

SELECTED UNREPORTED DECISIONS

P.P. v. Chua George

Magistrate's Court No. 7 in DAC 4480 of 1980

The Facts

The accused, Chua George was charged with bigamy under section 494 of the Penal Code.¹ Sometime in 1964, the accused went through a Chinese customary marriage with Tan Ah Hiang. It was proved by means of a marriage certificate that at that time, he was already married to one Alice Palmer.

The Prosecution submitted two propositions: firstly, that section 106 of the Evidence Act² relieved them from proving Alice Palmer alive on the date of the alleged second marriage; and secondly, that on the construction of section 4³ and section 6⁴ of the Women's Charter, proof of a valid, second, customary marriage was not required for a conviction of bigamy under Section 494 of the Penal Code.¹

¹ Cap. 103, Singapore Statutes, Rev. Ed. (1970).

494. Whoever having a husband or wife living, in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

² Cap. 5, Singapore Statutes, Rev. Ed. (1970).

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

³ Cap. 47, Singapore Statute, Rev. Ed. (1970).

4-(1) Every person who on the commencement of this Act is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable, during (he continuance of such marriage or marriages of contracting a valid marriage under any law, religion, custom or usage with any person other than such spouse or spouses.

(2) Every person who on the commencement of this Act is lawfully married under any law, religion, custom or usage to one or more spouses and who subsequently ceases to be married to such spouse or all such spouses, shall, if he thereafter marries again, be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage.

(3) Every person who on the commencement of this Act is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage.

(4) Nothing in this section shall affect the operation of Part III in relation to marriages solemnized in Singapore after the commencement of this Act.

⁴ Cap. 47, Singapore Statutes, Rev. Ed. (1970).

6. Any person lawfully married under any law, religion, custom or usage who during the continuance of such marriage purports to contract a marriage in Singapore or elsewhere under any law, religion, custom or usage in contravention of section 4 shall be deemed to commit the offence of marrying again during the lifetime of the husband or wife, as the case may be, within the meaning of section 494 of the Penal Code.

Hence, the prosecution did not try to prove Alice Palmer alive on the date of the alleged second marriage, and furthermore, they agreed that on the facts, the accused had only gone through a “form” of marriage ceremony, conceding that the ceremony, itself, did not constitute a valid Chinese customary marriage.

On the evidence, there were invitation cards to and photographs of a dinner held for guests on both sides. Tan Ah Hiang and the accused served tea to the former’s parents and offered prayers to ancestral tablets, but Tan Ah Hiang, alone, prayed to her ancestors and gods. Tan Ah Hiang also stated that at the time of the ceremony, she was one month pregnant; and the child was born eight months later. She also stated that she and the accused had cohabited for more than ten years after the ceremony, a fact affirmed by her father. Nevertheless, except for a visit from the accused’s mother on the wedding day, Tan Ah Hiang did not go to the accused’s parents house after the wedding ceremony and was never admitted into his family as daughter-in-law.

An expert on Chinese customary marriages stated that on the evidence, no valid Chinese customary marriage had been contracted, adding that in a valid Chinese customary marriage, the guardians to both parties must give their consent.

The Decision

On the first submission the learned judge stated, “the Prosecution could not rely on Section 106 of the Evidence Act to dispense with proving ... that on the date of the alleged marriage ... Alice Palmer was living.”

With regard to the second submission, the learned judge held that section 4 and section 6 of the Women’s Charter required proof of a second marriage “recognised by law, religion, custom or usage” for a conviction under Section 494 of the Penal Code. He quoted counsel for the defence and held that the word “purports” in section 6 was used to qualify the phrase “to contract” because section 4(1) of the Women’s Charter rendered a person incapable of contracting a valid marriage under any law, religion, custom or usage.

It is noted, however, that the second issue and not the first formed the basis of the decision. It is probable that the learned judge decided to deal with questions of substantive law relating to bigamy raised in the second issue before going on to decide questions of evidence raised in the first.

Since the Prosecution had conceded that no valid Chinese customary marriage had been contracted, whilst it was held that section 4 and section 6 of the Women’s Charter required proof of one, the accused was acquitted, and the first issue relating to section 106 of the Evidence Act was not dealt with thereafter.

Commentary:

Although the decision on the issues was correct, an important point was missed in this case — following local law, the accused had

contracted a valid customary marriage, but because prosecution had conceded that no customary marriage had been contracted, this point was not argued in court. The prosecution's concession was based on the assumption that all the requirements of Chinese custom had to be complied with before a valid marriage could be contracted. So following expert evidence, these requirements were not complied with in this case and it was held that no valid marriage had been contracted. However, a long line of cases has held such an assumption unjustified.

In 1893, the case of *Re Lao Leong An*⁵ held that a valid Chinese customary marriage could only be contracted if all the proper customary requisites were complied with, a stand not dissimilar to the one in *P.P. v. Chua George*. However, this rule of law was soon changed in *Choo Ang Chee v. Neo Chan Neo*⁶ where it was held that proof of the performance of a ceremony was not essential to the validity of a Chinese customary marriage (despite a lengthy discussion on Chinese rites and customs in that case). In the later case of *Ngai Lau Shia v. Low Chee Neo*,⁷ the court held that long cohabitation and repute were sufficient to raise the presumption of marriage. This stand was affirmed in the Privy Council decision of *Cheang Thye Pin v. Tan Ah Loy*⁸ soon after. There, it was held that "a ceremony though usual, was not essential to constitute a secondary wife." The facts that the union between the man and woman was of a permanent nature, and recognition of the woman as his secondary wife only give rise to an inference of marriage.

The final stage in the development of the law on Chinese customary marriages came in the Privy Council decision of *Khoo Hooi Leong v. Khoo Chong Yeok*.⁹ In deciding a man's rights to inheritance, the court had to decide on the status of his mother. In concluding that she was not a secondary wife (as no valid Chinese customary marriage had been contracted) it was stated "there was no evidence that the parties intended their union to be permanent in its nature. "Since then, the sole test of the validity of Chinese customary marriages has been the mutual intention of the parties to form a permanent union as husband and secondary wife. This test has been applied in the subsequent cases of *Re Lee Kim Chye*,¹⁰ *Re Lee Siew Kow*,¹¹ *Re Yeow Kian Kee*¹² and most recently, *Re Lee Gee Chong*.¹³

At one time, the cases of *Re Yeo Seng Whatt*¹⁴ and *Re Lee Choon Guan*¹⁵ suggested that apart from proof of a mutual intention to form

⁵ *Re Lao Leong An* (1893) 1 S.S.L.R. 1.

⁶ *Choo Ang Chee v. Neo Chan Neo* (1908) 12 S.S.L.R. 120.

⁷ *Ngai Lau Shia v. Low Chee Neo* (1915) 14 S.S.L.R. 35.

⁸ *Cheang Thye Pin v. Tan Ah Lay* (1920) A.C. 369.

⁹ *Khoo Hooi Leong v. Khoo Chong Yeok* (1930) A.C. 346.

¹⁰ *Re Lee Kim Chye (dec'd.)* (1936) 5 M.L.J. 60.

¹¹ *Re Lee Siew Kow (dec'd.)* (1952) 18 M.L.J. 184.

¹² *Re Yeow Kian Kee (dec'd.) Er Gek Cheng v. Ho Ying Seng* (1949) 15 M.L.J. 171.

¹³ *Re Lee Gee Chong (dec'd.) Tay Geok Yap & Ors. v. Tan Lian Chew* (1965) 31 M.L.J. 102.

¹⁴ *Re Yeo Seng Whatt (dec'd.) Chua Ip Neo v. Tan Keh Neo & Anor.* (1949) 15 M.L.J. 241.

¹⁵ *Re Lee Choon Guan (dec'd.) Lew Ah Lui v. Choa Eng Wan & Ors.* (1935) 4 M.L.J. 78.

a permanent union, proof of long cohabitation and repute of marriage were also required. Nevertheless, this proposition was soon rejected by the Federal Court in *Re Lee Gee Chong*¹³ in 1965. Instead the Federal Court affirmed the law as stated in *Re Yeow Kian Kee*¹² so that “the law of Singapore merely requires a consensual marriage, that is, an agreement to form a relationship that comes within the English definition of marriage... [so that]... proof of such intention is evidentiary only.”

In *P.P. v. Chua George*, the facts seem to evidence a mutual intention between the parties to form a permanent union. These facts include the wedding dinner, the serving of tea to Tan Ah Hiang’s parents, the prayers offered to ancestral tablets, the ten year period of cohabitation and the birth of the child. Hence it is submitted that, on the evidence, there was proof of a mutual intention between the accused and Tan Ah Hiang to form a permanent union as husband and wife. Since case law has held mutual intention to be the only requirement for a valid customary marriage, on the facts, such a marriage had been contracted.

Conclusion

Since it is submitted that a Chinese customary marriage had been contracted in the case of *P.P. v. Chua George*, it would appear that the prosecution’s second submission, based on the interpretation of the phrase “purports to contract” in section 6 of the Women’s Charter,⁴ was unnecessary and the concession that no customary marriage had been contracted was most damaging to their case. Instead, the prosecution could have chosen to argue that proof of a valid customary marriage was necessary for a conviction under section 494 of the Penal Code¹ and relying on case law and the particular facts of *P.P. v. Chua George*, that such a marriage had been contracted. How the case would have been decided subsequently is speculative and not within the scope of this case-note.

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