Public Prosecutor v Lee Wei Zheng Winston
[2002] SGHC 187

Case Number : Cr Rev 12/2002

Decision Date : 23 August 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jaswant Singh (Deputy Public Prosecutor) for the petitioner; Respondent in person

Parties : Public Prosecutor — Lee Wei Zheng Winston

Criminal Procedure and Sentencing – Revision of proceedings – Power of subordinate courts to alter judgments and sentences – Governing principles – s 217 Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Caning – Rule against caning in instalments – Whether High Court can order further infliction of caning after execution of original sentence of caning – s 231 Criminal Procedure Code (Cap 68) – reg 98(3) Prisons Regulations (Cap 247, Rg 2, 2002 Ed)

Criminal Procedure and Sentencing – Revision of proceedings – Power of High Court to alter judgments of lower court – Governing principles – Whether circumstances of case warrant exercise of power – ss 256(b)(iii) & 268 Criminal Procedure Code (Cap 68)

Revision – Governing principles – Power of Subordinate Courts to alter judgments – Criminal Procedure Code (Cap 68) s 217 – Whether High Court had power to increase the number of strokes after the sentence of caning imposed by the district court had been executed

Facts

The respondent had pleaded guilty before a district judge to an amended charge of rioting with a deadly weapon whilst being a member of an unlawful assembly whose common object was to cause hurt, punishable under s 148 read with s 149 of the Penal Code (Cap 224) (the 'PC'). The district judge, applying the principle of parity of sentencing and taking into account the sentences passed on the respondent's accomplices by another court, sentenced the respondent to 30 months' imprisonment and six strokes of the cane.

That evening, before the court had arisen for the day, the case was re-mentioned before the district judge. The respondent's counsel informed the district judge that one of the respondent's accomplices had received a sentence of 30 months' imprisonment and three strokes of the cane for the same offence. Based on this representation, the district judge reduced the respondent's sentence of caning from six strokes to three strokes.

It later came to the district judge's attention that the accomplice in question had been charged under a reduced charge, namely s 147 of the PC. The district judge applied to the High Court to exercise its powers of revision pursuant to s 268 of the Criminal Procedure Code (Cap 68) (the 'CPC'). The district judge submitted that he had had no power under the CPC to change the sentence of caning once it had been pronounced. While s 217 of the CPC allows the court to rectify mistakes that go beyond mere accidental slips and omissions before the court rises for the day, the district judge stated that as there had been no mistake in the original sentence, he had had no power to alter the original sentence.

The DPP submitted that the original sentence should be reinstated. The DPP further submitted that as the amended sentence of three strokes of the cane had already been executed, the respondent could not be caned again, even if the criminal revision was allowed.

Held

, allowing the application:

(1) The power of the subordinate courts to alter judgments, including sentences, is governed by s 217 of the CPC. While s 217(1) lays down a general prohibition against alteration of judgments by the subordinate courts, s 217(2) provides that clerical errors may be rectified at any time and 'any other mistake' may be rectified before the court rises for the day. In the present case, there was no clerical error or other mistake in the original judgment. Therefore the district judge had no power to alter the original sentence of caning (see 6-7).

(2) The revisionary powers of the High Court are conferred by s 23 of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) and s 268 of the CPC. It is established law that such powers of revision must be exercised sparingly (see 11); *Ang Poh Chuan v PP* [1996] 1 SLR 326 followed.

(3) There was sufficient injustice to warrant the exercise of the court's revisionary powers as the district judge had exceeded his powers in amending the original sentence. In addition, serious injustice stemmed from the fact that the amended sentence was not commensurate with the culpability of the respondent and violated the principle of parity. The respondent had received a sentence which was considerably lighter than that given to two of his accomplices even though all three were charged under s 148 of the PC (see 12-18).

(4) Section 231 of the CPC prohibits the execution of a sentence of caning in instalments. An order that the further three strokes be given to the respondent would be tantamount to the infliction of caning in instalments, since the respondent had already received the first three strokes and would necessarily have had to take the additional three strokes on a second occasion. Such an order would be contrary to s 231 of the CPC (see 25-31).

(5) The court ordered that the original sentence of 30 months' imprisonment and six strokes of the cane be reinstated, but that the further three strokes not be inflicted (see 34).

Case(s) referred to

Chiaw Wai Onn v PP

[1997] 3 SLR 445 (refd)
Ang Poh Chuan v PP [1996] 1 SLR 326 (folld)
Akalu Ahir v Ramdeo Ram AIR 1973 A 2145 (refd)
PP v Nyu Tiong Lam [1996] 1 SLR 273 (refd)
Liow Eng Giap v PP [1971] 1 MLJ 10 (refd)
PP v Ramlee and another action [1998] 3 SLR 539 (refd)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68) s 217, 231, 256(b)(iii), 268
Criminal Procedure Code (FMS Cap 6) [Mal] s 289
Penal Code (Cap 224) s 147, 148, 149
Prisons Act (Cap 247) s 77(1)
Prisons Regulations (Cap 247, R 2) reg 98(3)
Supreme Court of Judicature Act (Cap 322) s 23

Judgment

GROUNDS OF DECISION

Background

This was an application for criminal revision at the instance of a district judge. The respondent pleaded guilty before the district judge on 11 April 2002 to an amended charge of rioting with a deadly weapon, to wit, a hammer and a knife, whilst being a member of an unlawful assembly whose common object was to cause hurt, punishable under s 148 read with s 149 of the Penal Code (Cap 224) (the 'PC'). On 9 May 2002, the district judge, applying the principle of parity of sentencing and taking into account the sentences passed on the respondent's accomplices by another court, sentenced the respondent to 30 months' imprisonment and six strokes of the cane.

2 That evening, before the court had arisen for the day, the case was re-mentioned before the district judge. The prosecuting officer, the respondent and the respondent's counsel were present before the court. The DPP was not present. The respondent's counsel informed the district judge that one of the respondent's accomplices, Tan Teck Chye ('Tan'), had received a sentence of 30 months' imprisonment and three strokes of the cane for the same offence. The respondent's counsel had obtained this information from a copy of the schedule of accomplices' sentences which the DPP had furnished him. It would appear that the district judge's copy of the schedule indicated that Tan had been sentenced under a reduced charge, namely s 147 of the PC, as Tan's original charge under s 148 of the PC had been cancelled in some manner. However, no such cancellation was reflected on the respondent's counsel's copy.

3 The respondent's counsel, taking the view that both the respondent and Tan had been charged under s 148 of the PC, sought to have the respondent's original sentence altered in order to achieve parity. Based on the representation that Tan had been sentenced under s 148 instead of s 147 of the PC, the district judge reduced the respondent's sentence of caning from six strokes to three strokes.

4 It later came to the district judge's attention that Tan had indeed been convicted under s 147 of the PC. On 12 June 2002, the district judge applied to the High Court to exercise its powers of revision pursuant to s 268 of the Criminal Procedure Code (Cap 68) (the 'CPC'). The district judge stated that he had had no power under the CPC to change the sentence of caning once it had been pronounced. While s 217 of the CPC allows the subordinate courts to rectify mistakes that go beyond mere accidental slips and omissions before the court rises for the day, the district judge submitted that there was no mistake in the original sentence and he therefore had no power to alter the original sentence.

The power to alter or review the original sentence

5 The power of the subordinate courts to alter judgments, including sentences, is governed by s 217 of the CPC, which reads:

> (1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.
>
> (2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the court rises for the day.

6 In *Chiaw Wai Onn v PP* [1997] 3 SLR 445, the High Court took the view that s 217(1) lays down a general prohibition against alteration of judgments by the subordinate courts. The High Court interpreted s 217(2) as an excepting proviso to the prohibition in s 217(1), prescribing the limited circumstances in which the subordinate courts can alter or review judgments.

7 In the present case, it is clear that there was no 'clerical error' or 'any other mistake' in the original judgment. While the district judge had been led to believe that the respondent had received a harsher sentence than Tan under s 148 of the PC, there was in fact, no mistake in the respondent's original sentence as Tan had been charged under a reduced charge, namely s 147 of the PC. Therefore, the district judge had no power to alter the original sentence of caning.

Principles of revision

8 The revisionary powers of the High Court are conferred by s 23 of the Supreme Court of Judicature Act (Cap. 322, 1999 Ed) and s 268 of the CPC.

9 In particular, s 268(1) of the CPC states:

> The High Court may in any case, the record of the proceedings of which has been called for by itself or which otherwise comes to its knowledge, in its discretion exercise any of the powers conferred by sections 251, 255, 256 and 257.

10 Section 268(1) of the CPC provides that the High Court, in exercising its powers of revision, can exercise powers similar to those of an appellate court. As the DPP submitted, the High Court, in the exercise of its powers of revision, has, *inter alia*, the power under s 256(b)(iii) to 'alter the nature of the sentence'.

11 It is established law that such powers of revision must be exercised sparingly. The principles governing revision were laid down in *Ang Poh Chuan v PP* [1996] 1 SLR 326, where it was held that:

> …various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some serious injustice. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.

12 I found that there was sufficient injustice in the present case to warrant the exercise of the court's revisionary powers for the following reasons.

13 Firstly, the district judge had no power under s 217 of the CPC to alter the original sentence of caning. In *Akalu Ahir v Ramdeo Ram* AIR 1973 A 2145, Dua J, delivering the judgment of the Indian Supreme Court, said:

> Now adverting to the power of revision conferred on a High Court…it is an extraordinary discretionary power vested in the superior court to be exercised in aid of justice; in other words, to set right grave injustice. The High Court has been vested with this power to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law.

14 I am of the opinion that it is precisely in a case such as this, where the subordinate court

has amended a sentence in a manner which is contrary to law, that the Court should exercise its revisionary jurisdiction. Indeed, the High Court has previously granted applications for criminal revision where a judge exceeded his powers: *PP v Nyu Tiong Lam* [1996] 1 SLR 273.

15 In addition, there was serious injustice as the amended sentence was not commensurate with the culpability of the respondent and violated the principle of parity.

16 The principle of parity is well-established in local sentencing law. In *Liow Eng Giap v PP* [1971] 1 MLJ 10, Choor Singh J stated that, 'where there are no differentiating factors…public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same or similar offences.' More recently, in *PP v Ramlee and another action* [1998] 3 SLR 539, the High Court cited *Archbold* (1998), para 5-153, with approval, noting that 'where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility or their personal circumstances.'

17 In this case, the extent of the respondent's involvement in the offence was similar to that of two other accomplices, Wu Jin Chang ('Wu') and Tan Guan Da ('Guan'), both of whom received sentences of 36 months' imprisonment and six strokes of the cane.

18 At the time of the offence, the respondent was 16 years old, Wu was 17 years old and Guan was 18 years old. I am of the opinion that the respondent's amended sentence of 30 months' imprisonment and three strokes was inadequate, even when the disparity in ages of the offenders was taken into account. All three were charged under s 148 of the PC and were directly involved in assaulting the victims. The difference in sentences given to Wu and Guan on the one hand, and the respondent on the other, was sufficient cause for the court to exercise its revisionary powers. It was grossly unfair that the respondent was given a lighter sentence than Wu and Guan simply because there was confusion as to whether Tan was charged under s 148 or s 147 of the PC.

19 For these reasons, the circumstances clearly justified the exercise of the High Court's revisionary powers, which include the power under s 256(b)(iii) of the CPC to alter the nature of the sentence. The only question which remained related to the order the High Court should make.

What order should the Court make?

20 The district judge applied to the High Court to set aside the amended sentence and reinstate the original sentence of 30 months' imprisonment and six strokes of the cane, or alternatively, to make any other order which is just and appropriate in the circumstances.

21 Given the role played by the respondent in the offence, I was of the opinion that the original sentence was an appropriate one, as it is in accordance with the principle of parity of sentencing. The matter was, however, complicated by the fact that the amended sentence of three strokes of the cane had already been carried out on 19 June 2002. In view of this, the DPP submitted that the respondent could not be caned again, even if the criminal revision was allowed.

22 It was therefore necessary to consider whether the High Court had the power to increase the number of strokes after the sentence of caning imposed by the district court had already been executed. As this issue had not previously been considered in our courts, I took the opportunity to examine the provisions relating to caning in the CPC, the Prisons Act (Cap 247) and the Prisons Regulations.

23 Section 77(1) of the Prisons Act provides that:

> When any sentence of corporal punishment is passed under this Act upon any prisoner, he shall not be liable to more than one such sentence in respect of the act or acts, or omission or omissions, for which he has been sentenced.

24 This provision, by itself, does not prevent the respondent from receiving a further three strokes of cane, as there has not been more than one sentence in respect of his offence. Instead, the district judge was applying to the High Court to have an amendment to the original sentence set aside and the original sentence reinstated in its entirety. Indeed, if the sentence of caning had not already been executed, there would have been no difficulty with reinstating the original sentence of six strokes.

25 However, s 231 of the CPC provides that 'no sentence of caning shall be executed by instalments'. This has been interpreted in *Sentencing Practice in the Subordinate Courts* (2000) as prescribing that 'the court is prohibited from ordering the sentence of caning to be executed by instalments'. If indeed the scope of s 231 is limited to court orders, then s 231 would not prevent the respondent from receiving a further three strokes of the cane, as long as the court did not explicitly order the sentence to be carried out in instalments. On this interpretation, even if I was minded to reinstate the respondent's sentence of six strokes, as long as I did not order that the additional three strokes be given in instalments, the order would not contravene s 231 of the CPC.

26 However, I took the view that a broader interpretation of s 231 of the CPC should be adopted; the use of the word 'executed' in the provision suggests that the section is concerned with the actual infliction of the caning, and not with the instructions of the court as to the number of occasions on which the caning should be effected.

27 This interpretation is buttressed by reg 98(3) of the Prisons Regulations which provides that:

> Corporal punishment shall not, except by special order in cases of emergency, be inflicted within 24 hours of the sentence being awarded, nor shall it be inflicted by instalments.

28 The use of the term 'inflicted' indicates that the objective of the enactment was to ensure that the execution of caning not be delivered on more than one occasion in respect of the same sentence.

29 An order that the further three strokes be given to the respondent would be tantamount to the infliction of caning in instalments, since the respondent had already received the first three strokes and would necessarily have had to take the additional three strokes on a second occasion. Such an order would be contrary to s 231 of the CPC and reg 98(3) of the Prisons Regulations.

30 It is helpful to consider the decision of the Malaysian Supreme Court (as it was then known) in *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69. In that case, the two applicants had pleaded guilty to the offence of armed robbery of a motor car and other articles. Both were sentenced to two years' imprisonment and one stroke of the cane each. After the sentence of caning was carried out, the High Court judge, acting in revision, enhanced the sentence of caning on each applicant by four strokes. The applicants applied to the Supreme Court to determine, *inter alia*, whether the High Court had the power to enhance the sentence of caning after the sentence of caning imposed by the trial court had already been executed. The Supreme Court held that the Malaysian Criminal Procedure Code (the 'Malaysian CPC') prohibits caning to be executed in instalments and that therefore, in the

circumstances, it was improper for the judge to exercise his revisionary power to impose additional strokes of caning. While the Supreme Court did not specify exactly which provision in the Malaysian CPC prohibited caning, I was of the opinion that the Supreme Court was probably referring to s 289 of the Malaysian CPC, which corresponds with s 231 of the CPC (see *Mallal's Criminal Procedure*, 5th ed (1998)). Abdul Hamid CJ, delivering the judgment of the court, said:

> The Code clearly prohibits whipping to be executed in instalments. Thus, by imposing additional strokes after a sentence of whipping by a lower court had already been executed, it necessarily means that such strokes shall have to be further executed. Indeed, the whipping shall have to be inflicted on two separate occasions and therefore in two instalments. In such a case, it is clearly improper for a Judge to exercise his revisionary power to impose additional strokes. He would under those circumstances be acting contrary to law.

31 I am of the opinion that the approach adopted by the Malaysian Supreme Court is consistent with the spirit of s 231 of the CPC. Because of the special nature of the punishment of caning, the courts in Singapore have rigorously observed the statutory safeguards relating to caning, such as the maximum number of strokes which can be inflicted for different offences as well as the classes of persons who cannot be caned, specifically females, males sentenced to death and males whom the court considers to be more than 50 years of age. Similarly, the court should observe the clear prohibition in s 231 of the CPC against the execution of caning in instalments.

32 I wish to state that my holding in the present case should not be taken to restrict the power of future courts to enhance a sentence of caning once the sentence has been passed. Indeed, it must be noted that my holding is strictly confined to situations where the caning has actually been executed. There are stringent procedural safeguards in the CPC to ensure that no caning is done until the time period for appeals has expired. Thus, it will only be in extremely rare cases, where possible injustice is discovered after the time period for appeals has expired and the caning has been carried out, where the court will be prevented from ordering an enhancement of the sentence of caning. I was of the view that the possibility of injustice in these rare instances must be balanced against the need to uphold the principle embodied in statute that the execution of caning must be in line with the provisions of the CPC and other statutory enactments.

Conclusion

33 I agreed with the DPP's submissions that the respondent could not be caned again. In view of the principle of parity of sentencing, I was minded to sentence the respondent to an appropriate jail term in lieu of three strokes of the cane; this jail term would be in addition to the district judge's sentence of 30 months' imprisonment. Such an order would redress the injustice that has been caused by the alteration of the respondent's sentence, without falling foul of s 231 of the CPC.

34 However, as the DPP did not ask for this, and only applied to have the original sentence reinstated, I did not make my order in those terms. Instead, I granted the application for criminal revision and ordered that the original sentence of 30 months' imprisonment and six strokes of the cane be reinstated, but that the further three strokes be not inflicted.

Sgd:

YONG PUNG HOW

Chief Justice