

Huang Meizhe and another v Attorney-General
[2011] SGHC 38

Case Number : Originating Summons No 951 of 2010 (Summons No 4661 of 2010)
Decision Date : 22 February 2011
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Jeffrey Chan Wah Teck SC and Jay Lee (Attorney-General's Chambers) for the applicant/defendant; Spencer Gwee (instructed), Benjamin Aloysius Frois and Bala Albert (Lee, Frois & Partners) for the respondents / plaintiffs.
Parties : Huang Meizhe and another — Attorney-General

Civil Procedure – Striking Out

Courts and Jurisdiction – Court judgments – Declaratory

22 February 2011

Judgment reserved.

Tan Lee Meng J:

Introduction

1 The first plaintiff, Mdm Huang Meizhe (“Mdm Huang”), is the widow of Mr Tan Lead Sane (the “deceased”), who was killed by his sister-in-law, Mdm Wu Yun Yun. The second plaintiff, Mdm Ng Bee Hion (“Mdm Ng”) is the deceased’s mother. The plaintiffs, who thought that Mdm Wu should have been sentenced to life imprisonment, were dissatisfied with the Public Prosecutor’s decision not to appeal against the sentence of imprisonment for 16 years meted out to the latter by Kan Ting Chiu J (“Kan J”). As such, they filed Originating Summons No 951 of 2010 to obtain a declaration that the Attorney-General, as the Public Prosecutor, acted illegally and/or irrationally and/or with procedural impropriety in failing and/or refusing to appeal against the sentence.

Background

2 Mdm Wu, the China-born wife of Mr Tan Lead Shake (“TLS”), the elder brother of the deceased, came to Singapore in November 2001. She and TLS lived at No 6G Paya Lebar Crescent, Singapore 536027, with Mdm Ng, his two brothers, Mr Tan Lead Hand and the deceased, and the deceased’s wife, Mdm Huang. Mdm Wu and TLS have two children.

3 Apparently, Mdm Wu, who quarrelled with other members of the extended family, felt that Mdm Ng favoured the deceased and Mdm Huang. Some two weeks before the deceased was killed, Mdm Wu bought a fruit knife and hid it in a box beneath the kitchen sink on the ground floor of the family home. On 27 June 2008, she removed the fruit knife from the kitchen and hid it on top of the wardrobe in her bedroom. On the following day, at around 5.30 am, she went to Mdm Huang’s bedroom and stabbed the latter in the neck. Mdm Huang shouted for the deceased and when the deceased, who had been sleeping on a makeshift bed in the balcony of the bedroom, got up, Mdm Wu lunged at him and stabbed him in the chest and abdomen.

4 After stabbing the deceased, Mdm Wu walked to the ground floor with the fruit knife in her

hands. She took her jacket, umbrella and wallet from the kitchen and proceeded to leave the house. She was stopped by Mdm Ng. Mdm Wu cut Mdm Ng with the fruit knife, threw the fruit knife into a drain and left the house.

5 TLS called the police, who arrived at the scene at about 6.05 am. The deceased was ferried to the emergency department of Tan Tock Seng Hospital. He was pronounced dead at 6.59 am.

6 At around 12.15 pm on the same day, Mdm Wu contacted her husband, TLS, who managed to persuade her to surrender to the police. At about 1.15 pm, she was arrested by the police. She was remanded at Changi Women's Prison from 7 July 2008 to 18 August 2008 for psychiatric evaluation at the Institute of Mental Health ("IMH").

7 In his report dated 18 August 2008, Dr George Joseph Fernandez ("Dr Fernandez"), a Senior Consultant Psychiatrist at the IMH, stated that Mdm Wu was suffering from a major depressive disorder when she killed the deceased and injured Mdm Huang and Mdm Ng. He opined that her depression was largely a reaction to the discord in her family home and that this was characterised by "depressive moods, tearfulness, loss of appetite, loss of weight, suicidal ideation, diurnal variation of moods, a sense of worthlessness and hopelessness, somatic complaints, and even hypochondriacal fears of having cancer". Dr Fernandez concluded that while Mdm Wu was not of unsound mind at the time she committed the offences, the severity of her depressive symptoms had substantially affected her to such an extent that she could rely on the defence of diminished responsibility.

8 Mdm Wu was initially charged with the murder of the deceased and the attempted murder of Mdm Huang. However, after the psychiatric reports submitted by Dr Fernandez were taken into account, she was charged with one count of culpable homicide not amounting to murder, punishable under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed), and one count of attempting to commit culpable homicide not amounting to murder, punishable under s 308 of the Penal Code. Mdm Wu also faced a third charge of causing hurt to Mdm Ng.

9 On 17 April 2009, Mdm Wu pleaded guilty to both the charges concerning the death of the deceased and Mdm Huang's injury. She also consented to having the charge of causing hurt to Mdm Ng taken into consideration for the purpose of sentencing. Kan J adjourned the hearing for six months to enable Dr Fernandez to monitor Mdm Wu's condition and furnish a psychiatric report on her response to the treatment of her psychiatric condition.

10 The trial of Mdm Wu resumed on 17 November 2009. After hearing Dr Fernandez's oral testimony and the closing submissions of the Deputy Public Prosecutor and of Mdm Wu's counsel, Kan J sentenced Mdm Wu to imprisonment for 16 years. The judge said to Mdm Wu:

The first charge carries a maximum of life imprisonment. The second charge, a maximum of 15 years' imprisonment. On the facts ..., there is no room for light sentences....

The ... relevant considerations for determining whether a .. sentence of life imprisonment is to be imposed are generally referred to as the "Hodgson Conditions", that is (1) whether the offences committed are in themselves grave enough to require a very long sentence; (2) whether the offender is likely to commit such offences in the future; and (3) if such offences are committed again, whether the consequences may be especially serious.

In your case, conditions (1) and (3) are clearly satisfied. The question is whether condition (2) ... is also satisfied. On this question, we are fortunate to have the benefit of Dr Fernandez's latest report of the 10th of November which attests that you have complied with the treatment

[prescribed] to you and have responded reasonably well to the treatment and [have] significantly improved in your mental state.

Dr Fernandez cautions that a relapse of your condition may occur but he did not state any apprehensions of re-offending

In the last few years, the Courts had examined with care and concern the issue of the imposition of life sentence, most recently in the case of *Aniza* which your counsel cited. I find on the review of the views propounded in these cases that your case is not one to which life imprisonment should be imposed.

Having taken into account the facts of the case, the mitigating factors that your counsel have referred to and the fact that you have pleaded guilty to the two charges on which you are convicted and have agreed to have the 3rd charge taken into account for the purpose of sentencing, the sentence of this Court on you is: For the 1st charge, 12 years' imprisonment. For the 2nd charge, 4 years' imprisonment. Both sentences are to run consecutively. In fixing the two sentences, I've taken into account the total period that you have to serve before remission that is 16 years. These two sentences are to be backdated to the date of your arrest, 28th of June 2008.

11 Although the Deputy Public Prosecutor had argued before Kan J that a sentence of life imprisonment was appropriate, no appeal against the sentence was filed.

12 Both Mdm Huang and Mdm Ng thought that the sentence meted out to Mdm Wu was too light and they repeatedly urged the Attorney-General's Chambers ("AGC") to appeal against the sentence.

13 On 25 and 26 November 2009, their lawyer, Mr Benjamin Frois ("Mr Frois"), wrote to the AGC to explain why an appeal against the sentence should be filed.

14 On 9 December 2009, the AGC replied that the matter had been given careful consideration and that an appeal against the sentence was not warranted as it was not manifestly inadequate in the light of recent decisions of the Court of Appeal.

15 On 7 January 2010, the plaintiffs' lawyers, M/s Lee Frois & Partners wrote to the Minister for Law about the alleged unsatisfactory features in the trial of Mdm Wu. Among other things, a complaint was made that the Prosecution had tendered Dr Fernandez's psychiatric report to the court and had not called upon another psychiatrist to furnish a report, which presumably would have contradicted Dr Fernandez's report. A copy of this letter was forwarded by the Ministry of Law to the AGC.

16 On 25 January 2010, the AGC reiterated that the decision not to appeal against the sentence was made after careful consideration and that no appeal will be lodged against the sentence. As for the plaintiffs' complaint that the Prosecution had placed Dr Fernandez's report before the court, it was pointed out that the Prosecution was obliged to place all relevant evidence, including the said report, before the court. The AGC added that the plaintiffs' allegation that the Prosecution was at fault for not presenting a second psychiatrist report to the court was off the mark as the practice of "shopping around" for psychiatric reports until one is found that supports a particular point of view was unethical.

17 On 12 February 2010, the plaintiffs' lawyers sent another letter to the AGC to reiterate their

clients' view on the matter. On 15 March 2010, the AGC reiterated its position that no appeal will be lodged against the sentence and added that no further correspondence on the matter was necessary.

18 The plaintiffs then filed the present application on 13 September 2010. The AGC responded by applying to have the Originating Summons struck out.

Whether the Originating Summons should be struck out

19 O 18 r 19 (1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which deals with the striking out of an action or pleadings provides as follows:

The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

20 The court's power to strike out an action is a draconian one. As such, it should not be exercised unless a plaintiff's case is wholly devoid of merit. In *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649, the Court of Appeal explained at [18]:

In general, it is only in *plain and obvious cases that the power of striking out should be invoked*. ... It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that, where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

[emphasis added]

21 Obviously, a case that is hopelessly doomed to fail should be struck out. In *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd* [2003] 1 SLR(R) 295, where the Court of Appeal struck out a hopeless claim, Chao Hick Tin JA stated (at [34]) that to allow the case to go further for trial would be to compel the defendants to expend time and money in defending a case which obviously had not merit whatsoever.

22 The plaintiffs' application for a declaration must be viewed in the context of separation of powers under the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint). In regard to judicial power, Art 93 of the Constitution provides:

The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

23 As for the role of the Attorney-General as the nation's Public Prosecutor, this is outlined in Art 35(8) of the Constitution, which provides:

The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

Furthermore, s 336(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) provides:

The Attorney-General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code.

24 When considering the effect of Art 93 and Art 35(8) of the Constitution in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239, Chan Sek Keong CJ ("Chan CJ") explained at [144] that these two provisions "expressly separate the prosecutorial function from the judicial function, and give equal status to both functions". He added at [145]:

In relation to public prosecutions, Art 35(8) makes it clear that the *institution, conduct or discontinuance* of any criminal proceedings is a matter for only the Attorney-General to decide. This means that except for unconstitutionality, the Attorney-General has an unfettered discretion as to when and how he exercises his prosecutorial powers.

[emphasis in original]

25 Admittedly, Chan CJ made it clear at [149] that the exercise of prosecutorial discretion is subject to judicial review. However, he opined that the question of judicial review arises in only two situations. The first is where the prosecutorial discretion is abused because it was exercised in bad faith for an extraneous purpose. The second is when the exercise of prosecutorial prosecution contravenes constitutional protections and rights, as would be the case if discriminatory prosecution results in an accused being deprived of his right to equality under the law and the equal protection of the law under Art 12 of the Constitution.

26 The plaintiffs did not assert that in deciding not to appeal against the sentence, the Public Prosecutor had acted unconstitutionally or had been motivated by bad faith or extraneous circumstances. Neither did they allege that they had been deprived of equal protection of the law under Art 12 of the Constitution. It is worth noting that in so far as equal protection is concerned, in *Teh Cheng Poh v PP* [1979] 1 MLJ 50, Lord Diplock, while considering Art 8(1) of the Malaysian Constitution, which is on all fours with Art 12(1) of the Singapore Constitution, stated at p 57 that all that equality before the law requires is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration.

27 Although the plaintiffs had initially asserted that the Public Prosecutor had acted illegally and/or with procedural impropriety and/or irrationally in refusing to appeal against the sentence, their counsel, Mr Spencer Gwee, confirmed during the hearing that his clients were only relying on the ground that the decision not to appeal was irrational in the *Wednesbury* sense: see *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223. In effect, all that the plaintiffs asserted was that their lawyers were of the opinion that the Public Prosecutor has misconstrued the effect of recent decisions of the Court of Appeal by coming to the conclusion that an appeal was unwarranted in this case. As a decision of the Public Prosecutor in relation to the

conduct of a case, which includes whether or not to appeal against a decision of the trial judge, cannot be challenged in the courts where there has been no breach of the Constitution and no bad faith, the plaintiffs' application is bound to fail.

28 Apart from the effect of the constitutional provisions referred to above, it is also clear that the plaintiffs do not have legal rights with respect to the trial of Mdm Wu that can be the subject matter of the declaration sought. It follows from s 44 of the Supreme Court of Judicature Act (Cap 332, 2007 Rev Ed) that appeals in criminal cases emanate exclusively from an accused person or from the Public Prosecutor. As such, no legal rights of the plaintiffs had been affected by the Public Prosecutor's decision not to appeal against the sentence and they have no *locus standi* to apply for the declaration in question.

29 For the reasons stated, it is plain and obvious that the plaintiffs' application for a declaration that the Public Prosecutor had acted illegally and/or irrationally and/or with procedural impropriety in failing and/or or refusing to appeal against the sentence is bound to fail. As such, I order that it be struck out with costs.

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