

Ang Kah Kee v Public Prosecutor
[2002] SGHC 58

Case Number : Cr M 1/2002, MA 202/2001
Decision Date : 27 March 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Quek Mong Hua and Julian Tay (Lee & Lee) for the applicant/appellant; Ivan Chua Boon Hwee (Deputy Public Prosecutor) for the respondent
Parties : Ang Kah Kee — Public Prosecutor

Criminal Law – Offences – Hurt – Appellant convicted for voluntarily causing hurt to complainant by punching her right eye – Whether prosecution's case proven beyond reasonable doubt – s 323 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Requirements for admission of fresh evidence – Non-availability – Appellant seeking to adduce two medical reports at appeal – Whether evidence could have been obtained with reasonable diligence for use at trial – Whether evidence may be admitted at appeal notwithstanding availability at trial – Effect of refusal by expert witness to testify at trial – Whether miscarriage of justice if admission of fresh evidence disallowed – s 257(1) Criminal Procedure Code (Cap 68)

Evidence – Weight of evidence – Appellant convicted for voluntarily causing hurt to complainant by punching her right eye – Whether medical evidence establishes beyond reasonable doubt causation of racoon eye by alleged punch – Whether complainant's act of jumping out of a fifth storey window is supportive evidence of allegation of assault – Significance of complainant's delay in telling good Samaritans of alleged assault – Whether prosecution's case proven beyond reasonable doubt

Evidence – Impeaching witnesses' credibility – Effect of – Credibility of appellant and his witness seriously discounted – Whether defence prevented from successfully casting reasonable doubt over prosecution's case

Contract – Contractual terms – Sale & purchase agreement – Delivery of vacant possession delayed – Vendor wound up and liquidator appointed – Project completed – Whether purchasers entitled to set off liquidated damages against instalments due

Insolvency Law – Bankruptcy – Statutory right of set-off – Express wording in s 88(1) of Bankruptcy Act (Cap 20, 1996 Rev Ed) unlike s 41(1) of the pre-1995 Bankruptcy Act (Cap 20, 1985 Rev Ed)

Land – Development – Housing developers – rr 12(2), 12(3), 15(1) and 15(2) Housing Developers Rules 1985 – Statutory set-off – Protection of purchasers over unsecured creditors

Judgment

GROUND OF DECISION

The Charge

The appellant, Ang Kah Kee, was charged in the magistrate's court with the following offence:

You,

ANG KAH KEE, M/33 YRS
NRIC NO. S1831029-E

are charged that you on the 20th day of April 2000 at or about 10.00 p.m., at Block 122 Bishan Street 12 #05-39, Singapore, did voluntarily cause hurt to one Umi Kulsum binti Nurudin, who was then employed as a domestic maid in your household, to wit by punching her right eye, resulting in a right periorbital bruise, and you have thereby committed an offence under Section 323 of the Penal Code, Chapter 224.

2 Ang was found guilty of the charge and sentenced to three months' imprisonment. He appealed against conviction and sentence and also filed an application to adduce fresh expert evidence. The matter came up before me on 26 February 2002. I denied the criminal motion but allowed the appeal against conviction and sentence. My grounds for doing so are set out below.

The facts

3 The complainant, Umi Kulsum binti Nurudin ("Umi"), was an Indonesian national who had come to Singapore to work. On 15 April 2000, some five days before the alleged offence took place, she commenced her employment in Ang's household as a domestic maid. Ang's wife, Serene Eng Choo Hwee (Mdm Eng), was Umi's employer. Umi had difficulty with the English language and would communicate with her employers in a mixture of English and sign language.

4 During her short work stint, Umi spent most of her time at the home of Mdm Eng's parents since Ang and his wife would leave their two children in the care of Mdm Eng's parents during the week days while they worked.

5 On 20 April 2000, Ang and Mdm Eng brought Umi and their son back to their flat in Bishan as the next day was Good Friday, a public holiday. Umi set about doing the housework as instructed. One of her tasks was to mop the floor in the living room. All this while, Ang was sitting on the living room sofa watching television and reading newspapers.

6 What happened after this was a matter of dispute. According to Umi, the couple's baby son was in the bedroom with Mdm Eng. When Ang heard the cries of the baby, he instructed Umi to bring him out into the living room. Umi complied, but upon being told by Mdm Eng that she could manage the child on her own, Umi left the bedroom empty-handed and returned to her former task of mopping the living room floor.

7 Ang raised his voice at Umi for failing to obey his previous instructions when he continued to hear the baby's crying. According to Umi, he told her in a loud voice to bring the baby into the living room. Umi brought the baby boy out as ordered and placed him on the floor. Moments later, the child started to play with the dirty water in the pail that Umi was using to mop the floor. Ang shouted at Umi when he saw this. Umi quickly carried the child away from the pail and back into the bedroom.

8 As Umi returned to mop the floor, Ang allegedly began to chastise her for working slowly and for being inept in looking after children. He walked over to Umi, repeated his complaint and then allegedly punched her once in the right eye.

9 Umi did not cry out even though the punch had hurt her. Instead, she carried on mopping the rest of the floor. After she had finished her task, she took a shower, at which point she noticed that there was a bruise below her right eye. Thereafter, Umi went to bed.

10 Ang and Mdm Eng gave a different version of events. According to the duo, their child was in the

living room with Ang while Mdm Eng was taking a shower in the bedroom toilet. Umi was instructed to mop the living room floor at around 10 p.m. as it was dusty and the baby was in the house.

11 Whilst he was in the midst of watching television and reading newspapers, Ang heard splashing noises and realised that his son was playing with the dirty water in the pail that Umi was using to mop the floor. He then said "Hey! Hey! Berhenti, baby tak boleh kacau water." However, he did not raise his voice. Umi immediately carried the baby away from the pail. Mdm Eng then emerged from the bedroom to bring the baby in.

12 Soon after, Ang heard the baby crying in the bedroom, whereupon he instructed the maid to lend his wife a hand. Umi did so, but was told by Mdm Eng that she could manage on her own. Umi emerged from the bedroom and returned to her own room.

13 Mdm Eng came out of the bedroom into the living room. She informed Ang that she could look after the child by herself. Mdm. Eng told the Court that, up till that point in time, she had not noticed any injuries on Umi. Ang continued to read his newspapers and watch television until he turned in for the night at about 11 p.m.

14 Notwithstanding the different versions of what had happened on 20 April 2000, the events of the early hours of 21 April 2000 were not in dispute.

15 At approximately 3:30 a.m., some five and a half hours after the offence allegedly took place, Umi woke up and was determined to escape from the flat. According to her, she was gripped by fear that she would be hit again and felt that she had to flee from the flat immediately. She packed some belongings, including a pair of pants, a comb, a mirror and her purse, into a bag.

16 As she did not possess a set of keys to the front door, Umi felt that the only way to escape was through the fifth storey window of the flat. Under the cover of darkness, she climbed out of the window, with the aid of a chair, and hung onto the metal pipes normally used to hold the drying poles. She could not see what was directly below her. After suspending herself in this manner, Umi let go and fell some 13 metres onto the ground below. She told the Court that she had no recollection whatsoever of the manner in which she landed. She could also not remember whether she had hit anything in the course of falling.

17 Umi got onto her feet in a semi-conscious state and realised that she was bleeding from her injuries. She started to walk aimlessly. At around 6 a.m., while on his way to work, one Mohammed Salleh bin Mohamed Arshad (Mr Salleh) saw Umi wandering about in a daze. This was at the foot of Block 222 Toa Payoh, a distance away from where Umi had fallen. He noticed that she was bleeding from her head, her tee-shirt was bloody, her legs were swollen and there was a greenish bruise on her face. She also had cuts on both her hands and the nail of her big toe had come off.

18 Umi approached Mr Salleh for help, saying that she was in pain and that she was hungry. Judging from her bleeding head and swollen legs, Mr Salleh asked if she had been assaulted. Umi denied it and said that her injuries were due to an accident. Mr Salleh then brought Umi to the nearby market at Block 212 Toa Payoh for some food and drink. There, he pressed her for more information, asking her for the identity of her assailants. According to Mr Salleh, Umi refused to say anything as she was afraid. All he knew was that she was hungry. At one point, Umi went to the toilet in the market to change into the fresh pair of pants that she had brought with her.

19 After eating, Umi told Mr Salleh that she wanted to follow him. She was taken to his nephew's flat in Block 221 Toa Payoh. Mr Salleh then left for work while Umi slept for much of the day on the sofa.

Also in the flat for the whole day were the owner, Juma'at bin Mohamed Nasir (Mr Juma'at), and his brother, Jumari bin Mohamed Nasir (Mr Jumari). Neither attempted to speak to Umi to find out what had happened to her.

20 In the meantime, after Ang and Mdm Eng had awoken, they realised that Umi was missing from the flat. After a fruitless search of the vicinity, Mdm. Eng made a police report at about 10:10 a.m.

21 At 3:00 p.m., Mr Salleh returned to his nephew's flat for a short while during which he applied medicated oil to Umi's swollen legs. He met Mr Jumari and told him that he had found her at the market.

22 At around 6:00 p.m. the same day, Mr Juma'at's wife, Latifah binte Haji Hassan (Mdm Latifah), as well as Mr Jumari's girlfriend, Hajar binte Abdul Rahman alias Siti (Siti), returned to the flat. Mr Salleh returned from work shortly thereafter. The ladies offered Umi some food. In the kitchen, Mdm Latifah and Siti asked her if she had been abused. Umi finally revealed that she had been punched by her employer. At this point, everyone else in the flat resolved that they should report the matter to the police. Siti made the call. They noticed that Umi was crying and was afraid of being sent back to her employers. The police came and took Umi away with them.

The judge's decision

23 Essentially, the judge preferred Umi's version of what had happened on 20 April 2000. In his opinion, Ang's concern with hygiene, especially with regard to his son, was the prime impetus for the attack. His anger was sparked off when he saw his son playing with the dirty water in the pail. This was exacerbated by the fact that Ang and Mdm Eng had underlying complaints about the speed with which Umi did the domestic chores as well as her inexperience in looking after children.

24 The judge believed that Ang's baby son was in the bedroom rather than in the living room as Ang and Mdm Eng were very concerned about hygiene. It also struck him that, if the child was indeed in the living room, Ang would not have been able to concentrate on watching television and reading the newspapers. According to the judge, Ang and Mdm Eng had probably cooked up their version in order that Mdm Eng could testify that she did not observe any injuries on Umi during the two opportunities that she had to observe her that night.

25 The judge was of the view that, when Ang heard his son crying in the bedroom, he probably felt that it would calm him down, if he was taken out of the bedroom into the living room. Therefore, when Umi appeared to disobey Ang's explicit instructions, Ang became angry when he heard the child's persistent crying. As this was the first time he was aggressive toward Umi, coupled with the latter's poor command of English, Umi did not attempt to explain to Ang why she had not complied with his instructions.

26 According to the judge, everything came to a head when Ang saw his son playing with the dirty water. This led him to hit Umi. That Umi did not report the incident to Mdm Eng was, in the judge's mind, not fatal to the veracity of her story since she may have perceived that Mdm Eng would be supportive of her husband.

27 The judge also examined other possible reasons advanced by the defence that might otherwise explain why Umi would want to escape from the flat. First, homesickness was ruled out after he balanced this against Umi's financial commitments in coming to Singapore. Secondly, he rejected the possibility that Umi was frustrated with her meagre earnings as she would only earn \$10 a month for

the first seven months of employment. This was because Umi was aware that she had to pay off her debts to the maid agency. Thirdly, while Umi, being a Muslim, had a religious aversion to the pet dog belonging to Ang's in-laws, the judge noted that this did not seem to affect her work. He found that Ang had cooked up the story about the dog barking and trying to lick Umi in order to bolster his defence that Umi was unhappy with the presence of the animal in her workplace. Finally, the judge also rejected the suggestion that Umi might have planned her escape with another Indonesian maid. The judge said that this allegation was not mentioned in any of Ang's or Mdm Eng's written statements to the police.

28 All in all, the judge was not convinced that any one of the reasons ventured above could adequately explain why Umi would take the extreme measure of jumping out of a fifth storey window. In his opinion, something significant must have happened on the night of 20 April 2000 to push her to the point of desperation. The judge took the view that that event must have been the punch. He believed that Umi was, at that time, in grave fear for her own safety, as she was afraid of being hit again by Ang. That she did not have the house keys also helped to explain what would normally have been considered an irrational act.

29 After assessing the evidence given by the two prosecution expert witnesses, Dr Jackie Tan (Dr Tan) and Dr Quah Song Chiek (Dr Quah), the judge held that the bruise on Umi's right eye was consistent with a punch, and was not likely to have been a result of the fall. He accepted the medical evidence that, if the injury had been inflicted during the fall, its extent would have been more severe, in the sense that more than the lamina papyracea would have been fractured, and there would have been other associated facial injuries. In this case, the bruise below Umi's left eye was minor compared with that under her right eye.

30 The judge noted that Dr Tan had accepted the possibility that Umi's rounded knee may have hit her face during the fall. However, he discounted this in light of Dr Quah's testimony that such a scenario would have resulted in an injury more akin to that of a swollen cheek rather than the bruise that he had seen.

31 While Dr Quah admitted that it was possible that Umi's knee could have hit her elbow and then caused her fist to jab her face, the judge found that it was unlikely that such a thing could have occurred. Notwithstanding the fact that it was Umi's evidence that she had simply let go and fallen straight down, the judge opined that Umi must have initially attempted to scale down the wall, but had then fallen on the protruding parapet of the ground floor unit and landed on her buttocks, resulting in the fracture to the pubic ramus. Umi must then have recoiled backwards, causing the lacerations to the back of her head. Given this finding, the judge concluded that it would have been unlikely that Umi's fist could have jabbed her eye as it was not natural for a person landing on her buttocks to have her arms in front of her, as opposed to having it at the sides to try to cushion the impact of the fall.

32 Assessing the key witnesses' demeanour, the judge found that Ang and Mdm Eng were sophisticated witnesses who were capable and willing to fabricate allegations to bolster their defence. The false allegations he was referring to included the incident relating to the dog barking, chasing and licking Umi, as well as the allegation that Umi had planned her escape with another Indonesian maid. The judge, on the other hand, found Umi to be a truthful witness who was incapable of concocting false accusations against Ang. He excused Umi's poor recollection of what had happened after the fall since this was probably hampered by the injuries she had suffered. The judge was satisfied that she was clear and precise about what had happened at and around the time of the alleged punch.

33 On the basis of Umi's version of facts, the medical evidence as well as the credibility of the

respective parties, the judge found that the prosecution had made out the charge beyond reasonable doubt. Ang was duly convicted.

Issues raised on appeal

34 The crux of the appeal against conviction was that the judge had not applied the proper standard of proof. Counsel argued that he had failed to place adequate weight on the evidence of Ang and his wife, and had not given sufficient regard to the medical evidence that the injury to Umi's right eye could have been caused by the fall and not by the alleged punch.

35 Furthermore, counsel said that the judge had erred in drawing a number of conclusions: first, that Ang's concern for hygiene could have led him to assault Umi; second, that the sole reason for Umi's dramatic escape was the alleged punch by Ang; third, that Umi had escaped from the flat because she feared being hit again by Ang; and fourth, that Umi was a witness of truth despite having admitted to lying on her rsum.

36 Ang also appealed against the three month prison sentence. Counsel argued that it was manifestly excessive.

Motion to adduce fresh evidence

37 Counsel for the defence sought to adduce two medical reports at the appeal. The first was a report dated 6 February 2002 by Dr Ong Beng Beng from the Department of Pathology in the Faculty of Medicine, University of Malaya. The gist of this report was that, given the rate of appearance of the bruise, the absence of associated injuries expected in a punch of this nature, facial and head injuries sustained in the fall, and the uncertainty of the dynamics of the fall and the subsequent landing, the bruise around Umi's right eye was more likely to have been caused by the fall rather than a direct punch. The second was a report dated 28 January 2002 prepared by Dr Raymond Phua from the Eye Centre and Surgery at Gleneagles Medical Centre. After studying the reports by Dr Tan and Dr Quah as well as the photographs of Umi's bruised eye, the doctor wrote that there was insufficient information to conclude that the injury was caused by a punch.

38 The law on the admission of fresh evidence at appeal pursuant to s 257(1) of the Criminal Procedure Code (Cap 68) is well settled. Three elements must be satisfied, namely:

- (a) Non-availability – the evidence could not have been obtained with reasonable diligence for use at the trial;
- (b) Relevance – the evidence would probably have an important influence on the result of the case, though it need not be decisive; and
- (c) Reliability – the evidence must be apparently credible, though it need not be incontrovertible: see *Pandiyan Thanaraju Rogers v PP* [2001] 3 SLR 281; *Juma'at bin Samad v PP* [1993] 3 SLR 338.

39 I refused the motion to admit both medical reports because it had been clearly open to the defence during the trial before the magistrate to call these doctors as expert witnesses. For some reason, counsel did not do so, even though it was a key thrust of the defence that Umi's injuries were sustained as a result of the fall rather than the alleged punch.

40 It was pointed out that the 'non-availability' requirement was not an absolute one. The Court may allow evidence to be admitted at the appeal stage notwithstanding its availability at trial, if, in extenuating circumstances, the rejection of such evidence would result in a miscarriage of justice. This very narrow exception is in line with the core principle of s 257 of the Criminal Procedure Code that fresh evidence should be received in the interests of justice: *Lee Yuen Hong v PP* [2000] 2 SLR 339; *Chan Chun Yee v PP* [1998] 3 SLR 638. Be that as it may, I was of the opinion that the present situation did not fall within the ambit of the exception, for the very simple reason that the defence had been content throughout the trial to rely on the evidence of Dr Tan and Dr Quah.

41 It was submitted by defence counsel that the lawyer who had conducted Ang's defence before the judge was unable to tender expert evidence because the forensic psychologist from the Centre for Forensic Medicine, who had been ready and willing to testify, could not obtain permission from his superiors in the department to do so. Even at the appeal stage, counsel faced the same difficulty. In a letter dated 29 January 2002, the Director of the Centre wrote to defence counsel to inform them that, as a matter of policy, the Centre being part of the Health Sciences Authority "should not be involved in defence work which pertained to criminal cases".

42 I could not accept this refusal by one expert witness to testify at trial as a basis for suggesting that there would be a miscarriage of justice if the Court did not allow expert medical evidence to be adduced at the appeal stage. The Defence could easily have made the expedient decision to seek the opinion of other expert witnesses, such as Dr Raymond Phua or Dr Ong Beng Beng for example. It was also open to the defence at trial to subpoena the reluctant forensic expert from the Centre for Forensic Medicine. Section 180 (m) of the Criminal Procedure Code says:

Procedure in summary trials

180. The following procedure shall be observed by Magistrates' Courts and District Courts in summary trials:

...

(m)

(i) if the accused applies to the court to issue any process for compelling the attendance of any witness, whether he has or has not been previously examined in the case, for the purpose of examination or cross-examination or the production of any document or other thing, the court *shall issue process unless it considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice*, in which case that ground shall be recorded by it in writing;

(ii) the court may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial shall be deposited in court." [emphasis added]

43 Apart from the exceptions italicised above, the ability of an accused person to compel competent and compellable witnesses to testify by subpoena is otherwise unfettered: *T.N. Janadharan Pillai v State of Kerala* 1992 Cri. LJ 436; *State v Sabharwal & anor* 1989 Cri. LJ 2444. While these Indian authorities which I have just cited relate to witnesses of fact, I saw no good reason, at this point in time and without the benefit of counsels' arguments, to read a distinction between witnesses of fact and witnesses of opinion into s 180 (m) of the CPC.

Grounds for allowing the appeal

44 Assessing the various points raised in the appeal, and having perused the detailed grounds of decision, I was of the opinion that too much weight had been given to Umi's testimony, for a number of reasons. First, it could not be conclusively said that Umi was in grave fear for her own safety when she escaped from the flat. Secondly, I felt that it was not correct to require Ang to provide a rational explanation for what was otherwise a highly irrational act on Umi's part. Thirdly, the assessment and findings on the medical evidence presented before the court were clearly wrong. Finally, I took issue with Umi's delay in telling the good Samaritans who had helped her about the alleged injury that her employer had inflicted upon her.

Whether Umi was in grave fear for her own safety

45 Umi alleged that Ang had punched her at or about 10:00 p.m. on the night of 20 April 2000. After the assault, Umi said that Ang continued reading the newspapers and watching television. She did not cry out despite the pain. Instead, she resumed her task of mopping the floor of the living room with a rag. Thereafter, Umi took a shower, at which point she noticed a bruise around her right eye. She did nothing to treat the bruise even though, according to Dr Jackie Tan, the pain from the fracture would have been quite considerable. Umi then went to bed.

46 At 3:30 am the next morning, some five and a half hours after the alleged punch, Umi said that she woke up with the feeling that she had to leave the flat. She packed a bag containing her watch, purse, comb and some clothing. Having done that, she climbed out of the fifth storey window and landed on the ground below.

47 Taking all these into consideration, it could not be said that Umi was in grave fear of being assaulted again and had to leave the flat at all costs. This simply did not accord with the circumstances mentioned above. Any 'grave fear' that Umi might have felt at the time when she was allegedly punched must surely have dissipated very speedily, considering her actions immediately following that. Furthermore, at 3:30 a.m. in the wee hours of the morning, Ang was soundly asleep and it was not Umi's evidence that he had threatened her with further violence.

Demanding a rational explanation for an irrational act

48 I also found that the judge had erred in holding that, because there was no other plausible reason that the defence could proffer to explain Umi's decision to escape via a fifth storey window, and because something significant must have occurred on the night of 20 April 2000 to push her to take such a drastic step, that such a significant event must have been the alleged punching incident. Put another way, what the judge was in effect saying was that Umi's drastic act of jumping out of a fifth storey window was supportive evidence of the allegation forming the basis of the charge.

49 This approach faltered in three critical respects. First, it was wrong to push the burden of proof onto Ang to find a plausible explanation for Umi's dramatic behaviour. In any case, the theories advanced by the defence, such as the very low salary that Umi was drawing, her homesickness and the possibility that she might have been uncomfortable with the in-laws' pet dog, when viewed altogether, did not seem all that implausible as was made out to be. On the contrary, the finding that Ang's concern about hygiene was the driving force behind the assault ought to have been assessed

with more circumspection in light of the other evidence that Ang and Mdm Eng had simply sent their previous maid back to the maid agency and requested for a replacement when they had found her to be unsatisfactory.

50 Secondly, and more importantly, it failed to recognise that Umi's actions were inherently illogical, when examined side-by-side with her allegation that she had been punched, once, some five and a half hours prior to her escape. As I have already stated earlier, I could not accept the finding that Umi was in any state of fear after that lapse of time. Thirdly, and consequently, it demanded the almost impossible when the defence was expected to cough up an explanation that was commensurate with the drastic nature of the course of action that Umi had taken. When an act was clearly not logical or rational, it would be a fallacy to persist in making logical connections and extensions out of it.

Assessment of the medical evidence

51 I also took issue with the assessment of the medical evidence relating to the cause of the bruise, known as a racoon bruise, under Umi's right eye. At best, the expert testimonies of Dr Jackie Tan and Dr Quah Song Chiek were equivocal about the cause of the bruise.

52 Dr Tan deposed in examination-in-chief that the racoon bruise resulted from the fracture of the lamina papyracea – this was usually caused by a direct impact to the eye. If the injury was caused by the fall, the doctor surmised that it would have been far more serious in the sense that other parts of the orbit around the eye would have been fractured. However, she also said that the severity and extent of such injury would depend very much on the way in which the victim fell.

53 In cross-examination, Dr Tan agreed with defence counsel that it was not possible to rule out the fall as being a possible cause of the racoon bruise, especially since there was no information as to how Umi had fallen. She agreed that counsel's theory that the bruise might have been caused by contact with the rounded knee was a possible one. It was also possible that Umi's knee had contacted her elbow on impact with the ground and driven her fist into the region of her right eye. Finally, Dr Tan suggested that Umi's injuries indicated that she might have landed on her feet rather than her buttocks, since there were no bruises to the buttocks.

54 Dr Quah Song Chiek noted that Umi had bruises over both her eyes when he first examined her. There was the racoon bruise on her right eye and a minor bruise just over the left eye next to the nose bridge. He said that the racoon bruise was probably due to a direct impact to the eye consistent with a punch. He disagreed with defence counsel's suggestion that it could have been caused by contact with the rounded knee because, if that was the case, the zygoma bone would have been fractured, resulting in an injury resembling a bruised cheek. This was also unlikely given Dr Quah's theory that Umi had landed on her buttocks on the parapet of the first floor unit and then rolled over onto her anterior prospect. However, he agreed with counsel that it was possible that the bruise was a result of her fist accidentally jabbing the region of her eye during the fall. He said that the bruise over the left eye might have been caused by the fall.

55 Dr Quah's theory that Umi had landed on her buttocks, even though there were no bruises to the buttock region, was drawn from his observation that Umi's right anterior pubic ramus had been fractured. Furthermore, it was not possible that Umi had landed on her feet as there were no fractures to the ankles and feet or the elbow and clavicle, nor injuries to the lower facial region. The 2 cm laceration over the back of Umi's head was consistent with the theory that she had landed on her buttocks and rolled over, resulting in the head wound. When asked about this when she was

recalled to the stand, Dr Tan said that Dr Quah's theory was a possible one.

56 With regard to the bruises on the top of Umi's feet, Dr Quah suggested that it could be due to Umi landing on that part of her feet. They could also be scratches from contact with the window ledge or with the wall of the HDB block. Yet another possibility to explain the bruises on the right leg was internal bleeding from the fractured pubic ramus. He had no idea, though, of how the bruises on the left leg could have come about.

57 It was patently clear to me, from the evidence of the two medical witnesses, that it was not possible to be sure, beyond reasonable doubt, that the racoon bruise was caused by the punch rather than the fall. Much of the evidence was inconclusive, if not speculative, as the experts were not at all helped by Umi's total lack of recollection as to how she had fallen or landed.

58 I noted that the judge had made a finding of fact that Umi had attempted to scale down the wall and had fallen when she lost her footing. This was not a tenable finding, given Umi's clear testimony that she had simply hung onto the metal pipes on the fifth floor and then just let go of her hold.

59 Umi had fallen from a height of 13 metres. Directly below the fifth storey window were many other metal pipes used to hold drying poles, as well as a parapet forming the roof of the first storey flat. She had sustained a large number of physical injuries as a result of the fall. A perusal of Dr Quah's report to the investigation officer of Tanglin Police Division HQ revealed that Umi had sustained no less than 26 injuries of varying severity, including fractures, bruises, abrasions and lacerations found all over her body. Clearly there was a real possibility that Umi could have sustained the racoon bruise from the fall.

Delay in telling the good Samaritans of the alleged assault

60 In the case of *Tang Kin Seng v PP* [1997] 1 SLR 46, I said:

The evidential value of a prompt complaint often lay not in the fact that making it renders the victim's testimony more credible. The evidential value of a previous complaint is that the failure to make one renders the victim's evidence less credible. The reason is simple human experience. It is not usual human behaviour not to make a quick complaint. However, as in all cases where common human experience is used as a yardstick, there may be very good reasons why the victim's actions depart from it. It would be an error not to have regard to the explanation proffered.

61 I am of the view that inadequate significance had been ascribed to the fact that Umi did not complain to Mr Salleh that she had been punched in the eye by her employer. In fact, she was very reticent and reluctant to tell him much apart from the fact that she had suffered a fall. I noted that the explanation proffered was to the effect that Umi was afraid of being sent back to her employers, if she reported this matter to the police. Umi also said in cross-examination that she had only told Mr Salleh that she had fallen because he was only looking at her leg and torn pants, thus she did not mention that she had been punched. However, viewed in light of all the circumstances, I did not believe these were good enough reasons. According to Mr Salleh, Umi was the one who had approached him for help at 6:00 a.m. in the morning on 21 April 2000 and had wanted to follow him. He could communicate with her in a common tongue. He had gone out of his way to provide her with food and a temporary shelter. Therefore, there was no acceptable reason why Umi, who had said that she had escaped the way she did because of grave fear for her own safety, would not have taken

the first opportunity to tell the first good Samaritan to come her way that she had been assaulted by her employer. In fact, Umi only finally volunteered this information to Siti and Mdm Latifah sometime after 6:00 p.m. on 21 April 2000 when they asked her whether she had been abused.

Adverse findings on the credibility of Ang and Mdm Eng

62 The judge held that Ang's and Mdm Eng's credibility was affected when they apparently exaggerated the incident between Umi and Mdm Eng's parents' pet dog. He also found that Mdm Eng had concocted evidence about a second Indonesian maid who had allegedly helped Umi in her plan to escape from the flat on the night of 20 April 2000. It was telling that this allegation did not feature in any of Ang's or Mdm Eng's statements. This included Ang's cautioned statement to the police.

63 It is trite law that when a witness's credibility is impeached or otherwise found to be wanting, the court will generally tend to regard his evidence with less favour and accord it less weight. It has to scrutinise the whole of his evidence to decide which aspects might be true and which would have to be disregarded: *Sundra Moorthy Lankatharan v PP* [1997] 3 SLR 464.

64 In the present case, the fact that the credibility of Ang and his wife had been seriously discounted did not prevent the defence from successfully arguing that it had cast reasonable doubt over the prosecution's case. This was because an acquittal followed either from successfully arguing an affirmative defence, which Ang had failed to do so here, or by casting reasonable doubt over the prosecution's case by pointing to inherent flaws or improbabilities in its logic and evidence: *Tan Buck Tee v PP* [1961] 27 MLJ 176 at 179.

Conclusion

65 Having assessed the case in its entirety, I was of the opinion that the medical evidence could not establish with requisite certainty that the cause of the racoon eye was the punch that Ang had allegedly inflicted. Furthermore, the complainant's act of jumping out of a fifth storey window under those circumstances reflected an irrational and unpredictable frame of mind and it would have been wrong to draw any logical inferences or extensions from it, such as to support the allegation that Umi had been assaulted. Her reticence and reluctance to speak up about the alleged incident for a period of time despite being in the good hands of a family of Samaritans also cast some doubt over the veracity of her account. In the result, while Ang was not able to establish an affirmative defence of innocence, it was more important to note that the prosecution had not been able to prove beyond reasonable doubt that Ang was guilty of the charge. Consequently, an acquittal would be in order as a conviction under the present circumstances would have been unsafe.

Motion dismissed.

Appeal against conviction and sentence allowed.

Sgd:

YONG PUNG HOW
Chief Justice

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