

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 49

Criminal Case No 13 of 2016

Between

PUBLIC PROSECUTOR

And

BAC

GROUND OF DECISION

[Criminal Law] — [Offences] — [Culpable homicide]

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Public Prosecutor
v
BAC

[2016] SGHC 49

High Court — Criminal Case No 13 of 2016
Tay Yong Kwang J
18 March 2016

31 March 2016

Redacted

Tay Yong Kwang J:

1 The accused is a female Singaporean who is now 43 years old. She pleaded guilty to the following charge:

That you, BAC,

are charged that you, on 13 September 2014, at or about 1 p.m., at Block XXX Tampines Avenue X #09-XXX, Singapore (“the Unit”), did cause the death of one (deceased), male/7 years old, by pushing him out of the kitchen window of the Unit and causing him to fall to the ground floor, which act was done with the intention of causing his death, and you thereby committed an offence punishable under section 304(a) of the Penal Code (Cap. 224, 2008 Rev Ed).

2 The punishments provided by law under s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed) in respect of the charge are as follows:

Whoever commits culpable homicide not amounting to murder shall —

(a) if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, be punished with —

(i) imprisonment for life, and shall also be liable to caning; or

(ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

3 Taking into consideration the fact that the accused is a female and therefore not liable to caning as per s 325 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), I sentenced the accused to 5 years' imprisonment with effect from 13 September 2014, the date of arrest.

The Statement of Facts

4 The accused admitted all the facts set out in the following statement of facts:

I. Introduction

1. The accused is one BAC, Female, 43 years old, Singaporean, Date of Birth: [XX] September 1972 (NRIC No.: S72XXXXXX). She was employed as an Education Manager at XXX Cosmetics Pte Ltd at the time of the commission of the offence.

2. The Deceased is one [XXX], Male, Singaporean, Date of Birth: XX January 2007 (Birth Cert No.: TXXXXXXX). He was seven years old at the time of death. The Deceased was the second child of the Accused. The Deceased was diagnosed with autism spectrum disorder, which is a childhood-onset condition characterized by delay in speech and language development, difficulties with social communication and social interaction, as well as repetitive behaviours and unusual interests. The medical report on the Deceased dated 23 September 2014 prepared by Dr Lim Choon Guan of the Department of Child and Adolescent Psychiatry, Institute of Mental Health, is attached at **Tab A**.

3. The witness is Jarni Endah Sari ("Jarni"), a 32-year-old Indonesian female. At the time of the incident, she was working as a foreign domestic helper at Block XXX Tampines Avenue X, #07-XXX, Singapore ("Blk XXX #07-XXX"). The kitchen area of Blk XXX #07-XXX overlooks the kitchen area of Block XXX Tampines Avenue X #09-XXX, Singapore ("the Unit").

4. Prior to his demise, the Deceased resided at the Unit with the Accused, his father and his elder brother.

II. Facts relating to the charge

A. First information report

5. At or about 1 pm on 13 September 2014, the police received a call from a caller identifying herself as Mdm Oon reporting, "There is a female that I think fell off the building. She looks like a maid. I am not sure if she committed suicide. Can you send your officers over? I only heard a loud bang". The location given was the foot of Block XXX Tampines Avenue X, Singapore ("Blk XXX").

6. The police and paramedics arrived at the scene shortly. Upon police arrival at the scene, they found the motionless body of a young boy at the rear of Blk XXX near the column for unit number "XXX".

7. Vertical policing was conducted and the police were later informed by some residents of Blk XXX that the dead body seemed to resemble the Deceased who stayed on the 9th floor of the said block at either #09-XXX or #09-XXX.

8. Acting on this tip, the police knocked on the door of the Unit and were received by the Accused, who opened the door hugging a pillow. The Accused appeared to be in a daze and had her eyes closed. When asked who the current occupants of the unit were, the Accused said that she was in the Unit with one son as her husband had left with her other son. When informed that the police were investigating a fall from height, the Accused fell to the floor crying and was in a hysterical state. The police officers observed that the kitchen window and grilles of the Unit were open wide and a stool had been left under the open kitchen window.

9. Paramedics detected no sign of life from the Deceased and pronounced him dead at 1.09 pm on 13 September 2014.

B. The incident

10. On 13 September 2014, the Accused awoke at 4.30 am after a fitful sleep and started working on household chores. Throughout the morning, the Accused was engaged in a cold war with her husband, which escalated when she shouted out for him to bring in the laundry from the kitchen window when it started raining heavily. Her husband brought in the laundry and threw the aluminium poles bearing the clothes on the kitchen floor. The Accused's husband then left the Unit to send their elder son for tuition at or about 11.30 to 11.45 am, leaving the Accused alone in the Unit with the Deceased.

11. After the departure of her husband and elder son, the Accused cleared the clothes pegs that had been strewn on the kitchen floor to prevent the Deceased from tripping on them. She noticed people from the opposite block staring at her and pointed her middle finger at them. The Accused then picked up a black stool originally placed near the entrance of the kitchen and placed it at the kitchen window with the intention of climbing up and looking down to find the missing aluminium poles that had fallen off due to the heavy rain. The window grilles had been slid to the side and the kitchen window was open, which was unusual as the grilles were usually locked for safety reasons. However, she decided against climbing atop the stool as she was feeling dizzy. The Accused decided to take a shower to freshen up first. At the time, the Deceased was watching "Dora the Explorer" on television in the living room.

12. After coming out of the shower, the Accused saw that the Deceased had fallen asleep on the sofa with the television still on. As the Deceased had defecated in his trousers, the Accused removed the faeces from his trousers. The Accused then rested in her bedroom with her room door open.

13. While she was resting in her bedroom, the Accused heard some noises in the kitchen and decided to make a check. When she entered the kitchen, she saw the Deceased and was seized by the thought that he was the reason for her exhaustion and marital problems. The Accused formed the intention to cause the Deceased's death. The Accused saw that the black stool was still placed at the kitchen window and coaxed the Deceased to stand on top of the black stool. The Accused then told the Deceased to look down from the open kitchen window to search for his grandmother. When the Deceased complied with the Accused's instructions, the Accused grabbed his calves and pushed him out of the kitchen window, causing the Deceased to fall to the ground floor.

14. This was witnessed by Jarni, who was in the kitchen of Blk XXX #07-XXX at the material time. Jarni observed the Accused standing behind the Deceased at the open kitchen window of the Unit. The Deceased was observed by Jarni to be waving his hands and looking to the ground floor as if looking for something. Jarni then saw the Accused pushing the Deceased out of the kitchen window to the ground floor.

15. When the police arrived, the Accused was placed under arrest.

C. Autopsy report

16. Associate Professor Gilbert Lau, Senior Consultant Forensic Pathologist at the Health Sciences Authority, conducted an autopsy on the Deceased on 14 September 2014 at 10.30 am. He concluded that the Deceased's cause of death was due to multiple injuries, particularly of the head, consistent with a fall from a height. No typical defensive injury was found. At the time of the autopsy, there was no morphological evidence of any natural disease which could have caused or contributed to the death. The autopsy report dated 22 September 2014 is attached at **Tab B**.

D. Psychiatric assessment of the Accused

17. The Accused was examined by Dr Jerome Goh Hern Yee ("Dr Goh"), Senior Consultant and Chief, General and Forensic Psychiatry, of the Institute of Mental Health, Singapore, on 17 and 26 September 2014, as well as on 1, 14 and 21 October 2014.

18. Dr Goh opined that the Accused has a background of major depressive disorder. The Accused had a relapse of her depression and was labouring under depressed symptoms around the time of the offence. The Accused was not of unsound mind at the time of the offence, in that she was aware of the nature and quality of her actions. However, Dr Goh opined that the nature and severity of her depressive symptoms would have substantively impaired her mental responsibility for her actions or omissions around the time of the offence. The psychiatric report on the Accused prepared by Dr Goh dated 27 October 2014 is attached at **Tab C**.

19. Dr Goh also prepared a clarification report stating that the Accused's risk of violent recidivism was low and she was in partial remission of her condition. The Accused had shown significant improvement after initiation of antidepressant medication in prison and had been adherent to her psychiatric treatment in prison. She would require continuing psychiatric

care to maintain remission of her depression and help her cope with the Deceased's death and her reactions to this. The clarification report on the Accused prepared by Dr Goh dated 4 December 2015 is attached at **Tab D**.

III. Conclusion

20. On 13 September 2014, at or about 1 pm, the Accused pushed the Deceased out of the kitchen window of the Unit, causing him to fall to the ground floor, which act was done with the intention of causing his death. The Deceased died from injuries resulting from the fall which was a direct consequence of the Accused's actions.

21. The Accused has thereby committed the offence of culpable homicide not amounting to murder punishable under section 304(a) of the Penal Code (Cap 224, 2008 Rev Ed).

[Tabs A, B, C and D are not reproduced here.]

The accused's antecedents

5 The accused has a few antecedents, albeit not of significance here. In 1990, she was convicted of theft under s 380 of the Penal Code (Cap 224, 1985 Ed) and was ordered to undergo probation for one year. In 2008, she was convicted under s 5(3) of the Employment of Foreign Workers Act (Cap 91A, 1998 Rev Ed) for employing a foreign worker otherwise than in accordance with the conditions of the work permit. A second charge under s 22(1) of the Employment of Foreign Workers Act for failing to comply with conditions of the work permit was taken into consideration. She was sentenced to a \$4000 fine.

The Prosecution's submissions on sentence

6 The Prosecution submitted that a range of five to seven years' imprisonment would be appropriate in the present case. The cases of *PP v Kang Kah Li*, Criminal Case No. 28 of 2009 (10 July 2009, unreported) ("*Kang Kah Li*") and *PP v Goh Hai Eng*, Criminal Case No. 4 of 2010 (24

February 2010, unreported) (“*Goh Hai Eng*”) were cited in support of such a sentencing range. Notably, the accused persons in these cases also suffered from severe depression that significantly impaired their mental responsibility at the time of the offence.

7 The Prosecution further submitted that an aggravating factor in the present case was the presence of some element of planning and pre-meditation. This could be seen from how the accused had coaxed the deceased onto the stool and told him to look out of the window before pushing him out of the window to his death. The Prosecution argued that this element of planning and premeditation was also present in *Kang Kah Li* and *Goh Hai Eng*.

8 Nonetheless, the Prosecution acknowledged that similar to the cases of *Kang Kah Li* and *Goh Hai Eng*, the accused was likely to pose a low risk of danger to society. Hence, taking into account the presence of planning and premeditation as well as the accused’s mental condition that substantially impaired her mental responsibility for her offence, it was submitted that a sentence of between five to seven years’ imprisonment would be sufficient punishment for the accused.

The mitigation plea

9 The Defence submitted that a sentence of not more than five years should be imposed. The following points in mitigation were raised:

- (a) The accused had a psychiatric history of major depression since 2008, which may be linked causally to the deceased’s autistic condition.

(b) The accused was a working woman and the primary care-giver to the deceased. She buckled under the pressures of caring for a special needs child whilst labouring under depression.

(c) The accused was a loving wife and mother. The Defence tendered letters written by the accused's husband and their elder son stating the same and that they wished to be reunited with her soon.

(d) The accused formed the thought of causing death to the accused only at that the point of time when she saw the deceased in the kitchen, after she had cleaned up the deceased. When the police arrived, they found her hugging a pillow with her eyes closed and later collapsing in hysteria.

(e) The accused has been in custody since September 2014 and has responded well to treatment. She has made such swift recovery that she was asked to be a mentor to newcomers in prison.

The court's decision

10 The accused had admitted readily to her actions and pleaded guilty to the charge without reservation. In her statement to the police taken one day after the tragic incident, she spelt out in detail the events that took place on the previous day.

11 The accused had a pre-existing and documented mental condition that was directly attributable to the deceased. In a medical report dated 27 October 2014, Dr. Jerome Goh Hern Yee ("Dr Goh") confirmed that she was diagnosed with major depression since 10 September 2008, which was six years before the time of offence. Dr Goh reported that the accused had told

him that her “whole world came crashing down” when the deceased was diagnosed with autism at three years of age. It was then that she began to have suicidal thoughts as well as thoughts of harming the deceased. She also blamed herself for the deceased’s condition. In my view, an accused’s documented pre-existing depression that is directly linked to the victim carries much more weight as a mitigating factor than assertions of depression or other mental disorders that are made only after an accused has committed an offence and has been arrested, especially when such an accused had been functioning normally before the offence.

12 The accused’s mental disorder affected her judgment adversely at the time of the offence. Dr Goh was of the opinion that the accused was aware of the nature and quality of her actions at the time of the incident but her depression would have substantially impaired her mental responsibility for her actions.

13 The accused’s risk of reoffending is low. In his clarification report dated 4 December 2015, Dr Goh opined that the accused’s risk of violent recidivism is low but that she would “require continuing psychiatric care” to maintain remission of her depression. She also appeared to be recovering well from her depressive disorder while in custody. In Dr Goh’s opinion, the accused’s “recovery prospects are good”.

14 Finally, the accused has strong family support that could assist her on her path to full recovery after she is released from prison. Her husband and her elder son (who is about 14 years old), far from being angry with her for what she had done, have given written statements to express their longing for her return to the family. The husband said that the accused has been “a wonderful

wife to her husband and caring mother to her sons”. The elder son said that the accused “lovingly takes care and sacrifices so much” for the deceased. He concluded by stating that “my mum is a very joyous and happy person who is also very helpful and loving. I really would like my mum do come back home as soon as possible”.

15 For these reasons, although the accused ought to be punished for the offence against her son, I was of the view that five years’ imprisonment, taking effect from the date of the accused’s arrest (13 September 2014), would be sufficient punishment for her. Besides serving as punishment, the period in custody would also be useful in helping her to recover fully as she would have adequate supervision and medical attention while in prison. I hope she recovers well and returns home a much stronger person emotionally to rebuild her family and her personal life.

Tay Yong Kwang
Judge

Anandan Bala and Krystle Chiang (Attorney-General’s Chambers)
for the prosecution;
Anand Nalachandran (TSMP Law Corporation) for the accused.