Tay Chi Hiong v Public Prosecutor
[2003] SGHC 5

Case Number : MA 214/2002

Decision Date : 16 January 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Rai Ratankumar (Wong Gopal & Rai) for the appellant; G Kannan (Deputy Public Prosecutor) for the respondent

Parties : Tay Chi Hiong — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Approach of appellate court

Criminal Procedure and Sentencing – Charge – Form of charge – Omission in charge – Whether omission has occasioned a failure of justice – Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 396

Criminal Procedure and Sentencing – Sentencing – Whether sentence manifestly excessive – Enhanced penalties under s 8(1)(b) Moneylenders Act (Cap 188, 1985 Rev Ed)

Evidence – Witnesses – Inconsistencies in testimony – Whether inconsistencies undermining evidence in respect of key issues – Whether court entitled to accept one part of testimony and reject other part

1 This was an appeal arising from the conviction of the appellant Tay Chi Hiong ('Tay') by district judge Doris Lai-Chia Lee Mui of two charges under s 8(1)(b) of the Moneylenders Act (Cap 188) read with s 109 of the Penal Code (Cap 224). Tay was sentenced to pay a fine of $15,000 on the first charge and $20,000 on the second charge with default sentences fixed at two and four months respectively. I dismissed Tay's appeal against both conviction and sentence. I now give my reasons.

The prosecution's case

2 On 7 August 2001, Mdm Loo Chiew Fah lodged a complaint that persons unknown had written 'owe money pay money' on the walls adjacent to her unit at Blk 1 Eunos Crescent. She informed the police that a number of people had already come to her home demanding payment from her husband Chua Beng Kiaw ('Chua'). However, she was unaware of his whereabouts as they had been separated for the last two years.

3 Attempts were made to trace Chua and he was located sometime in September 2001. Chua informed the police that he had found himself in need of money sometime in December 1999. A friend of his brought him to Lorong 16 Geylang and introduced him to Tay to enable him to obtain a loan. Tay agreed to give him a loan of $500 at an interest rate of 20% and took down his particulars.

4 The loan was to be repaid in weekly instalments of $100 over six weeks. Any late payment would result in all previous payments being forfeited and Chua would have to start afresh to make six successive payments of $100. When Chua pleaded with Tay for a reprieve, Tay replied that he was not in a position to decide and would have to consult his boss - a man going by the name of 'Ah Kau'.

5 Chua testified that he met Tay four times in Geylang to make payments towards the loan. After this the venue for payment was changed to Yishun. He met Tay seven or eight times in Yishun at Blk 747 during which he handed over sums of $100 or $200 towards repayment of the loan. He could not recall the exact dates or the precise amounts paid out each time, but from 1999 to 2001 they amount

in total to a sum exceeding $1000.

6 On 14 September 2001, Chua was shown some 60 to 70 photographs of known moneylenders. He identified Tay from these photos. On 26 September 2001, an ID parade was conducted and Chua picked out Tay from the line-up as the man who had dispensed the loan and collected repayments from him. Chua affirmed that he would have been able to make a positive identification even if he had not seen the photographs previously because he had met the appellant so many times to make payments.

7 Tay was charged with two counts of abetment by intentionally aiding 'Ah Kau' to carry on an illegal moneylending operation by (i) dispensing $500 to Chua in December 1999 and (ii) collecting $100 from Chua in March 2000.

The defence

8 Tay's defence was one of complete denial. He denied knowing Chua or working for a man named 'Ah Kau' and alleged that he had been framed. Tay had previously been arrested for being an illegal moneylender. He had co-operated with the police at the time and provided information on the man he had been working for. Tay implied that Chua had been instigated to falsely implicate him in order to 'punish' Tay for helping the police.

Decision of the court below

9 The district judge acknowledged that there were discrepancies between Chua's evidence and that of his wife, Mdm Loo. Chua's testimony was that his wife had received a call asking her to inform Chua he was to make payments at Yishun instead of Geylang. Mdm Loo testified that she did not recall receiving any such phone calls but said several persons had come to the house to demand payment and it was possible that one of them may have told her to pass on the message.

10 The district judge considered these discrepancies between Chua and Loo's evidence to be immaterial and was prepared to accept Chua's evidence on all material points. As regards Tay's defence, the district judge considered it to be incredible. She found that there was no evidence to suggest Chua was attempting to frame Tay. Rather, the facts indicated otherwise. It was Chua's wife, Mdm Loo who made the initial police report. At that time, Chua had already been separated from his wife for quite some time and Chua had to be traced by the police before he gave a statement.

11 Having considered the evidence before her, the district judge preferred to accept Chua's testimony and found that the prosecution had proven its case beyond reasonable doubt.

Appeal against conviction

12 The prosecution's case was based primarily on Chua's evidence. As such, this appeal turned solely on whether the trial judge erred in accepting Chua's version of events. It is settled law that an appellate court will not overturn findings of fact unless they can be shown to be against the weight of evidence. As I said in *PP v Azman Abdullah* [1998] 2 SLR 704 at p 21,

> An appellate court, if it wishes to reverse the trial judge's decision, must not merely entertain doubts whether the decision is right but must be convinced that it is wrong.

Bearing this in mind, I was of the view that there was nothing to indicate that the district judge's findings were unsupportable or against the weight of the evidence adduced.

13 Tay contended that the district judge failed to adequately consider the inconsistencies in Chua's evidence and should have found him to be an unreliable witness. Now, the main discrepancy in Chua's evidence was his account of how he received the message that he was to make payments in Yishun instead of in Geylang. In his examination-in-chief, Chua stated:

> The accused called my home subsequently and informed my wife to ask me to make payment in Yishun. Thereafter I made payments in Yishun.

However, when questioned about this, Mdm Loo in her examination-in-chief stated:

> I do not have much of an impression of someone calling me to tell my husband to go to Yishun to pay. Normally they will come and tell their names. Yes, I did tell my husband that someone had come to ask him to go to Yishun to pay money.
>
> It is possible that one of the persons who came to demand payment did mention that my husband should make payment in Yishun.

14 In her grounds of judgement, the district judge considered this discrepancy between Chua and Loo's evidence to be immaterial and found that it did not affect the veracity of Chua's evidence. The district judge was fully entitled to come to such a conclusion. As I held in *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464, there is no rule of law that the testimony of a witness must be believed in its entirety or not at all. So long as the inconsistencies were minor in nature, or related to minor issues, it did not undermine the evidence in respect of key issues.

15 Here, the main issue was Chua's identification of Tay as the man he had liaised with in relation to the loan. The propriety of the identification parade was not in dispute. As such, the main question was whether Chua was telling the truth. In assessing Chua's credibility, the district judge noted that there was no motive for him to lie in order to frame Tay. If it was indeed a set-up, there would have been no need to mention the third person 'Ah Kau'. Furthermore, Chua was not the person who made the initial police report. It was his wife who made a complaint to the police and she did not know Chua's whereabouts at the time. Chua only came forward a month later when the security personnel at his work place informed him that he was being sought by the police.

16 In light of the above, I was satisfied that the district judge was justified in choosing to rely on Chua's evidence in all material aspects and to reject Tay's testimony. Being mindful of the fact that this Court had neither seen nor heard the witnesses, I was prepared to accept the district judge's assessment of the credibility of the witnesses.

17 However, I would just briefly touch upon one point which was not addressed by the district judge. The second charge related to a payment of $100 made to Tay in March 2000. Chua's evidence in relation to this was:

> On this occasion I can't recall whether it was $100 or $200. However, I confirm that I did make some payment that day. This payment was also related to the loan in question.

As such, the charge against Tay should have read '..*intentionally aiding the said 'Ah Kau' to collect a sum of $100 or $200 from Chua Beng Kiaw…'.* In my opinion, this was an omission that fell squarely within s 396 of the Criminal Procedure Code (Cap 68) which reads:

> Subject to the provisions hereinbefore contained, no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of –
>
> > (a) any error, omission or irregularity in the complaint, summons, warrant, charge or judgement or other proceedings before or during trial or in any inquiry or other proceeding under this Code;
> >
> > (b) the want of any sanction required by section 129; or
> >
> > (c) the improper admission or rejection of any evidence, unless the error, omission, improper admission or rejection of evidence, irregularity or want has occasioned a failure of justice.

Since Tay suffered no prejudice as a result of the omission in the charge, I found no need to disturb the findings of the district judge.

Whether sentence imposed was manifestly excessive

18 For the first charge, the mandatory minimum was a fine of $10,000. Tay was sentenced to pay a fine of $15,000, in default two months' imprisonment. For the second charge, the enhanced penalties under s 8(1)(b) of the Moneylenders Act (Cap 188) were applicable and the mandatory minimum was a fine of $20,000. The sentence imposed was a fine of $30,000, in default four months' imprisonment.

19 Both sentences were already at the lower end of the scale of punishment prescribed and could not be said to be manifestly excessive in any way. I therefore dismissed the appeal against sentence.