Mohammad Zam bin Abdul Rashid v Public Prosecutor
[2007] SGCA 11

Case Number : Cr App 7/2006, Cr M 38/2006

Decision Date : 23 February 2007

Tribunal/Court : Court of Appeal

Coram : Choo Han Teck J; Kan Ting Chiu J; Woo Bih Li J

Counsel Name(s) : Andy Yeo Kian Wee, Lim Dao Kai and Jesslyn Chia (Allen & Gledhill) for the appellant; Janet Wang (Deputy Public Prosecutor) for the respondent

Parties : Mohammad Zam bin Abdul Rashid — Public Prosecutor

Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Applicable principles for allowing fresh evidence at appeal where appellant pleading guilty to offence and appeal relating to sentence only – Section 257 Criminal Procedure Code (Cap 68, 1985 Rev Ed), s 55(1) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Appellant pleading guilty to offence of culpable homicide not amounting to murder – Whether sentence of life imprisonment unreasonable where evidence of familial support to address appellant's need for long-term medical treatment unconvincing

23 February 2007

Choo Han Teck J (delivering the grounds of decision of the court):

1 The appellant killed his wife on 2 December 2005. On 17 July 2006, he pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(*a*) of the Penal Code (Cap 224, 1985 Rev Ed) and was sentenced by the High Court to life imprisonment. He appealed against that sentence. He also made an application for further evidence to be adduced and considered for the purpose of the appeal. The reason for this application arose from the mental condition of the appellant and the judge's grounds of decision (see [2006] SGHC 168) in respect of the sentence imposed. We shall first set out the circumstances of the offence and the mitigation speech made on the appellant's behalf. The statement of facts (which had included the statement that the appellant was estranged from his siblings) had been read to the appellant and he had accepted it without objection.

2 The appellant is 45 years old and has a twin brother, Ramziz, who has been prominent in the application for further evidence to be adduced. The appellant was a caretaker in a condominium and had been married to his wife for eight years. They have no children. In addition to Ramziz, the appellant has five other siblings. About 1.00am on 2 December 2005, the appellant battered his wife so severely that in spite of medical attention in hospital, the wife succumbed to the injuries she suffered, mainly to her face and head, and died on 4 December 2005.

3 A consultant forensic psychiatrist with the Institute of Mental Health, Dr Stephen Phang, examined the appellant after he had been arrested by the police, and found the appellant to be suffering from a psychiatric disorder known as "Frontal Lobe Syndrome". A person with this condition is known to be emotionally labile and unable to control his impulses. It was for this reason that Dr Phang formed the opinion that the appellant had lost his impulse control when he killed his wife. At that time, he was also intoxicated with alcohol which most likely aggravated his medical condition, and had lost his temper, leading him eventually to shout at her and batter her. The court below noted

that Dr Phang was also of the opinion that the appellant was a potential danger to those around him, and that he required "long-term psychiatric follow-up and care, including the possibility of treatment with medication such as a mood stabiliser".

4 A second psychiatric opinion was taken from Dr Lim Yun Chin, a consultant psychiatrist at the Raffles Hospital, on the application of defence counsel. Dr Lim is also a consultant psychiatrist with the Singapore Prison Service's medical board. He was of the opinion that the syndrome developed insidiously, and the appellant was also unaware that alcohol would aggravate his loss of impulse control. He was of the view that although the appellant's condition was irreversible, it could be controlled with drugs, regular psychiatric assessment, counselling, and psycho-educational programmes. The court below noted the mitigation put forward on the appellant's behalf, and the undertaking by the appellant that he would abstain from alcohol. The court then referred (at [30] of the grounds of decision) to the three conditions commonly relied upon by the courts in support of a sentence of life imprisonment. The conditions are, first, "[t]he offence or offences are in themselves grave enough to require a very long sentence"; second, if "[i]t appears from the nature of the offences or from the accused's history that he is a person of unstable character likely to commit such offences in the future", and third, if "the offences are committed, the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence": see also *Purwanti Parji v PP* [2005] 2 SLR 220. The court noted that the second condition was the most relevant and contentious in the appellant's case. It was of the view that although the general deterrence of a long sentence was less relevant in a case where the offender was suffering from a mental disorder at the time of the offence, the courts would have to take into account the protection of the public against such an offender. In his grounds of decision, the learned judge below commented on the irreversibility of the appellant's psychiatric condition and the unlikelihood of having family support upon his release, unlike the case of the accused in *PP v Chee Cheong Hin* [2006] 2 SLR 707, where the three sisters of the accused deposed that they would help in the rehabilitation and future medical care of the accused.

5 Mr Andy Yeo, counsel for the appellant, submitted before us that it was due to an inadvertence that the court below was led to believe that there would be no family support for the appellant when he was released from prison. He thus sought leave to adduce evidence from the appellant's twin brother, Ramziz, his eldest brother, Aris, and another brother, Anwar. Counsel submitted that Ramziz was a health-care attendant at the Institute of Mental Health and would have no difficulty looking after the appellant. Counsel submitted that more importantly, Ramziz denied that he had told the investigating officer that the family could not and would not help. Thus, counsel argued that the sentence of life imprisonment was handed down by the judge in the erroneous belief that there would be no familial support after the appellant was released from prison. The two other brothers, Aris and Anwar, deposed affidavits to say that they would help financially and contribute towards paying for the appellant's medication.

6 Counsel for the prosecution referred to the principles expressed by Lord Denning in *Ladd v Marshall* [1954] 1 WLR 1489, and submitted that those principles had been adopted by the court in *Juma'at bin Samad v PP* [1993] 3 SLR 338 ("*Juma'at bin Samad*"). The learned prosecutor argued that none of the three conditions in *Ladd v Marshall* had been satisfied. The conditions are, first, the non-availability of the evidence in the proceedings below; second, the evidence would have had an important influence at the trial below; and third, the evidence must be credible, though not necessarily incontrovertible. Mr Yeo argued to the contrary, that the conditions in *Ladd v Marshall* had been met, and further, that we should allow the evidence under s 55(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") which provides as follows:

> In dealing with any appeal, the Court of Appeal may, if it thinks additional evidence is necessary,

either take such evidence itself or direct it to be taken by the trial court.

The court in *Juma'at bin Samad* referred to s 257 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which provides in similar terms as s 55(1) and held at 347, [34] that:

> The core principle in s 257 of the CPC, after all, is that additional evidence may be taken if it is necessary, which must mean necessary in the interests of justice. That said, it must be emphasized in no uncertain terms that such a situation will arise only in the most extraordinary circumstances.

Section 257 provides as follows:

> In dealing with any appeal under this Chapter the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a District Court or Magistrate's Court.

The court in *Juma'at bin Samad* also referred (at 347, [35]) to the provision in s 257 as a "narrow exception" and to English cases such as *R v Gatt* [1963] Crim LR 426, and *R v Parks* [1961] 1 WLR 1484 that took the view that the power to adduce evidence which was available at trial would be exercised if the court felt that there might otherwise be a miscarriage of justice if leave to adduce such evidence were refused. The rule in s 55(1) of the SCJA and s 257 of the CPC permitting the appellate court to grant leave to adduce further evidence to avoid a miscarriage of justice is to be balanced by the public interest in the finality of trial and ensuring that trials are not reopened each time evidence that should have been admitted at first instance was not admitted. Hence, the courts in cases such as *Juma'at bin Samad* and *R v Parks* took a narrow view of the provisions in question and regarded them as applicable only in "extraordinary circumstances". We would, however, emphasise that what is paramount under s 55(1) of the SCJA and s 257 of the CPC is the question of the relevancy, more specifically, materiality, as well as the credibility, of the further evidence to be adduced.

7 The present application did not arise from a trial but from proceedings in which the appellant had indicated that he would not claim trial but plead guilty to the charge against him. There was no evidence other than that which had been admitted by way of the statement of facts. Ultimately, the crucial issue in the proceedings below related only to sentence, which, generally, is a matter of the judge's discretion. Although *Ladd v Marshall* had been used as a reference, we are mindful that it was a civil case. In criminal cases, where the standard of proving guilt is higher, s 55(1) and s 257 of the respective Acts would be the more direct starting points of reference. The three conditions of *Ladd v Marshall* may be useful points for consideration even in a criminal case (after all, they are valid and reasonable considerations) so long as the court, in considering them, remains mindful of the higher burden of proving guilt in a criminal case. In a case such as the present, where the only issue is that of sentence, the question of the burden of proof does not have the same significance. That is because, traditionally, counsel has much latitude in what he may say by way of mitigation. In the unusual event in which a particular fact might be crucial and the court thinks that that fact is relevant, it may require it to be proved. It is not apparent or conclusive that the judge below would have required evidence to be taken had the appellant stated in mitigation that his siblings would look after him, even if the Prosecution had challenged that statement.

8 In any event, all the material facts had been disclosed to the Defence in this case. The statement of facts had been given, read and admitted. The Defence knew that the mitigating factor was the lack of impulse control by reason of the appellant's mental condition. It was aware of the prognosis and the long-term medical treatment that would be required. It was thus incumbent on the

Defence to satisfy the court that if a term of life imprisonment was to be avoided, there would be family or other support of a reliable nature that would address the need for the appellant's long-term medical treatment. The affidavits produced by the appellant's counsel after sentence had been passed, were, in our unanimous view, inadequate. It was not only that those matters could have been brought out during the mitigation, but the subsequent affidavits did not seem to us to have sufficiently addressed the point that the appellant required close supervision. Aris and Anwar pledged financial support. Ramziz deposed that as a health-care attendant by profession, he could look after the appellant. Aris stated that he was willing to let the appellant stay with his family. The affidavits filed did not convince us that the evidence to be adduced was not previously available or that they were credible. First, the suggestion of unified support from the siblings was contrary to the statement of facts that was admitted by the appellant. Counsel submitted that the Defence was unable to contact the siblings but it seemed strange to us that the appellant and his siblings, who were subsequently said to be close, were not in contact with one another. There was also no evidence that, apart from Ramziz, the other siblings had visited the appellant in remand. All this went towards the question of the credibility of the further evidence to be adduced.

9 In the absence of familial support and in the light of the other factors considered by the court below, like the seriousness of the offence and the manner in which it was committed, the sentence of life imprisonment was not inappropriate. For the reasons above, we disallowed the application for further evidence to be adduced, and also dismissed the appeal proper.