Public Prosecutor *v* Teo Choon Chai
[2015] SGHC 212

Case Number : Magistrate's Appeal No 181 of 2014

Decision Date : 14 August 2015

Tribunal/Court : High Court

Coram : See Kee Oon JC

Counsel Name(s) : Leong Weng Tat and Stephanie Koh (Attorney-General's Chambers) for the appellant; The respondent in person; Arvindran s/o Manoosegaran (Drew & Napier LLC) as amicus curiae.

Parties : Public Prosecutor — Teo Choon Chai

Criminal Law – Statutory offences – Casino Control Act – Entering a casino without paying the entry levy

14 August 2015

See Kee Oon JC:

1 The material facts of this case are simple and undisputed. The respondent, a Singaporean, used the NRIC of his friend, also a Singaporean, to enter the casino at Marina Bay Sands on three separate occasions in August 2013, and was detained by security officers when he again attempted to do so in September 2013. The law requires that all Singapore citizens and permanent residents pay a $100 entry levy in order to enter a casino for a consecutive period of 24 hours. On each of these four occasions, he paid the $100 entry levy, albeit "under the name of and identity of" the friend whose NRIC he used.

2 The respondent's actions gave rise to four charges for the offence of entering or attempting to enter a casino on false pretences under s 175A of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("the Act"), as well as three charges for the offence of entering a casino without paying the entry levy under s 116(6) and one charge for attempting to do so under s 116(6A) of the Act. He pleaded guilty to the s 175A charges and was duly convicted and sentenced. However he contested the ss 116(6) and 116(6A) charges and was acquitted of those charges by the District Judge below. The prosecution appealed against his acquittal and the sole issue for my determination was whether the respondent's conduct discloses any offence under ss 116(6) or 116(6A) of the Act.

3 For convenience I reproduce the relevant provisions of the Act:

> **Entry levy**
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> **116.**—(1) Subject to subsection (3), a casino operator shall not allow any person who is a citizen or permanent resident of Singapore to enter or remain on the casino premises at any time on any day unless the person has paid to the casino operator an entry levy of —
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> (*a*) $100 for every consecutive period of 24 hours; or
>
> (*b*) $2,000 for a valid annual membership of the casino.

…

(6) Subject to subsection (5), any citizen or permanent resident of Singapore who enters any casino premises without paying the entry levy specified in subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000, and shall also be liable for the amount of the entry levy specified in subsection (1)(*a*).

(6A) Subject to subsection (5), any citizen or permanent resident of Singapore who attempts to enter any casino premises without paying the entry levy specified in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

…

Entering casino on false pretences

175A. Any person who enters any casino by pretending to be some other person, or by using another person's identification document, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

4 On a plain reading of the statutory language, it was beyond doubt that the respondent committed an offence under s 175A of the Act by entering a casino using his friend's NRIC. But it was not so clear that he committed an offence under ss 116(6) or 116(6A) given that he did pay the $100 entry levy every time he entered the casino. The prosecution's broad argument was that the respondent's payment of the entry levy was, so to speak, an "invalid" payment for the purposes of ss 116(6) and 116(6A) of the Act because it was made under another person's name and identity. To justify this argument, the prosecution urged that a purposive interpretation of ss 116(6) and 116(6A) should be adopted. The arguments before me did not distinguish between ss 116(6) and 116(6A), and I have proceeded accordingly in the following paragraphs by referring only to s 116(6). For avoidance of doubt, my analysis applies equally to s 116(6A), which merely governs attempts to commit the offence set out in s 116(6).

The prosecution's contentions

5 The prosecution put forward four specific contentions in support of its broad argument that the respondent's payments of the entry levy were all "invalid" and I turn now to summarise these contentions. The first was that the respondent's payments were made to facilitate a fraudulent or criminal act and such payments cannot be valid. The prosecution relied in this regard on the common law principles "fraud unravels everything" and "*nullus commodum capere potest de injuria sua propria*" – which means "no one should be allowed to profit from his own wrong".

6 The second contention had to do with the relationship between s 116(6) of the Act and the effectiveness of the "excluded person" regime, under which particular persons are barred entirely from entering casinos. From the premise that entry levies "are part of a comprehensive suite of social safeguards aimed at discouraging problem gambling", it was argued that Parliament intended that excluded persons should be detected at the point in time at which they attempt to purchase an entry levy. Since casino operators ascertain whether a person is an excluded person by checking the NRIC that the person presents, it follows that a person's identity is the "cornerstone" of the entry levy system. If s 116(6) of the Act did not criminalise conduct such as the respondent's, the prosecution argued that this would impede the enforcement of the "excluded person" regime by "creating an opportunity for the excluded person to attempt to enter the casino fraudulently, by circumventing the

identity-based entry regime". That is, it opens a backdoor for excluded persons to "try their luck".

7 The third contention was that a narrow interpretation of s 116(6) of the Act carries the risk of facilitating the practice of multiple persons "sharing" entry levies. Suppose person A pays the entry levy using person B's NRIC, and after some time, A exits the casino and returns B his NRIC. Thereafter, B enters the casino with his NRIC. The prosecution said that, if s 116(6) did not criminalise the respondent's conduct, neither A nor B would be liable under s 116(6), and there would be uncertainty as to whether it is A or B who has the right to enter the casino, such that casino operators would not know which of the two ought to be permitted or denied entry. Such an "absurd" outcome could not have been intended by Parliament.

8 The fourth and final contention advanced by the prosecution was that the "link" between ss 116 and 175A of the Act is "plain" – both provisions are "premised on identity". Payment of the entry levy facilitates subsequent entry into the casino; hence, it was argued, if it is an offence to use an assumed identity to enter the casino, it must also be an offence to use an assumed identity to pay the entry levy. It cannot be that s 116 allows a person to "claim to be two persons as it suits him".

The *amicus curiae*'s submissions

9 It was common ground that the question for determination was novel. Having regard to the fact that the respondent was not represented by counsel, a young *amicus curiae* ("the *amicus*") was appointed to assist the court in addressing various issues arising out of the appeal. In this regard, Mr Arvindran s/o Manoosegaran was appointed as the *amicus*.

10 The key submissions of the *amicus* were as follows. Adopting a purposive interpretation, an offence under s 116(6) is not constituted when a Singapore citizen or permanent resident makes payment of the specified entry levy to enter or remain on the casino premises under another person's name. Parliament did not intend for s 116(6) to criminalise payment of the entry levy under false pretences. Moreover, s 116 and s 175A are not "inextricably linked" because Parliament intended these provisions to achieve different social objects. Section 116 was intended to discourage casual and impulse gamblers by imposing a pecuniary disincentive in the form of an entry levy to remain on the casino's premises for a specified period. Section 175A, on the other hand, was intended to enforce exclusion orders by penalising problem gamblers under exclusion orders who gained entry into the casino by impersonating someone else.

11 The *amicus* advanced two further submissions. The first was that s 116(6) is not a strict liability offence and the prosecution had to prove that the respondent intended to avoid payment of the entry levy by making payment under another person's name. Second, he submitted that it was impermissible to treat a s 175A offence as invariably disclosing an offence under s 116(6) of the Act as this would result in the respondent being punished twice for what was essentially the same offence of entering the casino "on false pretences". The *amicus* thus submitted that the District Judge's interpretation of s 116(6) does not undermine the social object and purpose of the casino entry regime in Singapore.

12 I have set out the submissions of the prosecution and the *amicus* roughly in the order in which they appeared in their respective written submissions. I will not, however, address these submissions in the same sequence in explaining the reasons for my decision to dismiss the appeal, which I do so now.

My decision

The entry levy as a social safeguard against problem gambling

13 There is no doubt that the imposition of entry levies and the corresponding criminalisation of the act of entering a casino without paying the levy are social safeguards against what might be termed "problem gambling", which broadly refers to the phenomenon of people becoming addicted to gambling and eventually landing themselves in financial ruin. This is evident in the excerpts from the Parliamentary debates quoted by the District Judge in her written grounds of decision, *Public Prosecutor v Teo Choon Chai* [2015] SGDC 41 ("the GD") at [14]. The relevant extracts from the speech by the then Deputy Prime Minister and Minister for Home Affairs Mr Wong Kan Seng during the Second Reading of the Casino Control Bill (*Singapore Parliamentary Debates*, *Official Report* (13 February 2006) vol 80) are as follows (at cols 2325–2328):

> Sir, what I have described thus far are measures to deal with the law and order aspects of the casino operations. Another key objective of the Casino Control Bill is to minimise the potential for casinos to cause harm to minors, vulnerable persons and society at large. The Bill shall enact the social safeguards that the Government had announced in Parliament in April last year.
>
> *Problem gambling*
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> …
>
> *Entry levy*
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> To discourage locals from developing into problem gamblers, clause 116 of the Bill shall require the casino operator to collect an entry levy from Singapore citizens and permanent residents for every consecutive 24 hours in the casinos or $2,000 for an annual membership. The levy will also underscore the message that gambling is an expense and not a means to get rich.
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> …
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> The CRA will work closely with the Ministry of Community Development, Youth and Sports to ensure that the social safeguards, such as entry levy collection and the exclusion orders, are effectively implemented in the casinos.

14 It is not controversial that entry levies were intended to act as a social safeguard: having to pay $100 just to enter a casino might discourage the ordinary rational person from gambling in casinos, or might at least dissuade him from over-indulging in gambling. In the words of the District Judge, with which I am in full agreement, the entry levy is designed to make Singaporeans and permanent residents "feel the pinch of having to pay $100 and consequently, to encourage them to reconsider their decision to engage in casual and impulse gambling" (at [20] of the GD). In short, it is a type of tax recognising that habitual gambling, and in particular, excessive gambling can cause harm not only to the individuals who gamble but also to their families and society at large.

Whether there is a link between the entry levy and the "excluded person" regime

15 There is likewise no doubt that the "excluded person" regime is also part of the system of social safeguards that the Act constructs against problem gambling. But it does not follow that the requirement to pay an entry levy is somehow inextricably linked or related to the "excluded person" regime. In my view, they are quite separate things. The entry levy requirement is a precondition for entry into a casino that applies to *all* Singaporeans and permanent residents, but the "excluded person" regime is targeted narrowly at specific individuals only, prohibiting them from entering the

casino altogether. Even if such persons pay the entry levy, it would not affect their status as "excluded persons": they remain "excluded" and should they present another person's NRIC and thereby gain entry into the casino, they would have committed an offence under s 175A of the Act. Whether they are apprehended quickly enough or at all is of course a separate matter, depending on the rigour of the casino's detection and enforcement measures.

16 Hence, I did not see how it could be said that s 116(6) of the Act was designed and intended to facilitate enforcement of the "excluded person" regime. In the same vein, I was unable to see why ss 116(6) and 175A of the Act must be inextricably linked or connected to each other, as the prosecution contended. These provisions give rise to separate and distinct offences and each can stand alone. A person who pays the entry levy and enters a casino using another person's NRIC clearly commits an offence under s 175A, but nothing in the Act suggests that there will inevitably or "automatically" be a complementary offence under s 116(6). After all, s 175A did not exist until 31 January 2013, when it was introduced into the Act by legislative amendments. By contrast, s 116(6) has been present since the inception of the Act. This fact alone strongly militates against the existence of any link between the two provisions.

Distinction between "fraudulent entry" and "fraudulent payment"

17 In my judgment, a distinction should be drawn between two scenarios. I will term these for convenience as "fraudulent entry" on one hand and "fraudulent payment" on the other. The former refers to *entering* a casino in what might loosely be called fraudulent circumstances, including entering using another person's NRIC or a foreigner's identification document. This can occur with or without payment of the entry levy. It would not be controversial, for instance, that both offences under ss 116(6) and 175A are committed where a Singaporean citizen or permanent resident does not pay the entry levy and pretends to be a foreigner and uses a foreigner's identification document to gain entry into the casino, There is no question that the conduct involved is criminalised by both ss 175A and 116(6) of the Act. The "fraudulent payment" scenario refers to *paying* the entry levy in those fraudulent circumstances (where applicable).

18 It is well-settled that a purposive approach is mandated in statutory interpretation having regard to s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). I agreed with the submission put forward by the *amicus* – adopting a purposive approach does not permit one to ignore the literal words of a statutory provision and reference to extrinsic material such as Parliamentary debates does not allow substitution or alteration of the actual text of the provision in question. In support of this, he aptly cited the observations of V K Rajah JA in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [57].

19 On a plain reading of s 116(6), the *actus reus* of the offence contemplated thereunder is made out only where there is both *non-payment* of the entry levy and subsequent *entry* into the casino: the offence clearly bites at the point of *entry*. As the prosecution acknowledged in oral argument, there would be no offence at all if a person paid the entry levy using another person's NRIC but for some reason did not enter the casino after all. Thus it would appear that there was no intention to criminalise mere "fraudulent payment". Moreover, it would require an inordinately strained interpretation to support the prosecution's contention that payment made using another person's identification documents is tantamount to non-payment altogether. There is nothing in the language of s 116(6), or other provisions of the Act or extrinsic material beyond s 116(6), to suggest that the provision must be read in this manner, such that non-payment is indistinct from actual payment, albeit made using another person's identification documents.

20 I was therefore unable to agree that s 116(6) must be read such that it criminalises a

"fraudulent payment" scenario in spite of the fact that actual payment of the entry levy had been made. In my view, s 116(6) only creates an offence relating to entering the casino without payment of the specified entry levy, *ie*, it criminalises a specific subset of "fraudulent entry". If it were truly Parliament's intention to criminalise "fraudulent payment" in circumstances where the offender has paid the entry levy but gains entry using someone else's identification documents, it could simply have inserted an express provision stating that it was an offence to *pay* the entry levy for the purpose of gaining entry under another person's name. But that is not the case under the Act.

21 I do not mean to suggest that the payment of the entry levy is wholly unconnected to a person's identity. As I understand it, this would not be consistent with the practice in casinos, which is to record that the entry levy has been paid in respect of the NRIC number provided during the payment. The entry levy is thus non-transferable to that extent, and as the District Judge explained in her GD (at [17]), this allows casinos to "ascertain if persons who have to pay the entry levy have done so and to ensure that they do not remain on the casino premises beyond 24 hours". To that extent the entry levy is tied to identity – but it is to that extent only, and for *administrative* purposes only. It is another thing altogether to say that the meaning of "paying the entry levy" in s 116(6) of the Act should also be tied to identity for the purpose of determining criminal liability under that provision.

The prosecution's other arguments

22 The prosecution submitted that their suggested interpretation must be adopted as there would otherwise be a negative impact on the enforcement of the social safeguards regime as a whole. This however brings me to another pertinent consideration: the respondent in the present case was not an excluded person under the Act, but he did pay the levy as required. I was unable to see how the District Judge's interpretation would undermine the operation of the social safeguards regime "as a whole". As I have pointed out above at [15], there are different aspects which were built into the system of social safeguards within the Act to guard against problem gambling.

23 Taking the prosecution's hypothetical in which A pays the entry levy using B's NRIC, and A exits the casino after some time and returns B his NRIC so that B then enters the casino with his NRIC, I did not see how there would be an absurd result if I adopted an interpretation of s 116(6) of the Act that did not criminalise the respondent's conduct. The prosecution argued that there would be an absurd result because, on that interpretation, neither A nor B would have committed an offence under s 116(6), but I did not think it was right to say that A and B would both escape liability. B would escape liability only if the *prosecution's* interpretation is preferred – on this interpretation, since A paid the entry levy in B's name, it is B who has made payment and who possesses the right to enter. However, if the link between entry levy and identity urged by the prosecution is done away with, the position would simply be that B has committed an offence under s 116(6) of the Act because the payment was, in fact, made by A and not B. Thus, A would be guilty of an offence under s 175A – for using B's NRIC to enter the casino – and B would be guilty of an offence under s 116(6), and each would also be guilty of the offence of abetting each other's offence. With respect, I perceived no absurdity in such an outcome.

24 Moving to a different point, I was not persuaded by the prosecution's invocation of the broad principles "fraud unravels everything" and "no one should be allowed to profit from his own wrong". As to the former principle, I understood it to be primarily applicable in the *civil* rather than criminal context. The authorities cited by the prosecution, *Mansource Interior Pte Ltd v Citiwall Safety Glass Pte Ltd* [2014] 3 SLR 264 and *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, are both civil cases, and the facts of those cases are very far removed from those in the instant appeal. Those authorities thus afforded me no assistance. As for the latter principle, I also understood it to belong to the civil

and not the criminal realm.

25 Even if the two principles relied on by the prosecution were applicable in criminal cases, they were framed at such a high level of generality that they compelled no particular result in this appeal. Taking the situation in the present case, for example, where a person enters a casino using another person's NRIC, fraud may "unravel" the *entry* into the casino, whatever that might mean, but it does not necessarily "unravel" the *payment* of the entry levy as well. It was in fact paid by the person who gained entry after all. And it was said that "no one should be allowed to profit from his own wrong", but what exactly is meant by "profit"? It could very well mean nothing more than that the respondent would not have been permitted to keep any winnings from his gambling, as the *amicus* contended.

Summary of my decision

26 Drawing the threads of the analysis together, I rejected the prosecution's interpretation of ss 116(6) and 116(6A) of the Act. On a plain reading of the statutory language, the respondent had not committed any offence under ss 116(6) or 116(6A) because he did pay the entry levy every time he entered or attempted to enter the casino. He paid and entered (or attempted to do so) using another person's NRIC, but each time he did so, that gave rise to a separate offence under s 175A. There is no reason whatsoever why the payment should be deemed "invalid" just because it was made under another person's name and identity. It is not in doubt that there may be situations where a person's act contravenes *both* ss 116(6) and 175A, *eg*, where a person enters using the identification document of a foreigner and does not pay any entry levy since foreigners are not required to pay, or where he enters using the NRIC of a Singaporean who has previously paid the annual entry levy that gives him the right to enter a casino for a year. But this was not one of those cases.

27 I make one final observation: the respondent submitted that he did not understand why he was charged for the s 116(6) offence when he had in fact paid the specified entry levy albeit using his friend's NRIC. While it is not always the case that all manner of penal legislation will be readily understood by lay persons, it is certainly desirable that legislation ought to be clear enough to be readily understood and applied. As I have explained above, the prosecution's interpretation of s 116(6) is at odds with the plain language of s 116(6) and I was not persuaded that a strained interpretation should be adopted.

Conclusion

28 I was therefore of the view that the District Judge correctly found that the respondent's acts of entering or attempting to enter the casino, having paid the entry levy in the name of another person, did not give rise to an offence under ss 116(6) or 116(6A) of the Act. I dismissed the prosecution's appeal accordingly.

29 My disposition of this appeal was in line with the submissions of the *amicus*. I wish to record my appreciation for his assistance. I should mention that he also advanced other arguments on s 116(6) – for instance, that it was *not* a strict liability offence but required *mens rea* in the form of an intention to avoid payment of the entry levy, and that the prosecution's reading of s 116(6) would fall foul of s 40 of the Interpretation Act because it would amount to punishing the respondent twice for the same offence. I do not, however, express any opinion on these matters as it is unnecessary to do so.