

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 8

Criminal Appeal No 15 of 2016

Between

DEWI SUKOWATI

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

EX-TEMPORE JUDGMENT

[Criminal procedure and sentencing] — [Sentencing] — [Culpable homicide]

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Dewi Sukowati
v
Public Prosecutor

[2017] SGCA 8

Court of Appeal — Criminal Appeal No 15 of 2016
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
16 January 2017

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the sentence of 18 years' imprisonment that was imposed by the High Court on the accused person, a domestic helper, for causing the death of her employer ("the deceased"). The accused pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed). She committed the homicide by hitting the back of the deceased's head forcefully against a wall and then, in an attempt to conceal the fact of her attack, she pushed the deceased who was unconscious but still alive at that time, face down into a swimming pool to give the impression that the deceased had committed suicide by drowning. While dragging the deceased's body towards the swimming pool, the accused also slammed the back of the deceased's head against the edge of a step in anger. The medical evidence is that the cause of death was drowning contributed by head injuries, although the head injuries alone were sufficient in the ordinary course of nature to cause death.

Facts

2 The facts are set out in the Statement of Facts (“SOF”) which the accused admitted to. It states that the accused, who was 18 years old at the time of the offence, is a female Indonesian who started working for the deceased as a domestic helper on 14 March 2014. The deceased was a female Singaporean, and was 69 years old at the time of her death. At the material time, both of them lived at the deceased’s home, which was a bungalow with a swimming pool.

3 At about 7.30am on the morning of 19 March 2014, just the sixth day of the accused’s employment, the accused was summoned by the deceased and asked to bring her a glass of water. The accused brought a glass of warm water on a tray to the deceased’s bedroom, and knocked on the door. The deceased opened the door, and then proceeded to scold the accused in Bahasa Indonesia saying, “*Salah lagi, salah lagi, dasar gadis bodoh, apa pun tak tahu*”, which means “wrong again, wrong again, very stupid girl, don’t know anything”. The accused had apparently delivered the glass of water on the wrong type of tray, contrary to the previous instructions that had been given by the deceased.

4 The deceased then splashed the water in the glass onto the accused’s face and threw the tray onto the floor. The accused squatted down to pick up the tray. However, the deceased snatched the tray from the accused’s hand and hit the left rear side of the accused’s head with the base of the tray. The accused was still in a squatting position while the deceased was bending over in front of her. The deceased continued scolding the accused, saying in Bahasa Indonesia, “*Sudah saya bilang lupa lagi salah lagi, kalu kayak gini saya potong gaji kamu jadi dua ratus*”, which means “I’ve already told you, you

forget again, you make mistakes again, I will cut your salary until it becomes \$200”.

5 Paragraphs 7 to 9 of the SOF narrate what transpired next, and bear setting out in full:

7 At this point, the Accused lost control of herself and suddenly grabbed hold of the Deceased’s hair with both the Accused’s hands and swung the Deceased’s head against the wall on her right with all the strength that the Accused had. The Accused had intended for the front of the Deceased’s head to hit the wall. However, the Deceased resisted and the back of her head hit the wall instead. As a result of the blow against the wall, the Deceased collapsed, unconscious and bleeding profusely from the back of her head. The Deceased lay face down on the floor, with her left arm bent near her head, her right arm stretched to the back and both legs straight out.

8 The Accused was frightened. Initially, she did not know whether the Deceased was alive or merely unconscious. Confused, she stood up and squatted down a few times, thinking about what she had done. After about ten minutes, the Accused flipped the Deceased’s body over to a supine position, so that she could check if the Deceased was still breathing. The Accused could not see whether the Deceased was breathing, and placed her right ear on the Deceased’s chest. The Accused could hear the Deceased’s heart beating weakly.

9 The Accused was worried that if the Deceased woke up and called the police, she would be arrested. She then decided to place the Deceased’s body in the swimming pool of the House so that the Deceased would drown and not be able to call the Police.

6 The SOF goes on to narrate that the accused then dragged the deceased’s supine body by the hair towards the swimming pool. The accused reached a ceramic-tiled step on the way to the swimming pool. Recalling the daily scolding and criticism that she had endured from the deceased, the accused became angry again and grabbed the hair of the deceased and

slammed the back of her head against the edge of the step. Even more blood flowed from the deceased's head as a result of this.

7 She continued to drag the deceased's body towards the swimming pool. Along the way, there were a few more steps and the accused grabbed the deceased by her pyjamas and dragged the deceased's body down the steps. The deceased's head and body hit against the steps repeatedly in the process.

8 When the accused eventually arrived at the swimming pool, she placed the deceased's body parallel to the edge of the swimming pool before flipping the deceased face down into the swimming pool. The accused then returned to the deceased's room to retrieve the deceased's sandals, and threw the sandals into the swimming pool to give the impression that the deceased had committed suicide by drowning herself in the pool.

9 The accused returned to the interior of the house, and cleaned the trail of blood from the deceased's bedroom to the swimming pool by mopping the floor several times. She used a cloth to wipe away the blood stains on the wall against which she had initially swung the deceased's head. She also threw away every blood-stained item that she saw in the house. The accused changed into a new set of clothes because the clothes that she had been wearing had become stained with the deceased's blood. The accused then soaked her blood-stained clothing in a pail to get rid of the stains.

10 After the accused thought that she had cleaned off all traces of blood, she left the house and rang the doorbell at the neighbour's house. Before the neighbour could answer the door, a despatch rider rode past. The accused told him in English, "Help me, my employer is in the swimming pool." The both of them then proceeded to the pool and the despatch driver called the police.

While waiting for the police, the accused started to break down and cry. She was arrested after the police arrived shortly thereafter and was placed in remand the same day.

Medical evidence

11 The forensic pathologist, Dr Wee Keng Poh, certified in his autopsy reports that the cause of death was “drowning *contributed by* contused brain *due to* fractured skull”. He noted that it was dangerous for the deceased to have been pushed into the pool after the head injuries she had sustained and that this act, in all likelihood, caused her death. However, he was also of the opinion that even if the deceased had not been thrown into the pool, she would have died from her head injuries which were sufficient in the ordinary course of nature to cause death.

12 The psychiatric reports of Dr Kenneth Koh of the Institute of Mental Health set out details of the accused’s background and personal circumstances as well as her mental state at the time of the offence.

13 In relation to the accused’s background, the psychiatric reports reveal that the accused is from a rural village in Central Java, Indonesia. She came to Singapore to work as a domestic helper when she was 17 years old. She entered the country with a passport that falsely understated her year of birth and only received one day’s training before she was sent to the deceased’s home. The accused’s account of the events leading to the offence, as reported by Dr Koh, is that she was subjected to verbal and physical abuse by the deceased from the first day of her employment. According to the accused, the deceased was demanding and scolded her, poked her head, hit her with a broomstick and once kicked her on the back when she was helping the

deceased to strap on her shoes. On the night before the homicide, the deceased had used a plate to hit the accused's fingers and scolded her for not being able to work.

14 On the accused's mental state, Dr Koh noted that she had no psychotic features and that her mood was not overtly depressed. She was fit to plead as she was not of unsound mind at the time of the offence; she was still aware of her actions and knew that they were wrong. Nevertheless, he assessed that the accused suffered from an Acute Stress Reaction, in accordance with the classification in the 10th revision of the International Statistical Classification of Diseases and Related Health Problems ("ICD-10"), at the "moment of the offence". This condition, in addition to the other "socio-cultural factors" in the case – namely her young age, sudden exposure to a different culture, lack of proper training, a past history of abuse by her father and the deceased's further abuse – interacted with the sudden assault by the deceased on the morning of the offence and brought about an abnormality of mind which in Dr Koh's opinion qualified her for the partial defence (to a charge of murder) of diminished responsibility, under Exception 7 to s 300 of the Penal Code. Dr Koh also opined that the accused had a good prognosis from a psychiatric viewpoint.

Applicable sentencing principles and precedents

15 We begin with the observation that has been made in previous cases of culpable homicide that the sentencing inquiry in these cases must always be fact sensitive given the wide variety of circumstances in which these offences are committed (see *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [55]).

16 Subject to this overarching observation, we note that previous sentencing decisions involving homicides by domestic helpers broadly fall into two clusters. First, there are a number of cases in which the sentences imposed by the court have ranged between 10 and 13 years. These cases include the following:

(a) In *Public Prosecutor v Tuti Aeliyah* (CC 29/2015, unreported), a sentence of 12 years' imprisonment was imposed on a 30 year old domestic helper who caused the death of her employer's 16 year old daughter. The offender was found to be suffering from severe depression with psychotic symptoms, namely paranoid persecutory delusions and auditory hallucinations. Her mental illness was found to have impaired her judgment at the material time and she had also tried to take her own life after the offence.

(b) In *Public Prosecutor v Than Than Win* (CC 34/2015, unreported), a sentence of 13 years' imprisonment was imposed on a 25 year old domestic helper who caused the death of her employer's 87 year old mother-in-law. The offender was enraged after the deceased scolded her and stabbed the deceased repeatedly using a pair of scissors, inflicting no less than 13 stab wounds. After the offence, the offender tried to commit suicide. She was diagnosed as suffering from a severe depressive disorder with psychotic symptoms and it was found to be highly likely that her judgment was significantly impaired at the material time.

(c) In *Public Prosecutor v Yati* (CC 63/2015, unreported), a sentence of 10 years' imprisonment was imposed on a 22 year old domestic helper who caused the death of her employer's 76 year old

mother who was wheelchair bound. The offender suffered from a major depressive disorder with mood-congruent psychotic features and decided to kill the deceased after she developed the notion that this would please her employer's wife. She committed the offence by suffocating the deceased with a pillow while the deceased was asleep.

17 We are satisfied that these cases, which the accused relied on, can all be distinguished on the ground that they involved offenders who were suffering from severe mental disorders with psychotic symptoms. In such circumstances, deterrence plays little, if any, role in sentencing and the imprisonment terms that are imposed tend to be driven primarily by considerations of protection and rehabilitation (see *Lim Ghim Peow* at [35] and [36]).

18 The accused also placed reliance on *Public Prosecutor v Rohana* [2006] SGHC 52 ("*Rohana*"). There, the offender was a 21 year old domestic helper who hit her female employer on the forehead with a large crystal ornamental stone after a scuffle between them. The employer tried to call for her daughter, who was sleeping. Fearing that the daughter would awaken and call the police, the offender killed the employer by striking her repeatedly with the ornamental stone and strangling her. She was sentenced to 10 years' imprisonment. At the time *Rohana* was decided, however, the sentencing range that was available to the court under s 304(a) of the Penal Code (Cap 224, 1985 Rev Ed) was limited to a term of imprisonment of up to 10 years or life imprisonment. Hence, the sentencing judge was forced to decide between two options neither of which appeared to be apt. A term of 10 years' imprisonment might be insufficient, while life imprisonment might be excessive. Faced with two imperfect options, the Judge chose the less unsatisfactory course and ruled out life imprisonment which would have been

crushing. The courts no longer face the identical dilemma following the amendment of s 304(a) in 2008 to increase the sentencing range by permitting the imposition of a term of imprisonment of up to 20 years as an alternative to life imprisonment. Thus we agree with the Prosecution that *Rohana* must be regarded as no longer relevant to the sentencing framework applicable today when sentencing under s 304(a) (see *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699 (“*Vitria*”) at [21] to [23]).

19 We turn to the second set of precedents. In these cases, the sentences have tended to cluster around either a term of imprisonment of around 20 years’ or life imprisonment. These are cases generally involving premeditation and where the interests of deterrence do enter the sentencing matrix. These are as follows:

(a) In *Purwanti Parji v Public Prosecutor* [2005] 2 SLR(R) 220 life imprisonment was imposed on a 17 year old domestic helper. This was a case decided before the sentencing range was amended. The offender became angry with the deceased, a 57 year old female, for scolding her and strangled the deceased to death while she was asleep. The offender then slit the deceased’s hand and placed a knife next to the body to make it look like the death was a suicide. The court noted that there was premeditation, and that the deceased was vulnerable as she had been attacked while asleep. There was no evidence of physical abuse and it was found that the offender was likely to reoffend. She was also not found to be suffering from any mental abnormality.

(b) In *Public Prosecutor v Barokah* [2008] SGHC 22 (“*Barokah*”). life imprisonment was imposed on a 26 year old domestic helper who caused the death of her 75 year old employer. This also was a pre-

amendment case. The offence was sparked by a struggle between the deceased and the offender which sprang from the deceased scolding the offender for leaving the flat late at night. The deceased fainted during the struggle and the accused then carried her, whilst unconscious, and pushed her out of the window. The offender was diagnosed with depression and dependent personality disorder; but the court found that the killing was deliberate as the offender had time to reflect on the incident after the deceased became unconscious and the act of pushing the deceased out of the window was not an act in “a continuum of the struggle” (*Barokah* at [57]). There was also no ill-treatment of the offender and the court found that it was likely that she would reoffend.

(c) In *Vitria*, a term of 20 years’ imprisonment was imposed on a 16 year old domestic helper who caused the death of her 87 year old female employer. The offence was committed five days into the offender’s employment in the course of which time she had been reprimanded and insulted by the deceased for her lapses at work; but there had been no physical abuse. The offender became angry and killed the deceased by smothering her with a pillow. To mask her crime, she attempted to make it seem that the deceased had died after slipping. She was not found to suffer from any mental illness. The court found that the killing was premeditated and that there were no real mitigating factors apart from the offender’s age.

(d) In *Public Prosecutor v Nurhayati* (CC 29/2012, unreported), a sentence of 20 years’ imprisonment was imposed on an 18 year old domestic helper who cause the death of her employer’s 12 year old child by pushing her over a parapet wall. The deceased was vulnerable

as she was not only young but also suffered from various ailments including scoliosis, and part of the offender's duties was to take care of the deceased. The offender killed the child after she became angry with her employer for frequently reprimanding her and wanted to exact vengeance. There was no history of physical abuse and, although the offender was diagnosed with having an adjustment disorder with depressed mood, it was found that this did not affect her ability to form a rational judgment or to exercise willpower to control her actions in accordance with that judgment.

Our decision

20 Against the backdrop of that consideration of the precedents, we turn to the facts before us. The SOF is clear that the *initial assault* occurred because of a loss of control and the medical evidence suggests this was carried out when the accused was affected by an Acute Stress Reaction. But there was a pause after the deceased fell unconscious, and paragraphs 8 and 9 of the SOF (see [5] above) make clear that the accused inflicted further injuries on the deceased and that she did so to ensure that the deceased would die so that she would not be able to report the initial assault. At the time the accused did this, she had no idea whether the injury already inflicted was sufficient to kill the deceased and it is evident that her further actions were taken specifically to ensure that the deceased would die. The charge against the accused also recites the subsequent assault, where she viciously slammed the back of the deceased's head against the edge of a step, as part of the incident that led to the deceased's death. In the circumstances, we are satisfied that there was sufficient premeditation and deliberateness to treat this as a case falling within the second broad set of cases.

21 We emphasise that premeditation, which implies a degree of forethought and calculation that goes *beyond* the *mens rea* of the offence, can develop even in a short span of time and in cases where the offence is preceded by spontaneous events. An example of this would be cases where a first crime is committed without premeditation but the offender goes on to deliberately commit further offences to cover his tracks. The present case is such an instance. The following observations by the High Court in *Barokah* are apposite (at [57]):

... Wee, the victim, was not only an elderly woman of 75 years of age, she was unconscious and completely at the accused's mercy at the material time. The altercation and the fight between the two women were over. Wee had been decisively defeated and lay on the floor unable to move or even to shout for help. *The accused had time to recover and reflect on the incident. I accepted that she did not plan before the altercation and fight to kill Wee that morning. However, as the courts have noted, intention can be formed on the spur of the moment.* Throwing any person, let alone a completely helpless, unconscious elderly woman, down from the ninth storey to die on impact shows how cold-blooded and dangerous the killer must be, even after taking into account the diagnosis of depression, whether severe or moderately so. It was undisputed that the accused could still tell the difference between right and wrong when she committed the horrendous act. *It must be emphasized that the act of pushing Wee to her death was not a continuum of the struggle, unlike the situation where one party pushes the other over a ledge or a balcony in the heat of a fight. The fight was over and the opponent as it were was knocked out.*

[emphasis added]

This too is a case where the accused, after the initial assault which rendered the deceased unconscious, knew that the deceased was still alive and because of that consciously acted to end her life as part of an ill-conceived plan to avoid arrest.

22 We accept that the accused's level of premeditation was perhaps not as significant as in some of the cases in which sentences of 20 years' imprisonment or life imprisonment have been imposed. There are also mitigating factors present such as the provocation by the deceased, the accused's mental condition at the time of the offence and her youth and personal circumstances. But the High Court Judge did take into account these factors in imposing the sentence of 18 years' imprisonment (see *Public Prosecutor v Dewi Sukowati* [2016] SGHC 152 at [55] and [56]).

23 In all the circumstances, we do not think the sentence imposed was wrong in principle or manifestly excessive. We therefore dismiss the appeal.

Sundaresh Menon
Chief Justice

Judith Prakash
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Mohd Muzammil Bin Mohd (Muzammil & Company) for the
appellant; and
Mohamed Faizal and Teo Lu Jia (Attorney-General's Chambers) for
the respondent.
