

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 46

Magistrate's Appeal No 9156 of 2018

Between

GCK

... Appellant

And

Public Prosecutor

... Respondent

GROUNDS OF DECISION

[Criminal Law] — [Evidence] — [Beyond reasonable doubt] — [Sufficiency
of third-party eye witness testimony]

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GCK
v
Public Prosecutor

[2019] SGHC 46

High Court — Magistrate's Appeal No 9156 of 2018
Aedit Abdullah J
2, 12, 23 November 2018

27 February 2019

Aedit Abdullah J:

Introduction

1 On appeal from the decision of the District Judge, I acquitted the appellant of a charge of sexual assault, having found that there was insufficient evidence for a safe conviction. The Prosecution has filed a criminal reference.

The conviction and sentence

2 The appellant was convicted of a charge under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"):¹

You, ... are charged that you, on the 26th day of November 2016, sometime between 3.00 p.m. and 4.00 p.m., inside Room 5, Level 3 of [the nursing home in] Singapore, did use criminal force to [the victim] ..., *to wit*, by positioning yourself above her body (which was then in a supine position on Bed 7 of the said

¹ ROP Vol 1, p 8.

Room 5) as you straddled her body with your knees apart on each side of her body, with your pants lowered to your thigh area and your buttocks exposed, and in this position, you placed your groin area on her groin area, intending to outrage the modesty of the said [victim], and you have thereby committed an offence punishable under Section 354(1) of the Penal Code, Chapter 224, (2008 Revised Edition).

3 The appellant was alleged to have outraged the modesty of a 55-year-old female resident of the nursing home (“Home”) he was employed at. A nurse testified that she had seen the appellant straddling the victim with his trousers down, knees apart on each side of the victim’s body and his groin area placed on the victim’s groin area. The only direct evidence that was before the court below was the testimony of the nurse. The victim was unfit to testify as she was suffering from cognitive impairment. Further, the victim was not immediately examined for physical signs of sexual assault as the Home was not able to promptly follow up on the nurse’s complaint.

4 The Appellant was convicted after a 17-day trial, and sentenced to 22 months’ imprisonment and three strokes of the cane.²

Background facts

5 The background facts were recounted in the district judge’s decision of *Public Prosecutor v GCK* [2018] SGDC 195.³

The Home, the appellant and its residents

6 The appellant started his employment at the Home in July 2010, initially as a health attendant, and from 2013, as a staff member of the maintenance department. He was put in charge of repairing and maintaining electrical items

² GD at [2].

³ ROP Vol 2, p 1265.

such as the fans, light bulbs and the call bells on the residents' beds.⁴

7 The residents of the Home were mainly elderly individuals with multiple disabilities, cognitive impairment or those in need of nursing care.⁵ The victim was a female resident of the Home. She was 55 years old at the time of the offence. She had been a resident of the Home since 6 July 2011.⁶ She had previously suffered multiple strokes which left her with limited speech and restricted mobility on the left side of her body. She also suffered from various psychological conditions.

The facts leading up to the incident

8 The Prosecution's case was that the Appellant had assaulted the victim on 26 November 2016, in Room 5, while the victim was in her bed ("Bed 7"). This assault was witnessed by Nurse MJ.

9 Nurse MJ happened to be in Room 5 while on her rounds. She had noticed that the curtains of three beds on the left side of the inner section of Room 5 were drawn. The curtain to one of the beds, Bed 8, was fully drawn but the curtain for Bed 7 was half drawn. She was puzzled as to why the curtains were drawn as the curtains were usually drawn only during diaper changes and the residents in three of the beds, including Bed 8, were not in the room at the time.

10 Nurse MJ proceeded to check on the resident in Bed 6. While she was at the foot of Bed 6, she heard a crying sound coming from the bed opposite, being Bed 7. When she turned around to face Bed 7, she saw the victim lying

⁴ GD at [6].

⁵ GD at [5].

⁶ GD at [7].

on the bed with the appellant kneeling above her. Nurse MJ stated that this crying sound was the same sound that the victim would make whenever the victim was in pain. Nurse MJ said that she could see Bed 7 as the curtain to Bed 7 was only half drawn.⁷

11 Nurse MJ described the appellant as having had his pants lowered to his thigh area and his bare buttocks exposed. His legs were apart, with one leg on each side of the victim's body. He was in a kneeling position with a slight tilt forward. The victim's trousers were also lowered and the left strap of her diaper was undone. The appellant's hips were facing the victim's hips and his groin area was touching her groin area. Nurse MJ stated that she was able to recognise the appellant as she could see half his face.⁸ Nurse MJ said that she was shocked by what she saw and thought that it had something to do with sex. She observed the situation for about five seconds before immediately leaving the room;⁹ she did not try to stop the appellant as she was scared.

12 After she left Room 5, Nurse MJ approached a male nurse, Nurse DS. She only told him to go to the room to see what the appellant was doing on the bed. She did not explain what she saw to Nurse DS. Nurse DS did go to the room but did not find the appellant to be doing anything untoward.

13 At about 6.30pm, after she had left work, Nurse MJ called a senior staff nurse, JS ("SSN JS") to speak about what she saw. They later met and Nurse MJ recounted what she had earlier witnessed.¹⁰ SSN JS then informed the director of the Home, Mr T, that night.¹¹ The victim was, however, not immediately sent

⁷ GD at [10]–[12].

⁸ GD at [13].

⁹ GD at [14].

¹⁰ GD at [16]–[17].

for medical examination. Instead, Mr T waited until the next day (27 November 2016) to investigate the matter.¹² He had Nurse MJ point out where the victim's bed was and he tried to talk to the victim. The victim was, unfortunately, unable to answer any of his questions. Mr T reviewed the CCTV footage of the incident the following day (28 November 2016). He said that he was shocked to see the appellant, a male staff, enter an all-female room unescorted. A male staff member cannot enter an all-female room unless he had the permission of the staff nurse on duty and there is no one inside the room. Mr T said that he then confronted the appellant on the matter. The appellant told Mr T that he was merely doing some work for a resident. Mr T explained that he did not speak to Nurse MJ as he spoke Hindi whereas she spoke Tamil. He then decided that he would not be taking further action as yet since he was new to the job and was trying to obtain more information.¹³

14 It was only in January 2017 that the Headquarters of the Home caught wind of the matter and decided to conduct an investigation. This led to a police report being lodged against the appellant on 23 January 2017.¹⁴

15 The appellant was arrested on 23 January 2017.¹⁵

The appellant's defence below

16 In his defence below, the appellant denied the assault. His reason for being in Room 5 was that he had been asked to fix the portable television belonging to the resident of Bed 8, Resident JP. He had met Resident JP in the

¹¹ GD at [24].

¹² GD at [26].

¹³ GD at [26]; Record of Appeal, p 47.

¹⁴ GD at [27].

¹⁵ Record of Appeal, p 1365.

dining hall on the third floor before lunch time. She asked him to help repair her portable television as she wanted to watch shows on Channel 8. According to the appellant, this was not the first time Resident JP had approach him for assistance to fix her television.¹⁶

17 The appellant made his way to Room 5 after lunch when he was done with his work for the day. He had brought along a power cable and screw driver. When he reached Bed 8, he noticed that the curtain was drawn. He had to therefore pull the curtain apart by a little to go to Bed 8. Resident JP was not at her bed. The appellant tried to switch the television on to check if there was power, but there was none. He opened up the plug and saw that the fuse was burnt. He thus took the fuse from the power cable that he had brought along with him and replaced the burnt fuse with it. He then switched the television on and there was power. He also tried tuning the television to receive Channel 8. During the time he was fiddling with the television, the appellant claimed to have been kneeling between Beds 7 and 8 and had placed the television in the middle of Bed 8.¹⁷

18 As the appellant was attending to the television, he heard a sound coming from behind him. It sounded as if someone was tapping at the bed or railing. The beds had railings along the sides to prevent the residents from falling off. The appellant said that when he turned his head, he saw the victim's head touching the railing on the left side of the bed. He heard the tapping two to three times. The curtain to Bed 7, in between Beds 7 and 8, was opened at the material time. The appellant stated that he could see that the victim was in pain. He thought that she was asking for some help. He also saw that her pillow was out of place. He then stood up, went to Bed 7 and adjusted her head to the middle

¹⁶ GD at [31].

¹⁷ GD at [32].

of the bed. He then put the pillow under her head. He also took a round pillow from the far side of Bed 7 and placed it on the left side of the victim in between her head and the bed railing so that she would not fall off again. In his hurry, and to reach for the round pillow, the appellant said that he placed his left knee in between the vertical bars of the bed railing on the left. The appellant demonstrated this to the District Judge during a site visit.¹⁸

19 Resident JP gave evidence for the defence. She confirmed that her portable television had broken down and that she had asked the appellant to attend to the matter. In this connection, she explained that she could not switch on her television, the adaptor was dislodged and she could not receive Channel 8 programmes on her television. During cross-examination, Resident JP clarified that the problem relating to power was that the adaptor was always loose and she had difficulty attaching it firmly to the power cable of her television because of her disability. Once the adaptor was firmly attached, there would be power to the television.¹⁹

20 Apart from his explanation as to what transpired on the day of the offence, the appellant also suggested in his defence that Nurse MJ might have held a grudge against him. The appellant explained that there were accusations of him having told Nurse MJ's landlord not to provide accommodation for Nurse MJ and her flatmates. The appellant also related another incident where Nurse MJ and her friend had dropped certain fruits and vegetables on the floor. He had told them that he would have to clean up after them, and there was an exchange of words between the appellant, and Nurse MJ and her friends. The appellant said that Nurse MJ looked annoyed. At the trial, the appellant further

¹⁸ GD at [33].

¹⁹ GD at [40]–[41].

suggested that there was a bad working relationship between him and his supervisor. Nurse MJ and his supervisor thus sought to blow up the issue.²⁰

The District Judge's findings and reasoning

21 The District Judge held that the “unusually convincing” standard used in assessing a victim’s testimony was equally applicable to cases involving substantial reliance on the sole testimony of a third-party eye witness.²¹ In assessing the credibility of the witnesses, the District Judge examined the demeanour of the witnesses, as well as the internal and external consistency of the witnesses’ evidence.

22 The District Judge preferred the evidence of Nurse MJ. He found her to be a truthful and candid witness and concluded that she could not have been mistaken about what she saw.²² He reasoned that what Nurse MJ had observed was so drastically different from the appellant’s version of events that it could not have been a mistake.²³ The District Judge also concluded that Nurse MJ’s evidence was both internally and externally consistent. He noted Nurse MJ’s reaction to the events – Nurse MJ had immediately left the room to seek Nurse DS’s assistance to check on Bed 7 after witnessing the incident and had also met SSN JS to tell her what she saw. In doing so, the District Judge accepted that it was reasonable of Nurse MJ to not have immediately raised alarm about what she had seen as she was in shock.²⁴ Nurse MJ’s evidence was further supported by the CCTV footage in terms of the sequence of entry of persons into Room 5. He added that Nurse MJ’s evidence was corroborated, to some

²⁰ GD at [35]–[36] & [38].

²¹ GD at [48]–[49].

²² GD at [53].

²³ GD at [53].

²⁴ GD at [54]–[55].

extent, by SSN JS and Nurse DS. While Nurse DS might not have caught the appellant in the act, this did not mean that Nurse MJ's evidence was contradicted by Nurse DS's evidence.²⁵ There was a gap of about 1 minute and 20 seconds between the time Nurse MJ exited Room 5 to the time Nurse DS entered the room. The appellant might have finished what he was doing.

23 The District Judge further found that Nurse MJ did not have any motive to bring a false accusation against the appellant as she had hardly known the appellant.²⁶

24 The District Judge then went on to consider the credibility of the appellant and found him to be of normal demeanour.²⁷ That said, the District Judge noted several inconsistencies in the appellant's evidence. The appellant indicated during the trial that he had placed his left knee between the vertical bars of the bed railing on the left side of the bed to reach for the pillow. However, the appellant's statement to the police was that he had placed both his knees on the left side of the bed. The District Judge reasoned that the appellant was trying to make his version of events to be as close as possible to the allegations made against him and explained that the posture indicated by the appellant was unnatural.²⁸ The District Judge noted further inconsistencies: namely, the point in time when the allegations over the appellant's interference with Nurse MJ's landlord arose, the first-time mention at trial of the appellant's bad working relationship with his supervisor, and the nature of the item he was holding onto when Nurse DS inspected Bed 7.²⁹ The District Judge also came to

²⁵ GD at [57].

²⁶ GD at [58].

²⁷ GD at [60]–[67].

²⁸ GD at [61]–[63].

²⁹ GD at [64].

the view that the appellant's evidence on when he was asked to repair the television was inconsistent with Nurse MJ's and Resident JP's respective evidence.³⁰ The District Judge added that the appellant's suggestions as to Nurse MJ's motive to lie against him had no merit.³¹

25 The District Judge finally considered Resident JP's evidence and found that while she was of normal demeanour,³² her evidence was inconsistent. Resident JP was internally inconsistent as to when she had approached the appellant for assistance in repairing the television; this led to the impeachment of her credit.³³ As for Resident JP's external consistency, the District Judge found her evidence to be inconsistent with that of the appellant – Resident JP's evidence, on the one hand, was that the only problem with the power to the television was that the adaptor was loose, whereas, the appellant's explanation was that the fuse had burnt.³⁴

26 In the light of the above, the District Judge came to the conclusion that Nurse MJ's evidence was unusually convincing.³⁵ It was adequately corroborated by the other witnesses and the objective evidence. On the other hand, the District Judge did not find the appellant and his witnesses to be credible witnesses. In the circumstances, the District Judge held that the Prosecution had proven its case against the appellant beyond reasonable doubt.

³⁰ GD at [66]

³¹ GD at [67].

³² GD at [68].

³³ GD at [69]–[70].

³⁴ GD at [71].

³⁵ GD at [77].

The decision on appeal

27 While sexual abuse of a vulnerable person in a care facility is clearly heinous, the fact that a person may be accused of such a crime does not mean that he committed it. The offence must be proved beyond reasonable doubt; it is not enough to show that the accused person probably did it, or most likely did it. What must be shown is that there are no other reasonable explanations that point to innocence.

28 A substantial challenge in cases of sexual abuse or assault is that such crimes often occur in seclusion, with no other witnesses present, and the objective evidence is often sparse. The court is usually left to weigh the words of one person over another. The difficulties in fact-finding are multiplied, as is the case here, if the victim is unable to testify and all that is before the court is the testimony of a third-party eye witness. It is against this context that the court requires the evidence against the accused person to be unusually convincing.

29 As it was in the present case, while I saw no reason to doubt the District Judge's conclusion that Nurse MJ was honest, it was unsafe to convict the appellant on her evidence alone. Taking the evidence as a whole, I found that there remained reasonable doubt as to the appellant's guilt.

The applicable law

30 While it is true that an appellate judge would rarely review a trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the credibility and veracity of witnesses (*Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [91]), an appellate judge is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45

(“*Jagatheesan*”) at [37]–[38]. Ultimately, the appellate court would have to scrutinise the trial judge’s decision to determine if the first instance determination did correctly assess whether the case was proven beyond a reasonable doubt: see *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 (“*Liton*”) as reproduced at [31] below.

31 As stated, evidential hurdles often arise in the context of sexual assault. In such circumstances, where conviction rests solely on the testimony of the complainant, the evidence of the complainant would have to be “unusually convincing” so as to overcome any doubts that might arise from the lack of corroboration: *AOF v Public Prosecutor* [2012] 3 SLR 34 (“*AOF*”) at [111]. Guidance was given in *Liton* at [39]:

In our view, therefore, the “extra something” implied by the word “unusually” must refer to the need for the trial judge to be aware of the dangers of convicting solely on the complainant’s testimony as well as of the importance of convicting only on testimony that, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused. Since a mandatory warning from the judge to himself is not required, the implication is that the appellate courts will scrutinise the trial judge’s grounds of decision to see whether the trial judge was indeed aware of the danger of convicting on the bare word of the complainant as well as whether the quality of the testimony itself was consistent with the high standard of proof beyond reasonable doubt.

32 Relevant considerations in determining whether a witness is unusually convincing are the demeanour of the complainant, as well as the internal and external consistencies found in the witness’s testimony: *AOF* at [115]. These factors are not exhaustive or conclusive. The evidence will ultimately have to be assessed in the round, with the exercise of reason and common sense. The unusually convincing standard does not change the rule that the Prosecution

must prove its case beyond reasonable doubt (*Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [29]).

33 A third-party witness who is disinterested and neutral may not appear to require the cautionary approach embodied by the need for evidence to be unusually convincing. Nonetheless, as the evidence remains word against word, a similar imperative applies: the court should be slow to convict in the absence of unusually convincing evidence. Hence, the District Judge was not wrong in transposing the unusually convincing requirement to an eye-witness. But even if that requirement were not applied to Nurse MJ, her evidence would not have been sufficient to secure a conviction simply because it fell short of the required cogency and strength that on any non-sexual case would be required for a conviction to stand: a reasonable doubt that she was mistaken could not be excluded. So on either the application of the unusually convincing requirement, or otherwise, the evidence for the prosecution did not make out a case beyond a reasonable doubt.

The difficulties with Nurse MJ's testimony as a third-party eye witness account

34 The facts of the present case fell out of the ordinary. As the District Judge noted, it is one of those rare cases involving the outrage of modesty where there was an independent witness to the offence. At the same time, the victim herself was unable to testify.

35 While there is no reason to doubt that Nurse MJ was truthful and candid, her evidence of the appellant's sexual assault on the victim was not definitive and conclusive of the matter, and there were gaps in the evidence that were not adequately addressed. The question in each case is whether, given the evidence presented, the doubt is a real or reasonable doubt or whether it was a merely

illusory or fanciful one: *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 at [96]. And in making such an assessment, the available evidence and absence of evidence must be taken into account: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [61].

36 Nurse MJ was a bystander. She was not the victim. While an eye witness's testimony has the advantage of being an independent account of the events, eye witness evidence is always subject to possible misapprehension and errors in observation. In contrast to a victim's own testimony, an eye witness's account would be subject to a greater degree of misperception, misapprehension and misattribution. This is particularly so where the incident might have taken place over a period of time and the eye witness was only present for a brief moment. Without an appreciation of the full context in which the events unfolded, a bystander's account may be liable to misinterpretation. An eye witness's testimony is not a recording. In the context of a civil claim, the Court of Appeal in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [47]–[49] stated:

Caution should also be exercised when relying on the uncorroborated recollections of a witness. In this regard, we note that memory is more than a reinstatement of the original perception, and often involves the interpretation and/or reinterpretation of details, judgment, estimates and the correlation of related incidents. Put another way, memory more closely resembles a synthesis of experiences rather than a replay of a videotape ...

... Moreover, the witness's original perception of the event or detail "may be defective and illusory; wrong associations may make it imperfect; judgments may misinterpret the experience; and suggestive influence may falsify the data of the senses" ...

37 As I noted above, I agreed with the District Judge that the "unusually convincing" standard may be applied to both victim and third-party eye witness accounts. However, the various difficulties mentioned above go towards the

reliability of an eye witness's evidence. In this relation, the District Judge found Nurse MJ to have been credible. However, credibility does not guarantee reliability.

Sufficiency of Nurse MJ's evidence alone

38 The question in the present case is whether Nurse MJ's testimony was sufficient to safely convict the appellant, bearing in mind the matters above and the absence of strong corroborating evidence. A key aspect of the District Judge's decision was that Nurse MJ could not have been mistaken as to what she saw. However, as I have explained above, it must be appreciated that Nurse MJ's perception of the matter would be weaker than the account of the victim. The incident might well have transpired. But having examined the existing state of the evidence as a whole, I did not find that the Prosecution had proven its case beyond reasonable doubt.

39 Nurse MJ had only about a five-second glimpse of the alleged assault. She may have indeed seen something, or she may have been mistaken. The possibility of mistake or misapprehension is higher the shorter the observation.

40 Additionally, according to Nurse MJ, the victim was crying at the material time. However, when Nurse DS quietly entered the room 1 minute and 20 seconds later, he observed the victim to be asleep and that she "looked normal":³⁶

Q: Please tell the Court what did you observe on bed 7?

...

A: [The victim] was sleeping on the bed.

...

³⁶ ROP Vol 1, pp 537-538.

Q: Can you please describe how [the Victim] appeared to you at that time?

A: She looked normal.

...

Q: Did you hear any sounds coming from her?

A: No ...

Q: ... did [the appellant] know that you were in room 5 at that time?

A: No, he did not know.

...

Q: Why do you say so?

A: Because when I tiptoed to look inside, he was looking at his mobile.

I noted that the victim has been observed to display labile moods and that there exists the possibility of the victim having stopped crying when the appellant was no longer above her. However, the drastic change from crying in pain to being asleep is something that cannot be lightly regarded; this is especially so in the light of the reason I will come to next.

41 There was a question of how long it would have taken the appellant to have adjusted his own and the victim's clothes after the assault. Nurse MJ's evidence was that the appellant had his trousers down to his thighs with his bare buttocks exposed and the victim had her trousers down with the left strap of her diapers undone. Yet, when Nurse DS entered the room shortly after Nurse MJ left, the victim was asleep and the appellant was at Bed 8 using his phone.³⁷

42 The strength of Nurse MJ's testimony had to also be weighed against the inherent probabilities arising from the other factual circumstances. The CCTV footage showed the appellant moving in and out of the inner section of

³⁷ ROP Vol 1, p 539.

Room 5 between 3.30pm to 3.47pm.³⁸ During this period, various other staff members and residents could be seen entering and exiting the room.³⁹ Given the activity that was going on in the room, more would be required to corroborate Nurse MJ's testimony. To this end, the District Judge came to a conclusion that Nurse MJ's evidence was, to some extent, corroborated by CCTV footage, SSN JS's evidence and Nurse DS's evidence. But such evidence was not sufficiently strong as to overcome the possibility of mistake or misapprehension. The CCTV footage only confirmed a limited sequence of events: when the appellant entered into the room, when Nurse MJ left the room and when Nurse DS entered the room, among other things. It did not prove that the appellant had indeed committed the acts as charged. Similarly, SSN JS's and Nurse DS's evidence only showed that Nurse MJ was truly convicted of what she saw. It was not direct proof of the facts relating to the appellant's guilt.

43 The various aforementioned issues left something to be desired. It is unfortunate that there were lost opportunities in the present case, particularly in the reaction of the Home to the complaint of the incident. The victim was not promptly examined for physical signs of sexual assault. However, the court has to ultimately work within the constraints of the evidence as adduced by the Prosecution and resist the temptation of reading more into the existing evidence, especially in situations where there could have been evidence that would have strengthened a point but was not adduced.

Inconsistencies in the appellant's and Resident JP's evidence

44 The inconsistencies in the evidence of the appellant and Resident JP did not go towards supporting or corroborating Nurse MJ's evidence. The weakness

³⁸ GD at [19].

³⁹ ROP Vol 2, pp 1382–1395.

of a defence does not in and of itself translate into strength of the Prosecution's evidence. It bears mentioning that the court does not have to believe an accused's evidence to acquit the accused. But to secure a conviction, the Prosecution's evidence must be sufficient to meet the standard required to prove the facts: see Jeffrey Pinsler SC, *Evidence and The Litigation Process* (LexisNexis, 6th Ed, 2017) at para 12.008.

45 In any event, while there were inconsistencies in the evidence of the appellant – particularly about what happened at Bed 7 – the inconsistencies were not such as to render his version of events untenable or to prevent reasonable doubt from being raised.

46 One key discrepancy in the appellant's evidence was his posture when he was tending to the victim. The appellant testified that he had placed his left knee between the vertical bars of the bed railing on the left side of the bed to reach for the pillow. However, the appellant's statement to the police was that he had placed both his knees on the left side of the bed. While the appellant's evidence was inconsistent as to the position of his knees, the wider point was that on his version, he was attempting to adjust the victim's head onto the pillow and reach for another pillow to support her head. It was consistent with this version that his posture might have been misperceived.

47 The District Judge also impeached the credit of Resident JP on the basis that her evidence was inconsistent. However, it is not any inconsistency that would be liable to impeachment. Resident JP's evidence, though inconsistent, should not have been impeached. Section 157(c) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") reads:

157. The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him:

...

(c) by proof of the former statements inconsistent with any part of his evidence which is liable to be contradicted.

It should be noted that the permissive word “may” is used. In other words, the fulfilment of the condition in s 157(c) of the Evidence Act does not *ipso facto* mean that the credit of the witness is impeached. It is not infrequent that the court is faced with inconsistent evidence of a witness. However, it is not any sort of inconsistency that would result in the impeachment of a witness’s credit. As the court in *Kwang Boon Keong Peter v Public Prosecutor* [1998] 2 SLR(R) 211 at [19] noted:

To impeach a witness’ credit is to disparage or undermine his character and moral reliability and worth. The purpose of the impeachment of a witness’s credit is to undermine his credibility by showing that his testimony in court should not be believed because he is of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath and should not be relied on.

48 The threshold in s 157(c) of the Evidence Act ought to be a high one. I did not find the evidence of Resident JP to have been so materially inconsistent that would warrant her impeachment. While Resident JP might not have been precise as to when she had asked the appellant to repair her portable television, the wider point is that she did ask the appellant to repair her portable television.

49 The District Judge noted that when Resident JP was confronted with her statement about the precise date of her request, Resident JP said that she recalled her request to be on 26 November 2016 because of counsel’s repeated reference to that date.⁴⁰ To my mind, not only was the witness an older person who was asked to recall matters that transpired at least a year before, the details sought

⁴⁰ GD at [69].

were, in the larger scheme, in relation to a mundane request to have her television repaired.

50 For completeness, I should also mention that any inconsistencies in relation to the evidence of the appellant were not such as to warrant his credit being impeached either.

Appropriateness of referring to evidence relating to the victim's psychiatric report

51 In sentencing the appellant, the District Judge referred to the testimony of the doctor who interviewed the victim during the preparation of the victim's psychiatric report. In doing so, the District Judge accepted that the victim "suffered from emotional distress and trauma arising from the incident".⁴¹

52 In my view, this was inappropriate. Given that the victim was found to have been unfit to testify, caution should be taken in referring to the victim's reaction and state of mind with respect to the events. Sentencing ought to be premised on facts that are established and tested, unless the parties consent otherwise.

Redaction

53 I noted that redaction was made to the District Judge's grounds of decision. I have doubts about the suppression of information in this case: the victim was a resident in the Home, and identification of the victim from the names of the witnesses would not have been readily made. However, since redaction had already been made, I left it as it was.

⁴¹ GD at [95]

Conclusion

54 The evidence on the record was insufficient to render the conviction safe. As the testimony of the witness did not exclude reasonable doubt, I accordingly acquitted the appellant. The Prosecution being dissatisfied with that acquittal on the facts has filed a criminal reference.

Aedit Abdullah
Judge

Lau Wen Jin (Dentons Rodyk & Davidson LLP) for the appellant;
Agnes Chan and Goh Yi Ling (Attorney-General's Chambers) for the
respondent.