8 OCT 2015

Summary of Prosecution's Submissions for
Magistrate's Appeal No. 9108 of 2015 Amos Yee v Public Prosecutor

1 Magistrate's Appeal No. 9108 of 2015 will be heard before Tay Yong Kwang J in the High Court on 8 Oct 2015. The Public Prosecutor is the Respondent in this appeal. This is a summary of the Public Prosecutor's submissions before Tay J.

2 This is a case of a teenager who broke the law, in the midst of seeking attention. He was convicted of:

a. a charge under s 292(1)(a) of the Penal Code (PC) for publishing an obscene image online and;

b. a charge under s 298 PC for deliberately wounding the feelings of Christians with the contents of a video that he created and disseminated online.

All the elements of each charge have clearly been made out against the Appellant, and he has clearly committed offences under s 292(1)(a) PC and s 298 PC.

Offence under s 292(1)(a) of Penal Code (offence of obscenity)

2 The test of whether an image is obscene under s 292(1) PC is whether it 'depraves and corrupts'. Cases authorities have also recognised that:

a. what is obscene is relative to its audience.

b. with respect to images on the internet, teenagers who can freely access these images may be a relevant set of audience.

3 The trial judge found that teenagers are likely to view the image and that the image would have a tendency to deprave and corrupt teenagers. Putting herself in the shoes of right-thinking parents and teachers of our community, the trial judge concluded that they would not approve of their children or students viewing the 'buttfucking' image.

4 This was a reasonable conclusion for the trial judge to draw. At the end of the day, each community must draw its own lines when it comes to obscenity. The concern with obscenity is its tendency to deprave and corrupt. Caselaw has established that it is important to avoid conveying and instilling in the young, 'the impression that casual and frivolous indulgence of the sexual instinct is something of no importance and indeed nothing more than a joke'. Indeed, it is clear that our community stands against a callous attitude towards sexual experimentation among teenagers. This is demonstrated by our laws, e.g. sexual

penetration of a minor (male or female) under 16 years of age is a crime under s 376A of the Penal Code, enacted in 2008.

5 It is argued by the Appellant that the trial judge failed to consider the image taken as a whole. Yet, when the image is taken as a whole, it is clearly obscene. The focus of the image is the depiction of 'buttfucking', leaving little to the imagination and headlined by the word 'buttfucking'. It is clear that any audience, including teenagers and younger children, and even adults, would be more drawn more to the "buttfucking" than to the superimposed faces. Plainly, the Appellant intended to and used something obscene to attract attention. In doing so, he broke the law.

Offence under s 298 Penal Code (deliberate intention to wound religious feelings)

6 The Appellant also committed an offence under s 298 PC, when he uploaded a video with the deliberate intention to wound the religious feelings of Christians.

7 Section 298 PC requires 'deliberate intention' to wound religious feelings. The Appellant essentially admitted to having the requisite 'deliberate intention', when he admitted that:

(a) he was 'fully aware' that his remarks were 'bound to promote ill-will amongst Christian population'; and

(b) he was aware that they 'raised discontent or disaffection amongst people practising the Christian faith in Singapore'.

8 Having made the above admissions, the Appellant now seeks to argue at the appeal that although he was well aware of the effect that his video would have on the Christian community, no offence was committed under s 298 PC because it was not his 'dominant intention' to wound the religious feelings of Christians, and that his dominant intention was to critique Mr Lee Kuan Yew. This is irrelevant because s 298 PC requires 'deliberate intention', not 'dominant intention'. Notably:

a. The Singapore High Court has rejected the 'dominant intention' test in other relevant cases. There is also Indian case authority effectively rejecting this test, holding that motive should not be confused with intention.

b. The language of s 298 PC is clear that only ‘deliberate intention’ is required, not ‘dominant intention’.

c. The use of the ‘dominant intention’ test would go against the aim of Parliament in introducing s 298 PC. It is clear from Parliamentary speeches on s 298 PC that in multi-racial and multi-religious Singapore, it is important that sensitivities of religious groups be respected. Applying the ‘dominant intention’ test would allow the opposite of what Parliament wanted to avoid, and allow someone the license to denigrate a religion by claiming that his ‘dominant intention’ was to expound on something else.

9 It is un-denied that the Appellant spent 2 to 3 days conceptualising, scripting, recording, editing and then uploading the video. These facts and the Appellant’s admission that he was ‘fully aware’ that his remarks were ‘bound to promote ill-will amongst Christian population’, show that his offence was premeditated, and clearly deliberate.

10 The Appellant has also wrongly argued that he did not contravene s 298 PC because there was no evidence of actual wounding of religious feelings. This is wrong because:

a. The language of s 298 PC does not require consideration of the effect of what was said. It is contravened even if there is no actual wounding of religious feelings. This is in contrast to s 298A PC, which requires consideration of the effect of an act, viz. whether it ‘disturbs or is likely to disturb the public tranquillity’.

b. An examination of the relevant Parliamentary speech shows that the intent of Parliament is to safeguard our racial and religious harmony by catching offenders before they have actually wounded religious feelings.

c. Indian case authority on a similar provision observed that there would be no difficulty in a successful prosecution even in the absence of proof that any class of persons was actually insulted.

Sentencing

11 The Appellant spent a total of 53 days in remand. This was entirely due to his own actions:

a. He deliberately breached bail conditions, causing not one but two sets of bailors to withdraw bail. This accounted for 18 out of 53 days spent in remand.

b. The Appellant rejected probation and then reposted the offensive material. This led to the Court ordering that he be remanded for assessment on his suitability for reformative training. This accounted for a further 21 out of 53 days spent in remand.

c. The Appellant rejected the Respondent's suggestions made before the trial, that he voluntarily continue the psychiatric evaluation and / or counselling that he had started at the IMH. As a result, the Court had to order his remand for psychiatric assessment at IMH. This accounted for the remaining 14 out of 53 days spent in remand.

12 The Appellant is a young offender with no record. As with other young first-time offenders, the Respondent's starting position was that rehabilitation with probation would be the most appropriate sentence. This was ruled out when the Appellant rejected probation and re-posted the offending article. However, by the end of the sentencing proceedings, the Appellant demonstrated a material shift in attitude and made unequivocal expressions of remorse both in person and through his counsel. He voluntarily removed the offensive material that he had re-posted and gave a written undertaking to the Court not to re-post the material. In light of these circumstances, the Respondent's position is that one day's imprisonment for each charge – running concurrently – is appropriate for this case. On sentencing, we leave it to the court.