Coastland Properties Pte Ltd v Lin Geok Choo
[1999] SGHC 328

Case Number : Suit 765/1999

Decision Date : 09 November 2000

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Lim Joo Toon (Joo Toon & Co) and Catherine Lim Chui Ling (Catherine Lim & Co) for the plaintiffs; Susan Tang Mei Ling (Francis Khoo & Lim) for the defendant

Parties : Coastland Properties Pte Ltd — Lin Geok Choo

Equity – Remedies – Specific performance – Sale of immovable property – Prejudice to third party – Effect of lawyers' conduct in conveyance and at trial on exercise of court's discretion

: The appellant was charged and convicted in the district court by district judge Khoo Oon Soo on the following two charges:

> *DAC 7108/2000 (the `first charge`)*
>
> *You, Wong Leong Chin, M/33 yrs, are charged that you, on or about 25 August 1998, at or about 2.30am, inside the unit of Blk 316 Tampines Street 33 [num]06-186, Singapore, did contravene the Personal Protection Order PPO No 694/1998 issued on 12 August 1998, to wit, by causing hurt to one Goh Cheng Sim and you have thereby committed an offence punishable under s 65(8) of the Women`s Charter (Cap 353, 1997 Ed).*
>
> *DAC 7109/2000 (the `second charge`)*
>
> *You, Wong Leong Chin, M/33 yrs, are charged that you, on or about 22 August 1999, at or about 9.30pm, inside the unit of Blk 316 Tampines Street 33 [num]06-186, Singapore, did contravene the Personal Protection Order PPO No 694/1998 issued on 12 August 1998, to wit, by causing hurt to one Goh Cheng Sim and you have thereby committed an offence punishable under s 65(8) of the Women`s Charter (Cap 353, 1997 Ed).*

The district judge convicted the appellant of both offences and sentenced the appellant to four weeks` imprisonment on the first charge and six weeks` imprisonment on the second charge. The two terms of imprisonment were ordered to run consecutively, making a total of ten weeks` imprisonment for the appellant.

The appellant appealed against his conviction and sentence on both charges. After hearing arguments of both the defence counsel and the DPP at the hearing of the appeal, I dismissed the appeal and affirmed the sentence in respect of DAC 7108/2000 (the first charge) but allowed the appeal and set aside the sentence in respect of DAC 7109/2000 (the second charge) for the reasons set out below.

The background

The appellant was the husband of the complainant, Madam Goh Cheng Sim (`Mdm Goh`) at the material time of the offences. On 12 August 1998, Mdm Goh had obtained a Personal Protection Order

(the `PPO`) against the appellant. The PPO arose from an incident in which the appellant slapped Mdm Goh when he saw a man bringing her home. The PPO, which was consented to by the appellant, prohibited the appellant from using family violence against Mdm Goh. The definition of `family violence` included, inter alia, causing hurt to Mdm Goh by such act which was known or ought to have been known would result in hurt.

Evidence relating to DAC 7108/2000 (the first charge)

The testimony of Mdm Goh, who gave evidence for the prosecution, on the first charge was as follows. On 25 August 1998, when the appellant returned home around midnight, Mdm Goh asked him where he had been. The appellant did not give a satisfactory answer and in fact lost his temper and became violent. He tried to strangle Mdm Goh, who resisted the attack. When she tried to run away, he chased her and continued to hit her. He allegedly used his fist to hit her face and body and also kicked her. She managed to run to the next room and lock the door. From the room, she called the police.

Two police officers, Sgt Alfian Ain and Sgt Eric Wee, arrived at the flat at about 3.09am. Sgt Eric Wee testified that Mdm Goh told them that she had been assaulted by the appellant and showed them her injuries. They were, however, unable to see any injuries at that time.

Later that same day, Mdm Goh went to the Accident and Emergency Department at Changi General Hospital to seek medical treatment for her injuries. There, she was examined by Dr Tan Wee Meng (`Dr Tan`). Dr Tan`s medical report recorded her as reporting that she had been assaulted and had been punched and kicked numerous times by her husband. The following injuries were observed by Dr Tan:

(a) 3cm diameter bruise over the right temple;

(b) 3cm diameter bruise over the left forearm;

(c) 3cm diameter bruise over the left shoulder;

(d) 3cm superficial abrasion on the left heel;

(e) three 8cm linear abrasions over left upper chest; and

(f) tenderness over the left thigh and forearm.

Mdm Goh was given medication and six days` medical leave by Dr Tan. His testimony was that her injuries were unlikely to be feigned and that her bruises were consistent with those caused by a blunt object such as a fist. Dr Tan also stated in a letter to the investigation officer, and again in his testimony in court, that the injuries on her were unlikely to have been self-inflicted.

Dr Tan testified that, although Mdm Goh had complained of being strangled by the appellant, he did not observe any visible marks on her neck. Nonetheless, he agreed that a person could be strangled without leaving such visible marks. However, the victim would exhibit other symptoms such as discomfort in swallowing.

The appellant`s testimony was that, at the material time in the first charge, he had gone home on Mdm Goh`s invitation to celebrate his birthday, but instead they ended up quarrelling. He had wanted

to leave the flat but she had grabbed the keys and held on to them tightly. He then managed to snatch the keys away from her. However, she blocked the main door to prevent him from going out. She threatened that, if he left, she would tell the police that he had assaulted her. He then called `999` for the police on his mobile phone, and said to them, `I am having a quarrel with my wife. She is getting crazy.` He then sat on the sofa and waited for the police to arrive. He maintained throughout that he did not hurt her and did not lay a finger on her. He did not know how she had sustained the injuries in question.

Evidence relating to DAC 7109/2000 (the second charge)

With regard to the second charge, Mdm Goh`s testimony was as follows. When the appellant returned home on the night of 22 August 1999, she asked him not to abandon her and their son. At this, he became agitated and assaulted her. He hit her and used his fist to punch her body, chest, back , upper arms and head. He also tried to strangle her and also kicked her on the legs. Her screams brought her brother, Mr Goh Cheng Yan, out of his room. However, her brother did not witness the assault as the appellant had fled the scene by then. She then called the police.

Early the next morning, Mdm Goh went to the Changi General Hospital and was examined by Dr Chai Yui Huei (`Dr Chai`). Dr Chai`s medical report stated that she complained that she had been strangled and hit on her left elbow by her husband early that morning. Dr Chai found the following injuries on her:

(a) two 0.5cm erythema on the right side of her neck; and

(b) one 4cm by 4cm bruise on her left elbow.

According to Dr Chai, her injuries were consistent with those from the blow of a blunt object such as finger tips. The age of her injuries, however, was not clear. She was discharged with analgesics and was given medical leave for that day.

The evidence of the appellant was that Mdm Goh had invited him home to discuss their matrimonial proceedings. They quarrelled again and she repeatedly threatened to accuse him falsely of assaulting her. Her brother came out of his room and told her not to shout and then returned to his room. The appellant wanted to leave the flat and he opened the main door but was hit by her on his back and head. He used his left hand to shield the blows and then he left the flat. He went to the police station to lodge a report about his wife`s threats. He denied touching Mdm Goh and he did not know how her injuries came about. However, he admitted in cross-examination that he might have lifted her and moved her to the side in order to get out of the flat.

The decision below

After hearing the evidence of both the prosecution and the defence, the district judge observed that the case turned on the issue of credibility, which was a question of fact to be resolved by an objective evaluation of the totality of the evidence adduced. In the light of the evidence of Dr Tan & Dr Chai who found injuries on Mdm Goh on both occasions, the question to be answered would be who or what caused those injuries.

The district judge said that he had evaluated the evidence and the submissions from both parties carefully and was satisfied that Mdm Goh was a witness of truth and that the prosecution had proven

its case against the appellant on both charges beyond a reasonable doubt. His reasons were, briefly, as follows. First, Mdm Goh was a forthright witness whereas the appellant was evasive and appeared cautious, especially during cross-examination. Second, Mdm Goh had injuries which were recorded by the respective doctors who examined her. Third, the district judge rejected the submission of the defence that the injuries could have been self-inflicted. Fourth, the district judge was of the view that the objective evidence of her injuries supported her version of the facts rather than the appellant`s.

The appeal

In his appeal against conviction, the appellant set out in his petition of appeal and his skeletal arguments numerous detailed grounds of appeal. He appealed mainly against the findings of fact by the district judge. In addition, he also appealed against his sentence and also on the ground that the district judge was wrong not to have drawn an adverse inference against the prosecution for their failure to call Mdm Goh`s brother, Goh Cheng Yan, as a witness in respect of the second charge.

The crux of the appellant`s appeal against the district judge`s findings of fact was that the district judge had erred in accepting the evidence of Mdm Goh instead of the appellant in relation to both offences. The appellant alleged that the district judge had accepted her evidence without having considered various inconsistencies between her evidence and that of the other prosecution witnesses. At the trial and at the appeal, the appellant attempted to cast a reasonable doubt on the prosecution`s case by suggesting that the injuries on Mdm Goh were not caused by the appellant but were possibly self-inflicted.

Inconsistencies relating to DAC 7108/2000 (the first charge)

The appellant contended, firstly, that in respect of the first charge, there was a material contradiction between Mdm Goh`s account and that of the two police officers, Sgt Alfian Ain and Sgt Eric Wee, who arrived at the flat after the incident. Mdm Goh`s evidence was that when the police arrived, her legs were injured and her whole body was bruised and very painful. She said that the police saw her injuries and asked whether these were painful. Sgt Eric Wee, however, testified that, although Mdm Goh told him that she was punched on the head, hands, body and legs, he saw no visible injuries on her at that time. The appellant contended that the district judge had not given any or adequate consideration to this material inconsistency.

The district judge noted that Sgt Eric Wee`s evidence was that he and Sgt Alfian Ain did not see any injuries on Mdm Goh at the flat. However, the district judge was of the opinion that nothing turned on this. He opined that Mdm Goh, when giving a description of the injuries sustained, was doing so with her recollection of a fast-moving incident involving her and her husband. It was difficult for her to describe with precision the exact details of the assault, how hard the blows were and where the injuries were in such circumstances.

The inconsistency between the evidence of Mdm Goh and that of the two police officers had been noted and considered by the district judge and was, in my view, rightfully disregarded. I agreed with the district judge that the fact that the police did not see the injuries on Mdm Goh at the flat did not constitute evidence that she was not injured at that point in time. There was medical evidence that certain injuries would not appear soon after the assault but would do so some time later. Dr Tan had testified that Mdm Goh`s bruises were of such a nature. Thus, as the police officers had arrived soon after the alleged assault, it was likely that the injuries had not become visible at that time. Moreover,

the police officers were not doctors and were not trained to examine victims for injuries.

The second inconsistency in the prosecution`s evidence on the first charge raised by the appellant related to Mdm Goh`s claim that she was strangled by the appellant allegedly resulting in internal injuries to her neck. She testified that she had told Dr Tan that she had inflammation in the throat and that Dr Tan had given her painkiller, medical leave and some ointment to apply. Dr Tan`s evidence, however, was that Mdm Goh did not tell him that she had throat inflammation. Although he did not give her any painkillers for the throat, he did give her some painkiller for her bruises. The appellant contended that the district judge had erred in not giving any consideration to this discrepancy.

In my mind, the issue of whether Mdm Goh told Dr Tan about her throat inflammation and whether Dr Tan had given her painkiller for the throat was not material. As much as it was difficult for Mdm Goh to describe with precision the exact details of the assault, how hard the blows were and where the injuries were in such circumstances, it would also be difficult for her to recall in exact detail what she had told Dr Tan or what kind of painkiller he had prescribed to her more than a year and a half after the incident.

As for the appellant`s suggestion that the injuries on Mdm Goh were self-inflicted, I dismissed this suggestion forthwith. There was clear evidence from Dr Tan that the injuries found on her were unlikely to be self-inflicted. Dr Tan had also testified that she was in a distraught condition when he saw her and it never occurred to him that her condition was feigned. In the light of Dr Tan`s medical report that she did in fact suffer multiple injuries on various parts of her body which appeared to be rather serious, I could not imagine that Mdm Goh or anyone for that matter would hit and bash themselves all over the body just so as to inflict such injuries upon themselves.

I had no doubt that on the evidence adduced in this case and the findings of fact and credibility made by the district judge, the first charge against the appellant was established by the prosecution beyond a reasonable doubt. I therefore dismissed the appeal against the appellant`s conviction on the first charge.

Inconsistency relating to DAC 7109/2000 (the second charge)

The inconsistency raised by the appellant in respect of the second charge was the contradiction between the evidence of Mdm Goh and Dr Chai in respect of her injuries sustained in the incident in 1999. She had claimed that she was hit and kicked by the appellant and suffered injuries in the form of bruises on the chest, the head and on both arms. She averred that she had shown those injuries to Dr Chai. The injuries found by Dr Chai, however, were two round erythema (redness) 0.5cm diameter in size, which were probably caused by blunt objects like finger tips, and a 4cm by 4cm bruise on her left elbow. No other injuries were reported by Dr Chai. His medical report stated that she had claimed to be strangled by her husband, using his hands and claimed to be hit on her left elbow.

The district judge had made a finding of credibility and decided that Mdm Goh was a truthful witness while the appellant was not. However, the inconsistency between Mdm Goh`s evidence and the medical evidence in respect of the second charge was, unfortunately, not considered by the district judge in his grounds of decision. Nonetheless, it is clear that in a case where the trial judge had overlooked or failed to take into account relevant evidence or failed to consider material discrepancies in the evidence which might have caused him to arrive at a different conclusion, an appellate court is able to review the evidence before it and come to its own conclusion on the evidence.

When the appellant is charged with two distinct offences, both offences must be proven by the prosecution beyond a reasonable doubt. In determining if each charge against the appellant has been proven beyond a reasonable doubt, the objective evidence and the surrounding relevant circumstances in relation to each alleged offence must be separately scrutinised.

In the trial below, the district judge disbelieved the appellant`s version of the facts in the light of the injuries that were suffered by Mdm Goh on both occasions in 1998 and in 1999. In respect of the first charge relating to the incident in 1998, the evidence of Dr Tan on Mdm Goh`s injuries was largely consistent with Mdm Goh`s own account of her injuries with the exception of some inconsequential details. With regard to the second charge relating to the 1999 incident, however, Mdm Goh`s account of her injuries and of how the appellant had allegedly hit and kicked her appeared to be highly exaggerated compared with the injuries which Dr Chai had found on her and with what she had reported to Dr Chai.

In my mind, the discrepancy between Dr Chai`s objective medical evidence and Mdm Goh`s evidence of her injuries and of how she had allegedly been hit and kicked by the appellant could not be dismissed as immaterial. In failing to deal with this inconsistency in the prosecution`s evidence, the district judge also failed to consider Dr Chai`s evidence that, based on the location of the injury on Mdm Goh`s neck, it was possible that the injury was self-inflicted. Moreover, unlike Dr Tan, Dr Chai did not testify that Mdm Goh`s injuries were unlikely to be self-inflicted and did not give any reasons why the injuries were unlikely to be self-inflicted. The inconsistency between the testimonies of Mdm Goh and Dr Chai was not explained by the prosecution.

In [para] 47 of his grounds of decision, the district judge stated:

> *What the defence was saying was that after each incident the victim would frame the accused by deliberately inflicting pain and suffering on herself. I found this suggestion ludicrous. Madam Goh did not strike me as a lady who would inflict injuries on her own body. So, what we had was the evidence of Madam Goh and that of the doctor who said that the injuries on Madam Goh were not self-inflicted. Against this was the bare allegation by the accused that they were. In the circumstances, I was of the view the injuries for both the 1998 and 1999 incidents were not self-inflicted.*

It appeared to me that the appellant was convicted on the evidence of Mdm Goh and the doctor who said that the injuries on Mdm Goh were not self-inflicted. The doctor whom the district judge was referring to was Dr Tan who gave evidence in relation to the first charge. However, the district judge did not mention in his findings the evidence of Dr Chai, who testified as to Mdm Goh`s injuries in relation to the second charge. It was clearly wrong for the district judge to have relied on the evidence of Dr Tan alone to convict the appellant on both charges.

In convicting the appellant on both charges, the district judge also seemed to have been influenced by the fact that the PPO in question came about because the appellant had slapped Mdm Goh in the first place. The prosecution, in their arguments before me, pointed out that Mdm Goh had testified that apart from the two incidents for which the appellant was charged, there were four or five other occasions on which the appellant had physically abused her. In my mind, the fact that the appellant had previously slapped her, or abused her on other occasions, did not lead to a necessary inference that the appellant must have committed violence against her in the two incidents for which he was being charged. The burden was on the prosecution to prove beyond reasonable doubt that the appellant was guilty of the two specific charges brought against him.

In my opinion, the inconsistency in the prosecution`s evidence on the second charge as well as the lack of objective medical evidence that Mdm Goh`s injuries were unlikely to be self-inflicted would have thrown some doubt on the cause of Mdm Goh`s injuries in respect of the incident in 1999. The element of the charge, ie that the appellant had wilfully contravened the PPO by causing hurt to Mdm Goh, had to be proven beyond reasonable doubt by the prosecution. Mdm Goh`s allegation was that the appellant had caused various injuries to her in the form of bruises on the chest, the head and both arms. Her allegation, clearly, was not made out by the medical evidence of Dr Chai. There was even doubt as to whether the injuries found on her by Dr Chai were caused by the appellant. Moreover, it is not surprising or uncommon for spouses who are estranged and in an acrimonious relationship to hurl groundless accusations at each other.

In the light of the inconsistency in the prosecution`s evidence in respect of the second charge and the objective medical evidence as well as the surrounding circumstances of the case, I found that the appellant had succeeded in casting a reasonable doubt on the prosecution`s case in respect of the second charge. I therefore allowed the appellant`s appeal against his conviction on the second charge and set aside the sentence of six weeks` imprisonment imposed by the district judge.

Although not necessary in view of my finding on the second charge, I will nonetheless deal briefly with the appellant`s submission that the district judge erred in not drawing an adverse inference against the prosecution for their failure to call Mdm Goh`s brother, Goh Cheng Yan, as a witness in respect of the second charge.

Adverse inference against the prosecution

Section 116 illustration (g) of the Evidence Act (Cap 97) provides:

> *The court may presume*
>
> *...*
>
> *(g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;*
>
> *...*

The defence counsel, at the trial, urged the district judge to draw an adverse inference against the prosecution for not calling Goh Cheng Yan as a witness. The district judge did not draw an adverse inference against the prosecution for two reasons. Firstly, the failure of the prosecution to call Goh Cheng Yan as a witness did not amount to withholding evidence. Secondly, the defence counsel did not communicate to the investigating officer that Goh Cheng Yan was required and this inaction had contributed to Goh Cheng Yan not being called at all.

In **Yeo Choon Huat v PP** [1998] 1 SLR 217 at pp 230-231, the Court of Appeal stated as follows:

> *The prosecution`s failure to call a witness does not therefore give rise to a presumption under s 116(g) of the Evidence Act unless it constitutes a*

> *withholding of evidence from the accused or the court. In the instant case, the prosecution had not offered Koh to the defence. However, the existence of Koh was clearly known to the appellant. The prosecution had identified Koh and the part that he had played in the case against the appellant. The appellant would have had no difficulty in tracing Koh as he was in remand, pending trial. It was clearly open to the appellant to call Koh as a defence witness after the prosecution had closed its case without calling upon Koh to testify. In our view, the prosecution had not in any way withheld evidence from the appellant or from the court, and the trial judge was right in refusing to draw an adverse inference under s 116 illustration (g) of the Evidence Act.*

It is clear that the prosecution retains the discretion whether or not to call a particular witness provided that there is no ulterior motive and the witness, who is available to, but not called by, the prosecution, is offered to the defence: **Lim Young Sien v PP** [1994] 2 SLR 257 at 266.

In this case, Mdm Goh`s brother, Goh Cheng Yan, had returned to Malaysia after the 1999 incident. The prosecution did not summon Goh Cheng Yan as a witness because Mdm Goh had said that he came out of the room only after the alleged assault. However, the investigating officer testified that, had he been informed that the defence required Goh Cheng Yan, he would have tried to contact him.

The appellant had not shown any ulterior motive on the part of the prosecution in not calling Goh Cheng Yan as a witness. There were no grounds for alleging that the prosecution had wrongly exercised their discretion in deciding whether to call Goh Cheng Yan as a witness. As in ***Yeo Choon Huat v PP*** (supra), the defence could have requested for Goh Cheng Yan to be called as a witness. Their failure to do so constituted inaction on their part.

In **Tan Ah Lay v PP** (Unreported) , the Court of Appeal observed that the absence of a witness was brought about by the inaction on the part of the appellant`s counsel. In that case, the Court held that, as the prosecution had not deliberately hidden the fact of the witness`s existence or failed in its duty to make the witness available to the appellant, the prosecution had not withheld evidence from the appellant or from the court and the presumption under s 116 illustration (g) of the Evidence Act did not apply.

Likewise, in this case, the prosecution did not withhold evidence from the appellant or from the court. In the circumstances, the district judge did not err in refusing to draw an adverse inference against the prosecution.

Appeal against sentence

Section 65(8) of the Women`s Charter (Cap 353) provides:

> *Any person who wilfully contravenes a protection order or an expedited order or an order made by virtue of subsection (5) except an order made by virtue of subsection (5)(b), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months or to both, and, in the case of a second or subsequent conviction, to a fine not exceeding S$5,000 or to imprisonment for a term not exceeding 12 months or to both.*

The district judge viewed family violence as a serious offence and also noted that there were no mitigating circumstances at all. The appellant was not even remorseful after he was convicted. The district judge thus imposed four weeks` imprisonment on the first charge and six weeks` imprisonment on the second charge. As both offences were distinct, the sentences were ordered to run consecutively. The appellant submitted that the custodial sentences were manifestly excessive and that fines were more appropriate in the circumstances.

I had no doubt that the wilful contravention of a protection order under s 65(8) of the Women`s Charter is a serious offence. This is also supported by the fact that a second or subsequent conviction under s 65(8) would be liable to attract a harsher sentence than the first conviction, as may be seen from the provision itself. Apart from the possible act of assaulting or causing hurt to a spouse, wilful contravention of such a protection order also amounts to a wilful breach of an order of court. In cases of wilful contravention of protection orders by causing hurt, the facts and circumstances constituting the offence may vary considerably and each case has to be looked at on the basis of its own particular facts. The seriousness of the injuries suffered by the victim is a factor to be considered in sentencing the offender.

That the court takes a very serious view of family violence and may, in appropriate cases, impose a custodial sentence on the offender may be seen from the case of **PP v N** [1999] 4 SLR 619 . In ***PP v N*** (supra), the offender pleaded guilty to three offences against his wife, namely, voluntarily causing hurt, wrongful confinement and criminal intimidation. The offender was only fined in the district court. However, on appeal, his sentence was drastically enhanced with a custodial sentence.

Public policy also requires that vulnerable members of the family such as wives and children should be protected from violence. A deterrent sentence in the form of imprisonment should be imposed in deserving cases of family violence. Sentences of fines may be more appropriate only in less serious cases in which no or little violence is involved, e.g. causing continual harassment to the family member.

In this case, in respect of the first charge, the appellant had used his fist to hit Mdm Goh in her face and body and had also kicked her, causing multiple bruises on various parts of her body. The injuries suffered by Mdm Goh were serious enough for Dr Tan to grant her six days of medical leave. In the circumstances, I was of the view that the appellant`s sentence of four weeks` imprisonment for the first charge was not manifestly excessive.

Conclusion

For the above reasons, I affirmed the appellant`s conviction and sentence on DAC 7108/2000 (the first charge) but set aside his conviction and sentence on DAC 7109/2000 (the second charge).

Outcome:

Appeal in DAC 7108/2000; appeal in DAC 7109/2000 allowed.