Lim Pei Ni Charissa v Public Prosecutor
[2006] SGHC 128

Case Number : MA 149/2005

Decision Date : 20 July 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Edmond Pereira (Edmond Pereira & Partners) for the appellant; Christina Koh (Deputy Public Prosecutor) for the respondent

Parties : Lim Pei Ni Charissa — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Appellant convicted on seven charges for abetment of cheating offences based on trial judge's findings of fact – Trial judge preferring prosecution witnesses' version of facts – Whether trial judge erring in findings of fact and assessment of veracity and credibility of witnesses – Whether appellant's conviction should be set aside

Criminal Procedure and Sentencing – Sentencing – Young offenders – Appellant convicted on seven charges for abetment of cheating offences – Appellant between 17 and 18 years old at time of offences – Factors to consider when deciding whether appellant should be sentenced to probation rather than imprisonment

20 July 2006

Tay Yong Kwang J:

1 The appellant, one Lim Pei Ni, Charissa, faced a total of 177 charges under s 420 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC") for the abetment of cheating offences relating to the use of stolen credit cards. Seven charges were proceeded upon, against which the appellant claimed trial before the district judge. At the end of the trial, the district judge convicted the appellant on all seven charges and sentenced her to a total of 33 months' imprisonment. She appealed against conviction and sentence.

2 At the hearing before me on 19 May 2006, I affirmed the appellant's conviction and adjourned my decision on sentence pending the preparation of a probation report. On 30 June 2006, I allowed the appeal against sentence, ordering that the appellant undergo a 36-month period of probation, with the appropriate conditions. I now give my reasons for doing so.

The appeal against conviction

The primary issue and the relevant law

3 The trial before the district judge proceeded on the basis that one Roger Loo Chee Hong ("Loo"), the then boyfriend of the appellant, had committed the underlying principal offences of deceiving retail establishments into believing that he was the rightful holder of the stolen credit cards, thereby dishonestly inducing them into accepting the credit cards for payment and delivering the purchased items to him. The key issue was therefore whether the underlying cheating offences had been committed pursuant to a conspiracy between the appellant and Loo.

4 The relevant law was set out succinctly by the district judge in his grounds of decision (*PP v Lim Pei Ni Charissa* [2006] SGDC 24) at [22]–[24]. Abetment by conspiracy is defined in s 107(*b*) of the PC and comprises three elements. First, the person abetting must engage, with one or more persons, in a conspiracy. Second, the conspiracy must be for the doing of the thing abetted. Third,

an act or illegal omission must take place in pursuance of the conspiracy, and in order to the doing of that thing: *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25. Agreement is at the heart of a conspiracy. Each conspirator must have an intention to be a party to an agreement to do an unlawful act: *Johnson v Youden* [1950] 1 KB 544; *Hwa Heng Lai Ricky v PP* [2005] SGHC 195.

Prosecution's case

5 According to the Prosecution, Loo and the appellant agreed that Loo should use stolen credit cards at various retail establishments to make fraudulent purchases. Loo was the Prosecution's primary witness against the appellant. At the time, Loo and the appellant had been cohabiting in a rented flat in Pandan Valley. In June 2003, Loo stole a credit card from one Toh Chong Yan by using a pair of chopsticks to extract letters from the latter's mailbox. According to Loo, he revealed to the appellant that he had stolen a credit card from a mailbox. The appellant was eager to go shopping. To determine whether the stolen credit card could be used, Loo decided to test the card. On 28 June 2003, Loo purchased a $14 shirt from a Giordano store. Although the appellant was present at the time, Loo told the appellant to leave the store when he made payment to avoid being caught on the store's close circuit security camera. Thereafter, Loo and the appellant used stolen credit cards to purchase various items. The appellant would leave the store while Loo made payment for the items. The stolen credit cards were used at various retail merchants to purchase goods as well as food and beverages from June to July 2003.

6 Around the same time in June 2003, Loo stole cheques from his neighbour. Loo eventually surrendered himself to the authorities and was sentenced to one year's imprisonment. He served eight months in prison, from 8 July 2003 to 9 March 2004. Upon his release, Loo was jobless, and was surviving on his savings, proceeds from the sale of his Economic Restructuring Shares (ERS) and New Singapore Shares (NSS) as well as handouts from his father. Loo testified that the appellant knew of his financial circumstances.

7 On 25 April 2004, Loo stole a credit card from a mailbox and, together with the appellant, proceeded to purchase items from the Levi's boutique. Subsequently, between April and September 2004, Loo made purchases at various retail stores, mostly in the appellant's presence and for her benefit.

The defence

8 According to the appellant, Loo told her that he would bring her shopping as her examinations had just ended and she had studied hard. The appellant queried whether Loo could afford to go shopping. Loo informed her that he had savings and that he was working. The appellant testified that Loo had not told her that he had stolen a credit card. After their shopping spree on 28 June 2003, the appellant again asked Loo whether he could afford their purchases. Loo told the appellant that he had savings and had received his pay.

9 On 29 June 2003, the appellant again enquired whether Loo could afford her purchases. Loo was irritated and brushed her questions aside. As such, the appellant did not pursue the matter and simply bought what she wanted. According to the appellant, she was too happy with being able to go shopping to suspect that Loo was using stolen credit cards. On one occasion, with regards to the purchase in the fifth charge, the appellant testified that she and Loo were shopping at the Christian Dior store. When the appellant chose a particular watch, Loo told her that it was beyond his budget. The appellant eventually selected a less expensive watch. The appellant deduced from this incident that Loo could afford the purchases that had been made. According to the appellant, she only found out that Loo had been using stolen credit cards when she was questioned by the Commercial Affairs

Department in December 2004, after Loo had been arrested.

The decision below and the appeal

10 Having carefully considered the evidence, the district judge came to the following conclusion at [111]–[112] of his grounds of decision ([4] *supra*):

> … I was satisfied beyond a reasonable doubt that the Accused had engaged in a conspiracy with Loo to commit credit card fraud on the 7 occasions specified in the proceeded charges. Loo's testimony was materially consistent and cogent. I believed Loo, who impressed me with his truthfulness and forthrightness. Various parts of his testimony, including the nature of his relationship with the Accused at the material time, were corroborated by his father, Loo Kok Man.
>
> The Accused, on the other hand, struck me as an unreliable witness. There were many occasions where the Accused purposefully disassociated herself from incriminating evidence. I agreed with the Prosecution's submission that the Accused was able to embark on the spending sprees in 2003 and 2004, intentionally buying a high number of luxury items or even ordinary items in excessive quantities, despite Loo's tight financial situation, because she knew that Loo was not paying for these items with his own money.

11 Before me, the appeal against the district judge's findings was on the grounds that:

> (a) The district judge erred in his assessment of the credibility of Loo, who was an accomplice and whose evidence should be treated with extreme caution, in deciding that Loo had told the appellant he had stolen credit cards and that Loo did not have a reason to falsely incriminate the appellant.
>
> (b) The district judge erred in failing to give adequate consideration to the fact that Loo had incriminated the appellant on the prompting of the investigating officer and that his testimony had been motivated by ill will.
>
> (c) On the totality of the evidence, there was reasonable doubt as to the Prosecution's case because the appellant was not present in 25 out of the 177 charges against the appellant.
>
> (d) The district judge had erred in his assessment of the appellant's credibility and had failed to consider that the appellant was used to the gratuitous receipt of luxury items because of her mother's generous attitude towards her.

12 In assessing the merits of the appeal, I was aware that the appellant's key arguments pertained to the district judge's findings of fact and his assessment of the veracity and credibility of the relevant witnesses. I was also mindful of the fact that the district judge had the benefit of hearing the evidence of the witnesses and observing their demeanour. An appellate judge must defer to the findings of fact made by the district judge which are based on the assessment of witnesses, unless they are clearly wrong or wholly against the weight of the evidence. Should the appellate judge wish to reverse the district judge's decision, he must not merely entertain doubts as to whether the decision was right, but must be convinced that it is wrong: *PP v Poh Oh Sim* [1990] SLR 1047 at 1050, [8]; *Moganaruban s/o Subramaniam v PP* [2005] 4 SLR 121 at [14].

13 Having considered the evidence before me, I was of the view that the district judge's decision was neither clearly wrong nor against the weight of evidence. On the contrary, the district judge had applied his mind carefully to the relevant issues and had made a careful assessment of the

credibility and testimony of each witness. Accordingly, I had no doubt that his decision to convict the appellant was correct and therefore dismissed the appeal against conviction.

The appeal against sentence

The decision below

14 Having convicted the appellant, the district judge proceeded to determine the appropriate sentence to impose. The following factors were considered by the Prosecution to be relevant in deeming the appellant unsuitable for probation:

(a) Although technically a first offender, the appellant had conspired with Loo over two periods in 2003 and 2004 and she did not desist from committing such offences even after Loo's conviction on unrelated property offences.

(b) Remorse was an essential pre-requisite for probation. The appellant had denied all wrongdoing and had weaved a fanciful tale to explain away incriminating evidence.

(c) Offences involving credit cards have always been seriously regarded as they involve the deception of financial institutions and are offences that are easy to commit but difficult to detect.

15 As a result, the district judge ordered that the appellant be sentenced in the following manner:

DAC 18818/2005 – two months' imprisonment.

DAC 18821/2005 – four months' imprisonment.

DAC 18850/2005 – four months' imprisonment.

DAC 18852/2005 – four months' imprisonment.

DAC 18863/2005 – 12 months' imprisonment.

DAC 18957/2005 – 12 months' imprisonment.

DAC 18960/2005 – nine months' imprisonment.

The sentences in District Arrest Cases Nos 18863, 18957 and 18960 of 2005 were ordered to run consecutively, resulting in a total of 33 months' imprisonment. The district judge's decision was based on his view that the appellant's punishment must reflect sufficient disapproval of her acts and deter similarly-minded persons in future. He also wanted to convey the message that the courts did not condone theft of credit cards and their subsequent use.

The appeal

General principles

16 In *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [21] and [25], Yong Pung How CJ stated that rehabilitation is the dominant consideration where the offender is 21 years and below. The appellant here was between 17 and 18 years of age when she committed the offences. She is now 20

years old. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. Compassion is usually shown to such offenders because they may not have had enough experience in life to realise the full consequences of their actions on themselves and on others. Yong CJ also recognised that the corrupt influence of a prison environment and the stigmatisation of having been to prison may be undesirable and counter-productive. As in all cases (whether involving young offenders or not), there is a need to strike a balance between public interest and the interest of the offender. Therefore, probation may be inappropriate in cases where serious offences such as robbery or other violent crimes have been committed, or where the offender has antecedents, as in *Siauw Yin Hee v PP* [1995] 1 SLR 514. But these must not be taken as inexorable principles of law, to be mechanically applied regardless of the factual matrix of the case. As explained in *Siauw Yin Hee* at 516, [7]:

> Certainly the rehabilitation of offenders constitutes one of the objectives by which a court is guided in passing sentence. It is as a corollary of this that the courts retain the discretion to decide the appropriateness of a rehabilitative sentence (such as probation) in any individual case. In virtually every case in which probation or a conditional discharge is asked for by an accused person, remorse is professed; reformation is promised. Yet, plainly, such assurances by themselves cannot form the sole basis on which a decision as to the suitability of a rehabilitative sentence is made. *The court must take into account various other factors including evidence of the accused's previous response to attempts at rehabilitating him*. Thus, for example, all things being equal, a court will be far more disinclined to order probation in the case of an accused who has in the past flouted with impunity the conditions imposed by a probation order. [emphasis added]

17 In *PP v Muhammad Nuzaihan bin Kamal Luddin* [2000] 1 SLR 34, Yong Pung How CJ, in setting aside a probation order made by the District Court, said (at [16]):

> 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. [emphasis added]

Indeed, s 5(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA") provides:

> 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, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years … [emphasis added]

Therefore, while it may be the case that the more egregious the offence or the more recalcitrant the offender, the less likely the offender will be able to convince the court that he or she will reform and respond to rehabilitation, there is nothing in the cases or in the statutes that indicate that the courts must view such circumstances as always ruling out the possibility of probation. In all such cases, the

guiding principle is the likely responsiveness of the young offender to rehabilitation. The court must apply its mind to the facts of each case and, in particular, the probation report.

The appellant's age, mentality and role in the cheating offences

18 In considering the appellant's sentence, I was in agreement with the district judge in so far as, even though the appellant was technically a first-time offender, the number of occasions and lengthy period over which the cheating offences were committed disqualified the appellant from relying on her lack of antecedents as a mitigating factor: *Chen Weixiong Jerriek v PP* [2003] 2 SLR 334. However, rather than concluding that the appellant was *ipso facto* "incorrigible" and undeserving of compassion, I was of the view that the appellant was a spoilt child who had been so blinded by her insatiable greed that she ignored the fact that what she was doing was wrong. At the time of the offence, the appellant was merely between 17 and 18 years old. The genesis of the appellant's independence and materialism was perhaps her own mother's indiscriminate showering of luxury items to make up for the appellant's difficult childhood. The appellant lacked guidance and a strong hand to teach her that it was more important to possess non-luxury items in an honest manner than to gain expensive goods through deceitful means.

19 Although there were 177 charges against the appellant relating to goods worth over $33,000, the appellant was tried and convicted on seven charges involving goods worth $7,508.20 and those were the only ones material to this appeal. The court should not take into consideration the remaining 170 charges, which had been stood down in the District Court, as they were irrelevant for the purposes of this appeal (see *Chua Tiong Tiong v PP* [2001] 3 SLR 425 at [29]). In any event, this was clearly not the operation of a syndicate engaged in large-scale credit card fraud. Rather, this was the work of one man who had used a pair of chopsticks to extract credit cards from mailboxes in order to buy things to please his erstwhile girlfriend. Relatedly, although I was aware that the appellant was the main person benefiting from the fraudulent purchases and that Loo had committed the cheating offences to please the appellant, she was neither the principal offender nor the instigator of the theft of the credit cards.

20 In this regard, *Fadilah bte Omar v PP* (Magistrate's Appeal No 168 of 1996) and *Senthil Kumar a/l Sintambaram v PP* (Magistrate's Appeal No 257 of 1999), cases relied upon by the Prosecution, can be distinguished. In *Fadilah bte Omar v PP*, a 16-year-old offender misappropriated a credit card that she had found in a toilet and used it to make fraudulent purchases. She pleaded guilty to three charges of cheating under s 420 of the PC and one charge of criminal misappropriation under s 403 of the PC, with 11 charges under s 420 of the PC taken into consideration. The total amount involved was $1,325.62. The offender was sentenced to a total of 14 months' imprisonment. Although the amount involved was much smaller than in the present case, the misappropriation and the fraudulent usage had both been carried out by the offender. Her culpability was therefore correspondingly greater and she was punished accordingly. Apart from this, I will be highlighting the special circumstances of the appellant in the case before me. In *Senthil Kumar a/l Sintambaram v PP*, a 17-year-old offender had been recruited to make fraudulent purchases with a counterfeit credit card. He pleaded guilty to five charges of conspiracy to cheat under s 420 read with s 109 of the PC, with seven similar charges taken into consideration. The total amount involved was $8,211.47, and the offender received $600 as payment. The offender received four years' imprisonment for his role in the scam. This case can be distinguished from the present one in that the offender was one of the players involved in an organised scam. None of these cases set a hard and fast rule against the ordering of probation in credit card offences, provided of course that the offender is suitable for and deserving of a chance at probation. Accordingly, although the courts must certainly treat cases of credit card fraud with disapprobation and censure, it is my view that, in the light of the nature of Loo's operations and the appellant's role in the offences, the balance between public interest and the

interest of the offender would not be compromised by a probation order here. I would add that this was simply an application and not an extension of the general principles articulated in *PP v Mok Ping Wuen Maurice* (see [16] *supra* at [21]).

The probation report

21 Turning next to the appellant's probation report, it was clear to me that the probation officer, Ms Rodziah Ahmad ("Ms Ahmad"), had carefully considered the appellant's suitability for and ability to respond to probation when making her recommendation. The probation report was comprehensive and detailed. Ms Ahmad interviewed the appellant face to face on five occasions and also interviewed the appellant's mother, grandmother, current boyfriend, her mother's boyfriend, the appellant's former teachers and the investigating officer in charge of the appellant's case. Ms Ahmad also visited the appellant's home. According to the probation report, the appellant's mother was the sole breadwinner and caregiver to the appellant and her sister. The appellant was close to her mother, who adopted a liberal attitude towards her children's upbringing. The appellant and her sister were given money and freedom to compensate them for their difficult childhood. The appellant was also close to her sister and her maternal grandmother.

22 Ms Ahmad stated in the probation report that the appellant was in a stable relationship with her current boyfriend and they have a three-month-old daughter. Since the birth of her daughter, the appellant has been living with her mother and the family is financially stable. The appellant is the main caregiver to her daughter, with her maternal grandmother assisting on weekday afternoons. The appellant was described in the report as an intelligent, well-behaved and mature student. She was accepted by the University of Western Australia to pursue a degree course in Law and the Arts but had deferred enrolment pending the outcome of the present case. The appellant is currently enrolled in a one-year diploma course in law in the Singapore Institute of Commerce. There is certainly promise in the appellant's future.

23 The probation report indicated that since the birth of her child, the appellant turned away from smoking and drinking and spent her time at home caring for her child instead. The appellant acknowledged to Ms Ahmad that she had become less materialistic and realised the need to be thrifty in order to provide for her child. She also intended to be self-sufficient, attaining educational qualifications and securing stable employment in order to give her child a good future. Ms Ahmad also stated before this court that the appellant was very receptive to the advice of her mother and grandmother since the birth of her child. Further, she believed that the appellant had the ability to respond to supervision while on probation even if the appellant's mother could not exert control over her.

24 Turning next to the issue of the appellant's remorse for her crimes, although I recognised that the appellant had chosen to claim trial rather than plead guilty, it was my view that the fact that she exercised her right to trial did not rob her of the court's discretion to order probation. An early plea of guilt may have afforded her further credit but she could not be penalised for choosing to go to trial. Further, and significantly, the appellant subsequently admitted to Ms Ahmad that she had been consumed by greed during the commission of the offences, without any thought as to the consequences. Ms Ahmad observed that the appellant was able to reflect and understand how her actions had impacted the retail institutions she had gone to, as well as her family members. The appellant was emotional when reflecting on the prospect of imprisonment and being separated from her baby. When questioned before this court, Ms Ahmad reiterated that the appellant had taken responsibility for her wrongdoing.

25 In recommending the appellant for probation, Ms Ahmad was clear that a maximum term of

probation coupled with an intensive case management plan were necessary to ensure that the appellant was rehabilitated. In particular, it was recommended that the appellant undergo a 36-month period of probation, divided into six months of intensive and 30 months of supervised probation. Additionally, the appellant was to remain indoors from 10.30pm to 6.00am and placed on the electronic monitoring scheme for six months. It was also recommended that the appellant perform 240 hours of community service, and that her mother be bonded to ensure the appellant's good behaviour.

26 Over and above the conditions stipulated above, the appellant had to undergo an individualised case management plan, which included a prison visit (to highlight to her the harsh realities of prison), psychological counselling, courses in financial planning and a parenting programme. The appellant's entire family would also be tasked to participate in family conferences throughout the period of her probation in order that they were equipped to support the appellant in her rehabilitation.

27 Despite the intensity of the envisaged supervision and rehabilitation plan, Ms Ahmad stated before this court that she was confident that the appellant would be able to complete the case management plan. Further, although Ms Ahmad was aware that the appellant's boyfriend had a number of criminal antecedents, he had not committed any offence for the past three years. Both the appellant and her boyfriend had acknowledged that they required counselling in order to be law-abiding and good parents to their child.

28 During cross-examination of Ms Ahmad before me, the Prosecution queried whether the appellant had simply been putting on her best front to Ms Ahmad and had used her linguistic ability to tell Ms Ahmad what the latter wanted to hear. I noted that Ms Ahmad's answer was clear – the appellant had been very forthcoming in addressing the many issues that still plagued her and had acknowledged her need for help.

29 In the light of the probation report and Ms Ahmad's testimony before me, it was clear to me that the probation programme envisaged for the appellant amounted to far more than a mere "slap on the wrist" as contended by the Prosecution. Rather, it was a carefully-crafted programme that took into account the appellant's circumstances and needs and was premised on the sound network of family support that the appellant was fortunate to receive. The programme also incorporated the requisite elements to ensure that the appellant realise the gravity of her misdeeds and the harsh realities of life in custody should she ever re-offend or breach the terms of her probation. Further, although I was aware that prison regulations allow the appellant to be with her infant while she serves a custodial sentence, it is eminently more desirable that the appellant's baby be brought up in a positive familial environment, rather than in prison.

Conclusion

30 In the final analysis, I was persuaded by the exceptional circumstances of this case to grant probation to a young woman who had exhibited maturity since the commission of her offences and deserved a chance to right the wrongs she had committed against society. In coming to this conclusion, I was fully cognisant of the fact that the appellant had committed serious offences over a period of time and I fully agree that it is very much in the public interest for the courts to take a harsh stand against credit card fraud in order to deter both the appellant and like-minded potential offenders from committing such crimes in the future. Yet, in the light of a unique combination of factors, including the appellant's age at the time of the offences, her role in the offences, her subsequent acknowledgment of her wrongs, her family support, her baby and her receptiveness to the terms of her intensive probation plan, I was of the view that the public interest could equally be advanced by ordering that the appellant undergo the maximum term of probation, with the appropriate terms as recommended by the probation officer. The only term I saw fit to vary was the requirement

that the appellant was to be home by 10.30pm. In my view, it was sufficient if the appellant returned home by midnight, especially since her diploma course was conducted at night. Additionally, I expressly warned the appellant that any breach of her probation order or commission of a subsequent offence would, under s 5(4) of the POA, render her liable to be sentenced for her original offences.

31 In the premises, I ordered that the appellant be placed on 36 months' probation with effect from 30 June 2006, with the following additional conditions:

(a) The appellant is to remain indoors from 12.00 midnight to 6.00am, unless prior permission is obtained from the probation officer.

(b) The appellant is to be placed on the electronic monitoring scheme for a period of six months.

(c) The appellant is to perform 240 hours of community service as directed by the probation officer.

(d) The appellant's mother is to be bonded for the amount of $10,000 to ensure the appellant's good behaviour.

32 It is hoped that, having received this chance, the appellant will make use of the support network to resolve her emotional issues and equip herself to provide a good future for herself and her child. I hope that she will live up to the faith that the probation officer and I have placed in her.