Gan Sim Lim v Public Prosecutor
[2005] SGHC 107

Case Number : MA 16/2005

Decision Date : 13 June 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : KR Manickavasagam (Manicka and Co) for the appellant; Tan Kiat Pheng (Deputy Public Prosecutor) for the respondent

Parties : Gan Sim Lim — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Appeal against conviction and sentence for offences of criminal intimidation, voluntarily causing hurt and theft – Whether trial judge erring in accepting complainant's and prosecution witnesses' testimonies over appellant's testimony

Criminal Procedure and Sentencing – Sentencing – Appeals – Appellant sentenced to two weeks' imprisonment for offence of voluntarily causing hurt to run concurrently with other custodial sentences – Whether two weeks' imprisonment adequate considering aggravated nature of assault – Whether custodial sentences for various offences to run concurrently or consecutively

13 June 2005

Yong Pung How CJ:

1 This was an appeal from the decision of District Judge Toh Yung Cheong, who convicted the appellant on three charges under ss 506 (criminal intimidation), 323 (voluntarily causing hurt) and 379 (theft) of the Penal Code (Cap 224, 1985 Rev Ed). The appellant was sentenced to six months' imprisonment for criminal intimidation, two weeks' imprisonment for voluntarily causing hurt and a fine of $800, in default eight days' imprisonment, for theft. The custodial sentences were ordered to run concurrently.

2 The appeal was brought against conviction and sentence. I heard the appeal and dismissed it. Additionally, I ordered the sentence of two weeks' imprisonment, imposed in relation to the charge of voluntarily causing hurt, to be enhanced to three months, and for the custodial sentences to run consecutively. I now give the reasons for my decision.

The facts

3 The appellant was, previously, the boyfriend of the complainant, Miss Kher Wai Fun ("Kher"), a stewardess with Singapore Airlines. Kher was staying in a condominium apartment at Ballota Park ("the condominium"). Sometime in October 2004, Kher ended her relationship with the appellant. On 14 November 2004, at about 10.00pm, the appellant contacted Kher and asked to meet her. Kher agreed on condition that they met at a public area, such as the poolside at the condominium, as she did not feel safe meeting the appellant at her apartment. The appellant agreed.

4 However, when Kher opened the door to her apartment to proceed to meet the appellant at the poolside, she found the appellant standing right outside her apartment. The appellant then entered the apartment and both parties had an argument, upon which Kher told the appellant to leave. Instead, the appellant grabbed Kher's handphone (a Nokia 6610 valued at $400) and left for his car. Kher followed the appellant and asked him to return her handphone or at least the simcard. Kher also requested the security guards at the condominium's guardhouse to prevent the appellant from leaving. However, the appellant managed to drive away.

5 Kher then used the phone at the guardhouse to call her friend, Terence Ng Chee Loon ("Terence"). She informed Terence about what had happened and Terence arrived at the condominium a few minutes later. Kher used Terence's handphone to call her own handphone. The appellant answered the call and Kher demanded that the appellant return her handphone. The appellant refused and insisted that he wanted to meet her. During this conversation, Kher realised that the appellant was with her colleague, Ivan Bay Yong Meng ("Ivan"). Kher agreed to talk to the appellant, but wanted Ivan to come along. The appellant agreed and both men left to meet Kher.

6 When the appellant and Ivan arrived at the condominium, they were stopped by the security guard. The appellant got frustrated and quarrelled with the security guard for about five minutes, after which they were allowed to proceed. When they arrived at Kher's apartment, Kher once again demanded that the appellant return her handphone. The appellant refused, saying it was not with him. Kher tried to search the appellant to recover her handphone and a scuffle ensued.

7 In the midst of this, Kher picked up a television remote control and threw it at the appellant, striking his forehead. She then searched the appellant's pocket, found his car keys and ran out of her apartment towards the appellant's car. The appellant tried to follow her, but was stopped by Ivan and Terence. There was a struggle between the three men, during which the appellant managed to grab the keys to Kher's apartment. The appellant also pushed Terence aside, and the latter fell onto a flowerpot outside Kher's apartment. The appellant then ran after Kher.

8 By this time, Kher had arrived at the condominium's carpark, where she met Lawrence Ng Chee Meng ("Lawrence"), who was Terence's brother. Terence had earlier called Lawrence and asked to meet him at the condominium. Both Kher and Lawrence then started to search the appellant's car for the handphone but could not find it. When they saw the appellant approaching them, with Ivan and Terence following behind, Lawrence stepped forward and blocked the appellant's path. The appellant grabbed Lawrence's neck and raised his left hand to punch Lawrence. Fortunately, both Kher and Terence managed to talk the appellant out of this, and he let go of Lawrence. Subsequently, Terence, Lawrence and Ivan left the condominium.

9 Kher ran back to her apartment, locked the front door and windows and entered the bedroom. The appellant followed Kher and started to bang and kick at the front door when he realised that Kher had locked it. He then used the keys he had grabbed earlier to enter the apartment, and tried to open the bedroom door by swiping at the lock with a piece of cardboard. Kher managed to snatch away the cardboard. The appellant started to kick the bedroom door, and Kher ran into the toilet and locked herself inside. The appellant managed to break into the bedroom and tried to open the toilet door. Left with no choice, Kher opened the door, whereupon the appellant barged in, pushed her into the bathtub and tried to strangle her.

10 He then pulled her into the bedroom and started to kick, punch and slap her. Kher screamed for help and tried to run away. However, the appellant managed to grab her and proceeded to throw her about on the floor, where he continued to kick and punch her. The appellant then picked up a pair of scissors from a desk in the bedroom and pointed it at Kher, saying "I'll kill you" and "Do you believe I'll kill you?" Kher testified that she believed the appellant would indeed carry out his threat and that she was willing to comply if he made any demands.

11 Suddenly, the appellant started to pant very hard and collapsed onto the floor, swinging his arms and legs as if he was having a fit. Kher tried to see if he was all right but he did not respond. She then took the scissors, moved it away from the appellant and ran barefoot out of the apartment to the guardhouse, where she met security guard Kim Aik Guan ("Kim"). Kher explained the situation to Kim, whereupon the latter dialled for the police and passed the phone to Kher.

12 Sergeant Lim Wai Leong Lynyrd ("Sgt Lim") and Corporal Ang Guek Leng arrived shortly after and met Kher. Sgt Lim observed that Kher was in a state of shock and noticed some scratch marks on her arms, neck and nose. He interviewed her and, after gathering the necessary information, proceeded to the apartment with her. Kher tried to open the front door, but it was locked and she did not have the keys to the apartment.

13 However, a few minutes later, the appellant opened the door. Sgt Lim testified that the appellant smelt of alcohol, and appeared uncooperative and rude. The appellant told Sgt Lim not to interfere in a "relationship problem" and to mind his own business. After making some inquiries of both parties, Sgt Lim proceeded to place the appellant under arrest. He gave Kher a medical examination form and advised her to go to a government hospital. A pair of scissors was seized from the bathroom.

14 The next morning, Kher saw her company doctor, Dr Yap Chin Vie ("Dr Yap"). Dr Yap prepared two reports on Kher's condition. The first report described that Kher had suffered contusions and lacerations that were consistent with soft tissue injury. The second report stated that Kher was suffering from post-traumatic stress disorder. The appellant too received medical treatment for swelling over the left forehead, bruises, scratches and other minor injuries. In the opinion of Dr Phoo Wai Heng, the doctor who attended to the appellant, the severity of the injuries suffered by him and Kher were comparable.

The trial below

15 The appellant elected to testify in his defence. He claimed that he only wanted to meet Kher at the material time because he had a buyer for some duty-free cigarettes which belonged to Kher. Kher allegedly left six cartons of cigarettes outside her apartment, which the appellant collected and placed in his car. The appellant then called Kher and insisted that she meet up with him to talk, failing which he would call the police and inform them about the duty-unpaid cigarettes.

16 Kher complied and the appellant entered the apartment. While they were in the apartment, an argument broke out, during which the appellant asked Kher for her handphone. Kher refused and the appellant proceeded to pick up the phone from a table in the apartment. He claimed that he only took the handphone because he wished to read the messages stored in it. The appellant then left the condominium and met Ivan. He informed Ivan that he wanted to report Kher to the police regarding the duty-unpaid cigarettes, but Ivan managed to talk him out of this.

17 The appellant then received a call from Kher, following which he and Ivan went to the condominium. The appellant denied that he had had an argument with the security guard, and claimed that the security guard had in fact advised him to have a "good talk" with Kher. The appellant alleged that when he and Ivan entered Kher's apartment, the latter began to yell and scream at him. He claimed that she slapped and punched him and asked for her handphone. Subsequently, Terence entered the apartment.

18 At this point, Kher ran out of the apartment, while Ivan and Terence subdued the appellant. The appellant managed to break free and grabbed hold of the keys to the apartment. He ran towards the carpark, where he saw Kher and Lawrence searching his car. A little while later, Kher ran back to her apartment and Ivan, Terence and Lawrence left the condominium. The appellant then checked his car and discovered that the six cartons of cigarettes were missing. He got angry and went back to Kher's apartment, entering the bedroom to search for the cigarettes.

19 The appellant alleged that Kher started to punch and kick him repeatedly, causing him to

retreat to the toilet and lock himself inside. The appellant then heard Kher run out of the apartment. The appellant also discovered that the bedroom door was jammed and used a pair of scissors to pry it open. Subsequently, he left the apartment, ran into some police officers and was arrested.

The decision below

20 The district judge found that both the Prosecution's and the Defence's versions, in relation to the events that took place prior to the alleged threats and assaults, were largely similar. The only major difference related to the issue of the cigarettes. Essentially, the district judge's decision hinged on his assessment of the credibility of the witnesses who testified before him. He found that Kher was a credible witness, who was frank about her relationship with the appellant and had also admitted candidly to her involvement with the duty-unpaid cigarettes. The district judge accepted Kher's evidence concerning the events, in particular, the part where the appellant broke into her apartment, assaulted her and threatened her with a pair of scissors.

21 Kher also did not appear to be a vindictive witness who was out to frame the appellant. In fact, the district judge found that Kher had no reason to frame the appellant, having been the one who broke up with him and wanting nothing to do with him anymore. Further, her account of the events leading up to the threat and assault was consistent with the accounts given by the other prosecution witnesses, namely, Terence, Lawrence and Ivan.

22 In relation to the evidence given by Terence, Lawrence and Ivan, the district judge held that they were broadly similar to that of the appellant in many aspects, at least in relation to the events that occurred prior to the alleged threat and assault. The district judge also found that there was no evidence that any of these witnesses had discussed and hatched a plan to retrieve the cigarettes from the appellant, and had only been there to help Kher and the appellant sort out their personal problems.

23 The district judge therefore rejected the Defence's theory of a conspiracy between Kher and the prosecution witnesses. He found the appellant to be an untruthful witness whose evidence lacked credibility. The appellant attempted to portray himself as an upright citizen and a former National Service police officer whose main concern was to make a police report against Kher for dealing in duty-unpaid cigarettes. The district judge found that the issue of the cigarettes was purely subsidiary as compared to the appellant's concern over his broken relationship with Kher.

24 It was also improbable that Kher had viciously attacked the appellant such that he had to seek shelter in the toilet. In this respect, the district judge noted that the appellant was of a larger build than Kher and, since he was a former National Service police officer, would have had no problem subduing Kher if the need had arisen. It was against this backdrop that the district judge examined the three charges against the appellant, and chose to convict and sentence him on them.

The appeal

25 The appellant made the following arguments on appeal:

(a) that the district judge should have disbelieved Kher and believed him instead;

(b) that the district judge should not have accepted the evidence of the prosecution witnesses over his evidence;

(c) that the district judge should have accepted his version of events that Kher and her

colleagues had a motive to frame him, as she was dealing in contraband cigarettes; and

(d) that the district judge placed too much emphasis on Kher's injuries and failed to give adequate consideration to the appellant's injuries, which, according to his doctor, were "comparable" to those suffered by Kher.

26 I noticed that despite bringing the appeal on sentence, as well as on conviction, the appellant made no submissions on the matter of sentence. It is trite law that an appellate court will only interfere with the sentence passed by a lower court if it is satisfied that: (a) the sentencing judge made the wrong decision as to the proper factual basis for the sentence; (b) the sentencing judge erred in appreciating the material placed before him; (c) the sentence was wrong in principle; or (d) the sentence imposed was manifestly excessive or inadequate: *Tan Koon Swan v PP* [1986] SLR 126; *Yeo Kwan Wee Kenneth v PP* [2004] 2 SLR 45. An appeal against sentence must therefore be brought on one of these bases. It is disappointing, to say the least, that counsel for the appellant had omitted to address such a basic issue in his submissions. Nevertheless, I still proceeded to analyse the appellant's appeal against sentence and have included the reasons for my findings.

Arguments (a), (b) and (c): The district judge accepted the prosecution witnesses' evidence, but disbelieved the appellant

27 I observed that the appellant's first three heads of argument were essentially the same, *ie*, the trial judge should have accepted only the appellant's evidence as representing the true state of affairs at the material time. I found it more convenient to deal with these arguments together.

28 In arriving at a decision on the credibility of a witness, trial courts have consistently relied on observations pertaining to (a) the witness' demeanour; (b) the internal consistency or inconsistency in the content of the evidence given by the witness; and (c) the external consistency or inconsistency between the content of the witness' evidence and extrinsic evidence (for instance, the evidence of other witnesses, documentary evidence or exhibits). These principles are not new, and I recall having highlighted them in *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610 ("*Farida Begam*"). The law is also equally clear as to when an appellate court would intervene in a trial court's findings on the demeanour of witnesses. In *Yap Giau Beng Terence v PP* [1998] 3 SLR 656, I observed (at [24]):

> It is trite law that an appellate court should be slow to overturn the trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence.

29 It was notable that the district judge, in his grounds of decision, expressly referred to the principles in *Farida Begam* when arriving at his assessments on Kher's credibility and the evidence of the other prosecution witnesses. With these principles in mind, the district judge launched into a meticulous assessment of the evidence given by each of the witnesses. I found these assessments to be crucial to this appeal and I considered them in turn.

Kher's evidence

30 I noted that the district judge scrutinised every aspect of Kher's evidence, including those given during cross-examination. He observed that Kher had been consistent and detailed in her evidence throughout the trial, and was a candid and honest witness. In arriving at this observation, he took into account the fact that her evidence was unshaken despite having been put through intensive cross-examination. Apart from simply basing his assessment of her evidence on her

demeanour, the district judge also took particular care to analyse whether Kher had any reason to frame the appellant. In this respect, the district judge took note of both Kher's and the appellant's description of their relationship, and the events that occurred at the material time.

31 He found, first, that Kher had no reason to frame the accused, having wanted nothing to do with him after their relationship had ended. Next, the district judge found that if all that Kher had wanted was to get the appellant arrested, she could have called for the police at any point in time that night, and need not have waited until after she had been assaulted. The district judge also considered, in detail, Kher's conduct immediately after the assault and her statements to the police, before coming to the conclusion that Kher was genuinely distressed by the appellant's behaviour at the material time.

32 He also exercised caution regarding the weight to be attached to Kher's contemporaneous complaint. In this regard, the district judge bore in mind that the evidential value of a prompt complaint did not necessarily render Kher's testimony more credible. Instead, the district judge went further and took into account the possibility that Kher's complaint could have been purely self-serving. However, the totality of the evidence, including the details as to what had occurred that night at the condominium and Kher's distressed reaction to these events, reinforced the district judge's finding that Kher was indeed a credible witness.

Evidence of Terence, Lawrence and Ivan

33 The district judge found that the evidence of the abovenamed witnesses was uncontroversial and essentially pertained to only the series of events up to the time of the alleged assault on Kher in her bedroom. The district judge also found that there was no indication from any of these witnesses that Kher had been in cahoots with them to lay a trap to recover the duty-unpaid cigarettes from the appellant, or to frame the appellant. In fact, the district judge found that none of these witnesses had even mentioned or discussed the cigarettes during the material time.

34 Ivan, for one, was with the appellant throughout the course of the events, and there was no evidence from the appellant that Ivan had mentioned the cigarettes. Terence and Lawrence had clearly appeared at the scene only to assist Kher, who was distressed. In this respect, the district judge found that Terence, Lawrence and Ivan had all along conducted themselves as friends who were trying to help Kher and the appellant resolve their personal problems.

35 The district judge added that if these witnesses and Kher had an agenda to retrieve the cigarettes from the appellant, they could have easily overpowered the lone appellant to achieve their aim. In fact, the appellant himself admitted that during his confrontation with Kher, the latter had only asked for her handphone to be returned and had never mentioned the cigarettes. As such, in the district judge's view, there was clearly no evidence of a pre-arranged plan between Kher, Terence, Lawrence and Ivan to retrieve the cigarettes from the appellant. The fact that the appellant did not have the cigarettes with him did not mean that these witnesses had taken them from him.

36 From these findings, it was clear to me that the appellant's arguments were baseless. The district judge was faultless in the meticulous manner in which he analysed each piece of evidence before him. His finding that Kher was a credible witness, and his acceptance of the evidence of Terence, Lawrence and Ivan, was probably the only conclusion that could have been drawn in the circumstances. The accuracy of the district judge's conclusion became more apparent when placed alongside his findings on the appellant's credibility as a witness. It was plain for all to see that the appellant was vainly trying his best to portray himself as a model citizen who was only trying to snuff out an offence, *ie*, Kher's involvement with the duty-unpaid cigarettes.

37 On a perusal of the notes of evidence, it was obvious that the appellant's primary concern at the material time was to confront Kher regarding their failed relationship. The cigarettes were a non-issue. In fact, the district judge accurately pointed out that the appellant had only raised the matter regarding the cigarettes to Kher as a bargaining chip to make Kher meet him. If he was indeed such a model citizen, he could have gone to the police straight away, instead of threatening to report Kher to the police unless she met him.

38 The appellant's contention that Kher viciously attacked him was also unbelievable. The district judge observed the differences in their builds and found that the appellant would have had no problem overpowering Kher if he had wanted to. I agreed with this conclusion. In any case, if Kher indeed had been the attacker, there would have been no need for Kher to run barefoot towards the guardhouse for assistance. She also would not have suffered genuine distress or, for that matter, post-traumatic stress disorder, as indicated in Kher's second medical report. Additionally, on the objective facts, the appellant was the aggressive party all along. Even Sgt Lim found the appellant to be uncooperative and rude. The fact that the appellant had also warned Sgt Lim not to interfere in the matter also said much about the appellant's aggressive stance.

39 On the whole, I found that the appellant was clutching at straws in his bid to convince me that the district judge ought to have believed him instead of the prosecution witnesses. There was clearly no objective evidence that supported the appellant's version of events. I therefore found no reason to overturn the district judge's findings in relation to his assessment of the witnesses and their evidence, and dismissed the appellant's arguments.

Argument (d): The appellant's injuries being comparable to Kher's injuries

40 The appellant argued that his injuries had been assessed as being "comparable" to those suffered by Kher. It was not clear to me how this argument was of assistance to the appellant. If the appellant was trying to establish the point that Kher too had hit him during their encounter, this would be an aimless venture. I found that the appellant was the aggressor from the outset. He arrived at Kher's house, overstayed his welcome, if any, was violent to Kher and had threatened her with a pair of scissors. In the circumstances, it would have been perfectly understandable if Kher had hit the appellant, thereby causing him to sustain injuries, in order to protect herself from a violent assailant. To my mind, this argument was pointless and as such, I dismissed it.

Conviction and sentence on the charge of theft

41 I observed that the district judge first analysed the theft charge and found that the appellant, by taking Kher's handphone out of her possession without her permission, even for a limited period of time, had knowingly caused wrongful loss to Kher, since she had been deprived of possession and use of the handphone. In this regard, the district judge turned to s 378 of the Penal Code, which reads:

> **Theft.**
>
> **378**. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft

The meaning of "dishonestly", then, is defined in s 24 of the Penal Code:

> **"Dishonestly".**

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.

42 Based on these sections, I found that the district judge was correct in holding that the appellant was guilty of an offence of theft. The crucial factor, here, would be the element of dishonesty. The appellant must not have simply taken away the handphone from Kher without her consent, but he must have done so "dishonestly". Since the appellant intended to take the handphone from Kher, at least in order to cause wrongful loss to Kher even for that short period of time, his taking of the handphone would have been dishonest.

43 I referred also to s 23 of the Penal Code, which defines "wrongful loss" as "loss by unlawful means of property to which the person losing it is legally entitled". The explanation to this section states that "[a] person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property". Reading all of these provisions together, it was clear to me that the theft charge against the appellant was properly made out, and the district judge was therefore correct to convict him on it.

44 As for the fine of $800 that was imposed on the appellant, I held that this was an adequate penalty. In *Packir Malim v PP* [1997] 3 SLR 429, the offender, who had no prior antecedents, stole items worth $120. He was fined $1,000. In *PP v Neo Kwang Yang* Magistrate's Appeal No 129 of 1998 (7 July 1998) (unreported), the offender pleaded guilty to a charge of stealing a handphone valued at $650. He was fined $2,000. Here, the district judge took into consideration the fact that the appellant had no previous convictions for property offences, and that the value of the item was relatively low ($400). Of course, the value of the item in this case was still higher than that in *Packir Malim*. Nevertheless, the district judge considered the extenuating circumstances in this case in arriving at his decision to impose the $800 fine.

45 He gave the appellant the benefit of doubt and accepted his claim that he only took the handphone to read the messages it contained, and that he had planned to return it to Kher once he had completed this task. I found that these facts placed the theft in this case in context. Compared to cases such as *Packir Malim* and *Neo Kwang Yang*, where the offenders in question took the items solely for material gain, the appellant in this case had no such objective. I thus felt that the district judge had correctly exercised his discretion to impose an $800 fine and declined to disturb his conclusion.

Conviction and sentence on the charge of criminal intimidation

46 Next, the district judge found that the appellant had uttered a threat to cause death to Kher: "I'll kill you" and "Do you believe I'll kill you?" These formed the charge of criminal intimidation, under the second limb of s 506 of the Penal Code. Criminal intimidation is defined in s 503 of the Penal Code as:

Criminal intimidation

503. Whoever threatens another with any injury to his person, reputation or property, or to that person or reputation of any one in whom that person is interested, with *intent to cause alarm to that person*, or to cause that person to do any act which he is not legally bound to do, or to omit to do an act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. [emphasis added]

Section 506 of the Penal Code reads:

Punishment for criminal intimidation. If threat is to cause death or grievous hurt, etc.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both; and *if the threat is to cause death* or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or with imprisonment for a term which may extend to 7 years or more, or impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to 7 years, or with a fine, or with both. [emphasis added]

It was obvious that the appellant only uttered the threats to Kher in order to alarm or frighten her into complying with his demands. In this sense, the appellant had indeed committed an offence of criminal intimidation. The fact that the words uttered were also threats to cause death to Kher exacerbated the seriousness of the criminal intimidation. The district judge was therefore faultless in convicting the appellant on the charge of criminal intimidation.

47 In relation to sentence, the district judge took into account a few cases on this issue. He cited *PP v N* [1999] 4 SLR 619, where the offender had threatened to kill his estranged wife. The offender in that case had confined his wife and tied her up before assaulting her and uttering the threat. The court in that case sentenced the offender to 12 months' imprisonment. In *Ramanathan Yogendran v PP* [1995] 2 SLR 563, the accused was a solicitor who threatened to kill the complainant. The threat was uttered over the phone. It was found that since the threat was uttered over the phone, the complainant would have had time to take measures for his own protection, or called the police. This diminished the gravity of the offence and therefore the sentence imposed was six months' imprisonment.

48 Finally, the district judge cited *Woon Salvacion Dalayon v PP* [2003] 1 SLR 129, where the offender had threatened to kill her three maids. In distinguishing cases such as *PP v N* and *Ramanathan Yogendran*, I held in *Woon Salvacion Dalayon* that the threats in that case were uttered in anger and on impulse. I imposed a sentence of three months' imprisonment, observing (at [43]) that:

> In determining the appropriate sentence to be passed in offences of this nature, the court has to consider carefully the events and circumstances surrounding its commission. The question to be determined is always this: to what extent can there be said to have been a serious threat made? In determining this, both the intention of the maker of the threat as well as the fear that the victim was put in due to the threat are of great relevance.

49 However, the district judge was of the view that the present case was more serious than *Woon Salvacion Dalayon*, even though the appellant here had obviously uttered the threats in anger and had acted on the spur of the moment. The district judge found that the appellant had entered Kher's apartment without her permission and broken open her bedroom door before going on to punch, slap, kick and threaten her with a pair of scissors. Kher was frightened by the appellant's threat and believed that he would carry it out. On these facts, the district judge sentenced the appellant to six months' imprisonment.

50 I found that the district judge was correct in imposing this sentence. The appellant, unlike the offender in *Woon Salvacion Dalayon*, had placed Kher under far more stress and violence, and had also held a pair of scissors when he was uttering the threats. If not for the appellant's sudden moment of hysterics, when he started to pant heavily and writhed on the floor, the appellant might have gone on to inflict further injury on Kher with the pair of scissors. In the circumstances, it was understandable that the threat appeared serious to Kher. Kher was placed under so much fear that

she was even willing to comply with any of his demands at that point in time.

51 However, although the circumstances of the present appeal are more serious than those in *Woon Salvacion Dalayon*, I found that they are still of a lesser degree than those in *PP v N*. In the latter case, the offender had, on previous occasions, been violent to his wife. Apart from hitting her, he had also tied and gagged her, and prevented her from leaving in order to force her to engage in sexual intercourse with him. These actions were far more severe than those committed by the appellant, whose actions were triggered by his scuffles with Kher, and were purely a product of his anger.

52 Therefore, although a three-month term of imprisonment would be insufficient, as it would inaccurately peg the appellant's conduct to the less serious conduct of the offender in *Woon Salvacion Dalayon*, a term of 12 months' imprisonment would be manifestly excessive. On the facts of this case, I found that the district judge's decision to sentence the appellant to six months' imprisonment was appropriate and, therefore, I upheld his decision.

Conviction and sentence on the charge of voluntarily causing hurt

53 The district judge found for a fact that the appellant had punched, kicked and slapped Kher in her bedroom, the instances of assault for which the appellant was charged. The charge was thus satisfied and the appellant was accordingly convicted on it. Although the district judge could not differentiate between the injuries sustained in the earlier two scuffles from those sustained in the bedroom, he noted that all of the injuries were nevertheless relatively minor. However, considering the circumstances in which the assault took place, including the fact that the appellant had entered Kher's apartment without her permission, the district judge was of the view that a short custodial sentence was appropriate, and sentenced the appellant to two weeks' imprisonment.

54 It was not disputed that the appellant assaulted Kher in her bedroom by shoving her into the bathtub, strangling her, punching her head, slapping her face, kicking her body and throwing her onto the floor, to list a few. Therefore, the district judge was indeed correct in convicting the appellant on the charge. The next issue would then be whether the sentence of two weeks' imprisonment was manifestly excessive or inadequate, for that matter. One consideration to bear in mind would be the severity of the injuries sustained by the victim, with minor injuries attracting fines and more serious ones warranting custodial sentences. Here, the injuries were minor and in the usual case a fine would be a sufficient penalty.

55 However, this is obviously not a fixed remedy and in an appropriate case, a custodial sentence could still be imposed despite the victim having suffered only minor injuries. Everything hinges on the facts of each case, and on these facts, there were aggravating factors that merited the imposition of a custodial sentence. The appellant's assault on Kher was by no means simple. The appellant went back to Kher's apartment most certainly to settle some form of unfinished business with her, and not to look for the cigarettes, which has been established as a non-issue. He behaved violently from the outset and literally broke into her bedroom. He pinned her into a bathtub, clearly restricting her movements, in order to strangle her.

56 He was still not satisfied and dragged her into the bedroom where he repeatedly kicked, punched and slapped her. All this time, Kher was unable to retaliate because the appellant was obviously overpowering her. When she tried to run away, the appellant would drag her back and rain punches and kicks at her. He then proceeded to throw Kher around on the floor of the room and continued to assault her, before picking up a pair of scissors and threatening her.

57 This was thus clearly not a case where the assault in question was a one-off slap or punch. It was a continuous assault that could have resulted in severe injuries, if not for the fact that the appellant became hysterical suddenly, giving Kher an unexpected opportunity to escape. It was against this backdrop that I scrutinised the custodial sentence that had been imposed on the appellant. In the circumstances, I found that a fine would be inadequate, considering the appellant's aggravated manner of assault, and held that the district judge was correct in imposing a custodial sentence.

58 However, I was deeply concerned as to the adequacy of the two-week term of imprisonment imposed by the district judge. As I have mentioned earlier, this was not a case of an assault characterised by a one-off slap. It was an aggravated assault comprising a string of physical abuses that only ended when the appellant became hysterical. From the facts, it was obvious to me that but for this moment of hysterics, the appellant would have continued to assault Kher. The seriousness of the assault was accentuated by the fact that the appellant was holding on to a pair of scissors before he became hysterical. It was frightening to think what he could have done to Kher if not for this period of hysterics.

59 In the circumstances, I found that a two-week term of imprisonment was insufficient. After much consideration, and taking into account the nature of the assault in this case, I held that a three-month term of imprisonment would be more appropriate.

60 I further observed that the district judge had ordered the custodial sentences to run concurrently. I found that if this holding remained unchanged, it would render the three-month term of imprisonment nugatory, as the appellant, regardless of the increase in the custodial sentence on the charge of assault, would only be incarcerated for a maximum of six months, being the term of imprisonment on the charge of criminal intimidation. In my view, the appellant needed to feel the full force of the repercussions for the offences he had committed.

61 The appellant was essentially a jilted man with a deflated ego. He was unable to handle Kher's rejection and resorted to an exaggerated and aggravated show of violence to express his hurt. In order to cover up his actual intentions, he concocted a story before the trial court, claiming that he was a victim of Kher's scheme, and that he was actually a model citizen who was on a mission to snuff out Kher's crime and expose her. I therefore felt that the appellant's conduct from the time of the offences up till the trial, and now on appeal, left no room for sympathy. This was despite the fact that the appellant had no recorded history of violence. The appellant needed to face the consequences of his actions in assaulting Kher, and ordering the custodial sentences to run concurrently would go against this aim. As such, I ordered the custodial sentences to run consecutively instead.

Appeal against conviction and sentence dismissed. Sentence on charge of voluntarily causing hurt enhanced to three months' imprisonment and custodial sentences ordered to run consecutively instead of concurrently.