Chua Siew Lin v Public Prosecutor
[2004] SGHC 203

Case Number : MA 61/2004

Decision Date : 10 September 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Subhas Anandan (Harry Elias Partnership) for appellant; Low Cheong Yeow (Deputy Public Prosecutor) for respondent

Parties : Chua Siew Lin — Public Prosecutor

Criminal Law – Offences – Criminal intimidation – Whether purportedly light-hearted words used under intimidating circumstances amounting to threat – Section 506 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Charge – Charge framed under first limb of s 506 Penal Code (Cap 224, 1985 Rev Ed) – Trial judge convicted appellant on second limb of s 506 Penal Code – Whether error affecting sentence or determination of guilt – Jurisdiction of High Court to maintain or set aside sentence – Section 261 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Mitigation – Whether inordinate delay in charging and prosecuting appellant valid mitigating factor

Criminal Procedure and Sentencing – Sentencing – Appeals – Maid abuse consisting of voluntarily causing hurt and criminal intimidation – Whether sentence manifestly excessive

Evidence – Interpretation – Inferences – Whether failure of Prosecution to produce DNA analysis raised inference that DNA analysis unfavourable to Prosecution – Section 116 illus (g) Evidence Act (Cap 97, 1997 Rev Ed)

10 September 2004

Yong Pung How CJ:

1 The appellant was convicted on one charge of voluntarily causing hurt under s 324 read with s 73(2) of the Penal Code (Cap 224, 1985 Rev Ed) ("PC"), one charge of criminal intimidation under the second limb of s 506 of the PC and one charge of voluntarily causing hurt under s 323 of the PC. All three charges arose from a single incident of maid abuse that occurred on the evening of 1 November 2001. The appellant was sentenced to a total of four months and two weeks' imprisonment. She appealed against both conviction and sentence. At the trial, counsel for the appellant sought to address me specifically on the issue of sentence. However, I have, in the interest of completeness, dealt with both the appeals on conviction and sentence. Accordingly, I dismissed the appeal on conviction but allowed the appeal on sentence in part. I now give my reasons.

The facts

2 At the material time, the appellant, a widow, lived at No 36 Carrisbrooke Grove with her three young children aged six years, four years and three months. From 12 February 2001 to 2 November 2001, the appellant had employed the victim, Nur Akbariyah ("Nur"), as a domestic maid.

3 On the evening of 1 November 2001, the appellant had allegedly threatened and assaulted Nur at the appellant's residence, thereby giving rise to the three charges above.

The Prosecution's case

4 The Prosecution relies primarily on Nur's testimony. At or around 6.40pm on 1 November 2001, the appellant and Nur were in the kitchen of the appellant's residence. The appellant was apparently unhappy with Nur because she had neglected to prepare dinner for the children.

5 At this time, the appellant was cooking porridge while nagging Nur. She had repeatedly asked Nur whether Nur "knew what she [the appellant] was doing". As Nur had noticed that the appellant had prepared carrots and cabbage, and was in the process of cutting potatoes, she replied that the appellant was making soup. This served to further anger the appellant. The appellant ordered Nur to slap herself.

6 However, even after Nur had slapped herself, the appellant remained dissatisfied and proceeded to give Nur a hard slap on the left cheek. Nur then withdrew to the area behind the kitchen where she laid on the floor and cried.

7 Shortly after, the appellant summoned Nur back to the kitchen and demanded to know why she was crying. Nur responded that she was in pain, to which the appellant pushed Nur's head against the kitchen wall. The appellant then took the kitchen knife that she had been using earlier and placed it against Nur's chin, at the same time asking Nur in a loud voice, "Can you wake up?" When Nur responded in the affirmative, the appellant proceeded to place the knife on Nur's chest and stomach area while repeating the same question.

8 Finally, the appellant rested the knife on Nur's left collarbone and repeated the question. This time, Nur felt some pain in her collarbone area.

9 When the appellant's tirade had ended, she assumed a conciliatory attitude and persuaded Nur not to cry and to speak to the appellant as a friend. The appellant then instructed Nur to run around the kitchen and to "put on a happy face". Nur complied with these instructions.

10 At the conclusion of the entire episode, Nur continued with her chores. It was while Nur was preparing the bath for the appellant's baby that she noticed a small cut on her collarbone. She also noticed that her T-shirt was stained with blood from the cut.

11 At about 11.30am the next morning, Nur took the opportunity to flee from the appellant's residence while the appellant had gone to fetch her children from kindergarten. Nur proceeded straight to Serangoon Gardens Police Post ("the police post") and reported the previous evening's incident. On the same day, Nur was sent for a medical examination at Tan Tock Seng Hospital. As a result, the appellant was charged with two counts of causing hurt and one count of criminal intimidation.

12 The trial against the appellant thus proceeded on the following three charges:

(a) voluntarily causing hurt to Nur by use of a knife (District Arrest Case No 3549 of 2004);

(b) criminal intimidation of Nur by placing a knife at her neck (District Arrest Case No 3550 of 2004); and

(c) voluntarily causing hurt to Nur by slapping her and pushing her head against a wall (District Arrest Case No 3551 of 2004).

The defence

13 The appellant denied all the allegations made against her. According to her testimony, on the evening of the alleged incident, Nur had informed the appellant that dinner had not yet been prepared. The appellant then went to the kitchen to prepare porridge, as her chief concern at the time was to prepare a meal for her children.

14 The appellant claimed to be merely "grumbling" as she prepared the meal. When Nur entered the kitchen, the appellant had simply asked why dinner was not yet cooked. Nur had responded by apologising repeatedly whereupon the appellant allegedly said to Nur, "Don't apologise. You just quietly slap yourself". The appellant then resumed cooking. Thereafter, the appellant went to breastfeed her baby while Nur fed the other children their dinner. Nothing further transpired that evening.

15 The following morning, the appellant discovered that Nur was missing only after she returned from fetching her children from kindergarten. As she was leaving her house to search for Nur, the appellant's neighbour informed the appellant that her maid had seen Nur bleeding. The neighbour also related to the appellant that Nur had told the neighbour's maid that she was going to report the matter to the police.

16 Upon hearing the neighbour's account of what had occurred, the appellant called the police and was informed that Nur was indeed at the police post and that an ambulance had been called for. The appellant was then instructed to wait at home. The following morning, the police conducted a search of the appellant's home. Nur was also present at the time and had allegedly said, "Sorry, Madam", to the appellant.

17 The appellant denied that the threat and assault ever took place at her residence on 1 November 2001.

The decision below

18 Before commencing his evaluation of the evidence before him, the district judge referred to the decision of *Choy Kok Meng v PP* [2003] SGHC 150, and recognised that the court must exercise extreme caution in examining Nur's evidence when the primary piece of evidence directly proving the Prosecution's case came from Nur herself. After scrutinising the evidence in great detail, he concluded that Nur had been earnest and forthright in recollecting the events that transpired on 1 November 2001. While there appeared to be some inconsistencies in her evidence, the district judge ultimately found them to be inconsequential in nature, and found that it was not unusual that Nur could not recollect such details with crystal clarity. He found that Nur had no reason to lie and that her account was credible.

19 In contrast, the district judge found the appellant to be a guarded witness who had, during the course of the trial, slanted her testimony to dissociate herself from adverse evidence. He found certain aspects of the appellant's version of the facts inherently incredible and observed that there were material discrepancies between the appellant's testimony and her police statement. He thus held that the Prosecution had successfully impeached the appellant's credit.

20 The district judge also noted that the Prosecution's case was supported by the objective medical evidence of Dr Tan Bien Peng ("Dr Tan"). Dr Tan had examined Nur at Tan Tock Seng Hospital at 12.37pm on 2 November 2001 and reported the following injuries:

(a) a 3cm diameter cephalohematoma over the right parietal region of the head; and

(b) a 1cm linear scar over the left clavicular region.

The district judge therefore concluded that the Prosecution had proven its case against the appellant beyond reasonable doubt and convicted the appellant on all three charges.

21 On the issue of sentence, the district judge considered the various mitigating factors, including the fact that the appellant had no previous antecedents. Hardship and mental stress suffered by the appellant were not deemed by the district judge to amount to valid mitigating factors. He did, however, take into account the fact that the threat had not lasted for a prolonged period and that the wound inflicted by the knife was relatively minor. Having considered the relevant benchmark sentences for the various offences and all the circumstances of the case, the district judge sentenced the appellant to:

(a) two weeks' imprisonment for voluntarily causing hurt with a knife;

(b) four months' imprisonment for criminal intimidation; and

(c) two weeks' imprisonment for voluntarily causing hurt by slapping the victim and pushing her head against a wall.

The sentences for the first two charges were ordered to run consecutively, resulting in a total custodial term of four months and two weeks.

The appeal

22 The appellant appealed against both conviction and sentence.

The appeal against conviction

23 The appellant's grounds of appeal centred around the lower court's findings of fact on the two charges of voluntarily causing hurt and voluntarily causing hurt with a knife. As to the grounds of appeal regarding the third charge of criminal intimidation, the appellant challenged the district judge's findings of both fact and law.

24 Before delving into each particular charge, I revisited some general principles that an appellate court ought to take cognisance of when invited to scrutinise the findings of a lower court.

General approach in appellate trials

25 It cannot be over-emphasised that an appellate court must be cautious in exercising its powers to overturn a lower court's finding of fact. This principle applies with equal force in cases where the appellate court has to decide whether the lower court ought to have accepted one party's version of facts over another: *Ong Ting Ting v PP* [2004] SGHC 156.

26 An appellate court will therefore only depart from the findings of the trial judge when it has been shown that the lower court had reached a conclusion that is clearly erroneous and unsustainable on the evidence tendered: *Sahadevan s/o Gundan v PP* [2003] 1 SLR 145. To this end, due regard must be given to the fact that the trial judge has the benefit of observing the demeanour of the witnesses when arriving at any finding of fact.

27 In the present case, the district judge displayed an awareness of the pitfalls in relying

primarily upon the evidence given by Nur to convict the appellant. He traversed the evidence carefully and arrived at the conclusion that Nur was indeed credible while the appellant, by contrast, was unworthy of belief.

28 With the above in mind, I proceeded to evaluate the merits of the appellant's grounds of appeal.

DAC 3549/2004: voluntarily causing hurt with a knife

29 The main thrust of the appellant's argument lay in the supposed mistake committed by the district judge when he reconciled the medical evidence with the other oral testimony given during the trial. The appellant relied upon the following part of the district judge's grounds of decision (see [2004] SGDC 147) at [42] and [43]:

> Cut on collarbone region an old scar – As for Dr Tan's testimony that the cut on Nur's collarbone region was an old scar and not a fresh wound (para 24(d)), I am of the view that this evidence alone does not discredit her evidence. After all, it is important to note that this wound is relatively minor (no more than 1 cm in size) and that some time had elapsed between the infliction of the injury and Dr Tan's medical examination. Under the circumstances, it is not inconceivable that Nur's injury might have healed by the time Dr Tan saw her. According to Dr Tan, the 1-cm scar over Nur's left collarbone region is consistent with a cut that was small, dried up and which did not require any dressing or treatment.
>
> Furthermore, there is the Accused's own evidence that very soon after discovering Nur missing on 2 November 2001, one Mrs Huang (a neighbour) informed her that her own maid had seen Nur 'bleeding'. This is consistent with Nur's evidence that when she was leaving the Accused's residence, she had shown her collarbone region injury to another maid from a neighbouring house.

From the above, the appellant contended that the district judge had implicitly accepted that Nur's wound was still bleeding at the time she had left the house and that this finding was unsupported by the objective medical evidence of Dr Tan. It was also alleged that Nur had contradicted herself when she stated at the trial that the blood on the wound was not totally dry at the time of the medical examination. On this basis, counsel for the appellant urged me to find in favour of the appellant and to hold that the district judge, in deciding that the appellant had indeed inflicted the knife wound on Nur, had reached a conclusion that was unsupported by the evidence.

30 A careful reading of [42] of the grounds of decision makes it abundantly clear that the district judge had never accepted that the wound was bleeding. In fact, he had come to the conclusion that the wound had healed itself by the time Nur was examined by Dr Tan. References in [43] to the conversation with the appellant's neighbour merely indicated that Nur had indeed shown her wound to the neighbour's maid and not that the wound was bleeding.

31 A necessary corollary to the above finding would therefore be that Dr Tan's report supports, rather than contradicts, the Prosecution's case that the knife wound had been inflicted the day before the medical examination. Implicit in the appellant's evidence that her neighbour's maid had seen Nur bleeding on the morning of 2 November 2001 is the assertion that Nur may have sustained the injury in the morning and not the previous night. The district judge's finding that the wound had dried up by the time Nur saw Dr Tan did not assist the appellant's case in this respect.

32 As to the appellant's submission that the district judge had failed to ascribe due consideration to the inherent contradiction between the medical evidence and Nur's evidence that the blood on the

wound was still not dry during Dr Tan's examination, I was of the view that the apparent contradiction should have little bearing on the appellant's conviction. It is clear from cases such as *Ng Kwee Leong v PP* [1998] 3 SLR 942 and *Hon Chi Wan Colman v PP* [2002] 3 SLR 558, that the court is entitled, for good reasons, to accept one part of a witness' testimony and to reject the other. On the facts, the district judge had found Nur's testimony to be credible and materially consistent with the nature of the injuries sustained by her. The apparent inconsistency may have been due to her anxiety over being placed on the witness stand and should not be used to prejudice the credibility of the rest of Nur's testimony. Furthermore, the medical examination and the presence of blood on the collarbone region of the T-shirt that Nur had worn at the material time provided greater impetus to believe the rest of Nur's testimony regardless of the alleged inconsistency.

33 In light of the finding that the wound had healed and that it corresponded to what was recorded in the medical report, the assertion that the medical report supported the appellant's case naturally fell away.

34 Counsel for the appellant also sought to raise the issue that the district judge had erred in relying upon certain evidence that constituted hearsay to corroborate Nur's version of the facts. These included Nur's evidence that she had spoken to a nurse about her wound prior to her examination by Dr Tan and the evidence of the appellant's conversation with her neighbour. As I was satisfied that the appellant's conviction was founded on sufficient evidence such as the bloodied shirt, Nur's credible testimony and the objective evidence of Dr Tan, whether those two pieces of evidence constituted hearsay evidence did not impact on the finding of the trial judge and I shall say no more on this matter.

35 The appellant further invited me to draw a negative inference from the fact that the Prosecution had failed to send the knife for deoxyribonucleic acid ("DNA") testing pursuant to s 116 illustration (g) of the Evidence Act (Cap 97, 1997 Ed) ("EA"). This would have required me to deem the DNA analysis of the knife as unfavourable to the Prosecution's case by virtue of the Prosecution having failed to produce such an analysis. However, the Prosecution had drawn my attention to the case of *Ang Jwee Herng v PP* [2001] 2 SLR 475 where it was decided that an adverse inference was to be drawn under s 116 illustration (g) of the EA only if the Prosecution withheld evidence which it possessed and not merely on account of its failure to obtain certain evidence.

36 In *Chua Keem Long v PP* [1996] 1 SLR 510 (cited in the recent decision of *Khua Kian Keong v PP* [2003] 4 SLR 526), in the context of the drawing of a negative inference from the Prosecution's failure to call certain witnesses, I had stated at [74] and [77]:

> It must be emphasized that s 116 illustration (g) is not mandatory. That provision merely states that the court may draw a presumption, not that it must. In determining whether or not that presumption ought to be drawn the court will have regard to all the circumstances, but particularly and importantly the materiality of the witnesses not produced. The adoption of any other approach would be to encourage the adducing of unnecessary evidence, prolonging the trial and confusing the issues.
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> …
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> The discretion conferred upon the prosecution cannot be fettered by any obligation to call a particular witness. What the prosecution has to do is to prove its case. It is not obliged to go out of its way to allow the defence any opportunity to test its evidence. It is not obliged to act for the defence. Only if there is an intention to hinder or hamper the defence would the possibility of a miscarriage of justice arise, requiring interference by the courts.

37 In the present case, in choosing not to send the knife for DNA analysis, the Prosecution had not withheld any material evidence from the appellant. There was no cause to draw a negative inference. While it may have been true that a DNA analysis of the knife would be relevant and perhaps useful in the determination of the appellant's guilt, I was of the view that Nur's testimony, Dr Tan's medical report and the blood-stained T-shirt were sufficient to establish the appellant's guilt. There was no need to take the additional step of procuring the DNA analysis.

38 In light of the district judge's finding that Nur was a credible witness, the substantial consistency of Nur's testimony with the injuries she sustained, the supporting evidence of Dr Tan's medical report and the blood found on the T-shirt worn by Nur at the material time, I was of the view that the appellant had failed to show that the district judge came to an erroneous conclusion on the evidence. I found that the district judge was correct in convicting the appellant on the charge of voluntarily causing hurt with a knife.

DAC 3550/2004: criminal intimidation using a knife

39 This aspect of the appeal raised two distinct issues. First, whether the appellant's utterances and conduct were capable of amounting to criminal intimidation under s 503 of the PC. Second, whether the conviction of the appellant under the ***second limb*** of s 506 of the PC, when the charge was framed under the ***first limb*** of s 506 of the PC, had the effect of rendering the conviction erroneous or merely went towards the determination of the sentence.

The first issue: conviction

40 The appellant disputed the veracity of the district judge's findings. It was argued that the district judge had placed too great a reliance upon the sole testimony of Nur without considering that the appellant was, at the material time, unable to threaten Nur as she was carrying her baby while making dinner. Furthermore, the appellant alleged that the facts, at best, disclosed that she had moved the knife around as she scolded Nur and that this did not constitute a threat and thus did not assist the Prosecution's case that she had threatened Nur.

41 It bears repeating that the district judge, upon hearing the evidence in its entirety, had decided that Nur was a credible witness and that the appellant, having had her credibility impeached, was not worthy of belief. He then found that the appellant had placed the knife on Nur's chin, chest and stomach area while asking her to "wake up" in a "strong tone". In the absence of the appellant producing any evidence to show that the district judge had erred in reaching the above conclusion, I was of the view that there was no reason to disturb the findings of fact.

42 The district judge then laid down the two-stage test that the Prosecution must satisfy before a conviction can be made out. First, whether the appellant had threatened Nur with injury to her person; and second, whether the threat was intended to cause alarm to her.

43 In ascertaining whether a threat was made, the learned district judge was guided by the case of *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113 where I had stated at [44] and [45]:

> For there to be a threat, the words uttered must be such that they would actually cause the victim, and any reasonable man in the victim's circumstances, to at least comprehend the words as having the *effect* of a threat to begin with. Otherwise, such words will not constitute a threat.
>
> To this extent, the existence of a threat will depend on the factual matrix of the case — a threat

is not issued merely because threatening words per se are used. Obviously, if the words '*I will assault you*' were uttered when the parties were merry-making and sharing a joke, no threat would have been issued; no one would have comprehended such words as having the effect of a threat. Therefore, all the circumstances of the case have to be considered.

44 To this end, the learned district judge concluded that there was no principle in law that only words (not acts) can amount to threats.

45 The appellant relied upon *Ratanlal & Dhirajlal's Law of Crimes,* vol 2 (23rd Ed, 1988) at p 2026 for the proposition that where no words are spoken by the accused, there can be no threat and that the intention of a speaker to threaten the victim can only be gathered from the words uttered. It was therefore submitted that the words "wake up" could not amount to a threat under s 503 of the PC.

46 On the facts, it was clear that the appellant had uttered the words "wake up" to Nur. Furthermore, as already observed in the *Ameer Akbar* case, all the circumstances of the case must be considered. I was of the view that just as intimidating phrases when used in a light-hearted context cannot amount to a threat, purportedly light-hearted words may amount to a threat when used under intimidating circumstances. There was nothing in s 503 of the PC that required a threat to be ascertained solely from the words used and not from the surrounding circumstances. A sensible interpretation must be ascribed to the words of s 503 of the PC if we are to prevent persons such as the appellant from eluding justice by using sugar-coated threats.

47 As for the requirement of an intention to cause alarm to the victim, I thought that the conduct of the accused in placing the knife at various parts of Nur's body, when viewed in conjunction with her repeated use of the phrase "wake up", would be sufficient to cause alarm to any reasonable person in Nur's position. I therefore found that the Prosecution had proven the charge beyond a reasonable doubt and that the conviction should be upheld.

The second issue: application of the wrong limb of s 506 PC

48 The appellant submitted that a conviction under the first limb of s 506 of the PC was sufficient. The first limb of s 506 of the PC deals with normal criminal intimidation and carries a maximum sentence of two years' imprisonment. The second limb of s 506 of the PC deals with criminal intimidation to cause death or grievous hurt and carries a maximum sentence of seven years' imprisonment.

49 The district judge had, in fact, convicted and sentenced the appellant pursuant to the second limb of s 506 of the PC. This was a matter of grave concern because a careful reading of the second charge revealed the particulars of the charge to be the appellant's act of threatening to ***cause injury*** to the victim with a knife. This brought the charge squarely within the ambit of the first limb of s 506 of the PC.

50 Counsel for the appellant had made no submissions on this point except to urge me to sentence the appellant under the first limb of s 506 of the PC. The Prosecution conceded that the district judge had erred in this respect but had submitted that the lower court's reliance on the second limb of s 506 of the PC did not occasion a failure of justice as far as the guilt of the appellant was concerned. To this end, the Prosecution relied on the case of *Lim Chuan Huat v PP* [2002] 1 SLR 105 where I had decided that where the error in question affects the sentence but not the determination of guilt, s 261 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") may be invoked to allow the High Court to set aside a sentence that is manifestly excessive.

51 I think that the approach laid down in *Lim Chuan Huat* is equally applicable in the present case. The district judge readily found the appellant guilty of criminal intimidation by way of threat to cause death or grievous hurt. It is obvious that the appellant can likewise be found guilty of a lesser charge of criminal intimidation by threat to cause injury. The only step that remained was to review the sentence meted out by the district judge. To resort to any other procedure would result in duplicity of effort and a waste of resources.

52 I will deal with the issue of sentence in the later part of my judgment.

DAC 3551/2004: voluntarily causing hurt

53 The appellant submitted that the district judge had placed too much emphasis on Nur's testimony without sufficient regard to the material discrepancies between her testimony and Dr Tan's medical report. In addition, counsel for the appellant had submitted that the district judge had placed insufficient emphasis on the concession by Dr Tan in his testimony that there could have been an alternative way in which Nur could have sustained the injury.

54 Again, it was clear from the district judge's grounds of decision that he found Nur's testimony to be substantially consistent with her injuries. He noted that Nur had stated in her evidence-in-chief that she had been slapped once on the left check, whereas Dr Tan's report reflected that Nur had claimed that the appellant had used her palms to slap Nur over both cheeks. Ultimately, the district judge, having expressly taken the discrepancy into account in determining the credibility of Nur's claims, still found her to be a credible witness.

55 I was persuaded that there arose no instance whereby the district judge had arrived at a finding that was unsupported by the evidence. Both Nur's testimony and the medical report indicated that Nur was indeed slapped. There was no need to disturb the district judge's finding in this regard.

56 The fact that Nur had sustained a head injury as a result of the appellant pushing her head against the wall was borne out by Nur's oral testimony and was further supported by the objective observations of Dr Tan. While the appellant alluded to the fact that Dr Tan had conceded that the head injury sustained by Nur could have occurred through other means, due regard must be had to the case of *Teo Keng Pong v PP* [1996] 3 SLR 329 at [68] where I had issued the following warning (in the context of the burden of proof on the Prosecution):

> It bears repeating that the burden on the prosecution is to prove its case beyond reasonable doubt. It is not to prove the case beyond all doubts. … The question in all cases is whether such doubts are real or reasonable, or whether they are merely fanciful. It is only when the doubts belong to the former category that the prosecution had not discharged its burden, and the accused is entitled to an acquittal.

57 The fact that Dr Tan had conceded the possibility of Nur sustaining a head injury by some other means did not take the appellant's assertion out of the fanciful and into the realm of real or reasonable doubt. The appellant had to show more in order to substantiate her argument. The appellant, in raising this line of reasoning, had plainly failed in this regard.

58 Having reviewed the reasoning of the district judge, it was my view that the Prosecution had yet again succeeded in establishing the charge beyond reasonable doubt. I therefore upheld the conviction.

The appeal against sentencing

General mitigating factors

59 Counsel for the appellant submitted several general mitigating factors that were allegedly in the appellant's favour. Chief amongst these were the appellant's lack of antecedent, hardship to the appellant's family and the inordinate delay of three years in the charging and prosecution of the appellant.

60 With regard to the absence of antecedents on the appellant's part, the district judge was correct in finding it to be a valid sentencing consideration. However, the Prosecution submitted that the appellant's lack of antecedents should be, at best, a neutral factor. To this end, reliance was placed on the authority of *PP v Tan Fook Sum* [1999] 2 SLR 523. However, that case cannot stand for such a proposition. In that case, I had held that the weight ascribed to the fact that the accused was a first time offender would have been greater if there were positive evidence as to character rather than the negative inference from the absence of allegations of other convictions. That, by any reading, cannot be taken to mean that the lack of antecedents on the part of the appellant has no mitigating value whatsoever. It is trite law that the absence of a prior conviction provides some degree of mitigation for an accused person.

61 It has also been clearly established that potential hardship suffered by the appellant's family plays no role in the determination of sentence. I had already stated in cases such as *Lim Choon Kang v PP* [1993] 3 SLR 927 and *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 that hardship caused to the accused's family when the accused was sent to prison carried little weight generally, and carried no weight at all when the term of imprisonment was short. Taking into consideration the relatively short custodial sentence meted out by the lower court, I found that the appellant's submission on hardship as a mitigating factor carried no merit whatsoever.

62 On the third and final mitigating factor, the appellant submitted that the case of *Tan Kiang Kwang v PP* [1996] 1 SLR 280 supported the practice of granting a "discount" in sentence for the inordinate delay in the prosecution of the appellant's case. The appellant's proposition was, however, misconceived. In that case, I had drawn a distinction between situations where the prosecution of the accused had occurred long after the accused had been charged and the converse situation where there was a delay in charging the accused but with no delay in the prosecution thereafter. I had further stated that there was greater mitigating force in the former situation. Hence, based on the present facts, where the prosecution had followed a few months after the appellant was charged, there was no force in the appellant's argument at all.

63 Before turning to review the specific sentences, I was mindful of some relevant mitigating factors that are indeed in the appellant's favour. First, as alluded to above, the appellant is a first-time offender; second, the entire episode happened on the spur of the moment and was not premeditated; third, the incident was short-lived; and finally, the injuries sustained were not of a serious nature. These considerations guided me in my assessment of the reasonableness of the sentences.

DAC 3549/2004: voluntarily causing hurt with a weapon

64 In his grounds of decision, the District Judge had made reference to the cases of *Lai Mei San Lily v PP* Magistrate's Appeal No 23 of 1995 (unreported) and *Ng Peng Kwang v PP* Magistrate's Appeal No 338 of 1990 (unreported). Both cases involved instances where the accused had stabbed the victim with a knife. The sentences meted out were one month's imprisonment and six months' imprisonment with three strokes of the cane respectively. I was of the view that *Ng Peng Kwang* should be distinguished as it involved a case of road rage, hence the impetus to mete out a harsher

sentence. Furthermore, it should be borne in mind that both cases involved instances of stabbing while, in the present case, the injury was a minor 1cm cut to the collarbone region.

65 As such, taking into account the above precedents, the nature of the injury and also the fact that the present case involves an incident of maid abuse, I found the sentence of two weeks' imprisonment entirely reasonable.

DAC 3550/2004: Criminal Intimidation

66 As I have alluded to in [48] to [52], the district judge had erred in convicting the appellant on the second limb of s 506 of the PC. The appropriate remedy to this problem is to revise the sentence ordered by the district judge.

67 The Prosecution had sought to rely upon the case of *PP v Luan Yuanxin* [2002] 2 SLR 98 to show that the sentence of four months' imprisonment was not manifestly excessive. Further, the Prosecution argued that the case was authority for the proposition that a harsher sentence should be ordered where the accused had used a weapon to intimidate the victim.

68 It is clear from the various cases involving criminal intimidation that the fact that the victim was not only alarmed but also put in fear for his or her safety was an aggravating factor. In addition, past cases have established that the use of a weapon in conjunction with the threat will inevitably lead to a custodial sentence. The above notwithstanding, I was mindful of the fact that the district judge had concluded that the appellant had uttered the threat in a moment of frustration, that the threat was not prolonged and that the appellant had not seriously intended to carry out the threat.

69 Having considered all the above, I decided that the Prosecution was wrong to rely on *Luan Yuanxin*. In that case, the accused had brandished a meat cleaver while threatening to kill the victim. The facts there, as they were borne out, justified a conviction and sentence under the second limb of s 506 of the PC.

70 As the present conviction ought to have come under the ambit of the first limb of s 506 of the PC, I found the case of *PP v Tan Beng Hoe* Magistrate's Appeal No 123 of 2002 (unreported) relevant in determining the appropriate sentence. In that case, the accused was sentenced to two months' imprisonment for pointing a chopper at the victim while pinning her to a wall. I accordingly allowed the appellant's appeal against sentence with respect to the charge of criminal intimidation and reduced it to two months' imprisonment.

DAC 3551/2004: voluntarily causing hurt

71 The appellant cited several cases to support the proposition that a fine would be a sufficient sentence. Those cases, however, did not involve instances of maid abuse. Previous cases have clearly stated that the courts should be ready to impose a custodial sentence in maid abuse cases to reflect the public policy of discouraging the ill treatment of foreign labour. In light of the tone I have set in such cases, it was reasonable for the district judge to have ordered a sentence of two weeks' imprisonment.

Conclusion

72 For the reasons above, I dismissed the appeal against conviction and upheld the sentence in part, with the sentence for DAC 3550/2004 to be reduced from four months' to two months' imprisonment.

Appeal against conviction dismissed and appeal on sentence allowed in part.