

Public Prosecutor v McCrea Michael
[2006] SGHC 119

Case Number : CC 17/2006
Decision Date : 05 July 2006
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Wong Kok Weng, Christopher Ong Siu Jin and Gillian Koh Tan (Deputy Public Prosecutors) for the Prosecution; Kelvin Lim (Kelvin Lim & Partners) and Jason Peter Dendroff (Ann Tan & Associates) for the accused
Parties : Public Prosecutor — McCrea Michael

Criminal Procedure and Sentencing – Sentencing – Date of commencement – Whether court should exercise discretion to backdate commencement of accused's sentence to when accused arrested and remanded in foreign country

Criminal Procedure and Sentencing – Sentencing – Principles – Accused pleading guilty to two charges of culpable homicide not amounting to murder and one charge of causing disappearance of evidence to avoid punishment – Application of "totality" principle and "one-transaction" principle where accused convicted for multiple offences in one set of proceedings – Appropriate sentence – Section 18 Criminal Procedure Code (Cap 68, 1985 Rev Ed), ss 201, 304(b) Penal Code (Cap 224, 1985 Rev Ed)

5 July 2006

Choo Han Teck J:

1 The accused pleaded guilty to two charges of culpable homicide not amounting to murder, under s 304(b) of the Penal Code (Cap 224, 1985 Rev Ed) and one charge of causing the disappearance of evidence with the intention of screening himself from legal punishment, which was an offence punishable under s 201 of the Penal Code. The three charges are set out below for convenience:

Amended 1st Charge

on the 2nd day of January 2002 at No. 21 Balmoral Park, #05-11 Pinewood Gardens, Singapore, did commit culpable homicide not amounting to murder by causing the death of one Kho Nai Guan, male, 46 years old, to wit, by strangling the said Kho Nai Guan, which act was done with the knowledge that it was likely to cause the death of the said Kho Nai Guan, and you have thereby committed an offence punishable under section 304(b) of the Penal Code, Chapter 224.

Amended 2nd Charge

on the 3rd day of January 2002 at No. 21 Balmoral Park, #05-11 Pinewood Gardens, Singapore, did commit culpable homicide not amounting to murder by causing the death of one Lan Ya Ming, female, 29 years old, to wit, by putting plastic bags around the said Lan Ya Ming's head and thereby suffocating her, which act was done with the knowledge that it was likely to cause the death of the said Lan Ya Ming, and you have thereby committed an offence punishable under section 304(b) of the Penal Code, Chapter 224.

3rd Charge

on or between the 2nd day of January 2002 and the 5th day of January 2002 at No. 21 Balmoral Park, #05-11 Pinewood Gardens, Singapore, together with one Audrey Ong Pei Ling, female, 23 years old, and in furtherance of the common intention of you both, having reason to believe that you had committed an offence of murder under section 302 of the Penal Code, Chapter 224, did cause evidence of the commission of that offence to disappear with the intention of screening yourself from legal punishment, to wit, by hiding the body of the said Kho Nai Guan at the carpark of Orchard Towers, Singapore, and removing the bloodstains and disposing of some of the deceased's belongings from the apartment, and you have thereby committed an offence punishable under section 201 read with section 34 of the Penal Code, Chapter 224.

A fourth charge, also under s 201, was taken into account for the purposes of sentencing.

2 The facts admitted by the accused were essentially as follows. He is a 48- year-old financial advisor holding a British passport. At the material time in January 2002, he lived in a flat at 21 Balmoral Park. Living with him in that flat were Kho Nai Guan ("Guan") and Lan Ya Ming ("Suzie"). Guan, a former taxi driver, worked as a chauffeur for the accused. Suzie, a Chinese national, was Guan's girlfriend. The stated facts showed that Guan was invited to stay in the flat from late 1999. Also living in the same flat was one Audrey Ong Pei Ling ("Audrey"). She was a waitress in a discotheque in 2001 when the accused first came to know her and courted her. She eventually left her job and worked as his secretary.

3 On 8 January 2002, the police discovered the decomposed bodies of a man and a woman in a Daewoo Chairman motor car used by Guan to chauffeur the accused. The bodies were subsequently identified to be the corpses of Guan and Suzie. The accused admitted that he had killed them both. Guan was killed in the morning of 2 January 2002 in the course of a fight between him and the accused. The admitted facts showed that the accused was angry with Guan for calling Audrey a slut. The accused punched Guan "continuously on the face until [it] was swollen". He stopped punching only when Guan became motionless. Audrey and the accused examined Guan and realised that he had died. The pathologist described a long list of injuries including fractures to the ribs and the superior thyroid horns, and certified that the death was caused by strangulation.

4 The accused and Audrey noticed that Suzie was about to leave the apartment. They stopped her and brought her to the master bedroom where they asked her if Guan had hidden drugs in the apartment, and also for the location where Guan kept the money that the accused had paid him as his year-end bonus. The accused told her to co-operate since Guan was already dead. They showed her Guan's body which the accused and Audrey had, by that time, put into a wicker basket.

5 In the afternoon, the accused and Audrey enlisted the help of two other persons, one Gemma Louise Ramsbottom ("Gemma") and one Augustine Justin Cheo Yi Tang ("Augustine"). The accused contacted Gemma, and Audrey contacted Augustine. She told Augustine that "the accused had a fight with someone" and that she needed Augustine's help to "dissolve" a "dead rat". Gemma arrived at the flat at 6.00pm with her two children and stayed in the flat while Audrey brought the children swimming until 9.00pm. It was not known what Gemma did in the flat in the meantime. Gemma left the flat with her daughters and promised to return after she had found a babysitter for her daughters. After Gemma left the flat, Audrey saw that Suzie was sitting on the floor of one of the rooms and looking into a filing cabinet. The recital of the fragmented facts continued with Audrey cleaning bloodstains and throwing away a broken vase that Guan had used to hit the accused during their fight in the morning. The accused and Audrey then searched the flat once more, presumably for Guan's money.

6 Later that night, Audrey went to Gemma's flat to help her find a babysitter, and Gemma, in

turn, went back to the accused's flat. Why the two women swapped places was a mystery to the court. Audrey returned to the accused's flat after midnight, which would be early 3 January 2002. Gemma opened the door and let her in. Audrey entered the apartment and noticed that Suzie was lying motionless on the floor in Guan's bedroom. After sleeping for a few hours, the trio, consisting of the accused, Audrey, and Gemma, spent the rest of the day again, searching for Guan's bonus money. We were not told how much money was involved or the reason why the accused was so motivated to find it.

7 In the evening of 3 January 2002, the trio moved Suzie's body to the living room and the accused tied plastic bags around Suzie's neck. He did so with the knowledge that this was likely to cause her death. The pathologist described the cause of death as being "consistent with Suffocation". In the evening of 4 January 2002, Augustine arrived with bleaching compounds, rubber gloves and sponges to help remove the bloodstains in the flat. The statement of facts recited that the accused told Augustine that he "had to 'silence' Suzie as she had witnessed the incident". The accused initially disputed this sentence but, after conferring with his counsel, admitted it despite Deputy Public Prosecutor Wong stating that he would refer to that statement in addressing the court on sentence.

8 The accused, Audrey and Gemma (and later, Augustine) were busy removing evidence of the crimes throughout 3 January 2002. They cleaned the flat of bloodstains, disposed of all Guan's personal items leaving no trace that he had lived in the flat. They then packed Guan's body into the wicker basket and measured the Daewoo Chairman motor car to be sure that the basket would fit into the rear seat of the car. They packed clothing and dumbbells into the wicker basket to add weight to it, in case they decided to dispose of the basket in the sea. Air freshener was sprayed into the basket to mask the smell of decomposing flesh. Then, Suzie's body was put into the boot of the car together with bags containing her personal effects.

9 The accused then drove the car, with Gemma in the front passenger seat and Audrey in the rear passenger seat, all over Singapore from Bukit Timah Hill to Punggol, looking for a suitable place to dispose the bodies. Eventually, they decided to leave the car in the car park of Orchard Towers. The accused and Audrey fled to London on 5 January 2002, and subsequently to Melbourne, Australia where they were arrested on 6 June 2002. The accused pleaded guilty and admitted the statement of facts from which the narrative of events above was extracted.

10 Mr Kelvin Lim, counsel for the accused, told the court in mitigation that his client had been living and working in Singapore for 25 years without the blemish of any previous convictions; that he worked as an "independent financial advisor to the multi-national expatriate community in the Far East", and had written a book entitled *The Expat Survival Kit* under the name of Mike Townsend. He is married with four children but they do not live here. He paid Guan a salary of \$6,000 and was generous to Guan's divorced wife by paying her \$1,600 a month on behalf of Guan towards her maintenance. This was done through his company's bank directly to her so that there would be no complaint by her that she never received any maintenance from Guan. Counsel said that the accused loved Guan like a brother.

11 On behalf of the accused, Mr Lim elaborated the events leading to Guan's death. He said that the accused threw a New Year party for about 30 people the night before, and in the early hours of the morning of 2 January, Guan and Suzie were cleaning up after the party while the accused and Audrey were enjoying a drink by themselves. Guan joined the accused a little later but was in a strange mood. When the accused enquired about his mood, he told the accused that he had taken some drugs. As they were all about to turn in for bed, Guan called Audrey a slut. When Audrey told the accused what Guan had said, the accused went up to Guan and pushed him against the wall and

told him to go to bed. That agitated Guan and caused him to become violent. He threw a chair at the accused. A fight ensued in the course of which Guan smashed a vase on the accused and used the broken vase to threaten the accused. The accused screamed at Guan to drop the vase, but, instead, Guan shouted that he would kill the accused, and tried repeatedly to stab the accused. The latter, fearing that he might be seriously injured or killed, "instinctively reacted in self-defence". After the fight, the accused and Audrey found Guan breathing weakly. The accused unsuccessfully tried various means of resuscitating him.

12 In respect of Suzie, Mr Lim told the court that Suzie went to the aid of Guan when he fought with the accused. She had a knife and stabbed the accused in the hand. The accused then kicked and punched her "until the knife fell out of her hand." Counsel submitted that the accused reacted in self-defence. He said that the accused and Audrey then brought Suzie to the master bedroom, gave her water, chocolates and cranberry juice. She was able to eat them but was unable to stand up. Audrey then cleaned her face and back for her.

13 It is usually much easier to decide on sentence where the full facts are known, especially after a trial when allegations and rebuttals have been fully subjected to cross-examination. In the present case, the facts were sparsely given, and the only independent and contemporaneous evidence was the forensic evidence. Only the accused and Audrey knows what really happened. Neither of them testified. The only eyewitness accounts would have been from the accused and Audrey, and to some extent, Gemma. But Audrey's account was only available months after the crime, and the accused person's version, years later. It was not possible to know if those accounts were true or if it had been distorted or even entirely concocted. The accused person's account given in mitigation must be considered together with the forensic evidence and the statement of facts that he admitted before the court. Where there are discrepancies or inconsistencies and the accused did not wish to challenge them by a Newton hearing, the court would be entitled to give more weight to the statement of facts and forensic evidence.

14 In sentencing a person convicted, in the same proceedings, of multiple offences, it is important to be mindful of the "one-transaction" and the "totality" principles. The "one-transaction" principle, loosely called, is simply a reminder that in some cases, the multiple offences were so closely connected that it might not be fair to treat them as entirely separate offences for sentencing purposes because of overlapping factors. An accused person who steals the purse of his victim after molesting her could be charged for the offence of outraging modesty as well as the offence of theft, or, as in *V Murugesan v PP* [2006] 1 SLR 388, the abduction and rape of a woman were separate acts committed in what the Court of Appeal considered to be part of the transaction of rape. That is one example of the use of the "one-transaction principle". The "totality principle" is an expansion of the "one-transaction principle". Under this principle, the sentencing court would take into account all sorts of overlapping factors that might, in some cases, render the overall punishment harsher than the offender deserves. These principles are applied as part of the court's sentencing discretion, and are important considerations although they are not mandatory rules.

15 In the present case, I first determined what would have been an appropriate sentence in respect of the first offence, that is, the homicide of Guan. Mr Lim said in mitigation that the accused loved Guan as his brother and that the death was caused as a result of a fight arising from a relatively small matter of Guan calling Audrey a slut. Against that, the forensic evidence and the admitted facts showed that however trivial the cause, the fight left Guan with extensive and serious injuries all over his body, from head to foot. His face was covered with bruises, both the superior thyroid horns (around the larynx) were fractured, and bruises were found on his arms and legs. Three ribs (seventh to ninth) were broken. The certified cause of death by Dr Paul Chui, the pathologist, was "strangulation". I was of the opinion that the extensive and violent nature of the assault in the

circumstances, the accused person's brotherly love for Guan notwithstanding, warranted a ten-year term of imprisonment.

16 I next considered what would have been an appropriate sentence in respect of the second homicide. Paragraph 28 of the statement of facts stated as follows:

When Audrey came out of the living room, the accused was putting plastic bags around Suzie's head. The accused then tightly secured the plastic bags around Susie's neck using one of the accused's red ties. The accused did so with the knowledge that this was likely to cause Suzie's death. The body was then wrapped up in various bundles of cloth.

This piece of admitted fact coincided with the description given by Dr Chui of the body when it was discovered at Orchard Towers. In his autopsy report, Dr Chui stated:

Covering the head and neck was a brownish plastic bag (with the Jasons Supermarket logo), the mouth of the bag being secured tightly by a red striped necktie that was knotted over the right posterolateral neck. Scalp hair was caught in the knot.

Dr Chui continued as follows:

On removing the brown plastic bag, another yellow plastic bag was seen over the head. It was noted that there was wound tightly, twice around the face at the level of the nose and mouth a ligature that comprises a length of neckties knotted together around the neck region securing tightly the mouth of the yellow plastic bag.

In mitigation Mr Lim said that Suzie attacked the accused with a knife in order to protect Guan, and so the accused acted in self-defence – as he did in the case of Guan's death. Counsel said, "It was also clear and undisputed that the accused did not intend to cause her death." This contradicted the statement of facts set out above. I was of the opinion that the admitted facts disclosed an act of homicide in circumstances that warranted a ten-year sentence of imprisonment.

17 In respect of the offence of causing the disappearance of evidence, the accused admitted in the charge that he was at the time acting in the belief that he had committed murder and was thus acting to screen himself from being implicated in such offence. Under s 201 of the Penal Code, the maximum sentence was a term of imprisonment of up to seven years. Audrey who pleaded guilty to two charges under s 201 was sentenced to two consecutive sentences of six years' imprisonment each. The accused was the mastermind in this offence, gathering a team consisting of himself, Audrey, Gemma and Augustine to dispose of two corpses, and eradicating all traces of their violent deaths from his flat. In the circumstances, I was of the view that a term of four years' imprisonment was appropriate. In this regard, the sentences imposed on Audrey were relevant in that I ought to keep in my peripheral vision, all related charges and sentences in respect of other accused persons involved in the same or related crimes as that of the accused. The sentence I passed on the accused in this charge was neither an approval nor disapproval of Audrey's sentences. When accomplices are tied or sentenced in separate proceedings, the courts might be influenced differently by the cases as presented to them and thus mete out sentences that differ. If the sentences are not glaringly disparate, then the difference is from discretion. If the difference is great but reasonably explained, then the fact that the sentences differ would not be remarkable. The likelihood of a difference in sentence tends to be higher in cases, such as the present, where the "totality principle" applies. The accused before me was charged with two charges of culpable homicide not amounting to murder, charges that Audrey did not face.

18 After the individual sentences had been decided, the question of whether the sentences were to run concurrently or consecutively fell to be considered. Section 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) provides that:

Where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

This is where I think the "one-transaction" and "totality" principles could be considered again when the court is considering how many, and which of the sentences it would order to run consecutively. This means that the court ought to take into account the totality of all the circumstances in which the offences were committed, and taking into account the connection of those offences to each other, the seriousness of the crime, the manner in which they were committed, as well as the mitigating factors and determine what would be a fair and appropriate overall length of imprisonment (no other punishment was relevant in the present case although imposing a fine was an option) to be imposed on the accused. In determining the overall length of imprisonment, I did not take into account any possible periods of remission that the prison authorities might grant. It would not be right to do so because remission of sentence for good behaviour or other reasons are given in respect of future events and conduct. The sentencing court is only concerned with past conduct and ought not to interfere with the executive discretion in granting remission. It is the same token that restrains the executive from refusing to offer remission on the ground that it thought the court's sentence inadequate. I make this point merely to state that I had not taken the period of remission into account. In the present case, although the second homicide was committed not long after the first, there was a sufficiently long break in time between them. The break, as well as the surrounding circumstances set out in the statement of facts, showed that the two homicides were not part of one transaction, but two separate ones. It will be recalled that after Guan had collapsed, Suzie was still alive and attempted to leave the building. She was prevented from doing so and taken to the master bedroom where she was fed chocolate and cranberry juice. Furthermore, on the "totality principle", I was also of the view that the two homicide offences ought to be punished with consecutive sentences. The manner in which the accused organised a team to destroy evidence of the crime, and his flight from the jurisdiction, were factors that inclined me towards ordering the sentence of the s 201 offence to run consecutively to that of the two homicide offences.

19 Mr Lim appealed to me to let the sentences run from 28 May 2002, the date the accused was first remanded in Melbourne, Australia (there was no explanation why this date differed from that of 6 June 2002 given in the statement of facts.) Audrey's prison sentences had been ordered to take effect from the date of her own initial remand. As I mentioned, Audrey's case is relevant but the facts and circumstances of the accused's case have a sufficient individuality of its own that does not require me to apply exactly what had been ordered against Audrey. In this case, that the accused was remanded for so long prior to trial was due largely to his resistance to extradition proceedings against him. He was entitled to challenge the Singapore government's application for his extradition, and it would be invidious for him to ask that his jail sentence commence from the date of his initial remand on account of his own filibuster. Furthermore, the commencement date of a prison sentence is a sympathy factor at the discretion of the court. That has been my own practice in dealing with the discretion of setting the commencement date of an order for imprisonment. In this case I was not sufficiently moved to exercise my discretion favourably to the accused and let his prison term begin from the date of his arrest or remand in Australia, or even from the date of his extradition back to Singapore.

20 The only mitigating factor in this case was that the accused had no previous convictions for any offence of relevance. Apart from that, there were no other clear factors. Counsel submitted that

he was remorseful, and that he had been affected psychologically by his crimes. Remorse is a state of mind, virtually incapable of proof, although signs of it might be more palpable in some cases than others. In most, if not all, cases, it is a question whether the court believed the offender's statement that he was remorseful. I saw no indication of remorse from the accused in this case; and if there were, they were not apparent until he had been extradited to Singapore. From the admitted facts, the accused had not only prevented Suzie from leaving the flat, but also kicked her in the head before killing her, all because he wanted to find Guan's money – right after he had killed Guan. That was the money that he had paid Guan as bonus payment. I thus find this case starved of mitigating factors that might have softened the orders of imprisonment.

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