

Harry Young Lai - - - - - Appellant

v.

Benjamin Cho Fook Lun and another - - - - Respondents

FROM

THE WEST INDIAN COURT OF APPEAL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
23RD MAY, 1955

Present at the Hearing :

LORD OAKSEY
LORD RADCLIFFE
LORD COHEN

[*Delivered by* LORD OAKSEY]

This is an Appeal by special leave from a judgment of the West Indian Court of Appeal (Mathieu-Perez, C.J., Trinidad and Tobago ; Collymore, C.J., Barbados ; and Bell, C.J., British Guiana) dated the 30th day of January, 1953, whereby the decision of the Supreme Court of Trinidad (Duke J.) dismissing with costs the petition of the first respondent for the dissolution of his marriage with the second respondent on the ground of her adultery with the appellant was set aside and the first respondent was granted a decree nisi on the ground of the said adultery and the appellant was ordered to pay the costs of both respondents in both Courts.

The now first respondent was the petitioner in the case and the appellant in the West Indian Court of Appeal (hereinafter called the Court of Appeal), the now second respondent was the respondent in both Courts, and the now appellant was correspondingly the co-respondent and respondent. To avoid confusion the parties will be called herein petitioner, respondent and co-respondent respectively.

The petitioner's case at the trial was that on his return to his home in San Fernando, Trinidad on 6th June, 1949, at about 9.50 p.m. he found the door locked on the inside and after climbing in through a window he found on looking through a small hatch in a partition the respondent committing adultery with the co-respondent on a table and bench and that on his calling out the co-respondent ran away and escaped through another door. His story was supported by his two clerks Young Ping and Young Poy who said they saw the respondent and a man whom the petitioner told them was the co-respondent and by a former servant of the petitioners named Howard who said he had seen the co-respondent come out of the house get in his car and drive away. The petitioner gave no evidence as to his wife's adulterous association with the co-respondent on any other occasion although he alleged it in his petition. A plan of the premises drawn by the petitioner was put in evidence but it is incomplete and has not been explained.

The respondent's case was that there was no truth in the petitioner's story: that he had said on various occasions that he wanted to get rid of her and marry another woman: that when he came home on the night

in question he asked whom she had been speaking to on the telephone and then after some violent abuse went off to the police station to make a report. She then telephoned to a friend of the family Mrs. Yhap who came at once and they went together to the police station.

The co-respondent's case was that he was not in the petitioner's house at all on the night in question and both he and his wife swore that he was at his own home some miles off from before 9 p.m. onwards.

In these circumstances it is apparent that the main question for determination was as Mr. Justice Duke said whether he was satisfied on the evidence that the respondent had committed adultery with the co-respondent or with any other man on the night in question and after a careful review of the evidence the learned judge came to the conclusion that he was not so satisfied.

The learned judge said in the course of his review of the evidence that he was satisfied the door was not locked on the inside and that the petitioner did not climb in through the window. The Court of Appeal seized upon these two findings of the learned judge and found that there was no justification for either of them and that therefore the matter was at large and they proceeded to criticise the respondent's case among other grounds because she did not call the police to prove the nature of the statement made to them by the petitioner on the night in question.

In their Lordships' opinion this criticism is without any foundation whatever.

The respondent's case was that the petitioner's case was concocted throughout and there was therefore no reason to think he might not have told the same story to the police, or that he was not lying when he said the door was locked and he had climbed in through the window.

As has been frequently pointed out by their Lordships' Board, and by the House of Lords, a judge, who like Mr. Justice Duke has seen the witnesses is in a much better position to decide who is telling the truth than any Court of Appeal.

Mr. Justice Duke not only saw the witnesses, he also took down their evidence apparently in longhand and carefully reviewed it in his judgment.

Whilst making the fullest allowance for the local knowledge of the Court of Appeal their Lordships after reading Mr. Justice Duke's judgment and all the evidence are satisfied that no Court of Appeal would be justified in disturbing the judgment of Mr. Justice Duke.

Mr. Stranger-Jones who appeared for the petitioner before their Lordships' Board very properly conceded that unless he could satisfy the Board that the case was at large as the Court of Appeal said it was he could not argue that there was any good ground for reversing the trial judge. Apparently the Court of Appeal thought that there was no satisfactory ground for the trial judge's finding that the door was not locked or that the petitioner did not enter by a window. But the view which the learned judge took was that the petitioner's whole story was a concoction and having seen the witnesses and heard the respondent's account which he was just as much entitled to believe or disbelieve as he was the evidence for the petitioner he was in their Lordships' opinion entitled to find as he did find that the door was not locked and that the petitioner did not enter by the window.

Their Lordships do not understand the Court of Appeal's criticism of the co-respondent's *alibi* on the ground that it was not co-extensive with and does not cover the entire material time. The petitioner said he arrived home at 9.50 p.m. and the co-respondent's wife said that the co-respondent was with her miles away from before 9 o'clock until she went to bed after ten and that he came to bed about half an hour later having been reading a book.

Their Lordships also consider that due consideration was not given by the Court of Appeal to the evidence of Mrs. Yhap who said that the petitioner did not mention the co-respondent to her on the night in question

or say that he had seen a man in the house but did say that his wife was talking to a man and that he asked her who was the man she was talking to.

For these reasons their Lordships have humbly advised Her Majesty that the appeal ought to be allowed. The petitioner must pay the costs throughout.

In the Privy Council

HARRY YOUNG LAI

v.

BENJAMIN CHO FOOK LUN AND
ANOTHER

DELIVERED BY
LORD OAKSEY

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