

Whang Sung Lin v PP
[2010] SGHC 53

Case Number : MA No 177 of 2009 (DAC 31396 of 2008)
Decision Date : 12 February 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Subhas Anandan and Sunil Sudheesan (M/s KhattarWong) for the appellant;
and Chay Yuen Fatt and Sharon Lim (Attorney-General's Chambers) for the
respondent.
Parties : Whang Sung Lin — PP

Criminal law – Statutory offences – Human Organ Transplant Act

12 February 2010

Judgment reserved.

Tay Yong Kwang J:

Introduction

1 This is an appeal against the decision of a District Judge (the “DJ”) in *PP v Whang Sung Lin* [2009] SGDC 308 (the “GD”). The appellant was convicted and sentenced to 8 months’ imprisonment for an offence under s 14(2) read with s 14(1) of the Human Organ Transplant Act (Cap 131A, 2005 Rev Ed) (the “HOTA”) and with s 109 of the Penal Code (Cap 224, 2008 Rev Ed). The appellant appealed against his conviction and sentence. At the hearing of the appeal, the appellant’s counsel was content to confine his oral arguments to the following two issues, stating that he was not disputing the findings of fact by the DJ:

(a) whether the charge (see [\[2\]](#) below) ought to have alleged abetment by aiding rather than by instigation; and

(b) whether the sentence meted out was manifestly excessive in the circumstances of the case.

However, as the appeal against conviction remains on record and for completeness, I shall deal with the factual disputes raised in the written submissions as well.

The charge and its elements

2 The appellant was charged as follows:

... that you, sometime between April 2008 and 19 June 2008, in Singapore, did intentionally abet, by instigation, one Wang Chin Sing and one Tang Wee Sung to enter into an arrangement in which the said Wang Chin Sing would, for valuable consideration, procure a suitable living donor to supply a kidney to the said Tang Wee Sung, to wit, by introducing the said Tang Wee Sung to the said Wang Chin Sing in return for a fee, for the said purpose, thereby abetting the said act,

which act was committed in consequence of your abetment, and you have thereby committed an offence punishable under Section 14(2) read with Section 14(1) of the Human Organ Transplant Act, Chapter 131A read with Section 109 of the Penal Code, Chapter 224.

3 Section 14 of the HOTA reads as follows:

Certain contracts, etc., to be void

14. —(1) Subject to this section, a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person, to the sale or supply of any organ or blood from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be, shall be void.

(2) A person who enters into a contract or arrangement of the kind referred to in subsection (1) and to which that subsection applies shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both

...

4 Sections 107 and 109 of the Penal Code read as follows:

Abetment of the doing of a thing

107 A person abets the doing of a thing who –

- (a) instigates any person to do that thing;
- (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

[Illustration omitted]

Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is

committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Factual background

5 The following facts were not disputed. The appellant's wife's uncle, Tang Wee Sung ("Tang"), was suffering from renal failure and required a kidney transplant. The appellant knew one Wang Chin Sing ("Wang") and that Wang was able to source for willing kidney donors in return for fees paid to Wang and the donor. The appellant then informed Tang that Wang may be able to help him source for a kidney donor and gave Wang's contact number to Tang. Through this introduction, Tang contacted Wang in May 2008 and the two men met. Subsequently, Tang and Wang entered into an agreement for Wang to source for a willing donor to sell a kidney to Tang. Tang agreed to pay \$300,000 for this arrangement. Wang then approached one Sulaiman Damanik ("Sulaiman"), an Indonesian, who agreed to sell one of his kidneys to Tang for 150m rupiah (or about S\$23,700). Another Indonesian man, one Toni, was recruited to act as a liaison between Sulaiman and Wang. For his role, Toni would be paid 20m rupiah (or about S\$3,200).

6 On 6 June 2008, Sulaiman arrived in Singapore where he underwent preparatory steps for the kidney transplant. Sulaiman was then coached by Wang to make a false statutory declaration stating that he was related to Tang and was donating his kidney for no financial gain. Sulaiman and Tang were also coached by Wang to provide false information before the Transplant Ethics Committee panel ("the ethics committee") which then approved the application for the live kidney transplant.

7 Meanwhile, on 30 May 2008, Wang issued a cash cheque for \$10,000 to the appellant. On 10 June 2008, Wang issued another cash cheque for \$10,000 to the appellant. The appellant did not deny receiving the two amounts. He disputed only the purpose for which they were given to him.

8 Subsequently, the parties involved in the kidney sale transaction were charged, convicted and sentenced as follows:

- (a) Sulaiman pleaded guilty to one charge under s 14(2) read with s 14(1) of the HOTA for entering into an arrangement to supply one of his kidneys for valuable consideration and one charge under s14(1)(a)(ii) of the Oaths and Declarations Act (Cap 211, 2001 Rev Ed) ("ODA") for making a false declaration. Sulaiman was fined \$1,000 for the HOTA offence and sentenced to 2 weeks' imprisonment for the ODA offence: see *Public Prosecutor v Sulaiman Damanik* [2008] SGDC 175.
- (b) Toni pleaded guilty to two charges under s 14(2) read with s 14(1) of the HOTA (one charge for entering into an arrangement to supply his kidney and one charge for aiding in the sale and purchase of Sulaiman's kidney) and one charge under s14(1)(a)(ii) of the ODA for making a false declaration. Toni also consented to having 2 charges (relating to the making of false statements) taken into consideration for the purpose of sentencing. Toni was sentenced to 3 months' imprisonment and a fine of \$2000 for the HOTA offences and 2 weeks' imprisonment for the ODA offence. The sentences were ordered to run consecutively: see *Public Prosecutor v Sulaiman Damanik* [2008] SGDC 175.
- (c) Tang pleaded guilty to one charge under s 14(2) read with s 14(1) of the HOTA for entering into an arrangement to purchase a kidney for valuable consideration and one charge under s14(1)(a)(ii) of the ODA for making a false declaration. A third charge concerning a HOTA regulatory offence relating to the making of false statements was taken into consideration.

Tang was fined \$7000 (in default, 7 weeks' imprisonment) for the HOTA offence and sentenced to 1 day's imprisonment and fined \$10,000 for the ODA offence: see *Public Prosecutor v Tang Wee Sung* [2008] SGDC 262.

- (d) Wang pleaded guilty to two charges under s14(2) read with s14(1) of HOTA for entering into two kidney sale and purchase arrangements (one involving the sale of Sulaiman's kidney and the other involving Toni's) and to two charges under the ODA and one regulatory offence under the Human Organ Transplant Regulations relating to abetting the making of false statements. Wang also consented to a further five charges relating to the abetment and making of false statutory declarations and false statements to be taken into account for sentencing purposes. Wang was sentenced to two consecutive terms of seven months' imprisonment each for the HOTA offences and three concurrent sentences of three months' imprisonment each for the ODA offences and the HOTA regulatory offence. The aggregate sentence of imprisonment to be served by Wang was 14 months: see *Public Prosecutor v Wang Chin Sing* [2008] SGDC 268, *Wang Chin Sing v Public Prosecutor* [2009] 1 SLR(R) 870.

Proceedings in the District Court

9 Wang testified that in 2006, he became aware of Tang's kidney problems. However, he did not act on this knowledge. Subsequently, he and the appellant became good friends and he mentioned Tang's condition to the appellant. The appellant knew that Wang had previously charged fees for helping to find organ donors. The appellant was aware of Tang's condition and asked Wang to charge a fee if Tang needed a kidney. However, nothing transpired from that conversation.

10 During a meeting in April 2008 initiated by Wang, the appellant and Wang agreed that the appellant would pass Wang's number to Tang and Wang would arrange for a kidney donor for Tang in return for a sum of \$300,000, from which the appellant would receive around \$100,000, depending on the final expenses incurred. The appellant was the one who came up with the figure of \$300,000.

11 The appellant duly passed Wang's mobile telephone number to Tang who then called Wang. Thus the contact between Wang and Tang was made and Wang went to Tang's home twice to discuss the matter. Tang agreed to pay Wang \$300,000 to get him a kidney donor. Pursuant to this arrangement, Tang paid \$50,000 on or around 12 May 2008 and \$75,000 on or around 3 June 2008 to Wang. From these cash payments, Wang made two advance payments of \$10,000 each (on 30 May 2008 and on 10 June 2008) to the appellant. Wang also kept the appellant informed about the developments. Subsequently, after police investigations into the kidney sale commenced, the appellant attempted to return the \$20,000 to Wang.

12 Tang testified that on 2 May 2008, he returned a call from the appellant. The appellant was aware of Tang's medical condition and that he was actively looking for a kidney donor. The appellant informed Tang that Wang would be able to help him find a living donor willing to sell his kidney. He then gave him Wang's mobile telephone number to Tang.

13 After Tang was brought in by the police for questioning, the appellant called him and, in a "strange conversation" which was quite "garbled", tried to borrow money from him. The appellant also informed Tang that Wang offered to give \$100,000 to the appellant. The appellant sounded confused and desperate.

14 The appellant refuted these allegations. The appellant testified that Wang asked him for an introduction to Tang. The appellant was not keen to do so as he was not close to Tang. Wang told the appellant that without Wang's help, Tang would die shortly. The appellant then visited Tang and

felt sorry for him. He therefore gave Wang's mobile telephone number to Tang and told Tang to call Wang if he wanted Wang's help. The appellant denied telling Wang to charge a fee or having received a part of the fee. The appellant explained that the two \$10,000 payments were loans from Wang. The appellant denied telling Tang about Wang's offer to lend him \$100,000. However, when cross-examined, the appellant claimed that Wang did offer to give him \$100,000.

The decision of the DJ

15 The DJ found that:

- (a) Wang and Tang were credible witnesses and that any inconsistencies in their statements were immaterial;
- (b) the appellant suggested to Wang that Wang charge Tang \$300,000 to find a kidney donor for Tang;
- (c) the appellant and Wang agreed that the appellant would receive \$100,000 from the \$300,000;
- (d) the appellant did not visit Tang before deciding to pass Wang's mobile telephone number to him. Instead, the appellant gave Wang's number to Tang over a phone conversation;
- (e) the \$20,000 given by Wang to the appellant were advance payments of the eventual profits due to the appellant. The evidence supported this. Firstly, there was a contemporaneous record kept by Wang of all the expenses relating to Tang's kidney transplant in which Wang recorded that two payments of \$10,000 had been made to the appellant. Secondly, the two payments were made soon after Tang paid money to Wang, indicating that they were not loans but advance payments to the appellant of his share of the fee. Thirdly, Wang kept the appellant updated regarding the progress of Tang's case, suggesting the appellant's continued interest in the matter; and
- (f) after the matter was exposed, the appellant attempted to cover up his action by trying to return the \$20,000 to Wang and by telling Tang that Wang offered him \$100,000 as a loan.

16 Based on the evidence, the DJ found that the appellant actively encouraged the kidney sale scheme by suggesting that Wang procure a kidney for Tang for \$300,000 and by introducing Tang to Wang. In return, the appellant would receive \$100,000 from Wang. Accordingly, the DJ found the appellant guilty of the charge (set out at [\[2\]](#) above).

17 As for the appropriate sentence, the DJ considered the appellant's mitigation plea, the sentences imposed on the other parties involved and the objective of deterring other individuals from acting as middlemen in organ trading. The DJ also considered the role played by the appellant and found that the appellant was motivated by greed and was the catalyst in bringing Tang and Wang together. He therefore sentenced the appellant to 8 months' imprisonment.

Issues raised on appeal

18 With respect to his conviction, the appellant disputed the DJ's finding of facts, i.e. that Wang and Tang were credible witnesses; that the inconsistencies in Wang's and Tang's evidence were immaterial; that the appellant initiated the kidney sale scheme by suggesting to Wang that he charge Tang \$300,000 for procuring a kidney for him; that the appellant would receive a monetary reward for his role in the scheme; and that the cheques for \$10,000 were advance payments and not loans.

19 However, the appellant admitted that he did introduce Wang to Tang. Therefore, the appellant contended that he should have been charged for abetment by aiding and not abetment by instigating. He was always willing to plead guilty to the charge if it had alleged abetment by aiding rather than by instigating and the prosecution and the DJ were informed as much at the outset of the trial. I asked Mr Subhas Anandan, counsel for the appellant, whether the appellant would have pleaded guilty if the prosecution had agreed to amend the charge to state abetment by aiding but insisted that the appellant admit that he was to have received \$100,000 as his share in the transaction. Mr Subhas replied that they did not get to the stage of discussing the issue of the \$100,000 as they could not even cross the first hurdle concerning the type of abetment. The prosecution contended that it was the other way round – the \$100,000 was the obstacle to a plea of guilt.

20 With respect to the sentence, the appellant contended that the DJ placed excessive emphasis on general deterrence and insufficient weight on parity in sentencing and over-emphasised the appellant's role in the kidney sale.

My decision

The appeal against conviction

The finding of facts

21 In assessing the merits of the appeal, I was mindful of the principle that since the DJ had the benefit of hearing the evidence of the witnesses and observing their demeanour, an appellate judge must defer to the findings of fact made by the DJ which are based on his assessment of the witnesses, unless they are clearly wrong or wholly against the weight of the evidence: see *Mogannaruban s/o Subramaniam v Public Prosecutor* [2005] 4 SLR(R) 121 at [14].

22 The appellant contended that the DJ erred in finding that Wang and Tang were honest and credible witnesses. The appellant also contended the DJ relied excessively on Tang's and Wang's demeanour without carefully considering the material inconsistencies in their evidence. In particular, the appellant highlighted that:

- (a) Wang's and Tang's evidence regarding (i) the date of their first meeting and (ii) who came up with the idea of getting an Indonesian donor were contradictory; and
- (b) Wang's statements regarding (i) whether Wang informed the appellant that he could help Tang; (ii) whether the appellant came up with the \$300,000 figure or whether it was a joint decision made by the two of them; (iii) when the \$300,000 figure was first mentioned to Tang; and (iv) who fabricated the lies to the ethics committee, were inconsistent.

23 The appellant further contended that there were logical fallacies in Wang's evidence, in particular, that:

- (a) Wang would receive \$60,000 - \$70,000 from the kidney sale transaction, a sum which was less than what the appellant would have got; and
- (b) despite having the means to do so, Wang chose not to act on Tang's kidney failure earlier even though he knew about it since 2006.

24 With respect to Tang's evidence, the appellant also asserted that Tang's memory about the incident would have been affected by his dire medical condition at the material time.

25 Having considered the evidence, I find no reason to disturb the DJ's findings. Firstly, there was no reason to doubt the credibility of Wang and Tang. Both Wang and Tang had already pleaded guilty to their respective charges and were duly convicted and sentenced. There was no evidence to suggest that either had any motive to falsely implicate the appellant. There was therefore no reason for them to lie in court.

26 Secondly, the prosecution's case that the appellant received monetary consideration for his role in the kidney sale was supported by contemporaneous documentation. The prosecution adduced an expense note (see above at [15(e)]) wherein Wang recorded the expenses and deductions in respect of the arrangement with Tang. The expense note was seized from Wang's apartment by Senior Staff Sergeant Andy Ong Beng Teck in a police raid on 19 June 2008. Two entries, which were boxed, recorded two \$10,000 payments to the appellant on two separate occasions. This was consistent with Wang's evidence that the money was paid to the appellant as advance payments and not as loans and that he kept a detailed expense record in order to account to the appellant the final expenses involved. Wang's evidence was also supported by the coincidence between the dates of Tang's payments to Wang and Wang's payments to the appellant: see above at [11]. This was consistent with Wang's testimony that he kept the appellant regularly updated on the progress of Tang's case and that the appellant asked for advance payments from the payments made by Tang to Wang.

27 Thirdly, I agree with the DJ that the inconsistencies in Wang's and Tang's statements were immaterial. Wang and Tang's disagreement over their respective involvement in the scheme was irrelevant to the appellant's culpability. Further, the courts do give adequate allowance for the fallibility of human memory: see *Ng Kwee Leong v PP* [1998] 3 SLR(R) 281. As for who came up with the \$300,000 fee, there was also nothing inconsistent between the appellant suggesting the figure of \$300,000 and the appellant and Wang then jointly agreeing on that amount. None of the alleged inconsistencies affected the core of the prosecution's case, i.e. that the appellant suggested charging Tang \$300,000 and that the appellant received monetary rewards for introducing Tang to Wang.

28 Fourthly, as for the alleged logical fallacies in Wang's evidence, I found that they were insufficient to cast doubt on the reliability of his evidence. As noted above, Wang had pleaded guilty and was already serving his sentence. There was no incentive for him to implicate the appellant falsely. Whether Wang stood to gain more from the kidney sale or whether the transaction with Tang could have gone through on an earlier date without the appellant's involvement has no bearing on the appellant's responsibility.

29 Finally, there was no evidence to suggest that Tang, unwell as he was, was not lucid at the time of his conversations with the appellant. I therefore see no reason to doubt the reliability of his evidence.

30 In contrast, I find the appellant's claims to be unconvincing. There was no reason why the two amounts of \$10,000 each would be recorded in the expense note had they been loans. There was nothing to suggest a history of lending between Wang and the appellant. The appellant further claimed under cross-examination that Wang volunteered to give him \$100,000. However, again, there was no apparent reason why Wang would do such a thing on his own volition. I therefore find Wang's and Tang's evidence to be much more credible than that of the appellant's.

Abetment by instigation or abetment by aiding

31 In order to make good the offence of abetment by instigation, the prosecution has to show the court that there was 'active suggestion, support, stimulation or encouragement' of the offence: *Balakrishnan S v Public Prosecutor* [2005] 4 SLR(R) 249 ("*Balakrishnan S*") at [66]. In *Balakrishnan S*, the second appellant was the supervising officer of a combat survival training course in the army. As a result of a water-dunking exercise, one trainee died and another was seriously injured. The second appellant was charged with abetment by instigation of a rash act causing death and of an act causing grievous hurt. The appellant contended that he had discharged his duty by setting limits for the training instructors. However, the court found that his failure to intervene when he witnessed the maltreatment of the trainees even though he was responsible for the safe conduct of the course was tantamount to his support and encouragement of the offence, which was sufficient for a finding of abetment by instigation.

32 The appellant contended that abetment by aiding was a 'lesser' crime than abetment by instigation and that the nature of the instigation must be such that there was an element of active suggestion which caused the offence. The appellant contended that Wang was an organ trader and Tang was a dying man and neither required instigation by the appellant to participate in the illegal transaction. Therefore, by introducing Tang to Wang, the appellant asserted that he was only guilty of abetting by aiding, not by instigating.

33 The prosecution relied on the following facts to support its allegation of abetment by instigation:

- (a) Wang informed the appellant about Tang's medical condition;
- (b) the appellant told Wang to charge Tang a higher fee because he is a rich man. While everyone may know that Tang is wealthy, the appellant was goading Wang to arrange the deal;
- (c) at the meeting when the appellant's share of the fee was agreed, it was the appellant who suggested the fee of \$300,000 after Wang had set out the expenses to be incurred in the whole transaction;
- (d) the appellant told Wang that he would go to see Tang and he asked Wang for his (Wang's) mobile telephone number, telling Wang that when Tang calls, please help him; and

- (e) the appellant did call Tang (although he asserted that it was a visit to Tang's home) and he gave Wang's mobile telephone number to Tang.

In any event, the prosecution argued, there was no suggestion by the DJ that an offence of abetment by aiding would necessarily have attracted a more lenient sentence than one involving abetment by instigation.

34 I note first of all that the charge (see [2] above) referred to the introduction of Tang to Wang in return for a fee as the only act of instigation. Looking at the facts adduced before the DJ, it appears to me to be a strain on language to describe what the appellant did in this case as 'active suggestion, support, stimulation or encouragement' (see [31] above). Tang desperately needed a kidney and was willing and able to pay for one. In his words, "I was actively looking for a kidney donor". For Tang, it was a matter of life and death or, at least, of having hope of an infinitely better quality of life after a transplant. Wang was known to be someone willing and able to source for a kidney donor in return for payment. Wang must be aware of Tang's wealth and that his predicament would cause him to be willing to part with a large amount of money in exchange for a kidney. There could be no reason why Wang would need encouragement or goading to 'help' Tang find a kidney donor. Both were obviously eager to engage in the transaction. The only snag was that Tang did not know about Wang and Wang somehow did not know how to approach Tang.

35 With the entrance of Tang's nephew-in-law (i.e. the appellant) onto the stage, the link between the 'trader' and the 'buyer' could be established. The meetings that the appellant had with Wang could not be anything more than discussions about what reward the appellant would receive for introducing Tang to Wang and perhaps some explanation by Wang about the process of and the amount of time needed for getting a kidney donor. The only 'goading' that the appellant did was to ask Wang to charge a higher fee than normal. This was understandable because the buyer was a wealthy but not healthy man and there was going to be another intermediary (i.e. the appellant) who wanted to have a cut of the profits. The higher the fee quoted and received by Wang, the greater the profits for Wang and the appellant as well. However, it would be naïve to think that Wang, a seasoned 'trader' in this field, had not already intended to charge Tang much more for his services.

36 On these facts, what was the appellant's role – a mere conduit or a catalyst? In ordinary parlance, one would accurately describe the appellant's acts of calling Tang to inform him that Wang would be able to help him find a person willing to sell his kidney and of passing Wang's mobile telephone number to Tang as acts of information and introduction. He did not urge Tang to call Wang immediately and certainly did not need to goad Tang into doing so. It was Tang who called Wang the same day without persuasion or encouragement. Wang was the glimmer of hope that Tang was searching for and Tang was the big-time client that Wang (or any middleman dealing in the organ trade) was looking for - two willing parties, one earnestly waiting for a better life and the other eagerly wanting to make a good living.

37 The appellant was therefore helping to put the two willing parties together or 'intentionally aiding' them within the meaning of s 107(c) of the Penal Code. He could hardly be said to be 'actively suggesting, supporting, stimulating or encouraging' them to do the transaction, although his wish must be that they would do so and at the price agreed between him and Wang earlier. As mentioned above, neither Tang nor Wang needed any goading or encouragement. They only needed to be introduced to each other and everything flowed smoothly and quickly from then on without any input from the appellant. The only goading that the appellant did was to tell Wang to charge more in Tang's case but that was in the context of 'If Tang needed a kidney, (the appellant) asked me to charge a

fee'. It was certainly not to urge a reluctant or ambivalent Wang to enter into the transaction. It was at the meeting (at the Ya Kun food outlet at Funan Centre) when the appellant was going to pass Wang's mobile telephone number to Tang that the figure of \$300,000 was suggested by the appellant and agreed between him and Wang. If the suggestion to charge \$300,000 was an instigation, it is clear that the illegal transaction was not 'committed in consequence of the instigation' (see the words in the Explanation to s 109 of the Penal Code at [4] above) as Wang was already going to do the transaction if Tang should call, with or without that suggestion. As mentioned above, the suggestion came about only because Tang was a wealthy man and both Wang and the appellant obviously hoped to make as much money out of his ill health as possible. Clearly, the offence was committed 'with the aid' (see again the words in the Explanation to s 109 and also Explanation 2 in s 107 of the Penal Code at [4] above) or help of the appellant in introducing Tang to Wang in return for a fee.

38 As agreed by the prosecution and counsel for the appellant during oral submissions, if I decide that the charge should have stated abetment by intentionally aiding rather than by instigating, I should amend the charge accordingly but the conviction is to stand without any need to read the amended charge to the appellant. As I am of the view that the acts of the appellant amounted to aiding rather than instigating, I now amend the charge (at [2] above) by deleting the words 'intentionally abet, by instigation' appearing in the second line thereof and substituting the words 'abet, by intentionally aiding'. The conviction is to stand even with such amendment. There is no scope for the appellant to argue that he would have pleaded guilty to the charge had it been amended in the way I just did because it was evident throughout the trial and even on appeal that the appellant did not accept that he was to have received payment for his role, something the prosecution would not compromise on.

39 In any case, the appellant is not correct in suggesting that abetment by aiding is a lesser crime than abetment by instigation. Although it is established that for the purposes of sentencing, the extent of the accused person's role in the offence is a relevant consideration (see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [44]-[45]), there is no reason why a person who aids in an offence is necessarily less morally culpable than one who instigates the offence. Section 107 of the Penal Code draws no distinction among the three categories of abetment and s 109 does not make any distinction in the court's sentencing powers with respect to an offence of abetment by aiding and an offence of abetment by instigation. The legal culpability remains the same for the three forms of abetment. Ultimately, the court has to examine the role played by an accused person in any particular set of facts. One who aids by practically paving the groundwork for an offence may well be punished more severely than one who merely instigates the commission thereof by a nod or a nudge.

The appeal against sentence

40 The appellate court's scope for interfering with sentences meted out by a lower court in the exercise of its discretion is limited. However, an appellate court is entitled to correct a sentence where (a) the sentencing judge has erred as to the proper factual basis for the sentence; (b) the sentencing judge has failed to appreciate the material placed before him; (c) the sentence imposed is wrong in principle and/or law; and (d) the sentence imposed is manifestly excessive: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [13].

41 The appellant contended that the DJ placed undue emphasis on the principle of general deterrence. However, while there are other principles of sentencing, i.e. retribution, prevention and rehabilitation, the court has to assess how much weight to accord to each principle in each case: see *ADF v Public Prosecutor* [2009] SGCA 57 at [54]. In cases where the accused acted as a middleman in organ trading, I agree with the DJ that the primary sentencing consideration is that of general

deterrence. This was established by V K Rajah JA in the related case of *Wang Chin Sing v Public Prosecutor* [2009] 1 SLR(R) 870. In dismissing Wang's appeal against his sentence, V K Rajah JA made the following comments:

6 ... The appellant has peddled deceit, trafficked in organs and profiteered from misery... the primary sentencing consideration in this matter ought to be that of general deterrence and not retribution. This is to firmly deter other individuals contemplating acting as middlemen in organ-trading in Singapore. While it can be said that HOTA does not currently single out the role of the middleman, it appears to me, for the broad reasons I have given earlier, that the middleman's role should, as a matter of sentencing policy, be accorded prominence. The sentences imposed by the district judge sufficiently articulate, for now, the unambiguous message that organ trafficking will not be tolerated in Singapore.

42 The appellant further contended that the purpose of general deterrence has already been fulfilled with the public's knowledge of the present tough stance against organ trading. However, general deterrence aims not only to educate, but also to prevent other like-minded persons from committing the same offence. This is best fulfilled by both Parliament and the courts taking a tough stance against the particular crime sought to be eradicated.

43 The appellant also contended that the DJ erred in his characterisation of the appellant's role in the scheme. The appellant reiterated his claims that he was not an instigator and that he did not receive a monetary reward for his role. As a consequence, he argued, when sentencing the appellant, the DJ failed to consider the true extent of the appellant's culpability and therefore the appellant's sentence was excessive. I have already stated my views on instigating as compared to aiding (see [\[39\]](#) above) and have agreed with the DJ's finding that the appellant did receive payment.

44 It has been said that deterrence must be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender: *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [31]. It has also been established that where two or more offenders are to be sentenced for participation in the same offence, their sentences should be similar unless there is relevant difference in their culpability for the offence or in their personal circumstances: *Public Prosecutor v Ramlee* [1998] 3 SLR(R) 95 at [7]. I reiterate the sentences meted out to the other parties involved in the scheme, in descending order of severity of punishment in the imprisonment terms (see [\[8\]](#) above):

- (a) Wang: 14 months' imprisonment in total for the 5 charges against him, with another 5 charges taken into consideration (7 months' imprisonment for the charge which the appellant was involved in).
- (b) Toni: 3 months' imprisonment for the 3 charges proceeded against him under the HOTA and the ODA.
- (c) Sulaiman: 2 weeks' imprisonment and a fine of \$1,000 (in default 1 week's imprisonment) for one charge each under the HOTA and the ODA.
- (d) Tang: 1 day imprisonment and an aggregate fine of \$17,000 for 1 charge under HOTA and 1 charge under the ODA.

45 Both parties agreed that Tang's and Sulaiman's cases ought not to be used for comparison as their circumstances were exceptional and deserving of sympathy. I agree. Where Wang was concerned, the appellant highlighted that the DJ who sentenced him commented that he played a major role in the arrangement and that he was the 'prime mover'. V K Rajah JA who heard Wang's appeal (see [41] above) also commented that Wang had to bear the lion's share of the stigma of culpability. In Toni's case, the sentencing judge described him as a runner for the organ trading syndicate and having a material role. The appellant submitted that Toni was more culpable than him and that he (the appellant) should have received a sentence of only about 3 months' imprisonment or slightly more. The prosecution pointed out that all the related parties pleaded guilty to their respective charges while the appellant claimed trial and appealed against conviction. Wang's imprisonment term of 7 months for the relevant offence was therefore already a discounted sentence. Accordingly, the appellant should not receive less than what was meted out to Wang. The prosecution also pointed out that Toni received only \$3,200 for his role as compared to the appellant who was to have received \$100,000.

46 In my view, insufficient weight was given to parity in sentencing in the appellant's case. The appellant stood to benefit far more financially than Toni but the appellant's role was a very limited one and stopped completely after that telephone call to Tang. Although the appellant and Wang were supposed to have got \$100,000 each from the illegal transaction, Wang was clearly the one who assembled the orchestra, conducted it and taught it to play his composition of deceit. Further, Wang was charged with two counts under s 14(2) read with s 14(1) of HOTA and had other charges taken into consideration for the purpose of sentencing while the appellant was convicted on only one charge. However, the appellant was the only one among the players who claimed trial and, as mentioned in [38] above, he would not have pleaded guilty even if the charge had alleged abetment by aiding instead of instigation. Looking at all the circumstances, I do not think that the appellant's level of culpability for the sole charge should be higher than or even close to that of Wang for the corresponding charge. However, the maximum fine of \$10,000 would not be adequate punishment in this case as the potential gain was \$100,000 and the appellant had already received \$20,000.

47 Balancing the need for general deterrence with parity in sentencing, I now reduce the appellant's sentence from eight months' imprisonment to four months. I emphasize here that the reduction in sentence has nothing to do with the amendment I made to the charge. The appeal against conviction is therefore dismissed while the appeal against sentence is allowed to the extent mentioned. The charge is amended in the manner indicated in [38] above.

48 As the Lunar New Year is two days away, I am willing to consider any reasonable request by the appellant for a postponement of sentence. This act of compassion is something our courts have always accorded to people having to serve imprisonment sentences just before major festivals or important events in their lives.

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