Phua Song Hua v Public Prosecutor
[2004] SGHC 33

Case Number : MA 117/2003

Decision Date : 24 February 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : M Ravi (M Ravi and Co) for appellant; Eddy Tham (Deputy Public Prosecutor) for respondent

Parties : Phua Song Hua — Public Prosecutor

Criminal Law – Offences – Public tranquillity – Rioting – Whether ingredients of offence fulfilled – s 146 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Sentencing principles for offence under s 147 of Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Statements – Cross-examination on charge pleaded guilty to – Whether material inconsistencies present

Evidence – Witnesses – Identification evidence – Whether appellant wrongly identified – Application of Turnbull guidelines

24 February 2004

Yong Pung How CJ:

1 The appellant ("Phua") was convicted in the district court by District Judge Teo Weng Kuan of two charges of rioting punishable under s 147 of the Penal Code (Cap 224, 1985 Rev Ed). He was sentenced to a total of 18 months' imprisonment and three strokes of the cane. Phua appealed against his conviction and sentence. I dismissed both appeals and now set out my grounds.

Background

2 Phua claimed trial to the following two charges:

> You, Phua Song Hua, are charged that you on the 18th day of April 2002 at or about 2.45 am, along Mohammad Sultan Road, Singapore, together with Bai Jinda Roy'ston, Leong Heen Meng, Oh Shifa and 4-5 unknown male persons, were members of an unlawful assembly, whose common object was to cause hurt to the said Lim Eu Zhi and in the prosecution of such common object of the said assembly, did cause hurt to the said Lim Eu Zhi, and you have thereby committed an offence punishable under section 147 of the Penal Code, Chapter 224.
>
> You, Phua Song Hua, are charged that that you on the 18th day of April 2002 at or about 2.56 am, along Mohammad Sultan Road off River Valley Road, Singapore, together with Bai Jinda Roy'ston, Leong Heen Meng, Oh Shifa and 2 unknown male persons, were members of an unlawful assembly, whose common object was to cause hurt to the said Lim Eu Zhi and Goi Wee Shien and in the prosecution of such common object of the said assembly, did cause hurt to the said Lim Eu Zhi and Goi Wee Shien, and you have thereby committed an offence punishable under section 147 of the Penal Code, Chapter 224.

3 The four other persons named in the charges – Oh Shifa ("Oh"), Bai Jinda ("Bai"), Tan Choon

Say ("Tan") and Leong Heen Meng ("Leong") – had pleaded guilty to reduced charges of unlawful assembly under s 143 of the Penal Code. They were called as defence witnesses at Phua's trial.

The Prosecution's case

4 The two victims, Lim Eu Zhi ("Lim") and Goi Wee Shien ("Goi"), had gone to a pub named Club 7 ("the club"). While they were leaving the pub, Lim was confronted by a group of five to six persons led by Oh. Oh and Lim had a brief scuffle, but the club's bouncers swiftly intervened and the altercation ceased.

The first incident

5 When Lim and Goi were walking later towards their motorcycles, they were again confronted by Oh who was leading a group of more than five men. The group punched and kicked Lim for about a minute. When a policeman (Staff Sergeant Mohamad Hirwan bin Muhd, hereinafter referred to as "Hirwan") arrived, all the assailants except Oh and Leong dispersed. While Hirwan was recording the particulars of Oh and Leong, Oh spoke to Lim and both managed to resolve the matter amicably. Hirwan then allowed all of them to leave.

6 During the trial, Lim could identify Oh, Leong and Bai as part of the group, but he could not remember if Phua was involved in the altercation. Goi, in contrast, identified Phua (in addition to Oh and Leong) as one of the persons who had surrounded Lim while four or five others attacked him.

The second incident

7 Lim and Goi then went to a convenience store, Seven Eleven, to purchase some cigarettes. After leaving the store, they were confronted by a different group of three men, who asked them which gang they belonged to. At this juncture, Bai, who was with the earlier group, shouted to the three men in Hokkien, "It was them!" The two groups then merged to surround Lim and Goi, and attacked them with punches and kicks.

8 Lim testified to being attacked by five or six persons. At one point, while he was on the ground, Phua punched him on the left side of his head. Lim specifically remembered Phua as being "quite small-sized" and clothed with a "long-sleeved white-coloured shirt". Goi also confirmed that Phua was one of the persons in this group that attacked them.

9 The police arrived then, and the assailants fled towards some taxis. Sergeant Sharul bin Osman ("Sharul") saw four persons running and boarding a taxi, but Sharul managed to stop the taxi and detain them. Hirwan brought Lim and Goi to identify the assailants. They confirmed that all four persons – Bai, Tan, Leong and Phua – were part of the group of assailants. Lim and Goi were then sent for medical examinations, and were found to have suffered injuries in the form of bruises to their heads and arms.

The Defence

10 Phua claimed that he was in the vicinity of the club at the material time, but was not involved in both incidents. He did not adduce any evidence to prove an alibi pursuant to s 105 of the Evidence Act (Cap 97, 1997 Rev Ed). Instead, he called Bai, Leong, Tan and Oh to testify that he was not with them during the two incidents.

11 According to Phua, he had gone to the club with Bai, where he met Tan and Leong. He left

the club later to purchase a drink at Seven Eleven. While consuming his drink outside the store, he contacted Bai and Tan, and arranged to meet them at the store to take a taxi together. While Phua was waiting for them, he witnessed a commotion opposite the club, which was dispersed by the police. This was the first incident which Phua denied being involved in.

12 After Phua purchased another drink, he witnessed another commotion, which was the second incident. He decided to leave in a taxi first and contact his friends later. When he entered the taxi, Bai, Tan and Leong suddenly appeared and rushed into the same taxi. However, the police arrived and stopped the vehicle.

The decision below

13 The trial judge convicted Phua of the two offences for the following reasons:

(a) He did not accept Phua's evidence. In his opinion, Phua's story was added to, changed and finally abandoned for a new version altogether. Furthermore, certain aspects of his testimony were improbable and contradictory.

(b) The testimonies of the four defence witnesses contradicted Phua's evidence and had irreconcilable discrepancies. In particular, the credibility of Leong and Bai was impeached when they were confronted with their previous inconsistent statements to the police.

(c) In contrast, Lim and Goi had provided consistent and coherent accounts, which were free from fundamentally irreconcilable discrepancies. The Prosecution's case was further bolstered by the testimonies of the arresting officers, which the trial judge found to be consistent.

14 The trial judge sentenced Phua to 12 months' imprisonment on the first charge, and 18 months' imprisonment and three strokes of the cane on the second charge. Both sentences were ordered to run concurrently.

The appeal

15 Essentially, Phua disputed the trial judge's findings of fact and asserted that his version of the material events should have been accepted. Phua's exact grounds of appeal were not succinctly stated, but his main contentions could be summarised as follows:

(a) the identification evidence which the Prosecution relied on was flawed;

(b) the trial judge failed to give sufficient weight to the testimony of the defence witnesses;

(c) the elements of the offence in s 146 were not fulfilled and the charges should have been amended; and

(d) the sentences were manifestly excessive in view of the minor role played by Phua.

Whether the identification evidence which the Prosecution relied on was flawed

The first charge

16 Phua contended that the identification evidence concerning the first charge was weak, since only Goi had noticed Phua at the scene and the fight had lasted only 30 seconds. In my opinion, the

trial judge was entitled to rely solely on Goi's identification evidence to conclude that Phua was present. I had noted in *Low Lin Lin v PP* [2002] 4 SLR 14 at [49] that "a conviction may be warranted on the testimony of one witness alone, *so long as the court is aware of the dangers and subjects the evidence to careful scrutiny*" [emphasis added]. In *Ang Jwee Herng v PP* [2001] 2 SLR 474, I also held that it was the quality of identification evidence, and not the number of witnesses that counted. I did not accept that an accused could never be convicted on identification evidence alone when there was only one witness to the offence.

17 In the present case, I was satisfied that the trial judge had taken great pains to analyse Goi's evidence before deciding to accept Goi's testimony. He came to the reasonable conclusion that Goi was able to remember Phua since he was an onlooker and would have noticed more details than Lim, who was the one being attacked. Furthermore, the trial judge noted that Goi could describe Phua with great detail as a "small built, frail" man with a "long sleeve white T-shirt". Goi could also give a satisfactory explanation as to why he could distinctly recall seeing Phua; he saw Phua again in the second incident and therefore Phua's image was firmly etched in his memory. In the light of the deliberate caution exercised by the trial judge, Phua's contention was untenable.

18 I also drew counsel for Phua's attention to the pertinent decision by the Court of Appeal in *Heng Aik Ren Thomas v PP* [1998] 3 SLR 465, which I recently applied in *Govindaraj Perumalsamy v PP* [2004] SGHC 16. The guidelines in *R v Turnbull* [1977] QB 224 for the assessment of identification evidence were endorsed and reformulated as a three-step test:

(a) The first question which a judge should ask when encountering a criminal case where there is identification evidence is whether the case against the accused depends wholly or substantially on the correctness of the identification evidence which is alleged by the Defence to be mistaken.

(b) If so, the second question should be this: Is the identification evidence of good quality, taking into account the circumstances in which identification by the witness was made? Some non-exhaustive factors to consider include the length of time for which the witness observed the accused, the distance at which the observation was made, the presence of obstructions, the frequency with which the witness saw the accused and the length of time which elapsed between the original observation and the subsequent identification to the police.

(c) If the quality of the identification evidence is poor, the judge should then seek other evidence which supports the correctness of the identification.

19 On the present facts, Phua's conviction hinged principally on the accuracy of Goi's evidence, as there was no other witness who could corroborate him. Proceeding to the next guideline, I found that Goi's evidence was of considerably high quality. Although he observed the fight for merely 30 seconds, he was not far away from the group. I inferred, from the record of proceedings, that he was at close quarters with Phua as he had actually attempted to stop the scuffle. He also saw Phua twice, and had identified Phua to the police very shortly after the second incident. I therefore concluded that the identification evidence of Phua for the first charge was reliable, notwithstanding identification by only one victim. There was then no necessity for me to consider the third guideline.

The second charge

20 Counsel for Phua alleged that the "identification parade", in which Phua, Bai, Leong and Tan were shown to the victims, was improperly conducted. He argued that the trial judge's refusal to allow cross-examination of Hirwan on the identification parade procedure was prejudicial to Phua.

21 I did not accept this submission as there was no indication of impropriety in the identification procedure. Admittedly, this identification parade was not conducted according to the usual formalities. In fact, counsel for Phua, in his cross-examination of Hirwan, termed the whole procedure an "immediate identification parade". Nonetheless, the entire procedure appeared to me to be no more than a confirmation by the victims of their earlier identification of Phua, rather than a formal identification parade which had to comply with strict rules. Since the judge did not allow cross-examination on the exact procedure used for an "immediate identification parade", it was not possible, in the absence of any express guidelines in the Criminal Procedure Code (Cap 68, 1985 Rev Ed), to criticise it as being improper.

22 In any event, I did not find the lack of cross-examination on the above procedure to be prejudicial to Phua. Even if the procedure was irregular, the identification evidence of Lim and Goi need not be automatically excluded. In *PP v Ong Phee Hoon James* [2000] 3 SLR 293, I found that the casual "face-to-face" manner of identification was procedurally improper. Yet, this finding merely affected the weight and not the admissibility of the identification evidence. The identification evidence was still evaluated according to the *Turnbull* guidelines, and found to be reliable. Only if there is evidence of bad faith or deliberate flouting of procedural requirements will an identification parade not be upheld: *Ong Phee Hoon* and *Thirumalai Kumar v PP* [1997] 3 SLR 434.

23 I was thus aware that the possibility of irregularity in the final identification of Phua need not preclude the court's acceptance of the earlier identification evidence. In this regard, I found the identification evidence in the second fight more compelling than in the first. Both victims had testified to seeing Phua and specified that Phua had attacked Lim. In particular, Lim recalled being punched on the left side of his head by Phua. He then noticed that Phua was "quite small-sized" and was wearing a long-sleeved white shirt. Lim and Goi, who had seen Phua at close quarters (Goi had seen him twice), and described him in similar terms, were able to identify him again before the police without hesitation. Once again, the *Turnbull* guidelines were amply fulfilled. Phua had no basis to find fault with the trial judge's decision concerning the accuracy of identification evidence in both charges.

Whether the trial judge failed to give sufficient weight to the testimony of the defence witnesses

24 I found this ground of appeal completely unmeritorious. It is settled law that an appellate court will generally defer to the trial judge's findings of fact when the findings hinge on his assessment of the credibility and veracity of the witnesses: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 and *PP v Fazely bin Rahmat* [2003] 2 SLR 184. Therefore, Phua had to convince me that the trial judge's decision was plainly wrong or wholly against the weight of evidence: *PP v Azman bin Abdullah* [1998] 2 SLR 704 and *Mustaza bin Abdul Majid v PP* [2004] SGHC 18. From the record of proceedings, I observed that the trial judge had meticulously analysed each defence witness's testimony, leaving no stone unturned, and had concluded that these witnesses had manifested material discrepancies which undermined their credibility. Before me, Phua could not successfully refute these findings of fact. I therefore agreed with the trial judge that the defence's position – that Phua was not at the scene during both fights – was unsustainable. I turn now to highlight some of these discrepancies.

25 First, Phua's own testimony was far from watertight. He appeared to be deliberately distancing himself from both incidents, by giving only very brief accounts of the fights during his examination-in-chief. Though he attributed the paucity of details to his poor vision, he was ironically able to add significant details during his cross-examination, including how helmets were used in the second incident and the number of persons assisting Oh in the first incident. After being confronted with many inconsistencies between his police statement and his oral testimony (which amounted to 11 points of inconsistency as tabulated by the trial judge), he conceded that everything in his

statement was the truth, thus effectively renouncing all that he said in court as "mistakes". The trial judge was certainly justified in concluding that these discrepancies could not simply be attributed to defective memory, as some differences were significant. As an illustration, Phua claimed in his police statement that he had never seen Leong before, but testified during the trial that he had met Leong at the club. In another inconsistency, Phua in his statement gave a detailed description of how he saw a big group led by Oh approaching Lim and Goi, but, according to his oral evidence, he saw both groups together when he emerged from the Seven Eleven store. Since Phua's testimony was highly malleable, it was dangerous to accept his defence that he was not present on both occasions.

26 Second, one of the defence witnesses, Leong, supported Phua by confirming that Phua was not present in both incidents. Yet, when cross-examined on his previous statement, he admitted that it was a completely different version from his oral testimony. Moreover, his version of how he fled to the taxi was completely at odds with all the other defence witnesses' accounts. The others testified that Leong, Bai and Tan fled to the taxi after the fight and saw Phua inside. Only Leong recounted how he and Bai were initially in the taxi with Phua before they saw the second commotion. He alleged that he and Bai then joined in the fight, pulled Tan away and returned to the taxi.

27 Third, Bai's credibility was similarly shaken when he was shown a material discrepancy in his police statement. He had earlier stated that as he was fleeing from the second fight, he had boarded the taxi with Phua and the others. This was patently contradictory to his claim at the trial that Phua was already in the taxi. Since Bai was dumbfounded and at a loss for an explanation, his testimony that Phua was already seated in the taxi was effectively unreliable. This discrepancy was particularly damaging to Phua's case, as Bai was an essential witness who had gone to the club with Phua, and who testified that on both occasions Phua was absent.

28 Finally, there was Tan's testimony. Tan only testified to Phua's absence in the second incident. Yet, all that he testified to was rendered inconsequential when he could not withstand cross-examination and finally conceded that he could not be sure that Phua was not involved in the fight. To my mind, the defence proffered by Phua was feeble and I was fully convinced that the Defence had failed to cast any reasonable doubt on the Prosecution's case.

The previous charges that Oh, Leong, Bai and Tan pleaded guilty to

29 The above inconsistencies would have sufficed to dismiss this ground of appeal, but I noted that the trial judge had also relied on the contradictions between the oral testimonies and the earlier pleas of guilt of Oh, Leong, Bai and Tan. These witnesses had pleaded guilty to charges stating that Phua was present and that there were more than five persons involved in the fights. Specifically, Bai, Leong and Oh's charges included Phua's name for the first fight, while Leong and Tan's charges implicated Phua for the second fight. However, during the trial, they blatantly denied that Phua was part of the group, and asserted that there were fewer than five persons in each incident. The Prosecution was entitled to cross-examine them on these discrepancies. As I had decided in *PP v Liew Kim Choo* [1997] 3 SLR 699 and *PP v Heah Lian Khin* [2000] 3 SLR 609, the statement of facts which a witness had previously admitted to in a guilty plea can be properly classified as a confession for the purposes of s 17 of the Evidence Act, and a witness can be cross-examined on it under s 147 of the Evidence Act. This principle should be equally applicable to the cross-examination on a charge admitted to in a guilty plea. I found then that the credibility of the witnesses was undermined in instances when they could not adequately explain the glaring contradictions. Notably, Bai, when confronted with the charge he had previously pleaded guilty to, changed his evidence and admitted that there were seven to eight persons involved.

30 However, I was not inclined to place too much emphasis on the discrepancy concerning the

insertion of Phua's name in the charges. In *Liew Kim Choo*, I enumerated various factors that militated against treating a statement of facts as evidence which could, on its own, convict an accomplice. I recognised that there were many reasons why a person might plead guilty and admit to a statement of facts even though the statement of facts might be untruthful. I noted that false guilty pleas were very plausible, since the statement of facts was not prepared by the accused, but by the investigating officer or the Public Prosecutor. The judge, in accepting a statement of facts, only needed to ensure that the accused had admitted to all the particulars material to the offence. I took these factors into consideration in *Ang Ser Kuang v PP* [1998] 3 SLR 909 and held that when immaterial particulars of a statement of facts were relied upon to reduce the credibility of a witness, the evidential value of the statement of facts had to be diminished.

31 In the present case, the defence witnesses had explained that they had objected to the inclusion of Phua's name in the charge, but nevertheless proceeded to plead guilty when his name was not removed. The insertion of Phua's name was not material to their conviction and any inaccuracy would not have vitiated their plea of guilt. Their subsequent denial of Phua's involvement in the trial did not, *per se*, show that they were concocting their evidence at the trial. Rather, I found their credibility to be largely undermined by other discrepancies listed above. The same could not be said for the witnesses' assertion that there were fewer than five persons. This fact was material to the charge, as five or more persons are required to fulfil the definition of an unlawful assembly under s 142 of the Penal Code. The reversal of their positions in the trial was thus detrimental to their credibility. Further, the judge noted that Phua in his police statement acknowledged that there were more than five persons in both incidents. It was unusual that, though Phua was not contesting the number of persons involved, the other witnesses decided to contradict their previous admissions and testify to the contrary. This particular inconsistency was surely indicative of the witnesses' excessive tailoring of their evidence in a bid to aid Phua. As such, I still agreed with the trial judge's conclusion that the defence witnesses were not credible.

Whether the two charges should have been reduced to s 143 offences

32 I also found this contention to be devoid of merit. It was clear to me that the main ingredients of the offence of rioting, as defined in s 146 of the Penal Code, had been fulfilled for both charges. The relevant provision is:

> Whenever force or violence is used by an unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

33 The first requirement is the presence of an unlawful assembly, which is, in turn, defined in s 141. Essentially, there must be an assembly of five or more persons, having a common object which corresponds with one of the objects specified in paras (a) to (e) of s 141. The evidence here showed that there were more than five persons in both incidents and that there was a common object of causing hurt, which satisfied object (c), "to commit any mischief or criminal trespass, *or other offence*" [emphasis added].

34 Next, violence must have been employed by the unlawful assembly in prosecution of the common object. There is again no dispute here that in both instances, the group punched and kicked Lim and Goi. Although Hirwan did not witness the fighting in the first incident, Bai, Leong and Oh testified that they had attacked Lim.

35 Lastly, Phua must have been a "member" of the unlawful assembly. Section 142 stipulates that a member is one who, "being aware of facts which render any assembly an unlawful assembly,

intentionally joins that assembly, or continues in it". I elaborated in *Lim Thian Hor v PP* [1996] 2 SLR 258 that the person should be aware of and concur with the common object. In this regard, participation in the common object of the unlawful assembly need not be manifested by overt acts. I held in that case that mere presence, together with direct or circumstantial evidence to show that the accused shared the common object, can amount to membership in the unlawful assembly. This principle was applied again in *Osman bin Ramli v PP* [2002] 4 SLR 1, where I inferred that the appellant, having seen the fight and chosen to remain without any special reason, was part of the unlawful assembly.

36 Similarly in this case, though there was no evidence of Phua having punched Lim in the first fight, Phua chose to stay with the group while Lim was being attacked and offered no special reason for doing so. The trial judge had drawn the proper inference that Phua had concurred with the common object of causing hurt to Lim. In the second scuffle, it was even clearer, from Phua's own participation in the fight, that he was in full agreement with the object of the assembly. On all counts, the offences of rioting were adequately made out.

37 The fact that the other witnesses had been charged with s 143 was no reason for Phua to be similarly charged under that section. It is common knowledge that accused persons who plead guilty, can be charged with less serious offences. In *PP v Knight Glenn Jeyasingam* [1999] 2 SLR 499, I alluded to the practice of plea negotiation, in which representations are made to the Attorney-General's Chambers. I acknowledged that this process might result in a *quid pro quo* such as a reduction of the charge. Since Phua chose to proceed with the trial, amendment of his charges could only occur if the elements of the offence were not satisfied. Phua failed to show how the ingredients in s 146 were not proven. Accordingly, this ground of appeal should fail.

Whether the sentences on both charges were manifestly excessive

38 Phua's counsel scathingly criticised the sentences as being harsher than those meted out to Oh, Bai, Leong and Tan, who had played a more major role. This objection neglected the fact that these witnesses had pleaded guilty to a less serious offence of unlawful assembly (s 143), which has a lower sentencing regime of a maximum penalty of six months' imprisonment. The principle of parity of sentence is irrelevant once there are different offences, as there is no longer any common basis for comparison. Moreover, as evident from *Knight Glenn*, plea negotiations will invariably result in reduced charges or sentences. Harsh as it might seem, the accused person who chooses to proceed with the trial runs the inherent risk that he might suffer a much heavier sentence than his accomplices who plead guilty. Phua, having failed to prove that he was not involved in both incidents of rioting, could not now rely on the fact that a heavier sentence *vis-à-vis* his accomplices had been meted out.

39 Under s 147, Phua faced imprisonment for a term of up to five years, and was also liable to be caned. Rioting has been consistently viewed as a serious offence, one which breaches public tranquillity and which warrants a deterrent sentence. The gravamen of the offence of rioting is the pursuit of a common unlawful purpose through weight of numbers. The individual is thus not being sentenced for his individual acts considered in isolation, but for his participation in the collective offence of rioting: *R v Caird* (1970) 54 Cr App R 499.

40 This principle does not inexorably imply that the role of the accused, relative to other offenders, can never be taken into account. In *Lim Thian Hor*, the accused did not attack the victim himself, but his son had used violence. The former was sentenced to 18 months' imprisonment, but his son received a sentence of 24 months' imprisonment and six strokes of the cane. Likewise, in the first incident, Phua had not participated in the punching of Lim. Twelve months' imprisonment was an appropriate sentence, considering the young age of Phua (18 years at sentencing and 17 years at the

time of offence) and the good testimonials on his performance in National Service.

41 Counsel for Phua urged me to set aside the sentence of caning for the second offence, but I rejected this submission. I acknowledged the fact that Phua was young. Nevertheless, the court, when dealing with youthful offenders, has to strike a balance between public interest and the interest of the offender: *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138. The seriousness of the offence of rioting was a strong factor which dissuaded me from reducing Phua's sentence. My view was further fortified by the presence of several aggravating factors. Phua did not have a clean record, having committed an offence of affray barely four months before this present offence. I noted that that offence was similar in nature to rioting as it involved the use of violence. In addition, Phua and the rest of the unlawful assembly had deliberately sought out Lim and Goi, in flagrant disregard of the police's earlier intervention in the first fight. In the trial judge's words, they "were deliberately spoiling for a fight, and they did so in clear disregard of the law". Such defiance could not be viewed lightly.

42 The sentence of 18 months' imprisonment and three strokes of the cane was reasonable, being at the lower range of the sentences meted out for "non-secret society related" offences. The courts have consistently imposed 18 to 36 months' imprisonment, as well as caning ranging from three to 12 strokes: *Chua Hwee Kiat Louis v PP* [2002] SGDC 220, *Yim Kar Mun Stanley v PP* [1997] SGDC 1, *Osman bin Ramli v PP* ([35] *supra*), *Rajasekaran s/o Armuthelingam v PP* [2001] SGHC 275 and *Tan Hui Li v PP* [1999] SGDC 1. I only noticed two cases – *Ang Kian Choon Lawrence v PP* [1997] SGDC 2 and *Mohamed Saleem s/o Mohamed Kassim v PP* [1998] SGDC 1 – in which the accused persons were not caned, but the facts therein were distinguishable. Significantly, the young offenders in those cases had clean records. In *Ang Kian Choon Lawrence*, the accused had also pleaded guilty. None of these factors were present here. Accordingly, I dismissed this ground of appeal and upheld the sentences imposed by the trial judge.

Conclusion

43 Phua had failed to show how the judge erred in convicting him based on reliable identification evidence and in finding his defence devoid of credibility. While Phua's participation in the first offence might have been minimal, his active involvement in punching Lim in the second offence was serious and could not warrant a lenient sentence. For the aforementioned reasons, Phua's appeals against conviction and sentence were without merit and were accordingly dismissed.

Appeal dismissed.