Teo Hee Heng v Public Prosecutor
[2000] SGHC 125

Case Number : Cr Rev 9/2000

Decision Date : 04 July 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : K Niraiselvan (Kumar & Kumar) for the petitioner; Hee Mee Lin (Deputy Public Prosecutor) for the respondent

Parties : Teo Hee Heng — Public Prosecutor

Criminal Law – General exceptions – Duress – Elements of defence – Whether wider common law doctrine of duress applicable – s 94 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – High court – Criminal revision – Governing principles – Exercise of powers of revision sparingly – Whether plea of guilt qualified and should not be accepted – Whether conviction should be quashed

Criminal Procedure and Sentencing – High court – Criminal revision – Revisionary powers to enhance sentence – Lack of mitigating factors – Pressure of aggravating circumstances – Sentence manifestly inadequate

: This was a petition for criminal revision in which the petitioner sought to have his conviction set aside on the basis that his plea of guilt was a qualified one and therefore should not have been accepted. The hearing of the petition came before me on 4 May 2000 and after listening to arguments from both sides, I dismissed the application and enhanced the sentence imposed on the petitioner. I now give my reasons.

The petitioner pleaded guilty in the subordinate courts to the following charge:

> *You, Teo Hee Heng, are charged that you, on or about 1 June 1999, from about 12:02am to about 9.42pm, in order to the committing of extortion of about $100 attempted to put one [ast][ast][ast][ast][ast][ast] in fear of certain injury to her daughter, to wit, by telling her over the phone, whilst she was at her place of residence at [ast][ast][ast][ast][ast][ast][ast][ast] Singapore, his friends are currently holding her daughter [ast][ast][ast][ast] [ast][ast] and they are playboys who prey on young girls and you have thereby committed an offence punishable under s 385 of the Penal Code (Cap 224).*

Due to an impending rape case in the High Court, the prosecution made an application under s 7(3) of the Subordinate Courts Act (Cap 321) for the names and addresses of the victim and her daughter not to be published so as to protect their identities and such was ordered accordingly by the district judge. A further charge of insulting the modesty of the same victim, an offence punishable under s 509 of the Penal Code, was taken into consideration for the purposes of sentencing. On his plea of guilt and subsequent conviction, the petitioner was sentenced to 30 months` imprisonment and four strokes of the cane.

The essential background facts of the case can be found in the statement of facts which was prepared by the prosecution following the petitioner`s plea of guilt. It was stated that the victim of the extortion was a 44 year-old lady, who was also the mother of a 12 year-old girl. On 28 May 1999, the victim`s daughter left home and went missing thereafter. The victim subsequently reported the

matter to the police and on 31 May 1999, placed advertisements in various newspapers, including the ***Shin Min Daily*** , requesting for assistance in locating her missing daughter. A copy of the ***Shin Min Daily*** with the relevant portion of the newspaper notice of the victim`s missing daughter was later shown to the petitioner by one Leow Yong Kee (`Leow`). Leow then asked the petitioner to call the victim on the pretext that he knew the whereabouts of her missing daughter and to demand $100 wrapped in the victim`s panties, if she wanted information on the whereabouts of her daughter. Leow also gave the petitioner a piece of paper with the victim`s mobile phone number written on it and taught him what to say to the victim.

On 1 June 1999, the petitioner called the victim several times, from about 12.02am to 9.42pm, and told her that his friends were currently holding her daughter and they were `playboys` who preyed on young girls. The petitioner then agreed to lead the victim to her daughter and arranged to meet her on the same day at 4.00pm at the top spiral staircase of Chinatown Point Shopping Centre. He also told the victim that when she arrived at the arranged venue, he would ask her to sit with her legs wide apart so that he could peep at her panties. He further warned the victim not to inform her husband or to report the matter to the police. After the phone call, Leow gave $30 to the petitioner. The victim informed her husband of the arrangement and the latter turned up instead for the appointment at 3.30pm. However, the petitioner did not show up. Later on the same day, the petitioner called up the victim at her home at around 8.45pm and reprimanded her for not turning up at the agreed place. Another appointment was fixed for the next day at 3.30pm. The victim then decided to inform the police and an ambush was prepared to apprehend the petitioner. On 2 June 1999, at about 3.30pm, the victim went to the agreed location and whilst there, was contacted by the petitioner who was using a public telephone. Fearing the safety of her daughter, the victim complied with the petitioner`s instructions to spread her legs wide and thereafter took off her panties to wrap the $100. The victim was subsequently re-directed to different places before finally being told by the petitioner to proceed to Mosque Street. The petitioner was eventually arrested by the police at Block B, Mosque Street, after he was spotted using the public telephone. Upon being questioned, the petitioner admitted to the offences and implicated Leow, who was subsequently arrested at his own residence.

The above facts, which were found in the statement of facts, were all admitted to by the petitioner without any qualifications during the proceedings before the district judge. It should be noted that Leow was also similarly charged as an accomplice to the offence and his case was heard and dealt with separately from that of the petitioner`s. A guilty plea was also tendered by Leow, who was consequently sentenced to 30 months` imprisonment and four strokes of the cane. As Leow`s case was heard before the petitioner`s, the district judge in the present case took into account what was imposed on Leow when she was determining the sentence to be passed on the petitioner.

The petitioner initially took out a petition of appeal against the sentence that was imposed on him by the district judge. However, he later decided that he wanted to challenge his conviction and sought to appeal against the correctness of his conviction as well. As the petitioner had pleaded guilty to the offence, he was prevented by s 244 of the Penal Code from bringing an appeal against his conviction. Therefore, the appeal against sentence was withdrawn and a petition for criminal revision was brought instead. In the petition, the defence of duress was raised and it was argued that as the petitioner was actually acting throughout under the threats and instructions of Leow, he did not have the mens rea at all for committing the offence.

Principles of revision

The revisionary powers of the High Court are conferred by s 23 of the Supreme Court of Judicature

Act (Cap 322) and s 268 of the Criminal Procedure Code (Cap 68) (`CPC`). Pursuant to such powers, the High Court has the discretion to exercise any of the powers conferred by ss 251, 255, 256 and 257 of the CPC, which includes reviewing the conviction passed by the lower courts. However, such powers of revision must be exercised sparingly. In **Mok Swee Kok v PP** [1994] 3 SLR 140 , I had particularly emphasised that although the High Court is capable of reviewing the conviction in exercise of its powers of revision, the very scope of these powers obliges the court to act with great circumspection and only where it is manifestly plain that the offence charged is nowhere disclosed in the statement of facts tendered. It is certainly not the purpose of a criminal revision to become a convenient form of `backdoor appeal` against conviction for accused persons who had pleaded guilty to their charges. Indeed, the governing principle is that the revisionary jurisdiction of the High Court should be invoked only if the court is satisfied that some serious injustice has been caused which warrants the exercise of its powers of revision: see **Ang Poh Chuan v PP** [1996] 1 SLR 326 , **Ngian Chin Boon v PP** [1999] 1 SLR 119 and **PP v Mohamed Noor bin Abdul Majeed** [2000] 3 SLR 17 .

Duress

In this application for revision, the petitioner sought to push the entire blame for the incident to Leow and exculpate himself by pleading the defence of duress. It was alleged that Leow had forced the petitioner to make all the phone calls to the victim and had instructed him on what to say. The petitioner claimed that he was actually reluctant to do what Leow had told him to do but did so only out of fear for his own life and that of his girlfriend`s. Apparently, Leow had threatened to rape the petitioner`s girlfriend and said that he would make sure that the petitioner suffered for the rest of his life if he did not comply with Leow`s demands. Leow also pointed a knife at the petitioner and forced him to make the initial phone call and said that nobody would find out even if the petitioner had died. It was claimed that every phone call that the petitioner made to the victim and everything he had said was done only in accordance with Leow`s demands as he was overcome by fear of the threats being carried out and was acting under duress.

I noted that the allegation of the petitioner having acted under threats and compulsion was not exactly an entirely new one. It had in fact already been raised at the trial level before the district judge. It was not disputed that Leow was the one who initiated the idea and was the one who instigated the petitioner to commit the extortion. This fact was properly reflected in the statement of facts as was mentioned earlier. It was also highlighted that the petitioner was of a borderline intelligence and was potentially gullible and easily manipulated by others. He had known Leow since young and they shared an unhealthy relationship where the latter would take advantage of the petitioner`s limited intelligence and frequently bullied, physically abused and threatened the petitioner into doing his bidding. Nonetheless, the petitioner continued his friendship with Leow, if it could even be called one, as Leow was the only companion he knew and could not bear to lose. All these facts were meticulously set out in the petitioner`s mitigation plea that was made before the district judge.

I found that whilst the facts that were claimed by the petitioner before the district judge could be considered believable, the same could not be said of the allegations made in his arguments canvassing for a revision. It did not escape my notice that, after a careful scrutiny of the notes of evidence of the proceedings in the lower court, the statement of facts and the petitioner`s mitigation plea, nowhere was it mentioned that the petitioner had been threatened by Leow in the manner that he was now seeking to allege. Leow may have instigated the petitioner, egged him on in committing the offence and even threatened to assault him if he did not do as Leow instructed but this did not then entitle the petitioner to claim a defence of duress.

The defence of duress is found in s 94 of the Penal Code (Cap 224), which states:

> *Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonable cause the apprehension that instant death to that person will otherwise be the consequence:*
>
> *Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.*

From the clear words of the section, it was apparent that the defence of duress is available only if the threats gave rise to reasonable fear of `instant death` and nothing short of such a serious threat would be sufficient to constitute duress. Furthermore, such threats must have been `imminent, persistent and extreme`: **PP v Fung Yuk Shing** [1993] 3 SLR 69 , **Wong Yoke Wah v PP** [1996] 1 SLR 246 , **Shaiful Edham bin Adam & Anor v PP** [1999] 2 SLR 57 . In the present case, even if I had been willing to accept the fresh allegations made by the petitioner, I was not satisfied that the defence would be made out on the facts. The supposed threats made by Leow to the petitioner were certainly not imminent, persistent or extreme. The fact was that when the petitioner arranged and went to meet with the victim and made the phone calls to give her further instructions, Leow was not with the petitioner and was not immediately exerting any threat over him. What was undeniable was that the petitioner was arrested and caught acting alone. From the circumstances, I was of the view that even if Leow had made any threats on the petitioner`s life, it was partly the petitioner`s own doing for having placed himself in such a position since he could easily have extricated himself out of the situation by seeking help from the police instead of continuing to act on Leow`s instigation.

I noted that there was a wider doctrine of duress under the common law that was enunciated by Smith J in the Supreme Court of Victoria case of **R v Hurley & Murray** [1967] VR 526 at 543. The judge there held that an accused may successfully plead a defence of duress if he is able to show that he committed the offence in the following circumstances:

(i) under a threat that death or grievous bodily harm will be inflicted unlawfully upon a human being if the accused fails to do the act and

(ii) the circumstances were such that a person of ordinary firmness would have been likely to yield to the threat in the way the accused did and

(iii) the threat was present and continuing, imminent and impending and

(iv) the accused reasonably apprehended that the threat would be carried out and

(v) he was induced thereby to commit the crime charged and (vi) that crime was not murder, nor any other crime so heinous as to be excepted from the doctrineand

(vii) the accused did not, by fault on his part when free from the duress, expose himself to its application and

(viii) he had no means, with safety to himself, of preventing the execution of the threat.

The issue of adopting the wider common law position was considered in the local case of **Wong Yoke Wah v PP** [1996] 1 SLR 246 . In that case, the Court of Appeal rejected the argument to abandon s 94 of the Penal Code for the position in ***R v Hurley & Murray*** , stating that there was no reason to

depart from what was really settled law. In the face of the clear words of s 94, I was similarly not persuaded to accept a preference for the common law doctrine of duress.

In any event, I found the new allegations made by the petitioner in his application for revision to be completely incredible and unbelievable. There was absolutely no plausible reason why Leow needed to force the petitioner to make the phone calls when he could have done so himself. The victim did not know either of them at all and it was not as if she would have recognised Leow from his voice if he had made the call instead. The petitioner had claimed that Leow suggested demanding money from the victim so that he could repay the sums that he had borrowed from the petitioner. In view of this, it seemed ludicrous and absurd that Leow would then turn around and have to threaten the petitioner into committing the extortion. The petitioner`s assertions were also contradictory to his earlier account given in the lower court. Curiously, there was never any mention of him having a girlfriend and of Leow making threats with regard to her. In fact, it was particularly highlighted in his mitigation plea that he had only one previous failed relationship with a woman and it was suggested that his inability to develop any new friendship after that was part of the reason why he was so reliant on Leow`s companionship. Furthermore, I was not convinced by the petitioner`s argument that he was especially vulnerable to Leow`s threats due to his gullibility and low intellect. From the notes of evidence, it could be observed that the petitioner was himself able to raise objections to the wording of the charge as well as the statement of facts, both of which were subsequently amended to take into account the petitioner`s objections. It was even pointed out by the learned district judge in her grounds of decision that the petitioner did not appear to be afraid of speaking up and that he did not accept the statement of facts readily. All these went towards showing that the petitioner had a mind of his own and was able to think for himself and certainly was not a man of such borderline intelligence who was prone to manipulation by others as he sought to portray himself to be. The petitioner`s case was also substantially weakened by his obvious failure to mention these important allegations to the district judge. The petitioner was represented by counsel even at that stage and there was no suggestion that he had been wrongly advised. No reasons were proffered for the significant omission and I could only infer that the fresh allegations, which were entirely unsubstantiated and far-fetched, were untrue. If the petitioner had kept silent because he was afraid of Leow then, I failed to understand, and no explanation was offered, as to why this fear was now removed.

The court must be satisfied that the plea of guilt made by the accused is valid and unequivocal before it accepts the plea. In order for a plea of guilt to be valid and unequivocal, three safeguards must be observed: see **Lee Weng Tuck v PP** [1989] 2 MLJ 143 , **Ganesun s/o Kannan v PP** [1996] 3 SLR 560 . Firstly, the court must be satisfied that it is the accused himself who wishes to plead guilty. Secondly, the court must ensure that the accused understood the nature and consequences of the plea. Thirdly, it must be established that the accused intended to admit without qualification the offence alleged against him. I was satisfied on the facts of the present case that all three of the above safeguards have been complied with. The petitioner clearly intended to admit, without qualifications, to the statement of facts which was interpreted and explained to him. As mentioned, the statement of facts was scrutinised and amended before the petitioner himself stated unequivocally that he wanted to admit to them. In addition, the minimum two years` imprisonment and mandatory caning sentence was also explained to him. I would re-emphasise that the petitioner had the benefit of counsel and in the absence of any suggestion that he had been wrongly advised, I was assured that there was no mistake or misunderstanding at all by the petitioner with regard to his plea of guilt.

In light of all the aforesaid reasons, I was not convinced that this was a case which justified a review of the conviction.

Sentence

In reviewing the sentence, I was of the opinion that the sentence of 30 months` imprisonment and four strokes of the cane was manifestly inadequate. Other than his plea of guilt, which he now sought to withdraw, there were no mitigating factors in favour of the petitioner. Instead, my attention was drawn to the various aggravating circumstances that called for a stiffer sentence. The actions of the petitioner showed that he was aware of what he was doing and that he had actively participated in the commission of the offences. Whilst Leow may have been the instigator who initiated the idea, it was the petitioner who then acted upon it. His cruel exploitation of the victim`s situation and his contemptible demands for the victim to perform those demeaning and degrading acts were truly reprehensible. The petitioner`s application for criminal revision, which was based on allegations that were completely self-serving and designed to absolve himself of any liability for offences which he obviously committed, also demonstrated that he was unrepentant and showed no signs of remorse for his deplorable deeds. Given the entire factual circumstances, I was of the view that the petitioner was the principal offender in this whole incident and was even more culpable than his accomplice, Leow. As Leow was already sentenced to 30 months` imprisonment and four strokes of the cane, the punishment deserved by the petitioner should rightly be more severe. Consequently, I exercised the High Court`s powers on revision, pursuant to s 268 and s 256(b)(ii) of the CPC, and enhanced the petitioner`s sentence to 48 months` imprisonment and six strokes of the cane.

Outcome:

Petition dismissed and sentence enhanced accordingly.

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