

Public Prosecutor v Jaykumaran s/o Saminathan Retinam
[2003] SGHC 45

Case Number : CR 4/2003, DAC 1262/2002

Decision Date : 03 March 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : —

Parties : Public Prosecutor — Jaykumaran s/o Saminathan Retinam

Criminal Procedure and Sentencing – Criminal revision – Review of conviction – High Court called for records of proceedings to review case – Whether accused should have been convicted of charge – Criminal Procedure Code (Cap 68) ss 256, 266 & 268

1 The accused, Jaykumaran s/o Saminathan Retinam ("Kumar") was jointly charged with his friend, Sahadevan s/o Gundan ("Sahadevan") for committing robbery with hurt of \$50 under s 394 of the Penal Code (Cap 224). Both of them were convicted of the charge and sentenced to six years' imprisonment each by the district judge.

2 Pursuant to my powers under s 266 of the Criminal Procedure Code (Cap 68), I called for and examined the records of proceedings in the district court, in respect of Kumar.

3 Briefly, the case was as follows : The victim, Vellaikkannu Pandi ("Pandi") was an illegal immigrant offender, who had been issued a special pass by the immigration department. It was his evidence that in the early hours of the morning of 8 January 2002, he had met Kumar and Sahadevan outside a 'Cheers' outlet at Blk 291, Yishun Ring Road. After chatting for a while, both of them left him at the compound wall outside the 'Cheers' outlet and went to the side entrance of the outlet. They returned shortly afterwards and Sahadevan asked Pandi how much money he had with him. When Pandi replied that he had no money, Kumar spoke to him in a very harsh tone "big brother is asking, why don't you hand over your money". Kumar then moved off a few metres away and left Sahadevan and Pandi alone. Pandi alleged that Sahadevan robbed him of \$50 and slapped him twice on the cheeks. Sahadevan also took what turned out later to be a copy of Pandi's special pass. Pandi testified that he was advised by a passer-by to call the police and he did, using the public phone located at the side of the 'Cheers' outlet. When he returned to where Sahadevan and Kumar were previously, he found only Sahadevan there. He pleaded with Sahadevan to return his special pass to him. At this point in time, Sahadevan took out a lighter, burnt the copy of the special pass and threw its remains over the compound wall.

4 Both Sahadevan and Kumar denied the allegations. Sahadevan claimed that he had taken a number of alcoholic drinks with Kumar that night and had dozed off on the compound wall. He further claimed that Pandi came up to him and threatened to 'finish him off'. He was afraid and rushed into the 'Cheers' outlet to call the police. While he was waiting inside the store for the police to arrive, someone came from outside and pushed him, causing him to fall outside the store. As for Kumar, he claimed to have left shortly after chatting with Sahadevan on the compound wall and did not know of the alleged altercation between Sahadevan and Pandi.

5 In reviewing the case, I found that Pandi's credibility was affected to a large extent by the many inconsistencies between his first information report and his evidence in court. It followed that his evidence should have been placed under greater scrutiny, especially when the prosecution's case rested primarily on his evidence that it was Sahadevan who had robbed him of \$50 and slapped him.

6 In relation to the copy of the special pass, there was no evidence to corroborate that it had been burnt by Sahadevan or that it even existed at all. Since the evidence on this point was rather

equivocal, any reservations as to whether the copy of the special pass had indeed been burnt by Sahadevan should be resolved in favour of both accused, since the prosecution bore the burden of proof. Taking into account the surrounding circumstances and the need to place a greater scrutiny on Pandi's evidence, the failure to recover the \$50 from either Sahadevan or Kumar further weakened the prosecution's case.

7 Furthermore, by Pandi's own account, there was a passer-by who was there all the while, being the only one at the scene that night other than himself, Sahadevan and Kumar. This passer-by was the one who had advised him to call the police and who had pushed Sahadevan onto the ground. This was corroborated by Sahadevan's own evidence and the still photographs from the CCTV recording at the 'Cheers' outlet. Three of the still photographs which were admitted into evidence showed chronologically, a man in a vertically-striped shirt with his hand on Sahadevan's shoulder at the entrance of the outlet, Sahadevan on the ground and the same man in the vertically-striped shirt talking to the police. As such, contrary to the trial judge's view, the passer-by was very much a material witness. Since he was at the scene and had, apparently, observed the entire incident, he would have been able to witness Sahadevan slapping Pandi. The failure on the part of the prosecution to call such a material witness to give evidence entitled me to draw an adverse inference against the prosecution under s 116(g) of the Evidence Act.

8 In my opinion, the trial judge erred in finding that the prosecution had proven the case against Sahadevan and Kumar beyond a reasonable doubt. At this juncture, I should add that I had previously heard Sahadevan's appeal and allowed it, setting aside his conviction and sentence.

9 For these reasons, I am of the view that Kumar's conviction under s 394 of the Penal Code could not be sustained and should be quashed; and I do so order in exercise of my powers of revision under s 256 of the Criminal Procedure Code read with s 268(1), without calling for a further hearing.

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