

Public Prosecutor v Ng Hua Chye
[2002] SGHC 154

Case Number : CC 39/2002
Decision Date : 19 July 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Lee Sing Lit and Wong Kok Weng (Deputy Public Prosecutors) for the Public Prosecutor; Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) (briefed) for the accused
Parties : Public Prosecutor — Ng Hua Chye

Criminal Procedure and Sentencing – Sentencing – Culpable homicide not amounting to murder – Other offences relating to abuse of domestic help – Whether court can impose life imprisonment consecutive to a lesser prison sentence when accused convicted on at least three distinct offences – Whether court to take global punishment into account where accused convicted of more than one charge – Appropriate sentence to impose – s 18 Criminal Procedure Code (Cap 68) -ss 73, 304(a), 323 & 324 Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

1. The accused is a 47 year old free lance tour guide and is married with two very young children, a three-year old daughter and a year-old son. On 2 December 2001 the accused went to a neighbourhood police post to report that he had assaulted his 18-year old Indonesian maid, Muawanatul Chasanah, and fears that she might die. It transpired that the maid did die and the resulting investigation by the police led to the discovery of the full story, almost entirely by the admissions of the accused himself. Consequently the accused was charged for the murder of Muawanatul. He was also charged for seven other offences under s 323 and s 324 of the Penal Code read with s 73. These are charges for causing hurt and causing hurt with dangerous weapons, or by dangerous means, against a victim who is a domestic maid. The murder charge was amended and reduced to a charge of culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code. The accused pleaded guilty to this amended first charge as well as to two charges (charges no. 4 and 6) under s 323 of the Penal Code, and two charges (charges no. 5 and 7) under s 324 of the Penal Code. He also agreed to have three other charges, namely charges no. 2, 3, and 8 to be taken into account for the purposes of sentencing. These are charges under s 323 of the Penal Code. The Statement of Facts was read to the accused and he accepted it without qualification. The pathologists report of Dr. Teo Eng Swee was also admitted together with the photographs of the corpse with the concurrence of the accused for the purposes of elaborating on the nature and extent of the injuries and scars found on the body of Muawanatul. The accused was thus convicted on the charges to which he pleaded guilty.

2. It may be convenient at this juncture for me to set out the punishment provided under the Penal Code in respect of the offences to which the accused had pleaded guilty. The offence of culpable homicide not amounting to murder may be punished under s 304(a) "with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall also be liable to caning, if the act by which death is caused is done with the intention of causing death, or of such bodily injury as is likely to cause death". The punishment under a s 323 offence is imprisonment of up to one year, or with a fine up to \$1,000, or with both. The punishment for a s 324 offence is imprisonment up to five years, or with fine, or with caning, or with any two of such punishments. Under s 73(2) of the Penal Code, the court may impose a sentence that is one and a half times above that prescribed in the

case where an employer of a domestic maid is charged with causing hurt or aggravated hurt to his maid. Hence, in this case, the maximum under s 323 and s 324 will be one year and six months and seven years and six months respectively.

3. It is to be noted that the sentence of life imprisonment, by virtue of the Court of Appeal decision in *Abdul Nasser v PP* [1997] 3 SLR 643, means a sentence of imprisonment for the rest of the natural life of the convicted accused. Consequently, the court in sentencing a person convicted under s 304(a) has to decide whether to impose a term of imprisonment of up to ten years, or life imprisonment. There is no middle ground, that is, between ten years and life imprisonment (See *Public Prosecutor v Tan Kei Loon Allan* [1999] 2 SLR 288). In this case before me the accused pleaded guilty and was convicted on at least three distinct offences, and therefore, by virtue of s 18 of the Criminal Procedure Code, Ch 68, I was obliged to order that the sentences for at least two of those offences shall run consecutively. This prompted Mr. Subhas Anandan, counsel for the accused, to submit in the course of his mitigation speech, that the accused ought not to be sentenced to life imprisonment under the first charge because it would not be possible for another prison sentence to follow that of a life sentence. Mr. Lee, the DPP, responded by pointing out that that would imply a somewhat absurd result in that an accused who is convicted on a single charge under s 304(a) is in greater jeopardy than one who has been convicted of more charges in addition to one under s 304(a). In my view, there is no provision in law that the sentence of life imprisonment must be the precedent sentence. Section 18 of the CPC does not specify which two sentences shall run consecutively. On a plain reading of that provision it seems to me that I am entitled to direct which of the sentences to be consecutive and which to be concurrent. I am fortified in this view by the fact that there is also no rule of law or procedure that requires any particular charge to be identified as the "first charge", and which to follow as the second, and so on. It is, therefore, within the court's power to impose a shorter sentence first followed by the life sentence to run consecutive to it should the court be minded to do so.

4. I now come to the mitigation on behalf of the accused and the DPP's response. Mr. Subhas acknowledges that the treatment of Muawanatul by the accused was horrendous. He submitted, however, that the accused is utterly remorseful and that this remorse must count in the punishment to be imposed. He reminded the court that the entire history including the facts leading to all the other charges were freely given by the accused to the police in the course of their investigation. The accused, he said, had wanted to send Muawanatul home to Indonesia because she was not performing her duties properly and had been stealing food meant for his daughter, but he relented because she pleaded with him not to do so. He suggested that the accused was caught in a kind of "Dr. Jekyll and Mr. Hyde" bind. We may well recall, in passing, that in R.L. Stevenson's "The Strange Case Of Dr. Jekyll And Mr. Hyde", Dr. Jekyll only tried to regain control after Mr. Hyde had killed, but by then it was too late, and the eventual consequence was that they destroyed each other; all on account of Mr. Hyde.

5. Mr. Subhas also pointed out that two of the more serious offences which the accused had previously been convicted of, namely, putting a person in fear of injury in order to commit extortion, were committed 27 years ago when the accused was only 20 years old. He was sentenced to a total of 12 months' imprisonment and three strokes of the cane for those offences. He has also asked me to disregard two other convictions for minor and unrelated kinds of offences, namely, offences relating to gaming in public.

6. Counsel submitted that the sentences normally meted out in the subordinate courts in respect of the offences under s 323 and s 324 read with s 73(2) of the Penal Code are between two to three months' imprisonment. Mr. Subhas concluded by pointing out that in this instant case, by reason of the consecutive sentences the accused may be sentenced to more than ten years imprisonment

overall, and therefore, he urged me not to "go overboard" by imposing a sentence of life imprisonment.

7. In response, Mr. Lee Sing Lit drew my attention to the full extent of the injuries inflicted by the accused on Muawanatul over a period of nine months. Apart from the beatings, she was virtually being starved of food for a prolonged period. This is evident from the fact that she had taken to stealing food meant for her employer's child, and that her weight of 50 kg had fallen to a mere 36 kg at the time of her death. The drift of Mr. Lee's submission is that taking the history of violence and the cruelty implied in the acts of the accused, a long custodial sentence would be required. I am of that same view although I may not think that a term of life imprisonment would be appropriate.

8. I am indeed bound to take into account the manner in which the accused ended the life of Muawanatul and the misery she had to endure for so many months up to the last days of her life. The picture of her beaten and undernourished body has muted the eloquence of your counsel. I do agree with Mr. Subhas, however, that some of the scars may be older scars and have not been explained. It will be wrong to attribute them to the cruelty of the accused. Nonetheless, on the facts before me, there is precious little to merit a lenient sentence. The court will normally take the global punishment into account in cases where the accused is convicted of more than one charge, and especially so when s 18 of the CPC applies because, obviously, in order to ascertain which of the sentences are to run concurrently and which consecutively, the court must have an idea what the overall sentence ought to be. Hence, taking the totality of the punishment into account with the circumstances of the case, the antecedents, the three other charges, and the speeches of counsel, I sentence the accused as follows:

- (a) in respect of the first charge, a sentence of 10 years imprisonment and 6 strokes of the cane;
- (b) in respect of the fourth charge, a sentence of 3 months imprisonment;
- (c) in respect of the fifth charge, a sentence of 4 years imprisonment and 3 strokes of the cane;
- (d) in respect of the sixth charge, a sentence of 3 months imprisonment; and
- (e) in respect of the seventh charge, a sentence of 4 years imprisonment and 3 strokes of the cane.

The sentences of imprisonment of all five charges shall run consecutively making a total term of 18 years and 6 months. The sentence of imprisonment shall take effect from 3 December 2001. The total number of strokes of the cane shall be 12.

Sgd:

Choo Han Teck

Judicial Commissioner