

Public Prosecutor v Muhamad Hasik bin Sahar
[2002] SGHC 105

Case Number : CC 12/2002
Decision Date : 13 May 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Ng Cheng Thiam and Imran Hamid (Attorney General's Chambers) for the Public Prosecutor; Lawrence Wong (Lawrence Wong & Co) (assigned) and N Kanagavijayan (N Krishna & Partners) (assigned) for the accused
Parties : Public Prosecutor — Muhamad Hasik bin Sahar

Criminal Procedure and Sentencing – Sentencing – Culpable homicide not amounting to murder – Accused member of group carrying out attack – Pre-meditation and careful planning of attack – No provocation from deceased – Mitigating factors – Accused 21 years of age at time of offence – Accused playing no role in planning attack – Accused not causing fatal injuries – Accused showing remorse by pleading guilty – Whether sentence of life imprisonment appropriate – s 304(a) read with s 149 Penal Code (Cap 224)

Judgment

GROUND OF DECISION

THE CHARGE

1. The Accused pleaded guilty before me to the following charge :

"That you, **MUHAMAD HASIK BIN SAHAR**

on or about the 31st day of May 2001, between 4.00 am and 4.40 am, in front of 82 South Bridge Road, Singapore, together with Muhammad Syamsul Ariffin Bin Brahim, Norhisham Bin Mohamad Dahlan, Fazely Bin Rahmat, Khairul Famy Bin Mohd Samsudin, Sharulhawazi Bin Ramy, Mohammad Ridzwan Bin Samad, and Mohammad Fahmi Bin Abdul Shukor were members of an unlawful assembly whose common object was to cause hurt with dangerous weapons to members of the '303' Secret Society and while you were a member of the said unlawful assembly, one or more members thereof, in prosecution of the common object of the said unlawful assembly, did cause the death of one Sulaiman Bin Hashim, male 17 years, to wit, by stabbing the said Sulaiman Bin Hashim with knives, the act of which was done with the intention of causing such bodily injury as is likely to cause death, and you have, by virtue of Section 149 of the Penal Code (Chapter 224), committed an offence punishable under Section 304(a) of the Penal Code (Chapter 224)."

2. Section 149 Penal Code provides :

"149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

3. Section 304(a) Penal Code states :

"304. Whoever commits culpable homicide not amounting to murder shall be punished –

(a) with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall also be liable to fine or to 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 ; ...".

THE STATEMENT OF FACTS

4. The deceased was a student of the Institute of Technical Education at Ang Mo Kio. He was also a national youth soccer player.

5. On 30 May 2001, at about 10.15 pm, he and his two friends, Shariff and Imran, attended a party at the "Rootz" discotheque in the Riverwalk Galleria located at Upper Circular Road. They left the discotheque at about 3 am on 31 May 2001 and went to a nearby restaurant for supper.

6. In the meantime, the Accused and his seven friends named in the charge were at the "Seven" Discotheque at Mohammed Sultan Road celebrating Syamsul's birthday. All eight persons are members of the "369" secret society of the "18" group also known as the "Sio Koon Tong" secret society. When the discotheque closed at about 3 am on 31 May 2001, the group proceeded to a nearby coffee shop along River Valley Road for snacks and drinks.

7. At the coffee shop, Norhisham, Syamsul and Sharulhawzi decided to launch a surprise attack on a rival gang, "303", operating in the Boat Quay area. The group then proceeded to plan the attack. Sharulhawzi asked Fahmi and Ridzwan to go ahead of the group in a taxi to the "Rootz" discotheque to check whether the rival gang members were there. Sharulhawzi gave Ridzwan \$20 for the taxi fare.

8. At about 4.20 am, the two "scouts" arrived at the destination and confirmed by mobile telephone the presence of the members of the said rival gang. They were also instructed to be ready to get two taxis as the get-away vehicles for the entire group.

9. The other six members of the group (including the Accused) then proceeded in two taxis to Boat Quay. When they were ready to attack, Sharulhawzi informed Fahmi by mobile telephone to flag down two taxis and direct the vehicles to Boat Quay to pick up the other six members.

10. At around 4.30 am, the deceased and his two friends left the restaurant and started walking along South Bridge Road towards the City Hall Mass Rapid Transit Station. As they were walking past a pub ("Bernie Goes to Town") located along that stretch of road near the Singapore River, the group of six was walking in the opposite direction along the other side of the road. The six then crossed the road and accosted the three friends from behind. Norhisham, Syamsul and Sharulhawzi brought out the knives which they had kept on their bodies.

11. Norhisham asked the three friends in Malay which gang they belonged to but before they could answer, they were set upon by the six. The Accused saw the deceased's friend, Shariff, stabbed in the back by Syamsul. The Accused threw some punches at Shariff's head. As the deceased's two friends ran for their lives, the Accused, Fazely and Khairul Famy chased them. The deceased's two

friends managed to escape from their attackers.

12. The Accused, Fazely and Khairul Famy, having failed to catch up with the deceased's two friends, then returned to where the deceased was lying on the steps of the "Bernie Goes to Town" pub. He had collapsed after being attacked by the other three armed gang members who continued to stab and slash him although he was not putting up any resistance. Khairul Famy shouted to the three armed members in Malay to move aside. The Accused, Fazely and Khairul Famy then moved in to kick and to punch the deceased repeatedly in the face. Fazely also used a "belt-chain" to whip the deceased's body.

13. After the attack, the group of six looked around for the two get-away taxis but they were not able to locate them. They then managed to flag down two other taxis and left the scene for a rented flat in Tampines. While fleeing, one of them chanted the gang's slogan. The remaining two gang members were informed by mobile telephone to meet at the said rented flat.

14. At the said flat, the group of six cleaned themselves. When the other two returned to join them, they all talked about the assault on the deceased.

15. At about 4.39 am, a member of the public called the police to inform them about the deceased who was lying on the pavement along South Bridge Road, bleeding profusely. The police arrived at the scene shortly thereafter and called for an ambulance. The deceased was brought to the Singapore General Hospital where he passed away at about 5 am.

16. The post mortem report stated that the deceased had 13 stab wounds and certified the cause of death as "stab wounds to the neck and chest.

17. Shariff suffered a 1.5 cm knife wound at the right side of his chest. He was hospitalized and then discharged on 2 June 2001. Imran did not sustain any injury.

18. On 15 June 2001, the Accused was arrested. This was followed by the arrest of Fazely on 25 June 2001. Khairul Famy, who had fled to Batam, was arrested by the Indonesian police and brought back to Singapore on 11 September 2001. These two gang members are standing trial in another High Court.

19. Ridzwan and Fahmi pleaded guilty in the Subordinate Courts on 22 November 2001 to a charge under section 147 Penal Code and were sentenced to three years imprisonment and to receive six strokes of the cane. The remaining three gang members who were armed are still at large.

ANTECEDENT

20. The Accused was convicted on 6 August 1996 on a charge of voluntarily causing hurt with dangerous weapons or means under section 324 read with section 34 Penal Code. He was sentenced to undergo reformatory training.

PROSECUTION'S SUBMISSIONS ON SENTENCE

21. The Prosecution argued that the Accused should be sentenced to undergo life imprisonment as the attack was pre-meditated and vicious. It was also directed at persons who were not members of any secret society and not known to the Accused and his gang members. The facts showed that the

Accused was an active participant in the ruthless and senseless attack on a totally defenceless victim. It was submitted that the Accused was part of a mob which would "loot and shoot completely innocent bystanders without giving a hoot", echoing my words quoted on appeal in **PP v Tan Kei Loon Allan** [1999] 2 SLR 288 (at paragraph 15), where the Court of Appeal enhanced the sentence imposed by me.

22. The attack took place at a location which was a "favourite watering hole for locals, expatriates and tourists alike". Statistics from the Criminal Investigation Department showed that there were 42 cases of rioting along the stretch from Boat Quay to Clarke Quay for the years 2000 and 2001.

23. The Prosecution also tendered the deceased's father's Victim Impact Statement where he stated that he forbade his other children from going out at night for fear that they too might be attacked for no apparent reason. It was submitted that public roads should be kept safe.

24. It was also argued that public interest outweighed the mitigating effect of the Accused's plea of guilt here and that the relative youth of the Accused should not be the main factor excluding him from being considered for life imprisonment where the circumstances warranted the imposition of such a sentence. The acts constituting the offence, the motives behind them and their consequences should also be examined [**PP v Ng Kwok Soon** (Criminal Case No. 58 of 2001) – unreported]. The Accused had also denied any involvement when he was questioned by the police.

THE MITIGATION

25. The Accused was 21 years old at the time of the offence and is now 22. He received education up to Secondary 1 and then dropped out of school. He was unemployed all along, living with his parents and his siblings in a four-room HDB flat in Tampines. He is the second eldest in his family. He has a steady girlfriend since 1995 and was planning to marry her.

26. The previous conviction in 1996 arose out of a fight amongst friends and was not related to gang disputes.

27. He was introduced to Norhisham by the latter's brother in 1998. He turned to Norhisham for advice and for financial assistance. Norhisham would always foot the bill whenever they went out for meals or for drinks. He therefore felt a sense of loyalty to Norhisham.

28. In January 2001, after the Accused and his friends were assaulted by a group along Orchard Road, Norhisham told him to join his gang so that nobody would bully him anymore. He became a member of the gang upon Norhisham's insistence but never knew about nor participated in any gang activities other than going drinking at nightspots with the gang once or twice a week.

29. He had gone for the birthday celebrations on 30 May 2001 without any inkling that there would be a fight later. Any planning concerning the attack was done by the 3 armed gang members only and that was only when they were at the coffee shop after the celebrations. He was not around when Sharulhawzi gave the directions to Fahmi and to Ridzwan. Those three armed gang members were the leaders and the principal offenders that early morning. Having agreed to go along to fight the rival gang, he was afraid to pull out as he felt obligated to Norhisham and because he had been warned before of the consequences of being a traitor. Although the Accused suspected that Norhisham was carrying a knife, he did not know for sure until the latter took it out just before the attack. He did not know the other two also each had a knife. He was unarmed.

30. It was Norhisham who directed the group of six to cross the road towards the victims and it was he who started the attack after posing the question to the victims. The Accused merely started chasing Shariff when instructed to do so by Syamsul. The fatal attack took place when he was doing so.

31. He did not cause any fatal or serious injuries to the deceased. He played a minor role and, at the most, was responsible only for the minor bruises and abrasions suffered by the deceased.

32. The group returned to the rented flat in Tampines as some of them were staying in that flat. It was not a case of meeting there for a debrief after a military operation.

33. Although the Accused was legally liable for the combined actions of the group, it was submitted that the court should consider their individual roles when sentencing each of them. Reliance was placed on *PP v Ravindran* [1993] 1 MLJ 45 where Visu Sinnadurai J in the Malaysian High Court, in a case involving section 304 Penal Code, said (at page 50) :

"It should be emphasized that whilst public interest plays an important role in sentencing practice, there are other important factors which a court needs to consider in imposing a particular sentence. Whilst it is recognized that no two cases may be the same, the exercise of the court's discretion should be in accordance with certain accepted principles or guidelines so as not to have too great a disparity in sentences for the same offence."

The judge then went on to consider factors such as a discount or credit for a plea of guilt, comparison of sentences in other cases for a similar offence, disparity of sentences amongst the accused persons and other mitigating factors relevant to the particular case.

34. The Accused here has pleaded guilty. This showed his remorse. He has also saved much public time and expense.

35. The sentences imposed in cases involving section 304(a) Penal Code and which did not concern accused persons who were mentally unstable ranged from six to ten years imprisonment. In *PP v Tan Kei Loon Allan* (cited earlier), life imprisonment was not imposed although the accused in that case was the only one armed with a dangerous weapon and was the one who inflicted the fatal injuries. The attack in that case was also in a public place, the accused was a member of a secret society, there was no provocation and the deceased was outnumbered.

36. The culpability of the Accused in the present case was lower than that in the other cases in that he was not the gang leader and was not the one who thought of and planned the attack, he was not armed at all and was not the one who inflicted any of the fatal injuries. It was argued that *PP v Ng Kwok Soon*, where I sentenced the accused to life imprisonment on a charge of attempted murder under section 307(1) Penal Code, could be distinguished on its facts.

37. It was further submitted that the statistics provided by the Prosecution showed an overall decrease of about 10% in the number of rioting cases at Boat Quay and at Clarke Quay between 2000 and 2001. There was also a decrease of 60% in cases involving gangs between those two years.

38. In the circumstances, it was argued that life imprisonment was not appropriate here.

THE DECISION OF THE COURT

39. In sentencing the Accused to life imprisonment on 9 May 2002, I said the following :

"1. Sulaiman Bin Hashim was a promising young man who had gone out with 2 friends to enjoy some night life on 30 May 2001. He ended up suffering a morning death in the early hours of 31 May 2001. Why did he die so suddenly and tragically? The inane but true answer is - eight members of a gang agreed, after some birthday celebrations, to launch a surprise attack on another gang with which neither Sulaiman nor his two friends had any connection. The attackers did not even know the three unfortunate friends.

2. The admitted facts showed that the attack was premeditated and carefully planned. An advance party was sent into enemy territory at the Boat Quay area to confirm the presence of the rival gang's members. Weapons were carried. The Accused suspected that at least one of the gang members was carrying a knife and certainly knew that three of them had knives with them before the attack. The retreat after the incursion into the Boat Quay area was also mapped out.

3. The attack was totally unprovoked. It was not the uncontrolled reaction of persons who had been suddenly abused or assaulted. The attackers did not seem interested in finding out whether the unfortunate threesome were indeed rival gang members. It seems to me that the predators were merely spoiling for some violent action and the prey happened to be outnumbered by two to one. The horrendous acts that early morning were indiscriminate and senseless.

4. When the Accused, after losing the deceased's two friends who managed to escape, returned to where the deceased was, the latter had already collapsed helplessly onto the ground. Far from being shocked by his fellow assailants' use of the knives and their continued stabbing and slashing at the defenceless victim, the Accused wanted some of the appalling action for himself and joined in kicking and punching the face of a man who was obviously not able to offer any resistance. 13 stab wounds were found on the victim, seven of which were at the vulnerable head and neck regions.

5. Although the attack was in the very early hours of the morning, it was nevertheless in a public area popular with locals and foreigners alike. Our streets and public places must be kept safe by day and by night for law abiding people. There must be no curfew at certain localities or during certain hours imposed by any gang. Gang fights and running street battles have absolutely no place in a civilized society.

6. In ***PP v Tan Kei Loon Allan*** [1999] 2 SLR 288, the Court of Appeal, after noting that life imprisonment now meant incarceration for the remainder of a convicted person's natural life with only the possibility of parole after 20 years, sounded the following cautionary note :

"37. In that respect, we are of the view that the courts must now exercise caution before committing a young offender to life imprisonment. Contrary to traditional reasoning, in similar cases involving a youthful offender on the one hand and an older offender in the other, the youthful offender sentenced to life imprisonment would now

be subject to a longer period of incarceration than an older offender, assuming they both lived to the same age."

There, the Court of Appeal was dealing with an 18 year old male convicted of an offence under section 304(a) Penal Code (who also happened to be a member of the Sio Koon Tong secret society like the present Accused). The Court of Appeal also did not think it desirable to set a benchmark sentence for the offence of culpable homicide under section 304(a) Penal Code. The sentence in that case was enhanced from 7 years imprisonment and 9 strokes of the cane to 10 years imprisonment and 15 strokes of the cane.

7. In **PP v Ng Kwok Soon** (Criminal Case No. 58 of 2001), in sentencing a 50 year old man to life imprisonment for attempted murder under section 307(1) Penal Code, I said :

"33. ... However, the guidelines in **Neo Man Lee v PP** relating to accused persons of unstable character did not mean that persons not suffering from mental disorder should not be sentenced to imprisonment for life. One must still examine the acts constituting the offence, the motives behind them and their consequences.

...

42. ... The Accused's clean record, his plea of guilt and his cooperation with the police would have earned him some merit if I could impose caning as well ... but, as I have stated, the Accused was not liable to be caned due to his age."

8. The Accused was 21 years old at the time of the offence. He turned 22 in February this year. He has pleaded guilty and that shows some remorse on his part, belated as it is. However, I have heard nothing that suggests that he felt remorse or even unease during the two weeks or so after the incident. Indeed, as the Prosecution has said, he denied any involvement when questioned by the police. He has a conviction under section 324 read with section 34 Penal Code for the offence of voluntarily causing hurt by dangerous weapons or means and was sentenced to undergo Reformative Training. He was 16 years old then. The degree of his culpability in this episode may be lower than that of Norhisham, Syamsul and Sharulhawzi but I disagree with Defence Counsel's description of it as a "minor role".

9. In the light of all that I have stated above, it is my view that the lower tier of up to 10 years' imprisonment is not appropriate for the Accused on the facts of this case. He has clearly not learnt his lesson from his previous experience in court. He has committed another offence involving physical violence, now with more devastating consequences. He is relatively young but was hardly a juvenile at the time of the offence. Those who feel victorious in being vicious and who have no qualms about the annual celebration of one's birth culminating in the untimely death of another will have to spend all subsequent birthdays within prison walls until such time as they are eligible for parole. There, hopefully, they

will begin to learn to appreciate and value another human being's life.

10. The Accused is sentenced to life imprisonment with effect from the date of his arrest on 15 June 2001. In view of the mitigating factors, he will not be subject to the maximum 24 strokes of the cane but is to receive 16 strokes of the cane."

Sgd:

TAY YONG KWANG
JUDICIAL COMMISSIONER

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