

Senthamel Selve d/o Ramanathan v Public Prosecutor
[2002] SGHC 143

Case Number : MA 2/2002
Decision Date : 10 July 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Kenneth Siow Itming (Siow Itming & Co) for the appellant; Lee Lit Cheng (Deputy Public Prosecutor) for the respondent
Parties : Senthamel Selve d/o Ramanathan — Public Prosecutor

Judgment

GROUND OF DECISION

This was an appeal by Senthamel Selve d/o Ramanathan ('Selve') against the decision of district judge Suriakumari Sidambaram in DAC 30073/2001. The judge convicted Selve of the offence of committing theft in a building used for the custody of property, pursuant to s 380 of the Penal Code, Cap 224. Selve was sentenced to ten weeks of imprisonment. She appealed against her conviction, but not her sentence.

Charge

2 The charge against Selve read as follows:

You, Senthamel Selve d/o Ramanathan, f/41 years

NRIC No : S 1437177Z

Date of Birth: 03-06-1960

are charged that you on 10th day of July 2001, at or about 3:35 p.m. at "Shop N Save Supermarket" located at No. 51, Ang Mo Kio Avenue 3, #02-01, Big Mac Centre, a building used for the custody of property, did commit theft of a packet containing eight "Selar Ikan" fishes, total valued at \$7.05/-, in the possession of one Koh Chin Hoe, and you have thereby committed an offence punishable under section 380 of the Penal Code, Chapter 224.

Prosecution's case

3 The prosecution presented the following facts: On 10 July 2001, Wong Fok Seng ('Wong'), a security guard at the Ang Mo Kio Avenue 3 branch of Shop and Save ('SNS') was on duty. Wong testified that at about 3:35 p.m., he saw Selve entering the store. She walked straight to the fish section, bypassing some weighing machines at point "184" on exhibit "P5" (the map of the store). Selve selected some "Selar" fish and put them in a clear plastic bag provided by the store. After that, he saw Selve going to the rice section, which he described as a "very quiet area". There, Selve put the plastic bag containing the fish into an NTUC plastic bag that she had with her. She then walked straight to the main entrance and made her exit quickly, without paying for the fish. She had left the store and was already near the escalators outside the store when Wong stopped her.

4 Wong saw that the NTUC plastic bag that Selve was carrying contained the bag of fish that had not been paid for. He asked her why she did not pay for the fish. She became very angry and spoke to him in English in a loud voice. However, he did not understand her because he did not have a good command of English. At this point, an Indian cashier, Ms. Isvari d/o P. Thirupathy ('Isvari') came over because of the commotion. Wong pointed to the fish that were still in the NTUC plastic bag and told Isvari that Selve did not pay for them. Isvari spoke with Selve and asked her to follow Wong into the office of the manager, Ms Shashikala d/o Packirisamy ('Shashikala').

5 Shashikala testified that, when she questioned Selve about the theft, Selve kept denying that she had stolen the fish but had only taken them outside the store to weigh them. She repeatedly claimed that she was told by an executive in charge of the fish counter that the weighing machines were outside. When asked why she had put the fish in the NTUC plastic bag if she wanted to weigh them, Selve did not answer the question but continued saying that she just wanted to weigh the fish. The police were called. Two male officers and one female officer came. They asked who caught Selve and Shashikala told them that it was Wong.

6 One of the police officers was Staff Sergeant Tay Hwee Meng ('SSGT Tay'). He testified that, on 10 July 2001, he was on Fast Response Car duty with his partner, Corporal Lai Yew Wai ('CPL Lai'). At about 3:59 p.m., he received a message asking him to proceed to SNS. After he arrived there, he obtained the facts from Wong and proceeded to talk to Selve while Lai took Wong's statement. He also called for a female police officer to come to the scene as Selve was a woman. Inspector Noorwati ('INSP Noorwati'), SSGT Tay's team leader, came in response to his request. SSGT Tay testified that Selve was very uncooperative when he questioned her and she refused to give her particulars to him. She claimed that there was a misunderstanding but she did not tell him that she was looking for a weighing machine. Tay took three photographs at the scene to use as evidence. He left the clarification on whether an offence had actually been committed to the Investigating Officer.

7 The Investigating Officer was one Sergeant Adrian Goh ('SGT Goh'). On 11 July 2001, he interviewed Selve to obtain her version of the facts. He also went down to SNS three times. During his first visit, he ascertained the layout of the supermarket. On his second visit, he checked the visibility of the weighing machines from the fish counter and on his last visit he took Shashikala's statement. He also called Wong to obtain his version of the facts. SGT Goh also reviewed the statements of the arresting officers, SSGT Tay and CPL Lai. After carrying out these investigations, he decided to charge Selve on the strength of Wong's statement which he had personally verified. He testified later that he had no reason to suspect that that SSGT Tay, CPL Lai or Wong were lying in their statements setting out the circumstances surrounding Selve's arrest.

8 As for the location of the weighing machines, Shashikala and Wong testified that there were two weighing machines in the store. In the morning, one machine would be placed near the fish counter. The other machine would be placed near the vegetables and fruits. In the afternoon, however, both machines would be placed at the same spot near the vegetables and fruits. This was where the weighing machine was located at the time Selve was detained. Shashikala also testified that this arrangement of shifting the weighing machines daily had been the store's practice for the past year.

9 Lastly, Wong testified that he had never seen Selve before 10 July 2001. He also testified that the store did not promise or give him any incentives to catch shoplifters.

Defence's case

10 Selve testified to the following: She was a part-time office attendant and part-time helper at

a canteen stall run by her friend, Mohamad Shaheed ('Shaheed'). She was a divorcee and had custody of her three children. However, she claimed that she was not in any financial difficulty.

11 On 10 July 2001, she went to the "NTUC" supermarket at Ang Mo Kio to purchase some groceries. She had \$126 and some coins on her that day. She paid for her purchases and left carrying four "NTUC" plastic bags containing the groceries. After that, she proceeded to SNS to buy some "Selar" fish for the canteen at which she helped.

12 At SNS, Selve walked straight to the fish counter. She passed the two weighing machines there. She claimed however, that she did not notice them. She explained that there were a lot of baskets filled with fruits in that area. She intended to use the machine near the fish counter. She had been to SNS twice before 10 July 2001, to buy fish and crabs. On both occasions, she was there in the afternoon and she weighed her items at the machine near the fish counter.

13 When she was at the fish counter, she met a Chinese man who was the executive in charge of that counter. She identified Koh Chin Hoe ('Koh') as that executive. Koh helped her select some "Selar" fish and put them inside a clear plastic bag. She then took the fish to the machine near the fish counter to weigh them, but the weighing machine was not there. Thus, she asked Koh where it was and whether he could help her weigh the fish. She claimed that he refused to help her to weigh the fish because he was too busy. Instead, he pointed around and said that the weighing machine was somewhere near the exit but he did not tell her exactly where the machine was.

14 She went towards the direction of the exit to look for the machine. When she could not find it, she asked a Chinese cashier for directions, only to be rudely told to find it herself. She then went to the exit and stood on a red carpet there. At this point, she was approached by Wong who accused her of not paying for the fish. She explained to him that she was trying to look for the weighing machine. She also told an Indian cashier what happened but the cashier did not help and told her to go into the manager's office instead. Wong brought her to the office. Subsequently, Shashikala and then the policemen came. She explained to Wong, Shashikala, the male police officer interviewing her and another female police officer that she did not steal the fish. She also asked them to call Koh to clarify the matter but no one paid any attention to her pleas. She wanted to call her friend, Shaheed, and the police allowed her to do so. After that, the police officers brought her back to the police station where she was detained.

15 Shaheed gave evidence for the defence. He testified that, on the day in question, he received a telephone call from Selve. She told him that she was being accused of shoplifting. He went down to the store. At the store, he took 23 photographs of the store, under Selve's directions to "prove what the Accused was trying to say, that she was looking for a weighing machine around the exit where she was directed by the fishmonger." However, he admitted that he did not try to look for the weighing machine himself or pay any attention to the signs which the store put up to indicate the position of the weighing machine.

16 Koh was the third witness for the defence. His evidence was that on 10 July 2001, he saw Selve at the fish counter. She picked some fish and put them in a clear plastic bag. She also asked him where she could weigh the fish. He told her that she could do so "in front" and pointed to the weighing machine near the vegetable and fruit counter. He testified that from where he stood the sign board that was hanging above the weighing machine which indicated their position and the machine could be seen clearly. It was only about six metres away from where he was standing. After pointing out the location of the machine to her, he continued with his work. He could not recall where she walked to.

17 CPL Lai and INSP Noorwati gave evidence as arresting officers. CPL Lai testified that he recorded Wong's statement but he did not speak to Selve at all. His evidence was that he saw the fish in the NTUC plastic bag belonging to Selve. Wong told him that Selve did not pay for the fish and Wong stopped her near the escalators outside the store. As for INSP Noorwati, she testified that she was called to SNS on 10 July 2001. When she arrived, she spoke to her officers in the manager's office. She arrested Selve after ascertaining the situation from her officers. INSP Noorwati remembered that Selve wanted to call someone but Selve did not explain anything to her about the fish. INSP Noorwati said that her role was to escort Selve, not to carry out investigations, which was the duty of the Investigating Officer.

18 The last witness for the Defence was Isvari, the Indian cashier that Selve spoke to, prior to being brought into the manager's office. Isvari testified that on 10 July 2001 she saw Wong speaking to Selve and went over to help to translate. Wong told her that Selve stole some fish from the store and put them in the NTUC plastic bag. Isvari gave evidence that Selve showed her the NTUC plastic bag and she saw that there was a bag of fish in it. Selve explained that she wanted to weigh the fish, but Isvari told her that if she really intended to do so, she should not place the fish in the NTUC plastic bag. After that, Isvari told Selve to follow Wong into the manager's office.

The decision below

19 The trial judge concluded that Selve was guilty of the offence of committing theft in a building used for the custody of property. She accepted Wong's evidence that Selve selected the fish and put them into an NTUC plastic bag in a quiet corner. The fact that the fish was in the NTUC bag that Selve was carrying was also corroborated by CPL Lai and Isvari.

20 The judge disbelieved Selve's evidence that she was looking for a weighing machine to weigh the fish when she was caught. She gave these reasons: *first*, Koh denied pointing to the exit when Selve asked him where the weighing machine was. The judge accepted Koh's testimony that he pointed Selve to the machines near the vegetables and fruits. The weighing machines and sign indicating their location were visible from the fish counter. *Secondly*, the route she took to the fish counters showed that she had passed the two machines. *Thirdly*, the judge found that Selve was familiar with the layout of the store as she admitted that she had been to the store twice previously. As such, she ought to know that there were no weighing machines outside the store. *Lastly*, the judge preferred Wong's testimony that Selve did not stop to ask a cashier for directions as to where the weighing machines were placed but headed straight to the exit over Selve's evidence that she asked for stop to ask for directions. The judge observed that Selve had not called this cashier to testify at trial. Furthermore, when asked to mark the route she took out of the store, she omitted to mark the stop at the cashier. It was only when her counsel pointed out this omission to her during her re-examination that she changed the drawing of the route she took.

21 The trial judge also gave a detailed analysis of the credibility of the witnesses. She found Wong to be a reliable witness because he did not have any incentive to frame Selve. Wong was never offered any reward for catching shoplifters. In addition, the judge found that all the prosecution's witnesses withstood cross-examination. Their evidence corroborated with each other and with even the defence's witnesses. She observed that they had no reason to conspire against Selve. On the other hand, she found that Selve was evasive and gave contradictory evidence. She had reason to lie to get herself out of the charge. She also discounted the evidence of Shaheed because it was hearsay and he had admitted that he would "definitely" help Selve if she were in trouble.

The appeal

22 The only issue before me was a factual one, whether Selve intended to leave SNS without paying for the "Selar" fish in her possession, thereby committing theft in a building used for the custody of property. As this was an appeal against the findings of fact made by the trial judge, I applied the established principle that an appellate court will not disturb findings of fact unless they are *clearly* reached against the weight of the evidence : *Lim Ah Poh v PP* [1992] 1 SLR 713, *Yap Giau Beng Terence v PP* [1998] 3 SLR 656).

23 After a review of the evidence available, I was convinced that the trial judge had ample reasons to support her finding that Selve had not intended to look for a weighing machine outside the store but had wanted to leave the store without paying for the fish. In particular, I noted the following pieces of evidence which pointed irresistibly to the conclusion that Selve was guilty of the charge against her:

24 First, Selve put the fish which she had not paid for into an NTUC plastic bag and took that bag outside the store. Selve never denied these facts. Her own witnesses, CPL Lai and Isvari, both clearly testified that they saw the unpaid fish in Selve's NTUC plastic bag. The evidence of CPL Lai and Isvari was consistent with Wong's testimony that he saw Selve go to a "very quiet area" of the store, the rice section, and surreptitiously put the fish into the NTUC plastic bag. I find no reason to doubt Wong's evidence. The fact that Selve put the unpaid fish into a white NTUC plastic bag and walked out of the store made her story that she wanted to go outside to weigh the fish highly unbelievable. If it was really her intention to weigh the fish and pay for them, she would not have placed them in her own bag and bring that bag out of the store without paying. I also observed that Selve never explained this inconsistency although she was confronted with it by Isvari and Shashikala.

25 Secondly, Selve had no reason to believe that the weighing machines were outside of the store. She claimed that she thought the machines were outside because Koh had told her that they were somewhere near the exit. However, Koh, who was her own witness, testified that he had never told her that the machines were near the exit. On the contrary, Koh gave evidence that he pointed Selve towards the weighing machines near the vegetables and fruits. Furthermore, he also testified that the machines were clearly visible from where he and Selve stood and were, in fact, only a mere six metres away.

26 In addition, Selve should know that there were no weighing machines outside the store because she was familiar with its layout. During her examination-in-chief, she said that she had been to the store "many times" and that she sometimes went there as frequently as once every two weeks. However, on further questioning by her own counsel, she subsequently said that she had only been there twice before 10 July 2001. I doubted that she was being truthful about the number of times she had been to the store before. Nevertheless, it was reasonable to draw the conclusion that she was familiar with the store's layout. She had been there at least twice and she knew where the fish counter and the weighing machine next to the fish counter was. The trial judge's finding that it was incredible that Selve would believe that the weighing machines were outside of the store in light of her familiarity with the store's layout, could not be faulted.

27 Before me, Counsel for Selve argued that the trial judge's assessment of the witnesses was wrong because she relied on Wong's testimony. Wong gave evidence that he saw Selve put the fish into a plastic bag at the fish counter without any help. Counsel for Selve pointed out that it was impossible for Selve to place the fish into the plastic bag without help because she only had the use of one of her hands as she was carrying the rest of her shopping bags with her other hand. As such, Counsel for Selve submitted that Wong's entire testimony should be discredited.

28 I rejected the argument put forth by Counsel for Selve, which appeared to me to be an attempt to grasp for straws. The question of exactly how Selve put the fish into the plastic bag was merely a minor point which was unnecessary to prove the charge against her. In any case, in light of the overwhelming evidence against Selve, such a minor discrepancy certainly could not show that the trial judge was clearly wrong in accepting Wong's testimony over Selve's.

29 Furthermore, I agreed with the trial judge's analysis on the credibility of the witnesses. She observed rightly that Wong and the police officers had no reason to conspire together to frame Selve. In fact, their evidence was generally consistent with each other and even Selve's own witnesses, such as Koh and Isvari. On the other hand, Selve had every incentive to lie to get herself acquitted. Her testimony contained many contradictions. Such contradictions included whether or not she stopped to ask a cashier for directions to the weighing machine, the number of times she had been to SNS previously and whether she was financially strapped. Her evidence was also not corroborated by her own witnesses. The trial judge's finding that Shaheed's evidence was hearsay and potentially biased because of his close relationship with her was also not obviously wrong. I concluded that Selve failed to show why the trial judge's analysis was clearly wrong when she preferred the testimony of the prosecution witnesses over Selve's own and Shaheed's evidence.

Conclusion

30 For the reasons given above, I found that Selve did intend to take the fish out of the store without paying for them, thereby committing the offence of committing theft in a building used for the custody of property. Accordingly, I dismissed her appeal and confirmed her sentence.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore