Thongthot Yordsa-Art and Another v Public Prosecutor
[2002] SGCA 33

Case Number : Cr App 3/2002

Decision Date : 10 July 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Goh Aik Leng (Goh Aik Leng & Partners) and Rajendran Kumaresan (WT Woon & Co) (both assigned) for the first appellant; Ram Goswami (Ram Goswami) and Boon Khoon Lim (Dora Boon & Co) (both assigned) for the second appellant; Bala Reddy and Sia Aik Kor (Deputy Public Prosecutors) for the respondent

Parties : Thongthot Yordsa-Art; Another — Public Prosecutor

Criminal Law – Offences – Unlawful assembly – Common object – Whether any difference between 'common object' under s 149 and 'common intention' under s 34 of the Penal Code (Cap 224) – ss 34 & 149 Penal Code (Cap 224)

Criminal Law – Offences – Unlawful assembly – Common object of assembly to cause grievous hurt – Whether appellants know they will likely kill deceased in furtherance of common object – ss 141 & 149 Penal Code (Cap 224)

Evidence – Admissibility of evidence – Confession – Retraction – Whether court can rely on retracted confession to convict accused

Evidence – Admissibility of evidence – Confession of co-accused – Whether such confession alone sufficient to sustain accused's conviction

Words and Phrases – 'Common object' – s 149 Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

1. The first appellant, Thongthot Yordsa-Art ('Thongthot'), and the second appellant, Dornchinnamat Yingyos ('Dornchinnamat'), who are both Thai nationals, were jointly tried and convicted of the following charge:

> You, Thongthot Yordsa-Art and Dornchinnamat Yingyos, are charged that you, on or about the 2nd day of June 2001, between 10.00 p.m. and 12.00 midnight, at a vacant lot of land off Pioneer Road North, Singapore, together with 4 other unknown males were members of an unlawful assembly whose joint common object was to cause grievous hurt to one Saenphan Thawan (male/23 years), and while you were a member of the said assembly, you and/or one or more of the members committed murder by causing the death of the said Saenphan Thawan, an offence which you knew to be likely to be committed in the prosecution of the common object of the assembly and you have by virtue of section 149 of the Penal Code (Chapter 224) committed an offence punishable under section 302 of the Penal Code.

2. The trial judge imposed the death sentence on both the appellants.

A. BACKGROUND

3. The deceased, Saenphan Thawan ('Yaou'), apparently wielded a measure of influence in an area off Pioneer Road, not far from Kian Teck Road, where a small community of Thai workers lived. He was in control of gambling, prostitution and the sale of drugs in the area, which is referred to by Thai workers as 'Kian Teck', a name which will, for convenience, be used in this judgment.

4. Ten days before Yaou was killed, Thongthot's girlfriend, Wena Awaburt ('Wena'), went to Kian Teck with a female friend, a Thai prostitute. While Wena was seated on a discarded bed in Kian Teck, Yaou approached her. He was not pleased to find her at Kian Teck and showed his displeasure by telling her 'not to do a man's job'. He then pointed a knife at her and warned her that he would arrange to have her raped and silenced if she was seen in the area again. Wena left in tears and reported the incident to Thongthot, who lived with a number of other Thai workers in a squatter settlement in a forested area off Jalan Bahar.

5. Thongthot was angered by Yaou's treatment of Wena. Within a few days, he went with six other men to Kian Teck to look for Yaou. According to him, the purpose of this trip to Kian Teck was to ask Yaou to apologise to Wena. However, they did not manage to find Yaou.

6. A few days later, Thongthot was informed that Yaou was sighted in Kian Teck. On 2 June 2001, he assembled another group of men to confront Yaou. This group included the second appellant, Dornchinnamat, and four other Thai men. The six men gathered at Jalan Bahar for drinks from 6 pm onwards and left for Kian Teck by taxi at around 10 pm. They were armed and their deadly arsenal of weapons, which were concealed in umbrellas, included knives, parangs, a long sword and a variety of metal chains.

7. After arriving at Kian Teck, Thongthot and his men managed to locate Yaou, who was with his girlfriend, Namphakdee Thapanee ('Nam'). During the confrontation, Yaou tried to flee from Thongthot and his gang but he was soon cornered and killed by them.

8. A pathologist, Dr Paul Chui, gave evidence that the injuries inflicted on Yaou were sufficient in the ordinary course of nature to cause his death. He pointed out that there were at least three injuries, each of which was sufficient to result in Yaou's death. An injury at the back of Yaou's head was particularly gruesome. The wound was so deep that Yaou's brain and spinal cord were cut.

B. THE TRIAL

9. At the trial, the prosecution asserted that Thongthot, Dornchinnamat and their gang went to Kian Teck on 2 June 2001 with the common object of causing grievous hurt to Yaou. As such, it was submitted that they and the other four men in their gang were members of an unlawful assembly by virtue of section 141 of the Penal Code, which provides, inter alia, as follows:

> An assembly of 5 or more persons is designated an 'unlawful assembly' if the common object of the persons composing that assembly is –
>
> …
>
> (c) to commit any mischief or criminal trespass, or other offence.

10. The prosecution also asserted that the members of the unlawful assembly knew that if their common object was to be achieved, it was likely that Yaou would be killed. In view of this, it was submitted that Thongthot and Dornchinnamat were guilty of murder because of section 149 of the Penal Code, which

provides as follows:

> If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing that offence, is a member of the same assembly, is guilty of that offence.

11. Both Thongthot and Dornchinnamat admitted that they were part of the gang which confronted Yaou and killed him on the evening of 2 June 2001. However, they denied that the common object of their gang was to cause grievous hurt to Yaou. Thongthot, who admitted that he stabbed Yaou, said that his object was merely to teach Yaou a lesson by getting him to apologise to his girlfriend, Wena. As for Dornchinnamat, who admitted in his statements to the police that he participated in the attack on Yaou, he asserted that the incriminating parts in the said statements were not interpreted to him by the Thai interpreter and did not reflect what he had told the police. He also said that when the statements were read to him before he signed them, he did not pay attention as he was under physical and mental stress.

The trial judge's decision

12. The trial judge said that the main issues before him were whether or not Thongthot and Dornchinnamat and their gang went to Kian Teck on 2 June 2001 with the common object of causing Yaou grievous hurt and whether or not the members of the gang knew that Yaou's death would be a likely result of what they would do in pursuit of their common object. He did not believe that Thongthot and his gang merely wanted Yaou to apologise to Wena. He was convinced that Yaou's assailants went to Kian Teck fully and dangerously armed to cause serious and grievous harm to Yaou. He thus accepted that Thongthot and Dornchinnamat were members of an unlawful assembly and proceeded to consider the effect of section 149 of the Penal Code.

13. The trial judge noted that Thongthot admitted in court that he stabbed Yaou with a knife although he claimed that this was done to 'stop Yaou from running', a claim which could not be believed. He also took into account the fact that Dornchinnamat had confessed to having played a role in the killing of Yaou and rejected his assertion that he did not incriminate himself in his statements to the police. The trial judge said that it was unnecessary for him to re-enact every blow struck during the murder 'for it does not matter who struck first, or who struck most or who struck the hardest'. What was important was that the unlawful assembly had the common object of causing grievous hurt to Yaou and that its members knew that the pursuit of their common object was likely to result in Yaou's death. As Yaou was killed, he held that it was evident from section 149 of the Penal Code that Thongthot and Dornchinnamat had committed murder, an offence punishable under section 302 of the Penal Code.

C. THE APPEAL

14. The main thrust of the appellants' case was that the trial judge erred when he held that they wanted to exact revenge on Yaou and that they carried weapons to Kian Teck so that grievous hurt could be caused to Yaou. Thongthot reiterated that he and the other members of his gang only intended to extract an apology from Yaou and not to kill him.

15. It cannot be disputed that Thongthot and Dornchinnamat and the other members of their gang were, by virtue of section 141 of the Penal Code, members of an unlawful assembly as there was ample evidence at the trial that their common object was to cause grievous hurt to Yaou. The remaining issue before us concerns the application of section 149 of the Penal Code to the circumstances of this case.

16. The meaning of the term 'common object' has been considered by the courts on innumerable occasions. In *Chandran v Public Prosecutor,* [1992] 2 SLR 265, 269, this court noted as follows:

> Section 149 does not require proof of a pre-arranged plan and a common intention which a prosecution involving s 34 of the Code would require. The 'common object' under s 149 of the Code must not be confused with the 'common intention' under s 34 of the Code. Though they both deal with what may be called 'constructive liability' for crime, it is important to see the distinction and the way both sections operate.
>
> In *Barendra Kumar Ghosh v Emperor*, Lord Sumner at p 7 said:
>
> There is a difference between object and intention, for though their object is common, the intentions of several members may differ and indeed may be similar only in the respect that they are all unlawful while the element of participation in action which is the leading feature of s 34, is replaced in s 149, by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons who become punishable as sharers in an offence.

17. In our view, the trial judge cannot be faulted for holding that the appellants and the other members of the unlawful assembly knew that it was likely that Yaou would be killed when they acted in pursuit of their common intention to cause him grievous hurt. The appellants tried to downplay the significance of their deadly arsenal of weapons by asserting that the weapons were only intended for self-defence. However, it is evident from the circumstances of the case and the ferocity of the attack on Yaou that this could not have been the case. If the weapons had indeed been carried by the appellants and the other members of the unlawful assembly for self-defence, Yaou would not have been killed. After all, Thongthot testified that Yaou was unarmed and outnumbered and that he was running away when he was savagely attacked. When questioned, he said as follows:

> Q. So when he got up to run away, he ran away alone?
>
> A….. *[H]e was alone*.
>
> Q. And he was not carrying any weapons?
>
> A. When he got up, *I don't see him carry anything*.
>
> Q. You were at [Yaou's] side. That means Yaou was not attacking you when you stabbed him?
>
> A. No, *he was running*.

18. Thongthot also shed some light on the common object of the unlawful assembly. When cross-examined, he said as follows:

> Q. Wouldn't [it] have been better to just let Yaou run away?
>
> *A. You think it's better if he runs and the others chase after him and kill him?*
>
> Don't you think that I … better … stop him?
>
> Q. … you think they would have killed him?

A. The thing happened was Rang carried a long sword and I can't tell what was going to happen when Rang chased after Yaou at the dark area.

Q. But you were worried he could have killed Yaou?

A. Yes, your Honour…

Q. …. You could have stopped two people who were your friends. Why did you not tell them to stop?

A. … *even I can stop [them], there were three more that I do not know where they were. They might attack Yaou as well*.

19. When considering the effect of section 149 of the Penal Code in relation to 'an offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly', it did not escape our attention that all the members of the unlawful assembly played a part in killing Yaou. Thongthot testified that after he stabbed Yaou twice, the other members of the unlawful assembly surrounded Yaou and Dornchinnamat slashed Yaou's head with great force. Another member of the unlawful assembly then slashed Yaou on the neck. Dornchinnamat corroborated this evidence when he said that the other members of his group continued to attack Yaou after he had slashed Yaou on the head. In these circumstances, there can be no doubt that the assailants knew that it was likely that their actions in furtherance of their common object of causing Yaou grievous hurt would result in his death. We thus saw no reason to interfere with the findings and verdict of the trial judge.

The second appellant's other grounds of appeal

20. Before concluding, reference will be made to the second appellant's other grounds of appeal, which, in our view, had no merit whatsoever. Dornchinnamat asserted that portions of his own statements to the police and the confession of his co-accused, Thongthot, who implicated him in the murder of Yaou, should not have been relied upon by the trial judge.

2 1 . Dornchinnamat's statements to the police will first be considered. As has been mentioned, he retracted substantial portions of these statements during the trial. He claimed that the retracted portions of the statements in question did not reflect what he actually said and that he did not pay attention when his statements were read to him by the Thai interpreter, Tasneeporn.

22. It is trite law that the retraction by an accused of his confession of guilt does not prevent the confession from being relied on if the judge believes that it is the truth. (See, for instance, *Yap Sow Keong v Public Prosecutor* [1947] MLJ 90 and *Ismail bin UK Abdul Rahman v Public Prosecutor* [1972-1974] SLR 232). The trial judge had reason to believe that Dornchinnamat was telling the truth when he confessed that he had played a part in the killing of Yaou. Dornchinnamat's two long statements were made nearly two weeks after he was arrested and each of the two-day sessions ended by around 2.15 pm. Both SSgt Daniel Teo, who recorded the statements, and the Thai interpreter, Tasneeporn, testified that the recorded statements were made by Dornchinnamat and that he was invited to amend any part of the statements before acknowledging that they were correct. The interpreter is an independent party and has no reason to fabricate evidence. Furthermore, as Dornchinnamat knew that he was facing a capital charge, it is most unlikely that he was not paying attention when his statements were read to him. We thus agreed with the trial judge that Dornchinnamat's confession may be relied upon as evidence of his guilt.

23. As for Dornchinnamat's assertion that the confession of his co-accused, Thongthot, should not have been given any weight by the trial judge, the courts have, on numerous occasions, considered whether or

not a confession of an accused may be used against a co-accused. In *Chin Seow Noi v Public Prosecutor* [1994] 1 SLR 135, this court reiterated that the conviction of an accused can be sustained solely on the basis of a confession by his co-accused if the confession establishes beyond reasonable doubt that the accused is guilty. In the present case, there was no incentive for Thongthot to lie about Dornchinnamat's role in the murder of Yaou. He had already admitted that he was part of the gang that took Yaou's life and his account of the events at Kian Teck on the evening of 2 June 2001, including the fact that Dornchinnamat slashed Yaou on the head, is consistent with Dornchinnamat's own admission in his statements to the police and with the eye-witness account by Yaou's girlfriend, Nam. As such, the trial judge was entitled to take into account Thongthot's evidence that Dornchinnamat played a role in the killing of Yaou.

D. CONCLUSION

24. As Thongthot and Dornchinnamat did not establish that the trial judge erred in finding them guilty of the charge faced by them, their appeals were dismissed.

Sgd:

YONG PUNG HOW	**CHAO HICK TIN**	**TAN LEE MENG**
Chief Justice	**Judge of Appeal Judge**	**Judge**

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