Li Huabo *v* Public Prosecutor
[2014] SGHC 133

Case Number : Magistrate's Appeal No 68 of 2013

Decision Date : 10 July 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Chee Meng SC, Melanie Ho, Paul Loy and Ng Shiyang (WongPartnership LLP) for the appellant; Luke Tan, Kelvin Kow and Magdeline Huang (Attorney-General's Chambers) for the respondent; Mahesh Rai (Drew & Napier LLC) as amicus curiae.

Parties : Li Huabo — Public Prosecutor

Criminal Law – Offences – Property – Receiving stolen property

10 July 2014 Judgment Reserved.

Choo Han Teck J:

1 This was an appeal against the decision of the District Judge in *Public Prosecutor v Li Huabo* [2013] SGDC 242 ("*Li*"). After a 16-day trial, of which ten days were spent on the question of the admissibility of the appellant's statements ("the ancillary hearing"), the District Judge convicted the appellant on 2 April 2013 on three charges of dishonestly receiving stolen property under s 411 of the Penal Code (Cap 224, 2008 Rev Ed). The first charge, DAC 2868/2012, was for $73,938.60. The second, DAC 2869/2012, was for $35,009.06. The third, DAC 2870/2012, was for $73,774.94. A sentence of nine months' imprisonment was imposed for DAC 2868/2012 and DAC 2870/2012 each, and 6 months' imprisonment was imposed for DAC 2869/2012. The sentences in DAC 2868/2012 and DAC 2869/2012 were ordered to run consecutively, leading to a total sentence of 15 months' imprisonment.

2 The appellant, Li Huabo, is a Chinese National and a Singaporean Permanent Resident. Since 2006, he had been working as a section director at Poyang County Finance Bureau ("PCFB") in Jiangxi Province, earning about RMB3000 a month. He resigned from his job and moved from China to Singapore with his family in January 2011. In February 2011, a police report was filed by a complainant, who alleged that the appellant was transferring benefits of criminal conduct in Singapore. Investigations commenced in March 2011. 18 statements by the appellant were recorded between 2 March 2011 and 26 January 2012. The appellant had sought legal advice from various firms throughout proceedings. On 7 March 2011, he engaged Wu LLC. On 14 March 2011, he engaged Rodyk & Davidson LLP. At trial, he was represented by RHTLaw Taylor Wessing, and on appeal, WongPartnership LLP.

3 At the court below, the appellant was accused of dishonestly receiving public funds belonging to the government of China. He had allegedly embezzled these funds, and then arranged for these monies to be transferred, through various intermediaries, to him in Singapore (into a United Overseas Bank Ltd ("UOB") High Yield account). The three charges pertained to three instances of monies being transferred into this account. The main contention was whether the monies were indeed embezzled public funds and hence "stolen property" for the purpose of s 411.

4 The appellant's statements to the Commercial Affairs Department ("CAD") contained confessions of embezzlement. In his statement dated 14 November 2011, the appellant stated that he "started to embezzle the funds from PCFB since December 2006". In his statement dated 2 March 2011, he stated that he resigned from PCFB because he "had embezzled around [RMB84m] of public [funds]" with two others. In that same statement, he explained in detail how he embezzled the funds:

> Zhang Qinghua, who is my subordinate at [PCFB] will issue cheques for fictitious payments made to Nong cun xin yong she which I will agree to and he will give the cheque to Xu Detang, bank manager of Nong cun xing yong she to effect payment. From Nong cun xing yong she, the money will again be transferred to Jin Xiu Shi Zhen Gong Cheng Pte Ltd's bank account. From there, the money will be transferred to personal credit cards of me and my various accomplices which will then be transferred again to Chen Mei Yin of Macau, a underground remittance agent, who will then remit the money to Singapore.

In his statements dated 23 and 28 March 2011, he specifically stated (in his answers to questions 90, 112 and 120) that the monies in each of the three charges "represented money [he] embezzled". At trial, the appellant argued that these statements were not made voluntarily and hence should be excluded. The District Judge found, however, after a lengthy hearing, that the statements were voluntarily made.

5 Aside from the appellant's statements, the prosecution relied on a defence exhibit (D1, a typewritten document made on the instruction of the appellant which contained a re-telling of the appellant's confessions to the CAD), and evidence from two prosecution witnesses, namely, one of the lead investigators from China and the owner of the remittance company that facilitated the transfers. At the close of the prosecution's case, the District Judge found that the prosecution had proven that there was some evidence to establish all the elements of each of the three charges of dishonestly receiving stolen property against the appellant.

6 The elements of the offence under s 411(1) of the Penal Code are as follows:

> (a) The offender must have dishonestly received or retained the property (in this case, the monies in the UOB High Yield account);
>
> (b) The offender must have had knowledge, or reason to believe, that the property was stolen; and
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> (c) The property must be "stolen property" within meaning of s 410 of the Penal Code.

It was the prosecution's case that it was only required at law to prove that the predicate offence fell within any one of the categories of offences stated in s 410. The prosecution argued that it was "not necessary to prove conclusively whether the predicate offence was, say, theft, cheating, criminal misappropriation or any one of the other offences specifically mentioned in s 410(1), or that the stolen money resulted from only one of these specified offences". The prosecution also argued that it did not bear the burden of proving the predicate offence beyond a reasonable doubt. For this, counsel relied on a passage in the High Court decision of *Ang Jeanette v PP* [2011] 4 SLR 1 ("*Ang Jeanette*") at [75] which reads:

> … While individual rights have to be respected, nice technical arguments should not be allowed to mist Parliament's salutary objective of enhancing effective international cooperation in combating crime. This can only be done if the architecture of the CDSA is viewed as expressing Parliament's clear intention to facilitate rather than to impede the prosecution of money laundering offences

and their like. The objective of all money laundering transactions is to mask the predicate offences from which the moneys are derived. Often the most difficult aspect for prosecutors is proving that the property concerned had a criminal origin. To insist on the strict proof of all the requirements necessary to establish such predicate offences (bearing in mind the thick fog that ordinarily envelops them, the difficulty in procuring witnesses and the absence of any express statutory direction to do so) would turn the CDSA into a charter for rogues.

I should point out that *Ang Jeanette* dealt with offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"). The prosecution argued that the reasoning there also applied in this case (and in all situations of transnational crime involving predicate offences committed outside the jurisdiction).

7 In his substantive defence, the appellant claimed that all the monies he received in his UOB High Yield account came from legitimate sources. The District Judge did not believe the appellant's version because he was not able to adduce credible evidence to account for any of the alleged legitimate sources. On the contrary (and appreciating that the burden indeed lay on the prosecution to make out its case beyond a reasonable doubt), the District Judge found that the three requirements of s 411 were satisfied for each of the offences. In particular, the third requirement, of the property being stolen property, was satisfied as the District Judge found the monies were embezzled (within meaning of Chinese law) from the PCFB. The equivalent offences in Singapore, which would have been made out had the offences been committed here, are criminal misappropriation under s 403 and theft under s 378 of the Penal Code.

8 On 4 April 2014, the appellant filed a criminal motion seeking to admit further evidence, namely, five online news articles and one joint statement by Zhang Qing Hua (the appellant's subordinate at PCFB) and Huang Gui Sheng (the appellant's brother-in-law). I allowed leave to the appellant to refer to these pieces of evidence in the appeal. On 27 May 2014, the appellant and the prosecution each filed a criminal motion seeking to admit further evidence. The appellant sought to admit a statement of Li Tuan (the appellant's sister) dated 28 April 2014. The prosecution sought to admit six statements from various parties and a clarification from Poyang County People's Procuratorate. I dismissed both of these applications.

9 In the appeal, the appellant's case was "more of the same". The sole point of contention was (as it was at trial) whether the monies, the subject matter of the three charges, constituted stolen property. Much of the appellant's case focused on how his confessions were involuntary. The rest of his case concerned the District Judge's interpretation of, and according "excessive weight" to, certain pieces of evidence. I will consider each of these in turn.

10 First, the appellant argued that the District Judge was wrong to have admitted the appellant's statements. He argued that he had only confessed in his statements so that he would not be deported. Before making the statements, he read the online newspaper articles (which the appellant sought to admit during the criminal motion on 4 April 2014) and was of the view that "the Chinese media had already publicly tried and crucified him". Hence, he "was under no illusion that he would never be able to return to China", and this fear of being returned to China operated materially on his mind when he made his confessions.

11 He claimed that before the official recording of his statement on 2 March 2011, the CAD investigating officer told him:

(a) that someone from Beijing had come to Singapore and was sitting in the room opposite him;

(b) that he faced deportation and would either be executed or sentenced to life imprisonment if he returned to China;

(c) that the Chinese authorities were only interested in the money he had embezzled; and

(d) that he would be let off if he admitted that the monies he brought into Singapore were embezzled monies from China.

After considering the evidence from the enforcement officers (including the CAD investigating officer and the two certified interpreters involved in the recording process), the District Judge came to the finding that these allegations were false, and that the CAD investigating officer had said none of these things (*Li* at [23]). I find no reason to disturb the finding of the District Judge, who had the benefit of assessing the witnesses' oral testimonies.

12 In addition to this discrete finding, the District Judge found that the appellant's evidence was "fraught with inconsistencies and lacked the cogency and coherence which one would expect from a witness of truth" (*Li* at [24]). The appellant had engaged counsel as early as 7 March 2011 yet did not raise the matter (of the alleged threats) with his lawyers (*Li* at [25]). His reason was that "his ongoing fear [had] been positively reinforced by the lawyers". To substantiate this rather serious allegation, he simply quoted his former lawyer as having told him, "[w]hen you see CAD again on 18th, stick to story". I found this unconvincing.

13 The District Judge held that the appellant's argument on involuntariness was a "convenient afterthought" (*Li* at [28]) and, given the totality of the evidence before me, I agree. The prosecution argued that the appellant's unequivocal confessions in his CAD statements were sufficient to show that the conviction was safe. Although I would have reservations relying on the appellant's confessions alone, given the totality of the evidence and how the confessions are consistent both internally (across the various statements) and externally (with independent oral and documentary evidence), I am inclined to agree that the conviction was safe. Nevertheless, I will consider the appellant's other points.

14 The appellant's second main argument was that the District Judge accorded excessive weight – or misinterpreted – certain pieces of evidence.

(a) First, he argued that the District Judge misinterpreted D1. D1 was a note created by the appellant as his own record of what transpired at the recording of his initial statements. The District Judge found that D1 corroborated his confessions in his statements (*Li* at [45]). The appellant argued that this was a "misinterpretation", primarily because he was compelled to have made those confessions all along, and that D1 was merely a record of what transpired. The appellant argued that D1, instead, should have been relied on as evidence that he was threatened by the investigating officer. Based on the finding that his statements were voluntary, this argument must fail.

(b) Second, he argued that the "Chinese evidence" relied on by the prosecution was inconsistent and unreliable. This was because, according to him, they were not translated in Singapore, the police statements were based on hearsay evidence and were not made voluntarily, and the evidence in its totality was replete with inconsistencies. He relied on the joint statement (which he sought to admit during the criminal motion on 4 April 2014) by his subordinate at PCFB and brother-in-law from whom statements were taken in the course of investigations. In the joint statement, the two parties stated that they "[realised their] mistakes [and] feel that it is necessary to tell the truth". The appellant's subordinate averred that his

earlier statement – that the appellant had participated in the misappropriation of RMB94m – was untrue. Both of them affirmed that they had misappropriated the funds from PCFB with a third party, and the three of them conspired to frame the appellant. I found that this joint statement was not credible for three reasons.

(i) First, the recording of the joint statement was arranged by the appellant's sister, who was also the wife of Huang Gui Sheng, one of the parties making the statement. Although the fact of their relationships alone did not prove that the statement was incredible, it showed that there were insufficient procedural safeguards in the recording of the statement.

(ii) Second, there was no evidence that the typewritten words in the statement were indeed the words of either party making the statement.

(iii) Third, it was not explained why they recorded a joint statement, rather than two separate and independent statements from each party. As the prosecution pointed out, this raised the risk of "cross contamination" of evidence.

Leaving aside the appellant's joint statement, I confront the issue of the Chinese evidence. One of the difficulties in dealing with transnational crimes lies in gathering credible and reliable evidence. In this case, the prosecution did not simply place statements recorded by the Chinese authorities before the court. It had called one of the Chinese investigators as a witness at trial. It also called the owner of the remittance company involved. The District Judge heard their evidence, compared it to the appellant's evidence, and came to the finding that the former was more credible, most notably in establishing that the predicate offence was made out (*Li* at [46] – [52]). I am of the view he was justified in doing so.

(c) Third, the appellant argued that the District Judge was wrong to rely on the evidence of Ong Ah Sim ("Ong"), the owner of the remittance company. Ong's evidence was that the appellant had confessed to him that he (the appellant) had been embezzling money in China, and that the embezzled money had been transferred to Singapore using his (Ong's) company. The District Judge found that "[t]here would have been absolutely no reason for Ong to conjure this up if it was not true" (*Li* at [46]). True to task, the appellant sought to posit a few such "reasons" before me. He argued that Ong fabricated the appellant's confession to him in order to avoid his own prosecution (and was hence an unreliable witness). This was an odd proposition. On the prosecution's case, Ong had reported the matter to the Monetary Authority of Singapore the day after the appellant's confession to him. If he did not report the matter, despite having known of the embezzlement and his involvement in remitting the funds to Singapore, he may well have been complicit in the appellant's crime. His motives behind choosing to report the matter – whether altruistic or self-serving – should not be held against him (or the credibility of his evidence). Further, Ong's evidence of the appellant's confessions to him was corroborated by the appellant's confessions in his CAD statements as well as the investigations of the Chinese authorities. Again, I accept the District Judge's handling of the evidence.

15 I am satisfied that that the District Judge dealt with the evidence in an even-handed and considered manner. Most of this appeal rested on the facts alone (and how evidence was dealt with), and as such, I see no reason to disturb his finding. Nevertheless, I turn to two interesting legal questions that have arisen. Although neither proved determinative of the verdict in this appeal, I will consider them for completeness.

16 First, what should the burden for proving the predicate offence (in a s 411 charge) be? The

District Judge, in citing *Ang Jeanette* (which dealt with the CDSA) seemed to take the view that this burden was lower than that of "beyond a reasonable doubt". The *amicus curiae*, Mr Mahesh Rai, argued that the District Judge was correct in doing so. He submitted that the purposive approach should be applied in interpreting s 411, pursuant to s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act"). On this approach, reliance on *Ang Jeanette* was justified because the legislative purposes behind both the provisions (s 44(1)(*a*) of the CDSA in *Ang Jeanette*, and s 411 of the Penal Code in this case) were similar. The purpose of the CDSA (or at least the amendments to s 47) was to allow the authorities to "prosecute anyone who is only involved in the receipt and onward transmission of property derived from serious offences, as well as confiscate proceeds of crime in the possession of a third party" (*Singapore Parliamentary Debates, Official Report* (19 September 2007) vol 83 at cols 1969–1970 (Associate Professor Ho Peng Kee, Senior Minister of State for Home Affairs)). The purpose of s 411 was to punish the dishonest receipt of the proceeds of crimes such as theft.

17 Mr Rai also considered Indian and English authorities on this point. In *Ajendranath Shah v State of Madhya Pradesh* AIR 1964 SC 170, the court found that circumstantial evidence leading to the conclusion that the goods recovered were stolen goods was sufficient to establish that the accused had assisted in the concealment of stolen property under s 414 of the Indian Penal Code (Act 45 of 1860). The position was similar in England with regard to the offence of handling. In *R v Fuschillo* [1940] 2 All ER 489, there was no actual proof of theft or of ownership of the goods. Counsel submitted that the Court of Criminal Appeal was nevertheless satisfied that circumstantial evidence provided sufficient proof that the accused had received stolen property.

18 Neither party seemed to contest Mr Rai's arguments. I am, however, doubtful that the Indian and English authorities stand for the proposition that a burden below reasonable doubt is warranted. After all, circumstantial evidence could still suffice to prove a case beyond reasonable doubt. In any case, I found that the predicate offence here was indeed established beyond a reasonable doubt. I agree with the District Judge's finding that the appellant's attempts to show that the monies came from legitimate sources were implausible (*Li* at [48] – [51]). As such, I leave this question open.

19 The second question that arose was whether, simply put, a thief could be charged with, and convicted of, dishonestly receiving the money he had stolen. Mr Rai's reply was in three parts:

(a) Where a thief merely receives or retains the stolen property in the same transaction as the original theft, he should not be convicted of dishonestly receiving stolen property.

(b) Where a thief receives or retains the stolen property from another after the act of stealing the property, he can be convicted of the offence of dishonest receipt of stolen property.

(c) Where a thief has been found in recent possession of stolen property, he can only be convicted of theft or dishonest receipt of stolen property, but not both.

20 In substantiating his argument for the first situation described, Mr Rai focused on the phrase "receives or retains" in s 411, a requisite portion of the physical element of the offence. He argued it would be impossible for one to receive property from oneself. "Retains", he argued, was meant to deal with cases where the individual did not know the property was stolen at first, but later found out and nevertheless chose to hold on to the property. On a plain reading of s 411, I am of the view this must be right for cases where the person satisfies the offence of theft (or any of the other predicate offences recognised in s 410).

21 The second and third situations postulated by Mr Rai resemble the facts of this case. The thief

stole the property, sent it away (or had hidden it), and subsequently received it. Following on from the reasoning in the first situation, the thief cannot be convicted of both theft and dishonest receipt when he steals (and first receives) the property. The principle that he should not be punished twice for the same offence is clear from s 40 of the Interpretation Act. Section 40 reads:

> **Provisions as to offences under 2 or more laws**
>
> 40. Where any act or omission constitutes an offence under 2 or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of those written laws but shall not be liable to be punished twice for the same offence.

22 If a person stole property in Singapore, passed it to an accomplice, and later received it from the accomplice, he should only convicted of either theft or dishonest receipt – not both. This case, however, was different. I find there was no injustice in convicting and sentencing the appellant (having found that he satisfied the elements of s 411) because he was neither convicted nor punished in China. Accordingly, I dismiss this appeal.