

Public Prosecutor v Han John Han
[2007] SGHC 8

Case Number : CC 32/2006
Decision Date : 15 January 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Shahla Iqbal (Deputy Public Prosecutor) for the Prosecution; Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — Han John Han

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Accused suffering from delusional disorder at time of offence – Risk of recurrence very low but not impossible – Accused's family's undertaking to keep accused under medical observation after release from prison – Accused having prior unblemished record – Whether shorter custodial sentence appropriate

Criminal Procedure and Sentencing – Sentencing – Principles – Whether period of remission should be factor in deciding appropriate length of custodial sentence

15 January 2007

Choo Han Teck J:

1 About one o'clock in the morning of 16 February 2006 the accused plunged an old sword into the chest of his wife and killed her. The couple had two daughters aged 10 and 11 respectively. The wife was carrying their third child and as a consequence of her death, the foetus, about 33 weeks in gestation at post-mortem, also died. The accused pleaded guilty to and was convicted on a charge of culpable homicide not amounting to murder (under s 304(a) of the Penal Code (Cap. 224 1985 Rev. Ed)) for killing his wife. A similar charge for causing the death of the foetus (under s 315 of the Penal Code) was taken into account for the purposes of sentencing.

2 The accused is 51 years old. He has a GCE "O" level certificate and two diplomas. He was working as a project manager in a company that appeared to be in the building industry. He had been collecting religious idols for a long time. He decided to dispose of some of them in December 2005, and that was when he discovered that his idols had been tampered with because he found papers he believed to be "charmed" pasted at the base of some of the idols. From then on, he "began to experience feelings of uneasiness, frightening nightmares and the belief that supernatural forces were trying to kill him". He also believed that all these were part of the hex his wife had put on him through the charmed papers placed in the idols. The medical reports tendered as part of the Statement of Facts showed that the accused had been under treatment for what is known as Grave's Disease which is an autoimmune illness that resulted, among other things, in his developing hypertension and increased anxiety. Little is known about his wife. She was 39 years old, and slept in a separate room from the accused because he snores. She was asleep in her room on the morning of 16 February 2006 when the accused attacked her. The doctors at the maternity hospital initially suspected that the wife had diabetes because the foetus was large for that stage of development. The accused thus suspected that she must be having an affair because, by his reasoning, no one else in his family had diabetes. He further concluded that his wife and her "lover" were using black magic to harm him so that when he was dead they would take his daughters and his possessions. Subsequent tests showed that the wife was not diabetic, but the results were not communicated to her because she was killed

before her next appointment at the hospital.

3 The accused was examined by Dr Kenneth G.W.W. Koh, an Associate Consultant Psychiatrist in the Department of Forensic Psychiatry of the Institute of Mental Health. Dr Koh wrote his report dated 29 March 2006 after interviewing the family as well as Tan Bok Seng, a friend of the accused and Lee Keok Meng, the supervisor of the accused at work. He also discussed the medical history of the accused with Dr Yeo Seem Huat, a private psychiatrist who had treated the accused on two occasions in 1995. Dr Koh was of the opinion that the accused knew what he was doing at the time of the offence and that he knew that what he was doing was wrong, and therefore, Dr Koh was of the opinion that the accused was not of unsound mind. This was clearly a deliberate finding so as to exclude a finding that the accused was insane within the meaning of s 84 of the Penal Code. However, Dr Koh was of the view that the accused was suffering from a psychotic disorder known as "a delusional disorder of the persecutory type" at the time of the offence and concluded that "it would be appropriate to consider that he had an abnormality of mind at the time of the [offence] due to inherent causes (his delusional disorder) and that his mental responsibility for his actions would have been markedly impaired at that time." This finding again, was written in legal terminology taken from Exception 7 of s 300 of the Penal Code.

4 From his observation and interviews, Dr Koh formed the view of a mentally disturbed person in the person of the accused, and he reported that at the time of the offence, the accused's "delusions focused on his wife as being the perpetrator. The vivid, unpleasant nightmares in the two weeks leading to the [homicide] reflected escalating mental disturbance in [the accused] and the peak of his distress was evident in the observations of Mr Tan and Mr Lee in the few days prior to the incident." Dr Koh was also of the view that even if the tests proved that he was not the father of the dead foetus "the diagnosis of delusional disorder would still be valid" because the focus of his delusion was on his wife's use of black magic on him. Finally, Dr Koh observed that "there was progressive psychotic deterioration to the point that he appeared to be decompensating socio-occupationally in the last few days preceding the alleged offence." There was no doubt, therefore, that in the language of Exception 7, the accused suffered from an abnormality of mind that substantially impaired his mental responsibility at the time of the offence. Thus far, there was no difficulty in medicine, law, or common sense.

5 In this case I accepted the statement by Dr Koh that the accused was not of unsound mind. Indeed, since that was accepted by the prosecution and the defence, and proceeding, as I do, on the basis that Dr Koh is an experienced and competent forensic psychiatrist, and Miss Shahla Iqbal and Mr Subhas Anandan are experienced and competent counsel, and all three have appeared numerous times before this court, there is no reason or basis for me to think that the accused was of unsound mind within the meaning of s 84 of the Penal Code. But I do feel obliged to comment, by the way, that doctors, lawyers, and judges too, have always to be mindful of how thinly the line separating s 84 "unsoundness of mind" from Exception 7's "abnormality of mind" is drawn; how delicately one must tread the path from diagnosis to prosecution to defence, to acquittal or conviction and finally, to sentencing an accused who has been diagnosed with a mental illness at the time of the offence.

6 Section 84 is a proposition of law, a general defence that applies to all offences (save perhaps for strict liability offences but that is not a relevant issue before this court). The question whether the facts fit the law is one that has to be determined by the court. There is nothing in principle that prevents a court from making a finding that an accused was or was not of unsound mind within the meaning of s 84 even without medical evidence. Section 84 is a legal definition of insanity. It is ironic that this question of fact rarely, if ever, comes for the determination of the court. It did not in the present case. Evidence of medical insanity or, in a more neutral word, "psychiatric disorder" would be

helpful to the court in deciding whether there were any predispositions or personal history of the accused that might make it more likely than not that he might not know what he was doing at the time of the offence or that he did not know that what he did was wrong, bearing in mind that there are many types of psychiatric disorders or illnesses and the degree of their intensity varies from case to case.

7 In a case in which s 84 applies, the procedure set out in s 314 of the Criminal Procedure Code ("CPC") (Cap 68, 1985 Rev Ed) requires the court, should it think the accused insane, to acquit the accused but to state for the record whether the accused had committed the act constituting the offence. If he did, the court will have to make an order that the accused be "kept in safe custody in such place and manner as the court thinks fit and shall report the case for the orders of the Minister under s 315(1) CPC." Section 315(2) provides that "the Minister may order that person to be confined in a mental hospital, prison or other suitable place of safe custody during the President's pleasure". Thereafter, if that person is fit for discharge, the procedure for such discharge is set out in s 318. It is not necessary to set out that provision in full in the present case, and it is sufficient to say that an accused person detained under s 315 because he had been found insane within the meaning of s 84, would be detained for an indeterminate period because if an accused person does not recover, he might never be released. Conversely, if he recovers within a year or less, he might be released soon after that. On the other hand, an accused found guilty of murder to which Exception 7 to s 300 of the Penal Code applied or was otherwise convicted of homicide not amounting to murder by reason of an abnormality of mind that substantially impairs his mental responsibility, would face a determinate sentence of imprisonment of up to 10 years or for life.

8 It is thus possible that a person who suffers from a psychiatric illness might be declared legally insane (under s 84) and be acquitted and detained at the President's pleasure, or be convicted under circumstances in which Exception 7 applies and be imprisoned. If a person such as the present accused is charged for murder, but not, I hasten to add, the present accused himself, and is found to suffer from a psychiatric illness, he might invoke either s 84 or Exception 7. If he invoked the former, and recovers within a year and is certified no longer to be in danger of causing injury to himself or to any other person, he might be released, for simplicity of argument, putting aside such short period that the doctors might wish to keep him for observation to be sure, by the end of that year. But that same person, if s 84 was not in issue, had pleaded guilty to culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code, would have to be imprisoned, and the court would have to determine what sentence would be appropriate. It would be difficult for the court to take into account the "what if" equation, namely, what if this person had been found insane under s 84? This is because in that case, s 84 would not be before the court. It is the artificial distinction between a legal insanity under s 84 and the commonly perceived medical one under Exception 7 that conceals the difficulties doctors, lawyers, and judges face in assessing the mental condition of an accused and the extent that condition was relevant in the commission of a criminal act by the accused. It could be that s 84 was rarely used because doctors were unable to find a situation where an accused person was so stark raving mad. Most of the time, the accused person would have been asked and would have answered that he knew what he was doing at the time of the offence, and that he knew that what he did was wrong. I can only hope that the doctors were able to determine that when the accused made that declaration of sanity (in the legal sense) he was truly sane and composed. But even then, one can never be sure that although the accused was sane at the time he was asked those questions, that he was also sane at the time of the offence. One might have to presume that the accused himself knew that at the time that his mind was mentally impaired, and yet not so impaired that he not only knew what he was doing but also that what he was doing was wrong, and further, that he was able to recall all that subsequently. If that were the case, what is meant by "an abnormality of mind that substantially impaired his mental responsibility", and what might the impact of that be?

9 I had set out the ironic effects and consequences of the distinction between legal and medical insanity so as to warn myself of the risk of sliding from one side of the line to the other, and also the difficulties posed in sentencing an accused who had suffered from an abnormality of mind at the time of the offence. I am using the word "insanity" as a neutral word because, in spite of areas where they overlap, legal and medical definitions of what is commonly described as insanity may have aspects that do not so overlap. I shall now consider the case of the present accused. In this regard, it is important to refer to a further medical report from Dr Koh dated 2 August 2006. Dr Koh reported that the accused had been taken off the anti-psychotic drugs that were used for the treatment of his psychotic condition, and since then had not developed any further delusions of persecution at all. Dr Koh also administered a test to determine the risk of future violence from the accused, and found that the accused scored well enough for him (Dr Koh) to say that "this indicates his risk of future violence to be very low." Dr Koh concluded his report with the following paragraph:

While [the accused] is serving out any prison term the court may mete out to him, he should be closely observed for the return of any psychotic symptoms. Should he be released, a thorough psychiatric and social assessment should be performed by the prison staff prior to the release as his mental state or social situation may have changed in the intervening time. Thereafter, he should continue strict follow up with a Forensic Psychiatrist and Forensic Case Manager at IMH.

There was also a report from the Medical Officer of the Queenstown Remand Prison, dated 20 July 2006, referring to the observations of Dr Lim Yun Chin, the prison psychiatrist, that the accused's symptoms of delusion were in remission, and noted that he was treated only for insomnia and depression. From these reports it seems that so far as the psychiatrists, particularly Dr Koh, were concerned, the accused is no longer troubled by the psychotic condition that impaired his mental responsibility at the time of the offence, and that by all reasonable tests and observation, the risk of a recurrence was "very low" but not impossible. Hence, Dr Koh cautioned that it would be wise to keep the accused under observation prior to and after his release from prison. The question of how long the prison term should be may now be considered.

10 Mr Subhas Anandan, counsel for the accused, pleaded in mitigation that a light sentence of imprisonment should be considered in this case by reason of the medical reports of a low risk of future violence, the desire of his daughters to have him home, and the undertaking of a close knit family to ensure that the accused would be routinely kept under medical observation after his release from prison. The learned DPP submitted that a ten-year term would be appropriate because the accused would only have served seven years after the period of remission of sentence by the prison authorities. In this regard, I should hasten to point out that the period of remission should not be a factor for the court's consideration. The court's sentence of imprisonment is made as a punishment for past conduct, whereas the period of remission is an executive decision being a reward for future conduct which the accused may or may not earn while in prison.

11 In determining the appropriate sentence in this case, the fact that the act of homicide killed not only his wife but his unborn child as well was relevant. But the two deaths must be considered together insofar as the "mental responsibility" of the accused was concerned. I have thus to revert to the perplexing question of what that truly means. There are so many forms of mental disorders and so many degrees of intensity of those disorders, each afflicting different individuals in its own way. In addition to that, the surrounding circumstances are also relevant. For example, a person who suffers from deep depression from dislocation from his home may have caused no harm, but if he was provoked at the peak moment of his despondency, he might commit suicide or even homicide. I hesitate to use the phrase "decide to kill" because it seems to me, in circumstances where a person's mental responsibility was substantially impaired, "decide" may be too ambiguous a word to use. Then there may be mental disorders so severe, afflicting an individual so acutely that he would have

caused harm without external provocation. These are just two of myriad examples.

12 The accused before me was hitherto a man with an unblemished record. He had what appeared to be a happy family. He had a wife who bore him two daughters and was carrying his third child. He was close to his siblings and parents. He held down a good job and was well thought of by his friends and colleague as far as I can make out from the documents included in the statement of facts. He then suffered a psychotic delusion and that expressed itself in the form of persecution. His otherwise harmless past time of collecting idols became the connection between his persecution and his imagination of the person persecuting him. He began to think that it was his wife who was the persecutor. She was using black magic to hex him. Everything connected to his wife became part of the danger she posed to him. Even her pregnancy became a source of suspicion of infidelity with a malicious motive, that is to say, the wife and her "lover" were plotting to take away his daughters and his possessions when he died. It was in that prevailing state of mind that he woke up at 1am on 16 February 2006 to kill his wife. It was all over within minutes. No planning. No deliberation. But, it seems, whatever drove him to that act, passed as soon as the act was done. He appeared naturally frightened and bewildered, and even contemplated if he should kill himself.

13 I accept that the accused is no longer a danger to himself or to others although for good measure his medical appointments should be maintained until the doctors are satisfied that they could be discontinued. In these circumstances, unable to justify with reason or sentiment for a long custodial sentence, nor to release him for less, I am of the view that a sentence of three years imprisonment is adequate and I so sentence the accused. The term of imprisonment is to take effect from 17 February 2006.

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