Mohamed Mustafa s/o Shahul Hamid v Public Prosecutor
[2002] SGHC 251

Case Number : MA No 111 of 2002

Decision Date : 28 October 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Spencer Gwee (Spencer Gwee & Co) for the appellant; G Kannan (Deputy Public Prosecutor) for the respondent

Parties : —

Criminal Law – Offences – Employment of illegal immigrants

Evidence – Weight of evidence – Discrepancies in prosecution witnesses' evidence – Whether trial judge's findings clearly against weight of evidence and unsupportable

Immigration – Employment – Illegal immigrant – Whether elements of offence made out – Immigration Act (Cap 133, 1997 Rev Ed) s 57(1)(e)

Judgment

GROUNDS OF DECISION

The appellant was tried in the district courts on two charges of employing illegal immigrants under s 57(1)(e) of the Immigration Act (Cap 133) at his stall in Tekkar Market. The first charge related to his employment of Md Serajul Islam ("Md Serajul"), a Bangladeshi, for the period between 4 August and 23 August 2001. The second charge related to his employment of an Indian national, Sheikh Abdullah, between 15 August and 23 August 2001. The appellant was convicted on both charges and sentenced to 12 months' imprisonment on each charge. Both sentences were ordered to run concurrently. I dismissed his appeal against conviction and affirmed the sentences imposed. I now give my reasons.

Background facts

2 The appellant ran a stall "Haji MM Shahul Hameed" in Tekkar Market, selling fresh mutton. His stall stood back-to-back with another mutton stall, "Johara Mutton Stall". Both stalls were separated only by a narrow space which was used between them as a common working area.

3 Johara Mutton Stall was licensed to one Mdm Joharabee. She gave evidence that she was in India from July to September 2001 and that her stall was closed during her absence. Prior to that, between January and May 2001, she had employed an assistant named "Nagore" who would run the stall on her behalf. It was the unchallenged evidence of Mdm Joharabee that Nagore had stopped working for her since May 2001 and had returned to India.

The prosecution's case

4 On 23 August 2001, at about 7:00am, Sheikh Abdullah was observed by Jailani Abdul Kadir, an employment inspector of the Ministry of Manpower, ("MOM"), to be putting some mutton into a plastic basket just in front of "Johara Mutton Stall". Jailani Abdul Kadir also observed Md Serajul handling mutton, in the common working area between the appellant's stall and the Johara Mutton Stall. According to him, Md Serajul, who had a piece of mutton in front of him and a chopper by his side, looked poised to cut the meat into smaller pieces. There was no one supervising Md Serajul and

Sheikh Abdullah, who were observed to be the only two persons present at the stall that morning. Jailani Abdul Kadir subsequently arrested Sheikh Abdullah, while Md Serajul was arrested by another employment inspector of MOM. The two MOM inspectors gave evidence that upon their arrest, both immigration offenders told them that they worked for the "Johara Mutton Stall" and that their boss was away in India.

5 Md Serajul subsequently testified that he was working for the appellant for about 17-18 days prior to his arrest. He had found employment at the appellant's stall through a friend 'Amir' sometime in August. Amir had informed him that the appellant would pay him $30 a day to work at his stall from 7am to 10pm. On his first day at work, the appellant informed him that his scope of work included cleaning the shop, clearing the rubbish, delivering meat to various shops in Serangoon as well as "managing" the Bangladeshi customers who frequented the stalls. He testified that during the period of his employment, he worked in the common working area between the appellant's stall and the Johara Mutton Stall. According to him, the appellant paid him $100 about 10-12 days later for the work done and promised to give him the remaining monies later. Md Serajul also stated that he had told the appellant that he was a Bangladeshi National who entered Singapore from Malaysia.

6 Sheikh Abdullah also testified that it was the appellant who employed him and that he had been working for the appellant for about a week prior to his arrest. He gave evidence that it was only after his third attempt in asking for work that the appellant employed him to work at his stall from 6am to 1pm. On the first occasion, he asked for a job but was turned down. At their next encounter, one week later, he asked the appellant for a job again. This time round, the appellant told him to come back and see him one week later. During this third occasion, the appellant asked to see his work permit. Sheikh Abdullah then showed him a forged, photocopied work permit. He lied to the appellant that the original permit was with his company and that the name on the work permit was his. As the appellant did not ask any further questions about his immigration status nor ask to see any other documents, Sheikh Abdullah assumed that the appellant had believed his story. It was only when he started work one week later that he told the appellant he was an Indian national. The appellant did not ask him to produce further identification papers at any time after starting work. He also testified that it was the appellant who would personally pay him his daily wage of $20 every day of that week except on the day he was arrested.

The defence

7 The appellant's defence was one of denial. He denied knowing either of the immigration offenders and denied having employed them at his stall. According to him, there was already sufficient help at the stall. He employed two workers, one Yusoff, a Singaporean and one Abdul Kuthoos, a permanent resident. In addition, his son, a polytechnic student, would help out at the stall in the afternoon if he did not have any classes. In this connection, the appellant argued that he would not have hired additional workers as he already had sufficient manpower. The appellant also claimed that the immigration offenders had colluded to falsely implicate him so that they could prolong their stay in Singapore and obtain a special pass by testifying against him. The appellant even went so far as to suggest that the true employer of the immigration offenders was either Joharabee or her assistant, Nagore.

The decision below

8 The trial judge ruled that, since the immigration offenders were found in the vicinity of the Johara Mutton Stall and that there was no evidence of the appellant having actual "charge, management or control" of the premises where they were found, the fairest thing to do would be to assess the evidence on the basis that the presumption in s 57(8) of the Immigration Act did not

operate. This was notwithstanding that she was of the opinion that it was arguable that *de facto* control by the appellant of the premises could be inferred – a point which the prosecution had failed to argue.

9 At the close of the trial, the trial judge found the appellant to be disingenuous and even far-fetched. She disbelieved his defence as well as the appellant's other witnesses whom she found lacking in impartiality. In contrast, the trial judge found Md Serajul and Sheikh Abdullah to be honest and credible witnesses. She accepted their evidence in relation to their employment by the appellant and found that, based on their account, the appellant had reasonable grounds to believe that Md Serajul and Sheikh Abdullah were immigration offenders.

10 As the trial judge was satisfied that the two charges against the appellant were proven beyond all reasonable doubt, she convicted him of them.

The appeal

11 The appellant appealed against his conviction and sentence. His main ground of appeal was that the trial judge had erred in finding that the prosecution had proven beyond all reasonable doubt his employment of the two immigration offenders as well as the necessary *mens rea* vis--vis their immigration status. As the appeal turned entirely on the findings of fact made by the trial judge, the main issue was whether the trial judge's findings were clearly against the weight of the evidence and unsupportable.

Whether the immigration offenders were credible witnesses

12 According to the appellant, the trial judge had clearly erred in accepting and relying upon the evidence of the immigration offenders. This was because their evidence was fraught with serious and material inconsistencies, which, in turn, impacted on their credibility as witnesses. The appellant also attacked the credibility of the immigration offenders on the basis that they had an ulterior motive to implicate him.

The discrepancies

13 In his written submission, the appellant highlighted a number of discrepancies in the evidence of both immigration offenders that he considered to be of a "serious and material" nature. On the basis of these discrepancies, the appellant contended that the evidence of the immigration offenders should, as a whole, be rejected. Having reviewed the evidence before me, I found these discrepancies to be either of a minor nature, in that they had no direct bearing on the facts in issue, or could be satisfactorily explained.

14 Assessing the evidence of each immigration offender in turn, the alleged discrepancies relating to Md Serajul's account were as follows:

> i Md Serajul had denied that the appellant was his employer when the appellant had confronted him about it in the police lock-up in the presence of three police officers;
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> ii Md Serajul's evidence that he was harboured at 120A Rowell Road was contradicted by other evidence; and
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> iii Md Serajul's evidence that he and Sheikh Abdullah were

arrested with another person named "Sedak" was contradicted by the evidence of the MOM inspectors.

15 The appellant's claim that Md Serajul had retracted his allegation in the police lock-up was firmly denied by Md Serajul, who testified that even though he had seen the appellant whilst in the lock-up on 24 August 2001, he had not engaged in any conversation with him. In my opinion, the trial judge had good reasons to prefer Md Serajul's account over that of the appellant. First, as she had aptly pointed out, no attempt was made by the appellant to put these allegations to police witnesses during the main trial. Secondly, it would be highly improbable for the police to have allowed the appellant, an accused person, to speak with and question a key witness at the police lock-up, especially when investigations were still ongoing.

16 At the trial below, the appellant had attempted to discredit Md Serajul on the basis that Md Serajul had tried to frame the appellant by maliciously fabricating a story about being harboured by the appellant at the residence of his sister at Rowell Road. In support of his contention, the appellant called upon his sister, Naina and one Bahurdeen Kader Beevi ("Bahurdeen") who worked as a maid in one of the residences to which Md Serajul was said to have brought the police. Barhudeen gave a confused account of a "person" being brought to the flat by police officers. As it turned out, Barhudeen's account was based on what she had heard through her employers. As such, her evidence was hearsay and could not be relied upon. Naina testified that Md Serajul brought some police officers to show them the flat in which he had stayed and had wrongly identified her flat as being the one where he had stayed. The trial judge held that all that Naina's evidence could establish was that Md Serajul had made a mistake in identifying the flat where he had stayed for a few days. This was plausible given that he was brought to the flat by a co-worker named "Sedak" and had only stayed in the flat for a few days.

17 In a similar vein, the appellant also sought to discredit Md Serajul on the basis that he had lied about the existence of a person named "Sedak" who was a co-worker at the stall. The appellant's argument had been canvassed before the trial judge who found that the available evidence did not in the least contradict Md Serajul's claim about there being two Indians working at the appellant's stall – Sheikh Abdullah and one other whom he knew as "Sedak". In the circumstance, she was of the opinion that Md Serajul's flawed recollection of having being arrested with Sedak was understandable in light of the shock and confusion Md Serajul must have experienced at the time of his arrest.

18 Having reviewed the evidence before me and bearing in mind the trial judge's advantage of having had the opportunity of observing the demeanour of the witnesses under cross-examination, I did not consider the trial judge's findings of fact and her decision to attach little weight to these discrepancies to be against the weight of the evidence.

19 In relation to the evidence of Sheikh Abdullah, the appellant highlighted the following discrepancies:

i Sheikh Abdullah had given a very confused and inconsistent account of the dates pertaining to his entry into Singapore and his subsequent employment by the appellant; and

ii Sheikh Abdullah's evidence that he had surrendered his photocopied work permit to the MOM inspectors during his arrest was not consistent with the evidence of the MOM inspectors.

20 According to the appellant, the fact that Sheikh Abdullah had contradicted himself many times in his evidence regarding his estimation of the dates at which he had entered Singapore and his subsequent employment by the appellant, served to undermine his credibility as a witness. Given that these events took place more than a year ago, I found that these discrepancies were really a result of human fallibility in retention and recollection, and amounted to nothing more than minor inconsistencies. In any event, considering that the appellant's defence was not one of alibi but one of total denial, Sheikh Abdullah's inability to recall the exact dates did not impinge upon the material aspects of his evidence. In this regard, Sheikh Abdullah gave very clear and cogent evidence about his employment by the appellant, which was also corroborated by the evidence of Md Serajul.

21 While the second discrepancy relating to Sheikh Abdullah's evidence was immaterial in that it did not relate directly to the facts in issue, the appellant contended that it must be taken to be a deliberate concoction, which militated against the credibility of Sheikh Abdullah. It should be noted that, even if Sheikh Abdullah had lied about the eventual whereabouts of his work permit, this did not mean that his evidence must be rejected as a whole. It is a well-established principle that a court may accept one part of a witness' testimony whilst rejecting another part: *Sundra Moorthy Lankatharan v PP* [1997] 3 SLR 464, *Ng Kwee Leong v PP* [1998] 3 SLR 942. I was satisfied that the trial judge gave due consideration to this inconsistent aspect of Sheikh Abdullah evidence in assessing the veracity of his evidence as a whole. Accordingly, I was not willing to disturb her findings of fact.

22 Another discrepancy that the appellant had emphasised was that the immigration offenders had, upon their arrest, informed the MOM inspectors that they were employed by the boss of "Johara Mutton Stall" who was away in India. The trial judge who noted that the immigration offenders had remained consistent in their stand that the appellant had employed them despite vigorous cross-examination, accepted the immigration offenders explanation that they had "babbled" the above statement in the midst of fear and confusion when they were arrested. I found this explanation to be plausible and consistent with the surrounding evidence.

Ulterior motive to implicate the appellant

23 The appellant also claimed that the immigration offenders had colluded to implicate him as they had an ulterior motive to "ingratiate themselves with the prosecution and wily nily find ways to lengthen their stay in Singapore". I found his claim to be of no merit whatsoever.

24 Not only did the appellant fail to produce any evidence of this alleged collusion between the immigration offenders, both immigration offenders were in fact already serving their one-year terms of imprisonment at the time when they testified at the trial. They clearly had nothing to gain in laying false allegations against the appellant once they were caught by the immigration authorities. In addition, they would risk being punished for offences of perjury and giving false information if they were exposed for telling lies against the appellant who claimed to be a relatively "well-known" stall-holder.

25 Having reviewed the evidence in light of the alleged discrepancies and collusion, I was even more convinced that the trial judge had treated the evidence of the immigration offenders with the necessary caution in assessing whether the prosecution's case was proven beyond reasonable doubt. In my judgement, her findings as to the consistency of the immigration offenders' evidence were also supported by the independent evidence of the MOM inspectors who testified that these immigration offenders were found in the early hours of the morning, within the immediate vicinity of the appellant's stall, handling meat. The photographs tendered in evidence also showed that the appellant's stall was the only mutton stall, in the immediate vicinity of where the immigration offenders were observed to be working, that was open at the time. It was also patently clear from the photographs that,

although Sheikh Abdullah was observed to be handling meat in front of the Johara Mutton Stall, the stall was closed at the material time. In fact, it was the unchallenged evidence of Mdm Joharabee that her stall had been closed since May 2001.

Whether the appellant's defence should have been rejected

26 The appellant argued that the trial judge was wrong in rejecting his defence and giving little weight to the evidence of the defence witnesses. He further submitted that, in so doing, the trial judge had ignored the fact that, until the point of their arrest that morning, no one was observed to be supervising the immigration offenders who were positioned nearer the vicinity of the Johara Mutton Stall than of the appellant's stall.

27 The appellant's defence was one of total denial. It was his position that he had never had any dealings with the immigration offenders. He also tried to reason that he was not in need of any additional workers apart from Yusoff, Abdul Kuthoos and his son. His claims, however, were shown to be untrue in light of the evidence.

28 In relation to his first claim, the appellant was unable to provide a valid explanation for why the immigration offenders were privy to the personal details of the appellant. Not only did they know that the appellant's name was "Mustafa" and that he came into work at 9 am every morning, they also knew who "Yusoff" was and that he was a Singaporean Malay. Furthermore, Sheikh Abdullah even knew that the appellant would do the accounting for his business at the stall. I found that the immigration offenders' familiarity with these details were, at the very least, inconsistent with the appellant's claim that he had had no dealings with the immigration offenders.

29 More telling of the untruthfulness of the appellant's claim of having had no dealings with the immigration offenders, was his inability to provide a reasonable explanation as to why the immigration offenders were seen at 7 am in the morning near the vicinity of his stall handling meat. One explanation which he provided was that the space between his stall and the Johara Mutton Stall was a public passageway where anyone could come and go as they pleased. From the photographs of the stalls tendered in evidence, it was patently clear to me that this was not true. Not only was this so called "passageway" between the stalls extremely narrow, the "passageway" appeared to be a common working area shared by both stall operators. In relation to his other explanation that the immigration offenders were employed by the Johara Mutton Stall, I found that it contained no merit, for the simple reason that it was the unchallenged evidence of Mdm Joharabee that she had closed her stall in May 2001 and that Nagore had stopped working for her since then. As for the fact that the immigration offenders were seen handling meat nearer the Johara Mutton Stall than the appellant's stall, I did not think it inconceivable for the appellant and his workers to take the opportunity to utilise the space at the Johara Mutton Stall, considering that it had been closed since May 2001.

30 The appellant's second claim that he did not require additional workers was thoroughly examined by the trial judge and rejected. The appellant himself was away from the stall for the greater part of the afternoon; Yusoff only worked at the stall two or three days a week and usually left by the afternoon; the appellant's son only worked on a part-time basis whenever his commitments in school would allow for it; as for Abdul Kuthoos, the appellant's evidence that Abdul Kuthoos worked six days a week and only took an off-day each Monday, was contradicted by the appellant's subsequent testimony that Abdul Kuthoos was not working on 23 August 2001, a Thursday. Moreover, neither Yusoff nor Abdul Kuthoos spoke Bengali. This meant that in the absence of the appellant and his son, there was no one else capable of dealing with the Bangladeshi customers who frequented the stall. Based on the above evidence, I did not find it improbable that the appellant would be in need of

additional workers.

31 In fact, I found that the appellant's claims, coupled with his inability to back them with proper evidence, only served to reveal his inconsistent stand and no doubt led the trial judge to form the opinion that he was "disingenuous, and even far fetched".

32 In so far as the three defence witness were concerned, I agreed with the trial judge that their evidence was of little use to the appellant. The evidence of Naina, the appellant's sister, was relevant mainly to disprove Md Serajul's allegation that he had been harboured by the appellant at his sister's residence. Vejakahumar gave evidence that he did not see either of the immigration offenders working at the appellant's stall whenever he delivered mutton to the appellant. The trial judge was of the opinion that he was an interested witness as he was a good friend of the appellant and came across as being very protective of the appellant. The third defence witness, Yusoff, gave evidence that the immigration offenders were not fellow employees at the appellant's stall. After a careful review of Yusoff's evidence, the trial judge found that it was "rife with internal inconsistencies" and ruled that it was unreliable and of little value. Based on the available evidence, I found the trial judge to be justified in her findings.

Appeal against sentence

33 Apart from stating that he found his sentence of 12 months imprisonment per charge to be manifestly excessive, he did not furnish any reasons in support of his contention.

34 In light of the fact that the benchmark sentence for an offence under s 57(1)(e) of the Immigration Act has been raised from six months to twelve months, I did not find the prescribed sentence of 12 months per charge to be manifestly excessive on the facts of his case. This was especially since the terms of imprisonment were ordered to run concurrently making it a total of 12 months imprisonment for both charges.

Conclusion

35 This was an appeal that turned entirely on the findings of fact by the trial judge. Having reviewed the evidence before me, and taking into account the discrepancies raised by the appellant, I was satisfied that the trial judge was fully justified in choosing to accept the evidence of the immigration offenders over the appellant's evidence. In the circumstances, I found no reason to disturb her findings of fact, and accordingly dismissed the appeal against conviction and sentence.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore