

Public Prosecutor v Teo Yaw Tiong Ignatuis
[2005] SGDC 196

Case Number : DAC 20958/2005, 22100/2005, 39525/2005, 22102/2005, 22103/2005, 28188/2005, MA 123/2005

Decision Date : 27 September 2005

Tribunal/Court : District Court

Coram : Bala Reddy

Counsel Name(s) : Derek Kang (Deputy Public Prosecutor) for the prosecution; P E Ashokan assisted by Renesh Boss (Khattar Wong) for the accused

Parties : Public Prosecutor — Teo Yaw Tiong Ignatuis

Criminal Law – Offences – Cheating – Cheating by personation – Accused using another person's passport to travel out of Singapore to collect proceeds of crime from foreign bank accounts opened and controlled by him – Sentence – Section 419 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Documents – Forgery, forgery for purpose of cheating, and using as genuine a forged document – Accused and accomplice, both bank officers, planning to obtain credit cards from other banks by submitting false documents; and transferring money from accounts of customers of bank for which they worked to foreign bank accounts – Accused main perpetrator of offences – Sentence – Sections 465, 467, 468, 471 Penal Code (Cap 224, Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles – Aggravating factors – Large amount of loss caused to bank – Lack of restitution – Highly-structured planning going into perpetrating fraud, including use of another person's passport to collect proceeds of crime – Accused breaching trust reposed in him by bank for which he worked – Accused perpetrating fraud on financial institutions and affecting financial and commercial integrity of Singapore's banking system by applying for credit cards in another person's name

Criminal Procedure and Sentencing – Sentencing – Principles – Parity of sentencing – Whether roles of accused and accomplice in crime and aggravating and mitigating factors comparable – Whether accused should be given sentences similar to accomplice's

27 September 2005

District Judge Bala Reddy

Background

1 The accused, Teo Yaw Tiong, Ignatuis (sic), and his accomplice one Goh Jen-Nie hatched two plans to cheat banks to enrich themselves. The first was to obtain credit cards by submitting false documents to the issuing banks and the second was to transfer monies from accounts of customers of OCBC bank to foreign bank accounts opened and controlled by the accused. The plans were elaborate and carefully executed. The first plan did not materialise but however, the second plan was successfully pulled off and a staggering S\$963,536 was siphoned away.

2 The criminal conduct of the accused resulted in 18 charges being brought against him. The accomplice faced 14 charges. The charges were of four types.

3 First set of 4 charges under section 471 read with section 467 Penal Code, related to the use of forged documents as genuine for the purposes of remitting funds from bank accounts in Singapore to foreign accounts. The second set of 4 charges under section 465 Penal Code related to forgery offences. The third set of 6 charges under section 468 Penal Code were in respect of forgery for the purposes of cheating banks to obtain credit cards. The fourth set of 4 charges under section 419 Penal Code related to the accused cheating by impersonation when he used another person's passport to travel out of Singapore to collect the proceeds of his ill gotten gains.

4 The accomplice pleaded guilty to 5 charges and had 9 other charges taken into consideration for the purpose of sentence. She was sentenced by the learned District Judge Tan Boon Gin to a total term of 36 months' imprisonment.

5 The accused who had claimed trial pleaded guilty on the first day of trial to 6 charges. 12 other charges were taken into consideration for the purpose of sentence. He was sentenced by this court to a total term of 60 months' imprisonment.

6 The accused who is serving sentence has now appealed against his sentence.

The Charges

7 The charges to which the accused pleaded guilty were as follows:

AMENDED 1ST CHARGE (DAC 020958/2005) P1

You,

Teo Yaw Tiong, Ignatuis (Male/ 36 years old)

NRIC No. S2199489H

are charged that you, sometime in October 2002, in Singapore, did fraudulently use as genuine a forged document purporting to give a person authority to deliver money, namely, an instruction letter purportedly signed by one Wage Rustan and one Siti Asiah and addressed to the manager of Oversea-Chinese Banking Corporation Ltd (OCBC), Centre Branch, requesting the transfer of US\$342,523.07 from the said Wage Rustan and the said Siti Asiah's jointly-held two OCBC US\$ Time Deposit accounts numbered TN802-57055-Y-USD & TN802-57056-M-USD to Loyal Bank Limited account number 104000758104, to wit, you submitted the said instruction letter to OCBC, Centre Branch, when you knew the said instruction letter was forged, and you have thereby committed an offence punishable under Section 471 read with Section 467 of the Penal Code, Chapter 224.

AMENDED 3RD CHARGE (DAC 022100/2005) P2

You,

Teo Yaw Tiong, Ignatuis (Male/ 36 years old)

NRIC No. S2199489H

are charged that you, sometime in October 2002, in Singapore, did fraudulently use as genuine a forged document purporting to give a person authority to deliver money, namely, an Oversea-Chinese Banking Corporation Ltd (OCBC) Remittance Form purportedly signed by one Seow Lye Neo Josephine, requesting the telegraphic transfer of US\$120,000 (S\$215,518) from the said Seow Lye Neo Josephine's OCBC Moneymax account number 612-716209 to Griffon Bank Limited, Commonwealth of Dominica, account number 992073901, to wit, you submitted the said remittance form to OCBC Aljunied Branch, when you knew the said remittance form was forged, and you have thereby committed an offence punishable under Section 471 read with Section 467 of the Penal Code, Chapter 224.

AMENDED 5TH CHARGE (DAC 022102/2005) P3

You,

Teo Yaw Tiong, Ignatuis (Male/ 36 years old)

NRIC No. S2199489H

are charged that you, sometime in October 2002, in Singapore, did fraudulently use as genuine a forged document purporting to give a person authority to deliver money, namely, an Oversea-Chinese Banking Corporation Ltd (OCBC) Remittance Form purportedly signed by Tang Hui Huang, requesting the telegraphic transfer of US\$100,000 (S\$178,018) from Tang Hui Huang's OCBC Easisave account number 501-267587-001 to Loyal Bank Limited, St Vincent, account number 104000761704, to wit, you submitted the said remittance form to OCBC Bukit Panjang Branch, when you knew the said remittance form was forged, and you have thereby committed an offence punishable under Section 471 read with Section 467 of the Penal Code, Chapter 224.

AMENDED 6TH CHARGE (DAC 022103/2005) P4

You,

Teo Yaw Tiong, Ignatuis (Male/ 36 years old)

NRIC No. S2199489H

are charged that you, sometime in October 2002, in Singapore, did fraudulently use as genuine a forged document purporting to give a person authority to deliver money, namely, an instruction letter purportedly signed by one Tang Hui Huang and addressed to the manager of Oversea-Chinese Banking Corporation Ltd (OCBC), Bukit Panjang Branch, requesting the transfer of US\$100,000 (S\$178,018) from the said Tang Hui Huang's OCBC Easisave account number 501-2657587-001 to Loyal Bank Limited, St. Vincent, account number 104000761704, to wit, you submitted the said instruction letter to OCBC, Bukit Panjang Branch, when you knew the said instruction letter was forged, and you have thereby committed an offence punishable under Section 471 read with Section 467 of the Penal Code, Chapter 224.

AMENDED 11th CHARGE (DAC 039525/2005) P5

You,

Teo Yaw Tiong Ignatuis (Male/36 years old)

NRIC No. S2199489H

are charged that you, on the 7th day of December 2002, at Woodlands Immigration Checkpoint, Singapore, did cheat by personation an Immigration Officer of Singapore Immigration & Registration, one Sajibu s/o Krishnan by presenting a Singapore Passport No. S7003687H bearing the name Tay Kim Leng, and falsely representing to the said Immigration Officer, that you are Tay Kim Leng, holder of Singapore Passport No. S7003687H, and by such manner of deception, you dishonestly induced the said Immigration Officer to grant you permission to leave Singapore, which the Immigration Officer would not have done had he not been so deceived and which act was likely to cause harm to the reputation of the said Immigration Officer and the Singapore Immigration & Registration and you have thereby committed an offence punishable under Section 419 of the Penal Code, Chapter 224.

AMENDED 13th CHARGE (DAC 028188/2005) P6

You,

Teo Yaw Tiong, Ignatius, MALE / 36 YEARS OLD

NRIC No: S2199489H

are charged that you, sometime in the month of July 2002, in Singapore, did commit forgery for the purpose of cheating, to wit, you forged supporting documents attached to a Maybank Millennium Visa Credit Card application form purportedly in the name of and signed by one Lai Chee Soon, intending to deceive Maybank into believing that the application was made by the said Lai Chee Soon, and you have thereby committed an offence punishable under Section 468 of the Penal Code, Chapter 224.

The Statement of Facts

8 The Statement of Facts tendered by the prosecution set out in detail all the factual circumstances of the offences. The Statement of Facts is reproduced below.

The Accused & the Accomplice

1. The accused is one Teo Yaw Tiong Ignatuis, male, 36 years old, NRIC No. S2199489H. At the time of his arrest, the accused was a businessman. The accused previously worked at OCBC from 16 May 2000 to September 2002 as, *inter alia*, a Mobile Banking Executive.

2. The accomplice is one Goh Jen-Nie, female, 34 years old, NRIC No. S7146468G. At the time of her arrest, the accomplice was an Assistant Manager of the Overseas Chinese Banking Corporation Limited ("OCBC"), Head Office, Business Banking – Commercial Service Centre, Chulia Street, Singapore.

The Complaint

3. From March 2003 to August 2003, three separate cases were reported to OCBC whereby customers claimed that there were fraudulent changes to their addresses and contact numbers, as well as fraudulent withdrawals from their bank accounts.

4. The *modus operandi* for these three cases was identical, i.e. someone had forged the customers' signatures and sent in forged instructions to OCBC for a change of address and contact particulars, followed shortly by a forged written instruction for outward remittances. These cases occurred between the period of September 2002 and October 2002.

5. The said three OCBC account-holders ("the victims") were:

- Wage Rustan, male, 74 years old ("Wage")

(FIN No: F2782725W)

- Josephine Seow Lye Neo, female, 55 years old ("Josephine")

(NRIC No. S0063340B)

- Tang Hui Huang, female, 66 years old ("Tang")

(NRIC No. 0841471H)

6. Two of the account-holders, Wage and Tang also reported the fraudulent withdrawals to the Police. The matter was subsequently referred to Commercial Affairs Department ("CAD") for investigation.

The arrest of the accused and accomplice by CAD

7. On 24 May 2005, acting on information received, the CAD arrested the accused and the accomplice for conspiracy to siphon funds from said three OCBC accounts.

The conspiracies

8. At the time of the commission of the offences, the accused was having an affair with the accomplice, who was married. The accused and the accomplice were heavily in debt as a result of indulging in gambling on the Internet using credit cards.

9. Sometime in July 2002, the accused, then a Mobile Banking Executive with OCBC, conspired with the accomplice to make use of OCBC customers' information that they had access to in the course of their work to fraudulently apply for credit cards and personal credit lines from banks in Singapore. The plan was to use these credit cards and personal credit lines to pay off their gambling debts. The accused and accomplice agreed to call this 'Plan A'.

10. The accused and the accomplice also conspired to obtain monies fraudulently through another scheme that they called 'Plan B'. They were to put 'Plan B' into action if 'Plan A' did not work. 'Plan B' involved the siphoning of funds from dormant OCBC accounts with high balances to foreign accounts located overseas. Based on the information that the accused and the accomplice had access to in the course of their work, they picked three account-holders to target, namely Wage, Josephine and Tang.

The Charge relating to Plan 'A'

DAC 028188/2005 (13th Charge)

11. Sometime on or around 10 September 2002, whilst at Blk 317 Sembawang Vista #15-209, Singapore, the accused altered the original address stated on the photocopy NRIC of one Lai Chee Soon ("Lai"), male, 47 yrs, (NRIC No: S2551573J) by using a computer software called "Adobe Photo Shop".

12. A portion of Lai's IRAS Notice of Assessment was also altered using similar method. After that, the accused filled up a blank copy of one Maybank Millennium Visa Credit Card application form in Lai's name and stating the mailing address as Blk 688E Woodlands Drive 75 #15-68, Singapore. This mailing address had earlier been ascertained by the accused and accomplice to be vacant at that time. The accused subsequently appended a fictitious signature purportedly made by Lai. The accused made these forgeries pursuant to 'Plan A', which he and the accomplice had conceived.

13. The accused and the accomplice subsequently submitted the completed forged application form in Lai's name, together with the forged supporting documents such as photocopy of the Lai's NRIC, his IRAS Notice of Assessment and pay slip to Maybank by post. In so doing, the accused and the accomplice intended to deceive Maybank into believing that the forged credit card application was in fact made by Lai and thereafter issuing a Maybank Millennium Credit Card in Lai's name to the mailing address at Blk 688E Woodlands Drive 75 #15-68, Singapore.

14. Maybank rejected the application as they suspected that the application was fraudulent. Maybank did not suffer any loss.

The Charges relating to Plan 'B'

DAC 020958/2005 (1st Charge)

15. On 10 October 2002, OCBC Centre Branch received a mail-in type-written instruction letter dated 9 October 2002 bearing the signatures of both Wage and his wife Siti Asiah ("Asiah") asking OCBC to perform a premature withdrawal of the monies in their two Time Deposits ("TD") accounts totaling US\$342,529.33 and remit the funds to account no. 104000758104 at Loyal Bank Limited ("LBL"), 112 Bonadie Street, Kingdom, St. Vincent, West Indies in Wage's name. The said two TD accounts (no. TN802-57055-Y-USD and TN802-57056-M-USD) were jointly held by Wage and Asiah. Acting on the said mail-in type written instructions, OCBC remitted US\$342,529.33 from the said two TD accounts held by Wage and Asiah to the LBL account in Wage's name.

16. Investigations revealed that pursuant to 'Plan B' conceived by the accused and the accomplice, the accused had prepared and forged the signatures of Wage and Asiah on the said type-written instruction letter dated 9 October 2002 and thereafter submitted it to OCBC Centre Branch as if it were genuine. The accused and the accomplice had also fraudulently opened the LBL account in Wage's name. The said LBL account was opened to receive the monies remitted from the said two TD accounts held by Wage and Asiah.

17. The accused had arranged for LBL to send all bank account information and an Automated Teller Machine ("ATM") card for the account to a vacant address at a landed property at The Springside, Singapore. The accused subsequently retrieved these documents from the mail box.

18. The accused subsequently kept possession of the said ATM card to make fraudulent withdrawals from the LBL account in Wage's name from ATMs in Singapore, Malaysia and the United States of America. The accomplice was present on some of these occasions when the accused made these withdrawals and also used the ATM card to make one withdrawal on her own in the United States of America.

DAC 022100/2005 (3rd Charge)

19. On 10 October 2002, the OCBC Aljunied Branch received a Remittance Application Form dated 9 October 2002, bearing the signature of Josephine asking for US\$120,000 (S\$215,518) from her Moneymax account no. 612-716209-001 to be remitted to account no. 213 001058 at Griffon Bank Limited ("GBL"), 17 Great Marlborough Street, Roseau, Commonwealth of Dominica. Acting on the said Remittance Application Form, OCBC remitted **US\$120,000.00** from Josephine's Moneymax account to the GBL account in Josephine's name.

20. Investigations revealed that pursuant to 'Plan B' conceived by the accused and the accomplice, the accomplice obtained a Remittance Application Form from OCBC sometime around October 2002. Thereafter, at the accused's home at Blk 317 Sembawang Vista #15-209, the accomplice filled up said form with Josephine's particulars in the presence of the accused. After the accomplice had completed the form, the accused forged the signature of Josephine on it and submitted it to OCBC Aljunied Branch as if it were genuine.

21. The accused and the accomplice had earlier fraudulently opened the GBL account in Josephine's name. The GBL account was opened to receive the monies that were fraudulently remitted from Josephine's Moneymax account with OCBC.

22. The accused arranged for GBL to send all bank account information and an ATM card for the GBL account in Josephine's name to a vacant address at a landed property at The Springside, Singapore. However, the accused and the accomplice did not receive any ATM card from GBL for the account in Josephine's name. They did not follow up with the matter with GBL, as they were afraid that their fraud would be exposed. The accused and the accomplice then decided to abandon the funds in the GBL account in Josephine's name.

DAC 022102/2005 and DAC 022103/2005 (5th Charge and 6th Charge)

23. On 25 October 2002, the OCBC Bukit Panjang Branch received a Remittance Application Form and a type-written instruction letter, both bearing the signatures of Tang, requesting to remit US\$100,000 (S\$178,018) from her OCBC Easisave account no. 501-267587-001 to account no. 104000761704 at LBL in Josephine's name. The said Remittance Application Form and the said type-written instruction letter were dated 22 October 2002. Acting on the said Remittance Application Form and the said type-written instruction letter, OCBC remitted US\$100,000.00 from Tang's OCBC Easisave account to the LBL account in Josephine's name.

24. Investigations revealed that pursuant to 'Plan B' conceived by the accused and the accomplice, the accomplice obtained a Remittance Application Form from the bank. On or around 22 October 2002, the accomplice filled up the said form with Tang's particulars in the presence of the accused at Blk 317 Sembawang Vista #15-209. After the accomplice had filled up the form, the accused forged the signature of Tang on it.

25. Pursuant to 'Plan B' conceived by the accused and the accomplice, the accused had also prepared and forged the signature of Tang on the type-written instruction letter dated 22 October 2002. The accused subsequently submitted both the said Remittance Application Form and the said type-written instruction letter in Tang's name to OCBC Bukit Panjang Branch as if they were genuine.

26. The accomplice and the accused had earlier fraudulently opened the LBL account in Josephine's name. The LBL account in Josephine's name was opened to receive the monies remitted from Tang's Easisave account with OCBC.

27. The accused and the accomplice had arranged for LBL to send all bank account information and an ATM card for the LBL account in Josephine's name to a vacant address at a landed property at The Springside, Singapore. The accused subsequently retrieved these documents and the ATM card from the mail box of the said vacant property.

28. The accused used the ATM card to make fraudulent withdrawals from the LBL account in Josephine's name from ATMs in Singapore, Malaysia and the United States of America. The accomplice was present on some of these occasions when the withdrawals were made.

29. The monies withdrawn at ATMs by the accused and the accomplice from the LBL accounts were used by them to pay off their own credit card debts, further gambling, personal expenses, etc.

DAC 039525/2005 (11th Charge)

30. Sometime in December 2002, the accused approached a friend, one Tay Kim Leng, NRIC No. S7003687H, and borrowed the passport of the said Tay Kim Leng. On 7 December 2002, the accused went to the Woodlands Immigration Checkpoint with the accomplice by a taxi that they had taken at Queen Street, Singapore. They intended to go to Malaysia to use the ATM cards issued by LBL for the accounts in Wage's and Josephine's names to withdraw monies. At the Woodlands Immigration Checkpoint, the accused presented the passport of the said Tay Kim Leng to an Immigration Officer of the Singapore Immigration & Registration, one Sajibu s/o Krishnan ("the Immigration Officer") and falsely represented himself to the Immigration Officer to be the said Tay Kim Leng.

31. The Immigration Officer was deceived by the accused's false representation and visual resemblance to the picture of the said Tay Kim Leng in the said Tay Kim Leng's passport and granted the accused permission to leave Singapore. The granting of the accused permission to leave Singapore under the accused's false representation is likely to cause harm to the reputation of the Immigration Officer and the Singapore Immigration & Registration.

32. The accused and the accomplice were charged accordingly. The accomplice pleaded guilty in District Court 24 on 7 September 2005.

Mitigation

9 The learned Defence Counsel tendered a written mitigation plea. (marked G). It was said on his behalf that he had to work all his life to provide for his family as they were poor. He suffered from asthma from a very young age but worked throughout his childhood to provide extra cash for the family. His mother as a single parent had to raise 4 children under very testing financial constraints. He nevertheless persevered and eventually obtained a double degree from Monash University.

10 The mitigation plea then focused on how he ended up with a gambling addiction. Counsel asserted that both Plan A and B were the joint efforts of the accused and the accomplice and that the accomplice was an active participant in the conspiracy. Counsel also said that the accused had pleaded guilty and was remorseful.

11 A substantial portion of the mitigation was also devoted to urging the court to impose a sentence similar to that imposed on the accomplice, on the grounds that parity in sentencing demanded such a sentence.

Address on Sentence

12 The learned DPP Derek Kang on the other hand made a forceful submission for a substantially heavier sentence than that imposed on the accomplice. His address on sentence is reproduced below:

AGGRAVATING FACTORS

Premeditation & professionalism

3. The offences were committed pursuant to a premeditated plan conceived by the accused and accomplice. The manner in which they covered their tracks by using vacant addresses and changing the contact details of account holders before issuing the forged instructions to remit shows a high degree of sophistication and calculation.

Large amount of money involved

4. The accused and the accomplice siphoned a total of about S\$963,536.00 from the 3 OCBC accounts. This is a substantial sum of money and far exceeds whatever they may have owed in gambling debts. Siphoning the monies for repayment of their gambling debts was reprehensible enough, but the excessive amount siphoned shows an intention to profit beyond that.

Abuse of position of trust and multiple charges

5. The accused and the accomplice, as officers of OCBC, had abused their privileged position to obtain information on customers' accounts to target. Through their knowledge of the internal work processes of OCBC, they knew what documents had to be forged and what to state in the forged documents to deceive OCBC into remitting monies to overseas accounts under their control. They had also targeted a number of OCBC account holders.

Public confidence and financial integrity of Singapore

6. The accused and the accomplice in committing the offences have undermined public confidence in the integrity of the banking system. If such offences are left unchecked, it will be detrimental to the image of Singaporean banks. Such offences are also hard to detect.

C THE ACCOMPLICE'S SENTENCE

7. The accomplice pleaded guilty on 7 September 2005 in Court 24 to abetting by conspiracy the accused on essentially the same charges proceeded against the accused at present save the charge of cheating by personation.

8. DJ Tan Boon Gin convicted the accomplice and sentenced her as follows:

DAC Number	Offence	Sentence	Concurrent/ Consecutive
20960/2005	s109 r/w s467 r/w s471, Cap. 224	18 months	<i>Consecutive</i>
22030/2005		9 months	<i>Consecutive</i>
22032/2005		9 months	<i>Consecutive</i>
22033/2005		9 months	Concurrent
28178/2005	s109 r/w 468, Cap. 224	6 months	Concurrent

9. The aggregate sentence for the accomplice was **36 months' imprisonment** (w.e.f. 5 September 2005 when the accomplice surrendered herself so that her bail monies could be released. She had previously been remanded for about 2 weeks after she was charged and before she managed to furnish bail)

D OTHER FACTORS TO CONSIDER IN SENTENCING

10. The aggravating factors highlighted at Paragraphs 3 – 6 in these Submissions on Sentence were also highlighted to the court during the sentencing for the accomplice.

11. Defence Counsel for the accomplice had indicated to the prosecution since June 2005 that the accomplice would be pleading guilty to her charges. The accused in contrast only indicated he would plead guilty at a late stage, thus causing the prosecution to expend considerable resources in preparing for trial.

12. Defence Counsel for the accomplice had cited in mitigation that the accomplice had been co-operative with the CAD and with OCBC since her arrest in May 2005. An affidavit from the accomplice was used by OCBC in its application for a Mareva Injunction over the remaining monies left in the Loyal Bank Limited ("LBL") and Griffon Bank Limited ("GBL") accounts that had been opened by the accused and accomplice. The accused in contrast offered no such cooperation.

13. The accomplice had also made restitution of S\$110,000.00 which was the accomplice's share of the proceeds of the crime.

14. According to the accomplice about US\$260,000.00 (around S\$450,000.00) remains in the LBL and GBL accounts. This has not been confirmed by LBL or GBL. The account-holders' losses were fully reimbursed by OCBC. Factoring in the assumed frozen sum of around S\$450,000.00 and the S\$110,000.00 of restitution made by the accomplice for her share of the proceeds of crime, the total loss to OCBC stands at around \$400,000.00.

D CONCLUSION

15. The prosecution respectfully submits that an appropriately severe sentence should be passed on the accused in the present case.

16. The prosecution further submits that with respect to the forgery charges, an aggregate sentence higher than that of the accomplice's ought to be imposed on the accused, in light of their differing circumstances (*as highlighted in Paragraphs 11 – 13 above*).

17. The prosecution further submits that a custodial sentence ought to be imposed for the cheating by personation charge as the use of another's Singaporean passport is a serious offence and compromises the integrity of our national borders, and that any custodial sentence (if imposed) should run consecutive to the aggregate term of imprisonment imposed for the forgery charges as it they are distinct offences.

Sentence

Aggravating factors

13 The manner in which the offences were committed showed a callous disregard of the integrity of financial institutions. The accused also abused his privileged position of having access to customer information within the bank by using the same to siphon away large amounts of money to accounts operated by him. Whilst the accomplice had abetted him in this criminal enterprise, he appeared to be the one who performed most of the crafty maneuvers. These included, preparing and forging the signatures of Wage and Asiah on the type-written instruction letter, forging the signature of Josephine, arranging for the bank account information and ATM cards to be sent to a vacant house address and retrieving the cards, making clandestine trips to Johor Bahru on someone else's passport to withdraw the proceeds of his crime.

Analysis of Precedents

14 In assessing sentence, I considered the current sentencing practice in the subordinate courts to determine the sentence for the respective charges that the accused had faced. In essence, the offences involved varying degrees of dishonesty, fraud, forgery, and cheating. I therefore looked at the sentences that have been passed for such cases to ascertain the benchmark for the offences that the accused had committed.

15 For offences under section 471 read with section 467 Penal Code, the sentences imposed have been in the region of about 30 months imprisonment per charge even when there has been no actual loss caused to the bank. (*Nomura Taiji & Ors v PP* [1998] 2 SLR 173). In *Nomura's* case, in reducing the original sentences imposed, the learned Chief Justice remarked that

The amount of the loss which could have resulted was an important factor to be taken into account in determining the severity of the sentences. However, it was not in every case that the sentence should reflect proportionately to the amount of the loss which could have resulted. *In this case, the scam was so ridiculous and absurd that it never would have succeeded in any event and this had to be taken into account in determining the sentences.* The third and fourth appellants' sentences were therefore reduced for each charge to 30 months to be concurrent while the first and second appellants' sentences were reduced for each charge to 24 months, also to be concurrent. *(emphasis added)*

16 In the present case however, there is clear evidence of the large amount of loss caused to the bank and this must be a factor in determining the appropriate imprisonment term for the accused, which must be higher than the length of imprisonment terms imposed in the *Nomura's* case.

17 In addition, it is also necessary to consider that highly structured planning had gone into perpetrating this fraud. The sophistication required to commit the offences came from his knowledge of the practices within the bank and hence I took a serious view of the fact that he worked within the organisation and breached the trust reposed in him. Where the amount involved for such offences exceed S\$500,000 the tariff is at least **4 ½** years imprisonment. The term of imprisonment should be higher where the accused has not made any restitution, such as in this case.

18 In so far as the forgery for the purposes of cheating charge was concerned, this is akin to credit card fraud cases and is of a serious nature. Offences involving credit cards affect the financial and commercial integrity of Singapore's banking system. In applying for credit card facilities using forged documents in another person's name the accused was perpetrating a fraud on the financial institutions and I was of the view that a measure of general deterrence was also necessary in the sentence for such an offence.

19 In addition to the charges that related to forgery and deception practised on the bank, the accused faced further charges of cheating by impersonation. He had used the passport belonging to one Tay Kim Leng, to leave Singapore to collect the proceeds of his crime. He presumably did this to cover his tracks. This fact further illustrates the devious planning that the accused had made for this whole criminal scheme.

20 Taking all the factors into account and also the prosecution's address on sentence, I imposed the following sentence in respect of the charges that related to forgery and cheating the banks.

DAC 20958/05 (P1) (amount involved US\$ 342,523.07)	-	24 months' imprisonment
---	---	-------------------------

DAC 22100/05 (P2) (amount involved S\$ 215,518)	-	15 months' imprisonment
---	---	-------------------------

DAC 22102/05 (P3) (amount involved S\$ 178,000)	-	15 months' imprisonment
---	---	-------------------------

DAC 22103/05 (P4) (amount is the same as in P3)	-	15 months' imprisonment
--	---	-------------------------

DAC 28188/05 (P6)	-	12 months' imprisonment
-------------------	---	-------------------------

21 Charges in P1,P2 and P3 were ordered to run consecutively making it a total of 54 months imprisonment.

22 In respect of the cheating by impersonation charge the learned DPP urged the court to impose a custodial sentence and to have it run consecutive to the other charges. I carefully considered this submission and agreed with the prosecution. In the present climate of global efforts at tightening border controls and ensuring safe travel, conduct that tends to compromise the integrity of our national borders must be deterred. Given the blatant disregard of our immigration laws by the accused and his

repeated acts in using another's passport to travel (3 other similar charges that were taken into consideration), I imposed a sentence of 6 months imprisonment for the charge under section 419 Penal Code and ordered the sentence to run consecutive to the 54 months' imprisonment that I had imposed for the other offences. The accused was therefore sentenced to a total of 60 months' imprisonment with effect from the date of his remand, 26 May 2005.

Parity in Sentence – reasons for disparity

23 In assessing sentence, I was fully aware of the sentence imposed on the accomplice. Since there were no Grounds of Decision, I called for the court records in the case of the accomplice and reviewed the facts and mitigation presented on behalf of the accomplice before I decided on the sentence for the accused. I did so on account of the fact that the principle of parity is well-established in local sentencing law.

24 The learned Chief Justice first clarified the principle in *Yong Siew Soon and Another v Public Prosecutor* [1992] 2 SLR 933 at 936 by placing the often cited dicta of Choor Singh J in *Liow Eng Giap v PP* in perspective :

10 Counsel relied on *Liow Eng Giap v PP*, where Choor Singh J had said [at p 11]:

... where there are no differentiating factors, as in this case, public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same or similar offences. Failure to observe this principle may, as in this case, lead to a legitimate complaint by an appellant that he has been dealt with more severely than another who committed an identical offence.

11 Admittedly, consistency in sentencing is a desirable goal, but it is not an overriding consideration, since the sentences in similar cases may have been either too high or too low. In this context, Grimberg JC observed in *Goh Moh Siah v PP* [1988] CLAS News No 2 p 14: 'Although there is an obvious interest in consistency of sentencing, I see no reason why the learned district judge should have considered himself fettered by a sentence imposed by another court, which was drawn to his attention, and which he rightly regarded as inadequate' In the present case, the learned trial judge said: 'I am of the view that the mere fact that another offender had been lucky to have received a relatively lenient sentence did not mean that all others who committed similar offences were entitled to lenient sentences.' He took the view that the offence was not something that could be viewed lightly. It called for a deterrent sentence and a fine would not be appropriate. His judgment in this respect could not be faulted.

25 The learned Chief Justice further elucidated the parity principle in his judgment in *Public Prosecutor v Norhisham bin Mohamad Dahlan* [2004] 1 SLR 48 at 52 – 53 as follows:

16 In *Lim Poh Tee v PP* [2001] 1 SLR 674, the court ruled that while consistency in sentencing was a desirable goal, this was not an inflexible or overriding principle. In particular the court stated:

The different degrees of culpability and the unique circumstances of each case play an equally, if not more, important role. Furthermore, the sentences in similar cases may have been either too high or too low: *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [26], following *Yong Siew Soon v PP* [1992] 2 SLR 933 at 936. It was readily apparent upon a closer examination, that there were several significant crucial differences in the facts of the present appeal which clearly warranted a comparatively higher sentence.

...

Nonetheless, the full reply was found in *PP v Ramlee* [1998] 3 SLR 539. In that case, the court stated at [7]:

Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or *their personal circumstances*: *Archbold* (1998) at para 5-153. An offender who has received a sentence that is significantly more severe

than has been imposed on his accomplice, and there being no reason for the differentiation, is a ground of appeal if the disparity is serious. This is even where the sentences viewed in isolation are not considered manifestly excessive: see *R v Walsh* (1980) 2 Cr App R (S) 224.

17 Whether the above authority successfully challenged the Prosecution's argument hinged on the meaning of the phrase "their personal circumstances". *Archbold* (2003) states at para 5-171:

Relevant difference in personal circumstances:

It is appropriate for a court to distinguish between offenders on the ground that one is significantly younger than the other (see *R v Turner*, unreported, October 6, 1976), that one has a significantly less serious criminal record (see *R v Walsh*, 2 Cr App R (S) 224, CA) or that some other mitigating circumstance is available to one defendant which is not available to the other (see *R v Tremarco*, 1 Cr App R (S) 286 CA). **Where the sentence on one defendant is reduced on account of mitigating circumstances which apply only to that defendant, the sentences of the other defendants should not be reduced:** *Att-Gen's References* (Nos 62, 63 and 64 of 1995). (emphasis added)

26 The most recent decision of the learned Chief Justice in *Sarjit Singh Rapati v Public Prosecutor* [2005] 1 SLR 638 at 659, also reiterated the above approach to the principle. Besides the aggravating features enumerated above, I was of the view that there were significant differences between the accomplice's role, the factors in her mitigation and that of the accused. I shall deal with these now.

Significant differences in circumstances between the Accused and the accomplice

Full restitution made by accomplice of her share of illegal gain

27 It was undisputed that the total amount of money siphoned was S\$963,536.00 from the 3 OCBC accounts. Of this sum, the accomplice's share was S\$110,000. She made full restitution of the amount. Common law sentencing principles recognise that restitution is a mitigating factor in passing sentence. In determining the relevant sentence for an offence, courts take into account the fact that restitution has been made by returning goods or money stolen. This would be a significant factor in the assessment of sentence for the accomplice. The prosecution also submitted that about S\$450,000 was still believed to be in the foreign bank accounts. However in respect of the balance amount of S\$400,000 benefited by the accused, he made no restitution. Clearly the failure by the accused to make any restitution in respect of the sum S\$400,000 was one of the several material factors that I had to consider when assessing sentence for him.

Full co-operation with the authorities and the bank from the inception

28 My perusal of the court records of the accomplice's mitigation, which was confirmed by the learned DPP (para 12 of the Address on sentence), showed that the accomplice had been co-operative with the CAD and with OCBC Bank since her arrest in May 2005. She had provided detailed information to the OCBC Bank on the scam, which the bank used to support its application for a Mareva Injunction over the remaining monies left in the Loyal Bank Limited and Griffon Bank Limited accounts that had been opened by the accused and accomplice. The accused in contrast offered no such co-operation. Such assistance is crucial in offences of this nature where financial institutions seek to recover the proceeds of crime. Where the crime is multi faceted and transnational, it would be a difficult and daunting task for investigators to unravel the puzzle quickly and bring the offenders to justice. It is equally important that the monies are traced before the gains are dissipated by the accused. The timely co-operation rendered by the accomplice in this regard would accordingly earn her a discount which would not be available to the accused.

Indication of preparedness to plead guilty from the outset

29 The accomplice had indicated that she would plead guilty to the charges that were brought against her from the earliest pre-trial conference. By her early indication, she did not waste the resources of the State in preparing for trial to prove her guilt. The accused on the other hand did not indicate any such willingness to plead guilty but claimed trial. His case was fixed for a 6 day trial before me. Although the learned counsel tried to impress on the court that there was 'no offer' made to the

accused on the number of charges that the prosecution would proceed on which consequently resulted in his late indication of a guilty plea, I was unable to place much weight on this. The fact remains that the accused more than anyone else would know his culpability and it is up to him to indicate whether he would plead guilty to the charges as early as possible. He failed to do this. Whilst I did not consider his having claimed trial as an aggravating factor, I was not able to give him any discount for the guilty plea when there was overwhelming evidence against him.

Witness for the prosecution

30 Besides the evidence gathered by the CAD, there was also the evidence of the accomplice who was a witness of the prosecution. The accomplice had agreed to be a witness for the prosecution and had after her conviction and sentence, been interviewed by the learned DPP for her to be called as a witness for the prosecution. Faced with such overwhelming evidence the accused was probably left with little choice, but to plead guilty. The fact that the accomplice agreed to be a prosecution witness is yet another significant factor that went to her credit in the assessment of her sentence.

31 Parity cannot be blind to the differing degrees of culpability of co-accused persons and their mitigation pleas. During the mitigation I highlighted the various differentiating factors that I have listed above to the learned counsel who responded that the sentence for this accused should be no more than an additional 6 months in total. I was unable to agree with counsel that the gravity of the offences and the role played by the accused would justify such a lenient treatment. I was of the view that in respect of the five charges which were similar to the charges to which the accomplice pleaded guilty to, the sentence for the accused should at least be one third more than that imposed on the accomplice.

32 I arrived at the global sentence of 60 months' imprisonment after having carefully considered all the relevant mitigating as well as aggravating factors in this case. Even if it be argued that the accomplice was let off lightly in this case, the dicta of Griffiths LJ in *Large* (1981) 3 Cr App R (S) 80, 82-83 is apposite at this juncture to dispel any misguided notion on the issue of parity in sentencing in the present case:

If there be honour among thieves.., let him who has been properly and severely sentenced rejoice in the good fortune of his companion who has received a lenient sentence. Let him not complain that he himself has received a proper sentence.

BACK TO TOP