

Public Prosecutor v Micheal Anak Garing and another
[2014] SGHC 13

Case Number : Criminal Case No 19 of 2013
Decision Date : 20 January 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Anandan Bala, Seraphina Fong and Marcus Foo (Attorney-General's Chambers) for the Public Prosecutor; Ramesh Tiwary (Ramesh Tiwary) and Josephus Tan (Patrick Tan LLC) for the first accused; B J Lean (Thiru & Co) and Amarick Gill Singh (Amarick Gill & Co) for the second accused.
Parties : Public Prosecutor — Micheal Anak Garing — Tony Anak Imba

Criminal Law – Offences – Murder

Criminal Law – Complicity – Common intention

[LawNet Editorial Note: The appeals to this decision in Criminal Appeals Nos 9 and 11 of 2015 were dismissed by the Court of Appeal on 27 February 2017. See [\[2017\] SGCA 7.](#)]

20 January 2014

Judgment reserved.

Choo Han Teck J:

1 Sometime between 12.13am and 7.34am of 30 May 2010, Shanmuganathan Dillidurai ("Shanmuganathan") was killed along Kallang Road. Shanmuganathan was a 41-year-old construction worker from India. He was cycling along Kallang Road near "The Riverine By The Park" condominium when he was set upon by a gang of assailants. He was assaulted and robbed of his wallet. He was already dead by the time he was found, and the cause of death was certified by the forensic pathologist as arising from multiple injuries. The main and fatal injuries were set out in the forensic report by Dr Paul Chui. Shanmuganathan was found with his left palm severed from his hand, his skull fractured, a slash wound to the neck which severed his jugular vein, and a wound over his back which cut so deep that his shoulder blade was cracked.

2 Shanmuganathan was not the only person attacked, nor was he the first. It transpired that three other persons were attacked by the same assailants. Investigations by the police revealed the identities of the assailants as Micheal Anak Garing ("Micheal Garing"), Tony Anak Imba ("Tony Imba"), Hairee Anak Landak ("Hairee Landak"), and Donny Anak Meluda. They were East Malaysians working in Singapore on work permits. On the evening of 29 May 2010, they were drinking rice wine and Sprite at 252C Geylang Road. There, they planned to commit robbery. There did not seem to be any specific plan or target, but the four of them left Geylang Road about 11pm. Micheal Garing armed himself with a parang (a home-made machete, exhibited as P453). Between 11 pm that evening and 7.34am of 30 May 2010, this gang of four attacked and robbed three other persons before they attacked Shanmuganathan. The three others were Sandeep Singh ("Sandeep"), Ang Jun Heng ("Ang"), and Egan Karuppaiah ("Egan"). Defence counsel objected to the admission of evidence relating to the three attacks on the ground that the evidence would be prejudicial to the accused persons. I overruled the objections and allowed the evidence to be adduced. The attacks on the three other persons were part of the crucial narrative leading to the offence at trial. What the assailants were

doing before the offence in question was relevant, not only to the prosecution, but as it will be seen, also to the defence. Each attack may appear to be an incident in itself but together they form an integral act pursuant to a common intention to assault and rob. The prejudicial value of the evidence of the other assaults did not outweigh the probative value. The final attack could not have been fully appreciated without evidence of the other three.

3 The evidence that were not disputed revealed that Sandeep was attacked first, followed by Ang, and then Egan. Sandeep was attacked while he was sitting on a rocking horse in a playground, chatting on the phone with his family members in India. Tony Imba hit him over the head with a brick. The blow fractured his skull, exposing his brain. Chips of broken bone were embedded in his brain. The forensic pathologist, Dr Paul Chui, and the surgeon, Dr Sharon Low, were of the opinion that that was a potentially fatal injury. After Tony Imba had dealt the first blow, the others continued the assault. Sandeep was slashed with the parang and robbed of his wallet and mobile phone. Ang was walking alone along a footpath beneath a Mass Rapid Transit track after a late night out with friends when he was set upon by the gang. Tony kicked Ang, and as Ang prepared to defend himself, the other members of the gang joined in the attack. Micheal Garing slashed Ang with the parang. For his resistance, Ang lost his left hand. His palm cut off almost in the same way that Shanmuganathan's palm was sliced off – midway across the palm, losing all four fingers. The doctors were unable to re-attach the severed hand. Ang had other laceration wounds, including one so deep that it almost cut his spinal cord. The medical evidence showed that that was a potentially fatal injury. About ten minutes after attacking Ang and robbing him of his wallet and mobile phone, the gang attacked Egan. Ang's mobile phone was subsequently found in Micheal Garing's possession. Egan was attacked first by Tony Imba before the other members joined in the attack. Egan had parts of his fingers cut off and various lacerations and fractures. He showed the resulting limitation of flexibility to his limbs when he testified for the prosecution. Like Sandeep and Ang, his wallet and mobile phone were taken away by the assailants.

4 Sandeep, Ang, and Egan testified to the assaults on them. Much of the evidence was not disputed. Mr Lean, counsel for Tony Imba, challenged the prosecution's contention that his client had the same intention as Micheal Garing, namely, in carrying out the violent attacks. Mr Lean's contention had been addressed by Hairee Landak's testimony as witness for the prosecution. Hairee Landak's evidence corroborated the prosecution's case that the four attacks, including the fatal one on Shanmuganathan, had a general pattern. Hairee Landak was separately dealt with for his role in the attacks.

5 As gleaned from Hairee Landak's testimony, in the case of Shanmuganathan, Tony Imba kicked him off his bicycle and then restrained him from running away. Micheal Garing then came up and cut him with the parang. The injuries suffered by Shanmuganathan were extensive and Dr Paul Chui testified that of the twenty wounds, four were in themselves sufficient in the ordinary course of nature to cause death. Tony Imba and Micheal Garing then took Shanmuganathan's wallet. The gang then returned to their quarters in Syed Alwi Road where they split the loot, taking \$70.00 each. Hairee Landak testified that Micheal Garing wore the pair of white shoes (seized and marked P519 and P520) during the attacks on the four victims. Micheal Garing's DNA was found on Shanmuganathan's waist pouch where his wallet was kept, and also on the parang. Traces of Ang's blood were found on the clothes and belt worn by Tony Imba. Micheal Garing and Tony Imba were charged under s 300(c) punishable under s 302, read with s 34, of the Penal Code (Cap 224, 2008 Rev Ed). No submissions were made on their behalf at the close of the prosecution's case. They elected to testify in their own defence.

6 Micheal Garing and Tony Imba blamed each other for the fatal wounds caused to Shanmuganathan. Tony Imba testified that Micheal Garing was the only one who wielded the parang

while he was only there with the intention to rob and not to cause physical harm to the victim. Micheal Garing admitted that he had swung the parang at Shanmuganathan but only over his head to scare him. He did not inflict the wounds on Shanmuganathan. He testified that after they had taken Shanmuganathan's wallet and were walking back to their quarters, Tony Imba snatched Micheal Garing's parang and went back to slash Shanmuganathan. At that time, the group was near an electrical box, roughly five to ten metres from where they left Shanmuganathan. This piece of evidence is not entirely reliable because Micheal Garing had given different accounts as to when and where Tony Imba took the parang from him. He was also not consistent as to what Tony Imba did with it. Although I accept that one might forget details of his experiences or get the chronology mixed up (for example, whether he saw a knife being used or a club, or whether a club was used before the knife), I am of the opinion that the discrepancies in Micheal Garing's evidence in this respect are not helpful to his defence for the reasons that I shall elaborate.

7 Tony Imba's defence was that he did not share the common intention with Micheal Garing of assaulting Shanmuganathan with the parang. His evidence was that he merely joined in to help the gang commit robbery. He also said that, in respect of the attack on Sandeep, he tried to stop Micheal Garing from using the parang. He also denied that he was the one who took the parang from Micheal Garing and used it to slash Shanmuganathan. In this regard, Tony Imba's evidence was consistent with Hairee Landak's, namely, that it was Micheal Garing who used the parang on Shanmuganathan.

8 The incontrovertible evidence of this case was that the gang of four planned a series of robberies on the evening of 29 May 2010. They carried out that plan and, within the next seven to eight hours, assaulted and robbed four victims in circumstances described in the preceding paragraphs. It was not disputed that a parang was used and that that was the weapon that caused serious injuries to all four victims, and death to Shanmuganathan. The attacks took place as if the gang were on a safari, hunting down one prey at a time, using the same method to trap and harm their victims. Shanmuganathan was the last of the four victims. The gang then retreated to their quarters to count and distribute the loot for the day. In these circumstances, it did not matter who wielded the parang on Shanmuganathan, although on the evidence presented by the prosecution and also the defence, I am satisfied that it was Micheal Garing who struck Shanmuganathan with the parang. His claim that it was Tony Imba who used the parang was not supported by any evidence. On the contrary, all the evidence, including Hairee Landak's testimony, showed that Micheal Garing was the one who used the parang. Hairee Landak was unclear in some aspects of his evidence but he testified that Tony Imba was restraining Shanmuganathan when Micheal Garing slashed Shanmuganathan.

9 I accept that there were no specific instructions or plans as to how the robberies were to be carried out, or what role each was to perform, although the evidence indicated that the four robberies had a general pattern. A victim would be identified, Tony Imba would begin the attack, and once he began, the others followed, including Micheal Garing with his parang. The disabled victim would then be robbed. In all three previous assaults, the victims were violently slashed by Micheal Garing's parang. Tony Imba could not have been oblivious to that. Hence, by the time they picked on Shanmuganathan, Tony Imba must have known that the victim was going to be similarly slashed. I am of the view that he cannot be heard to say that he did not intend to join in the attack with the parang and that he only agreed to rob. Having seen three victims lying in their own blood, it lies ill in his mouth to say at trial that he did not know that Shanmuganathan would be slashed. I am satisfied that the prosecution has proved its case beyond reasonable doubt that Tony Imba acted in common intention with Micheal Garing not only to rob but also to cause injuries to Shanmuganathan with the parang. Those injuries were inflicted by Micheal Garing in circumstances that Tony Imba could not have been oblivious to either the act or intention of Micheal Garing himself.

10 Micheal Garing claimed that he struck Shanmuganathan twice but that these were not the fatal blows. Mr Ramesh, his counsel, thus submitted that he could not be held responsible for the injuries inflicted by the other members subsequently. I do not accept this submission because Micheal Garing's evidence, which was consistent with his statements, was contradicted by Tony Imba and Hairee Landak. On the question of the person wielding the parang, I am satisfied that the prosecution has proven beyond reasonable doubt that it was Micheal Garing who was the one who used the parang on Shanmuganathan as well as the other victims. In any event, no matter who used the parang, every member of the gang would have known that the parang was going to be used by the time they set upon Shanmuganathan. By virtue of s 34 of the Penal Code (Cap 224, 2008 Rev Ed), each and every one of them would be as culpable as the one who used the parang: see *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119 at [168(d)]. The forensic evidence was explicitly clear that the injuries caused by the gang were sufficient in the ordinary course of nature to cause death. Accordingly, I find both accused guilty as charged and convict them accordingly.

11 I will sentence the accused on a date to be fixed.

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