

Ong Sock Hung v Public Prosecutor
[2005] SGHC 95

Case Number : MA 159/2004

Decision Date : 30 May 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Lim Joo Toon (Joo Toon and Co) and Foo Cheow Ming (Khattar Wong and Partners) for the appellant; Tan Kiat Pheng (Deputy Public Prosecutor) for the respondent

Parties : Ong Sock Hung — Public Prosecutor

Criminal Law – Criminal intimidation, insult and annoyance – Appellant convicted of criminal intimidation – Whether appellant was person waving chopper and uttering threats – Whether threat directed at victim – Section 506 Penal Code (Cap 224, 1985 Rev Ed)

Evidence – Admissibility of evidence – Similar fact evidence and character evidence – Whether trial judge erred in admitting certain evidence

Evidence – Principles – Identification evidence – Whether supporting evidence had to be visual as opposed to vocal

Evidence – Weight of evidence – Whether trial judge justified in relying on evidence given by certain witnesses – Whether trial judge misdirected herself with respect to proper inference to be drawn from evidence

30 May 2005

Yong Pung How CJ:

1 The appellant was convicted in the District Court on one charge of criminal intimidation towards one Yak Hong Chia ("Yak") and sentenced to two months' imprisonment under the first limb of s 506 of the Penal Code (Cap 224, 1985 Rev Ed): see [2005] SGDC 57. She appealed against her conviction alone. I dismissed the appeal, and now set out my reasons.

Facts

The charge

2 The charge against the appellant read as follows:

DAC 29977/2004

You,

Name: Ong Sock Hung, Female, 54 years old

NRIC: S2012789I

Date of Birth: 15 March 1950

Address: Block 101 Rivervale Walk #17-28

are charged that you, on 1st day of July 2004, at or about 1.15pm, at the 16th floor staircase, Blk 101 Rivervale Walk, Singapore, did commit criminal intimidation to one Yak Hong Chia, to wit, by pointing a chopper at Yak Hong Chia, and saying words to the effect "I will kill your whole

family" in Mandarin, with intent to cause alarm to the said Yak Hong Chia, and you have thereby committed an offence punishable under Section 506 of the Penal Code, Chapter 224.

The Prosecution's case

3 The appellant and Yak lived at Block 101 Rivervale Walk, Singapore, and were neighbours for about six years. The appellant lived on the 17th storey at unit #17-28, a unit that was directly above Yak's unit on the 16th storey.

4 There had been a long and acrimonious dispute between the appellant and Yak's family. The appellant complained that there were odours coming from Yak's flat and heat emanating from the walls of Yak's flat. She scolded Yak and her family almost on a daily basis.

5 On 1 July 2004 at about 1.15pm, Yak was alone at home when she heard the appellant throwing things and making a lot of noise in the appellant's flat. Yak then heard the appellant complaining about smells as she made her way down the staircase.

6 At that time, the door of Yak's flat was open with only the grille gate locked. Yak took two steps towards the door and peeked outside. She saw a person at the foot of the staircase brandishing a chopper towards the direction of her flat. She only had a partial view of this person and could only see the person's hand and leg. As the person gestured with the chopper by moving it forwards and backwards with a hacking motion, the person uttered very loudly in Mandarin words to the effect that she would kill Yak's whole family. Yak recognised the voice to be that of the appellant. After a few seconds, the appellant went back to her unit, scolding continuously along the way.

7 Yak was frightened by the appellant's threat. When the appellant left, she went out of her flat and, standing outside the opposite flat, asked her neighbour Mdm Lim Saw Gaik ("Mdm Lim") if she had heard the appellant and seen the appellant coming downstairs with a knife. Yak, however, did not take note of Mdm Lim's reply, as she was still in great fear that the appellant would come down with the chopper again. She quickly ran back to her flat.

8 Yak then called her husband, Tan Soo Chor ("Tan"), to inform him of what had happened. Tan was worried about her safety and told her to call the police. At about 1.43pm, Yak called the police for assistance. The police subsequently seized a chopper and two knives from the appellant's house, and Yak identified the chopper as the weapon which the appellant had used to threaten her. The appellant was subsequently placed under arrest.

9 Mdm Lim testified in court that Yak had indeed gone over to her flat to inform her that the appellant had come down with a knife. Mdm Lim further testified that she did not hear or see anything out of the ordinary at the material time. However, it later transpired that on the day of the offence, Mdm Lim had told Sergeant Kelvin Phua Kai Shuan ("Sgt Phua") that she had heard the words of the threat uttered by the appellant to Yak although she did not see the appellant wave the knife.

10 Tan was also called as a witness by the Prosecution, for the sole purpose of rebutting the appellant's claims that the dispute between the appellant and Yak's family was settled in May 2004. Tan testified that sometime in May or June 2004, he had gone to the appellant's flat to try to resolve the dispute between them. He testified that on that day, he and the appellant were initially talking at their windows. He tried to explain to the appellant that what she experienced was not caused by him or his family, but the appellant did not accept his explanation and they ended up quarrelling. During the quarrel, Tan told the appellant, "Don't force me to hit you." In response, the appellant told Tan to come upstairs to her flat.

11 Tan subsequently went upstairs to find out what the appellant wanted. However, when he arrived at the appellant's gate, the appellant, holding a chopper, walked towards the door and said, "You come and I am going to kill you." Tan spoke to the appellant and, after a while, the appellant appeared to calm down. Tan denied the appellant's claim that he had sworn to her that he was not responsible for the occurrences that disturbed her sleep. His evidence was that he could not say that the matter had ended amicably in May 2004, as by the time the meeting ended, he still did not know what the appellant was going to do to his family and him.

12 The Prosecution also adduced evidence from Dr Adrian Wang ("Dr Wang"), a Consultant Psychiatrist at the Institute of Mental Health. Dr Wang was of the opinion that the appellant was of sound mind at the time of the alleged offence and that she was fit to stand trial. However, Dr Wang's provisional diagnosis was that the appellant was suffering from a delusional disorder. This was a mental illness characterised by the patient having a false, unshakeable and non-bizarre belief. Dr Wang noted that the appellant held a firm and unshakeable belief that her neighbours were against her, that there was an odour coming from her neighbour's flat and that there was heat coming from the walls on the neighbour's side. At the time of the trial, Dr Wang was keeping track of the appellant's condition by scheduling outpatient visits for the appellant.

The defence

13 The appellant denied the allegations made against her. She testified that she was sleeping in her flat at the time of the incident.

14 The appellant gave evidence that in the middle of the night of 30 June 2004, she felt the walls of her flat warming up and cooling down a few times, before a surge of heat and a smell woke her from her sleep at 5.30am on 1 July 2004. She felt a little frustrated as this was not the first time such things occurred.

15 As the appellant was sweeping the floor later that morning, the walls again warmed up. The walls only cooled down at around 7.50am or 8.00am, but the kitchen tiles soon started to warm up. At about 8.05am, the appellant went downstairs to investigate and feel the walls. She touched the walls as she proceeded down the stairs from the 17th storey to the ninth storey. However, the walls felt normal.

16 At that time, the appellant was carrying a mobile telephone which had a pair of scissors and a key-chain hidden behind it. The appellant said that she usually carried a pair of scissors whenever she went out as a form of protection. The appellant was of the view that Yak could have seen her carrying the scissors and had mistaken the scissors for a chopper.

17 When the appellant went back to her flat, she found that the kitchen wall had cooled down. She then sent out an e-mail entitled "abusive neighbours/strange happening" to the relevant authorities at about 9.25am that morning. Subsequently, the appellant went to the market and returned to her flat at about 10.40am. She had her lunch at around 12.00 noon, after which she went to have an afternoon nap. She did not wake up until the police arrived outside her flat.

18 The appellant further testified that although she and Yak's family had frequent quarrels, by 1 July 2004 she no longer suspected Yak's family to be behind the strange odours and surges of heat that she experienced in her flat. This was because sometime in May 2004, Tan had gone to her house and sworn to her that he was not responsible for them, and she had believed him. The appellant also admitted that she had confronted Tan with a chopper during their conversation in May 2004. However, she claimed that this was because Tan had first stretched his arm through her gate, saying

"I want to punch you long ago." He had also shouted vulgarities at her and almost touched her chest. In anger, she had run to the kitchen and taken the chopper. Tan subsequently cooled down and swore to her that he had not disturbed the appellant's sleep at night. The appellant maintained that the meeting ended amicably after she accepted his word.

The decision below

19 The trial judge noted that the Prosecution's case against the appellant was based wholly on the identification evidence of Yak. After a careful consideration of the evidence, the trial judge held that the person who had waved the chopper and uttered the threats was the appellant. The trial judge found that Yak and Tan were credible and honest witnesses, whereas the appellant was not a credible witness. The trial judge further found that it had been proved beyond a reasonable doubt that the appellant's threats had indeed been directed at Yak, with intent to cause alarm to her. The trial judge held that the Prosecution had proved its case against the appellant beyond a reasonable doubt and accordingly, she convicted the appellant on the charge.

The appeal

20 On appeal, the appellant advanced a whole litany of complaints against the trial judge's decision, many of which overlap with one another. I found it helpful to group the appellant's main grounds of contention under four broad headings, which were:

- (a) the trial judge's reliance on the evidence given by the various prosecution witnesses;
- (b) the identification of the appellant as the person outside Yak's flat;
- (c) the person at whom the threat was directed; and
- (d) the admission of evidence that was prejudicial to the appellant.

21 I now deal with each ground in turn.

The trial judge's reliance on the evidence given by the various prosecution witnesses

22 The appellant questioned the credibility of Yak and Tan, and argued that the trial judge had misdirected herself with respect to the proper inference which ought to be drawn from the evidence of Mdm Lim.

23 I noted at the outset that the trial judge had made a finding of fact that Yak and Tan were credible witnesses. It is trite law that an appellate court will be slow to disturb a lower court's findings of fact unless they are plainly wrong or against the weight of the evidence. This is because the appellate court does not have the advantage of hearing the witnesses and observing their demeanour in court: *Lim Ah Poh v PP* [1992] 1 SLR 713; *Dong Guitian v PP* [2004] 3 SLR 34. An appellate court may thus reverse such findings only if it is convinced that the findings are wrong, and not merely because it entertains doubts as to whether the decision is right: *PP v Azman bin Abdullah* [1998] 2 SLR 704. However, when it comes to inferences of facts to be drawn from the actual findings, the appellate judge is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

24 The appellant raised many arguments to advance her submission that Yak was an unreliable witness. In my view, all the arguments raised were unmeritorious. First, the appellant argued that Yak

could not have known that the appellant threw things and made a lot of noise in her flat on the day of the incident, because it was not possible for Yak to see through the ceiling of her flat into the 17th floor unit above her. It was clear to me that although Yak could not actually see what the appellant was doing, it was possible for her to hear the sounds made by the person in the unit above her. Yak would have been aware that the appellant lived alone, given that Yak and the appellant had been neighbours for six years. Therefore, contrary to what the appellant argued, the evidence given by Yak that the appellant had thrown things and made a lot of noise in the flat above did not in any way show that Yak was a dishonest or unreliable witness.

25 Second, the appellant argued that it was odd for Yak to have seen the appellant wave the chopper and yet not have seen the appellant's face. The appellant pointed out that Yak had explained her failure to see the appellant's face by saying that she was frightened and did not look at the person's face, yet she had contradicted herself by claiming that the appellant's face was very fierce. However, from my perusal of the notes of evidence, it appeared to me that Yak had made an inference, and not an observation, that the appellant looked very fierce. Viewed in this light, I found that Yak had not contradicted herself on this point. Indeed, Yak clarified that she came to the conclusion that the appellant looked very fierce because of the fact that the appellant was scolding very fiercely on that day. Further, given that Yak saw the appellant holding a chopper and moving it forwards and backwards with a hacking motion, I found it unsurprising for Yak to have reached the conclusion that the appellant looked very fierce.

26 Third, the appellant pointed out various inconsistencies in Yak's evidence. Yak testified in court that she could not see the handle of the chopper, whereas the evidence of Sgt Phua was that Yak had told him on the day of the incident that the handle of the chopper was black. The appellant also argued that Yak had given inconsistent evidence as to her location when she saw the appellant. She had initially said that she was sitting on the sofa in her flat when she saw the appellant, but she later changed her evidence to say that she took two steps from the sofa before she could see the appellant. The appellant further took issue with the inconsistencies in Yak's testimony as to the time at which she had telephoned the police, as well as to the sequence of events that took place after the incident occurred and before she called the police.

27 In my opinion, these discrepancies did not show that the trial judge was plainly wrong in accepting Yak's evidence. The trial judge had to look at the picture in its entirety in determining whether to believe Yak. It was my opinion that the discrepancies pointed out by the appellant regarding the colour of the handle of the chopper, the location that Yak was at, the time Yak called the police and the sequence of events were immaterial discrepancies which had no direct bearing on whether the appellant had committed the offence. As I previously held in *Ng Kwee Leong v PP* [1998] 3 SLR 942, in such a case the trial judge is perfectly entitled to find that the discrepancies do not detract from the general veracity of the prosecution witness on the material issues.

28 The next argument advanced by the appellant involved an attack on the credibility of both Yak and Tan. The appellant submitted that as there was a long history of enmity lasting five years between the appellant and Yak's family, there was a strong probability that Yak and Tan had colluded to frame the appellant. This could be contrasted with the fact that no evidence was adduced to show any motive for the appellant to have thrown things about in her flat or threaten Yak in the manner alleged.

29 In my opinion, this argument was patently unsound. The appellant had made an assertion against Yak and Tan that was based on pure speculation. There was no evidence on the record to show that Yak and Tan had colluded to concoct evidence and frame the appellant. I did not think that the fact that there was a dispute between the parties necessarily led to the conclusion that Yak

and Tan would go out of their way to concoct evidence against the appellant. On the other hand, I felt that there was a plausible motive for the appellant to have carried out the alleged acts. In this regard, I completely rejected the appellant's claim that she had no motive to threaten Yak and her family because she no longer suspected Yak and her family to be responsible for the smell and heat that she experienced. This was because the e-mail that the appellant sent out on the morning of 1 July 2004 to the relevant authorities that was entitled "abusive neighbours/strange happening" showed that the appellant still thought that Yak's family was responsible for the smell and the heat.

30 In the circumstances, I was of the opinion that the trial judge was not plainly wrong in holding that Yak and Tan were credible witnesses.

31 The appellant further argued that the trial judge had misdirected herself as regards the true and proper inference that she ought to have drawn from the evidence of Mdm Lim. The appellant pointed out that Mdm Lim had testified in court that she did not see or hear anything out of the ordinary. However, on the day of the incident, Mdm Lim had told Sgt Phua that she heard the words of the threat uttered by the appellant although she did not see the appellant wield the chopper. The appellant argued that the reason for this inconsistency was that Mdm Lim had initially agreed with Yak's version of the events in the spirit of neighbourliness, but after going to court, she was impressed by the solemnity of the court proceedings and had then told the truth. The appellant argued that Mdm Lim's testimony in court should thus have been believed in preference to the evidence given to the police officers.

32 In my view, there was no merit to this argument. The trial judge, at [41] of her Grounds of Decision, noted that her assessment of Yak's credibility and veracity was not affected in any way by Mdm Lim's evidence that she had not heard anything out of the ordinary before Yak went to her gate. It appeared, therefore, that the trial judge had not made use of the evidence that Mdm Lim gave the police officers to corroborate the evidence given by Yak regarding the witnessing of the threat. The appellant's objection was thus invalid.

33 I further noted that the fact that Mdm Lim had not seen or heard anything out of the ordinary did not affect the Prosecution's case against the appellant. Although Yak was the sole witness against the appellant, there is no requirement in law that her evidence has to be corroborated by an independent witness. Nevertheless, I was aware that in such circumstances, Yak's testimony had to be so compelling to the extent that a conviction might be based solely on it: *Kuek Ah Lek v PP* [1995] 3 SLR 252 at [60]; *Yeo Eng Siang v PP* [2005] SGHC 47. In the present case, I was satisfied that a conviction of the appellant solely on the basis of Yak's testimony was not unsafe. I saw no reason to disturb the trial judge's finding that Yak was a credible witness. As the trial judge pointed out, it was not surprising that Mdm Lim had not heard or seen anything at the material time, as Mdm Lim was very busy attending to her children and chores, the television set was switched on, and her children were making a lot of noise.

34 For the reasons above, I found that the trial judge was justified in relying on the evidence given by Yak and Tan, and that she had not misdirected herself with respect to the proper inference which ought to be drawn from the evidence of Mdm Lim.

The identification of the appellant as the person outside Yak's flat

35 The appellant argued that the trial judge had erred in inferring that the appellant was the person outside Yak's flat, when the quality of Yak's visual identification had been very poor. The appellant pointed out that Yak had not seen the face of the person outside her flat but had only seen that person's hand and leg. The appellant also submitted that the trial judge had given too much

weight to the fact that Yak had purported to identify the person by her voice, when identification by voice was a weak and unsatisfactory form of identification.

36 I was of the view that the trial judge had not erred in her inference that the appellant was the person who had waved the chopper and uttered the threats. The trial judge had rightly pointed out that the Prosecution's case against the appellant relied wholly on the identification evidence of Yak, and she had considered and applied the guidelines for the assessment of identification evidence which were stated in *Heng Aik Ren Thomas v PP* [1998] 3 SLR 465 and adopted in the recent case of *Phua Song Hua v PP* [2004] SGHC 33. The trial judge had correctly concluded that in terms of visual identification, the evidence was not of good quality. This was for the very reason that Yak had not seen the face of the person who had stood outside her flat, and had only seen the person's leg and the hand holding the chopper.

37 In my view, the trial judge had not placed undue weight on the fact that Yak had purported to identify the appellant by voice. The trial judge had considered Yak's identification by voice only after she had concluded that the visual identification evidence of the appellant was of poor quality and when she was ascertaining if there was other evidence which supported the correctness of the identification. The appellant failed to appreciate that the identification by voice was, however, only one factor that the trial judge took into account at this stage of the test. The second factor that the trial judge took into account was the fact that before the person uttered the threat to kill Yak's whole family, the person had also complained about some odours. In addition, the trial judge took into account the fact that this person had been speaking from the 17th storey and subsequently as she made her way down the stairs to the 16th storey. The trial judge then held that it would be a very odd coincidence indeed that the person, if she was not the appellant, had a voice which resembled hers so closely, had the same grievance of bad odours against Yak and had come from the floor where the appellant lived. The trial judge held, on the authority of *Heng Aik Ren Thomas v PP*, that odd coincidences could, if unexplained, be supporting evidence.

38 It was clear to me that the trial judge was correct in her analysis of the evidence. Contrary to what the appellant argued, the supporting evidence need not be visual as opposed to vocal. What was important was that the supporting evidence was evidence that made the judge sure that there was no mistake in the identification: *Heng Aik Ren Thomas v PP*. In the present case, the numerous coincidences were sufficient to assure me that there was no mistake in the identification. Given that Yak and the appellant had been neighbours for about six years and Yak had been subjected to daily scoldings by the appellant, it was very likely that Yak had correctly recognised the voice of the appellant. There was no evidence that anyone else besides the appellant had complaints about a smell coming from Yak's flat. Further, the appellant stayed alone in her unit most of the time and it was very unlikely that the complaining had come from someone else who was in the appellant's flat. In my view, it was clear that the person who had uttered the threats and wielded the chopper was the appellant.

The person at whom the threat was directed

39 The appellant submitted that there was no evidence that she had pointed the chopper at Yak. The appellant claimed that the trial judge was wrong to infer that the threat was directed at Yak when there was no evidence that the appellant had faced Yak when she uttered the threatening words or that the appellant had intended to address those words to Yak.

40 In my opinion, this point was adequately addressed at [43] of the trial judge's Grounds of Decision. As the trial judge pointed out, it was evident from the HDB floor-plan that the appellant could only see Yak's unit and no other unit at the spot where the appellant stood with the chopper.

The appellant must have known that Yak was at home at the material time, as the door of Yak's flat was open and the television set was switched on. Further, the evidence of Dr Wang, the psychiatrist who examined the appellant, was that the appellant did not have a problem of seeing or imagining people who were not there. I also noted that the appellant had been complaining about some odours as she made her way down the staircase from the 17th floor. For the past six years, she had believed that the odours came from Yak's flat. When the appellant stopped at the foot of the staircase on the 16th floor and uttered the threatening words and wielded the chopper, the reasonable conclusion therefore was that the words were directed at Yak and the chopper was pointed at Yak.

41 As such, I ruled that this ground of appeal should fail.

The admission of evidence that was prejudicial to the appellant

42 The appellant's last argument related to the admission of certain evidence by the trial judge. The appellant claimed that the trial judge had erred in failing to exclude evidence given by Tan that the appellant had previously threatened him with a chopper. The appellant argued that such evidence was more prejudicial than probative, and would suggest that she was, by virtue of her previous behaviour, more prone to committing the present offence. The appellant also submitted that, beyond relying on Dr Wang's expert opinion that the appellant was fit to stand trial, the trial judge should not have admitted into evidence Dr Wang's provisional diagnosis that the appellant suffered from a delusional disorder. Such evidence was prejudicial to the appellant as it was akin to evidence of bad character and gave rise to an inference that the appellant had a propensity to commit the offence in question.

43 In my opinion, this argument was plainly untenable. The trial judge had made it very clear that Tan's testimony on the meeting that he had with the appellant in May 2004 was relevant only for the rebuttal of the appellant's claim that the dispute between Tan's family and her had been resolved amicably in May 2004. It was only relevant for the rebuttal of the appellant's claim that she had no motive in July 2004 to threaten to kill Yak's whole family. The trial judge had made it very clear that she completely rejected the submission that the appellant, by her conduct towards Tan in May 2004, had demonstrated a propensity to arm herself with a chopper and make threats to kill people. In these circumstances, I was of the view that the trial judge had not erred in admitting the evidence given by Tan.

44 I also found that the trial judge had not erred in admitting the evidence given by Dr Wang. Besides accepting Dr Wang's evidence for the purpose of establishing that the appellant was fit to stand trial, the trial judge had only considered the evidence for two other purposes. The first was to determine whether the appellant had directed her threat at Yak or at an imaginary person; and the second was to determine whether a lighter sentence would be appropriate for the appellant. The trial judge had therefore only considered Dr Wang's evidence for certain purposes which were not prejudicial to the appellant, and had not made use of the evidence to establish that the appellant was more prone to committing the offence in question. In the premises, the trial judge had clearly not erred in admitting Dr Wang's evidence.

Conclusion

45 A careful consideration of the notes of evidence and the trial judge's Grounds of Decision led me to the conclusion that the appellant's conviction should be sustained. Although Yak was the sole witness in this case, I was satisfied, on the whole of the evidence, that the charge against the appellant was made out. In my opinion, the grounds of appeal raised by the appellant were without merit and the appellant had failed to establish that the trial judge erred in convicting her. Accordingly,

I dismissed the appeal against conviction.

Appeal dismissed.

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