Chang Yam Song v Public Prosecutor
[2005] SGHC 142

Case Number : MA 21/2005

Decision Date : 08 August 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Christopher De Souza (Deputy Public Prosecutor) for the respondent

Parties : Chang Yam Song — Public Prosecutor

Criminal Law – Offences – Grievous hurt – Voluntarily causing grievous hurt – Whether appellant caused victim's injury – Whether appellant intended to cause or knew he was likely to cause grievous hurt – Section 325 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – General exceptions – Accident – Whether act done "by accident or misfortune" and "with proper care and caution" – Section 80 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – General exceptions – Private defence – Whether appellant under reasonable apprehension of danger to body from attempt or threat to commit offence – Section 102 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Findings of fact based on assessment of witnesses' credibility and veracity – Whether trial judge's findings plainly wrong or against weight of objective evidence

Criminal Procedure and Sentencing – Sentencing – Aggravating factors – Appellant's conduct at trial – Appellant charged with more serious of two similar offences

8 August 2005

Yong Pung How CJ:

1 The appellant was convicted in the District Court of voluntarily causing grievous hurt under s 325 of the Penal Code (Cap 224, 1985 Rev Ed). He was sentenced to three months' imprisonment. I dismissed his appeal against both conviction and sentence, and now give my reasons.

The facts

2 The appellant was charged as follows:

> [T]hat you, on the 9th day of March 2004, at or about 2.30pm, at Toa Payoh Central, Singapore, did voluntarily cause grievous hurt to one Chua Joong Wah, M/38 years old, to wit, by punching him once on his face, which caused the said Chua Joong Wah to sustain a nasal bone fracture, and you have thereby committed an offence punishable under section 325 of the Penal Code, Chapter 224.

3 At the trial, the Prosecution and the Defence gave contrasting versions of the incident. The only undisputed facts were that at the material time, the appellant owed Chua Joong Wah ("Chua") a substantial sum of money. The two men met by chance on the afternoon of 9 March 2004. The appellant demanded to see the contents of the file which Chua was carrying, but the latter refused to comply. In the course of the ensuing confrontation, Chua called the police. The appellant injured him on the nose before the police arrived.

The Prosecution's version

4 The Prosecution's case was that Chua, upon seeing the appellant, approached him to ask about repayment of the debt. The appellant at once started shouting at Chua and threatened to beat him up. The appellant also wanted to see the documents in Chua's file. Suspecting that the appellant was simply looking for a pretext to find fault with him, Chua refused the former's request and walked away. The appellant followed. He repeatedly asked Chua for the file and threatened to beat him up if he did not surrender it.

5 By then, a large crowd had gathered to watch the commotion. As the appellant kept challenging Chua to call the police, the latter did so after calling one of his friends to his assistance as a witness in the event of any trouble arising. In the interim before the police arrived, the appellant became very aggressive and tried to snatch the file from Chua. In the process, he threw several punches at Chua. One of these landed on Chua's nose, which started to bleed. Chua did not retaliate despite being hurt. At the trial, he explained that he had held back as he believed the appellant was trying to provoke him and thereby get him into trouble.

6 A short while later, the police arrived and separated the two men. Sergeant Gavin Koh Han Hsin ("Sgt Koh") interviewed Chua, while Corporal Low Li Wei ("Cpl Low") interviewed the appellant. In light of his nasal injury, Chua asked to be sent to a hospital for a medical examination. While waiting for the ambulance to arrive, he left the scene briefly for approximately five to ten minutes.

7 Throughout this period, Cpl Low was trying to calm the appellant, who remained preoccupied with Chua's file and who kept insisting that Chua should not be allowed to discard any of its contents. The appellant became even more agitated when he noticed that Chua was no longer at the scene. Together with the appellant, Sgt Koh and Cpl Low went in search of Chua. They found him a short distance away. When questioned, Chua explained that he had gone to a toilet to wash the blood from his face.

8 The appellant then became concerned that Chua might have taken the opportunity to dispose of some of the papers in his file. In view of the appellant's anxiety, Sgt Koh and Cpl Low helped him to make a search of the vicinity. The two police officers headed in one direction, and the appellant, in another. After some time, the latter returned to Sgt Koh and Cpl Low with a stack of papers which he claimed he had found nearby.

9 As for Chua, he was sent to Tan Tock Seng Hospital ("the Hospital") for treatment. An X-ray taken there revealed that he had a clear fracture involving the nasal bone. According to Dr Paul Mok Kan Hwei ("Dr Mok") who reviewed Chua's condition on 24 March 2004, a certain amount of force must have been used for Chua to suffer a fracture of this nature. Pursuant to this review, Dr Mok prepared a medical report dated 12 April 2004, which was admitted in evidence at the trial.

The Defence's version

10 The Defence's case, in contrast, was that it was Chua who had used force on the appellant first, and not *vice versa*. The appellant went up to Chua when he spotted him on 9 March 2004 as he believed Chua to be the mastermind of a series of poison pen letters directed against him. Upon seeing the appellant, Chua appeared frightened and tried to hide the file which he was carrying. Suspecting that Chua might be reacting in that manner because he had some of the poison pen letters in his file, the appellant asked Chua politely if he could see the file. To his surprise, Chua warned him not to go any nearer and threatened to call the police. Chua also kept shouting that the appellant owed him money.

11 As a crowd gathered around the two men, Chua started to walk away. The appellant followed closely so as not to lose sight of him. Realising that he was unlikely to be able to obtain Chua's file without the help of the authorities, the appellant deliberately challenged Chua to make good on his threat to call the police. Chua did so, but only after first telephoning a group of gangsters – so the appellant claimed – to go to his aid.

12 After making these calls, Chua seemed even more worried and tried once more to leave the scene. The appellant moved forward to stop him. Chua responded by pushing the appellant, causing his spectacles to fall off. As the appellant bent down to pick up his spectacles, he saw Chua approaching. He swung his right arm to fend Chua off and hit the latter's nose in the process. At the trial, the appellant emphasised repeatedly that he had hit Chua accidentally while acting in self-defence. He had no intention to hurt Chua; nor was the confrontation pre-arranged. He also denied that he had punched Chua while trying to snatch his file.

13 When the police arrived, the appellant told Cpl Low that there might be important documents in Chua's file and asked him to check its contents. Chua, however, refused to show Cpl Low the file when asked to do so. Chua then left the scene for about ten minutes. When he returned, the file seemed to be much thinner, and this time, he readily surrendered it to the police officers.

14 The appellant disbelieved Chua's explanation that he had gone to wash his face. He suspected that Chua had instead slipped away to discard incriminating documents from his file, and might have deliberately inflicted the nasal injury on himself at the same time. In the hope of retrieving some of the documents which he thought Chua might have disposed of, the appellant sought the two police officers' help to search the vicinity. To his elation, the appellant found a stack of the poison pen letters (*supra* [10]) nearby.

The decision at first instance

15 The district judge found Chua to be a credible witness and felt that his account of the material events contained "a ring of truth". The appellant's evidence, on the other hand, was "somewhat rehearsed, artificial and unbelievable". Furthermore, the medical evidence flatly contradicted the appellant's claim that he had hit Chua's nose accidentally in an act of self-defence. The district judge thus accepted Chua's evidence that the appellant had punched him and fractured his nasal bone while trying to seize his file.

16 With regards to sentencing, the district judge noted that the offence was not premeditated but was instead committed in the heat of the moment. He observed, however, that the appellant had shown very little remorse for his conduct despite having used considerable force on Chua. The appellant also had previous convictions in 1997 for being a member of an unlawful assembly, and in 1998 for a string of cheating and bankruptcy-related offences. Taking these factors into account, the district judge sentenced the appellant to three months' imprisonment.

The appeal against conviction

17 The appellant's appeal against conviction centred essentially on the district judge's finding that he (a) fractured Chua's nose on 9 March 2004 and (b) did so either intending to cause, or knowing himself to be likely to cause grievous hurt to Chua.

18 These findings of fact depended largely on the district judge's assessment of the credibility of the appellant and Chua as witnesses. In this respect, it is well-established, as I have previously stated in, *inter alia*, *Ang Jwee Herng v PP* [2001] 2 SLR 474 at [62] that:

> [A]n appellate court will be slow to overturn findings of fact by the trial judge especially when an assessment of the credibility and veracity of the witnesses has been made. The only instance when such interference is warranted is where the assessment was plainly wrong or against the weight of the objective evidence before the court, or where the assessment was based not so much on observing the demeanour of the witnesses but on inferences drawn from his evidence: *Lim Ah Poh v PP* [1992] 1 SLR 713 and *PP v Choo Thiam Hock* [1994] 3 SLR 248.

These principles are especially significant in a case like the present where the court is presented with directly contradictory versions of the events from the interested parties: *Ong Ting Ting v PP* [2004] 4 SLR 53 at [27].

19 I also note at this juncture that many of the factual issues raised at the trial were irrelevant for the purposes of this appeal. In particular, the questions as to whether Chua was indeed the mastermind behind the poison pen letters, whether he had any of these letters in his file at the material time and what he did in reality during the short period when he was away from the scene (*supra* [10] and [14]) did not shed any light on whether the appellant voluntarily caused grievous hurt to Chua as charged.

20 With these matters in mind, I turn to the merits of the appellant's arguments.

Whether the appellant fractured Chua's nasal bone on 9 March 2004

21 There were two limbs to this part of the appellant's case. First, it was contended that there was no reliable evidence to show that Chua suffered a nasal bone fracture on 9 March 2004. Second, it was said that even if Chua did sustain such an injury on that day, the district judge erred in finding that the appellant caused it.

22 With regards to the first limb, the appellant submitted that the evidence of Sgt Koh and Cpl Low contradicted Chua's testimony on the injury to his nose. Although Chua claimed that his nose bled for a considerable period of time after he was punched, the two police officers stated during cross-examination that they did not notice such bleeding. Furthermore, according to Sgt Koh, the paramedics who accompanied Chua to the Hospital said that his injury was "not so serious". The two police officers also did not attend to Chua's injury the moment they arrived on the scene; neither did they seek help from a nearby clinic. It was submitted that these measures would have been taken if Chua did indeed fracture his nasal bone as alleged.

23 There was no merit in the above arguments. Given that Chua had asked for medical attention once the police officers arrived on the scene even before any questioning started, and given that Sgt Koh had responded by calling for an ambulance, there was no reason for the two police officers to either attend to Chua personally or summon medical aid from the nearby clinic.

24 More importantly, contrary to the appellant's stance, the evidence of Sgt Koh and Cpl Low supported rather than contradicted Chua's assertion that he suffered a nasal bone fracture. Although there appeared to be conflicting evidence from the Prosecution witnesses as to whether there was any bleeding from Chua's nose at the material time, it must be remembered that both Sgt Koh and Cpl Low confirmed that Chua's nose was injured. From their perspective, the injury appeared to be in the form of a cut. Both officers also testified to Chua's nose being "reddish" or "red". I found this consistent with Chua's claim of nasal bleeding. What Chua regarded as bleeding from his nose might well have appeared to Sgt Koh and Cpl Low more as redness. The apparent discrepancy between Chua's evidence on one hand and the police officers' evidence on the other hand could in reality simply have been a difference in perception as to the severity of the bleeding. Besides, Sgt Koh

clarified in re-examination that when he said there was no bleeding from Chua's nose, he did not mean that there was not a single trace of blood. Instead, what he meant was that Chua was not bleeding profusely. As for Sgt Koh's evidence on the paramedics' opinion of Chua's injury, I was of the view that it should be given very little, if any, weight since a nasal bone fracture is not always noticeable by the naked eye. In any event, as paramedics are not fully trained doctors, the paramedics at the scene on the day of the incident would hardly have been in a position to give an accurate assessment of the nature and severity of Chua's injury.

25 The appellant also sought to argue that Dr Mok's medical report (*supra* [9]), which stated unequivocally that Chua sustained a fracture of his nasal bone on 9 March 2004, was not conclusive evidence. The appellant challenged the accuracy of this report on several grounds. He pointed out that the X-ray referred to in the report was not produced in evidence. Moreover, although Dr Mok told the court that the X-ray was taken on the night of 9 March 2004 at the Hospital's Accident and Emergency Department, Chua was in fact sent there in the afternoon, and not at night, on that day. It was contended that taken together, these factors indicated that the X-ray which Dr Mok relied on in his medical report might not have been the one taken for Chua at the Hospital on the day of the incident. The appellant submitted that the uncertainty in this respect was compounded by the fact that neither the doctor who examined Chua at the Hospital's Accident and Emergency Department on that day nor the radiologist who took the X-ray in question were called to testify. In addition, the appellant took issue with the fact that Dr Mok based his report not on a medical examination done on 9 March 2004 itself, but on a review done almost two weeks later on 24 March 2004. It was suggested that due to the lapse of time, Dr Mok's medical report might not have accurately reflected the nature of the injury which Chua suffered on 9 March 2004.

26 I was of the view that none of the above factors cast doubt on Dr Mok's evidence for several reasons.

27 First, it was not disputed at the trial that Chua fractured his nasal bone on 9 March 2004; nor was it suggested that the X-ray mentioned in Dr Mok's medical report was not the X-ray taken for Chua on that day. Counsel did not challenge Dr Mok on these points during cross-examination. Based on the procedural rule laid down in *Browne v Dunn* (1893) 6 R 67, the appellant could not raise these matters now at the appellate stage. As I explained in *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 4 SLR 111 at [48], the rule in *Browne v Dunn* entails that:

> Any matter upon which it is proposed to contradict the evidence-in-chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence-in-chief (*Cross & Tapper on Evidence* (8th Ed, 1995) at 319; *Phipson on Evidence* (14th Ed, 1990) at paras 12–13).

For the same procedural reason, the appellant was not entitled to challenge the accuracy of the medical report on the ground that it was based on a medical examination of Chua done some two weeks after 9 March 2004 rather than on one done on that day itself.

28 Second, Dr Mok's evidence that the X-ray referred to in his medical report was taken on the night of 9 March 2004 was not necessarily inconsistent with the fact that Chua was sent to the Hospital that afternoon. After arriving there, Chua would have had to wait for his turn to see the doctor. There was thus every likelihood that it was already night by the time he received medical attention. That the X-ray in question was apparently taken only at night did not therefore provide any basis for speculating that it might not have been the same X-ray which was taken of Chua's nose on the day of the incident.

29 Third, the Prosecution's failure to call as witnesses the doctor who attended to Chua at the Hospital on 9 March 2004 and the radiologist who took the X-ray mentioned in Dr Mok's medical report was immaterial. As I stated in *Chua Keem Long v PP* [1996] 1 SLR 510:

> The discretion conferred upon the prosecution cannot be fettered by any obligation to call a particular witness. What the prosecution has to do is to prove its case.

In this instance, all that the Prosecution had to prove at the trial, where medical evidence was concerned, was that Chua suffered a nasal bone fracture on 9 March 2004. It was for the Prosecution to decide which witnesses to call and what evidence to adduce to discharge this burden of proof. If the appellant were to be allowed to challenge Dr Mok's evidence on the mere ground that neither the above doctor nor the radiologist gave evidence to confirm that Chua was indeed treated at the Hospital on 9 March 2004 and had an X-ray taken then, it would have the effect of saddling the Prosecution with the impractical and unnecessary burden to call to the stand every single medical worker or hospital employee who treats a crime victim in cases where proof of the victim's injury is essential to the offence charged.

30 Accordingly, I rejected the appellant's argument that there was no credible evidence which showed that Chua sustained a fracture of his nasal bone on 9 March 2004.

31 As for the appellant's argument that the district judge erred in holding that he caused the above fracture (*supra* [21]), I likewise found it a non-starter. The district judge made a careful assessment of the witnesses' credibility and veracity before arriving at this conclusion. His decision was neither plainly wrong nor against the weight of the objective evidence (see *Ang Jwee Herng v PP*, *supra* [18]).

32 Where the appellant was concerned, the district judge had good reason to regard him as an unreliable witness given the illogicality underlying much of his evidence. For instance, the appellant claimed that after he repeatedly challenged Chua to call the police, the latter telephoned a group of gangsters for assistance, followed by the police (*supra* [11]). The district judge rightly dismissed this assertion as ridiculous. It was implausible that Chua, if indeed he had sought help from gangsters as the appellant alleged, would have simultaneously summoned the police to go to his aid. Likewise, the appellant's assertion that Chua advanced towards him as he bent down to pick up his spectacles (*supra* [12]) did not ring true. By the appellant's own account, Chua's overwhelming concern from the moment the two men met was to get away from the appellant. This was also borne out by Chua's evidence. In those circumstances, it was inconceivable that Chua would have approached the appellant after the latter dropped his spectacles. One would have expected Chua to seize the opportunity to make his escape instead. It followed that the appellant's claim that he swung his arm to stop Chua's approach, thereby accidentally injuring the latter's nose, was likewise unconvincing.

33 With regards to Chua, the district judge was mindful that he might fabricate evidence against the appellant since the latter owed him money and since there was bad blood between them. The district judge gave detailed reasons as to why he nonetheless found Chua a credible witness. He pointed out that Chua did not embellish his evidence to the appellant's detriment even though he had the opportunity to do so at the trial. Most notably, when Chua was asked how many times the appellant punched him, he replied candidly that he could not remember. Even when counsel invited him to suggest an approximate figure, he declined to speculate. Chua also admitted to certain points which worked in the Defence's favour. For instance, he agreed that he called the police partly because the appellant kept challenging him to do so. This supported the appellant's position that he would have called the police himself if Chua had not done so. The district judge further noted that there was extrinsic evidence which supported much of Chua's testimony. Chua's assertion that he did

not retaliate when the appellant punched him, for instance, was borne out by Cpl Low's evidence that there was no injury on the appellant when the police arrived on the scene. In my view, the district judge's reasoning was entirely sound.

34 The appellant contended, however, that the district judge overlooked various inconsistencies and falsehoods in Chua's evidence. I found this argument devoid of merit after a careful analysis of these supposed discrepancies and lies.

35 To begin with, the appellant pointed out that since Sgt Koh and Cpl Low did not arrest him on the spot when they arrived at the scene on 9 March 2004, it indicated that he did not injure Chua as alleged. Such reasoning was flawed. At the trial, counsel had already posed a similar question. In reply, Sgt Koh had explained that he did not arrest the appellant at that time or ask him to assist the police in their investigations as Chua's injury did not appear to be serious, and thus, there did not seem to be sufficient cause to probe into the incident. Besides, it appears from the Notes of Evidence that neither Cpl Low nor Sgt Koh had the opportunity to verify on the spot whether it was truly the appellant who hurt Chua. This might well have been another reason why they did not arrest the appellant straight away.

36 Next, the appellant submitted that he could not have been so silly as to punch Chua in front of the large crowd which had gathered, especially when the police were already on their way to the scene. As such, Chua must have lied in his account of how he came to be injured. I was unconvinced by this argument. Given the appellant's agitation and desperation to get hold of Chua's file at the material time, I found it entirely believable that the appellant did indeed punch Chua despite the crowd's presence.

37 It was also submitted that Chua gave inconsistent evidence as to whether he received any money from the appellant. When cross-examined, it was said, Chua initially denied having received any payment from the appellant, but subsequently admitted that he had received various sums after counsel showed him a stack of bank deposit slips evidencing payments made to his bank account. I dismissed this contention as it was based on a misunderstanding of Chua's evidence. Chua's stance throughout cross-examination was that he could not recall whether the appellant had repaid any of the outstanding debt owed, but he could confirm that the appellant gave him money after the confrontation of 9 March 2004 in the hope of putting the incident to rest. Likewise, Chua did not switch his stance and admit that the bank deposit slips mentioned above related to the appellant's payments to him. What he said, instead, was that he was unsure if the amounts reflected in these documents truly came from the appellant as the sums were paid in by cash such that he had no record of who the actual payer was.

38 The appellant emphasised in particular that Chua must have had something to hide at the material time since he initially refused to surrender his file to Cpl Low when asked to do so (*supra* [13]). Besides, Chua disappeared from the scene for some ten minutes and subsequently returned with a file which appeared to be much thinner. It was contended that given such evasive conduct on the part of Chua, the district judge was wrong to accept his version of the confrontation on 9 March 2004 as true. This argument was flawed as Chua's conduct on the day of the incident had no direct bearing on his credibility as a witness at the trial. In any case, even if Chua had truly been less than forthcoming during cross-examination when asked why he refused to show his file to the appellant and whether he discarded anything from the file while he was away from the scene, it did not follow that the district judge was therefore wrong to accept the other aspects of his evidence and in particular, his account of how his nose came to be injured. As I pointed out in *Yeo Kwan Wee Kenneth v PP* [2004] 2 SLR 45 at [26]:

> [T]here is … no rule of law that the testimony of a witness must be believed in its entirety or not at all. A court is competent, for good and cogent reasons, to accept one part of the testimony of a witness and reject the other: *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464, *Jimina Jacee d/o C D Athananasius v PP* [2001] 1 SLR 205, *Hon Chi Wan Colman v PP* [2002] 3 SLR 558.

39 For the above reasons, the appellant's allegations of inconsistencies and falsehoods in Chua's testimony were baseless. The district judge was right to regard Chua as a credible witness and to hold, on this basis, that the appellant had punched Chua on 9 March 2004, fracturing the latter's nasal bone as a result.

Whether the appellant intended to cause or knew he was likely to cause grievous hurt

40 Moving on to the appellant's contention that the district judge was wrong to find that he either intended to cause, or knew he was likely to cause grievous hurt to Chua (*supra* [17]), I note first of all the explanation of "intention" and "knowledge" given in *Sim Yew Thong v Ng Loy Nam Thomas* [2000] 4 SLR 193 ("*Sim Yew Thong*") at [18]. That case concerned the offence of voluntarily causing hurt under s 323 of the Penal Code, the *mens rea* for which is similar to that for the offence under s 325 of voluntarily causing grievous hurt. The only difference is that while the requisite intention and knowledge relate to hurt *per se* in the case of the s 323 offence, they pertain to grievous hurt where the s 325 offence is concerned. In *Sim Yew Thong*, I stated that:

> [I]ntention, being purely an operation of the mind, can only be proved by drawing inferences from the surrounding circumstances and the acts of the person. A person is said to intend the natural consequences of his act.

As for knowledge of the likelihood of causing hurt, I held that it encompassed "both recklessness (where an accused knows he is likely to cause a result) and negligence (when an accused has reason to believe that he is likely to cause a result)".

41 In light of the above definitions, I agreed with the district judge's finding that the appellant had the requisite *mens rea* at the material time to cause grievous hurt to Chua. As I mentioned earlier (*supra* [36]), the appellant was agitated and emotionally charged then, and wanted to get hold of Chua's file badly. In those circumstances, the appellant must have used considerable force when he punched Chua, contrary to his assertion that he hit the latter accidentally. This was borne out by Dr Mok's evidence that "some kind of force", "a certain amount of force" was needed to inflict the kind of fracture which Chua sustained. Thus, when the appellant punched Chua on the face, he must at the very least have had reason to believe that he was likely to cause grievous hurt to Chua. In this respect, the appellant's repeated claims at the trial as well as at the hearing of this appeal that he had no intention to hurt Chua and did not realise that his actions would result in Chua's nose being fractured were of no avail. I have already previously warned in *Louis Pius Gilbert v PP* [2003] 1 SLR 417 at [10], which likewise concerned the offence under s 325 of the Penal Code, that:

> Anyone must know that punching someone repeatedly would likely lead to grievous hurt. It cannot be an excuse to say that he had under-estimated his own strength and that he had only expected simple hurt to be caused. If one makes a decision to punch another person, he bears the risk of causing grievous, rather than just simple, hurt.

42 I was also of the view that in finding that the appellant possessed the *mens rea* to cause grievous hurt, the district judge did not fail to give adequate consideration to the Defence's reliance on accident and self-defence. Section 80 of the Penal Code states that the defence of accident is available only where, among other criteria, the act in question is done "by accident or misfortune" and

"with proper care and caution". Given the appellant's emotional state at the material time (*supra* [36]), it was highly unlikely that he dealt the blow to Chua's nose "by accident or misfortune". For the same reason, it was equally improbable that he acted with the degree of care and caution stipulated in s 80. As for self-defence, s 102 of the Penal Code states that the right of private defence of the body arises only when there is "a reasonable apprehension of danger to the body … from an attempt or threat to commit [an] offence". Since the appellant himself stated that he did not know whether Chua was going to attack him at the material time, he could not have been under any "reasonable apprehension of danger" then of an assault by Chua. This refuted his claim that he was merely acting in self-defence when he hit the latter.

The appeal against sentence

43 Turning to the appeal against sentence, as I stated in *Arts Niche Cyber Distribution Pte Ltd v PP* (*supra* [27]) at [54]:

> [I]t is well settled that an appellate court will not interfere with the sentence passed by a trial judge unless it is satisfied that the trial judge has made a wrong decision as to the proper factual basis for sentencing, has erred in appreciating the materials placed before him, has passed a sentence which is wrong in principle, or has imposed a sentence which is manifestly excessive (*Tan Koon Swan v PP* [1986] SLR 126; [1987] 2 MLJ 129).

44 Based on these principles, the appellant had no ground for contending that his sentence was manifestly excessive. On the contrary, I found the sentence imposed by the district judge manifestly inadequate. In my view, while the district judge rightly took into account the appellant's antecedents and the degree of force used for sentencing purposes (*supra* [16]), he failed to take heed of two other aggravating factors.

45 The first related to the appellant's conduct at the trial. The appellant repeatedly cast aspersions on and made baseless allegations against Chua. This was evidenced in particular by his lengthy testimony on the poison pen letters and why he suspected Chua of being the culprit behind them even though these matters were irrelevant to the offence charged. I note too the appellant's claim that Chua called a group of gangsters for help before telephoning the police (*supra* [11]). The appellant subsequently admitted during cross-examination that this was mere conjecture on his part. It was utterly irresponsible of the appellant to make barbed attacks on Chua's reputation in this manner. As I emphasised in *Lewis Christine v PP* [2001] 3 SLR 165 at [38]:

> While accused persons are free to prove their innocence, it must be made clear that this does not translate to a liberty to blatantly besmirch the repute of prosecution witnesses behind the shield of privilege in judicial proceedings.

46 In addition, midway through the trial, the appellant threw up for the first time the suggestion that Chua might have deliberately injured his nose himself (*supra* [14]). The appellant did not mention this in his statement to the police under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed). Indeed, it appears that he did not even inform his own counsel of this line of defence. These factors pointed strongly to the assertion of self-inflicted injury being an afterthought on the appellant's part. In any event, this suggestion was fantastical given Dr Mok's evidence on the degree of force needed to fracture a person's nasal bone (*supra* [9] and [41]). Before raising this ridiculous argument at the trial, the appellant should have paid greater heed to my warning in *Trade Facilities Pte Ltd v PP* [1995] 2 SLR 475 at [116] that "[t]he fact that a defendant has all but spun an entire fairy tale in court is a relevant consideration when sentencing".

47 The other aggravating factor which the district judge should have considered was the fact that the appellant was charged under s 325 of the Penal Code, rather than under s 323. It is evident from the different penalties prescribed in these two sections that s 325 is the more serious offence. Although the injury which Chua suffered, being a fracture of a bone, was "grievous" by virtue of the definition of "grievous hurt" in s 320(g), it was not a foregone conclusion that the appellant would therefore be charged under s 325 as opposed to s 323. In *Agmir Singh v PP* Magistrate's Appeal No 342 of 1992 (unreported) and *PP v Gopal Maganathan* [2001] SGDC 310 (unreported) for instance, where the injury caused was likely a fracture of the nasal bone, the accused persons were only charged with voluntarily causing hurt under s 323. The accused in *Agmir Singh v PP* was sentenced to three months' imprisonment, and the accused in *PP v Gopal Maganathan*, who was a first offender, to two months' imprisonment. In the present case in contrast, the appellant was charged under s 325 and not s 323. The sentence imposed on him therefore had to reflect the greater severity of the former offence. Accordingly, I increased the appellant's sentence of imprisonment from three months to six months.

Conclusion

48 For the foregoing reasons, I dismissed the appellant's appeal against both conviction and sentence. I also increased the term of imprisonment meted out in the court below.

Appeal against conviction and sentence dismissed.