Public Prosecutor *v* Wang Wenfeng
[2014] SGHC 23

Case Number	: Criminal Case No 4 of 2011
Decision Date	: 07 February 2014
Tribunal/Court	: High Court
Coram	: Lee Seiu Kin J
Counsel Name(s)	: Bala Reddy, Ilona Tan and Kelly Ho (Attorney-General's Chambers) for the Public Prosecutor; Wendell Wong and Alfian Adam Teo (Drew & Napier LLC) for the Accused.
Parties	: Public Prosecutor — Wang Wenfeng

Criminal Law – Offences – Murder – Re-sentencing

7 February 2014

Lee Seiu Kin J:

1 On 20 September 2011, Wang Wenfeng ("Wang") was convicted of murder under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed). At the time of the conviction, the offence was punishable with a mandatory death penalty under s 302 of the Penal Code. Wang appealed, but the Court of Appeal ("CA") upheld the conviction and sentence. On 1 January 2013, the Penal Code (Amendment) Act 2012 (Act No 32 of 2012) came into operation, with the effect that the death sentence is no longer mandatory under s 300(*b*), (*c*) and (*d*) of the Penal Code. Consequently, on 16 August 2013, the CA remitted the case back to the High Court for re-sentencing and, on 13 November 2013, I exercised my power under s 4(5)(*g*) of the Penal Code (Amendment) Act 2012 to re-sentence Wang to imprisonment for life and to 24 strokes of the cane. The prosecution has filed an appeal against the sentence and I now give the grounds for my decision.

The background

2 The full facts of this case are set out in my judgment delivered at the end of the trial in *Public Prosecutor v Wang Wenfeng* [2011] SGHC 208 ("HC Judgment"), as well as in the grounds of decision of the appeal in *Wang Wenfeng v Public Prosecutor* [2012] 4 SLR 590; [2012] SGCA 47 ("CA Judgment"). I shall therefore set out only the salient facts below.

3 Wang is from Fujian Province in the People's Republic of China. He came to Singapore to work, but at the time of the offence in April 2009, he was out of work and was required to leave Singapore by 15 April 2009. At that time, he could not afford a plane ticket home. He tried to borrow money from his younger sister and his wife but they did not lend him any. On Friday 10 April 2009, Wang decided to resort to robbery to get the money for his airfare.

4 In the early morning of 11 April 2009, Wang set off to Sun Plaza at Sembawang Drive, carrying with him a haversack containing a fruit knife, a pair of cotton gloves and a small bottle of water. He thought that taxi drivers would be good targets, so he flagged down a taxi. It was driven by the deceased, Yuen Swee Hong ("the Victim"). Wang directed the Victim to drive to "Bao Ping Chun" and, as they neared the destination, he directed the Victim to Jalan Selimang. When the taxi stopped at the end of Jalan Selimang, Wang had already put on his gloves and taken out his knife.

5 Wang used his left hand to hold the knife against the Victim's chest and his right hand to hold onto the backrest of the driver's seat. He told the Victim to hand over his money. A struggle ensued between Wang and the Victim and, in the course of the struggle, Wang stabbed the Victim on his chest. The Court of Appeal ("CA") found that the Victim was stabbed at least five times (CA Judgment at [36], [38]). The injuries inflicted on the Victim were severe enough to have caused heavy bleeding (HC Judgment at [24]) such that, within two minutes, the struggle ceased and the Victim went limp. This led Wang to believe that the Victim had died. He decided to hide the body in the secondary jungle nearby. After carrying the body to a location well inside the jungle, Wang searched the Victim's pockets and took the money he found.

6 Wang subsequently washed himself at a nearby beach and drove the taxi to a multi-storey car park at Canberra Road. He parked the taxi at one of the higher levels. Using the water he brought, he cleaned away the blood from part of the front cabin. He also cut the cables connecting the credit card machine which he thought was a Global Positioning System ("GPS"), took money and the Victim's mobile phone from the taxi, cleaned the door handle, and left for home.

7 Sometime later on the same day, Wang went out to dispose of the incriminating items, such as the soiled clothes he had worn. He left the haversack containing these items in a forested area near Nee Soon Road. As he was journeying on a bus, he received a missed call from the Victim's wife on the Victim's mobile phone. He alighted and returned a call to the Victim's wife. He told the Victim's wife that he was holding the Victim captive and demanded $150,000 from her. Over the course of two days, from 11 April 2009 to 12 April 2009, Wang gave instructions to the Victim's wife to make payment. When she still did not remit the money to the account number he provided, he reminded her that the Victim had not eaten for two days.

8 Meanwhile, Wang had secured a place on a flight departing on 14 April 2009. But before he could leave the country, he was arrested by the police on 13 April 2009.

The prosecution's submissions

9 The Indian courts adopt the position that the default punishment for murder is life imprisonment and that the death penalty is an exception (see *Bachan Singh v State of Punjab* AIR 1980 SC 898 at [151]). This, the prosecution submitted, was untenable in Singapore for two reasons. First, the legislative framework in India is different. There is no mandatory death penalty for s 300 cases in India, whereas the death penalty is still mandatory for s 300(*a*) cases in Singapore. Secondly, there is considerable uncertainty in India on the punishment to be ordered in capital offences (see *Sangeet and another v State of Haryana* AIR 2013 SC 447 at [81]).

10 The prosecution thus submitted that where the law, in this case, s 300(*c*), provides for a discretionary death penalty, neither life imprisonment nor the death penalty should be viewed as the default position. The correct approach is to consider all the facts and circumstances to determine if the offender ought to suffer the death penalty (see *Sia Ah Kew and others v Public Prosecutor* [1974–1976] SLR(R) 54 ("*Sia Ah Kew*") at [8]).

1 1 *Sia Ah Kew* is a case of kidnapping under s 3 of the Kidnapping Act (Cap 101, 1970 Rev Ed). The CA in that case similarly faced the binary choice of death or life imprisonment, and had opined that the maximum sentence of death penalty would be appropriate where the manner of the kidnapping or the acts or conduct of the kidnappers were such as to *outrage the feelings of the community* (at [5]).

12 The prosecution also referred the court to the Parliamentary speech by the Minister for Law

when introducing the amendments to the mandatory death penalty regime (see *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89):

> In deciding whether and how to apply the death penalty to a particular offence, several factors have to be considered. In particular … three interconnected factors: (1) *the seriousness of the offence*, both in terms of the harm that the commission of the offence is likely to cause to the victim and to society, and the personal culpability of the accused; (2) *how frequent or widespread an offence* is; and (3) *deterrence*. [emphasis added]

13 Each of the factors was analysed by the prosecution in light of the facts of this case.

14 In terms of the *seriousness of the offence*, the prosecution submitted on three main aspects. First, the offence was committed in a cruel manner. The prosecution argued that there was a high degree of premeditation and planning, which was demonstrated by Wang's intention to commit robbery at the wee hours of the morning, his preparation of items such as a knife, spare change of clothes and a water bottle, his deliberate choice of victim (a taxi driver), and his direction to the Victim to drive to a deserted area ("Bao Ping Chun"). The prosecution further pointed to the way Wang had armed himself with a dangerous weapon, a knife with a 12.5cm blade, and had focused his attack on a vulnerable part of the Victim's body, *viz*, the chest. Two of the stab wounds suffered by the Victim were described by the CA as "likely to have been very deep, with [one of them] achieving full, or near-complete, penetration of the knife's 12.5cm blade" (CA Judgment at [25]). As a result, the Victim suffered an agonizing and painful death. Secondly, Wang's culpability was high. The prosecution examined Wang's post-murder actions and argued he was unremorseful. Particular attention was paid to how Wang robbed from the Victim after he killed him, took steps to conceal the murder, attempted to extort money from the Victim's family, prepared to flee from Singapore and, even after arrest, led the police on a wild goose chase and gave several false statements. The prosecution submitted that there were no significant mitigating factors that Wang could rely on. Even though Wang experienced financial stress and loneliness as a foreigner in Singapore, they were not so unusual or extraordinary that he could rely upon them in mitigation. As Yong Pung How CJ stated in *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10], financial difficulties cannot be relied upon, save, possibly, in the most exceptional or extreme of circumstances. Thirdly, the prosecution submitted that Wang, being stronger and much younger than the Victim, and having taken the Victim by surprise from behind, had taken an unfair advantage over the Victim. The prosecution also stressed the high degree of public disquiet that had emanated from the case.

15 To show how *frequent or widespread* offences committed against taxi drivers are, the prosecution produced statistics on the number of robberies, serious hurt and murder committed against taxi drivers between January 2009 and September 2013. Significantly, the number of serious hurt cases over the years are: two in 2009, two in 2010, six in 2011, seven in 2012, and four in the period from January to September 2013. The prosecution pointed out the particular vulnerability of taxi drivers – they may be completely at the mercy of their passenger-turned-assailant, and out of the reach of any help that may be rendered by bystanders.

16 In calling for a *deterrent* sentence, the prosecution elaborated on the fact that public transport workers ("PTWs"), especially taxi drivers, have been viewed by the courts as vulnerable victims (see, *eg*, the CA judgment at [3] and *Wong Hoi Len v Public Prosecutor* [2009] 1 SLR(R) 115 at [11]). The prosecution argued that the present case also has a wider-felt impact of triggering unease and offending the sensibilities of the general public, which makes it necessary and appropriate to order a deterrent sentence (see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25]).

17 At the time of hearing, there were three other concluded murder re-sentencing cases. In all

these cases the court reduced the sentence of death to a sentence of life imprisonment and caning. The prosecution argued that these cases could be distinguished. In *Public Prosecutor v Fabian Adiu Edwin* (Criminal Case No 40 of 2009) ("*Fabian*"), the offender was young (18 years old at the time of offence) and had sub-normal intelligence. In *Public Prosecutor v Kho Jabing* [2013] SGHC 251 ("*Kho Jabing*"), the offender was also considered to be young (24 years old at the time of offence) and his choice of weapon was described as opportunistic and improvisational. In *Public Prosecutor v Gopinathan Nair Remadevi Bijukumar* (Criminal Case No 40 of 2011) ("*Gopinathan*"), the CA did not find that the offender had set out to rob the victim and had given the offender the benefit of doubt that he had been provoked by the victim. The prosecution submitted that none of these characteristics exist in the present case. Wang was already 30 years old at the time of the offence. From the degree of planning that went into his crime and the calculated steps he took to conceal the evidence, the prosecution submitted that Wang was a highly intelligent individual. Unlike *Kho Jabing*, Wang in this case had prepared a knife and therefore, his choice of weapon could not have been opportunistic. Lastly, unlike *Gopinathan*, Wang set out to rob the Victim and was not provoked.

18 In light of the foregoing, the prosecution submitted that the three precedent cases do not bar the court from imposing the death penalty. In fact, as the present case falls squarely within the category of cases that would outrage the feelings of the community, the prosecution urged the court to re-sentence Wang to death.

The defence's submissions

19 The defence relied on *Sia Ah Kew* for the principle that the death penalty should only be imposed for the worst manner of offending. The court was also referred to a number of cases from across the Commonwealth and other jurisdictions, which have a common thread of imposing the death penalty in the most exceptional cases. Therefore, the defence submitted that the death penalty should only be imposed if the manner by which the murder was carried out was of the most heinous nature, the murderer was of the worst type, and there was an absence of any significant mitigating circumstances. The present case, the defence argued, was not such a case where death penalty would be appropriate.

20 Much emphasis was placed on the fact that there was a lack of any premeditation to inflict the fatal injuries. What happened was a sudden and unexpected struggle, during which Wang stabbed the Victim spontaneously. Given that the intention to stab had formed only during the struggle, it could not be said that Wang consciously took advantage of the Victim's vulnerability or planned to stab the Victim as part of the robbery. Neither was the stabbing inflicted in cold blood as Wang did not relish the act of murder and no further injuries were inflicted on the Victim to ensure that he died.

21 The defence stressed that the post-killing acts, such as his extortion of money from the Victim's family, must be seen in context. They were induced by panic, fear and adrenaline, and the defence urged the court not to accord them undue weight in the formulation of what his intention was at the beginning of the criminal enterprise and when deciding the appropriate sentence.

22 To further show that the moral blameworthiness of Wang was below that for the most heinous cases of murder under s 300(*c*) of the Penal Code, the defence raised a number of mitigating circumstances. First, Wang did not form the intention to murder the Victim when he set out to commit robbery; he only brought the knife to scare his Victim into submission. Secondly, his mind was not at its clearest when he had formed the intention to stab the Victim during the struggle. At the time of the offence, he was labouring under difficult personal and financial circumstances and when the Victim struggled, he reacted on the spur of the moment without considering the consequences of his actions. Thirdly, the Victim was not made to endure extended pain and suffering; he went limp within

two minutes of the struggle. Fourthly, Wang was remorseful for his actions. The defence admitted that Wang lied to the police initially, but highlighted that Wang volunteered the truth later on. Lastly, Wang was not a hardened criminal, and has the potential to reform and be rehabilitated.

23 The defence referred to the four sentencing principles of deterrence, prevention, retribution, and rehabilitation as affirmed by the CA in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684, as well as the principle of individualised justice enunciated by V K Rajah J in the High Court decision of *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1. Having regard to the circumstances of Wang's act, the defence submitted that all four sentencing objectives can be met by a sentence of life imprisonment, and that life imprisonment was the appropriate sentence to be passed in this case.

24 There were also three letters written by Wang's father, sister and daughter pleading for clemency. They mentioned that Wang's 12-year-old daughter yearned to see her father again, and that his parents were over 50 years old and wished to have the accompaniment of their son in their old age.

25 In respect of the three precedent cases of re-sentencing, the defence drew the court's attention to the fact that none of the cases had meted out the death penalty. On the other hand, in addition to the sentence of life imprisonment, the three precedent cases had imposed either 18 or 24 strokes of cane. Because the defence submitted that an additional punishment of no more than ten strokes of the cane was appropriate, it had to distinguish the three precedent cases.

26 In *Fabian* and *Kho Jabing*, the court had imposed the maximum of 24 strokes of cane. The defence submitted that Wang's culpability in this case was lower than that of the offenders in *Fabian* and *Kho Jabing* because the offenders in the latter two cases had intended to use their weapons to cause bodily injury in furtherance of their robbery. The defence argued that no such intention was present in this case. In *Gopinathan*, the court had imposed 18 strokes of cane. The defence submitted that Wang's culpability was closer to the facts of *Gopinathan* because, in both cases, the robberies were motivated by desperate financial circumstances. Nonetheless, the defence observed that the offender in *Gopinathan* had maintained his lie about another man who had killed the victim, whereas the offender in this case had shown remorse at an earlier stage and volunteered the truth to the police less than ten days after he gave the false statements.

27 Given the above, the defence submitted that the appropriate sentence in this case was life imprisonment and no more than ten strokes of the cane.

The court's decision

28 The issue before me was whether the facts and circumstances of this case justified imposing the death penalty or life imprisonment with or without caning.

29 I had found that Wang had not set out with the intention to kill, but with the intention to commit robbery, armed with a knife. He had targeted taxi drivers, presumably for their unique vulnerability. He got the Victim to drive to a lonely spot and pointed the knife at him to get him to surrender his money. However the Victim tried to snatch or pluck the knife from Wang and a struggle ensued, resulting in the tragic outcome. These would be the relevant facts of the offence, although the aftermath provides some insight into Wang's frame of mind. When Wang realised that the Victim had gone limp, he got out of the taxi, ascertained that the Victim was dead, and proceeded to hide the body in the nearby jungle. He washed himself in the sea, drove the taxi to a multi-storey carpark, washed off the blood stains and took the Victim's money and mobile phone. He then attempted to

leave the country. When the Victim's wife called his mobile phone, Wang took advantage of the situation and tried to extort money from her by leading her to think that the Victim was still alive and would be hurt if she did not pay up.

30 It was in the context of these facts, particularly the facts leading to the killing, and to a lesser extent, the facts post-killing that I have to determine the issue, along with other factors of the case, namely the fact that the Victim was a taxi driver, and part of a vulnerable group.

31 The prosecution submitted that this was an offence against a PTW and therefore a deterrent sentence was necessary. There have been cases involving victims who were PTWs in which the courts have held that it was necessary to impose deterrent sentences in view of their vulnerable positions as well as the dangers posed to the public at large. I myself have stated this in a Magistrate's Appeal: see *Balbir Singh s/o Amar Singh v Public Prosecutor and another appeal* [2010] 3 SLR 784. But the expression "public transport worker" covers a wide range of people. This ranges from PTWs who operate transportation involving many passengers, such as buses or trains, to those who carry much less, *eg* taxis. The degree of danger to the public would vary with the numbers carried. However the danger may be higher in certain modes of transport, *eg* aircraft. The degree of punishment imposed could correspond to the degree of danger posed to the public. There is the special case of taxi drivers, who are vulnerable because they work alone and can be stranded in remote locations. However it is one thing to impose a higher fine or period of imprisonment for an offence against a taxi driver to deter like-minded from carrying out offences against taxi drivers. It is quite another to say that it is necessary and appropriate to impose a sentence of death where life imprisonment is otherwise called for. For the court to justify imposition of capital punishment on the ground of deterrence, the prosecution must produce much more evidence to show the inadequacy of life imprisonment (plus caning) as against the death sentence. The only evidence of this produced by the prosecution was a single incident of murder of a taxi driver in the past five years, which was this present case. There have been a number of cases of serious hurt against taxi drivers, but there is no upward trend nor are the numbers high – the range of such offences vary from two a year to seven a year in the last five years.

32 I therefore consider that deterrence was not a major factor in determining the sentence for the present case. The relevant parameters were the facts of the offence, although keeping in mind that it was perpetrated against a person belonging to a particularly vulnerable group. Wang had set out to rob a taxi driver, but there was no evidence of any intention to kill from the outset. Death was caused in the course of a struggle, one that Wang ought to have anticipated. The prosecution made a rather uncharacteristic submission that there was "a high degree of premeditation and planning", without stating that this was in relation to the offence of robbery and not the murder. This was puzzling because the finding of fact at both High Court and Court of Appeal was that the offence of murder was not premeditated. That submission only had the unfortunate effect of causing the media reports of the case to be misreported. As for the acts post-killing, there was a range of explanations for it, but Wang was entitled to the benefit of doubt that this was motivated by self-preservation after the fact and not cold blooded intent. The aggravating factor in this case was the fact that he took cruel advantage of the desperation of the Victim's widow and tried to extort money from her while keeping up her hopes that the Victim was still alive. But again there was no evidence that this was preplanned; indeed the evidence points to them being opportunistic acts. Wang deserved the full brunt of the law short of capital punishment. In my view, the ends of justice were served by a sentence of life imprisonment and, in view of the acts post-killing, to 24 strokes of the cane, which was the maximum sentence I can impose short of the death penalty.

33 For the reasons given above, I exercised my power under s 4(5)(*g*) of the Penal Code (Amendment) Act to re-sentence Wang to imprisonment for life and to 24 strokes of the cane.

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