Tan Bock Huat v Public Prosecutor
[2001] SGHC 59

Case Number	: MA 301/2000
Decision Date	: 26 March 2001
Tribunal/Court	: High Court
Coram	: Yong Pung How CJ
Counsel Name(s)	: Peter Yap (Peter Yap & Co) and Kertar Singh (Kertar & Co) for the appellant; Ong Hian Sun and Han Cher Kwang (Deputy Public Prosecutors) for the respondent
Parties	: Tan Bock Huat — Public Prosecutor

JUDGMENT:

Grounds of Judgment

The appellant, Tan Bock Huat, was convicted after a trial by district judge See Kee Oon, of one charge of corruption with common intention punishable under s 5(b)(i) of the Prevention of Corruption Act (Cap. 241) read with s 34 of the Penal Code (Cap. 224). He was sentenced to ten months imprisonment. He appealed against the conviction and the sentence imposed.

After hearing the submissions of both the counsel for the appellant and the DPP, I dismissed both appeals. I now give the reasons for my decision.

The charge

2 The charge, as amended by the prosecution at the close of the prosecutions case, read:

> You, Tan Bock Huat, (Male/48, NRIC S0123096D) are charged that you, on a day in March 1998, at a coffee shop along Eunos Crescent, in Singapore, together with one Tan Wah and in the furtherance of the common intention of both of you, did corruptly offer one Chee Han Boon Michael, a gratification of a sum of $15,000 (fifteen thousand dollars), as an inducement to assume criminal liability for yourself for an offence under s 5(1) of the Employment of Foreign Workers Act (Cap 91A), for the illegal employment of a total of 4 workers at a work site in Bishan Street 13, and you have thereby committed an offence punishable under s 5(b)(i) of the Prevention of Corruption Act (Cap 241) read with s 34 of the Penal Code (Cap 224).

The offence carries a fine not exceeding $100,000 or imprisonment for a term not exceeding five years or both.

The facts

3 The largely undisputed background facts were as follows. The appellant and Tan Wah ("Tan") were both renovation subcontractors at the material time. The appellant subcontracted a project at Bishan using the name of Tans construction company. With Tans permission, the appellant also used the latters company letterhead for correspondence. Tan was not involved in the day to day operations at the work site which was under the appellants control.

4 Tan "lent" the appellant twelve Thai workers for the project. They were arrested on 19 December 1996 as they turned out to be illegal immigrants. Another five Malaysian workers were also arrested at the work site on the same day. The Malaysians were in turn referred to the then Ministry of Labour (MOL). MOL subsequently released the five Malaysians whilst they conducted their investigations. They returned to the site and continued to be employed there. MOLs investigations however, did not keep pace with the investigations conducted by the police in relation to the twelve Thai workers.

5 Prior to 19 December 1996, an arrangement was made between Tan and one Michael Chee ("Chee") whereby Chee was to "take the rap" or to act as the "Tua Pek Kong" and assume responsibility in the event of any charges for employment of illegal Thai workers. From October 1996, Tan paid various sums of money to Chee amounting to $11,000. In addition, he paid Chee a further $8,000 after the arrest of the workers.

6 After the arrests, Tan introduced Chee to the appellant as the "Tua Pek Kong". Tan agreed to pay Chee about $20,000 for acting as the "Tua Pek Kong" with regard to the arrested workers. Initially, the appellant did not know about this payment arrangement. Nevertheless he agreed to assist in the plan and briefed Chee about the nature of the work done by the seventeen foreign workers. He also brought Chee to the site so that the five Malaysian workers could identify the latter as their boss. Tan told Chee to say that the appellant was engaged as a foreman at the site. During the investigations, the appellant also stated that he was their supervisor.

7 Chee was subsequently charged by the police under s 57(1)(e) of the Immigration Act (Cap 133) for illegally employing the twelve Thai workers. He pleaded guilty and was sentenced to a total of fourteen months imprisonment. He completed serving his sentence in January 1998. Sometime in February 1998, after Chees release from prison, MOL preferred five charges against him in relation to the employment of the Malaysian workers. Chee then realised that the MOL charges were still outstanding. At the same time, the appellant was charged with abetting Chee in the commission of those offences.

8 Subsequently, on a day in March 1998, Tan, Chee and the appellant had a discussion at a coffee shop in Eunos with the intention of resolving the outstanding MOL charges. Chee agreed to accept $15,000 for being the "Tua Pek Kong" in respect of the charges. However, he later changed his mind in court and denied being the employer of the five Malaysian workers. Further investigations were then conducted, leading to the present corruption charge preferred against the appellant.

9 As a result of these further investigations, Tan was also charged with and had earlier pleaded guilty to various offences including two corruption charges relating to the illegal employment of seventeen workers. A charge of corruptly offering Chee a sum of $15,000, in furtherance of the common intention of Tan and the appellant, as an inducement for assuming criminal liability for the illegal employment of the five Malaysian workers, was also taken into consideration for the purposes of sentencing. Tan was sentenced to an aggregate of twenty-six months imprisonment, which he is currently serving.

Evidence adduced by the prosecution

10 Tan testified that he was not aware of the existence of the five Malaysian workers until after their arrests. He subsequently realised that they were employed by the appellant. When Tan was giving evidence-in-chief, the appellants counsel informed the court that there was no dispute that the five workers belonged to the appellant.

11 Tan testified that the appellant had said that he would settle his own problems with regard to his five Malaysian workers. At that time, the appellant felt that the price sought by Chee for taking the rap for the Malaysian workers was too expensive. After Chees release from prison, Chee found out that another five charges were outstanding. Thereafter, sometime in March 1998, the appellant paged Tan and informed him that he had not "settled the problem" with the five Malaysians.

12 The appellant then arranged for a meeting between Chee, Tan and himself at a coffee shop in Eunos. Chee wanted payment of $3,000 for "taking the rap" for employing each worker, amounting to $15,000. The appellant said that he did not have that much money. Tan offered to help out by paying half the payment, i.e. $7,500 while the appellant was to pay the other half. Chee agreed

but went back on his word when he was charged in court.

13 Tan explained that he had offered to help the appellant out of goodwill. The five workers were not his and he would not face any criminal liability for them. At that time, Tan did not know whether the appellant was facing any charges but he knew that the appellant was in trouble because of them. Tan wanted to resolve the matter once and for all. He explained that, at that time, the matter still "wasnt settled". He maintained that Chee was to assume criminal liability for the appellant in regard to the MOL charges.

14 Tan conceded that he had earlier pleaded guilty to charges of making corrupt payments to Chee in relation to the illegal employment of all seventeen workers. He clarified however that the payments only related to the twelve Thai workers and excluded the five Malaysian workers. He did not notice that the charges did not draw any distinction between the Thai and the Malaysian workers.

15 Chee testified that he had agreed to be the "Tua Pek Kong" even before the arrest of the workers in December 1996. He later pleaded guilty to illegally employing the twelve Thai workers as he had already accepted bribes totaling $20,000 from Tan. At that point, he had not been paid to be the "Tua Pek Kong" for the five Malaysian workers. Chee understood that he was to assume criminal liability for both Tan and the appellant. He met the five Malaysian workers in December 1996, after they had been arrested and released. The appellant brought him to the site to see them and informed them that Chee "would be their boss". In January 1997, the appellant told him that he had informed the investigating officer that Chee was the employer of the workers, comprising seventeen in all. At that time, there were discussions between Tan, Chee and the appellant regarding the five Malaysian workers. Chee was to admit to being their employer as well. The appellant also briefed him on the nature of the work done by the Malaysian workers.

16 After his release from prison, Chee learnt of the outstanding MOL charges in respect of the five Malaysian workers. He contacted the appellant to see how they could be resolved. The appellant arranged for the three of them to meet. At the meeting in a coffee shop in Eunos in February or March 1998, Tan and the appellant told him that the MOL charges would carry fines only and that no mandatory jail term would be imposed. They negotiated and finally agreed to pay Chee $15,000 to be the "Tua Pek Kong" for the MOL charges. Tan suggested that he and the appellant could split the payment evenly. The appellant said that he could not afford $7,500 then and asked Tan to pay his share first. Tan agreed.

17 Chee was prepared to admit to employing the five Malaysian workers even though Tan had yet to pay him. He stated that he was prepared to be fined but not to be sent to jail. In court, Chee variously testified that he was "taking the rap" for Tan in relation to the five workers; that he would assume liability for the appellant since the workers belonged to him; that he would be the "fall guy" for both the appellant and Tan since the $15,000 was to be borne by both of them. Chee was to say that he had engaged the appellant as his foreman and that he was the one who employed the workers.

18 When asked by the district judge, Chee clarified that ultimately, it did not matter to him who the actual employer of the five Malaysian workers was. Both had agreed to pay, he therefore said that he was assuming liability for both. He explained that in 1998, he had not understood that the appellant could be convicted of abetment of employment of the five workers. He had believed that if he pleaded guilty to the five MOL charges and said that the appellant was his foreman, the latter would be set free. Chee believed that Tan and the appellant would have thought likewise.

Close of prosecutions case

19 At the close of the prosecutions case, the district judge held that there was substantial prima facie evidence supporting the charge. Accordingly, he called for the defence on the basis of an amended charge, as proposed by the prosecution, namely, to insert after the phrase "as an inducement to assume criminal liability" the words "for yourself" to indicate that the $15,000 was for the assumption of criminal liability on behalf of the appellant.

The defence

20 In court, the appellant denied that he was the employer of the five Malaysian workers. He testified that the workers were supplied by Tan who was the actual employer of all of them. He was merely a supervisor at the site and referred to Tan as his "boss". This contradicted the earlier concession made by his counsel, who had informed the court, presumably on the basis of instructions given by the appellant, that there was no dispute that these workers "belonged" to the appellant in 1996 and that Tan was aware of this.

21 The appellant admitted that he did not at any time inform anyone that Tan was the actual employer of the Malaysian workers, even after Chee resiled from "taking the rap" for the MOL charges. At the same time however, he admitted that he was in charge of employing or retaining workers on Tans behalf and that Tan "had delegated all the things to [him] at the work site with regard to these workers". He also admitted that he had briefed Chee about the duties of the Malaysian workers, introduced Chee to them as their boss and instructed them to inform the court that Chee was their boss.

22 As regards the material meeting at a coffee shop in Eunos, the appellant did not deny that such a meeting took place. However, he claimed that the meeting was arranged by Tan. It was his evidence that there was no such offer of $15,000 made by him to Chee. He had overheard Chee mentioning that Tan had offered him $15,000. However he did not take part in the discussion and denied that Tan had agreed to contribute $7,500 out of goodwill for him. As the appellant had already been charged for abetting Chee in the commission of the offences, the $15,000 was for Tans own protection only; it was not intended for Chee to assume criminal liability on behalf of the appellant. He further relied on the argument that Chee was not in a position to assume liability on his behalf since both of them had been charged in connection with the same offence. All the appellant intended to do was to ask Tan for assistance in engaging counsel and paying legal fees.

The decision of the district judge

23 The district judge stated that there was no question that the "Tua Pek Kong" scheme was corrupt. The only issue before the court was factual, i.e. whether the appellant was a co-offeror, together with Tan, of the $15,000 to Chee. After reviewing the evidence, the district judge held that the appellants culpability was clear.

24 The district judge accepted Tans and Chees testimony, noting that he had no reason to doubt their credibility. On the other hand, he found the appellant to be an unreliable witness who had crafted his testimony largely with the benefit of hindsight. In his view, the appellant was the actual employer of the five Malaysian workers. The district judge concluded that it did not ultimately matter to Chee whom he was assuming liability for. Chee had agreed to be the "Tua Pek Kong" in any event, as long as Tan and the appellant needed someone to pretend to be the employer of the seventeen workers.

25 The appellants argument that there was no attempt made by any party to shield the appellant from the fact that he was the supervisor who assisted in the employment of the workers at the work site was described by the district judge as a "disingenuous" submission and rejected. In his view, both Tan and the appellant agreed to pay Chee $15,000 at the coffee shop. It was their common understanding that Chee was to undertake liability for them in relation to the MOL charges to settle the matter once and for all. Tan and the appellant must have believed that Chee would be the only one assuming any liability, otherwise there would have been no reason to offer him the $15,000. In his view, the parties had no conception of the legal and procedural distinctions and had not anticipated that the appellant could still be charged for abetting Chee. They had understood the arrangement to mean that only Chee would be solely liable. The district judge accordingly convicted the appellant of the amended charge.

The appeal against conviction

26 Mr Yap, counsel for the appellant, sought to persuade me to overturn the conviction by relying on the following arguments:-

> i. that the appellant was never a party to, nor aware of, the earlier scheme agreed between Tan and Chee whereby Chee would act as a "fall guy" for Tan in return of payments;
>
> ii. that the material issue was not whether the appellant was the employer of the five workers, but whether the appellant offered payment to Chee in exchange for him assuming the appellants liability as an abettor;
>
> iii. that Chee was an unsatisfactory and unreliable witness who had given some five different explanations as to how he was supposed to assume the appellants liability;
>
> iv. that Chee and Tan had given conflicting evidence on the purpose of proposed payment i.e. whether it was for assuming liability for the appellant alone or for both Tan and the appellant.

27 The sole question which arose in this appeal was whether the district judge erred in finding that the appellant had corruptly co-offered a sum of $15,000 to Chee to assume liability under the Employment of Foreign Workers Act (Cap 91A). The issue was essentially factual, namely, whether the appellant was a co-offeror of the gratification. As I indicated above, the district judge found that the appellant was the actual employer of the five Malaysian workers, he thus had reasons to offer Chee gratification to assume his criminal liability. To that extent therefore, this appeal is principally an appeal against the findings of fact by the district judge.

28 It is established law that an appellate court will not disturb the trial judges findings of fact unless they were clearly reached against the weight of the evidence. This reluctance is even more pronounced when the findings of fact were based on the trial judges assessment of the witnesses veracity and credibility: *Tan Hung Yeoh v PP* [1999] 3 SLR 93. In the proceedings below, the district judge accepted the credibility of the prosecutions witnesses and found the appellant to be an unreliable witness who had crafted his testimony largely with the benefit of hindsight. His findings would not be lightly disturbed unless they were shown to be plainly wrong.

29 After carefully considering Mr Yaps written and oral arguments, I concluded that there was no merit in the appeal. In my view, Mr Yaps contentions failed to address the crux of the evidence which had been adduced against the appellant. Even though the appellant was not involved in the prior agreement between Tan and Chee, he did eventually come to learn of the scheme. He then actively participated in it by giving false statements to the authorities that Chee was the employer of all 17 workers; briefing Chee on the duties of the Malaysian workers; and instructing the workers to falsely identify Chee as their employer.

30 As a result of this scheme, only Chee was prosecuted and convicted for employing the twelve Thai illegal immigrants. From the outset, it was obvious that the appellant wanted Chee to assume liability in respect of the Malaysian workers. The district judge had therefore quite rightly taken these preceding events into account in his assessment of the evidence. In my view, the appellants conduct in the March 1998 incident clearly could not be divorced from and had to be viewed against this factual matrix.

31 Critically, the appellant failed to refute Tans and Chees highly incriminating testimony that the appellant had arranged for the meeting in Eunos in March 1998 when they discussed the resolution of the outstanding MOL charges. Both testified that, at this meeting, the appellant agreed to contribute $7,500 towards the $15,000 to be paid to Chee in return for his assuming criminal liability for the illegal employment of the Malaysian workers. Their evidence was accepted by the district judge who quite rightly

found that there was no reason to doubt their credibility. Tan and Chee had no discernible reason for fabricating the evidence against the appellant. They had already been convicted of charges arising out of the illegal employment and the corrupt "Tua Pek Kong" scheme. They had either completed serving or were in the midst of serving their sentences. In contrast, the appellant was found to be an unreliable witness. Significantly, the appellant did not seriously challenge this crucial finding of fact in the appeal. In the circumstances, I could see no reason to interfere with the district judges conclusions in this regard.

32 Once this finding of fact was accepted, Mr Yap faced an uphill task in persuading me that the appellant was merely an innocent bystander who had not participated in the March 1998 discussion. This was particularly so in light of the district judges finding that the appellant was the employer of the Malaysian workers. I was quite unable to accept the submission that the identity of the actual employer of these workers was not a material issue. Whether or not the appellant was the employer of the five Malaysian workers was material as this would have exposed the appellant to criminal liability for illegal employment. Regardless of whether he was already facing a charge of abetting the illegal employment, his concern must have been to avoid any criminal liability and prosecution. There would have been no reason for the appellant to arrange a meeting involving Chee, or to offer him a considerable sum of money at this stage unless he sought to gain some benefit from this arrangement. Certainly Chee would otherwise have no reason to continue to falsely admit to being the employer of the Malaysian workers.

33 As regards the apparent inconsistencies in Chees and Tans evidence as to whom Chee was to assume criminal liability for in return for $15,000, I fully agreed with the district judges opinion that the differences were not material. Chee explained that it did not matter to him whom he "took the rap" for. Since both had offered to pay him $15,000, he considered himself to be assuming liability on behalf of both. This was an understandable response. While Tan was not the employer of the five workers and would not have borne any liability for employing them, Tan himself admitted that he had a vested interest in ensuring the resolution of the entire affair.

34 I now address Mr Yaps contention that the appellant could not have made a corrupt offer to Chee as Chee could not have assumed his liability as an abettor. This submission was, in my view, highly contrived and artificial. The district judge found that the "Tua Pek Kong" scheme in operation between the parties was a fairly simple and uncomplicated one. The common understanding between the parties was that Chee was to assume sole liability for the illegal employment of the workers. It was patent that the parties did not envisage that the appellant could be charged for merely being a foreman. The district judge found that it was the parties erroneous expectation and hope that the appellant would be let off once Chee pleaded guilty to employing the workers. Based on the evidence of the various witnesses, the district judge was quite entitled to conclude that the parties had not comprehended the legal distinctions. This inference was also consistent with the appellants ready admission that he was the foreman and supervisor, even after he knew that there was a "Tua Pek Kong" arrangement in place.

35 Mr Yap next submitted that Chee could not give any satisfactory explanation as to how or in what manner he could possibly assume criminal liability for the appellant as an abettor. This was not a tenable argument. Chee understood that by pleading guilty to the charges and describing the appellant as his foreman, the appellant would be set free. At the time of the meeting in March 1998, he had not understood that the appellant could nonetheless be convicted of abetment of illegal employment. This understanding was common to all three parties. The fact that Chee could not fully elucidate the precise technical reasons for this understanding was not necessarily fatal to the prosecutions case.

36 Furthermore, the offer had to be viewed from the appellants perspective at the time when he, together with Tan, offered the gratification to Chee. They had earlier succeeded in their scheme in respect of the Thai workers when only Chee was prosecuted. This was doubtlessly a significant consideration in their minds, including the appellants. I thus could not but agree with the district judges inference that they had obviously not anticipated that the appellant could still be charged with abetting Chee in illegal employment. At the very least, they would have hoped that the appellant would be let off once Chee pleaded guilty to employing the workers.

37 In any case, the present charge against the appellant was made out once it was proved that: (i) the appellant had offered a gratification; (ii) as an inducement to assume criminal liability for himself; (iii) there was an objectively corrupt element in the scheme; and (iv) the appellant made the offer with a guilty knowledge: see *PP v Low Tiong Choon* [1998] 2 SLR 878; *Chan Wing Seng v PP* [1997] 2 SLR 426. It was not necessary to prove further that the offeree, Chee, would have succeeded in assuming the

appellants criminal liability.

38 In the final analysis, Mr Yaps submissions appeared to me to be mere speculative attacks against the reading of certain selected portions of the evidence. The district judges findings were underpinned by his assessment of the credibility and veracity of the witnesses. I was not persuaded that those findings were plainly wrong or against the weight of the evidence. Accordingly, I dismissed the appeal against conviction.

The appeal against sentence

39 Turning now to the appeal against sentence, Mr Yap contended that the sentence of ten months imprisonment was manifestly excessive. I need only deal briefly with this submission. The offence of corruption was grave in nature and was perpetrated with the objective of perverting the course of justice. The courts have always meted severe punishments for offences of such nature. In this case, the appellant was not only prepared for Chee to falsely admit to the charges of illegal employment, but also instructed the Malaysian workers to falsely identify Chee as their employer. Furthermore, I noted that the sentence imposed on the appellant was not disproportionate to the sentence imposed on Tan. Tan had pleaded guilty to two corruption charges in relation to the Thai workers and was sentenced to nine months imprisonment in respect of each of the charges. This was consistent with the usual tariff, bearing in mind the number of charges taken into consideration. In the event, I was not prepared to interfere with the sentence of ten months imprisonment which could not by any account be described as being manifestly excessive. Accordingly, I also dismissed the appeal against sentence.

Appeals dismissed.

Yong Pung How

Chief Justice