Public Prosecutor v Tay Beng Guan Albert
[2000] SGHC 155

Case Number : MA 70/2000

Decision Date : 01 August 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jennifer Marie and Gilbert Koh (Deputy Public Prosecutor) for the appellant; Ramesh Tiwary (Leo Fernando) for the respondent

Parties : Public Prosecutor — Tay Beng Guan Albert

Criminal Procedure and Sentencing – Sentencing – Plea of guilt – Whether plea of guilt has any mitigating value when accused caught red-handed

Criminal Procedure and Sentencing – Sentencing – Intruding upon privacy of woman – Use of modern technology to record victim's private moments – Potential repeated viewings and risk of circulation – Offence involving high degree of planning – Whether fine sufficient – Whether need for deterrent custodial sentence

: The respondent pleaded guilty in the magistrate`s court on 20 March 2000 to two charges of intruding upon the privacy of a woman under s 509 of the Penal Code (Cap 224). He was sentenced by magistrate Brenda Tan to a fine of $1,000 on each of the two charges. The prosecution appealed against this sentence as being manifestly inadequate. I allowed the appeal and enhanced the sentence to one month`s imprisonment on each charge, to run consecutively, in addition to the fine imposed by the magistrate. I now give my reasons.

The charges

The charges against the respondent read as follows:

> *MAC 921/2000*
>
> *You, Tay Beng Guan Albert, m/34 years, NRIC: S1732995-B are charged that, you on 3 January 2000 at about 1pm, at the master bedroom bathroom of Blk 27 Hume Ave [num]07-01 Hume Park 2, Singapore, intending to insult the modesty of one Lee Hsu Ching Lynette, to wit, by filming her in an undressed state without her knowledge, with your video camcorder, intending to intrude upon the privacy of the said victim, and you have thereby committed an offence punishable under s 509 of the Penal Code (Cap 224).*

And

> *MAC 922/2000*
>
> *You, Tay Beng Guan Albert, m/34 years, NRIC: S1732995-B are charged that, you sometime in November 1998, in the evening, at the master bedroom bathroom of Blk 27 Hume Ave [num]07-01 Hume Park 2, Singapore, intending to insult the modesty of one Koh Lay Tin Sandy, to wit, by filming the whole process of how the said subject eased herself in the toilet, without her knowledge, with your video camcorder, intending to intrude upon the privacy of*

the said victim, and you have thereby committed an offence punishable under section 509 of the Penal Code (Cap 224).

The facts

At about 1pm on 3 January 2000, the respondent and one Lee Hsu Ching Lynette (`Lee`) went to the respondent`s house after a game of squash. Lee was then a colleague of the respondent.

Lee requested to use the guest bathroom to take a shower. The respondent led her to the bathroom located in the master bedroom, where she proceeded to take a shower. After her shower, Lee noticed a camera lens hidden among a basket of soft toys, with the lens pointing directly at the toilet door which was made of glass.

Lee checked and discovered that it was a Sony video-camcorder which was switched on and in recording mode. She then removed the tape and replaced the video-camcorder back in its original position.

Lee brought the tape home to view its contents. The recording showed Lee undressing and stepping into the bathtub, and thereafter stepping out of the bathtub naked, drying herself and covering herself with a bath towel.

Lee then lodged a police report about the incident.

The tape also contained footage of another woman, one Koh Lay Tin Sandy (`Koh`), who was the respondent`s ex-colleague. Investigations revealed that sometime in November 1998 the respondent and Koh had dinner before proceeding to the respondent`s house to listen to music.

At the respondent`s house, Koh requested to use the bathroom and was led by the respondent to the bathroom in the master bedroom. The respondent switched the video-camcorder, which was similarly hidden in a basket of soft toys, to recording mode before allowing Koh to enter the bathroom.

The recording on the tape showed the entire process of Koh relieving herself in the toilet.

The decision below

The magistrate was satisfied that the respondent understood the nature and consequences of his pleas of guilt and found him guilty on both charges.

In mitigation, the respondent submitted that he had fallen for both Lee and Koh but saw no future in getting involved with them as he was married. He committed the present offences because he wanted some sort of closeness with them.

Five specific mitigation factors were highlighted. First, the respondent was filled with deep remorse and pleaded guilty. As such, Lee and Koh were spared the trauma of testifying in court. Also, the respondent co-operated with the police and furnished them with the identity and particulars of Koh. Secondly, the respondent had apologised to Lee and Koh and sought their forgiveness. Thirdly, the respondent was a first offender who had worked his way up from a disadvantaged background and he

had resolved not to transgress the law again. Fourthly, the respondent was seeking psychological help and undergoing counselling. Finally, the respondent cited his good character and the fact that he was well respected by peers and friends.

The magistrate took into account the facts of the case and the mitigation plea and imposed a $1,000 fine on the respondent on each of the two charges. Her reasons for the sentences were threefold. First, the usual benchmark for a first offender who pleaded guilty to an offence under s 509 of the Penal Code was a fine, and therefore a fine was applicable here, as there were no aggravating factors. Secondly, the respondent was a first offender who was repentant and on his way to being rehabilitated. Thirdly, the magistrate considered the case of **Tan Pin Seng v PP** [1998] 1 SLR 418 . In that case, the accused was, inter alia, charged and convicted under s 509 of the Penal Code for peeping at a lady taking her bath through a hole he made in the bathroom door (the `peeping offence`). The magistrate noted that, in that case, I had reduced the one month jail term imposed by the district court for the peeping offence to a fine of $2,000. She felt that the facts in that case were no less aggravating than the facts in the present case and therefore a fine in the present case would similarly suffice.

The appeal

The prosecution appealed against the fine imposed by the magistrate as being manifestly inadequate. Some of the prosecution`s main contentions were as follows:

Undue emphasis on the respondent`s plea of guilt

The prosecution contended that the magistrate placed undue emphasis on the respondent`s expression of remorse and plea of guilt. The prosecution cited the case of **PP v Tan Fook Sum** [1999] 2 SLR 523 at p 539 where I commented that `there is no mitigation value in a plea of guilt, if the offender pleads guilty in circumstances in which he knows that the prosecution would have no difficulty proving the charge against him; or if he had been caught red-handed`. In that case, I agreed with Chan Sek Keong J (as he then was) who said in **Wong Kai Chuen Philip v PP** [1990] SLR 1011 , 1014; [1991] 1 MLJ 321, 323 that `I do not see any mitigation value in a robber surrendering to the police after he is surrounded and has no means of escape, or much mitigation value in a professional man turning himself in in the face of absolute knowledge that the game is up`.

There is no doubt that the respondent in the present case was caught red-handed. The video tape that Lee handed over to the police contained hard evidence of the crimes committed by the respondent. The respondent would have known that the prosecution would have no difficulty proving the charge against him. With respect, given the facts in the present case, I was of the view that the respondent`s plea of guilt should have little or no mitigation value and that the magistrate erred in taking the view that `adequate weight should be attached to his plea of guilt`.

Pre-meditated and well-planned offence

The magistrate cited my decision in ***Tan Pin Seng*** `s case to support her view that a fine would suffice in cases of this nature. However, the prosecution pointed out that the present case should be distinguished because the offences committed by the respondent in the present case were pre-meditated and well-planned. The respondent replied by contending that the peeping offence committed in ***Tan Pin Seng*** `s case was equally pre-meditated and well-planned, because the

accused in that case had made a hole in the bathroom door in order to peep at the victim taking her bath.

It seemed very clear to me that the degree of culpability in the present case was very much greater than that in ***Tan Pin Seng*** `s case for the peeping offence. In the present case, there must have been a lot of meticulous planning on the respondent`s part in order to commit the offences. The respondent had to hide the video-camcorder in the basket of soft toys in the toilet and then carefully position the lens to point at the toilet door. Furthermore, the respondent had to switch the video-camcorder to recording mode quickly and discreetly before he allowed each of Lee and Koh to use the bathroom. Such a ***modus operandi*** surely required more planning and pre-meditation than peeping through a hole in the bathroom door.

I was therefore of the opinion that the magistrate erred by likening the present situation to that in ***Tan Pin Seng*** `s case. I felt that the high degree of planning needed for the commission of the present offences rendered the situation here more aggravating than that in ***Tan Pin Seng*** `s case.

Nature of offence

Most importantly, I felt that the nature of the present offences merited the utmost consideration. The prosecution rightly contended that the magistrate failed to consider that, if the tape had not been seized, the respondent could have played the tape many times over for his own perverted gratification. With respect, in comparing the present offences to the peeping offence in ***Tan Pin Seng*** `s case, the magistrate totally failed to consider the unique nature of the present offences.

Unlike other `peeping tom` cases where the offender peeps at the victim in person at one moment in time, the respondent here did not actually observe Lee and Koh in their private moments in person. He chose to record their private moments on tape, so that he could watch them again and again for his own perverted pleasure. The potential for repeated viewings made the nature of the offences in the present case wholly distinguishable from that in ***Tan Pin Seng*** `s case.

What the respondent essentially did in this case was to convert his bathroom into a `studio` to record the private moments of his women friends without their knowledge. Video-camcorders are available freely in this age of modern technology and policy considerations dictate that a deterrent sentence has to be imposed to indicate that offences of this nature will not be tolerated. I cannot send a message to the public that it is acceptable to make recordings of others without their knowledge as long as one has the financial resources to pay a fine. It was fortunate that the video tape in the present case was discovered by Lee. Should the tape have fallen into the hands of other third parties, the trauma and embarrassment that the victims would have had to endure would have been unimaginable. The fact that a victim`s private moments could be recorded without the victim`s knowledge and replayed over and over again for another`s perverted pleasure coupled with the risk of possible circulation of such tapes to other people compelled me to impose a custodial sentence in this case to make it clear that the court does not condone such behaviour or treat it lightly.

In my opinion, the magistrate was clearly wrong to take the view that a fine was sufficient and that there were no aggravating factors to justify imposing a custodial sentence.

Conclusion

In deciding what the appropriate sentence to be meted out in the present case was, I took note of all

the mitigating factors in the respondent`s favour that were raised in the lower court. The respondent appeared to be truly remorseful and was undergoing counselling to rehabilitate himself.

As I said in ***PP v Tan Fook Sum*** (supra) at p 540, `policy considerations, the gravity of the offence including the particular facts and circumstances thereof all mandated the imposition of a custodial sentence`.

For the reasons above, I allowed the appeal and sentenced the respondent to one month`s imprisonment on each charge, to run consecutively. The fines were ordered to remain.

Outcome:

Appeal allowed.