Cheong Siat Fong v Public Prosecutor
[2005] SGHC 176

Case Number : MA 74/2005

Decision Date : 23 September 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Irving Choh and Janice Sim (Rajah and Tann) for the appellant; Christina Koh (Deputy Public Prosecutor) for the respondent

Parties : Cheong Siat Fong — Public Prosecutor

Criminal Law – Offences – Property – Theft-in-dwelling – Appellant convicted of theft a blank cheque – Whether appellant's conviction should be overturned

Criminal Law – Offences – Property – Appellant convicted of using identity card without lawful authority – Whether appellant's conviction should be overturned

Criminal Law – Offences – Property – Forgery – Appellant convicted of forging documents by fraudulently signing on a cheque and bank document intending that the documents be used for the purpose of cheating – Whether appellant's conviction should be overturned

Criminal Procedure and Sentencing – Sentencing – Principles – Whether sentence imposed by judge below manifestly inadequate

23 September 2005

Yong Pung How CJ:

1 This was an appeal against the decision of District Judge Roy Grenville Neighbour, convicting Cheong Siat Fong, the appellant, of the following:

(a) Theft-in-dwelling of a DBS Bank Ltd ("DBS") blank cheque No 388343 for DBS account No 024-010926-7 under s 380 of the Penal Code (Cap 224, 1985 Rev Ed) ("DAC 1116/05");

(b) Use, without lawful authority, of a Singaporean identity card, No S12697312D, belonging to one Chan Chwee Yin under s 13(2)(*b*) of the National Registration Act (Cap 201, 1992 Rev Ed) ("DAC 1127/05");

(c) Forgery of a document by fraudulently signing the signature of the holder of DBS account No 024-010926-7, Chan Chwee Yin, on an "Authorisation for Closure of Account" form, intending that the document be used for the purpose of cheating under s 468 of the Penal Code ("DAC 1128/05"); and

(d) Forgery of a document by fraudulently signing the signature of the drawer, Chan Chwee Yin ("Chan"), on a DBS cheque No 388343 to withdraw cash of $39,379.12 from the DBS account No 024-010926-7, intending that the document be used for the purpose of cheating under s 468 of the Penal Code ("DAC 1129/05").

2 In sentencing, the district judge took into consideration ten other charges of theft from Chan's OCBC Bank ("OCBC") account totalling $9,370 between 20 to 24 May 2003. The appellant was sentenced to six months' imprisonment for DAC 1116/05, three months' imprisonment for DAC 1127/05, 15 months' imprisonment for DAC 1128/05 and 15 months' imprisonment for DAC 1129/05. The sentences of DAC 1116/05 and DAC 1128/05 were ordered to run consecutively while the remaining

sentences were ordered to run concurrently. The total term of imprisonment amounted to 21 months.

Undisputed facts

3 It was undisputed that on 23 June 2003, the appellant went to the Plaza Singapura branch of DBS, presented Chan's identity card, and asked to close Chan's DBS account. The bank officer, Siti Alina bte Talib ("Siti"), who has since left DBS, gave the appellant an "Authorisation for Closure of Account" form ("authorisation form"). Siti assisted the appellant in filling in the form and the appellant signed it in her presence. While waiting for Siti to process the closure, the appellant made an inquiry about investment products. She was referred to Relationship Manager Goh Fei Fei ("Goh"). After a while, Goh gathered that the appellant was not interested in purchasing any investment products at that time and told the appellant to wait for Siti to attend to her. In the meantime, Customer Service Officer Irene Sim ("Sim") authorised the closure of the bank account and Siti informed the appellant that a sum of $39,379.12 would be paid to her and wrote that amount down on the authorisation form. The appellant then filled in DBS cheque No 388343 ("the DBS cheque"), which belonged to Chan, for a sum of S$39,379.12 and signed it in Siti's presence. After Siti paid the appellant the money, the appellant signed at the back of the cheque to acknowledge receipt thereof.

4 Subsequently, Chan informed DBS that her account had been closed without her knowledge. Chia Loy Hua ("Chia"), who was a bank officer attached to the bank's fraud and loss investigation unit at the material time, commenced investigations. He retrieved the DBS cheque which was dated 23 June 2003, and the authorisation form from the Plaza Singapura branch as well as photographs printed out from the closed-circuit television recordings at the branch. From these photographs, Chan identified the appellant, whose brother is married to Chan's younger sister. After investigations, Chia lodged a police report on 28 July 2003 that DBS had been cheated out of the sum of $39,379.12 as a result of the fraudulent closure of Chan's bank account.

5 An analyst from the Health Sciences Authority, who was handed the authorisation form and the DBS cheque together with handwriting and signature specimens of the appellant and of Chan, testified that he found no evidence that Chan had signed the cheque, and that except for the word "cash" written on the cheque, all the other entries were written by the appellant. He could not rule out the possibility that the word "cash" was written by Chan. In any event, the appellant admitted at trial that she wrote all the entries on the cheque, including the word "cash". She also admitted that she signed the DBS cheque and the authorisation form in the presence of Siti on 23 June 2003.

6 Finally, it was undisputed that it is DBS's policy that only an account holder can close his or her account, and that no one else can do so on behalf of the account holder. This evidence was adduced from Siti, Goh and Sim.

The appellant's defence

7 The appellant's defence focused on proving that the withdrawal of the $39,379.12 and the closure of Chan's account were done pursuant to Chan's instructions. The central thrust of the defence was as follows. The appellant met Chan, who was single and a businesswoman, in 1997 during her brother's wedding to Chan's younger sister. Their friendship blossomed and in 1999 they became romantically involved. The appellant was the more submissive of the two and often followed Chan's directions. In early June 2003, Chan handed several documents to the appellant including her identity card, OCBC and United Overseas Bank Ltd ("UOB") ATM cards, one DBS cheque, one old Malaysian cheque carrying her writing and signature and one orange American International Assurance ("AIA") folder containing an insurance premium and an expiration notice. The appellant was told that Chan did not trust her siblings and that in the event of an emergency, the appellant might be required

to close Chan's DBS bank account. Chan told her that she should ask the bank officer for the exact balance, fill in the cheque accordingly and sign it. She was to follow the signature on the Malaysian cheque.

8 On 23 June 2003, Chan called the appellant between 1.00pm and 2.00pm, telling her that she was in Thailand and that she needed a large sum of money that very night. Chan's instruction was that the appellant was to close all three bank accounts and that she would come that night to collect the money. The appellant asked Chan how she was supposed to close all the accounts before the banks closed at 3.00pm. Thereupon, Chan told her that the priority was to withdraw the money from the DBS account and to close it. If she was able to do so, the appellant should then also withdraw the money from the other accounts. Chan also told the appellant to collect some investment brochures for her.

9 The appellant first proceeded to the UOB branch near Mandarin Hotel and then to the OCBC branch at Specialists' Shopping Centre where, at both places, she failed to withdraw any money for various reasons that did not concern this appeal. Finally, she went to the DBS branch at Plaza Singapura and proceeded as described at [3] above.

10 Chan did not meet the appellant that night. After a few days, Chan called the appellant while she was at home with her best friend, Anne Lee Meng Choo ("Lee"), to say that she was coming over in 15 minutes to pick up the money. The appellant went down to the car park below the appellant's apartment to meet Chan. Lee followed the appellant down but waited at the void deck. Chan arrived alone and the appellant got into the front passenger seat of the car. Chan said that she had just come back from her trip. She asked for the money and the appellant handed over the sum of $39,379.12, together with Chan's identity card, the OCBC and UOB ATM cards and the Malaysian cheque. She attempted to show Chan the AIA folder but the latter said that she was in a rush and would discuss it later. Chan took $10,000 from the money and gave it the appellant, saying that that was the amount she owed her. In the car, Chan brought out some souvenir key rings and two dildos. She wanted the appellant to follow her home so that she could use the dildos on her. The appellant said that she was not ready to do so. The appellant also told Chan that she had a dinner appointment with Lee. Chan became angry and gave the appellant an ultimatum – to choose between Lee or her. The appellant said that Chan was welcome to join them, but by this time, Chan was furious. The appellant left the car and slammed the door. She left the $10,000 and the AIA folder in her apartment and went for dinner with Lee. She tried to call Chan subsequently but to no avail.

The decision below

11 In respect of the material portions of the appellant's testimony, the district judge made the following findings of fact: first, that the relationship between Chan and the appellant was fabricated to lend credence to the theory that Chan had framed her and second, that the appellant stole the identity card and the blank DBS cheque from Chan's apartment while she was away on a business trip. The appellant achieved this by using a key that Chan had given her sometime in 1999 in order to facilitate the delivery of some furniture while Chan was also away on a business trip. Third, the appellant intended to deceive DBS by impersonating Chan. Finally, Chan did not instruct the appellant to withdraw any money from her bank accounts or to close her bank accounts on 23 June 2003. Furthermore, the appellant did not return any money to her, nor did the meeting in the car park ever take place.

The appeal against conviction

12 The appeal was mainly against the findings of fact made by the district judge. It is useful to

bear in mind the principles of appellate review. It is settled law that an appellate court does not review the findings of fact made by the trial judge *de novo*. In fact, it will be very slow to overturn such findings unless they are obviously against the weight of the evidence looked at in the round: *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32]. Where, as in this case, there are competing versions of what happened, the decision of the trial judge is accorded deference: *Chua Yong Khiang Melvin v PP* [1999] 4 SLR 87 at [31]. This is especially so where the findings are based on the credibility of the witnesses whom the trial judge had the opportunity to observe: *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113 at [42]; *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464 at [36]. As such, an extremely heavy burden is cast on the appellant to displace the trial judge's findings of fact: *Syed Jafaralsadeg bin Abdul Kadir v PP* [1998] 3 SLR 788 at [57].

Grounds of appeal

Whether the judge below erred in disbelieving the appellant's testimony that Chan had given her the items in question

13 Counsel for the appellant, Mr Irving Choh, first submitted as follows. On 6 June 2003, Chan made a police report that she had lost her identity card together with her UOB and OCBC ATM cards and some cash. In her report, the date and place of the alleged loss were recorded as 5 June 2003 at Bukit Batok Central. However, during cross-examination, Chan admitted that she first discovered the loss of her waist pouch in Malaysia on 31 May 2003 and attempted to report the loss in Malaysia but was told by a customs officer to report it in Singapore. Chan further admitted that she was not certain whether the items reported missing were actually in her pouch when she lost it, but that she assumed that they must have been when she could not locate them at home. Her explanation for the discrepancy between the police report and her testimony was that she was careless in filling in the report.

14 Mr Choh submitted that it was impossible for Chan to have inaccurately filled in the police report. Furthermore, she failed to inform her banks that her ATM cards were lost. Therefore, either Chan was not a credible witness and had made a false report to implicate the appellant, or she thought she had lost the items in question in Malaysia, discovered them later and handed them to the appellant.

15 I found no merit in these arguments. The district judge was entitled to find that Chan was a credible witness notwithstanding the apparent discrepancy. It is axiomatic that minor discrepancies and apparent contradictions do not necessarily destroy the credibility of the witness: *Chean Siong Guat v PP* [1969] 2 MLJ 63; *De Silva v PP* [1964] MLJ 81. Here, the discrepancy was immaterial. The undisputed fact was that a report was made on 6 June 2003. No reason was proffered to explain why Chan would have wanted to implicate the appellant as early as 6 June 2003 when the alleged falling out between them occurred only towards the end of June 2003. In fact, the appellant testified that up until then they had gotten along well. Furthermore, if Chan had subsequently found the items in her apartment and handed them over to the appellant, surely she would have withdrawn her report to avoid getting her friend into trouble. The fact that Chan failed to inform her banks that her cards were missing was of no significance. As she explained at trial, she was busy running her business. Mr Choh did not submit that this reason was far-fetched or improbable.

16 The only reasonable conclusion that could be drawn from the facts was that Chan genuinely lost the items she reported. While she assumed that they were lost in Malaysia, the appellant had in fact stolen them. In any event, I agreed with the district judge's reasoning that if Chan was meticulously planning to frame the accused from early June 2003, there was no reason why she would have openly admitted her mistake in filling in the report, or indeed, why she would have made such a

mistake in the first place and risk losing credibility: see [50] of the district judge's Grounds of Decision (at [2005] SGDC 154).

Whether the judge below erred in finding that the appellant intended to cheat DBS

17 Mr Choh's second submission was that the appellant's behaviour while closing the DBS account was inconsistent with someone who was intending to cheat. For example, there was no need for the appellant to sign both the DBS cheque and the authorisation form such that it would leave behind an unnecessary paper trail. Either one would have been sufficient. Furthermore, the appellant risked unnecessary exposure when she asked for information on investment products.

18 This submission was unpersuasive for two reasons. Firstly, it could equally be argued that it would make no sense for Chan to instruct the appellant to sign both the cheque and the authorisation form if it was unnecessary to do so. It would involve the appellant forging her signature twice, increasing the risk that she would forge it badly and thus causing her to be unable to withdraw the money for Chan in an emergency. It also made no sense that Chan would be concerned about investment products if it were true that on 23 June 2003 she needed a large amount of cash urgently and was, in fact, closing her account with the bank.

19 Secondly, I found that the behaviour of the appellant as evidenced by the record before me inexorably forced the conclusion that it was consistent with someone attempting to cheat. Goh and Siti testified that they did ask the appellant why she looked different from her identity card photograph to which the appellant replied that the photograph was taken a long time ago and that she had recently curled her hair. Her behaviour demonstrated an intention to impersonate Chan. This inference was fortified by these facts:

(a) The appellant testified at trial that she asked Chan why she did not pre-sign the cheque. This showed an awareness that no one else was allowed to sign the cheque except the account-holder.

(b) The appellant admitted at trial to operating a number of bank accounts and even closing at least one before. Therefore, she should know the procedure for closing bank accounts.

(c) The appellant admitted at trial that she knew that each person's signature was unique and relied on by the banks to verify that the cheque was issued by the account-holder.

Given these facts, it was incomprehensible that the accused could still claim that she did not know it would constitute forgery to sign someone else's signature on a cheque, even if she did not know the offence by its name. In fact, in her further statement to the police on 23 September 2004, she said, "I told [Chan] that I was not her and would thus not be able to sign for her." On cross-examination, the accused testified that she signed the statement carelessly. This was clearly untrue because the accused made several amendments to the substance of her statement before signing it.

Whether the judge below placed excessive weight on the appellant's claim that she shared a romantic relationship with Chan

20 Mr Choh finally submitted that the district judge, after finding that there was no romantic relationship between the appellant and Chan, went on to place too much emphasis on this finding. According to Mr Choh, all that was important was the undisputed fact that Chan and the appellant were close friends and that it was their friendship that prompted Chan to trust the appellant with her financial transactions. The appellant, it was submitted, merely reciprocated that trust by dutifully

carrying out Chan's instructions on 23 June 2003.

21 I found this submission somewhat surprising given that it was the appellant who first asserted at trial that she and Chan were lovers and that Chan had framed her because she felt spurned following the events described at [10] above. Their relationship was fundamental to the appellant's defence at trial. Having found that there was no romantic relationship between Chan and the appellant, it was open to the district judge to find that the appellant was not a reliable witness and that her defence no longer had a leg to stand on. I would also add that the district judge clearly did not convict the appellant solely on the basis that he did not believe that Chan and the appellant were lovers.

22 It goes without saying that any set of facts can give rise to endless speculation. What constitutes a reasonable doubt sufficient to acquit an accused is a different matter. As I said in *Teo Keng Pong v PP* [1996] 3 SLR 329 at 339, [68]:

> In almost all cases, there will remain that minutiae of doubt. Witnesses, apparently independent, could have conspired to 'frame' an accused. Alternatively, an accused could be the victim of some strange, but unfortunate, set of coincidences. The question in all cases is whether such doubts are real or reasonable, or whether they are merely fanciful. It is only when the doubts belong to the former category that the prosecution had not discharged its burden, and the accused is entitled to an acquittal.

Given the totality of the evidence, I found that the conviction was justified and not against the weight of the objective and undisputed facts.

Sentence

23 Mr Choh did not appeal the sentences imposed by the district judge. Nonetheless, an appellate court has the power under s 256(*c*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) to reduce, enhance, or alter the nature of a sentence. While mindful that an appellate court will not generally interfere with the sentences meted out by the court below, I found the district judge's sentences to be manifestly inadequate and ordered that the sentences be enhanced: see *Tan Koon Swan v PP* [1986] SLR 126; *Moganaruban s/o Subramaniam v PP* [2005] SGHC 147. I took into account the following in enhancing the appellant's sentences. First, the maximum terms of imprisonment were seven years for theft-in-dwelling and use of identity card without authority and ten years for forgery. This reflected the seriousness with which Parliament viewed these offences. Second, the theft and the forgery were deliberate. The evidence demonstrated that the appellant waited for an opportunity to steal the items in order to effect the withdrawal, and that she practised signing the signature in order to perfect it. Premeditation is an aggravating factor: *PP v Tan Fook Sum* [1999] 2 SLR 523 at [28]. Third, the appellant was able to commit the offence by utilising a key to Chan's apartment that she had in the first place because of Chan's trust in her. Intimate human relationships such as friendships are based, first and foremost, on trust. An abuse of one's position of trust and friendship should be taken seriously: see Andrew Ashworth, *Sentencing and Penal Policy* (Weidenfeld and Nicolson, 1983) at p 94. Fourth, the other ten withdrawals over a period of just four days in May 2003 of smaller amounts, followed by the large withdrawal on 23 June 2003, demonstrated how the accused was gradually emboldened by her earlier successes, as well as the systematic and premeditated manner in which the accused cheated her close and long-time friend. Finally, the punishment should be proportional to the magnitude of the offence. Here, the sum involved was not insignificant.

24 While the appellant was a first-time offender, which may be a mitigating factor in some cases

(see *Fu Foo Tong v PP* [1995] 1 SLR 448), the fact that the accused did not have a criminal record was no reason to award a "discount" where the first offence is particularly grave: *Turner* (1975) 61 Cr App R 67; *Tan Sai Tiang v PP* [2000] 1 SLR 439 at [40] (debunking the idea that for a first-time offender, the mere fact that a jail sentence had been imposed was always sufficient). Given the circumstances of the case, I found that only some but not excessive weight should be accorded to the appellant's clean record.

25 For the foregoing reasons, I enhanced the appellant's sentences as follows:

(a) DAC 1116/05 – enhanced to 15 months' imprisonment.

(b) DAC 1127/05 – enhanced to 24 months' imprisonment.

(c) DAC 1128/05 – to remain at 15 months' imprisonment.

(d) DAC 1129/05 – to remain at 15 months' imprisonment.

I ordered that the sentences for DAC 1116/05 and DAC 1127/05 were to run consecutively while the sentences for DAC 1128/05 and DAC 1129/05 were to run concurrently. The total term of imprisonment is therefore increased to 39 months.

Appeal dismissed; sentences enhanced.