PP

v.

SYED SADDIQ SYED ABDUL RAHMAN & OTHER APPEALS

Federal Court, Putrajaya
Abu Bakar Jais PCA, Che Mohd Ruzima Ghazali, Collin Lawrence Sequerah FCJJ
[Criminal Appeal Nos: 05(LB)-102-06-2025(W), 05(LB)-103-06-2025(W) & 05(LB)-104-06-2025(W)]
16 July 2026

Criminal Law: *Abetment — Respondent as then head of political party's youth wing, charged with abetting offence of criminal breach of trust (CBT) by instructing youth wing's Assistant Treasurer to withdraw RM1 million from youth wing's bank account without prior approval of party's Supreme Council — Whether withdrawal contravened art 24.8 of party's Constitution — Whether the word 'perbelanjaan' in art 24.8 connoted some form of spending and ought to be taken to mean 'expenses' as opposed to 'withdrawal' — Whether High Court erred in finding that the actus reus, being the disposal of the RM1 million, violated arts 24.8 and 24.7 of party's Constitution — Whether principal offence of CBT established — Whether ingredients of abetment proven*

Criminal Law: *Misappropriation — Transfer of fundraising proceeds for respondent's election campaign to respondent's personal bank account — Respondent claiming funds transferred belonged to him and were reimbursement for monies previously spent during election campaign — Whether actus reus of offence could only be committed in relation to property belonging to someone other than the accused — Whether High Court's finding of fact that the money was for respondent's use to finance respondent's election expenses irreconcilable with subsequent finding that prima facie case made out against respondent — Whether prosecution failed to adduce credible evidence to support charge*

Criminal Law: *Money Laundering — Transfer of monies which respondent considered to be reimbursement for expenses incurred in political campaign, into respondent's ASB account — Whether monies were proceeds of unlawful activity — Whether offence of money laundering under s 4(1)(b) Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 not sustainable where predicate offence under s 403 Penal Code not established*

Evidence: *Witness — Credibility — Unexplained inconsistencies in evidence of witness — Alleged improper pressure by investigators on witnesses — Whether reasonable to infer that PW13's evidence might have been tailored to suit prosecution's case*

The respondent was at the material time the head of the Parti Pribumi Bersatu Malaysia (Bersatu) youth wing, Angkatan Bersatu Anak Muda (Armada) and was charged with 4 criminal offences, namely:

(i) abetting the commission of criminal breach of trust (CBT) under s 406 read with s 109 of the Penal Code, by Armada's Assistant Treasurer (PW13) by instructing PW13 to withdraw the sum of RM1 million from Armada's bank account without prior approval of Bersatu's Supreme Council (1st charge/ abetment charge);

(ii) criminal misappropriation of the sum of RM120,000.00 under s 403 of the Code, being monies raised through fundraising events for the respondent's political campaign, which funds were deposited into the bank account of a sole proprietorship owned by PW13, Armada Bumi Bersatu Enterprise (ABBE) and subsequently transferred into the respondent's personal Maybank account (2nd charge/s 403 charge);

(iii) money laundering under s 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 by the subsequent transfer of RM100,000.00 in 2 separate tranches of RM50,000.00 each into the respondent's personal Maybank ASB account (3rd and 4th charges/AMLA charges).

In relation to the abetment charge, the respondent denied having abetted PW13. In relation to the s 403 charge, the respondent denied having dishonestly misappropriated or converted the RM120,000.00 and contended that the monies belonged to him and were raised for the purpose of his political campaign, and had always been treated by him as a reimbursement/ substitution of the RM171,675.00 that he had spent throughout the election campaign. The respondent claimed he had merely borrowed ABBE's bank account for the purpose of collecting contributions raised from 2 fundraising programmes. In relation to the AMLA charges, the respondent's defence was that the monies belonged to him and he had no reason to believe or suspect that the RM100,000.00 that was transferred to his ASB account was the proceeds of an unlawful activity. The respondent also alleged that certain witnesses were pressured, giving rise to the inference that the Malaysian Anti-Corruption Commission might have exerted improper pressure on PW13 to tailor his evidence to suit the prosecution's case. The High Court convicted and sentenced the respondent on all 4 charges. The Court of Appeal unanimously allowed the respondent's appeals and set aside the convictions and sentences imposed by the High Court. The Court of Appeal held *inter alia* that the High Court Judge (HCJ) had erred in finding that the disposal of the RM1 million was in violation of arts 24.8 and 24.7 of Bersatu's Constitution; that the word 'perbelanjaan' in Bersatu's Constitution ought to be taken to mean 'expenses' as opposed to 'withdrawal' in the absence of any definition of the word 'perbelanjaan' in the said Constitution; that the RM120,000.00 in fact belonged to the respondent and was a reimbursement of the monies that the respondent had spent on his election campaign; that there was a reasonable inference that the MACC might have exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution's case; and that since the predicate offence under s 403 of the Code was not proven, the AMLA charges could not therefore be sustained.

Held (dismissing the appeals):

Per Collin Lawrence Sequerah, FCJ (majority)

(1) The Court of Appeal had reasoned correctly that on its plain and ordinary meaning the word 'perbelanjaan' in art 24.8 of the Bersatu Constitution would connote some form of spending. Based on a plain and ordinary construction of the wording in art 24.8 of the Bersatu Constitution, there could not arise any form of ambiguity or doubt that the word 'perbelanjaan' in the said art 24.8 could only be understood to mean 'expenses' and not 'withdrawal'. Accordingly, the Court of Appeal was right in holding that the HCJ had erred in finding that the actus reus, being the disposal of the RM1 million, was in violation of arts 24.8 and 24.7 of the Bersatu Constitution. (paras 38, 41, 42 & 43)

(2) In light of the evidence adduced that money was distributed for Armada's programmes, PW13 could not be said to have been actuated by dishonesty in distributing the RM1 million. Consequently, the principal offence of CBT could not stand as the RM1 million that was withdrawn by PW13 was never misappropriated but was legitimately used for Armada's programmes, nor was there evidence that the respondent had personally benefitted from the said sum or that any of the monies were credited into his personal accounts. In the circumstances, and as the essential elements under s 405 of the Code were not satisfied, it could not be said that the respondent had abetted the commission of CBT. Given that the principal offence could not stand, it followed that the prosecution had also failed to prove the ingredients of abetment. (paras 62-66)

(3) Section 403 of the Code created a single offence capable of being committed through 2 distinct modes, i.e. dishonest misappropriation and dishonest conversion. The *actus reus* of the offence could only be committed in relation to property belonging to someone other than the accused. Therefore, it stood to reason that if the Court of Appeal found that the funds in fact belonged to the respondent, then the respondent could not be said to have committed the offence. (paras 72, 107 & 108)

(4) The Court of Appeal's finding that PW13 had in re-examination confirmed that the ABBE account was cleared beforehand for the purpose of the respondent's fundraising meant that all monies deposited into that account were only for the purpose of the respondent's campaign expenses; and that the RM120,000.00 that was collected from the fundraising events was then transferred from ABBE's account to the respondent's Maybank account upon the respondent's instructions. (para 85)

(5) Based on its observations, the Court of Appeal had correctly concluded that as the respondent had incurred expenses in campaigning which the respondent had paid for in advance, the respondent had naturally regarded the funds expended as being subject to reimbursement from the funds contributed by donors for his political campaigning which were paid into the account. (para 106)

(6) The HCJ's finding of fact that the RM120,000.00 was for the respondent's use to finance his election expenses was irreconcilable with the HCJ's subsequent finding that a *prima facie* case had been made out against the respondent. It clearly went against the grain of the essential elements of the charge in s 403 of the Code, which was premised upon the act of either misappropriation or conversion of property of someone other than the respondent. The necessary corollary was that no dishonesty or *mens rea* could be proven in relation to the charge. In the circumstances, the Court of Appeal had correctly concluded based on the evidence that the prosecution had failed to adduce credible evidence and facts to support the s 403 charge. (paras 109-114)

(7) In light of the unexplained inconsistencies in the evidence of PW13 at all levels of his testimony, and in view of evidence that improper pressure was brought to bear on other witnesses as well as PW13, the reasonable inference to be drawn was that PW13 was constrained to tailor his evidence to suit the prosecution's case. This constituted another cogent reason to dismiss the appeals and affirm the findings and decision of the Court of Appeal. (paras 118 & 119)

(8) As regards the AMLA charges, the Court of Appeal, having determined that the monies constituted reimbursement for expenses already incurred in the pursuit of the respondent's political campaign, was therefore correct in finding that the predicate offence under s 403 of the Code was not proven, and therefore the AMLA charges could not be sustained. (paras 106 & 122)

Per Che Mohd Ruzima Ghazali, FCJ (supporting)

(9) Under s 107 of the Code, abetment of a thing could be done by way of instigating, commanding, engaging in conspiracy and intentionally aiding the doing of that thing. It was trite that abetment of an offence was a distinct offence from the offence itself. Hence, if the charge against the principal offender could not stand, it must not necessarily follow that the case against the abettor must also fail. (para 154)

(10) From the clear language used in the Court of Appeal's grounds of judgment (GOJ), the Court of Appeal only considered the proving of CBT by the prosecution under the 1st limb of s 405 of the Code. Nowhere in the GOJ was it stated that the Court of Appeal's decision was based on the crime of CBT that was committed by PW13 under the third limb of s 405 of the Code. The act of dishonest misappropriation ought to involve dishonest intent. Therefore, it was sensible of the Court of Appeal to take into consideration the usage of the money after the withdrawal to determine whether there was any evil intention on the part of PW13 in committing the alleged CBT. In such a situation, the consideration of the money trail in the GOJ did not mean that the Court of Appeal had changed the narrative of the prosecution's case by deciding on the 3rd limb of s 405 of the Code. (para 161)

(11) Article 24.8 of Bersatu's Constitution prohibited 'expenses' and not 'withdrawal' of money in excess of RM500,000.00 without the prior approval of Bersatu's Supreme Council. The Court of Appeal in interpreting the said provision had not erred in taking a strict approach and deciding that the HCJ erred in equating the word 'withdrawal', which was not used in art 24.8, with the word 'expenses' that was clearly stated in the said provision. The Court of Appeal was not wrong in its approach since the interpretation involved a matter that could attract criminal liability of PW13 and lead to penal sanction upon conviction. The same consideration applied to the respondent since he was faced with the abetment charge which was based on the criminal liability of PW13 and which would also lead to penal sanction upon conviction. (paras 164, 167 & 168)

(12) The question of whether the word 'expenses' in art 24.8 of Bersatu's constitution could be expanded to cover the act of 'withdrawal' of the money was correctly answered in the negative by the Court of Appeal. It would be absurd to expand the meaning of the word 'expenses' to include 'withdrawal' since both words had different meanings and connotations. (para 169)

(13) There was no legal basis to equate the non-compliance with art 24.8 of Bersatu's constitution by PW13 in withdrawing the RM1 million from Armada's account to an act of CBT. The Court of Appeal was correct in finding that the act of withdrawal did not fall within any of the five limbs of the *actus reus* of CBT. Thus, it was a non-starter for the prosecution to rely on that piece of evidence against the respondent under the abetment charge. (para 172)

(14) Given the fact that PW13 was never charged and convicted before any court of law, PW13 could not be adjudged as a person who had committed or was guilty of the offence of CBT. Labelling PW13 as a person who had committed CBT just based on his confession was not good enough. (para 174)

(15) No person should be coerced into confessing to a crime or incriminating himself or herself. From the notes of evidence in the appeal records and the evidence adduced at the prosecution's case, it was not plainly wrong for the Court of Appeal to agree with the defence's contention that PW13's evidence might have been tailored to appease the MACC. Hence the allegation that the Court of Appeal had made 'wild accusations' was baseless and uncalled for. (paras 175 & 180)

(16) Given that the act of the principal offender PW13 was not proven to be criminally wrong in the first place, the respondent could not and should not be said to have abetted PW13. In the circumstances, there was no appealable error in the Court of Appeal's finding that the abetment charge was not proven even at the *prima facie* stage. (paras 181 & 182)

(17) One of the main ingredients in proving criminal misappropriation was that the property involved ought to belong to someone else other than the respondent. In this regard, and as was found by the Court of Appeal, it was not proven beyond reasonable doubt that the impugned RM120,000.00 in ABBE's account which was allegedly misappropriated by the respondent, belonged to ABBE, PW13 or someone else to satisfy one of the main ingredients in proving the s 403 charge against the respondent. Based on the evidence adduced and tendered by the prosecution, the most preferable inference was that the impugned RM120,000.00 belonged to the respondent himself. (paras 188, 195, 196 & 197)

(18) Even though the money collected in the fundraising events was originally owned by the donors, ownership of the funds changed once they were given by the donors to the respondent to fund his political campaign, thereby making the respondent the beneficial owner of the impugned RM120,000.00. Accordingly, there was no appealable error in the Court of Appeal's finding that the s 403 charge was not proven against the respondent. (para 197)

(19) Based on the finding that the prosecution had failed to prove the s 403 charge, the Court of Appeal had not erred in law or fact in concluding that the AMLA charges could not be sustained. On the totality of the evidence, the convictions of the respondent on all 4 charges were unsafe. (paras 201 & 202)

Per Abu Bakar Jais, PCA (dissenting, in relation to the 2nd to 4th charges)

(20) The words 'untuk diri sendiri' in the 2nd charge could not be separated from the words 'telah dengan secara tidak jujur menyalahgunakan harta'. Read together, and in the context of the 2nd charge, those words meant 'dishonestly misappropriated the money for his own use'. (para 227)

(21) In the context of the present case, the respondent's defence that he had used his own money earlier for his election campaign and therefore he was entitled to take the monies given by donors as reimbursement for himself, could not be sustained and did not raise a reasonable doubt on the appellant's case. This was because the donors had not given the monies as reimbursement to the respondent but for a future event, i.e. for his upcoming election campaign, and bearing in mind further the absence of sufficient documentary evidence to support the respondent's contention that he had spent RM170,000.00 of his own money for his election campaign. It was not for the respondent to use the monies to reimburse himself for the monies he had spent earlier. Hence, by instructing PW13 to transfer the monies to his personal Maybank account, the respondent had dishonestly misappropriated those monies for his own use contrary to s 403 of the Code. (paras 242-249)

(22) It was immaterial to say that misappropriation under s 403 of the Code could not mean for one's own use. The facts showed that monies from an account not belonging to the respondent went into the respondent's own account without justifiable reasons. That was sufficient to constitute misappropriation for the respondent's own use. It could not be the case that the respondent ought to be acquitted of this charge simply because the term 'misappropriation for own use' was used in the charge. In the premises, the 2nd charge was proven against the respondent. (paras 250-254)

(23) As regards the 3rd charge, the money that was deposited into the respondent's ASB account was from an unlawful activity as it came from donors for his election campaign, but the purpose of that election campaign was not achieved. The 3rd charge was thus proven against the respondent. The 4th charge was also proven against the respondent. (paras 260, 261, 262, 263, 270, 271, 272, 273 & 274)

(24) The fact that PW13 had to be questioned for the investigation and that it was a normal aspect of the same to be remanded in the first place, could not in itself mean that illegal pressure was exerted on PW13. In this regard, there was no proof to the standard of creating a reasonable doubt on the prosecution's case. (paras 277 & 284)

Case(s) referred to:

B A Rao & Ors v. Sapuran Kaur & Anor [1978] 1 MLRA 112 (refd)

Grundt v. Great Boulder Proprietary Gold Mines Ltd [1948] 1 Ch 145 (refd)

Haji Abdul Ghani Ishak & Anor v. PP [1981] 1 MLRA 649 (refd)

JJ Power Groups Enterprise & Ors v. PP [2025] 5 MLRA 504 (refd)

PP v. Abdul Rahman Mohamad [2005] 1 MLRA 51 (refd)

Rejab Lebai Man & Anor v. PP [2001] 6 MLRH 363 (refd)

Sia Soon Suan v. PP [1965] 1 MLRA 32 (refd)

Varatharajalu v. Public Prosecutor [1960] 1 MLRH 135 (refd)

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss 3, 4(1)(b), Schedule 2

Evidence Act 1950, ss 5, 6, 7, 8, 114(g)

Malaysian Anti-Corruption Commission Act 2009, ss 53, 62

Penal Code, ss 24, 107(a), (aa), 108, 109, 403, 405, 406

Other(s) referred to:

Ratanlal & Dhirajlal's, *Law of Crimes*, 28th edn, Vol 3, p 2923

Srimurugan Alagan, *The Penal Code: A Commentary*, Sweet & Maxwell, p 771

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[For the Court of Appeal judgment, please refer to *Syed Saddiq Syed Abdul Rahman v. PP And Other Appeals* [2025] 5 MLRA 350]

JUDGMENT

Collin Lawrence Sequerah FCJ (Majority):

A) Introduction

[1] The Respondent was charged with four offences as follows:-

Appeal No 05(LB)-102-06/2025(W)

(i) First charge — Abetting an offence of criminal breach of trust ("CBT"), punishable under s 406 of the Penal Code ("PC") read together with s 109 of the same Act.

The charge is as follows:

> "Bahawa kamu, pada 6 Mac 2020, di Menara CIMB Bank Berhad, yang beralamat di Menara CIMB KL Sentral, Tingkat Bawah, Menara CIMB, Jalan Stesen Sentral 2, Kuala Lumpur Sentral dalam Wilayah Persekutuan Kuala Lumpur telah bersubahat dengan Rafiq Hakim bin Razali yang merupakan Penolong Bendahari Angkatan Bersatu Anak Muda, Parti Pribumi Bersatu Malaysia (ARMADA Malaysia) dan di dalam kapasiti tersebut, Rafiq Hakim bin Razali telah diamanahkan dengan penguasaan ke atas dana ARMADA Malaysia berjumlah RM1,000,000.00 telah melakukan pecah amanah jenayah dengan secara tidak jujur menyalahgunakan dana tersebut iaitu satu kesalahan di bawah s 406 Kanun Keseksaan, dan kamu telah bersubahat melakukan kesalahan tersebut di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 406 Kanun Keseksaan [Akta 574] dibaca bersama s 109 Kanun yang sama."

('abetment charge')

Appeal No 05(LB)-103-06/2025(W)

(ii) Second Charge — Criminal misappropriation, punishable under s 403 of the PC.

The charge is as follows:

> "Bahawa kamu, di antara 8 April 2018 sehingga 21 April 2018 di Malayan Banking Berhad yang beralamat di No 16 & 16A, Jalan Pandan 3/6A, Taman Pandan Jaya dalam Wilayah Persekutuan Kuala Lumpur telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri, iaitu wang berjumlah RM120,000.00 daripada akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 dengan menyebabkan Rafiq Hakim bin Razali melupuskan wang tersebut dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 403 Kanun Keseksaan [Akta 574]."

("section 403 charge")

Appeal No 05(LB)-104-06/2025(W)

(iii) Third and Fourth Charges — Money laundering punishable under s 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATPUA 2001").

The charges read as follows:

> "Bahawa kamu, pada 16 Jun 2018, di Maybank Islamic Berhad yang beralamat di No 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta Yang sama."

("AMLA charge No 1")

> "Bahawa kamu, pada 19 Jun 2018, di Maybank Islamic Berhad yang beralamat di No 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan

satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta Yang sama."

("AMLA charge No 2")

[2] The Respondent was convicted by the Learned High Court Judge ("HCJ") on all the above charges and appealed against the entire decision of the High Court to the Court of Appeal ("COA").

[3] On 25 June 2025, the COA unanimously allowed all the Respondent's appeals and set aside both the convictions and sentences entered against the Respondent.

[4] Being aggrieved with the decision of the COA, the Appellant (Public Prosecutor) has appealed to this Court.

B) Parties' Submissions

Appellant's Case

[5] The narrative of the prosecution's (Appellant's) case in summary, with respect to each of the charges, is as follows.

The Abetment Charge

[6] The Respondent was the Head of Parti Pribumi Bersatu Malaysia ("Bersatu") youth wing, Angkatan Bersatu Anak Muda ("Armada") at the material time.

[7] Between February and early March 2020, a development in the political arena of Malaysia commonly referred to as the Sheraton Move saw the fall of the ruling Pakatan Harapan (PH) coalition Government and the resignation of Prime Minister Tun Dr Mahathir Mohamad. Thereafter, Tan Sri Muhyiddin Yassin was then sworn in as the Prime Minister of Malaysia.

[8] In early March 2020, a meeting was held at the Respondent's house. The Respondent, Rafiq Hakim bin Razali (PW13), who was the Assistant Treasurer of Armada, Ahmad Redzuan Mohamed Shafi (PW11), the Assistant Secretary of Armada at the material time and two other persons by the name of Ulya and Aizad were in attendance at the meeting.

[9] At this meeting, the Respondent was alleged to have instructed PW11 and PW13 to withdraw monies from Armada's official CIMB Account No 80-0848352-5 ('Armada's account'). Pursuant to this instruction, PW13 and PW11 proceeded to withdraw RM1 million from Armada's account on 6 March 2020.

[10] It is the prosecution's case that as the Head of Armada, the Respondent was subject to the Constitution of Armada (P53) where Article ('Art.') 18 of P53 states that:

> 'Peraturan Wang dan Harta parti yang ternyata dalam Fasal 24 Perlembagaan hendaklah dipakai sebagai Peraturan Kewangan Armada Malaysia.'

[11] Based on Art. 2 of P53, any reference to 'Perlembagaan' is a reference to Bersatu's Constitution.

[12]Art 24.8 of the Bersatu Constitution reads:

> 'Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi.'

[13] It is the prosecution's case that PW13 had contravened Art 24.8 of Bersatu's Constitution by withdrawing RM1 million on 6 March 2020 pursuant to the Respondent's instructions without obtaining Bersatu Supreme Council's prior approval and that the Respondent had abetted him in contravention of s 406 PC read together with s 109 PC.

The Section 403 Charge

[14] In 2018, two separate fundraisers were held in Muar and Ampang to raise funds for the Respondent's political campaign, and RM120,000.00 was raised from the events. These funds were deposited into the Maybank Islamic Berhad account number 562254511198 under the name of Armada Bumi Bersatu Enterprise ('ABBE/ABBE's account'), a company owned by PW13 at the material time.

[15] On 8th, 11th, 12th and 21 April 2018, pursuant to the Respondent's instructions, PW13 transferred the impugned RM120,000.00 in four (4) separate tranches of RM30,000.00 each into the Respondent's personal Maybank Account No. 151342007253 ('Respondent's Maybank account').

[16] The Respondent had therefore committed misappropriation under s 403 PC.

The AMLA Charges

[17] On 16th and 19 June 2018, the Respondent transferred RM100,000.00 in two (2) separate tranches of RM50,000.00 each into his personal Maybank ASB Account No 3585649 ('ASB Account'). These two transactions are the subject matter of the money laundering offences, the predicate of which is the offence under s 403 of the PC. The Respondent had committed offences under s 4(1)(b) of AMLATPUA 2001.

The Respondent's Defence

The Abetment Charge

[18] In relation to the abetment charge, it was the Respondent's defence that he did not instruct nor command PW11 and/or PW13 to withdraw the RM1 million from the Armada's bank account.

[19] According to the Respondent, during the meeting at his residence, it had been collectively decided by the then top leadership of Armada, known as G5, that monies needed to be withdrawn for the purposes of rendering Covid-19 pandemic assistance and welfare for the month of Ramadhan and Hari Raya.

[20] Consequently, PW13 was instructed to discuss with Armada's Exco for the exact amount required for the above purposes.

[21] The Respondent therefore denied that he had abetted PW13.

The Charge Under Section 403 PC

[22] In regard to the s 403 charge, it was the Respondent's defence that he did not dishonestly misappropriate or convert the RM120,000.00 as the said monies belonged to him and the monies were raised for the purpose of his political campaign. It was further contended that the impugned money was not the property of Armada or Bersatu or ABBE or PW13.

[23] It was the Respondent's further defence that the monies from the two fundraising dinners had always been treated by him as a reimbursement or a substitution of the monies he spent on his own personal political campaign. It was the Respondent's contention that throughout the election campaign he had spent about RM171,675.00 as evidenced by exhibit D91.

[24] According to the Respondent, he had merely borrowed the ABBE's bank account for the purpose of collecting contributions raised from the two fundraising programs.

[25] PW13 also confirmed that he had suggested to DW2 that the Respondent could use the ABBE's account for his fundraising programs and that the fundraising programs were meant for the Respondent's political campaign during the 14th General Election.

[26] DW2 and DW3 who were called by the Respondent, supported his defence by giving evidence that the fundraising events were meant solely for the Respondent's benefit and that this did not involve any members of Bersatu or Armada nor did they render any assistance, that the ABBE account was used for the fundraising events at the suggestion of PW13, and that the Respondent had given DW4 cash amounting to about RM30,000.00 to organise the Muar's fundraising dinner.

The Two Charges Under AMLA

[27] In relation to the AMLA charges, it was the Respondent's defence that he had no reason to believe or suspect that the sum of RM100,000.00 transferred to his ASB account was proceeds of unlawful activity or the instrumentalities of a scheduled offence as the said monies belonged to him and as such *mens rea* which is the essential element of the offence under the AMLA charges, is absent on his part.

C) Analysis And Findings

The Abetment Charge

[28] The relevant provisions of the law in regard to the abetment charge are the following:

> Section 107 of the PC provides:
>
> "Abetment of a thing
>
> 107. A person abets the doing of a thing who
>
> (a) instigates any person to do that thing;
>
> (aa) commands any person to do that thing;
>
> (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> (c) intentionally aids, by any act or illegal omission, the doing of that thing."
>
> Section 108 of the PC stipulates:
>
> "Abettor
>
> 108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."
>
> Section 109 of the PC reads:
>
> "109. Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.
>
> Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

[29] The abetment charge states that the Respondent abetted PW13 in committing the offence of criminal breach of trust under s 406 of the PC, which provides:

"Punishment of criminal breach of trust

406. Whoever commits criminal breach of trust shall be punished with imprisonment for a term not exceeding ten years and with whipping, and shall also be liable to fine."

[30] Section 405 of the PC defines the offence of criminal breach of trust as follows:

"Criminal breach of trust

405. Whoever, being in any manner entrusted with property, or with any dominion over property either solely or jointly with any other person dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust.""

[31] The HCJ had made a finding that the *actus reus* of the criminal breach of trust ie the disposal of the RM1 million, was in violation of art 24.8 and Art 24.7 of the Bersatu Constitution.

[32] The HCJ found that Art 24.8 of the Bersatu Constitution was the mode of stipulation of how the money or trust was to be discharged. It was the HCJ's view that the terms of entrustment were governed by Art 24.8 of the Bersatu Constitution, and any breach thereof constituted misappropriation.

[33] The HCJ opined that expenditure or "perbelanjaan" mentioned in Art 24.8 must be read to include withdrawal, given that Art 24.7 of the same Constitution restricts the Treasurer of Bersatu from keeping more than RM500,000.00 cash at one time.

[34] The HCJ therefore ruled that, being the Head of Armada as well as one of the trustees of Armada's account and in instructing PW11 and PW13 to withdraw RM1 million in cash from the Armada's account without the approval of Bersatu's Supreme Council, the Respondent's act fell under the actions described in s 405 and s 107(a) of the PC.

[35] The Court of Appeal ("COA"), however, held that the HCJ had erred in finding that the *actus reus,* which is the disposal of the RM1,000,000.00, was in violation of Art 24.8 and Art 24.7 of the Bersatu Constitution.

[36] Article 24.8 of the Bersatu Constitution states:

> "Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi."

[37] The COA reasoned that the word "perbelanjaan" used in Art 24.8 of the Bersatu Constitution must be taken to mean "expenses" as opposed to "withdrawal", where the direct translation of that word in Bahasa Malaysia is "pengeluaran".

[38] The COA held that there is no definition of the word "perbelanjaan" provided in the Bersatu Constitution to include "pengeluaran" or withdrawal. The COA therefore reasoned, quite correctly, in our view, that on its plain and ordinary meaning, the word "perbelanjaan" in Art 24.8 of the Bersatu Constitution would connote some form of spending.

[39] The COA stated that when the HCJ held that "perbelanjaan" must be read to also include "pengeluaran", they could not find themselves in agreement. The COA said that the one-off withdrawal of the RM1 million in the present matter cannot be equated to the action of "one-off" expenses or "perbelanjaan".

[40] They found no provision in Bersatu's Constitution expressly prohibiting the withdrawal or "pengeluaran" of money in excess of RM500,000.00 without the prior approval of Bersatu's Supreme Council.

[41] The COA went on to hold that Art 24.7 of the Bersatu Constitution merely provides that the Treasurer cannot hold more than RM500,000.00 at any one time and the money must be kept in a safe place in the registered office for the party's use of petty cash.

[42] Based upon a plain and ordinary construction of the wording in Art 24.8 of the Bersatu Constitution, in my view, there cannot arise any form of ambiguity or doubt that the word "perbelanjaan" employed in Art 24.8 of the Bersatu Constitution can only be understood to mean "expenses" and not "withdrawal".

[43] There is, in my view, no necessity to indulge in any form of mental gymnastics in order to unravel the meaning of the phrase which is in its ordinary and plain form. A plain and literal reading would suffice. I am of the view therefore that the COA was right in holding that the HCJ had erred in finding that the *actus reus*, being the disposal of the RM1,000,000.00, was in violation of Art 24.8 of the Bersatu Constitution.

[44] Article 24.7 of the Bersatu Constitution stipulates that the Treasurer cannot hold more than RM500,000.00 at any one time and the money must be kept in a safe place in the registered office for the party's use of petty cash.

[45] It was established in evidence that subsequent to the withdrawal of the RM1 million, PW13 distributed RM650,000.00 and RM250,000.00 respectively to Daniel Kusari (PW9) and Naqib Ab Rahim (PW8).

[46] PW9 testified that PW13 distributed to him RM650,000.00 for Armada's programs, where RM263,700.00 was spent for the said program. PW8 testified that after receiving RM250,000.00 from PW13, he returned RM100,000.00 to PW13 upon the latter's instruction that the money was for Armada's programs.

[47] PW25, the investigating officer, testified that the money spent was less than RM500,000.00. Based upon the combined evidence of PW8, PW9 and PW25, it follows therefore that the money spent from the impugned RM1 million was below the RM500,000.00 threshold and therefore the Bersatu Supreme Council's approval was not required.

[48] The COA had thus correctly concluded as follows:

> "[45] We therefore find that the LTJ erred in referring to Art 24.7 of the Bersatu Constitution and equating "withdrawal" with "expenses" from the same provision. To read the word "perbelanjaan" as necessarily encompassing "pengeluaran" is not a conclusion that must follows *(sic)* from Art 24.8 of the Bersatu Constitution. As such the withdrawal of the RM1 million from the Armada's account by PW13 cannot be said to have been used or disposed in violation of a direction of law."

[49] The COA was therefore correct in finding that the withdrawal of the RM1 million from the Armada's account by PW13 cannot be said to have been used or disposed of in violation of a direction of law.

[50] As far as the charge of abetment against the Respondent is concerned, it is pertinent to note that the prosecution had couched the principal charge of criminal breach of trust under s 405 PC by stating that PW13 had misappropriated the RM1 million.

[51] Therefore, the offence said to have been committed by PW13 fell under the first limb and not the second limb of s 405 of the PC, *viz*. dishonest misappropriation or "dengan secara tidak jujur menyalahgunakan dana tersebut..." that PW13 had misappropriated the RM1 million.

[52] In Ratanlal and Dhirajlal's *Law of Crimes*, 28th edn Vol 3 at p 2923, the learned author stated that "misappropriation" means "improperly setting apart for one's use to the exclusion of the owner".

[53] It goes without saying that in order to commit misappropriation, the element of dishonesty must be proven.

[54] The evidence disclosed that when he was asked as to why he had "clear" the money to PW8 and PW9, PW13 said "Saya hanya mengikut arahan YB Syed Saddiq" and that without the Respondent's instructions, he would not have, in his own words, "clear" the money to PW8 and PW9.

[55] The Appellant placed reliance on the evidence that the Respondent was said to have instructed to "clear" the RM1 million after an incident where RM250,000.00 was reported missing from the Respondent's house. The COA, however, found that PW13 had given contradictory evidence with regard to whether or not the instruction to "clearkan" was actually made.

[56] In this regard, PW13 in evidence stated he could not remember if the Respondent had specifically used the words "clearkan". He eventually conceded that this was merely his understanding of the conversation.

[57] PW13's evidence in this regard was as follows:

> "GDW: Ini dua tahun lalu, lebih sedikit. Boleh ingat secara khusus apa perkara-perkara yang digunakan secara spesifik semasa perbincangan itu?
>
> PW13: Spesifik tidak tapi saya boleh ingat maksud-
>
> GDW: Ok spesifik tidak ingat tapi mengikut pemahaman kamu maksud dia clearkan?
>
> PW13: Betul
>
> GDW: I put it to you he did not use those words. It's fahaman kamu, that's what you said earlier. That is your understanding of it, right?
>
> PW13: Yes."

[58] It is trite that any contradiction must be resolved in favour of the Respondent.

[59] With regard to the manner in which the said monies were employed, PW8 and PW9 had testified that all the monies spent from the RM1 million withdrawal were spent on Armada and for Armada's programs or activities.

[60] According to the Respondent, during the meeting at his residence, it had been collectively decided by the then top leadership of Armada, known as G5, that monies needed to be withdrawn for the purposes of rendering Covid-19 pandemic assistance and welfare for the month of Ramadhan and Hari Raya.

[61] Consequently, PW13 was instructed to discuss with Armada's Exco for the exact amount required for the above purposes.

[62] In light of the evidence adduced that the money was distributed for Armada's programs, PW13 cannot be said to have been actuated by dishonesty in distributing the RM1 million.

[63] Consequently, the principal offence of criminal breach of trust cannot stand as the RM1 million withdrawn by PW13 was never misappropriated but was legitimately used for Armada's programs.

[64] It was also never given in evidence that the Respondent had personally benefitted from the said sum of RM1 million or that any of these sums were credited to his personal accounts.

[65] In those circumstances, the Respondent could not be said to have abetted the commission of the offence of criminal breach of trust as the essential elements under s 405 of the PC were not satisfied.

[66] As the principal offence cannot stand, it must follow, as night follows day, that the prosecution had also failed to prove the ingredients of the offence under s 108 PC.

[67] I therefore agree with the decision of the COA in respect of the abetment charge against the Respondent. The appeal by the Appellant in respect of the abetment charge is therefore dismissed, and I affirm the findings and decision of the COA.

The Section 403 Charge

[68] The essence of the charge under s 403 PC is that the Respondent, between 8 April 2018 and 21 April 2018, dishonestly misappropriated RM120,000.00 from the Maybank Islamic account of Armada Bumi Bersatu Enterprise ('ABBE') by causing those funds to be transferred to his personal Maybank account through PW13.

[69] There are two distinct limbs under s 403, which are the 'misappropriation limb' and the 'conversion' limb respectively. If statutory interpretation is resorted to, it can be seen that both limbs clearly are not intended to have an identical meaning given the maxim that parliament does not legislate in vain and given that it is the duty of the court to ascribe significance to every word in an enactment. See *The Penal Code: A Commentary by Srimurugan Alagan* (Sweet & Maxwell) at p 771.

[70] From a reading of s 403, it can be discerned that the *actus reus* of the offence is the act of either misappropriation or conversion and the *mens rea* of the offence is dishonesty.

[71] The word "dishonestly" in s 403 in turn is defined under s 24 PCas "wrongful gain" and "wrongful loss".

[72] A plain reading of s 403 PC will also reveal that the section creates a single offence capable of being committed through two distinct modes which are:

(i) dishonest misappropriation, and

(ii) dishonest conversion.

[73] The statutory illustrations and Explanations 1 and 2 thereof affirm this distinction and clarify that temporary or purposeful use remains misappropriation if done dishonestly.

[74] On 7 April 2018, Team Saddiq organised a charity luncheon titled "Makan Amal Muo" at the SKT Banquet Hall, Muar, where tickets were sold and donations solicited from the public and supporters.

[75] A second event, called "Fund Battle for Johor", took place on 8 April 2018 at Hotel De Palma, Ampang. The objectives of both events were to raise funds for the Respondent's election campaign.

[76] All these proceeds totalling RM124,815.00 were deposited into the ABBE's Maybank account.

[77] The Respondent thereafter instructed PW13 to transfer the said sum of RM120,000.00, being the fundraising proceeds held in the ABBE Maybank Account, into the Respondent's personal Maybank account in several tranches.

[78] Armada Bumi Bersatu Enterprise ("ABBE") was established on 3 January 2018, with its sole proprietor being PW13, and the nature of its business being event management services.

[79] The establishment of this company was not discussed in any official ARMADA meeting, and the purpose of its formation was to generate income for ARMADA through the sale of merchandise as well as fundraising activities.

[80] PW13 was the sole signatory of the account while the Respondent had no access to this account but did have the Maybank2u username and password for the ABBE Maybank account that had been given to him by PW13. Nevertheless, all transactions could only be carried out by PW13 because the TAC Code to this account would be sent to PW13.

[81] The HCJ held that the RM120,000.00 raised through the Team Saddiq Fundraising Events was money publicly donated for campaign purposes and held in an intermediary Maybank Islamic account of Armada Bumi Bersatu Enterprise (ABBE Maybank Account) and thus was entrusted property and not personal money.

[82] On 16 June 2018 and 19 June 2018, the Respondent made two transfers of RM50,000.00 each from the same personal account to his Amanah Saham Bumiputera (ASB) investment account.

[83] The HCJ held that the Respondent's act of transferring that entire sum into his own Maybank account within days of collection constituted dishonest misappropriation.

[84] The main plank of the Appellant's complaint against the Court of Appeal (COA) is that they had erred in concluding that the amount of RM120,000.00 belonged to the Respondent and that the said amount had been utilised by the

Respondent for the purpose of his election campaign, which the Respondent then treated as a reimbursement for the sum of RM170,000.00 spent during his campaign.

[85] The key findings by the COA in respect of this were that they found that PW13 in re-examination confirmed that the ABBE account was cleared beforehand for the purpose of the Respondent's fundraising. This means that all the monies which came into that account were only for the purpose of the Respondent's campaign expenses. It was established that the monies collected from the fundraising events were RM120,000.00, which was then transferred from ABBE's account to the Respondent's Maybank account via four (4) transactions, respectively amounting to RM30,000.00 each, upon the Respondent's instructions.

[86] The COA held in that regard as follows:

> "In fact, we find not an iota of evidence surfaced showing that the money belongs to ABBE or Armada. There was no attempt by the prosecution to lead evidence that it is ABBE's monies albeit ABBE's account was used to receive the donation as a result of the Appellant's appeal to assist him with his election expenses. Premised on the LTJ's finding that the money was for the purpose of the Appellant's political campaign, we are of the considered view that PW13 had held the RM120,000.00 in trust for the Appellant and not for the donors. In other words, PW13 was accountable to the Appellant as the RM120,000.00 was in transit in the ABBE's account."

[87] Based upon these observations, the COA then proceeded to analyse the *actus reus* of the offence in the following terms:

> "[84] The *actus reus* of the offence under s 403 of the PC is misappropriation or conversion or causing the disposal of property of another person. In ***Law of Crimes*** **by Ratanlal & Dhirajlal, (26th Edn)**, at p 2264, it states:
>
> > "2. Scope... **The essence of this offence of criminal misappropriation is that the property of another person comes into the possession of the accused in some neutral manner and is misappropriated or converted to his own use by the accused**..."
> >
> > [Emphasis Added].
>
> [85] In the same literature, the author further laid down the ingredients of the offence under the same section to be:
>
> 5. Ingredients — The section requires the following ingredients:
>
> > (i) **The property must belong to a person other than the accused**;
> >
> > (ii) The accused must have misappropriated property or converted it to his own use; and
> >
> > (iii) There must be dishonest intention on the part of the accused
>
> [Emphasis Added]"

[88] The COA then made reference to illustration (a) of s 403 as follows:

> "(a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section"

[89] In my considered view, the COA embarked upon a correct analysis when it proceeded to analyse the *actus reus* of the section as being predicated upon the fact that the property that is the subject of the alleged offence must belong to a person other than the Respondent.

[90] Having done that, the COA then evaluated the available evidence adduced in order to determine this very question.

[91] As alluded to, the COA found no evidence that the monies belonged to either ABBE or Armada. PW13 also, from the evidence, had never said that the RM120,000.00 belonged to ABBE.

[92] In fact, the COA found that PW13 was not in any position to testify as to the ownership of the funds, when they found as follows:

> "[98] **In his witness statement D79, PW13 clearly stated that the fundraisers 'diuruskan oleh Hidayah dan Amshar' and that he 'tidak terlibat dengan Majlis Makan Amal ini.' Given that PW13 was not involved with the fundraiser, the person who could meaningfully give evidence on this issue would be Amshar**. Mohamed Amshar (DW2) should have been called at the prosecution stage to testify whether he did or did not have the knowledge about the campaign's expenses. Mohamed Amshar (DW2) and one other person by the name of Nurul Hidayah binti Kamarudin are material witnesses because these two persons are not only material, but also relevant to assist the Court with regard to the status of the RM120,000.00 being public contribution into the ABBE account. The non-calling of these two witnesses at the prosecution stage had left a gap in the prosecution case and attracted the presumption under s 114 (g) of the Evidence Act 1950.
>
> [99] **The prosecution again relied heavily on PW13's evidence and again we find PW13 was inconsistent**. We reproduced PW13's evidence in EIC: (refer to encl 12- PDF p 207 of Record of Appeal Vol 2 (2), encl 13-PDF page 9 of the Record of Appeal Vol 2 (3):
>
>> "TPR (WS): Baik, sebelum tadi pun...awak ada nyatakan "fund raising", siapa buat remark "fundraising" ini?
>>
>> PW13: Saya yang buat
>>
>> TPR (WS): Kenapa awak buat remark "fundraising"?
>>
>> PW13: Sebab duit yang terkumpul dalam akaun ini adalah untuk satu program fundraising yang dianjurkan...untuk YB Syed Saddiq dan selepas daripada itu, saya mendapat arahan untuk transfer amaun yang

dikumpulkan itu ke akaun YB Syed Saddiq. Tapi...pada waktu itu, ada account limit yang membolehkan saya buat transaksi dalam satu masa RM30,000.00 sahaja. Sebab itu ada dua transaksi."

[100] Then PW13 retracted his evidence and stated as follows:

"TPR (WS): Baik. Akaun peribadi ya? Duit-duit dalam akaun ABBE ni, untuk apa sebenarnya?

PW13: Duit hasil err...duit kegunaan, untuk kegunaan ahli-ahli ARMADA untuk program-program ARMADA juga.

TPR (WS): Sekali lagi, adakah duit dalam akaun ABBE ini..khas digunakan untuk aktiviti Syed Saddiq?

PW13: Err... bukan dia sahaja...err... ahli-ahli ARMADA yang lain juga boleh menggunakannya."

[101] However, upon being confronted with his witness statement (para 58) (D79) in cross-examination, PW13 sought to explain as follows (refer encl 16 PDF p 175 of the Record of Appeal Vol 2 (6):

"PW13: But in directly Syed Saddiq is also in Armada so maksud saya sebab apa Syed Saddiq dibenarkan menggunakan ABBE atas kapasiti dia sebagai ketua Armada which is in title sebab dia juga ahli Armada, Cuma bezanya dekat sini this the luar normal ABBE. ABBE normally kita jual merchandise sebagainya that's why saya bentangkan tapi duit yang digunakan dikumpulkan dalam ABBE Yang Arif adalah daripada hasil sumbangan orang ramai untuk tujuan kempen YB Syed Saddiq di Muar, tapi at first place he's in title because dia sebagai ketua Armada which is dia juga ahli Armada, itu penjelasan saya Yang Arif."

[102] Nonetheless, we agree with the defence's contention what PW13 sought to explain was that when he said other members could use the money in the ABBE account, he was referring to the ABBE account and not the RM120,000.00 which was meant for the Appellant."

[Emphasis Added]

[93] A few matters of significance emerge from the above passage by the COA, firstly, that PW13 was not involved in the fundraising and so could give no meaningful testimony in respect thereof. Secondly, he had given inconsistent evidence in relation to the purpose of the funds in ABBE.

[94] It also transpired from PW13's statement (D79) that while he had no knowledge of the fundraising, Mohamed Amshar (DW2) and Nurul Hidayah binti Kamarudin, however, did. This raised the issue of why the Appellant saw fit not to call either of them to unfold the narrative of the prosecution case in relation to the fundraising, since they would be in the best position to do so.

[95] One can only conclude from this, as the COA did, that had they been called, it would have adversely impacted the prosecution case as their testimonies would have proved unfavourable, and thus the adverse presumption under s 114(g) Evidence Act 1950 was rightfully invoked.

[96] The COA, after having found that there was no evidence that the monies belonged to either ABBE or Armada, went on to state as follows:

> "[105] RM90,000.00 from the impugned RM120,000.00 was transferred before the beginning of the campaign period, whereas the remaining RM30,000.00 was transferred on 21 April 2018 before the campaign period. Instead of depositing the RM170,000.00 the Appellant had on hand, the Appellant proceeded to spend RM170,000.00 on his election campaign, always intending that it be considered monies from the fundraisers. In these circumstances, the impugned sum in his Maybank account was substituted with the RM170,000.00 cash he had on hand, the latter of which was fully spent by the end of the campaign period for the Appellant's campaign in Muar. By 16th and 19 June 2018, therefore, the RM100,000.00 transferred into his ASB account had already become his personal monies."

[97] The COA reasoned thus that by the end of the campaign in Muar, the Respondent had fully spent the sum of RM170,000.00 he had in hand and therefore, by the 16th and 19th of June 2018, the sum of RM100,000.00 transferred into his ASB account had become his personal monies.

[98] This analysis by the COA also took care of the main plank of the Respondent's defence, which is that the impugned monies were a reimbursement of the monies that he had spent on his election campaign.

[99] In that regard, the testimony of the Respondent and that of DW4 is that during the first fundraising event, the Respondent initially used RM30,000.00 of his own funds and managed to raise approximately the same amount. The Respondent also asserted that the second fundraising event was fully sponsored by Mejar (B) Tan Pau Son, who was, like the Respondent, a fellow alumnus of the Royal Military College and therefore collectively had successfully raised and collected RM120,000.00.

[100] There was further evidence that the Respondent had withdrawn a sum of RM50,000.00 from his ASB account on 6th April 2018, which was evidenced by Exh. D90 (statement of the Respondent's ASB account). The Respondent had also borrowed monies from several individuals, including Radzi Tajudin (Mat Rodi) for a sum of RM40,000.00. All these were meant for financing the Respondent's own political campaign.

[101] The Respondent, in giving his statements pursuant to ss 53 and 62 of the MACC Act 2009, had also said that he spent no less than RM170,000.00 on his election campaign.

[102] Further to this, DW4 had prepared D91 (Declaration) with supporting receipts, and officially submitted the same to the Election Commission confirming that the Respondent had spent RM171,675.00 in his campaign.

[103] The COA also found as follows:

> "[92] The donors have contributed the money to and for the Appellant and the money was deposited into the ABBE account. We find that the LTJ erred in taking into consideration the facts of the transfer of money into the Appellant's personal account and the timing of the transfer. It is logical for expenses to be incurred in advance before 29 April 2018 as seen in the report filed by the Appellant with the Election Commission (see exhibit D91) and we find that the LTJ erred in holding that the donation could only be spent during the official campaign period (28 April 2018-9 May 2018). We further find that there was no requirement for the Appellant to justify his request for the transfer. According to the Appellant the money was his as the money was derived from his plea to the donors to assist him with his political campaign. He is therefore legally entitled to the money. Even if his belief that he is entitled to the money is wrong (which we find he is not), the offence cannot be said to have been committed.
>
> In Ratanlal & Dhirajlal's *Law of Crimes* Vol 2 at p 2264, the learned author had stated.
>
>> "A wrong opinion that the accused was justified in keeping the thing does not constitute this offence...""

[104] The COA here made certain telling observations; the first is that the HCJ made several erroneous findings when it came to the timing of the transfers. The HCJ found that the donation monies could only be spent during the official campaign period which ran from 28th April to 9 May 2018.

[105] However, the COA said that it is only logical that expenses are incurred in advance before the onset of campaigning on 28 April 2018 and that this is backed up in the report filed by the Respondent or on his behalf, with the Election Commission (exh D91).

[106] Given these observations by the COA, they were quite correct in arriving at the conclusion that, as the Respondent had incurred expenses in campaigning, which he paid for in advance, he had naturally regarded the funds expended as being subject to reimbursement from the funds which came into the account which were from donors contributing to the cause of his campaigning.

[107] Returning to the essential ingredients of the charge, the *actus reus* of the offence can only be committed in relation to property belonging to someone other than the accused.

[108] Therefore, it stands to reason that if the COA found that the funds in fact belonged to the Respondent, he cannot be said to have committed the offence.

[109] The COA also pointed out that in his judgment, the HCJ had made a finding of fact that the RM120,000.00 was for the use of the Respondent to finance his election expenses when he stated as follows:

> "[32] Setelah mempertimbangkan keterangan seperti yang dinyatakan di atas, Mahkamah ini berpuas hati bahawa wang hasil kutipan dari majlis makan malam amal ini sebenarnya adalah bagi tujuan membiayai perbelanjaan kempen pilihanraya OKT bagi pilihanraya yang akan diadakan sebulan (1 bulan) selepas majlis tersebut."

[110] However, after the HCJ arrived at that finding, he made an irreconcilable finding that a *prima facie* case had been made out against the Respondent.

[111] This quite clearly went against the grain of the essential elements of the charge in s 403 PC, which was premised upon the act of either misappropriation or conversion of property of someone other than the Respondent.

[112] The necessary corollary of that, of course, is that no dishonesty or *mens rea* can be proven in relation to the charge.

[113] The COA was therefore correct in its analysis and reasoning in relation to why the charge under s 403 was not made out.

[114] Under all the circumstances and for the reasons given, the COA was correct to conclude that based upon a maximum evaluation of the evidence, the prosecution has failed to adduce credible evidence and facts to support the s 403 charge.

The Allegation That Improper Pressure Was Brought To Bear Upon The Witnesses For The Prosecution

[115] One other important matter merits my consideration, which is that it was alleged on behalf of the Respondent that there was evidence of certain witnesses being pressured, which gave rise to a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution case.

[116] In order to appreciate the scope of this argument, it is pertinent to make reference to the manner in which the COA had dealt with it as follows:

> "[134] One other important aspect of the Appellant's defence relates to the probability of PW13's motivation to give evidence against the Appellant. It was the defence's contention that from PW13's evidence it can be strongly inferred that PW13 has tailored his evidence to appease the MACC. The relevant parts of PW13's evidence were highlighted as follows:
>
> "[a] While being examined by the prosecution, PW13 had admitted that he had been remanded by the MACC for a period of 6 days and during the remand period, he was sad and under a lot of stress;
>
> [b] He suffered a breakdown after being informed that his initial remand period may be extended for one more day; and
>
> [c] While he was in remand, he had even called his wife (PW12) to inform her that "bagi tahu pada sahabat-sahabat di luar, tak payah

buat-buat PC ni apa, sebab kat dalam, saya yang kena teruk, bukan mereka kat luar."

[135] PW13 then admitted during cross-examination that after being made aware that Art 24.8 of the Bersatu Constitution used the word 'perbelanjaan' instead of 'pengeluaran', he had changed his evidence to focus on no working papers being prepared for the withdrawal of the said RM1 million. The Court's attention was taken to that part of PW13's evidence:

"PB (GDW): Now you know... that PWRM got it wrong. Right? Because 24.8 does not say "pengeluaran" it says "perbelanjaan". Untuk a one-off payment of RM500,000.00 which wasn't the case here, correct?

PW13: Yes

PB (GDW): Yeah. That's why your whole evidence has changed now and you are focusing just on kertas kerja, right?

PW13: Yes."

[136] The defence further highlighted that another defence witness, DW4 had testified that she had been threatened and roughed up by MACC officers who had interrogated her in respect of the Appellant's case. She had then lodged a police report (D95) and called a press conference pertaining to the incident. In D95, DW4 revealed that:

i. On 4 June 2020, the MACC officers had taken her mobile phone, squealed at her and threw her mobile phone towards her;

ii. While in the investigation room, 6 MACC officers had hissed her and abused her with the words "babi" and "bodoh". These officers were said to have asserted that she deserved to live alone and to be cast aside by her family when they were dissatisfied with her answers; and

iii. One of the MACC officers had even threatened to slap her face and that subsequently she was also asked to stand for about 30 minutes with one of her legs and both of her hands up.

[137] The Appellant had written to MACC Chief Commissioner complaining *inter alia* of the incident that happened to DW4 (P96).

[138] DW4 is the wife of PW10, Abdul Hannan bin Khairy who also admitted that he was pressured while being investigated. The relevant part of PW10's evidence is reproduced:

"PB (GDW): Adakah kamu juga rasa tertekan?

PW10: Ya

PB (GDW): Ya. Dan ini semua adalah kerana PWRM hendak jawapan-jawapan tertentu dari kamu dan isteri kamu?

PW10: Ya."

> [139] We have examined the evidence of PW13 and as alluded to earlier, his evidence is inconsistent in many aspects during EIC, cross examination and re-examination. We find there is merit in the defence's contention that the evidence of these witnesses being pressured gives rise to a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution case. We agree with the defence's contention that it cannot be dismissed that PW13 had succumbed to the pressure of being investigated and interrogated to the extent that he admitted he had committed criminal breach of trust when questioned by the prosecution and gave evidence against the Appellant.
>
> [140] We are of the considered view that when there is evidence that witnesses were pressured and submissions made to infer evidence being tailored to suit the prosecution case, coupled with inconsistencies in the witness's testimony such as PW13 herein, not only there is merit in the submission, the evidence is both material and relevant to be considered. Yet again, nowhere in the LTJ's grounds of judgment disclosing that His Lordship had evaluated and considered this critical evidence. The omission to consider all the evidence has resulted in a failure of justice to the Appellant and we find there is a serious misdirection on the part of the LTJ."

[117] There was credible evidence given by PW13, PW10 and DW4 that they were subject to some measure of improper pressure by the officers from the MACC. DW4, the wife of PW10, had seen fit to lodge a police report in this regard.

[118] After having carefully considered and evaluated this argument, I find myself in agreement with the COA that in light of the unexplained inconsistencies in the evidence of PW13 at all levels of his testimony, there arises a reasonable inference that as there was evidence that improper pressure was brought to bear on other witnesses as well as PW13, that PW13 was constrained to tailor his evidence to suit the prosecution case. This necessarily impacted upon his credibility when giving evidence against the Respondent in respect of both the first and second charges.

[119] As was also pointed out by the COA, this critical aspect of the defence argument was never considered by the HCJ. This constituted another cogent reason to dismiss these appeals and affirm the findings and decision of the COA.

The AMLA Charges

[120] The essence of the Respondent's defence was that he had no reason to believe or suspect that the sum of RM100,000.00 which was transferred into his ASB account was proceeds of an unlawful activity or the instrumentalities of a scheduled offence.

[121] This is because the Respondent had considered the monies as constituting a reimbursement for expenses already incurred in pursuit of his political campaign.

[122] Having come to the determination that they did in respect of the charge under s 403 PC, the COA was correct in finding that, given that the predicate offence under s 403 of the PC was not proven, the AMLA charges could not be sustained.

Decision

[123] In conclusion, I find no appealable error on the part of the COA in respect of all the charges preferred against the Respondent for the reasons given above. Each of these appeals is thereby dismissed, and the decision of the COA in respect of all the charges is hereby affirmed.

Che Mohd Ruzima GhazaliFCJ (Supporting):

Introduction

[124] Briefly, the respondent, Syed Saddiq bin Syed Abdul Rahman (SS), faces four charges under three registered cases before the High Court. For the registered case no. WA-45-21-11/2021, SS faces a charge under s 406 of the Penal Code (PC) read together with s 109 of the PC (abetment charge). For the case no. WA-45-22-11/2021, SS faces a charge under s 403 of the PC (s 403 charge), and for the case no. WA-45-23-11/2021, SS faces two charges under s 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), punishable under s 4(1) of the AMLA (AMLA charges).

Background Facts

[125] The Court of Appeal observed the following brief facts for the abetment charge narrated from the prosecution's case. SS was the Head of Parti Pribumi Bersatu Malaysia (BERSATU) youth wing, Angkatan Bersatu Anak Muda (Armada) at the material time. Between February and early March 2020, a development in the political arena of Malaysia commonly referred to as the "Sheraton Move", saw the fall of the ruling Pakatan Harapan coalition Government and the resignation of Prime Minister Tun Dr Mahathir Mohamad. Thereafter, Tan Sri Muhyiddin Yassin was then sworn in as the Prime Minister of Malaysia. In early March 2020, a meeting was held at SS's house. SS, Rafiq Hakim Razali (PW13), who was the Assistant Treasurer of Armada at the material time, Ahmad Redzuan Mohamed Shafi (PW11), who was the Assistant Secretary of Armada at the material time, and two other persons by the name of Ulya Aqamah bin Husamudin (SD3) and Aizad attended the meeting. It was at this meeting that SS was alleged to have instructed PW11 and PW13 to withdraw monies from Armada's official account No. 80-0848352-5 in CIMB Bank (Armada's account). Pursuant to this alleged instruction, PW11 and PW13 proceeded to withdraw RM1 million from Armada's account on 6.3.2020. It is the prosecution's case that as the head of Armada, SS was subjected to the Constitution of Armada (P53) where Article (Art.) 18 of P53 states that:

> "Peraturan Wang dan Harta parti yang ternyata dalam Fasal 24 Perlembagaan hendaklah dipakai sebagai Peraturan Kewangan Armada Malaysia."

Based on Art. 2 of P53, any reference to "Perlembagaan" is a reference to BERSATU's Constitution. It is the prosecution's case that PW13 had contravened Art. 24.8 of BERSATU's Constitution by withdrawing RM1 million on 6.3.2020 allegedly pursuant to SS's instructions without obtaining BERSATU Supreme Council's prior approval. Art. 24.8 of BERSATU's Constitution reads:

> "Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi."

[126] As for the s 403 charge, in 2018, two separate fundraisers were held in Muar and Ampang to raise funds for SS's political campaign, and RM120,000.00 was raised from the events. These funds were deposited in Armada Bumi Bersatu Enterprise (ABBE) Maybank Islamic Berhad account number 562254511198 (ABBE's bank account). ABBE is a company owned by PW13. On the 8th, 11th, 12th and 21st of April 2018, pursuant to SS's instructions, PW13 transferred the impugned RM120,000.00 in four separate tranches of RM30,000.00 each into SS's personal Maybank Account No. 151342007253 (SS's Maybank account).

[127] As for the AMLA charges, on the 16th and 19th of June 2018, SS transferred RM100,000.00 in two separate tranches of RM50,000.00 each into his personal Maybank ASB Account No 3585649 (SS's ASB Account). These two transactions are the subject matter of the money laundering offences, the predicate of which is the offence under s 403 of the PC.

High Court's Decision

[128] The prosecution called 29 witnesses. At the end of the prosecution's case, the learned High Court Judge (LHCJ) found that the prosecution had proved a *prima facie* case of all charges framed against SS, and called SS to enter his defence.

[129] At the defence stage, SS gave the statement on oath and called 4 other witnesses. At the end of the defence case, the LHCJ found SS guilty and convicted him on all charges. For the abetment charge, SS was sentenced to imprisonment for a term of 3 years and one stroke of the cane. For the s 403 charge, SS was sentenced to imprisonment for a term of 2 years and one stroke of the cane. For each of the AMLA charges, SS was sentenced to imprisonment for a term of 2 years and a fine of RM5 million, and in default of payment of the fine, imprisonment for 2 years. The sentences of imprisonment for the AMLA charges were ordered to run concurrently.

SS's Appeal to Court of Appeal

[130] Aggrieved by the decision of the High Court, SS filed three separate notices of appeal to the Court of Appeal against the convictions and sentences of all four charges imposed upon him.

[131] Having heard the appeals, the Court of Appeal unanimously found that the convictions entered by the High Court on all the charges preferred against SS were unsafe. Therefore, SS's appeals were allowed, and the convictions and sentences are set aside. SS is acquitted and discharged of all the charges for the following reasons.

i. Abetment Charge

[132] The LHCJ made a critical legal error by equating a cash withdrawal with the *actus reus* of Criminal Breach of Trust (CBT) under s 405 of the PC. The *actus reus* of CBT under s 405 of the PC is strictly defined and limited to five limbs, which are:

(i) misappropriation,

(ii) conversion to own use,

(iii) use/disposal in violation of law,

(iv) use/disposal in violation of a legal contract, or

(v) wilfully suffering another to do any of (i) to (iv).

The mere act of withdrawing money does not by itself fall under any of the five limbs. A withdrawal is at its highest an act of preparation and not a complete offence, and since the principal offence, which is CBT, was not committed by the alleged principal offender, who is PW13, the charge of abetting that offence must also fail.

[133] Art. 24.8 of the BERSATU's Constitution only restricts "perbelanjaan" exceeding RM500,000.00 without approval. The LHCJ erred in law by reading the word "perbelanjaan" to include "pengeluaran". The two are distinct, and the constitution does not prohibit withdrawals above RM500,000.00. Therefore, the withdrawal of RM1 million was not in violation of any "direction of law" as required for CBT.

[134] Furthermore, evidence from PW8, PW9 and PW25 confirmed the withdrawn RM1 million was spent on Armada's programs covering Covid19 aid, Ramadhan month and Hari Raya Aidil Fitri. The total sum spent was below the RM500,000.00 threshold requiring approval. Critically, evidence showed the funds were used for Armada's programs and not a single cent for SS's personal gain.

[135] The instruction to "clear" the money was given in the context of a burglary at SS's house, where cash was stolen. The Court accepted the defence that this instruction was a valid concern for the safekeeping of party funds, not evidence of dishonest intent. The Court found the evidence of the key prosecution witness, PW13, to be contradictory and unreliable, particularly regarding whether SS specifically used the word "clearkan." His evidence was inconsistent between examination-in-chief and cross-examination. The testimonies of PW11 and PW13 on when and how the withdrawal amount was decided were also inconsistent.

[136] SS's alleged political motives consequent to the "Sheraton Move", his conduct after the withdrawal, and analysis of WhatsApp messages were irrelevant. The sole legal question was whether the instruction to withdraw constituted abetment of CBT, which it did not.

[137] There is merit in the defence's contention that the evidence of the prosecution witnesses being pressured gives rise to a strong reasonable inference that the Malaysian Anti-Corruption Commission (MACC) might have also exerted improper pressure upon the witnesses, particularly PW13, to tailor his evidence to suit the prosecution's case. The defence's contention that PW13 had succumbed to the pressure of being investigated and interrogated to the extent that he admitted he had committed CBT when questioned by the prosecution and gave evidence against SS cannot be ignored. Coupled with inconsistencies in the witnesses' testimony, there is merit in the defence's contention. That situation and the evidence by the witnesses are both material and relevant to be considered. The failure to evaluate and consider all evidence by the LHCJ is a clear misdirection which resulted in a serious failure of justice to SS.

[138] Therefore, the prosecution failed to prove a *prima facie* case against SS since the essential elements of the abetment charge were not established against the principal offender of CBT, who is PW13. Consequently, SS could not have abetted a non-existent offence. Furthermore, the element of dishonesty was absent, as the funds were used for Armada's objectives without any personal gain to PW13 or SS.

ii. Section 403 Charge

[139] To prove dishonest misappropriation of property under s 403 of the PC, the most essential ingredient is that the misappropriated property must belong to a person other than SS. The LHCJ made an irreconcilable finding when he explicitly found that the impugned RM120,000.00 was raised for the use of SS to finance his election expenses. Once the LHCJ made that factual finding, it legally established that the money belonged to SS. The evidence showed that the donors gave the money to SS for his campaign. Thus, the essential element of property belonging to another person was absent from the outset. SS cannot be guilty of misappropriating his own property.

[140] The LHCJ focused on the act of transferring the funds from the ABBE's account to SS's personal account as evidence of guilt. Since the money was for SS's campaign purposes, it was logical and necessary for him to access it. The campaign expenses would naturally be incurred before the official campaign period, as shown in SS's Election Commission report, exhibit D91, and from the evidence there is no requirement for SS to pay his campaign expenses directly from the ABBE account. Therefore, the transfer was a legitimate step to use funds meant for SS and transferring the money to his account to facilitate spending was not an illegal or dishonest act.

[141] The testimony of the main prosecution witness, PW13, is riddled with inconsistencies. PW13 gave contradictory evidence on the fundamental question of who owned the impugned RM120,000.00. PW13's alternating testimony between saying it was for SS's campaign and for general use of Armada is unsafe to be accepted and relied upon.

[142] Mohamed Amshar Aziz (DW2) and Siti Nurul Hidayah (SD4), who were the actual organizers of the fundraisers, were not called by the prosecution. Their absence left a critical gap in the prosecution's narrative about the nature and purpose of the funds. This failure attracted an adverse inference under s 114(g) of the Evidence Act 1950. The LHCJ erroneously relied on hearsay evidence from the investigating officer, Asbi bin Munip (PW29), regarding what DW2 allegedly said. This was inadmissible.

[143] SS had RM170,000.00 in cash on hand before the campaign. He spent this cash on campaign expenses, always intending it to be treated as the fundraiser money. The impugned RM120,000.00 that remained in his bank account thus effectively became his personal money, which he later transferred to his ASB account. The investigating officer (PW28) admitted that she did not investigate this defence at all, dismissing it as irrelevant. The MACC was "duty-bound to investigate the Accused's defence" and to negate it beyond reasonable doubt. Their failure to do so further weakened the prosecution case.

[144] Evidence confirmed the ABBE's bank account was not an official Armada account but a separate entity. Transfers from it were not Armada's concern. PW13's own witness statements (D79E) clearly said that the fundraiser was "for YB Syed Saddiq himself" and the money was "not for the use of Armada politics but for YB Syed Saddiq's politics". This directly supported SS's ownership claim.

[145] Therefore, the prosecution failed to prove a *prima facie* case, and even on a maximum evaluation of all evidence, failed to prove guilt beyond a reasonable doubt.

iii. AMLA Charges

[146] Given that the predicate offence under s 403 of the PC is not proven, the AMLA charges could not be sustained.

The Prosecution's Appeal Before Us

[147] Dissatisfied with the decision of the Court of Appeal, the prosecution filed three separate notices of appeal. The prosecution cited 15 grounds in the Petition of Appeal. In the prosecution's written submission, the grounds were condensed to two main reasons as follows:

(a) The learned Court of Appeal Judges erred in law and in fact in deciding that the main witness, PW13, was pressured by the MACC and tailored the evidence to fit the prosecution's version, even though there was no evidence to show such a situation.

(b) The learned Court of Appeal Judges erred in law and in fact when failing to consider all the evidence cumulatively and fairly, based on the correct law, even though the court has a judicial duty to critically re-evaluate all the evidence before the Court.

[148] As to the issues at hand, the prosecution raised two main specific questions. First, whether the Court of Appeal's action in choosing to review all the evidence contained in the appeal records has carried out the task fairly by truly reviewing the entire evidence of the prosecution and the defence critically, or has only selected the evidence which the court considers necessary and appropriate in coming to its decision. Second, whether the court can use personal opinion or, in the words used by the prosecution, as "a frolic of his own" in determining the value to be given to the evidence of PW13 without being supported by any evidence.

[149] In the oral argument before us, the prosecution stressed a few salient points that had been raised in the prosecution's written submission.

The Analysis and Decision

[150] The appeals before us emanated from the decision of the Court of Appeal in acquitting and discharging SS of the 4 charges under three registered cases before the High Court, namely, the abetment charge, the s 403 charge and the two AMLA charges.

Abetment Charge

[151] The abetment charge is the first charge that was framed against SS and is as follows:

> Bahawa kamu, pada 6 Mac 2020, di Menara CIMB Bank Berhad, yang beralamat di Menara CIMB KL Sentral, Tingkat Bawah, Menara CIMB, Jalan Stesen Sentral 2, Kuala Lumpur Sentral dalam Wilayah Persekutuan Kuala Lumpur telah bersubahat dengan Rafiq Hakim bin Razali yang merupakan Penolong Bendahari Angkatan Bersatu Anak Muda, Parti Pribumi Bersatu Malaysia (ARMADA Malaysia) dan di dalam kapasiti tersebut, Rafiq Hakim bin Razali telah diamanahkan dengan penguasaan ke atas dana ARMADA Malaysia berjumlah RM1,000,000.00 telah melakukan pecah amanah

jenayah dengan secara tidak jujur menyalahgunakan dana tersebut iaitu satu kesalahan di bawah s 406 Kanun Keseksaan, dan kamu telah bersubahat melakukan kesalahan tersebut di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 406 Kanun Keseksaan [Akta 574] dibaca bersama s 109 Kanun yang sama.

[152] The relevant provisions of the law regarding the abetment charge are as follows. Section 107 of the PC provides:

Abetment of a thing

107. A person abets the doing of a thing who-

(a) instigates any person to do that thing;

(aa) commands any person to do that thing;

(b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(c) intentionally aids, by any act or illegal omission, the doing of that thing.

Section 108 of the PC provides:

Abettor

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Section 109 of the PC provides:

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

[153] Under the abetment charge, it was stated that SS abetted PW13 in committing the offence of CBT under s 406 of the PC, which provides:

Punishment of criminal breach of trust

406. Whoever commits criminal breach of trust shall be punished with imprisonment for a term not exceeding ten years and with whipping, and shall also be liable to fine.

Meanwhile, the offence of CBT is defined under s 405 of the PC as follows:

> **Criminal breach of trust**
>
> **405.** Whoever, being in any manner entrusted with property, or with any dominion over property either solely or jointly with any other person dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[154] To begin with, the word "abetment" is not defined in the PC. Be that as it may, under s 107 of the PC abetment of a thing can be done by way of instigating (s 107(a)), commanding (s 107(aa)), engaging in conspiracy (s 107(b)) and intentionally aiding (s 107(c)), the doing of that thing. It is trite that abetment of an offence is a distinct offence from the offence itself. Therefore, if the charge against the principal offender could not stand, it must not necessarily follow that the case against the abettor must also fall. See *Rejab Lebai Man & Anor v. PP* [2001] 6 MLRH 363 where Augustine Paul J (as His Lordship then was) at p 374 made the following observation:

> The charge against the 2nd accused is for having abetted the 1st accused. Under s 107 of the Penal Code, abetment is constituted by instigating a person to commit an offence, or by engaging in a conspiracy to commit it, or by intentionally aiding a person to commit it. Abetment of an offence is a distinct offence from the offence itself (see *Sesha Ayyar v. Venkatasubba Chetty AIR* 1924 Mad 487). Thus, it does not follow that if the charge against the principal offender cannot stand the case against the abettor must fall as well (see *Kee Kim Chooi & Ors v. Public Prosecutor* [1952] 1 MLRH 138). However, it has been held by the Indian Courts that the rule only applies in instances of abetment by instigation or by engaging in a conspiracy to commit the offence abetted (see *Faguna Kanta Nath v. State of Assam AIR* 1959 SC 673; *Jammuna Singh v. State of Bihar AIR* 1967 SC 553). In the Singapore case of *Chua Kian Kok v. PP* [1999] 2 SLR 542 it was held that the rule that an abettor may be liable even though the principal offence was not committed should be extended to cover abetment by intentional aiding as well. The Malaysian position, however, is the same as in India. In *Periasamy Sinnappan v. PP* [1996] 1 MLRA 277 Gopal Sri Ram JCA in writing for the Court of Appeal said at p 295:
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> > The offence of abetment, when it consists of instigation, constitutes a separate and distinct offence. Consequently, an abettor who instigates the commission of an offence or conspires to commit it may be convicted of abetment, notwithstanding that one who is charged with the principal offence has been acquitted. It is otherwise where the abetment consists of intentional aiding; in such a case, acquittal of the principal offender must result in the acquittal of the abettor.
>
> Be that as it may, the offence of abetment in the Penal Code deals only with offenders who would be classified in English law as accessories before or at

the fact and not accessories after the fact (see *Varatharajalu v. Public Prosecutor* [1960] 1 MLRH 135). As explained in *Ratanlal & Dhirajlal's Law of Crimes* Vol I (24 Ed) at p 297:

> Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere concurrence in the criminal acts of another without such participation therein as helps to affect the criminal act or purpose is punishable under the Code. Nor does mere negligence amount to abetment.

[155] However, it is apparent to note that in proving the charge of abetment against the abettor, the prosecution first bears the duty of proving the crime against the principal offender. In the case of *Haji Abdul Ghani Ishak & Anor v. PP* [1981] 1 MLRA 649 at p 664, Wan Yahya J at the High Court made the following observation:

> "To succeed in their charge of abetment against 2nd accused, the prosecution will have to, in addition to the proving of the case against 1st accused, show that he instigated, conspired or aided the 1st accused in the commission of the offence. He must be shown to have knowledge of the consequence of his act — *National Coal Board v. Gamble* [1958] 1 QB 11, 18 and intention to aid."

Later, at the Federal Court, Raja Azlan Shah CJM (as His Royal Highness then was) in delivering the judgment of the Court in the same case at p 687, explained as follows:

> "It is of the essence of the offence of abetment that the abettor should substantially assist the principal offender towards the commission of the principal offence. In fact, it is an essential ingredient in a prosecution for abetment that there must be some evidence to show that the abettor actively suggested or stimulated the principal offender to the act by any means or language, direct or indirect, in the form of "expressed solicitation" or of "hints, insinuations or encouragement". There must also be common purpose or intent to aid or encourage the person who commits the principal crime and either an actual aiding or encouraging or a readiness to aid or encouraging will be required. The word "instigates" in s 107 of the Penal Code does not merely mean placing of temptation to do a forbidden thing but actively stimulating a person to do it — see Soonavala on *Bribery and Corruption* p 312. ..."

[156] Back to the appeal before this Court, at the outset, the prosecution relies on s 107(aa) of the PC to establish the abetment charge against SS. To be specific, SS is said to be the mastermind behind PW13 in committing the CBT, that is, the act of withdrawing RM1 million from Armada's account on 6 March 2020. Before us, the prosecution submitted that the Court of Appeal failed to evaluate the evidence cumulatively to determine malice on the part of SS. The prosecution emphasises the four episodes that had to be considered to show SS's guilty mind when he instructed PW13 to withdraw the money. The said four episodes are, first, SS's action before the withdrawal of the RM1 million, second, SS's action after the withdrawal of the RM1 million, third, SS's action after his house was investigated by MACC, and fourth, SS's action after his membership of BERSATU was revoked on 28 May 2020.

[157] It was argued that the Court of Appeal failed to apply the law under s 5, 6, 7 and 8 of the Evidence Act 1950 (EA 1950) in analysing the evidence for each and every episode narrated by the prosecution. It was further argued that, since the prosecution's case heavily depended on the circumstantial evidence, the prosecution was put in a disadvantageous or handicapped position when the Court of Appeal rejected numerous relevant pieces of evidence against SS's guilty mind in abetting PW13.

[158] As for the abetment charge, it is pertinent to examine carefully the charge proffered by the prosecution against SS. As per the charge, SS is said to have abetted PW13, who had been trusted with the control of Armada's funds in the amount of RM1 million, and PW13 has committed CBT by dishonestly misappropriating the said funds, which is an offence under s 406 of the PC. SS is said to have abetted the commission of the CBT by PW13, and the said CBT was committed as a result of SS's abetment.

[159] On the ingredients of the charge, it is the prosecution's contention that the Court of Appeal had decided on a wrong narrative since it was based on wrong law. To correct the confusion in dealing with the ingredients of the abetment charge, the prosecution pointed out that the CBT committed by PW13 is for "dishonestly misappropriate" the funds which is under the first limb of s 405 of the PC and not for "dishonestly uses or disposes the said fund in violation of any direction of law prescribing the mode in which such trust is to be discharged", which is under the third limb of s 405 of the PC that required a different set of evidence altogether.

[160] To address the prosecution's argument on this point, it is pertinent to look at the decision of the Court of Appeal as stated in the grounds of judgment (GOJ). In dealing with the offence of CBT that was allegedly committed by PW13, the Court of Appeal made the following observations and findings:

> [51] **The prosecution in the present matter has opted for misappropriation as the *actus reus* for the criminal breach of trust said to have been committed by PW13**. This is borne out in the charge where it is stated PW13, "dengan secara tidak jujur menyalahgunakan dana tersebut ..."
>
> [52] In *Ratanlal and Dhirajlal's Law of Crimes*, 28th Edition Vol 3 at p 2923, the learned author stated that "misappropriation" means "improperly setting apart for one's use to the exclusion of the owner".
>
> [53] Section 108 of the PC provides the definition of "abettor". There are two (2) limbs under s 108 of the PC.
>
> i. Firstly, the offence abetted is committed due to the instigation or command and;

ii. Secondly, the offence abetted was not committed but if committed the act would be an offence.

Apart from the two limbs, it must be noted that dishonesty is an important element to prove.

[54] **The prosecution says that PW13 has committed criminal breach of trust by misappropriating the RM1 million as per the charge**. On the facts of the case herein, we find there is no evidence disclosing PW13 had withdrawn the impugned sum of RM1 million, dishonestly. When he was asked as to why he had "clear" the money to PW8 and PW9, PW13 said "Saya hanya mengikut arahan YB Syed Saddiq" and that without the Appellant's instructions, he would not have "clear" the money to PW8 and PW9 (see EIC of PW13 on 6 July 2022). PW8 and PW9 had testified and affirmed that all the monies that were spent from the RM1 million withdrawal were spent on Armada and its programs or activities. Where the evidence adduced shows that the money was distributed for Armada's programs, PW13 cannot be said to have been actuated with dishonesty in distributing the RM1 million. We therefore find the principal offence under s 405 of the PC is groundless.

[55] **It must be emphasised that the prosecution had framed the abetment charge, stating that PW13 had misappropriated the RM1 million**. In other words, according to the abetment charge, the principal offence was committed. Therefore, **the offence said to have been committed by the Appellant falls under the first limb** and not the second limb of the PC.

[56] **Under the first limb, if the Appellant asked PW13 to use the money in the Armada's account not for Armada's programs and PW13 did it, the Appellant can be said to have abetted criminal breach of trust as the element of misappropriation exists**. We say that the principal offence of criminal breach of trust in the instant case is groundless because it cannot be disputed that the RM1 million withdrawn by PW13 was never misappropriated but was used for Armada's programs. In those circumstances the Appellant could not be said to have abetted the commission of the offence of criminal breach of trust when the offence itself does not satisfy any of the elements under s 405 of the PC.

[57] The real question or issue arising from the abetment charge is whether the alleged instruction or command by the Appellant to PW13 to withdraw the RM1 million was tantamount to an abetment to commit criminal breach of trust. It is our considered view that causing or commanding or instructing someone to withdraw money cannot be equated to disposal or conversion as prescribed under s 405 of the PC. There must be actual usage or appropriation of the money in the first place. PW8 and PW9 had testified and affirmed that all the monies that were spent from the RM1 million withdrawal were spent on Armada and Armada's programs or activities. Nowhere in the evidence shows that the Appellant had received a single cent from the impugned sum. We agree with the learned counsel's submission that the act of withdrawal does not fit into any of the physical or *actus reus* elements under s 405 of the PC and that withdrawal at its highest amounts to a preparatory act of the *actus reus* of criminal breach of trust. We have been referred to the case of

Thiangiah & Anor v. Public Prosecutor [1976] 1 MLRH 276, where the Court had stated that:

> "There are four stages in every crime. First an intention to commit the crime, secondly the preparation for its commission, thirdly the attempt to commit it and finally the actual commission of the crime. The mere forming of an intention to commit a crime and making preparations for its commission are not criminal acts and are not punishable under the law."

[Emphasis Added]

[161] From the reading of the said paragraphs, nowhere is it stated that the decision of the Court of Appeal is based on the crime of CBT that was committed by PW13 under the third limb of s 405 of the PC. In fact, the third limb was never discussed at all, and from the clear, simple language used in paras [55] and [56] of the GOJ, the Court of Appeal only considered the proving of CBT by the prosecution under the first limb of s 405 of the PC. For sure, the act of "dishonestly misappropriate" must involve dishonest intent. Therefore, it is sensible for the Court of Appeal to take into consideration the usage of the money after the withdrawal, to determine whether there is any evil intention on the part of PW13 in committing the alleged crime of CBT. In such a situation, the consideration of the money trail as mentioned in para [57] of the GOJ does not mean that the Court of Appeal changed the narrative of the prosecution's case by deciding on the third limb of s 405 of the PC.

[162] Who, then, is in the state of confusion? From the analysis and deliberation of the Court of Appeal as explicitly expressed in the GOJ, I am of the view that the prosecution's argument is misplaced and, to a certain extent, can be misleading. Thus, it is unbecoming for the prosecution to make such a mistake in his submission, which can mislead the correct reading and understanding of the Court of Appeal's decision.

[163] The next question is whether the Court of Appeal committed any appealable error in determining the abetment charge? In answering the question, the analysis and the finding of the Court of Appeal are pertinent. From the GOJ, the Court of Appeal is inquiring into the nature of the offence committed by the principal offender, PW13. This can be seen at paras [41] to [45] of the GOJ. For ease of reference, those paragraphs are as follows:

> [41] We will first address the issue of whether the act of withdrawing RM1 million from the Armada's account by PW13 was an act in violation of Art 24.8 of the Bersatu Constitution.
>
> [42] Art 24.8 of the Bersatu Constitution states:
>
>> "Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi."

[43] It is therefore apparent that only the word "perbelanjaan" is used in Art 24.8 of the Bersatu Constitution, which would mean "expenses" and not "withdrawal", where the translation of which in Bahasa Malaysia is "pengeluaran". We cannot find any equation of the word 'withdrawal" as "perbelanjaan" in any of the Bahasa Malaysia dictionaries. Furthermore, there is no definition of "perbelanjaan" provided in the Bersatu Constitution to include "pengeluaran" or withdrawal. On its plain and ordinary meaning, the word "perbelanjaan" in Art 24.8 of the Bersatu Constitution would connote some form of spending. Therefore, when the LTJ stated that "perbelanjaan" must be read to include "pengeluaran", we disagree. The one-off withdrawal of the RM1 million in the present matter cannot be equated to the action of "one off" expenses or "perbelanjaan". We find that there exists no provision in the Bersatu's Constitution expressly prohibiting the withdrawal or "pengeluaran" of money in excess of RM500,000.00 without the prior approval of Bersatu's Supreme Council.

[44] Art 24.7 of the Bersatu Constitution merely provides that the Treasurer cannot hold more than RM500,000.00 at any one time and the money must be kept in a safe place in the registered office for the party's use as petty cash. In examining the facts and evidence at the trial, it was established that subsequent to the withdrawal of the RM1 million, PW13 distributed RM650,000.00 and RM250,000.00, respectively to Daniel Kusari (PW9) and Naqib Ab Rahim (PW8). During Examination-in-Chief ("EIC") PW9 confirmed that PW13 distributed to him RM650,000.00 for Armada's programs, where RM263,700.00 was spent for the said program. PW8 on the other hand in EIC testified that after receiving RM250,000.00 from PW13, he returned RM100,000.00 to PW13 upon the latter's instruction that the money was for Armada's programs. PW25 as the investigating officer in cross-examination on 27 September 2022, testified that the money spent was less than RM500,000.00. Premised on the evidence of PW8, PW9 and PW25, it follows that the money spent from the impugned RM1 million was below the RM500,000.00 threshold and therefore the Bersatu Supreme Council's approval was never required.

[45] We therefore find that the LTJ erred in referring to Art 24.7 of the Bersatu Constitution and equating "withdrawal" with "expenses" from the same provision. To read the word "perbelanjaan" as necessarily encompassing "pengeluaran" is not a conclusion that must follow from Art 24.8 of the Bersatu Constitution. As such, the withdrawal of the RM1 million from the Armada's account by PW13 cannot be said to have been used or disposed of in violation of a direction of law.

...

[49] In the present matter, the physical act or *actus reus* of "withdrawal" of money does not fall under any of the five limbs of the *actus reus* of criminal breach of trust defined under s 405 of the PC. So, when PW13 being one of the three (3) signatories or trustees of Armada's account and he is not prohibited from holding Armada's funds, withdrew the RM1 million from the Armada's account, he cannot be said to have committed criminal breach of trust and it necessarily follows that the Appellant cannot be said to have abetted the commission of an offence.

[164] From the analysis, the Court of Appeal found that the act of withdrawing RM1 million from Armada's account by PW13 does not amount to CBT as the elements that constitute the offence which relate to the *actus reus* or physical element required under s 405 of the PC are not fulfilled. One of the main considerations is the interpretation of Art. 24.8 of the BERSATU's Constitution, which prohibits the "expenses" and not "withdrawal" of money in excess of RM500,000.00 without the prior approval of BERSATU's Supreme Council.

[165] Then, is the Court of Appeal correct in its analysis and findings on this issue? Upon reading the relevant provision in BERSATU's Constitution, particularly Art 24.8, I am of the view that no reasonable judge will differ from the Court of Appeal's finding based on the following reasons.

[166] First and foremost, the BERSATU Constitution is not law. It's just a set of rules that bind or govern the members of that political party. Any non-compliance with the rules will attract disciplinary action by the party, unless there is a complaint that the non-compliance with the rules clearly involved a commission of an offence stipulated under the PC or other law, e.g. the act of forgery, theft or bribery to name a few.

[167] Here, the complaint against PW13 involved an allegation that he breached Art. 24.8 of the BERSATU's Constitution, which amounted to an act of "dishonest misappropriation" of the Armada's fund. In interpreting Art. 24.8, the Court of Appeal took a strict approach where it was decided that the LHCJ erred in equating the word "withdrawal", which is not used or mentioned in Art. 24.8, with the word "expenses" that is clearly stated in the provision.

[168] The following question is whether such an approach was correctly applied? It is my considered view that the Court of Appeal is not wrong in its approach since the interpretation involved a matter that can attract criminal liability of PW13. Consequently, it will lead to penal sanction upon conviction. The same consideration should apply to SS since he is facing the abetment charge, which is based on the criminal liability of PW13, which will also lead to penal sanction upon conviction.

[169] The provision under Art. 24.8 of the BERSATU's Constitution clearly stated that "expenses" in excess of RM500,000.00 have to get prior approval of BERSATU's Supreme Council. Can it be expanded to cover the act of "withdrawal" of the money? The Court of Appeal answered the question negatively. I am of the view that the Court of Appeal is correct. I find it absurd to expand the meaning of the word "expenses" used in Art. 24.8 of the BERSATU's Constitution to include "withdrawal" since both words have different meanings and connotations as observed by the Court of Appeal at paragraph [43] of the GOJ.

[170] On absurdity, I am guided by the observation by Lord Greene MR in *Grundt v. Great Boulder Proprietary Gold Mines Ltd* [1948] 1 Ch 145 at pp 159-160, as follows:

> There is one rule, I think, which is very clear — and this brings me back to where I started, **the doctrine of absurdity** — that although the absurdity or the non-absurdity of one conclusion as compared with another may be of assistance, and very often is of assistance, to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that judges may be fallible in this question of an absurdity, and **in any event must not be applied so as to result in twisting language into a meaning which it cannot bear; it is a doctrine which must not be relied upon and must not be used to re-write the language in a way different from that in which it was originally framed**. Here, I not only do not find any absurdity, but even if I did, I should not be justified in re-writing art. 102 in such a way as to make it comply more nearly with what I, or another judge, might consider to be more reasonable.
>
> [Emphasis added]

Thus, the Court of Appeal is correct in its finding that the LHCJ erred in equating the word "withdrawal" with "expenses" since the equation would be tantamount to rewriting the language in a way different from that in which it was originally framed.

[171] If the interpretation of the word "expenses" to include "withdrawal" as decided by the LHCJ is accepted, there would be a quandary as to the correct interpretation of the word "expenses" used in Art. 24.8 of the BERSATU's Constitution, and alternative interpretations could exist. In such a situation, the benefit of the doubt in the interpretation must tilt in favour of the accused person, SS in this case and not otherwise. In other words, if two views are possible on the evidence adduced in the interpretation of the BERSATU's Constitution, one pointing to the guilt of SS and the other to his innocence, the view which is favourable to SS must be accepted. Thus, the interpretation and finding of the Court of Appeal on the interpretation of Art. 24.8 of the BERSATU's Constitution is correct, standing on a sound footing and should not be disturbed.

[172] Therefore, I am of the considered view that to equate the non-compliance with Art. 24.8 of the BERSATU's Constitution by PW13 in withdrawing RM1 million from Armada's account to an act of CBT surely has no legal basis. The Court of Appeal correctly observed that the act of withdrawal does not fall within any of the five limbs of the *actus reus* of CBT. Thus, it is a non-starter for the prosecution to rely on that piece of evidence against SS under the abetment charge.

[173] Related to the same issue, the prosecution chose not to prosecute PW13 for CBT. In the administration of justice in criminal cases, it is the responsibility of the prosecution to prove that someone is guilty, and not for someone who is accused of a crime to prove his innocence. In a criminal trial, the presumption of innocence is a principle of cardinal importance, and so the guilt of the accused person must in every case be proved beyond reasonable doubt by the prosecution. However strong and grave the suspicions against the accused person are, they can never take the place of proof in criminal proceedings. Raja Azlan Shah FJ (as His Royal Highness then was) in *B A Rao & Ors v. Sapuran Kaur & Anor* [1978] 1 MLRA 112 said:

> ... In the administration of justice nothing is of higher importance than that all relevant evidence should be admissible and should be heard by the tribunal that is charged with deciding according to the truth. To ordain that a court should decide upon the relevant facts and at the same time that it should not hear some of those relevant facts from the person who best knows them and can prove them at first hand, seems to be a contradiction in terms. It is best that truth should be out and that truth should prevail.

In *Sia Soon Suan v. PP* [1965] 1 MLRA 32, His Lordship Ong Hock Thye AGCJ (Malaya), delivering the judgment of the Federal Court, at pp 36-37 said this:

> ... We must accordingly exonerate all police and military personnel as well as the public prosecutor's officers from any sort of blame for the flaws which had developed in the prosecution case, nevertheless, the requirements of strict proof in a criminal case cannot be relaxed to bridge any material gap in the prosecution evidence. Irrespective of whether this court is otherwise convinced in its own mind of the guilt or innocence of an accused, its decision must be based on the evidence adduced and nothing else. This is axiomatic.

In this case before us, the evidence shows that PW13 agreed in cross-examination that he did not know about the requirement under Art. 24.8 of the BERSATU's Constitution until he was detained and questioned by MACC during the investigation, and he agreed that he committed CBT based on such a requirement. See encl 15 at pp 533 to 535.

[174] Considering the fact that PW13 was never charged and convicted before any court of law, he cannot be adjudged as a person that had committed or was guilty of the offence of CBT. The prosecution in the main written submission in encl 58, among others at paras 225 and 227 make a stand that "SP13 memang telah melakukan kesalahan pecah amanah jenayah di bawah s 406" and at para 229 the prosecution said that without instruction from SS "SP13 tidak akan melakukan kesalahan pecah amanah jenayah di bawah s 406", even without any proper proof that PW13 had committed CBT. Labelling PW13 as a person that had committed CBT just based on his confession is not good enough. For sure, the prosecution's stance on the alleged offence of CBT committed by PW13 is superficial and does not conform to the strict standard of proof in criminal jurisprudence.

[175] It is equally important to note that any person should not be coerced into confessing to a crime or to incriminate themselves. The Court of Appeal in its finding agreed with the defence's contention that the evidence of the witnesses had succumbed to the pressure, giving rise to a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution's case. Paragraphs [134] to [140] of the GOJ are as follows:

> [134] One other important aspect of the Appellant's defence relates to the probability of PW13's motivation to give evidence against the Appellant. It was the defence's contention that from PW13's evidence, it can be strongly inferred that PW13 has tailored his evidence to appease the MACC. The relevant parts of PW13's evidence were highlighted as follows:
>
> (a) While being examined by the prosecution, PW13 had admitted that he had been remanded by the MACC for a period of 6 days and during the remand period, he was sad and under a lot of stress;
>
> (b) He suffered a break down after being informed that his initial remand period may be extended for one more day; and
>
> (c) While he was in remand, he had even called his wife (PW12) to inform her that "bagi tahu pada sahabat-sahabat di luar, tak payah buat-buat PC ni apa, sebab kat dalam, saya yang kena teruk, bukan mereka kat luar."
>
> [135] PW13 then admitted during cross-examination that after being made aware that Art 24.8 of the Bersatu Constitution used the word 'perbelanjaan' instead of 'pengeluaran', he had changed his evidence to focus on no working papers being prepared for the withdrawal of the said RM1 million. The Court's attention was taken to that part of PW13's evidence:
>
> "PB (GDW): Now you know... that PWRm got it wrong. Right? Because 24.8 does not say "pengeluaran" it says "perbelanjaan". Untuk a one-off payment of RM500,000.00 which wasn't the case here, correct?
>
> PW13: Yes
>
> PB (GDW): Yeah. That's why your whole evidence has changed now and you are focusing just on kertas kerja,right?
>
> PW13: Yes."
>
> [136] The defence further highlighted that another defence witness, DW4 had testified that she had been threatened and roughed up by MACC officers who had interrogated her in respect of the Appellant's case. She had then lodged a police report (D95) and called a press conference pertaining to the incident. In D95, DW4 revealed that:
>
> i. On 4 June 2020, the MACC officers had taken her mobile phone, squealed at her and threw her mobile phone towards her;
>
> ii. While in the investigation room, 6 MACC officers had hissed her and abused her with the words "babi" and "bodoh". These officers were said to have asserted that she deserved to live alone and to be cast aside by her family when they were dissatisfied with her answers; and

> iii. One of the MACC officers had even threatened to slap her face and that subsequently she was also asked to stand for about 30 minutes with one of her legs and both of her hands up.
>
> [137] The Appellant had written to the MACC Chief Commissioner complaining *inter alia* of the incident that happened to DW4 (P96).
>
> [138] DW4 is the wife of PW10, Abdul Hannan bin Khairy, who also admitted that he was pressured while being investigated. The relevant part of PW10's evidence is reproduced:
>
> > "PB (GDW): Adakah kamu juga rasa tertekan?
> >
> > PW10: Ya
> >
> > PB (GDW): Ya. Dan ini semua adalah kerana PWRM hendak jawapan jawapan tertentu dari kamu dan isteri kamu?
> >
> > PW10: Ya."
>
> [139] We have examined the evidence of PW13, and as alluded to earlier, his evidence is inconsistent in many aspects during EIC, cross-examination and re-examination. We find there is merit in the defence's contention that the evidence of these witnesses being pressured gives rise to a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution's case. We agree with the defence's contention that it cannot be dismissed PW13 had succumbed to the pressure of being investigated and interrogated to the extent that he admitted he had committed criminal breach of trust when questioned by the prosecution and gave evidence against the Appellant.
>
> [140] We are of the considered view that when there is evidence that witnesses were pressured and submissions made to infer evidence being tailored to suit the prosecution case, coupled with inconsistencies in the witness's testimony such as PW13 herein, not only there is merit in the submission, the evidence are both material and relevant to be considered. Yet again, nowhere in the LTJ's grounds of judgment disclosing that His Lordship had evaluated and considered this critical evidence. The omission to consider all the evidence has resulted in a failure of justice to the Appellant, and we find there is a serious misdirection on the part of the LTJ.

[176] In the written submission, the prosecution frequently condemned the Court of Appeal for being unfair to them and MACC by making "wild accusations" without basis against them. It started with para 45 of the submission where it stated that:

> Mahkamah Rayuan **lebih dipengaruhi dengan emosi apabila membuat beberapa tuduhan liar** kepada Pendakwaan dan pihak SPRM tanpa apa-apa keterangan yang boleh digunakan untuk menyokong tuduhan liar tersebut. ...

Followed by para 81:

> ... Adalah hujahan kami kebarangkalian ini tidak cukup untuk mewujudkan keraguan yang munasabah dan **tidak cukup juga menjadi lesen untuk Mahkamah Rayuan membuat tuduhan liar** sebegini.

At para 91:

> Suka atau tidak, **Mahkamah Rayuan telahpun mengeluarkan "tohmahan"** kepada pihak Pendakwaan dan pihak SPRM **dengan menuduh mungkin (might) memberikan paksaan ke atas SP13 untuk menyesuaikan (tailored) versi pihak Pendakwaan**.

At para 92:

> Ini semua adalah **tuduhan yang serius oleh Mahkamah Rayuan** ke atas pihak SPRM dan Pendakwa Raya. Kami sendiri **tidak pernah come across tuduhan liar sebegini** datang daripada satu Mahkamah Rayuan. ...

At para 94:

> **Tuduhan liar oleh Mahkamah Rayuan ini** langsung tidak berlandaskan kepada apa-apa keterangan dan sangat tidak adil kepada pihak Pendakwaan atau SPRM. **Seolah-olah kami dipukul secara curi. Tiada peluang untuk kami menjawab tuduhan liar itu. Tuduhan liar ini semata-mata atas spekulasi dan sangkaan**. ...

At para 97:

> Bukan sahaja **Mahkamah Rayuan telah membuat tuduhan liar** kepada pihak Pendakwaan dan SPRM dengan **hanya bersandarkan kepada spekulasi dan sangkaan**, Mahkamah Rayuan juga gagal membuat judicial appreciation terhadap keterangan lain di dalam rekod rayuan. ...

At para 100:

> **Instead of membuat tuduhan liar sebegini** adalah lebih baik Mahkamah Rayuan meneliti sama ada SP10, SP11 dan SP13 mempunyai motif jahat ...

At para 115:

> Sebenarnya dalam kes rayuan ini, Mahkamah Rayuan hanya bergantung kepada soalan pihak Pembelaan semasa memeriksa balas SP13 **di dalam membuat tuduhan tidak berasas** kepada pihak Pendakwaan dan pihak SPRM. **Mahkamah Rayuan telah membuat *sweeping statement* dengan hanya bergantung kepada hujahan peguam Responden. Tuduhan liar ini bukannya datang daripada keterangan** tetapi daripada cadangan semasa soal-balas SP13 yang mana telah dinafikan oleh SP13. ...

At para 221:

> Keadaan ini berlaku kerana **Mahkamah Rayuan telah ada *a fix mind set* bahawa SP13 tidak boleh dipercayai *from the word go* lagi dengan membuat tuduhan liar** bahawa SP13 telah ditekan dan diugut oleh SPRM. ...

[Emphasis added]

Finally, at para 257 the prosecution submitted that all the accusations by the Court of Appeal against them and MACC are very serious and baseless, and urged this Court to expunge paras [134] to [140] from the GOJ.

[177] The question is, did the Court of Appeal make any "wild accusation" against the prosecution or the MACC as frequently alleged by the prosecution in the submission? From the reading of paras [134] to [140] of the GOJ, it is comprehensible that the observation and finding of the Court of Appeal is in response to the defence's contention that from PW13's evidence, it might have been tailored to appease the MACC.

[178] Upon perusing the entire paras [134] to [140] of the GOJ, I am of the view that the Court of Appeal has referred, analysed and dealt with the material relevant evidence pertaining to the issue before making the finding of fact that there might be a truth in the defence's contention concerning PW13's testimony against SS. The evidence referred to by the Court of Appeal as stated at paras [135] to [138] of the GOJ, explicitly justified the said finding of fact. The finding that was based on the testimony of the witnesses cannot be categorised as "wild accusation" against the prosecution or the MACC as submitted by the prosecution.

[179] Besides the excerpt referred to by the Court of Appeal in the GOJ, there is other hard evidence that can be seen from the appeal records that supported the defence's contention and the Court of Appeal finding. The relevant evidence is as follows:

(i) Evidence of PW13

Enclosure 15 at p 409 — Examination in Chief

TPR(WS): Baik... seterusnya semalam isteri anda, iaitu Puan Hidayah ada memberikan keterangan... terutama menjawab soalan Encik Gobind. Awak tahu pasal apa?

SP13: Ya, saya tahu.

TPR(WS): Boleh awak perjelaskan sikit pasal perkara itu?

SP13: Semasa saya ditahan 5 hari, sudah tentu saya rasa, siapa yang ada kat tempat saya, pada waktu tu... berasa sangat stress dan tertekan. Dan pada waktu yang sama juga, pada waktu tu kecoh... saudari Hidayah... Hidayah Hannaan, ya... bukan Hidayah isteri saya, ada membuat press conference berkenaan apa yang dikatakan... dikenakan sewaktu berada masa siasatan beliau di SPRM.

Dan benda ni... menambahkan stress saya lagi, sewaktu saya berada kat dalam.

Dan pada hari kelima tu, SPRM menjangkakan bahawa saya mungkin akan di extend selama sehari lagi reman. Jadi, of course, waktu tu, saya memang break down dan semasa menjadi tahanan SPRM saya tidak diberikan apa-apa platform untuk berhubung dengan luar.

Of course, pada waktu itu saya memang sedih, tertekan... banyak, banyaklah, memang breakdown. So, saya meminta salah seorang pegawai SPRM yang mengambil keterangan saya, saya memang minta tolong pada dia, "tuan, boleh tak saya nak minta izin untuk saya call wife saya", pada waktu tu. Sebab saya memang tengah breakdown. Dan dia memberikan handphonenya pada saya dan saya call wife saya. Dan antara apa yang saya katakan kepada isteri saya, saya memberikan insurance kepada isteri saya, bahawa saya okay dalam tahanan SPRM. Biasalah... proses interrograsi tidak ada sentuhan terhadap fizikal terhadap saya. Dan saya menyatakan kepada isteri saya, apa... err... bagi tahu pada sahabat-sahabat diluar, tak payah buat-buat PC ni apa, sebab kat dalam, saya yang kena teruk, bukan mereka kat luar. Itu ayat saya isteri saya lah, pada waktu itu. Dan dalam keadaan tertekan lah, pada waktu itu.

So, itu yang berlaku... sebenarnya berlaku, apa perbualan saya dengan isteri saya.

Enclosure 15 at p 535 — Cross-Examination

PB(GSD): Baik. Jadi, kamu setuju dengan saya, bahawa semasa siasatan, kamu dalam tertekan kerana kamu dikatakan melakukan kesalahan yang mana kamu bole dituduh?

SP13: Betul.

PB(GSD): Dan kamu tidak hendak dituduh, betul?

SP13: Seperti orang lain, saya pun, of course, saya pun tak nak dituduh.

At p 539

PB(GSD): Di dalam kes ini... it is SPRM that arrested you, tangkap kamu, tahan, siasat kamu dengan teruk. They broke you down, didn't they?

SP13: Yeah.

PB(GSD): And they had to break you down because if they didn't, you didn't give them what they wanted. Think about it, Encik Rafiq. Kalau pada hari pertama sudah sebut semua yang mereka nak tu, tak payah mereka teruk, tak payah mereka sampai sedih, pecah dan sebagainya, right? They went for you broke you down until they got what they wanted.

SP13: Ya.

ii. Evidence of SP10

Enclosure 14 at pp 289 to 291 — Cross-Examination

PB(GSD): Volkswagen Passat. Lebih kurang bila kamu beli kereta itu?

SP10: Saya tak ingat, tapi mungkin awal 2020.

PB(GSD): Baik. Encik Hannaan, saya akan tanya satu soalan, dengar baik-baik. Pernahkah Encik Hannaan disoal siasat berkenaan dengan kereta itu?

SP10: Ya

PB(GSD): Oleh pihak SPRM?

SP10: Ya

...

PB(GSD): Yes. Yang Arif, I need direction from the court, Yang Arif. The next question I ask may incriminate the witness. I am going to try to put in but I will try to phrase in in a way that doesn't, but I stand directed, Yang Arif. Yang Arif, feel that I shouldn't then will not or rephrase. My learned friend as well.

Encik Hannaan, minta maaf... saya kena tanya satu soalan, please listen to the question carefully. Encik Hannaan setuju bahawa pihak SPRM ada siasat berkenaan dengan kereta Passat itu. Right? Itu tadi sudah setuju lah, ya. Saya katakana kepada kamu, Yang Arif, I put it in the best way I can, bahawa Encik Hannaan juga risau... risau bahawa tindakan boleh diambil berkenaan dengan kereta itu terhadap Encik Hannaan. It's that okay, Yang Arif.

YA: Yeah

TPR(WS): Itu paling lembut, saya rasa.

PB(GSD): Yeah, I have been fair to witness, Yang Arif.

SP10: Ya.

PB(GSD): Dan Tindakan oleh SPRM? Ya?

SP10: Boleh ulang semula, YB.

PB(GSD): Tadi sebut risau Tindakan boleh diambilkan... jadi Tindakan boleh diambil oleh SPRM terhadap kamu?

SP10: Ya.

PB(GSD): Dan setuju bahawa sehingga sekarang tidak ada Tindakan diambil terhadap kamu berkaitan dengan kereta tersebut?

SP10: Ya.

At pp 297-298

PB(GSD): Encik Hannaan, mendengar keseluruhan keterangan yang telah pun kamu berikan hari ini, err... Encik Hannaan setuju dengan saya bahawa Encik Hannaan dalam ketakutan.

SP10: Ya.

PB(GSD): Juga untuk memeberi keterangan pada hari ini?

SP10: Ya.

PB(GSD): Dan Encik Hannaan takut... minta maaf ya, saya tanya soalan direct. And this is Court's answer, ya... Encik Hannaan juga takut pegawai-pegawai SPRM yang mengiringi kamu?

SP10: (SP10 tidak memberikan jawapan)

PB(GSD): Tidak mahu jawab?

SP10: Boleh kalau saya tak jawab?

PB(GSD): Baik. Leave it like that, Yang Arif. Saya juga katakan kepada kamu bahawa mendengar keterangan ini, yang diberikan hari ini juga adalah keterangan akibat daripada tekanan yang diberikan oleh SPRM?

SP10: Sebahagiannya, ya.

iii. Evidence of PW12 — the wife of PW13

Enclosure 14 at p 365 — Cross-Examination

PB(GSD): Adakah puan ingat bahawa Rafiq ada maklumkan kepada puan untuk memberitahu dia orang, ya... supaya minta Hidayah tone down on the PC yang mengkritik SPRM sepanjang SPRM sedang jalankan siasatan? I read again, Rafiq maklumkan supaya memberitahu dia orang, supaya minta Hidayah tone down on the PC yang mengkritik SPRM sepanjang SPRM sedang menjalankan siasatan?

SP12:

PB (GSD): Hidayah yang dimaksudkan adalah... Hidayah yang dimaksudkan itu adalah isteri kepada Encik Hannaan.

SP12: Okay, ya... betul.

[180] Upon sieving the note of evidence in the appeal records, the testimonies on the pressure put to relevant witnesses were not seriously challenged by the prosecution in the re-examination. From the evidence adduced at the prosecution case, it is not plainly wrong for the Court of Appeal to agree with the defence's contention that PW13's evidence might have been tailored to appease the MACC. The prosecution's allegation that the Court of Appeal made a "wild accusation" is baseless and uncalled for.

[181] As for the offence of abetment, it is trite that abetment is not direct commission of an offence but the facilitation of one. There is no straightforward or clear-cut formula that can be provided as to when the conviction for abetment would depend on the conviction of the principal offender. As for the abetment charge, SS as an abettor cannot and should not be said to have abetted PW13, the principal offender, when the act of the principal offender is not proven to be criminally wrong in the first place.

[182] Based on the above, I find that there is no appealable error in the Court of Appeal's finding that the prosecution failed to prove the abetment charge even at the *prima facie* stage.

Section 403 Charge

[183] The s 403 charge is the second charge that was framed against SS. The charge is as follows:

> Bahawa kamu, di antara 8 April 2018 sehingga 21 April 2018 di Malayan Banking Berhad yang beralamat di No. 16 & 16A, Jalan Pandan 3/6A, Taman Pandan Jaya dalam Wilayah Persekutuan Kuala Lumpur telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri, iaitu wang berjumlah RM120,000.00 daripada akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 dengan menyebabkan Rafiq Hakim bin Razali melupuskan wang tersebut dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 403 Kanun Keseksaan [Akta 574].

[184] The relevant provision of the law regarding criminal misappropriation of property is as follows. Section 403 of the PC provides:

> **Dishonest misappropriation of property**
>
> **403.** Whoever dishonestly misappropriates, or converts to his own use, or causes any other person to dispose of, any property, shall be punished with imprisonment for a term which shall not be less than six months and not more than five years and with whipping and shall also be liable to fine.

[185] The prosecution raised 9 grounds of appeal in its petition of appeal for the s 403 charge at the *prima facie* stage. As correctly summarised by learned counsel for SS, the 9 grounds are deduced to 3 main grounds as follows:

i. The COA erred when it ruled that the amount of RM120,000.00 belonged to the respondent and that the amount of RM120,000.00 had been used by the respondent for the purpose of his election campaign when the respondent treated it as a reimbursement for RM170,000.00 spent during his campaign — grounds 1, 3 and 4 of the petitions of appeal;

ii. The COA erred in invoking adverse inference housed under s 114(g) of the Evidence Act 1950 ("EA 1950") due to the failure of the appellant to call Mohamed Amshar bin Aziz and Siti Nurul Hidayah binti Kamaruddin — grounds 5 and 6 of the petitions of appeal; and

iii. The COA erred in finding that SP13's evidence was inconsistent and unsafe to be acted upon — ground 7 of the petitions of appeal.

Be that as it may, as mentioned at para [147] above, the prosecution condensed all the grounds of appeal to only two main reasons, and these two reasons also apply to the s 403 charge.

[186] On the other hand, learned counsel for SS raised a specific issue in relation to the s 403 charge in their submission here before us, or even at the courts below, that is, whether the charge is defective and groundless because it doesn't say the property misappropriated belongs to any other person other than the respondent. It was further submitted that nowhere did the charge state that the impugned RM120,000.00 belonged to ABBE, PW13 or anybody else. Then, learned counsel for SS referred to the sample charge for the offence under s 403 of the PC that ought to be followed as provided by the learned authors in *Law of Crimes* by Ratanlal & Dhirajlals, (26th Ed) and in *Mallal's Penal Law 2002*, where both authors lay down the requirement of naming the owner of the property involved in the misappropriation as an essential ingredient of the charge.

[187] Back to the charge framed against SS, the relevant part of the charge related to the issue of defective charge as submitted by learned counsel for SS is "telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri, iaitu wang berjumlah RM120,000.00 daripada akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 dengan menyebabkan Rafiq Hakim bin Razali melupuskan wang tersebut". Literally, SS is said to have dishonestly misappropriated to his own use the impugned RM120,000.00 from an account which belongs to ABBE by causing PW13 to dispose of the said money. From the choice of words in the charge in Bahasa Melayu, it is comprehensible and without doubt that the s 403 charge proffered by the prosecution stands on the fact that the impugned RM120,000.00 in ABBE's account belongs to ABBE. Therefore, there is no basis in the defence's contention that the s 403 charge against SS is defective on the ground that there is uncertainty of the owner of the impugned RM120,000.00.

[188] Be that as it may, the most pertinent question in relation to s 403 charge is, did the prosecution prove a *prima facie* case against SS under s 403 of the PC. The *actus reus* of the offence under s 403 of the PC is that, SS must have actually taken, used, or disposed of the impugned RM120,000.00 for his own use. The words "to his own use" must imply that the impugned RM120,000.00 belong to someone else other than the accused. Thus, it is essential for the prosecution to prove who is the owner of the impugned RM120,000.00, and in the charge proffered by the prosecution, it had positively identified ABBE as the owner of the money. Therefore, the real issue to be determined is that, whether the prosecution proved beyond doubt that the impugned RM120,000.00 in ABBE's account that was allegedly misappropriated by SS belongs to ABBE, and be mindful of the line of the defence forwarded by SS during the prosecution case that the impugned RM120,000.00 does not belong to ABBE, but belongs to him.

[189] To start with, we have to look at the analysis and the finding of the Court of Appeal on this issue. The relevant paragraphs in the GOJ, that deal with the issue are as follows:

> [84] The *actus reus* of the offence under s 403 of the PC is misappropriation or conversion, or causing the disposal of property of another person. In *Law of Crimes* by Ratanlal & Dhirajlal's, (26th Edn), at p 2264, it states:
>
> > "2. Scope...The essence of this offence of criminal misappropriation is that the property of another person comes into the possession of the accused in some neutral manner and is misappropriated or converted to his own use by the accused..."
>
> [Emphasis added]
>
> [85] In the same literature, the author further laid down the ingredients of the offence under the same section to be:
>
> > "5. Ingredients — The section requires the following ingredients:
> >
> > (i) The property must belong to a person other than the accused;
> >
> > (ii) The accused must have misappropriated property or converted it to his own use; and
> >
> > (iii) There must be dishonest intention on the part of the accused."
>
> [Emphasis added]
>
> [86] The evidence of PW19 revealed that the ABBE account was initially registered under PW13's name for the purpose of collecting and managing funds for Armada through the sale of merchandise and relevant activities.
>
> [87] PW13 in re-examination confirmed that the ABBE account was cleared beforehand for the purpose of the Appellant's fundraising. It was established that the monies collected from the fundraising events were RM120,000.00, which was then transferred from the ABBE's account to the Appellant's Maybank account via four (4) transactions, respectively amounting to RM30,000.00 each, upon the Appellant's instructions.
>
> ...
>
> [91] In examining the evidence of PW13, we further find that even PW13 did not say the RM120,000.00 belongs to ABBE. Instead, he testified that the account belongs to ABBE and the RM120,000.00 was deposited therein. PW13 did not say the RM120,000.00 belonged to him. He was not in a position to say as such because it was he who had suggested the ABBE account to be used to hold the money to be used by the Appellant. In fact, we find not an iota of evidence surfaced showing that the money belongs to ABBE or Armada. There was no attempt by the prosecution to lead evidence that it is ABBE's monies, albeit ABBE's account was used to receive the donation as a result of the Appellant's appeal to assist him with his election expenses. Premised on the LTJ's finding that the money was for the purpose of the Appellant's political campaign, we are of the considered view that PW13 had

held the RM120,000.00 in trust for the Appellant and not for the donors. In other words, PW13 was accountable to the Appellant as the RM120,000.00 was on transit in the ABBE's account.

...

[93] The proposition that the ownership of the property must lie in some person other than the accused is supported by Illustration (a) of s 403 of the PC, which states:

> "(a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section"

...

[108] It is undisputed that the impugned sums were deposited into the ABBE account, not the Armada account. The investigating officer PW28 herself conceded that the ABBE account and Armada account are separate and distinct entities.

[109] PW11 further corroborated PW28, where at para 61 of his witness statement, he stated:

> "Pendapat saya sekiranya wang dari akaun ABBE ini masuk ke dalam akaun peribadi milik YB Syed Saddiq, ianya tidak menjadi urusan ARMADA kerana akaun tersebut bukanlah akaun rasmi milik ARMADA."

[110] PW13, for that matter, lent weight to what PW11 said, where vide para 158 of D79E (his witness statement), he stated:

> "Tujuan majlis makan ini diadakan untuk tujuan fundraising YB Syed Saddiq sendiri iaitu berkempen di Muar."

[111] Further in para 163 of P79A, PW13 further stated:

> "...Saya tidak pernah membentangkan berkenaan wang sumbangan ini di dalam mesyuarat Exco kerana ianya bukan untuk kegunaan politik Armada tetapi untuk kegunaan politik YB Syed Saddiq berkempen di Parlimen Muar namun saya pernah membentangkan laporan kewangan ABBE di dalam mesyuarat rasmi Exco Armada berkenaan penjualan T-shirt dan cenderahati."

[112] Given the various contradictions in the evidence of PW13 in respect of which the monies were collected at the two fundraisers, the inference most favourable to the Appellant must be adopted.

[113] On a maximum evaluation, we find the prosecution has failed to adduce credible evidence and facts to support the s 403 charge. Credible evidence is evidence that is believable or capable of belief, and such evidence, after being subjected to maximum evaluation, the Court must feel safe to accept and act

> upon and that the evidence proves all the ingredients of the offences. In this case, the most important ingredient of the offence under s 403 of the PC, ie the RM120,000.00 belongs to another person instead of the Appellant, was not proved and we further find the evidence adduced by the prosecution are unsafe to be relied upon and insufficient to prove the necessary ingredients of the offence.

[190] From the GOJ, it clearly shows that the Court of Appeal spelled out the correct proposition of the law that one of the main ingredients in proving criminal misappropriation is that the property involved must belong to someone else other than SS. Upon examining the relevant appeal records, the Court of Appeal concluded that the prosecution has failed to adduce credible evidence to support a case under s 403 of the PC against SS. In other words, the prosecution failed to prove beyond reasonable doubt that the impugned RM120,000.00 in the ABBE's account which was allegedly misappropriated by SS actually belongs to ABBE.

[191] The next question is, whether there is any error in the Court of Appeal's finding on this issue? First of all, we have to look at the evidence tendered by the prosecution through PW13, the sole owner of ABBE and who had control of ABBE's account. PW13's testimony is very crucial and significant since he is the only person that has control over ABBE's account, as he is the sole owner of ABBE. As the owner of ABBE, PW13 must have personal knowledge of the impugned RM120,000.00 in ABBE's account.

[192] In examination-in-chief, PW13 told the court that the money in the ABBE's account was meant for the benefit of all Armada's members, including SS. However, when asked about the related four tranches of transfer of RM30,000.00 each to SS's personal account on 8, 11, 12 and 21 of April 2018, PW13 told that the business transaction details noted down on each transfer were for — "Fund transfer ARMADA Bumi Bersatu Enterprise — funds raising" followed by the numbers of payments which is 1st to 4th payment, and the amount of each transfer is RM30,000.00.

[193] During cross-examination, PW13 told the court that he himself offered ABBE's account to be used to deposit the funds raising money for SS's election campaign. The relevant excerpt is at p 521, encl 15 is as follows:

> PB(GSD): You are well aware of the fact bahawa akaun tersebut telah pun digunakan untuk tujuan fundraising YB Syed Saddiq sendiri iaitu berkempen di Muar?
>
> SP13: Saya tak pasti program itu adalah untuk Syed Saddiq sendiri. Tapi saya dicontact oleh Amshar, Pengarah Program. Dia kata akan ada satu fundraising, I mean, dua program fundraising yang akan mengguna satu akaun selain akaun ARMADA. Atas sebab itu, saya cadangkan menggunakan akaun ABBE ini yang bukan akaun rasmi ARMADA. Itu saja pengetahuan saya.

At pp 522-523, PW13 agreed that the purpose of the funds raising is for SS political campaign based on his previous statement given to MACC.

> PB(GSD): Saya bacakan, "Saya sahkan selepas bulan Mac 2018 hingga Jun 2018, sumber kewangan ABBE Adalah hasil sumbangan orang ramai sepenuhnya iaitu melalui Majlis Makan Amal di Muar dan Majlis Makan di De Palma Hotel."
>
> SP13: Betul
>
> PB(GSD): Sepenuhnya, ya…
>
> SP13: Okay.
>
> PB(GSD): Right, "Sumbangan orang ramai ini adalah satu program funraising. Saya sahkan YB Syed Saddiq telah mengarahkan Amshar untuk adakan fundraising dan menganjurkan Majlis Makan Malam Amal ini." Betul
>
> SP13: Betul.
>
> PB(GSD): "Tujuan majlis makan malam ini adalah untuk tujuan fundraising YB Sayed Saddiq "sendiri", iaitu berkempen di Muar… correct?
>
> SP13: Betul
>
> PB(GSD): Then it was on, "sumbangan ini untuk kegunaan politik YB Syed Saddiq sendiri. Iaitu berkempen di Parlimen Muar sebagai wakil Parti Pribumi. It stops there.
>
> Very clear. Your evidences during investigation and semasa sediakan dokumen ini menyatakan kamu tahu wang itu adalah untuk funraising Syed Saddiq sendiri untuk berkempen di Parlimen Muar. Right? You agree with me? Kamu setuju dengan saya bahawa keterangan kamu di mahkamah bercanggah dengan apa yang kamu telah nyatakan di perenggan 158.
>
> SP13: (SP13 tidak memberikan jawapan)
>
> PB(GSD): Right?
>
> SP13: Ya.

At p 524, SP13 confirmed twice that no other person except him had access and control of the ABBE's account. Then, at p 528 PW13 also agreed that the impugned RM120,000.00 in ABBE's account was not tabled in any Armada's EXCO meeting since the funds belonged to SS for his election campaign.

> PB (GSD): Saya katakan kepada kamu, bahawa laporan berkenaan kutipan sumbangan orang ramai bagi kempen politik Syed Saddiq melalui fundraiser-fundraiser tersebut, tidak kamu bentangkan dalam mesyuarat Exco? Right?
>
> SP13: Betul.

PB (GSD): Dan kamu tidak bentangkan kerana ianya bukan untuk kegunaan politik ARMADA tetapi untuk kegunaan politik YB Syed Saddiq sendiri berkempen di Parlimen Muar.

SP13: Berkempen di?

PB (GSD): Parlimen Muar. Parlimen Muar.

SP13: Untuk PRU, maksud tuan?

PB (GSD): Ya.

SP13: Betul

[194] Besides that, another relevant testimony came from the MACC's investigation officer, Nurul Hidayah Binti Kamarudin (PW28), who was in charge of investigating ABBE's account related to s 403 charges against SS. In the examination-in-chief, PW28 confirmed that ABBE is solely owned by PW13 and that ABBE opened and owned ABBE's account. PW28 also confirmed that she knew about the two fundraising events that were held on 7 April 2018 and 8 April 2018 in Muar and De Palma Hotel Ampang, respectively. From her investigation, the purpose of the fundraising events was for SS's campaign for the Muar parliamentary seat in coming 14th General Election (GE14). PW28 further testified that as for the Muar fund raising event, it was funded by SS personally which cost him RM30,000.00 and for De Palma Hotel fund raising event, it was sponsored by one Tan Pau Son, SS's friend who is also an alumnus of Royal Military College. When asked why ABBE's account was used to deposit the funds raising money, PW28 at p 1204 of encl 18, told that:

TPR: Kenapa dimasukkan ke dalam akaun Maybank ABBE?

PW28: Berdasarkan siasatan saya, wang ini dimasukkan ke dalam akaun ABBE kerana tujuan fundraising ini untuk SS berkempen di Parlimen Muar untuk PRU14, yang mana tujuan ABBE ini ditubuhkan juga adalah untuk program-program politik.

During cross-examination, PW28 further affirmed the fact that the two funds raising event were meant for SS's political campaign in Muar in GE14.

[195] Upon sieving the entire PW28 testimony, none of the questions asked or the answers given by her had positively identified or established that the impugned RM120,000.00 in ABBE's account belongs to ABBE, PW13, or someone else.

[196] The same goes to the other testimonies of the witnesses called by the prosecution. Not an iota of evidence produced by the prosecution shows that the impugned RM120,000.00 in ABBE's account belongs to ABBE, PW13, or someone else, to satisfy one of the main ingredients in proving s 403 charge against SS. On the contrary, all the evidence adduced by the prosecution shows that the impugned RM120,000.00 in ABBE's account is meant for SS, came from two fundraising events in Muar and at De Palma Hotel, Ampang for a specific purpose, that is for SS's political campaign in Muar in GE14.

[197] Based on the evidence adduced and tendered by the prosecution, the most preferable inference is that the impugned RM120,000.00 does not belong to ABBE, PW13, or someone else but SS himself. Even though the money collected in the two funds raising events were originally owned by the donors, I am of the view that the ownership of the funds changed hands once it was given out by the donors to SS to fund his political campaign in GE 14 in Muar, making SS the beneficial owner of the impugned RM120,000.00. Obviously, the prosecution failed to prove one of the main ingredients under s 403 charge. Thus, there is no appealable error in the Court of Appeal finding that the prosecution failed to prove s 403 charge against SS at the end of the prosecution's case.

The AMLA Charges

[198] SS was charged with two AMLA charges as follows:

> AMLA Charge No. 1
>
> Bahawa kamu, pada 16 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun Amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta yang sama.
>
> AMLA Charge No. 2
>
> Bahawa kamu, pada 19 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta yang sama.

[199] Both AMLA charges were predicated on s 403 charge since the money that was alleged to have been laundered came from SS's Maybank account, which was involved in the receipt of the impugned RM120,000.00 via four separate tranches of transfer of RM30,000.00 each. From the charges, SS allegedly engaged in money laundering activities, namely by transferring money amounting to RM50,000.00 each from his Maybank account to his Amanah Saham Bumiputera account on 16th and 19th June 2018 respectively. The money is said to be the proceeds of illegal activities, and therefore he committed an offence under s 4(1)(b) of the AMLA.

[200] Related to the standard of proof, it is trite that the prosecution had to prove that the money involved in money laundering is the proceeds of unlawful activity, and the burden of proof is beyond reasonable doubt. See Federal Court decision in *JJ Power Groups Enterprise & Ors v. PP* [2025] 5 MLRA 504 where it says that "...if one is prosecuted for an offence of money laundering under s 4(1) of the AMLATFPUAA 2001 for instance, each and every element of that offence, including the element of "proceeds of an unlawful activity" must be proved beyond reasonable doubt".

[201] Based on the finding that the prosecution had failed to prove the s 403 charge against SS, I find that the Court of Appeal did not err in law or fact when it made the following finding at para [144] of the GOJ:

> Given the predicate offence under s 403 of the PC is not proven, we further find that the AMLA charges could not be sustained.

Conclusion

[202] In the circumstances, I find that there is no appealable error in the Court of Appeal's findings and decisions. The prosecution's complaints as contained in the petition of appeal and the two main points submitted before this court are devoid of any merit. On the totality of the evidence, I agree that the convictions of SS by the High Court on all four charges are unsafe. The three appeals by the prosecution are hereby dismissed. The order of acquittal and discharge by the Court of Appeal on the four charges are hereby affirmed.

Abu Bakar Jais PCA (Dissenting):

Introduction

[203] This is a criminal appeal filed by the Public Prosecutor, the Appellant in this case, against the decision of the Court of Appeal ("COA"). The COA had reversed the decision of the High Court ("HC"). The HC had decided to convict and sentence the Respondent before us on the four charges against him. The charges are as follows:

> 1st Charge
>
> "Bahawa kamu, pada 6 Mac 2020, di Menara CIMB Bank Berhad, yang beralamat di Menara CIMB KL Sentral, Tingkat Bawah, Menara CIMB, Jalan Stesen Sentral 2, Kuala Lumpur Sentral dalam Wilayah Persekutuan Kuala Lumpur telah bersubahat dengan Rafiq Hakim bin Razali yang merupakan Penolong Bendahari Angkatan Bersatu Anak Muda, Parti Pribumi Bersatu Malaysia (ARMADA Malaysia) dan di dalam kapasiti tersebut, Rafiq Hakim

bin Razali telah diamanahkan dengan penguasaan ke atas dana ARMADA Malaysia berjumlah RM1,000,000.00 telah melakukan pecah amanah jenayah dengan secara tidak jujur menyalahgunakan dana tersebut iaitu satu kesalahan di bawah s 406 Kanun Keseksaan, dan kamu telah bersubahat melakukan kesalahan tersebut di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 406 Kanun Keseksaan [Akta 574] dibaca bersama s 109 Kanun yang sama."

2nd Charge

"Bahawa kamu, di antara 8 April 2018 sehingga 21 April 2018 di Malayan Banking Berhad yang beralamat di No. 16 & 16A, Jalan Pandan 3/6A, Taman Pandan Jaya dalam Wilayah Persekutuan Kuala Lumpur telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri, iaitu wang berjumlah RM120,000.00 daripada akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 dengan menyebabkan Rafiq Hakim bin Razali melupuskan wang tersebut dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 403 Kanun Keseksaan [Akta 574]."

3rd Charge

"Bahawa kamu, pada 16 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta yang sama."

4th Charge

"Bahawa kamu, pada 19 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah s 4(1) Akta yang sama."

Background Facts

[204] The Respondent was the head of Angkatan Bersatu Anak Muda ("Armada"), the youth wing of the political party, Parti Pribumi Bersatu Malaysia ("Bersatu").

[205] The Appellant's case is that in early March 2020, a meeting was held at the Respondent's house. In attendance were the Respondent, Rafiq Hakim bin Razali (PW13), who was the Assistant Treasurer of Armada, Ahmad Redzuan Mohamed Shafi (PW11), the Assistant Secretary of Armada at the material time and two other persons by the name of Ulya and Aizad. It was at this meeting that the Respondent was alleged to have instructed PW11 and PW13 to withdraw monies from Armada's official CIMB Account No. 80-0848352-5 ("Armada's account"). Pursuant to this alleged instruction, PW13 and PW11 proceeded to withdraw RM1 million from Armada's account on 6 March 2020.

[206] It is the Appellant's case that as the head of Armada, the Respondent was subjected to the Rules of Armada (P53) where Article ("Art") 18 of P53 states that:

> "Peraturan Wang dan Harta parti yang ternyata dalam Fasal 24 Perlembagaan hendaklah dipakai sebagai Peraturan Kewangan Armada Malaysia."

[207] Based on art 2 of P53, any reference to "Perlembagaan" is a reference to Bersatu's Constitution.

[208] It is the Appellant's case that PW13 had contravened art 24.8 of Bersatu's Constitution by withdrawing RM1 million on 6 March 2020 allegedly pursuant to the Respondent's instruction without obtaining Bersatu Supreme Council's prior approval. Article 24.8 of Bersatu's Constitution reads:

> "Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi."

[209] The Respondent is also alleged to have used some money unlawfully or without legitimate authorisation. His defence is that he had committed no offence as the money belongs to him and he therefore has every right to use the money.

The 1st Charge

[210] As narrated earlier, the first charge relates to abetment by the Respondent for criminal breach of trust ("CBT"). It relates to the accusation that the Respondent abetted PW13 for that offence.

[211] The COA decided that this charge was not proven as against the principal offender, Rafiq Hakim bin Razali, PW13, the name mentioned in the charge because of two reasons. They are as follows:

(a) HC was wrong to determine that the act of withdrawing the money of RM1,000,000.00 by PW13 from the relevant account was not allowed by Art 24.8 of the Bersatu Constitution. The COA instead found that the provision of Bersatu Constitution was not breached because the same does not state that such withdrawal is prohibited. What is prohibited is expenses or 'perbelanjaan' of more than RM500,000.00 without getting the approval of the Bersatu Supreme Council and;

(b) Out of that RM1 million withdrawn, less than RM500,000.00 was spent. This was for Armada's programs. Spending less than RM500,000.00 was allowed as Bersatu Supreme Council's approval was never required.

[212] I am of the view that the COA was not wrong in giving the two reasons above. This is because the act of withdrawing the money alone is not an act that is prohibited by that art 24.8 of the Bersatu Constitution. What is prohibited by that provision is using the money for expenses and not merely withdrawing the same.

[213] Further, as there is evidence that the money used is less than RM500,000.00, there is no need for approval from the Bersatu Supreme Council.

[214] According to the COA, since PW13 did not commit the offence of CBT, the Respondent could not have abetted PW13.

[215] Further, looking at the 1st charge, it says the Respondent abetted PW13, and it reads:

> ...telah bersubahat dengan Rafiq Hakim bin Razali yang merupakan Penolong Bendahari Angkatan Bersatu Anak Muda, Parti Pribumi Bersatu Malaysia (ARMADA Malaysia) dan di dalam kapasiti tersebut, Rafiq Hakim bin Razali telah diamanahkan dengan penguasaan ke atas dana ARMADA Malaysia berjumlah RM1,000,000.00 telah melakukan pecah amanah jenayah dengan secara tidak jujur menyalahgunakan dana tersebut iaitu satu kesalahan di bawah s 406 Kanun Keseksaan, dan kamu telah bersubahat melakukan kesalahan tersebut di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu...

[216] Following the above, the relevant question to ask is what did the Respondent do to abet PW13? What was the act done to "secara tidak jujur menyalahgunakan dana tersebut" ("dishonestly misused the money")? How is that so? To me, that is unclear from the charge. Nothing in the charge indicates how that money was dishonestly misused and, more importantly, how the Respondent had abetted that dishonest act.

[217] It is trite and fundamental in criminal law that a charge must be clear so that an accused person would know exactly what he is being accused of. There is absolutely no necessity to explain this further as this is a basic legal principle. With respect, I do not think sufficient information is reflected in the charge for the Respondent to answer it. The charge, to my mind, simply says an offence is committed and the Respondent abetted the same. Or to simplify it, the same is akin to accusing your friend of being a thief, and you had abetted him. That is unclear for you to answer the accusation, and that certainly would be unfair to you. This reason alone should be more than enough not to convict the Respondent on the 1st charge.

[218] Further, based on a few decisions of the Federal Court in previous cases, the COA found that abetment can only happen if the abettor was aware of the facts sufficiently to enable him to know that the act was unlawful and the same substantially assisted, actively suggested or stimulated the principal offender in the commission of the offence. There must also be common purpose or intent to aid or encourage the person who commits the principal crime, and either an actual aiding or encouraging or a readiness to aid or encourage will be required.

[219] I agree there must be some form of participation, although not necessarily substantial, on the part of the alleged abettor instead of being extremely passive.

[220] Further, what the COA found, as indicated earlier, could also relate to the need for the charge itself to be clear.

[221] The COA also said there are five limbs of *actus reus* or physical elements that constitute the offence of CBT under s 405 of the Penal Code ("PC"). They are:

i. Misappropriation;

ii. Conversion to own use;

iii. Use or disposal in violation of a direction of law; or

iv. Use or disposal in violation of a legal contract; or

v. "suffering" another person to do any of (i) to (iv).

[222] The COA states the withdrawing of the money is not what is stated under that provision of the PC. Therefore, when PW13 withdrew the money from the relevant account, that could not amount to CBT. Since that is not CBT, the Respondent could not be convicted for abetting PW13.

[223] I could not say that the COA is utterly wrong in its reasoning in finding that the Respondent had not abetted PW13 by the way it arrived at its observation and understanding. Justifying its conclusion by analyzing what constitutes CBT by referring to the written law could not be something completely incorrect for the COA to find.

[224] Therefore, I agree the 1st charge is not proven against the Respondent based on all the above reasons.

The 2nd Charge

[225] This charge relates to dishonest misappropriation of property against the Respondent under s 403 of the PC. This provision states as follows:

> "Dishonest misappropriation of property
>
> Whoever dishonestly misappropriates, or converts to his own use, or causes any other person to dispose of, any property, shall be punished with imprisonment for a term which shall not be less than six months and not more than five years and with whipping and shall also be liable to fine."

[226] In respect of this offence, there is no doubt of the material words used in the 2nd charge (see this charge as narrated earlier) against the Respondent. The material words are:

> ... telah dengan secara tidak jujur menyalahgunakan harta **untuk diri sendiri**...
>
> [Emphasis Added]

[227] The above words "untuk diri sendiri" obviously could not be separated from the rest of the words "telah dengan secara tidak jujur menyalahgunakan harta". All these words must be read together. Thus, the words "telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri" in the context of the 2nd charge mean "dishonestly misappropriated the money for his own use".

[228] The amount of money involved as in the charge is RM120,000.00. It relates to that amount in the Maybank account of Armada Bumi Bersatu Enterprise ("ABBE"), a sole proprietorship owned by PW13 at the material time. This amount was transferred to the Respondent's own Maybank account by PW13 on the instruction of the Respondent.

[229] The evidence found by the COA is that this amount was obtained because of two fundraising activities for the Respondent's election campaign. The election campaign is for the 14th General Election where the Respondent stood as the candidate for Muar. The campaign period was from 28 April 2018 to 9 May 2018 (as noted by the COA in para 92 of the GOJ COA). Essentially, the COA found that this amount is the Respondent's own money (para 90 of the grounds of judgment of the COA ("GOJ COA") states this). The COA found that the Respondent was therefore entitled to use this money. (paras 92 and 94 of the GOJ COA express this). Hence, the Respondent could not misappropriate that money. As such, the COA found this 2nd charge is not proven against the Respondent.

[230] Thus, is the COA right in saying this amount of money belongs to the Respondent? This is crucial because once it is shown this is not the case, then the whole basis for the COA's decision to allow the Respondent's appeal could not stand at least for this charge. I respectfully differ and would say the money does not belong to the Respondent.

[231] First, the money was deposited and then withdrawn from ABBE's account, as stated earlier, a sole proprietorship owned by PW13 at the material time. This amount was later transferred to the Respondent's own Maybank account by PW13 on the instruction of the Respondent. If the money truly belongs to the Respondent, why must it be deposited initially in ABBE's account and only later transferred to the Respondent's own account at Maybank, on the instruction of the Respondent to PW13? In fact, on this point, the COA said as follows:

> [94] We are of the considered view that if only the donations were deposited directly into the Appellant's account, the Appellant would not have to face this drawback of being charged for dishonest misappropriation of money **which he is entitled to**.
>
> [Emphasis Added]

[232] I am of the view that the above entire statement by the COA is true and spot on except the words "...which he is entitled to". Those words with respect, are not correct as the donations must be used for one specific purpose i.e. the Respondent's election campaign. But the evidence is lacking at the trial to show that the money (donation) was indeed used for that purpose as will be shown in a short while. Hence, the Respondent could not be entitled to the money.

[233] The Respondent believes the money is his. However, if the money truly belongs to the Respondent, at the risk of repetition, why can't the money be deposited directly into the Respondent's own account at Maybank? The element of dishonesty is also present on the part of the Respondent in misappropriating this amount as it went into the Respondent's personal account at Maybank, as stated, on his instruction to PW13.

[234] Second, from the Respondent's personal account at Maybank, the money was later deposited in the Respondent's investment account in Amanah Saham Bumiputera ("ASB"). Thus, if the money truly belongs to the Respondent, it should be acceptable if one asks, why is there a need for this elaborate trail? From ABBE's account to Respondent's Maybank account and then to Respondent's ASB account. Why can't the money go directly to Respondent's Maybank account or ASB account? After all, he has two accounts to choose from.

[235] Third, the money is for the Respondent's election campaign (this is a finding of fact by the HC and acknowledged by the COA). But before the election campaign started and a few days after the money was collected through the fund-raising activities, the Respondent instructed PW13 to transfer this money to the Respondent's own Maybank account from the ABBE's account (para 89 of the COA GOJ acknowledging this finding of fact of the HC). Since that was the purpose of the money, was this purpose achieved? It is important to note that the campaign period, as stated earlier, was from 28 April 2018 to 9 May 2018. However, only a few days before the beginning of this period, i.e.

between 8 April 2018 and 21 April 2018 (the COA noted these dates at para 81 GOJ COA), the money was transferred to the Respondent's personal accounts in Maybank.

[236] The money is from the donors through the fund-raising activities. The money is the donors' money and not the Respondent's money. It is meant for the Respondent's election campaign. It is not for the Respondent to use it as he pleases. The money did not achieve its purpose as before the election campaign started and a few days after the money was collected through the donors, the Respondent instructed PW13 to transfer this money to the Respondent's own Maybank account from the ABBE's account (again, para 89 of the COA GOJ acknowledging the finding of this fact by the HC). The money misappropriated was used for the Respondent's own purpose as it went into the Respondent's personal accounts at Maybank and then ASB.

[237] Dishonest misappropriation is also proven as the donors were never told by the Respondent that he would take the money and put it in his personal accounts as reimbursement for the money he had allegedly spent.

[238] According to the COA, the most important ingredient for this charge was not proven i.e. the money belongs to someone else and not the Respondent (para 113 GOJ COA). With respect to the COA, I am of the view the money indeed belongs to someone else. The money belongs to the donors for the Respondent's election campaign. It is not the money of the Respondent as it is to be used only for the election campaign and not anything else. The money is the Respondent's money only if it is used for its purpose.

[239] A little illustration to demonstrate the point seems appropriate at this stage. One may give another some money, and the latter may think that because it was given by the former, that money belongs to him or her. But the money was given for a specific purpose e.g. for the purchase of a car. The money is rightly the money of the latter but only if it is spent for that specific purpose.

[240] In the context of our present case, the money could not exist without the donors. In fact, the COA said the money came from the donors (para 92 GOJ COA). However, it should not be lost that the donors gave the money for a specific reason i.e. for the Respondent's election campaign. But the money never achieved its purpose for the reasons given earlier.

[241] The HC made a finding of fact that the money is for the Respondent's election campaign and not anything else. Not even "political campaign", the term used by the COA interchangeably with the words "election campaign" even if one wants to consider these words as carrying different meanings. The purpose of the money is still for the Respondent's election campaign to the HC and this can be gleaned by the findings of the HC as follows:

> [45] Bagi pertuduhan kedua, ketiga dan keempat, OKT menegaskan bahawa wang kutipan hasil majlis makan malam yang diadakan adalah untuk menggantikan perbelanjaan yang telah dikeluarkan dari wang beliau sendiri

yang telah digunakan olehnya **bagi menampung kos kempen pilihanraya beliau sendiri**.

[46] Untuk menyokong dakwaan ini, OKT telah mengemukakan D85, D86, D87, D88 dan D89 iaitu poster majlis makan malam, hantaran di Facebook dan ciapan di Twitter.

[47] DW2 dan DW4 juga dalam keterangan mereka menyatakan bahawa segala program meraih **dana tersebut adalah bagi tujuan kempen OKT sebagai calon dalam PRU14**.

[Emphasis Added]

[242] In his defence, the Respondent said he considered that money of RM120,000.00 as reimbursement for him as he had used RM170,000.00 of his own money for his election campaign. He chose this narrative as his defence. Thus, the Respondent is not disputing that the money comes from the donors or that the money belongs to the donors. He only said that he has a right to the money and had taken the money to reimburse himself.

[243] Hence, the question to ask is whether anyone uses any amount given by someone else for a specific purpose, by saying he (the former) had used his own money earlier and therefore he is entitled to take the money given as reimbursement to himself. In the context of the present case, can the Respondent take the money given to him by the donors as reimbursement for himself, as he had used the money for his election campaign much earlier than the donors giving the money to him. With respect, I do not think this defence could be sustained and did not raise a reasonable doubt on the Appellant's case. This is because the Respondent could not use the money given by the donors to reimburse himself, as the donors did not give him the money for that purpose. The donors gave him the money for a future event i.e. for his upcoming election campaign. Not for him to reimburse himself for the money he said he had spent earlier.

[244] Besides, there is no evidence to suggest that the fund-raising activities were held to reimburse the Respondent for any expenses incurred towards his election prior to those fund-raising activities. In this regard, there is no reason to dispute the finding of the HC that the donors gave their money in the fund-raising dinners held on 7 and 8 April 2018. But the money was transferred to the Respondent's account at Maybank immediately and almost immediately on 8,11, 12 and 21 April 2018.

[245] Further, not a single donor was told that the Respondent would use any donation to reimburse the latter for his expenses allegedly incurred much earlier than the donors making the donations, which is prior to the beginning of the election campaign.

[246] It must also be emphasised that the trite law is that when a finding of fact is made by the trial court, in this case the HC, this finding of fact should rarely be disturbed. The same principle is explained in the case of *PP v. Abdul Rahman Mohamad* [2005] 1 MLRA 51 as follows:

> ... the appellate court must be slow to disturb the factual findings of the trial judge unless it was convinced that his decision was plainly wrong or was against the weight of the evidence. The functions of an appellate court in an appeal from the decision of a trial judge, which decision was based on his opinion respecting the credibility and trustworthiness of the witnesses he saw are limited in their scope and character. In order to reverse, the appellate court should not merely entertain doubts as to whether the decision below is right, but must be convinced that it is wrong.

[247] The findings of fact by the HC which are relevant and not wrong are stated as follows:

> [33] Walau bagaimanapun, tindakan OKT mengarahkan PW13 untuk mengeluarkan dan memindahkan wang tersebut (RM120,000.00) ke dalam akaun peribadi milik OKT hanya beberapa hari selepas kutipan dibuat dan sebelum kempen pilihanraya bermula adalah suatu tindakan yang termasuk di bawah kesalahan s 403 KK, iaitu OKT telah menyalahgunakan harta untuk kegunaan sendiri.
>
> [34] Dilihat dari keseluruhan keterangan dan keadaan sewaktu itu, tiada alasan bagi OKT untuk memindahkan wang tersebut keluar dari akaun Maybank ABBE, kecuali untuk membiayai kempen pilihanraya beliau. Pembiayaan ataupun sebarang bayaran boleh dibuat terus melalui akaun Maybank ABBE ini, tanpa perlu ianya dipindahkan ke dalam akaun peribadi milik OKT.
>
> [35] Tindakan ini, pada hemat Mahkamah ini jelas menunjukkan niat OKT untuk menyalahgunakan wang tersebut untuk kegunaannya sendiri.

[248] Further, the defence of the Respondent that he could use the amount of RM120,000.00 as reimbursement for himself is disputed by PW13, the person operating the ABBE's account at the material time as owner of ABBE. As indicated earlier, from this account the money was transferred to the Respondent's Maybank account. PW13 testified he was not shown any receipts regarding any expenses of the Respondent, justifying the latter's claim for reimbursement. In instructing PW13 to put or transfer the money into his own account at Maybank, the Respondent had dishonestly misappropriated that money for his own use, an offence under s 403 of the PC.

[249] The other reason this could not raise a reasonable doubt on the Appellant's case is because the Respondent had not shown sufficient documentary evidence to support his contention that he had spent RM170,000.00 of his own money for his election campaign. I had examined the documents shown by the Respondent at the HC, marked as exhibits D85, D86, D87, D88 and D89. All these documents do not show that specific amount of RM170,000.00 being spent for his election campaign.

[250] Turning to the point of submission of the Respondent, I am also of the view, with respect, that it is immaterial to the point of being trivial to say that misappropriation under s 403 of the PC could not mean for one's own use. I had asked myself what the prejudice is even when the charge states misappropriation for the Respondent's own use? In this regard, what prejudice is there to say and find someone has misappropriated some money for his or her own use if there is evidence to that effect? The facts in the present case showed the money went from an account not belonging to the Respondent to the Respondent's own account without justifiable reasons. That is to my mind sufficient to constitute misappropriation for the Respondent's own use. It could not be the case that the Respondent must be acquitted of this charge simply because the charge had used the term "misappropriation for own use".

[251] In fact, on this point, I would quote what is stated in Part 1 of the written submission of the Respondent himself dated 26 November 2025 that states as follows:

> [52] In *Ratanlal and Dhirajlal's Law Of Crimes*, 28th Edition Vol.3 at p 2923, the learned author stated that **"misappropriation" means "improperly setting apart for one's own use** to the exclusion of the owner".
>
> [Emphasis Added]

[252] I noted and read lengthy written submissions not only by the Respondent but also by the Appellant as to whether "misappropriation" can essentially be coupled with the words "for own use". I see this with respect, as unnecessary by both sides for missing the basic point: what is so wrong to say "misappropriation for own use"? As a consequence, in this particular instance and for this particular charge, I do not think the Respondent had been misled by the same.

[253] Therefore, I am of the view there is no real, concrete and substantive issue as contended of this charge being defective for conflating the words "misappropriation" and "for own use" as submitted by the Respondent.

[254] Based on all the reasons explained, therefore, I am of the opinion that the 2nd charge is proven against the Respondent.

The 3rd Charge

[255] This charge is for the offence of money laundering for the amount stated in the charge, which is deposited in the Respondent's Maybank account and transferred to his ASB account. It is also relevant to refer to the whole charge as mentioned earlier.

[256] The COA said this charge is not proven because the 2nd charge is not proven (para 144 of the GOJ COA). Essentially, according to the COA, because the predicate offence under the 2nd charge is not proven, this 3rd charge could not also be proven.

[257] First, the Respondent does not deny that RM50,000.00 was transferred from his Maybank account to his ASB account. That Maybank account had received RM120,000.00 from the ABBE's account relating to the 2nd charge.

[258] The Respondent's only defence is that the RM50,000.00 belongs to him. Hence, since the money belongs to him, he asserted that he could not be involved in any money laundering.

[259] I have already explained, as seen in the determination on the 2nd charge above, that money of RM120,000.00 does not belong to the Respondent but to the donors. Likewise, that RM50,000.00 could not belong to the Respondent but to the donors. At the risk of repetition, it is also never denied by the Respondent that the RM50,000.00 was deposited into his ASB account from his Maybank account.

[260] In the first place, as explained earlier regarding the 2nd charge, there is no justification for the amount of RM120,000.00 that went into the Respondent's Maybank account. Likewise, there could not be any justification for part of the money i.e. RM50,000.00, from that amount of RM120,000.00 to be transferred from the Respondent's Maybank account into his ASB's account. That amount of RM50,000.00 is still not the Respondent's money.

[261] The Respondent dealt with that money when he deposited the same in his ASB account. The money is from unlawful activity as it came from the donors for his election campaign. But this purpose for the election campaign was not achieved as explained earlier. That is why the money is from unlawful activity. It was unlawful because the money coming from the donors did not attain its purpose, as the Respondent's activity or action in taking it instead had caused the aim of the money to fail.

[262] Further, s 3 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) states:

> "unlawful activity" means:
>
> > (a) any activity which constitutes any serious offence or any foreign serious offence; or (b) any activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of any serious offence or any foreign serious offence, regardless whether such activity, wholly or partly, takes place within or outside Malaysia;
> >
> > And Schedule 2 of the same statute above lists down s 403 of the Penal Code for the offence of dishonest misappropriation of property as one of the "serious offences". There is no dispute that the 2nd charge against the Respondent relates to this offence. Therefore, the Respondent is indeed involved with unlawful activity.

[263] Therefore, I am of the view that the 3rd charge has also been proven.

The 4th Charge

[264] This charge is almost identical with the 3rd charge except for the dates of the offence as stated in these two charges.

[265] The 4th charge is also for the offence of money laundering for the amount stated in the charge, which is deposited in the Respondent's Maybank account and transferred to his ASB account. It is also relevant to refer to the whole charge as narrated earlier.

[266] The COA, similarly as in the 3rd charge, found that this 4th charge is not proven because the 2nd charge is not proven (para 144 of the GOJ COA). Essentially, according to the COA, because the predicate offence under the 2nd charge is not proven, this 4th charge could not also be proven.

[267] My analysis for this 4th charge here should be similar to the 3rd charge.

[268] First, similarly as for the 3rd charge, the Respondent does not deny that RM50,000.00 was transferred from his Maybank account to his ASB account. That Maybank account had received RM120,000.00 from the ABBE's account relating to the 2nd charge.

[269] The Respondent's only defence for this charge, as similarly for the 3rd charge, is that RM50,000.00 belongs to him. Since the money belongs to him, he asserted that he could not be involved in any money laundering.

[270] I have already explained, as seen in the determination on the 2nd charge above, that money of RM120,000.00 does not belong to the Respondent but to the donors. Likewise, that RM50,000.00 could not belong to the Respondent but to the donors. At the risk of repetition, it is also never denied by the Respondent that the RM50,000.00 was deposited into his ASB account from his Maybank account.

[271] Likewise, as explained earlier regarding the 2nd charge, there is no justification for the amount of RM120,000.00 that went into the Respondent's Maybank account. Likewise, there could not be any justification for part of the money i.e. RM50,000.00, from that amount of RM120,000.00 to be transferred from the Respondent's Maybank account into his ASB's account. Similarly, as for the 3rd charge, that amount of RM50,000.00 is still not the Respondent's money.

[272] The Respondent dealt with that money when he deposited the same in his ASB account. The money is from unlawful activity as it came from the donors for his election campaign and not anything else. But this purpose for the election campaign was not achieved as explained earlier. That is why the money is from unlawful activity.

[273] Further, as explained for the 3rd charge, s 3 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) states: "unlawful activity" means:

> (a) any activity which constitutes any serious offence or any foreign serious offence; or
>
> (b) any activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of any serious offence or any foreign serious offence, regardless whether such activity, wholly or partly, takes place within or outside Malaysia;
>
> Similarly, Schedule 2 of the same statute above lists down s 403 of the Penal Code for the offence of dishonest misappropriation of property as one of the "serious offences". There is no dispute that the 2nd charge against the Respondent relates to this offence. Therefore, the Respondent is indeed involved with unlawful activity.

[274] Therefore, similarly to the 3rd charge, I am of the view that the 4th charge has also been proven.

[275] The Respondent also argued that there was improper pressure by the Malaysian Anti-Corruption Commission ("MACC"), the investigating authority, exerted against some witnesses, including PW13.

[276] On this point the COA said:

> "It was the defence's contention that from PW13's evidence it can be strongly inferred that PW13 has tailored his evidence to appease the MACC. The relevant parts of PW13's evidence were highlighted as follows:
>
> "[a] While being examined by the prosecution, PW13 had admitted that he had been remanded by the MACC for a period of 6 days and during the remand period, he was sad and under a lot of stress;
>
> [b] He suffered a breakdown after being informed that his initial remand period may be extended for one more day; and
>
> [c] While he was in remand, he had even called his wife (PW12) to inform her that "bagi tahu pada sahabat-sahabat di luar, tak payah buat-buat PC ni apa, sebab kat dalam, saya yang kena teruk, bukan mereka kat luar.""

[277] I am of the view that the above alone could not amount to undue pressure being exerted by MACC. For those who are familiar with criminal investigations, remand is a normal step taken to further investigate. In this case, PW13 had to be questioned for the investigation, and it is quite a normal aspect of the same to be remanded in the first place. That in itself could not mean that illegal pressure was exerted against him. Of course, there is unease and some level of stress or pressure when one is remanded, but that alone, without more concrete evidence that the same is blatantly unwarranted, could not mean that the action or inaction of the MACC is woefully wrong. When anyone is questioned by the authorities such as MACC or police during remand, that person will naturally feel some pressure as this is not a normal process in his daily life. Nonetheless, remand is indeed an exercise provided by the law.

[278] Further in respect of PW13, the allegation that he was pressured is highly remote when he unequivocally gave evidence after being re-examined by the Appellant as seen at p 60 of the notes of evidence as follows:

> **"Sebab saya rasa saya tiada niat jahat terhadap YB Syed Saddiq, saya kenal dia pun dah lama.** In fact, saya kenal family dia juga, saya kenal emak ayah dia juga, saya respect mereka macam mana saya respect my own parents. **Dan memang, tapi bila berkenaan dengan kes, saya perlu melaporkan perkara yang sebetulnya berdasarkan apa yang saya tahu**."
>
> [Emphasis Added]

[279] For those who understand the Malay language, that testimony above could not possibly come from someone who is pressured. PW13 also did not say he gave the evidence above because he was pressured by the MACC.

[280] That is not all. It becomes more interesting when we consider the evidence of PW13 when he was cross-examined by the Respondent's own lawyer on this issue of pressure. The questions and answers between the two in court are as follows:

> "PB (GSD): Right, this is what happened... this is a fix up against Syed Saddiq and SPRM put pressure on all of you, so that you will sign [*sic*] to its tune.
>
> SP13: **Yang tu saya... yang tu kena pada SPRM lah, saya tak tahu sama ada dia nak put pressure pada ni... ataupun tidak lah.**
>
> PB (GSD) But you don't deny.
>
> SP13: **Err... kemungkinan ada, tapi saya tak tahulah secara detail, mungkin boleh tanya pada SPRM.**"
>
> [Emphasis Added]

[281] As seen above, even PW13 himself is not sure whether there was pressure from MACC.

[282] The same is also true in respect of other witnesses who were said to be "pressured". The fact is all of them testified in court. However, none showed real and concrete evidence of the so-called pressure that they allegedly had to endure. In fact, what pressure?

[283] I dread to think of people who said they were pressured when the investigation was done, and prosecution ensued, without offering real evidence to prove they were indeed victimised horrendously by the authorities.

[284] With respect, on this issue of witnesses being pressured, I could see the assertion but not the proof, not even to the standard of creating a reasonable doubt on the prosecution's case.

Sentence

[285] On the issue of sentencing, I consider that the Respondent is a young man with huge potential. Unfortunately, he nonetheless, for the reasons explained above, should be convicted of the charges. An offence is still an offence, no matter how unfortunate the circumstances might be, giving rise to the offence being committed. However, I must still balance the need for actions to be taken against him in respect of sentence under the law and the need for him not to be sentenced too heavily. In this regard, I still have one extreme to choose over the other or something in between.

[286] For the 2nd charge, under the law, the sentence must include imprisonment and whipping. I have no option on this. A conviction also means a sentence of at least six months' imprisonment and at least one stroke of whipping. Hence, I order six months' imprisonment from today and one stroke of whipping against the Respondent.

[287] For the 3rd charge, under s 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) on conviction, the convicted person must be punished with imprisonment for a term not exceeding fifteen years and a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million ringgit, whichever is the higher.

[288] For the sentence of fine, the amount in the charge is RM50,000.00. Therefore, RM50,000.00 multiplied by 5 is RM250,000.00. However, this is lower than RM5,000,000.00. The sentence as indicated states the higher amount of RM5,000,000.00 should be imposed.

[289] I therefore order six months' imprisonment and a fine of RM5,000,000.00, in default, two years' imprisonment against the Respondent.

[290] For the 4th charge, under s 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613), on conviction, the sentence under the law is also similar to the 3rd charge. On conviction, the convicted person must be punished with imprisonment for a term not exceeding fifteen years and a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million ringgit, whichever is the higher.

[291] For the sentence of fine, the amount in this 4th charge is also RM50,000.00. Therefore, RM50,000.00 multiplied by 5 is also RM250,000.00. However, this is lower than RM5,000,000.00. The sentence states the higher amount of RM5,000,000.00 should be imposed.

[292] I therefore also order six months' imprisonment and a fine of RM5,000,000.00, in default of payment, two years' imprisonment against the Respondent.

Conviction And Sentence

[293] The convictions and sentences on the 2nd, 3rd and 4th charges that I have ordered against the Respondent here become immaterial because my learned brothers are not with me on the same. They are of course, very much entitled to do so as judges of the appellate court in our system of justice.