Chan Chim Yee v Public Prosecutor
[2000] SGCA 6

Case Number : Cr App 29/1999

Decision Date : 11 February 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA

Counsel Name(s) : Franxis Xavier and Quek Bee Choo (assigned) for the appellant; Winston Cheng Howe (Deputy Public Prosecutor) for the respondent

Parties : Chan Chim Yee — Public Prosecutor

Criminal Law – Offences – Murder – Identification of appellant – Whether witnesses' identification of appellant safe

Criminal Law – Offences – Murder – Defence of diminished responsibility – Whether defence made out

(delivering the grounds of judgment of the court): The appellant, Chan Chim Yee, was convicted before the High Court on a charge that on 11 August 1998 at about 7.30pm at the car park of Block 1002, Jalan Bukit Merah, Redhill Industrial Estate, Singapore he committed murder by causing the death of one Ooi Ang Yen (`the deceased`), an offence under s 300 and punishable under s 302 of the Penal Code (Cap 224). He was sentenced to suffer death. He appealed against his conviction. We heard the appeal and dismissed it. We now give our reasons.

Background

The appellant is 42 years old and is married with two children, a son aged 20, and a daughter aged 18. At the time of the offence, the appellant was working as a cleaner in Henderson Industrial Estate.

The deceased was a general worker at Image Printers Pte Ltd at Block 1002, Jalan Bukit Merah [num]04-12. She was 42 years old at the time of her death.

The appellant and the deceased became acquainted at the end of 1995. The deceased went on a trip to China at the invitation of her neighbour, an elderly lady, who was the appellant`s mother. The appellant also went on the trip and a relationship developed between him and the deceased, which they maintained after they returned to Singapore. Subsequently, the deceased formed a liaison with a colleague, Wong Hon Yee (`Wong`), and tried to end the relationship with the appellant. The appellant, however, was not prepared to accept that. According to Wong, one day in June 1998, the appellant went to the deceased`s workplace during lunch time and asked the deceased why she wanted to leave him. Another colleague of the deceased, Cheong Che Noi, recalled an occasion in May or June 1998, when the appellant came to the workplace during lunch, and told the deceased that he missed her and could not bear not seeing her. Then, on 6 July 1998 there was an incident when the appellant confronted the deceased and Wong, while they were on their way to dinner, and the appellant hit Wong on the head. Wong reported the assault to the police.

Prosecution evidence

On the evening of 11 August 1998, the deceased left her workplace on the fourth floor of Block 1002, Jalan Bukit Merah at about 7.30pm in the company of two colleagues, Tay Ah Nai (`Tay`) and Cheah

Choy Keng (`Cheah`). The three of them walked down by the stairs onto the driveway, heading towards a footpath which leads to Block 1003, Jalan Bukit Merah. At that point, a man called out the deceased`s name. There followed an altercation between the man and the deceased in the car park of Block 1002, Jalan Bukit Merah. The man then stabbed the deceased with a knife and fled. The deceased was dead by the time an ambulance officer came and attended on her. She had a stab wound over the anterior lower neck that penetrated between 7 and 8 cm into the chest, another stab wound above her left nipple which penetrated about 15 cm into the chest, and other lesser injuries. The pathologist, Dr Paul Chui, found that the death resulted from the stab wounds which were consistent with wounds caused by a knife.

Identity of the assailant

The appellant was identified as the assailant by Tay and Cheah. Tay`s evidence was that, prior to the evening in question, she had seen the appellant twice. The first occasion was some time in July 1998, when the appellant went to the workplace and the deceased introduced him to her and Wong, and the appellant joined them for lunch in the factory canteen. The second time was about two or three weeks later, when she was walking in a car park near her place of work at about 8am in the morning. She said that on that occasion, the appellant walked towards her and smiled at her, but they did not talk.

On the evening in question, she left the factory in Block 1002, Jalan Bukit Merah by the stairs together with the deceased and Cheah at about 7.30pm. When they reached the ground floor, she heard someone approaching from behind and calling out the deceased`s name. She turned around and saw him face to face at a distance of about two metres and recognised him; it was the appellant. She was very sure that it was the appellant. She and Cheah continued to walk towards the gate leading to Block 1003, Jalan Bukit Merah, and as they were walking towards the gate she heard the deceased conversing with the appellant in Cantonese. She did not hear the entire conversation, but she heard him asking the deceased whether the deceased had a new boyfriend. Subsequently, when she and Cheah were nearing the gate, she (Tay) turned around again. She then saw the appellant assaulting the deceased, although she was not sure whether the appellant was fisting or slapping the deceased. When the deceased fell onto the ground, Tay saw the appellant taking a knife from a yellow plastic bag and stabbing the deceased a few times before running off. Subsequently, on 23 August 1998, she identified the appellant at an identification parade held at the Criminal Investigation Department (`CID`).

Cheah in her evidence in court also identified the appellant as the person who assaulted the deceased. She said that she too had met the appellant on two occasions before the evening in question. On both occasions, he came to the factory to look for the deceased during lunchtime. On that fateful evening she, the deceased and Tay walked down the stairs to the ground floor and when they reached the ground floor a male Chinese called out to the deceased from the rear and stepped forward to her. On seeing that, she and Tay walked away and the deceased and the male Chinese walked behind. All four of them were then walking across the car park heading for the small gate that leads to Block 1003, Jalan Bukit Merah. As they were walking towards the gate she heard the male Chinese asking the deceased whether she was still having a relationship with her boyfriend. The voice of the male Chinese was very loud and he spoke in an angry tone. But she did not hear what the deceased was saying. She then turned around and saw the male Chinese assaulting the deceased who was then groaning in pain. The male Chinese then fled along the footpath. Cheah identified the appellant as the male Chinese who assaulted the deceased. She said that on that evening when she turned around she saw the appellant and got a good look at his face at a distance of about two metres. However, in an earlier statement made to the police on 14 August 1998 during the

investigation, she said: `I wish to say that I could not see the male Chinese clearly as the place was dark. Besides, I have poor eyesight during the night`. At the trial, she was referred to this statement which was inconsistent with what she said in court. She explained that she was at the time frightened and did not know what she was doing when she gave the statement.

The prosecution also adduced evidence to show that on 11 August 1998 the appellant worked between 8am and 5pm at the Henderson Industrial Estate. First, there was the evidence of Adeline Tan Chay Kin. She was, at the material time, employed as the manager of the firm, Regency Asia Building Services, which provided cleaning services to the Henderson Industrial Estate. Her evidence was that on 23 July 1988, the appellant was interviewed by her for the position of a cleaner, and after the interview he was employed as a cleaner starting the following day. All the workers in the morning shift worked from 8am to 5pm and were required to sign the `daily attendance` form. At the end of the morning shift, they were required to report `off work` at the office by signing the `daily attendance` form. The firm supervisor, Chua Ching Kang or she herself usually supervised the signing of the `daily attendance` form. She said that it was her firm`s practice for employees who were reporting off duty to page a hotline number with a message that they were reporting off duty. On 6 August 1998, the appellant requested for the morning shift and she acceded to his request. According to the `daily attendance` form, the appellant on 11 August reported for work at 7.30am and signed the form at the security counter in the presence of the supervisor, Chua. On the same day, he reported `off work` at 5.17pm and signed the `daily attendance` form. The pager records of the firm for 11 August 1998 showed that the appellant had paged Adeline Tan with the message `JIMMY CHAN [the appellant] FROM BLK 211 REPORTING OFF DUTY` at 5.20pm that day. On 13 August, the supervisor, Chua, informed her that the appellant had not reported for work and thereafter he did not report for work. She also testified that if workers had taken unauthorised breaks for lunch or dinner, she would counsel such errant employees, or deduct their wages, but would not require them to work extra hours. She denied that she instructed the appellant to do any overtime work on 11 August 1998 or that she even spoke to him between 5pm to 6pm on that day.

Chua Cheng Kang, the supervisor, also gave evidence for the prosecution. He confirmed that on 11 August 1998, according to the `daily attendance` form, the appellant reported for work at 7.30am and signed the form in his presence at the security counter, and reported `off work` at 5.17pm and at that time the appellant again signed the form in his presence. However, he left the security counter after that and did not see the appellant that night. He denied that on that evening the appellant was instructed by Adeline Tan to continue working after 5pm and that he worked from `five plus` to 9pm. He further denied that he spoke to the appellant on 12 August 1998 about the murder of the deceased. He said that the appellant did not report for work on 13 August 1998 and he informed Adeline Tan.

Finally, there was evidence of the appellant`s son, Chan Yew Leong. He said that on the evening of 11 August 1998, he saw his father coming home at `10- plus`, and that he further saw him in the living room at about 11pm. However, there was no sign of him at midnight or 3am the next morning.

The defence

The appellant raised two defences. His first defence was one of alibi, that is, that he was not the one who stabbed the deceased on the evening of 11 August 1998, as he was at his own place of work in Henderson Industrial Estate, where he was performing his duty as a cleaner. His second defence was that if the court found that it was he who stabbed the deceased, he was, at the material time, suffering from an abnormality of mind as substantially impaired his mental responsibility for his action in causing the death of the deceased.

Alibi

The appellant gave evidence in this defence. He flatly denied that he was the assailant, or that he went anywhere near the deceased`s workplace on the evening in question. His evidence was that on 11 August 1998 he worked from 8am to 5pm, as usual at his place of work in Henderson Industrial Estate. At 5pm, he telephoned Adeline Tan Chay Kin to inform her that he was reporting off work. He then signed on the daily attendance form at 5.17pm. However, he did not leave because Adeline Tan subsequently came to his workplace and told him to continue working from 5pm to 9pm to make up for the time he had taken for lunch to which he was not entitled.

After that, the appellant went to the security counter and a guard there, by the name of William or Wilson, gave him a `pau`, a bun. He ate the bun in the presence of Adeline Tan. At 6pm, he collected a toilet key from another security guard, one Raju (who had passed away before the hearing) and `went out to do some work`. At 7.15pm he returned and handed the key back to Raju. Also present at the guard counter at that time were William (or Wilson) and the supervisor, Chua Cheng Kang. He then did some cleaning at the lift area near the security counter until 8pm. At 8pm, he went up to the second storey to work. He worked there until 9pm and came down to the security counter again. He chatted with one of the security guards there for a while, and later went to bathe in the second storey toilet. After his bath, he came back downstairs and talked to Raju, a Malay security guard and a Chinese security guard who were present. It appeared that the latter two started their shift at 8pm. He told them that he would be staying in the factory that night and that they should look for him in case of a fire. He then went to sleep on a piece of cardboard at the staircase landing of the second floor.

On the following day, 12 August 1998, the appellant worked a normal day until 5pm. At about 7pm, he went to the hawker centre at Bukit Merah Central for dinner. While he was having dinner, he heard someone saying that a woman had been murdered in a factory at Redhill Close. Someone was reading a newspaper and he saw there a photograph that looked like his girlfriend. He asked that person what had happened and the person told him that a sailor working in a factory in Henderson had killed the woman. After hearing that, he cried and told the person that that was his girlfriend.

The appellant then went back to the factory and told his supervisor, Chua Cheng Kang, that his girlfriend had been murdered. Chua told him not to be afraid and that his brother was the chief at the CID. The appellant stayed in the factory again that night.

He said that he had met Tay and Cheah before 11 August 1998 through the deceased. He claimed that Tay had expressed an interest in him, which he did not reciprocate. He saw Tay three times before 11 August 1998. The first occasion was on 23 July 1998 when he went for an interview at a factory in Redhill. The second occasion was when she, the deceased, and Cheah came to his place of work to look for him. They then went to Tiong Bahru Shopping centre together. The third occasion was when she, the deceased, a Malay clerk and the appellant himself went to Tiong Bahru Plaza to see a movie. He did not like either Tay or Cheah, and had chided them for getting in the way between him and the deceased. He had also met Wong Hon Yee, but nothing happened between them.

The defence called two witnesses with a view to establishing the alibi. The first was Mahmood bin Osman, who was a security guard working at the night shift at the same place of work on 11 August 1998. Mahmood said that he first saw the appellant at around midnight, when he was doing his rounds, and then later at 4am, when the appellant was sleeping near the second floor staircase. He did not say that he saw the deceased between 7pm and 8pm on that evening. The second witness

was also a security guard, Vincent Wong Chun Keong, who was also on duty on 11 August 1998. The evidence of this witness did not assist the case for the defence. He could not remember whether he saw the appellant that night. The security guard, Raju, had passed away before the hearing.

Decision on alibi

In this case, there were two witnesses who testified that the appellant was the person who stabbed the deceased, namely, Tay and Cheah. Taking Cheah`s evidence first, the trial judge found that Cheah was not consistent on the identification of the appellant. In her statement to the police made on 14 August 1998 she admitted that she could not see the male Chinese who approached the deceased that evening in question as the place was dark and her eyesight at night was poor. At the trial, she said that she was very sure that the appellant was the assailant. The trial judge did not accept her evidence on the identification; and we ourselves were also unable to accept her evidence. As for Tay, the trial judge was impressed by her evidence and found that she gave clear and consistent reasons why she was certain that she saw the appellant. He accepted her evidence.

Before us counsel for the appellant challenged Tay`s evidence and submitted that her evidence could not be relied upon for the following reasons:

(a) Tay said she saw the assailant clearly only once on the night in question, when she was walking down the stairs. It was not in dispute that she could not see the assailant clearly when he was assaulting the deceased in the car park.

(b) Tay accepted that her recognition of him was based on a short backward `glance`.

(c) Cheah said in her initial police statement that she could not see the face of the assailant clearly at the staircase because it was dark. Similarly Tay also would have had difficulty in seeing the assailant clearly.

(d) The veracity of Tay`s evidence was in doubt because she disapproved of the relationship between the appellant and the deceased and the appellant said that Tay was romantically inclined towards him.

We were unable to accept these submissions. Tay knew the appellant, having seen him on two previous occasions, one of which was for a substantial length of time. On the evening in question, she was beside the deceased when she heard someone calling out to the deceased and on turning around, she saw the appellant face to face from a distance of about two metres, although she only had a short `glance` at him. She would have had no difficulty in recognising him. She rejected defence counsel`s suggestion that the area on the ground floor of the building, where she first saw the appellant, was poorly lit at night. She said: `The staircase which I came down was lit and there were some street lamps along this stretch of road`. She was positive that it was the appellant she saw that night.

The evidence of Tay on the identification of the appellant was supported by the evidence of what she and Cheah heard at the time just before the deceased was attacked. Both of them heard the appellant asking the deceased about her boyfriend. As the learned judge said, this in itself was not an identification, but it supported the identification of the appellant by the witnesses. He said at [para] 14 of his grounds of decision:

14 Both witnesses [Cheah and Tay] remembered that in the exchange between

the assailant and the deceased the assailant was unhappy with the deceased`s new relationship. The accused had expressed his distress over her lost affection, and had given vent to his animosity towards Wong Hon Yee. Though this by itself was not a positive identification of the accused, it supported the identification by the witnesses.

Turning to the evidence of the appellant, we found that his version of the events was patently unreliable. The evidence of Adeline Tan and Chua Cheng Kang disproved his allegation that he was on duty at his place of work at the material time. The trial judge concluded thus:

> *32 There was no reason why the evidence of Tay Ah Nai, Adeline Tan, Chua Cheng Kang and Chan Yew Leong should not be believed. None of them had any history of animosity towards the accused or any reason to give false evidence against him. Each of them gave his or her evidence clearly. The evidence of Adeline Tan and Chua was also corroborated by contemporaneous records in the attendance form and the pager message.*
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> *33 Mahmood bin Osman, on the other hand, was not a reliable witness. His account of the exchange between himself and the accused was not supported by the accused. His claim that he told the accused`s supervisor of the accused sleeping over was inconsistent with Chua`s evidence. Furthermore, he did not make a note of the alleged incident although he was duty-bound to do that.*

Th trial judge did not appear to have accepted the evidence of Mahmood bin Osman. However, Mahmood`s evidence did not really assist the appellant in his defence. No evidence was given by Mahmood that he saw the appellant at work at the material time, namely, between 7and 8pm on 11 August 1998.

After considering the all the evidence, the learned judge concluded that the appellant was the assailant. He said at [para] 49:

> *49 The prosecution had proved beyond a reasonable doubt that the deceased was assaulted by the accused on the fateful night. I also found that when the accused attacked the deceased with the knife he intended to inflict such bodily injury to her which are sufficient in the ordinary course of nature to cause death.*

We agreed entirely with this finding of the trial judge.

Diminished responsibility

We now turn to the defence of diminished responsibility, which was that, if the appellant did stab the deceased, he did it while he was suffering from an abnormality of mind as substantially impaired his mental responsibility for his acts in causing the death of the deceased.

In support of this defence the appellant called Dr Douglas Kong, a consultant psychiatrist in private practice. Dr Kong interviewed the appellant and his elder sister respectively and conducted a psychometric assessment of the appellant with the Weschler Adult Intelligence Scale (WAIS) and the Graham-Kendall`s Memory for Design test (MFD). Dr Kong`s opinion was that the appellant was of borderline intelligence. Individuals with lower intelligence have a `higher risk for maladaptive coping with stress, poor impulse control and to developing psychiatric difficulties`. The account of the appellant`s life history given by his sister, plus the fact that he was generally suspicious of Dr Kong himself, his own counsel, and even of his own family, seemed to indicate that he was likely to be having a `Paranoid Personality Disorder`.

Dr Kong was of the opinion that given the emotional relationship the appellant had had with the deceased, her death would have been a stressful event for him and would have caused a `Grief Reaction`, and if he had contributed to the death, there would be guilt, remorse or rationalisation on his part. However, the appellant`s reaction to the death of the deceased was none of these. Instead, he was bland and emotionless, which in the doctor`s view was incongruent with the close relationship he had had with the deceased.

Dr Kong went on to say that the appellant may have been having a paranoid psychosis around the time of the death of the deceased. He then went on to say:

> *If indeed, Mr Chan had committed the offence, then it is my opinion that Mr Chan had a Dissociative Fugue State. A Fugue State is a significant departure from one`s home or one`s customary activities with inability to recall some or all of one`s past. It could last for hours to days or even weeks. When the individual returns to the pre-fugue state, there may be no memory for the events that occurred during the fugue. The account provided by his counsel seemed to conform that of a Fugue State.*
>
> *Following this hypothesized Fugue State, the accused probably had Dissociative Amnesia. Dissociative Amnesia is a disturbance of one or more episodes of inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by ordinary forgetfulness.*
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> *Both Dissociative Fugue and Dissociative Amnesia may be associated with syndromes of psychological stress such as Depression and in the case of Mr Chan perhaps a Reactive Paranoid Psychosis. Certainly, Mr Chan appeared to be having some stress problems judging from the account of his behaviour in the sister`s history.*

It was pointed out to Dr Kong, in the course of his evidence, that at no point in time did the appellant say that he was unsure about the events of the night in question or that he could not remember. In fact, he had a completely different version of what happened that night. Dr Kong`s explanation for this was that if the appellant had done the deed but had a different set of memories for the time in question, `the scientific explanation would be that he must have done that thing and have had an amnesia for it, and in its place he manufactured memories which are consistent with his self-esteem and his belief as to what would happen` (sic). This phenomenon, according to Dr Kong, is known as `hysterical or dissociative confabulation`. If this had indeed happened, the appellant would not be aware that he has no real memory of the incident. The manufactured memories would be the `gospel truth` to him.

The prosecution called Dr Gwee Kok Peng as a rebuttal witness. Dr Gwee is an associate consultant at Woodbridge Hospital. He had examined the appellant on three occasions. He said specifically that having read Dr Kong`s report and on the basis of his own examination of the appellant, he was not able to find any symptoms or indications of either dissociative fugue or dissociative amnesia. Dr Gwee further made the point that generally speaking, a person in a fugue state usually escapes from a stressful situation and therefore tends to wander away from the place associated with the stressful situation. Therefore, the fact that he confronted the deceased was not in keeping with the fugue state diagnosis, though he conceded that it was possible.

As for the phenomenon of hysterical confabulation, Dr Gwee said that it was not a `universally accepted concept`, and that it was still under much study and debate. In particular, there was no consensus on whether hysterical confabulations were really `hysterical` (meaning dissociated from reality) or whether they were conscious or unconscious, partial or complete, or just fabricated or lies.

Decision on diminished responsibility

Having considered the evidence of the two psychiatrists, the trial judge concluded thus:

> *I was not satisfied that the accused was in a dissociative fugue state when he attacked the deceased because Criterion A set out in DSM-IV - the sudden unexpected travel from home or one`s customary place of daily activities with inability to recall some or all of one`s past, was not satisfied. Firstly the accused had not strayed from his home or workplace. Secondly, there was no inability to recall. Dr Kong`s explanation that the accused`s account of his activities was amnesia disguised by dissociative confabulation was unacceptable because the available authorities state that the confabulations are temporary and the patients are aware that they are confabulating. The accused was sticking to his accounts of events up to the trial, more than 14 months after the event and that is inconsistent with dissociative confabulation. Criterion B - the confusion about personal identity or assumption of a new identity, was also not present. Dr Kong had assumed that this element was present, but with respect, I cannot see any justification for the assumption. There is also no evidence on Criterion D - clinically significant distress or impairment in social, occupational or other important areas of functioning. Dr Kong alluded to his interviews with the sister, but no sibling gave evidence that the accused exhibited such distress or impaired behaviour.*

Before us, counsel for the appellant submitted as follows:

(a) The appellant was clearly shown by tests to be maladaptive to stressful events. The deceased leaving him for someone else would have had a tremendous impact upon his emotional stability.

(b) The learned judge erred in holding that there was no fugue on the basis that there was no evidence that the appellant had travelled from his home or other customary place of activity whether in an aimless or organised way. In fact, going to the deceased`s workplace was not a routine activity for the appellant and in any event, both Dr Kong and Dr Gwee accepted that one could be in a fugue state without `the indicia of aimless wandering being present`.

(c) The learned judge erred in placing weight on the fact that the appellant had no inability to recall the events of the night in question. Dr Kong had already given a cogent explanation for this by postulating a hysterical confabulation.

(d) The learned judge erred in placing weight on the fact that there was no confusion about personal identity. Any such confusion would only have occurred during the fugue state and would not have been detectable by Dr Kong after the event.

(e) In any event, his behaviour after he committed the crime, ie going about his work in the usual way on 12 August 1998, was inconsistent with that of a person who had full consciousness of what he had done. The fact that he reported to work the next day and worked normally until 5pm can only be explained by the fact that he had no memory of killing the deceased.

We were unable to accept these submissions which were based solely on the evidence of Dr Kong. The trial judge did not accept the evidence of Dr Kong. We could find no reason to disagree with the trial judge. Quite apart from what the trial judge said, there was also the evidence of Dr Gwee Kok Peng. He had also examined the appellant and was not able to find any symptoms or indications of either dissociative fugue or dissociative amnesia. The opinion of Dr Gwee cast serious doubt on the conclusions arrived at by Dr Kong. There was in fact no clinical evidence of a fugue state. The evidence of a fugue relied upon by Dr Kong was purely inferential based on what he heard from the appellant`s counsel and sister and on the appellant`s lack of guilt or remorse, and the appellant`s behaviour on 12 August 1998, which was the day after the offence was committed. In our judgment, the appellant had not made out the case that he was, at the time he killed the deceased, in a dissociative fugue state. This defence therefore failed.

Conclusion

For the reasons we have given, we dismissed the appeal.

Outcome:

Appeal dismissed.

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