Elizabeth Usha v Public Prosecutor
[2001] SGHC 34

Case Number : MA 277/2000

Decision Date : 22 February 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Harpreet Singh Nehal and Ajay Advani (Drew & Napier) for the appellant; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Elizabeth Usha — Public Prosecutor

Immigration – Harbouring – Illegal immigrant – Accused not having proprietary interest in premises – Whether accused can "harbour" illegal immigrants – ss 2 & 57(1)(d) Immigration Act (Cap 133)

Words and Phrases – "Harbour" – ss 2 & 57(1)(d) Immigration Act (Cap 133)

: The appellant was charged with three counts each of harbouring an immigration offender under s 57(1)(d) of the Immigration Act (Cap 133). At the end of the trial, District Judge Irene Wu convicted the appellant of all three charges and sentenced her to the mandatory minimum of six months` imprisonment on each charge, with two of the sentences ordered to run consecutively. The appellant appealed against her conviction only. After hearing counsel from both sides, I dismissed the appeal and now give my reasons.

Background facts

On 18 October 1999, a police raid was conducted at a two-storey shophouse situated at 78A Dunlop Street (`the premises`). Ten men were arrested during the raid, nine of whom were later ascertained to be immigration offenders. Amongst the nine were Jayaram (PW1), Palani (PW2) and Elangovan (PW3), the three Indian nationals named in each of the three charges against the appellant respectively. The men were subsequently convicted and duly sentenced for entering Singapore illegally. After serving out their prison sentences, they remained in Singapore temporarily on special passes pending the disposal of the present case.

The premises comprised two levels. The upper level contained three bedrooms, a toilet, a bathroom and a kitchen, while the rear portion of the lower level was used by the appellant for her beauty parlour business. The front portion, it appeared, was used as a hair dressing salon or barber shop at the material time. The legal tenant of the entire premises was one Sattish Chander (DW2) (`Sattish`), the appellant`s ex-husband whom she divorced in 1998. Sattish was ordered to pay the appellant maintenance following their divorce but was unable to do so and as such allowed her to use the lower level for her business in lieu of maintenance payments from him.

The prosecution`s case

The thrust of the prosecution`s case came from the testimonies of Jayaram, Palani and Elangovan, the substance of which was in all material respects similar. All three gave evidence that they had approached the appellant at her shop on the lower level of the premises some time in or around September 1999 and asked if she had rooms available for rent. On all three occasions, she replied that she had, and that the rent was $100 per month for each of them. Subsequently, the three men stayed in each of the three bedrooms on the second level of the premises, and paid the monthly rent

of $100 to the appellant directly. This arrangement continued for around one and a half to two months until the men were arrested on 18 October 1999.

The men further gave evidence that during their stay at the premises, the appellant would come up to the second level occasionally to check that everything was in order. She also told the men or their other roommates staying at the premises, who were mostly Indian nationals, what they could and could not do. In particular, she told them that they were not allowed to drink, gamble or bring friends back to the premises. Further, they were also told not to use the front entrance on the lower level too frequently as that was meant for customers. Instead, they were to use the back entrance of the shophouse as far as possible. The appellant however gave them permission to cook and to do their laundry in the common kitchen and bathroom on the upper level, which they did.

The appellant never checked nor did she ask to see the passports of any of the three men. She asked to see Jayaram`s work permit some 20 days after he had stayed at the premises in response to which he showed her a photocopy of someone else`s work permit. With respect to Elangovan, she asked for his work permit at the time when he first approached her for a room. Some days later, he handed a photocopy of a forged work permit to a friend to show to the appellant but did not know if his friend ever did so.

All three men denied knowing one Ramasanthern Annamalai Ramachandran or `Rocky`, a man alleged by the defence to have sub-leased the whole of the upper level of the premises from Sattish. The men were adamant, when shown a photograph of `Rocky`, that they had never seen or heard of him before. They also denied having ever seen Abdul Wahab (DW2) (`Wahab`), a man the defence alleged ran the barber shop situated in the front portion of the lower level of the premises at the material time. On the other hand, all three men recognised Sattish and were able to identify him as the appellant`s husband. This was either because the appellant had casually pointed him out to them during their stay at the premises, or they had learnt about his status from the other Indian nationals who stayed on the premises. Their evidence however was that they had seen Sattish at the premises on at most only two occasions and they had never spoken to him nor he to them.

The defence

The appellant was a 45-year-old divorcee with four children. After her divorce from Sattish, he allowed her to utilise the lower level of the premises for her business. From there, the appellant operated a beauty parlour as well as practised homeopathy. She was also a part-time property agent.

The mainstay of the appellant`s defence was essentially that it was `Rocky` who had rented out the rooms on the upper level to the immigration offenders. She produced what she alleged was a tenancy agreement between `Rocky` and Sattish dated 20 July 1999 (`the tenancy agreement`) in which the latter agreed to sub-let the upper level of the premises to the former for a period of two years commencing from 1 August 1999. The agreement was purportedly witnessed by Wahab.

According to the appellant, there were already three men occupying the rooms on the upper level before `Rocky` sub-leased it from Sattish. They were a Singaporean called Michael, an Indian with a valid work permit called Farok, and a special pass holder who stayed for only two weeks.

The appellant denied knowledge of how the illegal immigrants came to reside at the premises. She also denied ever giving instructions to the three prosecution witnesses as to what they could or could not do on the premises, or that she ever collected any rent from them. She said however that `Rocky` had asked her to help him source for tenants, as a result of which she had placed a notice on the

glass door outside the shop advertising rooms and office space for rent as well as her contact numbers. In response, two Indian nationals whose names she could not remember approached her for rooms, and she collected a deposit from them which she passed to `Rocky` who in turn paid her a commission. The appellant did not check the men`s papers as she did not think it was her responsibility to do so. She told `Rocky` to come and see the men on the date that they were moving in and thereafter had no further dealings with them.

The appellant further alleged that she did not talk to the persons who lived on the upper level. No one knew of her relationship with Sattish except `Rocky` and the barber Wahab. She also insisted that she did not have control over the upper level nor could she decide who stayed there. Likewise she did not see or check the passports and work permits of any of the persons living on the upper level save for Michael and Farok. During the relevant period from September 1999 to October 1999, she never went upstairs, even when she heard loud or unusual noises there, as it was not her duty to check. With regard to the collection of rent, she stated that she collected rent only when `Rocky` was not present, and even then only from Michael and Farok and no one else. At this point, the prosecution applied to impeach the appellant`s credit on the ground that she had made a previous inconsistent statement to the police to the effect that `Rocky` had given her permission to allow the Indian nationals to stay on the upper level, that she had collected rent on behalf of Rocky, and that she had photocopied and checked their work permits. The appellant challenged the admissibility of the statement on the ground that she had given it under pressure. After a voir dire, the trial judge ruled that the statement was made by the appellant voluntarily. However, she held that the appellant`s credit was not impeached as she was able to give a satisfactory explanation of the material discrepancies between her statement to the police and her testimony in court.

The defence also called Wahab to testify. His evidence was essentially that he worked as a barber in the front portion of the lower level of the premises during the relevant period and that he had rented the space from Sattish. He did not know, however, if there was anyone living upstairs at that time.

The third and last witness for the defence was Sattish. He gave evidence that prior to renting the upper level to `Rocky`, he had rented it to three other persons introduced to him by the appellant. The appellant also subsequently introduced `Rocky` to him and he paid her commissions for all the introductions. He asserted that the appellant did not help him to manage the premises nor did he authorise her to act on his behalf in his absence. When asked if he knew that the appellant allowed people to stay at the premises, he replied that she had to inform him as he was the legal tenant who had control. He later clarified that he meant control of the lower level only as the upper level had been rented to `Rocky` and as such any decision to sub-let the rooms upstairs lay with the latter.

The decision below

The trial judge accepted the evidence of the prosecution witnesses. She found that they had no reason or incentive to frame or implicate the appellant, and that their evidence was clear and consistent throughout. On the other hand, she found the defence story about `Rocky` to be unconvincing. She did not accept that Rocky had rented the upper level as none of the prosecution witnesses recognised him or had heard of him. Moreover, the tenancy agreement purportedly made between `Rocky` and Sattish and witnessed by Wahab was also of a dubious nature.

The trial judge further held that the main issue in this case was who had control of the premises and the rent. In this regard, she again accepted the prosecution witnesses` evidence that it was the appellant who had given them permission to stay, who had informed them of the rent and subsequently collected it from them, and who had laid down the rules for their stay. In addition, the

appellant had also visited the upper level at least four to six times between September and October 1999 to check on the number of persons sleeping there and to see that the place was neat. The appellant was thus actively involved in controlling the number of persons occupying the upper level. In the circumstances, the trial judge had no hesitation in rejecting the defence that she did not know that the prosecution witnesses resided on the upper level. She held that the appellant had indeed given shelter to the three men, thus triggering the presumption under s 57(7) of the Immigration Act (Cap 133). On the evidence, the trial judge found that the appellant had not rebutted the presumption as she had failed to make further enquiries of the men, save for asking to see two of their work permits, and convicted her accordingly.

The appeal

Counsel for the appellant did not challenge the trial judge`s findings of fact at the hearing before me. His only contention was one of law, namely, that the appellant was not a `harbourer` within the meaning of s 57(1)(d) of the Immigration Act as she was neither the owner nor tenant of the premises. As such, counsel argued that she could not have been the person who `in reality` gave shelter to the three men. This person could only either have been Sattish, or the owner of the premises. The appellant, counsel urged, was merely a property agent who had sourced for the tenants and, as such, could at most only be said to have been an abettor rather than the harbourer herself. As the charge proffered against her was for the principal offence, counsel argued that it was bad in law, and that it was now too late in the day to substitute the charge with one of abetment for which the presumption in favour of the prosecution in s 57(7) would not apply, as the defence at the trial had been wholly directed at attempting to show that the appellant had not harboured the three illegal immigrants.

The law

The main provisions I had to deal with in this case were ss 57((1)(d) and 57(7) of the Immigration Act (`the Act`), which state as follows:

57	(1)	Any person who -	
		(d)	harbours any person who has acted in contravention of the provisions of this Act or the regulations;
		shall be guilty of an offence and -	

		(ii)	subject to subsection (1A), in the case of an offence under paragraph (b), (d) or (e), shall be punished with imprisonment for a term of not less than 6 months and not more than 2 years and shall also be liable to a fine not exceeding $6,000; ...
	(7)	Where, in any proceedings for an offence under subsection (1)(d), it is proved that the defendant has given shelter to any person who has remained in Singapore unlawfully for a period exceeding 90 days after the expiration of any pass issued to him or who has entered Singapore in contravention of section 5(1) or 6(1), it shall be presumed, until the contrary is proved, that the defendant has harboured him knowing him to be a person who has acted in contravention of the provisions of this Act or the regulations.	

The term `harbour` in s 57(1)(d) is in turn defined in s 2 of the Act as meaning:

> ***to give*** *food or* ***shelter****, and includes the act of assisting a person in any way to evade apprehension. [Emphasis mine.]*

In **Lee Boon Leong Joseph v PP** [1997] 1 SLR 445 , I held that giving `shelter` means providing some form of habitation to the immigration offender. Before the presumption in s 57(7) can the triggered therefore, the prosecution has to show that the accused provided a place of habitation to the offenders with the intention or knowledge that they would inhabit that place and that they in fact did so. I reiterated this view in the subsequent case of **Lim Dee Chew v PP** [1997] 3 SLR 956 , in which I held that harbouring required a positive act of providing shelter or food. I stated further, at p

965 of that case, that:

> *[t]he person who provides the shelter or food (the harbourer) may not necessarily be the owner of the premises. In many cases the owner of the premises may rent the premises to a tenant who in turn may rent it to a sub-tenant. If the sub-tenant turns out to be an illegal immigrant, it cannot be that in all cases the owner of the premises will be held as the person who harboured the illegal immigrant. In my opinion this would depend on the facts of each particular case and the agreement which the owner of the premises had with the tenant.*

And further down in the judgment, I said:

> *... Therefore, on the whole, to determine who the harbourer is, we have to determine who is the person who `in reality` provides the shelter to the illegal immigrant. This would be by determining who was in control of the premises and the rent.*

Whether the appellant was a `harbourer`

The only issue I had to deal with in this appeal was really the question of whether or not a non-owner occupier of premises can be found guilty of harbouring illegal immigrants found on those premises. It is clear from the above propositions derived from the earlier cases that the person providing the shelter or food to the immigration offender need not necessarily be the owner of the premises. While in ***Lim Dee Chew*** I referred only to landlords and tenants as the other candidates who could potentially be found to be `harbourers`, clearly that reference was not meant to be exhaustive for there is nothing in the Act which confines the classes of persons who could potentially be found to be `harbourers` to persons who have proprietary interests in the property only. The definition of the term `harbour` in the Act as set out above is clear and unambiguous. Where the wording of a statute is clear and unequivocal, any reference to the Parliamentary debates behind the passing of that statutory provision is unnecessary and in fact, impermissible. As such, I found counsel`s lengthy discourse on Hansard and its purported declarations that 57(1)(d) was intended to be targetted at owners and/or landlords only to be wholly inappropriate and of no help to his client`s case whatsoever. In my view, any positive act of giving shelter in the form of providing habitation to an immigration offender by any person whomsoever falls squarely within the clear statutory definition of the word `harbour`, and there is nothing in that definition which restricts the classes of persons intended to be caught by it to owners, landlords and tenants, which words do not even appear in the definition. Indeed if it was thought that Parliament had meant for the section to be limited to owners, landlords and tenants only, then it was open to them to simply state that this was the case, but they did not do so. As such, I am of the view that even mere licensees or occupiers like the appellant who do not have any proprietary interest in the property are capable of being found to be `harbourers`, provided it can be proved that they had done a positive act of providing habitation to the illegal immigrants in question. In my opinion, it is unnecessary to lay down fixed or closed categories of persons to which the section applies. In every case, it is a question of fact whether or not the particular accused`s actions satisfy the plain meaning of the words `harbour` and `giving shelter` as set out in the Act. I see no compelling reason why the courts should unnecessarily narrow the scope of a piece of legislation which was clearly intended by Parliament to operate as a strict weapon to combat the rising trend of illegal immigration and its many attendant social problems. In particular, the provisions in the Act on harbouring were aimed specifically at making the procurement of accommodation by

illegal immigrants extremely difficult, if not impossible.

Returning to the facts of this case, I had no doubt that the appellant`s actions more than amply satisfied the definition of `harbour` in the Act. On the facts as found by the trial judge, it was clear that the appellant was the one who had allowed or permitted the three prosecution witnesses to stay on the upper level of the premises. They had approached her for accommodation, and she had provided them with rooms to stay in, which they did for a period of some one and a half to two months. She further not only stipulated the rent amount but also collected the rent from them every month. Her evidence that she had collected the rent on behalf of `Rocky` was disbelieved by the trial judge and no other evidence was produced by the defence to show that the appellant had collected the rent on behalf of any other person. Her position was thus different from that of the agent Goh See Hock in ***Lim Dee Chew*** `s case, who had been specifically instructed to collect the rent from the overstayer by the owner of the premises, ie the accused in that case. In the result, I was left with the only conclusion obvious to me in the present case that the appellant had in this case collected the rent for and on behalf of herself only. That she was clearly in charge and in control of the premises was also not in doubt as she was the one who gave the men their instructions on what they could and could not do on the premises, including which entrance they could and could not use, as well as checked on them regularly to see that everything was in order. In the light of all these circumstances, I could not see how the appellant could dispute that she had `in reality` provided shelter in the form of habitation, residence, occupancy and accommodation to the three men.

A separate, recurrent strand of argument tirelessly put forth by counsel at the hearing before me was that the appellant was but a mere agent for Sattish, who was the true harbourer in this case, and as such, the appellant could at most only be found to be guilty of abetment and not of the principal offence of harbouring itself. Respectfully, I could not agree with counsel. In the first place, there was no evidence whatsoever that the appellant was but a mere property agent who served as a conduit or middleman between Sattish, the legal tenant of the premises, and the three Indian nationals, the sub-tenants. On the contrary, the evidence of the three prosecution witnesses was that they only saw Sattish on one or two occasions throughout their entire stay at the premises and had never spoken to him. Further, the appellant did not at any time tell them that she was collecting the rent from them on behalf of Sattish. More pertinently, Sattish himself, a witness for the defence, denied knowing that the three men resided on the premises during the relevant period. It was patently obvious to me therefore that the appellant was quite clearly much more than the equivalent of a mere desk-clerk at a hotel as her counsel sought to make her out to be. While a mere desk-clerk could not keep the rates paid by the hotel`s guests, it was plain that the appellant in this case kept the full rent of $100 which she collected from each of the three Indian nationals for herself. She thus obtained a profit and benefited directly from letting the men stay on the premises, typifying the form of self-enrichment that the stringent immigration laws were precisely designed to avoid. Further, Sattish`s bare assertion that the appellant did not have control of the premises because he retained control of it flew directly in the face of the evidence given by the prosecution witnesses that the appellant could offer them rooms to stay, on the spot, without having to first confer with or seek the approval of Sattish or anyone else for that matter. Moreover, the appellant also laid the ground rules for the men staying on the premises, as well as conducted regular checks on the number of persons staying at any one time. Clearly her duties went way beyond that of a property or housing agent, whose duties one would realistically imagine, ceases the moment the tenancy commences and its terms are finalised. In the circumstances, I could not accept counsel`s argument that the appellant`s role was but that of a mere property agent.

In any event, I was of the view that counse`s attempts to pin the blame on, or to impute liability for the harbouring of the immigration offenders to, Sattish were wholly ill-conceived. While Sattish may well satisfy the statutory definition of `harbour` and be found guilty of the offence of harbouring

depending on whether or not he knew or was otherwise aware of the presence of the illegal immigrant tenants, this did not prevent the appellant from similarly satisfying the same definition and being found guilty of the same offence. There is nothing in the Act which states that there can at any one time only be one `harbourer`. Nevertheless, whether or not Sattish qualifies as a `harbourer` within the statutory definition was not the issue in this case. Sattish was not the person on trial here and, as such, it was not the duty of the trial judge or myself to make a finding on whether or not he could be said to have harboured the three Indian nationals. What was pertinent was whether or not the appellant came within the statutory definition, and as I have said, there is nothing in the statute which prevents two or more persons from being harbourers of the same immigration offenders at the same time. As such, counsel`s attempts to shift the blame onto Sattish alone was clearly futile and not helpful to his client`s cause.

In the light of the above circumstances, I had no doubt that the prosecution had more than amply proven that the appellant had given shelter to the three immigration offenders within the meaning of s 57(7) of the Act. The prosecution was thus given the benefit of the presumption in that section and was accordingly absolved from having to prove mens rea. Instead, the burden now lay on the appellant to prove on a balance of probabilities that she did not know or could not reasonably have known that the three men were immigration offenders. This she could succeed in doing only if she could show that she had satisfied the test of due diligence in s 57(10) of the Act, which inter alia, requires the accused to check the particulars contained in the immigrant`s original work permit against that in the original copy of his passport.

The appellant did not lead any evidence in the court below to show that she had performed the due diligence checks stipulated in s 57(10). She was content at the trial stage to attempt to disprove only the fact of harbouring, and the entire line of defence was thus never directed towards seeking to discharge the presumption of knowledge in s 57(7). As such, I found that the appellant had clearly not succeeded in discharging that presumption. Indeed it was plain from the prosecution witnesses` evidence that the appellant had failed to clear even the first hurdle of asking to see the men`s original passports and work permits.

Conclusion

In the light of the foregoing, I saw no reason to disturb the trial judge`s decision, and dismissed the appeal accordingly.

Outcome:

Appeal dismissed.