Public Prosecutor
v
Chua Siew Wei Kathleen

[2016] SGHC 33

High Court — Magistrate's Appeal No 9081 of 2015
See Kee Oon JC
2, 11 December 2015

Criminal procedure and sentencing — Appeal — Acquittal

11 March 2016 Judgment reserved.

See Kee Oon JC:

Introduction

1 The respondent faced a single charge of voluntarily causing hurt to the complainant, a foreign domestic maid employed by the respondent's sister. The offence is punishable under s 323 read with s 73(2) of the Penal Code (Cap 224, 2008 Rev Ed). She was alleged to have slapped the complainant on the cheek sometime in May 2012 at the condominium unit where the complainant was employed. The precise date and the time of the offence were not stated in the charge. She was acquitted following a trial before the Magistrate's Court. The prosecution now appeals against the order of acquittal made by the District Judge, who heard the trial in his *ex officio* capacity as a magistrate.

Background facts

2 The respondent lived and the complainant worked in a sixth-floor condominium unit where four other persons lived. These four persons were all related to the respondent: they were her husband, daughter, sister and mother. The complainant was officially employed by the respondent's sister, and she commenced work on 13 December 2011 and left the household on 30 October 2012.

3 The circumstances of the complainant's departure from the household on the day in question are largely undisputed. Sometime around 11.00am on 30 October 2012, she climbed out of the sixth floor window of the unit onto the ledge beneath and, from there, jumped to a rooftop one floor below. She had left a brief note of five lines on a Post-it note on which she wrote, "Thank you for all the kindness" in the first line before proceeding to say "sorry" to the respondent, her sister, her husband, and her daughter in each of the remaining lines.[1] Having injured her legs in the course of her descent, the complainant received assistance from two other domestic maids who were working in condominium units in the same development. She was eventually conveyed to the offices of a voluntary welfare organisation which provides assistance to migrant workers ("the VWO"). There, she complained that she had been enduring physical abuse for some months at the hands of the respondent, her sister, and their mother. The respondent was not in Singapore on the day the complainant left the household as she was on holiday in Australia with her husband and daughter.

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[1] Exhibit P4.

4 PW3, Celina M. Veletin, who was one of the domestic maids who attended to her on that day, testified that she felt "pity" for the complainant because it appeared that the latter's "body, her neck, her arms are all burnt".[2] In a similar vein, PW4, Ananda Valli d/o Govindapillai, who was the case worker who attended to her at the offices of the VWO, testified that the complainant's forearms appeared to be swollen. Suspecting that physical abuse was involved, she called the police and arranged for the complainant to be sent to the hospital. While waiting for the ambulance to arrive, she took pictures of the complainant's forearms which were eventually admitted into evidence.[3]

The divergent accounts given at the trial

5 The trial was heard over five days and the prosecution called a total of six witnesses. The complainant was the first witness to take the stand. She testified that her freedom of movement and ability to communicate with the outside world were greatly curtailed throughout her employment in the respondent's household. She testified that she was not permitted to leave the house on her own. For instance, when she was required to wash the car, the respondent's husband would follow her and wait for her to complete the task. While she was left alone at home on weekends, she said that the gate would always be locked and she was not able to open it as she was not given a set of keys.[4] She was not allowed to use the telephone at home (which was secured by a dial lock) or even to answer it when it rang – it would always be another member of the house who would answer the phone.[5]

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2 ROP, p 92, line 26

3 ROP, p 102, line 12 to ROP, p 103, line 8.

4 ROP, p 29, lines 22–27; ROP, p 42, line 28 to ROP, p 43 line 6.

5 ROP, p 43, lines 2–12

6 She testified that her employers were kind to her in the first three months of her employment, but thereafter the three women in the household began to inflict physical abuse on her. She said that the primary perpetrators of the abuse were the respondent's mother and the respondent herself. The complainant alleged that apart from being punched and slapped, she was also asked to immerse her hands into a toilet bowl into which bleach had been poured as a punishment for making mistakes.[6] When asked how the respondent, specifically, had abused her, she replied that the respondent had punched her, hit her with the receiver of the telephone, and also threatened her with a knife.[7]

7 By the complainant's account, the respondent inflicted abuse on her on more than one occasion, but faced just one charge concerning an incident alleged to have occurred several months before the complainant left the household. In relation to the charge, the complainant testified that the respondent had slapped her on the cheek sometime in May 2012 and that this was the first time the respondent had abused her. She was neither able to recall where in the house this incident occurred, nor the precise time, nor the reason why the respondent had slapped her. When questioned, she explained that she was unable to recall these details because the event in question had taken place a long time ago and because the respondent had abused her many times in the interim.[8] However, she was sure that this incident had taken place and when asked why the respondent might have done this, her testimony was, "I think the [respondent's] mother was angry to me".[9]

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6 ROP, p 33, lines 4–13; ROP.

7 ROP, p 51, lines 20–28.

8 ROP, p 33, line 21 to ROP, p 34, line 17.

9 ROP, p 34, line 5.

8 As for the apparent inconsistency between her account of events and the note that she left thanking everyone in the respondent's household (except for the respondent's mother) for their "kindness", the complainant explained that she wrote this in acknowledgement of the fact that they had been kind to her in the initial months, and that she had made mistakes in carrying out her duties. But she added that she had in fact penned two notes, and the other note – which was not produced in the proceedings (and presumably had never been recovered) – contained statements to the effect of, "I'm leaving. I cannot take anymore the abuse. I'll go somewhere where there is no bleach and no one would hurt me."[10]

9 The second to sixth witnesses called by the prosecution were not present at the time of the incident and therefore did not testify as to its particulars. These witnesses, whom I shall refer to as PW2 to PW6 respectively, were: the first investigation officer who was assigned to the case; the domestic maid who first attended to the complainant after her escape; the case worker from the VWO; the current investigation officer; and the complainant's cousin, who was also employed as a domestic maid in Singapore. They testified to such matters as the general condition of the complainant when she was found, the reasons which the complainant had given for her decision to leave the condominium unit, and, in the case of PW6, the fact that the complainant's family barely heard from her during the period of her employment.[11]

10 The charge against the respondent originally averred that the respondent had voluntarily caused hurt by slapping the complainant's face. The District

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[10] ROP, p 35, line 22.

[11] Appellant's submissions at paras 21–24.

Judge expressed the view that this was insufficiently precise and made a minor amendment to particularise the charge as one involving the slapping of the complainant on the cheek to better reflect the evidence which had been led.[12] The District Judge called for the respondent to enter her defence on this amended charge.

11 The respondent elected to give evidence on affirmation and did not call any other witnesses in her defence. For her part, she said that she had never slapped the complainant. She testified that, in the first place, she did not have a lot of interaction with the complainant because she would get home at only around 8.00 pm on weekdays. As for the weekends, she explained that they were filled with a number of activities – chiefly, these included her daughter's extra-curricular activities on Saturdays and attending church on Sundays. Therefore, she was out of the house for most of the day and would only return in the evenings. She acknowledged that she had scolded the complainant on a number of occasions but she maintained that she had never gone beyond scolding her to inflicting any form of physical hurt.[13]

12 When it was put to the respondent that the complainant would have had no reason to make a false accusation against her, she suggested that the complainant might have borne a grudge against her because she refused to permit the complainant to terminate her contract ahead of time. She explained that less than two months into her contract (sometime in 2012, at about the Chinese New Year period), the complainant expressed a desire to return home. However, the respondent replied that she would not permit this unless the

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12 ROP, p 154, lines 4–33.

13 ROP, p 198, lines 27–29.

complainant reimbursed her for the expenses that she incurred in facilitating her transfer from the Philippines to Singapore. Her unhappiness at this, she said, was the only "compelling reason" she could perceive for the complainant to have falsely alleged that the respondent had physically abused her.[14]

13 The respondent also denied the complainant's allegations of restriction of movement and communication. She testified that a set of keys was always left beside the main door in order that the complainant may leave and enter the house freely, whether to run errands on behalf of the household or to head downstairs to purchase food for herself or otherwise. She also added that the complainant had been given an access card in order that she may activate the lift to gain access to the condominium unit. Finally, she also said that the complainant had been at liberty to use the home telephone and that she had even purchased a number of pre-paid phone cards so that the complainant could make overseas calls on her handphone.[15]

The District Judge's decision

14 After hearing submissions at the close of trial, the District Judge acquitted the respondent on the same day. In the brief oral judgment he delivered *ex tempore*, he stressed that the "critical issue" in this case was not the credibility of the complainant vis-à-vis the respondent, but whether the guilt of the respondent had been established beyond a reasonable doubt. He noted, first, that the charge was bereft of particulars and, second, that the complainant was "tentative [and] at best hesitant in specifying her allegation." In the

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14 ROP, p 200, line 25.

15 ROP, pp 171 and 172.

circumstances, he concluded that the defendant had "not only raised a reasonable doubt of the prosecution's case but [had in fact]… rebutted the prosecution's case."[16]

15 After the filing of the present appeal, the District Judge issued written grounds of decision which was reported at *Public Prosecutor v Chua Siew Wei Kathleen* [2015] SGMC 23 ("the GD"). Much of the GD was taken up by a summary of the evidence that was adduced at trial from the various witnesses. As to his analysis of the complainant's evidence, the District Judge held that her testimony was "not unusually compelling or convincing" as much of it comprised "a generalisation of the alleged abuses she had received". He noted that while the complainant was "very detailed and convincing" as to the circumstances surrounding her departure from the condominium unit on 30 October 2012, her evidence in relation to the alleged incident of May 2012 was limited. He observed that apart from stating that she had been slapped and that it was "painful", the complainant was unable to provide details of the part of the house where she was slapped or the time the alleged incident took place. He also noted that while the complainant had ventured to suggest that the respondent had slapped her because she had angered the respondent's mother, she was unable to explain why the respondent's mother was angry (at [111]).

16 Moving to the testimony of the respondent, the District Judge found her evidence "unusually compelling and convincing", noting that it was "clear, consistent and detailed" and that the respondent "did not retract from any part of her testimony at all" (at [108]). In his view, the prosecution's cross-examination of the respondent related largely to "wholly irrelevant matters" and

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[16] ROP, p 227, lines 8–31.

was, on the whole, "unremarkable". He went on to observe: "[i]t was only remarkable in that this court had to repeatedly disallow a number of the prosecution's questions on the grounds that they were irrelevant." He also found that the inconsistencies in the respondent's testimony were "minor and immaterial" and "did not affect her credibility" (at [109]–[110]). However, this was really a point asserted rather than reasoned as he neither identified these inconsistencies nor did he explain why he found them to be of little consequence.

17 As for the evidence of the other prosecution witnesses, the District Judge opined that it was "not directly relevant" to the charge against the respondent as it pertained only to the circumstances of the complainant's departure from the household on 30 October 2012 and her subsequent transfer to the VWO. He thus considered that there was "no corroborative evidence". He also noted that the prosecution had not tendered any contemporaneous statements from the complainant, and further, that no statements made by the respondent to the police had been admitted into evidence (at [112]–[113]).

18 In the concluding paragraphs of his GD, the District Judge expressed agreement with the submissions of defence counsel, whose submissions he quoted extensively. He also quoted substantial portions of the extemporaneous judgment he gave upon acquitting the respondent. He did not add to these cited paragraphs save to emphasise certain portions of them in a way that leaves it beyond doubt that, in his mind, the reasons which led him to acquit the respondent were:

> (a) There was no "objective and incontrovertible evidence to corroborate the elements of the charge of assault". For that reason, the prosecution's case rested on the "bare allegation" of the complainant

which could be "neutralise[d]" by the "bare denial" of the respondent. (at [115]).

(b) The charge suffered from a "paucity of… relevant particulars" and it was surprising that the charge had been proceeded on "despite representations having been made. The benefit of the doubt ought to have been given" (at [115]). There was "too much distraction" arising out of allegations of abuse made against the respondent's sister and mother (at [116]).

(c) The complainant had been "quite tentative in her testimony" and that it was unclear why she "ran a foot and not a mile in her allegation". In particular, the District Judge drew attention to the fact that when questioned on the reason for the slap, the complainant twice prefaced her evidence with the qualifier "I think" (at [116]).

(d) Ultimately, the case was "not about the credibility of the [complainant]" and was "not about the credibility of the [respondent]". It was instead about proof, and the defendant had, through her testimony, "not only raised a reasonable doubt… [but had] rebutted the prosecution's case" (at [116]).

The grounds of appeal

19 Broadly summarised, the prosecution argues that the present appeal should be allowed for two reasons. First, they submit that they were denied a fair opportunity to present their case because of the District Judge's various interventions. In their written submissions, the prosecution points to a number

of instances when they were not permitted to pose questions to the respondent concerning, among other things:[17]

(a) An allegation that the complainant was not paid her salary for the first seven months of her employment because it was set off against a loan that the complainant had been given by the respondent.

(b) The respondent's previous experience in employing domestic maids.

(c) The genuineness of the respondent's stated concern for the complainant's skin condition – the specific question the prosecution sought to ask was, "So although you were concerned enough to tell [the complainant] to wear gloves [while working with bleach], you were not concerned enough to bring her to see a doctor for her red hands?"

(d) The frequency with which the respondent scolded the complainant.

(e) A suggestion that the respondent bore enmity towards the complainant because of insinuations that the complainant was in love with the respondent's husband.

20 The prosecution's position is that these were all relevant lines of inquiry as they would have had a direct impact on the court's evaluation of the respondent's evidence. Among other things, the prosecution argues that these questions would have been relevant to the court's assessment of the veracity of

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[17] Prosecution's further submissions dated 25 Jan 2016, paras 11 to 16.

the respondent's account of events.[18] The prosecution submits that the District Judge's interventions stemmed from his erroneous view that the respondent's evidence was relevant only insofar as it related directly to the alleged May 2012 incident, the corollary of this being that, in his view, any other evidence (in particular, evidence on the respondent's relationship and interactions with the complainant more generally) was irrelevant.[19]

21 Second, the prosecution argues that the District Judge's findings should be overturned as they were against the weight of the evidence. Among other things, they point out that the District Judge appeared not to have considered many relevant pieces of evidence such as the fact that the complainant had resorted to leaving the unit in an "extremely hazardous manner", that she never wavered in her account of having been abused, and that there was no convincing reason for her to have maligned the respondent. They also argue that the District Judge had failed to adequately consider the explanations provided by the complainant for being unable to give further particulars of the May 2012 incident (chiefly, the passage of time and the multiplicity of abusive acts which she had been subjected to).[20]

22 In conclusion, they submit that the evidence adduced at the trial, assessed fairly and in context, was sufficient to establish the respondent's guilt and so the court ought to allow the appeal and substitute the order of acquittal with a conviction. In the alternative, they submit that if the court does not find

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18 Appellant's submissions dated 2 December 2015 at paras 42(a), and paras 44–46.

19 Appellant's further submissions at paras 15, 17–18.

20 Appellant's submissions at paras 48 and 50.

that there is sufficient evidence to support a finding of conviction, then a re-trial ought to be ordered.[21]

My decision on the appeal against acquittal

23 Having carefully considered the matters presented before me, I have come to the conclusion that the District Judge had misdirected himself in two material respects. First, he had narrowed his focus unduly by considering only evidence directly related to the alleged May 2012 incident. In so doing, he had not only unfairly restricted the ambit of the prosecution's cross-examination and impeded their ability to present their case fully but had also impaired his own ability to evaluate and weigh the case presented by each side. Second, he had failed to consider essential pieces of evidence in the course of arriving at his conclusion and had therefore arrived at findings which are, in all the circumstances, against the weight of the evidence. I will explain each in turn.

Excessive judicial intervention

24 Excessive judicial interference in the conduct of a trial can present at least four distinct (though inter-related) grounds of challenge. The first is where it gives rise to a finding of apparent bias. This arises when the extent of the court's interventions are such that a fair-minded reasonable person with knowledge of the relevant facts observing the proceedings might reasonably apprehend that the court was biased (see *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Re Shankar Alan*") at [91] and [94]). The second is where the interruptions are so numerous and so intrusive that they unduly hamper a party in the conduct of his case. This was the case in the seminal decision of the

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[21] Appellant's submissions at paras 61–66; Appellant's further submissions at paras 26 and 30

English Court of Appeal in *Jones v National Coal Board* [1957] 2 QB 55. The third is where a judge "descends into the arena" by assuming a quasi-inquisitorial role and engages in such sustained questioning that he impairs his ability to evaluate and weigh the case presented by each side dispassionately and disinterestedly (*Re Shankar Alan* at [117(b)]). The fourth is where the extent of intervention discloses that the judge has prejudged the outcome of the case by determining the issues adversely against one of the parties before their case had been fully presented (at [109]).

25 In this case, the prosecution relies largely on the second and the third grounds of challenge. Their case is that that the District Judge had intervened so excessively that he had not only foreclosed potentially relevant lines of inquiry but had also closed his mind, impairing his ability to evaluate and weigh the case presented by the prosecution impartially.[22] I will examine each of these grounds of challenge separately.

Was the prosecution unduly hampered in the presentation of their case?

26 From the outset, the District Judge indicated that he was only interested in evidence which related to the facts stated in the charge. For that reason, he disallowed questions which related to the conditions of the complainant's employment or whether the respondent was aware of or concerned with the complainant's general welfare.[23] Almost at the start of cross-examination, he reminded the Deputy Public Prosecutor ("DPP") that "the charge is 323" (*ie*, it is one for voluntarily causing hurt under s 323 of the Penal Code) and stressed

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22 Appellant's further submissions at paras 17 and 18.

23 Appellant's further submissions at paras 12–14.

thereafter that they should "stick to the charge"[24] and focus only on what was relevant. At one point, he reprimanded the DPPs for pursuing a line of questioning relating to the respondent's alleged motivation for the slap, saying, "I'm not interested in philosophical answers why the charge is made out, you know. I'm more interested in whether the *actus* is made out from the evidence before me."[25]

27 The District Judge appeared to have taken the view that no evidence other than that which relates directly to the facts in issue (*ie*, whether the respondent had slapped the complainant) may be given. At a technical level, this is plainly wrong. Section 5 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") states that evidence may be given "of the existence or non-existence of every fact in issue *and of such other facts as are hereinafter declared to be relevant*…" [emphasis added]. Sections 6 to 16 of the EA then go on to set out many broad categories of relevant facts. These include facts which "are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue" (s 7), any fact which "shows or constitutes a motive or preparation for any fact in issue or relevant fact" (s 8(1)), and facts which are "necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact..." (s 9).

28 Having reviewed the transcript, I am satisfied that the prosecution's lines of questioning were not unreasonable or irrelevant and yet the questions were curtailed on many instances. Many of the abortive lines of questioning related either to (a) the relationship between the complainant and the respondent or (b)

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[24] ROP, p 178, line 2; ROP, p 184, lines 7–8.

[25] ROP, p 194, lines 16–18.

whether there had been general ill-treatment. Given that the complainant's and the respondent's accounts differed precisely on these matters, such evidence would have been highly probative of the credibility of the complainant and the respondent. These are matters which can be and should have been permitted to be canvassed in cross-examination but the notes of evidence are replete with clear examples of the prosecution being stopped while in the midst of a line of potentially relevant questioning. It suffices for me to mention two examples.

29 In the first, the DPP had asked the respondent a series of questions concerning the allegation that the respondent had withheld the complainant's salary from her and the following exchange was recorded:[26]

> Q: Now, the first 7 months of Jonna's salary was not paid to her because it was part of a loan from you, right?
>
> A: No, like I said, the loan repayment was actually supposed to pay by us if she completes her 2-year contract and she was given a---
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> Court: Mr Yang---
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> A: ---sorry.
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> Court: ---again, you know, I mean, these are all very interesting, when we discuss about the maid's day in a work, you know, all these are very interesting, but can you please stick to the---

In the second, the DPP had asked the respondent a series of questions relating to the allegations of maltreatment (specifically, the allegation that she had been confined to the condominium unit and was not able to use the phone). The respondent denied having done so and the DPP then asked the respondent if the complainant was the first domestic help engaged by her family. The defence

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[26] ROP, p 177, lines 18–26.

counsel interjected on the ground that the questions were irrelevant and the following exchange transpired:[27]

> Yang: Your Honour, this is relevant in terms of the---what is the experience of the accused in employing a foreign domestic worker and what is given to them or not given to them, Your Honour.
>
> Court: We are not holding an inquiry about the---under the MOM---by the MOM as to whether employer can employ---is fit to qualified to employ foreign maids. Come on, let's stick to the charge.
>
> …
>
> Yes, all maids---questions about how we deal with our maids are all very interesting in the social gathering, but I have no time for this, neither should we go into all these.

30 In their submissions, the respondent pointed out that the District Judge had intervened chiefly at their behest and that, on each occasion, the prosecution was given ample opportunity to justify the relevance of their lines of questioning. The respondent also submits that it is disingenuous for the prosecution to raise this as a ground of appeal now, given that the prosecution had accepted correction at numerous points in the trial, repeatedly informing the court they stood "guided" when the District Judge ruled a question to be irrelevant.[28] These points are correct, as far as they go, but they fail to look at the totality of the interventions.

31 From my review of the transcript, I note that the interruptions grew not just in frequency but also in intensity and that, eventually, the District Judge frequently initiated the interventions, interjecting the cross-examination

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27 ROP, p 184, lines 1–8; p 185, lines 26–28.

28 Respondent's further submissions dated 22 January 2016 at paras 39 and 43.

(sometimes mid-question), giving short shrift to the explanations proffered. In these circumstances, it is more accurate to say that the DPPs were compelled to move to a different line of questioning. Therefore, I do not agree that it is fair to say that the prosecution had accepted correction and are thereby precluded from appealing on this ground. Read fairly and in context, it was clear that the prosecution was, quite rightly, deferring to the ruling of the District Judge without foregoing their right to take up the point further as a point of challenge. The DPPs were the recipients of his admonitions to "[m]ove on better",[29] chided for their recalcitrance in not moving on as directed,[30] chastised for their "painfully drifting" cross-examination of the respondent, after being subject to such testy comments as "I have been tolerating you"[31] and "I spent already one hour on the bench".[32] To set matters in context, the respondent spent a little under two hours in all giving evidence, so it would be hard to say that the prosecution had been prolix or dilatory in their conduct of her cross-examination.

32 Ultimately, the question is what impression the appellate court is left with after considering all the evidence and all the circumstances as disclosed on the record (see *Re Shankar Alan* at [121]). In my judgment, the comments made by the District Judge went beyond the merely intemperate and, taken together with his other interventions, clearly pointed to the prosecution being prejudiced and unfairly impeded in the conduct of their case.

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29 ROP, p 193, lines 17–18.

30 ROP, p 194, lines 1–7.

31 ROP, p 190, line 28.

32 ROP, p 189, lines 16–17.

Had the District Judge "descended into the arena"?

33 I turn next to consider if there is evidence that the District Judge had so descended into the arena that his capacity for disinterested judgment had been compromised. This case is somewhat unique in that the ground of challenge is not premised on the District Judge's questions to a *witness*, but, rather, questions and comments made to the DPPs and, most crucially, on the way he repeatedly interrupted their cross-examination to disallow lines of questioning which in his view did not relate to the facts stated in the charge. It was argued that the District Judge had shown himself to be so partisan in his interventions that it was clear that he had closed his mind and ceased to be able to weigh the evidence impartially. From my examination of the record, it seems to me that, regrettably, this was what had taken place.

34 The clearest example of this concerns the District Judge's treatment of the subject of credibility. In his oral remarks at the delivery of judgment, he emphasised that this case was "not about the credibility of the [complainant]" and "not about the credibility of the [respondent]". With respect, I am quite unable to comprehend how or why he had arrived at this conclusion. The trial was necessary because the material factual allegations made by the complainant were disputed by the respondent. Thus, the outcome turned primarily on whether the court was prepared to accept the word of the former against the latter, and to find that the complainant's account had been proved beyond reasonable doubt. Seen in this light, the pivotal issue was credibility. It seems to me, therefore, that the District Judge could only have arrived at his conclusion because he was transfixed by two ideas: first, that nothing else but the facts in issue could be taken into consideration and, second, that the prosecution's case was fatally flawed to begin with because of the absence of sufficient particulars in the charge.

35 This is borne out by the District Judge's GD. After setting out the evidence of the complainant at some length, the District Judge interposed a section entitled "This court's observation of [the complainant's] testimony" wherein he set out his observations of her testimony at the close of the prosecution's case. He noted that her evidence on the matter of the May 2012 incident "was not compelling or convincing" because her testimony, insofar as it related to the charge, "was very limited". By contrast, he wrote that "[w]here she was detailed, her testimony was about what the accused's mother or the accused's sister did to her" (at [67] and [68]). Reading his GD, it would appear that even before hearing the totality of the evidence, he had already formed the view that the complainant's testimony was insufficient to support the charge and that, if anything, it was the respondent's sister and her mother who might have assaulted the complainant, and not the respondent herself. With respect, this discloses a clear error of principle. In *Haw Tua Tau and others v Public Prosecutor* [1981–1982] SLR(R) 133 at [15], Lord Diplock said:

> Whoever has the function of deciding facts on the trial of a criminal offence should keep an open mind about the veracity and accuracy of recollection of any individual witness, whether called for the Prosecution or the Defence, until after all the evidence to be tendered in the case on behalf of either side has been heard and it is possible to assess to what extent (if any) that witness's evidence has been confirmed, explained or contradicted by the evidence of other witnesses.

36 Nevertheless the District Judge went on to call for the defence. In subsequently setting out his observations of the complainant's testimony in his GD upon the conclusion of the trial, the District Judge merely reproduced *verbatim*, the *same* remarks he had made at the close of the prosecution's case pertaining to her testimony (at [111]). He did not consider how (if at all) the respondent's testimony had affected his assessment of the complainant's evidence. In such a case where so much turned on the parties' competing account of events, it seems to me that it was also incumbent on the District Judge

to have considered whether the matters raised by the defence in their case affected his analysis of her testimony.

37 When he turned to evaluate the respondent's testimony, he held that it was "credible… unusually compelling and convincing", primarily because he found that she had maintained a consistent account of her defence (at [108]). Given that the District Judge felt that credibility was not a focal point (see [18(d)] above) then it is distinctly odd that, quite contrary to his expressed view, he would make an explicit finding on credibility. Other than these brief reasons, not much more was advanced for his conclusions. There is no mention of any of the arguments presented by the prosecution at the close of trial in which they argued that the respondent's credibility had been damaged by the inconsistencies in her testimony.[33] Examining his GD, one is left with the distinct impression that having so ruled that there was a case to answer, he was too ready to find that the prosecution's case had been rebutted on the strength of the respondent's "consistent" evidence.

38 I have noted the contradictory approach towards the issue of credibility adopted by the District Judge in his GD as it goes some way towards fortifying my view that he had misdirected himself and not kept an open mind to the available evidence to be adduced before him. In this connection I note that in the course of the trial, the defence made much of the lack of particulars in the charge. But the explanations provided by the complainant for being unable to provide detailed particulars, chiefly the passage of time and the frequency of her abuse, were reasonable and plausible and ought to have been considered and

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[33] ROP, pp 295 and 296 (Prosecution's closing submissions at paras 8 and 9).

accorded due weight. The District Judge appears however to have felt otherwise and rejected them offhand, without explaining precisely why this was the case.

39 Another area of concern relates to the comments which he made in the course of the trial. At various points in the proceedings, the District Judge openly expressed the view that the prosecution's case theory was unsustainable. In the following extract, the DPP had asked the respondent a series of questions relating to her knowledge of the complainant's skin condition (specifically, that she suffered from dermatitis). The stated object of these questions was to examine if it was true that the complainant had been subject to ill-treatment while she worked in the household.[34]

Q:	So although you were concerned enough to tell her to wear gloves, you were not concerned enough to bring her to see a doctor for her red hands?
Court:	Irrelevant, unless you justify.
Yang:	Your Honour, it goes towards the veracity of what she is saying about her treatment of Jonna.
Court:	It goes to the veracity---
Witness:	My treatment of Jonna?
Court:	What is her treatment of Jonna? I can treat my---well, I don't know what to comment. These are all logic, you know. I can treat my staff very badly, but I don't slap them; I can treat my staff very nicely, but one day I lost my temper; I slapped him, I mean---

A little later, the DPP cross-examined the respondent on the subject of the red marks which were observed on the complainant's arms at the time of escape and the following exchange occurred:[35]

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34 ROP, p 191, lines 1–14

35 ROP, p 192, line 7 to ROP, p 193, line 14.

Witness: That was why I gave her the Elomet cream---

Court: Hold on, hold on, hold on, don't answer first. You know the difficulty or the significance, either way you want to put it, is that I think, in respect of the other house members, they were charged for offences around October, is it, somewhere?

Quek: That is right.

Court: Because the maid escaped, if I may use a neutral word, not escaped, left the home on 30th October 2012, *but this curious---this charge is curiously, significantly and puzzling, refers to the offence in May - May, June, July, August, September - 5 months before, so I am not so sure your questions pertaining to hands being red, bleached, what period, you know?* Because I believe, from what I have heard from the maid, events sort of developed very fast. So if you say that she doesn't care to, what, when in October when she escaped or doesn't care when she first joined the household? So you---I know what whether you are doing, you are asking me to draw inferences, you know, but inferences has to be irresistible, it---you are trying to tell me that she neglected looking after her, okay, maybe in October, but what about May? *This charge pertains to May, you know, which is a very curious timeframe, I don't even have the time.*

Yang: Your Honour, the defence exhibit D2M states the medical check-up was in June 2012 and there was dermatitis spotted by the doctor as of that time.

Court: Yes, so?

Yang: So I am asking the witness when she says that she saw that her hands are consistently red---

Court: Yes.

Yang: ---when she had seen this?

Court: Mr Yang, I always like to ask DPPs---

Yang: Yes.

Court: ---supposing your answers are all in your favour, "I put it to you that you don't care for Jonna." "Yes." "I put it to you that you just---you were just---you were indifferent to her hands being

> red." "Yes." *So what? So what you do want to do with the answer, to the charge, that she therefore slapped her in May? How can you---this is---you should do mathematics, you know, to get this kind of---the mathematical professor will ask you, therefore A and B were established, therefore X is proven?*
>
> [emphasis added]

40 I examined these exchanges together with the District Judge's comments that he had "no time" for questions about the prosecution's questions which he dismissively described as relating to "how we deal with our maids" (see [29] above). With great reluctance, I come to the conclusion from my perusal of the record in its entirety that the District Judge had already closed his mind before all the evidence had been tendered and was not receptive to being persuaded otherwise. The fact that his interventions came in the form of interruptions rather than in the form of sustained (and quasi-inquisitorial) questioning from the bench is a distinction of little consequence. The danger, as explained in *Re Shankar Alan*, is that a fair trial might be impossible if the decision maker "takes up a position and then pursues it with the passion of the advocate and in the process slips 'into the perils of self-persuasion'", thereby losing his ability to act impartially (at [115]). The point is that it is evident from the record that the District Judge had clearly taken a position – that the charge was defective for lack of particulars, and the complainant's testimony wanting for an absence of specificity – and pursued it in such a way that he undermined his ability to weigh the evidence impartially.

41 In *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [178], the Court of Appeal held that an allegation of judicial interference will succeed only in rare and egregious circumstances. Looking at matters in the round, I reluctantly conclude that this is such a case. The District Judge had, through his excessive interruptions, unfairly prejudiced the prosecution in the

presentation of their case and had also impaired his judgment and ability to fairly evaluate and weigh the evidence and the case as a whole. Indeed, I would go so far as to say, even though it was not specifically argued by the prosecution, that the manner in which the trial was conducted would lead a fair-minded reasonable person with knowledge of the relevant facts observing the proceedings to apprehend a reasonable suspicion of bias on the part of the District Judge. It would at the very least reasonably lead one to ask whether he had certain preconceived notions and whether he had pre-judged the case even before hearing all the evidence. In my judgment, therefore, the appeal must be allowed on this ground.

The District Judge's findings of fact

42 I now turn to the second ground of appeal. In *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [33], the Court of Appeal clarified that an appellate court should normally be slow to interfere with findings of fact made by trial judges unless the findings are either against the weight of the evidence or it can be established that the trial judge had misdirected himself as to the law. In my judgment, both bases for appellate intervention exist in this case.

Findings against the weight of the evidence

43 In my assessment, the District Judge had incorrectly characterised this case as involving little more than a bare and uncorroborated allegation by the complainant that the respondent had slapped her sometime in May 2012. It is true that there was no objective evidence directly relevant to the specific alleged incident in May 2012 which was the subject of the charge, and that the complainant could not provide full details in her account of that incident. But it does not follow that the complainant's claim of having been slapped by the

respondent in May 2012 was entirely uncorroborated. There is undisputed evidence that on 30 October 2012 the complainant made her way out of the house using a patently risky mode of egress, and that shortly thereafter she alleged that she had suffered abuse at the hands of the respondent and the two other women in the household where she worked. There was also medical evidence indicating that the complainant had sustained some injuries that were at least consistent with allegations of abuse that she had made against persons other than the respondent.

44 The fact that the complainant made her escape from the apartment in the dangerous manner in which she did strongly militates against the suggestion that her liberty was not constrained. Moreover it is difficult to discern any reason why the complainant would have falsely implicated the respondent. If indeed she was sorely unhappy with the respondent, as suggested, for not allowing her to return home in January 2012, then it is quite improbable that she would wait stoically for nine months until October 2012 to make her escape and then trump up allegations against all three women in the household. Further to that, there is the evidence of PW6, who testified that the complainant's family had not heard for her for the better part of the year while she was working in the respondent's household. Taken together, these points cast a shadow on the veracity of the respondent's testimony and call for an explanation.

45 The existence of evidence, both direct and circumstantial, suggesting that the complainant had been abused in some way during her time in the respondent's household casts doubt on the veracity of the respondent's claim that the complainant had not been ill-treated at all. It was incumbent on the District Judge to explain why he did not think the respondent's version of events undermined by that evidence. Quite inexplicably, he did not do so. In fact, he did not address the question of whether there had been a general pattern of abuse

in the household at all. Of course, even if it were found that some abuse had taken place, it might still be contended, in response, that the respondent might not have had anything to do with it. But such a matter would have to be properly considered and its implications for the credibility of all witnesses properly carefully sifted and evaluated, particularly since the complainant was unequivocal in saying that the respondent was a party to the abuse she suffered in the household and that the incident on May 2012 was the *first* time the respondent had laid hands on her (see [7] above).[36]

46 Against this background, it was incumbent upon the District Judge to explain why he found that, contrary to the evidence on record, no abuse took place. Alternatively, if he was of the view that such abuse had taken place, it was incumbent on him to explain why he found that the respondent had nothing to do with it, and having found thus, he would then have to explain why the respondent, despite her position that no abuse of any sort took place in her household, could still be considered a person whose testimony is "clear, consistent and detailed" and, on the whole, one which is "unusually compelling and convincing" (see the GD at [108]). He did not offer any explanations.

47 His assertion that the case was "not about the credibility" of the witnesses does not excuse him from the duty to give adequate reasons since he *did* make specific findings as to the parties' credibility and relied on them in the course of arriving at his decision to order an acquittal. In *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676, the Court of Appeal concluded that owing to the paucity of reasons in the trial judge's brief judgment, it was unable to discern whether the trial judge analysed some important factors: see [47]–[57]. In

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[36] ROP, p 33, line 21 to ROP, p 34, line 17.

deciding to order a re-trial, the Court of Appeal also pertinently observed (at [58]) that a "brief judgment is not necessarily an inadequate one", but the converse is also true: the length of a judgment is no indicator of its adequacy in terms of setting out the court's reasons and analysis. Much of the District Judge's GD was taken up by verbatim reproductions of the transcript and he did not take the opportunity to amplify the brief reasons he delivered in his oral judgment.

48 I would also add that if the respondent's evidence seemed to be consistent, it was perhaps because the District Judge had not permitted much of her evidence to be fully tested by the prosecution in cross-examination. In the circumstances, it could hardly be said that "[t]he prosecution cross-examined the [respondent] at length" (at [109] of the GD). Having regard to the above observations, I am of the view that the District Judge's assessment of the reliability of the respondent's testimony was erroneous and against the weight of the evidence.

Misdirected himself on the law

49 There were several parts of the GD where the District Judge had clearly erred in law. For instance, he noted at [113] that there was a paucity of corroborative evidence, citing the absence of any contemporaneous statements recorded from the complainant as an example. However, under s 259 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), the statements of witnesses are not ordinarily admissible under the law save in specified and limited circumstances. I did not consider this to be a serious error as it was not

vital to his conclusion. What was more troubling, however, was what he said in his extemporaneous judgment (reproduced substantially at [116] of the GD):[37]

> … I may say that there has been *too much distraction in this trial, or this case, by the facts in the other two cases which have been alleged against the defendant's mother and sister.* Assuming we don't have those two cases, I wonder whether this case would even have been brought here. *I---this Court has never come across a case where without this metrics of facts pertaining to the other two persons, person is brought to Court and charged with having committed an offence made 5 months before without particulars of the time, the place or exactly why the offence was committed against her.* I noticed that the victim---and, again, I say this is not to give the impression to the public or anyone that how can this Court not believe a victim when the other Court has convicted the other accused and believe the victim. *It's not a matter or credibility, as I said. I wonder whether there would be a case when someone is brought to Court on the same allegation of having committed an offence 5 months before without the particulars of time, place, why the offence was committed.* [emphasis added]

50 Reading this, the overwhelming impression conveyed is that the singular matter which troubled the District Judge above all was the manner in which prosecutorial discretion was exercised. He quoted defence counsel's concluding oral submissions extensively in his GD (at [115]), choosing to emphasise counsel's somewhat gratuitous expression of disappointment at the prosecution having proceeded with the charge "despite representations having been made". This was a wholly irrelevant consideration at trial. He went as far as to speculate that the prosecution had elected to proceed with the charge against the respondent only because it had also proceeded to charge the respondent's mother and her sister. However, he did not explain why such an approach gave him cause for concern and, for my part, I am unable to discern how such an exercise of prosecutorial discretion in the present case was inappropriate.

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[37] ROP, p 226, line 32 to p 227, line 18

51 It bears repeating that the manner in which the prosecution exercises discretion, whether in how they frame the charge(s) or elect to proceed to trial, does not relieve the trial judge of his primary task of assessing the credibility of the witnesses and evaluating the totality of the evidence adduced. As the Court of Appeal explained in *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012 at [29], the duty of selecting and framing charges is within the purview of the Public Prosecutor and the duty of the court is to concern itself with the charge *at hand* and decide whether the prosecution has proved beyond a reasonable doubt each and every element of the offence. If there are inadequate investigations or prosecutorial oversight, these may conceivably lead to poorly-particularised charges and inconsistent and weak evidence being adduced during the trial, but a trial judge would still be duty-bound to carefully evaluate and weigh the evidence before him objectively, and cogently explain the reasons for his findings.

52 I am conscious that the prosecution had originally sought to convene a joint trial but had eventually gone on to conduct three separate trials in relation to the complainant's allegations against the three women in the household. While this may not have been the most ideal state of affairs, the District Judge ought nonetheless to have considered the objective evidence of the abuse suffered by the complainant while she was working in the respondent's household in the course of the respondent's trial. This was not a mere "distraction" but a matter which went towards the credibility of the complainant as well as the respondent, as I had noted above in the preceding paragraphs (see [43]–[48] above). It is correct that the focus at the trial must be on the charge(s) at hand, but I am unable to agree with the District Judge's insistence on viewing the case through an inordinately narrow lens.

53 If what the District Judge had intended to convey "for the benefit of the public" (as he said in his extemporaneous judgment) was that he would have to consider the totality of the evidence before he could be satisfied that the prosecution had discharged their burden of proof, then that was all that was needed to be said. It would also then follow that he ought to have fully considered the totality of the evidence. To state that the case was "not a matter [of] credibility" was both unhelpful and inaccurate. In my view it reflected the District Judge's error in allowing his dissatisfaction with the investigative process and the framing of the charge to take centre-stage in his analysis, foreclosing full reception and reasoned assessment of the evidence before him. To my mind, his remark that the case was "not about the credibility" of the complainant or respondent can only be understood in that context.

54 With respect, the District Judge seemed to have been overly influenced by his view that there was something inherently improper in the prosecution having proceeded with the charge against the respondent, and his suspicion that this was because it had also brought charges against her mother and sister. On this basis, I hold that he had misdirected himself in allowing these matters to affect his assessment of the case and I would allow the appeal on this ground as well.

Whether to order a re-trial

55 Although I am of the view that the District Judge's order of acquittal should be set aside, I do not think that the evidence at present establishes beyond a reasonable doubt that the respondent slapped the complainant on the cheek in May 2012. I am only able to say that there is a substantial amount of evidence which suggests that the complainant may have been a credible witness and thus the prosecution's case is not unfounded. However, as I had noted above at [48],

the respondent's evidence was not fully tested in cross-examination. It cannot be right to assume that if the prosecution had been permitted to pose all their intended questions, the respondent's answers thereto would all be unsatisfactory. In the premises, I cannot go further and conclude that the evidence points irresistibly towards a conviction.

56 I also do not think that it would suffice for further evidence to be taken (either by myself or by the lower court) pursuant to s 392 of the CPC and for the matter to come back to me for further consideration. Ultimately, much hinges on an assessment of the oral testimonies of the complainant and the respondent. Since I have not had the opportunity of receiving that evidence first-hand, I do not think I would be in a suitable position to decide if the high standard of proof required to justify a conviction has been met. It seems to me that that task must fall, at least at first instance, to a judge who has had the opportunity to closely scrutinise *both* the complainant and the respondent's respective testimonies in the context of all the relevant evidence.

57 In the circumstances, s 390(*a*)(i) of the CPC empowers this court to direct that further inquiry be made, or to order a re-trial, or to remit the matter, together with the opinion of the appellate court, to the lower court for consideration. The first and third options are untenable. Given my finding that there has been excessive judicial interference in this case, it would not be appropriate for me to remit the matter back to the lower court for further inquiry or consideration. That leaves the option of a re-trial or, exceptionally, to leave the acquittal alone. Both options have their drawbacks. On the one hand, if a re-trial were ordered, the respondent would be put to expense and would have to undergo another trial through no fault of her own. On the other hand, if no re-trial were ordered, then the outcome would effectively be determined by a defect in the legal machinery, rather than by a considered verdict following a trial.

58 Having regard to the observations of the Court of Appeal and High Court respectively in *AOF v Public Prosecutor* [2012] 3 SLR 34 and *Ng Chee Tiong Tony v Public Prosecutor* [2008] 1 SLR(R) 900, it is well-established that the factors to consider in deciding whether a re-trial should be ordered include: (a) the seriousness of the offence, (b) the expense and length of time required for a new trial, (c) the availability of evidence given the lapse of time since the offence, (d) the relative strengths of the parties' cases, and (e) the public interest in ensuring that due process of law is observed. While these factors were articulated in the context of appeals against conviction, I am of the view that they provide useful guidance in this case.

59 While the nature of the assault which the respondent is alleged to have committed is relatively minor, I am conscious that the alleged victim belongs to a class of vulnerable persons (see *ADF v Public Prosecutor* [2010] 1 SLR 874 at [61]). There is therefore a significant public interest in ensuring that any verdict reached is the product of a considered decision by a judicial tribunal, rather than the result of a flaw in the legal process. It is also pertinent to reiterate that cases involving abuse of domestic maids often involve one person's word against another's with limited objective evidence. The need for trial judges to evaluate the evidence and the credibility of the witnesses carefully is thus especially pressing in such cases. In these circumstances, an appellate court should be more reluctant to allow failures in that regard by the trial judge to affect the outcome of cases. In this connection, I reject the respondent's submission that an order for a re-trial would amount to giving the prosecution a "second bite of the cherry".[38] This is not a case in which the prosecution can be

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[38] Respondent's further submissions at para 30(iv).

faulted for not having brought forward the necessary evidence but one in which they were *prevented* from conducting their case as they ought to have.

60 I accept that this incident took place some time ago – it is now nearly four years since the alleged incident happened – and so any prolongation of the matter would put the parties involved to expense. I am also conscious, as has been pointed out, that the complainant and two of the prosecution witnesses are foreign nationals and an order for a re-trial would involve delaying their return. As against that, however, I note that any re-trial is unlikely to be very protracted since the evidential phase of these proceedings took about three days in total. In any event, the prosecution is not precluded from seeking an appropriate order should they deem that they are no longer able to marshal the evidence to support the charge or if they decide, in all the circumstances of the case, not to proceed with the matter.

Conclusion

61 Having considered matters in the round, I am satisfied that the appeal must be allowed and the order of acquittal set aside. I am of the view that it is in the public interest to ensure full ventilation and consideration of the evidence by the court in a trial *de novo*. The appropriate course in the interests of justice would be to order a re-trial before another judge and I so order.

See Kee Oon
Judicial Commissioner

Yang Ziliang (Attorney-General's Chambers) for the appellant;
Quek Mong Hua and Jonathan Cho (Lee & Lee) for the respondent.