Tee Teng Heng v Public Prosecutor
[2000] SGHC 230

Case Number : MA 112/2000

Decision Date : 13 November 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Wilfred Goh Boon Cheong (Wilfred Goh & Partners) for the appellant; Hamidul Haq (Deputy Public Prosecutor) for the respondent

Parties : Tee Teng Heng — Public Prosecutor

Criminal Law – Offences – Property – Criminal trespass – Applicable principles -Whether proof of intent to annoy evidence required by direct – Whether accused reasonably believes he has legitimate ground for being on premises – Whether accused had requisite intent to annoy can be inferred – s 41 Penal Code (Cap 24)

Criminal Procedure and Sentencing – Sentencing – Enhancement of sentence

: ***The facts***

This is a straightforward case, the facts of which were as follows. The appellant, a former employee of the Housing and Development Board (`HDB`), was dismissed by the HDB on 2 February 1996. Being unhappy with his dismissal, he wrote a number of letters appealing to the HDB. However, his appeals were all rejected. The appellant was under the impression that his dismissal was the result of a conspiracy within the management of the HDB.

On 8 March 2000, which was about four years after his dismissal, the appellant went to the HDB Centre at Bukit Merah Central (`the premises`) to look for the CEO of the HDB, so as to ascertain the truth behind his dismissal. As he was unable to gain entry, the appellant waited at the exit door to Tower A of the premises. At around 4.30pm, one of the HDB staff opened the exit door from the inside so as to leave the premises, and this afforded the appellant the opportunity to slip inside.

The appellant initially went up to the 27th floor to look for the CEO of the HDB. Upon discovering that the CEO was not around, the appellant decided to make his way downstairs to the 25th floor, where the office of the head of the Human Resource department, one Goh Sin Tok, was located. The appellant intended to confront Goh Sin Tok, whom the appellant believed to have been involved in the alleged conspiracy to dismiss him.

Upon reaching the 25th floor, the appellant found the Assistant Security Officer, one Mohd Anwar Bin Wanchik (PW1), waiting for him. PW1 noticed that the appellant was not wearing a security pass, and asked the appellant to follow him to the security office on the second floor. The appellant complied. The police were subsequently summoned, and the appellant was arrested.

The charge

The appellant was charged in the court below with having committed criminal trespass. The charge against him read as follows:

> *You ... are charged that you on 8 March 2000 at or about 4.30pm, at HDB Centre Tower A, Level 25, Bukit Merah Central, Singapore, did commit criminal trespass, to wit, by entering into the said premises in the possession of one*

Mohd Anwar and caused annoyance to one Mohd Anwar and have thereby committed an offence punishable under s 447 of the Penal Code (Cap 224).

The hearing below

The prosecution`s case

According to the prosecution`s evidence, the appellant was barred from entering the premises upon his dismissal. His photograph had even been displayed at the security counters to ensure that he would not be allowed back onto the premises. The appellant had nevertheless continued to make unauthorised entries into the premises on several occasions.

By his own statement P7 (the admissibility of which was not challenged), the appellant admitted that sometime in January 2000, he had tried to come into the premises but was barred from entering. He had then effected entry in the same unauthorised manner as on 8 March 2000, ie by waiting for one of the HDB staff leaving the premises to open the exit door from the inside. He had then gone to Goh Sin Tok`s office on the 25th floor, where he scolded Goh Sin Tok for being involved in the alleged conspiracy to dismiss him. The appellant admitted that he was detained by the security officers and advised not to return. This warning apparently went unheeded. In his statement, the appellant further admitted that sometime in February 2000, he once again slipped into the premises through the exit door. Once more, he went to the 25th floor, where the appellant confronted Goh Sin Tok and scolded him. This time, the police were summoned and the appellant was given a final warning. During the course of cross-examination, the appellant testified that he had managed to sneak into the premises a total of three to four times.

The last straw finally came on 8 March 2000, ie the date of the arrest. PW1 gave evidence that on that day, at about 4.15pm, one of the security officers spotted the appellant in the vicinity of the premises. PW1, upon being alerted to the appellant`s presence, had then gone to the 25th floor, anticipating that the appellant would come looking for Goh Sin Tok again. True enough, the appellant showed up at the 25th floor, whereupon PW1 escorted the appellant to the security office downstairs.

PW1 further testified that he was annoyed by the appellant`s repeated unauthorised visits. Being the security officer, he had to go hunting for the appellant each time the latter slipped into the premises, and he was greatly inconvenienced as a result.

The case for the defence

The appellant testified that he did not know that he was committing an offence by entering the premises, as he did not do anything harmful or illegal. He never intended to cause any inconvenience or annoyance to anyone.

The finding below

At the end of the trial, the appellant was found guilty and sentenced to pay the maximum fine of $500. However, no custodial sentence was imposed. The appellant, being dissatisfied with the conviction, appealed to this court.

The appeal

Section 441 of the Penal Code defines the offence of criminal trespass as follows:

> *Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit `criminal trespass`.*

Before me, the appellant advanced the same argument as that which he proffered in the trial below, ie that he did not have the requisite intent to annoy anyone (ASS [para]1).

I have, in a number of authorities, already laid down the various principles applicable to cases on criminal trespass. Firstly, the requisite intent to annoy need not be proven by direct evidence. Most times, the court will have to infer the existence of the intention by examining the circumstances surrounding the offence: **PP v Seah Soon Keong** [1993] 3 SLR 442 (at p 444F). Secondly, the intent to annoy need not be the primary or dominant motive prompting entry into the premises: **PP v Pardeep Singh** [1999] 3 SLR 116 (at pp 123F and 124C).

In the present appeal, the appellant relied on **Ong Eng Guan v PP** [1956] MLJ 44 . In that case, the accused was an employee of a sewing machine company, from which the complainant had bought a sewing machine on hire purchase. When the complainant fell into arrears in making the instalment payments, the accused went to the complainant`s premises with the intention of either taking possession of the machine or of collecting the instalments due. It was held by Wilson J that, while this may in fact have annoyed the complainant, no intent to annoy could be inferred. ***Ong Eng Guan*** thus appeared to support the following proposition: where it is established that the accused possesses the reasonable belief that he has some legitimate grounds for being on the complainant`s premises, the court should generally not infer an intent to annoy.

However, ***Ong Eng Guan*** is of no assistance to an accused if it is shown that the accused knows that he has been banned from entering the complainant`s premises. Once the accused knows that he no longer has any legal right to be on the complainant`s premises, it would lie ill in the accused`s mouth to say that he reasonably believed that he had legitimate grounds for being on the complainant`s premises. In **PP v Ker Ban Siong** [1992] 2 SLR 938 , the accused was expressly banned from entering the Bukit Turf Club. He was served with a prohibition notice and warned not to return. In spite of this, he still returned to the Club several months later, thus ignoring the ban. From this, it was inferred that the accused in that case possessed the requisite intent to annoy. Likewise, in ***PP v Seah Soon Keong*** , I offered the following illustration (at p 444F):

> *Take, for example, an accused who was banned from a club by its management and who persisted in entering the club in knowing violation of the ban. The circumstances of his entry are such that one can infer an intent to annoy the management who banned him. It is difficult to imagine what further evidence the prosecution might be called on to produce in such a situation.*

Reverting to the facts of the present appeal, the appellant was of the view that there was a conspiracy by the HDB management to have him dismissed. In fact, he even claimed to have lodged a report at the Bukit Merah Neighbourhood Police Post to have the alleged conspiracy investigated. It was the appellant`s case that on all the occasions when he visited the premises, his intention was to ascertain the truth behind his dismissal. Even so, the appellant had been banned, and he knew that he was so banned, from entering the premises. He thus knew that he had no right whatsoever to be on the premises. Thus, while it may have been the appellant`s position that he had a genuine desire to investigate the alleged conspiracy, it would not have been possible for him to contend that he reasonably believed that he had any legitimate grounds for being on the premises. The facts of this appeal are far more in line with the ***Ker Ban Siong*** situation, where the accused person deliberately entered the premises despite having knowledge that he was no longer allowed inside.

As such, the trial judge was amply justified in drawing the inference that the appellant possessed the requisite intent to annoy. In the trial below, the appellant tried to argue that PW1 was never truly annoyed, and that the Human Resource department of the HDB had pressured PW1 into saying that he was annoyed. The short answer to this is that it is immaterial whether the complainant was in fact annoyed or not. What is important is that the intent to annoy was present: see ***PP v Seah Soon Keong*** (at 444I) and ***Ong Eng Guan v PP*** .

The conviction should therefore be upheld.

The appeal against sentence

The punishment for criminal trespass is prescribed in s 447 of the Penal Code, which reads:

> *Whoever commits criminal trespass shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to $500, or with both.*

The appellant in the present case was sentenced to pay the maximum fine of $500. By no stretch of the imagination could the sentence be said to have been manifestly excessive. In fact, in light of the appellant`s conduct, I was of the view that he was let off rather lightly. He had repeatedly intruded into the premises, despite having been warned, on each occasion when he was caught, not to do so. The sneaky manner by which he entered the premises, ie waiting at the exit door until somebody opened it from the inside, was also an aggravating factor. All this was done with a view to continually harass the staff of the Human Resource department during office hours. In short, he had made an utter nuisance of himself.

I therefore exercised my powers under s 256 of the Criminal Procedure Code (Cap 68) and enhanced the sentence, imposing a term of imprisonment of two weeks, over and above the fine of $500.

Outcome:

Appeal dismissed.