

Public Prosecutor v Luan Yuanxin
[2002] SGHC 65

Case Number : MA 12/2002

Decision Date : 02 April 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Peter Koy (Deputy Public Prosecutor) for the Appellant; Respondent in person

Parties : Public Prosecutor — Luan Yuanxin

Criminal Procedure and Sentencing – Sentencing – Penalties – Criminal intimidation – Aggravated form of criminal intimidation – Aggravating factors – Appellant threatening to cause death to victim with use of weapon and within confines of victim's room – Prior attempt to strangle victim – Relevance of victim's fear – Whether sentence of two months' imprisonment manifestly inadequate – s 506 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Sentencing – Principles – Voluntarily causing hurt – Aggravating circumstances – Appellant strangling victim with copper wire and biting victim on back and hand – Premeditation and use of considerable force – Verbal threat to strangle victim to death – Whether maximum sentence should be imposed – s 323 Penal Code (Cap 224)

Judgment

GROUND OF DECISION

The respondent, Luan Yuanxin, was charged with committing criminal intimidation by pointing a cleaver, with a blade measuring 20 cm in length, at his wife (the "victim") and threatening to kill her. This is an offence punishable under s 506 of the Penal Code (Cap 224). He was also charged with two counts of voluntarily causing hurt; first, by using a copper wire to strangle the victim around her neck and, secondly, by biting the victim on her back and on her right hand. Both offences are punishable under s 323 of the Penal Code. The respondent pleaded guilty to all three charges. He was convicted and sentenced to two months' imprisonment on the charge of criminal intimidation, two months' imprisonment on the charge of strangling the victim with a copper wire and one month's imprisonment on the charge of biting the victim on her back and on her right hand. The sentence of imprisonment for strangling the victim was to be consecutive to the sentence for criminal intimidation, thereby making a total term of imprisonment of four months. In passing the sentence, a fourth charge relating to voluntarily causing hurt by using both his hands to strangle the victim, an offence punishable under s 323, was taken into consideration with the respondent's consent. The DPP appealed against the sentence on the ground that it was manifestly inadequate. I now set out my reasons for allowing the appeal and enhancing the sentences.

The facts

2 The respondent lived with the victim, their eight year old daughter and his mother-in-law in an HDB flat in Yishun.

3 On 1 September 2001, at about 11.10pm, the respondent entered the victim's room with a meat cleaver. While pointing the cleaver at the victim, the respondent uttered in Mandarin that he wanted to kill her. The victim, who was in her room alone, quickly picked up the telephone in the room. When the respondent saw this, he retreated from the room and went into the kitchen.

The victim, fearing for her safety, then left the house together with her elderly mother and her daughter to look for the police at the void deck of the flat.

4 On 2 September 2001, at about 4 pm, the victim left her bedroom and went to the living room to get some ointment for a mosquito bite. The victim saw the respondent lying on a foldable bed in the living room. The victim's mother and daughter were also in the living room at the material time. As the victim was about to return to her bedroom, the respondent suddenly grabbed her from behind and, in one swift motion, coiled and tightened a copper wire, measuring about one metre in length, around her neck. In that split second, the victim managed to slip her right hand underneath the wire while simultaneously using her left hand to pull at the wire in a bid to prevent it from further tightening. In the ensuing struggle, the respondent proceeded to pin the victim down onto the sofa in the living room, and further tightened the wire around her neck while verbally threatening to strangle her to death. He refused to loosen his grip on the wire even when the victim, who was having difficulty breathing, was gasping for air. Instead, he tried to pull the victim's right hand away from underneath the wire, and even resorted to biting the victim's right hand in an attempt make her release her tenacious grip on the wire. As the victim still refused to let go of the wire, the respondent proceeded to bite her on her back, near her right shoulder. By this time, the victim's elderly mother and her eight year old daughter intervened and forced the respondent to release his grip on the wire. With their help, the victim finally managed to free herself from the respondent's hold.

5 The victim then left the house together with her mother and daughter to lodge a police report. She sought treatment at Tan Tock Seng Hospital on the same day and the doctor who examined her noted that she suffered the following injuries as a result of the respondent's attack:

- a abrasions : 4 cm in diameter over anterior chest wall and left shoulder;
- b two puncture wounds and 'bite' marks, seen over dorsal aspect of right hand;
- c five wire marks : linear marks seen over the right hand and right side of neck (about 5 cm long);
- d lacerations over the lower lips.

6 The victim was given the appropriate medical treatment and discharged with three days' medical leave.

The appeal

7 The prosecution appealed against the sentence imposed on the ground that it was manifestly inadequate. They submitted, inter alia, that the district judge had erred in his assessment of the gravity of the offence.

8 Having reviewed the circumstances of the case, I agreed entirely with the prosecution's submissions and found that the district judge had made gross errors of judgment in passing a sentence that can only be described as hopelessly disproportionate to the gravity of the offence. From his written grounds, it would appear that the district judge had completely failed to consider many of the aggravating factors that were so glaringly present. Instead, he simply glossed over these factors by holding that the respondent's actions were done "in a fit of anger", and that the injuries sustained by the victim were not "very serious" as there were "no evidence of permanent disability". In relation to the offence of criminal intimidation, he held that the attack was "not a prolonged one". In passing the

sentence, he placed a great amount of emphasis on the attack being "unprecedented", the respondent's lack of antecedents, as well as the problems that the respondent was facing at home and at work.

The charge for criminal intimidation under s 506

9 The punishment for a charge of criminal intimidation is covered by s 506 of the Penal Code. What is apparent from a reading of s 506 is the distinction that is drawn between criminal intimidation *simpliciter* and an aggravated form of criminal intimidation that attracts a much harsher punishment. A threat to cause death is specifically contemplated by the section to fall within the latter category. Such a threat when made in all seriousness by someone who is not clearly incapable of carrying out the threat is something that should never be taken lightly. This is particularly so when a weapon is used by the accused as part of the threat since the presence of a weapon serves not only to make the threat more menacing, but also goes towards proving the maker's intent to cause alarm to his victim. The seriousness of the present offence was further aggravated by the fact that the respondent had chosen to attack the victim within the confines her room. This would have had the intended effect of causing the victim greater alarm as she was trapped in the room with no means of escaping. That the victim feared for her safety was evinced by her leaving the house shortly after the incident to call for the police at the void deck of her flat.

10 In *Ramanathan Yogendran v PP* [1995] 2 SLR 563, I stated that in considering whether the substantive offence of criminal intimidation has been established, it should be shown that the victim had some objective basis to apprehend alarm, even if she was never alarmed. However this does not *ipso facto* mean that a victim's fear is irrelevant. It is a factor that should be borne in mind by a sentencing judge when meting out the appropriate sentence upon the accused's conviction. As I have already alluded to above, the victim was not only alarmed by the respondent's threat but had feared for her safety. This is clearly an aggravating factor that goes towards the seriousness of the offence.

11 In sentencing the respondent, I was also mindful of the sentencing tariffs set by previous cases involving criminal intimidation. The most recent case was my decision in *PP v N* [1999] 4 SLR 619. In that case, I sentenced the accused, who had threatened to kill his estranged wife over the telephone, to one year's imprisonment. There is no doubt that the threat to kill in the present case was a more serious one. It bears repeating that the respondent had deliberately carried out his threat to kill with the use of a weapon and within striking distance of the victim. Furthermore, the fourth charge that was to be taken into consideration for the purposes of sentencing, related to the respondent's attempt to strangle the victim with his hands some 10 minutes before he made the threat to kill her. All these aggravating factors, which the district judge had omitted to refer to in his written grounds, far outweighed the fact that the threat was not a "prolonged" one and, clearly require the court to impose a proportionately higher sentence.

The charges for voluntarily causing hurt under s 323

12 The respondent's acts relating to his two charges for voluntarily causing hurt were violent and vicious. They clearly showed that his acts were not, as the district judge so naively believed, done "in a fit of anger". On the contrary, there was no evidence that the attack was provoked. In fact, the evidence would seem to suggest that the attack involved some degree of premeditation. How else could one explain why the respondent, whom the victim observed to be lying on a foldable bed just seconds before she was attacked, had a one metre long copper wire within his reach?

13 It also seemed irrelevant to me in the context of the present case that the injuries sustained by the victim were "not very serious". The only reason why her injuries were not more serious, or that she is even alive today, was because she was quick enough to slip her hand underneath the wire to prevent it from tightening around her neck, and because of the intervention of her mother and her daughter.

14 What the injuries did in fact show was the degree of force which the respondent used on the victim and his corresponding intention to cause the victim serious injury. The five wire marks on her neck and right hand indicated that the respondent had used a considerable amount of force in tightening the wire around her neck. The two puncture wounds and the 'bite' marks on the victim's right hand revealed the respondent's resolve to force her to release her right hand from under the wire. The respondent's intention to cause the victim serious injury was further shown by his verbal threat to strangle her to death while tightening the wire around her neck.

15 Given the aggravating circumstances of this case, I had no qualms about imposing the maximum possible sentence of one year's imprisonment for both the respondent's charges under s 323. Had the prosecution not been so kind as to amend the respondent's original charge relating to the incident of strangulation using a copper wire from a s 324 offence (voluntarily causing hurt using a dangerous weapon) which carries a maximum term of imprisonment of five years, to a s 323 offence, I would in all probability have imposed a much higher sentence.

16 While it may be true that this was the respondent's first attack on his wife, the fact remained that he did attack his wife in a particularly violent manner. Only the day before, he had threatened to kill her while brandishing a cleaver in her face. Barely 24 hours had passed before he grabbed his wife and, this time round, threatened to kill her while tightening a wire around her neck. He did not cease his hold on her on his own accord but had to be overpowered. Furthermore, one should not forget that this attack was carried out in front of his eight year old daughter who had to witness this violent attack on her mother by her own father.

17 Violent acts such as these are particularly heinous when they are committed within the confines of a familial relationship as they constitute an abuse of the bonds of trust and interdependency that exist between family members. More often than not, the effects of such violence within the family fall most harshly upon the children who, while they may not be the direct recipients of the violence, will nevertheless carry the scars of these acts of brutality. In this regard, I was mindful of the need to deter anyone else who might resort to such violence, especially in view of the deplorable increase in the number of cases involving family violence.

Conclusion

18 Based on the above conclusions, I allowed the appeal and enhanced the respondent's sentence in respect of his charge of criminal intimidation from two months to two years, and the sentence relating to his charge of voluntarily causing hurt by using a copper wire to strangle the victim from two months to one year, and the sentence relating to the second charge of voluntarily causing hurt by biting the victim on back and right hand from one month to one year. Pursuant to s 18 of the Criminal Procedure Code (Cap 68), I ordered the sentences on the two charges of criminal intimidation and strangulation to run consecutively, making a total sentence of three years' imprisonment.

Appeal allowed.

Sgd:

YONG PUNG HOW
Chief Justice

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