Lewis Christine v Public Prosecutor
[2001] SGHC 113

Case Number : MA 298/2000

Decision Date : 29 May 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Johnny Seah (Seah & Co) for the appellant; Tan Boon Gin (Deputy Public Prosecutor) for the respondent

Parties : Lewis Christine — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Penalties – Serious cheating – Accused showing no remorse – Attempting to escape – Whether sentence of four months' imprisonment appropriate – s 420 Penal Code (Cap 224)

Evidence – Admissibility of evidence – Subsequent conduct – Arrest of accused for cheating – Unwillingness to furnish particulars – Attempting to escape – Whether conduct relevant – Whether strong inference of guilt – s 8(2) illustrations (f), (h) & (i) Evidence Act (Cap 97, 1997 Ed)

Evidence – Proof of evidence – Burden of proof – Accused switching price tag of pencil casing with one from coin purse – Cheating charge – Non-production of coin purse – Whether real evidence insufficient – Whether prosecution's task to adduce every possible relevant fact

Evidence – Proof of evidence – Confessions – Whether confession needs to be in writing to be admissible – Whether confession of sufficient weight to found conviction – Factors to consider -ss 121, 122 Criminal Procedure Code (Cap 68) – ss 21, 24-26 Evidence Act (Cap 97, 1997 Ed)

Evidence – Witnesses – Corroboration – Accused's testimony opposed to that of witness – Whether accused's attempts to escape corroborate allegations of witness

Evidence – Witnesses – Impeaching witnesses' credibility – Whether flawed witness equates to untruthful witness – Whether previous complaint by accused against witness affects weight of latter's testimony

: The appellant was convicted in the district court by Khoo Oon Soo DJ on the following charge of cheating under s 420 of the Penal Code (Cap 224):

> *You, Christine Lewis, are charged that you, on or about the 24th day of April 2000, on or about 8.10 pm, at the Seiyu Departmental Store at Parkway Parade Shopping Centre, Singapore, did cheat one Wong Fei Hsia, the cashier of Seiyu Departmental Store by deceiving her to believe that the price of a "Pochacco" pencil casing is worth $5.25, when in actual fact, you knew that the price of the said item is worth $16.95, and by such manner of deception, you dishonestly induced the said Wong Fei Hsia to deliver to you the said item for only $5.25 which she would not have done, had she not been so deceived, and you have thereby committed an offence punishable under section 420 of the Penal Code, Chapter 224.*

The appellant was sentenced to four months` imprisonment. She appealed against her conviction and the sentence imposed. I dismissed both appeals. I now give my reasons.

The facts

This was a classic case of `shoplifting` by means of switching price tags. The appellant was shopping at the toys section in Seiyu Department Store at about 8pm on 24 April 2000. She took a fancy to a `Pochacco` pencil casing and proceeded to remove its $16.95 price tag, replacing it with a $5.25 price tag taken from a nearby coin purse. Subsequently, she tendered the pencil casing to the cashier, Ms Wong Fei Hsia (`Wong`) and paid $5.25 for its purchase.

Unfortunately for the appellant, her act of switching price tags was observed by a sales promoter, Ms Ong Bee Lian (`Ong`). After the appellant left the section, Ong`s suspicions were confirmed when she found below the stationery shelf a crumpled $16.95 price tag (`P3`) and the plastic ring (`P4`) which attached it to the pencil casing. Ong promptly reported the matter to the security supervisor, Mr Paul A/L Devasarayan (`Paul`), who, together with a female security officer, Ms Susan Low Siew Meng (`Susan`), arrested the appellant and recovered the pencil casing.

The appellant was brought to the department store office where she was confronted with the alleged offence by Paul. Initially, she denied the offence and refused to give her personal particulars. Paul then told her that, if she refused to co-operate, he would ascertain the truth by checking the close circuit camera system. The appellant changed her tune and confessed to the switching of price tags, offering to pay the difference in price.

What followed was the high point of the drama. About a half hour into the interview, the appellant asked to go to the toilet. She was escorted by Susan and followed by three other officers. However, at the lift lobby, she suddenly turned and jumped down to a loading bay about one metre below. Susan managed to apprehend her, but released her when the appellant protested against her restraint, upon which the appellant promptly ran off a second time. Susan gave chase and caught hold of her some 40m away at the main road, where the appellant had fallen in the midst of her escapade.

The appellant was brought back to the office thereafter. In view of her behaviour, Paul made the decision to call the police. She was subsequently escorted by police officers and some members of the security staff to the police station.

The defence

The appellant flatly denied the act of the switching of price tags as well as knowledge of the original price of the pencil casing. Her version of events was as follows.

At the onset, she was merely testing the zippers on the pencil casing when they became detached. Because of this, she had to fiddle with the pencil casing in order to re-attach them. As far as she was concerned, the $5.25 price tag was on the pencil casing when she handled it and she had no reason to believe it was priced otherwise. When arrested and brought to the office, she felt indignant and refused to furnish her particulars as she felt Paul had no right to them. She further denied having made a confession, and explained that her offer to settle the difference in price was motivated by her concern to return home and prepare dinner for her daughter.

Her description of the escape was almost genteel. She claimed to have informed Paul that she was leaving, whereupon she struggled free from Susan and walked quickly to the steps leading to the loading bay. There, Paul blocked her way and even pushed her down onto the pavement. The appellant explained that her desire to leave was motivated by her anger at the way she was being treated. In particular, she alleged that Susan had shouted at her and twisted her arm behind her back throughout the entire interview. She further claimed that Susan continued to twist her arm until her

arrival at the police station.

Decision of the trial judge

The trial judge found that the prosecution had proved its case beyond reasonable doubt and convicted the appellant.

The appeal

This appeal was a multi-faceted attempt to chip away at every possible discrepancy in the prosecution`s case. For the sake of brevity I would summarise its main arguments as follows:

(1) the real evidence tendered by the prosecution was insufficient;

(2) the prosecution witnesses gave inconsistent and untruthful testimony, presumably in an effort to frame the appellant; and

(3) the conduct of the accused subsequent to the arrest was not probative of guilt.

Real evidence

The appellant argued that the prosecution`s case was weakened by its failure to produce two items of real evidence.

First, the appellant took issue with the non-production of the coin purse from which the $5.25 price tag was taken. This was, however, a minor quibble. While the coin purse provided the opportunity for the offence and was therefore technically relevant under s 7 of the Evidence Act (Cap 97, 1997 Ed), it shed little light on the fact in issue. The question of whether the appellant had switched the price tags was not answered by proving that the $5.25 price tag came from a particular item as opposed to some other source. It must be borne in mind that the prosecution does not bear the burden of adducing every possible relevant fact. The prosecutor`s task is to bring sufficient evidence to bear in order to prove the essential ingredients of the offence beyond reasonable doubt, not to adduce every preparatory fact constituting the background of the offence. Where the prosecutor is confident of proving the act of switching price tags with direct evidence, the exact source of the tools of deception is rendered inconsequential.

The second contention of the appellant centred on the ubiquitous plastic ring (P4) which linked the price tag to the pencil casing, described analogously by witnesses as a `bean sprout`. The appellant argued that the prosecution`s case required the adduction of two broken plastic rings, one linking the $5.25 price tag to the coin purse, and the other linking the $16.95 price tag to the pencil casing. As such, the appellant contended that the unbroken plastic ring (P4) tendered by the prosecution was insufficient to prove its case.

This was pure speculation and did not in my view carry the appellant very far. The prosecution`s account that there was only one unbroken plastic ring was explicable, considering that the plastic ring could be re-opened if not locked properly. This was the evidence of Ms Looi Sheau Chian, an employee of Rubber Band Pte Ltd which supplied the rings. It was also supported empirically by Ong, who demonstrated on stand that the plastic ring could be pulled apart and refixed. The appellant

could have very well opened up the ring, removed the $16.95 price tag, discarded both the ring and the original price tag, and then affixed the $5.25 price tag from the coin purse onto the metal chain of the pencil casing. This was consistent with the fact that only one plastic ring was recovered. Whether this ring was closed when discarded by the appellant or only subsequently to its discovery did not impact on its authenticity.

Prosecution witnesses

The appellant also took issue with the testimonies of four prosecution witnesses.

Ong, as the key eyewitness to the actus reus of the deception, took centrestage in the appellant`s case. Fortunately for the appellant, Ong had by all accounts been a flawed prosecution witness. She claimed that she could perceive exact price figures at a range of about 12ft when it was patently obvious that she could not. She had also had a prior encounter with the appellant, who had rebuked her over her sales service. This potentially cast doubt on her objectivity on the stand.

However, a flawed witness does not equate to an untruthful witness. The trial judge is entitled to determine which part of the witness`s testimony remains credible despite its discrepancies. In **Ramli bin Daud v PP** [1996] 3 SLR 225 , the conviction of the appellant for employing and harbouring illegal immigrants hinged on the testimony of one Richard Yap, his agent in the entire affair. Naturally, the bulk of the appeal, as in the present case, centred on highlighting numerous discrepancies in the testimony of this key witness. In rejecting that appeal, my reasoning was as follows (at p 230):

> *In any event, there was no indication that the district judge had permitted himself to be unduly influenced or misled by these discrepancies. The district judge had taken care to note that there were some major inconsistencies in Richard Yap`s evidence ... Nonetheless, he accepted Richard Yap`s evidence on the key facts in issue ... In any case, it is settled law that the testimony of a witness need not be wholly rejected merely because he is shown to have lied on certain aspects of his evidence.*

This was also the sentiment of Thomson CJ in **Khoon Chye Hin v PP** [1961] MLJ 105 at 107, where he said:

> *If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong.*

Accordingly, I agreed with the trial judge that the inaccuracy of Ong`s perception merely showed an over-zealous rather than an untruthful witness. Her discrepancies therefore only qualified her claim that she could see the exact figures on the price tag. There was no reason to doubt that from her vantage point, Ong could and did indeed observe the appellant in the crucial act of exchanging price tags. Her subsequent discovery of the crumpled $16.95 price tag further supported her initial observation.

As regards the previous encounter between the appellant and Ong, it should be borne in mind that

the alleged motive for lying must be juxtaposed against the magnitude of the lie. It is quite absurd that an employee would, for a mere customer complaint which went no further, seek to entrap the customer with planted evidence and conspire with colleagues to commit mass perjury in court. I accordingly found that the previous incident between the appellant and Ong had no impact on the weight of the latter`s testimony.

The appellant next contended for a litany of reasons that Paul`s evidence was not to be believed. Among these arguments, only one needs further examination. The appellant claimed that Paul lied about the appellant`s confession as there was no written record of it before the court. This argument could have been simply dispensed with by noting that the trial judge had not based his conviction on the confession. However, for the sake of clarification, I would go further and make two observations. The first is the impact of writing on admissibility of a confession. It is trite law that confessions need not be written to be admissible. There is no requirement of writing specified under the admissibility provisions relating to confessions under s 122 of the Criminal Procedure Code (Cap 68) or s 21 of the Evidence Act read with ss 24-26. In fact, s 122(5) specifically allows admission of a confession `whether it ... is oral or in writing`. The issue of writing only has some relevance to admissibility when an accused person claims in a voir dire or in submissions that the statement was not made by him at all. As the appellant did not challenge the admissibility of the confession at trial, the contention in this appeal must relate to the secondary consideration, which is the weight to be attached to the verbal confession. In considering whether a confession is of sufficient weight to found a conviction, regard must be had to a totality of factors - including the spontaneity of the confession, the wording of the questions and answers, the relative relationship between the confessor and the accuser, and the circumstances of the entire transaction. Whether a confession is recorded in writing, or even affirmed by signature for that matter, is simply a factor to be taken into consideration in assessing its probative value. Of course, where the police are concerned, failure to record a statement in accordance with s 121 of the Criminal Procedure Code may have greater impact on the weight of the confession (see **PP v Vasavan Sathiadew** [1989] SLR 944 [1990] 1 MLJ 151). But outside of the police station, the failure to record a statement in writing must be assessed in the context of the circumstances. Notably, even silence in the face of accusations by an equal have been held to be sufficient to found a conviction (see, for example, **Parkes v R** [1976] 3 All ER 380[1976] 1 WLR 1251, **Tan Khee Koon v PP** [1995] 3 SLR 724).

In this case, the trial judge had displayed judicious caution in not relying in his grounds on the confession. However, had he considered otherwise I would have had little doubt that the verbal nature of the confession made no impact on its weight in the light of the preliminary nature of that interview. One cannot expect security personnel to be conversant with and employ police procedures when questioning a suspect. Accordingly, I was of the view that the confession, if relied upon, would have been strongly probative of the appellant`s guilt, notwithstanding that it was subsequently retracted on the stand (see **Ismail bin UK Abdul Rahman v PP** [1972-1974] SLR 232 [1974] 2 MLJ 180 , **Panya Martmontree v PP** [1995] 3 SLR 341). This point of appeal therefore carried little merit.

The appellant further sought to cast aspersions on the testimony of a male security officer, Hoh Ah Nyong (`Hoh`). Hoh was not listed as a prosecution witness and the defence initially made much ado about Hoh`s role during the cross-examination of Susan and Paul. The defence then made an eleventh hour application to summon Hoh, which the prosecution gamely acceded to by calling Hoh as its witness. Hoh`s testimony, however, turned out to be anti-climactic. He had only played a minimal role throughout the entire episode, which pertained to observing the initial detention and witnessing the escape attempt. He was never present in the office while the appellant was inside. The trial judge was thus justifiably irked that much time and resources had been spent on procuring Hoh`s testimony.

Undaunted, counsel for the appellant maintained on appeal that Hoh was actively involved in the detention proceedings, and that Susan, Paul and Hoh were collectively lying to minimise the latter`s role and involvement in this case. I found this a bare and unsubstantiated assertion, unsupported by any possible motive on Hoh`s part to evade testifying on the stand. Even if the appellant was correct and Hoh was present throughout the detention proceedings, nothing material hinged on his testimony. It should be noted that, with regard to the crucial incident of the appellant`s attempted escape, Hoh`s testimony was in accordance with that of the other prosecution witnesses. This point of appeal was therefore an exercise in futility.

Finally, the appellant argued that insufficient weight had been placed on the evidence of the cashier, Wong, who said that there was nothing unusual about the pencil casing when she keyed in the transaction. The rationale behind this submission appeared to be the implication that the pencil casing was not doctored by the appellant. This, however, bordered on the frivolous. If anything, the innocuous nature of a fake attests to the cunning craftsmanship of the forger. The fact that the cashier took no special notice of the transaction in no way disproved the appellant`s act of switching the price tags.

Conduct subsequent of the accused

To my mind, the crux of this case lay in the conduct of the accused subsequent to her arrest by Susan and Paul. Her behaviour was glaringly inconsistent with that of an innocent person wrongly accused of a crime she did not commit. Her actions were of course clearly relevant under s 8(2) of the Evidence Act. They also found elucidation in illustrations (f), (h) and (i) to that section.

I was minded that conduct subsequent to the offence, without more, is not conclusive of prior guilt. This cautionary approach was highlighted by Raja Azlan Shah J in **Chandrasekaran v PP** [1971] 1 MLJ 153 , where, at 160-161, he said:

> *In a criminal case the conduct of an accused person is relevant against him under s 8 of the Evidence Ordinance. Therefore where the accused volunteered a statement presenting facts in a light favourable to himself, such conduct is relevant and can be held to be incriminatory only where it is open to no other reasonable explanation but of guilt. Of course, this category of conduct is not conclusive. It does not necessarily follow therefrom that he is guilty, any more than that an accused person making a false statement to enhance his appearance of innocence thereby necessarily provides proof of his guilt. It is only evidence which must, like all other evidence, be considered by the tribunal on a question of fact.*

In ***Chandrasekaran*** `s case, the appellant was charged with corruption for conspiring to defraud the government by the forging of vouchers. He had volunteered a statement to explain that various items of expenditure came from turf club winnings, in order to rebut the allegation of corruption. Such conduct was clearly not conclusive, as the act of volunteering exculpatory information could very well have been consistent with several explanations - one of which could have been that the witness was merely over-zealous in trying to prove his innocence.

There are, however, certain types of subsequent conduct which do not afford easy explanation. In this case, the appellant was unwilling to expedite proceedings by furnishing her particulars to Paul, purportedly because she felt he had no right to make such a request. This did not accord with the

profile of an innocent person eager to resolve a misunderstanding and be on her way. The provision of particulars would not have prejudiced her in any way and in any case would have been a foregone conclusion, if the police were called in. I was at this point reminded of Bentham`s oft-quoted phrase, `innocence claims the right of speaking as guilt invokes the privilege of silence`. The appellant`s lack of co-operation indicated a guilty person hoping to withhold her identity until she could find a means of escape.

Indeed, the appellant`s attempts to escape constituted the proverbial nail in the coffin of her conviction. Absconding from detention where there is no apparent reason to do so attracts a strong inference of guilt. In this case, the appellant`s explanations for her escape were quite incredible. She alleged ill-treatment by Susan, whom she claimed shouted at her and twisted her arm behind her back. These allegations were completely unsubstantiated. Quite apart from the consistent testimony of the security personnel, it was unlikely that Susan would have restrained the appellant by twisting her arm in the office. There was no demonstrable need to do so as the office door was locked and there were several security personnel and staff in the office. It was all the more unlikely that Susan continued twisting her arm after the arrival of the police officers and even during the trip to the police station. The fact that the appellant did not lodge formal complaints against the security officers, even though the police advised her that she could do so, further diluted the weight of her allegations. For these reasons, I have regarded her complaints of ill-treatment with a liberal pinch of salt. As I could find no other explanation for the appellant`s escape and her lack of co-operation, I accordingly came to the conclusion that her subsequent conduct raised a strong inference as to her guilt.

Quite apart from this inference, the escape attempt itself served to corroborate the allegations of the key eyewitness, Ong. This proposition draws strength from the case of **Dowse v A-G, Federation of Malaya** [1961] MLJ 249 . In that case, the appellant`s wife alleged that the appellant had committed adultery with one Miss Tan, which the appellant vehemently denied. Lord Radcliffe, in delivering the judgment of the Privy Council, held that the appellant`s agreement to have Miss Tan examined for pregnancy was independent evidence capable of corroborating his wife`s allegation of the affair. In the present case, where the appellant`s account was diametrically opposed to that of Ong, her attempts to escape from detention provided independent evidence which corroborated Ong`s allegations.

It was therefore quite clear in my mind that this appeal failed to raise good reasons that would justify a departure from the findings of the lower court (see my comments in **Soh Yang Tick v PP** [1998] 2 SLR 42 , and the views of FA Chua J in **Lim Ah Poh v PP** [1992] 1 SLR 713 at 713-719). Accordingly, I dismissed the appeal against conviction.

Appeal against sentence

The appellant is 50 years old, and is a part-time teacher and church counsellor. She is a first-time offender and the potential profit from her deception amounted to a small sum of $11.70.

There were, however, certain aggravating factors in this case which called for an imprisonment term of substantial duration.

Firstly, the appellant was charged under s 420 of the Penal Code (Cap 224) which is intended to create a more serious offence of cheating as compared to the general offence under s 415 (see **Chua Kian Kok v PP** [1999] 2 SLR 542). Although there is an overlap between the two offences, s 420 is narrower in scope and specifies a maximum period of imprisonment of up to seven years, as opposed to one year under s 415 read with s 417. Section 420 is therefore reserved for serious cheating cases

only (see **R v Nadaison** [1933] MLJ 41). It follows that an offender charged under s 420 must be dealt with more harshly than one charged under s 415.

Secondly, the appellant had demonstrated no remorse in the conduct of her defence. She had made numerous unfounded allegations, including ill-treatment by Susan, conspiracy between Ong and the other security officers, and lies by Susan, Paul and Hoh to minimise the latter`s role in the whole affair. The thrust of her defence was that the sales and security staff of Seiyu somehow orchestrated a symphony of fabrications to frame her, for no explicable reason other than her previous incident with Ong. While accused persons are free to prove their innocence, it must be made clear that this does not translate to a liberty to blatantly besmirch the repute of prosecution witnesses behind the shield of privilege in judicial proceedings.

Thirdly, the appellant`s thwarted escape showed her complete contempt for authority. The message must be brought home to offenders that it does not pay to abscond - and accordingly those who attempt to do so must be dealt with more harshly when proven guilty and convicted.

Conclusion

For the reasons given above, the appeals against conviction and sentence were dismissed.

Outcome:

Appeal dismissed.