Chen Weixiong Jerriek v Public Prosecutor
[2003] SGHC 103

Case Number : MA 18/2003

Decision Date : 30 April 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : James Lee Ah Fong (Ng, Lee & Partners) for the appellant; Edwin San (Deputy Public Prosecutor) for the respondent

Parties : Chen Weixiong Jerriek — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appeals – Application of the totality principle.

Criminal Procedure and Sentencing – Mitigation – Whether offender charged with multiple offences considered first offender

Criminal Procedure and Sentencing – Mitigation – Remorse – Whether evidence of genuine remorse shown

1 The appellant pleaded guilty in the district court to a total of seven charges, comprising three counts of robbery with common intention pursuant to s 392 of Penal Code (Cap 224) read with s 34 of the Penal Code, three counts of robbery with hurt with common intention under s 394 of the Penal Code read with s 34 of the Penal Code and one count of voluntarily causing hurt by means of a dangerous weapon under s 324 of the Penal Code. For the sake of clarity, the charges are set out hereunder.

(a) DAC 40371/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 5th day of July 2002 at or about 1.00pm at void deck of Blk 121, Lor 1 Toa Payoh, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, with furtherance of the common intention of you all, did rob one Ng Juin Chye Joel of a handphone valued at about $450/- and thereby committed an offence punishable under s 392 read with s 34 of the Penal Code.

(b) DAC 40732/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 5th day of July 2002 at or about 1.00pm at void deck of Blk 121, Lor 1 Toa Payoh, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, with furtherance of the common intention of you all, did rob one Ow Tuck Huat of a handphone valued at about $450/- and thereby committed an offence punishable under s 392 read with s 34 of the Penal Code

(c) DAC 41426/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 14th day of June 2002 at or about 3.50pm at void deck of Blk 242, Simei Street 5, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, were jointly concerned in committing robbery of one handphone valued at about S$300/- in the possession of one Yap Seng Wee Joel, and whilst committing the said robbery, voluntarily caused hurt to the said Yap Seng Wee Joel, to wit, by slapping him and banging his head against the wall and you all have thereby committed an offence punishable under s 394 of the Penal Code.

(d) DAC 41427/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 14th day of June 2002 at or about 5.30pm at along Blk 408, Bedok North Street 1, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, were jointly concerned in committing robbery of one handphone valued at about S$700/- in the possession of one Ong Jian Wei, and whilst commiting the said robbery, voluntarily caused hurt to the said Ong Jian Wei, to wit, by punching him on the face and head and you have thereby committed an offence punishable under s 394 of the Penal Code.

(e) DAC 41428/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 23rd day of June 2002 at or about 5.30pm at Level 3 staircase lobby of Century Square Shopping Centre located at No. 1 Tampines Central 1, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, with furtherance of the common intention of you all, did rob one Shum Shun Yin of one handphone valued at about $428/- and thereby committed an offence punishable under s 392 read with s 34 of the Penal Code.

(f) DAC 41433/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 21st day of June 2002 at or about 5.45pm at the staircase of White Sands Shopping Centre located at No 1, Pasir Ris Central Street 3, Singapore, together with Koh Bang Long and Chia Jia Ting Samuel, were jointly concerned in committing robbery of one handphone valued at about S$100/- in the possession of one Ng Wei Lun Schwarzenegger, and whilst committing the said robbery, voluntarily caused hurt to the said one Ng Wei Lun Schwarzenegger, to wit, by punching him on the face and kicking him in the chest and you all have thereby committed an offence punishable under s 394 of the Penal Code.

(g) DAC 61933/2002

You, Chen Weixiong Jerriek, male/17 years, NRIC S8539057J, are charged that you on or about the 26th day of December 2002 at or about 11.30pm outside Yishun 8 Coffeeshop at Yishun Central Road, Singapore, did voluntarily cause hurt to one Andy Lim Ban Chit, by means of an instrument which was used as a weapon of offence, is likely to cause death, to wit, a beer bottle and you thereby committed an offence punishable under s 324 of the Penal Code.

2 The appellant was sentenced to two years and six months imprisonment and six strokes of the cane in each of DAC 40371/2002, DAC 40372/2002 and DAC 41428/2002; five years and six months imprisonment and 12 strokes of the cane in each of DAC 41426/2002, DAC 41427/2002 and DAC 41433/2002; and one year and six months imprisonment in DAC 61933/2002. The district judge ordered the sentences in DAC 40371/2002, DAC 41426/2002 and DAC 61933/2002 to run consecutively and the other sentences to run concurrently. In total, the appellant was sentenced to nine years and six months imprisonment and 24 strokes of the cane pursuant to s 230 of the Criminal Procedure Code (Cap 68).

3 In passing sentence, 38 charges were taken into consideration. These comprised 32 charges for offences of robbery with common intention under s 392 of the Penal Code read with s 34 of the Penal Code and six charges for offences of robbery with hurt with common intention under s 394 of the Penal Code read with s 34 of the Penal Code. The present appeal was brought against sentence. I dismissed the appeal and now give my reasons.

The facts

4 The facts of the case are set out in the statement of facts to which the appellant admitted unreservedly in pleading guilty to the charges against him. The appellant, together with two accomplices, one Koh Ban Leong and one Chia Jia Ting Samuel, adopted a similar mode of operation in respect of the offences of robbery and robbery with hurt over a period of two months in June and July 2002. The appellant and his accomplices approached their victims, all of whom were between the ages of 12 and 16 years, and accused the victims of either staring at them or of belonging to a secret society. The victims were then forced to go with the appellant and his accomplices to quiet places such as multi-storey carparks or staircases of shopping centres. There, the victims were robbed of their handphones. Victims who resisted were beaten up. The beatings consisted of punches, kicks and slaps; one victim had his head slammed against a wall. The appellant and his accomplices sold off the stolen handphones to shops and spent the proceeds on food, drink and arcade games. The total value of the items taken in the 44 charges of robbery and robbery with hurt was $10,321.

5 In respect of DAC 61933/2002, the appellant committed the offence of voluntarily causing hurt by means of a dangerous weapon on 26 December 2002 while he was out on bail for the charges of robbery and robbery with hurt offences. The appellant was at a coffeeshop at Yishun Central Road. He perceived that the 22 year old victim, who was sitting at another table, was staring at him. He confronted the victim, grabbed an empty beer bottle from a nearby table and smashed it on the victim's head with such force that the bottom half of the bottle broke off. The victim suffered a 2 cm laceration in the occipital region.

The decision below

6 The only issue before the district judge was the appropriate sentence to impose on the appellant as the appellant had unequivocally pleaded guilty to the seven charges proceeded with against him in the court below. In sentencing the appellant, the district judge considered both the aggravating and mitigating factors of the case.

7 The district judge was of the view that, while the accused had pleaded guilty to the charges and had cooperated fully with the police in their investigations, the number of grave aggravating factors far outweighed these mitigating factors. The 44 robbery and robbery with hurt offences were committed over a period of about two months; on 14 June 2002, two offences of robbery with hurt were committed at two different locations within two hours of each other. The appellant had committed a large number of offences as a means of obtaining extra money to feed his lifestyle. The robbery offences were committed in a calculated manner and the appellant and his accomplices had selected their victims carefully, targeting only those who were smaller in size and younger than them, so that they could easily achieve their objectives through verbal threats. The district judge found that the appellant was of a violent disposition. Further, he had committed the offence of voluntarily causing hurt with a dangerous weapon while he was out on bail for the other offences; this displayed his indifference to the consequences of such criminal behaviour on the victim and upon himself.

8 The district judge ruled out the possibility of sentencing the appellant to probation as he took the view that the appellant could not be controlled by his parents, both before the offences of robbery and robbery with hurt were committed and during the period of bail after the appellant had been arrested. In addition, the offences had been committed while the appellant was receiving counselling from the Sembawang Family Service Centre ('the FSC'). Further, the serious nature of the appellant's offences and his violent disposition meant that reformative training was not a suitable option. Based on these considerations, the district judge imposed a sentence of imprisonment and

caning, as set out in para 2.

The appeal

9 On appeal, counsel for the appellant contended that the sentence imposed on the appellant was manifestly excessive. Counsel asserted that the district judge erred in finding that the appellant had a violent disposition as a report prepared by a volunteer counsellor at the FSC ('the FSC report') had stated that the appellant was 'positive to change and receptive to help'. Further, it was contended that the district judge's belief, that the appellant was not a 'mere follower' in the robbery offences and that the offences had been committed in a calculated manner, was without basis. Counsel also argued that there were mitigating factors which the district judge had failed to give sufficient weight to, such as the fact that the appellant was a 'youthful, first time offender' who was remorseful and capable of rehabilitation.

10 It was unsurprising that the district judge was of the opinion that the appellant had a violent disposition. That he was a violent and dangerous person was clear from the nature of his offences. When he was unable to get his victims to hand over their handphones using verbal threats alone, he had absolutely no qualms about resorting to physical violence on no less than nine occasions. In light of this, I was entirely unconvinced by counsel's contention that the incident at the coffeeshop at Yishun Central Road was a 'one-off incident'.

11 I also found no merit in counsel's argument that the district judge had failed to give due weight to the FSC report. However, it was my view that the report in fact carried very little weight, as it had been prepared by the counsellor following a single hour-long meeting and six brief telephone conversations with the appellant between March and August 2002. I found it difficult to accept that an accurate assessment of the appellant's character or capacity for rehabilitation could be made on this basis. I also noted that the robbery and robbery with hurt offences were committed while the appellant was undergoing counselling at the FSC; this cast serious doubt on the counsellor's assessment that the appellant was 'positive to change and receptive to help'.

12 I rejected counsel's contention that the appellant had been a mere follower in the robberies. The sheer number of offences committed put paid to this contention, as they indicated that the appellant was obviously an active perpetrator in the criminal activity. The large number of offences also cast doubt on the appellant's contention that the offences were not calculated. The robberies were not acts of mischief committed on a whim. The appellant and his accomplices obviously picked their victims with great care and only targeted victims who would be easily frightened into handing over their handphones. The victims were also identified by the appellant as being those who were unable to defend themselves against the violent assaults of the appellant and his accomplices if violence was resorted to.

13 Of particular concern to me were the arguments made by counsel that the appellant was a first offender, that he was remorseful and that he was young and therefore capable of rehabilitation. I shall deal with these arguments in some depth.

First offender

14 Counsel for the appellant stressed tirelessly before me that the appellant was a 'first offender' as the appellant had no antecedents at the time of his conviction. In *PP v Boon Kiah Kin* [1993] 3 SLR 639, I stated that

> [A] person who commits but one offence is presumptively less deserving of severity than a person who

> commits two offences of the same nature, and it seems to me unreal that their relative standing should change simply because of an administrative factor such as the speed or sequence of or interval between the progress of criminal proceedings in relation to the second person's two offences.

15 The appellant could not be regarded as a 'first offender' in any sense of the phrase. While he had no antecedents in the sense of prior convictions, he had pleaded guilty to seven charges of robbery with common intention, robbery with hurt with common intention and voluntarily causing hurt by means of a dangerous weapon. Further, no less than 38 other charges were taken into consideration for the purpose of sentencing – these comprised 32 charges for offences of robbery with common intention and six charges for offences of robbery with hurt with common intention. The only reason the appellant had no prior convictions was because the law had not yet caught up with him for his past misdeeds.

16 I was mindful that in *PP v Keh See Hua* [1994] 2 SLR 277, I regarded the appellant in that case as being a 'first time offender' even though he faced 19 charges of employing foreign workers without obtaining valid work permits under the Foreign Workers Act (Cap 91A). However, the particular words of s 5(8) of the Foreign Workers Act were such that the court had no choice but to treat that appellant as a first time offender as the 19 charges had been brought against that appellant in a single trial. Section 5(8) provides that:

> For the purpose of this section, all convictions for the contravention of subsection (1) entered against an employer at one and the same trial shall be deemed to be one conviction.

17 As I noted in *Keh See Hua*, the purpose for which s 5(8) was enacted was to exclude first time offenders with multiple charges from the mandatory minimum sentence to which offenders with a second or subsequent conviction under the Foreign Workers Act are subject. Given the unambiguous intention of Parliament in enacting s 5(8), it was not open to me to regard that appellant as anything but a first time offender. However, being unconstrained by any similar enactment in the present case, I am of the view that it is the prerogative of this court to refuse to consider as a first time offender anyone who has been charged with multiple offences, even if he has no prior convictions. I would venture further to hold that in any case, the courts in general should be extremely reluctant to regard such persons as first time offenders.

Remorse

18 Counsel for the appellant also submitted that his client was extremely remorseful, as evidenced by his plea of guilt and by the letters of apology he had written to the victims in the robberies.

19 While the voluntary surrender by an offender and a plea of guilt by him in court are factors that can be taken into account in mitigation as evidence of remorse, their relevance and the weight to be placed on them must depend on the circumstances of the case: *Wong Kai Chuen Philip v PP* [1990] SLR 1011. I see very little mitigating value in a robber pleading guilty after he has been turned over to the police; in this case, the game was up for the appellant as his father had handed him over to the police.

20 Further, there is always the public interest element to be considered. The Court of Appeal has clearly established in *Fu Foo Tong and Ors v PP* [1995] 1 SLR 448 that the protection of the public is an important exception to the general rule that an offender who pleads guilty is entitled to a discount of the sentence which would have been imposed on him had he claimed trial and been found guilty. The following passage from Lord Lane's judgment in *R v Costen* (1989) 11 Cr App R (S) 182

was quoted approvingly by the Court of Appeal in *Fu Foo Tong* and bears repeating here:

> But there are certain exceptions, likewise well authenticated in the authorities, to that general rule that discount will be allowed for a plea of guilty. The first and most important exception is the protection of the public. Where it is necessary that a long sentence, if necessary the maximum sentence, should be passed in order to protect the public, in those circumstances a plea of guilty may not result in any discount.

21 It was my view that a long sentence was necessary to protect the public in this case. The appellant was clearly of a violent disposition and had no qualms about venting his frustrations in public in a violent manner at the slightest perceived provocation. The appellant targeted vulnerable victims to rob. As the court noted in *Lim Kim Seng v PP* [1992] 1 SLR 743, the court must provide protection for persons regarded as easy targets and a deterrent element must be seen in the sentence imposed. I felt that the circumstances were such that any mitigating effect afforded by the guilty plea was entirely outweighed by the clear need for a deterrent sentence and the aggravating factors in this case.

22 There is a common practice for defence counsel in their mitigation pleas for lighter sentences to state glibly that their clients are remorseful. In view of this, I should add that remorse is only a mitigating factor where there is evidence of genuine compunction or remorse on the part of the offender. In *Soong Hee Sin v PP* [2001] 2 SLR 253, I noted that restitution made voluntarily before the commencement of criminal proceedings or in its earliest stages carries a higher mitigating value for it shows that the offender is genuinely sorry for his mistake. I also observed that

> On the other hand, where the sole motive for restitution is the hope or expectation of obtaining a lighter punishment, then the fact of restitution must be of little mitigating value…In my view, restitution as a mitigating factor is of decisive significance only when it is made voluntarily for only then would be a display of true moral conscience on the part of the accused…the best test of that genuine moral conscience occurs precisely when an accused is unrepresented for only then can the judge be absolutely certain that any restitution made was truly the result of unadulterated remorse on his part, rather than the contrived action of one previously advised on the law.

23 While my comments in *Soong Hee Sin* were made in relation to financial restitution in the context of an offence of financial breach of trust, the same principles apply, in my view, to other restitutionary gestures, such as the writing of letters of apology. It is all too easy for an offender to say he is sorry when the strong arm of the law has caught up with him. Thus, an offender's apologetic gestures must be carefully scrutinised to see whether they constitute evidence of genuine, heartfelt remorse. I did not feel that the appellant was at all remorseful. Further, I found it difficult to believe that he was genuinely contrite for the robbery offences as he had proceeded to offend again in a violent manner the moment he was released on bail for these offences.

Youthful offender who was capable of rehabilitation

24 Counsel for the appellant referred me to the FSC report which said that in the opinion of the volunteer counsellor, the appellant had potential to rehabilitate and 'become a useful person'.

25 Counsel also cited the case of *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138, where I said:

> 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. However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case.

26 In this case, given the appellant's proclivity to commit offences and the nature and pattern of his offending, I was not of the view that he was capable of rehabilitation. As I noted earlier, the offences were done in a calculated manner and vulnerable victims were targeted. Furthermore, the appellant even had the audacity to make an unprovoked attack while out on bail; this showed his total disregard of authority and blatant disrespect for the law. As I mentioned earlier, it must also be noted that the robbery offences were committed while the appellant was receiving counselling at the FSC.

27 Taking all the circumstances into account, I had no doubt in my mind that the appellant was a habitual offender and was too recalcitrant for reformation. This had a direct bearing on the appellant's contention that the sentence imposed by the district judge was manifestly excessive.

Whether the sentence was manifestly excessive or crushing

28 Counsel for the appellant submitted that the total sentence of nine years and six months and 24 strokes was manifestly excessive given the circumstances of the case. The sentencing court, in exercising its discretion to impose consecutive sentences, must have regard to the one transaction rule and the totality principle: *Kanagasuntharam v PP* [1992] 1 SLR 81.

29 The totality principle has two limbs. As I observed in *Kanagasuntharam v PP*, a cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender a 'crushing sentence' not in keeping with his records and prospects.

30 In *Maideen Pillai v PP* [1996] 1 SLR 161, I elaborated on the notion of a 'crushing sentence' in the following terms:

> [T]he sentencing court will bear in mind at all times the second limb of the totality principle, that is, the need to avoid an aggregate sentence so harsh as to be 'crushing' in its effect on the offender. Where consecutive sentences are imposed on an offender, the overall punishment should be *in proportion to the overall gravity of his criminal conduct, taking into account the circumstances in which he offended and also the pattern of his previous behaviour*. [Emphasis added]

31 I wish to reiterate that in considering whether a sentence can be considered to be crushing, a crucial consideration is the pattern of the offender's previous behaviour. It is important to emphasise this because a critical factor in applying the totality principle is the question of whether the offender is capable of rehabilitation or is likely to be a recidivist. But I must stress that the totality principle must not be allowed to strait-jacket the courts, such that they cannot impose severe sentences where the circumstances warrant this; it may well be necessary to do so where the public interest requires that the offender be kept in a custodial environment in order to keep our society safe from individuals who have no capacity for rehabilitation. It should not be open to offenders such as the appellant to use the totality principle as a shield to get around the clear and important considerations of public order and safety. In using the totality principle, the court must not only consider the gravity of an offender's conduct but also the likelihood that the offender will prove

to be a danger or menace to society if given a more lenient sentence. Thus, the application of the totality principle necessitates an analysis of the public interest and the sentence that is eventually meted out to the offender must reflect this.

32 Here, the total sentence of nine years and six months imprisonment and 24 strokes of the cane fell short of the statutory maximum of 20 years imprisonment and 24 strokes of the cane prescribed for the most serious offence, robbery with hurt with common intention under s 394 read with s 34 of the PC. In light of this, and taking into account the appellant's pattern of criminal behaviour and incapacity for rehabilitation, the sentence could not at all be said to be crushing.

33 Indeed, the sentence imposed by the district judge was, in my view, manifestly inadequate. Not only was there a notable absence of mitigating factors in favour of reducing the sentence, there were serious aggravating factors in the appellant's conduct, as I have discussed earlier. In the circumstances I was of the view that a more severe sentence was condign with the offences.

34 Accordingly I dismissed the appeal and enhanced the following sentences:

(a)	DAC 40372/2002	Enhanced to five years imprisonment and six strokes of the cane
(b)	DAC 41427/3002	Enhanced to seven years imprisonment and 12 strokes
(c)	DAC 41428/2002	Enhanced to seven years imprisonment and 6 strokes of the cane
(d)	DAC 41433/2002	Enhanced to seven years imprisonment and 12 strokes
(e)	DAC 61933/2002	Enhanced to five years imprisonment and 12 strokes of the cane

35 I ordered that the terms of imprisonment in DAC 41428/2002 and DAC 41433/2002 were to run consecutively and that the other sentences were to run concurrently. Thus, in total, the appellant was sentenced to 14 years imprisonment and 24 strokes of the cane pursuant to s 230 of the Criminal Procedure Code.

Appeal dismissed.