Public Prosecutor v Teo Cheng Kiat
[2000] SGHC 129

Case Number : CC 42/2000
Decision Date : 06 July 2000
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Lawrence Ang and Jeanne Lee (Attorney-General's Chambers) for the prosecution; Kevin De Souza (De Souza & Sahagar) (briefed) for the accused
Parties : Public Prosecutor — Teo Cheng Kiat

JUDGMENT:

Grounds of Decision

1 The Accused, Teo Cheng Kiat, is a 47 year old former employee of Singapore Airlines Ltd ("SIA"). He joined SIA in May 1975 as a clerk and from 1 September 1988 until his dismissal early this year, he was a Supervisor in the Cabin Crew Division, Administration Services Department, drawing a monthly salary of almost $3,000. He pleaded guilty to 10 Charges of criminal breach of trust ("CBT") under Section 408 Penal Code. 15 other similar Charges and one Charge under Section 43A of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act were admitted by him and taken into consideration for the purpose of sentencing.

2 The CBT Charges stated that he was entrusted with dominion over SIAs funds for the purpose of making allowance payments to the airlines cabin crew and was vested with the authority to process and cause payments to be made in respect of such allowances. They alleged that he dishonestly misappropriated numerous amounts from the airlines bank account with Overseas Union Bank Ltd ("OUB") by causing them to be paid to bank accounts which were in his name or controlled by him. The bank accounts which were controlled by the Accused included a joint account in the names of the Accused and his wife, Tan Lay Bee, one in the names of his wife and her sister, Tan Leh Kheng and one account in the name of his wife. The 25 CBT Charges covered a time span of 13 years from February 1987 to January 2000 and involved a total sum of $34,955.064.55. The 10 CBT Charges on which the Accused was convicted involved a total sum of $31,019,452.10. The only non-CBT Charge related to an offence of concealing property directly representing benefits from criminal conduct.

3 The airlines procedure for processing allowance payments and the manner in which the Accused exploited the system are set out with admirable precision and clarity by the Prosecution in the Statement of Facts. Briefly, the Accused as Supervisor was responsible for the data processing operations of his four subordinates so that allowances for the airlines cabin crew could be paid on time. The Accused was given access and was authorised to make adjustments to the Cabin Crew Allowance System. He could determine the name of the crew member who was to be paid, the amount payable and the receiving bank account number. A particular type of allowance (the Meal and Overnight Allowance), which was tax-free and payable only to cabin crew, was processed and paid directly to the cabin crew by the Accuseds department. Each crew member maintained a bank account with OUB and the money paid would be transferred by the Bank from the airlines account to the respective crew members account directly.

4 The Accuseds work was supposed to be checked and verified by the Accuseds two immediate supervisors but as the reports were voluminous, it was impractical to check all the payments. Random checks were expected to be made. However, even if checks had been made, there was no way the supervisors could verify all the details keyed in by the Accused.

5 The Accused controlled eight accounts in OUB at the material times. They were either personal accounts in his name or in his wifes name or joint-accounts in the names of the Accused and his wife or of his wife and her younger sister. The Accused credited into these eight accounts the money misappropriated from SIA.

6 By creating fictitious adjustments for extra payments of allowances, the Accused was able to siphon off money into the

accounts controlled by him. As the cabin crew to whom the allowances were due were also paid, there was no complaint. While the Accused was on leave, no adjustments would be made until his return as he was the only one authorised to make the adjustments.

7 To avoid detection, the Accused doctored a computer-generated report printed daily which contained all the adjustments made to crew allowances for that day. The doctored report would not reflect the fictitious adjustments made, the total number of adjustments made or the total amount involved in the adjustments.

8 Upon receiving the payment instructions from SIA, OUB would credit the amounts stated into the receiving bank account numbers. The relevant information for payment was the receiving bank account number and not the name of the cabin crew in question.

9 Using the above method, the Accused systematically channelled money into his OUB accounts. From there, he moved it to his accounts in other banks before spending it. With the misappropriated money, he bought seven private properties, including the house he was living in. Two of them have been fully paid for. He spent some $280,000 on renovations for two of the apartments. He also purchased a Mercedes Benz C 200 for $180,000 and a BMW 728 iA for $270,570. He spent another $1.85 million on jewellery and watches. He also patronised high fashion boutiques.

10 In Malaysia, which the Accused travelled to once a month on average in 1998 and where he stayed in a posh hotel each time, he has paid RM1.5 million for an apartment in Kuala Lumpur, RM750,000 for a Mercedes Benz CLK 320 and a deposit of RM90,000 for a Mercedes Benz S 320.

11 On 18 January 2000, one of the staff in the Internal Audit Department did an adhoc review of the data on the crew allowance payments and noticed that three OUB bank accounts (the Accuseds) received ten payments each on 15 December 1999. This was unusual as there should be only one payment of allowance to any crew member on a particular day. A police report was lodged on 19 January 2000 setting off the train of investigations leading to the present case.

THE PROSECUTIONS SUBMISSIONS ON SENTENCE

12 The Accused has no previous convictions. The Prosecution, however, urged me to pass a deterrent sentence by way of a substantial period of imprisonment. Of the almost $35 million embezzled, the Commercial Affairs Department ("CAD") was able to recover about $15 million in cash. The seven properties and the luxury items would probably yield another $6 million or so. That left some $14 million unaccounted for. The recovery of these assets came about because of the quick and decisive action taken by the CAD and was not due to voluntary restitution by the Accused.

13 The CAD had in its possession overwhelming documentary evidence against the Accused and would therefore have had little difficulty proving the charges against the Accused. His plea of guilt should not therefore be the dominant consideration in deciding on the sentence to be imposed.

14 The misappropriation in this case was systematic and calculated and was done almost every day for 13 years. It was done simply through greed and a desire to support an extravagant lifestyle. There was sophistication and planning. The Accused was placed in a position of considerable trust.

15 The High Court has unfettered sentencing powers save that it cannot impose the three punishments of imprisonment, fine and caning for one offence (Section 11(1) Criminal Procedure Code). While Section 17 Criminal Procedure Code restricts the sentencing powers of the Subordinate Courts to twice their ordinary jurisdiction, that section has imposed no restriction on the High Court since its amendment in 1966. Hence, although Section 18 Criminal Procedure Code requires that at least two of the imprisonment sentences run consecutively, it is open to the High Court to order more than two consecutive sentences.

16 The Prosecution submitted that the appropriate sentence should be the maximum sentence of seven years imprisonment per charge with three or more ordered to run consecutively because:

> (a) there were no circumstances in this case which mitigated the commission of the offences;
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> (b) the Accused had wasted away a large part of the funds on high living and may even have squirreled some of it away for his later life;
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> (c) he has pleaded guilty to 10 Charges in the face of overwhelming evidence;
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> (d) he has 16 Charges taken into consideration which would have the effect of enhancing the sentence;
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> (e) the total sum involved was massive;
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> (f) the offences were committed consistently over a long period of time;
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> (g) the Accused was in a position of trust and had betrayed the confidence of his employers and his superiors for 13 years; and
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> (h) the offences were committed in a premeditated and deliberate manner.

THE MITIGATION PLEA

17 The Accused completed secondary education in the Chinese language stream. His wife aged 48 is a homemaker. They have two sons one sitting for his GCE O level examinations this year while the other is a 20-year-old Singapore Armed Forces scholar currently studying overseas.

18 During the period of the offences, the Accused was employed in non-executive positions with SIA from senior clerical officer in 1987 to supervisor in 1988 and beyond.

19 He was highly remorseful for his wrong doing and wished to apologise to SIA unreservedly for the financial loss caused to the airline. He was also sorry for having manipulated his wife over the years in the opening of the bank account and for having misled her into believing that his wealth came from trading in private property.

20 In the beginning, the Accused was angry and bitter that he could not be promoted to a managerial position despite his diligence, knowledge and efficiency in the job due to his lack of educational qualifications. He had pointed out to his superiors the flaws in the payment system but no attention was paid to his comments because of his lack of professional qualifications. That was the catalyst that propelled him to commit the offences so that he could prove he was "one-up" over his superiors. Subsequently, greed became his motivating factor and he became intoxicated with the amount of funds at his disposal. Both bitterness and greed clouded his sense of judgment.

21 As he was not holding an executive position, the level of trust reposed in him was not very high. He was able to exploit the system because the checks and verifications were not properly carried out by his superiors.

22 The Accused was a first offender and has pleaded guilty at an early stage, thus saving both prosecution and judicial time and costs.

23 He has cooperated fully with the CAD in its investigations and efforts to recover the assets paid from the misappropriated money, including those outside the jurisdiction. He has executed the documents for sale of the two cars here and has also signed the documents allowing the money seized by the CAD to be used for the progress payments on the Singapore properties to avert any forfeiture. He was also cooperating with SIAs solicitors in their efforts to recover the misappropriated money.

24 Substantial recovery of the money has been made thus far and the total amount eventually recovered could be about $24 million.

25 Defence counsel cited *PP v Choy Hon Tim* (unreported), where a deputy chief executive (operations) and director of the Public Utilities Board pleaded guilty to five Charges under the Prevention of Corruption Act and had 25 other Charges taken into consideration and was sentenced to two consecutive maximum terms of seven years imprisonment by a District Court. The total amount involved there was more than $13 million and the offences were committed over 12 years. It was submitted that although the amount involved there was less than the amount in the present case, the circumstances in *Choys* case were far more aggravated as the offences undermined public confidence in the integrity of public servants and institutions and tarnished Singapores international standing as a corruption-free society. Accordingly, the present Accused should receive no more than Choy did, i.e. 14 years imprisonment.

THE SENTENCE

26 In passing sentence on the Accused, I read out the following judgment on sentence:

> "1 Each of the ten Charges to which the Accused has pleaded guilty carries a maximum imprisonment term of seven years to which a fine may be added. The maximum aggregate sentence that may be imposed by the High Court in this case is therefore 70 years imprisonment. Section 18 Criminal Procedure Code dictates that at least two of the sentences of imprisonment must run consecutively.
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> 2 In *Wong Kai Chuen Philip v PP* [1991] 1 MLJ 321, an advocate and solicitor pleaded guilty to two charges of criminal breach of trust and admitted four other charges involving a total of some $1.8 million. That was a case involving Section 409 Penal Code but the comments of Chan Sek Keong J are highly instructive. At page 323, the learned Judge said:
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> "I agree with counsel for the appellant on his submission on the principle of proportionality in sentencing. In an offence like criminal breach of trust, it is a matter of common sense that, all other things being equal, the larger the amount dishonestly misappropriated the greater the culpability of the offender and the more severe the sentence of the court."
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> This, together with the learned Judges other statements of principle of sentencing in criminal breach of trust cases, was endorsed by the Court of Appeal in *PP v Lee Meow Sim Jenny* [1993] 2 SLR 885 at page 893.
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> 3 The ten Charges in the present case involve sums of money ranging from $988,000 to $6 million. Like *Philip Wongs case*, the Charges here have been divided into convenient periods of time and relate to different bank accounts. The individual sums of money involved in each Charge are therefore not quite as important as the total amount of money misappropriated in all the 25 criminal

breach of trust Charges. Similarly, the individual sentences are not of so much practical significance as the aggregate of the sentences finally imposed.

4 It is not the title that the Accused had in the organization that matters. What is material is the degree of trust reposed in him and, as is evident from the Statement of Facts, the degree was very high. He had the access and the authority to make adjustments in the payment system, something even his superiors could not do. Any weakness in the payment system exploited by the Accused could not constitute a mitigating factor in his favour. If it were otherwise, the Courts would have to entertain pleas from burglars who blame house-owners for keeping their gates open or for using inferior locks.

5 The Accused is a first offender only in the sense that he was not caught and convicted all these years for the surreptitious and sophisticated siphoning of his employers money. Nonetheless, he has set a dubious record in the criminal annals upon his dramatic first entry.

6 The Accuseds plea of guilt in the face of the overwhelming documentary evidence does not carry the same weight such pleas do in cases which may be more difficult for the Prosecution to prove. This is also not a case where an Accused, overwhelmed by remorse, voluntarily surrenders and reveals his crimes. The detection of his 13 years of defalcation came about quite fortuitously. Nevertheless, his plea of guilt has saved time and expense and obviated the need to have many witnesses come to Court to testify.

7 It has been submitted that the Accused cooperated fully with the Commercial Affairs Department ("CAD") in its investigations and tracing and recovery of the money and the assets bought with the embezzled funds. He is also said to be assisting the solicitors of his former employers in recovering the misappropriated amounts. I note, however, that some $11 million (by the Accuseds estimation) to $14 million (by the Prosecutions estimation) remain unaccounted for. That amount, standing by itself, already dwarfs all other cases of criminal breach of trust by comparison. It must also not be forgotten that he has had the use and enjoyment of the various amounts of money (and what they bought) during this time.

8 Even if the Accuseds first few acts of misappropriation way back in 1987 were motivated by his bitterness and anger at his superiors, already poor excuses for his criminal misdeeds in any case, surely the rest of the gargantuan embezzlement was motivated solely by greed, greed and more greed. It was not even need but sheer greed that led to his multiple misdeeds. He had apparently become accustomed or should I say, addicted? to extravagance, splurging more money on luxury goods than many people could honestly earn in their life-time. The extraordinarily large amounts embezzled were used for lavish living his two luxury cars even had similar special registration numbers.

9 The Accuseds pilfering activities took place almost everyday for more than a decade. They were systematic and sophisticated. The siphoning was steady and sustained and the amounts were staggering. He coolly and cleverly concealed his covert criminal activities from his superiors. Last year alone, he siphoned off about $16 million. The Accused must therefore be severely punished for his

crimes. Further, bearing in mind that some $11 million to $14 million are still unaccounted for, I agree completely with the Prosecutions suggestion that "a very substantial period of imprisonment is called for to deny the Accused the opportunity to enjoy the fruits of his illegal enterprise". It must offend all notions of justice if perpetrators of financial crime like the present Accused are allowed to spend a short stint in prison and then emerge to live many more years as multi-millionaires living off money that was never theirs.

10 As I have indicated earlier, in a case such as this where there are multiple Charges, it is of no real practical significance what the individual sentences ought to be. I will not therefore try to tailor each sentence according to the amounts misappropriated. Public interest demands that monumental crimes attract memorial sentences. The Accused was "intoxicated" (borrowing the word used by learned Defence Counsel) by greed for 13 years. He will be given a sufficiently long period to become "sober" again. For this purpose, consecutive imprisonment sentences will be imposed to arrive at an appropriate aggregate term of imprisonment.

11 Mr Teo Cheng Kiat, the sentences of this Court are that you be imprisoned for six years in respect of each of the ten Charges. The imprisonment sentences for four of the ten Charges are to run consecutively with effect from 19 January 2000 while the rest are to run concurrently with the sentences for these four Charges. You will therefore serve a total of 24 years in prison with effect from 19 January 2000.

12 As indicated in Court earlier, I have granted a Consent Order in the terms sought in the Schedule of Assets read with the amended exhibit number 69.

13 I thank Mr Lawrence Ang, Ms Jeanne Lee and Mr Kevin de Souza for their very helpful Written Submissions."

Tay Yong Kwang

Judicial Commissioner