

Public Prosecutor v Chong Kai Xiong and others
[2010] SGHC 101

Case Number : Magistrate's Appeal No 317-321 of 2009 (Police Summons No 1344-1348 of 2008)
Decision Date : 01 April 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Bala Reddy, John Lu Zhuoren and Peggy Pao Pei Yu (Attorney-General's Chambers) for appellant; First, Second, Third, Fourth and Fifth Respondents in-person; Cheah Wuiling (Law Faculty, National University of Singapore) as Amicus Curiae
Parties : Public Prosecutor — Chong Kai Xiong and others

Criminal Law – Public Law

1 April 2010

Judgment reserved.

Choo Han Teck J:

1 This was the public prosecutor's appeal against the acquittal of the five respondents on a charge under r 5 of the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules (the "Rules"). Rule 5 provided that:

Any person who participates in any assembly or procession in any public road, public place or place of public resort shall, if he knows or ought reasonably to have known that the assembly or procession is held without a permit, or in contravention of any term or condition of a permit, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

The trial judge below found the five respondents who were charged for an offence under r 5 for taking part in a procession without a permit not guilty because the activity in question was not a "procession" within the meaning of the Rules or its parent Act, the Miscellaneous Offences (Public Order and Nuisance) Act, (Cap 184, 1997 Rev Ed) (the "Act").

2 The salient facts relating to the charge as found by the trial judge were as follows. A group of people gathered at the Speakers' Corner in Hong Lim Park on 16 September 2007. Some of them wore t-shirts emblazoned with the words "Democracy Now" and "Freedom Now" on the front and back, respectively, of the t-shirts. They were joined by other persons and together they walked from the Speakers' Corner to various places including the Parliament House, the front of the Istana and ending at the Queenstown Remand Prison ("QRP"). The five respondents were members of this group who were arrested and charged.

3 The trial judge found that the fifth respondent in a green t-shirt was the first to arrive at the Speakers' Corner at 2.45pm. He was joined by two others in black t-shirts. Subsequently, the first, third and fourth respondents and one Charles Tan as well as one Francis Yong joined them. A little later, the second respondent joined them. About 3.25pm the five respondents and Charles Tan together with four or five others left the park. Only the first to fourth respondents and Charles Tan wore the white t-shirts. The group of nine to ten people walked along South Bridge Road, stopped

near Parliament House, where the five persons in the white t-shirts posed for photographs. After that the group of nine or ten continued walking to the Supreme Court building and crossing over to the Funan Digitalife Mall. At that point, PW2, DSP Chan told the second respondent to cease the procession. Apparently the group ignored him and crossed over to the Peninsula Plaza where the first, second, third and fourth respondents distributed pamphlets to the public. The fifth respondent went into the building and re-appeared a short while later and the group continued walking towards Bras Basah Road. At this point, the prosecution's evidence was unclear as to whether all nine to ten of the original group were still in the group. They walked to Plaza Singapura and arrived at the Istana, and from there, to Centrepoint. The group took a toilet break at Centrepoint. After the break, they continued the walk along Orchard Road, Tanglin Road and ending at QRP.

- 4 The trial judge accepted that for the prosecution to succeed it had to prove that –
- (a) the respondents participated in a procession;
 - (b) the procession took place in a public place;
 - (c) the procession consisted of five or more persons;
 - (d) the procession was to commemorate an event; and
 - (e) the respondents ought reasonably to have known that the procession was held without a permit.

The trial judge found that there was no dispute that the event was held in a public place without a permit and that it was to commemorate an event, namely, the first anniversary of the WB-IMF protest held on 16 September 2006. The purpose of the event was posted on the website of the Singapore Democratic Party on 13 September 2007 stating that it was an "event" to commemorate the first anniversary of the protest led by one Dr Chee Soon Juan, the previous year. The event was planned to end at the QRP where Dr Chee was, on 16 September 2007, incarcerated.

5 The trial judge found that the prosecution had proved its case against all five respondents on all but one of the necessary ingredients of an offence under r 5 and he rejected the defences raised by each of them except for one element of the charge, namely, that the activity of the five respondents did not constitute a procession within the meaning of the Rules or Act. The trial judge referred to the dictionary meaning of the word from three dictionaries, namely, the *Cambridge International Dictionary of English* ("a line of people who are all walking or travelling in the same direction, esp. in a formal way as part of a religious ceremony or public celebration"); *The Oxford English Reference Dictionary* ("a number of people on vehicles etc moving forward in orderly succession, esp. at a ceremony, demonstration, or festivity"); and the *Collins Dictionary* ("1. the act of proceedings in a regular formation 2. a group of people or things moving towards in an orderly, regular, or ceremonial manner").

6 In response to the prosecution's submission that the offence was complete "so long as a group of five or more people walked from one point to another point in a public place to commemorate an event" the trial judge held that it could not agree with that approach because it was a "simplistic interpretation" of the word procession. The court accepted that the group need not proceed in a "structured way" or in a "formation". He also dismissed the respondents' other arguments such as that of Mr Yap, the fifth respondent, who claimed that he was not involved, but was there only as an observer. Having perused the evidence, I am of the view that that was an issue of fact which the trial judge rightly found against him. Even before me, the fifth respondent admitted that when the

group were at Centrepoint they lost sight of each other and he had to reach them through the cell-phone.

7 The trial judge then stated what he felt were his grounds for holding that the activity of the respondents was not a procession within the meaning of the Rules:

25 The difficulty in this case is in deciding whether what the defendants had done on the afternoon of 16 September 2007 amounted to being a procession. The collective evidence of the witnesses of the prosecution and defence showed that the group of people comprising SDP members, a few bloggers and some journalists had walked mainly on the pedestrian pathways from Hong Lim Park to the vicinity of the Istana, using the pavements and sidewalks. The people in this group were at times walking in pairs, at times singly and at times in smaller groups. They had walked casually and ad hoc stops were made for pamphlet distribution and toilet breaks.

26 Other than a few of them wearing similar white T-shirts with the words "Democracy Now" and "Freedom Now", the group did not attract any significant attention of the public while walking. They did not carry any of the usual paraphernalia associated with a protest or a rally march such as placards and banners. In saying this, I need to clarify that I do not accept the submission of the 5th Defendant that there must be a fixed formation and order for there to be a procession or that the people in a procession must have shouted slogans, carried placards and exhibited banners. Of course, if such features were exhibited or present, it would be easy to recognise that a procession had indeed been formed and had taken place.

27 The walk did not impede or cause any disruption to the flow of vehicular traffic or the movement of pedestrians. There were occasions when the participants of the group were walking several metres apart along the way and moving amongst the pedestrians. The group also used the pedestrian crossings at traffic light junctions in the same manner as other pedestrians, obeyed the traffic signals and did not move en masse onto the streets in any shape or form.

One of the respondents' responses to the prosecution's appeal was that they were only "walking", a point noted by the trial judge to be in the respondents' favour.

8 From the grounds delivered, it appeared to me that the trial judge was persuaded by the fact that the activity of the respondents was a "walk" and not a procession mainly because it was not disruptive and proceeded without a sustained formation. The specific facts that seemed to have significance in the trial judge's view were, first, the group obeyed traffic lights and did not impede either traffic or pedestrian flow. Secondly, the group walked casually and sometimes in pairs, sometimes singly, and sometimes in small groups; and thirdly, the group did not attract any significant attention of the public and did not carry "the usual paraphernalia associated with a protest".

9 A plain reading of r 5 indicates that any group of five or more persons would require a permit if they were to walk to a cinema to watch the anniversary of a James Bond film. The patently absurd situation would warrant a dismissal of the charge against the respondents because if they could walk to the cinema they can walk to the Istana. On the other hand, it is also obvious that r 5 was clearly not restricted to formal processions on the street proper. In this regard, the dictionary definitions of a procession and comments from courts in jurisdictions where there were no specific rules defining the number of persons that minimally qualify as an assembly or procession must be read in the context of a jurisdiction such as ours where there are such rules. Under our rules, a group of five is sufficient to qualify for the purposes of an assembly or procession. Such persons need not march in a fixed and structured formation to be regarded as a procession. The impression of an organised, orderly, and structured formation is vastly different between a group of five and a group of a hundred. Hence, a

group of five in whatever formation may not create the impression of a group "in a compact body marching in close formation" but can nonetheless be a procession.

10 Proof of disruption and nuisance naturally add to the evidence against the accused in a prosecution under r 5, but that rule is an anticipatory rule in the sense that the prosecution is not obliged to prove actual nuisance to the public whether by way of attracting the attention of members of the public or impeding pedestrian or vehicular flow. It is a rule that requires the persons planning the assembly or procession to obtain a permit. The purpose of this rule is to give the police notice of such events so that the police may exercise its discretion to refuse permission or grant permission with conditions or grant permission without conditions. What makes the assembly and procession one that falls within the ambit of r 5 is whether the assembly or procession was one that was designed to attract public attention to a cause as may give rise to a public disturbance or nuisance. Assemblies and processions with political or popular causes are more likely to fall within this category. This was the critical aspect of the present case that distinguished it from a walk. It may be that in the event, the respondents created no disturbance and thus, a walk such as they had planned should not reasonably be prohibited, but that does not address the question in this appeal, namely, was it one that a permit was required?

11 In the present case, the evidence on record shows that the respondents had a political purpose for what they called a "walk". They also knew that a licence was probably required because they had stated that the walk in question was going to be "as [they] had originally planned in 2006". In 2006, as the second respondent conceded, the organisers had applied for a permit but it was refused. On the facts of this case, therefore, there was no question that the respondents knew that a permit was required for them to organise a walk similar to the one they planned in 2006. That walk did not take place because the police stopped them. In the present case, the respondents and the other members walked from the Hong Lim Park without fanfare as to attract immediate police action. Miss Cheah, *amicus curiae*, agreed with the trial judge's finding that because no disturbance occurred and that the respondents were sometimes walking in pairs and sometimes singly, the indication was that "the degree of organisation was so low that the respondents failed to attract public attention." In this regard, I find myself unable to agree. The test is whether the organisers and participants intended to attract public attention, not whether they had succeeded or not. Rule 5 being pre-emptive leaves the assessment of risks to the permit issuer. When an event such as the present has been made public, public disorder may not necessarily be caused by the participants only; it may arise from crowds gathered to observe the event. The evidence of the internet posting, the selected use of t-shirts emblazoned with political slogans, the choice of route from departure to destination, and the distribution of pamphlets indicated otherwise. Breaking into smaller groups from time to time along the 12 km walk may also be part of the plan, but that is not important because with the degree of planning already in place, it is precisely a matter for the police to decide whether a permit should be issued or not. The organisers and participants can only take it that no permit was necessary at their own risk. As Miss Cheah also noted, r 5 was a pre-emptive rule – a procession intended to be peaceful can turn violent, and it is the police who has to assess the risk of that happening. Whether the circumstances were such that a permit ought to be sought must not be mixed up with the merits as to whether a permit would or ought to be given. In a marginal case, a defendant might have received the benefit of the doubt for having mixed up the two in believing that no permit would be necessary for the planned activity, but not in this case because the evidence shows that the respondents must have known that a permit was required.

12 In such circumstances, there is no basis to exculpate the respondents by calling the activity a walk instead of a procession. The word "procession" has a common meaning as indicated in the dictionaries cited by the trial judge. Walking off the street and observing pedestrian signal controls do not make a walk less of a procession. The word "procession" has long defied exact legal definition.

The ambivalent comments in the judgments in *Regina (Kay) v Commissioner of Police of the Metropolis* [2008] 1 WLR 2723 (citing with approval, a statement of Lord Goddard CJ in *Flockhart v Robinson* [1950] KB 498 – “A procession is not a mere body of persons; it is a body of persons moving along a route”) shows the reluctance of courts to express a fixed and definitive rule as to what “a procession” means. As I mentioned above, in defining a procession under the Rules, I think that the court has to have regard to the intention behind the rules in creating a minimum number of just five persons to qualify as a procession. It is a factual finding on the totality of ascertained facts. What amounts to a procession within the meaning of r 5 therefore is a question of mixed fact and law. What was significant for resolution in this appeal before me was whether on the facts as found by the trial judge the respondents had committed an offence under r 5. In my view, and for the reasons above, they had. The members of the “walk” might have walked in part in pairs or singly as the respondents did from time to time in this case, but that did not make the activity less of a procession because it would have taken the front walkers a moment to slow down and the back formation to speed up to have the groups to coalesce into one. It may have been a trouble-free procession but that would also be a risk factor for the police to take into account when an application is made.

13 I should briefly mention that in the course of the hearing before me, Mr Tan the third respondent argued that the Rules were *ultra vires* Art 14(1) (b) of the Constitution (the right of assembly). His submission was made as a statement rather than a reasoned argument, but in any event, I am of the view that constitutional provisions never create unbridled rights because the rule of law requires protection of the law to be extended to all and civil liberties cannot be very civil if in exercising them one disturbs the peace others enjoy. The Minister in the present case had not assigned himself unfettered rules in drawing limits to the right of assembly and procession. The extent and boundaries are set out in r 2 and 5 of the Rules. In my view, the limits are fair and adequate. Mr Tan also claimed that the police had already resolved never to issue a permit. That, however, is a matter of administrative law that did not arise in this case and in this appeal before me for the simple reason that no application was made by any of the respondents.

14 This appeal is therefore allowed and the orders for acquittal against all five respondents are set aside. The matter is to be remitted to the trial judge for an order for conviction to be recorded and for the court to impose the appropriate sentence after hearing mitigation and submissions.

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