

Lim Ek Kian v Public Prosecutor
[2003] SGHC 58

Case Number : MA 313/2002
Decision Date : 18 March 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Tan Bar Tien and Winston Quek Seng Soon (B T Tan & Company) for the appellant; Sia Aik Kor (Deputy Public Prosecutor) for the respondent
Parties : Lim Ek Kian — Public Prosecutor

Criminal Law – Offences – Property – Forgery for the purposes of cheating – Whether all the elements were made out – Whether the requisite mens rea was present – Penal Code (Cap 224) s 468 read with s 415, s 24.

Evidence – Witnesses – Impeaching witnesses' credibility – Whether evidence of past lies affect credibility – Whether questions to find such examples of past lies desirable.

1 The appellant ("Lim") was convicted on a charge of forgery for the purpose of cheating under s 468 of the Penal Code (Cap 224). The maximum punishment for this offence is imprisonment for up to seven years or a fine, or both. He was sentenced to 12 months' imprisonment and appealed against both his conviction and sentence. I dismissed both appeals and now set out my reasons.

Background

2 Lim was the managing director of JTA Motors Pte Ltd ("the Company"), which was then the Singaporean distributor for Skoda cars. On the evening of 22 January 2002, the complainant, one Evelyn Lai ("Evelyn"), entered into an agreement with the Company to purchase a Skoda car for \$69,700 under a guaranteed COE package.

3 Evelyn was attended to at all times by the Company's salesman, one Trevor Koh ("Trevor") and did not have any contact with Lim. Evelyn had to make a down-payment of 30% of the purchase price of the car, which she paid for in the following manner:

- (i) Credit card payment of \$4,000;
- (ii) Cheque payment of \$8,078; and
- (iii) A trade-in of her PARF/ COE rebate certificate, which she had obtained from scrapping her previous car, worth \$9,237

4 Evelyn gave evidence that she had instructed Trevor that the PARF/ COE rebate certificate was to be reserved to her name, that is, the rebates were to be used only to offset the costs of registering her new car. This was corroborated by Trevor. Trevor also testified that this instruction was communicated to Lim by him.

5 Trevor then asked Evelyn to sign a transfer form for the rebates, as well as to hand her Identity Card to the Company for the processing of paper work. Thinking that it was necessary in order that her instruction be carried out, she signed on the portion of the form reserved for the "Transferee". All these documents were handed over to Lim that evening.

6 Lim noticed that Evelyn had signed on the "Transferee" portion of the transfer form. He

proceeded to get a fresh transfer form, on which he entered the name and details of Evelyn under the *Transferor* portion. Lim also forged Evelyn's signature as "Transferor". He then entered the details of one Jason Lee, ("Jason"), in the *Transferee* portion, and forged Jason's signature there as well. Jason was another of the Company's customers and was due to have his car registered on the following day.

7 The following day, Lim presented the forged transfer form with both Evelyn's and Jason's identity cards at the Land Transport Authority ("LTA") to one Toh, the officer on duty at the time. On the strength of the transfer form and the identity cards, Toh issued a certificate transferring the value of the rebates from Evelyn to Jason. This certificate was then used by Lim towards payment of the registration charges for Jason's car.

8 This forgery of the transfer form, coupled with its presentation to Toh in order that the rebates be transferred from Evelyn to Jason, formed the subject matter of the charge.

9 It was not disputed that Jason had had no knowledge of this entire series of events. It was only on receiving a letter from the LTA that he was aware of the rebates' transfer. Furthermore, it emerged at trial that Jason's own PARF/ COE rebates had been transferred to three other parties without his knowledge or approval. In each case, his signature had been forged on the transfer forms.

10 Subsequently, Skoda terminated its distributorship with the Company, which went into receivership. Evelyn only found out about the unauthorised transfer of her rebates from a letter sent by the LTA. She did not get the car she ordered and lost substantially all of the money she paid to the Company, save for \$4,000 which was refunded to her by the credit card company.

The defence

11 Lim's defence was basically that he had not known of Evelyn's instruction to Trevor that the rebates be reserved only for use in paying off the costs of registering her car. Instead, it was contended that, since Evelyn had deposited the rebate certificate with the Company as part of the down-payment, the Company had become the beneficial owner of the rebates and could deal with it as it chose. It was also argued that Evelyn's instruction was not found in the sales agreement with the Company and thus her evidence on this should have been disregarded due to the parol evidence rule in ss 93, 94 of the Evidence Act (Cap 97).

12 While conceding that he had forged both Evelyn's and Jason's signatures on the transfer forms, Lim alleged that his actions were not dishonest nor fraudulent under the Penal Code, since they had been in the belief that he was entitled to deal with the rebates as he wished, in the Company's name. He also argued that his actions had caused no damage to either Toh, the person deceived, nor the LTA and thus did not fall under the second limb of cheating as defined in s 415 of the Penal Code.

The decision below

13 The district judge found that Evelyn had communicated her intention to retain the benefit of the rebates for her own use, accepting the evidence of both Evelyn and Trevor in this respect. He further found that this was neither uncommon nor repugnant to the terms of the sales agreement such as to evoke the parol evidence rule.

14 He also found that Lim had known of Evelyn's intention, and that he was both dishonest

and/or fraudulent in his actions for the purposes of the offence under s 468 read with s 415 of the Penal Code. In the alternative, he found that Lim's actions also satisfied the second limb of s 415, as harm had been caused to the reputation of the LTA.

The appeal against conviction

15 It seemed clear to me that the crux of this case lay in Lim's awareness of Evelyn's instruction to retain the use of the rebates solely for the purchase of her new car. The district judge found on the evidence that Lim was aware of the instruction, based mainly on the evidence of Evelyn and Trevor.

16 Lim's attack on this finding proceeded on two related fronts: He contended first that Evelyn's instruction ran contrary to commercial sense and would not have been agreed to by him if he had known. It was also alleged that Trevor's evidence should be disregarded as he was shown to be an unreliable witness.

17 Secondly, it was argued that Evelyn's instruction constituted a term of the agreement between her and the company. As such, it should have been documented in the sales agreement. Since the sales agreement was silent on the existence of her instruction, it was contended that the parole evidence rule applied and her evidence in court on this aspect should not have been accepted.

18 Mr Tan Bar Tien, who was Lim's counsel, put forth his case with conviction. However, after a careful perusal of the evidence, I was convinced that the appeal was without merit and must be dismissed.

Whether the district judge erred in accepting Evelyn's and Trevor's evidence

19 It is trite law that an appellate court should be slow to disturb a trial judge's finding of fact on the credibility of a witness, especially when they are based on his demeanour during trial: see *Lim Ah Poh v PP* [1992] 1 SLR 704, *Ang Jwee Herng v PP* [2001] 2 SLR 474.

20 The burden on Mr Tan here was a heavy one, and he failed to discharge it. I found Evelyn's instruction neither illogical nor unreasonable. It is clearly stated on the face of the rebate certificate that the use of the rebates was limited to the registration of a new car in the name of the holder of the certificate. Without an explicit transfer of the rebates by her, it remained her property in law. It was good consideration as payment for her new car since it could help defray the costs of registration which the company had to bear. This, however, surely did not mean that the company was free to deal with it without her consent.

21 It was argued strenuously that depositing the certificate as part of the down-payment showed Evelyn's intention for the company to become beneficial owner of the rebates. Mr Tan also pointed to Evelyn's admission in the trial below where she agreed that the value of the rebates belonged to the company. I found this argument to be neither here nor there. The only issue here was whether Evelyn *authorised* the transfer of her rebates, and the evidence clearly showed that she did not.

22 As to Trevor's evidence, I was in agreement with the district judge who found him to be a coherent and credible witness. Much was made of Trevor's admission during the trial that he had lied in the past to his clients. I failed to appreciate how this would affect his credibility as a witness. A distinction needs to be made between an untruthful person and an untruthful *witness*. A person who has lied in his personal capacity is not *ipso facto* a lying witness. A court of law need only be

concerned with determining the latter.

23 I also noted that details of Trevor's past untruths had come from his answers to questions posed to him during cross-examination. The line of questioning had no connection whatsoever with the material aspects of the case. While counsel are free to direct the course of their questioning, I think that they should refrain from directing irrelevant questions to the witness in "fishing expeditions" to damage his credibility. Such an approach unnecessarily distracts the court from determining properly the weight to be attached to relevant evidence given by the witness.

Parol evidence rule

24 Little needed to be said here. It sufficed for me to note that I found Lim's contentions on this ground to be of no merit. The sales agreement was not a clear and unambiguous documentation of the parties' obligations such as to attract the application of the rule. In addition, the *status quo* was that ownership of the rebates belonged with Evelyn, as clearly stated on the certificate. Applying the parol evidence rule would actually be adverse to Lim's case.

Whether the elements of the offence were satisfied

25 Having found that Lim had had knowledge of Evelyn's instruction, I had no doubt that the charge against him was properly made out. Section 468 PC states:

Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished ...

Forgery is defined in s 463 PC as

Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

26 Lim had forged both Evelyn's and Jason's signatures on the transfer forms. His intention in doing so was to deceive the LTA into transferring the rebates to Jason. He himself admitted that he knew the LTA would not transfer the rebates without seeing both of their signatures on the transfer forms. This was irrespective of whether he knew of Evelyn's intention to retain use of the rebates or not. I had no doubt that forgery was proven.

Whether this forgery was done for the purposes of cheating

27 Cheating is defined in s 415 Penal Code as:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

There are two alternative limbs to this offence. The first limb is that the deception practised must have been with the fraudulent or dishonest purpose of causing the deceived person to deliver, or consent to a retention of, property. The second limb is that there must have been an intention by the

deceiver to cause the deceived person to do or omit to do something, which does damage to the person deceived.

28 The trial judge found that Lim's actions satisfied both of these limbs. I agreed with this finding. With regard to the first limb, the only issue was whether Lim possessed the necessary *mens rea* – that of doing his actions dishonestly or fraudulently.

29 Dishonestly and Fraudulently are both defined in the Penal Code, under ss 24 and 25 respectively.

"Dishonestly".

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.

"Fraudulently".

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

30 In attempting to get Evelyn's rebates transferred away with the full knowledge of her intention to retain the use of them, Lim clearly intended to cause wrongful loss to her, within the meaning of s 24. Even if I accepted his ignorance of her instruction, Lim had still forged Jason's signature on the transfer form. Jason would not have been eligible for the rebates to be transferred to him without personally signing on the transfer form. Thus, Lim had also caused wrongful gain to Jason. Lim's actions satisfied the requirements of cheating under the first limb of s 415 and, as a result, I found him guilty of the offence he was charged with.

31 It was unnecessary to deal with his liability under the second limb of s 415. I found Lim's actions here to have compromised the reputation and integrity of the LTA's system of rebates transfer. This would constitute the damage required under the second limb of s 415. Hence, the district judge was correct to hold that Lim was liable under this limb as well.

32 Having reached the conclusions set out above, I was of the opinion that the appeal against conviction must be dismissed.

Appeal against sentence

33 In passing sentence, the district judge noted several aggravating factors in this case. The fraud was a serious one and had adversely affected confidence in the integrity of the system of vehicle registration in Singapore. It was also practised on a statutory body. The sum involved was relatively large, at \$9,237. In addition, Lim had abused the position of trust he was in vis-à-vis the car buyers.

34 In his appeal, Lim contended that the sentence was manifestly excessive as the offence had not been pre-meditated, the sum of money was not large and actually belonged to the Company as part of the down-payment and that he had not benefited financially from the offence. It was also argued that Evelyn's loss came solely as a result of the breach of the sales agreement by the company, and was not caused by Lim's actions.

35 I found all these contentions to be without merit. The courts have always treated offences under s 468 PC seriously, and past cases have adopted a 12 month sentence of imprisonment as a benchmark.

36 It was also not true that Lim's actions did not benefit him financially. While he may not have derived a direct benefit, his actions enabled him to continue his business and fulfil the Company's obligations. It was also very clear to me that Lim's actions were the sole reason for Evelyn's loss.

37 Lim's actions had adversely affected public perception of the system of rebates transfer and also of the car selling industry in general. His cavalier practice of transferring PARF/ COE rebates between his customers without their authorisation was an unacceptable form of behaviour in the commercial arena, showing a lack of business ethics and blatant disregard for his customers' welfare. It was suggested before me that it was an industry practice for the customer's rebates to be dealt with as the company's property once deposited as down-payment, irrespective of whether a transfer had been authorised or performed. Whether or not this is true, I think it is necessary for a reminder to be sent that the law takes a severe view of such practices and offenders will be dealt with seriously. Property rights and the systems set up to protect them must be respected.

38 I was therefore of the opinion that the sentence of 12 months' imprisonment was an appropriate one for Lim, and accordingly dismissed his appeal against sentence.

Conclusion

39 For the reasons stated above, I dismissed the appeals against both conviction and sentence.

Appeals dismissed.

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