# Public Prosecutor v Lim Teck Choon
# [2009] SGHC 3

**Case Number** : MA 200/2008

**Decision Date** : 06 January 2009

**Tribunal/Court** : High Court

**Coram** : V K Rajah JA

**Counsel Name(s)** : Lee Jwee Nguan (Attorney-General's Chambers) for the appellant; Letchamanan Devadason (Steven Lee, Dason & Khoo) and Mahtani Bhagwandas (Harpal Mahtani Partnership) for the respondent

**Parties** : Public Prosecutor — Lim Teck Choon

*Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Attempting to bribe police officer – Whether facts had been exceptional to warrant departure from benchmark custodial sentence – Section 6(b) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed)*

6 January 2009

V K Rajah JA:

1 The Prosecution appeals against the District Judge ("the DJ")'s decision in *PP v Lim Teck Choon* [2008] SGDC 322 ("GD") to fine Lim Teck Choon ("the respondent") $15,000 under s 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") on the ground that the sentence imposed is manifestly inadequate. It submits that a custodial sentence should be imposed instead of a mere fine. As the material facts are not in dispute, I shall adopt in these grounds the summary of facts tendered by the Prosecution.

**Factual Background**

2 On 7 July 2008, the respondent claimed trial to the s 6(*b*) PCA charge. On 8 July 2008, after the Prosecution had closed its case, in the midst of his cross-examination, the respondent elected to plead guilty and was convicted of the charge.

3 For ease of reference, the re-amended charge, which the respondent pleaded guilty to, is reproduced below:

> You
>
> **LIM TECK CHOON**
> **M/56, FIN NO. F1565418W**
> **MALAYSIAN**
>
> are charged that you, on the 31st day of October 2007, along Woodlands Road, Singapore, did corruptly offer a gratification in the form of a favour, to wit, by uttering the following words in mandarin, "*Next time you come to Malaysia, I will take care of you, still got benefits*", to an agent, namely, one Peh Wenxiang, a Sergeant in the employ of the Singapore Police Force and attached to the Traffic Police Department, as an inducement for the said Pah Wenxiang to forebear to do an act in relation to his principal affairs, to wit, to refrain from taking police action against you for committing a traffic offence of dangerous driving punishable under Section 64(1)

of the Road Traffic Act, Chapter 276, and you have thereby committed an offence punishable under section 6(b) of the Prevention of Corruption Act, Chapter 241.

[emphasis in original]

4 On pleading guilty to the charge, the respondent accepted the version of facts given by Sergeant Pah Wenxiang ("Sgt Pah") in evidence-in-chief as the facts of the case.

5 The respondent was sentenced, on 24 July 2008, to pay a fine of $15,000, in default of which he was to serve two months' imprisonment.

6. The fine has been paid.

7 Sgt Pah is a police officer attached to the Traffic Police Department. On 31 October 2007, sometime after 5pm, Sgt Pah was on motorcycle patrol along Woodlands Road. He noticed a white car, driven by the respondent, parked along the roadside at the opposite side of the road. The white car made an illegal U-turn, and immediately proceeded to travel against the flow of traffic for 50m before entering a petrol kiosk. This dangerous driving nearly resulted in a collision between the white car and a motorcycle. Sgt Pah immediately proceeded to the petrol kiosk and requested the respondent to step out of the car. This was at about 5.27pm.

8 The respondent was duly notified by Sgt Pah that he had committed the offence of dangerous driving. In response the respondent acknowledged that he had driven against the flow of traffic and explained that he had done this to avoid a traffic jam. This explanation did not impress Sgt Pah who then placed the respondent under arrest for dangerous driving and administered a Notice of Intention of Prosecution. He also explained to the respondent that the offence carried with it a fine or term of imprisonment, as well as a likely driving licence disqualification. The respondent pleaded for leniency but Sgt Pah firmly informed him that he would proceed with the matter. Soon after, Sgt Pah called the Operations Room and his Team Leader informing them that he had effected an arrest and requested for an escort vehicle to bring the respondent to the police station.

9 While waiting for the escort vehicle, Sgt Pah tried to diffuse the tension by adopting a more friendly air. They both conversed casually. The respondent informed Sgt Pah that he owned a few plantations in Malaysia, and that he knew some high ranking officials. Later in the conversation, rather abruptly, the respondent exclaimed in Mandarin, "Why want to do this? Be enemy? You should let me go. We can be friends. Next time you come to Malaysia I would take care of you. Still got good things"[note: 1]. At the same time, the respondent made a gesture with his hands. Sgt Pah immediately inferred from this that the respondent was offering him money to let him off. He admonished the respondent and stated that it was an offence to bribe a police officer. The respondent acknowledged this and did not proceed any further with the offer. After this, there were no further communications between them until the escort vehicle arrived at about 6.25pm.

10 Sgt Pah thereafter reported to the Operations Room and his Team Leader that a corrupt offer had been made to him. In due course, the occurrence of this incident was brought to the attention of the Corrupt Practices Investigation Bureau for further investigation. The present charge was levelled against the respondent upon the conclusion of that investigation.

11 The respondent has no criminal antecedents. He pleaded guilty to and was convicted of one count of dangerous driving under s 64(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) on 10 July 2008, vide District Arrest Case No 14257 of 2008 (dangerous driving offence referred to in the present case). He was sentenced to pay a fine of $2,500 and disqualified from driving for six months.

**Sentencing philosophy in relation to corruption offences**

12 Corruption and greed can never be completely eradicated. Nevertheless, it can be said with quiet confidence that Singapore is one of those few countries which have successfully combated and managed the incidence of corruption, thus reducing this vice to an impoverished state (see *inter alia The Development of Singapore Law, Historical and Socio-Legal Perspectives*, Andrew Phang Boon Leong (Butterworths, 1990) at p 238). The price for this salubrious environment is constant vigilance and the rigorous and relentless upholding of exacting ethical standards pervasively. An uncompromising stance is taken against all corruption offenders regardless of the standing of the parties involved. The investigation and prosecution of such offences is (and has to be) unfailingly prompt and thorough. Historically, Singapore courts have also consistently taken a firm, no-nonsense approach in the sentencing of such genre of offences. For example, in *Meeran bin Mydin v PP* [1998] 2 SLR 522, it was observed at [18] (citing the lower court's decision):

> *Acts of corruption must be effectively and decisively dealt with. Otherwise the very foundation of our country will be seriously undermined.* [Emphasis in original]

13 In the seminal decision of *Chua Tiong Tiong v PP* [2001] 3 SLR 425 at [17]–[19], Yong Pung How CJ noted:

> 17 I accepted the grave issue of public interest at stake in the present case. Eradicating corruption in our society is of primary concern, and has been so for many years. This concern becomes all the more urgent where public servants are involved, whose very core duties are to ensure the smooth administration and functioning of this country. Dependent as we are upon the confidence in those running the administration, any loss of such confidence through corruption becomes dangerous to its existence and inevitably leads to the corrosion of those forces, in the present case the police force, which sustain democratic institutions. I highlighted this in *Meeran bin Mydin v PP* (supra), approving the words of the trial judge in that case (at para 18):
>
> Acts of corruption must be effectively and decisively dealt with. Otherwise the very foundation of our country will be seriously undermined.
>
> 18 In 1960, this very same position was emphasised by the then Minister for Home Affairs when the PCA was presented before Parliament for its second reading:
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> The Prevention of Corruption Bill is in keeping with the new Government determination to stamp out bribery and corruption in the country, especially in the public service. The Government is deeply conscious that a Government cannot survive, no matter how good its aims and intentions are, if corruption exists within its ranks and its public service on which it depends to provide the efficient and effective administrative machinery to translate its policies into action. [emphasis is added]
>
> 19 Over the years, whilst we have had considerable success in keeping mainstream corruption in check, there are still instances of corruption which seep through our system. On my part, I have sought to deter corruption through harsher punishment for lawbreakers in this area, but success has not been total, and the judiciary still hears a steady stream of such cases. In many instances, the cases involve reprehensible public servants, contrary to their responsibility of acting as instruments preserving the efficiency, peace and stability of this nation. This not only erodes the confidence of the general public in their duty of service, but also reflects poorly on those public servants who stick by the law. Specifically for police officers, their role as guardians of our streets, our crime-fighters, to police our society becomes a ridicule.

14 The primary sentencing consideration in all corruption cases is undoubtedly that of general deterrence. In addition, the sentences also encapsulate the appropriate degree of opprobrium that such offences carry in Singapore. It is incontrovertible that corruption offences, if left unchecked, can quickly erode and eventually entirely undo the present work ethic of public servants as well as the institutional integrity of the enforcement agencies; matters that we now all take for granted as being part and parcel of the Singapore work environment. In *PP v Law Aik Meng* [2007] 2 SLR 814, I observed at [18] and [24]:

> 18 It has been a recurrent theme in our sentencing jurisprudence that "the dominant choice of sentence in advancing the public interest is the deterrent sentence" (see *Sentencing Practice in the Subordinate Courts* (Butterworths, 2nd Ed, 2003) ("*Sentencing Practice*") at p 73). Yong CJ observed with his customary clarity and acuity in *PP v Tan Fook Sum* [1999] 2 SLR 523 ("*Tan Fook Sum*") at 533, [18]:
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> > The foremost significance of the role of deterrence, both specific and general, in crime control in recent years, not least because of the established correlation between the sentences imposed by the courts and crime rates, need hardly be mentioned.
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> …
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> 24 General deterrence aims to educate and deter other like-minded members of the general public by making an example of a particular offender: *Meeran bin Mydin v PP* [1998] 2 SLR 522 at 525, [9] ("*Meeran bin Mydin*"). Premeditated offences aside, there are many other situations where general deterrence assumes significance and relevance. These may relate to the type and/or circumstances of a particular offence. Some examples of the types of offences, which warrant general deterrence are:
>
> > (a) *Offences against or relating to public institutions, such as the courts, the police and the civil service*: In *Meeran bin Mydin*, the appellant bribed an immigration officer at Woodlands Checkpoint by giving him money to procure social visit passes to enable various Indonesian nationals to enter Singapore via the checkpoint. A deterrent sentence was imposed by the court. Further, in *Mohammed Zairi bin Mohamad Mohtar v PP* [2002] 1 SLR 344 ("*Mohammed Zairi*"), the appellants were prison guards who were found to have abused the prisoners under their watch; Yong CJ was of the view that a clear message had to be sent that prison brutality would not be condoned under any circumstances.

15 Needless to say, the length of the custodial sentence (or any other penalties) should always be tied to the peculiar circumstances of each offence. In particular, the nature of the favour or advantage sought as well as the inducement offered would be pertinent. Yong Pung How CJ aptly declared in *Xia Qin Lai v PP* [1999] 4 SLR 343 at [29]:

> In short, the principle of deterrence (especially general deterrence) dictated that the length of the custodial sentence awarded had to be a not insubstantial one, in order to drive home the message to other like-minded persons that such offences will not be tolerated, but not so much as to be unjust in the circumstances of the case.

**Analysis of the sentencing decision**

16 The DJ rightly acknowledged that the normal sentencing approach for similar offences dictated the imposition of a custodial sentence in this matter. Nevertheless, she felt that a more lenient sentence was justified because of what she viewed as the unusual confluence of a number of salient

mitigating circumstances. They were as follows:

(a) the respondent had immediately admitted to the offence of dangerous driving when he was warned of the intended prosecution;

(b) the respondent only made the corrupt offer in the course of a casual conversation started by the police officer, and did not persist with this once the bribe had been rejected. This in the view of the learned DJ placed the offence "close to or at the cusp of the custody threshold" (GD at [19]);

(c) the respondent has made "vast and valuable contributions" to his hometown in Malaysia for the last 25 years (GD at [20]); and

(d) the respondent was genuinely remorseful.

She also referred to the decision of *Lu Xiaobin v PP* [2006] SGDC 66 ("*Lu Xiaobin v PP*") as an authority lending support to her view that a custodial sentence need not be invariably imposed in respect of all s 6(*b*) PCA offences involving police officers.

17 The learned DJ additionally observed that it was Sgt Pah who initiated the casual conversation. In her view:

> [i]t is thus significant that [the respondent] who had been conducting himself very properly after his arrest, only made the offer in the course of a casual conversation which was started by the sergeant. I think it is reasonable to say that the accused would in all probability not have said what he said had Sgt Pah not started the casual conversation. … Further, it is also significant that once Sgt Pah informed [the respondent] that it was an offence to offer a bribe, [the respondent] acknowledged instantly by saying 'ok' and did not persist.

In her view these circumstances placed the offence "close to or at the cusp of the custody threshold" (GD at [19]).

18 The Prosecution forcefully contends that the DJ has erred in her approach. My attention was drawn to *PP v Chew Suang Heng* [2001] 1 SLR 692 ("*Chew Suang Heng*") at [12]. There the High Court emphatically stated that offering a bribe to a police officer without solicitation warranted the imposition of a custodial sentence. The aggravating and mitigating circumstances in these cases only go towards the length of the custodial sentence. Further, custodial sentences are only departed from where the facts are "exceptional".

19 After appraising the relevant cases cited in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) pp 856–859, it appears to me that there is indeed a settled sentencing practice for corruption offences of this nature. Ordinarily, the courts will impose a custodial sentence for such corruption offences. I agree with Yong Pung How CJ's dicta in *Chew Suang Heng* at [12] that for corruption offences under the PCA which involve government servants, the norm is a custodial sentence and where there is a voluntary attempt to bribe a police officer without solicitation, there ought to be no doubt that a custodial sentence is warranted. The usual benchmark of a custodial sentence is only departed from where the facts are exceptional. There are two reasons for this. First, the significance of deterrence as a sentencing consideration is particularly high for this genre of offences. It is crucial that the present ethical fabric and the integrity of the police force be scrupulously maintained. The public (Singaporeans and foreigners alike) must understand that offences of this nature, if allowed to take root, will quickly become endemic and be extremely difficult

to, once again, bring under control, if not eradicate. It is not unimportant that such offences also undermine the proper administration of justice. Second, the fact that such offences usually involve the giving of some consideration in exchange for the receipt of an advantage or benefit usually militates against the meting out of just a fine. Simply imposing a fine, particularly on the well heeled, may not adequately deter those contemplating such a course of conduct in future.

20 It is beyond dispute that Sgt Pah did not solicit a bribe in the present case. Nor can it be even faintly suggested that his casual conversation was in any manner redolent of conduct inviting an offer of a bribe. Indeed, Sgt Pah testified that the bribe came about "suddenly". Rightly, the respondent's counsel accepts this. As such, I do not see how one can take issue with Sgt Pah's conduct or employ it as a footing for taking a more charitable view of the respondent's ill-conceived attempt to suborn him. Sgt Pah merely had a casual conversation with the respondent while they were waiting for the police escort vehicle to arrive. It is not correct to conclude that merely because he had initiated a casual conversation or indeed conversed casually, the culpability or corrupt intent of the respondent was somehow inexplicably diminished.

21 The fact that the respondent did not persist with the offer is certainly not a relevant mitigating consideration. Indeed, on the other hand, had he persisted in his improper conduct this would have been an aggravating consideration in the sentencing equation. All said and done, it appears to me that the respondent had quite cynically assessed the situation and taken his measure of Sgt Pah before making his offer. He had mistakenly thought that once his guard was down, Sgt Pah might be vulnerable to the proposed inducement. Further, the fact that the inducement was made in the context of other statements, implying that the respondent was well connected, reinforces my view that the respondent is undeserving of any special sympathy.

22 Unfortunately, the DJ has indeed erred in attaching undue weight to the fact that Sgt Pah began the casual conversation, and that the respondent did not persist in continuing the offer after Sgt Pah refused the bribe. These factors certainly do not even begin to amount to anything exceptional, and in no way place the case "close to or at the cusp of the custody threshold". Indeed, a less charitable no-nonsense view ought to have been taken of the circumstances as it is clear that the respondent adopted a calculated and rather calibrated approach in formulating and offering the inducement. The DJ was also incorrect in concluding that the respondent's positive good character and genuine remorse militated against a custodial sentence (GD at [20]). Evidence of good character and genuine remorse do not amount to exceptional circumstances which warrant a departure from the benchmark custodial sentence. Instead, they should be treated as mitigating circumstances which determine the length of the custodial sentence, applying *Chew Suang Heng*.

23 The decision in *Lu Xiaobin v PP* is not of any particular assistance. In that case, Lu Xiaobin ("Lu"), a 25-year-old Chinese national was arrested for unlawful possession of another person's identity card, as well as for possession of contraband cigarettes. At the material time, he was a student. While he was being escorted to the police station, in the police car, he offered the escorting police officers $200 to release him. He was then warned that it was an offence to bribe police officers in Singapore. Later, in the police station, he queried, "*How much you want to let me go?*"[emphasis added in original] (at [5]). He was charged for corruptly offering $200 to the police officers under s 6(*b*) of the PCA. Having pleaded guilty, Lu was sentenced to three months' imprisonment.

24 The High Court, on appeal, varied the sentence to a fine of $4,000 and in default thereof, 40 days' imprisonment. No written grounds were issued. Incidentally, the same District Judge had carriage of that matter and has perhaps viewed the appellate decision as signalling a more lenient approach towards such offences. While it appeared that Lu was a young man who had too much to drink, it is far from clear what peculiar consideration(s) the judge took into account in varying the

sentence. In my view, that decision should be treated as being confined to its particular facts and ought not be regarded by the lower courts as signalling a new point of departure from what is now the settled sentencing practice for addressing attempts to bribe police officers or other public servants. There is one further observation that I am minded to make. The lower courts should always bear in mind that if an appellate court desires or intends to vary the current sentencing framework, grounds of decision will be invariably given. One should be slow to interpret apparently anomalous decisions made in peculiar factual matrices as signalling a new or different sentencing approach.

25 Indeed, the very recent case of *Gay Wee Keong Samuel v PP* (Magistrate's Appeal No 139/2007/01) where the accused pleaded guilty to one count of corruptly offering $100 to a traffic police sergeant to "forgive" the offence of drink driving, under s 6(*b*) of the PCA reaffirms the sentencing approach I have outlined. Gay Wee Keong Samuel ("Gay"), a 27-year-old male Singaporean, had consumed alcohol, and then driven his car into a drain. He was arrested for drink driving by traffic policemen who arrived subsequently at the scene. Gay offered a police sergeant $100 to "settle this matter like the Malaysian Police"[note: 2]. The bribe was refused and he was arrested for the PCA offence. Gay was sentenced to three months' imprisonment. I upheld this sentence on appeal.

**Conclusion**

26 The DJ erred in applying an intricately nuanced sentencing approach to what is a plain and unmistakeable case of attempted corruption. The public is entitled to have in place a framework of clearly defined and unambiguous rules it can refer to and observe in all like situations. Ordinarily, any attempt to bribe a police officer or to deflect him from discharging his lawful duties *will* necessarily entail a custodial sentence; should the bribe be accepted, both parties can expect uncompromisingly stiff custodial sentences.

27 This is an area of sentencing where the courts should unremittingly adopt a firm, no-nonsense approach. Attempts to bribe a police officer cannot and must not be condoned and should instead be treated with the utmost and indeed absolute abhorrence. Only then can the integrity of the police force as a pillar of Singapore society be upheld and preserved.

28 In the result, I set aside the fine imposed by the DJ and replace it with a term of imprisonment of six weeks taking into account the relevant mitigating considerations that have been made by the respondent's counsel. The fine paid should be duly returned to the respondent.

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[note: 1]See Prosecution's Skeletal Arguments at para 9.

[note: 2]See Prosecution's Skeletal Arguments at para 34.