Chew Choon Ling Michael *v* Public Prosecutor
[2012] SGHC 214

Case Number : Criminal Motion No 90 of 2012

Decision Date : 24 October 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Vignesh Vaerhn and Eunice Lim (Allen & Gledhill LLP) for the applicant; Phang Suet Fern April (Attorney-General's Chambers) for the respondent.

Parties : Chew Choon Ling Michael — Public Prosecutor

Criminal Procedure and sentencing – Appeal – Abatement – Effect of death of appellant

24 October 2012 Judgment reserved.

Choo Han Teck J:

1 The applicant is the widow of Chew Choon Ling Michael ("Chew"), who was charged in June 2007 on five charges under the Copyright Act (Cap 63). Chew was charged together with a company called "Alterm Consortech Pte Ltd" ("Alterm"), and one Teng Siew Chin ("Teng"), an employee of Alterm. The trial spanned six months from 21 June 2010 to 5 January 2011. On 2 August 2011, all three were found guilty and convicted by the trial judge. They all filed Notices of Appeal on 12 August 2011 against their convictions. On 10 February 2012, Chew, Alterm and Teng were sentenced to pay fines of $21,000, $32,000 and $8,000 respectively. These were paid in full on the same day. Shortly after, Chew died on 24 February 2012. As his appeal (Magistrates Appeal No 195 of 2011/01) was deemed by the Registrar of the Subordinate Courts to have abated on his death, the trial judge's Grounds of Decision, which was issued subsequently on 29 May 2012, did not address the reasons for his conviction.

2 The applicant (who is also the co-administrator of Chew's estate and a director of Alterm) filed this Motion for leave to continue with Chew's appeal. In her affidavit, she stressed that it was of utmost importance to have Chew's name "cleared" so as not to have the shadow of criminal convictions cloud Alterm's ongoing activities. These are, of course, real concerns, more so given that the reasons for Chew's convictions are not on record. It would also make sense for Chew's appeal to continue since it is directly connected to the pending appeals of Alterm and Teng. I am also of the view that the applicable statutory provisions allow Chew's appeal to continue after his death. I thus grant leave for Chew's appeal to continue as if he were alive.

3 The applicant's counsel argued that the provisions in the Criminal Procedure Code 2010 (No 15 of 2010) ("2010 CPC") apply because Chew's appeal was filed after the 2010 CPC came into operation on 2 January 2011. The application was thus made pursuant to s 393(1)(*b*) read with s 393(2) of the 2010 CPC, pursuant to which the High Court may allow specified persons to commence or continue appeals for deceased accused persons. For convenience, s 393 is set out in full below:

> 393 – (1) Where a person has died –
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> (a) any relevant appeal which might have been begun by him if he were alive may be begun by a person approved by the High Court; and

(*b*) *where any relevant appeal was begun by him while he was alive or is begun in relation to his case under paragraph (a), any further step which might have been taken by him in connection with the appeal if he were alive may be taken by a person so approved.*

(2) The High Court may only give an approval to –

(*a*) *the widow or widower of the deceased;*

(b) a person who is the personal representative of the deceased; or

(c) any person appearing to the High Court to have, by reason of a family or similar relationship with the deceased, a substantial financial or other interest in the determination of a relevant appeal relating to him.

(3) An application for an approval may not be made after the end of the period of one year beginning with the date of death.

(4) Where this section applies, any reference to the appellant in any written law shall, where appropriate, be construed as being or including a reference to the person approved under this section.

(*5*) *Unless the approval is given under subsection (2), every appeal commenced shall finally abate on the death of an accused.*

(6) In this section, "relevant appeal" means an appeal made under this Part.

[emphasis added]

Objecting to the application, the Deputy Public Prosecutor ("DPP") argued that it is s 260 of the previous Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("old CPC") which governs the present case, with the consequence that Chew's appeal against his *conviction* must have abated upon his death. Section 260 states that:

Every appeal under section 245 shall finally abate on the death of the accused and every other appeal under this Chapter, *except an appeal against a sentence of fine*, shall finally abate on the death of the appellant.

[emphasis added]

Although the DPP's written submissions stated that "the Respondent is prepared to regard [Chew's appeal] as an appeal against both conviction and sentence" and that "[i]n the circumstances, section 260 of the old CPC allows the appeal against the sentence of $21,000 fine imposed on [Chew] to continue", the DPP clarified in court that she was in effect objecting to the application for Chew's appeal to continue because the appeal was against Chew's *conviction* only.

4 I agree with the DPP that s 260 of the old CPC applies to the present case. However, I find that "an appeal against a sentence of fine" under s 260 is sufficiently broad to encompass Chew's appeal. I will explain these two conclusions in turn. The DPP relied on s 429(2) of the 2010 CPC in support of her position that the old CPC applies. The material portions of s 429 provide as follows:

429 – (1) The Criminal Procedure Code (Cap 68) is repealed.

(2) This Code shall not affect –

(a) any inquiry, trial or other proceeding commenced or pending under the repealed Code before the appointed day, and every such inquiry, trial or other proceeding may be continued and everything in relation thereto may be done in all respects after that day as if this Code had not been enacted; and

(b) any further proceedings which may be taken under the repealed Code in respect of any inquiry, trial or other proceeding which has commenced or is pending before the appointed day, and such further proceedings maybe taken and everything in relation thereto may be done in all respects after that day as if this Code had not been enacted.

The DPP argued that in light of these provisions, the appeal filed by Chew would be subject to the old CPC because it is undisputed that the proceedings in the charges against Chew commenced in 2007. I agree. Regulation 2 of the Criminal Procedure Code (Transitional Provisions – Further Proceedings and Joint Trials) Regulations 2011 ("Reg 2") provides that:

> Where an accused has been charged for any offence before 2nd January 2011, *any proceeding (which includes any* pre-trial proceeding, trial, criminal motion, *criminal appeal*, criminal revision or criminal reference) *in relation to that offence may be taken or continued*, as the case may be, after that date and *everything in relation thereto may be done in all respects on or after that date as if the [2010 CPC] had not been enacted.*
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> [emphasis added]

The wording of Reg 2 is plain. The new law does not apply retrospectively to matters pending when the 2010 CPC came into force. So long as the charge for the relevant offence was brought before 2 January 2011, *any proceeding*, including criminal appeals, would be deemed "pending" and would thus be governed by the pre-2010 CPC position, in this case, the old CPC. In coming to this conclusion, I drew support from the decision in *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859. The applicant there was convicted in the District Court of two charges under the Registration of Criminals Act (Cap 268, 1985 Rev Ed). His appeal to the High Court was partially allowed. Following that, he applied to the High Court to reserve 22 questions of law of public interest to the Court of Appeal under s 60(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). After that application was dismissed, the applicant brought a further application to refer 26 questions to the Court of Appeal pursuant to s 397 of the 2010 CPC. The Court of Appeal held at [10]:

> [The applicant's first application], made on 15 November 2010, under s 60 SCJA which was then in force, was turned down by the Judge on 10 February 2011. In the meantime, on 2 January 2011, s 397 CPC 2010 came into force and replaced s 60 SCJA. … It seems to us that [the applicant] was not entitled to make this application under s 397 CPC 2010 for two reasons. First, it would amount to an abuse of process, even though this application contains four more questions than the first. He should not be allowed a second bite of the cherry. *Second, and more importantly, … [t]he CPC Transitional Regulations were deemed under reg 1 of the same to have come into operation on 2 January 2011. Thus, reg 2, and in turn s 397 CPC 2010, would apply to anyone charged with an offence on and after 2 January 2011.* In the present case, [the applicant] was charged and convicted of the offence while s 60 SCJA was still in force.
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> [emphasis added]

5 Turning to s 260 of the old CPC, I am of the view that "an appeal against a sentence of fine" would necessarily include an appeal against a conviction from which a sentence of fine was imposed. Where the sentence is one of a fine only, any appeal against that sentence must necessarily consider the validity of the fine. A fine operates, in present circumstances, against the estate directly. The personal representative is entitled to avert any such liability to the estate. This rationale does not apply to sentences of corporal punishment or imprisonment, which explains why s 260 has been so worded. Although other reasons may, of course, exist for extending the exception to other situations, this is a matter of policy for Parliament, which in any event, does not arise in the present case. Section 393 of the 2010 CPC may have achieved such extension but it is not applicable to the present case.

6 Returning to the provision under examination, I am not persuaded by the DPP's submission that s 260 should be narrowly and technically construed to the effect that an appeal against a sentence of fine only can continue, but an appeal against a conviction from which a sentence of fine is imposed must abate on the death of the accused. First, an appeal against conviction from which a fine is imposed is something more, not less, than an appeal from a sentence of fine only. On its face, s 260 does not confine the statutory carve-out to appeals against sentences of fine *only*. Second, drawing such fine distinctions misses the rationale for the statutory dichotomy despite the fact that that rationale (stated in [5] above) does not cease to be applicable in the latter situation involving an appeal against a conviction from which a fine has been imposed. If the fine was not justified it might be because the conviction was bad. If Chew's conviction is set aside on appeal, the sentence of fine imposed on him would necessarily be discharged. There is no reason why the statutory exception in s 260 of the old CPC should not apply to such a case.

7 For the reasons above, I allow the application for leave to continue Chew's appeal as if he was alive.