Public Prosecutor *v* Leow Kok Meng
[2011] SGHC 85

Case Number : Criminal Case No 48 of 2009

Decision Date : 08 April 2011

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Leong Wing Tuck and Cassandra Cheong (Attorney-General's Chambers) for the Prosecution; Lim Lay Choo Jennifer (Straits Law Practice LLC) for the Accused.

Parties : Public Prosecutor — Leow Kok Meng

Criminal Procedure And Sentencing

8 April 2011

Kan Ting Chiu J:

1 The accused Leow Kok Meng pleaded guilty to one charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed) and one charge of voluntarily causing grievous hurt by means of a knife under s 326 of the Penal Code. He was convicted on the charges and sentenced to life imprisonment for each offence with two offences of vandalism taken into consideration for the purpose of sentencing. The offences were committed on 29 August 2008. The accused was 47 years 10 months old at that time, and is 50 years 4 months old now.

The facts

2 The accused had attacked two persons. The person in the first offence was Karunagaran s/o Jaganathan ("Karunagaran"), who died, and the person in the second offence was Balan s/o G Krishnan ("Balan"), who was injured.

3 The accused, Karunagaran and Balan used to hang out in the Mei Ling Street vicinity. They knew one another; Karunagaran and Balan were good friends, but they were not on friendly terms with the accused as the accused had fought with Karunagaran a few years ago.

4 According to the accused, he ran into Karunagaran and Balan on several occasions on the day of the offence, starting from the morning. Karunagaran verbally abused him and his mother in Hokkien, but he kept out of the way of Karunagaran and Balan, and went about attending to his own matters, which included drinking stout and whiskey. When he was returning home in the afternoon, he noted that Karunagaran and Balan were still there. That annoyed him, and when he got home, he retrieved a hunting knife, put it in a sheath, then tucked the knife and sheath under his T-shirt, left his home and went downstairs.

5 What happened next were described in the Statement of Facts which he had admitted:

> 20 At about 4.45 p.m., the accused approached Balan who was seated at one of the benches at the fountain area in front of Block 157 Mei Ling Street. The accused pointed the knife at Balan. Without saying a word, the accused attacked Balan with the knife.

21. Balan tried to ward off the accused's attack. Balan asked the accused why he was attacking him, to which the accused replied in a confrontational manner, "what, what". In the course of the accused's knife attack, the accused inflicted multiple injuries on Balan.

...

23. At about this time, the deceased came to the fountain area and he saw the accused attacking Balan. The deceased then shouted at the accused. The accused turned his attention towards the deceased and attacked the deceased repeatedly with the knife. Consequently, the accused inflicted multiple incised and stab wounds on the deceased with the intention of causing such bodily injury as was likely to cause death.

24. As a result of the accused's attack, the deceased staggered and collapsed outside the fountain area. Balan managed to leave the scene and went up to the deceased's flat at the 16th level of Block 154 to inform the deceased's sister about what had happened to the deceased.

When the police arrived at the scene and arrested the accused, he was in an intoxicated state, speaking incoherently and had to be supported to get to a police car.

The injuries inflicted

6 Karunagaran died at the scene of the attack. Post-mortem examination revealed that there were 15 stab and incised wounds over different parts of his body. The cause of his death was certified as "multiple stab and incised wounds".

7 Balan sustained multiple lacerations on his right palm, chest and back. The lacerations to the palm had resulted in 100% cuts to two tendons and a median nerve.

Psychiatric evidence on the accused

8 Dr Arthur Lee, Senior Consultant Psychiatrist & Acting Chief, Addiction Medicine Department, Institute of Mental Health examined the accused in September 2008. In his report dated 13 October 2008, Dr Lee noted that the accused had a history of daily and excessive alcohol consumption going back more than 10 years. In the conclusion of his report, Dr Lee stated:

1 0 **Diagnosis and Opinion** – From the information available, my examination of the accused and interviews with his sister and the 3 independent Police eye-witnesses (first to arrive at the scene), Mr Leow, an ex-heroin addict (with likely Anti-Social Personality traits and low average intelligence), has **Alcohol Dependence** . His family history of alcoholism (2 siblings), recent emergency treatment for **low brain glucose with alcohol withdrawal seizures at Alexandra Hospital 2 weeks before the alleged incident** , and past visual hallucinations with recent abnormal liver function tests are all consistent with **moderately severe alcohol dependence**. Three objective witnesses (all Policemen first on-site, 2 immediately whilst he was still holding the knife) gave independent and concurring accounts of his strong alcoholic smell, overtly intoxicated and abnormal behavior with grossly unsteady gait. His perceptions, delusional belief (that the deceased planned to attack him with a metal rod), judgment and actions at the time of the alleged offence were all likely significantly influenced by his severe Alcohol Intoxication with possible exacerbation of low glucose (skipped lunch). The accused had **severe Alcohol Intoxication** (blood alcohol level likely well above 300mg% at the material time, given that 5 hours after his arrest, blood alcohol tested remained unusually high at **297mg%)**. In my opinion – even though he was not of unsound mind at the material time, (in that he was aware of the

nature and consequence of his actions), his **persecutory delusion, impaired judgment, loss of control and incoherence** are consistent with **alcohol-induced psychosis** ie an **abnormality of mind which has substantially impaired his mental responsibility for his actions**. At present, he is mentally fit to plead and stand trial in Court.

[emphasis in original]

9 Dr Lee followed up on the report with his opinion on whether the accused would be a serious danger to the public for an indeterminate period of time and whether the accused needed psychiatric care and treatment for an indefinite period of time. In a letter dated 5 October 2009, he stated:

From the history and mental state of the accused at the time of the alleged offence, 3 areas pertaining to possible future dangerousness in this case are of particular concern:

a Past history of drug related imprisonment and recidivism – the background of his long term history of substance and alcohol dependence and imprisonment: incarceration at [Drug Rehabilitation Centre] 4 times (heroin addiction) and imprisonment for drug related offences.

b ***At the time of the alleged offence – his*** [sic] ***had persecutory delusions, impulsive and unrestrained. dangerous acting-out with a knife after severe alcohol intoxication*** leading to the deceased man's death through multiple stabbing.

c Prognosis for the future – the likelihood of relapse for alcohol dependence and intoxication is high in this case, especially with a strong family history of heavy drinking (2 siblings), his co-morbid substance dependence, antisocial personality traits, lack of remorse and no previous evidence of active engagement nor compliance with treatment.

Treatment and rehabilitation will depend on this accused person's willingness to fully accept that he has a problem in the area of dependence on alcohol and past substance dependence, insight on the psycho-social consequences of his addictive lifestyle and his commitment to change his behavior and lifestyle. All seem to be lacking in this case and would not likely lead to his voluntary treatment especially in the absence of structured supervision, commitment and accountability

3 In my opinion, the above can be taken as evidence that *the accused is likely to pose a serious danger to the public*, given the facts, circumstances and psychiatric examination of this case which led to the death of the deceased who was stabbed in broad daylight in public. Hence, involuntary, ***custodial psychiatric care and treatment for an indefinite period of time may be beneficial for his mental well being, sustained sobriety and more importantly, for public safety*** .

[emphasis added]

10 The accused was seen by another psychiatrist, Dr Todd Tomita, Acting Chief & Consultant Psychiatrist, Department of General & Forensic Psychiatry, Institute of Mental Health/Woodbridge Hospital. Dr Tomita's involvement came after the accused was convicted, and the case had moved onto the sentencing phase.

11 In his report dated 27 April 2010, Dr Tomita sets out the accused's background history:

The defendant is a 49 year old divorced man. He is a recidivist offender with prior violent convictions.

His background history has been reported in detail in previous reports to the Court. In brief, the defendant has a primary three education. He has worked in a variety of odd jobs since then. He reports that his most stable occupation has been in foot reflexology. He reports having worked in the field for 20 years and obtained a certificate of qualification about 10 years ago.

The defendant reports working at many jobs. He denies having any difficulty with his employers and told me that he was a reliable employee. However, his longest job working as an employee has only been for several months at a time. He told me he usually does odd jobs on contract. He was working in the area of foot reflexology but stopped around 2007 because he injured his left hand. After this, he intermittently helped selling durians near his home.

The defendant was married for about two years when he was 40 years old. He has had about 10 live in relationships with women, the longest of which lasted five or six years.

the accused's alcohol and substance use history:

He has had recurrent problems connected with his drinking, which has increased over the years. In the past few years, he told me that he has been drinking daily starting in the morning. Prior to his arrest, his average consumption was 2 or 3 large bottles of beer per day supplemented with whisky about twice per week. He conceded that he was drinking more in order to get the same effect from alcohol and he had cravings for alcohol when not drinking. Although the defendant denied problems with withdrawal or memory problems, Dr. Arthur Lee's report noted otherwise. Information obtained from the defendant's sister and Alexandra Hospital records indicated that the defendant had problems with alcoholic blackouts, withdrawal tremours and one episode of alcohol withdrawal seizures resulting in an admission to Alexandra Hospital in 2008.

and the accused's past violence history:

His trouble with the law began in his teenage years. He was at [sic] boys home at age 15 for about two years after being arrested for theft. His adult criminal record began when he was in National Service. He was discharged from national Service as a result of criminal convictions and the subsequent prison term. He has had 5 prior sentencing dates for criminal convictions including robbery and armed robbery (1980), extortion (1980), voluntarily causing grievous hurt (1981), using criminal force to deter a public servant (1993), and voluntarily causing grievous hurt and voluntarily causing hurt with a dangerous weapon (1998). He has netted sentences of up to 15 months and caning for 2 of his sentences.

Robbery and armed robbery (1980)

The defendant denies committing these offences. A charge of possession of an offensive weapon was also taken into consideration at sentencing. The defendant told me had a knife. The Summary of Facts notes that the defendant and 2 co accused robbed a shopkeeper at knifepoint.

Voluntarily causing grievous hurt (1981)

The Statement of Facts notes that the defendant was out with friends drinking large amounts of alcohol. An accidental collision led to the victim striking the defendant. The defendant kicked the victim to the ground and stomped on his face 11-12 times. The victim sustained a severe head injury and was in hospital for 2 months.

Voluntarily causing grievous hurt and voluntarily causing hurt with a dangerous weapon (1998)

> The defendant provided a version of these events which was consistent with the Statement of Facts. The defendant met and gambled with the 2 victims. He won and wanted to stop playing. The victims insisted that the defendant continue to play and an argument ensued. The defendant walked over to a nearby shop and took up a knife. He approached the 2 victims and slashed them multiple times in the face, head and shoulders. The defendant told me he had not been drinking much the day of this incident. He estimated consuming 2 bottles of beer. The defendant told me that a bystander witnessed the victims punch the defendant in the face and throw a bottle at him and his testimony in court helped reduce the sentence.

12 Dr Tomita then presented a Violence Risk Assessment on the accused. In this Assessment, Dr Tomita noted:

> In the defendant's case, there is definite previous violence beginning with a conviction for robbery and armed robbery in 1980. Since then, he has had convictions for extortion (1980), voluntarily causing grievous hurt (1981), using criminal force to deter a public servant (1993), and voluntarily causing grievous hurt and voluntarily causing hurt with a dangerous weapon (1998). It is notable that the 1998 conviction occurred when the defendant was not using much alcohol. It is also notable that the use of a knife has been a regular feature of his offending behaviours.
>
> ...
>
> Mr. Leow has definite and serious substance use problems. These have remitted, as he is now unable to readily access alcohol given he is in remand. His substance use has affected his health, interpersonal relationships, and has been a factor in some of his offending including the index crimes.
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> ...
>
> *The defendant suffers from an antisocial personality disorder*.
>
> ...
>
> *The defendant lacks insight*. He fails to appreciate the connection between a lifestyle marked by daily drinking and associations with acquaintances who are also substance abusers. He fails to appreciate that his penchant for taking up a knife to resolve disputes is a recipe for a violent outcome. For example, in the index offence he expresses surprise that one of the victims's [sic] died but also reports the only solution he had to the problems with the victims was to get a knife and confront them.

and the Risk Assessment Summary was that:

> Overall, ***the defendant would be considered in the moderate range of risk for future violence*** . Although moderate, ***his risk is likely to be present over the long term*** . The nature of his violence was predatory when he was young when he committed robberies for personal gain. His offences have become more emotionally driven and triggered by interpersonal conflict as he has grown older. Alcohol use and some degree of intoxication has been a feature of most but not all of his offences. This is important as it highlights the fact that personality-based features such as aggressiveness, lack of remorse or guilt and lack of empathy are factors. Personality traits are by definition long standing and difficult to modify or change. The severity of his violence risk is the most concerning feature in this case. Although there have been only periods of a stability,

the most recent offence in 1998 and the index offence involved the defendant wielding a knife and inflicting potential and actual life threatening injuries.

[emphasis added]

13 Dr Tomita ended the report with his findings:

1. Clinical Formulation and Psychiatric Diagnosis

The defendant has problems with alcohol dependence and a temporary alcohol-induced psychosis has been assessed to have contributed to his current offences.

He is not psychotic now and there is no evidence that he suffers from a major mental illness or any persisting alcohol-induced psychiatric symptoms.

He has a past history of substance misuse but stopped using drugs about 15 years ago.

The defendant has an antisocial personality disorder and a moderate level of psychopathy.

He has failed to conform to social norms and repeatedly committed crimes, shows a lack of remorse, has failed to learn from his experience (including repeated incarcerations), and has an established pattern of aggressiveness and violent behaviour, which has escalated in severity over time.

2. Is there evidence to show that Leow Kok Meng is likely to represent a serious danger to the public for an indeterminate period of time?

Although at a moderate risk for violence, *his antisocial personality disorder and moderate level of psychopathy in conjunction with alcohol dependence are stable risk elevating features that are likely to remain important factors for at least the next decade*. His longstanding habit of abusing substances, alcohol in most recent years, does not bode well for his ability to control his cravings to use when he returns to the community. Unless clear and immediate sanctions remain present such as the prospect of jail or some other sanction, I foresee his ability to maintain control over his alcohol cravings will erode and be lost over time. Based on these considerations, ***the defendant will likely remain at least a moderate level of risk over the long term*** .

3. Consequently, would the subject need psychiatric care and treatment for an indefinite period of time?

Psychiatric treatment per se is not the main requirement in this case. He does not require psychiatric medications or monitoring of a major mental illness.

Instead, *the defendant requires alcohol treatment in order to develop a relapse plan* and gain skills to avoid a return to alcohol misuse once he returns to the community. Abstinence from alcohol is enforced now that he is in the institution; however, even a prolonged period in a controlled environment should not be used to assume control over alcohol has been gained. Treatment must be undertaken and the defendant should avail himself of substance abuse treatment available within the institution.

The defendant may also benefit from either psychological counseling or correctional treatment programs targeting anger and aggression problems. Although *such programming will not remove his antisocial and psychopathic personality traits*, treatment may help him gain better impulse

control and decision making skills so that he does not automatically resort to picking up a knife to resolve a future dispute.

[emphasis added]

14 Dr Tomita who is attached to the Institute of Mental Health had no knowledge of the treatment facilities that may be available to the accused when he serves his sentence in prison. The prosecution called a representative of the prison services, Salina bte Samion, Assistant Director, Special Population, Psychological and Counselling Services to supply the information. She disclosed that the prison services do not offer programmes for mentally disordered or for alcohol dependence offenders. There is, however, a violence intervention programme which is designed to increase the insight of persons who have committed violent offences of their violent behaviour. This is a voluntary programme for prisoners assessed to have moderate or high risk of re-offending who are found suitable to participate in the programme.

15 The accused did not call any psychiatrist to give evidence on his behalf.

The accused's criminal antecedents

16 The accused admitted to the following antecedents:

5 April 1980	Convicted of the offence of Armed Robbery with Common Intention, and sentenced to 9 months' imprisonment and 10 strokes of the cane. A charge of Possession of Offensive Weapon was taken into consideration.
24 June 1980	Convicted of the offence of Extortion with Common Intention, and sentenced to 6 months' imprisonment. A further charge of Extortion with Common Intention was taken into consideration.
14 July 1981	Convicted of the offence of Voluntarily Causing Grievous Hurt, and sentenced to 1 year imprisonment.
29 Apr 1993	Convicted of the offence of Using Criminal Force to Deter a Public Servant from Discharge of His Duty, and was sentenced to 7 days' imprisonment and fined S$2,000 (paid in full).
18 June 1998	Convicted of the offence of Voluntarily Causing Grievous Hurt, and was sentenced to 15 months' imprisonment and 3 strokes of the cane. Convicted of the offence of Voluntarily Causing Grievous Hurt with Dangerous Weapon or Means, and sentenced to 6 months' imprisonment (this was ordered to run concurrently).

The plea in mitigation

17 In the mitigation plea, counsel referred to the facts of the offences, laying emphasis of Karunagaran's abuse and provocation, and the accused's decision to keep away from Karunagaran and Balan.

18 The collection of the knife from the flat, and its use on Karunagaran and Balan were covered in

[13]to [15] of the plea:

> 13. The accused person remembered that Kana [Karunagaran] used to keep a metal pipe at his block near block 154. Hence, on returning home, he took a 1 foot-long knife with him for protection, just in case he was approached by Kana or Bala [Balan]. He was hoping to use it to deter/block any attack by them.
>
> 14. The accused person then left his home and the offence was committed shortly after, at the fountain area below the accused person's block.
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> 15. The offence itself had erupted suddenly and was committed within a brief span of a few minutes. In fact, it all happened so fast that the accused person was not even sure who he had attacked first. It was only at the police station that he was informed by the investigating officer that Kana had died.

19 It is to be noted that he did not see Karunagaran or Balan with a metal pipe on that day, and that he had attacked the two victims separately, Balan first before turning to Karunagaran.

20 In response to the prosecution's submission that the accused be sentenced to life imprisonment for the offences, defence counsel submitted that the accused did not fall within the second condition of the *Hodgson* criteria (see [22]). Counsel referred to Dr Tomita's opinion that the accused was not mentally unsound and did not require psychiatric treatment. Counsel also indicated that the accused will volunteer himself for the anger management programme and seek treatment for his alcohol dependence after his release, and that his family is committed to support him and ensure his rehabilitation.

The sentencing considerations

21 The accused was liable to be punished with imprisonment for life, or a term of up to 20 years for the offence of culpable homicide not amounting to murder, and to life imprisonment or a term of up to 15 years for voluntarily causing grievous hurt. He was also liable to be fined and caned for both offences.

22 The prosecution had argued that the accused should be sentenced to life imprisonment for the offences and submitted that the *Hodgson* criteria are satisfied. The criteria took its name from *R v Rowland Jack Forster Hodgson* (1982) 52 Cr App R 113 where MacKenna J stated at 114:

> When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (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.

23 In *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327, the *Hodgson* criteria and their application to Singapore came under the careful consideration of the Court of Appeal. Chan Sek Keong CJ delivering the judgment of the Court ruled at [34]:

> In our view, the answer to whether the *Hodgson* criteria are appropriate in Singapore is ... in the affirmative. The *Hodgson* criteria fulfil two important functions. The first is that they provide an alternative (*ie*, alternative to the principle that the highest punishment should only be reserved

for the worst types of cases), and equally principled, justification to impose life imprisonment when it is the highest punishment prescribed for an offence on an offender (*ie*, for the protection of society). The second is that the *Hodgson* criteria also provide a useful guide to differentiate between when it is appropriate to sentence to life imprisonment dangerous mentally unstable offenders who are a long-term threat to society and when lesser sentences may be meted out to those who suffer from a transient illness who can be rehabilitated and reintegrated into society. They reflect a humane approach to the punishment of mentally unstable offenders, without sacrificing the dominant objective of protecting the community from the likelihood of similar re-offending. Mental illnesses come in many forms and affect cognition and judgment in different degrees - some illnesses are genetic in origin, and some are situation-specific; some need long-term treatment or are not susceptible to treatment, whereas others are treatable. We need to consider, from a penal point of view, what public policy considerations justify keeping mentally unstable offenders in prison for life if it is not necessary to do so in order to protect the public. The only other justification is the need to punish them on the basis of retribution and/or deterrence. But, retribution involves the consideration of the proportionality principle which conflicts with the principle of public protection, and, ... deterrence is not apposite for mentally unstable offenders ...

Are the *Hodgson* criteria satisfied?

24 I had the evidence of the two psychiatrists, Dr Lee and Dr Tomita. Their evidence was not contradicted by any psychiatric evidence. When Dr Tomita was cross-examined by defence counsel, his diagnosis was not challenged, and the cross-examination was focused on the post-conviction management of the accused.

25 To recapitulate, Dr Lee had concluded that "custodial psychiatric care and treatment for an indefinite period of time may be beneficial for his mental well being, sustained sobriety and more importantly, for public safety" and Dr Tomita's opinion was that "the defendant will likely remain at least a moderate level of risk over the long term".

26 The defence conceded that the first *Hodgson* criterion was met. There could be no question about it – the accused had brutally attacked and killed Karunagaran, and Balan may have suffered the same fate if the accused had not transferred his aggression to Karunagaran.

27 Defence counsel submitted, against the weight of evidence, that the second *Hodgson* criterion was not met. The accused was diagnosed with anti-social personality disorder, alcohol dependence and a moderate level of psychopathy. These characteristics made him a person of unstable character. He has a history of anger and of violence with or without the use of knives. The evidence is that he was likely to behave in the same way in the future without intervention. The second *Hodgson* criterion was satisfied.

28 The third criterion was not specifically addressed, but the answer was obvious. If the accused were to re-offend in the future, the consequences would be serious. I only need to remind myself of Karunagaran and Balan.

29 Having established that the *Hodgson* criteria were met, I had to consider whether an indeterminate life imprisonment or appropriate determinate sentences were appropriate in this case. To do this, I had to look at the psychiatric evidence and the treatment facilities available to the accused. Dr Tomita had stated that "[p]ersonality traits are by definition long standing and difficult to modify" and he believed that the accused may benefit from treatment for his alcohol dependence and from anger management counselling, but the accused's anti-social and psychopathic personality traits

could not be removed.

30 Dr Tomita's views had to be considered against the fact that the accused could not receive any treatment for alcohol dependence while he is in prison, and may receive anger management help only if he sought it and was found to be suitable for the programme.

31 In deciding on the sentences for the accused, I took into account:

(a) the accused's mental afflictions;

(b) the accused's history of uncontrollable anger and violence;

(c) the limited treatment available in prison; and

(d) the uncertainty that he would recover from the afflictions even with treatment.

and I sentenced the accused to life imprisonment on the two charges on which he was convicted. The sentences are appropriate and are needed to protect the public from the dire consequences of any repeated outburst of anger and aggression from the accused.