Public Prosecutor *v* Fonda Global Engineering Pte Ltd
[2012] SGHC 222

Case Number : Magistrate's Appeal No 30 of 2012 (EMA 100 of 2011)

Decision Date : 30 October 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Hee Joek (Tan See Swan & Co) for the appellant; Tan Beng Swee (CTLC Law Corporation) for the respondent.

Parties : Public Prosecutor — Fonda Global Engineering Pte Ltd

Criminal Procedure and Sentencing

30 October 2012

Choo Han Teck J:

1 Fonda Global Engineering Pte Ltd ("the respondent") pleaded guilty in the court below to an offence under s 85(2) read with s 85(3) of the Electricity Act (Cap 89A, 2002 Rev Ed) ("the Act"). The respondent was appointed by the Land Transport Authority as the main contractor for a project to install and maintain street lighting and commuter facilities equipment. The respondent caused Maha Arul Sithi Construction & Engineering Pte Ltd ("Maha Arul") to carry out earthworks by sinking earth rods into the ground. In doing so without first digging trial holes to verify the absence of electricity cables, a 230kV high voltage cable and a 66kV high voltage auxiliary cable were damaged. The District Judge imposed a fine of $60,000 on the respondent. Dissatisfied with the sentence imposed, the Public Prosecutor appealed. When the appeal came before me on 6 July 2012, I adjourned the hearing pending my decision in *Khian Heng Construction (Pte) Ltd v Public Prosecutor* [2012] SGHC 141 ("*Khian Heng*"). In *Khian Heng*, I made clear that s 85(2) of the Act imposes liability only on the party who had directly damaged the high voltage electricity cable. A party who had not directly damaged the high voltage electricity cable could only be held equally liable in an agency context and this was contemplated by s 85(3) of the Act; otherwise, a main contractor could not be liable under s 85(2) for damage done to high voltage electricity cables by its sub-contractor. The charge in the present case discloses this agency context — the respondent was charged with an offence under s 85(2) read with s 85(3) of the Act. However, while the charge described Maha Arul as the "agent" of the respondent, the Statement of Facts only referred to Maha Arul as the "sub-contractor" of the respondent. This might have warranted the setting aside of the conviction, but because when the appeal came back before me, Mr Tan Beng Swee, counsel for the respondent, informed the court that his client was willing to accept that Maha Arul were in fact its agent and not merely a sub-contractor, I proceeded on the basis that the conviction was regular. I did, however, warn that because the distinction between an agent and a mere sub-contractor was a critical one in such cases, counsel in future prosecutions ought to make sure that the charge and the Statement of Facts are properly aligned in this regard.

2 Counsel for the appellant, Mr Tan Hee Joek ("Mr Tan"), submitted that the District Judge had not adequately considered the principle of deterrence in coming to his decision on the sentence. In particular, heavy reliance was placed on Parliament's increasing the maximum penalty in the 1996 Public Utilities Act (the predecessor of the Act) fivefold from $200,000 to the current $1 million in 1999 to underpin the argument that the present offence warrants the imposition of a deterrent

punishment. Mr Tan cited the speech of then Minister for Trade and Industry, BG George Yeo, during the Second Reading of the Public Utilities (Amendment) Bill 1999 (Bill 29 of 1999) (*Singapore Parliamentary Debates*, *Official Report* (18 August 1999) vol 70 at cols 2160–2161):

> Feedback from industry indicates that companies, particularly those in high-tech industries which rely heavily on sensitive computerised control systems, have been adversely affected by voltage dips in their power supply. Voltage dips, unlike power outages or blackouts, are momentary reductions of the voltage levels in the power supply system, which can disrupt the functions of sensitive computerised control systems.
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> Voltage dips occur some 25-30 times a year. They have a severe impact on some industries, particularly high-tech, process industries like the wafer fabrication industry. According to the Economic Development Board (EDB), voltage dip-related losses suffered by five high-tech companies between August 1997 and November 1998 amounted to some $3 million. This figure does not include the cost of production downtime, labour and delayed product deliveries. The production downtime can amount to as much as 10% of the monthly output of a wafer fabrication company.
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> The serious consequence to the economy as a result of damage to high-voltage cables makes a severe penalty necessary. A deterrent penalty of $1 million is therefore proposed for damage to a high-voltage cable. Section 107(3) [of the 1996 Public Utilities Act] will be amended to enhance the current fine of $200,000 to $1 million. The enhanced fine is the same as that provided under the Telecommunications Authority of Singapore Act for damaging telephone cables. At the present level of penalty, some contractors are tempted to risk hitting a cable rather than suffer project delay and payment of liquidated damages. A fine of $1 million will deter such behaviour irresponsible behaviour.

Mr Tan's argument was one which had been rejected in *JS Metal Pte Ltd v Public Prosecutor* [2011] 4 SLR 671. The learned Chief Justice in that case explained that while the prescribed maximum fine of $1 million under s 32A(2) of the Gas Act (Cap 116A, 2002 Rev Ed) had an element of deterrent punishment, it did not follow that every offence under that provision must be punished with a deterrent sentence. It must be borne in mind that sentences at or nearer to the prescribed maximum punishment are reserved for the most serious of cases, such as where great losses are caused to industry (as envisaged by the Minister). The present case is not such a case. The Statement of Facts disclosed only losses resulting from damage to a central chiller belonging to SIM University amounting to $9,000. This was thus not such an egregious case as to warrant the imposition of a strong deterrent sentence. Mr Tan further relied on the fact that the damage to the cables in the present case cost some $393,706.83 to repair. I would agree with the District Judge that while the cost of the damage to the cable was a relevant factor, it is not a predominant one in justifying a deterrent sentence. If at all Parliament's intention (as disclosed by the above quoted speech by the Minister) was for a deterrent sentence to be imposed on all offences under s 85(2), it would be because of the damage such breaches caused to industry, and not because of the damage caused to the cable itself *per se*. Further, the respondent had in the present case paid the $393,706.83 in repair costs, and this puts Mr Tan's reliance on the high repair costs to justify the imposition of a deterrent sentence in a paradoxical position, because it could equally be said that the payment in itself served as effective deterrence, at the very least to the respondent not to be careless again.

3 Mr Tan further relied on the High Court decision of *Public Prosecutor v Hock Lian Seng Infrastructure Limited* (Magistrate's Appeal No 278 of 2011) ("*Hock Lian Seng*") where the learned

Chao Hick Tin JA allowed the Prosecution's appeal in respect of the sentence for an offence under s 85(2) of the Act, increasing the fine from $10,000 to $50,000. Comparisons were drawn between *Hock Lian Seng* and the present case. For instance, it was suggested that the cost of repair to the damaged cables was nearly one hundred times more in the present case. It has not been argued that the higher repair costs in this case is suggestive of a proportionately greater extent of damage having been caused; in the present case, the bare fact of higher repair costs does not compel the court to the conclusion a higher fine should be imposed. Furthermore, the fact of the high repair costs was not something which was raised in the Statement of Facts, but highlighted only through the respondent's plea in mitigation. Neither was there anything in the Statement of Facts to suggest the severity of damage caused to the cables. Next, it was also submitted that as compared to *Hock Lian Seng*, there were two other charges for offences under ss 80(1)(a) and 80(1)(b) of the Act to be taken into consideration for the determining and passing of sentence in the present case. Nevertheless, in all the circumstances, although in *Hock Lian Seng* the fine was increased fivefold on appeal, and the District Judge in the present case did not have the benefit of the knowing the result of the *Hock Lian Seng* appeal when he passed the present sentence, that does not in itself compel the conclusion that the fine in the present case was manifestly inadequate so as to require an enhancement.

4 The appeal was therefore dismissed.