Teo Kian Leong v Public Prosecutor
[2001] SGHC 364

Case Number : MA 2/2001

Decision Date : 07 December 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Philip Fong and Lim Tse Haw (Harry Elias Partnership) for the appellant; Aedit Abdullah (Deputy Public Prosecutor) for the respondent

Parties : Teo Kian Leong — Public Prosecutor

Courts and Jurisdiction – Appeals – Whether power of appellate court subject to express limitation – When can appellate court overturn lower court's findings of fact – Applicable principles

Criminal Procedure and Sentencing – Judgment – Grounds of decision – Grounds of decision not conforming with guidelines – Whether appeal can succeed solely because trial judge's grounds of decision not ideal – Whether grounds of decision totally devoid of reasoning

Criminal Procedure and Sentencing – Sentencing – Unauthorised share trading – Sentencing practice -Factors to take into consideration – s 102(b) Securities Industry Act (Cap 289)

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Introduction

The appellant was convicted on eight charges of engaging in acts connected with the purchase and sale of securities, which operated as a deceit on another person. Each charge stated that the appellant had represented to his employer, UBS Warburg & Associates (Singapore) Pte Ltd (`the company`), that certain transactions were for and on behalf of Chia Soo Mui, Chia Lan Fong, Chia Low Fong, Yip Wai Choy, Oh Lay Geok, Oh Lay Khim, Oh Lay Hoon and Teo Song Boon (hereafter collectively referred to as `the complainants`) when they were in fact for his own interest. This is an offence under s 102(b) of the Securities Industry Act (Cap 289).

At the conclusion of the trial, the district judge sentenced the appellant to six months` imprisonment on each charge, ordering two of the sentences to run consecutively and the remaining sentences to run concurrently. The appellant thus faced a 12-month term of imprisonment. He appealed against both his conviction and sentence. After hearing the arguments of the appellant`s counsel, I dismissed the appeals and ordered the sentences to remain. I now set out my reasons.

Background facts

The appellant was a dealer`s representative of the company. His job was to make securities transactions on behalf of people who had trading accounts with the company. The complainants had such accounts and were his clients. By way of background, Teo Song Boon was a schoolmate and acquaintance of the appellant. Yip Wai Choy is married to Oh Lay Geok, who is the sister of Oh Lay Hoon and Oh Lay Khim. Chia Low Fong, Chia Soo Mui and Chia Lan Fong are sisters.

From March to May 2000, many sale and purchase transactions (`the trades`) were conducted on the accounts of the complainants. The trades involved several counters and were done in lots of between a few thousand to several hundred thousand shares and generally involved purchases

followed a few days later by sales.

While some of these trades resulted in profit, most resulted in losses and the complainants` trading accounts showed a nett loss at the end of the relevant period. The company subsequently issued letters of demand to the complainants, except for Oh Lay Hoon and Oh Lay Khim as the appellant had already paid for their losses. Several of the complainants then made complaints to the company and lodged police reports against the appellant, alleging that these trades were not authorised.

The prosecution`s case

Put simply, the prosecution`s case was that between March and May 2000, the appellant conducted many trades, representing that they were for and on behalf of the complainants. However, because the trades were not authorised and were actually for his own interest, these acts operated as a deceit on the company.

The complainants each testified that between March and April 2000, they discovered that unauthorised trades had been carried out under their trading accounts. Chia Low Fong gave evidence that on or about 8 March 2000, the appellant called her and informed her that there were transactions which had been wrongly keyed into her sister`s account. As the transactions had generated a profit, the appellant requested Low Fong to get her sister to return the profit to him. Low Fong issued a cheque to the appellant on her sister`s behalf. This cheque was subsequently deposited into the appellant`s bank account.

The other complainants learnt about the trades when they received contract notes from the Central Depository for trades which they had not authorised. Upon discovering this, they, either personally or through a representative, contacted the appellant to query the trades. Teo Song Boon gave evidence that the appellant admitted that he had done the trades on his own behalf. The other complainants testified that the appellant told them that the trades under their accounts were caused by mistakes. In any case, he assured all of them that their accounts would be rectified and that he would settle their losses. However, unauthorised trading continued to occur under the complainants` accounts. When they broached the subject with the appellant, he reassured them that the problem would be rectified, there would be no further trades and that he would settle the outstanding losses caused by the trades.

These assurances were given both over the phone as well as at informal meetings. Oh Lay Geok gave evidence that sometime in April 2000, she met the appellant and he promised to settle the losses, starting with the losses in her sisters` accounts. He eventually paid for the losses in Oh Lay Hoon and Oh Lay Khim`s accounts but did not clear the debts in the accounts of the other complainants.

Teo Song Boon and Chia Low Fong also had separate meetings with the appellant and received similar assurances. One Eilean Pak accompanied Low Fong to such a meeting on 15 May 2000 and gave evidence that such assurances were indeed made by the appellant.

In May 2000, all the complainants, other than Oh Lay Hoon and Oh Lay Khim, received letters from the company demanding that they repay the contra losses standing in their trading account. At about that time, some of them also received a brown envelope, purportedly from the company, which contained a draft letter in their names and addressed to the company. The letter was a proposal from them to the company to pay for the contra losses by monthly instalments. This letter was enclosed with a business reply envelope of the company, which had written on it `Attn: Marcus Teo`. Attached to the reply envelope was a Post-it note with the hand-written words, `Please contact

Marcus at PG:922-10-922 for clarifications`. Upon receiving the letters, these complainants contacted the appellant once again and he assured them that he would settle the losses with his bonus. However, they insisted on meeting up with him.

Chia Low Fong, accompanied by one Tee Kien Seah, met the appellant on 1 June and 5 June 2000. At the meetings, the appellant told Low Fong and Tee that even if he were to admit that the trades were his, the company still had the right to go after them. The appellant then said that the best way was for them to pay for the losses by monthly instalments and for him to reimburse them every month. When they refused to accept this solution, he gave them a draft letter, which he said would be from him to the company explaining that the trades were executed by him and that he undertook to bear full responsibility for them.

Teo Song Boon also met the appellant sometime in early June 2000. The appellant suggested that Teo propose to pay the company for the contra losses by instalments. However, Teo refused, stating that the appellant had to settle the losses since he had caused the losses by using Teo`s account without his authorisation. On hearing this, the appellant asked for more time to clear the losses and Teo agreed.

As for Yip Wai Choy and Oh Lay Geok, they testified that they met the appellant on 31 May 2000. After a short discussion, Yip demanded to speak to the appellant`s superiors at the company and met up with one Daniel Kwek and one Christina Foo.

In addition to evidence of the witnesses and several documents and cheques, the prosecution also adduced several Short Message Service (`SMS`) messages which were sent to Teo Song Boon by the appellant via his mobile phone and which Teo subsequently saved on his own mobile phone. In one message, sent on 22 May 2000, the appellant said:

> *Shld any1 ask abt yr a/c wif me, juz say there was consentment 2 the use of the a/c, pls dun say unauthorised use of the a/c. thks a million.*

Based on all the above evidence, the prosecution contended that it was clear that the trades were unauthorised.

The defence

The appellant claimed that the trades were either authorised or the result of mistakes and that his former clients were simply trying to evade their financial responsibilities and were pinning their losses on him. He stressed that their story was not legitimate, as nobody would have acted in the same way. They did nothing to stop the alleged trades and instead allowed him to continue engaging in a large number of unauthorised trades, complaining only after the company sent them letters of demand.

The appellant sought to rebut the evidence of the prosecution by claiming that the draft letters from the complainants to the company requesting for an instalment repayment plan had been sent upon requests made by Teo Song Boon, Yip Wai Choy and Oh Lay Geok because they had difficulties paying for the losses which they had personally incurred.

With regard to his payment of the Oh sisters` losses, the appellant said that he had done this because they were in financial difficulty and he wanted to help them by extending a personal loan to

them and clearing their debt.

The appellant argued that he could not hope to benefit from the unauthorised trades since he hardly knew the complainants and they were unlikely to share their profits with him. On the other hand, he would face severe consequences if he was found to have engaged in such practices. He also highlighted that some of the complainants had kept the profits that were transferred into their bank accounts as a result of gains made through the allegedly unauthorised trades.

The decision below

The district judge stated that, having observed the demeanour of the witnesses and having considered all the evidence adduced, he accepted the evidence of the prosecution witnesses as a truthful account of what had transpired. Apart from the credible direct oral testimony of the witnesses, the district judge also emphasised the corroborating evidence which substantiated the prosecution`s case. These were:

(1) the SMS message sent by the appellant to Teo Soon Boon on 22 May 2000;

(2) the cheques issued by the appellant to pay for Oh Lay Hoon and Oh Lay Khim`s losses; and

(3) the cheque from Chia Low Fong which was banked into the appellant`s account.

On the other hand, the district judge stated that he was unable to accept the appellant as a witness of truth. He was unconvinced by the appellant`s attempts to explain away the presence of the corroborating evidence mentioned above. In addition, he was unmoved by the appellant`s claim that he did not stand to profit from unauthorised trading as he could have engaged in such trading for a variety of reasons ranging from churning to generate commission, to secure a performance bonus or to pocketing profits after convincing clients to hand over the profits for trades done by `mistake`. Finally, he dismissed the appellant`s claim that the complainants were making the allegations in order to evade paying for the losses since they had challenged not only the loss-making trades but also those which resulted in gains.

The appeal against conviction

In his written submissions, the appellant challenged the district court`s finding that the trades were unauthorised. The main grounds of his appeal were that:

(1) the district judge failed to give adequate or any consideration at all to the likelihood of the complainants denying the validity of the trades entered into by them after the trades resulted in losses;

(2) the district judge was unduly influenced by the SMS message, which was capable of giving rise to other inferences and for which the appellant had given a reasonable alternative explanation; and

(3) the district judge was unduly influenced by the appellant`s deposit of Chia Low Fong`s cheque in his bank account when he convicted the appellant on the first, second and third charges (that is, making unauthorised trades through the Chia sisters` accounts) especially when the other profits earned through disputed transactions in the Chia sisters` accounts were retained by them.

Whether the findings of fact should be overturned

As in the court below, the only real issue before me was whether the trades conducted by the appellant were authorised by the complainants. This was a finding of fact which the appellant sought to overturn. The law on this is trite: the powers of an appellate court are not subject to any express limitation and it can overturn findings of fact; see **PP v Yeo Choon Poh** [1994] 2 SLR 867 . However, an appellate court will not disturb findings of fact unless they are `plainly wrong` or `clearly reached against the weight of the evidence`. This established principle was enunciated in **Lim Ah Poh v PP** [1992] 1 SLR 713 , **Jimina Jacee d/o CD Athananasius v PP** [2000] 1 SLR 205 and most recently, in **Ramis a/l Muniandy v PP** [2001] 3 SLR 534 .

During oral submissions, the appellant`s counsel cited the case of **Kwan Peng Hong v PP** [2000] 4 SLR 96 at [para]48 to 58 and submitted that, as the district judge did not state his reasons clearly as to how and why he preferred the evidence of the prosecution witnesses to that of the appellant, the appeal should be allowed. In ***Kwan Peng Hong*** I laid down, inter alia, several guidelines which should be followed by trial judges when considering the evidence before them:

> *50 ... the trial judge must also bear in mind that the weight to be attached to the witness`s evidence, among other factors, depends on his honesty, his ability, the number and consistency of the evidence, and conformity of the evidence with experience, and the coincidence of the evidence with other collateral circumstances.*
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> *51 For honesty and integrity, the trial judge must be open to any prevailing motive or inducement of the witness not to speak the truth. For the ability to speak the truth, the trial judge should take into account, among other factors, the opportunities that the witness has for observing the facts, the accuracy of the witness`s powers of discerning and the faithfulness of his memory in retaining the facts. For consistency, the trial judge must be aware that many seeming consistencies, will prove, upon closer scrutiny, to be in substantial contradiction and vice versa. As to the conformity of the testimony with experience, the trial judge must be receptive to whether the facts related were such as ordinarily would occur in human experience. As to the coincidence of the evidence with collateral and contemporaneous facts and circumstances, the trial judge must carry out close inspection of the evidence, comparing its details with each other and with contemporary accounts and collateral facts, if any.*
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> *52 These are not and cannot be exhaustive. The trial judge has an onerous duty in assessing the veracity of the witnesses, the credibility of the evidence and the weight to be attached to the evidence. Ultimately the trial is a factual process, and not that of some mathematical truth-searching. Be that as it may, the trial judge`s reasoning must be as systematic, detailed and reasonable as possible.*

At [para]58, I added that:

> *... where there are keenly contested versions of events, the trial judge has the basic duty to lay down in a detailed and clear way how, why, the factors,*

evidence and considerations that he has taken or refused to take into account, the weight he has attached to them, in arriving at his findings of fact ... If the reasoning has been unreasonable or shows signs of bias or prejudice, then the appellate court will not hesitate to intervene.

I am of the view that the above extracts from ***Kwan Peng Hong*** (supra) have been misconceived by the counsel of many appellants and erroneously used as grounds for undermining the decisions of trial judges.

The guidelines in ***Kwan Peng Hong*** (supra) were intended to help trial judges come to a reasoned decision. It presents an ideal which trial judges should aspire to and certainly try to conform with. If the guidelines are complied with, it is unlikely that the trial judge`s reasoning process will be marred by any logical pitfalls. In any case, one of the guidelines is that the trial judge should include details of his reasoning and that these should be systematic. This means that the reasoning process would be more transparent, thus ***helping*** the appellate court to decide if there is or is not a reason why the appeal should succeed.

However, simply arguing that a trial judge`s grounds of decision does not conform with the guidelines is not an adequate ground to acquit the appellant as this alone does not demonstrate that the trial judge`s decision and findings of fact were plainly wrong or against the weight of evidence or that there is a reasonable doubt that the appellant is innocent. After all, simply because the trial judge did not state his reasoning process in detail does not mean that he neglected to go through the process. And simply because the guidelines are not complied with strictly does not necessarily mean that there is a miscarriage of justice or that the case had not been proven beyond reasonable doubt and the accused should be automatically acquitted on appeal.

The only result of such a submission is that the appellate court will have to be more careful when scrutinising the evidence, the trial judge`s grounds and his comments as to the demeanour of the witnesses.

Admittedly, the grounds of decision of the district judge in this case was not perfect. It did not systematically deal with the evidence nor was the reasoning process detailed. Indeed, several important points which were raised by the appellant at trial and at the appeal were not dealt with in detail. However, the grounds were not totally devoid of reasoning. Moreover, rarely are trial judges` grounds of decision in perfect conformity with the guidelines stated in ***Kwan Peng Hong*** (supra). After examining the district judge`s grounds of decision, the evidence and arguments from counsel, I have come to the conclusion that the appellant`s arguments cannot be sustained and that the appeal on his conviction must fail.

First, the appellant contended that the district judge did not give enough consideration to the likelihood that the complainants denied the validity of the trades after the trades resulted in losses. The appellant said that this was likely especially in the light of certain inconsistent and contradictory evidence given by the complainants as well as the extended period of time they took to complain of the trades.

The only significant point made by the appellant at the appeal was that, while the complainants knew or should have known that he was conducting numerous unauthorised trades, they failed to complain to the company for weeks, only complaining when they received letters of demand from the company. The appellant submitted that their excuses, ie that they were either too busy to look at their contract notes or that they had complained to the appellant, were not acceptable as a reasonable

person would have complained to the authorities or the appellant`s superiors earlier.

I must say that it is indeed odd that the complainants did not complain earlier. However, this is not the first time that I have heard of such a thing. The truth is that many people do not bother to examine their own financial accounts and statements. And, even if they do, some of them do not seek help when they do not understand such statements. This is not very wise but it explains why some of the complainants did not report the unauthorised trades earlier.

It was also understandable that many of the complainants complained to the appellant and trusted him to keep his word. Some of them had been represented by him for a period of time and others had turned to him upon the recommendation of other friends. Ultimately, the appellant was an employee of UBS Warburg & Associates, a reputable bank with impeccable credentials. It was therefore not surprising that they would expect its representative to be reliable and honest. I should add that some of them also put off making complaints because the appellant had asked for more time to pay back the losses.

As for the inconsistencies in the evidence of the complainants, I did not find them material. The district judge had good reason to believe the prosecution witnesses` version of the facts. Not only did he have the opportunity of examining the demeanour of the witnesses and alluding to this in his grounds of decision, he also relied on some corroborating evidence (see above at [para]21). Moreover, there were also other independent sources of evidence which supported the complainants` version of the facts. First, there were the various documents produced by the prosecution, including the brown envelopes and Post-its as well as the draft letters to the company from the appellant. Secondly, the evidence of Chia Low Fong as to her meetings with the appellant was confirmed by Tee Kien Seah and Eilean Pak.

Furthermore, I was not persuaded by the appellant`s claim that, as some of the complainants were related, they could have compared notes on their stories or colluded against him. The complainants comprise of at least three distinct groups and there was no evidence that persons from each group either communicated or knew each other at the material times.

Finally, contrary to the appellant`s assertions, I saw no reason why the complainants would fabricate a story to incriminate the appellant. Even if the trades were unauthorised, the complainants may nevertheless remain liable for the trade losses as they may be estopped from denying the authority of their trades because of their failure to complain about them earlier; see **RHB-Cathay Securities v Ibrahim Khan** [1999] 3 SLR 464 . In fact, the appellant himself highlighted to a few of the complainants that, even if the trades were unauthorised, they were liable for the losses. There was therefore no impetus for them to lie.

On the other hand, I was not convinced by the appellant`s explanations for the above corroborating evidence. This led me to the appellant`s second argument. He claimed that the district judge was unduly influenced by the SMS message dated 22 May 2000 as it was capable of giving rise to other inferences and he had given a reasonable explanation for it. According to the appellant, that message referred to the discretionary trading which Teo Song Boon had allowed the appellant to engage in but which the company forbid. This explanation was quite implausible since discretionary trading is very different from unauthorised trading. My conclusion was the same as the district judge`s: the appellant would not have sent such a message if he had not engaged in unauthorised trading under Teo`s account. The district judge was therefore fully entitled to rely on this message as evidence that was very incriminating.

The appellant`s third main submission was that Chia Low Fong`s cheque was banked into his bank

account by mistake and he should be given the benefit of the doubt since, if he had actually wanted to profit from the trade, he would have made similar requests for the return of other profits generated by unauthorised trades. This argument would only hold water if no losses were subsequently made. The cheque was issued for a trade on 8 March 2000. The spate of unauthorised trades began around this time, and subsequently the appellant began to face losses. A highly plausible reason why he did not make similar requests later was that he wanted to recoup the losses so that no complaints would be made against him. He was no longer making unauthorised trades to profit but to cover his losses.

The district judge`s reliance on the prosecution witness`s evidence was therefore reasonable. The appellant did not convince me that the district judge`s finding that the trades were unauthorised was against the weight of evidence. As such, his conviction must stand.

The appeal against sentences

The prescribed punishment for an offence under s 102(b) of the Securities Industry Act (Cap 289) is imprisonment for a term not exceeding seven years or a fine not exceeding $250,000 or both. Bearing this in mind, and considering that the sentencing precedents show that the sentences imposed by the subordinate courts in recent cases range between four to six months` imprisonment, I failed to understand how the appellant`s sentence could be said to be manifestly excessive.

In the appellant`s skeletal arguments, he argued that in criminal breach of trust cases, the greater the loss caused to the victim, the greater the punishment should be. Considering that in previous cases the losses caused by the offenders were far greater than that caused by the appellant and yet they were sentenced to the same or lesser terms of imprisonment, there was no parity in sentencing. Therefore the appellant argued that his sentence should be reduced to four months` imprisonment.

While parity of sentencing is an important principle, this argument can only succeed if all the circumstances of the previous cases and the present one are identical or at least very similar. After all, the loss caused by the appellant (ie the magnitude of a crime) is only one of the factors to be considered by the court when it makes an assessment of the appropriate sentence to be meted out. Other factors that should be considered in a case like this are the gravity of the offence, the circumstances under which the acts were committed and any legitimate mitigating factors which may exist. In particular, the following factors have to be considered and taken into account:

(1) whether the acts were committed after deliberation and premeditation;

(2) whether the victims were vulnerable vis-.-vis the accused;

(3) whether there was an abuse of trust;

(4) whether the appellant pleaded guilty; and/or

(5) whether the appellant made restitution.

Ultimately, the principle that similar sentences must be imposed for similar offences and offenders is subject to the principle that each case must depend on its own facts. Even though it is true that the losses caused by the appellant in this case were only a fraction of that in ***PP v Hew Keong Chan*** (DAC 21810-6/99) and ***Syn Yong Sing David v PP*** (MA 266/98/01), the circumstances of this case are aggravating and therefore demanded that the appellant be punished accordingly.

The appellant was the representative dealer of the eight complainants and an employee of a reputable bank. He deliberately abused the trust and confidence they had in him and came up with a scheme to profit and later escape responsibility. Even after being confronted about his `mistakes`, he boldly continued to carry out similar transactions and accumulated greater losses at the expense of his clients, probably in the hope of recouping the losses and evading the consequences of his actions. This was very different from the facts in ***Syn Yong Sing David v PP*** (supra). In that case, the accused had acted with the consent and connivance of his client. Ultimately the loss would have been borne by the client under civil law and he deserved to bear the loss because the accused had acted with his consent. On the other hand, the appellant in this case, while causing less loss to his clients, had acted against their wishes and caused them financial hardship.

It is also worth pointing out that, unlike in this case, the accused persons in ***PP v Hew Keong Chan*** (supra) and ***Syn Yong Sing David v PP*** (supra) pleaded guilty and this was taken into account when they were sentenced.

In the circumstances, I found the appellant`s sentences reasonable and far from manifestly excessive.

Conclusion

For the foregoing reasons, I dismissed the appellant`s appeals against his conviction and sentence.

Outcome:

Appeal dismissed.