Lim Ghim Peow *v* Public Prosecutor
[2020] SGCA 104

Case Number	: Criminal Motion No 7 of 2020
Decision Date	: 19 October 2020
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JA; Tay Yong Kwang JA; Chao Hick Tin SJ
Counsel Name(s)	: The applicant in person; Francis Ng Yong Kiat SC and Norine Tan Yan Ling (Attorney-General's Chambers) for the respondent.
Parties	: Lim Ghim Peow — Public Prosecutor

Criminal Law – Offences – Culpable homicide

Criminal Procedure and Sentencing – Appeal – Procedure

19 October 2020

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 The applicant, Mr Lim Ghim Peow ("the Applicant"), pleaded guilty to a single charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) for causing the death of his ex-lover, whom he had doused with petrol and set ablaze. The Applicant also admitted to the statement of facts ("the SOF") without qualification. The High Court judge ("the Judge") sentenced him to 20 years' imprisonment (see *Public Prosecutor v Lim Ghim Peow* [2014] 2 SLR 522). We dismissed the Applicant's appeal against sentence on 11 July 2014 (see *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow (CA)*").

2 By Criminal Motion No 7 of 2020, the Applicant seeks to have his case "reheard" on the basis that his sentence was excessive and that the Judge "made [mistakes] in his judgment". We understand this to be an application under Division 1B of Part XX of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") for us to review our earlier decision in *Lim Ghim Peow (CA)*.

3 Having carefully considered the parties' written as well as oral submissions, it is clear to us that the application is wholly devoid of merit and is nothing but an attempt by the Applicant to mount a "back-door" appeal in violation of both the spirit and substance of the review process. We accordingly dismiss the application and provide our reasons for doing so.

Our decision

Failure to apply for leave

4 At the outset, we note that the present application did not comply with the statutorily prescribed procedure for the bringing of review applications, and that it could have been dismissed on this ground alone. Under s 394H(1) of the CPC, an applicant must first obtain leave from the relevant appellate court before making a review application, which the Applicant failed to do prior to commencing this application. In *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] SGCA 91 ("*Kreetharan*"), we cautioned at [14]–[16] and [41] that applications which fail to adhere to the proper procedure are liable to being summarily dismissed without further hearing. While

this was said in the context of a review application brought before the wrong court, the principle applies equally where a review application is brought without complying with the leave requirement, which we observed in *Kreetharan* at [17] appears to have been enacted in response to the concerns expressed by this court in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 about the need to balance the rights and interests of all persons who utilise scarce judicial resources. The leave requirement does this by allowing unmeritorious applications to be weeded out at an early stage. The importance of adhering to the statutorily prescribed procedure cannot be gainsaid, and applicants in future cases of this kind who elect to file review applications without leave may well have their applications treated as being made for leave and dismissed summarily.

Leave application

5 Even if the present application is treated as being one for leave, we would not (had the proper procedure in fact been followed) have hesitated to dismiss it summarily without it being set down for hearing pursuant to s 394H(7) of the CPC as there is no legitimate basis or merit to it (see *Kreetharan* at [41]).

6 The grounds raised by the Applicant clearly fail to meet the threshold for review. Under s 394J(2) of the CPC, the applicant in a review application must demonstrate to the appellate court that there is sufficient material (comprising either evidence or legal arguments) on which it may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made. For the material to be "sufficient", it must satisfy *all* of the requirements in s 394J(3) of the CPC: (a) first, the material has not been canvassed at any stage of the criminal proceedings; (b) second, the material could not have been adduced with reasonable diligence; and (c) third, the material is compelling, in that the material is reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made. Where the material consists of legal arguments, s 394J(4) of the CPC imposes an additional requirement that it must be based on a change in the law arising from a decision made by a court *after* the conclusion of criminal proceedings in respect of which the earlier decision was made (see *Kreetharan* at [18]–[20] and *Syed Suhail bin Syed Zin v Public Prosecutor* [2020] SGCA 101 at [17]–[20]).

7 The Applicant raises a number of factual allegations and legal arguments in support of his application. Several of these do not appear to be relevant to the sentence imposed and we deal only with the main points in this judgment.

8 First, the Applicant asserts that there were a number of inaccuracies or gaps in the SOF, and that his counsel in the High Court proceedings had failed to explain that by pleading guilty he was admitting to its contents. We reject these allegations as they undoubtedly could have been raised in court at an earlier date. The Applicant does not provide any coherent explanation for raising these allegations almost six years after the conclusion of his appeal. More importantly, the Applicant's claims are roundly contradicted by his former counsel, as well as the court transcripts which record that the SOF was read to the applicant by an interpreter and that he admitted to its contents without any qualifications.

9 Second, the Applicant argues that the Judge erred in his assessment of the psychiatric evidence and failed to consider several sentencing precedents. However, we had already considered these arguments in *Lim Ghim Peow (CA)*. Since the material has already been canvassed at an earlier stage of the proceedings, it plainly cannot form the basis for a review application. We also note that, as legal arguments, the material does not satisfy the additional requirement set out in s 394J(4) of the CPC that it must be based on a change in law occurring after the conclusion of the earlier

proceedings.

10 Third, the Applicant contends that the Judge discriminated against him due to his past involvement with secret societies. The Applicant's submission hinges on alleged remarks made by the Judge that the fact he had not been arrested for nine years did not mean that he had not committed any offences in the same period. Leaving aside whether the material could have been adduced earlier with reasonable diligence, we reject the Applicant's argument as there is no reliable evidence to substantiate this serious allegation. As is noted by both the respondent and the Applicant's former counsel, the court transcripts do not record the Judge having said anything to that effect and there is nothing to cast doubt on this.

11 Finally, the Applicant alleges a number of instances of negligence (in addition to those raised in relation to the SOF) on the part of his former counsel (both at first instance and on appeal), which can be broadly summarised as follows: (a) first, failing to engage a separate psychiatrist to give expert evidence on his behalf; (b) second, making only limited attempts to visit him and failing to act in accordance with his instructions; and (c) third, specific to his appeal, the late Mr Subhas Anandan ("Mr Anandan") being ill and unfamiliar with the facts of the case, rendering him unable to properly answer questions posed to him by this court. We think that these allegations are entirely baseless and unwarranted. Mr Sunil Sudheesan and Ms Diana Ngiam, the counsel having conduct of the Applicant's defence at first instance (and who assisted Mr Anandan in his appeal), detail in their response how they had obtained and complied with the Applicant's instructions. As against this, the Applicant's allegations amount to nothing more than bare assertions unsupported by any evidence. The same can be said about the allegations made against Mr Anandan, which take out of context an exchange that occurred during the hearing of the appeal. Far from having been negligent, it is clear the Applicant's former counsel expended prodigious efforts in representing their client (both at first instance and on appeal), and in doing so acted in the best traditions of the Bar. For the record, we would also emphasise that applicants will not get very far by making such unwarranted allegations many years after proceedings have concluded, if they do not have a sound basis grounded in relevant evidence.

Conclusion

12 For these reasons, we are satisfied that the present application is without basis and should be dismissed.