Public Prosecutor v Chia Moh Heng
[2003] SGHC 108

Case Number : CC 5/2003

Decision Date : 09 May 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Eddy Tham (Attorney-General's Chambers) for the Public Prosecutor; Marjory Yeoh (Attorney-General's Chambers) for the Public Prosecutor; Accused in person; Subhas Anandan (Harry Elias Partnership) as Amicus Curiae

Parties : Public Prosecutor — Chia Moh Heng

Criminal Procedure and Sentencing – Sentencing – Whether an order under s 315 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) may be made where the defence under s 84 of the Penal Code (Cap 224, 1985 Rev Ed) has not been established.

Criminal Procedure and Sentencing – Sentencing – Appropriate sentence under s 304 (a) of the Penal Code where the accused suffers from an impairment to the mind.

1 The accused is 52 years old and unemployed. He was renting a flat at Jalan Kukoh together with his friend Pang Siew Yin ('Pang') at the time of the offence. Pang was 55 years old. About 1am on 17 September 2002 the accused woke from sleep and went to brush his teeth at the kitchen sink. He spied a knife next to the sink and promptly took it in his hand and walked to Pang who was asleep. The accused plunged the knife deep into Pang's chest. Pang woke up with shock and ran out of the flat where he collapsed and died. The accused was charged with killing Pang under s 304(a) of the Penal Code, Ch 224, for culpable homicide not amounting to murder. The particulars of the charge aver that the act of the accused 'was done with the intention of causing such bodily injury as was likely to cause death'. The accused pleaded guilty to the charge. He was not represented but an *amicus curiae*, Mr Subhas Anandan was appointed to assist the court in respect of some important aspects relating to the mental state of the accused and to address the court in mitigation on behalf of the accused.

2 The accused was examined by Dr Tommy Tan of the Department of Forensic Psychiatry at the Woodbridge Hospital. Dr Tan gave his evidence orally and three of his reports on the accused were admitted into evidence. Dr Tan testified that he examined the accused over two or three occasions for a total of about two hours. He also studied the medical record of the accused. He stated that he did not peruse any of the statements given by the accused to the police because he did not think that they would be of much help to him.

3 The accused has a history of mental illness going back to 12 January 2001 when he was first admitted to the Woodbridge Hospital for setting fire to his landlord's corridor. According to Dr Tan, the accused was then suffering from a paranoid delusion that his landlord was conspiring with a neighbour to harm him 'and set five ghosts on him'. He believed that the landlord was spraying 'special fragrant flakes' that made people lose their minds, but he believed that he (the accused) was given special powers by some visiting monks to protect himself. The accused was admitted to the Woodbridge Hospital again on 31 January 2002 after the police arrested him at the Hotel Phoenix where he was found talking to himself.

4 In respect of the present offence, Dr Tan stated in his report of 4 October 2002 (P5) that the accused was examined by him and found to have 'psychomotor retardation, that is to say [that] his mental processes, is slowed down. He spoke slowly and [his] movements were retarded. His affect was depressed. He could not tell [Dr Tan] why he had killed the deceased. He said that he

was in a state between awake and asleep [at] the time of the alleged offence. He felt some force controlling him. He could have some paranoid beliefs about the deceased.' Dr Tan concluded that in his opinion, the accused had a 'schizoaffective disorder' at the time of the offence which 'substantially impaired his mental responsibility for the acts that caused the death of the deceased'. Dr Tan is of the opinion that the accused 'was not of unsound mind at the time of the offence, as he knew what he was doing and what he did was contrary to law' (sic). However, Dr Tan added that, in his view, the accused qualified for the defence of diminished responsibility because of the impairment to his mind caused by the schizoaffective disorder.

5 A person who is convicted of culpable homicide not amounting to murder under s 304(a) of the Penal Code shall be punished with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall also be liable to fine or caning if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury, as is likely to cause death. Dr Tan had expressly stated in his report, which he re-affirmed in his testimony in court, that the accused was not of unsound mind but, nonetheless, qualifies for the defence of diminished responsibility. What the psychiatrist means is that he does not think that the accused can be described to be of unsound mind within the meaning of s 84 of the Penal Code:

> '84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.'

6 However, in his view, the accused can be said to have a diminished responsibility within the meaning of Exception 7 to s 300 of the Penal Code at the time of the offence. Exception 7 reads:

> '*Exception 7*. – Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.'

It is important to state at this point that whether or not s 84 or Exception 7 applies in any case is a matter for the court to determine. In that sense, the opinions of doctors and psychiatrists cannot be the final word. That is obvious in cases where there is conflicting medical evidence. Where, as in this case, the only medical evidence comes solely from one psychiatrist, that point may not be as obvious. Nonetheless, in considering the application of s 84 and Exception 7, medical evidence is essential, and though not the final word, no court may proceed without it; that is because both statutory provisions have encrypted the requirement for specialist medical evidence into the legislative provisions. In the one case, medical evidence is required, at least, to determine, first of all, whether the accused is of unsound mind in the medical sense; and in the second, to determine whether he was labouring under an abnormality of mind arising from a retarded development of the mind, or any inherent causes, or induced by disease or injury.

7 In the eyes of the layman and any reasonable man, however, the accused in this case, with his long history of mental illness - talking to himself and imagining being harmed by his landlord and various others - is undoubtedly of unsound mind, or insane. That is to say that some ailment is afflicting his mind and causing him to imagine and believe things that a rational person would not. It is the combination of the ailment and the thought sequences produced in his mind by that ailment that distinguish such a person from one who, unaffected by any medical condition of the mind, forms beliefs that other rational men would not share – for example, some rational men may believe that it is bad luck to walk under a ladder while other equally rational men may not.

8 What then, is the distinction between s 84 and Exception 7? Section 84 is known as an absolute defence in that if that provision applies – and the burden of proving so is on the accused - the accused may be acquitted and, pursuant to s 315 of the Criminal Procedure Code, Ch 68, be ordered to be kept in safe custody and subsequently be confined in a mental hospital or other suitable place during the President's pleasure. A person to whom Exception 7 applies is guilty of culpable homicide but by reason of that exception, the culpable homicide is not murder and he cannot, therefore, be tried or convicted on a capital charge. The punishment would be within the range set out in s 304(a) of the Penal Code.

9 In the present case, the learned DPP Mr Tham argued that the accused is a danger to himself and society so long as he is labouring under the schizoaffective disorder. Mr Tham pointed out that the accused habitually did not comply with the regime of medical treatment prescribed to him. He therefore submitted that a sentence of life imprisonment ought to be imposed. His argument was supported by the evidence of Dr Tan.

10 Mr Anandan made some very pertinent points in his address to me relating to the state of mind of the accused and the extent to which his mental illness had diminished his culpability. I use the word 'diminished' here in the general sense and not in the sense which it is used in the context of Exception 7. Much of what Mr Anandan says is not challenged by Mr Tham. Mr Anandan recognises that there are serious problems posed by the accused in his condition and hence, when he made the recommendation that should a sentence of life imprisonment be handed down, the court should direct that the accused be made to serve his incarceration in a mental institution instead of the prison. Unfortunately, a direction of that nature can only be made if s 84 applies.

11 In considering the appropriate sentence for this accused we must remind ourselves that he had, with guidance of an able counsel, pleaded guilty and so precluded himself from the defence under s 84 although I accept that an order under s 315 of the Criminal Procedure Code (which is consequential only upon a successful defence under s 84) is the most appropriate order in circumstances such as the present. But s 84, by reason of its stringent requirements, has proved to be virtually inaccessible to accused persons who are mentally ill. That provision is a statutory expression of an outdated common law icon – the M'Naghten Rule, (from *M'Naghten's Case* (1843) 10 Cl & Fin 200) a point I had previously made in *Public Prosecutor v Dolah bin Omar* [2001] 4 SLR 302. One of the difficulties of s 84 is that it compels the doctors and the courts to draw a distinction between insanity and acts of insanity. It is one thing to say that a man who commits an act of insanity may not be insane; but it is quite another to say that a man who is insane (at the time of the offence, and not during a lucid interval) and commits an act of insanity must be required to prove that in doing so he was incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law.

12 Another problem, associated with the first, is the difficulty of determining whether an insane person was capable of knowing the nature of his act, or that what he was doing what was either wrong or contrary to law. In practice, that depends very much on what that insane man tells the examining psychiatrist. How badly has the insane man's perception of himself and his own conduct has been warped, or conversely, preserved by his mental illness is a relevant point that has not been raised in any antecedent case. How much effort is required to establish the reliability of the insane man's answers? If we do not believe him when he tells us that his landlord sets five ghosts on him, that is because that claim does not accord with our view of reality. Yet we may choose to believe him when he says that he knew that what he did was contrary to law, but that may be so only because those words conform to our view of reality. In the present case, Dr Tan spent no more than two hours with the accused. What transpired during this time? No record or transcript of the examination was available. Dr Tan did not look at the statements made by the accused to the police

although those statements might, and probably would have been, more contemporaneous than those he made to Dr Tan.

13 Finally, s 84 (or the M'Naghten Rule) befuddles even doctors, and constrains them from calling a spade a spade. This is evident from the evidence of Dr Tan himself who, in attempting to justify why he had diagnosed the accused as suffering from a serious mental disorder at the time of the offence and yet not to be of unsound mind. His answer was that he 'applied' the M'Naghten Rule. It is clear to me that by that answer, he meant that from the medical, but not the legal point of view, the accused was of unsound mind (or insane, in common parlance).

14 Reverting to the present circumstances, with s 315 of the Criminal Procedure Code and s 84 of the Penal Code excluded, the choice is therefore between a term of imprisonment of up to ten years or imprisonment for life. Gangsters who stab one another to death and are charged under s 304(a) have been sentenced within the range of six to ten years imprisonment, depending on the mitigating or aggravating circumstances of the individual case. In my view, the punishment for a person whose mental culpability is so diminished by illness ought to be for a lesser not greater term. But such a shorter sentence can be inappropriate or inadequate in many instances.

15 A mentally ill accused who is released from prison and does not continue his medical treatment may suffer a relapse, and consequently, result in death or injury to himself or others. Thus, the principle of deterrence – not so much the deterrence in the traditional sense of deterring others from committing like crimes, (for we are dealing here only with persons of deranged minds) but that of protecting the public as well as the accused himself - requires that such accused persons be incarcerated for as long as is necessary. In the circumstances of this case, with no other statutory provisions to measure what is necessary or to determine the *juste millieu*, the most appropriate sentence has to be, by default as it were, a sentence of life imprisonment. The accused will receive the appropriate medical treatment in prison and his mental illness can thus be kept in check. Dr Tan testified that if medical attention to the accused is interrupted, the likelihood of a relapse is strong. In this case, the accused who is a divorcee with no family support, is likely, if released, to forsake the long-term medical treatment that he will require. But that treatment will be available to him whilst he remains in prison. The paradox, therefore, is that a medically rehabilitated person in this accused will have to continue to spend the rest of his life in prison.

16 Notwithstanding the observations that I have made above, the only recourse I have in the circumstances of this case is to impose a sentence of life imprisonment. I, therefore, sentence the accused to a term of imprisonment for life, with effect from 17 September 2002. The date of commencement is material in the event the accused qualifies for release pursuant to any executive orders.