Public Prosecutor v Huang Rong Tai and Another
[2002] SGHC 218

Case Number : CC 34/2002

Decision Date : 18 September 2002

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Daniel Koh and Tan Kiat Pheng [Attorney-General's Chambers] for the prosecution; Wong Siew Hong and Eric Chew Yee Teck [Infinitus Law Corporation] for the first accused; Christina Goh [Christina Goh & Co] for the second accused

Parties : Public Prosecutor — Huang Rong Tai; A (a minor)

Judgment

GROUNDS OF DECISION

1. Huang, a 20-year old male ("the first accused") was charged together with his co-accused, *A* a 16-year old male ("the second accused"), on two counts of committing mischief by fire under s 436 of the Penal Code, Ch 224 (read with s 34). The first charge concerned the setting of fire to a market and hawker centre at Block 226, Ang Mo Kio Avenue 1 on 8 February 2000, at 2.53am. The second charge concerned the setting of fire at a market and hawker centre at Block 341, Ang Mo Kio Avenue 1 on 7 January 2001, at 2.16am.

2. The two fires took place almost a year apart in 2000 and 2001 respectively. The first accused was arrested on 10 September 2001 and the second accused was arrested on 20 September 2001. The circumstances of their arrests can be traced back to an incident on 6 September 2001. At 3am that morning three police patrol officers Sgt Mohamed Bin Zainol, Cpl. Hairulnizam Bin Sengari, and Cpl. Juhardi Bin Sa'adon spotted the two accused with a young girl near Blk 206, Ang Mo Kio Avenue 3. The girl walked away when she saw the police officers. The two corporals then went to find her while Sgt Mohamed questioned the two accused and ascertained their identities, although the first accused did not have his identity card with him at that time. The first accused told Sgt Mohamed that he was on his way to the flat belonging to the second accused's grandmother. The flat was at Blk 205 Ang Mo Kio. The two corporals, having failed to find the girl, returned to join Sgt Mohamed. The two accused told the officers that they had not been arrested before, but a screening with the police record showed that the first accused had a previous record with them.

3. The officers searched the two accused and found a cigarette lighter on the first accused but no cigarettes on either of them. The first accused said that he carried the lighter 'for fun'. A few hours later, at 4.45am the officers received a police message stating that a motorcycle was on fire at Blk 205, and began to suspect that the two accused were involved.

4. The case against the two accused was based entirely on their oral and written confessions. In respect of the first accused, the prosecution sought to admit two statements, made on 24 and 25 September 2001 respectively (marked P9 and P27), as well as two cautioned statements recorded on 2 4 September 2001, at 1.35pm and 2.31pm respectively (marked P25 and P 26). Lastly, the prosecution wished to admit a confession made on 27 September 2001 to four officers of the Civil Defence Force, namely, Capt. Thng Ting Mong, Capt. Azmi Bin Adam, Capt. Rashid Bin Mohd Noor, and Capt. Lee Fock Seng. The first accused challenged the admissibility of these confessions on the ground that they were unlawfully induced from him. A *voir dire* was held to determine the admissibility of these confessions. The case for the first accused was that he was kept in an air-conditioned room

and deprived of food, drink or sleep from the time he was arrested that is, shortly after midnight on 10 September 2001 for 14 hours. He was only asked one question throughout - "Did you set fire to the motorcycle?". He denied doing so. The evidence sufficiently supports his allegations. Sgt Murugasvaran admitted that he was interviewing the accused alone from midnight till 5am, and in the course of which, only one question was repeatedly put to the first accused. He claimed that the first accused was allowed rest from 5am to 8am. The accused denied this, and I gave him the benefit of doubt on this score. However, after considering the evidence and the submissions of counsel, I admitted the statements. He was, in my view then, unable to provide a coherent account of the nature of the threat, inducement, or promise that operated on his mind.

5. In the case of the second accused, the prosecution sought to admit four statements namely, two cautioned statements, made on 26 September and 5 October 2001 respectively; and two investigation statements made on 21 September and 2 October 2001 respectively. A *voir dire* was also necessary because the admissibility of these statements was challenged. The second accused was arrested on 20 September and was placed in a small air-conditioned room. It was disclosed by the prosecution that the room measured about five feet by seven feet (1.5 x 2 metres). The second accused testified that he was made to hug a large bag of ice placed on his lap, and his feet were placed in another bag of ice. He was there for several hours and was constantly shouted at by the officers. He gave in and made his first statement the next day because he was told that he would otherwise be brought back to the air-conditioned room.

6. In the case of the second accused I was not satisfied that the statements were made without threat, inducement or promise and gave the second accused the benefit of doubt. In doing so, it must be remembered that it was not necessary for me to make any finding of fact, for example, whether he was indeed made to hug a bag of ice. His first statement was an investigation statement and that was made the day immediately after the events complained of. The second accused was sent to the Singapore Boys' Home for detention from 22 September 2001, the day after his first statement. The superintendent of the Home testified that each time the second accused was brought back after a visit to the police for questioning he would be physically examined for injury. Thus, the DPP submitted that the boy had ample opportunities to complain but did not. Furthermore, he submitted, the examination did not reveal any signs of frostbite. The prosecution evidence was not sufficiently satisfactory because the officer who examined the boy did not himself give evidence. Moreover, the superintendent affirmed that the examination was done in the presence of a police officer. On the evidence, I am prepared to accept that it may be that the second accused would not be inclined to trade the relative comfort of the Home to the small air-conditioned room. In the circumstances, I ruled that his statements were inadmissible in evidence.

7. After reading the statements of the first accused, the prosecution called Dr. Tommy Tan and Prof. Mahendran to testify that in their opinion, the first accused, although of low I.Q. was nonetheless able to give an account of events that happened. He also told them that the fires were started by the second accused. The four captains from the Singapore Civil Defence Force (SCDF) were called to testify that they (all four of them) interviewed the first accused in the tiny interview room (Cpt Rashid agreed under cross-examination that it was about five feet by seven feet) at the police station. The officers appeared to me to be pleased with the prospect of collating data from an arsonist for their 'arsonist profile' data-pool that it did not occur to them that the 'arsonist' had not yet been convicted. They testified that the first accused told them that he had bought $10 of petrol in a detergent container which he kept in the void deck of his flat. He had used the petrol in a way which tallied with the SCDF's investigations.

8. At the close of the prosecution case, Mr. Wong declined to make any submission on behalf of the first accused. Miss Goh, however, submitted that there was no case for the second accused to

meet as there were no direct evidence against her client. I accept that the only evidence against the second accused was the evidence of the first accused implicating him, but at that stage, it was not appropriate to weigh the merits or otherwise of that evidence. Consequently I called upon both accused to enter upon their defence. They elected to testify.

9. The evidence of both accused was that they were not the ones who started the market fires. The first accused explained that he made his statements to the police because he was too cold and after a while, he "surrendered". He explained that he had told the doctor that he had voices and feigned a fit because he was bullied inside prison and wanted to 'escape'. There were some difficulty expressing this evidence by the accused and I understand him to mean that he wanted to get away from the prison bullies. It may be that his attempt was not likely to succeed from the outset, but I am prepared to accept his explanation. The point is that he thought it could succeed. The first accused also called evidence to show that he had been a student of the Chao Yang Special School for the educationally sub-normal. His teacher from that school, Miss Sharon See Toh also testified and she seemed to remember the first accused very well. She is presently teaching in the Dyslexia Association of Singapore. She has a degree in Special Education from the Monash University, and though she is not a trained psychiatrist, she was experienced in teaching mentally-handicapped children. She testified that the first accused had poor language skills although his numeric skills are better. He is able to count but has problems with concepts. He has difficulty expressing himself in English and cannot relate events in correct sequence; and had difficulty understanding the concept of 'before' and 'after'. She agreed under cross-examination that she taught him when he was 16 years old in 1996, and that he could have improved since then provided that he continued school or has someone to coach him at home. The first accused called two other witnesses, his mother, and Mr. Naidu, the president of the Association For Persons With Special Needs. Neither witness gave any evidence that was material one way or the other save that the first accused's mother testified that at the material times the first accused was staying in Bedok, and had not yet known the second accused.

10. The strength of the prosecution's case was also its weakness. The only evidence implicating both accused was the confession of the first accused. That was the sole pillar of the prosecution case. In some cases, that would have been sufficient. The law only requires that whatever the evidence adduced, the court must be satisfied that it had proven the prosecution's case beyond reasonable doubt. The statements of the first accused were retracted at trial, but Mr. Koh submitted that his evidence should be disregarded. The point made was that essentially, the first accused was an unreliable and untruthful witness. I pause to say that the defence case had consistently been advanced on the basis that the first accused was indeed an unreliable witness. There is a reason, which is not sinister, for that, namely, that the first accused was an educationally sub-normal person whose I.Q. of between 65 and 70 hindered his faculty of expression. This was corroborated to a large extent by his teacher Miss See Toh. In a case such as this, where the only evidence against the accused hinges on the reliability of a damning statement, the evidence of witnesses such as Miss See Toh, who are able to testify as to the linguistic ability of the first accused, is relevant and must be balanced against the evidence of the prosecution witnesses who had interviewed the first accused. In this regard, I see it as the court's duty to weigh the qualifications and standing of the respective witnesses, the length of time they had in contact with the accused, the length of time when they first and last saw the accused, the circumstances and environment in which the contact was made; and then taking measure of the accused himself in his testimony, and with that assessment, to consider the statements made by him. A statement that had been ruled admissible by the court does not, by its admission, attain an infallible status. At the close of the trial, the court is obliged to review that evidence and give it such weight as is appropriate.

11. In carrying out the exercise I mentioned above, it is not necessary to set out each individual part of the statements. The written and oral statements of the accused, including his testimony in

examination-in-chief and under cross-examination must be considered, in detail, and as a whole. In so doing, I am mindful that the first accused had not been entirely consistent, he had categorically incriminated the second accused and himself in his statements. Those parts are obviously important, but the issue at hand was whether notwithstanding the incriminatory statements, the first accused had raised a reasonable doubt as to the reliability of those statements. In spite of his low intelligence, the first accused understood most of the questions put to him by his counsel and those under cross-examination. His answers were mostly logical and sensible, but manner of expression as well as his demeanour reveal a young and impressionistic mind. The description of his mental capability by his former teacher Miss See Toh is consistent with my impression of him. Miss See Toh's evidence was, technically, an opinion; but it was, nonetheless, a professional opinion. She was suitably qualified, experienced and was personally in charge of teaching and assessing the mental capabilities of the first accused. The evidence that she gave was not in the sole province of psychiatrists and psychologists. It was, in my view, adequate. It was rational, appropriate, and credible - and sufficient to raise a reasonable doubt as to whether the statements were true or faithfully recorded.

12. Mr. Koh, in his very able submission, reminded me that the statements of the first accused were admitted after a *voir dire* and that I ought therefore find them to be reliable. Furthermore, he submitted that the statements were made 14 days after the arrest of the first accused and that, therefore, any threat, inducement or promise would have "evaporated like the petrol accelerant". Counsel also submitted that the statements were recorded by the investigating officer against whom no misconduct could be alleged, and also that the statements were interpreted by Miss Toh Bee Chuan an experienced police interpreter. These are obviously relevant points that I must take into account. The doctrine of proof beyond reasonable doubt permits an exoneration of the accused without implying a condemnation of his accuser or anyone else.

13. Reverting to the evidence, I find that there are some aspects of the statements of the first accused that must be regarded with caution. First, it was not explained how a container of petrol could be kept in the void deck of an Housing Development Board's flat for over a year without someone else, a cleaner, for instance, taking it away. The actual spot where it was kept was not known. Furthermore, some questions that arise naturally from the statements were not answered. First, why would two young and jobless boys spend $10 on petrol to use as an accelerant when cheaper alternatives such as kerosene could more easily and readily be purchased? Secondly, why would the accused confess to a crime which occurred more than a year ago and without any other evidence confronting him? Finally, as Mr. Wong pointed out, there was no corroborative evidence that the first and second accused knew each other during the times of the two fires. Indeed, the evidence is to the contrary. I am left with some doubt as to whether this was the duo (if indeed the fires were cause by a pair of arsonists) who set fire to the two markets.

14. In respect of the second accused, there was no evidence against him other than the incriminatory statements of the first accused. In law, if the statements of the first accused are found to be reliable, they may be used for the purposes of proving guilt against the second accused. On the specific facts of present case, however, the charges against the second accused must be dismissed if those of the first accused are not proved beyond reasonable doubt. The evidence of the second accused was also not damaged in any way under cross-examination.

15. Having regard to all the matters above, I am of the opinion that there is reasonable doubt as to the reliability of the first accused's statements as the sole basis for conviction. I, therefore, gave the benefit of that doubt to the two accused and acquitted them of the charges.

Sgd:

Choo Han Teck

Judicial Commissioner