Wong Sin Yee v Public Prosecutor
[2001] SGHC 102

Case Number : MA 30/2001, Cr M 15/2001

Decision Date : 23 May 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jimmy Yim SC and Suresh Divyanathan (Drew & Napier LLC) for the appellant; Jennifer Marie, Lee Lit Cheng and Eugene Lee (Deputy Public Prosecutors) for the respondent

Parties : Wong Sin Yee — Public Prosecutor

Criminal Procedure and Sentencing – Compounding of offences – Composition before date of arrest or application for warrant of arrest or summons – Whether consent of court necessary – s 199(1) Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Criminal references – Determination of criminal matter by High Court in exercise of appellate jurisdiction – Application by accused to refer question of law to Court of Appeal – Whether court ought to exercise discretion to allow reference to Court of Appeal - s 60(1) Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Criminal Procedure and Sentencing – Sentencing – Penalties – Hurt – Road bully causing hurt to victim – String of antecedents and no signs of remorse – Whether sentence of three months' imprisonment manifestly inadequate – s 323 Penal Code (Cap 224)

: Wong Sin Yee (`Mr Wong`), who is an advocate and solicitor, was convicted by District Judge Foo Chee Hock on 31 January 2001 on the following two charges:

> *First charge:*
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> *You, Wong Sin Yee, Male 41 years, NRIC No S1328846A, are charged that you, on the 26th day of December 1998, at or about 7.30 pm, along South Bridge Road, Singapore, which is a public place, with intent to cause alarm to Chou Siew Kee, did use insulting words towards the said Chou Siew Kee, to wit, by shouting, `why called your father, call Lee Kuan Yew or the F...ing Police` thereby causing alarm to the said Chou Siew Kee, and you have thereby committed an offence punishable under section 13A(1)(a) of the Miscellaneous Offences (Public Order & Nuisance) Amended Act, 1996, Edition, Chapter 184.*
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> *Second charge:*
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> *You, Wong Sin Yee, Male, NRIC No S1328846A are charged that you on the 26th day of December 1998, at or about 7.30 pm, along South Bridge Road, Singapore did voluntarily cause hurt to one Mok Gok Keong, M/30 yrs, by hitting him on his mouth using your handphone, and you have thereby committed an offence punishable under section 323 of the Penal Code, Chapter 224.*

The facts

On 26 December 1998, Mr Mok Gok Keong (`Mr Mok`) was driving his car along North Bridge Road with his wife, Ms Chou Siew Kee (`Ms Chou`), when Mr Wong tried to cut into his lane. Mr Mok sounded

his horn in warning as the traffic in his lane was very heavy. Mr Wong nevertheless squeezed into Mr Mok`s lane. When Mr Wong`s car was just in front of Mr Mok`s car, he braked suddenly. Mr Mok`s car also came to a sudden stop.

Both drivers alighted from their cars. Mr Wong went up to Mr Mok and asked him why he had hit his vehicle. Mr Mok observed that there was still a gap between the vehicles and no damage to either car. As their cars were obstructing the traffic, they returned to their cars, drove them to the side of the road, and continued their argument along the five-foot way.

Mr Wong said he would call the police since Mr Mok refused to compensate him. He used his hand phone, then said that the police would not come since no one was injured. Mr Mok asked his wife to call her father to see what could be done. When Ms Chou used her hand phone, Mr Wong rushed forward, waving his hand phone in his left hand, and scolded Ms Chou loudly, using the words stated in the first charge.

In fear that Mr Wong would harm his wife, Mr Mok told her to return to the car. As Mr Mok did not wish to speak to Mr Wong, he turned around. Suddenly, he felt his hair being pulled by Mr Wong, who used the hand phone in his left hand to hit Mr Mok on the mouth. Mr Wong then released Mr Mok and pushed him away. He clenched both his fists and challenged Mr Mok to a fight. Ms Chou demanded that Mr Wong hand over his identity card but he refused. Both parties parted. Mr Mok and Ms Chou went to the Central Police Station to make a police report. Mr Mok was referred to the Singapore General Hospital for a medical examination. The medical report showed that he suffered a 1cm haematoma and superficial abrasion on his right inner lower lip.

On 2 May 2000, Mr Wong gave Mr Mok $1,000 as compensation in an attempt to settle the matter. The two charges were brought against Mr Wong on 21 June 2000. The trial was heard before the judge from 23 to 24 October 2000 and 29 to 31 January 2001.

Decision of the judge

The judge withheld his consent to the composition and convicted Mr Wong on both charges. Mr Wong was fined $2,000 and ordered to pay $1,000 in compensation to the complainant in respect of the first charge. He was sentenced to three months` imprisonment in respect of the second charge.

Mr Wong`s appeal

Mr Wong appealed against the conviction in MA 30/2001. His appeal centred on the proper construction of s 199 of the Criminal Procedure Code (Cap 68) (`CPC`), which provides:

> *(1) The offences punishable under the Penal Code shown in the sixth column of Schedule A as being compoundable may be compounded by the person mentioned in that column provided that when an arrest has been effected or an application has been made for the issue of a warrant of arrest or summons the consent of a Magistrate or, if the offence is not triable by a Magistrate`s Court, of a District Judge, shall first be obtained.*
>
> *...*

(4) The composition of an offence under this section shall have the effect of an acquittal of the accused.

In **Kee Leong Bee v PP** [1999] 3 SLR 190 , the High Court held in respect of s 199(1):

19 Section 199(1) of the CPC does not state that the consent of the court is not required if the composition is made before an arrest has been effected or an application made for the issue of a warrant of arrest or summons. Instead, on its proper construction, an offence listed in the sixth column of Schedule A is compoundable only with the consent of the court when an arrest has been effected or an application made for the issue of a warrant of arrest or summons. It does not matter that the composition was made before the arrest was effected. The point is that once an offence is considered grave enough for formal proceedings to be commenced, the offence can be compounded only if the court agrees to it.

20 This reading of s 199(1) of the CPC is supported by the fact that offences such as causing grievous hurt by an act which endangers human life under s 338 of the Penal Code and assault or use of criminal force to a person with intent to outrage modesty under s 354 of the Penal Code are listed as compoundable under the sixth column of Schedule A. If the appellants` suggested reading of s 199(1) of the CPC is correct, it would mean that serious offences such as those under s 338 and s 354 of the Penal Code can be compounded without the consent of the court. Compositions are based on the public policy that, where the interests of the public are not vitally affected, such as in offences which are minor and largely private in nature, the injured party should be allowed to come to a settlement with the person against whom he complains. For offences such as those under s 338 or s 354 of the Penal Code which are potentially grave offences, it is difficult to conceive that Parliament would have regarded them as mere petty wrongs which do not affect the public interest and hence require no judicial sanction before composition is allowed. It is noteworthy that in India such offences are listed in s 320(2) of the Indian CPC. They are regarded as offences of greater gravity and are compoundable only with the consent of the court.

Mr Jimmy Yim SC, who appeared on behalf of the appellant, asked that the court reverse its decision in ***Kee Leong Bee*** . His main argument was that the legislative history of s 199 is against the interpretation taken by the court in ***Kee Leong Bee*** . He noted that in 1900, the equivalent provision of the CPC was s 248, subsequently renumbered as s 253 in 1936. The section provided:

(1) The offences punishable under the sections of the Penal Code described in the first two columns of Part A of the Table next following may be compounded by the person mentioned in the third column of that Table, or when a prosecution of such offence is actually pending, be compounded by such person with the consent of the Court before which the case is pending.

(2) The offences punishable under the sections of the Penal Code described in

> *Part B of the Table next following may with the consent of the Court before which the case is pending, be compounded by the person to whom the hurt has been caused.*

In 1954, a new provision on composition was introduced in the form of s 242. The wording for s 242 of the 1954 CPC is the same as the present s 199. It stated:

> *The offences punishable under the Penal Code shown in the sixth column of Schedule A as being compoundable may be compounded by the person mentioned in that column* ***provided that when an arrest has been effected or an application has been made for the issue of a warrant of arrest or summons*** *the consent of a Magistrate or, if the offence is not triable by a Magistrate`s Court, of a District Judge, shall first be obtained. [Emphasis is added.]*

In Supplement No 61, Government Gazette, Colony of Singapore, July to December 1954, the explanatory note to the Bill introducing s 242 stated:

> *In the existing section 253 of the Code there appears a table listing the offences which may with the consent of the Court be compounded. In Schedule A which appears at the end of the Code it is stated in Column 6 whether particular offences are compoundable or not. For the sake of simplicity the table appearing in the body of the Code has been omitted and again for the sake of simplicity it is provided by this clause that* ***once cognizance of an offence has been taken by a Court the consent of a Court must be obtained before composition****. It is proposed to amend the sixth column of Schedule A by inserting therein the effect of the table now omitted. [Emphasis is added.]*

Mr Yim observed that, according to the explanatory note, the effect of s 242 is this. There are no longer two distinct categories of compoundable offences, one falling under Table A and the other under Table B. Instead, there is now only one sole criterion, that `once cognizance of an offence has been taken by a Court the consent of a Court must be obtained before the composition`. He argued that the meaning of this must be that, if composition is reached before the court took cognizance of the offence, the consent of the court is not required. Since Mr Wong had given Mr Mok $1,000 as compensation on 2 May 2000 before the court took cognizance of the offence, the offence in the second charge had been compounded and Mr Wong was effectively acquitted under s 199(4) of the CPC.

While this particular sentence of the explanatory note could be read this way, it is also open to an alternative reading. It is also possible to read that sentence as saying that, once the court has cognizance of an offence, there can only be `composition` as defined in s 199(4), in the sense of having the effect of an acquittal, only if the court grants its consent. Without such consent, the `personal settlement` between the parties will not be regarded by the courts as a `composition`, with the effect of acquittal as defined in s 199(4).

The explanatory note and Mr Yim`s discussion about legislative history therefore do not add much, except to say that there is ambiguity in the provision, but that was always apparent on the language of the provision. The critical line in s 199(1) is the part that provides that `when an arrest has been

effected or an application has been made for the issue of a warrant of arrest or summons`, the consent of the court is needed before the offence can be compounded. The question is this: does that phrase mean that consent is needed only ` ***if*** an arrest has ***already*** been effected or ***if*** an application has ***already*** been made for the issue of a warrant of arrest or summons`, or does it mean that consent is needed ` ***whenever*** an arrest has been effected or ***whenever*** an application has been made for the issue of a warrant of arrest or summons`. Clearly, the provision is open to either interpretation. Mr Yim agreed that the provision is ambiguous and open to two interpretations. Which one should be taken?

Mr Yim admitted that the problem with his reading is that serious offences such as grievous hurt, endangering life and outrage of modesty will be compoundable without the consent of the court. He argued, however, that this problem may be more apparent than real, since there has been no occasion where such a problem has surfaced. However, a mere 12 days after ***Kee Leong Bee*** (supra) was delivered, the High Court heard **PP v Mohamed Nasir bin Mohamed Sali** [1999] 4 SLR 83 .

The facts of that case involved a religious teacher who faced three charges of outraging the modesty of his niece. The issue there was whether the district judge should have given his consent to the application to compound the offence. The relevance of ***PP v Mohamed Nasir bin Mohamed Sali*** to the present argument is this: these things ***do*** happen. If s 199(1) was not read in the way it was in ***Kee Leong Bee*** (supra), it would lead to very wrong results. Mr Yim did not deny this. Accused persons, faced with the prospect of humiliation and punishment, invariably feel the desire to pressurise the victim into settlement. If such settlements are allowed as compositions without the consent of the court, it would undermine the entire basis of criminal jurisprudence. Not only that, it would lead to an inequitable legal system where the rich can avoid criminal sanction by paying off the poor. For these reasons, I dismissed Mr Wong`s appeal.

Sentence

The Public Prosecutor cross-appealed in MA 30/2001 against the sentence for the second charge on the ground that it was manifestly inadequate. An offence under s 323 of the Penal Code (Cap 224) is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to $1,000. Mr Wong was sentenced to three months` imprisonment.

I have made it clear in **Ong Hwee Leong v PP** [1992] 1 SLR 794 and **PP v Lee Seck Hing** [1992] 2 SLR 745 that there can be no place in our roads for road bullies and that imprisonment should follow in such cases where the charge is under s 323 of the Penal Code.

In ***Neo Ner v PP*** MA 113/2001, the appellant pleaded guilty to a charge under s 323 of the Penal Code. He was sentenced to three months` imprisonment. There was a dispute on the road. The appellant alighted from his car and moved to the victim`s car. When the victim opened his car door to get out, the appellant slammed the door in the victim`s face. The victim suffered a 1cm superficial laceration on his cheek and a 3cm laceration on the back of his head. I dismissed the appellant`s appeal against sentence.

The appellant in ***Neo Ner v PP*** was a first time offender, who showed his remorse by pleading guilty to the offence. In contrast, Mr Wong brings with him a string of colourful antecedents, and no signs of remorse. He was convicted on 25 October 1994 on 12 charges of disobedience to an order duly promulgated by a public servant, an offence under s 188 of the Penal Code. He was convicted on 6 October 1999 of an offence under s 65 of the Road Traffic Act (Cap 276) for driving without due care or reasonable consideration.

In particular, on 4 October 1994, he was convicted of an offence under s 509 of the Penal Code for insulting the modesty of a woman, and of an offence under s 323 of the Penal Code for voluntarily causing hurt. Mr Wong had gone to the Singapore National Eye Centre in August 1992 to see a doctor. A dispute arose between him and the counter staff when Mr Wong demanded to see the doctor immediately. In the course of the dispute, Mr Wong told a female staff at the counter, `You take out your skirt and I put my finger in`. When a nursing officer intervened, Mr Wong tried to punch the female staff but ended up punching the nursing officer.

Mr Wong`s antecedents show a blatant disregard for human decency and civility. Through these and the present offence, he has shown himself to be extremely abusive and highly prone to violence. He behaved like an absolute gangster throughout the incident. Three months` imprisonment for him was manifestly inadequate in light of all these factors. The sentence was therefore increased to one year`s imprisonment and a fine of $1,000, with six months` imprisonment in default.

Reference to Court of Appeal

At the end of appeal MA 30/2001, Mr Wong applied by way of criminal motion CM 15/2001 for a question to be referred to the Court of Appeal pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) (`SCJA`). The question was:

> *On a true construction of s 199(1) of the Criminal Procedure Code, is the consent of the court required for the compounding of an offence listed as compoundable in the sixth column of Schedule A when an arrest or application for summons or warrant of arrest is made, even though the person hurt and the accused have agreed to a composition before the date of the arrest or application for summons or warrant of arrest?*

References to the Court of Appeal are governed by s 60(1) of the SCJA, which provides:

> *When a criminal matter has been determined by the High Court in the exercise of its appellate or revisionary jurisdiction, the Judge may on the application of any party, and shall on the application of the Public Prosecutor, reserve for the decision of the Court of Appeal any question of law of public interest which has arisen in the matter and the determination of which by the Judge has affected the case.*

The operation of s 60(1) of the SCJA was discussed by the High Court in **Ng Ai Tiong v PP** [2000] 2 SLR 358 , where it was held:

> *9 The requirements which must be satisfied before a s 60 application can be allowed are set out clearly in the words of the section itself. These requirements can be summarised as follows:*
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> *(i) There must be a question of law.*
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> *(ii) This question of law must be one of public interest and not of mere personal importance to the parties alone.*

(iii) The question must have arisen in the matter dealt with by the High Court in the exercise of its appellate or revisionary jurisdiction.

(iv) The determination of the question by the High Court must have affected the outcome of the case.

It should be borne in mind that where the application is brought by any party other than the Public Prosecutor, the power of the High Court under s 60 is discretionary in nature. This means that, even if all the above requirements have been satisfied, the court still retains the discretion to disallow a reference to the Court of Appeal.

10 The above listed conditions have been extensively interpreted and examined by previous local judicial authorities. In all these cases, it has been the common emphasis that the discretion under s 60, SCJA, must be exercised sparingly by the High Court. This is to give recognition and effect to Parliament`s intention for the High Court to be the final appellate court for criminal cases commenced in the subordinate courts. The importance of maintaining finality in such proceedings must not be seen to be easily compromised through the use of such a statutory device. In ***Abdul Salam bin Mohamed Salleh v PP*** *[1990] SLR 301 [1990] 3 MLJ 275 , Chan Sek Keong J [as he then was] had cautioned aptly that:*

`[Section 60, SCJA] is not an ordinary appeal provision to argue points of law which are settled or novel points which can be decided by the application or extension of established principles of law or the application of statutory provisions which have been authoritatively construed by higher courts.`

Hence, it is imperative that s 60 of the SCJA is utilised only in exceptional cases so as to ensure that the proper purpose of the section is not abused to serve as a form of `backdoor appeal`.

Mr Yim submitted that the question should be decided by the Court of Appeal because there are two conflicting views of the High Court on this issue. However, the question raised had already been settled conclusively by the High Court in ***Kee Leong Bee*** (supra). The statement in **PP v Norzian bin Bintat** [1995] 3 SLR 462 at 473G relied on by Mr Yim as evidence of a conflicting view of the High Court was clearly obiter. This was plainly evident from ***Norzian*** , where the issues were whether s 199 of the CPC was ultra vires the Constitution unless construed such that it would apply only in cases of private prosecutions, and whether the district judge wrongly exercised his discretion to allow the composition. Moreover, I had made it clear in ***Kee Leong Bee*** that my statement in ***Norzian*** , which Mr Yim relied on, was made in reliance on **Dharichhan Singh v Emperor** (Unreported) , which dealt with a provision of the Indian CPC which is very different from our s 199 of the CPC, and consequently should be regarded solely as obiter dictum.

As was stressed by Chan Sek Keong J (as he then was) in **Abdul Salam bin Mohamed Salleh v PP** [1990] SLR 301 [1990] 3 MLJ 275 , it is imperative that s 60 of the SCJA is utilised only in exceptional cases so as to ensure that the proper purpose of the section is not abused to serve as a form of `backdoor appeal`. The question raised being one which has been settled conclusively in ***Kee Leong Bee*** , I saw no basis to exercise my discretion to allow the question to be referred to the Court of

Appeal. Criminal Motion 15 of 2001 was therefore dismissed.

Outcome:

Appellant`s appeal dismissed; respondent`s appeal allowed; criminal motion dismissed.