

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1968] SGHC 19

MA 230/1967

Between

Saw Chiang Guan

... Appellant

And

Public Prosecutor

... Respondent

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Saw Chiang Guan and Others v Public Prosecutor

[1968] SGHC 19

MA 230/1967
A V Winslow J
09 July 1968

1 Each one of the three appellants was originally charged separately with acting as a bookmaker on 7 August 1966 at about 1735 hours in room 407, fourth floor, No 6 Cecil Street, Singapore and thereby committing an offence punishable under s 5(3)(a) of the Betting Ordinance, 1960 (No 30/60) but, on 21 October 1966 the prosecution applied for a joint trial under s 169 of the Criminal Procedure Code. This application was granted and the case eventually came on for hearing at a joint trial of all three appellants on 16 October 1967 when they were each convicted and fined \$3,000, in default 18 months' imprisonment.

2 Taking the view which I do about their joint trial, it is unnecessary for me to deal with the remaining grounds of appeal which are directed towards the merits.

3 Section 169 of the Criminal Procedure Code empowers the joint trial of more persons than one where, inter alia, they are accused of the same offence or of different offences committed in the same transaction.

4 The prosecution was bound to establish that each one of the three appellants was accused of the same offence. In order to establish that they were all accused of and were committing the same offence, it had to be shown that all three were jointly and collectively engaged in the same act of bookmaking. It is clear that they were not charged with committing different offences in the same transaction because each one of them was charged with acting as a bookmaker.

5 As the learned Chief Justice held in *Teo Kow Chye & Anor v Public Prosecutor*, [1965] 2 MLJ 212 the mere fact that two persons are in the same premises when carrying on their alleged unlawful activities is not sufficient to bring them within the provisions of s 169.

6 Because two or more persons use the same premises for the conduct of their bookmaking activities, it does not, in my view, automatically follow that they are concerned in the commission of the same offence as would, for example, be the case where two or more persons enter the same premises for the purpose of committing a robbery and do, in fact, commit it. It would be clear from the surrounding circumstances that such persons are jointly concerned in one offence of robbery and they can be jointly charged and tried for it. On the other hand, two persons can conduct bookmaking operations whilst in the same premises without necessarily being jointly concerned in the same act of bookmaking. Each one of them may be receiving bets from his own clients over the telephone and recording such bets without the other person being jointly concerned with him in that offence. I do not think that the prosecution can establish that one bookmaker was jointly concerned with another in the same offence merely by showing that he could have thrown out bets to that other or even received bets from that other person. It is, of course, open to the

prosecution, if they can, to prove abetment on the part of that other, in which case s 169 would sanction a joint trial. There is no such evidence herein.

7 In this particular appeal, the only evidence adduced by the prosecution to show that the three appellants were acting jointly in one transaction of bookmaking was that of Leong Ah Chee (PW2), an Inspector from the Gambling Suppression Branch of the CID, who gave expert evidence relating to three sets of documents found on a desk in the premises which, according to him, proved that the person in possession of each of these three set of documents would, in the case of two sets, be bookmakers, and, in the case of the third set, be someone assisting in the business of bookmaking. He denied that any of such persons could have been an agent or a runner of a bookmaker though he seemed to be a little unsure about this. In answer to the court as to whether he thought that the persons in possession of these three sets could be said to be conducting bookmaking operations individually or jointly, he stated:

It depends on the arrangements between them. It could be a syndicate. It could be individually and as races progress they have frequent interchanges of bets. They have more or less business connections, however.

8 This answer cannot, by any means, be said to show joint participation of the possessors of these documents in the one transaction of bookmaking. There was no other evidence that there was a syndicate of any kind. As I have earlier observed, a syndicate cannot materialise from the mere presence of two or more persons in the same premises, who may be conducting bookmaking operations, each with his own clients.

9 In my judgment, the joint trial of the three appellants was therefore illegal.

10 Their appeals are accordingly allowed and their convictions set aside. The fines, if paid, will be refunded.

11 There will, however, be separate retrials of each appellant. Bail will be extended in each case.

12 ***Appeals allowed.***

13 ***Separate retrials ordered***

A V Winslow J

Jimmy Loh (Ironsides & De Souza) for the appellants
Tay Soo Tee (Deputy Public Prosecutor) for the respondent
