Public Prosecutor v Saminathan s/o Subramaniam
[2002] SGHC 259

Case Number : CC 58/2002

Decision Date : 01 November 2002

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Ng Cheng Thiam, Paul Chia and Leong Wing Tuck [Attorney-General's Chambers] for the prosecution; Subhas Anandan and Anand Nalachandran [Harry Elias Partnership] (briefed) for the accused

Parties : Public Prosecutor — Saminathan s/o Subramaniam

Judgment

GROUNDS OF DECISION

1. The accused was charged with the murder of one Karichiappan s/o Perumal on 18 March 2002. A second charge - for robbery with hurt- was stood down pending the outcome of the murder trial. Karichiappan was a 78-year old retiree who, from the evidence of his family and the post-mortem report, was a healthy and able-bodied man. He lived in a flat at Jurong West with his wife Papathy, and their elder son, Kalanithy. Papathy who works for the National Parks, left home for work that morning at 5.20am. Kalanithy left the flat later, at 7.30am. Karichiappan was alone at home. Papathy returned to the flat at 4.20pm. She testified that as she was approaching her bedroom she saw her husband lying facedown on the floor in the guest room which was next to her bedroom. His hands were bound together with a yellow *saree*. The other end of the *saree* was wound round his neck and mouth and tied in a knot. Two other pieces of clothing, a white *dhoti*, and a patterned blouse, were also wound round Karichiappan's neck, but these two pieces of clothing were not tied. They were found wrapped round the neck and intertwined with the yellow *saree*. Karichiappan was otherwise naked when found. Papathy untied his hands and turned him over. She noticed that he was bleeding from the mouth, and was cold to the touch. Realising that he had died, Papathy ran out of her flat screaming for help. Her next door neighbour, Mr. Lim Cheng Tju, a school teacher, and his wife responded. Mr. Lim called the police and then went back to the flat to be with Papathy who then covered Karichiappan with a towel until the police arrived.

2. The first police officers to arrive at the flat were two officers from the neighbourhood police post, namely Sgt Ronald Ang and Cpl Fauzillah Hamid. Sgt Ang testified that they arrived at 4.46pm. He noted an Indian man lying supine on the floor in one of the rooms. He said that the man appeared to have been strangled by a *saree* and a piece of white *sarong*. At 5pm a paramedic, Mohd Nur Azli pronounced Karichiappan dead. Sgt Ang and Cpl Fauzillah checked the flat with Papathy and found that the study had been ransacked; and a drawer in Papathy's room had been forced open and her jewellery stolen. At 5.25pm Sgt Ang handed the investigation of the case over to Sgt Gavin Teo of the Jurong Police Division. He was subsequently joined by officers from the Special Investigation Section ("SIS") of the Criminal Investigation Department ("CID").

3. ASP Ng Poh Lai found a watch in a waste bin in the kitchen. The strap was broken. Papathy and her son told the officer that the watch did not belong to anyone in the family. Subbramaniam, Papathy's younger son, testified that he had seen the accused wearing a similar watch when the latter visited Karichiappan during Deepavali of 2001. Sorajah, the wife of the accused was called but was not asked if she could identify the watch, but the evidence concerning the watch was not a major feature of the prosecution case because the accused did not challenge the fact that he was in Karichiappan's flat at the material time. Reverting to the evening of 18 March, the prosecution

adduced evidence that at 11.15pm Dr. Wee Keng Poh, a pathologist from the Health Sciences Authority visited the scene of crime and examined the body of Karichiappan. A post mortem was conducted the next morning.

4. The prosecution also adduced evidence from Kalanithy that Sorajah spoke to Karichiappan on the evening of 17 March complaining about her husband, the accused, and at some point handed the telephone over to the accused who then spoke to Karichiappan. Kalanithy could hear his father chiding the accused loudly. Evidence was also adduced to show that although none of the missing jewellery were found in the possession of the accused, various pieces were traced to a pawnshop and recorded as being pawned by one Swaran Singh. The prosecution case was that the accused went to Karichiappan's flat on 18 March together with this same Swaran Singh. Several statements made by the accused were also admitted in evidence without challenge save that the defence case was that the statements were not recorded in full. In these statements the accused admitted going with Swaran Singh to Karichiappan's flat with the view of persuading Karichiappan not to instigate Sarojah to divorce the accused. A quarrel ensued and the accused hit Karichiappan who then fell to the ground. In spite of being injured in the melee Karichiappan continued to shout at the accused. Swaran Singh then took a yellow cloth, which appears to be the yellow *saree*, to restrain Karichiappan verbally and physically. As Karichiappan lapsed into unconsciousness the accused and Swaran Singh ransacked the flat and took away some jewellery.

5. Dr. Wee testified in court and in respect of his examination of the deceased body at the scene and at the autopsy. Dr. Wee prepared a post mortem report in which he certified the cause of death as "Ia: Asphyxia, Ib: Strangulation, and II: Compound fracture of the right mandible." In cases of asphyxia, which is really a condition in which the brain dies because of oxygen deprivation, death ensues within three to five minutes. Strangulation is one cause of asphyxia. Under cross-examination, Dr. Wee conceded that the fracture of the mandible is not a cause of death in itself. He explained that a fractured mandible (jaw bone) may hasten death if there is blood from the fracture and if the blood seeps down the windpipe it might result in death. However, he did not find blood in Karichiappan's windpipe during the autopsy. In the light of Dr. Wee's oral testimony, the inclusion of the compound fracture of the mandible as part of the certified cause of death was obviously incorrect. Dr. Wee referred to various signs such as bleeding in the whites of the eyes, larynx, and tongue as indications of death by asphyxiation. This was not challenged by Mr. Subhas, counsel for the accused. The only issue was whether the asphyxiation was caused by strangulation, or some other reason such as the covering of the deceased person's mouth and nose such that he was unable to breathe. In this regard, under cross-examination Dr. Wee stated that in his view, he believed that asphyxia in this case was, "on a balance of probabilities", caused by strangulation.

6. Dr. Wee was the prosecution's penultimate witness. The prosecution then closed its case after its last witness, Miss Lim Chin Chin, from the Health Sciences Authority, called formally to identify the *saree*. Mr. Subhas then made representations to the Public Prosecutor in the light of the evidence outlined above. The Public Prosecutor acceded to the representations and asked for the murder charge to be reduced. The second charge that had been stood down was also reduced to simple robbery. The accused pleaded guilty to both charges and admitted the facts set out in the Statement of Facts. The facts had already been adduced in greater detail during the course of the prosecution case. I think that I am entitled to consider the evidence adduced in the course of the prosecution case although in doing so one has also to consider those aspects which are challenged by the defence, and to bear in mind that the defence version had not been adduced by reason of the truncated trial.

7. That brings me to the mitigation by Mr. Subhas on behalf of the accused. The thrust of the mitigation plea was that the accused had gone to see Karichiappan on a personal and domestic

matter concerning his fear that Karichiappan might instigate Sarojah to divorce the accused. Counsel also noted that it was not the prosecution case that the purpose of the visit was to commit robbery or any other offence. He also submitted that the fractured jaw and fractured ribs were sustained by Karichiappan when he fell after being slapped by the accused. He said that the accused reacted with force because Karichiappan was raining saliva on him in the course of rebuking him for his treatment of Sarojah. The accused also alleged that even though Karichiappan had fallen to the ground he continued to berate the accused and hurt him with the curse that the accused would never father children. Counsel submitted that the accused and Swaran gagged and tied Karichiappan with the three pieces of clothing because they just wanted to stop him from shouting. Why they chose not to leave when their welcome and purpose expired was not explained. It is true that many of these things which were put forward by Mr. Subhas in mitigation cannot be fully proved, and more serious inferences could only be drawn without the requisite proof beyond reasonable doubt test; but on the incontrovertible facts - ignoring for the moment whether the robbery was premeditated or not, whether the accused's purpose was truly as he had described through his counsel, and whether the accused really gagged Karichiappan to stop him shouting - the accused had physically assaulted the deceased, he had not only gagged him but also tied him up in a stranglehold around his neck and face, as well as his arms, and robbed him and his wife of their property, leaving him to gag and choke and asphyxiate to death. All this was done by a man, now 47 years of age, with a history of criminal record that began when he was 22 years old. The record speaks of drug and property offences as well as crimes of violence. In the circumstances, I am of the view that a long custodial sentence would not be inappropriate. Lastly, in taking into account the totality of the punishment in respect of both offences, I am of the view that the accused ought to be sentenced to imprisonment for life and be given 6 strokes of the cane in respect of the amended first charge; and a term of 5 years imprisonment and 12 strokes of the cane in respect of the amended second charge. I therefore sentenced him accordingly, and directed that the terms of imprisonment to run concurrently with effect from 21 March 2002 when he was first ordered to be remanded by the court.

Sgd:

Choo Han Teck

Judicial Commissioner

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