Govindaraj Perumalsamy and Others v Public Prosecutor and Other Appeals [2004] SGHC 16

Case Number : MA 137/2003, 138/2003, 139/2003, 140/2003

Decision Date : 04 February 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : A Rajandran and Pratap Kishan (A Rajandran, Joseph and Nayar) for appellants; Glenn Seah Kim Ming (Deputy Public Prosecutor) for respondent

Parties : Govindaraj Perumalsamy; Ramaiah Guna Sekaran; Rathinam Manikandan; Soupramaniane D Jeamany — Public Prosecutor

Criminal Procedure and Sentencing – Identification parade – Whether alleged procedural irregularities that occurred before and during the identification parade tainted the identification evidence

Criminal Procedure and Sentencing – Sentencing – Whether sentence imposed was manifestly excessive

Evidence – Identification – Three-step test – Quality of identification evidence – Supporting evidence – Whether rejected false alibi sufficed as supporting evidence

Evidence – Witnesses – Whether trial judge's assessment of witnesses' credibility was flawed

4 February 2004

Yong Pung How CJ:

1 The four appellants were convicted of an offence under s 394 of the Penal Code (Cap 224, 1985 Rev Ed) for committing robbery with hurt. They were each sentenced to six years' imprisonment and 12 strokes of the cane, with the imprisonment sentences backdated to 28 February 2003, the date they were first remanded. At the end of the hearing before me, I dismissed the first, second and fourth appellants' appeals against conviction and sentence and allowed the third appellant's appeal. I now give my reasons.

Background

2 The complainant, Veerappan Durai ("Veerappan"), is an Indian national. He alleged that he was robbed and assaulted by six unidentified male Indians on 3 February 2003 at 11.00pm near Lorong 24 Geylang. He was robbed of a Nokia 8250 handphone (valued at $200), a gold chain (valued at $480) and $30 cash. He also alleged that he was hit on his head with a wooden pole from behind, and that he suffered punches on his forehead and left cheek.

3 On 26 February 2003, the police arrested the four appellants upon an informant's information. An identification parade was conducted on the night of 27 February 2003 and Veerappan identified the four appellants. The two other unidentified men remain at large.

4 The first to fourth appellants, Govindaraj Perumalsamy, Ramaiah Guna Sekaran, Rathinam Manikandan and Soupramaniane D Jeamany respectively, are all Indian nationals. At the time of their arrests, the second and fourth appellants possessed special passes that enabled them to stay in Singapore, pending the outcome of their compensation claims for injuries suffered at work. However, the first and third appellants had overstayed. In the court below, they pleaded guilty to overstaying

under s 15(3) of the Immigration Act (Cap 133, 1997 Rev Ed). The first appellant also pleaded guilty to fraudulent possession of a work permit under s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed).

The Prosecution's case

5 The Prosecution's version of events was that Veerappan saw the four appellants walking towards him along Geylang Road near Lorong 24 as he was walking towards a bus stop to take a bus to Tekka (Serangoon Road). The first, second and fourth appellants approached Veerappan. The fourth appellant talked to him for five minutes before he pulled Veerappan's shirt and demanded the latter's gold chain and handphone. When Veerappan refused to comply, the fourth appellant punched him on the forehead and seized his handphone and $30 from his shirt pocket. The second appellant hit him with a wooden pole from behind while the first appellant punched him on his left cheek and snatched his gold chain.

6 Veerappan noticed that the first appellant wore one earring and had a bangle on his right hand. He also observed that the third appellant was standing 6 to 10m away and appeared to be a lookout. The remaining two unidentified men were standing 4 to 5m away. After the robbery and assault, Veerappan saw the first, second and fourth appellants running towards Lorong 24 Geylang while the third appellant ran away in another direction. The remaining two unidentified men had disappeared. Because these two men did not come to his assistance, Veerappan assumed that they were also involved.

7 Feeling dizzy after the assault, Veerappan sat on the ground to recover. After half an hour, he took a taxi home and recounted the events to his friend Sathiah. They then returned to the scene of the crime because Sathiah wanted to see the place. Thereafter, both of them went to Geylang Neighbourhood Police Centre to lodge a police report. The next day on 4 February 2003, Veerappan was examined by one Dr Pushparanee Somasundram. She testified that Veerappan told her that he had lost consciousness for an unknown duration after the assault and that he suffered injuries on his left thigh and on the left side of his face. She found that there was pain and tenderness on his left cheek as well as an abrasion on his left thigh.

The Defence

8 The crux of the four appellants' defences was that of mistaken identity and denial that they were at the scene of the crime on the night in question. They also alleged that Veerappan identified them because he had seen them and their photographs before the identification parade. Save that the second and fourth appellants had met earlier at the same lawyer's office regarding their compensation claims and a few more times after that, the four appellants denied knowing one another or Veerappan.

9 At the material time, the first appellant claimed that he was at a boarding house at Nos 4 and 6 Lorong 24 Geylang hiding from a police raid. The second appellant asserted that he was in his room in Hougang. The third appellant professed that he was with his friend Kannan at Tekka before they returned to their lodging at Lorong 30 Geylang. The fourth appellant testified that he was watching a 9.00pm movie, "Anbesivam", at the Plaza Theatre in Jalan Sultan. After the movie ended at 12.30am, he only had enough money to take a taxi to Boon Lay MRT Station where he spent the night, before proceeding to his work quarters at Tuas in the morning.

10 All four appellants also averred that the identification parade was improperly conducted. Apparently, before the identification parade was conducted on the night of 27 February 2003, the

appellants were brought to the investigating officer's office that morning to swear on a Hindu deity. Later that evening, statements were recorded from them and their photographs were taken using a handphone and presumably shown to Veerappan, who was brought to see them in the investigating officer's room. Thereafter, the identification parade was held, comprising eleven people of whom eight, including themselves, were Indian males while two were Malay males and one, a Chinese male. The appellants also claimed that everyone in the line up wore their own clothes during the parade.

The decision of the court below

11 The trial judge recognised that the case against the four appellants hinged on the testimony of the key prosecution witness, Veerappan, and his identification of the appellants. The trial judge found that Veerappan had made no mistake in identifying his assailants. He dismissed the Defence's contention that convicting the appellants based solely on Veerappan's testimony was unsafe because of the numerous inconsistencies and whimsical changes in Veerappan's testimony. The trial judge held that Veerappan had no reason to frame the four appellants and that he was, on the whole, a truthful witness. The discrepancies in Veerappan's testimony were not material and only reflected his honesty in narrating the events to the best of his recollection.

12 On the other hand, the trial judge disbelieved the defences of all four appellants and held that they had concocted their defences. He further disbelieved their allegations regarding the procedural irregularities that occurred before and during the identification parade.

Appeal against conviction

13 The appellants advanced three main contentions on appeal. First they alleged that the identification evidence was unreliable because the quality of the evidence was poor and because Veerappan was not a credible witness. Second, the identification evidence was said to be tainted because of alleged procedural irregularities that happened before and during the identification parade. Finally, the appellants claimed that the trial judge's assessment of their credibility and that of various prosecution witnesses was flawed.

14 I shall now deal with each of these arguments in turn.

Whether the identification of the appellants was unreliable – quality of the evidence

15 The law on identification evidence was laid down in *Heng Aik Ren Thomas v PP* [1998] 3 SLR 465. In that case, the Court of Appeal adapted the guidelines laid down in *R v Turnbull* [1977] QB 224 into a three-step test as follows:

(a) The first question that a judge should ask when encountering a criminal case concerning identification evidence is whether the case against the accused depends wholly or substantially on the correctness of the identification evidence which is alleged by the Defence to be unreliable.

(b) If so, the second question should be this. Is the identification evidence of good quality, taking into account the circumstances in which the identification by the witness was made?

(c) Where the quality of the identification evidence is poor, the judge should go on to the third question. Is there any other evidence that goes to support the correctness of the identification?

16 As to the second question, the Court of Appeal suggested a non-exhaustive list of factors

and circumstances that could be considered in assessing whether the identification evidence was of good quality. These included:

(a) the length of time that the witness observed the accused;

(b) the distance at which the observation was made;

(c) the presence of obstructions in the way of the observation;

(d) the number of times the witness saw the accused;

(e) the frequency with which the witness saw the accused;

(f) the presence of any special reasons for the witness to remember the accused;

(g) the length of time which elapsed between the original observation and the subsequent identification to the police; and

(h) the presence of material discrepancies between the description of the accused as given by the witness and the actual appearance of the accused.

17 At the third stage of the test, if the judge is unable to find other supporting evidence for the identification, he should be mindful that a conviction based on such poor identification evidence would be unsafe.

18 Upon applying the three-step test, the trial judge was satisfied that the case against the appellants depended wholly or substantially on the correctness of the identification evidence. He then went on to consider whether the evidence was of good quality and concluded that the evidence was indeed of good quality for the following reasons:

(a) Veerappan saw the faces of the first, second and fourth appellants clearly when they approached him. The third appellant was only 6 to 10m away and Veerappan also saw his face clearly when the third appellant looked at him during the robbery.

(b) Though the lighting along the road was dim, it was sufficient for Veerappan to get a good look at his assailants during the encounter with them, which lasted several minutes. There were also no obstructions in his line of vision. Veerappan remembered clearly that the first appellant wore one earring and had a bangle.

(c) Veerappan was unable to describe his assailants by their attire or characteristics but maintained that he could identify them by their faces. Subsequently, he did identify them at the identification parade on 27 February 2003. The fact that he did not identify anyone from an earlier parade on 19 February 2003 before the four appellants were caught, confirmed Veerappan's ability to identify his assailants accurately.

(d) The fact that the experience must have been a harrowing one for Veerappan meant that the faces of the assailants would be indelibly imprinted on his mind.

19 With regards to the first, second and fourth appellants, I was of the view that the trial judge's reasons for holding the identification evidence to be of good quality were wholly sustainable. I have previously stated in *PP v L (a minor)* [1999] 3 SLR 219 that a victim of crime would naturally take a good look at his perpetrator and commit his face to memory. This was undoubtedly the case

here, especially since Veerappan had the opportunity to see his three assailants at close range for a few minutes before and during the incident. Although Veerappan testified that he later felt dizzy from the assault, it is pertinent to note that he had already looked intently at the three of them before his vision or memory was impaired in any conceivable way.

20 On the contrary, I found that Veerappan's identification suffered from certain weaknesses with respect to the third appellant. First of all, Veerappan testified that as his assailants approached him, the third appellant was looking down and he was a distance behind the first and second appellants, who were in turn walking behind the fourth appellant. Since the third appellant was right at the back of the group and he was looking down, Veerappan could not have seen his face before the incident, especially since the road was not brightly lit.

21 Second, Veerappan testified that during the incident, the third appellant was standing about 6 to 10m away. Veerappan noticed that the third appellant was looking down though he also claimed that he saw the latter look at him. I was unconvinced by Veerappan's version of events in this regard. Since the robbery and assault took place simultaneously, it was most incredible that Veerappan would be able to get a good look at a man standing 6 to 10m away, whilst he was desperately trying to prevent his possessions from being snatched and whilst he was being struck by a wooden pole on the back of his head and receiving punches on his forehead and left cheek. It was clear to me that he could not have looked at the person whom he claimed to be the third appellant for more than a few seconds under such circumstances let alone take a good look at him.

22 Third, the nub of the third appellant's involvement, as alleged by Veerappan, was that he acted as a lookout, as evinced by his taking flight from the scene after the incident, albeit alone and in a different direction from the other three appellants. The fact that the third appellant did not come to Veerappan's aid also indicated to him that the third appellant was in cahoots with the other three appellants. In court, Veerappan testified that he felt dizzy upon being attacked and had to sit on the ground but he never lost consciousness. He also averred that he never told Dr Pushparanee Somasundram that he had lost consciousness. However, his testimony was contradicted by the doctor, who testified that Veerappan had indeed told her so. She had also duly noted what he had told her in his medical report.

23 Since it is uncertain if Veerappan had indeed lost consciousness and, if so, for how long and at which point in time, there was a reasonable doubt as to whether he saw the third appellant fleeing the scene. Even if he was merely giddy, as he claimed in court, his vision or memory could have been impaired and his identification of the third appellant as the person fleeing the scene could be a mistake, especially since there would have been a flurry of activity all around him as his attackers fled. The fact that the two other unidentified men whom Veerappan claimed were also involved, had vanished without his notice, showed that he was not as alert and observant as he professed to be.

2 4 Additionally, Veerappan only identified the four appellants 24 days after the incident. Under such nebulous circumstances whereby Veerappan claimed to have seen the third appellant, the time lapse rendered the quality of the identification evidence even more suspect. As such, I found that Veerappan's observations of the third appellant were made in circumstances which only allowed identification evidence of poor quality. Accordingly, this was a situation where the trial judge's finding, that the quality of the identification evidence with regards to the third appellant was good, was clearly against the weight of the evidence. I should also add that just because the trial judge found Veerappan to be a truthful witness did not automatically mean that the court should rely on all of his evidence, bearing in mind human fallibility in observation, retention and recollection.

25 Following *Heng Aik Ren Thomas v PP* ([15] *supra*), since the identification evidence of the

third appellant was of poor quality, I proceeded to ascertain if there was supporting evidence, which need not be corroboration evidence of the kind required by *R v Baskerville* [1916] 2 KB 658. All that was required was evidence that would make me sure that there was no mistake in the identification.

26 In the court below, the trial judge had dismissed the third appellant's defence as concocted because his testimony in court differed from the account rendered in his two police statements. In his statements, the third appellant merely said that he could not remember where he was, neither could he confirm whom he was with on the night in question. Yet at trial, the third appellant testified that he was with one "Kannan" on the night in question. They had gone to Tekka and Cuff Road before returning to Lorong 30 Geylang. In this regard, I noted the salutary caution of Lord Widgery CJ in *R v Turnbull* ([15] *supra*), where he said at 230 of his judgment:

> Care should be taken by the judge when directing the jury about the support for an identification which may be derived from the fact that they have rejected an alibi. False alibis may be put forward for many reasons: an accused, for example, who has only his own truthful evidence to rely on may stupidly fabricate an alibi and get lying witnesses to support it out of fear that his own evidence will not be enough. Further, alibi witnesses can make genuine mistakes about dates and occasions like any other witnesses can. It is only when the jury is satisfied that the sole reason for the fabrication was to deceive them and there is no other explanation for its being put forward can fabrication provide any support for identification evidence. The jury should be reminded that proving the accused has told lies about where he was at the material time does not by itself prove that he was where the identifying witness says he was.

27 I found this point to be germane in the present case. Although the trial judge disbelieved the third appellant's alibi, this certainly did not by itself prove that the third appellant was at the scene of the crime. As I previously noted in *Simon Joseph v PP* [1997] 3 SLR 196, an accused's conviction should not be upheld merely because his defence was disbelieved by the trial judge.

28 I was not satisfied that the sole reason for the third appellant's fabrication was to deceive the court and that there could be no other explanation for its being put forward. The Prosecution's case also contained no more than veiled references to the third appellant's presence at the scene of the crime at the material time and the Prosecution had failed to adduce affirmative evidence that pointed ineluctably to the guilt of the third appellant. Accordingly, it was clear to me that there was no other supporting evidence for the poor quality identification evidence.

Whether the identification of the appellants was unreliable – Veerappan's credibility

29 Since the entire case hinged on the evidence given by Veerappan, this appeal naturally centred on highlighting discrepancies in his testimony. The appellants contended that Veerappan's testimony contained overwhelming inconsistencies, of which the main discrepancies were as follows:

(a) Veerappan said during his examination-in-chief that the offence took place at a bus stop along Lorong 24 Geylang where he waited five minutes for a bus. Under cross-examination, he said that the offence took place as he was walking along Lorong 24 towards a bus stop at Lorong 20 instead.

(b) The timings that Veerappan gave in his police report were inconsistent with his testimony in court. His recollection of time pertaining to his medical examination and the identification parade also differed from the time proffered by Dr Pushparanee Somasundram ("PW9") and the Investigating Officer, Sergeant Razali Rahmat ("PW2").

(c) PW2 testified that Veerappan told him that the fourth appellant assaulted him with the bangle and robbed him of his gold chain, handphone and cash. However, Veerappan testified that the first appellant wore the bangle and snatched his gold chain.

(d) At trial, Veerappan said that he only felt dizzy after the assault but he never lost consciousness. However, PW9 said that Veerappan had told her that he had lost consciousness.

(e) Veerappan testified that he spoke in Tamil to a Tamil officer at the police station, who acted as an interpreter to the recording officer. However, the recording officer, Sergeant Syed Az-Zameer bin Abdul Rahim ("PW7") asserted that there was no interpreter used in recording the report. PW7 said that Veerappan related the incident to him in simple English and used hand gestures.

(f) The gold chain that was taken from Veerappan was a gift from his friend, Murugesan Kulenthaivelu ("PW3"). Veerappan testified that he was given the chain four months after his 28th birthday. However, PW3 said that he had given Veerappan the gold chain six months before his 28th birthday.

30 Even if a few of these inconsistencies appeared to be material, it is trite law that a flawed witness does not equate to an untruthful witness. On this point, my observation in *Lewis Christine v PP* [2001] 3 SLR 165, that innocent discrepancies must be distinguished from deliberate lies, bears remembrance. Given that the four appellants did not know Veerappan and that Veerappan had no reason to frame them, the discrepancies in Veerappan's testimony did not seem to be deliberate lies.

31 Furthermore, the trial judge had been mindful that there were inconsistencies in Veerappan's evidence but, having weighed them against the totality of the evidence, he nonetheless accepted Veerappan's evidence on the key facts in issue. It is settled law that the trial judge is entitled to determine which part of a witness's testimony remains credible despite its discrepancies and there is no rule of law that the testimony of a witness must be believed in its entirety or not at all. Reference may be made to the cases of *Jimina Jacee d/o C D Athananasius v PP* [2000] 1 SLR 205 and *Mohammed Zairi bin Mohamad Mohtar v PP* [2002] 1 SLR 344.

32 These discrepancies also did not detract from the fact that the trial judge found Veerappan to be a reliable and honest witness. As I observed in *Ang Jwee Herng v PP* [2001] 2 SLR 474, the court recognises and accepts that human fallibility in observation, retention and recollection is oftentimes inevitable in weighing the evidence of a witness. I agreed with the trial judge that Veerappan was a truthful witness on the whole and it seemed to me that any inaccuracies in his recollection or perception showed his over-zealousness as a witness rather than any dishonesty on his part. In my view, the discrepancies in Veerappan's evidence were not so material that they diminished the value of the identification evidence or warranted interference with the trial judge's findings on Veerappan's credibility.

Whether the alleged procedural irregularities that occurred before and during the identification parade tainted the identification evidence

33 The appellants declared that the identification evidence should be rejected because Veerappan saw them and their photographs before the identification parade. They also claimed that the parade was conducted unfairly as the line-up included persons of different races and attire. Upon an assessment of the witnesses' veracity, the trial judge disbelieved the appellants' bare allegations and preferred PW2's and Staff Sergeant Karapaya s/o Arumugam's version of events, namely, that Veerappan did not have sight of the appellants or their photographs before the parade and the

persons in the line-up were all Indian men wearing lock-up attire.

34 It was apparent to me that the trial judge's findings should not be disturbed. After all, I have made it clear in *Jimina Jacee d/o C D Athananasius v PP* that due weight should be accorded to a trial judge's assessment of a witness's credibility based on demeanour in court, given that the trial judge has had the benefit of observing the demeanour of the particular witnesses.

35 Furthermore, this was not a situation where the trial judge simply believed one party's words over another's upon assessing the witnesses' veracity but it was one where he had the added benefit of perusing credible evidence given by PW2. At trial, PW2 had produced a precise and detailed list of the suspects who were involved in the identification parade. Juxtaposing PW2's evidence against the appellants' bare assertions rendered the hollowness of the appellants' words even more obvious. As such, the trial judge's findings, that the alleged procedural irregularities never occurred and that the identification evidence was not tainted, did not go against the weight of the evidence.

Whether the trial judge's assessment of the credibility of the appellants and various prosecution witnesses was flawed

36 With regard to the appellants' credibility, counsel for the appellants claimed that the trial judge had not been objective in assessing their credibility and had rejected their defences because of minor discrepancies. While the trial judge found that the third appellant's defence had been invented as an afterthought, he held that the evidence of the first, second and fourth appellants were contradicted both internally and by independent witnesses.

37 Cases like *PP v Victor Rajoo* [1995] 3 SLR 417 and *Simon Joseph v PP* ([17] *supra*) have stated uncontroversially that a finding on a witness's credibility should be tested against objective facts and evidence. The trial judge here had undertaken a detailed assessment of the evidence and considered the evidence in its entirety, ensuring that his findings on the four appellants' credibility were tested against independent evidence given by credible witnesses such as PW2, Subramaniam s/o Letchman Chitty ("PW4"), Tan Tiong Seng ("PW6") and Inspector Jeremy Tang ("PW10"). Therefore, he was entitled to place little or no weight on the appellants' evidence.

38 Unsurprisingly, the appellants also sought to cast doubt on the veracity of PW4 and PW6 who, the appellants claimed, had overriding self-interests in the matter. Both witnesses' interests lay in guarding themselves against offences for harbouring or employing an overstayer or for being an undeclared employer of a foreign national. PW4 is the owner of the Hougang flat where the second appellant claimed he was on the night in question, while PW6 is the owner of the boarding house where the first appellant claimed to have taken refuge on the night in question. However, both PW4 and PW6 flatly denied that the second and first appellants were respectively where they claimed to be that night.

39 In the circumstances, the second appellant's stay in Singapore was legal since he had a special pass, which he had shown to PW4. Hence, PW4 would have no reason to lie about the second appellant's whereabouts on the night in question. Counsel pounced on the fact that PW4 had contradicted himself as to when he first saw the second appellant, arguing that this inconsistency proved that PW4 had something to hide. My response to this is to reiterate my observation in *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464, that so long as the inconsistencies in a witness's evidence were minor in nature, or related to minor issues, it did not undermine his evidence in respect of the key issues. To my mind, the discrepancy in PW4's evidence was decidedly minor and should not be allowed to undermine the material facts in his evidence.

40 As for PW6, his evidence was consistent with that of PW10. Coupled with the material inconsistencies in the first appellant's evidence, there was no reason for the trial judge to doubt PW6's testimony. Moreover, even if PW4 and PW6 were indeed interested witnesses, it has been established in *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592 that a witness's evidence need not be treated with unnecessary caution simply because he has some self-interest in the matter. In this case, the trial judge had reached his findings after a thorough examination of the situation and upon testing his impression as to the demeanour of the various witnesses against the whole of the evidence. As such, I found no reason to disturb his findings.

41 I now turn to the appeal against sentence.

Appeal against sentence

42 The appellants' appeals against sentence were without merit. They had failed to raise any specific grounds for their appeals against sentence, which seemed to be a tacit recognition on their part that the sentence passed by the trial judge was not manifestly excessive. In *Loh Khoon Hai v PP* [1996] 2 SLR 321, I had stated that the tariff sentence for an offence under s 394 of the Penal Code is six years' imprisonment and 12 strokes of the cane, which was the sentence meted out to the four appellants here. The trial judge had also properly considered all the circumstances of the case and the sentence could not be said to be manifestly excessive.

Conclusion

43 For the foregoing reasons, I dismissed the first, second and fourth appellants' appeals against conviction and sentence. As for the third appellant, it cannot be said that the evidence was so compelling that his conviction could be based solely on it. I was satisfied that such a conviction would be unsafe and thus allowed the third appellant's appeal.

First, second and fourth appellants' appeal against conviction and sentence dismissed.
Third appellant's appeal allowed.

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