

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 209

Magistrate's Appeal 9159 of 2018

Between

Public Prosecutor

... Appellant

And

Tan Zhenyang

... Respondent

JUDGMENT

[Criminal procedure and sentencing] — [Sentencing] — [Appeals]

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Public Prosecutor

v

Tan Zhenyang

[2018] SGHC 209

High Court — Magistrate's Appeal 9159 of 2018
Chan Seng Onn J
28 September 2018

28 September 2018

Chan Seng Onn J:

1 The respondent, Tan Zhenyang, pleaded guilty to one charge under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) for voluntarily causing hurt to the victim, Ong Guan Hian Ian.

2 These are the facts as stated in the Statement of Facts ("SOF"). The offence arose out of a dispute over a parking lot in a multi-storey carpark. The victim had made an unauthorised right turn against the flow of traffic to reach the said parking lot before the respondent. The respondent told the victim that he had seen the lot first but the victim continued to reverse his car into the parking lot. The respondent stood behind the victim's car to prevent him from reversing further. The victim then called the police. While waiting for the police to arrive, the victim stepped out of his car intending to open the boot of his car. The victim signalled for the respondent to give way by placing the back of his right hand slightly below the respondent's chest. At this point, the respondent

grabbed the victim by the shoulder with his right hand, and pointed his left index finger close to the victim's face while saying "Don't touch me." Alarmed, the victim pushed the respondent's left hand away. The respondent then pulled the victim towards him with his left hand, and punched the victim's face with his right hand. Thereafter, the respondent continued hitting the victim, and grabbed the victim's left arm as he was trying to escape. As the victim struggled, the respondent grabbed him by the neck and shoved him onto a nearby car with such force that it caused a dent on the car's right rear passenger door. The respondent continued slapping the victim multiple times. The respondent then head-locked the victim with his arms, and only released him when a passer-by yelled at them to stop.

3 The victim suffered two scratch marks with some mild bruising across the right temple and upper cheek bone region, as well as a left elbow abrasion. The respondent is untraced.

4 The DJ below sentenced the respondent to a fine of \$5,000. The prosecution has appealed against this sentence on the basis that it is manifestly inadequate.

5 I agree broadly with the prosecution's submissions. First, I agree that the DJ had erred in relying on precedents which involved the offence of affray. Indeed, an affray charge would involve an assessment that both parties were culpable for using violence against each other. In the present case, the respondent was charged with voluntarily causing hurt under s 323 of the Penal Code. Therefore, it would have been more apposite for the DJ below to consider the sentencing precedents for s 323 offences instead.

6 Second, I agree with the prosecution that the DJ had made his decision upon certain erroneous findings of fact. Specifically, the DJ had strayed too far from what was stated in the SOF. The DJ found that there was no evidence that the victim had tried to escape, even though it was clearly stated in the SOF. The DJ also found that the victim had gone to the back of his vehicle and “used his hand to push the [respondent] away”. However, the SOF states that the victim had merely placed the back of his right hand slightly below the respondent’s chest. I note that the respondent has tried to argue that the victim was rude and provocative in his approach towards the respondent, and had even banged on the trunk of his vehicle to intimidate the respondent. However, this does not come out clearly in the SOF on which the decision on sentence must be based.

7 The sentencing precedents cited by the prosecution for cases involving voluntarily causing hurt out of road rage, specifically arising from parking related disputes, indicated that the range of sentences were between 2 to 5 weeks’ imprisonment. The prosecution further submitted that fines have only been given where there has been *severe* provocation by the victim.

8 I note that in *Public Prosecutor v Lim Yee Hua and another appeal* [2018] 3 SLR 1106, I had stated that although deterrence is the predominant sentencing principle for cases involving road rage, the custodial threshold need not necessarily be crossed in all cases. However, on the facts of the present case where the provocation by the victim if any was slight, and the nature of the assault was severe notwithstanding the relatively minor injuries sustained, a custodial sentence would be warranted. Accordingly, I allow the prosecution's appeal and impose a sentence of 5 weeks' imprisonment on the respondent. The fine of \$5,000/- paid is to be refunded to the respondent.

Chan Seng Onn
Judge

DPPs Han Ming Kuang and Houston Johannus (Attorney-General's
Chambers) for the appellant;
K. Jayakumar Naidu (M/s Jay Law Corporation) for the respondent.
