Leaw Siat Chong v Public Prosecutor
[2001] SGHC 345

Case Number : MA 190/2001

Decision Date : 20 November 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Goh Siok Leng and Goh E Pei (Leong Goh Danker & Subra) for the appellant; Winston Cheng (Deputy Public Prosecutor) for the respondent

Parties : Leaw Siat Chong — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appellant employing immigration offender – Imposition of benchmark sentence of 12 months' imprisonment – Mitigating factors – Appellant of advanced age – Short period of employment of immigration offender – First offender – Financial hardship to appellant's family – Ill health – Need to balance mitigating factors against other factors – Whether sentence manifestly excessive – s 57(1)(e) Immigration Act (Cap 133, 1997 Ed)

: The appellant was charged and convicted under s 57(1)(e) of the Immigration Act (Cap 133, 1997 Ed) (`the Act`) on one count of employing immigration offenders, namely one Ramadose Nagarajan (`Ramadose`), an Indian national, and was sentenced to 12 months` imprisonment. Although the appeal was initially stated to be against both conviction and sentence, it became apparent from the appellant`s submissions as well as at the hearing before me that the appellant had decided not to proceed on the appeal against conviction. I dismissed his appeal against sentence and now give my reasons.

The facts

The appellant was driving workers to a construction site on Sentosa on 12 February 2001 when his vehicle was stopped in order for the identification papers of the workers to be checked. It was discovered that Ramadose possessed neither a passport nor a valid work permit, although he was carrying a photocopied work permit in another person`s name. Ramadose was subsequently convicted of overstaying in Singapore.

The trial below

Before the trial judge, the appellant claimed that Ramadose was not his employee, and had only been on his vehicle on the day in question as the appellant was in the habit of giving rides to workers. He also attempted to exonerate himself by explaining away the incriminatory portions of his cautioned statement to the police. Furthermore, Ramadose, who had previously given a statement to the police stating that the appellant was his employer, retracted his statement on the stand. However, the prosecution applied successfully for Ramadose`s credit to be impeached, and the police statement was accepted into evidence.

The trial judge disbelieved the appellant`s defence, finding that the appellant had wilfully shut his eyes to Ramadose`s being an immigration offender, and convicted him of the charge. In imposing the sentence of 12 months` imprisonment, the trial judge noted that 12 months` imprisonment is the benchmark sentence for offences under s 57(1)(e), and that the appellant had not provided any exceptional reasons to justify a departure from the benchmark.

The present appeal

Before me, the appellant contended that the sentence imposed was manifestly excessive in light of his personal circumstances, which had not been raised in mitigation before the trial judge. Furthermore, there were features of his employment of Ramadose which justified a reduction in sentence. Finally, the appellant pointed out that in **Ang Jwee Herng v PP** [2001] 2 SLR 474 , a sentence of nine months` imprisonment had been imposed for each charge, while in **Elizabeth Usha v PP** [2001] 2 SLR 60 , a sentence of six months` imprisonment had been imposed on each charge. Consequently, he argued that his sentence should likewise be reduced by a few months.

FEATURES OF THE APPELLANT`S EMPLOYMENT OF RAMADOSE

The appellant raised three issues under this head, namely that: he had taken steps to verify Ramadose`s immigration status; he had only employed Ramadose for a short period of time; and he had not intended to employ him for a long period. I was of the opinion that none of these factors served to sufficiently distinguish the appellant`s situation from other cases brought under s 57(1)(e) such that a departure from the benchmark was justified.

I took the view that the appellant`s alleged efforts to verify Ramadose`s immigration status were not of such a nature as would operate as a mitigating factor. The appellant had not, as claimed in his submissions, checked Ramadose`s actual work permit, which was in any event made out in the name of one Kaliyaperumal Kanagasabai, but only a photocopy of it. This clearly fell short of the conditions for due diligence laid down in s 57(10) of the Act, which requires that the original copy be inspected. Furthermore, the photocopy was not merely a simple photocopy of the two sides of a work permit, but had been cut down to the same size as that of a genuine work permit, and laminated. It bore no resemblance at all to a genuine work permit, which is made of green plastic. I concluded that the odd appearance of the photocopy would have been sufficient to put anyone on notice, and found that the trial judge had been more than justified in finding that the appellant had `wilfully shut his eyes to the obvious fact that the latter was an immigration offender`.

I also rejected the contention that the length of the appellant`s employment of Ramadose was a mitigating factor. In **PP v Chia Kang Meng** (Unreported) , the appellant had originally been sentenced to the minimum term of six months` imprisonment, as the judge below had taken into account the fact that he had only employed the immigration offender for two weeks. I enhanced the sentence to 12 months` imprisonment on appeal by the prosecution. I wish to make it clear now that a short period of employment cannot be taken as the basis for a reduction of sentence.

As for the appellant`s claim that he had not intended to employ Ramadose for a long period of time, and would hence not have caused any social or immigration problems, I decided that this was irrelevant to the issue of sentence. Bearing in mind the Ministerial Statement made by the Minister for Home Affairs on 9 May 2000, where it was said that employers of immigration offenders make it easier for them to stay in Singapore by providing them with work, I found that the appellant had already contributed to the problem of immigration offenders by employing Ramadose to begin with. In any event, there was no evidence to show that the appellant would not simply have continued employing Ramadose until such time as he was arrested.

PERSONAL CIRCUMSTANCES OF THE APPELLANT

The appellant relied on the fact that he was a first offender, an issue which he had already raised in the court below. **Sim Gek Yong v PP** [1995] 1 SLR 537 makes it clear that, although being a first

offender is a mitigating factor, it must be weighed against other factors, the first and foremost consideration in this balancing process being the public interest. It was clear from the discussion in the grounds of decision of the trial judge of the problems caused by the prevalence of immigration offences, as well as the need to deter their commission, that the trial judge considered that the nature of the offence, and the public interest in deterring its commission, outweighed the fact that the appellant was a first offender. I saw no reason to disturb this finding.

It is in any event clear that being a first offender is not a bar to the imposition of the benchmark sentence in a s 57(1)(e) offence. In **Hameed Sultan Raffic v PP** (Unreported) , the appellant, a first offender, had initially been sentenced to seven months` imprisonment. I enhanced his sentence to 12 months` imprisonment on appeal.

The appellant also relied on his age and the fact that he was the sole breadwinner in his family. In rejecting these factors as grounds for mitigation, I noted that there is no general rule mandating the giving of a discount for offenders of advanced years - **Krishan Chand v PP** [1995] 2 SLR 291 . It is equally clear from **Lim Choon Kang v PP** [1993] 3 SLR 927 that hardship caused to the family by way of financial loss occasioned by imprisonment is of little weight today.

As for the appellant`s health issues, namely high blood pressure and a pain in his right eye, I wish to reiterate the point I made in **PP v Ong Ker Seng** (Unreported) that ill-health is not a mitigating factor except in the most exceptional cases when judicial mercy may be exercised. In the present case, the appellant had not presented me with evidence that the health problems were of such a serious nature that I ought to reduce his sentence on that ground. I also found it pertinent that the appellant had been able to continue working despite his health problems.

CASES IN WHICH THE BENCHMARK HAS BEEN DEPARTED FROM

Finally, I found that the two cases relied upon by the appellant in arguing for a reduction in his sentence could not be used to justify departures from the benchmark sentence. This was because the shorter sentences in both ***Ang Jwee Herng*** and ***Elizabeth Usha*** (supra) had been imposed by their respective trial judges before I confirmed in **Tan Soon Meng v PP** (Unreported) and ***Ang Jwee Herng*** itself that 12 months` imprisonment is now the benchmark sentence for immigration offences under s 57(1)(e), and hence do not reflect the current attitude of the courts towards the adequate punishment for such offences.

Conclusion

I found that none of the factors relied upon by the appellant sufficed to show that the benchmark sentence imposed by the trial judge was in any way excessive, let alone manifestly excessive, and consequently dismissed the appeal.

Outcome:

Appeal dismissed.