

**Public Prosecutor v Yong Siew Khian**  
**[2003] SGMC 22**

**Case Number** : MAC 4779/2002, 4780/2002, 4781/2002, MA 10/2003

**Decision Date** : 30 June 2003

**Tribunal/Court** : Magistrates Court

**Coram** : Alvin Koh Meng Sing

**Counsel Name(s)** : Derrick Kang Yu Hsien (Deputy Public Prosecutor) for the plaintiff; Surian Sidambaram (Surian & Partners) for the defendant

**Parties** : Public Prosecutor — Yong Siew Khian

1 The accused, Mdm Yong Siew Khian ("Mdm Yong") claimed trial to the following charges of maid abuse against her domestic maid, Mursiyani Mistam ("Mursiyani"):

*1st Charge (MAC 4779 of 2002)*

"You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you on or about August 2001, at about 11.00am at Blk 737 Pasir Ris Drive 10 #03-39, Singapore, caused hurt to one Mursiyani Mistam, by doing an act so negligent, to wit spilling hot water from the kettle onto the left ear and back of the said Mursiyani Mistam, an act which endanger the personal safety of Mursiyani Mistam and thereby committed an offence punishable under Section 337 of the Penal Code, Chapter 224."

*2nd Charge (MAC 4780 of 2002)*

"You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you on or about the 16<sup>th</sup> of September 2001 at about 8.00pm, at Blk 737 Pasir Ris Drive 10 #03-39, Singapore, being the employer of a domestic maid, one Mursiyani Mistam, did voluntarily cause hurt to the said Mursiyani Mistam, to wit by pinching her left triceps, and you have thereby committed an offence punishable under Section 323 read with Section 73(2) of the Penal Code, Chapter 224."

*3rd Charge (MAC 4781 of 2002)*

"You, Yong Siew Khian, Female, 36 Years old, NRIC No: S1823012G, are charged that you in the month of September 2001, at Blk 737, Pasir Ris Drive 10, # 03-39, Singapore, being the employer of a domestic maid, one Mursiyani Mistam, did voluntarily cause hurt to the said Mursiyani Mistam, to wit by using a plate to hit her head, and you have thereby committed an offence punishable under Section 323 read with Section 73(2) of the Penal Code, Chapter 224."

2 At the end of the trial, I found that the prosecution failed to make out its case and ordered that Mdm Yong be acquitted and discharged of all three charges. The prosecution appealed. I now give the grounds for my decision.

### **The case for the Prosecution**

3 The prosecution called eight witnesses to the stand:

- 1) SSGT Patrick Lim Boon Hua ('SSgt Lim'), Investigating Officer – PW1
- 2) Zaimuddin Anwar ('Mr Anwar'), Bahasa Indonesia Interpreter – PW2
- 3) Siti Chotimah ('Siti'), Complainant – PW3
- 4) Dr Teoh Hock Luen ('Dr Teoh'), Examining Doctor – PW4
- 5) Mursiyani Mistam ('Mursiyani'), Indonesian Maid – PW5
- 6) Fauziah Bte MohdYusof ('Fauziah'), Neighbour – PW6
- 7) Seng May Ling ('May Ling'), Maid Agent – PW7
- 8) SSGT Mohd Yusoff Bin Ahmad ('SSGT Yusoff'), Police Officer – PW8

#### *PW1. Testimony of SSgt Lim, Investigating Officer*

4 Investigating Officer SSgt Lim took over the case after preliminary investigations were completed and recorded cautioned statements from Mdm Yong. In these statements, Mdm Yong maintained that with regard to the first charge, she had accidentally spilled hot water on Mursiyani. On the other two charges, she denied the allegations totally. SSgt Lim also testified that Siti had handed over to him some hand-written notes, P6, that were thrown into her house by Mursiyani.

#### *PW2. Testimony of Mr Anwar, Bahasa Indonesia Interpreter*

5 Mr Anwar was a formal witness who translated Mursiyani's hand-written notes from Bahasa Indonesia to English. The translation was admitted as P7.

#### *PW3. Testimony of Siti, Complainant*

6 Siti is from Indonesia and was the complainant. She had been neighbours with Mdm Yong for about seven years at the material time. Siti met Mursiyani for the first time in front of the lift after she threw rubbish at the common rubbish chute situated near her flat. Mursiyani greeted her with the "Salaam" (Muslim greeting) but they did not talk. Some two to three days later, Siti met Mursiyani for the second time and asked her how she liked working for Mdm Yong. Mursiyani started to cry and showed Siti a one-inch in diameter reddish-blue bruise which she claimed was inflicted by Mdm Yong. In court, Siti pointed to the upper front portion of her left arm as the location of the pinch mark. Mursiyani further told Siti that hot water was "poured on her back". Although Siti testified that she did not see anything, nevertheless, she maintained that the "wound had healed". Approximately one week later on 20 September 2001, Siti found Mursiyani's hand-written notes in her house. Siti understood from reading it that Mursiyani was not happy working for Mdm Yong and wanted to work for her instead.

7 The next afternoon, 21 September 2001, Siti testified that she met Mursiyani again while she was with Fauziah and Ruby at the playground at the foot of the block. Mursiyani informed her that she had again been assaulted during dawn prayers and showed Siti a red mark on her head. Moved by pity for Mursiyani and on the urging of Fauziah and Ruby, at 3pm, Siti lodged a police report against Mdm Yong for maid abuse.

*PW4. Testimony of Dr Teoh, Examining Doctor*

8 Almost two hours later, Dr Teoh examined Mursiyani at Changi General Hospital. Mursiyani informed him that she had been pinched on the left triceps, scalded with hot water and slapped on the cheeks every day. She pointed out the bruise on her triceps to him. Consequently, Dr Teoh performed a physical examination of Mursiyani's cheeks, back and triceps. Apart from the 5 cm bruise on her triceps, Dr Teoh was unable to find any other injuries. The bruise had soft tissue swelling indicating that the injury could have been as recent as a few hours old (although this was unlikely) to one week old. Dr Teoh opined that it was unlikely to be self-inflicted (although not impossible) because there was twisting involved. Also, while it was unlikely that Mdm Yong's children could have caused it, this could not be ruled out.

9 With regard to the slappings, Dr Teoh opined that whether Mursiyani's face would display injuries depended on how hard she was actually slapped every day. In this case, he did not find any facial injuries nor any other evidence of slapping. He also could not find any scald injuries or any associated scarring on Mursiyani's back or anywhere else on her body. In addition, Dr Teoh was positive that Mursiyani did not mention anything about being hit on the head with a plate.

*PW5. Testimony of Mursiyani, Indonesian Maid*

10 Mursiyani commenced work as a domestic maid in Mdm Yong's household on 26 July 2001. As per the usual practice, Mursiyani owed her agency, Regency Personnel Pte Ltd ("Regency") costs incurred in bringing her to Singapore, to be repaid in six monthly deductions in her salary. Should she abandon her contract and return home prematurely, she would be penalised 5 million Rupiah by Regency. From the outset, Mursiyani found it difficult to cope with Mdm Yong's two children and complained to her and her agent, May Ling, that they would frequently hit her.

11 Mursiyani confirmed that on the first occasion when she met Siti, they merely exchanged a Muslim greeting and did not talk. Thereafter, Mursiyani penned a note to Siti to pour out her sorrows, but did not throw it into Siti's house until 20 September 2001. During the second meeting, Mursiyani cried and told Siti that Mdm Yong had poured hot water over her and pinched her. She showed Siti the bruise from the pinch. A few days later at the playground, Mursiyani met Siti again in the presence of two of her friends for the third time. Siti again asked to see the place where she had been pinched.

12 In relation to the *first charge*, Mursiyani alleged that at about 11am on a Saturday approximately one month after she started work, Mdm Yong questioned her why she had used hot water from the thermos flask in the kitchen to wash a milk bottle instead of using hot water from the kettle. Mursiyani apologised. Mdm Yong reprimanded her saying, "Look! This is hot water, you don't know? Everything, you don't know!" Mdm Yong then took the kettle from the stove, lifted it up to ear level and chased after her. Frightened, Mursiyani ran while shielding her left cheek with her left arm. The base of the kettle touched her head just above her left ear and hot water splashed out and wounded her. Mursiyani screamed, then squatted down and cried. Mdm Yong quickly closed the kitchen door for fear that her husband, Mr Tay Kok Lin ("Mr Tay") would hear her. She then replaced the kettle, took out some ice and brought her to the toilet where Mdm Yong applied ice on her back. She then sat Mursiyani down and apologised, asking her not to report the matter to the agent and if anyone should ask about the injury on her ear, to lie that it was caused by hot oil.

13 In relation to the *second charge*, Mursiyani testified that at about 8pm sometime after the hot water incident, she was ironing Mr Tay's clothes in the living room. After examining her ironing, Mdm Yong was displeased. She pinched the back of Mursiyani's left arm, whilst at the same time pulled her from the ironing area. Mursiyani cried and saw that the area pinched was red-bluish. After that, she went back to observe how

Mdm Yong ironed the clothes. Mursiyani claimed that she only showed Mdm Yong the bruise in private when the police arrived at the house on 21 September 2001. After seeing the bruise, Mdm Yong told her to lie to the police about her injuries.

14 In relation to the *third charge*, Mursiyani testified that on a morning before Mdm Yong went to work, she checked a plate that Mursiyani was washing and told her that it was not clean enough. Mdm Yong used the plate to knock the top of Mursiyani's head and proceeded to wash it herself. Mursiyani felt pain but there were no injuries.

15 In addition to these allegations, Mursiyani contended that that she was not given sufficient food. Mdm Yong would scold and slap her on the cheeks for the smallest of mistakes between four to six times in one day. However, she did not see if there were injuries on her face because she was always too busy with her chores.

*PW6. Testimony of Fauziah, Neighbour*

16 Fauziah was also Mdm Yong's neighbour during the material time of the charges. At about 2pm on 21 September 2001, Fauziah was in her flat when Siti's daughter came to ask her to go down to the playground. On arrival, she found only Siti and Ruby present; Mursiyani was not present. Siti narrated that Mursiyani had just told her she had been beaten by Mdm Yong.

17 Fauziah testified that Siti showed her Mursiyani's note about a few weeks to one month prior to 21 September 2001. Fauziah admitted that she had not talked to Mursiyani previously nor had she seen Mdm Yong inflict injuries on Mursiyani. She confirmed that she mentioned to Siti about hearing a loud "Ow" coming from Mdm Yong's flat on one occasion, but that yell came from a previous maid. In this regard, she was certain that she had not heard Mursiyani scream at all. On further cross-examination, Fauziah admitted that much of what she knew about Mdm Yong's alleged abuse of Mursiyani came from what Siti had previously told her.

*PW7. Testimony of May Ling, Employee of Regency Personnel Pte Ltd*

18 May Ling was the agent in charge of Mursiyani at Regency. She testified that Mdm Yong was one of Regency's clients who had in the past engaged three to four maids. The essence of her testimony was that Mursiyani's salary for the first six months of employment was payable to Regency to reimburse it for costs incurred in bringing her to Singapore. Should the maid wish to terminate her contract prematurely and return home, she would be liable for a sum in excess of the outstanding on this sum. However, in cases where the employer abused the maid, it was not Regency's practice to collect any payment from the maid even though it would still be indebted to the Indonesian side. May Ling further stated that if it was the employer who returned the maid, Regency would seek new employment for her should she wish to continue working. The maids from Regency were aware and counselled on this.

19 May Ling recalled Mdm Yong complaining that Mursiyani could not speak English and worked very slowly. On the occasion when Mursiyani was brought to Regency, May Ling counselled and also scolded Mursiyani. On the other hand, Mursiyani had complained to her over the telephone that Mdm Yong's children would not listen to her and would beat her. Mursiyani however admitted that she could not match up to Mdm Yong's expectations in terms of her work speed. While May Ling was unable to remember if Mursiyani complained of being assaulted, she was positive that Mursiyani never complained to her about Mdm Yong slapping her regularly. However, she was adamant that in both instances, she would definitely ask the maid to proceed to Regency.

*PW8. Testimony of SSgt Yusoff, Police Officer*

20 SSgt Yusoff was one of the officers at Mdm Yong's house on the afternoon of 21 September 2001. On arrival, Mursiyani informed him that she had been abused and showed him a blue-black mark about two inches from the left elbow. He could not however remember any other details about what Mursiyani told him. About

ten minutes after Mr Tay returned home, Mdm Yong also arrived and went into the flat. SSgt Yusoff testified that he never entered the flat. He did not hear or see any conversation taking place between Mdm Yong and Mursiyani. While he was at first unequivocal that no police officer was standing inside the flat near the main door, during cross-examination, he stated that he could not remember if an officer stood in the unit itself. SSgt Yusoff also confirmed that Mursiyani had not told him about any conversation she had with Mdm Yong when she came out of the flat carrying a bag.

### **The close of the Prosecution's case**

21 At the close of the prosecution's case, I granted leave to the prosecution to amend the third charge. While the original charge stated that Mdm Yong had on 20th September 2001 at 10am used a plate to hit Mursiyani's head, the exact date and time was subsequently removed [as per paragraph 1 of this judgment]. The defence did not make any application or submissions. Applying the test in *Haw Tua Tau v PP* [1980-1981] SLR 73 [1981] 2 MLJ 49, I was satisfied that a *prima facie* case had been established. Accordingly, I administered the standard allocution and called for the defence. Mdm Yong elected to give evidence.

### **The case for the Defence**

#### **DW1. Testimony of Mdm Yong, Accused**

22 Mdm Yong has two hyperactive children aged four and seven during the material time. In the same period, she worked as a sales executive in the food industry working from 9am to 6pm on Mondays to Fridays. She also worked on alternate Saturdays and on Sundays whenever there was a fair. On weekdays, she had to leave home before 8am so as to report to the office before 9am to hand documents to the ordering clerks. As for her husband, Mr Tay, she testified that his working hours were from 12pm to 9pm daily. During the material time, he had to leave the house by 11am. Mursiyani was her fifth maid and like the previous four maids, they were all from Regency. These four maids wanted to leave her employment on their own accord because they could not cope with her children.

23 Mdm Yong found Mursiyani to be a slow worker but generally did not have much complaints on her work. Mursiyani had informed her previously that she found her children to be rough and naughty. Hence on occasions when Mdm Yong had observed her son punching and kicking Mursiyani, she chided her son. Mursiyani did not report to have suffered any injuries as a result of these incidents. When Mursiyani informed her that she no longer wanted to work for her, Mdm Yong brought her to the maid agency for counselling.

24 Mdm Yong stated that the hot water incident was an accident. Mr Tay was not in that day and she had instructed Mursiyani to boil some water. When she went into the kitchen, she saw the stove was off and steam was emerging from the kettle on the stove, indicating that the water had boiled. Mursiyani was washing at the sink. As it was usual practice to pour the boiled water into a thermos flask, Mdm Yong picked up the full kettle with her right hand, intending to head for the thermos flask, located past Mursiyani. At this point, Mursiyani suddenly took two steps back. Instinctively, Mdm Yong lifted her arm higher (up to her ear level) and stepped back to avoid her. Hot water spilled out onto Mursiyani's ear and back. Mursiyani squatted down and cried. Mdm Yong immediately apologised. She applied ice on Mursiyani's ear and brought her to the toilet to check her back. She noted that there was some redness on her left ear and back. She then applied some cream for burns on the affected areas. Mursiyani declined her offer for medical attention and rested in her room for about two hours. That evening when Mr Tay returned from work, Mdm Yong told him of the incident. He brought the maid into the room where he examined her ear and again asked if she wanted to see a doctor. She declined.

25 In relation to the *second charge*, while Mursiyani did the laundry daily, because Mdm Yong was afraid that her hyperactive children would be scalded by the iron, she instructed Mursiyani to iron the clothes only on weekends when she was around to supervise them. However, she was aware that Mursiyani sometimes ironed the clothes in the afternoons whilst the children were at school. Mursiyani did not iron clothes on weekday evenings because she had other duties to perform. Mdm Yong denied ever pinching Mursiyani, nor did she see a bruise on Mursiyani's left triceps around September 2001.

26 In relation to the *third charge*, Mdm Yong contended that she never knocked Mursiyani on the head with a plate.

27 According to Mdm Yong, Mursiyani had the house keys and could leave the house at anytime. She denied that she imposed restrictions on her interactions with the neighbours nor did she ever control the food that Mursiyani could consume. In fact, she even bought bread daily for her breakfast. Mdm Yong never slapped Mursiyani. There were however two occasions in when she used force on Mursiyani: on the first occasion, Mursiyani had climbed out to the window ledge to clean the windows in the living room. Upon seeing this, Mdm Yong shouted at Mursiyani and pulled her down. On the second occasion, Mursiyani kept pressing some bean curd which Mdm Yong had bought from the market. Mdm Yong told her not to pinch it but Mursiyani could not understand what she meant. Hence, Mdm Yong demonstrated with a pinch on the back of Mursiyani's hand. On both occasions, Mursiyani did not complain of any injuries.

28 On the afternoon of 21 September 2001, Mdm Yong came home and saw a Chinese police officer standing in her flat near the gate. She entered the house and asked her daughter and Mr Tay what had happened. She did not speak to Mursiyani at all.

*DW2. Testimony of Mr Tay, Accused's Husband*

29 Throughout the material period, Mr Tay worked as a sales executive at a furniture retail shop in Joo Chiat. He was responsible for ensuring that the showroom was open by 12pm, and corroborated Mdm Yong's testimony that he left home before 11am to make the hour long journey to work. He confirmed that Mdm Yong would leave for work by 8am every morning. Mr Tay's mother-in-law stayed with the family during the first month to supervise Mursiyani and help her cope with his children. Mursiyani was the household's fifth maid. Save for one of the maids who worked for over a year, the rest worked for only a few months because they found it difficult to cope with his children. Mursiyani, too, had asked for a transfer in the first few weeks of her employment. He agreed to it in order to pacify her but he also asked Mdm Yong to bring Mursiyani to Regency for counselling. Subsequently, Mursiyani no longer asked for a transfer. He testified that Mursiyani's breakfast was mainly bread, and he occasionally bought it. He was unaware of any restrictions on the amount of food that Mursiyani could consume. While Mr Tay had seen his wife scolding Mursiyani on occasion, he never saw her assault Mursiyani, nor did Mursiyani ever complain about being assaulted.

30 On the day of the hot water incident, Mr Tay contradicted Mursiyani's version and said that he had not heard Mursiyani crying before he left the house. It was Mdm Yong who informed him that evening that Mursiyani had stepped back from the sink and she lifted the kettle to avoid her, leading to the accidental spillage of hot water. Mr Tay chided his wife and called Mursiyani into the master bedroom to check on her injury as well as ask her if she wanted to see a doctor. He observed a small red patch on her left ear.

31 Mr Tay was otherwise unacquainted with to the subject matter of the second and third charges.

32 On the afternoon of 21 September 2001, Mr Tay arrived home to find a number of police officers standing outside his flat. Upon entering it, a bespectacled Chinese officer stepped in and stood within the flat near the gate. This officer subsequently spoke to his colleagues who were standing outside the flat. About ten minutes later, Mdm Yong arrived. She asked him and Mursiyani what had happened. According to Mr Tay, save for that one question, there was no other conversation between Mursiyani and his wife. Throughout this period, Mdm Yong remained with him in the living room. Subsequently at the police station, My Tay said he could not control his restless children who ran around the station, including the room where Mdm Yong was recording her statement.

**Closing submissions**

33 The case was essentially disputed on facts. Both the prosecution and defence submitted that their respective witnesses were telling the truth and urged the court to make findings in their favour.

34 One of the key disputes involved whether a policeman was standing inside the flat when Mursiyani allegedly informed Mdm Yong in the toys room on 21 September 2001 about her bruise on the triceps. According to Mursiyani, it was then when Mdm Yong allegedly told her to lie to the police about it since she knew that she was at fault for it. This was hotly disputed because the defence claimed that no such conversation took place, particularly since a policeman was standing in the flat all the time and could not have allowed the both of them to have a private conversation in the room.

35 The prosecution also argued vehemently on both defence witnesses' working hours and this became an issue for impeachment. Mdm Yong's working hours was disputed because at the close of the prosecution's case, the third charge stated that the assault took place at about 10am on a weekday, a time when Mdm Yong claimed she would already be at work. On Mr Tay's working hours, this was relevant because Mursiyani claimed that he was still at home at 11am when the hot water incident took place and he had heard her crying. The defence argued that Mr Tay would already have left for work by that time.

36 It was also contended by the prosecution that great weight had to be placed on the fact that the police report was not made by Mursiyani herself but by Siti who had personally seen injuries allegedly caused by Mdm Yong. This made it even less plausible that Mursiyani would fabricate the charges, otherwise, she would herself have called the police [paragraphs 105-106 of prosecution's closing submissions]. In any case, it was submitted that Mursiyani had given extremely detailed evidence in court and in view of her age, the benefit of the doubt had to be given to her. On the other hand, Mdm Yong's evidence could not be trusted since she had deliberately lied in court when she said that she had not spoken to Mursiyani at all on 21 September 2001. Mr Tay's evidence proved this to be otherwise. Also, it was contended that because she deliberately downplayed her demands of and anger with the victim, she was devoid of credit [paragraph 110 of prosecution's closing submissions].

### **Evaluation of the evidence**

37 In *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610, the learned Chief Justice stated that the credibility of a witness can be based on some or all of the following, namely (a) his demeanour; (b) the internal consistency (or lack thereof) in the content of his evidence; and (c) the external consistency (or lack thereof) between the content of his evidence and extrinsic evidence such as the evidence of other witnesses.

#### *Evaluation of Siti's Testimony*

38 I found that Siti was neither a forthcoming nor a reliable witness. She was prone to embellishing her testimony and her evidence was often internally inconsistent and contradicted the testimony given by the other witnesses.

#### **Injuries**

39 During her second meeting with Mursiyani, Siti testified to have observed a reddish blue bruise. She pointed out the location of the bruise mark which was on the *front upper portion* of Mursiyani's left arm. When Siti was told by Mursiyani that hot water was splashed on her back, although she readily admitted that she did not see "anything" on Mursiyani's back, she insisted that there was a "healed wound".

40 With regard to the bruise, Mursiyani, Dr Teoh and SSgt Yusoff all testified that the bruise was on the *left triceps* close to Mursiyani's left elbow. Siti's version was unmistakably at odds with this evidence. There did not appear to be more than one bruise from the evidence. This suggested to me that Siti had either made a mistake or was lying in her evidence. Even if I gave Siti the benefit of doubt and accepted that she had inadvertently forgot about the exact location of the bruise, I felt that it was ludicrous for Siti to contend that there was a "healed wound" on Mursiyani's back simply after hearing Mursiyani's allegations even though she did not see anything [pg. 41 of the NE]. As Dr Teoh's testimony showed, there was no scarring or injury that suggested such a "healed wound". No other evidence was produced of any such injury to Mursiyani's back.

41 Further, Siti said that Mursiyani allegedly told her when they were at the playground that she was hit during dawn prayers. She even testified to having seen a reddish injury on the back portion of her right ear that was recently inflicted measuring approximately 5cm in length and 1 cm in width. Siti assumed Mdm Yong was the one who inflicted this with a plate but was not sure as she was distracted by what her friends, Ruby and Fauziah were saying. When asked for the details of when this wound was allegedly inflicted, I found that Siti was evasive and embellished her evidence by alleging that she was distracted [pg. 32 of the NE].

42 In my judgment, the size of this alleged injury on the ear suggested that it was rather serious. However, notably, Mursiyani did not even mention such an injury to Dr Teoh nor did he independently observe any injury of such nature on her right ear. In fact, Mursiyani herself denied telling Siti that the reddish injury on her head was caused by Mdm Yong. She elaborated that that injury came about as a result of Mdm Yong's son hitting her on the head with a telephone earlier that morning [pg. 61 of the NE]. In Mursiyani's testimony, she did not even allege that she had been hit during morning prayers.

#### Siti's Gullibility

43 When Siti was asked by the defence whether the bruise on Mursiyani could have been self-inflicted, Siti immediately dismissed this, saying that she was certain that it was caused by Mdm Yong because she heard from Fauziah's mother that she had heard Mursiyani screaming:

Q. Do you know if the pinch was self-inflicted?

A. I am convinced that the pinch was done by the employer because I heard from Fauziah's mother that she heard Mursiyani screaming.

Q. When did Fauziah's mother tell you that she heard Mursiyani screaming?

A. I can't remember.

Q. Did Fauziah or her mother tell you that she saw the Accused pinching Mursiyani?

A. No, but *they* heard the scream.

Q. Did they tell you why Mursiyani had screamed?

A. No.

Q. How did you come to the conclusion that Mursiyani had screamed because of the pinch?

A. Because shortly after Fauziah's mother told me about the scream, Mursiyani showed me the pinch mark.

44 It is thus apparent that Siti is a naïve and gullible person. In her own words, the pinch could not possibly have been self-inflicted *because* she had heard from Fauziah's mother that she heard the maid screaming, and shortly after Mursiyani had showed her the bruise. This entire testimony was speculative and baseless. No evidence ascertained that the scream emanated from Mursiyani, and resulted from a pinch inflicted by Mdm Yong. Upon further questioning, Siti was evasive and insisted that she could not remember the details [pg. 32 of the NE]. When Fauziah herself was put on the stand, she categorically denied having heard Mursiyani scream at all [pg. 181 and 182 of the NE].



45 As for Siti's passing allegations that she had previously seen and heard about injuries caused by Mdm Yong on her maids, I found that this was far more prejudicial than probative, and could not be relied on for the present trial (*DPP v Boardman* [1975] AC 421, *Tan Meng Jee v PP* [1996] 2 SLR 422).

46 Siti openly admitted that she felt sorry for Mursiyani and repeatedly mentioned during her testimony that Mursiyani had come a long way from home and only "*wanted to work and earn an honest living*" [pg. 39 of the NE]. She testified that she had heard stories about Mdm Yong abusing her maids from her friends and that led her to first enquire about how Mursiyani liked working for Mdm Yong [pg. 13 and 19 of the NE]. In my judgment, it was this sympathy for Mursiyani, coupled with groundless hearsay of abuse from her friends that unfairly skewed her opinion against Mdm Yong. This resulted in her readily accepting baseless accusations made by Mursiyani and summarily rejecting all other more plausible and reasonable explanations for the bruise she observed, as well as the alleged scream that Fauziah's mother may have heard. In my view, while she may not be blatantly lying in court, she was undoubtedly a gullible and susceptible person, prone to embellishment to support her testimony; in no way qualifying her to be a reliable witness.

#### *Evaluation of Dr Teoh's Evidence*

47 Generally, I found Dr Teoh's testimony to be fair and unbiased and I accepted it. As Mursiyani's examining doctor on 21 September 2001, he testified that she informed him *directly* that she was a victim of Mdm Yong's abuse involving daily slappings, scalding and pinching. He testified that Mursiyani's bruise located on the lower part of the left triceps was the *only* injury he found after a thorough physical examination. He opined that because there was evidence of twisting, the bruise was 'unlikely' to be self-inflicted. He also felt that it was 'unlikely' to be accidental or caused by Mdm Yong's children. He testified that Mursiyani did not inform him that she had been hit on the head by a plate [pg. 47 of the NE].

48 It was important to note that Dr Teoh felt that it was 'unlikely' and 'not impossible' for the bruise to be self-inflicted because there appeared to be twisting involved. His testimony was neither unequivocal nor conclusive and he was clearly not prepared to rule out the possibility of self-infliction. Indeed, I observed that where the bruise was located, that is, approximately two inches from the left elbow on the triceps, it was within normal human knowledge to know that it would be readily accessible by one's right hand and self-inflicted 'twisting' was not difficult. In the absence of further or more convincing evidence, it would be manifestly unsafe to rule out the possibility of self-infliction.

49 On whether the bruise could have been caused by Mdm Yong's children, it must be noted that Dr Teoh was also not prepared to rule this possibility out. The likelihood of this happening had to be weighed against the other evidence in the case, that is, that the children were undisputedly rough and Mursiyani had on several occasions complained that they would beat her. According to her own testimony, the four-year old boy had single-handedly caused her to suffer an injury behind the right ear which she showed to Siti on 21 September 2001. I therefore felt that it would also be unsafe to rule out the possibility that the bruise may have been inflicted by one of Mdm Yong's children.

50 In addition, it was pertinent to note that despite her complaint to Dr Teoh that she had been scalded with hot water, Mursiyani did not point out a back injury (as she did to Siti) or have any scald marks anywhere to show him. In fact, despite having placed a stethoscope on her back to check her breathing, Dr Teoh did not find any evidence of scalding there at all. Nor did he observe a scald mark on Mursiyani's left ear which according to her had swelled up and broke [pg. 145 of the NE]. While Mursiyani claimed to have told Dr Teoh about the plate-hitting incident on her head, Dr Teoh was unequivocal that no such complaint was made. In my judgment, the absence of injuries to substantiate Mursiyani's principal allegations of abuse was an important factor to note in assessing her credit.

#### *Evaluation of Mursiyani's Evidence*

51 As the main prosecution witness, Mursiyani's evidence brimmed with several internal and external inconsistencies. Her answers indicated a strong reluctance to testify candidly; oftentimes answering "I can't remember" to the simplest of questions [see for example pg. 101, 105, 113, 129 of the NE]. Her demeanour was unmistakably evasive throughout the proceedings. On the whole, I found her testimony unconvincing and unreliable.

### *Multiple Daily Slappings*

52 I felt that Mursiyani's allegation that she was slapped four to six times a day by Mdm Yong was a very serious one [pg. 63 and 81 of the NE]. According to her, the pain from the slaps allegedly lasted for about five minutes. She demonstrated to the court with a forceful slap using her hand the intensity and force used. She claimed that when she complained to Regency, the agency said they were aware and asked if she was able to tolerate it. At first, Mursiyani stated that she was certain of the number of slappings in a day testifying unequivocally that : "*Each time she slapped me, I counted...*"[pg. 84 of the NE]. Upon further cross-examination however, she qualified herself first to say that her daily slappings only started from the fourth day onwards and subsequently she abandoned her allegations further by saying that there were some days when she was not slapped at all. I felt that she was prevaricating when she further claimed that she was unsure if there were any injuries because she was always too busy with her chores to take time off to look in the mirror. It was apparent from her answers that Mursiyani was not a forthcoming witness at all [pg. 81 of the NE]:

Q. How often does she slap you?

A. 4 - 6 times a day.

Q. Can you describe the slaps?

Court: [PW5 demonstrates with a swift hard slap with her right hand.]

Q. Are they hard?

A. Don't know. But I feel the pain on my skin.

Q. Can you tell us how hard she hit you?

A. I felt the pain but I couldn't measure the force used.

Q. Was she angry every time she slapped you?

A. Everyday she's angry.

Q. Whenever she slaps you, any marks or bruises?

A. Whenever it happens, I am doing my chores so I have no time to look myself in the mirror.

Q. She slaps you 4 - 6 times a day. When you go to bed at night, do you look at yourself in the mirror?

A. No. When I sleep, it's already very late at night.

Q. Is there a mirror in the toilet in the kitchen?

A. Yes.

Q. Do you look at mirror to see if there are marks?

A. No, I'm busy with my work.

Q. You do use the toilet right?

A. Yes.

Q. So do you look at the mirror during your bath?

A. No, I don't look in the mirror when I bathe.

Q. You say the Accused slaps you 4 - 6 times a day. When did she first slap you?

A. 4 days after I first arrived.

Q. So for 4 days, she didn't slap you?

A. No, first 1 - 3 days, no slapping. The fourth day the slapping commenced.

53 Dr Teoh confirmed that Mursiyani had informed him that she was slapped on a daily basis. However he opined that whether facial scarring resulted depended on how hard Mursiyani was actually slapped. In my judgment, after observing the relatively great force which Mursiyani demonstrated to the court symbolising the force of the slaps (which Dr Teoh did not have the benefit of observing) that she allegedly suffered four to six times for a cumulative period of some sixty days, at least *some* facial injuries would be sustained. Dr Teoh found absolutely none at all. I also noted that these allegations of slappings were neither mentioned to May Ling, who categorically denied about having heard of any of these slappings, nor Siti who also did not testify to have heard from Mursiyani about these slappings.

54 I was thus not prepared to accept that Mursiyani suffered daily slappings. More importantly at this juncture, I felt that her readiness to change her testimony on such a serious allegation revealed her disposition and spoke volumes about her character. At the very least, this was a serious embellishment and exaggeration that could not be taken lightly.

#### *'Injuries' from the Children*

55 During her EIC, Mursiyani stated that she had not sustained any fresh injuries between the time she first spoke to Siti to the day when she met her again at the playground. On that day, she only showed Siti the bruise on her left arm. Only when the learned DPP informed her that Siti testified that she saw a red mark on the back of her right ear at the playground did Mursiyani immediately state that that mark had been caused by Mdm Yong's son hitting her with a telephone when she wanted to send him to school that morning [pg. 61 of the NE]. Shortly after, Mursiyani testified that she could not cope with Mdm Yong's children who were rough and would at times punch, kick and "use the telephone to hit [her]". When asked by the defence whether she ever suffered any injuries as a result, she unhesitatingly said "no" twice [pg. 74 and 75 of the NE]. Subsequently, this testimony was again qualified when she testified that she could not remember if she showed an injury at the back of her ear to Siti [pg. 102 of the NE]. When asked explicitly if there was a reddish mark on the back of her ear, only then did she reply that there was one [pg. 102 of the NE].

56 In my judgment, the manner and sequence of her answers revealed a rather inconsistent Mursiyani. Her earlier testimony that firstly, the children did not cause any injuries to her and secondly, that she only showed Siti the bruise on her left arm at the playground stood up in stark contrast to what she later said, that is, that she also showed Siti the red mark behind her right ear caused by Mdm Yong's son that morning. While it was true that she was alleging that Mdm Yong's son had caused the injury, she did not even complain about having sustained this injury to Dr Teoh. Instead, she alleged incidences of slappings and scalding that had not resulted in any injury.

57 Mursiyani had plainly fabricated about the injury to the back part of her ear in order to smoothen the apparent inconsistency with Siti's testimony. Mursiyani's whimsical changes in her testimony could not have been due to her inability to recall. In fact, as I observed throughout her testimony, she was careful with her words and could remember details well. This was clearly demonstrated by her ability to recall even the arrangement of furniture around the house when photographs of the flat were showed to her [pg. 77 of the NE]. This was also recognised by the prosecution in their closing submissions[paragraph 24 prosecution's closing submissions].

#### *Insufficient food*

58 The allegation of insufficient food first emerged during cross-examination when Mursiyani claimed that she told Siti that she did not have enough to eat. However, her contentions became increasingly strained as the cross-examination continued: At first, Mursiyani admitted that she was given two meals a day [pg. 87 of the NE]. Subsequently, she stated that there was usually plenty of food at home but they were raw and Mdm Yong imposed restrictions on her consuming the food in the house. For example, Mursiyani narrated that she was only allowed one packet of coffee and two pieces of bread for breakfast. Lunch could only be consumed after she completed her chores. Mursiyani said she could only have her dinner after Mr Tay returned from work [pg. 140 of the NE]. When counsel pointed out that this worked out to three meals a day, Mursiyani then contended that this did not count because she had to be given rice or noodles; other food for example bread, would not qualify as a meal [pg. 141 of the NE].

59 This allegation was plainly ludicrous. I would not embark on a lengthy discussion of what would constitute sufficient food as it was evident from Mursiyani's own evidence that her allegation was unsustainable. There was never any allegation that the quantity given was insufficient, hence, this issue was a non-starter. No complaints were made to Dr Teoh nor did he render an opinion that she was malnourished. Mursiyani also did not appear to have complained about this to May Ling or Siti before the police brought her away. I found that this was plainly another fabrication by Mursiyani.

#### *The Hand-written Note*

60 Mr Anwar's written translation of Mursiyani's hand-written note was admitted as P7 and reproduced verbatim as follows:

"Let me introduce myself. My name is Mursiyani. I am 20 years old and my highest education is Secondary 3 (SMP) and I am the second child of 5 siblings.

My address is Desa Masaran RT 3 RW I Bangkong Reang, Kabupaten Banjarnegara, Kecamatan Pawang, Province of Central Java, Indonesia.

I purposely came to Singapore to work and I could work. But, I am not lucky as I got an employer who does not have any humanity even when I do things correctly I was also scolded and what would happen to me if I did something wrong. Every morning and evening my employer used hands to beat me.

But I thank God and grateful to God because God had made me to meet a kind lady "Ibu" who believes in God. At that time I had greeted her and "Ibu" had replied me with a sweet smile and it had touched my heart and the husband also greeted me. Immediately, I have started to cry. Why I could not pray as a Muslim like "Ibu" who is also a Muslim and moreover it is impossible to me to read the holy Qur'an. However, I always pray to God so that God would open my employer's heart to realise. I really admire "Ibu" and I like "Ibu". I will need help at any time from "Ibu". I do not know if "Ibu" could help me. "Ibu" is wearing Muslim dress "Jilbab" with a kind heart. If Ibu does not have any maid I wanted to be her maid to take care of the children of a kind lady like "Ibu". Mursiyani loves children.

Everyday I have been beaten up in the morning, afternoon and evening by the children. For an example: when I put something wrongly I would be hit immediately. Ibu, please help me, how to make my employer to like and love me.

I am sorry "Ibu"

If Ibu has any a holy book "Yassen & Tahlil" – Please help me to have one. It is OK – even if the said holy book is not new, as long as the book is still a complete set of Yassen and Tahlil book.

Ibu, please help me – please help me, "Ibu" – How to make my employer good to me and how to make my employer to like me.

That is all my letter from Mursiyani and I am sorry because my words are not polite.

Please reply my letter and I am waiting your reply.

Mursiyani"

61 The following salient features in relation to the note were remarkable: firstly, Mursiyani claimed to have written the note after meeting Siti *on the first occasion* at the lift to pour out her sorrows because she felt that she was a nice person [pg. 130 of the NE]. It was stated by Siti and Mursiyani that on that occasion, they did not talk and only exchanged a Muslim greeting. Secondly, Mursiyani claimed in the note that she cried "immediately" after meeting Siti. Thirdly, Mursiyani informed Siti that she wished to be her maid and take care of her children, if any. While Mursiyani had wanted to hand it to Siti earlier, she only threw it into Siti's house on 20 September 2001 because she seldom chanced on Siti and did not see her door open which would allow her to throw it into the house.

62 Mursiyani was not truthful about the timing when the note was written. It was apparent from its contents that the recipient was no mere stranger. To contend that she had written with such familiarity and even plead for employment after one meeting where no words were exchanged flew in the face of logic. Further, Mursiyani stated in the letter that she cried *immediately* after meeting Siti. This plainly contradicted Siti and Mursiyani's testimony that Mursiyani only cried on the *second meeting*. When the note was allegedly written, this second meeting had not even taken place yet! I observed that it was undisputed that Mursiyani had the keys to the house and would frequently in the course of the day when no one was in, leave the house to fetch the children from school. I found that it was highly unusual for her to contend that she could not deliver the note to Siti then or slip it under her door even if it was shut. Mursiyani was clearly not testifying truthfully.

### **Evaluation of Fauziah's Evidence**

63 Fauziah was called to corroborate the evidence given by Siti and Mursiyani. However, I found that her knowledge of the case was largely hearsay and based on information communicated to her by Siti. Ironically, this often contradicted what Siti herself testified.

### *Number of Maids*

64 Fauziah testified that she had seen over ten maids working for Mdm Yong's household over a two-year period. Many of these maids told her that they had been abused by Mdm Yong and she said that she saw injuries on them.

65 Without anything more, it was impossible to test these allegations and was therefore far more prejudicial than probative and could not be relied on (*DPP v Boardman* [1975] AC 421, *Tan Meng Jee v PP* [1996] 2 SLR 422). Furthermore, Fauziah herself was inconsistent; at first she stated that Mdm Yong had changed up to ten different maids over a two-year period and that the maids worked for periods ranging from less than a month to a few months [pg. 158 of the NE]. Subsequently, she admitted that one of the maids had worked for over a year [pg. 167 of the NE].

66 In my view, Fauziah had exaggerated the number of maids to suggest high turnover. Mdm Yong testified that she had only procured maids from Regency and May Ling testified that Regency had provided only about four maids to her. This corroborated what both Mr Tay and Mdm Yong testified and I was satisfied that they were telling the truth when they said that Mursiyani was their fifth maid. There was no reason for them to lie as this information could easily be verified.

### *Inconsistencies*

67 I also found material inconsistencies in Fauziah's testimony as compared with Siti's: Fauziah emphatically stated that Siti had informed her that Mdm Yong had caused injuries to Mursiyani's thigh. However, Siti only testified substantially that she observed one bruise on the *front upper portion* of Mursiyani's left arm, one back scald injury that had 'healed' and one reddish mark on the back portion of Mursiyani's right ear. Further, nowhere in Mursiyani's evidence did she allege any injuries to her thighs. Nor did she allege this to Dr Teoh since he would otherwise have examined her in that area [pg. 45 of the NE].

68 Secondly, Fauziah testified that Siti informed her about Mursiyani's note, P6, that had been thrown her house *a few weeks to one month* prior to 21 September 2001 [pg. 173 of the NE]. Fauziah testified that she saw the note and could recall the verses from the Koran on top. Siti however testified that Mursiyani's hand-written note was thrown into her house *the day before* the police came, that is, on 20 September 2001 [pg. 16 of the NE].

69 Thirdly, Fauziah testified that on 21 September 2001, she had not met Mursiyani at the playground. By the time she was asked by Siti's daughter to go down to the playground at around 2pm, only Siti and Ruby were present and Siti informed her of Mursiyani's complaints to her earlier and urged her to accompany her to the police station to make a report [pg. 178 of the NE]. This was totally at odds with Siti's testimony that Mursiyani met her at the playground on 21 September 2001 whilst she was with Ruby and Fauziah [pg. 16 and 32 of the NE]. Siti testified that they had even persuaded her to go to the police station to make a report.

70 On the whole, I did not think that Fauziah was lying on the stand as she testified truthfully on matters in which she had personal knowledge. However, since she readily admitted that she had not spoken to Mursiyani before [pg. 158 of the NE], I regarded information that she had about Mursiyani's abuse probably came from Siti [see also paragraph 55 of prosecution's submission] and for obvious reasons, I placed little weight on it. After weighing the inconsistencies between Fauziah and Siti and taking note of their credibility, I found that it was Siti who had embellished and exaggerated to Fauziah what Mursiyani had told her in an effort to get the latter's support for Mursiyani's cause which she was championing. All in, Fauziah failed to add much weight to the prosecution's case. In fact, rather than corroborating the evidence of the other prosecution witnesses, Fauziah's testimony only served to raise grave doubts in my mind as to their credibility.

### ***Evaluation of May Ling's Evidence***

71 May Ling's evidence was helpful when she explained the financial liabilities of a maid to Regency in the event that she did not complete the first six months of her contract. Notably, she testified that Mursiyani was aware that save in instances of abuse, if she did not complete her contract with Mdm Yong and went home, she would have to compensate Regency a substantial financial amount. While she was called as a prosecution witness, her evidence that Mursiyani did not complain to her about being slapped on a regular basis nor did she complain that she had been scalded, pinched and hit on the head were generally supportive of the defence's case instead.

### ***Evaluation of SSgt Yusoff's Evidence***

72 SSgt Yusoff was called to corroborate Mursiyani's evidence that no police officer had stepped into the flat whilst she showed Mdm Yong her bruise and when she told Mursiyani to lie to her benefit.

73 On the whole, I found that SSgt Yusoff's evidence was rather inaccurate: while he seemed certain of his evidence at first, during cross-examination, when the defence enquired why he had after ascertaining that it was a case of maid abuse permitted Mursiyani and both her employers to be in the house in the absence of any close police surveillance, he began to waver in his evidence. Subsequently, in reply to the defence's put questions, he stated that he could not remember properly if there was a police officer standing inside the flat near the door [pg. 219 of the NE]. However, during re-examination, he reasserted that no police officer had entered the flat throughout the whole period.

74 Next, SSgt Yusoff was positive that Mursiyani carried a bag when she left the house [pg. 219 of the NE]. This was disputed by Mdm Yong who stated that no bag was carried and she had to bring Mursiyani's belongings to the agency one week later [pg. 235 of the NE]. I noted that Mursiyani corroborated Mdm Yong when she testified that she did not bring any belongings with her when she left the house and it was Mdm Yong who had brought it to her [pg. 66 of the NE].

75 In view of SSgt Yusoff's equivocal evidence, I was not prepared to rule out the possibility that no police officer had entered and stood in the flat on the afternoon of 21 September 2001. I preferred the evidence given by Mdm Yong and Mr Tay that there was an officer standing guard at the gate during the material time. In any case, SSgt Yusoff's evidence was merely to corroborate Mursiyani's version that no police officer had entered the flat; it did not go towards proving the crux of the matter, that is, that Mdm Yong had told Mursiyani to lie about her injury. I found that Mursiyani herself cast doubts on her earlier evidence when she said that she "did not know" whether any of the officers entered the house because "[she] did not wait for them" [pg. 114 of the NE].

### ***Evaluation of Mdm Yong's Evidence***

76 Mdm Yong was clear and had no hesitation in answering questions in court. She rose up to each question with a candour that was not seen from any of the other witnesses. I found that her evidence was coherent, materially consistent and reliable. In relation to the hot water incident, Mdm Yong explained candidly how it took place. I noted that her account of the incident and its aftermath coincided with Mursiyani's, albeit more elaborate, account on the material points. In relation to the second and third charges, Mdm Yong denied pinching the maid and hitting her on the head. In the course of her cross-examination, the prosecution applied to impeach her credit.

### ***The Law On Impeachment***

77 It is trite law that the effect of an impeachment is a serious one: requiring the court to find that the witness is one of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath: *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592. This is precisely the reason why courts would not liberally make findings of impeachment unless the inconsistencies between the previous statement and the testimony in court are serious inconsistencies or material contradictions. In *Sundara Moorthy*

*Lankatharan v PP* [1997] 3 SLR 464, the learned Yong CJ stated, "So long as the inconsistencies were minor in nature, or related to minor issues, it did not undermine the evidence in respect of key issues." In *Chen Jian Wei v PP* [2002] 2 SLR 255, Yong CJ also rejected the outcome of an impeachment process that was premised on immaterial and inconsequential inconsistencies. In *Mohammed Zairi bin Mohamad Mohtar v PP* [2002] 1 SLR 344, Yong CJ stated at paragraph 33:

It is settled law that the credibility of a witness cannot be impeached unless there are serious discrepancies or material contradictions between his oral testimony and his previous police statements: *Muthusamy v PP* [1948] MLJ 57. 'Material' inconsistencies are those inconsistencies that go to the crux of the charges against the appellants: *Kwang Boon Keong Peter v PP* [1998] 2 SLR 592.

#### *Mdm Yong's Impeachment: Working Hours*

78 The prosecution proceeded with impeachment firstly on the basis that in her police statement, P8, Mdm Yong said that her working hours were flexible and she would leave home at about 10am and return by 5.30pm. Her husband would usually leave the house at 11.45am. However in court, she testified that she had to leave for work by 8am in order to reach her office by 9am daily. Mr Tay would usually leave home at 11am. Mdm Yong maintained that her testimony in court was true and she had told the recording officer that her hours were 'flexible' because of the manner in which the question was asked [pg. 278 of the NE]. In addition, on weekends, she had the flexibility of going straight to her client's work place without first reporting to the office since that would be closed. She inadvertently omitted to mention this weekend routine earlier in court and was confused by the earlier question [pg. 296 of the NE]. Her husband had to leave home by 11am on a daily basis for otherwise he would not be able to reach work by 12pm. Mdm Yong further explained that there may be inconsistencies between her statement and her court testimony because it was her first time to a police station and she was tired and confused. Moreover, her two children were running in and out of the recording room and she wanted to bring them home quickly. Hence, she gave off-the-cuff replies to the recording officer and did not even spot these errors when her statement was read back to her. The defence further pointed out additional errors in the statement such as the spelling of the names of her children and the number of years of marriage as evidence of the inaccuracies in the recording process.

79 After assessing her demeanour on the stand, I gave Mdm Yong the benefit of doubt and accepted her explanation. She did not appear to be lying and in any case, Mdm Yong's commencement time for work was no longer a key issue since the prosecution deleted the originally stated "10am" from the third charge at the close of their case. Mursiyani's evidence on the stand was that Mdm Yong had assaulted her before she went to work, with no reference to the actual time this was alleged to have taken place. Hence, it was no longer an issue whether she was at home at 10am. I felt that this was an additional reason why there was no need for her to lie when she gave testimony on this matter.

#### *Mdm Yong's Impeachment: Instructions to Pour Hot Water*

80 Secondly, Mdm Yong stated in her police statement that she *wanted* Mursiyani to pour hot water from the kettle into the thermos flask. In court, she stated that she only instructed Mursiyani to boil water and she personally wanted to pour the hot water into the flask. In her explanation, Mdm Yong stated that she asked Mursiyani to boil water and it was a matter of course that Mursiyani was to pour the boiled water into the flask, otherwise it would cool down. Mursiyani usually did this whenever water was boiled.

81 I accepted what I found to be a logical explanation. In any case, this could not qualify as a material inconsistency in the circumstances because Mdm Yong was not disputing that the incident had taken place. In my view, the pertinent issue was the circumstances leading to the spillage and the court must not lose sight of the wood for the trees. Whether Mdm Yong had the intention, or in fact instructed Mursiyani to pour the hot water into the flask was not particularly material since it was not disputed that she had on her own volition picked up the kettle intending to head for the thermos flask and that the hot water spillage had taken place whilst she was holding on to the kettle. The alleged inconsistency did not go towards the crux of the charges (*Mohammed Zairi bin Mohamad Mohtar v PP, supra*). In any case, Mdm Yong's version could in no way be described as self-serving and I saw no reason for her to lie on this matter.



*Mdm Yong's Impeachment: Displeasure At Mursiyani's Dish-washing*

82 Thirdly, in her statement, Mdm Yong stated that she often scolded Mursiyani for not washing the plates clean. However in court, she stated that she had not been displeased with Mursiyani's dishwashing. Mdm Yong explained that the statement was inaccurate and had come about because the recording officer first told her that Mursiyani complained that she often scolded her with regard to her washing of the plates. Thereafter, the officer asked if she had scolded Mursiyani before. When she replied that she had scolded Mursiyani before, it was in direct reply to this question [pg. 283 of the NE].

83 In *Muthusamy v PP* [1948] MLJ 57, Taylor J stated at pg. 58:

Minor differences are attributable mainly to differences in interpretation and the way in which the statement was taken and sometimes to differences in recollection. A perfectly truthful witness may mention a detail on one occasion and not remember it on another. A mere omission is hardly ever a discrepancy. The police statement is usually much briefer than the evidence. Both the statement and the evidence are usually narratives reduced from question and answer. The witness is not responsible for the actual expression used in either, and all the less so when he does not speak English.

84 In the current instance, after hearing the explanation given by Mdm Yong, I was satisfied that she should be given the benefit of the doubt. Even if the prosecution managed to prove that she was angry with Mursiyani for failing to wash dishes properly at some random point during Mursiyani's two month stint, it did not mean that she would go so far as to hit Mursiyani on the head with a plate. After all, the defence had not claimed that they were not displeased with other aspects of Mursiyani's work at all. It was readily admitted that there were scoldings when she failed to meet up to expectations or made mistakes. In any event, I was not satisfied that this was a material inconsistency that should affect her credit.

*Mdm Yong's Impeachment: Conclusion*

85 Interestingly, the prosecution did not challenge Mdm Yong's assertion that her children were allowed to run around the recording room in spite of it potentially having a serious impact on the accuracy of her statement. This was further corroborated by Mr Tay's testimony. Putting aside this point, for the reasons given above, I was not satisfied that the discrepancies highlighted by the prosecution during impeachment were serious inconsistencies or material contradictions. Accordingly, I found that Mdm Yong's credit was not impeached.

*Evaluation of Mr Tay's Evidence*

86 The prosecution submitted that since Mr Tay is Mdm Yong's husband, he would obviously be an interested witness [paragraph 99 and 101 prosecution's submissions].

87 It is trite law that a witness's evidence need not be treated with caution or require corroboration simply because he may have some self-interest in the matter. In *Chua Keem Long v PP* [1996] 1 SLR 510, Yong CJ stated at 518:

It is open for the judge to so treat the evidence of an interested person with caution, but this is not a general rule. Whether caution is in fact required is very much dependent on the facts of the case. No purpose would be served by the laying down of a rigid rule. *Witnesses such as relatives, or persons in an antagonistic relationship with the accused, do not necessarily attract the same caution.* The purpose to be served by giving unreliable evidence has to be shown to be particularly strong before such a witness can be regarded as tainted. It is for the trial judge, upon considering the circumstances of the case, to decide whether a particular witness warrants that additional care. *[Emphasis added]*.

So long as it is apparent that the trial judge has not accepted the evidence of witnesses akin to accomplices wholesale without scrutiny, an appellate court would be slow to interfere with his findings of fact, or his preference for one witness's testimony over that of another.

88 The court would look at the whole surrounding circumstances of the situation, particularly the demeanour of the witness, the totality of his evidence and ask itself whether he could be believed (*Kwang Boon Keong Peter v PP* [1998] 2 SLR 592, 612). In my view, just because Mr Tay is married to the Accused did not automatically impugn the quality of his testimony; in fact I found that Mr Tay was an honest and coherent witness.

89 Mr Tay maintained that he was not aware of any assault committed by Mdm Yong against Mursiyani. He corroborated Mdm Yong's testimony that on 21 September 2001, there was a police officer standing near the gate of the flat. However, he differed from Mdm Yong's evidence that she had not spoken to Mursiyani at all by testifying that when she returned, she asked him *and Mursiyani* what had happened. On her part, Mdm Yong claimed that she asked Mr Tay *and her daughter* what had happened. I found that this may well be a difference of perception. According to Mr Tay, while he was with his wife in the living room all the time, his eyes were not always on her and he may have had perceived that this question was asked to Mursiyani when in fact Mdm Yong may have been directing it to her daughter. On her part, Mdm Yong may also have forgotten that she had made such an innocuous enquiry to Mursiyani. This was understandable in the circumstances. In any event, the real issue was whether Mdm Yong had a private conversation with Mursiyani in which she asked her to lie about her injury then. Mdm Yong vehemently denied that such a conversation had taken place and I found that this was corroborated by Mr Tay's testimony. He was certain that Mdm Yong only asked Mursiyani that one question the entire afternoon whilst he was always in close proximity with her in the living room. This was all the more unlikely since I did not believe that the police would permit the both of them to have a private conversation in the room out of their supervision. SSgt Yusoff himself did not profess to have kept his eyes on Mursiyani throughout the time he was at the house. In any case, the key fact that the prosecution had to prove was that Mdm Yong had asked Mursiyani to lie and I found this was not proven on the evidence. In the course of his cross-examination, the prosecution applied to impeach Mr Tay's testimony.

#### *Mr Tay's Impeachment: Describing The Evasive Action Taken*

90 The prosecution first alleged that Mr Tay was inconsistent in his long statement, P9, when he stated that Mdm Yong had 'pulled back' the kettle in a bid to avoid Mursiyani in the kitchen. In court, he testified that Mdm Yong had told him that she 'lifted up' her arm when the maid stepped backwards. Mr Tay explained that when he was first informed of the incident in their bedroom on the day of the hot water incident, his wife had used a Cantonese term 'pulled back'. That was why he said so in his statement. After recording the statement, he verified the matter with Mdm Yong and upon further discussion and a demonstration from her, he then realised that it was more accurate to describe it as 'lifted up'.

91 In deciding whether Mr Tay's credit should be impeached, it had to be remembered that he was recounting a conversation made to him by Mdm Yong over a year ago. This was not something that he had first hand knowledge about and Mr Tay could only rely on what he could remember from Mdm Yong's conversation with him that evening to reiterate during the recording of his statement. In *Loh Khoon Hai v PP* [1996] 2 SLR 321, Yong CJ stated:

The process of testimony was not a memory test and minor inconsistencies were often inevitable. Moreover, what appeared to be inconsistencies could have been due to the way the questions are phrased. The crux was whether the totality of the evidence was believable.

92 I was prepared to accept that he informed the recording officer what he knew and had paraphrased Mdm Yong's Cantonese term. Mr Tay only subsequently became elucidated of the facts when he verified what he told the police from a subsequent discussion and demonstration from Mdm Yong. Thus, thinking that it was

more accurate to use the term "lift up", he testified accordingly. In any case, the inconsistency was not so serious as to affect his credit. I found that the differences in words used was akin to semantics that may have arisen from describing the evasive action taken.

*Mr Tay's Impeachment: Change Of Employer For Mursiyani*

93 Secondly, the prosecution submitted that in Mr Tay's police statement he stated that after Mursiyani requested for a change in employer, he kept on telling Mursiyani that they would be exchanging her as soon as they had selected a new maid. It was submitted that this was in direct contradiction to Mr Tay's testimony where he said no plans had been made to exchange the maid and he never told the maid of such plans. In his defence, Mr Tay explained that when Mursiyani first asked for a transfer in the first two weeks, he agreed so as to "delay the time" [pg. 348 of the NE]. However, he subsequently asked his wife to bring Mursiyani to Regency for counselling because he felt that new maids needed more time to familiarise themselves. As Mursiyani had stopped asking for a transfer after the counselling session, he did not follow up on the issue and gave her a second chance. During the recording of the statement, when he was asked whether plans were made to exchange the maid, he replied in the affirmative because he was referring to the period *before* she was brought to Regency for counselling.

94 To begin with, Mr Tay's answers during cross-examination did not support the prosecution's contention about his testimony in the first place:

Q: *After Mursiyani Mistam was brought to the maid agency on one occasion, did she subsequently still ask for a transfer? [Emphasis added]*

A: To my knowledge, no.

Q: Did you subsequently make arrangements for an exchange of maids?

A: No.

Q. Did you tell Mursiyani Mistam after the visit to the agent that she would be transferred or exchanged?

A. I cannot remember.

Q. On your part you didn't make any arrangements?

A. No.

95 I agreed with the prosecution that had there been firm plans to exchange Mursiyani in the final days leading up to the police report, then the defence's submission that she had fabricated the charges in order to get out of Mdm Yong's employment would be severely undermined. However, after hearing his explanation, I was prepared to accept that at the time he stated that there were plans to exchange the maid, it was in direct answer to a question when they asked him what he had done after he described the maid as a slow worker (see P9 and also Taylor J's remarks in *Muthusamy v PP, supra*). In my view, the key question was whether there were firm plans to exchange Mursiyani in the final days leading up to the police report. It is readily apparent from the evidence that there were no such plans. Further, no questions were ever put to Mursiyani nor May Ling by the prosecution to establish the contrary position.

*Mr Tay's Impeachment: Conclusion*

96 In conclusion, I found that Mr Tay was consistent and coherent throughout his statement and court testimony. Accordingly, I did not find his credit impeached.

### ***Findings on the charges***

#### *Charge One: Criminal Negligence*

97 On the first charge, the prosecution contended that Mdm Yong was criminally negligent and had caused hurt to Mursiyani by spilling water on her left ear and back. On the factual dispute as to how the incident had taken place, it was contended that Mursiyani's version was more believable than Mdm Yong's. Hence, the prosecution submitted in accordance with Mursiyani's version, that it was grossly negligent to raise a kettle full of freshly boiled water and run towards another with that kettle held just above and near to the head of that person. Taking into account the circumstances of the case, I was unable to accept the prosecution's case and preferred Mdm Yong's account of what happened.

#### *Ear Injury*

98 The evidence showed that Mursiyani was extremely inconsistent on her injuries. During EIC, she said that the base of the kettle touched her head just above her left ear and hot water spilled out onto her *left ear* and her back [pg. 58 of the NE]. During cross-examination, she pointed to the region on her head just behind her left ear lobe as the injured part, prompting the court's question whether her left ear lobe itself was injured. In reply, Mursiyani stated unequivocally that her left ear lobe was *not* injured at all [pg. 98 of the NE]. Subsequently, she reverted to her earlier contention and went further to say that the wound on her left ear had swelled up and broke [pg. 146 of the NE].

99 I observed that Mursiyani was not confused when answering these questions. She fully comprehended that the injured part referred to at different times was either her head or her left ear lobe. She was also aware that the questions at that juncture were about the injury as opposed to her point of contact with the kettle. Often, she even pointed to the site of the injury. In my view, she was an inconsistent witness, making whimsical changes in her testimony. Contrary to her embellished contention that the injury to her left ear had swelled up and broke, Dr Teoh was unable to find any trace of injury on her left ear at all. This was not to say that Mursiyani's left ear was not injured during the incident for Mdm Yong was candid and testified that while the left ear was splashed by the hot water, it was such a minor affliction that no permanent injury was caused.

#### *Mr Tay's Presence in the House*

100 When she first screamed, Mursiyani contended that Mdm Yong quickly closed the kitchen sliding door for fear that Mr Tay (who was in the living room) might hear the commotion. Mr Tay subsequently enquired that evening about her crying that morning. The defence disputed and said that the entire incident took place when Mr Tay was away at work. It was further contended that Mdm Yong never intended to hide the incident from Mr Tay. She willingly informed him of what happened when he returned from work that evening. This was corroborated by Mr Tay who testified that he did not hear Mursiyani crying before he left for work [pg. 332 of the NE].

101 I believed the defence. It was illogical for Mursiyani to suggest that Mdm Yong had shut the kitchen door to keep Mr Tay from hearing her cries. It was apparent from the photographs of the house (Exhibit D4) that it was not particularly large and if Mr Tay had indeed been in the living room, he would undoubtedly have heard Mursiyani's scream *before* the door could ever be shut. Even so, Mursiyani's story was internally at odds with itself when she subsequently said that Mr Tay had actually heard her scream and cry in the morning [pg. 64 of the NE]. In my view, if this was really the truth, there was no reason for him to enquire about her crying only that evening instead of finding out immediately upon hearing her scream.

#### *Aftermath*

102 The undisputed aftermath of the hot water incident was that Mdm Yong immediately apologised to Mursiyani and applied ice and subsequently ointment to the affected areas. According to Mursiyani's own evidence, Mdm Yong used tissues to wipe her tears away and apologised on two occasions [pg. 57 of the NE].

103 I felt that such an aftermath was inherently at odds with Mursiyani's version of events that involved Mdm Yong chasing her around the kitchen shouting and screaming at her. Had Mdm Yong really been so angry and act in the reckless or negligent manner by raising the kettle to ear level and running after her, she would not have immediately apologised to Mursiyani immediately after the hot water spilled as it would have been foreseeable that this would have happened. In my view, it was implausible under the circumstances for Mdm Yong to then take pains to examine the affected areas to verify the extent of the injury and apply ice and ointment. This could not be described as the actions of someone who was so angry with Mursiyani as she tried to have the court believe. In addition, I noted that Mursiyani was evasive when asked about the extent of her injury, insisting that she could not see the extent of her injury [pg. 94 of the NE]. Obviously, she did not want to be bound to a description of her injuries. I therefore preferred the defence's version that the entire episode was an accident and felt that the aftermath as laid out by Mdm Yong and to a certain extent, by Mursiyani was consistent with this version.

104 In the final analysis, I noted that the kettle's nozzle pointed at an angle of 45° upwards. If the kettle had indeed hit Mursiyani's head just above the top of her left ear, it would have been very difficult, if not impossible, for her to sustain a scalding injury on her head just behind her left ear or on her left ear lobe for that matter. I therefore found that Mdm Yong had caused a minor spillage of a small quantity of hot water. The water had escaped and splashed from the nozzle due to her instinctive lifting of the hot kettle further upwards as a reflex response to the maid's sudden move towards her direction when she was about to transfer the water in the full kettle to the thermos flask.

#### *Whether Criminally Negligent*

105 The key question to be answered in relation to the first charge was whether the entirety of Mdm Yong's actions in the kitchen could be construed as criminally negligent so as to endanger the personal safety of Mursiyani. In deciding this, the standard to be applied was the same as the civil standard (*Lim Poh Eng v PP* [1999] 2 SLR 116). In the cited case of *PP v Teo Poh Leng* [1992] 1 SLR 15, M P H Rubin J stated that:

Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

106 The line to be drawn between criminal negligence and accident is often a fine one and can only be decided upon evaluating the entire circumstances of the incident in question. It is also pertinent to note section 80 of the *Penal Code* (Cap. 224) states:

#### *Accident in the doing of a lawful act*

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

107 The entire hot water incident took place in a matter of seconds and was because Mursiyani suddenly stepped backwards whilst Mdm Yong was moving behind her with the kettle. Under these circumstances, Mdm Yong instinctively reacted in order to mitigate any injury that may be caused to Mursiyani. However, the

prosecution submitted that it was more logical for Mdm Yong to move the full and heavy kettle with an open nozzle to the side, instead of lifting it higher as she contended [paragraph 81 of the prosecution's closing submissions].

108 With respect, I was unable to agree with this. Even if Mdm Yong had moved the kettle to the side as opposed to lifting it up (as contended by the prosecution), these were both evasive actions. As Mdm Yong explained, because her stove was deliberately built higher to protect her children and she had just picked up the kettle, the kettle was already fairly high up in the air. In the circumstances, I did not think that Mdm Yong had acted negligently by further lifting the kettle upwards. Had she not done so, Mursiyani may have made contact with the kettle itself leading to far more disastrous consequences. Mdm Yong's action was made in the 'agony of the moment' when confronted with the sudden emergency and was entirely reasonable in all the circumstances. I found that no criminal liability could attach under such circumstances.

### **Charge Two: The Alleged Pinch**

109 Mursiyani testified that whenever Mdm Yong was dissatisfied with her ironing, she would scold her and then demonstrate how it should be done. When asked if she did anything else, I noted that she did not mention that she was slapped. When counsel went on to ask if she would be slapped, she immediately alleged that Mdm Yong did slap her and she had not mentioned it earlier because she was not asked [pg. 108 of the NE]. In my view, if Mursiyani had really been slapped for such a minor matter, she would undoubtedly have mentioned that, instead of the more frivolous point that Mdm Yong checked her clothes and demonstrated the right way of ironing.

110 On the charge itself, Mursiyani testified that it was about 8pm in the evening when she stood opposite the television set as shown in Exhibit D4 photo 3B, ironing one of Mr Tay's shirts in the living room with the wall behind her and the ironing board before her. Mdm Yong allegedly stood on her left at the end of the ironing board to examine the clothes she was ironing and when she saw that the shirt was not properly ironed, she pinched Mursiyani's left triceps whilst at the same time pulled her out from the ironing area. When Mursiyani looked at the bruise, it was bluish-red. On the part of the defence, it was submitted that Mdm Yong had never pinched Mursiyani in such a manner before.

111 Assuming that Mursiyani's story was true, there was no reason for Mdm Yong to depart from her usual slappings and scoldings to resort instead to pinching Mursiyani. Moreover, since Mr Tay wore these shirts on a daily basis [pg. 330 of the NE] and Mursiyani, having worked for two months in the household, she should be well competent to iron these shirts. There would have been no reason for Mdm Yong to supervise her in the first instance, and certainly no reason to resort to such violence even assuming that Mursiyani did indeed botch that evening's ironing. Further, I noted that the details of Mursiyani's allegation were never contemporaneously complained to anyone else and neither Siti nor Dr Teoh testified to knowing how the bruise had been inflicted. In fact, Dr Teoh testified that Mursiyani had only made the complaint and did not elaborate on how she was bruised.

112 On the other hand, I believed Mdm Yong's testimony that Mursiyani was permitted to iron clothes only on weekends and in the afternoons when the two children were at school. Mursiyani had other chores to perform in the evenings. As I observed earlier [in paragraph 48 and 49], the bruise located at approximately two inches from the elbow on the left triceps could not be safely ruled out for self-infliction. Neither could infliction by one of the children be safely ruled out in view of the frequent complaints made by Mursiyani about them beating her. This did not contradict the medical evidence. When I weighed the evidence and considered the credibility of the witnesses, *a fortiori*, greater doubts were raised in my mind. I was therefore of the view that the prosecution had failed to make out its case in respect of the second charge.

### **Charge Three: Hitting the Head with a Plate**

113 Subsequent to the pinching incident, Mursiyani alleged that on a date that she could not remember, Mdm Yong examined a plate that she had just washed before she left for work. Being dissatisfied with her washing, she used the base of the plate to hit her once squarely on the top of her head. Mursiyani felt pain for five minutes but there were no swelling or lumps. Mursiyani claimed that she informed Siti about this incident. She also claimed that she informed Dr Teoh of this incident. When asked why there was no mention of this in the medical report, Mursiyani said that she had informed the doctor through a female police officer as she could not speak English.

114 I found that Mursiyani was plainly lying in respect of the third charge. Firstly, Siti was plainly unaware of Mursiyani's allegation that she was hit whilst washing plates. In fact, when asked by the prosecution about the subject matter of the third charge, she began by elaborating that Mursiyani had been hit on the head after her morning prayers. The prosecution also acknowledged that she was mistaken [pg. 15 of the NE] and I further noted that this allegation was not even mentioned in Mursiyani's testimony. Moreover, the red mark that Siti alleged was the subject matter of the third charge was utterly inconsistent with the manner that the plate assault was allegedly carried out. If Mursiyani's allegation was true, the injury would have been found on the top of her head and not on the right part of the head near the ear as Siti claimed. In addition, while Mursiyani claimed to have told Dr Teoh about this incident, he denied any knowledge of this. I was also not prepared to accept Mursiyani's contention that her complaint to Dr Teoh was misinterpreted in the interpretation process by the female police officer because according to Dr Teoh, Mursiyani had spoken to him directly [pg. 45 of the NE]. Moreover, there was also no mention by Dr Teoh that there was any communication problems. Accordingly, the case on the third charge also failed.

## Conclusion

115 Taking into consideration all the circumstances of the case, I found that the allegations in respect of all three charges formed part of a plan devised by Mursiyani to get out of Mdm Yong's employment and find alternative employment with Siti without paying the financial penalty. This was because Mursiyani obviously found it difficult to work for Mdm Yong as she could not cope with her two hyperactive children. Indeed the undisputed evidence was that previous maids had left the employment of Mdm Yong because they too found it difficult to cope with the children. May Ling also testified that should Mursiyani choose to leave under these circumstances, she would be subjected to a substantial financial penalty. That would not be the case if abuse by the employer could be shown. While Mursiyani claimed that she was not aware of this latter point when she left the employment of Mdm Yong on 21 September 2001, I did not believe her. Mursiyani proved in the course of the trial to be a very intelligent and shrewd witness and I found that it was not beyond her intellectual capabilities to contrive this plan, manipulating the rather gullible and overtly sympathetic Siti to aid her. The contents of Mursiyani's hand-written note spoke volumes of her Machiavellian disposition: containing *inter alia* elements to play up Siti's sympathy (baseless allegations of daily assaults proved to be so in the course of the trial), flattery (references of 'sweet smile', 'kind heart' etc), request for employment and even a part to establish closer ties ('borrowing of the book'). While the prosecution had repeatedly drew the court's attention to the fact that Mursiyani was not the complainant and it was Siti who had called the police, this only proved that Mursiyani's manipulation of Siti worked well.

116 For the reasons given above, I found that the prosecution had failed to make out its entire case. Mdm Yong was accordingly acquitted and discharged of all three charges.

*Acquitted and Discharged of All Charges*

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