

WRONGFUL ARREST BY PRIVATE PERSONS

Metro (Golden Mile) Pte. Ltd. v. Paul Chua Wah Liang

In an oral judgment delivered in the High Court on August 13, 1980, Mr. Justice Choor Singh upheld the decision of District Judge Adrian Soon which awarded businessman Paul Chua Wah Liang and his 5 children damages totalling \$1,800/- for wrongful detention and slander. This timely judgment stressed man's liberty of movement and proved both illuminating and instructive as regards the right of arrest by shop employees of suspected shoplifters.

The facts of the case are simple. As reported in the newspapers, on June 16, 1978, as businessman Paul Chua and his 5 children were about to drive off from the store carpark after shopping at Metro (Golden Mile) Pte. Ltd. they were stopped by two employees of the store. After being told that there was a mistake in the bill they were escorted to a first floor office where their parcels were checked and one of the children, Ian (aged 7), was searched. Everything appeared in order, an apology was extended on behalf of the store and the Chuas subsequently left.¹

²⁹ *Supra*, at p. 240.

³⁰ See [1980] 1 M.L.J. 251. Teh was charged and convicted under the Internal Security Act. He was also tried in accordance with the special procedure prescribed by the Essential (Security Cases) Regulations 1975 which had been validated by Act 216 of 1979, and executed. (See The Straits Times, Singapore, Friday, 11th April, 1980 at p. 14).

³¹ The writer is indebted to Mr. Jimmy Yim and Mr. Andrew Phang, 4th year students, Faculty of Law, National University of Singapore, and Mr. A.J. Harding, Lecturer, Faculty of Law, National University of Singapore for their comments and assistance.

¹ Facts as derived from the Sunday Times report of September 2, 1979 and Straits Times report of August 14, 1980.

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In giving judgment Mr. Justice Choor Singh said: "If [the arrest] is unlawful a man can bring an action for false imprisonment and get damages." This statement poses 2 questions. Firstly, under what circumstances is there an arrest; and secondly, when is such arrest unlawful.

"Arrest" connotes the imposition of total restraint upon the movements of an individual.² In its stricter context and the one pertinent to this article it connotes custody of another for the purpose of holding or detaining him to answer a criminal charge.³ Mere words would amount to an arrest only if in the circumstances of the case, they are calculated to bring, and do bring to a person's notice that he is under compulsion and he thereafter submits to the compulsion.⁴

In this case, evidence was given by the plaintiff Paul Chua that he went along with the employees of the store in order to avoid the embarrassment of a confrontation in the carpark. The defence on the other hand argued that there was a voluntary accession on the part of the plaintiffs to a polite request to follow by the employees of the store.

The learned Judge had this to say:

"When a private security guard or other employee of a departmental store stops a customer after he has left the store and tells him 'come along with me back to the store, I want to check the parcel you are carrying' this is an arrest.... It is irrelevant whether they went willingly or under protest."

From the facts as reported in the newspapers however, it is unclear whether such strong words of compulsion were used. The Chuas were merely told that "there was a mistake in the bill" and to follow the employees of the store. A voluntary accession to a polite request would not amount to an arrest. However in this instance the Judge was probably correct in his holding that there was an arrest as it is reasonable to believe that the Chuas did not voluntarily follow the employees of the store but did it out of compulsion in order to avoid further embarrassment in the carpark.

Once it is decided that there is an arrest, the next question to ask therefore is whether the arrest is lawful. In this instance, we are only concerned with the right of arrest by private persons (including private security guards and members of CISCO) as opposed to arrest by police officers.⁵ The relevant law governing the right of arrest by a private person is to be found in section 31 of the Criminal Procedure Code.⁶ By virtue of this section, any private person may arrest any person, who in his view, commits a non-bailable and seizable offence, such as theft.

² Halsbury (4th Edn.) Vol. II at para. 99.

³ Black's Law and Dictionary (5th Edn.).

⁴ *Per* Lord Parker, *Alderson v. Booth* (1969) 53 Crim. App. Reps. 301.

⁵ Defined in s. 2 of the Interpretation Act (Cap. 3, Singapore Statutes, Rev. Ed. 1970) as "any member of the Singapore Police Force. *Cf.* definition in s. 2 of the Criminal Procedure Code (Cap. 113, Singapore Statutes, Rev. Ed. 1970) which defines the term in a similar manner.

⁶ The right of arrest, both in England and in Singapore, is entirely regulated by statute; in England, by the Criminal Law Act 1967 and in Singapore, by the Criminal Procedure Code (Cap. 113, Singapore Statutes, Rev. Ed. 1970).

The phrase "in his view" is an unfortunate choice of words by the legislature as it can mean either "in his presence" or "in his opinion". At first impression, the latter meaning seems more likely. An examination of other sections under the same heading "Arrest Without a Warrant" show that the express words "in his presence" were used time and again in the other sections.⁷ It is therefore unlikely that if the legislature had intended to permit an arrest by a private citizen only if the offence is committed "in his presence" the words themselves would not have been expressly used.

Nevertheless, the Indian Courts in a series of decisions interpreting the section of the Indian Criminal Procedure Code from which our provision is derived have held that the words "in his view" mean "in his presence" or "within sight of him".⁸ Such interpretation is based upon the rationale that there should be as little abrogation of an individual's liberty as possible and that a private person's right of arrest, unlike that of a police officer, should be strictly confined. Unfortunately, there is no reported local decision which expressly deals with this matter. In light of the highly persuasive authority however, the Indian Courts' interpretation appears to be the one most likely followed by local courts. This is consistent with Mr. Justice Choor Singh's judgment where he said: "So far as arrest is concerned, a police constable has more power than a private person... he can justify it on the ground that the accused had committed a seizable offence. He does not have to go further, as a private person has to do, and prove that a seizable offence has in fact been committed." Such a statement that a seizable offence be actually committed naturally rejects the interpretation that section 33 permits an arrest by a private person on his subjective opinion that a non-bailable and seizable offence has been committed in his presence.

In the case of theft therefore, the security officer or other private person effecting the arrest must show that the theft was actually committed in his presence. A theft is complete once there is a moving of the property with the intention of taking it dishonestly out of another's possession.⁹ Thus in order that there be a lawful arrest the person effecting the arrest must actually see the removal of the article from the shelf of the store. The fact that he catches a customer walking past the cashier or trying to leave without paying is in itself insufficient for such fact is only evidence of theft and does not constitute the act of theft itself.

It is therefore insufficient that a departmental store installs a mechanical device such as a "magic eye" which activates an alarm when a customer tries to leave without paying for goods concealed on his person. Technically, none of the store's employees can effect an arrest for none of them can actually say that they saw the theft.

⁷ *E.g.* s. 31(1)(j) which permits an arrest by a police officer of a person committing a breach of peace in his presence; and s. 37 which permits a Magistrate or a Justice of the Peace to arrest a person committing an offence in his presence.

⁸ Sohoni's Code of Criminal Procedure, Vol. 1 (16th Edn. 1965) at p. 194. Since 1974 however, the Indian Criminal Procedure Code has been amended, the words "in his presence" being specifically substituted for the words "in his view".

⁹ S. 378 of the Penal Code (Cap. 103, Singapore Statutes, Rev. Ed. 1970).

An interesting situation would be one as to when the theft is actually witnessed with the aid of a mechanical device such as a television monitor. In the absence of any authority, it is submitted that in the interest of apprehending shoplifters and the like, a store employee who sees a theft committed in the store from the monitor screen of a security room should be in law permitted to effect an arrest under section 33 of the Criminal Procedure Code.

Another point stressed by the learned judge is that the arrest is only lawful if a non-bailable and seizable offence has actually been committed.¹⁰ This may sometimes be unjust on the person effecting an arrest for circumstances may not always be what they seem to the observer. A possible instance is that of the shopper, who after purchasing the article returns to exchange it for say, one of another colour. Too embarrassed or lazy to search out the sales supervisor she effects the change by herself. Though there may be all the appearance of a theft to a security officer who arrests her as she leaves with the second article, nevertheless in absence of an actual theft, technically he is open to an action in false imprisonment.

From the above, we conclude that although it may not always be just to the person effecting the arrest or practical in terms of apprehension of shoplifters, an arrest by a private person is only lawful if the person actually arrested commits an act of theft within his sight. An arrest under any other circumstances is therefore unlawful and the person arrested can maintain an action in false imprisonment. Hence, the learned Judge's statement that "departmental stores should do all their checking of bills and parcels before a customer leaves the store" appears to be, with all due respect, misconceived and misleading. In absence of the customer's consent, the store is equally not entitled to restrain their customers for the purpose of checking their bills and parcels when the customer is still on the store's premises unless the preconditions to an arrest under section 33 (as discussed earlier) are satisfied. In any event, no search can be made of any person arrested or his property.¹¹

All in all therefore, section 33 appears to be far too restrictive. In the absence of a right to apprehend shoplifters, even for the purpose of obtaining their name and Identity Card numbers, in all but the most stringent of circumstances, the stores appear to be very much helpless as against such offenders.

Here, a comparison can be made with the position in England where any person may arrest without warrant anyone who is, or whom he with reasonable cause suspects to be, in the act of committing an arrestable offence.¹² Furthermore, where an arrestable offence has been committed, any person may arrest, without warrant, anyone who is, or whom he suspects to be guilty of the offence.¹³

¹⁰ In the course of his judgment has said "... a private person has to... prove that a seizable offence has in fact been committed" and "... if an arrest is to be made, it should be made on sure ground and not on mere suspicion."

¹¹ Any search can only be undertaken by the police officer to whom the private person makes over the custody of the person arrested: s. 28, Criminal Procedure Code.

¹² S. 2(2), Criminal Law Act (U.K.) 1967.

¹³ S. 2(3), *ibid*.

It is submitted that such legislation is indeed to be preferred to the local legislation. There seems no logical reason why a civic minded private person should not be able to effect a citizen's arrest where he reasonably suspects another person to be guilty of a non-bailable and seizable offence or in the act of committing an arrestable offence. The fact that there must be sufficient grounds, for suspicion provide an adequate safeguard to an individual's liberty without being unduly harsh upon the person effecting the arrest. What amounts to reasonable suspicion is of course, a question of fact dependent upon all the circumstances of the case.

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