

Poh Sai v Public Prosecutor
[2003] SGHC 249

Case Number : MA 112/2003
Decision Date : 17 October 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Thangavelu and Shankar s/o Angammah Sevasamy (Rajah Velu & Co) for appellant; James E Lee (Deputy Public Prosecutor) for respondent
Parties : Poh Sai — Public Prosecutor

Evidence – Weight of evidence – Accused alleging that trial judge wrongly assessed the evidence – Whether wrong inferences drawn.

1 The appellant was convicted of one charge under s 380 of the Penal Code (Cap 224) and was sentenced to a term of imprisonment of four months. She appealed against her conviction. I dismissed her appeal against conviction and I now give my reasons.

Background

2 The appellant was a 48 year-old woman who claimed trial to the following charge:

You, Poh Sai... are charged that you on the 22nd day of January 2003, at or about 1.00 p.m., at Prime supermarket located at Blk 678, Woodlands Ave 6, #01-716, Singapore, a place used for custody of property, did commit theft of the following items:

- a) one packet of "Jin Huang" Thai fragrant rice white rice valued at \$6.20/-
- b) one packet of minced pork valued at \$2.55/-
- c) one packet of loin boneless meat valued at \$2.60/-

amounting to a total value of \$11.35, in the possession of Michael Low of the said Prime supermarket and have thereby committed an offence punishable under Section 380 of the Penal Code, Chapter 224

3 At the trial below, the appellant did not deny that she had taken the three items. Instead, her defence focused on contesting the mens rea of the offence: she denied intending to take the items without paying. The issue of her mens rea turned on two points of evidence: the location at which she was detained and accused of shoplifting; and her behaviour before and after being detained. I now turn to the evidence adduced at the trial below.

Prosecution's evidence

4 The prosecution's main witness was Tan Yang Liang ("Tan"), the security guard at Prime supermarket ("the supermarket"). On 22 January 2003, at about 1pm, Tan was on duty at the supermarket. He was not wearing a uniform and was attired in shorts, slippers and a singlet.

5 At that time, the supermarket was holding its Chinese New Year sale. As there was insufficient space inside the supermarket, some of the goods were placed outside the supermarket. Furthermore, as there were larger than normal crowds of customers frequenting the supermarket, an additional cashier was placed outside the store.

6 While on patrol, Tan spotted the appellant, who was holding a red plastic bag in her left

hand, at the meat department. The plastic bag was not from the supermarket. He noted that she was acting suspiciously as she was "looking here and there and keeping an eye on the supermarket's staff."

7 Tan saw the appellant take two packets of meat from the freezer and transfer them into one of the transparent plastic bags provided by the supermarket to customers. The appellant carried both bags in her left hand. She then walked over to the rice section and took a five kilo bag of rice and likewise held it in her left hand.

8 She then walked towards the bread section which was located just outside the supermarket next to the cashier. She kept looking at the cashier. She then moved behind the bread section, turned abruptly and walked down a corridor towards the loading bay behind the supermarket.

9 Tan immediately chased after her and stopped her about seven metres down the corridor. He informed her that he was a security guard employed by the supermarket. He told her that he had seen her taking the three items without paying and told her to follow him back to the office. The appellant told him that she was going to the back of the supermarket to look for her child in a car.

10 Tan did not believe her story as he could see that there was no car parked at the loading bay. Instead, he brought the appellant back to the supermarket's office. The appellant was very frightened and kept begging Tan to let her off. She told him that Chinese New Year was coming and asked him not to make a police report. Tan told her that it was their company's policy to hand over all shoplifters to the police. The appellant kept begging him and started crying.

11 Around this time, Low Wing Wah ("Low"), the supermarket's manager, came into the office. Tan told him about the shoplifting incident and the appellant's story about looking for her child. Low then walked to the loading bay to check out the appellant's story, but he did not see any car there. Upon his return, the appellant pleaded with Low to give her a second chance. Low refused and the matter was reported to the police.

12 Sergeant Tan Khim Huat was the first police officer to arrive at the supermarket. Upon his arrival he met Low, Tan and the appellant. He proceeded to take some photographs of the supermarket before referring the matter to the Investigating Officer, Fu Peng Mun. After he had referred the case to the Investigating Officer, he noticed that the appellant was crying. She asked him to give her a second chance and let her off. Sergeant Tan did not accede to her request and escorted the appellant back to the police station.

Defence's evidence

13 The appellant was the only witness for the defence. She admitted that she had taken the three items and had left the supermarket and walked to the bread section. After this point, her story diverged from the prosecution's.

14 She stated that she had not paid for the three items as she had not finished shopping yet. She was looking to buy a pole with a hook. These poles were placed outside the supermarket behind the bread section just next to a blue dustbin. She was looking at the poles when Tan approached her and asked her to go to the loading bay area.

15 As Tan was dressed so casually, she thought that he was a bad person and so she did not want to go with him. She thus walked to the cashier instead. Tan followed her and told her to go with him to the office.

16 The appellant denied crying and asking Tan to give her a second chance. She also denied telling Tan that she was going to the back of the supermarket to look for her child in a car. She further denied begging Low and Sergeant Tan for a second chance and to be let off. Instead, she stated that she had only asked them to allow her to go home to collect her laundry.

Decision of the court below

17 The district judge accepted Tan's testimony as he had given "his evidence in a straightforward manner and was not discredited on the material aspects of his evidence." He noted that Tan had no reason to lie against the appellant who was a stranger to him. He thus rejected the appellant's testimony.

18 The district judge further noted that Tan, Low and Sergeant Tan had all testified that the appellant had asked them to give her a chance and to let her off. He held that this constituted strong evidence against the appellant as there was no reason for all three of them to concoct evidence against the appellant. He found that the route she took as well as her conduct in looking at the staff before leaving abruptly were behaviour consistent with that of a shoplifter looking around to check that the coast was clear before taking the goods and making a quick getaway.

19 As such, the district judge held that the prosecution had proved their case beyond a reasonable doubt and convicted the appellant. He rejected her mitigation plea as containing "nothing mitigating", noted her three previous antecedents (all for shoplifting) and sentenced her to a term of imprisonment of four months.

The appeal

20 Before me, counsel for the appellant made two submissions. First, he contended that the district judge had erred in failing to appreciate that the appellant's conduct was inconsistent with that of a shoplifter. This, he argued, was clear because she did not make any attempt to conceal the three items. Instead she was merely carrying them openly in her left hand.

21 This argument was patently unmeritorious. Even if I accepted that the appellant did not attempt to conceal the three items, this did not lead to the inference that she did not intend to shoplift. The evidence showed that she was keeping a watchful eye on the staff as she left the supermarket. Furthermore, given the crowd there that day, it was only to be expected that none of the staff would be paying any particular attention to the appellant. Hence, this was clearly not the case of a shoplifter surreptitiously taking some items and sneaking off. This was the case of a shoplifter taking some items and leaving amidst the crowd. The *modus operandi* was different. Hence, I found that it could not be said that her behaviour was inconsistent with that of a shoplifter.

22 Counsel for the appellant next argued that the prosecution had failed to show that the appellant had left "the line of perceived demarcation between the area of business under the control of the supermarket and the area beyond that of the supermarket's control." This argument however flew in the face of the evidence before me. Tan's evidence made it clear that he detained the appellant about seven metres down the corridor, and the corridor led to the loading bay behind the supermarket. It was also clear from the evidence that the supermarket had not placed either any goods or a cashier anywhere on that corridor. As such, I could not see how it could possibly be argued that the appellant had not passed this so called "line of perceived demarcation."

23 I would just add that the appellant had in her notice of appeal stated that she was also appealing against sentence. However, counsel for the appellant did not address me on the matter. I

took the opportunity to clarify the matter and he confirmed that the appellant was not appealing against the sentence as it could not be said that the sentence was manifestly excessive. Having looked at the circumstances of the case and the appellant's antecedents, I was in full agreement with counsel on this point.

Conclusion

24 In view of the arguments raised by counsel for the appellant and my comments on these arguments above, it was clear to my mind that there were no grounds whatsoever for allowing the appeal. As such, I dismissed the appeal against conviction.

Appeal dismissed.

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