

Public Prosecutor v Saeng-Un Udom
[2001] SGHC 9

Case Number : CC 75/2000
Decision Date : 11 January 2001
Tribunal/Court : High Court
Coram : Chan Seng Onn JC
Counsel Name(s) : Hamidul Haq / Sandra Tsao (Deputy Public Prosecutors) for the prosecution;
James Masih / Ramli Salehkon (James Masih & Co) for the accused
Parties : Public Prosecutor — Saeng-Un Udom

JUDGMENT:

Grounds of Judgment

1. The accused, Saeng-Un Udom, is a 22-year-old male Thai national. He was charged with the murder of Weerasak Suebban (deceased), a fellow male Thai worker, aged 29, at North Shipyard (P) Ltd., 23 Tuas Crescent.
2. It was not disputed that during a drinking session, a serious quarrel broke out between the deceased and the accused in the early hours of the morning (slightly before 2.00 a.m.) on 23 June 2000 after the accused boasted that he was the best welder among them. The deceased was unhappy and scolded the accused for looking down on him. In the course of that quarrel, the deceased smashed two glass bottles and threatened the accused with a knife. Heated words were exchanged. The three other Thai workers present, namely Noikham Thamrong (Thamrong), Srisombat Jeerasak (Lao Ta) and Chobset Chai (Chai), separated them and told them not to fight. The accused then left the room. The deceased placed the knife on the table. Chai took the knife and threw it into a bin downstairs (see photographs P 6, P32 and P33).
3. According to Lao Ta, the deceased subsequently challenged the accused to a fight by shouting in Thai, If there is any problem we settle tomorrow in whatever manner. There was however no response from the accused who normally slept in the adjacent room.
4. Chai testified that the accused told him sometime after 7.10 a.m. on 23 June 2000 that he had used a metal pipe to hit someone the night before. When Chai asked who he had assaulted, the accused replied that sooner or later he would know. This evidence was not challenged by the defence counsel.
5. On the very morning of 23 June 2000, 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 covered with blood. The pathologist, Dr Gilbert Lau, who performed an autopsy on the deceased, opined that the lacerations on the deceaseds scalp were caused by at least two separate blows to the head within seconds of each other. He testified that a relatively heavy instrument with a sharp cutting edge was used as the larger laceration had characteristics of **both blunt and sharp force** effects. He believed that the cleanly cut strands of hair found on the deceaseds pillow and the wall, and the low blood splatter pattern on the wall supported his forensic finding. Dr Lau concluded in his report that *"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"*.
6. The accuseds Section 122(6) and Section 121 statements were admitted into evidence without any voire dire after defence counsel confirmed the voluntariness of the statements.
7. In his Section 122(6) statement given on 24 June 2000 after having been informed of the murder charge and warned that he should state any fact that he wished to rely on in his defence in court, the accused instead confessed as follows:

I admit to the charge and pleaded guilty. Earlier I was threatened by the deceased as he had used a knife to point at me. Before he could harm me, our friends came and separated both of us. I was drunk at that time. Thats all.
8. In his Section 121 statement given on 27 June 2000, the accused related the incident where the deceased had smashed two bottles and

threatened him. He stated how the deceased had further taken a knife, walked towards him and pointed the knife at him. The other three Thai workers separated them. The accused thereafter returned to his room with Chai. The accused described in detail in his long statement (a) what motivated him to kill the deceased, (b) how he eventually made up his mind to kill the deceased, (c) how he cut a metal rod in preparation for the killing and (d) the manner in which he assaulted the deceased who was then sound asleep:

21 While I was smoking in my room, I was still thinking of the earlier incident of what "WON" (deceased) did to me. I was feeling angry and started to think how to retaliate "WON" (deceased). I wish to state that I mean to hit him.

22 After finishing my cigarette, I left my room and went downstairs to take a drink. "CHAI" was already fast asleep. After drinking, I went back to my room to lie on the mattress. When I was lying on the mattress, I decided that I wanted to kill "WON" (deceased). If I did not kill "WON" (deceased), he would have killed me.

23 With this intention to kill "WON" (deceased), I left my room barebodied and went to the locker section to take a gas cutting torch from my locker. After taking the gas-cutting torch, I walked out from the steel workshop and walked a narrow path leading to another entrance of the steel workshop where the oxygen cylinders were placed. I knew that there is a metal rod placed near there.

24 When I reached where the oxygen cylinders were, I went to take a gas hose and fitted the gas-cutting torch with it. I then on the gas used a lighter to light it. After lighting it, I used the gas-cutting torch to cut the metal rod into about 80 cm long and the diameter is about 2.5 cm.

25 After cutting the metal rod, I threw the hose aside and took the metal rod measuring about 80 cm and hide it among a pile of metal outside the steel workshop. I then went back to take my gas-cutting torch and walked back to my locker and kept it. I wish to add that the place where I cut the metal rod was just below where "WON"(deceaseds) room was.

26 After keeping my gas-cutting torch, I went back to my room to rest. Whilst I was still resting, I was still thinking about the earlier incident and I affirmed myself that I am going to kill ""ON"" About 10 minutes later, I left my room and walked towards another staircase leading to "WON" (deceaseds) room. The room light was off.

27 I opened the rooms door as it was not locked and entered. When I was inside the room, "WON" (deceased), "THAMRONG" and "LOONG" were fast asleep on the floor. "WON" (deceased) was sleeping nearest to the wooden wall while "LOONG" was sleeping next to him and "THAMRONG". "THAMRONG" was sleeping nearest to the door. I was able to tell them apart as the room door was opened. The workshop lights were on and it shone into the room. I was in the room for about 5 minutes to make sure that everyone of them were fast asleep.

28 I then left the room and closed the door. I went downstairs and sat on a small wooden table to smoke. Whilst I was still smoking, I was asking myself whether should I kill "WON" (deceased) or not. About 10 to 15 minutes later, after I had smoked the cigarette, I made up my mind to kill "WON" (deceased).

29 As such, I left the wooden table and walked to the place where I had left the metal rod earlier. I took the metal rod and walked towards "WON" (deceaseds) room. I opened the door and walked to where "WON" (deceased) was sleeping. I stood near "WON" (deceaseds) head. I wish to state that "WON" (deceaseds) face and body was on the left side facing towards the door. "LOONG" and "THAMRONG" were fast asleep.

30 I then used my both hands to raise the metal rod and hit "WON" (deceaseds) head 3 times. "WON" (deceased) did not make any noise. While I was hitting "WON" (deceased), "LOONG" and "THAMRONG" were still fast asleep.

31 After hitting "WON" (deceased), I left his room with the metal rod in my right hand. I then walked to the slip-way basin and threw the metal rod into the sea. After that, I went back to sleep in my pair of blue jeans.

9. With the information provided by the accused, the investigating officer, SS/Sgt Benjamin Oh, managed to find and retrieve the iron rod from the bottom of the slipway basin on 29 June 2000.

10. At the close of the prosecutions case, the defence counsel submitted that an acquittal must follow because an essential element of the charge was not made out, namely, that the death was caused by the act of the accused. He relied heavily on paragraph 4 of Dr Laus autopsy report that:

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.

11. The defence counsel submitted that Dr Lau was clearly of the opinion that the iron rod retrieved from the slipway basin (see photographs P 113 to P 115) could not be the instrument used to inflict the severe open head injury, which was the cause of the death. Dr Lau examined the iron rod in court and found that the edges were not sharp. If the 0.8 m iron rod of more than 7 kg was used by the assailant, Dr Lau opined that there would be crushing head injuries and brain matter would have spilled out of the skull. Some brain matter might even be splattered onto the ceiling as well. Based on his general observations at the scene of crime, including the low height of the blood splatter on the wall and the strands of cleanly cut hair found on the pillow and wall, Dr Lau testified that a sharp-edged cutting instrument like a parang, a chopper or a cleaver was used.

12. The defence counsel argued that although the accused had confessed in his Section 121 statement that he had used an iron rod, the fatal injury was not caused by the iron rod as established by the forensic evidence. Counsel thus contended that the accused thought that he had hit the deceased 3 times but in fact he missed the target. Essentially, someone else had used a sharp-edged instrument to inflict the fatal injury on the deceased.

13. After considering the evidence led by the prosecution, I found that a prima facie case had been made out, which if unrebutted would warrant the conviction of the accused for the following reasons:

(a) The accused had voluntarily confessed in his Section 121 statement that he had used a metal rod to hit the deceased 3 times on the head with the intention of killing him. Since the deceased died from his head injuries, the accused was prima facie the murder assailant. The accused had admitted to all the essential elements of the offence in his statement.

(b) Dr Lau agreed that the smaller curved laceration on the back of the deceaseds head could be caused by the end of the iron rod although he also said that the butt of the handle of the parang found in the bin (photograph P34)

could have similarly caused it.

(c) Dr Laus opinion that it was unlikely for the metal rod to have caused the bigger laceration was premised on an assumption that the length of the metal rod (and not the jagged edge of the end of the metal rod) landed directly on the head along the direction of the laceration. Surely it need not necessarily be the case. In my view, it was not for me at this stage of the trial to evaluate and determine whether that assumption was correct on the evidence adduced so far by the prosecution. The appearance and nature of the injury would vary depending on where the accused stood when he inflicted the injury, how he swung the iron rod, the amount of force he used, which part of the metal rod made contact with and lacerated the deceaseds scalp, and whether the blow was a direct blow or a glancing or slicing blow on the head. Clearly, a direct blow from the length of the iron rod on the centre of the head would be very different from a glancing blow at the curved side of the head by the jagged circular edge at the end of the iron rod, slicing down the curved contour of the side of the head. A direct blow from the heavy metal rod might crush the skull completely whereas a much less direct impact from a glancing blow might be sufficient to cause a comminuted fracture but not sufficient to crush the skull completely and splash out the brain tissues. For instance, a direct blow from the end of the iron rod landing perpendicular to a concrete wall would probably cause a crater-like dent at the point of impact. But a glancing blow from an iron rod swung down the vertical wall with the end of the rod scrapping the wall would create a fairly neat straight line indentation giving the false appearance of a sharp-edged object slashing the wall. Only the accused would know what instrument he used and how exactly he had inflicted the blows. All the more so, his defence ought to be called.

(d) I did not find it inherently incredible that some hair could have been caught and cut by some small sharp crevices and jagged edges at the end cross-section of the iron rod, which the accused had freshly cut with a gas-cutting torch. In the process, some hair would have been ripped off during the blows, giving the appearance that the hair had been cut off by some sharp-edged instrument. In any event, Dr Lau did not examine the ends of the hair found on the wall and pillow under a microscope to determine whether they were indeed cut by a sharp-edged instrument. Over a period of time, rusting of the iron rod might also have blunted the jagged edges, making them less sharp or pointed to the touch, and the rust (or iron oxide) filling up the small sharp crevices might perhaps make them less visible to the naked eye.

(e) If the iron rod were to be wielded in a direction perpendicular to the length of the large laceration, the circular jagged end of the iron rod could have sliced round the deceaseds head causing the large deep laceration with the uneven and relatively ragged skin edges. In other words, the jagged edge (not the length) of the iron rod could have landed at about the 2 oclock position at the head and then sliced downwards to, say, the 5 oclock position in a glancing blow, in which case it would not be inherently incredible to find the large wide open laceration sustained by the deceased.

(f) At the end of the large laceration was another fairly long linear skin laceration perpendicular to it. Since the accused said he had inflicted 3 blows in his

statement, that could account for this third laceration.

14. In any event, even if Dr Laus evidence had created some uncertainty as to the actual weapon used, this *per se* should not preclude me from calling upon the accused to give his defence. The reasonable possibility existed that the accused was not truthful in his statement about the weapon he had used. What was most important was whether there was a prima facie case that the accused was the assailant. Applying the Haw Tua Tau [1981] 2 MLJ 49 test, I was satisfied that he was prima facie the assailant. Accordingly, I administered the standard allocution and called on him to enter into his defence after explaining the courses open to him. He elected to take the stand.

15. The accused gave evidence which corresponded substantially with what he had said in his Section 121 statement. He confessed on oath 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's head at the edge of the mattress where the deceased's forearms were (see photograph P 15), held one end of the iron rod with both hands, raised it well above his head and swung it in the direction of the deceased's 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 deceased's head. If he did, he believed that the deceased would only sustain a swollen head but he had not expected the deceased to die.

16. The only defence raised was that the accused had missed hitting the deceased's head entirely since there were no lacerations found that were consistent with blows from the heavy metal rod. Someone else using a heavy instrument with a sharp cutting edge had killed the deceased. Accordingly, the accused did not cause the death of the deceased. If at all, he could only be guilty of attempted murder.

17. The defence counsel repeated much of his submissions made at the close of the prosecution's case concerning Dr Laus evidence that the severe open head injury was not likely to have been inflicted with the heavy iron rod in question but by some other instrument with a sharp cutting edge. He pointed out that Dr Lau had excluded the possibility of a golf swinging action whereby the edge of the iron rod had come into contact with the deceased's head resulting in the severe laceration found. That would not cause a comminuted fracture to the skull which indicated that the blow had to be direct.

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.

19. I found beyond reasonable doubt that the accused had used the heavy iron rod to inflict the injuries found on the deceased's head with the intention of killing him. I disagreed with Dr Laus opinion that the iron rod was not the likely weapon used. In my judgment, photograph P 17 probably shows the first point of heavy impact above the deceased's right ear at the 2 o'clock 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 o'clock position towards the right eye, thereby cutting deep into the deceased's 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** 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 o'clock position and ending at the 5 o'clock position. The rather broad U and not V shaped laceration viewed depthwise 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 deceased's 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.

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 P16 and face the back of the deceased, which he did not.

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 deceased's right forearm and

elbow (see photographs P 16 and P17) 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 P66), 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.

23. No bloodstains were found on the iron rod because it had been immersed in sea water in the slipway basin.

24. After careful consideration of all the evidence, I had no reasonable doubt that the accused had caused the deceased's death. To have swung the iron rod three times and to have missed hitting the deceased's head completely on every occasion was hardly believable. I thus convicted the accused of the charge of murder under Section 300 (a) of the Penal Code and sentenced him to death.

Chan Seng Onn

Judicial Commissioner

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