

Mohd Raffiq Bin Mohd Aslam v Public Prosecutor
[2004] SGCA 32

Case Number : Cr App 2/2004
Decision Date : 24 July 2004
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ
Counsel Name(s) : David Rasif (David Rasif and Partners) and Goh Teck Wee (Goh Chang JP and Wong) for appellant; Khoo Oon Soo and Terrence Tay (Deputy Public Prosecutors) for respondent
Parties : Mohd Raffiq Bin Mohd Aslam — Public Prosecutor

Criminal Law – Offences – Murder – Whether deceased's husband or appellant had committed offence – Whether weight could be attributed to fact that deceased's husband initially charged for murder – Whether weight attributed to fact that deceased's husband's DNA found in stain on deceased's kitchen floor – Whether appellant had made false confessions.

24 July 2004

Kan Ting Chiu J:

1 The appellant Mohd Raffiq bin Mohd Aslam was convicted for the offence that he:

on the 7th day of August 2002, sometime between 6.42 am and 9.42 am, at Block 605 Yishun Street 61 #03-307, Singapore, did commit murder by causing the death of one Saratha d/o Sangeo, female/50 years old, and [he has] thereby committed an offence punishable under Section 302 of the Penal Code, Chapter 224

and was sentenced to suffer death: see *PP v Mohd Raffiq bin Mohd Aslam* [2004] SGHC 57. We dismissed his appeal against his conviction, and now explain our decision.

2 On 9 August 2002 at 8.15pm, the deceased Saratha d/o Sangeo was found dead lying face down in a pool of blood in the living room of her home at Block 605 Yishun Street 61, #03-307 ("the flat").

3 There were no signs of forced entry into the flat. Two pillowcases and a bedsheet were found beside the deceased's head. The bedsheet partly concealed a trail of blood that started at the entrance of the kitchen. A piece of cloth was covering a kitchen window which prevented persons outside the flat from looking in.

4 Forensic pathologist Dr Gilbert Lau conducted a preliminary examination of the deceased at the flat. He found several deep scalp lacerations on both sides of the victim's head and bruising around her eyes. From this examination, Dr Lau placed the time of death as between 8 and 9 August. Dr Lau also conducted an autopsy on the deceased. In the autopsy report, Dr Lau described severe and extensive fractures of the skull that he found, and he certified the cause of death to be blunt force trauma to the head. In his opinion, the deceased's head injuries were sufficient in the ordinary course of nature to cause death.

5 Specimens of blood found in the flat were sent for analysis. None of the specimens were from the appellant. One specimen from the kitchen floor (which was initially thought to be blood, but which analysts were unable to identify as blood or other biological fluids) was found to contain the DNA of her husband Jaganathan Subrayan ("Jaganathan"). No fingerprints of the appellant were found on the premises or the items therein.

6 Jaganathan was also the victim of an attack, but at a different place. He was found unconscious at 11.00am on 8 August at Yishun Industrial Park A. He was taken to hospital where it was established that he had sustained a severe brain injury. He suffered from post-traumatic amnesia and was, up to the date of the trial, unable to recall the events leading to his injuries.

7 Jaganathan was charged with the deceased's murder. The decision to charge him was influenced by the investigation officer's observation that he was constantly smiling when she interviewed him, and his reply that the deceased's jewellery was at the "armoury" (in fact he had meant "*almari*" which is "cupboard" in Malay and Tamil). Upon further investigation, he was given a discharge not amounting to an acquittal on the application of the Prosecution.

8 The appellant Mohd Raffiq bin Mohd Aslam was arrested at a hotel along Joo Chiat Road on 22 August. His arrest followed the recovery by the police of some of the deceased's jewellery from Ban Hin Pawnshop Pte Ltd ("Ban Hin Pawnshop") in Yishun Central. The jewellery, which consisted of two chains and nine pendants, had been pawned by the accused for \$1,100 at about 9.42am on 7 August 2002. Amongst the jewellery was the deceased's *thali*, an ornament customarily put on an Indian bride by her husband to signify their marriage, which is not removed during the duration of the marriage.

9 The appellant and the deceased had been co-workers at Systematic Laundry Enterprise Pte Ltd. He had been to her flat and had got to know Jaganathan. He described his activities on 7 August in statements that he made to the police after his arrest. The prosecution relied on 14 statements made by him, which were admitted in evidence without objection by the accused or any complaint from him that they were made involuntarily through inducement, threat, promise or oppression.

10 He recounted that at the end of July he asked for a loan of \$3,000 from the deceased. The deceased told him that she would discuss the matter with her husband and call him back. On 6 August, she told him to go to her house on 7 August before she left for work at 7.00am to collect the money.

11 In his cautioned statement recorded on the day he was arrested, the appellant stated that:

I Mohd Raffiq Bin Mohd Aslam wish to state that I have no intention whatsoever to hurt anyone. I was under tremendous pressure to sell [*sic*] my debts and also my marriage problem. I only need money and whatever I did as I say was not my intention. After doing what I did and found out that murder has taken place I was shock [*sic*] and scared. I know deceased personally and because of anger at her character I just wanted to hit her, after she started nagging at me. As I say [*sic*] earlier intention was just to get money and nothing else. It's hard to believe what I have done even until today.

12 Later on on the same day, he wrote out another statement that:

I, Mohd Raffiq Bin Mohd Aslam I/C 1467938/C of Blk 854 ... Woodlands St 83 know deceased Saratha [the deceased] since I was working in Systematic Laundromat. She was close to everybody and she like to loan out money and she did loan me a couple of hundred dollars. I know her husband casually and we met a couple of times. On that particular day on 7th August at 7.30 she call me to say that money is ready and come and collect. I told her I can only come earlier at 6+ as I have to go work. My intention going there was firstly to ask her why she spread gossip of me and my wife in work place as only she knows about this matter and at same time collect money. When I reach there husband was not around and she invite me to go in and tell me that she don't have full [amount] of 3k which I ask as her husband took part of it and will be back in the evening. I need the money urgently to settle my debts which I promised. At that same time nothing happen but she started talking of my personal affairs and that's when I hit her on her head which I

really recall is 2-3 times. When I saw her on the floor I was scared and really don't know what to do. I took the money and search the drawer. Then she started telling me that she has no cash to give me. I was disappointed angry and panicked as I had debt to settle. I ransacked her drawer and took cash [amount] of \$1060-\$1070. At the same time the chain I pawn for \$1k and sold the paper as I was scared. After the incident close the [house] door and left. I did promise to bring her husband out for dinner and on that particular day I waited for him down the block and I brought him to dinner. During the dinner conversation he talk about not having money and wife control all the money.

13 In the next investigation statement also recorded on the same day, the recording officer sought and obtained clarification from him:

Q1 You have indicated that you hit the deceased's head 2 to 3 times inside the house. Did you use any weapon?

A1 Yes, I used a metal bar to hit her head. I had a metal bar in my car and I brought it along to her house. At first, I left the metal bar outside her house and she also saw it. At that point when she told me that she did not have the money and part of it was with the husband, I took the metal bar placed outside her house and used it to hit her head. My intention was to take her money to settle my debts. When she started to shout, I panicked and I hit her on the head. After hitting her, and she was lying on the floor, I dragged her body to one side. That time, she was still alive. I also covered her blood with mattress pad and took a piece of cloth to cover the kitchen window.

Q2 Where is the metal bar which you used to hit the deceased?

A2 I threw it away at Yishun Industrial Park A.

14 On 2 September the appellant gave a more detailed account of the assault on the deceased and the events that followed:

When Saratha was walking towards the main door and the left side of her body was facing me, I took the metal bar from the sofa and held one end of it with both my hands. When she turned her head to look at me, I used the metal bar and hit her on the left side of the head. I did not raise the metal bar above my head level. I just raised it near to my head and then swung it at her head. After the blow hit her, she shouted my name "Raffiq" and covered the left side of her head with one of her hands. She crouched slightly.

Before she dropped onto the floor, I hit her head with the metal bar again with both my hands holding one end of the bar. This time, I was standing behind her. I raised the metal bar higher, over my head level and swung it at her head. I cannot remember which part of the head I hit her. She dropped flat onto the floor. The front part of her body was touching the floor and her face facing sideways, in the direction of the sofa.

After that, I raised the metal bar again and hit her on the left side of the head. I was still standing behind her and holding one side of the metal bar with both my hands. I did not have to raise the metal bar over my head level. I just raised the metal bar higher, near to my head and swung it at the left side of her head. So far as I remember, I hit Saratha 3 times, cannot be more than that.

At this point, I realised that [there] was a lot of blood on the floor, near her face. She was also making some noise and moving her body slightly. The noise was very soft, like mumbling sound and I could not catch up with what she was saying.

I stood next to her body. I was near to the sofa. I bent my body down to look at where the blood was coming out from. I was not sure whether the blood was coming out from her head or her mouth but there was a lot of blood surrounding her face.

I panicked. I was scared at the sight of so much blood. I did not do anything to help her or stop the bleeding. But seriously, at that time, I did not think that my action would kill her. My thinking was to cause her hurt, take the money and leave the place.

I left the metal bar on the sofa near to her body. After that, I closed the gate and the main door and took a piece of cloth from the cupboard in the master bedroom to cover up the kitchen windows, which were already all closed up. It was a very natural instinct. I did not want anyone to see me in the house, in that condition.

After that, I searched through all the rooms. It was in her handbag in the master bedroom that I saw a black purse, which contained her IC and a Transit Link card. In the end, I only found \$10/- notes amounting to \$60/- to \$70/- in 2 drawers in the master bedroom and a \$1,000/- note in a drawer in the spare room. I did not manage to find other cash or valuables. I did not ransack the rooms. I do not know why I did not do so. Seriously, I was only looking for the amount that she agreed to lend me.

After finding the cash, I came out to the living hall. I dragged Saratha away from the pool of blood surrounding her face. She was having difficulty breathing and by putting her away from the blood, I thought it would help her to breathe better. She was still alive and I could hear some soft noise coming out from her noise [sic]. Her body was motionless. I did not do anything else to help her stop the bleeding.

After that, I took one piece of mattress pad and 2 pillow case covers to cover up the pool of blood because I was scared at the sight of so much blood. It was not because I was worried that people could see the blood.

After shifting Saratha's body to the side of the wall, behind the sofa, I took 2 gold chains with pendants from her neck because I have not found enough cash from the rooms. I only found \$1,060/- to \$1,070/- and I needed at least another \$1,000/-. All these money, I intended to pay to the housing agent "Peter". In a way, I felt pressurised by "Peter" chasing after me for payment. When I removed the gold chains from Saratha's neck, she was still alive but she did not stop me. I did not notice whether she was still able to move her body.

After that, I found a marketing bag and used it to contain the handbag, which contained the cash and gold chains with pendants. I left the house before 9.00 am.

15 The essence of the appellant's defence was that the incriminating parts of his statements were untrue and that he did not assault the deceased in the way he described in the statements, or in any way.

16 He confirmed that he had approached the deceased for a loan of \$3,000 and that she agreed to give it to him on the morning of 7 August. When he went to collect it at about 6.20am to 6.25am, he met Jaganathan at the foot of the block where the deceased's flat was located. Jaganathan handed to him some pieces of jewellery and a \$1,000 note and told him that they were from the deceased and that one of her relatives was in the flat and the deceased did not want the relative to know about the loan. Jaganathan also said to him that it was all the cash he and the deceased had at that time, but he would let him have more cash that evening when they met for dinner. (He had promised to give Jaganathan a dinner treat for the latter's birthday which fell on 5 August.)

17 A short while after receiving the jewellery and the money, the appellant telephoned the deceased's home to thank her. When he asked for the deceased a female voice which he could not recognise said "Jaga", repeating it twice over when he asked for the deceased.

18 At about 9.00am, he went to Ban Hin Pawnshop and pawned the jewellery which Jaganathan handed to him earlier for \$1,100. With the proceeds, he met a housing agent named Peter to whom he was indebted, and repaid to him \$2,100.

19 In the evening, he drove back to Yishun and picked up Jaganathan after the latter returned home from work. They set off for dinner in his hired car.

20 They had dinner at Serangoon, and then proceeded to Geylang for drinks. Along the way, they stopped in the vicinity of Desker Road where Jaganathan engaged the services of a prostitute at the appellant's expense. After they reached their destination in Geylang, Jaganathan engaged the services of another prostitute, which the appellant also paid for. Then they settled down for drinks. Jaganathan had two or three large bottles of beer, while he had "Red Bull", and they talked.

21 Jaganathan told him that his friends would treat him to drinks, but he could not give treats to his friends because the deceased controlled his expenses. He added that he and his wife had had a fight the night before.

22 After they had their drinks they went back to the car. Jaganathan, who was intoxicated by then, wanted to go to a temple at Yishun. When they arrived at a temple in Yishun Industrial Park A, Jaganathan wanted to urinate. He stopped his car for Jaganathan to relieve himself by the roadside, and he also got out of the car.

23 While they were outside the car, Jaganathan said he had a problem and needed help. He said that he had hit the deceased, and he wanted the appellant to return the deceased's *thali*. When he offered the pawn ticket to Jaganathan, that did not placate him. Jaganathan continued to demand for the *thali* and threatened to tell the police that he (the appellant) had taken the *thali*. Jaganathan even offered him \$1,000 if he admitted to the police that he took the *thali*.

24 He was alarmed by what he heard, and pushed Jaganathan who fell on to the grass verge. He then took a metal bar from the boot of the car and hit Jaganathan twice with it. He took away Jaganathan's wallet and key chain and drove off, leaving Jaganathan there.

25 He drove around, thinking over the events of the night, and eventually decided to visit the deceased. He arrived at the deceased's block at around 10.00pm. He made a telephone call to her flat, but no one answered. He then went up to the flat, and gained entry with the keys he took from Jaganathan.

26 The flat was in darkness. When he switched on a light, he saw a large piece of orange cloth covering the floor and another piece of cloth covering the kitchen window. He saw the deceased lying face down on the floor behind a sofa in the living room. He was shocked and scared. He called her name a few times, then switched off the light and left. He estimated that he was in the flat for about five minutes.

27 He threw away Jaganathan's keys, and drove off. He realised that Jaganathan had hurt the deceased and he was not sure if she was dead or alive. He was in a state of panic because Jaganathan could accuse him of injuring the deceased as he had pawned her *thali*.

28 Subsequently, he came to know of the deceased's death and Jaganathan's arrest from the newspapers. He thought about his own condition. His wife was threatening to divorce him, he was in serious financial difficulties with creditors pressing him, and he was remorseful for hurting Jaganathan. He was also very unhappy, but there was a solution to his problems. He felt that he would get relief if

he was to go to prison, as no one would be able to harass or harm him there. Thus, he made those incriminating statements to the police.

29 His defence was that those voluntary statements were untrue. They were lies told by him out of his disillusionment with life and remorse for hurting Jaganathan. Since making those statements, his outlook on life and his relationship with his wife had improved, and he had decided to retract the lies and tell the world what really happened.

30 In the grounds of decision, the trial judge dealt with the legal effect of the retraction of a confession. He referred to *Ismail bin U K Abdul Rahman v PP* [1972–1974] SLR 232 where the Court of Criminal Appeal affirmed the proposition that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth: see [1] *supra*, at [72].

31 The trial judge then went on to state at [73]:

I reviewed his testimony with great care. In the end, I came to conclude that what he said in his voluntary statements that he was indeed the person who inflicted injuries on the victim on the morning of 7 August 2002 was true and that his current protestations were all borne out of an attempt on his part to escape the rigours of the law.

32 In the appeal, counsel submitted that the trial judge had erred in rejecting the appellant's defence. Five points were raised. The first was that if the appellant had murdered the deceased, he would not have pawned the jewellery in his own name. That presupposed that the appellant knew that the jewellery would be traced. The police were informed by the deceased's relatives of her missing jewellery. A check was made with the Singapore Pawnshops Association against Jaganathan's name, and that was negative. Then a search was made against the appellant's name, which was obtained from the deceased's co-workers, and it showed that he had pawned the jewellery at Ban Hin Pawnshop on 7 August. There was nothing to suggest that the appellant knew that his name would come up in the course of investigations, or that a check would be made with the pawnshops.

33 The second point was that Jaganathan must have removed the *thali* to reflect the end of the marital bonds with the deceased after he attacked her. The fact was that the *thali* was not the only item taken, as other items were recovered from the pawnshop. Furthermore, if Jaganathan had attacked his wife and left her for dead, he was not likely to remove the *thali* and draw attention to himself.

34 The third point was that the police had initially charged Jaganathan for the murder. This was a curious point. We knew that the charge was withdrawn and that the Prosecution had no intention of reviving it. When the prosecuting authority charges a person, that cannot be taken as evidence of his guilt. Any inference of guilt can only be drawn from evidence adduced at his trial, and not the fact that he was charged. *A fortiori*, the fact that the charge against Jaganathan was withdrawn cannot be a basis for inferring that he may be the real culprit.

35 The fourth point was that the trial judge had not given proper weight to the fact that Jaganathan's DNA was found in the stain on the kitchen floor. The judge was of the view that little could be made of the fact that a stain of blood or other bodily fluid of Jaganathan was found in his own house. We were of the same view.

36 The fifth point was that the appellant had explained that he made the false confessions because he was sick and tired of living, and felt pity for Jaganathan. However he did not confess when he learnt that the deceased had died and that Jaganathan had been arrested. His confessions did not come until after he was arrested and charged with murdering the deceased. We found that the trial judge was right to reject the explanation.

37 Having considered all the matters raised, we came to the conclusion that the trial judge was well justified in convicting the appellant on the basis of his confessions and the other evidence before the court.

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