Public Prosecutor v Norezam bin Mohsin and Others
[2007] SGHC 180

Case Number : CC 22/2007

Decision Date : 17 October 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Francis Ng and Shawn Ho (Deputy Public Prosecutor) for Prosecution; Abdul Jalil Tahir (A J Tahir & Co) for the first accused; Ramesh Selvaraj (Allen & Gledhill) for the second and fourth accused; Subhas Anandan and Sunil Sudheesan (KhattarWong) for the third accused; Eugene Thuraisingam (Allen & Gledhill) for the fifth accused; S S Dhillon (Dhillon & Partners) for the sixth accused

Parties : Public Prosecutor — Norezam bin Mohsin; Abdul Shahed s/o Akbal Ali; Abdul Razak Bin Abdul Hamid; Mohamad Rizal Bin Mohamed Amin; Mohamed Hishamadi Bin Rahmat; Khairul Iskandar Bin Khamsani

Criminal Procedure and Sentencing – Sentencing – Principles – Whether there should be parity in sentencing between cases of broadly similar facts

17 October 2007

Choo Han Teck J:

1 The six accused persons were members of a motorcycle gang called the "Onyx". On 16 September 2006 the six accused together with other members of the gang gathered in the vicinity of Kelantan Lane with the intention of attacking members of the rival "Alif" gang. They went from there to Magazine Road where they armed themselves with knives, and finally to Central Square where they spotted Zainal bin Nek with his girlfriend seated outside a 7-Eleven store. The fifth accused went up to Zainal and began slashing him with his knife. Zainal ran and was pursued by the accused persons. The fifth accused caught up first and slashed Zainal one more time. When Zainal stumbled, the others attacked him. It was not known how the rest of this assault was carried out other than the admission by all the accused persons to the statement of facts that they had struck Zainal repeatedly with knives.

2 All six accused pleaded guilty to the joint charge under s 304(a) read with s 149 of the Penal Code, Cap 224 for culpable homicide not amounting to murder. They also admitted to the statement of facts. The accused persons vary in age, the sixth accused being the youngest at 20 at the time of the offence and the fifth accused the oldest at 33. The first accused was 27. All accused were ably represented by counsel who mitigated on their behalf. The first accused was a first offender and submitted through counsel that he was not a member of the Onyx gang. He admitted to the offence but said that his role was minimal. I noted that he was of good character in school as borne out by his principal's testimonial.

3 All the accused persons appear remorseful for Zainal's death, and each of them has his own mitigation. The fifth accused, had a history of drug dependency and depression. He was also the oldest and from the statement of facts, the first to lead the assault and was the only one specifically identified as having knifed Zainal and causing at least three slash wounds. The statement of facts mentioned that all the others had used their knives but no details were given. In the circumstances, I was of the view that only the sixth accused merited a lower sentence on account of his youth. I

accepted that although equally culpable for the death, his participation was not as severe as the others. I thus sentenced him to seven years imprisonment and six strokes of the cane. I was of the view that the circumstances did not merit any differentiation for the others (except for the fifth accused) and so sentenced them to ten years imprisonment and 12 strokes of the cane each. The fifth accused being the instigator of the moment and having led the charge, ought to have a slight differentiation in sentence from the others. I thus ordered that he be given 18 strokes of the cane.

4 Counsel for the first accused relied on *PP v Norhisham bin Mohamed Dahlan* [2004] 1 SLR 48 for the proposition that "parity in sentences between cases of broadly similar facts was desirable, but not an overriding principle". In that case, the prosecution appealed against a sentence of ten years imprisonment and 16 strokes of the cane meted out by the first instance court. The DPP argued that an accomplice, Hasik, was sentenced to life imprisonment by another court *PP v Hasik bin Sahar* [2002] 3 SLR 149. *Norhisham* and *Hasik* were related cases and were, in turn, related to *PP v Fazely bin Rahmat* [2003] 2 SLR 184. These three cases arose from the same incident in which a young man was killed, but the circumstances before and during the incident were vastly different from the present; and more importantly, the circumstances leading to the plea of guilty of the various accused persons involved were unusual.

5 *Norhisham* (appeared to be unrepresented) and *Hasik* pleaded guilty to an offence under s 304(a) of the Penal Code, whereas Fazely and another accused claimed trial to a charge of murder. Both accused were acquitted of the charge but found guilty of an offence of rioting under s 147. On appeal, the Court of Appeal amended the conviction to one under s 325 for causing grievous hurt. There were a few others in the same incident who were sentenced to three years imprisonment for their role in getting taxis for the attackers. I am of the opinion that the circumstances of these four groups of cases were very unusual and none of them was a reliable example for the proposition that counsel advanced on behalf of the first accused, namely that the first accused ought to have a discrete sentence from the others in this case on account of the different roles. I accepted that the personal circumstances of each accused were different, but the only accused person whom I was prepared to impose a more lenient sentence was the 20-year old sixth accused. As for the rest, other than the fifth accused, the circumstances were not sufficiently different to merit any clear distinction between them.