

Public Prosecutor v Ong Li Xia and Another
[2000] SGHC 149

Case Number : CC 50/2000
Decision Date : 24 July 2000
Tribunal/Court : High Court
Coram : Amarjeet Singh JC
Counsel Name(s) : Jaswant Singh assisted by Ranveet Kaur (Attorney-Generael's Chambers) for the prosecution; Sheik Mustaffa (assigned by CLAS) for the 1st accused; R Retnam (briefed) for the 2nd accused
Parties : Public Prosecutor — Ong Li Xia; Yeo Kim Han

JUDGMENT:

Grounds of Judgment

1. The two Accused, *Ong Li Xia* and *Yeo Kim Han* have pleaded guilty to 5 offences with which they were jointly charged and which they committed in furtherance of the common intention of each other against the Victim and to two offences each with which they were separately charged. Consequently, they were convicted on all the charges.
2. Briefly, the charges under the Penal Code, Cap 224 on which the Accused have been convicted are:

Joint Charges

(i) 1st charge

(s 377) - abetting by instigating the Victim with threats to commit an unnatural offence with a dog i.e. by sucking the penis of the said animal.

(ii) 6th charge

(s 147) - being members of an unlawful assembly with others with the common object to cause hurt to the Victim by slapping, punching and kicking the Victim thereby committing rioting.

(iii) 9th charge

(s 324) - causing hurt to the Victim by hitting her with a weapon a stick.

(iv) 10th charge

(s 509) - intruding upon the privacy of the Victim and forcing her to strip naked and have her insert a marker and a Barbie dolls broken leg into her vagina.

(v) 12th charge

(s 342) - tying up and thereby wrongfully confining the Victim.

Separate Charges:

Ong Li Xia

(i) 14th charge

(s 326) - pouring hot water, i.e. a heated substance on the body of the Victim and thereby causing grievous hurt to her.

(ii) 15th charge

(s 342) - tying the Victim up with raffia and thereby wrongfully confining her.

Yeo Kim Han

(i) 4th charge

(s 506) - criminal intimidation by threatening the Victim with a stick.

(ii) 11th charge

(s 326) - pouring hot water i.e. a heated substance on the Victims body thereby causing grievous hurt.

2.1 In addition, each accused person, consented to a number of other charges being taken into consideration.

Both Accused consented to have the joint 7th Charge (rioting under s 147) and the joint 8th Charge (grievous hurt under s 326) taken into consideration.

Ong Li Xia

consented to 4 separate charges being taken into consideration namely the 11th Charge (pouring hot water on the victim grievous hurt under s 326), 13th Charge (causing hurt under s 323), 16th Charge (causing criminal force by cutting the Victims hair under s 352) and 17th Charge (pouring hot water on the Victim grievous hurt under s 326).

Yeo Kim Han

consented to 3 separate charges being taken into consideration namely the 2nd Charge (causing hurt with a metal chair under s 324), 3rd charge (causing hurt with books under s 323) and 5th charge (causing grievous hurt by pouring hot water, a heated substance under s 326).

3. ***Ong Li Xia*** was about 14 years at the time of the offences and ***Yeo Kim Han*** had attained the age of 17. The offences were committed between 15th December 1999 to 2nd January 2000 in an apartment where ***Ong Li Xia*** lived with 3 of her sisters and their mother. Her father was serving sentence at the time of the offences for a drug offence. The mother works in a karaoke lounge.

3.1 The Victim was confined to the flat in which **Ong Li Xia** lived with her sisters between 15th December 1999 to 2nd January 2000. All the offences were committed in the flat. The flat was visited by **Yeo Kim Han** whose girlfriend was one of the sisters of **Ong Li Xia**.

3.2 Some of the offences to which the two Accused have pleaded guilty, were committed together with others i.e. the sisters of **Ong Li Xia** and one Neo Soo Kai and one Melvin Yeo Yew Beng aged 17 years who also visited the flat. These individuals pleaded guilty in the Subordinate Courts and have been sentenced recently.

4. In essence, the Prosecutions *Statement of Facts* shows that the Victim was initially physically assaulted with fists and instruments. Thereafter, over time, she was asked to perform acts, which will fill anyone who approaches the case, with great revulsion. At her tender age she was forced under threats to put objects into her private part and forced on another occasion, to perform oral sex with a dog in effect an act of bestiality, if I might say, which greatly demeaned her sexually. In that incident, **Ong Li Xia** and **Yeo Kim Han** both told the Victim to suck the penis of the dog and **Ong Li Xia** carried the dog towards the Victims face. **Yeo Kim Han** threatened to beat the Victim with a stick if she did not do so. On other days, hot water taken from a kettle was poured on her during her captivity several times over the two weeks to her screams. She suffered from third degree burns on her neck and chest and trunk and on her upper and lower limb as the medical report shows. The photographic evidence shows extensive keloid formations over the burnt areas. The acts showed an inclination on the part of both Accused to be sadistic i.e. practising on the young Victim sexual perversion marked by a love for cruelty and also of deriving pleasure from inflicting or watching cruelty over the period of two weeks.

4.1 The Victim has in her *Victim Impact Statement* stated poignantly that the incidents have left on her horrendous scars as a result of the scalding with hot water, have hurt her and continue to hurt her greatly and have changed her life drastically for the worse and particularly that with her said scars, no boy will even be attracted to her. The photographic evidence of the scars confirms the anguish which she has, no doubt, experienced. Both Accused have also put the Victims family out of pocket with a large medical bill. More pain and expense will follow if she is able to undergo plastic surgery to correct the scars. Some residual scarring will though remain in the end.

Sentence

Ong Li Xia

5. **Ong Li Xia** being about 14 years old at the time of the offence and 15 now, falls within the definition of a *youthful offender* i.e. a person between the ages of 7 to 16, under s 2 of the **Criminal Procedure Code** Cap 68 (CPC). S 235 empowers a criminal court to imprison or fine a *youthful offender* convicted by it as set out by the punishment provided by that offence. The Court is however, given a discretionary power of sentencing such an accused person under the punishment provisions of the **Children & Young Persons Act** Cap 38 (CYPA) under which Act she would be categorised as a *young person* being between the ages of 14 to 16. The punishment provisions of CYPA are mainly set out in sections 37, 38 and 44 of the CYPA and they constitute lesser punishments save for a provision for imprisonment contained in s 37 which however can only be imposed if the Court certifies that the *young person* is of so unruly a character that such person cannot be detained in a place of detention or an approved school. S 38 under the same Act provides for detention for such specified period as a Court may specify where certain grave offences have been committed by the *young person* namely murder, culpable homicide not amounting to murder, attempted murder or voluntarily causing grievous hurt and again only if the Court is of the opinion that none of the other methods by which the case may be legally dealt with is suitable.

5.1 Counsel for **Ong Li Xia** submitted that I exercise my discretion and punish her under one of the lesser punishments provided by the CYPA as the Accused, otherwise a bright student in school and of good character, was traumatised by her fathers detention for a drug offence about a year earlier and by her mother seldom coming home as she worked in a karaoke lounge. Counsel explained that the Accused had also harmed the Victim whilst under the trauma as the Victim had not kept an

appointment with her at MacDonalds and also because her pet hamster was lost which loss she blamed on the Victim. Counsel also submitted that under the CYPA, the Prosecution had not shown that the Accused was of unruly character and should therefore not undergo imprisonment. Unruly character, he said, could not be shown or proven from the facts of the case but should be independently shown from external facts and observances as would describe her general reputation. Counsel intimated that perhaps, a pre-sentencing report should be called to ascertain her character.

5.2 The Deputy Public Prosecutor in reply stated that there was a strong indication that the Accused was of unruly character given the nature of the offences and given the length of time i.e. two weeks over which the several offences were committed. The Court could therefore he said, determine the unruly character of the Accused from the facts of the case if it intended to proceed on sentencing the Accused under the provisions of the CYPA.

6. In my opinion, I am satisfied that the Court should exercise its power to punish the Accused under its usual sentencing powers sitting as a Criminal Court as stated in s 235 of the CPC. For the exercise of such usual power, it is unnecessary for the Court to determine whether a *youthful offender* i.e. the *young person* is or is not generally of an unruly character. The vicious offences committed by the Accused on the Victim as is evident from the consequences she has suffered, call for a punitive sentence of imprisonment that is deterrent. The Accused showed her dark side by inflicting harm to the Victim with ***Yeo Kim Han*** or in separate incidents. The Accused contributed towards badly disfiguring her by pouring hot water on her body in addition to others thereby causing physical and mental damage to her in response to a petty dispute such as not turning up at MacDonalds as scheduled and because her hamster was missing for which she put the blame on the Victim. There was really no provocation or aggression by the Victim. *Young offenders* where they engage in violence and cause injuries on a person resulting in serious harm or consequences to the person without provocation can and should expect to be imprisoned and not expect to be dealt with kid gloves by the Court. Nor should a minor provocation be made an excuse to inflict mindless violence on a person.

6.1 In the circumstances, and taking into consideration the other charges consented to by the Accused, I sentence her as follows:

1st charge s 377 (unnatural offence) - 2 years imprisonment

6th charge s 147 (rioting) - 18 months imprisonment

9th charge s 324 (hurt with weapon - a stick) - 2 years imprisonment

10th charge s 509 (intruding on sexual privacy) - 6 months imprisonment

12th charge s 342 (confinement) - 6 months imprisonment

14th charge s 326 (pouring hot water) - 3 years imprisonment

15th charge s 342 (confinement) - 6 months imprisonment

6.2 I consider the 1st, 10th and 14th charges to be the most serious in so far as the actual facts are concerned and the sentences of 2 years, 6 months and 3 years respectively thereunder, shall run consecutively. The sentences in respect of the other charges are to run concurrently with that of the 1st, 10th and 14th charges. In sentencing the Accused, I have taken the totality principle into consideration by moderating the sentence.

The Accused shall therefore serve a total sentence of imprisonment of 5 years and shall take effect from the date of her remand.

Yeo Kim Han

7. As for **Yeo Kim Han**, whose girlfriend was *Ong Lay Hua*, the elder sister of **Ong Li Xia**, his co-accused, Defence Counsel submitted that peer pressure and influence, drove the Accused to participate in the acts described in the charges. Counsel stated that an altercation had broken out in the flat after the Victim was accused of not keeping an engagement at MacDonalds with his girlfriend Ong Lay Hua and the Victim had picked up a broomstick to attack Ong Lay Hua. However, Counsel had conceded that Ong Lay Hua had slapped the Victim in the first place. To my mind, therefore, if the Victim picked up a broomstick, she probably did it out of self-defence. No particular allegation was made by Counsel that she had actually hit Ong Lay Hua with the broomstick or where she had been hit. In any case, the Accused had participated in the events of bullying and torturing the Victim by his violence in common intention **with Ong Li Xia** and separately by himself for some two weeks afterwards. I reject the mitigation of the Accused that he acted out of peer pressure. The Victim had not provoked him or caused any harm to him. He was 17 and a member of *Ri Heng Lion Dance Training Centre* and had admittedly gone abroad with his troupe on lion dances. He was obviously travelled and mature. I am of the opinion that he has to bear greater responsibility than **Ong Li Xia** for the offences committed on the Victim especially in relation to the commission of the unnatural offence under s 377.. **Ong Li Xia** was not his equal in age, intelligence or experience as regards matters of sex although she had attained puberty and would have some basic instinct and understanding of sex. Moreover, I am of the opinion that there should therefore be a differentiating measure in respect of his punishment as it was he who threatened to beat the Victim with a stick if she did not perform the unnatural act. The unnatural act took place mainly because of his threats to harm the Victim with a weapon. Taking the other charges which the Accused has consented to be taken into consideration, I now sentence him as follows:

1st charge s 377 (unnatural offence) - 4 years imprisonment

6th charge s 147(rioting) - 18 months imprisonment plus 2 strokes of the cane

9th charge s 324(hurt with stick a weapon) - 2 years imprisonment plus 4 strokes of the cane

10th charge s 509(intruding on sexual privacy) - 6 months imprisonment

12th charge s 342(confinement) - 6 months imprisonment

4th charge s 506(criminal intimidation) - 6 months imprisonment

11th charge s 326(pouring hot water) - 3 years imprisonment plus 6 strokes of the cane.

7.1 The sentences of imprisonment in respect of the 1st, 10th and 11th charges are to run consecutively and the rest to run concurrently with the said 1st, 10th and 11th charges. I have similarly taken the totality principle into consideration in sentencing the Accused by moderating the sentence.

The total sentence of imprisonment therefore is 7 years and it shall take effect from the date of his remand.

The cumulative number of strokes of the cane in respect of the 6th, 9th and 11th charges shall be 12.

Amarjeet Singh

Judicial Commissioner

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