

Public Prosecutor

v

Ai Takagi

District Court – MAC 903124-2015 to MAC 903131 - 2015
District Judge Salina Ishak

8 March 2016

23 March 2016

District Judge Salina Ishak

These are my brief oral grounds of my decision. I will issue full written grounds in due course, if necessary. The present offences before me arose from several seditious articles posted on The Real Singapore or the TRS website whose stated aim was to be a platform where Singaporeans could express their thoughts and voice their complaints in their day-to-day lives freely, anonymously, without restraint or censorship. The accused, Ms Ai Takagi a 23-year old female Australian national of Japanese descent was an owner and Chief Editor of TRS and was responsible for the day-to-day editorial operations of TRS.

2. The present case serves as a timely reminder that one cannot and should not hide behind the anonymity of cyberspace to pen or to publish

sedition articles which promote feelings of ill-will and hostility towards foreigners and Singaporeans indiscriminately as such acts would not be tolerated. As correctly observed by the Senior District Judge Mr Richard Magnus in *PP v Koh Song Huat Benjamin* [2005] SGDC 272:

“ The virtual reality of cyberspace is generally unrefereed. But one cannot hide behind the anonymity of cyberspace, as each of the accused has done, to pen diatribes against another race or religion. The right to propagate an opinion on the Internet is not, and cannot be unfettered right. The right of one person’s freedom of expression must always be balanced by the right of another’s freedom from offence, and tampered by wider public interest considerations. It is only appropriate social behaviour, independent of any legal duty, of every Singapore citizen and resident to respect the other races in view of our multi-racial society. Each individual living here irrespective of their racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. These are basic ground rules. A fortiori, the Sedition Act statutorily delineates this redline on the ground in the subject at hand. Otherwise, the resultant harm is not only to one racial group but to the fabric of society.”

I also agreed with the Prosecution’s submissions that technological advances have made the propagation of racist and xenophobic messages even more pernicious today. Whereas previously a voice of intolerance would only be heard by those few individuals who come into direct contact of the person speaking, today, a single racist or xenophobic “post” can be disseminated to hundreds of thousands of people in the blink of an eye. Therefore, the need to protect social harmony from those who promote hostility and ill-will in Singapore is even more pertinent in the Internet age.

Background

3. The accused in the present case had pleaded guilty before me on 8 March 2016 to four charges of publishing a seditious article on TRS website under Section 4(1)(c) read with Section 3(1)(e) of the Sedition Act (Cap 290). She had admitted to the Statement of Facts without any qualification. Three other similar charges as well as one charge of intentionally omitting to produce documents which she were legally bound to produce to a public servant under Section 175 Penal Code (Cap 224) were taken into consideration with her consent for the purpose of sentencing.

Prescribed Punishment

4. The prescribed punishment for a first offence under Section 4(1) of the Sedition Act is a fine not exceeding \$5,000, or to imprisonment for a term not exceeding 3 years or to both.

5. In my consideration of the appropriate sentences to be imposed in the present case, I had considered the following factors:

(a) Nature and extent of seditious tendency

The doing of an act which has a seditious tendency to promote feelings of ill-will and hostility between different races or classes of population is a serious offence. It was clear that the offences

committed by the accused under Section 4(1)(c) read with Section 3(1)(e) of the Sedition Act are serious offences that are meant to protect racial and national cohesion in Singapore. In the present case, it was clear from the language used in the articles in the proceeded charges as well as allegations leveled against foreigners that the articles were intended from the outset to provoke unwarranted hatred against foreigners in Singapore. From the comments posted in response to the articles, it was clear that articles had in fact engendered vitriol and hatred from the readers of TRS. Hence, I agreed with the prosecution that the commission of these offences by the accused would thus warrant both specific and general deterrence. Public interest requires that custodial sentences be imposed on the accused in the present case.

(b) Financial gain from publication of seditious articles

I noted that the accused had benefitted financially through the running of TRS which I consider to be an aggravating factor. From December 2013 to April 2015, the period over which the sedition offences were committed, it was undisputed that TRS made in excess of AU\$470,000 from revenue generated through online advertising. In the present case, the accused was motivated by financial gains unlike in previous cases where the offenders were misguided youths (*PP v Koh Song Huat Benjamin & Another*; *PP v Gan Huah Shi*), deluded evangelists (*PP v Ong Kiang Cheng & Another*) or a frustrated individual (*PP v Ello Ed Munsel Bello*) The accused in the

present case was a shrewd businesswoman who was driven by financial gains and had committed sedition to enrich herself.

(c) Manner of distribution to the public domain

In the present case, the extent of dissemination of the seditious material was more far reaching as they were published on a publicly available website, which had millions of monthly unique visitors when the articles were uploaded. This is unlike in previous cases such as *Koh Song Huat Benjamin* where the seditious articles were published on a pet-interest website with no evidence that the remarks were read widely or in *Ong Kiang Cheng* where the seditious tracts were physically distributed by placing them in letter boxes.

(d) Extent of distribution into the public domain

In most of the previous cases referred to earlier, the hostility and ill-will was directed only towards a specific racial or religious group. In the present case, I agreed with the prosecution that the website TRS had sowed ill-will and hostility towards a wider group of foreigners and Singaporeans indiscriminately. It had targeted Filipinos, PRC nationals, Indians and even foreigners working in Singapore generally. By generally exploiting the foreigner-local divide, without targeting any specific racial or religious group, the accused through TRS was able to peddle xenophobia to readers generally, instead of appealing to only those who harboured animosity towards a specific race or religion.

In addition, there was evidence of fabrication unlike in the previous cases referred to earlier. In the present case where falsehoods were present namely for the first, sixth and seventh charges, they were central to rendering the articles seditious and deployed to attract a larger audience to the seditious material. Furthermore, in the present case there was a sustained campaign to publish seditious materials, in numerous separate instances over a span of more than one and a half years.

(e) Concealment of identity

The accused had taken active steps to hide her identity and evade the law whereas the offenders in the previous cases did not take active steps to hide their identities. She had used a fake name 'Farhan', spread misinformation about never being involved in TRS and had set up her business overseas to be beyond the reach of Singapore law. I noted that the police were only able to arrest her as she had happened to be in Singapore on holiday when the first information report was made against her.

(f) Level of blameworthiness

It was clear from the role played by the accused as well as the extent of her direct involvement in the publication of the seditious articles in the present case, she has a higher culpability as compared to the accused persons in the earlier case. In some of the other cases, there

was evidence of contrition after the offences were detected. In *Koh Song Huat Benjamin*, the offenders had removed their offending remarks and apologised for making them. In the present case, the accused had not removed the seditious articles or moderate the comments after they were detected. Instead of cooperating with the authorities she spurned them by refusing to comply with her legal obligations. I also noted that the articles remained accessible on the TRS website until was shut down on 3 May 2015.

6. Apart from the above factors, I had taken into account the fact that she is a first offender, her age at the time of the offences as well as the other mitigating factors as highlighted by her Counsel in my consideration of the appropriate sentence to impose. I also considered the case of *PP v Ello Ed Mundsel Bello (MAC 902864-2015 to MAC 902868-2015)* where the accused, a 29 year old male Filipino assistant nurse at TTSB had pleaded guilty to one charge of publishing a seditious publication on Facebook and two charges of providing false information to a public servant. Two other charges, namely a charge of publishing a seditious publication and a charge of providing false information to a public servant were TIC. His post and comment against Singaporeans caused significant public consternation and disquiet, causing aggrieved Singaporean to file numerous police reports against him. He had posted his comment on the TRS Facebook page which enjoyed a significant following at a material time. He was sentenced to 3 months imprisonment for the charge of publishing a seditious publication on Facebook.

7. After a careful consideration of the facts of the present case including the factors highlighted above, the accused's plea in mitigation and the various submissions on sentence by the prosecution and the defence, I am imposing the following sentences:

- a) 1st charge MAC 903124 - 2015 - 5 months' imprisonment;
- b) 3rd charge MAC 903126 - 2015 – 4 months' imprisonment;
- c) 6th charge MAC 903129 - 2015 – 5 months' imprisonment;
- d) 7th charge MAC 903130 - 2015 – 5 months' imprisonment.

8. Pursuant to Section 307 of the Criminal Procedure Code (Cap 68), as I had imposed terms of imprisonment for at least three distinct offences, I have to order the sentences of at least two of the charges to run consecutively. Hence, I am ordering the sentences for MAC 903124 – 2015 and MAC 903129 – 2015 to run consecutively. The total term of imprisonment is 10 months' imprisonment.

Salina Ishak
District Judge

DPPs G Kannan, Sheryl Janet George and Suhas Malhotra for the Prosecution;
Mr Choo Zheng Xi and Mr Raj Mannar for the Accused.