Lim Chuan Huat and Another v Public Prosecutor
[2002] SGHC 2

Case Number : MA 218/2001, 219/2001

Decision Date : 07 January 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Peter Yap (Chor Pee & Partners) for the first appellant; Kertar Singh (Kertar & Co) for the second appellant; Daniel Yong (Deputy Public Prosecutor) for the respondent

Parties : Lim Chuan Huat; Anor — Public Prosecutor

Criminal Law – Offences – Voluntarily causing hurt to maid – Appellants individually assaulting maid on various occasions – Whether assaults forming same transaction – Applicable tests – s 176 Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Charge – Duplicity – Charge containing more than one distinct offence – Duplicity resulting from use of phrase 'various occasions'- Whether duplicity mere irregularity and curable – ss 159(1), 168 & 396 Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Charge – Errors in charge – Particulars of charge – Ambiguity in use of phrase 'various occasions' – Whether errors material – Whether appellants misled by errors – ss 159(1) & 162 Criminal Procedure Code (Cap 68)

Criminal Procedure and Sentencing – Sentencing – Defective charges – Whether error relevant in determining guilt – Whether error an irregularity – Whether curable – Proper remedy – Jurisdiction of High Court to maintain or set aside sentence – s 261 Criminal Procedure Code (Cap 68)

Judgment

GROUNDS OF DECISION

The appellants were separately charged for causing hurt to their maid but were jointly tried in the district court. Both appellants appealed against their respective convictions and custodial sentence.

2 The charge against the first appellant (Lim) reads as follows:

> That you, Lim Chuan Huat, M/42 years, are charged that you on various occasions between the 5th day of March 1999 to the 11th day of June 1999, at Blk 295 Choa Chu Kang Avenue 2 # 12-159, Singapore, did voluntarily cause hurt to one Suprapti, F/27 years, to wit, by hitting her back, shoulders and hands with your hands and a rattan cane, and you have thereby committed an offence punishable under section 323 of the Penal Code, Chapter 224, read with section 73(2) of the Penal Code Chapter 224.

3 The charge against the second appellant (Tan) reads as follows:

> That you, Tan Suan Kheng @ Tan Lim Kheng, F/34 years, are charged that you on various occasions between the 5th day of March 1999 to the 10th day of June 1999, at Blk 295 Choa Chu Kang Avenue 2 # 12-159, Singapore, did voluntarily cause hurt to one Suprapti, F/27 years, to wit, by pinching her cheek and pulling her ears, and by hitting her hands with a rattan cane, and you have thereby

committed an offence punishable under section 323 of the Penal Code, Chapter 224, read with section 73(2) of the Penal Code Chapter 224.

4 The district judge convicted both appellants on their respective charges and sentenced each appellant to three months imprisonment and a fine of $ 1,500 (in default two months imprisonment). An offence of voluntarily causing hurt under s 321 of the Penal Code read with s 323 of the Penal Code carries a maximum fine of $1,000 or a term of imprisonment which may extend to one year, or both. However, as the victim in this case was a domestic maid and the perpetrators her employers, the court, pursuant to s 73(2) of the Penal Code, may increase the punishment to one and a half times the amount of punishment to which the accused would otherwise have been liable for that offence. The fine of $1,500 each has already been paid.

Facts

5 The victim, Ms Suprapti, an Indonesian, began working as a domestic maid for the appellants on 5 March 1999. Her duties included general household chores as well as looking after the appellants four year old daughter. During the course of her work, the victim was told to maintain a diary to keep a record of the chores she had done and any mistakes which she had made. The victim was also sometimes required to read the diary aloud to either of the appellants. The appellants claimed that they wanted her to record her mistakes in the diary so that she could learn from them and not repeat the same mistakes in future. This was their unusual method of helping the victim improve her work.

6 On 10 June 1999 at about 8 am, the victim was cooking in the kitchen when Tan came in and asked her why she had not shown or read the diary to her. The victim was told to read the diary 100 times. She stopped after reading it 50 times instead of 100 times as instructed as she was busy with her chores. Tan scolded the victim for not obeying her instructions and proceeded to hit her palms several times with a rattan cane. Tan also pinched the victim on her left cheek. When Tan asked her to continue reading the diary, the victim replied that she was tired and had other chores to perform. At this, Tan scolded the victim and pulled her ears. Tan then dragged her into the kitchen toilet and doused her face and body with cold water. Tan subsequently refused to let her change out of her wet clothes and she had to continue to work in them, without changing.

7 At around 12 or 1 pm the same day, the victim brought Tans daughter to the toilet in the master bedroom to relieve herself. Tan came into the toilet and upon noticing that the childs fingernails were long, instructed the victim to fetch the nail clipper. Tan then noticed that the victims own fingernails were also long and instructed her to cut her own fingernails as well. The victim said that she would cut her own fingernails as soon as the child had finished relieving herself and after the victim had given the child her milk. Tan scolded the victim for disobeying her instructions by not cutting her fingernails immediately and proceeded to punish her by caning her palms. After this, Tan told the victim to pull her own ears and to squat and stand alternatively.

8 Next, on 11 June 1999 at about 6 am, Tan was unhappy to find that the victim had not prepared her breakfast on time. Tan complained to her husband, Lim, who then caned the victim on both her shoulders. As the victim was previously instructed to stand against the kitchen wall with both her palms facing upwards whenever she was to be caned, the victim proceeded to assume the position while Lim caned her palms repeatedly. As a consequence of the caning, the victim was late in retrieving Lims newspaper from the front door for him to read. This angered Lim who used his right hand to beat her once on her back while she was running to collect the newspaper from the front door.

9 The victim testified that the cane her employers used was about 50 cm in length with a front red tip of about 10cm. However this cane was not found when the police conducted a search of the flat. According to the victim, she saw the cane under the sofa when the police came to search the house and she suspected that Lim had thrown the cane away in the rubbish chute. A search for the cane in the rubbish chute by the victim and the police was to no avail.

10 Dr Chow Yew Cheong examined the victim on 12 June 1999. In his report, Dr Chow listed the following injuries on the victims body:

Bruises

1 Left Cheek 1 cm
2 Two over left shoulder 3cm & 1 cm
3 Right shoulder 1 cm
4 Two over right forearm 1.5 cm each
5 Right palm
6 Two over right hand 1 cm each
7 Left wrist 0.5 cm
8 Two over left hand 0.5 cm each
9 Left thigh 2 cm

Abrasions

1 Both forearms
2 Both earlobes

Erythema (

the medical term for reddening of skin)

1 Both breasts

The Decision Below

11 The trial judge accepted the victims evidence that Tan assaulted her on 10 June 1999, and that Lim assaulted her on the morning of 11 June 1999. He ruled that the credit of both appellants had been successfully impeached by the prosecution on the basis that there were material discrepancies between the appellants respective long statements and their individual testimonies in court. As a result, he rejected both appellants version of the events as well as their defence that they had never assaulted the victim and that the victims injuries were self-inflicted. He also found the victims evidence to be consistent with the evidence of Dr Chow, who testified that, judging from the number and random distribution of the injuries, it was unlikely that the injuries were self-inflicted.

The Appeal

12 The appellants appeal was based on two main grounds. First, that the individual charge of each appellant was bad for duplicity; and secondly, that the trial judge had erred in law by proceeding with a joint trial for both appellants. Counsel for the appellants contended that this was contrary to s 168 of the Criminal Procedure Code (Cap 68) ("CPC") and amounted to an illegality which was incurable. They submitted that the duplicity contained in the appellants respective charges coupled with the joint trial of both appellants caused a confusion in the mind of the trial judge, who relied on prejudicial

evidence in the finding of guilt against the appellants. This resulted in a failure of justice and both the appellants convictions should accordingly be set aside.

13 I dealt with the appellants first contention of duplicity before considering the second issue of whether the appellants could and should have been jointly tried.

Whether the individual charge against each appellant was duplicitous

Duplicity

14 A charge alleging that the accused committed two or more distinct offences is duplicitous and contravenes s 168 of the CPC. The object behind s 168 is to ensure a fair trial and to see that the accused is not overwhelmed by having to defend several unconnected charges, or distinct offences lumped together in one charge. This is to save the accused from being embarrassed in his defence as well as to prevent the court from being unduly influenced by the different evidence tendered against the accused on different charges. The exceptions referred to in s 168 are confined to the rule on joinder of charges and do not apply to duplicity: see *See Yee Poo v PP* [1949] 1 MLJ 131 and *Chuan Hoe Engineering Pte Ltd v PP* [1996] 3 SLR 544. In this connection, I agreed with the appellants contention that both their respective charges were bad for duplicity. This was because each of these various occasions which the appellants were charged with, for voluntarily causing hurt to the victim, clearly constituted a distinct offence for which a separate charge should have been preferred.

15 The cases of *Chuan Hoe Engineering v PP*, *See Yee Poo v PP* and *Ramachandran v PP* [1972] 2 MLJ 183, all of which were cited by the appellants in support of their above contention, also stand for the legal proposition that, so long as each of these offences could have been the subject of a separate charge, and could have been proceeded with at one trial, the duplicity is merely an irregularity which can be cured by s 396 of the CPC. This is provided the accused was not prejudiced in his defence and there was no failure of justice occasioned by the irregularity. A failure of justice is considered to have occurred where the duplicity caused confusion in the mind of the trial judge so that he did not consider the evidence in respect of each alleged offence separately.

16 On the facts of the present case, I was of the opinion that there was no failure of justice occasioned by the duplicitous nature of the appellants charges. This was not a situation where I did not know, and could not ascertain, what offence the trial judge convicted the appellants of. On the contrary, I found that the trial judge had clearly directed his mind in keeping the evidence against each alleged offence separate when convicting the appellants of their respective charges. This was evident from his detailed grounds of decision which ran into some 274 paragraphs. Not only did I find that the trial judges grounds of decision demonstrated an awareness of the necessary ingredients of the appellants respective charges, I was of the further opinion that the trial judge recognised the fact that there was only sufficient evidence to make out the portion of the charge against Tan and Lim for voluntarily causing hurt to the victim on 10 and 11 June 1999 respectively (see below). In this connection, he accepted the evidence of the victim that Tan assaulted her in the manner laid out in her charge on 10 June 1999 and that Lim assaulted her in the manner specified in his charge on 11 June 1999. He also accepted the evidence of Dr Chow that the injuries found on the victims body were unlikely to be self-inflicted, and that the bruises on the victims shoulders, palms, forearms and breasts were likely to be attributed to caning and that the bruise on the victims left cheek was consistent with pinching or punching. From the trial judges grounds of decision, he did not appear to have relied on any evidence relating to the victims bare allegation of the various other incidents of assault in convicting Tan and Lim of causing hurt to the victim on 10 and 11 June respectively.

17 In relation to whether the appellants were prejudiced in their defence by the duplicity contained in their charges, I found that they were not so prejudiced. This was not a situation where the appellants had a specific defence corresponding to each of the specific incidents of assault alleged by the victim. Instead, both Lim and Tan had only one defence viz. completely denying ever assaulting the victim at any time whatsoever and maintaining throughout the duration of their trial that the victims injuries were self-inflicted. In this respect, I was of the opinion that the duplicity contained in individual charges of the appellants did not occasion a failure of justice and could be cured by s 396.

Bad drafting of charge

18 Notwithstanding that the latent duplicity contained in charges can be cured by s 396, I was of the further opinion that the manner in which the individual charges were drafted was in breach of s 159(1).

19 Section 159(1) of the CPC mandates that the charge shall contain particulars as to : (i) the time and place of the alleged offence, and (ii) the person (if any) against whom, or the thing (if any) in respect of which, the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

20 In relation to the charges, I found the phrase various occasions ambiguous. It shed no light at all on the exact number of occasions each appellant had allegedly caused hurt to the victim. The manner in which the charge was drafted also left the reader in doubt as to how each appellant had allegedly caused hurt to the victim. It was also unclear whether the nature of hurt inflicted by the appellants differed between each of these various occasions or whether it was always the exact combination of acts as stipulated in the appellants charges. Taking Lim as an example, did he always cause hurt to the victim by hitting her on her back, shoulders and hands with his hands and a cane, or were there instances where he had only used a cane to hit the victim on her palms?

21 Notwithstanding that charges against the appellants breached s 159, s 162 CPC provides that:

> No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission.

22 The object behind the concern of whether an accused is misled by errors in his charge is to safeguard the accused from being prejudiced in his defence. It is only in situations where the accused have been so misled, that the errors are considered material and go towards the validity of his charge.

23 In the present case, I found that the appellants were not misled by the errors in their respective charges, and therefore did not consider the errors to be material. Given that the victim was the first prosecution witness, all the alleged incidents would have been mentioned during her examination-in-chief. The notes of evidence reveal that the victim gave specific evidence that Tan had voluntarily assaulted her on 10 June 1999 in the exact manner as stipulated in Tans charge. She also gave specific evidence that Lim had struck her on 11 June 1999 in the exact manner specified in Lims charge. However, the victims evidence in relation to the various occasions other than 10 and 11 June 1999 was that the incidences of assault did occur but she could not remember the exact details. Hence, the victims evidence in relation to the incidents of assault, save those which occurred on 10 and 11 June 1999, were nothing more than bare allegations. It was also clear from the notes of

evidence that the victim did not confuse the incidents which happened on 10 and 11 June with the other incidents of assault of which she had trouble recalling the details. Therefore, not only were Lim and Tan specifically aware of the incidents of assault which the victim was alleging, but they were also afforded the opportunity to cross-examine the victim as well as to lead their own evidence on these incidents.

24 The charge for voluntarily causing hurt under s 321 of the Penal Code comprises three elements : *Farida Begam d/o Mohd Artham v PP* [2000] 4 SLR 610. They are namely

> (i) that the accused intended to cause hurt or knew that his/her actions were likely to cause hurt;
>
> (ii) the victim was hurt within the definition of s 319 of the Penal Code (ie the victim suffered bodily pain, disease or infirmity); and
>
> (iii) the accuseds action caused the hurt in question.

25 From the notes of evidence it was clear that the prosecution did not have sufficient evidence to prove the second and third elements of the charge in relation to all the various occasions of assault referred to in the charge. This was especially since the prosecutions case was premised solely on the testimony of three witnesses. They were namely, the victim, Dr Chow whose report only documented the 12 injuries (see para 10 above) and the investigating officer who recorded the first information report (whose evidence was not relevant for present purposes). In such a situation, the appellants could hardly be said to have been misled. This was because they would have known by the time the victim had given her evidence that the prosecution only had sufficient evidence to make out the elements of the charge against Tan for causing hurt to the victim on 10 June 1999, and against Lim for causing hurt to the victim on 11 June 1999. In other words, the appellants knew full well the charges they had to meet and were not left in doubt at trial as to what they were being charged with.

26 I note that the ambiguity and latent duplicity contained in the appellants charges resulted directly from the use of the phrase various occasions. This was an inexcusable error on the part of the prosecution especially since it could have been easily avoided by more careful drafting. It was fortuitous for the prosecution that the facts of this particular case lent themselves to a relatively straightforward application of s 162 and s 396 of the CPC. Had the evidence been less clear, or the appellants had specific defences corresponding to a particular incident, the ambiguity and latent duplicity contained in the charges would have resulted in an illegality. However, as I found the appellants knew the case they had to meet and were not placed in a position of embarrassment, they were not hindered or in any way prejudiced by the form of their charges which could be cured by s 162 and s 396 of the CPC.

Whether the appellants could and should have been jointly tried

27 The appellants second ground of appeal was that the trial judge had erred in trying both appellants together in a joint trial. They submitted that, in so doing, the trial judge had essentially failed to consider the evidence in respect of each appellant separately and that this failure caused the trial judge to rely on prejudicial evidence.

Whether the offences were committed in the same transaction

28 Section 176 of the CPC permits a joint trial where more than one person is accused of the same offence or of different offences in the same transaction. In the case of *Tse Po Chung Nathan v PP* [1993] 1 SLR 961 the Court of Appeal had to decide whether the first and second accused, who were convicted on similar but separate charges of importing 2178.0 g and 2190.3g of diamorphine, committed the offences in the same transaction and could thereby be jointly tried pursuant to s 176. Chao JA in delivering the decision of the Court of Appeal said at page 969 that:

> Ratanlal on Criminal Procedure Code (1985 Ed) at p 225 states that `the real and substantial test for determining whether several offences are connected together so as to form the same transaction depends upon whether they are so related to one another in point of purpose, or cause and effect, or as principal and subsidiary acts as to constitute one continuous action.
>
> Mitra on the Code of Criminal Procedure (16th Ed) states the tests in similar vein as follows at p 1385:
>
> > The tests to decide whether different acts are part of the same transaction are proximity of time, unity of place, unity of purpose or design and continuity of action. It is not necessary that all of them should be present to make the several incidents parts of the same transaction. Unity of place and proximity of time are not important tests at all, but the *main test is unity of purpose*. If the various acts are done in pursuance of a particular end in view and as accessory thereto, they may be treated as parts of the same transaction. *As to what is the same transaction must depend upon the facts and circumstances of each particular case*. It is not the distance nor the proximity of time which is so essential in order to consider what is `the same transaction` as the continuity of action and purpose. The expression `same transaction` must be understood as including both the immediate cause and effects of an act or event, and also its collocation, or relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of time space, cause and effect. *For a joint trial under s 239, identity of purpose is sufficient. Community of purpose in the sense of conspiracy is not in any way necessary, though if it is present, its presence will be a further element supporting a finding that the offences are committed in the same transaction.* Where the prosecution case alleges association and community of purpose among the accused, their joint trial is permissible. For s 223 it is enough if the different offences are committed in the course of the same transaction. The criterion which makes a joint trial allowable is what the prosecution case is, not what the result may be.

Under common law the position seems to be similar and we would just quote a passage of the Court of Criminal Appeal in *R v Assim* [1966] 2 QB 249 at p 261:

> Where, however, the matters which constitute the individual offences of the several offenders are upon the available evidence so related, whether in time or by other factors, that the interest of justice are best served by their being tried together, then they can properly be the subject of counts in one indictment and can, subject always to the discretion of the court, be tried together

[*Emphasis added*]

29 The Court of Appeal held that since the act of each accused was so closely connected with the act of the other, it could be said to have been done conjointly with the other. There was also a common or identity of purpose in the separate acts of both accused. Hence the offences were committed in same transaction.

30 Sarkar on Criminal Procedure (7th Edn) also echoes the common law position enunciated in the case of *R v Assim* where he states at page 718 that "[c]ommon sense and the ordinary use of language must decide whether on the facts of a particular case it is one transaction or several transactions". He is also of the further opinion that the expression same transaction being incapable of exact definition, has been left undefined in order that the courts discretion may not be fettered in any way.

31 Based on the foregoing, I found that the facts of the present case supported the trial judges decision to allow the appellants to be tried together. Not only was there an identity of purpose in the separate acts of the appellants, but there was unity of place and proximity of time. Furthermore, common sense dictates that given the facts of this particular case viz. the victim was the sole employee of both the appellants and the offences took place in the intimate setting of a household over a consecutive period of two days, it is not against the interest of justice for the appellants to be jointly tried. Thus, on the basis of their charges, the appellants could be jointly tried under s 176 of the CPC.

32 In finding that the offences were committed in the same transaction, I was mindful of the seemingly conflicting authority of *Manikum and another v PP* [1947] 1 MLJ 90, where Williams CJ held that two accused who committed criminal trespass on two different days could not be tried together as their offences were not committed in the same transaction. It is not clear from Williams CJs extremely brief judgment what the time lapse was between these two different days or whether the two appellants even had an identity of purpose. Given the paucity of details, I was unable to glean any meaningful legal proposition from the case of *Manikum* and I question the ability of such an attempt.

Whether a joint trial caused prejudice to the appellants

33 Since the appellants could be jointly tried under s 176 of the CPC, the next consideration was whether the appellants should have been jointly tried. In other words, whether there was any prejudice caused to the appellants in being tried together. The appellants supported their contention that they had in fact been prejudiced by the following reasons. First, the trial judge did not make any distinction between the acts of Lim and Tan in the period prior to 10 and 11 June 1999. Secondly, the trial judge did not keep the evidence applicable only to each appellant separately. They claimed that this was evident from his failure to make a clear finding as to which appellant inflicted which injuries and on which date. Finally, there was confusion and doubt in the trial judges findings as to what

would be the relevant and admissible evidence that implicated which of the two appellants.

34 I found the appellants contentions to be misconceived. From my reading of the trial judges grounds of decision, he did not appear to rely on alleged incidents of assaults by the appellants prior to 10 and 11 June in finding Tan and Lim guilty of their respective charges. Further, the fact that the trial judge failed to specifically state which injury was inflicted by whom and on which date did not necessarily mean that the trial judge imported into the case of one appellant, evidence admissible only against the other. In fact, I found that the manner in which the trial judge organised the evidence in his grounds of decision showed that he considered the evidence of each appellant separately. Furthermore, a reading of his grounds of decision revealed that the trial judge did not use the evidence of the wifes act of assault on the maid as evidence in convicting the husband, nor vice versa. The victims evidence in respect to who inflicted what injuries on which days was also extremely clear. This was partly because the appellants did not assault the victim jointly but individually on two different days. In addition, they also assaulted her on a different part of her body causing corresponding injuries to those parts of her body. The only common manner in which they had hurt the victim was by caning her on her palms. According to Dr Chows evidence, this in all probability resulted in the bruising of the victims hands as well as the bruises on her forearms and the reddening of the skin around her breasts. The victim also conceded that the bruises to her forearms and breasts were probably caused by the tip of the rattan cane hitting her breasts and forearms while she was being caned on her palms. This is because whenever she was caned on her palms, she was told to hold up her palms to chest level.

35 In this connection, other than the injuries on her hands, forearms and her breasts, the cause of the victims injuries could clearly be attributed to her corresponding perpetrator simply by observing where the injuries in question were located on the victims body. For example, the bruise on the victims left cheek could only be attributed to Tan who had pinched her on her left cheek, whereas the bruises on the victims shoulders was a result of Lim caning her on her shoulders. In this respect, it is difficult to see how the trial judge could have confused the evidence of the appellants in finding that the elements of the offence of voluntarily causing hurt had been made out against them.

36 Based on the above, I found that the appellants had not been prejudiced by being jointly tried and that their conviction should not be set aside.

Appeal on Sentence

37 The facts of this case presented a rather interesting point of law whether a distinction could be drawn between a confusion in the mind of the trial judge in considering the evidence which went towards establishing the ingredients of the charge in finding a conviction, and that which went towards affecting the trial judges discretion in sentencing. A failure of justice is occasioned only in the former viz. where the confusion in the mind of the trial judge as to the evidence to be considered goes towards the conviction and not in the latter. The fundamental issue at a criminal trial is the establishment of guilt. Hence, there can only be a failure of justice where the error in question (e.g the trial judges error of confusing the evidence) goes towards his conclusion of the guilt of the accused. However, where the error in question is irrelevant for the purposes of determining guilt and only affects the sentence, then is it an irregularity that can be cured. The proper remedy for such an irregularity is however not by the application of s 396 of the CPC, but by way of s 261 of the CPC which gives the High Court the jurisdiction to maintain a sentence or set aside a sentence that is manifestly excessive or inadequate in the circumstances of the case.

38 Hence, while I found that the trial judge had erred in taking into consideration the unsupported

allegations of the victim that she was consistently abused by her employers in sentencing the appellants, I was disinclined to reduce the sentence as I did not consider the sentence to be manifestly excessive. While it may be socially acceptable to some for parents to chastise their children by gently caning them with a rattan cane, using the same punishment on a maid who is employed in her professional capacity to assist in domestic chores is another issue altogether. It is not only humiliating for the maid to be treated and punished like a child by having her ears pulled, cheeks pinched and palms caned with a rattan, such acts are also cruel and uncivilised and should not be condoned by the society in which we live in today.

Conclusion

39 For the reasons above, I dismissed the appellants appeal against conviction and upheld the sentence imposed by the trial judge.

Appeals dismissed.

Sgd:

YONG PUNG HOW
Chief Justice