Public Prosecutor v Syed Hamid bin A Kadir Alhamid
[2002] SGCA 40

Case Number : CA 9/2002

Decision Date : 16 September 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Bala Reddy (Deputy Public Prosecutor) for the appellant; Respondent in person

Parties : Public Prosecutor — Syed Hamid bin A Kadir Alhamid

Criminal Procedure and Sentencing – Sentencing – Preventive detention – Nature and objective of preventive detention – Considerations in determining whether to order preventive detention – s 12(2)(a) Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Preventive detention – Respondent setting fire to HDB flat – Damage to flat and common corridor – Conviction for committing mischief by fire – Respondent's criminal career spanning 26 years – Respondent imprisoned for total of 49 months – Whether order of preventive detention appropriate

Criminal Procedure and Sentencing – Sentencing – Preventive detention – Whether comparison with length of respondent's previous imprisonment terms proper

Judgment

GROUNDS OF DECISION

1. In this case, the prosecution appealed against the sentence imposed by the trial judge on the respondent, Syed Hamid bin A Kadir Alhamid, who was found guilty of committing an offence punishable under section 436 of the Penal Code, Chapter 224, which provides as follows:

> Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place for worship, or for the administration of justice, or for the transaction of public affairs, or for education, or art, or for public use or ornament, or as a human dwelling, or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

2. The appellant, who contended that the trial judge's sentence of imprisonment for four years was manifestly inadequate in the circumstances of the case, asserted that an order of preventive detention under section 12(2)(a) of the Criminal Procedure Code ("CPC") should have been made.

Background

3. At around 11 pm on 4 November 2001, the respondent returned to his flat at Block 38, Bedok South Road, #02-653. He could not enter his flat because there was a padlock on his gate. He called his mother, the deceased, to open the gate. When his mother, who was lying on her bed in the front bedroom, did not respond to his shouts, the respondent took a brick and threw it at her though the window louvres. Although the brick landed on his mother's shoulder, she did not stir. The respondent, who became more angry, threw another brick at her but she still did not get up. The respondent then rolled some newspapers into a ball and threw the lighted object at his mother. It landed on her mattress, which caught fire.

4. A police officer, Sergeant Rohaizad bin Majnen, who lives five floors above the respondent's flat, rushed down to investigate after he

saw smoke emitting from a unit below. He saw the respondent standing outside his flat, smoking a cigarette. When questioned, the respondent said that his flat was on fire and that his mother was inside the flat.

5. The respondent's mother's body was found badly charred and lying on her burnt bed frame. The autopsy report stated that the cause of her death was unascertainable. All the same, fire was ruled out as the cause of the death of the respondent's mother, who was 77 years old and suffering from diabetes, a lung infection and ischaemic heart disease with interstitial fibrosis, which could cause her to die suddenly.

6. The fire started by the respondent damaged the flat and the common corridor outside it. Repairs costing around $3,000 were carried out by the HDB and the East Coast Town Council.

The trial

7. The prosecution urged the trial judge to impose an order of preventive detention under section 12(2)(a) of the CPC on the respondent in view of his numerous previous convictions. The trial judge initially agreed that such an order was appropriate and sentenced the respondent to 14 years of preventive detention. At this juncture, the prosecution pointed out that section 12(3) of the CPC requires the court to consider the physical and mental condition of the offender and his suitability for preventive detention before imposing such a sentence. The trial judge accordingly called for a preventive detention report and the matter was adjourned for three weeks. The report concluded that this was a case where an order for preventive detention was appropriate.

8. After studying the report in question, the trial judge noted that the respondent's terms of imprisonment ranged in the main from eight weeks to six months and were mostly for theft. He said that an order for preventive detention should not be made as it was too great a jump from sentences of six months to a period of incarceration ranging from seven to 20 years under a preventive detention order. He then sentenced the respondent to imprisonment for four years.

The appeal

9. To determine whether or not the appeal ought to be allowed, reference must first be made to section 12(2) of the CPC, which sets out the regime for preventive detention and provides as follows:

> (2) Where a person who is not less than 30 years of age —
>
> (a) is convicted before the High Court or a District Court of an offence punishable with imprisonment for a term of 2 years or upwards, and has been convicted on at least 3 previous occasions since he attained the age of 16 years of offences punishable with such a sentence, and was on at least two of those occasions sentenced to imprisonment or corrective training; ….
>
> then, *if the Court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time*, followed by a period of supervision if released before the expiration of his sentence, the Court, unless it has special reasons for not so doing, shall pass, in lieu of any sentence of imprisonment, a sentence of preventive detention of such term of not less than 7 nor more than 20 years as the Court may determine.
>
> (Emphasis added)

10. A sentence of preventive detention is intended for habitual offenders, aged more than 30 years, whom the court considers to be too recalcitrant for reformation (see *PP v Wong Wing Hung* [1999] 4 SLR 329). Preventive detention ought to be imposed if the accused has shown that he is such a menace to society that he should be incarcerated for a substantial period of time (see *PP v Perumal s/o Suppiah* [2000] 3 SLR 308). While the court will consider the need for the public to be protected from physical bodily harm, offences against property, such as theft, offences against the peace, such as affray, and offences against society in general, such as the consumption and

possession of drugs, may also be taken into account for the purpose of determining whether it is appropriate for an order of preventive detention to be made. In *Tan Ngin Hai v PP* [2001] 3 SLR 161, 163, Yong Pung How CJ explained:

> In my view, there is no rule of law which states that protection of the public necessarily refers to protecting them only from physical harm.… As such, the imposition of preventive detention ought not to be restricted only to persons with a history of violent behaviour as exhibited though the commission of violent crimes. Instead, the real test is whether or not the degree of propensity towards any type of criminal activity at all is such that the offender ought to be taken out of circulation altogether in order that he be not afforded even the slightest opportunity to give sway to his criminal tendencies again.

11. The respondent is 41 years old. The offences previously committed by him are numerous. In 1976, he was put on probation for two years for theft. He did not turn over a new leaf as he was fined $300 in 1981 for committing theft again. In 1982, he was imprisoned for a year for housebreaking and theft by night. In 1984, he was fined $2,500 for theft and fraudulent possession of property. He was imprisoned for 5 months as he failed to pay the fine. In 1986, he was fined $500 for criminal trespass and was imprisoned for one month after he failed to pay the fine. In 1986, he was imprisoned for a day and fined $400 for committing theft. As the fine was not paid, he was imprisoned for an additional month. By 1987, he had turned to drugs and was sent to a Drug Rehabilitation Centre for 6 months. In 1988, he was placed under drug supervision. In the same year, he committed theft for yet another time and was imprisoned for 8 weeks. In 1990, he was found guilty of unlawful possession of an offensive weapon and three counts of theft. He was imprisoned for 8 months and given 6 strokes of the cane. In 1990, he was sent to the Drug Rehabilitation Centre for 6 months and was subjected to drug supervision for 24 months. In 1993, he was once again sent to the Drug Rehabilitation Centre for 6 months and was subjected to drug supervision for 24 months. He could not get himself off drugs and in 1996, he was imprisoned for a total of six months for possession and consumption of drugs. In 1997, he was sent to the Drug Rehabilitation Centre for a third time and was again subjected to drug supervision. Finally, in 2000, he was imprisoned for 12 months for failing to report for a urine test on three occasions. Within a few months of his release from prison, he threw a lighted projectile at the mattress on which his mother was lying and was found guilty of committing mischief by fire, an offence for which the punishment prescribed in section 436 of the Penal Code includes life imprisonment or imprisonment for a term which may extend to 10 years.

12. The respondent's string of previous convictions and the circumstances of his latest offence reveal his propensity for criminal activity. In our view, there is a real danger that the respondent will commit more offences in the future. As such, this is a case where the trial judge should have made an order for preventive detention.

13. As for the period of detention, we were minded to have the respondent detained for a very long time. The respondent pointed out to us that although he had committed numerous offences in the past, he had never been imprisoned for a long period of time. However, in *PP v Perumal s/o Suppiah* [2000] 3 SLR 308, 316, Yong Pung How CJ made it clear that any comparison between the sentences previously imposed on the offender and the minimum period of preventive detention is misconceived and constitutes a misreading of the law and objective of preventive detention. He explained as follows:

> The criteria for the imposition of preventive detention is that set out in s 12(2)(a) or s12(2)(b) CPC. The provision does not stipulate a minimum term for an offender's previous sentences and does not require the previous sentences to correspond to the minimum period of preventive detention. Indeed an offender who has committed a perpetual string of offences for which he was sentenced to varying imprisonment terms of under one year is precisely the type of offender targeted by the provision.

14. We considered two cases where the maximum period of 20 years' preventive detention was imposed. In the first case, *PP v Wong Wing Hung* [1999] 4 SLR 329, the appellant, who was 35 years old, pleaded guilty to a charge under section 332 of the Penal Code for voluntarily causing hurt to a public servant. He had been previously charged and convicted a total of 16 times since 1980 and had been sentenced to a total of 15 years of imprisonment. In addition, he had received as punishment a total of 25 strokes of the cane. His previous convictions were in respect of outrage of modesty, rape, causing grievous hurt, criminal intimidation, armed robbery and using an offensive

weapon. The court was of the view that the appellant's large number of criminal convictions and his apparent lack of repentance proved that an order of preventive detention for the maximum possible period should be imposed.

15. In the second case, *Heng Jong Cheng v PP* [1999] 2 SLR 345, the appellant, who pleaded guilty to a charge of affray, was found guilty of 23 counts of abetment of cheating and one charge of abetment of attempted cheating. He had many previous convictions involving dishonesty over a period of more than three decades. For instance, in 1991, he was convicted of two charges of housebreaking and theft by night and was sentenced to two concurrent terms of 24 months' imprisonment. Shortly after he was released from prison, he was found guilty of three counts of assisting in the concealment or disposal of stolen property and sentenced to three terms of imprisonment, each of a duration of two years and six months, with two of the terms running consecutively. After his release from prison, he was charged with, inter alia, 23 counts of abetment of cheating. He was sentenced by the district judge to 9 years of preventive detention. On appeal, the period of detention was increased to 20 years. Yong Pung How CJ said that faced with an offender who had evinced a complete lack of remorse and whose record indicated that he was highly likely to return to a life of crime once he was released from detention, 9 years of preventive detention was manifestly inadequate to protect the public.

16. The respondent's position is not better than that of the offenders in the two cases referred to above. His first crime was committed way back in 1976, when he was merely 15 years old and he has gone from bad to worse over the years. He has been convicted on innumerable occasions over a period of 26 years and has been imprisoned for a total of 49 months. The imposition of a punishment of six strokes of the cane has had no effect whatsoever on his bent for criminal activity. In regard to his latest offence, it is rather alarming that he displayed such a blatant disregard for his own frail and aged mother when he threw bricks at her and when he threw a lighted ball of newspaper onto the mattress on which his mother was lying. He also showed how callous he was about the safety of his neighbours as the fire could easily have spread to other flats and could have caused death and injury but for the timely intervention of the civil defence force. When the fire started, the respondent took no steps whatsoever to put out the fire or to call the fire brigade even though his mother was trapped in the flat. He merely stood outside his house and smoked a cigarette. Indeed, in his skeletal submissions, he stated that he was "unable to do anything except to watch while waiting for the arrival of the police and fire brigade … and he could only prevent himself from getting caught in the raging fire".

17. The respondent's dependence on drugs and alcohol should not be overlooked. He has not been able to hold a steady job and many of the offences committed by him stemmed from the need to find money for drugs. Taking all circumstances into account, detaining the respondent for a long period of time would be in the interest of the public. As such, we sentenced the respondent to preventive detention for a period of 20 years.

Sgd:

YONG PUNG HOW	CHAO HICK TIN	TAN LEE MENG
Chief Justice	Judge of Appeal	Judge