Pritam Singh s/o Gurmukh Singh v Public Prosecutor
[2003] SGHC 160

Case Number : MA 4/2003, Cr M 11/2003

Decision Date : 21 July 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : B Ganesh (Ganesha & Partners) for the applicant/appellant; David Chew Siong Tai (Deputy Public Prosecutor) for the respondent

Parties : Pritam Singh s/o Gurmukh Singh — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Evidence of false testimony during trial – Evidence that counsel acted against instructions below – Whether such evidence was relevant to the appeal

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Abetment of an offence under s 57 of the Immigration Act (Cap 133, 1997 Rev Ed) – Whether sentence of 18 months' imprisonment was manifestly excessive

Criminal Law – Abetment – Elements of the offence – Mens rea – Whether the accused had knowledge of the circumstances constituting the offence – Whether it was necessary to ascertain the dominant intention of the accused in every case

Evidence – Witnesses – Impeaching witnesses' credibility – Discrepancies in evidence – Whether credibility impeached

1 The appellant ("Pritam") claimed trial to the following charge:

> You, Pritam Singh s/o Gurmukh Singh, NRIC No. S1490475A, are charged that you, between the period of May 2001 and 14 March 2002, at 'Cairnhill Towers', located at No. 81 Cairnhill Road, Singapore, did abet by intentionally aiding one Sukdev Singh s/o Harjit Singh the (sic) commission of the offence of employing one Sundram Ramajeyem, FIN No. G9013865R, a Sri Lankan National, as a security guard, whom you had reasonable grounds for believing to be a person who has acted in contravention of Section 6(1)(c) of the Immigration Act, Chapter 133, and punishable under Section 57(1)(e) of the Immigration Act, Chapter 133, read with Section 109 of the Penal Code, Chapter 224.

2 He was convicted by the district judge in the court below and sentenced to 18 months' imprisonment. He appealed against his conviction and sentence.

Background facts

3 In February 2001, Sundram Ramajeyem ("Sundram") entered Singapore illegally from Sri Lanka. With the help of an agent, he found work with Top Guard Security Agency ("TGSA") as a security guard at Cairnhill Towers. Sundram's agent, who could not be located, gave him a pink Singapore identity card which bore the name "Rakang Subramaniam" ("the identity card"). While Sundram was working at Cairnhill Towers, he went by the name "Ashok Karan".

4 On 14 March 2002, Sundram was arrested by immigration officers during an inspection of Cairnhill Towers. He was convicted on 11 April 2002 under s 6(1)(c) of the Immigration Act (Cap 133) for entering Singapore without a valid pass. In his statements to the police, Sundram claimed that it was Pritam who paid him his salary while he was working at Cairnhill Towers. He also stated that he had told Pritam that he was in possession of a Singapore identity card, and had informed Pritam that

the card was not his.

5 Pritam was an employee of TGSA. The exact scope of his duties was disputed below, as the prosecution claimed that he was an operations manager while the defence maintained that he was merely a patrolling officer. However, it was not disputed that he would regularly visit and perform checks at the locations where TGSA provided security guards, which included Cairnhill Towers.

6 Sukdev Singh was the sole proprietor of TGSA ("Sukdev"). He was subsequently charged with having employed an illegal immigrant, while Pritam was charged with having abetted Sukdev in the unlawful employment. The charge against Sukdev was withdrawn after he pleaded guilty to a different charge.

The trial below

7 The prosecution's case was that Pritam knew or had reason to believe that Sundram was an immigration offender, but had allowed him to continue working at Cairnhill Towers. He had therefore abetted the unlawful employment. Sundram was the main prosecution witness. In his testimony below, he reiterated that he had told Pritam of his possession of the identity card, and had informed Pritam that the card did not belong to him.

8 The defence claimed that Pritam was a patrolling officer, and could not have abetted Sundram's employment because he was not part of the management of TGSA. Pritam claimed that he had no reason to suspect that Sundram was an immigration offender. The defence argued that Sundram had started working at Cairnhill Towers in May 2000, and therefore it was TGSA's operations manager at that time, one Charan Singh ("Charan"), who had abetted his unlawful employment.

9 The trial judge dismissed the idea that only Charan was responsible for abetting the unlawful employment. Charan had left TGSA on 28 February 2001. The period specified in the charge was from May 2001 to March 2002, several months after his departure. As such, the judge held that Charan's role as the previous operations manager was irrelevant.

10 The judge accepted that Sundram had shown the identity card to Pritam, and had informed him that it belonged to someone else. She found that Pritam had taken over as the operations manager after Charan's departure, and was a key person in the company's management. The judge held that Pritam had chosen to be wilfully blind to Sundram's status as an illegal immigrant, as there were patently suspicious circumstances surrounding his employment. Nevertheless, he allowed Sundram to continue working at Cairnhill Towers.

11 The judge found Pritam guilty of the charge and sentenced him to 18 months' imprisonment. During the mitigation hearing, his counsel stated that Pritam's only mistake was "not to take steps to bring to notice of the employer when he was shown the identity card and his failure to follow-up". In her grounds of decision, the judge stated that this sentence confirmed her finding that Pritam was shown the identity card.

The criminal motion

12 Pritam appealed against the decision below. He also filed a criminal motion to adduce further evidence on appeal. This motion was filed in order to support two claims: that Charan – who appeared as a witness for the prosecution – had given false evidence during the trial, and that the defence counsel below had acted against his instructions when he told the court during mitigation that Pritam had been shown the identity card.

13 The reception of fresh evidence during an appeal is governed by s 257(1) of the Criminal Procedure Code (Cap 68), which reads:

> In dealing with any appeal under this Chapter the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a District Court or Magistrate's Court.

14 The reception of evidence under s 257(1) is subject to the three conditions found in *Ladd v Marshall* [1954] 3 All ER 745: non-availability, credibility and relevance. After reviewing the evidence, I found that it did not satisfy the criteria as it was not relevant to this appeal. I accordingly dismissed the motion.

15 Pritam sought to adduce seven affidavits before this Court. The first five affidavits related to Charan's allegedly false testimony below. These affidavits comprised the transcript of a conversation which took place on 2 May 2003.

16 Charan testified during the trial that he did not know Sundram, or anyone named "Rakang Subramaniam" or "Ashok Karan". Several months after the trial, Pritam confronted Charan and demanded to know why he had lied in court. During that conversation, Charan admitted that he did actually know who Sundram was. What Charan did not know was that Pritam was carrying a tape recorder at that time, and was surreptitiously recording their conversation with the intention of adducing the transcript as evidence during this appeal.

17 If Charan gave false evidence during the trial below, he was liable for perjury under s 191 and 193 of the Penal Code. That was a matter for investigation by the appropriate authorities. However, I found that the evidence obtained via Pritam's amateur 'sting' operation was irrelevant to this appeal because the judge had never relied on Charan's evidence in the first place. This was very clear from her grounds of decision in which she stated:

> I do not intend to examine the role of Charan Singh in TGS. My views are that regardless of the role played by Charan during his employment in TGS, he did not feature in TGS after he left on 28 February 2001.

18 The last two affidavits related to the mitigation plea presented by Pritam's counsel below. Both affidavits emphasised that Pritam was shocked by his counsel's admission that he had been shown the identity card, as such a submission was contrary to his explicit instructions.

19 If Pritam's counsel acted against his instructions below, he may have failed to provide adequate professional services. This could eventually result in disciplinary proceedings under s 75B and the Second Schedule to the Legal Profession Act (Cap 161). However, the evidence relating to counsel's lapse of judgment was otherwise irrelevant to this appeal. The mitigation plea was made only after the judge had found Pritam guilty, and was therefore irrelevant to his appeal against conviction. There was nothing to suggest that the impugned admission had any impact on the sentence imposed, and was thus also irrelevant to his appeal against sentence.

20 During the appeal, Pritam's counsel relied on *Chia Kah Boon v PP* [1999] 4 SLR 72 to argue that fresh evidence may be adduced even if it fails the *Ladd v Marshall* test, as long as justice so requires. That was undeniably true. However, the case of *Chia Kah Boon* was very different from the present appeal. In *Chia Kah Boon*, the evidence did not meet the requirements of *Ladd v Marshall* because it was obtainable during the trial below. By contrast, the evidence in the present appeal was

simply irrelevant.

21 The court in *Chia Kah Boon* emphasised that the exception to *Ladd v Marshall* was a narrow one which was warranted only by the most extenuating circumstances: see *Chan Chun Yee v PP* [1998] 3 SLR 638. There were no circumstances here which justified a departure from the rule in *Ladd v Marshall*. Furthermore, it is settled law that irrelevant evidence may not be adduced: s 5 of the Evidence Act (Cap 97).

The appeal

22 Pritam appealed on three grounds: first, that the judge erred in accepting the evidence of the prosecution witnesses and in disbelieving the defence witnesses; second, that the judge erred in calling for the defence at the close of the prosecution's case; third, that the sentence imposed was manifestly excessive. I dismissed the appeal on all three grounds.

The judge did not err in accepting the evidence of the prosecution witnesses

23 After hearing the evidence of all the witnesses, the judge found that the prosecution witnesses were truthful and that their evidence was credible. By contrast, her observation of the defence witnesses led her to the following conclusion:

> I find that the defence witnesses had rehearsed their evidence such that their evidence-in-chief synchronized. But, upon further questioning, their answers diverged, revealing marked inconsistencies. They were also vague and lacked logic. It was obvious that they were playing down the role of the Accused in TGS.

24 An examination of the record of proceedings revealed no reason to disturb the judge's conclusion. This ground of appeal was without merit.

The judge erred in finding that Pritam had been showed the identity card

25 In her grounds of decision, the judge stated that Sundram had maintained throughout the trial that he had shown the identity card to Pritam, and that the latter had told him to keep it. She thus accepted that Sundram had shown the identity card to Pritam. To bolster her finding, the judge relied on the statements made by Pritam's counsel during mitigation. On appeal, Pritam argued that the judge had erred in making this finding of fact.

26 It is true that a lower court's findings of fact should not be lightly disturbed: *Lim Ah Poh v PP* [1992] 1 SLR 713. However, I found that the evidence in this case did not entitle the judge to conclude that Pritam had been shown the identity card. Throughout the proceedings below, Pritam had adamantly stated that he was not shown the identity card. More importantly, Sundram himself did not maintain that he had shown the identity card to Pritam. His only reference to having done so was in the following exchange during cross-examination:

> Q: Refer to P3 – Q & A 18 – did Pritam Singh say those last words in Q18 answer – "there won't be any problem"?
>
> A: He did say those words.
>
> …
>
> Q: This statement was made on 14 March 2002, when were these five words uttered to you by

Pritam Singh?

A: *When I showed the identity card to him*. I can't remember the date. [emphasis added]

27 There was no other mention of Sundram having shown Pritam the identity card. A perusal of the evidence revealed that Sundram had consistently maintained that he had told Pritam about the identity card. Except for the passage reproduced above, he never claimed to have physically displayed the identity card to Pritam.

28 Under these circumstances, the judge was not entitled to find that Pritam had been shown the identity card. Moreover, she should not have relied on statements made during mitigation to confirm facts which were disputed during the trial. An appellate court is entitled to overturn a trial judge's finding of fact if its assessment of the facts is not based on the demeanour of the witnesses, but on inferences drawn from the evidence as a whole: *PP v Choo Thiam Hock & others* [1994] 3 SLR 248. I allowed the appeal on this point, and found that Sundram had merely told Pritam that he was in possession of the identity card.

The fact that Sundram had verbally informed Pritam of the identity card did not make the conviction unsound

29 The law on abetting the employment of an illegal immigrant by intentional aiding was settled in *Loh Kim Lan & another v PP* [2001] 1 SLR 552. In that case, the court held that the required *mens rea* was a dominant intention to assist the employer in committing the offence of employing illegal workers, with knowledge of the circumstances constituting that offence.

30 In the present appeal, Pritam did not dispute that the *actus reus* of the offence was made out. Instead, he argued that the judge's error made his conviction unsound as he did not have the requisite *mens rea*. He claimed that there was a "vast difference" between Sundram having shown him the identity card, and Sundram having told him that the card belonged to someone else. This was because the judge stated in her grounds of decision that Pritam must have known of Sundram's illegal status because the photograph on the identity card bore no resemblance to Sundram himself.

31 I did not accept this argument. There were in fact several factors which the judge took into account when she found that Pritam must have known of Sundram's illegal status. None of these factors were affected by her erroneous finding of fact. For example, the judge noted that, when Pritam handled Sundram's salary vouchers, he must have realised that the vouchers showed no deductions for Central Provident Fund contributions or for the foreign workers' levy. That meant that Sundram was neither a Singapore citizen nor a work permit holder. The judge also found that Pritam knew of TGSA's application to the Licensing Division of the Police Force seeking approval for Sundram to be employed as a security guard in June 2001, and he knew that the application had been rejected. Furthermore, Sundram spoke with a fairly obvious accent, and had expressly told Pritam that he was in possession of another person's identity card.

32 These were all patently suspicious circumstances which the judge relied on when she held that Pritam must have known of Sundram's illegal status. These circumstances were independent of the allegation that Sundram had shown the identity card to Pritam. Therefore, even taking the judge's erroneous finding of fact into account, I found no reason to disturb her conclusion that Pritam did have the requisite *mens rea* for the offence.

33 During oral submissions, Pritam's counsel argued that the requisite *mens rea* was a dominant intention to assist the employer, and did not focus on the issue of knowledge. This argument was

misconceived. The case law clearly shows that the requisite *mens rea* is whether the accused had knowledge of the circumstances constituting the offence. The question of 'dominant intention' only arises where there is a dispute over whom the accused had actually abetted. This was seen in *Daw Aye Aye Mu v PP* [1998] 2 SLR 64, where the High Court held that whether the accused had aided the employer or the illegal immigrant would depend on his dominant intention at the time that he did the act which led to the illegal immigrant's employment.

The judge did not err in calling for the defence

34 Pritam argued that the judge should not have called for his defence. His main contention was that Sundram was not a credible witness, and that his evidence could not be believed because it was often inconsistent. As Sundram was the main prosecution witness, the unreliable nature of his evidence meant that the prosecution had failed to discharge its burden at the close of its case. In support of this argument, Pritam outlined in great detail the discrepancies in Sundram's evidence.

35 I agreed that Sundram gave inconsistent evidence on the following matters:

a The date on which he was given the identity card;

b The date on which he started work at Cairnhill Towers;

c The date on which he told Pritam that he was holding on to another person's identity card;

d Whether he had any previous jobs before working at Cairnhill Towers;

e Why he went by the fictitious name of "Ashok Karan";

f Whether he had signed all the payment vouchers which were made out to him; and

g Whether he had entered Singapore with a valid passport or visa.

36 However, I found no merit to the allegation that Sundram was an unreliable witness merely because his evidence was not perfect. His discrepancies related to minor details which were not crucial to this appeal. It was unequivocally stated in *PP v Annamalai Pillai Jayanthi* [1998] 2 SLR 165 that:

> Nevertheless, *the mere presence of several discrepancies in the prosecution`s case cannot, per se, render its case manifestly unreliable*. It is incumbent upon the trial judge to consider whether the inconsistencies are sufficiently fundamental to nullify that part of the evidence which supports the charge. [emphasis added]

37 I found no reason to disturb the judge's decision to call for the defence. In her grounds of decision, she concluded that Sundram was a truthful witness after she had observed his demeanour in court. Due weight should be accorded to a trial judge's assessment of a witness' credibility based on demeanour in court: *Jimina Jacee d/o C D Athananasius v PP* [2000] 1 SLR 205.

38 Despite the inconsistencies in his evidence, Sundram had never wavered on three points: he had told Pritam that he was in possession of a Singapore identity card; he had informed Pritam that the card did not belong to him; and it was Pritam who paid him his salary. If unrebutted, these three points would establish each essential element of the offence. As I agreed with the judge that Sundram was a credible witness, I could not fault her decision to call on Pritam for his defence, as

required by the principles outlined in *Haw Tua Tau & another v PP* [1980–81] SLR 73.

Pritam remained liable for abetment even though Sukdev was given a discharge not amounting to an acquittal

39 In his submissions, Pritam called it "remarkable" that he was charged for abetting Sukdev in employing Sundram, even though Sukdev was given a discharge not amounting to an acquittal. There was no merit to this assertion. There is no need for the principal to have been convicted prior to the abettor in order that the latter may be found liable for aiding him: *Ong Ah Yeo Yenna v PP* [1993] 2 SLR 73. After all, the verdicts against an abettor and his principal are not interdependent – the conviction of either party turns on the evidence against him, which may be different from that admitted against the other party: see *Govindarajulu and another v PP* [1994] 2 SLR 838.

The sentence was not manifestly excessive

40 There was no reason to disturb the sentence imposed by the judge. The benchmark sentence for cases which go to trial under s 57 of the Immigration Act has been set at 12 months: *Soh Lip Hwa v PP* [2001] 4 SLR 198. The sentence for abetting an offence is the same as if the abettor was charged for the offence itself: s 109 of the Penal Code.

41 Pritam had a previous conviction under s 57 of the Immigration Act, for which he was sentenced to eight months' imprisonment. As a repeat offender, it could not be said that his sentence of 18 months (a mere six months above the benchmark) was manifestly excessive.

Motion and appeal dismissed.