

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 255

Magistrate's Appeal No 9104 of 2022

Between

Ripon

... Appellant

And

Public Prosecutor

... Respondent

BRIEF REMARKS

[Criminal Procedure and Sentencing — Sentencing — Principles]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ripon
v
Public Prosecutor

[2022] SGHC 255

General Division of the High Court — Magistrate's Appeal No 9104 of 2022
Aedit Abdullah J
30 September 2022

11 October 2022

Aedit Abdullah J:

1 These brief sentencing remarks are issued to give guidance to first instance courts pending the formulation of a new sentencing framework by the High Court in place of that first laid down in *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 (“*Pang Shuo*”). The actual sentence imposed in the present case was not manifestly excessive and was not disturbed.

2 The present case concerned an appeal against the sentence imposed on the appellant, Ripon. The appellant claimed trial to two charges under s 128I(1)(b) punishable under s 128L(4) of the Customs Act (Cap 70, 2004 Rev Ed) (“Customs Act”). Both charges pertained to duty unpaid cigarettes that he dealt with. The first charge concerned the amount of excise duty that was not paid (“Excise Duty Charge”). The second charge related to the amount of unpaid Goods and Services Tax. These remarks pertain only to the Excise Duty Charge.

3 The District Judge (“DJ”) convicted the appellant of both charges and imposed a global sentence of three months and one week’s imprisonment. In respect of the Excise Duty Charge, the DJ applied the sentencing framework in *Pang Shuo*. Adjusting for the appellant’s time in remand, a sentence of three months and one week was imposed. The DJ imposed a sentence of three weeks’ imprisonment for the remaining charge, which was ordered to run concurrently.

4 The thrust of the appellant’s appeal was on the ground of parity. An accomplice, one Rana Juel (“Rana”), received the duty unpaid cigarettes from him. Rana pleaded guilty to a charge similar to that of the Excise Duty Charge and was sentenced to a lower sentence of two months’ imprisonment. The appeal was dismissed as there were sufficient differentiating factors to distinguish the appellant from Rana, including the role played by the appellant.

5 As reliance was placed on *Pang Shuo* and *Wong Jing Ho Samuel v Public Prosecutor* [2022] 3 SLR 1009 (“*Wong Jing Ho*”) by the DJ, and on appeal by the Prosecution, I considered it necessary to give guidance for the time being in this area.

6 *Pang Shuo* laid down a graphical curve to indicate what sentences should be imposed for offences under s 128L(4) of the Customs Act. This was extended in *Wong Jing Ho* to offences under s 128I(1)(b) punishable under s 128L(4) of the Customs Act, which was followed in the present case. However, it is clear that after the subsequent decision of the Court of Appeal in *Public Prosecutor v Takaaki Masui and another and other matters* [2022] 1 SLR 1033 at [15], the approach taken in *Pang Shuo* is overly complex and technical. Graphical curves may give a semblance of predictability and precision, but these come at the expense of judgment and consideration of circumstances. Sentencing is not a mathematical exercise.

7 When an appropriate case is presented, it is likely that the High Court will lay down a new framework. In the meantime, parties and the lower courts should avoid using the graph in *Pang Shuo* and derivations from it. Nonetheless, first instance courts should approach sentencing in a way that is consistent and principled. Reference may be had to specific sentences imposed in other cases, for guidance, even if these used the framework in *Pang Shuo* and *Wong Jing Ho*, subject to consideration of the individual circumstances of the defendant before the court. If no such cases are available, pending the laying down of the revised framework, reference may be had to the sentence that would have been imposed under the *Pang Shuo* framework, but care must be taken in every case to consider the matter in terms of the usual criteria of culpability, harm, and proportionality, and to adjust the sentence accordingly. It would be sufficient to identify a range of possible sentences, without identifying a specific point. The individual circumstances of the case cannot be overridden by the graph, and courts must cater the sentence accordingly. The lower courts should calibrate and explain the reasons briefly in a few lines, at least.

Aedit Abdullah
Judge of the High Court

Skandarajah s/o Selvarajah (S Skandarajah & Co) (instructed by S K
Kumar Law Practice LLP) for the appellant;
Kong Kuek Foo (Attorney-General's Chambers) for the respondent.