Tang Keng Boon v Public Prosecutor
[2000] SGHC 9

Case Number : MA 220/1999

Decision Date : 17 January 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Christina Goh (Christina Goh & Co) for the appellant; Low Cheong Yeow (Deputy Public Prosecutor) for the respondent

Parties : Tang Keng Boon — Public Prosecutor

Criminal Law – Statutory offences – Prevention of Corruption Act (Cap 241) – Corruptly giving gratification – Whether relevant payments made – Whether appellant understands and intends payments to be for police officers – Objective and subjective corrupt element

Evidence – Witnesses – Impeaching witnesses' credibility – Prior inconsistent statements – Reliability and accuracy of prior statements – s 147(6) Evidence Act (Cap 97)

: The appellant faced two charges of corruption under s 5(b)(i) of the Prevention of Corruption Act (Cap 241) in the district court. The substance of these charges was that he, on two occasions in September 1998 and 1996 respectively corruptly, gave one `Allen`, through another Tan Chee Yak, gratification in the sums of $6,000 and $10,000 respectively as an inducement for `Allen` giving tip-offs on impending police raids on the appellant`s shop at [num ]03-78, Sim Lim Square, which sold pirated business software. The first offence was said to have been committed at Blk 1002, Tai Seng Avenue [num ]01-2540 (`the first charge`) while the second was more generally in Singapore (`the second charge`).

He appealed against his conviction on both charges, having been granted leave to withdraw his appeal against sentence. At the conclusion of the appeal, I upheld the conviction on the first charge but set aside the conviction and sentence on the second charge. These are my reasons.

The prosecution case

The prosecution called five witnesses in all. The undisputed content of their evidence was that the appellant had a 50% share in a business selling both original and pirated computer software. Chang Eng Guan Felix Edmund (`PW1`) and Tang Lee Leng (`PW2`) were the other business partners holding a 25% share each. PW2 was the girlfriend of PW1 while the appellant is her elder brother.

According to PW1, they entered into the business sometime in 1996 and sold pirated software at unit [num]03-78, Sim Lim Square. The shop unit was procured by the appellant. PW1 explained that by reason of the nature of their business, the shop was frequently raided by the police. Some time later, the appellant informed him that one Tan Chee Yak (`PW4`) was able to find ways to prevent such raids as PW4 had information or notice of such raids. PW1 was not told where this information came from, only that it would cost $10,000 a month. Having agreed to this, the payments started in 1996. By early 1998, they were reduced to $6,000 a month. These payments were made from the profits of the business and reflected in the accounts as `info`.

Whenever PW4 called him, PW1 would put the money in an envelope which PW4 collected. In his absence, PW4 collected the money from Alice Tan Lay Lian (`PW3`), a general employee of the business. Under cross-examination, PW1 admitted that he did not know the source of the information

or who the money was intended for. He assumed it was for the police but had no cogent reasons for this.

PW2 testified that she was only aware of payments made to PW4 sometime in 1998. PW1 informed her that these were for someone who could provide `information of the shops raided by the police`. This information related to the Sim Lim shop. Several details in her evidence contradicted an earlier statement she made to the CPIB on 25 October 1998 and the prosecution sought to impeach her credit on this basis. It is unnecessary to go into this as the district judge eventually held that her credit stood intact.

PW3 was employed in the business sometime in March 1997. PW1 informed her that the payments to PW4 were for information in order to avoid being raided. PW4 came once every one or two months to collect the sum of $6,000. She also prepared a payment voucher dated 28 September 1998 and wrote the accompanying cash cheque for $6,000 on the appellant`s instructions. The latter was drawn on U&C Trading`s account, which was the business name. She then left the cheque in the appellant`s office.

The prosecution`s key witness

PW4 was the prosecution`s principal witness. As appears from the charge, he was the immediate recipient of the payments. In examination-in-chief, he testified that he came to know the accused in 1992. He was not sure if the appellant had any dealing in pirated software and was only aware of the appellant`s Sim Lim shop in 1997. He had unexpectedly met Allen at a coffee shop near Sim Lim Square sometime in 1996 and had struck up a casual conversation. He only introduced Allen to the appellant sometime in the early part of 1997 at another coffee shop.

PW4 had found out earlier in 1997 that the appellant`s Sim Lim shop had been frequently raided. He mentioned this to Allen, who then suggested that they could both cheat the appellant of some money. They would inform the appellant of impending raids on his shop in return for money. When asked why this amounted to cheating the appellant, PW4 detracted from his earlier evidence and stated that no deception was involved. They merely took the appellant`s money in exchange for information on impending raids obtained by posting look-outs. The look-out arrangements were made by Allen.

PW4 denied being involved in the scheme as Allen spoke to the appellant directly, although he was also present. When asked specifically whether Allen told the appellant where the information came from, PW4 said that he was not paying attention to the conversation. He also denied being asked by the appellant where the information came from or how much the police wanted in return for the tip-offs.

The appellant agreed to the proposal and PW4 thereafter called the appellant`s workers on occasion to give them the relevant information. He denied telling the workers where the information came from. On other occasions, Allen called the workers and was the one who supplied the information.

As for the payments, PW4 received money on less than ten occasions and regularly between May and September 1998. He confirmed that he initially received $10,000, that this was subsequently reduced to $6,000 but denied receiving any money in 1996. More specifically, he agreed that he collected a cash cheque from the appellant`s office in September 1996 for $6,000, but could not remember who made the payment. In respect of the $10,000 payments, PW4 initially said that he first collected this sum from the appellant in 1997, but later said he could not recall if it was in fact the appellant or if he

had ever collected money from the appellant. The payments were made by either PW1 or PW3. Finally, PW4 admitted that he received a share of $1,000 from Allen, which was later reduced to $500.

PW4 was cross-examined by the prosecution on two statements made by him on 27 October and 10 November 1998 respectively. PW4 did not challenge these statements and admitted they were made voluntarily. The material portions of the first statement read as follows:

> *2 I know one Tang Keng Boon [the appellant] who was involved in the import and sales [of] counterfeit CD ROM ...*
>
> *3 Sometimes towards the end of 1996, Ah Boon [the appellant] told me that his men were caught many times for selling counterfeit CD ROMs. I told one Allen, whom I came to know from a coffee shop about Ah Boon`s problem. Allen then suggested to me why not we try to make some money out of this thing. Allen told me to tell Ah Boon that he had contacts with the police and that he could give tip-offs on impending raids conducted by the police. Allen suggested that we charge Ah Boon $10,000 per month for the tip-offs. I agreed to carry out the scheme as I thought that it would be easy money for us.*
>
> *4 I went back to Ah Boon and told him that Allen had contacts with some police officers who could give tip-offs on impending police raids. Ah Boon asked me for their names but I told him that their names could not be revealed. I told Ah Boon that Allen would inform me of the raids and I in turn would inform him or his men. Ah Boon asked me how much these police officers want in return for the tip-offs. I told him that they wanted a monthly sum of $10,000. I further told him that the tip-offs would be for raids against counterfeit CD ROMs and it was only for his shop operating at Sim Lim Square. Ah Boon had a shop at [num]03-77/78. Ah Boon accepted my offer.*
>
> *5 ...*
>
> *6 Every month, starting from towards the end of 1996, I collected a sum of $10,000 from either Ah Boon or Felix [PW1] until April or May 1998 when the amount was cut to $6,000 per month ... On most occasions, I would be paid in cash. On a few occasions I would be paid in cheque [sic].*
>
> *...*
>
> *11 I could remember that the last time when I received money from Ah Boon was sometime towards the end of September 1998 when he gave me a cash cheque of $6,000.*

It was apparent that PW4`s evidence-in-chief contradicted the contents of his statement in several material respects, relating to (a) his knowledge of the appellant`s dealings in pirated software and problems with police raids in 1996, (b) the fact that he told the appellant of Allen`s offer, (c) that the appellant was aware of the intended source of the information and asked PW4 for the names of the police officers, (d) that the appellant was informed that the police officers wanted $10,000 monthly, (e) that the $10,000 payments started towards the end of 1996, (f) that he received the

first payment from either the appellant or PW1 and (g) that PW4 received the $6,000 cash cheque from the appellant personally in September 1998.

PW4`s explanation for these inconsistencies was that he was anxious during the CPIB questioning about the condition of his pregnant wife who was about to deliver. He was detained at the CPIB for 12 hours and therefore wanted to finish the statement as soon as possible in order not to cause her anxiety. On cross-examination in this regard, PW4 stated that he did not give any thought to the accuracy of the statement. He did not pay full attention to the questions that were put to him on the information given, although he had earlier testified that he had answered the questions truthfully. When asked to explain how he could have answered the questions truthfully, he simply said that he was shocked when he was shown the statements by the investigating officer before trial, wondering why he had stated what he did.

In addition, PW4 was shown the statement of facts that he had admitted to when he pleaded guilty to a charge of corruptly receiving a sum of $6,000 from the appellant on a day in September 1998 at the appellant`s office. PW4 explained that it made no difference to him whom he received the money from as he had committed the offence. Further, as the sum was paid by an OCBC cheque and he had received several OCBC cheques from the appellant, he simply assumed that the appellant had paid the sum.

On cross-examination by defence counsel on his questioning at the CPIB, PW4 explained that the CPIB officers had questioned him on numerous occasions during his detention. He was unaware why his statement was taken 11 hours after he first arrived as he admitted from the outset that he received the money. He had not informed the officers of his desire to be released as soon as possible nor did the officers promise that he could return as soon as he made the statement.

The investigating officer

Finally, SSI Tin Yeow Cheng (`SSI Tin`) testified that during the recording of PW4`s statements, PW4 had initially denied receiving any money or giving any tip-offs to the appellant`s shop. As the interviews progressed through the day, interspersed by meal breaks, PW4 eventually admitted to devising a scheme with Allen to cheat the appellant of his money. SSI Tin then recorded the statement at 6.35pm based on what PW4 had told him during the course of the interviews and the recording itself. The statement was interpreted to PW4 and he made two amendments to para 3 before signing it. With respect to the second statement, SSI Tin went through the previous statement with PW4, who thereafter did not wish to make any amendments despite being allowed to do so. In this statement, PW4 clarified that he first received $10,000 in cash from the appellant personally towards the end of 1996 for tip-offs relating to impending police raids. Thereafter, there were a few occasions when PW1 or PW3 made the payments, but they were mostly made by the appellant.

SSI Tin denied suggesting to PW4 that Allen and he had planned to cheat the appellant, although he did ask PW4 if the information came from the police. This was in the light of PW1`s previous statement to the CPIB that the information given by PW4 was accurate. PW4 had denied this but was unable to say where the information came from.

The defence

The appellant elected to give evidence after his defence was called. The gist of this was that he did

not make any payments for tip-offs in 1996 and that any payments in 1998 were only for lookout services. He testified that he only joined one Tan Chee Teck to sell pirated compact discs at an outlet in Sim Lim Square in 1998. They faced problems with raids on the shop and became aware that Allen could supply lookout services. The appellant then spoke to PW4 sometime in 1997 or 1998 about this and asked him to seek Allen`s help in this respect. PW4 reverted after sometime that Allen wanted $10,000 for the service. The appellant did not ask PW4 how the service was to be provided because he knew that Allen employed people as lookouts. He denied being told by PW4 that the information would come from the police nor making any payments to PW4. He was not sure who handled the payments. Further, he was out of the country from 2 to 7 and from 18 to 26 December 1996 and was seldom at the office that month.

In cross-examination, the appellant agreed that he had five shops in 1996, one of which was at Sim Lim Square, the address of which he could not recall. However, it was not unit No [num]03-78 as this was owned by Tan Chee Teck. With respect to the payment voucher, the appellant denied having instructed PW3 to prepare it or seeing it at the shop.

The decision below

At the conclusion of the trial, the district judge held that PW4`s credit had been successfully impeached, rejecting his explanations for the discrepancies in his statements. They were thus admitted as evidence of the facts stated therein. She first found that the payments had started in 1996, accepting PW1`s evidence on this. Second, she held that the appellant had handed both the first payment of $10,000 and a payment of $6,000 in September 1998, based on the evidence of PW1, PW3 and the contents of PW4`s CPIB statements. Finally, she also accepted that the appellant was told that Allen had contacts with the police and the payments were made on that basis, relying solely on the contents of PW4`s first statement to that effect after evaluating its reliability and according it full weight. Accordingly, she convicted the appellant on both charges and sentenced him on both counts to two months imprisonment, which were to run consecutively.

The appeal

Although several other procedural points were raised in the petition of appeal, counsel for the appellant did not pursue these before me. She focussed solely on whether the trial judge erred in rejecting PW4`s testimony in court and accepting the contents of his statements as evidence of the truth in order to sustain the conviction on both charges. The reliance on PW4`s CPIB statements was a central issue in the trial below for the reason that it constituted the only evidence adduced by the prosecution on (a) the payment of the sum of $10,000 by the appellant to PW4 and (b) the nature of the payments via PW4 to Allen and the appellant`s intention in making them. I therefore similarly focus on this issue and will deal with these findings in turn.

The 1996 payment

The prosecution`s case with respect to the second charge was that it was the appellant who made the first payment of $10,000 in 1996. This was evident from the charge and the conduct of the prosecution case below. The district judge`s finding on this point was based solely on para 15 of PW4`s second statement on 10 November 1998, where he stated that the appellant paid the sum in cash. The appellant challenged this finding on the basis that it was not a contemporaneous statement.

The district judge was justified in rejecting PW4`s evidence in court on this point as he was evasive and changed his evidence on the $10,000 payment no less than three times. There was thus basis for her to draw the inference that he was giving evidence to assist the appellant. Nevertheless, she seemed to assume that it automatically followed from this rejection that the contents in para 15 represented the truth of the matter. The reliability or accuracy of the second statement in this respect, however, must still be weighed in the light of all the circumstances as required by s 147(6) of the Evidence Act (Cap 97).

I noted first that in his earlier statement on 27 October 1998, PW4`s evidence on this point was equivocal. At para 6, he merely stated that he collected a sum of $10,000 every month from ***either*** the appellant ***or*** PW1, until April or May 1998 when the amount was cut to $6,000 per month. This was almost two years after the date of the alleged payment, and PW4 was unclear over whether the appellant in fact made the first payment of $10,000. In contrast, PW1`s evidence in chief was as follows:

DPP:	How much and how frequent were the payments?
A:	It was on a monthly basis. Initially, the payment was $10,000.
DPP:	When did it change?
A:	I believe sometime in early 1998. It was changed to $6,000.
DPP:	Going back to your business arrangement. How was the payment made?
A:	It would have to be agreed by all. Basically, accused and I would make the decisions.
DPP:	The monthly payments of $10,000 started in which year?
A:	In 1996.
DPP:	How was the money paid and accounted for in the business?
A:	I would receive a call from Mr Tan Chee Yak and I would prepare the money for him.
DPP:	In cash or cheque?
A:	Always in cash.
DPP:	How would you prepare the money?
A:	I have to count the money and put it in an envelope and wait for Tan Chee Yak to come and collect.
DPP:	When Mr Tan Chee Yak collected the money, from whom did he do so?
A:	. [Emphasis added.]

He would collect it from me and when I am not around from Alice The foregoing extract makes it clear that PW1 had direct knowledge of and involvement in the payments, although he had no idea where the information provided by PW4 and Allen came from. He recounted rather accurately when they began, when they were reduced and his description of the method of payment substantially corroborated PW4`s account in para 6 of his first statement. Significantly, he made no mention of any occasion when the appellant made any payments. Either Alice or he did so, and the former only began

her employment sometime in March 1997. The district judge was content to accept PW1`s evidence that the payments were made in 1996, but did not deal with this aspect of his evidence in her grounds.

Secondly, PW4`s statements appeared to me to be somewhat inconsistent in respect of the venue of the payment. At para 6 of the first statement, he narrated:

> *... Every time when I or Allen wanted to collect money from Ah Boon [the appellant], I would telephone his office at Tai Seng Avenue first to inform them of my intention. Usually I would go down on the same day to collect the money. On most occasions I would be paid in cash. A few occasions I would be paid in cheque [sic].* ***I wish to say that all the money was collected by me. Allen had never been to Ah Boon`s office at Tai Seng to collect the money****.*

In his second statement, after stating that he did not wish to change anything in his earlier statement, he continued:

> *As for the first time, ie towards the end of 1996, that I received money from Ah Boon for tip-off of impending police raids, I had received $10,000 cash from Ah Boon. I could remember that the money was handed to me by Ah Boon. However, I could not remember where he handed the money to me.* ***All I know was that it was not in Ah Boon`s office at Tai Seng****. [Emphasis added.]*

I harboured reservations on the internal consistency of these statements when, on the one hand, PW4 was in substance stating that all payments were made at the Tai Seng office, and on the other, that the first was definitely not. The venue of the payments featured prominently in his recollection of who made the payments.

It was unfortunate that PW1 was not specifically asked who made the first payment in 1996. Nevertheless, the foregoing matters cast a reasonable doubt on the reliability of PW4`s statement in respect of the appellant`s physical act of payment in 1996, particularly since he could not even recall where the payment was made. A material element in the second charge was therefore not established. The respondent`s argument in this context was simply to affirm the district judge`s reasoning, which the foregoing demonstrates was lacking. I disagreed with the finding made below and thus set aside the conviction on the second charge as this was a matter of drawing inferences from the proven facts on the reliability of an unsworn statement in this particular respect.

I pause to add that s 5 of the Prevention of Corruption Act also envisages that a person corruptly giving a gratification may do so either by himself, by any other person or in conjunction with any other person. There was some evidence that, even if PW1 had made the first payment, it was made with the consent and knowledge of the appellant as it was drawn from the profits of the business in which the appellant had a 50% interest (see extract at [para] 26 above). However, this was not put to the appellant in cross-examination and the prosecution`s case was always based on the contents of PW4`s statement. The appellant was thus not given an adequate opportunity to deal with such an argument and PW1`s evidence in this respect. Any amendment to the charge at this stage would thus be prejudicial.

The September 1998 payment

The evidential difficulties inherent in the evidence on the 1996 payment did not apply to the act of payment under the first charge and the appellant did not seriously challenge this. There was ample independent evidence from PW3 that the appellant paid the $6,000 in September 1998 via a cash cheque, which corroborated the statement of PW4 made just one month after the payment.

The bone of contention at the trial below was whether the appellant knew or was under the impression that the payments were intended for police officers in exchange for relevant information on their raids. The main thrust of the appellant`s argument was that the payments were only made for look-out services. PW1 admitted that it was possible that the payments were for look-out services as he was aware of the practice. Further, PW2 also mentioned that PW1 once told her the money was for such services. However, the record demonstrated that PW1 and PW2`s evidence in this respect was unhelpful. They simply had no direct knowledge of where the information was supposed to come from.

The district judge justifiably considered that PW4`s evidence in court was evasive and tailored to assist the appellant. The principal piece of relevant evidence was thus para 4 of PW4`s first statement (see [para] 13 above). Her reasons for accepting the reliability of the statement on this question were, inter alia, as follows. First, PW4`s statements that the appellant told him about the raids on the Sim Lim shop and that he spoke to Allen about the problem were confirmed by the appellant. Second, considering the inherent probabilities of the appellant`s contention that the payments were merely for lookout services, it was odd that he did not mention this to PW1, his business partner, who was under the impression that the information in fact came from the police. Counsel for the appellant argued that there may have been other reasons why the appellant did not mention this to PW1. However, given the substantial amount of the payments, one would have expected him to have done so. Furthermore, the appellant left everything to PW4 and did not speak directly to Allen. He was willing to pay a substantial sum without bothering about the details of the lookout service and hence the quality and reliability of the information therefrom. It was more probable that the appellant`s understanding was that the information came from police sources.

Third, the appellant failed to mention in his s 122(6) statement that the payments were for lookout services. He in fact stated that he did not know what they were for. He ought reasonably to have mentioned this since he admitted he was involved in the transaction and thus an adverse inference was drawn. Before me, his counsel argued that he had already mentioned the substance of his defence in his earlier statement to the CPIB on 10 November 1998. However, the appellant`s explanation when cross-examined on the inconsistencies in that statement was partly that the statement was made as a result of leading questions and partly because he did not pay particular attention to the accuracy of his answers as he was not aware he was being charged. In the light of this, it would have been imperative for him to mention this essential matter in his s 122(6) statement when he was formally charged. He did not.

Fourth, PW4`s explanations for the inconsistencies in his statement were hardly credible. His anxiety over his wife`s condition was never raised to the CPIB officer. SSI Tin`s evidence, which was accepted by the trial judge, contradicted his allegation that he had no idea why he was detained for so long at CPIB when he admitted from the outset that he had received the money. Indeed, if PW4 had been forthcoming, it would be inconceivable why he remained at the CPIB office for some 12 hours. His evidence that he gave no thought to the accuracy of his statement was not borne out by the surrounding circumstances. The statements were interpreted to him and he went through them, even making amendments to para 3. In essence, PW4 admitted that he had made them truthfully and when presented with another opportunity on 10 November 1997 to review the earlier statement, he made no mention of any inaccuracy therein. Their reliability was thus not put in question because of the manner of recording.

The reasoning below was cogent and full weight was thus properly accorded to PW4`s first statement in this respect. I should add that PW4`s first statement was also made against his interest since he admitted that he received the payments and kept a share of the sums. What he told the appellant about the information to be provided was therefore also critical in determining his criminal liability for their receipt. In contrast, the appellant contradicted himself on when the business at Sim Lim Square commenced and his evidence was on the whole rejected by the district judge.

Based on the contents of para 4 of PW4`s first statement, it was clear that, when the payments were made, the intention was that at least some of it was to land in the hands of police officers to provide information on impending raids on the Sim Lim shop unit. The police source was material to the value of the information. This payment was thus intended for the purpose of thwarting the effectiveness of these raids. Such tip-offs would have been improper, in breach of police confidentiality and of the police officers` position of trust and responsibility: see **PP v Ong Teck Huat** [1993] 2 SLR 645 . There was thus an objectively corrupt element in the transaction when viewed from the perspective of the appellant`s intention in making the payment. It was no answer that PW4 and Allen never intended to pass the money on to police officers and that the whole scheme was said to be a fraud on the appellant: **Kannan s/o Kunjiraman & Anor v PP** [1995] 3 SLR 757 at 762. In these circumstances, the appellant must have subjectively known that the payments were corrupt in this sense, as it would be obvious to anyone that the receipt of such payments would be patently inconsistent with a police officer`s duties. The appellant did not argue otherwise. Both limbs of the test in **PP v Khoo Yong Hak** [1995] 2 SLR 283 were satisfied and the appellant`s conviction on the first charge was therefore proper.

Conclusion

For the foregoing reasons, I allowed the appeal against conviction on the second charge and dismissed the appeal on the first charge.

Outcome:

Appeal on the first charge dismissed; appeal against conviction on the second charge allowed.

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