Chuah Gin Synn v Public Prosecutor
[2003] SGHC 47

Case Number : MA 275/2002

Decision Date : 04 March 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Chen Chee Yen (Tan Peng Chin LLC) for the appellant; Cheng Howe Ming and Tan Wee Soon (Deputy Public Prosecutors) for the respondent

Parties : Chuah Gin Synn — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – First offender – Special circumstances Whether appropriate to substitute a term of imprisonment with a fine

Criminal Procedure and Sentencing – Sentencing – Sentencing – Jurisdiction of the High Court on appeal from a magistrate's court – Criminal Procedure Code (Cap 68) s 11(5)

Criminal Procedure and Sentencing – Appeal – Power of High Court sitting in appellate jurisdiction to correct an error in judgment – Where court has not yet risen for the day – Criminal Procedure Code (Cap 68) s 217.

1 The appellant pleaded guilty in the magistrate's court to one count of theft, an offence under s 379 of the Penal Code (Cap 224). She was sentenced to two weeks' imprisonment and appealed against her sentence. I allowed her appeal, substituting instead a fine of $2,000, in default two weeks' imprisonment, and now give my reasons.

The facts

2 The appellant is an Australian national who was visiting Singapore in order to register her marriage to her Singaporean fiancé. On 28 October 2002, she was at the Metro Department Store in Causeway Point, Woodlands, where a security guard observed her behaving suspiciously. Specifically, she was seen putting four different pieces of clothing into her bag, while attempting at the same time to conceal her actions. The appellant was also seen telling the cashier that she would return a brassiere to the relevant section of the store, but instead put the brassiere in her bag and attempted to leave the store.

3 When confronted by the security guard, a total of 11 items, being ten blouses and one brassiere, with a total value of $259.70, were found in the bag. The appellant admitted that she had stolen the items, and pleaded guilty to the charge of theft in the magistrate's court.

4 In determining her sentence, the magistrate noted that there had been a significant increase in the incidence of shoplifting cases in recent months, thereby warranting the imposition of more severe sentences in order to arrest the trend. In light of the number of items stolen by the appellant, which showed both the persistence of her conduct and her audacity, as well as constituting evidence of premeditation on her part, the magistrate concluded that a custodial sentence was warranted. He sentenced her to two weeks' imprisonment.

The appeal to this court

5 The appellant's appeal was made on the basis that the sentence imposed by the magistrate was

manifestly excessive. Counsel for the appellant raised the issue of the appellant having been on medication for depression at the time of the offence, when such medication had resulted in her acting out of character and committing the offence. As the appellant had not been represented in the lower court, she had failed to appreciate the importance of raising this issue in mitigation. Counsel also informed me that the appellant's marriage, which had originally been scheduled to take place on the day after her conviction in the magistrate's court, had now been postponed as a result of the present proceedings. Finally, he also emphasised that the appellant did not have a criminal record either in Singapore or in Australia, that she had shown remorse, and that she had co-operated with the police in their investigations. As such, he contended that the ends of justice would have been served by the imposition of a fine.

6 The prosecution objected to the appeal, arguing that the appellant had committed a serious offence whilst employing a number of surreptitious techniques. In light of the steady rise in shoplifting cases, it argued for a deterrent sentence to be imposed in the present case. As for the specific arguments raised in mitigation by the appellant, the prosecution contended that the claim of illness on the appellant's part was of little value as she had not shown how her illness or the medication had affected her conduct, which had been shrewd and deliberate. Furthermore, the appellant's co-operation with the police was of no mitigating value as she had been caught red-handed

The decision of the court

7 In deciding whether nor not to allow the appellant's appeal, I noted that the magistrate had made reference to four cases as supporting his decision to impose a custodial sentence. In *PP v Innasimuthu s/o DM* (MA 146/2001) and *PP v Nurashikin Binte Ahmad Borhan* (MA 15/2002), the accused persons had stolen items worth $838 and $9.70 respectively, and had been sentenced to four months' imprisonment and two weeks' imprisonment respectively. I noted, however, that these two cases were not strictly relevant to the present case, as in both cases the accused persons had criminal antecedents.

8 More relevant, in my view, were the cases of *PP v Sekharamantri Sairam Patnaik* (MA 5941/2002) and *PP v Roddie AK Belamy* (MAC 7705/2002), where both accused persons were first offenders. The magistrate had in fact relied on these two cases as indicative of the tougher steps taken by the courts in recent months to reverse the rise in shoplifting cases. In *Sekharamantri*, the accused stole four items worth $84.30 and was fined $2000, in default four weeks' imprisonment. In *Roddie*, the accused stole 10 items worth $113.90, and was sentenced to two weeks' imprisonment.

9 In light of the above cases, I could not agree with counsel's submission that the sentence imposed by the magistrate was manifestly excessive. Nevertheless, I noted that, as I put it in *Gan Hock Keong Winston v PP* [2002] 4 SLR 307 at paragraph 27:

> [S]entencing is not a scientific procedure. One cannot simply look at the sentence passed in a previous case, and then conclude that the identical sentence should be passed in another case with similar facts. If sentencing were to be reduced to such a mathematical exercise, then this would severely hamper the trial judge's fundamental discretion to pass sentences in accordance with all the factors of a particular case.

10 In light of the particular circumstances of the case, I was inclined to exercise some measure of clemency towards the appellant. Although the prosecution was right when it pointed out that illness is not a mitigating factor save in the most exceptional cases where judicial mercy is exercised – *PP v Ong Ker Seng* [2001] 4 SLR 180, I took into account the fact that the appellant had not appreciated the importance of raising her personal circumstances to the magistrate. I was also aware that it was not unheard of to impose a suitably high fine in lieu of imprisonment in shoplifting cases. For example, in *Chinta Murali Krishna v PP* (MA 289/2002/01), I had allowed the appellant's appeal against a sentence of two weeks' imprisonment and imposed a fine of $3500, in default two week's imprisonment.

11 The above said, bearing in mind that the appellant in *Chinta Murali* had only stolen two items worth $77.40, as well as the public policy need to halt the rise in petty crimes such as shoplifting, I took the view that a heavier fine was necessary. As such, I allowed the appeal by substituting a fine of $5,000, in default two weeks' imprisonment.

12 The appeal having been allowed, it was subsequently brought to my attention that the appellant had been tried in a magistrate's court for the offence, where the jurisdictional limit for a fine is only $2,000 – s 11(5), Criminal Procedure Code (Cap 68) (the 'CPC'). By contrast, the appellant in *Chinta Murali* had been tried in a district court, where the jurisdictional limit was $10,000 – s 11(3), CPC – such that the fine imposed was well-within the jurisdictional limit. .

13 Section 217 of the CPC provides:

> (1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgement.
>
> (2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the court rises for the day.

In *Chiaw Wai Onn v PP* [1997] 3 SLR 445, I clarified that the effect of this section was that the subordinate courts could not alter their judgments save as laid down in subsection (2). However, the phrase "rises for the day" could not mean that the court rose when it had heard all the cases scheduled for the day. As I put it in *Chiaw Wai Onn* at paragraph 74:

> Consequently, in practical terms, a court only rose for the day when the working day for the court had ended. This purposive construction would afford the judge a realistic opportunity to know of and correct any non-clerical mistake in the judgment without unduly offending the principle of finality. The limited time period within which a non-clerical mistake might be rectified ensured that the accused would not suffer any real detriment.

Finally, I had noted in *Chiaw Wai Onn*, that although s 217 did not deal with the High Court's powers on this issue, applying *Garmaz s/o Pakhar & Anor v PP* [1996] 1 SLR 401, the High Court in its appellate jurisdiction must necessarily have whatever powers the lower courts possessed.

14 In the present case, the error with respect to the jurisdictional limit of the magistrate's court was noted well within the timeframe contemplated by s 217. Consequently, it was possible for the parties to be summoned back to court before the court had risen for the day, and I accordingly reduced the

appellant's fine to $2,000, in default two weeks' imprisonment. I take the opportunity to emphasise, however, that the lower fine was imposed solely because of the jurisdictional limits of the magistrate's court, and that the fine of $5,000 that I had imposed initially would have been the more appropriate punishment for the appellant's transgressions.