

Tay Chin Wah v Public Prosecutor
[2001] SGCA 33

Case Number : Cr App 7/2001
Decision Date : 02 May 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Chua Eng Hui (Infinitus Law Corporation) and Ong Cheong Wei (Ong Cheong Wei & Co) for the appellant; Han Ming Kuang and Ravneet Kaur (Deputy Public Prosecutors) for the respondent
Parties : Tay Chin Wah — Public Prosecutor

Criminal Law – Statutory offences – Arms Offences Act – Appellant firing four bullets from revolver – Bullet hitting person – Presumption of intention to cause physical injury – Whether sufficient evidence to rebut presumption – ss 2 & 4 Arms Offences Act (Cap 14, 1998 Ed)

(delivering the grounds of judgment of the court):

Introduction

The appellant, Tay Chin Wah, was convicted by the High Court on one charge of using an arm, namely a .38mm Smith and Wesson revolver, by discharging four bullets from the said revolver with intent to cause physical injury to one Lee Yang Ping (`Lee`) and one Soh Keng Ho (`Soh`), at Block 642, Rowell Road, Singapore, on 22 January 1995 at around 1.10am, an offence punishable with death under s 4(1) of the Arms Offences Act (Cap 14, 1998 Ed) (`the Act`). We dismissed his appeal against conviction and sentence. We now give our reasons.

Facts

The background of the case can be stated briefly. The appellant`s girlfriend, Ms Susan Lee Ah Kai (`Susan`) had borrowed \$1,000 from Lee, who was an illegal moneylender. Her loan was guaranteed by Soh. Susan defaulted on the repayment. On 21 January 1995, at about 11.30pm, Soh spotted Susan and the appellant along Desker Road, beside Block 642, Rowell Road. Soh called Lee and informed him of the matter. Soh then confronted Susan at the footpath behind Block 642, Rowell Road. At around 1.10am of 22 January 1995, Lee arrived at the scene, and, together with Soh, confronted Susan and the appellant at the void deck of Block 642, Rowell Road. Lee and Soh demanded repayment of the loan from Susan, who was unable to pay up. A quarrel then broke out in which the appellant became involved. It was not disputed that in the course of the quarrel, the appellant whipped out his revolver, and fired four bullets. Lee was hit in the left buttock by one of the bullets.

THE APPELLANT`S STATEMENTS TO THE POLICE

The appellant gave three pre-trial statements to the Singapore police, in compliance with s 121 of the Criminal Procedure Code (Cap 68). All three statements were admitted as evidence in the trial without challenge from the defence counsel. The appellant told the police that he had fired the first shot upwards towards the ceiling of the void deck, because Soh was holding Susan by the neck and choking her. Soh, who was six or seven feet away from him, immediately released Susan and fled with Lee. As they were fleeing, he had fired another three shots in the direction where they ran.

In his first statement, dated 5 June 2000, he stated, inter alia:

... All of a sudden [Soh] forced Susan to the wall and squeezed her neck with his right hand. Susan appeared to be struggling hard for breath. Both the loanshark and [Soh]'s backs were facing me. At that time I was about 20 feet away from them. I then approached [Soh] and the loanshark. [Soh] had already released his grip against Susan's neck when I approached them. I told them not to behave in such a manner as we could always talk things over. The said loanshark then pointed his centre finger at me and then scolded me ... He appeared aggressive when he was talking to me. I recalled that I drew my revolver with my right hand from my right front trousers pocket and pointed the gun towards the ceiling. I subsequently fired one shot. I could not recall the position of the loanshark, [Soh] and Susan at that time. I am unable to recall whether [Soh] and the loanshark were facing me or their backs were towards me when I fire the first shot. I also could not tell if my first shot hit the ceiling of the void deck of Blk 642 Rowell Road. I am currently 67 years old and my memory is failing.

In a further statement recorded on 6 June 2000, he stated, inter alia:

After I fired the first shot, both [Soh] and the loanshark ran towards the old shop houses situated along Rowell Road. I did not pay attention exactly if anyone of them took cover at the nearest pillar. The place was quite dark. I got fed up and I subsequently fired another 3 shots towards the direction where [Soh] and the loanshark ran. I was not aware if [Soh] and the loanshark were hit by my bullets. Susan was shocked and stunned and she remained where she was.

In a further statement, also recorded on 6 June 2000, he gave the following responses to questions put to him by the investigating officer:

Q10: During the incident at the void deck of Blk 642 Rowell Road on 22 Jan 1995 at about 1 a.m, did [Soh] or the loan shark attack you or assault you?

A10: No. I exchanged vulgar words with [Soh] and the loanshark. There was no fight.

Q11: How far were you from [Soh] and the loanshark when you fire your first shot from your revolver?

A11: About 20 feet away.

The proceedings below

The prosecution's case was that the appellant had fired all four shots at Soh and Lee, with the intention to cause physical injury to them. The defence's case was that the appellant had fired the first shot at the ceiling, without any intention of causing injury to Soh or Lee. He only wanted to

scare them and to save Susan from being strangled. When they ran off, he was angry and got carried away and fired three shots in their direction. Although he had fired the three subsequent shots continuously in the direction of Lee and Soh, the place was dimly lit and he could not really see them and was not really aiming at them. He was angry when he fired the last three shots, but he had not intended to cause physical injury to either Soh or Lee. It was also submitted by the defence that the bullet which hit Lee was the first shot, which had ricocheted off the ceiling of the void deck.

No closing submissions were made by the defence counsel at the trial. The judge found that the prosecution had proved its case against the appellant and convicted him under s 4(1) of the Act.

Our decision

The relevant sections in the Arms Offences Act provide thus:

Interpretation

2 In this Act, unless the context otherwise requires -

...

"use", with its grammatical variations, means -

(a) in relation to a firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted - to cause such shot, bullet or other missile to be discharged or such noxious liquid, flame or fumes to be emitted with intent to cause physical injury to any person;

...

Using or attempting to use arms

4(1) Subject to any exception referred to in Chapter IV of the Penal Code (Cap. 224) which may be applicable (other than section 95), any person who uses or attempts to use any arm shall be guilty of an offence and shall on conviction be punished with death.

(2) In any proceedings for an offence under this section, any person who uses or attempts to use any arm shall, until the contrary is proved, be presumed to have used or attempted to use the arm with the intention to cause physical injury to any person or property.

Under s 4(2) of the Act, any person who uses or attempts to use any firearm is presumed, until the contrary is proved, to have intended to cause physical injury to a person or to property. The evidential burden is on the offender. To rebut the statutory presumption, he must produce sufficient evidence to prove that he did not intend to cause injury to anyone. In the present case, we found that the statutory presumption in s 4(2) of the Act had not been rebutted. It was not disputed that,

apart from the first shot, which the appellant claimed was fired at the ceiling, three consecutive shots were fired in immediate succession in the direction of Lee and Soh's retreating figures as they were fleeing from him. This was not disputed. Yet, the appellant told the court that he was not actually aiming at Lee and Soh, and had no intention of causing any physical injury to them. His bare denial of possessing the requisite intention, however, was far from being sufficient to rebut the statutory presumption. Indeed, the evidence before the court reinforced the presumption that he had intended to cause physical injury to Soh and Lee. Even though, according to him, the area was 'very dark' and he could not see them clearly, he managed to hit Lee in the left buttock. The scientific and medical evidence debunked the defence's theory that the bullet which hit Lee was the first shot, which had ricocheted off the ceiling. Dr Teo Teng Poh ('Dr Teo'), a Principal Scientific Officer of the Department of Scientific Services, had examined the bullet which had hit Lee, and he testified in court that the bullet was slightly distorted, in that its nose was not smooth, but the nose was still rounded. He opined that it was unlikely that the bullet had ricocheted off the ceiling, because such a bullet would have a side of its nose flattened. Moreover, the evidence revealed that Lee's hand phone, which was in his rear trouser pocket at the material time, had been hit squarely by the bullet, instead of at an angle. This was evident from the location of two craters in the hand phone, stained with lead from a bullet discharged from the appellant's revolver. Thus, in Dr Teo's opinion, it was more likely that the bullet which had hit Lee was not a ricochet bullet, but had hit the hand phone squarely and then lodged itself into Lee's left buttock. Dr Teo did concede that if the first bullet had ricocheted at a very shallow angle, it was possible that it would not be flattened on one side. However, as the trial judge had pointed out, it was unlikely that the bullet could have ricocheted off the ceiling and hit Lee's hand phone squarely, instead of at an angle, when Lee was six to seven feet away, with no ricochet damage to the bullet.

Furthermore, the appellant himself admitted that he had fired the last three shots out of anger. Those last three shots were clearly not fired in defence of Susan, for the first shot had been enough to send Soh and Lee fleeing for their lives, and she was in no mortal danger when he fired the subsequent three shots. A single shot from his revolver would have been enough to cause grave physical injury to Soh or Lee, and being aware of that fact, he had fired not one, but four bullets (which were all the bullets in his revolver), while in close proximity with Soh and Lee. All this negated his evidence that he had only intended to scare Soh and Lee, and that he had no intention to cause them physical injury. The evidence supported, if not an inference, then the presumption in s 4(2) of the Act, that he had intended to cause physical injury to Lee and Soh.

Counsel for the appellant made neither written nor oral submissions before us at the appeal. There was nothing to exculpate the appellant, who was clearly guilty of the charge against him. In the event, we dismissed his appeal against conviction and upheld the mandatory death sentence under s 4(1) of the Act.

Outcome:

Appeal dismissed.