Nur Azilah Bte Ithnin *v* Public Prosecutor
[2010] SGHC 210

Case Number	: Magistrate's Appeal No 355 of 2009 (DAC 36173/2009 & Ors)
Decision Date	: 29 July 2010
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA
Counsel Name(s)	: Shriniwas Rai and P.O. Ram (M/s Hin Rai & Tan) for the appellant; Lee Lit Cheng and Mohamed Faizal (Attorney-General's Chambers) for the respondent.
Parties	: Nur Azilah Bte Ithnin — Public Prosecutor

Criminal Law

29 July 2010

Chao Hick Tin JA:

Introduction

1 This appeal raised the perennial question as to the appropriate sentence to be imposed on a young offender. Should rehabilitation *always* be the paramount consideration? Clearly multiple interests are involved in the consideration of this question which the court must carefully weigh and balance. As a general proposition, based on precedents, it would not be wrong to say that the court would be inclined, when sentencing a young offender, to seek his or her rehabilitation. In some cases however, the court has been confronted with a conflict between a sentencing consideration and the general policy enunciated by Parliament. Specifically, in the present case, should the fact that the young offender was engaged in a particular form of social mischief (*ie* harassment of debtors by runners of illegal moneylenders) which Parliament has clearly evinced an intention to stamp out mean that the court is precluded from appraising rehabilitation as the predominant consideration? At the very heart of this appeal, this court had to decide whether the rehabilitation of the young offender should still remain the pre-dominant sentencing consideration for youths who commit offences that have been woven in the tapestry of unlicensed moneylending activities.

2 On the facts of this case, while I agreed with the court below that probation would be inappropriate given the offender's home environment and the nature of the offence, I was of the view that the court below should not have ruled out reformative training for the offender. While I recognised that Parliament had taken a serious view of the activities of unlicensed moneylenders and their related acts of harassment of debtors when Parliament enhanced the sentences for such offences (although the enhanced sentences were not applicable to the offender in the present case as the offences were committed before Parliament enhanced the sentences), I did not think that Parliament had wholly ruled out rehabilitation as a sentencing consideration when dealing with young offenders. I accordingly substituted the sentence of 48 months' imprisonment with an order that the offender be sent for reformative training. I now set out my detailed reasons.

Facts

3 The offender in this case was Nur Azilah Binte Ithnin (the "Appellant"). At all material times of the offences she was charged with, she was 16 years of age. She came from a family of five and was

the youngest amongst them. The Appellant did not come from a privileged background and her circumstances were quite unfortunate. She was physically abused by her father when she was young and her family's financial position was a constant struggle. Her parents were unemployed. Only her siblings held stable jobs and supported the family. The Appellant received a daily allowance of $2.00. During her school holidays, she had to take on various jobs to support both her family and her herself.

4 The Appellant's involvement with unlicensed moneylenders began in around April 2009 when she was forced to leave home after her parents discovered that she was suspended from school for poor attendance. Thereafter, the Appellant supported herself by working as a runner for two unlicensed moneylenders. After some time, she was allowed to return home. However, because of her family's precarious financial position and of her desire to contribute to the family, she decided to continue working for the unlicensed moneylenders. The two unlicensed moneylenders with whom the Appellant was in contact with were known as "Storm" and "Steven". On their instructions, the Appellant would commit acts of annoyance or harassment on designated debtors. In return, she was usually paid $40–$50 (depending on the unlicensed moneylender) for harassing each debtor, and would be paid much more (about $200) if the harassment included the setting of fire. Altogether, seven such acts were committed by the Appellant.

5 On three separate occasions in the month of June 2009, the Appellant committed acts of harassment on three housing units located in Ang Mo Kio, Compassvale Crescent and Yishun Ring Road. On each occasion, the Appellant and/or other accomplices would receive instructions from the unlicensed moneylenders to write statements on the staircase landings leading up to the targeted housing unit asking for money to be repaid and to splash paint on the doors of those units. These acts formed the basis of DACs 36173/2009, 36176/2009 and 36181/2009, where the Appellant was charged with harassing debtors on behalf of unlicensed moneylenders by defacing and causing damage to properties, offences punishable under section 28(2)(a) read with section 28(1)(b) and section 28(3)(a)(i) of the Moneylenders Act (Cap 188, 2010 Rev Ed)) ("Moneylenders Act"), read (where relevant) with either sections 34 or 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") .

6 In the same month of June 2009, the Appellant also committed acts of harassment on another group of housing units where she, together with other accomplices, set fire to those units. On three such occasions, the Appellant and the accomplices splashed thinner on the doors of targeted units and set it alight. In one of those instances, the shoe rack beside the unit was also set on fire. These acts formed the basis of DACs 41437/2009, 41438/2009 and 41439/2009, where the Appellant was charged for committing mischief by fire with the intention to cause damage to properties, an offence punishable under section 435, read with section 34 (where relevant) of the Penal Code.

7 The seventh charge related to an act which occurred on 22 June 2009, where the Appellant and an accomplice splashed thinner at the clothing hung along the corridor and the shoe rack placed outside the targeted unit in Ang Mo Kio. It would appear that they were spotted before they could light those objects on fire. This act formed the basis of DAC 41436/2009, where the Appellant was charged for attempting to commit mischief by fire, intending to cause damage to property, punishable under section 435 and read with sections 511 and 34 of the Penal Code.

District Court Proceedings

8 Before the District Court below, the Appellant (unrepresented at that time) pleaded guilty to all seven charges. In addition, the Appellant consented to having six additional charges of harassing debtors on behalf of unlicensed moneylenders by defacing and causing damage to properties taken into consideration (DACs 36171/2009, 36172/2009, 36178/2009, 36179/2009, 36180/2009 and

36182/2009). The acts which were the bases for the six charges taken into consideration involved the same *modus operandi* of writing declaratory statements of money owed on the walls of the staircase landings leading up to the targeted housing unit and splashing paint on the doors of those units.

9 After considering the mitigation plea of the Appellant and the submissions on sentence by the Prosecution, the District Judge ("DJ") sentenced the Appellant to a total of 48 months' imprisonment. For each of the three charges of harassment of debtors, the Appellant was sentenced to 9 months' imprisonment, and for each of the three charges of committing mischief by fire, the Appellant was sentenced to 26 months' imprisonment. As for the charge of attempted mischief by fire, the Appellant was sentenced to 13 months' imprisonment. The DJ ordered the sentences for every charge under each category of charge to run consecutively and the rest to run concurrently. The effective sentence was therefore 48 months' imprisonment.

10 The DJ took into account several considerations in determining the appropriate sentence Firstly, as the offences committed by the Appellant were sufficiently heinous to warrant a tough stance by the courts, the court's general approach of rehabilitating young offenders must be superseded by deterrence. Secondly, the DJ found that the Appellant had minimal rehabilitative prospects. The Appellant lacked familial support, had a history of physical abuse by her father and had also taken to substance abuse. Thirdly, the DJ found that the option of sending the Appellant to a Reformative Training Centre was inappropriate since the Appellant had a history of an inability to get along with her peers. Fourthly, the DJ placed significant emphasis on the determination by the Government to reduce incidents of unlicensed moneylending and the related harassment, see the DJ's Grounds of Decision reported at [2009] SGDC 404 at [12], [19] and [20]. In view of this public interest, the DJ inferred that deterrence must therefore be the dominant and primary consideration for such offences notwithstanding the relatively young age of the offender.

The Present Appeal

11 In her submissions before this Court, the Appellant's broad substantive grounds of appeal were that the sentence meted out by the DJ was manifestly excessive and that the DJ had erred in appreciating the materials before him. In reply, the Prosecution substantively repeated their arguments which were raised in their submissions on sentence to the court below, *ie* the need for a deterrent sentence in view of the rising trend of youths being recruited by unlicensed moneylending syndicates and the related use of more dangerous acts of annoyance involving fire.

12 It has been well established as a matter of general principle that the dominant consideration in sentencing young offenders has been rehabilitation. In *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Mok Ping Wuen Maurice*") at [21], Yong Pung How CJ succinctly summarised this general principle and rationalised the basis behind it as follows:

> Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young "don't know any better" and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case.

13 However, this general principle of regarding rehabilitation as the main consideration for the treatment of young offenders is not absolute. Yong Pung How CJ had this clearly in mind when he pointed out in *Mok Ping Wuen Maurice*, that the court had to "assess the facts in every case". If the crime is serious or heinous enough, the courts have held that deterrence will supersede rehabilitation as the sentencing consideration. In *PP v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Mohammad Al-Ansari*"), V K Rajah JA outlined, at [77]-[78], the following framework for courts to consider when deciding on the appropriate sentence for a young offender who has been convicted of a serious crime:

> 77 ...*First, the court must ask itself whether rehabilitation can remain a predominant consideration. If the offence was particularly heinous or the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender*. In this case, the statutorily prescribed punishment (in most cases a term of imprisonment) will be appropriate.
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> 78 However, if the principle of rehabilitation is considered to be relevant as a dominant consideration, the next question is how to give effect to this. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. In seeking to achieve the proper balance, the courts could consider the factors I enumerated above, but must, above all, pay heed to the conceptual basis for rehabilitation and deterrence.
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> [emphasis added]

14 From [5]–[7] above, it would be noted that this court was concerned with two types of offences, namely, harassment of debtors and mischief by fire. As I will show below, the courts have generally been reluctant to sentence youths below the age of 21 to a term of imprisonment for both types of offences when considered individually. In those cases, courts have instead been generally inclined to sentence these youths to either probation or reformative training since the courts did not view such offences, individually, as serious enough to warrant replacing rehabilitation with deterrence as the pre-dominant sentencing consideration. In this appeal, this court also had to consider both offences and whether collectively, bearing in mind the greater public interest in curbing unlicensed moneylending activities, this court ought to impose a deterrent sentence and consequently disregard the age of the offender.

Harassment of Debtors

15 Hitherto the courts have consistently sentenced young offenders, below the age of 21, to either probation or reformative training after they have been convicted of committing similar acts of harassment as those committed by the Appellant. I summarise the cases arising from the Moneylenders Act below:

(a) In DAC 15545/2009, the 17-year-old offender was sentenced to 18 months' probation for using an indelible red marker to write similar statements on the walls of the staircase landing leading to the targeted unit;

(b) In DAC 41432/2009, the 18-year-old offender was sentenced to reformative training for splashing paint and using the paint to write on the walls of the lift landing;

(c) In DACs 25422/2009, 26279/2009, 26280/2009 and 26281/2009, the 19-year-old offender was sentenced to reformative training for splashing paint and using markers to write loanshark writings;

(d) In DAC 38279/2009, 29850/2009, 39887/2009, 39854/2009, 39856/2009 and 38857/2009, the 19-year-old offender was sentenced to reformative training for splashing paint and writing on the walls outside the lift landing; and

(e) In DAC 41408/2009, the 20-year-old offender was sentenced to reformative training for splashing paint and writing on the walls of the lift landing.

16 In view of these precedents alone, it seemed clear to me that the sentence meted out by the DJ for the harassment of debtors charges was not in line with the precedents and manifestly excessive. In the proceedings below, although the Prosecution's submission on sentence made reference to all the above cases, the DJ nevertheless sentenced the Appellant to 9 months' imprisonment for each charge notwithstanding the similarities in the *modus operandi*, *ie* the splashing of paint and using indelible ink to write on the walls. The DJ based this sentence mainly on the culpability (*ie* greed) of the Appellant and the need for general deterrence. Putting aside the question of endangerment of lives (which was only relevant to the mischief by fire charges), I could not see any discernable factor that would justify such a departure from the sentencing precedents. In almost all the cases, the offenders were motivated by monetary rewards. Otherwise there would have been no reason for the offender to be involved in such loan shark activities. And in all cases, there existed the same public interest in curbing such activities.

Mischief by Fire

17 What was particularly germane in this appeal, and what distinguished this appeal from previous cases of unlicensed moneylending harassment involving youths, was that the Prosecution had preferred against the Appellant the additional charges of mischief by fire, an offence which attracted a higher statutory sentence. This court had to evaluate, apparently for the first time, whether where a young offender was guilty of both harassment of debtors and the corollary use of fire as a harassment technique, the consequent combined effect would be so serious or heinous that the pre-dominant consideration of rehabilitation when sentencing a young offender in those circumstances should be replaced by general deterrence.

18 As an observation, it would seem that courts have not usually sentenced young offenders to terms of imprisonment. In the case of *PP v Teo Sew Eng* [2008] SGDC 295, the offender had a family spat with another relative over some inheritance money. Believing that the relative was withholding money from her, the offender instigated her 17-year-old son (who then subsequently sought the assistance of his classmate, also 17 years old at the time of the offence) to set fire to that relative's car. After pleading guilty to the committing mischief by fire charges, both youths were sentenced to probation. The District Judge sentenced the offender to 6 months' imprisonment. The offender appealed against her imprisonment sentence and submitted that probation or alternatively a shorter jail sentence was more appropriate. On appeal, Justice Choo Han Teck observed that probation was not appropriate for the offender and had the offender's son not been young and labouring under a psychiatric disorder, he too was likely to be jailed, see *Teo Sew Eng v PP* [2009] 3 SLR(R) 324 at [3]. In the case of *PP v Yunani bin Abdul Hamid* [2007] SGDC 345 (where one charge involved drug

trafficking) the judge noted, at [22], that the offender was previously sentenced to 18 months' probation when he was 16 years old for a series of offences including that of committing mischief by fire (other charges related to housebreaking and theft). It has to be noted that although that accused had faced offences involving greater gravity and had been charged with a greater number of offences as compared to the Appellant, that accused had only been placed on probation.

19 The DJ and the Prosecution had rightly noted that the government has stepped up its efforts in curbing the wrongful acts of unlicensed moneylending syndicates. Parliament has enhanced the sentences for such violations in the Moneylenders Act especially in view of the growing audacity of these moneylenders adopting harassment techniques that could endanger their victims' lives. The Senior Minister of State for Home Affairs, Associate Professor Ho Peng Kee, had stated in Parliament, in oral answers to questions on illegal moneylenders and runners, that he endorsed the practice of charging offenders with offences that have prescribed sentences, as then was the case, to send a deterrent signal to the public (*Singapore Parliamentary Debates, Official Report* (18 August 2009) vol 86). What was equally of grave concern was the trend of youths being lured and used as syndicate runners. It was in light of the foregoing and in the public interest, that the DJ held that the dominant sentencing consideration in this case was deterrence, despite his acknowledgement that rehabilitation was usually the dominant consideration when sentencing youths below 21 years of age.

20 I would agree with the DJ that, *prima facie*, the pre-dominant sentencing consideration in all cases of loan shark harassment, *a fortiori* acts of harassment where there was mischief by fire, must be deterrence. The Court must, however, especially where young offenders were involved, carefully assess the facts in each case (see *Mok Ping Wuen Maurice* at [21]) and not apply the general rule of deterrence as a matter of course. There are many facets to public interest. It cannot be in the public interest that every such young offender be incarcerated and be exposed to the negative influences of hardened criminals in the prison environment. The rehabilitation of the young, who have gone astray, is a fundamental tenet of our society. If it is Parliament's intention to take away this option in relation to a particular offence or a category of offences, then, this intention must be made clear. Considering all the facts and circumstances in this case, including the nature and seriousness of the offence and the Appellant's potential for reform, it was my view that rehabilitation still remained as the pre-dominant sentencing consideration.

21 It seemed to me that in ruling out rehabilitation for the Appellant, the DJ had not fully appreciated several facets of the case. Firstly, while for the reasons alluded to in [10] above, the DJ was correct to hold that the offences committed by the Appellant were heinous, he had not given sufficient consideration to the circumstances under which she became a runner for loan sharks and why on being allowed to return home, she continued to be associated with such criminals. Importantly, her degree of culpability must be acutely assessed in the light of her surrounding circumstances. As stated in the probationary and reformative training reports, the Appellant did not come from a privileged background and her family was struggling to make ends meet. On the evidence, it was my view that the Appellant started to work for the unlicensed moneylenders out of desperation, rather than greed, in order to support herself. In that frame of mind, she carried out what was *instructed* by the unlicensed moneylenders. As stated in *Mok Ping Wuen Maurice* at [21], the courts should presume that youths are impressionable and are unlikely to know the full consequences of their actions. It seemed to me all the more so in this case. I further venture to think that her family environment and violence could very well have affected her value judgments on the propriety of her actions, and thus contributed to her inability to fathom the full consequences of her actions. It was not unlikely that the Appellant's actions were acts of mischief committed by an immature youth from a troubled home. These were circumstances which were highly germane to determining the appropriate sentence to be imposed on the Appellant. Here I would reiterate what V K Rajah J stated in *Tan Kay Beng v PP* [2006] 4 SLR(R) 10 at [31]:

31 Deterrence must always be tempered by *proportionality* in relation to the *severity of the offence committed as well as by the moral and legal culpability of the offender*. It is axiomatic that a court must abstain from gratuitous loading in sentences. …

[emphasis added]

22 Secondly, there was insufficient basis for the DJ to come to the finding that the Appellant had minimal rehabilitative prospects. The DJ held this view on the basis that the Appellant had lacked familial support, had a history of substance abuse, and that she was physically abused by her father, as set out in the Probation Report. In my view, the DJ should have taken greater precautions in using the findings in a probation report to justify his grounds for not sentencing the Appellant to reformative training. In the Probation Report, it was understandable that probation was found to be unsuitable since she lacked the familial support. Moreover, if she were put on probation, it would also mean that the Appellant could continue associating with negative peers, as she had done in the past. Unfortunately, the DJ did not consider the Appellant's rehabilitative prospects in the context of reformative training. In sentencing the Appellant to imprisonment, the DJ considered that rehabilitation was also possible in prison. With respect, perhaps, the DJ did not wholly appreciate the corruptive environment and stigmatisation that imprisonment would bring. More importantly, even if there are rehabilitative elements or programmes in prison, they are clearly not tailor-made for young offenders. In contrast to the DJ's views, the counsellor who prepared the Reformative Training Suitability Report did in fact acknowledge that the Appellant could be reformed if she was put through tailor-made programmes in reformative training. This was further corroborated in the Probation Report where it was noted that the Appellant was amenable to change, provided that she had close guidance and support and a firm and structured environment to support her rehabilitation. Indeed, after her arrest, the Appellant had expressed both remorse as well as the motivation to continue studying to secure a well-paying job and to improve the circumstances of her family. Having considered all these factors, it did not appear to me that there was a sufficient basis for the DJ to hold that the Appellant had such minimal rehabilitative prospects to preclude reformative training.

23 Therefore, while the offences committed by the Appellant were serious, bearing in mind the circumstances of the case and the reformative prospects of the Appellant, I came to the conclusion that this would not be an appropriate case to depart from the norm of regarding rehabilitation as the primary objective in the treatment of young offenders. I need hardly state that there are various aspects to society's interests. In my view, it is certainly not in society's interest to see that young offenders become hardened criminals. On the contrary, society would want to see young offenders turning over a new leaf to become law abiding citizens who will make positive contributions to its development. See Stephen Billick & Avram Mack, "The Utility of Residential Treatment Programs in the Prevention and Management of Juvenile Delinquency" in Adolescent Psychiatry, Vol 28 (The Analytic Press, 2004) p 95 at 96:

> The modern juvenile justice system differs from the adult justice system in three fundamental ways: (1) the importance of rehabilitation, (2) a focus on the best interests of the juvenile, and (3) the degree of judicial latitude. Rehabilitation is the ideal goal of the juvenile justice system. ... there is an attention to the best interests of the adolescent because society benefits when youths cease criminal behaviour and become productive adults.

The future of a young offender, who is not shown to be a recalcitrant offender, would be put at risk by the courts if he is not given a chance to rehabilitate and is made to serve a prison term like a common criminal. While I would not belittle the seriousness of the offences which the Appellant committed, the interests of society would be better served if she was given the chance to rehabilitate. I would reiterate that reformative training is not a soft option. The young offender

subject to that sentence, like a prison term, would lose his or her freedom of movement. The period of institutional training which the young offender would have to undergo is substantial, a minimum of 18 months and a maximum of 36 months. Reformative training provides the court with a middle-ground that broadly encapsulates the twin principles of rehabilitation and deterrence in relation to the young offender (see *Mohammad Al-Ansari* at [47], [57] and [58]). I therefore, with respect, could not accept the Prosecution's submission that an imprisonment sentence is necessary in this case to reflect the greater deterrence needed. I would reiterate the point I made above (at [20]) that although Parliament had enacted tougher measures for the offences relating to loan shark activities, it had not expressed the view that probation or reformative training should be excluded for young offenders for the same offences.

Conclusion

24 It was for these reasons that I allowed the appeal and substituted the prison term with reformative training. A question arose as to whether I should backdate the reformative training to the date the Appellant was first remanded. I did not think I should do so as that would not be in line with the object of the statutory scheme of reformative training. There is a minimum period of training which an offender subject to that regime must undergo. Backdating would in effect be shortening the period of training and would undermine or hinder the effectiveness of such a programme. I therefore ordered the sentence to commence forthwith.