

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 06

Magistrate's Appeal No 9091 of 2019

Between

Prakash s/o Manikam

... Appellant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Prakash s/o Manikam

v

Public Prosecutor

[2020] SGHC 06

Magistrate's Appeal No 9091 of 2019
Chua Lee Ming J
25 November 2019

8 January 2020

Chua Lee Ming J:

1 The accused, Mr Prakash s/o Manikam, was tried on a charge of rioting with three others under s 147 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). At the end of the trial, all four of them were acquitted. The District Judge framed a lesser charge under s 323 of the Penal Code against the accused for voluntarily caused hurt to one Mr Logeeswaaran a/l Shunmugam ("Logeeswaaran") by "punching him on his face, swinging him down onto the road, dragging him on the road by his left hand, and throwing him against the railings and kicking him". The accused pleaded guilty to this s 323 charge, and was sentenced to six months' imprisonment. The District Judge's grounds of decision are set out in *Public Prosecutor v Prakash s/o Manikam* [2019] SGDC 109 ("Grounds of Decision").

2 The accused also pleaded guilty to a charge under s 186 of the Penal Code for obstructing a police officer in the discharge of his duties. One other

charge under s 186 of the Penal Code was taken into consideration for the purpose of sentencing. He was fined \$500 for the s 186 charge.

3 The present appeal concerned only the sentence imposed for the s 323 charge.

4 The assault against Logeeswaaran took place in the early morning of 7 September 2016. The assault started at the junction of Clive Street and Hastings Road and continued on Hastings Road. A police camera (“POLCAM”), installed on Dalhousie Lane (which was nearby), recorded the assault.

5 The POLCAM footage showed that Logeeswaaran was assaulted by four persons, including the accused. The sequence of key events was as follows:

(a) The accused either pushed or punched Logeeswaaran in the mouth. The accused could not be seen in the footage but in his testimony he said that he pushed Logeeswaaran in the mouth because the latter had uttered vulgarities involving the accused’s mother.

(b) As Logeeswaaran walked away, a second attacker hit him on the back of his head, sending him stumbling across the road.

(c) The accused caught hold of Logeeswaaran and pushed him against the railing by the side of the road. Logeeswaaran’s back was against the railing and the accused punched him in his face. The accused then pulled Logeeswaaran away from the railing by the arm, flung him onto the road after which he dragged Logeeswaaran on the road for a short distance towards the railing.

(d) A third attacker punched Logeeswaaran in his face while Logeeswaaran was lying on the road facing up. Logeeswaaran's shoulders and head were not flat on the road because the accused was still holding onto his arm.

(e) The accused then flung Logeeswaaran against the railing. Logeeswaaran's back hit the railing. Thereafter, the accused kicked him in the chest while he was sitting on the road.

(f) A fourth attacker punched Logeeswaaran on either the back or the side of his head, sending Logeeswaaran stumbling towards the railing.

6 Logeeswaaran suffered the following injuries:

- (a) a small sub-centimetre laceration on his nasal bridge;
- (b) two missing front teeth from his upper jaw;
- (c) one missing front tooth from his lower jaw;
- (d) a 3cm laceration on his external lower lip;
- (e) a 2cm laceration on his internal lower lip; and
- (f) a 1cm by 1cm superficial abrasion over the back of his right elbow.

The lacerations on the lip were sutured and Logeeswaaran was given three days of medical leave.

7 The District Judge rejected the submissions by both the Prosecution and the accused that the sentence should be one month's imprisonment. Instead, she sentenced the accused to six months' imprisonment.

8 As stated earlier, the accused was acquitted of the offence of rioting under s 147 of the Penal Code and was convicted instead for voluntarily causing hurt under s 323 of the Penal Code. The distinction was important. An accused person who is convicted of the offence of rioting is sentenced not for his individual acts considered in isolation but for his participation in the collective offence of rioting: *Phua Song Hua v Public Prosecutor* [2004] SGHC 33 at [39]. In such cases, the injuries suffered by the victim may be considered in sentencing even if it could not be said that those injuries were caused by the acts of the accused person who is being sentenced. On the other hand, an accused who is convicted under s 323 is sentenced for his individual acts.

9 In the present case, the District Judge, correctly, took into consideration only the accused's individual acts. However, she attributed all of the injuries suffered by Logeeswaaran to the assault by the accused. In my judgment, this conclusion could not be supported on the evidence.

10 Apart from the abrasion over his right elbow, Logeeswaaran's injuries were to his nose and mouth. The POLCAM footage showed that Logeeswaaran was punched in the face by the accused *and* the third attacker. In her Grounds of Decision, the District Judge did not mention the punch by the third attacker. It was not clear why the District Judge disregarded the punch by the third attacker.

11 The doctor who examined Logeeswaaran testified that the injuries to his nose and mouth were consistent with a direct blow to the face. Not surprisingly

however, the doctor did not say that the injuries were caused by the accused's punch rather than the third attacker's.

12 In my view, having watched the POLCAM footage, it could not be determined from the evidence whether, or to what extent, the injuries to Logeeswaaran's nose and mouth were caused by the accused. From the POLCAM footage, the punch by the third attacker was not without force and could also have caused the injuries. Under these circumstances, the benefit of the doubt ought to have been given to the accused. In my view, the District Judge should not have attributed all of the injuries sustained by Logeeswaaran to the accused.

13 Once the injuries to Logeeswaaran's nose and mouth were excluded from consideration, it was clear that the sentence of six months' imprisonment was manifestly excessive and had to be set aside.

14 Next, both the Prosecution and the accused referred me to *Low Song Chye v Public Prosecutor and another appeal* [2019] SGHC 140 ("*Low Song Chye*") in which the High Court set out (at [77]) the following sentencing framework for s 323 cases in which a first-time offender pleads guilty:

Band	Hurt caused	Indicative sentencing range
1	Low harm: no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions	Fines or short custodial term up to four weeks
2	Moderate harm: hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Between four weeks' to six months' imprisonment

3	Serious harm: serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	Between six to 24 months' imprisonment
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The court in *Low Song Chye* (at [78]) further stated that a two-step inquiry should be involved in sentencing an offender under s 323 of the Penal Code. First, the court should derive the indicative sentencing range from the above framework. Second, the sentence should be adjusted based on the offender's culpability and other aggravating and mitigating factors.

15 The District Judge did not have the benefit of *Low Song Chye* as it was decided subsequent to her decision.

16 The Prosecution accepted that if it could not be determined which injuries were caused by the accused in the present case, the benefit of the doubt ought to be given to the accused and the hurt caused should therefore be categorised as low harm. The Prosecution submitted that the indicative sentence in this case should be four weeks' imprisonment but that, taking into consideration the aggravating factors, the final sentence ought to be two months' imprisonment. The Prosecution relied on the following aggravating factors:

- (a) the manner of the accused's assault;
- (b) the low level of provocation; and
- (c) the accused's antecedents which, though dissimilar in nature, showed his disregard for the law.

17 The accused, on the other hand, urged me to impose a sentence of four weeks' imprisonment.

18 Based on all the circumstances of the case, I agreed with the Prosecution and imposed a sentence of two months' imprisonment.

19 For the reasons stated above, I allowed the appeal, set aside the sentence of six months' imprisonment imposed by the District Judge and substituted in its place a sentence of two months' imprisonment.

Chua Lee Ming
Judge

Rajwin Singh Sandhu and Riyach Hussein (Amarjit Sidhu Law
Practice) for the appellant;
Gregory Gan (Attorney-General's Chambers) for the respondent.
