

Cheung Kan Lam v Public Prosecutor
[2003] SGHC 26

Case Number : MA 267/2002
Decision Date : 18 February 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Chung Ting Fai (Chung Tan & Partners) for the appellant; Anandan Bala (Deputy Public Prosecutor) for the respondent
Parties : Cheung Kan Lam — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Whether trial judge erred in assessment of evidence – Whether finding unsupportable or against weight of evidence

1 The appellant Cheung Kan Lam ('Cheung') faced two counts of housebreaking with intent to commit theft in furtherance of a common intention, which was an offence under s 457 read with s 34 of the Penal Code (Cap 224). He was jointly tried with his accomplices Samuel Lam Kong Shan ('Sam'), Lam Chi Yu ('Lam') and Yiu Pun Hwa ('Yiu'). The three accomplices faced a total of three housebreaking charges, of which only two

were committed with the appellant in furtherance of their common intention. District Judge Audrey Lim convicted Cheung along with his accomplices. He received a sentence of three years' imprisonment for each charge with the sentences to run consecutively. I dismissed Cheung's appeal against his conviction and sentence. I now give my reasons.

Church break-ins

2 In February 2002, there was a series of church break-ins, all of which occurred at night. Christ The King Catholic Church located at Ang Mo Kio was burgled on 10 February, followed shortly by St Teresa Church at Bukit Purmei Road on 13 February and, lastly, by Lighthouse Evangelism Church at Tampines Street 82 on 17 February. Substantial sums of money were stolen from each church.

The arrest

3 On 4 April 2002, Cheung and his accomplices were arrested along with one Chan Fook Ming ('Chan') in connection with a spate of burglaries on private residences occurring between December 2001 to early April 2002.

Lam's statements and site visit

4 During the course of investigations, Lam admitted to being a courier for stolen goods but denied committing housebreaking. However, in his statement of 24 April 2002, Lam confessed that he had not been involved in the residential burglaries but had actually participated in church break-ins. This was the first time the police became aware that the accused persons were involved in the church break-ins.

5 Several further statements were taken in which Lam unequivocally implicated Sam, Cheung and two other persons, Ah Mong and Ah Ti. In one of them, Lam indicated the order in which the churches

were broken into and was able to provide an extremely accurate sketch map of the location of Lighthouse Evangelism Church with its surrounding landmarks. He told the police that Cheung was only involved in the break-ins of two of the churches while the other accused persons had taken part in all three break-ins. Cheung had refused to take part in the third break-in because of a disagreement with Ah Mong. In another statement, Lam gave a fairly detailed explanation of the role each accused played in the break-ins.

6 On 25 April 2002, Lam led a party of four police officers to the sites of the churches broken into. Though he did not know the exact names of the churches, Lam was able to direct the police to them by referring to specific landmarks.

7 Subsequently, Cheung was charged with the first two break-ins while the other accused persons were charged with all three. At trial, Lam alleged that the police had fabricated the statements and he had signed them involuntarily after having been beaten up. At the end of a lengthy voir dire, the trial judge held that the statements had been given voluntarily and admitted them accordingly.

Supporting evidence

8 In addition to Lam's confessions, the prosecution highlighted the following:

(a) All four accused persons had been in Singapore at the time the churches were broken into. In fact, they had made multiple trips to Singapore on a number of occasions between December 2001 and March 2002, save for Lam who only came after February 2002. The prosecution alleged that these visits were sinister in purpose as they were for the accused persons to familiarise themselves with potential housebreaking sites in Singapore.

(b) From 28 December 2001 to 3 April 2002, large sums of money were remitted to the bank accounts of Sam, Cheung, and Cheung's wife. All remittances were made in cash. On 18 February 2002, soon after the third church break-in, two remittances totaling \$56,000 were made to Sam's bank account in Hong Kong. The applicant stated in the receipt was Cheung. The prosecution alleged that the remittances comprised the proceeds from the burglaries.

(c) Sam had been in possession of a rented white Toyota Corolla at the time of the offences. In a statement, Lam described Sam as driving a white car for the housebreaking committed on 10 and 13 February.

The defence

9 All four accused persons denied committing the offences. Cheung's defence was that he had come to Singapore for the purpose of sightseeing and to look for suitable sites to set up a food business. He claimed there was no pre-arrangement between the accused persons on when they were to be in Singapore. It was pure coincidence that he often arrived and left Singapore at the same time as the other accused persons. As for the remittances, he denied they were an attempt to siphon away proceeds from the burglaries. He claimed ignorance of the remittances made in his name and said that

Sam had used his name without his permission. The remittances to his wife's and his own bank accounts came from money that he had brought from Hong Kong to Singapore and were for his family's expenses.

Decision of the court below

10 Having ruled that Lam's statements were admissible, the trial judge found them to be true and reliable. In doing so, she considered that there was no reason for Lam to falsely implicate the other accused as Lam admitted that he bore no grudges or animosity towards them at the time the statements were recorded. While there were some discrepancies in the statements, the trial judge found that they were not fatal to the prosecution's case.

11 The trial judge also considered the other supporting evidence which led to the inference that they were involved in the commission of the church break-ins. She rejected the claims that the accused persons had been in Singapore at the same time on numerous occasions as the result of a series of coincidences. She found it to be extremely unlikely that Sam, Cheung and Lam could stay in the same flat on most occasions but each did not know what the others were doing in Singapore despite meeting up regularly for meals and nightclubbing. As for the remittances, she rejected Sam's claim that the moneys comprised the winnings from football bets. She noted that he must have been 'a very lucky person to have won some \$85,000 throughout this period', and that despite these huge winnings, he was not able to name a single game on which he won, nor could he name any football team other than Manchester United. Her analysis of the testimonies of each of the accused persons showed them to be 'unreliable and inherently contradictory'.

12 In relation to Cheung, the trial judge found him to be a dishonest and unreliable witness who was extremely evasive and hesitant in answering questions and often gave unsatisfactory answers on material issues. Though he claimed that he had come to Singapore to look at sites for setting up a food business, he could give no details of the sites visited nor could he satisfactorily explain why he had to stay in Singapore for 22 days in January to look at a mere two to three sites. As such, the trial judge found this whole story about setting up a food business to be a mere sham to conceal the fact that he had actually come to look for potential sites not for a food business, but for housebreaking.

13 As for the remittances made to the bank accounts of his wife and himself in Hong Kong, the trial judge rejected Cheung's 'lame explanation' that he had to remit the money for his wife's and children's expenses. Having admitted that he had set aside a sum of money in Hong Kong for these expenses prior to his trip to Singapore, there was no reason for him to bring money to Singapore only to remit them back to Hong Kong. Cheung was also unable to provide a satisfactory answer as to why he had remitted the money using someone else's name. The suspicious manner in which he went about remitting money led the trial judge to conclude that he was trying to cover his tracks with regard to the movement of money out of Singapore.

14 On the basis of the statements made by Lam, the supporting evidence and the 'unconvincing and unsubstantiated reasons' of the accused persons for their presence in Singapore on all the occasions, the trial judge found that the prosecution had proved its case beyond reasonable doubt.

The appeal

15 The sole question in this appeal was whether the trial judge had erred in her assessment of the evidence. After perusing the grounds of decision, I was of the view that the appeal was without merit. It is trite law that an appellate court will not overturn findings of fact unless they can be shown to be against the weight of evidence: *Public Prosecutor v Azman bin Abdullah* [1998] 2 SLR 704. There was nothing on record to indicate that the district judge's findings were unsupportable or against the weight of the evidence adduced. On the contrary, the weight of evidence was clearly against the appellant.

16 I was of the view that the trial judge was correct in holding that Lam's statements had been made voluntarily. Given that the statements were admissible, the conviction could have been sustained solely on the confession of Lam, a co-accused: *Chin Seow Noi & Ors v Public Prosecutor* [1994] 1 SLR 135 and s 30 Evidence Act (Cap 97). In addition, a retracted confession could still be relied upon for the truth of the facts therein, without the need for corroboration: *Yusof bin A Samad v Public Prosecutor* [2000] 4 SLR 58. As such, the trial judge was entitled to find the discrepancies in Lam's statements to be immaterial and to use them as a basis for convicting Cheung.

17 The reliability of those statements was supported by the fact that it was consistent with the other evidence. The fact that the accused persons were all in Singapore at the material time, the large remittances made shortly after the burglary and the rental of the white car constituted circumstantial evidence which, when viewed in totality, supported the inference that the accused persons had committed the offence in the manner described in the statements. On the other hand, the testimonies of the accused persons, Cheung included, were filled with material inconsistencies. Cheung's explanations for his conduct were tenuous at best. As such, the trial judge could not be faulted for concluding that Cheung was a dishonest and unreliable witness.

Conclusion

18 In light of the above, I dismissed the appeal against conviction. No submissions were made on sentence nor were any mitigating factors put forward. In any case, I was of the view that the sentence was appropriate and accordingly also dismissed the appeal against it.

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