

Geyabalan s/o K Ramiah and another v Public Prosecutor
[2014] SGHC 173

Case Number : Magistrate's Appeal Nos 13 and 14 of 2014
Decision Date : 04 September 2014
Tribunal/Court : High Court
Coram : See Kee Oon JC
Counsel Name(s) : K Mathialahan (Guna & Associates) for the appellant in Magistrate's Appeal No 13 of 2014; Subhas Anandan, Sunil Sudheesan and Diana Ngiam (RHTLaw Taylor Wessing LLP) for the appellant in Magistrate's Appeal No 14 of 2014; Zhong Zewei and Chloe Lee (Attorney-General's Chambers) for the respondent.
Parties : Geyabalan s/o K Ramiah and another — Public Prosecutor

Criminal Law – Offences – Property – Theft

4 September 2014

Judgment reserved.

See Kee Oon JC:

Introduction

1 These are related appeals by the appellants against the decision of the District Judge (“the trial judge”) convicting them on various charges of theft. The trial judge’s grounds of decision are reported in *Public Prosecutor v Geyabalan s/o K Ramiah and Another* [2014] SGDC 41 (“the GD”).

2 Geyabalan s/o K Ramiah (“Geyabalan”) and Nagas s/o Arumugam (“Nagas”) (collectively, “the Appellants”) were alleged to have stolen gold jewellery from passengers’ bags while on duty as baggage handlers at Changi Airport. They were charged with various counts of theft and disposing stolen property, and claimed trial to their respective charges. At the end of their joint trial, they were each found guilty of four charges of theft and acquitted of the rest of the charges against them. Geyabalan was sentenced to a total of six months’ imprisonment. Nagas was sentenced to a total of eight months’ imprisonment. Geyabalan now appeals against his conviction whereas Nagas appeals against both his conviction and sentence.

Background facts

3 The Appellants were previously employed as baggage handlers in the Budget Terminal at Changi Airport. The Appellants belonged to the same team of baggage handlers, comprising the Appellants, one Selvakumar s/o Kanniappan (“Selvakumar”), one Ashley Francis (“Francis”), and one Neo Thiam Chye. Nagas was the team leader or “skipper”. Their job was to load passengers’ baggage into the cargo holds of planes.

4 On various dates in 2010 and 2011, there were complaints made by numerous passengers who had travelled on Tiger Airways flights from Singapore to India that the jewellery in their check-in luggage had gone missing. On 14 September 2011, the police seized a number of jewellery from “Soon Hong” pawnshop located at Block 118 Rivervale Drive, #01-14 (“the Pawnshop”), which had been pawned under Nagas’ name. Some of these jewellery were subsequently identified as belonging to the passengers who had travelled on Tiger Airways flights and who had reported missing jewellery.

5 The Appellants were charged with various counts of theft and disposing stolen property. Geyabalan claimed trial to eight charges of theft under s 379 read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). Nagas claimed trial to six charges of theft under s 379 read with s 34 of the Penal Code and three charges of voluntarily assisting in the disposal of stolen property under s 414(1) of the Penal Code. For ease of reference, Annex A below sets out a table with the details of the proceeded charges.

The evidence in the proceedings below

6 The Prosecution called a total of 18 witnesses. Ten of these witnesses were passengers who had travelled on Tiger Airways flights from Singapore to India and whose jewellery in their check-in luggage had gone missing (collectively, "the Complainants"). Other witnesses included a representative of the Pawnshop, the ramp service manager who supervised the baggage handlers at the Budget Terminal, and various police officers who had been involved in the seizure of the jewellery from the Pawnshop and the investigation of the case. The key Prosecution witness was Selvakumar ("PW9") who testified as to the Appellants' involvement in the alleged thefts. PW9 had earlier pleaded guilty to a charge of theft and another charge of criminal misappropriation, with six other charges taken into consideration, and was sentenced to a total of two months and three weeks' imprisonment. Francis had also earlier pleaded guilty to one charge of theft, with two similar charges taken into consideration, and was sentenced to nine weeks' imprisonment. However, Francis did not give evidence at the Appellants' trial because he had been deported back to Malaysia after serving his sentence.

7 The Prosecution presented four main strands of evidence. First, there was PW9's testimony that he had acted together with the Appellants and Francis in committing thefts of jewellery from passengers' baggage while they were on duty as baggage handlers at the Budget Terminal. PW9 testified that each theft was committed pursuant to a prior agreement between all of them and was a joint effort which involved at least three or four team members. According to PW9, Nagas was the mastermind who coordinated the thefts from the ground while he, Geyabalan, and Francis removed the jewellery from the baggage. The three of them would then pass the stolen items to Nagas, who would arrange for the jewellery to be brought out of the airport, pawn off the jewellery, and pay part of the proceeds to the other two or three accomplices. PW9 also said that he had personally witnessed Francis and Geyabalan taking items from passengers' baggage. However, PW9 could not recall or identify on which dates and which flights the alleged thefts took place, and what jewellery was stolen.

8 Second, the Complainants gave evidence that the jewellery in their check-in luggage for Tiger Airways flights from Singapore to India had been stolen. They described how they were able to identify some of their missing jewellery among the items that were seized from the Pawnshop and how they had acquired those pieces of jewellery. Some of the Complainants produced receipts proving the purchase of the jewellery which they had lost and/or photographs showing themselves or their family members wearing the said jewellery.

9 Third, records from the Pawnshop and the testimony of the representative from the Pawnshop showed that the jewellery seized from the Pawnshop were indeed pawned by Nagas. According to the Prosecution, the proximity in time between the alleged thefts, the dates on which the items were pawned, and the items which were pawned together on each occasion, further corroborated the Appellants' guilt.

10 Fourth, the Prosecution adduced the attendance records kept by the Appellants' employer which showed that the Appellants were on duty and assigned to the corresponding flights which

involved jewellery from passengers' check-in luggage being stolen.

11 Both Appellants denied the charges against them and testified that they had not committed any theft of jewellery from passengers' baggage. They said that PW9 had falsely implicated them. However, they could not point to any motive for doing so. In Nagas' case, he further denied the allegations that the pawned jewellery were stolen. Nagas testified that all the jewellery pawned by him at the Pawnshop belonged to him and his wife, which they kept as a "reserve" and would pawn whenever they needed cash. Further, Nagas said that he was absent from work on two dates (*viz*, 14 and 16 April 2010) on which thefts were alleged to have taken place as he was on medical leave; it was therefore not possible for him to have committed theft on those two dates.

12 The Defence also called a third witness, Staff Sergeant Sujantha ("Sujantha"), to give evidence. Sujantha's evidence primarily related to a statement she recorded from PW9 on 14 September 2011 at the Airport Police Division ("D5"). In the statement, PW9 expressly stated that Nagas was not involved in the thefts. PW9 recanted from this position in his later statements to the police as well as on the witness stand. PW9 said that he had lied in his earlier statement D5 because he feared that Nagas would do something to his family, and also because Sujantha had taken the statement in a threatening manner. Against this, Sujantha's evidence was that she had never threatened PW9 in any way during the recording of the statement.

The decision below

13 On 7 November 2013, the trial judge convicted the Appellants on four charges of theft each and granted an acquittal for the rest of the charges. Geyabalan was convicted on the 1st, 2nd, 3rd, and 6th charges, and given a discharge amounting to an acquittal for the 4th, 5th, 7th, and 8th charges. Nagas was convicted on the 9th, 10th, 11th, and 12th charges, and given a discharge amounting to an acquittal for the 2nd, 3rd, 8th, 13th, and 14th charges.

14 For the charges on which the Appellants were convicted, the trial judge was satisfied that the direct and circumstantial evidence adduced by the Prosecution was sufficient to establish the Appellants' guilt beyond a reasonable doubt. First, the trial judge was satisfied that the evidence of the Complainants were reliable as they were able to identify the jewellery recovered from the Pawnshop as belonging to them. A proper procedure was also undertaken for the purpose of identifying the jewellery. Second, the trial judge found that PW9 was a "credible and reliable" witness and accepted his evidence that he, Francis, and the Appellants would usually commit the thefts together. Third, the trial judge considered documentary evidence such as the pawn tickets and the records of the Pawnshop which showed that Nagas had pawned the items identified by the Complainants as being those that were stolen from them. He also considered the attendance records of the baggage handlers and the clock-in cards of the Appellants which proved that the Appellants were present for work on some of the dates when the thefts were alleged to have taken place.

15 As for the charges on which the Appellants were acquitted, these charges related to dates on which the attendance records showed that either Nagas or PW9 was not present at work. The Appellants were therefore acquitted of these charges since there was doubt as to whether the alleged thefts on those dates had taken place.

16 On 21 January 2014, the trial judge sentenced Geyabalan to three months' imprisonment on each of the four theft charges with two of the sentences to run consecutively, resulting in a total sentence of six months' imprisonment. Nagas was sentenced to four months' imprisonment on each of the four theft charges with two of the sentences to run consecutively, resulting in a total sentence of eight months' imprisonment. The trial judge accepted the Prosecution's submission that the

sentencing principle of general deterrence applied in this case since the offences had caused distress and inconvenience to the victims, and since such offences would damage Singapore's reputation as an international aviation hub. The trial judge also considered the following aggravating factors: (1) there was premeditation as the Appellants would discuss and plan with PW9 and Francis before embarking on their crime; (2) the offences took place over a substantial period of time (between 2010 and 2011); (3) the Appellants had breached the trust placed in them as baggage handlers; and (4) the value of the items was substantial and some of the items had sentimental value. Finally, the trial judge took into account the sentences which had been imposed on the Appellants' accomplices, PW9 and Francis, the fact that the Appellants had claimed trial, as well as the Appellants' respective roles in the offences.

The appeals

17 Before me, both of the Appellants raised several grounds of appeal against their respective convictions. Geyabalan argued that the Prosecution had not proven its case beyond a reasonable doubt for the charges on which he was convicted since there is no evidence to show that he had removed the jewellery from the baggage on the dates specified in the charges or that he was linked to the pawning of the jewellery. He also submitted that PW9 is not a reliable witness and that the trial judge had erred by giving excessive weight to PW9's evidence. Moreover, the trial judge had erred in not giving due consideration to the possibility that the thefts could have been committed by persons other than the Appellants, such as the additional workers who were often deployed to assist them in their baggage-handling duties.

18 Nagas similarly argued that the trial judge had erred in relying on PW9's evidence. PW9's evidence contains material discrepancies such as the discrepancy between his statement D5, which does not mention Nagas' involvement, and his later statements, which implicate Nagas. He also argued that the trial judge had erred in relying on the evidence of the Complainants to convict him as the trial judge did not consider the possibility that the items identified by the Complainants could simply be similar to those owned by Nagas. Further, Nagas submitted that the trial judge had erred in rejecting the Appellants' evidence and other circumstantial evidence in favour of the Appellants, such as Nagas' conduct *vis-à-vis* the pawning of the jewellery, which is consistent with his plea of innocence.

19 In contrast, the Prosecution's position is that the trial judge was justified in relying on the evidence of the Complainants and PW9, who is a credible and consistent witness. The Prosecution argued that the direct evidence of the Complainants and PW9, taken together with the circumstantial evidence of the records from the Pawnshop and the attendance records, form an interlocking chain of evidence that point inexorably to the Appellants' involvement in the thefts. Although PW9 was unable to recall the precise dates on which each piece of jewellery was stolen, it is the evidence in totality, rather than PW9's evidence in isolation, which establishes the Appellants' guilt.

20 Nagas also appeals against his sentence of eight months' imprisonment, which he argued is manifestly excessive.

21 The key question that arises for determination in the present appeals is whether the Prosecution has proven its case beyond a reasonable doubt. In answering this question, it is imperative to examine the two main planks of the Prosecution's case, the evidence of the Complainants and PW9, which are now in contention. It is not disputed by either of the Appellants that the jewellery seized from the Pawnshop were indeed pawned by Nagas, or that the Appellants were both on duty and assigned to the particular flights on the dates the alleged thefts took place. This, however, is merely neutral evidence and is necessary but insufficient to establish the Appellants'

guilt. In order for the Appellants' respective convictions to be upheld, the Prosecution needs to establish the following beyond a reasonable doubt: (1) that PW9's evidence implicating the Appellants in the thefts is credible and compelling enough to sustain the Appellants' conviction; and (2) that the jewellery pawned by Nagas are stolen property belonging to the Complainants.

22 I will therefore consider the evidence of PW9 and the Complainants in turn, before dealing with the Appellants' respective convictions.

Evidence of PW9

Observations on accomplice evidence, motive, and witness credibility

23 PW9 gave direct evidence that he, Francis, and the Appellants were jointly involved in the thefts of jewellery from passengers' baggage. As PW9 was allegedly an accomplice of the Appellants, the trial judge considered the law as to the treatment of evidence of accomplices as encapsulated in Illustration (b) to s 116 and s 135 of the Evidence Act (Cap 97, 1997 Rev Ed). Those provisions affirm the principle that the court may convict an accused based on the uncorroborated evidence of an accomplice, but should still treat such evidence with caution as the accomplice may, and not must, be presumed to be unworthy of credit: *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 at [29]; *Chua Poh Kiat Anthony v Public Prosecutor* [1998] 2 SLR(R) 342 at [15]. The trial judge was of the opinion that PW9 was a credible witness notwithstanding the fact that he was an accomplice of the Appellants since he had already been convicted and sentenced for his involvement in the theft offences. There was also no evidence of any spite on the part of PW9 towards the Appellants.

24 This calls to mind the issue of which party bears the burden of proving a motive (or lack thereof) on the part of a witness to falsely implicate an accused person. In an oft-cited passage from the High Court case of *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591, Yong Pung How CJ stated (at [71]) that:

... The burden of proving a lack of motive to falsely implicate the appellant is on the Prosecution. Even though the Prosecution was making a negative assertion, the burden of proof is still on it. It is not for the defendant to prove that the complainant had some reason to falsely accuse him. This is a fact that would be wholly within the complainant's knowledge and nobody else's. The Defence therefore cannot be expected to prove this. It would be a circular argument to believe the complainant when she said that she had no reason to falsely accuse the appellant, and then say from that that the complainant is believed because she had no reason to falsely accuse the appellant. ...

25 While the passage above appears to imply that the burden of proof falls in the first instance on the Prosecution to show a lack of motive on the part of the witness to falsely implicate the accused person, it has been clarified in subsequent cases that this is not exactly the position to be adopted. In *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374 at [33], Yong CJ clarified that the above passage simply meant that:

... [W]here the accused can show that the complainant has a motive to false implicate him, then the burden must fall on the Prosecution to disprove that motive. This does not mean that the accused merely needs to allege that the complainant has a motive to falsely implicate him. Instead, the accused must adduce sufficient evidence of this motive so as to raise reasonable doubt in the Prosecution's case. Only then would the burden of proof shift to the Prosecution to prove that there was no such motive. ...

26 Therefore, as the law stands, the Defence first has to adduce sufficient evidence of a motive on the part of the witness to frame the accused person before the burden shifts to the Prosecution to disprove that motive: see *Gan Too Cheh v Public Prosecutor* [2006] 2 SLR(R) 220 at [23] and *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP v PP*") at [21]. However, if a trial judge wishes to make a finding that a complainant or prosecution witness had no reason to falsely implicate the accused person, the trial judge must base such a finding on credible evidence. It is not sufficient for the trial judge to rely only on the fact that the accused person cannot venture any reasons why the complainant or witness would lie in court to falsely implicate him: *Loo See Mei v Public Prosecutor* [2004] 2 SLR(R) 27 at [39].

27 In the present case, neither of the Appellants could point to any particular reason why PW9 would want to falsely implicate them in the thefts. Nevertheless, the trial judge considered the undisputed fact that PW9 had already been convicted and had served his sentence in relation to the thefts. Implicit in the trial judge's decision was the conclusion that there was no motive for PW9 to falsely implicate the Appellants. In the light of the principles elucidated above, I am of the view that the trial judge was entitled to arrive at such a finding.

28 However, that PW9 did not have a motive to falsely implicate the Appellants does not necessarily mean that he did not in fact do so, or that his evidence should be deemed credible or cogent. It cannot mean that his evidence should be accepted wholesale. In other words, motive and conduct ought not to be conflated. This point was succinctly made by V K Rajah JA in *XP v PP* in the context of allegations of collusion among complainants as follows (at [22]):

... [W]hat really matters in the final analysis is whether it can be established that the witness did or did not in fact falsely implicate the accused. Motive and conduct remain legally distinct concepts and ought not to be conflated. The Prosecution can successfully rebut allegations of collusion without having to prove beyond a reasonable doubt that the witnesses in question had no motive or reason to make a false complaint, if, for example, there were independent eyewitnesses or other real evidence independently establishing the truth of the complaint. If the witness could not possibly have made a false complaint, then his motive is irrelevant. Conversely, a finding that the witnesses in question had no motive to make a false complaint would often (and not invariably) lead to the conclusion that they did not in fact do so, but this in itself is not the determinative inquiry in considering the possibility of collusion. [emphasis added]

29 The ultimate inquiry therefore relates to PW9's credibility as a witness. It is well-established that an appellate court should exercise restraint in reviewing a trial judge's assessment of a witness' credibility since the trial judge has had the benefit of observing the witness in court. However, a favourable perception of his demeanour alone does not invariably immunise the trial judge's decision from appellate scrutiny. A witness may be observed to have testified in a frank and forthright manner but if he cannot recall or satisfactorily explain material facts and assertions, his credible demeanour cannot overcome such deficiencies: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [41]; *XP v PP* at [71]. Moreover, where the internal consistency of the content of the witness' evidence or the external consistency between the content of the witness' evidence and the extrinsic evidence is concerned, an appellate court is in as good a position as the trial court to assess the reliability and veracity of the witness' evidence: see *Jagatheesan* at [40], citing *Public Prosecutor v Choo Thiam Hock* [1994] 2 SLR(R) 702 at [11].

30 In this case, the trial judge found PW9 to be honest and forthright in giving his evidence in court and opined that he was a credible and reliable witness. This finding by the trial judge appeared to be premised on a number of matters, including his observation of PW9's demeanour while PW9 was giving evidence, PW9's explanation as to why he had not mentioned Nagas' involvement in the

statement D5, the fact that PW9 consistently maintained the involvement of the Appellants, Francis, and himself in the thefts at the airport, and PW9's detailed description of the team's *modus operandi* for carrying out the thefts.

31 In my view, however, there are a number of material deficiencies in PW9's evidence that were not or were not sufficiently dealt with by the trial judge, and which cast significant doubts on both its veracity and sufficiency in relation to the conviction of the Appellants. I shall elaborate on these deficiencies in turn.

Inability to recall specific details of the offences

32 In the first place, PW9's evidence is woefully lacking in specificity and detail. He conceded time and again that he was unable to tell the court or identify on which dates and which flights the alleged thefts took place and what jewellery were stolen. In fact, PW9 said that he could not remember any dates on which the alleged thefts had been committed even when the investigation officer had asked him during the course of investigations. The only incident which PW9 had any recollection of is the alleged theft of eight gold bangles that took place on 11 January 2011; but even then, he said that he only remembered the act of taking the eight gold bangles and not the time, month, and year when this was committed.

33 In his statement D5 recorded on 14 September 2011, PW9 stated that he had witnessed Geyabalan and Francis removing money and jewellery from passengers' luggage on three occasions. However, when he was questioned on this statement by defence counsel, he claimed not to remember the dates, times, or flights of these three occasions, or how much money and jewellery they took. His answers were ambivalent and even appeared to suggest that he did not know whether the statement was true or false since he claimed that he might have made it out of fear.

34 Notwithstanding that PW9 had pleaded guilty to the charges against him, it appears that he was unable to recall any details pertaining to his commission of the offences. He admitted that at the point in time when he pleaded guilty and consented to have the charges against him taken into consideration, he "couldn't remember any of the details, the facts of the case and the items stolen". He explained his decision to plead guilty as follows:

A ...Counsel asked me, you say there are 8 charges, did you commit them? I said I have already admitted, I have already given statement, I have already signed it. And I said, please fight for me---and please fight for me and he was fighting this case for 1 year. While in the midst of fighting for my case he told me, you don't have the money to fight this case, so you admit, he told me. So I admitted.

35 In relation to the *modus operandi* of the alleged thefts, PW9's evidence is that the stolen jewellery could be taken out of the airport because security screening was lax. However, this is inconsistent with the evidence of other witnesses that the baggage handlers would have to go through a thorough body search by a police officer after they completed their duties. PW9 maintained that during the period when he was working as a baggage handler, it was not a practice to have the workers screened or checked. This, however, is contradicted by Mr Roslan Abdul Rahman ("Roslan"), the ramp service manager who was in charge of supervising Nagas' team of baggage handlers. Roslan testified that the practice from mid-2010 onwards was that an additional police officer would be stationed below the cargo compartment, and there was a requirement that the person who was doing the loading of the baggage had to come down and report to the police officer and go through a thorough body search. This is also the evidence of the Appellants. In my view, PW9's evidence does not sufficiently address how the team was able to carry out the thefts despite these stringent

security screenings.

Inconsistent evidence on the number and identity of accomplices

36 PW9's evidence as to the number and identity of accomplices is also inconsistent, particularly in relation to the question of whether all four of them (*viz*, PW9, Francis, and the Appellants) needed to be there in order for the thefts to be committed. At various points, PW9 seemed to be certain that all four of them needed to be there:

Q Now Mr. Selvakumar, from what you know, were there any times when items were stolen, when not all 4 of you were around, say maybe one or more was on leave, not at work.

A To do this you need 4 people and we will only do it if we 4 are there.

37 However, PW9 later testified that before Francis joined their team, a Malay driver was involved in carrying out the thefts:

Q So before Francis joined the---you---you, [Geyabalan] and Nagas has never done it by yourself? Yes or no? Have you done it or you have not done it?

A We have, but---we have, but 4 people---4 people.

Q Who are the 4?

A At that time there was a shortage of 1 person. Then sometime there will be a Malay driver. The Malay driver will be pulling the van. Nagas will be the lookout. I and [Geyabalan] will do it upstairs.

38 PW9 had not mentioned the involvement of the Malay driver in any of his statements. He said that he had told the police about this Malay driver but later said that he had not told the police about the Malay driver because he was not asked. Confusingly, PW9 also seemed to agree in re-examination that before the Malay driver was involved, thefts were committed only by PW9 and the Appellants.

39 PW9's testimony that a theft could not be done alone and that all four accomplices were needed to do it also does not sit well with the fact that he had earlier pleaded guilty to a charge of dishonest misappropriation of an envelope containing 60,000 Indian rupees for which no other accused persons appeared to be involved. It appears from the charge and the statement of facts that this offence was not committed by anyone else other than PW9. PW9 however maintained under cross-examination that Francis, the Appellants, and himself had done it together.

Discrepancies regarding Nagas' involvement in the thefts

40 There is also some controversy regarding the statement D5, PW9's first police statement recorded by Sujantha (see [12] above). In that statement, PW9 had stated unequivocally that Nagas was not involved in the thefts. In PW9's later statements and on the stand, however, he recanted from this position. He gave various reasons for his alleged initial untruthfulness and why he said that Nagas was not involved. At certain points, PW9 said that he did not mention Nagas out of fear that Nagas would "do something" and because he was concerned with the safety of his wife and children. This explanation was accepted by the trial judge. However, PW9 was not able to give a rational explanation of why he was specifically afraid of Nagas, and conceded that Nagas had never threatened him or any of his family members. At another point, PW9 said that the statement D5 was

taken by Sujantha in a "threatening manner" and that she "kept threatening me to take the statements so I didn't tell her the truth". Later, however, PW9 claimed that Sujantha had not threatened him. Sujantha also testified that she had not threatened him in any way. To add to the confusion, in the course of his cross-examination, PW9 said that he had not mentioned Nagas' name because it did not occur to him that he should mention Nagas' involvement when the statement was recorded. This appears to be in direct contradiction to his earlier evidence that he had suppressed Nagas' name out of fear.

41 Moreover, PW9's testimony that Nagas had to be present for the thefts to be committed does not comport with the undisputed fact that Nagas was on medical leave on certain dates when the thefts were alleged to have taken place. When PW9 was asked whether Nagas had been present on 14 and 16 April 2010 and had committed thefts on those dates, PW9 said that this "could be [the case]" and reiterated his evidence that they would only commit the thefts if Nagas was there. PW9 had also admitted to having two charges taken into consideration in respect of thefts on those dates. However, the attendance records show that Nagas was absent from work on 14 and 16 April 2010 as he was on medical leave. Although Nagas was acquitted of the charges in relation to theft committed on these two dates, the discrepancy in PW9's evidence in this respect simply reinforces the inference that his evidence in respect of all the alleged thefts is wholly unreliable.

Evidence of the Complainants

42 As for the evidence of the Complainants, I am not persuaded that this establishes beyond a reasonable doubt that the jewellery pawned by Nagas at the Pawnshop are indeed jewellery which belonged to the Complainants. Reviewing their testimonies as well as the documentary evidence such as the receipts of the Complainants and photographs of their family members wearing the jewellery, I am prepared to accept that the Complainants had indeed owned jewellery which they lost while travelling on their respective flights from Singapore to India. The uncertainty, however, relates to the identification process.

43 It was conceded by most of the Complainants that the jewellery identified by them were not custom-made and did not have any special distinguishing feature. It is therefore difficult to say for certain that the jewellery identified by the Complainants are the *exact* same jewellery that had been found missing from their check-in luggage. One witness, for example, conceded that the item he had identified was "similar" but not the same as the one he had lost. Another witness who testified that he had lost eight gold bangles from his check-in luggage conceded that the bangles he had identified had the same design as those belonging to him but were not necessarily the same. Another witness, Anita Nirmala Anthony Raj ("PW7"), identified a gold chain with a pendant with an anchor design as belonging to her and stated that the gold chain came with an inscription "MYS", which stood for "Mayur Jewellers Bangalore". Upon verification by the investigation officer, the inscription on the gold chain was discovered to be "NVS" instead. Even taking the similarity in initials into account, the fact remains that the inscription is not a custom inscription but is instead a standard mark of the shop that sold the chain. Therefore, I cannot rule out the possibility that the jewellery items seized from the Pawnshop are merely similar to those owned by the Complainants.

44 This possibility is further reinforced by the undisputed evidence that Nagas had been regularly pawning jewellery items for a number of years before the alleged thefts, and that the jewellery identified by the Complainants is only a fraction of the total number of items that had been pawned by Nagas and seized by the police from the Pawnshop. The evidence of the Pawnshop representative, Mr Tan Chor Hui, is that he had known Nagas for six to seven years and that Nagas had been coming to the pawnshop to pawn items since 2004. The investigation officer in charge of the case, Mr Dinesh Vishnu ("Dinesh"), stated that the number of jewellery identified is only "about a quarter" of the total

number of gold jewellery that was seized by the police from the Pawnshop.

45 Pertinently, I note that all except two of the Complainants had said that their jewellery had been contained in their hand-carry luggage, which were eventually checked-in because a Tiger Airways staff or airport staff had informed them that there was no more space in the cabin or overhead compartments. Unfortunately, the possibility of the staff members to whom the bags were handed to having stolen the jewellery was not explored by the police. Dinesh, the investigation officer, conceded that he did not check with Tiger Airways which aircraft crew were on duty that day or who the bags had been handed over to.

Whether the Appellants' convictions should be upheld

46 At the outset, I note that the trial judge did not draw a distinction between Geyabalan and Nagas' respective charges and appeared to consider the evidence as applying to both of them equally. With respect, this approach is erroneous. The evidence of the Complainants, which form a main plank of the Prosecution's case, is clearly less relevant to Geyabalan than to Nagas. As Geyabalan pointed out, he was not caught stealing jewellery from passengers' baggage or found to be in possession of the stolen jewellery. The records from the Pawnshop only confirm that *Nagas* had pawned the items that were seized and subsequently identified by the Complainants as belonging to them. Neither is there any evidence from Nagas implicating Geyabalan in the alleged thefts or in the pawning of the jewellery.

47 Thus, in so far as Geyabalan is concerned, the only evidence that implicates him in the alleged thefts is the attendance records showing that he was present and on duty on those dates and for those flights which involved jewellery being allegedly stolen from check-in luggage, as well as PW9's testimony. However, pursuant to the discussion above, I do not find PW9 a credible or reliable witness given the material discrepancies in his evidence, both internal and external. While PW9's demeanour as assessed by the trial judge may have been that of a credible witness, this does not change the fact that his evidence is inconsistent and lacking in particulars. He was not able to recall details of the offences despite his assertions that he had personally witnessed the other accomplices taking jewellery from passengers' baggage. He also gave inconsistent evidence on the identity and number of persons involved in the alleged offences. More importantly, his evidence lacks specificity and detail as to the dates and times on which the alleged thefts took place and as to what items were stolen. While this is a case concerning joint criminal liability under s 34 of the Penal Code, it is nevertheless necessary to prove that the offence was actually committed on the dates and times stated in the charges.

48 In the present case, there is no evidence that Geyabalan or any of the three other accomplices had, on the specific dates stated in the four theft charges, taken the specific items of jewellery from passengers' baggage in furtherance of a common intention. Moreover, the trial judge apparently did not consider the possibility that the thefts could have been committed by either the airport staff or airline staff who had taken the bags from the passengers to be checked in (see [45] above), or the additional workers which PW9 himself agreed would often be assigned to India-bound flights to help with the loading of the luggage. I therefore find that the conviction of Geyabalan on the basis of PW9's testimony is unsafe and that the Prosecution has failed to prove beyond a reasonable doubt that Geyabalan had committed the offences in the four theft charges preferred against him.

49 The above observations in relation to PW9's testimony apply equally when considering Nagas' conviction. In the case of Nagas, unlike Geyabalan, the evidence of the Complainants as well as the records from the Pawnshop form additional planks of evidence against him. However, as I have found, the evidence of the Complainants is neither here nor there. In totality, the evidence cannot be said

to have established beyond a reasonable doubt that the jewellery lost by the Complainants had been pawned by Nagas or was at any time in his possession. Even taking the evidence of the Complainants together with PW9's evidence and the documentary evidence, such as the attendance records and the records from the Pawnshop, the evidence does not "inevitably and inexorably" lead the court to the single conclusion of Nagas' guilt: see *Ang Sunny v Public Prosecutor* [1965-1967] SLR(R) 123 at [14]. Nagas' convictions on the four theft charges should therefore also be overturned. It follows that is unnecessary for me to consider Nagas' appeal against his sentence.

Conclusion

50 In my view, undue weight was placed by the trial judge on the evidence of PW9 that the Appellants were involved in the alleged thefts, and the evidence of the Complainants that the jewellery they had identified was indeed theirs. These are crucial aspects of the Prosecution's case. However, the evidence in these respects is unreliable and inadequate to support the trial judge's findings.

51 Moreover, the trial judge did not consider the evidence in respect of each of the Appellants separately, and did not examine the individual particulars of the charges against the Appellants to ensure that they were made out on the available evidence. In doing so, the trial judge had adopted an overly broad-brush approach towards the assessment of the Prosecution's evidence. In the result, with respect, the findings are against the weight of the evidence and the convictions are unsafe.

52 It bears reiterating that the Prosecution bears the burden of proving its case against the Appellants beyond a reasonable doubt. In my judgment, the Prosecution has not discharged that burden in the present case. For all the reasons above, the Appellants' appeals against their respective convictions are allowed.

Annex A: Table of charges

S/N	Charge No.	Offence	Date	Items	Owner(s)
1	1st Charge (Geyabalan) 9th Charge (Nagas)	Theft with common intention	11 Jan 2011	8 gold bangles	Thangaraja Viknesh Kumar (PW3)
2	2nd Charge (Geyabalan) 10th Charge (Nagas)	Theft with common intention	17 Jan 2010	1 reversible gold necklace with white stones on one side, and white and red stone on the other side 1 gold necklace with white pearls and a peacock-shaped pendant	Natarajan Nithyakayani (PW11)
3	3rd Charge (Geyabalan) 11th Charge (Nagas)	Theft with common intention	6 Feb 2010	1 gold chain with black beads and a pendant	Gonna Padmavathi (PW2) Gummadi Ramana (PW1)

4	4th Charge (Geyabalan)	Theft with common intention	14 Apr 2010	1 pair of gold earrings 2 gold bangles 1 gold chain	Narayan Govinda Chandra Mouli (PW10)
	2nd Charge (Nagas)	Voluntarily assisting in disposal of stolen property	15 Apr 2010		

S/N	Charge No.	Offence	Date	Items	Owner(s)
5	5th Charge (Geyabalan)	Theft with common intention	16 Apr 2010	1 pair of gold earrings 1 gold earring 1 gold necklace 1 gold chain with red stones	Panchapakesan Suganda (PW6)
	3rd & 8th Charges (Nagas)	Voluntarily assisting in disposal of stolen property	19 & 29 Apr 2010		
6	6th Charge (Geyabalan)	Theft with common intention	2 Feb 2011	1 gold chain with pendant of an anchor design	Anitha Nirmala Anthony Raj (PW7)
	12th Charge (Nagas)				
7	7th Charge (Geyabalan)	Theft with common intention	24 May 2011	1 gold chain	Beena Sabeen (PW5)
	13th Charge (Nagas)				
8	8th Charge (Geyabalan)	Theft with common intention	29 Jul 2011	1 gold chain with black beads and pendant	Rishikesh Sahi (PW4)
	14th Charge (Nagas)				

Copyright © Government of Singapore.