

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 58

HC/Criminal Case No 8 of 2016

Between

Public Prosecutor

And

Rosdi Bin Joenet

FOUNDATIONS OF DECISION

[Criminal law] - [Offences] - [Culpable homicide]

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Public Prosecutor

v

Rosdi Bin Joenet

[2016] SGHC 58

High Court — Criminal Case No 8 of 2016
Foo Chee Hock JC
7 March 2016

13 April 2016

Foo Chee Hock JC:

1 The accused, Rosdi Bin Joenet, pleaded guilty to and was convicted on the following charge under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed):

That you, **ROSDI BIN JOENET**,

on the 17th of November 2012, sometime between 5.00 am to 5.19 am, at the master bedroom of Blk 850 Jurong West Street 81 #09-275, Singapore, did cause the death of one Faridah Bte Senin, NRIC: [xxx] (“the deceased”), to wit, by stabbing the deceased’s body multiple times with a kitchen knife (with a 20 cm long blade and a 13 cm long handle), with the intention of causing the deceased such bodily injuries as were likely to cause death and thus you have committed the offence of culpable homicide not amounting to murder

punishable under section 304(a) of the Penal Code (Chapter 224, 2008 Rev Ed).

2 The deceased was the accused's wife. They were married for about 21 years and were living in the abovementioned flat with their three children and the deceased's mother. The accused admitted to the statement of facts ("SOF") without qualification. The salient parts of the SOF are set out as follows:

Lead-up to the offence on 17 November 2012

5. Prior to the incident, the marital relationship between the accused and the deceased had soured. The accused suspected that the deceased was having an extramarital affair. However, when the accused confronted the deceased regarding his suspicions, the deceased denied any involvement in any extramarital affair.

6. Two weeks before the incident, the marital relationship between the accused and the deceased had deteriorated to the point such that they were sleeping in separate rooms. The deceased slept in the master bedroom together with A1 [the deceased's mother] while the accused slept in the study room.

Offence on 17 November 2012

7. On 17 November 2012 at about 5.00 am, the accused woke up and found A1 preparing food in the kitchen. At that point in time, the deceased was still sleeping in the master bedroom while their three children were sleeping in their own rooms.

8. The accused then entered the master bedroom and woke the deceased up in order to discuss their marital disputes. However, he was met with angry words from the deceased and was chased out of the bedroom.

9. However, the accused returned back to the master bedroom, armed with a *kitchen knife (with a 20 cm long blade and a 13 cm long handle)* this time round. The accused also closed and locked the master bedroom door. When the accused was alone with the deceased

inside the master bedroom, *the deceased was then heard screaming from the room.*

10. When A1 heard the deceased screaming, she rushed over and found that the door to the master bedroom was locked. When A1 demanded the door to be opened, the accused replied by saying that he was in a discussion with the deceased and that he would open the door a while later. *The deceased was then overheard begging the accused not to kill her.*

11. On 17 November 2012, sometime between 5.00 am to 5.19 am, at the master bedroom of the Flat, the accused used the kitchen knife to stab the deceased's body multiple times with the intention of causing the deceased bodily injuries as were likely to cause death. After that, the accused emerged out of the master bedroom and told A1 that he had killed the deceased. The accused also told his three children (who had been woken up by the deceased's screams) that he had "reasons" for killing the deceased.

12. When A1 and the three children (A2, A3 and A4) rushed inside the bedroom, they found the deceased lying motionless on the floor, with blood on her shirt. A blood-stained kitchen knife was found on a low cabinet beside the deceased.

13. A1 then called the Police on the same morning at about 5.19 am to report the incident. Shortly after that, the accused also called the Police with the text message that reads, "Murder. I am the husband. My wife. I am unable to say anything now. (caller crying)".

14. On the same morning at about 5.30 am, Sergeant Lin Yuheng and Corporal Rosmaria from Nanyang NPC arrived at the scene. When the police officers asked the accused what happened, the accused did not answer their questions and simply surrendered himself to the Police.

15. On the same morning at about 5.38 am, the deceased was pronounced dead by SCDF Paramedic Chen Jieyi Abigail.

[words in square brackets and emphasis added]

3 The autopsy was performed by Dr George Paul, Senior Consultant Forensic Pathologist, Health Sciences Authority. His Autopsy Report can be found at Tab A of the SOF. There were some 26 external injuries described at pp 4 to 7 of the Report. The SOF summarised them (at para 16) as follows:

- a) Injuries no 2, 5, 7-13, 17, 19-26 (inclusive) were caused by a sharp cutting weapon;
- b) Injuries no 24 and 25 were caused by either a double edged weapon with one edge not so sharp, or by a single edged thin bladed cutting – stabbing weapon [this could also be the same weapon mentioned in (a)];
- c) Injuries no 1, 3, 4, 6, 14, 15 and 18 were caused by blunt force impact;
- d) Injury no 16 was the end-wound-track of the outwards directed injury no 25.

(See also p 10 (under “Remarks”) of Autopsy Report.)

4 The cause of death was certified (at p 10 of Autopsy Report) as “stab injuries to superior vena cava [a vein that leads to the heart¹] and right bronchus [part of the lungs²]” (words in brackets within quote added). The Autopsy Report further states (at p 10):

... Injury no 24 and 25 [stab wounds to the chest], individually and collectively, were sufficient to cause death in the ordinary course of nature.

[words in brackets added]

¹ See footnote (1) of SOF at p 5.

² See footnote (2) of SOF at p 5.

5 In the hearing before me with respect to the sentence to be imposed, the arguments focused on *Public Prosecutor v Han John Han* [2007] 1 SLR(R) 1180 (“*Han John Han*”) and *Public Prosecutor v Kwok Teng Soon* [2001] 3 SLR(R) 273 (“*Kwok Teng Soon*”) which parties agreed to be the more relevant authorities. In both cases, (disregarding the punishments of fine or caning) s 304(a) of the Penal Code (Cap 224, 1985 Rev Ed) then provided for either life or up to 10 years’ imprisonment. With effect from 2008, the law was amended to confer the court with greater discretion in that the court can now impose an imprisonment term of up to 20 years or life imprisonment.

6 In *Han John Han*, the accused pleaded guilty to a charge under s 304(a) of the Penal Code (Cap 224, 1985 Rev Ed) for killing his wife by plunging a sword into her chest (see [1]). The deceased was then pregnant with their third child. Hence another charge under s 315 of the Penal Code (Cap 224, 1985 Rev Ed) for causing the death of the foetus was taken into consideration for sentencing (at [1]). The accused was found to be suffering from a “psychotic delusion” that his wife “was using black magic to hex him” and that she was plotting with her “lover” to take away his daughters and his possessions when he died (see [12] and also [4]). The accused was sentenced to 3 years’ imprisonment and on appeal the imprisonment term was increased to 5 years.

7 It appeared from the grounds of decision that the accused had undergone treatment (“taken off the anti-psychotic drugs” and “accused’s symptoms of delusion were in remission” (at [9])). Choo Han Teck J helpfully stated (at [9]):

... From these reports it seems that so far as the psychiatrists, particularly Dr Koh, are concerned, the accused is *no longer troubled* by the psychotic condition that impaired his mental responsibility at the time of the offence and, by all reasonable tests and observation, the *risk of a recurrence is “very low” but not impossible*. ...

[emphasis added]

8 In similar vein, Choo J accepted (at [13]) that the accused “is no longer a danger to himself or to others although, for good measure, his medical appointments should be maintained until the doctors are satisfied that they can be discontinued.”

9 *Kwok Teng Soon* was another case on s 304(a) of the Penal Code (Cap 224, 1985 Rev Ed), involving an accused suffering from delusional disorder (see [28]) when he killed his wife with a chopper in a savage attack which left her “almost decapitated” ([12]). The cause of death was certified as “Multiple Incised wounds to Head and Neck” ([14]). Tay Yong Kwang JC postulated (at [29]) that the “central theme” in the three conditions propounded in *Neo Man Lee v Public Prosecutor* [1991] 1 SLR(R) 918 (for imposing life imprisonment) was “whether the accused is a person of unstable character likely to commit such offences in future. The purpose of the three conditions is not to determine how evil a particular accused person can be. Rather, it is to extrapolate from his condition and his actions, the likelihood of a relapse and what the probable consequences might be.”

10 It appeared (see [15]) that the accused had earlier (before the offence) received treatment at Woodbridge Hospital. He was prescribed medication but did not follow-up on his treatment ([15]).

11 At [30], the court clearly found that the accused had not been cured and “would require long-term treatment which could lead to a remission but that would be premised on his ‘total compliance with treatment’”. Tay JC (at [30]) was not convinced that the accused’s brother was able to supervise the accused and ensure that he received the required treatment. Furthermore, Tay JC considered “how devastating the effects [of the accused’s mental disorder] could be when something triggered him off” and imposed life imprisonment as the “only appropriate sentence” ([30]).

12 It was not disputed that in the case of a mentally disordered offender, the rehabilitative principle needed to be considered and factored into the evaluation of the sentence where appropriate. In considering the present accused’s need for treatment and rehabilitation, the arguments covered the flipside – which was the risk of the accused reverting to violence if he was not cured. This raised the principle of incapacitation or protection of the public which will be discussed after the rehabilitative principle.

The rehabilitative principle – the accused’s need for treatment and risk of reoffending

13 In examining the above issues, I shall make reference to four psychiatric reports by Dr Bharat Saluja, Consultant, Institute of Mental Health, and will be reproducing extracts from them. For convenience, they shall be referred to by their location in the SOF as follows:

- (a) Report dated 10 December 2012 – Tab B of SOF.

- (b) Report dated 14 March 2014 – Tab C of SOF.
- (c) Report dated 11 May 2015 – Tab D of SOF.
- (d) Report dated 12 June 2015 – Tab E of SOF.

14 One main point relied on by Mr Abraham Vergis for the accused was that the risk of reoffending by the accused was low. If reliance was placed on Tab C of SOF (p 2, the second paragraph), then it should be noted that the assessment was outdated as the “clinical risk factors may have changed” and no formal risk assessment had been done. However, Dr Saluja did state for the record at Tab D of SOF (p 4, section J, para 2) that the accused’s “risk of committing future violence appears to be low currently despite him continuing to have delusional beliefs against his deceased wife and poor insight regarding his mental disorder.” (See also Tab E of SOF, p1, under “Opinion”.) Dr Saluja did postulate two possible scenarios where the risk of violence may be increased (at Tab E of SOF, p 1):

- 1) If he pursues his wife’s alleged lover (which he denied in interviews) or
- 2) If his delusional system (beliefs that are false, firm and fixed) incorporates other individuals which may happen if his illness remain untreated.

15 That said, it must be noted that the reports had been prepared on the present basis that the accused had not undergone any treatment yet. This was an important point because we did not have the benefit of a prognosis based on his response to medication or psychotherapy. So the psychiatric reports had to be considered for what they were saying with

that caveat in mind. The other implication was that we must be sensitive to this dissimilarity with the two precedent cases discussed above.

16 The responsibility that fell on this court was to sentence the accused in his present condition. He was not well, he was not healed and he had not begun any treatment. He still “harbour[ed] delusional thoughts against his deceased wife” and the “symptoms of his disorder are still active” (Tab E of SOF, p 1, under “Opinion”). There was evidence that he was still in denial (see Tab B of SOF, p 3, section D, para 1; and Tab D of SOF, p 2, section C, para 5).

17 I should next deal with the length and prognosis of treatment. In Tab C of SOF, p 1, under “Treatment Plan” and Tab D of SOF, p 4, section J, para 1, Dr Saluja stated that the delusional disorder – jealousy subtype which the accused was diagnosed with “is typically chronic and lifelong disorder unless treated”. In Tab E of SOF (p 1), under “Treatment”, Dr Saluja highlighted that the key to success was trust in the therapist. The treatment would comprise medication and psychotherapy, where Cognitive Behavior Therapy had the “best evidence” (Tab E of SOF). However the doctor qualified his opinion by saying that “[t]his is a successful treatment when done right; however, it is a long and difficult process for both the patient and therapist and can take months (or even years) for progress to be made” (Tab E of SOF, p 2, under “Psychotherapy”). He concluded by stating that his estimate was that the accused “would require 1 - 2 years of treatment but success of treatment is guarded” (Tab E of SOF, p 2, under “Psychotherapy”).

18 In addition to the delusional disorder, the accused was “exhibiting symptoms of depressive disorder which is a common comorbidity with delusional disorder” (Tab D of SOF, p 4, section J, para 1). This comorbid depressive disorder carried its own risks and difficulties (see Tab D of SOF, p 4, section J, para 4). The accused had a heart attack in 2013 and was on medication for his cardiac condition and diabetes (Tab D of SOF, p 3, section C, para 6). I had also taken note of para 62 of the Plea in Mitigation (“Mitigation”), and the Report at Tab S (at p 232) of the accused’s Bundle of Authorities and Documents (“BOD”).

19 On the point of social and family support for the accused (see paras 51 and 52 of Mitigation), the comforting picture submitted by Mr Vergis must be weighed against the challenges that the accused would face on release from prison (see also para 43(b) of Mitigation). His mother-in-law had said that she would not be living with him and the children on the accused’s release, leaving him to look after his children (Tab D of SOF, p 3, section G, para 1 and Letter of Appeal at Tab D of the accused’s BOD). The accused indicated that he wanted to take a course and obtain a licence to be a taxi driver (Tab D of SOF, p 3, section I, para 1). While his children and extended family may give him the moral support and loving environment, that had to be balanced with his role as provider and head of the family and his motivation to follow through with the treatment.

20 On the material before me, I was sceptical that there would be adequate support for the accused if he had not substantially recovered

from his psychological problems upon his release. The arguments made on behalf of the accused assumed that the threat of a recurrence was non-existent once the object of his delusional disorder was no more (para 63 of Mitigation). In the light of the above discussion, I could not justify treating the accused as if his mental disorder had distinctly ended (see paras 43(c) and 47 of Mitigation). Quite apart from the protection of the general public, the court needed to be assured that he would not be a threat to his own support system upon his release.

21 The above, which was explored and argued substantially at the hearing, discussed the application of the rehabilitative principle to our facts. However, the retributive and protection of the public principles were also relevant for sentencing.

Principles of retribution and protection of the public

22 The essence of the retributive principle as applied to our facts was that due punishment was required for such a grievous offence, notwithstanding that the accused was suffering from a mental disorder. The commentary in Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 18.125, which was essentially approved by the Court of Appeal in *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [39], stated the position clearly:

The retributive principle features prominently in the sentencing of mentally disordered or intellectually challenged offenders where the offence is *particularly serious or heinous*. In such cases, it appears that the retributive principle may even prevail over the rehabilitative principle.

23 The sentence here must also reflect the principle of protection of the public. The prosecution cited *Public Prosecutor v Goh Lee Yin and another appeal* [2008] 1 SLR(R) 824 at [108] in support (see para 9 of Prosecution’s Submissions on Sentence):

... [I]n cases involving serious offences, incapacitation would usually form the focus of the sentencing process. In *PP v Lim Ah Liang* ([94] *supra*), I noted at [41] that incapacitation aims to deal with severely mentally-ill offenders in such a way as to make them incapable of offending for substantial periods of time. It is popularly referred to as “public protection” and advocates the imposition of long, incapacitative custodial sentences on “dangerous” offenders when the potential risk to prospective victims is substantial. In my view, such a consideration would be highly relevant in cases involving serious offences notwithstanding the fact that the offender suffers from an impulse control psychiatric disorder, which causes the commission of the very offence. ...

24 There was no doubt that this was a serious and heinous offence, attracting the principles of retribution and incapacitation. As I stated in open court before passing sentence, the attack by the accused on his wife, leaving her with the 26 injuries noted in the Autopsy Report (see above), was vicious and violent. The prosecution highlighted para 9 (the weapon used and the deceased screaming from the room) and para 10 (the deceased’s mother demanding that the door be opened and the deceased begging the accused not to kill her) of the SOF. I was prepared to accept that there was no premeditation (see para 56 of Mitigation). While Mr Vergis pointed out that the catalogue of injuries noted included defensive and superficial injuries (see Official Transcript at p

40), the injuries nonetheless pointed to a savage attack on a defenceless victim. Although the accused had no history of violence, the effect of his delusional disorder was devastating when triggered. This allusion to the description in *Kwok Teng Soon* (at [30]) was made with full awareness that the sentencing considerations in *Kwok Teng Soon* may not be wholly applicable here.

25 I should also make reference to the likelihood of a relapse of the accused's condition with heinous consequences. It is sufficient to say that the sentence in *Han John Han* was of limited guidance here. The court there was confident of Han John Han's recovery, since he had undergone treatment. The court was also satisfied that for all practical purposes, he was not a danger to others. The position of the present accused was clearly distinguishable (see the discussion on the rehabilitative principle above). In these circumstances, the submission of 6 years' imprisonment by Mr Vergis could not do justice on the facts here. There was a need for a more substantial term of imprisonment.

The court's decision

26 In assessing the appropriate sentence, I further considered the accused's plea of guilt and remorse; and his co-operation with the authorities in the investigation of this matter. The accused had no antecedents which were relevant for sentencing and I accepted that it was his abnormality of mind that caused his actions on that fateful day (see Tab B of SOF, p 10, section M, para 4). I also considered his personal circumstances, and his family circumstances before and after

the tragic event of 17 November 2012. In this regard, the sentence should express such compassion as was permitted by the law.

27 Considering all relevant matters in the round, I was of the view that the appropriate sentence should be an imprisonment term of 9 years. In exercise of my discretion, I backdated the sentence imposed to 18 November 2012, the date of remand.

Foo Chee Hock
Judicial Commissioner

Wong Kok Weng and Ma Hanfeng (Attorney-General's Chambers)
for the prosecution;
Abraham Vergis (Providence Law Asia LLC) and
Nadia Ui Mhuimhneachain (Kalco Law LLC) for the accused.
