

Public Prosecutor v Sarle Steepan s/o Kolundu
[2009] SGHC 207

Case Number : CC 39/2009
Decision Date : 15 September 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Leong Wing Tuck, Diane Tan and Edmund Lam (Attorney-General's Chambers) for the Prosecution; Ronald Ng (Ng Lee & Partners) and Jeeva Arul Joethy (Joethy & Co) for the accused
Parties : Public Prosecutor — Sarle Steepan s/o Kolundu

Criminal Procedure and Sentencing – Sentencing – Accused pleading guilty to charge of culpable homicide not amounting to murder – Accused had slapped and dropped two-month-old victim because of anger with mother of victim – Appropriate sentence to be imposed

15 September 2009

Tay Yong Kwang J:

Introduction

1 The accused, born on 19 January 1965, originally faced a murder charge. On the first day of trial, the prosecution amended the charge to one of culpable homicide not amounting to murder. The accused pleaded guilty and was convicted on the following charge:

That you, Sarle Steepan s/o Kolundu, on 1 June 2008, at the void deck of Block 250 Yishun Avenue 9, Singapore, did cause the death of one Esther Regina d/o Sarle Steepan (Female/2 months old/DOB: 27 March 2008), by applying blunt force to her head, which act was done with the intention of causing such bodily injury as was likely to cause death, and you have thereby committed an offence punishable under section 304(a) of the Penal Code, Chapter 224.

The punishment provided in the said s 304(a) is imprisonment for life or imprisonment for a term of up to 20 years. In addition, the accused is liable to be fined or caned.

2 The accused also admitted an offence of having made a false joint statutory declaration with Siti Noor Fazlina bte Haron (or Jennifer, the mother of the deceased baby) on 8 May 2008 stating that both of them were the natural parents of the deceased baby, an offence punishable under s 14(1)(ii) of the Oaths and Declarations Act (Cap 211, 2001 Rev Ed). The accused was not the father of the deceased baby. This offence was taken into consideration for the purpose of sentence.

The facts

3 At the time of the offence, the accused was unemployed and residing at New Hope Halfway House ("New Hope") in Sembawang, a home for ex-drug addicts. In August 2007, the accused and Jennifer, who was then pregnant with the child of another man, got to know each other. They subsequently co-habited for a while in a rented room in a flat. They had to move out of the flat in February 2008. Eventually, the accused obtained admission to New Hope while Jennifer went to live in

Good Shepherd Centre, a crisis shelter for women located on the ground level of block 250 Yishun Avenue 9 ("block 250").

4 The accused found work as a delivery assistant with a moving company. He would go to Good Shepherd Centre to visit Jennifer each day. In March 2008, they made plans to get married. However, there were frequent quarrels. The accused was often drunk and would abuse Jennifer verbally and physically. On 17 March 2008, Jennifer applied for a Personal Protection Order against the accused.

5 On 27 March 2008, Jennifer gave birth to the baby in question and both mother and daughter remained in Good Shepherd Centre. On 8 May 2008, the accused falsely declared that he was the biological father of the baby and got her registered as his daughter.

6 Subsequently, the accused became suspicious about Jennifer and a supervisor at New Hope, believing that they could be having a sexual relationship with each other. He questioned Jennifer about this but she denied the allegation. He did not believe her and remained highly suspicious that she was cheating on him. As things turned out, his suspicions were not unfounded as the said supervisor and Jennifer had indeed been intimate.

7 At about 5pm on 1 June 2008, the accused went to a shoe shop in Northpoint Shopping Centre to look for Jennifer. She was then working as a sales assistant there. Reeking of alcohol, the accused created a scene at the shoe shop and assaulted Jennifer. He was apparently unhappy that she had not informed him that she was working that day. Security staff of the shopping centre and the police intervened and asked him to leave the shopping centre. Eventually, the accused left on his bicycle which he rode to Good Shepherd Centre.

8 At around 7.15pm, the accused arrived at Good Shepherd Centre and requested a staff member to allow him to take the baby girl out. When told by the staff that she could not hand over custody of the baby to him as the mother was still at her work place, the accused lied that Jennifer had given him permission to bring the baby out. As the accused was registered as the biological father of the baby, he was subsequently given permission to bring her out. The staff member then placed the baby in a pram together with a feeding bottle containing water. The baby was fine at that time. The accused then pushed the pram to the void deck of block 250.

9 A passer-by saw the accused at the said void deck standing and carrying the baby in his arms. He was trying to feed her with the bottle of water while she was crying very loudly. The accused thought about his relationship with Jennifer and became angry with her for cheating on him, for having scolded him earlier for borrowing money from a loanshark and for not informing him that she was going to work that afternoon. In his anger, he slapped the baby girl's face repeatedly. When her mouth began to bleed, the accused removed her clothes to try to wash out the bloodstains at a washing point at the void deck. When he went back to the pram, the baby's mouth was still bleeding. He used her wet clothes to wipe the blood away. Subsequently, he threw her clothes into a drain nearby.

10 At about 8pm, another passer-by noticed the baby lying in the pram wearing only her diapers. The accused was then seated on a stone seat at the void deck. The passer-by approached him and asked him what he was doing. The accused lifted up the baby and replied that the baby was not moving, crying or drinking. The baby was indeed motionless. She appeared cyanosed. The passer-by then walked to inform Good Shepherd Centre about the situation. The staff called for an ambulance.

11 When the ambulance arrived at block 250 sometime past 8pm, the baby was not breathing and had no pulse. The ambulance then rushed her to KK Women's and Children's Hospital. The accused also went to the hospital in that ambulance.

12 At the hospital, the baby was given emergency medical attention but she continued to deteriorate and died at 10.42pm that night. At about 11pm, the accused was placed under arrest at the hospital. The baby was eventually found to have sustained facial injuries and severe head injury, the latter being the certified cause of her death.

The accused's previous convictions

13 In 1990, the accused was convicted for drug possession and was fined \$1,000. In 2000, he was convicted for drug consumption and was sentenced to serve 18 months' imprisonment. In September 2002, he was convicted for consumption of a specified drug (which attracted enhanced punishment) and was sentenced to undergo 6 years' imprisonment and to receive 4 strokes of the cane. In March 2008, he was convicted for disorderly behaviour and was fined \$500. As he did not pay the fine, he served 2 days' imprisonment in default.

The prosecution's submissions on sentence

14 The prosecution referred to 3 decisions involving s 304(a) of the Penal Code where the victims were young children. In *PP v Yussri bin Mohamed Hozairi* (CC 27 of 2002)(unreported), a father who caused the death of his 21-month old son was sentenced to 10 years' imprisonment. In *PP v Goi Cher Nai* (CC 73 of 1995)(unreported), a woman who caused the death of her 6-year-old mentally retarded daughter was also sentenced to 10 years' imprisonment. In *PP v Muhammad Azahar bin M Shah* (CC 40 of 2004)(unreported), the man who killed his 1-month-old twin sons was sentenced to a total of 8 years' imprisonment and 6 strokes of the cane.

15 The above precedents, the prosecution submitted, showed "a consistently tough stance adopted by the courts when dealing with offenders who inflict fatal violence on defenceless young victims". The prosecution also highlighted the fact that all three cases were decided before the 2007 amendments made to the Penal Code came into effect on 1 February 2008. The applicable punishment under s 304(a) was then imprisonment for life or for up to a maximum of 10 years, with discretionary fine or caning. The second tier of imprisonment has now been raised from 10 to 20 years and that is the applicable law in the current case. The prosecution therefore argued that the sentences in the precedents cited could not be used for comparison in absolute terms.

16 The prosecution submitted that the courts have acknowledged the need to protect vulnerable victims such as handicapped, incapacitated and elderly persons and children (*PP v Raffi bin Jelani and Another* [2004] SGHC 120) and *Purwanti Parji v PP* [2005] 2 SLR 220).

17 Aggravating factors were also present in this case. The accused used deception on the staff of Good Shepherd Centre (who were aware that he was the registered father of the baby) to obtain custody of the baby. The deceased baby was barely 2 months old and was entirely at the mercy of the person she was with. There were horrific injuries suffered by the baby who was slapped repeatedly in anger by the accused. Blunt force was also applied to the baby's head, rendering her unconscious. The source of the accused's anger was not even the baby but her mother. The accused has shown no remorse. He gave a variety of versions relating to the cause of the fatal head injury to the police and to the psychiatrist who examined him on various occasions and has so far refused to account adequately for what he actually did to the baby (besides slapping her face). Although he had consumed alcohol, his actions that day and thereafter showed that he was well aware of what he was doing. He was telling different stories at different times and was not saying that he could not remember the events of that fateful evening. The accused also has previous convictions.

18 In the light of the above, the prosecution urged the court to impose a suitably lengthy

sentence "to adequately express society's ire, condemnation of and indignation towards the crime committed by the accused". Such a sentence, the prosecution suggested, should be close to s 304(a)'s second tier's maximum of 20 years, coupled with caning.

The mitigation plea

19 The accused was educated up to Primary 4. He used to work as a delivery man with a courier company and, at the material time, was working for a moving company whenever there was work to be done. Although a former drug addict, he had no criminal record relating to violent behaviour. He was assessed to be within the Mild Mental Retardation range of intellectual functioning with a full scale Intelligence Quotient of 63 by the Institute of Mental Health. His parents are deceased. He has four elder brothers and a younger one.

20 The accused got to know Jennifer in April 2007. They liked each other and eventually became lovers. Jennifer was pregnant with another man's child at that time and had no proper accommodation. The accused made great efforts to find a home for her by sneaking her into his father's flat, by paying for a hotel room for her and finally by renting a room for her. When they had to vacate the rented room, he managed to get help through a family services centre which found a place for Jennifer in Good Shepherd Centre and for him in New Hope. He would visit Jennifer every evening after work.

21 When Jennifer gave birth to the baby girl, the accused paid the medical bills and agreed to register his name as the baby's father. He was told by the authorities that he had to register his marriage with Jennifer before a birth certificate for the baby with his name as her father could be issued. He therefore applied to marry Jennifer. They were supposed to be married on 23 July 2008.

22 He became suspicious of Jennifer's relationship with the supervisor of New Hope when he noticed their behaviour and the care that the supervisor showered on her. That caused him to become jealous and angry. The supervisor has admitted in the course of investigations that he and Jennifer had had sex on one occasion.

23 On 31 May 2008, one day before the baby died, the accused went to visit Jennifer and the baby at Good Shepherd Centre. The two adults ended up quarrelling over money matters when the accused revealed that he had borrowed \$1,000 from illegal moneylenders, with Jennifer intimating that their relationship was over. He was upset with her angry remarks and went to buy a straw of heroin to consume that night.

24 On 1 June 2008, Jennifer telephoned him and they had an angry exchange of words again. When the accused called Good Shepherd Centre later, he found out that she had gone to work.

25 The accused's friend and fellow resident at New Hope then invited the accused to join him in drinking some Chinese wine. They consumed an entire bottle at Sembawang Park. They then went to look for food and ended up drinking more than two cans of beer each. The accused was quite intoxicated by then.

26 In that state, he went to look for Jennifer at her place of work in Northpoint Shopping Centre. He was angry with her for not telling him that she was working that day when they spoke on the telephone earlier. He was also angry with her for chiding him for borrowing from illegal moneylenders. Unable to control his anger, he slapped her twice. When told by the police to leave the shopping centre, he pretended to leave on his bicycle by circling the building. He then returned to Jennifer's place of work but did not see her there. Thinking that she had left for Good Shepherd Centre, he

decided to cycle there. He was so unsteady on his bicycle that he fell from it twice on the way there.

27 After obtaining custody of the baby from the staff there, he brought the baby to the void deck nearby. In anger, he slapped the baby even as he recalled the angry words uttered by Jennifer, her relationship with the supervisor and her indication that she wanted to break up with the accused. He recalled dropping the baby onto the ground (not by accident) and blood coming out of her mouth.

28 The accused was said to be a kind and compassionate person as shown by his conduct towards Jennifer when she was in need. He was also simple-minded. He merely wanted to be part of a family with Jennifer and the baby. He was very jealous and angry because of Jennifer's betrayal and ingratitude. He had consumed heroin the night before and in the morning of the offence and was also intoxicated. That clouded his mind and affected his actions that day.

29 Defence counsel, citing *PP v Wong Siu Fai* [2002] 3 SLR 276, submitted that intoxication could indicate the absence of a planned *modus operandi*. It was also argued that life imprisonment was not warranted as the accused did not have an unstable mental condition and was not a potential danger to people around him, unlike the accused in *PP v Mohammad Zam bin Abdul Rashid* [2006] SGHC 168 who was sentenced to undergo life imprisonment.

The decision of the court

30 The accused has a drug history going back to 1990. In his mitigation plea, he has admitted that he consumed heroin the night before and in the morning of the offence. Although not directly relevant to the offence of culpable homicide here, the previous convictions disentitle him from claiming before this court that he has a clean record or that he is law-abiding. In the circumstances of this case, the charge taken into consideration is also not of real consequence to the current offence as the false declaration stemmed from his genuine desire to marry the baby's mother and to regard the baby as their child.

31 The accused's only excuse for subjecting the pitiful 2-month old baby to the mindless violence appears to be his anger with the baby's mother, exacerbated by his consumption of heroin and alcohol, which in themselves are of no mitigating value when consumed voluntarily. Even if he felt betrayed by the mother's unfaithfulness and seeming ingratitude towards him, there could be no justification whatsoever for punishing an innocent and helpless baby for any perceived wrongs committed by her parent. Adults must resolve their problems within their own sphere and not visit their sins or troubles upon any child. The law accords defenceless and completely innocent victims the protection they deserve and when such persons are violated in any way, the punishment is often painful and severe. Those who inflict an ounce of violence on children unjustifiably should therefore not be surprised to receive a much more weighty punishment and not expect merely an ounce for an ounce.

32 We now know that the poor baby girl had been slapped repeatedly in anger and was "dropped" by the accused onto the ground at some stage of his custody which he had obtained by fraud. The drop was not accidental. It could have caused or contributed to the severe head injury that led to the baby's demise. Nevertheless, the baby's silent suffering did not move the punitive accused into penitent remedial action. It required a concerned passer-by to sound the alarm leading to the summoning of medical aid for the baby who must have been near death by then.

33 I have said before that the courts must speak clearly and convincingly for those who have no voice or who have been silenced forever. For the atrocity committed against the helpless baby on 1 June 2008, despite the accused's guilty plea, I am of the view that he ought to be sentenced to a

term of imprisonment nearer to the upper end of the new scale of 20 years provided in s 304(a) of the Penal Code and should undergo corporal punishment as well. The accused is therefore sentenced to 18 years' imprisonment and 16 strokes of the cane, with the imprisonment term backdated to the date of arrest on 1 June 2008.

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