Public Prosecutor *v* Kong Peng Yee
[2017] SGHC 253

Case Number : Criminal Case No 59 of 2017

Decision Date : 16 October 2017

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Wen Hsien, Sarah Shi and Dora Tay (Attorney-General's Chambers) for prosecution; Sunil Sudheesan and Diana Ngiam (Quahe Woo & Palmer LLC) for accused

Parties : Public Prosecutor — Kong Peng Yee

Criminal Law – Offences – Culpable homicide

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 52 of 2017 was allowed by the Court of Appeal on 27 June 2018. See [2018] SGCA 31.]

16 October 2017 Judgment reserved.

Choo Han Teck J:

1 On 13 March 2016, the accused attacked his wife with a knife and a chopper, killing her with 189 wounds. He was 68 years old at the time, and she, 63. They had been married for 36 years. The marriage bore them two daughters, now aged 27 and 36. The accused had been working as a technician, but has since retired. He has a hitherto unblemished record.

2 Dr Kenneth Koh ("Dr Koh") of the Institute of Mental Health ("IMH") examined the accused and diagnosed him as suffering from "late onset psychosis with persecutory, jealous and nihilistic/somatic delusions" when he killed his wife. Although Dr Koh is of the view that the psychotic delusions "significantly adversely affected [the accused person's] mental responsibility for his actions", he was "not of unsound mind [at the material time] in that he was aware of his actions and knew that his acts were wrongful". Dr Koh is also of the view that the accused was fit to plead. The accused then pleaded guilty to the charge of culpable homicide not amounting to murder punishable under s 304(*a*) of the Penal Code (Cap 224, 2008 Rev Ed), admitted the statement of facts, and was thus convicted.

3 The DPP argued that a sentence of nine years' imprisonment ought to be imposed on the facts of this case, based primarily on retributive and deterrent principles of sentencing. Although counsel for the accused suggested a shorter period of five years imprisonment, he seems to agree with the DPP that "protection of the public and retribution may still remain relevant sentencing considerations even where a mentally disordered offender is concerned".

4 The retributive principle of punishment is entirely different from that of the deterrent principle. Retributivism in punishment requires that an offender be justly punished for the offence that he had committed; no more, no less. In short, he is to be given the punishment that fits his offence. Proportionality would be a key consideration. The focus must be on the moral foundation of the sentence rather than what is useful for society. In contrast, deterrent punishment may be imposed to

deter others from committing the same offence, or to deter the accused from repeating his offence. Thus, it is not unusual to impose a stiffer punishment than the case requires just so that deterrence may be effective. But the principles of retribution and deterrence pull in different directions and could not be applied concurrently in the same case. Counsel before me also cited some past authority that included rehabilitation in the mix. To avoid confusion, it should be remembered that rehabilitation is always important, but it is not punishment.

5 In any case, neither the retributive principle nor deterrence applies in the present case. Deterrence to others is not appropriate here because people who do not suffer the same psychotic delusions as the accused will not go about killing their spouses for no reason or for the reasons that emanate from a deluded mind. Deterrence is also not appropriate against the accused himself because, as the doctor from IMH had certified, the accused is in remission and is safe to be returned to the care of his family. That leaves the question of retribution — how do we punish him for the offence that he had committed? What is the appropriate punishment for a man whose act was guided by thoughts that entered unbidden into his mind? There is no clear answer.

6 What we do know is that he was suffering from a psychosis that even the psychiatrists agree had affected his mental responsibility at the time of the offence. Given those circumstances, a reasonable man may fairly wonder why any punishment is even required? His madness is its own punishment. The problem lies not with the reasonable man, but with an archaic law that has been incorporated into our statute. That old rule, known as the M'Naghten rule, was handed down in a judgment in England (see *M'Naghten's Case* (1843) 10 Cl & Fin 200; 8 ER 718), which declared a man not to be insane if he either knew what he was doing or that what he was doing was wrong. From that moment on, legal insanity and medical insanity have not fitted themselves snugly in the same box.

7 Modern doctors have had to recite the M'Naghten statement when the accused admits to them (often long after their insane episode) that they knew what they were doing or that they knew that they did wrong. Can people truly and accurately discern their own mental state when they had, in fact, lost it? Can an accused person in remission of his mental illness accurately describe his own thoughts at the time of the offence when he was having an episode of psychotic delusion? Joseph Heller satirised this sort of situation, in "Catch-22". A pilot, he wrote, could escape flying combat missions only if he were insane; but any airman who applied to be declared insane could not have been insane. And so, to avoid what would have been manifest injustice in many cases, the law tries to be helpful and allows a man like the accused to avoid the gallows, even though he admits that he knew what he was doing or that he knew that he did wrong, if it could be shown that he was suffering from a mental illness that substantially affects his mental responsibility for his crime. The law leaves it to the court (not to the doctor) to determine whether the mental illness had indeed substantially affected the mental responsibility of the accused. But there are many kinds of illnesses and conditions that can create an abnormality of mind, and some abnormalities are more serious than others. And not all affect the sufferer's mental responsibility in the same way or to the same extent. The language of M'Naghten should be re-examined; doctors and lawyers should speak a common language when dealing with the mental responsibility of an accused who was laboring under a mental illness at the time of the offence.

8 The specific facts concerning the mind of this accused at the time of the offence are crucial in the determination of the legal question regarding his mental responsibility. It is equally important to consider what he was like before he killed his wife. We know that he had been gainfully employed as a technician with SIA Engineering Company until his retirement, and hitherto had an unblemished record. Then, in October 2015, he went to the hospital, complaining of headache and pain in his eye. He was given medication for glaucoma and inflammation, and subsequently had a cataract removed from his

right eye in January 2016.

9 After his eye surgery, he refused to take medication for his other ailments. He believed that laxatives intended for his constipation were poison. When his wife and a daughter tried to persuade him to drink prune juice instead, he imagined that they were trying to torture him.

10 Just about two months later, a day before the offence, the accused collected his health check results and continued to worry that someone was trying to harm him or that he was suffering from some disease and was going to die. While at his daughter's house, the accused told his daughter that he did not think she was his biological daughter, amongst other odd mutterings.

11 On 13 March 2016, his other daughter brought him to church. There, the accused began to behave strangely, making incomprehensible noises, and telling the pastor that God wanted him to return his daughter to the rightful parent. He also told a member of the congregation whom he did not know, that people were poisoning him.

12 When the church service ended, his daughter brought him home and chatted with her mother while the accused went to have a nap. The daughter left the flat about 3pm to fetch her sister. After she had left the flat, the accused heard roaring sounds which he claimed woke him up from his slumber. He then walked to the kitchen and retrieved a knife. Without more, he stabbed and cut her; 189 times, until she was dead. In his statements to the police, the accused claimed that he believed that he should kill his wife first because his family might want to kill him.

13 From those facts and the medical evidence, I have no hesitation in finding that the psychotic delusions substantially affected the mental responsibility of the accused. He had been remanded since that day. Dr Koh who examined the accused in 2016, and again in May this year, has written a positive and encouraging medical report dated 9 May 2017. I refer to the two most relevant paragraphs. Dr Koh wrote: 'With the passage of time, it is now more clear that Mr Kong had a brief psychotic episode at the time of the alleged offence, but he has since responded well to medication and entered into remission for several months now. There does not appear to be any dementing process detected in him nor any serious physical illness that had led to his disordered mental state at the time of the offence. Mr Kong has no known past history of violence, substance abuse and imprisonment. His psychiatric disorder is now in remission with medication. His family continues to visit him in prison and have indicated their commitment to care for him and ensure that he follows up on his treatment. Given these good prognostic factors as well as his advanced age, his risk of dangerousness to others is low." Dr Koh's opinion as of May 2017 was that, "[n]aturally, [the accused] will require long term follow up with psychiatric services and he should reside with [his] family who are able to monitor and supervise him."

14 Given all the above facts and medical opinion, I think that punishment is probably not the most appropriate response to a man like the accused here, and certainly not the 9 years imprisonment sought; but the law regards his act as an offence, and requires some punishment to be meted out. And so, I am sentencing the accused in the present case to two years' imprisonment, with effect from 13 March 2016, not on the basis of retributive justice, nor deterrence, but on the basis that it is the most appropriate punishment on the facts of this case. The sooner the accused is returned to the care of his family, the better.

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