# Toh Lam Seng v Public Prosecutor
# [2003] SGHC 102

**Case Number** : MA 24/2003, Cr Rev 7/2003

**Decision Date** : 30 April 2003

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : Ramesh Tiwary (Leo Fernando) for the petitioner/appellant; David Chew Siong Tai (Deputy Public Prosecutor) for the respondent

**Parties** : Toh Lam Seng — Public Prosecutor

*Criminal Procedure and Sentencing – Sentencing – Appeals – Plea of guilt – Mitigation plea which may qualify plea of guilt – Correct approach to be taken by court – Criminal Procedure Code (Cap 68,1985 Rev Ed) s 180*

*Criminal Procedure and Sentencing – Sentencing – Appeals – Plea of guilt -Whether plea of guilt qualified – Penal Code (Cap 224, 1985 Rev Ed) ss 300, 323, 334*

1 The petitioner was sentenced to 12 months' imprisonment in the district court on a charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224), ("PC"). The maximum punishment for the offence is imprisonment for up to 12 months or a fine of up to $1000, or both. The petitioner had pleaded guilty to the charge, but petitioned for his conviction to be quashed on the grounds that his plea of guilt was qualified. In the alternative, he appealed against his sentence on the grounds that it was manifestly excessive. I dismissed both the petition and the appeal and now set out my grounds.

**Background**

2 The whole incident arose out of fairly innocuous circumstances. The petitioner was the owner of a pet shop. The victim, Soh, was a tenant of a portion of the shop. The petitioner found out that Soh had started his own pet shop business elsewhere and was attempting to "steal" his customers. After being confronted by the petitioner, Soh decided to move out of the shop.

3 On the day of the incident, Soh had returned to the shop to collect his belongings. The petitioner asked Soh for the arrears of rent due to him. Soh asked to offset the debt with goods belonging to him, but the petitioner declined his offer. Soh then refused to settle the debt, saying that it was the petitioner's "own business". After this, the petitioner went to unlock a chain which secured a hamster cage belonging to Soh. Soh started insulting the petitioner. The nature of these insults were as stated in the petitioner's mitigation plea below:

Our client was told by Soh that Soh had the ability to open 2 shops (instead of just one unlike our client), that Soh's business would be so good that this would result in our client having to end up closing down his shop, that Soh would not let our client have a easy time with his business, that Soh would not let our client step into the pet industry any longer, and Soh kept going on.

4 This continued for between half an hour to an hour. The petitioner eventually swung the chain that he had been unlocking at Soh, hitting him once on the head. He then threw the chain down. A companion of Soh's witnessed the attack and contacted the police. According to the medical report, Soh suffered neither soft tissue damage nor any fractures on his head.

**The law on qualified pleas of guilt**

5 I had extensively considered the law on whether a plea of guilt is qualified in *Balasubramanian Palaniappa Vaiyapuri v PP* [2002] 1 SLR 314 and *Koh Thian Huat v PP* [2002] 3 SLR 28. In both, I emphasised the three procedural safeguards to be observed before a plea of guilt can be accepted. Briefly, they are:

(i) That the accused should plead guilty by his own mouth;

(ii) That the onus lies on the court to ensure that the accused understands the true nature and consequences of his plea; and

(iii) That the court must establish that the accused intends to admit without qualification the offence alleged against him.

6 Both requirements (ii) and (iii) are enshrined in s 180(a) and (b) of the Criminal Procedure Code (Cap 68) ("CPC"). Requirement (iii) can only be satisfied if the accused admits to all the ingredients of the offence contained in the statement of facts ("SOF") without qualification. It was emphasised in *Rajeevan Edakalavan v PP* [1998] 1 SLR 815 that, for a plea to be unequivocal, it must be clear that the accused is admitting to all the averments contained in the charge and to all the ingredients of the offence contained in the SOF.

7 As was said in *Balasubramanian*, the general position is that a plea of guilt would *only* be qualified by statements in the mitigation plea where such statements either contradict material admissions of fact made by the accused to the SOF and/or where they indicate the lack of an essential ingredient of the offence.

8 There is good reason for these stringent requirements. As I observed in *Koh Thian Huat*, a revisionary court must jealously guard its powers to prevent abuse by litigants seeking to use it as an alternative avenue of appeal against their conviction. The safeguards protect accused persons from uninformed or misguided pleas of guilt and as such are to be stringently observed; equally, however, where circumstances show that one has pleaded guilty unreservedly and with full knowledge of the consequences, it would be an abuse of the court's revisionary jurisdiction to allow a retraction of his plea.

9 Accordingly, the paramount function of the lower courts when accepting a plea of guilt is to determine whether the accused knowingly and unreservedly intends to plead guilty to the charge and admit the truth of the allegations against him in the SOF. In pursuance of this, it is beholden on the lower court to fully explain to the accused the nature and consequences of both the charge and his plea of guilt to it, and to ensure his comprehension. With regard to a mitigation plea, a statement which discloses the possibility of a defence does not always qualify a plea of guilt. Such statements made in mitigation could validly be treated as being made solely for their mitigatory effect without an intention to deny or contradict the accused person's prior admissions to the charge and SOF. As I remarked in *Ulaganathan Thamilarasan v PP* [1996] 2 SLR 534, 540:

> This court would be reluctant to go so far as to require that a magistrate or district judge treat, without further investigation, every mitigation plea which discloses the possibility of a denial of the admitted facts as constituting a modification of a plea of guilt.

10 The correct approach then, for the lower court confronted by statements made in mitigation which *could* constitute a qualification of a prior plea of guilt, is for the magistrate or district judge to embark on a further investigation. He must ascertain the accused person's purpose in making the said

statements and satisfy himself that the accused does indeed wish to unequivocally plead guilty to the charge. Only where this is done can the lower courts be said to have discharged the duty imposed on them by s 180(a) and (b) of the CPC. Justice must be done and must be seen to have been done in these circumstances.

11 It does not mean, of course, that a failure by the court below to conduct further investigations of the accused in such circumstances would, without more, entitle this court to exercise its revisionary powers. The surrounding circumstances of the case itself may justify the judge below in deciding that no such enquiry is needed and that the plea of guilt was plainly unequivocal. The overriding test is always whether any injustice has been occasioned to the accused by what had transpired below.

**The petition**

12 The petitioner contended that his plea of guilt was qualified and equivocal due to statements he had made in his mitigation plea. In effect, he had stated that he committed the offence under provocation in his mitigation, which would bring the offence outside of the ambit of s 323 PC. As stated in his mitigation plea:

> … Soh said many things to our client which **severely provoked** him such that he **could not control his emotions** [Emphasis added]

And, in a later part of the mitigation plea:

> …**the acts of provocation** were too much for the accused to deal with and he acted in a spontaneous manner in committing an offence…[Emphasis added]

13 Section 323 of the PC reads:

> Whoever, **except in the case provided for by section 334**, voluntarily causes hurt, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to $1,000, or with both. [Emphasis added]

Section 334 of the PC reads:

> Whoever voluntarily causes hurt **on grave and sudden provocation**, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to $500, or with both. [Emphasis added]

14 According to the petitioner, his claims of provocation qualified his plea of guilt, making it equivocal. In support, he cited the case of *Ulaganathan*, where the accused, in pleading guilty to a charge of outrage of modesty, claimed in mitigation that the act was done unintentionally. This mitigation was later changed after the DPP spoke to the accused. I quashed the conviction on the grounds that the court below had failed to ensure that the accused properly understood the nature and consequences of his plea, due partly to the intercession by the DPP in the proceedings below.

15 I did not think that *Ulaganathan* afforded the petitioner any assistance. The accused's mitigation plea there had contradicted his admission to the charge by denying *mens rea*; in addition, matters were compounded by the actions of the DPP in advising the accused to alter his mitigation plea. Both these circumstances played a key role in my striking out of the plea of guilt.

16 In the present case, the allegations of provocation contained in the petitioner's mitigation did not contradict his admissions to the material elements of the SOF or to the charge. The elements of the offence as admitted to by him were not qualified in any way.

17 Provocation is not a general defence under the PC. Neither does the existence of provocation automatically take the offence out of s 323 PC. Similar to Exception 1 to s 300 PC, the legal requirements of grave and sudden provocation must be satisfied before an offence under s 334 PC is made out. The proceedings below did not cast any doubt on the petitioner's intention to plead guilty to the present charge. He was ably represented by counsel, as evidenced by his lengthy and detailed mitigation plea. There was no allegation by him that he in any way misunderstood the proceedings below.

18 In addition, his mitigation disclosed in great detail the instances of the alleged provocation. I had no doubt that these very clearly fell short of satisfying the requirements of "grave and sudden provocation". In such a situation, it seemed obvious that the petitioner had raised the fact of provocation merely as a mitigatory circumstance.

19 As I have held above, it is desirable in such cases for the district judge or magistrate to conduct further enquiries of the accused to ensure that he truly intends to plead guilty unreservedly and without qualification. While this was not done here, the circumstances of this case entitled the judge below to treat the petitioner's plea of guilt as unequivocal. The petitioner had obviously shown his intention to plead guilty unreservedly and without qualification. I was therefore of the view that the conviction should be upheld and dismissed the petition.

**The appeal against sentence**

20 There was little to be said here. The appellant contended that the sentence was manifestly excessive as the judge below did not pay sufficient heed to the fact that he was provoked, that no serious injuries were suffered by Soh and that the offence was not premeditated.

21 I found these contentions to be of little or no merit. Soh was not an innocent victim in any sense of the word, having essentially promulgated the offence by his actions. However, the fact remained that the appellant's reaction here was far in excess of reasonable behaviour. Hitting someone over the head with a four meter long chain is a serious matter, as pointed out by the judge below.

22 What worked against the appellant in this instance were his long string of previous convictions for violent offences, including two prior convictions under s 324 PC, for causing hurt with a dangerous weapon, as well as a previous conviction under s 323 PC. His previous sentences were nine and six months for the offences under s 324 PC and two months for the offence under s 323 PC. He also had prior convictions for robbery and rioting.

23 The appellant clearly showed himself to be a violent man. While Soh had acted in an antagonistic manner throughout the incident, I did not find 12 months' imprisonment to be a manifestly excessive sentence, bearing in mind the appellant's numerous antecedents. Neither did I agree that the judge below had failed to sufficiently consider all the factors. Her grounds of decision showed that she had fully considered all the circumstances of the case.

24 In the result, I was of the view that the sentence should be upheld and accordingly dismissed the appeal.

**Conclusion**

25 For the reasons given above, I dismissed both the petition and the appeal against sentence.

*Petition and Appeal dismissed.*