Tan Chin Heng *v* Public Prosecutor
[2011] SGHC 7

Case Number : Magistrate's Appeal No 310 of 2010 (DAC 67022 and 67023 of 2009)

Decision Date : 11 January 2011

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Peter Ong Lip Cheng (Peter Ong & Raymond Tan) for the appellant; Edwin San (Deputy Public Prosecutor) for the respondent.

Parties : Tan Chin Heng — Public Prosecutor

Criminal Law

Criminal Procedure and Sentencing

11 January 2011

Choo Han Teck J:

1 The appellant was a 41-year old who was convicted on two charges under the Penal Code (Cap 224, 1985 Rev Ed). The first was a charge under s 170 for impersonating a police officer. The second was for using criminal force, an offence punishable under s 352 of the Penal Code. The offences in both charges were committed on 11 May 2007 in a hotel room in Geylang. The appellant first requested sexual services from a woman of Chinese nationality ("the complainant"). Under cross-examination the complainant admitted to being a prostitute. They went up to a room in Hotel 81 nearby and there the appellant showed the complainant a card and identified himself as a police officer. The complainant was not able to verify if the card was a genuine police identification card, which, in the event, it was not. The appellant then took out a piece of paper with English writing the content of which the complainant was not able to make out. He told the complainant that other girls had been arrested and he then bound the complainant's hands with plastic cable bonds. The complainant became frightened. The appellant then told her that he would release her if she stayed with him till dawn. She agreed and they had sexual intercourse during that time. After that the appellant brought the complainant to a convenience store to buy a phone card. The complainant did not report the events to the police until the next day when she was arrested in a raid by the police anti-vice squad. In the course of this arrest the complainant realized that the appellant was a fraud and thus lodged a complainant leading to the two charges against him.

2 The appellant was convicted at trial and sentenced to 12 months' imprisonment on the first charge (impersonation) and one month on the second charge (criminal intimidation). The trial judge ordered the two sentences to run consecutively. The appellant appealed against both conviction and sentence. Mr Peter Ong, counsel for the appellant submitted that although the appeal against conviction was an appeal on facts, the evidence showed that the trial judge ought to have disbelieved the complainant. He submitted that the appellant had paid her $60 for the sexual intercourse but did not pay her for the additional service of staying over the night and that was her motive for reporting him to the police. This submission was also made before the trial judge.

3 In a case such as this where the principal evidence is largely based on the oral testimony of the witnesses, an appellate court will not overturn the findings of fact made by the trial judge unless

there is obvious evidence on the record that the facts were wrong. For example, had the court found that the appellant produced a paper with English writing when the paper produced as an exhibit in court was in fact written in Chinese (this was not the case here and this example was used only as an illustration). In that event, the appeal court may overrule the finding of fact and then proceed to determine if that had a material bearing on the outcome of the trial. Findings of fact include inferences drawn from the facts found, and in the case where an appeal was based on an inference drawn from the facts, the appeal court will not overrule the inference unless it was an unreasonable inference. The term "unreasonable" will usually be used with great respect because trial judges, especially experienced ones, must be presumed to be competent to make reasonable inferences from the facts they have found.

4 The evidence in this case was largely based on the oral testimony of the complainant. There is no presumption that a prostitute's evidence cannot be accepted without corroboration although the circumstances surrounding the offence may be relevant in determining whether the evidence ought to be accepted or whether the appellant ought to be given the benefit of the doubt. There was nothing before me to indicate that the facts found by the trial judge were wrong. The appeal against conviction was therefore dismissed.

5 Counsel then argued that the sentences were too harsh, especially in the case of the second charge where the maximum sentence was three months' imprisonment or a fine up to $500 or both imprisonment and fine (the provision on sentence has since been amended but does not affect the appellant here). The maximum sentence for impersonating a police officer was two years' imprisonment or fine, or both imprisonment and fine. In exercising his discretion, the trial judge took into account the previous convictions and record of the appellant. He found that the appellant had been convicted on 12 charges for various offences, including impersonation, in a period of 18 years in which the appellant had been imprisoned for some of them. In those circumstances, the sentences imposed, even if ordered to run consecutively, were not manifestly excessive. There being no other material or relevant reason to interfere with the sentences imposed, the appeal against sentence was also dismissed.