

Public Prosecutor v Teo Chee Seng
[2005] SGCA 28

Case Number : Cr App 3/2005

Decision Date : 12 May 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Cheng Howe Ming, Woo Kar Wai and Jason Chan (Deputy Public Prosecutors) for the appellant; Michael Chia (Sankar Ow and Partners) for the respondent

Parties : Public Prosecutor — Teo Chee Seng

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Respondent convicted of culpable homicide not amounting to murder for causing death of infant by feeding her medicated oil – Additional charge of fabricating false evidence taken into consideration for sentencing purposes – Whether sentence of four years' imprisonment manifestly inadequate – Whether trial judge justified in departing from sentencing norm

12 May 2005

Tan Lee Meng J (delivering the judgment of the court):

1 The Public Prosecutor appealed against the sentence of four years' imprisonment imposed in the court below on the respondent, Teo Chee Seng ("Teo"), who pleaded guilty to a charge of culpable homicide not amounting to murder, punishable under s 304 (b) of the Penal Code (Cap 224, 1985 Rev Ed), for causing the death of Joanna Goh Jia Ying, a female infant aged seven months. When imposing the sentence, the trial judge took into account a second charge against Teo for fabricating false evidence by getting another person, Haidil bin Harun ("Haidil"), to make a false police report, in which Haidil claimed to have been present when the infant was found unconscious and that it was he who put medicated oil on the infant's tongue. We allowed the appeal against the sentence imposed on Teo and now set out the reasons for our decision.

2 Teo had been hired as a private investigator by the infant's mother, Tay Seoh Hong ("Tay"), to check on the movements of her husband, whom she suspected of having an affair with another woman. As it turned out, Teo, a married man with children of his own, fell in love with Tay and they became lovers. After Tay separated from her husband, Teo's mother helped Tay look after the infant.

3 The tragic event occurred on 25 October 2000 when Teo had to look after the infant for some time. He first drove to a car park at Serangoon Garden Way as he wanted to buy 4-D tickets. When the infant started crying, he decided to go to another 4-D outlet at Hougang Central. As the infant was still crying, he tried to pacify her by feeding her milk but the infant refused to drink the milk. Teo then applied some "Axe" medicated oil onto the infant's lips and nostrils. The infant showed signs of discomfort and the accused assumed that she felt a burning sensation on her lips and nostrils after the application of the medicated oil.

4 A little later, Teo shouted at the infant when she began to cry again. This time, he poured some of the medicated oil into the infant's mouth. The infant stopped crying but she moved her tongue in and out of her mouth and groaned in discomfort. Teo then joined the queue at the 4-D outlet at Hougang Central to purchase 4-D tickets. While he was in the queue, the infant started to cry. Teo returned with the infant to his car and tried to feed her milk. When she refused to drink the milk, he applied medicated oil onto her lips and nostrils and proceeded to a petrol kiosk to buy some goods, including a bottle of "Axe" medicated oil because the one that he had was already empty.

5 Teo next drove to the Riverdale Plaza car park and tried to feed the infant again. When she refused to drink the milk offered to her and cried, he shook the contents of the new bottle of medicated oil into her mouth. The infant's cries became fainter and fainter, her face changed colour, her stomach became bloated, there was a watery discharge from her nostrils and she retched and tried very hard to get rid of the poisonous substance from her body before she finally became unconscious. Teo took the infant and ran to a medical clinic in the shopping mall. It was then around 5.03pm. An ambulance took the infant to the KK Women's and Children's Hospital, where she was pronounced dead at 6.30pm. Dr Wee Keng Poh, a forensic pathologist, certified that the cause of death was "acute salicylic acid poisoning".

6 Teo pleaded guilty to a charge of culpable homicide not amounting to murder. His counsel pointed out that Teo had a history of "acute situation reaction" and that he did not intend to kill the infant as he loved her very much. At the material time, he was involved in his own divorce proceedings and was suffering from severe acute stress.

7 The trial judge, who noted that the court had a discretion to impose a sentence of imprisonment for up to ten years, was of the view that this case warranted a sentence that fell within the mid-range of the specified period of incarceration. He noted that Teo had not used violence on the child and that his apparent motive in using the medicated oil was primarily to stop the child's incessant crying. As such, he sentenced Teo to a term of imprisonment of four years.

The appeal

8 The Public Prosecutor, who was of the view that Teo's sentence was manifestly inadequate for his crime, submitted that the trial judge did not give sufficient weight to the following factors:

- (a) the vulnerability of the deceased;
- (b) the manner in which the offence was committed;
- (c) the sentencing trend; and
- (d) the additional charge faced by Teo with respect to the fabrication of false evidence.

9 As far as the vulnerability of the deceased is concerned, this court reiterated in *Purwanti Parji v PP* [2005] 2 SLR 220 that the law recognised the need to protect vulnerable and defenseless persons such as the handicapped, incapacitated, elderly and children. We thus agreed that the fact that the deceased was only seven months old was not given sufficient weight.

10 As for the manner in which the offence was committed, it may be recalled that the hapless infant's face changed colour, her stomach became bloated, there was a watery discharge from her nostrils and she retched and tried very hard to get rid of the poisonous substance from her body before she finally became unconscious. Admittedly, Teo did not kick or throw the infant onto the floor but feeding the helpless infant medicated oil and causing her so much pain and suffering is not in any way less heinous. Teo had on no less than four occasions applied medicated oil on the lips, nostrils and mouth of the infant whenever she cried. He was fully aware of the fact that the infant felt a burning sensation on her lips and nostrils after he applied it on her on the first occasion and when he poured medicated oil into the infant's mouth, he could see that she moved her tongue in and out of her mouth and groaned in discomfort. This did not stop him from continuing to put medicated oil on

her lips and nostrils and into her mouth until it was too late.

11 We accept that where the court has a discretion in sentencing an offender, the sentence meted out in a particular case may vary from that imposed in other cases because of special circumstances. However, in the present case, there was nothing to justify a departure from the range of sentences meted out in other cases involving the death of children, which is more than the four years of imprisonment imposed on Teo. In many of such cases, the accused were, like Teo, also irritated by the wailing of children.

12 Three such cases may be noted. In the first case, *PP v Sumarni bte Pono* Criminal Case No 11 of 2001, the mother of a child, aged two years, was so incensed by his crying that she carried him from his mattress, which was on the floor, and lifted him up to the level of her waist before dropping him onto the mattress. She then pulled his ears and knocked his head several times against the mattress. She pleaded guilty to a charge under s 304(b) of the Penal Code for causing the death of her child and was sentenced to imprisonment for a term of five years.

13 In the second case, *PP v Dwi Arti Samad* Criminal Case No 12 of 2000, the accused, a female aged 22 years, was also irritated by the cries of an infant, aged 15 months. She picked him up from his pram and dropped him onto the floor. The child was killed and she pleaded guilty to a charge of culpable homicide not amounting to murder. She was sentenced to eight years' imprisonment.

14 In the third case, *PP v Devadass s/o Suppaiyah* Criminal Case No 41 of 1997, the accused pleaded guilty to a charge under s 304(b) of the Penal Code. He had held a baby, aged three months, by the neck and slapped him hard several times for crying. The baby died after being thrown onto a mattress on the floor. The accused was sentenced to ten years' imprisonment.

15 When compared to the sentences imposed in the above three cases, the sentence imposed by the court below in the present case was manifestly inadequate. Furthermore, it ought not be overlooked that in Teo's case, another charge under s 193 of the Penal Code of fabricating false evidence must be taken into account. Teo's attempt to deceive the police and subvert the course of justice by getting another person to take the rap for him was deplorable. It is trite that the effect of taking into consideration other offences is to enhance the sentence that would otherwise be awarded (see, for instance, *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138).

16 Before concluding, a few words ought to be said about what Teo's counsel referred to as his "history of acute situational reaction". There was no concrete evidence of what effect this had on his actions and we would like to stress that a person with a history of acute situational reaction cannot be given a carte blanche to act without taking responsibility for his actions.

17 For the reasons stated, we set aside the sentence imposed by the court below and substituted it with a sentence of imprisonment for a term of seven years. The sentence is to be backdated to 30 July 2004.

Appeal allowed.

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