Koh Thian Huat v Public Prosecutor
[2002] SGHC 120

Case Number : Cr Rev 8/2002, MA 54/2002

Decision Date : 30 May 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Irving Choh Thian Chee (CTLC Law Corp) for the petitioner/appellant; Bala Reddy and Hwong Meng Jet (Deputy Public Prosecutors) for the respondent

Parties : Koh Thian Huat — Public Prosecutor

Judgment

GROUNDS OF DECISION

The petitioner, Koh Thian Huat, pleaded guilty in the district court to a charge of theft under s 380 of the Penal Code (Cap 224). Subsequently, he sought to retract his plea but this was disallowed by the trial judge. The petitioner then sought a criminal revision.

The background facts

2 The statement of facts ("SOF") revealed that on 8 January 2002, the petitioner was alone at Seiyu Department Store ("Seiyu") located in Parco Bugis Junction, Victoria Street. An in-house detective observed the appellant taking a necklace from a display shelf and placing it into the front pocket of his jeans. He was then seen moving to another display shelf where he took another necklace which he held in his left hand. Thereafter, the petitioner left Seiyu without paying. The petitioner was apprehended and the necklaces were recovered. They were subsequently identified as "Shiro" necklaces priced at $38.80 and $79.98.

3 On 1 February 2002, the petitioner appeared in person before a district judge ("the judge"). The charge under s 380 of the Penal Code was duly read and explained to him in Mandarin. The petitioner pleaded guilty and admitted to the entire SOF without qualification. He was accordingly convicted. Following his request, the court deferred sentencing until after the Chinese New Year holidays.

4 On 15 February 2002, the petitioner appeared again before the court and indicated that he wished to retract his guilty plea. He explained that at the time of the offence, he did not have an intention to steal and that he now wished to engage counsel. When queried by the judge that he seemed to have understood the nature and consequences of his plea perfectly, the petitioner simply reiterated that he had forgotten to pay and alleged that, at the first hearing, he was stopped from communicating this to the court by the interpreter.

5 After hearing his arguments, the judge refused to grant him leave to retract his plea. In the light of his antecedents, a pre-sentence report was called in order to determine the petitioners suitability for corrective training. Bail was extended.

6 On 8 March 2002, the petitioner appeared with counsel who informed the court that the petitioner was adamant about retracting his plea. Leave was again refused and the judge proceeded to sentencing. After considering his pre-sentence report and taking cognisance of his antecedents, the petitioner was sentenced to a term of seven years corrective training.

Decision of the judge

Retraction

7 Giving his reasons in a written judgment, the judge noted that his discretion to allow the petitioner to withdraw a plea of guilt existed so long as the court was not *functus officio* : *Ganesun s/o Kannan v PP* [1996] 3 SLR 56. Nevertheless, this discretion had to be exercised judicially and for valid reasons, and an accused should not be permitted merely at whim to change his plea. In any case, pleas of guilt by unrepresented persons should not be more easily vitiated, even if they were ignorant of some possible defence (*Packir Malim v PP* [1997] 3 SLR 429).

8 The judge noted that, when the charge was first read to the petitioner, he appeared to understand the proceedings without any difficulty. The entire SOF was admitted without qualification. In the premises, the judge ruled that the petitioner should be bound by his earlier plea of guilt, which he held to be valid, unequivocal and entirely voluntary. He was of the view that to allow the petitioner to retract his plea in such circumstances would be to "sanction a flagrant abuse of the courts process".

Sentencing

9 The judge took cognisance of the petitioners string of previous convictions. He noted that as of the date of the current conviction, the petitioner had been convicted on six occasions for ten separate offences (not including the offence of robbery with hurt in 1988 when he was put on probation). Between 1992 and 1997, he had been sentenced to a total of six years and five months imprisonment. Further, he was sent for a further 18 months in a Reformative Training Centre ("RTC") in 1989. Assuming that he was granted remission for all his sentences and including the detention at the RTC, the petitioner would have been incarcerated for at least five and a half years in the last twelve years.

10 The judge noted that the only factor that was remotely in his favour was that he had managed to stay out of trouble with the law in the last two years. Noting that the pre-sentence report had also recommended that he was suitable for corrective training, the judge sentenced the petitioner to a term of seven years corrective training.

The criminal revision

11 It is trite law that the revisionary powers of the High Court must be exercised judiciously. In *Ang Poh Chuan v PP* [1996] 1 SLR 326, it was stated at 330:

> Thus various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some serious injustice. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.

12 Before the court will be minded to invoke its revisionary jurisdiction, it must first be satisfied that some "serious injustice" has resulted or would result if it does not intervene. This has been the test consistently applied by the courts over the years.

13 Increasingly, however, convicted persons who have pleaded guilty at the lower courts allude to

these powers to challenge the correctness of their convictions.

14 Section 244 of the *Criminal Procedure Code* (Cap 68) ("CPC") states:

> When an accused person has pleaded guilty and been convicted by a District Court or Magistrates Court on that plea there shall be no appeal except as to the extent or legality of the sentence.

15 The legislatures intent to provide for the finality of the proceedings was encapsulated in that provision. In *Teo Hee Heng v PP* [2000] 3 SLR 168, 172, the court said:

> It is certainly not the purpose of a criminal revision to become a convenient form of "backdoor appeal" against conviction for accused person who had pleaded guilty to their charges.

16 In my opinion, the finality of a conviction following a guilty plea has been put into doubt by these frequent applications for revision. The powers of revision are not meant to cater to the whims of convicted persons who decide at a later stage to change their plea. Ultimately, the High Courts revisionary powers are to facilitate its supervisory and superintending jurisdiction over criminal proceedings before a subordinate court so as to correct, if necessary, a miscarriage of justice arising from the correctness, legality or propriety of any finding, sentence or order recorded or passed, and also as to the regularity of any proceedings of that court. In any case, there is a marked difference between the role and duties of a revisionary court and that of an appellate court. I agreed wholly with the following passage found in *Butterworths Annotated Statutes of Singapore*, Vol. 3 (1997 Issue), *Criminal Procedure Code* at 353:

> **Difference between appellate and revisionary jurisdiction**
>
> In an appeal, it is the duty of the appellate court to examine the evidence and come to an independent finding on each issue of fact but a revisional court deals with questions of evidence or disturbs the finding of fact by the lower court only in very exceptional cases, to prevent a miscarriage of justice. The revisional court will confine itself to errors of law or procedure only. In an application for revision, the main question which the High Court has to consider is whether substantial justice has been done and whether it should interfere in the interests of justice, whereas in an appeal, the appellant would be entitled to demand an adjudication upon all questions of fact and law raised in the appeal. When substantial justice has been done, it is not for the High Court to interfere in revision.

17 The High Court must therefore jealously guard its revisionary jurisdiction from being abused by frivolous and unmeritorious applications. The revisionary powers should never be misused as an avenue for litigants to commence a "backdoor appeal".

The petitioners case

18 The petitioners arguments, as gleaned from his Petition for Revision rested on two key points which were essentially identical to those canvassed before the court below. Firstly, he argued that he had inadvertently walked out of the store without paying for the necklaces. Secondly, the petitioner argued that, as he was unrepresented at the time of his plea, he was unaware that he had a valid defence. Regardless of this, his application for a criminal revision was made pursuant to s 23 of the Supreme Court of Judicature Act and s 268 as read with s 266 of the CPC and, as stated earlier, the onus fell on him to first satisfy the court that "serious injustice" would result if he was not granted leave to withdraw his plea of guilt. The "serious injustice" must be of a nature and degree that warrants the courts intervention and exercise of its powers of revision in order to rectify an error (or what appears to be an error) of law or procedure made by the judge below.

First ground: the absence of mens rea

19 Before me, the petitioner contended that, after he selected the first necklace, he noticed the second necklace and decided that he wanted to purchase it as well. As he was also holding a packet of cigarettes and a handphone in his hands, he placed one of the necklaces into his left jeans pocket and continued to hold the other in his hand. After browsing around, he had inadvertently walked out of the store without paying for the items.

20 This latest version of facts may be contrasted with that stated in the SOF. The SOF stated that the petitioner had placed the first necklace into his pocket *before* moving to another display shelf where he appropriated the second necklace. While the discrepancy between the two versions appeared to be slight, it was material. By putting forward a more innocuous version of facts, the petitioner sought to impress upon the court that his appropriation of the necklaces was a result of his inadvertence and carelessness; that he had no *mens rea*.

21 It must first be noted that the petitioner wholly accepted the version of facts when he pleaded guilty on 1 February 2002 and did not challenge the SOF until 8 March 2002. Further, I also noted that he had admitted to the entirety of the prosecutions SOF before he was convicted. Ordinarily, in cases where an accused pleads guilty, the charge sheet and the SOF act as the basis for the courts decision to convict. As the SOF has now become an integral part of criminal procedure in Singapore (*Mok Swee Kok v PP* [1994] 3 SLR 140, 146), it is my view that, when an accused has unqualifiedly admitted to the contents of the SOF, these facts should not thereafter be readily open to dispute. Permitting otherwise may unduly prolong the proceedings or possibly even undermine the soundness of the conviction.

22 Further, the petitioners change in the facts begs disbelief. A *bona fide* shopper would not normally place his intended purchases into his pocket. Such an act is even more implausible in the context since a necklace is not a bulky item. Assuming for a moment that the petitioner was being truthful about his hands being full, the more reasonable thing for him to do was to put his handphone or cigarettes into his pocket. Alternatively, he could easily have sought assistance from the sales staff.

23 In the absence of any valid reasons or explanations for the inconsistencies, the petitioners version of facts was rejected and accordingly his argument that he lacked the requisite *mens rea* at the time of the offence also failed.

Second ground: the validity of the plea

24 Next, the petitioner contended that, as an uneducated man, he was unable to understand the full ramifications of his plea and that throughout the entire proceedings he was confused and lost. At one stage, he claimed to have been stopped by an interpreter from voicing his defence. In the premises, the revisionary court should grant him leave to retract his plea of guilt.

25 Essentially, these arguments go towards the validity of the petitioners plea. As the judge had noted, the petitioner was provided with an interpreter, a professional who duly explained the entire proceedings to him in Mandarin. It was inconceivable that she would prohibit him from voicing his defence. More importantly, when he was asked to enter his plea, the judge observed that the petitioner appeared to understand perfectly what he was doing and that the plea was valid, unequivocal and voluntary. This was not unusual considering that the charge sheet and the SOF were straightforward and did not raise any complex issues of law or fact. In the absence of compelling evidence, an appellate court should not readily disturb such a finding which is based on a trial judges assessment of an offenders conduct and disposition in court.

26 I also disbelieved the petitioners contention that he was confused and lost amidst the court procedures. Judging from his numerous prior convictions, he was clearly no stranger to court proceedings. Had he really forgot to pay for the necklaces, he would have voiced this defence to the police and to the court. The fact that he chose to wait until 15 February 2002 before raising this defence suggested that it was merely an afterthought and an excuse.

27 Further, the unequivocal words used in his written mitigation reinforced my view. In that letter dated 29 January 2002 and entitled, "Letter of Appeal DAC 1157/02" it was stated:

> I know I have committed a criminal offence that I am very regretful over. It is really my mistake and I am willing to receive the rightful punishment from Your Honour.

28 While the petitioner had sought to argue that the letter was drafted by his wife who did it under the mistaken notion that he had no defence, this was his contrivance. The petitioner signed at the bottom of that letter signifying his agreement with its contents. Clearly, his wife had prepared the letter with his authority and instructions. He was therefore precluded from arguing that he had been mistaken about the availability of a legal defence. In any case, the very act of putting forward an altogether well-crafted mitigation plea with relevant supporting exhibits without the assistance of counsel (the letter was tendered to court on 1 February 2002 before counsel was engaged) demonstrated the petitioners acquaintance with court procedures; further reinforcing my belief as stated earlier. On the face of all this evidence, I found nothing to suggest that the petitioner was unable to appreciate the salient aspects of his case at the time of his plea.

The legal safeguards

29 The principles on whether the court should permit an attempt to retract a plea of guilt are firmly settled. Section 180(b) of the CPC states that if the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him, he may plead guilty to the charge and the court may convict him on it. The common law has evolved to include various procedural safeguards before a plea of guilt can be regarded as the basis for a conviction (*Ganesun s/o Kannan v PP* [1996] 3 SLR 560, *Lee Weng Tuck v PP* [1989] 2 MLJ 143). These safeguards require the convicting court to ensure that it is the accused himself who wishes to plead guilty. In ***R v Tan Thian Chai*** [1932] MLJ 74, Whitley J explained that this meant that an accused person should plead guilty or claim trial by his own mouth and not through his counsel. The second safeguard states that the onus lies on the judge to ascertain whether the accused understands the true nature and consequences of his plea. This goes hand in hand with s 180(b) of the CPC. Thirdly, the court must establish that the accused intends to admit without qualification the offence alleged against him. Procedurally, this means that the court is under a duty to ensure that all the ingredients constituting the offence are included in the SOF and admitted without qualification. In so doing, the court must also ensure that the accused is aware of the nature and consequences of such an admission. All three safeguards must be complied with before a court can convict on a guilty plea.

30 In the present case, the facts were straightforward and largely undisputed. The judge duly observed and adhered to the above-mentioned safeguards. In the premises, the conviction was sound. The evidence pointedly showed that the petitioner knew the nature and consequences of his plea.

The appeal against sentence

31 The petitioner also lodged an appeal against the sentence of seven years corrective training on the ground that it was manifestly excessive. However, on the day of the hearing, counsel for the petitioner sought leave to withdraw the appeal against sentence. In the light of the judges written grounds of decision and the petitioners antecedents, I granted leave to withdraw.

Conclusion

32 For the above reasons, the petition for criminal revision was dismissed and leave was granted to withdraw the appeal against sentence.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore