

Tay Aik Long Andrew v Public Prosecutor
[2004] SGHC 14

Case Number : MA 186/2003
Decision Date : 29 January 2004
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Appellant in person; Amarjit Singh (Deputy Public Prosecutor) for respondent
Parties : Tay Aik Long Andrew — Public Prosecutor

Criminal Law – Offences – Property – Criminal breach of trust – Appellant was a temporary employee at the Central Provident Fund Board who dishonestly misappropriated \$50 with which the complainant had intended to credit his wife's Central Provident Fund account so that she would be eligible to receive Economic Restructuring Shares

Evidence – Principles – Findings of fact by trial judge

29 January 2004

Yong Pung How CJ:

The charge

2 The charge against the appellant read as follows:

You, Tay Aik Long Andrew, Male/28 years, NRIC no S7507780-G, are charged that you, on 28th November 2002 at about 12.00 noon, at Central Provident Fund Board (CPF Tampines), located at Tampines Central, Singapore, being entrusted with cash of S\$50.00 belonging to one Leong Yew Cheong, which was meant to top up the CPF account of the said Leong Yew Cheong's wife to be eligible for the Economic Restructuring Shares (ERS), did dishonestly misappropriate the said cash of S\$50.00 and you have thereby committed criminal breach of trust, an offence punishable under section 406 of the Penal Code, Chapter 224.

Background facts

3 The Economic Restructuring Shares ("ERS") scheme was implemented by the Singapore government to offset increases to the goods and services tax. The first of three lots of ERS was distributed to eligible Singapore citizens in early 2003. Under the terms of the ERS scheme, only Singapore citizens who had contributed at least \$50 to their CPF accounts between 1 January and 31 December 2002 qualified for the first lot of ERS.

4 The appellant was employed on a temporary and part-time basis, through an employment agency, at the Tampines Central branch of the Central Provident Fund Board ("CPF Tampines"). He commenced work at CPF Tampines in October 2002 and was stationed at a temporary counter ("the ERS counter") which had been set up to handle the ERS allocation exercise. The appellant's scope of work involved assisting CPF members with ERS-related enquiries. Specifically, he was tasked with assisting CPF members who wished to make a voluntary contribution to their CPF accounts with the completion of Voluntary Contribution Forms.

5 The complainant was one Leong Yew Cheong ("Mr Leong"). Mr Leong's wife ("Mrs Leong") was unemployed and would therefore only be eligible for the first lot of ERS if a voluntary contribution of \$50 was made to her account on or before 31 December 2002.

Prosecution's version of the facts

6 The main prosecution witness was Mr Leong. He testified that he had gone to CPF Tampines on 28 November 2002 to make a voluntary contribution to Mrs Leong's CPF account.

7 Mr Leong went to the ERS counter where he was attended to by the appellant. Mr Leong handed the appellant a letter which the CPF Board had sent to Mrs Leong to remind her to make a voluntary contribution. The appellant asked Mr Leong whether he would be making the payment by cash. Mr Leong placed Mrs Leong's identity card and a \$50 note on the counter. The appellant placed the identity card on top of a pile of pink forms and placed the \$50 note on top of another pile of forms on the counter. The appellant then referred to Mrs Leong's identity card and filled in a pink Voluntary Contribution Form ("the pink form") with Mrs Leong's personal particulars. The appellant signed his initials, "AT", on the form and returned the pink form and the identity card, but not the \$50 note, to Mr Leong.

8 Mr Leong was under the impression that the pink form was an acknowledgement receipt for the payment and asked the appellant, "Is that all?". The appellant replied, "That's it. You may go". Mr Leong then left the CPF Tampines premises.

9 In December 2002, Mrs Leong discovered that no ERS had been credited into her CPF account. Mr Leong then made an inquiry *via* the CPF PAL-Phone system. He found that Mrs Leong's CPF account had been inactive for the past six months and that the \$50 contribution had not been credited to her account.

10 On 31 December 2002, Mr and Mrs Leong went to CPF Tampines and learnt from a CPF Board employee, one Lee Kah Leong ("Lee"), that the \$50 had not been credited into Mrs Leong's CPF account. Lee explained that the pink form was not a receipt and that the proper procedure for payment into CPF accounts was to make payment at the cashier counter, where a printed receipt would be issued to the person making the payment.

11 The cashier counter which Lee was referring to was actually an interview room a short distance behind the ERS counter which had been set up to process voluntary contributions for ERS. An A3-size "cashier" sign was pasted on the door of the interview room.

12 Lee advised Mr and Mrs Leong that they had until the end of the day to make the voluntary contribution. Mr Leong immediately made a contribution of \$50 into Mrs Leong's account and she was eventually allotted the ERS.

13 On the same day, Mr Leong made a police report. A week later, in an identification parade, Mr Leong picked out the appellant as the person who had attended to him on 28 November 2002.

The Defence

14 The appellant did not deny attending to Mr Leong on 28 November 2002. The appellant acknowledged that he had completed the pink form on behalf of Mr Leong and confirmed that he had written his initials on the form.

15 The appellant also admitted that, as a temporary employee, he had had no authority to accept payments from CPF members, and that the proper procedure was for payments to be processed at the cashier's counter.

16 The crux of the appellant's defence was that Mr Leong had not given him any money and that Mr Leong had probably gone to the ERS counter to make enquiries only. The appellant's position was that Mr Leong had given false evidence in court to avoid paying the \$50. The appellant further suggested that Mr Leong did not even have \$50 on him when he went to CPF Tampines on 28 November 2002.

The decision below

17 The district judge rejected the appellant's defence and accepted Mr Leong's evidence. She found that Mr Leong had entrusted the appellant with \$50 to pay into Mrs Leong's CPF account and that the appellant had not returned this sum to Mr Leong. The district judge further held that by telling Mr Leong that he could leave, the appellant had caused Mr Leong to believe that the \$50 would be credited into Mrs Leong's account and that the pink form was an official receipt.

18 The district judge therefore convicted the appellant and sentenced him to a fine of \$2,000.

The appeal

19 At the hearing before me, the appellant maintained that he was innocent and that he had not taken the money from Mr Leong. The crux of the appellant's appeal was that the Prosecution's version of the facts should not be believed because Mr Leong's evidence was not credible or plausible. In support of this contention, the appellant submitted that Mr Leong's evidence should not be believed as it was unlikely that Mr Leong had assumed that the pink form was an official receipt. The appellant also argued that Mr Leong should have noticed the cashier counter and ought to have realised that payment had to be made at that counter, instead of the ERS counter.

20 I shall now deal with the appellant's arguments, turning first to those relating to the plausibility of Mr Leong's version of the facts.

Whether Mr Leong had believed that the pink form was an official receipt for the payment of the sum of \$50

21 The appellant submitted that it was highly unlikely that Mr Leong genuinely believed that the pink form constituted an official receipt since no reasonable person would have taken this view. The appellant drew the court's attention to the fact that Mr Leong had referred to the pink form as a "form" in his evidence. The appellant argued that it was inconceivable that Mr Leong, a literate man, could have mistaken the pink form for a receipt.

22 I was of the view that it was entirely possible that Mr Leong might have believed that the pink form was an official receipt. The fact that Mr Leong referred to the pink form as a "form" in his evidence is irrelevant and not necessarily inconsistent with the Prosecution's version of the facts. This is because Mr Leong may have been under the impression that the CPF Board intended to issue the pink form as a receipt. Indeed, Mr Leong may have referred to the pink form as a "form" since it was labelled "Form VC7".

23 In any event, Mr Leong's assertion that he had believed the pink form was a receipt is believable as it would have been reasonable for him to believe that he could trust an employee at CPF Tampines to advise him on the proper procedure for payment. I was of the view that any doubts which Mr Leong may have been entertaining in his mind at the time would have been put to rest by the appellant's representation, "That's it, you may go". Based on this representation, Mr Leong would reasonably have assumed that the pink form was a receipt.

24 I also took into account the fact that Mr Leong had had no experience with transactions of this nature, as this was the first time he had made a voluntary contribution under the ERS scheme. I was of the view that it would have been unreasonable to expect Mr Leong to have known that he should have demanded a proper printed receipt. I was thus unpersuaded that there was any basis for disturbing the district judge's findings that Mr Leong had believed that the pink form constituted a receipt and that the \$50 would be properly credited into Mrs Leong's account.

Whether Mr Leong had noticed the cashier counter

25 The appellant argued that there was clear and unambiguous signage at CPF Tampines which indicated that payment was to be made at the cashier counter. The appellant also submitted that it would have been impossible for Mr Leong to have missed the cashier counter as the queue at the ERS counter led to the cashier counter. It was the appellant's case that Mr Leong could not possibly have believed that the pink form was an official receipt as he would have noticed the cashier counter at which payment was to be made.

26 I was unconvinced by the appellant's submissions. The appellant himself gave evidence at trial that approximately 20% of the CPF members whom he had attended to at the ERS counter had mistakenly given him money for voluntary contributions. I also noted that the cashier counter was makeshift in nature and consisted of a room with a table pushed in front of it. The sign was not very large and it is possible that Mr Leong may not have seen it. I therefore declined to disturb the district judge's finding that Mr Leong did not see or know that there was a separate cashier counter for payment.

Whether the district judge erred in accepting the Prosecution's evidence over the Defence's evidence

27 In addition to the appellant's attacks on the plausibility of Mr Leong's version of the facts, the appellant also submitted that the district judge had erred in finding that Mr Leong was a reliable witness and in accepting his evidence over that of the defence. Specifically, the appellant sought to challenge the district judge's findings that Mr Leong had entrusted the appellant with \$50 to pay into Mrs Leong's CPF account and that the appellant had not returned the \$50 to Mr Leong.

28 It is well-settled law that an appellate court will generally not interfere with a trial judge's findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges' findings and their reasons for these findings: *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719.

29 In *Syed Jafaralsadeg bin Abdul Kadir v PP* [1998] 3 SLR 788 at [56]-[57], I held that:

It is settled law that, where there is an appeal based on fact, the court should be slow to overturn the trial judge's finding of fact especially when the trial judge has made an assessment of the credibility and veracity of the witness, unless it can be shown that his assessment was plainly wrong or against the weight of the evidence before him. ... [T]here is an extremely heavy burden cast onto the appellant to displace the trial judge's findings of fact. The trial judge's findings will not be overturned unless it can be shown that the trial judge was horribly wrong in drawing his conclusions.

30 In this regard, I noted that the district judge had made specific observations relating to Mr Leong's demeanour in her grounds of decision. The district judge noted that Mr Leong had been

“fair and forthcoming” and that he did not embellish his evidence to bolster the Prosecution’s case.

31 In marked contrast, the district judge was of the view that the appellant was “unreliable and untruthful, not forthright with a tendency to ramble, and avoided answering questions in cross-examination”.

32 I was of the opinion that there was nothing in the evidence before the court to suggest that the district judge’s assessment of Mr Leong’s credibility was plainly wrong. In fact, Mr Leong’s version of the events of 31 December 2002 was corroborated by Lee, who testified that Mr Leong had told him that he had gone to CPF Tampines on 28 November 2002 to make a voluntary contribution of \$50 to Mrs Leong’s CPF account. Lee’s recollection of what Mr Leong had told him on 31 December 2002 matched Mr Leong’s evidence in court, and there is no substantial discrepancy between the two witnesses’ accounts.

33 I also agreed with the district judge’s assessment that Mr Leong had had no motive to lie since he did not know the appellant. In the words of the district judge, Mr Leong truly had “nothing to gain, but much to lose” by making a false police report and by giving false evidence in court against the appellant.

34 In preferring Mr Leong’s version of the facts over that of the appellant, the district judge relied on Mr Leong’s demeanour and the internal consistency in the content of his evidence. I was of the view that the district judge’s finding that Mr Leong was a reliable witness, made after she had carefully scrutinised Mr Leong’s testimony and demeanour in court, was not against the weight of the evidence and should not be disturbed. It could not be said that the district judge’s findings were plainly wrong or horribly wrong. Mr Leong’s evidence was entirely believable and the appellant’s attempts to discredit Mr Leong’s version of the facts as incredible and implausible left me thoroughly unpersuaded. In the result, I dismissed the appellant’s appeal against his conviction.

Appeal dismissed.