

Public Prosecutor v Kamal Bin Kupli and Others
[2007] SGHC 98

Case Number : CC 26/2006
Decision Date : 27 June 2007
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Imran Hamid, Stella Tan, Karen Ang and John Lu (Deputy Public Prosecutors) for the Prosecution; Gurdip Singh (Gurdip & Gill) and Jispal Singh (UniLegal LLC) for the first accused; John Abraham (Christopher Bridges) and Pratap Kishan (Kishan & V Suria Partnership) for the second accused; Christopher Bridges (Christopher Bridges) and Jeeva Joethy (Joethy & Co) for the third accused
Parties : Public Prosecutor — Kamal Bin Kupli; Abd Malik Bin Usman; Hamir Bin Hasim

Criminal Law – Complicity – Common intention – Severe head injuries inflicted on victim causing death – Whether fatal injuries inflicted in furtherance of common intention to rob – Section 34 Penal Code (Cap 224, 1985 Rev Ed)

Evidence – Witnesses – Confessions – Statements of co-accused persons – Whether statements of co-accused persons can be construed as confessions for purpose of s 30 of Evidence Act – Section 30 Evidence Act (Cap 97, 1997 Rev Ed)

27 June 2007

Kan Ting Chiu J:

1 The three accused persons before me were charged that they:

Between about 11.00pm, 24th December 2005, and about 1.36am, 25th December 2005, at the cemented footpath between Block 19 Upper Boon Keng Road and the former Boon Keng Primary School premises, Singapore, in furtherance of the common intention of [them] all, committed murder by causing the death of Thein Naing, male 41 years old, and [they had] thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

2 All three accused persons had nicknames. The first accused Kamal bin Kupli's nickname is "Zel". The second accused Abd Malik bin Usman's nickname is "Jepun", and the third accused Hamir bin Hasim's nickname is "Black".

3 The first accused and second accused were from Sabah and the third accused was from Johor, and they were all working in Singapore. The deceased Thein Naing was from Myanmar, and was also working in Singapore.

The prelude

4 On the night of 24 December 2005, the three accused persons were in the first accused's room at 302A Geylang Road with another three persons. They were drinking liquor for a few hours. After they had finished drinking, the three accused and another person, Benedict Inyang Anak Igai, whose nickname is "Chupin" left the room and walked towards Kallang. Along the way, they agreed to rob somebody as they had no money. They saw the deceased walking alone along Sims Way, and they

decided to rob him, and they trailed him to a footpath near Block 19 Upper Boon Keng Road, where they attacked and robbed him.

The confrontation

5 The confrontation between the deceased and the accused persons was described in the statements of the first accused and the third accused which were admitted to be voluntarily statements.

6 The first accused made a cautioned statement[\[note: 1\]](#) where he said:

We did not have the intention to beat him up badly. We just wanted to take his money. I kicked him first. Both of us fell. Malik and Hamir came. Malik used a buckle of a belt to hit the person. Benedict was standing nearby and keeping watch. The man was punching Hamir's neck. I punched the man's back. I fell again. I was drunk at that time. That man fell with face down. I took back my shoes which had dropped earlier. I used my shoe to hit the man's head from behind. I ran away with Hamir. Hamir's hand was bleeding.

7 In his investigation statement[\[note: 2\]](#) the first accused described the incident thus:

5 About 10 minutes later, we were walking near the footpath along Sims Way near Blk 19-20 Upper Boon Keng Road. Jepun sighted a male person whom I thought was a male Thai walking alone along the same foot path we were walking. He was about 10 meters ahead from us. The four of us decided to rob him and waited for the right place and opportunity to do it. We trailed him and when we saw him turning into a footpath between Blk 19 Upper Boon Keng Road and old building, I rushed forward first. The moment I caught up with him along the said footpath, he turned to look at me. I kicked him at his back and both of us fell. As a result of this my left shoe came off.

6 At this juncture, whilst the person was still lying prone on the ground, Jepun and Black arrived. He tried to get up but I held on to him to prevent him from getting up. I tried to punch him but he managed to push me away. He managed to stand up and by then Jepun and Black joined to attack that person. I saw Jepun swung his belt with a metal buckle with his right or left hand towards the person. Black was seen wrestling with the person. I got up and took my left shoe. At this juncture, Jepun, Black and that person were seen wrestling and knocking between the green fencing and the white zinc fencing.

7 After I had taken my left shoe, I used it to hit that person's face. He put up a fight and managed to punch Black at his neck. I came again and punched his back that caused him to fall forward towards Jepun. Jepun gave him another blow either a kick or a punch and he ended up with his back against the zinc fencing where Black stood. Black ended up wrestling with him and both of them were in a standing position. I shouted to Jepun to give him a knock out blow to immobilize him. Jepun kicked at the person's left waist and he fell to the ground bringing Black together with him. The moment that person fell, I saw Jepun used his right leg and stomp the person's right side of his head region repeatedly for about 2-3 times. The person became motionless lying prone. There was a pool of blood at his head region. I came forward and stomp that person's head once and ran. I did not see when Black took that person's wallet. Whilst all this was going on, Chupin was standing a distance away. He acted as a look-out and stood near the entrance of the footway along Sims Way.

8 The third accused also gave a cautioned statement[\[note: 3\]](#) that:

On that night, all of us were drunk. The one who started to hit that person was Kamal and Malik. At that time Malik asked me to take that person's wallet. When I took his wallet, that person hit me. I stabbed him three times at his body below his right armpit, but not all the stabbing hit him. I also injured my right palm. I gave the wallet to Malik and I walked away.

9 The third accused recounted in his investigation statement [\[note: 4\]](#) that:

9 When the said male Chinese, turned into the footpath between Blk 19 Upper Boon Keng Road and an old school, Zel and Jepun rushed towards the said male Chinese. I ran behind Zel and Jepun. Chupin was still behind me. I was not aware if Chupin was close behind me.

10 I wish to say that the footpath between Blk 19 Upper Boon Keng Road and the old school was dimly lit. When I turned to the said foot path, I saw Zel kicked the said male Chinese with his right leg at the neck region. However his kick missed and he fell down. I noticed that his right shoe came off. I then saw Jepun advanced and threw punches at the said male Chinese face and body. I saw the said male Chinese retaliated. I saw the said male Chinese threw a punch at Jepun but missed. Jepun pushed the said male Chinese against the a *[sic]* zinc barricade which was erected separating the footpath and the up grading project of Blk 19 Upper Boon Keng Road.

11 Jepun directed me to take the said male Chinese's wallet. As I was about to take his wallet from his left rear pocket, I saw him taking out an object from his right trousers pocket with his right hand. He subsequently brandished the said object at me. I noticed that it was small knife. *[sic]* I quickly held to the blade of the knife and snapped it up. I managed to recover the knife from *[sic]* him. At this moment he swung his left hand at my neck and as a result I fell down. The said male Chinese was still standing, leaning against the zinc barricade. I realized that I sustained a cut on my last right finger and palm of my right hand due to the blade of the knife. I was bleeding from the cut.

12 At this moment, I saw Jepun was holding his belt on his right hand. I was aware that the belt was attached to a big metal buckle. I saw him swinging his belt towards the said male Chinese's face and head region. He swung the belt at the said male Chinese's face and head regions about more than 3 times. I was certain that I saw the buckle of the belt hit the said male Chinese face and head regions. I saw the said male Chinese was bleeding from the head. At the same time, Zel held his right shoe with his right hand and hit the male Chinese's face. The said male Chinese was still leaning against the zinc barricade.

13 I stood up and went towards the said male Chinese. I held the knife which I recovered from him with my right hand and stabbed him about 3 to 4 times near the rear left back, beneath the shoulder of the male Chinese. At that time the said male Chinese was still struggling. I then swung the knife at the said male Chinese at the left shoulder and head regions. I was not certain if I managed to stab him. I noticed that his clothing was covered with blood. During my attack, Zel concurrently hit the said male Chinese with his right fist. My intention was to cause hurt to the said male Chinese when I swung the knife at him.

14 Shortly later, Jepun indicated to me to keep aside. Zel and I acknowledged and we moved aside. I saw that the said male Chinese had stopped retaliating. He was still conscious. I saw Jepun swung his belt with his right hand towards the said male Chinese's head. The buckle of the belt hit the said male Chinese's head. He then used his right leg to kick the right ribs of the said male Chinese. The said male Chinese fell with his face facing the ground. Jepun then used his right leg and stamped two times, at the head region of the said male Chinese.

15 Jepun then directed me to take the wallet of the said male Chinese. I then took the wallet of the said male Chinese from his left rear pocket. It was a black wallet. I then handed over the wallet to Jepun.

10 In the course of their defence, the first accused and the third accused were referred to their statements. The first accused had one issue, over the use of the phrase that he 'stomped' on the deceased's head, which he said should be 'stepped'. That qualification aside, neither of them disputed that the statements properly recorded in English what they had said in Malay to the recording officers. Neither did they say that their accounts of the events were inaccurate or mistaken.

11 The second accused did not make any statement on the confrontation that was admitted in evidence. His explanation was that he was drunk at that time and could not remember what happened.

12 There were two witnesses whose evidence helped to set the time of the attack. One was Mr Eu Ah Bar, the night watchman of Boon Keng Primary School. His evidence was that at about 10.00pm on 24 December 2005 when he was on duty, he heard his dog bark, and saw three figures which appeared to be pushing and kicking something on the footpath along the fence of the school.

13 The other witness was Mr Mohamad Sirat b Mohamed Mokri. He had walked along the footpath sometime after 1.30am on 25 December 2005, and saw a person lying motionless along the footpath. He made a report to the police[\[note: 5\]](#) at 1.36am which set the investigations in motion.

The autopsy findings

14 The deceased was already dead when his body was found and recovered from the footpath. Dr Teo Eng Swee, a Consultant Forensic Pathologist at the Centre for Forensic Medicine, Health Sciences Authority, performed an autopsy on the deceased, and prepared an autopsy report.[\[note: 6\]](#) On an external examination of the deceased, he found six incised wounds, three areas of patterned injuries on the face, and other injuries.

15 On his internal examination of the head, Dr Teo found the following:

Skull: The following cranial fractures were present:

1. Right parietal comminuted fracture related to the incised wound.
2. Hinge fracture across the base of the skull, extending from the right to the left lateral aspects of the petrous temporal bones, across the anterior aspects of the petrous temporal bones and the pituitary fossa. There was haemorrhage into the middle ears.
3. Crack fracture of the jugum of the sphenoid. There was haemorrhage into the sphenoid sinuses.
4. Crack fracture of the dorsum sellae.
5. Crack fractures of the medial aspect of the left middle cranial fossa, around the foramen rotundum, foramen lacerum and foramen ovale.

6. Crack fracture of the cribriform plate. There was haemorrhage into the ethmoid sinuses.

7. Crack fracture of the right orbital plate. There was severe haemorrhage into the retro-orbital fat. Dissection of the eyeballs showed no vitreous haemorrhage.

8. Facial fractures.

Meninges: There were thin subdural haemorrhages over the anterior and middle cranial fossae.

There were thin patchy bilateral subarachnoid haemorrhages, which was most severe over the right frontal, right parietal and right temporal lobes.

Brain: The brain was severely oedematous. There were focal, superficial, petechial contusions over the right temporal pole, and over the infero-lateral aspect of the right temporal lobe. Cut sections of the rest of the brain showed no gross intracerebral haemorrhage. The cerebrospinal fluid was bloodstained. Cut sections of the cerebellum, pons and medulla showed no haemorrhage.

16 Dr Teo also found the following on his examination of the respiratory system:

Airway: The airways contained frothy bloodstained fluid. The larynx, trachea and bronchi were otherwise unremarkable.

Lungs: The external surfaces of the lungs showed no injuries. Cut sections of the lungs mild congestion and oedema, with aspirated blood in a punctate pattern in the right lung and the left lower lobe. No pulmonary thrombo-embolism was present.

17 Dr Teo recorded in his autopsy report the presence of a shoe imprint bruise on the deceased's left forehead and he was of the opinion that the imprint was compatible with the outsole pattern of the first accused's shoes.

18 He also observed a laceration on the left parietal region of the deceased's head and an injury over the middle back which were consistent with being caused by a blunt object with a blunted tip. When he was shown the belts and belt buckles seized from the three accused persons, he said that any of those buckles could have caused the injuries.

19 His finding on the cause of death was stated as:

(Ia) Severe head injury.

(II) Aspiration of blood and stab wound to the chest.

He explained that the severe head injury was the immediate cause of death, and the aspiration of

blood and stab wound to the chest were contributory causes, in the sense that they were sufficient in the course of nature to cause death. However, as Dr Teo was positive that the head injuries were the immediate cause of death, the aspiration of blood and stab wound to the chest did not cause the deceased's death. It remained an unanswered question whether the deceased would have died from those injuries if he had not sustained the head injuries, but it was not critical to have an answer because the deceased did not die from those injuries.

Other laboratory findings

20 DNA tests of blood stains on the track shoes and jeans worn by the first accused showed that the blood matched the deceased's blood.

21 DNA tests of blood stains on the right track shoe of the second accused showed the blood matched the deceased's blood.

22 DNA tests of a stain found on a knife recovered from the third accused showed mixed profiles of the blood of the deceased and the blood of the third accused.

23 Ms Lim Chin Chin, Forensic Scientist, Criminalistics Laboratory, Centre for Forensic Science, Health Sciences Authority, compared the imprints shown in photographs of the deceased's forehead with the shoes recovered from the three accused persons and the deceased and found that an imprint on the left forehead which was similar to the outsole pattern of the first accused's track shoes.

The issues raised by the accused persons

The first accused

24 On behalf of the first accused, his counsel submitted that:

(a) the first accused's role in the attack ie, the initial kick to the deceased's back, the use of the left shoe to hit the deceased's forehead, the punching of the deceased's back and stepping on the deceased's head (the word used in his statement was "stomp") did not cause injuries which were sufficient in the ordinary course of nature to cause death[\[note: 7\]](#), and

(b) the first accused had no intention of causing the severe head injury found on the deceased[\[note: 8\]](#).

The second accused

25 Counsel for the second accused submitted that[\[note: 9\]](#):

The 2nd Accused person testified that he could not recall the events that transpired that fateful night as he was too drunk and only recalled committing robbery. The Prosecution's case against the 2nd Accused person rests primarily on the evidence of the other accused persons. In particular, the Prosecution will refer to the statements of the other accused persons against the 2nd Accused person pursuant to Section 30 of the Evidence Act.

However, it is the defence submission that Section 30 cannot apply, as the statements of the other accused persons cannot be considered as a confession for the offence of murder, but were made for the offence of robbery. The Court of Appeal held in *Chin Seow Noi v. PP* that the co-

accused statements had to be considered a "confession" before Section 30 can be applicable and it is humbly submitted that on a charge of murder, none of the statements of the co-accused persons can qualify as a confession.

26 Although reference was made to the second accused being drunk, the defence of intoxication under s 85 of the Penal Code (Cap 224, 1985 Rev Ed) was not raised, probably because the intoxication was not of the high degree of severity contemplated by that section that he did not know that his act was wrong or did not know what he was doing, and the intoxication was self-induced.

The third accused

27 On behalf of the third accused, it was submitted that:

- a. the stab wounds inflicted by the third accused were not the immediate cause of death of the deceased[\[note: 10\]](#);
- b. the stomping on the deceased's head was not committed in furtherance of the common intention of the three accused persons[\[note: 11\]](#), and
- c. the third accused did not have the requisite common intention to cause the fatal head injuries[\[note: 12\]](#).

Review of the law and issues raised

28 The prosecution's case against the accused persons was that they committed murder in furtherance of a common intention to rob the deceased. The operative common intention was the robbery and the common intention to commit murder was not a necessary element of the offence. The common intention to rob the deceased was admitted by the first and third accused in their investigation statements, and the second accused had not disagreed, and had appeared to have admitted to it as well in his evidence in court.[\[note: 13\]](#)

29 One important issue was whether the fatal injuries were inflicted in furtherance of the robbery. From the evidence, the accused persons had intended to assault the deceased to rob him. It was not their intention to confront and threaten him, and demand for his wallet. The undisputed evidence was that the first kick was delivered without any demand for the wallet. The *modus operandi* was to assault the victim and to rob him. The fight that ensued was a natural progression of the accused persons' common intention to overcome the deceased's resistance and to take his wallet, and in fact, the common intention was put in operation by their combined assault on him.

30 It was not a defence for the first accused that he did not cause the fatal head injuries (assuming that he did not). When death is caused in furtherance of a common intention of several persons, it may not be caused by anyone of them. For example, two persons may cause death by strangulation by pulling on each end of a rope. For that reason, the prosecution does not have to establish which particular accused caused the fatal injuries, as long as it is established that the fatal injuries are caused by one or more of them.

31 On the evidence, the three accused persons were the only ones who attacked the deceased and left him motionless. It was never suggested that anyone else came along and inflicted the fatal injuries on the deceased after they fled. If the suggestion had been made, I would have dismissed it as too farfetched to raise a reasonable doubt.

32 The submission of the second accused that the statements of his co-accuseds cannot be taken as confessions for the purpose of s 30 of the Evidence Act (Cap 97, 1997 Rev Ed) is unfounded. Section 30 states:

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.

33 In *Chin Seow Noi and others v PP* [1994] 1 SLR 135 which counsel referred to, the Court of Criminal Appeal expressly affirmed at p 149 that the correct interpretation of s 17(2) of the Evidence Act that:

A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

was set out in *Anandagoda v The Queen* (1962) 28 MLJ 289 ("*Anandagoda*").

34 In *Anandagoda*, a decision of the Privy Council from Ceylon, Lord Guest laid down the seminal definition of a confession at p 291:

The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts. In this connection their Lordships consider that the view expressed by Gratiaen J in *Seyadu v King* [(1951) 53 NLR 251, 253]:

"The test of whether an `admission` amounts to a `confession` within the meaning of s 17(2) must be decided by reference only to its own intrinsic terms"

is correct. It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence. ... The appropriate test in deciding whether a particular statement is a confession is whether the words of admission, in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?

35 The second accused's submission was flawed in two ways. Firstly, the statements of the first accused and the third accused were not "made for the offence of robbery". The two accused persons knew that they were under investigation for the offence of murder when they made the statements.

36 Secondly, even if they were under investigation for robbery only, as long as they make statements which amount to confessions which can be construed as confessions to murder under the *Anandagoda* test, such statements will be treated as confessions for the purpose of s 30 of the Evidence Act.

37 The statement of the first accused referred to at [6] above and that of the third accused

quoted at [8] above were confessions to an offence of murder in furtherance of a common intention to committing robbery.

38 With regard to the submissions of the third accused, it was correct that the stab wounds inflicted by the third accused was not the immediate cause of death, and did not cause the deceased's death. However, I did not agree with the argument that the stomping on the deceased's head was not committed in the furtherance of the common intention to rob the deceased. The three accused persons intended to rob the deceased. To do that, they set on him without warning, and when he tried to fight back and defend himself, they kicked him, punched him, stabbed him, hit him with a belt buckle and stomped on his head so that they could take his wallet from him. Nothing can be more evident that the attack, including the stomping, was done in the furtherance of their common intention to rob him.

39 Counsel pointed out that there was no discussion on the mode of carrying out the robbery or the attack on the deceased. There is no necessity for such specific planning and agreement. When they confronted the deceased and they attacked him together, the attack was carried out in the furtherance of their common intention.

40 The third issue raised was that the third accused did not have the requisite common intention to cause the fatal injuries. This argument did not stand up to examination. The attack was an integral part of the robbery, and cannot be broken up into segments. The whole attack was carried out and the injuries were inflicted for no other purpose than to carry out the robbery. The injuries inflicted in the attack were inflicted in furtherance of the common intention. Even if it was accepted that the third accused did not intend to, and did not inflict the fatal injuries, he would still be liable as I shall explain in the paragraphs that follow.

41 The best exposition on the necessary intention in my opinion, is found in the judgment of Bose J in *Virsa Singh v State of Punjab*, AIR 1958 SC 465 at paras 11 and 12:

(11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted.

...

(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S.300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the

three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

and his judgment has long been accepted to be applicable in Singapore as well.

42 In the present case, there is the additional element of common intention, where there was a common intention to rob the deceased, and to attack him to carry out the robbery. In the course of the robbery, someone amongst them stomped on the deceased's head causing the fatal injuries and the evidence of the first and the third accused disclosed that the first and the second accused had done that.

43 Under s 34 of the Penal Code:

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

The third accused would be liable even if he did not have the intention to, and did not inflict the fatal injuries. This had been made clear in a series of cases, including *Too Yin Sheong v PP* [1999] 1 SLR 682 at [29] (wrongly numbered as [28] in the report) where the Court of Appeal reiterated that:

it has been held that it is not incumbent upon the prosecution to show that the common intention of the accused was to commit the crime for which they are charged. It is the intention of the doer of the criminal offence charged that is in issue, and when s 34 applies, the others will be vicariously or constructively liable for the same offence. In other words, the participants need only have the mens rea for the offence commonly intended. It was not necessary for them to also possess the mens rea for the offence for which they are actually charged.

Conclusion

44 The facts and issues in this case can be put briefly but adequately. The three accused persons had intended to rob the deceased. They set on him and when he resisted they attacked him together, and inflicted severe injuries to his head which were the immediate cause of his death. They also inflicted stab injuries which were sufficient in the course of nature to cause death.

45 I found that the fatal injuries were intentionally inflicted in furtherance of their common intention to rob, and it was not the case that the injuries were caused unintentionally or accidentally, or that only minor injuries were intended.

46 In the circumstances, I found that all three accused persons were guilty on the charge they faced, convicted them, and imposed the mandatory death sentence on them.

[\[note: 1\]](#)P215

[\[note: 2\]](#)P218

[\[note: 3\]](#)P214

[\[note: 4\]](#)P217

[\[note: 4\]](#)P212

[\[note: 5\]](#)P210

[\[note: 6\]](#)P189

[\[note: 7\]](#)1st accused's submissions para 22

[\[note: 8\]](#)1st accused's submissions para 28

[\[note: 9\]](#)2nd accused's submissions page 13

[\[note: 10\]](#)3rd accused's submissions para 86

[\[note: 11\]](#)3rd accused's submissions page 10, caption II

[\[note: 12\]](#)3rd accused's submissions, page 14, caption III

[\[note: 13\]](#)Notes of Evidence p 867, line 29 to p 868 line 1

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