

Public Prosecutor v Dolah bin Omar
[2001] SGHC 256

Case Number : CC 45/2000
Decision Date : 04 September 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Chan Wang Ho and Thong Chee Kun (Attorney-General's Chambers) for the prosecution
Parties : Public Prosecutor — Dolah bin Omar

Criminal Law – Special exceptions – Diminished responsibility – Whether accused deserves compassion and leniency due to diminished mental culpability – Whether life imprisonment appropriate – ss 84 & 300 Exception 7 Penal Code (Cap 224)

Criminal Procedure and Sentencing – Accused of unsound mind – Accused's mental illness affecting perception of right and wrong – Accused aware of wrongful nature of act – Difficulty in understanding court procedure or in instructing counsel – Whether court should disregard plea of guilt

Criminal Procedure and Sentencing – Accused of unsound mind – Culpable homicide not amounting to murder – Accused satisfying criteria for defence of diminished responsibility – Accused suffering from chronic schizophrenia – Accused's mental condition requiring constant psychiatric treatment and supervision – Sentencing options and considerations – ss 304(a) & 314 Penal Code (Cap 224)

: The accused, aged 55, was charged and convicted for the offence of culpable homicide not amounting to murder under s 304(a) of the Penal Code (Cap 224). An offence under this section is punishable with imprisonment for life, or imprisonment for a term, which may extend to ten years, and shall also be liable to fine or caning.

The accused, represented by Mr Ahmad Nizam, pleaded guilty and admitted the facts set out in the statement of facts. On 20 January 2000 the accused bludgeoned his 79-year-old uncle to death with a stool and then cut off the deceased uncle's genitals. The killing was utterly gruesome. After considering the mitigation plea by Mr Nizam as well as the submission on sentence by the Deputy Public Prosecutor Mr Chan, I sentenced the accused to a term of life imprisonment. Although Mr Chan called for the imposition of life imprisonment because of the repulsive nature of the offence, it was not on that basis that I handed down the sentence.

The accused was a patient of the Institute of Mental Health and has been receiving outpatient treatment at the Tampines Psychiatric Outpatient Clinic. A psychiatric report dated 24 February 2000 by Dr Tommy Tan, an Associate Consultant Psychiatrist at the Woodbridge Hospital, which report was tendered as part of the prosecution's statement of facts, reveals the accused to be a person with a history of 'chronic schizophrenia' since the 1960s. He was 'markedly disabled socially and intellectually, unable to be gainfully employed and dependent on his family'.

The report went on to state that at the time of the offence the accused 'was suffering from an acute exacerbation of schizophrenia'. The psychiatrist stated that the accused satisfied the criteria for the defence of 'diminished responsibility'. He said that the accused 'has an abnormality of the mind, ie a persecutory delusion, brought on by Schizophrenia [which] would have substantially impaired his mental responsibility'.

The defence of insanity was not raised. Mr Nizam declared that the accused did not satisfy the

insanity test under s 84 of the Penal Code. The psychiatric report declared the accused fit to plead. It will be seen from the medical evidence that the accused was clearly in need of constant psychiatric treatment and supervision and that will continue for an indefinite period. Although he was suffering from mental illness since the 1960s, this was the only known incident of violence in his record of antecedents; but this episode was manifested in an extreme form, and there is evidence that there is a danger of recurrence if he does not undergo medical treatment. I have noted the plea made by his family, through his counsel, that they have forgiven him and do not hold him responsible for the crime.

The medical evidence shows that the mental culpability of this accused was substantially diminished. As such he deserves compassion and leniency, but nonetheless I am of the view that the sentence of life imprisonment is the appropriate sentence. The alternative was to sentence him to a fixed term of imprisonment not exceeding ten years. That will enable the accused to return to society after about seven years on account of good behaviour; but remains a danger to himself and others. Finding the correct principle to apply in the sentencing process in this case was, however, not a straightforward exercise. If a man must be punished for what he has done, then the fact that his mental culpability was diminished by reason of a mental illness ameliorates his crime and the punishment ought to be reduced to the extent that he is not punished beyond what he deserves. If medical treatment is not required (or in issue) a long custodial sentence may not be appropriate in such a case. However, in the present circumstances, I was unable to ignore the obvious desirability of keeping the accused safe from himself, and others, from him. Dr Tommy Tan wrote in a report dated 22 March 2000 that the accused 'has Chronic Schizophrenia, a major mental illness. He will need long-term medication. He can be a danger to others and himself if he does not take medication.' A person in this condition requires medical and psychiatric treatment as much as the law may require his imprisonment; but there is no other suitable relief or order that may be made under any of the relevant statutory provisions on the facts before me.

The two notable provisions under the Penal Code are s 84 and Exception 7 to s 300. They read as follows:

Section 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.

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.

These provisions were drafted at a time when psychiatric medicine was still in a relative state of infancy, and could not adequately guide the framers of the Code, who it appears from the overall scheme, initially intended to provide a general excuse for criminal conduct on account of an unsoundness of mind which eliminates any prescribed or implied mens rea of an offence, but subsequently incorporated the specific Exception 7 provision to exclude a homicide from the definition of murder if the accused was incapable of forming the requisite intention by reason of 'an abnormality of mind' without adjustment to s 84. No connection or distinction was made between 'unsoundness of mind' and 'abnormality of mind' nor of all the peripheral qualifications to those crucial terms. The words of s 84 were adopted in form and substance from the M'Naghten's Rules themselves emanating from **M'Naghten's Case** (Unreported) (Unreported) . The English have long questioned

the usefulness of those enigmatic Rules. See: **Royal Commission on Capital Punishment 1949-1953 Report**, 90-116. The dearth of cases in Singapore in which s 84 has been raised successfully as a defence is mute testimony consistent with the conclusion of the Royal Commission.

From the point of law, an accused found at trial to be of unsound mind within the definition of s 84 at the time of the offence will be acquitted as provided under s 314 of the Criminal Procedure Code (Cap 68) ('CPC'). By s 315(1) of the CPC, that accused will then be ordered to 'be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the orders of the Minister'. The Minister may then order that person to be 'confined in a mental hospital, prison or other suitable place of safe custody during the President's pleasure'. On the other hand, a person found at trial to be suffering from an abnormality of mind within the definition of Exception 7 (introduced in England under the Homicide Act 1957) may not be liable for murder but shall be found guilty of culpable homicide and be sentenced accordingly. The distinction between 'unsoundness of mind' and 'abnormality of mind' appears to be a legal one, hinging on the question whether the accused was aware of the nature of his act, or that what he did was wrong or contrary to law. Laying s 84 and Exception 7 in the same Code invites the suggestion that mental disorders are categorized neatly into one or the other, a suggestion which may mislead lawyers and doctors alike to assume that that is what the law wants. The end of the trap is the obfuscation of the simple fact that mental disorders are of different types and each has a wide range in terms of the degree of affliction. The effect of the trap is that the full facts of each case may not be adequately explored so as to facilitate the inquiry whether the accused was not guilty by reason of insanity, or guilty but not fully culpable, or guilty and fully culpable. In the second case, a further inquiry is necessary to determine what is the appropriate sentence of imprisonment since there is no fixed rule that a person convicted of culpable homicide must invariably be sentenced to life imprisonment.

Often, if not invariably, when an accused pleads guilty to a charge of culpable homicide not amounting to murder, he would have represented to his counsel and the psychiatrist (and sometimes to the court) that he was aware of the nature of his act and knew that what he did was wrong and contrary to law. But what is the weight to be given to an admission made by a person diagnosed to be suffering from an unsoundness or abnormality of mind such that his judgment and perception are impaired? It is virtually an inverse situation of Joseph Heller's **Catch-22**. In that novel, there is a 'regulation 22' under which a pilot may only apply to be discharged from the air force on the ground of insanity. However, the same regulation provided that if a pilot is capable of making that application he shall be deemed to be sane. Mr Nazim pleaded for the accused be confined in a mental institution as opposed to being sentenced under s 304(a) of the Penal Code. But as I have stated above, on the facts, this accused does not qualify to be acquitted on the ground of unsoundness of mind and the only orders that I could make are those under s 304(a). Given the nature of his illness, the closest order to a long term detention with medical rehabilitation would be, in my view, a sentence of life imprisonment; but if I do not provide any sound basis why a person whose mental capacity (for the commission of the offence charged) was diminished by a chronic and serious mental illness should be punished to the maximum limit provided under s 304(a) it is because there is none save the utilitarian one that I have adopted for this case.

There was no evidence in this case to suggest that although the accused had stated that he knew the nature of his act, and that his action was wrong, his admission ought, nonetheless, be disregarded because objective medical diagnosis indicates that his perception of right and wrong had been warped by his mental illness. There is only a hint of that in Dr Tan's report of 24 February 2000 that I shall now refer to again. It was, of course, open to counsel to ask that I reject the accused's plea and proceed to trial; but Mr Nizam was reluctant to do that - I say this not as a criticism in any way as I do not know the details of his brief and instructions - neither was I inclined to reject the plea on my own accord, even though on this score I had taken into account the last sentence in Dr

Tommy Tan`s report of 24 February 2000 at p 2 in which he stated:

[The accused] is fit to plead. He understands that he has been charged with killing his uncle and the consequence of being found guilty. However, I urged his counsel to be patient with him. I also humbly ask the court to be patient with him. His chronic symptoms may cause him some difficulty in following court procedures and instructing counsel.

It is well acknowledged that difficulty in understanding court procedure or in instructing counsel is not equated with the inability to understand the nature of the act or that it was wrong and contrary to law. That the accused failed to satisfy the criteria was fully borne out by the medical evidence and submission of Mr Nizam. So, once again, the narrowness of s 84 has prevented a possible candidate from passage. In my view, since the effect of an order under s 314 of the CPC and a sentence of life imprisonment would be almost similar in the present case I, therefore, accepted the accused`s plea of guilty and for the reasons above, sentenced him to life imprisonment.

Outcome:

Order accordingly.

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