IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 119

Magistrate's Appeal No 9208 of 2016/01

Between

Ang Lilian (Hong Lilian)

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Hurt] — [Domestic maid abuse]

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Introduction

1 The appellant claimed trial to eleven charges of voluntarily causing hurt to a domestic maid ("the victim") under s 323 read with s 73(2) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and one charge of using criminal force under s 352 of the Penal Code. The District Judge convicted the appellant on the eleven charges under s 323 read with s 73(2) of the Penal Code but acquitted the appellant on the charge under s 352 of the Penal Code. The District Judge's Grounds of Decision ("GD") is reported as *Public Prosecutor v Ang Lilian* [2016] SGMC 55.

2 For the eleven charges under s 323 read with s 73(2) of the Penal Code, the appellant was sentenced to imprisonment terms ranging from two weeks to six months per charge:

Charge Number	Sentence
C1A: MCN 900287/14	2 months' imprisonment
C2A: MCN 900288/14	2 months' imprisonment
C3B: MCN 900289/14	2 months' imprisonment
C4B: MCN 900290/14	6 months' imprisonment
C5A: MCN 900300/14	2 months' imprisonment
C6A: MCN 900301/14	2 weeks' imprisonment
C7A: MCN 900302/14	6 months' imprisonment
C8A: MCN 900303/14	2 months' imprisonment
C9B: MCN 900304/14	2 months' imprisonment
C10A: MCN 900305/14	2 months' imprisonment
C12A: MCN 900307/14	4 months' imprisonment

3 The District Judge ordered the imprisonment terms for MCN 900288/14, MCN 900290/14 and MCN 900302/14 to run consecutively. This resulted in an aggregate sentence of 14 months' imprisonment. The appellant was also ordered by the District Judge to pay S$3,150 (in default three weeks' imprisonment) as compensation to the victim.

4 I dismissed the appeals against both conviction and sentence. I found that an aggregate sentence of 16 months' imprisonment more adequately met the justice of the case. I therefore ordered the sentences in MCN 900290/2014, 900302/2014, and 900307/2014 to run consecutively. I now set out the reasons for my decision.

Background facts

5 The appellant was a 44 year-old Singaporean female at the time of the trial. The victim was a 27 year-old female Myanmar national, who had worked as a domestic maid at the appellant's home. The victim was employed by the appellant from 12 January 2013 to 7 May 2013. Prior to working for the appellant, the victim had worked as a domestic maid in two other households in Singapore.

Charges

6 The brief particulars of the eleven charges on appeal were as follows (in chronological order):

(a) In February 2013:

(i) C1A and C2A: the appellant had on two occasions knocked the victim's head three times with her fist.

(ii) C3B: the appellant dragged the victim to the toilet, sprayed water at her eyes with a water hose, and slapped her more than once.

(b) Sometime in March 2013:

(i) C4B: the appellant used a three-pin plug to hit the victim's head once, pulled her hair, threw her onto the floor, and slapped her multiple times.

(c) In April 2013:

(i) C5A: the appellant slapped the victim's face about 10 times.

(ii) C6A: the appellant dragged the victim by her hair into the bathroom and sprayed water on her eyes with the shower head.

(iii) C7A: the appellant used a dustpan to hit the victim's head multiple times.

(iv) C8A: the appellant used a towel to hit the victim multiple times on her face and body.

(v) C12A: the appellant used a cane to hit the victim's head multiple times.

(d) In May 2013:

(i) C9B: on 1 May 2013 at about 6am, the appellant hit the victim's head once with her fist.

(ii) C10A: on 1 May 2013 at about 5pm, the appellant slapped the victim about three times, pushed her to the floor, and kicked her buttock once.

First information report and follow-up police investigations

7 On 7 May 2013 at 8.11pm, Ms Santhi Sithirai ("Ms Santhi"), the appellant's neighbour who resided in the apartment unit next door, went to the Marine Parade Neighbourhood Police Centre to make a Police report. The first information report stated the following:

I THINK MY NEIGHBOUR MAID IS BEING ABUSED.

8 Police Sgt Mohamad Danial Bin Mohamad Nazali ("Sgt Danial") responded to Ms Santhi's report. When he arrived at the appellant's home, Sgt Danial observed that the victim had a bandage over her left eye. He then called

the victim to the house gate area and asked her what had happened to her left eye but she did not reply. Sgt Danial then decided to bring the victim out of the house to the staircase landing. At the staircase landing, Sgt Danial asked the victim, "Did you[r] employer beat you?". The victim nodded her head.

9 Sgt Danial proceeded to ask the victim "[w]hen was the last time your employer beat you?". The victim responded "2 weeks ago". He then asked the victim to lift her bandage and saw that the victim's left eye was swollen and that she had bruises on the left and right side of her face. Sgt Danial testified that the victim was crying, shivering and appeared to be "scared and helpless" after she told him that the appellant had beaten her. Sgt Danial then called for an ambulance. Sgt Danial's evidence was not challenged by the Defence at the trial below.

Medical examination of the victim

10 The victim was sent to Changi General Hospital where she was examined by two doctors, Dr Chen Yu Jia ("Dr Chen") and Dr Hah Yan Yee ("Dr Hah"). Dr Chen's medical report on the victim dated 14 May 2013 stated the following:

> The [victim] was seen by Dr Chen Yujia at the Accident and Emergency Department on 7/5/2013. She was registered at 2117 hours.
>
> [The victim] was allegedly assaulted by her employer a week ago. She complained of slight pain over frontal area.
>
> On examination, the following findings were noted:
>
> - Left and right infraorbital bruise seen.
> - Left side 3cm in diameter.
> - Right side 1cm in diameter.
> - Left eye – conjunctiva injected
> - 1cm bruise seen over anterior part of neck.

> X-ray of facial bone: no obvious fracture or dislocation.
>
> Diagnosis: conjunctival disorders.
>
> She was discharged.
>
> In view of the injected conjunctiva and visual acuity reduce in left eye, she was referred to ENT specialist clinic.

11 Dr Chen also recorded the following details in her clinical notes:

(a) The victim claimed that the appellant had used her hands, legs and water bottle to hit her;

(b) The victim claimed that she had been abused everyday by the appellant; and

(c) The latest episode had allegedly occurred one week before the medical examination.

12 At the trial, Dr Hah confirmed that she had seen the victim on 7 May 2013 upon Dr Chen's referral. Dr Hah's findings were contained in a report compiled by Dr David Justin Hernstadt ("Dr David's medical report") dated 16 October 2013. Dr David compiled the report on the basis of Dr Hah's clinical notes because Dr Hah had left the employ of Changi General Hospital by the time the report was written. Dr David's medical report stated the following:

> [The victim] presented with bilateral periorbital haematomas and left blurring of vision following alleged assault consistent with blunt force trauma one week ago.
>
> …Bilateral periorbital haematomas were noted, that was worse on the left as compared to the right…
>
> …Anterior segment examination found bilateral resolving subconjunctival haemorrhages, worse on the left as compared to the right…

> She was reviewed again two more times, first on 16 May 2013 and again on 09 July 2013, by which time the periorbital haemotaoma (*sic*), swelling and subconjunctival haemorrhages had resolved… She was then discharged from our service.

Further police investigations

13 After the medical examination at Changi General Hospital, the victim was brought back to the Bedok Police Division for further investigations. There, she was interviewed by the Senior Investigation Officer on duty, Police Sgt Ismail Bin Ali ("Sgt Ismail"), who observed that the victim looked "quite scared" because she was "trembling a bit".

14 On the afternoon of the next day, 8 May 2013, the victim was brought back to the appellant's house to retrieve her belongings and the items which the appellant had allegedly used to hurt her. During the visit, the Police seized a cane, a dustpan, and a three-pin cable plug. The Police did not manage to retrieve the towel that was mentioned in charge C8A (see [6(c)(iv)] above). Sgt Ismail, who accompanied the victim to the appellant's house, testified that, during the visit, the appellant had raised her voice at the Police officers and had accused the victim of lying. Sgt Ismail also testified that the victim appeared "to be very scared" during the visit to the appellant's house.

Decision below

15 The District Judge convicted the appellant on eleven charges of voluntarily causing hurt to the victim under s 323 read with s 73(2) of the Penal Code. In convicting the appellant, the District Judge accepted the victim's account of the incidents of abuse and also found that:

(a) The inconsistencies in the victim's evidence were either immaterial or could be explained:

(i) The victim's inability to specify dates and times did not shake her credibility; and

(ii) The inconsistencies in the victim's account of the acts of abuse in the charges were immaterial.

(b) The victim's failure to seek help was not a critical factor that should be held against her;

(c) The evidence of Ms Santhi, Sgt Danial, and Sgt Ismail were corroborative of the victim's evidence; and

(d) The medical phenomenon of gravitational seepage could possibly explain why the victim had suffered bruising on her eyes even though her eyes were never directly assaulted.

16 The District Judge also rejected the appellant's contention that the victim had fabricated her evidence in order to engineer a termination of employment with the appellant.

Appellant's case

17 On appeal, the appellant's case was largely focused on the alleged inconsistencies in the victim's evidence and the inadequacy of medical evidence. Specifically, the appellant contended that the District Judge had erred in accepting the victim's evidence in the light of:

(a) The inconsistencies in the victim's evidence as to the dates of the offences, the sequence of events, and the particulars of each charge;

(b) The fact that the victim had not attempted to escape or seek help despite the abuse she had allegedly suffered; and

(c) The fact that the victim had a "clear motive" for making false allegations of abuse in order to secure a change of employer.

18 The appellant also argued that the District Judge erred in:

(a) accepting the evidence of Ms Santhi who was not a credible witness;

(b) relying on the medical evidence of the doctors who had examined the victim; and

(c) accepting the evidence of the Prosecution's forensic expert over that of the appellant's forensic expert.

19 With regard to the sentence imposed, the appellant contended that the District Judge failed to give sufficient weight to the mitigating circumstances in this case, and that the sentence imposed was manifestly excessive.

Appeal against conviction

20 The legal principles governing appeals against convictions are well-established. The hearing of an appeal against conviction is not a re-trial of the case. Where findings of fact hinge on the trial judge's assessment of the credibility and veracity of witnesses, the appellate court will only interfere if the findings of fact are shown to be *plainly wrong* or *against the weight of the evidence* (see *ADF v Public Prosecutor* [2010] 1 SLR 874 ("*ADF*") at [16]). This is an eminently sensible approach given that the trial judge has the benefit of having observed the witness in court (see *Jagatheesan s/o*

Krishnasamy v Public Prosecutor [2006] 4 SLR(R) 4537 at [40]). Applying these principles, I found that the District Judge's findings could neither be said to be plainly wrong nor against the weight of the evidence. I will deal with the appellant's contentions in turn.

The inconsistencies in the victim's evidence at trial

21 I rejected the appellant's attempt to impugn the victim's credibility by pointing to various inconsistencies in her evidence. In my view, these inconsistencies were explicable and have been properly addressed by the District Judge in the GD.

22 The inconsistencies that the appellant relied upon fell into two categories, namely:

(a) inconsistencies as to the date and time or sequence of events; and

(b) inconsistencies relating to details of how the hurt was caused in each offence.

23 However, before I turn to address the appellant's contentions with respect to these two categories of inconsistencies, I will first deal with an argument the appellant's counsel raised regarding the Prosecution's amendment of the charges.

The Prosecution's amendment of the charges

24 Many of the inconsistencies raised by the appellant were predicated on the differences between the original charges brought against her and the Prosecution's subsequent amendments to those charges. The appellant

contended that these amendments reflected the shifting accounts that the victim had furnished to the Police, the Prosecution, and the court.

25 I found no merit in this contention. The Prosecution's amendments to the charges were insignificant and essentially related to minor details such as whether the appellant had "splashed" as opposed to "sprayed" water in the victim's eyes, and the exact number of times that the appellant had hit or slapped the victim. Even accepting that these amendments had been occasioned by inconsistencies in the victim's accounts, I was of the view that such minor amendments did not affect the victim's overall credibility (see the remarks at [29] below).

26 In any event, the Prosecution's amendments did not affect the appellant's ability to mount her defence, which was essentially one of complete denial. Subject to certain procedural safeguards, s 128 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") provides that the court may alter charges or frame new charges at any time before judgment is given. The procedural safeguards found in ss 128 and 129 of the CPC include the following requirements:

(a) The altered charge must be read and explained to the accused.

(b) The court must immediately call on the accused to enter his plea and to state whether he is ready to be tried on the altered charge.

(c) If the accused declares that he is not ready to be tried on the altered charge, the court must duly consider any reason he gives.

If the court thinks that proceeding immediately with the trial is unlikely to prejudice the accused's defence or the prosecutor's conduct of the case, then it

may proceed with the trial (s 129(3) CPC). If the court thinks otherwise, then it may direct a new trial or adjourn the trial for as long as necessary (s 129(4) CPC).

27 Ultimately, the court is concerned with whether the amendments cause the accused to be prejudiced or misled. This is demonstrated by Yong CJ's approach to dealing with amendments to charges in *Garmaz s/o Pakhar and another v Public Prosecutor* [1995] 3 SLR(R) 453 at [43]:

> Ultimately the overall consideration is whether any error or omission in framing the charge was such as to *cause the appellants to be prejudiced or misled.* In this respect, there is no real difficulty, given that the Prosecution's stand was that they were still prosecuting only one offence of corruption, except that they were unsure when it took place. Moreover, after the application for amendment was allowed on 30 August 1994, the defence was only called on 5 September 1994. *There was sufficient time for the Defence to reconsider their position and meet the Prosecution's case.* The appellants elected not to recall any witnesses. I am satisfied that no prejudice to their defence was occasioned. [emphasis added]

28 In the present case, the Prosecution's amendments to the charges did not prejudice the appellant in the conduct of her defence. All amendments to the charges were made before the appellant's defence was called. The amended charges were read and explained to the accused and the accused did not raise any concerns as to her readiness to be tried on the amended charges. More crucially, the appellant did not object to the Prosecution's application to amend the charges on 7 March 2016 and also did not apply to recall any of the witnesses as a result of the amended charge:

> Foo: Yes, Your Honour, I'm instructed that the defendant likewise dispute and claims trial to these three reamended charges. For housekeeping purposes, may I ascertain from Your Honour their marking? Would that be C3B, C4B and C9B henceforth?
>
> Court: That is correct, yes.

> …
>
> Court: Now, are you applying to recall any of the witnesses in addition to these three amended charges?
>
> Foo: No, Your Honour, I can---
>
> Court: Alright.
>
> Foo: ---confirm that.

Accordingly, I found that there was sufficient opportunity for the appellant to reconsider her position and meet the Prosecution's case.

Inconsistencies as to dates and times

29 I found that the victim's inconsistencies as to dates and times of the incidents of assault were minor and immaterial. It must be borne in mind that when a witness gives evidence on matters after a significant lapse of time, "adequate allowance must be accorded to the human fallibility in retention and recollection" (see *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [54] and [60]). In my view, such an allowance was appropriate in the present case as the alleged abuse occurred some two years before the commencement of the trial and it was reasonable that the victim's memories of the abuse may have faded over the passage of time. Furthermore, the evidence showed that the victim had been frequently abused by the appellant on numerous occasions (including the specific incidents which were the subject of the charges) between January 2013 and May 2013. In the circumstances, I found that it was not unreasonable that the victim had difficulty recalling specific dates and times for each specific instance of abuse. I therefore found that the victim's inability to recall specific dates and times with precision did not adversely affect the veracity and weight of her evidence.

30 Even accepting the appellant's case at its highest, the victim's inconsistencies and inability to specify exact dates and times in her evidence

did not materially affect the charges. Most of the charges were worded such that references to the date and time of the offences were in general terms, save for two of the charges (C9B and C10A), which the appellant had not taken issue with. Having regard to the charges as framed, the Prosecution was not required to adduce evidence from the victim on specific dates and times for each and every charge in order to discharge its burden of proof.

Inconsistencies as to the details of the abuse

31 I also found that the inconsistencies in the victim's evidence regarding how the hurt was caused were immaterial.

(1) Charges C1A and C2A

32 The appellant contended that an inconsistency arose from charges C1A and C2A and the victim's evidence at trial. Charges C1A and C2A averred that the appellant had used her "fist" while the victim's evidence at trial was that the appellant had used her "knuckles" to hit her:

> Q What did she do---what did Ma'am do?
>
> A My employer use her knuckle to knock me head---on my head three times.
>
> Q Can you, first, show us the action? Can you stand up and show us? And can you show us which---
>
> Court: Alright. Knocking action, downwards. Alright.

33 In my view, this inconsistency was immaterial because the "knuckles" could be considered to be a part of the "fist".

(2) Charge C3B

34 The appellant contended that an inconsistency arose between the victim's testimony during her evidence-in-chief ("EIC") and her evidence

under cross-examination. During her EIC, the victim testified that the spraying of the water lasted "[a]bout 5 minutes, 10 minutes. 5 to 10 minutes". Under cross-examination, the victim testified that the "whole incident" lasted "5-10 minutes". The victim eventually conceded that she was not able to tell how long her face/eyes were sprayed with water.

35 Despite the victim's inconsistency as to how long the appellant had sprayed water at her eyes, I agreed with the District Judge that this detail was not material as "it did not detract from the fact that she has maintained throughout her testimony that her eyes [were] sprayed with water".

(3) Charge C4B

36 The appellant contended that there was an inconsistency between the sequence of events given in the victim's EIC and the sequence of events in her evidence under cross-examination. The victim's evidence during EIC was that she was hit once on her head with a three-pin plug, pulled by her hair, pushed to the floor and then slapped three times on her cheeks. The appellant contended that this differed from the victim's evidence in cross-examination where she said that she was pulled by her hair, pushed to the floor, hit on her head with the three-pin plug and then slapped on her cheeks.

37 In my opinion, the District Judge was right in finding that this discrepancy in the sequences of events was minor given that the nature of the individual acts and the attack as a whole remained the same.

(4) Charge C6A

38 The appellant contended that an inconsistency arose from the difference in the part of the body that the victim had been assaulted on. The

victim alleged in her EIC that the appellant sprayed her face and body with water for a short while. In cross-examination, the victim claimed that the appellant allegedly sprayed water into her face and not her eyes. Again, this inconsistency was trivial given that the "eyes" may be considered to be a part of the "face".

The victim's failure to seek help should not be held against her

39 The appellant contended that the victim's failure to run away, seek medical treatment or make a police report was incongruous with her allegations of abuse. In support of her contention:

(a) The appellant highlighted that the victim was at liberty to enter and leave the appellant's house at all times leading up to 7 May 2013.

(b) The appellant relied on the fact that the victim had confirmed that she was issued with a booklet titled "A Guide for Foreign Domestic Workers" written in the Myanmese language and had also confirmed that she knew of the page which stated that if the "employer breaks the law or ill treats you, you can call the employment agency, police at 999, MOM at that number, your embassy at High Commissions, and your employer will be punished in accordance with the law".

40 The appellant also attempted to characterise the victim as someone who knew how to safeguard and advance her own self-interest. The appellant cited the example of how the victim had requested Mdm June Siew Geok Kim ("June Siew"), her maid agent, to procure a transfer after she (the victim) felt that she could not cope with looking after an old lady while working for her previous employer. The appellant also alleged that the fact that the victim had

not made any complaints to June Siew during the latter's visits to the appellant's home in February and March 2013 was evidence that she had not been abused.

41 I found the appellant's contentions to be devoid of any merit. The fact that the victim had not attempted escape or sought help despite the abuse she allegedly suffered is neither here nor there. While an attempt to escape or seek help may be construed as conduct that can corroborate the existence of an abusive environment, a failure to attempt escape or to seek help could be equally indicative of the extent of the victim's vulnerability and abject fear of her employer (to the extent that she does not dare to escape or seek help). In that regard, the difficulties which may be faced by domestic maids in reporting abuse were recognised by the Court of Appeal in *ADF* at [61]:

> …[m]any domestic maids work within the confines of the employer's home and have little contact with the rest of the society. Often, they are not well educated and cannot speak English or effectively communicate with the wider public. Further, not all cases of abuse come to light as some maids may be apprehensive about the consequences of seeking help in a foreign environment. Less educated maids may also not be aware of their rights and the severe view taken by the authorities here in relation to substantiated complaints. Lee Han Shih, "Silence on maid abuse must end", Business Times (27 July 2002), observed:
>
> > Many maids come from a background which carries with it a natural fear that the police are working for the rich, and are reluctant to seek their protection even when the opportunity presents itself…

42 In my judgment, even if the victim was aware of her legal rights, it must be recognised that the act of reporting an abusive employer would have required a degree of fortitude on the victim's part. The victim should neither be faulted nor have her credibility undermined simply because her fear had

prevented her from lodging a complaint or extricating herself from the appellant's abuse.

43 In any event, the victim had explained her passivity to some extent. I accepted her explanations. The victim's evidence was that the appellant had told her that if she ran away, she would be caught by the Police. She also explained that she was unfamiliar with the area around the appellant's house:

> Q Okay, now, Moe Myint, so far you have told us about how you were treated in the months that you were working for Ma'am. Now, can you tell us why did you not run away?
>
> A My employer told me if I ran away, I will be caught by the police and will be put into prison.
>
> Q Did you believe her?
>
> A Yes, I believed her. That's why I didn't run away.
>
> Q Any other reason why you didn't run away?
>
> A Also, the other reason is that I'm not familiar with the place. Didn't know where to go.

This, along with the victim's personal vulnerability as a foreigner with limited command of English, and a timid personality (as observed by Ms Santhi, Sgt Danial and Sgt Ismail), reasonably explained why she had not attempted escape or sought help. The District Judge was clearly conscious of all these considerations.

44 I also found that little weight should be ascribed to the fact that the victim had not complained to June Siew during the visits June Siew made in February and March 2013. First, June Siew was never called as a defence witness during the trial despite being offered to the Defence as a witness at the close of the Prosecution's case on 7 March 2016:

> Foo: In the premises, Your Honour, I've indicated to my learned friend that number 11, June Siew Geok Kim, is to be

> offered to the defence as a DW as such, I should be grateful for an opportunity to interview her
>
> Court: Yes.
>
> Foo: ---before deciding to call her as DW3. With the presently DW1 will be defendant, DW2 will be Dr Chang. So my learned friend has stated he will---he shall endeavour to see with---if June Siew may be brought to Court for me to interview tomorrow morning…

45 On 8 March 2016, the appellant informed the court that she did not intend to call June Siew as a witness:

> Foo: First of all, may I also take this opportunity to register my gratitude to my learned friend for availing maid agent June Siew for interview. I have duly interviewed her as are previously arranged---
>
> Court: Yes.
>
> Foo: ---and then *it is our election not to call her as a DW*. As such, that leave two defence witnesses for the defence case, the defendant herself and, as I have explained yesterday, the DW2 will be Dr Chang…
>
> [emphasis added]

46 Second, I also accepted the victim's explanation during cross-examination that she did not complain to June Siew because the appellant was around during those visits:

> Q Now, witness, I'm instructed that on these three occasions, June Siew, the maid agent visited you at Ms Ang Lilian house, that is to say, January, February and 26th March, on these three occasions, when June Siew saw you, you did not complain of any abuse or assaults to June Siew, is that correct?
>
> A My employer was around, Sir, during these occasions, Sir, I was---how to say, afraid to tell the agent of these abuses.
>
> Q Therefore, I take it that you agreed with my put that you said you did not complain to June Siew of abuses or assaults on the three occasions June Siew saw you, whatever the motivation may be, you did not complain of abuses or assaults, is that correct?

A Yes, it's correct, it's correct.

The victim had no motive to make false allegations

47 The appellant contended that the victim had a clear motive to perjure herself in order to secure a change of employer. In support of this, the appellant highlighted the following:

(a) The victim's admission that she found it difficult to work for the appellant. The victim had admitted that she could not cope with the appellant's instructions and the fact that she was constantly scolded.

(b) The victim's admission that she was disappointed with her salary being reduced from $500 per month with one day off per month, to $450 per month, with no days off.

(c) The victim's admission that she had gained from the change from the appellant to her present employer.

48 I found no merit in the appellant's contention. An accused person seeking to show that the victim has a motive to falsely implicate him or her has to adduce *sufficient evidence* of this motive so as to raise a reasonable doubt in the Prosecution's case. A mere allegation is not sufficient, as was stated in *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374 at [33]:

> …where the accused can show that the complainant has a motive to falsely implicate him, then the burden must fall on the Prosecution to disprove that motive. *This does not mean that the accused merely needs to allege that the complainant has a motive to falsely implicate him. Instead, the accused must adduce sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case.* Only then would the burden of proof shift to the Prosecution to prove that there was no such motive. … Furthermore, in deciding whether the accused had raised a reasonable doubt, it is necessary to

> juxtapose the motive to falsely implicate the accused against the circumstances of the alleged offence. [emphasis added]

49 There was no basis to support the appellant's contention that the victim had a motive to perjure. The fact that it was Ms Santhi, the neighbour, and not the victim who reported the abuse was strongly indicative of a lack of any such motive. If the victim had wanted to falsely accuse the appellant, she could have taken active steps to implicate the appellant. Instead, she adopted a position of stoic passivity. Furthermore, as rightly observed by the District Judge, there would have been no need for the victim to fabricate allegations of a litany of abuses by the appellant when one or two allegations of assault would have sufficed to secure her removal from the appellant's house and employ. Finally, the District Judge rightly observed that there was no guarantee, even if she left the employ of the appellant, that the victim would be able to secure a new employer immediately.

Ms Santhi's evidence corroborates the victim's account

50 The appellant contended that Ms Santhi "was not only unbelievable but a dangerous perjuror". This submission was based on two assertions:

(a) Ms Santhi did not witness any of the alleged offences.

(b) Ms Santhi's had exaggerated her evidence in court. In support of this, the appellant relied on the fact that no pinch mark was observed on the victim's left upper arm during the medical examination at Changi General Hospital, despite Ms Santhi's testimony that she saw such a pinch mark.

51 I rejected the appellant's contention unhesitatingly. Notwithstanding certain discrepancies in her evidence, I found Ms Santhi's testimony to be

reliable and cogent evidence of the appellant's treatment of the victim. As the appellant's next-door neighbour, Ms Santhi was in a position to give reliable evidence of the sounds that she heard emanating from the appellant's home. Ms Santhi's evidence was that she had heard scolding, crying and beating coming from the appellant's home at least four to five times a week. This corroborated the series of abuses that the victim was alleged to have suffered. Ms Santhi also gave reliable eyewitness evidence on what she saw on the morning of 7 May 2013 when she was on the way out of her house. Ms Santhi testified that she saw the victim sweeping the corridor floor outside the appellant's house and noticed the bandage over the appellant's left eye. This was corroborated by Sgt Danial's evidence of what he observed when he visited the appellant's home in the evening of 7 May 2013, as well as the photographs later taken at the Police station. Finally, there was no evidence of any dispute or acrimony between the appellant and Ms Santhi that would give rise to any conceivable motive on Ms Santhi's part to perjure and falsely accuse the appellant.

52 With respect to the discrepancy between the findings of the medical examination and Ms Santhi's observation of a "huge pinch mark" over the victim's left upper arm, I found that this discrepancy was inconsequential. It was most likely due to the fact that Ms Santhi only had a momentary glance at the victim and had not stopped to examine the victim carefully when she was on the way out of her house on the morning of 7 May 2013.

The evidence from the medical examiners

53 The appellant did not challenge the medical observations of Dr Chen and Dr Hah. Instead, the appellant contended that the account of the abuse told

by the victim to Dr Chen and Dr Hah was inconsistent with the victim's evidence in court.

54 Dr Chen examined the victim on 7 May 2013 at Changi General Hospital. She noted in her clinical notes that the victim said that her employer had used her hands, legs and a *water bottle* to hit her. Dr Hah also examined the victim on 7 May 2013 upon Dr Chen's referral. In cross-examination, Dr Hah testified that to the best of her recollection, in the absence of her clinical notes, the victim said she had been hit by her employer a week before the examination and that her employer had used a *comb* to hit her.

55 While none of the charges brought related to the victim being hit with a water bottle or a comb as noted by Dr Chen and Dr Hah respectively, these discrepancies were insufficient to raise a reasonable doubt in the appellant's favour. Dealing first with Dr Chen's evidence, Dr Chen examined the victim in the Accident & Emergency ("A&E") room at the Changi General Hospital for less than 15 minutes. This was compounded by the fact that the victim spoke minimal English and had no interpreter with her. Dr Chen admitted that she had rephrased the victim's simple English phrases and that the phrase "employer used hands, legs and water bottle to hit" recorded on her clinical notes might have been a rephrasing rather than a verbatim recording of what the victim had said to her.

56 On the whole, I found that the other parts of Dr Chen's medical report were consistent and corroborated the victim's testimony in court. The victim was last allegedly abused by the appellant on 1 May 2013, about a week before Dr Chen examined her. She also complained of pain on her frontal area, which was consistent with her evidence that the appellant had hit her on the head on multiple occasions.

57 With respect to Dr Hah, I found that the discrepancy between the victim's testimony and Dr Hah's recollection that the victim had claimed she was hit with a comb was also immaterial. As with Dr Chen, Dr Hah had also examined the victim for a short period of time, and faced the same issues relating to the victim's limited proficiency in English. Furthermore, this discrepancy could also be explained by the fact that Dr Hah was speaking from memory without reference to her clinical notes, which she could not obtain because she had left the employ of Changi General Hospital.

The forensic evidence

58 The appellant contended that the District Judge erred in preferring the evidence of the Prosecution's expert witness, Dr Cuthbert Teo ("Dr Teo") over that of the appellant's expert witness, Dr Chang Wei Chun ("Dr Chang"). At the trial below, Dr Teo and Dr Chang were consulted as experts to give their opinions as to whether the victim's account of the assault was consistent with the injuries she sustained as reflected in the medical reports. From their observations of the victim's photographs, Dr Teo and Dr Chang agreed that the victim suffered the following injuries:

(a) Left peri-orbital haemorrhage;

(b) Scleral sub-conjunctival haemorrhage, medially, of the left eye;

(c) Right infra-orbital bruise;

(d) Bruise over the mid front region of the neck;

(e) Possible bruising over the left side of the bridge of the nose;

(f) Possible bruising over the right cheek, somewhere midway between the right infra-orbital bruise and the level of the right corner of the mouth;

(g) Possible bruising over the left cheek, below the left peri-orbital bruise;

(h) Possible bruising over the upper front part of the neck;

(i) Possible reddish bruising over the regions of the left and right sternal-clavicular joints; and

(j) Possible bluish bruising over the lower right from part of the neck.

59 Dr Teo opined that the acts of abuse in the eleven charges could have caused the injuries seen on the victim. Dr Teo's observations, *inter alia*, were that:

(a) The application of blunt force trauma of the frontal scalp region could be the cause of the peri-orbital and infra-orbital bruising due to *gravitational seepage*;

(b) The slapping incidents in C3B, C4B, C5A and C10A could also cause bruising to the face, providing a possible mechanism of the cause of the victim's left sided facial bruising;

(c) The act of the appellant in pulling the victim's T-shirt in C8A could also possibly account for the bruising of the victim's neck over the Adam's apple; and

(d) The victim's account that she was hit on the head every one to two days might explain the swelling on the head. The victim's description of the swelling as "soft and feels like liquid" was consistent with descriptions of swellings often given by children as soft and compressible.

60 In his report, Dr Chang expressed the opinion that the injuries noted in the photographs could not have been caused by the alleged actions described in the charges. Dr Chang explained that the injuries sustained must be caused by a direct assault to the location of the injury because "each area of bruising would require a direct blunt force to be applied". Nevertheless, although Dr Chang's initial opinion was that the victim's peri-orbital bruising was more likely to have been caused by a direct assault to her left eye area, he agreed under cross-examination that it could also be explained by gravitational seepage:

> A If you---the head I would assume that it is the part that is covered by hair, the head, is it? So if you do have an injury there, most of the time then any bruising is not visible and it stays around the area. And *unless there has been a big, haematoma that cause it to track down*, it's unlikely to cause any periorbital---periorbital haematoma.
>
> …
>
> Q: … Dr Chang, do you agree that we can't definitively rule out that the orbital bruising, and the bruise on the left ridge of the complainant's nose, was not due to trauma on the frontal region of the skull? This is 22.2.2.
>
> A: 22.2.2, wait.
>
> Q: Because of *gravitational seepage*, which provides the possible explanation for the orbital bruising, and the bruise on the left ridge of the complainant's nose?
>
> A: I would agree with that.
>
> [emphasis added]

61 Dr Chang also expressed his agreement to the following during cross-examination:

(a) That the sub-conjunctival haemorrhage could have resulted from a possible irritation of the conjunctiva of the eye due to the swelling around the eye caused by the periorbital bruise:

> Q: You would agree with that. 22.2.3, would you agree that, and I would just read from the paragraph: "To the extent that the conjunctiva injection, if not due to direct blunt force trauma to the eye or from rubbing of the eye, could result from a possible irritation of the conjunctiva of the eye due to the swelling around the eye caused by the periorbital bruise."
>
> A: I would agree with that.

(b) That the bruising at the victim's throat area could be due to the pulling of the victim's shirt, depending on the direction the shirt was being pulled:

> Q: …Would you agree with 22.2.4, that: "To the extent that the bruising at the larynx could be due to the pulling of the shirt or blunt force due to the victim being pushed to the ground." Of course it depends on which part of body impacted the ground, and what type of ground.
>
> A Yes, I will agree that, but pulling of the shirt---but he needs to qualify it---which direction the pull is being---
>
> Q Yes, which is why he has stated "it depends".
>
> A Okay---okay, if you pull forward it's unlikely to cause bruising, if you pull backwards it is possible.

(c) One possible mechanism of facial bruising is by slapping, especially if the slapping is either forceful or repeated:

> Q: … And paragraph 22.2.5, do you agree that one possible mechanism of facial bruising is by slapping, especially if the slapping is either forceful or repeated?

A I agree with that.

On the whole, it appeared that there was not much divergence between Dr Teo and Dr Chang's opinion; both of them agreed on the possibility that many of the victim's injuries could have been caused by the appellant's alleged actions as averred in the charges.

62 The appellant contended that some of the acts of abuse particularised in the charges "ought to have" given rise to injuries, but no such injuries were observed on the victim. On this basis, the appellant submitted that the District Judge erred in ruling that some of these injuries may have healed by the time of examination. In support of this, the appellant relied on the fact that no medical witnesses testified that there were "recovered injuries".

63 I rejected the appellant's contention on this point. It was likely that many of the injuries would have healed by the time of the medical examination given the lapse of time between the acts of abuse and the medical examination on 7 May 2013. This lapse of time was at its shortest, six days and at its longest, about three months (from the date of the first three charges sometime in February 2013). Furthermore, Dr Chang agreed that it was not unreasonable that a bruise can fade in one week and that in the case of blunt force trauma where the skin is not broken, it was not unreasonable that there would be no residual scar. In any event, most of the injuries that the victim claimed to have sustained were swellings and bruises on her head. In respect of these injuries, Dr Teo explained, with reference to medical literature, that bruising of the scalp can be difficult to detect until the hair has been removed and that in clinical practice, shaving is often not an option.

64 For the abovementioned reasons, I was not persuaded that the District Judge had formed his conclusions against the weight of the evidence. Accordingly, I dismissed the appellant's appeal against conviction.

Appeal against sentence

65 I dismissed the appellant's appeal against sentence as the imprisonment terms ordered by the District Judge could not be said to be manifestly excessive. Instead, I found that the global sentence of 14 months' imprisonment ordered by the District Judge was manifestly inadequate. I therefore modified the combination of the three imprisonment sentences that were to run consecutively. This resulted in an overall increase of two months' imprisonment.

66 The powers of an appellate court in relation to sentences are stated in s 390(1) of the CPC:

> **Decision on appeal**
>
> **390**.—(1) At the hearing of the appeal, the appellate court may, if it considers there is no sufficient ground for interfering dismiss the appeal, or may —
>
> …
>
> *(b)* in an appeal from a conviction —
>
> …
>
> (ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or enhance the sentence; or
>
> (iii) with or without reducing or enhancing the sentence, and with or without altering the finding, alter the nature of the sentence;
>
> *(c)* in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence;
>
> …

67 Section 390(1)*(b)* makes clear that in an appeal from a conviction, the appellate court may enhance the sentence, even if there is no appeal by the Prosecution against the sentence imposed by the lower court. Nevertheless, the power of an appellate court to enhance or reduce sentences is subject to, *inter alia*, the condition that the sentence is either "manifestly excessive or manifestly inadequate in all the circumstances of the case":

> **Grounds for reversal by appellate court**
>
> **394.** Any judgment, sentence or order of a trial court may be reversed or set aside only where the appellate court is satisfied that it was wrong in law or against the weight of the evidence or, in the case of a sentence, manifestly excessive or manifestly inadequate in all the circumstances of the case.

68 As noted by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) at [14]–[15] (citing Yong CJ in *Public Prosecutor v Cheong Hock Lai* [2004] 3 SLR(R) at [26]), an appellate court may also interfere with a sentence imposed by a lower court where:

(a) The trial judge had made the wrong decision as to the proper factual matrix for sentence.

(b) The trial judge had erred in appreciating the material before him.

(c) The sentence was wrong in principle.

Whether the sentence was manifestly excessive

69 After the appellant was convicted by the District Judge, the Prosecution submitted for a global sentence of 14 to 16 months' imprisonment. The Prosecution also urged the court to order that the appellant compensate the victim S$3,150 for her loss of monthly salary. The amount of

S$3,150 represented the victim's loss of monthly salary from May 2013, when she left the appellant's employ, to December 2013, when she eventually found new employment. Apart from orally responding to the Prosecution's address on sentence, the appellant did not make any plea in mitigation and did not address the District Judge on the appropriate sentence.

70 In the GD, the District Judge identified deterrence and retribution as the dominant sentencing considerations in maid abuse cases. He then took into account the following aggravating factors in determining the appropriate sentence:

(a) The abuse was prolonged and escalated in severity;

(b) The victim had suffered grievously as she was assaulted with various household objects and the acts of assault were mainly inflicted on her head; and

(c) The appellant showed a lack of remorse.

71 On appeal, the appellant contended that the District Judge erred in not considering the mitigating factors in her favour. In my judgment, there was no basis for the appellant to make this contention. The District Judge could not have erred in this regard because the appellant did not offer any plea in mitigation nor highlight any mitigating factors for the District Judge's consideration. Furthermore, I found that the factors raised in the appellant's written submission were of no mitigatory value as they only sought to downplay the extent of the harm visited upon the victim. The factors the appellant relied on were:

(a) The fact that the victim had not been hospitalised, warded or granted hospitalisation leave;

(b) The victim did not require any medication, treatment or prescription;

(c) The victim did not suffer any loss of earning capacity or loss of amenities; and

(d) The appellant had no antecedents prior to the present case.

These factors were neutral at best. If the victim had been hospitalised, or had required medication or medical treatment, or had suffered a loss of earning capacity, such factors would certainly have been treated as aggravating instead. Yet it is well established that the absence of aggravating factors is not in itself mitigatory (see *Public Prosecutor v AOM* [2011] 2 SLR 1057 ("*AOM*") at [37]). In respect of the last factor, I agreed with the District Judge that in cases where the abuses were prolonged (as they were in the present case), a clean record is given no weight as a mitigating factor (see *AOM* at [42] and more recently *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("*Janardana*") at [18]).

72 In arguing that the aggregate sentence of 14 months' imprisonment was manifestly excessive, the appellant also relied on s 95 of the Penal Code which provides that:

> Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

In my view, it was clear that the appellant could not avail herself of s 95 of the Penal Code because of the number of incidents of assault involved. Moreover,

the injuries suffered by the victim in the present case, even disregarding those that no longer remained visible, still included other obvious visible injuries to her face and neck which clearly did not fall within the ambit of "slight harm" contemplated under s 95 of the Penal Code.

73 Lastly, I agreed with the District Judge that deterrence and retribution were the key considerations in sentencing for maid abuse cases. As the Court of Appeal stated *in ADF* at [55]:

> In a case of domestic maid abuse, ordinarily, the principles of deterrence and retribution take precedence. A deterrent sentence signifies that there is a public interest to protect over and above the ordinary punishment of criminal behaviour".

The public interest in deterring maid abuse was also recently reiterated in *Janardana* at [4].

74 Applying the principles of deterrence and retribution to the present case, it was clear that the aggravating factors warranted a significant imprisonment term for each charge. The victim had sustained visible injuries to her face and neck which are vulnerable parts of the body. The assaults in most of the charges were not singular acts of violence but involved multiple blows. In my judgment, a sentence in the range of two months' imprisonment for most of the charges involving simple assault was appropriate in the present case. This comported with the sentences meted out by the District Judge for the appellant's offences involving simple assault save for charge C6A (MCN 900301/2014) where, although the appellant did not physically hit the victim, she had dragged her by the hair into the bathroom and sprayed water at her eyes. I did not disturb the District Judge's sentence with respect to charge C6A, but I would observe that the imposed sentence of two weeks' imprisonment was at the lower end given the nature of the offence.

75 I also agreed with the District Judge that longer imprisonment terms of four to six months' imprisonment were appropriate for offences where objects and implements were used to cause hurt. The appellant had used household objects such as a three-pin plug, a dustpan and a cane to cause hurt to the victim. The lengthier terms of imprisonment for these charges properly reflected the use of these items as "weapons" against the victim.

The sentence was manifestly inadequate

76 The District Judge ordered three of the imprisonment terms to run consecutively. This was in keeping with the principle that consecutive sentences may be necessary to give effect to the interest of deterrence: *ADF* at [143]. However, while I agreed with the District Judge's decision to order three of the imprisonment terms to run consecutively, I found that, with reference to the aggregate sentences that have been imposed for similar cases, the global sentence of 14 months' imprisonment was manifestly inadequate given the gravity of the offences and the appellant's culpability in the present case.

77 In *ADF*, the accused was convicted after trial on five charges of voluntarily causing hurt to his domestic maid, and acquitted on eight charges. The five charges on which the accused was convicted related to causing hurt to his domestic maid by hitting her on the head with his knuckles and hands and kicking her in areas such as her hips and abdomen. The abuse happened over a period of four months. The eventual sentences imposed ranged from six to nine months' imprisonment per charge. Three sentences were ordered to run consecutively, resulting in a global sentence of 24 months' imprisonment.

78 In *Public Prosecutor v Wong Pui Kwan* (MCN 863/2013 & Ors), the offender pleaded guilty to six charges, which included two charges of voluntarily causing hurt to the domestic maid. Seven other charges were taken into consideration. The victim was abused by the offender on several occasions from October 2011 till 6 December 2011, when she ran away. The victim sustained bruises and skin discolouration over her upper and lower limbs and buttocks. The court sentenced the offender to terms of imprisonment ranging from four weeks to seven months. The court ordered the sentences in respect of three charges to run consecutively. In all, the offender was sentenced to 12 months' imprisonment.

79 In *Public Prosecutor v Nuraini Binte Hassan* (MCN 819/2013 & Ors), the offender pleaded guilty to four charges of voluntarily causing hurt to her domestic maid. Two other similar charges were taken into consideration. The offences spanned two weeks, from 22 July 2012 till 6 August 2012. The victim sustained chest and facial contusions. The court sentenced the offender to four months' imprisonments for three of the charges and five months' imprisonment for one charge. The court ordered one of the four-month sentences to run consecutively with the five-month sentence, resulting in a global sentence of nine months' imprisonment.

80 Having considered the sentences imposed in these cases and their underlying factual substratum, I was of the view that the aggregate sentence in the present case should be higher given the duration and nature of the abuse, as well as the fact that the accused in the present case had claimed trial to the charges. This was in contrast to *Public Prosecutor v Wong Pui Kwan* and *Public Prosecutor v Nuraini Binte Hassan* where slightly more lenient aggregate sentences were ordered in the context of the offenders having pleaded guilty.

81 The appellant was convicted after a fairly lengthy trial on a total of 11 charges involving offences committed over a duration from February 2013 to May 2013. There were serious aggravating factors which fell for due consideration: first, the appellant had capitalised on the victim's vulnerability and timidity and had sought to manipulate her into believing that running away would be futile and might even lead to her being arrested and imprisoned. In addition, the victim had to endure an increasing intensity of assaults over a prolonged duration.

82 More crucially, I found that the appellant displayed a complete lack of remorse. She mounted a spurious defence premised on a bare denial coupled with unbridled efforts to attack the credit of the prosecution witnesses, principally the victim and Ms Santhi. She was plainly insistent on making the victim relive the trauma of her experience of persistent and escalating abuse. I found no mitigating factors whatsoever.

83 I was particularly troubled by the submissions made by counsel (presumably on the appellant's instructions) to attempt to persuade me that Ms Santhi was "hallucinating" and was a "dangerous perjuror". I found absolutely no basis to cast serious aspersions on an independent witness who had come forward in the spirit of civic-mindedness to report her suspicions to the police. Without her intervention, the victim's prolonged abuse at the hands of the appellant might never have come to light at all.

84 The conduct of the defence and the submissions raised on appeal demonstrated a deplorable lack of remorse. In my view, a global sentence of 16 months' imprisonment more adequately met the justice of the case and was necessary to serve the ends of both general and specific deterrence. This represented the upper end of the sentence range sought by the Prosecution

below. I therefore ordered the sentences in MCN 900290/2014, 900302/2014, and 900307/2014 to run consecutively.

Conclusion

85 For the reasons stated above, I dismissed the appeals against both conviction and sentence. I also ordered that the aggregate imprisonment term be enhanced from 14 months to 16 months.

See Kee Oon
Judge

Foo Cheow Ming (Templars Law LLC) for the appellant;
Lu Zhuoren, John and Stephanie Koh (Attorney-General's Chambers) for the respondent.
