

Public Prosecutor v Huang Hong Si
[2003] SGHC 147

Case Number : CC 24/2003
Decision Date : 11 July 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Kiat Pheng (Attorney-General's Chambers) for the Public Prosecutor; Tan Wee Soon (Attorney-General's Chambers) for the Public Prosecutor; Accused in person
Parties : Public Prosecutor — Huang Hong Si

Criminal Procedure and Sentencing – Sentencing – Aggravating factors – Definition of 'aggravating factor' – Not to be confused with 'aggravated offence'

Criminal Procedure and Sentencing – Sentencing – Mitigating factors – Whether mental condition a mitigating factor

1 The accused is a 33 year old Chinese national who came to Singapore about two years ago to work as a plasterer. He was employed by a company called Sinzhou Engineering Pte Ltd. Zhang Xu Sheng, a 35 year old Chinese national and his partner Guo Han Cheng, also a Chinese national, were the two directors of Sinzhou.

2 It was asserted that in August 2002 Guo Han Cheng absconded with Sinzhou's money and, consequently, the company had to cease business. The salaries of its workers' had not been paid for some time. In November 2002, the accused, together with other workers, went to Zhang Xu Sheng's flat to demand payment of their wages. The confrontation turned ugly and the police were summoned. The workers were eventually persuaded to leave the flat by the police. But the accused went to the flat again, this time alone, on 14 December 2002 at 2.30pm. This time he brought with him a knife wrapped in a newspaper. He intended to ask Zhang Xu Sheng to either pay him \$5,800 or at least some money for daily expenses as he had only \$2 left. Zhang was not home. The accused decided to wait for him outside Zhang's flat.

3 Zhang Xu Sheng returned to the flat about 5pm. Zhang asked the accused to get assistance from the Ministry of Manpower instead. The two quarrelled. Zhang's parents, Zhang Shi Xiang and Wei Mei Mei came out of the flat and saw the accused slashing his own arm twice and saying 'See whether I dare!'. Zhang Xu Sheng asked the accused not to do anything foolish. The accused then stabbed Zhang once, injuring him. When Zhang's parents saw that they rushed at the accused to prevent him from further hurting Zhang. The accused 'waved and jabbed the knife' at Zhang's parents and in the melee, he stabbed Zhang's mother, Wei Mei Mei, aged 62, once in her left chest. The knife went into the woman's heart, killing her. Her husband was also injured but not too seriously.

4 Huang Hong Si pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code, Ch 224 in respect of Wei Mei Mei's death, and a charge of causing grievous hurt with weapon under s 324 of the same code, before me. A third charge under s 324 for causing hurt to Zhang's father was taken into account for the purposes of sentencing.

5 The accused was not represented by counsel and said in mitigation that he went to Zhang only to recover his money, a sum which he says may not be large to others but was great to him. He is married with a 10 year old son in China.

6 The learned DPP submitted that there were aggravating factors in this case and he listed

them as follows:

- '(i) the Accused had armed himself with a knife when he went to look for Zhang Xu Sheng ("the victim") on 14 December 2002. He knew the knife could be used as a dangerous weapon and he intended to use it to threaten or cause hurt for the purpose of obtaining money from the victim;
- (ii) the victim and his mother, Wei Mei Mei ("the deceased") were two innocent people who fell victim to the accused's action in using the knife;
- (iii) there was no provocation by the victim or the deceased;
- (iv) the deceased and the victim were unarmed and harmless to the accused;
- (v) the deceased was merely trying to stop the accused from attacking her son when the accused turned the knife on her;
- (vi) the injuries suffered by the deceased and the victim were very serious. The victim's injuries were so serious that he had to be hospitalised for 4 days. And if not for the deceased and her husband's intervention to stop the accused, the victim's injuries could have been worse. Although the deceased had suffered a single stab wound, it was sufficient to cause her death; and
- (vii) this was the second time that the accused had confronted the victim at his flat over his pay matters.'

7 It has become common practice for prosecuting counsel to address the court on sentencing. It is done with the view of assisting the court in balancing all the factors relevant to its determination of the sentence. The prosecuting counsel's submission will naturally focus on the degree of seriousness in connection with the offence so as to act as a ballast to the plea in mitigation by the accused. It appears to me that it has become customary of the prosecution to refer to the degree of seriousness in connection with the offence as 'aggravating factors'. While I would like to think that judges would appreciate counsel's purpose even if they may not accept all or any of the factors submitted, it is, nonetheless, important to understand the use of the term 'aggravating factors', and not confuse it with the phrase 'aggravated offence', as is sometimes used to describe an offence as a more serious version of another. For example, robbery with hurt can be described as an aggravated offence of robbery, and kidnapping in order to murder is an aggravated offence of kidnapping.

8 What has frequently been labelled as 'aggravating factors' are, therefore, more accurately factors that indicate the level of gravity of the crime in specific relation to the offence upon which the accused was charged. The degree of seriousness at each level differs according to the individual facts of the case. Such facts are not intended to be used to compare the crime of robbery with the crime of rape, for example. They are to be used to engage the court in the exercise of establishing how the offender is to be punished within the range of punishment prescribed for him for that offence. In this regard, the degree of seriousness of the crime has four major distinctive aspects. First, there is the degree of seriousness of the offence itself. This presents little difficulty because this aspect is usually reflected in the range of punishment prescribed by the legislature for the offence; although there is always room for moot, for example, as to whether the crime of fabricating evidence (for which the punishment is up to 3 years' imprisonment) is a more serious offence than the crime of being a member of an unlawful assembly (for which the punishment is up to 2 years' imprisonment).

9 The second aspect of seriousness is the manner and mode in which it was committed. An accused who kills his victim with a single stab wound commits the same crime, but arguably, in a less

brutal manner than one who crushes his victim to death with a truck as a weapon. Similarly, the offence of causing hurt is obviously more serious in a case where a person has been beaten several times (on the same occasion) than one who was hit only once (assuming the blows in both cases are roughly the same).

10 The third aspect is the degree of seriousness of the consequences of the criminal act. One victim may die a quick death, another may linger in pain before expiring. No two cases may be alike, but the task of the court to consider the degree and scope of seriousness is incomplete if it merely takes into account individual factors and add them all together (even if that can be done). It is not a numbers game. The court's duty is to consider all the factors, including the mitigation, as a blend and evaluating them as a whole.

11 The fourth aspect concerns the interests of the public. What is in the public interest is not always readily palpable and it should therefore be invoked less the crime be unjustifiably magnified.

12 In the present case, some of the 'aggravating factors' are merely standard parcels, for example, the fact that the accused was 'armed with a knife and intended to use it' is a factor common to many such cases; that innocent victims were harmed is a fact without which we would not have an offence. Similarly, the fact that there was no provocation from the victim is relevant but cannot be regarded as 'an aggravating factor'. Provocation by the victim, on the other hand, may be a mitigating factor.

13 In the present case, the accused was suffering from a mental condition that mitigates some of the factors that might otherwise have increased the degree of seriousness of the offence. The consultant psychiatrist at the Institute of Mental Health examined the accused and found the accused to have a 'prolonged depressive reaction that was caused by prolonged stressful situation'. He stated that the accused was in a dissociative state of mind at the time he committed the offences.' He also stated that although the accused was aware of what he was doing, 'he did not have mental control of his actions.' In the circumstances, I sentenced the accused to seven years imprisonment in respect of the first charge, and 12 months imprisonment in respect of the second charge. The sentences of imprisonment are to run concurrently with effect from the date of his arrest.