

Public Prosecutor v Mohamed Ridwan Bin Omar and Others
[2003] SGHC 49

Case Number : CC 7/2003

Decision Date : 05 March 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Hamidul Haq, Tai Wei Shyong and Cheok Yu-Liang (Deputy Public Prosecutors) for the Public Prosecutor; Ismail Hamid (Ismail Hamid & Co) for first accused; Shashi Nathan and Howard Cheam (Harry Elias Partnership) for the second accused; Third accused in person; Paul (Paul, Tan & Harbans) for the fourth accused; S S Dhillon and Terrence Hua (Dhillon Dendroff & Partners) for the fifth accused

Parties : Public Prosecutor — Mohamed Ridwan Bin Omar; Mohd Ashik Bin Zainuddin; Mohamed Helmie Bin Abdullah; Norizan Bin Tahir; Samsul Ariffin Bin Samsudi

Criminal Law – Offences – Grievous hurt – Use of dangerous weapon – Common object of unlawful assembly – Penal Code (Cap 224, 1985 Rev Ed) ss 149, 326

Criminal Procedure and Sentencing – Sentencing – Section 326 offences – Factors taken into account when sentencing – Penal Code (Cap 224, 1985 Rev Ed) s 326

1 Each of the five accused persons is charged with having committed an offence under s 326 of the Penal Code, by virtue of s 149 of the Penal Code. The offence under s 326 of the Penal Code is one of voluntary causing grievous hurt by means of any instrument which, used as a weapon of offence, is likely to cause death.

2 The five accused persons were involved in an attack on one Zulkefelee Bin Md Nor and two of his friends at about 2.23am of 5 February 2002 outside Legenda Karaoke Lounge at 441 Joo Chiat Road. At the time of the attack, Zulkefelee and his friends were merely squatting at a five foot way fronting the lounge. The attack involved the use of knives and wooden poles and, as a result of the attack, Zulkefelee was killed.

3 In mitigation, it was stressed that none of the accused had inflicted the two fatal stab wounds. It was also suggested that the accused persons did not know that other members of their group had knives. Also none of the accused persons was the mastermind behind the attack. Four of them did not know the reason for the attack while the mitigation plea of the fourth accused Norizan Bin Tahir suggested that he might have been aware of the reason which was a problem between the deceased and the deceased's girlfriend. Even then he did not say that he knew what the specific problem was.

4 As for antecedents:

(a) the first accused Mohamed Ridwan Bin Omar had been convicted on 28 December 1999 of an offence of affray but was punished with a fine only,

(b) the other accused persons either had antecedents which were not relevant or no antecedent.

5 On the other hand, even if none of the accused persons knew that other members of their group had knives, they all knew that some members of their group were armed with wooden poles. They must have known, before the attack on the deceased and his friends, what the common object was and that death may be caused, which unfortunately turned out to be the case. Although none of the accused persons inflicted the fatal wounds, they facilitated the act of others who did so.

6 The fact that the accused persons did not even know the actual reason for the attack emphasises how senseless their actions were.

7 In *Shamsul bin Abdullah v Public Prosecutor* [2002] 4 SLR 176, Chief Justice Yong Pung How cited with approval the following factors from Practitioners Library - Sentencing Practice in the Subordinate Courts (2000) as relevant in sentencing under s 326 of the Penal Code: (a) seriousness and permanence of injuries, (b) group action, (c) premeditation, (d) weapon used, (e) vulnerability of victim, (f) whether offender was in a position of authority, (g) racial motivation and (h) prior record of violence.

8 I would add that whether an accused pleads guilty or claims trial and whether an accused surrenders himself should also be relevant factors in sentencing.

9 In the circumstances,

(a) I sentence Mohamed Ridwan Bin Omar to eight years' imprisonment and eight strokes of the cane. The sentence of imprisonment is to run from the date of his arrest i.e 5 February 2002.

(b) I sentence Mohd Ashik Bin Zainuddin to seven and a half years' imprisonment and eight strokes of the cane. The sentence of imprisonment is to run from the date of his arrest i.e 5 February 2002.

(c) I sentence Mohamed Helmie Bin Abdullah to eight years' imprisonment and eight strokes of the cane. The sentence is to run from the date of his arrest i.e 6 August 2002.

(d) I sentence Norizan Bin Tahir to eight years' imprisonment and eight strokes of the cane. The sentence is to run from the date of his arrest i.e 17 November 2002.

(e) I sentence Samsul Ariffin Bin Samsudi to eight years' imprisonment and eight strokes of the cane. The sentence is to run from the date of his arrest i.e 17 November 2002.

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