Wong Soon Lee v Public Prosecutor
[2002] SGHC 216

Case Number : MA 72/2002

Decision Date : 17 September 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Hamidul Haq and Hui Choon Kuen (Deputy Public Prosecutors) for the respondent

Parties : Wong Soon Lee — Public Prosecutor

Criminal Procedure and Sentencing – Mitigation – Accused having young son with rare blood disease – Whether hardship caused to son because of accused's imprisonment carries any mitigating value

Criminal Procedure and Sentencing – Sentencing – Using criminal force knowing it to be likely to outrage modesty – Sentence of 12 months' imprisonment and three strokes of cane – Whether accused claiming trial adversely affects sentence – Accused having antecedents not strictly similar to present offence – Whether judge can take such antecedents into account – Benchmark sentence for outrage of modesty cases – Whether prison sentence manifestly excessive – Whether caning sentence manifestly excessive – s 354 Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

The appellant was convicted in the district court on one count of outrage of modesty pursuant to s 354 of the Penal Code (Cap 224) and was sentenced to 12 months' imprisonment and three strokes of the cane. Initially, the appellant appealed against both conviction and sentence. Subsequently, at the hearing on 3 September, the appellant dropped his appeal on conviction and proceeded with his appeal on sentence only. I allowed his appeal in part. I allowed the sentence of 12 months' imprisonment to remain but set aside the three strokes of the cane. I now give my reasons.

The facts

2 The appellant was charged as follows:

> You,
>
> Name: Wong Soon Lee, M/44 years
>
> NRIC No: S 1252347E
>
> Nationality: Singaporean
>
> DOB: 13.03.1957
>
> are charged that you, on the 26th day of July 2001, sometime after 9pm, inside the premises of "Take Off" pub located at Paramount Shopping Centre along Katong Road, Singapore, did use criminal force on one Nah Sze Ling, F/24 years old, to wit, by touching her breast with your left hand, knowing it to be likely that you will thereby outrage the modesty of the said Nah Sze Lin, and you have thereby committed an offence punishable under Section 354 of the Penal Code, Chapter 224.

3 On 26 July 2001, at around 8 p.m., the complainant Nah Sze Ling Tricia ("Tricia") went to the Take-Off Pub ("the pub") at Paramount Shopping Centre with her friend Doreen Leong Siew Peng ("Doreen"). Both of them were flight stewardesses at the time of the incident. The pub belonged to Kelly, a colleague of the two flight stewardesses.

4 When Tricia and Doreen arrived, they went to sit at the bar counter. The appellant was already there. They did not notice him at first, but, after a while, they realised that he was staring at them. He tried to get their attention by mumbling something to them. Doreen and Tricia ignored him. He then shouted at them, saying that if they were not happy, they need not sit there. Doreen and Tricia noticed that he was drunk and slurring in his speech.

5 Tricia and Doreen then complained to Kelley about the appellant's behaviour. Kelley told the appellant that Doreen was his wife and asked him to leave them alone. This was in fact not true, but it seemed to work as the appellant stopped trying to harass them. After a while, however, the appellant started staring at them again.

6 After that, three more of Tricia's colleagues arrived: Ng May Na ("May Na"), Ang Teck Cheng ("TC") and Penny Yong Pin Fong ("Penny"). They joined Tricia and Doreen at the bar counter. Upon arrival, Tricia and Doreen told them about how the appellant had been staring at them. TC went up to the appellant and told him to relax, have a drink and not disturb the girls. TC heard the appellant reply something along the lines of, "she's the boss' wife, it's okay, never mind, it's okay". TC then placed himself between the appellant and Tricia. Subsequently, the appellant reached out across TC and touched Tricia's left breast. Tricia exclaimed and slapped the appellant before running out of the pub. TC, Penny and May Na witnessed the appellant touching Tricia's left breast.

7 Tricia and her friends subsequently called the police. At about 9.47 p.m., Sgt James Siew ("Sgt Siew") arrived at the scene. He saw Tricia and Doreen crying and looking upset. Sgt Siew then interviewed the appellant and observed that he smelt of alcohol. The appellant was sent to Changi General Hospital for a medical examination and was examined by one Dr. Goh Ting Hui ("Dr. Goh"). Dr. Goh noted that he smelt of alcohol. A blood sample was collected from the appellant at 2.10 a.m. A blood test conducted on the sample revealed that there was 191 mg ethanol per 100 ml of blood.

8 The respondent's case below was that the appellant had intentionally touched the left breast of the complainant with his left hand knowing it to be likely that he would thereby outrage her modesty. The appellant's case below was that he had drunk a lot of alcohol that evening. Prior to drinking at the pub, he had been to one Barrel Pub in Siglap at about 4 p.m. where he drank about three to four glasses of beer and whiskey. After that, he proceeded to the pub where he continued drinking whiskey. He claimed that, when he woke up at the police lock-up, he had no recollection of what had taken place in the pub.

The decision below

9 The trial judge found that the prosecution had proven its case beyond reasonable doubt and convicted the accused on the charge. In sentencing the appellant, the trial judge noted that the benchmark sentence for outrage of modesty cases where the victim's private parts or sexual organs are intruded is a nine month jail term and caning: see *Chandresh Patel v PP* [1995] 1 CLAS 323. She also noted that the appellant had previous brushes with the law arising from excessive alcohol consumption. In August 1986 he was fined and disqualified from driving for one year for drink driving. Again, in July 1989, he was fined and disqualified for driving for two years for failing to provide a blood/urine specimen for testing under s 69 of the Road Traffic Act. The trial judge also found that the appellant had voluntarily induced his state of drunkenness and he had done so in a public place.

Therefore, it was quite foreseeable that he could have caused trouble to himself and the people around him. In light of these factors, the trial judge was of the view that a sentence above the benchmark should be imposed and ordered the appellant to be sentenced to 12 months' imprisonment and three strokes of the cane.

Appeal against sentence

10 In his present appeal against sentence and in mitigation in the court below, the appellant submitted that he was divorced and had custody of a 15 year-old son suffering from a rare blood disease. His son requires regular blood transfusions and is taking his GCE 'O' Levels examinations this year. He submitted that a custodial sentence would cause hardship to his son.

11 The short answer to that was that the appellant had only brought it upon himself. The legal position on this issue was clear: while the Court may be sympathetic to the families of accused persons, hardship caused to the family occasioned by imprisonment is of little weight today: *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305, *Lim Choon Kang v PP* [1993] 3 SLR 927 and *PP v Tan Fook Sum* [1999] 2 SLR 523. In this context, it is perhaps timely to reiterate a passage from Widgery CJ's judgment in *R v Ingham* (1980) 2 Cr App R (S) 184 (which was referred to in *Lai Oei Mui Jenny* and *Tan Fook Sum*):

> … it is not altogether an easy case, but of course, this always happens, time and time again, that imprisonment of the father inevitably causes hardship to the rest of the family. If we were to listen to this kind of argument regularly and normally in the cases that come before us, we should be considering not the necessary punishment for the offender but the extent to which his wife and family might be prejudiced by it. The crux of the matter is that part of the price to pay when committing a crime is that imprisonment does involve hardship on the wife and family, and it cannot be one of the factors which can affect what would otherwise be the right sentence.

In *Tan Fook Sum*, I stated at 539 that "[a]lthough ensuing hardship may exceptionally mitigate the rigour of punishment, the circumstances must be exceptional before the court will decide against a custodial sentence on this ground." On the facts of the present case, the appellant had not managed to satisfy me that it was an exceptional case worthy of a reduction on the grounds of hardship to his son.

12 The DPP submitted that the sentence was not manifestly excessive in light of the appellant's choice to claim trial and going through three full days of trial in the court below. I was of the opinion that this factor was neither here nor there. Essentially, the appellant's defence below was one of bare denial and non-recollection of events. In *Teo Keng Pong v PP* [1996] 3 SLR 329, I stated at p 341 that it would be very dangerous to discount the accused's evidence merely because it was a 'bare denial'. Even though the appellant in *Teo Keng Pong* went through a full trial and relied on a defence of bare denial, I nevertheless proceeded to find that some of the sentences were manifestly excessive and varied them accordingly. Similarly, on the particular facts of the present case, I saw no reason to adversely affect the appellant's sentence simply because he had claimed trial.

13 Next, I turned to the question of whether the trial judge was correct in enhancing the sentence from the benchmark of nine months' imprisonment to 12 months' imprisonment. Although the antecedents were not strictly of a similar nature to an offence under s 354, the trial judge was correct to take them into account because they shared some broad similarities arising from the

appellant's habit of drink: see *R Yoganathan v PP* [1999] 4 SLR 264, *Leong Mun Kwai v PP* [1996] 2 SLR 338 and *Lim Kim Seng & Anor v PP* [1992] 1 SLR 743. DA Thomas in *Principles of Sentencing* at pp 178-9 summarised the position in England to be as follows:

> The cases suggest that the appellant may be treated as a first offender where the subsequent offence can be seen as an isolated act out of character, rather than an extension of the offender's criminal activity into a hitherto unexplored field … *To be considered an offence out of character, the later offence should fall into a quite different broad category from the previous offences*… (emphasis added).

I found no reason for the local position to be any different from that in England. I was of the opinion that the appellant's previous incidents of drunk driving were not incidents out of character. Therefore, I found that the sentence of 12 months' imprisonment was not manifestly excessive in light of the appellant's previous brushes with the law arising from his excessive alcohol consumption.

14 However, I was of the opinion that the imposition of three strokes of the cane was manifestly excessive in light of the circumstances of the case. I was mindful of my earlier decision in *Chandresh Patel* where I laid down the benchmark of nine months' imprisonment and three strokes of the cane where a female's private parts or sexual organs are intruded. However, as I stated in *Ng Chiew Kiat v PP* [2000] 1 SLR 370 at 383:

> The offence of outrage of modesty under s 354 of the Penal Code encompasses a wide range of criminal behaviour. *The appropriate sentence for each case would largely depend on the nature of the act of molest as well as the circumstances surrounding the commission of the offence in question*. (emphasis added)

15 In *Nordin bin Ismail v PP* [1996] 1 CLAS News 250, the appellant was a police corporal who molested a woman police constable at the police station. Two of the charges were that he placed his hand on her shoulder and on her waist respectively. He was originally sentenced to three and four months' imprisonment for each of the two offences. On appeal, I reduced the sentence to a $500 fine for each of the two offences.

16 In *Soh Yang Tick v PP* [1998] 2 SLR 42, the appellant was faced with two charges of outraging the modesty of a secretary in his office. There, the appellant had allegedly touched the complainant's back and abdomen by putting his hand inside the jacket that the complainant was wearing and, on another occasion, he used his hand to lightly slap the complainant's buttock. He was convicted on both charges and appealed. I allowed the appeal against conviction on the first charge but dismissed the appeal against conviction on the second charge. However, I allowed the appeal against sentence on the second charge and reduced the sentence from one of imprisonment to a fine of $2,000.

17 In *Teo Keng Pong*, the appellant was convicted on not one, but six charges of outraging the modesty of a 13 year-old girl to whom he was giving tuition lessons. The charges related to the appellant caressing the girl's thigh, back and touching her left breast over a period of three weeks. I sentenced the accused to a total of seven months' imprisonment and fines of $2,500. I did not find that the circumstances of the case warranted an imposition of any strokes of the cane.

18 On the present facts, the trial judge accepted the complainant's testimony that the appellant touched her left breast for about two to three seconds. According to the testimony of various

prosecution witnesses at the trial, the appellant was in a state of 'high' at the time of the incident. Subsequently, it was determined that there was 191 mg of ethanol in his blood some five hours after the incident.

19 I was satisfied that the facts and circumstances surrounding the present case were sufficiently close to the case of *Teo Keng Pong* on the wide spectrum of s 354 offences to warrant a setting aside of the three strokes of the cane. I was of the view that *Nordin bin Ismail*, *Soh Yang Tick* and *Teo Keng Pong*, together with the present case, fall on the side of the spectrum where an imposition of strokes of the cane would have been manifestly excessive. In my opinion, a custodial sentence of 12 months' imprisonment would be sufficiently just punishment for the appellant to reflect on his habit of excessive drink and to learn his lesson that not all people will approve of unwanted physical contact. Accordingly, I allowed the sentence of 12 months' imprisonment to remain, but set aside the three strokes of the cane.

Appeal allowed in part; sentence varied.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore