Arun Prakash Vaithilingam v Public Prosecutor
[2003] SGCA 12

Case Number : Cr App 23/2002, CC 60/2002

Decision Date : 12 March 2003

Tribunal/Court : Court of Appeal

Coram : Judith Prakash J

Counsel Name(s) : N Kumaava Rajarh, Ms Parvathi Annanth (Raja Velu & Co) for the Appellant; Ng Cheng Thiam, Tan Wee Soon (Attorney-General's Chambers) for the Respondent

Parties : Arun Prakash Vaithilingam — Public Prosecutor

Criminal Law – Murder – Intention to cause bodily injury sufficient in the ordinary course of nature to cause death – Whether stabbing intentional – Penal Code (Cap 224) s 300(c)

Criminal Law – Murder – Defence of sudden fight – Whether use of knife against unarmed deceased constituted undue advantage – Penal Code (Cap 224) s 300 & 300(c), exception 4

Delivered by Chao Hick Tin JA

1 On 3 December 2002, the appellant, Arun Prakash Vaithilingam (Arun), was convicted of the crime of murder, namely, that he on 22 December 2001, at about 11.30pm, at the flat at Block 23, Marsiling Drive, #12-133, caused the death of one Lourdusamy Lenin Selvanayagan (Lenin) with the use of a knife. He was sentenced to the mandatory punishment of death. He appealed. On 17 February 2003, we heard his counsel's arguments and dismissed the appeal. We now give our reasons.

2 At the material time, both Arun and Lenin were Indian nationals working as electricians at a leading local shipyard. They and nine other fellow workers, all Indian nationals, were living in the same flat. The names of the other nine workers were:-

Bala Sundram Suresh Kumar (Suresh Kumar)

Selvaraj John David (John David);

Kaliamoorthy Nagaraj (Nagaraj);

Ganesan Siva Subramani (Subramani);

Sivapunniam Karthikeyan (Karthikeyan);

Kandasamy Pulgamani (Pulgamani);

Vanamamalai Pillai Chithambarakttalam (Pillai);

Clement Raj Leo Antuvan (Leo); and

Rajagopalan Palvannan (Palvannan)

3 On the morning of the fateful day, these workers, except Lenin (who was late) and John (who was

taken sick) was travelling on board a lorry which was to take them to the shipyard. During the journey, Lenin commented to the effect that Arun was not able to get ready on time because he would take "more than an hour to come out" of the toilet. This remark was heard by Palvannan who advised Lenin not to say such things as Arun would not be pleased if he heard it. Obviously peeved by this advice from Palvannan, Lenin asked him to mind his own business. Thereafter, there was an exchange of angry words, followed by a scuffle between the two. The others on the lorry had to intervene to separate them.

4 We should add that, according to Arun, he woke up late that morning because he was not feeling well. Thus he could not make it in time for the company's transport. However, he later managed to get to his place of work on his own.

5 During the course of the day, Palvannan told Arun what had happened in the morning on the lorry. However, there was no incident at the place of work even though Arun did see Lenin there. That evening, after returning from work, Arun and a few others (including Subramani and Karthikeyan) went out to help their employer, one Miranda George, to make some purchases of groceries. After transporting the purchases to their employer's home, they adjourned to a coffeeshop at Woodlands Central for some beer. Arun apparently left the coffeeshop to return to the flat at about 11.00pm. A few others remained behind and only left a while later between 11.15 and 11.30pm.

6 According to the events given by the prosecution witnesses (Pillai, Karthikeyan, Subramani, Palvannan and Pugalmani), Palvannan, who was sleeping at the living room of the flat was awakened by Arun and the latter asked him to go together with him and confront Lenin about the remark which the latter had made in the morning. Palvannan did not know what Arun wanted him to do and instead said that that could wait until the next morning. Still clearly upset, Arun went into the kitchen and took a knife from a drawer and went into the room where Lenin was sleeping. He woke Lenin up by kicking the latter's leg. There followed an angry exchange between them which led to Arun stabbing Lenin in the chest which caused his death. The defence did not dispute the evidence of the forensic pathologist that the stab wound was sufficient in the ordinary course of nature to cause death.

7 The defence of Arun was that he did not intend to stab Lenin. According to him, upon returning to the flat, he went into Lenin's room to ask the latter about what he had said in the morning. An argument and struggle ensued. He even fell onto the floor when they pushed each other. Other flatmates came to see what happened. Then Subramani and some others pushed him out of Lenin's room into his own room. He then noticed the handle of a knife protruding from a drawer in the kitchen. He took the knife and went back again to Lenin's room. Arun told Leo, who tried to stop him, that he was only going to show Lenin the knife and "to frighten him and make him apologise". Leo, Subramani, Pillai and others rushed to restrain him. Both Pillai and Subramani held him. At the same time Pulgamani and Nagaraj pushed Lenin to the other end of the room. Arun struggled to free himself from the hold of Subramani and Pillai. At one point, Subramani lost his grip on Arun's left arm, whereupon Arun transferred the knife which he was holding in his right hand to his left hand. We should add that Subramani lost his grip because, as he was struggling to restrain Arun, the knife which Arun was holding in his right hand slightly cut the stomach of Subramani. In Arun's own words, the events

which followed, as set out in his cautioned statement of 19 March 2002, were as follows:-

> "… I took the knife in my right hand and transferred to my left hand. Actually, I did not have intention to stab him. My friends who were holding me let go of me. I then went towards him. I did not realise that I had stabbed him. When I saw the knife stained with blood, then I realised that I had stabbed him somewhere on his body."

8 We should add that, of the prosecution witnesses, only Pulgamani corroborated Arun's testimony that upon returning to the flat he went first into Lenin's room instead of the kitchen. The others said that Arun, having failed to get Palvannan to go with him to confront Lenin, went into the kitchen to take the knife and then walked into Lenin's room.

9 The witnesses for the prosecution did not, in their evidence, allude to what Arun's intention was in wanting to confront Lenin. But Arun had testified that when he and others were at the lift landing of his block, after returning from the coffee shop, either Pillai or Pulgamani advised him "not to ask Lenin" and he replied that if they would not ask "then I would ask". Obviously intention may be inferred from either words expressed or conduct.

Decision below

10 At the trial, two defences were raised. The first was that Arun did not intend to stab Lenin. The second was that the injury was inflicted in the course of a sudden fight, a defence available to him under Exception 4 to s 300 of the Penal Code.

11 The trial judge rejected the argument that Arun had no intention to stab Lenin. One of the reasons which persuaded the judge to come to that conclusion was the switching of the knife from the right hand to the left hand. The switch took place after Subramani's grip on Arun's left hand was released. The switch could only mean that Arun intended to use the knife to attack Lenin. Secondly, there was the evidence of the other flatmates who witnessed the incident and whose accounts indicated that the stabbing was a deliberate move.

12 As regards the defence of sudden fight, the trial judge first found that there were more shouts rather than physical fight, the latter limited to the parties pushing each other by the shoulders. With some hesitation, he found what happened constituted a fight. The trial judge, however, did not accept Arun's version that he only took the knife from the kitchen in the midst of the fight with Lenin. Instead he found the evidence of the prosecution witnesses, that Arun first took the knife from the kitchen before entering Lenin's room to confront the latter, to be more credible. He found that Arun was prepared for a heated quarrel with Lenin and, in that sense, the fight could not have been sudden as far as Arun was concerned. But even giving Arun the benefit of the doubt that the fight was sudden, the trial judge next considered the question as to whether or not Arun had taken an unfair advantage over Lenin so as to bring the case out of Exception 4. On this he said:-

"I hold the view that generally a person who picks a quarrel or fight with an unarmed person, who is not substantially bigger or stronger than he, is deemed to have taken an unfair advantage when he uses a deadly weapon that he had armed himself with prior to the fight. By no account can two such protagonists be considered to be fairly or evenly matched. The post-mortem description of Lenin and my assessment of Arun do not indicate that Lenin was substantially bigger than Arun. Neither did Mr Rajarh suggest that he was, ….

In the present case before me, Arun went to instigate the fight armed beforehand. In such circumstances, I am of the opinion that he cannot avail himself the defence under Exception 4 because he had taken an unfair advantage over the unarmed Lenin."

Was stabbing intentional?

13 Before us, counsel for Arun raised the same two defences which had been raised in the court below. On the first issue of there being no intention on Arun's part to use the knife to stab Lenin, he submitted that Arun's evidence was clear. Arun was pushed out of Lenin's room by other flatmates who were trying to separate them. He then saw the knife handle protruding out of the drawer in the kitchen and took it with the intention of using it only to frighten Lenin and make him apologise. He also reiterated Arun's explanation as to why he switched the knife from his right hand to his left, i.e., so that he could use his right hand to hit Lenin. Thirdly, Arun was struggling to free himself from those flatmates who tried to restrain him, and when he broke free, the momentum caused Arun to move forward uncontrollably. He did not know how the knife in his left hand could have stabbed Lenin's chest.

14 Counsel argued that the trial judge was wrong not to have accepted Arun's evidence that he was pushed out of Lenin's room before he saw the knife handle protruding out of the kitchen drawer. The evidence of the flatmates (Subramani, Pillai, Karthikeyan and Palvannan) should not be relied on, and in particular when they were shown to be unreliable witnesses. When they brought Lenin to the hospital, they had lied to the doctor as to how Lenin had suffered the injury. Subramani explained that they were not truthful to the doctor on how Lenin's injury was sustained because they did not want there to be any delay in the treatment of Lenin. They had also lied to the Police about the number of people living in the flat. However, the trial judge, having considered all these aspects where the witnesses were not entirely truthful, did not consider their evidence to be unreliable as far as the events between Arun and Lenin were concerned. No evidence was adduced as to why they should side with Lenin over Arun. The evidence showed that the flatmates were, in fact, trying to prevent the dispute between the two.

15 It was true that the forensic pathologist, Dr Paul Chui, declined to give an opinion as to the manner in which Arun had handled the knife immediately prior to the stabbing. But the flatmates said that Arun was holding the knife in a stabbing way. In any case, this aspect of the matter was not, in the circumstances of this case, a crucial point. Whichever manner Arun had in fact held the knife, the essential question was, as the trial judge noted, whether he intended to use it to cause the injury.

16 It is trite law that to prove an accused guilty of murder under s 300(c) of the Penal Code, one of the essential elements which must be established is that "there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended": see *Virsa Singh v State of Punjab* AIR 1958 SC 465 and *Tan Cheow Bock v PP* [1991] SLR 293. This was how the trial judge came to his conclusion that the stabbing wound was not caused accidentally:-

> "There was no explanation why Arun switched the knife from his right hand to his left when his right arm was held by Pillai with both his (Pillai's) hands. I cannot come to any other conclusion than that Arun did so because he wanted to use the knife to attack Lenin. After he had cut Subramani and caused him to let free his hold of Arun from behind, Arun switched the knife to his now free left hand; and it was this hand that stabbed Lenin. In determining what was the intention of an accused it must not be forgotten that the relevant intention is the intention that accompanies the *actus reus*. I accept that it is reasonably possible that Arun's original intention might have been to threaten or frighten Lenin; but that intention soon evolved into the stronger one of using the knife to cause hurt to his target. I accept the evidence of Arun's flatmates unequivocally describing Arun's motion of stabbing Lenin to be a deliberate one."

17 The circumstances here were quite clear. Perhaps his original intention in getting the knife was to frighten Lenin. But his subsequent action showed otherwise. Arun was holding the knife in his right hand. He was being restrained by his flatmates from going forward to attack Lenin. He was struggling to free himself from their restraint. But when the opportunity came, with his left hand being freed, he wasted no time in taking over the knife from the right hand, and, with the knife in his left hand, he went forward to stab Lenin. To say that in this situation the intention of Arun was only to hit Lenin with his fist was wholly absurd. The trial judge placed significance on the fact that Arun used his free left hand to take over the knife from his right hand which was still being restrained. We agreed with the trial judge that the switch was, in the circumstances, a telling move. If his intention was not to use the knife but to beat Lenin with his fist, then the switch would not have taken place. He would simply have used his left hand to attack. Accordingly, the finding that the injury caused was intentional was fully supported by the evidence and could not be challenged.

18 The point was made that there was only a single stab wound. There is no principle of law which says that, just because what is involved is a single stab wound, therefore the stabbing cannot be intentional. While it is true that where there are multiple stab wounds, intention can be more readily inferred, it does not follow that where there is only a single stab wound, such an intention cannot be inferred. The number of stabs, while important, is not necessarily decisive, one way or another. It is the circumstances leading to the fatal injury which are all important.

19 Finally, the point was also made that, if Arun had the intention to stab Lenin, he would not have joined the others in taking Lenin to hospital and even offered to pay his hospital charges. Tinges of regret after the event do not necessarily render a crime any less a crime. What weight is to be given to such sentiments is wholly a matter of assessment for the trial judge, who, in this case, having considered all the evidence, had no reasonable doubt that the fatal injury was not caused by

accident but was intended.

Sudden fight

20 We now turn to the second defence raised of a sudden fight. This is provided for in Exception 4 to s 300 which reads:-

> "Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner."

21 As indicated before, the trial judge found that, before entering the room where Lenin was sleeping, Arun had first taken the knife from the kitchen drawer. What happened thereafter was an exchange of words followed by pushing. With some hesitation, he accepted that the pushing between the two constituted a fight – in his words "it was technically a fight". But the crucial point on which the trial judge found against Arun was on the question as to whether Arun had taken "undue advantage" in the fight, which term the Privy Council had in *Mohamed Kunjo v PP* (1978) 1 MLJ 75 accepted to mean "unfair advantage".

22 Counsel submitted that the mere fact that Arun was armed, and Lenin was not, could not *per se* amount to taking "undue advantage". He relied upon *Sarjug Prasad v The State* (1959) AIR Patna 66, where the victim was holding a mirror in his hand as he was walking on the road towards his shop. The sun's ray reflected from the mirror onto the face of the accused who was driving on the road. A quarrel ensued, followed by a scuffle. Third parties at the scene separated them. The victim then continued walking towards his shop. Just then the accused whipped out a knife, went towards the victim and struck the latter on the chest, causing his death. The court held the defence of sudden fight was not available to the accused because there was undue advantage. The fight was over upon the intervention of third parties and the victim had no reason to suspect that the accused would thereafter come after him with a knife. That was the "undue advantage" in that case which was not present here. Counsel argued that the "fight" here was still on-going when the stabbing took place.

23 Reference was also made by counsel to an unreported case of the High Court, *PP v Tan Nee Wah* (Criminal Case No. 25 of 1988) where the accused successfully raised the defence of a sudden fight. In that case, there was a prior incident between the accused and victim (both of whom worked for the same employer) which gave rise to some animosity between them. On the day of the incident, the accused had bought an axe and a knife from a hardware shop and had hidden them in the cabin of the lorry he was driving. The accused said that he bought the two weapons to frighten a debtor who had refused to pay. The court of two judges could not accept that as the reason for the purchase of the two weapons. Neither did they think the weapons were to confront the victim. The court was left in considerable doubt as to the real purpose of the accused in obtaining the weapons. They also found, from both the objective evidence at the scene and the evidence of the accused, that there was clearly a fight between them, although how it arose was less than clear. But the court did

accept the accused's evidence that, having left the employer's factory for the day on his motorcycle, he went back with the specific purpose of retrieving some articles he left in the lorry. It was then that the fight occurred between the accused and the victim, who was a watchman. The court also accepted that it was in the course of the fight that the accused took the knife hidden in the lorry to attack the victim.

24 But as counsel rightly stated, "whether there was undue or unfair advantage depends on the facts and circumstances of each case." Here, counsel for Arun made the following submission which we did not think was substantiated by the evidence:-

> "… in the midst of the fight Arun must have felt increasingly cornered. He felt that he had been driven up against the wall. The prosecution itself contended that there were at least 3 people restraining him. Concomitantly, he felt fear – he was on the edge of a precipice. His original intention was merely to frighten Lenin so as to get him to apologise. However, things had gone out of control but were positively against him. He was restrained by 3 people whereas Lenin was gaining ground. Arun was in a quandary. The incubus of doubt having set in – as he was apprehensive of whether he was going to be FURTHER attacked impelled him to cause a blow to Lenin."

25 This paragraph sought to paint Arun as the victim. All the evidence showed that Arun was the aggressor. We could not see how it could fairly be argued that, when Arun struck Lenin with the fatal stroke, he was "cornered".

26 Reliance was also placed by Arun on two High Court decisions, *PP v Ramasamy A/L Sebastian* [1990] SLR 875 and *PP v Seow Khoon Kwee* [1988] SLR 871, to contend that his situation was not materially different from those in the two cases. However, the trial judge distinguished them as follows:-

> "In *Ramasamy*, the court made a finding of fact that the accused picked up a knife in the course of the fight. In *Seow Khoon Kwee* the court found as a fact that the accused, a prisoner, was of smaller built *[sic]* than the deceased, a fellow prisoner who was known to have beaten other prisoners, and had taken the shard of glass to protect himself. In the present case before me, Arun went to instigate the fight armed beforehand."

27 Here was a case where the victim, Lenin, was fast asleep in his room. Still smarting from what seemed like a trivial remark which Lenin made about his toilet habit, Arun came into his room, armed with a knife to confront him. Vulgarities were exchanged. There was some pushing of shoulders. The trial judge, with some hesitation, found there was a "fight". The aggressor was, at all times, Arun, who had to be restrained by others. The first available opportunity when his left hand was free, he took the knife from his right hand, which was still being restrained, and thrust it into the chest of Lenin, who was totally unarmed. This turned out to be fatal. The trial judge had carefully assessed the evidence before he came to the conclusion that Arun had taken undue advantage of Lenin. We were not persuaded that this determination was wrong and accordingly affirmed it.

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