# Kannan s/o Kunjiraman and another
# v
# Public Prosecutor

## [1995] SGHC 222

High Court — Magistrate's Appeal No 96/95/01-02
Yong Pung How CJ
7, 18 September 1995

***Criminal Law*** *— Complicity — Criminal conspiracy — Required* mens rea *— Whether pretence conspirator a conspirator — Section 120A Penal Code (Cap 224, 1985 Rev Ed)*

***Criminal Law*** *— Statutory offences — Prevention of Corruption Act (Cap 241, 1985 Rev Ed) — Reward for arranging bribe — Whether corruptly received gratification — Section 5(*a*)(i) Prevention of Corruption Act (Cap 241, 1985 Rev Ed)*

***Criminal Procedure and Sentencing*** *— Sentencing — Appeals — Whether sentences manifestly excessive*

**Facts**

A bookmaker, Rajendran, offered the first appellant, Kannan, to bribe David Lee, Singapore's national goalkeeper, to let in goals during a match. Kannan asked the second appellant, Ong, to offer an $80,000 bribe to Lee. After the match, thinking that he had spoken with Lee, Rajendran gave Ong the $80,000, as well as $5,000 as a reward for arranging the bribe. Ong had actually never spoken to Lee and kept the $80,000 for himself.

The appellants were found guilty of conspiring with Rajendran to bribe David Lee. Both Kannan and Ong were also found guilty of corruptly receiving money. Kannan was sentenced to one year's imprisonment and fined $40,000, in default four months' imprisonment on the conspiracy charge; and 18 months' imprisonment and ordered to pay $5,000 in default two weeks' imprisonment on the corruption charge. Ong was sentenced to one year's imprisonment and fined $40,000, in default four months' imprisonment on the conspiracy charge; and sentenced to 30 months' imprisonment and ordered to pay $80,000, in default eight months' imprisonment on the corruption charge. The appeals were only against sentence.

**Held, dismissing the appeals:**

(1) The first appellant did not initiate the conspiracy but he could easily have rebuffed Rajendran. Instead, he conspired with Rajendran and got the second appellant involved. His involvement cannot be considered minor, and he was also rewarded for arranging the bribe. The sentences imposed were not manifestly excessive: at [25] and [26].

(2) The second appellant was more culpable. He was the president of a football club, and was the first appellant's superior. Furthermore, the amount received by him was $80,000. It was hardly a mitigating factor that the bribe was

never offered to David Lee because the second appellant pocketed it instead. When the second appellant surrendered $80,000 to the CPIB, this was done more to bolster his defence than as a result of any remorse on his part. The sentences imposed were not manifestly excessive: at [28].

[Observation: The *mens rea* required for criminal conspiracy under s 120A of the Penal Code (Cap 224, 1985 Rev Ed) was a true intention to enter into the agreement, which connoted an intention to carry into effect the agreement. Had it been the legislative intention to catch a pretence conspirator, the words "or purport to agree" would have been added in the definition of criminal conspiracy. Once the intention to agree was proven, the mere fact of agreement would constitute the offence of conspiracy: at [12] and [13].]

**Case(s) referred to**

*PP v Abbas Saad* District Arrest Case No 6962 of 1995 (distd)

*PP v Khoo Yong Hak* [1995] 1 SLR(R) 769; [1995] 2 SLR 283 (folld)

*R v Collins* [1983] TLR 630; The Times (26 October 1983) (folld)

*R v O'Brien* (1954) 110 CCC 1 (folld)

*R v Thomson* (1965) 50 Cr App R 1 (folld)

*Sairi bin Sulaiman v PP* Magistrate's Appeal No 346/94/01 (refd)

**Legislation referred to**

Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 268

Penal Code (Cap 224, 1985 Rev Ed) s 120A (consd)

Prevention of Corruption Act (Cap 241, 1993 Rev Ed) s 5(*a*)(i); s 5(*b*)(i)

*Peter Fernando (Leo Fernando) for the first appellant;*
*Edmond Pereira (Edmond Pereira & Partners) for the second appellant;*
*Sowaran Singh (Deputy Public Prosecutor) for the respondent.*

18 September 1995

**Yong Pung How CJ:**

1 The appellants, Kannan s/o Kunjiraman ("the first appellant") and Ong Kheng Hock ("the second appellant"), were convicted on a joint charge of conspiring with one Rajendran s/o R Kurusamy ("Rajendran") to corruptly offer a gratification of $80,000 to one David Lee, the goalkeeper of the Singapore national soccer team. The gratification was intended to be an inducement to David Lee to assist in reducing the winning margin of the Singapore national team in its match against Perlis in the FAM Premier League match held on 13 May 1994, by letting in goals.

2 The first appellant was also convicted on a charge of corruptly receiving from Rajendran a gratification of $5,000 as a reward for arranging the bribe to David Lee. The second appellant was convicted on an additional charge of corruptly receiving the $80,000 for David Lee. Both of

these charges were under s 5(*a*)(i) of the Prevention of Corruption Act (Cap 241).

3 The first appellant was sentenced to one year's imprisonment and fined $40,000, in default four months' imprisonment on the conspiracy charge. He was sentenced to 18 months' imprisonment and ordered to pay a penalty of $5,000, in default two weeks' imprisonment on the charge of corruptly receiving a gratification. The second appellant was also sentenced to one year's imprisonment and fined $40,000, in default four months' imprisonment on the conspiracy charge. He was sentenced to 30 months' imprisonment and ordered to pay a penalty of $80,000, in default eight months' imprisonment on the charge of corruptly receiving a gratification for David Lee.

4 The appellants filed notices of appeal against both conviction and sentence. They then applied for leave to withdraw their appeals against conviction. As the first appellant had not set out his grounds for appeal against sentence in his petition of appeal, he was technically deemed to have withdrawn his appeal against sentence. Counsel therefore applied for leave to argue the first appellant's appeal against sentence. The deputy public prosecutor ("the DPP") kindly indicated that he would not make any technical objection on this ground. I allowed the appellants' applications. The appeals were therefore only against sentence.

5 After hearing counsels' submissions and the DPP's, I dismissed the appellants' appeals against sentence. I now give my reasons.

6 The brief facts of the case are as follows. The first appellant is an ex-national player. He was also a committee member of the Changi United Football Club ("Changi United"), in which David Lee is the vice-president and a team member. The second appellant was the President of Changi United. Hence, he was the first appellant's superior. The first appellant was also an insurance salesman and the second appellant a sales manager with the same insurance company.

7 Rajendran was an admitted bookmaker involved in "fixing" matches. On the pretext of buying an insurance policy, Rajendran arranged with one Ramu to meet the first appellant. As a result of this meeting, the seed of the conspiracy to bribe David Lee was sown by Rajendran. He made an offer to bribe David Lee and the first appellant agreed to pass on the offer to the second appellant, who was in a position to speak to David Lee about this. The first appellant told the second appellant about the offer and asked him how the first appellant should reply to Rajendran. The second appellant indicated that the first appellant should reply in the positive.

8 Rajendran thought that a goal scored by the Perlis team was deliberately let in by David Lee and was happy with the outcome of the match. The $80,000 was handed over to the first appellant, together with $5,000 for the first appellant as a reward for arranging the bribe. The first

appellant passed the $80,000 to the second appellant. However, the second appellant kept the money. It turned out that the second appellant did not communicate Rajendran's offer to David Lee at all.

9 I must add that the facts of the present case raised a few questions of law regarding the convictions. It would be appropriate to deal with them here even though the appellants had decided not to proceed with their appeals against conviction. This is because if I had been of the view that any of the convictions could not be supported in law, I would have exercised my powers of revision under s 268 of the Criminal Procedure Code (Cap 68) to set aside that conviction, even if the appellant had not filed a notice of appeal against his conviction on that charge.

10 The first question relates to what is commonly called a pretence conspirator. This issue does not appear to have arisen previously in any local case. In the Canadian case of *R v O'Brien* (1954) 110 CCC 1, the Supreme Court of Canada held, by a majority, that conspiracy requires more than just an agreement to carry out an unlawful design. To be guilty of conspiracy a party to such an agreement must also have the co-existent intent to effect that design. Taschereau J said at 2:

> I think there has been some confusion as to the element of intention which is necessary to constitute the offence. It is, of course, essential that the conspirators have the intention to agree, and this agreement must be complete. There must also be a common design to do something unlawful, or something lawful by illegal means. Although it is not necessary that there should be an overt act in furtherance of the conspiracy, to complete the crime, I have no doubt that there must exist an intention to put the common design into effect. A common design necessarily involved an intention. Both are synonymous. The intention cannot be anything else but the will to attain the object of the agreement.

At 5, Rand J agreed:

> I agree that a conspiracy requires an actual intention in both parties at the moment of exchanging the words of agreement to participate in the act proposed; mere words purporting agreement without an assenting mind to the act proposed are not sufficient.

11 *R v O'Brien* was followed in the English case of *R v Thomson* (1965) 50 Cr App R 1. This was only a case in the Western Circuit, but it has since been followed by the Court of Appeal in *R v Collins* The Times (26 October 1983). In *R v Thomson*, Lawton J said at 3:

> When a man makes an agreement, he assents with his mind to the offer of the other party and communicates his assent to the other party by words or conduct. For the purposes of the law of contract, the words or conduct by which a man manifests his assent are binding on him and the law does not allow him to say that his mind did not go with his conduct. The criminal law, however, is concerned with punishing

> wrongdoing; the essential element in any crime, other than in the limited class of absolute offences, is a guilty mind. Evidence that the accused person acted and spoke as if he was making and had made an agreement may provide cogent evidence of a guilty mind; but it is only evidence and can be rebutted by other evidence.
>
> It follows, in my judgment, that in the crime of conspiracy there must be the element of a guilty mind …
>
> If the facts show, as the jury might on the evidence in this case infer that they do, that the defendant manifested his assent to a criminal enterprise, but that his mind did not go with his assent, then it seems to me that the element of the guilty mind is missing and, accordingly, on those facts he would be entitled to be acquitted, and I propose to direct the jury accordingly.

Section 120A of the Penal Code (Cap 224) defines a criminal conspiracy as such:

> When two or more persons agree to do, or cause to be done —
>
> (*a*) an illegal act; or
>
> (*b*) an act, which is not illegal, by illegal means,
>
> such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

12 This is not inconsistent with the English and Canadian cases, for "agree" connotes a true intention to enter into the agreement, which in turn connotes an intention to carry into effect the agreement. Had it been the legislative intention to catch a pretence conspirator, the words "or purport to agree" would have been added in the definition. The *mens rea* required for that would then be a mere intention to pretend to enter into the agreement.

13 Of course once the intention to agree, in the true sense, is proven, the mere fact of agreement would constitute the offence of conspiracy. It would then be no answer to say that the conspiracy was never carried out or that one conspirator or another did not do what he was supposed to have done under the conspiracy.

14 Hence, the district judge was right in not stopping at the external manifestation of an agreement, but treating it as evidence of a true intention to agree. This, of course, is a question of fact, usually inferred from all the surrounding circumstances. On this, the district judge had found against both the appellants and they have withdrawn their appeals against his finding.

15 The second question relates to the question of whether the $5,000 was corruptly received by the first appellant. This point was not argued by counsel and hence was not really considered below. However, in the light of my decision in *Sairi bin Sulaiman v PP* (MA 346/94/01) (unreported), it is necessary for me to deal with it.

16 The starting point is *PP v Khoo Yong Hak* [1995] 1 SLR(R) 769. There, I had held that for a gratification to be corruptly given under s 5(*b*)(i) of the Act, there must be a corrupt element in the transaction itself. The giving of the corruption must also be accompanied by a corrupt intent on the part of the giver. In *Sairi bin Sulaiman*, I held that the same considerations apply in the case of corruptly receiving a gratification.

17 The application of this test is not always easy, and the present case presents just such a difficulty. On the one hand, if A gives $5,000 to B to assault C, it would have been quite clear that, without more, the $5,000 was neither corruptly given by A nor corruptly received by B. As I have said in *Sairi bin Sulaiman v PP*, it might have been for an illegal purpose, but that did not *per se* make it corrupt. On the other hand, the $5,000 here was not for just any illegal purpose. The $5,000 was a reward for offering or arranging to offer a bribe to David Lee. The offer of a bribe is not just illegal but it is also undoubtedly corrupt. The same is true of arranging such an offer. Hence, it could be argued that the receipt of the $5,000 by the first appellant was also corrupt, as it was tainted by the underlying transaction in a way which makes it corrupt. It was a reward for a corrupt act and the first appellant received it knowing that it was such a reward.

18 In my view, a line must be drawn between a reward for doing something merely illegal, and a reward for doing something which is not just illegal but is in itself corrupt. The latter is corrupt, but the former is not necessarily so. This, of course, is a very fine distinction. However, there comes a point when fine distinction must be drawn and such distinctions are not unknown even in the criminal law. This is just such a case.

19 As for the fact that the agreement was never carried into effect, I am of the view that it should not make a difference. The $5,000 was given as a reward for arranging a bribe to David Lee. When it was received, the first appellant knew that it was given on this basis. It is not open to him to say that in fact, unknown to the giver of the gratification, the offer was never made to David Lee.

20 The last question concerns the receipt of the $80,000 by the second appellant. Even though the second appellant was part of the conspiracy to offer a bribe to David Lee, it appears that by the time the $80,000 was received by the second appellant, he had no intention at all to offer it to him. The offer was never communicated to David Lee. It could therefore be safely said that, at this stage, the second appellant had no intention

whatsoever to pass the $80,000 to David Lee. Could it then be said that the $80,000 was received for David Lee? Again, this was not argued below.

21 However, I am of the view that it could. The $80,000 was given to the second appellant for David Lee. When it was received by the second appellant, he knew that it was so given. Hence, he received it for David Lee. It is no answer to say that he did not intend to hold it for David Lee. An agent receives money for his principal, even though at the point of receipt he had no intention at all to pass it to his principal but instead intends to appropriate it for his own use.

22 As for the question of whether it was corruptly received, *PP v Khoo Yong Hak* ([16] *supra*) is again applicable. There was a corrupt element in the transaction as the $80,000 was meant as a bribe to David Lee. When the second appellant received it, he knew that it was given on that basis and he intended to receive it nevertheless. Hence he received it with a corrupt intent. It mattered not that he then intended to keep it for himself, instead of passing it on. When a bribe is offered to a principal through an agent or some other third party, it is not a defence for that third party, if he receives it knowing it to be a bribe, to say that he had no intention of passing it on but had intended all along to pocket it himself. Had it been the case that he received it knowing that it was a bribe for David Lee, but intending to hand it over to the authorities, then it could be said that there was no corrupt intent accompanying the receipt. However, that is not the case here. Thus, I was satisfied that all the charges against the appellants had been made out. I therefore granted leave to the appellants to withdraw their appeals against conviction and proceed with their appeals against sentence only.

23 I now turn to the appellants' appeals against sentence. I should say first that counsel for both appellants had criticised the district judge's findings of fact. In particular, counsel for the second appellant had levelled criticisms against the district judge's finding that the $80,000 surrendered to the CPIB was not in the house when it was searched. I have studied the notes of evidence carefully, and I must say that I find no reason to disagree with the district judge.

24 Counsel for the first appellant urged me to consider the first appellant's illustrious career in soccer prior to his conviction and the impact the convictions had on it. Also, the first appellant's family will suffer if he is sent to prison. These are of course relevant considerations, but it is inevitable that a criminal conviction will have an adverse impact on a first offender's career. It is also inevitable that an accused's family will suffer as a result of his imprisonment. Such sad consequences are unavoidable. On the other hand, the public interest must be protected. Soccer is a sport with a wide following. Offences of this nature have attracted much public attention lately. If left unchecked, they are capable of tarnishing the image of Singapore. All these had been considered by the district judge.

25 No doubt, in this case, the first appellant was the one who was approached. In this sense, it would be said that he did not initiate the conspiracy. However, he could easily have rebuffed Rajendran. Instead, he conspired with Rajendran and got the second appellant involved. He also pocketed the $5,000 which was given as a reward for arranging the bribe. It was through no credit of his that the intended bribe was never made to David Lee. In the end, I am not persuaded that the sentences imposed on the first appellant were manifestly excessive.

26 I have also considered the sentence meted out in *PP v Abbas Saad* (DAC 6962/95) (unreported). There, the accused was only fined $50,000 and no custodial sentence was imposed. However, the facts of that case were completely different and the accused's involvement there was minor. He also did not receive anything and was motivated by nothing more than a desire to help his friend. I do not see how this case is of any assistance to the first appellant.

27 As for the second appellant, he too is a first offender. Likewise, there is a strong likelihood that his $500,000 a year (or so counsel says) career in the insurance business will be ruined as a result of the convictions. Similarly, a prison sentence will have an adverse effect on the welfare of his family, in particular his wife, whom the court understands is receiving psychiatric attention. However, the public interest must also be taken into account as well.

28 I agree with the district judge that, in the present case, the second appellant was more culpable. It may be that it was the first appellant who approached the second appellant. However, the fact remains that the second appellant was the president of Changi United, the football club, and was the first appellant's superior. He could have brought the first appellant into line. Instead, he went along with him. Furthermore, the amount received by him was $80,000. It is hardly a mitigating factor that the bribe was never offered to David Lee because the second appellant pocketed it instead. I have also considered the fact that the second appellant surrendered $80,000 to the CPIB. However, it seems to me that this was done more to bolster his defence than as a result of any remorse on his part. Similarly, I have considered DAC 6962/95 ([26] *supra*) and I do not see any similarity between that case and the case here. In the circumstances, I am also not satisfied that the sentences imposed by the district judge were manifestly excessive or unduly harsh.

29 Hence, I dismissed both the appellants' appeals.

Headnoted by Chen Siyuan.