Public Prosecutor *v* Ho Wei Yi
[2014] SGHC 96

Case Number : Criminal Case No 8 of 2014

Decision Date : 14 May 2014

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Tan Wen Hsien, Pushpa S and Melissa Lim, DPPs, for the prosecution; Josehus Tan and Keith Lim (Fortis Law Corporation) for the accused

Parties : Public Prosecutor — Ho Wei Yi

Criminal Law

14 May 2014

Tay Yong Kwang J:

The Charge

1 The accused pleaded guilty to the following Charge:

> "That you, **HO WEI YI**,
>
> on the 5th day of August 2009, between 9.55 p.m. and 10.30 p.m. at unit #11-259, Block 110 McNair Road, Singapore, did commit culpable homicide not amounting to murder, to wit, by starting a fire in the master bedroom of the said unit while one Ho Shiong Chun (male, 58 years old) was in the room, which act was done with the intention of causing such bodily injury as was likely to cause the death of the said Ho Shiong Chun, and you have thereby committed an offence punishable under section 304(a) of the Penal Code, Chapter 224 (2008 Revised Edition)."

2 The punishments provided for this offence are imprisonment for life or imprisonment of up to 20 years with discretionary fine or caning.

The Statement of Facts ("SOF")

3 The Statement of Facts below sets out the circumstances leading to the offence. The accused admitted all the facts in the SOF without qualification. The SOF reads:

> **"Introduction**
>
> 1. The accused is Ho Wei Yi, a male Singaporean bearing NRIC number [redacted], aged 33 years old, date of birth 10 April 1980 ("the Accused").
>
> 2. The deceased is Ho Shiong Chun Michael, a male Singaporean bearing NRIC number [redacted], date of birth 14 May 1951 ("the Deceased").
>
> 3. Prior to his demise, the Deceased was a pastor with the Seventh-Day Adventist Church located at Yio Chu Kang Road. He resided at Block 110 McNair Road, #11-259, with his wife

and two sons. The Accused was his younger son.

Psychiatric history of the Accused and history of violence

4. Investigations revealed that the Accused was formerly a patient of the Institute of Mental Health ("IMH") and Adam Road Hospital.

5. The Accused was first admitted to IMH in December 2003 after experiencing a psychotic episode. The Accused was discharged on 14 January 2004 and stopped taking his antipsychotic medication shortly after his discharge.

6. In 2004, the Accused also sought treatment at Adam Road Hospital where he underwent six sessions of Electroconvulsive Therapy ("ECT"). After ECT, he was transferred back to IMH for follow-up treatment where antipsychotic medication was continued.

7. The Accused's psychiatric condition was kept under control until sometime in December 2006 when he again stopped taking his medication. The Accused's condition then deteriorated and the Accused began to exhibit increasingly hostile and violent behaviour at home and towards his family members from 2008. In particular, the Accused felt resentment against his parents for making him undergo ECT against his will.

8. One of the most serious incidents of violence by the Accused against his family took place on 2 July 2009. Sometime in the early hours of the morning on 2 July 2009, the Accused became aggressive when the Deceased commented that other patients who took psychiatric medication and underwent ECT could still work. In his anger, the Accused attempted to physically force the Deceased to swallow one of his (the Accused's) old psychiatric pills and also hit the Deceased over the eyebrows, causing a cut over his right eyebrow. The Accused's mother, who had been sleeping, was awakened by the noise. In the ensuing fracas, the Accused also hit his mother once on the face and tried to swing a plastic chair at her. This caused a large bruise on his mother's face. The Deceased and his wife then managed to run out of the house and called for the police.

9. When the police arrived at the scene, they were unable to gain entry into the flat as the Accused had barricaded the main door. After speaking to the Accused briefly, the police left the scene. The Deceased and his wife spent the rest of the night at a relative's place.

10. Later that morning, when the Deceased and his wife returned to the flat, the Accused again tried to force the Deceased to take his psychiatric medication. In order to diffuse the situation, the Accused's mother then offered to take the pill and the Accused put a pill in her mouth. The Accused then kicked his mother once in the pelvic region. The Accused's parents then left the flat again.

11. After leaving the flat, the Deceased and his wife went to see the Accused's psychiatrist, Dr Lee Cheng, and related the above incidents to him. On the same day, the Accused's parents proceeded to the Family Court to apply for a Personal Protection Order against the Accused.

12. Dr Lee Cheng's report on the Accused dated 22 March 2013 is enclosed at **ANNEX A** .

Events leading up to the commission of the offence

13. On the afternoon of 5 August 2009, the Accused attended a counselling session at the Family

Court with his parents. During this session, the Accused became aware that his mother had several medical reports in her possession that evidenced the Accused's violent behaviour against her. The matter was adjourned to 19 August 2009 and the Accused proceeded home separately from his parents.

14. Later that evening at about 6pm when the Accused and his parents returned home, the Accused demanded to see the medical reports. The Accused's parents then proceeded to their vehicle to retrieve the reports. Back at the flat, the Accused took all the medical reports and went through them one by one. He then crumpled them. The Accused's mother observed that the Accused appeared to be "not himself" and looked "angry". As she was afraid that the Accused would turn violent towards her, she left the house.

15. The Accused's mother then returned to the flat at about 8.15pm to retrieve her handbag and carkeys, and saw the Deceased alone at home at the time. The Deceased told her that the Accused had gone out. This was the last time the Deceased was seen alive. The Accused's mother told the Deceased that she was still afraid. She then left the house again and did not return until after 11pm when she was informed that the flat had caught fire.

16. Investigations also revealed that on the evening of 5 August 2009, the Accused left his house sometime just after 7.00pm and took the train from Boon Keng MRT station to Dhoby Ghaut MRT Station. Thereafter, he travelled to Chinatown and only arrived back at Boon Keng MRT Station sometime at about 9.30pm.

17. CCTV footage shows that the Accused had taken the lift up to the 11th floor of Block 110 McNair Road at about 9.52pm. Investigations revealed that the Accused proceeded to start a fire in the master bedroom of unit #11-259, knowing that the Deceased was in the master bedroom at the time. He then left the unit and padlocked the gate. As the Accused left the unit, he made no attempt to alert the Deceased about the fire or evacuate him from the unit. By so doing, the Accused had the intention to cause such bodily injury as was likely to cause the death of the Deceased.

18. Thereafter, the accused was seen taking the lift down from the eleventh floor to the ground floor at about 10.05pm. During this interval, the CCTV footage did not show anyone else taking the lifts to or from the eleventh floor of Block 110 McNair Road.

First Information Report and discovery of the Deceased's body

19. On 5 August 2009 at about 9.55pm, the police received a "999" call stating "*Police please come, I being beaten (sic)*". The incident location was given as Block 110 McNair Road #11-259. The caller's number was "90124451", which was subsequently ascertained to be the Deceased's handphone number. The First Information Report is enclosed at **ANNEX B** .

20. The same night at about 10.02pm, a second call was received from the Deceased, requesting that the police attend at the scene immediately.

21. At about 10.05pm, the police arrived at Block 110 McNair Road #11-259. They knocked on the door but there was no response. A minute or two later, the police officers smelled smoke coming from within the unit. Immediately, the officers tried opening the gate but found that it was padlocked.

22. The police officers then tried to open the main wooden door and found that it was not

locked. They managed to push the wooden door ajar and found that the unit was filled with thick black smoke and was in total darkness.

23. The police saw flames emerging from a room. The height of the flames was more than a metre high. As they were unable to gain entry into the flat, the police called the Singapore Civil Defence Force ("SCDF") for assistance.

24. At about 10.11pm, SCDF officers arrived at scene. The broke the padlock of the main gate to unit #11-259 and proceeded to put out the fire. They then conducted a search of the unit and discovered the Deceased's body face-down in a corner of the toilet adjoining the master bedroom. At about 11.55pm, the Deceased was pronounced dead.

Facts leading to the arrest of the Accused

25. Based on interviews with the family of the Accused, the Accused's frequent haunts were established and plainclothes officers were deployed at these locations.

26. On 6 August 2009 at about 9.45am, the Accused was spotted exiting from the ground floor male restroom of Velocity Shopping Centre (also known as Novena Square), located along Thomson Road. He was immediately placed under arrest and escorted to the Criminal Investigation Department.

Autopsy

27. On 6 August 2009, an autopsy was conducted by Dr Paul Chui on the Deceased. The certified cause of death was stated to be "**Inhalation of fire fumes**".

28. The autopsy report and its clarificatory reports dated 6 January 2010, 21 June 2010 and 8 February 2013 are enclosed collectively at **ANNEX C** .

Psychiatric condition of the accused after arrest

29. After his arrest, the Accused appeared unable to assist in investigations. The Accused was then referred to the IMH for psychiatric assessment.

30. In his report dated 31 August 2009, Dr Todd Tomita of IMH diagnosed the Accused to be mentally ill and suffering from schizophrenia. He noted that the Accused's psychotic disorder may have triggered and reduced his ability to control his aggressive impulses, but it would not have overwhelmed his ability to know what he was doing was wrong. He also opined that the Accused was fit to plead and stand trial, although his ability to assist in investigations would be partially impaired by his mental illness. A copy of Dr Tomita's reports dated 31 August 2009 and 2 September 2009 are enclosed at **ANNEX D** .

31. In subsequent reports dated 12 May 2010 and 17 June 2010, Dr Todd Tomita opined that the Accused was unfit to plead and to stand trial, and recommended that the Accused be remanded to IMH under Section 310 of the Criminal Procedure Code (Cap 68, 2008 Rev Ed). Consequently, pursuant to an Order by the Minister under Section 310(2) of the Criminal Procedure Code (Cap 68, 2008 Rev Ed) dated 9 November 2010, the Accused was remanded at IMH from 10 November 2010 to 20 September 2011. A copy of Dr Tomita's reports dated 12 May 2010, 17 June 2010 and 16 June 2011 are enclosed collectively at **ANNEX E** .

32. In an IMH Visitor Board Summary dated 5 September 2011, Dr Tejpal Singh opined that the Accused was now fit to plead and stand trial. He recommended that the Accused be remitted to Court to enter a plea and stand trial. A copy of the Visitor Board Summary and its Appendix A (Dr Tejpal Singh's report dated 19 September 2011) is enclosed at **ANNEX F** .

33. In a letter dated 3 October 2011 to the Subordinate Courts, Dr Tejpal Singh noted that the Accused's mental state has "improved over the recent months with medication", and that he is fit to plead. Accordingly, Dr Singh requested that a hearing date be fixed. Dr Singh's letter dated 3 October 2011 is enclosed at **ANNEX G** .

34. Dr Tejpal Singh proceeded to issue two further clarificatory reports in respect of the Accused's condition, dated 3 July 2012 and 24 April 2013 respectively. His reports dated 3 July 2012 and 24 April 2013 are enclosed collectively at **ANNEX H** .

Accused's version of events

35. After his arrest, the Accused refused to give any information about the incident unless his counsel was present as a witness.

36. In his statement dated 5 June 2012, the Accused claims that he heard voices on the night of 5 August 2009. He thought there was poison gas blowing at him from the door of the master bedroom, and also heard the Deceased shouting for help from the master bedroom.

37. The Accused claims that he then heard voices coming from the bed in the master bedroom. Wanting to exorcise the evil spirits from the bed, the Accused took two pieces of A4-sized paper from the living room table and a kitchen stove lighter, and walked back to the master bedroom. The Accused then placed the two sheets of paper on the bed and lit them using the kitchen stove lighter.

38. The Accused claims that after he started the fire, the voices he heard became louder and scarier, and began to sound like sirens. The Accused claims that he then panicked and ran out of the house.

39. Ad he left the house, the Accused padlocked the gate. The Accused knew that the Deceased was in the master bedroom at the time, but made no effort to alert him about the fire or evacuate him from the flat.

40. After the Accused left the flat, he thought about going back to extinguish the fire, but decided against it as he knew the Deceased had called the police and he was afraid that he would be arrested for arson.

Conclusion

41. By starting a fire in the master bedroom, knowing that the Deceased was in the master bedroom, and padlocking the main gate to unit #11-259, Block 110 McNair Road, thereby preventing the Deceased from escaping the fire in the unit, the Accused intended to cause such bodily injury as is likely to cause the death of the Deceased. The Accused has therefore committed culpable homicide not amounting to murder, an offence punishable under Section 304(a) of the Penal Code (Cap 224, 2008 Rev Ed)."

4 The Annexures referred to in the SOF are not set out in this judgment as there are about 150

pages of text altogether. References will be made to them where relevant.

The prosecution's submissions on sentence

5 The accused has no criminal record. The prosecution submitted that the principles of deterrence and rehabilitation would be most relevant in this case. It suggested that an appropriate sentence would be between 8 and 10 years' imprisonment without caning.

6 The prosecution highlighted that the accused had a history of psychiatric illness since 2003. He has been diagnosed with chronic paranoid schizophrenia which manifested itself in paranoid delusion, auditory hallucination, social withdrawal and agitated and aggressive behaviour. The accused was however fit to plead in court and to stand trial. He was not of unsound mind at the material time. He knew what he was doing and knew that it was wrong to set fire in his home (hereinafter referred to as "the flat").

7 The gravity of the offence had to be taken into consideration. There was the greatest possible damage to a person and to property. The autopsy report noted that there were thermal injuries (full skin thickness burns) over the vast majority of the deceased's body. Dr Paul Chui opined that the deceased was alive and actively breathing for a period of time during the fire in the flat. This was evidenced by the high levels of carboxyhaemoglobin and the presence of soot in the deceased's airways and oesophagus. It was also in evidence that at least 2 calls for help were made by the deceased to the police during the time the blaze was engulfing the flat. The deceased was elderly and did not attack the accused in any way.

8 The prosecution also noted that the fire was started in a housing estate at night when most of the residents would have been at home. Others were put in peril by the accused's acts. It was fortuitous that no injury to the neighbours and no damage to the adjoining flats were occasioned by the fire.

9 The prosecution also submitted that the acts of the accused should be viewed in the context of his strained relationship with his parents and the extent of his insight and understanding of his psychiatric condition. It was clear that the accused felt resentment at having been made to undergo ECT. This resentment, coupled with his refusal to take his medication, resulted in his increasingly hostile and violent behaviour towards his family members from 2008. The resentment and hostility were not caused by his psychiatric illness. He did not want to go to hospital but feared that this was becoming increasingly likely as his parents were determined to proceed with the application for a Personal Protection Order against him.

10 The various psychiatric reports on the accused showed that he was capable of making rational choices. For instance, his decision not to go back to the flat to try to extinguish the flames was because he knew his father had called the police and he did not want to return and be arrested for arson. This was clearly a reality-based decision driven by self-preservation rather than by his psychiatric condition. He was also able to disregard his auditory hallucinations at times. This was demonstrated by the incident after the fire when he "nearly listened" to voices telling him to jump off a building but did not do so after recalling a Bible verse.

11 Dr Tejpal Singh of IMH, who had taken over the care of the accused from July 2011 until he was returned to the prison, was of the opinion that the accused's condition, a relapsing and remitting illness, had improved with medication. As long as the accused took his medication regularly (which meant daily for the rest of his life), his mental state was likely to be stable. Otherwise, he would be at a high risk of relapse and pose a danger to the public. The difficulty was that the accused did not

believe that he needed treatment. Treatment could be provided for him in prison, a hospital or a structured setting. His mental state and risks would have to be re-assessed at the time of his release from prison. The psychiatrist would not recommend that the accused stay with his mother as there were concerns about her depression. He recommended that the accused be admitted to a forensic psychiatric ward at IMH as a step-down measure upon completion of sentence and thereafter be sent to supported accommodation in the community or to a long-stay ward at IMH. He could also live at home with family members who are willing and able to care for him and who could ensure compliance with treatment.

12 The prosecution pointed out that the accused's apparently stable condition at present was probably attributable to his treatment in custody. The IMH psychiatrist's report of 24 April 2013 still contained reservations about the depth of the accused's insight into his mental condition and the need for treatment. The psychiatrist reported that "although he accepts our account of his diagnosis, need for treatment and his potential risks, I am not sure if it is a true and deep understanding".

13 The prosecution also referred to a letter dated 20 January 2014 from the Member of Parliament ("MP") for Whampoa where it was stated that the accused's elder brother and his (the brother's) wife had approached and said to the MP that they would not be able "to support two mentally unwell persons" (meaning the accused and the mother) and that they were worried that the accused might be a danger to their family which includes a young child. Accordingly, the prosecution submitted that a suitably long imprisonment term should be imposed as the accused still required close supervision and a structured environment to address his condition. The probability of a relapse remained high with the attendant risks to himself and to others.

The mitigation and submissions for the accused

14 The accused's counsel urged the court to impose a term of 4 to 6 years' imprisonment. The accused, who was 29 years old at the time of the offence, had a long documented history of psychiatric illness. That was kept in check until sometime in December 2006 when he stopped taking his medication. His mental state deteriorated thereafter. The present offence had a causal link to his mental disorder.

15 Citing the Court of Appeal's decision in *PP v Aniza bte Essa* [2009] 3 SLR(R) 327, the accused's counsel submitted that the accused was not of so unstable a character that he would be likely to re-offend in the future. Deterrence has little or no effect on mentally unstable offenders. It was argued that rehabilitation ought to be at the forefront when considering the length of imprisonment given the accused's low likelihood of re-offending.

16 In a report made in July 2013, Dr M Winslow, senior consultant psychiatrist in the Singapore Prison Service, noted that the accused was aware of his illness and that his mental state had stabilized with medication. The accused was relevant and rational, with an euthymic or normal mood in the circumstances. The treatment appeared to have ameliorated his psychiatric symptoms which had gone into remission. He was aware of his need for long-term medication and treatment and had shown good response to anti-psychotic medication. He also appeared willing to undergo psychiatric rehabilitation and treatment for the long term. In Dr Winslow's opinion, before the accused could be considered for community treatment or rehabilitation, he should undergo a period of observation and rehabilitation at the IMH so that his progress could be better observed and he could take part in programmes to understand his illness better. He could also undergo supervised medication.

17 Given that the accused had a low risk of recidivism if he complied with treatment, the court should be primarily concerned about whether he would comply with medication and treatment upon his

release from imprisonment. He had faithfully complied throughout his period in remand and, on one occasion, even reminded the prison staff to give him his medication when that was overlooked.

18 In a handwritten note, the accused reminisced about his deceased father. He also stated that he now understood that he has an extremely severe and major mental illness and that he would hurt himself or other innocent people if he did not take his medication daily and continue with his treatment. He believed that he was no longer as foolish, proud and stubborn as before.

19 The accused also has strong support from his family members. In a joint affidavit affirmed in June 2013, his mother (aged 59), his male cousin (aged 33), his paternal uncle (aged 58) and his paternal aunt (aged 66) pledged that they would be responsible for the accused's daily care and provide him with the necessary financial and emotional support. They would also ensure that he adhere strictly to his treatment and medication. Should the accused refuse to comply, they undertook to immediately contact the authorities referred to in the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed). They would also help the accused to secure gainful employment upon his release from prison. The uncle and the aunt do not reside in the flat in issue. The cousin did not reside there too but has been doing so from the time the joint affidavit was affirmed.

20 In response to what the accused's elder brother and his wife had said to the MP (see [13] above), the defence counsel argued that the two of them were no longer residing in the flat. They were also not asked to play a supportive role for the accused's rehabilitation.

21 The accused was genuinely remorseful over what he had done to his father. His sole concern now is to spend as much time as possible with his aging mother and, when he is able, to provide for and take care of her.

22 It was further argued that caning ought not to be imposed because he was suffering from mental impairment at the time of the offence (*PP v Hwang Yew Kong* [2006] SGHC 22). Two previous cases involving mentally impaired accused persons in family tragedies were also referred to. They were *PP v Lee Show Fui* (unreported) and *PP v Han John Han* [2007] 1 SLR(R) 1180. The sentence in the first case was five years' imprisonment. In the second case, the original sentence of 3 years was enhanced on appeal to 5 years. As the present accused's case was "obviously less graphic and/or heinous", "a similar and/or lower term of imprisonment would be appropriate". An imprisonment term of 4 to 6 years would therefore be just.

The decision of the court

23 Bearing in mind the amount of time the accused had spent in custody (whether in prison under remand or in IMH), I sentenced him to 8 years' imprisonment backdated to 21 September 2011(the day he ceased to be under the Minister's order – see paragraph 31 of the SOF above). I agreed that caning was not appropriate in the circumstances of this case.

24 It was clear that the accused's state of mind was directly affected by his compliance with medication and treatment. He has been doing well in the recent past because of such compliance after his arrest. It was equally clear that his compliance took place in controlled surroundings with structural support, whether in prison or in IMH. Before the offence took place, the history showed that he was not a person who could be counted upon to take care of himself by faithfully consuming his prescribed medication. We have seen what he could do to his mother when he was unwell due to his non-compliance with medication. The offence also revealed how dangerous he could be to his family and the kind of collateral damage that he could have inflicted on his neighbours in the housing estate. It would therefore be highly unsafe and irresponsible to release him too soon into society.

25 The relatives who affirmed the affidavit pledging their support for the accused have good intentions and high hopes. However, I am not confident that they will be able to discipline the accused once he is a free man. The accused has proved that he is not a docile person. Even after his arrest, he could refuse to cooperate with the police unless he had legal representation (see paragraph 35 of the SOF). A man who had no fear of law enforcement officers while in custody does not appear to me to be someone who would placidly obey the persuasion of his kind relatives when he has liberty.

26 Among the four relatives, three are not young. They may not be able to protect themselves if the accused turns violent. The mother has some problems of her own. The uncle and the aunt cannot be with the accused all the time. The cousin is male and is about the same age as the accused but he will have his own life to take care of and is unlikely to be able to spend many waking hours with the accused. No evidence has been shown that the relatives were particularly close to the accused in the past. I do not think they will be in a position to cope with and to keep the strong-willed accused in check if he is given his liberty too soon.

27 For these reasons, I was of the view that an appropriate term of imprisonment would be 8 years backdated to 21 September 2011.