

Rehana Perveen v Public Prosecutor
[2002] SGHC 3

Case Number : MA 142/2001
Decision Date : 07 January 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Wee Pan Lee (Wee Tay & Lim) for the appellant; Ravneet Kaur (Deputy Public Prosecutor) for the respondent
Parties : Rehana Perveen — Public Prosecutor

Judgment

GROUND OF DECISION

The appellant, Rehana, was charged under s 325 of the Penal Code (Cap 224) for voluntarily causing grievous hurt to her mother-in-law, one Samim Akhtar d/o Mohd Yaakob ("Samim"), by hitting her left hand forcefully and thereby fracturing her left little finger. At the end of the trial, the trial judge convicted and sentenced Rehana to three months imprisonment and she appealed against this decision. After hearing arguments from both counsel, I allowed the appellants appeal on conviction and acquitted her of the charge against her. I now set out my reasons.

Facts

2 The undisputed facts were as follows. The complainant, Samim, is the mother of five children, among whom are Mohd Ishtiaq ("Ishtiaq"), Parveen Kauser ("Parveen") and Munawar Sultana ("Munawar"). Ishtiaq is the husband of Rehana, whose brother, Tahir Mahmood ("Tahir") is married to Parveen.

3 Ishtiaq and Rehana brought together and arranged for Tahir and Parveen to get married on 5 October 2000. Although Ishtiaq had initially agreed to bear a significant portion of the wedding expenses, a conflict subsequently ensued between Ishtiaq and his mother regarding the arrangements for the wedding and Ishtiaq refused to contribute to the wedding expenses. This led to some unhappiness on the part of Samim, Parveen and the other siblings. Nevertheless, Parveen and Tahir moved into Ishtiaqs home after the wedding.

4 On 26 October 2000, Tahir accompanied Ishtiaq, Rehana and their child on a trip to Jakarta. Parveen was unable to go along as she could not take leave from her job. As she was upset by Tahirs decision to go abroad, Parveen stayed with her mother while Tahir was away and refused to return to Ishtiaqs home to stay with him when he returned on 16 November. It was only on 19 November that she went to Ishtiaqs house, whereupon a quarrel ensued between the couple.

5 On the morning of 20 November 2000, Tahir reluctantly related the quarrel and his marital problems to Ishtiaq and Rehana. He then asked them to accompany him to Samims home to try to resolve his marital problems by reasoning with Samim and Parveens sisters, whom he felt had a great influence over his wife. At about 11 am, Tahir rang the doorbell at Samims home. Munawar opened the door and was about to open the grille gate outside the door when she saw Ishtiaq and Rehana emerging from the stairs behind Tahir. Munawar and Samim thereafter refused to open the gate but told them to go away. When Munawar and Samin tried to close the door, they were prevented from doing so, after which there was a tussle and Samims finger was hurt. Eventually, Munawar contacted the police and

managed to close the door. When police officers arrived at the scene, Samim showed them her injured finger and told them that her daughter-in-law had hit her finger.

6 Subsequently, Samim applied for personal protection orders against Tahir and Ishtiaq on 25 November 2000 and filed two complaints against them in the Family Court.

The Prosecutions case

7 The prosecutions case in the court below was that on 20 November 2000, Tahir rang the doorbell at Samims home. Munawar opened the door but before she unlocked the grille gate to let Tahir in, she saw Rehana and Ishtiaq emerge from the staircase behind him. At this point, Munawar got scared because Ishtiaq and Rehana were shouting vulgarities and so she tried to close the door. However, Ishtiaq held the door open while Rehana moved forward and placed her foot through an opening at the bottom right hand side of the grille gate to prevent the door from being closed. Angered by Munawars refusal to open the grille gate, Tahir and Ishtiaq kicked the grille gate and Rehana joined them in hurling insults at Munawar. Rehana then put her hand through the grille and hit Munawar on the face and shoulder.

8 On hearing the commotion, Samim came forward and told Tahir, Ishtiaq and Rehana to leave. As Tahir and Ishtiaq were holding the door open, Munawars continuous attempts to close the door were futile. She then decided to call the police and proceeded to get her mobile phone. Meanwhile Samim, who was close to the door, waved her left hand at Tahir, Ishtiaq and Rehana, gesturing at them to leave. Angered by these gestures Rehana put her arm through the grille gate and forcefully struck Samim twice on her left hand and fractured her finger.

9 When Munawar saw Rehana hit her mother, she threw her mobile phone on the sofa, quickly pushed Rehanas hand out of the grille and finally managed to close the door by putting all her body weight against it. Tahir, Ishtiaq and Rehana then left.

Defences Case

10 Tahir, Ishtiaq and Rehanas version of the incident differed somewhat from that related by Samim and Munawar. They claimed that on 20 November, they went to Samims home to try to resolve matters relating to the marital problems between Parveen and Tahir. Parveen was apparently upset with Tahir for several reasons. First, she did not want to stay in Ishtiaqs house with her husband as her relationship with her brother was very strained. This was because Samim, Parveen and the other siblings were upset with Ishtiaq for failing to pay for Parveens wedding expenses and discontinuing payment of Samims household bills and allowance in October 2000. Secondly, Parveen was angry with Tahir for going to Indonesia with Ishtiaq and Rehana, and resented the fact that Tahir was close to the couple.

11 When Tahir, Ishtiaq and Rehana arrived at Samims residence on the morning of 20 November 2000, Tahir rang the doorbell and Munawar opened the door. However, when she saw Ishtiaq and Rehana behind him, she refused to open the grille gate and called for Samim, who was willing to let Tahir enter although she wanted Rehana and Ishtiaq to leave.

12 Tahir told Samim that all they wanted to do was to sit down and talk but Samim refused to let them in and told them all to leave. Tahir then told Samim that he would bring four to five members of the Punjabi community to talk to her if she refused to listen. At this juncture, Samim clapped her

hands and made a sarcastic comment which angered Ishtiaq. Tahir then stepped aside and Ishtiaq, who was standing behind him, moved forward to stand in front of the door facing his mother. Tahir therefore stood to the left of Ishtiaq while Rehana stood directly behind them.

13 As it seemed that Samim was not heeding Ishtiaqs words, Rehana asked Samim to listen to them but Samim told her to keep quiet, stating that she was the root cause of their troubles. After that, Samim told Munawar to shut the door. As Munawar was trying to do this, Ishtiaq held the door to prevent it from being closed as he was trying to persuade Samim to listen to them. However, when she refused to do so, he removed his hand and the door slammed shut. It was the defences position that Samims finger could have been hurt when the door slammed shut.

14 The defences case was that throughout the entire incident, Rehana remained behind Ishtiaq and Tahir and could therefore not have hit Samim. Instead, Samim and her children had conspired to hurt Ishtiaq and his family because they were upset with him. Ishtiaq also testified that Samim was upset with Rehana as she believed that the latter had influenced her son against his family.

The Trial Judges Findings

15 The trial judge felt that having considered the evidence carefully and observed the demeanour of the witnesses, the prosecution had proved its case beyond reasonable doubt. She accepted Samim and Munawars evidence that Rehana had put her hand through the grille gate and forcefully hit Samims hand with her fist while Samim was gesturing at them to leave.

16 In coming to her conclusion, the trial judge dealt with some of the inconsistencies in Samim and Munawars evidence and the defence counsels attempts to discredit them. First, there was the inconsistency between Samims complaint filed in the family court, which stated that Parveen returned to her home on 19 November and the evidence which she gave in the court below, where she stated that Parveen returned on 20 November. The trial judge felt that it was clear that the date stated in the complaint was a mistake. Secondly, the trial judge felt that any inconsistency in Samims evidence, where she initially denied that Parveen stayed with her before the 20 November incident but later conceded that Parveen stayed with her while Tahir was in Indonesia, was not an issue and irrelevant to the case at hand. Finally, with regard to Munawars evidence that Rehana had put her foot through the grille gate to prevent the wooden door from being closed, the trial judge stated that she was satisfied that based on the demonstrations in court, Rehana could not have put her whole foot through the space between the grilles. However, she found that Rehana was able to put her foot in three quarters of the way and stated that, with regard to this inconsistency, she was prepared to accept the prosecutions submission that, given the situation at the time, it was possible for Munawar to have made a mistake in observation. In any case, the trial judge felt that this was a minor discrepancy.

17 On the other hand, the trial judge felt that there was a material inconsistency in the defence witnesses evidence. In the sequence of events narrated by Rehana and Tahir, after Samim made the sarcastic comment which angered Ishtiaq, Rehana spoke to Samim but was told to keep quiet. Munawar was then told to close the door. Ishtiaqs version, however, was that Samim became abusive and told Munawar to close the door. It was only after Munawar tried to close the door and he prevented her from doing so that Rehana spoke to Samim, who told her to keep quiet.

18 Finally, in assessing the evidence before her, the trial judge stated that she was of the view that Samim was not a person prone to exaggeration and appeared to be extremely reluctant to discuss her family problems in court. She was therefore prepared to accept her version of the events as

supported by Munawar and convicted Rehana on their evidence.

The appeal on conviction

19 Having heard arguments from both the prosecution and defence counsel, I was convinced that it was either impossible or, at the very least, extremely unlikely that Rehana committed the offence. First, I was of the opinion that, even if Samim and Munawars evidence on the incident was accepted *in toto*, Rehana was not in the position to inflict the injury on her mother-in-law. When considering whether she could have dealt such a blow, I noted that Samims hand was waving in a constant motion and Rehana would have had to hit her finger with such force that it would fracture. While possible, it is not easy for a person to hit a moving object, especially one as small as a finger. To strike it with the amount of force necessary to fracture it would have been all the more difficult and I accordingly failed to accept the likelihood that this occurred. My conclusion that the requisite amount of force could not have been applied was supported by Samims allegation that Rehana hit her with her fist which was inserted through the grille gate. I observed from the evidence that the space between the grilles was not very large and there would therefore have been insufficient space for Rehana to have swung her arm with sufficient force to inflict the injury. Furthermore, Rehanas foot was alleged to have been elevated on a part of the grille at the bottom right hand corner of the grille gate. Thus she was either resting her weight on that foot alone or her leg would have been bent, in both cases putting her in a position which would have made it very awkward for her to take both an extended as well as a forceful swing at Samims finger.

20 Secondly, while the issue of *mens rea* was not raised by counsel for the defence, it was my opinion that, even if Rehana did inflict the injury, it was extremely unlikely that she *intended* or *knew* that by her actions, she was *likely to cause grievous hurt*, as laid down in s 322 of the Penal Code. That the mental element was present was not even addressed by the prosecution in the court below, probably because counsel assumed that the circumstances indicated that it was present. The prosecution contended that Samim was hit twice and this might indicate that it was not an accident. However, not only was this point never put to Rehana in the court below, I did not think that it was probable that, with Samims hand waving in a constant motion, Rehana could have intended, or known that she was likely to hit Samims finger twice with such force that it would have fractured her finger. I have already dealt with the difficulty and improbability that such an injury could have been inflicted based on the account alleged by the prosecution. Under these circumstances, I simply could not infer that Rehana intended or knew that she would cause such an injury.

21 A likely explanation for Rehanas action, if it did occur at all, was that she overreacted to her mother-in-laws gestures and was trying to get Samim to stop gesturing at them. This was acknowledged by the trial judge in her judgment, where she stated that

Rehanas action was not premeditated and was in reality a reaction to Samims refusal to open the gate and waving of her hand in front of Rehana to indicate to the party to leave

In such circumstances, I found it hard to believe that Rehana actually intended to commit the alleged offence. At best, she intended or knew that she was likely to bruise her mother-in-law or cause her some bodily pain, which would make her guilty of voluntarily causing hurt contrary to s 323 of the Penal Code. However, she was not charged under that provision and I saw no reason to amend the charge because there was also sufficient doubt in my mind as to whether she did in fact cause the injury to Samim.

Credibility and veracity of Samims and Munawars evidence

22 Apart from being convinced that it was impossible or extremely unlikely that Rehana caused the injury to Samim, I felt that a reasonable doubt as to her guilt existed by virtue of the inconsistencies and questions left unanswered by the evidence given by Samim and Munawar.

23 At the appeal, counsel for the defence claimed that Samim was not a credible witness for several reasons. First, during cross examination, Samim was asked to demonstrate the manner in which she waved her hand at Rehana, Tahir and Ishtiaq. She demonstrated a wave away from her body with her thumb facing upwards. However, when she was asked to demonstrate the wave again, she changed the demonstration, showing an upward hand movement such that the thumb was facing downwards. While this change was noted by the trial judge in her judgment, she failed to deal with its implications in her judgment. Counsel for Rehana argued that, when Samim was asked to repeat the wave, she must have realised that her first demonstration could not have exposed her little finger to contact with Rehanas fist which, according to her allegations, struck her in a downward movement. She therefore changed the wave.

24 The defences argument in this respect was very potent and certainly went towards undermining Samims credibility. And to drive the point home, Rehanas counsels question after this change in demonstration was "Can you remember the incident very clearly?" and Samim replied that she did. It seemed odd that she would change her demonstration of the wave if her memory of the incident was really that clear. This certainly cast some doubt on Samims testimony, either as to its creditworthiness or as to its veracity and the trial judge erred in neglecting to give serious weight to this discrepancy.

25 Another inconsistency in Samims evidence which the defence took issue with was her assertion that Parveen had stayed with Tahir from the time they were married until 20 November 2000. When confronted with the fact that Tahir was in Indonesia from 26 October to 16 November during cross-examination, Samim was forced to retract from this position. The trial judge seems to have disregarded this as she felt that this inconsistency was not relevant to the case and attributed it simply to a reluctance on Samims part to discuss her family problems in Court. Rehanas counsel submitted that the trial judge erred in failing to consider this inconsistency together with the other inconsistencies in Samim and Munawars evidence when coming to her decision, and I agreed with him for several reasons. First, this inconsistency was not irrelevant since it went to show that there existed some problems in the relationship between Tahir and his wife which Samim would have known about. This contradicted her evidence in the court below where she claimed that there were no problems in their relationship. Secondly, even if the inconsistency was not relevant, it went to Samims credibility as a witness. She may indeed have avoided telling the truth because she did not want to discuss her family problems in court. Yet if that was really the case, she would have prevented Munawar from calling the police and certainly would have dissuaded Munawar from instituting a civil action against Rehana. Instead, she would have sought some form of mediation. In the light of this finding, I concluded that the trial judge should have borne in mind the cumulative effect of this inconsistency, Samims propensity to lie when the questions were not in her favour and also the possibility that Samim bore a grudge against Rehana.

26 The credibility of Munawar was also questionable. One of the more significant points raised by Rehanas counsel in his written submissions was that Munawars assertion, that Rehana assaulted her on the face and shoulder before her mother was hit, was not believable. First, Samim testified that she did not see her daughter being hit by Rehana. Secondly, Munawar did not inform the police that she was also assaulted by Rehana when they arrived. Thirdly, if she had indeed been assaulted and

moved away to contact the police, it was strange that Munawar did not inform her mother of this and insist that her mother move away from the door as she could be hurt. This was all the more puzzling, as Munawar testified in the court below that, when she was on the phone with the police, she kept checking on her mother as she was worried for her mothers safety. Finally, I noted that in the court below, this point was only brought up by Munawar during cross-examination. All these factors raised much doubt that Munawars account of the incident was completely accurate.

27 There was also the claim by Munawar that Rehana had put her entire foot through the space at the right hand corner of the grille gate. As I stated earlier, the trial judge accepted that Rehana could not put her entire foot through the hole. However, she accepted the prosecutions submission that, given the situation at that time, it was possible for Munawar to have erred in her judgment or observation on this point. That might have been true but it was difficult to see how both Munawar and Samim could have come to the same error in their observation as Samims evidence on this fact was identical with Munawars. The trial judge failed to address this point and also erred in finding that this inconsistency bore little relevance to the case. On the contrary, it was highly relevant since the defence claimed that Rehana was standing behind Tahir and Ishtiaq throughout the entire incident. Any proven flaws in Munawar and Samims evidence that Rehana was standing in front of them with her foot through the grille gate would have cast doubt on their claim that Rehana was actually in front and in the position to hit Samim.

28 As can be seen from the above, there were several problems and inconsistencies in Samim and Munawars evidence. In addition to this, several parts of their account of the incident was implausible and left many questions lingering.

29 First, in their evidence, Samim and Munawar claimed that, when Samim waved at Ishtiaq, Tahir and Rehana to leave, Ishtiaq and Tahir stood before the grille gate and were using both their hands to hold open the door. At the same time, Rehana stood beside them and had one hand through the grille gate as well as a foot partially inserted through the bottom right hand part of the gate. To my mind, Rehanas counsel was right in saying that this was unlikely, if not impossible. From the diagram tendered in evidence, I noted that the gate had a width of only 95 centimetres and found it hard to believe that three adults could stand before the gate in the positions described above.

30 Secondly, there was Munawars claim that, after Samim was struck, she pushed Rehanas hands out of the grille and closed the door with her body weight. If, as she claimed, Ishtiaq and Tahir were preventing the door from closing with both their hands on the door and Rehanas foot was at least partially inserted through the grille gate to prevent the door from closing, it was quite unlikely that Munawar would have succeeded in closing the door.

31 Thirdly, at various points of Munawar and Samims evidence, they stated that the door was wide open. I found this to be strangely inconsistent with their claim that Ishtiaq and Tahir were at the same time preventing the door from closing with both their hands. It would have been extremely awkward for them to have done this, especially as they were, by Samims evidence, standing behind Rehana and had their hands through the grille gate.

32 Finally, if Munawar and Samims account was to be accepted, I failed to see why Rehana would need to put her foot through the grille gate to hold the door open throughout the incident when it was wide open for most of this period. There would also be no reason for Rehana to take off her shoes before doing so, thus opening herself to greater injury should the door crush her feet. These unresolved implausibilities added to my doubts on the credibility and veracity of the prosecution witnesses account of the incident.

No weight was given to the Defences evidence

33 Not only was the trial judge wrong in her treatment of the prosecutions evidence, she also erred in totally rejecting the defences evidence. From her judgment, it was clear that there was only one main inconsistency in the defence witnesses evidence which she attacked. As pointed out above, she noted that in relation to the sequence of events, Ishtiaqs account differed from that of Tahir and Rehana. However, the inconsistency she alluded to was obviously not major. Considering the ease in which the trial judge dismissed inconsistencies in the evidence of Samim and Munawar, it was surprising that she did not similarly dismiss this inconsistency.

34 While I am usually reluctant to overturn a trial judges finding of fact, having considered all the evidence, I was of the view that it cannot be said that the prosecution had proven beyond reasonable doubt that Rehana was guilty of committing the offence of causing grievous hurt to Samim. I had no doubt that Samims injury was not self-inflicted, but that did not necessarily mean that Rehana inflicted it. Seeing that it was either impossible or improbable that Rehana inflicted the injury and also how unreliable the evidence of Munawar and Samim was, there was clearly a reasonable doubt that she was in fact guilty of the offence. In any case, I was of the further opinion that Rehana did not intend, nor did she know that she would cause such an injury. Ultimately, I was of the view that the injury was sustained in the tussle as Samim and Munawar struggled to close the door to their flat. The trial judges finding was made against the weight of the evidence and I accordingly acquitted the accused of the charge against her.

35 Having disposed of the appeal against Rehanas conviction in her favour, there was no need for me to deal with her appeal against her sentence.

Appeal allowed.

Sgd:

YONG PUNG HOW
CHIEF JUSTICE

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