

Wan Kim Hock v Public Prosecutor
[2002] SGHC 296

Case Number : MA No 29 of 2002
Decision Date : 10 December 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Tang Gee Ni (Chia & Tang) for the appellant; G Kannan (Deputy Public Prosecutor) for the respondent
Parties : —

Criminal Procedure and Sentencing – Appeal – Findings of fact – Approach of appellate court

Criminal Procedure and Sentencing – Sentencing – Effect of sentencing precedents

Criminal Procedure and Sentencing – Sentencing – Factors to be considered – Effect of claiming trial on sentencing – Lack of antecedents weighed against aggravating factors

Judgment

GROUNDS OF DECISION

Introduction

The appellant was convicted on one charge of criminal breach of trust under s 408 of the Penal Code, Cap 224. He appealed against his conviction and sentence. I dismissed his appeal and now give my reasons.

Background

2 The appellant was the finance administration manager of Stoval Technologies ('Stoval'). He had two other staff and a part-time assistant under him as well as the Human Resource Department to support him. He was placed in charge of the petty cash account in August 2000 when Karen, one of Stoval's accounts executives, resigned. He remained in charge of the petty cash account until he resigned in December 2000.

Prosecution's case

3 In early December 2000, a new accounting software was installed at Stoval. As a result, Choo Len, another of Stoval's accounts executives, discovered some discrepancies in the petty cash account. She informed Alex, the chief executive officer and managing director of Stoval.

4 Choo Len was then instructed to verify the problem. Upon receiving confirmation that there were indeed discrepancies, Alex confronted the appellant. The appellant immediately told Alex that he was resigning and handed over a hand-written resignation letter.

5 Thereupon, Alex asked that the appellant hand over the petty cash account to another member of his staff. A few hours later, the appellant prepared a four-page statement of accounts for the petty cash account which showed a positive balance of \$1012.68. After deducting some transportation payments, there was a balance of \$984.56. However, this balance was missing and the appellant proposed that the company deduct it from his salary.

6 Alex did not accept the appellant's proposal and appointed Kelvin, an accountant, to check the statement of accounts. By early 2001, Kelvin discovered that there was in the statement of accounts a S\$10,000 payment voucher that was not approved or signed by any of Stoval's directors. In addition, there was also a S\$5,000 cheque due and payable into the petty cash account which was not reflected in the statement of accounts prepared by the appellant.

7 The matter was referred to Stoval's board of directors who decided that a police report should be made. Kelvin then made a police report which resulted in the appellant's arrest.

The appellant's defence

8 The appellant, in his defence, admitted that there was a shortfall of \$15,000 in the petty cash account. He denied however that he had taken the money. He claimed that the shortfall had arisen because he had been too busy to update the petty cash account on a daily basis and thus there were petty cash payments which had been made but had not been recorded.

9 The appellant further claimed that he had been forced to resign by Alex as a result of his having informed Johnny, another of Stoval's directors, that Alex had withdrawn \$200,000 from the company's funds. Furthermore, the appellant claimed that he had been allowed by Alex to take the balance in the petty cash account for his personal expenses.

Decision below

10 At the conclusion of the case, the trial judge accepted the evidence given by the prosecution's witnesses as she found them to be straightforward and truthful and their evidence to be consistent and corroborated. In comparison, she rejected the appellant's defence as she found the appellant to be evasive and untruthful.

11 In addition, she found that the appellant had fabricated evidence to support his allegations that monies had been paid out which clearly demonstrated his dishonest intention to conceal his conversion of the missing sums. She thus convicted the appellant on the charge.

12 In passing sentence, the trial judge took into account the appellant's lack of antecedents, the quantum of money involved, the appellant's attempts to cover up his misdeeds and his lack of remorse or restitution and sentenced him to a term of imprisonment of 14 months.

Appeal against conviction

13 The appeal against conviction turned entirely on the trial judge's finding that the appellant had dishonestly misappropriated or converted the petty cash to his own use. In particular, the appellant challenged the findings of the trial judge that:

- (a) the prosecution witnesses' evidence was consistent;
- (b) the appellant had resigned after being confronted by Alex;
- (c) the balance in the petty cash account was missing;
and
- (d) the omission of the two cheques in the statement of

accounts was deliberate.

14 Lastly, the appellant also appealed against his sentence as being manifestly excessive.

The law on an appeal against findings of fact

15 It is trite law that an appellate court should be slow to overturn the trial judge's findings of fact, in particular where these findings depend on an assessment of the credibility and veracity of the various witnesses, unless these findings can be shown to be plainly wrong or against the weight of the evidence.

16 I have previously stated this in *PP v Azman bin Abdullah (1998) 2 SLR 704* and it bears remembering that:

It is well-settled law that in any appeal against a finding of fact, an appellate court will generally defer to the conclusion of the trial judge who has had the opportunity to see and assess the credibility of the witnesses. An appellate court, if it wishes to reverse the trial judge's decision, must not merely entertain doubts whether the decision is right but must be convinced that it is wrong.

17 With this in mind, I will now examine the arguments raised at appeal.

(a) Whether the prosecution witnesses' evidence was consistent

18 The appellant sought to raise several inconsistencies in the prosecution witnesses' evidence to rebut the trial judge's finding that their evidence was consistent. However, I found that the inconsistencies that the appellant sought to rely on in his appeal were minor and did not affect the crux of the case against the appellant. In contrast, I found that the appellant's testimony was riddled with material inconsistencies. For example, the appellant indicated that the missing money could have been payments to major big suppliers; yet, when questioned, he was unable to name any such suppliers.

(b) Whether the appellant had resigned after being confronted by Alex;

19 The appellant challenged this finding on the basis that it was inherently improbable that he would become so unhappy as to resign, merely because Alex had questioned him about the petty cash account. I was unable to accept this contention. Instead, common sense dictated to me that, rather than being inherently improbable, the appellant's immediate resignation was strongly indicative of his guilty conscience and his desire to depart immediately from the scene of the crime.

20 Furthermore, I found the appellant's explanation for his resignation difficult to accept. He was unable to show why Alex would have been so displeased, as to demand his resignation, over the minor matter of the appellant informing Johnny about the cashing of the cheque when there was no evidence that there was anything improper about the transaction.

(c) Whether the balance in the petty cash account was missing

21 The appellant argued that this finding was against common sense because, if this was true, Alex would simply not have allowed the appellant to leave. I found this argument to be without merit.

On the facts, the appellant had left only after agreeing for the company to deduct the balance owing from his salary. As such, there was no reason why Alex would not have let him leave. Furthermore, Alex had wanted to conduct further investigations into the petty cash account and this would clearly have been easier without the appellant being present.

22 As for the appellant's story of being allowed to take the monies in the petty cash account, I was plainly incredulous. It was inconceivable that Alex would have allowed the appellant to have taken the entire amount remaining in the petty cash account, thereby emptying out the entire petty cash account to the possible detriment of Stoval. This conclusion was reinforced when viewed against the backdrop of the events which had led Alex to confront the accused in the first place.

(d) *Whether the omission of the two cheques in the statement of accounts was deliberate*

23 The appellant repeated his arguments that he had used in the Court below that his omission was the result of negligence. Like the trial judge, I found this argument to be of little merit. The appellant was an experienced accountant with about 25 years of experience. It was unimaginable that he would be so overworked as to not have the time to maintain the petty cash account given that it was not a difficult task involving only the preparation of payment vouchers and getting them either approved or signed. Furthermore, there was no supporting evidence that any other aspect of financial management was similarly ignored by the appellant.

24 As such, given the ample evidence supporting the trial judge's finding of facts, I found no reason to interfere with any of the trial judge's findings or her conclusion that the appellant had dishonestly misappropriated or converted the monies in the petty cash account to his own use.

Appeal as to sentence

25 The appellant first argued that the trial judge had wrongly taken into account the fact that he had claimed trial and cited *Kuek Ah Lek v PP* (1995) 3 SLR 252 in support.

26 I found the appellant's argument to be flawed. The case of *Kuek Ah Lek* does not stand for the proposition that the Court can never take into account the fact that the appellant had claimed trial. Rather it indicates that where the appellant claims trial for a valid reason such as a viable defence, he should not be prejudiced for doing so.

27 However, in this appeal, the situation was different. The appellant had subjected the prosecution witnesses to an exhaustive and extensive cross examination in a failed attempt to find supporting evidence. In addition, he even accused one of the prosecution witness of wrongdoing. In view of such a defence, it must have been correct for the Court to take into account the fact that he had claimed trial.

28 Secondly, the appellant sought to draw from *Soong Hee Sin v PP* (2001) 2 SLR 253, a case where the accused was sentenced to a term of imprisonment of nine months, a sentencing tariff to illustrate that the sentence was manifestly excessive. I found that this argument did not lend much strength to his appeal. The process of sentencing is a matter of law that involves manifold factors such that no two cases would ever be totally identical for the purposes of sentencing. Thus, while past cases are clearly helpful in providing guidelines for the Court, that is all that they are, mere guidelines. In sentencing the offender, the Court must look to each case on its unique facts.

29 In any case, *Soong Hee Sin* can be easily distinguished. First, that was a case in which the accused misappropriated a lesser sum of S\$10,485.22 as opposed to S\$15,000 in the present appeal.

Secondly, the accused there had pleaded guilty immediately.

30 Lastly, I noted that in mitigation, it could only be said of the appellant that he had no previous antecedents. This factor while normally forceful must be balanced against the numerous aggravating factors such as the appellant's failure to make restitution, his lack of remorse throughout the entire trial and the fact that he had fabricated evidence in an attempt to escape liability.

31 As such, I found that the sentence imposed was not manifestly excessive especially when all the factors were collectively taken into consideration.

Conclusion

32 For the reasons given above, I was of the opinion that there was no merit in the appeal. Thus the appeal against conviction and sentence was dismissed and the sentence imposed by the trial judge was affirmed.

Sgd:

YONG PUNG HOW

Chief Justice