

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 232

Magistrate's Appeal No 9322 of 2018/01

Between

Public Prosecutor

... Appellant

And

Fatahurmman bin Bakar

... Respondent

Magistrate's Appeal No 9322 of 2018/02

Between

Fatahurmman bin Bakar

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

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Public Prosecutor
v
Fatahurtherman bin Bakar and another appeal

[2019] SGHC 232

High Court — Magistrate's Appeal No 9322 of 2018/01 and 9322 of 2018/02
Chan Seng Onn J
27 September 2019

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Chan Seng Onn J (delivering the judgment of the court *ex tempore*):

1 In the matters of HC/MA 9322/2018/01 and HC/MA 9322/2018/02, I hereby dismiss the Accused's appeal against conviction and sentence for both charges (MCN 900412/2017 and MCN 900413/2017) and allow the Prosecution's appeal against the sentence for the charge (MCN 900413/2017) under Section 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). I now briefly set out the reasons for my decision to increase the sentence from 2 weeks' imprisonment to 4 weeks' imprisonment for the charge under Section 323 of the Penal Code.

MCN 900413/2017 Charge: Section 323 of the Penal Code

2 In applying the framework laid out in *Public Prosecutor v Lim Yee Hua and another appeal* [2018] 3 SLR 1106, I agree with the finding of the learned District Judge ("DJ") that this incident was a case of road rage. The dispute

between the Victim and the Accused over the Accused's access to the petrol pump in the Petrol Kiosk had arisen "in the course of the shared use of the roads". Based on the Accused's testimony, it is clear that the violent acts by the Accused arose as the Victim's bus was blocking the Accused's path to the petrol pump in the Petrol Kiosk.

3 Next, considering the harm caused and culpability of this charge in the present case, I am of the opinion that the sentence of 2 weeks' imprisonment imposed by the DJ is manifestly inadequate and inconsistent with the relevant sentencing precedents on road rage violence for first-time offenders.

4 I find that the DJ had erred in holding that the harm and culpability of the Accused fell within the spectrum of that in *Senthilnathan s/o Veerappan v Public Prosecutor* (HC/MA 199/2012/01) ("*Senthilnathan*"), where a sentence of 2 weeks' imprisonment was imposed on the offender and upheld on appeal. In that case, the offender had pleaded guilty to a charge under Section 323 of the Penal Code, for throwing two punches at the left side of the victim's face. The victim managed to block both punches and the injuries caused to the victim were minor: an erythema over his left mastoid/neck area and a superficial scratch mark over his left forearm. On the other hand, the present case involves more severe injuries caused to the Victim: lateral luxation of two of the Victim's teeth. The nerve in the Victim's teeth had also died and the Victim's teeth were repositioned and splint. Further, the Accused claimed trial in the present case, unlike the offender in *Senthilnathan* who had shown remorse and pleaded guilty. The harm and culpability of the Accused in the present case is clearly higher than that of the offender in *Senthilnathan*, who received 2 weeks' imprisonment.

5 In coming to my decision, I also took into account the similar cases of *Neo Hong Chye v Public Prosecutor* (HC/MA 9092/2015/01) and *Shi Ka Yee v Public Prosecutor* (HC/MA 9089/2018/01), where the offenders had claimed trial and were convicted and sentenced to 4 weeks' imprisonment for road rage violence offences that resulted in minor injuries. The sentences for both cases were upheld on appeal. In those cases, the victims were not completely passive and had verbally insulted the offenders but the offenders were the only ones who had exerted physical force on the victims. The DJ distinguished the present case from the two cases, noting that there was no indication that the offenders in those cases had made any compensation to the victims. On the other hand, the DJ commented that the Accused had compensated the Victim *fully* in the present case.

6 I find that the DJ had placed undue weight on the Accused's display of remorse for the following reasons. First, the Accused only made *partial* compensation that did not cover the entirety of the Victim's required medical expenses. The Accused's compensation of \$201.40 only pertained to the costs that the Victim had incurred from his first (and only) consultation of Dr Swa and Dr Lim. Dr Lim had explained that the first consultation was a temporary and an emergency measure at best. However, the Victim did not make follow-up appointments to make dentures due to his financial difficulties. Second, the Accused only made compensation *after* his conviction. Third, the Accused also made allegations of the Victim's dishonesty at trial and in his mitigation plea, namely that the Victim had made a fabricated police report and had not disclosed the entire video that the Victim had recorded. Finally, the Accused claimed trial and followed up with an appeal against his conviction on both charges. As such, I would place minimal weight on the Accused's display of remorse as a mitigatory factor.

7 I also took into account the case of *Leong Ban Fatt v Public Prosecutor* (HC/MA 9092/2018/01) (“*Leong Ban Fatt*”), where the offender claimed trial and was sentenced to 4 weeks’ imprisonment after he was convicted of one count of road rage violence under s 323 of the Penal Code. The sentence was also upheld on appeal. In that case, the offender had punched the victim once on his lower lip, causing an abrasion wound, which is clearly a more minor injury than the injuries caused in the present case. I also note that the offender in *Leong Ban Fatt* was not a first time offender but his past convictions were 30 years old. The district judge in that case gave minimal weight to his antecedents as a result.

8 Having analysed the relevant sentencing precedents on road rage violence, I find that a sentence of 4 weeks’ imprisonment is appropriate having regard to all the relevant facts and circumstances of the case.

MCN 900412/2017 Charge: Section 352 of the Penal Code

9 As for the s 352 of the Penal Code charge (MCN 900412/2017), I am in agreement with the DJ that a sentence of 3 days’ imprisonment is appropriate and not manifestly excessive, having considered the totality of the Accused’s conduct and that this was another instance of road rage violence.

Global Sentence

10 Given that the two offences committed by the Accused formed part of the same transaction, I therefore order both sentences to run concurrently. As such, I hereby allow the Prosecution’s appeal and impose a global sentence of 4 weeks’ imprisonment. I also grant the Accused a deferment of the commencement of his sentence to 1 October 2019.

Chan Seng Onn
Judge

Charlene Tay Chia and M Kayal Pillay (Attorney-General's
Chambers) for the appellant in MA 9322/2018/01 and the respondent
in MA 9322/2018/02;
The respondent in MA 9322/2018/01 and the appellant in
MA 9322/2018/02 in person.
