IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 55

MA 71/1992

Between

Jupiter Shipping Pte Ltd

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

Criminal Procedure and Sentencing — Sentencing — Principles

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Jupiter Shipping Pte Ltd v Public Prosecutor

[1993] SGHC 55

MA 71/1992
Yong Pung How CJ
12 March 1993

1 On 2 December 1991 at about 10.45am, the vessel Hudson Bay was anchored at the Eastern Special Purposes Anchorage and receiving fuel oil from a bunker barge into its tank No 15. The fast pumping rate caused a sudden overflow of oil from the air vent of the tank onto the deck, and over the side of the Hudson Bay into the sea. The resulting oil slick measured about 300m by 5m in broken patches, covering an area of some 1,500m2. Cleaning operations were carried out by the anti-pollution sea unit of the Port of Singapore Authority. The costs of these operations amounted to $12,859 and were paid in full by the appellants, the agents of Hudson Bay.

2 The appellants were charged in the subordinate courts with an offence under s 7 of the Prevention of Pollution of the Sea Act (Cap 243) (`the Act`). So far as is material, s 7(1) provides:

> *... if any discharge of oil or an oily mixture occurs from a Singapore ship into any part of the sea or from any ship into Singapore waters, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine of not less than $500 and not more than $500,000 or to imprisonment for a term not exceeding 2 years or to both.*

3 The appellants pleaded guilty to the offence. In mitigation it was said that pollution had been caused accidentally, and that as soon as the spill had been discovered the pumping had been stopped and detergent immediately sprayed. The appellants had no antecedents.

4 The learned district judge imposed a fine of $10,000, which the appellants appealed against as being manifestly excessive. I dismissed the appeal.

5 Before me, the thrust of the submissions of counsel for the appellants was that a fine of $10,000 was manifestly excessive, being significantly higher than the usual range of fines for this offence. He pointed out that in PSA Summons No 737 of 1989 which involved a slick covering some 300m2 and cleaning-up costs of $11,456, the accused was only fined $4,000 despite seven similar previous convictions. The learned DPP also provided statistics on the various fines imposed in 1990 and 1991 for convictions for this offence, which ranged from the bare minimum of $500 to $5,000. The highest fine for this offence which counsel were acquainted with was a fine of $10,000 imposed by the district court in another case, which was subsequently reduced to $7,500 on appeal to the High Court.

6 Counsel for the appellants contended that this case could not be distinguished from the others, either on the ground of moral culpability or on the ground that the consequences of the spillage were more serious, such as would justify the imposition of a fine significantly higher than those within the usual range. Further, the appellants had pleaded guilty, and according to the usual principles of sentencing, as enunciated for example by Cumming-Bruce LJ in ***R v Boyd*** ,1 this should have proved a mitigating factor as regards the severity of the fine imposed.

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7 The learned DPP, however, contended that notwithstanding the statistics a fine of $10,000 could not be excessive, having regard to the obvious legislative intention of keeping the sea free of oil pollution. I agreed with him and dismissed the appeal.

8 The range of fines permitted by the Act is very wide, ranging from $500 to $500,000, and it would in my opinion be useful to make some comments on the sentencing guidelines to be applied in such cases.

9 It was common ground between the parties that the offence under s 7 was one of strict liability, in their case merely requiring proof of a discharge of oil from a ship into Singapore waters. It was not necessary to prove fault on the part of the master, owner or agent of the ship to render any of them liable. In the present case, the appellants contended that the spillage had been caused through no fault of theirs or of the master or crew of the Hudson Bay. They said that the unlawful discharge had occurred because the bunker barge supplying the fuel oil had done so at a faster rate than that requested by the Hudson Bay crew, which the ship`s tanks were unable to handle.

10 The presence or absence of fault on the part of the defendant is generally a relevant consideration when it comes to sentencing. Similarly, that a defendant is a first-time offender and that he has pleaded guilty to the offence would normally also constitute mitigating factors in this context. However, the principles which apply to sentencing for an offence of strict liability are different. The usual objectives of sentencing and the penal system as a whole, of individual deterrence, general deterrence and reformation, as enunciated by Keith Devlin in his book ***On Sentencing Offenders In Magistrates` Courts*** (1970 Ed), can have little bearing in the case of an offence which may be committed without fault on the part of the offender, or even against his active

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wishes. The nature of strict liability offences is such that they may be committed even when all reasonable steps have been taken to ensure that they are not committed. Therefore, no fine which could be imposed would necessarily prove a deterrent to the commission of such an offence.

11 Thus the only objective for the most part that there could reasonably be behind sentencing for a strict liability offence is that the sentence be, in the words of Keith Devlin, retributive: that the sentence imposed should be measured by the disapproval of society regarding the nature of the offence committed. A high sentence, therefore, would reflect the gravity of the offence. The maximum penalties should be reserved for the most serious cases in terms of consequences as well as conduct. The presence of fault and of previous convictions can only be relevant in this context.

12 It is beyond question that environmental concerns have become an important issue on both the national and global platforms. Only now are we beginning to realize the true extent of the long-term damage that may be caused to our immediate environment by oil pollution, to our sea resources and marine life. Also, as was pointed out by the learned DPP, Singapore has enacted the 1954 International Convention for the Prevention of Pollution of the Sea by Oil in the Act, and is a signatory to the 1982 Convention for the Law of the Sea. Further, Singaporean Ambassador Professor Tommy Koh chaired the recent UN Conference on Environment and Development. It is evident from this that Singapore has undertaken obligations under international law to ensure that her seas and environment be kept clean and free of pollution. In the light of growing awareness of the damaging effects of oil pollution on a national as well as a global scale, and in order to combat this, it is imperative that the courts regard offences of pollution with the utmost gravity. Parliament has evinced its concern for the seriousness of these offences by making them ones of strict liability. As

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far as sentencing for these offences go, I am of the view that the fines previously imposed for offences under s 7(1) taken in today`s context do not accurately reflect the strong public interest in preventing oil pollution as discussed above. I am certain that similar considerations were in the mind of the district judge in this case at the hearing below, when he imposed the fine that was outside the range previously imposed.

13 In this case, the appellants were carrying out an activity which was potentially hazardous: they must have been aware of the pollution that would result had something gone wrong in the process. That they would be liable to a high fine even if the pollution had not been caused through their culpability, in the words of Lord Salmon in ***Alphacell Ltd v Woodward*** 2 at p 848, `may be regarded as a not unfair hazard of carrying on a business which may cause pollution on the banks of a river`. The consequences of their commission of the offence, a slick of some 1,500m2, cannot be said to be trivial. Accordingly, I felt that the $10,000 fine imposed by the learned district judge was not manifestly excessive but perfectly reasonable.

14 Keith Devlin writes that in sentencing for strict liability offences, except where the offence is either trivial or extremely serious, one ends up with a fairly standardized fine, and that the task of the court is to draw a distinction between the `normal` offence where normal penalties should assist, and the relatively unusual case where special considerations ought to apply. I have already stated that in the case of an offender with a series of previous convictions, or one who has committed the offence with complete disregard for any safeguard measures or even intentionally, or one who has managed to create a devastatingly large oil slick resulting in the death of countless marine life, a more severe penalty should be imposed: the maximum penalty provided for in the Act is a fine of $500,000. On the other hand in the case, such as the one before me, of a breach

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where there have been no such aggravating factors, I am of the view that it would be instructive to standardize the penalty at a fine in the region of $10,000.

15 **Outcome:**

Yong Pung How CJ

Loo Dip Seng (Ang & Partners) for the appellants
Tan Chee Meng (Deputy Public Prosecutor) for the respondent

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