Public Prosecutor v Perumal s/o Suppiah
[2000] SGHC 103

Case Number : MA 61/2000

Decision Date : 02 June 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Ng Cheng Thiam (Deputy Public Prosecutor) for the appellant; Respondent in person

Parties : Public Prosecutor — Perumal s/o Suppiah

Criminal Procedure and Sentencing – Sentencing – Preventive detention – Applicable principles – Whether preventive detention appropriate – Whether court had discretion not to impose preventive detention once threshold test met – Whether prospect of remission relevant consideration – Whether appropriate to consider length of imprisonment previously imposed on offender – ss 12(2)(a) & 12(2)(b) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Mitigation – Hardship to offender's family of little mitigating value save in exceptional circumstances

Criminal Procedure and Sentencing – Sentencing – Powers of sentencing court – Jurisdictional limit of district court – ss 11(3) & 17 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

: This was an appeal by the Public Prosecutor against sentence passed by District Judge Khoo Oon Soo.

The respondent pleaded guilty to two charges of voluntarily causing hurt with a dangerous weapon under s 326 Penal Code (Cap 224) and of drug consumption under s 8(b)(i) Misuse of Drugs Act (Cap 185) with the enhanced punishment prescribed in s 33(3) of the same Act. He was sentenced to three years` imprisonment and six strokes of the cane on the s 326 Penal Code charge and four years` imprisonment on the drug consumption charge. Both sentences were ordered to run consecutively, making a total of seven years` imprisonment and six strokes of the cane.

At the close of the appeal, I set aside the sentences of imprisonment and sentenced the respondent to preventive detention for a period of ten years. I did not vary the district judge`s orders in relation to the six strokes of the cane on the charge under s 326 of the Penal Code. I now give my reasons in writing.

The facts

Charge under s 326 Penal Code (Cap 224)

According to the statement of facts which was admitted without qualification, the respondent was drinking with the victim and two other friends at a coffeeshop at the material time. When the victim stood up to leave, the respondent suddenly slashed his face, using a paper cutter with a blade measuring about 10 cm in length. He continued slashing the victim on the face until the latter dropped to the ground. The respondent then walked away from the scene. The police later conducted a search and detained the respondent in the vicinity of the attack. A paper cutter was also recovered from him.

The victim suffered the following injuries as a result:

> *a incised wound extending from upper part of forehead between nose and eye on the left side extending below along nasio-labial fold up to the chin on left side measuring about 20 cm;*
>
> *b incised wound extending from left side of cheek to left ala of nose measuring about 4 cm;*
>
> *c incised wound over outer end of left upper eyelid measuring about 2 cm;*
>
> *d incised wound over upper end of columella of nose measuring 1 cm;*
>
> *e incised wound in front of right ear extending downward and forward direction towards body of mandible and then extending to middle of upper part of neck measuring about 16 cm;*
>
> *f incised wound extending from middle of right side neck to the inner end of left clavicle;*
>
> *g incised wound over anterior chest, near clavicle on right side measuring 5 cm;*
>
> *h fractures of 5th metacarpal and proximal phalanx of little finger of right hand.*

The victim was warded for two nights at the hospital. The incised wounds were sutured while the fractures were conservatively treated. According to the medical report, the multiple slash wounds over the face will result in scarring and permanent disfigurement.

Charge under s 8(b)(i) read with s 33(3) Misuse of Drugs Act (Cap 185)

The respondent was arrested on suspicion of having consumed a controlled drug. A urine specimen was taken from him and forwarded to the Department of Scientific Services for analysis. It was subsequently confirmed that the urine specimen contained 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid, which is a cannabinol derivative (cannabis). Prior to this, the respondent had been previously convicted on 15 May 1987 for an offence of consumption of a controlled drug for which he was fined a sum of $500.

Mitigation in the court below

The prosecution did not address the court on sentence in the court below. It was however revealed that the respondent had a lengthy history of previous convictions spanning from 1979 to date. These consisted of various offences involving the use of force, including a conviction for culpable homicide not amounting to murder, affray, voluntarily causing hurt as well as theft and drug related offences for which he was sentenced to various terms of imprisonment ranging from one day to six years and fines. He was also sentenced to six strokes of the cane for the offence of culpable homicide not amounting to murder. In addition, the respondent had other drug related antecedents. He was admitted to drug rehabilitation centres on three occasions (in 1987, 1988 and 1990) and had also

been placed under drug supervision on four previous occasions.

In mitigation, counsel for the respondent in the court below relied on the fact that he was married with two young children aged six and ten. The respondent claimed that he was waylaid and assaulted by the victim and his friends some five weeks prior to the incident during which he sustained a 13 cm laceration. In essence, the respondent claimed that the attack was precipitated by the victim who had made fun of a scar on the respondent`s right check. It was also submitted that the previous consumption offence was committed a long time ago and that the current offence was committed because of the stress arising from investigation into the assault incident. Finally, his counsel submitted that preventive detention would be too harsh a punishment as it offered no prospect of remission.

The sentence imposed by the district judge

The respondent was aged 43 at the time of the offences. The district judge noted that the previous convictions showed the respondent to be a man of violence and a menace to society. Accordingly he called for a preventive detention report which confirmed that the respondent was suitable for preventive detention. The district judge noted that it was clear that the respondent faced the prospect of a substantial period of imprisonment.

After counsel`s renewed mitigation, the district judge reconsidered the previous convictions. He noted that the respondent`s most serious offence was committed in 1979 and that the longest prison term which he received in the 1990s was for a period of eight months for an offence of voluntarily causing hurt to a public servant. He also noted that no weapons or dangerous means were used in his past offences. The district judge held that he retained the discretion not to impose preventive detention, especially if the court was satisfied that its protective purpose could also be achieved by a substantial term of imprisonment. He thus declined to impose preventive detention and sentenced the respondent to a total of seven years` imprisonment and six strokes of the cane.

The appeal

The prosecution contended that the sentence was manifestly inadequate and urged me to impose a sentence of preventive detention with caning. In its written grounds of appeal, the prosecution contended that the district judge had failed to give sufficient weight to the respondent`s previous convictions which demonstrated him to be a menace to society. It was also submitted that the district judge had failed to appreciate the gravity of the respondent`s offence and had given undue consideration to his renewed mitigation. Finally the prosecution submitted that the district judge had failed to give adequate consideration to the need to protect the public and had wrongly exercised his discretion in declining to sentence the respondent to preventive detention.

Whether a substantial period of custody is expedient for the protection of the public

In view of the respondent`s age and previous convictions, this was potentially a case which called for preventive detention The regime of preventive detention is prescribed by s 12(2) of the Criminal Procedure Code (Cap 68) (CPC):

> *Where a person who is not less than 30 years of age -*

> *(a) is convicted before the High Court or a District Court of an offence punishable with imprisonment for a term of 2 years or upwards, and has been convicted on at least 3 previous occasions since he attained the age of 16 years of offences punishable with such a sentence, and was on at least two of those occasions sentenced to imprisonment or corrective training; or*
>
> *(b) ...*
>
> *then, if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiration of the sentence, the Court, unless it has special reasons for not so doing, shall pass, in lieu of any sentence of imprisonment, a sentence of preventive detention of such term of not less than 7 nor more than 20 years as the Court may determine.*

As I have previously stated in **Kua Hoon Chua v PP** [1995] 2 SLR 386 at 389F, preventive detention is a fitting punishment when an offender poses a `menace to society`. I have recently affirmed and reiterated this position in **PP v Wong Wing Hung** [1999] 4 SLR 329 at [para] 9 and 10 where I stated:

> *... the purpose of imposing preventive detention is in order to protect the public. If the offender in question proved by his history of criminal behaviour to be a menace to society, he should be and must be put away for the protection and safety of the community at large.*
>
> *Bearing in mind the objective and rationale behind the imposition of preventive detention, it should be clear that this sentence is meant essentially for habitual offenders, who must be over the age of 30 years, whom the court considers to be beyond redemption and too recalcitrant for reformation.*

Thus, the first question which arose in this appeal was whether the respondent had proved by his history of criminal behaviour to be a menace to society which necessitated his incarceration for a substantial period of time for the protection and safety of the community at large. In calling for the preventive detention report, the district judge had himself noted that the previous convictions showed the respondent to be a man of violence and a menace to society.

The respondent was now 43 years of age. His criminal career began in 1979 and he had since garnered a total of 17 convictions in the space of some 20 years, including the present two offences. These consisted of a variety of assault offences, including an offence of culpable homicide not amounting to murder, theft offences and drug related offences. It was evident that the respondent had been drifting in and out of prison with alarming regularity and frequency, combined with several stints in drug rehabilitation centres and periods of drug supervision.

As for the drug consumption offence, the respondent had proved to be unrepentant despite the various opportunities to reform. In this regard, the district judge, in my view, erred in not according sufficient weight to his previous drug convictions and antecedents. Whilst it was true that his last consumption offence was committed in 1987 for which he was fined $500, he was however recently convicted of similar drug-related offences of failing to report for urine tests in 1995 and possession of

a controlled drug in 1996.

A review of the previous convictions and the circumstances of the instant offence revealed the respondent`s propensity for violence. His first conviction in 1979 was for an extremely grave offence of manslaughter for which he was sentenced to six years` imprisonment with six strokes of the cane. Evidently, this lengthy period of incarceration left a minimal impression on him as he proceeded to re-offend almost immediately upon his release. His tendency to resort to violence and use of force was confirmed by the subsequent convictions for affray and voluntarily causing hurt. The respondent also demonstrated a blatant disregard for authority as evidenced by his previous convictions for causing hurt to a public servant in the discharge of his duties and for obstructing a public servant in the discharge of his public functions.

More importantly, the instant offence revealed a disconcerting escalation in the degree of danger which he posed to the public. The severity of the injuries inflicted had graduated from simple hurt to grievous hurt. In addition, the respondent had now resorted to the use of a dangerous weapon. Contrary to the district judge`s view, the fact that this was the first time that the respondent had used a weapon was completely devoid of any mitigating value. Instead it merely attested to the respondent`s increasingly violent streak.

The circumstances of the present offence were particularly pertinent. By the respondent`s own account, the attack was triggered by a mere comment about the respondent`s facial feature. This precipitated a totally unwarranted and vicious attack on the defenceless victim which persisted until the latter collapsed. The respondent thereupon coolly walked away from the scene. As a result of the attack, the victim suffered two fractures on his finger and multiple slash wounds, ranging from 1 cm to 20 cm in length. Notably, the slash wounds were concentrated on a vulnerable part of the victim`s body, namely, his face and neck and had resulted in permanent scarring and disfigurement. It was fortunate that the assault did not occasion more serious injuries.

Far from showing any contrition or remorse for his actions, the respondent sought to shift the blame, attempting to excuse his conduct by insinuating that the victim had provoked it with his comment about the respondent`s facial scar and by reference to an earlier incident in which the respondent was allegedly attacked by one of the victim`s friends. Even if true, this could hardly justify the brutality and viciousness of the attack.

Taking all the circumstances into account, I had no doubt in my mind that the respondent had shown himself to be a habitual offender and too recalcitrant for reformation. As reflected in his criminal history and obvious lack of remorse, he was patently a man of violence and was a menace to society as well as posing a high risk of re-offending. I was therefore of the view that the respondent ought to be incarcerated for a substantial period of time for the protection of the public.

Factors taken into account by the court below

In my view, little weight should have been placed on counsel`s renewed mitigation that the respondent had two young children. This plea had induced the district judge to reconsider the respondent`s previous convictions. I have previously stated that it is settled law that hardship caused to the offender`s family as a result of the imprisonment of the offender has little mitigating value save in very exceptional or extreme circumstances: **Ng Chiew Kiat v PP** [2000] 1 SLR 370 at [para ] 43. This is an unavoidable consequence occasioned by the offender`s own criminal conduct and could not affect what would otherwise be the right sentence: **Lai Oei Mui Jenny v PP** [1993] 3 SLR 305 at p 308, **PP v Tan Fook Sum** [1999] 2 SLR 523 at [para] 31. The same view was reiterated

by the Court of Appeal in **PP v Yap Koon Mong** [1999] 4 SLR 257 at [para] 34-36. It was evident that the present circumstances were not so exceptional as to warrant a reduction in the appropriate sentence.

In declining to impose preventive detention, the district judge also took into account the fact that the longest sentence imposed on the respondent in the 1990s was a term of eight months. I agreed with the prosecution`s written submission that this was an erroneous approach. The criteria for the imposition of preventive detention is that set out in s 12(2)(a) or s 12(2)(b) CPC. The provision does not stipulate a minimum term for an offender`s previous sentences and does not require the previous sentences to correspond to the minimum period of preventive detention. Indeed an offender who has committed a perpetual string of offences for which he was sentenced to varying imprisonment terms of under one year is precisely the type of offender targeted by the provision.

In ***PP v Wong Wing Hung*** at [para] 8, I had pointed out that the district judge had erred in law and in principle by drawing a comparison between the maximum term of imprisonment for the offence in question and the minimum term of preventive detention. As I stated in that case (at [para] 10):

> *... The minimum term stipulated in s 12(2) of `not less than 7 years` indicates that the normal limitations on sentencing do not apply when the court is considering a sentence of preventive detention.* ***It would be a mistake to confuse a sentence of preventive detention with a term of imprisonment as the two are obviously distinct sentences****. The wording of s 12(2) cannot be more unambiguous when it states that preventive detention is to be imposed `in lieu of any sentence of imprisonment`. [Emphasis added.]*

A different sentencing framework has been provided for imprisonment and preventive detention. A district court may pass a sentence of imprisonment for a term not exceeding seven years on a single charge - s 11(3)(a) CPC. Where justified by the offender`s previous convictions and antecedents a sentence of up to ten years can be imposed pursuant to the proviso to s 11(3). The term of imprisonment is of course subject to the statutory limits prescribed by the offence creating statute. The period of preventive detention on the other hand, ranges from a minimum of seven years up to a maximum of 20 years - s 12(2) CPC.

In other words, in a normal situation an offender can only be sentenced by a district judge up to a maximum of seven years on a single charge. This would either correspond to or be less than the minimum period of preventive detention. If the offence in question is punishable with imprisonment for up to two years, the offender would only have been sentenced to no more than two years imprisonment in any case. Thus, in the same vein, any comparison between the sentences previously imposed on the offender and the minimum period of preventive detention is misconceived and constitutes a misreading of the law and objective of preventive detention.

Manner in which discretion is to be exercised

Having met the threshold that `it is expedient for the protection of the public` that the offender `be detained in custody for a substantial period of time`, how should the court then proceed in deciding whether to sentence the offender to preventive detention or to imprisonment?

I need look no further than the plain and unequivocal language of s 12(2) CPC:

> ***... if the court is satisfied that it is expedient for the protection of the public***

> ***that he should be detained in custody for a substantial period of time**, followed by a period of supervision if released before the expiration of the sentence, **the Court, unless it has special reasons for not so doing, shall pass**, in lieu of any sentence of imprisonment, a sentence of preventive detention. [Emphasis added.]*

Although the district judge found the respondent to be a recalcitrant offender and a menace to society, he declined to impose preventive detention. He relied on the New Zealand decision of **R v Leitch** [1998] 1 NZLR 420 and held that he retained the discretion not to impose preventive detention, particularly when the protective purpose of preventive detention could be met by a substantial term of imprisonment. In that case, the New Zealand Court of Appeal was considering s 75(2) of the New Zealand Criminal Justice Act 1985 which provided for the sentence of preventive detention for certain specified offences, including sexual offences:

> *Subject to the provisions of this section, the High Court, if it is satisfied that it is expedient for the protection of the public that an offender to whom this section applies should be detained in custody for a substantial period, **may pass a sentence of preventive detention**. [Emphasis added.]*

It was in the context of this provision that Richardson P, delivering the judgment of the court at p 429 stated that:

> *... s 75(2) does not require the court to impose preventive detention whenever it is satisfied that it is expedient for the protection of the public to detain the offender in custody for a substantial period. The court `may` pass a sentence of preventive detention. At that point, when weighing the exercise of the discretion, the court will ordinarily consider whether the protective purpose of preventive detention could reasonably be met by an available finite sentence of imprisonment. And there may perhaps be other considerations which in particular circumstances may justify the court in the proper exercise of discretion not to impose preventive detention. Nevertheless, what is clear on this analysis is that, as the court put it in **R v Rameka** (Court of Appeal, Wellington, CA 178/97, 18 June 1997), `the statutory test is not to be burdened by the notion that preventive detention is a sentence of last resort`.*
>
> *Where the `expedient` standard is met it is of course appropriate in the exercise of the residual discretion to compare the statutory incidents and effects of preventive detention and an available finite sentence. A comparison of that kind may assist the sentencing court in deciding whether, following its assessment of the risk of reoffending at an appreciably distant future time, the necessarily substantial period of detention should be by way of an indefinite or an available finite term. If, compared with an available finite sentence, preventive detention would be longer than necessary to meet the objectives, the indeterminate sentence would be manifestly excessive. ...*

A review of the New Zealand provision immediately reveals two critical differences as compared to s 12(2) CPC. First, as opposed to the imperative language of s 12(2) CPC, the New Zealand provision specifies that the court `may` pass a sentence of preventive detention. While the New Zealand courts possess an unfettered residual discretion to impose either imprisonment or preventive detention, s 12(2) CPC specifically prescribes that the court shall impose preventive detention in lieu

of any sentence of imprisonment unless there are special reasons for not doing so. Logically speaking, this also means that the New Zealand courts are entitled to take into account a much broader range of considerations in deciding whether to impose a sentence of preventive detention.

Secondly, unlike s 12(2) which provides for a finite term of preventive detention of between seven to twenty years, s 77 of the New Zealand Criminal Justice Act provides for an indefinite period of preventive detention. Under the New Zealand system, an offender sentenced to preventive detention `shall be detained until released on the direction of the Parole Board`. Following release, as explained by Richardson P at p 430, detainees remain subject to recall to continue serving the sentence, unlike an offender who has completed a finite term of imprisonment. I was thus unable to share the district judge`s view that the difference was not material. It was patent from the above extract that the exposure to an indefinite sentence was a significant factor in the decision. Such a sentence might be manifestly excessive under certain circumstances, thus necessitating the need to explore other available finite sentences. This concern however, does not arise in the Singapore context as the court pronounces a finite term of preventive detention commensurate with the circumstances of the case. The offender is also not subject to recall once he completes the specified period of preventive detention.

It is also pertinent to note that the prosecution in that case conceded on appeal that a term of preventive detention was excessive and should be replaced by a finite term. There was also expert evidence on appeal that the risk of re-offending would be diminished if the offender engaged in and completed a rehabilitative programme (at p 421). The facts were thus clearly distinguishable from the present case.

I therefore declined to follow the approach advocated in ***R v Leitch*** . In view of the significant differences in the legislative provisions, it would be inappropriate to simply adopt the New Zealand decision without a proper understanding of its underlying reasoning and rationale. While reliance on foreign case law can provide a useful source of jurisprudence, one needs always to be cautious in citing decisions which hinge on the interpretation of a distinctly different statutory framework and policy.

With that in mind, I now take this opportunity to clarify the application of s 12(2) CPC as follows. When the criteria set out in s 12(2)(a) or s 12(2)(b) are met and if the court is satisfied that the offender poses such a danger to the public that it is expedient to detain him in custody for a substantial period of time, the court must sentence him to preventive detention unless there are special reasons rendering the offender unsuitable for preventive detention.

Applying the above principle, the district judge erred in holding that he retained the discretion not to impose preventive detention and that the protective purpose of preventive detention could be met by a substantial term of imprisonment once the threshold was met. This approach misconstrued the effect of s 12(2) CPC. Unlike the New Zealand courts, it was not open to the court below, in the absence of special reasons, to explore the alternative sentences.

In this regard, I must reiterate my earlier exhortation in ***PP v Wong Wing Hung*** at [para] 10 not to confuse the concept of preventive detention and imprisonment, which are distinct sentences and are underpinned by different objectives and rationales. The former is essentially aimed at the protection of the public while the latter reflects the traditional policies of prevention, deterrence, rehabilitation and retribution. They are different in duration, character and implementation. As such, it would be a mistake to view them as fungible sentences.

This is also an appropriate juncture to address the prosecution`s contention that the district judge

erred in according weight to the mitigation that preventive detention would be too harsh as it offered no prospect of remission. This was one of the reasons cited by the district judge for reconsidering the respondent`s previous convictions.

The threshold test is whether the offender poses such a menace to society that it would be expedient for the protection of the public to subject him to a substantial period of incarceration. This stage of the enquiry should simply focus on the danger which the offender poses to the community at large. Whether he should be incarcerated under the regime of imprisonment or preventive detention is not the subject of the enquiry at this stage. Correspondingly, it therefore follows that the prospect of remission is also not a relevant consideration.

Once that threshold is met, s 12(2) CPC stipulates that the offender shall be sentenced to preventive detention unless there are special reasons for not doing so. The provision does not go on to explain what constitutes `special reasons`. I am however inclined to agree with the prosecution`s submission that these would generally refer to the offender`s physical and mental suitability for preventive detention. This view is supported by reference to s 12(3) CPC which specifically requires the court to `consider the physical and mental condition of the offender and his suitability for such a sentence`. No other matters are specifically mentioned in s 12. It is not possible for me to elucidate in vacuo the circumstances which can amount to special reasons. Suffice to say, the reasons must be exceptional and each case would depend on its own facts.

As far as the present respondent was concerned, the lack of remission could hardly constitute a `special reason`. As I have previously commented in **Yusoff bin Hassan & Ors v PP** [1992] 2 SLR 1032 at pp 1034I-1035A, `corrective training and preventive detention are meant to supplant a sentence of imprisonment which would otherwise be ordered` and should be passed `in lieu of the aggregate sentence of imprisonment which the court would otherwise have been minded to impose`. It is thus quite inappropriate and irregular for the court to take into account the possibility of remission or the lack thereof. The sentencing court should simply address its mind to the appropriate period of custody merited by the offences for which the offender has been convicted before it and his criminal record, without delving into the issue of remission. In my view, the district judge had clearly misdirected himself by taking this factor into consideration.

Finally, I would only add that the district judge`s observation that preventive detention is served fully with no prospect of remission needs to be clarified. The Criminal Procedure (Corrective Training and Preventive Detention) Rules provides for the release of prisoners sentenced to preventive detention on license, under certain conditions, when he has served five-sixths or two-thirds of his sentence - r 18. However, a prisoner who has been released on license can be recalled in which case he shall be detained in prison until the expiration of his sentence.

In conclusion, after taking into account all the circumstances of the case and the respondent`s criminal history, I was satisfied that preventive detention for a period of ten years would be an appropriate period of custody.

Other considerations

I should add that if, for any reason, preventive detention was not suitable for the respondent, I would have been minded to increase the sentences of imprisonment imposed by the district judge as the aggregate sentence of seven years was manifestly inadequate.

Section 326 Penal Code provides for imprisonment for life, or for a term which may extend to ten

years, and shall also be liable to a fine or caning. Section 8(b)(i) read with s 33(3) Misuse of Drugs Act provides for a minimum term of three years` imprisonment, up to a maximum of ten years, and the offender shall also be liable to a fine of up to $20,000.

In view of the respondent`s atrocious criminal history, I would have been minded to apply the proviso to s 11(3) CPC which would have permitted me to sentence the respondent to imprisonment for a term longer than the normal district court jurisdictional limit of seven years, at least insofar as it relates to the offence under s 326 Penal Code. The proviso states:

> *Provided that where a District Court has convicted any person and it appears that by reason of any previous conviction or his antecedents, a punishment in excess of that prescribed in this subsection should be awarded, then the District Court may sentence that person to imprisonment for a term not exceeding 10 years and shall record its reason for so doing.*

Furthermore, since the respondent was convicted of two distinct charges, I would have jurisdiction in any case, to award an aggregate punishment of imprisonment of up to twice the ordinary jurisdictional competence of the court, ie 14 years - see proviso to s 17 CPC which states:

> *When a person is convicted at one trial of any two or more distinct offences the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court directs or to run concurrently if the court so direct, ...*
>
> *Provided that if the case is tried by a District Court or Magistrate`s Court the aggregate punishment of imprisonment shall not exceed twice the amount of punishment which such Court in the exercise of its ordinary jurisdiction is competent to inflict.*

I was of course mindful of the fact that s 11(3)(a) CPC states that the district court is competent to pass a sentence of imprisonment for a term not exceeding seven years as well as the decision of the Court of Appeal in **PP v Lee Meow Sim Jenny** [1993] 3 SLR 885 . The accused in that case, was convicted in the district court of three counts of criminal breach of trust. The offences were punishable under s 408 of the Penal Code with imprisonment which may extend to seven years and the offender was also liable to a fine. The accused was sentenced to two years` imprisonment on the first two charges and 18 months on the remaining charge. No fine was imposed. The first two charges were ordered to run consecutively, amounting to an aggregate sentence of four years.

On appeal to the High Court, I did not disturb the custodial sentences but enhanced the totality of the sentence by imposing a fine of $200,000, in default two years` imprisonment on each of the first two charges. The consequence of this was that, if the accused did not pay or was unable to pay the fines, she would receive a total of eight years` imprisonment.

The following question was then reserved for the Court of Appeal:

> *Whether the High Court, in exercising its jurisdiction in an appeal as to sentence, has the power to enhance the sentence beyond the limit of the power of the subordinate court which imposed the sentence.*

The Court of Appeal answered the question in the negative. Applying the principle to the facts, Karthigesu JA, delivering the judgment of the court, held that the enhanced sentence which I had imposed on appeal exceeded the sentencing powers of the district court. As a result, the Court of Appeal set aside the fines and enhanced the terms of imprisonment on each of the first two charges to three years, resulting in an aggregate sentence of six years` imprisonment.

This court is of course bound by the principle of law enunciated by the Court of Appeal. However, I was of the view that the actual result reached in that decision was distinguishable from the present case and did not prohibit me from enhancing the sentence by imposing an aggregate term of imprisonment which was longer than seven years.

First, the proviso to s 11(3) CPC was not applicable in that case. There, the maximum period of imprisonment was limited by s 408 Penal Code to a term of seven years. Furthermore, unlike the accused in that case, the respondent in the present appeal had an atrocious history of previous conviction or antecedents which, in my opinion, was capable of triggering the proviso to s 11(3). This would have entitled the district court to award a sentence in excess of seven years for the offences in question.

Secondly, I noted that the proviso to s 17 CPC which would have enabled the sentencing court to impose an aggregate sentence of up to 14 years did not appear to have been cited to the Court of Appeal. In my respectful view, if this highly relevant provision had been highlighted, the Court of Appeal might not have found the fines and the enhanced sentences to have exceeded the jurisdictional competence of the sentencing court.

Conclusion

In conclusion, I agreed with the prosecution that the total sentence of seven years` imprisonment meted out by the district judge was manifestly inadequate. Accordingly, I set aside the sentence of imprisonment imposed by the district judge in the court below and sentenced the respondent to preventive detention for a period of ten years. I did not disturb the sentence in relation to the six strokes of the cane ordered against the respondent.

Outcome:

Appeal allowed.