PP

v.

MOHD ISA ABDUL SAMAD

Federal Court, Putrajaya
Nordin Hassan, Lee Swee Seng, Che Mohd Ruzima Ghazali FCJJ
[Criminal Appeal No: 05(LB)-32-03-2024(W)]
10 February 2026

Criminal Law: *Corruption — Bribery — Appeal by Public Prosecutor against decision of Court of Appeal setting aside High Court's decision convicting respondent of receiving bribes under s 16(a)(A) Malaysian Anti-Corruption Commission Act 2009 — Whether elements of offence of receiving gratification proven — Whether presumption under s 50(1) Malaysian Anti-Corruption Commission Act 2009 triggered — Whether respondent failed to rebut said presumption of law — Whether respondent's conviction by High Court correct and safe — Principles of sentencing*

This was an appeal by the Public Prosecutor against the decision of the Court of Appeal, which had set aside the High Court's convictions and acquitted and discharged the respondent on the nine bribery charges. The High Court had earlier convicted the respondent of receiving bribes under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act"), and sentenced him to six years' imprisonment for each charge and to cumulative fines of RM15,450,000.00 for all nine charges. In default of the payment of the fine, two years' imprisonment was imposed. Meanwhile, the High Court acquitted and discharged the respondent of the charge of criminal breach of trust under s 409 of the Penal Code, the first charge against the respondent. The prosecution did not appeal against the acquittal of the offence of criminal breach of trust. In the present case, having perused the nine charges against the respondent and the provision of s 16(a)(A), the essential elements to be proven by the prosecution to establish its case were: (i) the respondent, the Chairman of FELDA and Felda Investment Corporation Sdn Bhd ("FICSB"), had received the gratification from Ikhwan Zaidel ("SP16"), the director and shareholder of Gagasan Abadi Properties Sdn Bhd ("GAPSB"), through the respondent's Special Officer, Muhammad Zahid Md Arip ("SP21"); (ii) the gratification received was as a reward for assisting GAPSB in the approval of the purchase of Merdeka Palace Hotel & Suites ("MPHS") by FICSB; and (iii) the gratification was received corruptly.

Held (allowing the appeal):

(1) The legislature had enacted a special provision under the law to facilitate the prosecution of corruption cases. As such, it effectively helped combat corruption in Malaysia. The provision was the presumption under s 50(1) of the MACC Act, which replaced the earlier presumption provisions in s 14 of

the Prevention of Corruption Act 1961 and s 42(1) of the Anti-Corruption Act 1997. The presumption under s 50(1) of the MACC Act was broader in scope than the earlier law's presumption, which had been repealed. The meaning of the words in s 50(1) was plain and unambiguous. It was the duty of judges to give effect to its plain meaning according to the words used by the legislature, and in interpreting the provision, it was a settled principle of law that the court should not put words into the statute. In the present case, the prosecution needed only to prove that the respondent received the money through SP21, thereby triggering the presumption under s 50(1). Upon establishing the receipt of the money, it was presumed that the money was received corruptly on account of the matters set out in the charge, which was to assist GAPSB in the approval of the purchase of MPHS by FICSB. (paras 52-56)

(2) The trial judge had, on the facts, assessed the credibility of SP21, considered the contradictions in his evidence as submitted by defence counsel, and concluded that SP21 was a credible witness. Having considered the evidence of SP21 and all the evidence presented in court, this Court found that the trial judge's finding on the credibility of SP21 was in accordance with the law and facts in this case. The trial judge's finding should not have been disturbed by the Court of Appeal. Further, the Court of Appeal found that there was a discrepancy between the amount earlier agreed to be paid by SP16 to the respondent, RM3 million, and the total amount shown in evidence and the charges, RM3.09 million, which SP21 did not explain. On this issue, the Court of Appeal failed to consider that, firstly, SP21 did not fix the amount of RM3 million to be paid by SP16, and that SP21 did not know the amount handed to him by SP16 in all transactions. SP21 accepted all the money from SP16 without counting it and remitted it to the respondent. There was no basis for SP21 to explain the contradiction between the amount agreed by SP16 and the amount given by SP16 to the respondent. Again, the fact remained that the respondent received the bribe money as stipulated in the charges. The evidence of SP21 was further corroborated by that of SP16, who handed over the gratification money to SP21 on behalf of the respondent. (paras 73, 74, 78 & 79)

(3) The trial judge in the present case also found SP16 to be a credible witness. Having perused the evidence of SP16 and the trial judge's reasoning in finding that SP16 is a credible witness, there was no cogent reason to disturb those findings, which were appropriate in the circumstances. In any event, the Court of Appeal did not directly touch on the credibility of SP16, but instead emphasised the credibility of SP21. (paras 105-106)

(4) The evidence of SP21, among others, established that money was paid to the respondent on nine occasions at the respondent's office. However, SP21 did not know the exact amount. The evidence of SP16 then supported SP21, that he delivered the money to SP21, as requested by SP21 for the respondent, on nine occasions. The amount was significant, as stipulated in the charges. The delivery of cash to SP21 by SP16 was a few days before the money was

handed over to the respondent, rendering the delivery of the said cash to the respondent probable. The evidence of Azizi Abd Wahab ("SP17"), the agent for the sale of MPHS to FICSB, also supported the probability of payment to the respondent, as SP16 had instructed SP17 to withdraw the money for the said payment. The funds requested by SP16 were then delivered to SP16, who then handed them over to SP21. The withdrawals of the significant sums were also supported by the cash cheques tendered in court. The withdrawals and the handing over of the said money to SP16, and the delivery of the said money to the respondent within a few days, made the respondent's receipt of the cash probable. The evidence of SP21 was corroborated by that of SP16, SP17 and the cash cheques tendered as exhibits in court. This evidence proved the *factum* of the respondent's receipt of the money as detailed in the charges. As the *factum* of receipt of money by the respondent had been established, it triggered the presumption under s 50(1) of the MACC Act that the money was corruptly received as a reward for matters set out in the charges, which was a reward for assisting in the approval of the purchase of MPHS by FICSB, unless proven to the contrary. (paras 136-140)

(5) The trial judge was correct when he decided that, having proven the *factum* of receipt of money by the respondent, the presumption applied, and under the law, it was presumed, unless the contrary was proven, that the respondent received the money corruptly on matters set out in the particulars of the offence, which was to assist in the approval of the purchase of MPHS. The respondent's acquittal on the charge of criminal breach of trust did not affect the trial judge's finding of *factum* of receipt of money in the bribery charges. As rightly pointed out by the Court of Appeal, the reason for the acquittal was that the decision to approve the purchase of MPHS was a collective decision of the Board of FICSB. The respondent was only a member and chairman of the said meeting that approved the sale. Thus, the trial judge's decision on the charge of criminal breach of trust was based on an assessment of the facts, and, mainly, that the decision to approve the sale was not made solely by the respondent. Furthermore, the Court of Appeal failed to appreciate that the prosecution's case, as stipulated in the charges, was that the money received by the respondent was a reward only to assist in the approval of the MPHS sale, and not to approve the purchase or direct (or influence) the Board of Directors of FICSB to approve the purchase. The cumulative circumstantial evidence could establish the respondent's assistance in approving MPHS's purchase. In any event, once the presumption was triggered, the burden was shifted to the respondent to rebut, on the balance of probabilities, that the money was not received corruptly as a reward in assisting the approval of MPHS's purchase. (paras 144-146)

(6) In the present case, the respondent's defence on the receipt of the money was a total denial. The respondent denied receiving the money through his Special Officer, SP21. The mere denial or non-receipt of the money, without more, was undoubtedly not something reasonable or probable that would rebut the presumption under s 50(1). There was insufficient evidence before

the court, on the balance of probabilities, to reach the reasonableness and probability of the respondent's contention of non-receipt of the money on the nine occasions as a reward for assisting the approval of MPHS's purchase. Likewise, the respondent denied any assistance in the approval of the purchase of MPHS. The trial judge had found, based on the available evidence, that the respondent had failed to rebut the presumption. Having perused all the available evidence before the court and the relevant law, this Court found that the trial judge's finding was supported by evidence and in accordance with the law. The respondent had failed to rebut the presumption of law under s 50(1) of the MACC Act. As such, the ingredients of the offence of corruptly receiving the money as a reward for assisting in the approval of the purchase of MPHS had been proven for all nine charges against the respondent under s 16(a)(A) of the MACC Act beyond a reasonable doubt. The Court of Appeal misapplied the presumption under s 50(1) and failed to assess the relevant facts in the present case properly, which warranted the intervention of this Court. The trial judge's conviction for the nine charges against the respondent was correct and safe. (paras 152, 153, 177, 178 & 179)

(7) On the sentence, the trial judge's imposition of the sentence was appropriate and in accordance with the law, having considered the defence's mitigation and the prosecution's application for a deterrent sentence. This Court only needed to reiterate that corruption was a heinous act that would destroy a nation. The sentence of six years for each charge, to be served concurrently, and a total fine of RM15,450,000 by the trial judge, which was five times the amount of gratification received by the respondent, was also restored. The respondent was also to serve two years' imprisonment in default of payment of the fine. (para 181)

Case(s) referred to:

Attan Abdul Gani v. PP [1969] 1 MLRH 58 (refd)

Brabakaran v. PP [1965] 1 MLRA 107 (refd)

Dato' Seri Anwar Ibrahim v. PP [2002] 1 MLRA 266 (refd)

DPP v. Kilbourne [1973] 1 All ER 440 (refd)

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

Lee Ah Seng & Anor v. PP [2007] 1 MLRA 784 (refd)

Loh Kooi Choon v. Government of Malaysia [1975] 1 MLRA 646 (refd)

Md Zainuddin Raujan v. PP [2013] 7 MLRA 125 (refd)

Muniandy & Anor v. PP [1973] 1 MLRA 780 (refd)

Pendakwa Raya lwn. Zakaria Mansor [1996] 3 MLRH 825 (refd)

Pendakwa Raya lwn. Mohd Asyraf Thiru Abdullah [2015] 5 MLRA 633 (refd)

PP v. Datuk Harun bin Haji Idris (No 2) [1976] 1 MLRH 562 (refd)

PP v. Md Nor Hamid [2003] 5 MLRH 193 (refd)

PP v. Mohd Radzi Abu Bakar [2005] 2 MLRA 590 (refd)

PP v. Sihabduin Hj Salleh & Anor [1980] 1 MLRA 3 (refd)

PP v. Yuvaraj [1968] 1 MLRA 976 (refd)

Public Prosecutor v. Yuvaraj [1968] 1 MLRA 606 (refd)

R v. Hills [1988] 86 Cr App R 26 (refd)

Sabarudin Non v. PP & Other Appeals [2004] 2 MLRA 441 (refd)

T.N. Nathan v. Public Prosecutor [1977] 1 MLRH 95 (refd)

Tan Weng Chiang v. PP [1992] 1 MLRA 332 (refd)

Thavanathan Balasubramaniam v. PP [1997] 1 MLRA 191 (refd)

Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeal [2012] 1 MLRA 712 (refd)

Yap Ee Kong & Anor v. PP [1980] 1 MLRA 48 (refd)

Yong Choo Kiong v. PP [2026] 1 MLRA 76 (refd)

Legislation referred to:

Anti-Corruption Act 1997, s 42(1)

Customs Act 1967, s 137

Dangerous Drugs Act 1952, s 37(d), (da)

Evidence Act 1950, s 134

Malaysian Anti-Corruption Commission Act 2009, ss 3, 16(a)(A), 24(1), 50(1)

Penal Code, ss 165, 409

Prevention of Corruption Act 1961, s 14

Counsel:

For the appellant: Afzainizam Abdul Aziz; AG's Chambers

For the respondent: Athimulan Muruthiah (Abu Bakar Isa Ramat, Mohamed Baharudeen Mohamed Ariff, Ashok Athimulan, Nor Elly Etasya Affreina Mohd Zamri, Cheah Sin Chin & Nur-Diana Ezlyn Hashim with him); M/s Hafarizam Wan & Aisha Mubarak

[For the Court of Appeal judgment, please refer to *Mohd Isa Abdul Samad v. PP* [2025] 4 MLRA 477]

JUDGMENT

Nordin Hassan FCJ:

Introduction

[1] This is an appeal by the Public Prosecutor against the decision of the Court of Appeal to acquit and discharge the respondent from nine charges of corruption offences, and to set aside the decision of the High Court on these bribery charges.

[2] The High Court had earlier convicted the respondent of receiving bribes under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ("the MACC Act") and sentenced him to 6 years' imprisonment for each charge and to cumulative fines of RM15,450,000.00 for all nine charges. In default of the payment of the fine, two years' imprisonment is imposed. Meanwhile, the High Court acquitted and discharged the respondent of the charge of criminal breach of trust under s 409 of the Penal Code, the first charge against the respondent. The prosecution did not appeal against the acquittal of the offence of criminal breach of trust.

[3] The charge of criminal breach of trust against the respondent is as follows:

> "Pertuduhan pertama
>
> Bahawa kamu pada 29 April 2014, di tingkat 50, Menara Felda, Platinum Park, No 11, Persiaran KLCC, 50088, dalam Wilayah Persekutuan Kuala Lumpur, sebagai ejen iaitu Pengarah Syarikat Felda Investment Corporation Sdn Bhd (No. Syarikat 1052445-A) dan di dalam kapasiti tersebut diamanahkan dengan harta tertentu iaitu dana syarikat Felda Investment Corporation Sdn Bhd telah melakukan pecah amanah jenayah ke atas dana tersebut, di mana kamu telah dengan curangnya melepaskan harta tersebut dengan meluluskan cadangan pembelian Merdeka Palace Hotel & Suites Kuching, Sarawak dengan harga RM160 million tanpa kelulusan Ahli Lembaga Pengarah Lembaga Kemajuan Tanah Persekutuan (FELDA) bertentangan dengan keputusan Mesyuarat Ahli Lembaga Pengarah FELDA Bilangan 33 bertarikh 25 Jun 2013 yang dibuat berkenaan perlaksanaan amanah tersebut di mana Ahli Lembaga Pengarah Felda memberi mandat kepada Ahli Lembaga Pengarah Syarikat Felda Investment Corporation Sdn Bhd dalam membuat keputusan pelaburan yang melibatkan projek yang bernilai RM100 juta ke bawah dan oleh yang demikian kamu telah melakukan suatu kesalahan pecah amanah jenayah iaitu kesalahan yang boleh dihukum di bawah s 409 Kanun Keseksaan."

[4] The nine bribery charges against the respondent, as amended, are as follows:

(i) Pertuduhan pindaan kedua (2nd amended charge) yang sama.

> Bahawa kamu di antara 15 Julai 2014 dan 30 Julai 2014, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM100,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million, dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(ii) Pertuduhan pindaan ketiga (3rd amended charge)

Bahawa kamu di antara 20 Julai 2014 dan 30 Julai 2014, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 140,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(iii) Pertuduhan pindaan keempat (4th amended charge)

Bahawa kamu di antara 15 Oktober 2014 dan 30 Oktober 2014, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 300,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(iv) Pertuduhan pindaan kelima (5th amended charge)

Bahawa kamu di antara 1 November 2014 dan 15 November 2014, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 250,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(v) Pertuduhan pindaan keenam (6th amended charge)

Bahawa kamu di antara 20 Jun 2015 dan 30 Jun 2015, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 500,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai

upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(vi) Pertuduhan pindaan ketujuh (7th amended charge)

Bahawa kamu di antara 13 Julai 2015 dan 16 Julai 2015, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 500,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(vii) Pertuduhan pindaan kelapan (8th amended charge)

Bahawa kamu di antara 20 Ogos 2015 dan 30 Ogos 2015, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 300,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(viii) Pertuduhan kesembilan (9th amended charge)

Bahawa kamu di antara 1 September 2015 dan 15 September 2015, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 500,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

(ix) Pertuduhan pindaan kesepuluh (10th amended charge)

> Bahawa kamu di antara 1 Disember 2015 dan 15 Disember 2015, di Tingkat 49, Menara Felda, Platinum Park, No 11, Persiaran KLCC, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima suatu suapan untuk diri kamu iaitu wang tunai berjumlah RM 500,000.00 daripada Ikhwan bin Zaidel iaitu Ahli Lembaga Pengarah Syarikat Gagasan Abadi Properties Sdn Bhd melalui Muhammad Zahid bin Md Arip sebagai upah bagi membantu meluluskan pembelian Merdeka Palace Hotel & Suites di Kuching, Sarawak oleh pihak Syarikat Felda Investment Corporation Sdn Bhd yang bernilai RM 160 million. Dengan itu kamu telah melakukan suatu kesalahan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah s 24(1) Akta yang sama.

The Prosecution Case

The Offer By Gagasan Abadi Properties Sdn Bhd (GAPSB) For Felda Investment Corporation Sdn Bhd (FICSB) To Buy Merdeka Palace Hotel & Suites (MPHS)

[5] In September 2013, GAPSB, the owner of MPHS, offered FICSB, the wholly owned subsidiary of FELDA, to buy MPHS for RM200 million. The offer was made by a letter dated 2 September 2013 addressed to the respondent, the Chairman of FELDA and FICSB. The letter of offer was personally sent to the respondent by Ikhwan bin Zaidel (SP16), the director and shareholder of GAPSB, through the respondent's Special Officer, Muhammad Zahid Md Arip (SP21).

[6] On 26 February 2014, the Board of Directors of FICSB, chaired by the respondent, having considered the offer from GAPSB, rejected it on the ground that the transaction was not profitable. The valuation report for MPHS, prepared by the valuation firm Henry Butcher Sarawak, revealed that the market value of MPHS was only RM137.6 million, substantially below GAPSB's offer price. On 28 February 2014, the FICSB's decision was conveyed to GAPSB by a letter signed by Mohd Zaid bin Abdul Jalil (SP15), the Chief Executive Officer of FICSB.

[7] A few weeks after sending the rejection letter, SP15 received a telephone call from the respondent, who directed SP15 to review the decision to buy MPHS at the Prime Minister's request. The next day, when SP15 met the respondent, the respondent instructed SP15 to proceed with the takeover of MPHS to assist political activities in Sarawak. The respondent also instructed SP15 to deliberate on the takeover of MPHS at the FICSB Board of Directors' meeting again. SP15 then conveyed the respondent's instruction to other Board of Directors' members.

[8] Thereafter, GAPSB sent another letter of offer dated 28 March 2014 to FICSB, addressed to the respondent as its Chairman. This time, the price offered to buy MPHS was reduced to RM165 million.

[9] Thereafter, SP21 and another GAPSB director, Ibrahim bin Baki, met with the respondent at his office at Menara FELDA, Kuala Lumpur. SP21 requested that the respondent consider the GAPSB's fresh offer to FICSB to purchase MPHS at a lower price. The respondent responded affirmatively and will try to assist, but indicated that the decision is with the FICSB Board of Directors.

[10] Subsequently, SP16 sent a letter dated 22 April 2014, signed by him, to the CEO of FICSB, SP15. In the said letter, SP16 informed that GAPSB had reduced the offer price from RM165 million to RM160 million for FICSB to buy MPHS.

The Decision Of FICSB On The Offer Made By GAPSB To Buy MPHS At The Price Of RM160 Million

[11] Upon receipt of the letter dated 22 April 2014 from GAPSB, which reduced the offer price to RM160 million, SP15 informed the respondent. The respondent then instructed SP15 to proceed with the deliberation of the Board's paper on this matter at the FICSB Board of Directors' meeting on 29 April 2014.

[12] On 28 April 2014, SP15 met with the respondent and briefed him on the Board's paper on the proposed acquisition of MPHS. SP15 in the briefing also informed the respondent that the management of FICSB had only valued MPHS at RM153 million and suggested that the respondent request a RM10 million discount from GAPSB. At that time, the respondent said he would ask the FICSB Board members to agree to the RM10 million discount.

[13] On 29 April 2014, before the Board of Directors' meeting, SP15 was called to the respondent's room and was asked not to raise the discount of the offered price, which was at RM160 million. Again, SP15 informed the respondent that the valuation by FICSB management was only RM153 million and asked how to justify the extra 7 million if FICSB were to agree to the offered price of RM160 million. The respondent then stated that they could use "goodwill" to justify the RM160 million cost, as MPHS was well known in Kuching, Sarawak.

[14] The 10th FICSB Board of Directors' meeting convened on that day, 29 April 2014, at 3:20 pm, and was chaired by the respondent. In the meeting, SP15 informed the Board members that the Board had previously rejected the acquisition of MPHS because it was not a viable investment and would require 27 years to generate a profit. SP15 also informed the Board that the valuation of MPHS by FICSB management was RM153 million. SP15 then presented the Board's paper on the proposal for the acquisition of MPHS.

[15] In the meeting regarding the acquisition of MPHS, the respondent informed the Board members that FICSB should consider the element of "goodwill" when assessing the offered price of RM160 million by GAPSB.

The respondent proposed that FICSB approve the acquisition of MPHS at a cost of RM160 million.

[16] The majority of the Board members agreed that FICSB buy MPHS at a price not exceeding RM160 million. Thus, the majority of the board agreed to the proposed price of RM160 million for the acquisition of MPHS.

[17] As FICSB has decided to buy MPHS for RM160 million, SP15 informed the Board members that any investment exceeding RM100 million requires approval from the FELDA Board of Directors. However, the respondent stated that approval by the FELDA Board of Directors was not necessary, as the members of the FICSB Board of Directors and the FELDA Board of Directors are the same persons.

[18] Subsequently, a letter dated 30 April 2014 was sent by FICSB to GAPSB, informing them of the decision to purchase MPHS for RM160 million. Thereafter, GAPSB sent to FICSB a letter of acceptance dated 25 May 2014.

The Request For Gratification From GAPSB By The Respondent Through Muhammad Zahid Bin Md Arip (SP21).

[19] After FICSB agreed to acquire MPHS and GAPSB signed the letter of acceptance, SP16 and Ibrahim bin Baki met with the respondent in a meeting arranged by SP21 in the respondent's office at Menara FELDA, Kuala Lumpur. During the meeting, SP16 thanked the respondent for agreeing to purchase MPHS at RM160 million.

[20] Thereafter, SP16 frequently visited Menara FELDA in Kuala Lumpur to finalize the MPHS sale-and-purchase agreement. During one of the visits, at Restoran Binjai in front of Menara FELDA, SP21 informed SP16 that the respondent is a politician and needs funds for his political activities. SP16 did not make any decision at that time but said he would consider the matter.

[21] SP16 understood that the respondent solicited money from GAPSB through SP21, his Special Officer, as a reward for assisting the acquisition of MPHS by FICSB. SP16 is also of the view that the money was intended for the respondent personally, rather than for a political purpose. If it is true that the money was used for political activities, the respondent could have asked SP16 at the two prior meetings.

[22] After the meeting with SP21, SP16 discussed the funding request with Ibrahim bin Baki and decided they had no choice but to accede to it. Both are concerned that, if they decline the request, the respondent might delay payment for the MPHS sale or terminate the sale. They also agreed to pay the RM10 million commission to JV Evolution Sdn Bhd as the agent for the sale of MPHS. The respondent's request for funds was not presented to the GAPSB Board of Directors because the members were aware that the Board would not approve it.

[23] A few days after the meeting with SP21 at Restoran Binjai, where the request for money was made, SP21 telephoned SP16 asking about the respondent's request for political funds. SP16 then informed SP21 that he would discuss this further when they met in Kuala Lumpur, to which SP21 agreed.

[24] In early June 2014, SP16 met with SP21 and informed him that he and Ibrahim bin Baki had agreed to provide RM3 million to the respondent as political funds. SP16 also informed SP21 that the money would be paid after GAPSB received payment from FICSB from the sale of MPHS.

Receipt Of Gratification Money By The Respondent Through SP21.

[25] Thereafter, at SP21's office, the respondent asked SP21 whether SP16 or Ibrahim bin Baki had called him ("ada Sarawak tu call"). SP21 answered "no", and the respondent requested SP21 to contact them and send his regards. ("Kau call lah diaorang, kirim salam tanya khabar"). SP21 understood that the respondent wanted him to call SP16 to ask about the political funds. SP21 then telephoned SP16 and conveyed the respondent's regards to him (Tan Sri kirim salam), to which SP16 responded that they would meet later ("oh...tak apa... nanti kita jumpa...")

[26] On 1 July 2014, GAPSB received a partial payment from FICSB for the MPHS sale in the amount of RM16 million.

[27] In the same month, July 2014, SP16 telephoned SP21 to inform him of his intention to meet SP21 at the PJ Hilton Hotel. SP21 then informed the respondent about SP16's intention to meet him, and the respondent asked him to meet SP16. The respondent also instructed SP21 to request advance funds from SP16, and SP21 subsequently requested RM100,000.00 from SP16.

[28] The gratification money was paid by SP16 to the respondent nine times, through SP21. The payment details are as follows:

(i) 1st payment — between mid-July and the end of July 2014, at Cigar Bar, PJ Hilton Hotel, the amount of RM100,000.00. SP16 stated that the money was for the respondent while handing it to SP21. ("Ini untuk Tan Sri, minta sampaikan pada Tan Sri"). The money was handed over to the respondent at his office in Menara FELDA, where he asked SP21 to place it on his table.

(ii) 2nd payment — end of July 2014, at Cigar Bar, PJ Hilton Hotel, the amount of RM140,000.00. SP16 informed SP21 that the money was for the respondent. The money was given to the respondent at his office in Menara FELDA and placed on his table.

(iii) 3rd payment — between mid-October and the end of October 2014, at Sunway Opal Condominium, Petaling Jaya, the amount of RM300,000.00. SP16 instructed SP21 to deliver the money to the respondent. SP21 handed over the money to the respondent

at his office at Menara FELDA by placing it on the respondent's table.

Before the payment, the respondent asked SP21 for any updates from SP16 and requested that SP21 send his regards. ("apa khabar kawan kita Sarawak tu?...call lah kata I kirim salam"). When SP21 contacted SP16 and conveyed the respondent's "salam", SP16 responded that they would meet later. ("waalaikumsalam, nanti kita jumpa")

(iv) 4th payment — early November 2014, at Sunway Opal Condominium, Petaling Jaya, the amount of RM250,000.00. SP16 also informed SP21 that the money was for the respondent. The money was then delivered to the respondent by SP21 at SP21's office in Menara FELDA, where SP21 placed it on his table.

(v) 5th payment — end of June 2015, at Sunway Opal Condominium, Petaling Jaya, the amount of RM500,000.00. SP16 handed the money to SP21 for delivery to the respondent. SP21 thereafter, passed the money to the respondent at his office at Menara FELDA by placing it on his table.

Before this 5th payment, in March 2015, SP16 telephoned SP21 to request the respondent's assistance with the balance of the MPHS sale price. The request was conveyed to the respondent.

(vi) 6th payment — in July 2015, at Sunway Opal Condominium, Petaling Jaya, the amount of RM500,000.00. SP16 passed the money to SP21, who handed it to the respondent. SP21 then delivered the money to the respondent at his Menara FELDA office by placing it on his table.

Before this payment, around the end of June, SP21 telephoned SP16 and conveyed the respondent's regards ("salam") to SP16.

(vii) 7th payment — end of August 2015, at SP21's brother's house, at Kuching, Sarawak, the amount of RM300,000.00. SP16 handed the money to SP21 for delivery to the respondent. Thereafter, the money was passed to the respondent at his office at Menara FELDA by placing it on his table.

(viii) 8th payment — in early September 2015, at Sunway Opal Condominium, Petaling Jaya, the amount of RM500,000.00. The money was handed over to SP21 by SP16, who later passed it to the respondent at his office in Menara FELDA. It was placed on the respondent's table.

(ix) 9th payment — in early December 2015, at Sunway Opal Condominium, Petaling Jaya, the amount of RM500,000.00. The money was handed over to SP21 for delivery to the respondent. The money was then delivered to the respondent at his office in Menara FELDA and placed on his table as instructed.

Proceedings At The High Court

[29] Having considered all the evidence presented by the prosecution, the outcome of the cross-examination, and the demeanor of witnesses, the trial judge found that the prosecution had failed to prove a *prima facie* case for the 1st charge of breach of trust under s 409 of the Penal Code. However, the trial judge found that the prosecution had proved a *prima facie* case on all nine charges of accepting bribes under s 16(a)(A) of the MACC Act. The trial judge concluded that the prosecution had proved that the respondent had received the gratification money as stipulated in the nine charges, and, as such, it triggered the presumption under s 50(1) of the same Act that the money was received corruptly as a reward in assisting the approval of the purchase of MPHS by FICSB. Therefore, the respondent was called to enter his defence for the nine bribery charges.

The Defence Of The Respondent

[30] The respondent's defence is straightforward: he denies any involvement in accepting bribes, as stated in the nine charges against him. The respondent testified that he has never received the bribe money alleged in the charges and has no knowledge of its existence. It was also the respondent's contention that SP21 intentionally implicated the respondent in the bribery offences. The defence also called other witnesses to support its defence, who were Zuraida binti Ariffin @ Shaari (SB2), Kamar Bashah bin Sharif (SB3), Mohamad Jani bin Ismail (SB4), Dahalan bin Tunggal (SB5), and Dr Mohd Zaqrul Razmal bin Mohd Podzi (SB6).

The Decision Of The Trial Judge At The End Of The Case

[31] The trial judge, having considered all the evidence presented in court, decided that the defence, on the balance of probabilities, had failed to rebut the presumption under s 50(1) of the MACC Act. It was also found that the defence was an afterthought and a bare denial, unsupported by reliable evidence. The trial judge then concluded that the defence had failed to raise any reasonable doubt on the prosecution's case. In the circumstances, the respondent was convicted of the nine bribery charges. The respondent was sentenced to six years' imprisonment for each charge, which ran concurrently, and a fine totaling RM 15,450,000.00, with a default penalty of two years' imprisonment.

Proceedings At The Court of Appeal

[32] Aggrieved with the decision of the High Court in convicting the respondent on the nine bribery charges, the respondent appealed against the decision to the Court of Appeal.

[33] The Court of Appeal, having analyzed the records of appeal and submissions by parties, decided to allow the respondent's appeal and set aside the decision of the High Court. The respondent was acquitted and discharged of all nine bribery charges.

[34] The Court of Appeal found that the prosecution had failed to establish a *prima facie* case at the conclusion of its case. The decision was based, among others, on the following grounds:

(i) The invocation of the presumption under s 50(1) by the trial judge is misplaced, and if the presumption applies, it has been rebutted by the defence.

(ii) There is no credible evidence that the respondent demanded gratification through SP21.

(iii) The prosecution presented two different narratives of its case against the respondent, which are that the gratification was a reward for the respondent in assisting the purchase of MPHS, as stipulated in the nine charges, and as an inducement for the respondent not to interfere with the completion of the contract for the sale of MPHS. This prejudiced the respondent's defence.

(iv) The prosecution's assertion that the respondent assisted in the approval of the sale of MPHS is negated by the acquittal of the respondent of the charge for criminal breach of trust. This is based on the trial judge's finding that there was no credible evidence that the respondent approved, instructed, or influenced the members of the FICSB's Board of Directors to approve the MPHS's purchase.

(v) There is no cogent evidence that the respondent had received the gratification apart from the oral evidence of SP21.

The Prosecution's Submission In The Appeal Before This Court.

[35] The prosecution in the appeal before this Court submitted, among others, that soliciting gratification is not an element for an offence of receiving gratification under s 16(a)(A) of the MACC Act. It was the submission of the prosecution that the Court of Appeal erred when it required the prosecution to establish the facts that the respondent had instructed SP21 to solicit or demand the money from SP16 to establish a *prima facie* case of receiving gratification under s 16(a)(A). The prosecution further contended that the

offences of soliciting gratification and receiving gratification are two distinct offences under s 16 of the MACC Act. The case of *Pendakwa Raya lwn. Mohd Asyraf Thiru Abdullah* [2015] 5 MLRA 633 was referred to further support this contention.

[36] It was further submitted that the evidence adduced shows that the respondent had instructed SP21 to demand and obtain gratification from SP16 for the respondent after the FICSB Board of Directors approved the acquisition or purchase of MPHS.

The prosecution contended that the Court of Appeal erred in law in setting aside the trial judge's finding of fact that the respondent had instructed SP21 to solicit the money from SP16 in stages, and that the money was handed over to the respondent as stipulated in the nine charges. It was further contended that gratification can be received through a third party, as decided in *PP v. Datuk Harun bin Haji Idris (No 2)* [1976] 1 MLRH 562.

Further, the prosecution submitted that the Court of Appeal erred in interfering with the finding of facts of the trial judge that the respondent instructed SP21 to solicit money from SP16, especially when the respondent informed him, "kalau dia orang bagi apa-apa nanti kau ambillah," and the sending of "salam" by the respondent to SP16 through SP21. The evidence of SP21 was assessed by the trial judge alongside that of other prosecution witnesses, in particular SP16.

[37] Next, the prosecution submitted that the trial judge had found SP16 and SP21 to be credible witnesses. The trial judge found that SP16 and SP21 were credible witnesses and that their evidence was not shaken during cross-examination. The finding was based on an objective assessment of their evidence.

[38] The prosecution further contended that the trial judge had assessed all the evidence and made an appropriate judicial appreciation of the evidence. The trial judge had evaluated all the evidence presented and made a correct judicial appreciation of evidence as laid down in the case of *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 2 MLRA 1.

[39] The prosecution then submitted that there is sufficient evidence to prove that the respondent had received the gratification through SP21 as stipulated in the charges. The prosecution submitted that the Court of Appeal erred in its finding that, apart from the oral evidence of SP21, there was no other evidence to prove that the respondent received the gratification money as stipulated in the charges. The evidence of SP21 that the respondent received the bribe money was corroborated by other evidence, including that of SP16.

[40] It was also the prosecution's submission that the trial judge correctly applied the presumption under s 50(1) of the MACC Act, and the Court of Appeal erred when it concluded that the presumption had been rebutted even

at the prosecution's case. The prosecution further submitted that the trial judge had correctly applied the presumption under s 50(1) of the MACC Act after the prosecution had proved the receipt of the gratification by the respondent.

[41] The prosecution then submitted that the trial judge's finding on the charge of criminal breach of trust against the respondent does not affect the findings on the nine bribery offences. The prosecution further submitted that the trial judge's decision to acquit the respondent of the charge of criminal breach of trust does not affect the trial judge's findings regarding the bribery offences, as they are separate and distinct offences. In addition, the decision to acquit the respondent of the criminal breach of trust does not negate the trial judge's finding that the respondent had received the money from SP21, which triggers the presumption under s 50(1) of the MACC Act.

[42] The prosecution submitted that the gratification received by the respondent was a reward for assisting in the approval of the purchase of MPHS by FICSB for RM160 million. The prosecution further submitted that the evidence presented is sufficient to prove that the gratification money of RM3.09 million, received by the respondent for a reward in assisting with the approval of the purchase of MPHS by FICSB. The Court of Appeal also erred in concluding that there are two distinct prosecution narratives in the present case, which prejudice the respondent's defence.

The Respondent's Submission

[43] On the contrary, counsel for the respondent submitted, among others, that the invocation of the presumption under s 50(1) of the MACC Act was correctly held by the Court of Appeal as misplaced, as the gratification was not as a reward for assisting in the approval of the MPHS purchase. As the approval to purchase was a collective decision of the FICSB Board of Directors, it demolished the factual basis for applying the presumption in the bribery charges.

[44] It was further submitted that the purpose of the gratification is a precondition to the presumption under s 50(1) for the charge under s 16(a)(A) of the MACC Act. In the present case, the actual purpose of the gratification received was the fear of future harm to the MPHS's sale and not as a reward for assisting the approval of the said sale; the presumption cannot be applied. Therefore, there was no duty for the respondent to rebut the presumption. Further, the prosecution had failed to adduce credible evidence to activate the said presumption.

[45] Counsel for the respondent further submitted that the Court of Appeal was correct in its finding that the prosecution had failed to prove a *prima facie* case for the bribery charges. There is no credible evidence that the respondent approved, directed, or influenced the decision of the FICSB Board of Directors.

[46] It was then submitted that, as the trial judge found no credible evidence that the respondent approved, directed, or influenced the decision of the FICSB Board of Directors, the finding is also applicable to the nine bribery charges. The trial judge's finding in the criminal breach of trust charge directly undermined the factual basis for the bribery charges.

[47] Next, counsel for the respondent submitted that the variance between the purpose of the receipt of the gratification in the charges and the evidence adduced is fatal and caused irredeemable prejudice to the respondent. In the nine charges, the purpose of the gratification was as a reward for assisting the sale of MPHS, whilst in evidence, the gratification was an inducement not to interfere with the completion of the contract of sale of MPHS. This seriously prejudices the respondent's defence when the prosecution's narrative was changed in midstream. In this regard, the respondent was denied sufficient notice of the charges against him.

The Analysis And Decision Of This Court.

[48] The appeal before this Court pertains to the decision of the Court of Appeal in acquitting and discharging the respondent of the nine charges under s 16(a)(A) of the MACC Act for accepting gratification. The said section states as follows:

> "Offence of accepting gratification
>
> 16. **Any person who by himself, or by or in conjunction with any other person -**
>
> (a) **corruptly** solicits or **receives** or agrees to receive for himself or for any other person; or
>
> (b) corruptly gives, promises, or offers to any person, whether for the benefit of that person or of another person;
>
> **any gratification as** an inducement to or **a reward for, or otherwise on account of -**
>
> (A) **any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or**
>
> (B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned,
>
> **commits an offence.**"
>
> [Emphasis Added]

[49] The sentence and penalty for the offence under s 16 is provided under s 24(1) of the same Act, which states:

"24.(1) **Any person who commits an offence under ss 16**, 17, 20, 21, 22, and 23 shall, on conviction, be liable to:

(a) **imprisonment for a term not exceeding twenty years; and**

(b) **a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence,** where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher."

[Emphasis Added]

[50] The provision of s 16(a)(A) cited above clearly provides, among others, that any person, whether acting alone or through another person, who corruptly receives gratification as a reward to do any matter or transaction, commits an offence. "Gratification" has been defined under s 3 of the same Act to include "money". It states as follows:

"gratification" means-

(a) **money**, donation, gift, loan, fee, reward, valuable security, property, or interest in property, being property of any description, whether movable or immovable, financial benefit, or any other similar advantage;

[Emphasis Added]

[51] In the present case, having perused the nine charges against the respondents and the provision of s 16(a)(A), the essential elements to be proven by the prosecution to establish its case are:

(i) The respondent received the gratification from SP16 through SP21;

(ii) The gratification received was as a reward for assisting GAPSB in the approval of the purchase of MPHS by FICSB;

(iii) The gratification was received corruptly.

The Presumption Under Section 50(1) Of The MACC Act 2009

[52] Before we proceed to analyse the evidence in this case, it is apposite to note that the legislature had enacted a special provision under the law to facilitate the prosecution of corruption cases. As such, it effectively helps combat corruption in Malaysia. The provision is the presumption under s 50(1) of the MACC Act 2009, which replaced the earlier presumption provisions in ss 14 of the Prevention of Corruption Act 1961 and 42(1) of the Anti-Corruption Act 1997. The presumption under s 50(1) of the MACC Act 2009 is broader in scope than the earlier law's presumption, which has been repealed.

[53] The earlier presumption provisions under s 14 of the Prevention of Corruption Act 1961 and s 42(1) of the Anti-Corruption Act 1997 for comparisons are as follows:

(i) Section 14 — Prevention of Corruption Act 1961

> Where in any proceedings against a person for an offence under ss 3 or 4, it is proved that **any gratification has been** paid or given to or **received** by a person in the employment of any public body, **such gratification shall be deemed to have been** paid or given and **received corruptly as an** inducement or **reward as hereinbefore mentioned**, unless the contrary is proved.

[Emphasis Added]

(ii) Section 42(1) — Anti-Corruption Act 1997

> "Where in any proceedings against any person for an offence under ss 10, 11, 13, 14 or 15 it is proved that **any gratification has been accepted** or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, **the gratification shall be presumed to have been corruptly accepted** or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised or offered as an inducement or **a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.**"

[Emphasis Added]

[54] The presumption under s 50(1) of the MACC Act 2009 states as follows:

> 50.(1) **Where in any proceedings against any person for an offence under ss 16**, 17, 18, 20, 21, 22 or 23 **it is proved that any gratification has been received** or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, **the gratification shall be presumed to have been corruptly received or agreed to be received**, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered **as** an inducement or **a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.**
>
> [Emphasis Added]

[55] The meaning of the words in s 50(1) is plain and unambiguous. It is the duty of judges to give effect to its plain meaning according to the words used by the legislature, and in interpreting the provision, it is a settled principle of law that the court should not put words into the statute.

(see *PP v. Sihabduin Hj Salleh & Anor* [1980] 1 MLRA 3; *Tan Weng Chiang v. PP* [1992] 1 MLRA 332; *Loh Kooi Choon v. Government of Malaysia* [1975] 1 MLRA 646; *Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeal* [2012] 1 MLRA 712)

[56] In the present case, the prosecution needs only to prove that the respondent received the money through SP21, thereby triggering the presumption under

s 50(1). Upon establishing the receipt of the money, it is presumed that the money was received corruptly on account of the matters set out in the charge, which was to assist GAPSB in the purchase of MPHS by FICSB.

[57] This Court in *Thavanathan Balasubramaniam v. PP* [1997] 1 MLRA 191, had earlier explained the application of the presumption under s 14 of the Prevention of Corruption Act 1961, which was updated by s 50(1) of the MACC Act, in the following manner:

> "In any event, in the instant case, **once it is proved that the money RM15,000.00 had been given to or received by the accused, the presumption under s 14 of the Act arose that the money had been given and received corruptly as an inducement or reward to acquit and discharge PW2 of the offence in the criminal case.** It was then for the accused to give an innocent explanation,**which the Court considered more likely than not that it was true.**"
>
> [Emphasis Added]

[58] The presumption under s 50(1) is a presumption of law and obligatory for the court to invoke it if the required fact to trigger the presumption has been proven, and in this case, the receipt of the bribe money. In *Attan Abdul Gani v. PP* [1969] 1 MLRH 58, the same issue was canvassed by the Court, and Sharma J said this:

> "**Once it is proved that the gratification has been paid or received, then, in the words of s 14 of the Act, 'such gratification shall be deemed to have been paid or given or received corruptly. '" The presumption at once arises under the section.**
>
> **This presumption is a presumption of law, and it is obligatory on the court to raise it in every proceeding for an offence under ss 3 or 4 of the Act, provided it is proved that the gratification had been paid, given, or received.** The prosecution has not to establish anything more than the payment of money. (see *State of Madras v. Vaidyanatha Iyer*, AIR 1958 SC 61 and *Emden v. State of Uttar Pradesh*, AIR 1960 SC 548). It then becomes the duty of the accused to disprove what s 14 begins to presume against him."
>
> [Emphasis Added]

[59] The respondent's contention that to trigger the presumption under s 50(1), the prosecution needs to prove the purpose of the gratification is misconceived. This amounts to putting words into the provision that were not required under it. The issue of having to prove more than what is needed to trigger the presumption has been discussed and decided in the case of *Public Prosecutor v. Yuvaraj* [1968] 1 MLRA 606, where Lord Diplock explained as follows:

> "It has been suggested that to satisfy the court that upon the balance of probabilities a fact does not exist puts too high a burden upon a defendant in criminal proceedings where the consequence of a failure to disprove that fact would be his conviction, and in some of the cases cited by the Federal

> Court without explicit disapproval expressions are used which might be understood as calling for an explanation by the defendant of no greater degree of plausibility than is sufficient to raise a reasonable doubt in the existence of the fact which he must disprove. But this is the best by which, in the allowance of any statutory provision reversing the burden of proof, the court determines whether a fact the existence of which is a necessary ingredient of a criminal offence has been "proved" or "not proved" by the prosecution, upon which the onus lies to prove it. **It is merely another way of saying that the prosecution must not only prove the existence of this first two factual ingredients of the offence, *viz*. (1) that a gratification was paid or given to or received by the defendant and (2) that at the time of the payment, gift or receipt, he was in the employment of a public body but must also satisfy the court that the circumstance in which the gratification was paid, given or received give rise beyond reasonable doubt to an inference or fact that it was paid given or received with a corrupt motive. This is the ordinary way in which the prosecution satisfied the burden of proving the motive with which the act was done by the defendant, where the onus of doing so lies upon this prosecution.** In Their Lordships' view, **it gives no sufficient effect to the reversal of the ordinary onus of proof by an express statutory provision that a fact which constitutes an ingredient of a criminal offence shall be deemed to exist "unless the contrary is proved.**"
>
> [Emphasis Added]

[60] Likewise, in the present case, the respondent's contention on the issue would negate the effect of the presumption under s 50(1) that a fact which constitutes an ingredient of the offence shall be deemed to exist until it is proved to the contrary as intended by the legislature. That contention would only amount to proving the prosecution's case in the ordinary way, which was not intended by the legislature. Thus, it is clear that the prosecution in the present case needs only to prove receipt of the gratification money by the respondent for the presumption under s 50(1) to apply.

[61] The shifted burden of proving an ingredient of a criminal offence to the defence under s 50(1) is not something new in our law. The presumption provision is also set out in s 165 of the Penal Code, s 137 of the Customs Act 1967, and ss 37(d) and 37(da) of the Dangerous Drugs Act 1952. Parliament passed these presumption provisions with their specific objective, and the Court's duty is to give effect to the intention of Parliament.

The Issue Of Whether The Prosecution Had Proved The Receipt Of The Gratification Money From SP16 Through SP21.

The Evidence Of SP21

[62] Muhammad Zahid bin Md Arip (SP21) was the Special Officer for the respondent at the material time and when the respondent was the Chairman of FELDA and FICSB.

[63] During the process of finalizing the sale of MPHS by GAPSB to FICSB, SP16 frequently visited Menara FELDA. During one of these visits at Restoran Binjai in front of Menara FELDA, SP21 informed SP16 that the respondent is a politician seeking funds for his political activities. SP16 only responded that there was no need to worry and that he would help the respondent. ("Jangan risaulah, nanti kita tolong Tan Sri.")

[64] Thereafter, at SP21's office, the respondent asked SP21 whether SP16 or Ibrahim bin Baki had called him. ("ada Sarawak tu call") SP21 answered no, and the respondent requested SP21 to contact them and send his regards. ("Kau call lah diaorang, kirim salam tanya khabar"). SP21 understood that the respondent wanted him to call SP16 to ask about the political funds. SP21 then telephoned SP16 and conveyed the respondent's regards to him (Tan Sri kirim salam), to which SP16 responded that they would meet later ("oh..tak apa.. nanti kita jumpa..")

[65] In early June 2014, SP16 met with SP21 and informed him that he and Ibrahim bin Baki had agreed to provide RM3 million to the respondent as political funds. SP16 also informed SP21 that the money would be paid after GAPSB received payment from FICSB from the sale of MPHS.

[66] SP21 testified that he was the middleman who solicited the money from SP16 and handed it to the respondent at the respondent's office on nine occasions. SP21 did not know the amount of money given to him by SP16, as he did not count it, but testified that he handed over the money he received from SP16 to the respondent 1 or 2 days after receiving it. Each time SP21 received money from SP16, he was told to deliver it to the respondent, which he did. The 1st payment was between mid-July and the end of July 2014, when the respondent asked SP21 to request an advance payment from SP16, and the 2nd payment was at the end of July 2014. About two months later, when no news was received from SP16, the respondent asked SP21 to call SP16 and send his regards ("salam"). Thereafter, in mid-October 2014, SP16 made the 3rd payment and handed it over to the respondent by SP21.

[67] Next, the 4th payment was in early November 2014, and the 5th payment was at the end of June 2015. Following this payment, the respondent again sent his regards ("salam") to SP16 via SP21, and, in July 2015, the 6th payment was made to the respondent.

[68] Further, the 7th payment was made to the respondent in August 2015, the 8th in September 2015, and the 9th in December 2015.

[69] It was the evidence of SP21 that each time he handed the money to the respondent, he was asked by the respondent to place it on the respondent's table in his office, which SP21 did.

[70] It was also SP21's evidence that the respondent had given him money in the sum of RM10,000.00 to RM20,000.00, and at times, RM50,000.00, after he had handed the money from SP16 to the respondent.

The Credibility Of SP21

[71] Firstly, it is settled law that the credibility of a witness is best determined by the trial judge, who has the advantage of audio-visual evidence and can assess the witness's demeanor. Unless the assessment is plainly wrong and made against the weight of the evidence presented, the finding on credibility should not be disturbed by the appellate court.

[72] This court in *Lee Ah Seng & Anor v. PP* [2007] 1 MLRA 784 has succinctly discussed this issue on the credibility of a witness as follows:

> "[9] The approach to be taken by an appellate court when dealing with a trial court's assessment of the credibility of a witness is well-established by high authorities. **The credibility of a witness is primarily for the trial judge. An appellate court should always be slow in disturbing such findings of fact arrived at by the judge who had audio-visual advantage of the witness, unless there are substantial and compelling reasons for disagreeing with the finding. Discrepancies will always be found in a witness's evidence, but a judge must determine whether they are minor or material. It would be wrong to say that just because a witness may have contradicted in his evidence or even told lies on one or two points, his evidence should be totally rejected.** In the final analysis, it is for the trial judge to determine which part of the evidence of a witness he is to accept and which to reject."
>
> [Emphasis Added]
>
> (see also *PP v. Mohd Radzi Abu Bakar* [2005] 2 MLRA 590; *Md Zainuddin Raujan v. PP* [2013] 7 MLRA 125; *Dato' Seri Anwar Ibrahim v. PP* [2002] 1 MLRA 266)

[73] In the present case, the trial judge assessed the credibility of SP21, considered the contradictions in his evidence as submitted by defence counsel, and concluded that SP21 is a credible witness. The trial judge's finding on SP21 credibility can be found at para 673 of the grounds of judgment, which states:

> "[673] Setelah membuat penelitian rapi dan mengguna pendekatan yang dinyatakan dalam kes-kes yang dirujuk di atas, Mahkamah pertamanya mendapati keterangan SP21 ada asas kebenaran atau 'ring of truth'. Keduanya, tiada percanggahan material dalam keterangan beliau. Ketiganya, tiada juga percanggahan antara keterangan SP21 dengan keterangan saksi pendakwaan yang lain. Seperti yang dirungkai sebelum ini, keterangan SP21 adalah keseluruhannya amat konsisten dengan keterangan SP16. Dan keempatnya, keseluruhan keterangan SP21 selari dengan kebarangkalian (inherent probabilities) kes ini. Oleh yang demikian, **tiada asas untuk mahkamah membuat dapatan bahawa kredibiliti SP21 adalah dipersoalkan atau keterangan beliau tidak patut dipercayai dan harus ditolak oleh mahkamah ini**"
>
> [Emphasis Added]

[74] Having considered the evidence of SP21 and all the evidence presented in court, we find the trial judge's finding on the credibility of SP21 was in accordance with the law and facts in this case. The trial judge's finding should not have been disturbed by the Court of Appeal.

[75] The Court of Appeal, in its finding, found that the reliance on the evidence of SP21 is unsafe because of the contradictions in his evidence, mainly the discrepancy in the number of "salam" SP21 conveyed to SP16. The discrepancy concerned whether SP21 conveyed the "salam" before every transaction, a point the prosecution did not clarify during re-examination or adequately evaluate by the trial judge.

[76] On this issue, we find that the discrepancy is not material, which is fatal to the prosecution's case. The facts remain that there was "salam" conveyed by SP21 to SP16 during the transaction, and more importantly, money was thereafter handed to SP21 to be given to the respondent. After all, the incident happened about 5 years before SP21 gave evidence in court, and it is reasonable and logical that he could not recollect exactly the number of "salam" he conveyed to SP16 during the transactions, or whether he conveyed the "salam" for each transaction. SP21 evidence that the "salam" was conveyed to SP16 is further corroborated by SP16.

[77] The discrepancy regarding the issue of "salam" is certainly insufficient to undermine the credibility of SP21. The court may accept part of the evidence and consider it in the totality of the evidence. Raja Azlan Shah FCJ in *PP v. Datuk Harun bin Haji Idris (No 2)* [1976] 1 MLRH 562 explained the issue on discrepancy of evidence in the following words:

> "I shall be almost inclined to think that if there are no discrepancies, it might be suggested that they have concocted their accounts of what had happened or what had been said because their versions are too consistent. **The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other.** It is, therefore, necessary to scrutinize each evidence very carefully as this involves the question of the weight to be given to certain evidence in particular circumstances."
>
> [Emphasis Added]

[78] Further, the Court of Appeal found that there is a discrepancy between the amount earlier agreed to be paid by SP16 to the respondent, RM3 million, and the total amount shown in evidence and the charges, RM3.09 million, which SP21 did not explain. On this issue, the Court of Appeal failed to consider that, firstly, SP21 did not fix the amount of RM3 million to be paid by SP16, and that SP21 did not know the amounts handed to him by SP16 in all transactions. SP21 accepted all the money from SP16 without counting it and remitted it to the respondent. There is no basis for SP21 to explain the contradiction between

the amount agreed by SP16 and the amount given by SP16 to the respondent. Again, the fact remained that the respondent received the bribe money as stipulated in the charges.

[79] The evidence of SP21 was further corroborated by that of SP16, who handed over the gratification money to SP21 on behalf of the respondent.

The Evidence Of SP16

[80] Ikhwan bin Zaidel (SP16) was a shareholder and director of GAPSB, and the evidence disclosed that FICSB agreed to purchase MPHS for RM160 million after GAPSB's second offer.

[81] After the second offer letter dated 28 March 2014 was sent to FICSB, SP16, and another GAPSB director, Ibrahim bin Baki, met with the respondent in his office at Menara FELDA. SP16 and Ibrahim Baki explained about MPHS and asked the respondent to consider GAPSB's offer. The respondent responded affirmatively and would assist GAPSB with the sale, but noted that the final decision was with the FICSB Board of Directors.

[82] The second meeting between SP16 and the respondent, held at the respondent's office, occurred after FICSB agreed to purchase MPHS for RM160 million, and at that meeting, SP16 thanked the respondent for MPHS's purchase.

[83] Thereafter, during one of SP16's visits to Kuala Lumpur to finalize the preparation of the Sale and Purchase Agreement for MPHS, at Restoran Binjai, in front of Menara FELDA, SP16 met with SP21, who informed him that the respondent is a politician and needs funds for his political activities. SP16 believed that SP21 solicited money for the respondent, as he was the respondent's Special Officer. SP16 was shocked by the request for political funds but informed that he would consider it. SP16 also believed that the requested funds were not for a political fund but for the respondent personally, as a reward for assisting the sale of MPHS. If the money was for a political fund, SP16 believed the respondent would have requested it when SP16 met the respondent twice earlier.

[84] Eventually, SP16 and Ibrahim Baki acceded to the respondent's request. They agreed to pay the respondent a portion of the money that GAPSB would pay to their agent, Syarikat JV Evolution Sdn Bhd ("JVESB"), in the sum of RM10 million, as commission for the sale of MPHS. SP16 informed SP21 that he and Ibrahim Baki have agreed to pay the respondent RM 3 million for political funds. SP16 also informed SP21 that the payment would be made only after FICSB begins payment for the MPHS sale.

[85] On 1 July 2014, GAPSB received an initial payment of RM16 million from FICSB for the sale of MPHS, and on 10 July 2014, GAPSB paid RM1 million to JVESB, representing 10% of the RM10 million commission, as agreed by GAPSB and JVESB. Subsequently, SP16 and SP17 agreed that the

commission payable to JVESB was only RM1 million, and the balance of the RM9 million payment was to be returned to SP16.

[86] In early July 2014, SP21 telephoned SP16 and requested that SP16 pay an advance of RM100,000.00 on behalf of the respondent. SP16 acceded and, between the middle of July and the end of July, at the Cigar Bar, PJ Hilton Hotel, SP16 handed over RM100,000.00 in cash to SP21 for delivery to the respondent. SP16 also informed SP21 that he had used his own money to pay the advance, and that the amount would be deducted from the RM 3 million he agreed to pay the respondent. This amount was the 1st payment made to the respondent and gave rise to the 2nd amended charge against the respondent.

[87] Next, at the end of July 2014, SP16 handed over RM140,000.00 in cash to SP21 for delivery to the respondent. The payment was also made at the Cigar Bar at the PJ Hilton Hotel. Earlier, SP16 had asked Azizi bin Abd Wahab (SP17), the Director of JVESB, to withdraw RM240,000.00 and hand it over to SP16. SP17 did this, and on 21 July 2014, the said money was given to SP16. SP16 deducted RM100,000.00 from the said amount as an advance payment he had made earlier to SP21 using his own money. This payment is the basis for the 3rd amended charge against the respondent.

[88] In September 2014, SP21 contacted SP16 and conveyed the respondent's "salam" to SP16. SP16 understood the "salam" to mean that SP21 needed money to be given to the respondent. SP16 acceded to the request and is awaiting the 2nd payment from FICSB regarding the MPHS sale.

[89] On 25 September 2014, FICSB made the 2nd payment for the MPHS sale in the sum of RM43,126,938.77.

[90] On 16 October 2014, GAPSB made the 2nd payment to JVESB in the amount of RM2,695,433.00 as commission.

[91] Further, sometime in October 2014, SP21 again contacted SP16 and conveyed the respondent's "salam" to him. Thereafter, SP16 asked SP17 to withdraw RM300,000.00 from JVESB's bank account and remit it to him. On 17 October 2014, SP17 handed the said amount in cash to SP16 at Restoran Naina, Kota Damansara.

[92] Between 17 October 2014 and 24 October 2014, at SP16's house in Sunway Opal Condominium, SP16 handed over RM300,000.00 in cash to SP21 to be given to the respondent. This transaction is the basis for the 4th amended charge against the respondent.

[93] Next, in early November 2014, SP21 again contacted SP16 and sent the respondent's "salam" to SP16. This prompted SP16 to ask SP17 to withdraw RM250,000.00 from JVESB's account and hand it over to SP16. On 15 November 2014, at Restoran Naina, Kota Damansara, the said cash was handed over to SP16.

[94] Between 5 November 2014 and 10 November 2014, at SP16's house, the sum of RM250,000.00 in cash was handed to SP21 by SP16 to be given to the respondent, and this is the basis of the 5th amended charge against the respondent.

[95] Thereafter, on 16 June 2015, GAPSB made a 3rd payment of RM6,304,567.00 to JVESB, being the commission as agent for the sale of MPHS.

[96] On 29 May 2015, SP16 was informed by the Finance Department of GAPSB that an amount of RM97,993,061.23 was paid by FICSB to GAPSB for the purchase of MPHS.

[97] Next, at the end of June 2015, SP21 telephoned SP16 and conveyed the respondent's "salam" to SP16, which SP16 then contacted SP17 and asked him to withdraw RM800,000.00 from the JVESB's bank account. This was acceded by SP17, and on 25 June 2015, SP16, SP17, and one Mazeed, another Director of JVESB, went to the Maybank Jelapang branch to withdraw the money. RM800,000.00 was withdrawn by SP17, and RM500,000.00 was handed to SP16. On the same day, at night, the sum of RM500,000.00 was handed over to SP21 by SP16 at SP16's house at Sunway Opal Condominium, Petaling Jaya. This is the basis for the 6th amended charge against the respondent.

[98] At the end of June 2015, SP16 received another telephone call from SP21 conveying the respondent's "salam". SP16 then contacted SP17, requesting him to withdraw another RM500,000.00 from the JVESB bank account. This was done by SP17, and on 9 July 2015, SP17 delivered the money in cash to SP16 at KL Sentral, Kuala Lumpur.

[99] On the same day, 9 July 2015, at about 10:00 pm, the money, RM500,000.00 in cash, was handed over to SP21 at SP16's house in Sunway Opal Condominium, Petaling Jaya, for SP21 to deliver it to the respondent. This is the basis for the 7th amended charge against the respondent.

[100] Further, sometime in the middle of August 2015, SP21 contacted SP16 and conveyed the respondent's "salam". Thereafter, SP16 instructed SP17 to withdraw RM300,000.00 from the JVESB bank account. SP16 then informed SP21 that the money was ready for collection at SP16's brother's house in Kuching, Sarawak. SP21 then came and collected the money, RM300,000.00 in cash. This is the basis for the 8th amended charge against the respondent.

[101] Next, in early September 2015, SP16 was again contacted by SP21, who conveyed the respondent's "salam". Again, SP16 instructed SP17 to withdraw RM500,000.00 from the JVESB bank account. SP17 withdrew the money from Maybank at the Jelapang branch and delivered the cash to SP16.

[102] On 12 September 2015, at about 9.40pm at Sunway Opal Condominium, RM500,000.00 in cash was handed over to SP21 for delivery to the respondent. This is the basis for the 9th amended charge against the respondent.

[103] Finally, in early December 2015, SP21 conveyed the respondent's "salam" to SP16, prompting SP16 to instruct SP17 to withdraw RM500,000.00 from the JVESB bank account. SP17 withdrew the money from the account and gave it to SP16. A few days later, between 4 December 2015 and 7 December 2015, the money, RM500,000.00 in cash, was handed over to SP21 at SP16's house in Sunway Opal Condominium for delivery to the respondent. During the handover of the money, SP16 informed SP21 that the payment was the final payment to the respondent. This is the basis for the 10th amended charge against the respondent.

[104] In his testimony, SP16 reiterated that all the money paid to SP21 was meant for the respondent.

The Credibility Of SP16.

[105] The trial judge in the present case also found SP16 to be a credible witness. In the grounds of judgment, the trial judge concluded as follows:

> "[665] Dakwaan bahawa kredibiliti SP16 tercabar juga kurang asasnya. Keterangan beliau kukuh ketika disoal balas dan alasan terdapat percanggahan ketika SP16 menjawab isu yang ditimbulkan peguam tertuduh iaitu mengenai perletakan jawatannya sebagai Pengarah Urusan GAPSB, persoalan tentang bagaimana SP16 mengetahui sebab penolakan oleh FICSB berhubung cadangan pembelian dan pengambilalihan MPHS adalah atas alasan harga yang tinggi yang ditawarkan jika tidak ada orang dalam yang memberitahu beliau, kegagalan SP16 membawa dan menunjukkan dokumen tentang usahanya mencari pelabur lain kepada Mahkamah menunjukkan kesungguhan SP16 untuk merealisasikan pembelian oleh FICSB sepertimana yang dirancang, **telah semua dijawab oleh SP16 dengan munasabah dan konsisten dengan keseluruhan keterangan kes.**
>
> [666] **Juga, bersandarkan keterangan SP16 dan SP17 berkenaan wang komisyen, tiada langsung percanggahan dengan perjanjian antara GAPSB dan JVESB (P262).** Ini adalah perjanjian awal antara SP16 dan SP17. Tetapi sudah ditunjukkan bahawa menerusi perbincangan yang lanjut, kedua-dua mereka bersetuju akhirnya hanya jumlah RM1 juta yang perlu dibayar kepada SP17 sebagai agen, dan yang lebihnya dipulangkan kepada SP16."
>
> [Emphasis Added]

[106] Having perused the evidence of SP16 and the trial judge's reasoning in finding that SP16 is a credible witness, we do not see any cogent reason to disturb those findings, which we find are appropriate in the circumstances. In any event, the Court of Appeal did not directly touch on the credibility of SP16, but instead emphasized the credibility of SP21.

[107] The other piece of corroborative evidence comes from SP17.

The Evidence Of SP17.

[108] Azizi bin Abd Wahab (SP17) and Mazeed Abdul Wahab were the Director and shareholders of JVESB. SP16 earlier requested SP17 to be the agent for the sale of MPHS to FICSB. Initially, they agreed that the commission, as an agent, was RM10 million; later, they agreed to RM 1 million, with the balance of RM9 million to be returned to SP16. This is because JVESB did not do much work on the MPHS sale.

[109] In early June 2014, SP17 and Mazeed Abdul Wahab were informed by SP16 that FICSB had agreed to purchase MPHS for a purchase price of RM160 million.

[110] On 10 July 2014, JVESB received RM1 million from GAPSB as commission for acting as the agent in the sale of MPHS.

[111] In the middle of July 2014, SP16 contacted SP17 and requested that SP17 withdraw RM240,000.00 to be delivered to SP16.

[112] In response to the request, on 21 July 2014, SP17 withdrew RM250,000.00 from the JVESB bank account at the Maybank Jelapang branch. The withdrawal was using the company's cash cheque, which was tendered in court as exh P156.

[113] On the same day, 21 July 2014, the sum of RM240,000.00 in cash was delivered to SP16 at his house in Sunway Opal Condominium. The balance of the RM10,000.00 withdrawal was for SP17's own use.

[114] Further, on 16 October 2014, JVESB received another payment from GAPSB in the amount of RM2,695,433.00 as commission for an agent in connection with the said sale of MPHS.

[115] Thereafter, sometime in October 2014, after JVESB received the 2nd commission payment, SP16 told SP17 that he needed RM300,000.00. SP17 withdrew the amount on 17 October 2014 from Maybank, Jelapang branch. The withdrawal was with the JVESB cash cheque. The cheque was tendered in court as exh P157.

[116] On the same day, 17 October 2014, the said money, RM300,000.00 in cash, was delivered to SP16 at the parking lot of Restoran Naina, Kota Damansara.

[117] In November 2014, SP16 contacted SP17 again and requested RM250,000.00. On 5 November 2014, SP17, using the company's cheque, withdrew the sum of RM293,000.00 from Maybank, Jelapang Branch. The cheque was tendered in court as exh P158.

[118] On the same day, 5 November 2014, the sum of RM250,000.00 in cash was handed over to SP16 at the parking lot of Restoran Naina, Kota Damansara. The balance of the RM43,000.00 withdrawal was for SP17 and Mazeed's use.

[119] Further, on 16 June 2015, JVESB received its 3rd commission payment from GAPSB in the sum of RM6,304,567.00.

[120] Thereafter, on 24 June 2015, SP16 requested SP17 to deliver to him RM500,000.00 in cash. On 25 June 2015, SP16, SP17, and Mazeed went to the Maybank Jelapang branch, and SP17 withdrew RM800,000.00 using 10 cash cheques of Jova Industries Sdn Bhd. The cheques were tendered in court as exhs P180, P181, P182, P183, P184, P185, P186, P187, P188 and P189.

[121] After the withdrawal of the money, RM800,000.00, the sum of RM500,000.00 was handed to SP16 at the bank and the balance of RM300,000.00 was for SP17 and Mazeed's use.

[122] Next, at the end of June 2015, SP16 contacted SP17 again and requested him to give SP16 RM500,000.00 in cash. Upon the said request, on 9 July 2015, SP17 withdrew RM800,000.00 at Maybank, Jelapang Branch, using 10 cash cheques of Jova Industries Sdn Bhd. The cheques were tendered in court as exh P190, P191, P192, P193, P194, P195, P196, P197, P198 and P199.

[123] On the same day, 9 July 2015, at KL Sentral, Kuala Lumpur, SP17 handed over RM500,000.00 to SP16, and the balance of RM300,000.00 was for SP17 and Mazeed's use.

[124] Furthermore, in the middle of August 2015, SP17 received a telephone call from SP16 requesting RM300,000.00 in cash. On 28 August 2015, SP17 and Mazeed went to the Maybank Jelapang branch and withdrew the said amount using five cash cheques from Vortex Dew (M) Sdn Bhd. The cheques were tendered in court and marked as exhs P206, P207, P208, P209, and P210.

[125] On the same day, 28 August 2015, the said money, RM300,000.00 in cash, was handed over to SP16's brother, Roney, near a restaurant at Setiawangsa. Kuala Lumpur.

[126] Next, in early September 2015, SP16 requested another RM500,000.00 from SP17. On 11 September 2015, SP16, SP17, and Mazeed went to the Maybank Jelapang branch, where SP17 withdrew the money. SP17 withdrew RM800,000.00 using eleven cash cheques from Vortex Dew (M) Sdn Bhd. The cheques were tendered in court as exhs P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, and P221.

[127] After the withdrawal, the amount of RM500,000.00 in cash was given to SP16, and the remainder of RM300,000.00 was for SP17 and Mazeed's use.

[128] Finally, in early December 2015, SP16 again requested RM500,000.00 from SP17. On 4 December 2015, after meeting SP16 at Restoran Naina, Kota Damansara, they went to the Maybank Jelapang branch, where SP17 withdrew RM800,000.00 using nine cash cheques from Vortex Dew (M) Sdn Bhd. The cheques were tendered in court as exhs P224, P225, P226, P227, P228, P229, P230, P231, and P232.

[129] Again, after the withdrawal, RM500,000.00 in cash was handed over to SP16 at the bank, and the balance of RM300,000.00 was for SP17 and Mazeed's use.

The Corroborative Evidence.

[130] It is a settled principle of law that corroboration of a witness's evidence requires the witness himself to be credible. Furthermore, corroborative evidence from other witnesses must also be plausible. In essence, one credible witness confirms another, thereby providing credible evidence.

(see also *Yap Ee Kong & Anor v. PP* [1980] 1 MLRA 48; *T.N. Nathan v. Public Prosecutor* [1977] 1 MLRH 95; *Thavanathan Balasubramaniam v. PP* [1997] 1 MLRA 191; *Attan Abdul Gani v. PP* [1969] 1 MLRH 58; *Sabarudin Non v. PP & Other Appeals* [2004] 2 MLRA 441; *DPP v. Kilbourne* [1973] 1 All ER 440)

[131] Corroborative evidence is also not restricted to oral evidence of an independent witness only, but also to facts and the logic of the established facts. Circumstantial evidence can also amount to corroboration if it is credible and supports another witness's testimony.

(see also *Brabakaran v. PP* [1965] 1 MLRA 107; *Muniandy & Anor v. PP* [1973] 1 MLRA 780; *Yong Choo Kiong v. PP* [2026] 1 MLRA 76; *R v. Hills* [1988] 86 Cr App R 26.)

[132] This Court has highlighted the issue of circumstantial evidence in the *Datuk Harun case (supra)*, where the facts have some similarities with the present case, and Raja Azlan Shah FJ said this:

> "On Rosedin's return to his office, he said he kept the money in his office safe. He collected that he handed the money to the accused on the same day or the next day. No one else was present. The accused did not give him any acknowledgment. Rosedin also said he did not receive any money from the accused. Nor was he given any instruction concerning the $225,000.00.
>
> **Is there some additional evidence rendering it more probable that the story of Rosedin is true. I have indicated, it is enough if there is independent evidence of relevant circumstances connecting the accused with the receipt of the $225,000.00. The evidence need not be direct; it is sufficient if it is merely circumstantial evidence of the accused's connection with the crime.**
>
> [Emphasis Added]

[133] On this issue of corroborative evidence, it is also pertinent to refresh our memory of the principles laid down by Sharma J in the *Attan Abdul Gani* case *(supra)*, among others, as follows:

> "The law as to corroboration, as enunciated by the various authorities, may be summarized:
>
> > It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent, the rules are clear:
> >
> > > (1) It is not necessary that there should be independent confirmation of every circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain a conviction. **All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.**"
>
> [Emphasis Added]

[134] In any event, it is trite that no particular number of witnesses is required to prove a fact. If the evidence of a single witness is found to be credible, a fact based on his evidence is proven (s 134 of the Evidence Act 1950)

[135] Returning to the present case, first, the trial judge has found that SP16 and SP21 are credible witnesses, which we agree with. Next, the defence did not challenge SP17's credibility.

[136] The evidence of SP21, as laid down earlier, among others, established that money was paid to the respondent on nine occasions at the respondent's office. However, SP21 did not know the exact amount.

[137] The evidence of SP16 then supported SP21, that he delivered the money to SP21, as requested by SP21 for the respondent, on nine occasions. The amount was significant, as stipulated in the charges. The delivery of cash to SP21 by SP16 was a few days before the money was handed over to the respondent, rendering the delivery of the said cash to the respondent probable. The probability of the truth of the delivery of money to the respondent must also be assessed on the facts of the present case, where the respondent assisted GAPSB in the purchase of MPHS, which we will discuss later in this judgment, and the request for the respondent's political funds from SP16.

[138] The evidence of SP17 also supported the probability of payment to the respondent, as SP16 instructed SP17 to withdraw the money for the said payment. The funds requested by SP16 were then delivered to SP16, who then handed them over to SP21. The withdrawals of the significant sums were also supported by the cash cheques tendered in court. The withdrawals and the

handing over of the said money to SP16, and the delivery of the said money to the respondent within a few days, made the respondent's receipt of the cash probable.

[139] The evidence of SP21 was corroborated by that of SP16, SP17, and the cash cheques tendered as exhibits in court. This evidence proved the *factum* of the respondent's receipt of the money as detailed in the charges.

[140] As the *factum* of receipt of money by the respondent has been established, it triggers the presumption under s 50(1) of the MACC Act that the money was corruptly received as a reward for matters set out in the charges, which is a reward for assisting the purchase of MPHS by FICSB, unless proved to the contrary.

[141] On the issue of presumption under s 50(1), the trial judge correctly found as a fact that the respondent's receipt of money as stipulated in the nine charges has been proved, which triggers the presumption under the said section. The application of the presumption by the trial judge in this case is not misplaced. The finding of the trial judge is as follows:

> "[680] Secara asasnya, s 50(1) memperuntukkan bahawa sekiranya elemen atau intipati penerimaan wang oleh tertuduh daripada SP16 telah dibuktikan, undang-undang menganggap, melainkan dibuktikan sebaliknya dengan cara mematahkan anggapan tersebut, penerimaan tersebut dilakukan secara rasuah sebagai upah dan juga upah itu diterima atas tindakan tertuduh membantu meluluskan pembelian MPHS.
>
> [681] Oleh kerana, seperti yang Mahkamah dapati sebelum ini, **pihak pendakwaan telah pada peringkat akhir kes pendakwaan berjaya membuktikan penerimaan wang suapan oleh tertuduh dalam sembilan transaksi berjumlah RM3.09 juta daripada SP16 (melalui perantara SP21), undang-undang dalam s 50(1) ASPRM telah diaktifkan dengan pengunaan anggapan tersebut, di mana elemen atau intipati penerimaan tersebut telah dianggap dibuat secara rasuah dan penerimaan upah itu disebabkan oleh bantuan kelulusan MPHS oleh tertuduh.**"
>
> [Emphasis Added]

[142] Further, at para 937 of the grounds of judgment, the trial judge reiterated as follows:

> "[937] Seperti yang telah Mahkamah dapati diakhir kes pendakwaan, **atas dasar penerimaan wang suapan oleh tertuduh telah dibuktikan, anggapan di bawah s 50(1) ASPRM telah bangkit dan terpakai terhadap tertuduh. Beban adalah di atas beliau, sekiranya berhasrat untuk memperolehi kebebasan daripada sembilan pertuduhan tersebut, untuk mematahkan anggapan tersebut di atas imbangan kebarangkalian.** Anggapan tersebut ialah penerimaan wang suapan tersebut adalah dilakukan secara rasuah sebagai upah di atas penglibatan tertuduh dalam memberi kelulusan pembelian MPHS oleh FICSB daripada GAPSB."
>
> [Emphasis Added]

[143] On the other hand, we find that the Court of Appeal's interpretation and application of the presumption of s 50(1) to the facts of the present case is misconceived. The Court of Appeal, in its grounds of judgment, viewed as follows:

> "[35] In our opinion, **the invoking of s 50(1) of the MACCA, and the learned judge's direction to the appellant "to rebut and show that the gratification in the form of cash was received corruptly and that it was not obtained as a reward for the accused's involvement in the approval by the Board of FIC of the purchase of the Merdeka Palace** Hotel" **is misplaced as it goes against the learned judge's findings in respect of the CBT charge. The learned judge had, in dismissing the CBT, found that though the appellant was a board member of FICSB, the decision to purchase MPHS was a collective decision of the board of FICSB.**"
>
> .....
>
> [36] **…Hence, the finding of the learned trial judge is that there is no credible evidence showing that the appellant had approved the FICSB's purchase of MPHS nor directed or influenced FICSB Board's decision to approve the purchase of MPHS. Now, if that was so, then it would not only have rebutted the presumption invoked by the court under s 50(1) of the MACCA, but it would have demolished the prosecution's case altogether.**"
>
> [Emphasis Added]

[144] The trial judge was correct when he decided that, having proved the *factum* of receipt of money by the respondent, the presumption applies, and under the law, it is presumed, unless the contrary is proved, that the respondent received the money corruptly on matters set out in the particulars of the offence, which is to assist in the approval of the MPHS sale.

[145] The respondent's acquittal on the charge of criminal breach of trust does not affect the trial judge's finding of *factum* of receipt of money in the bribery charges. As rightly pointed out by the Court of Appeal, the reason for the acquittal was that the decision to approve the purchase of MPHS was a collective decision of the Board of FICSB. The respondent was only a member and chairman of the said meeting that approved the sale. Thus, the trial judge's decision on the charge of criminal breach of trust was based on an assessment of the facts, and, mainly, the decision to approve the sale was not made solely by the respondent.

[146] Furthermore, the Court of Appeal failed to appreciate that the prosecution's case, as stipulated in the charges, is that the money received by the respondent was a reward only to assist in the approval of the MPHS sale, and not to approve the purchase or direct, or influence the Board of Directors of FICSB to approve the purchase. The cumulative circumstantial evidence can establish the respondent's assistance in approving the MPHS's purchase. In any event, once the presumption triggers, the burden is shifted to the respondent to

rebut, on the balance of probabilities, that the money was not received corruptly as a reward in assisting the approval of the MPHS's purchase.

The Rebuttal Of The Presumption Under Section 50(1).

[147] The rebuttal of the presumption under s 50(1) is on the balance of probabilities. The rebuttal evidence must be sufficient to establish its truthfulness, as the *factum* of payment has earlier been proved to trigger the application of the presumption. The defence of non- receipt of payment, *per se*, certainly does not discharge the burden of rebutting the presumption.

[148] In *Attan Gani's* case *(supra)*, the issue of the rebuttal of the presumption was explained as follows:

> "**The prosecution has not to establish anything more than the payment of money** (see *State of Madras v. Vaidyanatha Iyer* and *Emden v.State of Uttar Pradesh).* **It then becomes the duty of the accused to disprove what s 14 begins to presume against him.** For what is the degree of proof required of the accused, see *Rex v. Car Briant*, *Saminathan v. Public Prosecutor*, and *Otto George Gfella v. The King*. **The presumption cannot be said to have been rebutted without sufficient evidence, i.e, such evidence as is reasonably sufficient to invite the belief in its probable truthfulness. It is very strongly urged that, as the defence was one of non-receipt of the money, there was no onus on the appellant to prove "to the contrary" suggested in s 14. The argument is fallacious because the presumption comes into operation only when the *factum* of payment is proved, as it was to the satisfaction of the learned President in this case. If payment is not proved, the presumption does not arise, and consequently, there is nothing which the accused is required to prove to the contrary.**"
>
> [Emphasis Added]

[149] On the same issue, this court in the *PP v. Yuvaraj* [1968] 1 MLRA 976 has been referred a question of law as follows:

> "Whether in a prosecution under s 4(a) of the Prevention of Corruption Act 1961, a presumption of corruption having been raised under s 14 of the said Act, the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable, or whether that burden can only be rebutted by proof that the defence is on such fact (or facts) the existence of which is so probable that a prudent man would act on the supposition that it exists (s 3 Evidence Ordinance)."

[150] It was decided by the Federal Court as follows:

> "The presumption under s 14, be it emphasized, is a rebuttable one, and if the explanation offered is one which may well be true, how can it be said that the case for the prosecution, at the close of the trial, has been proved beyond a reasonable doubt? A proper evaluation of the evidence relied on by the defence is vastly different from the imposition of a distinctly heavier onus. If "proof" were held to imply satisfaction to the point of belief in the very existence of a fact, instead of belief in the reasonable probability of its

existence, then there can be no practical difference between the quantum of proof required of the defence and that laid on the prosecution. We do not think that is the law.

To conclude, with special reference to the instant case, **the finding of fact of the learned president was not merely that the explanation was "reasonable and probable" which would have sufficed**, but that it was as "compatible with the superior probability of his innocence." Clearly, therefore, his decision was correct in law and ought to be reaffirmed in this court as it has been affirmed by Ali J.

[Emphasis Added]

[151] The Privy Council in the same case affirmed the decision of the Federal Court and stated this:

"In the result upon the true construction of the Evidence Ordinance and the Prevention of Corruption Act 1961, there is, in their Lordships' view, no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question reserved for the consideration of the Federal Court, if the expression in the first part of the question: "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning **"the burden of rebutting such presumption is discharged if the court considers that on the balance of probabilities the gratification was not paid or given and received corruptly as an inducement or reward as mentioned in ss 3 or 4 of the Prevention of Corruption Act, 1961".**

[Emphasis Added]

[152] In the present case, the respondent's defence on the receipt of the money is a total denial. The respondent denied receiving the money through his Special Officer, SP21. In the respondent's witness statement, this was stated:

"Pertamanya, saya ingin menegaskan di sini bahawa saya tidak pernah membincangkan atau bertanya kepada Zahid Md Arip tentang status pembelian MPHS. Saya juga tidak pernah membincangkan ataupun bertanya kepada Zahid Md Arip tentang Haji Ikhwan. Saya tidak pernah mengarahkan Zahid Md Arip untuk meminta agar Haji Ikhwan memberikan ganjaran kepada saya kerana membantu meluluskan pembelian MPHS. Saya juga tidak pernah mengirim apa-apa salam kepada Haji Ikhwan kerana beliau tidak mempunyai sebarang kaitan dengan saya dan saya langsung tidak mengenalinya secara peribadi.

...

Zahid Md Arip telah mendakwa bahawa beliau telah menyerahkan wang suapan dari Hj Ikhwan sebanyak 9 kali ketika saya berada di dalam pejabat saya di Menara Felda. Saya menegaskan bahawa saya tidak ada menerima apa-apa wang dalam apa-apa bentuk daripada Zahid Md Arip. Kebiasaannya, apabila Zahid Md Arip datang ke pejabat saya, beliau hanya akan datang hanya dengan dokumen dan tidak dengan apa-apa beg kertas atau apa- apa beg besar lain.

> Zahid Md Arip telah menyatakan bahawa telah berlakunya penyerahan wang sebanyak 9 kali kepada saya. **Saya sesungguhnya menyangkal sepenuhnya telah berlaku apa-apa penyerahan wang terhadap saya oleh Zahid Md Arip.**"
>
> ....
>
> **Saya tidak pernah menerima apa-apa suapan daripada Haji Ikhwan melalui Zahid Md Arip. Ini adalah kerana saya tidak pernah membantu meluluskan pembelian MPHS tersebut dan saya juga tidak mempunyai kuasa untuk berbuat demikian.**
>
> [Emphasis Added]

[153] The mere denial or non-receipt of the money, without more, is undoubtedly not something reasonable or probable that would rebut the presumption under s 50(1). There is insufficient evidence before the court, on the balance of probabilities, to reach the reasonableness and probableness of the respondent's contention of non-receipt of the money on the nine occasions as a reward for assisting the approval of the MPHS's purchase. Likewise, the denial of any assistance in the approval of the purchase of MPHS. The trial judge has found, based on the available evidence, that the respondent has failed to rebut the presumption.

[154] In arriving at this decision, the trial judge had evaluated the evidence of the respondent and other defence witnesses, particularly the respondent's secretary, Zuraida binti Ariffin @ Shaari (SB2), the respondent's bodyguard, Kamar Bashah bin Sharif (SB3), and the respondent's acquaintances, Mohamad Jani bin Ismail (SB4) and Dahalan bin Tunggal (SB5).

[155] Firstly, having considered the evidence of the respondent, which essentially denied that he received the bribe money on nine occasions, and his reasons, including the respondent's oral testimony that SP21 confessed to the respondent that he just made up the story of the bribe money given to the respondent to implicate the respondent, the trial judge found that it is untenable and did not assist the respondent's defence. The so-called confession by SP21 to the respondent was not even put to SP21 during the prosecution's case. Thus, SP21 was denied the opportunity to challenge or deny the respondent's averment made at the defence stage. In the circumstances, the trial judge is entitled to conclude that the averment is untenable or an afterthought, having considered the totality of the evidence. Apart from evaluating the respondent's evidence, the trial judge proceeded to assess the other defence witnesses. In the grounds of judgment, the trial judge states as follows:

> "[722] Mahkamah mendapati dalam konteks ini penafian dan penjelasan keterangan tertuduh sahaja tidak membantu pembelaan beliau. Tetapi seperti yang disebutkan sebelum ini, pembelaan tertuduh juga bergantung kepada hujahan bahawa setiausaha tertuduh (SB2) dan pegawai pengiring beliau (SB3) juga tiada pengetahuan tentang pertuduhan penerimaan suapan

tersebut. Lebih sesuai jika keterangan tertuduh tersebut dinilai bersama keterangan SB2 dan SB3."

[156] Next, the trial judge found that the evidence of SB2 does not assist the respondent's defence, simply because she did not see SP21 bring any bag to the respondent's office. Therefore, the bribe money was not received by the respondent on the nine occasions in question. The trial judge said in his grounds of judgment as follows:

"[760] Walau bagaimanapun, rumusannya, keterangan SB2 tidak membantu pembelaan tertuduh kerana hanya atas dasar beliau tidak melihat SP21 membawa beg menuju ke bilik pejabat tertuduh tidak bermakna perkara tersebut tidak pernah berlaku, atas pelbagai sebab yang digariskan di atas."

[157] In furtherance of this, the trial judge evaluated the evidence of SB3, which, among others, was that he did not see the SP21 carry any bag or paper bag to be given to the respondent, nor did he have any knowledge of SP21 giving any bribe money to the respondent. The trial judge then concluded that the evidence of SB3 also does not support the respondent's defence. In his grounds of judgment, the trial judge found as follows:

"[775] Tetapi Mahkamah telah tunjukkan keterangan tertuduh, SB2 dan SB3 tidak kukuh untuk menyokong pembelaan tertuduh dan Mahkamah berpuashati keseluruhan keterangan tertuduh, SB2 dan SB3 dalam isu ini tidak membantu pembelaan tertuduh kerana SB2 tidak semestinya nampak atau sedar setiap kali SP21 masuk ke bilik pejabat tertuduh membawa beg yang dibawa yang berisi wang tersebut dan SB3 pula tidak semestinya tahu beg yang dibawa ke dalam kereta mengandungi wang, lebih lagi wang suapan. SP21 juga telah memberi kenyataan bahawa tiada yang tahu tentang penyerahan wang dari SP21 olehnya kepada tertuduh. Dan beliau selalu setiap kali ambil masa sehari atau dua selepas terima wang daripada SP16 untuk menyerahkan wang tersebut kepada tertuduh di pejabat tertuduh setelah pastikan tertuduh ada masuk ke pejabat.

[776] Suatu perkara penting. Mahkamah sedar transaksi-transaksi dalam pertuduhan didakwa telah berlaku sebanyak sembilan kejadian itu berlaku dalam tempoh masa yang menjangkau lebih kurang 18 bulan, dari Julai 2014 sehingga Disember 2015."

[158] Eventually, the trial judge concluded on the issue and said this:

"[798] Walau bagaimanapun, Mahkamah telahpun, seperti di atas, menganalisa keterangan SB2 dan SB3 dan merumuskan ianya tidak membantu kes pembelaan, tidak menimbulkan sebarang keraguan munasabah terhadap kes pendakwaan, dan jauh sekali menyangkal atau mematahkan anggapan penerimaan wang secara rasuah di bawah s 50(1) ASPRM atas imbangan kebarangkalian."

[159] In addition to evaluating the evidence of the respondents, SB2 and SB3, the trial judge also assessed in detail the evidence of SB4 and SB5, who testified that SP21 had once told SB4, in the hearing of SB5, that SP21 had received

RM 2 million from the MPHS purchase by FICSB. The trial judge then found that their evidence was a mere fiction and an afterthought, and failed to assist the defence in rebutting the presumption under s 50(1). In the grounds of judgment, the trial judge concluded as follows:

> "[898] Oleh yang demikian Mahkamah putuskan bahawa pembelaan mengenai pengakuan yang dikatakan dibuat oleh SP21 kepada SB4 dan SB5 adalah suatu pembelaan lewat atau afterthought, dan sebenarnya satu cerita yang dibuat-buat, dan satu rekaan yang lemah. Ini sahaja sudah secara seriusnya menjejaskan pembelaan tertuduh.
>
> [899] Sekiranya, seperti sepatutnya, sembilan isu yang lain diambilkira juga, tiada kesangsian bahawa nilai kebolehpercayaan keterangan-keterangan kedua-dua saksi pembelaan ini, SB4 dan SB5 mengenai dakwaan pengakuan oleh SP21 tersebut tidak boleh diterima. Keterangan-keterangan SB4 dan SB5 (dan SB6) tidak langsung menimbulkan sebarang keraguan munasabah terhadap kes pendakwaan, dan **sama-sekali gagal mematahkan anggapan di bawah s 50(1) ASPRM.**"
>
> [Emphasis Added]

[160] We agree with the assessment of the defence evidence by the trial judge in light of the totality of evidence. By the way, SB6 was the executive officer at Maybank's Jalan Raja Muda, Kuala Lumpur, where FICSB is a customer of Maybank. SB6 evidence, among others, relates to the money trail and bank documentation concerning FICSB's account.

[161] We also find that the trial judge was correct in his rejection of the defence's contention that SP21, who actually received all the money for himself without the respondent's knowledge. SP21 was the respondent's Special Officer who worked closely with the respondent. Besides, there is no single piece of evidence showing that SP21 took the money; it is improbable that SP21 would have brazenly swindled RM 3.09 million for himself, although SP16 had instructed him to hand it over to the respondent. Surely, SP16 would discover the fact that the money was not delivered to the respondent by SP21 and the repercussions of SP21's action.

[162] This reminds us of what Raja Azlan Shah FJ commented in the *Datuk Harun*'s case, where the defence counsel raised the same issue. It was stated as follows:

> "The question arises whether the accused's personal bodyguard was indeed necessary to accompany Rosedin to the bank because of the amount of money, which was substantial, or because it concerned the accused's own affairs. To me, it suggests the latter. If that is so, then it is irresistible to conclude that the accused accepted the money from the bank when it was established that Rosedin, armed with the authority of exh P19, withdrew $225,000.00 from the bank, and when Rosedin said that he handed it to the accused on March 27, 1973, or the following day. There can be no doubt that he handed the money to the accused and could not give a narrative of the event that happened on that day. **To suggest that he pocketed such big sum of money is**

> **a travesty of facts. At any rate, the bank was not informed or put on inquiry that the money did not reach the accused. There was, on the other hand, complete silence from the accused, which the bank must have interpreted to mean that he had received the money. Furthermore, the bank's accounting machinery supports the prosecution's case that the money was released to the accused. These are damning circumstantial evidence that connected the accused with acceptance of the $225,000.00.**"
>
> [Emphasis Added]

[163] Likewise, in the present case, there was complete silence from the respondent. SP16 was not informed that the money had not reached the respondent and must have assumed the respondent had received it. The cash withdrawals by SP17 from Maybank, as mentioned earlier, and the handover of the money to SP16 were damning circumstantial evidence linking the respondent to the acceptance of RM3.09 million.

[164] The Court of Appeal has misconceived the application of s 50(1) to the facts in the present case and the rebuttal evidence. In its grounds of judgment, the Court of Appeal concluded as follows:

> "Hence, the finding of the learned trial judge is that there is no credible evidence showing that the appellant had approved the FICSB's purchase of MPHS nor directed or influenced FICSB Board's decision to approve the purchase of MPHS. Now, if that was so, then it would not only have rebutted the presumption invoked by the court under s 50(1) of the MACC Act, but it would have demolished the prosecution's case altogether."

[165] As mentioned earlier, the prosecution's case, as set out in the charge and the evidence presented, is that the bribe money was a reward for the respondent's assistance in approving MPHS's sale, not in approving the purchase. Further, the prosecution's burden was only to prove the *factum* of receipt of the money, and the other element was presumed: that the money was received corruptly as a reward for assisting in the approval of the purchase. Thus, it cannot be said that the presumption has been rebutted without evaluating the evidence that can support the rebuttal on the balance of probabilities, nor that the prosecution's case has collapsed.

[166] Furthermore, the Court of Appeal misinterpreted the law on presumption under s 50(1) and in proving a *prima facie* case. At paragraph 33 of its grounds of judgment, this is stated:

> "[33] Hence, **in order to establish a *prima facie* case for each of these 9 charges, it was incumbent upon the prosecution to establish the fact that**:
>
> (i) **The appellant had directed SP21 to obtain the sum of money as stated in the charges from SP16;**
>
> (ii) That SP21 did receive the said sums of money time to time from SP16 for and on behalf of the appellant;

(iii) That these sums of money were received as gratification for the appellant assisting in obtaining the approval by FICSB to purchase MPHS from Syarikat Gagasan Abadi Properties Sdn Bhd; and

(iv) That the appellant did receive the gratification as stated in the charges from SP16 through SP21."

[Emphasis Added]

[167] Section 50(1) of the MACC Act is a presumption provision that helps the prosecution establish a *prima facie* case. As discussed earlier, in this case, the prosecution must prove only the respondent's receipt of money. The other ingredient of the offence under s 16(a)(A) is presumed to be that the respondent received the money corruptly, as a reward for assisting the approval of the MPHS's purchase. Thus, once the prosecution has proved the *factum* of receipt of money, a *prima facie* case has been established, and the defence must be called. It is then for the defence to rebut the presumption on the balance of probabilities.

(see also *Thavanathan Balasubramaniam v. PP* [1997] 1 MLRA 191; *PP v. Md Nor Hamid* [2003] 5 MLRH 193; *Pendakwa Raya lwn. Zakaria Mansor* [1996] 3 MLRH 825; *Public Prosecutor v. Yuvaraj* [1968] 1 MLRA 606; *Attan Abdul Gani v. PP* [1969] 1 MLRH 58; and *Pendakwa Raya lwn. Mohd Asyraf Thiru Abdullah* [2015] 5 MLRA 633)

[168] In the present case, the Court of Appeal, as mentioned earlier, required the prosecution to prove, among others, that the respondent had directed SP21 to obtain the money from SP16 to establish a *prima facie* case against the respondent. This is not required by the law to establish a *prima facie* case under s 16(a)(A) of the MACC Act.

[169] The Court of Appeal went on to further state that the presumption under s 50(1) was negated by the evidence of SP16 himself, who testified that the respondent never told or gave any assurance to SP16 that he would assist in the approval of the MPHS's sale, but fear that if the monies were not paid to the respondent it would derail the transaction by using the respondent's position as Chairman of FICSB and FELDA.

[170] This view by the Court of Appeal is devoid of any merit. First, as discussed earlier, the prosecution needs only to prove the *factum* of receipt of the money to trigger the presumption under s 50(1). Second, SP16 evidence showed that the respondent received money for assisting with the approval of the MPHS's sale. SP15, SP17, and SP21 support the evidence. The cumulative evidence showed these relevant facts:

(i) After the first offer to purchase MPHS was rejected by FICSB, the respondent instructed SP15 to review the decision on the acquisition of MPHS and informed him that the Prime Minister requested them to review the decision. The respondent also

told SP15 to proceed with the acquisition of MPHS to assist in Sarawak's political activities.

(ii) The respondent instructed SP15 to bring the matter to the meeting of FICSB's Board of Directors when SP15 showed the respondent the 2nd letter of offer from GAPSB for FICSB to purchase MPHS for RM160 million.

(iii) The respondent instructed SP15 to maintain the offer price of RM160.00 million in the FICSB's Board meeting on 29 April 2014, although SP15 informed the respondent that the valuation by FICSB Management was only RM153 million.

(iv) The respondent also told SP15 that the difference of RM7 million between the offered price and the valuation by the management of FICSB can be justified by considering the element of "goodwill" as the MPHS name has long been used and known in Kuching, Sarawak.

(v) The respondent also informed SP15 that the purchase, although above RM100 million, need not be referred to the FELDA Board of Directors as the members of FICSB's Board are the same as the members of FELDA's Board of Directors. This is untrue because the Board members are not identical.

(vi) On 29 April 2014, the FICSB's Board of Directors meeting, chaired by the respondent, approved the purchase of MPHS for RM160 million.

(vii) The respondent received a total of RM3.09 million from SP16 through SP21.

[171] Thus, the cumulative evidence before the court presented by the prosecution showed that the respondent did assist in the approval of the MPHS's purchase by FICSB. The respondent's fear of interference with the sale of MPHS was not part of the prosecution's case to prove the charges against the respondent. The prosecution's narrative is that the respondent received the money, which has been proven, and that the money was presumed to have been received corruptly as a reward for assisting in the approval of the purchase of MPHS by FICSB, which the respondent failed to rebut on the balance of probabilities. On the other hand, the evidence presented by the prosecution shows that the respondent did assist in the approval of the MPHS's purchase by FICSB.

[172] There are no two sets of the prosecution's narrative that the money is a reward for assisting in the approval of the said purchase and an inducement for the respondent not to interfere with the completion of the sale transaction. The prosecution's case, in particular, is based, among other things, on evidence from SP16 that the money was a reward for the respondent's assistance in

approving the MPHS's sale. This approval was made by the FICSB's Board of Directors meeting, chaired by the respondent, on 29 April 2014, but the demand for the bribe money was made after the date of the said approval at Restoran Binjai in front of Menara Felda. Thus, upon FICSB's approval of the purchase, the prosecution's narrative to establish the purpose of the bribery is complete, which is to assist in the approval of the sale. More pertinently, there was no prejudice to the respondent's defence, which is a total denial of receipt of money from SP16 through SP21.

[173] The Court of Appeal also found that there is no evidence of the demand for gratification. The words "kalau dia orang bagi apa-apa nanti kau ambil lah" to SP21 and the "salam" sent to SP16 through SP21 must not be construed as soliciting or demanding gratification.

[174] In this regard, we emphasize that the charges against the respondent pertain to receiving a bribe, not to soliciting one. The offences of soliciting gratification and receiving gratification are two distinct offences. The element of soliciting need not be proved in an offence of receiving gratification. If solicitation is proven, it further increases the likelihood of obtaining the gratification. However, without proof of solicitation, the offence of receiving gratification can be proven on its own.

(see also *Thavanathan Balasubramaniam v. PP* [1997] 1 MLRA 191; and *Pendakwa Raya lwn. Mohd Asyraf Thiru Abdullah* [2015] 5 MLRA 633)

[175] In the present case, when assessed in context, it is evident that the respondent solicited or demanded the bribe via SP21. The relevant evidence to show this, among others, is the following:

(i) The respondent assisted in approving the purchase of MPHS;

(ii) The respondent told SP21 "kalau diorang bagi apa-apa nanti kau ambil lah"

(iii) SP21 informed SP16 "Tan Sri orang politik, ramai yang datang minta tolong Tan Sri". Kadang-kadang beliau memerlukan dana bagi kerja politik.

(iv) The respondent further asked SP21 whether SP21 received any call from SP16, "ada Sarawak tu call", and when SP21 answered "no", the respondent instructed SP21 to call SP16 and said, "Kau call lah diaorang, kirim salam tanya khabar." SP21 understood that the respondent asked him to call SP16 to request the political funds, which he did.

(v) In July 2014, SP16 telephoned SP21 and wanted to meet him at the PJ Hilton Hotel. This was informed to the respondent by SP21, and the respondent responded, "pergilah jumpa." SP21

knows that the respondent wanted him to meet SP16 to receive the bribe.

(vi) The respondent asked SP21 to request advance payment from SP16.

(vii) On several occasions, the respondent sent his "salam" to SP16 through SP21 before the bribe money was paid to the respondent.

(viii) SP16 confirmed the demand for political funds by the respondent through SP21. In his written statement, he said this:

> "Saya juga faham bahawa permintaan wang dari Tan Sri Isa melalui Pegawai Khas beliau iaitu Zahid Md Arip adalah untuk Tan Sri Isa sendiri sebagai upah kepada Tan Sri Isa membantu pembelian MPHS. Permintaan wang yang dikatakan untuk kegunaan beliau dimaklumkan oleh Zahid Md Arip adalah sebagai alasan kerana jika betul-betul memerlukan dana politik beliau patut memberitahu kepada saya dalam 2 perjumpaan yang saya ada bersama Tan Sri Isa di pejabat beliau."

[176] We do acknowledge that conveying "salam" through an intermediary is a customary practice among Muslims. Still, in the context of the present case, the respondent, the chairman of FICSB, who was involved in the approval of the purchase of MPHS from GAPSB, conveying "salam" several times to SP16, who is the director and the shareholder of GAPSB, which succeeded in the sale of MPHS to FICSB, expressed a different connotation. The respondent's communication to SP21, together with the "salam," supported the evidence of solicitation or demand for the bribe money. As the Special Officer of the respondent, it was highly improbable that SP21 would solicit or demand the said bribe money for himself. It requires a person in authority to solicit or demand such a substantial amount, and in the present case, the respondent is that person.

[177] Having perused all the available evidence before the court and the relevant law, we find that the trial judge's finding is supported by evidence and, in accordance with the law. The respondent had failed to rebut the presumption of law under s 50(1) of the MACC Act. As such, the ingredients of the offence of corruptly receiving the money as a reward for assisting the approval for the purchase of MPHS had been proven for all nine charges against the respondent under s 16(a)(A) of the MACC Act beyond a reasonable doubt.

[178] The Court of Appeal, we find, misapplied the presumption under s 50(1) and failed to assess the relevant facts in the present case properly, which warrants the intervention of this Court.

[179] We find that the trial judge's conviction for the nine charges against the respondent is correct and safe.

Conclusion

[180] In the circumstances, it is our unanimous decision that the prosecution's appeal is allowed. The decision of the Court of Appeal in acquitting and discharging the respondent for all nine charges is set aside, and the decision of the High Court in convicting the respondent for the nine charges is restored.

[181] On sentence, we find that the trial judge's imposition of the sentence is appropriate and in accordance with the law, having considered the defence's mitigation and the prosecution's application for a deterrent sentence. We only need to reiterate that corruption is a heinous act that would destroy a nation. The sentence of six years for each charge, to be served concurrently, and a total fine of RM15,450,000.00 by the trial judge, which is five times the amount of gratification received by the respondent, is also restored. The respondent is also to serve 2 years' imprisonment in default of payment of the fine.