Lee Harith Gary (alias Lee Cheng Thiam) v Public Prosecutor
[2004] SGCA 51

Case Number : Cr App 9/2004

Decision Date : 08 November 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ

Counsel Name(s) : David Rasif (David Rasif and Partners) and Goh Teck Wee (Goh Chang JP and Wong) for appellant; Christopher Ong (Deputy Public Prosecutor) for respondent

Parties : Lee Harith Gary (alias Lee Cheng Thiam) — Public Prosecutor

Criminal Law – Offences – Murder – Whether on the evidence there was reasonable doubt in Prosecution's case

8 November 2004

Kan Ting Chiu J (delivering the judgment of the court):

1 The appellant, Harith Gary Lee alias Lee Cheng Thiam, was tried before Woo Bih Li J for the murder of Teo Siew Peng. The offence took place on 10 March 2003 at about 12.22pm on the tenth floor of Block 202 Choa Chu Kang Avenue 1, Singapore. He was found guilty and was convicted on the charge, and brought his appeal against the conviction before us.

2 The appellant was 39 years old. He had been married twice and was estranged from his second wife. The deceased, who was 32 years old, was either divorced or separated from her husband.

3 The appellant and the deceased had known one another for about ten years. However, they only became close around the first quarter of 2002. That developed into an intimate relationship, and they would stay together at the deceased's flat and the flat of her colleague and close friend, Goh Lye Keow ("Rita"), from time to time.

4 Woo J had found that the relationship between the appellant and the deceased was under strain months before the murder. The deceased was not happy with the relationship, and the appellant was trying to regain her affection.

5 Khoo Sok Lin Celine, a friend of the deceased, gave evidence that the deceased had told her that she was unhappy with the appellant because he was being over-possessive and that she had wanted to break her relationship with him. Rita gave evidence that the deceased had also told her that she was unhappy with her relationship with the appellant and was thinking of ending it although she was prepared to continue with it to see how it would go. Soon Shen Chwee, a friend of the appellant, gave evidence that on 4 March 2003, the appellant told him that he had broken up with his girlfriend for a week.

6 There was more direct evidence on the state of the relationship nearer to 10 March 2003, the day the deceased died. On the afternoon of 9 March, the appellant had been to the deceased's flat. He was not able to see the deceased. Instead he met her mother, Chioh Ah Hoi, and handed to her a bird in a birdcage and an envelope addressed to the deceased. In the evening, he rang the flat repeatedly to speak to the deceased. When Mdm Chioh told him that she was not there, he told her to consider herself to have given birth to one daughter less.

7 The letter to the deceased was in Chinese, which, when translated into English read:

> I do not know that I did wrong. Maybe you have found the exciting and colourful life you want. I am really not capable of anything now. I am not paid any salary and I can only work like hell. You may think that I do not want you or care about you, but I really have only you in my heart(?). I can accept it if you have a change of heart because I have no money. I can understand, as there are many men at 97(?) [This refers to a lounge the deceased worked at]. However, it is because of work that I have no time to keep you company. I will have regrets even if I die. I know I am useless and you have to lead a miserable life(?). You may think that the reason I want to be with you is to have sex with you. You are wrong, dear(?). I have four work assignments this month and I have to work like hell. I really have no time to keep you company. I really have nothing to say(?) and I hope you will be happy.

8 On that night of 9 March, the appellant telephoned Rita to ask if the deceased was with her. He told Rita that the deceased had mentioned the previous day that she wanted to end their relationship. The appellant also said to Rita words to the effect that "You just take it that you have lost a good friend."

9 When the deceased spoke to the appellant over the telephone, she told him that they should terminate their relationship. This statement so upset the appellant who was then outside the deceased's flat that he kicked and damaged the front metal gate of the flat. That woke up the deceased's sister, Teo Siew Hoon Karen, who was annoyed upon seeing him and the damaged gate. When she chided him, he complained about the way the deceased had treated him, and protested that he did not know why their relationship had gone bad, and said that he would hold onto the deceased and jump down from the block without regrets. The deceased's son, who was with Karen, heard the exchange.

10 At about 2.00am (on 10 March 2003), the appellant was outside Rita's flat looking for the deceased. He was told that the deceased was not there, and was refused entry into the flat. He again became upset, shook the metal gate violently, and put a padlock on it. He challenged Rita's husband to call the police. When the latter did that, he removed the padlock, apologised and left before the police arrived.

11 The next episode unfolded at between 11.00am and 12.00 noon at the deceased's place of work. The appellant appeared at her office, grabbed her by her hair and pulled her to the staircase. When Rita intervened to get him to release her, he struck Rita on the nose, and forcefully brought the deceased down to his lorry.

12 The final event took place at Block 202 where the deceased's flat was sited. Leong Siew Choon and Goh Poh See were residents in the block. They had fetched their children from a kindergarten and were walking towards the block when they noticed the appellant's lorry approaching the block at a high speed.

13 When the two women arrived at the void deck of the block, they waited for the lift to take them to the tenth floor from where they would walk down to their flats on the ninth floor. They saw the appellant and the deceased approaching, but the couple did not enter the lift with them and their children.

14 When they arrived at the tenth floor, the two women chatted a while before making their

way to their respective homes in different directions. As they walked, they both had further occasion to look at the couple who were then on the tenth floor corridor. Mdm Leong saw the man use his hands to lift up both the legs of the woman, with his hands slightly stretched and palms opened, holding onto her knees. The woman's legs were off the ground, and she was holding onto the railing on the parapet along the corridor with both hands, uttering something like "aw, aw, aw" softly. Initially Mdm Leong thought the couple was playing because the woman was not struggling. But the man lifted the woman's legs higher, and she then disappeared from sight. Mdm Leong looked over the parapet, and saw a body lying motionless on the pavement below. Mdm Leong disagreed with Mr Rasif, counsel for the appellant, that the man had both his arms around the knees of the woman or that he was trying to prevent her from throwing herself over the parapet.

16 Mdm Goh turned around to look at the couple when she heard a female voice uttering "ai, ai". She saw the woman holding onto the railing on the parapet with both hands, while the man who was behind her was holding onto her ankles and lifting her body upwards.

17 The deceased died from the fall. The police were alerted, and investigations commenced. The first officers to respond were Staff Sergeant Ishak bin Mohamed ("SSgt Ishak") and Special Constable Mohd Shahrul bin Ismail ("SC Shahrul"), who were on mobile patrol duty.

18 The two officers went to the tenth floor of Block 202 where they saw the appellant arguing with the deceased's father. SSgt Ishak asked the appellant what had happened, and he replied in English, "I killed her." He also said, "I already push her down. Do you want me to jump down I can do it."

19 There was a written record of these words. This was in the form of an entry in the patrol car log sheet made by SC Shahrul about one hour after the event. The entry, which read in part:

> When mobile was interviewing B1 [the Appellant] he was aggressive, smell of alcohol drunkard and bare footed he was wearing a shirt (few of the shirt button were unbutton) tuck out and blue jeans. When SSgt Ishak ask B1 what happen he said "I KILLED HER" AND HE MENTIONED "I WAITED FOR TEN YEARS". Culprit also mention his company had went Bankrupt. Mobile then asked him to calm down, however he aggressively inform "I already push her down. DO YOU WANT ME TO JUMP DOWN I CAN DO IT."

was dictated by SSgt Ishak to SC Shahrul. The words "I already push her down" were added on the instruction of SSgt Ishak after he read over the recording made by SC Shahrul. Both officers confirmed that those added words were spoken by the appellant. The log was signed off by SSgt Ishak at the end of their tour of duty.

20 Woo J held that statement to be admissible in evidence under s 122(5) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), and we confirmed the correctness of the ruling.

21 The appellant was placed under arrest, and was subsequently taken to the Jurong Police Division Headquarters. While he was there, Senior Staff Sergeant Pavia Roy Nicholas ("SSSgt Pavia") and Staff Sergeant Ng Leng Sing ("SSgt Ng") attempted to interview him, but he was in an agitated state and said in Hokkien, "I kill human being. I did not run. I waited for you to come. Why you all treat me like that? I want to take revenge against the police." This was interpreted into English by SSgt Ng, and SSSgt Pavia recorded it into his field diary.

22 On the following day, 11 March 2003, a cautioned statement was recorded from the appellant

where he said:

> I did not kill her. That day I managed to get her at her office. I had been trying to get her for the past 3 days. We went to the carpark at Kranji. We had a talk for a while. She was heavily indebted. She owed credit card companies at least S$10,000/= over. I was unable to help her anymore. In fact, I had helped her to repay the credit card companies and expenses for more than S$20,000/=. She was a drug addict and spent at least S$500/= a month on the drugs. Her salary was not enough for her expenses. I love her very much and had all along tolerated what she had done. At that time, I was badly drank [*sic*] as I had been drinking since last Friday. As I could not help her anymore, we discussed and decided to die together. She suggested that we go back to her block of flat. She had just bought this flat at Block 202 Choa Chu Kang Avenue 1 #10-xx and she had a lot of financial and family problems pertaining to this flat. I drove her back to her block of flat in my lorry. I parked my lorry at the carpark haphazardly because she already ran out of the lorry. I chased after her and went up to the 10th floor together with her in the lift. When the lift door opened at the 10th floor, she ran out and climbed over the parapet. I wanted to follow her but her father came out of the flat and grabbed my body. … Furthermore, she was a drug addict.

23 The appellant's defence was along the lines of the cautioned statement, with elaboration on his actions on 9 and 10 March 2003. He admitted that he had written the letter delivered to the deceased's mother, but denied telling her that she should consider herself to have given birth to one daughter less.

24 He agreed that he spoke to Rita over the telephone, but could not recall telling her that she should consider herself to have lost a good friend. He remembered that he had kicked the gate of the deceased's flat, but could not recall if he had told Karen that he would hold on to the deceased and jump down with no regrets.

25 He also admitted that he did place a padlock onto the gate of Rita's flat, and removed it subsequently when her husband made a call to the police.

26 He was very angry when he was in the deceased's office, and had grabbed her by her hair and dragged her out. His defence was that after they left the office, they went to a car park near Kranji Dam. While they were there, they had a quarrel. The deceased talked of her problems that she could not resolve. He suggested that they die together. She agreed and they returned to her flat.

27 When they reached the tenth floor, he was distracted momentarily when he saw someone repairing the gate of the deceased's flat. When he looked at the deceased again, she was at the parapet. Her hands were on the parapet, and her feet were off the floor. He tried to grab hold of her, but failed. Although his hands touched her legs, he was unable to have his arms around her knees.

28 He denied that he told SSgt Ishak and SC Shahrul that he had killed the deceased and had pushed her down and he disputed SSgt Ng's account of his statement at Jurong Police Division Headquarters, and asserted that he said he did *not* kill a human being.

29 Woo J found that the relationship between the appellant and the deceased was under strain at the time of her death. He came to this conclusion on the basis of the appellant's letter to the deceased, the deceased's telling Rita that she had told the appellant that she wanted to end the

relationship, the appellant telling Rita to consider herself to have lost a good friend, his telling Karen that he could hold onto the deceased and jump down, his telling the deceased's son that he was to die with the deceased, the kicking of the gate at the deceased's flat and the padlocking of the gate at Rita's flat. In addition to that, there was the appellant's ominous advice to the deceased's mother that she should consider herself to have given birth to one daughter fewer.

30 It was abundantly clear that he was angry and unhappy with the deceased on the days leading to her death, and that the deceased's death was on his mind.

31 Against this background, we share the trial judge's scepticism at the appellant's evidence on the suicide pact he made with the deceased after they left her office, and before going to her flat.

32 The judge gave particular attention to the events on the tenth floor corridor. He accepted the evidence of the two neighbours who witnessed the incident. He accepted that there was some inconsistency in their evidence, but found that it did not detract from their evidence that they saw the appellant holding the legs of the deceased and lifting her. This evidence contradicted the appellant's evidence that he tried unsuccessfully to stop the deceased climbing over the parapet.

33 He did not accept that the deceased, who was 1.48m tall could climb over the 1.3m tall railing in her platform shoes as quickly and easily as the appellant described.

34 The judge also considered the evidence in the statements the appellant was alleged to have made to SSgt Ishak and SC Shahrul at the scene. Woo J noted that counsel had, when cross-examining SSgt Ishak, suggested to him that when the appellant said "I killed her", he meant that he felt responsible for her death. The suggestion was significant as it was an acceptance that those words were said. However, when the appellant gave evidence, he denied that he had said that, thereby detracting from the earlier position, and taking a position (that he did not say those words) that was not put to the prosecution witnesses.

35 Woo J found that those words were said, as well as the words "I already push her down" which were added to the entry in the patrol car log sheet on the direction of SSgt Ishak. The judge found no reason for SSgt Ishak to fabricate his evidence, and found his recollection of the words to be reliable.

36 On the alleged statement made at Jurong Police Division Headquarters that "I kill human being", the judge noted that when SSgt Ng gave evidence on that, defence counsel put it to him that the appellant did not say that. The appellant's evidence was that he said "I did not kill human being". There is a significant difference between not having said something, and having said something that was not fully understood. The possibility that the appellant actually said that he did not kill was not put to the prosecution witness; counsel's cross-examination of Sgt Ishak left the impression that the appellant had said nothing at all.

37 On the appeal before us, Mr Rasif focused on three points:

(a) the evidence of the two neighbours;

(b) the trial judge's reliance on the appellant's oral confession "I already push her down"; and

(c) the trial judge's rejection of the appellant's account of events disclosed in his

cautioned statement.

38 These were matters that Woo J had dealt with at length. To Mr Rasif's credit, he did not assert that the trial judge had overlooked those matters or that his findings were perverse or made without basis. His case was that on the evidence there was still a reasonable doubt in the prosecution case.

39 We did not agree with the submission. There was abundant evidence from distinct sources that the appellant was upset and angry with the deceased, and had been alluding to her death the day before the alleged suicide pact, and also on his actions on the fateful day, particularly those on the tenth floor corridor. In addition to that, he admitted on three separate occasions that he killed her.

40 We found no grounds to depart from Woo J's decision, and dismissed the appeal.

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