Chan Chan Wah v Public Prosecutor
[2004] SGHC 247

Case Number : MA 67/2004

Decision Date : 04 November 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Loh Lin Kok (Loh Lin Kok) for appellant; Hamidul Haq (Deputy Public Prosecutor) for respondent

Parties : Chan Chan Wah — Public Prosecutor

Criminal Law – Statutory offences – Receiving stolen property – Elements of offence – s 411 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Principles applicable in appeal against findings of fact – Whether trial judge's findings against weight of evidence.

Criminal Procedure and Sentencing – Trials – Calling of rebuttal evidence by prosecution – Whether trial judge should have exercised discretion to allow rebuttal evidence.

Evidence – Proof of evidence – Standard of proof – Whether prima facie case established at close of prosecution's case.

4 November 2004

Yong Pung How CJ:

1 The appellant, Chan Chan Wah, was charged under s 411 of the Penal Code (Cap 224, 1985 Rev Ed) for dishonestly retaining an assortment of jewellery knowing these items to be stolen property ("the first charge"). He was also charged under s 35(3) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) for being in possession of an assortment of jewellery which he had reason to believe to be stolen or fraudulently obtained ("the second charge"). District Judge Abdul Rahim B A Jalil convicted the appellant of both charges and sentenced him to a total of 12 months' imprisonment: see *PP v Chan Chan Wah* [2004] SGDC 181. The appellant appealed against conviction.

The facts

Undisputed facts

2 The appellant owned two jewellery shops, one at Lucky Plaza ("the Lucky Plaza shop") and one at People's Park Complex ("the People's Park Shop"). On 5 April 2002, five Hong Kong nationals – Cheung Kan Lam also known as Lam Chye ("Cheung"), Lam Kong Shan Samuel ("Sam"), Lam Chi Yu ("Lam"), Chan Fook Ming also known as Ah Mong ("Ah Mong") and Yiu Pun Wa also known as Ah Ti ("Yiu") – were arrested for housebreaking. On the following day, the appellant was called up by the police and was told to surrender all the items that he had purchased from the five Hong Kong nationals. He surrendered 24 pieces of jewellery to the police. These 24 pieces of jewellery were purchased from Cheung and Sam. Later that day, another 148 pieces of jewellery were recovered from the Lucky Plaza shop. The appellant had also bought these 148 pieces from Cheung and Sam. Cheung and Sam had stolen all the 172 pieces of jewellery that were recovered by the police. Out of the 172 pieces, 132 of them were subsequently identified by their owners as having been stolen from them.

3 Another raid was conducted at the Lucky Plaza shop on 25 April 2002. That raid was triggered by a police report made by one Julia Cudron ("Julia") when she saw what she believed were jewellery pieces stolen from her on display in the shop. The police seized 24 items of jewellery which Julia identified as belonging to her. It was undisputed that Cheung and Sam had earlier broken into Julia's residence and had stolen various items including jewellery.

4 A total of 196 pieces of jewellery were recovered. Of these, 156 pieces (made up of the 132 pieces identified by their owners and the 24 pieces identified by Julia in the Lucky Plaza shop on 25 April 2002) were referred to in the first charge. The remaining 40 pieces that were not identified by their owners formed the subject matter of the second charge.

The Prosecution's case

5 The Prosecution contended that the appellant knew all along that the items of jewellery he purchased from Cheung and Sam came from instances of housebreaking committed by them in Singapore. The appellant had agreed to buy these stolen jewellery at very low prices, and was in effect acting as an accomplice to this group of Hong Kong burglars operating in Singapore by assisting them to turn these stolen properties into cash.

6 To prove that the appellant knew the items to be stolen property, the Prosecution relied mainly on the evidence of Lam. Lam testified that he came to Singapore in 2002 and stayed in a flat with Cheung, Sam and Ah Mong. He met the appellant on five or six occasions. On the second and third occasions, the appellant went to their flat empty-handed but left the flat carrying bags. During the fourth occasion, Lam saw the appellant wearing a Patek Phillipe watch. The appellant pointed at the watch and said that he had brought the watch for repair. The appellant added that the repairer had commented that the watch had been reported stolen and had told him to take it back. On the last occasion when Lam met the appellant at the flat, the appellant told Cheung that he should go to Malaysia to "take a rest". The appellant further said that "it had already been done for so long and the police would have known about it".

7 The Prosecution also relied on the police statement of Sam. In particular, the Prosecution placed emphasis on the following answers given by Sam in his statement:

> Q97: Do you know of anybody else other than the persons arrested together with you that sold stolen items to Mr Chan (B6) [the appellant]?
>
> A97: I have heard from Mr Chan himself and 'Lam Chye' that 'Ah Mong' and 'Ah Tee' had done the same things, *ie* sold stolen jewellery to Mr Chan.
>
> Q98: Can you elaborate more on this?
>
> A98: On one occasion when I was in Mr Chan's office in Lucky Plaza, Mr Chan had shown me his wrist which had a Patek Phillipe watch on it. This was sometime in Mar 02. The watch had a black leather strap. Mr Chan told me that the watch was sold to him by 'Ah Mong' for S$3,000/-. He had bought it for his own use. At that time Mr Chan had told me that 'Ah Mong' had stolen the watch. I think it was on the same occasion that Mr Chan mentioned about Ah Tee's 'harvest' being much bigger than ours. By the word 'harvest', I understood it to mean what we were doing, *ie* burglary. …
>
> Q99: Does Mr Chan know that the jewellery sold to him by yourself or Lam Chye are stolen items?

A: Yes. Lam Chye had mentioned to Mr Chan that some Singaporeans actually had nothing at home but fake items.

8 In respect of the 24 pieces of jewellery that were seized on 25 April 2002, the Prosecution's case was that these items were likewise stolen by Cheung and Sam and sold to the appellant. Reliance was placed on Julia's testimony that she could identify the 24 items as belonging to her.

The Defence's case

9 There were two parts to the Defence's case. Firstly, the appellant had no knowledge at all that the 172 items of jewellery sold to him by Cheung and Sam were stolen property. Secondly, with regard to the 24 items seized on 25 April 2002, the appellant had not purchased them from Cheung and Sam.

The appellant's testimony

10 The appellant testified that he first came to know Cheung on one of his business trips to Shenzhen. In August 2001, he went to Shenzhen again with his friend Tji Weng Foang ("Tji"), and Cheung invited them to his restaurant. The appellant saw people gambling illegally at the back of the restaurant. Cheung informed the appellant that many of the gamblers who had lost money would pledge their jewellery to him. Cheung asked the appellant whether he was interested in buying the pledged jewellery, and the appellant told him he would like to look at the items first.

11 On 5 December 2001, Cheung met the appellant at the People's Park shop. Cheung was with Sam and Yiu. A few days later, Cheung went to the Lucky Plaza shop and sold the appellant the first batch of jewellery, reassuring the appellant that the jewellery pieces were all pledged items that had not been redeemed. The appellant wrote out the prices of the items he bought on a piece of paper, but he did not retain a copy for himself as it was his own business and he was buying those items himself. No receipt was issued to Cheung, nor was there any other documentation that recorded the sale.

12 The appellant bought more jewellery from Cheung and Sam on five other occasions. The total value of the six transactions amounted to about $130,000. All the transactions were done in the daytime and the appellant's wife and staff were present in the office of the shop. After buying the jewellery on each of the six occasions, the appellant would hand the items over to his wife who would deal with them as she deemed fit. Most of these pieces of jewellery the appellant had purchased from Cheung and Sam were subsequently sold to other third parties, leaving only the 172 items that were recovered by the police on 6 April 2002.

13 The appellant admitted that he had met the five Hong Kong nationals on several other occasions. On the occasions when he visited them at their flat, Cheung gave him dried marine products and no sales of jewellery took place. The appellant said that he did not own a Patek Phillipe watch, nor did he make any of the comments which Lam and Sam alleged that he had made.

14 The appellant also denied that the 24 pieces of jewellery identified by Julia on 25 April 2002 were purchased from Cheung and Sam.

Esther Tan's testimony

15 Esther Tan, the appellant's wife, testified in support of the appellant's evidence in relation to the transactions with Cheung and Sam that took place in the Lucky Plaza shop. She also supported

the appellant's evidence that the 24 pieces of jewellery seized on 25 April 2002 were not sold to the appellant by Cheung and Lam. Instead, the appellant and herself had purchased these items from shops which were in the process of closing down. In particular, she relied on a tax invoice as documentary proof that some of the 24 items were purchased from one of these shops.

16 Esther Tan further testified that one of these 24 items, a yellow bracelet (marked "P16-0"), was actually sold by one Melissa Wong to her. According to her, when the items were seized on 25 April 2002, Melissa Wong was asked to come to the shop to identify P16-0, and Melissa Wong had said that P16-0 was the bracelet that she sold to Esther Tan.

17 At this juncture, it should be noted that the Prosecution called Melissa Wong as a rebuttal witness. She testified that she had sold a bracelet to Esther Tan but that it was a white gold bracelet and not a yellow bracelet. She further said that she picked up P16-0 when she came down to the shop because the design of P16-0 was very similar to that of the bracelet that she sold to Esther Tan, although the colour was different.

Other Defence witnesses

18 In essence, the other Defence witnesses gave evidence to support the testimonies of the appellant and his wife. Tji corroborated the appellant's evidence as to what transpired at Shenzhen. The appellant's shop assistants testified that Melissa Wong had indeed identified P16-0 as the bracelet that she had sold to Esther Tan. The Defence also produced a witness who had prior dealings with the appellant to give evidence that there was no paper documentation involved when she bought or sold jewellery to the appellant.

The decision below

19 Based on the evidence before him, the district judge was satisfied beyond a reasonable doubt that the appellant knew that the items he bought from Cheung and Lam were stolen. In reaching this conclusion, the judge took into account mainly the evidence of Lam and Sam.

20 The district judge found Lam to be a frank and candid witness, and saw no reason why Lam would want to make a false statement against the appellant. He therefore took into account the incriminating evidence from Lam that the appellant had told Cheung to go to Malaysia and "take a rest" as "it had been done for so long and the police would have known about it". In so doing, the learned judge drew the inference that the appellant was fully aware of Cheung's acts of housebreaking.

21 Further support for the above finding was derived from Sam's police statement. Sam testified in court, but he turned hostile and claimed to be unable to remember many relevant facts. The district judge therefore granted the Prosecution's application to impeach his credit and to further substitute his police statement in place of his testimony in court. The judge went on to take into account those parts of Sam's statement that incriminated the appellant. This included the references made to the conversation between Sam and the appellant, during which the appellant had told Sam that his Patek Phillipe watch was stolen property and sold to him by Chan, and had made reference to "harvest" which Sam understood to mean burglary. The court was further influenced by the fact that the reference to the Patek Phillipe watch in Sam's statement was consistent with Lam's testimony.

22 The court also took into consideration other circumstantial evidence. The absence of documentation recording the transactions led to the inference that the transactions with Cheung and Lam were illegitimate. Furthermore, the appellant's testimony that he had paid a total amount of

about $130,000 to Cheung and Lam was riddled with inconsistencies. In addition, the learned judge also noted that the business arrangement alleged by the appellant was illogical and suspicious. The judge pointed out that it would have made no business sense for Cheung and Lam to come all the way from China to sell the pledged items of jewellery to the appellant in Singapore.

2 3 In relation to the 24 pieces of jewellery seized on 25 April 2002, Julia was able to give consistent accounts in court of the history behind each of the items she had identified and was further able to produce photographs of four of these items. In contrast, the Defence could not satisfactorily explain the appellant's possession of the 24 items. The tax invoice produced by the Defence made no reference to the items in question. It was also difficult to believe Esther Tan's claim that the tax invoice constituted evidence of their purchase of the items since there were no identifying marks on these items. It would have been quite impossible for Esther Tan, who dealt with thousands of jewellery in the course of business, to distinguish them as being part of those items stated in the tax invoice. The court accordingly found that the 24 pieces of jewellery belonged to Julia and were stolen from her by Cheung and Sam.

24 In view of the above findings, the district judge held that the appellant was guilty of the first as well as the second charge.

The issues on appeal

25 The appellant set out many arguments in his Petition of Appeal, but basically only three main issues were raised:

(a) Whether the district judge erred in calling for the defence at the close of the Prosecution's case.

(b) Whether the district judge erred in finding that the appellant knew that the jewellery items he purchased from Cheung and Sam were stolen.

(c) Whether the district judge erred in finding that the 24 items of jewellery seized on 25 April 2002 belonged to Julia Cudron and were stolen from her.

2 6 The appeal was mainly against the findings of fact made by the district judge. In order to reverse the findings of fact of the court below, the appellant had to show that the findings were clearly erroneous and reached against the weight of the evidence:*Lim Ah Poh v PP* [1992] 1 SLR 713, *Rukiah bte Ismail v PP* [2004] SGHC 98. The burden was a particularly onerous one as the findings stemmed primarily from the trial judge's assessment of the creditworthiness of the witnesses that appeared before him: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

Whether the district judge erred in calling for the defence

27 The appellant contended that the district judge had erred in calling for the defence based on the tenuous evidence adduced by the Prosecution at the close of its case and in subsequently using the Defence's evidence to convict the appellant. In order to determine if the district judge had indeed made such an error, the elements that make up each of the two offences for which the appellant was charged should first be considered. The first charge was for the offence under s 411 of the Penal Code, which provides as follows:

> Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished…

28 To establish the offence under s 411, it must be shown that the accused has *retained* the stolen property with the *knowledge* or *having reason to believe* that the property was stolen. I observed that s 411 also makes reference to the retention of the property as being dishonest. Under s 24 of the Penal Code, dishonesty bears the meaning of an "intention of causing wrongful gain to one person, or wrongful loss to another person". In the ordinary case, dishonesty would be indistinguishable from the mental element of "knowledge or having reason to believe that the property was stolen". In other words, dishonesty does not form an additional *mens rea* requirement that needs to be satisfied. This was established in the case of *Ow Yew Beng v PP* [2003] 1 SLR 536, where I had stated at [12]:

> Ordinarily, the two mental elements of "dishonesty" and "knowing or having reason to believe that the property was stolen" go together. A person who retains property knowing it to be stolen, would naturally possess an intention to cause gain or loss which he knows to be wrongful. Similarly, a person who retains property which he has reason to believe is stolen would normally also have an intention to cause gain or loss which he has reason to believe is wrongful. There may, however, be some situations when these mental elements are not co-extensive. For instance, if a person's purpose of retention is to hand the property (which he knows or has reason to believe is stolen) to the police for investigations, then he is not dishonest since he has no intention to cause any wrongful loss or gain to anyone at all.

29 The second charge is for the offence under s 35(3) of the Miscellaneous Offences (Public Order and Nuisance) Act, which reads as follows:

> If it appears to such court that any person so brought before it had possession of such thing and had reasonable cause to believe the same to have been stolen or fraudulently obtained, that person shall be guilty of an offence…

For the offence to be established, it must be shown that the accused had possession of property which he had reason to believe was stolen or fraudulently obtained.

30 In the present case, with regard to the 172 pieces of jewellery that were seized by the police on 6 April 2002, it was not disputed that these pieces were stolen by Cheung and Sam and that they were in the possession of the appellant when they were seized. Therefore, the elements of "retention" under the first charge and "possession" under the second charge were already established. The focus was accordingly only on the *mens rea* requirement. If the Prosecution could adduce sufficient evidence which was not inherently incredible, and which if accepted as accurate would prove that the appellant knew that these items he bought from Cheung and Sam were stolen property, the Prosecution would have established its *prima facie* case in respect of the first charge: *Haw Tua Tau v PP* [1980–1981] SLR 73; *Ng Theng Shuang v PP* [1995] 2 SLR 36. I noted that this was an "ordinary" case where there was no need to distinguish between the requirement of dishonesty and that of knowledge – *ie*, the Prosecution did not need to establish a separate requirement of dishonesty. As for the second charge, if there was sufficient evidence at the close of the Prosecution's case that the appellant had the requisite knowledge, it would necessarily follow that the mental requirement of "reason to believe that the property was stolen" was satisfied as well. This would in turn mean that a *prima facie* case had also been established for the second charge.

31 During the trial in the court below, Lam's testimony pointed to the fact that the appellant had mentioned that his watch was stolen property and that the appellant had told Cheung to take a rest, adding that "it had already been done for so long and the police would have known about it". Further, there was Sam's incriminating evidence against the appellant in his police statement. This evidence was not inherently incredible. It further led to the reasonable inference that the appellant had

knowledge that the jewellery items he purchased from Cheung and Sam were stolen property. The Prosecution's evidence was therefore of such a nature that, if unrebutted and accepted as true, would establish that the appellant had the requisite knowledge. Accordingly, the Prosecution had established a *prima facie* case and the district judge was correct to have called for the defence.

3 2 It should be pointed out that in respect of the 24 items identified by Julia on 25 April 2002, there was a dispute as to whether they were stolen property in the first place. Therefore, the Prosecution had the additional task of producing some evidence that was not inherently incredible and that if unrebutted would prove that the 24 items were stolen. To this end, the Prosecution had relied on the testimony of Julia herself, who identified the items as belonging to her. Quite clearly, a *prima facie* case was established as well in respect of these 24 pieces of jewellery.

Whether the appellant had knowledge that the jewellery items were stolen

Evidence of Lam and Sam

33 One of the appellant's main contentions was that the district judge had placed undue weight on the evidence of Lam. In particular, the appellant argued that the judge failed to consider that Lam might have had an incentive to give false evidence to incriminate the appellant because he had something to gain by co-operating with the Prosecution. However, the district judge had in fact clearly directed his mind to this possibility and had taken the view that since no more charges were pending against Lam, he could have no incentive to lie in order to favour the Prosecution. The appellant contended that there could be other reasons for Lam to co-operate with the Prosecution, such as the possibility of a remission of his sentence. Yet, remission of sentences are regulated by the Prisons Act (Cap 247, 2000 Rev Ed) and its Regulations, and a prisoner's entitlement to remission is decided by the prison authorities. It was therefore not readily apparent how Lam's co-operation with the Prosecution would lead to a remission of his sentence. In any event, the district judge had found Lam to be a frank and candid witness during the trial. In this regard, it cannot be over-emphasised that an appellate court, without having had the same advantage that the trial judge had in observing the witnesses' demeanour under examination, should be slow to disagree with the trial judge as to the credibility of witnesses.

34 The appellant further contended that the district judge had erred in relying on Lam's evidence to come to the irresistible inference that the appellant was fully aware of Cheung's nefarious activities. Although the judge did state as such in his judgment, it appeared to me on a proper reading of his reasoning that the judge was satisfied beyond a reasonable doubt that the appellant had the requisite knowledge based on the totality of the evidence before him, and not based solely on Lam's testimony. In particular, the judge also took into account Sam's police statement.

35 After an impeachment exercise, the district judge had allowed Sam's statement to replace his testimony in court and to be admitted as evidence for the truth of the matter contained in the statement in accordance with s 147(3) of the Evidence Act (Cap 97, 1997 Rev Ed). In determining the weight to be given to such a statement, s 147(6) of the same Act provides that regard is to be had to the contemporaneity of the statement with the occurrence of the facts stated therein, and also to the question of whether the maker of the statement had any incentive to conceal or misrepresent the fact. In *PP v Tan Kim Seng Construction Pte Ltd* [1997] 3 SLR 158, I had noted at [27]:

> The contemporaneity of a statement with an incident is important for it guards against inaccuracy. However, the degree of contemporaneity that is required will vary with the facts in question. The recollection of the details of particular events, particularly where these occur

quickly, is easily susceptible to error with time. However, the recollection of the existence of a relationship, such as of employment, is not so malleable.

3 6 Contrary to the appellant's assertions, the district judge in the present case had explicitly taken into consideration the above factors in deciding what weight was to be attached to Sam's statement. The judge had regard to the fact that there was only a period of less than two months between the making of the statement and the incident referred to therein, and that it was an isolated incident which was less susceptible to error. The appellant argued that Sam had an incentive to misrepresent the facts so as to shift the blame on to others, including the appellant. However, this argument was unsustainable because the statement actually incriminated Sam himself. The statement made reference to the fact that "we" committed "burglary", and "we" must necessarily be interpreted to include Sam himself.

3 7 Another point raised was that the appellant could not have made the incriminatory remarks which Lam and Sam said he had made, including in particular his alleged remarks about the fact that his Patek Phillipe watch was stolen property. However, it was not inconceivable that the appellant could have made such comments. If the nature of his relationship with the Hong Kong nationals was such that he knew that they were committing housebreaking and he was further buying the stolen property from them, there clearly did not seem to be any need for him to be guarded while in their presence.

38 It ought also to be mentioned that Lam's evidence was consistent with Sam's in that both of them alleged that the appellant was wearing a stolen Patek Phillipe watch. The judge was perfectly entitled to make a finding that Lam's testimony on this point corroborated what Sam had said in his statement.

Other circumstantial evidence

3 9 The appellant challenged the district judge's finding that the absence of proper documentation suggested illegitimacy in the transactions. I noted that the defence had explained that no documentation was required because it was the appellant and his wife's personal business and there was therefore no need to account to any third party. Furthermore, one of the Defence witnesses testified that she had dealt with the appellant in the past without any documentation. However, as quite rightly put by the district judge, it was nonetheless odd that no records of any kind were kept at all for transactions involving such a large sum of money which, according to the appellant, amounted to about $130,000. Moreover, there was evidence that proper records were kept for transactions that were of much lesser value, such as those of about $20,000. In my opinion, the district judge was therefore perfectly entitled to draw the inference that the transactions were probably illegitimate based on the evidence before him.

40 The appellant also contended that the district judge had fallen into error in not accepting the appellant's claim that he had paid $130,000 for the jewellery pieces from Cheung and Lam, and that he had erred in striking down their business arrangement as being illogical. There was no real need to go through in detail the arguments canvassed by the appellant. The important point was that the district judge had reached his conclusions largely because of the inconsistent and conflicting testimony of the appellant, particularly in his explanations as to how the payments were made to Cheung and Lam. As I stated earlier, an appellate court should refrain from interfering with the district judge's finding of fact, especially if it turns on the credibility of the witnesses.

4 1 Furthermore, support for the district judge's decision to take into account the above circumstantial evidence can be found in the case of *Koh Hak Boon v PP* [1993] 3 SLR 427, where a

s 411 conviction was upheld under circumstances that were similar to those in the present case. In that case, large quantities of gold were sold at low prices with payment in cash and without any issue of certificates or receipts.

42 For the above reasons, the district judge was clearly entitled to find, based on the evidence before him, that the appellant knew the jewellery items to be stolen property.

Whether the 24 items seized on 25 April 2002 belonged to Julia

43 Two main objections were raised by the appellant in relation to this issue. The first related to the calling of rebuttal evidence. The second related to the weight that was placed on Julia's testimony.

Rebuttal evidence

44 Melissa Wong was called as a rebuttal witness by the Prosecution to prove that the bracelet she had sold to the appellant's shop was white gold in colour and not yellow. This would mean that P16-0, one of the 24 items in question, was actually not purchased from Melissa Wong as alleged by the Defence since P16-0 was yellow in colour. The appellant contended that the district judge should not have allowed the Prosecution's application to call Melissa Wong in rebuttal.

45 The principles governing when rebuttal evidence is permitted are clearly established in civil cases. The judge has a discretion whether or not to allow rebuttal evidence to be called, and generally leave will be granted if the party seeking to call the rebuttal witness was misled or taken by surprise: *Zainal bin Kuning v Chan Sin Mian Michael* [1996] 3 SLR 121. If a matter or development has quite unexpectedly arisen during trial which one party could not have reasonably anticipated, that party is permitted to call evidence in rebuttal: *Alrich Development Pte Ltd v Rafiq Jumabhoy (No 2)* [1994] 3 SLR 1. These principles regarding rebuttal evidence have been extended to criminal trials: *PP v Bridges Christopher* [1998] 1 SLR 162.

46 In the present case, the test would therefore be whether there were any issues that surfaced during the trial which caught the Prosecution by surprise as something which could not be reasonably anticipated, and which necessitated the calling of Melissa Wong to rebut these new matters raised. It was only at trial during the cross-examination of Julia that the Defence first alluded to the fact that there had been a lady who was called to go down to the appellant's shop to identify P16-0. Subsequently, Esther Tan, in the course of giving her testimony, identified this lady as Melissa Wong. It was at least arguable that the Prosecution could not have reasonably expected such a development in the Defence's case. In these circumstances, there was no basis for interfering with the district judge's exercise of discretion to allow such rebuttal evidence to be admitted.

Weight given to Julia's evidence

47 Julia had identified the 24 items as belonging to her on the day of the seizure (*ie*, 25 April 2002) and subsequently at trial, although she was less certain regarding eight of those items during the trial. The district judge relied on her evidence in reaching the conclusion that the 24 items were indeed hers and that they were stolen from her by Cheung and Sam. The appellant challenged this finding of fact on the ground that undue weight was given to Julia's evidence and that insufficient regard was had to the testimony of Esther Tan. Esther Tan had given evidence to the effect that the 24 items of jewellery were purchased from other shops that were closing down. The situation was therefore one where there were conflicting versions of facts from the two witnesses as to the origins of the 24 items in question. In the case of *Ong Ting Ting v PP* [2004] 4 SLR 53, I had stated at [27]:

> … I was presented with directly contradictory versions of the events from the two main interested parties. As the final decision necessarily rested on the acceptance of one account over the other, I gave due regard to the fact that the district judge had the advantage of observing the demeanour of the witnesses in court when he assessed the credibility of their evidence. Given the circumstances, the appellant obviously faced an uphill task in convincing me that the district judge's findings should be set aside.

48 Bearing the above approach in mind, I took the view that the decision of the district judge to prefer Julia's evidence over Esther Tan's should not be disturbed. In any event, there were indications that the district judge had carefully scrutinised their testimonies, and cogent justifications were given in the learned judge's judgment as to why he chose to accept Julia's testimony and reject Esther Tan's. In particular, Julia was able to give consistent accounts of the history behind each of the 24 items. In contrast, it would have been very difficult for Esther Tan to specifically distinguish these 24 items from the large number of jewellery pieces that she dealt with in her everyday business. Moreover, the judge was influenced by the fact that Esther Tan could not remember the colour of the bracelet that was sold to her by Melissa Wong, since the latter testified in rebuttal for the Prosecution that she had actually sold a white gold bracelet to the appellant's shop and not a yellow one as alleged by Esther Tan.

49 Therefore, in my opinion, there was no basis to interfere with the district judge's finding that the 24 pieces of jewellery in question belonged to Julia and were stolen from her.

Conclusion

5 0 This appeal was, in the main, a challenge against the lower court's findings of fact and assessment of evidence. The appellant had not provided any convincing reasons as to why the district judge's findings ought to be reversed. Accordingly, I dismissed the appeal against conviction.

Appeal against conviction dismissed.

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