

Lai Jenn Wu v Public Prosecutor
[2013] SGHC 190

Case Number : Magistrate's Appeal No 12 of 2013
Decision Date : 27 September 2013
Tribunal/Court : High Court
Coram : Choo Han Teck
Counsel Name(s) : Foo Cheow Ming (Peter Ong & Raymond Tan) for the appellant; Ma Han Feng and David Chew Siong Tai (Attorney-General's Chambers) for the Public Prosecutor.
Parties : Lai Jenn Wu — Public Prosecutor

Criminal Law – Sentencing – Forgery

27 September 2013

Judgment reserved.

Choo Han Teck J:

1 The appellant is a 29-year-old male Malaysian national. Sometime in November 2011, he found a wallet in a condominium carpark. The wallet contained its owner's NRIC, several credit cards, \$50 in cash, and a Post Office Savings Bank ("POSB") cheque. This cheque was blank except for a figure of \$50,000 written on it in pencil. The appellant picked up and kept the wallet and its contents. Subsequently, having lost money through gambling, he sought to make use of the cheque to recoup his losses. He wrote in pen over the pencil-written figure of \$50,000 and forged the wallet owner's signature on the cheque, and on 13 February 2012 he presented this cheque at a POSB branch. Given the amount of money involved, the bank officer to whom he presented the cheque took steps to verify his identity. She asked him to produce his NRIC, sign on the back of the cheque and provide his thumbprint. He complied but produced the wallet owner's NRIC instead. She noticed that the appellant's face did not match the photograph on the wallet owner's NRIC, that his signature on the back of the cheque was inconsistent with the signature on the front, and that his thumbprint did not match the thumbprint on the wallet owner's NRIC. As a consequence she alerted her superiors, and it was discovered after enquiries that the wallet owner had in November 2011 reported the loss of the POSB cheque presented by the appellant.

2 The appellant pleaded guilty in the District Court to a charge of forgery under s 465 of the Penal Code (Cap 224, 2008 Rev Ed) and consented to have taken into consideration a charge of dishonestly misappropriating the contents of the wallet besides the cheque – namely, \$50 in cash, credit cards and the wallet owner's NRIC – under s 403 of the Penal Code. He was sentenced to 4 months' imprisonment. Before me he appealed against sentence only.

3 The appellant provided some biographical detail to persuade me to reduce the sentence to a conditional discharge or a fine, the thrust of it being that the appellant is a young man with a promising future in the field of medicine, having earned a Bachelor's degree in medicine from a university in the People's Republic of China and being at the time of the offence enrolled in a course of study the completion of which would furnish him with the necessary qualifications to practise medicine in the United States of America. A term of imprisonment, the appellant says, would make it "virtually impossible" for him to be licensed to practice medicine either in the USA or in China. That may be so, but even if this were a valid mitigating factor, which I am not entirely sure it is, it was outweighed by the seriousness of the offence. The appellant intended to take for himself \$50,000

that he knew belonged to someone else and did all that he could towards that end. As the District Judge said, his offence was "premeditated, deliberate and determined" and not a "momentary lapse of judgment". In my view anything less than a non-nominal term of imprisonment would not be sufficient punishment.

4 However, as to the appropriate length of the term of imprisonment to be imposed on the appellant, I am of the opinion that four months is manifestly excessive in the circumstances. In the main, this was because no loss was occasioned by the appellant's act of forgery. The District Judge was undoubtedly correct to say that "[n]o credit can be given to the accused for this fact", since he did everything he could intending to cause a loss of \$50,000 to the wallet's owner and a corresponding gain to himself. But, it does not follow that the fact that no loss was caused is entirely irrelevant, which is what the District Judge appeared to suggest when she said that it "was not a mitigating factor" and was "[a]t best" a "neutral factor". The consequences of a person's actions are often if not invariably dependent on things that are outside that person's control, and hence two people may carry out identical acts with identical intentions that nevertheless result in vastly differing outcomes. Take a situation in which person A and person B both aim a gun at a third person and pull the trigger intending to kill, and A's gun fires a bullet as planned killing his target but B's gun jams and no bullet is fired. On one view, A and B are equally blameworthy because they carried out identical acts with identical intentions. Yet, the criminal law distinguishes between the two in that A would be liable for murder while B would be liable only for an attempt to murder, which carries a less severe punishment than murder. The broader point of which this hypothetical situation is an illustration is that the criminal law recognises that even consequences which are beyond an offender's control can be relevant in determining the appropriate punishment for that offender. Sustained analysis might perhaps reveal this to be an irrational moral instinct or intuition, but it is too entrenched a feature of the criminal law to be disregarded. Therefore I am of the view that the appellant is entitled to some degree of advantage from the fact that no loss was caused by his forgery, however fortuitous that consequence was. I am mindful that although the appellant caused no loss through his forgery, he did cause loss by dishonestly misappropriating the contents of the wallet other than the cheque, not to mention anxiety and inconvenience since the wallet's owner would have had to replace the misappropriated NRIC. But the amount of the loss was not great, and as for the anxiety and inconvenience caused, it would be disproportionate to increase the term of imprisonment by a substantial amount on that ground alone.

5 I should deal with two of the precedents cited to me by the prosecution because they might appear on initial examination to support a term of four months' imprisonment in the present case but are in my view distinguishable. The first is *Wong Whye Hong v PP* [2001] SGDC 378, in which the offender was sentenced to six months' imprisonment, a sentence affirmed by the High Court on appeal. The offender there forged the signature of his business partner on a cheque for \$13,000 and succeeded in obtaining that sum of money from the bank. The amount involved was smaller by some margin than that in the present case, but I think that a higher sentence was warranted in that case because substantial loss was caused even if temporarily, and in addition there was an element of breach of trust which the business partner had placed in the offender. The second precedent is District Arrest Case No 18653 of 2012, in which one Cheah Wei Yap was sentenced to four months' imprisonment. I do not understand that there was an appeal from the District Court's decision. The offender there committed theft of a chequebook from his former superior at work and proceeded to forge her signature on two cheques for \$20,000 and \$5,000. As in the present case, he did all he could to obtain the money but was thwarted by the bank's vigilance. Despite the smaller amount of money involved in that case, I would consider the offender there more culpable than the present appellant because the former took active steps to obtain the chequebook, which was not left out in the open but kept in a laptop bag stored behind a shop counter, whereas for the latter the POSB cheque came into his possession by passive finding. In addition, there was taken into consideration in

that case a wholly separate charge of housebreaking and theft by night, in which the offender climbed through the window of a hostel room to commit theft of a laptop belonging to a hostel guest. In the circumstances I am satisfied that the sentence in the present case ought to be lower than that which was imposed in the other case.

6 Finally, although the offender must bear all consequential adverse results from his offence, I would think that for a young man with no previous convictions to now have his hopes of a medical career dashed, which is itself, part of the punishment he has to bear. I would vary the appellant's sentence to two months' imprisonment.

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