Public Prosecutor v Lim Ah Seng
[2006] SGHC 122

Case Number : CC 18/2006

Decision Date : 07 July 2006

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Edwin San and Ong Luan Tze (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the accused

Parties : Public Prosecutor — Lim Ah Seng

Criminal Law – Offences – Culpable homicide not amounting to murder – Section 304(b) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles and factors to consider – Unique combination of extenuating circumstances – Accused victim of prolonged abuse by deceased – Accused not aggressor and not armed – Whether accused deserving of lesser sentence

7 July 2006

Sundaresh Menon JC:

1 The sanctity of human life is a fundamental idea upheld by every civilised society. It is so zealously upheld in ours that in the appropriate case, the taking of another's life is visited with the ultimate sanction of a capital sentence. However, a basic tenet of a civilised system of criminal justice is that offences are defined according to differences in their key elements. Thus the taking of a human life, though almost always deserving of society's opprobrium, must be seen in a proper light having regard to such matters as the state of mind of the accused person and the circumstances in which he did the deed.

2 This is reflected in our law in the range of offences that are prescribed to cover the taking of human life. These include murder which carries a mandatory death sentence, culpable homicide not amounting to murder, and the causing of death by a rash or negligent act not amounting to culpable homicide. There are crucial differences between each of these and the differences tend to lie in the circumstances in which life has been taken and the mental element which accompanied that.

3 The accused pleaded guilty before me to a charge of culpable homicide not amounting to murder under s 304(*b*) of the Penal Code (Cap 224, 1985 Rev Ed). That section provides as follows:

> Whoever commits culpable homicide not amounting to murder shall be punished —
>
> (*a*) ...
>
> (*b*) with imprisonment for a term which may extend to 10 years, or with fine, or with both, *if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.*
>
> [emphasis added]

4 It may be seen that the offence is made punishable under s 304(*b*) of the Penal Code where the mental element does not encompass the *intention* to cause death but rather the act has been done with the *knowledge* that it is likely to cause death.

The facts

5 The charge arises out of a tragic incident that took place on the night of 25 October 2005. The accused and the deceased had been married since 1998 but their marriage had run into difficulties following the abortion of a child the deceased had conceived in 2003. There followed a horrendous period in the life of the accused when he was subjected to repeated physical and psychological abuse by the deceased.

6 According to the report of the consultant psychiatrist, Dr Tommy Tan of the Institute of Mental Health, at the time of the offence, the accused was suffering from an abnormality of mind, post-traumatic stress disorder, caused by the repeated physical and psychological abuse he had been subjected to by the deceased. On account of this, Dr Tan was of the view that the accused was entitled to rely upon the defence of diminished responsibility. This is provided for in Exception 7 to s 300 of the Penal Code which states that culpable homicide is not murder if the accused was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts in causing the death.

7 Mr Subhas Anandan who appeared for the accused in this case submitted that on the facts before me, this was but one of the mitigating factors his client could have relied upon to take his case outside the ambit of murder or culpable homicide under s 304(*a*) where the required mental element is the intent to cause death or such bodily injury as is likely to cause death.

8 Returning to the factual narrative, the accused had been estranged from the deceased. He sought help from the Ministry of Community Development, Youth and Sports and even spent some time in a shelter. It is not surprising that Mr Anandan described his client as a "battered husband". In any event, the accused managed to avoid contact with the deceased for some months prior to the incident.

9 On 25 October 2005 at about 6.00pm, the accused received a phone call from the deceased who told him that she wanted to go to his mother's home to see their six-year-old daughter, Angel ("Angel"). The accused told her to proceed on her own.

10 At about 7.00pm, the accused returned home to his residence. He took a bath, did his laundry, and just as he was about to leave for dinner, the deceased arrived at his home. She told him that she had come to his house as she did not have the keys to his mother's house.

11 There followed a conversation in the course of which the deceased informed the accused that she wanted to bring Angel to Jakarta. The accused was not agreeable and they quarrelled, the deceased raising her voice at the accused. After this had gone on for a while, the deceased apparently invited the accused to make love to her, as they had not seen each other for a long time. The accused agreed, and they then engaged in sexual intercourse following which the deceased went to the bathroom to wash herself while the accused remained in the bedroom.

12 When the deceased returned to the bedroom, she again raised the subject of taking Angel to Jakarta, and added that if the accused were to refuse, she would lodge a police report against the accused for raping her. An argument broke out again in the course of which the deceased slapped the accused on his face. She also told him that as she had a record with the Institute of Mental Health, it would be alright for her to kill him. She then rushed into the kitchen and tried to grab a knife, but was stopped by the accused. The deceased then ran back into the bedroom. The accused followed her, in an attempt to prevent her from throwing things around, which she apparently was accustomed to doing during such quarrels.

13 It was about 9.00pm, when their quarrel in the bedroom took a turn for the worse. The deceased slapped the accused again and then strangled him by squeezing his throat and neck. The accused felt pain and finally retaliated by squeezing the deceased's throat and neck, thus strangling her. After a while, he felt that her grip on his neck had loosened, and he realised that she had fallen down and become motionless. The accused called out to her and tried to wake her up, but to no avail.

14 The accused then called his mother and shortly after this, at about 9.24pm, police officers and officers from the Singapore Civil Defence Force arrived at the scene. They saw the accused sitting shirtless in the living room of his residence. The accused went to the kitchen and came back to the living room with two knives. There he apparently stabbed himself in the thighs. He initially refused entry to the officers and threatened to kill himself. Officers from the Police Crisis Negotiation Unit were called in to handle the situation and a few hours later, the accused surrendered to the police and was arrested.

15 The deceased was found lying motionless on the floor of the bedroom. She was pronounced dead at 12.42am. The pathologist certified the cause of her death as asphyxia due to manual strangulation.

Sentencing considerations

16 Where in relation to a particular offence, the court is given a wide discretion in terms of the punishment it may impose, it is critical that it exercises that discretion, so as far as possible, in a manner that remains faithful to two essential legal principles:

(a) that the punishment fits the crime having regard to the circumstances attending the case before the court; and

(b) that like cases be treated alike.

17 The following passage from the judgment of Choo Han Teck J in *PP v Wan Chin Hon* [2005] SGHC 121 at [5] is instructive:

> The punishment for culpable homicide not amounting to murder under s 304(*b*) is a range of imprisonment that may extend to ten years, or a fine, or both imprisonment and fine. The sentencing of an offender requires a steadfast devotion to two broad principles – the principle that like cases must be treated alike, and that each case must be assessed on its own merits. These principles are more easily stated than applied. In the case of the act of causing death, the law discriminates a number of categories of culpability, and the range of sentences prescribed varies accordingly. The sentence in each case must be assessed according to such considerations as are right, proper, and fair. It is with these considerations in mind that I feel justified in taking into consideration the maximum punishment of two years' imprisonment for the offence (under s 304A of the Penal Code) of causing death by a rash or negligent act, and comparing that to a case such as the present in which death was caused with the knowledge that the act was likely to result in death. Further, I think that such comparisons are proper only if one is also mindful that the base (minimum sentence) is one day's jail in each of the two cases, and not that the punishment for a s 304(*b*) offence begins where that in s 304A leaves off, namely, a term of imprisonment of more than two years.

18 It is also instructive to have regard to what was said by the Court of Appeal in *PP v Tan Kei Loon Allan* [1999] 2 SLR 288 at [33]:

> We were of the view that it is not desirable, unlike simple rape, to set a benchmark for culpable homicide. The range of circumstances in which such offences are committed is extremely varied, as our brief survey of the reported cases demonstrates. They are not easily classified, and there is no such thing as a 'typical' homicide. Similarly, to classify all culpable homicides as more serious than all rapes is overly simplistic. … Sentencing for culpable homicide should remain a matter within the trial judge's discretion (subject to our power to review a decision made in error, or which is manifestly excessive or inadequate), and should be determined on the facts of each particular case.

19 With those preliminary observations, I turn to the case before me. There is no doubt that the taking of a human life is always a tragedy and it is none the less so here. However, to the extent one may seek extenuating circumstances, there is in my view an abundance of them here. In particular:

(a) The incident in question came about as a result of a contact initiated by the deceased. The accused, having endured a prolonged period of physical and psychological abuse from the deceased, had managed to break contact with the deceased for several months before the fateful day. Mr Anandan submitted that his client had been victimised by an abusive spouse on account of which he was suffering from a mental disorder and had also gone deaf in one ear. The accused appeared to be in the early stages of picking up the pieces of his broken life when the deceased appeared on his doorstep that fatal evening. Engaged in his humdrum chores, he had no inkling of the disaster that was about to happen.

(b) The deceased was undoubtedly the aggressor in the events that led to her death. This followed the pattern of abuse already inflicted upon the accused. She had raised her voice in a heated quarrel; then invited the accused to have sex with her. Following that interlude, she had threatened to falsely report him for raping her if he did not give in to her demands to be allowed to take their daughter with her to Indonesia. She had slapped the accused. Thereafter she insinuated a threat to kill him and went in search of a knife. Through this build-up of extreme tension the accused displayed exemplary restraint. The deceased then slapped the accused again and started to strangle him and even then he did not react until he felt physical pain, at which point he fought back by strangling her and, losing control, killed her.

20 I have already made reference to the psychiatric evidence. Mr Anandan drew my attention to portions of the psychiatric report which revealed the effects of the illness upon the accused. According to Dr Tan, this condition manifested itself in, among other things, constant anxiety and fear of the deceased, depressed moods, suicidal thoughts and hypervigilance to the presence of the deceased. He had become fearful even of being alone at home and when he was at home, he tended to lock himself in his bedroom and to leave the lights off for fear of the deceased.

21 The law recognises a wide variety of mitigating factors. Acting under provocation or in a state of diminished mental responsibility or in the exercise of the right of self-defence is among them. Indeed self-defence is a complete defence in certain circumstances providing that no more harm is inflicted than is necessary in the circumstances. In the present case, the accused presumably could have overpowered the deceased without having to kill her. His failure to calibrate his response resulted in his conviction of the offence. But in assessing the punishment that is to be meted out it is legitimate to have regard to all the factors that I have recounted.

22 While I do not mean in any way to devalue the worth of the deceased, it is the irresistible inference on the facts before me that she had by far the greater part to play in the events that led to her death. It is a matter of deep regret that she could not find help in the sorry state of anguish she obviously was in, but the consternation and sorrow one feels for her should not lead to the

imposition of a sentence on the accused which ignores the reality of the situation he was in.

23 It is also relevant to note the following:

(a) No weapon was used. Indeed, the accused had successfully stopped the deceased from using a weapon on him shortly before the final act.

(b) The accused has shown his deep remorse in his unconditional plea of guilt and his commitment to medical rehabilitation.

(c) The accused has co-operated fully with the authorities.

(d) There are no aggravating circumstances whatsoever, a point which the learned Deputy Public Prosecutor, Mr Edwin San, quite properly accepted.

(e) The accused has no antecedents whatsoever and aside from this incident was apparently trying his best to stay afloat in the rough waters he was in.

(f) There is no real likelihood of recurrence, again a point properly accepted by Mr San.

24 In short, this strikes me as a case that warrants a measure of compassion.

25 I turn to consider the precedents, having regard to the fact that the sentence in each case must ultimately turn on its own facts. Both counsel accepted that the court, in imposing the appropriate sentence, must have regard to the entire matrix of facts, before arriving at its conclusion as to what is just in the circumstances. There are not many precedents of direct assistance since such a confluence of mitigating circumstances and the utter lack of aggravating circumstances as I am faced with is rare indeed.

26 Nonetheless, I have considered the precedents at the lower end of the sentencing spectrum.

27 In *PP v Low Ah Soy* [2004] SGHC 249 ("*Low Ah Soy*"), the accused pleaded guilty to a charge under s 304(*b*) and to a related charge under s 422 of the Penal Code for causing mischief. The wife of the accused had left him for a man named Koh and had filed for divorce against the accused. She came to the house to collect her belongings and was accompanied by Koh. When Koh tried to enter the flat, he was stopped by the accused. Koh then took out a knife and threatened the accused with it. The accused ran to his kitchen, got hold of an even longer knife and advanced towards Koh. Koh retreated and threw some flower pots at the accused in an attempt to get away. However, the accused got to Koh and stabbed him three times. The psychiatric evidence supported a finding that the accused was in a state of diminished mental responsibility. Choo Han Teck J sentenced him to four years' imprisonment.

28 In my view, there are a number of factors in the case before me which call for a lesser sentence than was imposed in *Low Ah Soy*. The accused there had gone to get a weapon, chased the deceased when he had attempted to retreat and stabbed him three times. He was at least as much of an aggressor as the deceased. That was also not a case where the accused was a victim of sustained cruelty and abuse at the hands of the deceased as is the accused before me.

29 I was next referred to *PP v Oon Oon Sang Tee* Criminal Case No 11 of 2006 (unreported) ("*Oon Oon*"). There are no grounds of decision but the accused in that case was sentenced to four years and six months under s 304(*b*). In that case, the deceased had been having an affair and the

accused, her husband, was distraught by this. Some ten days after the affair began, and amidst an attempted reconciliation, the deceased told the accused that she felt she could not change the way she felt. In a fit of rage, the accused strangled his wife to death.

30 Mr San sought to persuade me that this was perhaps the closest case to the present as it involved a "wronged" husband strangling his wife. I think that is too simplistic. The accused in *Oon Oon* initiated the attack and acted out of jealousy. He had not been a victim of cruelty or abuse from the deceased either generally or at the time of the incident. Moreover, the accused was the aggressor, and was under no threat of harm or injury at the time. Accordingly, it is clear in my view that the accused before me is deserving of greater leniency.

31 Then there is a trilogy of cases where death was caused by stabbing. These are *Tan Seng Aik v PP* [1992] SGCA 59 ("*Tan Seng Aik*") a decision of the Court of Appeal where the appeal against a sentence of seven years was allowed and the accused was released having served two years and nine months of imprisonment; *PP v Katun Bee bte S Ibrahim* [2004] SGHC 46 ("*Katun*") a decision of Woo Bih Li J where the accused was sentenced to three years and six months' imprisonment; and *PP v Lim Boon Seng* [2004] SGHC 113 ("*Lim Boon Seng*") a decision of Tay Yong Kwang J where again the accused was sentenced to three years and six months' imprisonment.

32 These appear to be the lowest sentences hitherto imposed in cases of culpable homicide under s 304(*b*) of the Penal Code. Mr San submitted that I should accord greater weight to the sentence imposed in *Oon Oon* because that was a case where death was caused without the use of a weapon, the husband's mental responsibility was impaired, and the death was occasioned when the husband had momentarily lost control of himself. He submitted that the "stabbing cases" might not be of great assistance because of their different factual matrices.

33 I am unable to accept this submission. The superficial dissimilarity between the case at hand and the stabbing cases and the superficial similarity on the other hand with *Oon Oon* should not be allowed to obscure the search for justice in the case at hand. That search requires a consideration of every fact and circumstance which might help explain the seemingly inexplicable. That includes such factors as whether the accused was a victim, whether he was provoked, whether he was being attacked, whether he was the aggressor and whether he used a weapon. The fact that no weapon was used in the present case is in my view an ameliorating factor compared to the stabbing cases and unless there are other circumstances in those cases that render them irrelevant, I consider that I should have regard to those cases and examine how the courts there approached their sentencing responsibility.

34 In *Tan Seng Aik* ([31] *supra*) the accused had been in a discotheque with some friends. A minor incident on the dance floor escalated to a brawl involving several individuals on each side, including the accused and the deceased. The court considered the fact that the deceased had been part of the group that had been the aggressor throughout. That group had gone in search of the accused and his friends after they had left the discotheque and when the latter tried to leave in a taxi, they were stopped by the deceased and his gang. The accused in the meantime had purchased a knife. In the fracas that followed the deceased struck the accused with a stick and then dropped it. When he bent down to pick it up, the accused drew his knife and stabbed the deceased who died.

35 Lai Kew Chai J, who delivered the judgment of the Court of Appeal, referred to "the eminently special and extenuating circumstances" and allowed the appeal, ordering the accused, who had by then served a prison term of two years and nine months, to be released.

36 In my view, this case is in many respects closer to the facts before me save that in my

judgment the accused here is even more deserving of mercy. Unlike *Tan Seng Aik*, the accused in the present case had been the victim of abuse over a prolonged period, his mental responsibility was impaired as a direct consequence of the abuse he had suffered at the hands of the deceased, he had neither armed himself nor used a weapon, and in the face of the continuing abuse on the night in question, he had shown a notable degree of self-control.

37 I turn to *Katun* ([31] *supra*) where the accused was found to have taken a knife from the kitchen and used it to stab the deceased. As with the present case, the death arose out of a domestic quarrel. There was evidence that the deceased had occasionally been abusive towards the accused. However, unlike the present case, such abuse was of an entirely different order to that endured by the accused in the case at hand. Further, the accused in *Katun* had claimed trial and her key contention, which was rejected by Woo J, was that the knife had been taken from the kitchen by the deceased and not by her. This is to be contrasted with the instant case where the accused has unreservedly accepted responsibility for his actions from the outset. His genuine remorse apparently led him initially to contemplate suicide after strangling the deceased, he even mutilated himself when the police arrived before he was taken into custody, and he has since co-operated fully with the authorities. Furthermore, in *Katun*, Woo J found at [121] that the accused was the aggressor as between her and the deceased and had let her frustrations get the better of her.

38 Lastly, I turn to *Lim Boon Seng* ([31] *supra*), where the accused was indebted to the deceased in the sum of $1,800. The deceased, on being told that an instalment that was to have been paid would be delayed, confronted the accused at his fruit stall. The deceased shouted vulgarities at the accused and then started hitting him with his fists. The accused had retreated a short distance while still being hit when he noticed a knife. He grabbed it and used it, killing the deceased with a single stab.

39 This again bears a closer resemblance to the facts before me than does *Oon Oon* ([29] *supra*) or *Low Ah Soy* ([27] *supra*), but again I am satisfied that there are some further factors which favour the accused here. In *Lim Boon Seng*, there was no history of sustained abuse prior to the incident, there was no suggestion of diminished mental responsibility on the part of the accused, and the use of a knife by the accused in response to the punches being thrown at him may be compared with the present case where the accused was himself being strangled by a person he greatly feared when he retaliated in like manner.

40 I take on board the fact that a lesser charge than murder has been brought against the accused on account of the fact that he was in a state of diminished mental responsibility. Nonetheless, in my judgment, this does not preclude me having regard to such matters as how his impaired mental state had been brought about by the deceased, how it coloured the actions of the deceased at the material time from the perspective of the accused, and how it affected his response to the immediate circumstances he faced at the time of the incident.

Conclusion

41 Relative to all the cases, I consider, for the reasons I have given, that the accused here is yet more deserving of mercy and compassion. I note that s 304(*b*) of the Penal Code does not even prescribe a mandatory custodial sentence. However, the accused himself accepts that a custodial sentence is warranted. Rare as the present circumstances are, I am satisfied that a custodial sentence is appropriate. It would be idle to speculate when a custodial sentence would ever not be called for in a case of culpable homicide. But having regard to the principles I have outlined and the factors that distinguish this case from others even at the lower end of the sentencing spectrum, I

consider the appropriate sentence should be less than that meted out in the precedents I have referred to.

42 It is significant to note that the accused was not an aggressive person by nature. On the contrary, he seems to have responded to the abuse that was heaped on him with uncommon meekness. What takes this case outside the precedents is the particular combination of extenuating circumstances. The accused had been in an unhappy marriage in which he had been the victim of abuse from his wife. This had culminated in his mental illness which was causally linked to what transpired that night when his wife had initiated and pursued a course of action all through which the accused had been at the receiving end, until he finally snapped. Having regard to all this, I do not consider that I am departing from the precedents at all. Rather, I consider that the facts of the case before me simply call for a different sentence. This should have no bearing on the interest of general deterrence. The facts of this case are so unique that the sentence here will be of very limited precedential value in any other case.

43 In all the circumstances, I consider that the appropriate sentence is a term of imprisonment of two years and six months. This is to be backdated to the date of the arrest of the accused person on 25 October 2005.

44 The accused will forever bear the burden of having taken with his own hands the life of the person he once loved. It is my hope that for the duration, and even upon the completion, of his sentence, the accused will continue with his medical treatment and rehabilitation and that with the support of his family and his children he will work diligently towards rebuilding his life.

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