IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 94

Magistrate's Appeal No 9097 of 2017

Between

Public Prosecutor

… *Appellant*

And

Kusrini Bt Caslan Arja

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing]—[Sentencing]—[Appeals]

Public Prosecutor
v
Kusrini Bt Caslan Arja

[2017] SGHC 94

High Court — Magistrate's Appeal No 9097 of 2017
Tay Yong Kwang JA
25 April 2017

26 April 2017

Tay Yong Kwang JA:

1 The respondent is a domestic helper who had care of a child suffering from Type 1 Spinal Muscular Atrophy. The child is bedridden and requires caregivers, from time to time, to use a suction cap attached to the tube of a suction machine to suck out mucus and phlegm from him. The respondent had been taught to place the suction cap only on the outside of the nose and lips of the child.

2 The charge under s 5(1) (punishable under s 5(5)(*b*)) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) to which the respondent pleaded guilty states that she ill-treated the child by unreasonably doing three acts which endangered the child's safety and which caused the child unnecessary physical pain, suffering and injury. The three acts spelt out are, in essence:

(a) inserting the suction cap into the child's mouth, which dropped into the child's throat;

(b) inserting her fingers and then her right hand into the child's mouth and throat forcefully and repeatedly over about eight minutes to try to retrieve the suction cap; and

(c) leaving the suction cap inside the child's mouth for about 12 hours without informing anyone.

For this, the respondent could have been fined $4,000 or imprisoned for up to four years or both. I shall refer to the three acts set out above as "Act no.1" to "Act no.3".

3 It cannot be disputed that when Act no.1 was done, the respondent meant no harm to the child. She went against clear instructions, thinking that what she was doing would be more effective at clearing the child's phlegm. It was foolhardy but what she did in Act no.1 could hardly be called a wicked act in the sense of intentionally inflicting harm.

4 Act no.2 was really a consequence of Act no.1. The respondent added folly upon folly. While it might have been instinctive for her to use her fingers to reach into the child's mouth immediately to try to retrieve the dislodged suction cap, once bleeding started, common sense would have warned her that she should stop doing that. Instead, she compounded the situation by reaching further and forcefully into the poor child's mouth. At that point, she seemed oblivious to the pain, suffering and injury that she must have been causing. Blood was obviously oozing out and the alarm showed that the child's oxygen level was low. Any thinking adult, with or without basic medical knowledge, should have realised upon seeing such profuse bleeding that the method of

attempted retrieval was not only not working but was causing great harm to the child. At some point during the eight minutes or so of Act no.2, the respondent's actions changed from foolishness and ignorance into conduct that could properly be regarded as unthinking, uncaring and unconcerned and perhaps even unthinkable. It was as if the respondent was blinded by her single-minded desire to find and to pull out the lost suction cap and was not bothered at all by the obvious bleeding and what the helpless child must have been experiencing. This is the first blameworthy part of the respondent's conduct that morning.

5 In my view, the respondent's greatest culpability was in Act no.3 or her conduct after 9.21am on 23 November 2016. When the child's father called her on the phone after viewing the closed-circuit television monitor from his mobile phone, the respondent said nothing more than that there was "some blood" and then, a few moments later, gave the child's father the assurance that "everything was ok." If she had some regard for the child's well-being, she would have told the father that she accidentally dropped the suction cap into the child's throat and that it was still lodged inside. Instead, she appeared to have been content to just let things be. Any adult with common sense would know that it is dangerous to have even a piece of food stuck in one's throat. Therefore, to leave an object made of hard plastic measuring 4cm by 2cm, which cannot be digested or dissolved naturally, stuck in a child's throat and ignore it would be unthinkable to any adult. Moreover, this is a bedridden child requiring tender care. Her conduct could no longer be excused as sheer ignorance or foolishness. She did not tell anyone about the incident or call for help for the next 12 hours or so because "she was trying to hide her mistake" (as admitted by her at [26] of the Statement of Facts). Therein lies the respondent's real blameworthiness in this sad incident.

6 The respondent is therefore not being punished for being ignorant or unskilled in her work. She is being punished for her cold disregard of the child's safety and suffering which must have been evident to any ordinary adult in the situation that day. By her silence and suppression of the truth, the poor child was endangered and had to undergo prolonged pain and senseless suffering.

7 It is on this basis that I think the District Judge misapprehended the charge and the facts before him and wrongly analysed the case in essence as someone being punished simply because she was not equipped for a particular task. At the same time, I do not agree with the Prosecution that this case is as grave as the cited precedents where adult offenders wilfully or intentionally inflicted pain and suffering on child victims, often out of anger or annoyance, and in some instances, for a sustained period. I therefore do not think that the respondent should receive, in the Prosecution's words, a sentence of "at least 18 months' imprisonment".

8 In my judgment, doubling the imprisonment term imposed by the District Judge would be sufficient to serve the justice of this case. I allow the Prosecution's appeal and order that the respondent undergo eight months' imprisonment instead of the four-month term imposed by the District Judge.

Tay Yong Kwang
Judge of Appeal

Lee Lit Cheng and Teo Lu Jia (Attorney-General's Chambers) for the appellant;
Aylwin Tan (Mahmood Gaznavi & Partners) for the respondent.