Public Prosecutor v Leong Wai Nam
[2009] SGHC 283

Case Number : MA 230/2009

Decision Date : 18 December 2009

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Lee Lit Cheng and Ong Luan Tze, DPPs for the appellant; Leonard Loo (Leonard Loo LLP) for the respondent

Parties : Public Prosecutor — Leong Wai Nam

Criminal Procedure and Sentencing

18 December 2009

Tay Yong Kwang J:

Introduction

1 This case concerns an appeal by the Public Prosecutor against the sentence imposed on the respondent. The respondent, an advocate and solicitor aged 41, pleaded guilty before a District Court and was convicted on the following six charges:

DAC 10001/2009

This charge was one of criminal breach of trust ("CBT") of a sum of $48,000 as an attorney in May/June 2007, an offence punishable under s 409 Penal Code (Cap 224, 1985 Rev Ed).

DAC 10003/2009

This concerned CBT of $1,800 between December 2006 and May 2007, an offence under s 406 Penal Code.

DAC 10004/2009

The third charge alleged that the respondent, between June 2005 and July 2007, committed CBT of $1,300 as an agent, an offence under s 409 Penal Code.

DAC 10009/2009

The fourth charge related to cheating someone out of $4,300 between February and April 2008, an offence under s 420 Penal Code (Cap 224, 2008 Rev Ed).

DAC 10010/2009

This alleged CBT of $1,500 as an agent sometime in November 2005, an offence under s 409 Penal Code.

DAC 10014/2009

This charge was also under s 409 Penal Code as it concerned CBT of $4,000 as an agent. The

offence was committed between August and December 2005.

2 Save for DAC 10009/2009 ("the cheating charge"), all the other five offences set out above took place before the 2007 amendments to the Penal Code ("the new Penal Code") came into operation on 1 February 2008. S 406 provided for a maximum of 3 years' imprisonment, a fine or both while s 409 provided for life imprisonment, or imprisonment of up to 10 years and a liability to fine. The present s 420 in the new Penal Code, which applies to the cheating charge, provides for 10 years' imprisonment and a liability to fine.

3 With the consent of the respondent, ten other charges were taken into consideration for the purpose of sentence. These related to offences under s 406 (two charges), s 409 (seven charges) and s 420 (one charge) Penal Code involving various amounts of money, with all offences having taken place before the new Penal Code came into force.

The statement of facts

4 The respondent became an advocate and solicitor on 26 March 1994. He last practised as one in October 2007 and his practising certificate expired on 31 March 2008.

5 The respondent worked in 12 law firms between 1998 and 2007. He had profit-sharing agreements with the law firms involved. He also had a profit-sharing agreement with his friend, Benjamin. Benjamin was a lawyer practising in a local law firm ("the law firm"). He did not relish meeting clients. He therefore entered into a verbal agreement with the respondent whereby the respondent would meet clients and then relay their instructions to Benjamin. Benjamin would then carry out the necessary legal work. If any client had to go to court, the respondent would represent him.

6 Benjamin would issue invoices to the clients. Although the respondent was not employed by the law firm, Benjamin trusted him to collect the legal fees from the clients and pay them to the law firm. When Benjamin received his share of the legal fees from the law firm, he would deduct his costs for his secretary and then share the proceeds with the respondent equally.

7 The five CBT charges set out above essentially concerned the payment of legal fees by clients to the respondent as an advocate and solicitor, who misappropriated the cash for his own use or deposited the cheques or cash into his personal account and then used the money for his personal expenses. Only the second charge (DAC 10003/2009) concerned the profit-sharing arrangement between the respondent and Benjamin.

8 On 16 November 2007, the respondent lodged a police report against himself for having misappropriated funds from his clients. This was after he was confronted by his friends, including Benjamin.

9 In respect of the cheating charge, in November 2007, the respondent was engaged by Lim Kek Lye ("Lim"), a director of Kian Hong Aluminium Works Pte Ltd ("KHAW"), to pursue two debts of $24,000 and $42,000 owed by two other companies to KHAW and to Jia Hong Aluminium Works ("JHAW") respectively. By the end of October 2007, the respondent was no longer in practice. He did not inform Lim about this but proceeded to make several requests for payment of legal fees.

10 In December 2007, the respondent informed Lim that he had managed to garnish the bank accounts of both debtors. Lim was pleased with the outcome and continued paying the legal fees requested by the respondent. Between February and April 2008, Lim paid cash amounting to $4,300 to

the respondent who had requested the money for purported court expenses and legal fees.

11 The truth was that the respondent did not do any legal work for Lim at all. He had deceived Lim into thinking that he was acting for KHAW and JHAW in the two matters and had thereby induced Lim to pay him the $4,300 in question.

12 The total amount involved in the 16 charges was $93,370.38. Partial restitution of $25,000 has been made.

The accused's antecedents

13 The respondent did not have any criminal record.

The decision of the District Judge ("DJ")

14 The DJ considered the mitigating factors raised on the respondent's behalf. These included the fact that he had pleaded guilty, that he had no excuses for his offences and that he would have to face disciplinary proceedings by the Law Society of Singapore. Further, the respondent had co-operated with the police in their investigations and had made partial restitution before he surrendered himself.

15 The DJ opined that the respondent had betrayed the trust placed in him as an advocate and solicitor and that a deterrent sentence was called for. In imposing a deterrent sentence, he was mindful that it should be tempered by proportionality in relation to the severity of the offences committed as well as by the moral and legal culpability of the offender (citing *Tan Kay Beng v PP* [2006] 4 SLR 10). He also had regard to the "totality principle" so as not to impose a "crushing sentence" (citing *Kanagasuntharam v PP* [1992] 1 SLR 81).

16 The DJ imposed the following sentences (in respect of the charges in the order in which they have been set out at [1] above):

(a) 18 months' imprisonment;

(b) 6 months' imprisonment;

(c) 10 months' imprisonment;

(d) 14 months' imprisonment;

(e) 10 months' imprisonment;

(f) 12 months' imprisonment.

He ordered the imprisonment terms for (a), (d) and (f) to run consecutively with effect from 17 February 2009, making a total of 44 months' imprisonment.

The prosecution's submissions on appeal

17 The prosecution argued that the sentence imposed by the DJ was manifestly inadequate. It submitted that offences involving professional or corporate integrity or abuse of authority, in particular, CBT by a lawyer in the discharge of his professional duties, warranted the application of general deterrence in sentencing. It relied on the well-known and often cited words of Chan Sek Keong J (now CJ) in *Wong Kai Chuen Philip v PP* [1990] SLR 1011, at 1017:

> Lawyers trade on their honesty. They sell their trustworthiness. Accordingly, one of the gravest offences an advocate and solicitor can commit is to take his clients' money. Criminal breach of trust by a lawyer in the discharge of his professional duty must inevitably call for a custodial sentence of a deterrent nature, not so much as to deter the offender concerned but to deter other members of his profession from committing similar offences.

18 While acknowledging that the 44-month imprisonment term was a stiff sentence, the prosecution submitted that it was not sufficiently deterrent for like-minded lawyers. It stated that there was a disturbing trend of lawyers committing CBT of clients' money and absconding with the attendant public concern that such errant lawyers attracted. The Law Society of Singapore had to pay out some $631,000 in its last financial year to help victims of rogue lawyers but this represented only a small fraction of the overall loss suffered. The prosecution contended that there is a dire need to impose long custodial sentences for general deterrence and to restore the reputation of and to regain public confidence in the legal profession.

19 The prosecution pointed out that V K Rajah J (now JA) in *Tan Kay Beng v PP* (see [14] above) also made the following remarks (in addition to what the DJ cited):

> 51 …the application of the principle of general deterrence should usually be tempered with proportionality and a notion of fairness to the accused as well save where public interest unyieldingly dictates otherwise.

Referring to past cases of CBT by lawyers, the prosecution contended that the sentences imposed thus far have not been effective in deterring others from doing the same.

20 The following matters were cited by the prosecution as the aggravating factors to consider in this case. The respondent's acts of misappropriation took place over almost three years (between June 2005 and April 2008). They were not committed "on the spur of the moment but a case of deliberate, careful and planned dishonesty over a prolonged period". It was particularly aggravating that even after his dishonest deeds had come to light in November 2007 because of the confrontation by his friends, the respondent continued to deceive Lim in order to induce Lim to hand over money to him (see the facts of the cheating charge). Even after the partial restitution, there remained a loss of more than $68,000. The respondent abused the trust reposed in him by 11 clients and two law firms.

21 The prosecution submitted that the total sentence should be in the range of 6 to 7 years' imprisonment.

The respondent's submissions

22 Mr Leonard Loo for the respondent pointed out that, unlike the "bad sheep" who absconded with clients' money, the respondent acknowledged his wrongdoing even before any police investigations commenced and also pleaded guilty in court. He further pointed out that the prosecution did not make any submissions on sentence before the DJ.

23 When I asked whether financial difficulties were the trigger for the offences, the respondent (who is already serving sentence) asked to address the court in person from the secured enclosure. I allowed him to do so. The respondent explained that he had collected money from Lim (see the cheating charge) intending to pass the case to a law firm as he was not in practice then. However, he fell to temptation. The respondent said that after he surrendered himself, he really felt very remorseful. He was released without bond and had gone to meet the investigating officer whenever asked to do so.

24 The respondent said that he had to look after his mother aged 78 and a sister who was not well. He is divorced and has a young daughter. He pleaded that "there is one remorseful black sheep that wants to do right". He would like to work after serving imprisonment to pay back what he had taken from the victims.

The decision of the court

25 I allowed the appeal by the prosecution and enhanced the sentence for DAC 10001/2009 from 18 months' to 36 months' imprisonment. In respect of the cheating charge, I enhanced the sentence from 14 months' to 30 months' imprisonment. I ordered the imprisonment terms for the same three charges (as ordered by the DJ) to run consecutively, making a total of 78 months' imprisonment with effect from 17 February 2009.

26 I acknowledge that the respondent went to the police in November 2007 to report his own wrongdoing and admitted his guilt in court without reservation. It was said that he went to the police only after he was confronted by his friends, including Benjamin, about his misdeeds. Even so, it could not have been an easy decision to make and I would have regarded that as a very strong factor in his favour. However, this factor was practically demolished by the cheating charge, which occurred in 2008, months after he went to the police and while investigations were apparently underway. Another related cheating charge involving the same client (one of the ten charges taken into consideration for the purpose of sentence) also took place sometime between November 2007 and January 2008. These two offences threw into serious doubt whether the respondent was genuinely remorseful about the CBT offences.

27 Moreover, the cheating offences involved deception of a client who required legal advice and help in commercial matters. The sort of deception employed by the respondent would have lulled Lim into thinking that his companies were successful in their claims against the debtors. The consequences of such deception by an advocate and solicitor can be quite horrendous to a business. Its claims could become time-barred by the law relating to limitation. The debtors could have gone on to dissipate their assets. The one in the company given the task of initiating legal action would have been seriously embarrassed in his duties as he would undoubtedly have reported to the company what he had been told by the purported legal adviser.

28 The respondent knew that he could not undertake the legal work for KHAW and JHAW as he was not practising at the material time. It was not simply a case of him having agreed to act as lawyer and then doing nothing.

29 DAC 10001/2009 involved the largest amount of $48,000 misappropriated from a client. In terms of chronology, it was not among the first of the CBT offences committed by the respondent. Indeed, it was one of the later offences, taking place around mid-2007. Another related offence pertaining to the same client (which was taken into consideration for the purpose of sentence) occurred between April and August 2007 and involved the second largest amount of $20,800. They showed that the respondent was misappropriating much larger amounts as time went by compared to the earlier CBT offences which generally involved amounts of less than $2,000 (save for one of $4,000).

30 I agree entirely with and adopt what Chan J expressed in *Wong Kai Chuen Philip v PP* (see [16] above). Here, an advocate and solicitor not only committed a number of "one of the gravest offences" for his profession but aggravated them by cheating a client in his professional capacity, causing the client to lose potentially more than just the amounts of money taken from him.

31 The respondent had no previous conviction before the present offences came to light. A clean record may be effective in showing that what an accused person did on one or two isolated occasions was totally out of character but carries hardly any mitigating force when an accused person is convicted of a string of offences committed over a spectrum of time. All it means is that the accused person was fortunate not to have been caught by the law earlier. On the other hand, of course, previous convictions for similar offences would aggravate subsequent offences as they demonstrate a recalcitrant streak which must be dealt with more forcefully.