Tan Mui Teck v Public Prosecutor
[2003] SGHC 162

Case Number : MA 11/2003

Decision Date : 25 July 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Chia Boon Teck and Roy Yeo (Chia Yeo Partnership) for the appellant; Eddy Tham (Deputy Public Prosecutor) for the respondent

Parties : Tan Mui Teck — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Normal tariff sentence for offence under s 193 Penal Code (Cap 224, 1985 Rev Ed)

Evidence – Weight of evidence – Conflicting expert evidence – Principles to apply when determining weight of expert evidence

Evidence – Witnesses – Allegation of collusion between prosecution witnesses – Burden of proof

The appellant, Tan Mui Teck ('Tan') was convicted in the district court on six counts of giving false evidence in a judicial proceeding, which is an offence under s 193 of the Penal Code. Tan was sentenced to eight months' imprisonment on each charge with the sentences on three charges to run consecutively for a total term of two years' imprisonment. Tan appealed against both his conviction and sentence. The Public Prosecutor filed an appeal against the sentence on the ground that it was manifestly inadequate. I dismissed the appeal against conviction and allowed Tan's appeal against sentence, reducing it to one of six months per charge with the sentences for three charges to run consecutively. I now give my reasons.

Background

2 At all material times, Tan was the managing director as well as a shareholder in Ishida Technologies ('the Company'). In 1998, the Company launched a civil suit against three former employees – Ivan Tan ('Ivan'), Sharon Wan ('Sharon'), and Edmond Kuan ('Edmond') [collectively referred to as 'the trio'] – for breach of contract. The trio counter-claimed for the balance of their wages and their Central Provident Fund ('CPF') entitlements. In response, Tan filed an affidavit of evidence-in-chief that the trio was not entitled to CPF contributions as they were consultants hired on a temporary basis, rather than full-time employees. He further asserted that they had each received full payment for their consultancy services.

3 In support of this, Tan presented two sets of documents. The first set consisted of three consultancy agreements, which each member of the trio had purportedly signed with the Company. The second set consisted of three sets of payment vouchers, which the trio had purportedly initialled, acknowledging the receipt of payments for their 'consultancy services'. Tan claimed that the trio had signed all these documents in his presence.

4 Upon sight of these documents, the trio informed their solicitors that this was the first time that they had laid eyes on the documents and that the signatures did not belong to them. They were then advised to lodge a police report.

The charges

5 Tan was subsequently charged under s 193 of the Penal Code. The first three charges

alleged that he knowingly gave false evidence that three persons – namely Ivan, Sharon and Edmond, had signed and entered into the consultancy agreements dated 7 January 1997 with the Company. The fourth to sixth charges alleged that he knowingly gave false evidence that the same three persons had initialled certain payment vouchers.

Appeal against conviction

6 Since the crux of the prosecution's case lay in proving that the signatures were false, much of the trial centred upon the conflicting opinions of the experts brought by each side. Not surprisingly, counsel for Tan's primary argument on appeal was that the judge had erred in his treatment of the expert evidence. His second argument was that the judge had erred in his assessment of the credibility of the witnesses.

Expert evidence

7 At trial, the prosecution's expert witness was one Yap Bei Sing – a document examiner with the Health Sciences Authority. Mr Yap explained that there were seven levels of certainty in relation to the evidence observed between a questioned signature and a specimen signature. Level 1 indicated that the same person wrote both the specimen and questioned signature. Level 7 indicated that the person who wrote the specimen did not write the questioned signature.

8 Having compared the signatures on the consultancy agreements with the specimen signatures of the trio, Mr Yap concluded with a Level 6 certainty that there was no evidence to indicate that Ivan and Edmond had signed the consultancy agreements. He was similarly certain that Ivan had not initialled the payment vouchers. He could not come to any conclusions as to Edmond's initials on the payment vouchers as well as Sharon's signatures and initials because the specimens were too different from the questioned signatures.

9 Tan's expert was one James Blanco, an examiner of questioned documents from the United States, who was certified by the American Board of Forensic Document Examiners. Mr Blanco's opinion was the direct opposite of Mr Yap's. He concluded with a Level 1 certainty that Ivan had signed both the consultancy agreement and the payment vouchers. He further concluded that Edmond had signed the consultancy agreement. Like Mr Yap, he was unable to assist the Court as to the signatures and initials of Sharon, as well as the initials of Edmond.

Whether the judge erred in preferring the prosecution's expert

10 Counsel for Tan submitted to the Court that the judge should have preferred the expert evidence of Mr Blanco as he was more 'experienced and illustrious' than Mr Yap. It is pertinent to note that counsel was not suggesting that Mr Yap was not a competent witness. Rather, counsel's argument was that Mr Blanco's evidence should have been preferred simply because his credentials were more impressive.

11 In my opinion, the academic credentials of an expert may sometimes be relevant for determining the weight of his evidence since it gives an indicator of an expert's familiarity with the subject. That having been said, it is not the sole determinant for choosing between the conflicting opinions of experts. After all, an expert need only be skilled and it is trite law that such skill can be acquired either by special study or experience: *Leong Wing Kong v Public Prosecutor* [1994] 2 SLR 54. In resolving conflicting expert opinions, it is often far more productive to look at other considerations such as the methodology by which an expert has reached his or her conclusions and the demeanour of the expert, rather than merely comparing the pedigree of their *curriculum vitae*.

12 Furthermore, once a judge has weighed the conflicting opinions and reached a conclusion as to which opinion he prefers, it is a finding of fact which an appellate court would be loathe to disturb unless there are compelling grounds to do so: *Muhammad Jeffry v Public Prosecutor* [1997] 1 SLR 197.

13 In this case, the judge observed that Mr Yap had had the benefit of 24 specimen signatures from Ivan and 14 specimen signatures from Edmond to work with. In comparison, Mr Blanco had only two specimen signatures from each person. Mr Blanco conceded under cross-examination that Mr Yap was in a better position, in principle, to produce a more comprehensive analysis. In such a situation, I found that the judge was fully entitled to prefer Mr Yap's opinion over that of Mr Blanco, and saw no reason to disturb his finding.

Whether the evidence of the prosecution's expert created a reasonable doubt

14 Counsel for Tan then contended that, even if one were to accept Mr Yap's evidence, there would still exist a reasonable doubt as to whether the signatures were genuine since Mr Yap was able to conclude with only a Level 6 certainty that the signatures were false.

15 I found this argument to be misconceived. Mr Yap had already answered under cross-examination that a Level 6 certainty meant that he was of the opinion that there was only a slim chance that the signatures were genuine. Given that the burden on the prosecution was only to prove beyond reasonable doubt and not to prove beyond all doubt, I was of the view that Mr Yap's evidence did not create a reasonable doubt in this case.

16 In any event, in determining whether the prosecution had made out its case, one could not view Mr Yap's evidence in isolation. In my view, the judge was correct to hold that the charges had been proven beyond a reasonable doubt based on the totality of evidence, taking into account both the testimony of the trio as well as the inconsistencies inherent in Tan's testimony.

Credibility of witnesses

17 Counsel for Tan then contended that the judge had erred in accepting the trio as witnesses of truth and choosing to disbelieve the evidence of Tan. In particular, counsel for Tan argued that the judge had failed to consider the fact that the trio had an axe to grind with Tan.

18 With regard to the evidence of the trio, the judge found them to be consistent in their testimony and under cross-examination. The judge was conscious of the fact that the trio might have a bias but found that there was no evidence of collusion between the trio to concoct an artificially consistent story for the court. He also noted that there was no evidence that the trio were all working for Ivan's new company after their resignation from the Company, as Tan had alleged. Further, the parties had already settled their civil suit in the form of a Consent Order long before the criminal proceedings began.

19 In *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 3 SLR 278, I held that once the defence had raised an allegation of conspiracy, it was incumbent on the prosecution to discount the possibility of collusion beyond reasonable doubt. As such, the judge erred in this case by holding that there was no evidence of collusion, since it was the prosecution who bore the burden of showing there was an absence of collusion.

20 That having been said, the failure to prove a lack of collusion was not fatal to the prosecution in this case. In *Lee Kwang Peng,* I made the following observation:

> If, however, there is independent evidence that may be capable of supporting or verifying the evidence of the complainants, I do not think it matters whether this be classified as corroboration or as evidence that goes to prove the prosecution's case that there was no motive for fabrication – as either way, provided the independent evidence is of sufficient probative value, the allegation of conspiracy would be defeated.

Here, I was of the view that Mr Yap's opinion on the signatures constituted independent evidence supporting the evidence of the trio that the signatures were not genuine. This discounted the element of conspiracy amongst the trio.

21 As to Tan's evidence, it was clear that the judge was not impressed. Tan was described as an evasive and illogical witness whose testimony was riddled with inconsistencies. In particular, the judge noted that Tan alluded to the fact that it was Ivan himself who had typed out the consultancy agreements – yet, such a pertinent fact was not stated in his examination-in-chief, nor was it put to Ivan during cross-examination. Given the circumstances, the judge rightly concluded that Tan had made up these facts under pressure during cross-examination.

22 Having perused the record of appeal, and bearing in mind the fact that I did not have the advantages of the judge in observing the demeanour of the witnesses, I saw no reason to interfere with his conclusions. In the event, I dismissed the appeal against conviction.

Appeal against sentence

23 In *Koh Pee Huat v Public Prosecutor* [1996] 3 SLR 235, I observed that the normal tariff for an offence under s 193 of the Penal Code is six months. The DPP urged this Court to note the aggravating circumstances in this case by pointing out that Tan had used some skill and effort to bring forth false evidence before the Court. In support of this, the DPP cited *Choo Pheng Soon v Public Prosecutor* [2001] 1 SLR 698 – a case where I enhanced the sentence from two years' imprisonment to three and a half years.

24 I disagreed with the DPP on this point and dismissed the application to enhance the sentence. In my opinion, the judge correctly noted that the aggravating circumstances in *Choo Pheng Soon* were not present in this case. I saw no reason to depart from the normal tariff. As such, I allowed Tan's appeal against sentence and reduced the sentence for each charge to six months. The sentences for three charges were to run consecutively for a total of 18 months' imprisonment.

Appellant's appeal against conviction dismissed;
Appellant's appeal against sentence allowed;
Public Prosecutor's appeal against sentence dismissed.

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