

Woon Salacion Dalayon v Public Prosecutor
[2002] SGHC 244

Case Number : MA No 171 of 2002
Decision Date : 18 October 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Zero Nalpon (Nalpon & Company) for the appellant; Eugene Lee Yee Leng (Deputy Public Prosecutor) for the respondent
Parties : —

Criminal Procedure and Sentencing – Appeal – Findings of fact – Approach of appellate court

Criminal Procedure and Sentencing – Sentencing – Criminal intimidation – Applicable principle(s) when determining appropriate sentence – Whether sentence manifestly excessive – Penal Code (Cap 224, 1985 Rev Ed) s 506

Evidence – Statements – Previous inconsistent statements – Whether reliance on portions out of context – Evidence Act (Cap 97, 1997 Rev Ed) s 147(3)

Judgment

GROUND OF DECISION

This was an appeal from the decision of district judge Jasvender Kaur who convicted the appellant on a charge of criminal intimidation under s 506 of the Penal Code (Cap 224) by threatening to kill one Belen C De Vera, one Mercedes J Padillo and one Anelita S Domingo. The appellant was sentenced to six months' imprisonment. She appealed against both her conviction and sentence. I dismissed the appeal against conviction but allowed the appeal against sentence. I now set out my reasons.

Background facts

2 The appellant, one Salvacion Dalayon Woon ("Woon"), is a Singapore citizen but a Filipino by birth. She is 38 years old and worked as an assistant manager with Signature Employment Agency. ("the agency"). The complainants specified in the charge – Belen C De Vera ("Belen"), Mercedes J Padillo ("Mercedes") and Anelita S Domingo ("Anelita") are all Filipinos who had been recruited to work here as domestic maids by the agency. A fourth complainant, one Marilyn Ventura Ober ("Marilyn") was also initially specified in the charge but her name was subsequently deleted on application by the prosecution.

3 The four maids were required to pay the agency a sum of S\$2,010 each as fees for arranging their employment here. This was to be paid in instalments via deductions from their monthly pay. At the time of the offence, each of them was still owing money to the agency in differing amounts.

Prosecution case

4 The relevant events happened on 8 August 2001. On the afternoon of that day, all four maids were at the agency, in the kitchen. Sometime in the late afternoon, a couple and their son went to the agency. They sat together with Woon and one Ruth Marie Low Chew Lo Teck ("Ruth"). Subsequently, an argument broke out between the couple and Woon. All four maids came out from the kitchen to peep at the quarrel and returned to the kitchen after it ended.

5 After the quarrel, Woon went to the kitchen and asked them if they were still willing to work in Singapore. All four remained silent. Woon then returned to her office and called the four maids in. They complied. In the office also at that time were Ruth and another Filipino maid called MaryLou.

6 Woon scolded the four maids for not answering her earlier and called both Anelita's aunt and Marilyn's agent in the Philippines. Woon told Anelita's aunt to prepare 70,000 pesos to pay the agency if Anelita wished to return to Philippines. Anelita was then told to speak with her aunt. Similarly, she told Marilyn's agent to prepare money. Marilyn and Belen (who had the same agent) were told to speak with the agent.

7 Woon then told the four maids that they would have to pay 70,000 pesos to return home, or she would hire someone to kill them in the Philippines and pay him 20,000 pesos to do so. The four maids testified that Woon was very angry when she uttered the threat. All three of the maids in court testified that they were very frightened and worried by the threat.

8 Subsequently, Woon and Ruth left the agency. The maids were left to spend the night there. After discussions, they decided to escape from the agency. They sawed through the padlock on the gate and took a taxi to the Philippine embassy. It was shortly after midnight and the embassy was closed.

9 Anelita then contacted one Jocelyn Bayduan ("Jocelyn"), a Filipino domestic maid working here, for help. Jocelyn and her employer met the four maids and took them to a police station.

10 Jocelyn testified under cross-examination that Anelita had told her that the agency had threatened them when she met the four maids. At the police station, Anelita then told her about the details of the threat, that *"the agency had asked them to pay a big sum of money, failing which the agency would hire someone to kill them."*

Appellant's Defence

11 Woon made a statement P3 on 11 August 2001 to the Investigating Officer one M Saravanan ("Saravanan"). In subsequent investigations, Woon refused to sign her s 122(6) statement taken by Saravanan on 8 January 2002.

12 Ruth was also called as a defence witness. Ruth gave a statement P4 to Saravanan on 22 August 2001.

13 In court, Woon testified that on 8 August 2001, MaryLou had informed both her and Ruth that the maids were planning to escape. They had not taken this seriously.

14 After the quarrel with the couple, she had asked Ruth to call the four maids from the kitchen. This was to tell them to prepare themselves as Woon wished to bring them home so as to take them to the zoo the next day. The maids remained silent and she asked Ruth to tell them to return to the kitchen.

15 At around 6.30 pm, Woon asked Ruth to call Marilyn to the office to talk to her agent. Woon called the agent on the telephone and asked Marilyn to speak with him. Marilyn remained silent. After that, at about 7.29 pm, the appellant again asked Marilyn to speak to her agent. Once more, Marilyn remained silent. At this time, only Woon, Ruth, Marilyn and MaryLou were present. According to Woon, she then turned behind to Ruth and said *"Na (meaning Ruth), if Marilyn behaviour like this in Philippines can be killed."* Woon further claimed that she was crying at this time. Ruth comforted her

and sent the two maids into the kitchen.

16 Ruth's version of events given in court was substantially similar to Woon's.

The decision below

17 The prosecution applied to impeach Woon and Ruth based on the inconsistent statements that they had given previously. Both were given the opportunity to explain the inconsistencies.

18 Woon claimed that she was confused due to problems with her children at the time of the statements and also that she did not say what had been recorded. Similarly, Ruth claimed that she had been confused at the time of making the statement.

19 The district judge rejected their explanations and found that both had had their credit impeached. She then allowed the two statements into evidence pursuant to s 147(3) of the Evidence Act (Cap 97). She accepted the maids' evidence that Woon had threatened them, that all of them had been in the presence of Woon when the threat was made, and also as to the details of the threat. She found further support for this finding from the testimony of Jocelyn.

The appeal against conviction

20 The grounds of appeal consisted of challenges to the findings of fact made below. It is trite law that the appellate court will not disturb the findings of fact of a lower court unless they are clearly reached against the weight of evidence – *Lim Ah Poh v PP* [1992] 1 SLR 704. An appellate court must not merely entertain doubts about whether the decision is right but must be convinced that it is wrong: *PP v Azman bin Abdullah* [1998] 2 SLR 704.

21 Woon contended that as the findings of the lower court arose primarily from inferences made from the content of a witnesses' evidence here, the appellate court was in as good a position to review the evidence and come to its own conclusions. Counsel cited my judgement in *PP v Choo Thiam Hock* [1994] 3 SLR 248 as support. In my opinion, this arose from a misunderstanding of what I said in that case. In both *Choo* and *PP v Tubbs Julia Elizabeth* [2001] 4 SLR 75, I had emphasised that it would only be in exceptional cases where "*logic clearly militates against findings of fact made by the trial judge*" that the appellate court would review the findings of the lower court, even when the demeanour of the witness was not in issue in the determination of his/her credibility.

22 It should be clarified that *Choo* does not lower the bar for appellate intervention. The significance of a finding based primarily on evidence for the appellate court would only be that it is better equipped to conclude that the judge below was plainly wrong. The principles enunciated in *Lim Ah Poh* and like cases must still be applied and kept foremost in the mind of the appellate court.

23 The grounds of appeal could be broadly dealt with under the following headings:

(1) Whether the judge below had been mistaken in her reliance on the portions of the appellant's (P3) and Ruth's (P4) statements by taking them out of context

24 The material portions of P3 and P4 are as set out:

P3

"5. On 8 August 2001, I had called 'Marilyn' and 'Anelita'. I

told them that there

*had still owed their respective agents money for coming to Singapore. As such, it was difficult to have them send back. They insisted and I blew my top. **I told them that I would have someone kill them.** During this conversation, 'Mercedes' and 'Belen' were also around the office and I believe that they could have heard the threat. I wish to say that I have no intention of carrying out the threat."* [emphasis added]

P4

"4. On 8 August 2001, I was in the office together with

[the appellant], Anelita and Marilyn. [Woon] had allowed Marilyn and Anelita to talk on the phone. Thereafter Susan and the 2 maids engaged themselves in a conversation. During the conversation, [Woon] got angry, as both were indecisive of wanting to work in Singapore. **She told them that she would kill them.** I then advised them about their well-being and to work properly for the next employer. They were laughing and went back to the kitchen area. During our conversation, Mercedes and Belen were in the kitchen. I went home at about 8.00pm." [emphasis added]

25 Woon contended that, in relying on the highlighted portions to find that she had made the threat to *all four* maids, the judge below had erred as the context of the statements set out was that the appellant had made a threat *only* to Anelita and Marilyn

. Thus, the district judge took the portions out of context in her reliance on them to find that the threat had been made to the four maids.

26 In support, I was quoted the guidelines laid down in *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25 at 58-59 on the factors to consider in determining the weight of a statement admitted under s 147(3) of the Evidence Act (Cap 97). Specifically, I was referred to the following part of my judgement:

Fourth, regard should be had to the context of the statement. Subsection (6) does not restrict consideration to only the making of the statement but requires consideration of all the circumstances affecting its accuracy. Thus, the court must consider the context of the inconsistent portions, which requires that the whole of the statement be examined. **Reliance cannot be placed on a portion of the statement that is taken out of context.** [emphasis added]

27 I found this challenge to be misconceived. The judge below did not rely on the statements in finding that the accused had made a threat to the maids; her reliance on them in this respect was limited to the *tenor of the words* which the accused uttered. This was evident in 71 of her Grounds of Decision:

The material portion of the accused's statement that she had threatened the maids by stating that she would hire someone to kill them **was consistent with the threat which the maids had testified was made.** [emphasis added]

28 It was clear here that the judge below was concerned with the *details* of what Woon had

said, not whom she had said it to. There was clearly nothing wrong in relying on the statements in this way. While relying on the highlighted portions to show that a threat was made to all the maids might have infringed the principle from *Kelvin Chai*, the same could not be said of reliance on it merely as evidence of what was said by the accused at the relevant time.

(2) Whether the judge below erred in her selective reliance on P3 and P4

29 Woon's challenge here was that the judge below had rejected portions of the statements inconsistent with the prosecution case without giving good reasons in coming to her findings. Specifically, they pointed to her findings that all four maids were called to the office and threatened, that Woon, Anelita, Marilyn and Belen had used the telephone in the incident and that the maids had all been alarmed by the threat.

30 I found these contentions without merit. All the inconsistencies raised had been dealt with fully by the judge below. It was only in respect of the last issue that she had failed to give consideration to Ruth's statement (P4) that the two maids were "*laughing and went back to the kitchen area*" after the threat. In my opinion, the judge below should have given her reasons for rejecting this, since it related to the important issue of the effect the threat had on the maids. However, in view of her finding that:

i four maids had been involved in the incident, rather than two as the statement claimed; as well as the fact that

ii there was strong evidence that the maids were scared by the threat such as the circumstances of their escape and the evidence given by both Jocelyn and the police officer on duty, to whom the maids had made their police report to the effect that the maids had looked scared and worried;

I found her lack of reasons to be of little consequence.

(3) Whether the judge below was correct in rejecting the Woon's explanation for her inconsistent statements

31 Woon had tried to explain her inconsistent statement by claiming that she was confused at the time of its making. This was due to the fact that she suspected her maid of having sexually abused her daughter and also that her son had been injured. Woon contended that the effect of an apprehended sexual assault on her daughter should have been considered by the judge below.

32 In my view, the judge below was correct in rejecting this explanation. First, Woon had not been consistent in her explanations to the court. When she was first cross-examined on the inconsistencies, she claimed that she was unable to recall if she had indeed said the things recorded in the statement. On later cross-examination, she clarified that she was *only* confused about 5 (reproduced above) and 9 (not relevant to the charge) of the statement. However, on re-examination, the appellant was suddenly able to list out in detail what she had told to Saravanan in *every paragraph*, especially with regards 5. This was also where she alleged that the statement recorded was *not* what she said. The miraculous recovery of her recollection flies plainly in the face of her alleged "confused" state.

33 This was further reinforced by Woon claiming to have said the last sentence of 5, that she did not intend to carry out the threat, yet concurrently deny that she had said the other parts of 5.

34 Secondly, Woon's statement was materially similar in content to Ruth's statement. Although Ruth was also apparently "confused" when she made the statement, it was certainly not for the same serious reasons as Woon. As appropriately put by the judge below at 66 of her Grounds of Decision, it was "...*incredible that (Woon and Ruth) were confused and ended up making the same mistake.*"

35 Finally, evidence given by the defence showed that Woon had taken her daughter to a doctor on 5 August 2001, and the results of the doctor's examination had been that there was no evidence of sexual abuse. In view of all the above, the judge below was clearly right to reject Woon's explanation.

(4) Whether the judge below erred in accepting the testimonies of the maids given the numerous discrepancies in their evidence

36 The appellant alleges that the trial judge erred in accepting the evidence of the maids, given the numerous discrepancies in their testimonies in court about the events of that day and in relation to each other. These related to, *inter alia*, whether they all stayed in the agency on 7 August 2001, the fact that they could not recall the argument between the appellant and the couple and their conflicting testimonies as to who used the telephone at the time of the offence.

37 After carefully considering all the evidence, I was of the opinion that there was nothing wrong with the findings of the judge below. In *Ng Kwee Leong v PP* [1998] 2 SLR 942, the court stated clearly that immaterial discrepancies would not detract from the veracity of witnesses on material issues. As the Chief Justice held in that case,

Adequate allowance must be given to human fallibility in the precise assessment of short spans of time.

In addition, the maids' accounts were corroborated to some extent by the testimony of Jocelyn.

38 One point, however, stood out. Counsel for Woon contended that the possibility of collusion by the maids should have been considered by the judge below since their testimonies coincided on many material aspects. While it is true that a trial judge should always be alive to the possibility of prepared testimonies by witnesses, it is surely plausible that testimonies coincide because the facts described within are true.

39 Numerous other grounds of appeal were raised, but I found of them to be of little or no merit. Accordingly, I found no reason to disturb the district judge's findings and dismissed the appeal against conviction.

The appeal against sentence

40 The offence of which Woon had been convicted fell under the second limb of s 506 of the Penal Code (Cap 224) for being a threat to cause death. The maximum punishment is a term of imprisonment up to seven years or a fine or both. She had been sentenced to six month's imprisonment, which was the normal tariff for an offence of this nature.

41 Taking into account the circumstances of the current case, I was of the view that the sentence meted out by the judge below was manifestly excessive.

42 It bears remembering that while an objective view is taken of the words uttered and their effect, for the purposes of determining whether an offence under s 506 was made out and which limb

it fell to be punished under, the considerations for the court in passing sentence are very different.

43 In determining the appropriate sentence to be passed in offences of this nature, the court has to consider carefully the events and circumstances surrounding its commission. The question to be determined is always this: to what extent can there be said to have been a serious threat made? In determining this, both the intention of the maker of the threat as well as the fear that the victim was put in due to the threat are of great relevance: see *Lee Yoke Choong v PP* [1964] 1 MLJ 1964, *PP v Luan Yuanxin* [2002] 2 SLR 98.

44 In the present case, I did not think that there was any question that the threat was neither seriously intended to be a threat to life, nor understood as such by the victims. First, it was undisputed that Woon was extremely angry when she uttered the threat. Secondly, the threat took place in the presence of two other people – Ruth and MaryLou. Thirdly, the victims were put in no immediate fear for their lives. No weapons were used; neither did the context of the threat itself lead to an apprehension of *immediate* hurt.

45 The trial judge had herself found that "*there can be no doubt that the accused never intended to carry out the threat.*" The actual effect of the threat of death on the victims was also not severe. While they were frightened enough to escape, all of them testified that they had wanted to return to the Philippines after the threat was made despite their fear.

46 In addition, none of them were harmed. Woon had left them alone in the agency after the incident and, according to the maids' evidence, had even offered to take one of them to the zoo with her the following day. The threat was also not prolonged; the maids were sent to the kitchen immediately after Woon uttered the threat.

47 A perusal of past cases shows that the present situation is distinguishable. In *Ramanathan Yogendran v PP* [1995] 2 SLR 563, the accused solicitor had uttered the threat to kill over the telephone after a quarrel with the victim the previous day. In reducing the sentence from a year's imprisonment to six months, I stated that "**a threat to kill someone which is made in all seriousness is not something to be taken lightly**" [emphasis added]. I found the present case, where the threat was uttered in anger and very obviously on impulse, to be of even lesser gravity than in *Ramanathan*, where the phone call was clearly pre-meditated.

48 In *PP v N* [1999] 4 SLR 619, where the accused had also threatened to kill his wife via telephone, a sentence of one year's imprisonment was imposed. There were many aggravating factors in this case, not least the fact that it was in the context of a violent domestic relationship where there was every likelihood of the threat being carried out, as well as the fact that three other charges had been taken into consideration for sentencing. This was not the situation here. It was the evidence of the maids that they had been well-treated by Woon prior to the incident.

49 The other cases cited by the DPP in support of the sentence passed were also distinguishable as they concerned threats made using weapons, which were clearly aggravated.

50 The context of the threat in the circumstances of the present case was unique. Woon was not a mafia boss or criminal mastermind, she was only a manager in a maid agency. While it is undoubted that the maids were put in fear by her threat to hire a killer, the amount of fear thus induced could not have been as great as in the cases previously discussed.

51 I was also of the opinion that part of their fear stemmed from the demand for payment Woon had made of them. This is shown by the excerpt below from Mercedes' testimony:

"Q: What was discussed?

A: We did plan to escape **because of the money the Accused is asking us to pay** and the threat of killing us."

[emphasis added]

In similar vein, Anelita also stated in her Examination in Chief:

"Q. Why did you not stay at 329 Changi Road. Why did you have to get out?

A. The reason why we did not stay and thought of escaping was **because we were told to pay the 70,000 pesos and we were so scared** and that is why we did not stay and because of the threat to us."

[emphasis added]

52 Counsel for Woon argued strenuously that the present case did not merit a custodial sentence. I disagreed. Threats to cause death, no matter how casually said, are a serious matter and are so regarded by the court. Offences under the second limb of s 506 are invariably punished with custodial sentences because of the seriousness of these offences.

53 However, having taken the factors discussed above into account, I was of the view that a sentence of three months imprisonment would be more appropriate in this case. I therefore allowed the appeal against sentence and varied it accordingly.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore