Public Prosecutor *v* Tran Thi Tien
[2023] SGDC 169

Case Number : DSC-900662-2021, Magistrate's Appeal No. 9099-2023-01

Decision Date : 04 August 2023

Tribunal/Court : District Court

Coram : Eddy Tham

Counsel Name(s) : Prosecuting Officers Andre Moses Tan and Jason Lee Hong Jet (Ministry of Health) for the Public Prosecutor; Defence Counsels Chooi Jing Yen, Chen Yongxin and Ng Yuan Siang (M/s Eugene Thuraisingam LLP) for the Accused.

Parties : Public Prosecutor — Tran Thi Tien

Criminal Law – Criminal Procedure and Sentencing – Sections 13(a) and 17(1)(e) of the Medical Registration Act Chapter 174, Revised Edition 2014 – Sentencing

[LawNet Editorial Note: An appeal to this decision has been filed in MA 9099/2023/01.]

4 August 2023

District Judge Eddy Tham:

Background

1 This is the Prosecution’s appeal against sentence for one charge DSC-900662-2021 brought under section 13(a) Medical Registration Act (Cap 174, Rev Ed 2014) (“the MRA”) and punishable under section 17(1)(e) of the MRA.

2 The Accused had initially claimed trial to this charge together with another two charges. At the end of the Prosecution’s case, the Defence had indicated that the Accused would plead guilty to this charge, which was thereafter stood down. For the remaining 2 charges, at the end of the Prosecution’s case, the Accused elected to remain silent. I acquitted the Accused on charge DSC 900663 -2021 but convicted her on the other charge DSC 900666-2021 under section 5(2) Private Hospitals and Medical Clinics Act (Cap 248, Rev Ed 1999.

3 The Accused thereafter pleaded guilty to the charge DSC 900662-2021,which had been stood down.

4 I sentenced the Accused on the convicted charge as well as the charge which she has pleaded guilty to, and sentenced her as follows:

DSC 900662-2021: fine of $6,000; and

DSC 900666–2021: fine of $4000.

5 The Prosecution has filed an appeal against sentence only in respect of the charge for which the Accused had pleaded guilty to, namely DSC 900662-2021. I will now set out my reasons for the sentence for this charge.

The Charge

6 The charge which Accused pleaded guilty to, DSC 900662-2021 is set out here in full:

> … you, sometime between 2016 to 2018, at [address redacted], in Singapore, did do an act as a medical practitioner, to wit, by stitching an open wound on an unidentified woman's head at the temple area using a needle with thread, while being an unauthorised person, that is to say, a person who was not registered as a medical practitioner under the Medical Registration Act and who did not possess a valid practicing certificate, and you have thereby contravened Section 13(a) of the Medical Registration Act (Cap 174, 2014 Rev. Ed) and committed an offence punishable under Section 17(1)(e) of said Act.

The Statement of Facts

Background facts

7 The Accused is Tran Thi Tien, female, 35 years old, a Vietnamese citizen and a Singapore Permanent Resident. At the material time, she resided at [address redacted] (the "HDB Unit").

8 At all times, the Accused was not registered as a medical practitioner under the MRA and she did not have a valid practicing certificate allowing her to practise as or do an act as a medical practitioner. The Accused was therefore an unauthorised person as defined under section 13(b) of the MRA ("Unauthorised Person").

Circumstances relating to the 1st Charge

9 Sometime between 2016 to 2018, an unidentified female ("X") was in Singapore for a holiday. X was a friend of the Accused's older sister and was the Accused's godmother.

10 X's husband had hit X and X sustained an open wound at her right temple area behind her right eye (the "Wound"). X wanted the Wound to be stitched but could not afford to go to a hospital. As the Accused was trained in invasive aesthetic procedures, the Accused's older sister asked her to help stitch X's Wound. The Accused agreed to stitch up X's Wound.

11 Sometime between 2016 to 2018, X and the Accused's older sister visited the Accused at the HDB Unit. The Accused was wearing a white coat with a blue circular crest on the left breast pocket stating 'Myeong Woo University Hospital' in English.

12 The Accused brought X into a room at the front of the HDB Unit (the "Room"). In the middle of the Room was a single bed that was covered with a pink material (the "Bed"). Next to the Bed was a stool, a lamp which was switched on and illuminated the Bed, and a white trolley containing, scissors, plastic dishes, and several bottles containing unknown contents.

13 X wore a blue shower cap on her head and laid down on the Bed. A white material was placed between X's head and the Bed. Three oval shaped metal shaped dishes were placed on the Bed beside X's head and shoulders, and they contained forceps, syringes, cotton buds, and sealed packets of unknown contents.

14 The Accused then used water and alcohol wipes to clean X's temple area. Thereafter, the Accused sat on the stool next to the Bed and used a surgical suture needle and thread to stitch X's Wound (the "Stitching Procedure"). The Accused wore rubber gloves and used forceps to hold the surgical suture needle as she performed the Stitching Procedure. A total of two stitches were made by the Accused to close X's Wound.

15 An unknown person filmed the Accused carrying out the Stitching Procedure (the "Video").

16 After the Stitching Procedure was completed, X and the Accused's older sister left the HDB Unit. No payment was made to the Accused for the Stitching Procedure.

Expert opinions regarding Stitching Procedure

17 On 22 October 2019, Adjunct Associate Professor Chew Min Hoe ("Dr Chew") gave his opinion to the Ministry of Health ("MOH") on the Stitching Procedure performed by the Accused as recorded in the Video (Annex A). In his opinion, the Stitching Procedure was a practice of medicine and the instruments used by the Accused looked similar to those found in hospitals, as well as family physician clinics which perform simple surgical procedures. Dr Chew opined that these instruments are only handled by doctors who are trained to do so, and that nursing staff and allied health professionals in the hospitals are not accredited to do so. Dr Chew also opined that the needle used by the Accused looked like a surgical needle and thread and what he would use during surgical procedures.

18 On 16 June 2020, Dr Gavin Kang ("Dr Kang") gave his opinion to MOH on the risks of providing the Stitching Procedure in an HDB flat by a person who was not a trained medical professional (Annex B). Dr Kang identified the following risks, their likelihood of occurring, and their seriousness:

Risk	Likelihood of Risk	Seriousness of Risk
Wound infection	High	Wound infection
Wound dehiscence	High	Wound dehiscence
Scarring	High	Adverse Scarring
Allergy to drug	Medium	Anaphylaxis
Bruising and bleeding	Medium	Bruised appearance

19 By performing the Stitching Procedure on X's Wound sometime between 2016 to 2018, the Accused had, while being an Unauthorised Person, done an act as a medical practitioner, and she has thereby contravened Section 13(a) of the MRA and committed an offence punishable under Section 17(1)(e) of the MRA.

Antecedents

20 The Accused has no previous convictions.

The Prosecution's Submission on Sentence

21 The Prosecution sought an imprisonment term of 3 weeks.

22 The Prosecution relied on the sentencing regime for offences under section 17(1) of the MRA as set out in the High Court's decision in *Neo Ah Luan v Public Prosecutor* [2018] 5 SLR 1153 ("*Neo*"), using a four-step process in coming to the appropriate sentence:

(a) Step 1 – Identify the level of harm and the level of culpability;

(b) Step 2 – Identify the indicative starting point sentencing range according to the harm culpability matrix;

(c) Step 3 – Adjust the starting point according to offender-specific aggravating and mitigating factors that have not yet featured in the analysis; and

(d) Step 4 – Make further adjustments to take into account the totality principle.

23 The Prosecution submitted that harm was in the medium category due to the risks and the seriousness of the risk. It was submitted that the Stitching Procedure is an invasive procedure that involved the management of an open wound and the introduction of foreign materials (e.g. sutures) at multiple points in the immediate region around that wound. It would also require the Accused to have knowledge of what materials to use, where to insert them into X's skin, and how to properly apply them to close the wound (e.g., tightness of the sutures) and there was no evidence that the Accused was trained to perform such a Stitching Procedure.

24 The Prosecution also referred to the opinion of Dr Gavin Kang dated 16 June 20201for their categorisation of harm as 'medium'.

25 Accordingly based on the sentencing matrix laid down in *Neo* of low culpability and medium harm, where the sentencing range is from a short custodial sentence to 6 months' imprisonment, Prosecution had submitted for indicative starting term of 4 weeks' imprisonment.

26 Thereafter, adjusting the indicative starting sentence slightly in view of the late plea of guilty, the Prosecution submitted for a sentence of 3 weeks' imprisonment.

Mitigation

27 The Defence submitted that based on the framework as set out in *Neo*, the harm caused by the Accused was low and her culpability was low as well.

28 The Defence argued that there was no evidence of actual physical harm nor was there any evidence of any psychological or emotional harm. There was also no harm to public confidence in the medical profession or healthcare system as the Accused did not hold herself out as a licenced medical practitioner or collect any payment for the procedure.

29 As for potential harm, the Defence submitted that the risks set out by Dr Kang had been somewhat attenuated by his evidence during the trial that the risks would ultimately depend on factors such as the environment, technique, sterility and how gentle the operation was. The Defence also referred to Dr Chew Min Hoe's evidence in Court. Dr Chew was another witness called upon by the Prosecution. Dr Chew had stated when asked on the risks of infection that the risks of infection to a patient's forehead were generally quite low because the skin there is usually quite clean. He also noted that stitching does not have to be performed in a sterile area if the wound is small. The Defence pointed out that the wound was small in the present case since only 2 stitches only were required to close the wound, as set out in the Statement of Facts at [8].

30 As for the risk of scarring, Dr Chew had stated that this would depend on the skill of the proceduralist and the risk would be low if the proceduralist was experienced. The Defence asserted that the Accused did have some experience with stitching, having graduated from the University of Medicine and Pharmacy at Ho Chin Minh City in 2011 with a Bachelor's degree majoring in General Nursing. The Accused had thereafter performed many stitching procedures in Vietnam as part of her nursing training and she had worked as a nurse in a Vietnam hospital.

31 The Defence and the Prosecution both agreed that culpability was low in the instant case.

32 The Defence thus submitted that based on the *Neo* sentencing framework, a fine of not more than $5000 would be appropriate since both harm and culpability were low.

Application of the sentencing framework

33 An offence under section 13(a) of the MRA is punishable under section 17(1)(e) with a fine not exceeding $100,000 or to imprisonment not exceeding 12 months or to both.

34 The High Court in *Neo* had laid out the sentencing framework as set out in both parties' submissions. In assessing the harm caused, it is not disputed that the level of harm is not just based on actual physical harm but on potential harm as well. I bore in mind the High Court's remarks that in relation to harm, it is appropriate to have regard to "the realistic potential for harm" (see [66]). Otherwise, deterrence would not be served if an unqualified person who managed to carry out successfully an extremely risky medical procedure involving a high level for potential harm gets a lenient sentence ([67]).

35 In the present case, I found that the risks of a stitching procedure set out by Dr Kang above (at[8]) are potentially high in the form of wound infection, wound dehiscence and scarring. Clearly, this procedure if not done properly could potentially result in serious harm such as infection and dehiscence. Furthermore, scarring on the forehead would also no doubt cause psychological and emotional harm to a female subject. Hence, such a procedure as confirmed by Dr Chew should be carried out by a doctor who is trained to carry out such a procedure.

36 Whilst the Defence had referred to the evidence given by Dr Kang and Dr Chew in court to show that such risks would not be as high in the circumstances of the case, it is clear that the potential harm is still very real as the Accused was not a registered medical practitioner. The Stitching Procedure if not done properly can lead to serious complications. There is also no evidence as to whether all the instruments used had been properly sterilised.

37 The Defence also tried to assert that any risks would be mitigated by the fact that the Accused had some experience and qualification to carry out the Stitching Procedure by referencing her degree in Bachelor of Nursing from a Vietnam University and her previous work as a nurse. However, only limited weight could be placed on these assertions due to the lack of details and objective proof of her qualifications, such as whether the nursing degree involved any practical training in the Stitching Procedure.

38 I nonetheless found that objectively, the Accused did carry out the procedure in a relatively proper manner. She had worn surgical gloves and used surgical tools that are found in a hospital. The manner in which she had carried out the stitching using forceps and a surgical needle did not invite any adverse comments from the doctors who had viewed the video and had given evidence in court. She had also used water and alcohol wipes to clean the subject's temple area which would appear to be the proper way to sterilise the affected area. The wound was also relatively minor as only 2 stitches were required. The Accused with her nursing experience in a hospital would be familiar with good health and hygiene practices.

39 The potential harm is also lessened by the fact that no injection was made by the Accused which could introduce materials intravenously into the subject's body which would thereby increase risk of greater harm.

40 Other than the potential harm, I found that all the other guideline factors in *Neo* for the categorisation of low harm are present here:

(a) No actual personal injury was caused;

(b) No actual psychological or emotional harm was caused; and

(c) Public confidence in the medical profession and healthcare system was not undermined as the Accused did not hold herself out to be a registered medical practitioner.

41 On the whole, I found that the harm caused would be on the borderline between low and medium.

42 As for culpability of the Accused, I found that it was clearly on the low side. The Accused did not advertise her services for stitching procedure and she did not provide such service in return for monetary gain.

43 It appears also to be a one-off isolated incident given that the request was made by the Accused's sister. The Accused did not initiate this procedure and instead it arose out of a need to help someone. X had been injured by her husband and the Accused's sister had requested the Accused to carry out this procedure since the Accused was trained in invasive aesthetic procedures and X could not afford the medical treatment at a hospital.

44 The low culpability of the Accused in this case tilted the case in favour of a non-custodial sentence. This was not a typical case for which offenders are offering their services to all and sundry which should only be provided by a registered medical practitioner, where issues of public safety and health might be engaged.

45 I am reinforced in my view when I considered the sentencing precedents tendered by Prosecution and Defence. The first three cases were cited by Prosecution and the fourth case was by the Defence.

46 In *PP v Phan Tuyet Lan* (SC-90297-2021), the offender was facing three charges under section 17(1) of the MRA. The offender was sentenced to 3 months and 2 weeks' imprisonment on one proceeded charge with the other 2 charges taken into consideration. The facts were much more egregious in that the there was actual harm caused with infection of the wound, with emotional harm caused as well. The procedure also involved injections and intravenous treatment. Scale wise, it was much larger considering that the offender was giving treatment for profit to several victims over a period of time.

47 In *PP v Lin Haixia* (SC-903645-2022), the offender faced one charge under section 17(1) of the MRA for providing facial threadfill procedures. Harm was considered to be 'medium' as actual harm was caused with symptoms of pain, headaches and insomnia following the procedure. Culpability was considered to be 'low to medium' as offender had only learned to perform the procedure and thus showed little regard for the health and safety of the customer. She was sentenced to one month's imprisonment. This case appears to be more aggravated as actual harm was caused and implicitly the procedure was carried out for profit.

48 In *PP v Tan Sin Yee* (SC-907337-2022), the offender, a Malaysian citizen, faced 4 section 17(1) MRA charges and pleaded guilty to two charges with the remaining two charges taken into consideration. The procedures were in relation to facial threadlift and double eyelid stitching. No actual harm was caused and the Prosecution had submitted that the harm caused was 'low to medium'. However the culpability was 'medium' as the Accused had planned and advertised that she would be coming into Singapore to offer her services. There was thus an aggravating factor of a foreigner entering Singapore for the purpose of committing an offence. The Accused also did this for the motive of profit. She was sentenced to 2 weeks' imprisonment for each charge. There were clearly aggravating factors in this case which were absent in the case against the present Accused.

49 In *PP v Yang Hui Min* (SC-902842-2022), the offender pleaded guilty to one charge under section 17(1) MRA for injecting Botox into the underarm of the victim. The offender had been providing aesthetic treatment for about 3 months and was charging her customers $220 for Botox treatments. She was sentenced to a fine of $20,000. I found the facts clearly more aggravating than the present Accused as the offender was running a business for profit in carrying out such procedures. It was not a one-off incident and she had advertised her aesthetic treatments on Instagram. Injections were also carried out as part of the procedure.

50 For comparison, I had also considered the fact in *Neo*. There, the offender pleaded guilty to two charges under section 17(1) of the MRA. She had performed injections on her clients' skin with a dermal filler. No actual harm was caused but it was held that the potential for some bodily injury had placed the offences at the 'low to medium' category. Her culpability was assessed to be in the 'medium' category. She had offered these dermal filler injections over a period of about 2 years for profit. The High Court then arrived at an indicative sentence of about 2 months' imprisonment which was then calibrated down to 6 weeks' imprisonment after taking into account the offender's plea of guilt and cooperation with the authorities. I found that the facts in *Neo* clearly more aggravating than the present case, considering that there was injection of dermal fillers into the body of victims, the longer duration of the offending and the motive of profit.

51 Accordingly, I found that for the Accused, a fine would be sufficient. Given that the Accused did not profit from this service rendered to X to meet a medical need, the fine amount should not be a crushing one on the Accused but still sufficiently large enough to be deterrent. I have accordingly sentenced the Accused to a fine of $6000.

Conclusion

52 The Accused had provided a one-off procedure in response to a request to treat an open wound. She believed she had the necessary skills and the proper tools to carry such a procedure and, in the process, breached section 13 of the MRA. No actual harm was caused and no complaint was made following the procedure, although there were some inherent risks involved. Accordingly, a non-custodial sentence was meted out.

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