Cheng Thomas v Public Prosecutor
[2000] SGHC 258

Case Number : MA 180/2000, 201/2000

Decision Date : 30 November 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Hay Hung Chun and Francis Ng (Deputy Public Prosecutor) for the respondent

Parties : Cheng Thomas — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Young offenders – Detention at Boys' Home – Whether has power to refer appellant to District Court for sentencing to reformative training – Juvenile Court – s 44(2)(e) Children and Young Persons Act (Cap 38)

Criminal Procedure and Sentencing – Sentencing – Young offenders – Chance for rehabilitation – Whether reformative training oppositee – Whether second sentence of reformative training excessive

Words and Phrases – "Of so unruly a character" – s 44(2)(e) Children and Young Persons Act (Cap 38)

: The two appeals (MA 180/2000 and MA 201/2000) were brought by the accused who was appealing against his sentence only. The first appeal MA 180/2000 was against the decision of District Judge Seng Kwang Boon, who, on 12 July 2000, had sentenced the appellant to reformative training. The second appeal MA 201/2000 was against the decision of District Judge Mavis Chionh on 26 July 2000 to impose a second sentence of reformative training which was to run concurrently with the one ordered earlier.

Background facts

On 3 February 1998, at the age of 14 years and 8 months, the appellant was found guilty and convicted by the Juvenile Court on two counts of theft under s 379 read with s 34 of the Penal Code (Cap 224) and a further two counts of theft under s 379A of the Penal Code. Consequently, the appellant was sentenced by the Juvenile Court to stay in the Singapore Boys` Home (`the Boys` Home`) for 30 months. On 30 June 1998, I heard and dismissed his appeal against conviction and sentence and ordered him to commence serving his 30-month term in the Boys` Home from that day onwards.

During his stay at the Boys` Home, the appellant was ill-disciplined and a recalcitrant trouble-maker who failed to comply with the rules and regulations of the Home. The following acts of misconduct and its surrounding circumstances were recorded by Mr Koh Ann Keong, the Superintendent of the Boys` Home:

(i) On 20 March 2000, the appellant and two other residents of the Boys` Home vandalised the Segregation Room by forcing open the security grille of the toilet exhaust louve, removing a piece of metal rod and using it to make a hole the size of a computer mouse on the ventilation wall. They then used the metal rod to reach for the light switch outside the Segregation Room to switch off the light.

(ii) On 22 March 2000, the appellant attempted suicide by drinking shampoo in the dormitory. He was later examined by the psychiatrist of the Institute of Mental Health, who assessed him as non-suicidal

and no follow-up treatment was required. The appellant claimed that he attempted suicide because he was unhappy with the punishment of four strokes of the cane that was meted out to him by the Superintendent. He had been punished for being rude, defiant and refusing to carry out the teacher`s instructions to clean the classroom properly.

(iii) On 14 April 2000, the appellant escaped from the lawful custody of one Mohan s/o Francis Xavier, the Senior House Master of Block E of the Boys` Home. The appellant had been brought to the Jurong Polyclinic for medical attention after he complained of asthmatic problems. The appellant absconded after receiving medical attention and whilst waiting for his prescription.

(iv) At the time of his escape, the appellant`s hands were cuffed with a pair of Smith and Wesson handcuffs. After escaping, he managed to remove the handcuffs which he threw away after that.

(v) On 27 May 2000, the appellant was arrested by the police and taken back to the Boys` Home. On the same night, the appellant vandalised the Segregation Room again. This time he removed a metal showerhead and tied it to one end of his T-shirt, making a potentially dangerous weapon which could cause serious injuries if swung at another person`s head. The appellant then demanded to be released from the Segregation Room and to see a psychiatrist as well as the Superintendent immediately. When his demands were not acceded to, the appellant banged his head against the wall to protest. Eventually, he had to be restrained to a bed in order to protect him from further self-harm. Thereafter, he abused the staff with vulgarities.

The proceedings

On 29 May 2000, following these acts of misconduct by the appellant, the Superintendent of the Boys` Home made representations to the Juvenile Court under s 44(2) of the Children and Young Persons Act (`CYPA`) (Cap 38). The information provided by the Superintendent referred to the appellant`s misbehaviour, as enumerated earlier, and stated that the appellant was of so unruly a character that he could not be detained in the Boys` Home.

On 20 June 2000, after considering the information from the Superintendent, the Juvenile Court was satisfied that the appellant was of so unruly a character that he could not be detained in the Boys` Home. As the appellant was already 17 years old at the time of the hearing, the court called for a Reformative Training Report to assess his suitability for a sentence of reformative training. After receiving a report stating that the appellant was suitable for reformative training, the Juvenile Court invoked its powers under s 44(2)(e) of the CYPA to refer the appellant to a District Court so that he may be dealt with under s 13 of the Criminal Procedure Code (Cap 68). For the ease of reference, s 44(2)(e) CYPA states as follows:

> *(2) Where a Juvenile Court is satisfied, on the representations of the manager of a place of detention, an approved school or an approved home, that a person ordered to be detained in the place of detention, approved school or approved home is of* ***so unruly a character that he cannot be so detained*** *, the Court may -*
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> *...*
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> *(e) where the person is a male and has attained the age of 16 years and the Court is satisfied that it is expedient with a view to his reformation that he should undergo a period of training in a reformative training centre, the Court*

may order him to be brought before a District Court to be dealt with under section 13 of the Criminal Procedure Code. Cap. 68.

The matter came before District Judge Seng Kwang Boon on 12 July 2000, who, after reading the information provided by the Superintendent of the Boys` Home and the pre-sentence report, agreed with the Juvenile Court that reformative training was appropriate for the appellant. The appellant was thus sentenced to undergo a period of reformative training. This formed the background leading to MA 180/2000.

At the same time, two fresh charges (DAC 23944/2000 and MAC 3929/2000) were brought against the appellant in relation to his escape from the Boys` Home. The first charge was for escaping from the lawful custody of Mohan s/o Francis Xavier when they were at the Jurong Polyclinic, an offence under s 224 of the Penal Code. The second charge related to the appellant`s disposal of his handcuffs after making his escape. The police were not able to recover these handcuffs even after the arrest of the appellant. The act of throwing away the handcuffs, which cost around $48-$60, constituted an offence under s 427, Penal Code.

The proceedings for the two fresh charges were first heard by District Judge Mavis Chionh on 20 June 2000. It should be noted that this hearing took place prior to that before District Judge Seng Kwang Boon, as mentioned earlier. The appellant pleaded guilty to the two charges and in mitigation, said that he was `very sorry` and asked for leniency from the court. After taking into account his previous convictions and his disciplinary record in the Boys` Home, DJ Mavis Chionh was of the view that reformative training should be considered. A pre-sentence report was therefore called for. The first report that was presented by the Prisons Department certified that the appellant was physically and mentally fit and suitable for reformative training. The appellant`s counsel, however, informed the court that the report failed to make any reference to the appellant`s admittance into the Institute of Mental Health after he drank shampoo. DJ Mavis Chionh thus directed that a supplemental report be prepared in order to take into account the concern raised over the appellant`s mental health history. A further report was thereafter prepared and considered by DJ Mavis Chionh on 26 July 2000. The supplemental report confirmed that the appellant was suitable for reformative training. Accordingly, a sentence of reformative training was ordered by DJ Mavis Chionh. As DJ Seng Kwang Boon had, about two weeks earlier on 12 July 2000, also imposed the same sentence on the appellant, the second sentence of reformative training was ordered to commence running from the same date as the term imposed earlier. This was in consideration of the principle laid down in **Ng Kwok Fai v PP** [1996] 1 SLR 568 , where it was held that `consecutive terms of reformative training are wrong in principle and could give rise to problems in practice`. The appeal against DJ Mavis Chionh`s decision formed the subject-matter of MA 201/2000.

The appeals

MA 180/2000 (against the decision of DJ Seng Kwang Boon)

The sentence of reformative training was imposed here as a result of the Juvenile Court invoking its powers under s 44(2)(e) of the CYPA. Under this provision, it must be established that the appellant was `of so unruly a character` that he cannot continue to be detained in the Boys` Home and it is expedient with a view to his reformation that he should undergo a period of training in a reformative

training centre.

On the question of what would constitute `of so unruly a character` in the context of the CYPA, there did not seem to be any relevant case authority that had previously interpreted such a phrase or the word `unruly`. In such circumstances, the appropriate approach was to adopt the plain and literal meaning of the term and phrase. For that purpose, I found it useful to refer to some of the definitions of the word `unruly` as stated in various dictionaries. In ***West`s Legal Thesaurus/Dictionary*** , the word `unruly` was defined as `difficult to manage or control; hyperactive`. In ***The New Shorter Oxford English Dictionary*** , the same word was defined to mean `not easily controlled or disciplined; ungovernable; disorderly` and in the ***Longman Dictionary of the English Language*** , the meaning stated was `difficult to discipline or manage` and `not submissive to control`.

Whether or not the appellant was `of so unruly a character` was clearly a question of fact which must be determined from the factual circumstances of the case. I noted from his record that, since his early secondary school days, the appellant had shown himself to be disobedient, disruptive and obdurate. He was expelled from Thomson Secondary School in November 1996 after spending a year there. The basis for his expulsion was his continual misconduct which included possession of cigarettes, theft, molestation, rude behaviour towards teachers, assault and causing hurt to classmates. While the appellant was still at Thomson Secondary School, the principal had referred him to the Child Guidance Clinic managed by the Ministry of Health. He was diagnosed as having a `conduct disorder`. The appellant was then given another chance at schooling and was placed in First Toa Payoh Secondary School. However, he failed to learn from his errant ways and created a series of problems in the short period of three months that he spent there. It was observed by his teachers that the appellant was disruptive and rude in class, he vandalised school property, refused to do his work and was found in possession of cigarettes. He was a persistent trouble-maker to the extent that the school was left with no choice but to expel him in March 1997. Subsequently, the appellant voluntarily admitted himself into the Singapore Boys` Town in July 1997. Once again, he failed to make use of the opportunity to improve himself. Soon after his admission, he ran away from the institution to avoid punishment for his misbehaviour and even after his return some time later, he got into fights and other forms of trouble again. After he was caught and convicted for a series of thefts, the appellant was sentenced to stay in the Singapore Boys` Home for 30 months. Probation was not recommended for him as it was observed that the appellant was not at all remorseful for his misdeeds and required a stricter and more regimented environment to instil in him greater self-discipline and respect for the law and authority.

It was evident from the facts that the rehabilitative experience which the Boys` Home was intended to provide had not been achieved. The report prepared by the Superintendent of the Boys` Home for the Juvenile Court, listed out the whole litany of misdemeanours committed by the appellant even after he had been admitted to the Boys` Home. He remained defiant towards authority and refused to take any responsibility for his various wrong-doings. I did not have any doubt that the appellant was clearly of an `unruly` character. He had demonstrated himself, time and again, to be a rebellious and deviant youth, almost incapable of control. The stay in the Boys` Home was plainly not able to provide the suitable environment for his rehabilitation and reformation. In such a situation, and in view of the fact that the appellant had attained the age of 16 years, I was of the view that the Juvenile Court was entitled to exercise its powers under s 44(2)(e) of the CYPA, to order the appellant to be brought before a District Court to be given a sentence of reformative training.

Taking into consideration the young age of the appellant and his unfortunate family background, I decided that it was appropriate to give him another chance at rehabilitation. Since young, the appellant had lacked proper parental guidance and supervision, his parents having separated since he was three years old, and this was probably the fundamental cause of his unruliness. The appellant

was in serious need of some strict guidance and enforced reformation. This would not be suitably provided in a custodial sentence. In the case of **PP v Mok Ping Wuen Maurice** [1999] 1 SLR 138 at 142, I had stated that:

> *Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young don`t know any better` and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour.*

These considerations were similarly applicable to the present facts of the case. A custodial sentence was therefore unsuitable for the appellant.

However, it was obviously not a satisfactory arrangement for the appellant to continue his sentence at the Boys` Home, it being apparent that a more severe and regimented environment was necessary to steer the appellant in the right path. Thus, I was of the view that a sentence of reformative training was the most apposite in such circumstances and was not excessive at all. The appeal against the decision of DJ Seng Kwang Boon was therefore dismissed.

MA 201/2000 (against the decision of DJ Mavis Chionh)

For the earlier stated reasons, the sentence passed by DJ Mavis Chionh was similarly not excessive. The two fresh offences under s 224 and s 427 of the Penal Code each provided for punishment `with imprisonment for a term which may extend to 2 years, or with fine, or with both`. Applying the principles I laid down in ***Ng Kwok Fai v PP*** (supra), a custodial sentence was not suitable on the present facts since the appellant had already been sentenced to reformative training by DJ Seng Kwang Boon. The appellant`s antecedents and long history of misconduct, however, ruled out the mere imposition of a fine for the two offences. In the light of all the foregoing, I found the concurrent sentence of reformative training ordered by DJ Mavis Chionh to be the most appropriate sentence for the appellant. Accordingly, I ordered for this appeal to be dismissed too.

Outcome:

Appeals dismissed.