IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 236

Magistrate's Appeal No 144 of 2015

Between

Jeganathan Ramasamy

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Offences] — [Property] — [Criminal Breach of Trust]

[Criminal Procedure and Sentencing] — [Appeal] — [Acquittal]

TABLE OF CONTENTS

Jeganathan Ramasamy
v
Public Prosecutor

[2016] SGHC 236

High Court — Magistrate's Appeal No 144 of 2015
See Kee Oon JC
8 July 2016

20 October 2016 Judgment reserved.

See Kee Oon JC:

Introduction

1 The appellant, Jeganathan Ramasamy, has appealed against the learned trial judge's decision to convict him of two charges of criminal breach of trust ("CBT") by a public servant under s 409 of the Penal Code (Cap 224, 2008 Rev Ed). The charges state that the appellant dishonestly misappropriated two "Apple iPad 2" devices ("the Two iPad 2s"), which had been entrusted to him in his capacity as the director of the Technology Department of the Singapore Civil Defence Force ("the SDCF") in September 2011, by

(a) converting them to his own use by giving one of the Two iPad 2s to his daughter for her personal use; and

(b) selling the other to his colleague for a sum of $200.

The appellant was sentenced to ten weeks' imprisonment for each of the two charges, with both sentences to run concurrently. The trial judge's grounds of decision are reported as *Public Prosecutor v Jeganathan Ramasamy* [2016] SGDC 40.

2 Both before the trial judge and on appeal, it is undisputed that the appellant received the Two iPad 2s from NCS Pte Ltd ("NCS"), a vendor of the SCDF, and that he had given one to his daughter and sold the other to his colleague, Mr Eric Yap Wee Teck ("Mr Yap"). At that time, Mr Yap was the senior director of Emergency Services in the SCDF.[1] What is in dispute is (a) whether the Two iPad 2s were the property of the SCDF which had been entrusted to the appellant or whether they were his personal property, a point which goes towards the *actus reus* of the offences; and (b) even assuming that the Two iPad 2s had indeed been so entrusted, whether the appellant had mistakenly believed that they were his personal property and thus did not have the requisite *mens rea* to commit the offences. On appeal, counsel for the appellant, Mr Sanjiv Rajan ("Mr Rajan"), focuses on the second issue. The crux of the defence is that the appellant and the relevant NCS staff were at the very least talking at cross-purposes, in relation to why the Two iPad 2s were procured and handed over to the appellant.[2] Mr Rajan submits that the trial judge erred in not finding that the appellant was labouring under the mistaken impression that the Two iPad 2s were purchased by the staff from NCS for the appellant for his personal use.

3 I shall proceed to set out the background facts to provide the necessary context before going into the parties' arguments, summarising the trial judge's decision and finally giving my decision. Unless otherwise specified, the facts

1 Record of Proceedings ("ROP") volume ("Vol") 1 at p 585.

2 Appellant's submissions at para 36.

in the next section are undisputed and are mostly extracted from the Statement of Agreed Facts.[3]

Background facts

4 The appellant was the director of the Technology Department of the SCDF from 1 August 2007 to 11 September 2012. In that capacity, the appellant's job scope included, among other things, overseeing the implementation and maintenance of Info-Comm Technology ("ICT") systems in the SCDF and evaluating new ICT systems to improve the SCDF's operational and administrative processes.[4]

5 In February 2011, the Infocomm Development Authority of Singapore ("IDA"), which has since been restructured to form the Government Technology Agency (GovTech), invited participants from the SCDF to enrol in a trial which involved the use of iPads within the standard operating environment, commonly referred to as "SOE" ("the IDA trial").[5] The IDA trial was focused on providing the functionality of access to "SOE emails" through the use of Apple iPads. On the appellant's directions, the SCDF registered for the trial.[6] A few months later, in July 2011, the SCDF raised an invitation to quote ("ITQ") to invite vendors to put in bids for the supply of various equipment, including Apple iPad 2s, which were needed for the IDA trial. Two vendors, Genesis IT Services and New Vision Electronics, were successful in the ITQ and were each to supply two iPad 2s to the SCDF. There was some delay before the iPad 2s were delivered. On 22 September 2011, the

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3 Statement of Agreed Facts (ROP, Vol 2 at p 416 - 418).

4 Statement of Agreed Facts at para 3 (ROP, Vol 2 at p 416).

5 Statement of Agreed Facts at para 5 (ROP, Vol 2 at p 416).

6 Statement of Agreed Facts at para 5 (ROP, Vol 2 at p 416).

appellant received an Apple iPad 2 installed with the relevant software for the IDA trial. This iPad 2 is neither the subject of either charge nor directly relevant to them, but I include a reference to it as well as some details on the IDA trial in this brief narrative as both parties have alluded to these aspects as part of their case.

6 On 7 September 2011, the appellant had a meeting ("the meeting") on the premises of the SCDF with three staff members from NCS. This was a few weeks before he received the iPad 2 that was procured for the purpose of the IDA trial.[7] NCS, a subsidiary of Singapore Telecommunications Ltd ("SingTel"), is a system integrator that develops software for its customers, one of which is the SCDF. The three staff members from NCS at the meeting were (a) the group general manager, Mr Wong Soon Nam ("Mr Wong"); (b) the director of Business Development, Ms Esther Goh Tok Mui ("Ms Goh"); and (c) the director of Integrated Solutions, Ms Tan Chien Mien ("Ms Tan"). I will refer to them collectively as "the NCS staff". The meeting was arranged as NCS wanted to assure the SCDF that it would resolve a problem which had arisen in respect of a project that they were collaborating on.[8]

7 After the meeting, the parties went to the SCDF officers' mess for a coffee break. While they were chatting, the appellant noticed that some of the NCS staff were using the Apple iPad 2. He was informed that they had bought the Apple iPad 2s using their NCS staff discount.

8 The Prosecution and the appellant dispute what transpired thereafter in the officers' mess. The Prosecution's case is that the parties reached an agreement that NCS would provide iPad 2s to the SCDF for the purpose of a

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7 Statement of Agreed Facts at para 11 (ROP Vol 2 at p 417).

8 ROP Vol 1 at p 14.

trial concerning general mobility and applications that NCS would be rolling out in future for the SCDF. The appellant, on the other hand, asserts that there was no such agreement; instead, Mr Wong had agreed to see if there was a way he could help the appellant procure iPad 2s for his personal use.

9 On 8 September 2011, a day after the meeting, the appellant sent Mr Wong a text message stating "I am serious about the iPAD … Any good news". Mr Wong replied, through a text message, "[c]ertainly. It is considered done. Esther [*ie*, Ms Goh] is arranging".

10 A few days later, on 13 September 2011, the appellant sent a text message to NCS's deputy director of Business Development, Mr Yee Siew Wai, Stanley ("Mr Yee"), asking him "[s]o when is the ipad2 coming … Pse note I will have to pay". Mr Yee thereafter informed him on 15 September 2011 that the Two iPad 2s had arrived and delivered them to him in his office. The Prosecution and the appellant again put forward different accounts of what transpired when Mr Yee met the appellant to pass him the Two iPad 2s, but it seems to be common ground that the appellant had asked Mr Yee how much he needed to pay for the Two iPad 2s and was told to check with Mr Wong.

11 More than a week later, on 26 September 2011, the appellant and Mr Wong exchanged a series of text messages which both the Prosecution and the appellant place considerable emphasis on but in different ways. The series of text messages read as follows:

The appellant:	Friend, thank you for the F1 tickets. For the IPad2, can you tell me the amount I have to pay..

Mr Wong:	The iPad2 is meant for all the new mobile apps that we are rolling out for Scdf and for you to trial
Mr Wong:	So this is tool to facilitate testing
The appellant:	Noted…

12 The appellant says that he had simply replied "[n]oted" because he was in a meeting when he received Mr Wong's messages.[9] The Prosecution, on the other hand, argues that such a reply was clearly sent in acknowledgement to what Mr Wong had conveyed – that the Two iPad 2s were for the purposes of trial.

13 The phone records show that Mr Wong called the appellant about four minutes after that series of text messages was exchanged.[10] According to the appellant, Mr Wong told him in this call to try out the Two iPad 2s before they discuss the price. The Prosecution does not accept this. Mr Wong initially gave evidence that he did not call the appellant but later said, when he was shown the call records, that he could not remember the contents of the phone call or the fact that it was made. That night, Mr Wong forwarded the same series of text messages to Ms Goh.[11]

14 Subsequently, the appellant gave one of the Two iPad 2s to his daughter for her use and sold the other to Mr Yap for $200.

15 The Corrupt Practices Investigation Bureau ("the CPIB") began investigations into the alleged offences sometime in January 2012. Nearly two months later on 6 March 2012, NCS sent a letter to the SCDF making reference to the purported loan of the Two iPad 2s to the SCDF since 15

9 Appellant's skeletal submissions at para 61.

10 ROP Vol 2 at p 661.

11 Respondent's skeletal arguments at para 10.

September 2011 and indicating that the purported trial that the Two iPad 2s were supposedly meant for had concluded.[12] It is undisputed that this was the first time that NCS had sent any official correspondence to the SCDF in respect of the Two iPad 2s.

The parties' cases below

The Prosecution's case

16 The Prosecution's case was that the Two iPad 2s were on loan from NCS for the purpose of a trial concerning general mobility and applications which NCS would roll out for the SCDF in future, and were entrusted to the appellant in his capacity as the director of the department. It submits that the appellant had dishonestly misappropriated them with full knowledge of this purpose.

17 Relying on the evidence of the NCS staff who had testified at trial, the Prosecution submitted that the NCS staff and the appellant reached an agreement during the meeting in the officers' mess on 7 September 2011 that NCS would loan the Two iPad 2s to the SCDF for the purposes of a trial. It argued that as supported by the evidence given by Mr Yee,[13] this purpose was again told to the appellant by Mr Yee when he delivered the Two iPad 2s to him on 13 September 2011. It further argued that even if the appellant had for some reason been labouring under the wrong impression, the text messages sent by Mr Wong on 26 September 2011, which are set out at [11] above, must have made it absolutely clear to him that the Two iPad 2s were loaned to the SCDF for the purposes of a trial and were not sold to the appellant for his personal use. It argued that he could not have been mistaken from that point

12 ROP Vol 2 at p 656.

on. In this regard, the Prosecution also referred to the fact that Mr Wong had forwarded the series of text messages to Ms Goh that night, which on his evidence, was for the reason of keeping her in the loop on what he had communicated to the appellant about the purpose of the Two iPad 2s. The Prosecution submitted that this must mean that contrary to the appellant's assertion (see [11] above), the appellant and Mr Wong did not say anything that detracted from the contents of the text messages in the subsequent phone conversation.

The appellant's defence

18 The appellant's defence was that the Two iPad 2s were meant for his personal purchase and thus neither the *actus reus* nor the *mens rea* of the offences was made out. His version of the events was that on 7 September 2011, while they were in the officers' mess, he had a discussion with the NCS staff about purchasing iPad 2s for his personal use and Mr Wong had promised to check and get back to him. In the alternative, the appellant argued that at the very least, he had wrongly thought that the Two iPad 2s were for his personal purchase as he had been talking at cross-purposes with the NCS staff. He submitted that because of his mistaken state of mind, he did not have the *mens rea* to commit the offences even if the *actus reus* was made out.

19 In support of his defence, the appellant relied on the evidence of some of the Prosecution's witnesses as well as objective evidence such as contemporaneous phone records and text messages. Starting with the meeting in the officers' mess on 7 September 2011, the appellant pointed to Ms Tan's evidence in cross-examination that the appellant had asked whether there was "any other means" to buy the iPad 2s after he was told that they could not obtain the iPad 2s for him using their staff discount.[14] Next, he referred to the

text messages he sent the following day to Mr Wong in which he emphasised that he was serious about the iPad 2s and asked if there was any good news. He also relied heavily on his repeated attempts to enquire about the payment of the Two iPad 2s from Mr Wong or Mr Yee, many of which are supported by objective evidence in the form of text messages. The appellant further pointed out that NCS did not load any application into the Two iPad 2s which were delivered in mint condition and did not follow up on the Two iPad 2s in the three to four months from September 2011 to January 2012. He contended that these demonstrated that the Two iPad 2s were not provided for the SCDF's official use or for trial.[15]

The decision below

20 The trial judge convicted the appellant on both charges after a 12-day trial. He found that the Two iPad 2s were not the appellant's personal property but had been entrusted to him by the SCDF for the purposes of a trial, and that he knew that they were entrusted for this purpose and was *not* labouring under any mistaken belief in dealing with them in the manner he did.

21 On the point of entrustment, the trial judge relied on four main points. First, he relied on the evidence of the NCS staff who were present at the discussion in the officers' mess on 7 September 2011, namely Mr Wong, Ms Goh and Ms Tan. All three had testified that they did not recall that any one of them had agreed to look into the possibility of getting iPad 2s for the appellant's personal purchase.

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14 ROP vol 1 at p 499.

15 Appellant's skeletal submissions at para 52.

22 Second, the trial judge found the conduct of the parties, in particular the NCS staff, after the meeting to be consistent with the Prosecution's case that the Two iPad 2s were on loan to the SCDF. He found the series of messages exchanged between Ms Wong and the appellant on 8 September 2011 to be, at best, a neutral piece of evidence, which was equally consistent with an understanding that the iPad 2s were urgently needed for the purpose of testing. The trial judge found the manner in which the NCS staff, specifically Ms Goh, had arranged for the purchase of the Two iPad 2s to be significant and telling. He noted that she had raised a requisition form within NCS and had stated on the form that the Two iPad 2s were for "customer testing", which were steps consistent with an official purchase rather than a purchase by NCS on behalf of the appellant.

23 Third, the trial judge placed considerable emphasis on the text messages the appellant exchanged with Mr Wong on 26 September 2011. He held that it was clear from a plain reading of those text messages that the Two iPad 2s were meant for the trial of applications that NCS would eventually roll out for the SCDF. To his mind, the message conveyed in those text messages, in particular the words "this is tool for testing", was "straightforward and unambiguous". The trial judge rejected the appellant's explanation of how he had understood the messages and why he had replied "noted", discounting it as being "contorted and contrived". He did not think that Mr Wong would have taken such liberty as to peremptorily dictate, in such specific terms no less, how the appellant was to use the Two iPad 2s, had they indeed been intended for his personal usage.

24 Fourth, the trial judge placed weight on the fact that the appellant's case was inconsistent and irreconcilable with the account that the appellant had given to Mr Yap a day after the appellant was interviewed by the CPIB.

Mr Yap had given evidence that the appellant had told him that he had approached NCS to request two iPad 2s for testing, and the two iPad 2s "became surplus" after they were delivered because Singtel had supplied him with two iPad 2s that he had earlier asked for (presumably for the IDA trial). The trial judge noted that the appellant did not seek to challenge Mr Yap's recollection. Taking this in the light of the other evidence, the trial judge concluded that there was no doubt in his mind that the appellant had only formed the idea of purchasing the Two iPad 2s *after* they "became surplus" (*ie*, after the iPad 2s that were ordered for the purposes of the IDA trial arrived).

25 Having established that the appellant had been entrusted with the Two iPad 2s, the trial judge moved on to the issue of whether the appellant was under a mistaken belief that the Two iPad 2s were for his personal purchase. The trial judge noted that there was evidence that the appellant had asked for the price of the Two iPad 2s and had also expressed an intention to pay for them, but was satisfied that the appellant was not under any such mistaken belief notwithstanding those pieces of evidence. He noted the appellant's account that the discussion on the iPad 2s at the meeting centred on the issue of personal purchase, but found that this was not corroborated by any of the others who were present. He also found the appellant's indifference to the price and specifications of the Two iPad 2s to be inconsistent with the actions of a person who was buying the Two iPad 2s. Importantly, the trial judge found that *even if* the appellant had genuinely harboured some misunderstanding about the Two iPad 2s, no such misunderstanding could have been possible after the exchange of text messages he had with Mr Wong on 26 September 2011.

26 Finally, the trial judge was also of the view that the appellant's credibility had been impugned by the numerous inconsistencies in the accounts that the appellant gave (a) in court; (b) to Mr Yap in January 2012; and (c) in his statement to the CPIB in January 2012.

Arguments on appeal

27 The parties' cases on appeal are largely similar to their positions in the court below, save that the appellant appears to have elected to focus more on his alternative argument.[16] This argument is essentially that at the very least, even if NCS had supplied the Two iPad 2s to the SCDF for official reasons, he did not act dishonestly as he had always been under the impression, albeit a mistaken one, that the Two iPad 2s were for his personal purchase and use. Given that the appellant has adopted such an approach, I will correspondingly focus my analysis on the issue of *mens rea*. Where necessary, I will elaborate on the arguments of the parties in my analysis below.

My decision

28 Having examined the evidence and the parties' submissions, I am of the view that both the accounts of the Prosecution and the appellant are equally reasonable and plausible. It must necessarily follow that there is reasonable doubt that renders the conviction unsafe. I shall set out below my reasons for arriving at this conclusion.

29 I should state at the outset that I do not agree with the trial judge's key finding that the appellant could not have had any mistaken belief that the Two iPad 2s were for his personal purchase because it had been made clear to him that they were meant to be loaned to the SCDF for the purposes of trial. In my

16 Appellant's submission at para 3.

assessment, and with respect, there is room for considerable doubt as to whether the parties might have at the very least been talking at cross-purposes. The appellant's conduct and text messages up to, and including, the text messages he exchanged with Mr Wong on 26 September 2011 are, in my view, objectively capable of being understood as being consistent with his defence that he was under the impression that the Two iPad 2s were procured for his personal purchase.

The evidence of the NCS staff about the meeting

30 The evidence given by the NCS staff weighs largely against the appellant. Their unanimous testimonies were that an agreement had been reached after the meeting for NCS to supply the SCDF with iPad 2s for the purposes of trial. But it cannot be ignored that Ms Tan's evidence at the very least corroborates the appellant's account that he had asked whether they could help him purchase iPad 2s for his personal use.[17] She also testified that he had gone on to ask whether they could help him to purchase the iPad 2s for his personal use by other means[18] after they informed him that they were not able to obtain them at staff discount for him, but she was not able to recall how they had responded.[19]

The text message on 8 September 2011

31 Moving next to the text message that the appellant sent to Mr Wong the following day where he said "I am serious about the iPAD … Any good news" and Mr Wong replied "[c]ertainly. It is considered done. [Ms Goh] is arranging", I agree with the trial judge that this should be regarded as a piece

17 ROP Vol 1 at p 497, lines 11 to 17.

18 ROP Vol 1 at p 499, lines 7 and 8, and p 506, lines 23 to 25.

19 ROP Vol 1 at p 499, line 10.

of neutral evidence that could support either case. Where we depart is that he thinks it is at *best* neutral while my view is that it is at *least* neutral.

32 In my view, the fact that the appellant had asked whether there was any "good news" and reiterated that he was serious about the iPad 2s could be understood as being more consistent with the appellant's account that he was under the impression that Mr Wong would help him check if he could help him buy the iPad 2s and was thus following up. In fact, beyond the appellant's state of mind, I find it difficult to understand why there would have been a need for the appellant to send such a message if, going by the Prosecution's case, the NCS staff and the appellant had already reached an agreement the day before for NCS to provide the Two iPad 2s to the SCDF for trial. I did not find the Prosecution's submission that by "good news", the appellant was referring to whether the iPad 2s could be swiftly delivered to be persuasive. For one, this is not consistent with the account of the NCS staff, in particular Ms Goh, that the appellant was initially reluctant for iPad 2s to be introduced into the SCDF as he was concerned whether that might compromise cyber security.[20] There appears to be no reason why the appellant, who was initially reluctant and had to be persuaded, would suddenly want the iPad 2s to be urgently given to the SCDF. But I do not think it is necessary for me to come to a definitive finding on this issue. Ultimately, I am of the view that it is best to treat this text message as a neutral piece of evidence given that it is neither comprehensive nor unequivocal, and is capable of subjectively different interpretations.

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[20] ROP vol 1 at p 177 - 178.

Subsequent communication between the parties

33 The evidence that most strongly supports the appellant's case and raises considerable doubt in my mind as to the guilt of the appellant is the fact that the appellant had made repeated attempts to pay for the Two iPad 2s. It is undisputed that the appellant had asked to make payment or asked about the price of the Two iPad 2s on the following occasions:

(a) in his text message to Mr Yee on 13 September 2011 in which he asked "[s]o when is the ipad2 coming … Pse note I will have to pay" (see [10] above);

(b) when he met Mr Yee on 15 September 2011 and asked Mr Yee how much he needed to pay for the Two iPad 2s and was told to check with Mr Wong (see [10] above); and

(c) in his text message to Mr Wong on 26 September 2011, in which he asked Mr Wong to "tell [him] the amount [he has] to pay" (see [11] above).

34 The appellant argues that apart from these three instances, he had asked Mr Wong about the price of the Two iPad 2s on other occasions. He says that he spoke to Mr Wong over the phone on 16 September 2011 and had asked Mr Wong how much he needed to pay for them, to which Mr Wong replied that he would check and get back to him. He also asserts that he had followed up on the issue of payment over two phone calls with Mr Wong on 25 October 2011. The appellant also claims to have attempted to contact Mr Wong on several occasions from then till December 2011 but was unable to do so as Mr Wong was overseas. The Prosecution does not – and cannot – dispute that these calls, which are reflected in the phone records, had taken place. It

contends, however, that the appellant did not speak to Mr Wong about the issue of payment during these conversations and relies on Mr Wong's evidence for this argument. In the main, Mr Wong's evidence is that he is unable to recall the contents of the conversations but nonetheless doubts that they had spoken about payment or he would have asked his staff to follow up on that.

35 Despite this being a rather contentious issue in the trial below, I do not think it is necessary for me to focus my attention on whether the appellant had indeed spoken to Mr Wong about the issue of payment on those "other occasions". Of greater importance is the undisputed fact that he had asked about the price of the Two iPad 2s and to make payment not merely once but *three times* (as set out at [33] above). This sits uncomfortably with the Prosecution's case. Had the Two iPad 2s been provided for official purposes for the SCDF, or more importantly had he known that they had been provided for such purposes, there would be no reason why he would have been concerned about the issue of payment. His conduct is more consistent with that of a person who was buying the Two iPad 2s for himself or who had *thought* that the Two iPad 2s were for his own purchase.

36 I am unable to find any satisfactory answer from the evidence or the submissions of the Prosecution that negates this key feature of the appellant's defence. The Prosecution argues that his enquiries about payment are "not conclusive" about his genuine belief as they are contradicted by the evidence of the NCS staff that the agreement was that the Two iPad 2s were on loan to the SCDF. I do not find this persuasive. The evidence of the NCS staff represents *their* states of mind and may at best be a factor to take into account when assessing the *appellant's* state of mind. Their evidence does not, however, conclusively negate the objective evidence that shows that the

appellant had sought to make payment, which points to a different state of mind that he may have had.

37 Next, the Prosecution argues that the appellant's behaviour was inconsistent with that of a person genuinely interested in buying the Two iPad 2s as he was indifferent to the colour, price or specifications of the Two iPad 2s. I do not find this argument convincing, especially in the light of the explanation given by the appellant. He said that he had been eager to get his hands on the iPad 2s as they had just been released and were hard to get on the open market; to my mind, this explanation is entirely reasonable.

38 The Prosecution's strongest argument is that *even if* the court infers from the appellant's attempts to pay that the appellant had such a mistaken belief, any such mistaken belief would have been corrected and could no longer have existed after Mr Yee allegedly told him on 15 September 2011 that the Two iPad 2s were meant for the SCDF to use for trial.[21] At the very latest, the appellant ought no longer be mistaken by 26 September 2011 when Mr Wong reiterated the purpose of the Two iPad 2s to him and he replied "noted" in acknowledgement.[22]

39 I am not persuaded by the Prosecution's argument. There is no objective evidence to support Mr Yee's account that he had indeed told the appellant that the Two iPad 2s were meant for trial when he delivered the Two iPad 2s. Further, there also exists incontrovertible evidence that the appellant still continued to ask Mr Wong about the price of the Two iPad 2s even *after* speaking to Mr Yee on 15 September 2011. On a separate but related note, I also note Mr Yee's evidence that Ms Goh had replied "let [the appellant]

21 Respondent's skeletal arguments at para 51.

22 Respondent's skeletal arguments at para 61.

check with [Mr Wong]"[23] when he returned to NCS and recounted to her that the appellant had asked him about payment. In my assessment, if Ms Goh had truly responded in this fashion to Mr Yee, *ie*, to advise that the appellant should check with Mr Wong, it is plainly inconsistent with the Prosecution's case. Had there been a clear agreement or understanding all along between the parties that the Two iPad 2s were meant for testing, it is curious that Ms Goh would have replied to Mr Yee's query along those lines. Rather, it would have been only natural and logical for her to dismiss any query about payment. Indeed, one would imagine that she would have been perplexed as to why there was even any talk about payment.

40 I turn next to the series of text messages the appellant exchanged with Mr Wong on 26 September 2011. This is indisputably the most crucial piece of evidence against the appellant. The trial judge gave considerable weight to this aspectand found it to be almost decisive. To him, Mr Wong's replies were couched in "very simple English", and were "straightforward and unambiguous" in conveying that the iPad 2s were "for trial by SCDF". The trial judge was of the view that Mr Wong's replies were framed in peremptory language and in specific terms on how the appellant was to use the Two iPad 2s. To recapitulate, the text messages read as follows:

The appellant:	Friend, thank you for the F1 tickets. For the IPad2, can you tell me the amount I have to pay..
Mr Wong:	the iPad2 is meant for all the new mobile apps that we are rolling out for Scdf and for you to trial
Mr Wong:	So this is tool to facilitate testing.
The appellant:	Noted…

[23] ROP vol 1 p 540.

41 I accept that on its face, this brief exchange of text messages would appear to support the Prosecution's case. But with great respect, I differ from the trial judge's understanding of the meaning and cogency of these messages. I do not think that they can properly be considered to be conclusive evidence that renders the appellant's case untenable.

42 Fundamentally, I do not agree that Mr Wong's replies are "straightforward and unambiguous". Text messages are what they are: short messages which can be grammatically incorrect and contain typographical errors. They are convenient short-cuts, or substitutes for actual conversation or full written correspondence. As a result, they can be fertile ground for miscommunication and consequent misinterpretation. Imprecise or ambiguous language used in such an exchange might well reflect that the parties are talking at cross-purposes. In the midst of Mr Rajan's cross-examination of Mr Wong on this exchange of text messages, the trial judge commented that "people are not precise in their language when they communicate using [text messages] and WhatsApp". This would seem to suggest that the trial judge had in fact acknowledged the real possibility of miscommunication arising from the exchange of short text messages. Yet despite his comments, the trial judge went on to chastise Mr Rajan for "trying to split hairs" and for "trying to put the blame on [Mr Wong] for not being precise". With respect, the trial judge did not consider that there was room for doubt as to the meaning of these text messages.

43 Mr Wong's replies are hardly a model of clarity or precision, and cannot be said to be unequivocal or complete. While he did say that the iPad 2 is meant for the SCDF "to trial" and later that it is "[a] tool to facilitate testing", he did also say that the iPad 2 was meant for *the appellant* "to trial". I find it exceedingly curious that Mr Wong seemed to have deliberately omitted

addressing several details in his messages. Most tellingly, Mr Wong avoided directly answering the appellant's query about payment. He could simply have said that no payment was expected, but he did not. He could have made reference to their alleged agreement at the meeting and expressly clarified that the Two iPad 2s were not for sale or for the appellant's personal use, but he did not. He could also have expressed surprise or confusion at why the appellant was asking about payment, but he did not. This may be due to the informal, brief nature of text messages, or may be a deliberate choice made by Mr Wong not to make certain things clear for whatever reason.

44 The bottom line is that these messages do not encapsulate the entire communication between them and are shorn of context. While I agree that they might support the Prosecution's case to a certain extent, I am quite unable to accept that they are strongly decisive or conclusive evidence that would point unambiguously towards the appellant's guilty mind.

45 My conclusion is buttressed by the fact that the appellant and Mr Wong exchanged a phone call, which lasted about two minutes, almost immediately after the text messages were sent.[24] Mr Wong was the one who called the appellant. The appellant's evidence is that Mr Wong had told him during this call to try out the Two iPad 2s first and then they could talk about the price later. Mr Wong initially testified that no such call took place. He later conceded that there was such a call when he was shown the phone records, but said that he could not remember the contents of the conversation. What was said in this immediate follow-up to the text messages – which most certainly took place even though the contents of the conversation are disputed – would likely have provided more context and could change how we view or interpret

[24] ROP vol 1 at p 669.

the text messages. This further illustrates how the text messages *simpliciter* cannot be taken to have encapsulated the entire exchange between the parties or be fully reflective of their states of mind. Taking this into account, the weight of the text messages in support of the Prosecution's case and against the appellant's case must correspondingly diminish.

Observations on other aspects of the evidence

46 Nonetheless, I agree with the trial judge that there are circumstances apart from the text messages on 26 September 2011 that cast doubt on the appellant's case. These principally involve the inconsistencies between the case he has put forward and the account that he gave to Mr Yap when they met in January 2012, a day after the appellant was called in for investigations by the CPIB.

47 According to Mr Yap, the appellant explained to him that the SCDF was going to test a mobile mail system using iPads and he had asked SingTel to supply two iPads for testing. When he was later told that the iPads could not be supplied, he approached NCS and requested two iPad 2s *for testing*. But subsequently, the Two iPad 2s provided by NCS became "surplus" after SingTel supplied him with the iPad 2s that were originally promised, and that was when he sold one to Mr Yap. The appellant did not challenge Mr Yap's account (save for pointing out that the supplier of two of the iPad 2s for the IDA trial was New Vision Electronics and not SingTel) and in fact said that the account was "largely accurate".[25] He simply argued that Mr Yap's evidence should not have much bearing because he was not privy to the communications between the appellant and the NCS staff. This argument does not address the crux of the issue, which is that regardless of what Mr Yap

[25] ROP vol 2 p 497; Appellant's submissions at para 68.

knew or did not know, the appellant had told him a different account of why and how the Two iPad 2s were procured.

48 Further, it is also undisputed that the appellant informed Mr Yap that he had told the officers from the CPIB who interviewed him the day before that the purpose of the Two iPad 2s was for "a trial … on [his] mobile mail". This contradicts the position he puts forward in the appeal, which is that he had believed that the Two iPad 2s were meant for his personal purchase. I did not find his explanation that "mobile mail" here refers to his personal "Yahoo" mail to be persuasive.

49 But at the same time, there is also other evidence, apart from the appellant's repeated queries and attempts to make payment, that works against the Prosecution's case. Importantly, I do not think that the actions of the appellant in passing one of the Two iPad 2s to his daughter and selling the other to Mr Yap point irresistibly to him having a dishonest intent. I am unable to comprehend why he would have done so if he had known either from the start or after Mr Wong's text messages on 26 September 2011 that the Two iPad 2s were meant for the SCDF. In particular, selling an item that does not belong to you but to your organisation to a *senior officer* of your own organisation simply goes against the grain of logic and common sense. It is difficult to see why the appellant would have acted in such a brazenly cavalier and foolhardy manner even if he had wanted to take the liberty to pocket $200 – which is not, objectively speaking, a very large amount to be enriched by – or benefit his daughter. While it is certainly not necessary for the Prosecution to prove that an accused person had a motive to commit an offence before a charge is made out, the absence of a reasonable motive is still a relevant factor to take into account. In the present case, I cannot discern any plausible reason why the appellant would have dealt with the Two iPad 2s in the way he did

had he truly been conscious that they were entrusted to him as the SCDF's property.

50 The fact that NCS did not load any applications into the Two iPad 2s and more importantly, that there was no follow-up action from NCS in the three to four months from September 2011 to January 2012 is also inconsistent with the Prosecution's case that NCS had provided them to the SCDF for testing. Ms Goh tried to explain this away by saying that she had to deliver the Two iPad 2s to the appellant urgently and thus did not have time to load the applications, and did not follow up with the SCDF on their supposed arrangement to develop applications because she was understaffed and was preoccupied with other projects that were given priority as they were of higher value.[26] I do not find these two explanations persuasive. I also find it troubling that NCS did not, and did not see any need, to properly document the "trial" arrangements until March 2012, which was after the CPIB investigations had begun.

51 Leaving aside the issue of *mens rea* of the offences which I have been focusing on, all the above aspects cast doubt on whether even the *actus reus* of entrustment is made out. The evidence raises doubt as to whether the Two iPad 2s were truly intended for the SCDF "to trial" or whether for whatever reason, NCS had simply procured them for *the appellant's* personal "trial" or use, with or without an expectation of payment.

Conclusion

52 On a careful and considered evaluation of the evidence, I am drawn to conclude that both the Prosecution's case and the appellant's case have

[26] ROP Vol 1 at p 261-264.

inconsistencies and gaps which cannot be fully reconciled with different parts of the evidence. This could mean that both cases are equally plausible or reasonable, or that they are equally not. It could also suggest that the whole truth of the matter lies somewhere in between or that some parties, for reasons which may be quite removed from the present charges before the court, may have chosen to remain inscrutable or possibly even not to have been wholly truthful at various points.

53 Ultimately, in a criminal case the burden is squarely on the Prosecution to prove its case beyond a reasonable doubt. In my judgment, the overall picture in this case does not point convincingly and squarely towards the appellant having the requisite dishonest intent to support a finding of guilt. While I am not fully convinced that the appellant was wholly truthful and that his case should be preferred *in toto* over that of the Prosecution's, what matters is that ample doubt, which has crossed the threshold of "reasonable doubt", has been raised. I therefore conclude that the conviction is unsafe. With respect, the trial judge erred in concluding otherwise against the weight of the evidence. The appeal against conviction is thus allowed, and the appellant is acquitted and discharged.

See Kee Oon
Judicial Commissioner

Sanjiv Rajan and Christine Tee (Allen & Gledhill LLP) for the appellant;
Hon Yi (Attorney-General's Chambers) for the respondent.
