IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 273

Criminal Case No 48 of 2019

Between

Public Prosecutor

And

Govindarajan s/o
Thiruvengadam Uthirapathy

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Attempt to commit culpable homicide with hurt caused]

Version No 1: 27 Oct 2020 (22:41 hrs)

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Public Prosecutor
v
Govindarajan s/o Thiruvengadam Uthirapathy

[2019] SGHC 273

High Court — Criminal Case No 48 of 2019
Vincent Hoong JC
25 November 2019

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Vincent Hoong JC (delivering the judgment of the court *ex tempore*):

1 The accused person has pleaded guilty to a charge of attempted culpable homicide with hurt caused under s 308 of the Penal Code (Cap 224, 2008 Rev Ed).

2 Having heard the parties' submissions, I sentence the accused person to three years' and three months' imprisonment to commence from the date of his remand.

3 The Prosecution has proposed a sentencing framework for the offence. With respect, I do not think that this is an appropriate case to set out a sentencing framework. There are insufficient precedents to demonstrate why the proposed bands are appropriate. As the Prosecution has noted, the nature of this offence is fact-intensive. This is borne out by the cases cited which show that they vary greatly in their factual matrix. I therefore prefer the approach applied by the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684

("*Kwong Kok Hing*"), where the court stated at [33] that "[i]n arriving at an appropriate sentence, a court should almost invariably consider the relevance of the sentencing considerations of deterrence, retribution, prevention and rehabilitation".

4 In the present case, the accused person decided to kill his wife. He went into the kitchen to retrieve a plastic bag. Without any warning, he then approached her from behind, and proceeded to suffocate her with the plastic bag. He only stopped choking the victim when he realised that she had involuntarily urinated herself and lost consciousness. He observed that she was breathing and tried to rouse her to no avail. He then proceeded to help himself to the victim's properties, and left the flat without checking on her health. In his medical report, Dr Paul Chui, a senior consultant forensic pathologist with the Health Sciences Authority, opined that the accused person would have suffocated the victim with the plastic bag for between 15 seconds and 3 minutes.[1]

5 I agree with the Prosecution that it was only fortuitous that the victim escaped death. The accused person's conduct after the offence was also callous. He exhibited a blatant disregard for the victim's well-being: after pawning away the victim's jewellery, he then made purchases for the woman with whom he was having an affair. He then decided to leave Singapore, but was thwarted when he was arrested at the checkpoint.

6 In the circumstances, I agree that general deterrence and specific deterrence are relevant sentencing considerations in the present case. The law

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[1] Statement of facts, para 17, Tab D.

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should not condone violence as a solution to problems, in particular when severe consequences such as the victim's death may result. Specific deterrence is also necessary to remind the accused person that the use of extreme violence out of anger and vengeance will not be condoned. Furthermore, retributive justice should be given some weight, given that the accused person's assault threatened the victim's life. It was entirely fortunate that the victim survived the ordeal. The accused person had no part to play in the fortuitous outcome, and in fact showed a blatant disregard for her well-being, as evinced by his conduct after the offence (see *Public Prosecutor v BPK* [2018] 5 SLR 755 at [9]–[12]).

7 I have also considered the precedents cited by the Prosecution and the Defence. While the accused person's conduct was not as flagrant as the offenders in *Kwong Kok Hing* (pushing his ex-girlfriend in the path of an oncoming train) or in *Public Prosecutor v ACI* [2009] SGHC 246 (attacking his mistress with a chopper and throwing her over the third floor parapet, causing her to fall to the ground floor), what was significant was that the accused person in this case was not suffering from a mental disorder that attenuated his culpability. While the defence sought to paint a picture that he was riddled by his mental condition by referring to medical reports in 2006 and 2007, the accused person himself reported to the Institute of Mental Health ("IMH") psychiatrist that he was not depressed prior to the alleged offence. The IMH report, which was not contradicted by any other report, also showed that the adjustment disorder which he was diagnosed with had no causal or contributory link to the alleged offence.

8 Nonetheless, I recognise that the attack in this case was not as aggravated as in the case of *Public Prosecutor v BVS* (Criminal Case No 42 of 2018). In that case, the accused person was remanded for punching his ex-wife in the face. Upon his release on police bail, he sought his ex-wife out and slashed

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her repeatedly in broad daylight, causing her to suffer severe and potentially permanent injuries, as well as post-traumatic stress disorder. The accused person's offence was committed while a personal protection order was in place. While giving some allowance for the accused person's mental condition, which did not have a significant contributory link to his commission of the alleged offence, Justice Valerie Thean considered that a sentence of five years' imprisonment for the s 308 offence was appropriate.

9 As explained, there was absolutely no causal or contributory link between the accused person's adjustment disorder and the offence in this case. That the accused person suffers "with poor sleep, low mood and anxiety about his case"[2] is also not a relevant mitigating factor. As held in *Public Prosecutor v Koh Seah Wee and another* [2012] 1 SLR 292 at [64], mental illness arising from incarceration is induced by an offender's own criminal acts, and no mitigating weight ought to be given. The same point was made in *Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96.

10 However, I do give some mitigating weight to the remorse that the accused person has shown in a letter of apology which he wrote to his wife after the offence. The accused person's contrition is also corroborated by his daughter. The court in *Public Prosecutor v Wang Jian Bin* [2011] SGHC 212 held that some credit can be given for the accused person's remorse, which can be reflected by a genuine apology. Furthermore, the accused person's wife has forgiven him. While forgiveness is usually not a mitigating factor, it is relevant if the "sentence imposed on the offender would aggravate the victim's distress" (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [57]; *Ng Kean Meng Terence*

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[2] Mitigation p 43, para 3.

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v Public Prosecutor [2017] 2 SLR 449 at [45(a)]). The victim has written that the accused person's absence has caused her many sleepless nights, and that it has affected her health and performance at work. I therefore find that some mitigating weight ought to be given to the fact that the victim has forgiven the accused person, and craves his return.

11 The accused person's plea of guilty is also a relevant mitigating factor. In this regard, I agree with the Prosecution that the weight to be given ought to be confined to sparing the victim from the ordeal of having to give evidence and the saving of costs and time in a trial.

12 However, to be balanced against the above is the theft in dwelling charge, which is to be taken into consideration for the purposes of sentencing. This involves the accused person's act of stealing the victim's jewellery and wallet after he found her to be unconscious. I recognise that some aggravating weight has been given to the fact that he had behaved callously after the offence, as seen by his act of stealing the victim's possessions and thereafter making plans to leave the country. Nonetheless, given the distinct nature of the offence, I find that some aggravating weight ought to be given to the theft in dwelling charge.

13 In totality, having regard to the applicable sentencing principles and the relevant precedents, as well as the aggravating and mitigating factors in this case, I find that a sentence of three years' and three months' imprisonment is appropriate.

Vincent Hoong
Judicial Commissioner

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Wong Woon Kwong and Kong Kuek Foo (Attorney-General's Chambers)
for the Public Prosecutor;
Raphael Louis (Ray Louis Law Corporation)
for the accused.

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