Public Prosecutor v Norhisham bin Mohamad Dahlan
[2003] SGCA 44

Case Number : Cr App 8/2003

Decision Date : 31 October 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Yong Pung How CJ

Counsel Name(s) : Eddy Tham (Deputy Public Prosecutor) for the appellant; Respondent in person

Parties : Public Prosecutor — Norhisham bin Mohamad Dahlan

Criminal Procedure and Sentencing – Sentencing – Culpable homicide not amounting to murder – Whether life imprisonment appropriate – Factors to be considered – Principle of parity of sentencing – Whether violent antecedent of one co-offender justification for disparity between sentences of co-offenders – Sections 34 and 304(a) Penal Code (Cap 224, 1985 Rev Ed)

Delivered by Yong Pung How CJ

1 In Criminal Case No 27 of 2003, Woo Bih Li J found Norhisham bin Mohamad Dahlan (the respondent) guilty of culpable homicide not amounting to murder under s 304 (a) read with s 34 of the Penal Code (Cap 224), and sentenced him to ten years in prison and 16 strokes of the cane. The Public Prosecutor appealed for an increase in sentence to one of life imprisonment.

Facts

2 Sulaiman Bin Hashim, a national youth soccer player, was killed in the early hours of 31 May 2001. He was 17 years old.

3 On 30 May 2001, the respondent and seven of his friends were at a discotheque along Mohammed Sultan Road. They were celebrating the birthday of one of them by the name of Muhammad Syamsul Ariffin Bin Brahim (Syamsul). All eight of them were members of a secret society called 'Sar Luk Kau'. The eight of them proceeded to a nearby coffee shop along River Valley Road at about 3am on 31 May 2001. At the coffee shop, Syamsul and Sharulhawzi Bin Ramly (Sharul) decided to conduct a surprise attack on a rival secret society operating at Boat Quay.

4 Sharul directed two of the persons in the group to go to 'Rootz' discotheque, situated at Boat Quay, to scout for rival gang members. The plan was that, if rival gang members were located, the attack would take place. At about 4.20am, the scouts confirmed by mobile phone that rival gang members had been located. These two scouts had also been instructed to prepare two taxis as get-away vehicles for the entire group.

5 The six others, including the respondent, proceeded in two taxis and alighted at Upper Circular Road. They walked along South Bridge Road looking for rival gang members. On the same night, Sulaiman Bin Hashim (the deceased) and his friend Muhammad Shariff Bin Abdul Samat (Shariff) had gone to 'Rootz' discotheque at Upper Circular Road. The deceased had been given four complimentary tickets to attend a party at this discotheque. There, the deceased and Shariff met Mohamed Imran Bin Mohamed Ali (Imran). The three of them left 'Rootz' discotheque at about 3am and went for supper at a nearby coffee shop along Circular Road. At about 4.30am, they left the coffee shop and made their way to City Hall MRT Station. The route they took was South Bridge Road where they passed the 'Bernie Goes To Town' pub located at 82 South Bridge Road. Just then, the gang of six, including the respondent, was walking on the other side of South Bridge Road. The gang crossed the road and approached the deceased, Shariff and Imran from behind. The respondent then

confronted the deceased and the other two and asked them in Malay which gang they were from. Before the three could answer, they were attacked. Shariff was stabbed but he and Imran managed to escape. The deceased, however, did not escape. He was repeatedly stabbed by Syamsul, Sharul, and the respondent even after he collapsed onto the steps of the pub.

6 The other three gang members chased after Shariff and Imran but returned to the scene of the crime when their chase turned futile. Muhamad Hasik bin Sahar was one of the three that chased Shariff and Imran.

7 The respondent and the others failed to locate the two get-away taxis, and so left the scene in two other taxis. They headed back to the gang's rented flat in Tampines. The two scouts who were not in the two taxis were instructed to meet the rest of the gang at the Tampines flat. Once at the flat, the six members cleaned themselves and talked about the assault. The respondent was seen trying to repair his knife which had been damaged in the attack. In the meantime, a passer-by called the police to report that a man was bleeding in front of the pub.

8 The post-mortem report stated that the deceased had sustained a total of 13 stab wounds. It was certified that the cause of death was 'stab wounds to the neck and chest.' Shariff was admitted to Singapore General Hospital on 31 May 2001. It was confirmed that he had sustained a 1.5cm wound on the right side of his chest. This wound was caused by a knife. He was discharged on 2 June 2001. Imran did not sustain any injuries from the attack.

9 The respondent had been on the run in Malaysia since 31 May 2001. He was arrested on 30 June 2002.

10 The case of *PP v Muhamad Hasik bin Sahar* [2002] 3 SLR 149 was decided by Tay Yong Kwang JC (as he was then). Tay JC decided to sentence Muhamad Hasik bin Sahar (Hasik) to a term of life imprisonment which was upheld by the Court of Appeal. From paras 11 and 12 of Tay JC's judgment, it was clear that Hasik was involved in punching and kicking the deceased before he chased the deceased's two friends who were attempting to escape. When the deceased's friends had escaped, Hasik returned to assist the respondent in causing more hurt to the deceased. At this stage, the deceased was not putting up much resistance. Hasik mainly punched and kicked the deceased.

The decision below

11 Woo J accepted the respondent's plea of guilt and addressed his mind to the issue of sentence under 304(a) of the Penal Code. He was aware of the fact that Tay Yong Kwang JC had sentenced Hasik to a term of life imprisonment. He was therefore fully aware of the fact that if he sentenced the respondent to anything less than life imprisonment it would follow that, by the very nature of s 304(a), there would be a large disparity in sentence, since the next longest sentence available under the provision was ten years' imprisonment. In particular, Woo J addressed his mind to the fact that Tay JC stated, in the *Hasik* judgment, that the respondent was more culpable than Hasik. Woo J agreed with this statement in light, inter alia, of (a) the fact that the respondent was armed with a knife and (b) that the respondent was one of the key masterminds behind the attack. However, Woo J explained why he opted for the lesser sentence of ten years and 16 strokes in spite of the fact that the respondent was more active in the planning and slaying of the deceased. The reason stemmed from the fact that, unlike Hasik, the respondent did not have a previous conviction for a violent offence. Woo J stated:

> As regards the prosecution's submission that the accused had progressed from non-violent

> offences to the present one, I was of the view that this should not mean that he should be treated akin to one who had a previous conviction for a violent offence. Accordingly, his antecedents should have no bearing on the case before me, see *Roslan bin Abdul Rahman* [1999] 2 SLR 211.

Therefore, it was clear that Woo J had anticipated the issue of disparity in sentence and had addressed his mind to this concern by explaining why he was opting for the ten year tariff rather than the life tariff.

12 Woo J placed significant importance on the Court of Appeal judgment in *Tan Kei Loon Allan* [1999] 2 SLR 288. In particular, he highlighted the guideline that the court must be cautious in sentencing a young offender to life imprisonment since, after the Court of Appeal decision in *Abdul Nasir bin Amer Hamsah v Public Prosecutor* [1997] 3 SLR 643, a life sentence meant a sentence for the remainder of the prisoner's natural life.

13 Of importance was the fact that Woo J recognised that the respondent was more culpable than the respondent in *Tan Kei Loon*. He stated:

> So, here, in the case before me, the position of the accused could be said to be more culpable than the accused in *PP v Tan Kei Loon Allan* because the attack was planned and the deceased was not even a member of a secret society. Indeed, he and his friends were not given a chance to reply before they were attacked. The accused also appeared to be one of the ring leaders although he did not initiate the suggestion to attack. He did not surrender himself. In such circumstances his plea of guilt, carried little weight, if any. On the other hand, he did not charge in singly to stab the deceased with the fatal wound.

Nonetheless, Woo J was convinced that this high level of culpability did not reach the threshold needed to justify a life sentence. Therefore, there was a correct application of *Tan Kei Loon Allan* – i.e. if the life sentence is deemed excessive even in light of the high culpability of the accused, then the court *must* lean on the side of leniency.

14 Similarly, even though the respondent was arguably more culpable than Hasik, Woo J placed heavy emphasis on the fact that the latter had a record of criminal violence whereas the former did not have one. In particular, Woo J relied on the following paragraphs of Tay JC's Grounds of Decision in *Hasik*:

> He (Hasik) has a (previous) conviction under s 324 read with s 34 of the Penal Code for the offence of voluntarily causing hurt by dangerous weapons or means and was sentenced to undergo reformative training. He was 16 years old then. The degree of his culpability in this episode may be lower than that of Norhisham, Syamsul and Sharulhawzi but I disagree with defence counsel's description of it as a 'minor' role.
>
> In the light of all that I have stated above, it is my view that the lower tier of up to ten years' imprisonment is not appropriate for the accused on the facts of this case. He has clearly not learnt his lesson from his previous experience in court. He has committed another offence involving physical violence, now with more devastating consequences.

The appeal

15 The prosecution contended that Woo J erred in law in failing to adequately consider the principle of parity of sentencing. In particular, the prosecution argued that Woo J failed to take into

consideration the fact that Hasik, who was less culpable than the respondent, received a life sentence.

16 In *Lim Poh Tee v PP* [2001] 1 SLR 674, the court ruled that while consistency in sentencing was a desirable goal, this was not an inflexible or overriding principle. In particular the court stated:

> The different degrees of culpability and the unique circumstances of each case play an equally, if not more, important role. Furthermore, the sentences in similar cases may have been either too high or too low: *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at para 26, following *Yong Siew Soon v PP* [1992] 2 SLR 933 at page 936. It was readily apparent upon a closer examination, that there were several significant crucial differences in the facts of the present appeal which clearly warranted a comparatively higher sentence.

It is therefore clear that parity in sentences between cases of broadly similar facts is desirable but not an overriding principle. Where there are important factual differences between the cases, then the desire for parity gives way to the need for accurate sentencing. There was, however, one crucial difference between the ratio decidendi in *Lim Poh Tee* and the argument advanced by the prosecution. In *Lim Poh Tee* the court addressed parity in sentences between two *distinct* cases with broadly similar facts. In the case here, Hasik and the respondent were sentenced for the same identical offence. Thus *Lim Poh Tee* was not a full reply to the prosecution's argument. Nonetheless, the full reply was found in *PP v Ramlee and another action* [1998] 3 SLR 539. In that case, the court stated:

> Where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or *their personal circumstances*: Archbold (1998) para 5 - 153. An offender who has received a sentence that is significantly more severe than has been imposed on his accomplice, and there being no reason for the differentiation, is a ground of appeal if the disparity is serious. This is even where the sentences viewed in isolation are not considered manifestly excessive: see *R v Walsh* (1980) 2 Cr App R (S) 224.

17 Whether the above authority successfully challenged the prosecution's argument hinged on the meaning of the phrase 'their personal circumstances'. Archbold (2003) states at 5-171:

> Relevant difference in personal circumstances:
>
> It is appropriate for a court to distinguish between offenders on the ground that one is significantly younger than the other (see *R v Turner*, unreported, October 6, 1976), that one has a significantly less serious criminal record (see *R v Walsh*, 2 Cr App R (S) 224, CA) or that some other mitigating circumstance is available to one defendant which is not available to the other (see *R v Tremarco*, 1 Cr App R (S) 286 CA). Where the sentence on one defendant is reduced on account of mitigating circumstances which apply only to that defendant, the sentences of the other defendants should not be reduced: *Att – Gen's References* (Nos 62, 63 and 64 of 1995).

18 Therefore, the fact that Hasik's criminal record included a violent offence while the respondent's criminal record did not, justified the disparity in sentence. Of importance here was the fact that there is no intermediate mark in s 304(a) – between ten years and a life sentence – which helps explain why the disparity, though justified, was so wide. The case of *PP v Ramlee and another action* [1998] 3 SLR 539 and Archbold (editions 1998 and 2003) show that Woo J was correct to place emphasis on the respondent's lack of a violent antecedent when deciding to sentence him to ten years' imprisonment instead of the full term of life.

19 The passage from Archbold gives added credibility to the rationale behind the Court of Appeal's ratio decidendi in *Tan Kei Loon Allan*. In essence what *Tan Kei Loon Allan* was driving at was that a life sentence for a young offender works out to be tangibly longer than for an older offender, and therefore giving a young offender a sentence which works out to be tangibly shorter (ten years instead of life imprisonment) would be justified if the judge is convinced that a life sentence is excessive. This ties in neatly with what Archbold states about shorter sentences for younger offenders.

20 The prosecution's second argument was that Woo J failed to give adequate weight to the following aggravating factors: a) that it was a case of a pre-planned, vicious and senseless attack by a group of secret society gang members led by the respondent and b) that it was a totally unprovoked attack on a defenceless young man.

21 Woo J did analyse, in detail, the facts of the *Tan Kei Loon Allan* case and came to the conclusion that the respondent was more culpable than the respondent in the *Tan Kei Loon Allan* case. In coming to such a conclusion, Woo J paid heed to the following aggravating factors in the case before him:

Fact No	Explanation
1 :	The attack was planned
2 :	The deceased was not a member of a secret society
3 :	The deceased was not even given a chance to reply before he was attacked
4 :	The respondent was one of the ring leaders although he did not initiate the suggestion to attack
5 :	The respondent did not surrender himself.

22 Woo J addressed all the aggravating factors surrounding the case and gave each factor its

due weight. He concluded that although these factors made the respondent more culpable than the respondent in *Tan Kei Loon Allan*, he still considered a term of life imprisonment to be an excessive punishment. He drew on the fact that Hasik had a violent antecedent to his name whereas the respondent did not. What was of key importance here was that he was convinced that a life sentence – the next available sentence after ten years – was excessive.

23 The prosecution's third argument was that Woo J was incorrect to find that the main reason why Tay JC opted to sentence Hasik to a term of life imprisonment was because Hasik had been previously convicted for committing a violent offence. The prosecution raised a valid point here. Nonetheless, in Woo J's mind, the previous violent offence was a pivotal factor which tipped the balance in favour of a life sentence. We agreed with the prosecution that the heinousness of the crime was an important factor which weighed heavily in Tay JC's mind when he came to the conclusion that a life sentence was not excessive in the *Hasik* case. But we were equally of the view that the pivotal factor which tipped the balance in favour of a life sentence in the case of *Hasik* was that Hasik had already been sentenced to undergo reformative training for a violent offence and he had still not learnt his lesson.

24 We were also of the opinion that the prosecution's third argument should be addressed in the reverse – i.e by answering the following question:

> Even if the previous violent offence was not the 'main reason' for the life sentence in *Hasik*, should this challenge the integrity of the sentence delivered by Woo J?

We answered this question in the negative. Neither *PP v Ramlee and another action* [1998] 3 SLR 539 nor Archbold (editions 1998 and 2003) say anything about the need for the 'difference in personal circumstances' to be the main reason for the disparity in sentence. Therefore, the 'difference in personal circumstances' need only be *a* reason for the disparity in sentence.

25 The prosecution's fourth argument was that Woo J erred in law and in fact when he considered that it was less aggravating that the respondent 'did not charge singly to stab the deceased with the fatal wound.' We were of the view that Woo J was merely trying to draw parallels and mark differences between the case before him and the case of *Tan Kei Loon Allan*. Having already pin-pointed the major reasons why the respondent (Norhisham) was even more culpable than the respondent in *Tan Kei Loon Allan*, Woo J added that unlike the respondent in *Tan Kei Loon Allan*, Norhisham had not asked his buddies to stand back as he took a run up to pierce his knife into the deceased's lower back. Woo J considered that Norhisham's lack of such intense authority over the scene coupled with his lack of such a keen intention to stab the deceased at the end of an aggressive charge showed that, in this regard (only), his behaviour was less aggravating than the respondent's in *Tan Kei Loon Allan*. The argument behind whether it was more aggravating for three men (Norhisham and two others) to have continued slashing the deceased than for the respondent in *Tan Kei Loon Allan* to have charged in for the final stab after giving an order to his gang members to clear a way for him was academic – there was no clear answer either way. The real issue here was that Woo J placed little importance on the fact that Norhisham did not charge in for the kill. What Woo J emphasised was the fact that, unlike Hasik, Norhisham did not have a violent criminal record. This, for Woo J, was the litmus test which prompted his conclusion that a life sentence was excessive.

26 The fifth argument advanced by the prosecution was that Woo J erred in fact and in law when he regarded the antecedents of the respondent as having no bearing on the case at all.

27 The case of *Roslan bin Abdul Rahman v Public Prosecutor* [1999] 2 SLR 211 involved an

appellant who had pleaded guilty in the High Court to the charge of robbery causing death under s 394 read with s 397 of the Penal Code. At the trial below, the Public Prosecutor drew the court's attention to the appellant's previous antecedents all of which were drug-related. Karthigesu JA delivered the judgment of the Court of Appeal. He stated that the appellant's drug-related antecedents should have had no bearing on the trial below as they were completely unrelated to the offence the appellant was charged with. Karthigesu JA stressed that the appellant had no antecedents of the type of offence he was charged with. Following this principle laid down by the Court of Appeal, we were of the view that Woo J was correct not to allow the respondent's antecedents of non-violent offences to influence his mind when it came to sentencing.

Conclusion

28 After a thorough analysis of the sentencing principles, we dismissed the appeal.

Appeal dismissed.