

Yeo Chiang Chew v Public Prosecutor
[2002] SGHC 241

Case Number : MA No 121 of 2002
Decision Date : 15 October 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Steven Seah Seow Kang and Lauren Ong Ting Lan (Seah Ong & Partners) for the appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent
Parties : —

Criminal Law – Offences – Employment of illegal immigrant – Whether mens rea rebutted – Immigration Act (Cap 133, 1997 Rev Ed) s 57(1)(e)

Criminal Procedure and Sentencing – Appeal – Power and duty of appellate court

Immigration – Employment – Illegal immigrant – Mens rea – Immigration Act (Cap 133, 1997 Rev Ed) s 57(1)(e)

Judgment

GROUND OF DECISION

This was an appeal against the decision of Mavis Chionh DJ. The appellant, Yeo Chiang Chew ('Yeo') was convicted of a charge under s 57(1)(e) of the Immigration Act (Cap 133) ('the Act'). The charge alleged that between the end of September 2001 and 12 November 2001, Yeo had employed an illegal immigrant, one Lin Rui Chai ('Lin') at "Yi Xin Shu Shi" Stall at Yishun Ring Road, with reasonable grounds to believe that Lin was an immigration offender.

2 Under s 57(ii) of the Act, Yeo was liable for a jail sentence between six months and two years as well as a fine not exceeding \$6,000. Yeo was sentenced to 12 months' imprisonment and appealed against both conviction and sentence.

The offence

3 The *actus reus* of employment in this case was not disputed. An agreed statement of facts which was admitted agreed that Lin had entered Singapore illegally from Malaysia sometime at the end of September 2001, without any valid entry or work permit. She had already been convicted of a charge of entering Singapore without a valid pass and another charge of entering Singapore whilst under a ban, without written permission from the Controller of Immigration. It was also admitted that Lin was employed by Yeo at her stall from sometime around the end of September 2001 to 12 November 2001 and was paid about \$5 an hour for washing dishes and cleaning the stall. She was paid by Yeo either daily or once every two to three days.

4 Only the *mens rea* of the offence was in dispute. Yeo claimed that she had believed Lin to be a Singapore permanent resident because Lin had shown her a "blue IC" prior to starting work. The district judge held, following *Assathamby s/o Karupiah v PP* [1998] 2 SLR 744, that if Yeo had genuinely believed in Lin's permanent resident status, she would have a complete defence to the charge.

The prosecution's case

5 The prosecution's case was that Lin did not show Yeo any "blue IC", so Yeo could not have believed Lin to be a Singapore permanent resident on that ground. Lin herself denied having any blue IC or having shown any such identity card to Yeo. She testified that it was Yeo who approached her for the job and no one at the stall asked her for identification documents, nor had she shown such documents to anyone. On the day she was arrested, she was only permitted to bring along her purse. SSgt Abdul Halim, the investigation officer of the case, testified that no identification documents were seized from or found on Lin. The arresting officer, SSgt Cindy Yong Jong Hoi ('SSgt Yong') testified that she had searched Lin and tried to ascertain whether Lin had identification documents elsewhere other than on her person, but Lin did not have any such documents.

The case for the defence

6 Yeo testified that Lin was the one who approached her for a part-time job and she had accepted Lin only after being shown a blue-coloured IC with a photograph of a person who "looked the same as" Lin. She did not take note of the name shown on the IC and could not remember what Lin had said her name was. She called Lin "Big-size" and her other workers addressed Lin as "Xiao Mei". She also did not know Lin's exact address. The other two defence witnesses, Yeap Ah Yam ('Yeap') and Phang Kia Lau ('Phang'), both of whom were workers at Yeo's stall, confirmed that it was Lin who approached Yeo for a job and that Yeo had told Lin to bring her IC. They both testified to having seen Lin show Yeo a blue IC with a photograph resembling Lin herself.

7 It was not disputed that in her long statement of 12 November 2001 and in her cautioned statement, Yeo had mentioned Lin showing her a blue IC.

The appeal

8 The district judge found that Yeo's story about the "blue IC" was entirely fabricated. She was satisfied that Yeo had failed to rebut the presumption of *mens rea*. In Yeo's appeal against conviction, it was submitted that the district judge erred in fact and in law:

(i) when holding that she believed the assertion of Lin that no blue identity card was ever produced to Yeo;

(ii) when holding that the evidence of Yeo was highly unsatisfactory and finding Yeo's story of the blue IC a pure fabrication;

(iii) by failing to place emphasis on the fact that Yeo had in her long statement mentioned the blue IC;

(iv) by not accepting the evidence of the two workers as corroboration;

(v) by holding that Yeo did not have any genuine belief that Lin was a permanent resident simply because she looked non-Singaporean and spoke strongly-accented Mandarin.

(vi) by concluding that Yeo had reasonable grounds to believe that Lin was a immigration offender.

9 The district judge's decision stemmed entirely from the fact that she did not believe any of the

defence witnesses. In paragraphs 30 and 31 of her grounds of decision, she clearly explained why she did not believe Yeo:

30 The accused, on the other hand, struck me as being a shifty and disingenuous witness. In the course of watching her in the witness stand, I formed the distinct impression that she was attempting to put on a show of being even more simple-minded than Lin. From time to time, when asked questions by the DPP and by me, she would shake her head and mutter loudly about her lack of comprehension. Yet, when it suited her, she was able to answer questions readily and even, on occasion, to prompt the court interpreter.

31 The accused also showed herself capable of giving ambiguous and evasive answers when it suited her, leading to questions having to be repeated numerous times by the DPP and finally by me. It became clear that she was most evasive when cross-examined about her account of Lin's production of the "blue IC". It must have been obvious to her that there were various loopholes in this story. According to the accused, she only employed Lin after being convinced that Lin was a permanent resident. According to the accused, also, she would not have employed Lin if the latter had produced a forged IC. Having regard to these assertions, it was very odd that after taking the trouble to require proof of Lin's PR-status, she should have taken only a "cursory glance" at the "blue IC". It was also extremely odd that whilst she apparently took care to ensure the photograph on the IC was Lin's, she failed entirely to notice any of the personal particulars on the IC, not even the name or the address.

10 As for the other two defence witnesses Yeap and Phang, the district judge at paragraph 35 stated that she "found their evidence equally disingenuous and glib". In fact, she found that Phang was not working at the stall at all when Lin started work and so, could not have seen Lin show Yeo any blue IC. There were also "strange inconsistencies" among the testimonies of all three defence witnesses. In paragraph 40, the district judge held that "both Yeap and Phang struck me as being overly eager and suspiciously rehearsed in their accounts of the "blue IC" incident. On careful assessment, I found their evidence to be of no credibility and thus no corroborative value."

11 On the other hand, the district judge found Lin to be an honest witness after observing her closely in the witness stand. She considered Lin "simple-minded and guileless" (at paragraph 29) and believed her when she said that she did not show Yeo any blue IC.

12 I found it difficult to accept any of the arguments raised by the defence counsel once the district judge lost faith in the credibility of the defence witnesses, since it is trite law that an appellate court will not disturb the findings of fact of the court below unless they are clearly reached against the weight of the evidence: *Lim Ah Poh* [1992] 1 SLR 713. In examining the evidence, the appellate court has to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judge's findings and reasons therefor. Moreover, seldom does a district judge go this far in discrediting a witness and detailing her reasons for doing so. It was quite clear that she had no doubts about the lack of truth in what the defence witnesses were claiming. In the absence of objective evidence, it was impossible to expect me to allow the appeal.

13 It must further be borne in mind that this was a case where a statutory presumption had been placed on the accused and the burden was on her to rebut it on a balance of probabilities. This is the policy decision taken by Parliament. If the district judge did not believe her and her witnesses' story, and she had no further objective evidence to back her up (such as a photocopy of the blue IC to say the least), I could only defer to the better judgment of the district judge since I myself did not have the opportunity to observe the demeanour of the witnesses. Once it was held that Yeo was not in fact shown a blue IC by Lin, there was no need to consider any further questions on due diligence.

14 As for the sentence, I found no reason to disturb it as it was not manifestly excessive. A 12-month imprisonment is the benchmark in cases where an offender is convicted after trial of a s 57(1)

(e) Immigration Act offence: *Hameed Sultan Raffic v PP* (MA No 257 of 2000); *PP v Chia Kang Meng* (MA No 71 of 2001).

15 For the reasons above, I dismissed the appeal against conviction and sentence.

Appeal dismissed.

Sgd:

YONG PUNG HOW

Chief Justice

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