Tan Ngin Hai v Public Prosecutor
[2001] SGHC 122

Case Number : MA 325/2000

Decision Date : 01 June 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Thomas Tham Kok Leong and Gopalakrishnan Dinagaran (Thomas Tham & Co) for the appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent

Parties : Tan Ngin Hai — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Persistent offenders – Theft of $1.10 – Long history of criminal behaviour – Whether sentence of eight years' preventive detention manifestly excessive

: This was an appeal on sentence only.

The appellant claimed trial in the court below to a charge of theft under s 379 of the Penal Code (Cap 224) and one of fraudulent possession of a car key under s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Ed). He was acquitted of the latter charge but convicted of the former and sentenced to eight years` preventive detention. At the end of the hearing before me, I dismissed his appeal against sentence and now give my reasons.

Brief facts

In the early morning of 10 April 2000, patrolling police officers Sgt Muhammad Fazli bin Ismail and Cpl Ow Gim Peng received a message that a male Chinese had been spotted opening vehicle doors in the car park of Block 106 Aljunied Crescent. The two policemen responded promptly to the message and headed for the scene immediately.

Upon arrival, the officers found the appellant standing next to the opened front passenger door of a white-coloured van. They approached the appellant and asked him if he owned the van or otherwise worked for the company which owned it. The appellant replied in the negative to both questions. The officers then searched the appellant and found some coins and notes on him, which moneys he told the officers were his. He was also found to be holding a vehicle key.

Subsequently, the owner of the van was contacted and arrived at the scene. Upon inspecting the inside of the van, the owner told the police officers that some coins which he had placed in a compartment below the radio were missing. When shown the coins found on the appellant, the owner of the van identified a one-dollar coin and a ten-cent coin as belonging to him. The appellant was subsequently arrested and charged for theft of a sum of $1.10 for which he was convicted in the court below and sentenced to eight years` preventive detention.

The appeal

Before me, counsel for the appellant submitted that the sentence was manifestly excessive for a loot of only $1.10 and contended that the district judge had erred in failing to adequately consider the fact that the appellant suffered from depressive illness and personality disorder, and had spent a large part of his life in a mental institution. Counsel urged that because of this, his client could not be

considered an incorrigible criminal. Moreover, the appellant`s antecedents, although acknowledged to run into a long list, nevertheless comprised mainly drug-related offences which did not involve any element of dishonesty or violence.

With respect, I could not agree with counsel that the sentence was manifestly excessive. As the prosecution rightly pointed out, the appellant`s criminal record spoke volumes about the type of man that the court was dealing with. The appellant was clearly deeply entrenched in the criminal way of life, having started out on his life of crime from as early as when he was 16 years old. Now 44 years of age and an alarming 28 years of a career in crime later, the appellant had successfully garnered an extensive series of convictions to his credit. His colourful array of previous convictions included that for possession of offensive weapons, robbery with hurt, voluntarily causing hurt to a public servant to deter him from discharging his duty, illegal gaming, affray, theft, and possession and consumption of controlled drugs. It was not correct therefore to say that the appellant`s earlier offences did not involve any element of dishonesty or violence. In any event, I was of the view that the proper approach was to consider the totality of the appellant`s previous convictions and there was no need in this case to separate the drug offences from the other offences. It was clear to me from a perusal of the appellant`s entire history of antecedents that he was a man who had a strong inclination and propensity towards criminal activity. That this was the case can be gleaned from the fact that he had been sentenced to a total of at least 15 years` imprisonment and 18 strokes of the cane before committing the offence in the present case. In addition, he had also been in and out of drug rehabilitation centres and was otherwise placed repeatedly under drug supervision for his substance abuse problems. Despite all this, the appellant plainly failed to learn his lesson and remained unrepentant. He continued to re-offend time after time, demonstrating a clear disregard for authority and the law, and even possessed the audacity to commit the most recent offence barely one and a half years after being last released from prison for a previous conviction for a similar offence of theft. Obviously, the appellant had proven himself to be a recalcitrant criminal who has hitherto been incapable of mending his ways, despite having chalked up some 15 previous convictions. In the result, I had no doubt that the appellant was a most suitable candidate for preventive detention.

In **PP v Perumal s/o Suppiah** [2000] 3 SLR 308 , I held that the test for determining if preventive detention ought to be imposed is whether the offender had proved by his history of criminal behaviour to be a menace to society which necessitated his incarceration for a substantial period of time. In this regard, the paramount consideration for the court is the protection and safety of the public and the community at large. In my view, there is no rule of law which states that protection of the public necessarily refers to protecting them only from physical bodily harm. Offences against property, such as theft, and that against the peace, such as affray, or that against society in general, such as the consumption and possession of drugs, are all equally offensive to the community who deserves to be well protected from the repeat perpetrators of such crimes. As such, the imposition of preventive detention ought not to be restricted only to persons with a history of violent behaviour as exhibited through the commission of violent crimes. Instead, the real test is whether or not the degree of propensity towards any type of criminal activity at all is such that the offender ought to be taken out of circulation altogether in order that he be not afforded even the slightest opportunity to give sway to his criminal tendencies again. In my view, that threshold was clearly more than amply met in the present case.

In the recent case of **Soong Hee Sin v PP** [2001] 2 SLR 253 , I made the comment that a recalcitrant offender who repeatedly commits the same offence over and over again in spite of his numerous previous convictions should be sentenced to the maximum punishment prescribed by law even if the amounts or items stolen on each occasion were minuscule. Indeed, it would be difficult to find another statement which applies more aptly to the case at hand. Here, it must be remembered that it was not the isolated act of pilfering a meagre sum of $1.10, which taken on its own may

appear trivial or even petty, which warranted the severe punishment. Rather, it was that act, seen together with and in the larger context of the appellant`s earlier criminal history which necessitated a protracted term of incarceration. That the amount involved here was minuscule ought not therefore detract from the crux of the matter, which was that the appellant was without doubt an undeterred habitual offender and incorrigible recidivist.

Finally, with regard to the appellant`s alleged history of mental illness, I found that to be of no avail to the defence whatsoever. If anything, it fortified the view that the best option in the circumstances was to keep the appellant in prison for a longer period of time, where he could then be given proper and sustained treatment for his condition. It appeared after all that any previous attempts on his part to obtain treatment of his own volition had obviously not been met with any significant amount of success, given that he had continued to revert to his unlawful ways unendingly. In any case, I was of the view that the fact of his mental condition was irrelevant in determining the appropriate sentence to be given out in the present case, since the appellant had not in his defence pleaded insanity or otherwise sought to deny or disprove mens rea for the offence in question.

Conclusion

For the above reasons, I was not persuaded that the sentence of eight years` preventive detention imposed by the district judge ought to be disturbed. In reaching my decision, I also considered the pre-sentencing report submitted by the prosecution, in which it was unequivocally recommended that the appellant was mentally and physically suitable for a sentence of preventive detention. It was further stated in the report that the appellant tended to downplay the seriousness of his conduct and appeared to exhibit a lack of insight into his offending behaviour. In my opinion, this was a clear demonstration of the lack of remorse on the appellant`s part, and reinforced my view that the only appropriate sentence for one so irreversibly accustomed to a life of crime was a term of preventive detention. In the result, I dismissed the appeal accordingly.

Outcome:

Appeal dismissed.