Seah Hock Thiam *v* Public Prosecutor
[2013] SGHC 136

Case Number : Magistrate's Appeal No 293 of 2013

Decision Date : 19 July 2013

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Davinder Singh SC, Pardeep Singh Khosa and Vishal Harnal (Drew & Napier LLC) for the appellant; David Chew, Kelvin Kow, Victor Lim and Grace Lim (Attorney-General's Chambers) for the respondent.

Parties : Seah Hock Thiam — Public Prosecutor

Criminal Procedure and Sentencing – abetment – perverting the course of justice – ss 109, 204 Penal Code (Cap 224, 2008 Rev Ed)

Criminal Procedure and Sentencing – consideration of predicate offence when sentencing

Criminal Procedure and Sentencing – principle of deterrence

Evidence – admissibility of evidence

Evidence – weight of evidence – weight accorded to statements recorded under the Criminal Procedure Code 2010 (Act 15 of 2010) when "copied" from statements recorded under the Prevention of Corruption Act (Cap 241, Rev Ed 1993) – s 27 Prevention of Corruption Act – s 22 Criminal Procedure Code 2010

19 July 2013 Judgment reserved

Choo Han Teck J:

1 The traffic police served a request for the personal particulars on two parties, namely one Ong Pang Aik ("Ong") and Scorpio East Entertainment Pte Ltd ("Scorpio") in relation to parking offences committed on 12 August 2009 along Simon Road. The traffic police received replies indicating that the identities of the drivers involved were Salami bin Badrus and Rosniwati bte Jumani. However, they were not the real offenders but persons engaged by one Mohamad Azmi Bin Abdul Wahab ("Mohamad Azmi") to take the place of the real offenders Ong and Ho Ah Huat ("Ho"), the latter was the owner of Scorpio at the material time. Mohamad Azmi was the personal driver of the appellant and his evidence was crucial in the trial in which the appellant was convicted of two charges (DAC No 35949 and 35950 of 2011) of abetting Mohamad Azmi to pervert the course of justice by engaging two persons to assume the criminal liability of Ong and Ho, an offence under s 204A read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). The appellant claimed trial but was convicted and sentenced to six weeks' imprisonment for each charge. The two sentences of imprisonment were ordered to run concurrently. The appellant appealed against conviction and sentence before me.

2 On appeal, counsel for the appellant, Mr Davinder Singh SC, argued that the convictions were wrong and ought to be set aside. Mr Singh submitted that the trial judge had wrongly taken into consideration a statement made by the appellant to principal special investigator Terence Gue of the Corrupt Practices Investigation Bureau ("the CPIB"). The statement was recorded on 4 May 2010. The

statement, referred to as "D1" in the court below, was tendered by the appellant in a redacted version, and was admitted into evidence by the trial judge. The appellant's case on this point was that incriminatory parts of a statement recorded from the appellant by special investigator Michael Oh of the CPIB on 11 May 2010, referred to as "P7" in the court below, had been copied verbatim from D1 and incorporated into P7. Mr Singh submitted that D1 was a statement recorded after s 27 of the Prevention of Corruption Act (Cap 241, Rev Ed 1993) ("the PCA"), a notice to provide information to an officer of the CPIB, had been read to the appellant, whereas P7 was a statement recorded in the course of a police investigation into an offence under the Penal Code, and was governed by the provisions of the Criminal Procedure Code 2010 (Act 15 of 2010) ("the CPC 2010"). Since the CPC 2010 provides a protection against self-incrimination per s 22(2), Mr Singh's point was that unprotected and incriminatory information from D1, was thus grafted by a "copy and paste job" onto P7. This, he argued, rendered P7 akin to unlawfully obtained evidence and the trial judge was thus wrong to have given full weight to P7.

3 It seems to me that some portions in P7 were identical to D1 and the coincidences concerning typographical errors were too great such that I am led to conclude that there was a "copy and paste" exercise carried out by Michael Oh, the CPIB officer who recorded P7. However, I am of the view that this did not render P7 flawed to the extent that the trial judge ought not to have admitted it into evidence. A mere copying from D1 to P7 was not sufficient reason to render P7 unlawful evidence. First, modern technology enables expediency with the aid of "copy and paste" applications. It will be a backward step to insist that recording officers are not permitted to use such applications. Secondly, and more importantly, what is relevant is that the person signing the completed s 22 statement recognises and understands it as his statement. Once he has acknowledged it, as the appellant had done in this case with P7, the statement, whether it was cut and pasted or recorded afresh, will be his statement. That statement is admissible unless it is proven to be given under a threat, inducement or promise. In this case, Mr Naidu, counsel for the appellant at the trial, accepted that P7 was voluntarily given. On appeal, Mr Singh submitted that while this was so, P7 was not read and translated to the appellant before he signed it which would affect the weight accorded to it by the trial judge. This same issue was also raised at trial in Michael Oh and the appellant's testimonies. In my review of the evidence and in spite of Mr Singh's forceful arguments, I am of the opinion that P7 was properly admitted by the trial judge.

4 Furthermore, the material parts, that is to say the parts that incriminated the appellant, were not substantively identical to the portions in D1 and were thus obviously not the parts that were copied and pasted into P7. Also, there was information in P7 that was not present in D1. When the appellant was cross-examined at trial as to why he had signed P7 if it had not been read back to him, his answer to that and the subsequent questions did not impress the trial judge. I am thus of the view that the "copy and paste" objection to P7 is unsustainable and that there was no error on the part of the trial judge in admitting P7 and consequently relying on it.

5 I have considered Mr Singh's submission that the trial judge convicted the appellant on insufficient evidence and am of the view that the trial judge had ample evidence to find as he did. Counsel's arguments as to the implausibility of the facts constituting the offence therefore failed to persuade me. The appeal against conviction is therefore dismissed.

6 I shall now consider the appeal against sentence. S 204A of the Penal Code provides that:

> Whoever intentionally obstructs, prevents, perverts or defeats the course of justice shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

Section 109 of the Penal Code provides that:

> Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this codes for the punishment of such abetment, be punished with the punishment provided for the offence.

The words "obstructs, prevents, perverts or defeats" of s 204A convey the legislative intention of casting slightly different shades of the same meaning. Each word is sufficient to constitute an offence under s 204A although this offence is popularly referred to by lawyers as the offence of "perverting the course of justice". There is no need to add fresh words to these four simple words as their meanings are clear. In this case, two men parked illegally along a road. They were duly booked and subjected to a fine of up to $120 each and three demerit points against their licences. Justice requires that the right offender is punished. Hence, when a person intervenes to have someone else other than the real offenders pay the fines and suffer the demerit points, justice is perverted.

7 On the facts of the present case, every one of the persons involved contributed to the offence of perverting the course of justice They were: the two men, Ong (who drove a Maserati Gran Turino) and Ho (who drove a Porsche 911 Turbo); the two persons who took their places; Mohamad Azmi who procured their services; and the appellant who instructed Mohamad Azmi Whether they would be prosecuted is entirely a matter of the Public Prosecutor's discretion. How each individual would differ in the extent of culpability depend on the facts and circumstances of the individual offender and also a matter of the discretion of the sentencing court. Hence, on appeal, unless there are reasons to hold that the sentence was manifestly excessive, the appellate court would not disturb the sentence imposed. Antecedent cases show varying sentences according to the offence and the circumstances, an example of which is the set of cases reported as *Public Prosecutor v Leung Man Kwan* [2009] SGDC 458 and *Public Prosecutor v Tay Su Ann Evangeline* [2011] SGDC 57. Tay was arrested for driving without a licence and failing to stop at a traffic light. She paid $1,000 to Leung to accept criminal liability on her behalf. Tay was convicted under a s 204A charge and fined $2,000. Leung was convicted under the same charge, and sentenced to three months' imprisonment. There seemed to be strong mitigating factors in favour of Tay, including her youth (she was 19 at the time of the offence) and her clinically diagnosed depression at the time of the offence. On the other hand, Leung's sentence of three months' imprisonment seemed to be a reflection of the court's view that the offences committed by the principal (Tay) were serious traffic violations.

8 The predicate offence in the present case was similar to what Leung did in the abovementioned case. Both cases concerned a third party assuming liability for traffic violations resulting in the culprit escaping punishment. The only material difference was that in the present case, the traffic offences in question were illegal parking by a public road. The offences here were less serious than the offences committed by Leung's principal, Tay. In Tay's case, driving without a licence and beating a red light at a traffic junction were serious offences with the former potentially attracting a custodial sentence. Thus, in determining the extent of wrongdoing, the nature of the principal's offence is relevant. The more serious it is, the more serious the act of perverting the course of justice will be in relation to it. In the present case, the summonses in respect of the offences of Ong and Ho carried three demerit points and a fine of $120 each.

9 The appellant claimed that he merely asked his personal driver Mohamad Azmi to "take care of it", meaning that Azmi was to only pay the composition fine from the petty cash that Azmi was entrusted with. The trial judge disbelieved this defence and I see no reason to upset his findings and conviction of the appellant. However, in view of the fact that the offences committed by Ong and Ho were parking offences, I am of the view that it would be too harsh to place them at the same level of culpability as people who had committed much more serious traffic offences. In this case, I am of the view that six weeks' imprisonment is excessive. In other similar cases where there might be more persuasive mitigation, a fine might even suffice. In the circumstances of the present case, I see no

such mitigation other than the general good conduct of the appellant. Furthermore, it was obvious from the facts that the appellant and his sports car riding friends were wealthy offenders in which a fine would be of little deterrence. What would deter them were demerit points – and a short custodial sentence. For these reasons, I am of the view that the term of imprisonment be varied from six weeks to one week.