Selvaraju s/o Satippan v Public Prosecutor
[2004] SGCA 53

Case Number : Cr App 12/2004

Decision Date : 10 November 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Yong Pung How CJ

Counsel Name(s) : Appellant in person; Seah Kim Ming Glenn (Deputy Public Prosecutor) for respondent

Parties : Selvaraju s/o Satippan — Public Prosecutor

Criminal Law – Statutory offences – Kidnapping Act – Demand for moneys kidnapper believed owing to him – Whether amounting to demand for ransom – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

Criminal Law – Statutory offences – Kidnapping Act – Location of kidnap victim and kidnapper and identity of kidnapper known – Whether act still falling within ambit of Kidnapping Act – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

Criminal Law – Statutory offences – Kidnapping Act – Whether acts of accused constituting wrongful confinement – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

Criminal Law – Offences – Attempted murder – Section 307(1) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Hurt – Voluntarily causing hurt – Section 324 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Property – Mischief – Mischief by fire – Section 436 Penal Code (Cap 224, 1985 Rev Ed)

10 November 2004

Lai Kew Chai J (delivering the judgment of the court):

1 The appellant was convicted by Tay Yong Kwang J on four charges arising from the events of 7 August 2003 at the home of the Varghese family at 1 Cotswold Close. We dismissed his appeals against conviction and sentence, and set out our reasons below.

The facts

2 On the fateful day at about 9.45am, Madanahalu Gedara Subadrawathie, the Varghese family's maid ("the maid"), heard the doorbell ring. She saw the appellant standing outside the gates of the house. When she asked him for his name and the purpose of his visit, he refused to identify himself but said that he wanted to talk to her boss and also wanted some money. The maid told the appellant she would have to call her boss's wife, as her boss was not at home and she did not have his telephone number. The appellant insisted on speaking with her boss. He asked her to open the gates but she refused.

3 The maid started walking back towards the house. She turned and saw the appellant climbing over the fence. He subdued her and warned her not to shout or he would kill her. There was some dispute at the trial as to whether the appellant had used a small foldable knife in subduing the maid. The two persons entered the kitchen with the appellant holding on to the maid's neck tightly. He took a kitchen knife and threatened to kill her if she made any noise. He asked her to get valuables from

the master bedroom, but she claimed that there were none. He then asked her to close the curtains in the house. The appellant wanted to tie the maid up with some telephone wire, but she persuaded him to let her call her boss's wife and get her to bring money home. However, he soon changed his mind and stopped her from making the call.

4 Just at that moment, Nina Elizabeth Varghese ("Nina"), the daughter of the Varghese family, rang the doorbell. The appellant told the maid to let Nina in, before pulling her into the bathroom attached to Nina's bedroom. When Nina entered her bedroom talking on her mobile phone, the appellant pushed her against a wall and told her not to shout. Nina felt something sharp pressed against the right side of her neck. After some commotion, Nina asked the appellant what he wanted. He demanded $150,000 and threatened to kill her if his demand was not met. He told Nina to call her mother, Susheela Varghese ("Susheela"), to bring the money home and not to call the police. Nina asked if she could call her father, Roy Abraham Varghese ("Roy"), instead, but the appellant refused her request without giving a reason. Nina called Susheela, who in turn called Roy. The appellant subsequently repeated his demand and threat to Susheela over the telephone. Roy called the police.

5 The appellant tied Nina's wrists up using a length of computer speaker wire he had cut. Seeing that the appellant was becoming agitated, Nina struck up a conversation with him. He claimed that he intended to leave Singapore with the money. If he could not get the money, he would kill Nina and then commit suicide. Nina managed to negotiate with the appellant to lower the amount he demanded to $50,000.

6 The appellant noticed some movement outside the bathroom windows and asked the maid to open one of the windows. Roy was standing outside. The appellant and Nina stood at the entrance of the bathroom with the appellant pointing the knife at Nina's neck. Addressing the appellant as "Sir", Roy asked the appellant how he could help. The appellant repeated his demand that he be paid $150,000 or else he would kill Nina and commit suicide. The appellant, when asked by Roy, claimed to know Roy. Roy replied that he did not know the appellant. Roy also said he could only raise $50,000, and the appellant agreed to lower his demand to that amount. Roy left and informed some police officers outside the compound about what had transpired.

7 Roy returned to negotiate further with the appellant, saying that he was having difficulty raising the money. The appellant asked Roy for the small amount of money in Roy's wallet but soon returned it. Suddenly, the appellant noticed an Indian plainclothes police officer who had followed Roy into the compound and was crouching next to Roy. Roy lied that the police officer was his neighbour, and Nina played along. The appellant told Roy and the police officer to leave. Nina tried to convince the appellant about what Roy had said, but the appellant was not convinced, saying that he knew the neighbourhood well and the Vargheses did not have any Indian neighbours. He also said he had planned to go to the Varghese home about one and a half years ago.

8 The appellant grew impatient and broke off communications with the police negotiator and Roy, but not before telling Roy that his daughter was going to die that day. He instructed the maid to gather Nina's clothes, which were strewn about the bedroom, into a pile. He took out a lighter and said he was going to burn the house down. He then dragged a bookshelf to block the bedroom door and left the doors of the wardrobe open.

9 The maid asked to be allowed to call Roy to hurry up with the money. The appellant initially acceded to the maid's request but then changed his mind. He then told the maid he would let her go and that she was to go and tell Roy to bring the money or he would kill Nina. Nina suggested that she write a note to that effect for the maid to hand over to Roy instead, as the maid had a poor command of English. The appellant agreed and told Nina what to write, but Nina actually wrote to tell

her father that the appellant could see what was happening outside and was becoming desperate. The appellant could not read the note himself as he appeared to be short-sighted. Nina offered to read the note back to him, and repeated what he had dictated to her as if she had obeyed him. The appellant then helped the maid leave the house through the bathroom windows.

10 After the maid had left the house, the appellant, claiming to see policemen outside, set fire to the clothes in the wardrobe with the lighter. The fire spread quickly and there was a lot of black smoke, but the appellant refused Nina's request to open the bedroom windows. As the appellant and Nina moved towards the bathroom, he suddenly grabbed Nina's hands, raised the knife he was holding and brought it down on her left forearm while grunting loudly. He then cut his own wrists and neck, before going into the bathroom and closing the door.

11 Nina rushed towards the bedroom door and tried to pull aside the bookshelf blocking the door. The sound of her efforts brought the appellant out of the bathroom with knife in hand. Nina ducked down and tried unsuccessfully to crawl through the gap in the doorway. While she was in a squatting position, the appellant came up behind her with the knife raised above his head and aimed at her skull. Nina managed to dodge him before he could strike, ran into the bathroom, pushed open the window, stood on the toilet seat and dived headlong through the window grilles. The appellant left the bedroom and entered the hall, where he cut his wrists and neck intermittently before being arrested.

The trial

12 The Prosecution proceeded on the following four charges at the trial:

(a) committing mischief by fire, punishable under s 436 of the Penal Code (Cap 224, 1985 Rev Ed) ("the first charge");

(b) wrongfully confining Nina with intent to hold her for ransom, punishable under s 3 of the Kidnapping Act (Cap 151, 1999 Rev Ed) ("the second charge");

(c) voluntarily causing hurt to Nina, punishable under s 324 of the Penal Code ("the third charge"); and

(d) attempting to murder Nina, punishable under s 307(1) of the Penal Code ("the ninth charge").

Another five charges were withdrawn, and the appellant was given a discharge amounting to an acquittal in respect of these charges.

13 Apart from the issue of whether the appellant had with him the small foldable knife when he first entered the compound, the Defence did not dispute many of the facts in the Prosecution's case. In respect of the first charge, the appellant testified that he was angry as he felt cheated by Roy, but did not have the intention to set fire to the house and burn it down. On the third charge, he denied causing hurt to Nina, and suggested that Nina's injury had been caused accidentally. On the ninth charge, he denied attempting to murder Nina, saying that he could have done so earlier. Given the confined space and his bigger build, he would have succeeded in killing her in the way she described.

14 On the second charge, the appellant said that he was merely asking for the return of money Roy owed him. He alleged that he first got to know Roy, who worked as a financial adviser

representative with a financial planning company, in 1997 or 1998. He was then operating a food stall at the canteen of the old Tan Tock Seng Hospital. He invested $50,000 at Roy's invitation in the property business of Roy's father-in-law in November 1998 ("the investment agreement"). For his investment, he was supposed to receive a monthly return of $5,000 regardless of how the business fared. He would also get back his capital when the investment agreement was terminated. However, he did not know where Roy's calling card, which had Roy's home address and telephone number on it, had gone. He also had no written proof of the investment agreement and of the money supposedly given to Roy. The appellant claimed that he had received about $60,000 in total from Roy up to the end of 2000. In 2001, Roy stopped paying the appellant because of financial difficulties, but promised to settle all outstanding amounts owed to the appellant after his father-in-law had sold his house. The appellant waited for about a year with no news from Roy, and then made several unsuccessful demands for payment. In the face of his mounting financial and legal difficulties, the appellant went to the Varghese home on 7 August 2003 to ask that Roy pay what was due to him, which amounted to $150,000 in accrued monthly returns and another $50,000 being his capital. He only found out that Nina was Roy's daughter because the maid told him so and did not know she would be returning home at that time.

The decision below

15 On the first charge, the learned judge accepted the evidence of Nina and the maid that the appellant had told them he was going to burn the house down in order to kill Nina and himself. The appellant's actions in moving the bookshelf to block the bedroom door, starting the fire and doing nothing to put out the fire belied his claims that he had not set the clothes on fire to burn the house down. The maid's credibility as a witness was not reduced by the fact that the small foldable knife she alleged the appellant had with him was not found.

16 In respect of the third charge, the judge again accepted Nina's unequivocal and truthful evidence. One of the two doctors who had examined Nina after the incident did not think it likely that her injury was accidental or self-inflicted. While Nina may have overestimated in her evidence the amount of force the appellant had used in inflicting the injury, the material point was that the chopping action of the appellant was intentional.

17 For the ninth charge, the judge was satisfied that the appellant had intended to kill Nina as he was desperate and angry that his plan had been foiled, and that he would have killed her had he succeeded. As things turned out, the appellant had not been fast enough to strike Nina, while Nina had the presence of mind and agility to make her escape.

18 Turning to the second charge, the judge found that the appellant had wrongfully confined her to her bedroom and the attached bathroom. It did not matter that the location of the appellant and Nina, as well as the appellant's identity, was known, or that the location happened to be Nina's own home. The judge considered the question whether ransom in the context of s 3 of the Kidnapping Act included money that rightfully belonged to the kidnapper, and decided that the section would still apply even if the kidnapper was demanding that he be paid money belonging to him.

19 However, on the facts, the judge believed Roy and found the appellant's story about the investment agreement unbelievable. There was no written acknowledgment of receipt of the $50,000 the appellant had supposedly given Roy, which was difficult to believe when the appellant was entrusting virtually his entire savings to someone he barely knew. There was no written document referring to the investment agreement or its terms. Contrary to his claims, the appellant's conversations with Nina and Roy showed that Roy did not know him. He only demanded money throughout the incident and never mentioned the investment agreement. Further, the terms of, and

the returns under, the investment agreement were too good to believe, given the economic conditions at the time.

The appeal

20 The appellant appealed on the grounds that his conviction was unreasonable and the sentence imposed was manifestly excessive. At the start of the hearing before us, the appellant, who was unrepresented, asked the court to assign him counsel. After being informed that the court did not assign counsel in cases such as this that did not involve capital punishment, the appellant made oral submissions. He repeated the allegations he made at trial about the investment agreement with Roy, and explained that he had started the fire in the bedroom because he was angry and suffered from high blood pressure. He emphasised that he did not kidnap or abduct Nina.

21 The second charge of kidnapping for ransom carried the heaviest sentence of life imprisonment and 24 strokes of the cane. Life imprisonment has been interpreted to mean that a convict receiving such a sentence is to be imprisoned for the remainder of his natural life: *Abdul Nasir bin Amer Hamsah v PP* [1997] 3 SLR 643. Unless the appellant succeeded in his appeal on the second charge, it would make no practical difference to him if he succeeded in his appeals on the other charges. Hence, the issues pertaining to the second charge would be dealt with first.

22 Also, we considered in great detail the appellant's arguments at trial in reaching our decision, bearing in mind the circumstances in which the appellant conducted his appeal before this court.

The second charge: kidnapping for ransom

23 Section 3 of the Kidnapping Act provides that:

> Whoever, with intent to hold any person for ransom, abducts or wrongfully restrains or wrongfully confines that person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to caning.

Further, s 2 of the Kidnapping Act provides that:

> In this Act "abduction", "wrongful restraint" and "wrongful confinement" shall have the meanings assigned to them in sections 362, 339 and 340, respectively of the Penal Code (Cap 224).

As for wrongful confinement, s 340 of the Penal Code defines it as follows:

> Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.
>
> Illustrations
>
> (a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
>
> (b) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

24 The learned judge concluded correctly that the appellant had wrongfully confined Nina. The appellant held the kitchen knife to Nina's neck after she entered the bedroom. He tied Nina's wrists together and used the bookshelf to block the bedroom door and prevent her from leaving the

bedroom. He thereby confined Nina to the limits of the bedroom and the adjoining bathroom in a manner similar to that in illus (a) to s 340 of the Penal Code. At all times during the incident, the appellant stayed in the bedroom with Nina and the maid. He did not let go of the kitchen knife even as Nina tried to talk to him. The obvious implication of the appellant's behaviour was that he would readily use the knife against Nina if she attempted to leave the bedroom. This situation was little different from that found in illus (b) to s 340.

25 At the appellant's trial, defence counsel tried to argue that his actions did not fit the *modus operandi* of a kidnapper for ransom. Defence counsel highlighted that he did not conceal his location and identity, and had held Nina in her home as opposed to taking her away to another location. We recognised that the facts in this case were somewhat atypical of a kidnapping case. However, as the judge decided, this did not take the case out of the scope of the Kidnapping Act. Section 3 of the Kidnapping Act does not specify particular acts that, if done, will constitute the offence. Rather, the provision clearly sets out the elements of the offence. Once the judge found that the appellant had wrongly confined Nina, the next question to be considered was whether he had done so with the intention to hold her for ransom, not whether his actions fit a hypothetical model of the offence.

Ransom

26 The appellant in his defence said that he had gone to the Varghese home to get Roy to pay him the money allegedly due to him under the investment agreement. The point thus arose as to whether ransom included money that rightfully belonged to the kidnapper.

27 Ransom is not defined in the Kidnapping Act or the Penal Code. The word has not been judicially defined in many jurisdictions, including Singapore. This may be because it is usually obvious in kidnapping cases that the money demanded in return for the freedom of the victim is intended for the unlawful enrichment of the kidnapper.

28 However, there are American authorities that are apropos this issue. The United States courts have considered the definition of ransom, notably in the case of *USA v Escobar-Posado* 112 F 3d 82 (1997) cited by the Prosecution. In *USA v Escobar-Posado*, the defendant was involved in a drug transaction. Two women were hired to deliver money from New Jersey to Colombia, but they were robbed en route. The defendant and others abducted the women, and interrogated and sexually abused them to try and retrieve the money. One woman was later released upon a threat that her friends would be killed if the money was not returned. The United States Court of Appeals for the Second Circuit decided that there was nothing in the ordinary usage of the word that precluded a ransom from consisting of a demand for a sum the kidnapper believed was owed to him. This interpretation was approved in the subsequent cases of *USA v DiGiorgio* 193 F 3d 1175 (1999) and *USA v Sierra-Velasquez* 310 F 3d 1217 (2002). We respectfully adopted this interpretation as well.

29 Further, *Black's Law Dictionary* (8th Ed, 2004) at 1287–1288 defines the word ransom as a noun as follows:

> 1. Money or other consideration *demanded* or paid for the release of a captured person or property. … 2. The release of a captured person or property in exchange for payment of a *demanded* price. [emphasis added]

Even if the appellant's account for his presence at the Varghese home on 7 August 2003 were accepted, the fact remained that he had demanded that Roy pay him money in return for him setting Nina free, and threatened to take Nina's life if his demand was not met. Whether the appellant's demand for money was justified or not was irrelevant. Even if Roy did owe the appellant money, the

appellant's demand to be paid still constituted a demand for ransom.

30 Finally, the public interest demanded that ransom be defined for the purposes of s 3 of the Kidnapping Act to include money rightfully belonging to the kidnapper. Otherwise, a loophole in the law would be created that would be readily exploited in future. In this respect, we would quote the judgment in *USA v Escobar-Posado* at 83:

> Finally, neither logic nor policy supports appellant's position. We provide formal, peaceful means for legitimate debts to be collected in part at least so that resort to force can be prohibited. The fact that appellant's claim for the money was not legitimate – the debt was clearly not a lawful one – hardly justifies the use of force.

We would add that where the claim for payment was legitimate, as would have been the case if the appellant's story were true, it would still be unconscionable for the appellant to resort to violence to recover a legitimate debt owed to him when legal avenues remained open and unexplored.

The investment agreement

31 The only evidence of the investment agreement was the appellant's evidence contained in his police statements and testimony at trial. His evidence in this respect was consistent as between his statements and testimony. As highlighted earlier, the appellant did not have any written evidence proving that the investment agreement between him and Roy existed, or that he had given Roy $50,000 to invest.

32 The appellant claimed that shortly after he got to know Roy, Roy proposed the investment agreement to him. Although he was interested, he did not commit to the investment immediately. The appellant later gave Roy the money after Roy had shown him around both Roy's own house and Roy's father-in-law's house nearby. It should be noted at this juncture that there was some controversy as to how he was able to correctly describe one aspect of the interior of the latter house. He did not ask Roy for written proof for fear of slighting Roy. Roy paid the appellant $5,000 monthly as promised in the first two months, but the payments became irregular in frequency and in amounts of $2,000 and $3,000 until the end of 2000, at which point the appellant had received a total of $60,000. All payments were made in cash, and there were no written receipts.

33 The absence of written evidence supporting the appellant's story made it difficult for the appellant to prove that the investment agreement existed. The appellant's dubious evidence made his task harder still. If the appellant was to be believed, not only was he entitled to a generous 10% monthly return on an investment in real property, he was also entitled to be paid monthly returns on an indefinite basis regardless of the actual performance of Roy's father-in-law's business, and still have his capital of $50,000 repaid upon termination of the investment agreement. These terms strained credulity and would have been commercially suicidal, especially in view of the adverse economic climate at the time.

34 Furthermore, if the appellant had received a total of $60,000 from Roy by the end of 2000, he would have already recovered his capital, and made a 20% profit over two years to boot. Yet he stubbornly insisted, in the absence of any documentary proof, that he was still entitled to be repaid his $50,000 capital over and above all accrued monthly payments that Roy owed him. The terms of the investment agreement were simply unbelievable, and were supported solely by the appellant's assertions.

35 It was strange that Roy would have stipulated the sale of his father-in-law's house as a

condition to him paying the appellant, when it would have been far easier for Roy to sell his own house to raise the money. Yet, at no point before 7 August 2003 did the appellant ever question Roy why this unusual move was necessary, or wonder if his trust in Roy was unfounded, even after two years had passed with no sign that the sale had taken place. He did not report Roy to the authorities or complain to anyone at any time. If the investment was in Roy's father-in-law's business, and he desperately needed the money, he could have gone directly to Roy's father-in-law. After all, he knew where Roy's father-in-law lived. This reticence to demand payment did not sit well with his evidence that he needed the money urgently to solve his own problems.

36 The appellant's evidence was that he had initially asked Nina to call her mother Susheela and not Roy, because Roy had told him that Susheela kept all the money. He claimed that he wanted Roy's family to know that he had given Roy money. Yet, he never told Nina or Susheela that the money he wanted was owed to him by Roy. Neither did he mention during his negotiations with Roy that the money he wanted was what Roy had owed him. Seen in this light, it was revealing that the appellant agreed without much dispute to lower his demand from $150,000, the amount in arrears that Roy allegedly owed him, to $50,000, the alleged amount of his capital. Considering that he had the upper hand and had Nina under his control, his defence stretched credulity.

37 Most importantly, it was the clear and unequivocal evidence of Nina and Roy that the appellant was a complete stranger to Roy. The judge was able to assess their evidence and demeanour in court, and accepted their evidence without qualification. Consequently, the whole of the appellant's story about the investment agreement was undermined. Roy testified that he did not visit the old Tan Tock Seng Hospital in 1997 or 1998, contradicting the appellant's evidence on how he first met Roy. When Roy first negotiated with the appellant on 7 August 2003, Roy addressed the appellant as "Sir". Roy's evidence was that the appellant was a stranger to him, and the appellant did not address him by name. Nina said that the appellant did not say anything to her about Roy during the incident. It did not appear to her that the appellant and Roy knew each other. Given the tense and precarious circumstances, it was difficult to believe that Roy would pretend not to know who the appellant was, when the life of his daughter was at stake.

Conclusion on the second charge

38 We saw no reason to disturb the appellant's conviction on the second charge. That the appellant had reiterated his story on appeal did not make the story any more convincing. The appellant might not have had the intention to hold anyone for ransom when he entered the compound of the Varghese home. He might have been taken by surprise by Nina's return home. His subsequent actions, however, demonstrated that he had formed the intention to hold Nina for ransom as the situation developed. He testified that he was prepared to hold on to Nina for as long as it took for Roy to return home and give him his money. He claimed to know Roy, but the recognition was not mutual. The appellant failed to establish the existence of the investment agreement with its incredible terms. During the incident, he made repeated demands for money, but never once mentioned the investment agreement or the debt Roy supposedly owed him. Even if Roy owed him money, the manner in which he sought to recover the money was abhorrent, and any money paid would have constituted ransom.

The first charge: committing mischief by fire

39 The appellant was charged with committing mischief by fire knowing it to be likely to thereby cause the destruction of the Varghese home. The appellant admitted at trial to starting the fire. The judge decided that just because the appellant was angry did not mean he did not have, or could not have formed, the intention to burn down the house.

40 The learned judge accepted the evidence of Nina and the maid that the appellant had taken out a lighter and had told them he would burn down the house with Nina and himself in it. He had instructed the maid to gather Nina's clothes into a pile, and had blocked the bedroom door with the bookshelf to prevent Nina and the maid from getting out and rescuers from coming in. He set the clothes in the wardrobe on fire apparently after realising that he was cornered and would not be getting any money. Even as suffocating black smoke built up in the bedroom, he refused to open the bedroom windows. He made no attempt to put out the fire as it spread, even though he could have obtained water from the adjoining bathroom. The appellant must have known that, by letting the fire rage unabated, the house would inevitably be destroyed.

41 At the trial, there was an attempt by defence counsel to discredit the maid's evidence, which centred on the small foldable knife the maid said the appellant had used in subduing her after he entered the compound. The appellant denied having such a knife on him. No such knife was recovered from the scene. The maid was slightly confused in her testimony when defence counsel asked her to describe the knife, and initially described the kitchen knife the appellant had taken after the two of them had entered the kitchen.

42 However, the learned judge noted that the failure to recover the small foldable knife might have been due to the messy state the bedroom was in after the fire was put out. What was more important was that he had observed the maid giving her testimony, and was satisfied that she was a truthful witness. In any case, this issue did not impinge on the material parts of the maid's evidence, which were supported by Nina's evidence. We did not see any reason to disturb the judge's decision in this respect. The appellant's submission before this court that he had been angry and suffering from high blood pressure when he started the fire was beside the point and did not excuse his actions.

The third charge: voluntarily causing hurt

43 The appellant did not make any submissions on this charge before us. At trial, he said that he did not know how the injury to Nina's left forearm was caused, and suggested that it might have been an accident. On the other hand, Nina's evidence was that the appellant suddenly raised up the knife and "chopped" her arm with great force. She likened the sound made by the appellant in doing so to that made by tennis players.

44 It consequently became important to examine the evidence of the two doctors who had examined Nina after the incident. Dr Ganesan Naidu, who saw Nina shortly after the incident, stated in his medical report that the injury was highly unlikely to have been self-inflicted. In court, he did not draw any conclusion as to whether the injury had been caused accidentally or intentionally. Dr Tay Wee Sen, who examined Nina on 11 August 2003, stated in his medical report that the injury was unlikely to have been self-inflicted. At trial, Dr Tay testified that the injury was unlikely to have been accidental or self-inflicted. Both doctors declined to give a conclusive answer when defence counsel asked whether or not the wound on Nina's arm was consistent with the amount of force used as described by Nina. Both said that various other factors had to be considered like the sharpness of the knife used.

45 The appellant's conviction on the third charge was correct. Nina was not necessarily being untruthful in her description of the force used by the appellant in inflicting the injury, considering that he had acted suddenly in conditions that were chaotic and frightening. The appellant did not offer any evidence to challenge Nina's evidence. The evidence of both Dr Tay and Dr Naidu, the only medical evidence adduced at trial, did not support the appellant's suggestion that the injury had been caused by accident.

The ninth charge: attempted murder

46 Again, the appellant did not submit on this charge on appeal. In convicting the appellant, the learned judge accepted Nina's evidence describing how the appellant tried to take her life.

47 The appellant, on the other hand, offered nothing more than a bare denial. That he could have killed Nina at an earlier time was neither here nor there, because the crucial point was whether he had the intention to kill her at the particular time. At the beginning, he might well have been holding out hope that the Vargheses would accede to his demand and he could get away with the money. As time wore on, he had clearly become angry and desperate enough to form the intention to kill Nina. This could be seen from Nina's note to Roy, and the series of events that began with the appellant setting the clothes in the wardrobe on fire. In the circumstances, it was unlikely that the appellant's claim that he had ultimately let Nina leave the burning bedroom was true.

48 Similarly, the appellant's contention that he would have succeeded had he wanted to kill Nina in the manner she described missed the point completely. At the time, the bedroom was filled with black smoke. The appellant and Nina both had problems breathing, which were not helped by the appellant's refusal to open the bedroom windows. The appellant eventually had to go into the bathroom to get some air. Meanwhile, Nina was still trapped in the bedroom, and was struggling to move the bookshelf blocking the door aside with her hands tied and her arm injured. It was a matter of speculation why the appellant did not manage to inflict what would almost certainly have been a fatal blow on Nina when she was at his mercy. Nevertheless, the appellant failed to challenge Nina's version of events, and this charge was made out against him. There was no reason for this court to disturb his conviction on this charge.

49 The inescapable conclusion was that the appellant's appeal against conviction on all four charges must be dismissed.

Sentence

50 In considering whether the sentences imposed on the appellant were manifestly excessive, it was relevant to consider that he had a prior conviction for wrongful confinement under s 342 of the Penal Code.

The second charge

51 Upon conviction of the offence of kidnapping for ransom, s 3 of the Kidnapping Act provides for the penalties of death or life imprisonment. Where the accused is sentenced to life imprisonment, caning may in addition be imposed.

52 The judge, in sentencing the appellant to life imprisonment and 24 strokes of the cane, was conscious of the well-established sentencing principle set out in *Sia Ah Kew v PP* [1972–1974] SLR 208, which was also a case involving kidnapping for ransom. Wee Chong Jin CJ said at 210:

> It is a long and well established principle of sentencing that the legislature in fixing the maximum penalty for a criminal offence intends it only for the worst cases. ... In our opinion the maximum sentence prescribed by the legislature would be appropriate where the manner of the kidnapping or the acts or conduct of the kidnappers are such as to outrage the feelings of the community.

53 The entire incident at the Varghese home took place over several hours. The maid was released unharmed, while Nina did not sustain serious injuries. The appellant did not appear to have

planned his actions thoroughly and evidently was repeatedly caught out by unforeseen developments. However, the appellant daringly entered the compound after the maid had ignored him. He armed himself with the kitchen knife, brandished it and ultimately used it on Nina. As shown by Nina's victim impact statement, he had inflicted on her enduring psychological harm during her ordeal exceeding and outlasting the physical pain he had caused her. He needlessly put Roy and Susheela in distress over the fate of their daughter. That the incident took place at their home only added to the trauma the appellant's actions had caused the family. In light of these factors, we were of the view that the sentence imposed by the judge was wholly appropriate.

The first charge

54 The fire started by the appellant caused substantial damage to Nina's bedroom and almost destroyed the Varghese home. The physical damage, though rectifiable, was yet another reminder to the Varghese family of what the appellant had done. The appellant made it clear to Nina and the maid that he intended to burn the house down. He started the fire with Nina still in the bedroom with him after it dawned on him that his audacious plan to get money was doomed. The fact that the fire was started in the context of a botched attempt at kidnapping for ransom justified the judge sentencing the appellant to seven years' imprisonment on this charge.

The third charge

55 The appellant used a sharp kitchen knife with some force to hurt Nina in her left forearm, although the injury was not too severe. The injury was inflicted after the appellant realised that the game was up for him. He had repeatedly threatened Nina's life, and had brandished the knife while interacting with Nina, making clear his readiness to use it as necessary. He had inflicted the injury without warning, and it must have appeared to Nina at the time that he was finally making good on his threats. In the circumstances, the sentence of two years' imprisonment and six strokes of the cane was not manifestly excessive.

The ninth charge

56 As the appellant did not actually cause hurt to Nina in attempting to kill her, the maximum punishment under s 307(1) of the Penal Code was ten years' imprisonment and fine. The appellant's attempt to kill Nina came while Nina was trying to escape the blazing bedroom and the appellant. He was enraged and desperate as his plans went awry. She was in a vulnerable position when he came up behind her, and would have found it very difficult to defend herself in the state she was in. Nevertheless, the appellant did not make contact with Nina's body and she got away with her life. On the whole, the sentence of five years' imprisonment was not manifestly excessive.

57 The appellant's appeals against sentence on all four charges were dismissed.

Conclusion

58 It remained something of a mystery how the appellant came to know of the Varghese family, and decided that they would be the ideal victims from whom he could get a substantial sum of money. What was clear was that in a matter of hours, he had threatened the Varghese family's peace of mind in their own home.

Appeal dismissed.