

Public Prosecutor v Hendricks Glen Conleth
[2002] SGHC 306

Case Number : MA 152/2002
Decision Date : 14 December 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Hui Choon Kuen (Deputy Public Prosecutor) for the appellant; Julian Tay (Lee & Lee) for the respondent
Parties : Public Prosecutor — Hendricks Glen Conleth

*Criminal Law – Elements of crime – Mens rea – Aiding and abetting commission of offence
– Whether knowledge of offence proven – Prevention of Corruption Act (Cap 241, 1993 Rev Ed) s 6(a) read with 29(a)*

Judgment

GROUNDS OF DECISION

This was an appeal from the judgment of the learned district judge Hoo Sheau Peng where she acquitted the respondent, Conleth, on a charge of abetting by intentional aid, under s 6(a) read with s 29(a) of the Prevention of Corruption Act, Cap 241 ("PCA"), one Madhavan s/o Rajagopal ("Madu") to commit an offence under s 6(a) of the PCA. The s 6(a) offence committed by Madu was to make and use false airline boarding passes in the smuggling of two people into the USA in return for gratification. The DPP appealed against Conleth's acquittal. I dismissed the appeal and now give my reasons.

Facts

2 Madu was a Customer Services Officer ("CSO") with the Singapore Airport Terminal Services Ltd ("SATS"). Conleth was a former CSO and colleague of Madu, but had resigned in 1997. Part of a CSO's duties were to process boarding passes for passengers in transit.

3 Sometime in late October 2000, Madu had approached Conleth for help in smuggling people overseas. Madu promised him a sum of \$4,500 for his help. Conleth agreed as he was in need of money to settle his credit card bills.

4 On 1 November 2000, Conleth and Madu took a flight to Bangkok. On the flight, Madu gave him some details. Conleth was told that they would be helping to smuggle two people into the USA who did not have valid documents, and that all four of them would be on the same flight. However, both Madu and Conleth would disembark at Hong Kong, where there was a transit stop, from where they would later return to Singapore.

5 According to the prosecution, the scheme for smuggling people into the USA was that in return for money paid to him by one Khan, Madu would churn out two fake boarding passes in his and Conleth's name. They would then use these passes to board a flight to the USA on which they were not listed as passengers. The persons smuggled would be on the same flight. Madu and Conleth would then disembark at a transit point and return to Singapore whilst the two persons smuggled would continue to the USA. However, the details of this vague scheme were not disclosed to Conleth, save for what was listed in the preceding paragraph.

6 On 2 November 2000, they returned to Singapore from Bangkok on a night flight. At Changi Airport, Madu told Conleth not to check out but to stay within the transit area in Terminal 1. He was to wait for further instructions and he eventually stayed overnight in the transit area.

7 According to Madu, he was handed two boarding passes by Khan on that day, which were in the names of the persons to be smuggled. Since he and Conleth were not listed on the flight, Madu then procured two blank boarding passes, to which he had access as a SATS employee, and wrote their names on the passes for the flight from Singapore to Hong Kong only. His actions here constituted the s 6(a) PCA offence. All this was done in the absence of Conleth.

8 Madu and Conleth then entered the holding area. To enter, both Madu and Conleth presented the bogus passes along with their passports so that the documents would tally when checked. Madu then took the bogus pass back from Conleth. For the second check before entering the holding area proper, Madu then used the two boarding passes which he had gotten from Khan – this was necessary since the check here was done against the passenger manifest for the flight. Conleth had entered in front of Madu and did not see this. The two of them then boarded the flight.

9 As planned, both of them disembarked in Hong Kong and waited for a day before returning on 5 November 2000. Madu later paid Conleth \$4,500 as promised. Madu was subsequently charged and convicted on five counts of an offence under s 6(a) PCA. He also pleaded guilty to a charge under the Computer Misuse Act, Cap 50. He was sentenced to ten years imprisonment in total.

The decision below

10 The district judge found that the only issue in dispute was the *mens rea* of Conleth. She held that the offence of corruption in this case by Madu involved him accepting gratification in return for churning out fake boarding passes. She held that Conleth must be shown to have had knowledge of the corrupt element, constituted by Madu's acts, in order to be guilty of the offence charged.

11 The district judge believed Conleth's defence that he had had no knowledge at all of Madu's forgery of the boarding passes. She found that Conleth's intention was solely to aid Madu in smuggling people to the USA. In view of the surrounding circumstances at the time, she found that it was reasonable for Conleth not to have inquired further as to the details of the scheme. The district judge also held that there was no reason for Conleth to suspect that there was anything amiss with the boarding passes. Since the offence of abetment by intentional aid required knowledge of the circumstances constituting the offence abetted, she found that the prosecution had not satisfied its burden of proof concerning Conleth's *mens rea* on the evidence adduced. She accordingly acquitted Conleth.

The appeal

12 The only issue in this appeal was whether the judge below had erred in finding that Conleth had not been proven to have possessed the *mens rea* for the offence.

13 The relevant parts of s 6(a) and s 29(a) PCA read:

6(a) If any agent corruptly accepts or obtains, ... 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...

29(a) Whoever abets, within the meaning of the Penal Code the commission of an offence under this Act; ... shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

Further, s 107(c) of the Penal Code, Cap 224 provides:

A person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing.

14 The DPP pointed to the evidence that had been adduced against Conleth and argued that it was an irresistible inference that Conleth must have known of Madu's actions, or, at the very least, have had knowledge that something was amiss with the boarding passes. It was argued that this would have been sufficient to found the *mens rea* for the offence.

15 A list of the evidence against Conleth was set out by the DPP:

(i) He knew that Madu was a CSO and, being a former CSO, knew that Madu's duties involved dealing with passengers checking in;

(ii) he would further know that a CSO was able to generate boarding passes at will;

(iii) the district judge had found that he knew Madu would be paid for the scheme, and Conleth himself was paid a large sum of money;

(iv) the circumstances prior to the trip were suspicious – Conleth had to wait in the transit area overnight and fly off immediately the next day, which meant he never went through immigration, a fact he would have realised;

(v) although he did not buy tickets nor checked in, Madu was able to appear with his boarding pass;

(vi) he knew that he was to help in smuggling people illegally; and

(vii) he had seen the forged boarding pass with his name hand-written on it

16 I must confess at the outset that I was unable to see how the scheme as disclosed could have effectively smuggled people into the USA. This was also a mystery to all the parties involved, and the details adduced at the trial below did not shed much light on the matter.

17 Furthermore, it was unhelpful to focus on the fact that Conleth knew, or thought, that he

was helping to smuggle people into the USA by his actions. Involvement in the scheme itself did not give rise to criminal liability; what should be focused on was the extent of his awareness of Madu's actions. His knowledge that he was involved was neither here nor there; for all intents and purposes, all he had actually done here was to accept money in return for accompanying a friend to board a plane to Hong Kong.

18 Turning to the question of whether the judge below had erred in her finding that Conleth had had no knowledge of Madu's actions, I found the burden on the DPP in this instance to be a heavy one. In the proceedings below, the district judge had made her finding not just on the basis of the evidence before her, but also because she had *believed* both Madu's and Conleth's evidence that Conleth had had no knowledge of Madu's actions. While not explicitly stated in her grounds of decision, her decision on Conleth's credibility must have stemmed in part from her observation of his demeanour, since there was no other objective evidence in support of his story. As held in *Ang Jwee Herng v PP* [2001] 2 SLR 474, an appellate court will be slow to overturn findings of fact by the trial judge especially when an assessment of the credibility and veracity of the witnesses has been made.

19 Having examined the evidence carefully, I found it could not be proven beyond reasonable doubt that Conleth either knew or should have suspected both that there was something improper about the boarding passes and that Madu had brought this about with his powers as a CSO.

20 As the district judge had found, Conleth had had no details of the scheme save what Madu had told him. Notably, nothing was mentioned about the boarding passes. The scheme to smuggle was so murky that it cannot be said with certainty that Conleth must have known or suspected that Madu had to breach his duties by preparing false boarding passes as part of the scheme.

21 Similarly, the fact that Conleth had to spend the night in the transit area did not lend weight to the inferences which this court was urged to draw. It was also in evidence that Madu had taken Conleth's passport and told him that he would "settle everything" with regards to the flight to the USA; in such circumstances, it was not at all improbable for Conleth to think that Madu had legitimately bought tickets and checked in on the flight for both of them.

22 The strongest piece of evidence for the prosecution was the fact that Conleth had seen the boarding pass with his name hand-written on it. However, there was no evidence as to whether a boarding pass with a passenger name hand-written on it would be considered unusual or wrong. It was entirely possible that, because Conleth used to be a CSO, what would strike other people as odd about the boarding pass would in fact seem normal to him. In addition, it must be noted that Conleth was able to pass through the security check using the fake said boarding pass without any problems.

23 In contrast, the district judge found Conleth's defence believable since it was entirely logical for him not to have known much about the scheme, save that generally it was to smuggle people into the USA. There was no reason to think, on the evidence, that Conleth would have had knowledge of Madu's corrupt activities.

24 In view of the above, I was of the opinion that while Conleth's conduct in this matter was thoroughly dishonest and reprehensible, the fact remained that he had not been proven to have committed an offence punishable under our laws. Moral culpability by itself is not a sufficient basis to found criminal liability.

Conclusion

25 For the above reasons, I dismissed the appeal against acquittal.

Sgd:

YONG PUNG HOW

Chief Justice

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