

Public Prosecutor v Nasser Bin Salleh
[2003] SGHC 66

Case Number : CC 13/2003
Decision Date : 25 March 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jaswant Singh; Terence Tay; Thangavelu
Parties : Public Prosecutor — Nasser Bin Salleh

Criminal Procedure and Sentencing – Sentencing – Principles – Husband kicking wife upon discovering she was lying to him – Whether motive for offence relevant for sentencing under s 304 (a) Penal Code, Cap 224.

1 The accused, aged 34, pleaded guilty to a charge under s 304(a) of the Penal Code Ch 224 for causing the death of his wife Norafidah Binte Saparuan, also aged 34. The accused was unemployed. Norafidah's marriage to the accused had been de-stabilised and the couple were in conflict in more ways than one. Norafidah was seeing another man (Sheik Abdullah) and wanted a divorce. The accused wanted reconciliation.

2 On 27 August 2002 Norafidah spent the night at Sheik Abdullah's flat. They left the flat at 7am the following morning and walked to the bus-stop together. Sheik Abdullah's bus arrived first and he left for work. The accused and another man confronted Norafidah at the bus-stop before her bus arrived. The accused asked her to take him to Sheik Abdullah's flat and then told her to call him (Sheik Abdullah) back to the flat.

3 The party consisting of Norafidah, the accused and the other man reached the flat a while later. A woman named Sharrifah who lived there was still in bed, and so was her daughter Siti Shehah. It was not known what their relationship was with Sheik Abdullah. A commotion arose when the accused lost his temper after hearing Sharrifah refer to Norafidah as a "divorcee". He punched Norafidah who fell but the accused's friend helped her back on her feet.

4 To avoid embarrassment and attention Siti Shehah asked everyone to go into the flat. By this time, the accused's male friend had left but an unknown woman friend joined them. The accused and Sharrifah sat on the sofa and Norafidah and the unknown woman sat on the floor with their backs to the wall.

5 The accused was still in a foul mood and it darkened further when he learnt that Norafidah had lied to him more than he had suspected. Questioning Sharrifah, he found out that Norafidah did not come to the flat to help Sharrifah bake cookies as she had told him. Thereupon, he walked to Norafidah and told her to lower her hand from her mouth. He then kicked her in the mouth. The force caused her head to jerk backwards, hitting the wall. Resulting from the impact with the wall Norafidah developed an instantaneous epileptic fit. There was no doubt that the kick was an extremely violent one. It appears that the impact had caused a subarachnoid haemorrhage in her skull. She died from her head injury. The accused initially tried to revive her but fled when he realised the seriousness of her injury. However, he instructed the unknown woman to call for the ambulance before leaving the scene.

6 The facts show that this case could have been brought as an offence under s 304(b) of the Penal Code instead of s 304 (a). Under s 304(b) the punishment is imprisonment of up to ten years or fine whereas the punishment for an offence under s 304(a) is imprisonment for life or ten years. A case may justifiably be brought under s 304(b) if death was caused without the intention to cause death

or the intention to cause such bodily injury as is likely to cause death. Whether the injury in the present case falls within (a) or (b) of s 304 may depend on whether the injury was the kick itself or the kick and the resulting impact against the wall.

7 Whether the accused ought to be charged under (a) or (b) is a matter at the prosecutor's discretion and must so be respected. In this case, the prosecution case was presented by an experienced and learned prosecuting counsel, Mr Jaswant Singh, and, furthermore, the accused was represented by counsel of equal standing. In determining the appropriate sentence, the court must find a range within the limits prescribed under s 304(a) alone. That the facts might have justified the charge being brought under s 304(b) would not be relevant.

8 In this case, I took into account that the offence was committed in the culmination of deep feelings none less than the passion of 'love to hatred turned'. I think it a fair and reasonable inference that the accused had not intended or appreciated the impact caused by Norafidah's head hitting the wall. In the circumstances, I am of the view that a sentence between 7 to 9 years imprisonment as suggested by the learned DPP is not appropriate in this case. That may be more appropriate in cases where the offender has a deeper and more wilful motive, or cases where the physical assault is more heinous. I mention this without diminishing my view that the assault in the present case was a violent one. But given the circumstances of this case, I think that a sentence of 5 years imprisonment is sufficient.