Public Prosecutor v Tiyatun and Another
[2002] SGHC 76

Case Number : MA 35/2002, 36/2002

Decision Date : 18 April 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jaswant Singh (Deputy Public Prosecutor) for the appellant; Respondents in person

Parties : Public Prosecutor — Tiyatun; Another

Criminal Procedure and Sentencing – Sentencing – Principles – Respondents force feeding child resulting in death – Convictions for causing death by rash act not amounting to culpable homicide – Whether culpability stemming largely from ignorance – Degree of rashness or negligence – Whether sentence of nine months' imprisonment appropriate – s 304A Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

The respondents, Tiyatun and Sakdiah, pleaded guilty to their respective and similar charges under s 304A read with s 34 of the Penal Code (Cap 224) for acting in furtherance of a common intention to cause the death of the deceased, a child aged 21 months, by doing a rash act not amounting to culpable homicide. The respondents were convicted and sentenced to a term of nine months' imprisonment each by the district judge. The public prosecutor appealed against the sentence on the ground that it was manifestly inadequate. After hearing their arguments, I dismissed the appeal and affirmed the sentence. I now set out my reasons.

The facts

2 The respondents are both Indonesian nationals who were employed by the child's parents back in Indonesia to work in Singapore. Sakdiah, aged 24 years, was engaged as the family's maid, while Tiyatun, aged 42 years, was hired as the child's nanny.

3 On 17 December 2001 at about 7.20pm, the respondents were feeding the child in the toilet attached to his room. The child's meal comprised of porridge blended with soft minced meat and vegetables. Tiyatun, the elder of the pair, directed Sakdiah to press the child's nostrils together while holding down his hands so as to temporarily incapacitate his movements. The purpose of such an exercise was to force him to open his mouth, whereupon Tiyatun used a plastic cup to pour food into his mouth. In the course of so doing, the child had difficulty breathing. He started gasping for air and his face turned a bluish hue.

4 Later that evening, his parents sent him to Kandang Kerbau Women's and Children's Hospital ('KKH') for medical treatment where he was warded in the intensive care unit.

5 The child passed away three days later on 20 December 2001 at 5.52am. The final cause of death was certified to be "bronchopneumonia due to inhalation of foreign material". The pathologist suggested that there were previous occasions in the several weeks preceding the child's death when he had inhaled foreign material. A medical report submitted by KKH concluded that the fact that food debris had been found in the upper airway and trachea of the child constituted evidence that

suggested choking.

6 Investigations revealed that the respondents had, without the knowledge of the child's parents, been feeding him in the same way since he was 13 months old.

The appeal

7 The public prosecutor appealed against the sentence imposed on the ground that it was manifestly inadequate. It was submitted, inter alia, that the district judge had failed to accord sufficient weight to the aggravating factors in the case and had erred in law and in fact in holding that the culpability of the respondents stemmed largely from their ignorance when the "crux of the offence lies in acting with the consciousness that mischievous and illegal consequence may follow". The prosecution therefore pressed for a deterrent sentence.

8 In the present case, there is no dispute that the acts of the respondents in force feeding the child were rash. They had, in the court below, confirmed that they were conscious that death was at least a possible consequence of their actions. Yet, in spite of an awareness of the possibility of the inherent risk involved, they had carried on with their method of force feeding him. It was their rashness, in running the risk that the possibility of death may ensue, that made them criminally culpable under s 304A. In this connection, I found the district judge's finding that the respondents' culpability stemmed largely from their ignorance to be diametrically opposed to the essence of the respondents' conviction for causing death by a rash act. Ignorance of a fact implies a lack of knowledge or awareness of it. On the present facts, this was obviously not the case as the respondents had admitted to being conscious that death was at least a possible consequence of their method of force feeding. By their own admission, they were clearly not ignorant of the consequence, as improbable as they might have considered it to be, and had chosen to proceed regardless of their recognition of the risk of death.

9 However, while I found that the district judge had erred in holding that the culpability of the respondents stemmed largely from their ignorance, I was also of the opinion that the sentence of nine months' imprisonment was appropriate in the circumstances of the case. The severity of the sentence for a s 304A offence depends to a great extent on the degree of rashness or negligence which was present in the conduct of the accused. The greater the degree of rashness or negligence exhibited by the accused in the circumstances wherein death resulted, the more reprehensible his conduct and the more severe his sentence should be. For the purposes of sentencing, the mere fact that a human life is lost does not in itself justify the court in passing a deterrent sentence.

10 An example of an extremely high degree of rashness was that exhibited by the accused in the unreported decision of *PP v Ikaeshi Dulkolid* (DAC 41395/2000) cited by the prosecution before me. In that case, the accused, a domestic maid, had picked up the deceased and extended the 14-months old crying infant outside the window with the intent of letting the deceased see the birds outside. The accused, without resting her own arms on the window ledge for additional support, used her right palm to prop up the deceased's buttocks and placed her left hand under the deceased's left arm-pit to steady the deceased. While holding the deceased in this manner, the accused became engrossed in her own thoughts. She lost her grip on the deceased who began moving about thereby causing the deceased to fall to her death. The accused pleaded guilty to the charge of causing the deceased's death by doing a rash act not amounting to culpable homicide pursuant to s 304A of the Penal Code and was sentenced to the maximum term of imprisonment of two years.

11 It is axiomatic that the rashness exhibited in the case of *Ikaeshi Dulkolid* was of the highest

degree. Holding an infant outside a window, was an extremely foolish and dangerous thing to do. This was particularly so, given that the accused was preoccupied with her thoughts, while holding the infant so precariously. The probability of the risk of death ensuing in such a situation was very high. The circumstances of the case clearly pointed to the accused's total disregard of the infant's safety. Her rashness was of the most extreme kind and she deserved the maximum sentence of two years' imprisonment for her blatant disregard for the life of another human being entrusted in the care.

12 By contrast, while the respondents in the present case were criminally rash in that they appreciated the risk of death as a possible consequence of their method of feeding but chose to carry on regardless, the circumstances did not smack of their total disregard for the child's life. The fact remained that the respondents were feeding the child a meal of porridge blended with soft minced meat and vegetables, a meal that could have been easily swallowed by the child. More importantly, they had been feeding him in the same manner over the past eight months with no adverse consequences. Given the circumstances of the case, the culpable rashness exhibited by the respondents was of a lesser degree and deserving of a correspondingly lower sentence.

13 Based on the foregoing, I saw no reason for enhancing the sentence which adequately reflected their criminality and was, in my opinion, sufficient to create awareness of the risk inherent in force feeding as well as to deter individuals with a similar practice from so doing.

Sgd:

YONG PUNG HOW
Cheif Justice