

Public Prosecutor v Tan Khoon Shan Terrance
[2012] SGHC 181

Case Number : Magistrate's Appeal No 79 of 2012
Decision Date : 04 September 2012
Tribunal/Court : High Court
Coram : Chan Sek Keong CJ
Counsel Name(s) : G Kannan, Toh Puay San and Sanjiv Vaswani (Attorney-General's Chambers) for the appellant; Nedumaran Muthukrishnan (M Nedumaran & Co) for the respondent.
Parties : Public Prosecutor — Tan Khoon Shan Terrance

Criminal Procedure and Sentencing – Sentencing

4 September 2012

Chan Sek Keong CJ:

1 This was an appeal by the Public Prosecutor against the sentence of 15 months' imprisonment imposed on Terrance Tan Khoon Shan ("the Respondent") by the District Judge ("the DJ") for offences committed under s 41(c) of the Telecommunications Act (Cap 323, 2000 Rev Ed) ("the TA"). The offences were punishable under s 65 of the TA. The Respondent had pleaded guilty to and was convicted of 60 charges under s 41(c) of the TA. Another 557 similar charges were taken into consideration for the purposes of sentencing (see *Public Prosecutor v Terrance Tan Khoon Shan* [2012] SGDC 183). As of the time of the appeal, the Respondent was serving his sentence.

2 At the conclusion of the hearing of this appeal, I allowed the Public Prosecutor's appeal and enhanced the imprisonment term imposed on the Respondent to 30 months' imprisonment. I now set out the reasons for my decision.

Facts

3 OpenNet Private Limited ("OpenNet"), the victim in this case, was a provider of telecommunications services. It was awarded a contract by the Infocomm Development Authority of Singapore to build, manage and operate a nationwide all-fibre platform to provide ultra-high speed internet access to end users through a fibre optic platform. Pursuant to this, OpenNet engaged Singapore Telecommunications Limited ("Singtel") as a key contractor to lay the fibre optic cables to Fibre Splicing Boxes ("FSBs") located at various locations within each block of Housing and Development Board ("HDB") flats in Singapore. The FSBs located at the telephone risers were secured by a locking mechanism operated by a key. The keys were left on top of the FSBs to facilitate the contractors' works.

4 The Respondent was an ex-employee of Singtel. He used to work at Singtel as an Engineering Officer in the "Fibre to the Home" project, but his employment was terminated for poor work performance on 21 September 2010 just over a year after he was employed. Aggrieved by his dismissal, the Respondent decided to sabotage OpenNet's activities to cause trouble for his ex-supervisors at Singtel by damaging FSBs so that they would have to attend to subscribers' complaints for consequential loss of internet access and disruption of connectivity.

5 In early 2011, the Respondent found a set of keys on top of a FSB inside a telephone riser in a block of HDB flats in Clementi. [\[note: 1\]](#) From late March 2011, he began damaging FSBs by using the keys to unlock each FSB and cutting the fibre optic cables inside using a wire cutter. Disruption of service to all the subscribers of OpenNet was caused to all the HDB flats that were served by that FSB. Over a period of slightly more than a month, the Respondent damaged a total of 617 FSBs by repeating these acts in 12 housing estates across Singapore, namely, Clementi, Ang Mo Kio, Toa Payoh, Yishun, Sembawang, Bishan, Jurong, Sengkang, Toh Guan, Compassvale, Serangoon Central and Hougang. The monetary damage suffered by OpenNet as a result amounted to \$185,820.00.

The decision below

6 After hearing submissions on the aggravating factors and proposed benchmark, the mitigation plea and conducting a Newton hearing to ascertain the Respondent's state of mind when he committed the offences, the DJ sentenced the Respondent to three months' imprisonment for each of the charges proceeded with and ordered five sentences to run consecutively. The Respondent was thus sentenced to a total of 15 months' imprisonment.

7 In her Grounds of Decision ("GD"), the DJ explained that she preferred the diagnosis of Dr Jayaraman Hariram ("Dr Hariram"), Consultant Psychiatrist with the Institute of Mental Health, over that of Dr Lim Yun Chin ("Dr Lim"), Consultant Psychiatrist with Raffles Hospital [\[note: 2\]](#). Both Dr Hariram and Dr Lim examined the Respondent. Dr Hariram found that the Respondent did not suffer from depression but instead suffered from an adjustment disorder after his dismissal from Singtel, and he found this to have been a contributing factor for the Respondent's state of mind and conduct when he was committing the offences (see GD at [13] and [14]). Dr Hariram also noted that the Respondent was motivated by revenge when he committed the offences (see GD at [14]).

8 The DJ, in sentencing the Respondent, noted the Public Prosecutor's call for a lengthy custodial term, and took into consideration the following factors in deciding on the appropriate sentence to be imposed: the Respondent's early plea of guilt and cooperation with the police, his guilt and remorse indicated by his admission that he would have continued on his destructive path of revenge had he not been found out, his lack of thought of the consequences of his offences given that his only intention was to create more problems for his ex-supervisors, his lack of criminal mind, his lack of financial benefit from his acts, the serious nature of his crime and inconvenience and damage caused, his low probability of re-offending and that the overall sentence imposed should not be crushing (see GD at [19] and [20]).

The Public Prosecutor's appeal

9 The arguments of the Public Prosecutor before this court could be summarised as follows:

- (a) deterrence was the predominant sentencing consideration in this case and insufficient weight had been given to it;
- (b) insufficient weight had been given to the aggravating factors such as the fact that the offences were premeditated and motivated by revenge, the serious nature of the offences and the substantial extent of damage caused, the Respondent's persistence in the destructive acts and the numerous criminal acts committed;
- (c) undue weight had been given to the mitigating factors such as the lack of financial benefit to the Respondent, his remorse and low probability of reoffending, the adjustment disorder affecting the Respondent's then mental condition and perceiving his acts as naive and immature;

and

(d) the sentence imposed by the DJ was manifestly inadequate and did not reflect the totality of the Respondent's conduct.

10 The Public Prosecutor submitted that the appropriate sentence should be seven to eight months' imprisonment per charge with five consecutive sentences amounting to a total of 35 to 40 months' imprisonment. It argued that a higher imprisonment term per charge would reflect the premeditated and wilful nature of the offence, the significant financial loss caused and the need to protect the public interest in having a sound and reliable telecommunications infrastructure free from deliberate sabotage. In the alternative, it submitted that if the sentence of three months' imprisonment per charge was upheld, at least 12 sentences should run consecutively. This would amount to a total of 36 months' imprisonment for the Respondent which would be appropriate for the large number of offences he had committed, given the cumulative aggravating circumstances present and the serious nature of the offences committed threatening public interest.

The Respondent's reply

11 Counsel for the Respondent argued that the sentence imposed by the DJ was not manifestly inadequate and that it should be upheld. His arguments could be summarised as follows:

(a) the Public Prosecutor's primary and alternative methods of calculating the appropriate sentence were mechanistic;

(b) the Public Prosecutor's submission that 12 sentences should run consecutively was without legal basis; and

(c) the Public Prosecutor's proposed overall sentence was crushing.

Relevant sentencing principles

12 Where offences committed are animated by a desire to seek revenge, I was of the view that the proper principle of punishment to apply is that of retribution and general deterrence. In this case, the DJ neither discussed nor expressly identified any sentencing principle which formed the basis of the sentence she imposed on the Respondent.

13 The desire in a person to avenge a wrong is a human failing that society must not encourage, as it would lead him to take the law into his own hands. It can lead to vigilante justice and is inimical to the maintenance of law and order, as such, it must be suppressed for the greater good. In the present case, the Respondent's acts were motivated by nothing more than the desire to cause material damage to the operations of OpenNet, without any concern for the consequences of his acts to the public. Criminal acts animated by revenge are properly punished on the principle of retribution, taking into account the actual harm caused to the victims, which in this case would include the users of OpenNet's high-speed cable network.

14 The nature of the offence also calls for general deterrence. We now live in a digital age. High-speed internet access using the medium of fibre optics is the preferred mode of internet communication for all Singaporeans, whether it is for business, finance, investments, entertainment or communications. OpenNet, the victim, has been charged to provide this service to the public. There is therefore a strong public interest in protecting the reliability and security of Singapore's telecommunications system, which is a public good. Any damage to the system would not only cause

material damage and inconvenience to OpenNet but may also result in similar inconvenience and in some cases, material damage, to all the affected subscribers and users of its cable network. OpenNet's cable network should be regarded as a public good, and any intentional damage to or destruction of public goods is punishable above and beyond that for damaging or destroying private property which has no impact on the larger public interest. The courts must impose punishments to deter such criminal acts: see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR 814 at [24(d)]. The fibre optics network installed here was commissioned by the Singapore government and is a key part of the government's initiative to enable all Singaporeans to connect, transact and interact with each other, amongst others, in a wired nation. The government's policy to digitally enable the entire nation to facilitate and support this has been severely hindered by the Respondent's deliberate vengeful actions in cutting the fibre optic cables. Of relevance is Parliament's expressed intention for s 41 of the TA to "protect the ... public telecommunication licensee [OpenNet here] from damage if someone in the course of trying to intercept messages or to commit mischief damages or tampers with the installation or plant": see *Singapore Parliamentary Debates, Official Reports* (23 November 2009) vol 71 at col 478 (Mr Yeo Cheow Tong, Minister for Communications and Information Technology). The seriousness of the deliberate intention to cause mischief and to wreak destruction on the telecommunications system installed for the benefit of the public warranted a deterrent sentence in the circumstances. Regard may also be had to the fact that these offences were easily committed by simply using a wire cutter, but were not easily detected.

15 Additionally, the Respondent's conduct in this case was clearly planned and extremely reckless. He had committed his string of destructive acts on 617 FSBs by methodically repeating the same act of unlocking the FSBs and using a wire cutter to cut the fibre optic cables on 617 separate occasions, consequently inconveniencing numerous households in 12 housing estates over Singapore.

16 In the present case, the DJ was wrong to hold that the mitigating factors prevailed against the aggravating factors. Apart from the monetary damage of \$185,820.00 and also reputational damage caused to OpenNet, frustration and inconvenience would have been caused to the large number of households spread across 12 housing estates which had found their high-speed internet access disrupted.

17 Given the huge number of offences of mischief, 617 in total, committed by the Respondent over a period of slightly more than a month, from 31 March 2011 to 4 May 2011, the correct approach for the court to adopt in sentencing the Respondent is not to consider the sentence for each charge and then to multiply it with the number of charges on which he was convicted. This approach is not appropriate as the totality of the sentence would then depend on how many charges the Public Prosecutor decides to have tried and the number to be taken into consideration for the purpose of sentencing. There is nothing to commend such an approach. Instead, a more suitable approach is for the court to determine on a global basis what the totality of the sentence should be so as to avoid imposing a "crushing" sentence on the offender.

18 I did not agree with the DJ that there were any mitigating factors which outweighed the serious consequences of his criminal acts, having regard to the motivation for committing the offences, the number of offences and the harm done to OpenNet and its customers. The DJ gave weight, erroneously, to an irrelevant factor in the present case, *ie*, the fact that the Respondent did not acquire any financial benefit from his actions. Financial benefit was furthest from his mind. The Respondent's main aim was simply to wreak as much havoc to OpenNet's cable network, regardless of the consequences of his acts.

19 That said, the DJ rightly accorded some mitigating weight to his early plea of guilt, his co-operation with police investigations, and noted that he was willing to undergo a further psychiatric

examination upon the Public Prosecutor's request. However, these factors must be balanced by the fact that the Respondent confessed to his criminal acts only after he was confronted by the police with the keys and wire cutter found at his residence.

Appropriate sentence to be imposed

20 Section 65 of the TA provides that the penalty for committing an offence under s 41(c) of the TA is a fine not exceeding \$10,000 or an imprisonment term not exceeding three years or both.

21 Before me, the Public Prosecutor provided details of three unreported Magistrate's Court cases where offenders had been convicted of similar offences under s 41(c) of the TA. In *Public Prosecutor v Yahya Bin Ghani* (Magistrate Arrest Case No 2106 of 2000), the offender had deliberately pulled and damaged the telephone wire outside his girlfriend's home after a quarrel with her. For his s 41(c) TA offence which was the only charge proceeded against him eventually, he was convicted and fined \$2,000 with two weeks' imprisonment in default. In *Public Prosecutor v Rattan Singh s/o Kernial Singh* (Magistrate Arrest Case No 3184 of 2000), the offender had damaged the telephone line distribution box at the staircase landing of the victim's HDB block after setting fire to the victim's house. He had faced three charges, that of criminal intimidation, mischief with damage of \$25 caused, and a s 41(c) TA charge. He had no related antecedents *vis-a-vis* this last charge. For the s 41(c) TA offence, he was sentenced to six months' imprisonment. In *Public Prosecutor v Paramjeet Singh s/o Dharam Singh* (Magistrate Arrest Case No 4898 of 2002), the offender, an illegal immigrant, had tampered with wires in the public telephone booth to illegally connect a phone for his use there. He had faced two charges, one for illegally entering Singapore and the s 41(c) TA charge. As regards the latter charge, he pleaded guilty and was sentenced to three months' imprisonment.

22 Before the DJ, the Public Prosecutor had submitted that the sentence should be three months' imprisonment for each offence with 12 sentences running consecutively. The DJ rejected this submission and sentenced the Respondent to three months' imprisonment for each offence with five sentences running consecutively. Before me, the Public Prosecutor submitted that I should not uphold the DJ's sentence or her method of computing the total sentence, but increase it to seven to eight months' imprisonment per charge with five sentences running consecutively, giving the totality of between 35 and 40 months' imprisonment. While the cases (see [21] above) would be helpful to calibrate the appropriate sentence in this case, and the Public Prosecutor is not bound by its submission before the DJ, I was of the view that having regard to the nature of the offence, it was not necessary to vary the three months' imprisonment term imposed per charge to seven to eight months' imprisonment per charge. I was not persuaded that if the Respondent had merely committed one offence, it would have merited a seven to eight months' imprisonment term.

23 Taking into account the reckless and vengeful conduct of the Respondent in wantonly cutting the large number of fibre optic cables in order to maximise the damage to OpenNet's cable network to a large number of flats in the 12 housing estates, I considered that the totality of the punishment of 30 months' imprisonment would be appropriate for such conduct. I accordingly ordered ten of the sentences of three months' imprisonment each to run consecutively under MAC 4218/2011, MAC 4370/2011, MAC 4377/2011, MAC 4379/2011, MAC 4384/2011, MAC 4385/2011, MAC 4386/2011, MAC 4708/2011, MAC 4711/2011 and MAC 4713/2011.

[\[note: 1\]](#) Record of proceedings ("ROP"), p 85, Statement of Facts p 84 para 8

[\[note: 2\]](#) ROP p 823

