

Wang Chin Sing v Public Prosecutor
[2008] SGHC 215

Case Number : MA 228/2008
Decision Date : 19 November 2008
Tribunal/Court : High Court
Coram : V K Rajah JA
Counsel Name(s) : Shashi Nathan and Jansen Lim (Harry Elias Partnership) for the appellant;
Winston Cheng and Jeyendran Jeyapal (Attorney-General's Chambers) for the respondent
Parties : Wang Chin Sing — Public Prosecutor

Criminal Law – Abetment – Making false statutory declarations – Making false statements to Transplant Ethics Committee – Section 14(1)(a)(ii) Oaths and Declarations Act (Cap 211, 2001 Rev Ed) – Section 109 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Illegal organ supply – Sections 14(1) and 14(2) Human Organ Transplant Act (Cap 131A, 2005 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Appeals

19 November 2008

V K Rajah JA:

1 Incidents of organ trafficking are not peculiar to Singapore. The trade is the consequence of a worldwide imbalance between supply and demand. Globally, it has spawned a tangled web of desperate buyers and financially disadvantaged donors often improbably linked together by shady middlemen stealthily operating in “grey areas” outside national legal and ethical frameworks. Syndicates with criminal links are not uncommonly involved. Each such case, involving middlemen, often leaves in its wake a chaotic and challenging multitude of complex ethical, legal and medical problems. That aside, one of the most offensive features of such illegal trades is the exploitation of the donors who are usually financially challenged and poorly educated. Sad to say it has become in some parts of the world the “wages of poverty”.

2 Even if the donors, by dint of good fortune, receive reasonable compensation, almost invariably, no efforts are made to secure them against the future medical difficulties that they may have to confront. The cruel probabilities of such medical difficulties eventually materialising are often not remote. Further, it is also not unimportant to point out that, ironically, even the wealthier buyers (*ie*, the donees) are not safe from exploitation by these middlemen. As a result of the dire straits they find themselves in, they are often exceptionally vulnerable and readily succumb to the extortionate practices employed by some middlemen.

3 While these middlemen often claim to be providing a useful service to the desperately ill, the truth of the matter is that they are usually purely inspired by unbridled avarice to maximise their financial returns from each transaction. Left unchecked, these middlemen can cause immeasurable harm to the parties involved (particularly the donors) as well as indelibly tarnish the standing of the medical community, which may be (unwittingly) drawn into this intricate web of deceit. Admittedly, the culpability of the middlemen can indeed vary in different matters and the assessment of their conduct ultimately ought to depend on the precise role they have played in procuring the ‘trade’ as

well as the actual modalities employed. However, in Singapore as the law now stands, any middleman who seeks to secure for himself any form of commercial advantage has absolutely no legitimate role to play in the process of donor or organ matching and transfer. The Human Organ Transplant Act (Cap 131A, 2005 Rev Ed) ("HOTA") proscribes such activities.

4 I turn now to the subject offences. The appellant has pleaded guilty to five charges involving contraventions of HOTA (as well as its subsidiary legislation) and the Oaths and Declarations Act (Cap 211, 2001 Rev Ed) ("ODA") read with the Penal Code (Cap 224, 1985 Rev Ed). He has also consented to a further five charges relating to the abetment and making of false statutory declarations and false statements to be taken into account for sentencing purposes. The District Judge imposed consecutive sentences of seven months' imprisonment for each of the HOTA offences. The sentences of three months' imprisonment separately imposed for the two ODA offences and a HOTA regulatory offence were ordered to run concurrently. The aggregate sentence of imprisonment to be served by the appellant is 14 months. As the judge has ably summarised the relevant facts I gratefully adopt his narrative. These grounds should therefore be read in conjunction with his judgment; see *Wang Chin Sing v PP* [2008] SGDC 268). The judge found (at [37]-[58]):

37 ... It is apparent that Wang was intimately involved in the two transactions to purchase a kidney from living donors for Tang and Juliana Soh respectively. In the words of the learned DPP, "he was essentially a middleman, or broker, in layman's terms." The manner in which he meticulously planned how to deceive the relevant authorities, including the TEC members, into allowing the said illegal kidney transplant to proceed without any obstruction, his precise execution of the plan and his close supervision of the various 'actors' in the kidney-for-sale play, viz, Sulaiman, Toni and Tang, speak volumes of the degree of his culpability. In my judgment, he was clearly not a mere medical concierge who facilitated the illegal transactions or a mere host and care-taker as alleged by the Defence. He was the middleman who had actively brokered the illegal kidney-for sale deals with the buyers.

....

39 Wang's mitigation plea indicated that he knew that Tang was desperate to procure a kidney from a living donor in order to proceed with the kidney transplant operation. He also knew that Tang was a man of means as the fee quoted and agreed for the sourcing of a kidney was S\$300,000 which is 5 times more than that paid by Juliana Soh. He was clearly exploiting the situation. Hence, the weight of culpability clearly lies with Wang who sought to profit from the desperation of the terminally ill as well as the desperation of the poor.

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54 With regards to the offences of abetting the arrangements for the illegal purchase of a kidney, it is evident from the statement of facts that Wang had played a major role in the said arrangements. It was Wang who had planned and co-ordinated the entire course of action that needed to be taken by the various parties involved in the transactions, viz, the sellers, the buyers and the runner, in order to ensure that the illegal kidney transplant operation was successfully performed. It was Wang who planned and directed the travel and accommodation arrangements for Toni and Sulaiman.

55 Whilst Toni and Sulaiman were in Singapore, Wang directed them as to what to do in preparation for the kidney transplant. For this purpose, Wang arranged for them to undergo a battery of medical tests.

56 Wang also instructed Toni to act as the liaison person between Sulaiman and Tang. He was a runner acting for Wang for an agreed fee of about S\$3200.

...

57 With regard to the offences of abetting the making of false statutory declarations and false statements, it is equally evident that the accused had also played an instrumental role in the commission of the said offences. He did this by instigating and coaching the sellers, Sulaiman and Toni, into making a false statutory declaration each, before a Commissioner for Oaths, which were material for them to participate as living donors in a kidney transplant surgical operation. It is clear that the false statutory declarations were to deceive the TEC into approving the kidney transplant operation.

58 Further, in order to obtain the written authorisation of a TEC, Wang had also taught Toni to make, in relation to an application for the written authorisation of a TEC, a false statement that he was not aware that any other person had been offered any form of inducement, contract or arrangement for the latter to give his consent for the removal of his organ, which statement both Toni and Wang knew was false

I see no reason to disagree with any of these findings. What appears to me to be particularly troubling about the offences under consideration is the cavalier manner in which the appellant has fabricated several overlaying shrouds of deceit to ensure the success of his 'trade'. Further, his conduct in brazenly inflating, without any apparent compunction, the value of his services for Tang Wee Sung ("Tang") certainly casts him in poor light, to say the least. I do not, in this context, find the appellant's counsel's contention that more 'work' was involved in Tang's transaction persuasive. The differences in the two transactions cannot by any stretch justify the enormous difference in the brokerage charges involved. He (and perhaps Whang Sung Lin as well) was plainly attempting to take advantage of Tang's vulnerability.

5 There is also no doubt in my mind that as compared to the other parties, who have been punished for their involvement in this matter to-date (*ie*, the desperately ill buyer, Tang, and the financially distressed donors, Toni and Sulaiman Damanik) the appellant, quite plainly, must be fixed with the lion's share of the stigma of culpability. He not only attempted to maximise his personal gains and unscrupulously took advantage of Tang, Toni and Sulaiman, he had also instigated the making of several false statutory declarations and boldly concocted an elaborate masquerade to mislead the Hospital's Transplant Ethics Panel.

6 This much is now incontrovertible. The appellant has peddled deceit, trafficked in organs and profiteered from misery. I cannot in these circumstances say that the sentences, imposed by the District Judge, were plainly wrong. On the contrary, I think they were amply justified. Indeed, it can be said that the sentences for the ODA offences erred on the side of mildness. The sentences, on the whole, nevertheless correctly embody the sentencing considerations of deterrence and retribution. That said, the primary sentencing consideration in this matter ought to be that of general deterrence and not retribution. This is to firmly deter other individuals contemplating acting as middlemen in organ-trading in Singapore. While it can be said that HOTA does not currently single out the role of the middleman, it appears to me, for the broad reasons I have given earlier, that the middleman's role should, as a matter of sentencing policy, be accorded prominence. The sentences imposed by the District Judge sufficiently articulate, for now, the unambiguous message that organ trafficking will not be tolerated in Singapore. In the result, the appeal is dismissed.