

Public Prosecutor v Tay Chin Wah
[2000] SGHC 27

Case Number : CC 7/2001
Decision Date : 26 February 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Raymond Fong and Chew Siong Tai (Deputy Public Prosecutor) for the public prosecutor; Chua Eng Hui (Infinitus Law Corporation) and Ong Cheong Wei (Rayney Wong & Eric Ng) for the accused
Parties : Public Prosecutor — Tay Chin Wah

Criminal Law – Statutory offences – Arms offences Act – Using revolver and discharging bullets – First shot towards ceiling -Whether accused fires shot with intention to cause injury – Presumption that accused discharges revolver with intention to cause personal injury – Whether presumption rebutted – ss 4(1) & (2) Arms Offences Act (Cap 14, 1998 Ed)

: The accused faced the charge that he

on or about 22 January 1995, at about 1.10am, at the void deck of Blk 642 Rowell Road, Singapore, did use an arm, to wit, a .38 Smith and Wesson revolver, by causing four bullets to be discharged from it, and the said bullets were discharged at one Lee Yang Ping and Soh Keng Ho, and (he had) thereby committed an offence punishable under s 4(1) of the Arms Offences Act (Cap 14).

When the charge was read to the accused at the commencement of the trial, he pleaded guilty. The prosecution was directed to prove its case in the normal way and counsel for the accused cross-examined the prosecution witnesses. At the close of the prosecution case, the accused changed his plea and entered his defence.

The events leading to the events stated in the charge can be stated briefly. In the early morning of 22 January 1995, the accused was at the Rowell Road-Jalan Besar area with his lady friend, Susan, whose full name is Lee Ah Kai.

Susan was confronted by Soh Keng Ho and Lee Yang Ping at the void deck of Blk 642 Rowell Road. She had borrowed \$1,000 from Lee, a moneylender, with Soh as her guarantor. After taking the loan, she defaulted on the repayment.

When Lee and Soh demanded payment from Susan, she was unable to pay. A quarrel broke out between them, and the accused also became involved.

The accused admitted that he took out his revolver in the course of the quarrel. According to him he fired one shot upwards towards the ceiling of the void deck because Lee was holding Susan by the neck, choking her. Lee who was then six to seven feet away from him released Susan, and he and Soh fled. As they fled, he fired another two to three shots at them. In his words, `[a]t that point of time I got carried away. I could not see clearly where they were. However I admit that I fired a few shots at them` and `I admit that I fired three shots at them. Out of four shots, I fired one shot at the ceiling.` He said he fired the shots because he was angry and nervous, but he had no intention of causing hurt and had nothing on his mind at that time.

The evidence of Lee and Soh was that Lee was hit by the first shot, when the bullet went through the handphone in his rear trouser pocket and lodged itself in his left buttock.

That bullet was recovered and examined by Dr Teo Teng Poh, a Principal Scientific Officer of the Department of Scientific Services. Dr Teo found that it was fired from the accused's revolver. It was slightly distorted in that while its nose was still quite rounded, it was not smooth anymore. It did not appear to him to be a ricochet bullet because such a bullet would have a side of its nose flattened, and it would have hit the handphone at an angle and not squarely as to pierce it as it did. However he conceded that if the bullet had ricocheted at a very shallow angle it was possible that it would not be flattened on one side.

At the close of the case defence counsel accepted that the accused had not raised a defence in respect of the other shots fired.

The issue to be determined was whether the accused had used the revolver. Section 2 of the Act states that

'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;

The prosecutor referred to s 4(2) of the Act which raised a rebuttable presumption that when a person fires a revolver, he does that with the intention to cause personal injury, and submitted that the presumption was not rebutted by the defence.

On the evidence, there was the question whether the first shot was fired with the intention to cause injury in view of the accused's evidence that he fired towards the ceiling. On the other hand, Soh's evidence was that the accused pointed the revolver at him and Lee when he fired. It also appeared unlikely that the bullet could have ricocheted off the void deck ceiling and hit Lee who was six to seven feet away with no ricochet damage to the bullet. In any event, this question did not arise for the subsequent shots. When the accused admitted that he fired in anger at Lee and Soh as they fled, he reinforced the presumption rather than rebut it. He could not have opened fire with nothing on his mind as he claimed.

In the circumstances, I convicted the accused and imposed the mandatory death sentence.

Outcome:

Accused convicted.