

Public Prosecutor v Shaifudin
[2005] SGHC 66

Case Number : Cr Rev 5/2005
Decision Date : 06 April 2005
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Christina Koh (Deputy Public Prosecutor) for the petitioner; The respondent in person
Parties : Public Prosecutor — Shaifudin

Criminal Law – Petition for revision – Setting aside conviction procured on basis of false identity – Section 23 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) – Sections 266(1) and 268(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

6 April 2005

Yong Pung How CJ:

1 This was a petition by the Public Prosecutor to set aside the respondent's conviction, which was procured on the basis of a false identity that the respondent had assumed. I set aside the respondent's conviction and sentence for the reasons given below.

The facts

2 The respondent, one Raja Izzuwin, was wanted by the Singapore Civil Defence Force ("SCDF") for being absent without leave. On 15 October 2004 at about 1.45am, during a routine police spot check at Duxton Road, the police asked the respondent for his particulars. In order to avoid detection, he assumed the identity of one "Shaifudin". He provided the identity card number of "Shaifudin" verbally to the police, claiming he did not have his identity card in his possession.

3 Unknown to the respondent, the said "Shaifudin" was also wanted for a total of 12 parking-related summonses issued by the Urban Redevelopment Authority ("URA") and the Housing and Development Board ("HDB"). A screening with the Divisional Operations Room by the police of the particulars given by the respondent revealed that 12 warrants of arrest had been issued against "Shaifudin" for failing to turn up in court on various dates to answer to the summonses.

4 As a result, the respondent was placed under arrest and conveyed to the Central Police Division Headquarters, and an arrest report was lodged against him. The respondent maintained his assumed identity in the lock-up and provided the identity card number and residential address of "Shaifudin" to the Charge Office staff, who recorded the information in the Charge Book. The respondent was then searched, but no identification papers were found on him.

5 At about 9.00am that same day, the respondent was produced in Court No 14 of the Subordinate Courts. The charges by the HDB and the URA against "Shaifudin" were read and explained to the respondent and he confirmed that he understood the same. The case was adjourned to 18 October 2004, when the respondent was again produced in Court No 14. The respondent admitted to the facts of the case without qualification and pleaded guilty to all 12 charges in the summonses. In mitigation, he pleaded for leniency on the basis that it was his first offence and both his parents had passed away. It was established that "Shaifudin's" parents had indeed passed away.

6 The respondent was accordingly sentenced to pay a fine of \$7,200, with 36 days' imprisonment in default. The respondent was unable to pay the fine and was thus ordered to serve the default sentence at the Queenstown Remand Prison ("QRP"), where his true identity was discovered on 10 November 2004 to be that of Raja Izzuwin. On 11 November 2004, the respondent was arrested at the QRP for the offence of being absent without leave under s 48(1) of the Civil Defence Act (Cap 42, 2001 Rev Ed).

7 The respondent admitted that he had assumed the identity of his friend "Shaifudin" in order to avoid arrest, as he knew that he (Raja Izzuwin) was wanted by the SCDF. On 10 December 2004, the respondent pleaded guilty to the charge by the SCDF against him under s 48(1) of the Civil Defence Act and was sentenced to 11 months' imprisonment. On 11 March 2005, the respondent also pleaded guilty to one charge of giving false information under s 182 of the Penal Code (Cap 224, 1985 Rev Ed), and two charges of false personation under s 205 of the Penal Code. Ten other charges of false personation under s 205 of the Penal Code were taken into consideration for the purpose of sentencing, and the respondent was sentenced to a total of four months and three weeks' imprisonment for the charges under the Penal Code.

8 The Public Prosecutor thus petitioned for the erroneous conviction recorded against the respondent in regard to the parking summonses to be set aside. At the time of the hearing before me, the respondent was serving his prison sentence for his own offence of being absent without leave, and the real "Shaifudin" was still at large.

Setting aside the conviction

9 The revisionary powers of the High Court are conferred by s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA"). Pursuant to s 266(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"):

The High Court may call for and examine the record of any criminal proceeding before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of that subordinate court.

10 The High Court's revisionary powers are to facilitate its supervisory and superintending jurisdiction over criminal proceedings before a subordinate court so as to correct, if necessary, a miscarriage of justice arising from any of the grounds stated in s 266 of the CPC: *Koh Thian Huat v PP* [2002] 3 SLR 28, *Knight Glenn Jeyasingam v PP* [1999] 3 SLR 362. In addition, under s 268(1) of the CPC, the court may exercise any of the powers conferred by ss 251, 255, 256 and 257 of the CPC, which include reversing a conviction passed by the lower courts.

11 The principles governing revision are well established, and it suffices to restate that in order to attract the exercise of the court's revisionary jurisdiction, there must be serious injustice, or a fundamental error occasioning a clear failure of justice: *Ang Poh Chuan v PP* [1996] 1 SLR 326, *Magnum Finance Bhd v PP* [1996] 2 SLR 523.

1 2 This court has in several cases found a failure of justice to exist where a person has been convicted "despite the obvious absence of an essential constituent of the offence concerned": *Ng Kim Han v PP* [2001] 2 SLR 293 at [10], *Abdul Aziz bin Ahtam v PP* [1997] 2 SLR 96. For example, petitions for criminal revision have been allowed where the Statement of Facts did not disclose all the necessary elements of the offence: see *Chen Hock Heng Textile Printing Pte Ltd v PP* [1996] 1 SLR 745.

13 In the recent case of *Abdul Munaf bin Mohd Ismail v PP* [2004] SGHC 4, the petitioner, charged as Kathar Abdul Gafoor, had admitted without qualification to the Statement of Facts, which stated, *inter alia*, that he was an Indian national who had entered Singapore unlawfully by passing himself off as one Malaysian named Abdul Munaf bin Mohd Ismail using a photo-substituted Malaysian restricted passport. The petitioner pleaded guilty to the charge under s 6(1)(c) of the Immigration Act (Cap 133, 1997 Rev Ed) for entering Singapore without a valid pass and was convicted and sentenced to two months' imprisonment and fined \$2,000. He paid the fine and was serving his term of imprisonment when he petitioned to set aside his conviction and sentence. He produced six other old passports bearing the name of Abdul Munaf and a document which he said was his certificate of registration of citizenship in Malaysia. On the evidence, Choo Han Teck J was satisfied that the petitioner was probably Abdul Munaf, and set aside the conviction and sentence of the petitioner who was convicted in the name of Kathar Abdul Gafoor.

14 The present case is most unusual and the first of its kind to come before this court. The respondent had memorised "Shaifudin's" particulars well and was even able to provide "Shaifudin's" six-digit postal code to the police verbally. His mitigation plea was also consistent with "Shaifudin's" family circumstances.

15 It is not uncommon for people to try and evade detection or arrest by assuming a false or different identity. However, due to the respondent's convincing and well-executed charade, the respondent's identity was not verified before he was produced in court to face the parking charges against "Shaifudin". Nevertheless, to prevent the recurrence of a case such as the present one, proper measures ought to be taken in future to verify the identity of arrested and/or accused persons.

16 I found it mystifying as to why the respondent maintained his assumed identity and pleaded guilty to the parking offences despite the fact that they were not committed by him; presumably, the respondent chose to do so as the penalty for parking summonses was far less serious than that for being absent from duty without leave.

17 It is trite law that the fact that a petitioner pleaded guilty of his own accord is not a bar to the exercise of the court's revisionary power. The fact that a plea of guilt has been entered means only that the accused loses his right to appeal against his conviction pursuant to s 244 of the CPC, and an application by way of criminal revision is the only means by which the accused can have a wrongful conviction set aside: *Ng Kim Han v PP* ([12], *supra*).

18 In the circumstances of the present case, which led to the petition for revision being brought by the Public Prosecutor, the respondent's plea of guilt clearly did not prevent the court from exercising its powers of revision. Since the respondent did not commit the parking offences, his plea of guilt was invalid.

19 The correct identity of an accused is surely the paramount factor in the soundness of the conviction against him. Therefore, the conviction based on the mistaken identity of the respondent was fundamentally erroneous and amounted to a miscarriage of justice, whether or not the mistake was brought about by the respondent himself.

20 Accordingly, I set aside the respondent's conviction and sentence for the 12 parking-related offences and summonses.

Petition allowed.