IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 55

Criminal Appeal No 37 of 2020

Between

Tan Kok Meng

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 23 of 2020

Between

Public Prosecutor

… *Plaintiff*

And

Tan Kok Meng

… *Defendant*

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Murder]

[Criminal Law] — [General exceptions] — [Unsoundness of mind]
[Criminal Procedure and Sentencing] — [Accused of unsound mind]

TABLE OF CONTENTS

Tan Kok Meng
v
Public Prosecutor

[2021] SGCA 55

Court of Appeal — Criminal Appeal No 37 of 2020
Andrew Phang Boon Leong JCA, Tay Yong Kwang JCA and Chao Hick Tin SJ
4 May 2021

18 May 2021

Andrew Phang Boon Leong JCA (delivering the grounds of decision of the court):

Introduction

1 This is an appeal against the finding of the High Court judge ("the Judge") under s 251 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") that the appellant, Mr Tan Kok Meng ("the Appellant"), had committed the act of causing his father's death ("the Deceased"). We dismissed the appeal on 4 May 2021 and now set out the detailed grounds for our decision.

2 The Appellant was charged under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") for committing murder by strangling the Deceased and inflicting multiple blows on his face with the intention of causing his death. It was, and remains, undisputed that the Appellant was of unsound

mind at the material time such that s 84 of the Penal Code operated as a complete defence to his charge.

3 On appeal, the Defence also accepted the Judge's findings that the Appellant had carried out the acts as particularised in his charge (*ie*, "strangling [the Deceased] and inflicting multiple blows on his face"). We refer to these as the "Undisputed Acts". The sole contested issue in this appeal was thus whether the Appellant had caused the death of the Deceased by way of his Undisputed Acts.

Background to the appeal

4 The facts are uncomplicated and uncontested. The Appellant resided with his parents in their HDB flat in Bedok ("the Flat"). On the day of the incident, 13 November 2015, his mother, Mdm Toh Meow Siang ("Mdm Toh") observed that the Appellant was not his usual self and not in a good state. As such, prior to leaving the Flat at approximately 2.30pm, Mdm Toh told the Deceased to "keep the keys from [the Appellant] and to keep watch over him and not allow him to go out". The Flat's gate was padlocked when she left.

5 When Mdm Toh returned at around 5.00pm, the gate was still padlocked. Mdm Toh saw the Deceased lying supine on the floor with his head in a pool of blood. The Appellant was seated on the sofa facing the Deceased's body. Mdm Toh ran out of the Flat to seek help. Two of her neighbours, Mr Chua Kee Pau ("Chua") and Mr Mohamad Zin bin Abdul Karim ("Zin"), came to her aid. Zin called for an ambulance.

6 When Mdm Toh returned to the Flat, she shouted at the Appellant "as to why he killed his father". At that point, the Appellant walked towards the Deceased. He straddled the Deceased, "placed both his hands on the deceased's

upper chest, just below the throat area and at the collar bone area". Zin, who saw the Appellant sitting on the Deceased's stomach, pulled Mdm Toh away and escorted her to the corridor outside the Flat. There, Chua and Zin stayed with Mdm Toh as they waited for help to arrive.

7 Three paramedics, Lee Yan Lin Zaneta ("Zaneta"), Muhammad Farhan bin Kasim ("Farhan") and Muhammad Farid bin Abdol Rahim ("Farid") arrived at around 5.19pm. Upon arrival, the paramedics noted that the Deceased had a heart rate of 80 beats *per* minute ("bpm"). Zaneta certified the unresponsive Deceased to have a score of "3" on the Glasgow Coma Scale. This scale measures a subject's responsiveness from a scale of "3" to "15" with "3" being the lowest responsiveness.

8 Zaneta noted that the Deceased was making a "snoring-like" sound. This was a sign that there was an obstruction in his airway. Zaneta therefore inserted an Oral Pharyngeal Airway device ("OPA"), and the sound stopped. Prior to inserting the OPA, Zaneta wiped off blood clots outside the Deceased's mouth. She did not see any visible secretion of blood in the mouth, but she "found his heart beat to be slow and weak". This signified to her that "there [was an] issue with [the] heart already".

9 While Farid was sent to retrieve supplies from the ambulance downstairs, Farhan observed Zaneta as she inserted the OPA into the Deceased's mouth. He noticed that there was no blood gushing out of the mouth, nor any accumulation of blood inside the mouth.

10 Zaneta, Farhan and the Appellant were the only other people in the Flat while the Deceased was being attended to. After Zaneta inserted the OPA, the Appellant stood up from the sofa and moved towards the Deceased. He sat on

the Deceased's abdominal region and placed his hands on the Deceased's throat. In keeping with their protocols on safety, Zaneta and Farhan stepped backwards, away from the Deceased and the Appellant. Zaneta shouted at the Appellant to stop and to move away. The Appellant ignored her and continued to strangle the Deceased while mumbling "*wo yao ta shi*" ("I want him to die" in Mandarin). Eventually, the Appellant stood up and returned to the sofa.

11 The ambulance departed for the hospital at about 5.45pm. At approximately 5.51pm, the Deceased stopped breathing and his pulse was faint at around 36 bpm. His pulse subsequently weakened to about 24 bpm just prior to arriving at Changi General Hospital.

12 Dr Yow Zhi Wen ("Dr Yow") attended to the Deceased when he arrived at the hospital at around 5.56pm. Dr Yow reported that the Deceased had no pulse and no vital signs, and assessed him to be in a critical condition. Cardiopulmonary resuscitation ("CPR") was immediately carried out and a video laryngoscope was inserted. Dr Yow then saw a large amount of accumulated blood inside the Deceased's mouth and in his throat. Dr Yow also observed a "transverse laceration of tongue" measuring about 1cm in length. Finally, he noted bruising and swelling over the Deceased's neck, and assorted injuries on the face, eyes and chin. The Deceased was pronounced dead at 6.37pm on 13 November 2015.

13 The Appellant was examined by two psychiatrists in the aftermath of the incident and the lead up to trial. Both were of the view that the Appellant was suffering from schizophrenia and was probably of unsound mind at the time of the offence.

The autopsy findings

14 The autopsy report dated 13 January 2016 by the forensic pathologist, Associate Professor Teo Eng Swee ("AP Teo"), stated that the Deceased's cause of death was "**STRANGULATION AND ASPIRATION OF BLOOD**" [emphasis in original]. Aspiration of blood refers to the inhalation of blood into the lungs. Strangulation is the mechanical compression of airways causing suffocation.

15 In relation to the strangulation, the autopsy report identified numerous bruises and abrasions on the neck, coupled with extensive haemorrhaging on multiple regions of subcutaneous soft tissue and muscles there. There were also multiple laryngeal fractures (the larynx being the area of the throat containing the vocal cords and used for breathing, swallowing and talking).

16 In relation to the aspiration of blood, the autopsy report pointed to a transmural rupture of the tongue with the following communicating superior and inferior lacerations: first, a laceration measuring 2cm long over the midline inferior aspect of the tongue, 1cm from the tip of the tongue and second, a laceration shaped like the Mercedes-Benz logo, measuring 2.5cm x 2.5cm x 2.5cm over the anterior part of the superior aspect of the tongue ("the Mercedes Laceration"). The two lacerations (collectively, "the Tongue Laceration") were connected, hence the single "transmural rupture of the tongue" (*ie*, an injury that penetrates the entire wall of the tongue).

17 AP Teo clarified in his further report dated 21 January 2019 that there was no direct cause-effect relationship between the aspiration of blood and strangulation in the Deceased's case. Further, the aspiration of blood was not a result of the strangulation and the main source of the blood was likely the

Tongue Laceration. Tongue lacerations are commonly caused when a fall or blow to the face occurs when the tongue is between the teeth, and the shape and pattern of the Tongue Laceration was consistent with a punch to the face.

The dispute on appeal

18 The Judge agreed with AP Teo that the cause of the Deceased's death was aspiration and strangulation. The Defence had not adduced any medical evidence to the contrary and, in the Judge's view, failed to raise any reasonable doubt as to the veracity of the autopsy report or show that the Deceased's death could be attributed to any other causes. The Judge further held that the Appellant's actions were the only rational explanation for the Deceased's death when all the circumstances of the case were considered.

19 As the parties were agreed that the Appellant was of unsound mind at the material time such that s 84 of the Penal Code would serve as a complete defence to the Appellant's charge, the Judge acquitted him of the charge and made a finding that the Appellant had committed the act of causing the Deceased's death pursuant to s 251 of the CPC ("s 251 CPC"). She also made an order to commit the Appellant to safe custody pursuant to s 252(1) of the CPC.

20 On appeal, the Defence argued that the Undisputed Acts by the Appellant had not caused the Deceased's death and submitted that the finding under s 251 of the CPC should be that the Appellant had committed the act of causing grievous hurt rather than death. We will deal with the Defence's three main arguments below (see [28] onwards), but first, we explore a preliminary point on the operation of, and interplay between, ss 251 and 252 of the CPC ("ss 251 and 252 CPC") and s 84 of the Penal Code ("s 84 PC").

A preliminary point

21 Prior to its recent amendment with effect from 1 January 2020, s 84 PC had remained unchanged for approximately 160 years since it was first adopted from the Indian Penal Code (Act XLV of 1860). Section 84 PC operates as a complete defence to any offence on the ground that the accused was of "unsound mind" at the material time and thus incapable of knowing the nature of the act committed or that it is either wrong or contrary to law, and results in the acquittal of the accused.

22 This acquittal puts into play a host of consequences through the operation of ss 251 and 252 CPC, two sister provisions which not only date back to the first enactment of the CPC in 1955, but also to the first consolidated code of criminal procedure which came into operation in the Straits Settlements – the Straits Settlement Ordinance XXI of 1900 (see Bashir A Mallal "*The Criminal Procedure Code of the Straits Settlement (Annotated)*" (C A Ribeiro, 1st Ed, 1931) at p 1).

23 The applicable versions of ss 251 and 252 CPC read as follows:

> **Acquittal on the ground of unsound mind**
>
> **251.** If an accused is acquitted by operation of section 84 of the Penal Code, the finding must state specifically whether he committed the act or not.
>
> **Safe custody of person acquitted**
>
> **252.**—(1) Whenever the finding states that the accused committed the act alleged, the court before which the trial has been held shall, if that act would but for the incapacity found have constituted an offence, order that person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the orders of the Minister.
>
> (2) The Minister may order that person to be confined in a psychiatric institution, prison or other suitable place of safe custody during the President's pleasure.

24 Read in tandem, the three provisions follow a sequential chronological flow. Once s 84 PC results in the acquittal of an accused of unsound mind, s 251 CPC requires the court to make a finding as to the "act" committed by the accused. Section 252(1) CPC then steps in to empower the court to commit the accused to safe custody so as to rehabilitate him and ensure that he does not pose a danger to himself or society at large, on the basis that he had "committed the act alleged".

25 The use of the word "act" in both ss 251 and 252 CPC, as opposed to the term "offence" (a broader term which presumptively encompasses both *mens rea* and *actus reus* elements) indicates that the stipulated "finding" is only in relation to the *actus reus* elements of the offence. This is logical because both provisions are predicated on the prior operation of s 84 PC which acquits the accused of the proven charge and renders any proven *mens rea* legally irrelevant. Section 84 PC is, however, silent on the *actus reus* elements of the charge, a gap which is filled through the mandatory operation of s 251 CPC.

26 This procedural reading of ss 251 and 252 CPC is wholly in line with Parliament's articulated conceptualisation of the provisions. During the Second Reading of the Criminal Justice Reform Bill 2018 (*Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94), the Senior Minister of State for Law, Ms Indranee Rajah, stated that the law provides for "***special procedures*** to deal with two categories of accused persons with special needs" [emphasis added]. The second of these procedures concerns "those who are acquitted on the basis that they were of unsound mind at the time that they committed the offence" and is plainly a reference to ss 251 and 252 CPC. The Minister went on to state that:

> The ***procedures*** balance the need to ensure that such persons are not a danger to themselves or others, and the need to

> respect the fact that such persons have not been convicted of any offence. They are also designed to provide such persons with the best possible opportunities of recovery, in a controlled environment. [emphasis added]

27 It is clear to us that ss 251 and 252 CPC are predicated on a finding in respect of the *actus reus* elements of the offence because they provide for a procedure to ensure the safe custody of accused persons who have been acquitted of their offences by virtue of s 84 PC. With this in mind, we now turn to explain why the Judge was correct in finding that the Appellant had committed the ***act*** of causing the Deceased's death under s 251 CPC.

Our decision

28 We now deal with each of the Defence's three main arguments in turn.

The Mercedes Laceration was caused by the Appellant's attack

29 The Defence did not take issue with AP Teo's finding that the Mercedes Laceration was found on the Deceased's tongue *at the time of the autopsy*. Rather, its first argument was that the evidence did not establish its presence "before the autopsy", because (a) Dr Yow's account of the laceration cannot be reconciled with the description provided by AP Teo; (b) Zaneta did not observe the presence of the Mercedes Laceration; and (c) Dr Yow and the paramedics had not noticed blood secretion, accumulation or clotting on the tongue which in turn casts doubt upon the presence of the Mercedes Laceration – *ie*, a tongue laceration which would normally "bleed a lot".

30 The fatal flaw in this argument was that the Defence had provided no plausible alternative explanation for the presence of the Mercedes Laceration on the Deceased's body. Nor was it the Defence's case that the Deceased had been attacked (or that his body had somehow been tampered with) in the

16 hours between the time the Deceased was examined by Dr Yow and the start of the autopsy by AP Teo. Such injuries do not magically appear out of nowhere. In any event, there were cogent and reasoned explanations in respect of the three alleged inconsistencies.

31 While Dr Yow's description of the Tongue Laceration differed from that of AP Teo, this was explicable on the basis of Dr Yow's evidence that the Deceased's tongue was swollen such that the exact shape or dimension of the laceration would have been difficult to make out on account of the swelling of the tongue. Furthermore, AP Teo testified that he himself had been unable to fully appreciate the extent of the Tongue Laceration until he had "pulled the tongue apart" because a muscle like the tongue tends to close back upon itself when it is cut. This meant that the true extent of the cut would not be obvious until the muscle is opened up. To illustrate this, AP Teo gave the example of "making a cut into a piece of beef" which closes back on itself once the knife is removed.

32 This struck us as a logical explanation as to why Dr Yow and the paramedics had failed to appreciate the true extent of the Mercedes Laceration and the Tongue Laceration. In contrast, we found it difficult to follow the unwarranted objections levelled by the Defence against AP Teo's illustration which included, *inter alia,* that "AP Teo did not even specify the type of beef" or that "AP Teo did not cite any scientific experiment … to support his analogy that the human tongue behaves the same way as an unknown unspecified cut of beef".

33 In a similar vein, Zaneta testified that she could have missed the laceration because the mouth was stained with blood. Further, given that Zaneta was providing emergency services in a stressful environment where the

perpetrator of the injuries had already strangled the Deceased once in her presence, it was unsurprising that she may have overlooked the laceration.

34 We did not accept the Defence's argument that the lack of blood on the tongue casts doubt upon the presence of Mercedes Laceration. This argument ignored (a) the large pool of blood around the Deceased's head when he was found, (b) AP Teo's evidence that the only injury that could be responsible for such a large amount of blood was the Tongue Laceration – blood which could have spilled out from the Deceased's mouth when his head had been tilted or turned, and (c) AP Teo's explanation that the paramedics may have failed to notice an active secretion of blood from the tongue because:

> … if a person is moribund where the ***blood pressure is very low***, where the ***heart is not beating properly*** to have enough blood circulation or where the person is in the ***process of dying***, or when the person is actually dead, then … there may be ***no active bleeding*** at that point in time from the wound. [emphasis added]

35 The Defence claimed that AP Teo's testimony was "pure conjecture" and unreliable because he was not physically present at the scene and had used qualifiers such as "if" and "could" when explaining why there was no blood to be found in the mouth or tongue. This objection betrayed a continued and persistent misunderstanding of AP Teo's role as a forensic pathologist. Forensic pathologists examine the dead bodies that are presented to them. They are *not* factual witnesses who were physically present in the time leading up to the offence or the death so as to *personally* observe the cause of death. AP Teo had to employ caveats and qualifiers because his role was to provide his expert opinion as to the *possible* causes of death in the light of his medical knowledge and after having performed the necessary procedures during the autopsy.

36 The Defence submitted that AP Teo's evidence that the Deceased was in the "process of dying" was against the weight of the evidence because the paramedics had observed that the Deceased was breathing normally and had a pulse of 80 bpm upon their arrival. Dr Yow had also stated that this heart rate was a "good prognostic sign" that indicated that the Deceased was still responsive.

37 With respect, it was the *Defence's submission* which was contrary to the evidence adduced. The recorded pulse of 80 bpm was the Deceased's pulse *when the paramedics first arrived at the scene* (at approximately 5.19pm). Zaneta had also seen signs early on that there were issues with the Deceased's heart. The Deceased stopped breathing entirely at 5.51pm and his heart rate slowed to 36 bpm. Upon arrival at the hospital at around 5.56pm, the Deceased no longer had a pulse and was in a critical condition. Even if there were initially "good prognostic signs" after the Appellant's attack, the collective accounts of the paramedics and Dr Yow showed a clear deterioration in the Deceased's condition, the very definition of a "process of death". This was a process which ended when the Deceased succumbed to his injuries at 6.37pm, in spite of continued medical intervention.

38 We would add that the Defence's emphasis on the "80 bpm" as a "good prognostic sign" painted an incomplete and misleading picture of Dr Yow's evidence, which was that when viewed in the context of his injuries, the heart rate of 80 bpm was more likely an indication that the Deceased was no longer able to compensate for his blood loss and injuries.

39 Bearing in mind the foregoing, we found that the Mercedes Laceration was caused by the Appellant's Undisputed Acts and was present as a result of these acts.

There was aspiration of blood

40 The Defence's second argument was that the Judge had erred in accepting AP Teo's evidence that the Undisputed Acts caused an aspiration of blood for two reasons. First, it could not be ruled out that the CPR carried out on the Deceased had caused blood to enter into his lungs. Second, AP Teo had provided no proof that there was blood in the Deceased's airways such as "photographs of a dissected trachea showing the presence of blood" or autopsy photos that show the fluids that flowed out of the dissected lungs or trachea.

41 The lack of photos was not an evidential deficiency. As AP Teo had painstakingly explained, the trachea is a tube. When opened during the autopsy, whatever is within it will flow out. There was no way for him to see inside the tube unless it was opened and it was not possible for him to take photographs of blood flowing out unless the entire autopsy was videoed.

42 We also found it somewhat disingenuous for the Defence to deny that there was an aspiration of blood, while simultaneously arguing that "it cannot be ruled out that the blood expressed from the cut sections of the lung was due to the haemorrhage caused by CPR". These two arguments were mutually exclusive and the Defence was not allowed to mount them in tandem, especially when it had ample opportunity, but chose not, to question AP Teo's view that the pattern of haemorrhage on the cut lungs was different from the pattern that one would expect from the bruising caused by the CPR.

43 We thus agreed with the Judge that there was aspiration of blood.

Strangulation was an independent cause of death alongside aspiration of blood.

44 AP Teo opined that the effects of strangulation contributed to death because the "compression of the airway has started a process of death which is ongoing and … irreversible, leading to eventual death". To explain the signs of breathing observed by the paramedics, AP Teo further explained that during the process, there can be sounds of breathing, gasping and some gurgling, "[b]ut this is not effective breathing. There is no air that is moving into the lungs to cause oxygen to get to the blood". While there may be a pulse, this may not mean that "there is effective blood pressure or effective blood circulation or effective heart beating" because the heart may be beating ineffectively such that the blood is not bringing enough oxygen to the rest of the body.

45 The Defence's third and final argument was that the Judge had erred in finding that strangulation and aspiration of blood caused death. On its view, the Judge should have rejected AP Teo's view because: (a) AP Teo was not present in the Flat to diagnose the Deceased so he could not tell if there was "effective" breathing, heart rate, blood pressure or blood circulation; (b) AP Teo's view is at odds with the paramedics' evidence that the Deceased was breathing normally and had a heart rate of 80 bpm which was a good prognostic sign; and (c) the final bout of strangulation continued for at most two minutes, *ie*, far shorter than the four to five minutes of compressive force that is normally necessary to cause death by strangulation.

46 For the reasons stated at [35], [37] and [38] above, we rejected the first two arguments. We also rejected the third argument as it ignored the fact that there were two *observed bouts* of strangulation and assumed implicitly that the earlier bout of strangulation would have had no impact on the Deceased since it

had already ceased. It bears emphasising that the Deceased's injuries were incredibly severe prior to the final bout of strangulation which occurred after Zaneta had inserted the OPA. The Deceased was already completely unresponsive at that stage with a score of "3" on the Glasgow Coma Scale. The Defence thus failed to raise reasonable doubt that strangulation was an independent cause of death alongside the aspiration of blood.

Conclusion

47 Viewing the case in its totality, we found that the Undisputed Acts caused the death of the Deceased. There was no other reasonable explanation for the injuries found on the Deceased. The Deceased was hale and hearty when Mdm Toh left the Flat. When she returned, the Deceased was unresponsive and lying motionless in a pool of his own blood. During this three-hour window of time, the Appellant was the only person with access to the Deceased. It was also common ground that the Appellant had attacked the elderly Deceased by strangling him and inflicting multiple blows on his face during this period. The rapid deterioration of his condition in approximately 90 minutes from the time Mdm Tan returned to the Flat to the time he was pronounced dead in the hospital made clear that the Appellant's actions had started a spiral of death which was irreversible despite the best efforts of Dr Yow, his team and the paramedics.

48 It flows from our affirmation on the point of causation that in these circumstances, it must necessarily follow as a natural and irresistible inference that the Appellant must have had the intention to cause the injuries that resulted in the Deceased's death. However, this is not a live issue in this appeal as the parties are agreed that the Appellant was of unsound mind within the purview of s 84 PC at the time of the offence. The operation of s 84 PC renders the Appellant's *mens rea* legally irrelevant (see [25] above).

49 In conclusion, we affirmed the Judge's finding under s 251 CPC and her order under s 252(1) CPC and dismissed the appeal. The brevity of the facts in this case belies the enormity of the tragedy that has befallen the Deceased, the Appellant and their family. Like the Judge, we hope that this decision provides a measure of closure for the family as it brings to a close a painful chapter of legal proceedings in their lives.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

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(Peter Low & Choo LLC) for the appellant;
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the respondent.