

Public Prosecutor v Luong Kathleen Thi Trang Hoang
[2009] SGDC 210

Case Number : DAC 16861/2009, 16900/2009, MA 168/2009

Decision Date : 30 June 2009

Tribunal/Court : District Court

Coram : Liew Thiam Leng

Counsel Name(s) : DPP Lim Tse Haw for the prosecution; Derek Kang (Rodyk & Davidson LLP) for the accused

Parties : Public Prosecutor — Luong Kathleen Thi Trang Hoang

[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter. Hence, the Annex(es) for this judgment will not be available in LawNet.]

30 June 09

District Judge Liew Thiam Leng

1. The accused face 2 charges under s.47(3) of the Passports Act (Cap 220). In the first charge, she was charged for abetting a Vietnamese child in the use of an American Passport belonging to another person. In the second charge, she was charged for presenting an American Passport belonging to another person to an officer from the Immigration and Checkpoints Authority (ICA). She pleaded guilty to both charges without any qualification and was found guilty and convicted accordingly. She was sentenced to a period of 12 months imprisonment for each charge with both sentences to run concurrently. She is appealing against the sentence imposed.

"DAC 16900/2009 (Exhibit C1A)

You, Luong Kathleen Thi Trang Hoang, female, 34 years old, (DOB: 13.11.1974), (A United States of America (USA) (National)), are charged that you, on 17 Mar 2009 at about 9.09 pm, at the Arrival Section, Terminal One, Arrival East Wing of Changi Airport Immigration Checkpoint, Singapore, did abet by intentionally aiding xxx, a Vietnamese child aged 8 years, to use a foreign travel document in connection with identification which you knew was not issued to the said xxx without reasonable excuse, to wit, you presented to an Immigration & Checkpoints Authority (ICA) officer, one Staff Sergeant Nur Badren Bin Abdul Razak, a USA passport bearing serial number xxx in the name of "Phan Andrew" as the passport belonging to the said xxx, and you have thereby committed an offence punishable under section 47(3) of the Passports Act Cap 220, read with section 109 of the Penal Code, Chapter 224.

DAC 16861/2009 (Exhibit C2A)

You, Luong Kathleen Thi Trang Hoang, female, 34 years old, (DOB: 13.11.1974), (A United States of America (USA) (National)), are charged that you, on 17 Mar 2009 at the Arrival Section, Terminal 1, Arrival East Wing of Changi Airport Immigration Checkpoint, Singapore, without reasonable excuse, did make use of a foreign travel document as your own, to wit you produced to an Immigration & Checkpoints Authority (ICA) officer, a United States of America passport bearing

serial number xxx and particulars issued under "Nguyen Chau Mai (F/30.9.1978)" for identification, which you knew that the said travel document was not issued to you and you have thereby committed an offence under Section 47(3) of the Passports Act 2007 Cap 220, which is an offence punishable under the same section of the said Act.

Statement of Facts

2. " Public Prosecutor v Luong Kathleen Thi Trang Hoang

The Accused

1. The accused is Luong Kathleen Thi Trang Hoang, female of 34 years old. She is a national of the United States of America (USA).

The Child

2. The child is one xxx, male of 8 years old. He is a Vietnamese national, holding Vietnam Passport No: xxx. Copy of the passport is annexed herein as Annex A.

The Facts

3. On 17 March 2009 at about 3 pm, Staff Sergeant (S/Sgt) Nur Badren Bin Abdul Razak ("S/Sgt Badren"), an officer of the Immigration and Checkpoint Authority of Singapore ("ICA"), started his duty at one of the Immigration counter at the Arrival East Wing of Terminal One of Changi Airport. His duty was carrying out arrival clearance for arriving passengers at the East Wing and to issue social visit pass to the arriving passengers to enter Singapore.

4. On the same day at about 9.09 pm, the accused and the child arrived in Singapore by Air Asia flight number AK 127 from Kuala Lumpur.

5. The accused and the child then approached S/Sgt Badren's counter. The accused presented a USA passport, number xxx, in the name of "Nguyen Chau Mai" for herself ("the accused's USA passport") and another USA passport, number xxx in the name of "Phan Andrew", a male of 12 years old, for the child to S/Sgt Badren, Copies of the 2 passports are annexed herein as Annex B & Annex C respectively.

6. Upon receiving the 2 passports, S/Sgt Badren asked the accused what was her relationship with the child. The accused replied that the child was her son.

7. S/Sgt Badren then checked the accused's facial features with the photograph on the accused's USA passport. S/Sgt Badren found that the photograph on the accused's USA passport did not resemble the accused's face. S/Sgt Badren then requested the accused for her US identification card but the accused said she did not have it. The accused then told S/Sgt Badren that she had cosmetic surgery on her face. S/Sgt Badren decided to refer the accused and the child to his duty officer for further interview.

8. ICA Officer Chris Teng Sau Chien ("Officer Teng") then took over the interview of the accused and the child. Before Officer Teng, the accused maintained that the accused's USA passport was hers and that the child was her son.

9. After repeated questioning, however, the accused finally admitted that the accused's USA passport did not belong to her. The accused claimed that the said USA passport actually belonged to her cousin and that she had resorted to the use of her cousin's USA passport as she needed to travel urgently. She further claimed she had lost her own passport in the USA and was not able to get a replacement in time. She then produced a photocopy of her lost passport bearing her own name and photograph. Copy of the passport is annexed herein as Annex D.

10. The accused maintained that the child was her son and their purpose to come to Singapore was to transit in Beijing and then to Los Angeles by Air China.

11. At about 0030 hrs on 18 March 2009, a cleaner reported to ICA that she had found a Vietnamese passport in the rubbish bin located at the Arrival East Waiting Lounge. ICA discovered that the passport photograph of the Vietnamese Passport closely resembled the child but under the name of "xxx". This is the passport in Annex A.

12. The accused was then shown the Vietnamese passport under the name of "xxx" (Annex A) that was found. It was only then that the accused confessed to Officer Teng that the child was not her son. She claimed that she befriended the child in Vietnam last year. She further claimed that she wanted to bring the child out of Vietnam to the USA for a better life. She also claimed that she applied for the USA passport in Annex A for the child using her own son's identity but using the child's photograph for the application. She said they were only transiting in Singapore but had to clear the Singapore Immigration as the connecting flights do not have transit facilities.

13. The accused was then arrested and held in custody at Bedok Police Station. Neither the accused nor the child had any reasonable excuse in using the aforesaid passports which were not issued to them as their own."

Mitigation

3. The accused's mitigation is summarised as follows:

She had left Vietnam at a young age and was subsequently re-settled in the United States, California through a humanitarian programme. She had engaged in looking after underprivileged children in the Honduras and later met a Vietnamese friend. In order to help her friend, she tried adopting her friend's younger son xxx but to no avail. She then planned to bring xxx to the United States by using a United States Passport in her son's name but with a photograph of xxx. Unfortunately, due to a turn of events, she was eventually detained in Singapore for using her cousin's Passport and aiding xxx to use a foreign passport issued in the name of Phan Andrew. Accused is a first offender and is not a member of a syndicate. She did not succeed in her getting to the United States through Singapore and that there is no need for specific deterrence and that there is no fear that she will return to Singapore to commit the same offences.

Sentence

4. The accused is charged for 2 offences under s.47(3) of the Passports Act ("PA")(Cap.220). The punishment for a charge under s.47(3) of the PA is a fine of up to \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

5. There are aggravating factors in this case.

Planning and Premeditation

The accused in the present case had hatched a plan to bring a Vietnamese child xxx ("xxx") to the United States. In order to do this, she had obtained an American Passport in her son's name Phan Andrew ("Andrew") who is an American citizen. However, she used a photograph of xxx instead of Andrew in the application for the Passport. The accused maintained that xxx was her son when she was at the Changi Airport Immigration Checkpoint and upon further questioning, she admitted that she had used her son's name in the application of the United States Passport and using the photograph of xxx. The accused had also used a United States Passport belonging to one Nguyen Chau Mai at the Changi Airport Immigration Checkpoint. Where there is planning as opposed to a spontaneous offence, the offence is treated more seriously. Professor Ashworth in Sentencing and Criminal Justice (Butterworths, 3rd Edition) at page 136 states:-

"A person who plans or organises a crime is generally more culpable, because the Offence is premeditated and the offender is therefore more fully confirmed in his anti-social motivation than someone who acts on impulse ... Planned lawbreaking constitutes a great threat to society, since it betokens a considered attack on social values, with greater commitment and perhaps continuity than a spontaneous crime."

6. In *PP v Tan Fook Sum* [1999] 2 SLR 523. the High Court stated:-

“It is well established that where an act is done after deliberation and with premeditation as opposed to the situation where it is done on the spur of the moment and ‘in hot blood’, that is an aggravating and not a mitigating circumstance.”

Steps taken to avoid detection

7. The accused in the present case had taken steps to avoid detection. She had used her son Andrew’s name and particulars but with the photograph of xxx in the application for a United States Passport. When the accused was at the Singapore Airport Immigration Checkpoint, she presented 2 passports. She told the Immigration Officer that the passport bearing the name “Nguyen Chau Mai” was her passport. However, the Immigration Officer observed that the photograph in the passport looked different from her appearance. The accused told the Immigration Officer that she had undergone plastic surgery which explains the difference in appearance. She also claimed that xxx was her son when she handed the passport bearing the name of Phan Andrew to the Immigration Officer. Fortuitously, a cleaner at the airport found a Vietnamese Passport in the rubbish bin near to the Arrival East Wing Waiting Lounge at Changi Airport. The Immigration and Checkpoint Authority found that this Vietnamese Passport photograph resembled the child (xxx) who was with the accused. When the accused was shown this Vietnamese Passport which belonged to xxx in his Vietnamese name xxx, the accused admitted that xxx was not her son and that she wanted to bring the child to the United States for a better life by transiting in Singapore through Beijing to the United States.

8. Where an accused take steps to avoid the detection of his crime, it is an aggravating factor. In *PP v Fernando Payagala Waduge Malitha Kumar* [2007] SGHC 23, V K Rajah J (as he then was) at para.42 stated that:-

“Inextricably linked to the idea of premeditation and organised crime is the level of sophistication that characterises an offence. A sophisticated offence replete with carefully orchestrated efforts and steps to avoid detection is an aggravating factor in sentencing.”

Using Singapore as a transit centre

9. The learned defence counsel had submitted that the accused had committed the offences as she wanted to help the child xxx to have a better life in the United States. The defence had failed to appreciate the significance of what the accused had done. The accused had intended to use Singapore as a transit point in order to fly to Beijing and then to the United States by using another person’s passport. At the same time, she had aided a friend’s child called “xxx” by claiming that it was her child to an Immigration Officer at the Singapore Airport. She had also presented a passport bearing her son’s name “Andrew” and passing it as “xxx’s” passport. If such offences are not dealt with seriously, would be offenders would use Singapore as a transit centre. The Passports Act (Cap 220) was passed to prevent the abuse and misuse of passports. The punishment provided under the Passports Act (Cap 220) is an indication that such offences will not be tolerated and will be dealt with seriously.

10. The defence cited a few cases in which the accused persons were charged for cheating by personation under s.419 of the Penal Code (Cap.224) involving passports and were sentenced to short imprisonment terms. The learned defence counsel had submitted that a short custodial term should likewise be imposed instead of a long imprisonment term. To begin with, the accused in the present case was charged under s.47(3) of the Passports Act (Cap. 220) which carry a fine or imprisonment which may extend to 10 years imprisonment whereas the cheating by personation charge under s.419 of the Penal Code (Cap. 224) carry a much lighter sentence. The prosecution had submitted that even though the accused was in transit, the offence cannot be treated lightly and that such acts cannot be condoned. Moreover, it may lead to Singapore being a transit centre for such crimes if the matter is not treated severely. The prosecution also submitted the benchmark sentences for offences under the Passports Act which was 12 months imprisonment. The court agrees with the prosecution’s submission that the circumstances of this case would warrant a custodial sentence of 12 months imprisonment as the accused cannot resort to illegal acts to do a good deed. In *PP v Jeevanantham Mangaleena* (DAC 17856 of 2008), *PP v Imran Salahuddin* (DAC 57701 of 2008) and *PP v Chen Qingmei* (DAC 58806 and DAC 58807 of 2008), the courts had consistently imposed a sentence of 12 months imprisonment.

11. Taking all the circumstances of this case into consideration, the court imposed the following sentences:-

DAC 16900/2009 – 12 months imprisonment.

DAC 16861/2009 – 12 months imprisonment.

The court also ordered the sentences to run concurrently and to backdate the sentence to the date of her remand which is 17th March 2009. The accused is serving a total of 12 months imprisonment. The accused is appealing against the sentence imposed.

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