TENGKU ADNAN TENGKU MANSOR

v.

PP

Court of Appeal, Putrajaya
Suraya Othman, Abu Bakar Jais, Ahmad Nasfy Yasin JJCA
[Criminal Appeal No: W-05(SH)-440-12-2020]
29 October 2021

Criminal Law: *Penal Code — Section 165 — Appellant, being a public servant, alleged to have received money for himself — Appellant appealed against conviction and sentence for said offence — Whether trial judge correctly re-evaluated evidence adduced by appellant — Whether failure of trial judge to direct his mind to prosecution's failure to re-examine key witness rendered conviction unsafe — Whether trial judge had made a serious misdirection on veracity of official receipt for said sum — Whether inference favourable to appellant should be made on purpose of deposit of said sum — Whether conviction of appellant unsafe*

Evidence: *Weight — Decision of trial judge — Appellant convicted and sentenced for offence under s 165 Penal Code — Whether trial judge correctly re-evaluated evidence adduced by appellant by weighing against evidence adduced by respondent at end of prosecution's case*

This was an appeal by the appellant against this conviction and sentence for an offence under s 165 of the Penal Code by the High Court. At the material time the appellant was the Minister for the Federal Territories, a public servant, and was alleged to have received RM2 million ('the said sum') from one Sri Datuk Chai Kin Kong ('SP19') for himself. On the other hand, the appellant maintained that the said sum was a political donation to UMNO for two by-elections in Selangor and Perak and that the said sum had been deposited into the company owned by the appellant, Tadmansori Holding Sdn Bhd ('Tadmansori'), as the appellant had fronted his own money first to UMNO for the said by-elections prior to receiving the said sum from SP19. Accordingly, the main issue to be decided in this appeal was, whether the trial judge correctly re-evaluated the evidence adduced by the appellant by weighing it against the evidence adduced by the respondent at the end of prosecution's case.

Held (allowing the appeal and setting aside the conviction and sentence imposed on the appellant):

Per Ahmad Nasfy Yasin, JCA (majority):

(1) Based on the evidence of the prosecution witnesses, the purpose for which the said sum was to be utilised for the two by-elections was made clear. In the circumstances, the trial judge had failed to evaluate and give attention to the

evidence of the investigating officer ('SP23') who had not ruled out that the cheque (P15) for the said sum was given as a political donation for the expenses of the two by-elections. Further, the trial judge had failed to test and evaluate the entire evidence especially the evidence of SP19, Mohd Hasbi bin Jaafar the Group Chief Operating Officer of Tadmansori ('SP6'), and SP23 that the said sum was meant for the two by-elections. (paras 57-60)

(2) It was trite that the failure by the prosecution to re-examine on this pivotal issue amounts to an acceptance of the witness testimony. In the instant case, the prosecution failed to re-examine its witness, SP19 on his evidence in cross-examination that the said sum was a political donation to UMNO. However, the trial judge had not directed his mind on the failure of the prosecution to re-examine SP19 on the said evidence. Such a failure on such a critical point/issue amounted to a non-direction which rendered the conviction of the appellant unsafe. (paras 61-62)

(3) With regard to the official receipt for the purported political donation ('D74'), SP19 in re-examination reiterated that he received the D74 on the 16th or 17th June 2016. From the Records of Appeal, this direct evidence was neither contradicted nor disproved and thus, remained unchallenged by the prosecution. Therefore, the prosecution's submission that D74 was only issued in November 2018 after the appellant was arrested and that D74 was a forged document remained unproved. The trial judge, on this issue had decided to disregard the evidence of SP19 on the receipt. Here, failure on the part of the trial judge to consider the foregoing unchallenged direct evidence amounted to a serious misdirection which warranted appellate intervention. (paras 63-65)

(4) In the instant case, the crediting of the cheque for the said sum into the account of Tadmansori did not lead to an irresistible conclusion that the appellant had committed the offence charged, and that *per se*, was insufficient to convict the appellant as, upon a proper evaluation, this evidence amounted to no more than circumstantial evidence, which did not point irresistibly to the guilt of the appellant. Upon full scrutiny of the prosecution's evidence, the defence contention on the purpose for which the money was to be utilised was not a mere invention by the appellant. At any rate it created a doubt as to whether the appellant had accepted or received the money for himself. It was trite that when there were two possible conclusions that could be made from a set of facts, an inference favourable to the accused should be made. (para 67)

(5) In the circumstances, there were serious misdirections and non-directions committed by the trial judge on the law and evidence warranting appellate intervention. As such, it would be unsafe to sustain the conviction of the appellant on the said charge. (para 68)

Per Abu Bakar Jais, JCA (minority):

(6) D74 must be viewed not only from SP19's perspective or understanding that it was for political donation, as SP19 did not have personal knowledge

that the money was indeed for political donation. Besides, the statement by SP19 that he was requested by the appellant to make the political donation remained only as that. Nothing more, nothing less. Thus, if the prosecution did not re-examine SP19 further on this, it certainly could not mean that the said sum was indeed money for political donation and not personally for the appellant. The prosecution's case was not shaken even if it was true that SP19 was not challenged in re-examination that the money was indeed a political donation. Further, both SP6 and SP23 did not have personal knowledge that the said sum was a political donation. At best, the evidence of SP6 and SP23 was that the appellant told them the money was a political donation. (paras 106, 107 & 111)

(7) In the instant case, it was never proven that there was any record that UMNO was given the said sum. Neither was it proven that the said sum was used for the by-elections by the appellant, though he said he had used his own money for that purpose. It was more likely that the appellant had no or little responsibility to raise funds for the by-elections in Selangor and Perak because he was not the Liaison Chairman of those states. He was only the Federal Territory UMNO Liaison Chairman. With regard to the testimonies of the defence witnesses Datuk Rizalman Bin Mokhtar and Datuk Zakaria Bin Dullah, the source of the cash purportedly given to them both for use of the by-elections was not shown. Here, the said sum went into Tadmansori's bank account. However, there was no withdrawal from this account that was shown to be given to Datuk Rizalman and Datuk Zakaria. Neither was it shown that the cash came from other sources. In the circumstances, the appellant did not show credible evidence that the amount of RM2 million was used for those by-elections. (paras 113, 122, 132 & 136)

(8) At the end of the defence, the trial judge reviewed all the evidence tendered at the end of prosecution and at the end of defence for maximum evaluation. After subjecting the evidence to maximum evaluation, the trial judge was satisfied that the prosecution had proven its case beyond reasonable doubt. The approach by the trial judge in this regard was proper and correct, and he did not err in convicting the appellant. (para 141)

Case(s) referred to:

Alan Soh Heng Liang v. Public Prosecutor [2020] MLRAU 340 (refd)

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 2 MLRA 1 (refd)

Khee Thuan Giap v. PP [2019] MLRAU 152 (refd)

Khoon Chye Hin v. PP [1961] 1 MLRA 684 (refd)

Lim Guan Eng v. Public Prosecutor Other Appeals [1998] 1 MLRA 457 (refd)

Mohd Khir Toyo v. PP [2015] 6 MLRA 1 (refd)

Mohamad Radhi Yaakob v. PP [1991] 1 MLRA 158 (refd)

Ng Hoo Kui & Anor v. Wendy Tan Lee Peng & Ors [2020] 6 MLRA 193(refd)

Ong Teik Thai v. PP [2016] 5 MLRA 267 (refd)

PP v. Bernadito L Alenjandro JR [2015] MLRAU 165 (refd)

PP v. Dato' Saidin Thamby [2012] 2 MLRA 641 (refd)

PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 1 MLRH 59 (refd)

Public Prosecutor v. Kasmin Bin Soeb [1974] 1 MLRH 108 (refd)

R Rama Chandran v. The Industrial Court of Malaysia & Anor [1996] 1 MELR 71; [1996] 1 MLRA 725 (refd)

Samundee Devan Kerishnan Muthu v. PP [2008] 2 MLRA 650 (refd)

Wong Swee Chin v. Public Prosecutor [1980] 1 MLRA 125 (refd)

Legislation referred to:

Courts of Judicature Act 1964 s 15(1)

Criminal Procedure Code, s 180(1), (4), 182A

Penal Code, ss 21(i), 165

Counsel:

For the appellant: Tan Hock Chuan (Satharuban Sivasubramaniam, Michelle Lai Mei See & Aaron Lau Peng Mun with him); M/s Tan Hock Chuan & Co

For the respondent: Asmah Musa (Haderiah Siri, Rullizah Haji Abdul Majid, Nushuhaida Zainal Azahar & Natasha Abdul Azis with her); Attorney General's Chambers

JUDGMENT

Ahmad Nasfy Yasin JCA (Majority):

Introduction

[1] The appellant was charged before the Kuala Lumpur High Court, which charge reads as follows:

> "That you, on 14 June 2016, at CIMB Bank Berhad, Pusat Bandar Damansara Branch, Level 1, Lot A4, Block A, Pusat Bandar Damansara, in the Federal Territory of Kuala Lumpur, being a public servant, Kuala Lumpur, being a public servant, to wit, the Minister for Federal Territories, accepted for yourself a valuables thing without consideration, to wit, the sum of RM2,000,000.00 from one Chai Kim Kong by way of a Hong Leong Islamic Bank cheque No 136822 belonging to Aset Kayamas Sdn Bhd that was deposited into CIMB Bank account no 8001179747 belonging to Tadmansori Holding Sdn Bhd in which you had an interest, when you knew that Aset Kayamas Sdn Bhd had a connection with your official function, and you have thereby committed and offence punishable under s 165 of the Penal Code"

[2] At the end of the trial, the appellant was found guilty and was convicted. He was sentenced to 12 months of imprisonment and a fine of RM2,000,000.00 and in default six months' imprisonment.

[3] The appellant appealed against the conviction and sentence. We heard the appeal. After carefully considering all the submissions, in writing and that made orally by both parties, we came to a decision, which is not unanimous. By a majority we allowed the appeal. Our learned brother, Abu Bakar Jais, JCA dissents and rendered his brief grounds in affirming the decision of the court below. We have, in announcing our decision earlier rendered our broad grounds. The following are our full grounds for the majority. We will, where necessary comment on the brief grounds furnished by our learned brother, as at the time of writing these grounds, we have not the advantage of reading his full grounds. Needless to say, where we find it necessary, we will provide a response thereto, following the precedent by the majority in Federal Court in the case of *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1996] 1 MELR 71; [1996] 1 MLRA 725.

The Case In The High Court

[4] The accused in the court below and the appellant before us, was a Minister in the Federal Cabinet. At all material time he helmed the Ministry of Federal Territories. At the same time, he was also the Secretary General of the dominant political party, UMNO (United Malays National Organisation). He was also the controlling shareholder of a company known as Tadmansori Holding Sdn Bhd (Tandmansori).

[5] In April 2013, the Ministry of Federal Territories launched a project called "Rumah Mampu Milik Wilayah Persekutuan (RUMAWIP)". It was touted as an urban affordable housing project. It targeted to build 80,000 units by 2018. To carry out this project, land will be required. It is common knowledge that the City Hall or its Malay acronym DBKL (Dewan Bandaraya Kuala Lumpur) had massive land banks, parts of which will be utilised for this project. Private companies will then be invited to submit proposals to carry out the project on the identified lands.

[6] At this juncture enter the other important persona, named in the charge as Tan Sri Chai Kim Kong. He is the director of a number of companies including a company known as Aset Kayamas Sdn Bhd From the facts, it is not in dispute that the appellant had requested Tan Sri Chai (SP19) to participate in the project. SP19 duly obliged and had through several companies that he owned including Aset Kayamas participated.

[7] It is appropriate at this juncture to state that the prosecution, in its opening statement, stated that it will adduce evidence and prove that the accused then, now the appellant, had requested for a political donation from Tan Sri Chai. We pause here to mention that it is curious that the prosecution had emphasised the words "political donation" without ascribing the extent and import of that phrase.

[8] Returning to the narrative, through a letter dated 26 January 2015, Aset Kayamas proposed to purchase DBKL's land as part of the project. Eventually

after a few meetings and discussions, Aset Kayamas and DBKL entered into a Sale and Purchase agreement dated 1 July 2016 for the purchase of the land.

[9] It is in evidence that the appellant had, sometime during the course of this project, requested SP19 for what he said to be a political donation, of around RM5,000,000.00 to RM6,000,000.00 to be utilised for two upcoming by-elections for the district of Kuala Kangsar in Perak and Sungai Besar in Selangor respectively which elections were scheduled to be held simultaneously on the 18 June 2016.

[10] The appellant had requested SP19 to make the contribution payable to Tadmansori. SP19 in his evidence stated that he did not know who the company belongs to. He also said that it did not cross his mind to inquire from the appellant why the payment was to be made to Tadmansori and not to UMNO. SP19 decided to contribute RM2,000,000.00 as, according to him, that was all that he could afford to give at that time. He then instructed his staff to prepare the cheque and signed it. The cheque, a Hong Leong Islamic Bank cheque number 136822 was dated 14 June 2016 (P15) and was made payable to Tadmansori. SP19 personally handed over this cheque personally to the appellant on 14 June 2016, two days before the by elections were scheduled to be held.

[11] The appellant then handed the cheque to his driver, on the same day the driver was instructed to deposit the cheque into Tadmansori's bank account with CIMB Bank. The cheque was duly presented on 14 Jun 2016 and credited into Tadmansori's CIMB Bank's account on 16 Jun 2016. There is no dispute about this fact as this was confirmed by a bank officer with CIMB Bank (SP2) and Tadmansori's Assistant Accounts Manager (SP5).

[12] SP5 and the Chief Operating Officer of Tadmansori (SP6) testified that Tadmansori neither made any payments to UMNO nor had any dealing with Aset Kayamas.

[13] Upon being asked by the learned counsel for the appellant in the course of cross-examination whether he had received any letter of acceptance/ acknowledgment or receipts on the payment made by Aset Kayamas, SP19 responded positively and took out the receipt from his wallet purported to be an UMNO's official receipt No 376241 dated 14 June 2016 for the sum of RM2,000,000.00 (D74) on which document it was written "sumbangan PRK Kuala Kangsar dan Sungai Besar ("UMNO receipt").

[14] SP19 claimed that the appellant had given him the UMNO receipt two days after he had given the cheque (P15). Upon revelation of the UMNO receipt during the trial, an officer from MACC went to UMNO's headquarters at the Putra World Trade Centre and seized three unused receipt books (IDD 77, IDD 78 and IDD79) and one receipt book from which the UMNO receipt was allegedly issued (D74, P76). Farahdzilah binti Abd Kadir (SP21), the Deputy Head of the Finance Department at UMNO's headquarters testified

that the appellant had signed the receipt (D74) in his capacity as the "Pengerusi Badan Perhubungan UMNO Wilayah Persekutuan" and that the donation was for Badan Perhubungan UMNO Wilayah Persekutuan and not for the UMNO Headquarters.

[15] The prosecution then focused on the receipt book from which UMNO receipts were allegedly issued from. This receipt book contained the duplicate copies of receipts from number 37621 to 376250. According to Farahdzillah (SP21) ordinarily, a receipt would be issued to a person concerned and that one duplicate copy would remain in the receipt book. The duplicate copy of the UMNO receipt, however, was conspicuously missing from this receipt book. SP21 could not explain it and stated that the receipt books were easily accessible. The prosecution then shifted its focus on the duplicate receipts that were issued before and after the UMNO receipt. The receipt issued before the UMNO receipt was the receipt number 376240 dated 12 November 2018 and one after that was the receipt number 376242 dated 16 November 2018. The UMNO receipt, however, was dated 14 June 2016. The discrepancy in the date of issuance was striking.

[16] Apart from the UMNO receipt (D74), there were other three unused receipt books (IDD 77, IDD 78 and IDD 79) that were also seized by MACC. These three unused receipt books preceded that of the receipt book that was allegedly used to issue the UMNO receipt (IDD 77 number 257901-257950; IDD 78 numbers 310451-310500; IDD 79 numbers 368401-368450). In light of the above discrepancies, Farahdzillah however agreed with the suggestion of the learned counsel that receipts were issued randomly, and not systematically.

Finding of the Trial judge at the End of the Prosecution Case

[17] At the close of the prosecution's case the learned trial judge considered the elements to be proved by the prosecution under s 165 Penal Code (PC). Considering the evidence of all the prosecution's witnesses, the trial judge was satisfied that the prosecution had proved every element of the offence as follows:

(i) The accused, as the Minister for the Federal Territories, was a public servant;

(ii) He had received RM2,000,000.00 from Tan Sri Chai for himself;

(iii) There was no consideration given for the RM2,000,000.00; and

(iv) He knew that Tan Sri Chai had connections with his official functions.

[18] A careful reading of the learned trial judge grounds of judgment, contained the following observations and findings, at the end of the prosecution's case:

(i) The accused's appointment as a Federal Minister by His Majesty the King is apparent from the instrument of Appointment dated 16 May 2013. That the accused held the position of the Minister for the Federal Territories from May 2013 to 2018 was established through the testimonies of Daman Huri (SP3), the Division Secretary (Parliamentary and Constitutional affairs) in the Prime Minister's Department and SP10, the accused's form er Senior Private Secretary. As a Minister, the accused would invariably be entrusted to perform public duties - [see p 30 para 69, Grounds of Judgment RRT (Jilid 1) (GOJ (Jilid1)].

(ii) It is evident that the accused was paid by the Government to perform public duties in his capacity as the Minister for the Federal Territories, and is therefore, a public servant - refer to para 71, GOJ RRT (Jilid 1)].

(iii) Section 165 PC states that it is an offence if the accused had received a valuable thing "for himself from any other person". The crucial issue here is whether the accused had received the RM2,000,000.00 for himself. It was however put by the defence that the sum concerned was a donation for UMNO, and not for the accused's personal benefit - [refer to para 76, GOJ, RRT (Jilid 1)].

(iv) It is pertinent to firstly address the fact that the cheque was made payable to Tadmansori, and not in the accused's name. The preliminary issue is whether the payment could as such be deemed to benefit the accused and not the company - [refer to para 77, GOJ, RRT (Jilid 1)].

(v) Evidence led from the officer of the Companies Commission of Malaysia (SP1), establishes the fact that the accused is the majority shareholder of Tadmansori. He owns 99.9% of Tadmonsori's shareholdings, and that this had always been the state of affair from the time that the company was incorporated - [refer to para 78, GOJ, RRT (Jilid 1)].

(vi) The ownership of a company is determ ined through its shareholdings. The fact that the accused owned 99.99% of Tadmansori, and that the only other shareholder owns a minuscule 0.01% leads to the inevitable conclusion that the accused stands to benefit directly from any payment made to the company, being the largest shareholder. Evidence has also been led to show that the accused runs the company, and is the primary decision maker. He is essentially the alter ego of the company. Payment to Tadmansori would as such stand to benefit the accused - [refer to para 80, GOJ, RRT (Jilid 1)].

(vii) I will now come to the issue of whether the RM2,000,000.00 given was solicited by the accused for himself, or was a political donation for UMNO. Tan Sri Chai had unequivocally testified in examination-in-chief and under cross-examination, that the accused has solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5,000,000.00 to RM6,000,000.00 for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2,000,000.00 was indeed a political donation meant for UMNO and not for the accused. The defence team also referred to the prosecution's opening statement, where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the investigating officer (SP23) had under cross-examination, admitted that his investigations revealed that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC. Datuk Mohd Hasbi (SP6), Tadmansori's Chief Operating Officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections - [refer to para 81, GOJ, RRT (Jilid 1)].

(viii) The UMNO receipt alone cannot be taken as incontrovertible proof that the RM2,000,000.00 was a political donation. I have grave reservation on the UMNO receipt for several reasons. Firstly, I find it incredible that Tan Sri Chai did not think it crucial to inform the MACC officers of the existence at the UMNO receipt, when he appeared before them several times for his statement to be taken. The prosecution had during re-examination showed Tan Sri Chai the statements that he had made to the MACC on the three occasions that he was there, to refresh his memory whether he had raised the issue of the receipt. It confirmed that he never did. Even if assuming that he had only found the UMNO receipt after MACC had completed its investigation on him, one would have expected him to inform the MACC the minute he found the UMNO receipt. Tan Sri Chai himself testified that he had known the accused for a long time and has clearly developed a closed relationship with the accused. One would have expected him to seize the opportunity to exculpate the accused, and not merely keep the UMNO receipt [refer to para 85, GOJ, RRT (Jilid 1)].

(ix) I would also expect Tan Sri Chai to have given the UMNO receipt to the relevant employee in Aset Kayamas, namely Lai Vui Kong, Aset Kayamas' Financial Controller (SP16), as the latter was the one that oversaw the preparation of the cheque and handed it over to Tan Sri Chai. If Aset Kayamas had issued the RM2,000,000.00 as political donation, it would have been necessary for the company to have a copy of the UMNO receipt for auditing and record purposes. I find it highly questionable that was not done particularly if Tan Sri Chai had indeed received the UMNO receipt from the accused two days after he had given the cheque - [refer to para 86, GOJ, RRT (Jilid 1)].

(x) It is a fact that Tan Sri Chai had known the accused for many years, and had dealt with each other during that time. It is also apparent that the accused had done favour for him, and he in turn too had done favours for the accused. Tan Sri Chai, in my opinion had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. I will therefore disregard his testimony only in respect of the UMNO receipt - [refer to para 88, GOJ, RRT (Jilid 1)].

(xi) I had in taking into account all these factors, come to the conclusion that the UMNO receipt must be treated with absolute suspicion, and will not attach any weight to it. It was crisp and new - [refer to p 42 para 95 GOJ, RRT and p 40 para 92 (Jilid 1)].

(xii) The only plausible conclusion is that the payment was meant to benefit the accused. The fact that the accused had specially instructed Tan Sri Chai to make the cheque payable to Tadmansori's and not to UMNO, could only mean that he intended to benefit himself [refer to para 97 p 42, GOJ, RRT (Jilid 1)].

[19] Having found the prosecution had made out a *prima facie* case, the learned trial judge then called upon the appellant to enter his defence.

The Defence

[20] In his evidence given under oath, the appellant narrated his defence. He stated that he had an illustrious political career. He had been a member of UMNO since 1969 and had risen the ranks steadily. He was a treasurer in 1988, a member of the Supreme Council in 1993 and 2004, and Executive Secretary in 1999, the Federal Territory Liaison Chairman in 2000, UMNO's Secretary General from 2008 to 2018 and UMNO's treasurer again in 2018. He was appointed as Barisan National's Federal Territory Chairman in 2001.

[21] The appellant also stated that he was sworn in as Senator in December 2000 and was subsequently appointed as the Deputy Minister in the Prime

Minister's Department in September 2001. He also held several ministerial posts since; Minister in the Prime Minister's Department in November 2002, Tourism Minister in February 2006, and the Minister for the Federal Territories in 2013, a position which he held until 2018. He had been a Member of Parliament for the Putrajaya Constituency for many years, having succeeded in 11th, 12th, 13th and 14th General Elections.

[22] He was active in business before joining the cabinet in 2001, and claimed to have held positions in public and non-public listed companies. He admitted owning Tadmansori, and that it was a family-owned company that has seen its paid-up capital rose to RM100 million from an initial RM100,000.00. The company's business is multi-fold: manufacturing, agriculture, food, real estate, hotel and investment. The appellant claimed that Tadmansori's achievements were the envy of many.

[23] The appellant stated that he had only embarked into politics to serve the nation and its people. He claimed that the charge levelled against him is irrelevant, and a conspiracy designed by another political party to bring UMNO and Barisan Nasional down, as he holds prominent positions and is seen as their funder. In his own words: "So to kill me is to kill UMNO/Barisan Nasional". He asserted that he had given an undertaking to give financial support to UMNO as its treasurer, an obligation that he claimed to have started back in 1988 when he was UMNO's Youth's treasurer. He claims that UMNO still owes him a sum to the tune of RM17,000,000.00 million.

[24] The appellant reiterated that he was already a successful businessman before joining the Cabinet in 2001. He was prepared to produce his "Declaration of Asset" for 2001, 2006, 2013 and 2015 ("the declaration") that were submitted to the Prime Ministers then, to prove his wealth. The appellant had at this point during the trial, requested that the proceedings be done in camera, pursuant to s 15(1) Courts of Judicature Act 1964 ("CJA 1964"). The appellant was apprehensive of his assets and that of his family's safety. However, the appellant's application was dismissed by the learned trial judge. The appellant subsequently opted not to tender the declarations as defence exhibit in light of the dismissal by the trial judge to hear the proceedings on camera. He had nevertheless orally testified the value of his assets declared, which were RM938,643,566.16 in 2001, RM711,325,822.00 in 2006, RM691,770,000.00 in 2013 and RM782,748.061.00 in 2016. He said RM2,000.000.00 was merely pocket money to him.

[25] He had in his capacity as the Federal Territories Minister obtained the Cabinet's approval to allow DBKL to enter into joint ventures with developers when the affordable housing project was to be carried out in the Federal Territories in 2013. This method had enabled DBKL to do outright sales of its land to the developers, who would then develop them based on what has been agreed upon. There were other advantages. His Ministry, for example, would not require funding from the Government, and that the developers would need to handle any problems involving squatters on the land bought, which

were then one of the thorny issues. The appellant claimed that this method would not only fulfil the housing quota set by the Government, but would also increase DBKL's coffers.

[26] The appellant had known Tan Sri Chai for more than thirty years, dating back to the days they had dealings in the logging business. He had approached Tan Sri Chai to take part in the affordable housing projects, as he deem the latter to be a capable developer.

[27] The appellant also acknowledged and confirmed the various correspondences and proceedings on Aset Kayamas's dealing with DBKL. He maintained that the whole process on Aset Kayamas' purchase of the land and the project was done legitimately, and he had not committed anything illegal or extraordinary. He had for instance approved Aset Kayamas' request to defer payment of the deposit, as the company's request to reduce the value of the land would take time. He maintained that, at no time did he interfere with the valuation of the land as it was under the jurisdiction of the Government's Valuation Department. He asserted that the set procedures on approving Aset Kayamas's various requests were dutifully adhered to, irrespective of the fact that he was the Minister and was in favour of the requests.

[28] He admitted to soliciting from Tan Sri Chai for donations in early June 2016 to finance the two by-elections. These by-elections for the parliamentary seat of Sungai Besar and Kuala Kangsar became necessary after the Members of Parliament for both constituencies perished in a helicopter crash in Sarawak. As the Chairman of UMNO and Barisan Nasional Federal Territories division, it is his responsibility to raise funds for these by-elections. He did request Tan Sri Chai to donate between RM5,000,000.00 to RM6,000,000.00 initially but Tan Sri Chai did not commit to that figure and merely said that he would donate later. Eventually Tan Sri Chai told the appellant that he would be donating a sum of RM2,000,000.00 but required some time to raise the funds. The appellant said he would advance the RM2,000,000.00 to UMNO first, as he trusted Tan Sri Chai to keep his pledge. The appellant admitted receiving the cheque for RM2,000,000.00 from Tan Sri Chai on 14 June 2016, but claimed that it was given quite late, as the by-elections were scheduled to be held on 18 June 2016.

[29] According to the appellant, donations are usually given in cash but claimed that Tan Sri Chai had found it difficult to raise RM2,000,000.00 in cash, and gave a cheque for RM2,000,000.00 instead. The appellant had requested Tan Sri Chai to make out the cheque to Tadmansori, as he had already used his own money for UMNO's by-election, especially in campaign expenses. He also stated that it is common knowledge within UMNO that he had often made advances to the party and would look for donations and sponsors for UMNO's activities.

[30] The appellant exhorted that he would not have requested Tan Sri Chai to make the cheque payable to Tadmansori had he intended to utilise it for

himself, as the banking trails would be apparent. He was adamant that the RM2,000,000.00 was for UMNO's benefit, and that he never intended to pocket it for himself.

[31] The appellant explained that he had used UMNO's headquarters receipt for Tan Sri Chai's contribution, as the Federal Territory UMNO does not have receipt books. He had issued the UMNO receipt to Tan Sri Chai, but could not remember who wrote the details on the UMNO receipt, as he had only signed it in his capacity as the UMNO's Federal Territory Liaison Chairman. He had no knowledge as to why there was no duplicate copies of the UMNO receipt in the receipt book and pointed out that anyone working at the Finance and Administration Department of the UMNO headquarters would have access to all the receipt books.

[32] The appellant further explained that, each UMNO and Barisan Nasional's state liaison would form their team for a by-election. Datuk Rizalman (SD3) was appointed as the Head of Operations for the Sungai Besar's by-elections by the UMNO's Federal Territory. Datuk Rizalman had initially discussed with the appellant's Political Secretary at the time, Datuk Mohd Rafi bin Ali Hassan (SD2) about the budget required to meet the expenditure of the Sungai Besar's by-election. The appellant subsequently met both of them. The budget of RM1,300,000.00 suggested by the duo was whittled down to RM1,013,200.00 by the appellant. A copy of the budget for the expenses was produced through Datuk Rizalman. It showed details of the items to be spent on the campaign. The appellant had advanced his own money amounting to RM1,013,200.00. He gave the sum in cash to Datuk Mohd Rafi, who subsequently handed it over to Datuk Rizalman.

[33] Both Datuk Mohd Rafi and Datuk Rizalman testified that the appellant had never depended on funds from UMNO's headquarters to carry out UMNO's Federal Territory's Political activities, and that he would either use his own money or money obtained through donations. Both Datuk Mohd Rafi and Datuk Rizalman echoed what the appellant had said on the funding arrangements for the Sungai Besar's by-elections.

[34] The appellant had in his capacity as the Secretary General of UMNO and Barisan Nasional, appointed Datuk Zakaria bin Dullah (SD4) to assist in the election operations for the two by-elections. Datuk Zakaria bin Dullah (SD4) was the coordinator for the Barisan Nasional's Youth Volunteer Project. Youths were recruited as volunteers for various community programs under this project. The youths were enlisted to help with the Sungai Besar's as well as Kuala Kangsar's by-elections. They were involved in numerous community programs, such as organising sports activities, breaking of fast events, distributing food and groceries to the community and so on. This project required funds.

[35] Datuk Zakaria had prepared a budget of RM1,007,600.00 involving 1,000 youths. A copy of the budget was tendered through him. The appellant had

no issues with the budget proposed and advanced his own money by giving RM1,007,600.00 in cash to Datuk Zakaria. Similar to the testimonies of Datuk Mohd Rafi dan Datuk Rizalman, Datuk Zakaria too testified that the appellant had never received any funding from UMNO or Barisan Nasional, and that he had always used his own money.

Finding Of The Trial Judge At The Conclusion Of The Trial

[36] As regard the accused's application to hold trial proceedings in camera pertaining to the declarations supposedly contained details of the accused's family assets, pursuant to s 15(1) Courts of the Judicature Act 1964 ("CJA 1964"), the learned trial judge held that the granting of the accused's application would be contrary to the interest of justice. Mindful of the fact that the accused was a form er Federal Minister, and this case has garnered public interest, the learned trial judge opined that the public has a right to hear what the court hears and see what the court sees. Hence, the public would be able to appreciate any decision reached by the court, and not be kept guessing or speculating due to any evidence being kept out of public knowledge. On this aspect we are in agreement with the learned trial judge that the power to order proceedings in camera must be exercised sparingly and it is a case where it is expedient in the interests of public safety, public security and property, and not in the interest of an individual. In the present factual matrix, we do not find that it is expedient that a trial in camera be allowed and that the apprehension that an exposure of one's wealth would expose oneself to becoming a victim of a crime, without more, is not sufficient to attract the protection of s 15 of the CJA.

[37] The learned trial judge had rejected the appellant's allegations that the charge against him is irrelevant and is a ploy by UMNO's and Barisan Nasional's rival political parties to upend them by targeting him. The learned trial judge had correctly, in our view stated that the accused's complaint is not novel. He is not the first politician charged for a criminal offence who has complained of a political conspiracy and conspiracy, ipso facto, is not a defence for which due weight ought the be unnecessarily placed.

[38] In respect of the giving and the receipt of the money, the learned judge took the view that the intention of the giver is immaterial and cannot form part of the consideration in concluding whether the offence under s 165 of the PC has been proved. And given that was the position the appellant's reliance on the evidence of Tan Sri Chai on the purpose for which the RM2,000,000.00 was given was misplaced. The evidence comes to naught according to the learned judge. The primary issue, according to the learned judge was whether the accused had accepted the RM2,000,000.00 for himself.

[39] The evidence that the appellant had accepted the sum of RM2,000,000.00 for himself according to the learned judge, was confirmed and supported by several evidence. First, there was no corresponding payment from Tadmansori to UMNO. In fact the appellant had clearly instructed Tan Sri Chai to make the cheque payable to Tadmansori. Tan Sri Chai, in his witness statement,

confirmed, that the appellant had at a meeting, told him to issue the cheque in Tadmansori's favour. This fact was not contested by the defence when Tan Sri Chai testified. It is, according to the learned Judge, apparent that the appellant had from the onset, wanted the payment to be made to Tadmansori. Further, as Tan Sri Chai had not committed on the exact amount of donation, it makes little sense for the appellant to have advanced a sum closer to the RM2 million as it would also be presumptuous. Tan Sri Chai had only decided to give RM2,000,000.00 when he gave the cheque on 16 June 2016. On this aspect, reliance was placed on the authority of *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 1 MLRH 59 (HC) to underscore that the defence had failed to appropriately put the defence case to the prosecution's witness and thus the defence subsequent averments and submissions must accordingly be treated with suspicion and caution.

[40] As regards the UMNO receipt, the learned judge form ed the view that the appellant's explanation that he had no knowledge of why there was no duplicate copy of the UMNO receipt in the receipt book (ID76), and that it was not his duty to handle the receipt books, and that responsibility lies with the staff in the Finance and Administrative Department of UMNO's headquarters was not convincing. Similarly, the appellant's explanation of the need to maintain confidentiality of the donation was of spurious nature and was a red herring of sorts. Accordingly, his Lordship ruled that no weight ought to be attached to the UMNO receipt. However, the learned trial judge ruled and admitted the other three receipt books as defence exhibits (IDD 77 to ID77, IDD78 to ID78 and IDD79 to ID79), as the receipt books were originals seized from the UMNO's headquarters.

[41] The appellant in his evidence had referred to UMNO Financial Statement for year 2019 and highlighted the auditor's remark at para 1(a), p 11, where it was stated that the Financial Statement was prepared based on a continuous effort basis, as UMNO's treasurer had given an undertaking to provide financial support to fulfil its responsibilities and to meet its liabilities. This remark serves to augment his assertion that he provides financial support to UMNO in meeting its obligation and liabilities. The learned trial judge in his finding stated that he was unable to appreciate the appellant's contention, as the by-election were held in 2016 whereas at that material time the accused was not the UMNO's treasurer. He only became the treasurer in 2018.

[42] As regards the two by-elections, the learned trial judge made a finding that since these two by-elections involved two other states, namely Selangor and Perak and not the Federal Territories, then it would have been the responsibility of the respective state's Chairman and certainly not the appellant. Therefore, the appellant's contention, that he bore the responsibility to raise funds for the two by-elections could not be true.

[43] As to the budget sheet prepared by Datuk Rizalman, the learned judge concluded that he has grave doubts on the veracity of the budget sheets

produced by both personalities as the same was a simple one-page budget itemising the twelve's items that he claimed to have been incurred and spent for the Sungai Besar's by-elections. Furthermore, the witness had admitted that he had prepared the budget sheet for the trial proceedings based on memory, as he had disposed of the original and any supporting receipts soon after the by-election ended. The budget sheet prepared by Datuk Zakaria, according to the learned judge suffered the same infirmity.

[44] The learned judge had also rejected the submission canvassed by the counsel for the appellant that the prosecution's failure to challenge the evidence of both Datuk Rizalman and Datuk Zakaria on the amount spent for the two by-elections, and that they received cash totalling RM2,020,800.00 from the accused tantamount to an acceptance of their testimony. In this, learned judge took the view that the proposition set out by the Apex Court in the case of *Wong Swee Chin v. Public Prosecutor* [1980] 1 MLRA 125 was a general rule and that it is ultimately the court's task to carefully evaluate all the evidence and determine its weight and the case of *Khee Thuan Giap v. PP* [2019] MLRAU 152 was cited.

[45] In summary, the learned trial judge had arrived at the conclusion as follows:

(i) the appellant had pocketed the RM2,000,000.00 for himself;

(ii) the appellant's contention that he is a person of high net worth and accordingly will not be easily enticed with what he considered a paltry sum of RM2,000,000.00 was not capable of belief as the sum of RM2 million is a substantial amount of money even for a millionaire;

(iii) the evidence of Datuk Rizalman and Datuk Zakariawere in all likelihood have been concocted after the event in an attempt to buffer the appellant's defence. Thus, the alleged advance of slightly more than RM2,000,000.00 for the by-elections were afterthoughts to give a figure closer to RM2 million; and

(iv) that Tadmansori was used as a facade, it is but for a conduit to receive the fruit of his crime.

[46] The appellant was found guilty of the charge and was convicted and accordingly sentenced.

The Appeal

[47] Before us learned counsel for the appellant had canvassed the following issues:

(a) The learned trial judge had erred in law and in fact when he failed to consider that the prosecution had failed to prove

beyond reasonable doubt a key element in the charge that the RM2,000,000.00 was paid to the appellant for himself.

(b) The learned trial judge had erred in law and in fact when he failed to consider that the evidence of the prosecution witnesses (SP19, SP6 and SP23) supported the defence that the sum of RM2,000,000.00 was a political donation to UMNO for the two by-elections.

(c) The learned trial judge erred in law and in fact when he failed to consider that the failure of the respondent to re-examine the prosecution's star witness, SP19, on his evidence in cross-examination that the sum of RM2,000,000.00 was a political donation to UMNO, amounted to an acceptance of SP19's testimony.

(d) The learned trial judge had erred in law and in fact when he failed to consider the evidence that the star prosecution witness, Tan Sri Datuk Chai Kin Kong (SP19) and the appellant had stated in their statements to the MACC during the investigation that the RM2,000,000.00 was a political donation to UMNO for expenses in the by-elections.

(e) The learned trial judge had erred in law and in fact when he failed to consider the evidence of the prosecution's star witness, SP19, on his evidence during cross-examination that he had received the UMNO Official Receipt (D74) two or three days after it was issued on 14 June 2016.

(f) The learned trial judge had erred in law and in fact when he held that the duplicate copy of the UMNO receipt (D74) was the only duplicate copy missing from the receipt book and that this had raised a red flag.

(g) The learned trial judge had erred in law and in fact when he failed to attach weight to the UMNO Official Receipt (D74).

(h) The learned trial judge had erred in law and in fact when he imported his own personal knowledge that the UMNO Official Receipt (D74) was "crisp and new" when there was no evidence to this effect.

(i) The learned trial judge had erred in law and in fact when he failed to consider that where facts are open to two or more inferences, that which is in favour of the appellant should be adopted.

(j) The learned trial judge had erred in law and in fact when he failed to consider the fact that it was widely accepted that the appellant had frequently used his own funds to advance to UMNO, including expenses for by-elections.

(k) The learned trial judge had erred in law and in fact when he failed to consider the evidence of the appellant, SD2, SD3 and SD4, which were not challenged by the respondent in cross-examination and amounted to an acceptance of their testimony.

Our Decision

[48] Before analysing the correctness of approach and accordingly the respective grounds advanced by the trial judge it is appropriate for us to state that sitting in an appeal, we have no advantage of the audio visual that is enjoyed by the trial judge. That does not however mean that all findings of the trial judge could be lumped as findings of facts. The Federal Court, in a recent decision in *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng & Ors* [2020] 6 MLRA 193 had occasion to answer the question and provide a useful guidance to the courts below on the proper approach in dealing with the issue of appellate intervention premised on the "plainly wrong" test. In gist, it is necessary in an appeal for the appellate court to determ ine whether the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. In that process, the appellate court is perfectly entitled to examine the process of evaluation of the evidence by the trial court - *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 2 MLRA 1 FC. More importantly the 'plainly wrong' test is not intended to be used by an appellate court as a mean to substitute its own decision for that of the trial court on the facts. There are many facets upon which the decision may be said to be plainly wrong and that includes where crucial evidence had been misconstrued resulting in the uncertainty on one party's evidence; the consistency of the other party's evidence being disregarded and when a trial judge had so manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial, and in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him.

[49] Unfortunately the present appeal in one such case where the decision of the trial judge is plainly wrong. As we shall demonstrate crucial evidence were misconstrued by the learned judge resulting in a wrong conclusion. The finding of the learned judge on the crucial elements of the charge was not only unsupported by evidence but militate against them.

[50] In short, the central issue in this instant appeal is whether the learned trial judge correctly re-evaluated the evidence adduced by the appellant by weighing against the evidence adduced by the respondent at the end of prosecution's case.

[51] It is trite that, the burden of proof rests on the prosecution throughout the trial to prove its case in accordance with the provision of s 180(1) and (4) of the Criminal Procedure Code ("CPC"). It is the duty of the trial court to undertake a maximum evaluation of the credibility and reliability of all the evidence adduced so as to determ ine whether each and every essential ingredients of

the offence has been established, in order to make a finding whether or not the prosecution has made out a *prima facie* case against the accused [see *PP v. Dato' Saidin Thamby* [2012] 2 MLRA 641. The court is not restricted to merely evaluating the evidence adduced by the prosecution or the defence in isolation or one without the other. It is nevertheless the bounden duty of the court as enjoined in s 182A of the Criminal Procedure Code to also carefully re-evaluate the whole of the evidence of the prosecution in conjunction with the defence evidence to determ ine upon whether a reasonable doubt has been raised as to the guilt of the accused. The principle is clearly enshrined in the case of *PP v. Bernadito L Alenjandro JR* [2015] MLRAU 165 where the court held that:

> "We, therefore, find no merit in the argument that the trial judge made two inconsistent findings, one at the end of the prosecution case and another at the end of the defence case because it is trite that at the end of the defence case the trial judge must re-evaluate all the evidence of the Prosecution and Defence and ask himself whether the Prosecution had proven its case beyond reasonable doubt or as the case may be whether the Defence had cast a reasonable doubt on the Prosecution Case. [See *Seow Hoong v. PP* [2002] 5 MLRH 381]. It is obvious that a finding made at the end of the Prosecution Case is not necessarily immutable because if this is so, it would not be necessary to re-evaluate all the evidence at the end of the Defence case and in so doing may make a finding which is at variance with an initial finding made at the question of inconsistency does not, therefore, arise."

[52] In the context of the present case, the four ingredients of the offence are as follows:

(i) The appellant as the Minister for Federal Territories was a public servant;

(ii) The appellant had received for himself RM2,000,000.00 from Tan Sri Chai Kin Kong;

(iii) There was no consideration for the RM2,000,000.00; and

(iv) The appellant knew Tan Sri Chai had connections with his official functions.

[53] Applying the ingredients to the facts of this case, one of the essential elements of the offence which must be proved by the prosecution is that the sum of RM2,000,000.00 was paid to the appellant for himself and not for any other person or entity. This is undoubtedly a key element of the charge. If the key element in the charge is not proved beyond reasonable doubt, then the appellant ought to be acquitted and discharged without his defence being called [*Mohamad Radhi Yaakob v. PP* [1991] 1 MLRA 158]. Here, we find the learned Judge's conclusion that ingredient no. (ii) above had been established beyond reasonable doubt, is untenable.

[54] We sustain the submission by learned counsel for the appellant that the learned trial judge has erred in law and in fact when he failed to consider the

evidence of the prosecution witness, SP19 (Tan Sri Chai), SP6 (Chief Operating Officer of Tadmansori) Dato' Hasbi bin Jaafar and SP23 (investigating officer) Muhammad Saad bin Bordani, each of which and cumulatively had supported the defence's contention that the sum of RM2,000,000.00 was a political donation to UMNO for the two by-elections.

[55] The learned trial judge stated in para [81] as follows:

> "[81] I will now come to the issue of whether the RM2,000,000.00 given was solicited by the accused for himself or was a political donation for UMNO. Tan Sri Chai had unequivocally testified in examination in chief and under cross-examination, that the accused had solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5,000,000.00 to RM6,000,000.00 for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2,000,000.00 was indeed a political donation meant for UMNO, and not for the accused. The defence team also referred to the prosecution's opening statement where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the Investigation Officer (SP23) had under cross-examination, admitted that his investigations reveal that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC Datuk Mohd Hasbi (SP6), Tadmansori's Chief Operating Officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections."

[56] The relevant evidence by Tan Sri Chai (SP19) can be referred to at para 47 of his witness statement (P73) where he said:

> "47. Berkenaan dengan bayaran cek tersebut, saya sahkan pembayaran wang RM2 juta tersebut adalah sumbangan kepada Tengku Adnan kerana beliau meminta sumbangan tersebut daripada saya untuk dana politik. Seingat saya, Tengku Adnan ada menyatakan bahawa UMNO memerlukan dana politik lebih kurang RM5-6 juta untuk pilihan raya kecil. Beliau hanya bertanya kepada saya boleh bagi. Saya pula tidak menjanjikan berapa jumlah yang akan diberikan tetapi akan menyerahkan cek sumbangan tersebut kepada beliau apabila saya sudah mempunyai wang."

[57] Learned counsel for the appellant was not wrong in describing SP19 as being a star witness for the prosecution. SP19 has however clearly confirmed that the sum of RM2,000,000.00 was a political donation to UMNO and not meant for the appellant. SP6 Dato' Hasbi bin Jaafar was also told by the appellant that the RM2,000,000.00 cheque was a political donation to be utilised for the Sungai Besar dan Kuala Kangsar by-elections. In short, the purpose for which the money was to be utilised for the two by-elections was made clear to SP19. This can be seen in the evidence of Tan Sri Chai (SP19) on 17 July 2019 at p 480 of the Rekod Rayuan (Baru) Jilid 2(3):

DT: Saya difahamkan bahawa apa yang Dato' Seri Tengku Adnan telah memaklumkan kepada Tan Sri, dan Tan Sri sila sahkan betul atau tidak, beliau katakan ada short fall, ada kekurangan lebih kurang RM5 juta untuk 2 pilihanraya kecil yang dekat dah iaitu pada bulan Jun 2016 dan beliau Tanya Tan Sri sama ada Tan Sri boleh membuat sumbangan kepada UMNO. Can you confiRMwas what that is true?

SP19: Ya, ada.

DT: Jadi dari permulaan, from the start Tan Sri tahu bahawa sumbangan ini adalah sumbangan politik untuk parti UMNOlah untuk 2 by-election. Sumbangan bukanlah untuk Dato' Seri Tengku Adnan sendiri. You know that from the beginning?

SP19: Ya, saya setuju.

DT: Paragraph 49 Tan Sri, kemudian saya memutuskan... Can you please translate 49 and so?

SP19: Ya.

At p 486 of the Record Rayuan (Baru) Jilid 2(3).

DT: Yang Arif dengan rujuk saksi kepada P15 p 11, the cheque. Ada? Tan Sri, adakah ini untuk sumbangan RM2,000,000.00 kepada dana politik UMNO?

SP19: Ya.

[58] In supporting the evidence of Tan Sri Chai (SP19), Datuk Mohd Hasbi bin Jaafar (SP6), the Group Chief Operating Officer of Tadmansori, testified that after he received a WhatsApp text from the appellant showing the deposit slip (P21) of the RM2,000,000.00 from Aset Kayamas Sdn Bhd to Tadmansori Holding Sdn Bhd he was told by the appellant that the RM2,000,000.00 cheque was a political donation for Sungai Besar's and Kuala Kangsar's by-elections. This can be seen in the evidence of Datuk Mohd Hasbi bin Jaafar (SP6) on 3 July 2019 at p 61 of the Rekod Rayuan (Baru) Jilid 2(1):

DT: Kamu telah bekerja dengan Datuk Seri Tengku Adnan untuk 24 tahun sekurang-kurangnya lah ya kamu kenal dia. Adakah kamu tahu terdapat 2 pilihanraya kecil yang telah dijalankan pada bulan Jun 2016?

SP6: Ya.

DT: Adakah kamu tahu pilihanraya kecil tersebut pada 18 Jun 2016 untuk pilihanraya kecil Sg. Besar di Selangor dan Kuala Kangsar di Perak, tahu?

SP6: Ya, tahu.

DT: Saya merujuk Datuk Hasbi kepada pernyataan saksi kamu perenggan yang ke 7, P21. Saya rujuk kamu kepada tarikh yang tertera di atas deposit cek 14 Jun 2016. Tadi kamu katakan kamu tahu tentang by-

election pada 18 Jun 2016. Adakah kamu terima whatsapp tersebut dari Datuk Seri Tengku Adnan pada 14 Jun hari yang sama atau next day, boleh tak?

SP6: Saya tak berapa ingat tapi saya rasa hari yang sama.

DT: 14 Jun 2016 ialah hari Selasa, sementara pilihanraya kecil 18 Jun 2016 hari Sabtu. Soalan saya, selepas kamu menerima whatsapp tersebut daripada Datuk Seri Tengku Adnan, adakah kamu berbual telefon dengan beliau selepas follow up atau selepas check, ada?

SP6: Ya, selepas follow up selepas forward ada.

DT: Awak ada cakap telefon dengan Datuk Seri?

SP6: Ada.

DT: Selepas whatsapp ya, dan apa yang kamu telah katakan?

SP6: Saya sebut yang saya ada menerima daripadanya salinan whatsapp tersebut dan selepas itu saya tanyalah untuk Tadmansori Holding Sdn Bhd untuk nak confiRMdengan Tadmansori Holding Sdn Bhd dimasukkan ke tak ke Tadmansori Holding Sdn Bhd slip itu.

DT: Adakah kamu mengesahkan bahawa funds telahpun dimasukkan kemudian atau tidak?

SP6: Ya, selepas itu saya bercakap semula mengatakan cek telah clear di dalam syarikat.

DT: Sekarang saya nak Tanya soalan khusus sila dengar betul-betul atas arahan saya, semasa perbualan telefon tersebut adakah Datuk Seri Tengku Adnan menyebut kepada kamu bahawa wang tersebut ialah dengan izin political donation untuk kedua-dua pilihanraya kecil yang dimaksudkan?

SP6: Ya, benar.

[59] In this respect both SP19 Tan Sri Chai and SP6, Datuk Mohd Hasbi bin Jaafar were prosecution witnesses. Thus, we agree with the appellant's counsel that it is trite that the prosecution is bound by the evidence of its own witnesses [see *Lim Guan Eng v. Public Prosecutor Other Appeals* [1998] 1 MLRA 457].

[60] It is our considered view that the learned trial judge had failed to evaluate and give attention to the evidence of the investigating officer (SP23) who had not ruled out that the RM2,000,000.00 cheque (P15) was given as a political donation for the expenses of the two by-elections. We also find that the learned trial judge had failed to test and evaluate the entire evidence especially the evidence of SP19, SP6 and SP23 that the RM2,000,000.00 was meant for the two by-elections.

[61] Another crucial issue which, in our view, the learned trial judge had failed to consider was the failure of the prosecution to re-examine the prosecution's

star witness, SP19, on his evidence in cross-examination that the sum of RM2,000,000.00 was a political donation to UMNO. It is undisputed that SP19 was the star witness of the prosecution and the entire version of the prosecution's case was built largely upon his testimony. It is trite that the failure by the prosecution to re-examine on this pivotal issue amounts to an acceptance of the witness testimony. In similar vein, no suggestion was made by the prosecution that SP19 was dishonest or untruthful. No attempts too were made by the prosecution to impeach SP19 or treat him as a hostile witness. In fact, whilst a judge was entitled to accept one part of the evidence and disregard the other part of the evidence, curiously the learned judge had decided to reject the evidence of SP19 pertaining to the receipt, that too by extrapolation of evidence not proved, that the receipt was "new and crisp" which the same was not even faintly suggested by the prosecution.

[62] At the risk of repetition, in his written grounds of judgment, the learned judge had not directed his mind on the failure of the prosecution to re-examine SP19 on his evidence in cross-examination that the RM2,000,000.00 was a political donation to UMNO. We find that such a failure on such a critical point/issue amounted to a non-direction which rendered the conviction unsafe.

[63] Again, in respect of the official receipt D74, SP19 in re-examination reiterated that he received the receipt (D74) on 16th or 17 June 2016. From the Records of Appeal, we found that this direct evidence was neither contradicted nor disproved and thus remained unchallenged by the prosecution. Thus, the prosecution's submission that D74 was only issued in November 2018 after the appellant was arrested and that D74 was a forged document remains unproved. The learned trial judge, on this issue had decided to disregard the evidence of SP19 on the receipt. The learned trial judge, at para 85 had stated:

> "(88)...Tan Sri Chai, in my opinion, had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. I will therefore disregard his testimony only in respect of the UMNO receipt."

[64] We are not persuaded by the learned trial judge reasoning. In our judgment, based on the set of facts, the learned trial judge should have adopted an inference in favour of the defence.

[65] With respect, we are of the view that the failure on the part of the learned trial judge to consider the foregoing unchallenged direct evidence amounts to a serious misdirection which warrants appellate intervention [see *Ong Teik Thai v. PP* [2016] 5 MLRA 267].

[66] As regard the receipt book (P76), Nik Muhamad Faiez bin Idris (SP20) and the Investigating Officer (P23) had given evidence that there were two missing receipts from the receipt book (P76) ie receipt no 376241 (D74) and receipt no 376244. This is contrary to the finding of the learned trial judge when he held that the duplicate copy of the UMNO receipt (D74) was the only duplicate copy missing from the receipt book and that he said this had raised a red flag.

[67] Before us the prosecution had submitted that the RM2,000,000.00 was paid for the appellant for himself as the cheque was credited into the account of Tadmansori and there was no corresponding payment to UMNO from the Tadmansori Holding. It was also urged upon us that the whole of the defence of the appellant was an invention. We should also note that this ground appears to be the grounds upon which our learned brother had relied upon to find that the crucial ingredient of the offence had been established. With respect, we find such submission and conclusion untenable. In our judgment, the crediting of the cheque into the account of Tadmansori did not lead to an irresistible conclusion that the appellant had committed the offence charged, and this *per se*, is insufficient to convict the appellant as, upon a proper evaluation, this evidence amounts to no more than circumstantial evidence, which does not point irresistibly to the guilt of the appellant. Upon full scrutiny of the prosecution's evidence, we are of the view that the defence contention on the purpose for which the money was to be utilised was not a mere invention by the appellant. At any rate it creates a doubt as to whether the appellant had accepted or received the money for himself. It is trite that when there are two possible conclusions that could be made from a set of facts, an inference favourable to the accused should be made - *Public Prosecutor v. Kasmin Bin Soeb* [1974] 1 MLRH 108; *Samundee Devan Kerishnan Muthu v. PP* [2008] 2 MLRA 650; and *Alan Soh Heng Liang v. PP* [2020] MLRAU 340.

Conclusion

[68] In the circumstances, and for all the above reasons we have alluded to, we concluded that there were serious misdirections and non-directions committed by the trial judge on the law and evidence warranting appellate intervention. As such, we are of the view that it would be unsafe to sustain the conviction on the charge.

[69] Accordingly, we allowed the appeal and set aside the conviction and sentence imposed on the appellant by the High Court. The appellant is hereby acquitted and discharged.

Abu Bakar Jais JCA (Minority):

[70] The appellant, in this case, was charged for the offence under s 165 of the Penal Code. This section states as follows:

> Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

[71] The above is understandably too long to digest. However, the learned High Court Judge ("HCJ") had assisted us through his grounds of judgment to appreciate the four elements of s 165 of the Penal Code. The four elements in the context of the present case are as follows:

(a) The appellant being the Minister for Federal Territories was a public servant;

(b) The appellant obtained a valuable thing for himself;

(c) There was no consideration for the valuable thing he obtained; and

(d) The appellant knew Tan Sri Chai ("Chai") had connection with his official functions.

[72] Proving the bare minimum of all the four elements would mean that the appellant should be convicted for the offence charged, in the absence of a defence that could raise a reasonable doubt. It is quite straightforward in that sense.

[73] I shall now go on to evaluate whether there was evidence before the High Court on each of the elements mentioned.

The Appellant Being The Minister For Federal Territories Was A Public Servant

[74] With regard to this element, during the trial, it was not disputed that the appellant was at the material time the Minister for Federal Territories. The appellant also cannot be denied was a public servant pursuant to s 21(i) of the Penal Code which states as follows:

> The words "public servant" denote a person falling under any of the descriptions hereinafter following:
>
> ...
>
> every officer whose duty it is, as such officer, to take, receive, keep or expend any property, on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, **and every officer in the service or pay of Government, or remunerated by fees or commission for the perform ance of any public duty;**
>
> [Emphasis Added]

[75] In respect of the above, there was evidence tendered in court that the appellant received salaries and allowances from the government.

[76] The learned HCJ also rightly referred to the Federal Court case of *Mohd Khir Toyo v. PP* [2015] 6 MLRA 1 in saying a person in the service or pay of the government, or is remunerated by fees or commission for the perform ance of public duty, is deemed as a public servant. I am bound by the Federal Court's decision.

[77] In any event, when the counsel for the appellant submitted before us at the Court of Appeal, he did not say the first element was not proven.

[78] Based on all the above points, I agree with the learned HCJ that the first element had been proven by the prosecution.

The Appellant Obtained A Valuable Thing For Himself

[79] For this element, the valuable thing is the cheque of RM2 million. Logically, nobody has argued that this is not a valuable thing.

[80] The cheque was given by Chai and handed personally to the appellant. Chai is a friend of the appellant. They have known each other for more than 30 years. The cheque was issued by Aset Kayamas, a housing development company. Chai owns this company and is a director of the same.

[81] The cheque was made out to Tadmansori. This is a company where the appellant owns 99.99% of the shares (worth RM99,999,996.00) since the incorporation of the same. Evidence was tendered that the appellant was the decision-maker for this company. Practically the appellant is the owner of this company.

[82] After receiving the cheque from the Chai, the appellant instructed his driver to deposit the cheque into Tadmansori's bank account. The cheque was later cleared and RM2 million was credited into Tadmansori's bank account.

[83] Since RM2 million went into this account, the money was for the appellant himself, as he is practically the owner of this company. As stated, he owns almost all the shares of this company except a small share worth about RM4.00. The appellant's brother is the owner of this RM4.00 share.

[84] I am therefore with the learned HCJ that this second element had been proven based on the reasons explained.

[85] In any event, what is important to be considered regarding this element is that the appellant contended he did not receive the money RM2 million for himself. Instead, he said that the money was a political donation for UMNO, his political party. The money was needed for the expenses of UMNO for two by-elections in Sg Besar and Kuala Kangsar.

[86] This is the defence of the appellant, contending this element was not proven because the money was not for himself. I shall come back to this defence after I explain the two other elements and the evaluation of the evidence regarding these two elements.

There Was No Consideration For The Valuable Thing He Obtained

[87] The cheque came from Aset Kayamas to Tadmansori. There were no business dealings between these two companies.

[88] When the cheque was cleared and RM2 million was credited into the bank account of Tadmansori, nothing was given in return by Tadmansori or Appellant to Aset Kayamas or Chai. There was no consideration given by Tadmansori or the appellant for the RM2 million received.

[89] For this third element, there is no dispute that even UMNO did not give consideration. There is no reason for UMNO to give consideration since UMNO never received the money. There is no record that Tadmansori had given the money to UMNO after receiving the cheque. The appellant pocketed the money but who gave anything in return to Chai or Aset Kayamas? Answer - Nobody.

[90] Therefore, the third element had also been proven.

The Appellant Knew Chai Had Connection With His Official Functions

[91] With regards to the fourth and last element, the prosecution must prove the appellant knew that Chai had connections with his official functions.

[92] The prosecution only needs to show the appellant was aware that Chai and not even Aset Kayamas had connections with his official function as the Federal Territories Minister. There is no need for the prosecution to prove the appellant had in fact used his position to assist Aset Kayamas in its dealings with his official function.

[93] In this regard, among others, the appellant knew that Chai and Aset Kayamas were interested in the Federal Territories Ministry's scheme for an affordable housing project. It was the appellant who requested Tan Sri Chai to participate in this project. There is also evidence that Chai met the appellant personally at least on three occasions regarding this scheme for an affordable housing project. The appellant also wrote minutes on a few of Aset Kayamas's letters regarding the project. The evidence narrated, would be sufficient to prove this element ie the appellant knew Chai had connection with his official functions.

[94] Whether there was evidence the appellant even got his subordinates to act on these letters and what were the actions taken by his subordinates are immaterial. This is because for this element, as stated, the prosecution only needs to prove the appellant knew Chai had connection with his official functions. And the evidence that I have narrated earlier, would be sufficient to prove this element. This is what I meant by proving the bare minimum as I stated earlier.

[95] It is most important to note that for this element, the prosecution has no duty to prove the appellant had obtained a valuable thing ie RM2 million in return for a favour by him for Chai or Aset Kayamas. The appellant need not do a favour for them. It is sufficient for the appellant to know that Chai and Aset Kayamas had connection with his official function.

[96] Therefore, with the evidence that have been highlighted, the prosecution had also proven this last element of s 165 of the Penal Code.

The End Of The Prosecution's Case

[97] At the end of the prosecution's case, the learned HCJ had correctly subjected the evidence adduced for maximum evaluation. After the evaluation, he was not wrong to find a *prima facie* case against the appellant. He was also right to find credible evidence to prove every element of the offence, which if unrebutted would warrant a conviction against the appellant. He therefore correctly called for the defence after the evaluation of the evidence at this stage.

Defence

[98] As indicated, the defence of the appellant is the money of RM2 million is not for himself. He said that the money was a political donation for UMNO. The money was needed for UMNO expenses for two by-elections in Sg Besar and Kuala Kangsar.

[99] First, when the appellant received the RM2 million, he did not give it to UMNO. As stated, neither did Tadmansori give the money to UMNO.

[100] The appellant said he had used his own money for UMNO for the by-elections. Therefore, he need not give the money to UMNO. Thus, there are no records from UMNO showing it had received the money. The appellant had taken the money.

[101] The assertion by the appellant that he had used his own money and therefore need not give the same to UMNO is with respect far-fetched. This assertion would mean the appellant could act according to his wishes as to the money received. This would also mean the appellant has no obligation to even inform UMNO of the money that had been handed to him. It also amounts to a situation where the appellant is able to ignore other UMNO members on the need for accountability for any monies received. All these would render the appellant's story that he had used his own money for the by-elections, with respect, highly unlikely.

[102] In fact, it is in evidence, in at least eight instances UMNO did repay the advances made by the appellant when he had used his own money. But for the present case, there is no evidence that UMNO repaid him for the RM2 million purportedly used by him for UMNO for the by-elections. Thus, by deduction, it only shows that it is not true for the appellant to say he had used

his own money for UMNO in this case. Had he used his own money, UMNO would have repaid him this money, just like so many instances in the past. Unfortunately, as stated there is no evidence from UMNO to this effect.

Chai (SP 19)

[103] Chai was a prosecution's witness. However, in the trial, during cross-examination by counsel for the appellant, Chai quite dramatically took out his wallet and from the wallet he took out a single UMNO's receipt number 376241 dated 14 June 2016. This was to support that the money was a political donation for UMNO and not for the appellant. On the receipt was written 'RM2,000,000.00 - sumbangan PRK Kuala Kangsar dan Sungai Besar' ('contribution for Kuala Kangsar and Sungai Besar by-elections'). The appellant told the court he had signed on the receipt in his capacity as UMNO Federal Territory Liaison Chairman.

[104] The prosecution was surprised by Chai's action. They did not expect this. They thought Chai did not have this receipt because when the investigation officer ("IO") testified, the IO said Chai never informed him of the receipt during the investigation although the lO's team had requested Chai to give any documents pertaining to the cheque of RM2 million to the IO.

[105] If indeed Chai was given the receipt in appropriate time, he would have told the IO so during the investigation. Instead, it became too convenient for him to come up with the receipt many months after the investigation and as a result, the receipt was only produced in court. Chai said he did not show it earlier as the IO did not pursue the matter further. This is difficult to believe. As stated, the lO's team had requested Chai to give any documents pertaining to the cheque of RM2 million to the IO. This happened way before the trial, during the investigation itself. If indeed Chai wants the court to believe the money was a political donation, he would have handed the receipt much earlier before the trial to the IO.

[106] The receipt must also be viewed not only from Chai's perspective or understanding that it was for political donation. First, Chai did not have personal knowledge that the money was indeed for political donation. At best, he knew of it as political donation because the appellant told him so. For example, I can tell you I want some money from you for my local mosque but you can never be sure what I will use it for.

[107] Besides, the statement by Chai that he was requested by the appellant for political donation remains only as that. Nothing more, nothing less. So even if the prosecution did not re-examine Chai further on this, it certainly could not mean that the RM2 million was indeed money for political donation and not personally for the appellant. As stated, this is because Chai knew it as political donation purely because the appellant told him so. The prosecution's case is not shaken even if it is true that Chai was not challenged in re-examination that the money was indeed a political donation. There is nothing worthy from

such re-examination because Chai knew it as political donation only because the appellant said so. It is opposed to a defence of alibi for instance. If a witness comes to court and says an accused was not at the scene of the crime and did not commit the murder, as the accused was at that material time with him, obviously the prosecution needs to challenge the witness in re-examination. It affects the prosecution greatly if the witness is not re-examined. This is different when Chai testified the appellant told him that he needed the money as political donation. Even when he was not re-examined, this has not affected the prosecution's case because the best that stood from Chai's evidence for the appellant, is that he was only inform ed that the money was meant as political donation. Thus, a court needs to be vigilant to note what was actually said by a witness in court. The testimony of a witness on a specific matter might mean little, if not nothing compared to the totality of evidence from his overall testimony, testimonies of all witnesses and exhibits that must be assessed, evaluated and weighed. The court must not compartmentalise and separate a piece of evidence, without reasons, coming from a witness without verifying that evidence with other evidence before the court.

Datuk Mohd Hasbi (SP6) And Investigating Officer (SP23)

[108] The appellant said that both Datuk Mohd Hasbi and the Investigating Officer ("IO") who were prosecution's witnesses also supported his evidence that the RM2 million was a political donation.

[109] Datuk Mohd Hasbi, Tadmansori's Chief Operating Officer, testified that the appellant told him the money was a political donation. The IO in turn said from his investigation, Chai and the appellant also told him that the money was a political donation.

[110] Just because Datuk Mohd Hasbi was inform ed by the appellant the money was a political donation, this could not mean the money was not for the appellant himself. Datuk Mohd Hasbi said it was a political donation merely because the appellant told him so. The same goes for the IO. He was inform ed by Chai that it was a political donation and Chai knew it as a political donation because the appellant said so. And of course the appellant told the IO it was a political donation. It should not be expected that the appellant will say the money was meant for himself.

[111] Both Datuk Mohd Hasbi and the IO do not have personal knowledge it was a political donation. At best, the evidence of Datuk Mohd Hasbi and the IO was that the appellant told them the money was a political donation.

Political Donation

[112] It was self-serving for the appellant to say that he had requested Tan Sri Chai to issue the cheque to Tadmansori instead of UMNO because he had used his own money for UMNO. With respect, he was unable to prove that he had used the RM2 million for UMNO.

[113] It is also untrue for the appellant to say that the money was given as political donation and not for him personally. This is because it was never proven that there was any record that UMNO was given the money. Neither was it proven that the money was used for the by-elections by the appellant, though he said he had used his own money for that purpose. The appellant did not show credible evidence that the amount of RM2 million was used for these by-elections.

[114] For politicians to say monies received were meant as political donations, there must be proper accounting. The very least is to show proof that the political donation was properly debited and credited. In the case where the politicians come from political parties (as opposed to independents), such as in this case, the more reasons, that political parties must show the details of this accounting. Especially when you come from a political party with financial means. If your political party can spend millions for a political cause, surely your political party can the very least, engage accountants or those qualified to properly account for the monies you say you had received as political donations. Otherwise, politicians can gleefully say there was no reason to doubt the monies received as it was simply a political donation. After all, why should politicians be treated differently from others? If others need to answer and explain the source of their income, likewise politicians must be subjected to the same standard. Besides, in this case, RM2 million is not a small amount. It may be a small amount to the appellant but nobody had testified this is a small amount for UMNO.

The Receipt

[115] The receipt was produced in court to support the defence that the money was for political donation to UMNO. However, the receipt itself was seriously doubtful for several reasons apart from what have been stated earlier.

[116] During the trial, the learned HCJ viewed and scrutinised the receipt itself. He gave the finding that the receipt was crisp and new despite after four years in Chai's possession. Unless this finding is totally unfounded, it should not at the appellate stage be disturbed. The learned HCJ, as the trial judge is entitled to make this finding after visual and physical inspection of the receipt. A judge has a duty to observe and make an assessment of all exhibits tendered before him in court. If he is prevented from doing that, he might as well not be there. With his finding, he is entitled to believe the receipt could not have been issued as contended by Chai and the appellant.

[117] The learned HCJ had also appropriately taken into account the receipt book from which the receipt was issued. In respect of this receipt book, the learned HCJ noted that the appellant gave conflicting evidence regarding the receipt from this receipt book. In his witness statement, the appellant said he had no knowledge why there was no duplicate copy to the receipt and that it was not his duty to handle the receipt book. But when he was cross-examined, he said he had pulled out the duplicate copy from the receipt book. This

contradiction is material and the learned HCJ had correctly taken this into account. If the appellant was not responsible to handle the receipt book, he too had no business to pull out the duplicate copy from the receipt book.

[118] On that score too, the circumstances of the presence of the signature of the appellant on the receipt is another event too convenient to be true. He signed the receipt as UMNO Federal Territory Liaison Chairman. One is justified to question why the receipt from UMNO headquarters, was signed by someone in UMNO Wilayah Persekutuan. It would be more logical that someone in authority at UMNO headquarters would have signed the receipt instead of the appellant.

[119] The appellant also could not simply say that he had used the receipt from UMNO headquarters because Federal Territory UMNO where he was Liaison Chairman, does not have receipts books. This is far too convenient for him to say. Such a statement with respect seems hollow. It is difficult to accept Federal Territory UMNO could not afford a receipt book. As most people would know, even lesser establishments (eg some sundry shops) do have receipt books.

[120] He also said he signed the receipt in question from UMNO headquarters as the Federal Territory UMNO Liaison Chairman. This is also unacceptable. You sign your own receipt. Not the receipt of others. With respect, this is another instance of an afterthought.

The By-Elections

[121] The appellant said he had the responsibility of raising funds for the two by-elections and he had used his own money. The two by-elections were in Sungai Besar, Selangor and Kuala Kangsar, Perak and not in Federal Territory. He was Federal Territory UMNO Liaison Chairman. He was also not at that time the Treasurer of UMNO. He also said each UMNO state liaison would form their own teams for a by-election.

[122] It is more likely the appellant has no or little responsibility to raise funds for the by-elections in Selangor and Perak because he was not the Liaison Chairman of these states. He was, as stated only the Federal Territory UMNO Liaison Chairman. As stated also, the appellant even explained that each UMNO state liaison would form their own team. This would show the statement that he had to raise funds for the two by-elections as most likely untrue.

Datuk Rizalman And Datuk Zakaria

[123] Datuk Rizalman Bin Mokhtar ("Datuk Rizalman") and Datuk Zakaria Bin Dullah ("Datuk Zakaria") were defence's witnesses for the appellant.

[124] Datuk Rizalman testified to support the appellant evidence he had used his own money for the by-election at Sungai Besar. The appellant said Datuk Rizalman was in charge of the by-election in Sungai Besar, Selangor.

[125] Datuk Rizalman showed a one page budget sheet of twelve items as expenses which were purportedly spent for the by-election in Sungai Besar. He said he prepared this based on memory as he had disposed of the original and the supporting receipts. The amount came up to RM1,013,200.00.

[126] Datuk Zakaria also came to court producing another one page budget sheet for ten items amounting to RM1,007,600.00 for the two by-elections. He too did not keep the receipts supporting the budget.

[127] Both brought the budget sheets for their testimonies in court after four years since the by-elections. They no longer have the receipts supporting the budget sheets but they could come up with more or less the exact amount spent for the two by-elections. This is too good to be true. Their abilities to recall things from sheer memory could not be that powerful. Most people normally could not even remember how much was spent a few days earlier, what more four years ago. Especially when you do not have the receipts and invoices to back you up and your expenditure runs to a substantial sum.

[128] Further, as can be seen, the budget sheets amount to slightly more than RM2 million. It is just too convenient for the two gentlemen to arrive at this figure. Too high above RM2 million, will prompt some to ask why only claimed RM2 million? Too low below RM2 million will also attract others to ask why claimed so much when the expenses are way below RM2 million? So slightly above RM2 million collectively should be just about right to show in the budget sheets. It is to accord with what Chai gave the appellant. Of course, it must also not be exactly RM2 million. It is too much of a coincidence if it does.

[129] As these budget sheets are more than suspicious, it could not be said the testimonies of Datuk Rizalman and Datuk Zakaria had raised a reasonable doubt on the prosecution's case.

[130] The appellant also said he gave RM1,013,200.00 cash to Datuk Rizalman and RM1,007,600.00 to Datuk Zakaria for these by-elections. This, with respect is unbelievable. Give cash? It would be quite difficult to accept that cash for such a large amount had been given to the two gentlemen.

[131] Even if the appellant still wanted to give the money to the two Datuks, the very least was for the appellant to use cheques or transfer the money through his bank accounts and not cash. It would be much safer and logical. So, the statement of the appellant that Datuk Rizalman and Datuk Zakaria received cash amounting to more than RM2 million from him, with respect could not be accepted.

[132] Further, the learned HCJ correctly noted that the appellant could not show the source of the cash he gave to Datuk Rizalman and Datuk Zakaria. As stated, the RM2 million went into Tadmansori's bank account. However, there was no withdrawal from this account that was shown to be given to Datuk Rizalman and Datuk Zakaria. Neither was it shown that the cash came from other sources.

Datuk Mohd Rafi

[133] The only other witness for the appellant was his former political secretary, Datuk Mohd Rafi Bin Alii Hassan ("Datuk Mohd Rafi").

[134] Datuk Mohd Rafi gave evidence he took the cash of RM1,013,200.00 from the appellant and handed the same to Datuk Rizalman.

[135] The testimony of Datuk Mohd Rafi could not be true based on the reasons given earlier on the budget sheet regarding this amount. Explanation has also been given it could not be true that for this large amount of money, cash would be handed to Datuk Rizalman.

[136] As a consequence, on the whole, the appellant with respect was unable to show that he did spend or use RM2 million or so of his own money for the by-elections.

Assessment Of The Defence

[137] In respect of the defence, the totality of evidence must be taken into account by the court. At the risk of repetition, a witness's particular testimony, must generally also be consistent with other parts of his evidence and also the evidence of other witnesses. In fact, even outside court, you check all available facts and not merely believe what one will tell you. It does not take a judge to appreciate this. You take the whole tree. Not just the flowers and leaves. The word "generally" here should also be noted. There is of course an exception. For instance, it is permitted that a part of the evidence of a witness be separated from the rest. When a witness tells a lie, his whole evidence should not be totally rejected. In *Khoon Chye Hin v. PP* [1961] 1 MLRA 684, it is explained as follows:

> If a witness demonstrably tells lies on one or two points then It Is clear that he Is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong.

[138] Thus, based on the above, it was correct for the learned HCJ to accept part of the evidence of Chai, while rejecting his testimony that the RM2 million was a political donation.

[139] On the defence of the appellant as a whole, like a jigsaw puzzle, you try to attach the pieces together. If you could not do it, a piece or two might be missing. As a result, the jigsaw puzzle could not be solved. For instance, the first piece is the defence that the money is a political donation and not for the appellant himself. Based on the explanation earlier, even this first piece is tattered. The edges are not smooth to be attached to other pieces of the puzzle. The second piece is the receipt. However, as explained the receipt is highly suspicious and therefore should not be accepted. Thus, the second piece could not be attached to the first piece. You go on to take the other pieces (including

the budget sheets and the purported cash given by the appellant to the Datuk Rizalman and Datuk Zakaria) and try to do the same. If you still could not do it, your jigsaw puzzle crumbles, just like the defence here.

[140] In essence, with the kind of defence narrated, the four elements for the offence as explained earlier have been proven beyond reasonable doubt. The appellant, by the defence tendered, had not raised a reasonable doubt on any of these elements.

At The End Of Defence

[141] At the end of the defence, the learned HCJ reviewed all the evidence tendered at the end of prosecution and at the end of defence for maximum evaluation. After subjecting the evidence to maximum evaluation, the learned HCJ was satisfied that the prosecution had proven its case beyond reasonable doubt. The approach by the learned HCJ in this regard was proper and correct. He too did not err in the steps that were taken in convicting the appellant.

Sentence

[142] On sentence, I would say there is no reason to disturb the sentence of 12 months imprisonment and fine of RM2 million, in default six months imprisonment that was imposed by the learned HCJ. In deciding the appropriate sentence, among others, the learned HCJ correctly took into account the service to the nation by the appellant. The learned HCJ was also mindful of the gravity of the offence committed before imposing sentence.

[143] Based on the prosecution's case and the defence as narrated, the appellant had not raised a reasonable doubt on the prosecution's case. Hence, with respect, I would dismiss the appeal and affirm the conviction and sentence against the appellant.

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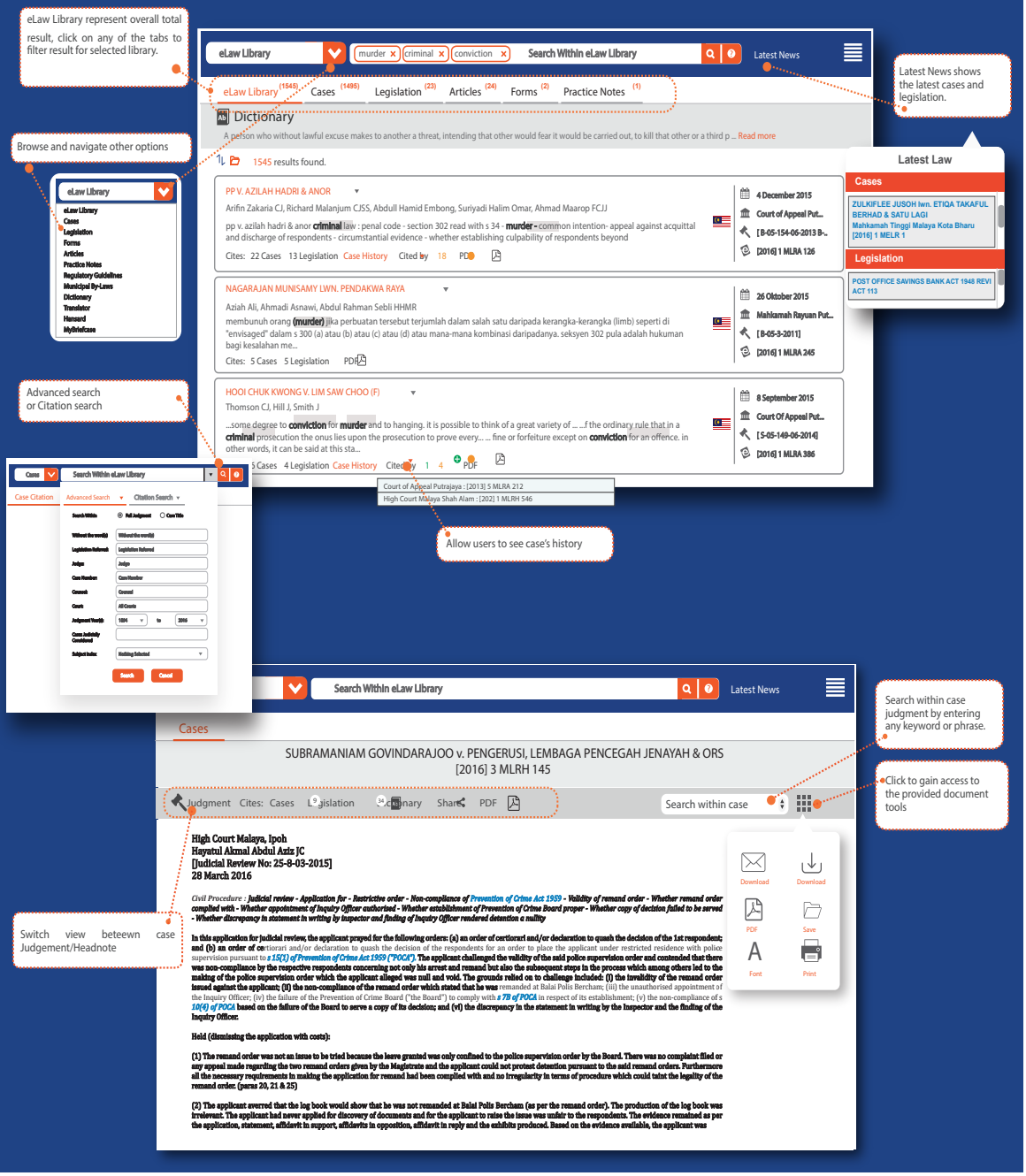

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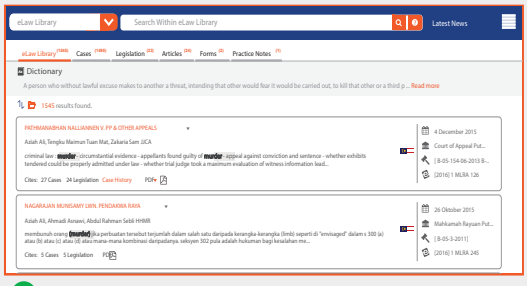

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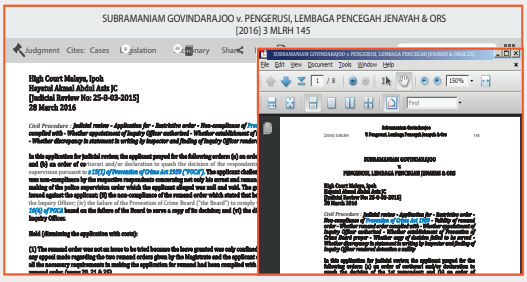

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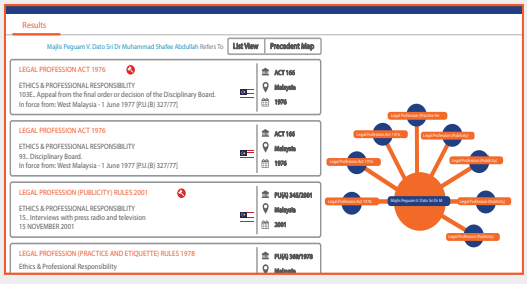

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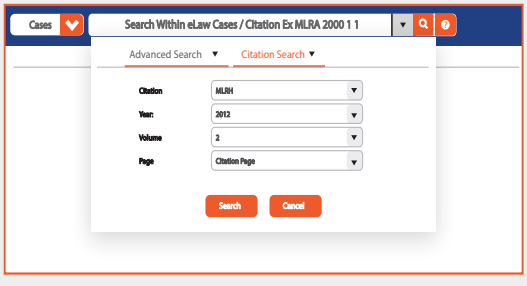

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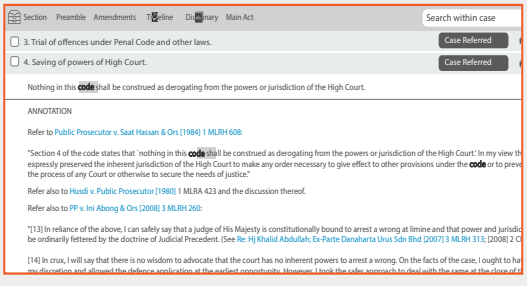

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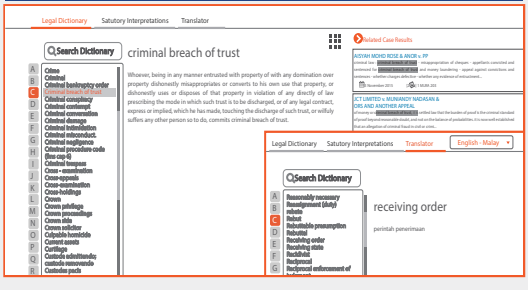

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