# Mohd Hazwan bin Mohd Muji *v* Public Prosecutor
# [2012] SGHC 203

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| **Case Number** | : Magistrate's Appeal No 118 of 2012 |
| **Decision Date** | : 10 October 2012 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Quentin Loh J |
| **Counsel Name(s)** | : S K Kumar (S K Kumar Law Practice LLP) for the appellant; Samuel Chua (Attorney-General's Chambers) for the respondent. |
| **Parties** | : Mohd Hazwan bin Mohd Muji — Public Prosecutor |

*Criminal Law – Statutory Offences – Immigration Act – Section 57(1)(c) of the Immigration Act*

10 October 2012 Judgment

**Quentin Loh J:**

1 This is an appeal by the appellant, Mohd Hazwan bin Mohd Muji, against his conviction for an offence of engaging in the business of conveying a prohibited immigrant out of Singapore under s 57(1)(c) of the Immigration Act (Cap 133) ("the Act"), and also against his sentence under s 57 (1)(iii) of the Act of 2 years' imprisonment and 3 strokes of the cane for the conviction. Having heard both parties on 7 September 2012, and having considered the submissions tendered by parties pursuant to my directions given during that hearing, in a hearing before me on 5 October 2012, I exercised my power under s 390(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") and framed an alternative charge under s 57(1)(b) of the Act punishable under s 57(1)(ii) of the Act. I now set out my written grounds for doing so.

**Facts**

***The charge against the appellant***

2 On 3 February 2012, the following charge was preferred against the appellant:

> You … are charged that you, on 01.02.2012 at the Woodlands Immigration Checkpoint, Departure Car Bay, Singapore, did engage in the business of conveying out of Singapore in a Malaysian registered vehicle bearing registration number JMX 5517, one Bangladeshi national namely one Dalowar Hossain Soleman Kazi… whom you had reasonable grounds to believe to be a prohibited immigrant and you have thereby committed an offence under section 57(1)(c) of the Immigration Act (Cap. 133) which offence is punishable under section 57(1)(iii) of the said Act.

3 S 57(1)(c) of the Act which is punishable under s 57(1)(iii) of the Act provides that:

> **Offences**
>
> **57.**—(1) Any person who —
>
> …

(c) engages in the business or trade of conveying to or out of Singapore in or on any vehicle, vessel, aircraft or train any person whom he knows or has reasonable grounds for believing is a prohibited immigrant;

…

shall be guilty of an offence and —

…

(iii) in the case of an offence under paragraph (c), shall be punished with imprisonment for a term of not less than 2 years and not more than 5 years and shall also be punished, subject to sections 325(1) and 330(1) of the Criminal Procedure Code 2010, with caning with not less than 3 strokes;

***The background facts***

4 On 1 February 2012, the appellant was arrested by officers of the Immigration & Checkpoints Authority ("ICA") at the Departure Car Bay of Woodlands Checkpoint. A Bangladesh national Dalowar Hossain Soleman Kazi ("Dalowar") was found crouching on the floorboard at the rear passenger seat of a car bearing Malaysian registration number JMX5517 (the "vehicle") driven by the appellant. Investigations revealed that the vehicle belonged to the appellant's brother-in-law, one Johan Bin Sidek ("Johan").

5 The appellant had met Johan on the morning of 1 February 2012 and, at Johan's request, agreed to help him to convey Dalowar, who was unlawfully remaining in Singapore, out of Singapore and into Malaysia by hiding him in Johan's vehicle. The appellant was promised a sum of S$1,000 for doing so. Johan showed the appellant how to conceal Dalowar on the floorboard at the rear passengers' seat by placing two pieces of cloths over Dalowar to avoid being detected by the checkpoint authorities. Johan also instructed the appellant to reach the taxi stand located at Marsiling MRT station by 11.30am and Dalowar would approach him. Johan further instructed the appellant to drop Dalowar off at the Caltex petrol station located outside the Malaysia immigration checkpoint in Johore once he had successfully conveyed him out of Singapore.

6 The operation went as planned until the appellant arrived at Woodlands Checkpoint at about 12.37pm and was stopped by ICA officers for the usual checks. The ICA officers found Dalowar crouching on the floorboard at the rear passenger seat and arrested the appellant and Dalowar. Two separate statements were recorded from the appellant on 1 February 2012 at 6.15pm ("P3") and on 2 February 2012 at 2.30pm. In the proceedings below, the appellant did not dispute the fact that he was caught at the Woodlands Checkpoint for smuggling Dalowar in a car out of Singapore into Johore, and did not dispute that he knew that Dalowar was a prohibited immigrant.

**Decision Below**

7 In the trial in the Subordinate Courts below, the appellant contended that he had merely *abetted* Dalowar to leave Singapore in contravention of the less serious offence under section 57(1)(b) of the Act which carried a lower sentence, rather than *engaging in the business* of conveying Dalowar out of Singapore. The appellant argued that he could not have engaged in any business of conveying prohibited immigrants out of the country because he was only involved in one transaction and not multiple transactions. The trial judge ("the Judge") disagreed. First, he held that one transaction of conveying prohibited immigrants can also amount to a "business", relying on the High

Court’s decision in *Shekhar a/l Subramaniam v PP* [1997] 1 SLR (R) 291 (“*Shekhar*”). In *Shekhar*, Yong CJ did not accept counsel's submission that the word “business” in s 57(1)(c) of the Act connoted some sense of system and continuity, or that the offence under s 57(1)(c) required an accused to have engaged in more than a single act of conveying a prohibited immigrant (at [8]). Yong CJ said (at [12]):

> [The Act] seeks inter alia to deny entry into Singapore to persons falling within any “prohibited class”; and to punish persons who succeed in illegally gaining entry as well as those who assist them. Such assistance may be rendered on a “one-off” basis; or it may be part of a long-standing routine: the former is no less inimical to our strict immigration policies than is the latter. In short, there is no reason why the Act should only catch out persons who render assistance to prohibited immigrants on a long-standing basis; and no reason, therefore, to say that an offence under s 57(1)(c) is established only where an accused has undertaken the conveyance of prohibited immigrants into Singapore with some degree of “system and continuity”.

8 Next, the Judge found that the appellant had “engaged” in the business of conveying illegal immigrants by being a part of Johan’s enterprise. He held, on the basis of the evidence before him, that the appellant knew that Johan had a business of smuggling prohibited immigrants out of Singapore (at [15]-[16]). For example, in one of the appellant’s recorded statements (P3), the appellant said he knew that Johan had been arrested in Singapore sometime on 5 Jan 2012 (about a month before the appellant’s arrest) for human smuggling. Thereafter on 1 February 2012, Johan asked the appellant to convey a prohibited immigrant out of Singapore for S$1000 and he agreed. Johan gave the appellant detailed instructions on where to meet the prohibited immigrant, what to do and how to hide him in the car, and the appellant stated at in his recorded statement P3 that Johan had used the same method himself to convey illegal immigrants out of Singapore. Therefore, there was no question that the appellant knew that Johan was in the business of smuggling prohibited immigrants out of Singapore.

9 The Judge also found that at the very least, the appellant knew that Johan had arranged for the appellant to convey Dalowar out for a fee of S$1,000 (at [18]). Having such knowledge and participating in the scheme nonetheless, the Judge held that this amounted to the act of engaging in the business of conveying illegal immigrants out of Singapore. The Judge then noted that (at [21] and [23]):

> 21 … It did not matter that he was not the one who had negotiated with either the prohibited immigrant or any of the intermediaries or runners. The fact remained that the [appellant] had participated and had taken part in that business by performing a crucial role and benefitting financially from that role.
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> …
>
> 23 The defence contention that the [appellant] had merely abetted [Dalowar] to leave Singapore and was therefore liable for a lesser offence completely ignored the fact that the [appellant’s] act was committed pursuant to and in the context of an illegal business. The position would have been different had [Dalowar] approached the [appellant] directly for help to sneak out of the country and the [appellant], out of compassion, then decided to help him do so. If that had been the scenario, I would have been prepared amend the charge to the lesser offence. However, that was not the case here.

**Issue**

10 The present appeal turns on the interpretation of the operative phrase of s 57(1)(c) of the Act, namely, the phrase "engages in the business". In particular, the issue before me is whether, given the level of involvement of the appellant in the present appeal, the appellant can be said to be "engaged in the business" of conveying a prohibited immigrant out of Singapore.

**This Court's Decision**

***The meaning of the word "business"***

11 It is now settled law that the scope of the word "business" as used in s 57(1)(c) of the Act does not connote an element of system and continuity. To be considered to have been engaged in the business of conveying prohibited immigrants, an accused person need not have engaged in more than one act of conveying prohibited immigrants nor does the act of conveying need to have been a completed one (see *Shekhar* at [12] and *Public Prosecutor v Ng Yong Leng* [2009] 4 SLR(R) 107 ("*Ng Yong Leng*") at [5]).

***The meaning of the word "engages"***

12 The word "engages" in s 57(1)(c) of the Act is not defined anywhere in the Act. The short title of s 57 ("Offences") and the part of the Act in which s 57 lies (Part VI, "Miscellaneous") also offers no assistance to the interpretation of this word. The second reading of Bill 26 of 1969, which introduced the new offence under s 57(1)(c) into the Act, is similarly of no assistance as there is no comment about Parliament's intention with regard to the scope and intent of s 57(1)(c) of the Act.

13 However s 57(6) of the Act casts some light on the scope of the offence under s 57(1)(c) of the Act. S 57(6) provides:

> (6) Where, in any proceedings for an offence under subsection (1)(c), it is proved that the defendant has *conveyed* any prohibited immigrant in any vehicle, vessel, aircraft or train, it shall be presumed, until the contrary is proved, that he is *engaged in the business or trade of conveying* to Singapore in or on that vehicle, vessel, aircraft or train that prohibited immigrant knowing him to be, or having reasonable grounds for believing him to be, a prohibited immigrant.
>
> [emphasis added]

14 It is clear from the text of s 57(6) of the Act that a distinction is drawn between the mere act of conveying and the act of engaging in the business of conveying, in that the mere act of conveying is insufficient to constitute the act of engaging in the business of conveying. If this were not the case, *ie*, if the mere act of conveying without more is sufficient to constitute the act of engaging in the business of conveying, then s 57(6) of the Act would be rendered otiose, and this could not have been Parliament's intention. This interpretation is supported by the comments of the then Minister of Health and Home Affairs, Mr Chua Sian Chin, during the second reading of Bill No 52 of 1973 (Parliamentary Debates, vol. 32 (30 November 1973)) which introduced the present s 57(6). The Minister said (at col 1341-1342):

> Under section 56(1)(c) of the Immigration Act [which corresponds to s 57(1)(c) of the present Act], any person who engages in the business or trade of conveying to Singapore in or on any vessel, aircraft or vehicle, any person whom he knows or has reasonable grounds for believing is a prohibited immigrant, is guilty of an offence. This is an offence of trafficking in illegal immigrants.
>
> It is, however, extremely difficult to secure convictions under this provision because of the

difficulty in adducing evidence to prove beyond reasonable doubt that the defendant is engaged in the business of trafficking illegal immigrants to Singapore. Between 1970 and June 1973, of the 88 traffickers arrested only 35 were prosecuted in court. The other 53 were not charged because it was not possible to adduce the amount of evidence required for a conviction in court.

In order to facilitate proof, clause 2 (c) of the Bill therefore seeks to introduce a legal presumption to provide that where, in any proceeding for an offence of trafficking, it is proved that the defendant has conveyed any prohibited illegal immigrant in or on any vessel, aircraft or vehicle, it shall be presumed, until the contrary is proved, that the defendant is engaged in the business or trade of conveying to Singapore prohibited immigrants.

15 That was not the only occasion where Parliament had commented on the difficulty of adducing evidence sufficient to ground a charge under s 57(1)(c) of the Act. In the second reading of Bill 35 of 1998 (Parliamentary Debates, vol 69 (4 September 1998), the then Minister for Home Affairs Mr Wong Kan Seng made the following comments in the context of proposing more severe punishment for the offence of abetment of any person to enter Singapore in contravention of the Act (at col 931-932):

Smugglers of illegal immigrants bring the illegal immigration problem to Singapore and therefore have to be dealt with severely. Currently, those convicted of engaging in the business of conveying prohibited immigrants into Singapore can be jailed between two and five years and caned a mandatory minimum of three strokes. Although this penalty is adequately severe, in reality, many traffickers, boatmen and runners caught smuggling illegal immigrants escape punishment under this section. Instead, they are charged with abetment of illegal entry. This is because it is, in practice, difficult to obtain evidence showing that the traffickers have engaged in the business of smuggling illegal immigrants. As abettors, they are liable to be jailed between six months and two years and fined up to $6,000, but do not receive corporal punishment.

Let me relate an actual example to illustrate the point I am making. On 7th May 1998 at 3.30 am, Police Coast Guard intercepted a fast-moving sampan, fitted with a 200 hp outboard engine, at sea off Changi while it was proceeding from Batam towards Pulau Tekong. There were two boat operators and three passengers in the sampan. None of them possessed valid travel documents and they were all arrested. The two boat operators were charged as abettors, and sentenced to seven months' imprisonment each. The three passengers were charged for attempting to enter Singapore illegally, and sentenced to three months' imprisonment each.

The two boat operators could not be charged as traffickers because we did not have adequate proof that they were engaged in the business of conveying illegal immigrants to Singapore. Under our proposal to equate the penalty for attempted illegal entry to the penalty for illegal entry, caning for attempted illegal entry will become mandatory for the passengers. But it is absurd that the passengers are caned under the proposed amendments while those who facilitated their illegal entry, ie, the boat operators, are not.

It is more effective to tackle the problem at source, and deter the conveyance of illegal immigrants to Singapore altogether. Besides, these so-called "abettors" are as guilty in bringing in illegal immigrants as those convicted as smugglers. Therefore, deterrent penalties have to be imposed. To ensure that these smugglers do not escape the corporal punishment meted out to those convicted of trafficking in illegal immigrants, we propose that the penalty for abetment of illegal entry be amended to include mandatory caning. Clauses 11(b) and (d) of the Bill amend section 57(1) of the Act to provide that abettors of illegal entry under section 6 will be punished with a mandatory minimum of three strokes of the cane, in addition to the existing penalty of between six months and two years' jail.

16 From the Minister's statement, it is again clear that a mere conveyor of prohibited immigrants, like the boat operator discussed above, is not caught under s 57(1)(c) of the Act. If the Minister thought it was 'absurd' that a person convicted of attempted illegal entry would suffer caning while the boat operator conveying him into Singapore would not, it is strange why the Prosecution should not simply charge the said boat operator under s 57(1)(c) of the Act and thereby, on conviction, suffer mandatory caning as punishment rather than have Parliament impose mandatory caning as punishment for an offence under s 57(1)(b) of the Act. The only inference to be drawn is that it is not possible to charge the boat operator under s 57(1)(c) of the Act as such an offence requires proof of a level of involvement above that of being a mere conveyor of prohibited immigrants.

17 Thus, it appears from the parliamentary reports that Parliament had envisaged the offence of engaging in the business of conveying illegal immigrants as dealing with more than mere conveyors of prohibited immigrants. That is not to say that persons caught in the act of conveying can never be charged under s 57(1)(c) of the Act for engaging in the business or trade of conveying prohibited immigrants. Such persons can similarly be charged and convicted under s 57(1)(c) of the Act if:

(a) they are presumed under s 57(6) of the Act to be engaged in the business or trade of conveying prohibited immigrants *to* Singapore and they are unable to prove the contrary on a balance of probabilities; or

(b) there is sufficient evidence to prove beyond a reasonable doubt that the accused is more than a mere runner, and is engaged in the business of conveying prohibited immigrants *to or out of* Singapore.

However, as accepted by parties in the present appeal, the presumption in s 57(6) of the Act does not apply in the present appeal as the appellant was charged and convicted for an offence of engaging in the business of conveying a prohibited immigrant *out of* Singapore. I make no comment on whether the omission to include a presumption of engaging in the business of conveying prohibited immigrants *out* of Singapore in s 57(6) of the Act was deliberate as this was not discussed in the second reading of Bill No 52 of 1973.

18 How then is the prosecution to prove that the appellant was engaging in the business of conveying a prohibited immigrant out of Singapore? Without express guidance from the text of the Act and parliamentary intent, I now turn to the existing case law in relation to s 57(1)(c) of the Act.

***Case law in relation to s 57(1)(c) of the Act***

19 There appears to only be three cases dealing with the offence under s 57(1)(c) of the Act where written grounds were delivered, namely, *Shekhar*, *Ng Yong Leng*, and *Public Prosecutor v Gabriel Kong Kum Loong* [2011] SGDC 164 ("*Gabriel Kong*"). I shall examine each of these decisions in detail.

20 In *Shekhar*, the appellant was a lorry driver who had colluded with a male Indian named Segar to convey an Indian national named Veeraiah into Singapore knowing that Veeraiah had no passport. The appellant was paid RM$100 by Segar for doing so. The whole operation took place on 25 September 1996 and involved Veeraiah lying down at the rear of the appellant's lorry, covered with a piece of canvas, whilst the appellant drove through the Woodlands Immigration Checkpoint. Unfortunately for the appellant and Veeraiah, immigration officers ambushed the lorry after it had cleared the immigration checkpoint. The appellant was then arrested and charged with the offence of engaging in the business of conveying Veeraiah to Singapore in a motor vehicle. He pleaded guilty to the charge and was sentenced to two years' imprisonment, with three strokes of the cane, but

sought a criminal revision of his conviction before the High Court.

21 Before the High Court, the appellant focused his arguments on the meaning of the word "business" in s 57(1)(c), arguing that the word "business" in this section connoted some sense of system and continuity. As noted above, Yong CJ did not accept this argument or the submission that the offence under s 57(1)(c) required an accused to have engaged in more than a single act of conveying a prohibited immigrant (*Shekhar* at [8] and [12]). Unfortunately, the decision in *Shekhar* only dealt with the meaning of the word "business" and not the meaning of the word "engages" in s 57(1)(c) of the Act. Hence, I find the decision in *Shekhar* of little assistance to me in the present appeal. The fact that one transaction can amount to a "business" says nothing about the level of involvement required to be considered to be "engaged" in that business.

22 In contrast, the decision in *Ng Yong Leng* provides more assistance. In *Ng Yong Leng*, the accused accepted a job from one "Ah Phiew". No description was given as to what the job was but from the admitted statement of facts it seemed clear that after his contact with Ah Phiew, the accused met one Yap and one Marcus and asked them to convey prohibited immigrants out of Singapore. They discussed the details of the transaction and the accused then told the three Chinese nationals who were supposed to be conveyed out of Singapore to meet him that evening between 6.00pm and 7.00pm. They then met Yap and Marcus at a carpark next to the Aljunied MRT station and the three Chinese nationals got into the car with Yap and Marcus. The group drove to shore off Tuas West Drive Road at 11.00pm and waited there for five hours for a boat to take the three Chinese nationals out of Singapore. The boat did not arrive and the three Chinese nationals were told to get back into the car with Yap and Marcus. However, the group was arrested by immigration officers before they could drive off. The accused subsequently pleaded guilty to a charge under s 57(1)(c) of the Act.

23 In a criminal revision brought by the Prosecution for matters not relevant for present purposes, Choo J observed that (at [5]):

> *The nub of the offence [under s 57(1)(c) of the Act] is the "carrying on the business"*. In this regard, the accused had admitted to facts which in their ordinary meaning showed that the accused had engaged in the act for his personal gain. That he had also made all the arrangements without himself participating in the actual act of conveying the three Chinese nationals was also proof that he was at the material time "carrying on the business" of conveying prohibited immigrants.
>
> [emphasis added]

I find that Choo J's observation above similarly shows that being engaged in or carrying on the business of conveying prohibited immigrants involves a degree of involvement in the business of conveying prohibited immigrants higher than the mere act of conveying, such as making arrangements as to where and at what time to pick up the prohibited immigrants and planning the modus operandi for the illegal operation.

24 While not stated explicitly, I am of the view that the decision in *Gabriel Kong* is consistent with my interpretation of the word "engage" in s 57(1)(c) of the Act. In *Gabriel Kong*, the accused was arrested at Woodlands Checkpoint with a male PRC national ("Huang") found hidden in the boot of the car driven by the accused. Investigations revealed that whilst in Malaysia, the accused had taken a loan from one "Lao Gao" for his gambling debts but was unable to repay the loan. The accused was then asked by Lao Gao whether he was willing to convey immigrants who had remained unlawfully in Singapore, out of Singapore to Malaysia illegally, by hiding them in the car boot in order to offset his

debts, failing which he threatened to harass his family members. The accused accepted Lao Gao's offer as he wanted to repay the loan as soon as possible.

25 On the morning of the day of the offence, Lao Gao called the accused over the phone and instructed him to go to Wang Huo, a small town located at Johor Bahru, Malaysia to look out for a vehicle, which had a car key placed near its front right tyre. The accused was instructed to drive the said car to the carpark of Woodlands Centre Road in Singapore to await further instruction, and was also informed that he would receive RM500 upon the successful conveying of the immigrant out of Singapore to Johor Bahru. The accused complied, and on the afternoon of the same day, the accused received another phone call from Lao Gao to look out for Huang. The accused eventually spotted Huang at the carpark and instructed him to board the car and to crawl into the car boot after he had lowered the rear passenger seat. After Huang had crawled and hid himself in the car boot, the accused pushed the rear passenger seat back to its original position, concealing Huang. The accused then drove to the Woodlands Checkpoint and was stopped by ICA officers for checks whereupon Huang was found hiding in the boot of the vehicle. The accused and Huang were then placed under arrest, and the accused was then charged with an offence under s 57(1)(c) of the Act for engaging in the business of conveying Huang out of Singapore.

26 At trial, the defence submitted that the accused had merely abetted the prohibited immigrant to leave Singapore, and asked for the charge to be reduced to one under s 57(1)(b) of the Act. The District Judge agreed with the defence, finding that the prosecution had not proved its case beyond a reasonable doubt that the accused had "engaged in the business of conveying out of Singapore" the prohibited immigrant (at [12]). The District Judge, unfortunately, did not give substantive reasons for his ruling. The only reasonable inference that can be drawn therefore is that the District Judge amended the charge because he thought that the charge under s 57(1)(c) was not made out on the evidence before him. This means that the role of the accused in *Gabriel Kong*, which did not include any form of planning or making of arrangements with the prohibited immigrant but, rather, was limited to receiving instructions from the man behind the scenes, is insufficient to ground a charge of engaging in the business of conveying an illegal immigrant out of Singapore. The learned Deputy Public Prosecutor ("DPP") also confirmed that the Prosecution's appeal from the District Court's decision in *Gabriel Kong* was discontinued.

27 I should add that while the District Judge in *Gabriel Kong* had, when considering the appropriate sentence to be meted out to the accused, discussed the role of the accused in the illegal operation (at [25]-[26]), I am of the view that the District Judge's comments in this regard relate only to sentencing considerations rather than the reason for the amendment of the charge. In particular, the fact that the accused in *Gabriel Kong* was under duress from Lao Gao should not be a consideration in deciding whether to amend a charge under s 57(1)(c) to one under s 57(1)(b) of the Act as that is only relevant for sentencing purposes.

28 Finally, in relation to *Gabriel Kong*, I should add that the accused was promised a sum of RM500 if he had successfully conveyed the prohibited immigrant out of Singapore. I thus do not accept the learned DPP's submission that the fact that an accused had conveyed a prohibited immigrant for his personal gain *necessarily* means that he should be caught under s 57(1)(c) of the Act. This is certainly not the ratio in *Ng Yong Leng*, nor is it consistent with the decision in *Gabriel Kong*.

***The level of involvement of the appellant***

29 From the decisions of *Ng Yong Leng* and *Gabriel Kong*, I find that the act of "engaging" in the business of conveying prohibited immigrants requires a level of involvement over and above being a mere conveyor of such prohibited immigrants. As such, I respectfully disagree with the learned trial

judge that to "engage" in the business of conveying prohibited immigrants simply means to "participate or take part in" in that business. I find that some act of planning or of making of arrangements with the prohibited immigrant and the conveyor (if the accused is not the person personally conveying the prohibited immigrant in or out of Singapore) is required.

30 On this interpretation of the word "engage" as used in s 57(1)(c) of the Act, I find that it was wrong to find that the appellant's role of hiding the prohibited immigrant in his brother-in-law's vehicle and conveying him to the Woodlands Checkpoint, without negotiating with the prohibited immigrant, is sufficient to convict him of a charge under s 57(1)(c) of the Act. Based on the appellant's level of involvement in the present appeal, I am satisfied that he should have been charged with an offence under s 57(1)(b) of the Act for abetting Dalowar to leave Singapore in contravention of the Act instead. The fact that the appellant's brother-in-law may be carrying on such a business does not mean that the appellant is necessarily carrying on this business together with his brother-in-law. Accordingly, I amended the charge to the following charge under s 57(1)(b) of the Act:

> "You,
>
> MOHD HAZWAN BIN MOHD MUJI
>
> (TW28.07.1991) 20 YEARS OLD
>
> MALAYSAct NATIONAL
>
> MALAYSActN PASSPORT NO: XXX
>
> FIN NO: XXX
>
> are charged that you, on 01.02.2012 at the Woodlands Immigration Checkpoint, Departure Car Bay, Singapore, did abet one Bangladesh national namely one Dalowar Hossain Soleman Kazi (ICa/01.08.1975) to leave Singapore in contravention of the Immigration Act (Cap 133), and you have thereby committed an offence under Section 57(l)(b) of the Immigration Act (Cap 133) which offence is punishable under Section 57(l)(ii) of the said Act."

***Conviction of the amended charge***

31 Having amended the charge to one under s 57(1)(b) of the Act, I asked the appellant if he intended to offer any defence. The appellant indicated, after conferring with his Counsel, that he wished to plead guilty to the amended charge and accordingly offered no defence to the amended charge. Based on the records before me, I am satisfied that there is sufficient evidence for me to convict the appellant of the amended charge and I convicted the appellant on the amended charge accordingly.

***The appropriate sentence to be imposed***

32 I now turn to consider the appropriate sentence to be imposed on the appellant.

33 I begin with the sentence imposed on the accused in *Gabriel Kong* since the facts of the present appeal, as well as some of the mitigating factors present, are largely similar to those in *Gabriel Kong* with one significant difference. In *Gabriel Kong*, the court sentenced the accused to 8 months' imprisonment after the accused pleaded to an amended charge under s 57(1)(b) of the Act rather than the initial charge under s 57(1)(c) of the Act. The court had found the following

mitigating factors in favour of the accused:

(a) the accused's lack of antecedents;

(b) the accused's guilty plea;

(c) the fact that there was only one illegal immigrant involved;

(d) the fact that the accused was only a runner accepting the assignment under duress to pay off his debts; and

(e) the accused's young age, and the fact that if he were a Singaporean he would have been considered for probation.

34 In the present appeal, the mitigating factors in the appellant's favour are as follows:

(a) the appellant has no antecedents;

(b) the appellant had pleaded guilty to the amended charge;

(c) the appellant was only 20 years of age at the time of commission of the offence; and

(d) the appellant only faces one charge in relation to one prohibited immigrant.

The only difference between the present appeal and *Gabriel Kong* is that the appellant here was not motivated by duress by a creditor but rather by the prospect of personal gain. The appellant, who was drawing a monthly salary of RM750 at the time of the offence decided to take up the assignment to convey Dalowar out of Singapore as he claims that his salary was insufficient for him to survive. This is very different from the duress suffered by the accused in *Gabriel Kong*. Accordingly, a sentence higher than 8 months' imprisonment is warranted.

35 Parties have also brought to my attention the decision in *Public Prosecutor v Md Mahbubul Hoque Md Sirajul Hoque* [2009] SGDC 317 ("*Md Mahbubul*") where the accused was convicted of two charges under section s 57(1)(b) of the Act and sentenced to two 14-month terms of imprisonment on the s 57(1)(b) charges. The accused had also pleaded guilty to three charges under s 5(1) of the *Protected Areas and Protected Places Act* (Cap 256) read with s 109 of the *Penal Code*. The facts of *Md Mahbubul* are as follows. The accused and one Labib discussed using their airport passes which were issued to them for their work purposes to enable Bangladeshis who were here unlawfully to leave Singapore. The accused was a seasonal airport pass holder whilst Labib held a visitor pass. The accused and Labib were aware that they could access the transit area via the staff entrance by keying in their allocated passwords and with the visit pass holder being accompanied by a seasonal pass holder. Thereafter, they approached one Pannu and told him of their scheme and requested him to refer Bangladeshis who wished to leave Singapore after their unlawful stay. Pannu agreed to approach an unknown Bangladeshi 'Hiron' to refer immigration offenders who wanted to leave Singapore and to arrange for their misleading Bangladesh passports and air tickets. The trio negotiated on their payment with 'Hiron'. It was agreed that the accused and Labib would be paid a total of $500 for each Bangladeshi national escorted into the transit area.

36 The accused subsequently tried to smuggle three Bangladeshi nationals using the modus operandi above but two of these nationals were apprehended whilst queuing to enter the Gatehold Room for having false Bangladeshi passports in their possession. In sentencing the accused to 14

months' imprisonment on each of the s 57(1)(b) Act charges, the judge noted that (at [20]):

> These were not unplanned offences. The accused saw an opportunity to exploit his ability to secure access to the protected area by virtue of his seasonal pass and he and his accomplices in that knowledge quite deliberately set out to break the law. The accused had seriously abused his position by escorting 14 Bangladeshis into a protected place to enable the Bangladeshis to bypass the entry point at which they were required to present themselves. This seriously compromised the security of the airport and thwarted the immigration control put in place. He did not commit these offences due to humanitarian concerns. The accused and his accomplices were engaged in assisting the unlawful departures as a commercial venture for personal profit.

37 The factual matrix in the present appeal is very different from that in *Md Mahbubul* as the appellant here never exploited or abused any ability or position he had in committing the offence. Hence, the appellant in the present case should attract a punishment which is less than 14 months' imprisonment on the amended charge under s 57(1)(b) of the Act.

38 Considering all the facts and circumstances of this case, I find that a sentence of 10 months' imprisonment would be appropriate in the circumstances of the case, and I sentence the appellant to 10 months' imprisonment accordingly. The sentence shall commence from the date of the appellant's remand on 3 February 2012.

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