

Tuan Foo Pao (alias Chong Fook Pao) v Public Prosecutor
[2012] SGHC 29

Case Number : Magistrate's Appeal No 2 of 2011 (MAC No 4068-4070 of 2010)
Decision Date : 07 February 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Appellant in-person; Leong Wing Tuck (Attorney-General's Chambers) for the respondent.
Parties : Tuan Foo Pao (alias Chong Fook Pao) — Public Prosecutor

Criminal Procedure and Sentencing

7 February 2012

Choo Han Teck J:

1 The appellant was aged 56 on 21 April 2010, the time of the offences. He was convicted by the District Court on three charges after a trial lasting two days. He appealed against the convictions. The first was a charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224, 1985 Rev Ed) for which he was sentenced to imprisonment for two weeks. The second and third charges were under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("the Miscellaneous Offences Act") for behaving in a disorderly manner, and for which he was fined \$1,000 each. He appealed against conviction and sentence.

2 The facts found by the trial judge were as follows. The appellant went to the Family Court on 21 April 2010 in relation to applications by him for a Personal Protection Order against his four siblings and counter applications by his siblings against him. While waiting for proceedings to commence the appellant head butted his brother, PW2 Chong Fook Leng ("PW2"). He then shouted when still in the corridor of the court. He and his brother were sent in to explain their conduct to the Family Court judge. When they left the Family Court the appellant started shouting again.

3 Two of the brothers including PW2 testified. The other, PW3 Chong Fook Tuang ("PW3") testified that he saw the appellant hit PW2 with his head. He saw PW2 holding his nose and realised that the appellant had struck him on the nose. Both brothers testified that the appellant was aggressive and shouting. Their evidence was corroborated by PW4 Foo See Chong Jacky ("PW4"), a security officer of the Subordinate Courts. He too saw the appellant using his forehead to hit a man (PW2). He saw PW2 covering his nose and shouting in pain. PW4 heard the appellant shouting at PW2. PW5 was the investigation officer ("PW5") who produced a footage of closed circuit television ("CCTV") tape and explained that there was a two to three seconds lapse between frames.

4 Under cross-examination when confronted by PW4's account to the Family Court judge, the appellant told the trial judge that he was not saying that PW4 was lying but "it could be a clash of head. It all happened in a split second". The trial judge also found the appellant's testimony that he had followed PW3 into the Protecting Orderly Services room to be untrue because it was not borne out by the CCTV footage. The trial judge disbelieved the appellant's account of the incident. The trial judge noted that the appellant's testimony before her was that there was no bodily contact between him and PW2 whereas he told the Family Court judge at the time that it was possibly just a clash of

heads. The trial judge disbelieved the appellant's explanation of the head butting as a spasmodic action arising from shock and fear. On the other hand, she accepted PW2's account and the corroborative testimonies of PW3 and PW4. PW1, Dr Leong Chui Ling testified that PW2 went to her for medical attention about four hours after the incident. She did not find any visible signs of injury but concluded that there was tenderness due to contusion and explained that was a soft tissue injury. She said that signs of redness could have subsided by the time of her examination of PW2.

5 The trial judge took into account the broad range of conduct that could be considered under a charge of disorderly behaviour. She concluded that shouting in the premises of a courthouse in the manner of the appellant was disorderly behaviour within the meaning of s 20 of the Miscellaneous Offences Act. She disbelieved the appellant's account of the incidents in which he denied shouting in respect of the first charge, and in respect of the second, that he only said some Chinese words to PW4 as he was walking out of the courthouse.

6 On appeal, the appellant repeated his claim that he did not touch PW2 and did not shout. He also claimed that his evidence would be borne out by the CCTV. After perusing the CCTV footage, it was clear that it was not helpful to either the prosecution or the defence. Contrary to the appellant's assertion, the trial judge did not rely on the CCTV to convict him. She relied on the oral testimonies of all the witnesses, including the appellant. The appellant also alleged a conspiracy and false evidence by PW4 but in spite of lengthy adjournments to produce such evidence and to engage counsel, he produced neither.

7 There was nothing on record that supported the appellant's version. He claimed that it was impossible for him to have hit PW2 and not to have that recorded on the CCTV. The court below accepted the explanation that there was a two to three seconds lapse between frames. The appellant himself claimed at the Family Court that "all happened in split second". There was no basis to disturb any of the trial judge's findings of fact. Further, so far as the convictions for disorderly behaviour were concerned, I agree with the trial judge that a high level of decorum is expected in and near the vicinity of any courtroom. The conduct of the appellant as narrated by the prosecution witnesses was disorderly. I agree with the trial judge that the charges had been proved. The sentences meted out were not excessive. If it were not a family dispute, the appellant might have received a longer term of imprisonment. Accordingly, the appeals against conviction and sentence were dismissed.

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