Cheong Choon Bin v Public Prosecutor
[2001] SGHC 255

Case Number : MA 76/2001

Decision Date : 04 September 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Allan Tan Chwee Wan (Sim Mong Teck & Partners) for the appellant; Toh Yung Cheong (Deputy Public Prosecutor) for the respondent

Parties : Cheong Choon Bin — Public Prosecutor

Courts and Jurisdiction – CourPower of appellate court to overturn trial judge's findings of fact – Relevant considerations – Whether any reason to interfere with trial judge's findings of fact

Immigration – Statutory definition of 'employ' – Circumstances when person deemed employer – Whether substance or form of employer-employee relationship important – s 2 Immigration Act (Cap 133, 1997 Ed)

Immigration – Standard of due diligence after amendments to Immigration Act – Employer's duty to check immigration status of foreign employees – Whether employer's statutory duty and responsibility delegable – Whether relevant that employment done by third party – ss 57(9) & 57(10) Immigration Act (Cap 133, 1997 Ed)

Words and Phrases – 'Employ' – s 2 Immigration Act (Cap 133, 1997 Ed)

: The appellant was charged and convicted under s 57(1)(e) of the Immigration Act (Cap 133, 1997 Ed) (`the Act`) on three counts of employing immigration offenders. He was sentenced to ten months` imprisonment on each charge, and pursuant to s 18 of the Criminal Procedure Code (Cap 68), two of the terms of imprisonment were ordered to run consecutively. I dismissed his appeal against conviction and now give my reasons below.

The facts

The appellant`s company, C & B General Services & Trading Pte Ltd (`C & B`), held the contract for cleaning and gardening works at Good Luck Garden Condominium (`Good Luck Garden`). On 15 February 2000, police officers conducted a raid on Good Luck Garden. Four male persons, all wearing T-shirts bearing the legend `C & B General Services & Trading Pte Ltd` were arrested. The arrested persons included three Sri Lankan nationals - Laxman Pradeep (PW5), Ruwan Pradeep (PW6) and Jerad Neil (PW7) (collectively, `the Sri Lankan witnesses`) - who were subsequently convicted of entering Singapore unlawfully and who were the subjects of the three charges against the appellant.

The prosecution`s case

The prosecution alleged that the appellant`s employment of the Sri Lankan witnesses was pursuant to a contract made between C & B and the estate managers of Good Luck Garden, which obliged C & B to provide six cleaners and three gardeners - making a total of nine workers - at Good Luck Garden. Although the contract in existence at the date of the police raid was for the period of 1 May 1999 to 30 April 2000, the prosecution was able to adduce evidence to show that C & B had held the cleaning contract at Good Luck Garden prior to 1999. Yap Sieh Wah (PW1), an employee of the estate managers of Good Luck Garden, testified that he had seen the Sri Lankan witnesses, dressed in the C & B uniform, working at Good Luck Garden. PW1 further testified that he had seen the appellant taking

the C & B workers to Good Luck Garden, and that he had seen the appellant there almost every month.

PW5 and PW6 testified that they had worked as cleaners at Good Luck Garden between August 1999 and February 2000, while PW7 testified that he had worked there part-time as a gardener between December 1998 and February 1999, and full-time from February 1999 until February 2000. All three had been introduced to a Sri Lankan named `Banda` by fellow Sri Lankans, and it was Banda who recruited them to work at Good Luck Garden. Banda also appeared to be the main overseer at Good Luck Garden. Likewise, it was Banda who told PW6 that the appellant was his employer.

However, both PW5 and PW6 testified that their monthly salaries of $700 each were paid to them by the appellant, save for one occasion when PW6 was paid by Tan Hin Lee (PW4), one of the appellant`s employees. PW7 gave evidence that although he received his salary of $700 from various persons, it was the appellant who paid him his salary on four or five occasions. PW7 also testified that he had seen PW4 bring to Good Luck Garden the equipment used by the foreign workers. Finally, PW5 stated that the appellant did not speak to him, apart from paying him his salary, while PW7 testified that, on the occasions when the appellant paid him, he never asked to see any of PW7`s identification papers.

PW4, who had worked for C & B between June 1998 and September 1999, testified that he would be sent at times to Good Luck Garden to pay the workers` salaries, which were in the form of cheques signed by the appellant and which PW4 encashed before paying the workers in cash. The workers had to sign payment vouchers when they were paid. PW4 claimed to have asked the workers for their identification documents, although he had not pursued the matter when they did not produce the documents. PW4 further testified that C & B supplied equipment for the use of the workers, and that he had made some deliveries of equipment himself. He had seen PW7 doing gardening work during one of his visits to Good Luck Garden, although he could not recognise PW5 or PW6.

PW4 and the Sri Lankan witnesses were also recalled as the appellant claimed to have four witnesses (`the Bangladeshi witnesses`) who had worked at Good Luck Garden between February and July or August 1999. The Sri Lankan witnesses testified that they were unfamiliar with these Bangladeshi witnesses. On the other hand, PW4 testified that while two of the Bangladeshis were unfamiliar to him, the other two, one `Islam` and one `Haman`, had been employed by C & B on the HDB grass-cutting teams. PW4 also testified that Islam had been deployed to Good Luck Garden as a grass-cutter occasionally.

The defence

The appellant gave evidence on his own behalf. He testified that Banda was the supervisor of the foreign workers at Good Luck Garden. He had employed Banda because Banda had previously worked for the sub-contractor who carried out the cleaning and gardening services, and the management corporation of Good Luck Garden had `told` him to retain Banda. Salaries were usually paid by PW4 or another C & B employee, and between May 1999 and February 2000, he had paid salaries to the workers at Good Luck Garden on only two occasions at most.

The appellant further claimed to be unaware of the exact identities of the foreign workers he employed to work at Good Luck Garden, as well as the day-to-day situation there, as he was often away on business in Cambodia during that period. Nevertheless, he claimed to be certain that on the day of the raid, ie 15 February 2000, only legal foreign workers were employed at Good Luck Garden. Finally, he claimed that he had never seen the Sri Lankan witnesses before.

Finally, the appellant called the Bangladeshi witnesses, who testified that they did not know the Sri Lankan witnesses.

The decision below

The district judge noted that since **Tamilkodi s/o Pompayan v PP** [1999] 1 SLR 702 , the manner of remuneration and the degree of control exercised by the alleged employer over the worker continued to be significant considerations in determining the existence of an employment relationship. However, these were not the only considerations that the court would take cognizance of. The district judge found the following factors to be relevant in deciding that an employment relationship did exist between the appellant and the Sri Lankan witnesses:

(1) that the appellant held the cleaning contract at Good Luck Garden at the material time and was expected to pay his workers out of the contract sum;

(2) that it was the appellant`s responsibility to ensure that the contracted number of workers was present to carry out the works;

(3) that the Sri Lankan witnesses were engaged in carrying out the cleaning and gardening works at Good Luck Garden;

(4) that the equipment used by the workers was provided by C & B; and

(5) that the appellant paid the workers` salaries.

In making the above findings, the district judge preferred the evidence of the prosecution witnesses to that of the defence witnesses. She took the view that there was no reason for the Sri Lankan witnesses to lie about having worked at Good Luck Garden, and also rejected the attempt by the appellant to discredit PW4 as the appellant`s allegations of a bad relationship with PW4 had not been put to PW4 when he was on the stand.

On the other hand, the district judge rejected the testimony of the Bangladeshi witnesses for being inconsistent and `suspiciously vague`. For example, the Bangladeshi witnesses provided completely different accounts of the way in which they entered Good Luck Garden to work, although they were supposed to have been sent to work together every day. Moreover, she did not consider the Bangladeshi witnesses entirely disinterested. This was because three of them were still working for the appellant while the fourth had only recently left the appellant`s employ after working for him for a prolonged period.

Finally, the district judge found the appellant to be completely lacking in credibility. She found it to be inconsistent that he should claim to be incapable of recognising every single one of his workers, while at the same time asserting that the Sri Lankan witnesses had never worked at Good Luck Garden. Furthermore, although both the appellant and the Sri Lankan witnesses were agreed on the fact that the workers were required to sign payment vouchers when they were paid, the appellant was unable to produce any of this material evidence. On the other hand, he was able to produce documents which were clearly in his favour. Finally, the district judge found it to be suspicious that the period during which the appellant claimed to have had least contact with Good Luck Garden was the same period during which the Sri Lankan witnesses were employed there. All in all, she found the appellant`s testimony to be evasive and disingenuous, `retreat[ing] behind a smokescreen of

convenient excuses which included his supposed lack of time and the poor state of his office records`.

In finding that the Sri Lankan witnesses were employed by the appellant, the district judge noted that there was no close contact between them and the appellant. Nevertheless, she did not find this to be fatal to the prosecution`s case, as the nature of the work undertaken by the Sri Lankan witnesses did not require close supervision by the appellant. Moreover, `the illegal workers had been cleaning the very premises the appellant was contracted to clean, using cleaning equipment belonging to the appellant`. Finally, the district judge was of the view that the arrangement in place at Good Luck Garden, in which Banda had the most contact with the illegal workers, mirrored the factual situation in ***Tamilkodi*** `s case (supra). She found that the High Court`s conclusion in that case, viz that the minimal contact was deliberate, in order to distance the accused in that case from the illegal workers, was equally applicable to the appellant`s case.

Having found that the actus reus of the offence had been made out against the appellant, the district judge found that the mens rea had also been established. He had reasonable grounds to believe that the Sri Lankan witnesses had entered Singapore illegally, as they looked `distinctly non-Singaporean`, yet he never once asked to see their identification papers. In the circumstances, the appellant had been wilfully blind to the issue of the Sri Lankan witnesses` immigration status. As it was clear from cases such as **PP v Koo Pui Fong** [1996] 2 SLR 266 that wilful blindness was evidence from which guilty knowledge could be inferred, it followed that it was also evidence from which `reason to believe` could be inferred. The working conditions set up at Good Luck Garden were such that there would be no need for such steps to be taken unless the appellant knew of, or had reasonable grounds to suspect, that the workers were illegal.

The district judge duly convicted the appellant of all three charges.

The appeal

I dealt with the grounds of appeal to this court under two broad categories:

(1) challenges to various findings of fact made by the district judge; and

(2) whether employment of the Sri Lankan witnesses by the appellant was properly made out.

THE FINDINGS OF FACT

The appellant`s challenges under this head centered on the various assessments made by the district judge of the credibility of the prosecution and defence witnesses, taking issue with the fact that the district judge preferred the evidence of the prosecution witnesses to that of the defence witnesses.

It is trite law that an appellate court will not disturb findings of fact made by a trial court unless they are `clearly reached against the weight of the evidence`: **Lim Ah Poh v PP** [1992] 1 SLR 713 . In relation to the prosecution witnesses, I saw no reason to overturn the district judge`s assessment of their credibility. The evidence of the Sri Lankan witnesses that they worked at Good Luck Garden was corroborated by at least two witnesses, of which one (PW1) was an employee of the estate managers of Good Luck Garden and hence was an independent witness. As for the appellant`s attempt to discredit the evidence of PW4 by alleging that he had a `strained` relationship with PW4, I found that in this case the district judge had correctly applied the principles established in **Browne v Dunn** [1893] 6 R 67, namely, not to give much weight to the allegations, since they had never been

put to PW4 on the witness stand. I also noted that when PW4 had been cross-examined in the court below on his relationship with the appellant, he had testified that their working relationship was `average`.

I was likewise reluctant to overturn the district judge`s assessment of the evidence given by the appellant and the Bangladeshi witnesses. An appellate court is slow to disturb a trial court`s findings of fact because the trial judge has the benefit of seeing and hearing the witnesses in court. The district judge in the present case had the opportunity to observe the demeanour of both the Bangladeshi witnesses and appellant. She found the appellant`s testimony to be `blatantly deceitful` and his explanations for not producing material evidence to be `suspicious`. Her discounting of the evidence of the Bangladeshi workers was not due solely to her assessment of them as non-independent witnesses. Instead, she placed reliance on the fact that their evidence was `suspiciously vague` and inconsistent.

WHETHER EMPLOYMENT OF THE WITNESSES BY THE APPELLANT WAS MADE OUT

The appellant claimed that the employment by him of the Sri Lankan witnesses had not been properly made out, placing reliance on the contention that it had been Banda who told them that they could work at Good Luck Garden. Before me, counsel for the appellant contended that this arrangement had not been devised by the appellant in an attempt to distance himself from the Sri Lankan witnesses. Instead, he contended that there was a possibility that the Sri Lankan witnesses had been employed by Banda without the knowledge and consent of the appellant. However, I found that a proper case for the appellant being the employer of the Sri Lankan witnesses had been made out for the reasons below.

Section 2 of the Act defines `employ` to mean `to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration`. I noted in both **Gay Yun Lin v PP** [1999] 1 SLR 547 and ***Tamilkodi*** `s case (supra) that the effect of this definition is to deem a person as the employer of another person so long as he uses the services of the latter in the running of his business. It is also clear from **Lee Boon Leong Joseph v PP** [1997] 1 SLR 445 , a case cited by the district judge in her grounds of decision, that the substance of the employer-employee relationship is more important than its form. As such, whether or not the Sri Lankan witnesses identified the appellant as the `boss` would not be a determining factor in relation to whether the requisite relationship existed between them and the appellant.

It was not denied in the trial below that C & B was obliged to provide cleaning services at Good Luck Garden, nor was it disputed before me that the equipment used by the workers belonged to C & B. I have held that the findings of the district judge relating to the evidence of the prosecution witnesses cannot be disturbed. In light of the foregoing, it was my view that the appellant fell within the definition of `employ` in s 2 of the Act, and the district judge was correct to find that he was the employer of the Sri Lankan witnesses.

Whether or not the actual task of recruitment of the foreign workers had been carried out by a third party, in this case Banda, was not relevant. The duty imposed by s 57(9) and (10) of the Act on an employer to exercise due diligence to ensure that his employee is not an illegal worker is a non-delegable responsibility. I decided in **Ramli bin Daud v PP** [1996] 3 SLR 225 , a case based on a version of s 57(10) which predates the 1998 amendments to the Act, that the then-wording of s 57(10) required an employer to personally examine a worker`s identification papers before he could be said to have exercised due diligence. The 1998 amendments to the Act removed the word `personally` from s 57(10). However, as I noted in **Mohamed Lukman bin Amoo v PP** [1999] 4 SLR 292 , another case decided on the old wording of s 57(10), the current version of s 57(10) `merely

sets out in more detail the steps to be taken by a person charged under [...] s 57(1)(e) of the Act`. This interpretation of the changes made by the 1998 amendments is in line with a ministerial statement by the Minister for Home Affairs on 9 May 2000, in which the Minister stated that the 1998 amendments were intended `to update and state clearly what the requirements are` with respect to the checks to be carried out under s 57(10). As such, I would emphasise, notwithstanding the absence of the word `personally` in the current version of s 57(10), that the employer`s task of checking the identification papers of his foreign workers remains a non-delegable one. An employer who fails to comply with s 57(10) does so at his own peril.

It was clear that such checks had never been carried out by the appellant, who allegedly left it to Banda to conduct the checks, if indeed they were carried out at all. Before me, counsel had argued that it would have been impossible for the appellant to ascertain whether any of the workers present were illegal workers unless he carried out the onerous task of conducting daily roll-calls. The reason behind this contention was the claim that the appellant used approximately 40 to 60 workers at any one time, and he would have no means of ascertaining who were the particular workers on a particular day, or the exact nature of their immigration status, unless he conducted a check of their identification papers every day. I rejected this argument. Such a contention only supported the district judge`s finding that the appellant had exhibited a wilful blindness as to the legality of his foreign workers, for to run his business in such a way clearly evinced a reckless disregard as to whether he was employing illegal workers or not.

The above finding also rendered irrelevant the appellant`s contention that the district judge failed to consider whether the risks inherent in employing foreign workers outweighed the monetary savings from employing them. It was clear from the foregoing that the appellant simply did not care whether or not his employees were illegal workers.

Conclusion

For the foregoing reasons, I concluded that the appellant had been properly convicted of the charges in the court below, and dismissed the appeal.

Outcome:

Appeal dismissed.

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