

Attorney-General v Shadrake Alan
[2010] SGHC 339

Case Number : Originating Summons No 720 of 2010
Decision Date : 16 November 2010
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Hema Subramanian, Low Siew Ling and Lim Sai Nei (Attorney-General's Chambers) for the applicant; M Ravi (L F Violet Netto) for the respondent.
Parties : Attorney-General — Shadrake Alan

Contempt of court

16 November 2010

Judgment reserved.

Quentin Loh J:

1 In *A-G v Shadrake Alan* [2010] SGHC 327 ("the main judgment"), I convicted the respondent, Mr Alan Shadrake, of the contempt of scandalising the judiciary through his book, *Once a Jolly Hangman: Singapore Justice in the Dock* ("the book"). I then gave parties one week to consider my judgment and, in the case of Mr Shadrake, to consider whether he wished to make amends for his contempt. One week later I heard counsel on sentence and reserved judgment, which I now give. For convenience I have adopted the abbreviations used in the main judgment.

2 In the main judgment I confined myself to the minimum finding necessary to dispose of the issue of liability. I found that when read in context, eleven statements in the book written by Mr Shadrake, which is or was circulated in Singapore, posed more than a remote possibility of undermining public confidence in the administration of justice in Singapore. I found also that the statements fell outside the ambit of fair criticism because they had been made in bad faith and/or without rational basis. I did not say more on the magnitude of the risk posed. That went to sentencing, and I did not address the issue in order that Mr Shadrake would have the maximum latitude to make amends for his contempt. I pointed out the possibility of making amends at [138] of the main judgment and when I delivered a summarised version of the main judgment in open court. As the case law indicates, this could be done by Mr Shadrake apologising sincerely and unequivocally to the court, and by him doing all that is within his power to withdraw the offending publication (or the offending parts thereof) from circulation. I should state for the record that, had Mr Shadrake made appropriate amends for his contempt, he would have been dealt with very differently.

3 Regrettably, while Mr Shadrake certainly appears to have been busy in the meantime, his efforts seem to have been in the opposite direction. During the hearing on sentence, Ms Subramanian for the Attorney-General tendered an online article published by the Guardian newspaper on 7 November 2010 ("the Guardian article"). The Guardian article was based on an interview with Mr Shadrake, made after I gave the main judgment and after he had had a chance to review my reasons for finding him in contempt for eleven out of the fourteen statements impugned by the Attorney-General. Among other things Mr Shadrake insisted in the interview that the book was "devastatingly accurate" and declared that: "This story is never going away. I'll keep it on the boil for as long as I live. They're going to regret they ever started this." In its entirety, the Guardian article read as follows (with emphasis added in bold for the title and the passages relied upon by Ms

Subramanian):

Alan Shadrake faces Singapore jail term for criticising use of death penalty

Contempt of court conviction for British author whose book fiercely criticises Singaporean justice system

When his head hit the pillow in his Singapore hotel room in the early hours of 18 July, Alan Shadrake must have believed his gamble had paid off.

Earlier that day, the British author had attended the launch of his controversial book, in which he accused Singapore's judiciary of bowing to outside pressure and applying double standards in its application of the death penalty.

He knew that the authorities did not like what he had to say.

While wealthy – often well-connected foreigners – can expect leniency, he argued in *Once the Jolly Hangman: Singapore's Justice in the Dock*, the poor and disenfranchised are summarily executed.

But at dawn he was woken by the arrival of three police officers who ransacked his room before taking him away for questioning.

Two days of interrogations later, Shadrake was released on bail, minus his confiscated passport, fearing he, too, was about to feel the full force of the same unforgiving criminal justice system he had lambasted in print. "They used shock and awe tactics in an attempt to terrify me into submission."

Last week the 76-year-old was convicted of contempt of court, for which he could spend up to six months in Singapore's Changi prison, when the high court sentences him this week. He also faces separate charges of criminal defamation, which carries a maximum penalty of two years in prison and a hefty fine. Shadrake's crime was to challenge the enthusiastic use of the death penalty in a country notoriously intolerant of dissent. **Drawing on interviews with a retired chief executioner, lawyers, former police officers and human rights activists, his central claim is that justice in one of the world's most advanced economies is anything but blind. He highlights several inconsistent applications of the law which, he says, prove Singapore's judiciary "picks and chooses how they respond depending on the state's diplomatic and economic interests".**

In handing down the guilty verdict, the judge, Quentin Loh, said Shadrake had "scandalised" the judiciary through "a dissembling and selective background of truths and half-truths, and sometimes outright falsehoods".

He offered the prolific British author the chance to "make amends", but Shadrake was unrepentant. "They are effectively asking me to apologise, but I have done nothing wrong and I have no amends to make," he said. "It's utter nonsense - I haven't scandalised anyone. "I'm not going to run away or back down. If they want to jail me, then so be it." Past experience suggests that Shadrake should have taken the advice of the British high commission in Singapore and excused himself from the book launch.

The country's elder statesman, Lee Kuan Yew, whose son is now prime minister, has frequently

used strict anti-defamation laws to crush dissent and punish foreign journalists.

A Wall Street Journal editor was fined \$10,000 last year for publishing articles deemed to have shown contempt for Singapore's judiciary, while three local activists were sentenced to short prison terms for wearing T-shirts illustrated with a kangaroo dressed as a judge. Shadrake's conviction has thrown into sharp relief the contradiction at the heart of Singapore's rise from colonial backwater to economic powerhouse: that the gains that have given its people the highest living standards in Asia since it declared independence from Britain in 1963, co-exist with an unapologetic contempt for freedoms taken for granted in other developed Asian economies.

The government is also highly sensitive to attacks on its draconian attitude towards serious crime. According to Amnesty International, Singapore, a country of nearly 5 million, has the highest per capita rate of executions in the world, having put more than 420 people to death since 1991.

In a 2004 report, Amnesty said the death penalty was disproportionately used against migrant workers, drug addicts and poorer people.

"Singapore's drug laws flout global fair-trial standards by shifting the burden of proof to suspects," says Lance Lattig, a researcher on Singapore for Amnesty in London. "A drug trafficking suspect faces hanging unless he can manage to prove his innocence. If the Singapore government has issues with Shadrake's book, it should address his arguments directly, not threaten him with prison."

Shadrake has admitted one minor inaccuracy in his book, but insists the rest of the material is "devastatingly accurate". "They know the book is accurate, which is why they're going to all this trouble," he said.

As he waits to learn his fate, the former Fleet Street journalist, who arrived in Singapore in 2002 to write travel articles for the local tourist board, admits to fantasising about swimming along the causeway and over the border to Malaysia, visible from his hotel room.

But he has no intention of fleeing: "I am prepared to go to jail: if I apologise, or try to abscond, it means I lied, that I got my facts wrong."

With his client's biggest day in court only days away, Ravi is concerned about the toll the trial is taking on Shadrake's health. He suffers from high blood pressure and an irregular heartbeat, and in August he spent two days in hospital after a longstanding colonic complaint caused internal bleeding.

Shadrake, meanwhile, insists he is in good spirits, even managing to belt out a defiant karaoke version of "My Way" on the night of his conviction.

And while the British high commission in Singapore has offered only "words of comfort" since his arrest, he says he has received countless messages of support from ordinary Singaporeans. **"The authorities overreacted without thinking through the consequences and the anti-Singapore hysteria that followed," he said. "And that is growing all the time."**

Shadrake refuses to reveal how he will respond if he is sent to prison this week, saying only that he has several back-up plans in place: "This story is never going away. I'll keep it on the boil for as long as I live. They're going to regret they ever started this."

When I sought clarification on the accuracy of the Guardian article, Mr Shadrake confirmed through his counsel, Mr Ravi, that it accurately reported what he had said. Mr Ravi also made express what was implied in Mr Shadrake's interview with the Guardian: Mr Shadrake was going to publish a second edition of the book, with new chapters. A clearer intent to repeat his contempt there cannot be.

4 Mr Ravi informed me that Mr Shadrake would apologise if the sensitivities of the judiciary had been offended, and that Mr Shadrake never had the intention of undermining the judiciary. In his reply he confirmed this. I am unable to accept this as having any mitigating value. I had explained very clearly at [53] of the main judgment that the law is not concerned with the personal sensibilities of judges. It is concerned with the actual or potential effect on public confidence in the administration of justice. In proposing to apologise if the sensitivities of the judiciary had been offended, Mr Shadrake showed that he is completely oblivious to what I have said in the main judgment.

5 It was against this regrettable background that I considered the parties' submissions. Mr Ravi's written submissions argued for a financial penalty to be imposed but during the hearing he submitted that a censure would be quite sufficient. Ms Subramanian submitted for a minimum sentence of 12 weeks' imprisonment. As I observed when reserving judgment, these two positions were quite far apart.

The case law

6 I first consider the several cases cited in argument, beginning with the local cases. Ms Subramanian relied on three cases for the relevant sentencing principles.

7 The first case is *AG v Chee Soon Juan* [2006] 2 SLR(R) 650 ("*Chee Soon Juan*"), where Lai J remarked that fines would no longer be the norm for the offence of scandalising the court. That case involved a statement that the Singapore judiciary was biased and unfair and acted at the instance of the government in cases involving opposition politicians. The statement was read aloud during court proceedings and then circulated to the media and other entities. In deciding on sentence, Lai J observed that the offence of scandalising the court had hitherto been punished with fines only, but went on to observe that:

59 It appeared at first sight that the present offences of contempt *in facie curiae* by insulting the Judiciary as a whole before AR Low, and of contempt by scandalising the court, warranted a fine rather than a term of imprisonment. However, the present case can also be distinguished from all previous cases in which fines were imposed for acts scandalising the court. None of those cases involved situations where the contemptuous statements were actually read *before* the court. This factor, coupled with the unfounded allegations made against the Judiciary, clearly rendered the acts of the Respondent as "conduct calculated to lower the authority of the court" which amounted to "sheer, unmitigated contempt" sufficient to warrant a sentence of imprisonment: (*per* Yong CJ in *Re Tan Khee Eng John* ([27] *supra*) at [14]).

60 The Respondent's conduct leading up to the present proceedings was clearly reprehensible. In addition, he was not contrite nor did he make any attempt to withdraw his offending remarks. Instead, he repeatedly maintained that he spoke the truth. As the SSG had submitted, a jail sentence was necessary so as to deter the Respondent from repeating, and like-minded persons from committing, similar acts in future.

61 For the reasons stated, I decided to and did impose a jail sentence of one day on the Respondent. It was to serve as a warning to others who chose to go down the Respondent's path that, henceforth, similar offenders can expect to be incarcerated and perhaps fined as well

and, if the circumstances warranted it, sent to jail for longer periods too. Fines as the penalty for contempt of court of this nature will no longer be the norm.

As Mr Ravi pointed out, it appears from the passages cited that Lai J's dictum that fines will no longer be the norm must be read in the light of the learned judge's finding that *Chee Soon Juan* differed from previous cases in that the contempt was committed (partly) in the face of the court. Lai J's dictum was also made with reference to recalcitrant offenders.

8 The second case is *AG v Hertzberg* [2009] 1 SLR(R) 1103 ("*Hertzberg*"), where Tay J expounded the relevant sentencing principles as follows:

57 The AG submitted that in assessing the proper sanction to be imposed on the third respondent, the following principles of sentencing would apply in the instant case:

... denunciation (to drive home the point that such behaviour is unacceptable), specific deterrence (to prevent a recurrence of such behaviour) and general deterrence (to signal to others that such behaviour will be dealt with severely).

The AG pointed out that the third respondent is a repeat offender, having been fined \$6,000 in *Zimmerman* ([13] *supra*) and \$4,000 in *Wain* ([13] *supra*). The AG, suggesting that the previous fines were derisory in amount, submitted that a substantial fine, one that is sufficient to hurt but not to cripple, should be imposed. Mr Jeyaretnam, on the other hand, pointed out that our courts have been imposing fines in the region of a few thousand dollars with the highest amount ever awarded for the present form of contempt of court being \$10,000 in *Lingle* ([21] *supra*) at [64] [*sic*]. He submitted that if the third respondent was found liable for contempt of court, the fine imposed should not depart from the existing scale as laid down in the earlier cases. Anything more, he argued, would have an unnecessary "chilling effect" on speech and would not be needed to vindicate the honour and reputation of the courts.

58 I agree that the general sentencing principles referred to above are appropriate in determining the appropriate punishment for the criminal forms of contempt of court such as the present one of "scandalising the court" in the instant case. The factors that the court should have regard to in deciding the appropriate punishment are the nature of the contempt, who the contemnor is, the degree of his culpability, how the contempt was published, the kind of publication and the extent of the publication (see *Zimmerman* at [50]). Other relevant considerations would be whether the respondent argued against culpability, expressed regret over his conduct or made an apology for his contempt of court (see also *Wong Hong Toy* ([52] *supra*) at [46] and *AG v Pang Cheng Lian* [1974-1976] SLR(R) 271). As mentioned above (at [34]), whether the statements in question merely pose a remote possibility or present a real risk of harm to the administration of justice can also be taken into account in determining the sentence. The considerations are not exhaustive and what are of particular relevance would depend ultimately on the facts of each case. While the fines imposed in the earlier cases provide useful guides, each case should of course be dealt with on its own merits.

In *Hertzberg*, a \$25,000 fine was imposed on the corporate contemnor.

9 The third case is *AG v Tan Liang Joo* [2009] 2 SLR(R) 1132 ("*Tan Liang Joo*"), where Prakash J gave her own summary of the applicable sentencing principles:

31 The penalty for contempt of court can take the form of either a fine or imprisonment and there is no limit on the amount of the fine or duration of imprisonment (*AG v Chee Soon Juan*

([\[9\]](#) *supra*) at [57]; *Lee Hsien Loong v Singapore Democratic Party* ([\[9\]](#) *supra*) at [179]). In reaching a decision on the sentence, I bore in mind that "[t]he object of imposing the penalty for the offence of scandalising the court is to ensure that the unwarranted statements made by the contemnor about the court or the judge are repelled and not repeated" (*Gallagher v Durack* at 57). The relevant factors for consideration include: the nature and gravity of the contempt; the seriousness of the occasion on which the contempt was committed; the importance of deterring would-be contemnors from following suit; and the culpability of the contemnor (see *Lee Hsien Loong v Singapore Democratic Party* at [179]-[180] and [222]). Fines as the penalty for scandalising the court are no longer the norm (*AG v Chee Soon Juan* at [61]). The appropriate sentence can only be determined by looking at the particular facts of each case (*Soong Hee Sin v PP* [2001] 1 SLR(R) 475).

In *Tan Liang Joo*, the three respondents were wearing t-shirts imprinted with a picture of a kangaroo dressed in a judge's gown within and in the vicinity of the Supreme Court building when an assessment of damages involving politicians was ongoing. One of the respondents wore the t-shirt on further occasions and posted photographs of the respondents wearing the t-shirts online. All the respondents refused to apologise after they were found to be in contempt. The last-mentioned respondent was sentenced to 15 days' imprisonment while the other two were sentenced to 7 days' imprisonment.

10 Also relevant are the penalties imposed in those cases where internationally-reputed publications such as Newsweek, the Wall Street Journal Asia and the International Herald Tribune have scandalised the courts by alleging bias and partiality in cases between politicians from the ruling party and the opposition: *A-G v Pang Cheng Lian* [1974-1976] SLR(R) 271; *A-G v Zimmerman Fred* [1985-1986] SLR(R) 476; *A-G v Wain Barry J* [1991] 1 SLR(R) 85; *A-G v Lingle* [1995] 1 SLR(R) 199 and *Hertzberg*. In those cases, which predated Lai J's dictum in *Chee Soon Juan*, fines were imposed on both the corporate owners of the publications as well as the human agents involved in publication. Mr Ravi relied on these cases as examples where low sentences were imposed.

11 Counsel also referred me to several foreign authorities. These are of course not sentencing precedents as such, but may be illuminating insofar as they touch on matters of principle and the proper sentencing approach to take in cases where the court has been scandalised.

12 The first case referred to by Ms Subramanian is *Secretary for Justice v The Oriental Press Group Ltd* [1998] HKCFI 564, which concerned a widely-circulated Hong Kong newspaper, the Oriental Daily News and its editor, amongst others. They were convicted for threatening, harassing and intimidating a judge, and for publishing seven articles over a month which vilified the judiciary with scurrilous remarks and racist slurs. This campaign was in response to a decision against the paper by the targeted judge in a separate proceeding. The Hong Kong Court of First Instance found both the editor and the company who owned the paper to be in contempt.

13 The court's judgment on sentence is found in a separate judgment: *Secretary for Justice v The Oriental Press Group Ltd* [1998] HKCFI 173 ("*Oriental Press Group*"). In respect of the editor, the court held that he must bear ultimate responsibility for the contents of the paper and the conduct of its staff, although the court suspected that the editor may have been influenced or encouraged by the board of the company which owned the paper. The editor had also apologised. After considering these and other factors, the court held that the editor should be jailed for 3 months in respect of the publications and 3 months in respect of harassing the judge, with 1 month of the latter sentence to run consecutively with the former sentence, making a total of 4 months. It is significant that the court adopted 8 months as the starting point, although it is not clear whether this was in respect of the publications or the harassment or both.

14 In respect of the company which owned the paper, the court held, in stern language, that:

15. We have noted the unreserved apology which the Oriental Press Group Ltd. has tendered. We have also read the guidelines (if they can properly be characterized as guidelines) which it has issued as to the form and content of articles appearing in the *Oriental Daily News* to ensure that the law is not broken in the future. However, it is impossible for us to deal with the Oriental Press Group Ltd. other than by the imposition of a very heavy fine. We bear in mind that in the Group's consolidated accounts for the year ending 31st March 1997, the Group's profit after taxation was in the region of \$208 million. We bear in mind also that fines are intended to punish the offender. They are meant to hurt. A fine which is merely an irritating annoyance represents hardly any punishment at all. In all the circumstances of the case, we believe that the proper fine to impose on the Oriental Press Group Ltd. for its contempt of court relating to the publication of the articles complained of in a newspaper with the largest readership in Hong Kong is one of \$5 million.

15 The editor's appeal to the Court of Appeal was dismissed and the Court of Final Appeal refused leave to appeal further.

16 The second case is *Secretary of Justice v Choy Bing Wing* [2005] HKCFI 1125, where the respondent was convicted of scandalising a judge, viz Rogers VP, with the intention and in the hope that it would result in the recusal of the judge from a proceeding he was involved in. His appeals against liability failed. In meting out a sentence of 6 months, the Hong Kong Court of First Instance considered that the respondent was "set on a calculated course of conduct to try and ensure that, with a tirade of abuse, he could obtain the result he desired; namely, to obtain the recusal of Rogers VP, and, by that result, to fashion the Court of Appeal to his own liking": *Secretary of Justice v Choy Bing Wing* [2005] HKCFI 1159 ("*Choy Bing Wing*") at [23].

17 The third case is *Durack v Gallagher* (1982) 65 FLR 459. In that case, Gallagher, a union leader, had successfully appealed to the Full Court of the Federal Court of Australia against his conviction for contempt. In speaking to the media after his acquittal, Gallagher said: "I'm very happy to the rank and file of the union who has shown such fine support for the officials of the union and I believe that by their actions in demonstrating in walking off jobs ... I believe that that has been the main reason for the court changing its mind." Fresh contempt proceedings were instituted, and Keely J, sitting as a single judge in the Federal Court, found Gallagher to be in contempt. In sentencing Gallagher to three months' imprisonment Keely J made the following observations:

Over a long period, the activities of the Federation [ie the union] and the sayings of Mr. Gallagher have been given much publicity by the news media. Mr. Gallagher is a public figure. He has been given every opportunity to explain his answer. He has not done so. He has shown no sign of remorse. He has expressed no regret to the Court. He has offered no apology to the Court. His conduct had a tendency to impair the confidence of the public in the court's judgments. It attacked the integrity, propriety and impartiality of the Court. The confidence of the public in the integrity, propriety and impartiality of the Court must be maintained.

The contempt of court by Norman Leslie Gallagher warrants the imposition of a severe penalty. In all the circumstances it is not appropriate that a monetary penalty should be imposed. In any event it is all too easy for Mr. Gallagher to have a monetary penalty paid by 'benefactors'. The punishment must take the form of imprisonment. In all the circumstances he must be sent to prison for three calendar months. In addition he will be ordered to pay the Attorney-General's costs.

18 Gallagher's appeal to the Full Court of the Federal Court was dismissed: *Gallagher v Durack* (1982) 68 FLR 210. Gallagher then sought leave from the High Court to appeal against conviction and sentence in *Gallagher v Durack* (1983) 152 CLR 238 ("*Gallagher v Durack*"). The majority refused leave, and gave the following reasons at 245 in respect of sentence:

An independent ground on which special leave to appeal was sought was that it was erroneous for the Federal Court to take into account as one of the reasons for imposing a sentence of imprisonment instead of a fine the fact that the court thought that the applicant would not pay a fine out of his own funds. Counsel relied upon cases in which it has been held that it is wrong to impose a sentence of imprisonment not because it is merited but because of a belief that the convicted person cannot pay a fine. Such cases however are quite distinguishable from the present, whose circumstances were most exceptional. The applicant, in the course of the interview, made it clear that the Federation would not pay the fine imposed upon it out of its ordinary funds, and it can be inferred from his further remarks that moneys to pay that fine would be provided by employers who could not afford to have industrial trouble with the union. The Full Court did not rely on the latter circumstance, although it was entitled to do so. The object of the imposition of a penalty upon a person convicted of contempt of court is to endeavour to ensure that the unwarranted statements which he has made about the court or a judge are repelled and will not be repeated. In the present case, the applicant, who did not go into the witness box to explain the meaning of his statement or his attitude towards its repetition, was given an ample opportunity to apologize to the court but has chosen not to do so. If the court comes to the conclusion that a person convicted of contempt of court will not personally suffer or be deterred by a fine, that is a matter which it may consider in imposing sentence. It is of course clear that the Federal Court reached its conclusion that a sentence of imprisonment should be imposed chiefly because of the gravity of the contempt, and that the matters to which reference has just been made provided only an additional consideration.

19 Reference should also be made to the vigorous dissent of Murphy J, who made a point on selective prosecution which is pertinent to an argument made by Mr Ravi. Murphy J held at 252-253:

20. Special leave should also be granted to appeal against the sentence of three months' imprisonment. It is very rare for imprisonment to be imposed in a contempt of this kind where the court orders are not being wilfully disobeyed. (See *Dunbabin's Case* (1935) 53 CLR, at p 448 ; *Solicitor-General v. Radio Avon Ltd.* (1978) 1 NZLR 225, at p 242 ; *Dean's Case* (1567) Cro Eliz 689, at p 690 [1653] EngR 589; (78 ER 925, at p 926) .) The Federal Court observed that imprisonment was necessary because a fine would be no deterrent to Mr. Gallagher as it would be paid by others. Special leave would enable the Court to consider whether this represents a departure from proper principles of sentencing. The question is of public importance. It has grave implications for newspaper editors whose fines for contempt are paid for by newspaper companies. If the approach of the Federal Court on this question was wrong, the sentence should be reconsidered.

21. We were informed that Mr. Gallagher had no previous conviction for contempt of court or for anything else (except for refusal to answer before a Royal Commission in circumstances such that the Federal Court correctly decided to disregard it). In the light of the fact that normally fines only are imposed even for serious contempts in scandalizing the court, the sentence of three months' imprisonment appears to be a savage penalty. It would be unfortunate if this departure from the normal created the impression that imprisonment for scandalizing the court is reserved for militant trade union leaders.

22. Special leave would also enable consideration of another aspect which concerned the Federal

Court. Although the statements emanated from Mr. Gallagher they were given national publicity by the media. Yet Mr. Gallagher alone has been prosecuted. If, as the Federal Court thought, the statements were a clear contempt, this is an instance of selective prosecution. The Federal Court noted that no explanation was advanced by the Attorney-General for proceeding only against Mr. Gallagher. The authority and standing of the Federal Court can only be lowered if it allows itself to become the vehicle of unexplained selective prosecutions for contempt of itself. The fact that no one else who participated is to be punished should have been an important factor in considering whether to sentence Mr. Gallagher to imprisonment (see *Attorney-General (N.S.W.) v. Munday* (1972) 2 NSWLR 887). Although some attempt was made in this Court to explain the prosecution of Mr. Gallagher alone, it was not persuasive.

20 The fourth is *Re Bauskis* [2006] NSWSC 908, where the respondent was wearing a t-shirt with the slogan "Trial by jury is democracy", and refused to remove the t-shirt or leave the courtroom when asked to do so. He also used abusive language against the judge and refused to apologise when committed for contempt. The judge took the view that the respondent, together with others, was attempting to intimidate him. He sentenced the respondent to 14 days' imprisonment: *Re Bauskis* [2006] NSWSC 907 ("*Re Bauskis*").

21 Mr Ravi urged me to rely on *R v Hoser* [2001] VSC 443. In that case, the offending publication was a book attributing improper motives to judges in cases where the author had been convicted. The judge, Eames J, imposed a fine of \$3,000 on the author and \$2,000 on the company through which he published the book: *R v Hoser* [2001] VSC 480 ("*R v Hoser*"). In declining to impose a term of imprisonment, Eames J agreed with counsel's submission that many of the impugned passages in the book were found not to constitute contempt, that in examining the passages he (Eames J) had identified a number of important issues concerning the administration of justice, that the author's integrity and credibility had already been adversely affected by the judge's finding, that the author was motivated by a deep sense of grievance as to his convictions, and that the author would remove the offending passages in future editions of the book. This was notwithstanding the fact that the judge found that the book was widely disseminated, that the author and his company earned substantial profits from the publication of the book, that the author expressed no remorse for his actions, and that the judge had little confidence that the author would not repeat his acts of contempt. On appeal, the author was convicted in respect of more statements but no further penalty was imposed: *Hoser v R* [2003] VSCA 194.

22 Ms Subramanian also referred me to some decisions of our courts which were unaccompanied by grounds. In the absence of grounds I am unable to accord too much weight to those decisions.

Application to the facts

23 I would reiterate that the foreign authorities relied upon are not sentencing precedents as such, but are useful as illustrations of the sentencing approaches taken. In this regard, it is noteworthy that the High Court of Australia in *Gallagher v Durack* sanctioned 3 months' imprisonment for a public statement that the Federal Court had bowed to the power of the unions and not the law of the land. Similarly, the Hong Kong Court of First Instance in *Oriental Press Group* imposed a sentence of 3 months for the scandalising publications in that case, which sentence was affirmed on appeal. These sentences show that the courts of those jurisdictions have not hesitated to give robust sentences where the facts warrant it. These sentences, I should add, are significantly higher than the 15 days imposed in *Tan Liang Joo*, currently the highest sentence of imprisonment imposed in Singapore for scandalising the court.

24 However, to the extent that both counsel were referring to those authorities as benchmarks, I

cannot, with respect, agree with them. In any case it would be difficult to reconcile the sentences in the Australian cases of *Gallagher v Durack* and *R v Hoser*, relied on by Ms Subramanian and Mr Ravi respectively, and it would be incongruous and inappropriate for a Singapore judge to reconcile Australian sentences. Further, in *Choy Bing Wing* and *Re Bauskis*, the contempt was directed at ongoing proceedings. The part of *Oriental Press Group* pertaining to the harassment of a judge is also not applicable here. However, in deference to Mr Ravi's reliance on *R v Hoser*, I would say that, had the facts of that case been put before me, I would be disposed to give a much heavier sentence than that which was given in that case.

25 The general sentencing principles are well articulated in the local authorities cited above and are uncontroversial. There are two broad considerations. The first is the culpability of the contemnor and the need for specific deterrence. The second is the actual or potential effect of the contemning publication, *ie* the risk posed by the publication to public confidence in the administration of justice, and the need for general deterrence.

26 On the basis on the law as I have stated it in the main judgment, I would also hold that imprisonment would be the norm for the author of a publication which scandalises the court. To constitute contempt by scandalising, a publication must not only pose a real risk of undermining public confidence in the administration of justice; it must also fall outside the ambit of fair criticism, meaning that it is either made without rational basis, made without a honest and genuine belief as to its truth, or made in abusive language. The mere satisfaction of these criteria, without more, already makes for a high degree of culpability. The contemning author stands by definition in an area where his right of free speech has been abused and where the public standing of the courts should be vindicated. In the absence of special reasons, such as appropriate amends, the default punishment should be imprisonment.

Effect of the book

27 I first consider the effect of the book. The precise extent of circulation in Singapore is not established, although it is not disputed that the book is or was circulated in Singapore, and had sold a total of almost 6,000 copies in Singapore and overseas. There is also Mr Ravi's candid statement during the hearing on liability that:

In fact, in my office, I'll be very honest, I'm not selling the book. I have -- so many lawyers have come to take the books because my client have provided a lot of copies from the distributors. I'm not selling it but I have given lawyers gratuitously at the -- my clients have been quite pleased that many lawyers are turning up in droves to buy -- to have a copy of the book. Some would like to just make payment at their volition. [\[note: 1\]](#)

The impugned statements are also in a more enduring medium than journals or magazines, *viz* a book.

28 I next consider the sheer breadth and gravity of Mr Shadrake's allegations. As I said at [72] of the main judgment, "the more serious the allegation made, the greater the risk it poses to public confidence in the administration of justice, all other things being equal." In this regard, Mr Shadrake's allegations of judicial impropriety are without precedent in this jurisdiction in terms of their specificity, the number of judges targeted (the whole Supreme Court bench in Vignes Mourthi's case) and their gravity, pertaining as they did to cases concerning the life and liberty of those who come before the courts. In particular they surpass the allegations made in *Chee Soon Juan* and *Tan Liang Joo*, where sentences of imprisonment were imposed. I briefly recapitulate some of Mr Shadrake's key allegations:

(a) In discussing the case of Julia Bohl (the 2nd statement), Mr Shadrake claimed that the

courts gave a light sentence arranged for by the Singapore government under threat of economic reprisals by the German government. There was no rational basis supplied for this, and Mr Shadrake's own source (Mr Anandan's autobiography) clearly stated otherwise, *ie* that Julia Bohl could not face the death penalty because the amount of pure cannabis seized was only 281 grams and below the threshold of 500 grams.

(b) In discussing the case of Maria Krol-Hmelak and Peter Johnson (the 4th statement), Mr Shadrake claimed that the courts succumbed to executive and diplomatic pressure in acquitting two accused persons in a capital case. In his affidavit, Mr Shadrake claimed he was referring to an abuse of prosecutorial discretion, not the judiciary. This was plainly unsustainable as the relevant sentence in the passage reads: "So it was very likely *a government verdict not a judicial one*" (emphasis added). During submissions, Mr Ravi supplied in support of the 4th statement the wholly untenable basis that the trial judge, Lai Kew Chai J, had indicated that he would give written grounds for his decision but later did not do so.

(c) In discussing the cases of Dinesh Bhatia, Andrew Veale and Penelope Pang (the 7th and 8th statements), Mr Shadrake claimed that the rich and well-connected are shown favouritism and given light jail sentences, notwithstanding that Mr Anandan's autobiography, which he claimed to rely on, also gave three instances (out of four) where fines were imposed for similar offenders who were certainly not rich or famous. He acknowledged that he had made a mistake in stating that Dinesh Bhatia faced the maximum sentence of 10 years. This was impossible since Dinesh Bhatia was a first offender. But he did not and has not said anything about withdrawing an almost identical statement just immediately before the one he had acknowledged as erroneous.

(d) In discussing the case of Vignes Mourthi (the 9th, 10th and 11th statements), Mr Shadrake claimed that the Supreme Court judiciary has culpably suppressed possibly exculpatory evidence in a capital case, supplying only the completely untenable rationale that the Legal Service and the judiciary were "porous". During submissions on sentence, Mr Ravi then put forward Mr Shadrake's insincere "apology" referred to at [\[34\]](#) below.

(e) In the 1st and 5th statements, Mr Shadrake made further general statements alleging judicial impropriety in cases concerning the life and liberty of those who come before the courts. In general, he has shown himself to be more interested in make allegations against the judiciary than with criticising the analyses and outcomes in individual cases.

29 I now consider the likely effect on a member of the public who reads the book. Mr Shadrake does not have the reputation and ostensible credibility of some of the publications which have been found to be in contempt of our courts, *eg* the International Herald Tribune and the Wall Street Journal Asia. But he has presented himself as an investigative journalist, and the book is written in the style of a piece of investigative journalism. For example, at p 26 of the book, which I have set out at [\[85\]](#) of the main judgment, he says that:

I wanted to expose some of the ghastly secrets of the gallows – the kind of secrets Singapore's leaders are so proud of, revere, put so much faith in but don't want anyone else to know about. Capital punishment in the tiny state had for far too long been shrouded in this kind of secrecy and discussion on the subject completely discouraged. It was time something was done about it in as dramatic a way as possible, I thought to myself. Could I be the one to expose the un-exposable? It would not be the first time I had rattled a few cages in high places with an equally embarrassing expose ... But being trained in journalism in the 'publish and be damned' way, I was determined to go ahead come what may.

The average reader will not subject Mr Shadrake's claim to being an investigative journalism or his allegations to searching criticism. He will read Mr Shadrake's allegations much in the way they were presented in the Guardian article:

While wealthy – often well-connected foreigners – can expect leniency, [Mr Shadrake] argued in *Once the Jolly Hangman: Singapore's Justice in the Dock*, the poor and disenfranchised are summarily executed.

...

Drawing on interviews with a retired chief executioner, lawyers, former police officers and human rights activists, [Mr Shadrake's] central claim is that justice in one of the world's most advanced economies is anything but blind. He highlights several inconsistent applications of the law which, he says, prove Singapore's judiciary "picks and chooses how they respond depending on the state's diplomatic and economic interests".

I would therefore sentence Mr Shadrake on the basis that an average person who reads the book is likely to believe his allegations.

30 Mr Ravi pointed out the Attorney-General has not taken steps to ban the book. He did not explain the legal basis on which the Attorney-General is bound to ban the book, and in any case I am not concerned in these proceedings with whether the Attorney-General should ban the book. But I do understand Mr Ravi to be making a point about what he sees as the incongruity of the Attorney-General's actions here. Now, if this was a case where the Attorney-General has been improperly selective in prosecuting those who are involved in creating and distributing a scandalous publication, I can see some force in the dissenting judgment of Murphy J in *Gallagher v Durack* that this should count towards sentence. In fact, as Lord Reid explained in *A-G v Times Newspaper Ltd* [1974] 1 AC 273 at 289, the fact that others are free and are likely to make similar comments must be taken into account in assessing liability in the first place. The reason for this is easy enough to understand – if others are free to make scandalous remarks then the risk to public confidence cannot be said to emanate solely from the publication which is selectively prosecuted, and this would naturally be reflected in the sentence.

31 But on the facts there is simply no selective prosecution. As emerged during the various hearings before me, the Attorney-General had advised bookstores carrying the book to take legal advice, as a result of which the book has been taken off the shelves. This left Mr Shadrake, who was unwilling from the very start, despite several overtures by the Attorney-General, to retract his contemptuous publication and apologise to the court. I do not see how, on these facts, there could be said to be any sort of improperly selective prosecution.

32 In the same connection, Mr Ravi also made a point about how those involved in making the IBA report had not been prosecuted and punished for contempt. This ignores the facts. The relevant IBA conference had been held in Singapore in October 2007. The IBA report was released in July 2008, after some exchanges with the government and well after the conference had ended. So I am doubtful that those who were involved in making the report were within jurisdiction. But assuming in Mr Shadrake's favour that they were within jurisdiction and not prosecuted, the fact remains, as I have made clear in [131] of the main judgment, that it was Mr Shadrake's selective quotation of the IBA report, and his exaggeration of its conclusions, that placed him outside the scope of fair criticism. So this was not a case of Mr Shadrake being selectively prosecuted for repeating what the IBA was free to say.

Culpability

33 There is no doubt that Mr Shadrake's personal culpability is of the very highest order. He has made sustained and extensive allegations of judicial impropriety in cases concerning life and liberty, and has done so without rational basis, and with reckless disregard as to the truth or falsehood of his allegations. He has in particular showed a tendency to distort his sources for his own purposes.

34 Outside the courtroom Mr Shadrake has declared his complete lack of remorse, and discarded his pretence that he was not targeting the judiciary in the book. He has also asserted that his book was "devastatingly accurate", despite everything I have said in the main judgment. Notwithstanding this, Mr Shadrake instructed Mr Ravi to inform me during the hearing on sentence that he did not mean to allege a cover-up by the "high echelons of the judiciary" in Vignes Mourthi's case, despite his express words to the contrary in the book. In the light of this, his already misguided proposal to apologise must be regarded as nothing more than a tactical ploy to obtain a reduced sentence.

35 He is a first time offender, but that carries no weight at all in the light of the sustained allegations he has made in the book and his intention, stated through Mr Ravi in the face of the court, that he intends to produce a second edition of the book. This last fact is unprecedented in our case law, and calls for a strong element of specific deterrence in determining the sentence.

Disgorgement of profit

36 Questions had crossed my mind as to the motives of Mr Shadrake in writing this book. The bibliographical note on the back cover of the book does not show that he had a history of being an activist against the death penalty. Certainly, following from what I have said in the main judgment, it does not seem that he was overly concerned about ascertaining the truth or falsity of what he wrote. Notwithstanding his claims of meticulous research, the sources given by him during the hearing were mostly publicly available, and indeed one (the Chief Justice's article) was published after his book. His style and tone is sensational in nature: see eg p 26 of the book, which I set out above at [\[29\]](#). All these point to a man who is out to provoke controversy. But since these are suspicions on my part only, I disregard them for the purposes of sentencing.

37 However, I do have Mr Ravi's statement that almost 6,000 copies of the book have been sold in total. I think that a fine should be imposed to prevent Mr Shadrake from profiting from his contempt. Let this be a signal that those who hope to profit from controversy by scandalising the court may expect to have their profits disgorged by a stiff fine, in addition to such other punishment as may be imposed.

Other factors

38 Mr Ravi informed me that Mr Shadrake has had surgery for colon cancer. He has a history of coronary artery disease and had undergone successful angioplasty/stenting. He has also been suffering from hypertension for over 30 years. While the cancer is now in remission, Mr Shadrake still needs to go for annual checkups for polyps. Applying the principles stated by Rajah JA in *Chng Yew Chin v PP* [2006] 4 SLR(R) 124, I do not think that Mr Shadrake's medical condition justified the exercise of judicial mercy. His condition was not severe and would not be aggravated by the term of imprisonment contemplated here. Ms Subramanian also informed me that Mr Shadrake would be able to receive appropriate medical attention in prison if necessary.

39 Mr Ravi urged me to consider the possible effect of the sentence I pass on a proposed tie-up between Yale University and the National University of Singapore, which he described as a "multi-

million or multi-billion" dollar project that was a "real leap" for Singapore. Needless to say I give no weight at all to this argument. Indeed, I found this argument deeply ironic, given that barely a few weeks ago Mr Ravi was defending as fair criticism Mr Shadrake's criticism that Andrew Veale was given a light sentence because he was "the sort of people Singapore needs".

40 In his earlier submissions Mr Ravi had sought to place reliance on s 225C of the Penal Code (Cap 224, 2008 Rev Ed), which provides as follows:

Offences against laws of Singapore where no special punishment is provided

225C. Whoever does anything which by any law in force in Singapore he is prohibited from doing, or omits to do anything which he is so enjoined to do, shall, when no special punishment is provided by the law for such commission or omission, be punished with fine not exceeding \$2,000.

41 When I reminded him of this submission during the hearing on sentence, Mr Ravi clarified that he was abandoning this argument, because it is beyond dispute that the common law recognises imprisonment as a punishment for contempt. This was also Ms Subramanian's intended reply, and had the argument been pressed I too would have taken the same view.

Conclusion on sentence

42 On the basis of Mr Shadrake's culpability alone, in particular his stated intent to repeat his contempt by publishing an expanded second edition of the book, I would have agreed with Ms Subramanian's submission of a minimum sentence of 3 months' imprisonment to serve the objective of specific deterrence. This would be further justified by the likely effect of Mr Shadrake's book on the uncritical reader, as illustrated by the Guardian article. However, I must take into account the previous sentencing precedents (which are on the low end), the fact that the precise extent of the book's circulation in Singapore was unclear, and also the fact that Mr Shadrake was not a person with a credible and established reputation. I would also apply a discount, entirely undeserved by Mr Shadrake and which will and should not be taken as a precedent, to signal that the courts have no interest in stifling legitimate debate on the death penalty and other areas of the law.

43 In the result, I sentence Mr Shadrake to 6 weeks' imprisonment and a fine of S\$20,000, in default of which he shall serve a further 2 weeks in prison, such further term to run consecutively to the first.

44 If at any time after my judgment Mr Shadrake wishes to purge his contempt, he can do so by applying under O 52 r 7(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

Costs

45 After delivering the above judgment on sentence I heard counsel on costs. It was common ground that I should fix costs. Ms Subramanian submitted that the Attorney-General should be awarded a total sum of \$80,000 and indicated that a taxed sum would be substantially higher. Mr Ravi, rather extravagantly, asked for \$100,000 in costs for Mr Shadrake. He argued in the alternative that the Attorney-General should receive less than \$10,000 in costs.

46 As a general rule costs should follow the event and there is no reason for me to depart from that rule in this case. As for quantum, the first thing to be noticed is that the submissions on liability and sentence took three and a half days, on top of several ancillary matters.

47 I also considered that, although I had adopted the real risk test in preference to the inherent tendency test, it was not quite the test Mr Ravi had argued for, which seemed to require a substantial degree of risk. Ms Subramanian had accepted in the end, as I did, that there might not be much difference between the inherent tendency test and the real risk test, although in this regard I would repeat what was said at [50] and [54] of the main judgment. As for the facts, although I have held that three of the fourteen impugned statements were not in contempt, very little time was spent on those three statements, which in any case do not form the sting of his allegations. The Attorney-General has substantially succeeded on the remaining eleven statements, on which most of the time was spent.

48 I gave significant weight to the fact that Mr Shadrake had during the hearing on sentence exhibited a complete lack of remorse for his contempt, and in particular had stated, through Mr Ravi, his intention to publish a second and expanded edition of the book. This should be reflected in my order as to costs.

49 In the result, I fixed costs at \$55,000.

[\[note: 1\]](#) Notes of Evidence, Day 2, p 140.

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