Saeng-Un Udom v Public Prosecutor
[2001] SGCA 39

Case Number	: CA 3/2000
Decision Date	: 12 May 2001
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: James Masih (James Masih & Co) and Ramli Salehkon (Ramli & Co) for the appellant; Bala Reddy and Edwin San (Deputy Public Prosecutors) for the respondent
Parties	: Saeng-Un Udom — Public Prosecutor

JUDGMENT:

Grounds of Judgment

Introduction

1. The appellant, Saeng-Un Udom (Udom), a Thai national, was charged for committing murder of one, Weerasak Suebban (Suebban) , a fellow Thai worker, at North Shipyard (Pte) Ltd, 23 Tuas Crescent, on 23 June 2000, an offence under s 300 and punishable under s 302 of the Penal Code (Cap. 224, 1985 ed). He was tried before the High Court and was convicted and sentenced to suffer death. He appealed against his conviction. We allowed the appeal, set aside the conviction and sentence, and convicted him of the offence of attempting to commit murder, an offence punishable under s 307 of the Penal Code, and sentenced him to a term of imprisonment for 10 years. We now give our reasons.

The facts

2. On the night of 22 June 2000, Udom, Suebban and three other friends, namely, Noikham Thamrong (Thamrong), Srisombat Jeerasak (Lao Ta) and Chobset Chai (Chai) were having a drinking session. They continued drinking to the early hours of the following morning. Just before 2.00 am on 23 June 2000, a serious quarrel broke out between Udom and Suebban. The cause of the quarrel was the boast made by Udom that he was the best welder among them. Suebban was unhappy about this and scolded Udom, which then resulted in a heated quarrel between the two of them. In the course of the quarrel, Suebban smashed two glass bottles and threatened Udom with a knife. The others intervened and separated the two. Udom then left the room and Suebban placed the knife on the table. Chai took the knife and threw it into a Castrol bin downstairs. Suebban returned to his room. While inside the room, Lao Ta heard him making a challenge to Udom by shouting in Thai: If there is any problem we settle tomorrow in whatever manner. There was however no response from Udom.

3. Udom returned to his room, changed to a pair of jeans, and lay down on his bed. He was restless and thought that he would have to kill Suebban in the belief that if he did not do so, the latter would kill him in the early hours. About ten minutes later he got up and retrieved a metal cutting gas torch from a locker and cut a piece of a metal rod which was about eighty centimetres in length, two and a half centimetres in diameter and about seven or eight kilograms in weight. He then placed the rod near Suebbans room, somewhere near an engine room among some scrap metal.

4. Thereafter, he returned the gas torch to its storage place and went back to the spot near Suebbans room, where he left the metal rod. He smoked a cigarette and then, according to him, opened the doors of the deceaseds room, walked into the room [and] hit the deceased three times with the metal rod. He then left the room with the metal rod and threw it into the sea in the slipway basin. He returned to his room and went to bed. At dawn, he rose, went for breakfast and reported for work as usual.

5. On the very morning, Suebban (the deceased) was found dead on his mattress, lying on his side in a prone position, with

his face turned to his right and facing down, and his head was covered with blood. Dr Gilbert Lau, the forensic pathologist of the Institute of Science and Forensic Medicine, went to the site and inspected the body. Subsequently, he performed an autopsy on the deceased.

The evidence

6. Udom was arrested. He gave both a cautioned statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 ed) and a long statement to the investigation officer under s 121(1) of the Code. In the former, he expressly pleaded guilty to the charge. In the latter, he described in detail what he did on the night of 22 June and the early morning of 23 June 2000. In essence, he admitted to having had the mens rea of murder as well as having committed the actus reus of murder. These damning statements were not challenged and the judge further confirmed with Udom that he had not been coerced or induced, in any way, into making the statements and that he understood the nature of the charge he faced, when he made his cautioned statement.

7. With the information provided by Udom, the investigation officer, SS/Sgt Benjamin Oh, managed to find and retrieve the metal rod from the bottom of the slipway basin on 29 June 2000. This was accepted by Udom as the weapon he used.

8. The other material evidence was given by Chai. He testified that Udom told him sometime after 7.10 am on 23 June 2000 that he had used a metal pipe to hit someone the night before. When Chai asked whom he had assaulted, Udom replied that sooner or later he would know. This evidence was not challenged by the defence counsel.

9. Dr Gilbert Lau gave evidence as to the findings he made in the autopsy performed on the deceased. His opinion was that from the lacerations on the scalp at least two separate blows were inflicted on the head within seconds of each other. He testified that a relatively heavy instrument with a sharp cutting edge, like a parang, was used, as the larger laceration had characteristics of both blunt and sharp force effects. He believed that the clean cut strands of hair found on the deceaseds pillow and the wall, and the low blood splatter pattern on the wall supported his forensic findings. Dr Lau concluded in his report (so far as relevant) as follows:

> 1. ..
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> 2. Death was caused by a severe, open head injury, comprising an extensive, depressed, open comminuted, right temporo-parieto-occipital fracture, from which linear fractures radiated across the calvarium and into the base of the skull, accompanied by diffuse intracranial haemorrhage and extensive cerebral lacerations.
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> 3. The presence of two distinctive scalp lacerations on the right temporal and occipital regions, directly overlying the depressed, comminuted cranial fracture, would indicate that at least two separate blows had been inflicted on that part of the head.
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> 4. The cleanly incised appearance of the superior (upper) margin of the anterior (forward) portion of the comminuted fracture would suggest that it had been caused by the application of a relatively heavy instrument with a sharp cutting edge.
>
> 5. ..

In his evidence in court, Dr Lau categorically denied that the fatal wounds could have been caused by the alleged murder weapon, i.e. the metal rod, or anything like it. This evidence was severely tested by both the prosecution as well as the judge.

10. Udom gave evidence in his defence. His evidence corresponded substantially with what he had said in his s 121 statement. He admitted that he intended to kill the deceased. He therefore fashioned an iron rod. After ascertaining that the deceased was fast asleep, he stood near the deceased head at the edge of the mattress where the deceaseds forearms were, held one end of the iron rod with both hands, raised it well above his head and swung it in the direction of the deceaseds head. For the second and third blows, he raised the iron rod only to his shoulder level. As the room was dark, he was however not certain whether he did, in fact, hit the deceaseds head.

The prosecution

11. The prosecution rested mainly on the evidence of Udom, including the statements made to the investigation officer, and the evidence of the other Thai workers who were present at the drinking session and who witnessed the heated quarrel that took place between him and Suebban in the early hours of the morning of 23 June 2000.

The defence

12. The defence, on the other hand, relied mainly on the evidence given by Dr Gilbert Lau. On the basis of the evidence of Dr Lau, the defence was that there were no wounds sustained by the deceased which were consistent with blows from the metal rod, which Udom said he used to hit the deceased. The inference was that Udom, in the darkness of the deceaseds room, in hitting the deceaseds head, missed it completely. Someone else, using a heavy weapon with a sharp cutting edge, killed the deceased either before or after Udoms attempt. The prosecution therefore had failed to prove an essential element of the offence, namely, that the accused actually caused the death of the deceased. As regards the evidence of Udom, it was argued that he had honestly believed that he committed the murder, but in fact he was mistaken; he did not commit the murder. What he did amounted to an attempt to commit murder.

The decision below

13. The trial judge held that the *parang*, which was found at the shipyard on the morning of 23 June 2000, was not the weapon used. There were no bloodstains on it, and in his testimony Chai said that the *parang* was in the same position as he had left it. The judge said:

> 18 In my view, the parang shown in photograph P 33 was not the weapon used. There were no bloodstains on it. Chai testified that the photograph showed the parang in the same position as he had put it. If it had been used to inflict the severe head injuries on the deceased, I would expect it to be bloodstained. If the assailant had picked it up from the bin to use it, it was most unlikely that he

would replace it in exactly the same position where Chai left it in the bin.

14. The judge found that the accused had used the heavy iron rod to inflict the injuries on the deceaseds head with the intention of killing him. He disagreed with Dr Laus opinion and held that it was the metal rod that was the murder weapon. The judge explained:

> 19 . . . . . In my judgment, photograph P 17 probably shows the first point of heavy impact above the deceaseds right ear at the 2 oclock position. It was likely to be a glancing or slicing blow with the jagged circular edge of the end of the iron rod making first contact. Due to the momentum of the swing, the jagged circular edge of the rod would be carried down to the 5 oclock position towards the right eye, thereby cutting deep into the deceaseds scalp and head (as can be seen in photographs P 65 and P 66), and cracking the skull along the way at the same time. Since it was not a direct impact, the whole skull was not crushed and the severe blood and brain splatter that Dr Lau was expecting did not occur. The rough edges of the end of the iron rod did not give a neat cut on the scalp. To me, this was consistent with the rather ragged and torn edges of the opened skin at the large laceration. A close examination of photographs P 65 and P 66 would show that the end (towards the right eye) of the relatively long and **wide** [sic] laceration had features of a collection of tissue material indicating the end of the glancing blow. I also noted the presence of ridge-like features which indicated a compression of the tissues at that end of the laceration consistent with a blow starting at the 2 oclock position and ending at the 5 oclock position. The rather broad U and not V shaped laceration viewed depthwise [sic] seemed to me to be more consistent with an object with a relatively blunt edge causing the laceration rather than a sharp knife or a sharp bladed object. Further, if the assailant standing near both forearms of the deceased had used a sharp-edged weapon such as a *parang*, and having regard to the position of the deceaseds head lying on the mattress (see photograph P 17) the laceration caused would instead be more likely to be perpendicular to the severe laceration seen in photograph P 66.

In coming to this conclusion, he disagreed with Dr Gilbert Lau and continued:

> 20 Hence, it was erroneous for Dr Lau to assume that the direction of the blow from the iron rod was necessarily along the length of the severe laceration on the head, which meant that the accused would have to stand on the mattress near marker "1" in photograph P 16 and face the back of the deceased, which he did not.
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> 21 The accused testified that he did not raise the iron rod as high for the second and third blows. With the lesser force applied, that would account for the crescent shaped minor laceration at the back of the head (see photograph P 65) when the curved edge of the tip of the iron rod penetrated the scalp. Similarly, I did not find it improbable for the accused to have remained standing near the deceaseds right forearm and elbow (see photographs P 16 and P 17) before he launched another swing of the iron rod in the direction of the head with much less force than the first blow, scraping the right forehead region but missing the centre of the head. If the jagged edge of the end of the iron rod had grazed the scalp along the forehead (see photographs P 65 and P 66), that would probably account for the relatively shallow linear laceration perpendicular to the main

laceration.

> 22 As for the strands of hair, they were likely to be caught and cut by some of the crevices and jagged edges at the circular end cross-section of the iron rod in the course of the swinging action.

15. Following from that, the judge concluded that he had no reasonable doubt that Udom had caused the death of the deceased. Apart from his view as to how the injuries were caused by the metal rod, he found it unbelievable that Udom could have missed hitting the deceaseds head completely, when he swung the metal rod at the deceaseds head three times.

The appeal

16. The crux of the arguments before us centred on the evidence of Dr Gilbert Lau. He was the expert called by the prosecution, and his opinion as to the cause of the death of the deceased was the only forensic evidence before the court. He was unmistakably clear in his evidence that the fatal wounds inflicted on the head of the deceased were caused by a relatively heavy instrument with a sharp cutting edge, such as a parang, chopper or cleaver, and not by a metal rod such as the one, which Udom said he used to hit the deceased.

17. It is true that Udom admitted that he caused the death of the deceased. It was argued that he said that because he honestly believed that he did it. However, subsequent investigations revealed that he was mistaken. There was irrefutable evidence that the fatal wounds were not inflicted by him. It was pointed out that at the time when he entered the room of the deceased, armed with the metal rod, the room was dark, and he did not realise that the object which he hit with the iron rod was not the deceaseds head, which he believed it was. He therefore did not kill the deceased.

18. In conclusion, it was submitted that, on the basis of the evidence before the court, the prosecution had failed to prove beyond reasonable doubt an essential element of the offence of murder, namely, that the acts of Udom caused the death of the deceased. He was guilty only of an attempt to murder the deceased and should therefore be dealt with accordingly under s 307 of the Penal Code.

Dr Gilbert Laus evidence

19. It would be helpful to refer to Dr Gilbert Laus evidence in some detail. First, when he was asked about the probable nature of the real murder weapon, Dr Lau opined that a *parang*, such as the one discovered in the Castrol bin or a heavy piece of scrap metal found in abundance around the shipyard, which had been sharpened along one edge, could have caused the injuries. He said:

> A *parang* is both relatively heavy, has a solid blade, metal blade. At the same time, it has a cutting edge which is why I said that in effect, it would be similar to injuries caused by say, a chopper or a meat cleaver. Its a very much the same sort of effect. So both relatively heavy, they are solid, relatively heavy objects as well as a cutting edge.

20. Next, Dr Lau was specifically asked by the judge if the rod could have caused the injuries

bearing in mind the very sharp edge at the end of the metal rod. Dr Lau responded thus:

> Well, I did consider that very carefully and whilst the metal rod could have caused the fractures of the skull and the injury to the underlying brain that was observed at autopsy, it would not have given rise to the sharp forced effects that weve seen the relatively sharp margins of the front of this laceration and also the cleanly cut upper edge of the fracture nor would it have caused the hair to have been cleanly cut. Rather, it would have crushed the hair and this effect can be quite obvious in many homicidal head injuries Its [the wound] very cleanly cut. A rod of that nature would just have smashed the whole skull in basically. You would not see something like this.

21. If the injuries had been caused by the rod, the nature of the injuries would have been very different. Dr Lau said:

> I took into consideration both the appearance of the cleanly cut strands of hair which one would not be able to achieve with the use of the rod alone. With the presence of the sharp anterior or front margin of the laceration as well as the peculiar contour of the skull, homicidal head injuries caused by blunt force trauma are by no means uncommon locally and most of the time, one doesnt see these features. One sees the entire skull being smashed in and in fact brain matters spewing out. That is typical of blunt force purely blunt force injury to the brain. Here we did not observe any brain matters spewing out or contaminating the wall staining the wall or the beddings at all If the rod had indeed been used, I would expect to find brains spilling out and be splattered which is very much what we usually see in these injuries and the whole at least the right side of the head very badly smashed in. As you can see, the head still retains much if its shape externally.

Furthermore, he said:

> if the rod had in fact been used, being heavy and long as it is I believe it is almost a meter long or is just slightly shorter than that one would probably have to lift it up quite a bit higher in order to inflict the injuries to the head. In which case I would expect to find a much wider splatter or at least higher splatter. Perhaps even the ceiling might have been splattered with blood. But nothing of that sort was found at the scene. So I would surmise that the shorter object had in fact been used such as the *parang* or the metal piece that was described.

22. It was suggested to Dr Lau that the blows were caused by the metal rod and the lacerations on the scalp were caused by the sharp edge of the metal rod. His response was that he would expect to find a crescentric laceration on the scalp and a depressed, rounded fracture underneath it. Furthermore, a single blow of the nature suggested would not have caused such an elongated wound. As regards the nature of the sharp object the doctor had in mind, he said:

> No, this is not the sort of sharpness I am referring to. I am referring to a knife-like sort of sharpness and its no ordinary kitchen knife. Its got to be a relatively heavy knife-like object. This rod is heavy enough to cause fractures and the underlying injury to the brain but the edge here, whilst we could cut ourselves with it, so to speak, if we were not careful, would not be sharp enough to cut through, to slice I think the word that would be appropriate here is a slicing

action. This would not give us a slicing action.

23. Thus, the judges theory of how the fatal wounds could have been inflicted on the deceaseds head by the use of the metal rod was put to Dr Lau as a possible or probable explanation. Dr Lau rejected this theory and consistently said that the fatal injuries would not be the way they were, if the victim had indeed been bludgeoned in the manner suggested by the judge. Dr Laus opinion was that the fatal injury showed the features of both sharp force as well as blunt force effects and thus was probably inflicted with a relatively heavy object with a cutting edge. When he was questioned about another and smaller laceration on the back of the victims head, he opined that it was entirely attributable to blunt force trauma per se and may, therefore, have been caused by the butt of the parang.

Our decision

24. In our opinion, the unrebutted evidence of Dr Lau alone was sufficient to raise a reasonable doubt that Udom had caused the death of the deceased. This was the evidence given by the prosecutions expert and was positively favourable to the defence. It was the expert himself who gave an opinion contrary to the case of the prosecution. The prosecution had not adduced any other evidence to cast any doubt on such evidence.

25. We now turn to the question whether the judge was entitled to reject the experts opinion and substitute it with one of his own. On this issue, we found of assistance the decision of the English Court of Criminal Appeal in *Rodney William Bailey* (1978) 66 Cr App R 31. There, the accused was convicted at Leicester Assizes of murder of a girl aged 16, and he appealed against his conviction on the ground that the verdict was unreasonable and not supported by evidence. The facts briefly were that the accused, then aged 17, for no apparent reason brutally battered the victim to death with an iron bar. He was charged for murder and he raised the defence of diminished responsibility. Three medical experts were called and they all testified that, at the material time, the accused was suffering from an abnormality of mind induced by disease, namely, epilepsy, and that thereby his mental responsibility was substantially impaired. There was no evidence to dispute the evidence of the three medical specialists. The jury, nonetheless, returned a verdict of murder, refusing to find that the plea of diminished responsibility had been proved. The Court of Criminal Appeal held that the verdict was unreasonable and unsupported by evidence, and substituted the conviction of murder with that of manslaughter on the ground of diminished responsibility. The Lord Chief Justice, in the course of his judgment, said at p 32:

> This Court has said on many occasions that of course juries are not bound by what the medical witnesses say (See e.g., per Lord Goddard C.J. in *Rivett* [1950] 34 Cr. App. R. 87, 94), but at the same time they must act on evidence, and if there is nothing before them, no facts and no circumstances shown before them which throw doubt on the medical evidence, then that is all that they are left with, and the jury, in those circumstances, must accept it. That was the effect of the decision of this Court, sitting as a Court of five judges, in the case of *Matheson*, (1958) 42 CR. App. R. 145; [1958] a W.L.R. 474 and, as we understand it, nothing that this court said in the case of *Byrne*, (1960) 44 CR. App. R 246; [1960] 1 Q.B. 396, throws any doubt upon what was said in *Mathesons* case *(supra)*.

26. The duties of a judge in dealing with expert opinion are succinctly stated in Vol. 10 of *Halsburys*

Laws of Singapore (2000) at [120. 257]:

> As to reception of the evidence, the court may, if there is no definite expert evidence to the contrary, agree with the expert (*Official Administrator Federated Malay States v State of Selangor* [1939] MLJ 226) but it must not blindly accept the evidence merely because there is no definite opinion to the contrary (*Re Choo Eng Choon, decd* (1908) 12 SSLR 120). Apart, however, from that duty, the duty of the court is largely negative. Ex hypothesi, the evidence is outside the learning of the court. Therefore, the role of the court is restricted t o electing or choosing between conflicting expert evidence or accepting or rejecting the proffered expert evidence, though none else is offered (*Muhammad Jefrry bin Safii v PP* [1997] 1 SLR 197). *The court should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged* (*Sek Kim Wah v PP* [1987] SLR 107), *if the court finds that the evidence is based on sound grounds and supported by the basic facts, it can do little else than to accept the evidence*. [Emphasis is added.]

27. In this case, it certainly cannot be said that Dr Laus opinion was obviously lacking in defensibility. In our opinion, his evidence was based on sound grounds and supported by the basic facts. In the face of such evidence, the judge, with respect, was not entitled to venture his own opinion on a matter which was clearly outside the learning of the court. In our judgement, in this case, he was not entitled to reject Dr Laus opinion and substitute it with one of his own.

Conclusion

28. In view of the evidence of Dr Lau, the prosecution had failed to proved beyond reasonable doubt that Udom caused the death of the deceased. For this reason, the appeal must be allowed, and it was allowed.

29. We now turn to the offence that Udom had committed. The evidence adduced, in particular his admissions made in the statements and in court, were sufficient to sustain a conviction of the offence of an attempt to commit the murder of the deceased, punishable under s 307 of the Penal Code. Accordingly, we convicted him of such offence.

30. As regards the appropriate sentence, s 307 of the Penal Code provides:

> 307. (1) Whoever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned and shall also be liable to caning.
>
> ..
>
> (2) ..

There are two limbs to sub-s (1), and as there was no evidence that the appellant had caused any hurt to the deceased, he should be subject to the punishment provided by the first limb of the section. In this case, in view of Udoms mens rea and the heinous nature of the acts by which he attempted to cause the deceaseds death, we were of the opinion that Udom should be sentenced to a term of imprisonment for 10 years. We accordingly so ordered.

Order accordingly

Yong Pung How	L P Thean	Chao Hick Tin
Chief Justice	Judge of Appeal	Judge of Appeal