Public Prosecutor *v* Lee Han Fong Lyon
[2014] SGHC 89

Case Number : Magistrate's Appeal No 272 of 2013

Decision Date : 30 April 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Lin Yinbing and Krystle Chiang (Attorney-General's Chambers) for the appellant; Alfred Dodwell and Maiyaz Al Islam (Dodwell & Co LLC) for the respondent.

Parties : Public Prosecutor — Lee Han Fong Lyon

Criminal Law – Statutory offences – Misuse of Drugs Act

Criminal Law – Offences – Offences against public servants

Criminal Law – Statutory offences – Road Traffic Act

30 April 2014 Judgment reserved.

Choo Han Teck J:

1 This was the prosecution's appeal against sentence. On 6 June 2012, the respondent pleaded guilty to, and was convicted of:

a. one charge, for an offence of impersonating a police officer, under s 170 of the Penal Code (Cap 224, 2008 Rev Ed);

b. one charge, for an offence of consuming methamphetamine, under s 8(*b*)(ii), punishable under s 33 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed); and

c. one charge, for an offence of driving without a valid licence, under s 35(1), punishable under s 131(2) of the Road Traffic Act (Cap 276, 2004 Rev Ed).

2 The respondent also consented to having three other charges under s 170 of the Penal Code and one charge under s 96(1) of the Road Traffic Act, of taking a motor vehicle without the owner's consent, taken into consideration for the purpose of sentencing. All the offences took place in November and December 2010. The respondent was 24 years old at that time. He had committed three prior offences, and was convicted for these on 14 March 2007. These offences were for:

a. driving in breach of a condition of a provisional driving license, under s 36(5) of the Road Traffic Act;

b. using indecent, threatening, abusive or insulting words or behaviour towards a public servant, under s 13D(1)(*a*) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed); and

c. using a motor vehicle without insuring against third party risk, punishable under s 3(2) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed).

For the three offences, he faced a total fine of $2,500 and 12 months' disqualification from driving all classes of motor vehicles.

3 After the respondent pleaded guilty on 6 June 2012, in submissions as to sentence, both parties disagreed as to the extent of the involvement of the respondent's Attention Deficit Hyperactivity Disorder ("ADHD") in his criminality. The district judge called for a probation report, and adjourned the matter to 11 July 2012. At the hearing on 11 July 2012, counsel for the respondent sought a further adjournment to obtain forensic evaluation reports from Dr Saluja Bharat, a consultant for the General and Forensic Psychiatry department at the Institute of Mental Health ("IMH"). The adjournment was granted. At the next hearing on 5 December 2012, a further adjournment was granted for a further report, as well as for parties to address the court on the significant delay in the case. Parties appeared before the judge on 30 May 2013. The judge mentioned that further clarifications were needed from Dr Saluja. The matter was adjourned to 15 July 2013. On 15 July 2013, the probation officer was examined in court. On 24 September 2013, a Newton hearing was held in regard to Dr Saluja's reports, as the prosecution was dissatisfied with them and the clarifications sought by the judge on 30 May 2013 were not forthcoming. During the Newton hearing, Dr Saluja was examined in court.

4 Having had the benefit of the Newton hearing, the probation report, the various reports from Dr Saluja and other psychiatrists, and examination of Dr Saluja and the probation officer, the district judge came to his decision of an order of probation on 24 October 2013. The district judge ordered the respondent to undergo a total of 24 months' supervised probation, and to:

a. attend regular treatment for his ADHD;

b. adhere to the medication regime as prescribed by his psychiatrist;

c. undergo random urine tests.

The district judge also ordered that the respondent's parents were to place a bond of $5,000 to ensure the respondent's good behaviour during the period of probation. The prosecution appealed to this court, arguing that a custodial term and a disqualification order should be meted. Both parties accepted that probation was indeed a viable sentencing option, pursuant to s 5(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed), as none of the sentences prescribed for any of the offences in question were fixed by law. It is the prosecution's case, however, that probation should not have been ordered.

5 The main issue before me was the same as that before the district judge – the extent of the respondent's ADHD in his criminality, namely, in his impersonating a police officer, consuming methamphetamine, and driving without a valid licence. The crux of the prosecution's case was that the respondent's ADHD did not cause him to commit these crimes. Expanding on this, the prosecution further argued that the district judge erred in law and fact by placing excessive reliance on the respondent's ADHD.

6 The common ground between parties was that the respondent has been, and is, suffering from ADHD. I have also set out the procedural history of this case before the district judge to note that he had addressed his mind to the respondent's condition, and in his meting the appropriate sentence. I accept the prosecution's argument – which was not denied either by the respondent – that the respondent's ADHD did not single-handedly cause the respondent to commit the offences, but I do not think that the district judge was wrong to find that the ADHD played a role in the psyche of the respondent, and was a factor in his criminality. The district judge stated in his grounds of decision (*PP*

v Lee Han Fong Lyon [2013] SGDC 437 at [33]) that:

> although the [respondent] was aware of the wrongfulness of the various acts he had committed [the respondent] could not realise the [seriousness] of his actions as he could not think much about the [consequences] of his wrongful acts.

He thus found that the ADHD was indeed a contributory factor. He came to this finding after having perused the reports of the probation officer and Dr Saluja. I should point out that Dr Saluja, as noted by the district judge, was thoroughly experienced in criminal cases, handled 300 – 400 drug cases a year, and runs a specialised clinic for ADHD patients at the IMH.

7 I also do not think that the district judge placed excessive reliance on the respondent's ADHD in coming to his decision. The district judge distilled from a series of high court cases the notion that less emphasis could be placed on the principle of deterrence when the offender was facing a serious mental or psychiatric disorder at the time of commission of the offence. The prosecution did not seem to take offence with this observation, save as to fault the district judge's subsequent argument that this case was one in which rehabilitation should be prioritised ahead of deterrence. While I appreciate the concern of the prosecution, that the effect of general deterrence may be impinged by straying from the usual sentencing range, I think that this concern arises from the assumption that this case is substantially similar, if not identical, to the other cases cited. But that assumption is faulty. This is a unique case of a young offender with no drug-related antecedents and a supportive background. Considering these other factors (the respondent's age, his antecedents, and familial support), while seemingly detracting from the doctrinal debate as to which sentencing principle should take precedence, serves, in fact, to "give meaning in its full context to the often cited labels of… rehabilitation, deterrence and incapacitation" (see *PP v Goh Lee Yin* [2008] 1 SLR(R) 824 at [57]). In his grounds of decision, the district judge noted the various sentencing principles (at [22] – [25]), subsequently addressed his mind to the unique facts of the case (at [31] – [36]), and formed the view that rehabilitation should take precedence (at [45]). I cannot fault his analysis.

8 The prosecution has argued that the district judge had placed "undue weight" on these "various other factors", which include the respondent's having not reoffended after his conviction in June 2012, the respondent's level of remorse, and the familial support. I think that this is not the case. Having read the district judge's grounds of decision, I think that he had addressed his mind to each of these factors in a measured manner. Most notably, on the last point of familial support, the learned prosecutor emphasised during oral submissions her concern that the district judge had "inadvertently conveyed the impression that [financial contributions, which come from the family in furnishing psychiatric reports] can mitigate an offender's culpability or ensure a reduced sentence". It is important to appreciate the context in which the district judge's statement was made. For completeness, I set out the relevant paragraph from his grounds of decision below:

> 44. I am satisfied that the accused has amply learnt his lesson from these proceedings. The length of these proceedings must have inflicted further pain and anguish both to him and to his family. At the same time, his staying crime free and further receiving the strong support of his parents, must have had a calming and positive effect on him and raised his hopes for the future. Here, I note in particular, that his parents had struggled to raise the substantial funds necessary to pay for the earlier psychiatric reports from Raffles Hospital and also the final IMH medical reports. In view of that sacrifice they made, the court – and Parties – were provided with further relevant and crucial medical evidence. Therefore, this Court does not wish to see such positive hopes dashed away or a more deterrent sentence imposed than is necessary on the facts of this case. Nor does the court wish to impose a sentence that has a crushing effect on the accused as he is still relatively young.

9 I think the crucial phrase in the paragraph was "more deterrent sentence imposed than is necessary". I do not think the interpretation postulated by the prosecution was a fair one to arrive at based on an objective reading of the paragraph even in isolation, let alone in the context of the entire grounds of decision. The district judge merely noted the contributions of the family, and went on to emphasise that a "more deterrent sentence… than is necessary" should not be imposed.

10 The district judge had adopted a measured and thoughtful approach throughout this case – as was most clearly evidenced by the numerous clarifications he sought on the reports. Further, if any reassurance was needed that the district judge was not overly optimistic, it can be found in his grounds of decision (at [37]), where he acknowledged that "[w]here a probation order is granted, there can always be a review of the accused's progress." This further demonstrated, in my view, the district judge's cognisance of the sentence of probation, the safeguards that were in place should things go awry, and why, on the whole, it was indeed an appropriate sentence.

11 For the reasons above, the appeal is dismissed.