

S Gopikrishnan v Public Prosecutor
[2013] SGHC 125

Case Number : Magistrate's Appeal No 149 of 2012
Decision Date : 01 July 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Gopinath Pillai (TanJinHwee LLC) for the Appellant; Ng Yiwen (Attorney-General's Chambers) for the Respondent.
Parties : S Gopikrishnan — Public Prosecutor

Criminal Procedure and Sentencing – Voluntarily causing grievous hurt – Road rage

1 July 2013

Judgment reserved.

Choo Han Teck J:

1 The appellant was driving his 13-year-old son to school in the morning of 3 May 2011 along Bartley Road, 'battling the morning rush hour', according to the trial judge, when he swerved into the complainant taxi-driver's path. Temper quickly overcame both drivers with one sounding his car horn and the other (the appellant) gesturing with his finger (he claimed that he raised his hand but not finger). When the vehicles stopped, the appellant noticed that the taxi-driver had picked up his camera to take a picture of the appellant and his car, and that somehow increased the appellant's rage. He got out of his car and walked to the taxi driver who was attempting to take his picture. These were the uncontroversial facts.

2 The taxi-driver's account thereafter was that the appellant went up to his taxi and tried to wrest the camera from him, and at the same time he shouted 'Give me the camera you fucking bastard, or I will punch your face.' When he failed to get the camera, the appellant walked back to his car but he turned back when he saw that the taxi-driver was still using the camera. He walked back to the taxi and tried once more to grab the camera. The taxi-driver used his right hand to fend off the appellant. That was when the appellant pulled the taxi-driver's middle finger causing a sharp pain. The doctor, Dr Seah Chee Yong ("Dr Seah"), who examined the taxi-driver testified that his examination and the x-ray report showed that the taxi-driver suffered an 'avulsion fracture of the right middle finger at the third middle phalanx'.

3 The appellant denied that he had shouted vulgarities at the taxi-driver and that it was the taxi-driver who used vulgarities. He denied touching the taxi-driver at all. The trial judge accepted the taxi-driver's version and convicted the appellant on charge under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") for causing grievous hurt to the taxi-driver, and sentenced the appellant to eight months imprisonment. The appellant was also ordered to pay \$120 as compensation under s 359 of the Criminal Procedure Code (Act 15 of 2010).

4 The appellant appealed against conviction and sentence. So far as the conviction was concerned, Mr Gopinath Pillai, counsel for the appellant, realised that the appellant had to offer an alternative account of the taxi-driver's injury. Thus counsel submitted that the avulsion fracture could have been caused when the tax-driver tapped that finger vigorously and repeatedly against the driver's window of his taxi. Counsel had hoped that the brief account at trial where the appellant had

claimed that the taxi-driver 'jabbed his finger' at him in a vulgar way, might help raise a reasonable doubt that the injury was inflicted by the appellant. The main defence at trial appeared to be a denial of contact and thus, the injury was fabricated by the taxi-driver. The trial judge disbelieved the appellant's account. On the evidence, I am of the view that there is no basis for this court, on appeal, to interfere with those findings.

5 In respect of the sentence, it was clear that the judge took into account the fact that the charge was not just the usual road rage offence because the appellant in this case was charged for causing grievous hurt and not simple hurt. It is plain that the former is a much more serious charge because the injuries contemplated under s 325 of the Penal Code are serious and debilitating ones. One of those injuries that would bring a case within the ambit of s 325 is a fracture injury. However, in this case, the medical evidence and the evidence of the taxi-driver showed that while the injury to the middle finger had caused pain and was properly diagnosed as an avulsion fracture, it was, in fact, not as serious as the term 'fracture' suggested. Dr Seah described the injury as a 'sprain injury' although the pain could be 'quite great'. There was some swelling of the finger, but the taxi-driver did not require hospitalisation, and Dr Seah testified that the taxi-driver was 'treated non-operatively'. The injury did not prevent the taxi-driver from continuing to drive and work. Subsequent follow-up indicated that the injury healed.

6 I take into account the finding that the injury was caused by the appellant pulling the taxi-driver's finger (in the course of trying to grab the camera), and that apart from that no other violence was used. Cases of road rage offenders charged under s 325 have shown more aggravating circumstances: in *Public Prosecutor v Lee Seck Hing* [1992] 2 SLR(R) 374; [1992] SGHC 185, the accused had fractured the victim's right arm, tailed the victim to the hospital, then threatened him with further injury while he was apologising; while in *Public Prosecutor v Tan Eng Heong* [2010] SGDC 303, the accused had hit the victim with a wooden pole a few times and only ceased because he had to resume control of his car. It seems to me that although the charge and the conviction were proper and correct, the circumstances indicated that this case was more akin to a case of causing simple hurt in the course of a road rage.

7 Even so, comparing this case with other road rage cases in which simple hurt was caused, the injury caused was not in fact as serious as some others. In *Neo Ner v Public Prosecutor* (MA 113 of 2000, unreported), the accused was sentenced to three months' imprisonment for slamming the victim's car door in the victim's face, causing a laceration to the cheek and back of his head; in *Ong Kok Leong & Tay Liang Seah v Public Prosecutor* (MA 195 and 196 of 2008, unreported), the first accused was sentenced to two weeks' imprisonment for punching the victim on his face and chest a few times; in *PP v Goh Kah Sia* [2010] SGDC 166, the accused was sentenced to two weeks' imprisonment for punching the victim repeatedly on the forehead. It can be surmised that the circumstances in this case in which the injury was caused (pulling at the finger) was not as severe as some other more aggravating assaults following a road rage.

8 The appellant was hitherto a person of good character and this was his first offence. It was not premeditated and had occasioned from a lack of control. It seems unlikely that with this experience he would likely commit this offence again. In the circumstances, I am of the view that the sentence was manifestly excessive.

9 The appeal against conviction is dismissed. The sentence in so far as the imprisonment was concerned is varied from eight months to two weeks.