Public Prosecutor v Salwant Singh s/o Amer Singh
[2003] SGHC 213

Case Number : MA 115/2003

Decision Date : 19 September 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Christopher Ong Siu Jin (Deputy Public Prosecutor) for appellant/respondent; Respondent/appellant in person

Parties : Public Prosecutor — Salwant Singh s/o Amer Singh

Criminal Procedure and Sentencing – Sentencing – Forms of punishment – Preventive detention – Appropriate length of preventive detention

1 The respondent Salwant Singh s/o Amer Singh claimed trial in the district court to 765 charges of cheating under s 420 of the Penal Code (Cap 224). Subsequently, he pleaded guilty to five charges. The remaining charges were taken into consideration for the purpose of sentencing. The district judge sentenced him to 12 years' preventive detention. The Public Prosecutor appealed against the sentence. The respondent cross-appealed. I dismissed the cross-appeal. I allowed the Public Prosecutor's appeal, and enhanced the sentence to 20 years' preventive detention. I now give my reasons.

Background

2 I set out here the first of the five charges to which the respondent pleaded guilty. The other charges, including the 760 charges taken into consideration, differed only in terms of the respective particulars of the date of the offence, the identity of the victim and the amount of money involved.

> You, Salwant Singh s/o Amer Singh, Male/41 yrs old, NRIC No S1570345H are charged that on the 19 June 1999 [*sic*], M/s Infoseek Communications (S) Pte Ltd located at No 10 Anson Road #34-12, International Plaza, Singapore, did cheat United Overseas Bank (UOB) Card Centre by deceiving UOB Card Centre into believing that one Neo Cheng Sim, holder of a credit card bearing number: 4541 8220 0052 5845 had made IDD calls worth S$1648.92, which you knew to be untrue and by such manner of deception, you dishonestly induced UOB Card Centre to deliver the said amount to M/S Infoseek Communications (S) Pte Ltd, to wit, by crediting the said amount to the bank account of M/s Infoseek Communications (S) Pte Ltd held with UOB Coleman Street Branch and you have thereby committed an offence punishable under Section 420 of the Penal Code, Chapter 224.

Between June and early July 1999, the respondent fraudulently processed 765 fictitious credit card transactions. The total amount involved was $554,557.05, or just over half a million dollars.

3 The circumstances in which the present offences took place were set out in the statement of facts, to which the respondent pleaded guilty without qualification. The respondent was a director of Infoseek Communications (S) Pte Ltd ('Infoseek'). Under an August 1998 merchant agreement with United Overseas Bank ('UOB'), Infoseek offered international 'call back' services to UOB customers, who could pay for those services via three modes of payment. One mode was post-payment credit card billing. This involved the respondent keying the particulars of each transaction into an electronic draft capture terminal provided by UOB. Then, UOB Card Centre would credit the billed amount into Infoseek's UOB bank account.

4 From April 1999, a glitch in Infoseek's computerized billing system caused it to begin overcharging customers. The respondent managed to correct this, but saw in it an opportunity to generate more money for Infoseek. After correcting the glitch, the respondent began to charge his customers for call back services they never used. He would either duplicate individual customers' calls to inflate total usage, or charge for the same call twice.

5 The unusually high volume of business transacted by Infoseek around June 1999 prompted UOB to begin investigations. In the first week of July 1999, UOB froze $116,675.43 from Infoseek's bank account. On 6 July 1999, the respondent left for India. He was arrested there on 27 February 2001. On 24 December 2002, he was extradited to Singapore.

6 The respondent was represented by counsel below. He claimed trial to all 765 charges. On the first day of trial, however, he elected to plead guilty to five charges, and consented to have the other charges taken into consideration for the purpose of sentencing. The district judge called for a pre-sentencing preventive detention report. He then adjourned the matter for two weeks.

7 One week before the respondent was due to be sentenced, he filed an 'application' to retract his plea. The basis of this 'application' was that the investigating officer and the DPP having charge of his case had 'cowed and deceived' him into pleading guilty. On the day of sentencing, the respondent filed a 'supplementary application' further alleging that undertakings to accord him due process and a fair hearing, which undertakings were purportedly given by the Singapore government to secure his extradition from India, had not been honoured.

8 The district judge disallowed the respondent's applications. He then heard the respondent's plea in mitigation, and the prosecution's submissions on sentence.

The decision below

9 The district judge did not consider that any of the points raised by the respondent's counsel were valid mitigating factors. Indeed, he found some of counsel's submissions to be 'utterly disingenuous.' For example, counsel submitted that this was really just a case of overcharging, that the respondent had made restitution of $116,000 and was prepared to surrender $40,000 from his personal UOB account as further restitution. The district judge noted that the $116,000 was, in fact, the money frozen by UOB. Also, the district judge was of the opinion that the respondent's offer to surrender a further $40,000 was calculated to mislead the court. It was established that the respondent had withdrawn over $40,000 from his personal account just days before UOB began investigations so that, at the time of sentencing, the account contained only $300.

10 The district judge found that the respondent was a suitable candidate for preventive detention. Taking into account the respondent's lengthy list of antecedents and the circumstances of the present offending, the district judge formed the opinion that the respondent was 'an incorrigible recidivist too recalcitrant for reformation.' The district judge found the respondent's demonstrated lack of remorse to be particularly disturbing. He then sentenced the respondent to preventive detention for a term of 12 years.

The appeals against sentence

The prosecution's appeal

11 The basis of the prosecution's appeal was that the sentence was manifestly inadequate. The essence of the prosecution's arguments was that the district judge had erred in failing to give due

weight to the aggravating factors present in this case. As such, he had failed to mete out a term of preventive detention of sufficient length to ensure that the public would be protected from the respondent.

12 The prosecution drew parallels between this case and that of *PP v Wong Wing Hung* [1999] 4 SLR 329, in which I had sentenced the accused to the maximum term of 20 years' preventive detention. The prosecution submitted that, like the accused in *Wong Wing Hung*, the respondent was still relatively young (41 at the time of this appeal), having begun his criminal career at 21. He also had a long and varied series of previous convictions.

The respondent's appeal

13 The respondent appeared in person before me. Despite this being an appeal against sentence, the respondent's written grounds of appeal ran the gamut. Very few of his grounds were relevant to the issue of sentencing. In court, he repeated what, in my view, were scandalous and baseless allegations that the prosecution had 'cleverly hookwinded' him into pleading guilty. He facetiously claimed to have been running a business which generated a monthly revenue of $260,000, when my review of the evidence showed that Infoseek's credit card sales brought in only about $6,000 a month. He asked for a new trial and, for the first time in these proceedings, glibly claimed to have an alibi for every one of the 765 charges against him.

14 I could not, of course, grant the respondent's request for a new trial. First, this was not the proper forum for such a request. As the respondent had pleaded guilty, the correct procedure should have been an application for revision rather than an appeal against sentence. This I made clear in *Chen Hock Heng Textile Printing Pte Ltd v PP* [1996] 1 SLR 745 at 749. Second, my review of the evidence did not reveal any error so fundamental that it justified the exercise of this court's revisionary powers on its own motion under ss 266 and 268 of the Criminal Procedure Code (Cap 68). That being the case, the respondent's request had to be dismissed.

15 Before I turn to the substance of the appeal, I pause only to observe that I found no reason at all to fault the district judge's decision to disallow the respondent's application to retract his plea. That decision was firmly grounded in the authority of *Ganesun s/o Kannan v PP* [1996] 3 SLR 560. The district judge found the respondent's application to be 'utterly unmeritorious in law and premised on baseless and outrageous allegations,' which allegations the respondent repeated before me. In the circumstances, I could only construe his request for a new trial as yet another last-ditch attempt by him to escape a sentence of preventive detention.

The law

16 Section 12(2) of the Criminal Procedure Code states:

> (2) Where a person who is not less than 30 years of age –
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> (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.

In *Tan Ngin Hai v PP* [2001] 3 SLR 161 at 163, I held that the real test as to whether a sentence of preventive detention should be imposed 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.

This approach was recently applied by the Court of Appeal in *PP v Syed Hamid Bin A Kadir Alhamid* [2002] 4 SLR 154.

Application to the present facts

17 Applying those principles to the present appeal, I had absolutely no doubt that the district judge rightly considered the respondent to be a suitable candidate for a term of preventive detention. To my mind, the only issue was the appropriate period of detention that the respondent should be made to serve.

18 In relation to the respondent's suitability for a sentence of preventive detention, his antecedents spoke for themselves. He had appeared in court no fewer than seven times since 1983 to answer to 92 separate offences. The respondent's diverse criminal repertoire ranged from violent offences, such as attempted rape and kidnapping, to property offences such as theft and robbery with hurt. He had three previous convictions for cheating under s 420 of the Penal Code, and one previous conviction for attempted cheating. One of those cheating convictions was sustained in 1990 with two other charges of theft of motor vehicle or component parts and unlawful possession of an offensive weapon. On that occasion, four other charges were taken into consideration for the purpose of sentencing. The respondent was sentenced to five years' corrective training and six strokes of the cane.

19 In addition, he had been sentenced to three years' imprisonment and four strokes of the cane in 1986, and five-and-a-half years' imprisonment and 12 strokes in 1987. He had also accumulated some $6,150 in fines. I was satisfied that there was a real danger that the respondent would re-offend, and that it was expedient for the protection of the public that he should be detained in custody for a substantial period of time. The facts of this appeal clearly satisfied the threshold test in *Tan Ngin Hai v PP*.

20 I disagreed with only one aspect of the district judge's reasoning. In coming to his conclusion that the respondent was a suitable candidate for preventive detention, he relied on the New Zealand Court of Appeal decision in *R v Leitch* [1998] 1 NZLR 420. That case considered s 75(2) of the New Zealand Criminal Justice Act 1985, which provided for the sentence of preventive detention for certain specified offences, including sexual offences. I had, however, held in *PP v Perumal s/o Suppiah* [2000] 3 SLR 308 at 317 that there were critical differences between the New Zealand provision and our s 12(2). As such, I declined to follow *R v Leitch*. I agreed, however, with the district judge's conclusion that the respondent should be subjected to a term of preventive detention.

21 The question, then, was how long the respondent should be detained in custody. The district judge was of the opinion that the appropriate period of detention was 12 years. I did not agree. A sentence of 12 years was manifestly inadequate to reflect the length and gravity of the

respondent's versatile criminal record, and the urgent need that he be incarcerated for the protection of society for a very substantial length of time. In my judgement, the circumstances of this particular case necessitated that the respondent be put away for the maximum term of 20 years. In particular, I had regard to the following.

22 First, the respondent displayed a breathtaking lack of any remorse whatsoever for the crimes he perpetrated upon Infoseek's hapless customers. He had to be extradited from India to face the present charges. He sought to retract his plea in the court below, and then, in a further attempt to minimise his culpability on appeal, repeated his scandalous allegations against the prosecution. I noted that this penchant for minimising his culpability, apparent even as he appeared before me for this appeal, accorded with the opinion of the prison psychologist, who indicated in her preventive detention report that the respondent displayed a tendency to intellectualise his offending, and to downplay personal responsibility for his crimes.

23 Second, I accepted the prosecution's argument in respect of the parallels between this case and *Wong Wing Hung*. That was also a case wherein I sentenced the accused to a term of 20 years' preventive detention. As in *Wong Wing Hung*, the gravity and scale of the respondent's crimes had intensified over the years. He had spent substantial periods of time in corrective training as well as prison, but those stints in custody apparently had little deterrent effect. The prosecution further submitted that there were additional factors in this appeal that made the respondent even more of a danger to society than the accused in *Wong Wing Hung*. I agreed.

24 This was an exceptional case. In no other case before me has an offender made such a conscious effort to upgrade his skills over the course of his criminal history. The respondent used his time in corrective training to obtain a bachelor's degree in economics from the University of London by distance-learning. After his release, he mastered the computer, teaching himself various applications such as C++ and Java. He thereby graduated from simple cheating offences involving 'bounced cheques' (his words) to a complex computer-based credit card scam.

25 Instead of turning his new-found skills to good use for the benefit of society, the respondent chose instead to turn them to his own advantage, inflicting grave economic harm in a most insidious, sophisticated and large-scale manner. The net effect of all this was that he was, and remained, armed with the potential to offend again in that fashion. As the district judge aptly put it, the respondent's computer savvy, amalgamated with his criminal propensity, could only be a 'potent combination.' The facts of the present appeal already attested to that. In the premises I was of the opinion that the public interest demanded that the respondent be taken out of circulation for the maximum term of 20 years.

26 I would only add one final note. Before me, the respondent argued that I should take the 22 months of 'hardship' spent in custody awaiting extradition into account in determining the appropriate length of his sentence. I was not at all persuaded by this argument. I was not, in law, bound to discount the respondent's sentence for his time spent in foreign custody. In this respect I was guided by the decision of the English Court of Appeal in *Peffer* (1992) 13 Cr App R (S), which was also considered and followed by the district judge.

27 I was not moved either by the respondent's tales of 'hardship.' I took note of the fact that his letter of complaint to the Indian authorities, which letter he had annexed to his written submissions, was dated 11 August 2003. That was just three days before this appeal was heard, and over eight months after his extradition was completed. This delay, which the respondent failed to explain in court, lent no credence to his allegations. To my mind, these allegations, like the allegations against the prosecution and his eleventh-hour attempt to retract his guilty plea, were

mere ploys to delay his sentence.

28 In light of the foregoing reasons, I considered that a maximum period of preventive detention was the only appropriate sentence on these particular facts. Accordingly, I dismissed the respondent's cross-appeal and allowed the Public Prosecutor's appeal, enhancing the period of preventive detention to the maximum term of 20 years.

Appeal allowed; cross-appeal dismissed.