Public Prosecutor v Yong Siew Khian
[2003] SGHC 230

Case Number : MA 10/2003

Decision Date : 06 October 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Eddy Tham (Deputy Public Prosecutor) for the appellant; Rashidah Saheer (Surian and Partners) for the respondent

Parties : Public Prosecutor — Yong Siew Khian

Criminal Law – Offences – Hurt – Whether trial judge erred in his findings of fact leading to acquittal of accused – s 337 Penal Code – Causing hurt by act which endangers life or personal safety and voluntarily causing hurt to domestic maid

1 The respondent, Yong Siew Khian ('Yong'), was acquitted in the magistrate's court on the following three charges of maid abuse against her domestic maid, one Mursiyani Mistam ('Mursiyani'):

> *1st Charge (MAC 4779 of 2002)*
>
> You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you on or about August 2001, at about 11.00am at Blk 737 Pasir Ris Drive 10 #03-39, Singapore, caused hurt to one Mursiyani Mistam, by doing an act so negligent, to wit spilling hot water from the kettle onto the left ear and back of the said Mursiyani Mistam and thereby committed an offence punishable under Section 337 of the Penal Code, Chapter 224.
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> *2nd Charge (MAC 4780 of 2002)*
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> You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you on or about the 16th of September 2001 at about 8.00pm at Blk 737 Pasir Ris Drive 10 #03-39, Singapore, being the employer of a domestic maid, one Mursiyani Mistam, did voluntarily cause hurt to the said Mursiyani Mistam, to wit by punching her left triceps, and you have thereby committed an offence punishable under Section 323 read with Section 73(2) of the Penal Code, Chapter 224.
>
> *3rd Charge (MAC 4781 of 2002)*
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> You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you in the month of September 2001, at Blk 737 Pasir Ris Drive 10 #03-39, Singapore, being the employer of a domestic maid, one Mursiyani Mistam, did voluntarily cause hurt to the said Mursiyani Mistam, to wit by using a plate to hit her head, and you have thereby committed an offence punishable under Section 323 read with Section 73(2) of the Penal Code, Chapter 224.

2 The prosecution appeared before me to appeal against Yong's acquittal on all three charges. I dismissed the appeal and set out the reasons below for my decision.

Background facts

3 The alleged victim, Mursiyani, an Indonesian, was 22 years old at the time of the trial. She started working for Yong as a domestic maid on 26 July 2001 after arriving in Singapore a few days

before. This was her first job in Singapore. Her responsibilities included looking after Yong's two young children, fetching them to and from school, house-cleaning, cooking and ironing clothes.

4 Yong was a 34-year-old working mother at the material time, working as a sales executive. She had employed five maids over a period of three years and Mursiyani was her fifth maid.

5 The police report was lodged by one Siti Chotimah ('Siti'), a neighbour of Yong, to whom Mursiyani had complained of being abused.

The appeal

6 The appeal centred on the magistrate's findings of fact. The prosecution submitted that those findings were reached against the weight of the evidence.

The first charge

7 The fact that Yong had caused hurt to Mursiyani by spilling hot water onto her ear and the back of her body was not disputed. What was in contention was whether it was an accident as opposed to a negligent act under s 337 of the Penal Code.

8 According to Musiyani, Yong was upset with her for not using the hot water from the kettle. When Mursiyani replied that she did not know that there was hot water in the kettle, Yong lost her temper and said, "Look, this is hot water, you don't know? Everything, you don't know!" Yong then proceeded to lift up the kettle and chased after Mursiyani, saying, "See, see, see." In the process, hot water spilled onto Mursiyani's left ear and back. Mursiyani then screamed, squatted down and cried. Yong quickly closed the kitchen door for fear that her husband, one Tay Kok Lin ('Tay'), would hear Mursiyani. Thereafter, Yong apologised to her and applied ice to her back. Yong also told her not to report the matter to her agent and to lie that the injury to her ear was caused by hot oil should anyone ask about it.

9 Yong's version in court was that she was carrying the kettle from the stove to pour into the flask when Mursiyani, who was then washing dishes at the kitchen sink, suddenly moved back two steps towards her. To avoid Mursiyani, Yong lifted the kettle up. Unfortunately, in the process, hot water spilled out from the kettle onto the neck and back of Mursiyani. Yong apologised to her and applied ice to her ear and a cream for burns on her back. Mursiyani declined Yong's offer of medical attention. That evening, when Tay returned home from work, Yong told him of the incident. He examined Mursiyani's ear and also asked if she wanted to see a doctor. She again declined.

10 It was Yong's version that the magistrate chose to believe. On appeal, the prosecution submitted that Yong's version was incredible for the following reasons. First, it involved Mursiyani walking backwards away from the kitchen sink, instead of doing the more natural thing, which was to turn around and walk away. Second, Yong could not have lifted the kettle up in her attempt to avoid Mursiyani since the kettle was full and heavy and would have taken a lot of strength to be lifted up to the ear level. It was also more natural and instinctive to move the kettle sideways as opposed to upwards to avoid another person. Third, Yong and Tay had themselves, in their police statements, described the evasive action taken by the former, as "back away" and "pulling the kettle back" respectively, rather than "upwards". They contradicted themselves on this point later in court.

11 The prosecution further submitted that the magistrate had erred in finding the undisputed fact of Yong apologising to Mursiyani and treating her injuries to be at odds with the version given by Mursiyani, because Yong would not have apologised to Mursiyani immediately after the hot water spilt

on the latter if she had been angrily chasing her. Instead, the prosecution contended that the apology was entirely consistent with Mursiyani's version as it was highly plausible that after hearing Mursiyani's screams, Yong realised the extent of harm caused by her in a fit of anger and instantly felt regret and remorse.

12 As far as I could see, all these arguments were based on mere speculation and not evidence. For instance, even though there was some force in the prosecution's argument that the more natural thing to do would be to turn around and walk away from the sink after the washing up is done, it seemed equally possible to me that someone might move backwards away from the sink if she was still checking to make sure that the sink was clean after the washing up. It was a matter of pure speculation as to which action Mursiyani had taken.

13 Similarly, depending on the amount of space between where Yong was standing and the kitchen walls, it was perfectly possible that she had only enough space to move the kettle upwards rather than sideways or backwards. There was also no evidence that the kettle was full or that if it was full, it would have been too heavy for a adult female to lift up. Although I agreed that the magistrate should not have dismissed the possibility of Yong apologising immediately to Mursiyani after losing her temper, it was again possible in either version for Yong to apologise right after hurting Mursiyani, whether accidentally or deliberately. Again, it was speculative as to which of the possible events took place.

14 In the event that conflicting versions of events are equally plausible, such that the judge below cannot be shown to have been wrong in his choice of which to believe in, the appellate court is unable to reverse the magistrate's decision. This principle was clearly established in *PP v Azman bin Abdullah* [1998] 2 SLR 704, and reiterated countless times in subsequent cases. I needed to elaborate no further. I was of the opinion that such was the case here and was therefore unable to allow the appeal on these grounds. As for Yong and Tay's contradictory statements, they related to the credibility of witnesses, which I would deal with later.

The second charge

15 Mursiyani claimed that Yong was dissatisfied with her ironing of Tay's shirt at the material time. Yong pinched Mursiyani on the back of her left arm and then pulled her away while still pinching her. Mursiyani cried and noticed that the area pinched was bluish-red. Yong then took over the ironing of the shirt.

16 Yong, however, denied ever pinching Mursiyani because of dissatisfaction over her ironing. She did, however, admit to having used force on Mursiyani only on two occasions – once to pull her back when Mursiyani had half her body outside the window whilst cleaning it, and another time to demonstrate the meaning of 'pinch' to Mursiyani by pinching the back of Mursiyani's hand.

17 The prosecution drew my attention to the incontrovertible evidence that the medical examination, conducted just after the police report was lodged, revealed that Mursiyani had suffered a bruise. The examining doctor, one Dr Teoh Hock Luen ('Dr Teoh'), had recorded a spiral-shaped bruise five cm in diameter on Mursiyani's left triceps and gave evidence that the injury was unlikely to be self-inflicted as the shape of the bruise suggested that twisting was involved.

18 The magistrate considered Dr Teoh's testimony to be "neither unequivocal nor conclusive" and that "he was clearly not prepared to rule out the possibility of self-infliction". The magistrate therefore decided on his own accord that since the bruise was two inches from the left elbow on the triceps, it would be readily accessible by one's right hand and self-inflicting twisting was therefore

"not difficult".

19 The prosecution took issue with this finding and argued that the magistrate had erred in expecting the evidence to be totally unequivocal before it could be relied on. The prosecution also claimed that the magistrate had substituted his own opinion for that of the expert medical witness, thus offending the principle in *Saeng-Un Udom v PP* [2001] 3 SLR 1, which prohibits a judge from rejecting and substituting with his own opinion unopposed expert evidence on a matter outside the learning of the court.

20 I did not agree with the prosecution that the magistrate had contravened the principle in *Saeng-Un Udom*. This was not a matter outside the learning of the court and the magistrate was thus entitled to draw his own conclusion, especially in light of the equivocal medical evidence. The matter simply revolved around whether it was possible to self-inflict a bruise on one's left triceps by twisting with one's right hand. The magistrate could easily have checked if the right hand was accessible to the spot of injury by moving his right hand over to his left triceps. This was unlike the situation in *Saeng-Un Udom* where a judge could not be expected to possess knowledge of the type of weapon required to cause fatal injuries. Furthermore, the notes of evidence recorded Dr Teoh's admission during cross-examination that self-injury was "not impossible". Such equivocal medical evidence, coupled with the fact that the matter fell within the learning of the court, precluded me from finding that the magistrate had erred in his finding.

21 I was further unable to concur with the prosecution's submission that the magistrate was wrong to have found that "it would also be unsafe to rule out the possibility that the bruise may have been inflicted by one of [Yong's] children". The magistrate had arrived at this conclusion by weighing Dr Teoh's refusal to rule out this possibility together with Mursiyani's own evidence that the children were rough with her and that the four-year old boy had single-handedly caused her to suffer an injury behind her right ear.

22 The prosecution submitted that the magistrate's reasoning was against the weight of the evidence as there was no allegation by any of the witnesses that either of the children had pinched Mursiyani. It was further claimed that the magistrate had failed to appreciate Dr Teoh's evidence that it was very unlikely that a child of seven years and below was able to inflict a twisting injury to the extent that it would cause a spiral bruise with a diameter of five cm.

23 I could not accept the prosecution's submission that there must be some allegation that the children had pinched Mursiyani before the magistrate could consider that possibility. As long as there was a reasonable doubt that someone other than Yong could have objectively caused the injury, the magistrate was bound to acquit Yong. This was regardless of whether there were specific allegations by witnesses that either of the children had caused it. The lack of allegations also did not render it less likely that the children could have caused the injury.

24 In addition, it was clear to me, from perusing the notes of evidence, that Dr Teoh had merely testified that it was "not impossible" for a hyperactive eight-year-old to inflict the injury. Since Yong had an eight-year-old daughter suffering from hyperactivity, the magistrate was entitled to conclude that there was a reasonable doubt that one of Yong's children (or at least the daughter) had inflicted the injury. Taking the evidence in its totality, I was unable to allow the appeal against acquittal on this second charge.

The third charge

25 The third charge was that Yong had hit Mursiyani on the head with a plate. Mursiyani's

evidence was that it happened one morning before Yong left for work. Yong had checked a plate which Mursiyani had earlier washed and found that it was not clean. She then used the plate to knock Mursiyani on the head. Yong denied this completely.

26 The magistrate noted that Mursiyani claimed that she had informed Dr Teoh of this incident but this claim was not borne out either by the medical report or Dr Teoh's testimony. In fact, Dr Teoh was unequivocal that no such complaint had ever been made. The magistrate thus chose to disbelieve Mursiyani. The prosecution submitted that this contradiction was not the result of a deliberate lie but arose out of confusion on either the part of Mursiyani or Dr Teoh. Alternatively, the prosecution submitted that it was possible that Mursiyani might not have communicated effectively to Dr Teoh the fact of this additional assault.

27 Again, this submission was not supported by evidence and I could not make a decision based on speculation as to whether there was indeed confusion or miscommunication. The magistrate's acceptance of Yong's version in preference to Mursiyani's was not shown to have been wrong. The principle in *Azman bin Abdullah* prevented me from interfering with the magistrate's decision. Once again, I had to dismiss the appeal against acquittal on this charge.

Credibility of witnesses

28 The prosecution submitted that the magistrate was wrong to disbelieve the testimony of Mursiyani as it was corroborated by the evidence of the complainant, Siti, as well as that of another neighbour, one Fauziah Bte Mohd Yusof ('Fauziah'). The magistrate, however, found Siti to be a gullible and unreliable witness whose gullibility was manipulated by an intelligent and shrewd Mursiyani into making a police report on her behalf. As for Fauziah, he found that her testimony failed to add much weight to the prosecution's case because her knowledge of the case was largely based on hearsay.

29 It is trite law that the assessment of the credibility of witnesses is best undertaken by the trial judge. The appellate court has no cognisance of the demeanour of the witnesses and is hence not in the best position to decide whose testimony to believe. The prosecution, however, went to great lengths in their written submissions to try and convince me that Mursiyani was telling the truth, pointing out, for instance, that the spontaneous circumstances under which she revealed her bruise to Siti meant that she could not have manipulated the situation. In my view, the spontaneity of the revelation of the injury did not contradict the possibility that the injury could have been caused by one of Yong's children. My review of the totality of the evidence also showed that none of the other objective facts contradicted the magistrate's findings. Hence, given that I had no opportunity to observe the demeanour of the witnesses, I could not substitute the magistrate's opinion to come to my own conclusion that Mursiyani was a more reliable witness than Yong.

30 I further noted that Siti had testified that the bruise was on the upper front portion of Mursiyani's arm whereas Dr Teoh had found the bruise to be two inches above her left triceps. This rendered Siti an unreliable witness. The discrepancy related to a key issue in her testimony, namely, that she had seen the bruise on Mursiyani's arm. I therefore had no grounds upon which to find that the magistrate had erred in rejecting Siti's testimony as having any corroborative value.

31 I also could not accept the prosecution's submission that the magistrate was wrong in treating Yong and Tay as credible witnesses on the basis of the discrepancy between their police statements and their testimonies pertaining to the action taken by Yong to avoid injuring Mursiyani with the hot kettle. In the police statements, Yong and Tay had described the evasive action as "back away" and "pulling the kettle back" respectively, but in court, both had claimed that the kettle

was in fact *lifted up*. I agreed with the magistrate that the inconsistency was a minor one. It could be easily explained by the fact that Yong had made the split-second decision to take the evasive action when she saw Mursiyani backing into her, and may not have remembered exactly how she avoided the latter. Alternatively, she could have been both backing away and lifting up the kettle at the same time to avoid Mursiyani. I found that the magistrate was entitled to regard these possibilities as probable after taking into account the demeanour of both Yong and Tay.

32 The magistrate found Tay to be "consistent and coherent throughout his statement and court testimony" and Yong's evidence to be "coherent, materially consistent and reliable". He came to this conclusion based upon the candour with which Yong answered each question, and her admissions to scolding Mursiyani when the latter failed to meet her expectations or made mistakes. Furthermore, I noted that Yong had admitted to using force on Mursiyani twice even though this was denied by Mursiyani. This was not an admission that would have helped Yong's case. As for Tay, he readily admitted to hearing his wife scold Mursiyani fairly frequently in the first month, even though this might have been adverse to his wife's defence. It was unsurprising then, that the magistrate had found them to be forthcoming witnesses and was willing to disregard minor inconsistencies in their testimonies.

Conclusion

33 For the above reasons, I found that the prosecution's grounds of appeal could not be sustained. I dismissed the appeal accordingly.

Appeal dismissed.

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