G Krishnasamy Naidu v Public Prosecutor
[2006] SGCA 36

Case Number : CA 2/2006

Decision Date : 21 September 2006

Tribunal/Court : Court of Appeal

Coram : Choo Han Teck J; V K Rajah J; Tay Yong Kwang J

Counsel Name(s) : Peter Keith Fernando (Leo Fernando) and Jeeva Joethy (Joethy & Co) for the appellant; Lau Wing Yum and Jason Chan (Deputy Public Prosecutors) for the respondent

Parties : G Krishnasamy Naidu — Public Prosecutor

Criminal Law – Special exceptions – Diminished responsibility – Whether appellant suffering from abnormality of mind – Whether such abnormality arising from condition of mind or illness – Whether mental responsibility of appellant sufficiently diminished by abnormality of mind – Whether limbs of inquiry under s 300 Exception 7 Penal Code to be considered separately or as whole – Section 300 Exception 7 Penal Code (Cap 224, 1985 Rev Ed)

21 September 2006 *Judgment reserved.*

Choo Han Teck J (delivering the judgment of the court):

1 The 43-year-old appellant killed his 39-year-old wife ("Chitra") on 17 May 2004. He attacked her with a newly purchased chopping knife and caused numerous wounds. The pathologist, Dr Gilbert Lau, determined that six major wounds were inflicted and one of the incised wounds across Chitra's neck resulted in her death. The appellant was variously a bus driver, a taxi driver, and a lorry attendant. Chitra worked as a factory hand. The couple married on 1 June 1985 and subsequently produced two children, a daughter born in 1986 and a son in 1989. Between those years, Chitra had an affair with one Murugan. The appellant discovered the affair and only the intervention of his mother stopped him from seeking a divorce then. The appellant forgave Chitra and their marriage continued uneventfully until 2000 when Chitra had an affair with a colleague named Jayaseelan. When the appellant found out about this affair on 28 March 2000, he beat her with a bamboo pole and fractured her hand. She admitted to being pregnant with Jayaseelan's baby and the appellant took her to a clinic to have the foetus aborted. Eventually, Jayaseelan returned to India in October 2001, but still sent Chitra a Valentine's Day card in 2002, which the appellant found and kept. He threatened to divorce Chitra but she pleaded with him not to.

2 By the end of 2001 it was Chitra who had decided to divorce the appellant and the divorce papers as well as an application for a personal protection order ("PPO") were served on him on 28 November 2001, whereupon the appellant threatened to kill her if the application for the PPO was not withdrawn. In December 2001, Chitra had an affair with a man called Anan. She denied the appellant's accusations of her infidelity with Anan, whereupon he beat her again with a bamboo pole. Shortly thereafter, on 10 January 2002, Chitra lodged a police report about the appellant's assault on her. On 25 March 2002, the appellant was convicted of causing grievous hurt and sentenced to three months' imprisonment. Chitra visited him in jail and when he was released on 25 May 2002, she asked for his forgiveness and he forgave her. The trial judge seemed to have accepted that from that time until February 2004 the appellant "had a normal relationship with Chitra". By "normal", we gather that the court meant uneventful. However, it appeared that Chitra had a relationship with a man called Michael Lee. The appellant seemed to be ignorant of this relationship.

3 In February 2004, Chitra befriended a man called Asokan s/o Muthu Suppiah ("Ashok"). He was a security guard in a nearby factory who took the same bus to work as Chitra. It was during the trips to work in February 2004 that Chitra got to know Ashok better. They befriended each other and exchanged stories of their personal lives. Ashok also invited Chitra to the Indian Association to listen to music. The trial judge noted that the appellant stayed away from home from February to 6 March 2004 after quarrelling with Chitra and his children, and so was unaware of the friendship between Ashok and Chitra at that time. However, the appellant remained in touch with Chitra. On 26 March 2004 he called to tell her that he would take her home after her night shift. At breakfast, she told him that she had a company barbecue that evening but she would be going there only after 9.00pm to avoid some people she did not like. She left home about 8.30pm, dressed in a sleeveless blouse and a long denim skirt. The appellant thought that that was inappropriate dressing for a barbeque, and as the evening wore on, he began to suspect more and more that Chitra was having an affair. He checked on her with the help of a friend and found no such chalet and no such barbecue as he had been led to believe. He called her on her mobile telephone and demanded that she return home. After that, the appellant telephoned Chitra every five or ten minutes out of suspicion but by that time Chitra had switched off her mobile telephone. When she finally returned home, the appellant thought that she looked dishevelled and inferred that she must have had sexual intercourse earlier on. The trial judge noted in great detail the appellant's growing suspicion and increasing jealousy from that point up to 17 May 2004 when he killed her, including the appellant's remand pending psychiatric assessment after he was charged in the District Court on 10 April 2004 for stabbing Chitra with a knife. He was released on bail on 7 May 2004 and went to stay with his mother, but his jealous preoccupation with Chitra was unabated, and on 17 May 2004, he killed her after approaching her on the pretext of asking her to sign papers for their divorce. The trial judge rejected his defence of diminished responsibility by reason of an abnormality of mind that substantially impaired his mental responsibility – the defence under Exception 7 to s 300 of the Penal Code (Cap 224, 1985 Rev Ed), and duly convicted the appellant of murder and sentenced him to death (see *PP v G Krishnasamy Naidu* [2006] 3 SLR 44). The appellant appealed on the ground that the trial judge erred in rejecting his defence.

4 The analysis of Exception 7 by the Court of Appeal in previous cases had a "three-stage test" as part of its analysis. In *Tengku Jonaris Badlishah v PP* [1999] 2 SLR 260 ("*Tengku Jonaris Badlishah*") at [35], reference was made to *Mansoor s/o Abdullah v PP* [1998] 3 SLR 719 ("*Mansoor*") and the court implicitly approved the view of the court in *Mansoor* that there were "three limbs" to the defence under Exception 7 as follows:

> In *Mansoor s/o Abdullah & Anor v PP* [1998] 3 SLR 719, it was stated that there are three limbs to this defence. The accused must show on the balance of probabilities that
>
> (i) he was suffering from an abnormality of mind at the time he caused the victim's death;
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> (ii) his abnormality of mind arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury; and
>
> (iii) his abnormality of mind substantially impaired his mental responsibility for his acts and omissions in causing the death.

We are of the view that the three-stage test remains a convenient way of drawing attention to the three critical aspects of the provision in many cases. Unfortunately, the three-stage test is a reference that sometimes admits of a misapplication of the law. We believe that that was what happened in this case. Exception 7 is not meant to be a three-stage provision. On the contrary, it is

a composite clause that must be read and applied as a whole. This is what it says:

> Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

Where Exception 7 is considered strictly in a three-stage fashion, the conclusion at one stage may be irreconcilable with another stage. This appears to be the result in this case.

5 The court below proceeded to determine whether Exception 7 applied in this case in a three-stage manner as it was stated in *Mansoor* above, namely, by first enquiring whether the appellant suffered from an abnormality of mind. After a detailed analysis of the evidence, it decided that the appellant was suffering from such an abnormality. The court then considered the second "stage", namely whether such abnormality arose from a condition of the mind or some illness, and decided that the medical evidence sufficiently showed that the appellant was suffering from a mental illness that gave rise to the abnormality of mind. Finally, it considered what it understood to be the "third stage", namely, whether the mental responsibility of the appellant was sufficiently diminished by the abnormality of mind. Having analysed and answered the first two "stages" in the manner that it did, it would not have been surprising had the court similarly decided in the affirmative in respect of the third limb. However, the court was of the opinion that the mental responsibility of the appellant was not diminished. This was the crux of the appeal before us. Mr Fernando, counsel for the appellant, submitted that on the findings of fact made by the trial judge, the court should not have inferred that the mental responsibility of the appellant was not substantially impaired. In support of that argument, counsel also submitted that the court gave far too little weight to the medical evidence of Dr Stephen Phang, the medical expert witness for the Defence who was of the opinion that the appellant was labouring under an abnormality of mind occasioned by "morbid jealousy", a psychiatric illness, that substantially impaired his mental responsibility.

6 The gravamen of Exception 7 concerns the straightforward question whether "the offender was suffering from such abnormality of mind … as substantially impaired his mental responsibility for his acts and omissions in causing the death", and, in our view, is really one composite requirement. The cause of that abnormality may be any one of those things cited in parenthesis, namely "whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury". Splitting the one question into three stages or limbs compels the court to ask three questions instead of one. That may be an acceptable method provided that in a case such as the one before us, the court eventually reconstitutes the three stages to the composite question and answers it as a whole. Exception 7 does not require the court to ask, first, whether there was an abnormality of mind, and proceed to ask whether that abnormality had substantially impaired the mental responsibility of the accused if the first answer were in the affirmative. If the mental responsibility of the accused was not impaired, then the answer to the composite question really should be that the accused was not suffering from an abnormality of mind that substantially impaired his mental responsibility. In *Mansoor*, the trial judge essentially answered the composite question when he expressed his opinion that the accused did not suffer from any abnormality of mind, a finding that this court accepted (see [27] of the Court of Appeal's judgment). Exception 7 is not concerned with all manner of abnormalities but only with those that had substantially impaired the mental responsibility of the accused person. Hence in *Tengku Jonaris Badlishah* this court was of the view that the psychiatric disorder, dysthymia, did not substantially impair the accused person's mental responsibility. In our view, it was clear that the question was ultimately answered in a composite way in that case. Similarly, in *Chua Hwa Soon Jimmy v PP* [1998] 2 SLR 22, this court held, at [33], as follows:

> On the totality of the evidence, we concluded that the appellant could have restrained himself, even if we accepted that he was commanded by a voice. His abnormality of mind (if any) was not such as to substantially impair his mental responsibility for the offence committed. After all, he had the presence of mind to try and tie the deceased up when assaulted; to avoid electrocution by using the telephone cord instead of pulling the plug; to look for the keys to make his escape; to put on his boots before leaving the crime scene; and to dispose of his bloodied clothes. His behaviour immediately after the murder was also inconsistent with a person who claimed to be out of control. Therefore, the entire episode, in our judgment, demonstrated that the appellant's mind was not *substantially* impaired as to absolve him of mental responsibility for his foul crime. [emphasis in original]

In that case, unlike the present, this court decided the application of Exception 7 by answering it as a composite question.

7 Admittedly, an inquiry into the application of Exception 7 in any case is essentially an inquiry of fact: see *Sek Kim Wah v PP* [1987] SLR 107 at 111, [33], as was approved by this court in *Mansoor* at [13]. Accordingly, in such instances, an appellate court would not normally interfere with the findings of the trial judge, and for good reason: the evidence that the appeal court reads from the record can never appear as sharp and clear as it would to the trial judge who hears it fresh. Indeed, evidence appearing in cold print may sometimes create a contrary impression of the facts as the trial judge first received it. However, when the exercise of fact finding proceeded on a misapplication of the law, the appellate court may intervene if it was satisfied that the misapplication resulted in an erroneous inference of fact. As Wee Chong Jin CJ held in *Sek Kim Wah* (at 111, [33]) "the verdict as to abnormality of mind is plainly a finding of fact which must be founded on all the evidence which evidence of course includes medical opinion" though we note that the court added that even in cases where the medical opinion was unchallenged, the trial judge was "perfectly entitled to reject or differ from the opinions of the medical men, if there are other facts on which they could do so" (*ibid*). Reverting to the case before us, the court below held at [198] that "the Defence has discharged its burden on the first limb. I find that the [appellant] was suffering from the disorder known as morbid jealousy at the time he killed Chitra". The court then accepted at [200] that "morbid jealousy is a disease of the mind and that it is a major mental illness". After making those two findings, the court moved on to the third and last limb, *ie*, "whether the disorder had substantially impaired the [appellant's] responsibility for his act of killing Chitra" (at [201]). Given the court's findings on what it regarded as the first and second limbs, the question remaining was not whether morbid jealousy could have impaired the mental responsibility of the appellant, but whether it did substantially. To that end, in view of the close connection of the illness to the object of the offence (Chitra), and the finding that the appellant was labouring under an abnormality of mind, one would have thought that the natural inference would be that there had been a substantial impairment of the appellant's mental responsibility. Instead, the learned judge concluded at [211] as follows:

> The burden of proof is on the Defence. I am afraid that the Defence has failed to discharge its burden in respect of the third limb. In the circumstances, I have to reject the defence of diminished responsibility …

8 By applying the three-stage test and answering each stage in turn as the trial judge did, and finding that morbid jealousy was a disease of the mind and that it resulted in an abnormality of mind in the appellant, the conclusion that the mental responsibility of the appellant was, nonetheless, not substantially impaired requires explanation as to how that conclusion was reached. This is especially so in the light of the fact that this was a case in which the disease of the mind had a close, if not the only, connection between the appellant's act and Chitra's death – a direct correlation between the subject appellant and the object deceased. Indeed, the evidence revealed no other motive or

reason, with the court finding as a fact that the subject was suffering from an abnormality of mind caused by a disease directly related to his perception of Chitra's lack of fidelity to him. The court below appeared to have arrived at the conclusion that there had been no substantial impairment of the appellant's mental responsibility on two factors. First, the court appeared to be influenced by what it described at [209] as the "detailed plans to kill and [the appellant's] execution of the plan, as well as his awareness of the penalty for murder" and also that he wavered in carrying out his plan. The court appeared to have rejected the evidence of Dr Phang that a person with an abnormality of mind was still capable of making and carrying out elaborate plans and, instead, drew what appears to us an arbitrary distinction between the ability of an abnormal mind to "plan their travel to a hospital, register to see the doctor and collect and pay for their medication" and the plans that the appellant made to kill Chitra: see [202]. This is where the examination of Exception 7 in three distinct steps instead of a single whole had resulted in a serious incongruity. When a person has already been determined to be suffering from an abnormality of mind in present circumstances, how does one determine what sort of conduct, and at which point that person's action may be said to have been impaired, and when it has not? If the court has not determined that the person had suffered any abnormality of mind, then it might take such actions and conduct into account in deciding whether or not there was sufficient evidence of abnormality. This difference is vital. It is a difference that would be better appreciated if Exception 7 was applied in the manner we have explained, not as a three-stage inquiry, but a single, composite one, or, if considered in three stages, to review it subsequently as a whole by asking the following question: Did the accused suffer from an abnormality of mind as substantially impaired his mental responsibility?

9 The second consideration as to why the trial judge did not think that there was a substantial impairment of the appellant's mental responsibility can be found at [210] of the judgment:

> On the totality of the evidence, I am not persuaded that the accused could not have resisted his impulse to kill Chitra. That impulse stemmed from his obsession about her. He could not bear to divorce her or to let her be with other men. Such obsessive feelings are also found in persons who are extremely possessive and jealous, but not morbidly so. In my view, his feelings for her, however strong, did not substantially impair his mental responsibility for his actions leading to the killing of Chitra even though he was suffering from a mental disorder.

It seems to us that the comparison made with jealous persons who are not suffering from morbid jealousy ought to have yielded the opposite inference – that there would be no reason to suppose that while normal jealousy would not have resulted in a substantial impairment of mental responsibility, a mind in which the disease of morbid jealousy was raging for a substantial period leading to the killing, was probably so impaired.

10 Those seem to be the reasons explaining why the court thought that in spite of the abnormality of mind caused by the illness of morbid jealousy, the appellant's mental responsibility was not substantially impaired. In our view, the question of whether the court ought to have then proceeded to state that it found no abnormality of mind that substantially impaired the appellant's mental responsibility because the illness did not substantially impair the appellant's mental responsibility is not one of mere semantic nicety. This step (arising from the third limb) is conceptually different from the composite one of finding that the appellant had an abnormality of mind by reason of the illness but that, nonetheless, his mental responsibility was not substantially impaired. The failure to appreciate the conceptual distinction was probably the result of applying the three-stage test. By so doing, the court was bound to explain why it had rejected what would otherwise have been a logical conclusion. As the finder of fact, it was, of course, entitled to apply the three-stage test, but in doing so, it had narrowed the sphere of its inquiry, from the broader one of whether the appellant had an abnormality of mind that substantially impaired his mental responsibility, and obligated itself to

explain why it did not follow the more natural conclusion that the appellant's mental responsibility was probably substantially impaired since he had an abnormality of mind caused by the illness of morbid jealousy. The issue before this court was whether the conclusion of the court below in respect of its answer to the third question could be sustained. We are of the unanimous opinion that it could not. The two factors that seemed to have led the court below to its decision did not, in our view, result in the correct inference being made, especially given the well-reasoned medical evidence, as well as the facts accepted by the trial judge. Those showed that the appellant was mentally tormented for long periods by his unshakeable belief that his wife was unfaithful. If the court was of the view that the appellant's belief was unremarkable or untenable (which was not the case here), then it ought to find that the appellant was either not suffering from an illness, or, that notwithstanding his illness, was not suffering from an abnormality of mind that substantially impaired his mental responsibility. The conclusion it actually reached, however, though conceptually possible, required convincing reasons in support. That was what we found lacking.

11 For the reasons above, we are of the view that it would not be safe to return a verdict of murder, and we thus set aside the conviction and convict him on a charge of culpable homicide not amounting to murder and punishable under s 304(*a*) of the Penal Code. We will decide on sentence after hearing counsel.