

Public Prosecutor v Yeow Beng Chye
[2003] SGHC 74

Case Number : MA 271/2002
Decision Date : 23 April 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : G Kannan and Royston Ng (Deputy Public Prosecutors) for the appellant; Singa Retnam and V G Kurup (Singa Retnam, Kurup & Associates) for the respondent
Parties : Public Prosecutor — Yeow Beng Chye

Criminal Law – Illegal gratification – Multiple inconsistencies in key witness's testimony leading to amendment of majority of charges – Whether inconsistencies destroyed prosecution's case – Prevention of Corruption Act (Cap 241) s 6(a)

Criminal Law – Mixed statement – Reliability of incriminating parts – Judge's discretion on weight to be given to incriminating parts

Criminal Law – Lack of motive to falsely implicated accused – Where the burden of proof lay

1 This was an appeal against the decision of district judge Tey Tsun Hang. The respondent, Yeow Beng Chye ('Yeow'), a police intelligence officer, was tried on 24 charges, all under s 6(a) of the Prevention of Corruption Act (Cap 241). The charges alleged that he had corruptly accepted gratification from an Indonesian prostitute working in the Geylang vicinity, Emalia Susilawati ('Emalia'), on 24 occasions between March 1999 and August 2001, as a reward for helping her stay on in Singapore by extending her visas through special passes for monthly extensions.

2 The district judge acquitted Yeow on all 24 charges after the defence was called. The prosecution appeared before me to appeal against the district judge's decision with regards to the first four charges.

The facts

3 Yeow was a police intelligence officer attached to the Divisional Intelligence Branch of the Central Police Station. Emalia was recruited as a police informer for Yeow. Emalia would gather information about illegal activities and pass it on to Yeow. The reward for Emalia was to have her visa extended.

The prosecution's case

4 The gist of the allegation by Emalia was that she could not come up with the information that Yeow wanted. Yet she wished to stay on in Singapore to continue working as a prostitute. In order to have her visa extended, she gave money to Yeow to keep her on as a police informer. Emalia alleged that she had not come up with the bulk of the information contained in the police's source working file which had been attributed to her. The prosecution's case was that Yeow had forged the information or falsely credited the information to Emalia so that she could continue staying in Singapore. In return, Yeow received from Emalia an initial payment of \$1,500 and 23 subsequent payments of \$1000 each.

5 However, Emalia changed her testimony half-way through the trial, with the result that 20 out of the 24 charges had to be amended by the prosecution at the close of the prosecution's case. For these 20 charges, the time, location and even the sums of money of the alleged transactions had

to be amended.

The appeal

6 The district judge found "serious inconsistencies" in Emalia's testimony and considered her allegations "incredible". As a result, he was not satisfied that the charges were proven by the prosecution beyond reasonable doubt after the defence was called. He also found credible evidence of grudges on Emalia's part against Yeow, who had personally deported her back to Indonesia. The district judge acquitted Yeow on all 24 charges. The prosecution appealed against the acquittal on the first four charges, arguing that the district judge had erred by failing to give due weight to the accused's mixed statement to the police, by giving undue weight to inconsistencies in Emalia's testimony and by coming to certain conclusions on the facts. I shall first deal with the inconsistencies.

The inconsistencies

(i) How Emalia came to be a police informer

7 Emalia claimed that she had become a police informer on her own initiative. She had been arrested on 8 February 1999 by the police for overstaying on her visa. At the police lock-up, she claimed to have told one police officer that she had information about Indonesians selling drugs at Geylang. Thereafter, Yeow interviewed her, whereupon she asked Yeow to give her one week to look for information on the drug seller.

8 However, the former Head of Intelligence at the Central Police Station, ASP Bakurdeen, Yeow's superior at that time, testified that it was in fact his idea that Yeow and his colleagues randomly look up detainees at police lock-ups to recruit as police informers. In his examination-in-chief, he testified:

It was me who initiated the whole thing by telling Yeow we should recruit foreign nationals as sources because the incident of crime by foreigners in Geylang was high at that time.

ASP Bakurdeen was offered by the prosecution to the defence. His credit was not challenged by the prosecution.

9 Yeow's colleague, Staff Sergeant Chong Wei Tong, also made it clear that he was with Yeow when they randomly picked up those in the police lock-up for interview. He testified that they had picked out Emalia's name from the suspects' list at the lock-up. His credit was not challenged by the prosecution who had offered him as a witness to the defence.

10 The district judge concluded that "this showed that Emalia had been rather economical with the truth when she claimed that she was the one who initiated it (sic) to a police officer to be a police informer".

(ii) Whether Emalia knew one Mohd Habib

11 It was part of the defence that Yeow had tried to help solve the relationship problem between Emalia and her 'boyfriend', one Mohd Habib. When Emalia was cross-examined on this issue, she first denied ever knowing Mohd Habib, and then admitted that he was Yeow's informer and that she was the one who introduced him to Yeow. An extract of the cross-examination is reproduced below (emphasis added):

Cross-examination

Q: Did you not have a Bangladeshi boyfriend?

A: Yes, I have.

Q: **Mohd Habib?**

A: **No, I don't know him.**

Q: You used to call Manah?

A: My boyfriend is Mr Alam, a Bangladeshi.

Q: **Is Mohd Habib a Bangladeshi?**

A: **Yes, he's informer to Andy.**

Q: **You were the one who introduced him to Andy?**

A: **Yes, agree.**

The district judge considered this to be another instance in which Emalia had not been "forthcoming" and "was deliberately evasive on this issue".

(iii) Ah Sing's role

12 Emalia made the police report to CPIB with the help of prosecution witness Teo Koon Sing ('Teo'). In her examination-in-chief, she admitted to telling Yeow that 'there was an Indonesian Chinese who brought Indonesian girls to prostitute in Singapore' by the name of 'Ah Sing'. Later in reply to a question by the court, she denied that Teo was a pimp. There was a contact note, whose authenticity was not challenged by the prosecution, which showed that Yeow got the information that 'Ah Sing' was a pimp from Emalia herself. On the assumption that Teo must have been 'Ah Sing', the district judge concluded that "Emalia also showed that she was willing to twist the facts on 'Ah Sing'".

(iv) Discrepancy between Emalia and Ah Sing about their dealings

13 The district judge noted that while Emalia told the court that Teo was a "good friend" of hers, Teo tried to change that impression and said that she was "just a friend".

14 In addition, Emalia claimed that it was Teo who offered to bring her to the police to lodge a police report. She was scared but Teo offered again to bring her to make a police report. She went along. However, Teo had a different version of the story. He claimed that Emalia was the one who "wanted to make a police report".

(v) Emalia's testimony regarding alleged payments to Yeow

15 In the first place, Emalia had given information to CPIB of non-existent HDB apartment block numbers, where she supposedly gave money to Yeow. She changed her testimony regarding the venue of some of the offences from Block 51 Bedok Reservoir Road, a non-existent block, to Block 149 and claimed that it was because Block 149 is near Block 150 and 151 and she merely forgot to

mention the '1'. She also changed Block 221, another non-existent block, to Block 122 and claimed that the latter block was near Block 149 even though it was about 400 metres away. She tried to explain these inconsistencies by saying that she could have been mistaken or that it was just a lapse of memory.

16 There were also other discrepancies regarding the venues in which some of the offences were alleged to have taken place. In October 1999 (charge 6), Yeow was supposed to have received \$1000 at the Shaw Tower carpark. However, due to Emalia's testimony, the charge was amended and the offence was then alleged to have been carried out at the Central Police Station. In November 1999 (charge 7), Yeow was supposed to have received money at Shaw Tower carpark. However, due to Emalia's testimony, the charge was amended so that the offence was then allegedly carried out at the SIR Building.

17 In addition, Emalia gave flip-flopping testimony regarding the dates when she claimed to have given the sums of money to Yeow. According to the schedule given by Emalia to the CPIB, no payments were made in July and August 1999, but in the amended charges she was supposed to have paid Yeow \$1000 in July 1999. In the schedule, Yeow was supposed to have received \$1000 in September 1999 but due to Emalia's testimony in court, there was no charge on this alleged payment.

18 Some of the allegations of payments also appeared incredible. For instance, in December 1999 (charge 8), Yeow was supposed to have received \$1000 from Emalia. However, it was not disputed by the prosecution that Yeow was in fact away in Vietnam on a holiday during this period. This was independently verified by the stamp on Yeow's passport.

19 In other instances, Emalia testified to having given Yeow money on occasions when, as the stamps on her passport showed, she was either out of the country or had obtained fresh social visit visas from Changi Airport at the immigration checkpoints. For example, charge 5 was that she had allegedly given money to Yeow on 4 July 1999 for an extension of her visa. Yet her passport showed that she had left Singapore on 5 July 1999. Neither was there any extension of her visa on 4 July 1999. Another example was with charge 9, where she claimed to have given Yeow money on 17 January 2000. However, her passport showed that Emalia left Singapore on 6 January 2000 and returned to Singapore only on 1 February 2000. Moreover, Emalia's passport showed that the visa obtained at the time of charge 13 was given at the immigration checkpoint and was not a visa extension, so Yeow's "help" could not have been required.

20 As Emalia had testified with her passport in front of her and had the benefit of an Indonesian interpreter beside her interpreting every page of the passport and explaining the content of every visa stamp, the district judge was convinced that "Emalia's testimony was unreliable and full of deliberate distortions" and that "in such circumstances, serious doubt had been cast on Emalia's credibility".

21 There were also inconsistencies regarding the sums of payment. In the schedule given by Emalia to CPIB, none of the entries was for \$500. However, in charge 13, she claimed to have given Yeow \$500. Since she had earlier told the court in her examination-in-chief that every time Yeow helped her to obtain a visa extension, she would pay him \$1000, the district judge regarded the \$500 allegation as a "serious flip-flopping in cross-examination" which "was most telling". In addition, charge 16 alleged that Emalia had given Yeow \$1000 on 17 October 2000 for a visa extension. When it was pointed out to her that her passport showed that she had left Singapore on 5 November 2000, she then said that she had in fact only given Yeow \$750 for an extension of 3 weeks.

(vi) The prosecution's appeal on the inconsistencies

22 The prosecution argued that the inconsistencies in Emalia's testimony as to dates, locations and amounts only related to the other charges apart from the first four which were the subject of the appeal. Moreover, even if the inconsistencies on the other charges were taken into account when dealing with the first four charges, given the number of charges and the period of time over which the offences were committed, the inconsistencies should not have been given much weight. The prosecution also pointed out that some of the inconsistencies were minor and had little or no bearing on the case. Moreover, Emalia had no opportunity to confirm the HDB block numbers until she was brought to the scene.

23 It is trite law that not every inconsistency will destroy a prosecution's case. In *PP v Yeo Gek Hong* [2003] SGHC [61], I had considered some of the inconsistencies in that case as not in fact warranting the magistrate's findings that they were "persistent and brazen changes in testimony". One inconsistency was that the witness thought that she had made the police report on March 2 and was therefore of the opinion that she had been assaulted on March 1, the day before she made the report. The police report however showed that it was made on March 3. However, I was of the opinion that there could be "no sinister motive... ascribed to her getting the date of the police report wrong, as that date, of all the many bandied about by the parties, was the only one capable of independent verification". As such, the witness's "confused chronology could not be a basis for treating her credit as impeached", taking into account that the events narrated had taken place one and a half years before the proceedings below.

24 In this case, I also recognised that there were indeed a few inconsistencies of "*Yeo Gek Hong* inconsequentiality". For instance, the district judge noted that while Emalia told the court that Teo was a "good friend" of hers, Teo said that she was "just a friend". What Emalia thought of Teo need not necessarily coincide with how Teo regarded her and this had little bearing on the case. Whether they were really good friends or not also had little to do with whether Yeow was indeed corrupt. Even if Emalia and Teo were not that close, Emalia could still have given false testimony against Yeow without the help of Teo who merely brought her to make the police report. We were not dealing with a case of whose responsibility it was for giving false testimony, if there was indeed any, against Yeow, so the relationship between Teo and Emalia was inconsequential to this case.

25 I was also of the view that whether Emalia had volunteered to be a police informer or had signed up only after being approached by Yeow was also of minor consequence. It was clear from ASP Bakurdeen's testimony that he was the one who initiated the idea of having police informers and told Yeow to approach some random people in the lock-up. However, whether it was of Emalia's own initiative that she came to be a police informer did not point conclusively to whether she lacked the necessary information so that she had to end up bribing Yeow in order to stay on as a police informer and get her visa extensions.

26 At the same time, it was quite clear to me that the other inconsistencies were more serious. The district judge had carefully detailed the wide scale of Emalia's flip-flopping testimony, ranging from confusion of dates and venues to amounts paid. Although it was true that, given the number of charges and the period of time over which the offences were given, Emalia could not be expected to remember every single detail, there were nevertheless inconsistencies that did not accord with a memory lapse. For instance, Emalia had testified, with her passport in front of her and with the aid of an interpreter, that she had given Yeow money on 17 January 2000. However, her passport showed that Emalia left Singapore on 6 January 2000 and returned to Singapore only on 1 February 2000. For some of the other charges, Emalia's visas were fresh social visit visas given at the immigration checkpoints, such as Changi Airport, where Emalia did not obtain and could not have obtained Yeow's help in obtaining such visas.

27 Emalia's numerous inconsistencies regarding the dates, locations and amounts given showed a systematic confusion. Even after discounting the minor inconsistencies, her other inconsistencies had cumulatively weakened the prosecution's case. What a one-off inconsistency due to memory lapses could not do, a systematic and widespread pattern of many inconsistencies coming together had managed to bring down the prosecution's case. Against these objective inconsistencies, I did not think that the district judge had erred in finding Emalia a less than credible witness. Although it was true that, as Thomson CJ in *Khoon Chye Hin v PP* [1961] MLJ 105 at 107 put it, "to say... that because a witness has been proved a liar on one or two points then the whole of his evidence 'must in law be rejected' is to go too far and is wrong", Emalia's systematic and extensive inconsistencies could properly be said to have destroyed much of her credibility with regard to her entire testimony.

Yeow's mixed statement

28 At the end of a *voir dire*, the district judge admitted a mixed statement given by Yeow to the CPIB. In *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25, I followed the decisions in *R v Findlay Duncan* [1981] 73 Cr App R 359 and *Chan Kim Choi v PP* [1991] SLR 34, [1991] 1 MLJ 260, and held that, where a mixed statement was under consideration, the whole statement, both the incriminating parts and the excuses or explanations, must be considered in deciding where the truth lay. Equally, however, the incriminating parts were likely to be true whereas the excuses did not have the same weight.

29 The district judge, however, did not consider the incriminating part to be reliable. This was due to the discrepancies between what Yeow seemed to have admitted in his mixed statement and what Emalia had testified. For instance, the district judge noted that, while Yeow in his statement seemed to have said that there was a prior meeting where money was offered before the first payment of \$1000 was made by Emalia, Emalia claimed that Yeow had accepted the money at her first offer and the sum given was \$1500. This discrepancy concerned the first charge which was the subject of this appeal.

30 Moreover, the district judge noted that "the mixed statement too, contained HDB block numbers that were non-existent, and a schedule of payment that was later shown by Emalia herself to be incorrect". Yeow had earlier stated in his statement that he wished to plea guilty to all the charges contained in the schedule. However, he later added in handwriting to the typed-written statement: "I wish to state that I had never met Lia (Emalia) at the staircase of Block 51, Bedok Reservoir Road or the staircase of Block 221 Bedok Reservoir Road to collect any money from her." Not only had Yeow not clearly and unambiguously admitted to all the charges, he had also attempted to admit to charges that later proved to be incredible and incontrovertibly wrong.

31 I found that the district judge was within the boundaries of *Kelvin Chai* in reaching this finding of fact. *Kelvin Chai* retained the trial judge's discretion to make his own conclusion about the reliability of the incriminating parts of a mixed statement, even though its guidelines were that the incriminating parts were more likely to be true. This might not be the case where there were inconsistencies between the witness's testimony and the incriminating parts of the statement, as in this case. Neither could it be the case where the accused had incriminated himself in an ambiguous manner and with impossible charges. Although these charges were not the subject of this appeal, the mixed statement was nevertheless rendered unreliable. The district judge was correct in giving little weight to Yeow's statement.

Conclusion of facts

(i) Identifying prosecution witness Teo Koon Sing to be the pimp 'Ah Seng' referred to in a contact

note

32 The prosecution complained that the judge had erred in equating prosecution witness Teo, the one who brought Emalia to make the police report, with the pimp 'Ah Seng' referred to in the contact note. I found that, even if this was not so, Emalia's inconsistencies still could not be discounted or explained away. Moreover, Teo's testimony had little bearing on whether Yeow was indeed bribed since the former was not an eye-witness to any of the alleged incidents of bribery. His testimony as self-corroborating evidence for Emalia only carried little weight against the massive number of inconsistencies elsewhere.

(ii) Concluding that Emalia had a motive for fabricating allegations against Yeow

33 In following *Khoo Kwoon Hain v PP* [1995] 2 SLR 767 which held that the burden of proving a lack of motive to falsely implicate an accused was on the prosecution, the district judge found that the prosecution had failed to discharge its burden. Instead, he found credible evidence of grudges against Yeow on Emalia's part. First, she was personally deported back to Indonesia by Yeow when she failed to produce any more information for the police. Second, when she came back to Singapore again and was robbed, she called Yeow for assistance but was flatly turned down by him. These were facts that were not disputed by the prosecution. A mere assertion that Emalia was not in fact upset with Yeow for deporting her did not discharge the prosecution's burden. Yeow's testimony that Emalia "did not show any expression" when he deported her was also neither here nor there. I found the district judge justified in finding that the prosecution had failed to prove that Emalia bore no grudges against Yeow to want to falsely implicate him.

(iii) Concluding that the information in all the contact notes came from Emalia

34 Emalia alleged that she only gave a few pieces of information to Yeow. The rest were forged by Yeow in the form of contact notes, so that Emalia would continue to be seen as a 'productive source' and could get her visa extensions.

35 However, Yeow's superior at that time, ASP Bakurdeen testified that the information in Emalia's file did produce results. For instances, Emalia denied giving information to Yeow that there were 20 male Indians staying at 18A Veerasamy Road. However, the intelligence file contained a report put up by Yeow showing that subsequent arrests were made following such tip-off from Emalia. In addition, the intelligence report showed that 15 Indian illegal migrants residing at 22A Cuff Road and 10 Bangladeshi illegal immigrants residing at No. 17A Lorong 13 Geylang were arrested following alleged tip-offs by Emalia who denied providing such information.

36 The district judge noted that the prosecution had failed to adduce any evidence that the information and tip-offs came from some other sources, despite the fact that at the relevant time, Yeow had two other sources apart from Emalia, one of whom was a male Bangladeshi introduced to him by Emalia herself. Although the prosecution highlighted the fact that Yeow himself had admitted that the police intelligence officers sometimes shared information with each other, they were nonetheless unable to produce a police officer that could testify to having shared with Yeow the information in the contact notes which Emalia had denied providing. Moreover, the fact that some of the tip-offs were with regards to places geographically far from Geylang where Emalia worked had little or no evidential value and was not conclusive of anything. It is not reasonable to assume that police sources are only able to provide tip-offs of crimes near their workplace.

37 Under such circumstances, and with the opportunity to observe the demeanour of the witnesses, the district judge was not wrong in coming to the conclusion that all the information in the

contact notes could have come from no other than Emalia herself. The prosecution did not prove otherwise and it was not for the defence to disprove the accusation.

Conclusion

38 Having the advantage of the district judge's careful detailing of the numerous inconsistencies in the key witness Emalia's testimony, and seeing that the prosecution had failed to prove that Emalia bore no grudges against Yeow or that Yeow had in fact forged the contact notes which contained reliable and fruitful information, I agreed with the district judge that the case against Yeow had not been proved beyond reasonable doubt and I dismissed the appeal.

Appeal dismissed.

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