

Sulochana d/o Tambiah Dirumala Sakkrawarthi v Rajalakshmi Ramoo
[2003] SGHC 299

Case Number : MA 108/2003
Decision Date : 28 November 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : N Kanagavijayan (Kana and Co) for appellant; Thangavelu (Rajah Velu and Co) for respondent
Parties : Sulochana d/o Tambiah Dirumala Sakkrawarthi — Rajalakshmi Ramoo

Criminal Procedure and Sentencing – Appeal – Appellant seeking to overturn findings of fact by trial judge – Whether appellant succeeded in showing that trial judge's decision manifestly wrong or against weight of evidence

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Defamation – Factors determining seriousness of defamatory conduct – Whether sentence imposed manifestly excessive – Section 500 Penal Code (Cap 224, 1985 Rev Ed)

1 The appellant, Sulochana d/o Tambiah Dirumala Sakkrawarthi ('Sulochana'), was convicted in the Subordinate Courts on one charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224), and two charges of criminal defamation punishable under s 500 of the Penal Code. Sulochana was sentenced to one month's imprisonment on the s 323 charge, and fined \$2000 in respect of each of the s 500 charges. I dismissed her appeals against both her conviction and sentence. I now give my reasons.

Background

2 This private summons essentially arose out of deteriorating domestic relations between Sulochana and her husband, Raveendran Vijayan ('Raveendran'). At the material time, the couple was estranged and had been living apart for almost two years. Sulochana had custody, care and control of their children. Raveendran was then a tenant of the respondent cum complainant, Rajalakshmi Ramoo ('the complainant').

The complainant's case

3 On 3 December 2001, Sulochana was with her two daughters at Yishun market when she spotted her husband shopping with the complainant. Sulochana confronted the complainant. After verbally abusing the complainant, she then picked up her sandal and struck the complainant twice on her head. She also pushed the complainant on the chest and used her right leg to kick the complainant's knee. Understandably, the commotion drew a crowd. The complainant began crying and, when a few people moved away, she managed to escape and Sulochana did not pursue her. This assault formed the subject matter of the charge under s 323.

4 At the behest of Raveendran, the complainant did not make a police report at the time. However, she took a different view when a number of Raveendran's relatives came to the complainant's house to speak to him about reconciling with his wife. In the process, the complainant found out that Sulochana had, on two separate occasions, told Raveendran's relatives that the complainant was a prostitute, and further alleged that her children were all born of different men.

5 The first incident, which forms the subject matter of the first charge under s 500, occurred at Tekka market on 24 December 2001. Sulochana bumped into two of Raveendran's relatives – one

Rengasamy Kumaravelu ('Kumar') and his daughter-in-law, Angeline Malar ('Angeline'). Sulochana approached them and related her problems with Raveendran. She told them that Raveendran had been staying with this other woman, and informed them that this other woman was a 'loose' person who had borne her children with different men. Sulochana then asked for the telephone number of Kumar's wife, Margaret Jayamani ('Margaret'), who was also Raveendran's cousin.

6 A few days later, Sulochana called Margaret and asked if she knew about Raveendran's relationship with the complainant. She proceeded to tell Margaret 'bad things' about the complainant, including the fact that she had born her children with different men. This telephone conversation formed the basis of the second charge under s 500.

7 Being concerned about the situation, Margaret brought Kumar and Angeline to visit Raveendran at the complainant's residence, intending to advise him to leave the complainant. They then informed him of what they had heard from Sulochana. It was then that the complainant realised that such remarks had been made about her character. She then brought a private summons against Sulochana, relying largely on the testimony of Raveendran and his relatives to substantiate the charges.

The defence

8 As to the alleged assault, Sulochana's version of events differed greatly from that of the complainant. Sulochana testified that the altercation had arisen because the complainant had begun by shouting vulgarities at her. She testified that both of them had been standing face to face when the complainant used her hand to push Sulochana. This prompted Sulochana to attempt to protect herself by removing her sandal and throwing it at the complainant. Sulochana claimed that the sandal did not actually hit any part of the complainant, but landed a few metres away from her. This was supported by the testimony of her two daughters who were present at the scene.

9 In addition, Sulochana produced a witness – one Balusamy Elayraja ('Raja') – an Indian National who had approached her shortly after the above incident and offered to help her carry her baskets of food home. Raja informed her that he had overheard Raveendran quarrelling with the complainant in the carpark and warned Sulochana that the complainant had asked Raveendran to beat her up. Raja offered to assist Sulochana if she wished to make a police report against the complainant. Sulochana took down Raja's name, contact number and work permit number. At trial, Raja supported Sulochana's version of events as to the assault, and claimed that it was the complainant who had first pushed Sulochana and called her a prostitute, and that Sulochana's slipper had never hit the complainant.

10 As to the criminal defamation charges, Sulochana denied having ever made the remarks in question. Instead, she claimed that when she bumped into Kumar and Angeline, it was Kumar who first told her that her husband was committing adultery with the complainant. She then told Kumar and Angeline that she "knew all about Rajalakshmi and Raveendran". She also denied asking for Margaret's number. Instead, it was Kumar who asked Sulochana for her number.

11 As for the telephone conversation with Margaret, she claimed that it was Margaret who called her that day. She testified that she did not speak long with Margaret, except to tell her that she was busy that day and that she would call her back. She alleged that all three witnesses were lying to help Raveendran "take revenge" on her.

Decision of the court below

12 The trial judge found that the complainant's witnesses were credible and possessed no reason to lie. Though they were related to Raveendran, they were not close, nor did they know the complainant prior to the alleged incidents. He found that they had no incentive to help the complainant and had no motive to harm Sulochana by fabricating evidence.

13 In contrast, the trial judge expressed grave doubts about the credibility of the defence witnesses. Sulochana was described as being "inconsistent and reluctant in her answers". The trial judge was also cautious about the evidence from Sulochana's two daughters, as it was clear that they had a strong interest in ensuring that their mother was not convicted. Raja, the supposed independent witness for the defence, was described as 'evasive' and his testimony bore numerous inconsistencies with that of the other defence witnesses. Accordingly, the trial judge accepted the complainant's version of events and convicted Sulochana on all charges.

Appeal against conviction

14 Before I delve into the findings of fact which Sulochana took issue with, I pause to note that her convictions turned largely on whose version of events should be believed. As I have reiterated in *Yap Giau Beng Terence v Public Prosecutor* [1998] 3 SLR 656, an appellate court will be slow to overturn a decision where it hinges on a trial judge's assessment of the credibility and veracity of witnesses. As such, Sulochana had a heavy burden to bear, for she had to show that the trial judge was manifestly wrong or had made his decision against the weight of evidence. After a careful perusal of her submissions, I was of the opinion that her challenge to the trial judge's findings of fact amounted to a mere dredging of trivial facts and did not meet this burden. However, I would just address her main submission of the trial judge's assessment of the credibility of witnesses.

Credibility of witnesses

15 Sulochana argued that the trial judge erred in failing to consider that the prosecution witnesses were all interested parties, whose evidence should have been discounted. As to Raveendran, she contended that he had an incentive to lie because he was in a relationship with the complainant and held a grudge against his estranged wife. In my opinion, this argument failed on two levels – first, there was no evidence beyond whispers and innuendo to suggest that Raveendran and the complainant shared anything more than a landlord-tenant relationship. Second, I found it unlikely that Raveendran would set out to deliberately harm his wife, estranged though they might be, since she was the caretaker of their children and a conviction would most likely deprive them of her care.

16 As to the other prosecution witnesses – that is, Kumar, Margaret and Angeline – the mere fact that they were related to Raveendran was no reason to doubt their evidence. The trial judge was correct to find that this did not, in itself, lead to an inference that they would fabricate evidence to help the complainant with whom they were not acquainted.

17 Sulochana then went on to challenge the trial judge's assessment of the defence witnesses, alleging that the trial judge erred in doubting the evidence of her daughters. I was of the opinion that the trial judge was also correct to have treated the evidence of Sulochana's daughters with caution. Unlike the prosecution witnesses who were related, but not close, to Raveendran, these two witnesses had a strong incentive to lie in order to protect their mother.

18 As to the supposedly independent witness, Raja, I was of the opinion that the judge was correct to hold that his evidence was suspect. It was highly improbable that a random passer-by, not related to any of the parties, would make the effort to report to Sulochana about what he had overheard between Raveendran and the complainant. Further, the trial judge correctly noted that

Sulochana had failed to make any mention of Raja when she made a police report a few days after the assault at the market, even though she had his relevant details. This cast doubt on the authenticity of Raja as an independent witness.

Appeal against sentence

19 Sulochana was sentenced to one month's imprisonment for the s 323 offence, which is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to \$1000, or with both. Sulochana contended that the sentence was manifestly excessive, in light of the circumstances under which the offence was committed and the fact that the injuries caused were minor. In addition, she argued that there would be financial hardship since she was taking care of her four children.

20 Where an offence under s 323 arises from a domestic dispute, the court is generally reluctant to impose a term of imprisonment. However, in this case, I saw no reason to vary the sentence imposed. As the trial judge noted, financial hardship is not generally a significant mitigating factor: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 3 SLR 305. Further, there were several aggravating factors in the present case. Sulochana had used a heeled sandal to attack the complainant's head - a sensitive and critical part of the body. The assault also took place in a crowded market and the complainant not only received bodily injury, but was also publicly humiliated. I also noted that Sulochana showed no remorse after the assault. In these circumstances, the sentence imposed was not manifestly excessive.

21 As to the criminal defamation charges, the trial judge imposed a fine of \$2000 for each charge, which is the maximum amount a magistrate may impose. Sulochana was pleading for the fines to be reduced to \$1000 per charge.

22 Counsel for Sulochana rightly noted that there is currently no benchmark for a s 500 offence, which is punishable with a term of imprisonment up to two years, or a fine or both. Whilst s 500 clearly provides for imprisonment, the courts should not, as a general rule, resort to imprisonment except for the most heinous of conduct or where an offender has shown himself to be unresponsive to financial deterrence.

23 In relation to creating a benchmark for a fine, I was of the view that it would be impracticable to lay down a precise monetary figure, since much would depend on the actual nature of the defamatory statements made. Rather, I found it would be more instructive to set down the factors that would determine the seriousness of an offence under s 500. These factors would include, *inter alia*, the nature of the defamatory remark, the conduct, position and standing of the defamed party, the mode and extent of the publication and the conduct of the defendant after making the defamatory comments.

25 In this case, Sulochana had called the complainant 'a prostitute' whose children were all born of different men. This was a vicious remark which attacked the complainant's chastity - an essential element of a woman's reputation in society. Though Sulochana was charged with making these statements to only three people, the very nature of the allegations made were serious enough to justify the fine of \$2000 for each charge. Further, I found that Sulochana had shown no remorse throughout the proceedings. As such, I saw no reason to interfere with the trial judge's discretion on this point.

Appellant's appeals against conviction and sentence dismissed.

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