

Teo Keng Chuan v Public Prosecutor
[2001] SGHC 49

Case Number : MA 274/2000
Decision Date : 16 March 2001
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : B Ganesh (Ganesha & Partners) for the appellant; Ravneet Kaur (Deputy Public Prosecutor) for the respondent
Parties : Teo Keng Chuan — Public Prosecutor

JUDGMENT:

Grounds of Judgment

The appellant, Teo Keng Chuan ("Teo"), was charged in the district court as follows:

You, Teo Keng Chuan, Male/43 yrs are charged that you, on or about the 25th day in November 1998, at 58 Lim Chu Kang Lane 6, Singapore, being an agent, to wit, a Senior Technician in the employ of Public Utilities Board did corruptly accept a gratification of a sum of \$50 (Fifty Dollars) from one Tan Song Chee, Sole-Proprietor of Siong Ching Engineering as an inducement for doing an act in relation to your principal's affair, to wit, by not causing undue delay in installing the water meters for Siong Ching Engineering at 58 Lim Chu Kang Lane 6 and you have thereby committed an offence punishable under Section 6(a) of the Prevention of Corruption Act, Cap 241.

The facts

2 Teo was, at the material time, a Senior Technician of the Public Utilities Board ("PUB"). On 25 November 1998, the Big Metering Unit, a department in PUB which fixes big meters, attended at 58 Lim Chu Kang Lane 6 (the 'site') to fix a meter. Teo and the service crew arrived at the site in a van. The crew comprised two technicians, Mohamad Isa ("Isa") and Tay Ngak Peng ("Tay"), and two daily rated workers, Abdul Rahman bin Yaman ("Rahman") and Apps Ronald Mervil ("Ronald"). Tan Song Chee ("Tan"), the contractor for the project at the site, was present when they arrived.

3 Prior to 25 November 1998, another department of PUB had certified that the position of the pipes at the site was in order for the meter to be fixed. However, when the Big Metering Unit went to fix the meter at the site, the position of the pipes was not in order. The PUB lengthening piece was on the customer side when it was supposed to be on the PUB side. The crew then moved the lengthening piece from the customer side to the PUB side and fixed the meter.

The prosecution's case

4 The prosecution's case was that Teo had received \$50 from Tan at the site that day, whereupon Teo had directed the crew to move the lengthening piece to the correct position in order for the meter to be fixed when the matter should have been referred to another department of PUB. Therefore, the fact that the crew had moved the piece at Teo's direction was evidence of a favour shown to Tan, which stemmed from the receipt of the \$50 from Tan.

The defence

5 Teo's defence, on the other hand, was that he did not receive any money from Tan and was framed, and although he had directed the crew to move the piece, he had no knowledge at the material time that he should have referred the matter to another department. Thus, he had not shown any favour to Tan by directing the crew to reposition the piece.

The trial and decision below

6 There were various witnesses for both the prosecution and the defence in this case. The evidence was complicated by the fact that there were material inconsistencies in the evidence of several of the witnesses. There were at least three witnesses who retracted their previous statements to the Corrupt Practices Investigation Bureau ("CPIB"). There were no less than three voir dire and four impeachment proceedings conducted during the course of the trial.

7 At the conclusion of the hearing after six days of trial and after both the prosecution and the defence had tendered their written submissions, the district judge (the 'judge') convicted Teo on the charge and sentenced him to three months' imprisonment and a fine of \$50 with one day's imprisonment in default.

The appeal

8 Teo appealed against his conviction. Defence counsel contended that the judge had erred in her evaluation of the evidence, in particular in accepting the evidence of Tan, and finding that the prosecution had proven its case against Teo beyond a reasonable doubt. Counsel also submitted that the judge had erred in concluding that Teo had not rebutted the presumption raised by s 8 of the Prevention of Corruption Act (Cap 241) ("PCA"). After hearing the submissions of both the defence counsel and the prosecution, I dismissed the appeal for the reasons set out below.

The law

9 Section 6(a) of the PCA, under which Teo was charged, states as follows:

6. If -

(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, 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 and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

10 In this case, the presumption in s 8 of the PCA applied. Section 8 provides:

8. Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

11 Therefore, under ss 6(a) and 8 of the PCA, what the prosecution had to prove were the following elements (*Yuen Chun Yii v PP* [1997] 3 SLR 57 at 68 and *Chew Chew Sun v PP* [1975] 2 MLJ 58 at 59):

- (i) a gratification was paid or given to or received by Teo;
- (ii) at the material time, Teo was in the employment of the Government or any department thereof or of a public body; and
- (iii) the gratification was from a person who had or sought to have dealings with the Government or any department thereof or any public body.

12 Once the three elements under s 8 of the PCA were proven, the presumption became operative. Teo would be presumed to have received the money or gratification corruptly as an inducement or reward for doing the act in relation to his principal's affairs, i.e. directing the crew to move the piece on the site. The burden would then be on Teo to rebut the presumption on a balance of probabilities: *Yuen Chun Yii v PP* (*supra*); *Chew Chew Sun v PP* (*supra*); *Wee Toon Boon v PP* [1976] 2 MLJ 191; *PP v Yuvaraj* [1969] 2 MLJ 89; and *George s/o Joseph v PP* (MA 571/87) (unreported). In such a case, whether the presumption is rebutted is a question of fact to be determined on a case-by-case basis: *Yuen Chun Yii v PP* (*supra* at 76).

13 In this case, there was no dispute that Teo was in the employment of PUB, a "public body" within the meaning of the Act (the second element) and that Tan had dealings with this "public body" (the third element). On the facts, this appeal turned on two main issues: first, whether the judge was correct in finding that Teo had in fact received the \$50 from Tan (the first element); and second, whether the judge was correct in finding that Teo had not rebutted the presumption under s 8 of the PCA on a balance of probabilities.

(i) Whether Teo had accepted money from Tan

14 The only direct evidence on this question of fact came from Tan himself, who said that he had handed over \$50 to Teo at the site on the day in question. Teo, on the other hand, denied receiving any money from Tan. No other person saw Tan handing the money over to Teo.

15 According to Tan, at the material time when Teo and the service crew comprising Isa, Tay, Rahman and Ronald arrived at the site in a van, the service crew alighted from the van and Tan walked up to them. Isa told Tan that there were four of them. Tan had the impression that Isa wanted money and he handed \$30 to Isa. After accepting the money, Isa told him that there was another officer in the van (Teo). Tan then walked to the van which was about 20 feet away. Teo alighted from the van and stood by the side of the van. Thinking that Teo might also want money, Tan gave \$50 to Teo and Teo took the money. Nothing was said between the two men.

16 Tan claimed that he gave the money to the PUB officers as it was the market practice to do so and he was afraid that if he did

not give the money to them, they might find fault and not install the meter for him. Installing the meter was very important to Tan as he might be liable for damages for late completion if it was not installed. According to Tan, this was the first and only time he had attended such an installation. Yet, at one point in his evidence regarding what prompted him to think that the PUB officers would refuse to install the meter unless they were given 'coffee money', he said that 'normally, (he) decided based on their reaction'. He was unable to give a satisfactory explanation as to why he said 'normally' when he claimed that this was the first time he had encountered such an incident. Tan claimed that his licensed plumber, Wee Sian Guan ("Wee"), had told him that some PUB officers asked for money. Wee had been Tan's licensed plumber for the last ten years.

17 Teo, however, denied receiving any money from Tan. Teo's evidence was that on that day at the site, when he opened the door of the van, he saw Tan standing just next to the van. Tan and he did not speak to each other but merely looked at each other. Teo then walked away from the van because Isa called out to him, telling him that there was a shortage of a pipe.

18 Isa, one of the crew members, gave evidence for the prosecution. Isa had pleaded guilty to a charge of corruptly accepting a gratification of \$10 from Tan that day at the site. His evidence was that, after he had received \$30 from Tan, Tan asked if he was the supervisor there. Isa said "No, the supervisor is inside," and pointed to the van. Isa then saw Tan walk towards the van but did not know what transpired after that. The \$30 Isa received from Tan was shared among the crew members. Isa kept \$10 for himself and gave \$10 to Tay and \$5 each to Rahman and Ronald.

19 Between the evidence of Tan and of Teo, the judge chose to believe Tan rather than Teo. It was not disputed that Tan, after handing the \$30 to Isa, walked towards the van where Teo was. It was unbelievable that Tan could have walked over to the van just to look at Teo. In the circumstances, it was more likely than not that Tan had walked over to the van for the purpose of giving money to the supervisor, Teo. In my opinion, this was a reasonable inference to draw in the light of the evidence adduced at the trial below.

20 Teo's defence at the trial and on appeal was one of denial. He alleged that Tan and Wee (Tan's licensed plumber) had set him up because they were angry with him over a project at Bukit Batok. What happened at Bukit Batok was that on two occasions, when Teo's crew went down to the site, Wee's men were not around and as a result, the meter could not be fixed.

21 The judge rejected Teo's defence and rightfully so. Teo's allegation, that he had been framed by Tan and Wee as a result of their unhappiness over the Bukit Batok project, was a mere allegation not supported by any evidence.

22 There was no evidence of a boiling feud between the parties which could have motivated Tan and Wee to set Teo up. After the Bukit Batok incident, both Teo and Wee had supposedly reported the matter to Teo's supervisor, Nair. However, Nair was not called upon by the defence to testify whether Wee had complained about Teo and was angry over the Bukit Batok incident. Further, the engineer in charge of the Big Metering Unit and Teo's supervisor, Michael Toh, testified that no complaint in respect of the Bukit Batok incident was brought to him although in terms of hierarchy, he would have been made aware of any such complaint brought to the department.

23 Teo testified that Wee was angry with him over the Bukit Batok project and had insinuated that Teo's crew had tried to get money from Wee in return for their services. Fearing that Tan and Wee would set him up, Teo claimed that in the van on their way to the site at Lim Chu Kang, he had warned his crew against taking money. However, the fact that the crew did take money from Tan that day certainly undermined Teo's evidence in this regard.

24 Teo also said that, at the CPIB, he was shown two photographs taken at the site that day, one showing him about to alight from the van and the other showing Tan standing near the door of the van, indicating that there had been a set-up. The prosecution, however, denied the existence of any such photographs. None of the alleged photographs were tendered as evidence in court and I therefore disregarded Teo's evidence in this respect.

25 Most importantly, and this was crucial, Teo's defence that he was framed by Tan and Wee did not appear anywhere in his s 122(6) Criminal Procedure Code (Cap 68) ('CPC') statement or in his statements to the CPIB. Teo's explanation for the omission was that he had told this to the officer but it was not recorded for some reason, or that he had not thought of telling the recorder

so. In such circumstances, I had no hesitation in drawing an adverse inference against Teo.

26 The evidence in this case was complicated by the fact that there were various inconsistencies in the testimonies of the witnesses on both sides. At the trial below and on appeal, defence counsel pointed out several inconsistencies between the evidence of Tan and that of Wee, who was also a prosecution witness. Counsel submitted that the judge had erred in convicting Teo on Tan's evidence in the light of those inconsistencies. I noted, however, that although there were inconsistencies in the prosecution's evidence, they were not material and did not affect the central issues in this case.

27 The judge, in evaluating the evidence, acknowledged that Tan was not an honest and forthright witness and thus treated his evidence with caution. In particular, she treated his evidence with caution also, because she found that Tan himself was instrumental in initiating the corrupt transaction and played an active part by asking Isa for the supervisor and then approaching Teo, who was in the van.

28 As for Teo, it was evident that he was not an honest witness either and inconsistencies emerged at different points in his evidence. As a matter of fact, he was impeached as a witness during the course of the trial below. Three of the crew members, namely Isa, Rahman and Tay, were also impeached as witnesses.

29 Although the credit of the various witnesses had been impeached, this did not mean that all their evidence should be disregarded. The judge recognised the principle that the court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which should be disregarded: *Chng Gim Huat v PP* [2000] 3 SLR 262; *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592; *PP v Mohammed Faizal Shah* [1998] 1 SLR 333; and *PP v Somwang Phatthanaseng* [1992] 1 SLR 138.

30 I found that the judge had evaluated carefully the evidence put forward by both the prosecution and the defence and had correctly treated the evidence of the witnesses with utmost caution in arriving at the finding that Teo had indeed accepted the money from Tan. It was within the discretion of the judge to prefer the evidence of certain witnesses over others based on her evaluation of the evidence in totality and on her observation of the demeanour of the witnesses. In my mind, defence counsel had not shown on appeal how the judge had erred in arriving at this finding of fact.

31 Once it was accepted that Teo had received the money from Tan, the next question was whether Teo had corruptly received the money or gratification as an inducement to do the act in relation to his principal's affairs, i.e. directing the crew to move the lengthening piece. The presumption under s 8 of the PCA applied and the burden was on Teo to rebut the presumption on a balance of probabilities.

(ii) Whether presumption under s 8 PCA was rebutted

32 In order to rebut the presumption, the burden was on Teo to show on a balance of probabilities that he had not corruptly accepted the money from Tan as an inducement to show favour to Tan. The question of whether Teo had corruptly received the gratification as an inducement to direct the crew to move the lengthening piece on the site revolved around two main questions of fact. The first was whether Teo had in fact directed the crew to move the lengthening piece on the site and the second was whether Teo had the knowledge at the material time that he should have referred the matter to the PUB Installation Unit.

33 With regard to the first question of whether Teo had directed the crew to move the lengthening piece, there were inconsistencies in the evidence of the witnesses.

34 Teo's evidence in this regard was inconsistent at various points. His CPIB statement of 24 May 1999 stated as follows:

I recall that some of the piping was in the wrong position. As such, I asked the crew to make the necessary alterations, fit the water and turn on the water supply.

35 His subsequent evidence in court was that when he went to the meter position, he saw the lengthening piece attached to the customer side and not the PUB side where it ought to be. He then told Isa that since the lengthening piece was present, he could fix the meter and returned to the van without giving instructions as to how the meter was to be fixed. Later, however, he said that by the time he went to the meter position, the lengthening piece had already been dismantled and he did not ask the crew to make alterations.

36 Isa's evidence on this point in his CPIB statement of 24 May 1999 was as follows:

I saw that the length of the pipe was too short. Therefore, we could not fix the meter. Teo then asked me and Tay to alter the pipe. This was extra work to us as the installation of the pipes was done by the Installation Department from PUB, they did not do a good job... We could actually not alter the pipes, as it was not our job but the job of the Installation Department.

37 In court, however, Isa too changed his evidence. He said that that was no problem with the pipe and that it was not too short but that the crew, including him, moved the lengthening piece anyway. However, he did not know who had instructed the crew to move the piece. He accepted that he was in charge of the crew and that Teo was the most senior person present but maintained that he did not know who had issued the instruction to move the piece.

38 As for Tay, the evidence in his CPIB statement of 24 May 1999 was as follows:

The contractor for the pipe has installed the pipe position wrongly and Teo Keng Chuan had asked us to help him do some changing of the position of the pipe. This is not one of our duties but as it was a small problem and something that we could do, we helped him to change the position of the pipe before fitting the meter.

In court, however, Tay's evidence was that the pipes were not in the wrong position but were just not fastened properly.

39 On the issue of whether Teo had directed the crew to move the lengthening piece, it was clear that what Teo, Isa and Tay had said in their CPIB statements were materially inconsistent with their testimonies in court. The credit of all three of them was impeached on this basis and the relevant parts of their CPIB statements were admitted as evidence under s 147(3) of the Evidence Act (Cap 97).

40 The final position of the defence in the trial below was that it was Teo who had directed the crew to move the lengthening piece. Coupled with the relevant parts of the CPIB statements admitted in evidence under s 147(3) of the Evidence Act, the judge found as a fact that Teo had directed the crew to move the piece. I saw no reason to disturb the finding of the judge on this point.

41 The next question to be considered was whether Teo knew at the material time that instead of moving the lengthening piece to its correct position at his own initiative, he should have referred the matter to the Installation Department of PUB. In this regard, Teo claimed that, at the material time, although he had directed the crew to move the lengthening piece, he did not know that the move should have been done by the Installation Unit as there was nothing in the instruction manual prohibiting this. Moreover, he had never encountered a similar situation before. The move was thus not evidence of any favour shown to the contractor, Tan.

42 Clear evidence was led to the effect that, if the lengthening piece was required to be moved for purposes of fixing the meter, such a move was not within the job scope of Teo's unit, the Big Metering Unit. Should such a scenario arise, the service van crew was to report the matter to the Senior Technician who would in turn report it to the Installation Unit. The Installation Unit would then get the licensed plumber to remove the piece. As a matter of checks and balance, it was PUB's practice that the person who laid and approved the pipes ready for fitting with the meter was different from the person who fitted the meter. The

officers from the Big Metering Unit and the service crew were not allowed to move the piece and alter the position of the pipes. This rule was not documented but was disseminated through briefings.

43 The judge rejected Teo's evidence that he had no knowledge that he should have referred the matter to the Installation Unit and I agreed entirely with her finding. The technicians Isa and Tay were aware that moving the piece was outside the scope of their duties. It would be incredible if, as a Senior Technician who supervised the crew, Teo did not know what was known to his crew members. I found it hard to believe that having been with PUB for 23 years and having joined the Big Metering Unit since 1990, Teo did not know of the proper scope of the duties of the Big Metering Unit.

44 Having found that Teo did in fact direct the crew to move the lengthening piece, knowing that the proper procedure was to refer the matter to the Installation Unit of PUB, it was clear to me that he had failed to rebut the presumption in s 8 of the PCA on the required standard of proof, i.e. balance of probabilities.

Conclusion

45 On the facts of the case and in the light of the evidence, I was of the view that a connection had been established between the money received from Tan and Teo's act of directing the crew to move the lengthening piece, i.e. Teo's act was a favour to Tan stemming from the gratification received. The elements in s 8 of the PCA had been proven beyond a reasonable doubt and the failure of Teo to rebut the presumption in s 8 meant that his conviction must stand.

46 This case revolved largely around an evidential exercise. The witnesses in this case were not honest as was evident from the numerous inconsistencies in the evidence as well as the impeachment of the various witnesses, including the appellant, Teo, himself. Even the evidence of the main prosecution witness, Tan, had to be treated with caution. The judge had applied her mind to these evidential matters and had come to findings based on her assessment of which parts of the evidence were true and which were not. In my view, objectively, it could not be said that the findings of fact below were clearly against the weight of the evidence and I would not disturb the findings.

47 As for Teo's sentence, three months' imprisonment and a penalty of \$50 with one day's imprisonment in default was not manifestly excessive. A custodial sentence was justified in this case as the corrupt transaction involved a public servant, of whom the highest standards of integrity was expected.

48 In the premises, the appeal was dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Yong Pung How

Chief Justice

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