Public Prosecutor v Thongthot Yordsa-Art and Another
[2002] SGHC 34

Case Number	: CC 3/2002
Decision Date	: 25 February 2002
Tribunal/Court	: High Court
Coram	: Choo Han Teck JC
Counsel Name(s)	: Ravneet Kaur, Sia Aik Kor and Paul Chia [Attorney-General's Chambers] for the prosecution; Goh Aik Leng [Goh Aik Leng & Partners] (assigned) and Rajendran Kumaresan [W T Woon & Co] (assigned) for the first accused; Ram Goswami [Ram Goswami] (assigned) and Boon Khoon Lin [Dora Boon & Co] (assigned) for the second accused
Parties	: Public Prosecutor — Thongthot Yordsa-Art; Dornchinnamat Yingyos

Judgment

GROUNDS OF DECISION

1. The first and second accused, aged 33 and 20 respectively, are Thai nationals charged under s 149 read with s 302 of the Penal Code for being part of an unlawful assembly consisting of six persons with a common object of causing grievous hurt to Saenphan Thawan (referred to by the witnesses as "Yaou"). It is also the prosecution case that in the course of that assault one or more of the members of the assembly murdered Yaou. The crime was committed between 10pm and midnight of 2 June 2001 at a vacant lot off Pioneer Road North. This place was somewhat inaccurately referred to by the Thais involved in this case as the "Kian Teck" area, a reference to Kian Teck Road which was not far away. Nevertheless, I shall adopt that reference for convenience, as I do with "Yaou".

2. It will be useful and convenient at this point to refer to the requirements under s 149 of the Penal Code. That section provides as follows:

> "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing that offence, is a member of the same assembly, is guilty of that offence."

This is a provision designed to encapsulate a myriad statutory offences into s 149 without having to set them out specifically and individually. The offence which applies in any given case depends on the common object of the group. Thus, if the common object is to sexually, and by force, molest a victim, and in order to carry out that common object, the group kidnaps their victim and subsequently molest her, each and every member of the group is liable to be prosecuted for abduction, kidnapping, outrage of modesty, or even causing hurt as the case may be. A member of that group is not excused on the ground that he participated only in the abduction but not the outraging of modesty, or *vice versa*. The provision in question also applies to cases in which the members of an unlawful assembly knows that a particular offence is likely to be committed in prosecution of their common object. So, for instance, if the common object of the group is to set a dormitory ablaze in the middle of the night, knowing that there are occupants there who are likely to be burnt, hurt, or killed, then if any such consequence ensued each member is liable for such offence as the case may be. The element of knowledge here is the knowledge of each member who shares the common object. In view of what I have said above, it becomes obvious that in cases in which the common object is to cause hurt by means of dangerous weapons, the charge need only state that as the common object. Grievous hurt

and murder are technical and legal terms that describe the more serious consequences of an assault. Thus, if the common object of an unlawful assembly was to cause hurt, whether the members may be liable for grievous hurt or murder depends on whether they knew that those were likely consequences in the prosecution of their object; and that depends on the facts of each individual case.

3. The unchallenged evidence of the pathologist Dr. Paul Chui in this case established that the injuries inflicted on Yaou were caused about the time in question and were sufficient in the ordinary course of nature to cause death. He noted that there were at least three injuries on Yaou, each of which was sufficient in itself to result in death. The biggest of the three was the injury to the back of the head that ran from one ear to the other. A wedge of the skull had been cleaved off with the wound running so deep that the brain and spinal cord were cut. I have no difficulty accepting this evidence. No one could possibly survive so grievous an injury. Both accused admitted that they were part of the gang of six who confronted Yaou at the material time. The focus of the trial was therefore on the question as to whether the group had gone to seek Yaou with the common object of causing hurt, and the important ancillary one of whether they knew that death was a likely result of their common object.

4. The largely undisputed evidence concerning Yaou is that he was an influential man in the small community of Thai squatters at Kian Teck. He appeared to be the person who controlled the gambling and prostitution activities, as well as the selling of drugs there. About ten days prior to the assault one Wena Awaburt, who was the girl friend of the first accused, had gone to Kian Teck with a Thai woman called "Fon". What she and Fon did or intended to do there is irrelevant. Wena was confronted by Yaou who showed his displeasure at her presence there by telling her "not to do a man's job" and, while pointing a knife at her, told her that if he catches her there again he would have her raped and silenced. Wena left in tears and returned to Jalan Bahar. "Jalan Bahar" was the term used by the witnesses to refer to a forested area off Jalan Bahar where the first accused had set up a small colony of Thai nationals living in makeshift huts without common domestic amenities such as piped water or electricity. One of the huts was used as a kitchen and dining area.

5. Wena reported her experience at Kian Teck to the first accused when she returned to Jalan Bahar. The first accused was initially angry with Wena for ignoring his advice not to go to Kian Teck, but eventually, Yaou's insult peeved him even more, and his anger turned towards Yaou himself. Within three days, the first accused gathered his friends Rang and Sunthorn, who in turn, gathered four others including the second accused; together the seven men went to Kian Teck to find Yaou with the view of "teaching him a lesson", but the exercise was in vain as they could not find their quarry. In his oral testimony, the first accused explained that as far as he was concerned, the object of teaching Yaou a lesson was simply to bring him back to Jalan Bahar where he will be asked to apologise to Wena, and that if he refuses to go to Jalan Bahar, to have him telephone Wena to convey his apology.

6. About two days before 2 June, the first accused received information that Yaou was back at Kian Teck. Once again he made arrangements with Rang and his friends to find Yaou. On the evening of 2 June 2001, from 6pm onwards, the group gathered at Jalan Bahar, with the arrival of Rang, and two of his friends who were not known to the first accused. Two others from the previous failed mission, namely Sunthorn and the second accused had been staying at Jalan Bahar since the first incident. This group of six spent the early part of the evening drinking. Then at 10pm they left for Kian Teck. They went by taxi driven by one Lee Bon Liang who testified that he drove the group there in two trips for which he was paid $40. Lee could only identify the first accused because he paid the fare. He also recalled that some of the men were wearing "army uniforms" and carried umbrellas but was unable to say how many carried umbrellas. The defence did not dispute the prosecution evidence from Namphakdee Thapanee, the girl friend of Yaou that the gang accosted Yaou and her at Kian Teck where they had found the couple, she sitting on a bed, and Yaou squatting beside it. It is also not

disputed that members of that group killed Yaou in the course of the confrontation. I now come to the disputed evidence.

7. The prosecution case is that the gang of six assembled at Kian Teck with the common object of causing grievous hurt to Yaou and to that end all six were armed; some with knives, some with *parangs,* a long sword, and others with a variety of metal chains. The first accused steadfastly maintained that his intention was only to teach Yaou a lesson, by which he meant to get him to apologise to Wena. He therefore arrived at Kian Teck unarmed. He said that although he did not see his party arming themselves and concealing the weapons in umbrellas, he was aware that it was Rang's personal practice to be armed wherever he went. The first accused admitted in court, as he did in his statements to the police, that he was himself armed with a knife; but he clarified that the knife was handed to him by the second accused only after they had arrived at Kian Teck and after the second accused, returning from an early reconnaissance further infield, advised the first accused to keep the knife for his protection because he believed that Yaou was also armed. The second accused also made various statements to the police, including his cautioned statement under s 122(6) of the CPC in which he admitted to using weapons and participating in the assault. However, he testified in court that those parts of the statements were not correct because he did not make them. He explained that the interpreter did not interpret those portions to him. He added that at the material times he was under physical and mental distress, and was in no condition to listen to what was read to him. Taking his evidence in the light of the corrections he made there, and the evidence of the interpreter and recording officer, it was an explanation that I do not accept.

8. The evidence from two of the Thai women who stayed at the Jalan Bahar huts. One of the two, Somjit Kheelawong testified that she saw the first accused and three other men leaving for Kian Teck after arming themselves with knives and chains. Although her testimony related to the aborted first mission (which was about a week before 2 June 2001) to Kian Teck, it is relevant because the accused persons maintained that on that occasion they were unarmed. Lek Chuatum, the other witness, who was also the girl friend of the second accused testified that on the evening of 2 June 2001 just before the group left for Kian Teck, she saw Rang conceal a sword in an umbrella and heard him ask the second accused to help him tie the sword to it. Lek and Somjit were cross-examined thoroughly by counsel for the two accused. In assessing their evidence, I took into account the difficulties inherent in translated evidence, as well as inconsistencies, and conclude that the evidence of these two women are reliable. There were various weapons such as a *parang* and a meat cleaver found at the scene of crime, but it is not the prosecution case that these were the weapons that were used to kill Yaou. There appears no direct evidence as to whose weapons these were. The police, however, recovered an array of similar weapons as well as metal chains at the huts in Jalan Bahar. More important is the admission in court by the first accused that he had used the knife given to him by the second accused at Kian Teck to stab Yaou. However, he qualified his evidence by saying that he did it in order to "stop Yaou from running" and that he inflicted the wound just as Yaou was falling to the ground. Studying his oral evidence as a whole especially his account of the stabbing, I am unable to see any benevolent or innocent intent in this act as described. His evidence represents the incontrovertible evidence that weapons were used, and in particular, by the first accused. I am satisfied that the prosecution has sufficiently proved that two accused were armed when they arrived at Kian Teck with Rang and three others, on 2 June 2001, and that they were aware that the others were also armed.

9. The critical dispute is over the issue of the intention of the gang. The prosecution's reliance on s 149 obliged them to prove beyond reasonable doubt that the gang assembled for the purpose or, in the terminology of the statute, the common object of causing hurt to Yaou with the knowledge that death was likely to ensue. The second accused's version, or at least the one he put before me was that he had no idea why they went to Kian Teck. Having regard to his evidence in its entirety, and

given his role in assisting with the preparation of weapons in particular, I am unable to accept his evidence in court. The first accused's defence was that he had no such intention and that his only object was to teach Yaou a lesson, which he translated to mean getting him to come over to Jalan Bahar to apologise to Wena. In court and under cross-examination he further explained that should Yaou refuse, he (the first accused) would make him (Yaou) telephone Wena to apologise. This line was not pursued further, but the question that begs to be asked is what would the gang do if Yaou refused to do either? In a manner that came across like an afterthought, the first accused at one stage said that he would slap Yaou if he refuses to apologise. It must be remembered that the entire situation arose because of the threat, insult, and humiliation of Wena by Yaou. From the narration of the event, it is plain that the insult was eventually felt and shared by the first accused whose girl friend it was who bore the direct brunt of it. It was about pride and honour, which must be restored once Yaou makes a public apology to Wena. The question is, was Yaou likely to apologise? From all accounts, the answer is an emphatic, no. Yaou was perceived by the first accused as a fearsome man, a drug rival, who heads the Kian Teck area. He was, in the words of the first accused, "the Mafia" of Kian Teck. That being so, how would pride and honour be restored if Yaou refused to apologise? Even if Yaou had declined in the most polite fashion, although on the facts that was unlikely to be so, the first accused and his gang would be perceived as going back to their community at Jalan Bahar with their tails between their legs, so to speak. I can only infer that that kind of ending would be utterly unacceptable to them. There are many who would turn the other cheek when slapped, and let bygones be bygones, but these six who set out armed with weapons to right a wrong were not likely to accept the humiliation of a failed mission. Given these circumstances and all the evidence of the Thai women as well as the statements of the accused persons, I find that the gang went fully and dangerously armed to cause serious and grievous harm to Yaou. I do not accept that the first accused had used the words "teach [Yaou] a lesson" to mean what he said. In coming to this finding I have taken into account the evidence of Wena Awaburt herself, and the police statements of the two accused persons even though they had, in court, renounced various (but not all) parts of those statements. I am not convinced by their testimony that the statements were not reflective of what they actually said. I find, therefore, that the first and second accused together with Rang and three others had the common object, not of extracting an apology from Yaou, but of exacting severe revenge on him by means of weapons in a manner calculated to cause such injury that death would be a likely, if not a specifically intended, result.

10. The first and second accused each gave an account of what actually happened when their gang apprehended Yaou late on the evening of 2 June, but they have not told the full story. There was only one independent eye-witness, namely, Namphakdee Thapanee. She had run away before Yaou succumbed to his injuries, but what she had seen and heard was sufficient to complete the prosecution case against both accused. On the facts of this case, it is not necessary to re-enact the scene blow-by-blow for it does not matter who struck first, or who struck most, or who struck the hardest. On the facts as I have found, namely, that a gang of six men heavily armed with an assortment of swords, *parangs*, knives and chains gathered with the intention of assaulting a selected victim with those weapons, knowing, even if they had not intended such result, that grievous hurt and death are likely consequences of that assault, each member of that gang becomes responsible for the consequences. If the victim is hurt each of them is guilty of causing hurt; if the victim is grievously hurt each of them is guilty of causing grievous hurt; and if the victim dies, each of them is guilty of causing his death; and if the death resulted under circumstances which the law defines as murder, then each of the perpetrators is guilty of murder.

11. Although the first accused did not expressly say so, he alluded in his oral testimony that the consequences were totally unexpected; but even if I do accept that, which I do not, it is of no assistance to him. They were armed with an array of dangerous weapons to be used on their chosen prey. To say, without more, that had the victim surrendered, or pleaded for mercy, or apologised

immediately, there would not have been any trouble at all is clearly an exculpatory statement made after the event. Finally, it must be noted that it was not the case for either defence that the gang brought weapons just to frighten Yaou, and that in the course of the proceedings something totally unexpected occurred which resulted in the death of the victim. In other words, the defence would have been to deny the charge by demurring from the alleged common object of causing grievous hurt, and substituting it with the common object of intimidation. But that was not the case for the defence and nothing in the evidence requires me to examine this line any further. Neither was it the defence of the two accused that they or any of the member of their gang did not know that death was likely to ensue from their planned assault, instead, their defence was constructed around the stand that no weapon was intended to be used.

12. I should also spare a few words in respect of the various evidence over which the prosecution and defence strove, respectively, to emphasize or minimize, including Wena's evidence that she heard Rang say that they must not hit the snake only on the back, and that he would bring back Yaou's head, as well as the evidence, including the statements of the first accused, that he would bring back Yaou's teeth to show Wena. These are all part of the evidence that must be considered in the totality of the case for prosecution as well as the defence. They ought not be ignored nor should undue weight be given to them. They are relevant in so far as I have to consider them in relation to my assessment as to the credibility of the accused persons. The evidence as to the severity of the injury is relevant in this case only in so far as it establishes the sufficiency of the legal definition of murder. It is of little significance, if any, for the purposes of ascertaining the knowledge or intention in cases such as this where the charge is one based on, as was in this case, the second limb of s 149, that is, *"such as the members of the assembly knew to be likely to be committed in prosecution of that [common] object"*. It is a different matter if the charge concerned a common intention under s 34 of the Penal Code because in cases of that sort, the common intention may well have been formed at the instance of attack, and the severity of the injury may then be a relevant consideration in ascertaining whether that was the intention.

13. Finally, I will address the defence of sudden fight. From the facts as I have found, there is no room to contemplate that the death of Yaou arose in a sudden fight. One cannot proceed to pick a fight armed with dangerous weapons and claim the defence by virtue of Exception 4 ("sudden fight") to s 300, by saying that his victim fought him. On the facts as I have found, it is immaterial whether Yaou fought first or fought back. In any event, on the evidence of the accused themselves, Yaou was chased around in the darkness of the night and finally felled by blows from one or more of the members of the assembly, aided or assisted by the stab wounds inflicted by the first accused.

14. For the foregoing reasons, I am satisfied that the prosecution has proved its case beyond reasonable doubt that the first and second accused are guilty as charged. I, therefore, convicted them and sentenced them to suffer death.

Sgd:

Choo Han Teck
Judicial Commissioner