

Public Prosecutor v Selvaraju s/o Satippan
[2004] SGHC 154

Case Number : CC 19/2004
Decision Date : 26 July 2004
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Cheng Howe Ming and Deborah Tan (Deputy Public Prosecutors) for prosecution;
Mohan Das Naidu (Mohan Das Naidu and Partners) and Tey Tsun Hang (Drew and Napier LLC) for accused
Parties : Public Prosecutor — Selvaraju s/o Satippan

Criminal Law – Offences – Attempted murder – Section 307(1) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Hurt – Voluntarily causing hurt – Section 324 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Offences – Property – Mischief – Mischief by fire – Section 436 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Statutory offences – Kidnapping Act – Demand for moneys kidnapper believed owing to him – Whether amounting to demand for "ransom" – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

Criminal Law – Statutory offences – Kidnapping Act – Location of kidnap victim and kidnapper and identity of kidnapper known – Whether act still falling within ambit of Kidnapping Act – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

Criminal Law – Statutory offences – Kidnapping Act – Whether acts of accused constituting wrongful confinement – Section 3 Kidnapping Act (Cap 151, 1999 Rev Ed)

26 July 2004

Tay Yong Kwang J:

1 The accused is a 45-year-old male Indian Singaporean. He was unemployed at the time of his arrest. He was tried before me on the following four charges:

That you, Selvaraju s/o Satippan

1st Charge: on the 7th day of August 2003, at or about 1.18 pm, at 1 Cotswold Close, Singapore, did commit mischief by fire, to wit, by setting fire to the clothes inside the wardrobe in the bedroom occupied by one Nina Elizabeth Varghese, knowing it to be likely that you would thereby cause the destruction of the said house, which was a building ordinarily used as a place for human dwelling, and you have thereby committed an offence punishable under section 436 of the Penal Code, Chapter 224.

2nd Charge: on the 7th day of August 2003, sometime between 10.00 am and 1.20 pm, at 1 Cotswold Close, Singapore, with intent to hold one Nina Elizabeth Varghese, female 22 years old, for ransom, wrongfully confined the said Nina Elizabeth Varghese, and you have thereby committed an offence punishable under section 3 of the Kidnapping Act, Chapter 151.

3rd Charge: on the 7th day of August 2003, sometime between 10.00 am and 1.20 pm at

1 Cotswold Close, Singapore, did voluntarily cause hurt to one Nina Elizabeth Varghese, female 22 years old, by means of an instrument for cutting, to wit, a kitchen knife, by chopping the left forearm of the said Nina Elizabeth Varghese with the said kitchen knife, and you have thereby committed an offence punishable under section 324 of the Penal Code, Chapter 224.

...

9th Charge: on the 7th day of August 2003, sometime at or about 1.20 pm at 1 Cotswold Close, Singapore, did attempt to murder Nina Elizabeth Varghese, female 22 years old, by holding a knife above your head aimed at her skull and plunging it down towards her head, with the intention of causing death to the said Nina Elizabeth Varghese, and you have thereby committed an offence punishable under section 307(1) of the Penal Code, Chapter 224.

The Prosecution's case

2 The Varghese family resides at 1 Cotswold Close, Singapore. The house is a single storey bungalow. The members of the family involved in this trial were Roy Abraham Varghese ("Roy"), his wife, Susheela Varghese ("Susheela"), and their daughter, Nina Elizabeth Varghese ("Nina"). Roy is a Financial Advisor Representative with Ipac Financial Planning Singapore Private Limited. Nina is a journalist. Roy's father-in-law is in the business of buying and selling properties. His house is a short distance away from Roy's.

3 On Thursday, 7 August 2003, at about 7.00am, the Vargheses left their home. At about 9.45am, a domestic maid working in the Vargheses' home, Madanahalu Gedara Subadrawathie ("the maid"), was having breakfast in the kitchen when she heard the doorbell ring. She ignored it. The doorbell rang again, this time continuously. The maid walked to the hall to look out of the house. She saw an Indian man (the accused) standing outside the gates. She then went out of the house and walked towards the gates.

4 The accused, whom she had not met before, looked at her fiercely. She asked for his name and the purpose of his visit. He did not tell her his name but said he wanted to talk to her boss and also wanted some money. When she told him her boss was not at home, he asked her to call him. She then told him she did not have the telephone number of her boss but would call her boss' wife. He said it was useless to speak to her boss' wife and insisted on talking to her boss. He then asked her to open the gates but she claimed she did not have the key for the small gate or the remote control for the main gates.

5 The maid started walking back towards the house. When she turned around to look at the accused, she saw him climbing over the fence. He had taken off his shoes and had thrown them into the compound of the house. She shouted for help. He was carrying what appeared to her to be a small foldable knife and warned her not to shout or he would kill her. He covered her mouth with his hand and pointed the knife at her neck

6 They then went into the kitchen with the accused holding on to her neck tightly. He took a kitchen knife from the holder and threatened to kill her if she cried or shouted for help. Pointing the kitchen knife at her neck, he led her to Susheela's bedroom and asked the maid to get jewellery and money from the room. She claimed there were no valuables inside the room. The accused then asked her to close the curtains in that room. He then made her pull out the telephone wire from the wall and the telephone. He took the telephone wire and led her out of the bedroom.

7 The accused asked the maid to close all the curtains in the house. He also asked her to lock

the door that opened from the driveway into the house but she told him it was already locked. He wanted to use the telephone wire to tie her up but she pleaded with him to allow her to call Susheela to inform her of what was happening at home. Eventually, he agreed to let her make a call and told her to inform Susheela to bring money home or he would kill the maid. Before the maid could telephone Susheela, the accused changed his mind and told her not to make the call.

8 At that moment, Nina rang the door bell. The maid told the accused the Vargheses' elder daughter had returned home. He asked the maid to open the automatic gates from inside the house and she did so. Nina then walked into the compound of the house.

9 The accused told the maid to unlock the door leading into the house but not to open it. He then pulled her into the bathroom in Nina's bedroom. There, the maid shouted "Nina" but the accused covered her mouth and warned her not to shout or he would kill her.

10 When Nina entered her bedroom, still talking on her mobile phone, the accused pushed her against a wall and told her not to shout. She felt something sharp pressed against the right side of her neck. He grabbed her mobile phone and switched it off. Nina started to scream and there was yelling and some commotion in the bedroom.

11 When things calmed down, Nina asked to be allowed to sit down. She sat on her bed. She then asked the accused what he wanted. Still holding the knife, he told her he wanted money and asked her for \$150,000 or he would kill her. He then asked the maid to shut the two top-hung windows in the bathroom and to close the bathroom door and the curtains in the bedroom. The bathroom's windows had grilles which were spaced widely apart. The maid was then instructed to sit on Nina's bed. Immediately thereafter, he asked the maid to lock the bathroom windows but to leave the bathroom door open.

12 He then handed Nina her mobile phone and told her to call her mother to bring the said amount of money home and not to contact the police or he would kill Nina. She wanted to call her father instead as she felt her father was a stronger person. However, the accused denied her request without giving any reason.

13 Nina telephoned her mother and told her there was an intruder in their home and asked her to go home immediately. She also requested that her mother not bring her father or the police along. Susheela was shocked but agreed to comply.

14 At about 10.00am, Roy received a telephone call from his wife informing him that Nina called her to say that there was an intruder in their home. His wife asked him to return home quickly. Roy then asked his colleague to call the police. She did so.

15 Subsequently, the accused made Nina call her mother again. This time, he spoke to her and told her to bring \$150,000 but not the police or he would kill Nina.

16 Nina's mobile phone rang several times after that but the accused would merely pick up the calls without saying anything. He then decided to tie Nina up. He pulled out some wire from the computer's speakers next to her bed and cut a length of it with the knife he was holding. He held her hands to her front and instructed the maid to tie Nina's wrists. While the maid was doing so, the accused took over and tightened the wire over her wrists.

17 The accused became impatient and told Nina to call her mother to hurry and not to bring the police or he would kill Nina. Nina complied. She then started a conversation with the accused, hoping

to calm him and to dissuade him from killing her. He appeared very nervous and kept looking out of the window for movements. She asked him about his background and was told he was 45 years old and divorced with no children. He claimed he had no ties in Singapore and intended to leave for and retire in New Zealand or Switzerland with the money that he wanted. If he could not achieve his aim that day, he would kill Nina and then commit suicide.

18 He also mentioned to Nina that he had been a construction worker with ten men working under him and was educated up to the Primary 6 level. He was last employed in January 2003. She offered to find him a job but he turned her down. She then negotiated with him on the amount asked for and managed to lower it to \$50,000.

19 The accused then noticed some movement outside the bathroom windows and asked the maid to open one of them. When she did so, they saw Roy standing outside. Roy had returned home and had climbed over the fence into the compound. The accused and Nina were standing at the entrance of the bathroom with the accused pointing the knife at Nina's neck. Roy addressed the accused as "Sir" and asked him how he could help him. The accused told him he only wanted \$150,000 in cash or else he would kill Nina and then commit suicide. Roy asked the accused whether he (Roy) knew him. The accused said he knew Roy. Roy then told the accused he (Roy) did not know him and that he did not have \$150,000 but could possibly get \$50,000. The accused agreed to lower his demand to that figure.

20 It occurred to Nina that the accused could be one Raj who had been making prank calls to her family's fixed-line telephone as well as her mobile phone. When she asked him whether he was Raj, the accused refused to answer her. He then warned Roy not to call the police. Roy promised him he would not do so. After asking the accused not to harm Nina, Roy said he had to leave to make the arrangements for the money.

21 Roy walked to the front of his house and saw some police officers outside the compound. He related the events to them. Subsequently, an Indian police officer in plain clothes arrived and Roy told him he wanted to go into the compound again to ensure that his daughter was alright. The Indian police officer went with him but tried to stay out of the sight of the accused.

22 In the meantime, the accused and Nina continued their conversation in her bedroom. He appeared to be alert and in control of himself but he never let go of the knife. The accused claimed he was Mohandas and asked her what her parents' occupations were and where her grandparents lived. She told him the truth about her parents' occupations but lied about the places of residence of her grandparents. She told him he could still walk out of the house as the police had not arrived. However, he repeated that he wanted the money that day or both he and Nina would die.

23 Back outside the bathroom windows, Roy told the accused he had only \$10,000 in the bank but could possibly get another \$30,000 with help from his father-in-law. The accused asked Roy how much money he had in his wallet and Roy replied that he had only \$100 to \$200. The accused asked the maid to take the money from Roy through the window. They exchanged a few more words and the accused then asked the maid to return the money to Roy.

24 Suddenly, the accused noticed the Indian police officer crouching at the right side of Roy. Roy lied to the accused that the police officer was his neighbour, Thamby. Nina went along with that lie. Roy said that his wife had gone to the bank to withdraw the money. The accused then told the two men to go away and to get the money, failing which he would kill Nina.

25 After the two men left, Nina tried to convince the accused about Thamby but he said he

knew the neighbourhood well. He knew that the people living in the house next to the Vargheses' were Europeans, that a Chinese family lived across the road and there were no Indians living in the vicinity. He accepted Nina's offer to drive him to the airport after he received the money, saying he had to alight along the way to collect his passport and belongings. He told Nina he had planned to go to her home about one and a half years ago.

26 After a while, the accused became visibly impatient. He had spoken to the police negotiator using Nina's mobile phone and had merely told them to hurry up with the money. He also spoke to Roy telling him, "Your daughter is going to die today. God bless you." He then switched the mobile phone off and refused to listen to Nina's pleas to turn on their only means of communicating with the people outside the house. He walked to the bedroom windows and, after peeping outside, claimed he could see police officers in the neighbouring house.

27 Nina had returned recently from the United States of America and was still in the process of unpacking her clothes which were strewn about her bedroom. The accused instructed the maid to gather the clothes into a pile. He then took out a lighter and said he was going to burn the house down. He dragged the book shelf in the bedroom to block the bedroom door and left the doors of the wardrobe open. The maid asked the accused to allow her to make a call to Roy to ask him to hurry up with the money. The accused acceded to that request and handed over Nina's mobile phone to the maid. However, before she could speak to anyone, he snatched the mobile phone back and switched it off again. He then told the maid he would release her and she was to go and tell Roy to bring the money or he would kill Nina. Nina suggested that she write a note for the maid to hand over to Roy, as the maid's command of English was not good. The accused agreed.

28 He told Nina to write words to the effect that Roy was to bring the money immediately or Nina would die and that he was not to bring the police. However, Nina wrote to inform her father that "He can see you in the neighbors' house. Please come to my bathroom window now. Bring no one. He is getting desperate." The accused appeared to be quite short sighted and could not read the note. Nina volunteered to read it to him. She repeated the words he had dictated as if she had obeyed him.

29 The note was given to the maid and the accused then helped the maid to stand on a chair and to squeeze out through the grilles of the bathroom windows as the bedroom door was blocked. The accused tied a piece of telephone cable into a noose, claiming he would use that to hang himself after killing Nina.

30 The maid thus left the house and handed over the note to the police outside. Inside the house, the accused claimed he could see policemen outside. He then used the lighter to set fire to the clothes in the wardrobe. The fire spread rapidly and there was a lot of black smoke in the bedroom. Nina asked the accused to open the bedroom windows as it was difficult to breathe. He refused. They moved towards the bathroom. Suddenly, the accused grabbed Nina's hands, raised the knife he was holding and brought it down hard on her left forearm. He exerted so much force that he actually grunted like a tennis player would in a match. He then cut his wrists once or twice and also cut himself once at his neck. He did not exert much force on himself although blood began to flow out from his wounds. He then went into the bathroom for air and closed the door.

31 Nina ran to the bedroom door and tried to pull the book shelf aside. It was difficult for her with her wrists tied and her left forearm wounded. When the accused heard her dragging the book shelf, he emerged from the bathroom and walked towards her with the knife in his right hand. Nina ducked down and tried to crawl through the gap in the doorway but was unsuccessful. She was in a squatting position when the accused came up behind her with the knife raised above his head and aimed at her skull. On seeing that he was going to strike her head with the knife, she crawled past

him and ran as fast as she could into the bathroom. She pushed open the window, stood on the toilet seat and dived out headlong through the grilles. She then dashed towards the main gates and met some police officers there. Later, she was brought to the hospital for medical treatment.

32 The accused left the burning bedroom and went into the hall where he was observed to be cutting his wrists and his neck intermittently. He was arrested when the police stormed in.

33 The maid added that about two weeks before 7 August 2003, she answered a telephone call in the house and the male caller asked her in English, "Hema, how are you?". When she told him there was no Hema living there, the caller told her not to lie as he knew she was Hema from the way she talked. She told him her name and said he must have called the wrong number. A few days later, there were a number of prank calls. In one of those calls, the male caller identified himself as Raj and said he was a Singapore Indian.

34 Susheela testified, when she was recalled by the Prosecution, that she had been informed by a friend that that friend's maid had told her that Susheela's former maid, Hema, had had a boyfriend in Singapore called Raj. Hema worked for the Vargheses between 1994 and 1998. Her service was terminated in 1998 because Susheela was told by her neighbour that Hema had brought her boyfriend into the house while the family was on vacation. Susheela did not know who that boyfriend was.

The defence

35 Many of the facts in the Prosecution's case were not disputed by the Defence. The accused denied he was carrying a foldable knife when he first entered the compound of the house. Indeed, such a knife was not found by the police.

36 In respect of the first charge relating to committing mischief by fire, the accused testified that he was angry as he felt cheated by Roy but did not have the intention to set fire to the house to burn it down. On the second charge of kidnapping for ransom, his defence was that he was merely asking for the return of money owed to him by Roy. On the third charge of voluntarily causing hurt, he denied that he caused hurt to Nina. He suggested that Nina's injury was caused accidentally. He denied the final charge of attempted murder, stating that if he had wanted to kill her in the manner alleged, he would have succeeded.

37 The accused was residing in the Yishun housing estate. He was educated up to the Primary 6 level. Before his arrest, he was working as a cement mixer truck driver. Before that, he operated a food stall in a canteen at the old Tan Tock Seng Hospital.

38 Roy went to that food stall occasionally to have his meals. They exchanged pleasantries and got to know each other. During one such meeting, Roy asked him to take part in his father-in-law's business of buying and selling immovable properties. If he invested \$50,000 in that business, he would receive returns of \$5,000 per month whether or not the business was making profits. He would also get back the principal amount when either party terminated the agreement. Roy gave him his business calling card with his address and home telephone number and asked him to call him at his home if he was interested in investing. He did not know where that calling card was now.

39 The accused informed Roy that he needed some time to ponder over the business proposition. He left the food stall to his wife to manage and started work as a truck driver. He used to own a cement mixer truck.

40 Sometime in November 1998, the accused decided to invest in the said property business and

went to Roy's home to look for him. Roy went outside his house to meet the accused. The accused told Roy he was ready to hand over the investment amount of \$50,000. Roy then told him to return to the house a couple of days later.

41 Two days later, the accused returned to Roy's home. He managed to put the amount together by scrapping his cement mixer truck and using his savings and his lottery prize moneys won in 1995 and 1996. Roy invited the accused into his house and showed him around. They were the only two people in the house then. Roy also invited and drove the accused to his father-in-law's house, a short distance away. The father-in-law was not home. Again, Roy showed the accused around. The accused walked up a staircase to the second floor. The staircase was carpeted in red (the accused was correct on this point). There was also a green or blue carpet on the second floor. They then returned to Roy's house where the accused told Roy to go to his (accused's) place of work at the Bukit Timah Nature Park the next day.

42 When Roy went to the accused's place of work the next day, Roy repeated the terms of the business proposition. Trusting Roy, the accused handed over \$50,000 in cash to him. There was no written agreement or acknowledgment.

43 Roy paid the accused the agreed monthly returns of \$5,000 for January and February 1999. After those initial payments, Roy made irregular payments of between \$2,000 and \$3,000 per month until the end of the year 2000. All the payments were made in cash and handed over personally by Roy to the accused outside the latter's work place. All in, the accused received about \$60,000 from Roy.

44 In 2001, Roy told the accused he was having financial difficulties and was unable to continue paying him the returns. He promised the accused that as soon as his father-in-law sold his house, he would be able to settle all outstanding amounts owing to the accused.

45 The accused trusted Roy and waited about a year. He then went to Roy's house to demand payment on three occasions but was unsuccessful. On the fourth visit, the accused waited in his car outside the house. When Roy returned home, he told the accused to park his car further down the road and wait for him there. When Roy went to meet him later, he told the accused he was not able to repay him until after the sale of his father-in-law's house.

46 Around June or July 2002, the accused went to see Roy again as no payment had been made to him. He drove his employers' cement mixer truck to Roy's house and parked it a distance away. When Roy returned home, he stopped his car and told the accused to get in. Roy then drove his car a short distance away from his house. The accused told Roy that he was unable to pay his bills and the instalments for his flat. However, Roy repeated his problems and said that his father-in-law's house had not been sold yet. He promised the accused he would give him some money to settle his outstanding bills but did not keep that promise.

47 In December 2002 or January 2003, the accused tried to meet Roy at his house without success. In the following two months, he received warrants of arrest for his failure to attend court for not having paid his television licence fee and the conservancy charges for his flat. The housing authority also threatened to re-possess his flat. His utility bills were also not paid. It was in these trying circumstances that he decided to go to Roy's house in the morning of 7 August 2003 to ask for payment of the money due to him, amounting to some \$150,000 in monthly returns and another \$50,000 being the capital amount. He denied that he had a small foldable knife with him.

48 It was submitted that as the accused did not have the intention to burn the house down, the

charge under s 436 of the Penal Code (Cap 224, 1985 Rev Ed) ought to be amended to one under s 435 of the Penal Code, which concerns a less serious form of the offence of mischief by fire.

49 In respect of the kidnapping charge, the Defence argued that the accused's intention in going to Roy's house that day was not to commit kidnapping for ransom but merely to ask for the return of the money owed to him. He did not even know Nina was Roy's daughter until he was told by the maid and certainly did not know she was going to return home that morning. He was unsure as to what he should do when Nina rang the doorbell. His testimony in court was largely consistent with the statements he gave to the investigators, including a statement under s 122(6) of the Criminal Procedure Code (Cap 68, Rev Ed 1985) made on 14 August 2003. He could not have known about Roy, his father-in-law's business and his house if it was not Roy who told him those facts and brought him to the house. He could not recall correctly the colour of the carpet on the second floor of the house but he was right at least about the stairs being carpeted in red and about the presence of a carpet on the second floor. The attempt by Susheela to show that the accused knew Roy's previous maid was hearsay upon hearsay. There was no evidence, in any event, that the former maid passed any information about Roy to the accused. The accused denied knowing the Vargheses' former maid.

50 It was submitted that in law, the accused's act of demanding the return of the money owed to him by Roy could not constitute "ransom" and his act of confining Nina in her own house could not be said to be an act of kidnapping for ransom. "Ransom", in its dictionary meanings, is money paid to a kidnapper for the release of the person abducted; the release of property or a person in return for the payment of a demanded price; or money demanded for the return of a captured person. The person who demanded the ransom would have no legal entitlement to the ransom. This should be contrasted with the act of recovering a debt due.

51 It was further argued that none of the accused's actions was consistent with the hallmarks of kidnapping for ransom. The hallmarks were concealment of the kidnapper's intention and identity and of the location of the victim. In the present case, the identity of the accused and the location of Nina were known to everyone. He was at the house to get back his money and would leave immediately after getting it. He did not hurt the maid at all and allowed her to leave the house.

52 It was submitted that, on the evidence adduced, it would be more appropriate to charge the accused with an offence under s 331 or s 348 of the Penal Code. Even if the court should find that there was no debt owed by Roy to the accused, it was argued that the accused ought to have been charged with extortion under s 386 of the Penal Code.

53 He did not know how Nina's arm was injured. He believed it could have been caused in the panicky situation when both of them were trying to get out of the burning room. If he had "chopped" her left forearm in the way described by her, the injury would have been a more serious one.

54 Similarly, if the accused had wanted to murder Nina, he could have done it earlier. In any event, he would also have had no difficulty in plunging the knife into Nina's head given the confined space and his bigger build. He denied having attempted to murder Nina.

The decision of the court

55 I accepted the evidence of Nina and the maid that the accused told them he intended to burn the house down in order to kill Nina and himself. He used the bookshelf to block the room door to prevent escape and to keep out rescuers. He asked the maid to gather Nina's clothes into a pile and then he set fire to them by using his lighter. When the flames started spreading, he made no effort at all to try and put them out although water was readily available in the attached bathroom. His actions

belied his claims that he had not set fire to the clothes in order to burn the house down. Indeed, he was angry but that did not mean he had no intention of, or could not form the intention of, burning down the house. The maid's credibility was not reduced by the fact that no small foldable knife was found at the scene. Perhaps it was missed in the messy, soot-filled bedroom after the fire. I did not think she was lying about this or any other material fact. I had no doubt the accused was guilty on the first charge of having committed mischief by fire.

56 In respect of the third charge of causing hurt by means of the kitchen knife, I again accepted the unequivocal and truthful evidence of Nina. One of the two doctors who examined Nina after the event did not think it likely that the injury on her left forearm was accidental or self-inflicted. The long and clean cut suggested that the wound was inflicted intentionally. It was possible that Nina, in that frightful situation, overestimated the force with which the accused had brought the kitchen knife down on her left forearm. However, what was material was that the chopping action was intentional, whatever the force used might have been. I therefore found the accused guilty on this charge as well.

57 Where the attempted murder charge was concerned, it was clear that at that stage, the accused was a desperate man driven by his angry realisation that his plans had been foiled by the arrival of the police. With the overpowering smoke billowing from the burning clothes, the situation in the bedroom was obviously very chaotic. Clearly, the accused was not fast enough to inflict a fatal injury on Nina's head. Perhaps he felt no need to move swiftly as he thought Nina had no way of escaping from the burning bedroom. Perhaps the smoke had taken its toll on him. Nina, unlike the accused, was determined not to die. She was thus able to slip away from him and, despite her fear and her injury, had the presence of mind and agility of body to make her escape through the fortuitously wide gap in the window grilles of the bathroom. I believed her testimony that the accused was going to bring the kitchen knife down on her head. Plainly, if he had succeeded, death to Nina was the most likely outcome. He obviously intended to take her life in the desperate situation he found himself in. I therefore found him guilty of attempted murder.

58 The kidnapping charge did raise some interesting issues of law. Sections 2 and 3 of the Kidnapping Act (Cap 151, 1999 Rev Ed) provide:

Interpretation

2 In this Act "abduction", "wrongful restraint" and "wrongful confinement" shall have the meanings assigned to them in sections 362, 339 and 340, respectively of the Penal Code (Cap. 224).

Abduction, wrongful restraint or wrongful confinement for ransom

3 Whoever, with intent to hold any person for ransom, abducts or wrongfully restrains or wrongfully confines that person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to caning.

"Ransom" is not defined in the Kidnapping Act.

59 The charge in question alleges wrongful confinement which is defined in s 340 of the Penal Code in the following way:

340 Whoever wrongfully restrains any person in such a manner as to prevent that person

from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

60 The acts of the accused in holding the kitchen knife to Nina’s neck, tying up her hands and blocking the bedroom door prevented Nina from going beyond the bedroom and the bathroom. Clearly, she had been as good as locked up in the bedroom and the bathroom as in illus (a) above. Similarly, his act of staying in the bedroom and brandishing the kitchen knife often was no different in substance from the situation in illus (b) above. It was obvious what the accused would have done if Nina had tried to escape, as demonstrated by him in the attempted murder charge. The accused therefore did wrongfully confine Nina in the house, particularly in the bedroom and the bathroom.

61 I note the submissions by the Defence that kidnappers would normally keep their location and their identity secret. However, the fact that the location of the kidnapper and the kidnapped and the kidnapper’s identity were known could not take the present case out of the ambit of the Kidnapping Act. Neither could the fact that the location happened to be the victim’s home. As shown above, there was clearly wrongful confinement. The accused could decide to make his escape by demanding a vehicle and bringing Nina along as a hostage. The situation would be no different from that where a kidnapper wrongfully confines his victim in a building which the victim is visiting.

62 Is it “ransom” if the accused was merely demanding money that was rightfully his? The ordinary meaning of “ransom” is that it is an amount of money or other consideration to be paid in order to set free a person who has been kidnapped. In *USA v Jairo Leon Escobar-Posado* 1997 US App. LEXIS 8536, a decision of the United States Court of Appeals for the Second Circuit, the defendant was involved in a drug transaction where two women were hired to transport money from New Jersey to Colombia. On the way, the women were robbed at gunpoint by robbers posing as policemen. Several days later, the defendant and others abducted the two women and a female roommate and interrogated and sexually abused them in an attempt to retrieve the money. Eventually, the abductors released one of the women, demanding that she return with the missing money or else her friends would be killed.

63 Dismissing the defendant’s argument in that case that the threat could not constitute a ransom demand because the two women owed him the missing money, the court there said there was no authority to support the proposition that a demand for money as a condition for the release of the victim was not a ransom demand because the money was owed to the kidnapper. Relying on Webster’s Third New International Dictionary (G & C Merriam Co., 1981), the court found that there was nothing in the word’s ordinary usage (“a consideration paid or demanded for the redemption of a captured person”) that precluded a ransom from consisting of a demand for a sum that the kidnapper believed was owed to him. The court ended by saying at [4] that:

Finally, neither logic nor policy supports appellant’s position. We provide formal, peaceful means for legitimate debts to be collected in part at least so that resort to force can be prohibited. The fact that appellant’s claim for the money was not legitimate – the debt was clearly not a lawful one – hardly justifies the use of force.

64 In *USA v John DiGiorgio* 1999 US App. LEXIS 19960, the United States Court of Appeals for the Eleventh Circuit said at [7]:

This appeal raises the issue of whether the definition of "ransom" as used by the Sentencing Guidelines includes money the kidnapper believes is owed to him by the victim. We conclude that it does. Although "ransom" is not defined by the Guidelines, we are bound to give the term its ordinary meaning. ... Black's Law Dictionary [6th Ed, 1990] defines ransom as "the money, price, or consideration paid or demanded for redemption of a kidnapped person or persons; a payment that releases from captivity". ... Nothing in that definition excludes previously-owed money from qualifying as the "payment that releases from captivity". The only other circuit to directly address this issue agrees. See *United States v Escobar-Posado* [112F. 3d 82, 83 (2d Cir. 1997)] (expressly holding that a prior debt can be considered a ransom demand).

65 I respectfully agree with the two decisions cited above. Even if the accused in this case was merely asking Roy for money owed to him in return for the release of Nina, his acts would fall squarely within s 3 of the Kidnapping Act. The facts of the present case may well fall within some other penal provisions too but it is a matter of prosecutorial discretion as to the charges to prefer against the accused here. I note also, that while ransom is in most cases demanded from a victim's family or friends, the said section has no restrictions as to the person(s) paying the ransom. It appears, therefore, that money demanded from a victim in exchange for his own release would also amount to an offence under that section.

66 On the facts, however, I believed Roy and found the accused's story about his investment in Roy's father-in-law's business completely unbelievable. He could not have entrusted practically his entire savings with a man he met only a few times without even asking for an acknowledgment of receipt of the money. There was nothing whatsoever in writing alluding to the investment agreement or its terms. During the entire episode in the Vargheses' house, he only asked for money without mentioning the alleged agreement with Roy at all. His conversation with Nina and with Roy showed that Roy did not know him. He could have gleaned the little he knew about Roy's father-in-law's house and business from some other source or from his surreptitious observation. After all, he did tell Nina he had been contemplating going to the house for the past one and a half years.

67 Further, the alleged terms were simply too good to believe. The accused was supposed to be getting returns of 10% every month from a property business. Even with the alleged breaches by Roy, the accused supposedly got \$60,000 from Roy within two years. That would mean he got back at least his capital sum plus 20% over two years or 10% per year. Such returns in 1999 and 2000, at a time not known to be an economic golden age, defied belief altogether. I therefore had no doubt that there was no such investment agreement and that Roy did not owe the accused any money.

68 Even if the accused had gone into the house with the original intention of committing robbery, it was clear he decided at some stage thereafter to commit kidnapping for ransom. The accused was guilty on the kidnapping charge as well. I therefore convicted him on all the four charges on which he was tried.

Sentence

69 The accused was convicted in 1993 on a charge under s 342 of the Penal Code for wrongful confinement. He was fined \$1,000 but did not pay the fine. The sentence in default was 20 days imprisonment.

70 Nina, in her victim impact statement, recounted the trauma of 7 August 2003 and the days

following. She now lives in a perpetual state of hypervigilance and has developed a phobia of dark-skinned Indian men as they remind her of her attacker. The attack left a scar on her left forearm. She had to seek psychological counselling for the nightmares and fear she was experiencing.

71 In mitigation, the Defence urged me to bear in mind that the maid was released unharmed, the injuries Nina suffered were not very serious, the whole episode lasted no more than a few hours and the kidnap was a botched-up job committed by a witless man rather than a scheming, hard-core criminal. There was also no financial gain.

72 The accused was extremely bold in making his entry into the house. Even if his crimes were not well planned, he inflicted an immeasurable amount of psychological damage on Nina in addition to the cut on her left forearm. He obviously wanted to kill her after his plans were foiled. He almost destroyed a family's home. He demolished the Vargheses' sense of peace and security and put Nina's parents through a nerve-wracking experience. Taking all the circumstances into consideration and bearing in mind the guiding principles enunciated by the then Court of Criminal Appeal in *Sia Ah Kew v PP* [1972–1974] SLR 208 where the kidnapping charge was concerned, I sentenced the accused as follows:

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|-----|---------------------------------|--|
| (a) | charge under s 436 Penal Code | - 7 years' imprisonment; |
| (b) | charge under s 3 Kidnapping Act | - life imprisonment and
24 strokes of the cane; |
| (c) | s 324 Penal Code | - 2 years' imprisonment
and 6 strokes of the cane;
and |
| (d) | s 307 (1) Penal Code | - 5 years imprisonment. |

The imprisonment term for (c) was ordered to run consecutively to that for (a) with the imprisonment terms for (a), (b) and (d) deemed to have commenced on 7 August 2003. The accused would be subject to a maximum of 24 strokes of the cane.

Accused sentenced to imprisonment for life with effect from 7 August 2003 and to receive 24 strokes of the cane.