Public Prosecutor *v* Lim Choon Hong and another
[2017] SGHC 237

Case Number	: Magistrates Appeals' Nos 9103 and 9104 of 2017
Decision Date	: 15 September 2017
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Sellakumaran s/o Sellamuthoo and Crystal Tan Yan Shi (Attorney-General's Chambers) for the Appellant; Suresh Damodara and Sukhmit Singh (Damodara Hazra LLP) for the Respondents.
Parties	: Public Prosecutor — Lim Choon Hong — Chong Sui Foon

Criminal Procedure and Sentencing – Sentencing – Appeals

15 September 2017

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 As a country with a scarcity of human resources, we depend on foreigners who come here to undertake work. With rising levels of affluence and the opportunity for families to enjoy double incomes, very much of the menial work in our country is done by foreign workers. Foreign domestic workers are pervasive in many segments of Singapore's society. In some senses, the work opportunities this presents provides economic incentives for nationals of other countries who seek to work their way out of their own difficult conditions.

2 It is imperative in this milieu of circumstances that we as a society ensure that these foreign workers are treated decently and accorded the sort of guarantees of human dignity that we would accord to any human being. This is important for several reasons but in my judgment, one consideration of special significance is what this says about ourselves as a society. We too have progressed as a nation from the direst of circumstances just 52 years ago. If we reach the point where we do not set our face firmly against the treatment of our fellow human beings in a way that reasonable people would regard as not being in keeping with the most basic standards of decency, then we have condemned ourselves.

3 I say this by way of prelude because I think it is critical that we not understate the deplorable nature of the conduct of the two respondents in this case.

4 I also observe that this is entirely in keeping with the settled jurisprudence of our courts on the sentencing approach we should take to cases where foreign domestic workers are ill-treated. In *ADF v Public Prosecutor* [2010] 1 SLR 874 ("*ADF*"), the Court of Appeal said as follows at [55] (*per* VK Rajah JA):

> In a case of domestic maid abuse, ordinarily, the principles of deterrence and retribution take precedence. A deterrent sentence signifies that there is a public interest to protect over and above the ordinary punishment of criminal behaviour. *The protection of domestic maids from abuse by their employers is always a matter of public interest, given their vulnerable status and the prevalence of such relationships in Singapore*. No employer or household member has the right to engage in abusive behaviour against a domestic maid. All maids should be treated fairly,

with dignity and respect.

[emphasis in original]

And at [61] of the same case, the learned judge said that "[t]he courts have unwaveringly recognised domestic maids as vulnerable victims and a category of persons in need of constant protection".

5 More recently, in *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("*Janardana*"), I said as follows at [3] and [4]:

> 3 The special provision enacted for the abuse of this class of victim stems from the recognition that domestic helpers are particularly vulnerable to abuse by their employers and their immediate family members (see *Singapore Parliamentary Debates, Official Report* (20 April 1998) vol 68 at col 1923 (Mr Wong Kan Seng, Minister for Home Affairs)). This is so for several reasons, of which I will mention just three:
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> (a) First, domestic helpers are in a foreign land and will often not have the time or opportunity to develop familiarity or a support network. Domestic helpers who have just arrived in Singapore or have only been working here for a few months, such as the victim in this case, are especially vulnerable.
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> (b) Second, they are in an inherently unequal position of subordination in relation to their employers.
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> (c) Third, the abuse will usually take place in the privacy of the employer's home and without the presence of any independent witnesses. This not only makes the offence very difficult to detect, but also invariably increases the difficulty of prosecuting such offences because it will usually be a case of one's word against that of the other. This, coupled with the fear of jeopardising their prospects of employment as well as the general fear of the employer engendered by the situation they find themselves in, is likely to discourage victims from making a complaint.
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> 4 The upshot of this is that domestic helpers usually do not have a voice and, in many senses, are dependent on the good faith of their employers. It is critical that the law steps in to protect domestic helpers from being abused by their employers, who are the very people who should be taking care of them. Deterrence therefore takes centre stage where such abuse has taken place and offenders can expect a stiff sentence.

6 In my judgment, these principles will be relevant in assessing the culpability of the respondents in this case. However, before I turn to the facts of this case, I wish to make some preliminary observations.

7 The circumstances in the present case were perhaps somewhat complicated by the fact that there appeared to have been a misstep in the prosecution that has led to this appeal. The case had evidently been initiated by the enforcement unit of the Ministry of Manpower. According to the learned Deputy Public Prosecutor Mr Sellakumaran, by the time the Public Prosecutor took carriage of the matter, some time had passed and in all the circumstances it was decided, in the exercise of prosecutorial discretion, that the case would proceed under the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("EFMA") instead of bringing other possible charges under the Penal Code (Cap 224, 2008 Rev Ed) for offences such as voluntarily causing hurt or voluntarily causing grievous

hurt.

8 There are some consequences that flow from this. The offence under the EFMA is one of strict liability. However, as I explained in my judgment in *Seng Foo Building Construction Pte Ltd v Public Prosecutor* [2017] 3 SLR 201 at [39], while this might displace the need to establish any mental state for the purpose of securing a conviction, the culpability of the offender remains relevant in assessing the gravity of the offence and the appropriate sentence that is to be imposed.

9 However, it is also important to note that the offence I am presented with is one that carries a maximum sentence of one year. Hence, the question for me is where within that somewhat limited sentencing range the present offence falls. If I consider for example that the offence falls at the high, but not the highest, end of the range and so decided to impose a sentence of, say, ten months' imprisonment, this should not be misconstrued as saying that such a punishment would always be sufficient for the type of offending conduct that is presented here even if a charge had been presented under a different provision.

10 Thus, if instead of proceeding under the EFMA, the Prosecution had proceeded with a charge of voluntarily causing hurt that carries a maximum of two years' imprisonment or voluntarily causing grievous hurt carrying a maximum of ten years' imprisonment, the same level of culpability would likely have resulted in a significantly higher sentence because of the wider sentencing range that would have been afforded to the court in that situation, and even more is this the case when one factors in the enhanced penalties for offences against domestic maids under s 73 of the Penal Code.

11 Against that background, I turn to the case before me.

12 The respondents, Lim Choon Hong and Chong Sui Foon, who are husband and wife, pleaded guilty each to a single charge under s 22(1)(*a*) of the EFMA. The first respondent, as the employer, was charged under s 22(1)(*a*) of the EFMA and the second respondent was charged for abetting the commission of the offence.

13 Section 22(1)(*a*) EFMA provides that any person who

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> (*a*) being an employer, a foreign employee or a self-employed foreigner to whom a work pass applies or had applied, contravenes any condition (other than a regulatory condition) of the work pass or in-principle approval of the application for the work pass;
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> …
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> shall be guilty of an offence and shall be liable —
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> …
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> (i) in the case of an offence under paragraph (*a*), (*b*) or (*c*), to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both; …

14 The condition that was breached in the present case was Condition 1 in Part 1 of the Fourth Schedule to the Employment of Foreign Manpower (Work Passes) Regulations 2012 (S 569/2012), which states:

> 1. Except as the Controller specifies otherwise in writing, the employer is responsible for —

(*a*) the upkeep and maintenance of the foreign employee in Singapore, including *the provision of adequate food* and medical treatment; and

(*b*) bearing the costs of such upkeep and maintenance.

[emphasis added]

15 The District Judge sentenced the first respondent to three weeks' imprisonment and the maximum fine of $10,000 (in default, one month's imprisonment), and sentenced the second respondent to three months' imprisonment. This followed both respondents' having entered a plea of guilt after the close of the Prosecution's case.

16 The Public Prosecutor appeals and contends that, in view of the manner and extent of their abuse of the victim, which resulted in the denial of her basic human right to adequate nutrition, nothing short of the maximum prescribed 12 months' imprisonment will suffice.

17 The facts upon which the respondents were convicted were set out in the statement of facts and I propose only to summarise the following salient facts.

18 The victim in this case was systematically deprived of sufficient food and food of sufficient nutritional value over a period of 15 months. As a consequence, the victim lost about 40% of her body weight, going from a weight of 49kg to a weight of just 29kg. During the same period her Body Mass Index went from 24.3, which would be at the healthy range, to 14.4 at which she was grossly undernourished. This happened owing to a bizarre feeding regime where she was fed a fixed number of slices of bread and packets of instant noodles at two specified times of the day with adjustments being made to the rations issued in a subsequent meal if there had been any extra quantity given at an earlier meal. This routine – in terms of food quantity and quality – applied only to the victim. The respondents and the other family members were spared any such deprivation. Furthermore, the routine persisted even when they went away from Singapore with the victim.

19 The victim was not only inherently vulnerable as a foreign domestic worker for the reasons I have referred to in my reference to my judgment in *Janardana* and the Court of Appeal's judgment in *ADF*, she was additionally so because it is evident from the facts that she could turn to no one for help. Her pleas to the respondents were not fruitful. Nor were her efforts to reach out to the maid agency because the respondents insisted that any such attempt to contact the maid agency be conveyed by messages to be passed through them. All through this she continued to be engaged in carrying out the domestic chores.

20 In my judgment, on an objective appraisal of the facts, the respondents subjected the victim to systematic cruelty and the denial of her basic human dignity.

21 Mr Damodara, counsel for the respondents, suggested that this had to be seen in the context of some mental illness issues affecting the second respondent. But a Newton hearing was held after which it was found that there was no causal link between the mental illness and the conduct that the respondents had engaged in. To put it bluntly, the second respondent's conduct seemed to defy explanation. In the context of a strict liability offence, explanation is not material as to guilt. But in search of that which we think defines our humanity, we seek an explanation for such cruel behaviour. It seems none was forthcoming in this case.

22 Given the character of the acts in this case, I have no hesitation in concluding that the acts

and the conduct in this case fell at the very high end of culpability. And on that basis I am amply satisfied that the sentences that were imposed by the learned District Judge were patently and manifestly inadequate.

23 In my judgment, this was unaffected by Mr Damodara' s argument that the Prosecution had proceeded on a breach of Condition 1 rather than, say, Condition 9 which more clearly covered ill-treatment. Perhaps so; but there was no doubt as to the gravamen of the Prosecution's case from the statement of facts, and I can see no unfairness at all in holding that even in the context of a breach of Condition 1, this was a case at the high end in terms of culpability.

24 I am also satisfied that no distinction is to be drawn between the culpability of the first respondent and the second respondent. It is true that the second respondent was the active perpetrator, but what makes the first respondent equally culpable in my judgment is that his was the legal duty to safeguard the victim, and with full knowledge of what was happening, he turned the other way and allowed the cruelty to continue. In such circumstances I can see no basis for treating his position as being any less culpable than the second respondent's.

25 The only remaining question is whether the respondents should receive the maximum permitted sentence of 12 months. This must be considered not in the abstract, by asking whether one thinks such conduct generally should be visited with such a sentence, but rather by asking whether this case falls at the very highest end of the range of culpability that is reflected in a sentencing range that carries a maximum permitted term of imprisonment of 12 months.

26 In my judgment two factors militate against this. First, as I said to the learned DPP Mr Sellakumaran, although the acts were cruel, and although I am satisfied that the respondents knew and intended the acts and omissions that they were each engaged in, and although the evidence could not provide an explanation that makes sense for why anyone would engage in such conduct, this fell short of establishing that the respondents had in fact acted in order to be cruel.

27 In the course of the arguments I referred to this loosely as acting "maliciously", and what I mean by this is one who acts cruelly purely out of the gratification that one derives from inflicting such cruelty. That in my judgment would be an even more egregious case than the present one. Mr Sellakumaran invited me to draw that inference in the absence of any other explanation being proffered; but I think that the possibility of such a conclusion being drawn in the circumstances should have been, but evidently was not, put to the psychiatrists who gave evidence below.

28 The second factor I consider is that compensation in the sum of $20,000 was in the end offered and paid by the respondents. This was substantial having regard to what had originally been sought by the victim. I accept Mr Sellakumaran's submission that this was done at least in part to avoid a harsher sentence. It came late in the day after the close of the Prosecution's case and was made in part in the context of a compromise of possible civil liabilities. Hence I think the weight to be accorded this factor should be attenuated, but nonetheless some weight should be accorded to the fact of compensation.

29 In all the circumstances I am satisfied that a sentence of ten months' imprisonment is appropriate. I set aside both sentences below and impose in their place a term of imprisonment of ten months on each of the respondents.

30 In the interests of allowing the respondents to make acceptable living arrangements for their children, I order the second respondent to commence sentence at once and the first respondent to commence sentence one week after the completion of the second respondent's sentence.