

Public Prosecutor v Ng Yong Leng
[2009] SGHC 155

Case Number : Cr Rev 13/2009
Decision Date : 03 July 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Hay Hung Chun (Attorney-General's Chambers) for the applicant; The respondent in person
Parties : Public Prosecutor — Ng Yong Leng

Criminal Law – Offences – Engaging in business or trade of conveying prohibited immigrants to or out of Singapore – Whether act or transaction need to be successful or completed

3 July 2009

Judgment reserved.

Choo Han Teck J:

1 The matter was brought to the court's attention by the judge below. The accused had pleaded guilty to a charge under s 57(1)(c)(iii) of the Immigration Act (Cap133) read with s 107(b) and s 116 of the Penal Code (cap224). These provisions are set out in full for convenience as the subject of the proceedings before me concerned the question whether the offence charged was a completed offence. If it had, the sentence imposed by the court below would have been meted out within his jurisdiction to sentence. However, if s 116 applied and the offence was not a completed offence, the accused was only liable to be sentenced to one-fourth of the longest term provided for the offence. The judge below had sentenced the accused to two years imprisonment and three strokes of the cane. Were this court to find that the offence was not a completed offence, the sentence ought to have been one year and three months being one fourth of the longest term of five years provided under s 57(1)(c)(iii).

Section 57(1)(c) reads:

Any person who – (c) engages in the business or trade of conveying to or out of Singapore in or on any vehicle, vessel, aircraft or train any person whom he knows or has reasonable grounds of believing is a prohibited immigrant; shall be guilty of an offence and – (iii) in the case of an offence under paragraph (c), shall be punished with imprisonment for a term of not less than 2 years and not more than 5 years and shall also be punished, subject to s 231 of the Criminal Procedure Code (Cap 68), with canning of not less than 3 strokes

Sections 107 and 116 of the Penal Code provided as follows:

Abetment of the doing of a thing

107. A person abets the doing of a thing who —

(a) instigates any person to do that thing;

(b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the

doing of that thing; or

(c) intentionally aids, by any act or illegal omission, the doing of that thing.

Abetment of an offence punishable with imprisonment

116. Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for that offence, or with both.

2 The facts of the offence were as follows. A car with the registration number of SJC 5259D was stopped by officers from the Immigration Control Authority. The car was driven by Yap Siong Huat ("Yap") and accompanied by Marcus Chan Guan Yang ("Marcus"). With them were two women and a man from the People's Republic of China. They were prohibited immigrants.

3 In the admitted statement of facts, the accused accepted a job from one "Ah Phiew". No description was given as to what the job was but it seemed clear from the statement that the accused contacted one "Yong Sheng" after his contact with Ah Phiew. Two days after contacting Yong Sheng, the accused met Yap and Marcus and asked them to "convey prohibited immigrants out of Singapore". They discussed the details of the transaction and the accused then told the three Chinese nationals to meet him that evening between 6pm and 7pm. They then met Yap and Marcus at a carpark next to the Aljunied MRT station. The three Chinese nationals got into the car with Yap and Marcus. They drove to shore off Tuas West Drive Road at 11pm. They waited there for five hours for a boat to take the three Chinese nationals out of Singapore. The boat did not arrive and the three Chinese nationals were told to get back into the car with Yap and Marcus. The party was arrested by immigration officers before they could drive off.

4 After sentencing the accused, the court below formed the view that since the three Chinese nationals were arrested before they could be conveyed out of Singapore, "the offence was not committed in consequence of [the] abetment". The court was also of the view that since s 116 applied, the sentence should not have been the minimum two years imprisonment but a quarter of the maximum term of five years.

5 I am of the opinion that the sentence need not be revised and the orders made below should stand. Section 57(1)(c) of the Immigration Act creates the offence of carrying on the business or trade of conveying prohibited immigrants to or from Singapore. The nub of the offence is the "carrying on the business". In this regard, the accused had admitted to facts which in their ordinary meaning showed that the accused had engaged in the act for his personal gain. That he had also made all the arrangements without himself participating in the actual act of conveying the three Chinese nationals was also proof that he was at the material time "carrying on the business" of conveying prohibited immigrants. The business need not have to be a successful one or the act of conveyance a completed act. It can also be a business even if the said offence was the very first transaction. The act or transaction thus need not be completed transaction. In my opinion, so far as this accused was concerned, s 107 and s 116 of the Penal Code were not necessary for the purpose of convicting this accused as charged. He was guilty of the principal offence as it were. His involvement was a primary one of carrying on the business of conveying prohibited immigrants to and out of Singapore.

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