Public Prosecutor v Norhisham Bin Mohamad Dahlan
[2003] SGHC 159

Case Number : CC 27/2003

Decision Date : 25 July 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Ng Cheng Thiam, Imran Hamid and Chong Li Min (Attorney-General's Chambers) for the prosecution; Selva K Naidu (Naidu Mohan & Theseira) [assigned] and Ayaduray Jeyapalan (Ganesha & Partners) [assigned] for the accused

Parties : Public Prosecutor — Norhisham Bin Mohamad Dahlan

Criminal Law – Offences – Culpable homicide – Section 304(a) read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Previous conviction for non-violent offences – Whether any bearing on sentence for violent offence

1 The accused Norhisham Bin Mohamad Dahlan ("the Accused") was charged with the offence of culpable homicide not amounting to murder under s 304(a) read with s 34 of the Penal Code. He pleaded guilty to the charge and I accepted his plea and convicted him.

2 After submissions on sentencing, I sentenced the Accused to imprisonment for a term of ten years with effect from the date of his arrest ie 30 June 2002 and 16 strokes of the cane. The Public Prosecutor has appealed against the sentence.

Background

3 On 30 May 2001, the Accused and seven of his friends were at 'Seven' discotheque at Mohammed Sultan Road 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 known as 'Sar Luk Kau' (literally meaning '369' in English) operating in Kallang Airport Road. When the discotheque closed at about 3am on 31 May 2001, the group proceeded to a nearby coffee shop along River Valley Road for snacks and drinks.

4 At the coffee shop, Syamsul and another person Sharulhawzi Bin Ramly ("Sharul") decided to launch a surprise attack on a rival secret society operating in the Boat Quay area. The plan was disseminated to the others while Syamsul, Sharul and the Accused directed the plan.

5 Sharul directed two of the persons in the group to proceed to "Rootz" discotheque at South Bridge Road to look for rival gang members. Upon confirmation of the presence of such gang members, the attack would take place. The two scouts then went to South Bridge Road. At about 4.20am, they confirmed by mobile phone that rival gang members were indeed present. The two scouts were also tasked to find two taxis as get-away vehicles for the entire group.

6 The other six members, including the Accused, proceeded in two taxis and alighted at Upper Circular Road. They walked along South Bridge Road looking out for members of their rival secret society to attack them.

7 In the meantime, the deceased Sulaiman Bin Hashim ("the Deceased") and his friend Muhammad Shariff Bin Abdul Samat ("Shariff") had gone to "Rootz" discotheque at Upper Circular Road. Shariff had been given four complimentary tickets to attend a party at this discotheque.

Whilst there, they met Mohamed Imran Bin Mohamed Ali ("Imran"). The three of them left "Rootz" discotheque at about 3am and proceeded to a 24 hour coffee shop at Circular Road for supper. At about 4.30am, they left the coffee shop for City Hall MRT Station. In doing so, they walked along South Bridge Road, past "Bernie Goes To Town" pub at 82 South Bridge Road.

8 It was at this point that the six members from '369', including the Accused, were walking on the other side of South Bridge Road, opposite "Bernie Goes To Town" pub. They walked past the Deceased and his party, crossed the road and came up behind them. Syamsul, Sharul and the Accused had knives with them. The Accused confronted the Deceased and the other two and asked them in Malay which gang they were from. Before a reply was given, all three were attacked. Shariff was stabbed but he and Imran managed to escape. The Deceased was not so lucky. He was repeatedly stabbed by Syamsul, Sharul and the Accused even after he collapsed onto the steps of the pub. The other three members in the meantime chased after Shariff and Imran and eventually returned to the scene of the crime.

9 The Accused and the others then left the scene in two taxis, after failing to locate the two get-away taxis which were supposed to have been ready for their get-away. They headed for the gang's rented flat at Tampines. Along the way, each of the two scouts were contacted on his mobile phone to return to the same location. Upon arriving at the flat, the six members cleaned themselves and talked about the assault. The Accused was seen trying to repair his knife which had been damaged.

10 In the meantime, a member of the public had called the police to inform them that a man was bleeding in front of the pub.

11 The post mortem report stated that the Deceased had sustained a total of 13 stab wounds. The cause of death was certified as "stab wounds to the neck and chest". Shariff was admitted to Singapore General Hospital on 31 May 2001 as he had sustained a 1.5 cm wound on the right side of the chest caused by a knife. He was discharged on 2 June 2001. Imran did not sustain any injury from the attack.

12 The Accused was born on 18 May 1980. At the time of the offence, he was 21 years of age. He attended school until Primary 5 when he dropped out of school. He then began to work and held various jobs. At the time of the offence, he was working as a bouncer at a music lounge. He had been on the run in Malaysia since 31 May 2001. He was arrested on 30 June 2002.

13 The Deceased was born on 4 June 1983. At the time of the offence, he was 17 years of age. He was a student of the Institute of Technical Education and was a national youth soccer player.

The provisions

14 Section 304(a) of the Penal Code states:

> 304. Whoever commits culpable homicide not amounting to murder shall be punished -
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> (a) with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to caning, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

15 Section 34 of the Penal Code states:

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

The submissions and my reasons

16 The defence submitted that it was not the Accused who suggested the attack. Although the Accused agreed with the suggestion, he had thought that the attack would merely be with arms and legs. The Accused was carrying a small flick knife whose blade was about 5 inches long. He did not intend to cause the death of the Deceased and he felt he did not cause the fatal injury. He carried his knife for his own protection as he was working as a bouncer and he was afraid of reprisals. The Accused had no previous conviction for any crime of violence and this was the first time he was involved in a gang fight. The Accused had pleaded guilty. Five of the Accused's accomplices who had been caught and dealt with received the following sentences:

	Name	Charge	Sentence
(a)	Muhamad Hasik Bin Sahar	s 304(a) r/w s 149	life imprisonment + 16 strokes
(b)	Khairul Famy Bin Mohd Samsudin	s 325 r/w s 149	7 years + 12 strokes
(c)	Fazely Bin Rahman	s 325 r/w s 149	7 years + 12 strokes
(d)	Mohammad Fahmi Bin Abdul Shukor (one of the scouts)	s 109 r/w s 34 & s 147	3 years + 6 strokes
(e)	Mohammad Ridzwan Bin Samad (one of the scouts)	s 109 r/w s 34 & s 147	3 years + 6 strokes

17 The defence relied on the principles enunciated in *PP v Tan Kei Loon Allan* [1999] 2 SLR 288 which I shall elaborate on later.

18 The prosecution submitted the following as aggravating factors:

(a) The Accused and his accomplices were members of a secret society.

(b) The Deceased had sustained 13 stab wounds to his head, neck, shoulder, back and limbs. The numerous injuries showed that the Accused and his accomplices had no concern for human life.

(c) The attack was premeditated. It was senseless as the Deceased and his friends were not given an opportunity to respond when questioned, before they were attacked.

(d) The attack was in a public area which locals, expatriates and tourists go to especially during week-ends.

19 The prosecution referred to the judgment of Sharma J in *Tan Bok Yeng v PP* [1972] 1 MLJ 214

which involved the crime of robbery. At p 215, Sharma J said:

> The second accused was 20 years of age while the appellant was 25 years at the date of the commission of the crime. I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of the youth alone is capable of performing and producing. …

20 The prosecution also relied on *Regina v Secretary of State for the Home Department, Ex parte Hindley* [1998] QB 751 where Lord Bingham CJ said, at p 769B:

> …I can see no reason, in principle, why a crime or crimes, if sufficiently heinous, should not be regarded as deserving lifelong incarceration for purposes of pure punishment.

In my view, this statement was taken out of context by the prosecution. That was a case involving murder and the issue there was whether it was unlawful for a whole life tariff to be set in any case.

21 Paragraph 16 of the prosecution's submission stated that cases involving senseless attacks on innocents resulting in the death of the victim should attract life imprisonment. Paragraph 18 of the same submission stated that the sentence should be "sufficiently long to deter other like-minded persons".

22 Ultimately, the prosecution relied heavily on the sentence meted out to one of the Accused's accomplices Muhamad Hasik Bin Sahar ("Hasik"). As mentioned above, he received a sentence of life imprisonment and 16 strokes of the cane whereas others received much less. However, the others were not charged under s 304(a) as was Hasik and the Accused before me.

23 The prosecution submitted that the Accused's role was more aggravating than Hasik's because the Accused had used a knife whereas Hasik did not. I would add that in the judgment of Tay Yong Kwang JC (as he then was), the judge recognised that Hasik's culpability might have been lower than that of Syamsul, Sharul and the Accused (see [2002] 3 SLR 149 at p 156, para 8).

24 I found the views expressed by the Court of Appeal in *PP v Tan Kei Loon Allan* very helpful. In that case, the accused was also charged under s 304(a) of the Penal Code. The background facts were that the accused was a member of a secret society. He and other members of their secret society were assaulted at Bugis Junction by members of another secret society, the Sio Gi Ho Secret Society. Being outnumbered, they dispersed and later agreed to reconvene at Parklane Shopping Centre the same night. The accused bought 2 knives. He kept one and handed the other to one of his gang members. At Parklane Shopping Centre, some gang members of the accused's secret society confronted the deceased and asked him what gang he belonged to. The deceased replied he was a member of the Sio Gi Ho Secret Society. Thereupon three members of the accused's gang assaulted the deceased while one stood guard and warned the deceased's two friends not to interfere. Two other members of the accused's gang then arrived at the scene and joined in the assault. The deceased fell to the ground and covered his head. At this point, the accused, armed with a knife, came running and called to the others to clear a way for him. He rushed in and stabbed the deceased once in his lower back. This inflicted a deep wound which caused the deceased's death en route to hospital. There was no evidence that the deceased had participated in the earlier attack on the accused and his friends at Bugis Junction.

25 In the High Court, the prosecution sought a deterrent sentence ie life imprisonment and 24 strokes of the cane on the grounds that:

(a) the injuries were very serious,

(b) there was no provocation by the deceased,

(c) the attack took place in public,

(d) the deceased was outnumbered and defenceless,

(e) the accused was a secret society member,

(f) the accused had been armed with a dangerous weapon, and

(g) though the accused had pleaded guilty, the protection of the public was an important exception to the one-third discount rule.

26 The High Court in that case was of the view that senseless warfare by one gang against another must meet with severe disapproval "but they should not be equated with situations where hoodlums loot and shoot completely innocent bystanders without giving a hoot". However, it also took into account the absence of antecedents, the fact that the accused had surrendered himself and his plea of guilt. In the circumstances, the High Court sentenced the accused there to seven years' imprisonment and nine strokes of the cane. The Court of Appeal enhanced the sentence of imprisonment to ten years, being the next highest sentence, and the caning to 15 strokes of the cane. Before doing so, Justice Lai Kew Chai, delivering the judgment of the Court of Appeal said, at paras 36 to 40:

> 36 On the question whether a sentence of life imprisonment was appropriate, we were naturally impressed by the implications of our decision in *Abdul Nasir.* Certainly, even with R119A, a sentence of life is now much harsher than it was before our ruling in *Abdul Nasir*. Whereas an accused person previously would serve a maximum sentence of 20 years, with a potential remission commuting his sentence to one of 13 years and 4 months, he must now serve a minimum of 20 years' imprisonment, at which point his release would be within the discretion of a Life Imprisonment Review Board. So, the minimum period of incarceration is now six years and eight months longer, whilst the maximum period of incarceration, previously 20 years, is now the remainder of the prisoner's natural life. In this context it is equally important to note that under the old position, his release after 20 years would have been guaranteed, but a prisoner sentenced for life in respect of a crime committed after *Abdul Nasir* has no such peace of mind.
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> 37 In that respect, we are of the view that the courts must now exercise caution before committing a young offender to life imprisonment. Contrary to traditional reasoning, in similar cases involving a youthful offender on the one hand and an older offender in the other, the youthful offender sentenced to life imprisonment would now be subject to a longer period of incarceration than an older offender, assuming they both lived to the same age.
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> 38 This case highlights one consequence of our decision in *Abdul Nasir* where youthful offenders are concerned. With the life sentence now being a sentence for the remainder of the convicted person's natural life, the range of sentencing options are very limited. If the trial judge does not wish to impose a sentence of life imprisonment (which carries a minimum of 20 years, but which, as in the present case, may extend to over 50 years), he must impose a sentence of up to ten years' imprisonment (which, with remission, would amount to a sentence of up to seven years' imprisonment).
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> 39 In serious cases the court must choose between the two options for a weighty sentence: ten

years or life imprisonment. Under the old position, the effective choices would be up to seven years' imprisonment (after remission) or about 13 years' imprisonment for a 'life sentence' (after remission), a gap of about six years. Without remission, the gap would be ten years. Now, the gap is very much wider. Even assuming a positive outcome after review by the Life Imprisonment Review Board, the gap between the sentencing options is between 7 and 20 years, more than double the old position. Assuming a negative outcome by the Review Board, or that the sentence was not commuted, the gap widens. In the present case, the gap is 44 years (the difference between 10 years and 54 years). There is no discretion for the court to impose a sentence of more than ten years, but less than life imprisonment. This compares to the position in England, where, in respect of manslaughter (murder without intent), the court has a discretion to impose a sentence up to and including a sentence for life (see the English Offences Against the Person Act 1861, s 5, as amended by the Criminal Justice Act 1948).

40 In a situation in which the court is desirous of a sentence greater than ten years, but feels that a sentence of life imprisonment is excessive, we have no choice but to come down, however reluctantly, on the side of leniency. Otherwise, the punishment imposed would significantly exceed the offender's culpability. It would, in our view, be wrong to adopt an approach in which the court would prefer an excessive sentence to an inadequate one.

27 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.

28 In the circumstances, I was of the view that the aggravating factors mentioned by the prosecution meant that this was one of those serious cases where I had to choose between ten years or life imprisonment. However, it did not follow that a sentence "sufficiently long to deter other like-minded persons" must necessarily mean the maximum sentence. I was not persuaded by the court's decision in respect of Hasik that such a sentence was appropriate in the case before me. In my view, the main reason why Tay JC imposed life imprisonment there was because Hasik had previously been convicted of the offence of voluntarily causing hurt by dangerous weapons or means under s 324 read with s 24 of the Penal Code. Tay JC said, at paras 8 to 9:

8 The accused was 21 years old at the time of the offence. He turned 22 in February this year. He has pleaded guilty and that shows some remorse on his part, belated as it is. However, I have heard nothing that suggests that he felt remorse or even unease during the two weeks or so after the incident. Indeed, as the prosecution has said, he denied any involvement when questioned by the police. *He has a 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'.

9 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*. He is relatively young but was hardly a juvenile at the time of the offence. Those who feel victorious in being vicious and who have no qualms about the annual

> celebration of one's birth culminating in the untimely death of another will have to spend all subsequent birthdays within prison walls until such time as they are eligible for parole. There, hopefully, they will begin to learn to appreciate and value another human being's life.
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> [Emphasis added]

The sentence for Hasik was upheld by the Court of Appeal.

29 Although I was of the view that the Accused's culpability was greater than Hasik's, the Accused had no previous conviction for violent offences. His previous convictions were :

	Date	Offence	Sentence
(a)	1/7/97	S.379A C.224 Theft of motor vehicles or component parts read with s 34 C 224 common intention	Imprisonment and disqualified from driving 15 months. 60 months all classes. First of series commenced on 20/5/97
(b)	1/7/97	S.379A C.224 Theft of motor vehicles or component parts read with s 34 C 224 common intention	Imprisonment and disqualifed from driving 15 months. 60 months all classes concurrent with DAC10831/97
(c)	1/7/97	S.8(B) C.185 Consumption of a controlled drug punishable under s 33(3) C 185 Punishable	Imprisonment only. 9 months consecutive with DAC10831/97
(d)	1/7/97	S.35(1) C.184 Fraudulent possession of property	Fine only S$1,500.00 in default 3 weeks (not paid) consecutive with DAC10831/97

30 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 v PP* [1999] 2 SLR 211.

31 In the circumstances, I was of the view that life imprisonment would not be appropriate and I sentenced the Accused to the next highest punishment of ten years with 16 strokes of the cane.

Accused convicted.