

Ng Soon Kim v Public Prosecutor
[2019] SGHC 247

Case Number : Magistrate's Appeal No 9022 of 2019
Decision Date : 17 October 2019
Tribunal/Court : High Court
Coram : Sundaresh Menon CJ
Counsel Name(s) : Mervyn Tan and Evan Teo (Anthony Law Corporation) for the appellant; Hay Hung Chun and Li Yihong (Attorney-General's Chambers) for the respondent.
Parties : Ng Soon Kim — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appeals

17 October 2019

Sundaresh Menon CJ:

1 The appellant pleaded guilty to a charge of voluntarily causing hurt by means of fire under s 324 of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”). He was sentenced to 14 months’ imprisonment and disqualified from holding or obtaining all classes of driving licences for 18 months.

2 This was the appellant’s appeal against sentence. After hearing the parties and considering their submissions, I set aside the sentence of 14 months’ imprisonment and imposed a sentence of seven months’ imprisonment in its place. I also reduced the term of disqualification to a period of nine months. I gave brief grounds for my decision at the hearing. I now give fuller grounds.

Facts

3 The facts of this case are not in dispute, and are set out in full in the Statement of Facts that the appellant admitted to without qualification. Briefly, the appellant and the victim were both taxi drivers who did not know each other at the time. The appellant had abruptly cut into the victim’s lane at the Vivocity taxi stand while the victim was waiting in line in his taxi to pick up passengers. The victim did not confront the appellant at the time. Subsequently, the appellant’s taxi stopped beside the victim’s taxi at a traffic light junction. The victim wound down his front passenger window and started shouting at the appellant, berating him for the manner in which he had earlier driven. The victim used some Hokkien vulgarities in the course of this confrontation. The appellant alighted from his taxi, taking a can of insecticide with him. He stretched his hand into the victim’s taxi, pointed the can of insecticide at the victim and sprayed the victim with insecticide twice. On the second spray, some of the insecticide entered the victim’s eyes, causing him eye irritation and pain. The victim’s passenger shouted at the appellant.

4 After the second spray, the appellant returned to his taxi and retrieved a lighter. He then came back to the victim’s taxi and sprayed the can of insecticide at the victim a third time. This time, he held the lighter in front of the can, and in the process lit it, thus igniting the aerosol stream and creating a flash fire that lasted about three seconds. The flash fire caused the victim to suffer some superficial first degree burns and singeing of his hair. He was treated at Singapore General Hospital as an outpatient.

The decision below

5 Before the learned District Judge, the Prosecution submitted that the following sentencing matrix ought to apply in sentencing for offences under s 324 of the Penal Code:

	Low Culpability	Medium Culpability	High Culpability
Low Harm	Fine	At least 1 year's imprisonment	At least 2 years' imprisonment
Medium Harm	At least 1 year's imprisonment	At least 2 years' imprisonment	At least 3 years' imprisonment
Serious Harm	At least 2 years' imprisonment	At least 3 years' imprisonment	At least 4.5 years' imprisonment

6 The District Judge accepted and applied this sentencing matrix, which was not seriously contested before him by the appellant. The District Judge accepted, as was common ground, that the victim was only slightly injured and that the harm caused was, therefore, low. The District Judge also accepted the Prosecution's submission that the appellant's culpability should be considered at the medium level. Taking into consideration the fact that the assault was an act of road rage, and the deterrent stance courts have taken against such behaviour, the District Judge considered it appropriate to apply an uplift from the minimum starting point of one year's imprisonment under the sentencing matrix to the middle part of the range of one to two years' imprisonment. This, he thought, was further reinforced by the serious risk of conflagration in this case. Having reached that point, the District Judge examined the relevant offender-specific considerations and mitigating factors to arrive at the 14-month imprisonment term that he eventually imposed.

My decision

The Prosecution's proposed sentencing matrix

7 I begin by setting out ss 323 and 324 of the Penal Code. Section 323 is relevant because the offence prescribed by s 324 is an aggravated form of the offence prescribed under s 323.

Punishment for voluntarily causing hurt

323. 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 2 years, or with fine which may extend to \$5,000, or with both.

...

Voluntarily causing hurt by dangerous weapons or means

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for a term

which may extend to 7 years, or with fine, or with caning, or with any combination of such punishments.

8 The Prosecution's sentencing matrix rests on the uncontroversial premise that the sentence that is to be meted out is a function of two considerations: the type of harm and the level of culpability. What is controversial, however, is how the matrix assigns equal emphasis to these two considerations in calibrating the appropriate sentence. This is evident in how the proposed minimum sentence increases at the same rate along the culpability axis as it does along the harm axis.

9 In my judgment, the sentencing matrix that was advanced by the Prosecution and accepted by the District Judge below was wrong in principle. This was because the matrix rested on the incorrect premise that the entire sentencing range for an offence under s 324, being a sentence of up to seven years' imprisonment, a fine and caning, should be applied across the matrix in a way that placed equal emphasis on the type of harm and on the level of culpability. As alluded to above, s 324 is the aggravated form of the offence prescribed under s 323. Section 323 sets out the punishment for the offence of voluntarily causing hurt, and it provides for a maximum sentence of up to two years' imprisonment and a fine of \$5,000. Under s 324 however, the identical harm would be liable to the imposition of the much heftier penalties prescribed where dangerous means are used. This made it clear to me that the emphasis on harm and culpability cannot be identical.

10 Within the ambit of culpability, the particular indicia the court should be attentive to, having regard to the express terms of s 324, are the particular means used to inflict harm in the case before the court. Section 324 sets out the following specific and different means for the infliction of hurt:

- (a) by means of any instrument for shooting, stabbing or cutting,
- (b) by means of any instrument which, used as a weapon of offence, is likely to cause death,
- (c) by means of fire or any heated substance,
- (d) by means of any poison or any corrosive substance,
- (e) by means of any explosive substance,
- (f) by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or
- (g) by means of any animal.

11 Some of these means, such as using an instrument for shooting, or using a weapon likely to cause death, are likely to be inherently more egregious than other means, such as the use of a substance deleterious to the body or by means of an animal, although even in the latter, much will depend on the particular facts. By way of example, if the accused person were to use an animal to inflict harm, the gravity and egregiousness would vary greatly depending on whether, for instance, a king cobra was used as compared to if a small dog was used. Evidently, the use of a matrix that failed to adequately distinguish these means also could not be correct. I therefore rejected the use of the matrix that was developed by the Prosecution and applied by the District Judge. I also declined to prescribe, at this stage, a sentencing framework, as I was not satisfied that there has been sufficient jurisprudence dealing with sentencing under this section to make this a viable exercise.

Imprisonment

12 In these circumstances, I approached the task of arriving at an appropriate sentence for an offence under s 324 in the following manner. First, I considered what would be an appropriate sentence had the hurt alone been the subject of an offence under s 323. Second, I then considered the application of a suitable uplift, having regard to the dangerous means used. In this connection, I considered it appropriate, as a matter of principle, to have regard to the *potential* harm that could result from the chosen means of offending. This seemed to me to follow from the fact that some of the dangerous means prescribed in s 324 were identified by reference to their potential for causing harm, such as means likely to cause death, when in most cases brought under the provision death will not in fact have been caused. Finally, I then calibrated the sentence to what I considered was appropriate having considered the particular aggravating or mitigating circumstances at play.

First step: Sentence under s 323

13 The High Court in *Low Song Chye v Public Prosecutor and another appeal* [2019] SGHC 140 ("*Low Song Chye*") recently laid down the following sentencing framework in s 323 cases for a first-time offender who pleaded guilty:

Band	Hurt caused	Indicative sentencing range
1	Low harm: no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions	Fines or short custodial term up to four weeks
2	Moderate harm: hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Between four weeks' to six months' imprisonment
3	Serious harm: serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	Between six to 24 months' imprisonment

14 It was common ground, and I accepted, that the harm caused on the present facts was low. The victim suffered some superficial first degree burns and singeing of his hair as a result of the appellant's actions. That said, the injuries were caused to the victim's face, which is correctly to be regarded as a vulnerable part of a person's body. Further, the appellant had deliberately targeted the victim's face. Moreover, the fact that the present offence occurred in the context of a road rage setting was an aggravating factor that warranted the imposition of a short custodial sentence for the purposes of deterrence: see *Public Prosecutor v Lim Yee Hua and another appeal* [2018] 3 SLR 1106 at [26] and [29]. Applying the sentencing framework in *Low Song Chye* while taking into account, additionally, that the offence took place in a road rage setting, I considered that a short custodial term of two months would have been justified on the facts had the hurt alone been the subject of a charge brought under s 323.

Second step: Applying a suitable uplift based on the dangerous means used

15 I next considered the means used to inflict the injuries. The use of fire or any heated substance covered a wide range of possible settings. In this case, the use of a lighter, coupled with a flammable aerosol, would not have been trivial by any means, but neither would it have been at the high end of serious culpability.

16 That said, the flame was lit in a confined space, which caused alarm to others, including the victim's passenger and carried with it the potential for more harm than in fact transpired if, for instance, some part of the vehicle's interior had caught fire. Furthermore, the offence took place in the middle of a busy road intersection, which might have given rise to some public alarm. I was persuaded, in the circumstances, that the facts here warranted a substantial uplift. I decided that I would have imposed an uplift of around six months' imprisonment on account of the means used.

Third step: Calibrating on account of other considerations

17 Finally, I considered the various aggravating and mitigating circumstances at play. The principal factor that weighed upon me was the fact that the appellant had pleaded guilty, which would warrant some moderation in sentencing. Even though the evidence against the appellant in this case was largely uncontroverted, I accepted that his timeous plea of guilt saved precious judicial time and resources that would otherwise have been incurred at trial. I further took note of the fact that the appellant was a first-time offender. These considerations led me to the conclusion that overall, a term of seven months' imprisonment was justified here.

Disqualification

18 I considered that the 18-month driving disqualification was manifestly excessive, and when I put this to the learned Deputy Public Prosecutor, Mr Hay Hung Chun, he quite fairly and properly did not strenuously contend otherwise.

19 In *Public Prosecutor v Fizul Asrul bin Efandi* [2018] 5 SLR 475 ("*Fizul*"), the offender claimed trial to one charge of voluntarily causing hurt under s 323 of the Penal Code. He was convicted and sentenced to 16 weeks' imprisonment. On the prosecution's appeal against the sentencing judge's refusal to impose a driving ban by way of disqualification, Tay JA imposed a 12-month disqualification order: at [21]. Crucially, unlike the appellant in the instant case, the offender in *Fizul* had previously been convicted of an offence under s 323 in similar circumstances: at [21]. Despite the repeat offence there, Tay JA imposed only a 12-month disqualification.

20 *Fizul* also referred (at [20]) to a number of unreported cases spanning a variety of factual situations in which the court imposed a disqualification order. This ranged from a period of six months for first time offenders to a period of 12 months for an offender with a previous conviction for causing death by dangerous driving, and who in that case had punched his victim multiple times in a road rage incident.

21 In the light of those precedents, the 18-month disqualification here was evidently on the high side. I therefore reduced the term of disqualification to nine months.

Conclusion

22 For these reasons, I set aside the sentence of 14 months' imprisonment imposed below and imposed a term of seven months' imprisonment in its place. I also reduced the term of disqualification from 18 months to nine months. Commencement of the sentence was deferred to 26 November 2019 to enable the appellant to attend to some medical issues. The present bail arrangements were ordered to continue.