Wu Si Yuan v Public Prosecutor
[2003] SGHC 7

Case Number : MA 221/2002

Decision Date : 21 January 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Gloria James (Hoh & Partners) for the appellant; David Chew Siong Tai and G Kannan (Deputy Public Prosecutors) for the respondent

Parties : Wu Si Yuan — Public Prosecutor

Criminal Procedure and Sentencing – Probation – Factors to be considered – Relevance of the likelihood of success of the rehabilitive attempt

1 The appellant was convicted in the district court on a charge of having consumed N, α-Dimethyl-3, 4-(methylenedioxy)phenethylene ('Ecstasy'), an offence under s 8(b)(i) read with s 8A of the Misuse of Drugs Act ('MDA') (Cap 185). She was sentenced to 12 months' imprisonment and appealed against her sentence. After calling for a probation report, I dismissed her appeal and upheld the sentence imposed by the district court. I now give my reasons.

The facts

2 The appellant was detained on 21 March 2002 at the Singapore Immigration Arrival Bus Hall at Woodlands Checkpoint. A urine test was administered which tested positive for amphetamines, and she confessed upon questioning to having consumed Ecstasy at a Johore Bahru discotheque. Her urine sample subsequently tested positive for Ecstasy by the Centre for Forensic Sciences of the Health Sciences Authority.

3 The appellant pleaded guilty in the district court to the charge, and, in mitigation, the following account was disclosed to the court below: the appellant had gone to Johore Bahru with her boyfriend, one Alex, on 17 March 2002 as she was depressed by the constant altercations at home between her parents. The day after her arrival, her mother called her and asked her to come home. The appellant intended to comply, but was unwilling to depart on her own as she did not have any Malaysian currency on her. Alex refused her request to take her back to Singapore, and subsequently refused similar requests made on the following days. On 21 March 2002, the appellant accompanied Alex and their friends to a karaoke lounge in Johore Bahru, where she consumed some alcohol. Alex showed her an Ecstasy tablet, bit off half of it, and asked her to take the other half. She was initially reluctant to do so, but relented after Alex kept pressing her.

4 When the appellant returned to Singapore with Alex on the evening of 21 March, Alex was arrested at the checkpoint. The appellant was told that she could depart but elected to wait for Alex. Subsequently, she too was asked to provide a urine sample, and was arrested when her test showed a positive result.

5 The district judge sentenced the appellant to 12 months' imprisonment, and she appealed against the sentence on the ground that it was manifestly excessive. Her grounds were that she was only 17 years old, had an unblemished record, had pleaded guilty at the first opportunity, had shown by her good behaviour since her arrest that she had learnt her lesson, and had made a concerted effort to stay away from drugs and also from her boyfriend who had induced her to take the earlier tablet.

6 At the hearing of her appeal before me on 12 November 2002, I was informed that the appellant

had gained admission to a polytechnic to pursue a course of Information Management, and she would be deprived of this opportunity of having a proper education if she had to suffer a term of imprisonment. Although I was of the view that none of these factors would justify an alteration in the sentence, I asked for a probation report and adjourned the hearing on account of the appellant's age.

The principles governing the grant of probation

7 In the present case, the appellant had been convicted of the offence of consumption of drugs, which per s 8(b)(i) of the MDA carries a punishment of imprisonment up to 10 years, or a fine of up to $20,000, or both. However, s 5(1) of the Probation of Offenders Act (Cap 252) provides that:

> Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order…

8 In *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138, I made the following observations as to when it might be appropriate to grant probation to a young offender:

> 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. [my emphasis]

In *PP v Muhammad Nuzaihan Bin Kamal Luddin* [2000] 1 SLR 43, I added the following observations:

> The traditional and broad rationale of probation therefore has always been to wean offenders away from a life-time career in crime and to reform and rehabilitate them into self-reliant and useful citizens. In the case of youthful criminals, the *chances of effective rehabilitation* are greater than in the case of adults, making the possible use of probation more relevant where young offenders are concerned. Nevertheless, [it is] clear that probation is *never granted as of right, even in the case of juvenile offenders*. In deciding whether or not probation is the appropriate sentence in each case, the court still has to *take into account all the circumstances* of the case, including the nature of the offence and the character of the offender. [my emphasis]

9 The above, however, should not be interpreted as indicating that probation is automatically suitable for a young offender whose lapse is better attributed to naivety and youthful folly than to any criminal tendency. It must be emphasised that the court takes into account all the circumstances of a case when deciding whether to grant probation, and one factor which is relevant to this consideration is the likelihood of success of the attempted rehabilitation. If the circumstances are such that the probation will not afford the offender in question a realistic opportunity to rehabilitate

his or her life, then a prison sentence will be more appropriate. After all, the core function of the Singapore prison service is to protect society through the safe custody and rehabilitation of offenders.

Application to the present case

10 It was with the above principles in mind that I resumed the hearing of the appeal on 7 January 2003. I had had the opportunity to study the careful and comprehensive report from the probation officer who had attended to this matter. In doing so, she had interviewed on many occasions the appellant and other members of her family, teachers at her secondary school and at the polytechnic to which she had gone, and officers of the Central Narcotics Board, and she was of the view that the probation prospects were not encouraging. Her parents did not get along and there was constant friction between them at home. Her father was assessed as a concerned but ineffective parent whose regular drinking habit and irregular work schedule had led to his complete lack of involvement in her supervision. Her mother, for her part, was seen to be concerned and protective, but at the same time was unable to exert any parental authority over the appellant. As for her two sisters, she had a close and good relationship with her younger sister but a strained one with the elder sister. The elder sister had in fact disclosed that she had not spoken to the appellant for about two years, did not want to be involved in her affairs, and did not see the possibility of a reconciliation in the near future.

11 With this family environment, it was not surprising to me that the appellant had become dependent on the company of friends with whom she would spend time at discotheques and night clubs, where she indulged in underage drinking, and stayed out until 3.00 am on about three to four times a week. I also noted that, although the appellant had been performing reasonably well in the first three years of secondary school, she had done dismally in her secondary four year and shown only a 75% attendance for that school year. Likewise, the appellant had not attended regularly at the polytechnic and she had failed all her subjects during her time there before she was arrested.

12 It was a reflection of this lack of parental control at home that the probation report took the view that the appellant might have a better chance of rehabilitation and improvement in an alternative physical and social environment. Accordingly, the report recommended a 24-month probation, split into 12 months of intensive and 12 months of supervised probation with the following additional conditions:

(a) to reside in a residential institution such as Andrew and Grace Home, which was prepared to take her, for a period of 12 months;

(b) to remain indoors from 9.00 pm to 6.00 am;

(c) to perform 120 hours of community service;

(d) to attend a prison visit;

(e) to undergo a urine test regime; and

(f) that her parents should be bonded to ensure good behaviour.

13 The prosecution, however, made several criticisms of the proposed probation, with which I agreed. In particular, the recommended home residential programme for teenage girls merely provided for temporary refuge. Its aim was to provide a cosy homelike atmosphere within the concept of a family for those who sought refuge, with surrogate parents providing love and care. While this might

have been of benefit to the appellant in that it represented an improvement over her home situation, I noted that the home had no apparent focus on, or programme designed to achieve, the rehabilitation of offenders. The voluntary nature of the residential programme also meant that the appellant could discontinue her stay if she chose to. Of course, this would be tantamount to a breach of a condition of her probation, but the fact remained that the programme would not carry with it the sting of compulsion.

14 I was also mindful of the prosecution's argument that prison, too, could achieve the aim of rehabilitating young offenders such as the appellant; the aim of the prison service being to help steer offenders towards being responsible members of society. It would also afford the appellant, if she was indeed sincere in continuing her studies, the opportunity to do so, through avenues such as the prison school. In this context, my attention was drawn to a speech made by the Minister for Home Affairs at the Prisons Workplan Seminar on 26 March 2002, in which the Minister noted that about 80% of the inmates taking the GCE "A" Level examination in the previous year had achieved a minimum of one "A" Level pass, which was about 50% higher than the national average for private candidates.

15 In light of the foregoing, I was of the view that while it is common for young offenders of the appellant's age and who have committed similar offences to be granted probation, this would not be appropriate in the present case. A strong and committed family unit which is ready and willing to take a leading role in the rehabilitation of an offender is crucial to the success of such rehabilitative attempts, and clearly, this was not present in the instant case. The probation report had recognised this and suggested an alternative location for her probation to be served, namely at a residential home. However, I accepted the DPP's view that the alternative suggested was not a viable one, as it was not tailored towards providing that requisite level of supervision and vigilance. Accordingly, I declined to accept the recommendation of the probation report and dismissed the appeal against sentence.