IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 119

Magistrate's Appeal No 9349 of 2018

Between

Public Prosecutor

… *Appellant*

And

Satesh s/o Navarlan

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Forms of punishment]
[Criminal Law] — [Offences] — [Hurt]
[Criminal Law] — [Offences] — [Statutory offences] — [Women's Charter]

Version No 1: 27 Oct 2020 (22:41 hrs)

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Public Prosecutor
v
Satesh s/o Navarlan

[2019] SGHC 119

High Court — Magistrate's Appeal No 9349 of 2018
Tay Yong Kwang JA
3 May 2019

8 May 2019

Tay Yong Kwang JA:

Introduction

1 The present appeal concerns domestic violence committed by the Respondent on his wife. In the court below, the Respondent pleaded guilty to two charges. The District Judge ("DJ") imposed on him a Short Detention Order of 14 days and a Day Reporting Order of nine months. The Prosecution appealed against that decision. After hearing submissions from the Prosecution and the Respondent, I allowed the appeal and imposed a global sentence of five weeks' imprisonment. I delivered an oral judgment at the appeal hearing and now provide the detailed reasons.

Facts

2 The Respondent, Satesh s/o Navarlan, was a 34-year-old Singaporean at the time of the offences. The victim is his wife, who was residing with him at

the material time of the offences. In the court below, he pleaded guilty to one charge under s 65(8) of the Women's Charter (Cap 353, 2009 Rev Ed) for contravening a Personal Protection Order ("PPO"), and one charge under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) for voluntarily causing hurt to his wife. One other charge under s 65(8) of the Women's Charter and one other charge under s 323 of the Penal Code were taken into consideration for the purpose of sentencing. At the time of the offences, the Respondent was subject to a PPO under s 65 of the Women's Charter, issued on 18 September 2014, which restrained the Respondent from using family violence against his wife.

3 The offences took place in the home of the Respondent and his wife. The Statement of Facts stated that in the early morning of 1 February 2018, the Respondent returned home, intoxicated. The wife was in the bedroom with their five-year-old daughter when the Respondent entered at about 2.30am and grabbed the blanket away from his wife. He grabbed her right leg and bit it. These facts formed the subject matter of the charge under s 65(8) of the Women's Charter which the Respondent pleaded guilty to and the charge under s 323 of the Penal Code that was taken into consideration.

4 About 10 minutes later, the wife asked the Respondent to wash up because he smelled of alcohol. The Respondent responded strangely by rolling around on the bed. Worried for their daughter, the wife brought her out of the bedroom into the living room. The Respondent followed them out and an argument ensued between the Respondent and his wife. The argument became heated and the Respondent threw several punches at his wife. The wife got hold of an umbrella that was near her and attempted to use it to block these punches. However, the Respondent managed to land a punch on his wife's left cheek. The attack did not stop there. The Respondent grabbed the umbrella away from his wife and swung it at her, using it to hit her on both flanks. These facts formed

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the subject matter of the charge under s 323 of the Penal Code which the Respondent pleaded guilty to and the charge under s 65(8) of the Women's Charter that was taken into consideration.

5 Their daughter informed the Respondent's father about the incident after witnessing it. The Respondent's father, who was also residing in the flat, tried to separate the Respondent and his wife. The wife tried to call the police with her hand-phone but the Respondent snatched it from her and threw it on the floor before she could make the call. The wife fled from the flat with the daughter and then called the police. She was found to suffer from "tenderness over her left cheek, forehead, left side of neck and left chest wall with thoracic region" as a result of the Respondent's attacks. She was discharged with medication for the contusions. Since then, she has been seeking refuge at a community shelter and has not returned home to live with the Respondent.

The proceedings in the District Court

The parties' sentencing positions

6 The Prosecution sought a global imprisonment term of four weeks in the light of precedents and the aggravating factors in the present case, including the fact that the violent acts were committed in the context of familial relations and in the presence of the Respondent's young daughter.

7 The Respondent, in mitigation, submitted for a high fine to be imposed. His counsel highlighted that the set of offences was a once-off event which happened spontaneously in the context of an argument between the Respondent and his wife. The Respondent claimed that it was his wife who had first hit him with a television remote control and he bit her leg in retaliation. Similarly, he punched her because she tried to hit him when he attempted to stop her from

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leaving the bedroom and he grabbed the umbrella after she pointed it at him. These were events which the Respondent was only able to reconstruct from an email of 8 Feb 2018 sent by his wife to her lawyer (for the purpose of commencing divorce proceedings) which she forwarded to the Respondent upon his request. Additionally, his counsel submitted that he had joined Alcoholic Anonymous and attended his first meeting on 9 June 2018 to address his alcoholic problem. The Respondent was also gainfully employed. The counsel highlighted that the wife had reconciled with him and would stay with him on weekends.

The DJ's decision

8 The DJ imposed on the Respondent a Short Detention Order ("SDO") of 14 days and a Day Reporting Order ("DRO") of nine months, together with electronic monitoring, compulsory counselling sessions and a treatment programme at the National Addiction Management Services. These sentences were stayed pending the Prosecution's appeal.

9 In his grounds of decision reported at *Public Prosecutor v Satesh s/o Navarlan* [2019] SGMC 3 (the "GD"), having decided that the nature and extent of the violence caused the custodial threshold to be crossed (GD at [31]), the DJ nevertheless thought that there was "sufficient ground to view rehabilitation with some prospect" (GD at [35]). He appeared to have come to such a conclusion on two grounds:

(a) the Respondent enrolled himself with Alcoholics Anonymous after he was charged with the present offences (GD at [33]); and

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(b) the Respondent asserted that his wife had reconciled with him and that she and their daughter would stay with the Respondent during weekends (GD at [34]).

10 The DJ explained that imposing DRO with conditions to ensure that the Respondent would follow through with his promise to reform and deal with his drinking problem and SDO for deterrent effect would clearly be able to better advance the twin interests of "bringing the message of the seriousness of domestic violence" to the Respondent and "giving the chance to [him] to deal with his underlying issue of drinking to reduce the risk of re-offending in the future" (GD at [35]).

The appeal

11 The Prosecution appealed against the community-based sentences imposed by the DJ. The Prosecution submitted that the dominant sentence in this case should be deterrence, both general and specific, and that the DJ accorded too much weight to the principle of rehabilitation and the mitigation plea.[1] The Prosecution argued for a total imprisonment term of at least four weeks, with a sentence of four weeks' imprisonment for each charge and both imprisonment terms running concurrently.[2]

12 Counsel for the Respondent submitted that a SDO also carries a punitive and deterring element (citing *Public Prosecutor v Teo Chang Heng* [2018] 3 SLR 1163 ("*Teo Chang Heng*") at [15]). Counsel argued that the DJ did not hold rehabilitation to be the primary sentencing consideration and the very choice of a SDO over other community-based sentences demonstrated an acute

1 Prosecution's written submissions at para 28.

2 Prosecution's written submissions at paras 79 and 83.

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awareness of the need to address the element of deterrence and retribution. The DJ, according to the Respondent, had taken a nuanced approach to arrive at a fairly-calibrated balance of the sentencing principles.[3] Counsel also emphasised the fact that the Respondent's DRO Suitability Report recommended that he was suitable for DRO, reflective of his amenability to rehabilitation.[4] Counsel further submitted that the facts of *Wong Leong Chin v Public Prosecutor* [2000] 3 SLR(R) 560 ("*Wong Leong Chin*")[5] and *Public Prosecutor v N* [1999] 3 SLR(R) 499 ("*PP v N*"),[6] where custodial terms were imposed, were more aggravated than the facts of the present case and therefore should be distinguished.[7] The mitigating factors submitted in the court below were repeated.[8]

My decision

Deterrence as the dominant principle

13 It has been held that violent acts are particularly heinous when they are committed within the confines of a familial relationship as they constitute an abuse of the bonds of trust and interdependency that exist between family members. Thus, there is a strong need to deter anyone who might resort to such violence (*Public Prosecutor v Luan Yuanxin* [2002] 1 SLR(R) 613 ("*Luan Yuanxin*") at [17]). Similarly, in *Wong Leong Chin* at [49], the High Court observed that "[p]ublic policy requires that vulnerable members of the family such as wives and children should be protected from violence". The High Court

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3 Respondent's written submissions at paras 29–37.

4 Respondent's written submissions at paras 39 and 46.

5 Respondent's Bundle of Authorities ("RBOA") at Tab F.

6 RBOA at Tab G.

7 Respondent's written submissions at paras 23–27.

8 Respondent's written submissions at paras 53–59.

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explained that a deterrent sentence in the form of imprisonment should be imposed in deserving cases of family violence, while sentences of fines may be more appropriate only in less serious cases in which no or little violence is involved.

14 It is clear therefore that the principle of deterrence features prominently in offences of domestic violence. The present case is no exception.

The gravity of the offences

15 The Respondent highlighted that his wife's injuries were not serious. The injuries might not be very serious but the Respondent's culpability was certainly very high. The Respondent's relentless assault against his wife in the presence of their then five-year-old daughter after returning home in an intoxicated state at past 2am and rudely waking them up showed his true self. He bit her right leg. Later, he could even laugh and mock the way his wife held an umbrella to ward him off. He snatched the umbrella from her and used it to hit her body while sarcastically and sadistically telling her, "This is how it works!".[9] He tried to stop her from leaving the flat after assaulting her and chased her to the lift when she managed to escape from the flat.

16 One can imagine what the acts of the Respondent that day and his history of spousal violence must have done to his wife's and their young daughter's sense of security and peace of mind. His wife obviously could not tolerate his drunken violence any more when she decided to move out of the matrimonial flat with her daughter and to seek refuge at a family centre. She even decided to file for divorce one week after the assault, listing the history of her matrimonial woes in her email of 8 Feb 2018 to her divorce lawyer.[10]

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9 Record of Appeal ("ROA") at p 79.

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Aggravating factor

17 Before the DJ, the Respondent claimed in his personal mitigation plea, which was presented together with the mitigation plea prepared by his counsel, that he had no recollection of the events that early morning and had to rely on the email his wife wrote to her divorce lawyer. The law is clear that voluntary excessive consumption of alcohol aggravates rather than mitigates an offence that results from such drunkenness. The Respondent had an alcohol problem for more than 10 years and the most recent recorded manifestation of his problem was in the PPO made against him in 2014 for the protection of his wife. This was issued after he had pushed his wife while he was in an intoxicated state, injuring her.[11] Nevertheless, the Respondent continued with his excessive consumption of alcohol, whether for social purposes or to relieve stress.

Lack of rehabilitation prospects

18 In the Respondent's personal mitigation plea presented before the DJ,[12] the Respondent stated that "I would like to reiterate that the offence is out of character for which I am extremely remorseful...". Such a statement showed that he was either in denial or was simply unable to appreciate his propensity for violence against his wife, particularly when he had consumed too much alcohol. The present offences were certainly not out of character with his conduct leading to his wife applying for a PPO against him in 2014. Consuming too much alcohol and getting into trouble was also not new to him. He was convicted and imprisoned in 2007 and again in 2013 for drink-driving.[13] Even in his DRO Suitability Report, the Correctional Rehabilitation Specialist found

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10 ROA at p 78.

11 ROA at p 44.

12 Mitigation plea at para 17(g), found at ROA p 97.

13 ROA at p 39.

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that the Respondent had "distorted thinking related to spousal violence" and assessed him "to display thinking supportive of crime" because the Respondent had externalised his actions to alcohol influence and claimed that he was not able to control himself.[14]

19 Counsel for the Respondent emphasised that the Respondent had enrolled with Alcoholics Anonymous. However, his sudden decision to enrol with Alcoholics Anonymous after he was charged with the present offences must be seen in the light of his long history of alcohol abuse. It did not appear to be motivated by true remorse but appeared to be a tactical move for his mitigation plea.

20 The Respondent informed the court that he has obtained a new public housing flat and has furnished it. He hoped for the family to live together in this new home. I was told that his wife (who attended the appeal hearing) did not proceed with the divorce action. However, she and their daughter have not moved into the flat and he was still trying to persuade them that it was safe for them to return home. The wife is working part-time.

21 The Respondent has a new job with effect from 4 March 2019 and is on probation for six months. He is afraid that he will lose this job if the community-based sentences were changed to a term of imprisonment.

The appropriate sentence

22 Community-based sentences were enacted by Parliament to target "offences and offenders traditionally viewed by the courts to be on the rehabilitation end of the spectrum", such as "regulatory offences, offences involving younger accused persons and persons with specific and minor mental

[14] ROA at p 45, paras 9 and 18.

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conditions" (Minister for Law, K Shanmugam, Criminal Procedure Code Bill (Bill No 11 of 2010) *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422). Minister Shanmugam further explained that a SDO could be imposed where "rehabilitation is a key consideration" (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 425).

23 The present offences did not fall under the categories for which community-based sentencing was envisaged. There was nothing to suggest that the Respondent's capacity for rehabilitation was so promising that the option of community-based sentencing would be appropriate in the present case. On the contrary, given the Respondent's history of alcohol abuse and propensity of violence against his wife as well as his high level of culpability, there was a strong need for specific deterrence against the Respondent. Bearing in mind all the circumstances here, the "some prospect" at rehabilitation mentioned by the DJ could not override the clear need for punishment to emphasise to the Respondent and other like-minded persons that family violence cannot be tolerated and that voluntary intoxication worsens rather than mitigates the offences.

24 Given the strong stance taken against family violence, custodial sentences have been imposed for breaches of PPOs. In *Wong Leong Chin*,[15] the offender returned home around midnight and his wife asked where he had been. He did not give a satisfactory answer and instead lost his temper and became violent. He tried to strangle his wife. After she tried to run away, he chased her, hit her and kicked her. The offender's sentence of four weeks' imprisonment for the charge of breach of PPO based on these facts was upheld by the High Court.

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15 RBOA at Tab F.

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25 Similarly, in *PP v N*,[16] the offender pleaded guilty to three offences against his wife, namely voluntarily causing hurt, wrongful confinement and criminal intimidation. He had slapped her face, tied up her hands, gagged her and threatened to kill her. The offender's sentence of a fine was overturned on appeal and enhanced to imprisonment of 18 months.

26 In *Luan Yuanxin*,[17] the offender pleaded guilty to two charges under s 323 of the Penal Code (among other charges). The offender had strangled his wife with a copper wire and had bitten her right hand. With help from their eight-year-old daughter and the wife's elderly mother, the wife finally managed to free herself from the offender's hold. The High Court imposed the maximum sentence of one year's imprisonment for each charge, considering the violence and viciousness of the offender's acts, that some degree of premeditation was involved in the attack, the considerable degree of force which the offender used and his corresponding intention to cause his wife serious injury as well as the offender's verbal threat to strangle her to death while tightening the wire around her neck (at [12] and [14]). The High Court also gave due weight to the fact that the offender carried out the attack in front of the eight-year-old daughter who had to witness the violent attack on her mother by her own father (at [16]). The High Court stressed the importance of deterring anyone who might resort to familial violence (at [17]):

> Violent acts such as these are particularly heinous when they are committed within the confines of a familial relationship as they constitute an abuse of the bonds of trust and interdependency that exist between family members. More often than not, the effects of such violence within the family fall most harshly upon the children who, while they may not be the direct recipients of the violence, will nevertheless carry the scars of these acts of brutality.

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16 RBOA at Tab G.

17 ABOA at Tab F.

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Conclusion

27 I therefore allowed the Prosecution's appeal against sentence. I set aside the community-based sentences and substituted imprisonment terms of three weeks for the charge of breach of PPO under the Women's Charter and five weeks for the charge of voluntarily causing hurt under the Penal Code. As both offences were very close in time with the first offence spilling over to the second within a time span of about 15 minutes, I ordered both imprisonment terms to run concurrently, giving a total sentence of five weeks' imprisonment.

28 If the Respondent is genuine about quitting his alcohol habit, he can go for the relevant treatment programmes after serving the imprisonment sentence.

Tay Yong Kwang
Judge of Appeal

Wuan Kin Lek Nicholas and Jotham Tay (Attorney-General's Chambers) for the plaintiff;
Kalidass s/o Murugaiyan (Kalidass Law Corporation) for the respondent.

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