Tan Peng Mong *v* Public Prosecutor
[2013] SGHC 229

Case Number : Magistrate's Appeal No 21 of 2013

Decision Date : 31 October 2013

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Lee Chay Pin Victor and Lew Chen Chen (Chambers Law LLP) for the appellant; Sanjna Rai (Attorney-General's Chambers) for the Public Prosecutor.

Parties : Tan Peng Mong — Public Prosecutor

Criminal Law – Offences – Hurt – Offence committed by public transport worker – Sentencing

31 October 2013

Choo Han Teck J:

1 This was a case in which a taxi driver assaulted his passenger. The accused taxi driver was convicted in the District Court on two charges. The first was voluntarily causing hurt and the second was using criminal force, under ss 323 and 352 respectively of the Penal Code (Cap 224, 2008 Rev Ed). He was sentenced to 10 days' imprisonment on the first charge and a fine of $1,000 on the second. The accused appealed against conviction and sentence while the prosecution appealed against sentence. At the conclusion of the hearing I dismissed the appeals of the accused and the prosecution. I write these grounds of decision primarily to explain why I did not accept the prosecution's argument that two decisions cited by the learned DPP, read together, lay down a standard sentence of 4 weeks' imprisonment for "simple assaults" committed by public transport workers against their passengers.

2 But first I should narrate the facts and explain briefly why I dismissed the accused's appeal against conviction. In the late afternoon of 29 October 2011, the accused, then 57 years of age, picked up a couple in his taxi, a male Caucasian aged 36 and his wife aged 27. During the journey there was recurrent disagreement between the accused and the male passenger concerning the temperature at which the air-conditioning was set. This eventually resulted in the male passenger's embellishing a request to decrease the temperature with the expostulation "for fuck's sake". The trial judge found that the accused then became more aggressive in his manner. As the taxi neared the passengers' destination, the accused asked, "You got balls? You got balls?" and told them that he was taking them somewhere other than their destination. He proceeded to navigate the taxi to the extreme right lane. While the taxi was stopped at a red light, the passengers alighted and stood on the road divider. The accused followed at once. The trial judge found that the accused grabbed the male passenger's throat, which was the act giving rise to the charge of using criminal force. The male passenger reacted by pushing the accused away, which caused the accused to fall and fracture his left wrist. The trial judge further found that while the male passenger attended to his wife, the accused recovered, took hold of the male passenger's jumper with his injured left hand and with his right hand swung an umbrella that hit the male passenger over the left ear. This was the act giving rise to the charge of voluntarily causing hurt. The police were called, and when they arrived they found the accused a distance away from the passengers shouting at them.

3 Having gone through the record, I cannot say that the trial judge's findings of fact were

against the weight of the evidence. It cannot be doubted that there was an altercation of some sort before the police arrived, and the remaining question was what exactly happened in the altercation, to which question only the accused and his passengers knew the answer. Thus this case largely depended on an assessment of the credibility of the accused and the passengers, which assessment the trial judge is better-placed than the appellate court to make. Addressing the arguments that the defence put forward on appeal, I did not think that the failure to recover the umbrella which the accused allegedly used damaged the prosecution's case to any substantial extent, and I thought that the injuries reported by the doctor who examined the male passenger the same night were consistent with the injuries to be expected from having been grabbed by the throat and hit on the left temple with an umbrella. I also thought it entirely believable that the accused should be able to take hold of the male passenger's jumper with his left hand despite having fractured his left wrist moments before. For these reasons I did not interfere with the findings of fact below and upheld the conviction.

4 On the question of sentence, the prosecution's argument which these grounds of decision are meant to address relied on *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 ("*Wong Hoi Len*") and *Public Prosecutor v Heng Swee Weng* [2010] 1 SLR 954 ("*Heng Swee Weng*"). In *Wong Hoi Len*, a passenger pushed and punched a taxi driver and was convicted on a charge of voluntarily causing hurt under s 323 of the Penal Code. The court there held at [20] that the "starting benchmark for a simple assault" on a public transport worker would be "a custodial sentence of around four weeks". In *Heng Swee Weng*, a taxi driver was convicted on a charge of outrage of modesty under s 354 of the Penal Code. He touched the hand of his passenger, a 15-year-old girl, took her to a place other than her intended destination, and when she alighted followed her out of the taxi and hugged her. The court agreed at [16] that taxi drivers were in a "special position *vis-à-vis* their passengers" in that they are entrusted with the safety of the passenger and the custody of his property. He went on to say at [18] that "the protection accorded to one side of the [service frontline] must, as a matter of logic, be also extended to the other side", which meant that "just as public transport workers deserve special protection" when they are victims of crime, so public transport workers who abuse the trust passengers place in them deserve "particular denunciation". The prosecution argued that it followed that where a public transport worker committed a simple assault against a passenger, the starting point for such an offence should likewise be about four weeks' imprisonment. I have no disagreement with what was held in these two cases.

5 In my view, the prosecution's argument here was not on the same point. I accepted that offences committed by public transport workers against their passengers might merit "particular denunciation" by reason of the position of trust that these workers occupy in relation to their passengers. For the duration of the ride, public transport workers are in sole control of where their passengers go, and their presence together in an enclosed space can make it difficult for passengers to escape when public transport workers commit offences against them — in the same way that it could make it difficult for these workers to escape offences committed against them by their passengers. Hence, when public transport workers commit offences against their passengers, their culpability is generally — although not invariably — higher than that of persons who commit the same offences against strangers. But I did not think it means that offences committed by public transport workers against their passengers ought to be punished as severely as offences committed by passengers against the workers. There are a few reasons for this. First, as V K Rajah JA ("Rajah JA") said in *Wong Hoi Len* at [18], offences against public transport workers compromise their "right to work in a safe and secure environment" and for that reason warrant enhanced sanction. In contrast, offences by these workers against their passengers do not involve undermining such a right. Second, offences against public transport workers are likely to have an adverse effect on the provision of a public service in that such offences may discourage people from taking up employment in the public transport sector, when to begin with many people find such employment an unattractive prospect given the hours and the pay. A decrease in the number of public transport workers would reduce the

capacity of the public transport system to serve the public. Third, Rajah JA's starting sentence of four weeks' imprisonment for voluntarily causing hurt to public transport workers must be taken in the context, at [10]–[11] of *Wong Hoi Len*, of an increasing frequency, to a worrying degree, of offences committed against these workers. There appears to be no similar frequency of offences committed by public transport workers against their passengers, and consequently no similar need for general deterrence in sentencing for these offences.

6 In the present case, the accused's position as a taxi driver increased his culpability in that, being in sole control of where his passengers went, he took them away from where they wanted to go and thus caused them distress. Further, as a direct consequence of his veering away from their destination, they found themselves stranded in the middle of the road and vulnerable to the accused's assault. Hence I did not think that a sentence of ten days' imprisonment on the charge of voluntarily causing hurt was manifestly excessive. However, I did not think it was manifestly inadequate either. I agreed with the trial judge's view that this was not a particularly serious assault, and that there were a number of other factors which called for leniency towards the accused and which the judge below had taken into account. I therefore dismissed both the accused's and prosecution's appeals against sentence.