

V Retnasooria v Public Prosecutor
[2003] SGHC 294

Case Number : MA 60/2003

Decision Date : 26 November 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Michael Khoo SC and Josephine Low (Michael Khoo and Partners) for appellant;
Eddy Tham (deputy Public Prosecutor) for respondent

Parties : V Retnasooria — Public Prosecutor

Immigration – Criminal offences – Making false statements for the purposes of obtaining employment passes – ss 57(1)(k) & 57(1)(iv) Immigration Act (Cap 133, 1997 Rev Edn)

1 This was an appeal by V. Retnasooria (the appellant) against the decision of district judge Siva Shanmugam to convict him of two offences under s 57(1)(k) of the Immigration Act (Cap 133), punishable under s 57(1)(iv) of the said Act. The district judge sentenced the appellant to three months' imprisonment for each offence. The sentences were ordered to run concurrently. The appellant appealed against both the convictions.

Facts

2 The appellant ran an overseas call company, ISA Satellite Communications Pte Ltd. In early 2001, the appellant sought to employ one Amjad Hussain (Amjad), a Pakistani national, who promised the appellant that he would be able to help him in his business. Amjad managed to secure an employment pass from the Ministry of Manpower (MOM) in June 2001 and began to work for the appellant. It was an undisputed fact that the appellant had acted as the 'local sponsor' in Amjad's successful application for the employment pass. The appellant was subsequently charged for falsely declaring certain facts on the application form. He was also charged for falsely declaring certain facts in a previous application to MOM which was unsuccessful. The charges read as follows:

Charge 1 (DAC 48356/02) (The successful application)

You, V. Retnasooria are charged that you, on 11 June 2001 at the Employment Pass Section, SIR Building, Singapore, did obtain for one AMJAD HUSSAIN (M/12.1.76), a Pakistani national, an employment pass by making a false statement in Form 8, an application form for an employment pass, which you submitted on 21 May 2001, stating that the information given by you in the form is true when the said application form contained facts which you knew to be false, namely:

(a) that the said Amjad Hussain will be employed as a Managing Director of M/s ISA Satellite Communications Pte Ltd,

(b) that the said Amjad Hussain will be paid a basic monthly salary of S\$8,500

and you have thereby committed an offence under s 57(1)(k) of the Immigration Act (Cap 133), punishable under s 57(1)(iv) of the said Act.

Charge 2 (DAC 5992/03) (The unsuccessful application)

You, V. Retnasooria are charged that you, on 15 March 2001 at the Employment Pass Section, SIR Building, Singapore, did attempt to obtain for one AMJAD HUSSAIN (M/12.1.76), a Pakistani

national, an employment pass by making a false statement in Form 8, an application form for an employment pass, which you submitted on or before 15 March 2001, by stating that the information given by you in Part V and Part VI of the form are true when the said application form contained facts which you knew or had reasonable grounds to believe to be false, namely:

- (a) that the said Amjad Hussain had never been prohibited from entering Singapore,
- (b) that the said Amjad Hussain will be employed as a Head of Operations of M/s Amjad Guest House,
- (c) that the said Amjad Hussain will be paid a basic monthly salary of S\$5,500

and you have thereby committed an offence under s 57(1)(k) of the Immigration Act (Cap 133), punishable under s 57(1)(iv) of the said Act.

With regard to the form named in the first charge, the appellant admitted that he had signed the application form and offered himself as the 'local sponsor'. His defence was that he was not declaring any false facts therein. With regard to the application form named in the second charge, the appellant denied having anything to do with it.

Prosecution's case at trial

3 The prosecution relied on the evidence of Ms Winnie Liew who was the manager of the Employment Pass Division of MOM at the material time. She identified two application forms for an employment pass submitted to the division in 2001. The first application form dated 15 March 2001 was from a company known as Amjad Guest House which gave its registered address as 179 Syed Alwi Road. The form was an application for an employment pass for Amjad to work as the Head of Operations at the Guest House at a salary of \$5,500 per month. This application was not approved.

4 Ms Liew identified a second application form which came from the company known as ISA Satellite Communications Pte Ltd (ISA). The registered address given in the application form was 179 Syed Alwi Road #01-02. The date, 21 May 2001, stamped on the front page of the form indicated the date the form was received by the Employment Pass Division. This second application was for an employment pass for Amjad to work as a Managing Director of ISA on a monthly salary of \$8,500. The application form was signed by the sponsor who had given his name as Dave R. Sooria. The appellant admitted that he went by this name and that he had signed the said form.

5 On 23 May 2001, Ms Liew sent a standard questionnaire to ISA asking for further particulars about the scope of work Amjad would be doing. The questionnaire also enquired into the financial stability of ISA. On 5 June 2001, the appellant replied to the questionnaire stating that Amjad was very well qualified in the field of communications and that Amjad had already invested \$200,000 in ISA. Ms Liew stated that since the requirements for an employment pass were met, she issued Amjad an employment pass to work as a Managing Director for ISA from 11 June 2001 to 11 June 2002.

6 The prosecution then called a former employee of ISA to the stand. Nagaraju Mukaya (Naga), a 62 year old odd job labourer whose highest educational qualification was Primary 6, told the court that ISA was also involved in the supply of labour to contractors. Naga also testified that ISA facilitated extensions of stay for foreigners. Of further importance was the fact that Naga had allowed the Amjad Guest House Company to be registered in his name pursuant to a request by the appellant. The appellant had told Naga that the Amjad Guest House Company could not be registered in the appellant's name since his name had been used to register too many business entities in the

past. The appellant had also told the accused that the other partner was a foreigner.

7 Naga identified Amjad as a friend of the appellant, stated that Amjad was not paid a salary of \$5,500 and emphasised that the Amjad Guest House never existed at 179 Syed Alwi Road. Lastly, Naga told the court that he submitted the application form, the subject matter of the second charge, to the Employment Pass Office on the instructions of the appellant.

8 The prosecution then called Amjad to the stand. He admitted to appending his signature on both the forms which made up the subject matter of the charges. Amjad also informed the court that the appellant had told him that the submission of both forms would help him stay in Singapore. As regards the second charge, Amjad was unaware that he was to be the 'Head of Operations' at Amjad Guest House. In fact, he stated that there was never an Amjad Guest House at 179 Syed Alwi Road and that he had never been paid \$5,500.

9 As regards the form itself, Amjad told the court that he had only filled in certain portions as instructed by the appellant. Amjad added that the entries which were not filled in by him were likely to have been filled up by the appellant.

10 As regards the form which made up the subject matter of the first charge (the successful application), Amjad stated that he only filled up Part IX of the form. He saw the appellant fill up Part X. Amjad's evidence as regards who filled up which part of the form was not crucial since the appellant admitted to signing the form which stated that Amjad would be paid \$8,500 for being the Managing Director of ISA. Part X, which the appellant admitted signing, stated:

We hereby sponsor this application and certify that it is made for the purpose as stated by the applicant. The statements made by the applicant in this application are to the best of our knowledge true. We undertake to be responsible for the stay, maintenance and repatriation of the applicant.

It was clear, therefore, that it did not matter who filled in the statements – what mattered was that the appellant knew what was being stated was false.

11 The prosecution further relied on the fact that under cross-examination Amjad informed the court that the appellant had used Amjad's name to procure the services of a foreign domestic maid for himself. This was a bid to show how easily the appellant manipulated the labour regulations to his advantage.

The defence's case

12 The appellant told the court that he first got to know Amjad in June 2000. Amjad used to go to the appellant's call shop to make overseas phone calls. Because Amjad was a regular customer, the appellant became acquainted with him. Amjad then broached the idea of starting a Guest House with the appellant. The appellant told the court that he was totally disinterested in this idea.

13 The appellant stated that Amjad had told him that he (Amjad) had discussed the idea of the Guest House with Naga. The appellant explained to the court that Naga and Amjad then started a company and Amjad applied for an employment pass to run the Guest House. The appellant said that he had absolutely nothing to do with the application for the employment pass. This was the appellant's bid to distance himself from the second charge.

14 About two to three weeks after Amjad learnt that his first application for an employment pass

was rejected, he went to see the appellant about a Pakistani contact who he knew wanted to do business with ISA (the appellant's company). This contact, from a Pakistani company called Shell Speak, started to negotiate how he could engage ISA to supply and install telecommunications equipment for Shell Speak. Amjad then offered to invest \$200,000 in ISA and the appellant reciprocated by agreeing to transfer 40,000 ISA shares to Amjad. This would have made Amjad the majority shareholder of ISA.

15 It was then decided that the appellant and Amjad would apply for an employment pass for the latter. This would allow Amjad to work as the managing director of ISA. Amjad told the appellant that he had to be appointed managing director of the company as he needed the requisite authority to deal on behalf of ISA when meeting with counterparts in Pakistan. Based on estimated profit and Amjad's investment of \$200,000 it was agreed that Amjad would get a monthly salary of \$8,500 as well as 20% profit sharing. This was based on the assumption that the Pakistani contract would begin immediately.

16 In May 2001, the appellant asked his auditor, from N Rajan Associates, to prepare the necessary resolutions and documents to appoint Amjad as the managing director of ISA. Towards the end of May 2001, the appellant submitted an application form for Amjad's employment pass to work as the managing director of ISA. In June 2001, the employment pass was approved.

17 The appellant stated that, when the Shell Speak project had not yet started and the estimated investment returns had still not come in, it was agreed that Amjad would not take his salary of \$8,500 per month until such time that the Shell Speak project began to materialise. By September 2001, Amjad had still not managed to secure any other contracts for ISA. After September 2001, the appellant had lost track of Amjad's whereabouts. At the end of September 2001, an officer from the Internal Security Department came to the accused's office looking for Amjad.

18 In October 2001, the appellant decided to terminate Amjad and cancel his employment pass. He then wrote to MOM to request the cancellation of the employment pass. The appellant told the court that MOM replied stating that Amjad's employment pass and passport were needed for such a cancellation.

19 In April 2002, Amjad contacted the appellant. He told the appellant that he had been to Germany. Knowing that Amjad was wanted by MOM, the appellant told him to go to the MOM office located at the Singapore Immigration and Registration Building. Amjad went along. An officer from the Employment Pass Section then contacted the appellant and told him that Amjad was with him. The appellant told him to refer Amjad to the authorities and have him arrested.

20 The defence called Mogan s/o V Mantri. The purpose behind calling Mogan was to establish that Amjad was in fact very conversant in English. It seemed that the defence was attempting to prove that Amjad could have very easily filled up the application forms and 'worked through the system' to obtain an employment pass. This was so at least with regard to the unsuccessful application form which made up the subject matter of the second charge.

21 The defence's last witness was one Narayan Manoharan (Mano). The main thrust of Mano's testimony was that Amjad did in fact collect the proceeds of the call shop when Amjad was working in it. In particular, Mano said that Amjad was asked to run the call shop while trying to secure some work from Pakistan. Such evidence sought to do two things. First, it attempted to establish that, although Amjad was not being paid the full \$8,500 as stated on the employment pass application, he was nonetheless being paid close to this sum by means of the proceeds which he was allowed to collect from the call shop. Secondly, it attempted to establish that Amjad was still genuinely working

as a managing director, even if he was also concurrently running the call shop.

The decision of the trial court

22 The trial judge found PW2 Naga's evidence to be true and without fabrication. He impressed the court as a simple person who was at all times at the disposal of the appellant. Naga did not strike the trial judge as a person with sufficient business ambition or acumen who would want to initiate the operating of a Guest House with a foreign partner. The trial judge was mindful of the sour state of relations between Naga and the appellant but was satisfied that Naga had given an honest account of events in relation to the information provided in the unsuccessful application form, which was the subject matter of the second charge, and the circumstances leading to the form being submitted to the Employment Pass Office.

23 The trial judge found PW3 Amjad to be a reliable witness. He found that Amjad's evidence was, to a large extent, corroborated by Naga and the independent documentary evidence before the court. Emphasis was placed on the fact that Amjad was able to give a clear, coherent and convincing account of his dealings with the appellant from the time he had met the appellant in early 2000 to the time of his arrest in April 2002. The court was satisfied that the apparent inconsistencies in Amjad's evidence were not material to the issues before the court.

24 The trial judge found the appellant to be a clever and untruthful witness. It was clear to the trial judge that the appellant was manipulating both Naga and Amjad for his own ends.

25 As regards DW3 Mogan and DW4 Mano, the trial judge found their evidence difficult to accept since they were interested witnesses who were beholden to the appellant. It was clear in the trial judge's mind that they had been called upon merely to corroborate the appellant's case. Mogan admitted under cross-examination that he was a personal friend of the appellant. Mano admitted under cross-examination that the appellant had provided him with programming jobs on a weekly basis and that the appellant helped to bring his 10 friends to Singapore under work permits.

Trial judge's findings as regards the first charge (The successful application)

26 The trial judge relied on Amjad's evidence that he was only interested in staying in Singapore on a long term basis and the notion of applying for an employment pass had originated from the appellant who was doing this as a return for Amjad's monetary investment with him. Thus, the appellant threatened to cancel Amjad's employment pass when this investment did not materialise. Amjad had also told the court that the appellant held Amjad out as a managing director solely for the purpose of obtaining the employment pass.

27 The trial judge ruled that the appellant's degree of culpability was further revealed when he wrote to MOM in reply to its questionnaire. In the reply, he described Amjad to be extremely experienced in the communications industry. The appellant also stated that Amjad had brought to the company an investment of \$200,000 which was clearly untrue.

28 Emphasis was placed on the fact that the appellant had testified that ISA was a dormant company which was revived solely for the purpose of dealings with the Pakistani Company Shell Speak. However, in the application form for the employment pass, the appellant had represented to the Employment Pass Office that ISA was an on-going entity with annual million-dollar turnover figures dating back to 1998.

29 The appellant had adduced documentary proof to show that there were in fact

correspondences between himself and the Pakistani Company, Shell Speak. He tendered these documents to show that he was indeed exploring business opportunities in Pakistan. The trial judge found that this may have been true but that the evidence before the court was that Amjad had little or nothing to do with the appellant's plans for business in Pakistan.

30 The trial judge concluded that the appellant sponsored the employment pass application for the purpose of securing Amjad's monetary investment. He also found that Amjad eventually went on to merely manage the call centre.

Trial judge's findings as regards the second charge

(The unsuccessful application)

31 The trial judge emphasised that Naga had told the court that it was the appellant who handed him the completed application form to give to the Employment Pass Office. The fact that Naga had nothing to do with the managing of the Guest House substantiated Naga's and Amjad's evidence that it was the appellant who had produced the false information found in the form and that it was the appellant who caused it to be submitted to the Employment Pass Office.

32 The prosecution relied on circumstantial evidence to show that it was the appellant who had furnished the necessary information and that it was the appellant who was orchestrating the application for Amjad's Employment Pass. After citing the law on circumstantial evidence, namely the case of *Nadasan Chandra Secharan v PP* [1997] 1 SLR 723, the trial judge concluded that it was only the appellant who had, by virtue of the nature of his work, the opportunity and capacity to apply for an employment pass for Amjad. The trial judge stressed that the appellant's motive for doing so was made abundantly clear by Amjad who told the court that the appellant was securing an employment pass for him in return for the capital investment Amjad had made with him. I must add, at this stage, that I did not agree with the trial judge in his finding here. I was of the opinion that the trial judge was too quick to form this motive and attribute it to the appellant. Nonetheless, after reading the record of proceedings, especially the evidence of PW2 Naga, I was convinced that the appellant was instrumental in the submission of the application form which contained the false statements.

33 On the evidence adduced, the trial judge inferred that it was the appellant who furnished the relevant false information found in the application form. The court also found that it was the appellant who had caused the application form to be submitted to the Employment Pass Section with a view to obtaining an employment pass for Amjad. To this end, the trial judge stated:

at the time [the application] was submitted, it was obvious that the application for an Employment Pass for Amjad was made not so much for his services as the Head of Operations of a Guest House but more so to enable him to reside in Singapore on a prolonged basis.

The law

34 Section 57(1)(k) of the Immigration Act (Cap 133) read with s 57(1)(iv) of the Act states that any person who by making a false statement obtains or attempts to obtain an entry or re-entry permit, pass or certificate for himself or for any other person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 or to imprisonment for a term not exceeding 12 months or to both.

The appeal

35 As regards the second charge, the appellant contended that the trial judge was wrong to have convicted him on such loose circumstantial evidence. However, a study of the notes of evidence showed that PW2 Naga stated that the appellant was integral in the submission of the application form. The verbatim notes found in the notes of evidence showed the following:

PW2 Naga's cross-examination by Defence Counsel

Q: Put: It was you who submitted P3 (the application form) to the authorities because you did not want Amjad to be working in Amjad Guest House without a valid Work Permit?

A: *I submitted the form. It was given to me by the accused.*

(Emphasis added)

36 The notes of evidence and the exhibits showed that the appellant had a great deal of influence over PW2 Naga's acts. The notes of evidence showed the following:

PW2 Naga's examination-in-chief by Prosecuting Officer

Ct: Registry of Companies and Businesses printout of Amjad Guest House admitted and marked P7.

Q: Who set up this company?

A: The accused and Amjad. They are very close.

Q: How do you explain your name appearing on these printouts?

A: Accused had told that for a partnership a foreigner had to pair up with the local. That's the reason why I allowed my name to be used. *I agreed to this because I was working for accused. These are done on the accused's request. He said I could make money.* (Emphasis added)

It was clear from the evidence that the appellant had a great influence over Naga with regard, *inter alia*, to employment pass issues. It was also clear that Naga was a credible witness. Therefore, the trial judge was correct to rely on Naga's evidence that it was the appellant who had handed him the completed application form to hand over to the Employment Pass Office.

37 In *Nadasan Chandra Secharan v Public Prosecutor* [1997] 1 SLR 723, the Court of Appeal clarified the law regarding convictions based on circumstantial evidence. Delivering the judgment of the court, I quoted the case of *Shepherd v R* (1990) 97 ALR 161:

...the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact - every piece of evidence - relied upon to prove an element by inference must itself be proved beyond reasonable doubt ... Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.

I then put the quote in perspective and stated on behalf of the court:

...The question before us is simply this: Does the cumulative evidence drive one inevitably and

inexorably to the one conclusion and one conclusion only, that it was the appellant who intentionally caused the death of the deceased? Or is there some other reasonably possible explanation of the facts connecting the appellant to the murder? (See *Ang Sunny v PP*).

38 In the current case it was absolutely clear that:

- (a) the appellant had immense control over the person who submitted the application form which contained the false statements,
- (b) the appellant was the one who caused the false information to be represented on the form,
- (c) the appellant had no intention of paying the person he was sponsoring the salary declared on the form.

Furthermore, there was no other reasonable explanation as to why there was or how there came to be false information on the application form which was duly submitted.

39 The reasoning above has two immediate consequences. First, it re-emphasises that a conviction based on circumstantial evidence is not easily achieved – it can only be achieved, as *Nadasan Chandra Secharan* has shown, where the circumstantial evidence 'leads the judge inevitably and inexorably to one conclusion and one conclusion only': that it was the accused who committed the said offence. The second consequence of the reasoning is that the prosecution and MOM are given the necessary legal room to secure the convictions of those who manipulate the work permit and the employment pass system in order to 'legalise' the very labour migration which MOM seeks to weed out.

40 As regards the conviction on the first charge, the appellant contended that at the time the application was submitted he was genuinely under the belief that Amjad would be made the managing director of ISA and that he would be paid \$8,500. While there was evidence that the appellant had made Amjad the managing director of ISA, there was, equally, insufficient evidence that showed that Amjad was actually paid \$8,500 per month. The notes of evidence illustrated this point:

PW3 Amjad's Examination-in-Chief by Prosecuting Officer

Q: Were you ever paid a salary of \$8,500?

A: No.

Q: Did you suggest the title of managing director to anyone?

A: No.

Q: Who came up with the title of managing director?

A: The boss, Mr Dave. The accused.

The fact that Amjad was not paid anything close to \$8,500 was again substantiated in a statement given by Amjad following his arrest. In that statement, marked D5 in the Exhibit File, Amjad said that he knew he was not going to be paid \$8,500 as he was receiving just \$700 per month from the appellant prior to the application. Under cross-examination, Amjad testified that the appellant had paid him a total sum of \$8,000 for nine months' work.

41 The appellant further contended that the prosecution had not proved beyond reasonable doubt that he had known the information, on both the applications, to be false at the time they were submitted. The appellant cited the case of *PP v Wong Kum Fook MA* [No. 46 of 1995] (unreported) to bolster his case. Although defence counsel's use of the case was unique, it did not go so far as to shake the convictions by the trial judge below. In that case I ruled that it was germane to s 182 of the Penal Code that there must be positive knowledge or a belief that the information was false and that the burden was on the prosecution to positively establish the element of 'knowledge' or 'belief' of the accused to the court's satisfaction. Two responses must be made. First, s 182 of the Penal Code is different from s 57(1)(k) of the Immigration Act since only the former states:

Whoever gives to any public servant any information orally or in writing *which he knows or believes to be false...* (Emphasis added).

The words in italics do not appear in s 57(1)(k) such as to limit the ambit of the section. Second, it was nonetheless clear in this case that the appellant knew that Amjad was not going to be paid \$5,500 for running the Amjad Guest House. Similarly, it was clear on the facts that the appellant knew that Amjad was not going to be paid \$8,500. The appellant knew this at the time the forms were submitted.

Conclusion

42 In light of the above reasons, I dismissed the appeal.

Appeal dismissed.

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