Public Prosecutor *v* Ali bin Bakar and another appeal
[2012] SGHC 83

Case Number	: Magistrate's Appeal No 11 of 2012 (DAC No 50185 of 2011, DAC No 50461 of 2011, DAC No 487 of 2012 and DAC No 2173 of 2012) and Magistrate's Appeal No 12 of 2012 (DAC No 50186 of 2011, DAC No 50440 of 2011, DAC No 492 of 2012 and DAC No 2174 of 2012)
Decision Date	: 17 April 2012
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Hay Hung Chun and Qiu Huixiang (Attorney-General's Chambers) for the appellant; The respondents in person.
Parties	: Public Prosecutor — Ali bin Bakar

Criminal Procedure and Sentencing

17 April 2012

Choo Han Teck J:

1 These were appeals by the Public Prosecutor against the sentences handed down by the court below against the two respondents. The respondents are 30-year old twin brothers who pleaded guilty to four charges each of theft in dwelling with common intention under s 380 read with s 34 of the Penal Code (Cap 224, Rev Ed 2008) ("Penal Code"). The charges arose out of a series of break-ins that the respondents committed together in 2011. The first charge concerned theft of $700 in cash and 100 boxes of cigarettes valued at $1,000. The second and third charges involved theft of $450 and $200 in cash respectively, and the fourth concerned theft of $200 and cigarettes valued at $1,500. The respondents also each had four other charges of theft that were taken into consideration for the purposes of sentencing.

2 The trial judge imposed a term of three months' imprisonment for each of the four proceeded charges. She ordered that two of the sentences be served consecutively and the other two be served concurrently with the first two, making a total of six months' imprisonment for each respondent. The sentence of imprisonment was ordered to take effect from the date of remand, namely, 26 December 2011. The Public Prosecutor appealed against the sentences on the ground that the individual sentence for each charge as well as the total sentence were manifestly inadequate.

3 Mr Hay, the Deputy Public Prosecutor ("DPP") submitted that the judge below ("the Judge") was wrong to hold that $4,193, being the total loss suffered by the victims, was "not a substantial amount". He also submitted that the Judge did not give sufficient weight to the fact that the stolen property could not be recovered and no restitution was made. The learned DPP argued that the Judge did not give sufficient weight to the fact that "the offences were pre-meditated and formed a series of offences". He also submitted that the Judge failed to give sufficient consideration to the antecedents of the respondents. The learned DPP thus submitted that the sentences were manifestly inadequate.

4 In the grounds of decision, the Judge noted that the respondents had antecedents, but she had "not been able to surface other cases which [we]re on all fours with the facts of the present

case". She noted that most offences prosecuted under s 380 of the Penal Code "relate[d] to shoplifting committed in supermarkets and shops". The respondents on the other hand seemed to prefer stalls in hawker centres as targets. In my view, there is no significant difference in the distinction. Section 380 of the Penal Code expressly applies to buildings or premises where property is kept and little significance could be made of the difference between cigarettes and money stolen from a shop and a hawker stall where breaking-in was committed. The Judge was of the view that even if there were cases "with similar factual matrix, each case has to be dealt with on its own facts". She cited Yong CJ in *Soong Hee Sin v PP* [2001] 1 SLR(R) 475, in which he held at [12] that:

> In my view, the regime of sentencing is a matter of law which involves a hotchpotch of such varied and manifold factors that no two cases can ever be completely identical. While past cases are no doubt helpful and sometimes serve as critical guidelines for the sentencing court, that is also all that they are, *ie* mere guidelines only. … At the end of the day, every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances...

I agree entirely with the opinion above and would only add that for that reason, the appellate court would not interfere with a sentence passed by the court of first instance unless the sentence was manifestly excessive or manifestly inadequate.

5 Generally, when a first instance judge has expressly considered a factor for the purposes of sentencing, it would not be lightly disturbed because it is never easy to say whether the consideration of that factor that went on in the mind of the judge was adequate or not or that she had given some other factor more weight than it deserved. Thus, whether $4,193 was a substantial amount is not a crucial point in this appeal because the amount or value of the subject matter of theft can be $1 to $1 million or more. The weight to be attributed to the value of the subject matter of theft was, in this case, within the Judge's discretion. She considered that, in the circumstances, the amount was not substantial. It is neither sufficiently crucial nor easy to quarrel with that view. What is important is that the sentencing court has considered all the relevant factors and assessed the overall circumstances of the case in determining what the punishment should be, and all the circumstances must necessarily connect to the offender. This seemed to be the case here save for one factor that, in my view, ought to have been given greater weight, namely, the antecedents of the respondents.

6 Hence, the sentences in this case would have been unremarkable but for the fact that both respondents had previous convictions for theft, and had in 2009 been convicted of three charges of theft in dwelling with common intention. They were sentenced to six months' imprisonment for each charge. In two of the three charges in 2009, the court had ordered the six months' imprisonment term for each charge to be served consecutively. Thus both respondents had served up to 12 months' imprisonment for theft in dwelling with common intention previously. If not for this, I would not have increased the sentence imposed in this appeal. Courts may incline towards leniency for first offenders, but if the offender is not deterred by the sentence he cannot be given a "frequent flyer" discount. In crime, higher frequency must generally attract harsher punishment unless there are good reasons to the contrary. There were none in this case.

7 For the reasons above, the appeals were allowed and I increased the terms of imprisonment from three months to seven months for each charge and for two of them to be served consecutively, making a total of 14 months' imprisonment for each respondent.