

Public Prosecutor v Aw Teck Hock
[2002] SGHC 249

Case Number : CC No 56 of 2002
Decision Date : 25 October 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Leong Kwang Ian (Attorney-General's Chambers) for the Public Prosecutor; Jason Toh (Rayney Wong & Eric Ng) for the accused
Parties : —

Criminal Procedure and Sentencing – Sentencing – Culpable homicide not amounting to murder – Penal Code (Cap 224, 1985 Rev Ed) s 304(b)

Criminal Procedure and Sentencing – Sentencing – Mitigation – Alleged provocation – Accused's previous convictions not related

Judgment

GROUNDS OF DECISION

1 The accused pleaded guilty to the following charge :

"That you, Aw Teck Hock, on the 15th day of May 2002, between 1.00 am and 5.00 am, at Blk 31 Taman Ho Swee #01-161 Singapore, did commit culpable homicide not amounting to murder by causing the death of one Aw Swee Seng, male/73 years, to wit, by kicking his body and head and throwing a plastic chair at him, which act was done with the knowledge of causing such bodily injury as was likely to cause death to the said Aw Swee Seng, and you have thereby committed an offence punishable under section 304 (b) of the Penal Code, Chapter 224."

The Facts

2 The accused, then 37 years old, is the youngest son of the deceased. They lived together in a ground floor flat at Taman Ho Swee. On 15 May 2002, at 12.49 pm, the accused telephoned the police to report that he had a fight with his father the previous night and that when he woke up, he found his father had stopped breathing.

3 In response, two police officers went to the said flat. The accused led them to the living room where his father was lying motionless in a supine position on a mattress. Various injuries could be seen on the father's body. The accused informed the police officers that he used a white plastic chair to hit his father in a fight the previous night. He was then arrested.

4 At about 1.40 pm, medical assistance arrived but the father was pronounced dead.

5 Subsequent investigations revealed that the accused returned home sometime between 1 am and 5 am on 15 May 2002 after an alcohol-drinking session. His father, who was still awake then, nagged him for returning home so late and began to scold him using Hokkien vulgarities. A quarrel

ensued and that escalated into a fight. The accused pushed his father who fell backwards. He then went forward to kick his father's body and head. He also picked up a plastic chair and threw it at his father. He then carried his father to the mattress in the living room before he went into his bedroom to sleep.

6 The accused's neighbour informed the police that he was awakened by a commotion in the accused's flat at around 3 am that day. He also heard arguments and what appeared to be the sound of something hitting the wall.

7 When the accused woke up past noon that day, he found that his father had stopped breathing and was not responding to his calls. He then called the police. Before the police arrived, he put right a sofa in the living room which had toppled over during the fight earlier. He also used a towel to wipe away some blood stains on the floor.

8 The police found a broken white plastic chair with bloodstains outside the rear door of the flat. Bloodstains were also found on the mattress cover, a towel, a cushion cover, the television set and the floor. Subsequent analysis showed that the blood came from the father.

9 The accused underwent a medical examination that same day. No injuries were found on him.

10 The post mortem revealed bruises and abrasions all over the deceased's head, his neck and his 4 limbs. There were also fractures of the ribs. The cause of death was certified as "multiple injuries".

Previous Convictions

11 The accused was convicted of the offence of gaming in public in 1981, 1985 and 1994 and of the offence of gaming in a common gaming house in 1995 for which he was fined on each occasion.

The Mitigation Plea

12 The accused was a cleaner working in the Ministry of Environment Building. On 14 May 2002, he was invited by 4 colleagues to join them for drinks after work.

13 At about 7 pm, 3 of them shared 2 bottles of beer at a coffee shop at Bukit Merah View. The other 2 persons drank coffee and then left the group. At about 9pm, the 3 proceeded to a pub at Clarke Quay where they shared one jug of beer. They then went to a karaoke lounge in Kim Seng Road. One of the trio had beer and then left. The accused and the remaining colleague drank one and a half bottles of brandy until about 2 am when they shared a taxi home. Both lived in Taman Ho Swee.

14 The accused stumbled home and opened the main door. In his drunken stupor, he saw his father storming towards him and hurling vulgarities at him. They quarrelled and he vaguely remembered having pushed his father away. The rest of the events in the early hours that day were completely hazy to him.

15 When he woke up around noon and saw his father lying motionless on the floor, he tried to rouse him. He then telephoned the police and his sister and waited for the police to arrive.

16 The accused married in 1989 and divorced in 1997. His wife has custody of their son aged 9 and their daughter aged 12. After his divorce, he moved in with his father. He was usually unemployed

due to his low education and the poor state of his mental and physical health. He used to do odd job labour until March 2002 when he got a job as a cleaner earning \$40 per day. He was paid fortnightly.

17 Being the youngest in a family of 7 siblings, he was doted on by his father with whom he had lived harmoniously for the past 5 years. His mother passed away a few years ago. The family had a tragic history. His eldest brother committed suicide in 1986 and his second eldest brother was stabbed to death in 2001. The attack on his father was completely uncharacteristic and he offers no excuse for his actions. He is truly remorseful and suffers immense agony over the tragic incident day after day. He "is the one who will suffer the most from the loss of his father who died at his hands". The tragedy happened within the family and the accused is not a danger to anyone.

18 His previous convictions were rather long ago and did not involve offences of violence. He used no weapon in the attack on his father. He was not a habitual drinker of alcohol – he could scarcely afford to do so.

19 Among the many cases cited was ***PP v Jamal anak Nyalau [2002] 3 SLR 66*** where the 3 accused persons there were convicted of an offence under section 304 (b) Penal Code and sentenced to imprisonment of 6 years and 6 months each. There, the 3 accused persons had attacked a helpless victim without provocation. They had no previous conviction and had pleaded guilty at the first opportunity. No weapons were used. It was argued that there was some provocation by the father in the present case. Further the victim here was not outnumbered. I was therefore urged to imprison the accused for no more than 6 years.

THE DECISION OF THE COURT

20 I acknowledge that the accused did inform and cooperate with the police and has pleaded guilty. I also accept that the previous convictions show him to be a man given to gambling rather than to violence.

21 The father was 73 years old. It is quite apparent from the extensive injuries suffered by him and the total lack of injury on the accused's body that the deceased was frail while the accused was much more robust despite his assertion about having a rather weak disposition. Whatever little provocation came from the elderly man was not something that was so out of the ordinary that it should cause so explosive a reaction. The accused literally kicked a man who was down and out.

22 It was highlighted in mitigation that the accused carried his father to the mattress after the attack before he went to bed. Even so, I seriously doubt it was an act of filial piety or of tender mercy or even of remorse. It is as comforting as having been robbed and then having the robber wish you, "Have a good day". It would of course be quite different if he had the good sense then to call for the police or for an ambulance.

23 It was also said that the accused was no habitual drinker of alcohol. However, the merry-making sessions in the evening of 14 May 2002 showed that this could not be so. The effects of consuming excessive alcohol are well known and should certainly be known to the then 37 year old accused. The law does not allow intoxication as a defence to a criminal charge except in very limited circumstances (sections 85 and 86 Penal Code). Intoxication is also of no mitigating value in the case of a grown-up man like the accused. He who imbibes excessively and is then imbued with Dutch courage should not be heard crying, "Don't blame me, it's the alcohol" when charged with some offence committed in the state of intoxication.

24 In the circumstances, I could not agree that the accused should be given a sentence at the

lower end of the scale provided in section 304 (b) Penal Code. I therefore sentenced him to 9 years imprisonment with effect from 15 May 2002, the date of his arrest.

Sgd:

TAY YONG KWANG

JUDICIAL COMMISSIONER

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