

Public Prosecutor v Quek Li Hao
[2013] SGHC 152

Case Number : Magistrate's Appeal No 57 of 2013
Decision Date : 13 August 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Kenneth Wong and Vadivalagan Shanmuga (Deputy Public Prosecutors) for the Appellant; Respondent in person.
Parties : Public Prosecutor — Quek Li Hao

Criminal Procedure and Sentencing – Sentencing – Appeals

13 August 2013

Tay Yong Kwang J:

1 This was an appeal by the Prosecution against the sentences meted out to the Accused (“the Respondent”) by the District Judge (“DJ”) in respect of four charges of harassment with property damage. The Respondent committed the offences on behalf of an unlicensed moneylender, such offences being punishable under s 28(2)(a) read with s 28(3)(b)(i) of the Moneylenders Act (Cap 188, 2010 Rev Ed) (“Harassment Charges”).

2 At the conclusion of the appeal, I allowed the Prosecution’s appeal. I now set out my reasons.

The background

3 The Respondent, now 38 years old, stood as a guarantor for his friend, “Eric”, to borrow money from three unlicensed moneylenders. A few weeks later, “Eric” disappeared and the unlicensed moneylenders harassed the Respondent for repayment. As the Respondent was left to bear “Eric’s” debts, he started to take loans ranging from \$500 to \$1000 from other unlicensed moneylenders in order to pay off the existing debts.

4 Sometime in early 2012, the Respondent took a \$500 loan from an unlicensed moneylender known as “Paul” as he needed cash urgently. Thereafter, whenever the Respondent needed cash urgently, he contacted “Paul” and obtained new loans from him. Sometime in mid July 2012, the Respondent was unable to repay “Paul”. “Paul” offered the Respondent the job of a “runner”, which included splashing paint at borrowers’ flats and scrawling “O\$P\$” at staircase walls. The Respondent was promised \$70 for each unit which was harassed, with such payments to be used to set off the Respondent’s outstanding debts with “Paul”. The Respondent agreed and started working for “Paul” sometime in late July 2012.

5 The Respondent also borrowed from an unlicensed moneylender named “James”. In May 2012, he was unable to repay the loan. “James” told the Respondent that his flat would be harassed unless he opened a bank account for the use of his unlicensed moneylending business. The Respondent agreed to open a bank account and did so on 5 May 2012. He passed the Automated Teller Machine (ATM) card and Personal Identification Number (PIN) linked to the account to “James”. This formed the subject matter of the charge of assisting “James” in the carrying on of the business of money-

lending punishable under s 14(1)(b)(i) read with s 14(1A)(a) of the Moneylenders Act (“Assisting Moneylender Charge”). [\[note: 1\]](#)

6 On 21 August 2012 at about 2.17am, one Zakaria Bin Osman called the police stating that “There is a Chinese man wearing grey T-shirt and black bermudas with spectacle just open his bag and write something on the wall”, giving the location as Block 17 Hougang Ave 3. The police arrived and managed to arrest the Respondent at the void deck of the said block of flats after a short chase.

7 The Respondent was found with the following items:

- (a) One bag;
- (b) Five plastic bags;
- (c) One glove;
- (d) One screwdriver;
- (e) Two paint brushes;
- (f) Four cans of green paint;
- (g) Six marker pens;
- (h) One pen;
- (i) One bottle of WD40 – stain remover;
- (j) One Nokia hand-phone;
- (k) One piece of paper with entries;
- (l) One receipt; and
- (m) One can of used paint in a yellow plastic bag.

8 The Respondent consented to seven other charges of harassment on behalf of an unlicensed moneylender (by splashing paint and writing loan shark related graffiti) to be taken into consideration for sentencing purposes.

The charges

9 The Respondent pleaded guilty before the DJ to the following charges:

DAC 30189/2012:

[Quek Li Hao] are charged that you, on the 21st day of August 2012, at or about 2.17am, at the vicinity of Block 17 Hougang Ave 3 #12-153, Singapore, while acting on behalf of an unlicensed moneylender known as “PAUL”, did commit an act likely to cause annoyance to the borrower Ang Siok Chin and her family, in connection with a loan to the said borrower, to wit, by using an indelible black marker pen to write 3 sets of “12-153 O\$P\$ [xxx] KING” at the 10th, 11th and 12th

floor staircase walls and also splashed green colour paint at neighbouring unit #11-153, and in the course of committing the said act, did cause damage to the said property, and you have thereby committed an offence under Section 28(1)(b) punishable under Section 28(2)(a) and Section 28(3)(b)(i) of the Moneylenders Act (Cap. 188).

DAC 31095/2012:

[Quek Li Hao] are charged that you, on the 25th day of July 2012, between 1.30am and 5.00am, at the vicinity of Block 559 Hougang Street 51 #14-396, Singapore, while acting on behalf of an unlicensed moneylender known as "PAUL", did commit an act likely to cause annoyance to the unit occupant Syaiful Bahri Bin Mohamed Sapuan and his family, in connection with a loan to an unknown borrower, to wit, by using an indelible black marker pen to write two sets of "14-396 O\$P\$ [xxx] KING" at the 13th and 14th floor staircase walls and also splashed red colour paint at said unit #14-396 door and gate, and in the course of committing the said act, did cause damage to the said property, and you and thereby committed an offence under Section 28(1)(b) punishable under Section 28(2)(a) and Section 28(3)(b)(i) of the Moneylenders Act (Cap. 188).

DAC 31098/2012:

[Quek Li Hao] are charged that you, on the 9th day of August 2012, between 1.30am and 5.00am, at the vicinity of Block 710 Yishun Ave 5 #03-100, Singapore, while acting on behalf of an unlicensed moneylender known as "PAUL", did commit an act likely to cause annoyance to a 'surety' of a borrower, Saleh Bin Mohamed and his family, in connection with a loan to the borrower, to wit, by using an indelible black marker pen to write three sets of "3-100 O\$P\$ KING [xxx]" at the 3rd, 4th and 5th floor staircase walls and also splashed red colour paint at the said unit's door and gate, and in the course of committing the said act, did cause damage to the said property and you have thereby committed an offence under Section 28(1)(b) punishable under Section 28(2)(a) and Section 28(3)(b)(i) of the Moneylenders Act (Cap. 188).

DAC 32996/2012:

[Quek Li Hao] are charged that you, on the 16th day of August 2012, between 1.30am and 5.00am, at the vicinity of Block 319 Hougang Ave 5 #04-23, Singapore, while acting on behalf of an unlicensed moneylender known as "PAUL", did commit an act likely to cause annoyance to the borrower Lee Tuan Poong and his family, in connection with a loan to the said borrower, to wit, by using an indelible black marker pen to write three sets of "4-23 O\$P\$ [xxx] KING" at the 4th, 5th and 6th floor staircase walls and also splashed blue colour paint at the said unit's door and gate, and in the course of committing the said act, did cause damage to the said property, and you have thereby committed an offence under Section 28(1)(b) punishable under Section 28(2)(a) and Section 28(3)(b)(i) of the Moneylenders Act (Cap. 188).

DAC 32997/2012:

[Quek Li Hao] are charged that you, on the 5th day of May 2012, at United Overseas Bank (UOB) Toa Payoh Branch, Singapore, did assist one 'James', in the carrying on of the business of money-lending in Singapore, to wit, by opening an UOB account bearing number [xxx] under your name, and thereafter handing over the UOB Automated Teller Machine (ATM) card and Personal Identification Number (PIN) linked to the said UOB account to the said 'James', so as to facilitate the said 'James' unlicensed money-lending business when 'James' was not an excluded

moneylender or an exempt moneylender or authorised to do so by license, and you have thereby assisted in the contravention of Section 5(1) of the Moneylenders Act (Cap. 188) and thus has committed an offence punishable under Section 14(1)(b)(i) and 14(1A)(a) of the said Act.

The decision below

10 The punishments provided for the Harassment Charges are imprisonment for a term not exceeding five years, a discretionary fine between \$5,000 and \$50,000 in amount and caning with three to six strokes. The DJ sentenced the Respondent to seven months' imprisonment and three strokes of the cane for each of the four Harassment Charges [\[note: 2\]](#) and to one month's imprisonment and a fine of \$30,000 (in default, three weeks' imprisonment) for the Assisting Moneylender Charge [\[note: 3\]](#). The Assisting Moneylender Charge is not the subject of the Prosecution's appeal.

11 The DJ ordered two of the imprisonment terms for the Harassment Charges to run consecutively. The aggregate sentence was therefore 14 months' imprisonment, 12 strokes of the cane and a fine of \$30,000 (in default, three weeks' imprisonment).

12 In arriving at the sentence of seven months' imprisonment and three strokes of the cane for each of the Harassment Charges, the DJ considered the following:

(a) The Respondent had a clean record;

(b) The Respondent was in the category of persons deserving of compassion as he had committed the offences due to unforeseen financial difficulties that were not of his own doing. He was a victim of circumstances spiralling beyond his control. Specifically, the Respondent had helped a friend by standing as the guarantor but the friend 'turned out to be wholly unworthy and disappeared'. Further, as a dutiful son, he had to foot the medical bills of his sickly parents which further added to his financial woes;

(c) He pleaded guilty and was remorseful;

(d) His employers were willing to re-employ him after his period of incarceration; and

(e) He was unlikely to reoffend.

13 The DJ highlighted that in *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 ("*Ong Chee Eng*") at [39], the High Court had observed that a "discount ought to have been given by the District Judge for the charges that dealt only with the splashing of the paint and the writing on the walls". Further, the DJ noted that it was highlighted in *Ong Chee Eng* (at [10]) that deterrence was just one aspect of a sophisticated and holistic solution. Hence, in the DJ's view, the 12-month benchmark sentence laid down in *Public Prosecutor v Nelson Jeyaraj s/o Chandran* [2011] 2 SLR 1130 ("*Nelson Jeyaraj*") was not meant to be a hard and fast rule.

14 The DJ also observed that the courts have not indiscriminately imposed 12 months' imprisonment as seen in the cases of *Public Prosecutor v Tan Chiah Khing* [2012] SGDC 35 ("*Tan Chiah Khing*") and *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380 ("*Abdullah Bin Abdul Rahman*"). In *Tan Chiah Khing*, the offender was sentenced to six months' imprisonment and the Prosecution's appeal against sentence was dismissed by the High Court. In *Abdullah Bin Abdul Rahman*, the offender, who stood as a guarantor for a friend and committed the offences after his friend disappeared, was sentenced to eight weeks' imprisonment and three strokes of the cane on

each of the harassment charges. On appeal, the imprisonment sentence was enhanced to seven months for each of the harassment charges.

The Prosecution's case

15 The Prosecution urged this court to enhance the individual sentences of seven months' imprisonment and three strokes of the cane for the Harassment Charges as these were manifestly inadequate. The usual tariff for such offences committed in similar circumstances was between nine and 12 months' imprisonment with three strokes of the cane. The Prosecution submitted that the individual sentences for the Harassment Charges should be enhanced to 12 months' imprisonment and three strokes of the cane.

16 The Prosecution argued that the sentences imposed for the Harassment Charges were manifestly inadequate because the DJ had erred in fact and in law by:

- (a) Failing to give sufficient weight to the need for general deterrence with regard to the nature of such offences and Parliament's clear intent to take a tougher stance against loanshark related offences;
- (b) Failing to give sufficient weight to the need for specific deterrence and placing undue weight on the Respondent's personal circumstances;
- (c) Failing to adequately appreciate the distinguishing elements between this case and the cases relied on by the DJ to justify departure from the benchmark sentence;
- (d) Failing to give adequate consideration to sentencing precedents exhibiting similar facts; and
- (e) Failing to give due weight to the aggravating factors in the present case.

17 The Prosecution also pointed out the following aggravating factors here:

- (a) The offences were premeditated as opposed to being carried out on the spur of the moment. The Respondent had gone to the victims' units equipped with paint and markers for carrying out the acts of harassment. Further, the Respondent knowingly worked for at least two different loan sharks; and
- (b) The Respondent went to six different locations all over Singapore (Hougang, Yishun, Ang Mo Kio and Pasir Ris) to carry out the acts of harassment.

18 The Respondent did not provide any documentary evidence for his claims of financial hardship in his plea of mitigation. Even if those claims were true, the financial difficulties faced by the Respondent hardly amounted to such exceptional circumstances that warranted significant weight to be placed on them as a mitigating factor.

19 Finally, in one of the Harassment Charges, the Respondent went so far as to splash paint on the unit adjacent to the debtor's unit, thereby causing needless annoyance and distress to the debtor's neighbour.

The Respondent's case

20 The Respondent, who was legally represented before the DJ but not before me, made the

following points:

(a) The Respondent argued that, as pointed out by the DJ, it was clearly not meant to be a "hard and fast rule" that 12 months' imprisonment was the "usual benchmark" for harassment cases.

(b) He emphasized the circumstances in which he had resorted to the borrowing of money from loan sharks, namely, the fact that he had exhausted all legal avenues to raise funds and, when faced with his family's emergencies, he really had no choice but to turn to loan sharks. He stated that he belonged to "those, who, out of genuinely desperate financial need brought about by events not within their control (eg. sudden sickness and prolonged retrenchment) borrow from loan sharks whom they are then forced to work for ..." (*Ong Chee Eng* at [18]).

(c) The Respondent stated that he splashed paint on others' homes unwillingly after the loan sharks became aggressive, phoned him at his office, threatened to harass his colleagues and to make him lose his job. His health also suffered due to the long-term stress.

(d) He asked the Court to show compassion towards him and maintain the sentence given by the DJ. This was because he had aged and sickly parents to care for and he was remorseful.

My decision

21 The present case presents an opportunity to elaborate on the benchmark sentence for non-fire harassment cases with resultant property damage under the Moneylenders Act.

Parliament's approach towards loan shark offences

22 Parliament's approach towards loan shark offences is clear - it has prescribed mandatory imprisonment and caning for even first-time offenders. Hence, in the light of the severity of the mandatory sentences, Parliament's intention is clearly to strongly deter the commission of loan shark offences: *Ong Chee Eng* at [10].

Benchmark sentence for non-fire harassment cases

23 In *Nelson Jeyaraj*, the High Court (at [47]) stated that the benchmark sentence for non-fire harassment cases with property damage is 12 months' imprisonment and three strokes of the cane.

24 The High Court in *Ong Chee Eng* (at [14] and [18]) grouped accused persons into two categories: the first category consists of those who turn to loan sharks not to pay off their gambling debts but because of genuinely desperate needs such as sudden sickness and prolonged retrenchment ("genuine financial need" category).

25 The second category consists of those less deserving of sympathy such as youth harassers lured by the easy money and the thrill and gamblers who harass for the easy money they can obtain to repay their gambling debts ("greed and self-interest" category).

26 Although the offender in *Ong Chee Eng* fell into the "genuine financial need" category, the High Court did not depart from the benchmark sentence of 12 months' imprisonment and three strokes of the cane. However, it did state that a small discount of one to two months could have been given where steps had been taken by the offender to minimize damage. The High Court gave 12 months' imprisonment and three strokes for each of the non-fire harassment charges and 16 months'

imprisonment and three strokes for each of the fire harassment charges. One of the non-fire harassment charges and three of the fire harassment charges were ordered to run consecutively making the total sentence 60 months' imprisonment and the maximum 24 strokes of the cane.

27 The High Court in *Ong Chee Eng* therefore left undisturbed the 12-month imprisonment term and three strokes of the cane for each of the non-fire harassment charges involving property damage. In the same vein, although the Respondent here belonged to the "genuine financial need" category – as he claimed he needed money for his parents' hospitalisation bills and was a guarantor turned debtor turned harasser – there was no reason why the benchmark sentence of 12 months' imprisonment and 3 strokes of the cane for non-fire harassment cases with property damage should not apply to his case.

28 The Respondent also appeared to have been in a better financial position compared with the offender in *Ong Chee Eng*. While both of them became involved with loan sharks after they had guaranteed their friends' loans, the Respondent here was still working and drawing a monthly salary of \$2,500 at the time of the commission of the Harassment Charges. In contrast, the offender in *Ong Chee Eng* was retrenched and had to go to the extent of selling his HDB flat to try to repay the loans but even that proved to be insufficient for the repayment.

29 The offender in *Ong Chee Eng* had also confessed to the majority of the charges that were brought against him and which the police would otherwise have been unable to pin on him. In contrast, the Respondent was caught red-handed with the addresses of the flats that he was instructed to harass still stored in the SMS inbox of his mobile phone. These formed the subject-matter of the charges that were preferred against him.

Distinguishing the cases cited by the DJ that departed from the benchmark sentence

30 The cases relied upon by the DJ that departed from the benchmark sentence – *Abdullah Bin Abdul Rahman* and *Tan Chiah Khing* – could be distinguished from the present case.

31 In *Abdullah Bin Abdul Rahman*, the 49-year-old offender was sentenced by the district judge in that case to eight weeks' imprisonment with three strokes of the cane for each of the harassment charges with property damage. On appeal, the High Court increased the sentence to seven months' imprisonment and three strokes of the cane for each of those charges.

32 While no written grounds of decision were given for that case, it should be noted that the offender had been released on 3 December 2011 (after remission of sentence). He could not be located to attend the hearing of the Prosecution's appeal against sentence, originally fixed on 31 January 2012. By the time he was present in court for the hearing of the appeal on 3 October 2012, it had been some ten months after his release from prison. In those circumstances, the Prosecution conceded before the High Court that a sentencing discount could be given to the offender, in view of the hardship that would be caused to him if his sentence were to be increased to the benchmark of 12 months' imprisonment and three strokes of the cane. In contrast, there were no such peculiar facts in the present case.

33 Further, the offender there was approaching 50 years of age and had recently undergone heart surgery to insert a stent, as he had purportedly suffered a heart attack whilst committing an act of harassment. In the present case, the Respondent was a healthy 37-year-old at the time of the offences.

34 In *Tan Chiah Khing*, the accused was sentenced to six months' imprisonment for the charge of

non-fire harassment with property damage on behalf of an unlicensed moneylender. The offender there faced only one count each of non-fire harassment with property damage and assisting in unlicensed moneylending. In contrast, the Respondent faced four Harassment Charges and one charge of assisting a moneylender, with seven similar charges of harassment taken into consideration for sentencing purposes.

35 The district judge in *Tan Chiah Khing* took into consideration the following factors in departing from the benchmark sentence: the offender was above 50 years old and not in good health and the offences were committed within a period of two days. However, these factors do not apply in the present case to the healthy and then 37-year-old Respondent who committed the offences over a longer period of time of about five weeks.

36 In other cases with unusual circumstances, custodial sentences below the 12-month benchmark have been meted out. For example, in *Public Prosecutor v Kalaiselvan Subramaniam* (DAC 30535/2012 & another), the offender was sentenced to ten months' imprisonment as he was suffering from schizophrenia at the material time. In the present case, I did not find that the Respondent's personal background amounted to such unusual circumstances as to warrant a discount in the benchmark sentence with regard to the Harassment Charges.

Discount in sentence when steps are taken to minimise damage caused to property

37 A small discount of one to two months to the benchmark sentence could be given for non-fire harassment cases when the accused person had taken steps to minimize the damage caused to property (*Ong Chee Eng* at [39]). For example, the offender in *Ong Chee Eng* "wrote on the walls with a non-permanent white board marker so the intimidating scrawls could be removed with a wet cloth" (at [8].)

38 In our present case, there was no evidence before the Court that the Respondent had taken steps to minimize the damage caused to the various flats and their surroundings. In fact, he had even gone to the extent of splashing paint on a debtor's neighbour's flat (see further at [39] to [44] below).

Aggravating factor when innocent persons are harassed

39 In my view, it is an aggravating factor when innocent persons are deliberately targeted and harassed. This could take the form of harassing the debtor's neighbours or vandalising the flat when the harasser knows that the debtor is no longer residing there. Innocent parties should not be made to suffer the anxiety, frustration and helplessness caused by such acts of harassment. Such indiscriminate acts disturb the peace of mind and sense of well-being of the community by enlarging the area of conflict.

40 In *Nelson Jeyaraj*, the High Court stated that (at [20]):

Harassment offences threaten the safety of a considerably wider scope of persons beyond the debtors and/or sureties. Innocent victims are often utilised as deliberate targets, not because of any prior association with the illegal moneylenders, but because the unlicensed moneylenders and their "runners" see them as nothing more than a pawn in order to pressure the actual debtors to pay up. At the Second Reading of the 2010 amendment bill which brought the Moneylenders Act to its current form, the Senior Minister of State for Home Affairs (Assoc Prof Ho Peng Kee) said at col 2051:

Loansharks now increasingly target innocent neighbouring households by splashing paint on their doors, or on their cars in multi-storey carparks, hoping that peer pressure would force the borrowers to pay up. Indeed, in some instances, knowing that innocent parties are frustrated, loansharks demand that they pay up on behalf of the actual debtors! These acts, though generally non-confrontational in nature and non-life threatening, nevertheless disrupt the community's sense of well-being.

[emphasis added]

41 In *Public Prosecutor v Mohammad Suhairi Bin Mail* [2011] SGDC 31, the district judge imposed higher imprisonment sentences for the harassment of neighbours' units and for securing the main gate, as these were aggravated forms of harassment. He sentenced the offender to 14 months' imprisonment and three strokes of the cane for each of the two charges of harassing the debtor's neighbours' units by writing graffiti and splashing paint.

42 In the present case, the Respondent harassed the debtor's neighbour by splashing paint on the neighbour's unit. When I asked the Respondent about this incident, he admitted that he knew that he was harassing the debtor's neighbour before he splashed the paint. He claimed that he was reluctant to do so and had called his boss to express his reservations but was instructed nevertheless to carry out the act of harassment against the neighbour.

43 However, the Prosecution in the present case did not seek to make a distinction between the sentences to be meted out for offences involving innocent persons and those involving debtors. It merely used the fact that a neighbouring unit was targeted as a factor to support its arguments that the benchmark should not have been departed from.

44 In my view, offenders who knowingly harass innocent persons such as debtors' neighbours ought to be given an imprisonment term of two to three months higher than the benchmark sentence of 12 months' imprisonment. Unlicensed moneylenders and their assistants should not be allowed to treat debtors' neighbours as mere collateral damage in their unrelenting quest to make debtors pay up. Similarly, offenders in the "greed and self-interest" category could justifiably be given enhanced sentences of three to six months above the said benchmark, with due consideration accorded to their youthfulness and other relevant factors.

Conclusion

45 For the above reasons, I allowed the Prosecution's appeal against the sentences imposed by the DJ. In respect of the four Harassment Charges, I ordered the imprisonment terms imposed by the DJ to be enhanced to 12 months' imprisonment for each charge with the three strokes of the cane for each charge to remain unchanged.

46 The imprisonment terms for DAC 30189/2012 and DAC 31095/2012 were ordered to run consecutively, with the rest of the imprisonment terms running concurrently with them. The total sentence was therefore 24 months' imprisonment with effect from 6 March 2013, 12 strokes of the cane and a \$30,000 fine (in default, 3 weeks' imprisonment).

[\[note: 1\]](#) DAC 32997-2012.

[\[note: 2\]](#) DAC 30189-2012, DAC 31095-2012, DAC 31098-2012, and DAC 32996-2012.

[\[note: 3\]](#) DAC 32997-2012.

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