Ajmer Singh s/o Ajit Singh *v* Chua Hock Kwee
[2013] SGHC 59

Case Number	: Magistrate's Appeal No 158/2012/01
Decision Date	: 11 March 2013
Tribunal/Court	: High Court
Coram	: Tay Yong Kwang J
Counsel Name(s)	: Subhas Anandan, Sunil Sudheesan and Diana Ngiam (RHTLaw Taylor Wessing LLP) for the appellant; the respondent in person.
Parties	: Ajmer Singh s/o Ajit Singh — Chua Hock Kwee

Criminal Law – Offences

Evidence – Weight of evidence

Criminal Procedure and Sentencing – Appeal – Acquittal

11 March 2013

Tay Yong Kwang J:

Introduction

1 This appeal arose out of a Magistrate's Complaint filed by the respondent. As it was a private prosecution, the Public Prosecutor was not involved in the proceedings in the District Court and in this appeal. After a trial, the appellant was convicted on a charge of voluntarily causing hurt to the respondent, an offence under s 323 of the Penal Code (Cap 224, 2008 Rev Ed). The charge against him was as follows: [note: 1]

> You ... are charged that you, on the 8th day of May 2010 about 7.00 p.m. in the coffeeshop within Changi Gardens Condonminium located at 971 Upper Changi Road North, Singapore 507666, did voluntarily cause hurt to one Chua Hock Kwee, to wit by punching him on his left cheek, and you have thereby committed an offence punishable under Section 323 of the Penal Code, Chapter 224.

2 The appellant was sentenced to a fine of $1,000 (in default, one week's imprisonment). He paid the fine and initially appealed against both the conviction and the sentence but subsequently confined his appeal only to the conviction. At the conclusion of the hearing, I allowed the appeal against his conviction and acquitted him. I now give my reasons.

The respondent's case at trial

3 The respondent was represented by counsel at trial. At about 7 pm on 8 May 2010, the respondent was at a coffeeshop at Changi Garden Condominium ("the condominium") drinking beer with his landlord, one Vincent Yong Fah Nam ("Vincent"). The crux of the respondent's case was that the appellant entered the coffeeshop, spoke to the condominium security guard, one Ranjit Singh ("Ranjit"), walked aggressively to the respondent's table and shouted loudly to the respondent, "You

are a gangster". According to the respondent, he stood up and asked "What happened". The appellant immediately responded by punching the respondent's left cheek with his right hand. As a result of the punch, the respondent fell against a fence behind him and his dentures fell out. The respondent also claimed that the appellant pushed Vincent who was seated on a chair causing Vincent to fall to the ground. The respondent called the police thereafter.

4 The respondent and Dr Marella Jameema ("Dr Jameema"), the doctor who examined the respondent later at a hospital, gave evidence as prosecution witnesses. Vincent was supposed to be one of the prosecution witnesses but was not called.

The appellant's case at trial

5 The appellant met Ranjit at the rear entrance to the coffeeshop and was informed by Ranjit that Vincent (who was also the appellant's former neighbour) had been drinking and was drunk and that Vincent was making comments about Ranjit drinking coffee in the coffeeshop instead of performing his duty. The appellant told Ranjit to remain calm and asked Ranjit to follow him to where Vincent was seated. Vincent leaned back in his chair and placed his hands on the appellant's hips and complained to the appellant about Ranjit and about the appellant having written a letter to Starhub complaining about high frequency radio emissions from a base station erected on Vincent's roof. The crux of the defence was that while the appellant was talking to Vincent, the respondent (who was seated beside Vincent) suddenly lunged at the appellant. To protect himself, the appellant raised both hands to block the attack. As it had rained earlier, the respondent slipped on the wet floor and his left cheek hit Vincent's right shoulder. The respondent got up, started uttering vulgarities and challenged the appellant to a fight to which the appellant declined. The respondent then ran into the coffeeshop, opened a drawer and took out a shiny object and charged at the appellant and Ranjit. Ranjit picked up a chair to ward off the attack and called the police thereafter.

6 The appellant and Ranjit gave evidence as defence witnesses. Vincent was offered as a witness to the appellant. I was informed by the appellant's counsel at the hearing of this appeal that Vincent had unfortunately become paralysed and was unable to speak. Therefore, although he was offered as a witness to the appellant at the trial, there was no point in calling him to testify.

The decision below

7 The grounds of decision of the District Judge ("the DJ") can be found in *Chua Hock Kwee v Ajmer Singh s/o Ajit Singh* [2012] SGDC 310 [note: 2] ("the GD"). In brief, the DJ found for the respondent as he was satisfied beyond reasonable doubt that there was an injury to the respondent's left cheek and that it was caused by a blunt object such as a punch. The DJ believed the respondent's case as he was of the view that the respondent had given a generally consistent account whereas the appellant's defence had material discrepancies.

The decision on appeal

8 The DJ did not seem to have considered that the prosecution's case actually rested on the evidence of a sole material witness, namely the respondent. It was stated in the medical report [note: 3] that Dr Jameema's physical examination of the respondent found "no swelling or erythema over the left cheek" and Dr Jameema explained during cross-examination that her diagnosis of a "left cheek contusion" was thus based on the respondent's own complaint of pain. [note: 4] Dr Jameema also expressed the view during examination-in-chief that "anything blunt" could have possibly led to the injury. [note: 5] It was therefore evident that the evidence of Dr Jameema (who was the only other

prosecution witness) was at most neutral to the respondent's case since she was not able to independently corroborate the existence and nature of the respondent's injury. The appellant's version of events that the respondent had slipped and fallen onto Vincent's shoulder could have similarly constituted something blunt that resulted in the contusion.

9 It is an established principle that the evidence of a complainant must be unusually convincing if a conviction were to be based solely on it (see for example *AOF v Public Prosecutor* [2012] 3 SLR 34, *Ong Mingwee (alias Wang Mingwei) v Public Prosecutor* [2012] SGHC 244 and *Tan Wei Yi v Public Prosecutor* [2005] 3 SLR(R) 471). The Court of Appeal in *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 explained the meaning of the related expression "unusually compelling" at [39]:

> Given that the standard of proof required in a criminal case is already that of "beyond a reasonable doubt" ... the expression "unusually compelling" must mean something more than a mere restatement of the requisite standard of proof. Indeed, Prof Michael Hor notes, in "Corroboration: Rules and Discretion in the Search for Truth" [2000] SJLS 509 at 531, that the expression must clearly mean something apart from the standard of proof. If, in fact, one scrutinises closely the observations of Rajah J in [*Chng Yew Chin v Public Prosecutor* [2006] 4 SLR(R) 124] ... it will be seen that the true emphasis is not on the standard of proof in the abstract, but, rather, on the *sufficiency* of the complainant's testimony. By its very nature, the inquiry is a factual one. It is also a question of *judgment* on the part of the trial judge that is *inextricably linked* to the high standard of proof, *ie*, "beyond a reasonable doubt". In our view, therefore, the "extra something" implied by the word "unusually" must refer to the need for the trial judge to be aware of the dangers of convicting solely on the complainant's testimony as well as of the importance of convicting only on testimony that, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused. Since a mandatory warning from the judge to himself is not required, the implication is that the appellate courts will scrutinise the trial judge's grounds of decision to see whether the trial judge was indeed aware of the danger of convicting on the bare word of the complainant as well as whether the quality of the testimony itself was consistent with the high standard of proof beyond a reasonable doubt.
>
> [emphasis in original]

10 The DJ would therefore appear to have erred in his appreciation of the evidence of Dr Jameema (see [8]). It was not apparent that he was aware of the danger of convicting the appellant on the respondent's sole testimony. In any case, the evidence adduced by the respondent was not sufficient to prove his case beyond a reasonable doubt.

11 There was a material inconsistency in the respondent's evidence on the issue of the weather and the state of the coffeeshop floor at the time in question. The respondent had categorically stated at the trial that it was a sunny day and that the floor of the coffeeshop was dry: [note: 6]

> Q Mr. Chua, on the day of the incident 8th May 2010, can you describe for this Court what the weather was like?
>
> A There was no rain.
>
> Q So there was no rain. Was it drizzling?
>
> A No

Q Was the floor dry or wet?

A Dry.

Q It was a sunny day?

A It was not raining, it was sunny.

12 Contrary to what the respondent claimed, the weather report by the National Environment Agency ("the NEA weather report") (which was admitted as evidence after the respondent had given his evidence) stated that there were "heavy to very heavy showers with thunder/lightning from 1630-1720 hrs" in the vicinity of the condominium. [note: 7] The NEA weather report was tendered by the respondent to refute the evidence of the appellant that it was drizzling at the time of the incident at about 7 pm. The DJ did not consider that the NEA weather report was a double-edged sword in that it also refuted the respondent's own evidence. At the hearing of this appeal, the respondent, who appeared in person, admitted that it had been raining on the day of the incident. This inconsistency in the respondent's evidence below was highly material since a wet and slippery floor would be consistent with the appellant's version of events. Since the respondent was unequivocal in his evidence at trial, I was not prepared to consider that this inconsistency could be explained away by the fallibilities of human memory or some other innocent explanation. Instead, I was prepared to accept the submission by the appellant's counsel that the respondent had deliberately lied about this material issue. As noted in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [92]:

> *An accused's deliberate lies on material issues can corroborate other evidence against him* (*PP v Yeo Choon Poh* [1994] 2 SLR 867 applying the test in *Regina v Lucas (Ruth)* [1981] QB 720). *The decision to draw such an adverse inference from deliberate lies again must depend on the nature of the evidence and the circumstances in which the lies have been made; do the circumstances betray a consciousness of guilt?* One must realise that lies are not invariably or inevitably engendered by a realisation of and/or desire to conceal guilt. Lies may be told in a misguided attempt to support or embellish an explanation, to deflect blame, to minimise embarrassment or to conceal some other behaviour. The human mind responds in a myriad ways to stress and/or embarrassment without necessarily being actuated by an underlying intention to conceal guilt. There is not and cannot be any cut and dried approach of universal application in deciphering the human mind. The telling of lies cannot invariably be equated with guilt. Only when lies are clearly demonstrated to be a conscious attempt to conceal guilt can they then be employed to support other evidence adduced by the Prosecution; they cannot however by themselves make out the Prosecution's case: *R v Strudwick and Merry* (1994) 99 Cr App R 326 at 331, *per* Farquharson LJ:
>
> > Lies, if they are proved to have been told through a consciousness of guilt, may support a prosecution case, but on their own they do not make a positive case of manslaughter or indeed any other crime.
>
> *In essence, a lie told by an accused can only strengthen or support evidence if it is clear that (a) the lie was deliberate, (b) it relates to a material issue and (c) there is no innocent explanation for it:* Archbold, *Criminal Pleading, Evidence and Practice 2005* (Sweet & Maxwell, 2005) at para 4-402.
>
> [emphasis added]

13 The DJ appeared to have made a factual error in stating that the police report [note: 8] lodged by the respondent was made the very same day of the incident (see the GD at [14]) as it was in fact lodged only two days after the incident. The wrong reference to Exhibit P5 [note: 9] instead of Exhibit P9 [note: 10] suggested that the DJ mistook the report of the respondent's telephone call to the police, which was made on the day of the incident itself (8 May 2010), for the police report which was made on 10 May 2010. However, this factual mistake was not significant since the police report was in fact made fairly contemporaneously after the incident and since the respondent's account at trial was generally consistent with his police report and the Magistrate's Complaint in the material aspects.

14 The DJ did not appear to have given due regard to Ranjit's contemporaneous Security Guard Incident Report [note: 11]. The DJ held at [20] of the GD that Ranjit made "no mention of the respondent slipping after throwing a punch at the appellant and the respondent hitting his left cheek on [Vincent's] right shoulder" in his Security Guard Incident Report and in his Magistrate's Complaint. While it was true that Ranjit did not mention this detail in his Magistrate's Complaint, [note: 12] he did in fact report this in his Security Guard Incident Report. The material portion of the said report reproduced below clearly corroborated the appellant's account: [note: 13]

> ... I saw [Vincent] holding [the appellant's] waist and they were talking. All of a sudden [the respondent] got up and swing [*sic*] his right hand at [the appellant] and [the appellant] block [*sic*] with his hands and [the respondent] fell on [Vincent] ...

Since Ranjit's Magistrate's Complaint was filed close to two months after the incident and the Security Guard Incident Report was filed the same day as the incident, the DJ erred in placing undue weight on the Magistrate's Complaint and in not according sufficient weight to the material portions of the Security Guard Incident Report.

15 The DJ found that the defence was not to be believed because there was an inconsistency as to whether the appellant had used one hand or both hands to block the respondent's attack. In the appellant's police report [note: 14] lodged three days after the incident, he stated that he had used his "hand" to block the attack, while Ranjit stated in the Security Guard Incident Report [note: 15] that the appellant had used his "hands" to block the attack. It was, however, evident from the extract of the trial transcripts below that the appellant had clarified that he actually meant to refer to *both* hands when he referred to "hand": [note: 16]

> Q And what did you do next?
>
> A I quickly put my *hand* up to block the attack.
>
> Q Which hand?
>
> A I put in fact *both hands* up to protect myself.
>
> [emphasis added]

Even if this were an inconsistency, it would not have been a material one since what remained materially consistent in the evidence of both the appellant and Ranjit was that the respondent had lunged towards the appellant causing the appellant to attempt to block the attack.

16 The DJ considered the appellant's explanations as to why the respondent attacked him on the day in question (see the GD at [16]) and was of the view that the previous run-ins between the appellant and the respondent were mere "afterthoughts" by the appellant since they were not mentioned in his police reports and in his Magistrate's Complaint and they were "not serious issues". In my view, it was not entirely surprising that the appellant did not include the details of the previous run-ins in his police reports and his Magistrate's Complaint as those details, although possible motives for the attack, were not immediately relevant to a mere narration of the incident in question. The appellant was only offering possible explanations for the respondent's motives and his account on this issue, seen in the light of all the evidence, could not be said to have had the effect of diminishing the credibility of his case. In any event, if his defence was not to be believed because the previous run-ins revealed no just cause for the respondent to attack the appellant, the same reasoning could have applied with equal force to exculpate the appellant as he would also have no reason to cause hurt to the respondent.

17 The DJ remarked that the appellant did not mention in his police report that the respondent later took a shiny object from a drawer in the coffee shop (see the GD at [22]). The material portion of the appellant's police report stated as follows: [note: 17]

> ... [The respondent] then got up and went in into the coffee shop taking something out from the drawer and attacked the security guard, Mr Ranjit. Mr Ranjit then took a chair to protect himself. ...

Save for the detail that the object was shiny, the appellant had in fact given an account consistent with Ranjit's evidence in his police report. The DJ also found that the appellant had embellished his evidence at trial when he stated that the respondent attacked both him and Ranjit. Although the appellant's police report mentioned only Ranjit, his Magistrate's Complaint lodged on 15 July 2010 did state that the respondent "attacked me and proceeded on to obtain a weapon to further attack me and the security officer".

18 The DJ should not have disbelieved Ranjit's evidence that the respondent did in fact return to attack him with an object on the basis that Ranjit only said that there were two men "finding trouble" when he called the police without also mentioning that he was being threatened by the respondent as well. In this respect, the DJ placed too much weight on the fact that certain details were left out in what was only a brief telephone call to the police. It was also difficult to see why the phrase "finding trouble" used by Ranjit in his telephone call could not encompass the incident between the respondent and Ranjit.

19 The DJ found that the appellant was inconsistent as to whether the respondent had threatened only him or both him and his family (see the GD at [23]). In the appellant's Magistrate's Complaint, [note: 18] he stated that Vincent, and not the respondent (as it was mistakenly thought to be by the DJ), had threatened him and his family. The appellant's evidence in court that the respondent had threatened only him (and not his family as well) was therefore not inconsistent with his Magistrate's Complaint. It followed that the DJ's finding that the appellant was an unreliable and untruthful witness was against the weight of the evidence.

20 For the above reasons, I was of the view that the conviction was unsafe and should not be allowed to stand. I therefore allowed the appeal and set aside the appellant's conviction. I also ordered that the fine paid by the appellant be refunded to him.

[note: 1] Record of Proceedings ("ROP") at p 2

[note: 2] ROP at p 568 (with the title incorrectly stated as "Ajmer Singh s/o Ajit Singh v Chua Hock Kwee")

[note: 3] ROP at p 587

[note: 4] ROP at pp 100 - 101

[note: 5] ROP at p 98

[note: 6] ROP at p 66

[note: 7] ROP at p 595

[note: 8] ROP at pp 590 to 591

[note: 9] ROP at p 585

[note: 10] ROP at pp 590 to 591

[note: 11] ROP at pp 663 to 665

[note: 12] ROP at p 603

[note: 13] *Ibid*

[note: 14] ROP at p 649

[note: 15] ROP at pp 663 to 665

[note: 16] ROP at p 120 lines 1 to 4

[note: 17] ROP at p 649

[note: 18] ROP at pp 655 to 656