Public Prosecutor v Yeo Gek Hong
[2003] SGHC 61

Case Number : MA 284/2002

Decision Date : 24 March 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Sia Aik Kor; Goh Peck San

Parties : Public Prosecutor — Yeo Gek Hong

Criminal Law – Offences – Causing hurt – Whether case against accused made out – Penal Code (Cap 224, 1985 Rev Ed), ss 73 and 323.

1 The respondent, Yeo Gek Hong ('Yeo'), was tried in the magistrate's court on a charge of causing hurt to the complainant, her Indonesian maid, an offence punishable under s 323 read with s 73 of the Penal Code (Cap 224). She was acquitted of the charge and the prosecution appealed against the magistrate's decision. I dismissed the appeal and now give my reasons.

The facts

2 The complainant, Kitri Isna ('Kitri'), was discovered at the World Trade Centre's ferry terminal on 2 March 2001 by an employee of one of the ferry services, Na'aim bin Miswan. As Kitri wished to go to Batam, but the last ferry had already departed, Na'aim took Kitri back to his home, where he and his wife gave her food and shelter for the night. While at their home, the couple noticed marks on Kitri's face and she ended up making a police report the next day, 3 March 2001. In her report, Kitri alleged that Yeo had assaulted her on the right side of her face and had not paid her wages, and stated that she wanted to return to Indonesia.

3 At about the same time, Yeo's husband, Low Tay Poy ('Low') lodged a police report on Kitri's disappearance and reported the theft of her passport, work permits, $3,500 in cash and a gold coin. Kitri subsequently pleaded guilty to the charge of theft as a servant, and served three weeks' imprisonment.

The proceedings below

The prosecution's case

4 The case against Yeo was based primarily on Kitri's evidence. Kitri stated that at about 4 or 5 pm on 2 March 2001, she had allowed Yeo's baby, whom she was caring for, to play with her shoe. Yeo witnessed this and, angered, pulled Kitri's T-shirt and threw her onto the floor. Yeo then stood above Kitri, who was on the floor with her face facing upwards, and hit her on the left and right sides of her face. Kitri tried to ward off the blows by turning her head to the left and right, and Yeo then slapped her left and right cheeks, and scratched both her ears. Finally, Yeo lifted Kitri's head and knocked it against the floor, twice. Yeo then left the flat to take the baby to the doctor at about 6 pm, whereupon Kitri packed her belongings, prised open a drawer and took her passport, RM 27 and a gold coin, and fled.

5 Kitri was examined by one Dr Desmond Choo Cheng Swee after she made her police report, and a total of seven injuries were noted in the medical report. Dr Choo testified that the injuries on Kitri were fresh and had been inflicted in the last 72 hours. He thought it possible that a bruise on Kitri's left forehead, and another on the left side of her nose, had been caused by a blunt object. At

the same time due to the multiple injuries on Kitri, he thought it less likely that these two injuries, together with another bruise found on the right side of Kitri's face, were self-inflicted. As for the bruises found on Kitri's right and left ears, Dr Choo noted that they had been inflicted on the concha. Persons who pulled their own ears, however, would normally pull on the lobe, which would not cause injury to the concha. As such, he opined that it was more likely that direct force had been applied to the concha. Finally, Dr Choo stated that Kitri had complained of tenderness at her left back and left arm, but that he had not noted bruises in those areas.

The defence

6 For her part, Yeo denied assaulting Kitri, claiming that Kitri was a clumsy person who had a tendency to drop off to sleep suddenly, whereupon her head would bump against nearby objects. Furthermore, Kitri often made mistakes in her work and would punish herself by slapping her own face and pulling her own ears repeatedly. Yeo disputed the claim that the incident with the shoe had occurred on 2 March 2001, alleging instead that it had occurred on 1 March 2001. Kitri had then punished herself in the usual fashion, and Yeo had complained about the incident to her husband, Low, when he returned home that evening. According to Yeo, she did not bring the baby to the clinic until the evening of 2 March 2001. When she returned home at 11pm that night, she and Low found Kitri missing, along with her documents, the money, and a gold coin.

7 Yeo's account was verified by Low, who stated that the shoe incident had occurred on 1 March 2001, that by the time he returned that night, Kitri had stopped punishing herself, and that Yeo had never asked Kitri to punish herself. However, this testimony was in marked contrast to his statement to the police, in which he had claimed that Kitri was still punishing herself when he returned home on 1 March 2001. More importantly, he had stated there that Yeo told him the reason for Kitri's punishment was that she had bathed the baby and then left him bare-bodied, and further, that Yeo was the one who asked Kitri to punish herself. These inconsistencies hence led to an application by the prosecution to impeach Low's credit.

The magistrate's decision

8 After considering all the evidence, the magistrate concluded that Kitri was not a credible witness. He took particular issue with inconsistencies in her chronology of events, which showed her to waver on the issue of when the alleged assault had occurred. The magistrate also took the view that Kitri's evidence was not consistent with the medical evidence, as Dr Choo had testified that the bruises on the face were likely to have been caused by a blunt object. Kitri had also not mentioned about her being kicked during her examination-in-chief, while she had mentioned it to Dr Choo when he examined her, hence his acceptance of her claim that her back was tender. Most importantly, the magistrate placed reliance on the fact that Dr Choo could not discount the fact that the injuries had been self-inflicted.

9 The magistrate did note that the defence evidence was also lacking, in that it varied between Yeo ordering Kitri to hit herself and Kitri offering to punish herself. The inconsistencies in Low's evidence also had to be taken into account. In the final reckoning, however, the magistrate took the view that the deficiencies in Low's testimony did not affect Yeo's defence, and he was led to conclude that the actual explanation for her running away was not because she had been assaulted, but because she wanted to escape with the fruits of her thievery. Consequently, Yeo was acquitted of the charge.

The appeal to this court

10 Before me, the prosecution's appeal was based on challenges to the magistrate's findings on the evidence. Specifically, it challenged his findings on Kitri's evidence, the medical evidence, and the defence evidence.

Kitri's credibility as a witness

11 The magistrate's conclusion that Kitri was not a credible witness primarily was based on the inconsistencies in her testimony as to the chronology of events, the inconsistency between her testimony and the medical evidence, as well as various other minor inconsistencies. On the first issue, the magistrate had pointed out that Kitri had come up with a total of three possible scenarios: first, that she had been assaulted and run away on March 1 and made the police report on March 2; second, that she had been assaulted and run away on March 2 and made the police report on March 3; and third, that she had been assaulted on March 1, run away on March 2, and made her police report on March 3.

12 I did not doubt that such inconsistencies clearly existed. The prosecution's case had been based on the second scenario, since the date stamped on the police report was 3 March 2001. Kitri, on the other hand, showed a tendency in her cross-examination to use the first scenario when giving her evidence, even after the mistake had been brought to her attention. That said, I was not convinced that these inconsistencies warranted the magistrate's finding that they were "persistent and brazen changes in testimony", nor that the "changes in the dates of alleged assault here were material and not satisfactorily explained".

13 As the prosecution pointed out, there was no material difference between the first and second scenarios insofar as they are clear that Kitri was assaulted and ran away on the first day, and made her police report on the second day. Kitri's testimony also indicated that her lapses stemmed from her persistent belief that she had made her police report on March 2. Seeing that her allegation was that she had been assaulted on the day before the making of the police report, I took the view that it was logical for her to assume that the day of the assault was March 1. There was also no sinister motive to be ascribed to her getting the date of the police report wrong, as that date, of all the many bandied about by the parties, was the only one capable of independent verification.

14 As such, the only criticism that could effectively be made of Kitri's testimony on this issue was her one mention of the third scenario, during her cross-examination by Yeo's counsel. I did not consider this lapse to be significant, especially when taken together with the fact that the events narrated had taken place one and a half years before the proceedings below. As such, I concluded that Kitri's confused chronology could not be a basis for treating her credit as impeached.

15 It would be apt at this juncture to comment that I also took the view that the magistrate had placed undue reliance on various other minor inconsistencies in Kitri's testimony as being indicative of her lack of untrustworthiness. For one, the magistrate had found that there was an inconsistency in that Kitri said that she had personally spoken to Dr Choo in Malay, while Dr Choo testified that he had used an interpreter. I noted, however, that Dr Choo's and Kitri's testimony were compatible, as what Dr Choo had stated in the court below was that when the interpreter arrived, he went over with Kitri, in the interpreter's presence, what he had already recorded.

16 I also did not agree with the magistrate's view that Kitri's going straight to the ferry terminal, rather than going to the police, indicated that her motive in running away was to flee with her ill-gotten gains, rather than because she had been assaulted. I took the view that this aspect of her behaviour was at best equivocal, as it was not entirely unbelievable that a young girl who had been assaulted would attempt to run straight for home, rather than running the risk of going to the police,

being disbelieved, and being returned to an abusive employer.

17 Indeed, I found the items stolen by Kitri to be significant in countering the claim that she had run away because of her act of theft. Kitri was adamant that Yeo had not paid her throughout the 15 months of her employment, and Yeo had conceded that at the time Kitri ran away, she was owed her a full month's wages. All Kitri had taken, in fact, were her own documents, a small amount of Malaysian ringgit, which she used to pay for her taxi to the World Trade Centre, and the gold coin, and I took the view that it could be inferred that Kitri merely intended to take what she felt was owed her, rather than to profit from her theft.

18 Finally, I considered the inconsistencies which the magistrate had noted with regard to Kitri's injuries. Unlike the other inconsistencies taken into account by the magistrate, I took the view that it would be more difficult to explain these away. In her initial report to the police, Kitri only stated that Yeo had hit her on the right side of the face. It was not until she was examined by Dr Choo that she elaborated, stating that Yeo had also banged her head against the floor, scratched her ears and kicked her back. Strangely, Kitri did not mention her being kicked in her examination in chief. More significantly, she repeated in her evidence in chief that Yeo had "scratched" her ears, said later on that Yeo had "caught" her ears, before finally sticking to the claim that Yeo had pulled her ears. Although she clarified in her evidence in chief that by 'scratching', she meant that Yeo used her nails to scratch her ear before pulling it, I was not convinced that this sufficed as an explanation.

The medical evidence

19 It need hardly be said that an appellate court should be slow to disturb findings of fact unless they are clearly reached against the weight of the evidence – *Lim Ah Poh v Public Prosecutor* [1992] 1 SLR 713, most recently applied in *Gan Hock Keong Winston v Public Prosecutor* [2002] 4 SLR 299. In the present case, I felt that the magistrate had taken an unduly harsh view of many of the perceived inadequacies in Kitri's evidence. At the same time, I felt that the unexplained inconsistencies in claims made by Kitri as to her injuries rendered it unsafe to accept her uncorroborated testimony alone. As such, I considered the medical evidence to be of crucial importance in the present case.

20 Seven injuries were listed in Kitri's medical report: 3 bruises on her face, a bruise each on the concha of her ears, and tenderness in her back and arm. These last two were not observed by Dr Choo, but nevertheless recorded on account of the other injuries on Kitri's person. I noted that Dr Choo's initial view had been that the injuries were unlikely to be self-inflicted. However, upon being asked what his view would be if informed that Kitri had a history of injuring herself, Dr Choo then qualified himself by saying that, in light of such history, it was possible that the injuries had been self-inflicted. This had been taken into account by the magistrate, who had also noted that the visible injuries were slight in nature, measuring only 0.5cm by 0.5cm. He was also inclined to the view that Kitri's own admissions as to her clumsiness and her punishing of herself had diluted the impact of Dr Choo's evidence.

21 The above findings were contested by the prosecution, who argued before me that Yeo's account of matters was completely far-fetched. Where Yeo's description of Kitri's manner of pulling her own ears was concerned, I fully agreed. Yeo had claimed that Kitri would pull her eyes by twisting the upper and lower lobes before pulling the ear sideways. This was an odd description which jarred with Dr Choo's description of how a person would normally pull their own ears, namely by pulling on the lobe only, where such a latter form of pulling would not have caused the type of bruising found on Kitri's ears. As such, I considered it likely that Yeo might have invented this particular description in order to counter Dr Choo's testimony was quite high.

22 As for the bruises on Kitri's face, Dr Choo had initially taken the view that the injuries were not self-inflicted, but, at the same time, had identified the bruise on the forehead and the bruise on the left side of the nose as possibly being caused by a blunt object. This conformed with Yeo's testimony, in that she had claimed that these injuries were caused by impact with the leg of a cot and a door frame, respectively. However, I noted that there was no sign of Yeo having mentioned these alleged causes for the injuries until her examination in chief, such that it was again possible for Yeo to have tailored her explanations to fit Dr Choo's analysis. I also noted that the bruise on the right side of Kitri's face was, according to Dr Choo, possibly caused by a slap. This accorded with Kitri's report to the police, where she stated that Yeo had hit her on the right side of the face.

23 The above said, the fact that there was a high risk that the defence evidence had been concocted to fit Dr Choo's evidence would have had little impact if the prosecution evidence was itself shaky. As the prosecution conceded, it could not, in discharging its burden of proof, merely point to the inadequacies of the defence case, for an acquittal could follow either from successfully arguing an affirmative defence, or by casting reasonable doubt over the prosecution's case – *Ang Kah Kee v Public Prosecutor* [2002] 2 SLR 104. As such, any perceived flaws in Yeo's evidence could not justify her conviction if the prosecution's evidence could not prove its case beyond reasonable doubt. In the present case, I was of the view that the prosecution's evidence did not reach the requisite level of certainty.

24 I have already stated above my reservations about the material inconsistencies contained in her account of the injuries allegedly dealt her by Yeo, inconsistencies which I felt had not been satisfactorily explained. In addition to these inconsistencies, it also did not help the prosecution's case that the medical evidence was not strong, and the cause of Kitri's injuries could not be pinpointed with the requisite level of accuracy. Even if Dr Choo's concession, that Kitri's alleged history made it possible that the injuries were self-inflicted, were disregarded, the fact remained that he was not able to state with a high degree of certainty the cause of the injuries, his examination in chief showing that he tended to use words like "possibly" and "likely". I also bore in mind the magistrate's observation that the bruises were very small in size, which presumably accounted for Dr Choo's inability to state their cause with any higher level of certainty.

25 I was also mindful of the fact that Dr Choo had reached his conclusions as to whether the injuries had been self-inflicted on the basis of the totality of the injuries caused, which included the tenderness on the back and the arm. However, in the absence of visible proof, the only basis for his acceptance of these injuries was Kitri's word only. As such, it would have been extremely unsafe to place any reliance on the number of injuries as being indicative of how they were inflicted.

The defence evidence

26 In light of my finding that the prosecution evidence was not of a sufficiently high quality to warrant Yeo's conviction, it was not strictly necessary to consider the defence evidence. I did agree, however, with the magistrate's observation that Yeo's evidence was "dubious", there being a number of instances which, albeit circumstantial, were indicative of suspect motives on Yeo's part. I noted that there was a significant amount of vacillation on Yeo's part as to whether Kitri offered to punish herself or whether Yeo would order her to punish herself, with Yeo finally admitting that the punishments originated from her orders. Before me, the prosecution argued that Yeo's lie in this regard was motivated by a fear of the truth and, being deliberate, material and independently proven, could amount to corroboration of Kitri's claims – *R v Lucas (Ruth)* [1981] QB 720, most recently applied in *Bala Murugan a/l Krishnan & anor v Public Prosecutor* [2002] 4 SLR 289.

27 I took the view, however, that Yeo's dissembling on this issue was not strictly material to the

present inquiry, seeing that the charge against Yeo was for personally assaulting Kitri, and not for compelling Kitri to punish herself. However, I found that the fact of the dissembling was in and of itself suspicious. Another instance was that of the discrepancies in Low's evidence, which the magistrate too had noted. However, he did not consider the impeachment of Low's credit on this issue to warrant the rejection of the defence. I took the point made by Yeo's counsel that these inconsistencies should not detract from Low's evidence that Yeo had related the events of March 1 to him. I also accepted that Low's evidence was not directly relevant as Low was not a witness to any of the events which might have warranted Kitri being punished. However, I found that the change from Kitri having neglected to clothe the baby on March 1, to her giving the baby a shoe to play with on March 1, was a notable one which formed part of the backdrop to assessing the credibility of Yeo as a witness.

28 I also considered Yeo's claim that Kitri was an extremely clumsy person who often fell asleep while doing her chores. Allegedly, her head would loll to the side as she slept, and impact against any hard objects which were nearby. Yeo cited as examples of Kitri's clumsiness two incidents where she had fallen asleep outside a temple and hit her head against a pillar, and an incident in February 2001 when she hit a glass panel so hard that it broke. However, although Kitri admitted that those particular incidents had occurred, I also found it significant that she denied the occurrence of other specific incidents which Yeo claimed had occurred, such as that she had hit her head against the tap while washing dishes, or that she had hit herself against the leg of her double-decker bed while sleeping. Moreover, Kitri attributed injuries sustained in those instances to Yeo's having hit her.

29 Indeed, while Yeo claimed that Kitri "often" fell asleep on the job, she also testified that Kitri did not fall asleep very often, "maybe now and then". It hence struck me as remarkably coincidental that Kitri would have fallen asleep twice on the day of the shoe incident, thereby resulting in her hitting her head against the leg of the cot three times and a further time against the aluminium door frame.

30 Finally, I noted that Low, when making his police report as to Kitri's disappearance, claimed that Kitri had stolen $3,500 in cash. On the other hand, Kitri, who readily admitted to taking the other items, denied taking the money, and the issue was not pursued by Yeo's counsel. It was also stated by the investigating officer that the $3,500 was never recovered. I found it more likely than not that Kitri had never in fact stolen this sum, and it was hence suspicious that Low would have made the claim he did.

Conclusion

31 All in all, it was my view that the prosecution had made out a stronger case against Yeo than the magistrate had allowed. However, in light of the ambiguous nature of the medical evidence, and the fact that the indications of Yeo's unreliability as a witness were wholly circumstantial, I was driven to conclude that, despite the magistrate's unduly harsh assessment of Kitri's evidence, a reasonable doubt lingered as to Yeo's guilt. Consequently, I dismissed the appeal. In closing, I wish to emphasise that the quality of the evidence in the present case was extremely unsatisfactory, the cause of which I dare to venture was the one and a half years' delay in bringing the case to trial.

Appeal dismissed.