Public Prosecutor *v* Amos Yee Pang Sang
[2015] SGDC 215

Case Number : MAC No. 902694 & 902695 of 2015

Decision Date : 28 July 2015

Tribunal/Court : District Court

Coram : Kaur Jasvender

Counsel Name(s) : Hay Hung Chun, Hon Yi & Kelvin Kow Weijie (Deputy Public Prosecutors) for the prosecution; Alfred Dodwell and Chong Jia Hao (Dodwell & Co LLC) and Tan Ngee Wee Ervin (Michael Hwang Chambers LLC) for the accused

Parties : Public Prosecutor — Amos Yee Pang Sang

28 July 2015

District Judge Kaur Jasvender:

1 The accused claimed trial to a charge under section 292(1)(a) of the Penal Code (Cap 224) and a charge under section 298 of the Penal Code (Cap 224). He was found guilty and sentenced to one week's imprisonment on the charge under section 292(1)(a) and to three weeks' imprisonment on the charge under section 298. Both terms of imprisonment were ordered to run consecutively. The four-week term was backdated and the accused was released on the same day. He has now appealed against the conviction and sentence on both charges.

2 The prosecution and defence agreed to proceed by way of agreed facts ('ASOF') and exhibits thus dispensing with the need for any evidence to be called. Accordingly, it was agreed that no adverse inference will be drawn against the accused from not testifying in his defence.

3 In the course of the closing submissions, the defence made reference to the cautioned statement of the accused relating to the section 298 charge recorded on 30 March 2015 at 10.07am. The prosecution objected to the defence making reference to the statement on the ground that it was not part of the ASOF and exhibits. I shall deal with this aspect later.

Section 292(1)(a) charge

4 The background to this charge is set out at paragraphs 4 and 5 of the ASOF, which reads:

> The accused had disagreed with a statement attributed to the late Mrs Margaret Thatcher to the effect that Mr Lee Kuan Yew was always right. The accused took this to mean that the former had an "uncanny liking" for the latter.

> On 25 March 2015, the accused posted a status update to his Facebook page where he stated "Is anyone able to photoshop a picture of Margaret Thatcher making out with Lee Kuan Yew?" The accused decided to create one himself. He found an image depicting two persons and promptly superimposed the faces of the subjects on the image.

5 On 28 March 2015, the accused created a blog post, entitled "Lee Kuan Yew buttfucking Margaret Thatcher". As part of the blog post, he uploaded the image in question.

6 It was not in dispute that the uploading of the image by the accused to his blog post page was a transmission of the image via electronic means.

Object of section 292

7 The defence submitted that section 292 is 'meant to catch purveyors and peddlers of pornography; not political satire'.

8 I will make three observations in this regard. First, pornography is an aggravated form of obscenity. It is obvious that the commercial exploitation of pornography has the greatest evil, and accordingly it is unsurprising that the law enforcement agencies will target their enforcement against such activities. The bulk of prosecutions involve the commercial sale and distribution of obscene materials but there are also prosecutions involving possession for private use.

9 Second, the use of the section has evolved with changing trends and mediums of publication. The early cases involved the print material – books and magazines; next came the prosecution for obscene inlays of films; thereafter prosecutions involving playing cards and computer games started to come before the courts; and there has also been at least one prosecution involving t-shirts. The Internet represented a new medium, which resulted in section 292 being updated in 2008.

10 Third, the purposes or intention of the author or publisher are irrelevant. The object of the section is the protection of minds. At the end of the day, it is for the Public Prosecutor to decide when a prosecution is warranted in the public interest.

Definition of obscene

11 The sole issue was whether the image in question is an obscene representation. Section 42 of the Penal Code (Cap 224) describes 'obscene' as follows:

> The word "obscene", in relation to any thing or matter, means any thing or matter the effect of which is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

12 The statutory definition was introduced in 2008. It requires that the image be judged by its impact on the primary readership, i.e. those persons who are likely to view the blog post.

13 There were two questions which I had to determine: first, what persons were likely to read the blog post; and, whether the image would tend to deprave and corrupt such persons.

Persons likely to view the blog post

14 It is a well-known fact that Singaporeans from all age groups use the Internet daily. The readers of the blog post would therefore range from teenagers to those in their forties or even older. Whilst a broad ranging community would have access to the blog post, the significant fact is that the accused is a teenager. It is therefore reasonable to infer that a blog by a teenager will attract readership amongst his age group.

15 I did not agree with the prosecution that I should be concerned with the effect of the image on the minds of the indistinct 'average Singaporean on the MRT train with Internet access'. In my judgment, I should be concerned with the effect of the image on teenagers as the group of likely readers. If the image were likely to deprave and corrupt them, then it will be obscene.

Tendency to deprave and corrupt

16 What is considered as obscene has changed from time to time and may not exactly be the same in different countries. I shall at this stage deal with the defence submission that a similar image is found on a Women's Health Magazine website from South Africa (exhibit D1). Comparisons with other available material has been held to be the wrong approach (*Regina v. Reiter* [1954] 2 Q.B. 16). What is permitted elsewhere in the world is also irrelevant. I am not concerned with standards in other countries. Exhibit D1 is thus irrelevant to determining the question of obscenity. It is for the court to judge if the image is obscene having regard to our current community's standards or conscience.

17 The words 'deprave' and 'corrupt' appear to be synonymous. In *Director of Public Prosecutions v Whyte* [1972] WLR 410, 416H, Lord Wilberforce said:

> The Obscene Publications Act 1959 adopted the expression "deprave and corrupt" but gave a new turn to it. Previously, though appearing in Cockburn C.J.'s formula, the words had in fact been largely disregarded: the courts simply considered whether the publication was obscene and the tendency to deprave and corrupt was presumed: see *Crowe v. Graham* (1968) 41 A.L.J.R. 402, 409, per Windeyer J. citing Professor Glanville Williams [*Criminal Law, The General Part*, 2nd ed. (1961), p. 70]. But the Act of 1959 changed all this. Instead of a presumed consequence of obscenity, a tendency to deprave and corrupt became the test of obscenity and became what had to be proved. One consequence appears to be that the section does not hit "articles" which merely shock however many people.

He then went on to emphasise that the influence on the mind was the primary target. Lord Pearson made a similar observation at 421G:

> But in my opinion, the words "deprave and corrupt" in the statutory definition, as in the judgment of Cockburn C.J. in *Reg v. Hicklin* L.R. 3 Q.B. 360, refer to the effect of pornographic articles on the mind, including the emotions and it is not essential that any physical sexual activity (or any "overt sexual activity," if that phrase has a different meaning) should result.

18 As regards how the tendency to deprave and corrupt is to be judged, Lord Wilberforce stated that the tendency to deprave and corrupt is not to be estimated in relation to some assumed standard of purity of some reasonable average man. It is the likely reader. And to apply different tests to teenagers, members of men's clubs or men in various occupations or localities would be a matter of common sense. This approach is in line with the Malaysian case of *Mohamed Ibrahim v PP* [1963] MLJ 289, where Thomson CJ considered the effects of the books on the minds of the 'strong-minded', the philosopher, the young reader.

19 I turn now to the defence submission. In the main, the defence submitted that the image does not meet the high threshold of 'deprave and corrupt'. It was said:

> … taking the prosecution's case at its highest, the influence of image on the likely viewer is such that it may either: (a) lead them toward being disrespectful or vulgar; or (b) lead them toward sexual experimentation. This does not meet the test of having a tendency to 'deprave and corrupt." Further, a

court having regard to the current standards of ordinary decent people will not find sexual experimentation of the sort which the image is directed towards as having a tendency to "deprave and corrupt".

20 Taking the last point of the defence first, *viz*. the 'current standards of ordinary decent people will not find sexual experimentation of the sort as having a tendency to 'deprave and corrupt''. As I have stated, I am concerned with the effect of the image on teenagers. In this regard, I asked myself these two questions: "Would any right-thinking parent approve of their teenage daughters and sons to view such an image?" "Would any teacher approve of such an image to be viewed by his or her students in the school library?" In my judgment, the answer would be an emphatic 'no'. It would meet with their strongest possible disapproval and condemnation.

21 Sexuality education has been introduced in our schools for some time now. According to the website of the Ministry of Education, the object is as follows:

> Our children and youth grow up in a rapidly changing world where globalisation and technological advancements expose them to a wide range of influences from around the world. They need to acquire the knowledge, skills, values and attitudes which will allow them to develop healthy and responsible relationships and make informed and responsible decisions. While parents play the primary role, schools have a complementary role in providing sexuality education as part of a holistic education.
>
> With accurate, current and age-appropriate knowledge, and social and emotional skills, our children and youth will be equipped to protect themselves from sexual advances and abuse, **and avoid sexual experimentation** and activities that lead to problems related to teenage pregnancies and STIs/HIV. [emphasis added]

22 Our current societal norms are clearly against sexual experimentation by our young. The image in question portrays two persons having anal sexual intercourse in a sexual position which has been referred to as the 'wheel barrow' position. It has to be emphasised that the image is of unnatural intercourse. This is made explicit by the description 'buttfucking'.

23 I did not agree with the prosecution submission that the tendency to corrupt and deprave was satisfied because the image was calculated to convey and instil the impression that the use of 'sexual imagery is something of no importance and is nothing more than a joke to "make fun" of other persons'. On the other hand, the defence acknowledged that the image may have a tendency to lead towards sexual experimentation. I agree that it would encourage sexual precociousness. In my judgment, such an image would not only tend to excite teenagers to try out different sexual positions but also deviant sexual activity, i.e., anal intercourse. Such sexual desires and lascivious thoughts would have a corrupting effect on young minds. Accordingly, I was satisfied that the image has a tendency to corrupt and deprave.

24 The defence submitted that the likely viewers of the image are persons who would have voluntarily sought out the image or clicked on its link. It was submitted:

> a viewer who, in the circumstances, must be apprised of the controversy surrounding the image (least of all having been tipped off by the title of the post), and who continues to view it, are not persons whose minds the image will influence in such a manner as can be said to "tend to deprave and corrupt".

I found this submission unsound. It does not matter whether the young reader clicks on the link unsuspectingly or has permissive values and therefore clicks on the link because of its title. In *DPP v Whyte*, where the regular customers were regarded to be 'dirty old men', Lord Wilberforce said:

> The Act's purpose is to prevent the depraving and corrupting of men's minds by certain types of writing; it could never have been intended to except from the legislative protection a large body of citizens merely because, in different degrees, they had previously been exposed, or exposed themselves, to the "obscene" material. The Act is not merely concerned with the once for all corruption of the wholly innocent; it equally protects the less innocent from further corruption, the addict from feeding or increasing his addiction.

25 The definition is silent on the proportion of readers who would have their morals affected before the test is made out. In the English Court of Appeal decision in *R v. Calder & Boyars* [1969] 1 Q.B. 151, it was held that the jury must be satisfied that a significant proportion of the likely readership would be guided along the path of corruption. In *D.P.P. v Whyte* [1972] 3 WLR 410, Lord Pearson stated that 'persons' means some persons and as long 'as is not so small as to be negligible', the statutory definition would be met. In this regard, the Internet's reach is pervasive. I was satisfied that the group of teenagers will not be negligible – really negligible – that the de minimis principle might be applied. (Lord Pearson at 421D of *DPP v Whyte*).

26 I was therefore satisfied that the charge has been proven beyond a reasonable doubt and the accused was found guilty and convicted.

The section 298 charge

27 The subject-matter of the section 298 charge is found in a video entitled 'Lee Kuan Yew is finally dead' which the accused recorded on his video-camera and uploaded onto his YouTube public channel on 27 March 2015. The portion of the video which is the subject-matter of the charge is set out below:

> Seeing what Lee Kuan Yew has done, I am sure many individuals who have done similar things come to mind. But I'm going to compare him to someone that people haven't really mentioned before – Jesus. And the aptness of that analogy is heightened seeing how Christians seem to be a really big fan of him. They are both power hungry and malicious, but deceive others into thinking that they are compassionate and kind. Their impact and legacy will ultimately not last as more and more people find out that they're full of bull. And Lee Kuan Yew's followers are completely delusional and ignorant and have absolutely no sound logic or knowledge about him that is grounded in reality, which Lee Kuan Yew very easily manipulates, similar to the Christian knowledge of the Bible and the work of a multitude of priests.

28 Section 298 makes it an offence if one with deliberate intention of wounding the religious feelings of any person causes any matter however represented to be seen or heard by that person. Due to the pervasive use of the Internet, this section was updated in 2008 to cover online transmissions. Its scope was also widened to include the wounding of racial feelings.

Meaning of 'any person'

29 I shall first deal with the point made at paragraph 70 of the defence submissions that the section refers to "any person" and therefore it is 'only meant to criminalise words, gestures or representation that is directed at a person and not at the entire religious community'. I rejected this submission. First, it is in direct contravention of section 2 of the Interpretation Act (Cap 1, Rev Ed 2002) which provides specifically that

> "2(1). Words and expressions in the singular include the plural and words and expressions in the plural include the singular."

30 Second, the interpretation suggested would result in an outcome that if a person were to upload materials wounding the religious feelings of one person, i.e. Person A, it would fall within the scope of the section, but if the same material were to refer to a class of persons, e.g. the Christians, it would fall outside its scope although the harm of wounding the religious feelings of a class of persons would potentially be greater. In my judgment, this would defeat the purpose of the section and such a construction is unjustifiable.

Wounding the religious feelings of Christians

31 First, the defence submitted that the words were not capable of wounding the religious feelings of Christians.

32 To wound the religious feelings simply means to give offence to any person. The excerpt in question of the video labels both the late Mr Lee Kuan Yew and Jesus as 'power hungry', 'malicious', 'deceptive' in that they 'deceive others into thinking that they are compassionate and kind'; 'they're full of bull' and their legacies will therefore not last; and that Christians have no real knowledge of the bible which is being manipulated by the 'work of a multitude of priests'.

33 In my judgment, the comments about Jesus, the central figure of Christianity, are clearly derogatory and offensive to Christians. The comment that Christians have no real knowledge of the bible because their understanding is being manipulated by a 'multitude of priests' is insulting and offensive to the Christian community.

34 Further, the defence submission is also contrary to the accused's admission that he was aware the video was offensive to the Christian community. In his section 22 statement, he said:

> Before I uploaded the video, I was aware that the content of the video was offensive and would promote feelings of disharmony or feelings of ill-will within the Christian community.

35 Next, it was submitted that there was no evidence that the religious feelings of Christians have been wounded. It was submitted:

> No religious leaders, especially the Christian leaders have step forward or even made an official statement to say that their religious feelings of Christians have been wounded.

36 First, it is incorrect to say that there is no evidence that any Christian was offended. The accused in his section 22 statement admitted that there were persons who were offended. In this regard, I shall quote the relevant parts from paragraph 4, which read:

> After the video was uploaded, I noted that there were about 20 negative comments that were left on my video on YouTube, mostly from people practising Christianity. … I was heartened that there were some comments and voices of support amongst the people who commented on my video, … I noted that there were people who were offended by my video and I fully expected people to take offence, ...

37 Second, I find this submission to be wholly misconceived. The offence is complete once an utterance is made with the deliberate intention of wounding the religious feelings. Of course, if a witness testifies that his religious feelings were wounded, and eventually the charge is proved beyond a reasonable doubt, the proof of wounding may be relevant in the assessment of sentence to be imposed on the accused.

38 A similar argument was made in the Indian case of *The King v Nga Shwe Hpi* (1939) AIR 199, where the respondent caused a book to be printed of which certain parts were held to constitute an offence under section 298 of the Indian Penal Code. It was submitted by the defence that the prosecution was unable to call a single witness to say that the publication and distribution of the book caused any resentment or outraged the religious feelings of anyone. This argument was rejected by Roberts C.J. who stated:

> We think that if there had been a prosecution in 1931 after dissemination of the copies of this book, it must have been successful even in the absence of proof that any class of persons were actually insulted. The attempt to insult them would none the less have been proved from the language employed.

…

> Perhaps the reasons that no actual harm was occasioned in 1931 was that none of the three books were of any real importance, nor were they written by persons of learning or special influence. They attracted no attention beyond a limited circle of persons, happily tolerant, who treated them with the contempt which they deserved.

39 In the instant case, (to use the words of Robert CJ), the video was not made by someone who is learned or of special influence. It is by a 16-year-old teenager who plainly has a lot of growing up to do. It is unsurprising therefore that the negative reaction was limited to the comments that the accused received on social media.

40 To sum up, the section requires the accused to have deliberately intended to wound religious feelings. It does not require proof that the religious feelings were in fact wounded.

Deliberate intention to wound the religious feelings of some persons

41 I agreed that knowledge of the likelihood of feelings being hurt is insufficient by itself. The section requires that the accused should have a deliberate intention of wounding the religious feelings.

42 The main issue was if he had the intention to wound religious feelings? If he had, then where the intention to wound was not conceived on the spur of the moment but was premeditated, deliberate intention may be inferred.

43 I turn now to the cautioned statement which was objected to by the prosecution. The defence did not tender the statement as part of the defence case or inform the prosecution of its intention to use the statement but only sought to do so as part of its closing submissions. Asked if it was an oversight, Mr Dodwell did not confirm that it was so, but said that he did not think the prosecution would object to its use. I did not find this to be a satisfactory explanation and a proper way to conduct the defence. The defence ought not to have withheld its intention of using the statement and should have informed the prosecution of the intention to use the cautioned statement when the parties were agreeing on the facts and exhibits.

44 I decided to allow the admission of the cautioned statement because I did not find that its admission without cross-examination would prejudice the prosecution's case. The cautioned statement is not at odds with the contents of the section 22 statement. In the section 22 statement, there is no express admission by the accused that he had a deliberate intention to wound. He averred that he was making an analogy. He stated at paragraph 6 as follows:

> In the midst of my research, I began to see a lot of similarities between Lee Kuan Yew and Jesus Christ and thought that it was a rather interesting and unique analogy.
>
> In the cautioned statement, when the charge was read, he specifically denied he had a deliberate intention of wounding feelings and said his intention was to provide a unique analogy to Mr Lee Kuan Yew.

45 More significantly, intention, which is a state of mind, can never be proved as a fact. It is a question of what is the irresistible inference to be drawn from all the relevant facts. Here, the relevant facts are the contents of the video and the knowledge of the accused as to its effect.

46 In the main, the defence submitted that the accused did not have a 'real or dominant' intention to wound the religious feelings of Christians but that the words complained of were included in good faith to support the critique of the late Mr Lee Kuan Yew. It was argued this was evidenced by the title of the video 'Lee Kuan Yew

is finally dead' and that the paragraph complained of also started with *'Seeing what Lee Kuan Yew has done, I am sure that many individuals who have done similar things come to mind'*.

47 The reliance on the 'real or dominant' intention was taken from the Indian case of *Narayan Das and Anr v. The State* A.I.R. 1952 Ori 149. There, the accused proclaimed himself to be the living God 'Nararupi Narayan' and called upon the villagers to worship him. On the 'Rath Jatra' day, as some of the villagers were going to see the Rath Jatra of Lord Jagannath that was being celebrated, the accused dissuaded the villagers from going by saying that Jagannath was a piece of wood whereas he was living God and he should be worshipped. He was prosecuted under section 298 of the Indian Penal Code for having deliberately wounded the religious feelings of the villagers by saying that Lord Jagannath was only a piece of wood. The Orissa High Court found the charge was not made out on the following grounds:

> He was undoubtedly free to preach about the divinity in him and to dissuade people from idol worship. His object in saying that Lord Jagannath at Bonaigarh was merely a piece of wood was to contrast his position as living God with that of the inanimate object at Bonaigarth in furtherance of his preaching against idol worship. The primary or dominant intention was therefore to emphasise his own divinity and not to deliberately wound the religious feelings of others by insulting Lord Jagannath.

48 In my judgment, the 'real and dominant' test cannot be applied carte blanche to all factual circumstances. It is useful when there is a doubt as to the accused's intent. In *Narayan Das*, it was clear that the accused was convinced of his own divinity as he believed himself to be God incarnate. The Orissa High Court therefore employed the 'real and dominant' test to assist to determine if his intent was to emphasise his own divinity and not to insult Lord Jagannath.

49 Turning to the instant case. I do not consider the title of the video 'Lee Kuan Yew is finally dead' and the fact there are "at best, 10 sentences" in which reference is made to Jesus and Christians to be determinative. What is determinative is the character of the contents. From the contents, there are two distinct subjects. This is apparent as the accused was drawing an analogy between them. His motive for using the analogy is irrelevant. By making an analogy between the two different subjects, the accused was pointing to the same alleged denigrating similarities between Mr Lee Kuan Yew and his followers and Jesus and Christians. Moreover, the accused was also 'fully aware' that the comparison was offensive to the Christian population and he looked up the Sedition Act. In these circumstances, I find that the accused's immediate intent was to denigrate both subjects. As there is no ambiguity in the accused's intention, the real or dominant test is inapplicable.

50 It is not in dispute that the accused spent 2 to 3 days conceptualising, writing, filming and editing the script. I am therefore satisfied that the intent was deliberate.

51 The defence also submitted that the accused did not target the video at 'a specific group of religious people'. This point is neither here nor there. A further point was made that 'users are free to browse and view the content that they so choose and pause or close such content at will, is akin to speaking words in the privacy of a secluded location although there remains the possibility that someone might walk by and overhear'. The comparison of the Internet to the 'privacy of a secluded' location is indeed strange. The section was updated in 2008 precisely because of the vast reach of the Internet. Lastly, having regard to the nature of the remarks, it would suffice for me to simply state that no issue of 'fair latitude' for religious discussion or free speech arises.

52 I was therefore satisfied that the ingredients of the charge have been proved beyond a reasonable doubt and the accused was accordingly found guilty and convicted.

53 Following the conviction of the accused on the two charges on 12 May 2015, he was ordered to remove the offending video and the obscene image.

Sentence

54 In mitigation, it was said the accused is aged 16 years. He has been active on social media since 8 years old. He had good academic performance and conduct in primary and secondary school. He won the 'Best Actor' and 'Best Short Film' awards at The New Paper's inaugural FIRST Film Fest. It was added that the accused had cooperated in the course of investigations.

55 The prosecution urged me to call for pre-sentence reports to assess the accused's suitability for probation or a mandatory treatment order ('MTO'). The defence urged me to impose a fine or a short imprisonment term of not more than two weeks taking into account that the accused had spent 18 days in remand as he did not wish to be placed on probation.

56 As a sentence of probation for an offender above 14 years of age requires his consent, I stood down the case to speak to his parents and counsel in Chambers with a view to the accused reconsidering his position and also to determine if I should call for a MTO suitability report. Thereafter, learned counsel spoke to the accused and I was informed that he was prepared to consider probation. The prosecution then dropped its request for a MTO suitability report. I adjourned the case to 2 June 2015 for a probation report to be prepared. The bail sum was reduced and the bail conditions removed to allow the accused to be released on bail for the assessment to be done by a probation officer.

Events following the calling of the probation report

57 The probation officer ('PO') met with the accused and his parents in Court on the same day, and scheduled interview sessions with the accused and his parents on 14 May 2015 and 15 May 2015. The PO also gave a trial time restriction of 10pm, which the accused agreed to abide by. The PO made a time restriction check over the phone at 10.30pm the same night, and the accused was present at home.

58 On the following day (13 May), the PO made a time restriction check over the phone at 10.15pm. The accused was not at home. The PO then made a house visit at 10.50pm on the same night. The accused was still not at home. The PO was informed by the accused's mother that the accused was uncertain if he wanted to be placed on probation. The accused's mother did not consent for the release of a report from IMH on the two sessions that the accused had attended. She told the PO that the information would not be substantial.

59 On 14 May 2015, the accused and his parents did not turn up for the scheduled meeting. The PO contacted the accused on the phone and he requested for some time to consider if he wanted to be placed on probation.

60 On 16 May 2015, the PO contacted the accused at 10.15pm. The accused expressed that he was not keen on probation as the probation period would be long and a jail sentence was shorter. He added that he did not mind having a conviction record. When informed that the court would need to be informed, he requested for more time to consider his decision.

61 On 20 May 2015, the PO spoke to the accused and his parents over the phone. The accused confirmed that he did not want to be placed on probation. The parents declined to meet with the PO on the ground that the accused was not keen on probation.

62 As the accused and his parents had declined to be interviewed, a probation report could not be prepared. To assist the court, the PO provided a summary of what she had ascertained based on written school reports received from the accused's primary and secondary schools and telephone conversations with school personnel on 22 May 2015 (see exhibit P11). The PO gathered that the accused started having disciplinary issues since secondary 1. He was late for school and used vulgarities and offensive terms in his assignments. It was reported that he did not have a good relationship with most of his classmates as he was insensitive towards others in his views and was not receptive to opinions. He also did not socialise well with members of the English Drama and Debating Society, which was his CCA. The accused had a minor role in the Singapore Youth

Festival (Drama Presentation), and it was noted that he was unreceptive towards feedback about his acting. The school principal opined that the accused may benefit from structured programmes or routines for engagement.

Mention on 27 ay 2015

63 Since the accused had changed his mind and did not wish to consent to probation, a mention was scheduled on 27 May 2015 to re-consider the sentencing options. The prosecution tendered an affidavit of the investigation officer detailing the events after the accused's conviction. The relevant portion of the affidavit (see exhibit P12) at paragraph 19 reads:

> As mentioned above, the DJ ordered Amos to take down the Offending Video and the Obscene Image following his conviction. Although the Offending Video and the blog post containing the Obscene Image were privatised after Amos was first released on bail, I observed on 21 May 2015 that they had been made public again.

64 The prosecution informed me that it would be submitting for a sentence of reformative training. Learned counsel stated that he was not ready to submit and the case was adjourned to the original sentencing date on 2 June 2015.

Mention on 2 June 2015

65 On 2 June 2015, the prosecution tendered a further affidavit of the investigation officer which set out the online posts made by the accused since 26 May 2015 (see exhibit P13). The parties first met with me in Chambers and learned counsel requested for time to take instructions from the accused, which was granted.

66 The relevant portions of the affidavit are that the accused made a post on 1 June 2015 at about 1.00pm on his Facebook wall stating that "I refuse to take down the videos and the blog posts, at least indefinitely." At about 6pm, he republished the obscene image which is the subject-matter of MAC 90264 of 2015. In another blog post on the same day entitled "Refutation To The Charges Against Me" he stated, "And yes, to the chagrin of numerous people, I have not 'learnt my lesson', nor do I see any 'lesson' that needs to be learnt."

67 The prosecution urged me to call for a report to assess the accused's suitability for reformative training. The defence took issue with this and submitted that the prosecution had 'shifted position' and that this option was not considered initially because the offences did not warrant reformative training. The defence requested for a short term of imprisonment proportionate to the offences having regard to the fact that the accused had spent 18 days in remand.

68 The prosecution's position at the outset was to press for a rehabilitative sentence. As probation was regrettably no longer an option because the accused chose not to consent to it, the only other realistic rehabilitative sentencing option left but which involved incarceration was reformative training.

69 The three pre-conditions that must be met for a sentence of reformative training are:

i. the offences are punishable with imprisonment;

ii. the offender is aged between 16 and below 21;

iii. having regard to three matters; (i) the offender's character; (ii) his previous conduct; (iii) the circumstances of the offence, the sentence is necessary for the offender's reformation and prevention of crime.

70 The first and second conditions were met. The offence under section 292(1)(a) of publishing the obscene image carries a maximum term of imprisonment of three months. The offence under section 298 of wounding the religious feelings carries a maximum term of three years' imprisonment. The pre-condition is that the offence is punishable with imprisonment. There is no requirement that the offence must be punishable with a term of imprisonment of more than the minimum period of reformative training. The maximum sentence is a relevant consideration, but is no more than that; indeed, were it otherwise a severe limitation would be imposed on the powers of the court (see *Amos* (1960) Cr App R 42.)

71 With reference to the third condition, it is important to note that the court has to look not only at the offence but at the offender. Whilst the particular circumstances of the offences were not the most serious, they were also not trivial warranting only a fine such that it would be wholly disproportionate to impose reformative training (see *PP v. Saiful Rizam bin Assim and other appeals* [2014] 2 SLR 495). I disagreed with the defence that the events after 12 May 2015 ought not to have been brought to my attention by the prosecution. The behaviour of the accused after his conviction revealed a good deal about his character. He was taking the position that he can do as he pleases and choose the punishment that he prefers. He was unrepentant and showed no intention to abide by the law. I thus called for a report to assess his suitability for reformative training before deciding on the appropriate sentence. He was ordered to be remanded for the usual duration of three weeks' for the report to be submitted.

Mention on 23 June 2015 – the RTC report

72 The accused was found mentally and physically fit to undergo reformative training (see exhibit P14). Senior Consultant Psychiatrist Dr Munidasa Winslow ('Dr Winslow') stated: 'Some of his behaviour resembles that of people with high functioning Autism, or Aspergers Syndrome, although he has not had formal psychological testing to confirm the diagnosis.' The accused had declined to undergo formal testing by the psychologist, Dr Siew Kum Yew. Dr Winslow stated that 'Indeed, the structured environment that RTC provides, together with appropriate therapy, could equip him with the social skills that will give him better insight and address existing adjustment issues.'

73 I saw parties in Chambers before the mention to ascertain the accused's position on the offending materials which he had reposted. Learned counsel requested for time to speak to the accused, which was granted. After speaking to the accused, he informed me that the accused had agreed to privatise the offending materials. The accused gave a written undertaking to that effect and also undertook not to re-post the materials (see exhibit D7). The offending materials were thereafter privatised.

74 In view of the revelation that the accused may possibly suffer from Autism Spectrum Disorder ('ASD'), I called for a MTO suitability report. I did not find it appropriate to release the accused on bail and order him to report at IMH for the assessment. He had repeatedly non-complied with orders and refused to undergo formal testing at RTC. He also had during a bail hearing at the High Court rejected the suggestion to continue with psychiatric evaluation and/ or counselling that he had started at IMH. Accordingly, I ordered him to be remanded for the usual period of two weeks' for the report to be prepared.

Mention on 6 July 2015 – the IMH report

75 The accused was examined by Dr CaiYiming ('Dr Cai'), an emeritus consultant at the Department of Child & Adolescent Psychiatry at IMH. Dr Cai opined that the accused does not suffer from ASD or any other mental disorder (see exhibit P15). He stated that the accused 'promised not to re-offend as he realised what he did was against the law and could disrupt social harmony'. Dr Cai went on to make the following recommendations:

i. Amos would benefit from having a counsellor/mentor to guide him on the reasonable use of the Internet. He is misguided in not appreciating that 'freedom of expression is not freedom from consequence'.

ii. He should also continue with formal education where he has the opportunity to socialise with his peers.

iii. In addition, family counselling to improve the interaction and relationship among all family members is also recommended.

76 With regard to Dr Cai's recommendation, learned counsel informed me that he had arranged with Dr Lim Yun Chin, a psychiatrist at Raffles Hospital, to come up with an appropriate mentorship programme and counselling for the accused for his future, and perhaps also to arrange some family counselling.

77 In view of the accused's undertaking in exhibit D7, his change of attitude to be amenable to counselling and not to reoffend, the prosecution informed me that it was no longer pressing for reformative training. Instead, it sought a one day's imprisonment term.

Sentence for the section 298 offence

78 As regards the section 298 offence, the defence referred me to two cases – *PP v. Benjamin Koh Song Huat & Lim Yew Nicholas* [2005] SGDC 272 ('Benjamin Koh and Nicholas Lim') and an unreported case published in the Straits Times involving one Andrew Kiong.

79 Benjamin Koh and Nicholas Lim were prosecuted under section 4(1)(a) punishable under section 4(1) of the Sedition Act (Cap 290) for publishing anti-Malay and anti-Muslim remarks on the Internet. Senior District Judge Richard Magnus noted that the 'offending acts … were nipped early and contained'. Both offenders issued apologies and removed the offending material from public access. He sentenced Benjamin Koh to one month's imprisonment and Nicholas Lim to one day's imprisonment and the maximum fine of $5,000. The senior district judge stated that the court 'will not hesitate to impose salutary and stiffer sentences in future cases.'

80 For *Andrew Kiong's* case, which was a prosecution under section 298 of the Penal Code, there are no written grounds of decision available. From the press report, the accused was charged with leaving a card which insulted Islam on a car parked at the basement carpark of a condominium. He admitted he had placed a total of eight cards on cars believed to be owned by Muslims. He pleaded guilty. In mitigation it was said that the offender had apologised 'unreservedly' to the complainants. He was sentenced to two weeks' imprisonment.

81 Religion is a very sensitive and passionate subject. We pride ourselves on our multi-ethnic and multi-religious society where everyone is free to practice his religion. This achievement is the result of much hard work over the years and is an on-going effort. Pejorative remarks have the potential to cause social disorder. The sentencing objectives for such and offence are therefore retribution and general and specific deterrence.

82 I did not agree that a nominal one day's imprisonment was appropriate. Apart from the fact that the accused was a young offender with no prior record, there was precious little that could be said in his favour. He did not have the benefit of a plea of guilt. His conduct was unlike that of the offenders Benjamin Koh, Nicholas Lai and Andrew Kiong who repented and apologised for their actions after their arrest. Here, the accused did not apologise for what he did. He also refused to take down the video after his arrest. Upon conviction, he was ordered to remove the video. He did so initially. However, within a space of two weeks, he published the same video again. There was thus contemptuous defiance. He only agreed to privatise the video and gave an undertaking not to republish it after the three-week remand at the RTC. During his stint at IMH, he promised not to reoffend again. Whilst the promise not to reoffend came very late in the day, I nevertheless gave it some weight.

83 The accused committed the offence with deliberation. He spent 2 to 3 days conceptualising, writing, filming and editing the script. As regards the nature of the offending material, I noted the remarks were invective in nature and were against the central figure of Christianity and against Christians in general. They

were also published on the Internet. I noted that the negative remarks on social media were fortunately limited. Accordingly, I determined a term of three weeks' imprisonment to be appropriate.

Sentence for the section 292(1)(a) offence

84 As regards the charge under section 292(1)(a), the defence cited two cases– in one case a fine was imposed and in the other case a sentence of four weeks' imprisonment was imposed. The sentence for an offence under section 292(1)(a) turns very much on its own factual matrix. The factors which influence the sentence include the degree and type of obscenity together with the form in which it is presented; the scale; and to whom the publication was made to.

85 In the instant case, the image was of a sexual position with the visages of two former Prime Ministers and it was explicitly described to be an image showing 'buttfucking'. The image was uploaded on the Internet and it was accessible to all young viewers with Internet access. The accused showed no remorse, and republished the same image after his conviction. Accordingly, I determined that the custody threshold had been crossed and imposed a short term of one week's imprisonment.

86 I would add that I had tempered the individual sentences because of the young age of the accused. As both offences were separate and distinct, I ordered both sentences to run consecutively. I was satisfied that the total sentence of four weeks' imprisonment was proportionate. I backdated the sentence to the date of remand on 23 June 2015, and the accused was released on the same day.

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