

Yip Min-Ting v Public Prosecutor
[2010] SGHC 23

Case Number : Magistrate's Appeal No 30 of 2009
Decision Date : 19 January 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Spencer Gwee Hak Theng (Spencer Gwee & Co) for the appellant; Aedit Abdullah (Deputy Public Prosecutor) for the respondent.
Parties : Yip Min-Ting — Public Prosecutor

Criminal Law

19 January 2010

Choo Han Teck J:

1 At the time of the offence, the appellant was a 26-year old senior writer (earning \$2,200 a month) for a wine and dine magazine. She would visit fashion shops to find clothes for her articles in the magazine. One of the shops from which she obtained clothes for that purpose was the "Eclecticism" store owned by one Miss Chang. The appellant would take clothing attire from shops like Eclecticism and return them after she had completed her article. The transactions were recorded as loans by the shop and a loan form would be completed and signed, a copy of which would be retained by the appellant and the shop respectively. On 14 November 2007 she went to the Eclecticism Store to return a camisole that she had previously taken on loan for her professional purposes. The shop assistant had difficulty looking for the shop's copy of the loan receipt and contacted Miss Chang who returned to the shop to look for the receipt. The trial judge found that in the course of her time in the shop there appeared to be two other topics the appellant exchanged with Miss Chang. First, Miss Chang noticed that the camisole was stained and wanted the appellant to clean it. Secondly, the appellant said that she was not borrowing anything new that day. However, on the same day, at 5pm the sales assistant found a blue jumper under the label of "Twelfth Street by Cynthia Vincent" and valued at \$510 missing from the racks. She reported this to Miss Chang who checked the closed circuit television ("CCTV") footage. From the CCTV footage, the appellant was seen taking the blue jumper and a white dress to the counter. She had several bags with her at the time. She was seen examining the blue jumper while the sales assistant appeared to be looking for the previous loan receipt. The trial judge noted that the appellant was seen "quickly folding the garment and placing it into her bag" ([2009] SGDC 141 at [8]). Miss Chang reported the matter to the police at 7.11pm, alleging that the appellant had left the shop with the blue jumper without paying for it. The appellant was arrested and charged under s 379 of the Penal Code (Cap 224, 2008 Rev Ed) for theft of the blue jumper. The appellant was convicted after the trial and fined \$1,500.

2 The appellant appealed against conviction and sentence. Mr Gwee, counsel for the appellant, submitted that the appellant was distracted by thoughts on her work and the stain on the camisole and so did not record the loan of the blue jumper. Counsel said that the blue jumper was left at the appellant's desk at the office openly because she intended to use it for her article over the next few days. Counsel submitted that there was no intention to steal because the appellant was familiar with the shop and knew that there was a CCTV. He said that the CCTV was so obviously placed that no one could miss it. Hence, he argued that no one would have attempted to steal anything in full view

of the camera. Counsel submitted that the appellant's case was that she never said that she was not borrowing any clothing that day. The only evidence of that was from the testimony of the sales assistant and Miss Chang. The sound recording from the CCTV was played over in court several times but the court could not make out any statement by the appellant that she was not borrowing any clothes. Counsel submitted that the conversation between the appellant and Miss Chang centred on the stained camisole. He argued that the trial judge erred when he repeatedly referred to the appellant's statement that she was not borrowing anything that day.

3 The appeal against conviction was entirely on a finding of fact which was ably argued by counsel. The evidence was such that had the trial judge given the appellant the benefit of the doubt there would be little to question. However, in spite of the factors raised by counsel, the evidence was sufficient for a finder of fact in this case to conclude that the offence had been proved beyond reasonable doubt. The trial judge could have justified his finding on his acceptance of the testimonies of the sales assistant and Miss Chang. There was insufficient evidence on record to entitle an appeal court to overturn that finding. The appeal against conviction was therefore dismissed.

4 Mr Gwee asked that the fine be set aside and a probation order made instead. In view of the appellant's hitherto unblemished record and the nature and circumstances of the offence, including the value of the item taken and the possible consequences of the sentence on the appellant's career, I called for a probation report. The report was duly submitted. The report set out the appellant's academic record which includes a Bachelor of Arts degree from the National University of Singapore, and further courses in fashion and journalism from the University of the Arts London. The appellant's record in school showed her to be diligent, talented and mature. The probation report made no adverse findings and recorded mostly a penitent person. The reporting officer recommended supervised probation for 6 months with 40 hours of community service. I was of the view that that was a sound recommendation and so I substituted the fine with a probation order with the recommended community service.

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