

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGDC 100

SC-912619-2017
DAC-946788-2017 & Ors
Magistrate's Appeal No. 9002-2020-01

Public Prosecutor

Against

Portela Vilma Jimenez

GROUND'S OF DECISION

**Public Prosecutor
v.
Portela Vilma Jimenez

[2020] SGDC 100**

District Court – DAC-946788-2017 & Ors
District Judge Jasvender Kaur

16, 17, 31 January 2019,
5, 6, 19 September 2019,
5 December 2019,
2, 6 January 2020;

16 April 2020

District Judge Jasvender Kaur:

1. The accused was a domestic helper for an elderly couple between December 2015 and April 2017. The employer, Mr Yong Choong Hiong ('victim') was 89 years old in 2017. His wife suffers from dementia and is wheelchair bound.
2. The victim is the account holder of two bank accounts and the associated automated teller machines cards ('ATM' cards) involved in all ten charges. The details of the charges are as follows:

DAC-946788-2017	Theft of a UOB ATM card under s 380 of the Penal Code (Cap. 224) on or before 13 January 2017
DAC-946789-2017	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 13 January 2017 at about 7.28 am
DAC-946790-2017	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 16 January 2017 at about 12.38 pm

DAC-946791-2017	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 21 January 2017 at about 7.11 am
MAC-902622-2018	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 30 January 2017 at about 7.57 am
MAC-902623-2018	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 3 February 2017 at about 8.08 am
MAC-902624-2018	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 3 February 2017 at about 8.10 am
MAC-902625-2018	Theft of \$1000 from a UOB ATM under s 379 of the Penal Code on 8 February 2017 at about 1.21 pm
MAC-902626-2018	Theft of \$1000 from a POSB ATM under s 379 of the Penal Code on 8 February 2017 at about 1.23 pm
DAC-920393-2018	Theft of a POSB ATM card under s 380 of the Penal Code on or before 8 February 2017

3. The accused claimed trial to the 10 charges. Her defence was that the withdrawals were made with the consent of the victim. I rejected her defence. I was satisfied that the 10 charges were proved beyond a reasonable doubt and convicted the accused. She was sentenced to 10 weeks' imprisonment on the s 380 charges and to four months' imprisonment on each of the s 379 charges. Three four-month terms were ordered to run consecutively, making a total of 12 months' imprisonment. The accused has appealed against that conviction and sentence.

Undisputed facts

4. The accused made the eight withdrawals of \$1,000 each from the victim's bank account on seven occasions from his UOB account and on a single occasion from his POSB account between 13 January 2017 and 8 February 2017. The CCTV footage captured the accused making the eight withdrawals which are reflected in the victim's bank statements.

5. On 22 February 2017 at about 1.04 pm, the victim lodged a police report stating that monies had been withdrawn without his authorisation.

Issue

6. The factual issue is whether the victim passed the ATM cards to the accused to make the eight withdrawals or the accused took them without his knowledge and made the withdrawals.

7. The accused's defence is that the withdrawals were made with the express consent of the victim as compensation for him touching her sexually and attempting to have sexual intercourse.

Prosecution's case

Evidence of PW1 – Yong Choong Hiong ('victim')

8. The victim was 91 years old when he gave evidence. He denied making the withdrawals of \$1,000 each on 13 January 2017, 16 January 2017, 21 January 2017, 30 January 2017, the two withdrawals of \$1,000 each on 3 February 2017, and the withdrawal of \$1,000 on 8 February 2017 from his UOB account and another withdrawal of \$1000 on the same day from his POSB account.

9. He recollected that he initially knew around \$5,000 was withdrawn from his bank account without his consent. At the police station, he was told that the actual amount withdrawn was \$8,000.

10. He denied that he allowed the accused to make the withdrawals. He stated that he did not ever hand his ATM cards to the accused or disclose the PIN to her. He stated that his ATM cards were always in his wallet. He would place the wallet in the drawer when he went to sleep at night. His daily routine involved waking up at 8.00am, taking a bath, and thereafter putting the wallet in his trouser pocket.

11. He stated that the accused would accompany him and his wife when they attended talks on dementia at the Memory Café on Saturdays. He was unable to remember if the accused accompanied him elsewhere. He confirmed that he is able to go out alone.

12. Under cross-examination, he stated that he controlled his expenses. He agreed that he was careful with his money.

13. On 22 February 2017, he made a police report. He disagreed that his family members found out about the withdrawals around 21 February 2017. He said that he showed them the January 2017 bank statement.

14. He disagreed that he had allowed the accused to make the withdrawals because he touched her sexually on 8 January 2017, 15 January 2017 and attempted to have sexual intercourse with her on 2 February 2017 and 5 February 2017.

Evidence of PW2 – Yong Fong Cheng ('Fong Cheng')

15. Fong Cheng is the son of the victim. He said his parents who are both very old live alone and the accused was hired to take care of them.

16. He was unaware of the victim's ATM PIN. He had also never withdrawn money for the victim. He said the victim paid the salary of the accused.

17. He testified that the victim had asked him to make a Lasting Power of Attorney ('LPA') for him. They also then decided that it would be better for the victim to have a joint bank account due to his advanced age. He disagreed that he suggested to the victim to open a joint bank account because he found out about the 'strange' withdrawals.

18. On 21 February 2017, he accompanied the victim to the UOB Parkway Parade Branch in order to open the joint account. There, the victim took out his January 2017 bank statement which he had received in early February 2017 and

showed it to the staff, and told the staff about ‘unknown’ transactions which had taken place. Fong Cheng testified that this was the first time that he came to know of the unauthorised withdrawals.

19. He said he knew that the ATMs would have video surveillance (‘CCTV’) which would have captured the person who made the withdrawals. He and the victim requested to view the footage. However, they were told that they had to make a police report to view it.

20. On 22 February 2017, he and the victim went to make the police report. They were advised by the police to check if there were other unauthorised withdrawals. After the report was lodged, they went back to UOB with the report. However, they were still not allowed to view the CCTV footage. They were informed that the person who made the withdrawals is a lady with long black hair.

21. Under cross-examination, he said that the victim did not tell him that he went to UOB in the 1st week of February 2017. However, he said that the victim informed the staff at the Parkway Parade branch that he had gone to the Raffles Place branch.

Evidence of PW3 – Assistant Superintendent of Police Tan Jia Ming (‘ASP Tan’)

22. ASP Tan obtained the CCTV footages from UOB and POSB. He stated that the ATMs from which the accused made the withdrawals were at three locations. The ATMs were within walking distance from the victim’s house. He stated that the UOB and POSB ATMs which the accused withdrew from on 8 February 2017 were located in close proximity.

23. He recorded three statements from the accused under s 22 of the Criminal Procedure Code (Cap 68). The first statement was recorded on 6 April 2017 at the maid agency. ASP Tan agreed that he did not ask the accused if she required an

interpreter. However, he stated that he asked her if she was comfortable giving her answers in English and if she understood him. After obtaining her confirmation, he proceeded to record her statement without an interpreter. He recorded the statement between 11.22am to 12.05pm. Upon conclusion, he read the statement aloud. As he read the statement, he would pause at certain junctures to check if the statement was correct. He said the accused made additions to answer 7. The accused signed upon conclusion.

24. Under cross-examination, with respect to the sentence “*He wrote the PIN on a piece of paper and showed it to me before he took it away.*” at answer 7, he disagreed that the accused did not say the words ‘before he took it away’. He disagreed that the accused told him that the employer wrote the PIN on a piece of paper and gave it to her and she put it on top of her table. ASP Tan disagreed that the accused did not give answer 9, which reads: ‘*For the first, third and fourth time, I took it the next morning while for the second time, I forgot the PIN so I went back to ask my employer for the PIN again before taking the money 2 days later.*’ He stated that the sentence was very specific and it could not have ‘materialised out of nothing’.

25. The next s 22 statement was recorded on 23 May 2017 at 11.28am and ended at 11.43am. ASP Tan did not ask the accused if she required an interpreter as she was able to understand English during the first statement. Upon the completion of the recording of the statement, he read it to the accused before she signed. He said the accused was able to see its contents as he was reading it because he placed the statement in the middle of the table. Under cross-examination, he disagreed that he did not pose question 11 which reads: “*Did you withdraw on behalf of your employer at DBS?*” ASP Tan replied that he definitely asked the question because he was aware of the withdrawal from the victim’s DBS account and he therefore needed to ask the accused. He said that it was “one of the most important question in the whole statement”.

26. On the same day, between 11.49am and 1.10pm, ASP Tan recorded the cautioned statements relating to eight charges. The accused wrote her response to the eight charges.

27. Thereafter at 1.28pm, he recorded the third s 22 statement. It ended at 1.40pm. He disagreed that question 1 which reads: “*You wish to inform that you withdrew from DBS Bank as well?*” was understood by the accused to refer to whether she made withdrawals from her own DBS account. ASP Tan explained that during the recording of the eight cautioned statement which relates to the withdrawal from the DBS account, the accused informed him that she was able to recall making the withdrawal from the DBS account. He thus decided to record the further long statement.

28. On 27 December 2017, he recorded the cautioned statement for the 9th charge. ASP Tan said the accused wrote until “thank you ...” He said the accused was very perplexed as to why there were additional charges for the theft of the ATM card. He then explained to her the charge. The accused understood and continued to write her response to the charge.

Evidence of PW4 – Chua Bee Chin, Jasmine (‘Jasmine’)

29. Jasmine is a bank teller with UOB at its Parkway Parade Branch. On 21 February 2017, the victim went to the branch with his son, Fong Cheng, and his daughter-in-law. She said the victim and his son spoke to her.

30. The victim handed to her his ATM card. She was told that there were several ATM withdrawals which were not made by the victim. She said that as the account was in the victim’s sole name, he requested to open a joint account with his son. She said that they wanted a joint account to track the withdrawals because they were worried that there would be more unauthorised withdrawals.

31. Jasmine stated that if a customer reports an unauthorised withdrawal, the process is to ask the customer to fill up a form. She filled up four claim forms on behalf of the victim. They related to withdrawals of \$1,000 each on 13, 16, 21 and 31 January 2017. Jasmine was unable to explain why the system entry indicated the withdrawal took place on 31 January 2017 whereas the CCTV footage showed that it was actually on 30 January 2017.

Evidence of PW5 – Rainnie Nguyen Thi Hong Nga ('Rainnie')

32. Rainnie is a manager at UOB. She stated that the victim and his son came to the UOB Parkway Branch on 21 February 2017. They were attended to by Jasmine.

33. She was involved in verifying the signature of the victim on the claim forms (P3) and she assisted the victim and his son to open a joint account. She stated that it is the procedure of UOB to ask a customer to fill in a standard claim form if he were to allege an unauthorised withdrawal by ATM. She stated that the claim form will be kept by UOB.

Prima facie case

34. There was no submission of no case to answer made. I was satisfied that a prima facie case was made out and the accused was called upon to enter her defence. She chose to give evidence. She did not call any witness in her defence.

Defence case

Evidence of accused

35. The accused started working for the victim on 28 December 2015. She addressed the victim as 'Yeye' and his wife as 'Nainai'. Her starting salary was \$550. It was raised to \$580 in November 2016. She had two off days in a month. She slept at 8pm and woke up at 6am. Her bedroom was beside the victim and

Nainai's bedroom. She sometimes accompanied the victim and Nainai to buy groceries and on other times she went alone.

36. She claimed that the withdrawals were made with the consent of the victim and asserted that she was unable to take the victim's cards without his permission.

37. On the evening of 8 January 2017, she alleged that the victim came to her room. He asked her if Nainai had taken her medication. She told him that she had. He then touched her arm. She asked him what he wanted. He told her that he wanted to touch her. She replied that his daughter-in-law, Sandy, might know about it. He assured her not to worry. He told her that only the two of them will know about it as Nainai has dementia. She claimed that the victim promised her \$500 in return for touching her. She agreed. He pulled up her shirt and pulled down her shorts and underwear to her thighs. He touched both her breasts and her private part. After about 20 minutes and whilst the victim was still touching her, Nainai woke up. She then went to her room. The victim went downstairs.

38. She assisted Nainai to go back to sleep. Thereafter, she returned to her room. The victim came to her room again. He gave her a piece of paper on which he had written his UOB PIN. She placed the paper on her table. She then went to sleep.

39. On 9 January 2017 at around 7am, the victim passed her his UOB ATM card and told her to withdraw \$500. She went to the UOB ATM at Boon Keng market. However, she was unable to make the withdrawal as she forgot to bring the piece of paper on which the PIN was written. She returned the card to the victim. She told him that she did not require the money yet.

40. On 11 January 2017 at about 7am, the victim gave her the ATM card and told her to withdraw the \$500. She went to the Boon Keng market again. However, she was not able to withdraw as she did not know what to press next

after she keyed in the PIN. She went back and returned the card to the victim. He remarked that she is bright but yet she did not know how to make a withdrawal.

41. On 13 January 2017 at about 7am, the victim again passed the UOB ATM card to her and told her to withdraw the \$500. She then went to the UOB ATM at Kallang MRT Station. After she had keyed in the PIN, she accidentally pressed the first button at the top left-hand side. She then realised that a sum of \$1,000 was withdrawn. She went back and handed the ATM card and the money to the victim. He handed her \$500.

42. On 15 January 2017 at about 9pm, the victim came to her room. He told her that he wanted to touch her. She asked him if he was not scared of Sandy. He told her that only the two of them will know of it. He then took off her clothes. The victim was wearing a singlet and pyjamas without underwear. He went on top of her and touched her breasts. He then held his penis and tried to have sexual intercourse. However, his penis was 'too soft'. At that moment, Nainai woke up and was shouting in her room. She then went to attend to her. After attending to Nainai, she went back to her room. The victim had left her room by then.

43. On 16 January 2017 at about 10am, the victim passed her the UOB ATM card to withdraw \$500. She went to the UOB ATM near Boon Keng market. She withdrew \$1,000 as she only knew how to 'press that button on top'. Upon returning back, she passed the ATM card and the \$1,000 to the victim. He gave \$500.

44. As regards the withdrawals of \$1,000 on 21 January 2017 at 7.11am and 30 January 2017 at 7.57am, the accused claimed that she had no recollection making these two withdrawals.

45. On 2 February 2017 at about 9pm, whilst she was arranging things in the living room, the victim told her that he wanted to have sex with her on the sofa. She declined. The victim then embraced her tightly. She pushed him a little and

in the process scratched his arm. He then asked her, *“Isn’t it you wanted a necklace? If you wanted the necklace, you will give what I wanted.”* It was her evidence that the victim had seen her friend wearing a necklace which was worth \$650. She said that before she could reply, Nainai shouted from her room. She then went upstairs to check on her. Thereafter, she went to sleep.

46. On 3 February 2017 at about 7am, the victim handed to her the UOB ATM card and told her to withdraw \$550 for her salary and for the necklace. She went to the ATM at Kallang Bahru. Upon returning back, she handed the \$2,000 and the ATM card to the victim. He gave her the salary and money to buy the necklace.

47. On 5 February 2017 between 9 and 10pm, she was at the staircase. The victim came up to her and wanted to touch her body. She declined and told him that she will inform Sandy if he were to do it. He did not persist. He told her that he will give her \$500 and asked her not to inform Sandy.

48. On 8 February 2017 at about 10am, the victim passed his POSB ATM card to her. She claimed that the victim was unable to find his UOB ATM card. He told her that the PIN was identical to the UOB PIN. Thereafter, the victim went upstairs. He then found his UOB ATM card. He handed it to her and told her to withdraw a total of \$1,000 with each card as he needed money to go to Johor Bahru. She went to Boon Keng and withdrew the monies. Upon returning, she handed the \$2,000 and the two cards to the victim. She claimed the victim gave her \$500.

49. On 6 April 2017, Sandy came to her house and told her to pack up. She told her that she will be returning her to the maid agency.

Findings

50. The victim was 91 years of age when he gave evidence. He had difficulty hearing the questions. He also had difficulty in articulating and his manner of speech was often unclear which led to difficulties in making out what he had said. In addition, he also had difficulties in recollecting some events. This was of course not his fault as it was clearly attributable to his advanced age. He was, however, absolutely certain that he had not handed his ATM cards to the accused to make the eight withdrawals.

The delay in reporting

51. According to the police report, the victim received the January 2017 UOB bank statement on 2 February 2017. The defence referred to the inaction by the victim of about three weeks' and contended that it supported the accused's defence that the victim had consented to the withdrawals and that he had reported only because Fong Cheng had found out about them.

52. This contention is not supported by Fong Cheng's evidence. He testified that the victim informed him in February 2017 that he wanted to set up a LPA. They discussed and it was agreed that the victim should also have a joint bank account. Fong Cheng was unaware at that point about the withdrawals. The decision to open a joint account led to the visit with the victim to the Parkway Parade Branch of UOB. Fong Cheng's clear evidence was that he only found out about the unauthorised withdrawals when the victim informed a staff at the bank. He said the victim also mentioned he had been to the Raffles Place Branch.

53. I had no reason to doubt the reliability of Fong Cheng's evidence. I accepted his evidence that he did not go through the UOB bank statement and raise the issue of the withdrawals with the victim. He was unaware of the victim's PIN and had never made any withdrawals for him. In short, the victim was living independently and had full control of his finances.

54. The victim was no longer able to remember his visit to the Raffles Place Branch. He was therefore unable to give any evidence as to whom he spoke to, whether he only made enquiries, or whether he was given or had lodged any claim form. In his police report, the only reference to him having filled a claim form was at the subsequent visit to the Parkway Parade Branch.

55. The victim was unaware of the withdrawals which had taken place in February 2017 when he went to the Parkway Parade Branch on 21 February 2017. This was because he had not received the February bank statement by then. He was still able to remember this fact as seen from the following answer he gave when asked:

Q: Come again, Mr. Yong, can you repeat yourself? How much money was taken from your bank account? Do you remember?

A: I remember about, uh, uh, 5,000 but later I went to the police station, she say 8,000.

Although the victim's recollection was that he initially knew about \$5,000 was withdrawn without his consent, the fact that he was in the dark about the withdrawals totalling \$4,000 which took place in February 2017 is evident from the fact that he lodged only four claims on 21 February 2017 which totalled \$4,000. He only became aware of the other withdrawals in February 2017 thereafter. This clearly supports his evidence that the withdrawals were without his consent. Otherwise, he would logically have lodged claims for the entire amount.

56. Fong Cheng testified that they wanted to view the footage of who had made the withdrawals but were told to lodge a police report, which the victim did the following day. They went to the bank with the police report but were still not allowed to view the footage but were instead given a description of the person. In my view, it was unlikely that the elderly victim indulged in this charade if he had consented to the withdrawals.

57. If the victim had the alleged arrangement to pay the accused and consented to the withdrawals, it stands to reason that he would not make a false police report against her. After all, the evidence of the accused was that the victim would always keep his word. I found that the victim had no motivation to make a false accusation against the accused and get her into trouble.

Did the accused have the opportunity to take the ATM cards?

58. The defence submitted that the prosecution had not shown how the accused could have gained access to the ATM cards on a total of six occasions and thereafter returned them, i.e. a total of 12 occasions in all.

59. The victim's evidence was that he did not know how the accused obtained possession of his ATM cards. He kept them in his wallet which he placed in his trouser pocket during the day. He would take out the wallet at night and place it in a drawer. His routine was to wake up at 8am, take a bath and change his clothes. Thereafter, he would take his wallet and place it in his trousers.

60. The accused's room was beside the victim's room which he shared with his wife. The accused had access to the room as she would clean it and she also entered at night to attend to the victim's wife to assist her to go back to sleep when she woke up. It was the accused's evidence that the victim did not wish to be disturbed when he was sleeping. The accused also woke up at 6am ahead of the victim.

61. I thus found that the accused had the opportunity to remove the ATM cards from the wallet in the drawer and place them back in the wallet when it was in the drawer.

Could the accused have known the PIN if it had not been disclosed to her?

62. The accused claimed that she knew the PIN because the victim had written it for her. The defence's argument is that she would otherwise not have known the number. The victim had the same PIN for both ATM cards.

63. The accused claimed that the victim wrote the PIN on a piece of paper on the night of 8 January 2017. On the next day (9th), he passed her his ATM card at around 7am. She then went to Boon Keng market to withdraw \$500 with the card. She was unable to make the withdrawal as she did not key in the correct PIN. Asked why she did not bring the paper with her, she gave the following answers¹:

Q: Was your only purpose to go to Boon Keng Market to withdraw the \$500?

A: Yes.

Q: So you---if you have---if your only purpose was to withdraw the \$500, you agree that it does not make sense for you to leave the PIN number paper in the house, correct?

A: I forgotten because the paper is upstairs.

Q: But it doesn't make sense for you to forget because your only purpose to go to Boon Keng Market was to withdraw the money, right?

A: I forgotten about it because what I have in mind is the money that I wanted to take out.

The accused's explanation that she forgot because she was preoccupied with the thought of withdrawing the money is hollow and does not make sense. This was not the accused's bank account. She clearly needed the PIN to withdraw the money. It is therefore unbelievable that she would have simply forgotten about the paper if the victim had indeed written down his PIN for her. Moreover, if the withdrawal was uppermost on her mind and considering that her sole purpose of going to Upper Boon Keng market was to make the withdrawal, she could not have forgotten the paper as she required the PIN to make the withdrawal.

¹ NE 19 September 2019 at p 8, lines 28-32 and p 9, lines 1-7.

64. It was also the accused's evidence that she believed she had memorised the PIN.² She did not give any evidence on when she memorised it. Considering that she went at around 7.30am, she could not have memorised it in the morning. If she had, it was unlikely that she would have forgotten the PIN or the paper. It would also not make sense for her to memorise it at night because if she indeed had the paper, there would have been no need for her to resort to memorising the PIN.

65. On 11 January 2017, the accused made a second attempt to withdraw money. She claimed that the victim passed his ATM card to her at about 7am. Again, she did not bring the alleged piece of paper. She claimed she wrote the PIN on her palm. She keyed in the PIN successfully and read what appeared on the screen. She claimed that she did not press any button as she was scared to make a mistake. When she returned back, she did not ask the victim what she should press and neither did the victim tell her what to do. I found the accused's version of events to be implausible.

66. The accused has been working overseas in Singapore and Kuwait for 20 years. She has a DBS bank account with an ATM card. Accordingly, she is familiar how to use an ATM. In any case, if the accused did not know what to do, the natural reaction would have been to ask the victim to teach her, or to ask him to withdraw the money for her when they went out together or when he went out alone.

67. Despite claiming to be scared to press a button and not having asked the victim what she should do, she went again two days later to withdraw the money. She claimed that the victim handed her the ATM card at around 7am on 13 January 2017. She also did not bring the piece of paper with the PIN again. She agreed that based on the CCTV footage, she keyed in the PIN twice. She accepted

² NE 19 September 2019, p 10 at lines 18-20.

that she keyed in the wrong number initially. Asked why she was not scared to press the button this time, she claimed that she pressed it by accident whilst looking at the CCTV camera. She was shown the CCTV footage, and she then agreed that she did not look at the CCTV camera. Her explanation was therefore clearly proven to be false.

68. It would be naïve to think that the only way the accused could have known the PIN was if it had been disclosed to her. On the accused's evidence, she had gone out with the victim and also went grocery shopping with the victim and his wife. She would therefore have seen the victim using the ATM card and would have had the opportunity to see him keying in the PIN.

69. I found the accused's evidence that the victim had written the PIN on a paper to be untruthful. She had not produced the alleged piece of paper. She was also not seen referring to it in the footage. There was no reason for her to memorise the victim's PIN if he had written it for her. There was clearly guesstimate involved in keying the PIN as she was not successful on the 9th and 11th January 2017. I rejected her evidence that she was unable to withdraw on 11th January 2017 as she was scared to press a button. Further, her claim that the victim handed her his ATM card at about 7am on all three days was false as the victim's usual routine was to wake up at 8am.

Were the withdrawals made pursuant to an arrangement which allowed the victim to sexually touch the accused?

1st incident – 8th January 2017

70. The accused alleged that the victim told her that he would give her \$500 in exchange for touching her breasts and private part. She alleged that the victim touched her breasts and private part for 20 minutes whilst she was lying down on her bed. He only stopped when his wife woke up. Pursuant to the arrangement, she withdrew \$1,000 on 13th January 2017 and returned \$500 to the victim.

71. I found the narration of the accused that she was touched for a good 20 minutes and the touching only stopped because Nainai woke up to be plainly unconvincing. Further, if there was indeed such an alleged arrangement for the payment of \$500, there was absolutely no reason for the accused to withdraw \$1,000. She tried to justify this by claiming that she did not know how to withdraw the exact sum. She gave the following evidence³:

Court: Okay, sure. So your evidence is that you pressed the button on the left---the 1st button at the top on the left. Is that what she's saying?

Witness: Yes.

Court: And did you see the various amounts written there which you could withdraw---the various options of the amounts?

Witness: No.

Court: No? Meaning what, it was a blank screen?

Witness: There is no amount you can see on the screen unlike the DBS after you insert your card, you can see the amounts.

...

Q So you're saying---your story is that you pressed a button where there were no numbers next to---on the screen where there were no numbers being shown and \$1,000 just came out. Is that correct?

A When I pressed the button on top, then there's a sound and the money came out.

...

Court: Okay, just to clarify: On the subsequent occasions when you withdrew from the UOB ATM, on the screen, did you see the various options for you to select in order to make the withdrawal?

Witness: I can see but I do not know which one to press.

Court: Could see what?

Witness: I cannot recall anymore.

³ NE 19 September 2019 at p 13, lines 15-24, p 14, lines 1-6, p 52, lines 29-32 & p 53 lines 1-11.

Court: So you saw the various amounts that you could choose?

Witness: No.

Court: No? So---

Witness: Don't have.

Court: Don't have? Okay. Then help us understand what you saw.

Witness: There's only---something is written on this side and on this side, and there's buttons on the right side and also on the left side.

72. The accused's assertion that she was unable to see the amount options to choose from is patently false. I found that her lies showed that there was no arrangement to pay her \$500 for the alleged touching and she instead intentionally withdrew \$1,000 without the consent of the victim.

2nd incident – 15th January 2017

73. The accused claimed that she was lying in bed and the victim went on top of her and wanted to have sexual intercourse with her. She was not agreeable to have sex. She pushed him a little when he was taking out his penis. However, the victim remained on top. She asked him if he was not scared that his daughter-in-law, Sandy, will find out. He told her that she will not. On her evidence, she was then agreeable to have sexual intercourse but she had to leave the room as the victim's wife had woken up.

74. The accused's evidence that she asked the victim if he was not afraid that Sandy will find out is unconvincing. The victim's wife was sleeping then and is wheelchair bound. There was thus only the victim and her effectively. The accused's initial evidence was that the \$500 arrangement was only for touching her and she was not agreeable to have sex. In fact, she claimed to have pushed the victim a little when he took out his penis. Under cross-examination, asked why

she subsequently agreed to have sexual intercourse, she gave the following answers in response⁴:

Q But you told this Court earlier that you will not have agreed to have sexual intercourse with him.

A Yes.

Q: So now all of a sudden you are okay with it?

A: At the beginning I agreed because he will pay me 500.

Q: But this is different because he tried to have sex with you.

A: Because I'm thinking of Nainai, that if she wakes up, she will make noise.

The accused provided no explanation for her alleged change in stance to allow the victim to attempt to have sexual intercourse but instead contradicted her earlier evidence that the arrangement for the payment of \$500 was only for her to be touched.

75. Further, the accused in her police statement made no mention that the victim attempted to have sexual intercourse. She stated in her statement that the victim touched her breasts and crotch area and she consented to it. She claimed to be embarrassed to disclose this incident although no sexual intercourse took place because another female police officer and her agent were present when she was giving her statement. I disbelieved this explanation. She had no qualms in disclosing that the victim had touched her breasts and private part. I found that the story was an afterthought in an attempt to make her account more convincing.

76. On her evidence, the incident ended because Nainai woke up and she had to go to her room to attend to her. She stated that Nainai was okay and she went back to her room. However, under cross-examination she painted a different picture. She claimed that she was in the room for about 15 minutes as she had to coax Nainai to go to sleep. She did not give any explanation for the difference in

⁴ NE 19 September 2019, p 17 at lines 6-13.

her evidence. I did not find this difference to be innocuous or to be the result of passage of time. I found that the accused had increased the time she spent in the room because it would otherwise be odd that the victim had immediately left the room without waiting for her to return.

3rd incident – 2nd February 2017

77. The accused claimed that on 2 February 2017 whilst she was at the staircase of the living room, the victim told her to have sexual intercourse with him on the sofa if she wanted a necklace. Again, there was a remarkable coincidence as Nainai woke up when he made the request. She left to attend to her and thereafter went to her own room. There was no further interaction with the victim that night.

78. Nevertheless, the victim passed her his ATM card to withdraw money for a necklace worth \$650 and her salary of \$580 on the following day. She withdrew \$2,000. On her evidence, she was given her salary of \$580 and \$650 for the necklace from the money that she withdrew. She was cross-examined as follows⁵:

Q: But he gave you the money from---your---your story is that he gave you the money from the \$2,000 that you withdrew for him?

A: Yes.

Q: But do you remember that the \$2,000 that you withdrew was all in \$50 notes?

A: Yes.

Q: So how could Yeye have given you \$580 in \$50 notes?

A: He has his change.

Q But you just told this Court that he gave you the money from the money you gave him. You are changing your story, right, Ms. Vilma?

Court: Mdm, there's no need to raise your voice, please.

⁵ NE 19 September 2019, at p 22, lines 10-27.

Interpreter: Okay.

Witness: Sorry. [as spoken by Witness in English]

A What I'm saying is that when he gave me the money, he gave me this one for my salary and the other one is for the necklace. And he got money on his own during that time.

The accused was paid her salary in cash by the victim. He had never asked her to withdraw money for that purpose on any other occasion. There was no reason why the victim would ask the accused to withdraw money for her salary on this occasion. In fact, the accused was caught lying when it was pointed to her that her salary of \$580 could not have been paid from the money that she withdrew which was in \$50 notes. She then changed her evidence and claimed that the balance was given by the victim from the money that he had.

79. As regards the cost of the necklace, in her evidence-in-chief, the accused's version was that the victim saw the necklace of her friend which was worth \$650. In cross-examination, pressed on how the victim knew its cost, her story evolved and she claimed that she and the victim had enquired about the price when they were at Jurong Mall. When it was pointed out that on her evidence she would have received \$30 less, she claimed that she did not count the money when the victim handed it to her.

80. It was the evidence of the accused that the victim was careful with his money. The accused claimed that when the victim asked her to have sex with him and she declined, he had said, "*Isn't it you wanted a necklace? If you wanted the necklace, you will give what I wanted.*" That being the case, the necklace was a quid pro quo for her consenting to have sexual intercourse. It did not make sense for the victim to give her more money on this occasion, i.e. \$650 for a necklace when the accused had not complied with his condition of giving him what he wanted.

81. The accused also made no mention of the necklace in her police statements. The statements were recorded in April and May 2017. If the victim had indeed given her payment for the necklace, this would have stood out in the memory of the accused as she would have received more than \$500. In fact, in her statement, she stated that she had only received \$500 each on four occasions.

4th incident – 5th February 2017

82. As regards the incident on 5th February 2017, the accused claimed that the victim wanted to touch her. However, she did not agree and told him that she will tell Sandy if he were to do so. The victim did not persist. Nevertheless, he told her that he will give her \$500 if she did not inform Sandy.

83. I found the version of the accused unconvincing. The victim had not touched her on this occasion. The accused had no reason to tell Sandy as he did not touch her. She also did not threaten to tell Sandy after he did not touch her and neither did she ask him for the \$500. As such, there was no reason for the victim to be afraid and offer the \$500.

84. Moreover, what is more confounding is her evidence that the ATM cards were passed to her three days later on 8th of February 2017. This was unlike the prior three occasions where she claimed the victim passed her the ATM card on the very next day. If the victim was afraid that the accused may divulge his sexual misconduct to Sandy, it did not make sense for him to delay the handing of the ATM card to her.

85. In addition, the accused claimed that the reason she was given the POSB ATM card was because the victim was unable to find his UOB ATM card initially. After the UOB ATM card was allegedly found, the victim asked her to withdraw an amount of \$2,000 using both accounts; \$500 for herself and \$1,500 for him. I found her story to be contrived. If the victim had found the UOB ATM

card, there was absolutely no reason for him to hand it to the accused and to tell her to withdraw the amount with both ATM cards when he had sufficient balance for the full amount in both accounts.

86. To add to the disbelief, the victim was capable of going out on his own. He was able to withdraw money himself. In fact, he had never enlisted the assistance of his son to withdraw money for him. There was therefore no reason for him to have asked the accused to withdraw for him.

The two unexplained withdrawals

87. The accused was unable to explain two of the eight withdrawals, i.e. the withdrawals on 21 and 30 January 2017.

88. She claimed that she is unable to remember as the withdrawals were done during the Chinese New Year period when she was especially busy. The Chinese New Year holiday in 2017 was on 28 and 29 January. I found her explanation unacceptable. If she had during the busy period found time to go out and make the withdrawals, there would be all the more reason for her to remember the two withdrawals.

89. The accused in her cautioned statement stated that she withdrew money four times. I rejected her contrived explanation that she was referring to the location of the ATM machines. Having taken the position that she withdrew four times, the accused would be hard put to fabricate details of another two occasions of alleged sexual misconduct on the part of the victim.

Conclusion

90. I rejected the accused's evidence that the victim had touched her sexually and the monies were withdrawn with his consent. I was satisfied that the prosecution has established beyond a reasonable doubt that the victim did not

hand her his ATM cards and the eight withdrawals were made without his consent, and the accused was accordingly found guilty and convicted.

Sentence

91. Section 379 provides for an imprisonment term of up to three years or fine or both. Section 380 provides for mandatory imprisonment up to seven years.

92. It cannot be overemphasised that this is not an ordinary theft case. It is a case with significant aggravating factors which requires an enhancement of the sentence above the usual norm for regular theft offences.

93. The relevant sentencing objectives are general deterrence and retribution. As regards culpability, first, the offences were committed against a vulnerable victim. Whilst he is physically mobile, the fact remains that he is of advanced age— 89 years old at the material time.

94. Second, there was a grave betrayal of trust. The accused was allowed into the household to look after the welfare of the elderly couple. The accused exploited her position by first stealing the UOB ATM card and on the last occasion she was emboldened and also stole the POSB ATM card. Just as abusing domestic workers cannot be tolerated, likewise offences by domestic workers against an elderly employer cannot be tolerated.

95. Third, this was not an isolated offence. The accused made eight withdrawals on six separate occasions.

96. Fourth, these were premeditated offences which involved the stealthy removal of the ATM card (two on the last occasion) and placing it back into the wallet.

97. In terms of harm, the sum of \$8,000 is not a small amount. The accused has not made any restitution. Whilst the victim has other savings due to his thrifty

and disciplined way of life, the impact on an elderly victim who loses his savings is greater as he or she will be unable to earn back the lost monies.

98. In terms of the mitigating factors, there are effectively none. The accused did not have the benefit of a plea of guilt. By choosing to brazen it out by levelling serious allegations against the victim, she lost the sentencing discount. Whilst this is the accused's first conviction, she had committed a series of thefts and accordingly I declined to give her any credit for her prior clean record.

99. As regards the level of the sentence, the sentencing precedents are of limited value. In *Kannan s/o Gangathran* [2018] SGDC 83, the offender was the employer of the elderly employee. He was entrusted by the employee with his ATM card in order to make deposits of his salary. Instead, he made five unauthorised withdrawals with the ATM card. The total amount stolen was a fairly low sum of \$1,200. He was convicted of theft on 2001. He pleaded guilty. He was sentenced to two months' imprisonment. In *Subramaniam Janaki v PP* (MA 209 of 2005), the offender pleaded guilty to a solitary theft charge under s 381 Penal Code with another s 182 charge being taken into consideration for the purpose of sentence. She was a domestic helper and committed theft of jewellery worth \$5,700 from her employer. The jewellery was recovered. As such, there was no loss to the employer. She was sentenced to 15 weeks' imprisonment.

100. The defence relied heavily on the case of *Chuan Puan Seng v PP* (MA 240 of 2006). The offender was convicted after a trial on 23 charges under s 379 and s 380 Penal Code. The victim was the offender's girlfriend with whom he was cohabiting. He took her ATM card while she was asleep and used it to withdraw cash (of amounts between \$110 and \$1,000, which totalled over \$6,000) on various occasions. He used most of the money on the victim. On appeal, his sentence was reduced to one day's imprisonment on each s 380 charge with two sentences to run consecutively and a fine of \$500, in default two

weeks' imprisonment on each s 379 charge. There was no judgment issued by the High Court. Based on the notes of evidence of the appeal proceedings, the High Court found the moral culpability of the offender to be low as the stolen monies were used to pay rent and to spend on the victim, which benefitted both the offender and the victim.

101. In contrast, the accused was motivated by greed or personal gain. I found her culpability to be high and the harm to be moderate. Having regard to the relevant sentencing purposes, the culpability and harm, the accused was sentenced to 10 weeks' imprisonment on the two section 380 charges and to four month's imprisonment on the three s 379 charges. The sentences on three theft charges (2nd, 5th & 9th) were ordered to run consecutively. The total sentence was therefore 12 months' imprisonment, which in my judgment is just and proportionate to the overall offending.



Jasvender Kaur
District Judge



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