Lim Kim Luan v Public Prosecutor
[2002] SGHC 147

Case Number : MA 345/2001

Decision Date : 15 July 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Quek Mong Hua and Julian Tay Wei Loong (Lee & Lee) for the appellant; Alvin Chen Yi Jing (Deputy Public Prosecutor) for the respondent

Parties : Lim Kim Luan — Public Prosecutor

Criminal Law – Offences – Voluntarily causing hurt – Using criminal force – Employer abusing domestic help – ss 323 & 324 read with s 73 & 352 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Appeal – Appeal against trial judge's findings of fact – When appellate court can reverse findings

Judgment

GROUNDS OF DECISION

The appellant faced six charges altogether, of which three had been stood down for another trial. In this appeal, the three charges tried in the court below were those for : -

(a) voluntarily causing hurt to her domestic maid, Tri Handayani Wiryo Sukarto ("Yani") by kicking her three times on her back, under s 323 read with s 73 of the Penal Code, Cap 224 ("PC");

(b) using criminal force on Yani by pouring warm water on the back of her head, near the neck, under s 352 of the CPC;

(c) voluntarily causing hurt to Yani by pouring hot water onto her and scalding her left upper arm, under s 324 read with s 73 of the CPC;

on 21 June 2001, at or about 1.00 am at 8 Hougang Street 92, #13-02, Singapore.

2. There was medical evidence of injuries found on Yani. She was examined at Changi General Hospital on 22 June 2001 at 4.00 am by Dr Tan Kok Yang ("Dr Tan") who prepared a medical report. The injuries found on her were recorded as follows :-

a 2 cm scalp haematoma at right parietal region;

b 0.5 cm scratch on right ear lobe;

c 3 cm x 1 cm bruise on the left neck;

d bruise corresponding to finger marks on right arm;

e 1 cm bruise on right forearm;

f 6 cm x 14 cm secondary degree burn and blistering on the left arm;

g bruises on the dorsum of both feet.

Dr Tan also gave testimony in court that, in his own medical report, he had noted that Yani had some tenderness in the mid-thoracic region of her back.

3. The appellant did not deny that she caused the secondary degree burn, which was the most serious of all the injuries found on Yani. Her defence at trial was that she had accidentally scalded Yani on her left arm, while the rest of the injuries found on Yani were claimed by the appellant to have been self-inflicted by Yani.

Yani's version of events on 21 June 2001

4. It is important to lay out in full the actual words used by Yani during her testimony in court to describe the incident, which resulted in the three charges being brought against the appellant :

> On 21 June 2001, at about 1.00 am, my employer kicks my back 3 times. I was then washing clothing in the bathroom. Maybe it was because I didn't have enough sleep. I was sleepy and she kicked me 3 times. It was painful. I didn't say anything to her. Maybe my employer thought I was sleeping at that time, then my employer poured hot water at the back of my neck, towards the lower part of my neck. Maybe, she took the water from the thermos flask. She used a cup to get the water. *It was hot.* I didn't say anything. I continued washing the clothing because *I felt hot* in my face. I looked down. Maybe my employer thought then I was still sleeping. Then she poured hot water on me. She wanted to pour hot water on my face. Then I used my left hand to block, using my left upper arm. I kept quiet. *I felt very very hot.* I didn't respond. I continued to wash clothing. I felt scared.[emphasis added]

The appellant's version of events

5. The district judge had found that there were many shifts in the appellant's defence. This would be elaborated upon later on. The ultimate version which the appellant put forth and maintained at this appeal was that she had accidentally caused the scalding on the morning of 20 June 2001. She had been in the kitchen cooking and was at the sink holding a bowl of hot water. Yani came into the kitchen and squatted down to retrieve a floor mat in the cabinet below the sink. When Andres (the appellant's baby boy whom Yani was employed to look after) started crying, Yani stood up and knocked into the appellant, causing the hot water to spill onto Yani. After the incident, she had apologised to Yani and applied cream for her. In the evening of 20 June 2001, the whole family, together with Yani, had gone to the National Library to do research for a hearing the next day at the Small Claims Tribunal. They arrived home at about 9.30 pm. Both the appellant and her husband wanted to prepare for their case by reading the materials which they had photocopied earlier at the National Library. At around 12.30 am on 21 June 2001, they started preparing video clips to be used as evidence for their case. They only finished the video clips at around 2.00 am. The next morning, they were at the Small Claims Tribunal until 2.30 pm. In the evening, the whole family went out together with Yani to order a birthday cake at Ang Mo Kio Central. They reached home at about 10.00 pm and it was at about 10.45 pm that two policemen who had responded to a call arrived.

The testimony of the two policemen

6. On 21 June 2001, the police received an anonymous telephone call from a male caller at 10.36 pm. The caller stated 'Maid was abused' and gave the home address of the appellant. Sgt Tan Chee Hiong ("Sgt Tan") and Sgt Neo Weiko ("Sgt Neo") were dispatched to the appellant's home. When they arrived, it was the appellant's husband, Low Gim Huat ("Mr Low"), who came to the door. The police officers informed him of a maid abuse complaint. They were not let immediately into the apartment but were told to wait for a while, before the door was closed on them. Several minutes

later, the appellant opened the door to let the police officers in.

7. When they were within the apartment, the police officers attempted to ask Yani what happened. Questions were addressed to Yani but the appellant kept on interrupting during the questioning. The appellant told them that Yani had an injury at the left upper arm. Sgt Tan saw that there was a bandage on her arm and asked Yani to remove it. However, he saw only parts of the injury as the bandage was stuck onto the skin and Yani was in pain. The appellant appeared scared and nervous. As the appellant kept on interrupting on the questioning of Yani, Sgt Tan had to bring Yani outside the unit, out onto the corridor to interview her. Yani was reluctant to speak and appeared tearful and scared. When Sgt Tan persisted in asking her to tell the truth, she broke down and told him in broken English that the appellant threw hot water onto her. Sgt Tan called for assistance. SIO William Lee came to the scene with a Malay interpreter and interviewed Yani. A white mug identified by Yani as used by the appellant to throw hot water onto her was then seized from the kitchen. Photographs were also directed to be taken.

8. Sgt Neo also recalled an occurrence when the appellant had behaved strangely by inviting him into the study room, when Sgt Tan went outside the unit to speak to SIO William Lee. She informed him that she had something to talk to him privately. When he entered into the room with her, she closed the door. She said that she didn't abuse the maid. Sgt Neo felt that the statement was a general one and immediately opened the door as he was afraid of allegations of molest and corruption. As he opened the door, he saw Mr Low walking away from Yani upon discovering that he (Sgt Tan) was coming out of the room.

The decision below

9. At the conclusion of the trial, the district judge found that the prosecution had proven its case beyond a reasonable doubt. There was no evidence of inconsistency in the prosecution's case. Neither was any one of the prosecution's witnesses discredited. Yani's consistent story was corroborated by the testimony of the two police officers who were disinterested witnesses. There was also independent medical evidence of Yani's numerous injuries.

10. On the other hand, he found that the appellant's version of the incident changed several times during the trial. The first version started with Yani squatting down to wash clothes in the kitchen bathroom. The appellant walked in holding a mug of hot water, when Yani suddenly got up and knocked into the appellant. Then, the story changed to one where the appellant was <u>cooking</u> in the kitchen, and Yani was <u>washing clothes</u> in the kitchen bathroom. Later, it changed again, to that of Yani <u>coming into the kitchen,</u> squatting down to retrieve a floor-mat and in the process of getting up, colliding with the appellant who was then holding a <u>cup</u> of hot water. Eventually, when the appellant testified, she changed the story to her <u>soaking utensils</u> in hot water and holding <u>a small rice bowl</u> of hot water. Finally, in the closing submissions of the defence, it changed again, to that of the appellant <u>soaking a bowl with hot water</u> (the district judge's emphasis).

11. The defence of the appellant that Yani had self-inflicted the injuries on herself, other than the burn injury, was found to be far-fetched and unbelievable. The defence's submission was that the injuries were self-inflicted either within the six days before photographs of the injuries were taken on 27 June 2001 or when the appellant and her husband were at the Small Claims Tribunal on the morning of 21 June 2001. The first possibility was groundless as Yani was examined on 22 June 2001. As for the second possibility, the district judge found it incredible that, after the scalding incident, Yani, without any motive or purpose, immediately came up with a scheme, self-inflicted such extensive injuries on herself and then informed the police through an anonymous telephone call by an unidentified male. Despite all the preparation, which the appellant had apparently done with the

intention to repatriate Yani back to Indonesia, there was no evidence that Yani had any knowledge of it at all.

12. Therefore, the district judge convicted the appellant and sentenced her to ten months' imprisonment for scalding Yani with hot water, two months' imprisonment for kicking Yani's back three times and also imposed a fine of $500 for pouring warm water on the back of her head. The imprisonment sentences were ordered to run concurrently.

The appeal

13. In this appeal, the bulk of the appellant's challenges were directed towards the district judge's findings of fact. The principles governing an appellate court's role in reviewing a trial judge's findings of fact are well-settled. In *PP v Azman bin Abdullah* [1998] 2 SLR 704 at 21, I made the following observations :

> It is well-settled law that in any appeal against a finding of fact, an appellate court will generally defer to the conclusion of the trial judge who has had the opportunity to see and assess the credibility of the witnesses. An appellate court, if it wishes to reverse the trial judge's decision, *must not merely entertain doubts whether the decision is right but must be convinced that it is wrong : see PP v Poh Oh Sim* [1990] SLR 1047 [emphasis added].

I now turn to the appeal proper.

Shifts in the appellant's defence

14. It was contended that the supposed shifts in the defence as highlighted by the district judge in his judgment happened as a result of a series of mistakes made by the appellant's counsel and that she had informed him accordingly of the mistakes, immediately after the hearing on 29 October and again before 3 December 2001. When the appellant's counsel made mistakes again at the hearing on 3 December 2001, the appellant discharged him and represented herself in court. As such, the defence was only brought in line with the correct version ultimately put forth on 3 December 2001. What the district judge cited as a shift was no more than the appellant's reaffirming the correct version of what happened.

15. I found this difficult to accept. The shifts in defence did not merely involve which receptacle the appellant was holding when the accident occurred; whether it was a mug or a bowl or a cup. It shifted entirely from Yani *squatting down to wash clothes in the kitchen bathroom* and the appellant *walking in with a mug of hot water* to Yani *being in the kitchen* squatting down *to retrieve a floor mat* and knocking into the appellant *who was at the sink with a bowl of hot water.* The appellant was noted by the district judge to be a highly intelligent woman. She was writing notes throughout the whole trial. On 29 October 2001, there were several occasions when she had signalled to her counsel for communication. The district judge had allowed the counsel to step over to the dock to discuss things with her. The 'mistakes' made by counsel were not minor contradictions but deviated greatly from the supposed 'correct version'. And yet the appellant failed to point out those mistakes to her counsel or to the court during the trial of 29 October 2001, despite having had several opportunities to do so.

The video clips

16. The district judge was doubtful of the timings stated in the video clips which were recorded on the night of the alleged abuse. In his view, the timer could always be adjusted to reflect the time desired. Counsel for the appellant argued that the district judge had erred in this regard. I accept his

submissions that, while the timer could be adjusted *before* the recording started, it could not be done so *after* the recording. There was sufficient evidence to show that the preparation of the video clips was made way before the police arrived at the appellant's apartment on the night of 21 June 2001. As such, there was no reason to doubt the authenticity of the video clips.

17. Nevertheless, in my opinion, the district judge was correct to attach very little weight to the video clips. The video clips were tendered as evidence in court to substantiate the appellant's claim that she was assisting her husband, Mr Low, to make the video clips on 21 June 2001 between 12.30 pm to 2.00 am. It was argued that she could not thus have scalded Yani at around 1.15 am, the time at which the incident was alleged to have occurred. However, the first two video clips was found to have stated the time to be 12.53 am and 1.23 am respectively and they did not contain any images. The third video clip had a recording of a wooden TV console as well as of Mr Low opening drawers, with the appellant's voice in the background. This third video clip had the timing stated as 1.54 am. As the first two video clips did not contain any images, and the time of the alleged abuses as stated in the charges were between 1 am and 1.15 am, it was clear that the video clips did not help to advance the appellant's case. In addition, Mr Low's testimony that the appellant was with him during the entire recording of the video clips had to be treated with caution as he was found to be an interested witness. Mr Low's doubts, hesitation, signs of anxiety and nervousness in court as recorded by the district judge further eroded his credibility as a witness. In my view, the district judge was clearly entitled to disbelieve Mr Low's testimony.

Yani's testimony of the incident

18. It was argued that the district judge was wrong to have believed Yani's testimony as her version of events was inherently incredible. Yani had testified that she was squatting down in the toilet and was sleepy. Presumably she was leaning forward. SIO William Lee's testimony was that Yani had told him that her employer came from behind and used hot water to splash on her left arm. In such a position, it was not possible for Yani to have known where the water was obtained from or the receptacle used by the appellant and yet Yani identified both the thermos flask and the mug respectively. Furthermore, Yani's version that she used her arm to ward off the hot water would have necessitated or at least given cause for the sides of her body to be scalded as well and yet there were no burn marks on the left side of her body. In addition, it was most unusual how the same 'hot' water could have such markedly different effects, causing no marks or burns on Yani's neck but yet purportedly hot enough to scald her arm.

19. In my opinion, there is really nothing so unbelievable about Yani's testimony. She had testified in her examination-in-chief that "maybe, she took the water from the thermos flask". She was not clear as to the origin of the hot water but surely it was not difficult for her to assume that it came from a thermos flask in the kitchen, in which hot water is normally stored. Furthermore, it could not be said that it was impossible for her to see the receptacle used by the appellant to splash hot water on her, *as* she raised her left arm to ward off the water. It was a reflex action, indicative of the fact that Yani must have seen the appellant approaching her with the receptacle a few moments before the hot water was actually splashed onto her left arm.

20. As for the fact that there were no burn marks on her left side, it did not mean that Yani's version was not to be preferred over the appellant's. The district judge was entitled to note the nature of the injury from the photographs, as a well-defined burn from severe scalding and compare it with both the appellant's and Yani's versions of the events. I was inclined to believe that such a well-defined burn would more likely be caused by a deliberate splashing of hot water using direct force rather than an accidental spillage of hot water from a bowl. In my view, the district judge was correct to make the determination that Yani's version of events was more in line with the burn injury.

21. As for the allegation that the ‘hot’ water was the same and could not have caused different effects, the district judge had dealt with this point thoroughly in his judgment and, in this regard, it was not possible to overturn his finding of fact. He had rightly noted that Yani used two different descriptions for the temperature of water. He had also referred to *Kamus Dwibahasa,* a Malay dictionary and found that in the Malay language, no difference is made between ‘warm’ and ‘hot’. In the light of such observations, he was of the view that the two different phrases used by Yani to describe what she felt to be different temperatures poured on her neck and her arm respectively, ‘hot’ and ‘very very hot’ must be regarded as sensible and fitting in the circumstances.

The rest of the injuries

22. In the medical report itself, Dr Tan had recorded that he was unable to say anything of the age of the injuries and that the possibility of self-infliction of the injuries was uncertain. Counsel for the appellant argued that there was no evidence that Yani was never allowed to leave the apartment. She had had opportunities to meet with the neighbours and even to mingle with other maids in the estate. If the appellant had indeed abused Yani, why had she not complained to anyone about it? Yani could also have gone to her agent, Florence Chua ("Ms Chua"), for help but she did not do so. It was said that the only reasonable explanation for this was that the appellant had never assaulted or abused her. The district judge failed to consider sufficiently the possibility that the rest of the injuries, other than the burn injury found on Yani, were self-inflicted or even that they were old injuries from bruises that Yani had sustained during the course of the work.

23. From the evidence, it seemed that the only time that Yani was left alone in the apartment after the alleged ‘scalding accident’ on 20 June 2001 was when the appellant and her husband had been at the Small Claims Tribunal. It is doubtful that during that short span of time, Yani could have self-inflicted herself with such extensive injuries and then come up with a scheme to get an anonymous male caller to inform the police.

24. More importantly, the appellant had not been able to give a reasonable explanation as to why Yani would have wanted to self-inflict injuries on herself. The only reason that the appellant offered was that Yani did not want to be sent back to Indonesia. Yet, despite all that was being done to repatriate Yani back to Indonesia, such as obtaining a letter of repatriation from the maid agency, there was no evidence whatsoever that Yani had any knowledge of it. Without a motive on Yani’s part, it is an incredible defence to say that Yani had planned, executed and endured such a great extent of injuries on herself.

25. To suggest that the injuries were sustained in the course of work was even more revealing. There were bruises corresponding to *finger marks* on the right arm of Yani. By no stretch of any imagination, could it be said that such bruises were sustained in the ordinary course of work as a domestic maid.

The biting incident

26. It transpired during the trial that Yani had bitten the arm of the appellant’s baby, Andres, once before and this had been reported to the police by the appellant on 23 March 2001. It was argued by the counsel for the appellant that this incident was of major significance; namely, that it showed the vicious nature and character of Yani in biting a helpless 9-month old baby, Yani’s propensity to lie in court and finally the forgiving and considerate nature of the appellant in giving Yani a second chance and not repatriating her immediately. Counsel for the appellant made much of this incident, contending that the district judge had, unfortunately, not appreciated sufficiently the significance of this biting incident.

27. A reading of the judgment of the district judge revealed that he did, in fact, accept that Yani had bitten the arm of the baby and had considered the issue of whether a maid who had bitten a baby could well concoct lies to 'frame' the appellant. He was of the conclusion that Yani had not been inconsistent and saw no reason to disbelieve her testimony that she bit the baby when the appellant was beating her legs with a toy stick. Yani had never given different versions of the biting incident herself. Her version of the incident was contradicted by the maid agent, Ms Chua and by the appellant's good friend, Basil Camoeus, who spoke to Yani soon after the incident. However, the district judge had dealt with their evidence thoroughly. He found that Ms Chua was only told about the incident by the appellant herself and had never had the opportunity to speak to Yani about it. As such, Yani could not have told her that she bit the baby because she wanted to force a three-pin plug out of the baby's mouth. As for Basil Cameous's testimony, the district judge found it to be vague and did not establish much other than the fact that Yani had bitten the baby, a point which was not disputed. Despite the biting incident, the district judge found, on the totality of evidence before him, that Yani had been truthful and that there was no basis to reject her evidence. I saw no reason to depart from the district judge's finding that Yani had neither been inconsistent nor had she concocted lies to frame the appellant.

Conclusion

28. In conclusion, I found that the appellant could not succeed in her appeal. She was unable to show that the district judge was wrong in coming to his conclusion that the prosecution had proven its case beyond a reasonable doubt. Yani was merely eighteen years old at the time of employment and the appellant was her first employer since she arrived in Singapore from Indonesia. The actions of the appellant in abusing a mere eighteen-year old girl under her power and authority were wholly reprehensible. The district judge had properly considered all the circumstances of the case on the issue of sentence and the sentence could not be regarded as manifestly excessive. Accordingly, I dismissed the appeal and upheld the sentence imposed by the court below.

Appeal dismissed

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore

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