 1997. KKK's evidence was that the accused indicated to him that a lot of work had to be done for the loans to be approved and for draw down to be effected successfully. KKK said that he caught the 'hint' for gratification from the accused and added that he would know what to do. KKK also noted the accused's confirmation that KKK had known that the accused was desirous of a gratification when the accused said something to the effect that he would take care of his part and KKK should do so likewise. As a businessman, KKK said that he readily understood that the accused was seeking a personal 'disbursement for extra work involved' i.e. a commission or coffee money. On the evidence, it is amply clear to me that the accused was seeking gratification from KKK as reward for him to successfully and expeditiously process the applications for account opening and credit lines in relation to his principal's business i.e. BL.

187. Having ascertained the intention of the accused in the first part of the first limb, the second part of the first limb is to ask whether *such an intention tainted the transaction with an objective corrupt element*, given the factual matrix. On the evidence, because the accused was desirous of receiving the eventual gratification from KKK, the accused had compromised the bank's standard practices in more ways than one: the accused had never met KKK's 6 nominees prior to the draw down; the accused did not verify the 6 nominees personal particulars and net worth as supplied to him; the accused even made false entries in each of the Client Information Forms to ensure that the request to open accounts would be granted etc. It is also worth pointing out that it took only about a week for the accused to effect draw down for all 7 accounts from the point when KKK made known his credit needs to the accused. It is not exaggerating to say that the accused had hoodwinked BL management into believing that KKK's nominees were high net worth individuals when they were not. The latter is a basic criteria in order to become a customer of private banking. Among other factors, the accused was motivated by the eventual gratification that he knew KKK would be giving to him. The entire transaction was tainted with a corrupt element.

The second limb – is there guilty knowledge?

188. Since I am satisfied that the prosecution has established the first limb, it is now necessary for me to apply the second limb i.e. to show that the accused has a guilty knowledge, over and above a corrupt element in the transaction. To convict an accused for corruption, both limbs must be fulfilled beyond a reasonable doubt. On the evidence, the accused had full knowledge that his dealings with KKK in relation to the 7 accounts was not overboard.

189. In order to conceal his personal receipt of the gratification, the accused had even arranged to use his sister-in-law's name i.e. TSC, to open an account with Innosabah for his use so that KKK could utilise TSC's Innosabah account to channel the gratification sum to the accused. While the method of channelling the gratification sum may have been suggested by KKK, it was the accused who displayed the guilty knowledge by using TSC's name to open an account with Innosabah to achieve his purpose. For reasons given earlier, I reject TSC's evidence that the account was not for the benefit of the accused. She is not credit worthy and her evidence is totally unreliable. I am convinced that TSC's evidence was all motivated to exculpate the accused from the charge.

190. The accused's decision to surreptitiously record the dialogue that he had with KKK at JB around Chinese New Year in 2002 also reveals his guilty knowledge. Because the accused knew that he received gratification from KKK, he felt obliged and duty bound to follow-up with KKK's legal suits with BL. The accused could not afford to offend KKK by declining to meet him lest KKK would expose his receipt of the gratification. Hence, the accused must have decided to record the dialogue such that he can produce it as evidence in court to exculpate himself, if found to be useful. Looking at the transcript and considering the evidence of the transcriber (DW7), the possibility of the accused having tampered with the recording cannot be excluded. How else can one explain sounds of toilet flushing in the recording when the meeting took place in a hotel Food & Beverage outlet?

191. There is overwhelming evidence pointing to the corrupt element of the receipt of the gratification and the accused's guilty knowledge that the receipt of the same is corrupt. I am satisfied that the prosecution has proven the charge against the accused beyond reasonable doubt. Accordingly, I convict the accused on the charge.

O. Mitigation

192. In mitigation, the Defence Counsel submitted that the accused is a first offender. Mr Pereira emphasised that the accused did not solicit for the bribe. The losses suffered by KKK and BL are not directly attributable to the acts of the accused. The loans disbursed were secured loans in that they were secured by collateral as required by the bank.

193. Mr Pereira informed the court that the accused is married to a housewife and they have two young children. The accused is also supporting his aged parents. Mr Pereira urged the court not to impose a custodial sentence since the court has the discretion to impose a fine.

P. DPP's submission on sentence

194. The DPP urged the court to impose a stiff custodial sentence and the full penalty under s 13 of the Act for the following reasons:

(a) the amount of the gratification involved is extraordinarily large;

(b) the accused has displayed no remorse whatsoever; and

(c) the acts of the accused had caused a huge loss to his employer. The DPP submitted that the fact that the loans drawn down were secured is not all. In private banking, loans were given only to high net worth clients who must also have the financial means to meet margin calls. In this instance, the DPP stressed that KKK's nominees were not in such a position. Mr Pereira disagreed with the DPP and reasoned that the bank suffered the loss as a result of the Asian Financial crisis and not as a result of the accused's actions. I agree with the Defence on this point. The bank in giving a loan always faces risks. The bank can only protect itself by securing collaterals which it did. The DPP's submission on the 'margin calls' may be misconceived since it was KKK who was actually responsible for the loans throughout and not his 6 nominees. In any event, at the material point, KKK was a man of means to meet until the Asian Financial Crisis stepped in.

Q. On sentence

195. The accused was in receipt of a corrupt gratification sum amounting to M$300,000 to M$400,000. That is about S$150,000 to S$200,000 at the material time. The corrupt gratification received in the precedents that follow were all related to commercial dealings charged under s 6(a) of the Act.

Whether a fine or custodial sentence for the accused would be appropriate

196. The Act expressly provides for the imposition of imprisonment sentences regardless of whether the offence was committed in the public arena or commercial context. Whether a custodial sentence is warranted in a particular case is determined upon a careful consideration of sentencing principles such as the public interest and other policy considerations, as well as the gravity of the offence including the particular facts and circumstances thereof: see *Lim Teck Chye v PP* [2004] SGHC 72 at ¶ 65. In *PP v Yeoh Hock Lam* [2001] SGDC 212, unreported judgment dated 9 July 2001, the court held that where the amount of gratification is relatively low and where it is not in excess of $30,000, a substantial fine will usually be adequate punishment. In addition, the offender will have to forfeit his ill-gotten gratification as well.

197. In the light of *PP v Yeoh Hock Lam* and the previous decided cases where the offenders were similarly charged under s 6(a) of the Act, if the amount of corrupt gratification involved was large, a custodial sentence would invariably be imposed. Besides the large amount of gratification involved in the present case, the accused committed this offence in breach of his

duties as a senior appointment holder to his principal, a financial institution. Public policy also requires that such offenders not be penalised leniently and serve as a deterrence to maintain confidence in the banking industry. In view of the handsome gratification received by the accused as a result of the offence committed, if a custodial sentence is not imposed, an offender like him could conveniently pay off his fine and penalty without much hardship. This would make our criminal justice system and its penalties susceptible to a cost benefit analysis and be perceived by potential offenders as an allowable risk in their criminal endeavours: see *Lim Teck Chye v PP* [1994] SGHC 72 at ¶80. Given the facts of the present case, I have no doubt that the accused ought to be given a custodial sentence. The only issue here is the length of it.

Where custodial sentences were meted out for s 6(a) charges

198. In *Tang See Meng v PP* (MA 62/2001/01), the offender was convicted after a trial on five charges under s 6(a) of the Prevention of Corruption Act. In late 1997, the offender was employed by the Singapore office of Tekken Corp ('Tekken') as its contracts manager. In April 1998, Tekken was awarded the contract for the building works at a construction project. It subsequently awarded sub-contracts to various sub-contractors, including a company called De Kong Construction (S) Pte Ltd ('De Kong'). Whilst acting as an agent for Tekken in his capacity as the company's contracts manager, the offender corruptly accepted gratification in the form of payments from a director of De Kong, and these payments were rewards for the offender doing an act in relation to the affairs of Tekken, namely, recommending that De Kong be awarded the sub-contract by Tekken. He received a total of $140,000 as gratification over 5 occasions i.e. $10,000 paid in October 1998; $20,000 paid in March 1999; $40,000 paid in April 1999; $40,000 paid in May 1999; and $30,000 paid in June 1999. The offender received three months' imprisonment per charge with two of the imprisonment terms to run consecutively i.e. a total of six months' imprisonment. Upon conviction, the court was urged to impose a penalty of $70,000 as the offender had in reality pocketed only half of the money from each cheque. The offender was ordered to pay the full penalty of $140,000 (in default four months' imprisonment).

199. In *Lam Khing Lang @ David v PP* (MA 522/92/01), the offender was a traffic manager in the employ of CBI Overseas Inc. His duties were to contact freight companies, obtain quotes, organise shipments to various locations in South East Asia of material and equipment used in CBI's construction projects. He was convicted after a trial of obtaining gratification from four companies as rewards for arranging the shipment of construction materials and equipment from Singapore to destinations in South East Asia. He corruptly obtained $87,077.48 over 8 occasions. He received a total of 8 months imprisonment. He was also ordered to pay a penalty of $87,077.48 (in default ten months' imprisonment).

200. Finally, in *Ng See Ming v PP* (MA 248/96/01), the offender pleaded guilty to 4 charges of corruptly obtaining a total of $54,716 over a period of 14 months from a sales manager as a reward for purchasing compressor pumps from his company over an eight-month period. Nine other charges were taken into consideration by the court in assessing sentence. The offender received 5 months imprisonment on each of the 4 charges. Two of the sentences were ordered to run consecutively i.e. 10 months in total. A penalty of $54,716 was also ordered to be paid (in default 3 months imprisonment).

Where fines were given for s 6(a) charges

201. In *Tan Tze Chye v PP* [1997] 1 SLR 134, the offender was the managing director of a company in the business of property consultancy. He was instructed to sell an industrial property and was also to secure the printing of publicity brochures to promote the sale of the property. The offender approached one Ang from Akira Advertising Pte Ltd ('Akira') to do the printing. He asked Ang for a 10% commission. Ang agreed. Ang was asked to make payment out to a sole proprietorship managed and run by the offender, Ang duly issued a cheque for the sum of $383 was owing by Akira for the services. The offender was found guilty of accepting the $383 as a reward for showing favour to Ang, that is, by engaging Akira to do the printing of the publicity brochures. The trial court imposed a fine of $5,000 and ordered a penalty of $383.

202. In *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592, the offender was the senior purchasing manager in a private firm. He was later promoted to be the materials manager and subsequently to the post of director of materials. During the Chinese New Year festive periods of 1989, 1992 and 1993, he received 'ang pows' of $5,000, $1,000 and $1,000 respectively. The prosecution's case was that the 'ang pows' were corruptly accepted by the offender as a reward for purchasing fasteners from the company of the giver. The offender in his defence denied receiving the money on the three occasions. He was found guilty. The trial court sentenced the offender to a fine of $12,000 on the charge involving $5,000 and $6,000 each on the remaining two charges and imposed a penalty of $7,000.

The appropriate length of the custodial sentence for the accused

203. A quick perusal of the precedents above would show that the amount of gratification in question in the present case has far exceeded the threshold warranting just a fine. As the amount of gratification here is about S$150,000, a fine will certainly not be sufficiently deterrent. In this regard, an appropriate custodial sentence is called for and I find *Tang See Meng v PP* most helpful to the present case for sentencing for the following reasons:

(a) all five charges in *Tang See Meng* were based on s 6(a) as in our present case i.e. receipt of a reward in relation to his principal's affairs in the context of commercial dealings;

(b) the total amount of the gratification received in *Tang See Meng* and our present case is within a similar range; and

(c) the convictions in each case came about after a full trial.

In *Tang See Meng's* case, the offender received three months' imprisonment per charge with two of the imprisonment terms to run consecutively i.e. a total of six months' imprisonment. In other words, the offender therein effectively served 6 months' imprisonment for receiving a total of bribe of $140,000.

204. I have taken into consideration that the accused in the present case faced one charge as opposed to five charges in *Tang See Meng's* case. I also note that the facts of the present case are less aggravated than in *Tang See Meng*. In the latter, the offender received bribes over 5 occasions. In our present case, the gratification was a one-off. I would give the accused the benefit of the doubt that it was his one-off folly that led to the commission of the offence. In contrast, in *Tang See Meng's* case, the offender therein systematically received five gratifications between October 1998 to June 1999. With the above in mind, I am of the view that the accused in the present case deserves a lighter custodial sentence than the offender in *Tang See Meng's* case. Accordingly, I sentenced the accused to 4 months' imprisonment on the charge.

R. Penalty

205. As for the penalty, I am minded to order the accused to pay a penalty of S$150,000 in default 15 weeks' imprisonment. The amount of S$150,000 was arrived at by converting the lower end of the range of M$300,000 to M$400,000 to Singapore currency taking into consideration the usual fluctuations of both currencies. To minimise dispute, the amount of S$150,000 was derived with the agreement of the DPP and the Defence Counsel that that amount would be a fair and reasonable conversion of M$300,000. The lower end is used since no evidence has been adduced by the prosecution to state the exact amount received. In that regard, a benefit of doubt could be accorded to the accused. The latter would also be the least prejudicial to the accused. The object of imposing a penalty equal to the gratification is primarily to prevent corrupt wrongdoers from keeping or benefiting from the spoils of their crimes (see *Tan Kwang Joo v PP* [1989] 3 MLJ 26 and *PP v Suen Kok Weng*, CR 6/99). Incidentally, s 13 of the Act does not require the court to consider the way in which an accused may have disposed of the gratification he accepted. See *Tang See Meng v PP* (MA 62/2001/01).

Accused is convicted and sentenced on the charge.

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