Fong Ser Joo William v Public Prosecutor
[2000] SGHC 179

Case Number : MA 20/2000

Decision Date : 01 September 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Edmond Pereira and Vinit Chhabra (Edmond Pereira &Partners) for the appellant; Kan Shuk Weng (Deputy Public Prosecutor) for the respondent

Parties : Fong Ser Joo William — Public Prosecutor

Criminal Law – Offences – Corruption – Corruptly receiving gratification – Police officer enquiring into status of investigations – Whether enquiring into status of investigations constitutes "favour" – Whether enquiries into status of investigations objectively corrupt – s 6(a) Prevention of Corruption Act (Cap 241, 1993 Rev Ed)

: The appellant was charged in the district court and claimed trial to the following two charges under the Prevention of Corruption Act (Cap 241) (the `Act`):

> *Amended second charge (DAC 33172/99)*
>
> *You, William Fong Ser Joo, M/32 yrs, NRIC ... , are charged that you, on a day between 1 June 1998 and 31 July 1998, at the void deck of Blk 470, Ang Mo Kio Avenue 10, Singapore, being an agent, to wit, a Probationary Inspector of Police attached to the Ang Mo Kio Divisional Headquarter, did corruptly accept for yourself a gratification of an unspecified amount of money from one Chua Tiong Tiong through one Lim Hock Ghee as an inducement to show favour in relation to your principal`s affairs, to wit, by using your office and connections, as a Probationary Inspector in the Singapore Police Force, to make inquiries into the status of police investigations, which investigations the said Chua Tiong Tiong had an interest in, and you have thereby committed an offence punishable under s 6(a) of the Prevention of Corruption Act (Cap 241).*
>
> *Amended third charge (DAC 33173/99)*
>
> *You, William Fong Ser Joo, M/32 yrs, NRIC ... , are charged that you, on a day between 1 June 1998 and 31 July 1998, at the void deck of Blk 470, Ang Mo Kio Avenue 10, Singapore, being an agent, to wit, a Probationary Inspector of Police attached to the Ang Mo Kio Divisional Headquarter, did corruptly accept for yourself a gratification of an unspecified amount of money from one Chua Tiong Tiong through one Lim Hock Ghee as an inducement to show favour in relation to your principal`s affairs, to wit, by using your office and connections, as a Probationary Inspector in the Singapore Police Force, to make inquiries into the status of police investigations, which investigations the said Chua Tiong Tiong had an interest in, and you have thereby committed an offence punishable under s 6(a) of the Prevention of Corruption Act (Cap 241).*

The punishment prescribed under s 6(a) of the Act is a fine not exceeding $100,000 or imprisonment for a term not exceeding five years or both. The district judge below convicted the appellant of both charges and sentenced him to imprisonment for a term of nine months on each charge, with both sentences to run concurrently. The appellant appealed against both conviction and sentence. I

dismissed the appeal for the reasons set out below.

The prosecution`s case

The prosecution`s case was that the appellant received two corrupt payments from Chua Tiong Tiong (also known as Ah Long San or Ah San) (`Chua`) on two occasions between June and July 1998. The appellant received these payments by way of money put into an envelope and delivered to his letterbox. The payments were corrupt as they were allegedly given by Chua as an inducement to the appellant to help enquire into police investigations in which Chua was interested.

Senior Staff Sergeant Ong Teng Chai (PW1) of Geylang Police Division testified of a raid carried out on 15 June 1998 at a flat in Geylang East Avenue 3 (the `premises`) for suspected money-lending activities. At the premises, 12 persons were detained, one of whom was Chua`s brother, Chua Tiong Chye. When PW1 was going down from the premises to pick up vans to transport the 12 detainees back to Geylang Police Division, he received a page from the appellant. When he returned the call, the appellant asked him where he was and whether he was conducting a raid in Geylang. Later, PW1 was back in the premises at Geylang, he was informed by a radio operator from Geylang Police Division that there was someone called `Ah Long San` at the void deck of the premises who wanted to come up to see them. However, PW1 told the operator that he did not wish to see anyone.

The next day, the appellant called PW1 again at least three or four times to enquire about the status of the persons arrested in the raid. On one of those occasions, the appellant mentioned to PW1 that `Ah Pui` was not happy. Apparently, Chua was introduced as `Ah Pui` to the appellant when they first met in 1996.

Staff Sergeant Choo Kwang Meng (PW2), also from Geylang Police Division, was PW1`s partner in the conduct of the raid at the premises. PW2 testified that, as he and PW1 were going back to Geylang Police Division to bring some vans to fetch the detainees of the raid, PW1 informed him of a page from a Chinese man named William Fong, who was making an enquiry as to whether PW1 was conducting a raid in the Geylang area.

Lim Hock Ghee (PW3) was Chua`s former driver. He testified that, on two occasions between June and July 1998, on Chua`s instructions, he had delivered two envelopes to the mailbox of the appellant`s residential address. PW3`s evidence was that Chua had told him that the envelopes contained `insurance money`.

Vincent Lem (PW6) was a police officer attached to Jurong Police Division and was also involved in the raid at the premises on 15 June 1998. PW6 was acquainted with Chua and he stated in cross-examination that Chua was involved in money-lending activities during the period from October 1997 to June 1998. PW6 had also seen the appellant with Chua once, either in late 1997 or in early 1998 at Lido Palace Nite Club and had observed that Chua and the appellant were friends. On that occasion, Chua had introduced the appellant to PW6 as William from Ang Mo Kio Police Division. The appellant then introduced himself to PW6 and said that `Ah San is a good man`.

Hassan bin Ahmad (PW7) was a former Assistant Superintendent of Police and had been the appellant`s coursemate during a course conducted at the Police Academy from October 1997 to August 1998. The prosecution sought to adduce evidence through PW7 that on one occasion when the appellant was at the Police Academy attending a course, Chua had called up to ask the appellant to help him screen someone leaving the State. However, PW7 turned hostile and the prosecution then attempted to impeach his credit with his previous statement to the Corrupt Practices Investigation

Bureau (`CPIB`). Paragraphs 29 and 30 of PW7`s CPIB statement were as follows:

> *29 I would like to state that William Fong told me during `C` course when we were sitting around the vicinity of the barracks when a call came in for him and after he hung up the phone, he told me that Ah San had asked for his help to screen someone who was leaving the State. I presumed that someone would be one of Ah San`s friends. Screening would mean finding out if the person was on the Immigration Stop List*
>
> *30 William told me that he had a way of finding out if the person was on the stop list without having to submit a performa. I presumed that since William was confined to the Police Academy he must have called over the phone to instruct his ops room to give him any details on whether the person mentioned by Ah San was on the stop list.*

PW7 challenged the voluntariness of his CPIB statement. Following a voir dire, the district judge found that his statement was made voluntarily and accordingly admitted the contents of the statement in evidence. The district judge found that PW7`s explanation for the inconsistency between his evidence in court and his statement, namely, that the statement was inaccurate, was unsatisfactory. Thus, the district judge found that PW7`s credit was impeached and disbelieved his evidence in court in this regard.

The defence

The appellant joined the Police Force in 1986 as a constable and he became an Assistant Inspector in 1996. He had first met Chua in 1996. When he met Chua again a year later, the appellant gathered from his sources that Chua was also known as Ah Long San and that Chua had given up his illegal money-lending business sometime back. By 1997, the appellant and Chua had become friends and, by mid-1998, they had become close friends despite Chua`s past. The appellant was also a very keen soccer fan and when he learnt that Chua was betting on the 1998 World Cup soccer competition games, he placed `piggyback` bets together with Chua`s bets for amounts between $100 to $250. Initially, the appellant and Chua met to square up winnings and losses. However, when such an arrangement became inconvenient, they agreed that the appellant`s winnings should be delivered to his letterbox. The delivery of money on the two occasions by PW3 to the appellant`s letterbox were the appellant`s winnings.

As for the enquiry that the appellant had made of PW1 on 15 June 1998 regarding the raid, the appellant claimed that he had made the enquiry on behalf of one Ah Huat. The appellant admitted making three further calls to PW1 the next day to enquire about the same matter. He asserted that all he had wanted to know was whether the person in whom Ah Huat was interested had been arrested and if he would be charged. Ah Huat was not called to give evidence. The appellant maintained that his enquiry had nothing to do with Chua and he also denied having done any screening for Chua.

The decision below

Having observed the witnesses and weighed the evidence, the district judge found the prosecution

witnesses, with the exception of PW7, to be reliable and credible. He found that there was no reason for the court not to accept their evidence.

The district judge found, however, that the appellant was not a witness of truth after having observed his demeanour and weighed his testimony with the evidence presented before the court. In particular, the appellant had initially denied to the CPIB that he had received money delivered to him by PW3 and he had also denied making enquiries of PW1 about the raid on 15 June 1998. However, these matters were admitted by the appellant himself in his further statements to the CPIB. The district judge found that the appellant`s explanations for his initial denials were far from satisfactory. The district judge also found that the appellant`s story of the money he received being winnings from the World Cup bets was an afterthought that was invented between the time when he was first asked about the payments and the time when he finally admitted to having received them.

The district judge also accepted and considered the evidence of PW7 contained in paras 29 and 30 of his CPIB statement, namely, that the appellant had informed PW7 of Chua`s request for a screening to be done.

Having found that the prosecution had proven its case against the appellant beyond reasonable doubt, the district judge convicted the appellant on both charges and sentenced him to imprisonment of nine months on each charge, with both sentences to run concurrently.

The law

Section 6(a) of the Act states as follows:

> *6 If -*
>
> *(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal`s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal`s affairs or business;*
>
> *...*
>
> *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.*

In order to establish the charges under s 6(a) of the Act against the appellant, the burden was on the prosecution to prove the following four elements beyond a reasonable doubt (**Kwang Boon Keong Peter v PP** [1998] 2 SLR 592 at 613):

(i) acceptance of gratification;

(ii) as an inducement or reward;

(iii) there was an objectively corrupt element in the transaction; and

(iv) the appellant accepted the gratification with a guilty knowledge.

The appeal

The appellant`s main grounds of appeal appeared to be as follows:

(a) the district judge erred in finding that the appellant had accepted the money from Chua as an inducement for showing favour to Chua by making enquiries into the status of police investigations in which Chua was interested;

(b) the district judge erred in finding that there was an objectively corrupt element in the transaction; and

(c) the district judge erred in finding that the appellant had accepted the money from Chua with a guilty knowledge.

Essentially, the appellant`s basis for the appeal was that, apart from the first element of the offences under s 6(a) of the Act, ie acceptance of money, which was admitted by the appellant, the other three elements (the acceptance of the money as an inducement, the corrupt element in the transaction and the appellant`s guilty knowledge) were not present in this case.

The issues

(a) Whether the appellant had accepted the money from Chua as an inducement to show favour to Chua by making enquiries into the status of police investigations in which Chua was interested

Whether the appellant had accepted the money from Chua as an inducement to show favour to the latter was a question of fact. After reviewing the evidence adduced before the court, the district judge accepted the prosecution`s evidence and rejected the appellant`s evidence with regard to the purpose for which the money was paid to the appellant.

The district judge found that on the evidence the appellant was enjoying a mutually beneficial relationship with Chua, in that he was receiving payments from Chua in exchange for exercising his powers and connections as a police officer as and when called upon to do so by Chua. The judge also inferred from the evidence that Chua was cultivating a close association with the appellant to further and protect his own interests by having the appellant and his position in the Police Force called upon as and when necessary. It was in this context that Chua had told PW3 that the envelopes for the appellant contained `insurance money`. The appellant had allowed himself to be beholden to Chua and his intention was clearly to enrich himself by abusing his position in the Police Force.

The district judge`s findings on the appellant`s intention in accepting the money from Chua were based on his assessment of the evidence before him, taking into account the veracity and demeanour of the witnesses. In my view, the judge was entitled to arrive at such findings of fact and there was no evidence that he had erred in making such findings.

On the face of the evidence, the appellant had shown favour to Chua when he made at least four enquiries into the status of the raid carried out in Geylang on 15 June 1998 in which Chua`s brother was detained. The circumstances surrounding the appellant`s enquiries were suspect. In particular, the evidence, that Chua`s brother was detained in the raid and also the call from Geylang Police Division informing PW1 that someone called `Ah Long San` was at the void deck of the premises in Geylang waiting to see him, supported the inference that the money which the appellant had accepted from Chua was in return for making the enquiries for Chua.

Counsel for the appellant argued that enquiring into the status of investigations could not constitute a favour for the purposes of the charges faced by the appellant as such enquiries were common. This contention was rightfully rejected by the district judge on the ground that such inquiries are usually only conducted by persons having an official interest, such as other police officers conducting concurrent investigations, or by persons having a legitimate interest, such as lawyers or next-of-kin, and the appellant did not fall within any of those categories.

In this regard, it should be noted that it was not necessary for the prosecution to prove that the appellant`s receipt of money from Chua was an inducement for a specific corrupt act or favour. It was sufficient for the prosecution to show that the gratification was given in anticipation of some future corrupt act being performed. It was stated in the recent case of **Hassan bin Ahmad v PP** [2000] 3 SLR 791 at [para] 20:

> *... It was therefore not necessary for the prosecution to prove a nexus between each receipt and a particular act; it only sufficed to demonstrate that the payments were not made innocently, but to purchase the recipient`s servitude. This is the essence of being `bought over` - that the recipient of the gratification be at the beck and call of the payor, prodded into action by his recollection of the payor`s generosity even when no specific act was demanded at the time of payment.*

This was exactly what happened in this case when the district judge found that the appellant was receiving payments from Chua in exchange for exercising his powers and connections as a police officer as and when called upon to do so by Chua. The appellant had allowed himself to be `bought over` and to become beholden to Chua.

It should also be noted that in finding corruption under s 6(a) of the Act, it is not even necessary to prove the actual act of showing favour. The principle that one can be guilty of taking a bribe, even if it is not proved that he has shown favour, was recognised in **R v Carr** [1957] 1 WLR 165, **Krishna Jayaram v PP** [1989] SLR 696 , 702; [1989] 3 MLJ 272, 275 and **R v Mills** [1978] 68 Cr App Rep 154, 158-159. It is the receipt of the gratification, together with the intention of the giver and the recipient, that is material. Indeed, s 9(1) of the Act states as follows:

> *Where in any proceedings against any agent for any offence under section 6(a), it is proved that he corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification, having reason to believe or suspect that the gratification was offered as an inducement or reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal`s affairs or business, he shall be guilty of an offence under that section notwithstanding that he did not have the power, right or opportunity to do so, show or forbear or that he accepted the gratification without intending to do so, show or forbear or that he did not in fact do so, show or forbear or that the act, favour or disfavour was not in*

relation to his principal`s affairs or business.

(b) Whether there was an objectively corrupt element in the transaction

Such an objectively corrupt element can be established by ascertaining the appellant`s intention in the light of the factual matrix. Whether a transaction had a corrupt element is an objective inquiry that is essentially based on the ordinary standard of the reasonable man and to be answered only after the court has inferred what the appellant intended when he entered into the transaction: **Chan Wing Seng v PP** [1997] 2 SLR 426 at 433.

The district judge found that the appellant, by placing himself at Chua`s disposal, had not only compromised the integrity of the Police Force but had also contributed to hindering its core process of maintaining law and order. He therefore found that the appellant`s intention in accepting the money from Chua had tainted the receipt of the money with an objectively corrupt element.

Counsel for the appellant contended that the appellant`s act of enquiring into the status of police investigations, and in particular, merely asking whether the persons arrested were to be `charged or remanded` was not, by an objective standard, a corrupt act. It is true that the mere act of enquiring into the status of police investigations is not an objectively corrupt act. However, the same act in the light of the factual matrix in this case, i.e. coupled with the acceptance of gratification by a police officer as an inducement to seek `inside information`, would clearly be a corrupt act by any objective standard.

I saw no reason to disturb the district judge`s finding that the appellant`s intention in accepting the money from Chua was to place himself at Chua`s disposal. I wholly agreed with him that what the appellant had done had the effect of compromising the integrity of the Police Force and hindering its core process of maintaining law and order. Such intention on the part of the appellant, as a police officer, would no doubt cast a shadow on the integrity of the Police Force in the ordinary mind of a reasonable man. The objectively corrupt element was clearly established beyond a reasonable doubt in this case.

(c) Whether the appellant accepted the money with a guilty knowledge

The guilty knowledge that must be established for a conviction under s 6(a) of the Act refers to whether the appellant knew or realised that what he did was corrupt by the ordinary and objective standard. This is a subjective test: **Chan Wing Seng v PP** [1997] 2 SLR 426 at 434.

On his finding as to whether the appellant possessed the relevant guilty knowledge, the district judge stated in his judgment:

> *40 The test to be applied here is an objective standard. The accused knew that it was improper for him as a police officer to carry a close relationship with a person of ill-repute. This would be why he had consistently maintained that by the time he and CTT became close friends his sources had informed him that CTT was no longer in the money-lending business. I was unable to accept the accused`s evidence in this regard. His evidence is to be contrasted with that of two other police officers PW1 and PW6. Both of them had stated that CTT was a reputed money-lender. PW6 had added that CTT was involved in money-lending activities at the material time.*

> *41 Having reviewed the evidence in its totality, I was satisfied that the accused knew that what he was doing was corrupt by the ordinary and objective standard.*

The question of whether the appellant possessed the relevant guilty knowledge was a subjective one. However, there was still an objective element in that the guilty knowledge was that of knowing or realising that what he did was corrupt by the ordinary and objective standard. This objective element was what the district judge was referring to in para 40 of his judgment when he stated that, `The test to be applied here is an objective standard`. It was clear, however, from the context that he was in fact applying a subjective test in ascertaining whether the appellant had the guilty knowledge. This was the correct approach.

Counsel for the appellant submitted that the district judge erred in finding that the appellant possessed the guilty knowledge that what he was doing was corrupt for the sole reason that the appellant associated himself with a person of an ill reputation. This argument was misconceived as the district judge did not find that the appellant possessed the guilty knowledge for the sole reason that the appellant had associated himself with Chua. It was clear that the district judge arrived at his finding on the appellant`s guilty knowledge after `having reviewed the evidence in its totality`. There was no evidence that the judge had considered irrelevant evidence or had failed to consider any relevant evidence. Whether the appellant possessed the guilty knowledge was a question of fact and there was no evidence that the judge had erred in finding that the appellant in this case possessed the relevant guilty knowledge.

Conclusion

It is clear that whether a payment is corruptly obtained and accepted is a question of fact to be determined by the court in the light of the circumstances of each case: **Mohamed Ali bin Mohamed Iqbal v PP** SLR 447 [1979] 2 MLJ 58 and **Krishna Jayaram v PP** [1989] SLR 696 , 705; [1989] 3 MLJ 272, 277. The circumstances under which an appellate court may disturb a finding of fact is limited and, in this case, I could not find any reasonable grounds on which the district judge`s findings of fact should be disturbed.

I would add that counsel for the appellant, in attempting to cast doubt on the prosecution`s case, appeared to rely extensively on the fact that Chua was not called as a prosecution witness. In my mind, Chua would not have been a helpful witness in view of the fact that, had he given evidence against the appellant, he would have incriminated himself as well. The question of intention, in the absence of a confession, is always decided as a matter of inference from the available evidence and the surrounding circumstances. In my opinion, the district judge drew the appropriate inferences from the evidence adduced and I was satisfied that he was correct to find that the appellant`s intention had been proven by the prosecution beyond a reasonable doubt.

As for the appellant`s appeal against sentence, I was of the view that his sentence of nine months` imprisonment on each charge with both sentences to run concurrently was not manifestly excessive, in consideration of the fact that he was a law enforcement officer when the offences were committed. Generally, where a law enforcement officer is convicted of an offence under s 6(a) of the Act, a custodial sentence is appropriate. What the appellant did undermined the integrity of the Police Force and this was an aggravating factor to be taken into account.

For the above reasons, I dismissed the appeal and affirmed both the appellant`s conviction and sentence.

Outcome:

Appeal dismissed.