

Lwee Kwi Ling Mary v Quek Chin Huat
[2003] SGHC 38

Case Number : MA 146/2002

Decision Date : 26 February 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Edmond Pereira (Edmond Pereira & Partners) for the appellant; Respondent in person

Parties : Lwee Kwi Ling Mary — Quek Chin Huat

Criminal Procedure and Sentencing – Sentencing – Criminal intimidation – Death threat with weapon – Effect of threat on victim – Acting partially in private defence – Whether sentence was manifestly excessive – Penal Code (Cap 224, 1985 Rev Ed) s 506

This was an appeal by Mary Lwee Kwi Ling ('Mary') against the sentence imposed by Magistrate Chong Kah Wei in Private Summons 575 of 2001. The magistrate convicted Mary of one charge of criminal intimidation towards one Quek Chin Huat ('Quek'), an offence punishable under s 506 of the Penal Code (Cap 224) and sentenced her to 10 weeks' imprisonment.

The charge

2 The charge against Mary read as follows:

You, Mary Lwee Kwi Ling, NRIC: S 2554649/J, F/46 yrs, are charged that you, on the 11th day of March 2001 at or about 2050 hours at the corridor of unit #27-04, Tower 2A, The Bayshore, 30 Bayshore Road, Singapore 469974, did threaten to cause injury to one Quek Chin Huat, to wit by wielding a chopper and shouting the words, "I am going to kill you", with the intention of causing the said Quek Chin Huat to be alarmed and you have thereby committed an offence punishable under Section 506 of the Penal Code (Chapter 224).

Undisputed facts

3 Mary and her husband, Chai Yaw Hoi ('Chai')(collectively referred to as 'the Chais') rented an apartment at #04-07, Tower 2A, The Bayshore, 30 Bayshore Road, Singapore 469974, from Quek's wife, Ng Chew Sin ('Ng'). At the material time, the Chais had sublet this unit to a sub-tenant. They themselves stayed at another unit in the same block, i.e. #27-04, which they owned.

4 On 11 March 2001, at about 8 p.m., Quek went to unit #27-04 to collect outstanding rent from the Chais, i.e. the rent for the months of February and March 2001 for the unit at #04-07. Chai informed Quek that he had already issued a cheque for the rent for the month of February. However, the cheque was with his maid, Cirila Ebu Salem ('Cirila'), who was not in the apartment. He issued another cheque to pay for the rent for the month of March to Quek and asked him to come back on the next day for the second cheque. Quek left the premises. When he was at the lift lobby of the ground floor, he met Cirila who confirmed that she had the cheque. Hence, Quek followed Cirila back to unit #27-04 to collect it.

5 Quek waited outside the apartment while the maid searched for the cheque. Meanwhile, Mary was

on the phone with Ng. She expressed her displeasure to Ng that Quek had come to her apartment to collect rent. Subsequently, Mary started shouting abusive words at Quek, who was still standing just outside the apartment. Quek retaliated by shouting abusive words at Mary which antagonised Chai. He pushed Quek with both his hand and he also pushed Quek's groin with his right leg. A scuffle ensued. Quek grabbed Chai's neck and pushed him causing him to move backwards into the apartment and land on a wooden elephant. As a result, Chai suffered an abrasion on the right side of the neck and a dislocation of the right shoulder. At this point, Mary took out a chopper from the kitchen and went to the dining area. She threatened to injure Quek by shouting the words "I am going to kill you" while wielding the chopper. Quek went out of the apartment and stood at the main gate, where he waited until the police came. Meanwhile, Cirila restrained Mary, removed the chopper and hid it in a kitchen cabinet.

6 A security guard who was employed by the condominium, Kulwant Singh s/o Didar Singh ('Kulwant Singh'), arrived at the scene to investigate the commotion. Subsequently, the police came pursuant to a call from Chai. They arrested Mary and asked Quek to go to the police station to assist in investigations. Chai was sent to the hospital.

7 On 8 June 2001, Quek took out a private summons against both the Chais. He accused Mary of, *inter alia*, the offence of criminal intimidation by wielding the chopper and uttering a death threat at him.

The decision below

8 The magistrate found that the elements of the charge against Mary for criminal intimidation were made out. This was because Mary had threatened Quek with an injury to his person by uttering the words "I am going to kill you" while wielding a chopper. Furthermore, he found that Mary had intended to cause alarm to Quek who was in fact sufficiently alarmed to leave the apartment in fear for his safety.

9 In sentencing Mary, the magistrate was aware that the benchmark sentence for the offence was six to 12 months' imprisonment. He considered the following aggravating factors: First, that the nature of the threat was a death threat made when Mary was armed with, and was wielding, a chopper. Secondly, that Mary had actually dashed at Quek and caused marks on the dining chairs and door with the chopper; and lastly, that Mary was not remorseful and had fabricated evidence at trial to exonerate herself. In Mary's favour, the magistrate noted that Mary had not been charged with aggravated criminal intimidation under the second limb of s 506 but with criminal intimidation *simpliciter* under the first limb of that section. The latter offence attracts a maximum sentence of two years' imprisonment while the former offence attracts a maximum sentence of seven years' imprisonment. Furthermore, Mary was acting, in part, in private defence of her property and of Chai who had been injured by Quek prior to her commission of the offence. Lastly, Quek did not appear to have been too frightened by the threat as he had waited outside the apartment.

The appeal

10 Mary appealed against her sentence on the ground that it was manifestly excessive. Her counsel, Mr. Edmond Pereira, submitted that her offence should not attract a custodial sentence. He

contended that the magistrate erred by placing too much emphasis on the finding that Mary made marks on the dining chairs and door using the chopper when there was no evidence to support that finding. He also contended that insufficient weight was placed on the fact that Mary was acting to protect herself, her husband and her property and also that Quek was not particularly frightened by Mary's threat.

11 In determining whether Mary's sentence was appropriate, I was guided by the following summary of the principles in relation to the sentencing of offenders under s 506 set out in *Sentencing Practice in the Subordinate Courts* (Butterworths, 2000 ed.):

For the purposes of sentencing, the nature of the threat, the context in which it was uttered, and the effect on the victim are the most significant factors. If the threat was with a weapon or accompanied by a weapon, a term of custody will be inevitable. Where the threat is to kill, the sentencing range is between six to 12 months' imprisonment. If the threat is to injure seriously or if it is committed in the course of an assault or other criminal conduct, a term of custody can also be expected.

Consequently, I considered the nature of the threat, the context in which it was made and the effect on Quek, the victim.

12 In my view, Mr. Pereira pointed correctly to the mitigating factors in the present case, both in the court below and on appeal. The context in which the threat was uttered was one in which her husband had just been attacked and injured by Quek. Quek had grabbed Chai's neck. He was also the stronger of the two and had managed to push Chai from the main door of the apartment, where they were both standing, to the place inside the apartment where the wooden elephant furniture was. Quek had stopped inflicting further injuries on Chai only when it was evident that Chai was injured and Cirila had intervened and asked Quek to stop so that Chai's injuries could be tended to. However, even after Chai was injured, Quek did not leave the apartment. It was only at this point that Mary took out the chopper and uttered the death threat at Quek to get him to leave the apartment. In doing so, Mary had clearly exceeded her right to private defence. However, the context in which she committed the offence was a relevant mitigating factor.

13 Another consideration in favour of Mary was that Quek did not appear to have been too alarmed by her threat. While he did leave the apartment in response to the threat, he continued to wait outside the apartment with the door remaining open. He voluntarily remained at a place that was within striking distance of Mary. He did not take any steps to call for help.

14 However, the nature of the threat made by Mary could not be taken lightly. She uttered a death threat at Quek while wielding a chopper. Before me, Mr Pereira argued that there was no evidence that Mary had actually used the chopper to create marks on the dining chair and door as the photographs which were allegedly taken by the security guard, Kulwant Singh, had not been produced in court. Quite apart from whether Mary did make marks on the chair and door, the threat made by Mary has always been viewed seriously by the law. In *PP v Luan Yuanxin* [2002] 2 SLR 98 at ¶ 9, I stated that a death threat made with a weapon should never be taken lightly.

15 In the recent cases, the sentences meted out to offenders have ranged from six months' to two years' imprisonment. In particular, in one case a six months' imprisonment was imposed and in another a two-year term was imposed. In *Sandar s/o Samuvallu v PP* (MA 214/96/01), the offender threatened his mistress by tapping her head with a hammer and threatening to kill her. In mitigation, he said he committed the offence because she had used vulgar language. He was sentenced to six months' imprisonment by the district courts and the sentence was upheld by me on appeal. In *PP v Luan Yuanxin*, the offender threatened to kill his wife while pointing a cleaver at her when she was within striking distance. The offender also chose to attack the victim in the confines of her room. The wife, fearing for her safety, left the house together with her mother and daughter at the first opportunity. She called for the police only when she was at the void deck where it was safe. I enhanced the sentence imposed on the offender to two years' imprisonment due to the numerous aggravating factors and a lack of mitigating factors in the case.

16 In my view, it was clear that the offence of uttering a death threat while using a weapon should normally attract a prison term of at least six months. Accordingly, I rejected Mr. Pereira's arguments that Mary should only be given a non-custodial sentence. However, I was persuaded that there were exceptional facts in the present case, which distinguished it from the other sentencing precedents. These were, first, that Mary had only uttered the death threat after seeing her husband attacked by Quek and after Quek's failure to leave her apartment; and secondly, that Quek had not seemed too alarmed by her threat. A sentence of less than six months' imprisonment was warranted in the circumstances but I was also of the view that the sentence imposed by the magistrate, i.e. ten weeks' imprisonment, was too lenient. I noted that the magistrate, at ¶ 161 of his Grounds of Decision, had admitted that the sentence he imposed was on the "lenient side".

Conclusion

17 Accordingly, I dismissed Mary's appeal and enhanced her sentence to three months' imprisonment. Counsel for Mary made an application under s 223 of the Criminal Procedure Code (Cap 68) for the commencement of her sentence to be deferred until after the Lunar New Year holidays. I granted the application and ordered Mary to commence serving her sentence on 4 February 2003.