Chan Yok Tuang v Public Prosecutor
[2008] SGHC 137

Case Number : MA 69/2008

Decision Date : 20 August 2008

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ

Counsel Name(s) : Surian Sidambaram (Surian & Partners) for the appellant; Francis Ng (Attorney-General's Chambers) for the respondent

Parties : Chan Yok Tuang — Public Prosecutor

Criminal Law – Criminal intimidation, insult and annoyance – Elements of offence of criminal intimidation – Whether elements fulfilled on facts

Criminal Procedure and Sentencing – Charge – Doubt as to what offence committed – Whether charge defective for failing to state threatening words in original language

Criminal Procedure and Sentencing – Revision of proceedings – Whether appropriate for court to exercise revisionary powers

20 August 2008 Judgment reserved.

Chan Sek Keong CJ:

The parties

1 This is an appeal by Chan Yok Tuang ("the Appellant") against the sentence of three months' imprisonment imposed by the judge ("the District Judge") in District Arrest Case No 39165 of 2007.

2 The Appellant had pleaded guilty to one charge of committing criminal intimidation by threatening to cause injury to the reputation of one Senior Staff Sergeant Jessie Lim Geok Hwee ("SSSgt Lim") by uttering "I will shoot her to death" in Hokkien at her, with the intent of causing her alarm ("the Charge"). The offence of criminal intimidation is punishable under s 506 of the Penal Code (Cap 224, 1985 Rev Ed) as follows:

> **Punishment for criminal intimidation. If threat is to cause death or grievous hurt, etc.**
>
> **506.** Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both; and if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or with imprisonment for a term which may extend to 7 years or more, or impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

Facts of the case

3 The facts are as follows. The Appellant is a 48-year-old caretaker of a hotel located at Lorong 18 Geylang. On 16 May 2007, SSSgt Lim and a party of police officers were performing their routine anti-crime rounds at Lorong 16 and Lorong 18 Geylang when the Appellant spotted them and began creating a scene. According to the agreed statement of facts ("SOF"):

> 3 ASP Mark Koh [("ASP Koh")], who was with SSSgt Lim at the time, performed a record

check using the [Appellant's] particulars and discovered that he had secret society records. Using the powers conferred upon him by virtue of Section 44(2) of the Criminal Law (Temporary Provisions) Act (Cap. 67), ASP Koh detained the [Appellant]. Shortly thereafter, the [Appellant] was brought back to the Police Cantonment Complex lockup by ASP Koh and SSSgt Lim.

4 Whilst at the lockup, the [Appellant] was observed to be glaring aggressively at SSSgt Lim. When ASP Koh asked him why he was behaving in this manner, the [Appellant] snapped in Hokkien, "I will shoot her to death", whilst glaring at the victim. Although the [Appellant] meant that he intended to file an adverse complaint against SSSgt Lim, SSSgt Lim understood him to be making a threat against her life. This was uttered in the presence and hearing of SSSgt Lim, ASP Koh, and one other police officer.

5 Following this, ASP Koh ascertained from the [Appellant] that he had uttered the aforementioned statement as he bore a grudge against SSSgt Lim, whom he perceived to have adversely affected his business due to her regular patrols in Lorong 16 and 18 Geylang.

4 The Appellant's real intention in uttering those Hokkien words was accepted by the Prosecution and it was so stated in the SOF, which was agreed to by the Appellant without qualification.

The District Judge's decision

5 The Charge read:

You,

…

are charged that you on 16 May 07, at the Central Police Division lockup, Singapore, did commit criminal intimidation by threatening to cause injury to the reputation of SSSgt Jessie Lim Geok Hwee; to wit, by uttering "I will shoot her to death" in Hokkien at her, with intent to cause alarm to the said SSSgt Jessie Lim Geok Hwee, and you have thereby committed an offence punishable under Section 506 of the Penal Code (Cap. 224).

The Appellant pleaded guilty to the Charge and also admitted to the SOF without qualification. The District Judge accepted his plea and sentenced him to three months' imprisonment (see *PP v Chan Yok Tuang* [2008] SGDC 100 ("the GD")).

6 In imposing the sentence of three months' imprisonment, the District Judge took into account the following aggravating factors:

(a) that the offence of criminal intimidation was by nature a serious one (at [5] of the GD);

(b) that the words of threat were directed at a public servant and not just any ordinary person on the street, and were not uttered "in the heat of the moment" (at [6] and [9] of the GD);

(c) that the offence was committed in a police station in front of three police officers, and was an "audacious act" which suggested a "contemptuous disregard for lawful authorities" (at [8] of the GD); and

(d) that the Appellant was convicted in 1988 of using criminal force to deter a public servant from discharging his duty, an offence which was of a similar character to the present offence, but that in view of its "vintage", the antecedent should be given "substantially lesser" weight (at

[10] of the GD).

7 Being dissatisfied with the District Judge's decision, the Appellant appealed against the sentence.

Proceedings on appeal

8 Counsel for the Appellant argued that the sentence was manifestly excessive for the following reasons:

(a) The District Judge had placed undue emphasis on the fact that the words were uttered at a police officer.

(b) The District Judge did not take into consideration the intention of the Appellant nor did he consider the circumstances under which the words were uttered.

(c) The District Judge did not address his mind to the fact that the Charge averred that the threat was intended to injure the reputation of SSSgt Lim and not to cause bodily injury.

(d) The District Judge did not direct his mind to the fact that the Appellant had not intended any violence against SSSgt Lim but had only intended to make an adverse complaint against her.

9 The Deputy Public Prosecutor ("DPP"), on his part, defended the District Judge's sentence on the following grounds:

(a) The effect of the threat on a victim is a relevant consideration in sentencing. Since it was reasonable for SSSgt Lim to form the impression that the Appellant was, by his words, making a threat to her life, the District Judge did not err in treating this as an aggravating factor.

(b) The District Judge correctly considered the victim's status as a police officer as an aggravating factor.

(c) The location of the offence (*ie*, a police station) was an aggravating factor the District Judge rightly took cognisance of.

(d) The District Judge did not err in taking into account the Appellant's 20-year-old antecedent as it was relevant to sentencing and the District Judge recognised that the weight to be attached to this previous antecedent would be "substantially lesser".

(e) The District Judge had been conscious of the Appellant's plea of guilt but the weight to be attached to this mitigating factor was reduced because the Appellant was caught red-handed.

(f) The threat was not uttered "in the heat of the moment" given the delay of several hours between the arrest and the commission of the offence.

(g) The fact that no weapon was used and that no physical injury was threatened could not be considered a mitigating factor.

Observations on the District Judge's decision on sentence

10 In my view, the District Judge had erred in several respects in his consideration of the relevant sentencing factors. First, even if the offence of criminal intimidation were a serious offence, it cannot

be an aggravating factor because that was the very offence that the Appellant had been convicted of. Secondly, it is also unhelpful to describe the offence as a serious offence since it covers various kinds of proscribed acts which vary in degree of gravity and some of which cannot be said to be serious. Such a blunderbuss approach clouds the mind on what is really serious and what is not that serious. Every offence, in a sense, is serious, but that is not the criterion for imposing punishments on offenders. Thirdly, the SOF does not show that the Appellant had a contemptuous disregard for public authority. The SOF shows that the Appellant had merely intended to say that he wanted to file a complaint against SSSgt Lim. In the present case, the error was obvious in the light of what the Appellant had actually meant (although the evidence was rather unsatisfactory as to what he had actually said), even assuming that what he had meant was a threat to the reputation of SSSgt Lim. There was also no evidence from the other two police officers of what they had heard or what they had understood of the Appellant's utterance. The improbability of any sensible person sitting in a police lock-up threatening, in the presence of two police officers, to shoot and kill a third police officer, should have raised a doubt in the mind of the District Judge as to the intention of the Appellant in allegedly uttering the words as stated in the Charge.

Observations on the Charge, the SOF and the plea of guilt

11 This leads me to the main concern I had after reading the SOF. It was that the SOF did not show that the Appellant had committed the offence of criminal intimidation. When I questioned the DPP on the legality of the conviction, he was non-committal on the issue. It is therefore necessary for me to deal with the facts of the case as set out in the SOF and the law on what act or omission constitutes the offence of criminal intimidation under the Penal Code.

12 My first observation is that although the words spoken by the Appellant were in Hokkien, only the English translation of those words is set out in the Charge and in the SOF. In my view, the Charge should have set out the Appellant's verbal threat in the language in which it was uttered (in this case, the Chinese characters as well as the phonetic equivalent in English of the threatening words) and an official translation of the meaning of those words in English. The alleged words should not have been rendered in English alone. The reasons for this requirement are plain. Words have to be understood to have an effect on the listener. If the listener does not understand what is said, it would be difficult to show that he or she has been intimidated or alarmed by those words. In the present case, the SOF illustrates this very point. SSSgt Lim apparently understood the Appellant's utterance to mean that he wanted to shoot and kill her, whereas what he had intended to say was that he wanted to make an adverse complaint against her. What was said in Hokkien was understood by SSSgt Lim in a sense entirely different from what the Appellant had meant by his utterance.

13 My second observation is that, as a matter of evidence, unless the actual words in the language used are set out in the Charge or the SOF (together with an official translation in English), they cannot be proved. In the absence of proof, there is no admissible utterance, and hence no offence can be made out. The only argument in the present case for the Appellant's words in Hokkien having been "proved" is the acceptance by the Appellant and the Prosecution that what he had said was that he had intended to make a complaint against SSSgt Lim. But that is not what is stated to be the threatening words in the Charge. In fact, the SOF disproves the words in English allegedly uttered by the Appellant in Hokkien.

14 An analogous situation in civil proceedings would be a claim for damages for defamation. If the alleged defamatory words are not proved, there can be no defamation. In *Workers' Party v Tay Boon Too* [1972-1974] SLR 621, the plaintiffs sued the defendant for slander for having said in Hokkien, at an election rally, that the plaintiffs had received $600,000 from a foreign source for election expenses. The statement of claim set out the defamatory words in English but not in Hokkien.

F A Chua J dismissed the claim on the ground that there was no proof of publication because the Hokkien words had not been pleaded. He held at 625, [25] that, in an action for slander, "the witnesses must prove the words used". It was not sufficient for them to state what they had conceived to be the substance or effect of the words. On appeal, the Court of Appeal upheld Chua J's judgment on this point as well as other points (see *Workers' Party v Tay Boon Too* [1975-1977] SLR 124).

15 The legal position is *a fortiori* with regard to a charge for criminal defamation or criminal intimidation since both offences depend on the effect of the words used. If the actual words used are not set out, they cannot be proved, and, without proof, there is no utterance which can defame or intimidate. Furthermore, the court would not be in a position to determine whether the actual words, by themselves, have a threatening effect on a reasonable listener if no meaning could be attached to them at all. The failure to set out the Hokkien words would have been fatal to the Charge but for the fact that both the Prosecution and the Defence had agreed to the meaning of the words intended by the Appellant.

16 My third observation is that the Charge, as stated, was incoherent in that there is no rational nexus between the words stated to have been uttered by the Appellant and the injury said to have been intended to be inflicted on SSSgt Lim, *viz*, to her reputation. The Charge states that the Appellant committed criminal intimidation "by threatening to cause injury to the reputation of SSSgt Jessie Lim Geok Hwee; to wit, by uttering 'I will shoot her to death' in Hokkien at her, with intent to cause alarm to the said SSSgt Jessie Lim Geok Hwee". I find it difficult to appreciate or conceive how those words could have injured her *reputation*. The Charge should have been dismissed on this ground alone.

17 Surprisingly, the Appellant's counsel at the trial below allowed the Appellant to plead guilty to the Charge in spite of its obvious incoherence. Equally surprising, the Appellant's counsel before me also did not question the legality of his client's plea of guilt even though he had referred to the decision of the Court of Appeal in *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR 601 ("*Mohammed Liton*"). Instead, he submitted that what his client had actually said in Hokkien was "wah *soot* hor yi *see*" [emphasis added] and that the word "soot" in Hokkien was the English phonetic equivalent of "sue" or take legal action against someone. But he conceded that it could also mean "shoot". The Prosecution suggested that the Appellant could have used a mixture of Hokkien and English and that the Appellant had actually uttered: "wah *shoot* hor yi see" [emphasis added]. I will not speculate on the actual Hokkien words uttered by the Appellant or their meaning. The only admissible evidence before me is what is stated in the SOF, and it is absolutely clear from the SOF that whatever the Appellant might have said, it was not to threaten to shoot SSSgt Lim.

What constitutes criminal intimidation under section 503 of the Penal Code

18 In *Mohammed Liton*, the Court of Appeal held that there were two essential elements in the offence of criminal intimidation which could be satisfied by any of the grounds listed under s 503 of the Penal Code. The court said, at [62], as follows:

(a) A person is threatened with any injury (the first general element):

(i) to his person, reputation or property; or

(ii) to the person or reputation of any one in whom he (*ie*, the person threatened) is interested.

(b) The threat is made with intent (the second general element):

(i) to cause alarm to the person threatened;

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which he is legally entitled to do as the means of avoiding the execution of such threat.

Both (a) *and* (b) above must be satisfied in order for an offence under s 503 of the Penal Code to be made out, with (a) representing the *actus reus* and (b) representing the *mens rea*.

[emphasis in original]

1 9 However, the court also held, after considering the judgments of Ong Hock Thye J in the Malaysian case of *Lee Yoke Choong v Public Prosecutor* [1964] MLJ 138 ("*Lee Yoke Choong*") and of Yong Pung How CJ in *Ramanathan Yogendran v PP* [1995] 2 SLR 563 ("*Ramanathan Yogendran*") and *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113 ("*Ameer Akbar*"), that there was no further necessity to show, as a matter of fact, that anyone was actually threatened. By this, the court did not mean that the offence was committed if the words of threat were uttered *in vacuo*, but that the person intended to be threatened need not feel alarmed or threatened by the words of threat.

2 0 In *Lee Yoke Choong*, the facts showed that the words of threat uttered by the appellant had no effect whatever on the victim. Ong J held that the offence of criminal intimidation lay in the intent behind the threat, and not its effect. In *Ramanathan Yogendran*, Yong CJ, after referring to *Lee Yoke Choong*, held at 590, [112] that the victim must be "alarmed by the threat. This was not a required element of the charge but such evidence did fortify it to a significant extent." However, in *Ameer Akbar*, Yong CJ appeared to change his position when he explained this statement as follows (at [46]):

But I must emphasise that the victim's perception of the words must not be confused with whether the victim was actually frightened or not. And to this extent, the offence of criminal intimidation does not depend on the nerves of the individual being threatened. In my opinion, this must have been what Ong J had in mind when he stated in *Lee Yoke Choong* … that '[t]he offence of criminal intimidation lies in the intent behind a threat, not in its *effect*.' Thus, in *Yogendran*'s case, I concluded that a literal approach to Ong J's dicta without any qualification was inappropriate precisely because his use of the word '*effect*' is likely to mislead one into thinking that the state of mind of the victim is always irrelevant. [emphasis in original]

21 As a result, the Court of Appeal in *Mohammed Liton* ([17] *supra*) held, at [65], as follows:

It would thus appear that the effect of the threat on the victim is not entirely irrelevant, but would assist the court in determining whether the alleged offender in fact had the intention to commit the offence of criminal intimidation. If, for example, the threat was uttered in circumstances in which no reasonable person in the victim's shoes could have apprehended alarm, that would be a factor (or even a strong factor) that could be invoked by the accused to support the argument that he did *not* have the *requisite intention* to commit the offence. If, however, there is such an objective basis for apprehension present, then it would not matter if the victim did *not*, *in fact*, apprehend alarm as a result of the threat. [emphasis in original]

In short, the offence is committed even if the victim does not feel threatened by the words or action of the accused so long as the latter intends to cause alarm or to cause the victim to do or omit to do certain things as the means of avoiding the execution of such threat.

Offence not made out on the facts – no actus reus and no mens rea

22 Given the law as stated by the Court of Appeal in *Mohammed Liton*, I am of the view that the Charge, whether standing alone, or read with the SOF, does not disclose any offence on the part of the Appellant as both the *actus reus* and the *mens rea* of criminal intimidation were absent.

Absent actus reus– threat of injury to reputation

23 The *actus reus* element of criminal intimidation involves a threat of injury to person, reputation or property. The only threatening words set out in the Charge were that the Appellant had stated that he would shoot SSSgt Lim. However, the SOF and the arguments of counsel for the parties show that the words set out in the Charge had not been uttered in the English sense in which they have been reproduced in the Charge. In other words, the *actus reus* was not only not proved, it was contradicted by the SOF. Furthermore, whatever SSSgt Lim might have heard or understood of the Appellant's words, she had never considered that they were intended to injure her reputation.

24 The District Judge attached undue weight to SSSgt Lim's apprehension of the Appellant's words when instead he should have focused on what the Appellant had meant. This is evident from the GD at [5]:

> While investigation revealed that what the accused intended the words to mean was that he would make a complaint against SSSgt Lim, the fact remains that the words taken in their literal sense meant that he would shoot and kill her. It was therefore natural that SSgt [*sic*] had interpreted the threat to be made against her life and be alarmed. It would be naive to expect the victim to respond to the threat made by asking the accused to clarify if his utterance was intended to threaten her life or her reputation.

In this passage, the District Judge accepted the literal meaning of the words set out in Charge. The result was that he appeared to have convicted the Appellant for an offence for which he had not been charged, *viz*, that he had used words to threaten injury or death to SSSgt Lim and had thereby caused her to be alarmed. In fact, the SOF does not state that she was alarmed at all. Furthermore, there is no evidence as to the other two police officers' understanding of the words uttered by the Appellant. On the contrary, on further investigation, they were satisfied that the Appellant did not mean to say that he would shoot SSSgt Lim. Both counsel for the Appellant and the DPP had made submissions on what the Hokkien words used by the Appellant were and what they meant. My only observation is that neither of them is a certified translator and their translation of what the words meant would not be admissible in evidence.

25 There was an obvious disconnect between the meaning of the words intended by the Appellant (as set out in the SOF) and the meaning as understood by SSSgt Lim. It is not really necessary for me to determine whether it was reasonable for SSSgt Lim to have understood the words to mean what she thought they meant or were intended to mean. The fact is that SSSgt Lim's understanding could not have been that the Appellant's words amounted to a threat to her reputation. If SSSgt Lim did not understand the Appellant's words as a threat to her reputation, then again there was no *actus reus*.

Absent mens rea– intention to cause alarm

26 The *mens rea* element of criminal intimidation is constituted from the intention of the maker of the threat. The Charge proceeded on the basis that the threat was made to injure the reputation of SSSgt Lim with the intent of causing alarm to her. However, the SOF clearly states that what the Appellant meant by his words was that he was going to file a complaint against SSSgt Lim. He had neither threatened to injure her physically nor threatened to injure her reputation with intent to cause her alarm. Whatever SSSgt Lim had felt was not what the Appellant had intended. Therefore there was also no *mens rea*.

27 The previous history of the relationship between the Appellant and SSSgt Lim and the circumstances in which the Appellant was brought to the police station and put in the lock-up throw some light on the intention of the Appellant in uttering the alleged Hokkien words. The SOF shows that SSSgt Lim had conducted regular patrols along Lorong 16 and Lorong 18 Geylang where the Appellant's hotel was situated. In his mitigation plea (which was not contradicted by the Prosecution), counsel for the Appellant submitted that the Appellant was aggrieved as he had been suspected of being a pimp and felt that the regular patrols around his hotel were adversely affecting his business although he had done nothing wrong. Against this backdrop, he was then detained by the police officers, brought to the police station and put in the lock-up because of his past secret society records. For these reasons, the Appellant might have some cause to believe that he had been unfairly treated by the police officers and, in particular, SSSgt Lim. Given the physical environment in which the Appellant found himself, it was unlikely that he would have been so reckless as to threaten to shoot SSSgt Lim. It was more likely that he was venting his anger, annoyance or frustration at the manner in which he perceived he was being treated by the police officers.

Exercise of revisionary power

28 For the above reasons, I find that the Appellant had not committed the offence to which he had pleaded guilty. Although the appeal before me was only against sentence, it is incumbent upon me sitting in the High Court to correct the legality of his conviction. Accordingly, I propose to exercise my revisionary powers under s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) read with ss 266 and 268 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) to set aside the conviction and acquit the Appellant of the charge of criminal intimidation.