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Remarks.More Remarks and a Grounds of Decision : One Judgment Too Many? TT Durai V Public Prosecutor, Unreported Magistrate's Appeal

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Case Note

REMARKS, MORE REMARKS AND A GROUNDS OF DECISION

One Judgment too Many?

T T Durai v Public Prosecutor
⇒[2007] SGDC 334

In May 2008, the High Court dismissed the appeal of former NKF CEO, T T Durai, against his conviction and sentence. What is little known is that one of Durai's six grounds of appeal was in fact upheld. The appellate judge subsequently devoted nine out of 12 paragraphs of his four-page Grounds of Decision, to explain his reasons for doing so. Although this ruling did not affect the final outcome of the *Durai* appeal, it has to some extent helped to settle a question that has vexed criminal law practitioners in recent years. This concerns the legality and propriety of writing multiple judgments in a case. Such a practice amongst subordinate court judges was revealed in the *Durai* case to be more widespread than was previously thought. This note discusses the usefulness of the decision in the light of the uncertainty amongst lower court judges as to the legality of this strange practice. It also examines the shortcomings of the judgment in this regard.

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I. Introduction

1 On 11 June 2007, T T Durai, the former CEO of the National Kidney Foundation ("NKF"), was convicted on one charge of "knowingly" using, with intent to deceive NKF, an invoice which contained a false statement, an offence under s 6(*c*) of the Prevention of

Corruption Act.[1] He was sentenced to three months' imprisonment for this offence.

2 Durai's petition of appeal to the High Court against his conviction and sentence was filed on 24 January 2008. In it he raised six grounds of appeal. The first five grounds were stated to be:[2]

> (a) the failure of the prosecution to establish the ingredients of the charge, at the close of the prosecution case;
>
> (b) material "intrinsic and extrinsic" contradictions in the evidence of David Tan, the main prosecution witness;
>
> (c) failure of the trial judge to treat the evidence of David Tan, an accomplice, with customary caution;
>
> (d) error in law and fact by the trial judge in finding there was a core of "untainted evidence" from which adverse inferences unfavourable to the appellant were drawn and, consequently, in requiring him to give an explanation; and
>
> (e) drawing adverse inferences from the appellant's election to remain silent when called upon to make his defence.

3 The sixth and last ground of appeal, the most relevant to this note, was against the multiple judgments written by the trial judge:[3]

> The trial judge erred in law in issuing the Grounds of Decision dated 17 December 2007 in contravention of the Criminal Procedure Code when he had already given his reasons for his findings in writing in the form of the three written Remarks dated 28 March 2007, 11 June 2007 and 21 June 2007 comprising 45 pages.

4 This was the only ground of appeal that was allowed by Justice Tay Yong Kwang who heard the appeal. Unfortunately for the appellant, that decision in his favour did not have the slightest effect on the final result of the appeal.

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1 Cap 241, 1985 Rev Ed. Section 6(*c*) provides that "if any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal ,he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 5 years or to both".

2 Extracted from the Skeletal Submissions of the Appellant, dated 21 May 2008, submitted to the High Court in Magistrate's Appeal No 126/2007/01.

3 Skeletal Submissions of the Appellant, p 4.

II. The multiple judgments

5 What the trial judge had done in this case was to issue a total of four written judgments, which he had variously described, at different stages of the proceedings. On 28 March 2007, he issued a nine-page written judgment termed "Remarks at the Close of the Prosecution's Case" which contained his reasons for calling on the defence. On 11 June 2007, he gave a 29-page written reasons for convicting the accused which he called "Remarks before Verdict" and on 21 June 2007, after sentencing the accused to three months' imprisonment, he issued another nine-page written "Remarks at Sentencing". The three "Remarks" contained a total of 47 pages. A final 63-page Grounds of Decision[4] then followed on 17 December 2007, some six months after the appellant had filed his notice of appeal. This was the only judgment that the District Judge was required by law to write.[5]

III. The appellant's complaint

6 The appellant's complaint, on appeal, was that the writing of the multiple judgments by the trial judge was a clear breach of s 217(1) of the Criminal Procedure Code[6] which reads:

> No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.

7 Clearly, this provision embodies the principle of *functus officio* which is "at the very core of the principle of finality".[7] According to Spenser Wilkinson J, "[i]f a written judgment is delivered, it is perfected as soon as it is delivered and signed; if an oral judgment is delivered … it is perfected as soon as it has been pronounced and the effect thereof has been entered in the judge's note-book and signed".[8]

8 Section 217(2) confines the "limited circumstances" when an alteration or review of a judgment is permissible, to clerical errors and to "any other mistakes" which must be rectified before the court rises for the day.[9] A mistake is not "mere forgetfulness".[10] It is, as Russell CJ

4 See *T T Durai v PP* [2007] SGDC 334.

5 Section 247(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) requires a Grounds of Decision to be made available to the appellant "when a notice of appeal has been lodged".

6 Cap 68, 1985 Rev Ed. The section corresponds with s 362 of the Indian Criminal Procedure Code and s 278 of the Malaysian Code.

7 *Chiaw Wai Onn v PP* [1997] 3 SLR 445, *per* Yong CJ. See also *Mallal's Criminal Procedure Code* (Malayan Law Journal Sdn Bhd, 5th Ed, 1978) at para 9030.

8 *PP v Heng You Nang* [1949] MLJ 285.

9 See *Chiaw Wai Onn v PP* [1997] 3 SLR 445 followed in *Lim Teck Leng Roland v PP* [2001] 4 SLR 61; *PP v Lee Wei Zheng Winston* [2002] 4 SLR 33. Rising for the day

(*cont'd on the next page*)

explained in *Sandford v Beal*,[11] "a slip made, not by design but by mischance". Obviously, a change of heart or opinion, on further reflection, would not be a mistake sufficient to warrant an alteration or review of a previous court judgment under s 217(2) of the Code.

9 Section 217(2) does not contemplate a court hearing and deciding a disputed issue as to whether a mistake was made. It applies only if a mistake was obvious to the court or admitted by all parties. In other situations, a party aggrieved by the alleged mistake should appeal or seek criminal revision.[12] A mistake within s 217(2) of the Code must be a genuine error of law or fact as, for example, in the powers of sentencing prescribed by a statute or in not allowing counsel to address the court before sentencing in accordance with prescribed procedure.[13] Altering a sentence because a new fact has arisen and not because of a clerical error or mistake at the time of the sentencing process, would be an improper application of s 217(2) of the Criminal Procedure Code.[14]

10 It was, therefore, submitted on behalf of the appellant that the trial judge had erred in this case by supplementing his three judgments totalling some 43 pages, written six months earlier between March and June 2007, with a 63-page Grounds of Decision dated 17 December 2007 containing "critical additions"[15] or embellishments. Consequently, there was a breach of s 217 of the Code to warrant appellate intervention.

11 At the conclusion of the hearing of the appeal, the judge was persuaded, to use his own words, to "agree with the appellant that the District Judge should not have supplemented his 3 remarks given at various stages of the trial, notwithstanding his qualifier and reservation of a right to give 'full grounds'".[16] Despite the appellate judge upholding this ground of appeal or allowing this ground of appeal, it proved a pyrrhic victory for the appellant as it was held not to affect the final outcome of the appeal.

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would imply that the court has attended to all its business for the day: *Chiaw Wai Onn v PP* [1997] 3 SLR 445; *Chuah Gin Synn v PP* [2002] 2 SLR 179.

10 *Barrow v Isaacs* [1891] 1 QB 417, *per* Esther MR.

11 65 LJQB 74.

12 *Virgie Rizza V Leong v PP* [1998] SGHC 112 at [12] followed in *PP v Oh Hu Sung* [2003] 4 SLR 541.

13 *PP v Lee Wei Zheng Winston* [2002] 4 SLR 33; *Monteiro v PP* [1964] MLJ 338.

14 *PP v Lee Wei Zheng Winston* [2002] 4 SLR 33.

15 Skeletal Submissions of the Appellant (Magistrate' Appeal No 126/2007/01), dated 21 May 2008, at para 217.

16 Unreported Grounds of Decision dated 30 May 2008, at p 2, para 8.

IV. Previous criticisms

12 The practice of writing multiple judgments[17] by the lower courts has not been considered by the Singapore High Court since the 1964 decision of the High Court in *PP v John Thien*[18] when Wee Chong Jin CJ allowed an application to expunge the grounds of decision from the record in view of an earlier "brief judgment" that had been read out by the trial judge. However, in view of the frequency of this practice in recent years, it was the subject of academic examination in 2007.[19]

13 Questions as to the propriety of delivering multiple judgments by subordinate court judges were raised as a result of two "oral" judgments delivered by a District Judge in *PP v Velusamy Mathivanan.*[20] Better known as the *CrimsonLogic* case, it was concluded in the District Court in December 2006.[21] In that case, the trial judge had delivered a 67-page oral judgment in open court. On the following day, he made available to the parties another 69-page written judgment which he described as an "Oral Judgment". As in the *Durai* judgments entitled "Remarks", the "oral" judgments contained a number of qualifiers or caveats by the trial judge to the effect that if there were an appeal, "he would elaborate on his reasons". The matter did not proceed to appeal thus making the writing of a further Grounds of Decision, unlike in the *Durai* case, unnecessary.

14 The *CrimsonLogic* judgments prompted the author in September 2007 to review the applicable legislative provisions and case law in both Singapore and Malaysia and to examine both the legality

17 Undefined in the Criminal Procedure Code, but the word "judgment" indicates the final order in a trial terminating in an acquittal or conviction: *Marzuki bin Mokhtar v PP* [1981] 2 MLJ 155; *Balasingham v PP* [1959] MLJ 59 and *Lim Teck Leng Roland v PP* [2001] 4 SLR 61. For purposes of s 217 of the Code, it also appears to cover a sentence of the court: *PP v Yap Thiang Wah* [1992] 1 MLJ 206; *Low Ah Thit v PP* [1992] 2 CLJ 1223; *Choo Teck Soon v PP* [1954] MLJ 63; *Ooi Sim Yim v PP* [1990] 1 MLJ 88.

18 Unreported MA No 58 of 1964 briefly noted in [1964] MLJ ci. In that case, Wee Chong Jin CJ allowed an application to expunge from the record the Grounds of Decision of a District Judge in the light of his earlier brief oral judgment. This was followed in *Low Ah Thit v PP* [1992] CLJ 1223 and *PP v Johannes Van Damme* [1993] SGHC 90. See also *Goh Lai Wak v PP* [1994] 1 SLR 748. The Court of Appeal had occasion to consider the matter in respect of High Court decisions some 15 years ago in *Goh Lai Wak v PP* and *Anyanwu v PP* [1994] 2 SLR 46.

19 See S Chandra Mohan, "The CrimsonLogic Case: When is a Judgment *Not* a Judgment" *Law Gazette*, September 2007, 23.

20 DAC 47935/2005, unreported, better known as the *CrimsonLogic* case as all the accused were employees of CrimsonLogic, an IT systems provider. The case was concluded in December 2006.

21 For a detailed examination of this case in reference to multiple judgments, see S Chandra Mohan, "The CrimsonLogic Case: When is a Judgment *Not* a Judgment" *Law Gazette*, September 2007, 23.

and propriety of the practice amongst lower court judges of writing multiple judgments in a case. The review concluded that existing legislation and abundant judicial authorities in both Singapore and Malaysia disapproved the writing of multiple judgments. The paper suggested some reasons for the emergence of the recent practice of delivering multiple judgments in the lower courts and expressed the hope that the High Court would remedy the situation at the earliest opportunity. This article was published in the *Singapore Law Gazette* in September 2007, after the three sets of "Remarks" had been delivered in *Durai,* but before the writing of the Grounds of Decision in December 2007. In writing his Grounds of Decision, the trial judge in *Durai* appears to have felt compelled to address some of these criticisms in writing multiple judgments and to explain the reasons for his writing the earlier three "Remarks" or judgments.[22]

V. The trial judge's explanation

15 According to the trial judge, the writing of his three earlier "Remarks" was done "in accordance with current practice in the Subordinate Courts".[23] He also gave other reasons. As the decisions of the Singapore Court of Appeal in *Goh Lai Wak v PP*[24] and *Anyanwu v PP*[25] against the writing of multiple judgments were in reference to High Court decisions, "it may be possible to argue", the judge reasoned, that these decisions applied only to the High Court. In this line of reasoning the trial judge overlooked the fact that in *Goh Lai Wak v PP,* the Court of Appeal approved the Malaysian cases of *Ankur Nath Ganguli v PP*[26] and *Lorraine Phylis Cohen v PP,*[27] both decisions on the equivalent of s 217 of our Criminal Procedure Code which prohibits a lower court from altering or reviewing a judgment.

16 The trial judge next referred to ss 217 to 219 of the Criminal Procedure Code.[28] He opined that "none of these provisions directly prohibit the giving of reasons before supplying grounds of decision".[29]

22 [2007] SGDC 334 at [149]–[158].
23 [2007] SGDC 334 at [149].
24 [1994] 1 SLR 748 a decision on s 46 of the Supreme Court of Judicature Act (Cap 322, 1993 Reprint).
25 [1994] 2 SLR 42.
26 [1956] MLJ 206.
27 [1989] 2 MLJ 288 where the Malaysian Supreme Court ordered that only the first judgment be included in the record although this judgment had only dealt with the prosecution case as in the case of the first set of "Remarks" in *Durai*.
28 Cap 68, 1985 Rev Ed. Section 217 prohibits the alteration or review of judgments by the lower court, s 218 requires the explanation of judgment to the appellant and s 219 provides for the original written judgment to be filed with the record of proceedings.
29 [2007] SGDC at [154].

To be fair, he rightly conceded that there were indeed judgments in both Singapore and Malaysia which were against such a view.[30]

17 Additionally, the trial judge took the view that the prohibition in s 217 against altering or reviewing a judgment was only "concerned with the alteration of the verdict or sentence", rather than the "grounds". The suggestion was that his earlier "Remarks" were all "reasons" or "grounds" for various decisions and not judgments incapable of review under s 217 of the Code. Finally, according to the trial judge, even if a judge's reasons for his decision (like his three "Remarks") were to be construed as judgments, they could be altered or reviewed if the judge indicates that a final judgment will follow. In other words, such qualifiers were sufficient to permit the writing of multiple judgments before the final Grounds of Decision.

18 If the trial judge were right, a judge could give different reasons in various judgments for making judicial determinations so long as he reserved the right to give a "final" Grounds of Decision should the need arise. Such a position would be wholly untenable and in total disregard of the provisions of s 217 of the Code which seeks to ensure finality of court judgments.

19 Equally unacceptable was the trial judge's reasoning that the writing of multiple judgments is permissible because the Code does not expressly prohibit this. Would the writing of many judgments in one case have even been within the reasonable contemplation of the drafters of the Code to make them want to provide for a prohibition of such judicial conduct? Why indeed would any judge, who has to constantly write judgments in between hearing cases on busy court schedules, want to write multiple judgments in any one case? Unless, of course, he entertains second thoughts or wishes to bolster the reasons given in an earlier judgment. And it is such an alteration or review that s 217(1) of the Criminal Procedure Code expressly prohibits.

20 The consequences of writing double judgments have been documented elsewhere.[31] There is always the possibility of inconsistencies in the trial judge's findings and in his analysis of evidence or contradictions between judgments. More importantly, it raises questions as to judicial credibility and the danger of *ex post facto*

30 Reference was made to the Malaysian decisions of *Habee Bur Rahman* [1971] 2 MLJ 194, *Loh Kwang Seang* [1960] MLJ 271, and to the Singapore decisions in *PP v Johannes Van Damme* [1993] SGHC 90 and *PP v John Thien*, briefly noted in [1964] MLJ ci. See also *Chiaw Wai Onn v PP* [1997] 3 SLR 445.

31 S Chandra Mohan, "The *CrimsonLogic* Case: When is a Judgment *Not* a Judgment" *Law Gazette*, September 2007, 23 at 27 and 28.

justification. These have been recognised by the Malaysian Supreme Court:[32]

> Supplementary grounds after a written judgment has been delivered may well affect judicial credibility because they could easily be mistaken for the wisdom of hindsight rather than representing the actual decision-making process. Consequently, it is undesirable to have two written judgments in the same case.

21 The *Durai* case may well be an excellent illustration of the wisdom of these words.

VI. The appellate judge's decisions

22 Justice Tay Yong Kwang rightly rejected[33] the trial judge's main justification for writing the three earlier judgments titled "Remarks" in addition to the Grounds of Decision. He noted that all the three sets of "Remarks", totalling 46 pages, "adopt the general format of formal judgments or grounds of decision" and that they "set out in detail the facts, the contentions, the decision and the reasons for the decision".[34] Tay J held that "in form and in substance therefore, the Remarks are judgments or grounds of decision".[35] The fact that the "Remarks" had a qualifier to the effect that they were not meant to be full grounds of decision made no difference.

23 Beyond this, the judge did not specifically deal with all the reasons for the trial judge's perceived entitlement to the writing of multiple judgments. Instead, he was content to refer *in extenso* to that part of the judgment of the Court of Appeal in *Goh Lai Wak v PP*[36] where Yong CJ quoted Lee Hun Hoe CJ in *Cohen Phylis v PP*:[37]

> Lee Hun Hoe CJ, in delivering the judgment of the court, held at p 289F:
>
> > Since there was already a written judgment, signed and delivered on 1 September 1987, no second written judgment or grounds of decision could be delivered subsequently to supplement the first judgment. We do not think it is competent for the learned judge to supplement the first judgment by delivering a second judgment or grounds of

32 *Sykt Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v Majilis Perbandaran Pulau Pinang* [1996] 2 MLJ 697 followed in *Dr Chin Yoon Hiap v Ng Eu Khoon* [1998] 1 MLJ 57.

33 Unreported Magistrate's Appeal No 126/2007/01.

34 Page 1, para 2 of the Judgment dated 30 May 2008.

35 Page 1, para 4 of the Judgment dated 30 May 2008.

36 [1994] 1 SLR 748 at [32]–[34].

37 [1989] 2 MLJ 288.

> decision. This is clearly against fundamental principle as is normally understood.

Later, at p 289C, in adopting Mathew CJ's judgment in *Ankur Nath*,[38] Lee Hun Hoe CJ said:

> We support the sentiments expressed therein since the said provision (s 21(1) of the Courts Ordinance 1948) is similar in substance to s 52(1) of the Courts of Judicature Act 1964. We consider it wrong in principle to allow a judge to supplement his original judgment by a second judgment. If we allow this, what is there to prevent a third or fourth judgment to supplement an earlier judgment.

> We agree with the propositions enunciated in *Ankur Nath* and *Lorraine Phylis Cohen*. A judge cannot subsequently give his grounds of decision if he has already delivered a prior judgment at the conclusion of the trial which contains his reasons for convicting the accused. This principle does not affect the operation of s 218 of the Criminal Procedure Code (Cap 68) which provides that a judgment shall be explained to the accused. There cannot be any objection to a judge providing briefly at the conclusion of a trial an outline of the issues before him and the evidence on them, and to indicate briefly, without reasons, his findings on them. In such circumstances, there should be no objection if subsequent written grounds of decision are delivered in which the evidence is fully reviewed and the judge's detailed reasons or grounds for his findings are comprehensively recorded.

> [footnote added]

24 Tay J noted that "this principle" was affirmed by the Singapore Court of Appeal almost immediately in *Anyanwu v PP*.[39] A more positive statement then followed:[40]

> I do not see why this principle which applies to the High Court should not apply to the Subordinate Courts.

> I therefore agree with the appellant that the DJ should not have supplemented his 3 remarks given at the various stages of the trial, notwithstanding his qualifier and reservation of a right to give 'full grounds'.

25 The mere reference in this context to the Court of Appeal's doubtful comment based on s 218 of the Code,[41] as providing a limited

38 [1956] MLJ 205.

39 [1994] 2 SLR 46 at [19]–[20].

40 At paras 7 and 8 of the unreported judgment.

41 The use of s 218 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) for this purpose is questionable as can be seen from the subsequent case of *Anyanwu v PP* [1994] 2 SLR 46. Section 218 only requires the judge to explain to the accused his decision of an acquittal or conviction and, if the accused so desires, to provide him

(*cont'd on the next page*)

exception to the rule of prohibition against altering judgments, is difficult to understand.[42] The appellate judge did not take this opportunity to comment upon nor express any judicial disapproval of "the current practice in the subordinate courts"[43] to write more than one judgment. This was unfortunate given that the High Court has a supervisory jurisdiction over the Subordinate Courts and that this was the first opportunity the High Court had of reviewing the recent, and apparently common, unsatisfactory practice in the lower courts of writing multiple judgments.

VII. The difficulties with the judgment

26 The difficulty with the High Court judgment in the *Durai* appeal lies, firstly, with the total inconsequence of the judge's decision in allowing the appellant's sixth ground of appeal and in his ruling that the multiple judgments written by the trial judge fell foul of the law. In view of Tay J's finding that the three "Remarks" were indeed judgments, and having reiterated that the proscription against the alteration and review of judgments, enshrined in s 217 of the Criminal Procedure Code,[44] applied to subordinate court judgments, should the judge then not have disregarded the subsequent Grounds of Decision and determined the appeal solely on the basis of the earlier three judgments? That was what was done in *PP v John Thien*[45] by Wee Chong Jin CJ and in a number of Malaysian decisions.[46] Many of these authorities were brought to the attention of the judge in the course of the appeal.[47]

27 In *Loh Kwang Seng v PP*,[48] Rigby J opined that the court must consider the original judgment as it stands and exclude any consideration of the parts subsequently added. In *Low Ah Thit v PP*,[49]

with a translation in his own language. The purpose of the section is to ensure that the accused understands the judgment or rulings made against him: *Mallal's Criminal Procedure Code* (Malayan Law Journal Sdn Bhd, 5th Ed) at para 8904. Section 218 does not require the judge to state his *reasons* for his decision.

42 For a fuller discussion, see S Chandra Mohan, "The *CrimsonLogic* Case: When is a Judgment *Not* a Judgment" *Law Gazette*, September 2007, 23.

43 According to the trial judge: [2007] SGDC 334 at [149].

44 Cap 68, 1985 Rev Ed.

45 [1964] MLJ ci, followed in *PP v Johannes Van Damme* [1993] SGHC 90 and *Low Ah Thit v PP* [1992] 2 CLJ 1223. The second judgment was expunged from the records of the case.

46 See, for example, *Habee Bur Rahman v PP* [1971] 2 MLJ 194; *Nathan v PP* [1972] 2 MLJ 101; *Loh Kwang Seang v PP* [1960] MLJ 271; *Ankur Nath Ganguli v PP* [1956] MLJ 206, *Low Ah Thit v PP* [1992] 2 CLJ 1223; *PP v Yap Thiang Wah* [1992] MLJ 206; *Lorraine Phyliss Cohen v PP* [1989] 2 MLJ 288.

47 See the Skeletal Submissions of the Appellant (Magistrate' Appeal No 126/2007/01), dated 21 May 2008, at pp 67–68.

48 [1960] MLJ 271.

49 [1992] 2 CLJ 1223.

a more recent authority, Chong Siew Fai J held that the existence of two judgments "does not render the proceedings bad or void" but went on to state that the "appropriate course to take (and is the one which I would here adopt) is to ignore the second judgment and give whatever regard and weight to the first".[50] The Malaysian Court of Appeal has also held[51] that, even in civil cases, the second of two judgments dealing with the same issues should be regarded as a nullity. Such a consideration need not always result in the original judgment of the trial court being set aside if the remaining judgment is capable of supporting it.[52]

28 Clearly, both legal authority and the logical consequence of his decisions on the sixth ground of appeal should have led the appellate judge to disregard the grounds of decision and to instead reconsider the trial judge's contemporaneous evaluation of the prosecution evidence as contained in the original judgments entitled "Remarks". Had the appellate judge done so, would he still have come to the conclusion that the trial judge was correct in deciding that the case against the appellant had been proven beyond reasonable doubt? That question will always remain unanswered.

29 The greater difficulty with the judgment is the manner in which the appellate court finally dealt with the trial judge's violations of s 217 of the Code. The appellate judge's final conclusion was that there was "*no suggestion* that the DJ has departed from his earlier reasoning or that he has changed anything material in his grounds of decision of 17 December 2007" [emphasis added].[53] Consequently, he held that the error of the trial judge in writing multiple judgments in breach of the law was a mere irregularity which did not occasion a failure of justice sufficient to vitiate the District Judge's decision.

30 The appellate judge's conclusion that there was "no suggestion" that the trial judge had departed from his earlier reasoning or changed anything material in his subsequent grounds of decision (his fourth judgment in the case) is again difficult to understand. On the contrary, it had been strenuously submitted on behalf of the appellant, that what the trial judge had done in his 63-page Grounds of Decision of 17 December 2007 was to supplement his earlier detailed judgments (entitled "Remarks"), by another 15 pages. Examples were given to the

50 [1992] 2 CLJ 1223 at 1224.

51 *Dr Chin Yoon Hiap v Ng Eu Khoon* [1998] 1 MLJ 57; *Sykt Bekerjsama-Sama Serbaguna Sungai Gelukor Dengan Tanggungan Bhd Majilis Perbandaran Pulau Pinang* [1996] 2 MLJ 697 following criminal cases such as *Habee Bur Rahman v PP* [1971] 2 MLJ 194 and *Ankur Nath Ganguli v PP* [1956] MLJ 206.

52 See, for example, *Habee Bur Rahman v PP* [1971] 2 MLJ 194.

53 Paragraph 9 of the unreported judgment.

judge during the hearing of the appeal of "critical additions"[54] or embellishments that the trial judge had made in the Grounds of Decision he had written, six months after the last of three earlier judgments. Some 27 additional paragraphs in the trial judge's Grounds of Decision were brought to the appellate judge's attention, as evidence of the trial judge clearly "supplementing his reasons (given earlier) for his calling the defence of the appellant and convicting him".[55]

31 It must be remembered that the entire defence, many of the grounds of appeal and the principal submissions during the appeal were that the principal prosecution witness (David Tan) was a completely unreliable witness whose evidence was riddled with contractions and hence ought not to have been believed by the trial judge. Indeed, the trial judge's treatment and "inexplicable"[56] acceptance of the evidence of David Tan, an acknowledged accomplice, was the main subject of the appeal.

32 It was therefore submitted to Tay J, in the course of the appeal, that there were significant additions in the trial judge's Grounds of Decision (or "alterations", to use the term in s 217 of the Code). These were said to "relate to his treatment of David Tan's evidence in relation to":[57]

> (1) The multiple versions of David Tan's evidence in Court;
>
> (2) The different sets of statements made by David Tan to the CPIB;
>
> (3) David Tan's statements to the CAD and KPMG;
>
> (4) The so-called core untainted evidence of David Tan;
>
> (5) The inferences that the trial judge drew on the core untainted evidence of David Tan; and
>
> (6) Inferences as to the intention of the Appellant.

33 The trial judge, it was further submitted on the appellant's behalf, had clearly "augmented his Grounds of Decision by giving further reasons or grounds for his findings in relation to the critical averments in the charge, in clear contravention of section 217 of the

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54 Skeletal Submissions of the Appellant (Magistrate' Appeal No 126/2007/01), dated 21 May 2008, at para 217.

55 Skeletal Submissions of the Appellant (Magistrate' Appeal No 126/2007/01), dated 21 May 2008, at para 217.

56 Skeletal Submissions of the Appellant (Magistrate' Appeal No 126/2007/01), dated 21 May 2008, at paras 142 and 144. A number of pages of the detailed 85-page skeletal submissions were devoted to the unreliability of Tan's conflicting evidence and the trial judge's treatment of this evidence in his judgments.

57 Appellant's Skeletal Submissions, dated 21 May 2008, at para 219.

Criminal Procedure Code".[58] In the circumstances, Tay J's conclusion that "there is no suggestion that the DJ has departed from his earlier reasoning or that he has changed anything material in his grounds of decision",[59] with respect, is rather astonishing.

34 As was held in *Loh Kwang Seang v PP*,[60] the presence of more than one judgment does not necessarily constitute a miscarriage of justice to vitiate a trial. This was followed in *Habee Bur Rahman v PP*,[61] where the Kuching High Court ruled that it was not permissible for a court "to supplement the grounds of decision or to amplify them in any way", disregarded the second judgment but upheld the conviction on the basis of the original judgment. But if the remaining judgment is defective or inadequate, the court may well find that the trial judge's decision cannot be supported and may quash the conviction. In *Ankur Nath Ganguli v PP*,[62] the Federation of Malaya Court of Appeal similarly considered only the original oral judgment that was delivered, instead of the Grounds of Decision written later, and found the judgment defective in the absence of consideration of the accomplice evidence. It was this additional but important inquiry that the appellate judge failed to make in the *Durai* case, despite allowing the sixth ground of appeal.

35 Finally, an appeal is essentially a rehearing and the appellate court may re-examine the whole case and the entire decision of the lower court in order to determine if the findings of the trial court are correct.[63] There was, hence, nothing to preclude the appellate judge in the *Durai* case from re-examining the evidence that was before the trial judge *ab initio*, regardless of the multiple judgments, and to uphold the conviction if it was warranted by the evidence.[64] But that too was not the path the appellate judge took in this appeal.

VIII. Conclusion

36 The *Durai* appeal case may have helped to finally remove any doubts of the lower Judiciary as to the impropriety of writing multiple judgments in a case. Unfortunately, the brief judgment has not emphasised, as other earlier authorities have done, that there may be adverse consequences if the rule prohibiting the alteration or review of judgments is breached. For all judges, there still remains the question of

58 Appellant's Skeletal Arguments, at pp 71–72, para 221.
59 Page 2, para 9 of the unreported judgment.
60 [1960] MLJ 271 followed in *Habee Bur Rahman v PP* [1971] 2 MLJ 194.
61 [1971] 2 MLJ 194.
62 [1956] MLJ 288.
63 *Balasingham v PP* [1959] MLJ 193; *PP v Ma'arif* [1969] 2 MLJ 65; *Thong Hong Kee v PP* [1952] MLJ 110.
64 *Paramasivan v PP* [1948–49] MLJ Supp 152.

what is to be made of the suggestion by the Court of Appeal in *Goh Lai Wak v PP*,[65] that because a judgment has to be explained to the accused under s 218 of the Criminal Procedure Code[66] "there cannot be any objection to a judge providing briefly at the conclusion of a trial an outline of the issues before him and the evidence on them, and to indicate briefly, without reasons, his findings on them". As has been observed earlier in this note, that incorrect interpretation of s 218 may have contributed to the problem of multiple judgments.[67] The current Court of Appeal will no doubt deal with this matter at the earliest opportunity.

37 The *Durai* case at least demonstrates the importance of a plainly common sense view. It is that multiple judgments are best avoided by judges in view of the possibility of complaints of inconsistencies and contradictions in a judge's findings and in his analysis of the evidence between his various judgments. More importantly, alterations of judgments strike at the very core of finality of judicial decisions, which is of fundamental importance to criminal justice as the drafters of the Code recognised in 1900.[68]

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65 [1994] 1 SLR 748 followed in *Anyanwu v PP* [1994] 2 SLR 46. It is not clear why Tay J included that quote when referring to the judgment in *Goh Lai Wak v PP* [1994] 1 SLR 748 at [34].

66 Cap 68, 1985 Rev Ed.

67 See S Chandra Mohan, "The *CrimsonLogic* Case: When is a Judgment *Not* a Judgment" *Law Gazette*, September 2007, 23.

68 It was then numbered as s 266. See *Chiaw Wai Onn v PP* [1997] 3 SLR 445.