

Dong Ching Jit v Public Prosecutor
[2010] SGHC 244

Case Number : Magistrate's Appeal No 373 of 2009 (DAC Nos 50327-50336 of 2008)
Decision Date : 20 August 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Sant Singh SC, Tng Kim Choon and Rubin Paul Mukkam (Tan Rajah & Cheah) for the appellant; Edwin San (Attorney-General's Chambers) for the respondent.
Parties : Dong Ching Jit — Public Prosecutor

Criminal Law

20 August 2010

Choo Han Teck J:

1 The appellant, Mr Dong Ching Jit (the "Appellant"), was a Manager in the Social Visit Pass Unit of the Visitor Services Centre of the Immigration & Checkpoints Authority ("ICA"), Singapore. He was charged with and convicted in the District Court on four counts of corruption pursuant to s 6(a) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (the "Act"). He appealed to this court against his conviction and sentence. At the conclusion of the hearing, I was of the view that the charges preferred against the Appellant were not proved beyond reasonable doubt and I accordingly allowed the appeal against conviction. I now give my reasons.

2 The charges against the Appellant alleged that he accepted gratification for granting extensions of social visit passes to foreign nationals. The details of the four proceeded charges were:

- (a) DAC 50327 of 2008: On or about 7 January 2005, the Appellant did corruptly accept from Edmund for himself monetary gratification as a reward for doing an act in relation to his principal's affairs by granting extensions of social visit passes to nationals of the People's Republic of China and Vietnam;
- (b) DAC 50333 of 2008: On or about 28 January 2005, the Appellant did corruptly accept from Edmund for himself a gratification of an unspecified amount of not less than three bundles of \$50 notes as a reward for doing an act in relation to his principal's affairs by granting extensions of social visit passes to nationals of the People's Republic of China and Vietnam;
- (c) DAC 50334 of 2008: On or about 7 February 2005, the Appellant did corruptly accept from Edmund for himself a gratification of a sum not less than \$5,000 as an inducement for doing an act in relation to his principal's affairs by granting extensions of social visit passes to nationals of the People's Republic of China and Vietnam; and
- (d) DAC 50336 of 2008: On or about 8 April 2005, the Appellant did corruptly accept from

Edmund for himself a gratification of a sum not less than \$5,000 as an inducement for doing an act in relation to his principal's affairs by granting extensions of social visit passes to nationals of the People's Republic of China and Vietnam.

3 The prosecution relied on the various testimonies of several members of the criminal syndicate that allegedly offered the gratification that formed the basis of the charges. One Edmund Hoon Wai Kein @ Ah Boy ("Edmund") operated a criminal syndicate which facilitated the extension of social visit passes in Singapore for female nationals from the People's Republic of China and Vietnam in return for a monetary fee. The criminal syndicate used intermediaries to collect the passports and the requisite fee from these female foreigners, and these passports would be handed to Edmund who was assisted by one Yap Kok Wee ("Yap"). Edmund then submitted these passports, each with an accompanying application form ("Form 14"), to the Appellant in ICA. The Appellant, as the manager of the social visit passes unit, used his authority to grant extensions of stay to all the passports handed to him by Edmund. In return, the Appellant accepted monetary gratification from Edmund. Edmund was the main witness for the prosecution and his testimony led to the Appellant's conviction.

4 In contrast, the Appellant's defence was that he discharged his duties without receiving any gratification from Edmund. The Appellant accepted that he had granted, or had directed his subordinates to grant, extensions of the social visit passes in respect of the foreign passports handed to him by Edmund. His defence was that he extended the stays of these foreign nationals because he was led to believe that an officer from the Internal Security Department ("ISD"), one "Mark Chew", called him and wanted the extensions done. He was led to believe that this request arose from ISD's anti-vice operation in the Joo Chiat area. The Appellant admitted that he never personally met Mark Chew, but he contended that he granted these extensions on the basis of trust even though the latter failed to submit the necessary referral cover letter from ISD as required by department protocol. The Appellant also claimed that he thought Edmund and Yap were associates of Mark Chew. On that basis, he granted extensions to the passports that they handed to him. The Appellant however eventually ceased granting these extensions, and this was after he warned that these extensions will not continue unless and until the necessary cover letter was produced.

5 At the conclusion of the trial, the District Judge ("DJ") convicted the Appellant and sentenced the Appellant to a total of 18 months' imprisonment and ordered him to pay a penalty of \$10,000. The DJ found that Edmund was a credible and convincing witness who had given a candid account and whose testimony was largely unscathed by cross-examination. Furthermore, Edmund's testimony was consistent and corroborated by the evidence of other witnesses. In contrast, the DJ found the Appellant's defence without merit. She found that "Mark Chew" did not exist and that there was no ISD anti-vice operation in Joo Chiat as claimed. Lastly, she found that the Appellant's evidence was riddled with inconsistencies and that he was evasive and not a witness of truth.

6 On appeal, the Appellant raised two broad grounds. First, his counsel, Mr Sant Singh SC, argued that there were numerous inconsistencies in both Edmund's and Yap's testimonies collectively and individually, and second, he argued that the DJ's findings pertaining to the non-existence of Mark Chew was against the weight of the evidence. In response, the prosecution contended that this appeal was on findings of fact and there was no good reason to disturb the DJ's findings. In the course of the hearing, I raised an issue as to whether the prosecution had indeed proved the Appellant's *receipt* of the gratification as charged. The Appellant submitted that the thrust of the prosecution's case below was grounded on Edmund's testimony that he was the one that physically handed over the various sums to the Appellant. No other evidence was adduced. The Respondent confirmed the same. As I saw it, it was essential for the prosecution to prove receipt of the gratification, and in my judgment, they had not done so beyond a reasonable doubt.

7 In the present case, the entirety of the prosecution's evidence rested on the word of a single witness with virtually no corroborative evidence other than the behaviour and consistency of his evidence. A total of 14 witnesses were called by the prosecution below, but only Edmund held the key to their case. Edmund testified that he handed over various sums to the Appellant but the Appellant denied the existence of such facts. In such cases, the evidence must not only be damning but also convincingly clear. Edmund's evidence was however unreliable.

8 There were three unsatisfactory aspects of Edmund's evidence. First, there were inconsistencies with his testimony that adversely affected the reliability of his evidence. On the facts, those inconsistencies arose from the amendments that were made to the charges, and the ambiguities that were inherent in the finalised charges. With reference to the charges set out in [2] above, the Appellant was initially charged as receiving \$48,000 for charge (b), \$7,000 for charge (c), and \$5,000 for charge (d). However, on 31 August 2009, the charges were amended to their present form *after* Edmund testified (charge (a) was left unchanged). I was of the view that these changes to be material in this appeal. Edmund was the principal protagonist in the criminal syndicate, and he was the one that purportedly handed the sums of money to the Appellant. That being so, if the purported gratification did in fact happen, he must surely know the exact quantum that was furnished to the Appellant. The amendments therefore cast a substantial doubt on his reliability. What confirmed my doubts however, were the amendments that were subsequently made. In so far as charge (a) and (b) were concerned, the amount purportedly accepted by the Appellant were not set out in definite terms; in charge (a), the Appellant received a unspecified quantum, while in charge (b), the Appellant received three bundles of \$50 notes. The amended charges were therefore ambiguous. Cumulatively, these amendments as a whole led to the irresistible conclusion that Edmund was materially wavering in recounting his narrative. In my view, the above cast serious doubt on his overall reliability as a witness.

9 Second, there was no other evidence that corroborated with Edmund's assertion that he handed sums of money to the Appellant. In the trial below, Yap's testimony was adduced as corroborative evidence and was subsequently accepted by the DJ in her grounds of decision (her grounds of decision can be found at *Public Prosecutor v Dong Ching Jit* [2010] SGDC 79) ("GD") at [82]. She reasoned that Yap's evidence "substantially corroborated" with Edmund's account. Yap's evidence corroborated with the general procedure pertaining to the submission of the passports of the foreign nationals and the forms to the Appellant. But what Yap's evidence did not corroborate, was Edmund's assertion that he handed sums of money to the Appellant. By Edmund's own admission, Yap was not with him when he saw the Appellant on all material occasions where these sums were allegedly handed over to the Appellant. In my view, Edmund's evidence should not have been accepted in its totality even though some part of it was corroborated by Yap. The acceptance of the gratification was a crucial element of the charge and it should not have been easily glossed over and deemed as proved. Other than Edmund's bare assertion therefore, there was simply no corroborative evidence whatsoever that the Appellant received any form of gratification from Edmund.

10 Third, the Appellant's defence was plausible. In all his dealings with Edmund, the Appellant recounted that he was led to believe that it was an inter-agency request from the ISD, fronted by an ISD agent called Mark Chew. Rightly, the DJ stated in [90] of her GD that the Appellant's defence will either fall or stand depending on Mark Chew's existence. The DJ however eventually disbelieved the Appellant and held that Mark Chew did not exist. In contrast, I accepted that "Mark Chew" was a character created by Edmund to deceive the Appellant into granting the respective passport extensions. In the Appellant's statement to the Corrupt Practices Investigation Bureau, he elaborated:

... sometime in early January 2005, I received a call from a male who identified himself as Mark

Chew from [the ISD]. Mark Chew claimed that there were some applications from the company of William Kwek. Mark Chew said that all the applicants had been screened by ISD and that the applicants are not problem visitors. Mark Chew told me that some of these visitors were staying at Hilton Hotel. Mark Chew said that he would ask the company representative whose name is Edmund to come down to submit the applications to me. I told Mark Chew okay and I would see Edmund. Sometime in the afternoon, Edmund came down with a stack of applicants for extension of stay. Edmund told me that [M]ark Chew from ISD asked him to see me and after that I received all the applications and I checked the passports to see if there were any over-stayers and screened with my computer under PEMS (Passport and Employment System) to see if the applicants were on our records. I found out that they are not on records. I noticed that the applicants are mostly females Vietnamese. I personally screened the applicants and found out that they have no adverse record and straightaway I gave instructions to my staff to give a one month extension of SVP and I told my staff that this was an ISD case.

11 After considering the record of appeal, I was of the view that the above account given by the Appellant was adequately corroborated and plausible. Application forms (ie Form 14) as exhibited in P35 and P36 indicated that the extensions were requested by Mark Chew from the ISD, and further, a post-it message written by a third-party ICA staff had indicated that "Mark Chew called. Asked to return call ...". Additionally, the Appellant's immediate supervisor (a prosecution witness himself), admitted that the Appellant informed him on the existence of the Mark Chew and he himself made a call to that Mark Chew to request the necessary cover letter from ISD requesting the extension of the passports. On these facts, I accepted that the Appellant could have believed that Mark Chew existed and had therefore no corrupt motive whatsoever when he carried out his official duties in extending the passports he received from Edmund.

12 Furthermore, I was also of the view that the complexity of Edmund's plan had inadvertently supported the Appellant's defence. In [81] of the DJ's *GD*, she recounted the general procedure used by Edmund, as corroborated by Yap, in getting the relevant extensions:

... I note that Edmund has given a detailed account of the procedure of how he went about submitting the passports of the foreign nationals together with the necessary application forms namely form 14 to the accused at the ICA office after his runners had passed them to him. At the ICA office, he would make a call to tell the accused that he had arrived and then he would meet the accused in the interview room to pass him the passports. There was a list of the names of the passport holders and the passport numbers which he had prepared in advance which was also given to the accused. This would be used to countercheck to make sure that all the passports as stated in the list were given to the accused ...

In my view, the above account would be contrary to common sense if there was indeed gratification. If gratification was indeed offered to and accepted by the Appellant, why would Edmund and Yap need to fill in the mentioned Form 14, and why was there a need for the Appellant to indicate on those respective forms that "Mark Chew" requested for those extensions? On the same reasoning, why would there be a need for such details, and a countercheck of the passports to match the above-mentioned list of names? Such behaviour would have been more appropriate and consistent with the Appellant's version. Furthermore, I think that it is also material that the Appellant refused to further extend the passports until and unless he received the cover letter from ISD. When that happened, it would make sense that Edmund tried to contact *other* ICA officers to practise his deceit. This probably explains why the phone records showed that Edmund called other extensions within ICA after the Appellant stopped extending the passports. I therefore accepted that the above features of the procedure were possibly attempts to deceive the Appellant into believing that he was legitimately granting extensions on behalf of a fellow government agency. I must also add that much has been

made of Appellant's failure to verify Mark Chew's identity with the relevant agency and his subsequent failure to follow the procedure of obtaining a cover letter before granting the respective extensions. This may be a little presumptuous in view of the nature of ICA's daily operations. The Appellant's witness below, Wong Look Ching, testified that the ICA is consistently swamped with voluminous applications and procedures for checking would sometimes be short-circuited. Given the elaborate nature of Edmund's plan, the working conditions faced by the Appellant, and Edmund's audacity to utilise the ISD as a pretext for his deceit, I accepted that the Appellant could have been duped. The Appellant might have breached department protocol, but on the facts, I did not think that his failure to check was corroborative of guilt.

13 For the above reasons, I was of the view that the corruption charges were not proved beyond reasonable doubt. Edmund's role in this case was said to be that of an accomplice, but his testimony had numerous inconsistencies and furthermore, was not corroborated by any objective evidence. Accordingly, by virtue of s 116, illustration (b) of the Evidence Act (Cap 97, 1997 Rev Ed), I presume that he is unworthy of credit and his evidence needs to be treated with caution. I therefore allowed the appeal against conviction and acquitted the Appellant of all four charges.

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