

Public Prosecutor v Lim Hwang Ngin Lawrence
[2008] SGHC 171

Case Number : CC 26/2007
Decision Date : 08 October 2008
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Winston Cheng Howe Ming, Shahla Iqbal and Lee Ti-Ting (Deputy Public Prosecutors) for the prosecution; Lee Teck Leng (Lee Associates) for the accused
Parties : Public Prosecutor — Lim Hwang Ngin Lawrence
Criminal Law

8 October 2008

Kan Ting Chiu J:

Introduction

1 The accused, Lawrence Lim Hwang Ngin, stood trial on 13 charges for offences under ss 323, 354, 376, 377 and 509 of the Penal Code (Cap 224, 1985 Rev Ed) against Tri Utami, ("Tri"), a maid employed by him and his wife over the period from 29 January 2006 to 5 May 2006.

2 He was convicted on five charges for offences under s 323, i.e. the 1st, 9th, 10th, 12th and 13th charges and was acquitted of the other charges. He had made a qualified admission of guilt to the 1st charge and pleaded guilty to the 9th charge. He had pleaded not guilty to the 10th, 12th and 13th charges. He now appeals against his conviction on those three charges. The Public Prosecutor has not appealed against the acquittals.

3 These grounds will be directed at the three convictions under appeal, and will not touch on the convictions and acquittals not under appeal.

4 The three charges are:

10th Charge: on or about 29 April 2006, sometime in the morning, at Block 521 Woodlands Drive 14 #10-355, Singapore, being the husband of one Chua Hwee Hwa, the employer of a domestic maid, namely one Tri Utami, did voluntarily cause hurt to the said Tri Utami, to wit, by kicking her hips, and you have thereby committed an offence punishable under section 323 read with section 73(2) of the Penal Code, Chapter 224.

12th Charge: on or about 4 May 2006, sometime at night, at Block 521 Woodlands Drive 14 #10-355, Singapore, being the husband of one Chua Hwee Hwa, the employer of a domestic maid, namely one Tri Utami, did voluntarily cause hurt to the said Tri Utami, to wit, by kicking her abdomen several times, by pushing her hard on her chest with your leg and slapping her cheeks several times and you have thereby committed an offence punishable under section 323 read with section 73(2) of the Penal Code, Chapter 224.

13th Charge: on or about 5 May 2006, sometime in the morning, at Block 521 Woodlands Drive 14 #10-355, Singapore, being the husband of one Chua Hwee Hwa, the employer of a domestic maid, namely one Tri Utami, did voluntarily cause hurt to the said Tri Utami, to wit, by kicking her abdomen several times, and you have thereby committed an offence punishable under section 323 read with section 73(2) of the Penal Code, Chapter 224.

5 The accused was accused of committing rape, carnal intercourse and outraging the modesty of Tri, as well as causing hurt to her. The hearing spanned 28 days, with Tri being on the witness box for more than eight days.

6 Much of the time was spent on Tri's working conditions such as the diary schedules and records she had to maintain, and whether she had the means to leave the flat. She was also cross-examined extensively on her conduct during the police investigations, e.g., her statements to the police officers who dealt with her, as well as the doctors who had examined her.

7 It came as no surprise that inconsistencies and omissions surfaced. There were inconsistencies over dates, places and events, and they led to the acquittals that followed, where the deficiencies and flaws created reasonable doubts in the prosecution's case.

8 For the charges on which the accused was convicted, and in particular the convictions which are under appeal, I was mindful that the evidence was not beyond criticism. There were inconsistencies and omissions in the narratives to the different police officers and the doctors, and variations in the narratives. However, I was satisfied that they were not critical, and they did not detract from the basis on which I have found the accused to be guilty on the charges.

Background

9 Tri had started work with the accused and his wife Chua Hwee Hwa (who is also known as Joanne) in December 2004. Her duties were to look after her employers' infant daughter Hazel, and to perform household duties.

10 Tri had worked for a Chinese family in Malaysia previously; she was conversant in Mandarin, and communicated with the accused and his wife in Mandarin. Technically, she was registered as the employee of the accused's wife, though the parties regarded her at all times as the employee of the couple.

11 Tri is a submissive and timid person. Throughout the trial, her evidence was that she would comply with the orders of the accused and his wife, and there was no suggestion that she would 'talk back' or show any disagreement. Her meekness was also confirmed by Jeanie Cacanando, a Filipino maid from a neighbouring flat, who testified that Tri did not act on her advice to report to the police, her embassy or maid agent that her employer had assaulted her. [\[note: 1\]](#) Another witness, Lau Eng

Teng, had also advised Tri to make a police report, but Tri also did not want to do that. [\[note: 2\]](#) The police were eventually alerted because Lau Eng Teng was so disturbed by Tri's plight that she called the police without consulting her.

12 The accused is a police officer holding the rank of staff sergeant, and he was attached to the Intellectual Property Rights Branch, Criminal Investigation Division, as an investigator. He admitted to bearing an active dislike for Tri after he witnessed her shouting at Hazel and shaking her violently. He wanted to dismiss Tri, but his wife wanted to give her a second chance, so they kept her on, [\[note: 3\]](#) but he was hostile and domineering towards Tri. He stated that "I did admit that I want to make her life miserable ... I'm just having psychological warfare to her only." [\[note: 4\]](#)

13 Tri was afraid of him. She said that he would threaten to send her to Batam to be a prostitute, or to send her to prison if she disobeyed him. The accused denied making prostitution threats, but admitted making the imprisonment threats. [\[note: 5\]](#)

14 He was ready to inflict corporal punishment on Tri over minor incidents. The two convictions that are not under appeal show that the physical maltreatment started on 29 January 2006 and was repeated on 21 April 2006. Both assaults were for minor reasons. For the offence of 29 January 2006, which was Chinese New Year day, the accused knocked Tri with his knuckles several times. Tri's evidence was that he hit her for forgetting to pack the baby's hat and napkins when they went out that day. The accused could not recall the reason for the beating. For the other charge which took place on 21 April 2006, the accused admitted that he hit Tri for not holding onto the baby during a bath, and the baby tripped and fell, without suffering any injuries. For this carelessness, the accused hit her head with his fist repeatedly.

15 The allegations of the offences and the investigations came to light on 5 May 2006. On that day, Jeanie Cacanando spoke to Tri and learnt of the mistreatment she had endured. They were unable to communicate effectively because Tri spoke little English, and Jeanie Cacanando did not speak Bahasa Indonesia or Mandarin. Jeanie Cacanando then got Lau Eng Teng, a mature lady residing in a neighbouring flat, to speak to Tri in Mandarin. After seeing Tri's state and speaking to her, Lau Eng Teng was so distressed that she made a telephone call to the police. Following this call, investigations commenced, and Tri was taken away from the accused's flat by the police.

The 10th charge

16 The charge was that on 29 April 2006, the accused kicked Tri's hips while they were at his residence. Tri's evidence was that the accused was annoyed because he could not find Hazel's toys which she had placed at a different place. He kicked her on both hips, and left blue-black marks. [\[note: 6\]](#)

17 When she was sent for medical examination by the police on 5 May 2006 at the National University Hospital, the examining doctor, Dr Chan Kim Poh, found an area of ecchymoses over her left hip greater trochanteric region and an area of ecchymoses over her right hip greater trochanteric region. [\[note: 7\]](#) Dr Chan was of the opinion that the age of the injuries was between one to 14 days which would cover injuries inflicted on 29 April 2006. His findings corroborated Tri's evidence that she was kicked on both hips. Tri's evidence was also that she was kicked on the hips on only one occasion, 29 April 2006.

18 In a statement recorded on 9 May 2006 in the course of police investigations, Tri recounted that on Saturday, 29 April 2006, the accused:

had kicked me on the both thighs because I did not place the toys in the right place. He kicked my right thigh and when I turned because it was painful and he then kicked me on the left. After that he kicked me near the hip on the left.[\[note: 8\]](#)

19 The accused was questioned about the incident and a statement was recorded from him on 26 May 2006.[\[note: 9\]](#) It was recorded:

Q According to your maid, Tri, on one Saturday in the month of April, you scolded her as you could not find a particular toy for your daughter and you had also kicked on her thighs many times. What have you got to say?

A I did not kick her. I have never kicked her! But I ever scolded her if she did anything to my daughter.[\[note: 10\]](#)

20 In court, he said:

I will not assault her for this kind of minor ... minor, minor things. If I were to ever hit her, I belief *[sic]* it must have caused my daughter to cry or injured.[\[note: 11\]](#)

overlooking the events of 29 January 2006 referred to in [14].

21 His counsel in the closing submissions contended that:

the accused had admitted that he kicked Tri's hips on 4 May 2006 night. The bruises on Tri's hips could have been caused by the accused on 4 May 2006 instead of 29 April 2006.[\[note: 12\]](#)

22 However, the accused had also denied in his statement of 26 May 2006 that he kicked Tri on 4 May,[\[note: 13\]](#) although he changed his position when he gave his defence, and said that he kicked Tri's hips on 4 May 2006.[\[note: 14\]](#)

23 The other matter raised by the defence was that Tri did not refer to the assault in her first statement to the police given on 5 May 2006. That statement was taken on the very day of her abrupt removal from the flat, and was recorded from 10.15pm to 2am the next morning. That must have been a traumatic and exhausting time for her. It was evident that she did not recall all the incidents of assault, including the events of 29 January 2006, which the accused admitted to. However, she referred to this incident in her next statement recorded on 9 May 2006.[\[note: 15\]](#)

24 Having observed her giving her evidence, and having considered the findings and evidence of Dr Chan, I believe the evidence of Tri. On the other hand, the accused's defence that he kicked her hips, but only on 4 May 2006, did not raise any reasonable doubt that the offence took place.

The 12th charge

25 The charge was that on the night of 4 May 2006, the accused kicked Tri in her abdomen several times, pushed her chest with his leg and slapped her cheeks several times.

26 In her first statement of 5 May 2006, Tri had alleged that the accused kicked her on her stomach[\[note: 16\]](#) and she had also mentioned in her second statement of 9 May 2006 that he had assaulted her on 4 May 2006.[\[note: 17\]](#)

27 Tri's evidence was that on the night of 4 May 2006, she allowed Hazel to hold a ballpen and

walk about. The accused and his wife saw that and became angry because they regarded that as dangerous to Hazel. The accused scolded her and kicked her on the stomach. He ordered her to place her hands on her head while he kicked her. She felt pain, and lowered her hand, which came into contact with his leg. This angered him more, and he raised his leg and pressed his foot against her chest, making it difficult for her to breathe. After doing that, he followed up by slapping her on the left and right sides of her face. As a result of these assaults, she suffered red marks under her chin.[\[note: 18\]](#) In the course of the investigations, the accused had denied kicking Tri, in an investigation statement of 26 May 2006,[\[note: 19\]](#) and again in a cautioned statement recorded on 4 January 2007.[\[note: 20\]](#)

28 The accused admitted in court that he had assaulted Tri that day using his hands and legs, and that it was a bad assault because he had lost control of himself.[\[note: 21\]](#) He explained that he got into that state after his wife told him that Hazel had hit her head on the floor because Tri had not placed a cushion on the floor.[\[note: 22\]](#)

29 He admitted that he caused a small bump on the back of Tri's head. He also admitted to slapping Tri, and kicking her. However, he said he kicked her on the hips and not in the abdomen because he did not want to cause internal injury to her.[\[note: 23\]](#) During cross-examination, he agreed that he could have caused injury when he hit Tri on the head.[\[note: 24\]](#)

30 His counsel repeated that:

... he lost control of himself. He used his leg to kick Tri, and used his hand to hit her. He assaulted her badly that night.[\[note: 25\]](#)

...

He scolded Tri. He lost control of himself as he was very angry and frustrated. He kicked her hips. ... Even when she moved around to avoid his kicking, he just continued kicking her. He did not kick her abdomen as he did not want to cause her internal injuries. He also slapped her on her cheeks several times. As he assaulted her, he scolded her. He did not press his leg hard against her chest.

When he assaulted Tri, she started crying. He did not stop. He kept kicking and hitting her on and off. He could not recall exactly what he did. He assaulted her for a few minutes.

in the closing submissions. [\[note: 26\]](#)

31 It is to be noted that the accused admitted he kicked and slapped Tri. His defence was that he kicked her hips and not her abdomen. However, by his own account of that incident, he was not in a state of mind which allowed calm and accurate recollection.

32 On the other hand, Tri, the passive victim of the assault, was clear that she was kicked in the abdomen, and she had complained to Dr Chan Kim Poh when she was brought for medical examination that day, that her employer kicked her on 4 May 2006 on her lower left chest and she also complained of pain in the left lower ribs. There was no reason for her to say that he kicked her in the abdomen if he had kicked her hips. Her complaints to Dr Chan placed the area of assault at the lower chest, which is just above the abdomen.

33 On the evidence, I found Tri's recollection of the events more reliable than the accused's account, and I found the accused guilty as charged.

The 13th charge

34 The charge was that the accused kicked Tri in the abdomen on the morning of 5 May 2006, the day when the police were alerted and commenced investigations.

35 Tri's evidence was that in the early morning of that day, Hazel cried, and the accused's wife asked Tri to prepare milk for Hazel. When Tri did that she used the wrong teat on the milk bottle. The accused and his wife were enraged at Tri over this, and the accused kicked her stomach a few times.[\[note: 27\]](#) (There was another allegation of a separate incident of assault later in the morning on the buttock which is not covered in this charge.)

36 The accused put up a total and bare defence that nothing had happened on the morning of 5 May 2006 as alleged. Hazel had not cried and he did not kick Tri.[\[note: 28\]](#)

37 The credibility of each account has to be evaluated and compared against the other. The matter came to light because the neighbouring maid, Jeanie Cacanando, saw Tri crying that morning. It was Jeanie Cacanando who took the initiative to speak to Tri, and Tri indicated to her by gestures and said that her employer had kicked her abdomen.[\[note: 29\]](#) Jeanie Cacanando was moved to inform the neighbour Lau Eng Teng of the matter. Lau Eng Teng spoke with Tri in Mandarin, and Tri told her that her male employer had kicked her abdomen.[\[note: 30\]](#) The accused's defence was that he did not assault Tri that morning, and his wife confirmed that.

38 The evidence of Jeanie Cacanando and Lau Eng Teng is significant. They were independent and neutral witnesses who had no reason to lie or to help Tri by giving false evidence to incriminate the accused. The significance of their evidence is that Tri had informed them of the assault by the accused when she did not expect them to act on her complaints. She did not want to report the matter, and she did not know that Lau Eng Teng would call the police without consulting her.

39 After hearing and reviewing the evidence, I was satisfied beyond a reasonable doubt that Tri was speaking the truth when she said that the accused kicked her abdomen that morning.

Observations

40 I will conclude with two observations on the conduct of the investigations by officers of the Serious Sexual Crime Branch ("SSCB"), Criminal Investigations Department. The SSCB, as its name indicates, specialises in the investigations of serious sexual offences. When such offences are reported, they are referred to the branch for investigations. The SSCB should be staffed and equipped to carry out the investigations efficiently.

41 During the course of investigations, Tri's case was handled by two officers of the SSCB. The first officer was Station Inspector Cecilia Yeo, and the second officer was Senior Investigation Officer Sitimarsita Bohari.

42 SI Yeo was questioned by the prosecutor about a statement she recorded from Tri on 5 May 2006 which contained the following question and answer:

Q Do you think that [the accused] raped you ...?

A No, as he did not force or threaten me in any way before or during the sexual intercourse. In fact, I was sexually aroused when [he] used his fingers to rub and then insert into my vagina.[\[note: 31\]](#)

The prosecutor asked her:

Q [W]hat did you tell her was the definition of “rape”, you know, what you indicate to her?

and she replied:

A [I]f I recall correctly, I told her that if the accused did not force or threaten her, then it is not considered rape.[\[note: 32\]](#)

43 That was a wrong definition of “rape”. Section 375(1) of the Penal Code (Cap 224, 1985 Rev Ed) which deals with rape states:

Any man who penetrates the vagina of a woman with his penis —

(a) without her consent; or

(b) with or without her consent, when she is under 14 years of age,

shall be guilty of an offence.

44 If the officer had a proper knowledge of the offence of rape, she would not have told Tri that there is no rape without force or threat, and she should have advised her that rape is sexual intercourse without consent. It is important that SSCB investigators have proper understanding of the offences they investigate. They should refer to the Penal Code or any applicable statutes when they inform and question victims or suspects of the offences that they are investigating.

45 When SIO Sitimarsita Bohari gave evidence, it transpired that in respect of one alleged incident, there was some confusion whether Tri had said that the accused rubbed her vulva or her vagina. This arose because Tri had used the equivalent of ‘private part’, and was not asked to be more specific, or to demonstrate the action.

46 While it may be that a victim of a sexual assault may not want or cannot describe fully and accurately the assault, accurate descriptions are necessary. The SSCB should have models and pictures of the anatomical parts which victims can use to explain assault. Apparently none were available. Descriptions of the anatomy should go beyond general terms like “private part”, and the exact part should be identified and named.

47 The prosecutor agreed that changes and improvements can be made in these areas. I believe that appropriate steps can be implemented and the investigative process can be improved for the benefit of victims and accused persons.

[\[note: 1\]](#)PS1 paras 3 and 4

[\[note: 2\]](#)PS30 para 3

[\[note: 3\]](#)Notes of Evidence page 1934

[\[note: 4\]](#)Notes of Evidence page 1944

[\[note: 5\]](#)Notes of Evidence 1846

[\[note: 6\]](#)Notes of Evidence pages 154-155

[\[note: 7\]](#)P68

[\[note: 8\]](#)P116, Answer 5

[\[note: 9\]](#)P82

[\[note: 10\]](#)P82, Q131 and Answer

[\[note: 11\]](#)Notes of Evidence page 1829

[\[note: 12\]](#)Defence Closing Submissions, para 245

[\[note: 13\]](#)P82, Q133 and Answer

[\[note: 14\]](#)Notes of Evidence page 1843

[\[note: 15\]](#)P116

[\[note: 16\]](#)P114 para 10

[\[note: 17\]](#)P116 Answer 5

[\[note: 18\]](#)Notes of Evidence pages 159-168

[\[note: 19\]](#)P82 Answer 133

[\[note: 20\]](#)P107

[\[note: 21\]](#)Notes of Evidence page 1835

[\[note: 22\]](#)Notes of Evidence page 1836

[\[note: 23\]](#)Notes of Evidence page 1843

[\[note: 24\]](#)Notes of Evidence page 1903

[\[note: 25\]](#)Defence Closing Submissions para 277

[\[note: 26\]](#)Defence Closing Submissions paras 281 and 282

[\[note: 27\]](#)Notes of Evidence pages 169-170

[\[note: 28\]](#)Notes of Evidence page 1847

[\[note: 29\]](#)PS1 para 4; Notes of Evidence pages 1402, 1413

[\[note: 30\]](#)PS30 para 2; Notes of Evidence page 1424

[\[note: 31\]](#)P114

[\[note: 32\]](#)Notes of Evidence page 1212

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