# Public Prosecutor v Mahat bin Salim
# [2005] SGHC 83

**Case Number** : Cr Rev 6/2005

**Decision Date** : 28 April 2005

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : Ravneet Kaur (Deputy Public Prosecutor) for the prosecution; The respondent in person

**Parties** : Public Prosecutor — Mahat bin Salim

*Criminal Procedure and Sentencing – Revision of proceedings – Whether High Court should exercise revisionary powers to set aside sentence for reformative training and order sentence for corrective training – Governing principles – Section 268 Criminal Procedure Code (Cap 68, 1985 Rev Ed), s 23 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)*

*Criminal Procedure and Sentencing – Sentencing – Forms of punishment – Corrective training – Relevant considerations to be taken into account in determining length of corrective training – Whether minimum period of corrective training sufficient and appropriate – Section 12(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

*Criminal Procedure and Sentencing – Sentencing – Forms of punishment – Corrective training – Whether court having power to order caning or fine in addition to sentence of corrective training – Section 12(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

28 April 2005

**Yong Pung How CJ:**

1 The respondent pleaded guilty to three charges under ss 394, 356 and 380 of the Penal Code (Cap 224, 1985 Rev Ed) and was sentenced by the district judge to reformative training. Shortly afterwards, the district judge was alerted to the fact that the respondent had already exceeded the prescribed maximum age for which reformative training was appropriate.

2 The district judge thus filed the present petition urging this court to exercise its revisionary powers under s 268 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") to order that the sentence imposed be replaced with one that was fitting in the circumstances. The Prosecution supported this application by the district judge and argued for a corrective training sentence to be imposed.

3 After careful consideration of the facts and law, I allowed the petition and set aside the sentence of reformative training. I ordered in place of it a sentence of five years of corrective training and 12 strokes of the cane. I now give my reasons.

**The facts**

4 The respondent pleaded guilty to the following charges under the Penal Code:

(a) one charge of voluntarily causing hurt in committing robbery under s 394;

(b) one charge of snatch theft under s 356; and

(c) one charge of theft in dwelling under s 380.

5 These charges related to different victims. The facts relating to the charge under s 394 are as follows: on 24 January 2005 at about 7.30pm, the respondent followed the victim into the lift of a block of flats. The respondent suddenly grabbed the victim's handphone valued at $498 and a struggle ensued. When the lift door opened, the respondent bit the victim on her left palm, snatched the handphone from her and fled. A few days later, he tried to dispose of the stolen property at a handphone shop in the neighbourhood. However, he was arrested before he could do so.

6 As for the charge under s 356, the facts are that on 4 January 2005 at about 1.40am, the victim was approached by the respondent who asked her for loose change. The respondent observed that the victim had a Personal Digital Assistant handphone in her waist-pouch. When the victim replied that she had no loose change, the accused walked away. Shortly afterwards, when the victim was walking towards a private estate, the victim approached her again and this time exerted criminal force on her by snatching the handphone valued at $600 from her pouch. The accused fled whilst the victim shouted for help. Her cries alerted a passer-by who informed the police. The accused has since sold the handphone and used the proceeds to pay for his personal expenses.

7 Finally, in relation to the third charge under s 380, the facts are that on 5 January 2005 at about 3.45pm, the accused was walking along a row of shops when he noticed that there was no one manning a particular unit. He entered the shop, opened one of the unlocked drawers behind the counter and stole $1,650 in cash and one senior citizen EZ-link card. The shop owner subsequently lodged a police report. The accused has since spent the money on a shopping spree.

8 The respondent also admitted to two further charges for theft and for voluntarily assisting in disposing of stolen property under ss 379 and 414 of the Penal Code respectively, and consented to having these charges taken into consideration for the purpose of sentencing. These two offences were also committed in the month of January 2005.

**The petition**

9 On 25 February 2005, the respondent, who was born on 26 December 1983, pleaded guilty to all three charges before the district judge. After calling for a pre-sentencing report, which indicated that the respondent was suitable to undergo reformative training, the district judge sentenced him to reformative training on 18 March 2005. However, on 24 March 2005, the district judge was alerted to the fact that the accused was already 21 years and 2 months old on the date of his conviction, and that the sentence of reformative training was thus wrong in law. According to s 13(1)(a) of the CPC, only offenders under the age of 21 on the date of their conviction can be sentenced to reformative training.

**The Prosecution's case**

10 The Prosecution supported the district judge's application for criminal revision of the sentence pursuant to the High Court's exercise of its revisionary powers. The Prosecution further recommended that the sentence of corrective training be ordered in lieu of any sentence of imprisonment. However, it was silent on whether other forms of punishment, such as caning or fine, as provided for under the CPC, should be ordered.

**The exercise of revisionary powers**

11 The relevant statutory provisions dealing with the revisionary powers of the High Court are s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) and s 268 of the CPC. It is trite law that the revisionary jurisdiction and powers of the High Court must be exercised judiciously. There

must be some form of serious injustice, that is, there must be something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below, which warrants the exercise of the revisionary powers: *Ang Poh Chuan v PP* [1996] 1 SLR 326; *Ngian Chin Boon v PP* [1999] 1 SLR 119; *PP v Mohamed Noor bin Abdul Majeed* [2000] 3 SLR 17; *Koh Thian Huat v PP* [2002] 3 SLR 28.

12 It is clear that the sentence of reformative training is wrong in law as the respondent was beyond the prescribed maximum age for reformative training on the date of his conviction. In view of this obvious error, there is no reason not to allow this petition. Accordingly, the sentence of reformative training will be set aside. I shall now turn to the issue of the appropriate sentence to be passed in place of reformative training.

**The appropriate sentence**

***Corrective training***

13 The local authorities have established that the principal aim of corrective training is to rehabilitate the offender who has a propensity to lead a criminal life. More specifically, it is to turn him away from the easy allure of crime by putting him through a regime of discipline and by teaching him certain work skills. It therefore seeks to reduce recidivism: *Kua Hoon Chua v PP* [1995] 2 SLR 386 followed in *G Ravichander v PP* [2002] 4 SLR 587 and *PP v Wong Wing Hung* [1999] 4 SLR 329. In view of the respondent's fairly long list of antecedents and his young age, I found it necessary and appropriate for the respondent to undergo training of a corrective character for a substantial period of time with a view to his reformation and the prevention of crime.

14 I arrived at this decision after taking into account several factors. First, the respondent's criminal record displayed his unfortunate proclivities towards committing crimes, especially property-related offences. When he had barely turned 15, the accused started his criminal career when he was convicted for snatch theft under s 356 of the Penal Code and placed on probation. At that time, he was also ordered to reside in a juvenile home for two years. When he was 16, he was convicted of theft in dwelling under s 380 of the Penal Code and sentenced to three months' imprisonment. At 19, he was found guilty of having possession of housebreaking elements and/or offensive weapons and for that served three months in jail. His latest conviction was in April 2004, where he, at 20 years of age, was convicted of theft under s 379 of the Penal Code and, this time, was sentenced to six months' imprisonment. Barely a few months after being released from prison at the close of 2004, the respondent returned to his old ways and in January 2005 committed a total of five offences, two of which were taken into consideration for the purpose of sentencing. His previous jail sentences have thus proved to be of little deterrent effect.

15 Second, there is clearly a need to provide persons such as the respondent with sufficient time to reform their character before they are permitted to return to society. A sentence of imprisonment would simply be another vacation for him, judging from his criminal past. The respondent's prior convictions on property-related offences demonstrate his apparent penchant for stealing in order to satisfy his material needs. A regimented environment instilling discipline and morally correct values would be more likely to reverse such criminal tendencies as soon as possible before they continue manifesting themselves.

16 Third, the respondent, at 21 years of age, is still very young and possesses no work skills, having dropped out of school after Primary Three. A normal jail sentence will not provide him with the necessary skills to earn a decent livelihood when he returns to society. One can imagine that when he is released from prison, he will continue to while away his time unproductively before he commits his

next offence when he is in need of money. A longer jail sentence will be unlikely to carry the desired deterrent effect. On the contrary, if the respondent is given a minimum sentence of five years of corrective training, where he will be trained and reformed, he will only be 26 when he is released and will still have many years of his life ahead of him to put into use any skills he has learnt.

17 Fourth, even if reformation is unsuccessful, at the very least the objective of crime prevention is achieved in that the respondent is placed out of public circulation for a substantial period of time whilst undergoing corrective training.

18 Fifth, the technical requirements warranted under s 12(1) CPC for corrective training to be ordered have been satisfied. Under that provision, the offender must be at least 18 years of age and is either:

> (a) convicted before the High Court or a district court of an offence punishable with an imprisonment term of two years or more and has been convicted on at least two previous occasions since he turned 16 of offences punishable with such a sentence; or
>
> (b) convicted at one trial before the High Court or a district court of three or more distinct offences punishable with imprisonment for two years or more and has been convicted and sentenced to imprisonment for not less than one month since he turned 16 of an offence punishable with jail for two years or more.

On the facts, these requirements have been satisfied. Consequently, for the reasons set out above, I was of the view that the respondent was a suitable candidate for corrective training.

19 In determining the length of the sentence of corrective training, I found the principles laid down in *G Ravichander v PP* ([13] *supra*) at [26] and [27] instructive:

> [W]hen sentencing a person to corrective training, normal sentencing principles such as the gravity of the offence, tariffs, mitigating and aggravating factors, while still relevant, do not take centre-stage. Rather, *the critical factor to be considered is the amount of time that the court feels is required to enable real reform to be attempted*. …
>
> Provided that the prisoner is capable of reform, a longer period of corrective training might be imposed if his antecedents reveal a more disturbing downward trend. *On the other hand, if a prisoner only has a few previous infractions which are not very serious, and which do not reveal a dangerous frequency of recurrence, then a shorter period may be imposed since it might be thought that this would suffice to reform him*.
>
> [emphasis added]

20 Taking into account all the relevant circumstances of this case, and bearing in mind that although the respondent's criminal record reveals a probable frequency of recurrence of the offences, his prior run-ins with the law were not extremely serious. I was therefore minded to mete out the minimum sentence of five years of corrective training. I was of the view that this would be a sufficient period for the respondent to turn over a new leaf.

21 Before passing a sentence of corrective training, I noted that I was required by s 12(1) of the CPC to consider the physical and mental condition of the offender and his suitability for such a sentence. It is often the case that a pre-sentencing report will be called for the purposes of making the assessment. This report examines, *inter alia*, the degree of risk that the accused would re-offend

and whether he has displayed a willingness to accept responsibility for his actions. Nevertheless, it is settled law that such pre-sentencing reports are called for by judges only as a matter of practice: *Kua Hoon Chua v PP* ([13] *supra*). Indeed, the CPC does not contain anything which makes it mandatory for the court to call for a pre-sentencing report before passing a sentence of corrective training, so long as the court is already fully satisfied of the respondent's physical and mental suitability for the sentence.

22 Having studied the respondent's records carefully, I have no doubt that the respondent is suited to undergo corrective training. There is thus no need to prolong the process further by waiting for a corrective training report. Therefore, I dispensed with the usual practice of calling for such a report: following *PP v Wong Wing Hung* ([13] *supra*) and *Kua Hoon Chua v PP*.

***Whether fine and/or caning appropriate***

23 Apart from ordering a sentence of corrective training, the law allows me to simultaneously order further modes of punishment where criminal provisions so stipulate and where it is warranted on the facts. Section 12(1) of the CPC provides that where the technical requirements of the provision in s 12(1)(*a*) or 12(1)(*b*) are met, then unless a court has special reasons for not so doing, it "shall pass, *in lieu of any sentence of imprisonment*, a sentence of corrective training" [emphasis added]. Corrective training therefore only supplants a sentence of imprisonment: *Yusoff bin Hassan v PP* [1992] 2 SLR 1032, followed in *PP v Wong Wing Hung* and *PP v Perumal s/o Suppiah* [2000] 3 SLR 308. It does not supplant any other forms of punishment apart from imprisonment.

24 Therefore, a court still retains the power to order a sentence of caning or fine in addition to a sentence of corrective training. For instance, in *PP v Jaberali s/o Abbas* Magistrate's Appeal No 171 of 2001, the district court (see [2001] SGDC 201) had sentenced the accused to 12 strokes of the cane on top of the eight years of corrective training that was meted out to him. Subsequently on the Prosecution's appeal, this was enhanced to 12 years' corrective training and 12 strokes of the cane.

25 It is perhaps opportune at this juncture to examine the prescribed punishments of the relevant Penal Code provisions under which the accused is found guilty. For an offence:

(a) under s 356, offenders "shall be punished with imprisonment for a term of not less than one year and not more than 7 years *and shall also be liable to caning*";

(b) under s 380, offenders "shall be punished with imprisonment for a term which may extend to 7 years, *and shall also be liable to fine*"; and

(c) under s 394, offenders "shall be punished with imprisonment for a term not less than 5 years and not more than 20 years *and shall also be punished with caning with not less than 12 strokes*".

26 In determining whether the sentence of fine or caning is mandatory in addition to the period of incarceration, it is necessary to pay close attention to the interpretation of the words "shall also be *liable*" and "shall also be *punished*".

*"Shall be liable"*

27 The authorities have established that *prima facie*, the words "shall be liable" (as opposed to "shall be punished") contain no obligatory or mandatory connotation: *PP v Lee Soon Lee Vincent* [1998] 3 SLR 552; *PP v Nurashikin bte Ahmad Borhan* [2003] 1 SLR 52; *PP v Loo Kun Long*

[2003] 1 SLR 28. Indeed, Brown J in *Ng Chwee Puan v R* [1953] MLJ 86 at 86 remarked:

> [T]he word "liable" contains no obligatory or mandatory connotation. Sitting in this Court, with a table fan blowing directly on to me, I am "liable" to catch a cold. But it does not follow that I shall.

28 Of course, there are instances where the phrase "shall be liable" may be construed to be of mandatory effect. As an illustration, according to s 97 of the Income Tax Act (Cap 134, 2004 Rev Ed), anyone who renders a false tax return "shall be guilty of an offence and *shall be liable* on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both". The phrase "shall be liable" must necessarily be construed to be mandatory in the sense that one or both of the prescribed sentences must be imposed. To interpret it otherwise would lead to the absurd result that no sentence may be imposed on the offender at all: *Chng Gim Huat v PP* [2000] 3 SLR 262.

29 Such is not the case in the current criminal revision. In ss 356 and 380, mandatory sentences of imprisonment have already been prescribed. Therefore, the concern that no sentence at all might be imposed is unfounded. The phrase "shall also be liable" consequently carries no mandatory connotation. As such, this court retains the discretion on whether or not to order a sentence of fine or caning for offences under ss 356 and 380. I hasten to add that there ought to be no distinction between the phrase "shall be liable" and "shall *also* be liable" by virtue of the fact that the word "liable" carries no mandatory effect regardless of the use of the word "also" in ss 356 and 380.

*"Shall be punished"*

30 On the other hand, the phrase "shall be punished" contained in s 394 of the Penal Code clearly points to a mandatory sentence. I remarked in *PP v Lee Soon Lee Vincent* ([27] *supra*) at [15]:

> [I]f one looked at the Penal Code, it would be apparent that the draftsman had been very careful in using the phrase 'shall be punished' to prescribe a mandatory penalty, and using 'shall be liable' only when the penalty was dependent on the court's discretion.

31 Therefore, apart from meting out a sentence of corrective training, I was compelled by statute to sentence the respondent to at least 12 strokes of the cane pursuant to s 394.

***Further sentence in addition to corrective training***

32 On the offence of snatch theft under s 356 of the Penal Code, I exercised my discretion not to order the respondent to be caned. I took into consideration the following factors: the property stolen was of relatively low value at $600; minor force was used; the victim did not sustain any injury; there was no premeditation or careful planning; and the respondent was not armed. Therefore, I did not think it appropriate in this case to sentence the respondent to caning.

33 With regard to the theft in dwelling offence under s 380, I decided not to fine the respondent as well. I took into account the fact that the theft was not the culmination of premeditation and careful planning, and was largely an impulsive act on the part of the respondent. Further, the respondent was not armed, nor had he threatened hurt to anyone when committing the theft. Therefore, his infractions were not so serious as to warrant the imposition of a fine on top of the five years of corrective training that he will have to serve.

34 As for the offence of robbery with hurt under s 394, I bore in mind that, as established earlier,

the sentence of caning was mandatory. The court cannot of its own accord dispense with a mandatory sentence of caning: *Ramanathan Yogendran v PP* [1995] 2 SLR 563. On the facts, given that the victim was only bitten on her left palm, sustained no visible injury and thus did not require medical treatment, I saw fit that only the minimum punishment ought to be meted out to the respondent. I therefore sentenced him to 12 strokes of the cane.

**Mitigation**

35 The respondent, who was not represented in this petition, pleaded for leniency and claimed in mitigation that he was remorseful and would turn over a new leaf. He sought to impress upon me the undue hardship that his family would suffer as a result of his incarceration. His mother and older sister have since passed away, and his two older brothers are in prison, leaving him the only one to take care of his father, who suffered a stroke, and a younger sister, who is still schooling. He also has a girlfriend who is pregnant with his child.

36 Much as I sympathised with the plight of his family and note that his incarceration may cause them additional hardship, the respondent only has himself to blame. It is well settled that hardship to the accused's family has very little mitigating value, unless there are exceptional circumstances at hand: *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305; *Ng Chiew Kiat v PP* [2000] 1 SLR 370; *Tan Fook Sum* [1999] 2 SLR 523; *Lim Choon Kang v PP* [1993] 3 SLR 927. Hardship is an inevitable consequence occasioned by the offender's own criminal conduct and cannot have any significant bearing on what would otherwise be the appropriate sentence. One cannot modify a sentence imposed on the accused simply because the family will suffer. The respondent also failed to raise any exceptional reasons to justify departing from the general principle.

37 Further, in view of the fact that the respondent had not done better for himself even after four previous convictions, and the fact that he committed the latest offences barely three months after being released from prison, one would have to be very naïve to believe his promises of better conduct in future.

**Conclusion**

38 For the foregoing reasons, I allowed the petition and ordered that the respondent be sentenced to five years of corrective training and to receive 12 strokes of the cane.

Petition allowed.