Public Prosecutor v Chee Cheong Hin Constance
[2006] SGHC 60

Case Number : CC 13/2005

Decision Date : 07 April 2006

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : Wong Kok Weng, Han Ming Kwang and Chong Li Min (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan, Anand Nalachandran and Sunil Sudheesan (Harry Elias Partnership) for the accused

Parties : Public Prosecutor — Chee Cheong Hin Constance

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Mentally disordered offender – Medical report prepared on treatment of offender's schizophrenia for court's consideration prior to sentencing – Appropriate sentences for convictions of kidnapping from lawful guardianship and culpable homicide in light of medical report – Applicable sentencing principles

7 April 2006

V K Rajah J:

1 This judgment is to be read in conjunction with my decision in *PP v Chee Cheong Hin Constance* [2006] SGHC 9.

2 I had on 24 January 2006 found the accused guilty of having committed the following offences:

(a) kidnapping the deceased, Neo Sindee, from the lawful guardianship of her father, Neo Eng Tong (an offence punishable under s 363 Penal Code (Cap 224, 1985 Rev Ed)) ("the kidnapping offence"); and

(b) causing the death of Neo Sindee by causing her to fall from Block 1, Telok Blangah Crescent ("the Block") with the intention of causing such bodily injury as is likely to cause death (an offence punishable under s 304(*a*) Penal Code) ("the culpable homicide offence").

3 Upon convicting the accused I allowed counsel time to digest my grounds of decision prior to making their submissions on sentencing. I have now had the benefit of considering their submissions and have, after sober contemplation, determined the appropriate sentences for the two offences.

The culpable homicide offence

4 Given the gravity of the offence the accused has committed, the issue that arises is whether the appropriate sentence to mete out is a term of life imprisonment or ten years' imprisonment. Section 304(*a*) of the Penal Code neither envisages nor permits any other sentencing option for such exceedingly heinous offending acts.

5 The Court of Appeal in *Neo Man Lee v PP* [1991] SLR 146 and *Purwanti Parji v PP* [2005] 2 SLR 220 at [19] approved and applied the following three broad criteria that could warrant the imposition of a term of life imprisonment as enunciated by the English Court of Appeal in *R v Hodgson* (1968) 52 Cr App R 113 at 114 ("the *Hodgson* criteria"):

(1) where the offence or offences are in themselves grave enough to require a very long

sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.

6 In *Purwanti Parji v PP*, the Court of Appeal took pains (at [24]) to stress that these criteria were "mere guidelines" whose "status should not be overstated". Just as importantly, the court acknowledged that mental impairment was not the "only way" to establish unstable character (at [22]). The reference to "unstable character" would apply to individuals who could pose a risk or danger to society arising from an inability to maintain self-control when confronted with some provocation, real or imagined.

7 Mr Subhas Anandan, counsel for the accused, candidly concedes that the first and third criteria are satisfied in this case. He contends, however, "that it is unreasonable for the Prosecution to suggest that the [accused] has a high propensity to commit such an offence in the future". This, with due respect, does not by any means accurately sum up the Prosecution's stance. The *Hodgson* criteria do not require that a case of "high propensity" be established. The court need only be persuaded that a likelihood of such future offences being committed exists. The reference to such future offences is not to be equated with the prospective commission of identical offences. It would suffice that the offences contemplated fall within the broad spectrum of somewhat similar offences. In this case, in order to warrant a sentence of indeterminate duration, the court needs to be persuaded that there is a real risk of future violent interpersonal or dangerous behaviour by the accused.

8 To begin with, the accused cannot credibly deny or dismiss the compelling evidence pointing starkly to her current mental instability. I refer in this connection to the psychiatric prognosis. On 24 January 2006, Mr Anandan applied for an order directing that Dr Stephen Phang, the Deputy Chief of the Department of Forensic Psychiatry at the Institute of Mental Health, examine the accused with a view towards preparing a report for consideration prior to sentencing. The Prosecution did not object to such a course of action. Upon receiving the court's directions, Dr Phang duly prepared a report.

9 In his report dated 4 February 2006 ("the final report"), Dr Phang emphasises that the most important protective factor for persons suffering from simple schizophrenia is maintenance therapy with antipsychotic drugs. In this regard, it is pertinent to note that Dr Phang was unequivocal in emphasising, however, that he is "totally unconvinced that the subject will remain compliant to the prescribed medication on a daily basis if hypothetically left to her own devices at some point in the future".

10 Dr Phang is on the other hand entirely convinced that her lack of insight into the nature, extent and seriousness of her mental disorder is an "unequivocal indication of the attenuation of her better judgment". The accused "remained quite indubitably remote from normality".

11 After appraising all the relevant circumstances, Dr Phang concludes the final report with the following prognosis:

> Her high likelihood of defaulting future treatment as a consequence of her lack of insight may conceivably precipitate psychotic relapses, with the attendant risk of illness-related violent behaviour. More specifically, it is inherent in the very definition of simple schizophrenia that such patients invariably pursue a progressively deteriorating and downhill course with respect to their illness. In general, a diagnosis of schizophrenia (particularly untreated and therefore active

illness) also in itself confers an approximate 7% risk of death by suicide.

…

It is axiomatic in psychiatric risk assessment that a past history of violent behaviour is predictive of an increased risk of future interpersonal violence.

…

I am of the considered opinion that she remains, by virtue of her past history of violent behaviour and considerable degree of insightlessness into her serious mental disorder, a potential risk of dangerousness both to herself as well as others. The fundamental goal of treatment with antipsychotic medication is to retard, if not arrest the typical progressive downhill deterioration of her illness. It is therefore respectfully suggested that she should be kept in conditions of security where she may continually receive psychiatric treatment, and also be reviewed on a regular basis.

I note that Dr Phang did not venture to suggest the period for which the accused should receive medical treatment in order to retard or arrest her illness.

12 Mr Anandan has also helpfully drawn to my attention the observations of the learned Chief Justice Yong Pung How in *Ng So Kuen Connie v PP* at [2003] 3 SLR 178 at [58]:

> [T]he element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence. This is particularly so if there is a causal link between the mental disorder and the commission of the offence. In addition to the need for a causal link, other factors such as the seriousness of the mental condition, the likelihood of the appellant repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. *In my view, general deterrence will not be enhanced by meting out an imprisonment term to a patient suffering from a serious mental disorder which led to the commission of the offence*. [emphasis added]

13 I accept the force and logic of these percipient observations. The issue of general deterrence cannot be a real consideration in a case like this since there is a very real and palpable causal link between the illness and the two offences. The principal sentencing considerations in this case should to that extent relate to and address the rehabilitation of the accused and the protection of the public. Given the singular gravity of the offences involved in the present case, however, there is no doubt that a lengthy custodial sentence is imperative, unlike the case of the accused in *Goh Lee Yin v PP* [2006] 1 SLR 530, who was a kleptomaniac with exceptionally strong family support.

14 The accused's conduct is nothing short of deeply disturbing However, it must now be acknowledged in the light of the medical evidence that it was fuelled and triggered by her illness.

15 I also have to take into account that in the course of the hearing Dr Phang observed:

> [I]n general, for all cases of schizophrenia, it is said that one-third will be completely cured after a number of years of treatment, usually — principally drug treatment. One third will have, you know, relapses and remissions, and they will be in and out of mental — or psychiatric hospitals. And one-third will have a progressive downhill slide. *So I'm afraid I — I think the jury would be out on that at this point in time because it's relatively early days yet …* [emphasis added]

16 The imposition of an indeterminate prison term should be avoided when addressing offenders with an unstable medical or mental condition *if* there is a reasonable basis for concluding that the offender's medical condition could stabilise and/or that the propensity for violence would sufficiently and satisfactorily recede after medical treatment and continuing supervision. The burden is on the Prosecution to establish that the accused is likely to remain a future and real danger to the public without medication and permanent incarceration. I cannot conclude at this juncture that her medical condition will not stabilise or recede in the course of her incarceration, upon mandatory medication being duly administered. Indeed, on the contrary, it would appear that her present downward slide to further irrationality is likely to be arrested with proper medication and adequate supervision.

17 After penning the final report, Dr Phang testified that the accused is likely to need treatment on a "very long term basis, possibly on a permanent basis". The goal of medication would primarily be to arrest the "inevitable downhill slide". Dr Phang's clinical instincts lead him to conclude and reiterate that the accused is not very likely to take her prescribed medication compliantly if left "to her own devices". That said, Dr Phang readily acknowledged that if the accused were placed under a strict regime of medication and supervision "the likelihood is that she would improve".

18 Upon the conclusion of Dr Phang's testimony, Mr Anandan promptly sought an adjournment to ascertain if concrete assurance could be procured from the accused's immediate family that the manifest need for permanent medical attention and some form of familial supervision would be appropriately and adequately addressed. I granted the adjournment.

19 A prison-appointed psychiatrist has now confirmed that with regular medication and adequate supervision the symptoms the accused now suffers from will abate. The accused's three sisters have each sworn affidavits, severally undertaking to assume responsibility for the accused's future medical care and supervision upon her release from incarceration. Upon her release from prison, the accused will live with one of her sisters on a permanent basis. The sisters will personally ensure that the accused is brought regularly for medical appointments and attend to her financial needs as well as seek employment for her. Given their backgrounds and emphatic assertions, I am satisfied that her sisters are responsible persons who will live up to their commitment to ensure and preserve her future welfare and well-being. In such circumstances where a satisfactory support mechanism to secure the accused's rehabilitation and future medical treatment prevails, the risk of the accused's illness once again conflagrating into violence is fairly remote. I am inclined to quantify this risk in a manner that precludes the need for permanent incarceration.

20 I am also constrained in this regard to take into account the Court of Appeal's observations in *PP v Tan Kei Loon Allan* [1999] 2 SLR 288 at [40]:

> *In a situation in which the court is desirous of a sentence greater than ten years, but feels that a sentence of life imprisonment is excessive, we have no choice but to come down, however reluctantly, on the side of leniency*. Otherwise, the punishment imposed would significantly exceed the offender's culpability. It would, in our view, be wrong to adopt an approach in which the court would prefer an excessive sentence to an inadequate one. [emphasis added]

21 Sentencing, while a highly fact-sensitive exercise, mandates the exercise of both a sound discretion as well as a resounding sense of fairness. I have no alternative but to resolve any doubt that prevails as to whether a term of life imprisonment is appropriate or excessive in the accused's favour. In the circumstances I sentence her to a term of ten years' imprisonment.

22 This sentence is to be backdated to the date of remand, *ie*, 8 October 2004.

The kidnapping offence

23 There appears to be a dearth of sentencing precedents for similar offences. The only tangentially relevant case appears to be *Lew Ai Ling, Irene v PP* Magistrate's Appeal No 306 of 1992. The accused in that case abducted a four-year-old child overnight with the intention of extorting money from her parents. However, upon changing her mind, the accused later sought to return the child to the place of abduction. A sentence of two years' imprisonment was imposed.

24 The essence of malfeasance and culpability arising from kidnapping a young child in an offence pursuant to s 263 of the Penal Code lies in the enforced separation from her lawful guardian and the ensuing fear and distress caused to the child. Just as crucial is the apprehension, anxiety and distress caused to and suffered by her guardian or parents. It is an abhorrent act that must be visited upon with a severe sentence both in order to deter future offences as well as to punish the offender commensurably. The duration of the act, the motive for the abduction and any harm caused to the victim are all relevant considerations.

25 In determining the appropriate sentence in this case, I am mindful that the *single transaction* and *totality* principles must not be overlooked; see also [12] and [13] above. To that extent I am conscious that the accused's subsequent act in causing Sindee to fall from the Block should not figure as a sentencing consideration in this offence, as it has already been dealt with in the sentence for the culpable homicide offence. I cannot, however, ignore that while the period of abduction was brief, the circumstances in which Sindee was removed were deeply distressing to both Sindee as well as her parents. When Sindee awoke she must have been overcome by immeasurable shock and anguish. Indeed the accused herself acknowledged that Sindee cried inconsolably. Without any doubt, the entire continuum of events caused and created overwhelming trauma for both Sindee and her parents.

26 Taking into account all the relevant circumstances, I consider a term of imprisonment of three years the appropriate sentence for the kidnapping offence.

Conclusion

27 Given the gravity of the offences, it is only appropriate that the sentences meted out for both offences should run consecutively. The accused will therefore have to serve a sentence of 13 years' imprisonment commencing from the date of her prison remand (see [22] above).

Coda

28 I would like to conclude with a reference to the remarks of the learned Chief Justice Yong Pung How in *Goh Lee Yin v PP* ([13] *supra*) where he pointedly emphasised at [61]:

> If the courts are to *properly adjudicate* on cases where the offender suffers from some medical condition, the courts must be vested with the requisite sentencing discretion. [emphasis added]

29 The current position, where the courts are neither empowered nor endowed with any discretion whatsoever to customise or tailor their sentences in a manner that would be consistent with either the possible recovery or decline of the medical condition of an offender who is unwell, is far from satisfactory. Judges often have to choose between a rock and a hard place when resolving their colliding instincts in determining the appropriate sentence. Should the offender's medical condition stabilise without any real risk of a relapse it would be quite unjust for him or her to continue to be incarcerated after rehabilitation through medical attention when he or she no longer poses any

further risk to the public upon a return to the community. It is apodeictic that in such an instance the underlying rationale for the second of the *Hodgson* criteria (see [5] above) no longer prevails. In order to properly and fairly sentence offenders whose medical condition might potentially be reversed through medical attention and/or with the passage of time, the courts should be conferred the discretion to impose a sentence band with appropriate minimum and maximum sentences tied to periodical medical assessments and reviews. This will minimise the rather unscientific and imprecise conjecture that is now inevitably prevalent when determining appropriate sentences for such offenders. The proposed approach, while fairer to offenders, will also concomitantly serve to address and assuage public interest concerns on adequate sentencing as well as protection from mentally ill offenders with a propensity for violence. It is my hope that Parliament will review the present position and, upon taking into account the views of all relevant stakeholders in the sentencing and rehabilitation framework, endow the courts with more comprehensive and pragmatic sentencing powers. Effectiveness need not be divorced from fairness and reality. It is a fundamental tenet of criminal jurisprudence that whenever liberty is subtracted, justice must be added. Sentencing in cases such as this requires a rapier-like rather than a blunderbuss approach.

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