Public Prosecutor v Chong Siew Chin
[2001] SGHC 372

Case Number : MA 160/2001

Decision Date : 13 December 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Ravneet Kaur (Deputy Public Prosecutor) for the appellant/respondent; Ong Cheong Wei (Ong Cheong Wei & Co) for the respondent/appellant

Parties : Public Prosecutor — Chong Siew Chin

Criminal Law – Offences – Voluntarily causing hurt – Employer assaulting domestic maid – Whether charges made out – ss 73(1)(a) & 323 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Appeal – Power of appellate court to reverse trial court's findings of fact – Applicable principles – Whether any reason to interfere with trial judge's findings of fact

Criminal Procedure and Sentencing – Sentencing – Maid abuse – Appeal against sentence – Non-custodial sentence – Whether sentence manifestly inadequate – Aggravating factors – Mental abuse calculatedly applied in conjunction with physical abuse – Policy considerations – s 323 read with s 73(2) Penal Code (Cap 224)

Evidence – Proof of evidence – Corroboration – Lies by accused – Criteria for lies to amount to corroboration

Evidence – Proof of evidence – Defence of alibi – Nature of alibi defence – Accused to bear evidential burden of proof – Whether burden discharged on present facts – s 105 Evidence Act (Cap 97, 1997 Ed)

: The respondent was convicted on three charges for voluntarily causing hurt to her domestic maid, Bonasih Sarmo (`Bonasih`) pursuant to s 323 read with s 73(1)(a) of the Penal Code (Cap 224). The charges comprised the same act by the respondent of slapping Bonasih on the left side of her face at the respondent`s house on three separate occasions; once in the early morning, once later in the morning and once in the evening of 24 July 1999.

The s 323 Penal Code offence is punishable with imprisonment for a term not exceeding one year, or with fine which may extend to $1,000, or with both. However, under the enhanced penalties for offences against domestic maids provided under s 73(2) of the Penal Code, a court may enhance the sentence to one and a half times the amount of punishment to which the offender would otherwise have been liable for that offence; making for a maximum sentence of imprisonment for a term not exceeding 18 months, or with fine which may extend to $1,500 or with both.

In the court below, the respondent was fined $1,500 on each charge, in default, two weeks` imprisonment on each charge, making a total fine of $4,500, in default, six weeks` imprisonment. The fine was paid.

The prosecution appealed against the sentence on the ground that it was manifestly inadequate while the respondent appealed against the conviction. I dismissed the respondent`s appeal against conviction and allowed the prosecution`s appeal on sentence. I now give my reasons.

The facts

Bonasih arrived in Singapore from Indonesia around 15 July 1999. She commenced work as a domestic maid at the respondent`s bungalow on 22 July 1999.

At or about 3am on 24 July 1999, the respondent entered Bonasih`s room and discovered that she was sleeping with the bedroom lights and fan on. Angered, the respondent used her right hand to slap Bonasih`s left cheek. The respondent then inquired about her husband`s clothes, and upon hearing an unsatisfactory answer, she slapped Bonasih again. The following morning, Bonasih noticed that she had a bruise on the left side of her face and a cut on her lips. These were the facts of the first charge.

On the second charge, at or about 8.30am later that morning, Bonasih was in the kitchen boiling water to fill a flask. The respondent entered the kitchen and scolded Bonasih for putting too much water into the flask. The scolding was followed by another slap from the respondent.

Later that evening, the respondent was again displeased with Bonasih`s work. This time, the respondent was unhappy with the way in which Bonasih cooked the rice. The respondent slapped her again in the same manner, using her right hand on the left side of Bonasih`s face. These were the facts of the third charge.

On 28 July 1999, Suyanti Sastro Sugito (`Yanti`), another domestic maid working in the vicinity of the respondent`s house, inquired about Bonasih`s bruises. After being questioned by Yanti repeatedly, Bonasih finally told her that the respondent had slapped her. Yanti alerted the police. When they arrived, police officer Mohammad bin Suporno (`Mohammad`) observed that there was a three to four centimetre bruise on the left side of Bonasih`s face and a cut on the left side of her lips. However, Bonasih told Mohammad that she was responsible for her own injuries as she had fallen in the toilet while cleaning the wall. Mohammad observed that she appeared very frightened, particularly after the respondent joined them. He asked her to show him how she fell and, after the demonstration, he felt that the injuries were inconsistent with her story.

On 8 August 1999 at around 3pm, Bonasih`s sister, Buniyah bte Sarmo (`Buniyah`) visited her at the respondent`s house. Bonasih confided to her sister that she was frequently physically abused by the respondent. Subsequently, the respondent returned home and Buniyah left. Shortly after, Bonasih fled the respondent`s house, seeking refuge with her sister who was still waiting at a nearby bus stop. Buniyah recounted that she looked very frightened and was crying. Later, Bonasih reported the assaults to the police.

When sent for a medical examination, Bonasih informed the examining doctor that she had been slapped on the face by the respondent and was also punched on her right arm. She also said that her ear was pulled and her face pinched. The medical report from Dr Adrian Koh Jit Hin (`Dr Koh`) stated that there was tenderness on the left side of Bonasih`s jaw. There were no bruises or fractures. However, Dr Koh opined that her injuries were consistent with her account and were consistent with injuries caused by blows from a `blunt object`.

The decision below

CONVICTION

The crux of the case was factual. After hearing the witnesses for both sides and after observing their

demeanour during the course of the trial, the magistrate noted that the maid came across as a very honest and credible witness. He also felt that she was not a very intelligent person who was capable of weaving a consistent story to support her allegations against the respondent.

In sharp contrast, the magistrate described the respondent as a very intelligent witness who was always slow and careful with her answers. In spite of this, her fa+ade cracked when inconsistencies arose during the course of her testimony and when compared with the evidence given by her own witnesses. As such, the magistrate found that she was not an honest witness and her version of events was not to be believed.

In view of the evidence before him, the magistrate convicted the respondent on all three charges of voluntarily causing hurt to Bonasih.

SENTENCING

During mitigation, the respondent submitted that she had suffered greatly from this incident and that she was extremely remorseful over the incident. It was also submitted that she had co-operated fully with the police.

The magistrate noted that the events leading to the assaults were extremely trivial matters and there was no provocation from Bonasih prior to being assaulted. The magistrate also noted that Parliament had amended the law in 1998 to provide for enhanced punishment in cases involving, inter alia, voluntarily causing hurt to domestic maids. However, noting that Bonasih`s bruises had healed soon after the assaults and that, within a week after the incidents, there was no visible evidence of bruising, the magistrate considered these injuries to be minor and regarded this factor as the key consideration during sentencing.

Examining case precedents, the magistrate found that a heavy fine was usually imposed for offences charged under s 323 of the Penal Code where the hurt caused was not severe. In particular, he noted ***PP v Tan Siam Keow*** (PS 643 and 644/2000) where the victim was slapped in the face several times, her head was hit and her hair pulled. As a result of the assaults, the victim suffered multiple bruises on her arm and legs. The magistrate noted that the judge in that case took a further three charges into consideration and fined the accused the maximum of $1,500 per charge.

As such, after taking into account s 73(2) of the Penal Code, the magistrate imposed the maximum fine of $1,500 per charge.

Both the prosecution and the respondent appealed.

The appeal

CONVICTION

It was undisputed that Bonasih suffered injuries that included facial bruises and a cut to her lip. The key question in the current appeal was whether these injuries were the result of the respondent`s assaults as laid out in the charges. The respondent challenged various findings of fact and inferences drawn by the magistrate. I dealt with them as follows:

(1) Injuries on Bonasih

(2) Bonasih`s credibility

(3) The respondent`s credibility

(4) Motive to frame the respondent

Injuries on Bonasih

The respondent contended that the magistrate did not properly consider her evidence. Despite Bonasih`s statement that she was slapped almost every day, the respondent alleged that the magistrate failed to consider why Buniyah did not testify to have seen visible bruises on Bonasih when she visited her on 8 August 1999. Also, she contended that the magistrate failed to properly assess the evidence given by Dr Koh, in particular that the injuries alleged to be suffered by Bonasih were not independently observed or verified.

I found that it was absurd for the respondent to rely on these grounds of appeal since Bonasih`s injuries were undisputed. The respondent testified to have seen bruises and swelling on Bonasih`s face on 25 July 1999. Her injuries were also independently observed by the police officer, Mohammad, when he first interviewed Bonasih at the house. While Mohammad was not strictly an expert witness, I was prepared to accept his observations and conclusion, which was made after watching the demonstration from Bonasih about the way she allegedly fell in the toilet and comparing it with the injuries sustained by Bonasih. In cases such as these, a normal person`s human experience is sufficient to conclude that the injuries sustained could not have been the result of a fall as described. In any case, after evaluating Mohammad`s testimony in the light of other evidence, the magistrate also found that Bonasih`s injuries were not caused by a fall.

The respondent`s family doctor of 16 years, Dr Singh, testified that had Bonasih been slapped on the cheek, she would have shown bruises. Dr Singh`s examination occurred on 2 August 1999, nine days after Bonasih was first assaulted. More importantly, the magistrate correctly noted that Dr Singh`s evidence was irrelevant since the injuries were not in issue at the trial and the respondent had testified that Bonasih`s `left face was reddish and slightly swollen` on 25 July 1999. I also rejected the respondent`s contention that Bonasih ought to have complained to Dr Singh if she was really hurt. Such failure to complain was inconsequential since it was readily apparent that Bonasih was already in constant fear of the respondent and therefore would certainly not have dared to complain to Dr Singh in the presence of the respondent who was in the examination room. In any case, in **Tang Kin Seng v PP** [1997] 1 SLR 46 at 65, I said that the evidential value of a prompt complaint lay not in the fact that making it renders the victim`s testimony more credible, but rather, it was the failure to make a complaint which rendered a victim`s evidence less credible:

> *78 ... Deciding whether to call a previous complaint `corroboration` or otherwise does not add anything to the fact finding process. In all cases, it is necessary to identify the reason behind the perceived unreliability of the complainant`s testimony. Only then is it possible to decide whether a previous complaint or the absence of one adds anything at all to the equation.*
>
> *79 The evidential value of a prompt complaint often lay not in the fact that making it renders the victim`s testimony more credible. The evidential value of a previous complaint is that the failure to make one renders the victim`s evidence **less** credible. The reason is simply common human experience. It is*

> *not usual human behaviour for a victim not to make a quick complaint. However, as in all cases where common human experience is used as a yardstick, there may be very good reasons why the victim`s actions depart from it. It would then be an error not to have regard to the explanation proffered. All these merely illustrate the fallacy of adhering to a fixed formula.*

Also, I failed to see how Dr Koh`s evidence was helpful to the respondent`s case. By the time he examined Bonasih on 8 August 1999, any bruises suffered as a result of the respondent`s slapping on 24 July 1999 would have healed substantially. In any case, Dr Koh was still able to detect tenderness on Bonasih`s left jaw. When informed by Bonasih that the injuries arose from being slapped on the face by the respondent, he noted that the `injuries were consistent with her account and were consistent with blow(s) from a blunt object`. Dr Koh also clarified in court that a `blunt object` could mean a `stick, foot or fist` and did not rule out the possibility that the injuries could be caused by slapping of up to three times a day.

Bonasih`s credibility

In essence, the respondent contended that Bonasih`s evidence should not be believed. She argued that Bonasih was mentally unstable and that the magistrate had placed too much weight on her evidence and ignored the fact that she was a pathological liar.

The respondent`s only evidence in support of her allegation that Bonasih was mentally unstable was that Bonasih was cracking her knuckles loudly when she was first picked up from the maid agency. However, I did not think that this alone was sufficient to prove mental instability. Bonasih had explained that she had merely felt nervous, arising from the respondent`s expression of dislike of her at the maid agency. Also, I noted that Bonasih was going to a new place and any ostensible nervousness would have been perfectly understandable.

The police officer, Mohammad`s evidence was particularly helpful on questions relating to Bonasih`s credibility. For example, Bonasih testified in court that she was in great fear of the respondent. This was corroborated by Mohammad when he visited the house on 28 July 1999 and he described Bonasih as follows:

> *I could see she was trembling, her hands were shaking and words coming out from her mouth are whispering like she does not want someone else to hear it.*

He testified that Bonasih became particularly frightened when the respondent came out of the house to join them and it was apparent to him that Bonasih was unwilling to tell him the truth about her injuries, choosing instead to maintain that she had a fall. Such a spontaneous display of fear involuntarily manifested by Bonasih provided strong support for the prosecution`s case. Furthermore, I felt that the circumstantial evidence was exceptionally compelling in other respects: It was the respondent`s own testimony that she had noticed injuries on Bonasih on 25 July 1999. As such, it was only logical to infer that the injuries were caused between the time when Bonasih first arrived at the respondent`s house on 22 July 1999 and 25 July 1999. Separately, Bonasih`s overwhelming fear of the respondent was independently observed by Mohammad when he first met Bonasih. Since there was no evidence that Bonasih was ever allowed to go out of the house on her own nor was there any suggestion that she had been assaulted by someone else in the respondent`s household, the evidence when put together provided strong support for Bonasih`s allegations.

It should be noted that none of the prosecution witnesses were found to have been inconsistent nor were they ever discredited. Furthermore, Bonasih`s credibility was supported by independent medical opinion from Dr Koh. From the notes of evidence, I agreed that Bonasih did not seem particularly intelligent but, on the whole, she was an honest and consistent witness.

The respondent`s credibility

On the other hand, I agreed that the respondent was a highly intelligent woman. She tendered extensive documentary exhibits such as a car park coupon on the night of 22 July 1999, the receipt obtained at a restaurant the same night, the passport showing that a trip had been made to Johore Bahru on 25 July 1999 and the police report made on 8 August 1999 about Bonasih`s fleeing from her house. However, none of these peripheral documents were relevant or material since they were far detached from the issues, time and location stated in the charges.

I agreed that the respondent`s evidence was generally inconsistent and untruthful. Raising an alibi defence on the third charge, the respondent stated that she was at her mother`s residence playing mahjong with the rest of her family on the evening of 24 July 1999. In support of this, the respondent produced her mother, Mdm Choong Fatt Keow (`Mdm Choong`), to support this story. The respondent testified that on that occasion, after losing money to her sister during mahjong, her sister had jokingly said that she would buy her a birthday cake in return. According to the respondent, this was never done. However, Mdm Choong contradicted her daughter`s account when she testified that the cake was indeed bought and that the respondent and she herself even had a slice of it. Neither of them could have been mistaken or confused since they had narrated events on that evening with remarkable clarity. Another inconsistency was detected when the respondent told the court that her daughter had complained that the meal prepared by Bonasih on the evening of 24 July 1999 did not suit her taste. During cross-examination, the respondent elaborated to say that she did not have to worry about leaving Bonasih alone to cook dinner because she had prepared extra rice and dishes on that day. When reminded that, if this was so, then her daughter would not have had to eat Bonasih`s cooking, the respondent immediately qualified herself by saying that there was not enough dishes prepared. I agreed with the magistrate that the respondent changed her story when she realised her mistake.

The prosecution then sought to argue that the inconsistencies were actually lies told by the respondent and that this amounted to corroboration of the prosecution`s case. While I agreed that there may be cases where lies may properly be regarded as circumstantial evidence of guilt on the basis that they were invented to conceal guilt, a trial judge must not be overly hasty to come to that conclusion as an accused may lie for a variety of reasons. In any case, the trial judge, as the finder of fact must first satisfy himself that the accused did indeed lie. In this regard, I found it helpful to refer to **R v Lucas** [1981] QB 720 which was followed in the local case of **Khoo Kwoon Hain v PP** [1995] 2 SLR 767 . In ***R v Lucas*** , Lord Lane CJ stated at 724 that an accused`s lies may corroborate other evidence against him if, but only if, certain criteria are satisfied:

> *... the lie ... must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and a fear of the truth ... people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly, the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.*

In the present case, the inconsistency arising from whether a birthday cake was actually bought and shared did not relate to a material issue in the charge. Similarly, whether or not the respondent had prepared sufficient dishes for her daughter`s consumption on the night of 24 July 1999 was also insufficiently conclusive and not material enough to qualify as corroboration. I was, however, prepared to note that this indicated the respondent`s lack of credibility, and that little, if any, weight should be placed on her evidence.

In general, the alibi defence involves more than a mere denial of presence at the scene of the crime, but asserts collaterally that the accused was present somewhere else. Section 105 of the Evidence Act (Cap 97, 1997 Ed) states:

> *The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*
>
> *Illustrations*
>
> *...*
>
> *(b) B wishes the court to believe that at the time in question he was elsewhere. He must prove it.*

In **Ramakrishnan s/o Ramayan v PP** [1998] 3 SLR 645 , I stated that s 105 of the Evidence Act operated such that the accused bore the evidential burden of production to raise the issue of alibi. In other words, the accused had to raise a reasonable doubt as to his presence at the scene stated in the charges. In this case, Bonasih testified convincingly for the prosecution that, on the night of 24 July 1999, the respondent was at home teaching her to cook. The only evidence produced by the respondent in support of her alibi was her own testimony and Mdm Choong`s testimony. Quite apart from the fact that her mother, Mdm Choong, was an interested witness, I found Mdm Choong`s evidence to be inconsistent and, as such, little weight should be placed on her testimony. In my opinion, the respondent had failed to discharge the evidential burden of proof on her alibi defence.

With regard to the bare denial on the first charge, the respondent denied having used a key to access Bonasih`s room, claiming that she did not have any such key. After cross-examination, the magistrate disbelieved her and found that it was implausible for the respondent, who had occupied the house for over 13 years, not to have all the keys to the rooms, in particular, the key to the new maid`s room. As such, he rejected the respondent`s bare denial. I agreed with the magistrate.

On the second charge, Bonasih testified that she was slapped by the respondent in the kitchen at about 8.30am, 24 July 1999. Counsel for the respondent did not challenge Bonasih`s account of the assaults on that morning, choosing instead to assert another bare denial. To bolster her story, the respondent claimed that she did not see Bonasih before she left for her routine Saturday morning swim. However, it was not disputed that Bonasih was boiling water in the kitchen and the respondent testified that she prepared and ate breakfast and was around the house at the material time. As such, I found that it was inconceivable that the respondent would fail to meet Bonasih in the single floor bungalow house.

No motive for framing the respondent

Finally, the respondent contended that Bonasih had framed her in order to escape working for her. This was another bare allegation. There was not one iota of evidence to suggest any hostility displayed by Bonasih towards the respondent which might be the cause for the former`s purported desire to frame the respondent. In fact, if Bonasih had wanted to frame the respondent so that she could leave her employment, then, instead of telling Mohammad that she had fallen in the toilet, she would have seized the opportunity and told him that she had been assaulted by the respondent. She would certainly have been rescued by the police. As such, I rejected the respondent`s arguments.

Conclusion

It should be noted that the magistrate`s decision to disbelieve the respondent and believe Bonasih was reached after a trial process where he had had the benefit of observing the witnesses and their demeanour. As it has been repeatedly stated, an appellate court will not interfere with a trial judge`s findings of fact, especially where such findings were based on his assessment of the witnesses` veracity and credibility, unless they were plainly wrong. See, for example, **Arts Niche Cyber Distribution v PP** [1999] 4 SLR 111 . While the credibility of the witnesses did play a large part in this case, the court was helped by the compelling circumstantial evidence in coming to its final conclusion. I was unable to find any merit in the respondent`s arguments and accordingly I dismissed the respondent`s appeal against conviction.

SENTENCE

The object of legislation providing for enhanced punishment for certain offences against maids in Singapore stemmed from the recognition that maids require additional protection because of their special circumstances. As noted by the Minister for Home Affairs in Parliament in April 1998, full time domestic maids are usually female and are totally dependent on their employers for food and lodging. Having travelled long distances to work in Singapore, many of them are totally deprived of their support network of family and friends. In this case, Bonasih was particularly vulnerable, having arrived from Indonesia just a week before starting work, and having only started working for the respondent less than two days before the assaults began. In contrast, the respondent was well aware that she was in a position of authority and had abused it. While the offences did not seem premeditated, it was disturbing to note that they were committed habitually and in response to dissatisfaction over very trivial matters. Shockingly, the respondent seemed to use slapping as standard punishment in instructing Bonasih on her work.

Evaluating Bonasih`s injuries, I did not think that they were minor enough to justify a fine. The bruises and a fairly large cut on the lip were visible four days after the assault, and this suggested that they were not superficial wounds and a great deal of force was used which caused extensive bleeding. As such, I felt that the magistrate was mistaken about the extent of injuries suffered by Bonasih. He did, however, note that the respondent used her bare hands to carry out the assaults which made it unnecessary to impose an even heavier sentence.

Contrary to the respondent`s submissions, I did not observe any ostensible contrition or remorse on her part for causing the injuries. Quite the opposite, it became clear that, after the assaults, the respondent subjected Bonasih to a regime of threats and coached her to lie if she was ever questioned. Bonasih was therefore not subjected only to physical abuse; the beatings and threats created in Bonasih an ` ***overwhelming fear*** ` of the respondent. One can only imagine the trauma that Bonasih experienced throughout the short duration of her employment. I therefore held that,

where mental abuse was calculatedly applied in conjunction with physical abuse to a domestic maid, this should be viewed as a serious aggravating factor.

Maid abuse usually takes place in the privacy of the home where offences are hard to detect. In recent years, the number of foreign maids working in Singapore households has risen steadily. Unfortunately, reported cases of maid abuse have also risen steadily: 105 in 1994 to 193 in 1997. I felt that a deterrent sentence should be imposed to arrest the rising trend of such offences. In addition, I noted that such disgraceful conduct lowers Singapore`s international reputation and damages bilateral relations with neighbouring countries.

In **Farida Begam d/o Mohd Artham v PP** [2001] 4 SLR 610 , the offender had used a broom handle to assault her maid causing extensive bruises. The offender`s sentence was enhanced from three months` imprisonment to nine months` imprisonment. In **Tan Yok Hong v PP** (Unreported) , the offender pleaded guilty to one charge of causing hurt to a maid by slapping her on the face, causing bleeding to the maid`s nose. Two other charges of causing hurt were taken into consideration and the offender was sentenced to two weeks` imprisonment. In **PP v Faridah bte Abdul Fatah** (Unreported) , the offender had placed eight clothes pegs on the victim`s ears and pulled them off one by one. The medical report disclosed that the maid suffered bruising and abrasions to both her ears as a result. Following an appeal, the initial fine of $1,500 was enhanced to three weeks` imprisonment.

Conclusion

For the reasons above, I allowed the prosecution`s appeal against sentence and varied the original sentence. After reading s 323 with s 73(2) of the Penal Code, the final sentence was enhanced to six weeks` imprisonment on each charge. Two of the three sentences were ordered to run concurrently, making for a total of twelve weeks` imprisonment. The fines paid by the respondent were ordered to be refunded.

Outcome:

Appeal against conviction dismissed; appeal against sentence allowed.