Rahman Pachan Pillai Prasana v Public Prosecutor
[2003] SGHC 52

Case Number : MA 286/2002

Decision Date : 11 March 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Selva K Naidu (Naidu Mohan & Theseira) for the appellant; Francis Ng (Deputy Public Prosecutor) for the respondent

Parties : Rahman Pachan Pillai Prasana — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Mitigation – Whether the fact that an offender has made no financial gain or has caused no financial loss to another from fabricating false evidence a mitigating factor.

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Disparity with sentences imposed in previous similar cases – Whether consistency in sentencing overriding consideration – Applicable principles.

1 The appellant claimed trial to a charge of fabricating false evidence for use in a High Court Suit, an offence under s 193 of the Penal Code (Cap 224) which is punishable with an imprisonment term of up to seven years.

2 The judge convicted the appellant of the charge and sentenced her to two years' imprisonment. The appellant initially appealed against both her conviction and sentence. Subsequently, in a letter to the Court dated 21 February 2003, she dropped the appeal against conviction and elected to proceed with the appeal against sentence only.

3 After careful consideration of the circumstances of this case, I dismissed the appeal. I now give my reasons.

The facts

4 The appellant was at the relevant time working as the secretary of one Gopalan Mukunnan ('Mukunnan'), then the Honorary Consul of the Republic of Malta to Singapore. Sometime in early 1992, the appellant and Mukunnan came to know of a Nigerian transaction which promised a profit of US$2.7m with an investment of only a few hundred thousand dollars. Mukunnan wanted to participate in the deal but had insufficient funds.

5 Sometime around June 1993, Mukunnan approached his old friend, one John Fernando ('Fernando') for a loan. Fernando, after discussing the loan with his wife, Sita Fernando ('Sita'), agreed to lend Mukunnan $50,000 for him to carry out 'site visits' in Nigeria. Whilst in Nigeria, Mukunnan asked for a further loan of $354,000. Fernando reluctantly agreed to the further loan.

6 On 4 November 1993, Fernando and Sita went to Mukunnan's office to obtain from the appellant a letter of surety (with the Malta Consulate as guarantor) for the loan of $354,000, as instructed by Mukunnan. The letter of surety was typed on the Malta Consulate letterhead and signed by the appellant "for Malta Consul Singapore". After obtaining the letter of surety, Fernando remitted $354,000 to Nigeria. Mukunnan subsequently borrowed another $6,000 from Fernando.

7 The deal turned out to be a scam. In 1998, Fernando commenced an action in the High Court (*John Fernando v Gopalan Mukunnan,* Suit No 2360/1998) ('High Court Suit') against Mukunnan to

recover the total loan amount of $410,000. The crux of Mukunnan's defence was that the payments were not loans to him, but Fernando's investments in the business venture and he was hence not liable to repay Fernando a single cent.

8 The appellant then swore an affidavit before a Commissioner for Oaths stating in paragraph 22 of that affidavit that Fernando had signed a letter ('impugned letter') promising that he "would not use the letter of surety dated 4 November 1993 against the Consulate of Malta for any claims purposes whatsoever". A copy of the impugned letter was annexed to the affidavit. The appellant also stated in the affidavit that she was alone with Fernando when the impugned letter was typed and that she saw Fernando sign it.

9 The affidavit was filed in court. The High Court Suit was eventually settled with a consent judgment being entered in favour of Fernando.

10 Fernando denied signing the impugned letter and he proceeded to lodge a police report, which led to the present charge against the appellant.

The trial below

11 At the trial below, the prosecution adduced expert evidence to show that the signature on the impugned letter was a forgery and, since the appellant claimed in her affidavit that she had *seen* Fernando sign the impugned letter, there was no possibility that the appellant did not know that the impugned letter was a forgery. The inevitable inference was that the appellant had either forged the signature herself, or had at least been aware that the signature was a forgery. The prosecution hence argued that both the physical and mental elements of the offence were made out.

12 In her defence, the appellant denied that the signature on the impugned letter was a forgery but did not bring in another expert to support her case. She stuck by her statement in the affidavit that she had seen Fernando sign the impugned letter.

13 After a three-day trial, the judge found the appellant guilty of the charge and sentenced her to two years' imprisonment.

Issues arising on appeal

14 The appellant contended that the sentence here was manifestly excessive on two main grounds: (i) the judge had failed to consider certain mitigating factors; and (ii) the sentence was out of line with previous similar cases.

Whether the judge had failed to consider certain mitigating factors

15 The appellant alleged that the judge had failed to consider two mitigating factors in this case. First, the appellant pointed out that the admission of the impugned letter as evidence could not have defeated Fernando's claim against Mukunnan in the High Court Suit. She therefore argued that the consequences flowing from the perjury were trivial and should be taken into account by the judge in sentencing.

16 I found this argument unmeritorious. The impugned letter stated that Fernando would not enforce the surety against the Malta Consulate.In other words, it purported to render the surety arrangement inoperative. This would weaken Fernando's case that the payments were loans and not business investments. It would be easier to characterise the payments as loans if there was a surety

since as a matter of commercial practice, a surety was required for a loan and not for an investment. Without a binding surety arrangement, Fernando's case that the payments were loans would clearly be undermined.

17 Secondly, the appellant pointed out that admission of the impugned letter as evidence in the High Court Suit had not in fact caused any financial losses to Fernando since the claim was eventually settled with a consent judgment in favour of Fernando. The appellant also did not gain financially from fabricating false evidence. The judge refused to consider this a valid mitigating factor.

18 I have emphasised on previous occasions that the fact that an offender made no financial gain or caused no financial loss to another from his crime was a legitimate mitigating factor but of very little weight: see *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 and *PP v Gurmit Singh* [1999] 3 SLR 215. Although those cases were not decided in the context of the offence of fabricating false evidence, I was of the opinion that they should be followed in this appeal. The purpose behind the enactment of s 193 of the Penal Code is to deter any attempt to pervert the course of *justice* and the fact that there have been no *personal* gains or losses arising from the perjury can only be of little weight as a mitigating factor.

19 In a sense, the true victim of the offence of perjury is not an individual, but the course of justice itself. Judicial proceedings require all evidence to be as truthful as possible: the proper administration of justice is thwarted by false evidence whether or not such evidence leads to unfair gains or losses to an individual. As Russell L.J. stated succinctly in *Abdulhamid Jamal Shamji* [1989] 11 Cr. App. R. (S.) 587 at 589-590:

> The circumstances in which perjury can be committed are infinite. Sometimes … as a result of perjury a defendant is wrongly convicted in a criminal trial and suffers imprisonment … sometimes the perjurer lies to save his own skin … Sometimes in civil proceedings, as these were, the effect of perjury is to cause financial loss to others, or, conversely, to enable to perjurer to gain financially. Those aggravating features are not present here … *it must [however] always be remembered in cases of this kind one victim of perjury. That victim is the course of justice and its proper administration. Justice inevitably suffers whatever the motive for the perjury and in what circumstances it is committed…*it is because of that inevitable feature of the offence that a conviction for perjury must always be visited, save in the most exceptional circumstances that do not prevail here, with an immediate custodial sentence [Emphasis is added].

20 Hence the fact that the appellant had not gained financially, or that Fernando had not lost financially from the fabricated evidence was of little weight as a mitigating factor. Although the judge below went further than he should have and rejected this aspect of the case as a mitigating factor altogether, that alone was insufficient to overturn the sentence. I hence found no merit in this ground of appeal.

Whether the sentence here was out of line with previous similar cases

21 The appellant relied principally on the decision of *Koh Pee Huat v PP* [1996] 3 SLR 235. The accused there ('Koh') made a false statement in an affidavit which was filed in a maintenance claim involving his former wife ('Fang'). The false statement asserted that the handwriting on certain papers was Fang's. Koh was convicted of a charge of fabricating false evidence and sentenced to six months' imprisonment. On appeal, I reduced the sentence to one month's imprisonment.

22 I emphasised that a short sentence was justified there only because of the exceptional

circumstances in that case. It is important to note that in *Koh Pee Huat*, the purpose of making the false statement was to show that Koh and Fang were interested in buying a new property. As it turned out however, Koh and Fang were indeed interested in buying a new property. In other words, the statement there, although in itself false, was tendered for the purpose of proving a fact which was actually true. The false statement there could not therefore have led to any unjust consequences. Such exceptional circumstances were not present in this appeal: the impugned letter was tendered in the High Court Suit to prove that Fernando *did not* have a case for repayment. As the consent judgment there showed, however, Fernando *had* a case for repayment. Admission of the impugned letter as evidence could therefore unjustly defeat Fernando's claim against Mukunnan.

23 The appellant also cited several cases where sentences of less than two years' imprisonment were imposed for the offence of fabricating false evidence for use in judicial proceedings. I was not convinced that those cases showed that the sentence here was manifestly excessive. I have emphasised on many occasions that, while consistency in sentencing was a desirable goal, this was not an inflexible or overriding principle. The different degrees of culpability and the unique circumstances of each case played an equally, if not more, important role. Furthermore, the sentences in similar cases might have been either too high or too low: *Lim Poh Tee v PP* [2001] 1 SLR 674; *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 and *Yong Siew Soon v PP* [1992] 2 SLR 933.

24 In the present appeal, the appellant had carefully set out to deceive the High Court with the fabricated evidence. Instead of expressing remorse, she went on to spin a web of deceit in the trial below, hence wasting precious court time. She clearly had no regard for the solemn nature of swearing an affidavit and for judicial proceedings in Singapore. The sentence meted out by the court below was proportionate to the gravity of her conduct. For the foregoing reasons, I dismissed the appeal.

Appeal dismissed.

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