

Tan Kim Huat Jerry v Public Prosecutor
[2014] SGHC 100

Case Number : Magistrate's Appeal No 301 of 2013
Decision Date : 23 May 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Gurdip Singh and Jagjit Singh (Gurdip & Gill) for the appellant; Jiang Ke-Yue and Foong Leong Parn (Attorney-General's Chambers) for the respondent.
Parties : Tan Kim Huat Jerry — Public Prosecutor

Criminal Law – Offences – Currency and bank notes

23 May 2014

Judgment Reserved.

Choo Han Teck J:

1 This was an appeal against sentence. Mr Gurdip Singh ("Mr Singh"), counsel for the appellant, described this case as "all about [the appellant's] enthusiasm to get back his car" – enthusiasm that led the appellant to commit acts of forgery. That was also how Mr Singh described the case before District Judge Marvin Bay, when the appellant pleaded guilty to the charges under appeal. The district judge sentenced the appellant to four weeks' imprisonment. Mr Singh submitted that the sentence should only be a fine, or a shorter custodial term.

2 The appellant, a sole proprietor of "Car Central Automobile", has been dealing in second-hand cars for about 20 years. In 2012, he was involved in a deal that went awry. He attempted to sell a Porsche Boxster to Ms Goh Soo Im Esther ("Ms Goh"). The appellant met Ms Goh in March 2012 and parties orally agreed that:

- a. the Boxster would be registered in Ms Goh's name;
- b. the purchase price of the Boxster, \$110,000 plus fees, would be offset by trading in Ms Goh's Mercedes SLK, leaving a balance price of \$60,000 outstanding; and
- c. the balance price of \$60,000 would be financed by a hire-purchase loan.

3 The appellant transferred the ownership of the Boxster to Ms Goh on 22 April 2012. He also obtained a hire-purchase loan from Century Tokyo Leasing (Singapore) Pte Ltd. On 24 April 2012, the appellant and Ms Goh entered into a written sale and purchase agreement for the Boxster, which included a term that the hire-purchase loan was to be obtained from OCBC Bank. On that same day, Ms Goh took delivery of the Boxster, and the appellant took delivery of the Mercedes SLK.

4 On 4 May 2012, the appellant informed Ms Goh that OCBC Bank did not approve the hire-purchase loan because the ownership of the Boxster was transferred before the loan application. As such, Ms Goh's only option was the loan from Century Tokyo. She was presumably unhappy with that option, and as a result, a contractual dispute arose between the parties. As Mr Singh said, the crux of that dispute was "whether the sale [had] been aborted due to the nonfulfilment of a condition that the sale was subject to OCBC loan approval". The matter proceeded to court and was eventually

settled on 14 June 2013, at which point Ms Goh returned the Boxster to the appellant.

5 In his "enthusiasm to get back his car" in the interim – between 4 May 2012 and 14 June 2013 – the appellant committed acts of forgery. After realising that the deal had gone awry, the appellant felt that the status quo should prevail. On 11 May 2012, he had "returned" the Mercedes SLK by parking it at Ms Goh's son's condominium car park, and insisted on the return of the Boxster. Ms Goh refused to comply.

6 On 24 May 2012, Ms Goh received a telephone call from an officer at the Land Transport Authority ("LTA"). The officer informed her that the LTA received a letter, allegedly signed by her, which indicated that the Boxster had been wrongly transferred to her and that she requested the LTA's assistance to transfer the ownership to "Car Central Automobile". The officer further informed Ms Goh that it was the appellant who handed the letter to the LTA. Ms Goh told the officer that the letter was not signed by her, and provided a specimen signature for verification. She subsequently reported the matter to the police.

7 It transpired that the appellant had forged the letter to the LTA. Further investigations revealed that this was only one of four documents that the appellant had forged. The appellant resorted to the LTA hoping to, as he stated in his mitigation plea, "get the [Boxster] re-transferred back ...in order that he could tow it away if [Ms Goh] refused to return the said vehicle". He, again in his own words, "told LTA that he had wrongly transferred a Porsche to [Ms Goh] as she purchased a Lexus and not a Porsche". As such, his story to the LTA was that the transfer in ownership of the Boxster (on 22 April 2012) was nothing more than a case of mistake – that Ms Goh had all along intended to purchase a different car, a Lexus, – and that they needed the LTA's assistance to nullify the transfer in ownership of the Boxster. He discovered, however, that for his plan to work, he needed to provide the LTA with supporting documents, namely, the log card of the Boxster, the sale and purchase agreement of the Lexus, the insurance certificate of the Lexus, and a letter from Ms Goh to say that the Boxster had been wrongly transferred. To that end, the appellant forged two letters to the LTA dated 4 May 2012, a sale and purchase agreement dated 4 April 2012, and an insurance certificate dated 9 April 2012. It is clear that all the documents were forged with the intent to cause the LTA to transfer the ownership of the Boxster from Ms Goh to "Car Central Automobile".

8 He faced four charges (one for each document forged) under s 465 of the Penal Code (Cap 224, 2008 Rev Ed). He chose to plead guilty. On 1 November 2013, during the plead guilty mention, the prosecution informed the court that it was proceeding on one charge (namely DAC 7933/2013, which was for forging the letter entitled "Re: SKC933L"), and applied to have the remaining three charges taken into consideration for the purpose of sentencing. The court convicted the appellant and asked counsel if they had any submissions as to sentence. The prosecution argued that a minimum sentence of six weeks' imprisonment was appropriate. Mr Singh requested a four week adjournment to prepare submissions. This was granted, and on 28 November, he returned with a brief mitigation plea in which he emphasised the appellant's "enthusiasm" and "desperation" to get back "his" car, and argued a non-custodial sentence was appropriate. The district judge sentenced the appellant to four weeks' imprisonment. Mr Singh indicated he wished to appeal, and applied for bail pending appeal – which was granted.

9 Before me, Mr Singh argued that the district judge erred in law and in fact in meting a custodial sentence because:

- a. this was a one-off incident by the appellant;
- b. the appellant was only trying to "recover his car";

- c. the remaining 3 charges were given undue emphasis;
- d. the “preferment of multiple... charges” was prejudicial to the appellant; and
- e. the appellant was 52 years old, suffering from a mixed anxiety depression, married with a 12 year old son, and the sole bread winner.

10 The last two arguments could be disposed of briefly. The fourth (preference of multiple charges) related to prosecutorial discretion. The fifth (particulars of the appellant) did not include any mitigating factors. It was not Mr Singh’s case that the appellant’s depression caused him to commit the offence. Neither did he raise any extenuating circumstances that warranted his reliance on the appellant’s condition as a mitigating factor. The appellant’s psychiatrist indicated that, in addition to depression, the appellant also had “chronic stress... and panic attacks”, the district judge found it “difficult to connect a panic attack with a deliberate and pre-meditated forgery of a series of documents” (*PP v Tan Kim Huat Jerry* [2013] SGDC 450 (“*Jerry*”) at [21]). I agree. The appellant’s reiteration of his family problems did not advance his case either.

11 I come now to the first three points raised by Mr Singh. I find that none of these contained issues that had not been considered by the district judge. In fact, the district judge acknowledged that the appellant had no relevant antecedents (*Jerry* at [16]). Furthermore, I think that the district judge had adequately explained his reliance on the charges taken into consideration (in arriving at his sentence) by highlighting the “sheer magnitude of the [appellant’s] forgeries in perpetrating the crime” (*Jerry* at [23]). He had noted that the other three charges “revealed three very diverse acts of forgery being committed in the fabrication of [the] documents” (*Jerry* at [23]). I do not think that this was an undue emphasis. The three other charges, as well as the facts in its entirety, showed that – notwithstanding that this was an isolated incident – the appellant had acted deliberately and in accordance with a “scheme”.

12 Crucially, Mr Singh’s description of this case as simply that of the “appellant trying to get back his car” cannot stand. First, the car (Boxster) was not “his” at the material time. The appellant, a 20-year-veteran in the car sales industry, cannot be excused for not having realised this. Although understandable that the appellant could have been unhappy when he could not complete the sale, that was no excuse for him to commit a crime. Second, this description of the case does not fully reflect the gravity of the fraud perpetuated on a public institution (the LTA). Although the officer at the LTA (who contacted Ms Goh) may not have incurred any personal loss, the “potential corruption of LTA records” was a live concern throughout this episode. In this regard, the district judge was of the view that there was a “need for general deterrence to maintain public confidence in LTA records”. Nevertheless, he appreciated that the appellant had (initially) approached the transaction with Ms Goh in good faith, and also took into account that the appellant was no hardened criminal (noting, especially, how the appellant’s scheme was rather simplistic and “would be quickly unravelled with a modicum of investigative work”. See *Jerry* at [37]).

13 On the whole, I am satisfied that the district judge had not erred in fact or in law, and the sentence of 4 weeks’ imprisonment was not manifestly excessive. It seemed clear that the district judge had fully considered the facts of this case and had taken the authorities into account. He considered another case involving a forgery in a vehicle transfer, *Gana Prakasam s/o Thangaveloo v PP* (MA 224/2000) (“*Gana*”). The appellant in *Gana* pleaded guilty to a single s 465 charge and faced a sentence of three months’ imprisonment. The accused there appealed, and the high court enhanced the sentence to six months. The district judge distinguished this case from *Gana* and came to the conclusion that 4 weeks was an appropriate sentence. In particular, he noted that the “level of criminality” in this case was rather low, with the appellant facing more stress factors (such as the

“eccentric demands and obdurate behaviour” of Ms Goh) than the appellant in *Gana*. The district judge also “appreciated that the [appellant] had approached the transaction with [Ms Goh] in good faith” (*Jerry* at [37]).

14 This case was not merely about the appellant’s enthusiasm to get his car back – if that were the case, perhaps different considerations would arise. This case was about an experienced car salesman who chose forgery over the law when his contract failed. As the district judge noted (*Jerry* at [38]):

[the appellant] would have known that it was never open for him to unilaterally call off the two vehicle transaction by jettisoning the Mercedes at the condominium car park of [Ms Goh’s] son and then contrive to procure the return of the [Boxster]. He must [have been] well aware of his remedies in law, and could not [have been] oblivious to the implications of what he was instead doing.

For the reasons above, this appeal before me is dismissed.

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