

Hou Ai Hui v Public Prosecutor
[2001] SGHC 238

Case Number : MA No 355 of 2000
Decision Date : 27 August 2001
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : —
Parties : —

Judgment:

This was an appeal by the appellant Hou Ai Hui ("Hou"), against her conviction and sentence by district judge Siva Shanmugam on 6 December 2000. She was charged with the offence of abetting one Lim Choon Kit ("Lim"), a private investigator, by instigating him to commit the offence of giving false evidence in a stage of a judicial proceeding.

The Charge

You are charged that you, between September 1997 and the 8th day of June 1998, in Singapore, did abet one Lim Choon Kit, a private investigator, in the commission of an offence of fabricating false evidence for the purpose of being used in a judicial proceeding when he swore an affidavit dated 8th June 1998 before one Loh Lee Ming, a Commissioner for Oaths, wherein was stated, inter alia, in reference to an investigation conducted by him on the movements of your husband, one Tan Poh Chye, that he investigated the matter between 1 March 1997 and 11 May 1997 and in connection with his investigation, he exhibited and annexed to the affidavit a copy of the investigation report in which he made certain false statements, following your instigation, that he conducted surveillance on Tan Poh Chye on 8, 9, 10, 11, 14, 22 and 23 April 1997 when he did not and which, so appearing in evidence at the proceeding, might cause the Judge to entertain an erroneous opinion touching the point material to the result of the said proceedings, and which affidavit was filed in the Subordinate Courts and used by you as evidence at the hearing of the Divorce Petition No. 396 of 1998 for the dissolution of your marriage to Tan Poh Chye, which act was committed in consequence of your abetment and you have thereby committed an offence punishable under Section 193 read with section 109 of the Penal Code, Chapter 224.

2 Section 193 of the Penal Code states that the offence is punishable with imprisonment for up to seven years, and shall also be liable to fine. The appellant was convicted and sentenced to six months imprisonment.

The Facts

The prosecutions case

3 The prosecutions version of the facts was based mainly on the testimony of Lim. They adduced evidence that on 1 March 1997 the appellant engaged Lim to conduct investigations on her husband, one Tan Poh Chye ("Mr Tan"), who was carrying on an extra-marital affair with one Kwek Geok Moi ("Ms Kwek") at Ms Kweks Yishun residence. Lim agreed to carry out observations on the couple for the month of March 1997 for \$ 1,500. After conducting the observations for one month, Lim submitted his first investigation report to the appellant. Lim testified that the appellant found the report

inadequate, and asked that he include more information. Lim agreed to do so and carried out observations on the couple at Yishun for the month of April 1997. As Lim did not receive extra payment for the observations in April, he only conducted surveillance randomly. The observations in April did not produce any evidence of Mr Tan's extra-marital affair. Lim informed the appellant who then asked that he continue to observe the couple but this time at her own matrimonial home in Jurong West.

4 The observations at Jurong West did not disclose anything. Lim informed the appellant accordingly. She expressed disbelief that no evidence could be gathered and insisted that Lim continue to carry out further observations. These further observations were also futile as they too did not yield any evidence of the extra-marital affair.

5 Lim then submitted a new report documenting his observations on the dates in March, April and May when he conducted surveillance and explained its contents to her. This new report did not contain any information suggesting that Mr Tan and Ms Kwek were involved in an extra-marital affair. Lim testified that the appellant then informed him that she had witnesses who could testify to the couple's co-habitation in the Jurong West flat on 8, 9, 10, 11, 14, 22 and 23 April 1997 ("the material dates"). Lim accepted what the appellant had told him and inserted the said dates and events into his investigation report ("P4") dated 28 May 1997. He then handed the amended report, P4, to the appellants' sister one Hou Yan Hui.

6 Lim further testified that he had admitted to the appellant that he had not seen Mr Tan and Ms Kwek on the said dates. He added that had the appellant not told him that she had witnesses who could testify to the incidences of co-habitation, he would not have included the false entries into the report, P4.

7 It was not disputed that P4 was subsequently filed in court, via Lim's affidavit in support of the appellants' divorce proceedings. Mr Tan and Ms Kwek corroborated the testimony of Lim. They testified that they had not co-habited at the Jurong West flat on the said dates.

The appellants' case

8 The appellants' case was based mainly on the appellants' testimony. Her evidence, in so far as it was material, was that Mr Tan and Ms Kwek did in fact cohabit at the Jurong West flat on the dates in April which were stated in P4. The appellant also denied that she had anything to do with Lim's compilation of P4 and claimed that she had no knowledge of P4 until it was produced in court.

Decision of the Court below

9 The district judge, who had the opportunity to observe the credibility and veracity of the witness, found the appellant to be an unreliable witness and rejected her evidence.

10 In finding that the appellant knew and intended that P4 be relied upon and used in her divorce proceedings, the trial judge also relied on a transcript of a telephone conversation between the appellant and Lim ("P7") adduced by the prosecution as compelling evidence against the appellant. He found that the contents of P7 clearly corroborated Lim's testimony that it was the appellant who had directed Lim to make the false statements in P4 so as to expedite her divorce proceedings.

The Appeal

11 At the hearing before me, counsel for the appellant, Mr Spencer Gwee ("Mr Gwee"), contended

that the prosecution had failed to establish the elements of the offence beyond a reasonable doubt. Mr Gwee also contended that the trial judge had erred in fact by accepting the evidence of Lim and failing to sufficiently examine the evidence and defence of the appellant. After hearing his arguments, I found them to be of little or no merit and dismissed the appeal accordingly. I now set out my reasons.

Unreliability of Lims testimony

12 As this appeal deals essentially with issues of fact, the respective versions of the facts given by the prosecution and the appellant will inevitably be in conflict. The trial judge is therefore tasked with deciding whose version of the facts to believe. To this end, it is pertinent to state the well-established principle that an appellate court should not disturb the trial judges finding of facts unless they were clearly reached against the weight of evidence or if they were clearly wrong. Further, where the trial judges finding of fact was based on his assessment of the witnesses credibility and veracity, as in the present case, the appellate court should be even more reluctant to overturn such findings: *Lim Ah Poh v PP* [1992] 1 SLR 713, *Yap Giau Beng Terence v PP* [1998] 3 SLR 656, *Tan Hung Yeoh v PP* [1999] 3 SLR 93, *Ng Chiew Kiat v PP* [2000] 1 SLR 439.

13 In his attempt to convince me to reject Lims testimony, Mr Gwee submitted that Lims testimony was unreliable as he had a motive to lie. He also submitted that the trial judge had failed to accord proper weight to the evidence of the defence witnesses. I note that the trial judge found that Lim had no reason to lie and implicate the appellant. He ruled that Lim quite clearly had no interest in the outcome of the trial or the divorce proceedings between the appellant and Mr Tan. As such, he accepted the evidence of Lim. On the other hand, the trial judge found the appellant to be an unreliable witness. He also held that he was unable to accept the evidence of the appellants sister and mother in the absence of independent corroboration as they were interested witnesses.

14 As the above allegations do not demonstrate that the trial judges finding of facts was clearly reached against the weight of evidence or that they were clearly wrong, I see no reason for me to overturn the trial judges finding of facts and I accordingly accept the testimony of Lim.

Ingredients of the Offence

15 It was held in *PP v Ng Ai Tiong* [2000] 1 SLR 454 that the offence for instigating the fabrication of false evidence comprises four elements, each of which must be proved beyond a reasonable doubt in order to establish conviction. On the present facts, the ingredients of the offence were as follow:

- (i) that Lim made a false statement;
- (ii) the appellant knew the statement to be false;
- (iii) the appellant instigated Lim to make the statement; and
- (iv) the appellant intended to use the statement in her divorce proceedings.

(i) Whether Lim made a false statement

16 Mr Gwee contended that there was insufficient evidence to prove that the alleged observations in P4 on the material dates were in fact false. This was because, under cross-examination, Lim admitted that he conducted only random observations at the Jurong West flat during the material dates in April 1997. On top of that, Lim also admitted that he worked together with his partner, one "Ah Chui", to conduct surveillance on Mr Tan and Ms Kwek. Sometimes they would work independently of each other in conducting surveillance. Lim further admitted that the report P4 was based on the

observations of both himself and Ah Chui and that he could not remember if Ah Chui was on duty on any of those material dates in April 1997.

17 I found Mr Gwees submission that Lim had conducted surveillance on the dates in April 1997 to be totally irrelevant. The fabrication of false evidence lay in the fact that Lim claimed in P4 to have observed the couple when in fact he had not done so. Lim had maintained throughout his cross-examination that he did not see the couple at all during his random observations on the material dates in April 1997. This fact, being the crux of the present charge, was not disputed by the appellant either before me or at the trial below.

18 In addressing Mr Gwees submission concerning Ah Chui, I noted that Ah Chui was not produced as a witness at the trial below. The prosecution explained that they had no means of tracing him. They explained that Lim only knew Ah Chui as a part-time staff, and did not have any other information on him since he stopped work. I was satisfied with the prosecutions reasons for not producing Ah Chui as witness. Notwithstanding that the court did not have the benefit of Ah Chuis testimony, I found that there was no "real probability" that Lim could have reported Ah Chuis actual observations of the couple. This was because Lim testified that Ah Chui, being his subordinate, would always report his observations to him. Lim, who bore the sole responsibility of compiling the report, would then include in the report Ah Chuis account of his observations.

(ii) Whether the appellant knew the statement to be false

19 Mr Gwee contended that the appellant did not know that the statement was false because she knew for a fact, and had witnesses to affirm, that Mr Tan and Ms Kwek were co-habiting on the material dates. Mr Gwee also submitted that the trial judge did not give due weight to the appellants defence that she did not understand the contents of P4 as her command of English was poor. In this connection, the appellant had also testified that she did not try to discover the contents of the report.

20 The requisite level of knowledge for this limb of the charge was met as long as the appellant knew that Lim did not witness the events on the material dates himself. Lim had categorically informed the court that he did not see the couple entering or leaving the matrimonial home in Jurong on the material dates. Lim also testified that when the appellant told him to include the entries of the material dates in P4, he informed the appellant specifically that he did not see the couple on those material dates. This having been established, it was inconsequential whether Mr Tan and Ms Kwek were in fact co-habiting on the material dates or, for that matter, that the appellant had actually seen them engage in the act of sexual intercourse.

21 With regard to Mr Gwees contention that due weight was not accorded to the appellants defence, I found it inconceivable that she could not have known about the contents of P4. Her alleged ignorance of the report when she was the one who commissioned the report in the first place flew in the face of logic. It was unimaginable that she would not have even attempted to discover the contents of the report when she had revealed herself to be interested and anxious about the report to be tendered in support of her divorce proceedings. Her claims that neither Lim nor any one of the previous three lawyers she had engaged (including the lawyer handling her divorce) had explained the contents of P4 to her was equally unbelievable. To this end, I concurred entirely with the trial judges decision not to accord any weight at all to her evidence.

(iii) Whether the appellant instigated Lim to make the false statement

22 Mr Gwee contended that, apart from Lims testimony, there was no evidence to prove that the

appellant instigated Lim to make the false statements. He pointed out that the subject matter of the conversation between the appellant and Lim contained in the transcript, P7, did not contain any incriminating evidence against the appellant. He submitted first that the report referred to in the taped conversation was a report dated 28 May 1997 ("D5") and not the alleged report put up by Lim which was subsequently altered to form P5. Secondly, he submitted that the taped conversation "at best" revealed the appellant taxing Lim for his failure to include the dates in March and May 1997 when she had told Lim to come down to conduct observations as the couple was in the flat. Mr Gwee further submitted that P7 also revealed the appellant making enquiries as to why Lim had omitted to mention the presence of her mother at the flat on 8 April 1997.

23 The relevant parts of the conversation, translated from mandarin, are set out below:

At page 8 of the transcript:

Hou: Then the last time you wrote in the report, you only wrote about the 10th. That is to say, I told you about the 8th of April and the 10th of April nights, he brought the woman here.

At page 9 of the transcript:

Hou: No, you record this down now. That is on the 8th and 10th, my mother was around. You only wrote in the report about the 10th she was around only. Now I have your report in my hands.

24 The prosecutions written submission argued that D5 could not possibly be the report referred to in P7 for two main reasons. First, the transcript of the conversation as set out above showed that there was at least one previous report that did not include an entry for 8 April 1997. D5 showed that there was an entry for 8 April 1997. Second, if the court were to accept the appellants claim that the conversation at page 9 of the transcript (as excerpted above) merely showed her enquiring why the presence of her mother on 8 April 1997 was not stated in D5, then it followed from a plain reading of the excerpt that the court must also accept that D5 contained an entry dated 10 April 1997 which referred to the appellants mother. I found that the entry in D5 for 10 April 1997 made no such reference to the appellants mother. Instead, the entry for 10 April 1997 documented Mr Tan and Ms Kwek arriving together at the Jurong West flat at about 12:30am.

25 Given that the authenticity of the tape recording and the accuracy of the transcript were not in issue, it was a question of interpretation whether P7 corroborated Lims evidence. From my reading of the transcript, I accepted the prosecutions arguments that P7 did not refer to D5. Accordingly, I agreed with the trial judge in finding that P7 was compelling evidence which proved the element of instigation.

(iv) Whether the appellant intended to use the report in support of her divorce proceedings

26 Mr Gwee contended that the appellant had no motive, and therefore no intention, to use the report in support of her divorce proceedings. This was because she already had sufficient evidence to prove the fact of adultery in the form of a photo of her husband cavorting with another woman in Taiwan. Taking Mr Gwees contention to its logical conclusion, the question which begged itself was: If the appellant had no motive to use the report because she had sufficient evidence to prove her husbands adultery, then why did she put herself through the trouble and cost of engaging a private investigator in the first place?

27 Even if I were to accept that the appellant had no motive to use the report, a lack of motive does not automatically equate to an absence of intention. Motive is merely a test of intention. It is not an ingredient of the offence of fabricating false evidence (see *Koh Pee Huat v PP* [1996] 3 SLR 235). Notwithstanding that the appellant admitted under cross-examination that she intended to use P4 in her divorce proceedings, I was satisfied on the facts that the requisite intention was established by the appellants very act of commissioning a private investigator to conduct surveillance on her husband.

Appeal on Sentence

28 The appellant also appealed against the sentence on the ground that it was manifestly excessive.

29 In view of the fact that the offence under s 193 is a serious offence that perverts and undermines the administration of justice, I found that the sentence was not manifestly excessive. This was especially as the first limb of s 193 strikes at the very root of the justice system that is designed to protect society.

Conclusion

30 For the reasons set out above, I found that the prosecution had established beyond a reasonable doubt that the appellant had directed Lim to include the entries on 8, 9, 10, 11, 14, 22 and 23 April 1997 as eye-witness accounts when in fact they were not.

Appeal dismissed and conviction and sentence affirmed.

Sgd:

YONG PUNG HOW
Chief Justice