IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 53

Criminal Case No 15 of 2016

Between

PUBLIC PROSECUTOR

And

LIM HOU PENG JACKSON

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Culpable homicide]

Version No 1: 27 Oct 2020 (22:39 hrs)

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Lim Hou Peng Jackson

[2016] SGHC 53

High Court — Criminal Case No 15 of 2016
Tay Yong Kwang J
14 March 2016

4 April 2016

Tay Yong Kwang J:

1 The accused is a male Singaporean who is now 41 years old. He pleaded guilty to the following two charges:

> That you, Lim Hou Peng, Jackson,
>
> 1st CHARGE — sometime in the morning on 20 November 2014, at Block 406 Ang Mo Kio Avenue 10, #09-695, Singapore, did cause the death of one Tran Cam Ny, female/32 years old ('the deceased'), to wit, by pressing a blanket down on her mouth and face area with your hands, with the knowledge that such an act was likely to cause the deceased's death by suffocation, and you have thereby committed an offence of culpable homicide not amounting to murder punishable under Section 304(b) of the Penal Code, Chapter 224.
>
> 2nd CHARGE — on or about the 20th day of November 2014, at Block 406 Ang Mo Kio Avenue 10, #09-695, Singapore, did consume a Specified Drug listed in the Fourth Schedule to The

Version No 1: 27 Oct 2020 (22:39 hrs)

> Misuse of Drugs Act (Chapter 185, 2008 Rev. Ed), to wit, Methamphetamine, without authorisation under the said Act or the Regulations made thereunder and thereby committed an offence under Section 8(*b*)(*ii*) of the Misuse of Drugs Act (Chapter 185, 2008 Rev. Ed).
>
> And further, that you, before the commission of the said offence, on 12 October 2001, had been convicted in Subordinate Court No. 26 (DAC 26140/2001), Singapore, for an offence of consumption of a controlled drug, Ketamine, under Section 8(*b*)(*i*) of the Misuse of Drugs Act (Cap 185) and sentenced to 12 months' imprisonment, and on 5 August 2003, had been convicted in Subordinate Court No. 13 (DAC 29090/2003), Singapore, for an offence of consumption of a controlled drug, Norketamine, under Section 8(*b*)(*i*) of the Misuse of Drugs Act (Cap 185) and sentenced to 3 years' imprisonment, which convictions have not been set aside, and that you are now liable to be punished under Section 33A(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) by virtue of Section 33A(5)(a)(i) of the same.

2 The accused also admitted the offence stated in the following third charge and consented to have it taken into consideration for the purpose of sentencing.

> That you, Lim Hou Peng, Jackson,
>
> 3rd CHARGE on or about the 20th day of November 2014, at Block 406 Ang Mo Kio Avenue 10, #09-695, Singapore, did have in your possession utensils intended for the consumption of a Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev. Ed), to wit, one bottle, one tube, one scissor and two tweezers, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 9 and punishable under Section 33(1) of the

Version No 1: 27 Oct 2020 (22:39 hrs)

said Act.

3 The punishments provided by law in respect of the charges are as follows. In respect of the first charge, s 304(b) of the Penal Code (Cap 224, 2008 Rev Ed) provides for imprisonment for a term that may extend to 10 years or fine or caning or any combination of such punishments. In respect of the second charge, s 33A(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") prescribes for imprisonment of not less than five years and not more than seven years and for caning of not less than three strokes and not more than six strokes. In respect of the third charge which was taken into consideration, s 33(1) of the MDA, read with the Second Schedule of the said Act, prescribes a maximum punishment of three years' imprisonment, a fine of $10,000 or both.

4 I sentenced the accused to four years and six months' imprisonment in respect of the first charge. In respect of the second charge, I sentenced him to the minimum of five years' imprisonment and three strokes of the cane. I also ordered these sentences to run consecutively with effect from 20 November 2014. The total sentence was therefore nine years and six months' imprisonment and three strokes of the cane.

The Statement of Facts

5 The accused admitted all the facts set out in the following statement of facts:

> **A) Introduction**
>
> 1. The accused is Lim Hou Peng, Jackson, a 41-year-old male Singaporean, bearing NRIC No. S7423401A. His date of birth is 18 July 1974. At the time of the offences, he was an odd-job labourer. The accused's home address is Blk 406 Ang Mo Kio Avenue 10, #09-695 ("the accused's home").

Version No 1: 27 Oct 2020 (22:39 hrs)

2. The Prosecution is proceeding on two charges - 1 count of culpable homicide not amounting to murder under Section 304(b) of the Penal Code; and 1 count of consumption of a specified drug under Section 8(b)(ii), punishable under Section 33A(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") - with one remaining charge taken into consideration for the purpose of sentencing.

B) Facts pertaining to the 1st Charge – Culpable homicide not amounting to murder

Introduction

3. The deceased is Tran Cam Ny, a 32-year-old female Vietnamese National at the time of her death. At the material time, she was in a relationship with the accused. They were both married.

4. The first witness is Vu Thi Thanh Thao ("Thao"), a female Vietnamese National. She is a friend of the deceased.

5. The second witness is Nguyen Thi Dinh ("Dinh"), a female Vietnamese National. She is also a friend of the deceased.

The Incident

6. On 19 November 2014, the deceased was staying over at the accused's home. At about 8 p.m., the deceased began calling her friend, Thao, to come over to the accused's home to keep her company.

7. Thao eventually agreed and arrived at around 2 a.m. on 20 November 2014. Thao and the deceased then called Dinh to join them, and Dinh arrived at about 2.30 a.m. The deceased, Thao and Dinh then went into the bedroom to chat, while the accused smoked 'Ice' (the street name for methamphetamine) in the living room. Occasionally, the deceased would go out of the bedroom to join the accused to smoke 'Ice'. Subsequently, all four of them retired to sleep in the bedroom.

8. Shortly after that, the deceased began to cry loudly and argue with the accused about him giving away money that she had provided him to other women. When the deceased would not stop crying, the accused left the bedroom to smoke 'Ice' in the living room. After a while, the deceased went out to join him and later began quarrelling with the accused again. Blows were exchanged between them. Thao and Dinh intervened to stop the fight and pulled the deceased into the bedroom.

Version No 1: 27 Oct 2020 (22:39 hrs)

9. Subsequently, the deceased began shouting and acting hysterically. The accused then entered the bedroom and began to slap and punch her face. Thao and Dinh decided to leave the accused's home as they were frightened of the situation. It was about 8.15 a.m. on 20 November 2014 when they left.

10. After that, the deceased began assaulting the accused, who pinned her down to the ground and sat on her chest while straddling her. The deceased continued shouting. The accused wanted to stop her from shouting because he was afraid that their neighbours would be alerted, and that he and the deceased may get into trouble if the neighbours called the police. To stop her from shouting, the accused hit her repeatedly on the face. When she would not stop shouting, he took a blanket and pressed it over her mouth and face area with both hands.

11. After a while, the deceased appeared to have calmed down, and the accused released the deceased. However, she began screaming again, so he pressed the blanket over her mouth and face once more. After some time, the accused noticed that the deceased was bleeding from her mouth and was biting onto the blanket, so he took the blanket away. Following that, the deceased gradually stopped responding and became motionless.

12. After trying to call a friend and his father for help, the accused called '995'. While waiting for the Singapore Civil Defence Force ("SCDF") personnel to arrive, the accused performed Cardio-Pulmonary Resuscitation on the deceased as instructed by the SCDF call operator. After the paramedic arrived, the deceased was pronounced dead at about 12.32 p.m.

13. Subsequently, the accused was arrested by the police on the same day.

Autopsy, Toxicology and Medical Reports

14. In the autopsy report (AZ1451-07153) of the deceased by Dr Paul Chui (dated 27 November 2014), the cause of death was certified to be "suffocation". Superficial injuries, mainly in the form of bruises, were found all over the deceased's head, body and limbs. There were also bruising and lacerations found on both sides of her inner cheeks, among other injuries.

15. In the clarification report by Dr Chui (dated 14 September 2015), it was explained that:

> a) Suffocation through the obstruction of nostrils and mouth results in oxygen deprivation, which will lead to irreversible brain damage if it persists.

Version No 1: 27 Oct 2020 (22:39 hrs)

b) Suffocation can be unsuccessful if either the nostrils or the mouth is only partially obstructed.

c) Compression on the chest concurrently will increase respiratory effort and reduce air intake, compounding the effect of obstruction of the nostrils and mouth.

d) The deceased's oral injuries were consistent with having resulted from a struggle to breathe during the event of suffocation.

16. In the toxicology report (TX-1431-07702) by Leong Hsiao Tung (dated 10 December 2014), Amphetamine and Methamphetamine were detected in the deceased's peripheral blood (plain) sample, bile and stomach contents.

17. In the accused's medical report by Dr Kang Jun Hui Larry (dated 19 May 2015), the accused was diagnosed with the following injuries:

a) A linear 2cm abrasion over the right side of the neck

b) A linear superficial 1 cm abrasion over the left cheek

c) Multiple linear superficial abrasions measuring 5cm to lOcm over the back

d) Multiple linear superficial abrasions measuring 5 to 6cm noted over the torso.

18. By pressing the blanket down on the deceased's mouth and face area with his hands to stop the deceased from screaming, with the knowledge that this was likely to cause the deceased's death by suffocation, the accused has committed an offence of culpable homicide not amounting to murder, punishable under Section 304(b) of the Penal Code, Chapter 224.

C) Facts pertaining to the 2nd Charge – Consumption of a specified drug, Methamphetamine (LT1)

19. Following his arrest, the accused provided two bottles of his urine samples which were sealed 'CENTRAL NARCOTICS BUREAU' and marked "P-SA-14-00742-1 LIM HOU PENG, JACKSON S7423401A" and "P-SA-14-00742-2 LIM HOU PENG, JACKSON S7423401A" in his presence. The said urine samples were sent to the Health Sciences Authority ("HSA") on 21 November 2014 for analysis.

20. On 25 November 2014, the HSA issued two Certificates under Section 16 of the MDA bearing Lab Nos: AT-1433-1 1043-001-03 and AT-1433-11043-002-03 respectively.

Version No 1: 27 Oct 2020 (22:39 hrs)

> 21. Bellene Chung, an analyst with the Analytical Toxicology Laboratory of the HSA, having conduct of the analysis in relation to the urine sample marked as "P-SA-14-00742-1 LIM HOU PENG, JACKSON S7423401A", issued the Certificate bearing Lab No: AT-1433-11043-001-03 stating that on analysis, the said urine sample was found to contain Methamphetamine.
>
> 22. Ong Han Hui Jordan, an analyst with the Analytical Toxicology Laboratory of the HSA, having conduct of the analysis in relation to the urine sample marked as "P-SA-14-00742-2 LIM HOU PENG, JACKSON S7423401A", issued the Certificate bearing Lab No: AT-1433-11043-002-03 stating that on analysis, the said urine sample was found to contain Methamphetamine.
>
> 23. Methamphetamine is a Specified Drug listed in the Fourth Schedule to the MDA. The accused is not authorised under the MDA or the Regulations made thereunder to consume Methamphetamine, a Specified Drug listed in the Fourth Schedule to the said Act and has committed an offence under s 8(b)(ii) of the said Act.
>
> 24. Before the commission of the said offence, the accused was on 12 October 2001, in Subordinate Court No. 26, *vide* DAC 26140/2001, convicted of an offence for consumption of a controlled drug, *to wit*, Ketamine, under s 8(b)(i) of the Misuse of Drugs Act, and sentenced to 12 months' imprisonment; and was on 5 August 2003, in Subordinate Court No. 13, vide DAC 29090/2003, convicted of an offence for consumption of a controlled drug, *to wit*, Norketamine, under s 8(b)(i) of the Misuse of Drugs Act, and sentenced to 3 years' imprisonment; which convictions have not been set aside to date and are previous convictions for consumption of a specified drug by virtue of s 33A(5)(a)(i) of the MDA. As such, the accused shall now be punished under s 33A(1) of the MDA.

The accused's antecedents

6 The accused has a criminal record. In 1992, he was convicted under s 380 Penal Code (Cap 224, 1985 Ed) and in 1997, he was convicted under s 143 of the same Code. In 2001, the accused was convicted for the consumption of Ketamine, a controlled drug, and sentenced to 12 months' imprisonment. In 2003, he was convicted for trafficking in Ketamine and for

Version No 1: 27 Oct 2020 (22:39 hrs)

consumption of Norketamine. For these two drug offences, he received a global sentence of six years' imprisonment and three strokes of the cane. The 2001 and 2003 drug consumption offences formed the basis for the enhanced punishment in the second charge.

The Prosecution's submissions on sentence

7 The Prosecution submitted that the sentences for both the first and second charge should run consecutively and urged the court to impose a global sentence of at least 11 years' imprisonment and three strokes of the cane on the accused.

8 In respect of the first charge, the Prosecution submitted that an imprisonment term of at least six years was warranted. The Prosecution submitted that the precedents could be separated into two categories, one where significant mitigating factors were present and another, where no significant mitigating factors were present.

9 The Prosecution cited the cases of *PP v Lim Ah Seng* [2007] 2 SLR(R) 957 ("*Lim Ah Seng*"), *PP v Md Mosharah and others* [2009] SGHC 163 ("*Md Mosharah*") and *PP v Oon Oon Sang Tee* CC 11/2006 (unreported) ("*Oon Oon Sang* Tee") as examples of cases that had significant mitigating factors. In *Lim Ah Seng* and *Oon Oon Sang Tee*, the offenders were suffering from psychiatric conditions that contributed to their commission of the offence. In *Md Moshara*, the offender had endured psychological abuse by the deceased for some four months prior to the time of the offence. In respect of these three cases, the sentences imposed by the court ranged from two and a half to four and a half years' imprisonment.

Version No 1: 27 Oct 2020 (22:39 hrs)

10 In support of its position that the present case fell within the category of cases with no significant mitigating factors, the Prosecution cited the cases of *PP v Yan Haibing* CC 7/2007 (unreported), *Tan Chee Hwee and another v PP* [1993] 2 SLR(R) 493 and *PP v Budiman bin Hassan* [1994] SGHC 28 ("*Budiman*"). The Prosecution noted that the case of *Budiman* was subsequently appealed and the sentence of six years' imprisonment was enhanced to nine years' imprisonment. In respect of all these cases, the sentences imposed by the court ranged from seven to nine years' imprisonment.

11 The Prosecution argued that the present case belonged to the category of cases with no significant mitigating factors but fell on the lower end of the sentencing range within the category. The accused did not suffer from any psychiatric condition at the time of the offence. The Prosecution submitted that although the deceased was shouting and acting hysterically, she was not provoking the accused and did not pose a threat to him. The Prosecution submitted that there was an aggravating factor, namely that the accused's acts were fuelled by his desire to evade apprehension by the police as both he and the deceased had just consumed 'Ice'. Nonetheless, the Prosecution contended that the facts in the present case were still less aggravating than the precedents cited. This is because the offenders in those cases played a more active role in initiating the offence and they choked the victims to death.

12 In respect of the second charge, the Prosecution submitted that the accused should be sentenced to a five-year imprisonment term and three strokes of the cane. This is the minimum sentence prescribed by s 33A(1) read with s 33A(5)(a) of the MDA for accused persons who have at least two prior convictions for consumption of controlled drugs.

Version No 1: 27 Oct 2020 (22:39 hrs)

13 The Prosecution further submitted that the sentences in respect of the first and the second charges should run consecutively. This is because they were separate and distinct offences. The cumulative sentence would also not offend the one-transaction principle or the totality principle.

The mitigation plea

14 The Defence did not object to the Prosecution's sentencing position in respect of the second charge. It is, after all, the minimum that the court is required to impose by law. The Defence also did not contest the Prosecution's submission that the two sentences should run consecutively. Instead, the Defence based the bulk of its submissions on the appropriate sentence that should be meted out for the first charge. It argued that a sentence of three to four years' imprisonment was adequate.

15 In mitigation, the following points were raised:

(a) The accused's actions were not premeditated. Instead, they were committed in the spur of the moment.

(b) The accused and the deceased were in a loving and long-term relationship at the time of the offence. They even had plans to get married. As such, the accused never intended to end the deceased's life.

(c) The accused was not the aggressor. He had tried repeatedly to diffuse the situation by pacifying the deceased and telling her to calm down. However, as the deceased was in a drug-fuelled frenzy, she continued screaming and abusing the accused physically and verbally.

Version No 1: 27 Oct 2020 (22:39 hrs)

(d) The accused's actions were not motivated by malice or ill-will. He had resorted to pressing the blanket over the deceased's mouth because she was screaming and struggling. He was worried that the noise would cause their neighbours to call the police and he did not want both of them to get into trouble.

(e) The accused showed instant and genuine remorse. When he realised that the deceased had stopped moving, he immediately sought help. He did not flee the scene and also did not even think of getting rid of the drug paraphernalia. Instead, he performed Cardiopulmonary Resuscitation on the deceased while the ambulance was on its way. In this regard, the Defence cited the case of *PP v Lim Boon Seng* [2004] SGHC 113 ("*Lim Boon Seng*"), in which the accused had also displayed instant and genuine remorse and had rendered aid to the victim. In *Lim Boon Seng*, I sentenced the accused to three and a half years' imprisonment.

(f) The accused has lost the woman he was planning to marry. While he was in remand, his father died from cancer and he was unable to attend the funeral.

(g) The accused's paternal aunt and her family visit him regularly in prison and are able and willing to provide him with a stable family environment upon his release from prison.

The court's decision

16 I will first address the issue of sentence in respect of the second charge. It is undisputed that the accused should be sentenced to five year's imprisonment and three strokes of the cane. I agree as there was no reason to

Version No 1: 27 Oct 2020 (22:39 hrs)

impose a sentence beyond the minimum required by law. The charge taken into consideration was a drug-related charge but it was in essence part of the process of drug consumption under the second charge as the accused was practically caught in the act. I therefore sentenced the accused to five years' imprisonment and three strokes of the cane for the second charge.

17 In respect of the first charge, it was clear that the accused did not harbour any intention to hurt the deceased, much less to kill her. Before the deceased began to behave erratically, they were happily consuming Ice in the flat. He merely wanted to stop her from screaming and getting both of them into trouble with the law. Unfortunately, he used too much force and exerted too much pressure on the deceased in the process.

18 The accused showed instant and genuine remorse. As mentioned above, the Defence cited *Lim Boon Seng* for the principle that instant and genuine remorse of the accused serves as a strong mitigating factor. In *Lim Boon Seng*, the accused was indeed contrite and had rendered aid to the deceased. He also shouted to his friend to call the police and the ambulance to the scene after the stabbing incident. However, the deceased in that case was also the aggressor and he was of bigger build than the accused (*Lim Boon Seng* at [18]). In the present case, the autopsy report on the deceased noted that the deceased was a "thin female" of 154cm in height and 34 kg in weight. In contrast, when the accused rose in court to speak, he certainly looked much taller and bigger than the deceased's dimensions. Defence counsel, Ms Jennifer Lim, pointed out that the accused was not of such good build before his arrest. Nevertheless, he had the advantage of height and size over the deceased and had used disproportionate force on her.

Version No 1: 27 Oct 2020 (22:39 hrs)

19 While it is true that the two charges involved distinct offences, the present case was unique in that one offence led indirectly to the other. The accused's (and the deceased's) drug consumption led ultimately to the altercation and the struggle. Given that the accused will be serving five years' imprisonment for the second charge, I think a consecutive imprisonment term of four and a half years in respect of the first charge would be adequate punishment on the facts here.

20 I therefore sentenced the accused to a total of nine and a half years' imprisonment with effect from 20 November 2014, the date of his arrest. In addition, he is to receive the mandatory minimum of three strokes of the cane. This case shows how the consumption of illegal drugs can sometimes lead to very sad and fatal consequences which were never intended.

Tay Yong Kwang
Judge

Eugene Lee and Lee Zu Zhao (Attorney-General's Chambers) for the prosecution;
Jennifer Lim (Straits Law Practice LLC) for the accused.

Version No 1: 27 Oct 2020 (22:39 hrs)