

Public Prosecutor v Kwong Kok Hing
[2007] SGHC 86

Case Number : CC 13/2007
Decision Date : 30 May 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Francis Ng, Jean Kua and Luke Tang (Deputy Public Prosecutors) for the Prosecution; Shashi Nathan and Anand Nalachandran (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — Kwong Kok Hing

Criminal Procedure and Sentencing – Sentencing – Appropriate sentence for charge under s 308 of the Penal Code (Cap 224, 1985 Rev Ed) of attempted culpable homicide with hurt – Whether minor injury sustained by victim constituted 'hurt' in the context of the charge – Factors to be considered in sentencing under attempted culpable homicide charge

30 May 2007

Choo Han Teck J:

1 On 14 September 2006 the accused was quarrelling with Low Siew Mui (“Low”) at the platform of the Clementi Mass Rapid Transit (“MRT”) station. It was 6.58pm at the time. The accused pushed Low who fell over the platform and onto the train tracks. She landed on her heels and immediately dashed across the tracks to the other side opposite the platform. As soon as she had crossed over the parapet enclosing the tracks on that side, an incoming train travelling at 50 or 60 km/h went by and had Low not crossed the tracks she would have been hit by the train and would most likely have been killed.

2 The accused was detained by other commuters and handed over to the police who eventually charged him for an offence under s 308 of the Penal Code , Chapter 224 as follows –

“That you, Kwong Kok Hing, on or about the 14th day of September 2006 at about 6.58pm at the westbound side of the train platform at the Clementi Mass Rapid Transit (“MRT”) Station, Singapore, did an act, to wit, you pushed one Low Siew Mui (female, 26 years old) into the path of an oncoming MRT train, with such knowledge and under such circumstances that if by that act you had caused the death of the said Low Siew Mui, you would have been guilty of culpable homicide not amounting to murder, and that you caused hurt to the said Low Siew Mui by the said act, and you have thereby committed an offence punishable under section 308 of the Penal Code, Chapter 224.

3 On 24 May 2007 the accused pleaded guilty to the charge and admitted the statement of facts. The relevant facts were stated as follows. The accused had been dating Low for about two years prior to 14 September 2006, but several days prior to this date, Low told the accused that she wanted to end their relationship. On that day itself (14 September), the accused went to the Clementi Post Office where Low worked to talk about their relationship in the hope that it might be saved. They were unable to talk because Low was busy. It was only at 6pm when she left work that the accused got to speak to her but they quarrelled instead. Low rang her sister to accompany her home from the Clementi MRT station and so she walked to that station with the accused walking and

quarrelling along the way until they reached the train platform, still quarrelling. It was at this point that the accused pushed her and she fell onto the tracks. A video clip of the incident was admitted as part of the statement of facts. The clip showed the facts as described.

4 The statement of facts stated that the accused "knew that his act of pushing [Low Siew Mui] into the path of the oncoming MRT train was one that was so imminently dangerous that it must in all probability cause death and committed the said act without any excuse for incurring the risk of [Low Siew Mui's] death" (sic). These words referring to *mens rea* were taken from s 300(d) of the Penal Code, which is the provision for the offence of murder. The provision for the offence of culpable homicide not amounting to murder is s 299, which, unlike s 300, has three sub-paragraphs instead of four. It is true that the psychiatrist had given his opinion that the accused "would qualify for the defence of diminished responsibility if [Low Siew Mui] had died and [the accused] was charged with murder." However, the accused was charged with attempted culpable homicide not amounting to murder and not with murder. The reference to the terms from the murder provision was thus inappropriate. However, for the purposes of sentencing, this error was not important. The statement of facts also stated that the accused was examined by Dr Tommy Tan, a psychiatrist with the Institute of Mental Health who was of the opinion that the accused 'was suffering from moderate depressive episode at the time of the offence'. The psychiatrist was also of the view that the accused would qualify for the defence of diminished responsibility. The report of Dr Tan dated 27 September 2006 was exhibited as part of the statement of facts.

5 The accused can be described as an intelligent but shy person with psychological problems. It was not disputed that although he was an ASEAN scholar, he did not complete his 'A' levels examinations, and eventually went for university education overseas. He was described by Dr Tan as 'polite, cooperative and forthcoming'. He had been treated by a psychiatrist since 2005 although the details of his early treatment were not known apart from the indication that he had been teased in school for the scars on his chest left on him as a result of a scalding incident occurring in childhood, and that he had been 'feeling depressed since he was young'. Dr Tan reported that three days before the incident the accused went to his private psychiatrist Dr Lim Y C, who gave him electro-convulsive treatment two days later, that is, on 13 September, the day before the incident. The accused told Dr Tan that he did not try to kill Low and that it was "an accident". He said that he had only intended to scare her.

6 Dr Tan's opinion after his examination of the accused was as follows:

In my opinion, Mr Kwong Kok Hing suffers from Dysthymia (F34.1 International Classification of Diseases, edition 100 since he was in school. It is characterised by a chronic depressive mood. In addition, he had a moderate depressive episode in the recent few months, which is characterised by a more severe low mood, lethargy, poor concentration difficulty coping with work and suicidal thoughts.

He was suffering from moderate depressive episode (F32.1) at the time of the alleged offence. He was not of unsound mind at the time of the alleged offence according to McNaughtons Rules as he knew what he was doing and would have known what he had allegedly done was wrong. However he had behaved impulsively at the time of the alleged [offence] because of his mental disorder. He did not think of the possible consequences of what he had done.

7 In the course of his mitigation plea Mr Shashi Nathan, counsel for the accused, referred to several cases, as did the DPP Mr Francis Ng in his response. Some of the cases concerned actual killings in which the accused persons were convicted and sentenced for culpable homicide not amounting to murder. *PP v Katun Bee Bte S Ibrahim* [2004] SGHC 46 was one of these. In that case,

Woo J sentenced the accused to three years and six months imprisonment for stabbing a man to death. There were some cases that were more relevant in that they were cases of attempted culpable homicide not amounting to murder, that is under s 308 of the Penal Code as was the case before me. In *PP v Chot Saik Kam* [1990] SLR 756 the accused pleaded guilty to a charge under s 308 and was sentenced to three years imprisonment for stabbing his victim several times. In *PP v Low Ah Fatt*, Criminal Case No 36 of 1992 (unreported), another case under s 308, the accused was sentenced to three years and six months imprisonment for setting fire to a room and burning his landlady's son. In *PP v Kee Hwee Lun*, Criminal Case No 24 of 2001 (unreported) a 42-year old mother was fined \$1,000 on each of two charges under s 308 for attempting to kill her three children, aged between three and six years. It will be obvious that these cases have disparate sentences ranging from a fine of \$1,000 to imprisonment of three years and six months. It will also be obvious that the facts were quite disparate, and the mitigating factors might also have been different. There was certainly no previously known case similar on the facts as the present.

8 Mr Shashi Nathan informed the court that the accused had given a written apology to Low and had undertaken that he would no longer bother her. This letter was given to Low in the presence of the DPP. Mr Ng says that Low accepted the apology but had not forgiven the accused. I did not require Low to say so personally and prefer to take the more charitable view that even if she had not, she might do so some day. In the meantime, it was more important to consider that the accused's parents, who were in court, would be looking after the accused in Malaysia after he was released from prison, and that arrangements had been made by them to arrange for psychiatric care to be continued in Malaysia.

9 Under s 308, the punishment may extend to three years imprisonment and if hurt was caused, up to seven years. The charge on which this accused was convicted alleged that hurt was caused. The element of hurt in this case was identified from Low's statement during her medical examination that she had "pain over her right calf associated with numbness". The statement of facts stated that when she was helped out of the MRT tracks shortly after the incident she "realised that her right calf was sore and painful". Considering these statements and after watching the video clip, I am of the view that Low had probably pulled a muscle as she landed on the tracks. Whether an injury of this nature constitutes "hurt" in the context of the charge is not only a test of meaning, of which I think it will pass; it is also a test of judicial charity, of which I hope it will also pass. The DPP suggested a sentence between three to five years' imprisonment. I am mindful that the act of pushing someone onto a railway or MRT track is a dangerous act that endangers that person's life, but the act of endangering life alone is not the test. It will be seen that s 336 of the Penal Code provides specifically for the offence of doing an act that endangers life, and the punishment is imprisonment of up to three months, and if hurt was caused in the process, s 337 provides that the punishment will be imprisonment of up to six months. It is true that Low was fortunate to be alive. Her good fortune is thus also the good fortune of the accused. He might otherwise have faced a murder charge. The danger of the act was inherent in the charge and therefore should not be expanded to the extent that we punish the offender for what might have been instead of what was the fact. Dr Tan's opinion of the accused person's state of mind at the time of the offence must be considered in the context of the charge. Dr Tan stated that the accused "had behaved impulsively at the time of the alleged [offence] because of his mental disorder". He did not think of the possible consequences of what he had done." That behaviour was, in his view, connected to the depressive illness that the accused had at the time. I think that a sentence of one year's imprisonment is sufficient punishment for this accused, a first offender.