

Louis Pius Gilbert v Public Prosecutor
[2002] SGHC 303

Case Number : MA No 196 of 2002

Decision Date : 13 December 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Winston Cheng Howe Ming (Deputy Public Prosecutor) for the respondent

Parties : —

Criminal Law – Offences – Grievous hurt – Penal Code (Cap 224, 1985 Rev Ed) s 325 – Whether fracture caused by blows from accused – Whether intention to cause grievous hurt

Criminal Law – Special exceptions – Provocation

Criminal Procedure and Sentencing – Sentencing – Aggravating factors and special circumstances warranting heavier sentence – Deliberate act of violence and contempt of court – Use of proviso to s 11(3) of Criminal Procedure Code (Cap 68, 1985 Rev Ed) to enhance sentence

Judgment

GROUND OF DECISION

This was an appeal from the judgment of district judge Adrian Soon who convicted the appellant Pius Gilbert Louis ('Pius') of one charge of causing grievous hurt to one Halijah Mohammed ('Ms Halijah') under s 325 of the Penal Code (Cap 224) and sentenced him to six years' imprisonment. Pius appealed against both conviction and sentence. I dismissed the appeal on conviction and enhanced his sentence to ten years' imprisonment. I now give my reasons.

The prosecution's case

2 The prosecution's version of events was as follows: on 1 February 2002 at 10.30 a.m., district judge Daphne Hong ('DJ Hong') was hearing a summons-in-chambers in Chamber E of the Family and Juvenile Courts Building concerning an application by Pius's ex-wife for a variation of some of the orders made on ancillary issues pursuant to their divorce. While Ms Halijah, who was acting for Pius's ex-wife, was replying to Pius's submission, Pius suddenly got up from his seat and walked to the public door. This was observed by DJ Hong who wondered what Pius was doing as the hearing had not ended. After spending about three seconds at the door, Pius turned around and approached Ms Halijah. He angrily accused her of intending to destroy him. Saying that he was not afraid to die, Pius gave Ms Halijah a few slaps to the face, followed with punches to her face and head. DJ Hong pressed the emergency button while telling him to stop assaulting Ms Halijah. Pius stopped after delivering a few more punches. He then took two steps towards DJ Hong who told him to stop. Pius did so while reiterating that he was not afraid to die. After pausing, Pius returned to Ms Halijah and resumed punching her on the face. In the two series of attacks, Pius inflicted seven to ten blows on Ms Halijah's face.

3 DJ Hong then tried to leave the chamber to seek assistance but found that the public door was locked. She released the lock and proceeded to Chamber F where she asked district judge Shobha Nair ('DJ Shobha') to call for the police. On her way back to her chambers, DJ Hong saw Pius in the public waiting area shouting away. Back in her chambers, she saw magistrate Lim Hui Min ('Magistrate Lim') with Ms Halijah and noticed that the latter had sustained bruises. Subsequently, the

police arrived and Pius was taken into custody.

4 On the same day some two hours later, Dr Caroline Low who runs the Family Court Clinic for victims of spousal abuse examined Ms Halijah. Her clinical examination revealed that Ms Halijah's left eye was very swollen. There was also tenderness on palpation around the eye socket and on the left side of the nose. The conjunctiva was infected. As Dr Low suspected a fracture, she sent Ms Halijah for an x-ray. The x-ray report of Dr K. Param stated that there was a suspected lower fracture in the left orbital floor. Three days later, Ms Halijah consulted Dr Jerry Tan, an eye surgeon for a second opinion on her injuries. She was found to have swollen and bruised upper and lower eyelids of her left eye which were injuries consistent with a heavy blow to the left eye and orbit. Subsequently, when Dr Jerry Tan became aware of the x-ray report, he sent Ms Halijah for a Computer Tomography Imaging (CT scan). The CT scan done by Dr See Toh Cheong Wah revealed that she had sustained a fracture of the lamina papyracea in her left eye. Based on the clinical findings as well as the CT scan report and the Magnetic Resonance Imaging (MRI) report, Dr Tan confirmed that there was such a fracture. He further stated that this fracture was likely to have been caused by a blunt object such as a fist.

The appellant's case

5 During the hearing before DJ Hong, Pius had made an offer to settle the issue brought up by the application but Ms Halijah said "No" to his offer. Pius testified that at this point of time, he felt a gush of blood rushing through his brain. He protested that Ms Halijah had made this same offer in writing. When asked by DJ Hong, Ms Halijah again said "No". This caused Pius to become very angry. His version of events was that he stood up and walked along the side of the table, looking for the letter which contained the offer. DJ Hong was looking down. Pius then smacked Ms Halijah with his left hand while looking at DJ Hong. Ms Halijah did not make a sound. Pius then used his right hand to thump the table. It was then that DJ Hong looked up. Pius uttered, "Is this justice? I want my money. There is no justice. I have tried to kill myself. I am not afraid to die. Do you want me to kill myself?"

6 Just as Ms Halijah was letting out a moaning sound, Pius once again smacked her while still keeping his focus on the judge. This time, DJ Hong saw the smack and tried to activate the panic button. Pius then went to the public door. He looked through the glass panel in the door as he was afraid that the police would be rushing in. When he did not see any policemen, he walked forward. DJ Hong walked passed him on the way out of the chamber to go to the adjourning chamber.

7 Pius then walked to Ms Halijah. While scolding her for causing him so much trouble, he used his right hand to knock her head. Ms Halijah screamed very loudly, which apparently caused Pius to become so frightened that he walked to the back of the room. The judge's door then opened and two women entered. Pius told one of them to apologise on his behalf to DJ Hong for causing her distress and that he was not angry with her. After that he left the chamber. At the foyer, he told his family members what had happened. Eventually, Pius was arrested by the police and brought to the Central Police Station.

The appeal against conviction

8 Pius submitted that the prosecution had failed to prove conclusively and beyond a reasonable doubt that there was a fracture of the lamina papyracea based on medical evidence. He thus contended that he ought to be charged under s 323 of the Penal Code for voluntarily causing hurt, instead of s 325 as no grievous hurt had been caused.

9 This same submission had been put before the trial judge below who had carefully considered

the matter. In paragraph 54 of the trial judge's grounds of decision, he stated that:

The Court was satisfied that there was ample evidence to prove that the lamina papyracea is a bone. The accused's challenge was devoid of merit.

... he challenged the medical conclusion that the lamina papyracea had been fractured. From the CT scan, Dr See Toh made the finding that there was a fracture of the lamina papyracea. He also said that it was a blow out fracture and not a hair-line fracture as the lamina papyracea is the weakest part of the ethmoidal bone. His finding was based on 2 features which he observed. The first feature is that there was a break in the continuity of the medial wall of the left orbit or socket. In the normal state, the outline of the orbit is a continuous line and oval shape. The second feature is that there were soft tissues (fat or connective tissues) protruding from the left orbit into the air cells of the adjacent ethmoidal sinus when there should not be any tissue in the sinus which is a group of cells lying beside the orbit. In this respect, Dr Tan stated that for the orbital tissues to enter the sinus, there had to be a break in the bone plus a break in the lining in the bone. It was the accused's contention that "the lamina papyracea can never be fractured or there is never such a case known without orbital floor also having a fracture." In line with his stand, the accused asked Dr Jerry Tan if there was any special reason why the floor of the orbit did not fracture in this case. The surgeon's reply was this : "I know you can have fracture on the medial wall without fracture of the floor. There are theories (conjectures) why this happens." Dr Tan had in fact already stated in examination-in-chief that it is possible to have a fracture of the lamina papyracea without a fracture of the orbital floor. His evidence was supported by the testimony of Dr See Toh who stated that "the lamina papyracea can be fractured without a corresponding fracture to the interior borders of the orbit." Therefore, the accused's assertion ran contrary to the medical evidence and must be rejected.

Pius argued, however, that there were seven other doctors who failed to detect a fracture in the lamina papyracea. I noted that none of these doctors in fact did a CT scan on Ms Halijah. One of the prosecution witness Dr Dharambir Singh Sethi ('Dr Dharambir'), senior consultant of ENT at the Singapore General Hospital gave expert evidence that a CT Scan is usually necessary to confirm or exclude a fracture, and that an endoscopic examination could not do the same. This was not disputed by Pius, nor did he adduce any expert evidence to the contrary. The Court of Appeal in *Saeng-Un Udom v PP* [2001] 3 SLR 1 held that:

the court should not, when confronted with expert evidence, which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and

prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged... if the court finds that the evidence is based on sound grounds and supported by basic facts, it can do little else than to accept the evidence.

Following this case, I found no reason to reject the expert evidence given by Dr Dharambir, and since the CT scan did in fact show that there was a fracture and there were competent, independent and reliable doctor-witnesses who testified to the same, I found no reason to disturb the trial judge's finding that the prosecution had proven that there was a fracture of the lamina paprycea beyond reasonable doubt.

10 It was impossible to accept Pius's submission that he did not have the necessary intention to cause grievous hurt when he had delivered seven to ten punches in two series of attacks to the face of Ms Halijah. The element of intention which must be established to satisfy a charge under s 325 of the Penal Code, as elaborated in *PP v Sng Siew Ngoh* [1996] 1 SLR 143, is that the accused must intend to cause or know that he was likely to cause grievous hurt. Anyone must know that punching someone repeatedly would likely lead to grievous hurt. It cannot be an excuse to say that he had under-estimated his own strength and that he had only expected simple hurt to be caused. If one makes a decision to punch another person, he bears the risk of causing grievous, rather than just simple, hurt.

11 I also rejected Pius's defences of grave and sudden provocation and accepted the trial judge's findings on this point. First of all, there was no grave and sudden provocation. Ms Halijah's act of lodging a caveat on the matrimonial flat and her refusal to accept Pius's offer of settlement at the summons-in-chambers hearing in order to first get her client's instructions were all part of her professional duty to act in the best interests of her client. There was no evidence of a personal vendetta as imagined by Pius. The defence of grave and sudden provocation is not meant to protect people who are exceptionally pugnacious, bad-tempered or over-sensitive. It would be ridiculous to extend the defence by classifying legal steps taken by the opponent's lawyer as acts sufficient to cause grave and sudden provocation, as it would expose all the lawyers to the risk of assault whenever they act in a manner adverse to the interests of their opponent.

12 Moreover, Pius's actions pointed to the conclusion that he had not lost self-control. He himself had testified that, when Ms Halijah turned down his offer (which was the alleged act of provocation), he stood up and started looking for the letter in which Ms Halijah herself had made the same offer. This sounded more like a man with the presence of mind to look for proof to substantiate his assertion that there was really such an offer, than a man who had lost self-control. He also claimed that when he was hitting Ms Halijah, he was looking at DJ Hong as he wanted to show his frustration with Ms Halijah's conduct as well as that of the judge. Further, there was evidence that he was the only person who could have locked the chamber's doors. These had to be the deliberate acts of a man in full control of his mental faculties. Because the credit of two of the defence witnesses were impeached, no weight could be given to their testimonies that Pius appeared edgy and anxious after the incident. I thus held that the trial judge had come to the correct and logical conclusion in dismissing the defence of grave and sudden provocation.

13 For the reasons given above, I was satisfied that the elements of the offence had been fully made out and dismissed the appellant's appeal against his conviction.

The appeal against sentence

14 Pius was sentenced to six years' imprisonment. He could not be caned as he was 51 years of age. There were many especially aggravating factors in this case, however, which cried out for a heavier sentence.

15 Pius is a dangerous man. He was not afraid to carry out a pre-meditated attack on a lawyer in the courts or to intimidate a judge. He had obviously no respect for the law. The extent of his determination to carry out the crime was shown by the fact that he had first locked the door before the attack to prevent his victim from escaping, as well as the fact that he came back to punch his victim a second time even after DJ Hong told him to stop. He himself had the audacity to admit that his intention was to generate publicity and make his point. He also testified that he wanted DJ Hong to see him attack Ms Halijah to show his unhappiness with the both of them. Worst of all, he intimidated the district judge by coming towards her when she told him to stop the attack on Ms Halijah. I have checked the records and there had never been an attack like this in our courts before. This was an unprecedented act of violence coupled with contempt of the court. It would be making a mockery of our system of law and the courts of our land to let him get away with a lighter punishment.

16 Moreover, he showed no remorse right up to the end. During his mitigation plea, he stated that "I do not apologise nor regret my action..." and then went on to justify his actions in the name of defending his family, his reputation, and his dignity and honour. During the trial, he launched attacks on the dignity of the majority of the witnesses including that of the district judges. In the appeal before me, he continued to claim justification for his actions. Instead of trying to turn over a new leaf, he chose to blame others for his "misfortune". Before me, he even had the breathtaking impertinence to tell me that he would explain his views confidentially to me in the privacy of my own chambers. A heavy sentence should serve as a wake-up call to him to re-examine his own conduct and attitude. Society has to be protected from a violent and dangerous man like Pius who has complete disregard for the law.

17 I was mindful of the fact that, following *PP v Lee Meow Sim Jenny* [1993] 3 SLR 885, my powers when sitting in an appellate capacity hearing appeals from the district courts, are limited by the power which a District Court possesses. However, the proviso to s 11(3) of the Criminal Procedure Code (Cap 68) empowers a district court to sentence a person to imprisonment for a term not exceeding ten years by reason of any previous conviction or of his antecedents provided that the court records its reason for so doing. Unlike the proviso to s 11(5) which limits the punishment which a magistrate's court can award to "the full punishment authorised by law for the offence, for which that person has been convicted" there is no such restriction on the district court's powers under the s 11(3) proviso. Moreover, on a purposive interpretation, it is unlikely that Parliament intended the restriction under s 11(5) to be read into the proviso to s 11(3), since otherwise there would be extremely few cases which would warrant its use at all. Most importantly, there were very special and unique reasons in this case which call for an exercise of the s 11(3) proviso. I was unable to think of another situation which warranted a more severe punishment. We were dealing here with a man whose contemptuous conduct had outraged the dignity of our courts. He was lucky to escape caning only because of his age.

18 As Pius has had previous convictions – in 1986, he was fined for providing public entertainment without a licence, and in 1999 he was imprisoned and disqualified from holding or obtaining a driving licence for five years for driving while under disqualification – I increased his sentence to ten years' imprisonment pursuant to the proviso to s 11(3) in light of the aggravating factors stated above.

Conclusion

19 For the reasons above, I dismissed the appeal against conviction and enhanced Pius's sentence to ten years' imprisonment.

Sgd:

YONG PUNG HOW

Chief Justice

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