IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 161

Magistrate's Appeal No 9037 of 2016

Between

JANARDANA JAYASANKARR

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

EX-TEMPORE JUDGMENT

[Criminal Law] — [Offences] — [Hurt] — [Causing hurt to domestic helper]

Janardana Jayasankarr
v
Public Prosecutor

[2016] SGHC 161

High Court — Magistrate's Appeal No 9037 of 2016
Sundaresh Menon CJ
4 August 2016

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

1 This is an appeal brought by the appellant, Janardana Jayasankarr ("the Appellant"), against a sentence of 14 weeks' imprisonment that the learned District Judge Jasvender Kaur ("the District Judge") imposed on him for two counts of voluntarily causing hurt to his domestic helper ("the victim") under s 323 read with s 73(2) of the Penal Code (Cap 224, 2008 Rev Ed). Two other similar charges involving the same victim were taken into consideration for the purposes of sentencing. The district judge imposed a sentence of seven weeks' imprisonment for each of the two proceeded charges, and ordered both sentences to run consecutively.

2 Before going into the specifics of this case, I reiterate the observation of the Court of Appeal in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") that the abuse of a domestic helper is a very serious offence. It attracted the attention of Parliament in 1998, resulting in amendments to the sentencing regime that were geared towards enhancing the

gravity of the punishment to be imposed for such offences. Specifically, s 73(2) of the Penal Code was enacted and it provides that the court may sentence an employer or a member of the employer's household who commits certain offences against a domestic helper to one and a half times the punishment that the offender would otherwise have been liable for if the victim had not been a domestic helper.

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:

(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.

(b) Second, they are in an inherently unequal position of subordination in relation to their employers.

(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.

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.

5 The evidence before me reveals that the Appellant had assaulted the 31-year-old Filipino victim on four occasions. The first assault, which was the subject of the first of two charges that were taken into consideration for the purposes of sentencing, occurred in late November 2014. This was less than two months after the victim started working as a domestic helper in the Appellant's household. The Appellant slapped the victim on her face on that occasion. The remaining assaults, which were the subject-matter of the three other charges, took place two months later in January 2015, and occurred within a short span of less than two days between the night of 20 January 2015 and the morning of 22 January 2015. Two of these charges were proceeded with.

6 At or about 10pm on 20 January 2015, the Appellant grabbed the victim by her shirt and dragged her into the master bedroom as he was unhappy with her. His displeasure was apparently prompted by an incident earlier in the day when he saw her open the fridge and microwave. He had assumed that she was stealing food even though she had only been checking

whether there was enough food for the next day. After dragging her into the master bedroom, the Appellant and his wife took turns to scold and hit the victim for all her previous ostensible wrongdoings. The assault started with the Appellant slapping her face, and then punching her on her stomach and chest. His wife then slapped the victim and grabbed the victim's neck with her hands, causing the latter to fall to the ground in pain. The Appellant asked her to stand up but the victim was not able to do so. He then stamped on her back while she was on the floor. After the attack, the couple continued scolding the victim for some time before allowing her to return to her room. That assault was the subject of the first proceeded charge against the Appellant. For completeness, I note that the Appellant's wife has been convicted of a single charge of voluntarily causing hurt to a domestic helper for that assault, and was sentenced to a term of one week's imprisonment. Neither party has brought an appeal against that sentence.

7 A little more than a day later, at 4am on 22 January 2015, the Appellant again slapped the victim. This was the subject of the second charge that was taken into consideration for the purposes of sentencing. The fourth assault, which was the subject of the second proceeded charge, occurred five hours later at 9am. The Appellant confronted the victim when she returned to the home after sending his children to school, and questioned her about some items that she had placed in a bucket under the sink. He then punched her in the chest and kicked her stomach. Even after she fell to the ground after the initial assault, the Appellant did not cease the attack but continued to kick her on the back.

8 As a result of the assaults by the Appellant, the victim sustained bruises on her scalp, cheeks, anterior upper chest, back, sacral area and left hip, tenderness over her anterior chest, as well as swelling of her left ear.

9 The offences committed by the Appellant came to light somewhat fortuitously when a concerned stranger, Ms Phua Merlyn Mapolo ("Ms Mapolo"), noticed that the victim had numerous bruises on various parts of her body. That occurred when the victim was on her way to send the Appellant's children to school at 8.15am on 22 January 2015 (which was between the time that the third and fourth assaults took place). Ms Mapolo approached the victim and was informed by her, and subsequently by another domestic helper who was acquainted with the victim, that the victim had been abused a number of times by her employers. The latter also told Ms Mapolo that the victim had previously sought help from her on a few occasions. According to what is set out in the agreed statement of facts, the victim was fearful and worried that the Appellant would see her talking to other persons and thus hurried off after exchanging a few words with Ms Mapolo. Ms Mapolo then decided to report the matter to the Police. The injuries that were spotted by Ms Mapolo must have been the result of the second and third assaults that took place more than a day before and on that very morning. The fact that the bruising on the victim was so visible as to be spotted and as to warrant the concern of a stranger illustrates how forceful the assaults by the Appellant (and his wife) must have been.

10 In the proceedings below, the Prosecution submitted that an aggregate sentence of six to eight weeks' imprisonment would be appropriate, while the Appellant submitted that a term of six weeks' imprisonment would suffice. The District Judge was unimpressed by the submissions of both the

Prosecution and the Appellant. She disagreed that an aggregate sentence of six to eight weeks' imprisonment was commensurate with the overall criminality of the offences; and instead imposed a sentence of seven weeks' imprisonment for each of the two proceeded charges and ordered that both were to run consecutively. The aggregate sentence was therefore 14 weeks' imprisonment. The District Judge also ordered that the Appellant pay the victim $500 as compensation, in addition to the $500 that he had earlier paid the victim on his own accord. The relatively low amount of compensation appears to be explained by the Appellant's financial situation. There is no appeal against the compensation order.

11 The Appellant accepts that the offences that he committed warrant a custodial sentence. He says, however, that the custodial term should be no more than eight weeks – this being the higher end of what the Prosecution had sought in the proceedings below. He also submits that the sentence of 14 weeks' imprisonment imposed by the District Judge is manifestly excessive as the individual sentence of seven weeks' imprisonment is not in line with the precedents; and further, the District Judge had erred in ordering that the two sentences run consecutively. It appears that there may have been some sort of agreement with the Prosecution as part of the negotiations that culminated in the Appellant's decision to plead guilty. The Appellant is therefore aggrieved that the District Judge had disregarded what the Prosecution had submitted without first alerting him to the sentence she intended to impose especially as this was substantially more than what the Prosecution was seeking. As it turns out, the Prosecution has now changed its position and is robustly defending the decision of the District Judge. It seems clear that one of the two positions taken by the Prosecution must have been erroneous.

12 In any event, sentencing is ultimately a matter for the court, in the sense that where the penalty prescribed for an offence extends across a range, the question of where the offence falls within that range is squarely for the determination of the court. Therefore, while the Prosecution is expected to assist the court in this task, it is ultimately for the court to assess and determine what sentence would be just in the light of all the circumstances before it. In the present case, the District Judge was entitled, and had acted in an entirely proper manner in choosing to form her own view as to what the appropriate sentence should be. Just as the submissions of the defence on sentence is not necessarily the *lower* limit of the sentence that a court may impose, the Prosecution's submissions on sentence is not, and should not be regarded as, the *upper* limit of the sentence that may be meted out. Hence, to the extent that the Appellant is relying on the argument that the District Judge was bound by the Prosecution's submission or should have alerted him if she was minded to impose a higher sentence than what had been sought, this was wrong and ill-conceived. Mr Rajan Nair ("Mr Nair"), counsel for the Appellant, rightly decided not to press this point on appeal.

13 I turn next to the Appellant's principal submission which is that the sentence is manifestly excessive. The Appellant's first argument in this regard is that the individual sentence of seven weeks' imprisonment is excessive in relation to the other precedents. To this, I make two preliminary observations:

(a) First, sentencing for the offence of voluntarily causing hurt will invariably be *very* fact-sensitive. Among the critical considerations in sentencing are the severity of the assault and the nature of the injuries that have been sustained as a result. This is not a matter of simply

counting the injuries but involves an actual consideration and assessment of the severity of the injuries suffered in each case.

(b) Second, as I have previously stated (see *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [11(d)] where I reiterated the observation of Chao Hick Tin JA in *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776), sentencing precedents without grounds or explanations should bear little, if any, weight because they are unreasoned. As a result, it will not be possible in such cases to discern what had weighed on the mind of the sentencing judge or why the sentencing judge had approached the matter in a particular way. Hence, such precedents are not likely to be persuasive.

14 In my judgment, the real issue in the present case turns on the severity of the assaults by the Appellant and the nature and extent of the injuries that were sustained by the victim. Because eye-witness evidence of the actual assault will often not be available, the courts are driven to examine the nature and severity of the injuries that have been sustained as an indicator or reflection of the severity of the assault. In this connection, I am not persuaded by Mr Nair's submission that the injuries suffered by the victim were "not so serious" as to suggest that the assaults were very severe in nature. While it may be true that the victim neither suffered any fractures nor broke any bones, this does not mean that her injuries were not serious or that the assault was minor. The medical report reflects that the victim suffered bruising on her scalp, cheeks, chest, back, hip, and sacral area, as well as swelling of her left ear; in short, there were not many parts of her body that were free from bruises. In these circumstances, I find it difficult to accept that the injuries can be considered minor or "not so serious". In fact, had the victim suffered

fractures or more serious injuries, the Appellant could instead be facing a more serious charge of voluntarily causing *grievous* hurt under s 325 of the Penal Code, which warrants a different and enhanced scale of punishment altogether (see also my observations at [22] below). In any event, Mr Nair accepts that the injuries suffered by the victim in this case were generally more serious than those suffered by the victims in the precedents that were put to the District Judge in which lower sentences had been imposed, save possibly for the case of *Public Prosecutor v Tay Li Nah* (MCN 800304/2013, unreported) ("*Tay Li Nah*"), where he says the injuries were about the same as in the present case. In *Tay Li Nah*, the offender was sentenced to a term of imprisonment of four weeks for a single charge of abuse but I place no reliance on that decision because it is not a reasoned decision – see [13(b)] above.

15 The injuries suffered by the victim, and the way in which the incidents, which are the subject matter of the charges in this case, were initiated and transpired, paint a picture of the wanton bullying of a domestic helper, causing her to reach a point where she was afraid even to be seen talking to other persons. There were repeated assaults with no comprehensible trigger – though it must be emphasised that no trigger or misconduct on the part of the domestic helper can ever justify abuse (see *ADF* at [111]). Further, the assaults affected vulnerable areas such as the victim's chest and stomach, which have been identified by the Court of Appeal in *ADF* as aggravating (see *ADF* at [133]), and even extended to the victim literally being kicked while she was down. Having regard to the extent of bruising that was present and the fact that such bruising remained visible for up to a day or two after the incidents, I consider that the assaults were severe and carried out with considerable force. In the circumstances, I consider this as a serious instance of abuse. Domestic

helpers cannot become an outlet for a frustrated employer to vent his or her personal frustrations. They are human beings entitled to be accorded due dignity and respect because the human condition demands nothing less.

16 In my judgment, there are at least two aggravating factors present:

(a) First, the victim sustained serious injuries (as evidenced by the extent of bruising) in vulnerable areas such as the stomach and the chest.

(b) Second, the victim was kicked repeatedly while she was on the ground. I regard this as aggravating because the victim would have less ability to defend or shield herself from further injuries once she had fallen; and also because the act of kicking is more likely to cause more serious injuries and pain having regard to the greater strength of the legs.

I should add that in the present circumstances, there would inevitably have been mental abuse as well because of the manner in which the injuries were inflicted, coupled with the vulnerable situation of the victim for the reasons I have already mentioned at [3] above. In this regard, I also consider it relevant that the victim was new to Singapore, having started work in the Appellant's household less than two months before the first assault and four months before the latest offences were committed. This made her even more vulnerable. These factors should be taken together with the sentencing range that was available in this case. In this regard, I note that the offences in this case could have been punished with a term of imprisonment of up to three years. In all the circumstances, I consider that the sentence in this case could have been even higher (see my observations at [20]-[22] below).

17 The Appellant's next submission is that the District Judge should not have run the two sentences consecutively in the light of the one-transaction rule. I am satisfied that there is no merit in this. I dealt at length with the principles that govern the choice of sentences to run consecutively in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (as summarised at [81]) and I do not propose to rehearse them here. The two proceeded charges in the present case involve separate offences. The fact that they involve the same domestic helper, employer, pattern of violence and were less than two days apart does not offend the one-transaction rule. To hold otherwise would be patently wrong as it would be akin to giving employers a licence to repeatedly abuse their domestic helpers as long as the assaults all take place within a short span of time and then face the prospect of being charged for only a single offence. The question of whether separate interests have been violated is one of common sense. Where a person is beaten on three separate occasions over a span of 36 hours, there is no question in my mind that these are separate violations that can be individually punished. In fact, this should be regarded as a "cumulative aggravating feature" (to use the language of the Court of Appeal in *ADF* at [92]), which supports the District Judge's decision to run the sentences consecutively in order to enhance the aggregate sentence.

18 I also reject Mr Nair's submission that the District Judge had failed to give sufficient mitigating weight to the fact that the Appellant had pleaded guilty and that he did not have any relevant antecedent. I do not accept either of these submissions. The former is not factually correct because there is nothing in the District Judge's grounds of decision to warrant the conclusion that she did not take this fact into account in coming to her decision on sentence. On the contrary, she stated at [18] of her grounds that she "noted that

the accused had pleaded guilty". As to the latter submission, it is clear from case law that no weight should be placed on the lack of antecedents where the offender in question has been charged with multiple offences (see *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR 334), unless the series of offences arose from a single incident. In the present case, the offending behaviour had spanned a period of two months with the first charge, which the Appellant consented to being taken into consideration for sentencing, having occurred in late November 2014 and the other charges taking place in January 2015. The fact is that by the time of the incidents, which are the subject of the proceeded charges, the Appellant had already committed a similar offence on at least one occasion. I cannot see how the absence of an antecedent in such a context could be said to be a factor that counts in his favour. It would at most be a neutral factor.

19 In all the circumstances, I dismiss the appeal.

20 In fact, as I said at [16] above, I think the sentence in this case could have been higher. I am conscious of the fact that there are several other cases involving the abuse of domestic helpers where the courts appear to have taken a relatively lighter view on sentencing. While it is necessary to carefully analyse the actual injuries sustained and the other circumstances of the cases before reaching a definitive conclusion, at least provisionally, I am concerned that the courts in some of those cases might not have sufficiently taken into account the acute need for deterrence in such offences and might perhaps also not have sufficiently appreciated the need to calibrate the sentences across the full range of the available punishment.

21 As I observed in *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [60], the maximum sentence that is stipulated for an offence signals the gravity with which Parliament views that offence. The sentencing judge ought therefore to take this into account when determining precisely where the offender's conduct falls within the entire range of punishment devised by Parliament. This is a point of particular importance in the context of this offence, where, as I have noted at [2] above, Parliament had specifically acted to *enhance* the sentencing powers of the court when dealing with the abuse of domestic helpers even though the existing sentencing ranges for the various offences were already quite broad. As the law presently stands, the offence of voluntarily causing hurt to a domestic helper attracts a punishment of up to a maximum of three years' imprisonment and a fine of $7,500 taking account of the enhancement that is provided for by s 73(2) of the Penal Code.

22 It should also be borne in mind that this range applies just to cases involving *simple* hurt. Where grievous or more serious hurt is caused to a domestic helper, the offence would fall within s 325 of the Penal Code, which attracts a much higher maximum custodial term of 15 years. Looking at the precedents in this light, it might well be thought that the courts have not sufficiently taken into account or utilised the breadth of the sentencing range that has been prescribed by Parliament.

23 In my judgment, this is an area of sentencing that may benefit from a proper review in an appropriate case. Such a review should be undertaken with a view to calibrating the applicable benchmarks upwards and with an elucidation of the factors that the courts should take into account when sentencing. I have not embarked on this in the present case because I do not think the parties have come prepared to address me on these considerations

and issues. Indeed, as I have noted at [11] above, the Appellant is aggrieved that the deal he appears to have thought he had struck with the Prosecution in the court below did not find favour with the District Judge. The Prosecution has also somewhat abruptly changed its position on appeal. Despite having sought a significantly lower sentence before the District Judge, it endeavours on appeal to defend the decision of the District Judge by pointing to other cases that had imposed similar or more onerous sentences. Those cases had not been relied on in the court below. In all the circumstances, I do not think this is a suitable case for a proper consideration of these issues. I do, however, wish to signal the need to turn to this in due course, when a suitable case arises.

24 Before I end, I comment briefly on the Prosecution's change of position in respect of the sentence it sought at first instance and then on appeal. The stance of the Prosecution, *as an institution*, on sentencing is a reflection of what it considers is in the public interest. It is paramount that the Prosecution, as guardian of the public interest, advance a position that it believes to be consistent with its role in this respect. The Prosecution could conceivably change its view on sentencing and on what the public interest demands in a given case by the time that case comes on appeal or indeed at any other stage of the proceedings. This is not impermissible. But, in my judgment, where it does change its position in a material way, it should articulate and explain its reasons for doing so; this, unfortunately, has not been done here.

25 There is a further point: where the Prosecution has determined *at first instance* – as it is entitled to – that it is in line with the public interest to submit for a lower sentence as part of the process of plea bargaining in order to

obviate the need for a trial, a question arises as to whether it may subsequently change its stance *on appeal*. On the one hand, it seems to me that because the Prosecution should always be guided by the public interest, a change of stance should be permitted if the public interest so demands. On the other hand, the position of the accused person must also be considered. If the accused person agreed to plead guilty on the basis of the Prosecution taking a certain stance, he may well feel aggrieved if the Prosecution subsequently changes its position after he has pleaded guilty. I do not have to come to a decision on this issue in this case because it is not entirely clear whether the Prosecution and the defence did have such an agreement, although there is at least some suggestion of this. In any case, it is certainly not Mr Nair's position that his client's plea of guilt was tainted in some way on account of this. In my judgment, the resolution of this issue, if it arises in a future case, will likely involve a balancing of the various interests and as I see it, in this context, it will be even more important that the change of position by the Prosecution, *as an institution*, is carefully explained.

Sundaresh Menon
Chief Justice

Rajan s/o Sankaran Nair (Rajan Nair & Partners) for the appellant;
Zhuo Wenzhao and Li Yihong (Attorney-General's Chambers) for the respondent.
