

Lim Sin Han Andy v Public Prosecutor
[2000] SGHC 54

Case Number : MA 302/1999

Decision Date : 01 April 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Thomas Tham Kok Leong (Thomas Tham & Co) for the appellant; Wan Wai Yee (Deputy Public Prosecutor) for the respondent

Parties : Lim Sin Han Andy — Public Prosecutor

Criminal Procedure and Sentencing – Mitigation – Failure of appellant to attend at place of duty without leave – Whether appellant's lack of criminal antecedents carries mitigating value – s 48(1) Civil Defence Act (Cap 42)

Criminal Procedure and Sentencing – Sentencing – Whether public interest involved in National Service justifies deterrent sentence

: The appellant was convicted on the following charge in the district court by Kow Keng Siong:

You, Andy Lim Sin Han M/22 yrs NRIC No 7724864/A are charged that you, being a full-time national serviceman in the Singapore Civil Defence Force and subject to the Civil Defence Act (Cap 42), whilst having been notified to report for duty at PSA Pasir Panjang Worksite, Singapore, did from 12 August 1996 to 20 October 1999 fail to attend at your place of duty without leave, and you have thereby committed an offence punishable under s 48(1) of the said Act.

The appellant pleaded guilty to the charge and was sentenced to 18 months' imprisonment.

The facts

The appellant was a full-time national serviceman in the Singapore Civil Defence Force. Accordingly, he was subject to the Civil Defence Act (Cap 42).

On 19 January 1996, the appellant was told to report for his national service duty at the Pasir Panjang Worksite, Jalan Bahar Camp, Singapore, with effect from 19 January 1996 until further notice. The appellant reported for his duty from 19 January 1996 until 11 August 1996. After that, he failed to report for duty at the designated place of duty from 12 August 1996 continuously without leave until the day he surrendered to the police on 21 October 1999.

During the period of absence between 12 August 1996 and 20 October 1999, a period of three years, two months and nine days, the appellant did not have a legitimate reason or any medical exemption to justify his absence.

The decision below

The trial judge found the appellant guilty on the charge and convicted him accordingly.

The appellant raised several factors in mitigation in the district court. First, he informed the court

that he did not have any criminal antecedent. He had also pleaded guilty. Further, he said that, at the time of the offence, he had to work to support his child, who had turned two years old by the time of his conviction. He had also surrendered himself to the authorities and accordingly he pleaded for leniency.

The trial judge did not accord significant weight to the fact that he was a first offender in view of the observations in **PP v Tan Fook Sum** [1999] 2 SLR 523 and **Xia Qin Lai v PP** [1999] 4 SLR 343 at [para] 27. As stated in **PP v Tan Fook Sum** at [para] 32:

... it may be said that the weight to be given [to the fact that the respondent has no previous conviction] would be greater if there were positive evidence as to character rather than the negative inference from the absence of allegations of other convictions. Contrariwise ... being of good character is irrelevant as a mitigating factor but relevant as an aggravating factor in that the offence is so much greater because the offender should have known better.

Accordingly, the fact that the appellant had no previous conviction was not considered a relevant mitigating factor.

However, the trial judge considered the appellant`s plea of guilt and his surrender to the police to be in his favour in determining the sentence as these factors were indicative of genuine remorse on his part.

As regards the appellant`s contention that he had committed the offence to support his child, the trial judge did not think that this was a mitigating consideration at all. National service liability is mandatory for all eligible Singapore citizens. National service is about one`s duty to the country, and about placing the nation`s interests above one`s own. It would be unfair to all national servicemen who diligently perform their national service at a personal sacrifice to themselves and their families if the appellant`s contention was accepted as a valid mitigating factor.

The trial judge also felt that there was a serious public interest involved in this case. At [para] 8 of his judgment, he said:

[b]eing absent without leave from national service is undeniably a serious offence. By committing an offence under s 48(1) of the Civil Defence Act, the offender has acted irresponsibly, shirking his fundamental obligation to his country, to which he owes his citizenship and allegiance. Such conduct is prejudicial to the interests of the State as the offender`s absence potentially compromises the overall effectiveness and discipline of his unit. The adverse impact of the criminal act is made all the more significant when one considers the fact that the offender is part of a unit that provides an essential public service, in this case the Civil Defence. To treat such an offender leniently would be to send a wrong message to young men about to be enlisted for, or already serving their national service.

Accordingly, the trial judge felt that the public interest required that the appellant should not be treated leniently, especially since his period of absence was substantial.

The trial judge also referred to the case of **PP v Chia Kok Hua** (MA 531/92/01) in determining the length of the sentence to be imposed on the appellant. In **PP v Chia Kok Hua** , the respondent was

convicted of the offence of desertion under s 24 of the Civil Defence Act and the offence of being absent without leave under s 48 of the Act. The respondent was eventually sentenced to one year's imprisonment and three months' imprisonment respectively. The trial judge felt that **PP v Chia Kok Hua** was instructive as it demonstrated that a significant custodial sentence would be imposed where an offence under s 48 of the Act had been committed. It was noted that in **PP v Chia Kok Hua**, the respondent was given a custodial sentence that was about half the period of his absence.

Having considered all the above factors, the trial judge sentenced the appellant to 18 months' imprisonment, which was about half the period of his absence.

The appeal

The appellant filed an appeal against the sentence on the ground that it was manifestly excessive.

The appellant stated that the trial judge had failed to take into account the fact that the appellant was a first time offender and the fact that the appellant had pleaded guilty at the first opportunity. He also contended that the trial judge had failed to direct his mind adequately or at all to the fact that the appellant was charged with the offence of failing to attend at the place of duty without leave under s 48(1) of the Civil Defence Act, and not the offence of desertion under s 24 of the Act. Finally, the appellant contended that the trial judge had failed to consider the fact that he stayed away in order that he could work to support his wife and child.

In my opinion, there was no merit in the appellant's submissions on appeal. It was clear from the decision of the trial judge that the mitigating factors advanced by the appellant had been carefully considered and weighed by him. The fact that the appellant was a first offender was not considered a relevant factor in the light of the observations in **PP v Tan Fook Sum** (supra) and **Xia Qin Lai v PP** (supra) at [para] 27. Further, the trial judge had adequately considered the fact that the appellant was charged with the offence of being absent without leave under s 48(1) of the Act and not the offence of desertion under s 24 of the Act. The trial judge's decision did not reveal any confusion on his Honour's part in this respect.

I gave careful consideration to the appellant's contention that the trial judge failed to consider the fact that he was absent from work because he wanted to work and support his wife and child as this contention raised an issue of public importance.

Public interest

The trial judge held that the fact that the appellant stayed away from work to support his family did not carry any weight in mitigation. This was because the public interest involved in national service required that servicemen be prepared to subordinate their personal interests to the interests of the State.

I did not think that the sentence imposed by the trial judge was manifestly excessive. National service is vital to the security of Singapore and it necessarily entails sacrifices by national servicemen and their families. In order to safeguard the security interests of the State, everyone who is required by law to do national service must obey and carry out the lawful orders given to him. If the courts were to sympathise with the personal difficulties of every national servicemen, the overall effectiveness and efficiency of civil defence or the Singapore Armed Forces would be severely compromised. The deterrence of the individual offender, and others who might be tempted to commit

the offence, is therefore necessary to advance the public interest involved in cases such as the present one.

Conclusion

In my view, the sentence of 18 months' imprisonment imposed by the trial judge was appropriate in the light of the relevant mitigating considerations, the public interest involved and the substantial period of absence during which the appellant failed to attend to his place of duty without leave. Accordingly, I dismissed the appeal against sentence.

Outcome:

Appeal dismissed.

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