Ho Yean Theng Jill v Public Prosecutor
[2003] SGHC 280

Case Number : MA 70/2003, Cr M 15/2003

Decision Date : 14 November 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : K S Rajah SC (Harry Elias Partnership) and Peter Ong Lip Cheng (Ong Lip Cheng and Rajendran) for applicant/appellant; Christopher Ong Siu Jin (Deputy Public Prosecutor) for respondent

Parties : Ho Yean Theng Jill — Public Prosecutor

Criminal Procedure and Sentencing – Charge – Joinder of similar offences – Whether series of connected acts should be tried as separate offences or one composite offence – Section 170 Criminal Procedure Code (Cap 68, 1985 Rev Ed) – Section 71 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Compounding of offences – Maid abuse by de facto employer – Whether court should grant consent for compounding of offence – Section 199 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles – Voluntarily causing hurt – Maid abuse by de facto employer – Whether sentence manifestly excessive – Section 323 Penal Code (Cap 24, 1985 Rev Ed)

1 The appellant was convicted in the Magistrate's Court on five charges of voluntarily causing hurt under s 323 of the Penal Code and was sentenced to a total of four months' imprisonment. She appealed against both conviction and sentence. After hearing counsel's arguments, I dismissed the appeal against both conviction and sentence. I now give my reasons.

Preliminary issue

2 In the petition of appeal filed on 21 April 2003, the appellant essentially challenged the magistrate's findings of fact. Thereafter, the appellant filed a criminal motion for leave to file a supplementary petition of appeal on 10 September 2003.

3 The original petition of appeal challenged the magistrate's findings of fact. However, the supplementary petition of appeal raised issues of whether the magistrate had erred in withholding his consent to allow the offences to be compounded. At the hearing, counsel for the appellant argued that the criminal motion should be allowed because the supplementary petition of appeal raised issues of considerable importance with regard to maid abuse cases in Singapore. As the prosecution did not object, I allowed the criminal motion to file the supplementary petition of appeal.

4 It should be noted that the magistrate published his grounds of decision on 14 July 2003. This was about two months before the appellant filed the supplementary petition of appeal. This had an impact on one of the appellant's arguments which I will deal with below.

5 The parties had also agreed in writing prior to the hearing, that the appellant would not be proceeding on the challenges against the magistrate's findings of fact as found in the original petition of appeal. As the appellant had abandoned the challenge against the magistrate's findings of fact, I will begin with only a brief summary of the facts.

Facts

6 This was a simple case of maid abuse. The victim was a domestic maid from Indonesia by the name of Sartini binti Warsono ('Sartini'). The appellant was a 28 year-old divorcee with a young daughter. Sartini's work permit was registered under the name of one Tan Key San ('Tan'), who is the appellant's ex-husband. Tan moved out of the matrimonial flat before the material incidents took place. It was undisputed that Sartini was working in the appellant's household and that Sartini took instructions from the appellant at all material times.

7 Before the commencement of the trial below, counsel for the appellant indicated to the Court that the appellant offered to compound the offence. The DPP objected to the composition and the magistrate withheld his consent. The relevant parts of the notes of evidence are as follows:

> D/C: (Peter Ong) – taken client's instructions.
> Offence compoundable – explaining if maid is mindful to compound.
>
> DPP: Maid is not willing – usually not compounded. Prosecution is opposing.
>
> D/C: Want to see Senior DPP to make oral representations.
>
> Court: Stand down to 11.15 a.m.
> Court commences at 11.25 a.m.
>
> D/C: Representation turned down – *maid is now willing to compound*. Prosecution is objecting to it but asking Court to allow it.
>
> DPP: *Confirmed that maid is willing to compound but Prosecution objecting.*
>
> D/C: Compensation offer is $5,000/- and plus [sic] medical expenses and arrears of salary.
>
> Court: *Not allowing composition.*
>
> D/C: Client is claiming trial. [emphasis added]

8 At the trial, Sartini gave evidence for the prosecution. Sartini testified that in the late morning of 10 March 2002, the appellant scolded her about the dirty table in the living room and took a bamboo pole, normally used for drying clothes, to hit Sartini's hand twice. This formed the substance of the first charge.

9 Sartini then proceeded to wipe the table and the appellant continued to scold her. Sartini then asked to return to Indonesia. On hearing this, the appellant took the front door keys from the top of the piano and scratched Sartini on the face with the keys. This took place about 10 minutes after the incident involving the bamboo pole and formed the substance of the second charge.

10 About 10 to 15 minutes after that, Sartini attempted to take the keys to let herself out of the flat, so that she could buy some food for herself. The appellant admonished her for it and prevented her from leaving. In the process of a scuffle that ensued, the appellant hit Sartini about five times on the top of her head with a high-heeled shoe that she picked up from the shoe rack next to the front door. This formed the basis of the third charge.

11 A few days thereafter, on the night of 14 March 2002, Sartini testified that she was in the living room when the appellant asked her if she had washed the master bedroom toilet. She told the appellant that she had not done so. The appellant went into the master bedroom toilet and told

Sartini to follow her there to show Sartini the state of the toilet. When they returned to the living room, the appellant emptied a plastic basket normally used to keep her daughter's toys and hit Sartini on the head with it. This was the substance of the fourth charge.

12 The appellant continued to scold Sartini. About eight minutes later, the appellant used her right hand to scratch Sartini's face. This was the basis of the fifth charge.

13 The next morning, on 15 March 2002, Sartini left the appellant's flat. She contacted her aunt, one Kusniatun who is also working as a domestic maid in Singapore. Sartini went to Kusniatun's flat whereupon the sister of Kusniatun's employer informed the police.

14 Sartini was brought to one Dr Siow Yeen Kiat for examination of the injuries on 15 March 2002. Dr Siow noted that Sartini suffered the following injuries:

(a) a 5 cm scratch mark on her left lower eyelid;

(b) a 2 cm scratch mark on her right cheek;

(c) a 2 cm scratch mark on her right parotid area;

(d) multiple very superficial scratch marks on her right cheek.

15 The appellant's case at the trial below was one of bare denial. She denied that the basket existed, that she had hit Sartini with a high-heeled shoe and that she scratched her face with a key and/or her fingers. She also attempted to present an alternative version of how the incidents unfolded. For example, with regard to the attempt by Sartini to leave the flat to buy food, she said that her sister told her that Sartini could have hurt herself when she (the appellant's sister) tried to pull her in during the scuffle. The appellant also said that she had asked Sartini about the injury and Sartini had told her that 'it's okay'. In his grounds of decision, the magistrate noted that the appellant's sister was not called as a witness. Also, the magistrate noted that the appellant did not put to Sartini that she (the appellant) had noticed her bruises and asked her about it.

The decision below

16 The magistrate evaluated the testimony of the witnesses at great length and found that all the charges against the appellant had been proven beyond reasonable doubt. On the issue of composition of the offence, the magistrate held at paragraph 147 of his grounds of decision, '[t]hey [the defence] also pointed out that a composition sum of $5,000 was offered to Sartini at the start of the trial (which the Court did not allow).' The magistrate did not state his reasons for not allowing the composition of the offence in his grounds of decision. However, it has to be noted that the grounds of decision was published almost two months before the appellant decided to proceed with the supplementary petition of appeal to challenge the magistrate's decision on the issue of composition.

17 On sentencing, the magistrate held at paragraph 148:

> While I agree that the enhanced penalties of Section 73 [of the Penal Code] cannot apply because the charges are simply under Section 323, I must note that the law still grants me the discretion to enforce a maximum of one year's imprisonment or $1,000 fine or both. However, Section 73 aside, Sartini was still a domestic maid. Yes, officially her work permit was under the name of the Appellant's ex-husband but *de facto* if not *de jure* she was under the employ of the Appellant. She was the Appellant's maid, and as such belonged to the vulnerable class that

Section 73 was designed to protect. While, through a technicality, the Court is unable to enhance to maximum penalty, there is nothing that disallows the Court to consider the fact that the victim was the perpetrator's maid as an aggravating factor and sentence accordingly within the confines of the maximum sentences allowable under Section 323 itself.

18 After considering the relevant mitigating circumstances, the magistrate sentenced the appellant to four weeks' imprisonment for the first, third and fourth charges. He also sentenced her to two months' imprisonment for the second and fifth charges. Finally, he ordered the sentences for the second and fifth charges to run consecutively, bringing the total term of imprisonment to four months.

The appeal against conviction

19 In essence, the appellant's case on appeal against conviction was that the magistrate erred in not allowing her to compound the offences. Counsel argued that this court should exercise its discretionary powers under s 268 of the Criminal Procedure Code (CPC) and allow the offences to be compounded with the consent of the maid.

20 First, counsel submitted that the magistrate should have leaned in favour of composition because this was a simple case of voluntarily causing hurt. Counsel tried to persuade me that Parliament had expressly retained the right to compound offences even in instances of maid abuse. Secondly, counsel argued that the magistrate did not exercise his discretion judiciously because he did not provide grounds for withholding his consent. I will deal with each of these arguments in turn.

Composition of the offence

General principles

21 The crux of this appeal was whether the courts should lean in favour of giving its consent in cases where a domestic maid was hurt, even though the person who hit the maid was not her de jure employer but her de facto employer.

22 Section 199(1) of the CPC states:

> **Compounding of offences.**
>
> 199.—(1) The offences punishable under the Penal Code shown in the sixth column of Schedule A as being compoundable may be compounded by the person mentioned in that column provided that when an arrest has been effected or an application has been made for the issue of a warrant of arrest or summons *the consent of a Magistrate* or, if the offence is not triable by a Magistrate's Court, of a District Judge, *shall first be obtained*. [emphasis added]

23 Several general guidelines have been laid down in both foreign and local cases as to how the courts should exercise its discretion when deciding whether to grant consent to compound the offence. In *Emperor v Alibhai Abdul* AIR 1921 Bom 166, Crump J observed:

> The policy of the legislature is that, in the case of certain minor offences, *where the interests of the public are not vitally affected*, the complainant should be permitted to come to terms with the party against whom he complains. [emphasis added]

24 In *PP v Norzian bin Bintat* [1995] 3 SLR 462, I laid down several general principles with regard to the composition of offences. It was held at p 475:

[I]n the absence of aggravating factors, the courts should lean towards the granting of consent in cases where the public interest does not figure strongly.

25 In that judgment, I referred to and approved the decisions in *Re Chang Cheng Hoe & Others* [1966] 2 MLJ 252 and *Ganatra Vishanji Kuverji v The State* AIR 1939 Pat 141. In *Re Chang Cheng Hoe & Others*, Ong Hock Sim J observed at p 253 of the report:

> I would however say that it should be left to the discretion and good sense of the courts to have regard to the interests of both the public and the parties, the circumstances and the nature of the offence in deciding whether to allow a case to be compounded.

26 In *Ganatra Vishanji Kuverji*, it was held:

> In granting permission, the court has to exercise discretion vested in it judicially. The nature of the alleged offence, circumstances under which it is alleged to have been committed, relationship between the parties, possibility of parties living in peace and harmony if composition is allowed, stage at which composition is sought are some of the facts to be considered in deciding whether permission should be granted.

27 In *PP v Norzian bin Bintat*, the appellant there was charged with voluntarily causing hurt to his neighbour. The victim was willing to compound the offence. However, the prosecution objected. The trial judge gave his consent under s 199 of the CPC despite the DPP's objection. On appeal by the prosecution, I found that the case involved a 'minor tiff between neighbours' and that it was not a suitable case to refuse consent to compound the offence. Consequently, I upheld the trial judge's exercise of his discretion to consent to the composition of the offence.

Whether Parliament had expressly retained the right to composition in cases of maid abuse

28 Counsel for the appellant argued that, although Parliament had enhanced the sentence under s 73 of the Penal Code for instances of maid abuse, Parliament had expressly retained the right to composition. For this argument, counsel kept on referring the Court to various completely irrelevant passages from the Parliamentary debates over the Penal Code (Amendment) Bill where the proposed enhanced punishment under s 73 of the Penal Code was discussed in Parliament.

29 On the whole, I found counsel's stubborn reliance on the Parliamentary speeches to be wholly gratuitous. The relevant parts of s 9A of the Interpretation Act states:

> **Purposive interpretation of written law and use of extrinsic materials**
>
> 9A(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —
>
> (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
>
> (b) *to ascertain the meaning of the provision when* —
>
> (i) *the provision is ambiguous or obscure*; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include — […]

(c) *the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;* […] [emphasis added]

30 Under s 9A of the Interpretation Act, a Court may refer to extrinsic materials only in limited circumstances, for example, to ascertain the meaning of the provision when the meaning of that provision is ambiguous or unclear. Here, it was undisputed that s 73 of the Penal Code did not apply to the present facts because Sartini's employer was the appellant's ex-husband and not the appellant herself. Further, the appellant was charged under s 323 of the Penal Code and not s 73 of the Penal Code. The magistrate was also clear in his grounds of decision that s 73 of the Penal Code did not apply. In any case, there was no dispute about the language of s 73 of the Penal Code. Hence, I saw no relevance whatsoever in counsel's continued reference to passages from speeches in Parliament by Associate Professor Chin Tet Yung and Mr Simon Tay. However worthy these two members of Parliament might be, counsel seemed totally unaware that their views could not be regarded as legal authorities to be cited in court.

Whether the Court should lean in favour of granting consent

31 Having established that Parliament did not expressly retain the right of composition in cases of maid abuse, I also could not agree with the appellant's counsel's argument that the courts should lean in favour of granting consent for composition even in cases of maid abuse. Such a stance would be contrary to a steady body of case law from this Court. Emphasis had been consistently placed on the strong element of public interest involved when a foreign domestic maid is hurt or abused. Most recently, in *PP v Chong Siew Chin* [2002] 1 SLR 117, I stated at paragraph 40:

The object of legislation providing for enhanced punishment for certain offences against maids in Singapore stemmed from the recognition that maids require additional protection because of their special circumstances. As noted by the Minister for Home Affairs in Parliament in April 1998, full time domestic maids are usually female and are totally dependent on their employers for food and lodging. Having travelled long distances to work in Singapore, many of them are totally deprived of their support network of family and friends.

Further, at paragraph 42, I also made the following observation:

Maid abuse usually takes place in the privacy of the home where offences are hard to detect. In recent years, the number of foreign maids working in Singapore households has risen steadily. Unfortunately, reported cases of maid abuse have also risen steadily: 105 in 1994 to 193 in 1997. I felt that a deterrent sentence should be imposed to arrest the rising trend of such offences. In addition, I noted that such disgraceful conduct lowers Singapore's international reputation and damages bilateral relations with neighbouring countries.

32 In light of this, I agreed with the prosecution's submission that leaning against the granting of consent to compound the offence in maid abuse cases will send a clear signal to would-be maid

abusers that they will not escape the consequences of their actions by simply 'paying off' their victim. Further, it will send a right massage to the neighbouring countries that persons who abuse their nationals who come to Singapore to work as domestic maids will not be allowed to 'purchase' their way out of the criminal justice system and be immune from prosecution.

33 Counsel pointed out to the Court that in the present case, Sartini's employer was the appellant's ex-husband and not the appellant herself. Consequently, counsel argued that this was a simple case of hurt. Therefore, the magistrate should have leaned in favour of granting consent to the composition. In support of his argument, counsel referred the Court to a statement by the Minister for Home Affairs, at Parliamentary Debates (1998) vol 68 column 1941, where the Minister turned down Mr Simon Tay's suggestion to have a deeming provision for the purposes of s 73 of the Penal Code:

> As to the drafting suggestions made by Mr Tay, I have been guided by the Attorney-General that this is the way we should draft our laws. Whether or not we should deem a person who is the employer as a registered employer of the domestic worker, even though that worker may not be working in his household, and deem the person liable for the enhanced punishment, I think we take it one step at a time. If there is a trend to show that employers overcome the law by getting another person to employ that worker, and eventually allow the person to work in his home and abuse the maid, then we will amend the law to take care of the problem. So, don't worry employers, if you intend to do that, be sure the law will catch up with you in no time.

34 I found counsel's reliance on this statement and all the speeches he cited to be hopelessly misguided. In my judgment, the fact that the appellant was Sartini's de facto employer and not her de jure employer has no bearing on whether the courts should lean in favour of granting consent to allow composition of the offences. The public interest mentioned in *Emperor v Alibhai Abdul* and *PP v Norzian bin Bintat* is very much present in cases where a foreign domestic maid had been abused. This is so even if the perpetrator was the maid's de facto, and not de jure, employer because of a mere technicality in the registration of the domestic maid's work permit. The public interest element in such cases is sufficient to warrant a departure from the general principle that the courts should lean in favour of granting consent for composition of minor offences. To allow the appellant to compound the offence simply because she was not the de jure employer would be to send the wrong message to other persons in the position of the appellant as well as to our neighbouring countries who send their nationals to work here as domestic maids.

35 On the present facts, I found that not only was there a strong public interest element, there were also aggravating factors which warranted a departure from the general norm to grant consent to compound such offences. These included the cruel ways in which the appellant had inflicted the injuries on Sartini. At its highest, this argument relating to whether the appellant was Sartini's de facto employer raised an issue with regard to sentencing, which I will address below when I deal with the appeal against sentence.

The distinction between composition of offence and compensation orders

36 Counsel for the appellant also submitted that the magistrate should not have ignored the willingness of the appellant to pay compensation to Sartini and, in counsel's words, the maid's 'right given to her by law to compound the offence'. Counsel then made another surprising submission that 'it is consistent with Singapore being a gracious society when generous compensation is ordered to be paid to the victim by the offender even for minor offences.'

37 In my opinion, counsel had turned the concept of a gracious society on its head. In no

conceivable way can a society be said to be gracious if accused persons in the position of the appellant are allowed to purchase their way out of the criminal justice system by offering to pay compensation to the victim. This argument demonstrated counsel's unfortunate propensity to conflate the issue of composition of offence with that of compensation. These are two distinct tools in criminal procedure which serve different purposes. A trial judge is always entitled to consider whether the discretion should be exercised to make a compensation order under s 401(1)(b) of the CPC. This is so regardless of the court's decision to consent to composition of the offence. Indeed, if persons in the position of the appellant are truly remorseful and genuinely sincere about their offers to compensate their domestic maids for the injuries, there is nothing to prevent a trial judge from ordering a compensation order under s 401(1)(b) of the CPC if the facts of the case warrant it. This may be done after the trial judge has decided not to consent to the composition of the offence. If the accused person is subsequently found guilty of the offence, the compensation order may be made in addition to the punishment to be meted out. I reiterate that the trial judge should make a compensation order in addition to the punishment to be meted out only in appropriate cases where the facts and circumstances of the case warrant it.

38 For the above reasons, I found that the prosecution had rightly objected to the composition of the offence, even though the appellant was not Sartini's de jure employer. The prosecution did not exceed its powers, as alleged by counsel for the appellant, by objecting to the composition. In light of the strong public interest, the prosecution was entitled to object even though the appellant was not Sartini's de jure employer. Further, I found that the magistrate did not err in leaning against the granting of the consent. The remaining issue is whether the magistrate exercised his discretion to withhold consent judiciously.

Whether the magistrate exercised his discretion judiciously

39 Counsel for the appellant also submitted that the magistrate erred in law because he failed to provide any grounds for his decision not to grant consent. For this issue, I had to first consider whether the magistrate's lack of grounds was fatal to his decision to withhold consent. Secondly, notwithstanding the lack of grounds for not granting consent, I had to decide whether the exercise of his discretion was nevertheless correct.

The magistrate's failure to provide grounds for refusing to consent

40 In *Kee Leong Bee & Anor v PP* [1999] 3 SLR 190, this Court held at paragraph 21:

> Where an order involves a discretion of the court, the appellate court will not interfere with the exercise of the discretion unless it was exercised on demonstrably wrong principles or *without any grounds*, or if the judge had ignored some relevant provision of law; see *Lim Seng Gin v R* [1956] MLJ 76 and *R v Lim Kian Soo* [1950] MLJ 181. [emphasis added]

41 In *Ritter v Godfrey* [1920] 2 KB 47, Lord Sterndale MR observed:

> The discretion must be judicially exercised and therefore there must be some grounds for its exercise, for a discretion exercised on no grounds cannot be judicial.

42 Here, the magistrate did not state his reasons for withholding his consent in his grounds of decision. The facts of the present appeal differ from those found in *Kee Leong Bee & Anor v PP* because there, the trial judge had stated that he withheld his discretionary consent to the composition on the basis that there was inherent public interest involved, having regard to the nature of the alleged offences, the circumstances under which they were committed and the relationship

between the parties. Therefore, at first glance, it appeared that the magistrate may have exercised his discretion non-judiciously.

43 However, as the prosecution rightly pointed out, the magistrate's omission to state his reasons must be viewed in light of the circumstances and context of how the issue of composition was raised in this appeal.

44 In *Kee Leong Bee & Anor v PP*, it was established that if an appellant wishes to challenge a trial judge's discretion in withholding the consent for composition of offences, the appropriate mechanism is that of a criminal revision and not an appeal. There, the appellant had offered to compound the offence, but the district judge withheld his consent. In holding that the district judge's decision was not an order of finality to which parties could appeal from, this Court observed at paragraph 13:

> I was therefore of the view that the test of finality of an order, should be whether its operative effect is to result in a conviction, sentence or acquittal. On that basis, the district judge's order to refuse composition was not an order of finality as its operative effect was to continue the trial and was hence not appealable.

45 Similarly, the magistrate's exercise of his discretion was strictly speaking not an order of finality from which the appellant could appeal: see also *Criminal Procedure* by Tan Yock Lin, Vol 2 XIX 72 [401] (2003, Issue No 9). Consequently, the appellant's decision to file a notice of appeal rather than a petition for criminal revision would have given the magistrate a justifiable impression that the appellant was challenging his findings of fact and not his exercise of discretion to withhold consent to composition. This was further strengthened by the fact that the appellant's counsel did not, at any point in the trial below, query or challenge the magistrate's withholding of the consent. There is nothing in the notes of evidence to suggest that counsel had orally objected to the magistrate's findings. More importantly, the issue of composition only arose about two months after the grounds of decision had been published. Therefore, taking into account the context in which the issue of consent to compound the offences arose, I found that the appellant's counsel's criticism of the magistrate's lack of grounds was unjustified.

The magistrate's exercise of discretion

46 Furthermore, one has to view the magistrate's lack of reasons for withholding his consent in the context of his entire grounds of decision as a whole. In the paragraph immediately following from his brief discussion of the composition issue, the magistrate dealt with the issue of sentencing and the issue of whether the appellant was a de facto employer. In that paragraph, he observed that Sartini 'belonged to a vulnerable class that s 73 was designed to protect.' This demonstrated that the strong public interest due to Sartini's status as a foreign domestic maid was operative in the magistrate's mind. In any event, in light of the factual matrix involved here, I was of the view that the withholding of consent was justifiable. In *PP v Norzian bin Bintat*, it was held at p 474 of the report:

> It is clear that the court in exercising its discretion whether or not to grant consent to composition is not acting as a rubber stamp. […] although the learned magistrate had a discretion to grant or withhold his consent to the composition […], that discretion is a judicial discretion and therefore one which must be exercised not only in accordance with the rules of reason and justice but also in accordance with the provisions of the law. […] *in a case where the public interest is involved, it is proper to withhold consent to composition*. [emphasis added]

47 Consequently, I found that the magistrate did not err in law when he withheld the consent to compound the offences because he was conscious of the strong public interest involved in where a maid was abused. His failure to provide grounds for withholding his consent was not fatal in light of the circumstances in which the issue of composition of offences arose. Further, bearing in mind the factors mentioned in *Ganatra Visharji Kuverji* (cited above), the aggravating manner in which the appellant inflicted the injuries on Sartini (bearing in mind the multiple injuries inflicted, the use of an instrument such as a high-heeled shoe and keys to inflict those injuries) would, in my view, have warranted the withholding of consent. This was simply not a case of neighbours exchanging blows over a heated misunderstanding. As a result, I dismissed the appeal against conviction.

The appeal against sentence

Application of s 71 of the Penal Code

48 Counsel for the appellant argued that the prosecution erred in preferring five charges under s 323 of the Penal Code. Further, it was argued that the magistrate erred in law in allowing the trial to proceed on five charges and imposing consecutive sentences on two of those offences through the operation of s 18 of the CPC.

49 This argument was unmeritorious. Counsel for the appellant sought to rely on s 71 of the Penal Code to argue that the appellant should have been charged for only the two composite offences, one for the incidents that happened on 10 March and one for the incidents that happened on 14 March. This argument conflated the issues of joinder of charges and punishment. Joinder of charges is dealt with under s 170(1) of the CPC which states:

> **Trial for more than one offence.**
>
> 170. —(1) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

50 The error made by counsel for the appellant was the same one made by Choor Singh J in *Harry Lee Wee v PP* [1980] 2 MLJ 56. In that case, the appellant faced eight charges of obtaining restitution in consideration of the concealment of the offence of criminal breach of trust by his assistant. Choor Singh J held that the prosecution could have chosen to bring only one charge against the defendant by reason of s 71 of the Penal Code. In criticising this judgment, I made the following observation in *Zeng Guoyuan v PP (No 2)* [1997] 3 SLR 883 at paragraph 15:

> Furthermore, the judgment is curious on various counts. First, Choor Singh J makes the mistake of confusing the question of joinder of charges on the one hand with that of punishment on the other. *Section 71 of the Penal Code, as explained earlier, has no bearing on the joinder of charges.* [emphasis added]

51 In that same judgment, I went on to lay down the following guiding principles at paragraph 17:

> In my view, a reading of the relevant sections of the CPC and the Penal Code as well as the existing case law shows that the correct approach to ascertaining the applicability of s 71(1) is to distinguish between two situations. The first is where separate offences arise out of one transaction. The second is where the entire transaction is in reality one offence, or to use the terminology of the *Tham Wing Fai Peter v PP* case, one 'composite offence'. Where there are

separate offences, separate sentences may be ordered for each, the question being only whether such sentences ought to be concurrent or consecutive and whether s 18 of the CPC is applicable. Where all the acts complained of are component parts of but one offence or are so closely connected that it cannot be fairly said that more than one offence has been committed, s 71(1) of the Penal Code is relevant. Whether several charges fall within one situation or the other must be one of fact, depending on the peculiar circumstances of each case." [emphasis added]

52 Section 170 of the CPC clearly allows each of the distinct offences to be brought against the appellant. The fact that each of the first three charges and the latter two charges appeared to refer to actions done by the appellant at around the same time did not differ from the general applicability of s 170 of the CPC. Hence, I found that the prosecution did not err in preferring to bring five charges against the appellant and, similarly, the magistrate did not err in allowing the trial to proceed on the five charges.

53 Once it is determined that the magistrate rightly proceeded on five charges, the issue became whether the magistrate had breached s 71 of the Penal Code in meting out the sentence to the appellant. Since there were five charges, the magistrate was bound by s 18 of the CPC to order that two of the sentences run consecutively. Here, it must be remembered that he ordered the sentences for the second and fifth charge to run consecutively. The second charge related to events occurring on the 10 March 2002, while the fifth charge related to the events on 14 March 2002. Thus, the sentence meted out by the magistrate punished the appellant once for the events on 10 March and another time for the offences on 14 March. Since they relate to distinct offences which happened on two separate days, there was no breach of s 71 of the Penal Code.

The effect of finding that the appellant was the de facto employer

54 Counsel for the appellant also argued that the magistrate erred in treating the appellant as a de facto employer and enhancing her sentence in view of that. I have already referred to the passages from the Parliamentary debates, in particular, the speeches of Mr Simon Tay and the Minister for Home Affairs, which counsel sought to rely on to show that Parliament had rejected the proposition to introduce a deeming provision into s 73 of the Penal Code.

55 In my judgment, the rejection of the suggestion to have a deeming provision merely showed that Parliament did not intend to extend the *maximum limit* of the enhanced punishment regime to de facto employers. That is different from saying that the courts are bound to mete out only the usual punishment in instances of de facto employers, which appeared to be the essence of counsel's submission. The distinction, though fine, is an important one. Even in instances involving de jure employers, s 73(2) of the Penal Code states that a court *may* (not shall) sentence the employer to one and a half times the punishment. One sees that even in instances involving de jure employers, the courts have a discretion in its sentencing powers, so long as it is within one and a half times the punishment prescribed under the various provisions. Similarly, in instances involving de facto employers, the courts retain the discretion to mete out punishment so long as it is within the limits set out in the various provisions of the Penal Code. For the present appeal involving s 323 of the Penal Code, the magistrate had a discretion to mete out punishment of up to $1,000 fine or one year's imprisonment or both for each offence.

56 Counsel's submission on this point would have had more force if the magistrate went beyond the provisions of s 323 of the Penal Code and imposed a sentence of more than one year's imprisonment. That was not the case here. The magistrate was conscious of the fact that s 73 of the Penal Code did not apply. Nevertheless, the magistrate was entitled to take into account all the relevant facts and circumstances of the case in meting out the sentence within the statutory limits

and he did take these into account.

57 On the facts of this appeal, the two most pertinent facts were that the appellant was in a position of authority and that Sartini was a vulnerable victim. On the point of abuse of authority, Professor Andrew Ashworth opined, at p 131 of his book, *Sentencing and Criminal Justice* (2nd Ed, 1995):

> Where breach of trust or abuse of authority is an element in the crime, the force of aggravation come more from the social context of the offence. The crime may be unplanned, committed by an individual and not involving any violence or threats. But trust is fundamental to many social relationships … and one of the burdens of trust or authority is an undertaking of incorruptability.

58 Here, it was undisputed that the appellant did exercise authority over Sartini at the material time. Even though s 73 of the Penal Code did not apply to her because she was not the registered employer, the magistrate was entitled to take into account the fact that the appellant exercised authority over Sartini as an aggravating factor.

59 The other relevant fact was that the Sartini was a maid and a vulnerable victim. On the issue of vulnerable victims, Professor Ashworth opined at p 130 of the same book which has been cited above:

> Greater culpability is probably the answer where an offender commits a crime against a vulnerable victim: there is a widely shared view that it is worse to take advantage of a relatively helpless person, and so the offender is more culpable if aware that the victim is specially vulnerable […]

60 In the local context, it is widely accepted that foreign domestic maids fall into the category of vulnerable victims. Indeed, at the second reading of the Penal Code (Amendment) Bill, the Minister for Home Affairs commenced his speech by saying that '[m]aids are […] more vulnerable to abuse by employers and their immediate family members': see column 1923.

61 For these reasons, I found that the magistrate correctly applied his mind to these aggravating factors when he considered the sentence to be meted out to the appellant. He also rightly rejected the application of s 73 of the Penal Code and meted out a sentence which was within the limits of s 323 of the Penal Code.

Whether the sentence was manifestly excessive

62 Counsel for the appellant first contended that the sentence was manifestly excessive because there was no established pattern of abuse. I found that the force of this submission was greatly undermined by the fact that the appellant had inflicted the injuries on Sartini on no less than five separate occasions which occurred over not one, but two separate days in close proximity to one another. Next, counsel submitted that 'the injuries, aside from the scratches, were either minor or non-existent in nature'. A quick glance at the photographs in the exhibits revealed the insincerity of that argument. The scratches were clearly visible and as long as 5 cm. Most of these injuries were inflicted on the face and head which are vulnerable parts of a body. Factually, I found no reason to disturb the sentence meted out by the magistrate.

63 Turning to the sentences in recent similar cases, I also found that the sentence meted out was not manifestly excessive. In *Tan Yok Hong v PP* (MA 67 of 1999), the accused pleaded guilty to slapping her maid and was sentenced to two weeks' imprisonment. Where the accused person claimed trial (as the appellant did on the facts of this case), the courts have been less lenient. In *Farida*

Begam d/o Mohd Artham v PP [2001] 4 SLR 610, the accused assaulted her maid with a broom handle and caused extensive bruises. On appeal, I enhanced her sentence from three months' to nine months' imprisonment.

64 A case which is similar to the facts of the present appeal is *PP v Chong Siew Chin* [2002] 1 SLR 117 where I allowed the prosecution's appeal against sentence and substituted the fine of $1,500 for each of the three charges (of slapping the face of the maid) with an imprisonment term of six weeks for all three charges. In that appeal, I also ordered two of the sentences to run consecutively, bringing the total to three months' imprisonment. Here, the injuries inflicted by the appellant were slightly more aggravated because the appellant was found guilty of using instruments such as a bamboo pole to hit Sartini's arm, a high-heeled shoe to hit her head and keys to scratch her face. Consequently, the higher sentence of a total of four months' imprisonment was justified.

65 In referring to these cases, I was conscious of the fact that in each of those cases, the accused person was charged and convicted under s 323 read with s 73 of the Penal Code. Nevertheless, I found the sentences meted out in those cases to be relevant because the aggravating factors were similar bearing in mind the authority the accused person wielded over the maid and the vulnerability of the maid in each case. Also, the need for general deterrence is just as strong even though s 73 of the Penal Code did not apply. As I observed in *Farida Begam d/o Mohd Artham v PP*, maid abusers have certain misconceptions which must be corrected: a maid sells her services; she does not sell her person. A maid's abased social status does not make her any less of a human being. It is certainly not a licence for persons in the position of the appellant to vent their frustration and anger on the maid. The need to correct these misconceptions is not diminished by the fact that the perpetrator was not the maid's de jure employer, but her de facto employer. Thus, I found that the sentence was not manifestly excessive and I dismissed the appeal against sentence.

Reducing the sentence to allow the appellant to see her daughter graduate from kindergarten

66 At the hearing of the appeal, counsel for the appellant conveyed the appellant's request to have the sentence reduced to one month so that she may be released from prison in time to see her daughter graduate from kindergarten in November.

67 I saw absolutely no merit in this request. It is trite law that hardship to the accused person's family if the accused is sent to prison carries little weight as a mitigating factor today: see for example *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 and *Ng Chiew Kiat v PP* [2000] 1 SLR 370. This is particularly so if the imprisonment term is short. If the appellant had been truly concerned about being there for her daughter, she should have thought twice before hitting her maid. More importantly, I would have set a dangerous precedent if I had acceded to her most unusual request. It would be tantamount to reducing the imprisonment term of a convicted person on the fortuitous ground that he or she had a child who is graduating from school. That simply cannot be the case. The absurdity of the appellant's request was self-evident.

Conclusion

68 For the reasons given above, I dismissed the appeal against conviction and upheld the sentence meted out by the magistrate.

Criminal motion allowed; appeal against conviction and sentence dismissed.