Lim Poh Tee v Public Prosecutor
[2001] SGHC 26

Case Number : MA 342/1999

Decision Date : 07 February 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : K Muralidharan Pillai (Allen & Gledhill) for the appellant; Tan Boon Gin (Deputy Public Prosecutor) for the respondent

Parties : Lim Poh Tee — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Police officer corruptly accepting gratification - Whether need for substantial deterrent sentence – Whether shorter sentence warranted

Criminal Procedure and Sentencing – Sentencing – Whether manifestly excessive – Consistency with similar cases – Applicable principles – Whether previous conviction on similar offence relevant

: This was an appeal by the appellant, Lim Poh Tee (`Lim`), against the sentence imposed by district judge Jasvendar Kaur.

In the court below, Lim claimed trial to and was convicted, of one charge of corruptly accepting from one Chua Tiong Tiong (`Chua`), a known illegal moneylender, gratification in the form of free entertainment of an unspecified sum on a day in 1997, as an inducement to show favour to Chua in relation to his principal`s affairs, to wit, to assist Chua in the event that he requires help in his illegal moneylending activities, which offence was punishable under s 6(a) of the Prevention of Corruption Act (Cap 241) (`PCA`). Lim initially lodged, but later discontinued, an appeal against the conviction. At the hearing below, he was also tried and acquitted of two other charges of framing an incorrect record or writing with intent to save a person from punishment, which offences were punishable under s 218 of the Penal Code (Cap 224). There was no appeal against the orders of acquittal..

Chua was jointly tried and convicted at the same trial, of corruptly giving the said gratification to Lim, which offence was punishable under s 6(b) PCA. He was sentenced to 18 months` imprisonment. Chua has appealed against the sentence and his appeal is pending.

The sentence prescribed for an offence punishable under s 6(a) PCA was a term of imprisonment of up to five years or fine not exceeding $100,000 or both. The district judge sentenced the appellant to two and a half years` imprisonment. After hearing both parties, I dismissed the appeal. I now give my reasons in writing.

The facts

Lim joined the Singapore Police Force as a police constable in 1983. At the material time, he held the post of Acting Inspector, attached to the Violent Crime Squad at the Jurong Police Division Headquarters. He was a key officer in the division. He was the second officer-in-charge of the Violent Crime Squad and was also covering the duties of a Chief Investigation Officer (IV).

Chua, also known as `Ah Long San` or `Ah San`, operated an illegal money-lending business from Geylang. This was known to Lim. Together, they had frequented the Lido Palace Nite Club (`Lido Palace`) located at Concorde Hotel at least four or five times since 1996. Chua was the one who settled the bills on these occasions.

Lem Woon Wee (`Lem`), was formerly a police corporal attached to Jurong Police Division Headquarters. He was responsible for investigating illegal moneylending cases. Sometime in the middle of the night of 18 October 1997, while at home, Lem was informed of the arrest of one Lee Hwee Leong (`Lee`) for an offence under the Moneylenders Act (Cap 188) for harassing a debtor, one Saithu Julalutheen (`Saithu`). Lem later received a page from Lim who enquired if he had a loan shark case. When he confirmed this, Lim said that the person arrested was his friend`s friend and asked him to help out. From this, Lem formed the impression that Lim wanted him to treat the suspect leniently.

Lee had gone to Saithu`s flat to collect money on behalf of one `Ah Ban`, an illegal moneylender, who in turn worked for Chua. At the station, Lim brought Lee up from the lock up. He informed Lee that outside people had given instructions and reassured the latter that he would be alright. Lim asked Lee whether he knew `Ah San` or `Ah Thiam` and asked him not to implicate `Ah San`.

Lem arrived at the station and discovered that Lim had already taken Lee from the lock up; he found them together in Lim`s office. A statement was then purportedly recorded from Lee by Lem. The contents of the statement were in fact narrated by Lim, who informed Lem that his `friend`s side` had already settled the matter with the victim who would give a negative statement. He stressed to Lem the importance of recording a statement from the victim which stated that `Ah Ban` was not a loan shark and that the loan was interest free. This was duly done by Lem later that morning. Lim dropped by during the recording of Saithu`s statement.

Lim told Lem there was no need for him to be present at the morning panel. Instead, Lim briefed the panel on the case involving Lee; the panel directed that an investigation paper be put up. Lim however informed Lem that the case had been settled and to file away the papers. He directed Lem to record that there were no elements of illegal moneylending, to classify the report as `police assistance required` and to release Lee unconditionally. Lem complied.

About two weeks later, Lim invited Lem to Lido Palace. They went to a KTV room where Lim introduced Lem to Chua, who was introduced as `Ah San`. Lim told Chua that Lem was from the `Jurong loan shark` squad. Lim and Lem proceeded to enjoy the entertainment, which included hostesses, food, drinks and karaoke. They did not pay for the entertainment. Instead, Lim said that there was no need to pay and that `they` would settle the bill.

On a subsequent occasion in October 1997, Lim separately invited both Lem and another police officer, sergeant Yap Chee Kong (`Sgt Yap`), to a function at Lido Palace. Sgt Yap was also attached to Jurong Police Division Headquarters and was also responsible for investigating loan shark cases.

Upon his arrival at Lido Palace, Sgt Yap was met by Lim. The latter in turn brought Sgt Yap to meet Chua and introduced him as his colleague Yap who handled loan shark cases in Jurong. The three officers, that is, Lim, Lem and Sgt Yap, then spent the night enjoying the entertainment in the form of singing, drinks and hostesses. The bill for the entertainment was again paid by Chua.

A few days later, Lim approached Lem and Sgt Yap. Referring to Chua as `Ah Long San`, he said that Chua had many runners of whom he had lost count. He told them to keep him informed of any future reports involving loan shark cases and to provide him with the names of the suspects, the name of the complainant, the place of operation of the suspects and their contact numbers. He would then check with Chua whether the suspects were under him. In this way, Chua`s associates could liaise with the complainant to give a negative statement or to stop the harassment.

At the close of the trial, the district judge concluded that Lim got himself involved in Lee`s arrest as he had been asked by Chua to help out. Subsequently, he invited Lem and Sgt Yap to Lido Palace and introduced them to Chua, in the course of which he intentionally informed the latter that they were responsible for investigating moneylending cases at Jurong. Chua had provided free entertainment to Lim with the corrupt intention of seeking his assistance in the event that he required help in his illegal moneylending activities. At the same time, Lim accepted the entertainment corruptly as an inducement to assist Chua in the event that the latter required such assistance. Thereafter, Lim requested Lem and Sgt Yap to provide him with information on loan shark cases reported at the station with the intention of passing on the information to Chua so as to enable the latter to alert his runners to escape conviction. The district judge accordingly convicted Lim on the charge of corruption.

The decision below

The district judge observed that the starting point usually adopted in sentencing was six months` imprisonment and noted that sentences for police officers convicted of corruption have ranged from six weeks` imprisonment to three years and more. There was thus no single benchmark sentence.

The district judge took into account the need for a substantial element of punishment and deterrence as Lim had committed the corruption offences in his capacity as a police officer. She also considered the fact that Lim was a senior and key officer of Jurong Police Division Headquarters at the material time and that his conduct constituted a serious abuse of his position and a gross betrayal of trust. Furthermore, Lim sought to draw two junior officers into the web of corruption and had instigated them to act contrary to their enforcement duties. His actions had also brought disrepute to the Singapore Police Force and undermined public confidence in the rectitude of police officers. Finally, the district judge took into account Lim`s previous conviction in 1998, for an offence of corruption punishable under s 6(a) PCA for which he was sentenced to three months` imprisonment.

The appeal

Mr Muralidharan Pillai, the counsel for Lim, argued that the sentence was manifestly excessive. He submitted that the sentence imposed was significantly above the normal tariffs and noticeably disparate to other similar cases; that a shorter sentence would have sufficed to deter like-minded offenders; that the sentence was seriously disproportionate to the sentence imposed on the accomplice; and that excessive weight had been placed on his previous conviction.

The DPP, Mr Tan Boon Gin, on the other hand, argued that the considerations of public interest, the need for deterrence as well as the aggravating factors present, justified the sentence which was imposed by the district judge.

The sentence

Deterrent sentence

At the outset, I noted that Mr Pillai conceded that a deterrent sentence was called for. Indeed, it was patently obvious that the public interest demanded the imposition of a substantial deterrent sentence as it involved corruption on the part of a public servant; and further involved an abuse of the position and powers of a police officer.

Mr Pillai however, argued that the district judge failed to consider whether a shorter sentence would have sufficed to meet the need for deterrence. In support, he cited Lord Lane`s observations in **R v Bibi** [1980] 1 WLR 1193 at p 1195A:

> *... sentencing courts must be particularly careful to examine each case to ensure, if an immediate custodial sentence is necessary, that the sentence is as short as possible, consistent only with the duty to protect the interests of the public and to punish and deter the criminal.*

Lord Lane`s comments were however, prefaced by his concern over the dangerous state of overcrowding in the UK prisons, which was not a pertinent nor relevant consideration in the present appeal. In any event, Lord Lane recognised that the varying severity of the offences merited sentences of different duration and would also depend on the role and degree of culpability of the offender in question. There, Lord Lane was addressing his mind to a first offender who had played a fringe role in the enterprise; who was not possessed of the normal degree of independence of mind and action and for whom any term of imprisonment would have inevitably been traumatic. Such features were not present in relation to Lim.

Mr Pillai also relied on the Malaysian Supreme Court decision in **Mohamed Abdullah Ang Swee Kang v PP** [1988] 1 MLJ 167 at p 170I which commented that:

> *The fact that a sentence of imprisonment is imposed as a deterrence does not justify the sentencer in passing a sentence of greater length than the facts of the offence warrant.*

This was not a new or novel proposition. The entire tenor of the judgement revealed that the Malaysian Supreme Court merely reiterated the need to consider the overall perspective, including the total gravity of the offence, the facts of the commission, the presence or absence of mitigating factors and the sentences imposed in similar cases.

Viewed in that light, the cases cited by Mr Pillai go no further than my earlier observations in **Xia Qin Lai v PP** [1999] 4 SLR 343 at [para] 29 where I stated:

> *... the principle of deterrence (especially general deterrence) dictated that the length of the custodial sentence awarded had to be a not insubstantial one, in order to drive home the message to other like-minded persons that such offences will not be tolerated, but not so much as to be unjust in the circumstances of the case.*

Thus, the pertinent question to be addressed was whether the length of the sentence imposed by the district judge was unjust in all the circumstances of the case. In this regard, the culpability of the offender, the circumstances of the offence, the aggravating and mitigating factors and the sentences imposed in similar cases would be relevant considerations.

Disparity with sentences imposed in similar cases

In seeking to persuade this court to reduce the sentence imposed on Lim, Mr Pillai relied on the case

of **Krishan Chand v PP** [1995] 2 SLR 291 . There, I allowed the appeal and reduced the sentences after noting that the sentences imposed by the district judge far exceeded the tariffs set for the offences in question, especially in view of the genuine mitigating factors prevailing in that appellant`s favour. Following that rationale, Mr Pillai argued that the sentence imposed on his client was greatly in excess of the sentences imposed in the similar cases of **Hassan bin Ahmad v PP** [2000] 3 SLR 791 (` ***Hassan*** `); **Fong Ser Joo William v PP** [2000] 4 SLR 77 (` **William Fong** (Unreported) **PP v Sim Bok Huat Royston** (Unreported) (` ***Royston Sim*** `

In ***Hassan*** , the appellant, who was an Assistant Superintendent of Police, was convicted after a trial, of four charges under s 6(a) PCA for corruptly receiving monies from the same protagonist, Chua. On one occasion, the appellant, at Chua`s request, made certain inquiries concerning Chua`s associate who had been arrested by the police. On another occasion, also at Chua`s request, he enquired into the status of an arrested suspect and intervened in the interview of the suspect. He was a first offender and was sentenced to nine months` imprisonment on each charge, to run consecutively. On appeal, I upheld the sentences, while commenting that the total sentence of 18 months was generous.

In ***William Fong*** , the appellant, a police inspector, was convicted after a trial, of two charges under s 6(1) PCA, for corruptly receiving moneys from the same Chua. In return, the appellant used his office and police connections to make certain enquiries into the status of police investigations in which Chua was interested. He was a first offender and was sentenced to nine months imprisonment per charge with the sentences to run concurrently. In that case, I also upheld the sentences on appeal.

In ***Royston Sim*** , the accused, a police inspector, was convicted after a trial, of one charge under s 6(a) PCA for corruptly receiving money from the same Chua. At Chua`s request, he subsequently made an unauthorised status enquiry on a certain individual. The accused in that case had four previous antecedents, of which three involved the unauthorised screening of data and an unauthorised enquiry on behalf of Chua, as well as receiving free drinks from him. The district judge sentenced him to nine months` imprisonment after taking into account his commendable service records, his personal circumstances and the single charge. There, the accused did not lodge an appeal against the sentence.

The above-mentioned three cases shared certain aggravating features with the present appeal. These related to the offenders` position as law enforcement officers of some seniority, the corrupt acceptance of gratification from Chua as an inducement for showing favours in relation to their principal`s affairs, the abuse of trust and the adverse impact on the integrity and reputation of the Police Force. As the same giver and similar corrupt purpose was involved, these provided formidable support for Mr Pillai`s submission that the sentence of two and a half years` imprisonment imposed on Lim on the single charge was far in excess of the usual term of nine months` imprisonment. Incidentally, the cases in question were decided after the conclusion of the trial in the present appeal. It could conceivably be argued that the district judge may well have imposed a different sentence had it been possible to bring these cases to her attention.

Nonetheless, while consistency in sentencing was a desirable goal, this was not an inflexible or overriding principle. The different degrees of culpability and the unique circumstances of each case play an equally, if not more, important role. Furthermore, the sentences in similar cases may have been either too high or too low: **PP v Mok Ping Wuen Maurice** [1999] 1 SLR 138 at [para] 26, following **Yong Siew Soon v PP** [1992] 2 SLR 933 at p 936. It was readily apparent upon a closer examination, that there were several significant crucial differences in the facts of the present appeal which clearly warranted a comparatively higher sentence.

As was correctly observed by the district judge, it was highly reprehensible Lim intentionally drew two junior officers into the web of corruption and in that way rendered more police officers beholden to Mr Chua`s corrupt gratification. Not content with personally betraying the trust reposed upon him, he sought to similarly corrupt other junior officers who would have looked up to him as a role model and for guidance. He was after all a senior officer and a key appointment holder at Jurong Police Division Headquarters with subordinate officers under his command. By insidiously cloaking the entertainment in a veil of normalcy and acceptability, Lim was effectively recruiting a cadre of police officers who would be similarly beholden to Chua. He further instigated the junior officers to act contrary to their duties and to assist Chua and his associates to evade criminal liability. His conduct showed that he was prepared, not merely to make enquiries into investigations on Chua`s behalf, but to actively interfere in the course of police investigations and to subvert the due administration of the criminal justice system. I further noted that Lim had demonstrated absolutely no remorse for his conduct and had cast spurious and unsubstantiated allegations against various law enforcement officers in the course of his defence. Lastly, Lim had a prior conviction for a wholly unrelated offence of corruption. These were extremely critical distinguishing considerations which did not feature in the ***Hassan*** , ***William Fong*** and ***Royston Sim*** cases.

Viewed in that manner, I was quite unable to accept the submission that the sentence of two and a half years` imprisonment was unjustified and far in excess of the facts and circumstances of the case.

Mr Pillai had also cited **Yusof bin A Samad v PP** [2000] 4 SLR 58 where the appellant, a former police corporal, was convicted after a trial, of 14 counts of corruption under s 6(a) PCA for accepting gratification in return for supplying confidential information pertaining to deceased persons and their next-of-kin, which information he had obtained as a police hearse driver. He was sentenced to nine months per charge, with the first two sentences to run consecutively.

In my view, that case was of marginal relevance due to its different factual matrix. There the appellant provided confidential information to undertakers to enable them to rapidly descend on the scene of the police case. While this may have hindered sensitive police work in the process, it was quite unlike Lim`s blatant and deliberate intention to assist illegal money-lenders to escape criminal liability

Disparity with sentence imposed on Mr Chua

Mr Pillai next argued that the sentence imposed on Lim was seriously disproportionate to the sentence of one and half years` imposed on the giver, Chua. He cited the following commentary from **Sentencing Practice in the Subordinate Courts** [2000] at p 602 in support:

> *The law makes the giver equally culpable as the receiver. However, not all givers are in the same category. Givers who act under some form of pressure or in a moment of fear to avoid a minor transgression of the law would not be treated with the same severity as acceptors who in most situations would be motivated by greed.* ***However, givers who intend to corrupt the establishment of law and order for private gain, or those who give or offer bribes to pervert the course of justice are generally treated with as much severity as the acceptors of the bribe****. [Emphasis added.]*

I would deal briefly with this submission, bearing in mind that the appeal by Chua against the

sentence imposed on him is still pending. In the first place, there is no rigid or inflexible rule that the giver or acceptor of such bribes be treated with equal severity. As I emphasized earlier, while consistency in sentencing is desirable, the varying degrees of culpability and the unique circumstances of each case play an equally, if not more important role. The sentence imposed on the accomplice may also have been too high or too low. I was thus not inclined to be fettered by the sentence which was imposed on Chua.

For the purposes of this appeal, it sufficed to say that there were justifiable grounds for imposing a higher sentence on Lim. The aggravating features which were unique to Lim have been highlighted above and would in large part, explain the difference in the sentences imposed.

Previous conviction

Mr Pillai further contended that the district judge had placed excessive weight on Lim`s previous conviction which was committed after the present offence, in imposing a sentence which greatly exceeded the normal sentencing tariffs. To recall, Lim was convicted in 1998 of a similar offence of corruption which occurred on 9 March 1998; for which he was sentenced to three months` imprisonment.

There was little merit in this submission. It was clear from **Sim Yeow Seng v PP** [1995] 3 SLR 44 at p 47D-E that:

> ***...a sentencing court should have regard to all of the accused`s antecedents up to the moment of sentencing because these antecedents reveal his character, his attitudes and the likelihood of rehabilitation. So long as previous convictions are shown to exist, therefore, it does not matter whether they were in respect of offences committed before or subsequent to the offence for which the court is considering sentence.***
>
> *... All things being equal, the need to deter an accused from further gravitating towards such wrongdoing is basis enough for the sentencing court to enhance sentence to an appropriate degree; although, as I stated in* ***Boon Kiah Kin****, it should simultaneously be remembered that the accused is being punished solely for the offence before the court and any enhancement ought not to bring the sentence beyond the tariff applicable to the offence. [Emphasis added.]*

Lim`s previous conviction for an unrelated offence of corruption committed in 1998, revealed his propensity to corrupt means of self-enrichment and correspondingly, a need to deter him from gravitating towards such wrong-doing. Accordingly, the district judge was fully entitled to take his previous conviction into account. Further, when one examined the district judge`s decision in totality, it would have been readily apparent that the antecedent was merely one of the factors considered by her when she assessed the appropriate sentence. The more material considerations were the need for deterrence and the presence of serious aggravating factors.

It was certainly not a situation whereby the district judge relied excessively on the previous conviction and in consequence, enhanced the sentence beyond the tariff applicable to the offence. As explained above, I was quite unable to accept Mr Pillai`s submission that the sentence imposed on Lim was greatly in excess of the sentences imposed in other cases.

Conclusion

In determining the appropriate sentence in any particular case, the court is faced with a difficult and indefinable task. The sentencing judge has always to examine the relevant facts most thoroughly as no two cases are exactly the same. While I appreciate the sentencing practice in other cases where a somewhat lower sentence was imposed, a degree of flexibility must be allowed in order to meet the different considerations and factual matrix of each particular case.

Had the case been first heard before me, I may well have been inclined to order a slightly lower term of imprisonment. An appellate court however, would only interfere with the sentence imposed by the lower court based on the principles in **Tan Koon Swan v PP** [1986] SLR 126 [1987] 2 MLJ 129 . In my view, the sentence of two and a half years` imprisonment could hardly be described as being manifestly excessive or unjust in all the circumstances of the case. There being no error of principle on the part of the district judge, there were really no grounds to justify a reduction of the sentence imposed on Lim. Accordingly, I dismissed the appeal and upheld the sentence imposed by the court below.

Outcome:

Appeal dismissed.