Yeo Eng Siang v Public Prosecutor
[2005] SGHC 47

Case Number : MA 169/2004

Decision Date : 08 March 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Low Cheong Yeow (Deputy Public Prosecutor) for the respondent

Parties : Yeo Eng Siang — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Accused appealing against decision of trial judge to accept testimony of prosecution witness over accused's own testimony – Whether appellate court should interfere with trial judge's findings of fact

Evidence – Proof of evidence – Standard of proof – Reliance on sole prosecution witness's testimony – Whether Prosecution's case proven beyond reasonable doubt

Immigration – Harbouring – Overstayer – Whether sufficient evidence adduced to prove beyond reasonable doubt that accused harbouring overstayer – Section 57(1)(d) Immigration Act (Cap 133, 1997 Rev Ed)

8 March 2005

Yong Pung How CJ:

1 This was an appeal against the decision of a district judge, wherein the appellant was convicted under s 57(1)(d) of the Immigration Act (Cap 133, 1997 Rev Ed) ("the Act"), and sentenced to seven months' imprisonment for harbouring an overstayer who had acted in contravention of s 15(3)(b) of the Act. The appeal was against both conviction and sentence. After considering the evidence in the record, the district judge's Grounds of Decision and the Prosecution's case against the appellant, I decided to allow the appeal against conviction and sentence. I now give my reasons.

The facts

The charge

2 The appellant was charged under s 57(1)(d) of the Act for harbouring an overstayer, Chen Shixian ("Chen"), between 26 and 27 February 2004 at the appellant's flat. It was undisputed that Chen, a Chinese national, had acted in contravention of s 15(3)(b) of the Act by overstaying in Singapore for a period exceeding 90 days after the expiration of his social visit pass.

3 The main issues in contention were: (a) whether the appellant had harboured Chen between 26 and 27 February 2004, and (b) if so, whether the appellant had reasonable grounds for believing Chen to be an overstayer. According to s 57(7) of the Act, once it is proved that the appellant had harboured Chen, it shall be presumed, until the contrary is proved, that the appellant knew that Chen was an overstayer.

The Prosecution's case

4 The Prosecution essentially based its case on Chen's testimony. Chen testified that he had

met the appellant for the first time on 26 February 2004, while he was working as a rag-and-bone man. As Chen passed by the appellant's flat, the appellant offered to sell him a television set. Chen wanted to leave after he realised that he was unable to buy the television set from the appellant as the gate to the flat was locked with chains. However, the appellant called him back to ask for his help to deliver some documents to a lawyer. The appellant then handed Chen three documents in English. Chen was initially reluctant to help the appellant. He told the appellant that his passport had expired and he was concerned that he might be arrested at the lawyer's office. However, after the appellant assured him that there would be no police officers at the lawyer's office, Chen decided to help the appellant as he felt sorry for the appellant.

5 Chen asked the appellant for money for the taxi ride to the lawyer's office, but the appellant said that he had no money. Chen decided to use his own money to take a taxi to the lawyer's office. This taxi ride cost him $12. When Chen reached the lawyer's office, he was unable to find the lawyer. He therefore left the documents with a lady in the office. Chen then called the appellant to inform him of this. In response, the appellant told Chen to wait for the lawyer. After waiting for a while, the lawyer had yet to appear, so Chen called the appellant again. The appellant instructed him to leave the documents with the lady and to bring some newspapers back to him.

6 After completing the errand for the appellant, Chen again used his own money ($12) to take a taxi to return to the appellant's flat, where the appellant thanked him for his help. Chen testified that he entered the flat because the appellant had told him to do so. Although the gate was locked with chains, the chains were rather loose, so that he was able to squeeze into the flat through a gap created by pushing the gate.

7 After Chen entered the flat, he saw that the flat was very messy and decided to help the appellant tidy the flat. The appellant asked Chen whether he knew of a lady who could help him to tidy the place. Chen said that there was a friend who would be able to help but that the appellant must be willing to pay for this. Chen testified that the appellant offered him $100 for the job. Since Chen could not finish tidying the flat by himself, he decided to ask his friend, a Chinese lady known as "Little Sister" ("LS") for help and he would split the money equally with her.

8 Subsequently, Chen brought LS to the appellant's flat. LS entered the flat in the same way Chen did, by squeezing through the gap created by pushing the gate. After Chen and LS had completed the work, they asked the appellant for payment. The appellant told them that he had no money to pay them. Instead, he suggested that they stay the night at his flat.

9 Chen next went out to buy dinner for LS, the appellant and himself. During dinner, the appellant offered to rent a room to them at $80 per person per month. Chen agreed to take up the offer as the rent offered by the appellant was lower than what he was paying for his place at Choa Chu Kang. Chen felt that he could take advantage of the low rent and simply forget about the $100 owed to him by the appellant. Chen also testified that he had told the appellant at least twice that his passport had expired. This was because Chen believed that, if he did not inform the appellant at the outset of his immigration status, the appellant might call the police to have him arrested should the appellant later discover that he was an overstayer. Having assisted the appellant, Chen felt that he could trust the appellant not to inform the police.

10 Chen and LS later spent the night in the living room. On the following day, 27 February 2004, the appellant passed them two pieces of paper and sent them on an errand to withdraw money from a bank. Chen was initially reluctant to go to the bank as he felt that, due to his immigration status, he might be arrested. However, the appellant assured Chen otherwise, saying that he would speak to the manager of the bank.

11 When Chen and LS reached the bank, one of the counter staff informed them that the two pieces of paper were for opening an account. Puzzled, they left the bank and Chen called the appellant to seek clarification. The appellant's response was that he would inform the manager accordingly and they should return to the bank. Back at the bank, the manager told Chen and LS to take a seat in the waiting area. Later on, LS managed to slip away. As for Chen, the police subsequently arrived and arrested him.

12 The other witness for the Prosecution was Aw Ann Beng ("Aw"), the operational manager of the bank. Aw gave evidence that the appellant spoke to him on the phone on 27 February 2004. The appellant complained that a Chinese couple had stolen a pre-signed withdrawal voucher from him. When Aw informed the appellant that the Chinese couple was at the branch, the appellant told Aw to call the police as the couple were illegal immigrants and if Aw did not detain them, Aw would be committing a crime.

13 Staff Sergeant Gan Ong Peng ("SSgt Gan"), the investigating officer, also testified for the Prosecution. He gave evidence that during his first visit to the appellant's flat on 12 March 2004, he saw three chains with padlocks on the gate. He further observed that the chains on the gate could be extended, such that a person could squeeze through the gap created. SSgt Gan also testified that the appellant claimed that he did not have the keys to the locks and was locked in with his (the appellant's) consent.

The defence

14 The appellant's defence was that Chen and LS had never entered the flat either on 26 or 27 February 2004. The appellant said that it was impossible for them to enter the flat as the gate to the flat was tightly secured with chains and he did not have the keys to unlock the chains. The appellant testified that he did not see Chen and LS on 26 February 2004, but only on 27 February 2004 when they pestered him for a loan. Eventually, Chen threatened the appellant into signing a document authorising them to withdraw money from the appellant's account. Chen also stole two banking documents from the appellant. The appellant related these events to a church counsellor known as Mr Yeo, who then made the phone call to the police. It was suggested that Chen was probably angry with the appellant for causing him to be arrested and, in revenge, conjured up the allegation that the appellant had harboured him.

15 The younger sister of the appellant, Yeo Siang Kiang Irene ("Irene") and the appellant's ex-wife, Lim Meng Hong ("Suzie") also gave evidence for the Defence. They testified that they did not think that anyone could squeeze through any gap at the gate as it was tightly secured with chains and the appellant did not have the keys to unlock the chains.

The decision below

16 The district judge observed that this was essentially a case of one man's word against another. She went on to examine the testimony of Chen and the appellant. In assessing Chen's evidence, the district judge was mindful that Chen might well have had an axe to grind against the appellant, and so she scrutinised Chen's evidence with great care and circumspection. Nevertheless, having had the opportunity to observe Chen closely on the witness stand, the district judge found Chen's testimony to be generally consistent. At [55] of her Grounds of Decision ([2005] SGDC 1), the district judge held:

> I also observed that Chen answered questions without hesitation and gave his testimony in a forthright manner. I assessed him to be a witness of truth. Though there were certain parts of his

testimony that may appear, at first glance, to be inconsistent, I found these inconsistencies (if at all) minor and immaterial. They did not undermine his evidence in respect of the key issues relating to the charge.

17 On the other hand, the district judge found the appellant's evidence to be riddled with inconsistencies, replete with afterthoughts and peppered with outright lies. In short, the district judge rejected the appellant's evidence in its entirety and accepted Chen's version of events.

18 The district judge was satisfied that Chen met the appellant at his flat on 26 February 2004 and assisted the appellant to deliver some documents to a lawyer. She also accepted the Prosecution's case that on 26 February 2004, the appellant allowed Chen to enter the flat by pulling the gate to fully extend the chains thereon. The district judge found as a fact that at the material time, the chains used to lock the gate were loose enough to allow Chen (and subsequently LS) to squeeze through the gap created. She decided to reject the Defence's case that the chains were utilised to tightly secure the gate of the flat on 26 and 27 February 2004. She further found that Chen and LS had assisted in tidying the flat. However, as the appellant had no money to pay them, he sought to appease them by allowing them to spend the night in the flat. To "sweeten" the deal, he even offered to rent them a room at the low rate of $80 per person per month. The district judge opined that the appellant probably realised that he would have to get rid of Chen and LS as soon as possible or he might get into trouble when the owner found out that he had allowed others to stay in her flat. As such, the appellant sent Chen and LS on an errand to the bank the next day. Thereafter, the appellant alerted the bank and the police so that Chen and LS could be arrested.

19 Thus, the district judge found that at the close of the entire case, the Prosecution had proved the charge against the appellant beyond a reasonable doubt. Accordingly, the appellant was found guilty and sentenced to seven months' imprisonment. The sentence was backdated to 9 September 2004, the date on which the appellant had been remanded when he was first charged with this offence.

The appeal

20 In this appeal before me, the appellant essentially challenged the district judge's acceptance of Chen's version of events. His main submission was that Chen was not a reliable, credible or trustworthy witness as his testimony was full of contradictions, inconsistencies and irrationalities. In the appellant's submissions, he raised various contradictions in Chen's testimony, but I will only deal with those that were material to the charge.

21 The Prosecution premised its submissions primarily on the district judge's Grounds of Decision. The Prosecution argued that since the judge had given clear and cogent reasons as to why she believed Chen and not the appellant, such findings of fact that hinged on the judge's assessment of the credibility of the witnesses should not be lightly disturbed.

Principles of appellate intervention

22 Indeed, a perusal of the district judge's Grounds of Decision would reveal that she had made various findings of fact based on an assessment of the credibility of the witnesses. In this regard, I agree with the Prosecution that an appellate court should be slow to overturn such findings unless they are plainly wrong or against the weight of evidence, especially when an assessment of the credibility and veracity of the witnesses has been made: *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32], as cited in *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24] and in *Ang Jwee Herng v PP* [2001] 2 SLR 474 at [62]. An appellate court may reverse the trial judge's decision only if it is

convinced that the decision was wrong, and not merely because it entertains doubts as to whether the decision was right: *PP v Azman bin Abdullah* [1998] 2 SLR 704 at [21].

23 However, one must also bear in mind the principle that where the trial judge's assessment of a witness's credibility was based not so much on his demeanour as a witness, but on inferences drawn from the content of his evidence, the appellate court is in as good a position as the trial court to assess the same material: *PP v Choo Thiam Hock* [1994] 3 SLR 248 at 253, [12], as cited in *Awtar Singh s/o Margar Singh v PP* [2000] 3 SLR 439 at [39].

24 I had said in *PP v Tubbs Julia Elizabeth* [2001] 4 SLR 75 at [22], that the case of *PP v Choo Thiam Hock* should not be read beyond its context, in that there must be strong objective facts that weigh so strongly against the decision of the trial judge that intervention on appeal is required. Nevertheless, the principle remains that where instances permit, although the appellate court might not be in a position to assess the witness's demeanour, it should not refrain from evaluating the conclusions of the trial judge based on all the facts known to it. As I further stated in the case of *PP v Tubbs Julia Elizabeth* at [23]:

> In the normal case, a judge sitting on appeal should be sensitive to the impressionistic nuances which invariably contribute to the inferences drawn by the trial judge, who had the opportunity of observing and evaluating the evidence first-hand. This does not mean that a respondent, by invoking the spectre of *Lim Ah Poh* (supra) and other like cases, can effectively keep at bay the scrutiny of an appeal court over the findings at first instance. This is merely a guiding principle and should not be applied to usurp the power of the appellate court to correct errors of law and fact made by a lower court. Rather, it serves as a gentle reminder that an appellate court should exercise careful restraint and only intervene in the rare case where logic clearly militates against the findings of fact made by the trial judge.

25 The present appeal was certainly such an exceptional case. It was highly questionable to me whether the Prosecution had proved its case beyond a reasonable doubt. In addition, the fact that the conviction of the appellant was based solely on Chen's testimony was of special significance. I have to emphasise that in such circumstances, it was imperative to make a finding that Chen's testimony was *so compelling to the extent that a conviction might be based solely on it*: *Kuek Ah Lek v PP* [1995] 3 SLR 252 at 266, [60]. Where the decision to believe Chen stemmed from what the district judge thought was the compelling logic of the situation, it is again open for this court to examine that logic and reverse the findings of the court below if the logic was flawed: *Lee Boon Leong Joseph v PP* [1997] 1 SLR 445 at [46]. It bears repeating that although there is no prohibition against relying on the evidence of one witness, there is always a danger where a conviction is based solely on one witness's evidence. To warrant a conviction on the testimony of one witness alone, the trial court has to be aware of the dangers and subject the evidence to careful scrutiny: *Low Lin Lin v PP* [2002] 4 SLR 14 at [49].

Whether it was safe to convict the appellant based on Chen's testimony

26 The Prosecution had based its case primarily on Chen's evidence, but a careful examination of Chen's testimony would reveal numerous weaknesses that rendered the conviction of the appellant extremely unsafe. Chen's testimony was riddled with material contradictions and improbabilities, which I shall now set out.

27 First, Chen's evidence of his first encounter with the appellant on 26 February 2004, where he assisted the appellant to deliver some documents to a lawyer, revealed several improbabilities. According to Chen, the appellant called him back to ask for his help to deliver some documents to a

lawyer. The appellant then passed him three documents in English. In the first place, it was difficult to believe that the appellant would pass important documents meant for a lawyer to Chen, a rag and bone man he had met for the first time.

28 In addition, Chen said that his initial response to the appellant was that he could not help the appellant as his passport had expired. I found it unbelievable that Chen, knowing that he would be sent back to China if he was caught, would reveal his immigration status so readily to the appellant, a person he was meeting for the first time. This was especially so since Chen had admitted in cross-examination that he would not normally volunteer information about his immigration status to others.

29 Further, Chen said that when he asked the appellant for money for the taxi ride to the lawyer's office, the appellant said that he had none. Yet, out of pity for the appellant, Chen decided to take a taxi with his own money. This taxi ride cost Chen $12. According to Chen, he had called the appellant twice to inform the appellant that he had left the documents with the lady at the lawyer's office. As Chen did not manage to see the lawyer, he also told the appellant that he would not take the newspapers back. What I found unbelievable was the fact that despite finishing his task and not having to deliver any newspapers to the appellant, Chen decided to use his own money ($12) to take a taxi to return to the appellant's house. It seemed inexplicable why Chen, having finished his task, would find it necessary to return to the appellant's house. Chen's explanation was that he had to inform the appellant that the documents had been delivered. To my mind, this explanation was illogical, as Chen had already informed the appellant twice over the phone that the task was completed. There was no reason for Chen to spend his own money to return to the appellant's flat when he had already relayed the information over the phone.

30 When Chen was questioned during cross-examination, he claimed that talking to the appellant on the phone was not as clear as talking to the appellant in person. Again, this explanation does not hold water in the light of the fact that Chen had not only accepted instructions from the appellant over the phone, but had also told the appellant over the phone that the documents had been delivered. I found it highly unbelievable that the only purpose for Chen's return to the appellant's flat was to simply inform the appellant that the documents had been delivered. In the light of the illogicality in Chen's account of how he had helped the appellant to deliver documents on 26 February 2004, I found it difficult to agree with the district judge's acceptance of this part of Chen's testimony.

31 I also found that there were far too many doubts in Chen's account of how he had entered the appellant's flat. The district judge found that the appellant had allowed Chen to enter the flat by pulling the gate to fully extend the chains thereon. Chen also testified that he had pushed at the gate to create a gap. The district judge then found as a fact that, at the material time, the chains used to lock the gate were loose enough to allow Chen (and subsequently LS) to squeeze through the gap created.

32 In my view, not only was the idea of squeezing through a gap at the gate highly suspect, the manner in which Chen allegedly squeezed through this gap was physically impossible. It was not disputed that the gate only opened outwards, and I would imagine most gates in flats open in a similar fashion. Logically, if the gate only opened outwards, it was ridiculous how the appellant, by pulling the gate from inside the flat, and Chen, by pushing the gate from outside, could create a gap large enough for Chen to squeeze through. No matter how loose the chains around the gate might have been, since Chen was standing on the outside of the gate, his action of pushing the gate inwards would make it impossible to create any gap. Instead, it would have closed the gate shut. As such, it was impossible that Chen could have squeezed his way into the flat in the way he described. The logical way to create such a gap, provided that the chains were loose enough, would be for Chen

to pull the gate, and for the appellant to push the gate. Although Chen's testimony was sworn in Mandarin, I believe that such a material inaccuracy in his testimony, which was crucial to the question of whether he had entered the appellant's flat, could not simply be attributed to inadvertent mistakes made in translation. The Prosecution's case was gravely undermined by the inherent improbabilities in these facts before me.

33 There was also little evidence to prove that the chains were loose on the material dates. Although the district judge was entitled to reject the chains admitted in evidence during the Defence's case[1] as proof of the chains that locked the gate between 26 and 27 February 2004, on the basis that these chains were found in August 2004 after the alleged offence, this did not mean that the testimony of SSgt Gan was immediately illustrative of how the gate was locked on the material dates. To begin with, SSgt Gan's observations on 12 March 2004 were likewise made after the alleged offence. Moreover, as highlighted by the appellant, SSgt Gan's testimony, that he saw three chains with padlocks on the gate, was different from Chen's testimony that there were four to five chain locks on the material dates. Using the same line of reasoning, SSgt Gan's observations on 12 March 2004 could not, by themselves, be determinative of the way the chains were used on the material dates.

34 There was also conflicting testimony as to how the chains were normally secured around the gate. I noticed that SSgt Gan observed, during his visit to the appellant's flat, that the chains could be extended such that a person could still squeeze through the gate. On the other hand, Irene and Suzie testified for the Defence that they did not think that anyone could squeeze through the gate. Contrary to the Prosecution's submissions, the district judge was not justified in preferring the evidence of SSgt Gan to Irene's and Suzie's, for the same reason that all three of them were unable to testify as to the actual events on the material dates. In addition, I took note of the fact that SSgt Gan did not actually attempt to squeeze through the gate, which could prove that all the chains securing the gate were loose, but he only made an observation that he thought it was possible for a person to squeeze through the gate. Given that SSgt Gan's evidence was based merely on observations and there was conflicting evidence, I was not inclined to take the view that the district judge took, especially since Chen's account of how he entered the appellant's flat already appeared highly improbable. With such confusing evidence, it was very difficult for me to affirm this conviction.

35 The consistent thread in Irene's and Suzie's testimony was that the appellant's other sister, Jenny Yeo ("Jenny"), wanted to keep the appellant locked in for his own protection as he was medically unwell. This was also to prevent the appellant from bringing junk back to the flat. Since the purpose of the chains was to lock the appellant in, it appeared to me to be highly improbable that the chains, or at least, the particular chain(s) used by Jenny, would be so loosely secured that a person could squeeze through a gap at the gate, as this would mean that the appellant could likewise leave the flat. Similarly, if Jenny wanted to keep the appellant locked in, it was improbable for the appellant to have the keys to the particular chain(s) used by Jenny. Notwithstanding the possibility that the appellant could have added on other chains, or might have the keys to the other chains, I would imagine that so long as one or more of the chains was tightly secured, it would be impossible to create a gap that was large enough for a man to squeeze through. The Prosecution made the suggestion that the reason for the chains being kept loose was for the appellant to escape in case of emergency. However, this suggestion flew against the fact that one of the main reasons why the appellant was kept locked in was because of his mental defects. It was therefore doubtful that Jenny would risk leaving a gap through which the appellant could leave the flat. Also, if there was a real emergency, the appellant could always ask for help through the open window or by making a phone call.

36 I would also like to add that I agreed with the district judge that Jenny would be the best

person to give an account as to how the chains were secured on the material dates. However, it must be stressed that the burden was not on the appellant to prove his innocence by proving that the chains were tightly secured on the material dates. Instead, the burden was on the Prosecution to prove that the chains were loosely secured on the material dates such that a gap could be created for Chen to enter the appellant's flat, since the nub of the Prosecution's case depended on whether Chen could enter the appellant's flat. With such doubtful evidence, it was significantly questionable whether the Prosecution had proved its case beyond a reasonable doubt.

37 I further found that Chen's account of how he and LS were offered $100 to tidy the appellant's flat was highly doubtful. Not only did I think that it was dubious for Chen to return to the appellant's flat after delivering the documents to the lawyer's office, I also could not understand why Chen would enter the flat of the appellant, a stranger, simply because he was told to do so. The fact that Chen allegedly entered the appellant's flat by squeezing through the gap, instead of asking the appellant to unfasten the locks, made the entry into the appellant's flat seem even more dubious. It begged the question as to why Chen would willingly enter the flat of a stranger in such a queer manner.

38 When the appellant asked Chen whether there was anyone to help tidy the flat, Chen's response was that there was someone who would be able to help, but the appellant must be willing to pay. Yet again, I found the fact that Chen would ask the appellant for money at this stage to be highly suspect. Chen knew for a fact that the appellant had no money, since Chen himself had to pay $24 for the taxi fares for the alleged journeys to and from the lawyer, yet Chen still asked the appellant for money for tidying the flat. Moreover, Chen's behaviour seemed irrational. Chen claimed that he had helped the appellant to deliver the documents and tidy the flat as he felt sorry for the appellant. However, in the next breath, he decided to ask the appellant for money for tidying the flat.

39 With regard to the appellant's offer of $100 to Chen for tidying the flat, Chen testified that he decided to ask LS for help and split the money with her as he could not finish the job. Once again, I found the behaviour of Chen to be irrational. Chen, knowing full well that the appellant had no money even to pay for his taxi fare, actually believed that the appellant would pay him $100 for cleaning up the flat and even decided to rope in his friend, LS, to help. When Chen was asked whether he was worried he would not be paid, his answer was simply, "I saw [the appellant] was quite pitiful." This flew against the fact that Chen was the one who actually asked the appellant for money for tidying the flat. If Chen truly felt sorry for the appellant, there was no reason for him to ask the appellant for money for tidying the flat. Chen's version of events showed him to be, at one moment, altruistic, and at the next, opportunistic. The district judge accepted Chen's explanation that as a worker, he would not ask his employer whether he had money to pay, but this did not detract from the fact that Chen already knew for a fact that the appellant had no money.

40 Finally, in my opinion, Chen's account that the appellant offered him and LS a night's stay, as well as a low rental at $80 per month per person was also riddled with improbabilities. Chen testified that after he and LS had finished tidying the flat, the appellant said that he had no money to pay them. The district judge then made the inference that, in order to appease Chen, the appellant offered Chen and LS a night's stay. Although Chen told the appellant that his passport had expired, the appellant said that it was all right. Chen then allegedly went to buy dinner for the appellant, himself and LS. To begin with, I could not understand why Chen had to buy dinner for the appellant. According to the medical reports and the testimony of Irene and Suzie, the appellant was mentally defective and incapable of taking care of himself. Hence, his meals were taken care of by welfare officers, his relatives or his maid. Irene testified that for lunch, people from social welfare would usually bring food to the appellant and for dinner, a maid would usually bring food to him. If the maid usually brought food to the appellant at night, I found it to be too much of a coincidence that on the

particular night of 26 February 2004, the maid did not bring food to the appellant, such that Chen needed to buy dinner for the appellant.

41 Chen also claimed that after dinner, he and LS spent a night in the appellant's flat on 26 February 2004. This formed the crux of the charge that the appellant harboured Chen between 26 and 27 February 2004. The district judge made the inference that the appellant offered Chen and LS a night's stay to appease them, but this did not explain why Chen and LS would accept the offer to spend the night at the appellant's flat. In the first place, Chen testified that the appellant's flat was very messy. I could not imagine that Chen, and maybe LS, having a rented place of his or her own, would actually spend a night in the appellant's messy flat, especially when the appellant was a person that Chen had met for the first time. The Prosecution offered another explanation for Chen's overnight stay at the appellant's flat, that is, the fact that Chen's lease at his place in Choa Chu Kang would be ending. However, even if Chen and LS were interested in the low rental allegedly offered by the appellant, there was no explanation as to why they had to spend a night there, since they could have moved in the next day.

42 Apart from the above, I also found that there were various inconsistencies in Chen's testimony which were material to the Prosecution's case. As mentioned by the appellant, Chen testified that it was over dinner that the appellant offered him a room at a low rental and Chen and LS decided to snap up the offer and forgo the $100 allegedly owed by the appellant. Yet, during cross-examination, Chen said that the appellant only asked him to move in on the second day, on the afternoon that Chen went to the bank, which was 27 February 2004. Furthermore, Chen testified that he and LS continued to tidy the flat the next day (27 February 2004), although he had earlier testified that he had finished the job on 26 February 2004 and was not paid for his efforts. To me, it was doubtful that Chen, not having been paid for his efforts on 26 February 2004, would continue to tidy the flat the next day.The greatest contradiction in Chen's testimony, as pointed out by the appellant, was that Chen initially claimed that he and LS spent the night in the living room, but during cross-examination, when Chen was asked where the appellant was when he and LS were tidying the flat, Chen's reply was that the appellant was in the first room where Chen eventually stayed in. Chen's inconsistency as to the part of the flat that he actually stayed in was material because, if Chen had actually spent a night in the appellant's flat, I would imagine that he would have known at his fingertips where he had slept.

43 Having observed the various inconsistencies and improbabilities of Chen's account, I believed that a conviction in this case, solely on the basis of Chen's testimony, was highly unsafe. For a safe conviction, Chen's testimony had to be compelling to the extent that it proved the Prosecution's case beyond a reasonable doubt. However, this was not the case. Instead, similar to my decision in *Khua Kian Keong v PP* [2003] 4 SLR 526 at [26], Chen's entire account lacked persuasiveness due to multiple vacillations. His account of how he entered the appellant's house was inherently improbable, and the other discrepancies further undermined the credibility of his testimony which was, unfortunately, the only evidence relied on for conviction.

44 Besides, there was also the possibility that Chen might still have an axe to grind, as he was well aware that the appellant was the one who caused him to be arrested. The possibility that Chen might have conjured up these allegations against the appellant was very real in the light of his testimony, certain parts of which seemed to be targeted at imputing the appellant with knowledge of his illegal immigration status, as he kept stressing the fact that he repeatedly told the appellant that he was an overstayer. The district judge quite rightly looked to the content of Chen's evidence. Unfortunately, in my opinion, she drew incorrect conclusions from her examination of that content. Therefore, in the light of the tenuous evidence of Chen, I could not agree with the district judge's inferences that Chen and LS had entered the appellant's house between 26 and 27 February 2004, by

squeezing through the gap at the gate. As such, the Prosecution was unable to prove that the appellant had harboured Chen between 26 and 27 February 2004 and the conviction must be quashed.

Whether the appellant's testimony should be rejected in its entirety

45 I also considered the Prosecution's submission that the appellant's evidence was riddled with inconsistencies, such that the district judge rightly decided to believe Chen and not the appellant. I had looked through these inconsistencies upon which the appellant was discredited, and observed that they were largely related to whether the appellant had knowledge that Chen was an overstayer and to the events that happened at the bank prior to Chen's arrest. These were not particularly material to whether the Prosecution had made out the *actus reus* of "harbouring". Moreover, the district judge had opined in her Grounds of Decision that there was no rule of law that the testimony of a witness must be believed in its entirety or not at all. So, notwithstanding the inconsistencies, I found that this did not naturally mean that the appellant's testimony must be rejected as a whole. I also found that the district judge, in assessing the inconsistencies in the appellant's testimony, should not have viewed these inconsistencies so seriously in the light of the appellant's mental defects, which she rightfully took into account in sentencing.

46 At this juncture, it must be reiterated that the district judge's disbelief of the appellant's testimony did not in any way lower the burden of proof on the Prosecution. The onus was still on the Prosecution to prove beyond a reasonable doubt that Chen did enter the appellant's flat on 26 February 2004 and that he spent a night there. It was not for the appellant to disprove these events. Especially where the Prosecution is relying on the sole testimony of a witness, the witness's version of events must be watertight. If not, the conviction would be extremely unsafe.

Whether adverse inferences should be drawn against the Prosecution for failing to call upon certain witnesses

47 I was not inclined to draw adverse inferences against the Prosecution for failing to call the lawyer or the lady at the office to testify, as it is beyond dispute that strict criteria have to be met before such adverse inferences can be drawn: *Khua Kian Keong v PP* ([43] *supra*) at [34]. However, by not making these witnesses available to the Defence, the Prosecution had placed the Defence in an invidious position of being unable to rebut Chen's bare allegation that he had delivered documents on the appellant's behalf to a lawyer. As a matter of prudence, the Prosecution should have either called the lawyer or the lady at the lawyer's office to testify as to whether Chen had paid a visit to their office on 26 February 2004 and had handed over some of the appellant's documents to them, notwithstanding the fact that there is no legal requirement for the corroboration of Chen's testimony (as stated clearly in s 136 of the Evidence Act (Cap 97, 1997 Rev Ed)). This was especially so in the present circumstances, where the events on 26 February 2004 were material to the Prosecution's case, at least to prove that the appellant did meet Chen on 26 February 2004.

The appeal process

48 On 26 November 2004, the appellant was sentenced to seven months' imprisonment. His sentence was ordered to take effect from his date of remand, 9 September 2004. The appellant lodged the Notice of Appeal on 3 December 2004. According to the prison authorities, the appellant's earliest date of release was 29 January 2005. There was no evidence in the records that the appellant had made any application for bail pending appeal. On 4 January 2005, a signed copy each of the Record of Proceedings and the Grounds of Decision was served on the appellant. The Petition of Appeal was then lodged on 13 January 2005, and the appeal was fixed for hearing on 1 February

2005. As a result, this appeal was rendered academic, as the appellant had already served his sentence by the time this appeal was heard by me.

49 I found this situation regrettable, to say the least. Although the records showed that the procedure for filing criminal appeals was complied with, I believe that such a situation calls for reforms to the criminal justice system so as to provide for such special circumstances. I believe that, where possible, the courts should try to prevent such situations from occurring.

Conclusion

50 This was a situation where the court was faced with an extremely unsafe conviction as the sole testimony relied on to convict the appellant was riddled with contradictions and improbabilities. Based on the above reasons, I decided to allow the appeal. Accordingly, the conviction and sentence were set aside.

Appeal against conviction and sentence allowed.

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[1]Exhibit D1