

Public Prosecutor v Lim Beng Cheok
[2003] SGHC 54

Case Number : CC 8/2003

Decision Date : 13 March 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Imran Hamid (Deputy Public Prosecutor) for Public Prosecutor; Lee Teck Leng (Tan Peng Chin LLC) for the accused

Parties : Public Prosecutor — Lim Beng Cheok

Criminal Procedure and Sentencing – Sentencing – Plea of guilt – Mitigating factor – Good character – Accused was a teacher who had had a beneficial effect on his students

Criminal Procedure and Sentencing – Sentencing – Carnal intercourse against order of nature - Fellatio – Relevant considerations in sentencing – Whether necessary to give different sentences for offences where accused performed fellatio on victim and offences where accused received fellatio from victim – Penal Code (Cap 224) s 377

Background

1 The accused Lim Beng Cheok ("Lim"), also known as Philip Lim, faced a total of 56 charges under s 377 and 377A of the Penal Code and one charge under the Films Act (Cap 107). The prosecution proceeded with ten charges i.e five charges of voluntarily having carnal intercourse against the order of nature under s 377 Penal Code and five charges of committing an act of gross indecency with a male person under s 377A of the Penal Code. The offences under these ten charges are in respect of five boys aged 13 to 15 at the time of the offences and span over one year from December 2000 to February 2002. I will refer to the five boys as Ong, Sim, Chua, Hong and Goh.

2 At the time of the offences, Lim was a mathematics tutor who gave tuition from his home at Ang Mo Kio.

3 The circumstances as to how the five victims were introduced to Lim were similar. The parents of the five victims received word that Lim was an effective mathematics tutor. They were weak in their grasp of mathematics and their parents were concerned about this. Lim was engaged to tutor the five victims. He was trusted for his tuition methods. Some of the victims, like other students, had at some point of time either resided with him at the flat or would stay over at his flat on occasions, usually just prior to the school examination. Lim provided meals and lodging for them. He was a stern and demanding tutor who would not hesitate to resort to corporal punishment to enforce discipline and exact obedience from his students.

4 The offences came to light because a psychologist in Ong's school was informed by his form teacher that there had been a noticeable deterioration in Ong's attitude towards his mother and schoolwork and Ong had run away from home. It was in the third counselling session with Ong and after probing that the psychologist discovered that Lim had sexually abused Ong and other boys.

5 Lim pleaded guilty to the ten charges and was convicted accordingly. He consented to the remaining 47 charges being taken into consideration for the purpose of sentencing.

Lim's character and contributions

6 Mr Lee Teck Leng, Counsel for Lim, submitted that good character was a mitigating factor,

citing two cases. In *Melvani v Public Prosecutor* [1969-1971] SLR 464, Chief Justice Wee Chong Jin (as he then was) said that "good character is always a circumstance which a court ought to consider in assessing sentence". In *Siah Ooi Choe v Public Prosecutor* [1988] SLR 402, L P Thean J (as he then was) had taken into account the background of the appellant's character and his contribution to society and the country.

7 Mr Imran Hamid for the prosecution, relied on *Chan Mei Yoong Letticia v Public Prosecutor* [2002] 2 SLR 465 to submit that good character should not have any effect on sentencing in the case before me.

8 However, I noted that in *Letticia's* case, the offence was one under the Immigration Act (Cap 133). That may be why the impressive testimonial of the good character of the accused there failed to mitigate the benchmark sentence.

9 On the question of good character and contribution to society, Mr Lee presented an impressive array of testimonials i.e 87 from Lim's former students and eight from his former students' parents. In addition, there was a testimonial from the Management Committee of Kwang Im Tng Buddhist Temple at Balestier Road. Some of the persons who wrote the testimonials appeared to be aware of the nature of the charges which Lim was facing. Moreover, some of those who had given testimonials were present in court on the day when submissions on sentencing were made.

10 I will cite from a few of the testimonials as that will give a better perspective of the beneficial effect Lim had had on many of his students:

Testimonial from Chan Wei Gan (Lieutenant-Colonel, Commanding Officer of 6 SIR)

"<INTRODUCTIONS>

It has taken me some time to pen down my feelings and thoughts surrounding the recent news that I have come to know. I write this note with a heavy heart, and this is written as a testimony to a man whom I have the utmost respect and admiration for. I can only hope this note of mine, and that of many others could bear witness how much Mr Philip Lim has been a blessing to many people who have the fortunate opportunity to encounter his kindness and grace.

<PERSONAL EXPERIENCES>

...

Suffice it to say that I was a very immature and stubborn 15 year old when I first met Philip. I was a student with poor grades, and was just promoted to Secondary 3 after repeating a year in Secondary 2. I remember my mid-year exam results were 'full of reds' and it was clear that I was having difficulty in coping with my studies, in particular in both Elementary and Additional Mathematics. The future for me then was gloomy and uncertain, and I was overcome with a sense of hopelessness and the lack of will power to strive. It was then that a mutual friend recommended me to Philip.

Philip was introduced to me as a gifted and 'Super-power' tutor. I have come across stories of him giving free tuition to students who are poor both financially and academically, and performing magic by turning their Mathematics grades from 'F' to 'A'. I soon found out a great deal more about him - selfless, compassionate, kind-hearted - are some of the words that come

to my mind instinctively to best describe him. ...

I owe a lot to Philip, and I guess I will always be indebted to him. Philip had helped me cope, not just with my studies then but with life till this day, instilling in me what are the few of my cornerstone - principles in life. In short, he has touched and changed my life. ...

When I was in Sec 3, I came to be acquainted with a group of lower secondary boys who in my opinion then, were "hopeless students". They were not only behaving as bullies amongst their peers, but were also seen as 'incorrigibles' by teachers and staff of the school. They were also recruited by gangsters to participate in gang related activities outside school premises. As two of the boys were in the same school brass band which I served as an active committee member, I brought this matter to the attention of Philip, since I was confident that Philip would be able to help these perceived outcasts. I knew he would, as I was too, a recipient of his kindness and grace. And he did.

He took them under his wings and became their Guardian Angel. He bravely confronted their gangster leader, and negotiated for their 'release' from the gang formation. Although he refused to let me in on the proceedings then, I subsequently found out that he did what no other teacher would have done for their students. He not only has to pay the gangster 'compensation' monies but also to beg for forgiveness on his students' behalf. Philip finally led these way-ward acquaintances of mine away from the mess, and help them to take the first step towards the right direction. The life of these people was changed from that very moment, and all of them went on to graduate from polytechnics and university subsequently, and they now lead meaningful lives, gainfully employed and contributing to the society.

...

Another incident that I would [sic] to highlight is the time when I was doing my tertiary study in Manchester from 1988 to 1991. My younger brother, Wei Ping was badly injured in a freak accident in camp whilst serving National Service Full-time. He was hospitalised and had to undergo surgery for his severe injury. My parents were quite depressed, and were at a loss at that time - especially so since their only other son was away in England pursuing his studies. They guardedly kept the news from me, as they didn't want it to affect my studies.

During these trying times, Philip was their main pillar of strength. Not only did he make the necessary administrative and medical arrangements for them, but also kept vigil at my brother's bedside whenever he needed him. He and his students took turns to look after my brothers and parents, and attended to their every need. When my brother was finally discharged from the hospital after weeks of hospitalisation, he went as far as organising a homecoming party for him. Such compassion and kindness are precisely the sort of gestures Philip readily offer his students, exuding genuine care and concerns for them."

Testimonial from LTC Giam Hock Koon, Head Budgets & Force Plans Branch, Naval Plans Department - HQ RSN

" ... Where he himself was not able to help in a certain subject, like English, Literature or Geography, he would make arrangements for his ex-students with the aptitude in these subjects to help guide the weaker students. In the run up to the exams, we studied together at his house, and he would take it upon himself to provide food and drinks as we prepared for our exams. To Philip, no effort or expense was too great in preparing us for the exams.

My respect for Mr Philip Lim (we call him "Sir"), however, is not because of his professional skills as a tutor, but because he is a selfless individual who would go to any length to help others, for example:

- He has helped some in my cohort of students to get out of gangs. He personally met with the gang elders to plead for the "release" of his students, not without some degree of personal risk to himself. 20 years on, these very students who he had "rescued" are doing well in their careers and family life, whereas had it [sic] not for Philip, the outcome would probably have been very different.

- He helps out at temples and charitable organisations. This was so 20 years ago, and it has been the case up to his recent detention. This has rubbed off on many of his students who follow his example in doing similar work.

- He would waive [sic] fees for many of the students from less well off families, and on occasions, would lend a helping hand to help resolve the financial [sic] of students and friends who fall on hard times.

- He had the ability to see the positive side to any individual. To him there is no person for whom there is 'no hope', provided the individual was willing to make the effort to improve.

...

It was therefore a tremendous shock for me to learn of his current situation. To this day, I have extreme difficulties reconciling the character of the person that I know for such a long time, with the allegations that are currently leveled against him. I urge that in passing judgement, full consideration be given to the many positive contributions Mr Philip Lim has made."

Testimonial from Chow Yeng Har, a parent of Lim's student (English translation)

"Honourable Judge

...

Under Philip Lim's guidance over a period of time, my son began to show care and concern for the people around him. He respects the elders. He cares about others feeling. Not only that, my son used to follow Mr. Lim to the temple to do voluntary work, and distribute "HongBao". He even brings along the students to the market to help a fruit store hawker to sell fruits. (The hawker was sick during that peak period and does not have assistant).

...

As a parent, I was surprised that during some occasions like, his birthday, teachers' day, prayers day, lunar festival, Chinese New Year etc., the students will come in groups and gather around him. Some have been doing this for the past twenty years without fail. I also amazed that the way the students and their parents respect him and addressed him as "Sir".

In life, everyone makes mistakes either in work or behavior. It is not easy to manage on psychological, socially, philosophy, reform and sexuality. In view that he has contributed his duty towards the society, I pray that Your Honour would be understanding and grant light sentencing.

The students have been worrying for him for a period of time. They have travelling tirelessly to and from the prison to visit him and to give him moral support. They have tried their best to support their "Sir" (during his imprisonment, some even gave tuition to raise monies to engage a lawyer to represent him and some do house cleaning for him as his [*sic*] is single). ...

...

As a parent, we were heartache over his misdeed. It is unbearable to see that he has to endure the pain and suffering of imprisonment.

Once again I hope that Your Honour have mercy. We promised to take good care of him, offer him counselling, help him and support him to live a new life so that he does not make mistake again."

Impact on the victims

11 The impact on the victims is set out in the Statement of Facts which includes the report of Dr Cai Yiming of the Child Guidance Clinic of the Institute of Health on each of the victims. Dr Cai is Senior Consultant and the Head of the Clinic.

Ong

12 In the Statement of Facts, it is stated that Ong had confided to the school counsellor his concern about contracting sexually transmitted diseases. He was also afraid that he might be labelled as "gay". He was confused and felt partly to blame as he felt good during the acts. He was hesitant to go to the police.

13 During the examination by Dr Cai, Ong was co-operative and forthcoming.

14 As a result of the sexual abuse, Ong blamed his stepfather and mother ("his parents") for sending him for tuition under Lim. He hated his parents. He also blamed Lim for giving him horrible times as he felt shameful that the events had surfaced. However, he had no intrusive memory or flashback. Dr Cai recommended continued counselling for one year as Ong had a lot of anger and hate against his parents.

Sim

15 Dr Cai described Sim as friendly and co-operative.

16 Sim had not dared to say "no" to Lim nor tell his own parents as he was afraid of the spiritual power of Lim whom he believed was a disciple of "Tua Peh Kong".

17 Sim felt guilty. He felt abused sexually and considered himself no longer a virgin. Memories of Lim kept coming to his mind and he was worried that Lim might harm his family. He had nightmares about Lim coming to kill his parents and him. However, I noted that Dr Cai's report did not allege that any specific threat had been made by Lim against Sim.

18 Dr Cai concluded that Sim had signs and symptoms of a Post Traumatic Stress Disorder. For this, counselling was recommended for at least the next one year.

Chua

19 Dr Cai said that Chua appeared shy and embarrassed about what had happened to him. Nevertheless, he was co-operative and forthcoming. Sometime in June or July 2000, Lim had asked him if he had ever watched pornography before and touched his private part. This was in Lim's room (in Lim's flat). Chua was a bit scared and Lim told him to calm down. From then on, Lim helped him and they masturbated each other and performed mutual oral sex.

20 Chua said he did enjoy the acts and Lim did not use any threat or force on him. However, he did not tell anyone as he was embarrassed. He had no signs and symptoms of a Post Traumatic Stress Disorder.

Hong

21 Hong also appeared shy and embarrassed about what had happened. Nevertheless, he was co-operative and forthcoming during his session with Dr Cai.

22 Hong was still grateful to Lim and had a high regard for him as a tutor and his teaching methods.

23 It was sometime in the middle of 2001 when Lim asked Hong to let another boy have a look at his penis. He obliged out of deference to Lim and also to satisfy the curiosity of the other boy. This went on with Lim helping Hong to masturbate and this progressed to mutual masturbation. There was no oral sex between them. Hong was not at ease at first but Lim gave a veiled threat of cutting him off emotionally and he gave in. As a result, he had a bit of self-blame as he did not reject outright the advance of Lim.

24 After the police stepped in to investigate, Hong felt embarrassed and worried that others might know about his past activities. He had some difficulty facing his parents, friends and teachers initially but he was all right now. He had no signs and symptoms of a Post Traumatic Stress Disorder.

25 Mr Lee also submitted that Hong's brother also wrote a testimonial for Lim stating, "His kindness is something I will not be able to repay".

Goh

26 During Dr Cai's examination, Goh was in a relaxed and cheerful mood. He was also forthcoming and co-operative.

27 In November 2001, Lim had hugged Goh and kissed his cheek lightly, progressing to touching his private part. Later, Lim helped him to masturbate a few times. Once or twice, he masturbated Lim, under Lim's direction.

28 Goh was shocked at first and Lim told him not to tell anyone. Goh was worried that should he disclose to his parents, his parents might stop his tuition and his results in Mathematics might drop. He was quite happy with the tuition under the accused as his results in Mathematics improved significantly. He still held Lim in high esteem as a tutor.

29 Goh did not have recurrent thoughts or intrusive memories of these events and had no signs and symptoms of a Post Traumatic Stress Disorder.

30 Mr Lee also submitted that Goh had visited Lim in remand with the permission of his parents.

Reports on Lim

31 The prosecution relied on reports of Dr Kenneth Koh of the Institute of Mental Health, Woodbridge Hospital. Dr Koh is the Registrar of Department of Forensic Psychiatry. In his report dated 27 August 2002, Dr Koh said that Lim came from a family of ten siblings whom he hardly kept in contact with. His tuition was to male students in secondary school as he claimed to have had bad experiences with female students who cried when he scolded them.

32 Lim was a homosexual and his first sexual encounter was while he was doing National Service.

33 I note from the report that Lim had admitted to sexual activity, similar to those for which he was being charged, with previous students. However, Lim could not remember exactly when and with how many. During the hearing before me, Mr Lee was instructed that the previous occasions happened two or three times a long time ago and comprised masturbation.

34 During examination by Dr Koh, Lim was calm although worried about the sentence he would receive. Lim was coherent and did not display any psychotic symptoms or anything which would suggest a major mood disorder.

35 Dr Koh was of the opinion that Lim has paedophilia (sexually attracted to males).

36 In his second report dated 27 November 2002, Dr Koh was of the view that there was a high rate of recidivism, relying on statistics from the British Journal of Criminology. He was of the opinion that Lim posed a danger to young boys.

37 The defence obtained an opinion from Dr Tian Choong Sing of The Psychotherapy Clinic for Adults and Children (Ang & Kong). Prior to entering into private practice, Dr Tian was working at the Department of Child & Adolescent Psychiatry, Institute of Mental Health and was its Senior Registrar. Dr Tian said that Lim was spontaneous and co-operative. There was no psychotic features. In his conclusion, he said:

Conclusion

In conclusion, Mr. L appears to be a rather simple, naïve and lonely man who is socially isolated and has little interactions with the outside world other than with his students.

The development of his sexual orientation was affected by his upbringing and the early sexual victimization by his neighbour.

I am of the opinion that he was not able to find more appropriate channels of outlet for his sexual need because of his limited social circle and poor social skills. As such, he began to rationalize the choice of his students for his homosexual acts, thinking that they were in a way 'helping' his students to relieve their sexual tension and urges. He also rationalized that it must be alright as he had their consent to participate in those acts and had not resorted to any force or trickery.

In considering these factors, I do not agree with Dr. Kenneth Koh's opinion that Mr. Lim poses a danger to young boys. He had not sought out his victims in a premeditated manner. There were no trickery, violence or the use of threats.

Mr. Lim is remorseful of his actions. He is concerned about the impact of his actions in the lives of his students and is worried that they would be punished for their involvement. He is now aware of the

severity of the offence and is ashamed to meet up with his ex-students and their parents who have been supporting him. I am of the opinion that given proper therapy, the risk of recidivism can be significantly reduced.

...

38 In his response dated 3 March 2003, Dr Koh was of the view that the many testimonials describing Lim to be resourceful in acquiring aid for his students and organising his boys to do charity work appeared to contradict Dr Tian's description of Lim as being naïve.

39 As for Dr Tian's view that the acts were not premeditated, Dr Koh said that the liaisons were not chance encounters between strangers. Lim had time to develop trust and to assert his authority over the victims. There was thus no need for trickery, violence or threats. The mentor-tutee relationship demanded a certain amount of obedience on the part of the students. Dr Koh maintained that there was a high rate of recidivism and said that the fact that Lim faced 56 charges was evidence of a repeated pattern of behaviour. He also pointed out that Lim appeared to be aware of his sexual problem but did not seek treatment. Dr Koh was prepared to agree that Lim was a good tutor and character builder and Lim may have been of good character in many respects. However, one aspect of Lim was grossly aberrant.

Sentencing guides and submissions

40 On the facts before me, the most helpful case on sentencing under s 377 of the Penal Code was that of *Adam bin Darsin v Public Prosecutor* [2001] 2 SLR 412. There, the accused was also charged under s 377 for committing fellatio on his victims. He pleaded guilty to eight charges in respect of eight victims, with 15 other similar charges being taken into consideration for the purpose of sentencing. L P Thean JA (as he then was), delivering the judgment of the Court of Appeal, considered three forms of unnatural carnal intercourse under s 377 and was of the view that:

- (a) where an accused committed anal intercourse on a victim, this activity was the most serious as it involved some degree of coercion and violence,
- (b) where an accused performed fellatio on the victim (as in *Adam's* case), this activity was the least serious.

Thean JA implied that where the accused coerced or cajoled a victim to perform fellatio on him, this would be of intermediate gravity.

41 There, Thean JA said in para 23:

23 In our judgment, an appropriate sentence for an offence of unnatural carnal intercourse such as that committed by the appellant in this case would be in the region of five years, subject to any mitigating or aggravating circumstances that may be present. In this case, the appellant had no previous conviction of similar offences and no harm or injury had been inflicted on the victims. Nor are there any significant mitigating or aggravating factors.

42 I hasten to stress that all three forms of unnatural carnal intercourse are offences not to be taken lightly and the point about performing fellatio on a victim being the least serious is only relative to the other two forms of unnatural carnal intercourse.

43 Of the 56 charges faced by Lim:

- (a) 11 were charges under s 377 Penal Code,
- (b) the remaining 45 charges were under s 377A.

44 Of the 11 charges under s 377:

- (a) eight were instances where Lim performed fellatio on the victim, and
- (b) the remaining three were instances where Lim told the victim to perform fellatio on him.

45 Of the 45 charges under s 377A:

- (a) 42 were in respect of Lim using his hand to masturbate the penis of one of the victims,
- (b) one was in respect of Lim's instigating a victim to masturbate Lim's penis,
- (c) two were in respect of Lim's telling a victim to masturbate another victim.

46 The ten charges which Lim pleaded guilty to was a mixture of the above acts, but excluding the one stated in para 45(b) above.

47 Mr Lee sought to distinguish the case of *Adam bin Darsin* and relied on *Public Prosecutor v Raymond Pok* [2003] SGHC 18, a decision by Justice Tay Yong Kwang where Tay J sentenced the accused to two years' imprisonment for each charge under s 377 Penal Code involving fellatio by the victim on the accused there. Mr Lee sought to persuade me that I should use that sentence as a guide because in *Pok's* case, the acts were consensual as in the case before me whereas in *Adam's* case they were not consensual.

48 Having said that, Mr Lee conceded that a sentence of two years' imprisonment would not be appropriate in view of the relationship of trust. He suggested three years' imprisonment instead and, if three years was too low, he then suggested it should not exceed four years' per charge under s 377.

49 For the offences under s 377A, Mr Lee submitted that I should be guided by a sentence of nine months which was the sentence eventually imposed in *Lee Kwang Peng v Public Prosecutor* [1997] 3 SLR 278 for an outrage of modesty under s 354 Penal Code. Mr Lee submitted that the offences under s 377A were akin to offences under s 354 and the prosecution had proceeded under s 377A instead because consent under that provision was not a defence whereas under s 354, it was.

50 As regards the question of consecutive sentences, Mr Lee referred to what Thean JA had said in the case of *Adam bin Darsin*:

24 Lastly, in this case, having regard to the nature of the offences committed by the appellant, we were of the opinion that the total term of imprisonment of 40 years imposed by the court below, was a crushing sentence and not in proportion to the overall gravity of the criminal conduct of the appellant. On this point we echo the following observation of Yong Pung How CJ in *Maideen Pillai v PP* [1996] 1 SLR 161 at p 196:

[T]he sentencing court will bear in mind at all times the second limb of the totality principle, that is, the need to avoid an aggregate sentence so harsh as to be 'crushing' in its effect on the offender. Where consecutive sentences are imposed on an offender, the overall punishment

should be in proportion to the overall gravity of his criminal conduct, taking into account the circumstances in which he offended and also the pattern of his previous behaviour.

25 In the circumstances, we reduced the term of imprisonment of five years for each of the offences and ordered four of them to run consecutively and the remaining four to run concurrently with the four consecutive terms of five years, thus making in aggregate a total term of 20 years.

51 Mr Lee concluded his submission by saying that the total years of imprisonment should be significantly less than 20 years and submitted that a total sentence of ten to twelve years would serve the ends of justice and would be a sufficient deterrent. Anything more would be crushing and not in proportion to the overall gravity of the conduct of Lim.

52 On the other hand, Mr Hamid submitted that Lim had abused his position of trust and authority and the trust placed on him by the students' parents. In some cases, he was their surrogate parent. For example, Lim had told Ong's mother that Ong had to be tutored daily from Monday to Sunday and because of the time taken to travel to and fro, Ong eventually stayed at Lim's flat with Ong's mother visiting Ong twice a week. Likewise Hong also eventually stayed at Lim's flat.

53 Mr Hamid also submitted that Lim's use of corporal punishment and veiled threats to kick the victims out of the tuition group enhanced his influence over them.

54 Mr Hamid submitted that the fact that the victims feared, trusted and respected Lim obviated the need for Lim to resort to violence, overt threats and trickery. Lim had subtly manipulated the victims to do what he wanted them to do and what Lim had done was to corrupt his victims morally. Lim was merely giving excuses when he had alleged that he was trying to "educate" the victims and make them "more open minded". This was Lim's way of getting his victims to engage in his perversions.

55 Mr Hamid submitted that Lim knew his own perverse inclination but did not seek treatment. He submitted that Lim was a danger to young boys and the numerous charges were evidence of a repeated pattern of behaviour. He also pointed out that even Dr Tian's report recognised the risk of recidivism and that is why Dr Tian had said that if there was proper therapy, the risk of recidivism can be significantly reduced.

56 Mr Hamid relied on, inter alia, *Donald Walters* [1994] 15 Cr App R(S) 690 in which Judge J, in the Court of Appeal, said:

Mr Jenkins has carefully drawn our attention to the significance of this man's age and his positive good character, the effect of any prison sentence on him, the damage to his family, the loss of his own reputation within his community and, indeed, the financial consequences of the conviction. Our attention has been drawn to the delay and strain, and to the fact that the last incident of which the appellant was convicted occurred as long ago as 1984.

We have considered those matters, as the learned judge did. They have to be taken into account, but at the end of the day this remains a case in which a man of very mature years in a position of trust systematically abused that trust in a most disgraceful, persistent and damaging way, targeting vulnerable [*sic*] girls who, for various reasons, he believed would be unlikely to report his conduct.

The sentence to be passed had to reflect public abhorrence of behaviour of this kind. Without the benefit of a plea of guilty, a sentence of four years' imprisonment was appropriate.

57 I was of the view that although the facts in *Lim Hock Hin Kelvin v Public Prosecutor* [1998] 1 SLR 801 were different from those before me, certain statements by Chief Justice Yong Pung How were also apposite.

58 At paras 21, 25(1) and 34, Yong CJ said:

21 In considering the appropriate tariffs for sentences, the gravity of the offence and the circumstances in which the offence was committed had to be taken into account.

Gravity of the offence

(1) *Harm to the victims.* The harm to the victims includes both the physical and the emotional harm. ... The long-term emotional harm and psychological scars to the victims cannot be underestimated, though there has been caution in *R v Willis* (1974) 60 Cr App R 146 that the court should not readily assume that the victims will later develop homosexuality in life because they have been sexually abused when young. Much will also depend on the support the victims receive from their families.

(2) *Social danger.* Paedophilic offences are by their nature unpleasant and most distressing and the society has to express its marked disapproval for such harm to the young and vulnerable victims. The presumption is that the safety of the child must be paramount and chronic paedophiles who have a propensity to re-offend, because they are either totally unable or unwilling to control themselves, have to be put away for long periods.

...

25 We considered the relevant circumstances of the offence in placing a particular offence according to its relative gravity.

Circumstances in which the offences are committed:

(1) *Abuse of trust and authority.* Where an offender is placed in a position of trust by the parents or by the victims, the breach of trust justifies a substantial sentence on the ground of general deterrence. All those who have charge of children cannot abuse their positions for the sake of gratifying their sexual urges.

...

34 In our judgment the learned judge's observation that 'though pleading guilty must be given effect to in determining sentence, it must depend on the facts of each and every case' is perfectly proper and correct. For example, in a rape case, where the trauma of the victim having to recount the rape in evidence is saved, a plea of guilty might be considered as justifying an appropriate discount to the sentence that might have been passed after a trial. But there is always the public interest to be considered.

59 In relation to the specific charges, Mr Hamid said that in the case of *Adam bin Darsin*, the Court of Appeal had suggested that a court should start off with five years' imprisonment for acts of fellatio on the victim. As the offences included acts where Lim received fellatio, Mr Hamid submitted that the sentence for such offences should go beyond five years. However, Mr Lee pointed out that in the case of *Adam bin Darsin*, the accused faced 23 charges under s 377 as opposed to the 11 which Lim was facing.

60 On s 377A, Mr Hamid used the case of *Lim Hock Hin Kelvin* as a guide and submitted that a sentence of one year's imprisonment was appropriate.

61 Mr Hamid submitted that the case before me was more aggravating than in the case of *Adam bin Darsin* as Lim was in a position of trust and authority. Calling for a deterrent sentence, Mr Hamid submitted that the aggregate term of imprisonment ought to exceed the 20 years imposed in the case of *Adam bin Darsin*.

My Decision

62 Lim is an extraordinary person. Unfortunately, he is extraordinary both in the positive and in the perverse sense.

63 I accepted that the tremendous beneficial influence Lim had had on the lives of many of his students was a strong mitigating factor.

64 On the other hand, Lim was in a position of authority and a relationship of trust. Lim was trusted by both the parents of the victims and by the victims themselves. The reason why no physical force was used was because he systematically exploited his position of authority and trust. The fact that, generally, his students looked to him as their mentor was, in my view, not a mitigating but an aggravating factor.

65 I also found Lim's explanation that he was helping the victims to be open-minded when he engaged in the offences, unacceptable. He had taken advantage of them to satisfy his depraved nature. The sentence to be passed should reflect public abhorrence of behaviour of this kind in the circumstances of the case.

66 As regards the risk of recidivism, I had considered the reports of Dr Kenneth Koh and Dr Tian Choong Sing.

67 I also noted that Lim had no prior conviction and Mr Lee had informed me that Lim was undergoing treatment. Furthermore, as Lim had been able to instil discipline in his students, I was of the view that there was a fair chance that he would be able to do likewise for himself so as to refrain from ever abusing male children again, especially since he had become aware of the severity of the punishment for such offences.

68 In the circumstances, I sentenced the accused Lim Beng Cheok as follows:

- (a) On the 43rd charge under s 377A, one year's imprisonment
- (b) On the 2nd charge under s 377A, one year's imprisonment
- (c) On the 9th charge under s 377, six years' imprisonment
- (d) On the 15th charge under s 377, six years' imprisonment
- (e) On the 21st charge under s 377A, one year's imprisonment
- (f) On the 27th charge under s 377, six years' imprisonment

- (g) On the 29th charge under s 377, six years' imprisonment
- (h) On the 31st charge under s 377, six years' imprisonment
- (i) On the 39th charge under s 377A, one year's imprisonment
- (j) On the 34th charge under s 377A, one year's imprisonment

69 The sentences for the 9th , 27th and 31st charges were to run consecutively from the date of remand i.e 2 August 2002. The sentences for the remaining seven charges were to run concurrently with the consecutive sentences. The aggregate term of imprisonment was 18 years.

70 I would add that in the circumstances of the case, the totality of the charges on which Lim was convicted as well as the remaining charges being taken into consideration, I did not think any useful purpose would be served in ordering different sentences for offences of fellatio upon the victim and offences for instructing the victim to perform fellatio on him.

Copyright © Government of Singapore.