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Public Prosecutor

v

Ang Geok Kim

[2016] SGHC 35

High Court — Magistrate's Appeal No 101 of 2015/01
Tay Yong Kwang J
11 March 2016

Criminal law — Offences — Property — Criminal breach of trust

11 March 2016

Tay Yong Kwang J

Introduction

1 This is an appeal by the Public Prosecutor (“the Prosecution”) against the District Court’s acquittal of Ang Geok Kim (“the Respondent”) on 11 charges of committing criminal breach of trust as a servant in respect of sponsored funds which she was entrusted with dominion over (see the District Court’s Grounds of Decision (the “GD”) in (2015) SGDC 244).

2 At all material times, the Respondent was a corporate sales manager in Cultural & Entertainment Holidays Pte Ltd (“C&E”), a travel agency. In the charges, she was described as a “sales executive” but nothing in this appeal turns on the difference in job title.

3 Out of the 11 charges, the second and third charges fell within the ambit of the Penal Code (Cap 224, 1985 Rev Ed) which was in operation before 1 Feb 2008 (“the old Penal Code”). The rest were within the ambit of the Penal Code (Cap 224, 2008 Rev Ed) that is presently in force (“the new Penal Code”).

The District Judge’s decision

4 The District Judge acquitted the Respondent on all 11 charges, concluding (at [323] of his GD) that the Prosecution had not proved beyond a reasonable doubt that:

- (a) In all 11 charges, that the Respondent had the requisite dishonest intention (the *mens rea*) when she performed the transactions;
- (b) In all 11 charges, that C&E had suffered any loss;
- (c) In the relevant charges, that the Respondent had made a wrongful gain when she retained the 5% service charge; and
- (d) In the eight “conspiracy” charges, that the Respondent had conspired with PW1 Jackie, PW3 Andy, or Ricky (collectively “the co-conspirators” although Ricky passed away before the alleged offences came to light).

Amendments to second and third charges

5 In its written submissions, the Prosecution applied for the second and third charges to be amended in the event that its appeal against acquittal was allowed. It submitted that the second charge should be amended to reflect a sum of \$16,000 as the misappropriated funds instead of \$28,000 because benefit of

the doubt was given to the Respondent that \$12,000 could have been used for official promotional business approved by the Respondent's general manager.

6 In respect of the third charge, the Prosecution submitted that an amendment should be made to reflect a sum of \$14, 964 instead of \$15,000. This was because benefit of the doubt was given for \$36 which, from the records, did not appear to have been converted.

7 Before me, the Respondent's counsel stated that he had no objection to the proposed amendments.

The appeal against acquittal

8 I now turn to the Respondent's arguments against the acquittal on all 11 charges.

Dishonesty (the *mens rea*)

9 The Prosecution submitted that there were six "red flags" that pointed clearly to the Respondent's dishonesty. Mr Ronald Ng for the Respondent retorted that they were merely "red herrings". They were as follows:

- (a) The Respondent's deliberate choice of an unorthodox conversion over established methods for processing travel arrangements in order to circumvent proper checks and balances that were in place;
- (b) The Respondent's deliberate choice to proceed with encashment of the sponsored travel vouchers despite her general manager's warning of possible criminal consequences;

- (c) The fact that the Respondent deducted a personal “service charge” in return for the favours she did for the co-conspirators;
- (d) The Respondent’s awareness that Jackie was using sponsored funds for his personal benefit;
- (e) The Respondent’s lack of prior dealings with Andy and Ricky; and
- (f) The Respondent’s confession in her statement to the police that her actions were wrong.

10 I agree with the Prosecution’s arguments. In my opinion, the evidence showed that the Respondent’s conduct was not one of mere carelessness. She was dishonest in the dealings mentioned in the charges as she clearly had the intention to cause wrongful gain to the co-conspirators and herself, although her share was only 5%. The Respondent’s encashment of travel vouchers was not authorised by C&E at the material times. The way she carried it out by camouflaging the encashment with cash paid by walk-in customers coupled with the inaccurate documentation certainly showed her guilty mind.

Wrongful loss

11 I disagree with the District Judge’s finding that C&E did not suffer any loss.

12 C&E did suffer loss as a result of the Respondent’s encashment of the sponsored travel vouchers using the cash paid by walk-in customers (who had nothing to do with the travel vouchers). C&E had two kinds of customers: those who used travel vouchers to pay for their trips and those who were walk-in

customers who paid money for their trips. When the travel vouchers were exchanged with cash from walk-in customers, C&E suffered a loss of profits that could have been made from the use of vouchers by those who would have been entitled to them. This is because C&E was deprived of the additional profits that could otherwise have been made from the sales to customers who would have used the travel vouchers. Assuming that the potential profit from each travel voucher was 10% (or any other figure), this was the amount of profit C&E would lose each time the Respondent converted the travel vouchers the way she did for the co-conspirators.

Wrongful gain

13 Even if I am wrong on the issue of wrongful loss, it was clear that the Respondent intended to cause wrongful gain to the co-conspirators. The travel vouchers were either used for their own purposes or converted into cash for them without a proper audit trail. It was undeniable that the Respondent also made a wrongful gain for herself when she retained 5% of the sponsored funds in exchange for the personal favours done by her. I place no weight on the evidence that C&E would have approved of her taking such a cut. That evidence was given on hindsight and with a blinkered view of the true situation which was that a senior employee of C&E was assisting others in misusing sponsored funds. In my opinion, C&E's new company policy in 2015 did not support the conclusion that the company would have approved of the service charge kept by the Respondent. Under the new policy, the service charge of 10% is to be paid to the company (as estimated minimum amount of loss of profits) and not to any staff member for his/her personal benefit.

14 The sponsored funds were given for the specific purposes of sponsoring promotional events held at NTUC Pubs as well as customer or staff incentive travel. The Respondent was aware of that. At no point was the Respondent authorised to encash travel vouchers for the co-conspirators' personal benefit or to retain a 5% "service charge" in exchange for doing these favours. The Respondent has admitted that there was no such company policy allowing her to do so and that she did not inform her employers about the "service charge". Since the Respondent has been working for many years in the sales and tour business and as C&E's sales manager in charge of corporate and incentive accounts since 1996 or 1997, she must have known that the sponsored funds were being diverted for unauthorised purposes when she encashed the travel vouchers for the co-conspirators and took a 5% cut.

15 This is amplified by the fact that the Respondent knew that Ricky and Andy were employed by Thong Huat, one of the sponsors of the funds concerned. The fact that sponsored funds were being used to purchase travel vouchers which were then converted back into cash and returned to the sponsor's employees would have made it apparent to the Respondent that the funds were being misused.

16 Hence, even if the Respondent did not intend to cause wrongful loss to C&E, it is undeniable that wrongful gain was intended.

Conspiracy

17 The element of conspiracy was also satisfied. Conspiracy is usually inferred from objective facts rather than proved directly. It is clear that the Respondent had agreed with the co-conspirators to make use of the sponsored funds in the way they were eventually misapplied. Although it was Jackie who

devised the scheme and who later told Andy and Ricky about it, the Respondent agreed to play the pivotal role of encashing travel vouchers for their personal benefit. Without her involvement, the three co-conspirators would not have been able to misuse the sponsored funds in the way they did. The charges of conspiracy were therefore made out.

My decision on conviction

18 For these reasons, I allow the Prosecution's appeal against the Respondent's acquittal on all 11 charges. I also allow the Prosecution's application to amend the second and the third charges. I convict the Respondent on the 11 charges (as amended) accordingly.

The sentences

19 Upon the appeal being allowed, the Prosecution requested a postponement of submissions on sentence as there are outstanding charges against the Respondent which are unrelated to the facts here and the Prosecution intends to offer to the Respondent to have them taken into consideration for sentencing in this appeal. Mr Ronald Ng had no objections to this request. He stated that the Respondent has indicated previously that she intends to plead guilty to those outstanding charges.

20 I will therefore hear the submissions on sentence on Wed 16 March 2016. As the Respondent is a Singaporean and she is on bail for the outstanding charges with her passport in the custody of the investigating authorities, I see no need to impose bail for this short adjournment.

Tay Yong Kwang
Judge

Jiang Ke-Yue (Attorney-General's Chambers) for the appellant;
Ronald Ng (Ng, Lee & Partners) for the respondent.
