

Public Prosecutor v Goh Kee Cher
[2023] SGDC 88

Case Number : District Summons Charge No. 900599 of 2022 & Anor, Magistrate's Appeal No. 9074-2023-01

Decision Date : 12 May 2023

Tribunal/Court : District Court

Coram : Ong Luan Tze

Counsel Name(s) : Mr Amos Lee and Mr Hari Ravendra (Ministry of Manpower) for the Prosecution; Mr Lee Kui Bao and Ms Kimberly Yeo (Tito Isaac & Co LLP) for the Accused

Parties : Public Prosecutor — Goh Kee Cher

Criminal Law – Statutory offences – Workplace Safety and Health Act

Criminal Procedure and Sentencing – Sentencing

[LawNet Editorial Note: An appeal to this decision has been filed in MA 9074/2023/01.]

12 May 2023

District Judge Ong Luan Tze:

1 The Accused pleaded guilty to a charge of knowingly making use of a certificate required for the purposes of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) (“the Act”) that was false, an offence under s 53(c) of the Act. Another similar charge was taken into consideration for the purpose of sentencing.

2 In essence, the Accused was tasked to perform some lifting works at a worksite under SMRT Corporation Ltd (“SMRT”). When SMRT, pursuant to its duty as an occupier under s 11(a) of the Act to take all reasonably practicable measures to ensure the safety of the workplace, asked for verification from the Accused as a competent lifting supervisor, he submitted a false “Lifting Supervisors Safety Course” certificate (“the certificate”).

3 The Prosecution asked for a custodial term, arguing that both the culpability of the Accused and the (potential) harm were high. The Defence submitted for a fine of not more than \$4,000, pointing out that in fact no works were carried out, the Accused was experienced in this nature of work, and the certificate was not technically required for the work the Accused was supposed to do.

4 Having considered the arguments from both parties, I was satisfied that a fine was sufficient and appropriate in the present case, and imposed the maximum fine of \$5,000 (in default two weeks’ imprisonment) accordingly.

5 The Prosecution has appealed against this sentence.

Statement of Facts

6 The salient points in the Statement of Facts, to which the Accused admitted without qualification, are set out below.

7 At the material time, the Accused was employed by Yong Yang Lift Engineering Pte Ltd (“the Company”) as a supervisor.

8 Sometime in February 2016, the Company arranged for the Accused to attend a lifting supervisors safety course to be conducted by SpringCo Business Consultants Pte Ltd (“SpringCo Business Consultants”). Unknown to the Company, SpringCo Business Consultants was not a MOM-accredited training provider for the said course at the material time. The course lasted only one day and there was no proper assessment conducted at the end of the course.

9 Subsequently, the Accused received the following certificate from SpringCo Business Consultants bearing his name:

(a) Certificate of successful Completion for Lifting Supervisors Safety Course from 10 to 13 April 2016 purportedly issued by SpringCo Business Consultants (“the certificate”).

10 At all material times, the Accused knew that the certificate was false as the course only lasted one day and he did not complete any proper assessment at the end of it.

11 On or about 16 February 2021, the Company deployed the Accused to a worksite under SMRT located at Woodlands South MRT. SMRT was the occupier of the said premises. The Accused was appointed as the lifting supervisor by the Company and he performed this role for the lifting of a main drive shaft bearing a weight of about 600kg (“the Works”) by executing all the pre-lifting safety checks. The Accused also instructed his co-worker to perform the role of a rigger for the Works.

12 On the same day, the Accused submitted a copy of the certificate to SMRT through the Company. This was upon SMRT's request, in order to verify if the Accused was a competent lifting supervisor. As an occupier, it is SMRT's duty under s 11(a) of the Act to verify if the Accused was competent to be a lifting supervisor.

13 The Accused knowingly made use of the certificate when he knew that the certificate was false, by using it to represent that he was trained as a lifting supervisor to SMRT, in order to obtain the appointment as a lifting supervisor.

14 On 18 February 2021, as SMRT had suspicions about the certificate, it immediately removed the Accused from his role as lifting supervisor for the Works. The Accused would have continued performing his role as a lifting supervisor if SMRT had approved his appointment.

Antecedents

15 The Accused was untraced.

Prosecution's Address on Sentence

16 The Prosecution submitted that deterrence was the dominant sentencing principle, and in particular that general deterrence was a strong feature given that the Accused's conduct affected public safety at workplaces and his deception would have gone undetected if not for SMRT having contacted MOM for verification of the certificate.

17 Relying on *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447, the Prosecution submitted that an appropriate framework to determine the sentence in the present case was an assessment of "harm" and "culpability".

18 While no actual harm was caused, the Prosecution pointed out that the potential harm was real and significant, given that the Works involved the lifting of a main drive shaft weighing 600kg within an MRT station. An incompetent lifting supervisor might not fully appreciate the risks involved or know the safety measures that ought to be taken for a lifting operation to be conducted safely. There was therefore a real risk of harm to everyone in the vicinity of the Works, and SMRT as an occupier, would also be subject to possible prosecutorial action should a workplace accident occur.

19 In terms of culpability, the Prosecution relied on the following to argue that the Accused's culpability was high:

(a) The Accused clearly knew that the certificate was false, given that he obtained it only after attending a one day course and there was no proper assessment conducted at the end of the course, and he still deliberately submitted the certificate to SMRT;

(b) Despite knowing he was not trained or competent to be a lifting supervisor, he still assumed the role and responsibilities of one by performing the requisite pre-lifting checks and also instructed his co-workers to perform the role of a rigger; and

(c) He would have continued in this role if SMRT had not verified the authenticity of the certificate.

20 The Prosecution also pointed out that such offences were difficult to detect and a deterrent sentence was therefore necessary.

21 The Prosecution relied on some unreported State Court decisions for similar offences under s 53(c) of the Act, with sentences ranging from 8 days to 6 weeks' imprisonment. In these cases, the offenders were placed in roles such as rigger and signalman, scissor lift operator and forklift operator without proper training, and no harm was actually caused.

22 On the basis of the above, the Prosecution submitted that a custodial term of between one to two weeks' imprisonment was warranted.

Mitigation

23 The Defence submitted that the levels of harm and culpability were low in the present case.

24 With regard to culpability, the Defence pointed out that unlike some of the precedent cases, the Accused had not deliberately procured or purchased the false certificates. He simply attended the course that was arranged by the Company. At the time of the course, the Accused had already been with the Company for close to 20 years, and he did not require the certificate for his job.

25 The Defence also pointed out that the certificate was not directly required under the WSHA for the Works to be carried out. The WSHA required certificates for certain high-risk matters e.g. certificate of registration to act as a crane operator, but not for Works of the present nature.

26 Under normal circumstances, the certificate was only required for works that involve a crane, but the Works in the present case did not involve a crane and the Works was restricted to simply lifting using a chain block. Therefore, the Works was not one of high risk and the potential harm arising from it was low and not classified as something that required formal certified training. In any case, no actual lifting works had commenced. The Defence also submitted that the Accused was a veteran in this area of work and was familiar with what needed to be done. He was therefore competent to carry out the role of a lifting

supervisor in the present case.

27 Arguing that general deterrence did not necessarily lead to a custodial sentence, the Defence asked for a fine of not more than \$4,000.

Court's Decision

28 Workplace safety should be taken seriously, and I agreed that a dominant sentencing principle when dealing with such cases involving the use of false certificates to misrepresent competency in high risk roles in the workplace is that of general deterrence. The main reason for this is the significant potential harm that could result from such misrepresentation.

29 In the absence of any High Court guidance on the appropriate sentencing framework to apply in such cases, I agreed that the harm and culpability assessment is a reasonable way forward.

Low harm in the present case

30 In the usual case under s 53(a) of the Act, the risk of potential harm is high, even if no actual harm results. This is because of the very nature of work which is often being done or contemplated, for example involving the use of scissor lifts, forklifts or cranes. The inherent dangers in such work and the public safety element necessarily warrants a strong show of deterrence show from the courts when it comes to sentencing for misrepresenting competency in these work areas.

31 This was the main basis on which the Prosecution argued that the custodial threshold had been crossed in the present case, and this also appeared to be the main reason behind the custodial terms imposed in the cited precedent cases. I agreed that if the potential harm in the present case was high, the starting point would be a custodial term. The fact that no actual harm resulted, or that the Works had not actually commenced, would not, in my view, impact significantly on this starting point. The Accused should not be given credit for SMRT's vigilance in verifying the certificate.

32 However, I was not satisfied that the potential harm was high in the present case.

33 It was not disputed between parties that in fact the certificate was not required for the Works in question. The Prosecution conceded that if SMRT had not asked for the certificate and the Accused had gone ahead with the Works, no offence would have been committed and the Accused would have done nothing wrong. If he was not incompetent for the job in that scenario, I failed to see why he became incompetent just because SMRT had asked for, and he had submitted, a false certificate which was not directly required for the job. He may be incompetent in so far as SMRT's own internal standards and expectations are concerned, but in terms of objective competency in handling the Works, there should be no change in the position.

34 The Act does not require such Works to be handled by certified workers. A certificate would have made the Accused *more competent* to handle the Works, but I do not think that the lack of the certificate necessarily made the Accused *incompetent* to handle the Works.

35 Therefore in my view, the potential harm in the present case should be pegged at a lower level than a case where the false certificate is actually required for the works to be carried out. In those cases, the lack of a certificate would necessarily reflect an incompetency on the part of the offender, in so far as the requirements under the Act are concerned.

36 Additionally, the Defence submitted, and I had no reason to doubt, that the Accused has been handling work of this nature for years and would presumably know what he was doing.

37 On the basis of the above, I found that the potential harm in the present case was low.

Low Culpability

38 As the Defence had pointed out, this was not a case where the Accused had deliberately gone out to procure or purchase a false certificate. On the facts, it would appear that the Company had arranged for and the Accused had attended the course *bona fide*, and it was only after the course ended that the Accused realised that the issued certificate was a false one. His culpability should not be pegged at the same level as some of the offenders in the precedent cases who had deliberately procured certificates for the purpose of misrepresenting their competency.

39 The fact that the Accused knew the certificate was false and still went ahead to submit it to SMRT forms part of the element of the charge, and I do not think this adds much to the sentencing matrix.

40 As I accepted that he was experienced for the Works and not necessarily incompetent based on the lack of a certificate, I did not find that he had deliberately taken on a role which he knew he was incompetent or unable to handle safely.

41 As a whole, I found that the Accused's culpability was low.

Other relevant factors

42 The crux of the offence in the present case lay in the Accused's misrepresentation to SMRT that he had a valid Lifting Supervisor's Safety Course certificate. As an occupier, SMRT has certain duties to fulfil under the Act and the use of false certificates impacts on SMRT or any other workplace occupier's ability to properly assess for itself whether the person in charge satisfies the occupier's own internal standards of competency. This was an aggravating factor, and a reason for applying the principle of deterrence even in the present case.

43 As the Prosecution pointed out, these offences are also difficult to detect.

44 Given that I found the harm and culpability to be low in the present case, I did not think that the custodial threshold was crossed. Nevertheless, such misrepresentations should still be strongly discouraged, and in the circumstances, I was of the view that the maximum fine of \$5,000 (in default two weeks imprisonment) was justified and appropriate, and imposed the same accordingly.

45 The fine has been paid by the Accused.