

Public Prosecutor v Arun Prakash Vaithilingam
[2002] SGHC 295

Case Number : CC 60/2002
Decision Date : 10 December 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Ng Cheng Thiam and Francis Ng [Attorney-General's Chambers] for the prosecution; N K Rajarh [N K Rajarh] (assigned) and Parvathi Annanth [Siow Itming & Co] (assigned) for the accused
Parties : Public Prosecutor — Arun Prakash Vaithilingam

Judgment

GROUND OF DECISION

1. On 22 December 2001 about 11.30pm, 23-year old **Arun** Prakash Vaithilingam plunged a kitchen knife into the chest of Lourdasamy **Lenin** Selvanayagan, also 23 years old. Several of Lenin's flat-mates, including Arun, took him to the Alexandra Hospital where he was attended by Dr. Soh Poh Chong and another doctor shortly after midnight. The doctors could not detect any sign of spontaneous breathing on Lenin but nonetheless tried to resuscitate him. They surrendered the effort some thirty-five minutes later, pronouncing him dead at 1.02am (23 December). Arun, who had left the hospital shortly after Lenin was brought to the hospital, was not seen again thereafter until he was arrested at the Causeway Check-point on 18 March 2002 when he attempted to leave the country on a forged passport. He was subsequently charged with the murder of Lenin.

2. Lenin and Arun were not only flat-mates at a flat at Marsiling, but were also fellow electricians working in a shipyard. Nine other co-workers also stayed with these two at the flat. They were Bala Sundram **Suresh Kumar**, Selvaraj **John David**, Kaliamoorthy **Nagaraj**, Ganesan Siva **Subramani**, Sivapunniam **Karthikeyan**, Kandasamy **Pulgamani**, Vanamamalai **Pillai** Chithambarakktalam, Clement Raj **Leo** Antuvan, and Rajagopalan **Palvannan**. A lorry would pick them up at a designated spot each morning to fetch them to work. On the morning of 22 December 2001 this cohort of workers (save for John David who was not working that day and Arun who was late) got on the lorry. Palvannan overheard a remark by Lenin that it would take an hour for Arun to get out of the toilet and that was why he was so often late. Palvannan advised Lenin to be discreet in his comments, but his gratuitous advice was not welcome. A scuffle ensued between Palvannan and Lenin on the lorry but was quickly broken up by their friends. The day passed between this minor incident and the fatal one that evening. Death sometimes stalks after unremarkable incidents such as the seemingly minor fracas in this case.

3. The day passed at work without further incident. That evening, Arun returned to the flat about 11pm having gone out, first to help his employer collect groceries for Christmas, then to a coffeeshop with some of his colleagues including Leo, Karthikeyan, Subramani, Nagaraj, and Pillai for drinks. They had some beer. None of the witnesses could recall exactly how much beer they consumed as a group or individually. This is not an important fact in the sense that intoxication as a general defence under the Penal Code was not raised by Mr. Rajarh, counsel for the accused Arun. But counsel suggested that Arun had consumed a sufficient quantity of beer as to impair his ability to form the requisite intention of knifing Lenin. I am unable to find any support for this suggestion from the evidence and I therefore reject it.

4. The prosecution evidence in so far as it was not challenged is that Arun upon returning to the

flat went to wake the sleeping Palvannan and asked him to accompany him (Arun) to speak to Lenin about his (Lenin's) fight with Palvannan that morning, but more importantly, about what Lenin might have said about Arun in the process. Palvannan told Arun to go to bed and speak to Lenin in the morning. However, Arun proceeded to Lenin's room and woke the latter. A vociferous argument ensued which attracted various occupants in the flat to that room. In the course of the argument Arun stabbed Lenin in the chest. That solitary blow was fatal and Lenin died from it. Of that there is no dispute. Dr. Paul Chui the pathologist described in detail the damage caused by the knife. The blade cut through about 11 to 19cm of tissue. Although the heart itself was not perforated, two important vessels, the main pulmonary artery and left upper pulmonary vein, were cut and, according to the doctor, that had the same effect as cutting a hole in the heart. In this regard, I am satisfied that the injury caused by Arun was sufficient in the ordinary course of nature to cause death. The critical issue, therefore, was whether Arun intended to stab Lenin. If he did, the law demands that his culpability follows the consequences of that action.

5. Arun's case was that he did not intend to stab Lenin. He admitted taking the knife from the kitchen cabinet, but he said that he had only wanted to frighten Lenin with it. He further testified that although he remembers swing his left arm, to which hand he had switched the knife to a moment before, he was not aware that he had injured anyone at that time. He said that the first inkling that he had done so was when he saw blood at the tip of the blade when he was hustled out of Lenin's room. That was the crux of his defence. The main dispute between defence and prosecution concerned the events between the time Arun got back to the flat and the time Lenin was stabbed. It was not disputed that Lenin was brought, unconscious, to the Alexandra Hospital's Accident And Emergency Department by Subramani, Palvannan and Arun himself. Neither is it disputed that after they had taken Lenin out of the taxi, Arun left the hospital and was not seen again until his arrest some months later on 18 March 2002.

6. The contending versions are as follows. The prosecution's witnesses had not been entirely consistent, but for reasons which I shall explain shortly, those inconsistencies are not material to the main findings of fact. The DPP Mr. Ng submitted that the evidence shows that Arun went straight to the kitchen after failing to get Palvannan to get up, and there picked up the knife before going to Lenin's room. Once there, he woke Lenin and a quarrel ensued between the two. They were uttering insults and vulgarities at each other. There was also a minor scuffle in that each pushed the other but, by any account, nothing more serious than that took place before the stabbing. Palvannan testified that he woke up when he heard the ruckus and went to Lenin's room to investigate. There were a number of people in the room by the time he got there. He said that he saw Arun being restrained from behind by Subramani and also by Pillai who held on to his (Arun's) right arm. He saw Arun switch the knife to his left hand and, breaking free from Subramani, Arun took a step forward and plunged the knife into Lenin's chest. He saw Arun withdrawing the knife from Lenin's chest. The inconsistencies in the evidence of the other eye-witnesses, namely, Subramani, Pillai, Nagaraj, Karthikeyan, and Pulgamani so far as they relate to what happened precisely at the time Arun stabbed Lenin were, in my opinion, differences arising from imperfect recollection of an event long past in which each witness perceived the same event from slightly different angles. I would not say that anyone of them had deliberately given a false account of what he saw.

7. One major difference in evidence was that of Pulgamani who said that he saw Arun walking straight to Lenin's room after he entered the flat. This contradicted the other witnesses who testified that they saw Arun walking towards the kitchen which adjoins his (Arun's) own room. It therefore, also contradicted Arun's version. Arun's evidence was that he had gone unarmed into Lenin's room, but after he was hustled out Lenin's room by Subramani and one or two others towards his own room, he then espied the knife protruding by its handle from a drawer in the kitchen cabinet. He took the knife and marched back to Lenin's room. All this time he and Lenin continued to shout at each other.

He said that Leo tried to stop him but he told Leo that he was only going to "show him the knife and threaten him and make him [Lenin] apologise". According to Arun, when the others saw him with the knife they rushed to restrain him. It was at that point that Subramani held him. Arun also believed that Leo was also helping Subramani in restraining him. At the same time Pulgamani and Nagaraj pushed Lenin to the other end of the room, near the corner of the bed at the other end from where Arun was. Pulgamani and Nagaraj were trying to force Lenin to sit on the bed but Lenin kept getting up. Arun then recalled that at that time Pillai grabbed him by the right arm and Palvannan came to him and pulled him by the front of his T-shirt. Arun remembers only struggling to free himself from the restraint of Subramani and Pillai, when Subramani lost his grip Arun moved forward to Palvannan's right and swung his left arm forwards. He testified that at that point he did not know where his hand was landing and he did not know that he had touched Lenin. Mr. Rajarh submitted that since Arun had evinced an intention to punch Lenin with his right hand after switching the knife to his left, he must therefore have only intended to punch Lenin.

8. Mr. Rajarh admitted Arun's cautioned statement signed on 19 March 2002. No other statements of the accused was admitted in evidence whether by the prosecution or the defence. The cautioned statement reads as follows:

"I did not plan or intend to kill him. While I was talking to him, we had an argument. He then pushed me to the ground. Our friends who were in the room separated us. We had a very heated argument and we scolded each other. We were both in anger. I was taken out of the room by some friends. I was then pushed into the kitchen where I saw a knife in the kitchen. I then got hold of the knife. At the same time, the other person also came charging towards me. 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 stabbed him somewhere on his body. One of my friends whom I called Balan Pallai told me that I had stabbed him on his chest. Thereafter, Palvanan, Silvakumar and I carried him to the hospital. While in the hospital, I made a call to a friend of mine and related to him what had happened earlier. He advised me not to stay but leave the hospital. Before leaving, I told Silva that I am leaving. This is what happened."

9. Arun testified that when they were at the lift landing of his flat either Pillai or Pulgamani asked him "not to ask Lenin" and he replied that if they would not ask "then I would ask". We were not told what precisely it was that Arun intended to ask Lenin. In the context of the other evidence, the reasonable alternatives are first, that Arun might have wanted to ask Lenin what he said about him (Arun) in the morning or why he had attacked Palvannan, or secondly, to ask Lenin to apologise to him and Palvannan for what happened in the morning, or thirdly, both the first and second alternatives. The evidence reveals that even when Arun eventually confronted Lenin the substance of their verbal exchange was minimal and the witnesses' recollection was more of the vulgarities than the quarrel. The precise reason why Arun wanted to speak to Lenin at 11pm that evening is important only insofar as it goes towards proving or disproving an intention to use the knife. Like many individual pieces of evidence, in itself it was of little relevance or weight, but it is still necessary to consider it

in context together with all the other evidence. In the event, however, this potentially useful information was not adduced. Sometimes the fact that a piece of useful information was available but not adduced is eloquent in its silence, but this omission is immaterial on the facts as I find in this case. Arun had clearly intended, or at the least, prepared to pick a quarrel with Lenin while armed with a knife. In this context, the precise agenda was irrelevant to either prosecution or defence.

10. There is no dispute that Lenin died from the stab wound inflicted by Arun. Nor is it disputed that the injury was sufficient in the ordinary course of nature to cause death. Therefore, Arun's act is murder unless he succeeds in his defence. There were two defences open to him on the evidence of the case. First, that he did not intend to stab Lenin. Secondly, that the injury was inflicted in the course of a sudden fight, a defence under Exception 4 to s 300 of the Penal Code which provides as follows: "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". In the course of his submission, Mr. Rajarh urged me to find the evidence of the prosecution eyewitnesses to be inconsistent and unreliable, and that the evidence of Arun be accepted.

11. I now come to consider the first defence. The main thrust of Mr. Rajarh's submission and the case he conducted in defence formed around the defence of sudden fight although Arun's oral evidence as well as his cautioned statement suggest that absence of intention to stab would be an ostensible defence. Counsel did not press hard on this point although he did argue strenuously that the manner in which the stab wound was inflicted showed that the act was devoid of intent. It is appropriate to note the difference in evidence concerning the way the knife was held and how it was used. The prosecution witnesses said that Arun first held the knife in a stabbing position, that is with the little finger closest to the hilt and blade; as opposed to holding it in a thrusting position as Arun said, that is, with the thumb and index finger (forefinger) closest to the hilt and blade. From the photograph of the entry wound it appears to me that the blade pierced Lenin's chest horizontally (consistent with the knife being held as the prosecution witnesses said) and not vertically. But in either case, there is scarcely any evidence to indicate that Arun had only intended to use his fist and not the blade to attack Lenin. Hence, I am satisfied that if he had intended to attack Lenin it was an intention to do so with the knife.

12. Mr. Rajarh submitted that Arun had no intention to use the knife other than to frighten Lenin as the former so testified. There was no explanation why Arun had 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. I therefore reject the submission that Lenin was unwittingly or unintentionally stabbed.

13. Arun's defence of sudden fight is a little more complex and is not the same as the defence of an absence of intention to stab. A fight is a fight - and here I do not think that the legislature had verbal fights in mind - but the nature and degree of seriousness in terms of the number of persons involved, the duration and severity of blows are important when one has to ascertain whether an unfair advantage had been enjoyed by any of the participants, and whether the fatal blow was inflicted "in the heat of passion". The evidence before me as described by all the witnesses including

Arun created an impression in my mind of a fight that had more bark than bite. By all accounts, Arun and Lenin, were shouting accusations and vulgarities at each other, but so far as real, physical action was concerned, it was limited to a couple of pushing of the shoulders by each of the antagonists. It was technically a fight. In the least, it was a small fight, about the scale in *PP v Ramasamy* [1990] SLR 875, although in that case there appeared to be no physical attack by the deceased on the accused. Furthermore, the accused there inflicted not one but three serious injuries with a knife on the deceased. Both parties there were drunk at the material time. The fight started without weapons but in the course of which the accused took out a knife from the knife rack and stabbed the deceased. The accused there was of smaller built than the deceased. The two-man court ruled that Exception 4 applied, and that death was caused in a sudden fight without the accused having taken an unfair advantage over the deceased. Mr. Rajarh also referred extensively to *Soosay v PP* [1993] 3 SLR 272. This was the case in which the accused Soosay alleged that Lim, a transvestite, had stolen his friend's gold chain. A quarrel ensued in the course of which Lim drew a knife out of his handbag and threatened to use it on Soosay. A fight broke out between them and they were trying to gain possession of the knife that had been knocked out of Lim's hand in the fight. Soosay got it; but Lim continued to charge at him and was fatally wounded by Soosay. On Appeal, the Court of Appeal set aside the finding of murder and substituted the conviction for one under culpable homicide not amounting to murder because the court was of the view that death was inflicted in the course of a sudden fight within the meaning of Exception 4.

14. In the present case, an important factual issue has to be resolved before any consideration of the sudden fight defence and properly be made. The issue may be posed in this way. Was Arun jostled out of Lenin's room in the midst of his quarrel and returning there moments later with the knife he found in the kitchen? This version came only from Arun's testimony itself. None of the other witnesses supported this version in any way. It is true that the description of those witnesses as to what happened was not a perfect fit. And those were the same ones who did not tell the full story at the hospital, and also conspired to lie about the number of occupants in the flat. Were the witnesses truthful? Were they truthful in part and untruthful in others? Which were the truthful parts? The difficulties in the fact-finding process are eminently present in this case. It does not mean, however, that whenever the facts cannot be easily ascertained the benefit of the doubt should be given to the accused. The court must first endeavour to make its findings however difficult the exercise may be. The process must be complete before a decision can be made as to whether or not there is any reasonable doubt. Of course, sometimes at the end of the process the court may conclude that a specific fact cannot be found or ascertained, but that decision is itself a finding of fact. To begin, the overall context of the case should not be ignored. In as much as his act was grim and fatal, so too, would the consequences be to the accused should the crucial facts be found against him. The circumstances in this case, including the motive and cause, leading to the commission of the offence, very much like those in *Ramasamy's* (and to a slightly lesser extent, *Soosay's*), were trivial in nature. That accounts for the reason why the pall of tragedy classically forms from a blending of the petty and the vile - such as we see in these two cases.

15. Subramani, Pillai, Palvannan, Kathikeyan, Pulgamani, and, by the same token, Arun, were recalling an incident that took place more than a year ago. They had no *aide memoir* to help them. Some of them may have a clearer recollection than others generally; some are clearer in specific aspects, or moments within moments; some are mentally more alert and sharper than others and are thus more aware of what was being expected of them at a trial like this; some, like Arun (who has diplomas in electrical engineering and computer studies) may be better educated than others; and some are more reticent than others. Arun who was the central figure had good reasons to remember the incident well but he also had every reason to modify the story to his advantage. This observation is made from the vantage ground of objectivity, but it is to be remembered that in the distillation of evidence the subjective condition of the individual person has to be taken into account. It is not only

necessary to ask what a reasonable person in the witness's position would have said or done, but also, what the man himself had said or done; lest one falls to the folly of jumping to a wrong conclusion. Further, it is also necessary to compare what was said with the manner in which it was said; to be alive to nuances in words spoken by witnesses (especially where they come from diverse background); the interpretation given them by the court interpreters; the smile, or the odd teardrop, that comes with their words; and a pause before answering, though silent, is very much a part of the evidence - just as pauses between musical notes are part of the music. From this mass of evidence, and toggling between what must be considered objectively with that which must be considered subjectively, the court makes its findings of fact.

16. Approaching the evidence in the manner I have elaborated above, I am unable to accept Arun's version that he only took the knife in the midst of his fight with Lenin. The eyewitnesses in the room had all impressed me as generally straightforward people, and I do not believe that that would hesitate to affirm Arun's version if it was at all true. There was no evidence by anyone that these witnesses bore a grudge against Arun, and *vice versa*. In measuring their evidence, I am mindful that these men had banded together to conceal the fact that there were 11 of them in the flat. But that was a matter of an entirely different concern. They were there under some real apprehension that they may have themselves done some wrong in overcrowding that tiny flat. Their evidence concerning Arun was different. In that regard, they were non-partisan witnesses.

17. I now come to some specific aspects of the defence of sudden fight. I accept that it does not matter who started the fight but a fight there must be. The blow must also have been inflicted without premeditation in the heat of passion and upon a sudden quarrel. And the final condition required under Exception 4 is that the fatal wound was inflicted without the accused taking an unfair advantage over the deceased or had acted in a cruel or unusual manner. Although the fight was not much of a fight it was nevertheless a fight within the meaning of Exception 4. I will, however, say that on the evidence, the quarrel between Arun and Lenin was more sudden from Lenin's point than Arun's. The former was asleep and was woken only to be abused and killed. The latter, on the other hand, had formed the intention of waking Lenin for the (initial) purpose of confrontation. From the evidence, I find that at the very least, Arun was prepared and ready for a heated quarrel. In such circumstances, can the quarrel be described as one falling within the definition of Exception 4? Although I take the view that the quarrel was sudden more from Lenin's point of view than Arun's, the courts had on occasions to rule that it did not matter who provoked the fight or landed the first blow. *Ramasay's* case is one example. In this regard, I will give Arun the benefit of doubt and hold that in my view, the quarrel was sudden. Finally, we must ask whether Arun had taken an unfair advantage over Lenin? There are many forms of uneven fights. A man who is 1.6m tall pitted against a man who is 1.9m tall is ostensibly disadvantaged, but we ought to ignore advantages of nature in a contemplation of Exception 4 especially when the smaller man picks on the larger one. Matters may be complicated where, say the bigger man is professionally trained in unarmed combat, or even where it is the smaller man who is so trained. These aspects are interesting and might be relevant in the appropriate case, but not in the present one.

18. 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, and Arun's own evidence was that he took the knife to threaten and frighten Lenin. In *PP v Ramasamy* as well as *PP v Seow Khoon Kwee* [1988] SLR 871 the courts there held that the use of a knife and a shard of glass in the cases respectively did not constitute the taking of an unfair advantage. These cases are easily distinguishable on the facts. In

Ramasamy, the court made a finding of fact that the accused picked up a knife in the course of the fight. In *Seow Khoo Kwee* the court found as a fact that the accused, a prisoner, was of smaller built 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. 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.

19. For the reasons above, I am satisfied that the prosecution has proved its case against the accused and I therefore convicted him and sentenced him to suffer death.

Sgd:

Choo Han Teck

Judicial Commissioner

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