Tan Wei Yi v Public Prosecutor
[2005] SGHC 124

Case Number : MA 32/2005

Decision Date : 12 July 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the appellant; Tan Kiat Pheng (Deputy Public Prosecutor) for the respondent

Parties : Tan Wei Yi — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Co-accused persons withdrawing respective appeals causing trial judge to conclude appellant lying in court – Whether trial judge erred in concluding appellant lying – When appellate court may interfere with trial judge's findings of fact

Evidence – Proof of evidence – Standard of proof – Whether Prosecution having to prove every relevant ingredient of charge beyond reasonable doubt

Evidence – Witnesses – Corroboration – Trial judge relying solely on victim's uncorroborated testimony to convict appellant – Whether trial judge finding victim's testimony unusually compelling – Whether trial judge's failure to make such finding amounting to error of law

12 July 2005

Yong Pung How CJ:

1 This was an appeal from the district judge, wherein the appellant was convicted on a charge of voluntarily causing grievous hurt to one Lim Thiam Bock ("the victim"), in furtherance of the common intention of six other accused persons, an offence punishable under s 325 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed). The six other accused persons were:

(a) Tan Chee Hong ("Chee Hong"), the appellant's father;

(b) Tan Sen Chong ("Sen Chong"), the appellant's cousin;

(c) Lim Wee Kee ("Wee Kee"), the appellant's cousin;

(d) Tan Che Loon ("Che Loon"), the appellant's uncle;

(e) Tan Chee Keong ("Chee Keong"), the appellant's uncle; and

(f) Jenny Tay Zhen Ni ("Jenny Tay"), the appellant's girlfriend.

2 At the conclusion of the trial, the district judge convicted only the appellant, Chee Hong, Che Loon and Chee Keong on charges of voluntarily causing grievous hurt. Sen Chong and Jenny Tay were acquitted, as the district judge was not satisfied that the Prosecution had proved its case against them on the original charge, while Wee Kee was convicted on a reduced charge under s 323 of the Penal Code for voluntarily causing hurt.

3 Apart from Chee Hong, who was sentenced to ten months' imprisonment, the appellant, Che Loon and Chee Keong were sentenced to seven months' imprisonment. Wee Kee was sentenced to a fine of $1,000, in default, two weeks' imprisonment. Initially, the appellant, Che Loon, Chee Keong and

Wee Kee filed appeals against their conviction and sentence. However, the latter three subsequently withdrew their appeals.

The Prosecution's version of events

4 According to the victim, on the morning of 6 February 2003, he went to the apartment of one Chew Moi Chye ("Chew") at Woodlands to read and explain the contents of a letter to Chew. Chew was formerly Chee Hong's wife, and is also the appellant's mother; Chew and Chee Hong divorced on the ground that Chew had committed adultery with the victim. After reading the letter to Chew, the victim prepared to leave. Before he left, he went to the toilet in the kitchen to relieve himself. While the victim was in the toilet, the seven accused persons arrived at Chew's apartment, which was also previously Chee Hong and Chew's matrimonial home. Chee Hong claimed that he was there to remove some of his furniture from the apartment.

5 Chee Hong knocked on the front door of the apartment, and, getting no response, started to knock even louder. Chew then told him that the front door was jammed and could not be opened. Chee Hong told Chew to step aside and kicked the door open. He walked into the apartment's living room with the appellant and the other accused persons behind him. Chee Hong, the appellant and Chew then went into the master bedroom, and thereafter, into the kitchen to look at the refrigerator. Chew informed him that the refrigerator was not working, following which Chee Hong walked further into the kitchen to inspect the washing machine.

6 Chew then said that she was going to take a bath, to which Chee Hong replied that he wanted to use the toilet. Chee Hong pulled open the folding door of the toilet and spotted the victim inside. He recognised the victim to be Chew's illicit lover and became infuriated. He punched the victim, causing him to stumble, knock his head against the toilet wall and fall down. Once the victim was on the toilet floor, the appellant sat on top of him and used his knees to pin down the victim's hands. Chee Hong was at the appellant's side. Both of them punched the victim continuously on the face, and he started to bleed very badly.

7 Chee Hong and the appellant then pulled the victim up to a standing position, and the victim spotted Che Loon and Chee Keong at the entrance of the toilet. As Chee Hong and the appellant punched the victim on his back, Che Loon and Chee Keong dragged him out of the toilet and into the kitchen. There, Che Loon and Chee Keong started to punch the victim on his face and body, causing him to fall onto a window grille.

8 The victim was then pulled away, and he found himself sandwiched between the appellant and Chee Hong on one side, and Che Loon and Chee Keong on the other. All four began punching the victim. The victim testified that he was punched in a "pendulum" fashion, meaning that the four assailants took turns to punch him continuously, causing him to move from the position of the two assailants on one side to the position of the two assailants on the other.

9 The assault continued until the victim finally collapsed onto the kitchen floor, where several people, whose specific identity he was unable to make out, surrounded him. He was kicked about on his body, back and front. He remembered, in particular, a stomp followed by a kick on his hip. Chew testified that Wee Kee was the one who delivered the stomp and kick. Subsequently, an ambulance arrived and the victim was conveyed to the hospital.

10 Amongst the injuries he suffered were a chipped hipbone, injuries to the right eye, a possibly permanent numbness on the right side of the face, an inability to open his mouth wide, a "clicking"

sound from the jawbone that was likely to be permanent, cuts on the forehead requiring stitches, and bruises all over his body, which took about two months to heal. Most significantly, the victim also suffered a blowout fracture of the right eye orbit, which was essentially a fracture of the bone floor on which the eyeball rested. The fracture was determined as having been caused by a blunt trauma or force to the eye, pushing the eyeball downwards and thereby fracturing the orbit.

11 The first police officer at the scene, Staff Sergeant Lim Thian Chin ("SSgt Lim"), testified that he interviewed Chew as soon as the victim was conveyed to the hospital. He observed that Chew was in a state of shock. She informed SSgt Lim that Chee Hong and his two brothers, Che Loon and Chee Keong, had assaulted the victim. She claimed that she had tried to stop them, but was prevented from doing so by the appellant and Sen Chong. SSgt Lim recorded what she had said in his logsheet, which was admitted in evidence.

The defence

12 Chee Hong claimed that he only went into the toilet to question the victim, whereupon the victim pushed him out. Chee Hong was so infuriated that he hit the victim's face. He claimed that all this time, the victim kept pushing him. Chee Hong continued to hit the victim outside the toilet and only stopped when someone told them to stop fighting. Chee Hong asserted that he was the only one who had hit the victim, and that he had done so because he was extremely provoked and was under the impression that the victim was going to strike him.

13 The other accused persons aligned themselves with Chee Hong's version of events. In particular, the appellant testified that although he was in the kitchen when Chee Hong was punching the victim, he did not participate in the assault. He claimed that he shouted out to Chee Hong to stop beating the victim, fearing that the victim might be killed. He also claimed that his only ostensible participation in the events of that day was to pull his mother away from the kitchen and into the living room.

The decision below

14 The district judge found that Chee Hong was the one who had initiated the assault, and was not acting under any grave and sudden provocation from the victim that would entitle him to the right of private defence. The district judge also accepted the victim's evidence, and found that the victim was "a witness of truth". He then held that the appellant, Che Loon and Chee Keong had participated in the assault on the victim, and accordingly convicted each of them on the charge.

15 The district judge also referred to the victim's testimony during cross-examination, wherein the victim reiterated that he specifically saw the appellant punching him in the toilet. He found that the victim could not have been wrong about what he saw despite having been assaulted, since the appellant's involvement had taken place from the very beginning when the victim would have been keenly aware of what was going on. He therefore concluded that the appellant had lied in his testimony, and held that he had indeed sat on the victim, pinned him down and punched him on the face.

16 Further, in relation to Chew's statement to SSgt Lim and her evidence during the trial, both of which exculpated the appellant, the district judge found that Chew would not have been able to see what had occurred in the toilet, as she was being pulled away from the toilet at that time. In this respect, the district judge held that the appellant's most crucial and active participation in the

assault took place in the toilet, compared to his more passive role in the assault that took place in the kitchen. Since Chew did not witness the appellant's assault on the victim in the toilet, she was therefore not in a position to exculpate him. Accordingly, the district judge held that the appellant had acted in furtherance of the common intention of Chee Hong, Che Loon and Chee Keong in assaulting the victim and causing him grievous hurt.

17 As for Sen Chong's participation in the assault, the district judge held that he had reservations as to whether Sen Chong had actually laid hands on the victim. He found that the victim's testimony was insufficient to prove Sen Chong's involvement in the assault beyond a reasonable doubt. As such, Sen Chong was acquitted. The district judge also acquitted Jenny Tay, but did not provide any reasons for doing so. This was understandable, as the district judge wrote his grounds in relation to the appellant's appeal, and therefore focused only on the facts pertaining to the assault in which the appellant allegedly participated.

18 With respect to Wee Kee, the district judge found for a fact that she was the one who stomped and kicked the victim on the hip. In this respect, the district judge relied on Chew's testimony where she stated that she witnessed Wee Kee kicking the victim when he was lying on the floor after the initial assault. However, the district judge was not convinced that Wee Kee shared any common intention with the appellant, Chee Hong, Che Loon and Chee Keong to commit grievous hurt on the victim. Wee Kee was instead convicted on a lesser charge of voluntarily causing hurt to the victim, and was sentenced to a fine of $1,000, in default, two weeks' imprisonment.

19 The appellant, together with Che Loon and Chee Keong, was sentenced to seven months' imprisonment. Chee Hong was sentenced to ten months' imprisonment. The district judge reasoned that although it was unrealistic to distinguish between the four accused persons as to who had delivered more punches on the victim or who had played a greater role, the fact remained that Chee Hong was the one who had initiated the attack. The district judge held that but for Chee Hong's attack, the rest would not have assaulted the victim. As such, a longer term of imprisonment was imposed on Chee Hong, as opposed to the three other co-accused persons.

The appeal

20 The appeal was brought against both conviction and sentence. Upon close scrutiny of the district judge's grounds of decision and the notes of evidence, I found that I was unable to agree with the district judge as to whether the Prosecution had indeed proved its case against the appellant beyond a reasonable doubt. I was fully aware that the burden on the Prosecution is not to overcome every imaginable doubt in the case, unless these doubts are real or reasonable: *Tang Kin Seng v PP* [1997] 1 SLR 46 at [93]; *Kwan Peng Hong v PP* [2000] 4 SLR 96 at [44].

21 However, it bears repeating that the Prosecution most certainly has the duty of proving every relevant ingredient of the charge beyond a reasonable doubt in order to establish its case: *Tang Kin Seng v PP* at [92]. In fact, this was my concern when I analysed the present appeal. I found that if the district judge had properly applied his mind to the evidence before him, he would have come to the conclusion that the Prosecution had not proved beyond a reasonable doubt that the appellant had indeed assaulted the victim, which was the most crucial element of the charge. I now give the reasons for my decision.

Whether the victim's evidence was unusually compelling

22 It was clear that the district judge relied solely on the victim's testimony in convicting the

appellant. Although the district judge made some reference to Chew's evidence, these references were only in relation to Che Loon and Chee Keong's involvement in the assault. However, Chew had unequivocally testified that, contrary to the victim's assertions, the appellant did not assault the victim. Nevertheless, the district judge rejected Chew's evidence exculpating the appellant, labelling it as capable of being "subject to some criticism", and proceeded to convict the appellant solely on the victim's version of events. Therefore, the victim's evidence with respect to the appellant's involvement in the assault remained uncorroborated.

23 The question would then be whether it was safe to convict the appellant solely on the victim's testimony. Although there is no prohibition against relying on the evidence of one witness, as I reiterated very recently in *Yeo Eng Siang v PP* [2005] 2 SLR 409 at [25], there is an inherent danger in convicting an accused based only on the evidence of a single witness. The court must be mindful of this danger and has to subject the evidence before it to careful scrutiny before arriving at a decision to convict an accused person on the basis of a sole witness's testimony: *Low Lin Lin v PP* [2002] 4 SLR 14 at [49]; *Khua Kian Keong v PP* [2003] 4 SLR 526 at [16]; *Phua Song Hua v PP* [2004] SGHC 33 at [16]. In such circumstances, it is trite law that a conviction may be sustained on the testimony of one witness only if the court made a finding that the witness's testimony was so compelling that a conviction could be based solely on it: *Kuek Ah Lek v PP* [1995] 3 SLR 252 at [60]; *Yeo Eng Siang v PP* at [25].

24 In the present case, the district judge never made a finding as to how compelling the victim's testimony in relation to the appellant was. Of course, the victim's testimony in respect of Che Loon and Chee Keong was clearly corroborated by Chew's evidence, and therefore such a finding would not be necessary in relation to these aspects of the victim's testimony. However, since it was obvious that the victim's testimony regarding the appellant was uncorroborated, the district judge should have then applied his mind to consider if the victim's testimony was so compelling that the appellant's conviction could be based solely on it.

25 The district judge's failure to do so rings alarm bells as to whether he had actually exercised the appropriate level of caution when relying solely on the victim's testimony to convict the appellant. Indeed, there was in this case a very real possibility that the district judge convicted the appellant on the basis of the victim's testimony without even realising that he had to find that the victim's testimony was of such a compelling nature as to warrant the conviction. Whatever the possibilities, the fact remains that the law required the district judge to make this finding, and his not doing so was an error of law that could not be rectified.

26 Alternatively, even if one were to argue that a specific finding was a purely procedural requirement, I was of the opinion that there were also no substantive findings in the district judge's grounds of decision that indicated that the victim's testimony was so compelling that it was safe to rely solely on it to convict the appellant. The only finding the district judge made in relation to the victim's testimony was that he found the victim to be a "witness of truth". However, there were no other findings as to the nature of the victim's testimony. I therefore found it difficult to see, from the district judge's grounds of decision, how compelling the victim's testimony really was. In any case, on a close scrutiny of the notes of evidence, it was doubtful that the victim's testimony was indeed so unusually compelling that the appellant's conviction could be based solely on it.

27 When the victim was cross-examined, his answers clearly indicated that much of his descriptions about the assault were based on his own *assumptions* as to what *could* have happened, and not what actually happened. In fact, the victim agreed that he was assuming that two persons, *ie*, Chee Hong and the appellant, punched him near the toilet. The basis of his assumption was that

he saw Chee Hong and the appellant approaching him and therefore, they must have punched him. However, after admitting that he had premised his testimony on an assumption, the victim *changed his evidence* and testified that he clearly saw the appellant punching him.

28 Even when defence counsel suggested that he could have been dazed after the first punch was thrown at him, the victim testified that he was a "tough guy" who could withstand punches, and therefore, he could take the first punch and still be able to see. The victim also insisted that he was aware of what was going on despite all the punches that were thrown at him. However, he was unable to positively identify who Che Loon and Chee Keong were. In fact, Che Loon and Chee Keong were only identified by the district judge in the course of the trial, through a process of elimination.

29 The victim attempted to explain this away by changing his position again and testifying that he was actually not fully cognisant at the time of the assault and that the situation occurred so fast that he could not see everything. However, the victim had earlier also testified that the alleged assault by the appellant and Chee Hong took place in a matter of one to two seconds, but in that situation, he was able to positively and very clearly identify the appellant as the assailant. I found it very difficult to rationalise the victim's selective memory with regard to his assailants.

30 Another strange aspect of the victim's testimony pertained to *who* had actually continued to punch and kick him when he was brought to the kitchen for the second episode of assaults. The victim testified that despite not seeing who had punched him, he was still able to feel the punches, and therefore, it must have been *all* the assailants who threw the punches. He also testified that he saw three persons (the identities of whom he was unaware) approaching him, following which he felt punches. He, however, never saw *which* of these three persons punched him. Nevertheless, he *assumed* that all three of them punched him.

31 It was clear to me that the victim constantly based his testimony on assumptions, because he admittedly never really saw who had actually struck him. I found that to the victim, so long as the accused persons were present at the scene, it meant that they must have participated in the assault. This was probably why the victim testified that Sen Chong had also assaulted him, although the district judge found that there was no evidence to support this contention.

32 In fact, the victim had also at one point alleged to the doctor who first examined him at the hospital that six men had assaulted him. However, it was undisputed that of the seven people who were accused of assaulting him, two were women. Therefore, there could not have been six men assaulting him at any one point in time. Additionally, Sen Chong was found not to have assaulted the victim at all. Therefore, it is inexplicable how the victim could have alleged that six men had assaulted him. Even if the victim's allegation could be explained away as a minor inconsistency, it appeared surreptitious since the victim claimed that he was, from the outset, very sure about the number of people who had approached him in the toilet and kitchen.

33 In the circumstances, I found that the victim's testimony was riddled with assumptions and inconsistencies, and was hardly of such a compelling nature that the appellant's conviction could be based solely on it. In fact, even if the district judge had made the specific finding that the victim's testimony in relation to the appellant was of a very compelling nature, from my close scrutiny of the notes of evidence, I would have found otherwise and overturned the district judge's finding as clearly incapable of being supported on the objective evidence.

34 In this respect, of course, I am fully aware that an appellate court ought to be slow to overturn a trial judge's findings of fact, especially where they hinge on the trial judge's assessment of

the credibility and veracity of witnesses: *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32]; *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24]; *Tan Hung Yeoh v PP* [1999] 3 SLR 93 at [23]. However, this is not an unassailable rule, and where an appellate court is convinced that a trial judge's findings of fact is plainly wrong or against the weight of the evidence, the appellate court must obviously intervene: *PP v Poh Oh Sim* [1990] SLR 1047 at 1050, [8]; *PP v Azman bin Abdullah* [1998] 2 SLR 704 at [21]; *Syed Jafaralsadeg bin Abdul Kadir v PP* [1998] 3 SLR 788 at [56]; *PP v Tubbs Julia Elizabeth* [2001] 4 SLR 75 at [22]–[23]; *Chen Jian Wei v PP* [2002] 2 SLR 255 at [56]. Even if I agreed with the district judge's assessment that the victim was a truthful witness, it did not also mean that I must rely on the victim's evidence in its entirety: *Govindaraj Perumalsamy v PP* [2004] SGHC 16 at [24]. In fact, in my view, the victim's testimony in relation to the appellant was most unsatisfactory.

35 Therefore, in order to convict the appellant on the victim's testimony, the district judge had to ensure that other independent evidence corroborated the victim's evidence. Unfortunately, this was not done. As such, the case essentially came down to the victim's word against the appellant's. The fact then that the victim's testimony was riddled with inconsistencies was very telling. Considering the weakness of the victim's testimony against the appellant, and the fact that this was the *only* evidence against the appellant, it was highly questionable whether the Prosecution had indeed proved its case against the appellant beyond a reasonable doubt. In the event, I allowed the appellant's appeal against conviction on this point alone. Accordingly, I acquitted the appellant and quashed his sentence.

36 Apart from this, I noted that there were other issues raised in the district judge's grounds of decision that were far from satisfactory. I analysed a few of the more pertinent ones.

Other issues

37 First, I found that the reasons cited by the district judge in rejecting Chew's evidence in relation to the appellant's involvement in the assault, and the manner in which he handled her evidence in other aspects, left much to be desired. Although Chew was a prosecution witness, her evidence in relation to the appellant was markedly different from the victim's.

38 In such a situation, the district judge clearly ought to have been alerted to the fact that it was unsafe to convict the appellant solely on the victim's testimony. I now highlight the aspects of Chew's evidence that were in conflict with the victim's testimony, and the reasons why the district judge's treatment of these aspects of her evidence was flawed.

Chew's evidence

39 In my opinion, the district judge failed to properly address his mind to Chew's statement to SSgt Lim, which exculpated the appellant, Sen Chong, Wee Kee and Jenny Tay. (For the purposes of this appeal, I will not be referring to the aspects of the evidence pertaining to Wee Kee and Jenny Tay, unless it is necessary.) Further, at trial, Chew maintained that the appellant was not at all involved in the assault. She asserted that the appellant was in the kitchen at all material times, and that she did not witness him assaulting the victim.

40 It was strange that the district judge paid very little regard to these aspects of Chew's evidence, although he found that her evidence in relation to Che Loon and Chee Keong was "reliable and unassailable". Of course, a trial judge is entitled to partially reject a witness's evidence without having to reject that witness's evidence in its entirety: *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464 at [44]; *Jimina Jacee d/o CD Athananasius v PP* [2000] 1 SLR 205 at [22];

Mohammed Zairi bin Mohamad Mohtar v PP [2002] 1 SLR 344 at [28]; *Ng So Kuen Connie v PP* [2003] 3 SLR 178 at [34]. In this case, however, the district judge seemed to have accepted and rejected Chew's testimony in a very strange, patchwork-like manner.

41 For instance, although he accepted her evidence in relation to Che Loon and Chee Keong's participation in the assault, he clearly rejected her evidence that she saw Che Loon and Chee Keong enter the toilet. Instead, the district judge came to the unsubstantiated finding that Chew probably meant to say that Che Loon and Chee Keong entered the "kitchen" instead of the "toilet". Despite my repeated perusal of the notes of evidence, I was unable to understand how the district judge arrived at this finding. In fact, to my mind, this finding completely defied the clear testimony provided by Chew that Che Loon and Chee Keong entered the toilet after Chee Hong, whilst the appellant pulled her away from the scene.

42 This finding also undermined the district judge's other finding that Chew's testimony in relation to Che Loon and Chee Keong was "reliable and unassailable". It seemed as if the district judge made assumptions in order to support his holding that the appellant was the one who entered the toilet with Chee Hong, thereby leading him to conclude that the appellant must have sat on and assaulted the victim. I found that this was an unwarranted exercise in straining Chew's testimony in order to make it appear as consistent as possible, in so far as it pertained to Che Loon and Chee Keong.

43 The district judge also dismissed Chew's testimony and her statement to SSgt Lim, which exonerated the appellant of blame, as being borne out of a motherly instinct to protect her son. To me, this reason was not sufficient enough to dismiss these aspects of Chew's evidence. For one, Chew's statement to SSgt Lim exculpated not just the appellant, but Sen Chong, Wee Kee and Jenny Tay as well. If it was truly Chew's maternal instincts that were at play when she gave the statement to SSgt Lim, it was then not understandable why Chew's maternal instincts traversed beyond her son to "protect" Sen Chong , Wee Kee and Jenny Tay as well.

44 I observed that the district judge also attempted to buttress his point by alluding to the fact that Chew was in a state of shock when SSgt Lim interviewed her. The district judge obviously meant that since Chew was in a state of shock, her knee-jerk reaction would have been to protect her son. However, this was merely the district judge's own *opinion*. The district judge failed to consider the *possibility* that a person in a state of shock might be less likely to concoct a false story on the spur of the moment. If the district judge had considered this possibility, it could have led to the alternative conclusion that Chew was probably telling the truth in relation to the appellant's non-involvement in the assault, or at least raised a reasonable doubt as to whether the appellant was really involved in the assault.

45 Apart from her statement to SSgt Lim, Chew continued to assert at trial that she did not see the appellant and Sen Chong assaulting the victim. In fact, Chew was a witness to the entire episode of violence up to the point when the appellant pulled her away into the living room. Although it was possible that the appellant may not have been by Chew's side when she was in the living room and could have gone into the kitchen, the district judge himself discounted the possibility that the appellant had an active role in the assault that took place in the kitchen. In fact, from the district judge's grounds of decision, it was clear that the appellant had probably only stood by as Chee Hong, Che Loon and Chee Keong kicked the victim.

46 This being the case, and the fact that the district judge wrongly arrived at the conclusion that the appellant was the one who entered the toilet to assault the victim, there was much doubt as

to whether the appellant assaulted the victim at any point in time. This doubt was further exacerbated by the unsatisfactory manner in which the district judge rejected Chew's evidence, which clearly exonerated the appellant. Therefore, in my opinion, there was indeed reasonable doubt as to whether the appellant had assaulted the victim. In the circumstances, I found that the appellant's conviction was unsafe.

47 At this juncture, I wish to address the Deputy Public Prosecutor's ("DPP") submission during the hearing of this appeal that the appellant must have taken part in the assault that took place in the kitchen. As such, the DPP argued that the appellant should at least be convicted on a lesser charge of voluntarily causing hurt under s 323 of the Penal Code. I could not agree with this submission. For one, there was nothing conclusive in the notes of evidence that clearly indicated that the appellant did indeed assault the victim in the kitchen. In fact, the victim himself admitted that he had his eyes closed during this particular episode of assault, and was therefore unable to identify his assailants. Most importantly, as I have highlighted earlier, the district judge himself found that the appellant did not play an active role in the assault that took place in the kitchen, and had only stood by as Chee Hong, Che Loon and Chee Keong kicked the victim. That being the case, I found that there was no evidence before me to find that the appellant assaulted the victim in the kitchen, let alone any reasons to convict the appellant on a reduced charge. I accordingly dismissed the DPP's submission.

Co-appellants withdrew their appeals

48 The next issue pertained to the district judge's holding that since Wee Kee, Chee Keong and Che Loon had all decided to abandon their appeals, this signified that all of the accused persons, including the appellant, had deliberately lied to the court saying that only Chee Hong was involved. The district judge had obviously made this holding in an attempt to find some substance to support his analysis that the appellant was not a credible witness. However, I could not at all agree with the district judge on this, and held that he erred in making this presumption.

49 In this case, nothing conclusive could be said about the reasons behind the withdrawal of the appeals. The simple fact that the respective appellants had withdrawn their appeals did not translate immediately into an acceptance by the appellants that they had lied in their testimony. There could be multiple reasons why appellants withdraw their appeals, some of which could be based on practical considerations such as costs. Additionally, the fact that the other appellants had withdrawn their appeals did not then mean that the appellant must have therefore lied in his testimony. This was an illogical train of thought and an erroneous one at that. I therefore had no hesitation whatsoever in overturning this holding.

Bruises on the victim's arm

50 The district judge found that the appellant must have pinned the victim down by placing his knees on his hands because there were bilateral forearm bruises noted on the victim. The bruises were documented by the doctor as being over both arms, below the elbow. First, I found that the district judge's description of the manner in which the appellant allegedly pinned the victim down did not tally with the bruises that were present. If the appellant had placed his knees on the victim's hands, bruises would have formed on the victim's hands instead of below the elbow.

51 Even if the district judge had made an error as to the exact part of the body on which the appellant had allegedly placed his knees, *ie*, below the elbow instead of on the hands, the evidence of bruising on the forearms could not conclusively determine that the appellant must have been the one

who pinned the victim down with his knees, or that any one at all had even pinned the victim down in that manner in the first place.

52 The victim himself had testified that he was beaten from "head to toe". The episodes of assault on him were also indiscriminate. For instance, the victim was kicked about by a group of people when he was lying on the kitchen floor. That being the case, it was perfectly plausible that the bilateral forearm bruises could have been a result of these episodes of assault instead of having been caused by the appellant. They could even have been caused when the victim raised his arms to fend off the blows that were directed at him. In my opinion, the district judge ought not to have come to this conclusion when there was clearly doubt as to how the bruises came about and who had caused them.

53 If the district judge had been truly perturbed by the presence and possible cause(s) of these bruises, he should have exercised his discretion and taken the opportunity to clarify his concern with the doctor (Dr Yeo Tseng Tai) who had testified at trial for the Prosecution. However, he should not have been too ready to place the blame on the appellant in order to hold that the appellant did indeed pin the victim down.

The appellant followed Chee Hong closely

54 In a valiant last-ditch attempt, the DPP argued that the appellant was, at all material times, following closely behind Chee Hong. The DPP submitted that this therefore meant that the appellant must have also followed Chee Hong into the toilet or at least taken part in the assault at some point in time. I could not agree with the DPP's submission. I found that it would take a large leap of logic and a heavy dose of assumptions in order to link the appellant's physical proximity to Chee Hong with the assault. That is, it did not mean that just because the appellant followed Chee Hong closely, he must have therefore assaulted the victim.

55 The Prosecution's burden, as I have stated earlier in this judgment and in other cases, is always to prove an accused person's commission of an offence beyond a reasonable doubt. Where there is reasonable doubt as to whether an accused person had indeed committed the offence that he was charged with, the court would almost invariably have to record an acquittal on that charge. Likewise, in this case, there was a reasonable doubt as to whether the appellant assaulted the victim at any point in time – the very essence of the charge of voluntarily causing grievous hurt. That being the case, it was clear to me that the Prosecution had not proved its case against the appellant, and therefore, the appellant must be acquitted on the charge.

Conclusion

56 In my opinion, this was a most unfortunate case. Although the district judge was in a very unenviable situation in having to arrive at a decision with the type of evidence that was before him, I felt that he should have been charier, especially since he was essentially convicting the appellant on the basis of a sole witness's testimony. Additionally, the district judge's decision and his narration of the facts of the case were based largely on assumptions. It was of course understandable that where the evidence pointed towards diametrically opposite sets of facts, the district judge would have little choice but to make relevant assumptions and inferences in coming to the most logical version of events.

57 However, when the version of events was based largely on assumptions derived as a result of a sole witness's testimony, there was the danger that there could have been an unwarranted over-

reliance on that witness's testimony. The district judge should have been immediately alerted to the possibility of this danger and ought to have been more cautious with his approach to the victim's evidence. The fact that he did not do so was regrettable.

58 In conclusion, based on a perusal of the notes of evidence, I found that if the district judge had exercised more caution with all the evidence before him, he would not have been able to arrive at the same conclusion with regard to the appellant's conviction. There were far too many doubts in the Prosecution's case against the appellant that were not adequately addressed. Therefore, the appellant's conviction could not be justified. As such, I allowed the appellant's appeal against conviction and ordered that he be acquitted. His sentence was accordingly quashed.

Appeal against conviction allowed.