

Aam Usup v Public Prosecutor
[2009] SGHC 227

Case Number : DAC 669/2008, MA 74/2009
Decision Date : 06 October 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Anand Nalachandran and Sue Ann Li (ATMD Bird & Bird LLP) for the appellant;
Edwin San and David Low (Deputy Public Prosecutors) for the respondent
Parties : Aam Usup — Public Prosecutor

Criminal Law

6 October 2009

Choo Han Teck J:

1 This was an appeal against the decision of the learned District Judge (“DJ”) to convict the Appellant on the charge of having committed theft of her master’s property whilst being employed in her capacity as a servant (domestic worker). The DJ sentenced her to six months’ imprisonment under s 381 of the Penal Code (Cap. 224, 1985 Rev Ed). The appeal was against both the conviction and the sentence received.

2 The theft was of two safe deposit boxes (“safes”) belonging to the Appellant’s employers. She had reported the theft but was arrested on the confession of another maid, one Sri Sunarti Mulyo Sutarno (“Sri Sunarti”). She implicated the Appellant as her accomplice and instigator of the theft on the day of her arrest and in subsequent statements to the police. Sri Sunarti was charged separately, pleaded guilty and she had served her sentence by the time of the Appellant’s trial on 7 May 2008, when she was called as a witness for the prosecution.

3 On the stand, however, Sri Sunarti recanted and claimed that she carried out the theft of the two safes on her own. The prosecution cross-examined her as a hostile witness under s 156 of the Evidence Act (Cap. 97, 1997 Rev Ed) before impeaching her credibility under s 157 of the same and applying to have her previous statements admitted as substantive evidence of their stated facts under s 147(3) of the Evidence Act. At the close of the prosecution’s case, no submissions were made by the Appellant’s counsel and the Appellant herself elected to remain silent. She did not call any other witnesses.

4 In the appeal before me, counsel for the Appellant focused his arguments on two grounds: that the statements made by Sri Sunarti were inadmissible as they amounted to the confessions of an accomplice; and that the DJ erred in finding that those statements were corroborated by independent and material evidence adduced by the prosecution.

5 So far as the law was concerned, the police statements of an accomplice were admissible to impeach her oral testimony. Section 135 of the Evidence Act provides that an accomplice is a competent witness against an accused person; her testimony must therefore be capable of being impeached under s 157 of the Evidence Act using her previous statements. The High Court decision in *PP v Sng Siew Ngoh* [1996] 1 SLR 143 also makes it clear that once a statement is admissible to impugn the witness’ credibility under s 157 it is also admissible as substantive evidence under

s 147(3). It was the trial judge's discretion to decide on the value and weight to accord to the two conflicting versions, which, in this case was exercised by the court in considerable detail. This appeal, therefore, turned primarily on the findings of fact made by the DJ below. I am of the view that there was nothing perverse in the findings made by the court below. There was sufficient evidence to incriminate the Appellant. Sri Sunarti's statements were corroborated by, amongst others, the lack of ransack in the flat, her demonstrated inability to carry the safes on her own, and CCTV footage. The Appellant chose, by remaining silent, not to answer the case against her and the DJ was entitled to take that silence into account and draw an adverse inference from it.

6 In the circumstances, therefore, this appeal was dismissed. The Appellant was ordered to commence her sentence on 18 September 2009.

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