

Public Prosecutor v Mohammad Zam bin Abdul Rashid
[2006] SGHC 168

Case Number : CC 20/2006
Decision Date : 21 September 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Imran Abdul Hamid and Muhamad Imaduddin (Deputy Public Prosecutors) for the Prosecution; Andy Yeo, Lim Dao Kai and Jesslyn Chia (Allen & Gledhill) for the accused
Parties : Public Prosecutor — Mohammad Zam bin Abdul Rashid

Criminal Procedure and Sentencing – Sentencing – Culpable homicide not amounting to murder – Whether accused should be sentenced to a term of life imprisonment or imprisonment up to 10 years

21 September 2006

Tay Yong Kwang J:

The facts

1 The accused is now 45 years old. He pleaded guilty to the following charge of culpable homicide under s 304(a) of the Penal Code (Cap 224, 1985 Rev Ed):

That you, **MOHAMMAD ZAM BIN ABDUL RASHID**, on the 2nd day of December 2005, at about 1.37a.m., at Block 1 Dover Road #05-314, Singapore, did cause the death of one Ramona Binte Johari, female, then 37 years old, when you used your hands, an alarm clock, a standing fan, an ironing board and others, to assault her, in particular, to her face and head areas, which acts which caused her death were done with the intention of causing such bodily injury as is likely to cause death, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under section 304(a) of the Penal Code, Chapter 224.

The punishment provided by s 304(a) of the Penal Code is life imprisonment or imprisonment for up to ten years. In addition, the accused may also be fined or caned. I sentenced him to life imprisonment but did not order caning.

2 Before the incident set out in the charge, the accused was a caretaker in a condominium. He was educated up to primary six level. The flat at Dover Road ("the flat") is a two-bedroom Housing and Development Board flat. At the material time, the accused resided therein with his wife (the lady victim mentioned in the charge) ("the deceased"), her 13-year-old nephew and the accused's younger brother, a divorcee, who had been granted permission by the deceased to live in the flat. The deceased was a production operator. The flat belonged to her. The accused and the deceased were married for some eight years. They were childless. Before marrying the deceased, the accused was previously married and he has a teenage son from that earlier marriage. However, he did not maintain contact with his son.

3 The accused has a twin brother ("Ramziz"). Ramziz said in a conditioned statement made in June 2006 that there were altogether seven siblings in the family, of whom the accused and he were the fourth and fifth eldest. He said that most of the siblings were estranged from the accused. Their parents passed away a few years ago.

4 On 1 December 2005, the deceased returned to the flat and prepared dinner. After dinner, she, her nephew and the accused's younger brother watched television. Later, the two males went to sleep, leaving the deceased watching television alone. The nephew occupied the bedroom next to the corridor while the accused's younger brother slept in the kitchen area.

5 At about 1.00am on 2 December 2005, the nephew was roused from his sleep by someone shouting very loudly in the corridor outside the flat. He climbed onto the upper deck of the double-decker bed that he was sleeping on and saw the accused picking up shoe boxes and throwing them downstairs. The accused then entered the flat and walked past the nephew's bedroom into his and the deceased's bedroom. He shouted vulgarities at the deceased who cried. The nephew went out of his bedroom to see what was happening. He saw the deceased seated on the floor next to her bed with the accused standing near her, slapping and punching her face. The accused then picked up an alarm clock, weighing some 200g from the dressing table and threw it forcefully at the deceased's face. Blood appeared on her face upon impact. The accused continued to punch her face while she begged him to stop.

6 The accused next picked up a floor fan, weighing some 8.5kg, pulled the plug out of the socket and, using both hands, lifted it over his head and threw it at the deceased's face while she was still seated on the floor. The deceased bolted out of the bedroom into the bathroom in the kitchen and locked the bathroom door. The accused followed and kicked the bathroom door open. He then grabbed her by her hair and pulled her out. As he pulled her back towards their bedroom, the deceased's body hit the door of the kitchen cabinet, causing it to be dislodged. When he released his hold on her hair, she ran back into their bedroom. The accused pursued her and resumed punching and slapping her head and face, while shouting vulgarities at her. She begged him again to stop the assault. She then managed to run out of the bedroom into the living room and sat down on a sofa. The accused's younger brother had left the flat by then.

7 The accused went after the deceased again. He held onto the nape of her neck and smashed her head down onto the wooden armrest of the sofa. He then went into the nephew's bedroom, picked up an ironing board weighing about 4.5kg and, holding it with both hands, used it to hit the deceased on the head. He then grabbed hold of one of the deceased's hands and dragged her back into their bedroom. The deceased did not appear to be able to stand up.

8 The nephew witnessed the assault on the deceased but did not dare to intervene as he was afraid of the accused. Both the nephew and the accused's younger brother had been warned before not to interfere in the accused's domestic disputes. Some time later, the accused entered the nephew's bedroom and asked him to go over to the other bedroom to help carry the deceased onto the bed. The deceased was slumped on the floor, leaning on the side of the bed. She looked weak and had a lot of blood on her face. The nephew called out to her but she did not respond. He then helped the accused lift her from the floor onto the bed and used some tissue paper to wipe some of the blood from her face. The accused stood by and watched. The accused then told the nephew to return to his own bedroom and asked him not to respond should anyone go to the flat later as a result of the commotion therein.

9 Subsequently, at about 1.39am, the nephew heard someone knocking on the main door of the flat and on the window panes of his bedroom. They were two uniformed police officers who were responding to a call from someone about a dispute going on in the flat. The inside of the flat was then unlit. After knocking for some time, the police officers went back to the ground floor to see if there was light in the kitchen at the back of the flat. The accused went into the nephew's bedroom and told him to get up. When they stepped out of the flat later, the two police officers had already gone down to the ground floor. The accused looked over the parapet wall, called out and waved to them.

10 When the two police officers went back up to the flat, they saw the accused clad only in a pair of shorts with blood stains of the upper half of his body. His breath smelled of alcohol but he was behaving and conversing normally. When they asked him what had happened, the accused replied that it was a small matter between husband and wife and that he had slapped and punched his wife as he had seen her "behaving very closely with another man whilst she was at work" (statement of facts at para 9). He also alleged that the deceased had been drinking.

11 One of the police officers stepped into the accused's bedroom and saw the deceased lying supine on the bed with both arms and legs spread apart and with a lot of blood around her mouth. Her eyes were closed and her breathing was laboured. He called for an ambulance which arrived at about 2.14am.

12 The ambulance officer noted massive amounts of dried blood at the deceased's mouth and found several pieces of her teeth beside her. There were multiple bruises on her face, especially at her eyes. There was a large bruise over the left parietal region of her head resulting in what appeared to be a deformity in her head. She had to be taken to a hospital immediately. However, as the paramedics were carrying the deceased out of the bedroom, the accused shouted in Malay and pushed his way towards them. The police officers warned him not to obstruct the paramedics in their work but the accused refused to heed the warning. He was therefore restrained with handcuffs. After the ambulance had left with the deceased, investigating officers arrived at the flat and interviewed the accused. They found seven of the deceased's teeth, covered with her blood, at various locations in the flat.

13 At the National University Hospital, the deceased was found to be bleeding from the gums and had several loose teeth. A computed tomography (CT) scan revealed that the deceased had acute right subdural haematoma and required emergency craniectomy to evacuate the haematoma. During the surgery, a large piece of her skull had to be removed to allow the surgeons access to the brain. Some of the bleeding was stopped but the prognosis was poor. The deceased was administered propofol to rouse her from the coma and morphine to ameliorate the pain.

14 On 4 December 2005, the deceased succumbed to her injuries and passed away without regaining consciousness. The next day, an autopsy was performed on her. Several of her ribs were found to have been fractured. The certified cause of death was bronchopneumonia following acute subdural haemorrhage. The injury was sufficient in the ordinary course of nature to cause death.

15 Dr Stephen Phang, a consultant forensic psychiatrist at the Institute of Mental Health, examined the accused and found him to be suffering from Frontal Lobe Syndrome ("FLS"), an organic personality disorder, which had substantially impaired his mental responsibility for the acts that caused the death of the deceased. FLS is characterised by a significant alteration of the accused's habitual patterns of behaviour before his head injury, involving the expression of emotions, needs and impulses. The principal manifestation of FLS in the accused was emotional lability (uncontrolled and unstable expression of emotions), with associated irritability and outbursts of anger. He also exhibited inappropriate or disinhibited expression of needs without (or at least with significantly diminished) consideration of consequences or of social conventions. His previous conviction for outrage of modesty was a case in point, as were his inappropriate sexual advances towards his late wife. The outstanding personality change in FLS has been described as a loss of finer feelings and social graces, as part of a general coarsening of personality. Dr Stephen Phang was of the opinion that it was in the context of his suffering from FLS that the accused experienced a loss of impulse control in the course of the altercation he had with the deceased at the material time, leading to the subsequent assault. The fact that the accused was also intoxicated at the material time was very likely to have further contributed to an exacerbation of his loss of impulse control. However, the accused still retained the

ability to appreciate the nature of his acts then and was not of unsound mind.

16 In a subsequent report, Dr Stephen Phang said that the accused was still capable of forming an intention to cause the injuries in question and retained the mental capacity to know that his acts were likely to cause death. In the light of the accused's psychiatric disorder, with the attendant emotional lability and instability, as well as other associated inappropriate behaviour, Dr Stephen Phang opined that the accused was a potential danger to those around him, not least as a consequence of his unpredictability and impulsivity. The accused would certainly require long-term psychiatric follow-up and care, including the possibility of treatment with medication such as a mood stabiliser.

Previous convictions

17 The accused had several antecedents. In 1981, he was convicted of theft in a dwelling house under s 380 of the Penal Code and was fined \$2,000. In 1990, he was convicted on a charge of unlawful possession of an identity card other than his own and was again fined \$2,000. In August 2000, he was convicted on two charges of outrage of modesty and was sentenced to a total of 18 months' imprisonment with six strokes of the cane. One other count of outrage of modesty was taken into consideration for sentencing purposes.

The Defence's psychiatric report

18 The Defence applied for an adjournment so that the accused could be examined by another psychiatrist. That was granted.

19 On 29 August 2006, Dr Lim Yun Chin (Dr Y C Lim"), a consultant psychiatrist at Raffles Hospital and a psychiatrist in the Prisons Medical Service, prepared a report on the accused after having examined him in Queenstown Remand Prison and having studied Dr Stephen Phang's report of 26 January 2006. Dr Y C Lim had also referred to the discharge notes from Changi General Hospital pertaining to the accused's head injury (in 1987) which subsequently gave rise to FLS.

20 According to Dr Y C Lim, FLS affects the sufferer's personality more profoundly and obviously than any of the sufferer's other brain functions. Although the accused had admitted (probably on direct questioning) that he had been experiencing changes in his personality following his head injury, Dr Y C Lim opined that it was unlikely that he could have an adequate grasp of or insight into how or in what manner his behaviour had been profoundly altered. The accused also could not have had knowledge that his changed temperament was related to his severe brain injury. The awareness of his disorder only appeared in retrospect following the commission of the present offence. Like most FLS, the accused's condition developed insidiously and was therefore not readily detected unless there was regular follow-up and observation of subtle behavioural change reported by family members. The people around the accused were similarly oblivious to his condition and hence did not think of referring him for assessment and treatment. The accused was also ignorant of the fact that the use of alcoholic beverages would aggravate his loss of impulse control and lower his threshold to aggressive outbursts.

21 FLS is an irreversible condition. However, it would be possible to ameliorate and modify significant parts of the accused's behaviour particularly pertaining to his aggression and impulse control. Medication could be used to reduce his violent tendencies as well as to improve his poor impulse control. Such medication included readily available anti-psychotics. The accused's mood instability and lability could also respond to mood stabilisers and anti-depressants. It was probable, Dr Y C Lim opined, that with adequate medication, regular psychiatric follow-up, counselling and

psycho-education programmes, the accused could be mentally stabilised, his violent propensity reduced and his impulse control moderated. During counselling, the accused would be advised to refrain from alcohol and his family members could be educated and counselled on the nature of his illness.

22 An ongoing, regular treatment involving the constant administration of medication would improve the accused's ability to live a more normal life free of disruptive symptoms. If he remained mentally stable for the next ten years with adequate treatment, it would be conceivable that he would develop the insight and motivation needed for him to continue voluntary treatment and regular medication for an indefinite period.

The Prosecution's submissions on sentence

23 The Prosecution urged me to sentence the accused to life imprisonment as, according to Dr Stephen Phang, the accused was a potential danger to those around him as a consequence of his unpredictability and impulsivity. Excessive violence was used during the offence, as detailed in the statement of facts. The nature of the offence and the circumstances of its commission were grave enough to justify a very long sentence. Even if the accused was placed on drug therapy, he was not likely to be compliant with his treatment. As Dr Stephen Phang noted in his report, the accused abused alcohol several times a week and also had a history of heroin abuse for which he had been admitted to drug rehabilitation centres.

24 The accused has no family support. According to the conditioned statement (see [3] above) given by his twin brother, Ramziz, the accused's family members had discussed the accused's case and, regrettably, they were "not able to undertake the responsibility of taking care of him when he is released due to financial constraints". The person who took care of the accused and his household was the deceased. The drug therapy for the accused would have to be life-long and would be expensive if it was administered outside a penal institution. It would not cure him in any event but would only suppress the symptoms of his condition. All these practical considerations were not likely to encourage the accused to be compliant with any treatment programme. The danger of relapse was therefore high and the facts showed that the accused was capable of inflicting extremely grievous injuries even on the person who was taking care of him.

The mitigation plea

25 The accused was educated up to primary six. A neuropsychological assessment in January 2006 showed that he had an intelligence quotient (IQ) of 66. As a caretaker in a condominium before the offence, he did not earn much but contributed significantly to the household expenses. He pleaded guilty timeously after taking legal advice from counsel assigned by the Criminal Legal Aid Scheme and after representations had been made to the Prosecution. He was remorseful and felt the loss of his wife as acutely as the rest of the family. His previous conviction for outrage of modesty was a manifestation of his latent psychiatric disorder which he knew nothing about. He has no other antecedents of violent offences.

26 The accused had a very good relationship with his wife for 17 years although there were the occasional quarrels over money and household matters. The offence was not premeditated. He was drinking with his friend before the offence and consumed at least four bottles of Tiger beer that night instead of his usual one to two bottles. The analysis of his blood taken a few hours after the offence showed that it contained 161mg of ethanol per 100ml of blood. The state of his intoxication indicated a lack of planning in the commission of the offence. As stated by Choo Han Teck JC (as he then was) in *PP v Wong Siu Fai* [2002] 3 SLR 276 at [6], intoxication, though of no exculpatory value, was

nonetheless indicative of an absence of a planned *modus operandi*. Dr Stephen Phang opined that the accused's state of intoxication was very likely to have further contributed to an exacerbation of his loss of impulse control. Similarly, Dr Y C Lim was of the view that the accused was ignorant of the fact that consuming alcohol would aggravate his loss of impulse control and lower his threshold for aggressive outbursts. Further, it was clear that the accused did not know that he was suffering from FLS.

27 Although the Defence accepted that the offence in question was grave enough to warrant a very long sentence and that if such an offence was committed in future, the consequences to others could be "specially injurious", it argued that the accused was not likely to commit such an offence again. It relied on the opinion of Dr Y C Lim about his prognosis for the accused. It submitted that Dr Stephen Phang did not form an opinion as to whether the accused would still be a potential danger to those around him after undergoing long-term psychiatric follow-up and care. As the accused was not aware of his psychiatric disorder until he was diagnosed by Dr Stephen Phang, he was never given a chance to seek treatment and probably avert this tragedy.

28 The accused undertook that he would take all necessary medication and undergo all required treatment for his condition. He also undertook that he would not consume alcohol in future. The Defence admitted that familial support for the accused in his rehabilitation was unlikely to be forthcoming but, again relying on the words of Dr Y C Lim, argued that there was a reasonable chance here that the accused would undergo the necessary treatment even when left to his own devices upon his release.

29 It was argued that where the court was desirous of a sentence greater than ten years but felt that life imprisonment was excessive, the court should come down on the side of leniency, as, otherwise, the punishment imposed would significantly exceed the accused's culpability (see *PP v Tan Kei Loon Allan* [1999] 2 SLR 288 at [40]).

The decision of the court

30 In *Purwanti Parji v PP* [2005] 2 SLR 220 at [19] ("*Purwanti*"), the Court of Appeal reiterated the approach taken by the then Court of Criminal Appeal in *Neo Man Lee v PP* [1991] SLR 146 at 148, [7], which in turn broadly endorsed the approach of the English Court of Appeal in *R v Rowland Jack Forster Hodgson* (1968) 52 Cr App R 113, that a sentence of life imprisonment would be justified if three conditions were met. The conditions are:

- (a) The offence or offences are in themselves grave enough to require a very long sentence.
- (b) It appears from the nature of the offences or from the accused's history that he is a person of unstable character likely to commit such offences in the future.
- (c) If the offences are committed, the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.

These conditions remain applicable post-*Abdul Nasir bin Amer Hamsah v PP* [1997] 3 SLR 643 where it was held that life imprisonment meant imprisonment for the remainder of the prisoner's natural life (*Purwanti* at [19]). Like the situation in *Purwanti*, the bone of contention here lay in condition (b).

31 The accused's unfortunate mental condition has to be taken into account in mitigation when deciding the appropriate length of sentence to impose. However, this has to be counterbalanced with

the right of society to be safe from wanton violence. As I have said in *PP v Kwok Teng Soon* [2001] 4 SLR 516, a decision affirmed by the Court of Appeal in *Kwok Teng Soon v PP* (Criminal Appeal No 22 of 2001), the purpose of the three conditions (see [30] above) is not to determine how evil a particular accused person could be. Instead, they are for the purpose of extrapolating from his mental condition and his actions the likelihood of a relapse and what the probable consequences might be in such an event. As held in *Ng So Kuen Connie v PP* [2003] 3 SLR 178 at [58], the element of general deterrence should be given considerably less weight if there is a causal link between the mental disorder and the commission of the offence. Nevertheless, protection of the public (and that includes the accused's family and friends) is paramount in such cases.

32 The facts show that the accused could be quite maniacal and merciless when he got angry. The reason that he offered for the relentless assault on his unfortunate wife was his claim to have seen her "behaving very closely with another man whilst she was at work" (statement of facts at para 9). There was no elaboration on this allegation or when such an incident took place. It appears to me to be a lame excuse conjured up by the accused to try to explain to the police officers why he had assaulted the deceased. It does not appear from the facts that the deceased provoked him or was the cause of his anger in any way (and was therefore not fuelling his anger). Yet the accused attacked her like she was his most bitter enemy.

33 The only other excuse offered by the accused for his violence was what he told Dr Stephen Phang (at para 6 of the first report dated 26 January 2006). He claimed there that he was unsuccessful in persuading his wife to go down from the flat to accompany him at the coffee shop where he was drinking beer. That was hardly an excuse for the degree of violence exhibited by him upon his return to the flat after midnight on the day in question.

34 Clearly, the accused has an unstable mental condition which, as the facts have shown, could lead to vicious volatility against even the person closest to him, someone who was not even resisting his attack but who was constantly begging him to stop. It was a running, bloody battle with the accused pursuing the deceased through the various parts of the flat and using various means to beat the life out of a defenceless woman. He then exhibited absolutely no remorse and saw no need to call for medical help for her. All this shows how dangerous he was and could be in future.

35 Dr Y C Lim stated in his report that FLS was irreversible although medication could reduce the accused's violent tendencies as well as improve his impulse control. The accused is already 45 years old. When he is released, he is unlikely to have family support of any sort, something conceded by the Defence. I have no confidence at all in his undertakings that he will comply with medication and continue with treatment upon his release, bearing in mind his history and despite the realisation that he is suffering from FLS. I also have no faith in his undertaking that he will abstain from alcohol when he is all alone most of the time, without someone to monitor him closely and constantly. His siblings will also have gotten on in years and they have their own families to take care of. It is highly unlikely that any of them will be able to give the accused the care and supervision that he will need.

36 The accused's circumstances take him out of the situation that was present in *PP v Chee Cheong Hin Constance* [2006] 2 SLR 707 where V K Rajah J was obviously impressed and persuaded by the accused's three sisters' affidavits there that there would be a satisfactory support mechanism to secure her rehabilitation and future medical treatment. Upon her release, the accused there would be living with one of the sisters on a permanent basis. The judge was also convinced that, given their backgrounds and emphatic assertions, they were responsible persons who would live up to their commitment to ensure and preserve her future welfare and well-being (see [19] in that case). The judge was therefore able to conclude that the risk of the accused's illness bursting into violence again was fairly remote and sentenced her to ten years' imprisonment for the offence under s 304(a) of the

Penal Code.

37 As I have stated above, the present accused's family members neither have the time nor the resources to take care of him like Constance Chee's sisters were able and willing to.

38 In *PP v Aguilar Guen Garlejo* [2006] 3 SLR 247, the accused there was suffering from masked depression, a moderate major depressive disorder (single episode). She was also convicted of an offence under s 304(a) of the Penal Code and was sentenced to the lower tier of ten years' imprisonment. It must be noted that the psychiatrist in that case considered that the risk of re-offending was low and that the depressive episode was purely of a transient nature.

39 In the present case, the accused's condition, sadly, is irreversible (according to Dr Y C Lim) and he remains a potential danger to those around him (according to Dr Stephen Phang). Dr Y C Lim's more optimistic outlook for the accused is predicated on medication working well for the accused and on the accused's sense of responsibility and reliability in taking the medication and going for follow-up treatment upon his release from prison. Apart from the question of affordability of the medication, left to his devices, I very much doubt that the accused will have the discipline to adhere to such a regime outside the confines of incarceration.

40 In *PP v Rohana* [2006] SGHC 52, Woo Bih Li J opined (at [12]) that the fact that the three conditions (see [30] above) were satisfied did not necessarily mean that a sentence of life imprisonment should be imposed, particularly since such a sentence now meant imprisonment for the rest of the prisoner's natural life. I agree. In sentencing the accused there to ten years' imprisonment, Woo J took into account the fact that she was suffering from an abnormality of mind, arising from her moderately severe depressive episode, which substantially impaired her mental responsibility. He added (at [15]):

I would add that I should not be taken to suggest that life imprisonment is inappropriate for all such cases. Indeed, at times, the mental state of an accused person may require life imprisonment to be imposed.

It can be seen that Woo J was not dealing with an accused who had a recurrent mental problem like the accused in the present case.

41 The three conditions are not necessarily confined only to cases where the accused is suffering from some mental disorder. This was made clear by the Court of Appeal in *Purwanti* ([30] *supra*) at [22] where it said:

Admittedly, the *Hodgson* conditions were first adopted locally in *Neo Man Lee*, which involved a mentally-impaired offender. However, that should be relegated to an unfortunate coincidence and nothing more. We should also add that there was nothing in the *Hodgson* judgment to suggest that the English Court of Appeal was concerned with dealing with mentally-impaired offenders. Indeed, the facts of *Hodgson* did not reveal that the accused in that case was mentally impaired.

In *Purwanti*, the accused was of unstable character although she was not mentally impaired (see *Purwanti* at [23]).

42 In *PP v Sivaraman Reddy Sivakumar* [2002] SGHC 48 ("*Sivaraman*"), another case relied upon by the Defence, I sentenced the accused there, who was not suffering from mental impairment, to ten years' imprisonment and 15 strokes of the cane for stabbing his wife to death. I took into consideration in the accused's favour the fact that he did try quite frantically to save his wife after

the stabbing. The Defence submitted that the present accused, unlike the one in *Sivaraman*, did not inflict any fatal injury on the deceased whose death resulted instead from the accumulation of multiple smaller wounds which led to the acute subdural haemorrhage. It also argued that the accused had asked for help from the two policemen who arrived after the incident had happened.

43 With respect, I would have thought that the circumstances leading to the deceased's death in this case were much more horrific than those in *Sivaraman*. It was a prolonged attack with the deceased running for her life to no avail within the confines of the flat. The accused called for the police to go up to the flat only after about a couple of hours had passed. When medical help arrived, he was obstructive and had to be restrained forcibly. Apart from these distinguishing features, the accused in *Sivaraman* did not have an irreversible mental disorder.

44 On the totality of the facts in this case, the risk that something untoward will happen again when the accused is not in control of himself is very real and is too much to ask of the public. As I have stated, the protection of the public is paramount in a case like this. I am therefore of the opinion that the only appropriate sentence here is life imprisonment, deemed to have commenced from the date of his arrest on 2 December 2005. In view of his mental condition, no caning is ordered.

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