

Public Prosecutor v CAD
[2019] SGHC 262

Case Number : Criminal Case No 62 of 2019
Decision Date : 04 November 2019
Tribunal/Court : High Court
Coram : Vincent Hoong JC
Counsel Name(s) : Zhou Yihong and Han Ming Kuang (Attorney-General's Chambers) for the prosecution; Anand Nalachandran (TSMP Law Corporation) for the accused.
Parties : Public Prosecutor — CAD

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Culpable homicide

4 November 2019

Vincent Hoong JC (delivering the judgment of the court *ex tempore*):

1 The accused person has pleaded guilty to a charge of culpable homicide under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed).

2 While I recognise that the accused person was operating under a major depressive disorder (“MDD”) which “substantially impaired her mental responsibility”, I agree with the Prosecution that rehabilitation ought not to take precedence in this case. Instead, retribution and deterrence are the dominant sentencing principles.

3 While the principle of deterrence *may* be given considerably less weight if the offender was suffering from a mental disorder at the time of the offence, the element of deterrence may be accorded full weight where the mental disorder is not serious or not causally related to the commission of the offence, and the offence is a serious one: *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 at [28]. The offence here is plainly a serious one, given that the death of the accused person’s infant daughter resulted from her actions.

4 This is exacerbated by the fact that the accused person’s mental condition did not so severely impair her mental state, unlike the offender in *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 (“*Kong Peng Yee*”), who, in a psychotic episode, stabbed his wife to death for no logical reason. The accused person had done her acts out of anger and frustration, albeit while afflicted by her MDD. Her acts were thus founded on a true and rational factual basis, and the “mental disorder in such cases can only ameliorate to a *limited extent* the criminal conduct because the offender’s mind is still rational” [emphasis added] (*Kong Peng Yee* at [65]).

5 Her ability to think rationally can be seen by her acts post-offence, whereby she lied to her own husband on two occasions, and even performed cardiopulmonary resuscitation on her daughter. That being so, I find that her mental condition did not serve to override the sentencing considerations of retribution and deterrence in this case.

6 Turning to the principles of deterrence and retribution, I find the observations of the Court of Appeal in *Public Prosecutor v BDB* [2018] 1 SLR 127 at [34]–[38] to be highly instructive. The courts must come down stringently on offences against vulnerable victims, especially when such offences

are committed by caretakers who are imbued with the trust of such victims. Maintaining such an uncompromising stance, in particular against offenders who commit the most severe cases of abuse of young victims (*ie*, the death of such victims) achieves four objectives:

(a) First, like-minded members of the public may be deterred, in particular as “depression, even if severe, cannot be a license to kill or to harm others” (*Kong Peng Yee* at [65]).

(b) Second, denouncing such conduct gives expression to public outrage at the fact that such offenders in question have taken advantage of their victims’ vulnerability. This is particularly poignant here, where the power disparity between the accused person and her two-year old daughter was extremely large, especially as there was no other person at home to stand in the way of the accused person’s abuse of her daughter.

(c) Third, the sentencing consideration of retribution is engaged in such cases of serious violence being inflicted on a vulnerable victim.

(d) Fourth, imposing a severe sentence in such cases help ensure that the punishment is proportionate to the offender’s culpability.

7 With the sentencing principles in mind, I turn to the precedents to arrive at the appropriate sentence that will give effect to such principles.

8 I find that the accused person’s culpability in this case exceeds that of those in *Public Prosecutor v Goh Hai Eng* (Criminal Case No 4 of 2010) (“*Goh Hai Eng*”), *Public Prosecutor v Graffart Philippe Marcell Guy* (Criminal Case No 36 of 2016) (“*Graffart Philippe*”) and *Public Prosecutor v BAC* [2016] SGHC 49 (“*BAC*”), where the offenders had been sentenced to five years’ imprisonment for causing the death of their young child.

9 In relation to the first two cases, the offenders had been similarly impaired by a mental condition, which caused them to take misguided steps that culminated in the death of their child. The offender in *Goh Hai Eng* was suicidal and decided to kill her daughter as she did not wish to leave her behind, while the offender in *Graffart Philippe* sought, prior to his own failed suicide attempt, to “take” his son with him while he was mired in a contested battle for his child’s custody. Such offenders were motivated by a misguided interest for their child. In contrast, the accused person, while afflicted by her MDD, was motivated simply by her frustration with her child’s conduct, and her culpability therefore falls on a higher spectrum than the offenders in *Goh Hai Eng* and *Graffart Philippe*.

10 As for *BAC*, Tay Yong Kwang J (as he then was) made clear that the direct link between the victim and the offender’s mental condition “carries much more weight as a mitigating factor than assertions of depression or other mental disorders that are made only after an accused has committed an offence and has been arrested, especially when such an accused had been functioning normally before the offence” (at [11]). The offender in *BAC* had a reported pre-existing mental condition that was directly attributable to the deceased, whose diagnosis with autism *six years* prior to the offence caused the offender’s “whole world [to come] crashing down”. Here, the mental disorder faced by the accused person was not in any way related to the deceased, and the accused person had in fact defaulted on a follow-up with the Institute of Mental Health prior to the commission of the offence. Less mitigating weight ought therefore to be ascribed to her condition, and *BAC* is clearly distinguishable.

11 I find that this case is more analogous to *Public Prosecutor v Maryani bt Usman Utar* (Criminal Case No 76 of 2018), whereby a domestic helper had caused the death of a one-year old child to

vent her frustration at the deceased's mother. The domestic helper was sentenced to seven years' imprisonment, after it was found that she was suffering from Depressive Disorder of at least moderate intensity and Acute Stress Reaction. I do not accept the defence's attempt to distinguish this case as the offender was a domestic helper, while the above three cases involved parents (like the accused person). Whether the offender is a parent or a domestic helper, the fact remains that significant trust and confidence is reposed in them to care for the child, and that such trust is flagrantly betrayed when the offender takes out their frustration and anger on the child, causing the child's untimely death. The sentencing principles of deterrence and retribution thus operate with equal force, whether the offender is a domestic helper or a parent to the child. Indeed, it may be said that, given the unrequited trust placed on parents to care for their own child, that the abuse of trust in the accused person's case was *more severe* than that of a domestic helper, whose conduct is often checked by the parents themselves.

12 The present case is deeply unfortunate. I recognise that the accused person was in a difficult situation given the death of another child shortly before the offence was committed, and that some punishment must already be felt on her part given her personal responsibility for the death of her own child. However, in the overall circumstances of the case, which involved an unprovoked attack on a defenceless child, I find that the sentencing objectives of deterrence and retribution take centre-stage, and that a sentence of seven years' imprisonment is appropriate. These principles are not overridden by the principle of rehabilitation notwithstanding the accused person's strong familial support, especially as rehabilitation may take place in the confines of prison, and does not necessitate a light sentence (*Kong Peng Yee* at [59(f)]).

13 For all these reasons, and having considered the parties' submissions on sentence, I sentence the accused person to seven years' imprisonment, commencing the accused person's date of remand (12 April 2018).