Public Prosecutor v Muhammad Zulkahil bin Johari and Another
[2009] SGHC 74

Case Number : CC 13/2009

Decision Date : 30 March 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Sellakumaran Sellamuthoo (Deputy Public Prosecutor) for the prosecution; First Accused in-person; Edmond Pereira and S Balamurugan (Edmond Pereira & Partners) for the second accused

Parties : Public Prosecutor — Muhammad Zulkahil bin Johari; Nur Rizal Bin Mohamed Zainul

Criminal Law

Criminal Procedure and Sentencing – Sentencing

30 March 2009

Choo Han Teck J:

1 The first and second accused were described as members of a "motorcycle" gang known as the "Onyx". All that can be presumed and notice taken of the common description of a "motorcycle gang" is that they are groups of people, not restricted to males, who ride about in groups on their motorcycles. They often give themselves names, such as "Onyx", but it cannot be said that all motorcycle gangs have violence or gangsterism as their object; some gather for the thrill of riding. In the present case, members of the Onyx gang gathered on the evening of 16 September 2006 near midnight with the common object of assaulting members of another motorcycle gang known as the "Alif" whose members had recently assaulted an Onyx member. At least 17 members of the Onyx eventually gathered in the vicinity of Magazine Road. Shortly after midnight, when the second accused was at Magazine Road, he was told by a gang member that one Zainal Bin Nek ("Zainal") was spotted near Central Square, near Havelock Road. Onyx members believed that Zainal was the deputy leader of another motorcycle gang called "Blackjack" which, according to the Statement of Facts, "had ties" with the "Alif" gang. It was not clear what the nature of that relationship between "Blackjack" and "Alif" was – that is always a problem with idiomatic phrases, such as "had ties" – but it was not crucial in this case for the court to know the nature of the relationship between the Alif and Blackjack gangs.

2 When he was told that Zainal was at Central Square, the second accused instructed his gang to go and search for Zainal. The second accused and three others did not join in the hunt nor did they take part in the assault by the Onyx gang on Zainal. Zainal was stabbed and eventually died. Six members of the gang pleaded guilty and were sentenced on 17 October 2007. Of the four who did not participate in the attack, the second accused was the only one charged. He pleaded guilty to this charge of culpable homicide not amounting to murder, a charge under s 304 (a) read with s 149 of the Penal Code, Cap 224. He was also charged with an unrelated incident of assault which took place on 15 April 2007. This was a charge under s 324 of the Penal Code. He pleaded guilty to both charges.

3 The first accused was similarly charged for culpable homicide not amounting to murder in respect of Zainal's death. He also pleaded guilty to the charge. The first and second accused persons were also charged for being members of an unlawful assembly and causing hurt to Zainal in respect of

the same incident. These charges were taken into account for the purposes of sentencing. The first accused was 19 years old at the time of the assault. He was the second youngest of the members who had been charged. One Khairul Iskandar was a year older. Khairul was sentenced to seven years imprisonment and six strokes of the cane in the previous proceedings before this court. The others were sentenced to 10 years imprisonment and 12 strokes of the cane except for one Mohamed Hishamadi who was sentenced to 10 years imprisonment and 18 strokes of the cane on account of his being the oldest of the group and the instigator of the actual assault.

4 In a case such as the present where many accused persons were involved, the court had to maintain a consistency of sentences without ignoring or overemphasizing the individual circumstances of each offender. Hence, the differences may not be as great as might be expected by the accused or the prosecutor. The first accused in the present proceedings was younger than Khairul but his participation was more violent. On the other hand, the second accused was not present at the assault but he had the same common object and appeared to be one of the senior members of the gang. Taking all these factors into account, I was of the opinion that the first and second accused persons before me in these proceedings should be given sentences that are close to those imposed on the six others in the previous proceedings. The first accused was thus sentenced to nine years imprisonment and 10 strokes of the cane; and the second accused was sentenced to eight years imprisonment and 10 strokes of the cane in respect of the homicide charge, and 12 months' imprisonment and six strokes of the cane in respect of the charge for causing hurt. Since they were totally unrelated offences and since I also took into account the overall terms of imprisonment, I ordered the two terms of imprisonment to run consecutively.

5 The DPP submitted that a sentence of corrective training might be an appropriate sentence in respect of the second accused. The conditions required to be satisfied under s 12(1) of the Criminal procedure Code, Cap 68 are that the charge for which the accused is being sentenced was one that was punishable with imprisonment of up to two years and the accused must also have, since attaining the age of 16, been convicted of two offences punishable with imprisonment of at least two years. The DPP produced a memorandum of previous convictions which showed that the second accused was convicted in 2002 and 2003 of an offence under s 427 of the Penal Code (for committing mischief) and also for an offence under s 506 of the Penal Code for criminal intimidation. An offence under s 427 as well as s 506 is punishable with imprisonment of up to two years. The DPP sought to persuade me that the second accused had other offences related to violence which were punishable with more than two years imprisonment. These were not in evidence so I do not think that they should be taken into account. The DPP submitted that the requirement to produce the memorandum of previous convictions was only a "technical requirement". Insofar as the appropriate previous convictions were concerned, they were not just a matter of a "technical" requirement. It was, as Mr Pereira, counsel for the second accused, pointed out, a legal requirement. It was a condition imposed by law. Further, in addition to those conditions, the court may impose an order for corrective training of not less than five and not more than 14 years of corrective training, only if it were satisfied that "it is expedient with a view to [the accused person's] reformation and prevention of crime that he should receive training of a corrective character". In the present case, given the overall circumstances and what appeared to me to be sufficient and sincere remorse, I was of the opinion that a sentence of corrective training was not necessary.