

Teo Sew Eng v Public Prosecutor
[2009] SGHC 88

Case Number : MA 189/2008

Decision Date : 13 April 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Subhas Anandan and Sunil Sudheesan (KhattarWong) for the appellant; Lee Jwee Nguan (Attorney-General's Chambers) for the respondent

Parties : Teo Sew Eng — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appeals – Aiding and abetting offence of mischief by fire under s 435 read with s 109 Penal Code (Cap 224, 1985 Rev Ed) – Context of offence being family dispute – Principal offenders receiving probation – Mother aiding and abetting son in committing offence

13 April 2009

Judgment reserved.

Choo Han Teck J:

1 The Appellant pleaded guilty and was convicted of one charge of aiding and abetting her son, one Louis Hong ("Louis"), to commit mischief by fire, an offence punishable under s 435 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) with mandatory imprisonment for a term of up to seven years, and was sentenced to six months' imprisonment. One similar charge was taken into consideration for the purposes of sentencing. She had initially claimed trial to the two charges, but changed her mind during the trial. She then pleaded guilty and admitted to the Statement of Facts without qualification. The appellant believed that Louis's father entrusted \$300,000 to Dorothy (Louis's paternal aunt) for Louis when he (the father) died in 1998, but Dorothy only handed about \$100,000 to her (the appellant). Louis was born out of wedlock. The appellant confronted Dorothy over the unpaid sum but Dorothy denied withholding any money from the appellant. The appellant told Louis that she suspected Dorothy to be withholding the money from them. So Louis decided to burn Dorothy's car as an act of revenge. Louis asked his classmate, one Ho Ki Yeow to help him. They agreed to carry out the plan on 23 October 2006. Louis told the appellant about this and asked her to get charcoal, petrol, and cloth for committing the arson. Initially the appellant refused, but Louis finally persuaded her. On 23 October 2006, the appellant told Louis that the accessories he needed were in a plastic bag below a fire hose reel at the multi-storey car park where Dorothy parked her car. Subsequently, Louis and Ho used the accessories to set fire to Dorothy's car and then fled. The damage caused to Dorothy's car was assessed at \$40,500. A second car was damaged, and the damage was assessed at \$25,000. A resident spotted the fire and reported it to the authorities.

2 Louis and Ho were arrested and charged. Louis pleaded guilty to one charge of mischief by fire, committed in furtherance of a common intention, an offence punishable under s 435 read with s 34 of the Penal Code. A similar charge was taken into consideration for the purposes of sentencing. He was sentenced to 24 months' probation. Ho likewise pleaded guilty to one charge of mischief by fire, committed in furtherance of a common intention, with a similar charge being taken into consideration for the purposes of sentencing. He was sentenced to 21 months' probation. The Appellant has appealed against her sentence of six months imprisonment, contending that it was manifestly excessive. Counsel for the appellant submitted that probation or, alternatively, a shorter jail sentence, was more appropriate in the circumstances of the case. One of the factors emphasised

was that the Appellant had a psychiatric condition at the material time, *viz*, Dysthymia, and that had caused her to give in to Louis's demands for assistance. The medical reports tendered in evidence below, however, did not establish clearly that the psychiatric condition had, in fact, caused the Appellant to act against her better judgment. Counsel for the Appellant also tried to stress that if the Appellant was sent to prison, no one would look after Louis, who suffers from Attention Deficit Hyperactivity Disorder. The DPP drew my attention to Louis' probation report, which stated that a maternal aunt had agreed to look after Louis. That aunt had died, but the DPP said that another aunt had agreed to take over. Mr Anandan, counsel for the appellant submitted that Louis is not close to this aunt.

3 The DPP submitted that the appellant was an example of "bad parenting", but I do not think that that alone would be the justification for her custodial sentence. The offence was a serious one and had Louis not been young, and labouring under a psychiatric disorder, he too was likely to be jailed. Although the appellant was also troubled by a psychiatric condition, she was the adult, and instead of guiding Louis away from crime, encouraged him to commit it. Taking into account all the facts and circumstances, I am not persuaded that probation would be an appropriate order to make in her case. However, given the fact that the two principal offenders were given probation, and the offence arose from a family spat, I am of the view that imprisonment of a term of six months was excessive and a more appropriate term would be two months. The sentence below is therefore varied accordingly. The term of imprisonment is to commence forthwith.

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