IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 4

Criminal Motion No 24 of 2021

Between

Thennarasu s/o Karupiah

… *Applicant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Appeal] — [Out of Time]

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Thennarasu s/o Karupiah
v
Public Prosecutor

[2022] SGCA 4

Court of Appeal — Criminal Motion No 24 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
17 January 2022

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Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The applicant, Mr Thennarasu s/o Karupiah, pleaded guilty to a single charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") for causing the death of the victim in a vicious fight. In the course of the fight, the applicant hit the victim on the head and back with a metal chair and stomped on his face. The applicant admitted to the statement of facts ("the SOF") without qualification. The High Court judge ("the Judge") sentenced him to a total of 15 years' and 5 months' imprisonment on 1 October 2018. The applicant did not file an appeal against his sentence within the prescribed time of 14 days from conviction as required by s 377(2)(*b*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC").

2 By Criminal Motion No 24 of 2021 filed on 25 June 2021, the applicant seeks an extension of time under s 380(1) of the CPC to file a notice of appeal against his sentence on the basis that he was promised a sentence of 10 years' imprisonment by his former counsel, had been forced to plead guilty in the fear that he would be sentenced to life imprisonment and material facts and evidence were not highlighted by his former counsel to the Judge.

3 Having carefully considered the parties' submissions, it is clear to us that the application is wholly devoid of merit. The allegations made against his former counsel are nothing but afterthoughts contrived by the applicant to seek a review of his sentence which he now apparently considers to be excessive. We accordingly dismiss the application and provide our brief reasons for doing so.

Our decision

Application for extension of time

4 Under s 380(1) of the CPC, an appellate court may, on the application of any person debarred from appealing for non-compliance with any provision of the CPC, permit him to appeal against any judgment, sentence or order if it considers that to do so would be in the interests of justice. However, no party in breach of the procedural rules and timelines is *entitled* to an extension of time as a matter of course. A party seeking the court's indulgence to excuse a breach of a time limit for appeal must put forward sufficient material upon which the court may act (see the decision of the High Court in *Lim Hong Kheng v Public Prosecutor* [2006] 3 SLR(R) 358 at [27]). In particular, the court will consider (a) the length of the delay in the prosecution of the appeal; (b) the explanation put forward for the delay; and (c) the prospects of a successful appeal (see the decision of this court in *Bachoo Mohan Singh v Public Prosecutor and other applications* [2010] 1 SLR 966 at [64]).

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5 In our judgment, the applicant has failed to put forward either facts or arguments which meet the threshold required to persuade the court to grant an extension of time.

6 First, the applicant does not provide any coherent explanation for his lengthy delay of about 2 years and 8 months in attempting to lodge an appeal. While he claims to have had difficulty obtaining legal aid or representation from Recourse Initiative and other lawyers, the applicant has provided scant details as to the time when he first began seeking legal assistance or the number of lawyers he allegedly sought assistance from. He does not explain either why, when he was given the opportunity to file a timely appeal against his sentence with the assistance of the prison services, he chose not to do so. Instead, he indicated on 2 October 2018 that he was satisfied with his sentence.

7 Second, the applicant's contention that his sentence is "too high" is wholly unmeritorious. We agree with the Prosecution that the sentence imposed by the Judge cannot be considered manifestly excessive and is within the range of precedent cases. The cases cited by the applicant, *Tan Chun Seng v Public Prosecutor* [2003] 2 SLR(R) 506, *Soosay v Public Prosecutor* [1993] 2 SLR(R) 670 and *Public Prosecutor v Lee Chin Guan* [1991] 2 SLR(R) 762 are inapplicable because they were decided under an entirely different sentencing regime. At the time those cases were decided, the applicable provision was s 304(*b*) of the Penal Code (Cap 224, 1985 Rev Ed). This section authorised the court to either impose a sentence of up to 10 years' imprisonment or life imprisonment. This explains the relatively shorter imprisonment terms of 10 years, 9 years and 7 years meted out to the offenders in those cases. The facts of those cases are also distinguishable from the present one.

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8 Third, the applicant's assertion that his former counsel, Mr Thangavelu, had failed to follow his instructions to highlight particular facts and evidence to the Judge is completely unfounded. His allegation is contradicted by both the oral mitigation and the written mitigation plea made by Mr Thangavelu on the applicant's behalf. It was clear to us that, quite contrary to the applicant's assertions in that regard, Mr Thangavelu dutifully highlighted the elements of provocation, suddenness of the fight, lack of premeditation and the applicant's remorse. Mr Thangavelu also addressed the autopsy report and clarified that the nine times the applicant hit the victim with the chair, eight blows fell on the victim's back and only one fell on his head. As the applicant's counsel, Mr Thangavelu had the responsibility of deciding how best to conduct the mitigation after studying the evidence and applicable law. There is not an iota of evidence to show that he did not carry out that responsibility in a proper fashion and it appears to us that the applicant has simply conjured up complaints about his conduct out of thin air. We accordingly reject the applicant's belated complaints.

9 Fourth, the applicant has also made assertions that he did not cause the death of the victim. Having pleaded guilty and admitted to the SOF without qualification, he is not permitted to do so. In this application, the applicant put forward a different reconstruction of events but this was based on his own "recollection" and ran counter to his admissions in the SOF. The applicant has not put forward any basis on which this court can disregard the SOF which encompassed the autopsy finding that the victim was killed by the impact of a blunt force to the front of his head.

10 Finally, the applicant's assertion that he had been forced by Mr Thangavelu to plead guilty is wholly unbelievable. He claims that Mr Thangavelu had promised him a ten years imprisonment term and he was

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later forced to accept the Prosecution's "offer of 16 years" as the alternative would be life imprisonment. These allegations are not only late and therefore less convincing but they were also roundly rebutted by Mr Thangavelu's affidavit which detailed how he had obtained the applicant's instructions and advised the applicant accordingly. It appears that the applicant misunderstood the legal advice provided by Mr Thangavelu. Mr Thangavelu explained that he did not promise the applicant that he could obtain a sentence of ten years' imprisonment for him. He advised the applicant that, taking into account precedents and the Prosecution's sentencing position of 12 years' imprisonment at the time, it was possible to mitigate and seek a sentence of 9 to 10 years' imprisonment. Considering Mr Thangavelu's experience in criminal practice, it is highly improbable that he would promise a client that he could get a particular imprisonment term. Obviously, Mr Thangavelu was aware that the actual sentence would not be within his control.

11 It appears that the applicant also misunderstood the Prosecution's plead guilty offer and their subsequent change in sentencing position. The applicant repeatedly emphasises that he had accepted the Prosecution's offer of 12 years' imprisonment. However, the Prosecution's conditional offer was limited to the lowering of the charge from murder under s 300(*c*) of the Penal Code to culpable homicide under s 304(*a*) of the Penal Code should he plead guilty. While the Prosecution may have also initially indicated that it would seek a sentence of 12 years' imprisonment and this was communicated by Mr Thangavelu to the applicant, the Prosecution retained the discretion to change its sentencing position at any time before the plead guilty hearing. While the applicant may have been satisfied with the Prosecution's original sentencing position of 12 years' imprisonment, it is critical to note that the Prosecution's revision of its sentencing position to 16 years and 5 months' imprisonment on

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26 September 2018 was made known to the applicant before he pleaded guilty. That the applicant still pleaded guilty was consistent with Mr Thangavelu's explanation that he had informed the applicant of the change in position and advised him that he still had the option not to plead guilty but in that event the charge would revert to one of murder which carried the heavier punishment of life imprisonment or death.

12 The evidence does not support the applicant's assertion that he had been forced in any way to plead guilty. In accordance with the applicant's instructions, Mr Thangavelu sought a sentence of between eight to ten years' imprisonment in mitigation before the Judge. There was certainly nothing objectionable about Mr Thangavelu's conduct of the applicant's defence. We also find the applicant's collateral allegations against his former counsel, Mr Mohamed Baiross, to be unfounded and without relevance to the present criminal motion.

13 For completeness, we note that the applicant has reiterated that he does not wish to retract his guilty plea. However, in so far as some of his factual allegations above seem to cast doubt on his plea of guilt, we see no basis to allow a retraction of his plea and overturn his conviction. Such an application would fall within the first category of cases (*ie*, post-sentence retraction of plea) discussed by this court in *Public Prosecutor v Dinesh s/o Rajantheran* [2019] 1 SLR 1289 (at [48]–[51]). This court set out the threshold of intervention as one where there is serious injustice or where the accused person did not have the genuine freedom to plead guilty. For the reasons explained above, we are satisfied that there is no serious injustice and that the applicant did exercise his genuine freedom to plead guilty.

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Conclusion

14 For these reasons, we are satisfied that the present application is without basis and should be dismissed.

15 We should observe that this is another instance of the increasing number of cases in which unfounded allegations against former counsel have been made by accused persons to further their own ends. Such grave allegations, which attack the reputation of counsel and the finality and integrity of the judicial process, should not be lightly made and, if made at all, must be supported by strong and cogent evidence. Unfounded allegations are reprehensible and unjust to counsel who have tried their best to assist clients in difficult situations, often without much material or other reward. This court will not hesitate to deal firmly with incessant applications to retry or to re-open concluded matters through making allegations against previous counsel for alleged incompetence and/or indifference. The court would also not hesitate to make adverse costs orders against those who persist in making unsustainable and unfounded allegations against their former counsel.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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The applicant in person;
Bhajanvir Singh and Dwayne Lum (Attorney-General's Chambers)
for the respondent.

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