

Public Prosecutor v Jamal anak Nyalau and Others
[2002] SGHC 78

Case Number : CC 22/2002

Decision Date : 19 April 2002

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Daniel Yong and Hwong Meng Jet (Deputy Public Prosecutors) for the Public Prosecutor; Jamal anak Nyalau, first accused, in person; A Rajandran (A Rajandran Joseph & Nair) (assigned) for the second accused; Cheah Kok Lim (Ang & Partners) (assigned) for the third accused

Parties : Public Prosecutor — Jamal anak Nyalau

Criminal Law – Offences – Culpable homicide not amounting to murder – Assault of deceased without provocation – ss 34 & 304(b) Penal Code (Cap 224)

Criminal Procedure and Sentencing – Mitigation – First offenders – Pleading guilty at first opportunity – No use of weapons in assault

Judgment

GROUND OF DECISION

1 Three accused persons, Jamal Anak Nyalau, the first accused born on 26 February 1982, Jawi Anak Bukok, the second accused born on 8 October 1980 and Jeffery Anak Randi, the third accused born on 19 February 1975, all Malaysians and working in Singapore on work permits, were jointly charged and tried before me on the charge that they:

on the 7th day of July 2001, between 3.00 a.m. and 4.00 a.m., at the back lane between Lorong 22 Geylang and Lorong 24 Geylang, Singapore, in furtherance of the common intention of all, did commit culpable homicide not amounting to murder by causing the death of one Thet Lwin, male/36 years old, to wit, by punching his head region and kicking his body, which act was done with the knowledge that it was likely to cause death to the said Thet Lwin, an offence under section 304(b) of the Penal Code, Chapter 224 read with section 34 of the Penal Code.

2 The punishment for this offence is a term of imprisonment which may extend to ten years or with fine or both. The first accused was unrepresented while the other two were represented by counsel assigned by the Criminal Legal Aid Scheme of The Law Society of Singapore.

3 The facts presented by the prosecution and admitted by all three accused persons without any qualification were as follows.

4 On 7 July 2001 at about 6.30am a passer-by, one Ponnathan Malayagu, on his way to the market, found the deceased lying motionless in the back lane between Lorong 22 and Lorong 24 Geylang, Singapore. He initially thought the deceased was asleep but when the latter did not respond to his attempts in rousing him from sleep, Ponnathan promptly called the police. The police and ambulance staff arrived at the scene at about 7.10am and the deceased was pronounced dead.

5 Dr Teo Eng Swee, Consultant Forensic Pathologist, from the Centre for Forensic Medicine, Health Sciences Authority performed an autopsy on the deceased. In his autopsy report, Dr Teo recorded

numerous external injuries to the head, neck and chest regions which corresponded to the internal injuries he found to the head and neck region. Dr Teo certified the cause of death as intracranial haemorrhage.

6 Investigations revealed that the three accused persons who are known to each other, met up at about 10.00pm on 6 July 2001 in Geylang for drinks and chatted outside unit 7B Jalan Suka, Singapore. The entrance to the unit is along the back lane between Lorong 22 and Lorong 24 Geylang, where the deceased was found.

7 Sometime after 10.00pm that night, the second accused introduced the deceased to one call girl by name Juriah bte Sarimin as a potential customer. Juriah agreed to provide sexual services to the deceased and brought him to a brothel. An hour later, she returned to the backlane and saw the three accused persons seated somewhere along the backlane, in front of the entrance to unit 7B Jalan Suka. She joined them and drank some Coca Cola before returning to where she came from, whilst they left for supper.

8 At about 3.00am on the 7 July 2001, while Juriah was inside unit 7B Jalan Suka, she heard someone calling her name. She went out to check and saw the deceased standing outside the unit. The three accused persons were next to the deceased. The deceased asked for sexual services again, this time, for \$20 but Juriah declined, demanding \$150. The first accused then came forward and spoke to the deceased, asking him if he wanted Juriah's services for \$150 or not. The deceased declined.

9 The first accused then started to punch the deceased repeatedly in his abdomen and head region. The deceased did not retaliate and slowly collapsed on the ground. The other two accused persons presently joined in the assault. The second accused grabbed the deceased's shirt and punched his face and head region about 5 times. The second accused kicked the deceased's body, held onto the deceased's hair and hit his head against the wall. At one point, Juriah saw the third accused punching the deceased's forehead.

10 Throughout the assault by the three accused persons, the deceased was crying and did not retaliate. At one point during the assault, the second accused searched the deceased and took his wallet, from which he took \$15 and gave it to Juriah and a receipt which he had found within. He also warned her not to tell anyone about the incident.

11 After the assault, the three accused persons left the deceased in the backlane outside the entrance to unit 7B Jalan Suka while they went into the unit. They subsequently carried the deceased away from the entrance to 7B Jalan Suka and left him about 25 metres away, along the backlane where he was eventually found.

12 All three of them admitted that they had, in furtherance of their common intention, assaulted and caused the death of the deceased and that they knew that their acts of assault were such as were likely to cause the death of the victim.

13 All three accused pleaded guilty to the charges and gave their consent for a second charge involving the theft of \$15 and a receipt to be taken into consideration. In their mitigation, all of them professed their remorse and pleaded for leniency. The court was told that they were first offenders and that they pleaded guilty at the first opportunity.

14 It was clear from the facts that in early hours of 7 July 2001, all three accused persons kicked, punched and barged the head of a hapless victim without even the slightest provocation from him. The victim's plight, his cries and non-retaliation did not seem to have moved the accused persons at

all. It was sheer unmitigated violence. Their mindlessness was further evident from the fact that they even proceeded to remove whatever monies the deceased had in his possession.

15 After all the mayhem, damage and termination of a life, all three implored the court for leniency whilst declaring their repentance and sorrow. In my evaluation, such declarations are always expedient to make especially after the strong arm of the law had caught up with the offenders. It was made known to them that criminal and anti-social elements who resort to violence without justification or necessity cannot expect the court to treat them lightly. In relation to the sentence to be imposed, defence counsel as well as the DPP invited the attention of the Court to a number of cases where the High Court had imposed sentences for offences under s 304(b) of the Penal Code ranging from ten years to seven years (see: **Public Prosecutor v Teo Heng Chye** [1989] 3 MLJ 205 (HC), **Chan Kim Choi v Public Prosecutor** [1991] 1 SLR 34 (CCA), **Tan Chee Hwee & Anor v Public Prosecutor** [1993] 2 SLR 657 (CCA), **Soosay v Public Prosecutor** [1993] 3 SLR 272 (CCA), **Roshdi v Public Prosecutor** [1994] 3 SLR 282 (CA), **Public Prosecutor v Ng Say Hong** (CC 49/97), **Mohamed Hassan bin Mohamed Arshad** (CC 27/99) , **Public Prosecutor v Mohd Rashid Bin Yahadi** (CC 66/00) and **Public Prosecutor v Budiman Bin Hassan** (CC 36/1993) (sentence was increased to 9 years on appeal).

16 A singular feature in this case was that no weapons of any nature were used by any of them to hurt the victim. Having noted it and bearing in mind that they were all first offenders and pleaded guilty at the first opportunity, I was of the view that a term of imprisonment of 6 years and 6 months on each of them would be an appropriate punishment. Consequently I sentenced them as follows:

(1) The first accused is sentenced to six years and six months imprisonment on the first charge. Sentence is backdated to the date of arrest ie 7 July 2001;

(2) The second accused is sentenced to six years and six months imprisonment on the first charge. Sentence is backdated to the date of arrest ie 7 July 2001;

(3) The third accused is sentenced to six years and six months imprisonment on the first charge. Sentence is backdated to the date of arrest ie 7 July 2001.

All non-documentary exhibits to the police for disposal. Cash exhibit of \$15 to be returned to the family.

Sgd:

MPH RUBIN
Judge

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