Wu Guo Hao Max *v* Public Prosecutor
[2013] SGHC 255

Case Number	: Magistrate's Appeal No 266 of 2012, Criminal Motions No 17 & 39 of 2013 and Criminal Revision No 16 of 2013
Decision Date	: 22 November 2013
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Applicant in-person; Francis Ng and Gregory Gan (Attorney-General's Chambers) for the Public Prosecutor.
Parties	: Wu Guo Hao Max — Public Prosecutor

Criminal Law – Statutory offences – Employment of Foreign Manpower Act (Cap 91A. 2009 Rev Ed)

22 November 2013

Choo Han Teck J:

1 The appellant in Magistrate's Appeal No 266 of 2012 made two applications in Criminal Motions No 17 and 39 of 2013. The applications arose from his appeal against conviction and sentence in respect of four charges of knowingly furnishing false information to the Controller of Work Passes under s 22(1)(d) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed). The offences were punishable under s 22(1)(ii). The appellant submitted four applications for an "Entrepass" with accompanying business plans to the Ministry of Manpower. These applications were purportedly made by four Chinese nationals — one application per person — who wished to start a business in Singapore. The four persons were Zhao Guo An ("Zhao"), Sha You Bing ("Sha"), Lu Jun Cai ("Lu") and Li Jian Hua ("Li"). The four charges that the appellant faced corresponded to these four applications. In DAC 42940 of 2010, Zhao was the applicant purporting to set up a business called HaoLin Project Pte Ltd; in DAC 42941 of 2010, Sha was the applicant purporting to set up Panyue Construction Pte Ltd; in DAC 42942 of 2010 Lu was the applicant purporting to set up Tima Works Pte Ltd; and in DAC 42493 of 2010, Li was the applicant purporting to set up Penja Renovation Pte Ltd.

2 The prosecution proved at trial that none of the four had the intention of setting up the business described in their applications. The information and applications were submitted by the appellant through his company HobLink Business Coauthor Pte Ltd. The four persons each paid the company $1,500 for the submission of these applications. The prosecution also proved that the appellant knew that the four persons had no intention of setting up a business. The appellant was therefore convicted of furnishing information which he knew was false to the Controller of Work Passes and sentenced to three months imprisonment with two of the sentences to run consecutively making a total of six months imprisonment. The appellant appealed. His appeal was strictly on fact, but he also alleged bias and prejudice on the part of the trial judge. It was in respect of these matters that the appellant filed the two Criminal Motions.

3 Some of the issues raised in the Criminal Motions were in fact matters that should be considered in the appeal proper (for example the prayer that the long statement be expunged from the record and that a *voir dire* be conducted to determine its admissibility). I shall deal first with the matters that were properly to be dealt with in the Criminal Motions before the appeal itself.

4 The main application in Criminal Motion No 17 of 2013 was for the production of the charges that the prosecution had sought to replace the four charges in question. In the event, the four charges were not amended and hence the proposed amended charges were not adduced. Those charges were thus of no relevance to the trial but the appellant, acting in person here and below, had a sharp and distinct distrust of the prosecution and the trial court. He assumed that there was some relevance otherwise the prosecution would not have attempted to amend the charges. He made a further assumption in that the aborted amendments were in his favour. Therefore, he claimed, it was in the interests of justice that they be produced. The trial judge was entirely correct in refusing to allow the proposed draft charges to be adduced. No draft was tendered before the court and none can be found in the record. The amendments, whatever their worth, have become totally irrelevant once the prosecution decided not to amend the charges.

5 Then there was the appellant's request to adduce fresh evidence. This was in relation to some voice recordings made by the appellant in his conversations with the investigating officer. The recordings and transcript are the subject of the present request. The recordings were unauthorised and were in the possession of the appellant. He spent more than 20 days cross-examining the investigating officer and had ample opportunity then to confront the officer with these recordings or a transcript, but he did not do so. Therefore I did not permit him to adduce the recordings and transcript at the appeal stage. He also requested 14 items to be admitted. Those articles were shown to witnesses and marked only for identification. They were not admitted at trial after the prosecution had objected to their admission, mainly for lack of relevance and lack of authenticity. For example, many of the items relate to text messages which could not be verified by any witness. In my view the trial judge was right not to admit these items and I did not allow him to admit them now.

6 In Criminal Motion No 39 of 2013, the appellant wanted his cautioned statements to be admitted. These statements were not admitted at trial. The "cautioned statement" is so named because the accused person, when charged, is served with a notice to state the facts upon which he intends to rely in his defence, and he would be cautioned that if he does not do so, his evidence would be less likely to be believed should those facts emerge only at trial. It seems that accused persons may not comprehend the purpose and function of the cautioned statement. Consequently, the cautioned statements tend to contain admissions of guilt and become prized evidence which the prosecution then tenders as part of the prosecution's case at trial. However, if, as in this case, the prosecution does not tender it, the defence could and should do so if it intended to rely on the statements. In exceptional cases, where the accused was clueless as to what his defence was, let alone how it should have been conducted, an appeal court may allow the cautioned statements to be admitted at the appeal. The appellant before me was not such an accused. He was savvy and knew very clearly what he was doing. He put up a defence that resulted in the trial lasting over 100 days. In his reply, the DPP Mr Francis Ng submitted that the appellant's cautioned statements merely recited that he was an honest businessman, a role he embellished in detail during his defence at trial. The cautioned statements were subsequently produced in the appellant's affidavit in support of the Criminal Motions. As the DPP submitted, they merely stated that the appellant was honest and the prosecution witnesses were lying.

7 For all these reasons, I am of the view that the applications should be dismissed. The other evidence sought to be admitted were letters of complaint against the trial judge. They were written before the trial ended. In any event, if the complaints were valid and relevant, they can be advanced as part of the arguments in the appeal proper. The applications in Criminal Motion No 17 of 2013 and Criminal Motion No 39 of 2013 were thus dismissed. As a result of having filed these two Motions, the appellant's appeal could not be heard until the Motions were dealt with. Both Motions were voluminous and I thus adjourned the hearing of the appeal to the date of my decision in respect of the two Criminal Motions. I directed that there would be no further adjournments and the appeal would

proceed on the date as fixed. The appeal was fixed for hearing on 13 November 2013. On 25 October 2013 the appellant filed Criminal Revision No 16 of 2013. It contained 30 pages of small printed complaints regarding the conduct of the trial judge and numerous submissions relating to the evidence at trial. This was a trial that lasted about 106 days in the Subordinate Courts.

8 I directed the appellant to incorporate his grievances under his appeal and to proceed with his appeal as the matters raised in Criminal Revision No 16 of 2013 related to the evidence and procedure which he complained were wrongly administered or adjudicated by the trial judge. The appellant's submissions turned out to be nothing more than the matters he had covered in his applications and all the written submissions that he had filed.

9 The grounds of appeal were on facts. First, he was adamant that he committed no offence because the instructions given to him by the persons involved were genuine instructions, *ie*, he said that the persons told him that they intended to set up businesses in Singapore and asked him to help them submit applications towards that end. He also claimed that the Ministry of Manpower did not think that he had committed any offence on the basis that the investigating officer's initial conclusion was that he was not running an "unlicensed employment agency". Secondly, he alleged that he was framed by the four persons concerned in the charges. Thirdly, he took an obsessive view that the trial judge would not have convicted him had he (the judge) not wrongly ruled that the proposed amendments to the charges were not relevant evidence.

10 I agree with the DPP that the findings of fact sufficient to prove the charges had been properly made by the trial judge. There was nothing sufficiently cogent to indicate that the trial judge ought to have found that either the offences had not been committed by the appellant or that he had been framed by the persons named. The appellant did not adduce any credible evidence that he had been framed. On the contrary, the evidence adduced and rightfully accepted by the trial judge was that the persons named never intended to apply for an "EntrePass" and the applications submitted were submitted by the appellant and contained particulars that the appellant knew to be false. It was made clear by the trial judge that, on the crucial fact as to who provided the information that were incorporated into the business plans, the information was found to have been provided by the appellant and not the four persons. I have no basis for finding that the appellant's evidence was more credible than that of the prosecution's witnesses.

11 I would also find that the allegations of bias and prejudice against the long suffering trial judge were unfounded. I could not help but form the impression that the trial judge gave the appellant far too much leeway at trial, perhaps on account of his being an accused in person, unrepresented by counsel. Events since have shown that the appellant had taken too much advantage of this. I was therefore of the view that the appeal had no merit and the sentences passed were not manifestly excessive. The matters raised in Criminal Revision No 16 of 2013 and the appeal in Magistrate's Appeal No 266 of 2012 were therefore dismissed.