

Tan Choon Kin v Public Prosecutor
[2002] SGHC 209

Case Number : MA 124/2002
Decision Date : 10 September 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Palakrishnan SC (Palakrishnan & Partners) for the appellant; Tai Wei Shyong (Deputy Public Prosecutor) for the respondent
Parties : Tan Choon Kin — Public Prosecutor

*Criminal Procedure and Sentencing – Appeal – Appeal against trial judge's findings of fact
– Whether and when appellate court can disturb such findings*

*Evidence – Witnesses – Corroboration – Conviction of appellant on basis of witness's testimony
– Whether witness's testimony requiring corroboration – Whether requirement of multiplicity of witnesses exists – s 136 Evidence Act (Cap 97, 1997 Ed)*

Immigration – Employment – Illegal foreign worker – Appellant employing illegal foreign worker without verifying his immigration status – Foreign worker regarding appellant as boss – Foreign worker receiving salary from appellant – Whether task of verifying immigration status delegable – Whether elements of offence made out – Whether appellant has necessary mens rea – ss 57(1)(e), 57(9) & 57(10) Immigration Act (Cap 133, 1997 Ed)

Judgment

GROUND OF DECISION

This was an appeal against the decision of district judge Audrey Lim. The appellant, Tan Choon Kin ('Tan'), was convicted of an offence under s 57(1)(e) of the Immigration Act (Cap 133) ('the Act') for employing a Thai national, Sommai Maneethap ('Sommair'), who had entered Singapore without a valid passport or work permit. The trial judge sentenced Tan to 12 months' imprisonment. Tan appealed against her conviction. I dismissed the appeal and now give my reasons.

The charge

2 The appellant was charged as follows:

You, Tan Choon Kin, F/55 yrs, NRIC No. S0408140D, are charged that you, sometime between February 2001 and 13th July 2001, at a stall located at No. 35 Fishery Port Road, Jurong Fishery Road, Singapore, did employ one Sommai Maneethap, M/29 yrs, a Thai National as a stall assistant, whom you had reasonable grounds for believing to be a person who entered Singapore without being in possession of a valid pass lawfully issued by the Controller of Immigration, in contravention of section 6(1)(c) of the Immigration Act, Chapter 133 and you have thereby committed an offence under section 57(1)(e) of the Immigration Act, Chapter 133, and punishable under section 57(1)(ii) of the said Act.

The facts

3 Tan was at the material time director of First Choon Frozen Food Pte Ltd ('First Choon'). She operated two stalls dealing in wholesale seafood and ice at the Jurong Fishery Port ('the Port'). At 4.45 am on 13 July 2001, Ministry of Manpower ('MOM') officers raided Tan's stalls. Outside one of her stalls, they arrested a Thai national pushing a trolley. He was later ascertained to be Sommai. He was subsequently charged and convicted of offences of illegal entry and possession of a forged Agri-Food and Veterinary Authority ('AVA') pass. Sommai's photograph was on the pass, but the name was incorrect.

4 At trial, Sommai testified that he entered Singapore illegally sometime in January 2001, whereupon he met an agent by the name of Peter. Peter showed Sommai a photocopy of a work permit with the name 'Prachan Ritongrak', which he was asked to memorise. Then he brought Sommai to Tan's office outside the Port. There, his employment was confirmed. Tan provided him with accommodation beside the office.

5 Sommai worked for Tan at her stall from 12.00 am to 12.00 pm daily until his arrest. He saw Peter three times during this period. According to Sommai, Tan paid his salary in cash every month. This amounted to \$700 for the first month and \$800 for each subsequent month. Sommai also stated that he regarded Tan as his boss. Peter did not instruct him on his daily work. This was also what he told the MOM officers after his arrest. When Cisco took over port security in or around June 2001, however, it was Peter who gave Sommai the forged AVA pass.

The prosecution's case

6 At trial, the prosecution adduced oral testimony from Sommai and the MOM officers who conducted the raid and investigation to show that Tan, and not Peter, had had control over Sommai. Sommai himself was able to testify in some detail with regards to the nature and workings of Tan's wholesale seafood and ice business at the Port. He also testified that he received instructions from Tan and from Tan's children, who could speak some Thai. Furthermore, Tan had never asked for nor verified Sommai's passport and work permit. From the outset, when he was arrested by the MOM officers during the raid, he maintained that Tan, and not Peter, was his employer.

7 The MOM officers who conducted the raid (PW1, PW2 and PW3) confirmed that they had observed Sommai unloading ice from a sack into a trolley and pushing the trolley in front of Tan's stalls at the Port. In addition, PW3 testified that when Sommai was shown a photograph of Tan while he was being interviewed by the MOM officers, and was asked if that was his employer, he answered in the affirmative.

The defence

8 Essentially, Tan's defence at trial was that Sommai was Peter's employee, not hers. It was her case that since four or five of her workers had quit after Chinese New Year, she needed workers to transport seafood from the boats to her stalls. In this regard she approached Peter, whom she first came to know of five or six years previously. As the workers belonged to Peter, she would pay Peter and not the workers directly. Peter brought three Thai workers, including Sommai, to her stalls on 30th or 31st January 2001. Tan also stated that she subsequently did not pay Sommai at all. Instead, she paid Peter \$580 per month per worker. She produced invoices, receipts and copies of cheques to support this contention at trial. There was no dispute that the monies were paid. At trial and on appeal, the only dispute was the purpose of these payments.

9 Tan also stated that she obtained Sommai's work permit and passport from Peter at the outset, but had neglected to take copies of them. Also, Sommai did not work exclusively at her stalls, but at a number of different stalls at the Port. Peter was at the Port daily to instruct his workers as Tan could not speak Thai. When Cisco took over port security, she terminated the 'sub-contract' with Peter as he did not show her valid work permits for his Thai workers. She last saw Peter in July or August 2001.

The decision below

10 The trial judge made the following findings of fact:

- (a) Sommai had been employed by Tan, not Peter;
- (b) Tan had never checked Sommai's passport and work permit;
- (c) the payments of \$580 per worker per month made by Tan to Peter's company from February to May 2001 were probably commissions for introducing the Thai workers;
- (d) Tan had the necessary *mens rea* for the offence as she knew Sommai was a Thai national and was worried about his immigration status, yet failed to perform the requisite due diligence checks under sections 57(9) and 57(10) of the Act.

11 Having examined the evidence before her and observed the demeanour of the witnesses, the trial judge concluded that the prosecution had proved its case beyond a reasonable doubt and convicted Tan accordingly.

12 In reaching her conclusion, the trial judge was mindful of her reliance on Sommai's testimony in doing so. She applied the test enunciated in *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610, in which this court stated that 'a judge can make a finding on the credibility of a witness based on some or all of the following:

- (1) his demeanour.
- (2) the internal consistency (or lack thereof) in the content of his evidence.
- (3) the external consistency (or lack thereof) between the content of his evidence and extrinsic evidence (for example, the evidence of other witnesses, documentary evidence or exhibits).'

She found Sommai to be a truthful and credible witness on material issues based on this test. In contrast, she found Tan's testimony to be inherently contradictory and inconsistent on material issues. Significantly, this included the issue of whether she had checked Sommai's passport and work permit at all.

The appeal

13 Before me, counsel for Tan raised three main points. First, he argued that the oral evidence of Sommai was the only basis that the conviction was founded upon, which evidence lacked any or any adequate corroborative support in the entirety of the trial. Second, he contended that the trial judge had erred in fact in finding that the payments made by Tan to Peter were not wages, but were commission payable to Peter for introducing Sommai to Tan. Finally, he argued that Tan did not perform the due diligence checks required under ss 57(9) and 57(10) of the Act as she had no reason to believe Sommai was an illegal immigrant. The corollary to this was that she did not have the requisite *mens rea* for conviction under s 57(1)(e), and should therefore not have been convicted.

14 In counsel's view, these three points were sufficient to raise a reasonable doubt in the prosecution's case.

15 I considered each of these points in turn.

(a) The lack of corroborative support for Sommai's evidence

16 The trial judge was well aware of her reliance on Sommai's testimony in convicting Tan. She also noted the weakness of Tan's own testimony, including her demeanour in court and the internal and external inconsistencies in her evidence. In contrast, Sommai was able to testify in detail about Tan's business, and as to activities outside the Port with regard to Tan's business.

17 With respect to Tan's business Sommai knew:

- (a) that Tan had a lorry, and had many workers comprising Thais, Malaysians, PRC nationals and Indians;
- (b) that Tan's children helped in the business;
- (c) the types of activities that took place at Tan's stalls, such as delivering ice and seafood to customers, and weighing seafood; and
- (d) that there were regular customers who came to collect ice from Tan.

18 With respect to Tan's business activities outside the Port, Sommai knew that:

- (a) Tan had an office outside but near the Port;
- (b) she provided accommodation for her workers near her office;
- (c) the office had two female staff; and
- (d) she paid her workers in cash.

19 It is worth quoting the trial judge's opinion on the strength of Sommai's testimony at some length:

If Sommai was not Tan's employee, had never been to her office, did not stay at Tan's lodgings, was not paid wages

by her, and had never been transported in her company lorry, how would he have known all these [sic], since he was allegedly assisting Tan only at the Port, and only to transport seafood from the boats to Tan's stalls? Sommai would not have been able to observe these details of Tan's business, especially those outside the Port, given his allegedly limited scope of work at a limited place. Moreover he could not have obtained these information [sic] from Tan, her children or her workers, since allegedly, none of them could or did speak to him as testified by defence witnesses.

As such, I concluded that Sommai would only have known of all the above only because he had been employed by Tan to work at her stalls, had been paid by her in cash every month, had been to her office and had been provided lodgings by her.

20 As for Tan's contention that Sommai's evidence required corroborative support, this was clearly not a situation where witness testimony needed to be corroborated. Section 136 of the Evidence Act excludes any multiplicity of witnesses requirement. Quite apart from that, there was no reason why Sommai should be treated as a witness unworthy of credit or with an interest to serve since he had already been convicted of the offences he was charged with, especially in the light of the trial judge's findings of fact as to his credibility: see *Chua Keem Long v PP* [1996] 1 SLR 510. In this regard it is pertinent to bear in mind the Court of Appeal's observation in *Abdul Ra'uf bin Abdul Rahman v PP* [2000] 1 SLR 683, applying *Lim Ah Poh v PP* [1992] 1 SLR 713:

An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges' findings and their reasons therefor.

In light of the trial judge's reasoning and the relevant case law, I saw no reason to disturb her finding of fact on this issue.

(b) The nature of Tan's payments to Peter

21 The dispute at trial and on appeal was whether the payments of \$580 per month per worker (totalling \$1,740 per month) from February to May 2001 were the workers' salaries or commissions payable to Peter for introducing the Thai workers to Tan. If they were the former, then it was Peter who employed them. If the latter, they were Tan's workers.

22 The trial judge found that they were commissions payable to Peter. Her reasoning was that it was not unbelievable that Tan could have expended \$1,300-1,400 per month on Sommai (inclusive of the commission), given that she paid her Malaysian and Singaporean workers \$1,400-1,500 each (not including workers' levies). She found that there was no 'sub-contract' between Tan and Peter for Sommai's employment as Tan contended.

23 She reached her conclusion based on a comparison of the rates at which all of Tan's workers

were paid, and the scope of the duties they had to perform at Tan's stalls. I could not fault the trial judge's reasoning on this issue. Therefore, I saw no basis for me to disturb the trial judge's findings of fact.

(c) *Whether Tan had the requisite*

mens rea for conviction

24 Tan would have had a defence to the charge had she been able to show that she had fulfilled the due diligence requirements set out in section 57(10)(b) of the Act. At trial, Tan gave evidence that her illiteracy and inability to read or understand English hindered her from making a photocopy of Sommai's passport and work permit. The trial judge found, and rightly so, that Tan was using illiteracy as an excuse, and that, moreover, she was lying with respect to her inability to understand English. If anything, her illiteracy ought to have compelled her to be more careful, retaining a photocopy of Sommai's passport and work permit for future verification since 'the employer's task of checking the identification papers of his foreign workers remains a non-delegable one. An employer who fails to comply with s 57(10) does so at his own peril': see *Cheong Choon Bin v PP* [2001] 4 SLR 190.

25 Furthermore, it is not at all clear from the Notes of Evidence that Sommai testified that Tan was looking at *his* passport, as counsel contended in the proceedings below. Sommai testified from the outset that his passport had been taken away before he entered Singapore. He also testified that Tan had looked at *the* passport, not at what was purportedly his passport. One might infer from the context of this question in the cross-examination that Tan might have been looking at a forged document provided by Peter, but the basis for such an inference is tenuous at best.

26 Finally, the trial judge concluded, based on the internal inconsistencies within Tan's own testimony, that she had never insisted on looking at Sommai's passport and work permit and had never checked them, either personally or through her son as she claimed.

Conclusion

27 In the main, the essence of this appeal was to dispute the trial judge's findings of fact, which, as I have observed, the appellate court will not disturb unless they were 'clearly reached against the weight of the evidence.' I did not find this to be the case in the premises, especially given the trial judge's careful observations on the demeanour of the witnesses in the proceedings below.

28 For the foregoing reasons, I dismissed the appeal against conviction and upheld the sentence of 12 months' imprisonment.

Sgd:

YONG PUNG HOW

Chief Justice

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