FORGIVENESS IN THE CRIMINAL JUSTICE SYSTEM IN NIGERIA: A REVIEW OF PUBLIC PROSECUTOR V. SHAWN TAN JIA JUNWITHIN THE CONTEXT OF ISLAMIC LAW

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Abstract

In the administration of criminal justice system in Nigeria, offences are against the State and the role of the victim is limited to being a witness for the Prosecutor. Unlike other stakeholders who have been clothed with the powers to forgive, pardon, grant amnesty or discontinued an ongoing case, the victim, whose rights have been violated has no such powers. Adopting doctrinal method of legal research, this article adopted a tripartite approach in dissecting the research topic. It examined the role of other stakeholders in contradistinction with the role of the victim within the context of forgiveness; it reviewed and critique the decided case of Public Prosecutor v. Shawn Tan Jia Jun and finally explore the position of Islamic Law as far as forgiveness is concerned and the active role played by the victim. The results demonstrated that the victim, who is directly affected by the commission of the crime is not included among those granted the powers to forgive, pardon, grant amnesty or discontinued an ongoing case. It is therefore recommended that the criminal justice system should introduce 'victim forgiveness' and emulate the Islamic criminal law wherein the victim played a very active role and has the power to forgive or discontinue the case.

Keywords: *Forgiveness, Islamic law, Criminal Law, Dispute Resolution, Shawn Tan Jia Jun*

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Introduction

The criminal justice system in Nigeria is regulated by the Administration of Criminal Justice Act (ACJA)[1] and Administration of Criminal Justice Laws (ACJL) respectively[2]. The Act applies to the Federal Government while the Laws apply to the State Governments. The States are at liberty to review, improve on and domesticate the ACJA to suit their peculiar needs. The Nigerian Criminal law classified crimes as offences against the State and empowers only the State through its instrumentalities to arrest, arraign, prosecute offenders[3] using the victim in most cases as the 'star-witness', to secure conviction and the subsequent sentencing of the defendant by the court. Whereas, the State has put in place structures and mechanisms to check commissions of crimes, prosecute offenders and award punishment and/or fine as the case may be. However, save for the role of a star-witness, the victim has no say in how the case should be prosecuted or whether the defendant should be forgiven.

In criminal cases, the office of the Attorney General (A.G) either for the State or Federal Government has been given the rare privilege to discontinue a case by invoking the *Nolleprosequi* clause[4]. It means the AG who is not a victim and may not understand the state of mind and pains of a victim is empowered at any stage of the trial to discontinue it if he deems it fit that such discontinuance is in the best interest of the State. Similarly, the Chief Judge of a State, Governor or President have the powers under the law to pardon or grant amnesty to a convict. The difference between the powers granted to the AG and Chief Justice/Governor or President is that while the former is during trial, the latter is after sentencing. Either way, the law has empowered 'strangers' so to say in the determination of the rights of the victim without corresponding powers given to the victim. Recently, the Federal Government signed into law, the Administration of Criminal Justice Act which seeks to provide a bit of consolation from the

[1] ACJA 2015. Is an Act of the National Assembly whose provisions apply to criminal trials for offences established by an Act of National Assembly and other offences punishable in the Federal Capital Territory, Abuja.

[2] Tosin Osasona, 'Time to Reform Nigeria's Criminal Justice System', Journal of Law and Criminal System, (2015)(3)(2)

[3] Ibid

[4] Nolle Prosequi is the statutory powers given to the Attorney General of the State or Federation to take over or discontinued any criminal case at any stage before the final judgement. See Sections 174 (C) and 211(C) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also *Chief Lere Adebayo v The State* (2012) LEPLR 35098 CA

traditional provision wherein the victim can now be award compensation[5] but without the power to either discontinue the case except with the approval of the Attorney General or to out rightly forgive the defendant.

The core of this research is to appraise the level of involvement of a victim in the prosecution/determination of his/her case; powers granted to other stakeholders to discontinue, pardon or grant amnesty to the defendant; review and critique the case of ***Public Prosecutor v. Shawn Tan Jia Jun,*** provide the Islamic Law position and suggest recommendations.

Conceptual Framework of Forgiveness in the Administration of Justice in Nigeria

To distinct the animal kingdom from the world of men, there is the need to have a system where rule of law is enforced. A society governed and ruled by men wherein rights of others are respected and punishment for violating those rights are stipulated. Nigeria, being a former colony of Britain designed her legal system in accordance with British Common Law system.

The post-independence Nigeria criminal system saw two codes of law. Penal code for the Northern part of the country who are predominately Muslims and Criminal Code for the Southern part of the Country with majority being Christians. It was recently that the Government enacted the Administration of Criminal Justice Act as a uniform Criminal Law for the entire country.

Nigeria, being a Common Law country is practicing adversarial system. The adversarial system of justice works to resolve cases in court by pitting partial advocates for each side against one another with a judge who works to ensure that the rules of court and law are followed. The system thrives by its use of interested opposing parties debating over an issue in order to ensure the pursuit of justice. This system of justice delivery has been criticized for its value of winning over truth, but studies show it is a system that looks to protect the rights of individuals on trial[6].

As far as forgiveness is concerned, the traditional understanding and reality about crimes in most common law jurisdictions including Nigeria depict that they are offences against the State and

[5] Section 319(1)(a) of the ACJA provides that a court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict.

[6] IkengaK.E.Oraegbunam,'The Jurisprudence of Adversarial Justice', A New Journal of African Studies, (2019)(15)(1)

only the State via its legal instrumentality can decide what must be the punishment awarded to an offender. The State has put in place procedures that once the commission of a crime is reported or established, the suspect/defendant will be arrested; investigated and tried before a competent court of law. The State through the office of the Director of Public Prosecution (DPP)or Commissioner of Police proffer a charge against the defendant, arraign and prosecute him using the victim as the prosecution's witness. The role of the victim is limited to that of a witness and nothing more. This was the position until recently when the Administration of Criminal Justice Act[7] was enacted wherein compensation in certain cases is proposed to be given to the victim in addition to any prison term a judge might give to the defendant upon conviction

Role of the Attorney General (A.G State/Federal)

The office of the Attorney General (A.G) is a creation of the law[8]. In the system of Administration of Justice in Nigeria, A.G occupies a very prominent position. As the number one Chief Legal Officer and Commissioner for Justice, A.G exercises a controlling authority in the conduct of any civil proceeding affecting government or any of its agencies. The Constitution[9] provides ***"There shall be an Attorney-General for each State who shall be the Chief Law Officer of the State and a Commissioner for Justice of the government of that State"***. The holder of the office is appointed by the Governor and confirmed by the State House of Assembly members.

To contextualize the duties of the A.G, he is in-charge of the Ministry of Justice and has responsibility for the various departments and agencies of the Ministry. As the Chief Law Officer of the State, he exercises his power and performs his functions either personally or through any Law officer in the department or agency of the Ministry. His functions include: Giving legal advice to government, Ministries, Statutory bodies and Departments of Government; Arranging for legal officers or lawyers to prosecute criminal matters; arranging for lawyers to institute or defend civil actions on behalf of the State, its parastatals and agencies; Keeping under review all the laws applicable with a view to their systematic development and reform; Preparing executive

[7] Administration of Criminal Justice Act (ACJA) 2015

[8] Attorney General of the Federation is provided for under Section 150 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended)

[9] Attorney General of the State is provided for under Section 195 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

bills in accordance with directives from the Cabinet for Laws to be enacted by the State House of Assembly; Preparing subsidiary legislation for government Ministries and other Bodies; Attending the State Executive Council meeting where policies are formulated for the State; and Performing any other duty that may be assigned to him by the Governor[10].

Furthermore, the Attorney-General is the Chief Public Prosecutor in a State for all criminal matters. In the exercise of his powers to institute, undertake or discontinue criminal proceedings as conferred on him by S.211 of the Constitution[11], the Attorney-General shall not be subject to the direction or control of any person or authority. In the exercise of the aforementioned powers, the Supreme Court of Nigeria had held that the Attorney General is a master unto himself, law unto himself, and is under no control – judicial or otherwise whatsoever. The exercise of his discretion in that regard is final and irreversible by even his appointer and is subject only to public condemnation in the court of public opinion[12].

The above judicial pronouncement succinctly captured the enormous powers at the disposal of the A.G which is always subject to abuse. To put the discussion into proper perspective and demonstrate how powerful the AG is, it is important to review two cases which were discontinued by the office of the A.G with a view of driving home the point that if the A.G who is not directly affected by the commission of the crime is empowered to, at a will and without question discontinued an ongoing case, then it will align with logic and common sense that the victim of the crime should equally be empowered to play active role in the determination of a case which directly affects him/her.

FRN vs Sen. DanjumaGoje& 3 others

This case occurred during the regime of the former A.G of federation, AbubakarMalami SAN, the accused persons were charged on alleged forgery and financial embezzlement, including

[10] Office of the Attorney General, Lagos State Ministry of Justice available @ https://lagosstatemoj.org/office-of-the-attorney-general accessed on 28th October, 2024

[11] By Section 211 of the Constitution, the prosecutorial powers of the Attorney General have been constitutionally guaranteed.

[12]AbdulsalamGambo. A Critique of the Power of Attorney General in the Administration of Criminal Justice in Nigeria (LLM Dissertation Faculty of Law Ahmadu Bello University 2015)

contract of fraud on food supply to the State Government House as well as loan facilities taken from Access and Union Banks without following due process. On 7th day of October 2011, the four accused persons were arraigned on 21-amended count charge of conspiracy and money laundering which they all pleaded not guilty.

After 2817 days of trial in court, the case was stalled when in an emergency hearing before Justice Babatunde Quadiri, the EFCC counsel, Mr Wahab Shittu, told the court that the agency was withdrawing from the case and handing it over to the office of the Attorney-General for continuation. Instead of continuing with the case, the AGF however, stated that after a thorough review of the matter, there was no prima facie case against the accused persons and in the Ag's opinion, the case was weak and frivolous. Against that background, the A.G withdrew the charges against Goje from the court in exercise of his constitutional power[13]. The withdrawal of the case by the AGF made Goje a free man. This was a case involving corruption, abuse of office and the need to hold public office holders accountable for their actions done on behalf of the people. One would have thought that the office of the A.G will carry out a detached investigation with a view of ascertaining how five billion naira belonging to the State was mismanaged. Rather, in supposedly exercising his power, the A.G without recourse to the affected people discontinued the case and the accused persons became free!!!

CASE TWO[14] "Charge No. CR/216/2016 for giving false information to the Police"

Unlike the first one, this is a recent case during the regime of the new A.G of Federation Fagbemi Lateef SAN. The gist of the matter is that **s**ometimes in November 2013, One Mr. Benjamin Joseph, the owner of Citadel Oracle Concepts Limited, lodged a petition at the Police Special Fraud Unit (SFU), Ikoyi, Lagos that the company's letterhead papers and its board resolution were forged by the Plaintiffs and some officers of Technology Distributions Limited, and Access Bank to carry out a contract with the FIRS without their knowledge. He sent a similar petition in early 2014 to the Nigeria Police Headquarters (Force CID) Abuja. However, both the SFU and Police Headquarters found the allegations to be false after due investigations

[13] 'AGF Took Over Goje's N5bn Corruption Case, Evoked NolleProsequi' EFCC Media & Publicity (20th July 2019). See also 'Top Controversial Cases Taken Over by Nigeria's Attorney General, Malami, and How They Ended', Sahara Reporter,(3rd June, 2020)

[14]Adamu Sani, 'When Nigeria's Chief Law Officer Obstruct Justice', THISDAYLIVE (8th October, 2024)

and charged Mr. Benjamin Joseph to court in Charge No. CR/216/2016, before Honourable Justice Peter Kekemeke of the FCT High Court, Abuja. Whereas, the Prosecution closed its case in 2018 but Benjamin Joseph has failed or refused to open his defence.

In a twist of event, Mr. Benjamin Joseph, in 2016, wrote another petition (on the same set of facts) against Chief Igbokwe and Princess Kama and some officers of Technology Distributions Limited (now TD Africa Limited) to the then Vice President of Nigeria, Prof. Yemi Osinbajo, who endorsed the case to the EFCC for investigation and prosecution. The EFCC subjected the duo of Chief Igbokwe and Princess Kama to trial in ***Charge No.CR/244/2018,*** that lasted for three years and at the end of which they were discharged and acquitted by Honourable Justice Senchi of the FCT High Court (as he then was). In the said judgment, Honourable Justice Senchi held that Benjamin Joseph, as the nominal complainant, gave false information to the Vice President and the EFCC and imposed a N20million damages against him for false petitioning and to serve as a deterrent to others. This judgement corroborates and vindicates the Police in prosecuting Mr. Benjamin Jospeh in the said Charge No. CR/216/2016 before Justice Kekemeke.

Upon the resumption into office by the new Attorney General, Lateef Fagbemi SAN, Mr. Benjamin Joseph allegedly approached his revered office to intervene, withdraw, and discontinue the criminal case filed by the Police against him. Whereupon, the Attorney General, relying on his powers under Section 174 of the Constitution, wrote to the Inspector General of Police to withdraw and discontinue the criminal case against Benjamin Joseph. The said two Plaintiffs averred that the Attorney General never heard from them or even from the Police Prosecutor handling the case, Mr. Simon Lough SAN, before giving the instruction on a one-sided story from Mr. Benjamin Joseph.

However, in utter disbelief of all lawyers involved in the case, when the other ***Charge No. CR/216/2016,*** came up before Honourable Justice Peter Kekemeke on Thursday, 20 June 2024, a lawyer from the Office of the Attorney General and Minister of Justice, Barrister F. N. Umorh, Assistant Chief State Counsel, announced appearance for the Prosecution and said she had the instruction of the Attorney General to withdraw and discontinue the case. This is despite the fact that the Order of the Honourable Justice Ekwo was made in the presence of the lawyers from the Office of the Attorney General, and it was brought to the attention of Honourable Justice

Kekemeke in the course of the proceedings on 20 June 2024. In the circumstance, Honourable Justice Kekemeke was constrained into making a ruling striking out ***Charge No. CR/216/2016,*** discharging and acquitting Benjamin Joseph.

Whereas it is not within the scope of this research to critique the correctness or otherwise of the use of A.G fiat, the crucial point to note is that the law empowers the A.G to discontinue an ongoing matter without recourse or approval of the victim. The A.G is so powerful that with just a letter to the court/Judge, an existing case can be discontinued.

Role of the Judge/ Governor/ President

Historically speaking, the concept of pardon/clemency or amnesty is said to have emanated from the Greek and Roman Empire[15]. Due to the Greek democratic practice back then wherein power exclusively resides with the people, it was an established custom that any pardon or clemency must be presented via a petition which must be signed/supported by not less than six thousand people[16]. The procedure to seek the support of the people is to curb arbitrary pardon/clemency by the leadership or subject the process to the whims of political leaders which was the practice in the Roman Empire.

The practice in both Greek and Rome set the framework for the development in England of monarchical pardon powers, which later found its way into the Nigerian legal system, now enshrined in sections 175 and 212 of the Nigerian Constitution. The section provides as follows:

1. The President may: a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions. b) Grant to a person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence; c) Substitute a less severe form of punishment imposed on that person for such an offence; or d) Remit the whole or any part of any punishment imposed on that person for such an offence or ay penalty or forfeiture otherwise due to the state on account of such an offence.

[15]Melissa Dowling,'Clemency & Cruelty in the Roman World' University of Michigan Press, (2006)

[16] Rita Abhavan Ngwoke and Sogunle B. Abayomi An Appraisal of the Power of Pardon under Nigerian Law: Lessons from Other Jurisdictions Beijing Law Review, (2022)(13)(2)

2. The President's powers under subsection (1) of this Section shall be exercised by him after consultation with the Council of State.
3. The President, acting under the advice of the Council of State, may exercise his powers under sub-section (1) of this section about persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court-martial.

Contextualizing the above provisions, wherein it is understandable that the offence is against the State which is represented by the President/Governor, and granting such individual the ability to pardon an offender, however, the practice of seeking the support of at least six thousand people as practiced in Greek is not obtainable in our country. Similarly, the provision of the constitution is not helpful as the condition for the grant of such amnesty/pardon has not been codified or provided. It is easier therefore for the occupier of the office of the Governor/President to abuse the power by granting his political stooges pardon even when such grant is against the popular wish of the people he represents.

It is important to state that the power to pardon can only be exercised after the conviction and sentencing of an accused person. This is the position of the Court for instance, in ***Solola & Anor v The State***[17] the Nigerian Supreme Court said: "It needs to be stressed for future guidance that a person convicted for murder or sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to this Court and until that appeal is finally determined the Head of State or the Governor of a State cannot under sections 175 or 212 of the Constitution as the case may be, exercise his power of prerogative of mercy in favour of that person". The Court of Appeal in the same case ***(Appeal No. CA/A/77/2001)*** earlier drove the point home more vividly thus: "…whichever the word is used, it presupposes that the person to be pardoned has done something, which the law presumes to be criminal or has committed an offence or is guilty of a crime. To interpret the power of pardon of a governor of a state to include the pardon of someone whose right to a presumption of innocence is guaranteed and protected by the Constitution, and against whom there cannot be a suggestion of having done something criminal without a pronunciation of guilt by a court of law, will be to bring the provision of Section 212(1)(a) of the 1999 Constitution into direct conflict with the provision of Section 36 (5) of the Constitution".

[17] (2005) 11, NWLR (pt.937) 460

It is therefore settled that the President/Governor or Chief Judge who is not directly affected by the alleged crime committed and may not understand the extent of damage the convict has caused to the victim, has in law been granted the powers to technically forgive the convict via the grant of pardon or amnesty as the case may be. It is against this background that this article passionately advocate that the victim of the crime should or ought to be clothed with similar power to grant forgiveness whether before the conclusion of the trial or post conclusion.

THE CASE OF *PUBLIC PROSECUTOR V. SHAWN TAN JIA JUN* AT THE MAGISTRATE COURT[18]

This was a case decided by the Magistrate Court of Singapore. Why am I using Singapore as a case study? It is because Singapore inherited from England a criminal justice system similar to that of Nigeria which considers that an offence committed is against the State and the liability of the offender was owed first and foremost to the State[19]. This approach is different from the concept of restorative justice which seeks to restore the familial or social relationship between the victim and the offender which has been broken or damaged by the offence committed by the latter.

In this case, the charge as proffered by the Prosecutor is reproduced. That " ***You, SHAWN TAN JIA JUN, on 15 July 2020, at or about 12.00pm, at address in Singapore, did voluntarily cause hurt to one Leong MiuKheng Seraphina, to wit, by punching and kicking her abdominal area when she was 9 weeks pregnant and punching her face, intending to cause hurt to her, and thereby causing her to sustain the following injuries: · right and left-sided redness over her face associated with right-sided inferior · orbital and maxillary bone tenderness on palpation; · anterior chest redness; · mild tenderness over her midline of the thoracic (upper) spine; · grab marks over her right arm with dark red bruises seen over the dorsum of the right hand; and · similar multiple dark red bruises seen over the left arm, dorsum of the left hand, bilateral knees and bilateral shins, and you have thereby committed an offence punishable under Section 323 of the Penal Code (Cap 224, 2008 Rev Ed)".***

[18] *Public Prosecutor v Shawn Tan Jia Jun* [2021] SGMC 87
[19] *Public Prosecutor v UI* [2008] 4 SLR(R) 500

Fact of the Case

The Accused and the victim started dating right from the high school, the relationship continued post-high school and became intimate. They later found themselves nine weeks' pregnant on 10th July 2020 and was given a week by the doctor to decide whether to keep or abort the foetus before it became too late to perform safe abortion. On 14 July 2020, the victim visited and stayed overnight at the Accused's home. They got into a heated argument the next day at around noon whilst discussing the next steps pertaining to the pregnancy and started shouting at each other. In the midst of the heated argument, the Accused pushed her onto the bed, punched and kicked her abdominal area and punched her face multiple times. The Accused's mother, who was at home at that time, stopped the incident. The victim called her friend, who fetched her from the Accused's home. She subsequently sought medical treatment at NUH. After medical examination, she was discovered to have sustained injuries, as stated in the charge.

Case of the Prosecution

The Prosecution sought a custodial term of at least 2 weeks' imprisonment against the Accused on the basis of general deterrence in accordance with the sentencing framework set out in the law. The Prosecution submitted that the case fell within Band 1 in light of the low harm suffered by the victim. In assessing the Accused's culpability, the Prosecution pointed out that the custodial threshold would be crossed because of two factors: first, that the injuries were inflicted in the context of a domestic violence/relationship, and secondly, the risk of injury posed to the victim's 9-week old foetus.

With respect to the relationship between parties, the Prosecution submitted that the Courts had readily imposed custodial sentences on accused persons who inflict domestic violence on their family members or on their partners to send a strong deterrent signal showing the Court's disapproval of violent acts inflicted on more vulnerable persons within a domestic partnership. With respect to the harm caused, the Accused's actions resulted in the victim experiencing supra pubic pain at her abdominal region.

In urging the Court to consider the potential harm to the 9-week-old foetus, the Prosecution cited the road traffic accident case of ***PP v KohThiamHuat***[20], where the High Court took into account

[20] [2017] 4 SLR 1099

the potential risk of harm in determining the extent of harm to be taken into account for the purpose of sentencing, in addition to actual harm caused. The Prosecution also cited the case of ***PP v Hue An Li***[21] to draw a parallel between the fact that "speeding increases the risk of harm occurring" and that "throwing multiple punches at a victim's body and abdominal area poses a risk of harm to the victim and/or causes the victim to suffer harm". It was submitted that drawing from both these cases, the Court ought to consider that the higher the degree of danger posed by this offender, the higher the risk of harm and the greater need there is to deter others from doing so. Further, there was a need to deter the like-minded from similar violent behaviour that puts vulnerable persons in domestic relationships in harm's way.

Case of the Defense

The Defence counsel informed the Court that the Accused and the victim had been dating for a few years and had opted for an abortion when they found out that the victim was pregnant because they decided that they were too young and were not ready to become parents at that time. However, after the victim stayed overnight with the Accused on 15 July 2020, they had second thoughts and started arguing in the Accused's bedroom. The argument became increasingly heated and emotional, and both parties started shouting at each other. The Accused tried to leave the room to give themselves time to calm down, but was held back by the victim, who wanted him to stay and resolve the matter. It was at this time that as the Accused was struggling with her to leave the room and end the dispute that he pushed her onto the bed and assaulted her. It was submitted that the incident happened impulsively without premeditation over a very short period of time. It was completely out of character and he was deeply remorseful over the wrongfulness and foolishness of his actions.

After the incident, the Accused reconciled with the victim, and they planned to get married by the end of 2021. On her own accord, the victim tried to withdraw her complaint to the police and drop charges against the Accused, but was told that the case was no longer under the police's control. She then went to see her Member of Parliament for assistance to drop charges.

The Defence also informed the Court that the Accused made an honest living as a delivery rider and was in a poor financial situation. He lived with his mother, stepfather and two younger step-

[21] [2014] 4 SLR 661

siblings, who were in Primary One and Two. He worked hard to support his family and vowed never to conduct himself again as he did at the time of the incident. It was highlighted that the Accused was a first-time offender, had cooperated fully with the police and pleaded guilty at the first opportunity. The injuries suffered by the victim were not severe. The Court was urged to give the Accused a chance to return to becoming a contributing member of society. The Defence counsel sought a fine of $3500.00 against the Accused, or alternatively, an imprisonment term not exceeding one week.

Decision of the Court

In the words of the trial judge "I turned to the aggravating factors highlighted by the Prosecution and the mitigating factors submitted by Defence counsel. The two aggravating factors raised by the Prosecution was the fact that this case involved domestic partners and that the victim had been pregnant at that time. In the Accused's favour was his relatively young age of 24 years, his plea of guilt and his prospects for rehabilitation as demonstrated by his sincere remorse in his personal hand-written mitigation plea, his resolve to improve himself, positive working attitude and desire to do better in his life in order to take better care of his family? I accepted the Accused's explanation that the incident occurred because both parties had been agitated in their argument just moments before. He tried to leave the room in order to end the argument, but the victim held onto him and refused to let him leave". The subsequent acts of violence by the Accused was committed on impulse and the physical altercation with them was not pre-mediated. The injuries suffered by the victim was superficial and minor, and she was given a retrospective one-day MC for 15 July 2020.

In this case, the victim had not only forgiven the Accused but agreed to marry him within the next couple of months. The Prosecution rightly pointed out that forgiveness was a private matter between the victim and the offender and should not affect the sentence imposed on the offender by the courts, which reflected public interest in criminal punishment: ***Ng Kean Meng Terence v PP***[22]**.**However, there were two possible exceptions to this: **first, where the sentence imposed on the offender would aggravate the victim's distress, and secondly, where the victim's forgiveness was relevant to a determination of the harm the victim has suffered as a result of the offence.**

[22] [2017] 2 SLR 449

Forgiveness by the victim should be regarded as a private matter between the victim and the offender, which should not affect the sentence to be imposed except under two conditions (1) where the sentence imposed on the offender would aggravate the victim's distress and (ii) the victim's forgiveness was relevant to a determination of the harm suffered as a result of the offence. These exceptions were explained at length in ***PP v UI***[23], a case involving the rape of the victim by her natural father several times when she was between ten and 14 years of age. In mitigation, the Defence tendered letters from the victim and her mother expressing their forgiveness of the offender and pleaded for leniency. In considering these exceptions, the Court of Appeal referred to a case commentary on the English case of ***R v Adam John Nunn***[24] in the Criminal Law Review and the summary expressed by Lord Bingham CJ in ***R v Gerard Martin Roche***[25]. The first exception was considered in Nunn, a case in which a young man was sentenced to four years' imprisonment at the first instance for causing the death of his best friend due to dangerous driving. At his appeal against sentence, the deceased's mother and sister provided lengthy written statements to the English Court of Appeal expressing that the length of the sentence imposed on the offender had made it more difficult for the mother and the sister to come to terms with the loss and grief which they suffered following the death of the victim. The deceased's mother had stated in her written statement that: While ... [the offender] remains in prison, I will remain concerned about him, worrying about him and this will continue to be a source of additional grief to me.

This was regarded by the English Court of Appeal as "clear evidence" that the length of the sentence was causing the deceased's family additional grief, and the offender's term of imprisonment was accordingly reduced to three years. The second exception was from another English Court of Appeal case, where the offender had been charged with the rape of his former domestic partner. In R v James Kevin Hutchinson[26], the victim attempted to withdraw the charges before and during the course of the trial and told the court that she still loved the offender. The offender was convicted and sentenced to six years' imprisonment. On appeal, Owen J, observed that (at 137): It seems that the fact of [the victim's] forgiveness [of the

[23] [2008] 4 SLR(R) 500
[24] [1996] 2 Cr App R (S) 136
[25] [1999] 2 Cr App R (S) 105
[26][1994] 15 Cr App R (S) 134

offender] must mean that the psychological and mental suffering must be very much less in those circumstances than would be the case in respect of a woman who very understandably could not forgive such an offence as that with which we are dealing [ie, the offence of rape]. Accordingly, some mitigation must be seen in that one factor.

Accordingly, the sentence against the offender was reduced to five years' imprisonment. In my view, both these exceptions were present in this case. In a letter handwritten by the victim dated 25 October 2021 tendered to Court, the victim put forth an impassioned plea for the Accused to be dealt with leniency. She explained that they had been dating for a long time (5 years) since secondary school and she was well aware that he was a man of good character. He was decent, cared for his family and kept his word. Although they had already decided to abort the pregnancy before the incident, he stayed with and provide for their future together and had changed tremendously. She also informed the Court that she had tried to drop the charges against the Accused but was unable to do so. She then approached her Member of Parliament for Chua Chu Kang GRC Mr Zhulkarnain Abdul Rahim for assistance and was advised to provide a character reference for him. To understand the nature of the victim's forgiveness of the Accused in this case and why the exceptions in PP v UI were made out, I quote the relevant portions of her letter to the Court:

> I would like to bring to light the kind of person that he is despite what has happened in recent times. Shawn is a person of good moral character. I realize that might seem hard to believe given the circumstances but it's true nonetheless. I am very well aware of the charges that he is facing and the consequences of those actions, but having seen how much effort he has put into change for the better I would like to plead for leniency he's a true gentleman and he's always true to his words. I'm sure he will learn from this experience and will not think of repeating it. I have known Shawn since we were in secondary school and have been together for the past five years. In the time spent together, I have seen and gone through ups and downs with him and all the while I have been convinced that he is a decent person at the core. He just needs more people to believe in him so that he can become the person I know he is the deep down. We have actually made plans to go for an abortion before the incident and he did not let what happened stop him from being there for me. He kept to his words and was by my side

> through it all he took very good care of me and did more than what was needed from him, especially when I was recuperating. These specific features make me believe he is truly a decent man. I do see a future with him and I do not wish for this charge to have a negative impact on his future, academically and socially. Shawn has shown me that he knows what he did was wrong and he's incredibly remorseful they happened. He is willing to do whatever it takes to make reparations, financially and emotionally if possible. But to do that he needs to be given an opportunity to get a second chance. I recognize that Shawn broke the law and I do not believe that he should get off without any punishment. But I believe that just because he made a mistake it doesn't make him a bad person. Everyone makes mistakes and looking beyond the wrongs, I'm convinced that he is indeed a kind, loving, thoughtful and selfless person I'm confident that he will take responsibility for his actions and will not reoffend.

The victim also shared that in meting out any sentence against the Accused, the Court should be mindful that it would affect her as well, as they were planning their future together. This should be seen in the light of the fact that they were to be married in the very near future and the Accused had plans to join a new company in a new job role.

As an observer at close range, the victim was essentially testifying to the fact that the Accused was a good and responsible person who had acted out of character in a one-off incident, and who had also changed for the better since then. The Accused was of relatively young age and had clearly learnt his lesson. The fact of the victim's forgiveness was well established in this case by virtue of the fact that she had agreed to marry him at the end of the year and was looking forward to their future together. This was perhaps the most important indication of her faith in his character and transformation. As she explained, any sentence imposed on the Accused would therefore also impact her as well, fulfilling the exceptions in PP v UI and Ng Kean Meng Terence in regarding the victim's forgiveness as a mitigating factor. I had invited the Prosecution to respond to the exceptions in PP v UI presented in this case, but was informed by the learned Prosecutor that the Prosecution's written submissions was as far as they would go in arguing this case.

Court's Conclusion

Having considered fully the exceptional facts of this case, I sentenced the Accused to a fine of $3500.00, in default two weeks' imprisonment.

THE CASE OF *PUBLIC PROSECUTOR V. SHAWN TAN JIA JUN* AT THE APPEALATE COURT[27]

Not satisfied with the decision of the trial court, the Prosecution appealed to the High Court against the sentence of a fine imposed on the **Tan.** At the Magistrate Court, Tan pleaded guilty to one charge of voluntarily causing grievous hurt, under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) and was sentenced to a fine of $3,500 in default of two weeks' imprisonment.

In the Prosecution's appeal, they argued, *inter alia*, that the learned District Judge had placed undue weight on the Victim's forgiveness of Tan. They sought for a sentence of two weeks' imprisonment instead. The High Court found that forgiveness did not apply as a mitigating factor in the present case. The Prosecution's appeal was allowed, and Tan's sentence of a fine of $3,500 in default two weeks' imprisonment was set aside and substituted with a sentence of two weeks' imprisonment.

Review of the Case

The position of the High Court substituting the fine of $3,500 with two weeks imprisonment is not only overzealous but unreasonable considering the following points: that the respondent pleaded guilty to the charge; the victim wrote a letter pleading for the forgiveness of the respondent and how sentencing him to prison will affect their future plan of getting married; the offence with which the respondent was charged provided for an alternate punishment which the trial court has awarded pecuniary fine as a way of saving the relationship. It appears the appellate court is not interested in the wellbeing of the victim and her position in the determination of the case. The appellate judge discountenance the exceptions provided under the law, to wit ***"(1) where the sentence imposed on the offender would aggravate the victim's distress and (ii) the victim's forgiveness was relevant to a determination of the harm suffered as a result of the offence"***

[27] [2022] SGHC 76

From the victim's letter, both exceptions are applicable. It was so detailed that both of them are planning to get married; that the respondent had in the past stood by her in all her challenges and in the instant case, he was with her through the process; that she is not saying the respondent should not be punished, but a fine will be sufficient.

The appellate judge has used his office to destroy a prospective marriage because it is very unlikely for the respondent to come back from prison and marry the victim. The law should equally be interested in striking a balance in the application of certain provisions especially when the drafter of the law deliberately included alternate punishment. Would it not be a win-win situation where the respondent is made to pay fine and later marry the victim?

The Islamic Law Position

Unlike the man-made criminal legal system, Islamic Law has its source from the Quran, Hadith as Primary Source and Ijma and Qiyas as the Secondary Source[28]. Similarly, a victim under Islamic law is more proactive and involved in the determination of the dispute. He is not only a witness but has powers to forgive the defendant and discontinue the case.

Islamic legal system provides for an alternative means of resolving crimes by substantially involving and empowering the victim or his family on how best to resolve the conflict[29]. The priority of Islamic Law is not to destroy an existing relationship but to ensure disputes are managed in the most matured and effective way. The philosophy behind such provision is never to underestimate or promote commission of heinous crime but to be practical and realistic in terms of addressing conflicts. For instance, where a breadwinner of a family is killed and survived by wife and children, the conventional legal system arrests the offender, arraign, prosecute and eventually send him to jail/life imprisonment or death. In this process, the government has no special package for the family of the deceased and there are no financial emoluments given to the deceased immediate family to address their financial needs, unlike Islamic Law that provides for blood-money in such circumstance[30].

[28] Sources of Islamic Law available @ https://islamiclabourcode.org/sources-of-islamic-law/ accessed on 27thNovember, 2024

[29] Surah An-Nisaa 4v92. See also Sahih Al-Bukhari 9:83:41-50

[30] He who has killed a believer by mistake must set free a believing slave, and pay the diya to the family of the slain unless they remit it as a charity. (Surah An-Nisaa 4v92)

In the instant case, the accused is young and in love, the parties had challenges on how to cope financially with little or no income while expecting a baby. In such a scenario, it is expected that parties will have slight misunderstanding which ought to be resolved amicably. No doubt, the accused is at fault and deserve to be punished, in the humble view of this writer, the punishment awarded in form of fine is enough without the need to send the accused to prison. Of what use is the prison term considering the concept of reformation in the criminal justice system? How is the prison term helpful to the victim who had pleaded for pardon for her future husband? Will the government or criminal justice system provide a husband for the victim when the accused refused to go ahead with the marriage as planned? Is it not detrimental to the victim that she is getting married to an ex-convict, is the monetary fine awarded against the accused not enough? These are some of the unresolved questions that the prosecutor ought to ask before appealing the judgement of the lower court.

The above lacuna is being taken care of by the divine provision which provides for the concept of restorative justice in Islamic criminal law that emphasizes recovery, reconciliation, and reintegration of offenders into society. This approach pays special attention to the needs of victims, encourages their active participation in the dispute resolution process, and involves the community as a key stakeholder. It identifies the potential for using the concept of restorative justice in Islamic criminal law as an alternative to resolving disputes. A restorative approach allows the parties involved to reach mutually satisfactory agreements, restore damaged relationships, and reduce the risk of repeat offenses. It is therefore submitted that the concept of restorative justice in Islamic criminal law can be an alternative that has the potential to improve justice in dispute resolution.

In promoting such concept, Allah says in the glorious Quran, ***"And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation – his reward is [due] from Allah. Indeed, He does not like wrongdoers.***[31]*"* In the above verse, we can understand that Allah will reward and bless those who are truly able to forgive. While it may sometimes be the hardest thing we do, we must understand the importance in reconciling with those we may have never thought possible of being forgiven – we must do this if not for ourselves, then at least for Allah.

[31] Surah Ashurah, *(Quran 42 verse 40)*

Similarly, Allah says ***"And whoever is patient and forgives – indeed, that is of the matters [worthy] of resolve.***[32]*"* The Quran reminds us again that being patient and being able to forgive are two sides of the same coin – if we are to truly live as a united Ummah, we must continuously strive towards reconciliation and forgiveness for the betterment of our society.

When the rich people threatened not to assist the needy, Allah says ***"Do not let the people of virtue and affluence among you swear to suspend donations to their relatives, the needy, and the emigrants in the cause of Allah. Let them pardon and forgive.*** *Do you not love to be forgiven by Allah? And Allah is All-Forgiving, Most Merciful.*[33]*"* Just as we love to be forgiven and shown mercy by Allah, we must strive towards showing mercy and forgiveness in our own lives – as Muslims, this is the least we can do in showing how much we love Allah.

Conclusion

Laws are made for humans and not the other way round. Where the law provides for both fine and imprisonment, the judge should be at liberty to choose which of the punishments best suit the circumstance. Similarly, the interest of the victim should play a crucial role in the determination of the case as advocated for in this article. The essence of justice will be defeated as in this case where the appellate through the help of the Court substituted the payment of $3500 as fine with two weeks imprisonment without considering how the judgement will affect the existing cum the future relationship between the defendant and the victim. In my humble opinion, the priority of the justice system should be reformation of the defendant and not mortification. Justice should be for all the parties, the victim, the State and the defendant. Prosecutors should stop being overzealous and reflect on the future of the victim while seeking justice. What is the purpose of securing conviction when the future of the victim is destroyed? Would the conviction provide the victim a husband? Is the fine not enough for a first-time offender who pleaded guilty and was remorseful? These are some of the questions the prosecutor ought to have asked before insisting on imprisonment for the defendant. Laws are meant to regulate our relationship and not to destroy it. It aligns with logic and commonsense therefore that where a person is faced with two evils, he should pick the lesser one especially in a situation where picking the lesser evil will best address the concerns of all parties involved. It

[32] Surah Ashurah*(Quran 42 verse 43)*
[33] Surah An-Nur*(Quran 24 verse 22)*

contradicts logic when the prosecutor who is expected to protect the interest of the victim is the same person working hard to destroy the victim. Payment of fine and subsequent marriage by the parties would have produced a win-win situation, in the instant case, the prosecutor is happy at the expense of the victim's future, such approach should be discouraged.