Jagir Singh Touwana v Public Prosecutor
[2005] SGHC 36

Case Number : MA 88/2004

Decision Date : 22 February 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : The appellant in person; Leong Wing Tuck (Deputy Public Prosecutor) for the respondent

Parties : Jagir Singh Touwana — Public Prosecutor

Constitutional Law – Natural justice – Bias – Whether trial judge was biased

Constitutional Law – Natural justice – Right to fair trial – Whether trial judge had prevented appellant from cross-examining one of the prosecution witnesses

Criminal Procedure and Sentencing – Sentencing – Appeals – Whether sentence imposed was manifestly excessive – Section 131(1A) Road Traffic Act (Cap 276, 1997 Rev Ed)

Road Traffic – Offences – Appellant convicted of parking at unbroken double yellow lines – Whether judge was wrong in accepting evidence of prosecution witness – Whether traffic warden had issued summons against appellant only because traffic warden felt that appellant was challenging his authority – Rule 22(b) Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed)

22 February 2005

Yong Pung How CJ:

1 This was an appeal against the decision of a district judge, in which Jagir Singh Touwana ("the appellant") was convicted of parking at unbroken double yellow lines under r 22(b) of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed) ("the Road Traffic Rules"), and sentenced to a fine of $700, and in default thereof, seven days' imprisonment, under s 131(1A) of the Road Traffic Act (Cap 276, 1997 Rev Ed) ("the RTA"). The most recent version of the RTA is the 2004 revised edition, where s 131(1A) has been renumbered s 131(2). At the time the appellant was charged, however, only the 1997 revised edition of the RTA was in force. Accordingly, all mention of the RTA in this Grounds of Decision is made with reference to the 1997 revised edition.

2 The appellant appealed against both conviction and sentence. I dismissed the appeals, and now set out my reasons.

The facts

3 The appellant was charged with parking at unbroken double yellow lines on 22 October 2003 at about 7.44pm, along Upper Serangoon Road. There was no dispute that the appellant had stopped his car on three occasions along this road on this date and at about this time, and that there were unbroken double yellow lines along this stretch of road. The only issue in contention at the trial below was whether the appellant's actions had amounted to "parking" as defined in s 2 of the RTA. Section 2 of the RTA states that to "park" means "to bring a motor vehicle or a trailer to a stationary position and cause it to wait for any purpose other than that of immediately taking up or setting down persons, goods or luggage".

4 The Prosecution's case was that Mardiono bin Tukiman ("PW1"), a uniformed traffic warden, was carrying out enforcement duties at the material time. He saw the appellant's car stop along Upper Serangoon Road, just outside a *nasi lemak* stall. After about ten seconds, PW1 waved to the driver of the car to move on. The appellant drove on and stopped for about 30 seconds at a second position, which was only a few metres further down the road. PW1 started to key in the registration number of the appellant's car into his portable handheld terminal. The appellant subsequently moved to a third position along the same road and stopped for about 30 seconds, before finally moving away altogether. All three positions were along the same road with the double yellow lines. During PW1's entire observation of the car, he did not see any persons, goods or luggage being taken up or set down. There was also no obstruction in front of the car, and the car could have moved off easily. PW1 observed that the appellant only signalled to filter out after he had stopped for the third time.

5 The appellant, however, claimed that he had dropped off his wife, Malkit Kaur ("DW2"), and a family friend, Karthiani d/o Mani Nair ("DW3"), at the *nasi lemak* stall on the day of the alleged offence to buy dinner, and had driven off immediately after that. He did not see PW1 waving at him. However, as there was heavy traffic in the lane to his right and a stationary lorry in his lane obstructing his path, he had to stop at the second position, a few metres further down the road. He then saw PW1 approaching his car from behind, and waited because he wanted to tell PW1 that he intended to drive away and was not parking there. As PW1 did not reach his car, he again moved forward to drive away. However, he had to stop at the third position, as he still could not enter the lane on his right due to heavy traffic. He was only able to filter into the right lane from the third position.

The decision below

6 The trial judge found PW1 to be an honest, forthright and candid witness, and believed his version of the events (see [2004] SGDC 279). He found that the appellant had been at the three positions for ten seconds, 30 seconds and 30 seconds respectively. The trial judge reasoned that PW1 could have seen the appellant's car after the appellant's wife and friend had alighted. He found that after the appellant's wife and friend had alighted, the appellant was probably waiting for them to finish purchasing the food from the *nasi lemak* stall, but when the appellant realised the presence of PW1, he had moved the car slightly further down the road and stopped again. The appellant had waited for PW1 to approach, but PW1 did not do so.

7 The trial judge found that there was no obstruction blocking the appellant's path, and there was thus no lawful excuse for the appellant to wait as he did at the first and second positions after his passengers had alighted. At the second position, the appellant's wait in order for PW1 to approach him did not constitute a lawful reason for him to remain there. At the third position, illegal parking had also occurred until such time as the appellant had formed his intention to filter out. Accordingly, the appellant was sentenced under s 131(1A) of the RTA to a fine of $700, and in default thereof, seven days' imprisonment.

Appeal against conviction

8 I found it helpful to group the appellant's grounds of contention into four broad categories, which were that:

(a) The trial judge had placed too much weight on the testimony of PW1, even though PW1 was evasive in his answers throughout his cross-examination and there were glaring inconsistencies in his evidence.

(b) PW1 had booked the appellant because he felt that the appellant was challenging him after he had waved him on, and PW1, in the circumstances, had over-reacted to the situation.

(c) The trial judge was biased.

(d) The trial judge had prevented the appellant from cross-examining one Esther Chong ("PW2"), by saying that the appellant was only required to raise a reasonable doubt by cross-examining PW1 and that he had done a fine job. This had raised the expectations of the appellant, thereby preventing further cross-examination of PW2.

9 I now deal with each ground in turn.

Whether the trial judge was wrong to place too much weight on the testimony of PW1

10 I found that although there were instances of evasiveness during PW1's cross-examination and there were some inconsistencies in his evidence, the trial judge had made a finding of fact that PW1 was an honest, forthright and candid witness, and had chosen to believe his evidence. It is trite law that an appellate court will not disturb findings of fact unless they are plainly wrong or clearly reached against the weight of evidence. This is because an appellate court has not seen or heard the witnesses and has to pay due regard to the trial judge's findings and his reasons: *Lim Ah Poh v PP* [1992] 1 SLR 713; *Teo Kian Leong v PP* [2002] 1 SLR 147. In particular, where findings of fact hinge on the trial judge's assessment of the credibility and veracity of witnesses, an appellate court should be slow to overturn these findings of fact: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656. As a result, I could only overturn the trial judge's findings of fact if they were plainly wrong or clearly reached against the weight of evidence.

11 PW1 was evasive when he was asked whether he was behind the appellant's car when he waved at the car to move away, and whether he thought that it was necessary to ask the appellant why he had stopped before taking down the appellant's number. PW1 was also evasive when he was questioned as to whether it was possible that passengers had alighted from the appellant's car before he saw the car. Further, PW1 had mentioned that when he saw the car, it was already at a stationary position, but with the brake lights still on. He was evasive when he was questioned as to whether he was suggesting that the brake lights were still on because the vehicle had just come to a stop.

12 I was of the opinion that PW1's evasiveness went towards facts that were not material to the appellant's conviction. First, PW1 was not obliged to give the appellant a chance to explain himself before issuing a summons against him. Second, PW1 was clear in his evidence that he had not seen anyone getting into or alighting from the car at the three stationary positions that he observed the car to be in. Since that was the case, whether or not passengers had indeed alighted from the appellant's car before PW1 saw the car was irrelevant. So long as the appellant had not driven away from the double yellow lines after he had allowed his passengers to alight, he would be guilty of the offence in question.

13 As a result, I found that the fact that PW1 was evasive during his cross-examination did not show that the trial judge was plainly wrong in accepting his evidence. However, PW1 was inconsistent in his testimony on the crucial issue of whether the road in front of the appellant was obstructed. If the appellant had intended to drive away but was prevented from doing so because the road was obstructed, he would not be guilty of the offence of illegal parking. In this regard, PW1 first gave

evidence that there was a vehicle about 25m to 30m ahead of the appellant's car, and the vehicle was moving along the lane. He did not see a stationary lorry. He subsequently gave evidence that he was only concentrating on the appellant's car, and that he was not sure if he could see the lane in front of the car. When PW1 later gave evidence in Malay with the help of a Malay interpreter, the trial judge again questioned him on this issue. PW1 then said that he could see the lane in front of the appellant's car clearly up to a distance of about 30m. There was a bus stop in front of the car, and the nearest bus was about 25m away. There were no other cars in the lane. During his re-examination, PW1 reiterated that there was no obstruction in the lane in front of the appellant's car, and the appellant was free to drive off.

14 Although PW1 had given inconsistent evidence on the issue of whether the road in front of the appellant was obstructed, I bore in mind the fact that the trial judge was in a better position to determine the credibility of the evidence given by each witness, and he had found that PW1 was a credible witness. Moreover, I was of the opinion that the evidence given by the Defence on this issue was equally inconsistent. The appellant testified that there was a stationary lorry in the first lane on the left. This lorry was about 20 ft and some three to four car lengths away, and was involved in the unloading of goods. DW2, however, initially said that there were two vehicles within 1.5m in front of the appellant's car, and passengers were alighting from these vehicles. She could not remember what these vehicles were. Subsequently, DW2 testified that these vehicles were cars, and she did not remember seeing a bus or a lorry.

15 It was therefore clear to me that the evidence given by the Defence as to whether the lane in front of the appellant's car was blocked was just as contradictory as the evidence given by PW1. In the case of the Prosecution, I also noted that after PW1 got a Malay interpreter, he gave clear evidence that he could see the lane in front of the appellant's car, and that there were no obstructions. In these circumstances, I found that as the trial judge had the opportunity to observe the demeanour of the various witnesses when they gave evidence in court, he was justified in coming to the finding of fact that there was no obstruction in front of the appellant's car. There was thus no reason for me to disturb this finding.

16 There were also other discernible inconsistencies in PW1's evidence. PW1 had given inconsistent evidence as to whether the appellant had seen him approaching the car when the car stopped for the first time along the double yellow lines. However, I found that this was an immaterial discrepancy that had no direct bearing on whether the appellant had committed the offence in question. Whether the appellant moved off because he saw PW1 waving him off or whether he had driven away of his own accord was immaterial, because PW1 was not obliged to give the appellant a chance to move off. As I noted in *Ng Kwee Leong v PP* [1998] 3 SLR 942, in such a case the trial judge was entitled to find that the immaterial discrepancy did not detract from the general veracity of the prosecution witness on the material issues.

17 As a result, I found that despite the fact that PW1 was evasive and that there were certain inconsistencies in his evidence, it could not be said that the trial judge was plainly wrong in accepting his evidence. PW1 had given clear evidence about the other material elements of the offence: that the car had stopped three times, for ten seconds, 30 seconds and 30 seconds respectively; and that he had not seen anyone getting into or alighting from the car during these three periods. In this regard, I noted that although DW2 and DW3 initially testified that the appellant must have seen them alighting from the car, DW3 later agreed with the prosecuting officer that when she alighted from the vehicle, she could not be sure whether PW1 was looking at the appellant's vehicle or at some other vehicle. As PW1 could well have been looking at something else when DW2 and DW3 alighted, I found that the trial judge was justified in finding that PW1 could have first seen the appellant's car only

after DW2 and DW3 had alighted.

18 The highly unsatisfactory evidence adduced by the Defence fortified my holding that the trial judge was not plainly wrong in accepting PW1's evidence. First, the appellant's contention that he formed his intention to filter out of his lane after his passengers had alighted was clearly unmeritorious. The appellant had alleged that this intention could be seen from the fact that he had turned on his car's signal light when he was at the first position. However, the appellant had not mentioned that he had turned on the signal light during his examination-in-chief and when he put his case to PW1. He only mentioned this when the court questioned him on this issue. If he had truly formed the intention to filter out from the left lane from the start, he would have mentioned the fact that he had turned on his signal light when he was cross-examining PW1, because he would then be able to show that PW1 was wrong in taking down his particulars when it was obvious that he was trying to filter out of the left lane. In this regard, I found that the trial judge's reasoning was cogent and convincing. Also, if the appellant's signal light were indeed turned on, he would not have had to wait for PW1 to walk over to tell PW1 that he was not parking and intended to move away. This would have been apparent from his signal light. The appellant's further explanation that the signal was automatically cancelled when his steering wheel was straightened also did not fit in with his version of the events, because, as the trial judge reasoned, if the appellant had indeed maintained his steering wheel in a position ready to filter out, the steering wheel would not have been straightened, and the signal light would have remained turned on.

19 Second, I found that the evidence given by DW2 was extremely dubious. I found that the trial judge was once again cogent in his reasoning that DW2's evidence was unreliable. DW2 had given evidence that after she had alighted from the appellant's car, she had seen the appellant's car two lanes to the right of the extreme left lane. She also pointed out on a photograph the position where she saw the appellant's car. However, as a matter of logic, it was impossible for the appellant to have reached that particular position, because that position was too near to the original position of the car when it had stopped to allow DW2 to alight. Further, DW2 had also claimed that she saw PW1 writing down the vehicle's registration number on paper, but PW1 had in reality used his portable handheld terminal to key in the car numbers of motorists who had parked at the unbroken double yellow lines.

20 Third, I found that there were also contradictions between the evidence given by DW3 and the evidence given by the appellant. The appellant had given evidence that there were no buses behind his car when he stopped, but DW3 had said that there were a few buses behind the appellant's car.

21 I was therefore of the opinion that the evidence adduced from the defence witnesses was contradictory and highly unsatisfactory. In these circumstances, I had no doubt that the trial judge was not plainly wrong, and it was not against the weight of evidence, for him to accept PW1's evidence over the evidence of the defence witnesses.

Whether PW1 had booked the appellant because he felt that the appellant was challenging him after he had waved him on, and whether PW1 had over-reacted to the situation

22 The reason why the appellant could have thought that PW1 had booked him for challenging PW1's authority was because of a sentence that PW1 had said during his cross-examination. PW1 had stated, "It appeared as if the driver was challenging me." PW1 had said this when he was trying to explain why the appellant had driven the car forward and then stopped at the second stationary position, after PW1 had waved the car to move on. However, I noted that upon further questioning by the appellant on this sentence, PW1 had made it clear in court that he did not feel any animosity

towards the appellant, but felt that he had to be tactful in carrying out his duty. I therefore found that there was no basis to hold that PW1 had issued a summons against the appellant only because PW1 had felt that the appellant was challenging him, and he wanted to assert his authority over the appellant.

23 In any case, I found that whether PW1 had over-reacted to the situation and booked the appellant only because he felt that the appellant was challenging him was irrelevant, as there was no obligation on PW1 to give the appellant a chance to move away before taking down his particulars. For the charge against the appellant to be made out, all that had to be proved was that the appellant had parked at the side of the road and that there was no lawful excuse for the appellant to have done so. As I held above, the trial judge was not plainly wrong in finding that the appellant had indeed stopped three times at the side of the road and that there was no lawful excuse for the appellant to do so. In these circumstances, I found that the charge against the appellant had been made out, and the motive that PW1 had in booking the appellant was irrelevant.

Whether the trial judge was biased

24 The appellant argued that the trial judge had presided over the case with a "pre-judged mind" after having uttered the following sentence during the pre-trial conference: "If it is not parking then what is it?" The appellant also argued that the trial judge appeared to be "prosecution-minded", as he claimed that his complaint about the prosecution officer's conduct, as well as an inappropriate remark allegedly uttered in court by the prosecution officer, was dismissed without any queries.

25 I found that the appellant's claim was frivolous, and did not meet the high threshold required for an argument of bias to succeed. For the appellant to succeed in his argument, apparent bias would suffice and there was no need to prove actual bias: *Mohamed Ferooz v PP* [1997] 3 SLR 345. The test to be applied in order to determine if the judge was biased was set out in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 at 338: Would a reasonable and fair-minded person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the appellant was not possible?

26 I found that the appellant made a wholly unsubstantiated allegation against the trial judge. It was evident from the Notes of Evidence and the trial judge's Grounds of Decision that he had reached his findings through logical reasoning and a detailed examination of the evidence given by both parties. A reasonable person would not suspect that a fair trial for the appellant had not taken place. There was absolutely no basis for the appellant to ask for a re-trial based on the fact that the trial judge was biased. I therefore dismissed this ground of appeal summarily.

Whether the trial judge had prevented the appellant from cross-examining PW2

27 PW2 was an investigating officer with the Traffic Police Division. The appellant submitted that during the trial, the trial judge had told the appellant that he was only required to raise a reasonable doubt by cross-examining PW1 and that the appellant had done a fine job. This had raised the expectations of the appellant, thereby preventing him from further cross-examining PW2.

28 I noted that in the Notes of Evidence, there was no record of the trial judge telling the appellant that he was only required to raise a reasonable doubt by cross-examining PW1, and that the appellant had done a good job. In any case, even if the trial judge had indeed told the appellant that, there was force in the Prosecution's submission that it was not surprising for a trial judge to offer a lay person who conducted his own defence appropriate guidance on aspects of trial procedure.

Further, it was difficult to see what the appellant would achieve by a cross-examination of PW2, whose role was merely to prepare the charge, interview the reporting officer and prepare for trial. Given that PW2 had not actually observed the incident on the day in question, it was unlikely that her evidence would be able to assist the appellant in overturning his conviction.

29 In light of the above, I concluded that the appellant's grounds of appeal against his conviction were wholly unmeritorious. Accordingly, I dismissed the appeal against conviction.

Appeal against sentence

30 The appellant also submitted that the sentence imposed by the trial judge was manifestly excessive, in view of the appellant's clean record and the fact that the offence was a minor one with no aggravating factors.

31 A comparison of this case with sentencing precedents revealed that a fine of $700 was not manifestly excessive. Due to a dearth of authorities concerning the direct issue of parking at unbroken double yellow lines, I also examined similar cases on the issue of illegal parking.

32 In *Tan Soo Phuan v PP* [2001] SGDC 249, the accused was charged with parking opposite double white lines, an offence under r 22(A) of the Road Traffic Rules read with s 83 of the RTA and punishable under s 131(1)(d) of the RTA. Section 131(1)(d) set out the same penalty as that found in s 131(1A) of the RTA. This case was not directly relevant to the present case, as the accused in *Tan Soo Phuan v PP* was a subsequent offender and was thus subject to a different sentencing tariff. What was relevant, however, was the fact that one of the accused's antecedents was for parking at unbroken double yellow lines under r 22(b) of the Road Traffic Rules. The accused was fined $1,000 for that offence.

33 In *Teo Kay Hoe v PP* (Magistrate's Appeal No 248 of 2000, unreported judgment dated 21 September 2000), the accused was convicted of parking within a "Demerit Points No Parking" zone in contravention of r 24A of the Road Traffic Rules and punishable under s 131(1)(d) of the RTA. He was fined $600, and in default thereof, one week's imprisonment, for the offence.

34 In *PP v Theseira Noel Edmund* [2003] SGDC 328, the accused was also convicted for parking within a "Demerit Points No Parking" zone. Although the decision only dealt with the accused's appeal against his conviction at the District Court level, the sentence imposed by the Magistrate's Court in that case was instructive. The accused was sentenced to a fine of $700, and in default thereof, seven days' imprisonment, by the Magistrate's Court.

35 It could be seen from these cases that the fine imposed in such cases of illegal parking was about the same or higher than that imposed in the present case. In light of these sentencing precedents, I was of the opinion that a fine of $700 in this case was not manifestly excessive, even though there were no aggravating factors and the appellant had no antecedents.

Conclusion

36 For the foregoing reasons, I dismissed both appeals against conviction and sentence.

Appeal against conviction and sentence dismissed.