

Public Prosecutor v Teo Chee Seng
[2005] SGHC 45

Case Number : CC 3/2005
Decision Date : 28 February 2005
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jason Chan (Deputy Public Prosecutor) for the prosecution; Michael Chia (Sankar Ow and Partners) for the accused
Parties : Public Prosecutor — Teo Chee Seng

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Culpable homicide – Appropriate sentence for causing death of infant where death not caused by violent act committed in fit of rage – Section 304(b) Penal Code (Cap 224, 1985 Rev Ed)

28 February 2005

Choo Han Teck J:

1 The accused, aged 35, pleaded guilty to a charge of culpable homicide not amounting to murder, and punishable under s 304(b) of the Penal Code (Cap 224, 1985 Rev Ed) for causing the death of a seven-month-old infant. He admitted to administering medicated oil into the mouth of the infant on 25 October 2000 between 1.30pm and 5.03pm. A second charge of fabricating false evidence, by getting one Haidil bin Harun (“Haidil”) to make a false police report stating that he (Haidil) was the one who put the medicated oil on the deceased infant, was taken into consideration.

2 The infant was the child of Tay Seoh Hong, aged 30. In April 2000, she engaged the services of the accused, a private investigator, to check on her husband whom she suspected to be unfaithful. By June of 2000, Tay and the accused fell in love with each other, and became lovers. Eventually, Tay separated from her husband, but she took custody of the infant. The mother of the accused helped Tay look after the infant.

3 The events relating to the charge began about 1.00pm on 25 October 2000, when the accused left his flat at Serangoon North to fetch Tay from her workplace. On the way, he drove to a car park at 61 Serangoon Garden Way with the intention of buying 4-D tickets. The infant started crying and the accused then decided to go to another 4-D outlet at Hougang Central. The infant continued to cry and the accused tried to pacify her by feeding her milk. But the infant refused to drink the milk.

4 The accused then applied some medicated oil, which his counsel said he was using for himself, and applied some of it on the lips and nostrils of the infant. The infant stopped crying but began showing signs of discomfort. The admitted Statement of Facts stated:

The accused assumed that the deceased was feeling a burning sensation on her lips and nostrils because of the medicated oil.

But a while later, the infant started to cry again. The accused shouted at her but she continued to wail. The accused took out the medicated oil again, and this time, he poured some of it into the infant’s mouth. The deceased stopped crying. The Statement of Facts stated:

She moved her tongue in and out of her mouth and groaned in discomfort.

The statement recited that the accused then brought the infant along to the 4-D outlet at Hougang Central. And while he was in the queue, the infant started to cry. The accused was again unable to pacify her and he returned to the car and tried to feed her milk, but the infant refused to drink. The accused became frustrated, and applied some more medicated oil on the infant's lips and nostrils.

5 After that, the accused drove to a petrol kiosk where he picked up sundry goods, including a bottle of medicated oil because he had already used up the previous bottle. He then drove to Riverdale Plaza and tried to feed milk to the infant again but she refused and started to cry. The accused tried to force-feed her with no success. He scolded the infant and shook the contents of the newly-purchased bottle of medicated oil into the infant's mouth. Her crying then became softer, and her stomach became bloated. She started retching and there was a fluid discharge from her nostrils. Then she became unconscious.

6 The accused then carried the infant from the car and ran into the shopping mall where he found a clinic. This was now 5.03pm. The doctor did not detect any obstruction of the airway of the infant. An ambulance arrived at 5.30pm and took the infant to the Kendang Kerbau Women and Children's Hospital where the infant was pronounced dead at 6.30pm. Salicylate, menthol and eucalyptol were found in the stomach contents of the infant. On 26 October 2000, the forensic pathologist certified the cause of death as "acute salicylate poisoning".

7 In mitigation, counsel for the accused related the domestic problems of the accused that were causing him severe acute stress. He was at the material time going through divorce proceedings with his wife of seven years. He was fighting for custody of his two young children. Even after he had obtained custody of the children, he was unhappy with his wife's rights of access, and continued to dispute this issue with her. Counsel stated that the accused had a history of "acute situational reaction". Counsel stated on behalf of the accused that he had no intention to kill the infant, and in fact loved the child.

8 The Deputy Public Prosecutor ("DPP") produced a list of previous cases involving the homicide of infants, the sentences of which were between five years' imprisonment and ten years' imprisonment. The maximum punishment for an offence under s 304(b) is ten years imprisonment or fine or both. Although they were all cases involving infant deaths, the common factor was that they all involved a violent act committed in a fit of rage. The diverse sentences within the range in s 304(b) are the natural consequences of the different types of injuries and the manner in which they were inflicted. So, although any homicide is a culpable homicide, the nature and circumstances of the injury leading to the death are important factors in the court's assessment of sent

9 In the present case, the accused was also angry and frustrated like the accused persons in the cases cited to me. Some of those cases also involved crying babies. But, from the Statement of Facts, this was not a case of an extreme case of fury leading to an act of extreme violence. The accused in the present case was clearly frustrated, and angry, but he was attempting to find alternative ways of stopping the child from crying. The Statement of Facts was not clear, and I cannot read too much into that, but it seemed like a long afternoon (from about 1.00pm to 5.03pm) for the accused.

10 A man who fires a gun at another, aiming at his abdomen, without an intention to kill, but who knows that his act is likely to kill, commits culpable homicide not amounting to murder under s 299 of the Penal Code, and is liable under s 304(b). The phrase "knowledge that he is likely by such act to cause death", in criminal law jurisprudence, has a bearing of certainty, and not merely a

probability, of death. But it lies somewhere between an intention to kill and recklessness. The latter constitutes a mental element that has no regard whether the act is or is not likely to cause death. The diversity of facts in individual cases is always a challenge to the courts when it comes to the determination of the facts, in relation to statutory distinctions of the different categories of the mental element in the crime. There is a significant difference between firing a gun at a person and, for example, as in the present case, feeding medicated oil to an infant. The apparent motive of the accused was primarily to stop the child from her incessant crying. That his senses were overcome by frustration and anger was not a mitigating factor, but it might constitute a sympathy factor, which is different. A sympathy factor may determine whether the court might wish to impose the high or low end of a sentence usually meted out in similar cases.

11 In a case under s 304(b), the court has the discretion to determine a sentence of imprisonment of up to ten years. But, the question is, what is the criteria for such determination? Where possible, a sentencing court ought to apply whatever objective criteria as may possibly be achieved. Nonetheless, there will ultimately be a strong subjective element in every case, where, as a result, the sentence may differ from court to court. The short and straightforward facts in each case will form the major part of the objective factors for consideration. The evaluation of those factors is subjective. Since offences falling within s 304(b) will vary from case to case, and the court has only ten years within which it will have to determine the appropriate sentence, I am of the view that a term of seven to ten years would be appropriate for the varying circumstances of the more culpable cases, such as those involving a violent assault. For cases such as the present, the mid-range of four to seven years would be appropriate. Although there are no immutable principles that might determine precise points in a sentence of imprisonment, I think that seven years would be a fair point for the two categories to merge. I would leave deserving cases, that is, those with very strong mitigating factors to be considered, for imprisonment of less than four years. Within each band, the discretion of the court ought to determine which end of the band is the more appropriate one.

12 In the present case, I am of the view that it fell well within the mid-range. The only point which needed a deeper consideration was whether, taking the second charge into account, the higher end ought to be imposed. Not much was mentioned about the second charge by either the Prosecution or the Defence. On the facts available to me, the circumstances concerning the second charge fortified my impression that the predominant element operating behind the act was foolishness, and not malice – that is the layer beneath the *mens rea* of the crime. A wiser person in circumstances of either the accused or Haidil would have understood the folly of taking the blame for someone else's crime, or as in the case of this accused, in asking someone else to take the blame for him.

13 In the circumstances, taking into account of the nature and circumstances of the second charge, I am of the view that a sentence just below the lowest of those on the list submitted by the DPP would be appropriate. Consequently, I sentenced the accused to four years' imprisonment for the offence.

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