Lim Hong Kheng v Public Prosecutor
[2006] SGHC 100

Case Number : Cr M 13/2006, MA 148/2005

Decision Date : 07 June 2006

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Wong Hin Pkin Wendell (Drew & Napier LLC) for the applicant; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Lim Hong Kheng — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Out of time – Application for extension of time for filing petition of appeal – Applicable principles and factors to be considered by court when exercising discretion to allow extension of time – Whether applicant having automatic right to extension of time – Section 250 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

7 June 2006

Sundaresh Menon JC:

Background

1 Anyone concerned with the administration of justice in Singapore will know that in common with the workings of most other legal systems, there is an expectation that the various timelines stipulated in the procedural rules of the courts will be complied with. This is essential to assure the speedy and efficient dispensation of justice. But these very rules also provide a measure of flexibility to be exercised in the appropriate cases. This is one of those cases.

2 Lim Hong Kheng ("the Applicant") was convicted on 24 November 2005 of abetting her son in the employment of a foreign domestic worker in breach of the conditions of the latter's work permit. The Applicant was found to have conspired with her son to employ the worker as a shop assistant when under the terms of the work permit, she was only allowed to work as a domestic worker. In so doing, the Applicant was found to have committed an offence under s 5(3) read with s 23(1) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ("the Act") and punishable under s 33(2) of the Act. She was sentenced to a fine of $3,500 by the learned magistrate who dealt with the matter at first instance.

3 The Applicant filed her notice of appeal within the prescribed time and on 12 April 2006 her solicitors received a certified copy of the notes of evidence and of the grounds of decision from the Registrar of the Subordinate Courts. At the same time, her solicitors had their attention drawn to the requirement in s 247(4) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") that the petition of appeal had to be filed within ten days of receipt of the grounds of decision, failing which the appeal would be deemed to have been withdrawn by virtue of s 247(7) of the CPC.

4 For reasons unknown to the Applicant, her solicitors only sent her the communication from the Subordinate Courts on 17 April 2006. By then, the Applicant had lost half the statutory time she was allowed for the purposes of considering whether to proceed with the appeal and if so, of having her petition prepared and filed. The Applicant subsequently changed her solicitors with the result that her motion before me was presented and argued by Mr Wendell Wong. In the circumstances, it was not possible for me to require those who appeared to be directly responsible for the delay to account for it. However, Mr Wong did make available a copy of a letter from the Applicant's previous solicitors

to the Applicant which confirmed that they had been served with the notes of evidence and grounds of decision on 12 April 2006 and had only informed the Applicant of this on 17 April 2006. For some reason, even then, the notes of evidence and grounds of decision do not appear to have been sent to the Applicant. In her affidavit, the Applicant stated that she had only received the grounds of decision a few days later on 21 April 2006. That was the penultimate day of the period within which the petition was to have been filed.

5 The Applicant also explained that there had been some confusion stemming from the fact that her son's solicitors had only received the notes of evidence and grounds of decision from the Subordinate Courts on 13 April 2006 and his solicitors had advised that the time for him to file his petition of appeal would expire on 24 April 2006.

6 During this time, the Applicant took the decision first to engage new solicitors and then, following consultation, to pursue the appeal. After a meeting with her new solicitors on 23 April 2006, a petition of appeal was prepared. An attempt was made to file the petition on the next day but it was rejected as the time for the Applicant to file her petition had expired on 22 April 2006 (a Saturday) and the appeal was therefore deemed to have been withdrawn pursuant to s 247(7) of the CPC.

7 The Applicant therefore brought this motion seeking the indulgence of the court to exercise its power under s 250 of the CPC to extend the time for her to file her petition and pursue her appeal.

8 Mr Hay Hung Chun, the learned deputy public prosecutor, objected to the motion. After hearing the arguments I was satisfied that this was a proper case for the exercise of my discretion and I granted the relief sought by the Applicant. However, having regard to the vigour of Mr Hay's submissions in the face of what seemed at first blush to be a straightforward application and because of what appeared to be a possible lack of clarity in the applicable principles guiding the exercise of the court's discretion in such cases, I thought it appropriate briefly to explain my reasons for doing so.

The applicable principles

9 The starting point of the analysis is s 250 of the CPC which provides:

> The High Court may, on the application of any person desirous of appealing who is debarred from doing so upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the District Judge or to the Magistrate and to the parties as the Court considers desirable in order that substantial justice may be done in the matter.

10 This plainly is a provision that confers a broad discretion upon the court and in the exercise of that discretion the court is to be guided by the objective that "substantial justice may be done in the matter". In the course of his arguments, Mr Hay argued that the "substantial justice" in question extended beyond a consideration of the interests of the Applicant to the interests of society at large. He referred me to a passage in the judgment of Kang Hwee Gee J in *Saw Yew Choy v Public Prosecutor* [2000] 1 MLJ 493 ("*Saw Yew Choy*"). In that decision, the High Court of Malaysia had noted at 500 as follows:

> However, the catch phrase 'in order that substantial justice may be done in the matter' … was interpreted in the *Jumari*'s case to encompass not merely substantial justice to the convicted person but also substantial justice to 'society at large on whose behalf the Public Prosecutor

acts' – following which it was held on the other side of the coin, that no substantial justice would be done, if the appellant's application were to be allowed in that case.

11 The apparent breadth of this statement did not seem to me to sit well with the plain words of s 250. In particular, what is clear from the section is that the court is to be guided by what would enable substantial justice to be done "in the matter" at hand. I therefore reviewed the judgment in *Jumari bin Mohamed v Public Prosecutor* [1982] 1 MLJ 282 ("*Jumari*") and having done so and in particular, having examined the context in which that suggestion was apparently first made in *Jumari*, I am satisfied that it does not support so broad a notion. *Jumari* was a case where the applicant, having been found guilty of certain offences under the Malaysian Prevention of Corruption Act 1961 (Act 57), was sentenced to imprisonment. As is the position in the case before me, the applicant had filed his notice of appeal in good time but had failed to prepare and file his petition within the permitted time. On the facts of that case, Azmi J dismissed the application for an extension of time. The court first considered the reasons advanced for the delay and found these to be "flimsy and frivolous". The court then went on to note at 284 as follows:

> Further, there is nothing on record to show that the applicant's conviction is wrongful. In the circumstances, I am of the view that no substantial justice would be done if the extension of time were allowed in this particular case. For the purpose of doing substantial justice, the court must bear in mind that justice must be done not only to the convicted person but also to society at large on whose behalf the Public Prosecutor acts. As stated by Thomson C.J. in [the] *Veerasingam* case … "It is just as imperative that a rightful conviction should be successfully defended as it is that a wrongful one should be successfully attacked".

12 When the passage is seen in context, it becomes apparent that all the court was saying in *Jumari* was that it also had to have regard to whether there were any merits in the proposed appeal. I therefore do not accept that in considering what would achieve substantial justice in the matter it is appropriate to consider the wider interests of society at large where these are not directly relevant to the case at hand. I would echo here the words of Thomson CJ in *Veerasingam v Public Prosecutor* [1958] MLJ 76 ("*Veerasingam*") where his Lordship declined to define "substantial justice" but suggested that it "is done when a rightful conviction is upheld and a wrongful one quashed" (at 79).

13 Another plank in Mr Hay's argument was to the effect that the court should take a less tolerant view of the application because in dealing with a convicted person as the Applicant is in this case, there is no longer a presumption of innocence in her favour. Mr Hay cited another passage from *Saw Yew Choy* ([10] *supra*) where the court noted at 501 as follows:

> There are reasons in my view why in the first place the strict approach … ought to be applied to require due compliance with the Criminal Procedure Code. If an appellant is allowed to say that his failure to lodge his petition of appeal within the time stipulated is due to the default of his counsel, it would be relatively easy for him to avoid the strict provision of s 307 of the … Code by merely putting the blame on his counsel. It must be understood by all those who are involved in the administration of criminal justice that a verdict pronounced by a court of law at first instance is for all intents and purposes a finality. The presumption of innocence of a person accused of an offence ends with his conviction. He is now a guilty and convicted person who must be punished without further delay. But in civilised societies where the liberty of the subject is paramount, it is generally recognised that the condemned should be afforded the opportunity to have his conviction reviewed by a higher court – but not before certain stringent conditions are imposed with respect to the time within which the appellant is obliged to prosecute his appeal to ensure that his liability to submit to punishment without delay is not compromised.

14 I do not find this an attractive argument. While it may be true that the presumption of innocence no longer avails one who has been convicted at first instance, that appears to me to have nothing to do with whether I should exercise the discretion I undoubtedly have. The point simply is that the Legislature has in fact conferred upon the court a discretion to extend the time limits that are applicable specifically to the prosecution of an appeal. That discretion does not appear to me to be limited by a consideration of whether or not the applicant has the benefit of a presumption of innocence operating in his favour at the time of the application.

15 I turn then to the approach to be taken in exercising my discretion. I begin by outlining how I consider the previous cases on this issue are to be approached and understood in the context of a statutory provision that confers a broad discretion on the court. In this regard I found the following *dictum* of Raja Azlan Shah J (as His Royal Highness then was) in *Public Prosecutor v Sundaravelu* [1967] 1 MLJ 79 at 79–80 a useful reminder:

> This application brings into review the [relevant] provisions … of the Criminal Procedure Code (Cap. 6). It is clear from the provisions of that section that this court has a discretion whether or not to allow the application, but to my mind emphasis is laid on the phrase "in order that substantial justice may be done in the matter". I think the provisions of this section have been well gone into by the Court of Appeal in *Veerasingam*'s case. There it was said that *the section is one of discretion and no hard and fast rules can be laid down, otherwise it ceases to be a discretion and becomes a rule of law.* [emphasis added]

(See also the decision of the Malaysian High Court in *Ishak bin Hj Shaari v Public Prosecutor* [1997] 5 MLJ 28 ("*Shaari*") where this *dictum* was cited and applied.)

16 This is important to note because there may otherwise be a tendency to treat cases dealing with particular fact situations as establishing binding rules and it is clear to me that this would not be a correct approach. By way of example, Mr Hay noted that the nub of the Applicant's complaint was that there had been a delay in the transmission to her of the relevant documents by her previous solicitors and relying upon *Saw Yew Choy* again, he submitted that to succeed in an argument founded on the default of her solicitors, the Applicant would have "to show conclusively" that the delay was in fact the fault of her former solicitors and that she herself was completely free from blame. There is certainly language in *Saw Yew Choy* that might be read to encourage such an argument. However, when read in context it becomes clear in my view that the court in *Saw Yew Choy* was doing no more than to state that *on the facts of that case* the court was unwilling to grant the extension on the ground of the alleged failing of the applicant's counsel. Indeed there are a number of cases where counsel's default has been relied on in an attempt to justify an extension. This has been successful in some instances (see for instance *Shaari* and cases cited there) and unsuccessful in others (see for instance *Saw Yew Choy*, *Jumari* and *Khor Cheng Wah v Sungai Way Leasing Sdn Bhd* [1996] 1 MLJ 223).

17 In *Shaari*, Suriyadi J referred to some judgments in civil proceedings where the courts had taken into account the default of a party's solicitors as a factor warranting an extension of time and went on to state at 37–38:

> With the wisdom of the above two civil cases available for my consideration, it would appear unusual if the same factor of the solicitor's inadvertence could not be applied for criminal cases. In fact, there is more reason that this factor should be considered in order that substantial justice may be done as the liberty of a person is no mean commodity. Moreover, in criminal cases whenever a doubt arises, the benefit of that doubt has consistently tilted to the accused. To conclude on this point, on the possibility that there was inadvertence on the part of the solicitors

who handled this matter and through no fault of the applicant he had suffered, I believe the court should not be prevented from or fettered in considering it.

18 I find these comments entirely persuasive. In this regard, I note that our own jurisprudence in the context of civil appeals has developed along a similar line. In *Stansfield Business International Pte Ltd v Vithya Sri Sumathis* [1999] 3 SLR 239 ("*Stansfield*"), Chao Hick Tin J (as he then was) appeared to suggest that default on the part of one's solicitors could not be relied on to warrant the exercise of the court's discretion in favour of the applicant. However, in *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 2 SLR 686 ("*Nomura*"), Lai Siu Chiu J carefully reviewed the various authorities on the point and concluded as follows (at [20]):

> In my opinion, these cases do not lay down a general proposition that mistakes of the solicitor would *never* be sufficient to justify an extension of time. Whether it is appropriate to allow the applicant to bring an appeal out of time would depend on the circumstances of each case, having considered the relevant principles governing the exercise of the judicial discretion. In those two cases, the failure on the part of the respective solicitors in charge to file the notice of appeal was clearly inexcusable in the circumstances … [emphasis in original]

19 I note that when *Nomura* went on appeal, the Court of Appeal in a judgment delivered by Chao Hick Tin JA (as he then was) affirmed the statement of principle articulated by Lai Siu Chiu J and said as follows (at [2000] 4 SLR 46 at [28]):

> We agreed with Lai Siu Chiu J that there is no absolute rule of law which prescribes that an error on the part of a solicitor or his staff can never, under any circumstances, be a sufficient ground to grant an extension of time to file a notice of appeal. Having said that, we do not think it is possible to lay down any hard and fast rules as to the circumstances under which a mistake or error on the part of the solicitor or his staff would be held to be sufficient to persuade the court to show sympathy to the application. It is the overall picture that emerges to the court that would be determinative. However, a mistake, even bona fide, is only one factor in the overall consideration. Such a mistake per se may not be sufficient to enable the court to exercise its discretion in favour of an extension. … Thus, if there is anything in the High Court decision in *Stansfield Business International Pte Ltd v Vithya Sri Sumathis* … which could be read to suggest, although it did not expressly so state, that an error on the part of a solicitor absolutely bars any relief, it is not correct.

20 It is thus clear that no hard and fast rule is to be extracted from the authorities that the default of one's solicitors can or cannot afford a basis for an extension of time. In each case it is a matter for the court's discretion having regard to all the circumstances of the case.

21 Subject to these observations, I now consider the broad principles that have been stated in previous cases to inform the exercise of discretion in cases such as the present. There is a consistent line of cases in our jurisprudence which touch on this and which can be traced to the decision of the Brunei Court of Appeal in *Zulkifli bin Puasa v Public Prosecutor* [1985] 1 MLJ 461 ("*Zulkifli*").That was a case where a group of eight applicants had been convicted of rape on 12 September 1984 and had been sentenced to imprisonment. An application for leave to appeal had to be filed by 26 September 1984 but this was not done. On 3 October 1984 (a week after the time limit had expired), an application for an extension of time was filed. The Court of Appeal had this to say on the principles that inform such applications (at 462):

> There are two factors to be considered upon an application for an extension of time, (1) the length of the delay and whether it can be satisfactorily explained, and (2) whether the out of

time application is likely to succeed.

> Where, as here, the delay is of short duration the court may, if it thinks fit, disregard the delay, even in the absence of satisfactory reasons, but where a substantial interval of time (a month or more) has elapsed, an extension of time will not be granted, as a matter of course, without a satisfactory explanation: see *Rhodes* [*R v Rhodes* (1910) 5 Cr App R 35]. Where the delay is minimal the court will still not grant an extension of time if the application for which the extension is sought is bound to fail: there must be an arguable case. Moreover, even though the subsequent application may be likely to succeed … the court will not grant an extension of time as a matter of course … The entire circumstances will be considered.

22 This was followed in Singapore by Chan Sek Keong J (as he then was) in *Anuar bin Othman v PP* [1990] SLR 1180 ("*Anuar*") where the court held that a sufficient explanation had been given to explain a delay of some 18 months in filing the petition. The applicant in that case had apparently exhausted his funds and was unable to engage a solicitor to prosecute the appeal. When the notes of evidence and grounds of decision were served on him, he did not know how to prepare the petition and was also unaware of the time limits. Chan J then went on to consider the prospects in the appeal and in this context said as follows (at 1183, [12]):

> In order to determine whether the applicant has an arguable case, I decided to look into the merits of this case as if I were hearing the appeal as it was the most convenient course to take in the circumstances. Because this was an unusual course to take, I indicated to the DPP and counsel for the applicant that this was what I intended to do and I received no objection from them. I accordingly asked for and have heard full arguments based on the grounds of decision and the notes of evidence to ascertain whether or not the applicant had an arguable case.

23 Mr Wong submitted in his skeletal argument that the court in *Anuar* had held that to look into whether the applicant had an arguable case was "an unusual course to take". Mr Wong further submitted as follows: "[Chan J] did not elaborate but presumably he meant that where the length of delay and its explanation were justified, the court would not look into the merits of the appeal under the [second] limb of the [*Zulkifli*] test".

24 I have no hesitation at all in rejecting this submission since it is plain, on reading the portion of the judgment of Chan J which I have reproduced above, that what the court considered "unusual" about the course it had taken in that case was examining the merits of the appeal as if it were hearing the appeal. Plainly, this would be unusual in the context of an application for an extension of time to prosecute an appeal but in *Anuar* it was thought to be the most convenient course to take and neither party thought otherwise. In my view, the court in *Anuar* went no further than to follow the guidelines set out in *Zulkifli*.

25 The next case to consider this was *Seah Hee Tect v PP* [1992] 2 SLR 210 ("*Seah Hee Tect*") a decision of GP Selvam JC (as he then was). In *Seah Hee Tect* the applicant was convicted of an offence under the Road Traffic Rules 1981 (Cap 276, R 20, 1990 Rev Ed) and appealed within the permitted time against his sentence. Some five months later he applied for leave to appeal against his conviction as well. Selvam JC followed *Zulkifli* and denied the application. His Honour reviewed the affidavit filed in that case and noted that it consisted of nothing more than a series of bare assertions as to the existence of merits. In the premises, there was no basis for the court to come to any view as to the prospects in the appeal. The court also noted that no explanation had been put forward at all for the inordinate delay of five months. As succinctly stated by Selvam JC at 213, [14]:

> If applications are allowed on the basis of the assertions made in this case, the court's role will

be reduced to rubber-stamping such applications.

26 Finally in *Salwant Singh v PP* [2005] 1 SLR 36 ("*Salwant Singh*"), the Singapore Court of Appeal was presented with a motion for an extension of time to file a notice of appeal. Although the motion was brought under s 50 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), the Court of Appeal noted the striking similarity in the terms of this provision and s 250 of the CPC and cited and endorsed the *dicta* in *Zulkifli* and its adoption in *Seah Hee Tect*. On the facts of the case, the Court of Appeal was satisfied that the applicant had provided a sufficient explanation for the failure to file the notice within time. As it transpired, this had been due to factors which were wholly outside the control of the applicant. However the application was dismissed because the court was satisfied that the intended appeal had no prospect of success at all. The applicant had pleaded guilty to begin with and under s 244 of the CPC, there could be no appeal against a conviction upon a plea of guilt. Further and in any event, there was no question of public interest which would have warranted a further appeal to the Court of Appeal. In the circumstances the court noted that any lodgment of a notice of appeal by the applicant would be "a waste of his time and that of the court" (at [22]).

27 What then is one to make of these pronouncements? It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an *entitlement* to an extension of time. The foregoing cases all establish that in exercising the court's discretion under s 250 of the CPC it is relevant to consider all the circumstances, and in doing so to use a framework that incorporates such considerations as:

(a) the length of the delay in the prosecution of the appeal;

(b) the explanation put forward for the delay; and

(c) the prospects in the appeal.

28 But in my view, these factors are not to be considered in a mechanistic way. As I have noted above, I rejected Mr Wong's submission that any of these considerations are necessarily more important than any others. But I also reject the notion that in every situation each of these is equally important or to be considered in exactly the same way. Indeed, in *Zulkifli*, it was suggested that where, as is the case before me, the delay is of short duration, the court may, if it thinks fit, disregard the delay altogether. While this illustrates the flexibility that is commended to a court considering an application in circumstances such as the present, I doubt if this particular suggestion in *Zulkifli* can be accepted without some clarification.

29 In my view, the fact that the length of the delay is minimal may well diminish the degree of scrutiny given to the explanation given for that delay, or the prospects in the appeal. In contrast, a greater degree of scrutiny would be warranted in a case where the delay is rather more substantial. I regard this as supportable on the very language used in *Zulkifli* where the court appears to have drawn a distinction between the ordinary case where it may be relevant to inquire into "whether the [appeal] is likely to succeed" on the one hand and the case of a minimal delay on the other, where the court would not grant the application "if the application … is bound to fail: there must be an arguable case".

30 The latter threshold is a low one directed primarily at excluding those cases that are hopeless and likely to result in a waste of judicial time and the resources that go with that – see the decision of the Court of Appeal in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644 at 652–653where this was discussed, albeit in a different context.

31 This was also the standard applied by the Court of Appeal in *Salwant Singh* ([26] *supra*) when considering the merits of the intended appeal in the context of an application for an extension of time to file the notice of appeal. As I have noted above, the court in fact found that the applicant was completely absolved of any responsibility for not filing the notice within time. It is therefore not surprising that the court applied such an undemanding standard in assessing the merits. Even so, the application was disallowed because on the facts, the court found it was doomed to failure and would have been a waste of time and resources. This is entirely consistent with the principle that no party has an entitlement to an extension of time, no matter how good the explanation for the delay may be. However, I would not have expected the prospects in the appeal to be subjected only to a similarly undemanding standard if, for instance, the delay had not been so cogently shown not to be due to any fault on the part of the applicant.

32 Although it is not directly relevant, I have also considered the approach taken by the courts when faced with similar applications in the context of civil appeals. In *Hau Khee Wee v Chua Kian Tong* [1986] SLR 484 ("*Hau Khee Wee*"), Chan Sek Keong JC (as he then was) considered the authorities beginning with *Ratnam v Cumarasamy* [1965] 1 MLJ 228 and identified four factors to be borne in mind in deciding whether to grant an extension of time to file a notice of appeal in a civil case (at 488, [14]):

(a) the length of the delay;

(b) the reasons for the delay;

(c) the chances of the appeal succeeding if the time for appealing were extended; and

(d) the degree of prejudice to the would-be respondent if the application were granted.

33 The approach commended in *Hau Khee Wee* has withstood the test of time and a line of cases, including several decisions of the Court of Appeal, have endorsed it. See for example, *Pearson v Chen Chien Wen Edwin* [1991] SLR 212 ("*Pearson*"); *The Tokai Maru* [1998] 3 SLR 105; *Stansfield* ([18] *supra*) ; *Nomura* ([18] *supra*) ; *Ong Cheng Aik v Dayco Products Singapore Pte Ltd* [2005] 2 SLR 561 ("*Ong Cheng Aik*"); and *Lai Swee Lin Linda v AG* [2005] SGCA 58. In *Ong Cheng Aik*,the Court of Appeal clarified that the *Hau Khee Wee* approach is applicable both to cases of applications to extend the time for appeal, as well as to those to extend the time for carrying out some other step to prosecute an existing appeal, but subject to the following important observation (at [16]):

> While the four factors may be applicable to both types of applications for extension of time to do an act in that they assist the court in determining whether there is "some material" for the court to exercise its discretion in favour of the applicant, it must follow as a matter of logic and justice that the "material" required for an application for extension of time to file a notice of appeal out of time should be weightier or more compelling than that required for other applications for extension of time. At the end of the day, the court must, after weighing all the circumstances, come to the conclusion that the application deserves sympathy.

34 It is not surprising that the approach taken to the resolution of this issue in the context of

civil appeals is broadly similar to that taken with criminal appeals. One of the key points to emerge from this brief review of the civil cases is that the court must ultimately consider all the circumstances of the case and then decide whether to exercise its discretion in favour of the applicant. Yong Pung How CJ in *Pearson* (at 218, [17]) explained in this context that the factors identified in *Hau Khee Wee* provide a framework for the court in considering the exercise of its discretion.

35 The cases show that the way in which this framework has been used and the emphasis that has been placed upon particular considerations have varied somewhat from case to case depending on the particular circumstances at hand. It is clear from such cases as *Ong Cheng Aik, Lai Swee Lin Linda v AG*, *The Tokai Maru* and *Pearson* (among others) that the courts do not approach the *Hau Khee Wee* framework in a mechanistic way. Instead, all the circumstances are weighed in order to arrive at a conclusion as to whether sufficient material has been placed before the court to merit its sympathy. I return here to the *dicta* of the Court of Appeal in *Ong Cheng Aik* where it expressly recognised that the same framework could be used to consider the quite different situations where an appeal had been filed in time and was then not prosecuted in a timely manner, and where the appeal had not been brought in time in the first place; but the court noted that in each case the framework would be applied differently in terms of the weight of the material that the applicant would be required to place before the court.

36 I consider that in the context of criminal cases, there is, if anything, an even greater need for such flexibility in the application of the relevant framework. I reiterate here my agreement with the sentiments expressed by Suriyadi J in the extract from the judgment in *Shaari* ([15] *supra*) which I have quoted at [17] above.

37 In my view, the approach set out in *Zulkifli* and followed in the subsequent cases provide a framework for exercising the court's discretion where an application is brought under s 250 of the CPC. That framework is not meant in any way to restrict the court's discretion and it should be applied as appropriate with due regard to the circumstances of each case. I therefore conclude that in exercising my discretion in an application under s 250 of the CPC:

(a) I must endeavour to do substantial justice in the matter before me having regard to all the circumstances of the case.

(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.

(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.

(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.

(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach

will be excused.

The present case

3 8 Applying these considerations to the present case, I had little hesitation in granting the motion before me.

39 The delay in this case was as minimal as it could be, since in effect the Applicant had attempted to file the petition one working day out of time. This is to be considered in the light of the explanations put forward by the Applicant. By the time the Applicant even knew that the notes of evidence and grounds of decision had been received, half the statutory period allowed for the petition to be prepared and filed had expired. Further, she only received the grounds on the penultimate day of the period within which the petition was to be filed. This is a period when the Applicant wanted to take advice on the wisdom of pursuing the appeal. Moreover, there was the additional factor of a related appeal being pursued by her son where some confusion arose because of a slightly different time frame. There was also some evidence of tension in her relations with her former solicitors which prompted her to engage new solicitors. In all the circumstances, the loss of five of the permitted ten days was a significant loss of time for her. This says nothing of the further loss of time before she received the grounds of decision. I was therefore satisfied that the Applicant had more than adequately explained the delay, minimal though it was to begin with.

40 Turning to the merits, Mr Hay argued with conviction that there was little prospect of success in the appeal. His arguments centred on the fact that this was primarily an appeal on a point of fact. It is trite that appeals on facts are seldom easy. Yet, I can say from experience that they are not doomed to failure simply by virtue of being appeals on the facts.

41 Mr Wong argued that one of his principal grounds of appeal was that the learned magistrate had erroneously relied on the uncorroborated and inconsistent evidence of the domestic worker in arriving at the findings of fact upon which the conviction was based. He submitted that this was at least a mixed question of law and fact. I did not think this was an appropriate case to warrant the unusual course of hearing arguments on the merits as though I were hearing the appeal itself. I therefore confine myself to saying that I was satisfied from the arguments Mr Wong placed before me that the appeal was not hopeless or bound to fail.

42 Lastly, I would like to say that I found it pleasing that both counsel made such strenuous efforts on what might have appeared to be a relatively unimportant case. To the Applicant a conviction is a matter of great importance even if it happens not to result in a sentence of imprisonment. Mr Wong's efforts in pursuing the appeal for his client in spite of the pressures of time he was obviously under are commendable. Equally, Mr Hay's strenuous efforts are to be lauded. As I noted at the outset, it was the vigour of his submissions that convinced me that it was appropriate to make this contribution to the understanding of s 250 of the CPC. I thank them both for their efforts.