

Cheng William v Loo Ngee Long Edmund
[2001] SGHC 201

Case Number : MA 102/2001

Decision Date : 30 July 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : N Sreenivasan (Straits Law Practice LLC) for the respondent; Bala Reddy and Toh Yung Cheong (Deputy Public Prosecutors) for the public prosecutor

Parties : Cheng William — Loo Ngee Long Edmund

Criminal Procedure and Sentencing – Sentencing – Whether manifestly inadequate – Wrongful restraint – Assault – Criminal intimidation – No aggravating factors

Criminal Procedure and Sentencing – Public prosecutor – Powers – Whether Public Prosecutor has power to intervene in criminal proceedings and private prosecutions – Whether Public Prosecutor has power to discontinue proceedings

: This was an appeal against the decision of the District Judge Salina Ishak in a private summons case when she convicted the respondent of one offence each under ss 352, 341 and 506 of the Penal Code (Cap 224). The respondent was sentenced to a fine of \$500 (in default two days' imprisonment) in respect of the first offence, a fine of \$500 (in default two days' imprisonment) in respect of the second offence, and a fine of \$1,000 (in default five days' imprisonment) in respect of the third offence. The appellant appealed against the sentence on the ground that it was manifestly inadequate. Although the Public Prosecutor had not been involved directly in the proceedings, he took the unusual step of intervening in the appeal. He submitted that the appeal be discontinued. I ordered that the appeal be discontinued and now give my reasons.

The charges

The first two charges and the amended third charge read as follows:

First Charge

PSS 001078-2001

You,

Edmund Loo Ngee Long,

NRIC No. S1523005C

*are charged that you, on the 15th day of September 2000 at or about 2.00 pm at 279 Balestier Road, Balestier Point, Singapore 329727 did without grave and sudden provocation assaulted (**sic**) one William Cheng, to wit, by shouting rudely and using aggressive gestures at him, making him apprehend that you were about to use criminal force on him, and you have thereby committed an offence punishable under section 352 of the Penal Code, Cap 224.*

Second Charge

PSS 001089-2000

You,

Edmund Loo Ngee Long,

NRIC No. S1523005C

*are charged that you, on the 15th day of September 2000 at or about 2.00 pm at 279 Balestier Road, Balestier Point, Singapore 329727 did voluntarily obstruct one William Cheng, to wit, prevent (**sic**) him from proceeding in his intended direction in which he has a right to proceed and you have thereby committed an offence under section 341 of the Penal Code, Cap 224.*

Third Charge

PSS 00109-2000

You,

Edmund Loo Ngee Long,

NRIC No. S1523005C

*are charged that you, on the 15th day of September 2000 at or about 2.00 pm at 279 Balestier Road, Balestier Point, Singapore 329727 did threatened (**sic**) one William Cheng Chairman of Balestier Point Management Corporation, to wit, by threatening him with injury to his person, intending thereby to cause alarm to the said William Cheng and you have thereby committed and (**sic**) offence punishable under section 506 of the Penal Code, Cap 224.*

The offences

The relevant provisions of the Penal Code provide as follows:

341 Whoever wrongfully restrains any person shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to \$500, or with both.

352 Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to \$500, or with both.

506 Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both; and if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or with imprisonment for a term which may extend to 7 years or more, or impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

The facts

Both the appellant and respondent conduct business from units in a building complex called Balestier Point. The appellant operates a health centre and was the chairman of the Balestier Point Management Corporation at the material time. The respondent is a car dealer and parked cars which were offered for sale by his business at the car park of Balestier Point.

Some time before the incident occurred, the appellant had instituted rules which imposed a charge on the transfer of season parking labels from one vehicle to another. This materially affected the respondent's business and that of other car dealers operating in the complex, as the dealers would transfer the season parking labels from cars which they had sold to cars which were yet to be sold. With the introduction of this scheme, they were looking to incur significant transfer fees. If the parking label used on a vehicle had not been issued for that vehicle, the vehicle was liable to be wheel-clamped and a fee would have to be paid to have the clamp released. The respondent's unhappiness about this situation was the backdrop for the offences.

On 15 September 2000, the respondent confronted the appellant and wanted to know if the appellant had caused one of his vehicles (without a valid season parking label) to be wheel-clamped. The judge accepted the appellant's evidence of the events that subsequently transpired. The cogent facts were as follows. The respondent insisted on talking to the appellant and raised his hands to prevent the appellant from proceeding to the restroom (this gave rise to the charge under s 341). The respondent hurled vulgarities at the appellant. He said that he would 'kill' the appellant if the appellant 'touched' his car and that he would 'get people to beat' the appellant (this gave rise to the charge under s 506). The respondent also raised his fist, at which point the appellant fled to the security counter and called the police (this gave rise to the charge under s 352).

Some police officers arrived and tried to mediate between the appellant and the respondent. The respondent offered a verbal apology but the appellant insisted on a written one. When the respondent refused, the appellant commenced the private prosecution. The police did not think it necessary to investigate further nor to charge the respondent.

The judge's decision

The judge handed down her grounds of decision on 14 May 2001. She set out in detail the evidence of the prosecution and of the defence. She found that the appellant had proved his case beyond a reasonable doubt, but did not elaborate on how she arrived at that conclusion.

Although the appellant did not expressly argue for a custodial sentence, the key issue in this appeal (as between the appellant and the respondent) was whether the sentence imposed should have

included a custodial element. It should be noted that the judge had already imposed the maximum fine in respect of the first two charges, while there is no prescribed maximum fine for the third charge. In deciding that the case did not warrant a custodial sentence, the judge was mindful in particular of the following factors:

- (1) although the police were aware of the matter, they did not conduct further investigations and the Public Prosecutor did not think it necessary to institute a public prosecution;
- (2) the appellant had brought the private prosecution because he was dissatisfied with the respondent's verbal apology and insisted on a written one;
- (3) the respondent did not cause any physical injury or property damage;
- (4) all three charges arose from the same incident.

The appeal against sentence

The appellant's first ground of appeal was that the sentence was manifestly inadequate and that is the only ground that is of relevance in a court of law. Firstly, in relation to an offence under s 352, the respondent cited ***Sentencing Practice in the Subordinate Courts*** to show that, in the absence of aggravating factors, the usual sentence imposed was a fine. There were no aggravating factors in this case; and the fact that the respondent had acted on impulse would negative the seriousness of the crime.

Secondly, although the respondent did not refer to ***Sentencing Practice in the Subordinate Courts*** in relation to an offence under s 341, it would be useful to refer to the same. Once again, factors which indicated that the crime was not a serious one were present: one, the respondent acted on impulse, not because he intended to commit a serious offence; and two, the restraint was only momentary.

Thirdly, in relation to an offence under s 506, the respondent referred to the abovementioned book to show that the circumstances of this offence rendered it less serious. For example, although the respondent had threatened to have the appellant beaten up and said he would 'kill' the appellant if the appellant touched his car, this was a one-off, impulsive outburst. It did not occur in a deserted place. It did not take place in a wider context of illegal activity.

The appellant's remaining grounds of appeal were either irrelevant or unsubstantiated.

Public Prosecutor intervention

There were two parts to the DPP's submission. The first was that the Public Prosecutor had a right to intervene to have the proceedings discontinued. The second was that the appeal was without merit. This second issue has been dealt with above.

The starting point was art 35(8) of the Constitution, which states:

The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

Section 336(1) of the Criminal Procedure Code (Cap 68) further provides:

The Attorney-General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code.

Since the provisions refer to `any proceedings for any offence` and `criminal prosecutions and proceedings under this Code` without qualification, they apply to private prosecutions as well. It would seem that these provisions squarely contemplate the risks particular to private prosecutions, where the complainant may allow his `private passions and prejudices to creep into the conduct` of a criminal appeal (**Ponniah v Lim** [\[1960\] MLJ 152](#)). A private prosecution is a prosecution by a private individual which, if successful, relies on the state machinery to mete out the sentence imposed. In addition, a criminal offence is based on the notion of a wrong committed against society or social values. It follows that a private prosecution should not defeat the interests of state and society (such interests in this context being determined by the Public Prosecutor).

The case law on this subject is also clear. **Hawa bte Haji Mohamed Hussain v Miranda** [\[1988\] SLR 720 \[1988\] 3 MLJ 397](#) and **Jasbir Kaur v Mukhtiar Singh** [\[1999\] 2 SLR 349](#) involved straightforward applications of art 35(8) and s 336(1).

Conclusion

For the reasons stated above, I ordered that the proceedings be dismissed.

Outcome:

Proceedings dismissed.

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