Public Prosecutor v Chia Teck Leng
[2004] SGHC 68

Case Number : CC 12/2004

Decision Date : 02 April 2004

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Thong Chee Kun (Deputy Public Prosecutor) for prosecution; Edmond Pereira and Benjamin Choo (Edmond Pereira and Partners) for accused

Parties : Public Prosecutor — Chia Teck Leng

Criminal Procedure and Sentencing – Sentencing – Aggravating factors – Impact of crime on banking and commerce – Abuse of position of trust.

Criminal Procedure and Sentencing – Mitigation – Whether accused less culpable if he did not actively seek out victims and victims were trusting or gullible.

Criminal Procedure and Sentencing – Mitigation – Whether accused less culpable if scheme too simplistic to succeed or if he did not dissipate money.

Criminal Procedure and Sentencing – Mitigation – Mitigating value of accused's co-operation with authorities and evidence of his good character.

2 April 2004

Tay Yong Kwang J:

1 There were a total of 46 charges in this case. The Prosecution proceeded with 14 charges while the other 32 charges were taken into consideration for the purpose of sentencing.

2 The 14 charges that were proceeded with were six charges under s 467 of the Penal Code (Cap 224, 1985 Rev Ed) and eight charges under s 420 of the Penal Code.

3 The 32 charges taken into consideration comprised the following:

(a) five charges under s 467 of the Penal Code;

(b) eight charges under ss 465 and 471 of the Penal Code read with s 109 of the same;

(c) four charges under s 408 of the Penal Code;

(d) three charges under s 468 of the Penal Code;

(e) ten charges under s 420 of the Penal Code; and

(f) two charges under s 47(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed).

4 The Statement of Facts, accepted without qualification by the accused, set out in detail the circumstances leading to the commission of each of the offences proceeded with. The documents forged by the accused were enclosed with the Statement of Facts. A synopsis of the contents of the Statement of Facts appeared in the Prosecution's "Summary of Facts", reproduced in full below:

1 The accused is … a 44-year-old Singaporean male Chinese (Date of Birth: 11 October 1959; NRIC number S1383087H).

2 He has pleaded guilty before this Hono[u]rable Court to six charges under section 467 of the Penal Code and eight charges under section 420 of the same.

Background

3 The Accused joined Asia Pacific Breweries (Singapore) Pte Ltd ("APBS") as its Finance Manager on 20 January 1999. As the Finance Manager of APBS, he was responsible for all financial, accounting and bookkeeping matters of APBS.

4 APBS is a wholly owned subsidiary of Asia Pacific Breweries Limited ("APBL"), which is listed on the Singapore Stock Exchange Limited. Its principal activity is the manufacture of beer and related products. The Accused was transferred to APBL as the Senior Manager (Group Finance) on 14 July 2003.

5 The Accused was arrested on 2 September 2003 at the Commercial Affairs Department.

Investigations

6 Since 1994, the Accused had been gambling at casinos on board "Star Cruise" vessels.

7 Sometime between 1998 and early 1999, before he joined APBS, the Accused lost heavily in gambling and accumulated gambling debts amounting to more than S$1 million.

8 Shortly after the Accused joined APBS as its Finance Manager, he devised a plan in January 1999 to obtain credit facilities from Skandinaviska Enskilda Banken ("SEB") for his personal use by using forged documents to open bank accounts with SEB in the name of APBS.

9 Emboldened by the successful execution of his devious plan, the Accused subsequently created several other fictitious documents between January 1999 and March 2003, in order to obtain, for his own purposes, further credit and loan facilities on behalf of APBS from four foreign banks operating in Singapore, namely:

(i) SEB;

(ii) the former Sakura Bank Limited, now known as Sumitomo Mitsui Banking Corporation ("SMBC");

(iii) the former Fuji Bank Limited, now known as Mizuho Corporate Bank Ltd ("Mizuho"); and

(iv) Bayerische Hypo-und Vereinsbank Aktiengesellschaft ("HVB").

10 The credit and loan facilities were obtained from these banks without the consent and knowledge of APBS.

11 The numerous forged documents created by the Accused included certified extracts of directors' resolutions. Forged between January 1999 and March 2003, these directors' resolutions purportedly authorised him, as sole signatory, to receive the credit and loan facilities provided by

the four banks, sign all transactions and operate the bank accounts, on behalf of APBS.

12 In order to forge the signatures of various directors of APBS, the Accused obtained their signature specimens from APBS annual reports and other internal documents. The Accused then practised signing their signatures on pieces of paper several times until he was satisfied that he could replicate their signatures.

13 Investigations by the Commercial Affairs Department ("CAD") revealed that the Accused obtained, by using forged documents, loan and credit facilities amounting to US$83 million and S$18 million collectively from these banks.

14 Investigations also disclosed that the Accused had fraudulently made several withdrawals from the credit and loan facilities provided by the banks between 1999 and 2003.

15 Between March 2003 and July 2003, the Accused also gave written instructions to the four banks to make the following withdrawals:

(i) US$13 million from credit facilities provided by SEB on 20 March 2003;

(ii) US$12 million from credit facilities provided by SEB on 19 May 2003;

(iii) S$5 million from credit facilities provided by SMBC on 4 June 2003;

(iv) S$5 million from credit facilities provided by SMBC on 29 July 2003;

(v) US$3.5 million from credit facilities provided by Mizuho on 14 April 2003;

(vi) US$3.5 million from credit facilities provided by Mizuho on 28 April 2003;

(vii) US$1 million from credit facilities provided by Mizuho on 4 June 2003; and

(viii) US$30 million from loan facilities provided by HVB on 21 March 2003.

16 Monies drawn from the credit and loan facilities between 1999 and 2003 were channeled into the SEB bank account, which was also fraudulently opened by the Accused in the name of APBS. A large portion of these monies were then transferred to the Accused person's personal bank accounts (account nos. 022-010850-6 and 001-020579-0) maintained with the DBS Bank Limited ("DBS") in Singapore, before being remitted to casinos in Australia, United Kingdom, Hong Kong, Malaysia, Cambodia and the Philippines. These remittances were made for the purpose of financing the Accused person's gambling activities at these casinos.

17 The Accused placed bets of about S$200 when he started gambling on board "Star Cruise" vessels. Stakes were slowly increased to about S$5,000 a hand. With the illegally obtained money, he started placing bets of A$20,000 and £25,000 in casinos in Australia and London respectively, before eventually enlarging his bets to A$400,000 a hand when he gambled in Crown Casino in Australia.

18 The Accused had cheated the four banks collectively of about S$117.1 million. CAD has managed to secure the recovery of just about S$34.8 million, from property seized in the course of investigations as well as voluntary remittances made by the Accused from bank accounts maintained by him overseas. Some S$62 million was squandered and lost at various casinos around the world.

The Prosecution's submissions on sentence

5 The Prosecution argued that the sentencing principles of retribution and deterrence were of particular relevance here as this case "is the largest case of commercial fraud in the history of Singapore". It highlighted the aggravating factors discussed below.

The sum of money involved

6 The accused cheated the four banks in question of an unprecedented total of $117.1m over some four years, out of which only the sum of $34.8m has been recovered. The loans and credit facilities granted amounted to some $159m.

How the accused used the money

7 "A colossal S$62 million of the banks' money was frittered away throwing dice and flipping cards at the gambling table without restraint." Being one of the biggest players in an Australian casino, he was provided with transport in a private jet whenever he wanted to gamble. Various casinos in Australia and in London extended personal invitations to him to visit them. The accused also used the illegally obtained money to purchase a Mercedes Benz car and an apartment in Francis Lodge, Singapore. He also gave away more than $300,000 in cash and gifts to various persons.

Blatant abuse of position of trust

8 Just five days after joining Asia Pacific Breweries (Singapore) Pte Ltd ("APBS") as its finance manager, the accused audaciously began his illegal endeavour, establishing a banking relationship with one of the banks by presenting forged documents. The four charges of criminal breach of trust under s 408 of the Penal Code, which will be taken into consideration for the purpose of sentencing, involved $53m even though that sum was eventually returned to his employers.

Pre-meditation and planning

9 This was not a one-off offence committed on a surge of sudden impulse. The offences "required the systematic planning and pre-meditation of a criminal genius". He diligently practised replicating the signatures of the various directors of his employers. Money drawn down from the credit facilities were channelled to the SEB current accounts fraudulently opened in the name of his employers. By rolling over the funds provided by the banks, the accused presented himself as a creditworthy customer by making timely remittances to each of the banks whenever repayments were due. He created the impression that money was being transferred from one company account to another.

Adverse impact on Singapore's reputation as a financial hub

10 The accused's actions have damaged our reputation as an honest and efficient financial hub. The foreign banks in question have invested substantially here.

11 The Prosecution also argued that the plea of guilt in the face of the "avalanche of evidence" against the accused should not attract a substantial discount in sentence (see *Wong Kai Chuen Philip v PP* [1990] SLR 1011). The fact that the accused was a first offender was of little mitigating value and was at best a neutral factor unless there was positive evidence as to his character rather than negative inference from the absence of antecedents (see *Xia Qin Lai v PP* [1999] 4 SLR 343).

12 The Prosecution also referred to two recent High Court cases decided by me. In *PP v Teo Cheng Kiat* [2000] SGHC 129 (unreported), an employee of Singapore Airlines who embezzled $34.9m of his employers' funds was sentenced to an aggregate imprisonment term of 24 years on ten charges under s 408 of the Penal Code. In *PP v Lam Chen Fong* [2002] 4 SLR 887, an operator of a money remittance business was sentenced to an aggregate of 22 years in prison on 22 charges, 20 of which were under s 409 of the Penal Code. The amount misappropriated there was some $8.7m. Both accused persons in those two cases pleaded guilty.

13 Citing *Sim Gek Yong v PP* [1995] 1 SLR 537, it was argued that the conduct of the accused here fell within a range of conduct which characterised the most serious instance of the offences in question. The offences were not motivated by need but by greed and there was "little doubt that the accused relished the thrill of high-stake gambling and enjoyed being revered at the casinos as a high-roller". He would still be swindling the banks had he not been caught.

14 In view of the numerous charges involving multiple victims, the Prosecution urged me to order more than two imprisonment sentences to run consecutively. It was submitted that the gravity of the offences here warranted an aggregate term of imprisonment higher than the maximum term of 14 years which the district courts could impose by law.

The mitigation plea

15 The accused is married with two teenage sons. He graduated with a degree in accountancy from the National University of Singapore in 1983. Before joining APBS, he was the financial controller in another company.

16 He had been gambling and losing heavily since 1995/1996. By 1997, he owed several banks about $100,000. In 1996/1997, he organised a company function for his previous employers on board one of the Star Cruise ships and was invited to gamble in the private room in the casino. Having won a few thousand dollars on that trip, he began to gamble regularly on board Star Cruise ships and managed to win about $1m within a year. He was thus able to discharge his outstanding debts.

17 However, in August 1998, he had a severe reversal of fortune in gambling. He lost so much that even with help from his wife and his family, he could not settle his debts. Hounded by his creditors, he became a desperate man.

18 It was around that period that the accused joined APBS. "Driven to desperation", he began to open bank accounts in the name of APBS using forged documents. He withdrew money from the accounts and transferred it to his own account or paid it directly to his creditors. The banks never questioned him as to why he was the sole signatory for the accounts. Out of the four banks in question, SEB was the only one that he had approached to open an account. The other three were the ones who approached him to canvass for business from APBS.

19 Initially, he was not very confident that SEB would extend the facilities but he was prepared to take the chance. Counsel for the accused submitted that:

> A desperate man would resort to desperate means. He took the chance but he did not take advantage of the banking system. He had expected the banks to check on the authenticity of the documents and signatures as well as to verify the documents. He assumed that they would and had done so. He did not at any time hold himself as the person who pulled the strings at [APBS]. He was surprised when the facilities were extended.

Having succeeded in doing all this, he continued to take further chances and the facilities got bigger and the draw-downs increased. "The scheme would have fallen apart if the banks had done their due diligence. It is not a case of the accused knowing or having intimate knowledge that the banks will not do their due diligence." The scheme hatched by the accused was just too simplistic and possibly too absurd to succeed and that should be taken into account in sentencing (see *Nomura Taiji v PP* [1998] 2 SLR 173).

20 The accused knew he had to return the money to the bank accounts. In his mind, he was "borrowing" the money and would return it with his winnings. He had no intention of fleeing with the money. He did not buy expensive goods or splurge on holidays. He lived in the same home and drove a car that he could support with his legitimate income. The illegally obtained money went straight to the casinos and back. It was not dissipated. The luxurious lifestyle he enjoyed was provided by the casinos as part of their package.

21 Infected by the gambling disease and obsessed with how he could return the money, he sought the highest bets available anywhere so that he could recover enough to cover his losses and repay the banks. That led to the situation where he was playing at A$400,000 a hand. He returned the winnings to the SEB account. He withdrew $53m from APBS's account with OCBC Bank between November 1999 and October 2002 but returned the money over the period with no loss incurred by APBS and before his arrest.

22 He also did not draw down all the available funds. He had more than A$32m in his Westpac account and would have absconded long ago if it had been his intention to enrich himself.

23 In addition to the above, I was asked to consider his timely plea of guilt. He had indicated from the outset that he would be admitting the charges against him. Although such a plea would be of much less mitigating value if an offender had been caught red-handed or if the Prosecution would have no difficulty proving its case against him, due regard should be given to the time and expense saved. Witnesses from different jurisdictions now did not have to be called for what would have been a lengthy trial.

24 The accused co-operated fully with the investigators right from the moment he was questioned by them. Although the scope of their inquiry at that time was a very limited one, he not only answered their questions but also volunteered information on the other bank accounts, where most of the funds were held, and on the flow of the funds. He also helped in the tracing and the recovery of the money by signing all necessary papers. He thus saved the investigators a lot of time and effort. The extent of his co-operation attested to his remorse and regret and should be accorded some mitigating value (see *PP v Lim Hoon Choo* [2000] 1 SLR 221).

25 The complex flow of funds was not deliberately designed to avoid detection. It was simply the route he took to allow for the flow of funds to support his gambling habits. He did not use any fictitious names for his accounts.

26 There was restitution of about $34.8m representing almost 30% of the total amount he had illegally obtained. Where the $1.29m remitted to the authorities by his girlfriend, Li Jin, was concerned, the accused asserted that he had given her only S$254,000 and US$20,000. He claimed that the rest of that amount was Li Jin's own money and should be returned to her. It would be to his advantage to increase the amount of restitution but he did not wish to implicate an innocent party.

27 In response to the Prosecution's contention that the accused's actions have damaged Singapore's standing as an honest and efficient financial hub, the Defence argued that:

> To a certain extent the ease in which the banks relied on the forged documents reveal that increased security measures must be put in place. This can be done by the banks themselves or by amendments to the regulatory legislation. These actions will certainly restore public and investor confidence which passing a crushing sentence on the accused can never hope to achieve.

28 The cases relied on by the Prosecution contained aggravating factors absent here. In *PP v Teo Cheng Kiat,* the offender doctored the reports daily over 13 years while *PP v Lam Chen Fong* involved a total of 1,202 charges, more than 1,000 victims who were foreign workers and an accused taking flight out of the jurisdiction. The present case took place over only about four years and the victims were all corporations numbering far fewer than in the case of the foreign workers.

29 Besides the absence of any previous criminal record, there was also positive evidence of the accused's character, unlike in *Xia Qin Lai v PP*. The accused assisted in fund-raising efforts for flood relief in Cambodia in 2001, resulting in a donation of US$100,000 by Asia Pacific Breweries Limited. A letter from the Senior Minister and First Vice President of the National Committee for Disaster Management of Cambodia dated 24 December 2003 was tendered as proof of this.

30 The accused was a filial son who looked after his aged and ailing parents. The two sons of the accused have also written a joint letter on 28 March 2004 to the court expressing their initial disappointment with their father for having brought them much anguish and humiliation but acknowledging upon reflection that it was only human to err, "albeit that the error he committed was of an unparalleled scale". They spoke of their "very caring and loving father" with great affection, recalling incidents which demonstrated those attributes, in the hope of providing the court "with a more holistic profile" of their father. They ended their letter with the following words:

> We also hope that you will grant us our dearest wish to see our father as a free man again earlier as lessening his sentence, is not only making it easier on him, but a lot easier on us, the people who are truly innocent in this case. Thank you very much.

31 Finally, it was submitted that the maximum sentence of life imprisonment was not appropriate here in the light of the mitigating factors. The accused did not siphon off any money to secret accounts and therefore would not have any opportunity of enjoying the fruits of his illegal acts upon release from prison. The aggregate sentence imposed should not be so harsh as to be crushing in its effect on the accused (*Maideen Pillai v PP* [1996] 1 SLR 161).

The decision of the court

32 I am grateful to Deputy Public Prosecutor Thong Chee Kun for the Prosecution and Mr Edmond Pereira and Mr Benjamin Choo for the Defence for their invaluable assistance in bringing this case to a swift and smooth conclusion and for their thorough submissions. I congratulate the Commercial Affairs Department for having done a fine job in putting together the puzzling pieces of this complex jigsaw.

33 This is a case of a finance manager responsible for the accounting integrity of a reputable company turning forger and fraudster soon after joining the company. He was no mere corporate sentry; he was the commander of the guards. The implication of the mitigation plea appears to be that the crime was less serious because some of the victims walked through the door themselves without him seeking them out actively. It was unremarkable that the banks involved here would seek his acquaintance with the hope of establishing a profitable banking relationship with the company. Bankers knocking on his door were there to meet the man "responsible for all financial, accounting and bookkeeping matters of APBS" to forge a business relationship but the man they met was

unfortunately in the business of forgery. They did not suspect for one moment that the financial wizard was conjuring up fake documents. The fact that they made "cold calls" on the accused therefore does not make his crimes of forgery and fraud more forgivable.

34 The mitigation plea also seems to be casting some blame on the banks cheated for having made it too easy for him to commit the offences by being too naïve and trusting or perhaps even negligent. That appears to be the thrust of the statement, "the scheme would have fallen apart if the banks had done their due diligence". As mentioned, the banks believed, and rightly so, that they were dealing with a responsible head of finance of an established company. That is why the law regards abuse of positions of trust as an aggravating factor. I have said in *PP v Teo Cheng Kiat* that burglars should not be blaming house owners for leaving their gates open or using inferior locks. Similarly, forgers and fraudsters should not be decrying trusting or even gullible victims. The accused, accustomed to taking chances on gaming tables, took a gamble with SEB and was obviously elated that it paid off. That emboldened him to play for higher stakes.

35 In reply to the submission that the "simplistic scheme" of the accused was practically doomed to failure, I only need to point out that it was very successful for more than four years. Sometimes, the simplest solution or scheme is obvious only to a genius. The fact that his massive defalcations and movements of funds remained undetected for more than four years must surely attest to the correctness of the Prosecution's assertion that this was the work of a criminal genius.

36 The illegal taking of money here was likened to "borrowing" by the Defence. It would appear then that the "loans" that the accused took had no repayment dates and were interest-free. The "loans" were also getting bigger over the years. How was he hoping to repay $62m worth of loans? He did not need to splurge on lavish overseas holidays because each gambling trip was a lavish, all-expenses-paid holiday. Were his massive gambling losses not the payments made in any event? His gambling trips using the illegally obtained funds were nothing more than a result of his addiction to gambling and to the grandeur and splendour of being treated like a royal flushed with slush funds.

37 While the accused may not have kept some secret account somewhere, he has squandered a sum which is enough to feed many people for life. The loss here, unlike that in *Nomura Taiji v PP*, has already happened and the loss is great. In that case, it was because the amount of loss which *could have* resulted was "so astronomical" and "the scam was so ridiculous and absurd that it would never have succeeded in any event" that the court there said that it was not in every case that the sentence should reflect proportionately the amount of the loss that could result to the victim.

38 There are of course some points in the accused's favour. By pleading guilty and indicating he was going to do so from the outset, a lot of time and expense in a potentially lengthy trial have been saved. However, this would have to be counter-balanced against the time and expense that would be involved in the litigation that is likely to be generated among the corporate entities ensnared by his misdeeds.

39 He has no criminal record and has done some good for the flood victims in Cambodia in 2001. I also note his co-operation with the investigators in helping to piece together the mess he had created and in recovering some 30% of the funds. It is fortunate for the accused that the Australian dollar has risen in value against the Singapore dollar resulting in a higher amount of restitution when the funds in Australian dollars were converted to local currency.

40 I am touched by the tender words of the two teenage sons of the accused. The accused may have lost everything else but he still has the immeasurably valuable gift of love from his two sons. Their young hands pen words that only mature mouths speak. To the two young men, whom I

shall not address by name in this judgment out of respect for their privacy, I assure you the court appreciates your anguish and anxiety. Indeed, you should continue loving your father as his guilt is confined to the charges and none of them accuses him of being a bad dad. The court's sentence will probably disappoint you but that is not because the court does not believe you.

41 I would like to add here that the accused is not being punished for being a gambler either.

42 Crimes such as the present case strike at the heart of banking and commerce. They erode the open halls of trust and erect the high walls of suspicion. They lead to ever more stringent checks by banks on honest businesses with the attendant impact in terms of time and cost.

43 Section 420 of the Penal Code provides for imprisonment of up to seven years and a liability to fine while s 467 of the Penal Code provides for life imprisonment or a term which may extend to ten years and a liability to fine.

44 Weighing all the above factors and bearing in mind the 32 charges to be taken into consideration, I now pronounce sentence on Mr Chia Teck Leng. For each of the 14 charges on which he has been convicted, he is sentenced to undergo six years in prison. Seven of these imprisonment terms are to run consecutively with the other seven running concurrently with them making a total of 42 years. The commencement of the sentence is backdated to 2 September 2003, the date of his arrest.

Accused found guilty and sentenced to 42 years' imprisonment with effect from 2 September 2003.