

Public Prosecutor v Au Gan Chye
[2009] SGHC 124

Case Number : CC 11/2009
Decision Date : 22 May 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Amarjit Singh (Attorney-General's Chambers) for the Prosecution; Peter Latimer Ezekiel (Peter Ezekiel & Co) for the accused
Parties : Public Prosecutor — Au Gan Chye

Criminal Law – Offences – Kidnapping, abduction, slavery and forced labour – Accused kidnapped/abducted three victims – Accused pleaded guilty – Penal Code (Cap 224, 2008 Rev Ed) s 364A(ii)

Criminal Procedure and Sentencing – Sentencing – Penalties – Principles – Kidnapping and abduction – Young victim – Need for general deterrence – Penal Code (Cap 224, 2008 Rev Ed) s 364A(ii)

22 May 2009

Judgment reserved

Choo Han Teck J:

1 On 8 April 2008, one [B], aged 60, her 2-year old granddaughter, one [C], and her maid, one [D], were abducted by a man named Neo Soon Joo (“Neo”), aged 37 years. One Au Gan Chye, (“the accused”), aged 54 years, was Neo’s accomplice in the crime. Both men were taxi drivers. Neo held up the three victims at knife point at [B]’s home just as they were alighting from their car. They were forced back into the car and [B] was told to drive along Braddell Road where the accused had been waiting. He got into the front passenger seat and after that Neo instructed [B] to drive to Serangoon Avenue 1. Midway there, [B] was told to stop the car and the accused took over and drove the car. [B] then sat in the front passenger seat wearing blocked out sunglasses so she could not see. [D] was also made to wear similar sunglasses. In the car, Neo first demanded \$60,000 from [B], threatening to put their lives in danger if he did not get the money. He also used [B]’s cell-phone to call her husband, one [E], aged 61, and demanded the money from him.

2 Eventually, Neo accepted [B]’s offer to give him \$50,000 instead because she said that that was all she had. They drove to a POSB branch at Hougang where [B] alighted and withdrew \$50,000 and handed the money to Neo who had waited nearby. Neo left her there and she telephoned [E] from a “7-11” convenience store. [D] and [C] were found unharmed inside the car. None of the three victims were hurt. Neo gave \$15,000 to the accused and fled the country after the accused drove him to the Woodlands Checkpoint. He is still at large. The accused spent a large sum of the money from the crime, mainly to discharge his debts. Only \$5,350 was recovered from him after his arrest.

3 The accused was charged under s 364A(ii) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed). Section 364A provides as follows:

Kidnapping or abducting in order to compel the Government, etc. 364A. Whoever —

- (a) kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction; and
- (b) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes death or hurt to such person,

in order to compel —

- (i) the Government to do or abstain from doing any act, shall be punished with death or imprisonment for life, and shall, if he is not sentenced to death, also be liable to fine or to caning; or
- (ii) any other person to do or abstain from doing any act shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine or to caning.

There has been no previous case of anyone charged under this provision, which counsel submitted, is not entirely the same as the equivalent provision found in the Indian Penal Code. The Indian version of s 364A is entitled "Kidnapping for ransom" and provides as follows:

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the government or [any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, imprisonment for life, and shall also be liable to fine.]

The difference in the Singapore provision and the Indian provision lies in the punishment provided. In cases such as the present, the punishment provided has an upper limit of 15 years imprisonment. The more serious penalty of life imprisonment or death applies only where the kidnapping or abduction was committed with the view of compelling the Government to do or abstain from doing any act.

4 Counsel for the accused submitted in mitigation that the accused had no similar antecedents and was only previously convicted of a gaming offence for which he was fined. He is 55 years old and was driven to commit this crime because he was in desperate need of money. Counsel submitted that Neo was the master-mind in this case and the accused person's role was mainly that of a driver. He did not threaten the hostages. The threats were made by Neo. The DPP, Mr Amarjit Singh, submitted that this case involved vulnerable victims who were threatened at knife-point. The accused was a willing participant sharing a common intention to abduct the hostages for ransom. His taxi was used in the course of the crime and also in helping Neo flee the jurisdiction.

5 I accept that the accused played the smaller part in the crime compared to Neo but his participation was no less vital in the commission of the offence. Kidnapping, especially of multiple hostages or young hostages should attract a severe term of imprisonment. One of the hostages was a very young child but it was not clear from the Statement of Facts as to how frightened she was. It was possible that at the age of two, she might have been too young to appreciate the danger. If so, that might be a factor to be considered. However, on the whole, I agree that a general deterrence is appropriate in dealing with such offences. I am of the view that a term of imprisonment of 10 years should be imposed. I therefore sentence the accused to imprisonment for a term of 10 years with

effect from 12 April 2008.

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