Public Prosecutor v Choi Guo Hong Edward
[2006] SGHC 226

Case Number : Cr Rev 18/2006

Decision Date : 11 December 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : April Phang (Deputy Public Prosecutor) for the Prosecution; Respondent in person

Parties : Public Prosecutor — Choi Guo Hong Edward

Criminal Procedure and Sentencing – Revision of proceedings – Whether enhanced punishment by way of mandatory imprisonment applicable to offences of abetting unlicensed moneylender to carry out business as moneylender – Whether district judge erring in failing to impose mandatory imprisonment terms for such offences – Whether enhanced punishment applicable only to principal offence – Section 8(1)(b) Moneylenders Act (Cap 188, 1985 Rev Ed), s 109 Penal Code (Cap 224, 1985 Rev Ed)

11 December 2006

Tay Yong Kwang J:

The facts

1 This criminal revision relates to an omission by a district court to impose mandatory imprisonment terms on the respondent.

2 On 26 October 2006, the respondent, aged 23, pleaded guilty before a district judge to three charges of abetting an unlicensed moneylender to carry out business as a moneylender, an offence under s 8(1)(b) of the Moneylenders Act (Cap 188, 1985 Rev Ed) ("the Act") read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed) ("the Code"). Two other counts under the same provisions of law were taken into consideration for the purpose of sentence. All the charges further alleged that the respondent, before committing the said offences, had on 10 December 2004 been convicted of a charge (DAC 51127/2004) in the Subordinate Courts, Singapore under the same provisions of law for an offence of abetting unlicensed moneylending and that he was thereby liable to enhanced punishment under the said s 8(1)(b). In DAC 51127/2004, the respondent was fined $10,000 and, in default of payment, to undergo six weeks' imprisonment. He did not pay the fine.

3 According to the statement of facts, the respondent was spotted in the vicinity of a block of flats by a police officer who was performing patrol duties on 27 September 2006 at about 4.30am. The respondent had with him a piece of blank paper and a blue pen. The respondent was unable to give a satisfactory account on what he was doing there at that time of the morning. The police officer saw some writing on the wall at the staircase landing of the second floor, which was in typical moneylending jargon telling a debtor to pay up his debt. He then arrested the respondent.

4 In July 2006, the respondent borrowed money from an unlicensed moneylender named Mark. As he was unable to repay Mark, he agreed to work as a runner for Mark for at least two to three months in order to work off the loan. As a runner, the respondent had to go to a debtor's flat to check whether there was evidence of harassment by other loan sharks so that Mark's syndicate could decide whether to lend that debtor money or whether to harass that debtor for repayment of any

loan taken. The respondent would also check if other runners had gone to harass a debtor as instructed by Mark and to report to him on whether there were closed circuit television cameras installed in the vicinity of a debtor's flat. However, the three charges to which the respondent pleaded guilty concerned his acts in checking out the respective debtors' flats (in various housing estates) for evidence of harassment by other unlicensed moneylenders and reporting the situation to Mark, so as to assist him in deciding whether to give a loan or to harass the occupant for repayment.

5 The respondent had a number of antecedents relating to abuse of intoxicating substances and controlled drugs. His last brush with the law was in the said DAC 51127/2004. In conjunction with that offence, he was also convicted for vandalism and sentenced to two months in prison together with three strokes of the cane.

6 In respect of the three charges to which the respondent pleaded guilty and was convicted, the district judge sentenced him for each charge to a fine of $20,000, and in default, two months in prison. He failed to pay the fines and is therefore serving a total of six months' imprisonment in default. As mentioned earlier, the district judge did not impose imprisonment terms for the three charges, which, as indicated in the charges, is mandatory under s 8(1)(b)(ii) of the Act for second or subsequent offences under that section. Upon realization of that omission, the district judge forwarded the record of proceedings to the High Court in order that the said error might be rectified by the exercise of the High Court's revisionary powers.

The revision before the High Court

7 The respondent was not legally represented before the district judge and before me but Deputy Public Prosecutor ("the DPP") April Phang has been most helpful in drawing my attention to the relevant issues of law involved in this revision.

8 Section 109 of the Penal Code states:

> Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no provision is made by this Code for the punishment of such abetment, shall be punished with the punishment provided for the offence.

9 Section 8(1)(b) of the Moneylenders Act reads:

> If any person –
>
> (a) …
>
> (b) carries on business as a moneylender without holding a licence, or being licensed as a moneylender, carries on business as such in any name other than his authorised name or at any place other than his authorised address or addresses;
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> …
>
> he shall be guilty of an offence and –
>
> (i) in the case of a first offence, shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 2 years or to both;
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> (ii) in the case of a second or subsequent offence, shall be liable on

conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years; and in the case of an offender being a company, shall be liable on conviction to a fine of not less than $40,000 and not more than $400,000.

…

10 The DPP submitted that the issue before the High Court was whether enhanced punishment (by way of mandatory imprisonment) was applicable to the offence of abetment of an offence under s 8(1)(b) of the Moneylenders Act or whether the enhanced punishment applied only to the principal offence.

11 In *Choy Tuck Sum v PP* [2000] 4 SLR 665, the appellant claimed trial and was convicted on a charge of abetting another person in the offence of employing a foreign worker without a valid work permit, an offence under s 5(1) read with s 23 of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ("the EFWA") and punishable under s 5(6) of the same Act. Sections 5(1) and (6) state:

5.—(1) No person shall employ a foreign worker unless he has obtained in respect of the foreign worker a valid work permit which allows the foreign worker to work for him.

…

(6) Any person who fails to comply with or contravenes subsection (1) shall be guilty of an offence and shall –

…

(b) on a second or subsequent conviction, be punished –

(i) in the case of an individual, with imprisonment for a term of not less than a month and not more than 12 months and shall also be liable to a fine of an amount of not less than 24 months' levy and not more than 48 months' levy;

…

Section 23(1) of the said Act provides:

Any person who abets the commission of an offence under this Act shall be guilty of the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

12 The appellant in that case had a previous conviction for an offence under s 5(1) of the EFWA in 1993 for which he was fined $9,600. The trial judge in that case took the view that the conviction on the abetment offence constituted a second conviction and therefore imposed the mandatory custodial sentence, ordering the appellant to serve the minimum one month's imprisonment and to pay a fine of $7,920. The appellant appealed to the High Court, arguing that he should not have been regarded as a repeat offender under the said s 5(6).

13 Yong Pung How CJ dismissed the appeal, holding that s 23(1) EFWA was a general and all-encompassing provision that applied to all the sections in the EFWA that was liability-creating. From the plain words of s 23(1), a person who abetted the commission of any offence under the EFWA

would be considered as being guilty of the substantive principal offence and would be subject to the same punishment provided for the principal offence. Section 23(1) did not provide specifically for the punishment for the offence of abetment. From the parliamentary debates, it was apparent that the mischief which the EFWA was intended to deal with extended to the illegal employment of foreign workers who had valid work permits. Bearing in mind this mischief, Yong CJ held that the appellant was clearly a second offender under s 5(1) and was therefore subject to the enhanced punishment provision. He also held that the enhanced punishment provision would similarly apply if the situation had been the converse, *ie,* if the first conviction was for the abetment of an offence under s 5(1) and the second conviction was for committing the substantive offence.

14 However, Yong CJ added the following rider (at [16]):

> Pausing here, it is necessary for me to emphasise that the above interpretation is particular to the provisions of the EFWA, which were specifically worded by Parliament in order to deal with the mischief behind the Act. To illustrate this point, the wording in s 23(1) of the EFWA can be contrasted with the general provisions on abetment in the Penal Code (Cap 224). Section 109 of the Penal Code provides that 'whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence'. It should be noted immediately that this provision, as well as the other abetment provisions in the Penal Code, is unlike that of s 23(1) EFWA, in that it does not explicitly provide that the abettor will be treated as being guilty of the substantive offence. At a conceptual level and on the question of conviction, an abetment offence is certainly still distinct from the substantive principal offence. Therefore, the holding in this case should not be interpreted to mean that in all cases, an abetment offence would automatically be treated as being the same as the substantive principal offence. It also does not mean that a conviction for an abetment offence will always attract enhanced punishment once the accused person is shown to have a prior conviction for the principal offence abetted. As I mentioned earlier, whether or not enhanced punishment should be imposed would depend very much on the exact wording of the provisions dealing with the abetment offence and the substantive principal offence.

15 In the case before me, the amendments to the Moneylenders Act were effected with effect from 1 January 2006. During the second reading of the amendment bill, which introduced the enhanced punishment provisions, the Senior Minister of State for Law, Assoc Prof Ho Peng Kee, said (see Singapore Parliamentary Debates, Official Record (21 November 2005) Volume 80 at column 1831):

> Sir, this Bill seeks to amend the Moneylenders Act by introducing higher penalties to curb the rise in illegal moneylending activities and related harassment cases.
>
> …
>
> Sir, as for these amendments which are under consideration, Parliament should send a strong signal to loansharks that we will not tolerate the conduct of unlicensed moneylending activities, where exorbitant interest rates are charged and borrowers and even non-borrowers are harassed in their own homes. Therefore, this Bill seeks to increase the penalties for unlicensed moneylending under the Moneylenders Act as follows:
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> …
>
> Fourthly, repeat offenders of illegal moneylending will be subject to mandatory imprisonment,

whilst repeat offenders of harassment where hurt to person or damage to property is caused will be subject to mandatory caning.

…

In conclusion, Sir, these amendments are needed to send a strong signal that the Government has zero tolerance for unlicensed moneylending activities. The enhanced deterrent effect should also help stem the increase that we have seen in such activities.

16 Clearly, the legislative intent of the amendment was to provide enhanced penalties and police powers to deal with the increase in unlicensed moneylending activities and the attendant harassment of debtors arising therefrom. Repeat offenders of illegal moneylending and of harassment would be subject to enhanced punishments. Abetting such offences fall within the same circle of social ills that the amendments hoped to curb although, unlike s 23 of the EFWA, they do not explicitly provide that the abettor will be treated as being guilty of the substantive offence. In my view, that makes no difference because s 109 of the Penal Code does say that the abettor of any offence shall, in the absence of a provision in the Penal Code specifying the punishment for such abetment, be punished with the punishment provided for the offence.

17 Section 109 of the Penal Code applies to the Moneylenders Act because s 40(2) of the Code provides that the "offence" in s 109 (and other sections) "denotes a thing punishable under the Penal Code or under any other law for the time being in force". The principal offender under s 8(1)(b) of the Act would have been punished according to the two tiers provided in that section, depending on whether or not he was a second or subsequent offender. An abettor, according to s 109 of the Code, would be punished in the same way, *ie,* according to the same two tiers of punishment. In the present case therefore, although both the first and second convictions relate to abetment of the principal offence of moneylending, the respondent would still be subject to the enhanced punishment because that is how the principal offences would have been dealt with. The district judge was therefore correct in sending this case up for revision.

18 Section 8(1)(b) of the Moneylenders Act is worded in the same way as s 5 of the Common Gaming Houses Act and the latter provision has been interpreted by me in *Lim Li Ling v PP* [2006] SGHC 184 to mean that a fine is discretionary although if one is imposed, it has to be not less than the minimum set out in the provision. The respondent here could therefore have been imprisoned by the district judge without the need for a fine. In my opinion, a fine, coupled with mandatory imprisonment, was appropriate for second and subsequent offences under s 8(1)(b) of the Moneylenders Act (and for abetment thereof). The respondent here was essentially performing nothing more than the role of a scout on reconnaissance missions. The imposition of one month's imprisonment for each of the three charges proceeded with would therefore be adequate on the facts of this case and I so ordered. Two of the three imprisonment terms would run consecutively pursuant to s 18 of the Criminal Procedure Code (Cap 68, 1985 Ed). As he is serving six months' imprisonment in default of payment of the fines imposed, he would now have to serve a total of eight months' imprisonment.