Farida Begam d/o Mohd Artham v Public Prosecutor
[2001] SGHC 333

Case Number : MA 149/2001

Decision Date : 08 November 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Shashi Nathan (Harry Elias Partnership) for the appellantt; Daniel Yong (Deputy Public Prosecutor) for the respondent

Parties : Farida Begam d/o Mohd Artham — Public Prosecutor

Criminal Law – Offences – Voluntarily causing hurt – Elements of offence – Whether elements satisfied – Definition of 'hurt'- ss 319, 321 & 323 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Sentencing – Maid abuse – Deterrence and public policy – Enhancment of penalties – s 73 Penal Code (Cap 224)

Evidence – Witnesses – Credibility – Assessment of witness's demeanour – Internal and external consistency of evidence – Evidence of disinterested witness – Evidence of interested witnesses – Need for caution

: For ease of reference, Farida Begam d/o Mohd Artham will be referred to as the appellant, and the Public Prosecutor as the respondent. This was an appeal from the decision of Magistrate Gilbert Low (`the judge`), in which he convicted the appellant of an offence under s 323 of the Penal Code (Cap 224) and acquitted her of three other charges under the same section. The appellant was sentenced to three months` imprisonment. The appellant appealed against conviction and sentence. The respondent cross-appealed against sentence. I dismissed the appellant`s appeals and allowed the respondent`s cross-appeal and now give my reasons.

The charge

The first three charges were irrelevant for the purposes of this appeal. The fourth charge read as follows:

> *You ... are charged that you, on 30 August 1999, at Blk 496E Tampines Avenue 9 [num]02-524, Singapore, being the employer of a domestic maid, one Khusniati Habib (female, 20 years of age), did voluntarily cause hurt to her, to wit, by hitting her head, face and chest with a wooden scrub and a slipper, and you have thereby committed an offence under section 323 of the Penal Code (Chapter 224) punishable under the aforesaid section read with section 73(2) of the Penal Code (Chapter 224).*

The evidence of the prosecution

Khusniati Habib (`PW4`) started work in the appellant`s household as a domestic maid on 13 July 1999. There were allegations of several other instances of abuse, but the incident in question occurred on 30 August 1999 at about 7.30am. PW4 was cleaning the floor outside the flat with a long brush when the appellant told her that she was using the brush wrongly. The appellant then hit PW4 on the head and upper body several times with the brush pole. She subsequently hit PW4 hard on the face with a slipper. PW4 did not scream or cry for fear of reprisals. The appellant then showed PW4

how to use the brush and PW4 duly complied.

Later that morning, PW4 took the appellant`s daughter to school. One of PW4`s friends saw the injuries on her face and suggested she make a police report. They pleaded with a passer-by, Rugayah bte Idris (`PW3`) for help. PW3 took them to a police post, where a report was lodged at 1.30pm. The police took photographs of PW4`s injuries at 3pm. She was examined by Dr Khor Chong Chneah (`PW2`) at 9.40pm. PW4 spent the night in police custody. The next day, at 11am, Sgt Sani b Tugiman (PW1) noticed that the area around PW4`s eyes had darkened. More photographs of PW4`s face were taken.

The evidence of the defence

The appellant denied ever hitting PW4. Her evidence regarding the time at which she was home on 30 August 1999 was inconsistent throughout the trial (see below). The defence suggested two reasons for PW4`s injuries. First, Shamsunisha d/o Mohd Ghouse (`DW3`), the appellant`s aunt, said that PW4 had fallen twice, once forwards and once backwards, while washing the kitchen floor on 29 August 1999. The appellant, DW3 and the appellant`s brother, Mohamed Ali (`DW2`), said that PW4 only had slight bruises on her forehead at 11.30am the next day. Hence the second reason which the defence suggested was that PW4 inflicted the injuries on herself sometime between 11.30am and 1.30pm on 30 August 1999, while she was not in the appellant`s home.

Furthermore, the appellant alleged that PW4 had twice stolen money and valuables. The appellant made a police report on 30 August 1999 (the very day that PW4 had made ***her*** police report) alleging theft by PW4.

The magistrate`s decision

The judge set out the prosecution`s and the defence`s evidence. He described the impeachment exercises against PW4 and the appellant. He ruled that the former`s credit was not impeached, but that the latter`s was. He accepted PW4`s version of events, and PW2`s explanation of the possible cause of PW4`s injuries. In sentencing the appellant, he bore in mind the fact that she was a first offender, had two children and was 27 years old at the time of the offence. He imposed what he believed was the benchmark of three months` imprisonment.

Issues

The issues in this appeal were:

(1) The credibility of PW4 and Staff Sergeant Patrick Lim (`PW6`).

(2) The credibility of the defence witnesses.

(3) Whether the elements of the offence were present.

(4) Whether the sentence was manifestly inadequate or excessive.

THE FIRST ISSUE: CREDIBILITY OF PW4 AND PW6

A judge can make a finding on the credibility of a witness based on some or all of the following:

(1) His demeanour.

(2) The internal consistency (or lack thereof) in the content of his evidence.

(3) The external consistency (or lack thereof) between the content of his evidence and extrinsic evidence (for example, the evidence of other witnesses, documentary evidence or exhibits).

The starting point in relation to findings based on demeanour was **Yap Giau Beng Terence v PP** [1998] 3 SLR 656 :

> *It is trite law that an appellate court should be slow to overturn the trial judge`s findings of fact,* ***especially where they hinge on the trial judge`s assessment of the credibility and veracity of witnesses****, unless they can be shown to be plainly wrong or against the weight of the evidence. [Emphasis is added.]*

This was relevant to all the witnesses, but it was especially so to PW4. In PW4`s case, while her evidence ***in relation to the particular incident*** was generally internally consistent, there was little extrinsic evidence with which her evidence could be compared. No other prosecution witness was present at the scene of the incident, and the medical evidence did not rule out a combination of falls and self-infliction as the cause (see below). Hence the judge`s assessment of her demeanour was significant. In contrast, in PW6`s case, there was external consistency between the content of his evidence and the actual document on which the appellant`s statement was made (see below). In the case of the defence witnesses, there were both internal inconsistencies in the content of individual witnesses` evidence and external inconsistencies between the content of different witnesses` evidence inter se.

PW4 was only 19 years old at the time of the incident, and had only received six years of education. The judge was of the opinion that she was naïve and not of high intelligence. The defence attempted to impeach PW4`s credit, based on inconsistencies between her police report and her testimony. There was only one issue which could be called a `discrepancy`: the police report mentioned `daily` abuse but the appellant was charged in relation to only four incidents. Staff Sergeant Lee Kim Siah (PW5) explained that PW4 had mentioned other incidents of abuse, but as the details of these were unclear, the appellant was not charged in relation to them. The judge found that PW4`s credit was not impeached. The judge was also careful to state that the appellant`s acquittal on three other charges was not due to PW4`s unreliability, but because of the lack of specific details in her evidence. However, PW4 remembered the incident in question well, because it was the most serious assault.

The next issue involved PW6`s credibility. On 30 August 1999, the appellant made a statement, which was recorded in English by PW6. She later claimed that she did not understand the statement as she had only been educated up to Standard Two, in Tamil, in India. This was rejected for two reasons. First, PW6 was not an interested witness; he was merely doing his job. Second, the circumstances (as related by PW6 and evidenced by the document) showed that the appellant understood the statement:

(1) PW6 said it was his practice to ask the maker of the statement in which language he wanted it recorded. In this case, the appellant wanted it recorded in English.

(2) PW6 and the appellant had communicated in simple English.

(3) When the statement was read back to the appellant, she asked for certain amendments to be made; when they were made, she countersigned against them.

THE SECOND ISSUE: CREDIBILITY OF THE DEFENCE WITNESSES

DW2 and DW3, being relatives of the appellant, were interested witnesses. In **Thirumalai Kumar v PP** [1997] 3 SLR 434 , the court said of the appellant`s wife and mother: `Both were interested parties and there was every reason to treat their evidence with caution.`

There were two main issues in which material discrepancies in the defence`s evidence surface. First, the allegations of theft revealed the following weaknesses:

(1) Neither the appellant, DW2 nor DW3 could remember the exact dates of the two alleged incidents.

(2) In relation to the first alleged incident, the appellant said in her statement to the police that she found the missing money in PW4`s bag. In her examination in chief, she said it was DW3 who had found the money. Her explanation for the discrepancy was that they were both at the scene.

(3) The appellant said she did not tell Noor Jehan bte Mohd Nor (`DW4`), through whom she had employed PW4, about the thefts, but DW4 said that she did.

The second issue was when the appellant was at home on 30 August 1999. The appellant kept changing her evidence:

(1) In her examination-in-chief, she said that she left at 7.30am, to go to Kandang Kerbau to prepare for her late father`s prayers.

(2) During cross-examination, she said that she left at 7am, to deliver goods with her husband. She returned at 2.30pm.

(3) During the impeachment exercise, she said she left at about 10am.

(4) When she was cross-examined further, she said that she left at 7am.

(5) During re-examination, she said that she left at 7am and returned at 9am.

THE THIRD ISSUE: WERE THE ELEMENTS OF THE OFFENCE PRESENT?

Section 321 of the Penal Code provides for the offence of voluntarily causing hurt:

> *Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".*

The first element was that the appellant intended to cause hurt or knew that her actions were likely to cause hurt. As the prosecution`s evidence has been accepted over the defence`s version, it was plain that the appellant intended to cause hurt to PW4.

The second element was that the victim was hurt. Section 319 defines `hurt`:

> *Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*

PW2`s medical report noted that PW4`s injuries included: hematomas and lesions over the scalp; bruises over the temples, nose and eyelids; swelling of the eyes and a bruise over the shoulder. These fell within s 319.

The third element was that the appellant`s actions ***caused*** the hurt. PW2 opined that the above-mentioned injuries probably occurred within 24 hours of his examining PW4. He also thought that they were caused by a blunt object. First, the defence alleged that the bruises on PW4`s forehead were caused by her falls. PW2 thought this unlikely because:

(1) A fall could only lead to one of the three hematomas on the scalp. Moreover, it was unlikely that the hematomas were caused on different occasions.

(2) A face-down fall could not explain the bruises on PW4`s temples, which were on the sides of her face.

(3) Looking at the distribution of the injuries, they were unlikely to have been caused by a fall.

In any case, the falls could not explain her other injuries.

The second allegation was that PW4 had inflicted the injuries upon herself. PW2 also thought this unlikely. He said that, while each individual injury could have been self-inflicted, it was unlikely that all of them were inflicted at the same time. Yet, the medical evidence suggested that most of the injuries were sustained at the same time.

The final allegation was that PW4 sustained the injuries through a combination of falls and self-infliction. PW2 agreed that this was possible. However, the rest of the evidence made this explanation unlikely (see above). There was also no credible reason for PW4`s self-infliction. Moreover, it was unlikely that she could have inflicted such injuries on herself within two hours, and presumably in public. The irresistible inference was that the appellant had caused PW4`s injuries.

THE FOURTH ISSUE: SENTENCE

The punishment for an offence under s 321 is set out in s 323:

> *Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to $1,000, or with both.*

However, as the victim in this case was a domestic maid and the perpetrator her employer, the court should also have considered s 73:

> *(1) Subsection (2) shall apply where an employer of a domestic maid or a member of the employer`s household is convicted of -*

> *(a) an offence of causing hurt or grievous hurt to any domestic maid employed by the employer punishable under section 323, 324 or 325 ...*
>
> *(2) Where an employer of a domestic maid or a member of the employer`s household is convicted of an offence described in subsection (1)(a) ...* ***the court may sentence the employer*** *of the domestic maid or the member of his household, as the case may be,* ***to one and a half times the amount of punishment to which he would otherwise have been liable for that offence*** *. [Emphasis is added.]*

There were no real mitigating factors here. The fact that the appellant had no antecedents itself did not carry much weight. As was said in **PP v Tan Fook Sum** [1999] 2 SLR 523 at [para]32:

> *[T]he fact that the respondent has no previous convictions ... is of little assistance to him. The inference here must be that the respondent as a first offender and being of good character is a mitigating factor ... the weight to be given to this would be greater if there were positive evidence as to character rather than the negative inference from the absence of ... other convictions.*

There were, however, several aggravating factors:

(1) PW4 sustained rather serious injuries, concentrated on the head and face, which are vulnerable parts of the body.

(2) The appellant did not use her bare hands, but used a wooden pole and a slipper.

(3) The appellant was in a position of authority over PW4.

(4) PW4 was a vulnerable victim. Maids have been recognised as a category of persons in need of greater protection.

(5) The attack was unprovoked.

(6) The appellant had shown no remorse. She had not apologised to PW4 nor paid her any compensation. She even tried to cast aspersions on PW4`s character during the trial.

The precedents showed that, where no injuries or minor injuries are caused, only a fine was imposed. It was clear that in this case, a custodial sentence was warranted. The respondent cited ***Murnita bte Mujini v PP*** (MA 293/2000), whose facts were similar to the present case. In that case, the appellant tied the victim to a ladder and beat her with a wooden pole, causing cuts and bruises all over the latter`s body. The appellant was also a first offender and 27 years old at the time of the offence. The difference was that she pleaded guilty. On appeal, the court sentenced her to 15 months` imprisonment on the s 323 charge.

In imposing custodial sentences, the courts in cases like ***Wong Suet Peng v PP*** (MA 170/2000) and ***Chung Poh Chee v PP*** (MA 71/2000) have recognised the need for deterrence and the importance of public policy in this area. The judge in this case had overlooked these concerns, for he did not even mention s 73 and the legislative intent behind it. During the parliamentary debate on the Penal Code

(Amendment) Bill on 20 April 1998, the Minister for Home Affairs listed the reasons for the enhanced penalties:

(1) Maids are especially vulnerable to abuse by their employers because they `work within the confines of their employers` home for 24 hours of the day ... are isolated from the rest of society ... and depend on their employer for food and lodging`.

(2) Maid abuse should not be tolerated in a gracious society, which is what Singapore aspires to be.

(3) Maid abuse is also detrimental to Singapore`s international reputation and bilateral relations.

Section 73 was passed in response to an alarming increase in maid abuse cases from 1994 to 1997. Maid abusers have certain misconceptions which must be corrected. A maid sells her services; she does not sell her person. An employer should not exploit his maid`s dependence on him for food and lodging, for these are basic rights. A maid`s abased social status does not mean that she is any less of a human being and any less protected by the law.

There exists in Singapore a rather unique situation where foreign domestic help is affordable for a large part of the population. Singaporeans should not take this situation for granted, for the luxury of having foreign help depends greatly on good relations with neighbouring states. It is probably not a good thing that the key criterion for employing a maid is financial ability; but it would of course be an administrative nightmare if the authorities had to check on every maid`s living conditions and on the household members. Just because the authorities do not scrutinise a potential employer, before he employs a maid and periodically while she is in his employ, he should not think that he will not be punished for any offences he commits against her.

Conclusion

For the reasons above, the appellant`s appeals against conviction and sentence were dismissed, the respondent`s cross-appeal against sentence was allowed and the sentence was enhanced to nine months` imprisonment.

Outcome:

Appeals dismissed; cross-appeal allowed.

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