

Public Prosecutor v Neo Boon Seng
[2008] SGHC 90

Case Number : MA 190/2007
Decision Date : 13 June 2008
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ
Counsel Name(s) : Leong Wing Tuck (Attorney-General's Chambers) for the appellant; Alain Abraham Johns (Alain A Johns Partnership) for the respondent
Parties : Public Prosecutor — Neo Boon Seng

Criminal Procedure and Sentencing – Sentencing – Appeals – Offence of criminal misappropriation committed by taxi driver against passenger – Custodial sentence as benchmark sentence – Need for deterrent sentence – Section 403 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Benchmark sentences for property offence committed by taxi driver against passenger – Custodial sentence as benchmark sentence

13 June 2008

Chan Sek Keong CJ:

Introduction

1 This was an appeal by the Public Prosecutor against the decision of the district judge in District Arrest Case No 25056 of 2007 in sentencing the respondent to a fine of \$6,000 or two months' imprisonment in default of payment of the fine (see *PP v Neo Boon Seng* [2007] SGDC 339). The respondent had pleaded guilty to one charge of dishonestly misappropriating property under s 403 of the Penal Code (Cap 224, 1985 Rev Ed), which states:

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use movable property, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

At the conclusion of the hearing, I allowed the appeal and substituted the sentence imposed by the district judge with a sentence of three weeks' imprisonment. Here are my reasons for so doing.

Facts of the case

2 The respondent was a taxi driver and the victim was his passenger. The victim had boarded the respondent's taxi at about 10.40pm on 20 June 2007 at Changi Airport. Being heavily laden with baggage, the victim placed several pieces of luggage in the boot of the taxi and a number of items in the front passenger seat. The items which were placed in the front passenger seat included a bottle of Chateau Corbin wine, a Nike haversack containing three pairs of shoes, and a briefcase containing a laptop computer with accessories, various currencies from different countries, two Mont Blanc pens, the victim's spectacles, the victim's passport, and various items belonging to the victim's company. The total value of all the items placed in the front passenger seat was \$11,661.05.

3 When the victim alighted at his residence at Vanda Avenue, he unloaded the luggage in the boot but forgot about the items in the front passenger seat. The respondent also forgot about the items and only became aware of them shortly after leaving the victim's residence. He did not attempt to restore the items to the victim, however, and placed the items in the boot of the taxi before continuing with his shift.

4 When the victim discovered that he did not have the items with him, he immediately reported the incident to the taxi company and waited in his house for the respondent to arrive with his property. The taxi company, upon receiving the complaint, sent out messages to all its taxi drivers informing them of the incident. After waiting in vain for more than two hours, at about 1.30am on 21 June 2007, the victim reported the loss to the police.

5 At around 6.00am on 21 June 2007, the respondent stopped his taxi for breakfast at a coffeeshop at Bedok Reservoir Road. After eating, he looked through the victim's items and discarded some of the items at a shop in the vicinity. The only items he kept were the currencies, the laptop computer and its accessories, the haversack with the shoes, and the wine. At the conclusion of his shift (on 21 June 2007 at 7.00am), he took the items he had retained and placed them in the kitchen of his Housing and Development Board flat.

6 On 21 June 2007 at about 11.00pm, the police raided the respondent's residence. The respondent promptly surrendered the items he had retained. All of the items were recovered (either from the shop or the respondent's flat), save for the pens, the spectacles, the passport, and US\$1,000 worth of currency. The items which were not recovered had an approximate total value of \$4,000.

The district judge's grounds of decision

7 The district judge gave little credit to the respondent's plea of mitigation on sentence in the light of what he had done and the fact that he did not make restitution for the value of the items not recovered. However, he was of the view that the severity of the sentence had to be tempered somewhat as the victim had recovered a significant number of the items lost. He also felt that there was no need for the element of general deterrence to be reflected in the respondent's sentence and that a high fine would be sufficient punishment.

Applicable legal principles

8 In *Tan Koon Swan v PP* [1986] SLR 126 and *PP v Cheong Hock Lai* [2004] 3 SLR 203, it was held that an appellate court would only interfere with a trial court's decision on sentencing in the following situations:

- (a) the sentencing judge had erred in respect of the proper factual basis for sentence;
- (b) the sentencing judge had failed to appreciate the materials placed before him;
- (c) the sentence imposed was wrong in principle and/or law; or
- (d) the sentence imposed was manifestly excessive or manifestly inadequate, as the case might be.

9 It will suffice for me to elaborate briefly on situations (c) and (d). In regards to situation (c), the phrase "wrong in principle" has been described as being particularly suitable to cover cases where

a trial judge has chosen the wrong type of sentence (John Sprack, *A Practical Approach to Criminal Procedure* (Oxford University Press, 11th Ed, 2006) at p 496). As for situation (d), in *PP v Siew Boon Loong* [2005] 1 SLR 611, Yong Pung How CJ described a sentence that was manifestly excessive or inadequate to be as follows (at [22]):

When a sentence is said to be manifestly inadequate, or conversely, manifestly excessive, it means that the sentence is *unjustly lenient or severe*, as the case may be, and *requires substantial alterations rather than minute corrections to remedy the injustice* ... [emphasis added]

Custodial sentence as a benchmark sentence

10 In my view, the district judge was wrong in principle in regarding this case as not meriting a custodial sentence. Although the offence of criminal misappropriation under s 403 of the Penal Code is considered to be one of the less serious property offences in ch XVII of the Penal Code because it does not require a positive act of taking as contrasted with a negative act of keeping something that belongs to another (*Practitioners' Library – Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at p 414), this consideration, in my view, should not apply to a taxi driver. The reason is that a taxi driver is in a special position *vis-à-vis* his passenger. The taxi driver provides a transport service to the passenger for a fee and a passenger, in purchasing the service, not only entrusts the safety of his person but also custody of his property to the taxi driver during the journey. If the taxi driver finds lost property in the taxi, he should return it to the passenger if he knows who he is and where he lives. If he does not have such knowledge, he should place the goods within a reasonable time with the taxi company. At the very least, a taxi driver has a legal obligation not to take his passenger's property and, in my opinion, this duty should be enforced strictly and vigorously.

11 For these reasons, I am of the view that the benchmark for a property offence committed by a taxi driver against a passenger is a custodial sentence unless there are countervailing mitigating factors (such as the nature and insignificant value of the property) that would make a fine an appropriate sentence. In the present case, however, the value of the misappropriated items was not insignificant (see [2] above), and the contents of the laptop computer (which might be of no value to the respondent) could be worth much more to the victim than the market price of the laptop itself. Even if the recovered items were disregarded, the value of the unrecovered items was approximately \$4,000 (see [6] above). On these facts, it was difficult to justify a fine of \$6,000 as being sufficient punishment for a taxi driver in whom a passenger is entitled to repose some degree of trust as to the safety of any property he may have inadvertently left behind in the taxi.

Custodial sentence as a general deterrence

12 Other than what has already been stated, policy considerations, in my view, also indicate that there is a need to deter taxi drivers from committing property offences against passengers. In this regard, it is rather surprising that there is no reported sentencing precedent for cases such as the present. The answer may well be that, in the past, taxi drivers have always acted in an exemplary manner by either returning lost property to their passengers or depositing the property with the taxi companies from which they rent the taxis. If this surmise is correct, then it is all the more necessary that any incipient problem of taxi drivers misappropriating their passengers' property should be nipped in the bud. The courts need to signal to taxi drivers that they will face a custodial sentence if they are convicted of this type of offence.

13 The taxi industry is a pillar of Singapore's public transport system with an average daily ridership of more than 900,000 (see Land Transport Authority, "Singapore Land Transport Statistics in Brief

2007", available at <[http://www.lta.gov.sg/corp_info/doc/Stats_In_Brief\(2007\).pdf](http://www.lta.gov.sg/corp_info/doc/Stats_In_Brief(2007).pdf)> (accessed 10 June 2008)). In the Land Transport Authority's white paper, *A World Class Land Transport System* (Cmd 1 of 1996, 2 January 1996), taxis are described (at p 47) as playing "a key role in bridging the gap between private transport, and bus and rail transport". Taxi drivers provide an essential private transport service to the public. Although they do not provide this service as public servants, they are licensed to do so at prescribed fares by a public authority, viz, the Land Transport Authority ("LTA"). Their licences give them the exclusive right to provide a transport service to the public as a means of earning a decent living. With privileges come social responsibilities. This is not a novel perception of public service. Even the illegal pirate taxis in days of yore were accepted by the LTA as "performing a public service" (see *The Journey: Singapore's Land Transport Story* (SNP International Publishing Pte Ltd, 2005) at p 57). The performance of a public service, especially one which is exclusive to one group of service providers, necessarily demands that it be done with a high level of honesty and care for the customers. It is thus unsurprising that the LTA has set stringent demands on taxi drivers. For example, since September 2003, the LTA has set quality of service standards which require the number of customer complaints or offences against customer satisfaction recorded against any one taxi driver to be not more than two per ten million kilometres driven by that driver (see *The Journey* at p 61).

14 More surprising, perhaps, would be the fact that society *expects* and even *demand*s a high level of professionalism and integrity from taxi drivers. Honest taxi drivers are frequently praised and dishonest taxi drivers are lambasted in the media by the public (see, readers' letters published in *The Straits Times*, eg, "Costly cellphone returned by cabby" (12 February 2008), "Honest cabby returned phone" (5 February 2008) and "Cabby touts damage Singapore's reputation" (24 June 2005)). Taxi drivers also play an important role in providing first impressions of Singapore to tourists. In a sense they are our daily front-line ambassadors to visitors to Singapore. The Singapore Tourism Board, in fact, launched a "Taxi Tourist Guide" scheme in 2004 in which taxi drivers may undergo training to be licensed as tour guides for tourists.

15 An increase in instances of dishonest conduct on the part of taxi drivers in relation to property belonging to passengers would certainly affect Singapore's well-earned reputation for integrity in the provision of public services generally. In the case of dishonesty in the taxi service, it is not so much the potential harm to the economy in terms of a decreased use of taxi services and employment in the taxi services sector (which may be insignificant or inconsequential), it is really the less perceptible and, in the long term, the more pervasive harm to the reputation of Singapore for integrity if one important sector of its public services is reputed for dishonesty.

16 Public policy would therefore call for deterrent sentences to discourage dishonesty in taxi drivers. General deterrence would be a particularly relevant consideration in cases such as the present since the misplacing of items in taxis is an extremely commonplace occurrence. Everyday, forgetful and stressed commuters leave their property in taxis. As many taxi drivers may be tempted to keep such property, the courts should send a message that any dishonest conduct will not be condoned and the benchmark punishment will be a custodial sentence, save in exceptional circumstances.

17 In response to the Prosecution's call for general deterrence and, specifically, a custodial sentence, the respondent referred to the case of *Cheah Kar Seong (alias Cheah Ban Guan) v PP* Magistrate's Appeal No 202 of 1997 ("*Cheah Kar Seong*"). Cheah, who was a security officer at Changi International Airport, misappropriated a sum of ¥20,000 (which at current exchange rates is worth approximately \$260). He was sentenced to four months' imprisonment by the trial judge, who felt that a custodial sentence was warranted because of the abuse of position. On appeal, Cheah's sentence was reduced to a fine of \$2,000 with two months' imprisonment in default. The respondent correctly

pointed out that if a security officer who had abused his position was only fined for the offence of theft, the sentence in the present case could not be said to be manifestly inadequate. It is difficult to disagree with the logic of that submission, but it does not follow that I must then follow *Cheah Kar Seong*. *Quandoque bonus dormitat Homerus*: even Homer was said to have nodded off from time to time and the courts may not be so lenient in future cases of offences committed by security officers under s 403 of the Penal Code. In any event, the reasons for the decision in *Cheah Kar Seong* are not recorded and we can only speculate as to what they may have been. There might well have been some extenuating circumstance present which called for the imposition of a non-custodial sentence.

18 The reputation of our taxi services, at present, is excellent and the public generally has every confidence in the integrity of taxi drivers. The victim, for one, gave a statement that he had waited for nearly two hours before reporting the matter to the police because he had expected, and it was a legitimate expectation based on the reputation of our taxi service, that his property would be returned shortly. Unfortunately, this did not turn out to be the case with respect to the respondent. Taxi drivers, to reiterate, must resist the temptation to unlawfully take the property of passengers which are inadvertently left behind in taxis, in order to sustain the good reputation of the entire body of taxi drivers in Singapore.

Conclusion

19 In the circumstances, I was of the view that the sentence imposed by the district judge was both wrong in principle and manifestly inadequate. After taking the high value of the items misappropriated and all other relevant facts into account, I came to the conclusion that three weeks' imprisonment would be a more appropriate sentence.

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