Mowvalappil Ussainer s/o K Alikunhi v Public Prosecutor
[2001] SGHC 191

Case Number	: MA 88/2001
Decision Date	: 20 July 2001
Tribunal/Court	: High Court
Coram	: Yong Pung How CJ
Counsel Name(s)	: S K Kumar (S K Kumar & Associates) for the appellant; Khoo Oon Soo and Hwong Meng Jet (Deputy Public Prosecutors) for the respondent
Parties	: Mowvalappil Ussainer s/o K Alikunhi — Public Prosecutor

Judgment:

This was an appeal against conviction only. After hearing counsel's arguments, I dismissed the appeal without calling upon the DPP to reply. I now give my reasons.

Brief facts

2 The salient undisputed facts were as follows. An inspection by certain officials from the Employment Inspectorate of the Ministry of Manpower was carried out on the premises of Williams Precision Engineering Pte Ltd ('WPE') at No. 6 Penjuru Close on the morning of 10 October 2000. 21 Indian nationals were arrested pursuant to the inspection, all of whom were subsequently found to be immigration offenders.

3 The appellant was the sole proprietor of Master Labour & Cleaning Contractor, a company which had entered into a contract with WPE to supply workers to the latter. WPE would pay the workers' salaries to the appellant, who would in turn pay them over to the workers, after deducting a commission for himself. The 21 illegal immigrants and overstayers found on WPE's premises during the routine inspection on 10 October 2000 were found to have been supplied by the appellant.

4 Twenty-one separate charges of employing immigration offenders under s 57(1)(e) of the Immigration Act (Cap 133) were subsequently brought against the appellant. At the commencement of the trial, the prosecution asked to proceed on only two of those charges, and applied for the remainder to be stood down. The application was granted by the district judge. As such, only two charges of employing immigration offenders were proceeded with against the appellant, and these were in respect of one Ravichandran s/o Uthirapathy ('Ravichandran'), and one Kalyanasundaram s/o Pakkirisamy ('Kalyana') respectively.

The prosecution's case

5 The principal witness for the prosecution was Ravichandran (PW2), who testified that he had been introduced to the appellant by one Kumar, a fellow Indian national who had come from the same village in India as him and whom Ravichandran had met around the 'Tekka' area in Serangoon several days before 6 October 2000. At that time, Ravichandran had planned to return to India from Singapore on 6 October 2000 as his special visit pass of 14 days was due to expire on that date. Kumar however suggested that Ravichandran should remain in Singapore to work so that he could bring some money home when he finally left the country. The latter agreed.

6 On 6 October 2000, Kumar took Ravichandran and Kalyana, another Indian national, to the Marsiling MRT station. En route, Kumar told the men that they would each be paid $50 a day for their services. When they arrived at the station, they made their way to the void deck of a block of flats where they

met the appellant, who was already present and seated at a round table at the void deck. The appellant asked Kumar why he was late but it was unclear if any response was forthcoming.

7 The appellant then told Ravichandran and Kalyana to sit and asked the former if he knew how to write. Ravichandran noticed at this point that there were about three or four pink Singapore identity cards on the table. He did not know however how they got there. The appellant proceeded to hand over an employment application form to Ravichandran and told him to fill it up. At this juncture, Kumar held up one of the identity cards on the table which bore the name 'Gregory s/o Packrisamy' and compared the photograph in it against Ravichandran's face. He commented that the photograph in the card matched Ravichandran's countenance. Upon confirming this with two other Indian men who had subsequently arrived at the scene, Kumar handed the identity card to Ravichandran and told him to fill up the employment application form according to the particulars on the card. Ravichandran complied with the instruction and filled up the form as he was told. He filled in all the general particulars himself except for the items 'Religion' and 'Sex' which were filled in by the appellant. When he came to the 'Education' section of the form, the appellant referred him to another form, and told him to simply copy the words 'Form 6' onto his own form. Ravichandran did as he was told though he was unsure what the words meant. The section 'National Service' was also left blank. Ravichandran then signed the form which was subsequently dated 6 October 2000 by the appellant. Thereafter, the form was handed back to the appellant. The latter did not at any time ask Ravichandran where he came from nor did he ask to see any identification papers. The identity card bearing the name 'Gregory s/o Packrisamy' was also subsequently taken back from Ravichandran.

8 Ravichandran was unsure if Kalyana was also shown an identity card. He recalled however seeing the appellant fill in a form for Kalyana, but did not know if the appellant had referred to anything when filling up the form.

9 The appellant did not tell the men about the nature of the work that they would be doing. He seemed more concerned about the fact that they were late. Kumar however repeated in the appellant's presence that the men would be paid $50 a day for a 12-hour work day.

10 After filling out the forms, the appellant took Ravichandran and Kalyana to WPE in a taxi. At WPE, the appellant told the men to wait outside while he went inside. Subsequently, the appellant returned with a Chinese man who brought the men into the premises and gave them their uniforms. No one at WPE asked to see Ravichandran's identification papers nor did anyone interview him.

11 Ravichandran testified that the appellant and Kumar told him that if anyone were to ask for his name, he was to identify himself as 'Gregory'. He further denied ever representing to the appellant that he was a Singaporean.

The defence

12 The appellant gave a diametrically opposite version of the facts concerning his dealings with Ravichandran and Kalyana. His story was essentially that the men were merely two out of several men who had responded to his advertisement in the papers for workers. He denied knowing Kumar, and asserted that the men had come to meet him on their own in the afternoon of 5 October 2000. There, they showed him Singapore identity cards, and according to the appellant, spoke, dressed and behaved like locals. As such, he had no reason to believe or suspect that they were foreigners, much less, immigration offenders. He admitted however that he had filled in the 'Sex' and 'Religion' portions of Ravichandran's form, and had also filled in Kalyana's form for him. Thereafter, he told the men to meet him at the Marsiling MRT station at 7.30am the next day so that he could bring them to their work place. The appellant averred that he dated the employment application forms 6 October 2000

because according to him, WPE wanted the forms to reflect the date when the workers actually started work.

13 The next day, 6 October 2000, the appellant met the two men at the Marsiling MRT station at around 7am. From there, they took a train to the Jurong East MRT station, hopped onto a bus and subsequently proceeded on foot to WPE, where they arrived at around 10am.

14 At WPE, they met Wilfred Ho (PW3) ('Ho'), a Human Resource Manager with WPE. Ho asked to see the men's identity cards, at which juncture the appellant asked the men for them, and subsequently handed the cards over to Ho together with the men's employment application forms. Ho examined the cards and thereafter returned them to the men. He then told the appellant that he could leave and that he would take care of the rest. The appellant never saw either Ravichandran or Kalyana again after that day.

15 The appellant maintained that he believed all along that Ravichandran and Kalyana were Singaporeans. He would not have agreed to employ them had he known or suspected that they were not locals. He sought to justify his stand by pointing to the fact that the rate of $50 a day which he had agreed to pay the men was the normal rate for Singaporean workers only and that foreign workers could not have expected to be paid as much.

The decision below

16 At the end of the trial, the district judge disbelieved the appellant's testimony and chose instead to rely on Ravichandran's version of the facts. In the circumstances, he held that the appellant had reasonable grounds for believing that Ravichandran and Kalyana were immigration offenders. Having failed to make the necessary due diligence checks on their status as required by the statute, the district judge found him guilty of the offence of employing illegal immigrants. The appellant was sentenced to 12 months' imprisonment on each of the two charges, with the terms ordered to run concurrently.

The appeal

17 The appellant appealed against his conviction only.

18 There was in my view only one principal issue to be dealt with in this appeal. The fact of employment was never disputed by the defence. It was conceded, both at the hearing before me and at the trial, that the appellant employed both Ravichandran and Kalyana. It was also not disputed that the appellant had not asked for or checked the men's passports and other immigration documents and papers. The entire appeal thus turned on the question whether or not the appellant had reasonable grounds for believing that the men were illegal immigrants. If so, then his failure to check the necessary documents would render him guilty of the offence of employing under s 57(1)(e) of the Act. If not, then an order for acquittal would have been apposite.

19 Upon a perusal of the record of proceedings, I arrived at the view that the pivotal question in this case was a simple one of fact only, the key to criminal liability being whether it was the appellant's or Ravichandran's evidence which should have been believed. According to the former, the two men had responded to his advertisement for workers in the papers, and had represented themselves to him as Singaporeans by showing him pink Singapore identity cards when applying for the job. The thrust of the latter's version on the other hand was that the appellant and Kumar were together engaged in a scam to knowingly pass off foreigners as Singaporean workers by presenting them with sham identity cards and asking the men to assume the identity of the persons on those cards. This was thus not a

case of having to decide if the circumstances were such as to put the appellant on notice at least insofar as Ravichandran was concerned with regard to his status and any argument by the defence to this end was thus wholly irrelevant. The upshot really was that if Ravichandran's story was to be believed at all, then that story had to be taken in its entirety. In other words, the whole story would have to be believed, which would in turn make any inquiry into the appellant's state of mind completely unnecessary. On a practical and realistic view of the situation therefore, once Ravichandran's evidence is believed, then the appellant must be taken to have been fully cognisant of the men's status as foreigners, and himself an active participant in the whole scam to recruit and pass them off as Singaporeans.

20 In the circumstances, the district judge found that it was indeed Ravichandran's testimony which contained the true version of the facts after having carefully considered and reviewed all the evidence and materials before him. It is unnecessary for me at this juncture to repeat in detail the oft-cited caution ensconced in *Lim Ah Poh v PP* [1992] 1 SLR 713 and echoed in the numerous cases following it concerning the treatment by an appellate court of pure findings of fact. Suffice it to say that it is settled law that an appellate court would be slow to overturn such findings by the trial judge especially when an assessment of the credibility and veracity of the witnesses has been made. The only instances when such interference is warranted is where the assessment was plainly wrong or against the weight of the objective evidence before the court, or where the assessment was based not so much on observing the demeanour of the witnesses but on inferences drawn from their evidence.

21 In my view, there was nothing to show that the trial judge erred in his findings in this case. If anything, the conclusions reached by him were more than amply supported by the evidence before the court, and counsel was unable to persuade me otherwise. I shall deal with each of the more pertinent points raised by counsel in turn.

Ravichandran's evidence

22 The thrust of Ravichandran's evidence damning the appellant was both clear and cogent and well-withstood cross-examination. He was consistent throughout in his story of how he had been brought to see the appellant by Kumar, and how the two men had arranged for Kalyana and himself to utilise and assume the particulars of sham identity cards provided by the appellant and Kumar. Before me however, defence counsel sought to point out various inconsistencies in Ravichandran's testimony which he said the trial judge erroneously failed to give adequate weight to. He highlighted for example the question whether Ravichandran might have sold his passport to Kumar, or whether he had known Kumar in India prior to coming to Singapore. With respect, I found these inconsistencies in Ravichandran's evidence to be but mere trivial inaccuracies and for all logical purposes irrelevant to the finding of guilt. In any event, the trial judge was more than acutely aware of these minor contradictions in Ravichandran's testimony and in fact devoted an entire section of his judgment to dealing with them. Having done so, he concluded, as he was fully entitled to do, that any discrepancy was immaterial and did not adversely affect the prosecution's case. In the result, I saw no reason to disturb the trial judge's findings on Ravichandran's credibility. It is trite law after all that in weighing the evidence of witnesses, the court recognises and accepts that human fallibility in observation, retention and recollection is often inevitable. This does not mean however that the whole of a witness' testimony should be rejected simply because certain parts of it may be technically inaccurate due to a genuine lapse in memory whether due to passage of time or otherwise.

23 There was in any case no conceivable reason or motive why Ravichandran would want to frame or implicate the appellant nor was defence counsel able to point out to one. Ravichandran had already been dealt with by the authorities for overstaying and had completed his prison sentence by the time

of the trial below. There was thus no incentive for him to give false evidence for to do so would only open him to the risk of punishment for perjury which I was certain was the last thing on his mind. In the premises, I saw no reason to doubt the trial judge's assessment of Ravichandran's veracity.

24 With regard to Kalyana, defence counsel sought desperately to impugn what he alleged to be scarce evidence of the circumstances surrounding the former's employment. He submitted, somewhat tirelessly, that there was no clear evidence to prove that Kalyana was similarly shown a sham identity card by the appellant and/or Kumar as Ravichandran was vague and unsure about this and could only speak categorically for himself. With all due respect, I found this to be yet another example of what was at most a minor aberration, if I may even call it such, in the prosecution's case. Clearly the district judge was fully entitled to infer from all the surrounding circumstances that Kalyana was in all reasonable probability hired in the same way that Ravichandran was. They had after all both been brought to see the appellant at the same time by Kumar, and if Ravichandran was shown a sham identity card, then it meant that the appellant must have known that he was a foreigner as a result of which, he ought to have been put on notice as to Kalyana's status. This brought me back to the point I made earlier on how the present case really involved an all-or-nothing scenario. If Ravichandran was to be believed at all, which he was, then his story had to be taken in toto. In other words, the court had to accept that the appellant was indeed involved in a scam to pass foreigners off as Singaporeans, in which case I failed to see how any other inference with regard to the circumstances surrounding Kalyana's employment could have been drawn. It was nave to suggest, as defence counsel did, that the appellant could have recruited Ravichandran with full knowledge of the fact that he was a foreigner and yet remain completely oblivious to the possibility that Kalyana was, so to speak, 'of the same mould' when the two men were recruited simultaneously. The argument by defence counsel therefore that there was no concrete evidence establishing the circumstances in which Kalyana came to be employed was thus completely misconceived.

The appellant's evidence

25 While I had much faith in Ravichandran's evidence, the same confidence could not unfortunately be had of the appellant's testimony. His story struck me as being full of glaring loopholes, and further contained a host of absurd explanations which simply could not be reconciled with logic.

26 Firstly, although the appellant claimed categorically that Ravichandran and Kalyana had approached him in response to his advertisement in the newspapers for workers, no documentary evidence of such an advertisement was ever produced to the court, despite its easy availability. Next, the alleged meeting place of the men at Block 157 Woodlands Street 13 was also questionable for several reasons. Firstly, it was not the block in which the appellant lived, nor was it that of his labour supply company's registered address. It was thus highly unusual for the appellant to require potential job applicants to meet him there, suggesting that the appellant might have been engaging in something illicit. Second, Block 157 is also some distance away from the Marsiling MRT station, as a result of which it seemed highly improbable that the men, blue-collar foreign workers who had only been in the country for slightly over a week, would have been able to locate it by themselves. As such, the likely inference appeared to be that someone had to have brought the men to Block 175 to meet the appellant, for while they might have been familiar with the commuter-friendly MRT system, it seemed implausible that they would have been able to find a block of flats amidst the complex matrix of a Housing and Development Board estate through their own devices. Next, the appellant was also unable to proffer any convincing explanation as to why he should have required the men to meet him at the Marsiling MRT station, which is located in the northern part of Singapore, in order to take them to WPE which is situated all the way in the west. It would have been much easier, and in fact much more sensible, for him to have arranged to meet them at the Jurong East MRT station directly but he did not do so. He sought to explain away this curious arrangement by saying that the men would not

have known how to get to WPE on their own, and that was why he had to arrange to meet them at an easily accessible MRT station first. Unfortunately for him though, I was given to understand that the most convenient and accessible MRT station for the men, who had to take the train from Bugis, was in fact Jurong East, and not Marsiling. To have them go all the way to Marsiling, and then bring them to Jurong East, would involve them having to change trains at least twice. On the other hand, the route from Bugis to Jurong East was a direct one which meant that the men could have easily gone and met the appellant there directly. In any event, if he had in fact believed them to be Singaporeans as he claimed, then there was no reason why he should have assumed that the men would not have known how to get to WPE directly. In my view, the ineluctable inference from all this was that the alleged meeting between the appellant and the two men in the afternoon of 5 October 2000 was probably non-existent. What most likely transpired was that Kumar had brought the two men to meet the appellant at Block 157 Woodlands Street 13 on the morning of 6 October 2000 itself, and having run late on time, the appellant subsequently took the men to WPE by taxi. It will be recalled that Ravichandran had testified that the first thing the appellant had said to Kumar that morning was to ask why he was late. I very much doubted therefore if there was ever an MRT ride from Marsiling to Jurong East.

27 Moving on to the employment application forms, it will be recalled that only the section containing the applicants' general particulars were filled in. It is telling that sections on 'National Service', 'Next-of-kin' and 'Employment History' were conveniently left blank. Defence counsel sought to play this down by pointing out that even Wilfred Ho of WPE did not question the lack of information in these sections when he accepted the men for work. I found this argument to be completely lacking in merit. The stringency of WPE's checks on the men whom they accepted to work for them was irrelevant insofar as the charges against the appellant were concerned. Similarly, the beliefs that WPE or its employees held regarding the men's status. In fact, WPE could itself well be guilty of the offence of employing illegal immigrants, if it is found that they too were de facto employers and had not carried out the necessary due diligence checks. All these, however, were not the issue in this case and it was not my prerogative to make a ruling on them. Whether or not WPE is similarly guilty of an offence remains to be decided at a separate hearing. For our purposes, I found it sufficient to note that they were not the ones on trial here. As such, whatever their views and screening procedures, these certainly did not detract from or lessen the appellant's own culpability. In my view, the fact that the appellant was content to leave out those details in the employment forms was highly suggestive of his knowledge that the two men were not locals, which in turn, supported the prosecution's theory that the whole arrangement was nothing but a scam to deliberately pass foreigners off as Singaporean workers.

Prosecution's failure to call Kumar and Kalyana as witnesses

28 The argument that an adverse inference ought to be drawn against the prosecution for their failure to call certain witnesses to the stand is one which has been raised countless times in appeals before me, albeit mostly unsuccessfully, by desperate counsel in desperate need to get their clients off the hook. As was often the case previously, I again saw no merit in that argument which was raised here. It is trite law that not every failure by the prosecution to call a material witness warrants the drawing of an adverse inference against them under s 116 illustration (g) of the Evidence Act (Cap 97). While Kumar and Kalyana's evidence, if called, would have been relevant, and maybe even helpful, the absence of them did not however have the effect of demolishing the prosecution's case in any way. The uncontroverted evidence of Ravichandran was clear as to the circumstances in which he was brought to the appellant, as well as his subsequent employment by the latter. That evidence was on its own more than sufficient to sustain a finding of knowledge on the appellant's part with regard to the men's immigrant status. In any event, it has also been laid down innumerably that an adverse inference would only be drawn against the prosecution if it could be shown that it withheld

certain evidence which it possessed and not merely on account of its failure to obtain certain evidence. Further, such inference is often drawn only if the withholding was motivated by some ulterior motive such as an intention to hinder or hamper the defence: see *Yeo Choon Huat v PP* [1998] 1 SLR 217, *Chua Keen Long v PP* [1996] 1 SLR 510 and *Roy S Selvarajah v PP* [1998] 3 SLR 517. In this case, no such suggestion of an improper motive on the prosecution's part was ever suggested by the defence. If anything, the prosecution had adequately explained that Kalyana could not be called as he had already been repatriated to India by the time of the trial and was thus unavailable as a witness. This was treated as an acceptable and valid reason for the failure to put a person on the stand in the case of *James Ong Phee Hoon v PP* [2000] 3 SLR 293 and should similarly be regarded as so in the present case. With respect to Kumar, the evidence suggested, contrary to the defence's insinuations otherwise, that the police and authorities had tried their best to, and had in fact exerted much effort in attempting to, locate him after Ravichandran and Kalyana's arrest. SSgt Shrmani Abdul Hamid (PW4) testified that he had visited the Marsiling and Serangoon areas to search for Kumar, accompanied by Ravichandran following his arrest, but the efforts to trace the elusive Kumar had been in vain. Nevertheless those efforts on their own militated strongly against the suggestion that the prosecution and/or the police were deliberately withholding evidence from the defence.

Other miscellaneous points

29 It remains pertinent for me to deal with a few remaining miscellaneous points raised by counsel. First is the issue of the wage of S$50 a day promised to Ravichandran and Kalyana by the appellant. The appellant contended that S$50 was way above the market rate for foreign workers and he would not have agreed to pay them so much had he known that they were not Singaporeans. I again found little merit in this argument. Under the appellant's contract with WPE, he would receive between $76 and $91 per 12-hour day for each worker that he supplied. Thus, even after deducting the $50 which he had to pay over to the men, he still stood to make a handsome profit of between $26 to $41 per worker per day, which is hardly an insignificant amount by any standards, given that his overheads were virtually nil. Moreover, the fact that he was hiring illegals meant that he did not even have to pay the foreign worker levy, which meant that the profit of $26 to $41 was all for his keeping. If anything, it appeared to me that the reason why he was able or content to pay the men higher than the normal market rate was precisely because he knew that they were illegals and as such did not have to take the levy charges into account when calculating his margins.

30 Finally, there was the assertion that the prosecution's failure to call the actual holders of the sham identity cards to testify ought to result in an adverse inference being drawn against them. As with the case of Kalyana and Kumar, I found that there was nothing to suggest that there was any ulterior motive on their part in not calling the identity card holders. If it was even required at all, I was inclined to think that the failure to do so was but the result of a genuine oversight on the part of the investigating authorities to trace those men. In any event, I took the view that the defence themselves could have called the holders of those identity cards as the photocopies of the cards bearing the men's particulars were at all times in the appellant's possession. As such, even if the prosecution had failed to call the holders, there was nothing stopping the appellant from doing so. That he did not do so suggested that any evidence which they might have given would not have been favourable to him. On balance, I found this point about the absence of the actual holders of the identity cards on the stand to be neither here nor there, and did not attach any weight to it.

Conclusion

31 As I mentioned at the start of this judgment, this was really an open-and-shut case which turned primarily on fact alone. The oft-repeated caution on the treatment of findings of fact by an appellate

body has already been set out above and cannot be over-emphasised. Upon a review of all the evidence, I was not persuaded that the trial judge's findings in this case could in any way be impugned. The appeal was accordingly dismissed.

Appeal dismissed.

Sgd:

YONG PUNG HOW
Chief Justice

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