Chua Tian Bok Timothy v Public Prosecutor
[2004] SGHC 208

Case Number : Cr Rev 19/2004

Decision Date : 16 September 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) for petitioner; Benjamin Yim Geok Choon (Deputy Public Prosecutor) for respondent

Parties : Chua Tian Bok Timothy — Public Prosecutor

Criminal Procedure and Sentencing – Compounding of offences – Voluntarily causing hurt in road rage incident – Victim consenting to composition after seeking independent legal advice – Whether judge's discretion to refuse composition correctly exercised – Considerations of public interest – Section 199 Criminal Procedure Code (Cap 68, 1985 Rev Ed), s 323 Penal Code (Cap 224, 1985 Rev Ed)

16 September 2004

Yong Pung How CJ:

1 This was a petition for the revision of a magistrate's decision in withholding his consent to the composition of an offence under s 323 of the Penal Code (Cap 224, 1985 Rev Ed).

The facts

2 The petitioner, Timothy Chua Tian Bok, was charged under s 323 of the Penal Code with voluntarily causing hurt to one Toh Tong Lee ("the victim") by punching him in the face. This incident occurred after a road accident where the petitioner had come out of his car and assaulted the victim. The petitioner was a passenger in the car. As a consequence of the alleged assault, the victim suffered three sets of injuries – a bruise on the right cheek, a superficial scratch below the bruise near the right side of the mouth and multiple elongated bruises on the left and right aspects of the front neck.

3 An offence under s 323 of the Penal Code is compoundable under s 199 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC").

4 Section 199(1) of the CPC states:

> The offences punishable under the Penal Code shown in the sixth column of Schedule A as being compoundable may be compounded by the person mentioned in that column provided that when an arrest has been effected or an application has been made for the issue of a warrant of arrest or summons the consent of a Magistrate or, if the offence is not triable by a Magistrate's Court, of a District Judge, shall first be obtained.

5 The victim agreed to accept an *ex gratia* payment of $7,500 from the petitioner and confirmed his decision through independent counsel. The petitioner thereby applied for composition pursuant to s 199 of the CPC.

6 Magistrate Gilbert Low exercised his discretion to withhold consent to the composition

because he felt that to do otherwise would be tantamount to diluting the court's strict policy against road rage incidents and allowing a person in the petitioner's position to buy himself out of his predicament. The magistrate observed that this strict policy had been extended to passengers of motor vehicles who resorted to violence against other road users, as well as first-time offenders. He also noted that, as a result of the alleged assault, the victim sustained multiple injuries.

Whether the magistrate exercised his discretion correctly

7 The main issue I had to decide was whether the magistrate erred in withholding his consent to the composition. It is undisputed that an offence under s 323 of the Penal Code is compoundable under s 199 of the CPC. As to the discretion of a judge to grant or withhold consent to composition, I have expressed my view in *PP v Norzian bin Bintat* [1995] 3 SLR 462 at 474, [52]:

> [T]hat discretion is a judicial discretion and therefore one which must be exercised not only in accordance with the rules of reason and justice but also in accordance with the provisions of the law.

8 Further, in two of my recent decisions in *Kee Leong Bee v PP* [1999] 3 SLR 190 at [21] and *Ho Yean Theng Jill v PP* [2004] 1 SLR 254 at [40], I have said that:

> Where an order involves a discretion of the court, the appellate court will not interfere with the exercise of the discretion unless it was exercised on demonstrably wrong principles or without any grounds, or if the judge had ignored some relevant provision of law ...

9 There are several general guidelines laid down in both foreign and local case law that may assist the court in the exercise of its discretion. I discussed these principles at length in *Norzian bin Bintat* (at 474–475, [54] and [56]):

> [I]n a case where the public interest is involved, it is proper to withhold consent to composition. …
>
> [I]n the absence of aggravating factors, the courts should lean towards the granting of consent in cases where the public interest does not figure strongly.

10 Also, in exercising this discretion, the court should take into account factors including the interests of the parties, relationship between the parties, possibility of the parties living in peace and harmony if composition is allowed, the stage at which composition is sought, circumstances under which the offence is alleged to have been committed and the nature of the alleged offence.

11 After considering the written and oral submissions of the petitioner and the Prosecution, I was of the view that the magistrate exercised his discretion correctly in withholding his consent to composition. I now give my reasons.

12 I found that the magistrate did not err when he withheld his consent to compound the offence because he was conscious of the strong public interest against allowing composition in road rage incidents. Our courts have consistently emphasised the seriousness of such incidents of assault on motorists on the roads and have always adopted a strict policy against such incidents, often imposing a custodial sentence where the offence is voluntarily causing hurt under s 323 of the Penal Code and caning where the offence is the more serious one of voluntarily causing grievous hurt under s 325 of the Penal Code (*Ong Hwee Leong v PP* [1992] 1 SLR 794; *PP v Lee Seck Hing*

[1992] 2 SLR 745). I made it clear in *Ong Hwee Leong v PP* and *PP v Lee Seck Hing* that there can be no place on our roads for road bullies. In *Ong Hwee Leong v PP*, I observed at 795–796, [7] that:

> Such minor incidents occur on our roads many times every day. No doubt they are frustrating to those involved. But if, many times every day on our public roads, everyone were to lose his temper and react to the degree the appellant did, all semblance of order would quickly dissipate and only the most violent would prevail. The perceptible trend in this direction deservedly incurs the courts' displeasure and must be determinedly discouraged.

13 In the later case of *PP v Lee Seck Hing*, I further commented at 748, [11] and [12] that:

> Violent crimes are one of the curses of our society against which it is the primary duty of the courts to protect the public. This is especially so on a small island like Singapore, where citizens live in close proximity to each other: our daily lives are unavoidably intertwined to some extent, making the preservation of order and harmony all the more important.
>
> … The court must also be mindful of the need to deter anyone else who would resort with impunity to violence on the roads, especially in view of the deplorable increase in such incidents. Our roads are progressively becoming more crowded each month, as more and more cars add to the traffic, and motorists must simply learn to live with one another. There can be no place on our roads for road bullies. Such persons must be made aware of the severe detestation the law expresses in regard to such crimes. They must not be allowed to go away thinking that they can beat up somebody else on the slightest provocation for the price of a few thousand dollars.

14 Counsel for the petitioner argued in his written submissions that such a strict policy against road rage incidents only manifested in sentencing and did not translate into a veto against composition. This view was clearly misguided. At trial, counsel for the petitioner did not persist with this argument and I will only deal with it briefly.

15 I found it only logical that in an offence where our courts have expressed a strict policy in sentencing, involving imprisonment as the appropriate punishment, the public interest would also extend to withholding consent to composition. I have previously held that consent should be withheld in outrage of modesty cases involving an abuse of a position of trust over a protracted period (*PP v Mohamed Nasir bin Mohamed Sali* [1999] 4 SLR 83) as well as in maid abuse cases (*Kee Leong Bee v PP*; *Ho Yean Theng Jill v PP*). The rationale for withholding consent to composition in maid abuse cases is to protect domestic maids who are more vulnerable to abuse by employers and their immediate family members than any other categories of employees. Similarly, we have to protect motorists on our roads. The strict policy adopted by the courts in road rage incidents is to deter anyone who would resort with impunity to violence on the roads, especially in view of the recent deplorable increase in such incidents. To allow composition of such offences, notwithstanding the strong public interest element involved, would be to run contrary to a steady body of case law from this court. This is a question of public policy which we have always enforced. Thus, I found that the magistrate was correct in deciding that there is an inherent public policy against allowing consent to composition in road rage incidents.

16 I also agreed with the magistrate's observation that the strict policy against road rage incidents extends to passengers of motor vehicles who resort to violence against other road users, as well as first-time offenders. Counsel for the petitioner argued in his written submissions that this was

not the usual situation of what is colloquially known as "road rage" since the petitioner was not the driver of the car. This was a superfluous distinction. This offence arose from a dispute between the petitioner and the victim after a road accident and was clearly a road rage incident. Moreover, the public policy against road rage incidents where the driver is normally the aggressor applies with equal force in cases where a passenger is the aggressor. Regardless of whether the aggressor is the driver or a passenger, the public interest to be protected is the same – the prevention of sporadic outbreaks of violence on our roads so as to protect our motorists and road users. Thus, the strict policy against road rage incidents includes cases where the aggressor is a passenger.

17 Counsel for the petitioner conceded this point at trial. He, however, tried to distinguish the present case from typical road rage cases where parties flash their headlights and try to cut into each other's lanes. He argued that in this case, there was a near fatal accident, which had caused trauma and shock to the petitioner, who therefore reacted in a most unexpected way. The crux of the submission was that, since each case should be decided on its own facts, the petitioner should be given a chance to compound the offence, notwithstanding the public interest element involved in such road rage incidents.

18 While I agreed that each case should be decided on its own facts, I could not agree that this case should be treated differently from other road rage cases and that the public interest element be overlooked. The petitioner was not entitled to go around attacking others and reacting in such a violent manner merely because he claimed that he was traumatised after a near fatal accident. Besides, as the Prosecution highlighted to this court, it could be pure speculation that the accident was near fatal as there was no report of any injuries sustained by the petitioner or his wife. In fact, the only injuries were those suffered by the victim. I found that any shock and trauma experienced by the petitioner after the accident should not extend to the infliction of multiple injuries on the victim. The fact that an accident occurred was no excuse.

19 Counsel for the petitioner had a further argument, that this court should not disregard the victim's informed decision to exercise a statutory right to compound an offence. In response, the Prosecution relied on the cases of *Kee Leong Bee v PP* and *Wong Sin Yee v PP* [2001] 3 SLR 197 to submit that, in cases where the public interest demands that composition be disallowed, this can override even the consent of the victim to compound an offence. I agreed with the Prosecution's submissions. The mere fact that the victim agreed to composition after seeking independent legal advice was insufficient to warrant the court's consent to composition as the court is not to act as a mere rubber stamp in exercising its discretion (*PP v Norzian bin Bintat*). Instead, where the public interest figures strongly, as in the present case, it would be proper for this court to withhold its consent.

20 The petitioner, being the chairman of a new taxi company, was a man in a responsible position. He should have set an example for other road users instead of attempting to buy the victim out for a princely sum. To allow the petitioner to compound the offence would send a wrong signal to the public that it is acceptable to assault people with no regard for the consequences, so long as they have the means to pay off their victims.

Conclusion

21 The vital element in deciding whether to grant or withhold consent to composition is to determine whether there is a public interest that figures strongly. In this case, it was clearly a road rage incident where the public interest in protecting road users figured compellingly. Thus, notwithstanding the peripheral issues raised by the petitioner, there was an inherent public interest in

withholding consent to composition.

22 I dismissed the petition for revision and remitted the case to the lower court for trial.