Jin Yugang v Public Prosecutor
[2003] SGCA 22

Case Number : Cr App 1/2003

Decision Date : 17 May 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ

Counsel Name(s) : Tan Teow Yeow, Alan Moh (Tan Teow Yeow & Partners) for Appellant; Eddy Tham, Edwin San (DPP's) for Respondent

Parties : Jin Yugang — Public Prosecutor

Criminal Law – Offences – Murder

Criminal Law – General exceptions – Intoxication – whether the appellant was so intoxicated that he was unaware of what he was doing

Evidence – Proof of evidence – Onus of proof – whether the burden of proving a defence of intoxication lied with the accused person

Delivered by Chao Hick Tin JA

1 The appellant was convicted at the High Court of the crime of murder, namely, that on 4 February 2002, between 12 midnight and 00.48, he killed one Wang Hong in front of house No. 83 Rangoon Road. He was sentenced to suffer death. We heard his appeal on 28 April 2003 and dismissed it. We now give our reasons.

The facts

2 The events leading to the killing of Wang Hong (the deceased) were largely not in dispute. The appellant is a Chinese national. He, together with three others, the deceased, one Zhao Zhi Yuan (Zhao) and another person, were foreign workers from China sharing a rented room in the flat at No. 81B Rangoon Road (No 81B). The flat was on the third floor of a building. The appellant, the deceased and Zhao all worked for the same employer, Crusade Cleaning Service.

3 On the evening of 3 February 2002, as arranged, two friends of theirs, who were also fellow workers from China, Wang Bao Chun (Wang) and Gan Xin Lian (Gan), came to their room to have dinner and drinks with them. Wang and Gan brought two bottles of Kao Liang Chinese wine (Kao Liang) with them. They then proceeded to prepare food in the kitchen. In the meantime, the appellant and the deceased left their lodging for the Serangoon Road area to distribute pamphlets in order to earn some extra money. This task was given to them by a third party. They returned to the lodging at about 10.00pm and joined the others for dinner and drinks. At about the same time, a female friend of Zhao, one Ms Tang, also came to the flat to return a pair of pants which she had altered for Zhao.

4 During the meal, they drank the two bottles of Kao Liang and some beer. According to the appellant, he himself consumed half a bottle of the Kao Liang. Later, when all the drinks had been consumed, Gan went out to buy six more large bottles of Tiger beer. The appellant could not recall whether he also drank beer besides the Kao Liang.

5 It was at about midnight when an argument broke out between the appellant and the deceased. It would appear that the deceased started it all by scolding the appellant. Thereafter, they abused each other by uttering vulgarities. At this stage, Ms Tang left the flat.

6 With a view to calming things down, Zhao pulled the appellant away and brought him down to the ground floor. Zhao urged him not to quarrel with the deceased; he reminded the appellant that they had come to Singapore to work to earn money and not to fight or get into trouble. After a few minutes, when the appellant seemed to have cooled down, they walked up to the flat. However, before long, the appellant and the deceased started quarrelling again. Wang went to restrain the deceased. What exactly happened thereafter was not entirely clear. Zhao and Wang were not sure if the deceased was holding anything in his hands. At the same time the appellant moved towards his own bed, the lower deck of a double-decker bed. Suddenly, the appellant was seen holding a knife in his hand. Zhao and Gan rushed to restrain the appellant. In the course of doing that, Gan's hands were injured. Zhao then tended to Gan's injuries.

7 The commotion caused the landlady of the flat, and two other persons (her son and her friend) who were with her, to come over and see what was happening. At that instant, the deceased ran out of the room, chased by the appellant with a knife in his hand. When Zhao and Gan went downstairs a minute later, they saw the deceased lying on the ground, with the appellant standing and holding a knife in one hand and looking at the deceased. Seeing that the deceased had been seriously injured, Zhao and Gan attempted, in vain, to stop passing vehicles to help them transport the deceased to hospital. The Police and an ambulance arrived some twenty minutes later.

8 What happened on the street level before Zhao and Gan came down was witnessed by three members of the public. First, one Kee Lian Huat, who was travelling in a taxi, saw a man standing and swinging a knife he was holding at a man lying on the ground, who sought to ward off the attack. Second, one Thangarasan, who was living in the vicinity, saw one man chasing another and as the second man stumbled and fell onto the ground, the first man, who had a knife in his right hand, started to stab the second man. Thangarasan even shouted (in English) at the attacker to stop but the latter continued to stab in an "uncontrollable state". He also continued to stab the person on the ground even after the latter was motionless. Third, one Png Tiong San, who was passing the scene of the crime in his lorry, saw a person stabbing another, who was lying on the ground, at the abdomen. Png also shouted to the attacker to stop. He then saw the attacker throw the knife onto the ground, give a few kicks to the victim who was lying there, walk away a few steps and then turn back to kick the victim again a few more times.

9 The first officers to arrive at the scene at about 00.51 hrs were Cpl Ong Chee Keong (Cpl Ong) and Sgt Koh Chong Kok (Sgt Koh). They saw the deceased lying next to a pool of blood, with part of his stomach exposed. Cpl Ong and Sgt Koh then, upon being beckoned by the son of the landlady from the third floor, went up to flat No. 81B, where they saw the appellant outside the door. They noted that the appellant smelt of alcohol. He was aggressive, telling the officers not to get near him. However, Cpl Ong managed to ask and obtain his answers to the following questions in Mandarin:-

Q: Do you know the guy lying downstairs?

A: He is my friend, he wants to beat me to death.

Q: He wants to beat you to death, is that why you did that to him?

A: Yes.

10 Cpl Ong said that the appellant gave those answers without any hesitation. Throughout the encounter with the appellant outside the door of flat No. 81B, the appellant was aggressive. Besides warning the police officers not to get near him, he swung his legs in the air. Because of his behaviour, Cpl Ong had to call for back-up. When two more police officers arrived, they managed,

with some force, to subdue him and brought him to the ground floor. To get him into the police vehicle, again some force had to be resorted to because the appellant deliberately stiffened his body, refusing to get into the vehicle.

11 Sgt Koh also said that during the confrontation outside flat No. 81B, the appellant, when asked to squat, used his right hand as if it were a pistol and pointed it at his right temple, and asked the officers to shoot him there. According to Sgt Koh, the appellant spoke very loudly and had a slurred speech.

12 There was some suggestion (on the evidence of Gan) that the deceased had used a smashed beer bottle to confront the appellant. The appellant also recalled seeing the deceased pick up a beer bottle and hitting it against the table. However, the police found no glass splinters on the floor of the room, although it was in a mess, with bloodstains on the floor, the wall, the entrance curtain and the bed. The bloodstains were later established to be those of the deceased and Gan.

13 In the police vehicle, upon being asked by Sgt Koh, the appellant answered that their quarrel related to their work relationship, as the deceased was his supervisor. He alleged that during the quarrel the deceased sought to use a beer bottle to kill him. Thus, he used the knife, which was hidden under his bed and was for use in his work, to stab the deceased. He said that the deceased ran out of the room after being stabbed by him. We should, however, point out that in the record of this conversation made in the Patrol Log Sheet by another officer, no mention was made that the appellant said that the deceased was his supervisor and that the knife was required for his work.

14 Zhao said that on that night he drank one glass of the Chinese wine and some two bottles of beer and was quite drunk. Wang said that he too consumed a lot and could not recall the details of the event that night. But he recalled vaguely that the deceased could have said to the appellant "I can send you back" - a kind of threat. Gan said the deceased was a more aggressive person than the appellant, and that that was so that night.

15 The get-together that evening was not to celebrate anything in particular. As they were having a day off on 4 February, it was felt that it would be good to get together to chat, eat and drink.

Statements

16 Later that morning, a s 122(6) statement was obtained from the appellant and he stated the following:-

> On 03.02.2002, I was drinking with my fellow countrymen Wang Hong (the deceased), Wang Baochun, Gan Xinlian and Zhao Zhiyuan in the bedroom. For no obvious reasons, Wang Hong suddenly smashed a bottle and used it to stab me, saying that he wanted to kill me. I have drunk a lot and under the influence of alcohol, I accidentally injured Wang Hong and killed him.

There was no objection to this statement being admitted at the trial.

17 From 7-16 February 2002, five investigation statements were obtained by the Police from the appellant. These statements were also admitted into evidence without any objection. The essence of those statements was that after the deceased tried to attack him with the smashed beer bottle, he retreated to his bed, accidentally touched the knife which was hidden in his pillow and took it out to defend himself. He could not remember what happened after that as he was very drunk.

Medical evidence

18 We now turn to the medical evidence. At about 5.05am that day, the appellant was examined by Dr Soo Kian Hing of the Alexandra Hospital. In his report, Dr Soo stated that the appellant was conscious and alert, with alcoholic breath and injected conjunctiva. He did not have flushing of the face, slurring of speech or verboseness. His straight line walking was fair and his gait was steady. His blood sample was found to contain 137 mg of ethanol per 100 ml of blood. There were bruises and abrasions on his body. Although in the report Dr Soo had shown the appellant as having "incoherent speech", he explained in court that that could have been due to a lapse, a tick made in error. He recalled that the appellant was able to give answers to simple questions such as "How did you get the injuries?" and "Was there any pain?"

19 In cross-examination, upon being shown a photograph that there could be a bruise and some abrasions on the appellant's right chest, Dr Soo said that the impact there was a mild one. He agreed that tenderness at that area would be consistent with having been hit there by an object. There was no rib fracture but an x-ray of his left wrist showed a defect likely to be a fracture of the hamate bone.

20 The forensic pathologist, Dr Paul Chui, found seven stab wounds and 15 incised wounds on the body of the deceased. Three of the stab wounds would be sufficient in the ordinary course of nature to cause death. There was no dispute that the stab wounds inflicted by the appellant caused the death of the deceased. One of the fatal stab wounds was from the back, cutting through the right lung and going into the chest wall, causing massive bleeding and the collapse of the lung. On being questioned in cross-examination whether this wound could have been caused by the appellant fisting the deceased while holding the knife in his right hand, Dr Chui said that, if the wound were so caused, it would not have been so deep.

21 During the appellant's detention in prison, he was examined by a consultant psychiatrist, Dr Stephen Phang, on three occasions, i.e., on 21 and 26 February 2002 and 2 March 2002. The appellant was able to give him an account of himself with regard to the events that evening. He told Dr Phang that the deceased scolded him for no apparent reason and even attempted to attack him with an empty beer bottle. He explained that he took the knife to defend himself. He said he had drunk a considerable amount of the Chinese wine and beer that evening. Over the three days of interview by Dr Phang, the appellant was able to give a detailed and consistent account of the events, such as fighting next to the main road, the deceased lying on the ground, the arrival of the policemen at flat No. 81B and their handcuffing him. In Dr Phang's opinion:-

> The Accused does not suffer from any psychiatric illness. It is evident from his consistent recollection and account of the events that transpired at and around the material time of the alleged killing that he was not of unsound mind then. In fact, he even indicated his awareness of the difference between murder and manslaughter, attempting to exonerate himself from the former, which he is currently charged with, by stating that he did not have any intention to kill, nor was the incident preceded by any planning on his part. Although intoxicated, I do not believe he was so intoxicated that he could not appreciate the nature of his acts at the time. His ability to recollect and recount the events at the time essentially, in my opinion, eliminates this possibility. He presently understands the nature of the charge against him, as well as the potential consequences in the event of conviction. He is fit to plead to the charge and take his trial.

22 Dr Phang also opined that the effect which a certain quantity of alcohol would have on an individual would depend on that person's tolerance for alcohol. As far as the appellant was

concerned, Dr Phang, while agreeing that the alcohol level of the appellant at the time of the offence was estimated to be around 200mg/100ml, did not think that the appellant was so severely impaired mentally due to intoxication because:-

(i) he could remember hiding from the deceased and taking a knife to defend himself;

(ii) he could recount the confrontation with the policemen and that two policemen had handcuffed him;

(iii) he was able to recall that the deceased scolded him with vulgarities although he could not recall the exact words used; he did, however, remember that the deceased had uttered the four letter word.

In his opinion, the appellant must have had a high level of tolerance for alcohol.

Appeal

23 At the trial, while the appellant also raised the defences of grave and sudden provocation and of sudden fight under s 300 of the Penal Code, his main defence was really that of intoxication under s 86(2) of the Penal Code. All three defences were rejected by the trial judge. Before us, his counsel only pursued the defence of intoxication.

24 In considering the question of intoxication, besides s 86(2) there is also a need to look at s 85(2). We shall now set out both these provisions:-

85(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and –

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.

86(2) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

25 Counsel for the appellant submitted that on the totality of the evidence it was clear that the appellant, on account of his state of intoxication, could not have had the intention of committing murder. Emphasis was placed on the fact that the level of alcohol contained in the appellant's blood sample taken five hours after the incident was found to be 137mg/100ml. It would thus follow that at the time he stabbed the deceased, the alcohol in the appellant's blood would have been in the region of 200mg/100ml. The deceased, too, had a high alcohol content in his blood (142mg/100ml).

26 Counsel alluded to the fact that both the appellant and the deceased were friends and colleagues, having hailed from the same province in China. There was no motive for the appellant to have killed the deceased. That fateful night they even went out together to distribute pamphlets to the public in the Serangoon Road area to earn some extra money. They sat next to each other at the dinner table and the quarrel erupted quite suddenly. In his various statements the appellant repeatedly said

that he was drunk.

27 Counsel submitted that little reliance should be placed on the evidence of Dr Phang, who is not an expert on alcohol addiction. Moreover, he only examined the appellant some 17 days after the event. There was no evidence that he talked to Dr Soo or perused the report of the latter. The fact that the appellant could chase the deceased from the third floor to the ground floor did not mean he was not in a drunken state and the many stab wounds inflicted upon the deceased were clear evidence of his intoxicated state. One of the prosecution witnesses, who saw the way in which the appellant went about attacking the deceased who was lying on the ground, said that he was in an "uncontrollable state".

Our consideration

28 As counsel for the appellant rightly conceded, the burden was on the defence to show, on a balance of probabilities, that the accused was so intoxicated that he could not have formed the necessary intention to commit the offence he was charged with: see *Suradet v PP* [1993] 3 SLR 265 and *Indra Wijaya Ibrahim v PP* [1995] 2 SLR 442.

29 At this juncture it may be expedient for us to set out again briefly the critical portions of evidence given by the appellant. He said that at the dinner table, for no apparent reason, the deceased started to raise his voice and scold someone. Perhaps it was the effect of the alcohol. When the appellant asked him why he was angry, he abused the appellant and the latter's mother, and threatened to beat him and send him home. Though the appellant's mother had died some twenty years ago, he was nevertheless very upset with the abuse uttered by the deceased and shouted back at him. He could not remember that Zhao brought him down to the ground floor to cool off. He, however, remembered someone pushing the deceased to one end of the room. At one point, the deceased tried to attack him with a broken beer bottle. As he retreated onto his bed, he touched the knife which was hidden in his folded pillow and took it to defend himself. As he was taking it, he did not realize it was a knife. With it in his hand, he just hit wildly. When the deceased walked out of the room, he followed him downstairs. He could not recall what happened to the knife or whether the deceased was bleeding. He then climbed up the stairs to the flat and asked the people inside to open the door to let him in. Later, the police came up to where he was but he could not remember what transpired between the police officers and him. He did not know that he had killed the deceased; all he wanted to do then was to go into the flat, shower and sleep.

30 The appellant also said that the deceased was never his supervisor at the place of work. Neither did he require a knife for his work. He said he would indulge in drinking two to three times a week. It would be a bottle of beer and some Kao Liang.

31 The trial judge, after referring to ss 85 and 86 of the Penal Code, noted that –

> The (appellant) was quite capable of carrying on a logical conversation at the staircase when the police officers were trying to apprehend him. He could resist arrest and even refuse to go into the police vehicle by deliberately not bending his body. He could give coherent answers to SGT Koh's questions in the police vehicle. Photographs taken of him at about 3.20am that day (P 14 and P 15) showed a man who was in control of his senses and able to stand in an upright position. His response to the deceased while they were in the room was to reach for his knife kept within his folded pillow. I disbelieved his assertions that he was merely looking for something to fend off the attacks. Even if he was, that would show he was still well in control of his senses. It was not possible that a man who could instinctively defend himself by grabbing some object and then fighting ferociously was not at all conscious that he was wielding a dangerous

weapon in his hand. He could chase the fleeing deceased from the third level to ground level and overtake him. The many stab wounds were deliberately and forcefully inflicted.

The Accused was incensed but he was certainly not insane. He had the requisite intention to commit murder.

32 We must reiterate that the burden of establishing that the appellant could not have had the intention of committing the offence he was charged with, rested with him. He did not adduce any scientific or other evidence to establish that fact, other than his own assertions. Even taking the appellant's claim of being highly intoxicated on the face of it, this had to be weighed against other objective evidence, such as,

(i) he was able to carry on an intelligent conversation with Cpl Ong just outside the door of flat No. 81B;

(ii) he resisted arrest and even stiffened his body when the police officers wanted him to get into the police vehicle;

(iii) he was able to talk sensibly to Sgt Koh in the vehicle;

(iv) he sensed that the deceased was trying to attack him with a broken bottle and he took out the knife hidden in his folded pillow allegedly to defend himself;

(v) he could chase the deceased from the third floor to the ground floor and there stab him deliberately and forcefully;

(vi) after stabbing and kicking the deceased who was on the ground, he walked away a few steps and came back to kick the deceased further. This showed the extent of his rage.

33 An equally significant consideration in this regard was the fact that the appellant was able to give a reasonable account of the events up to the stage when he said the deceased tried to attack him with a smashed beer bottle and he took a knife from his pillow to defend himself. This indicated knowledge and awareness. In *Mohd Sulaiman v PP* [1994] 2 SLR 465, this Court dismissed the defence of intoxication because of, *inter alia*, the accused's ability to recount his activities after he had stabbed the victim. That showed that the accused could not have been seriously intoxicated.

34 While we accepted that on that fateful night the appellant had consumed quite an amount of alcoholic drinks (with his alcohol level at around 200mg/100ml at the time of the incident), it did not follow that he was, therefore, intoxicated to such an extent that he did not know what he was doing. It is common sense that alcohol tolerance varies from person to person. As was stated by the High Court in *PP v Ramasamy a/l Sebastian* [1990] SLR 875 –

> In any event, the blood alcohol level itself can never be conclusive to determine the degree of intoxication of the accused. Different people react differently to the same blood alcohol level. It makes a great difference whether the person is or is not an experienced drinker. In our judgment and here we accept the opinion of Dr Chan (PW15), the more reliable indicator of the state of mind of the accused must be the conduct of the accused immediately prior to and after the offence.

35 Some people, if they had that same amount of alcohol in their blood as the appellant had, could become so intoxicated that they would be unaware of their surroundings. They could very well be

sprawling on the ground too. But it did not follow that such would be the effect of that level of alcohol on all persons. There was evidence, including that of the appellant himself, that he was a seasoned drinker. That probably explained why he was still sober, very much in control of his senses. What further proof of anger and vengeance was needed when the appellant, having stabbed and kicked the deceased lying on the ground and walked away, came back and kicked him further? This could not be the conduct of a person who was so intoxicated that he did not know what he was doing. His actions spoke volumes, showing utter spite and disgust for the person lying there.

36 Here we must address the evidence of some witnesses who described the appellant's attack as "uncontrollable". The trial judge, having weighed the expert evidence of Dr Phang against the observations of the lay witnesses, came to the view that the acts which the witnesses saw were really those of an "incensed" person. This finding was clearly supported by the evidence. There was no basis upon which we could differ from the trial judge.

37 Finally, the argument was made that the appellant did not flee from the scene of the crime. This fact was neither here nor there. As Dr Phang said, there was really no link between the question of whether the alleged offender was totally unaware of his actions and the act of not fleeing. That was quite plain. The act of not fleeing might very well indicate a sense of guilt and remorse or preparedness to take responsibility for his own act.

38 In our judgment, the trial judge was amply justified in holding that the appellant knew what he was doing when he repeatedly stabbed the deceased. By no stretch of the imagination could it be said that the judge's finding was against the weight of the evidence. Thus, we upheld the conviction.

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