Khwan-On Natthaphon v Public Prosecutor
[2002] SGCA 1

Case Number	: Cr App 16/2001
Decision Date	: 08 January 2002
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: NK Rajah (Rajah Velu & Co) and S Balamurugan (Tan Lee & Partners) (both assigned) for Natthaphon; Ng Cheng Thiam (Deputy Public Prosecutor) for the respondent
Parties	: Khwan-On Natthaphon — Public Prosecutor

Criminal Law – Offences – Murder – Diminished responsibility – Conflicting expert evidence – Whether defence made out on balance of probabilities – s 300 Exception 7 Penal Code (Cap 224)

Criminal Law – Offences – Murder – Intention – Injuries sufficient in ordinary course of nature to cause death – Whether requisite intention for murder proved beyond reasonable doubt – s 300(c) Penal Code (Cap 224)

Judgment

GROUNDS OF DECISION

1. The appellant, Khwan-On Nattaphon, a Thai national, was tried before the High Court on a charge that on 15 June 2000, between 12.48 am and 6.00 am, he committed murder by causing the death of one Ong Huay Dee (the deceased), a part-time taxi driver, at Pasir Ris Drive 1, Singapore, an offence under s 302 and punishable under s 300 of the Penal Code (Cap. 224, 1985 ed). He was convicted and was sentenced to suffer death. He appealed against his conviction. We heard the appeal and dismissed it for the reasons which we now give.

The facts

2. The deceaseds body was discovered inside a NTUC Comfort taxi (the taxi) at Pasir Ris Drive 1 at about 6 am on 15 June 2000. At about 9.15 am the forensic pathologist, Dr Teo Eng Swee (Dr Teo), arrived at the scene. He noted blood sprays and blood drips inside the taxi.

3. Dr Teo subsequently conducted a post-mortem. He found that there were in the main four injuries on the deceaseds head: three lacerations and one bruise. In his opinion, the cause of death was intracranial haemorrhage and cerebral contusions with fractured skull, and there were at least four blows inflicted on the deceaseds head, which accounted for the three lacerations and one bruise. In his report, he described them as follows:-

> (i) a 5.2 cm laceration on the back part of the head to the left, just left of the midline, which was consistent with being caused by the narrow surface of the flat handle of a hook hammer (a specimen being produced in court) with great and severe force being used;
>
> (ii) a 1.2 cm laceration on the back part of the head, also to the left, near the mastoid region, which was consistent with being caused by the hook part or the flat edge of the hook hammer with moderate force being used;

(iii) a laceration on the back part of the head, again to the left, near the midline, which was consistent with being caused by the hook part or flat edge of the hook hammer with moderate force being used; and

(iv) a bruise on the back part of the head, at the lower right, which was consistent with being caused by the broader surface of the flat handle of the hook hammer with moderate force being used.

4. Dr Teo said that the blows to the deceaseds head resulted in injury to the deceaseds brain which was the cause of the death. The deceased would most likely have died within minutes of the blows being inflicted. In his opinion, the injuries (i) and (iv) above described were sufficient in the ordinary course of nature to cause the death of the deceased. The injuries sustained by the deceased were probably caused by a blunt weapon. Although he suggested in his report that a hook hammer was the likely weapon, he did not rule out a steel pipe with jagged or sharp edges or even a spanner as being the weapon used. He added that the assailant was probably behind the victim at the time the injuries were inflicted. He did not see any sign of struggle in the taxi.

5. The other evidence tendered by the prosecution through Dr Teo was that when he first arrived at the scene to examine the deceased, he found that although the deceased had a handphone clip on his belt, no handphone was found either attached to it or nearby.

The appellants account

6. The appellant was arrested on 16 June 2000. He provided the police with an account of what had transpired. He said that, on the night of 14 June 2001, he was at a park near Golden Mile Complex with his friend, Wanchai Meeying (Wanchai). They got into a fight with a group of men from Thailand, in the course of which Wanchai was hurt and the appellant picked up a metal object, which belonged to their assailants. They ran towards the main road heading for the bus stop opposite Golden Mile Complex. When they reached the bus stop the appellant concealed the metal object by tucking it at his right waist and covered it with his longsleeve jacket. He then noticed his jacket was stained with Wanchais blood. At the bus stop, they parted company, and the appellant decided to return to his living quarters at Pasir Ris. He hailed a taxi and the deceaseds taxi came along and he boarded it. He gave the deceased directions and continued to guide him on the route to be taken, as the latter was unfamiliar with the route.

7. During the course of the journey, the appellant noticed the deceased looking at him through the rear view mirror, and also turning his head round to look at the appellant a few times. The deceased asked the appellant: You fighting? to which the appellant replied: No. The appellant became worried about the bloodstains on his jacket. The deceased asked a few more times but the appellant did not reply. He began to worry that the deceased would report him to the police, as the deceased kept looking at him and even attempted at one point to use his mobile phone. When the taxi reached Lorong Halus, the appellant did not stop the deceased, but directed him instead to Pasir Ris Drive 1. When the taxi stopped, the appellant saw the deceased pressing the meter and, at the same time, picking up his mobile telephone. The appellant then hit the deceased two to three times on the head with the metal object he took along from the fight, and after that he took the deceaseds mobile telephone and wallet, and fled.

The trial below

8. It was not disputed that the appellant inflicted the injuries on the deceased; nor was it disputed that the injuries (i) and (iv) above described were sufficient in the ordinary course of nature to cause death. The appellants defence was that he was suffering from an abnormality of mind as substantially impaired his mental responsibility for his acts in causing the death of the deceased. Alternatively, his defence was that the case against him had not been proven beyond reasonable doubt on the ground that at the time he inflicted the injuries on the deceased he lacked the requisite intention to commit murder.

The prosecution evidence

9. The prosecution called a succession of witnesses, including the appellants friends, workmates and supervisors. The appellants friends and workmates testified that they had not noticed any abnormal behaviour on the appellants part, and that he socialised with them regularly. However, a fellow Thai worker, Samran Sathiakit, told the court that on one occasion the appellant, after a drinking session, became annoyed with Samran as the latter was questioning him about some missing monies; the appellant thereupon picked up a cooking knife and used it to injure Samrans dog.

10. The prosecution also called the appellants girlfriend, Phensuwan Netnapha (Phensuwan). Phensuwan testified that the appellant generally acted normally, but that he was occasionally temperamental and withdrawn and there were times when he was only pretending to be happy.

11. Another piece of evidence which was of some relevance was that given by S/Sgt Raymond Tan. The sergeant testified that, whilst the appellant was in police custody, he attempted to harm himself by knocking against the walls of the remand cell, and as a result was transferred to a padded cell. There too he was observed to have attempted to remove the wire casing of the padded wall and attempted to pull the wire close to his neck. S/Sgt Raymond Tan confirmed that he also learnt that the accused later attempted to commit suicide whilst at the Queenstown Remand Prison.

12. In anticipation of the defence of diminished responsibility, the prosecution called Dr Tommy Tan to give evidence on the mental condition and the general disposition of the appellant. Dr Tan is presently a consultant of Woodbridge Hospital and prior to that he was a psychiatrist attached to Changi General Hospital. He examined the appellant on 19 July, 26 July and 2 August 2000. Arising from his examinations, Dr Tan prepared a report on the appellant, which was admitted in evidence. In it he said, inter alia:

> In my opinion, he has a Depressive Episode, following his arrest and imprisonment. It is reactive to his current circumstances. He is fit to plead. He is fully aware of the charge against him and the consequence of pleading guilty. He is rational and lucid and will be able to instruct his counsel and follow proceedings in court.
>
> In summary,
>
> > 1. The accused was not of unsound mind at the time of alleged offence.
> >
> > 2. There was no mental illness before and during the alleged offence that would impair his mental responsibility at the material time.

3. He has a depressive episode following his arrest and imprisonment. His depressive symptoms have improved with medication.

4. He is fit to plead.

The defence

13. The appellant gave evidence in his defence. His evidence was briefly this. He was born in Thailand on 28 August 1974 and is the youngest in the family of seven children. His father is a farmer and his mother is mentally incapacitated and is unable to work. He studied at a Thai medium school and attained secondary six level. As a child he had been abused by one of his brothers, and was unpopular in school. He left school at the age of 18 and started working as a factory hand and later as a construction worker.

14. His family has a history of mental illness. His mother has been mentally ill for some time and is on medication. One of his brothers also suffers from mental illness amounting to insanity. The appellant, when he was in Thailand, had mental problems. Whenever he tried to think his head became hot. He suffered from bouts of stress, insomnia, paranoia and forgetfulness. His father brought him to see a doctor, Dr Samsak, and he was given medication for his symptoms. Since then he had been on medication to alleviate his mental conditions. He also resorted to taking paracetamol tablets with a view to getting rid of his insomnia and other illness, and the dosage he took on each occasion increased from initially three tablets to six or seven later.

15. He is married and has a child aged about three years old. His wife left him for another man, which resulted in several suicide attempts by him. He was greatly affected by the separation from his wife and also his son. He wanted to take care of his son, but his mother-in-law would not allow him. At times, he was not conscious of what he was doing; sometimes he went out naked, and he was forgetful. He became very suspicious for no apparent reason; and he did not trust anyone. Before he came to Singapore he always carried guns. Quite often when he was under stress, he used to shoot aimlessly into the sky.

16. After the appellant came to Singapore in 1999, he worked well until about May 2000, when he began losing concentration in his work and suffered constant headaches and insomnia. He also drank a lot during this period. Referring to the incident in which he hurt the dog, he said that at that time he was in the kitchen preparing food for himself and others. His colleagues there included Samran who had a dog with him. He heard his workmates talking about their families back in Thailand. At that point in time, while he was slicing meat, suddenly he grabbed hold of the dog nearby and used the knife to slash its back. He did not know what he was doing and regained his faculties only when he heard the dog crying. He did not know why he hurt the dog.

The medical evidence in the defence

17. In support of his defence, the appellant called Dr Douglas Kong Sim Guan (Dr Kong), a consultant psychiatrist in private practice. Dr Kong referred to the *Diagnostic and Statistical Manual of Mental Disorders* (4th edition) (DSM-IV) and took the view that, in the case of the appellant, the DSM-IV criteria for Major Depressive Episode had been satisfied. DSM-IV requires that five or more of a given set of nine symptoms must be present in the patient during the same two-week period. The symptoms must represent a change from previous functioning, and at least one of the symptoms must

be either a depressed mood or loss of interest or pleasure. The nine symptoms are:-

(i) a depressed mood;

(ii) a diminished pleasure in daily activities;

(iii) significant weight loss or weight gain;

(iv) insomnia;

(v) observable psychomotor retardation;

(vi) fatigue;

(vii) feelings of worthlessness or excessive or inappropriate guilt;

(viii) a diminished ability to think or concentrate, or indecisiveness; and

(ix) recurrent thoughts of death.

Dr Kong was of the view that all nine symptoms were present in the appellant, although he was only about 50% sure of the presence of symptom (vii).

18. According to Dr Kong, this Major Depression caused the appellant to lose control of himself, such as in the incident with the dog. Moreover, the appellant had developed a fear of the police as he had been convicted and caned for illegal entry into Singapore in the past. The fight at Golden Mile Complex just before the appellant encountered the deceased, combined with the deceaseds suspicions and the perceived likelihood of his calling the police, caused a Paranoid Reaction that resulted in the attack on the deceased. The Major Depression had impaired [the appellants] perception, judgment, concentration, and executive function, such that he was not in full control of his mental faculties and was not aware of the consequences of his actions.

19. Based on his observation of the appellants testimony, Dr Kong was of the further view that the appellant suffered from dissociative amnesia, and the appellants account of events in the taxi was in actuality a reconstruction based on being told the events by the police. Furthermore, the events in the taxi were the result of a brief psychotic disorder on the appellants part. A psychotic disorder is defined in Kaplan & Saddocks *Comprehensive Textbook of Psychiatry* as:

(i) delusions, hallucinations, disorganised speech or grossly disorganised or catatonic behaviour;

(ii) lasting at least one day but less than one month; and

(iii) which is not better accounted for by a mood disorder with psychotic features, schizoaffective disorder, or

schizophrenia, and is not due to the direct physiological effects of a substance or a general medical condition.

Dr Kong was of the opinion that these criteria were met as appellant was deluded as to the deceaseds suspicions of him, as well as exhibiting highly disorganised behaviour.

Rebuttal medical evidence

20. The prosecutions expert witness, Dr Tan was recalled to give rebuttal evidence. He opined that although the appellant appeared to have developed a mild depressive episode after his arrest, as evidenced by his suicide attempts after arrest, he did not suffer from an form of mental or major depressive illness before his arrest. The diagnostic guidelines in the *International Classification of Diseases* (ICD-10) state that for a depressive episode to be diagnosed, there must be at least two of the following conditions present:-

(i) depressed mood

(ii) loss of interest and enjoyment

(iii) increased fatigability

In addition, there must also be present at least two of the following:-

(i) reduced concentration and attention

(ii) reduced self-esteem and self-confidence

(iii) ideas of guilt and unworthiness

(iv) bleak and pessimistic views of the future

(v) ideas or acts of self-harm or suicide

(vi) disturbed sleep

(vii) diminished appetite.

Dr Tan opined that, on the evidence, the ICD-10 criteria were not met, as the appellant was able to function normally in the weeks before the murder, and had by his own admission been actively helping his friend Wanchai to look for a job the week before the murder. Dr Tan also placed reliance on the appellants ability to give clear and precise directions to the deceased from Golden Mile Complex all the way to Pasir Ris. Dr Tans conclusion was that the appellant was not suffering any mental illness that had impaired his mental responsibility for the offence which he committed.

21. With leave of the court, the prosecution called one Noordin bin Mohd Amin who was employed by the same employer Lian Hin Lee as the appellant. Noordin testified that between May and June 2000 he was a construction carpenter with Lian Hin Lee at the work site at Lorong Halus. The appellant was in his team and Noordins role was to direct the Thai workers in the work they carried out. He spoke little Thai and the instructions were given to the Thai workers by sign language. Noordin said that the appellant did not tell him that he (the appellant) was ill or that his memory was so bad that he was unable to work. Noordin said that the appellant was able to follow instructions and complete the job allocated to him. He described the appellants standard of work as O K but the appellant was sometimes careless.

The decision below

22. The trial judge found that the defence of diminished responsibility had not been made out on the balance of probabilities. The appellant was in possession of all his mental faculties during the entire taxi journey, and the injuries inflicted on the deceased were not inflicted while he was in a

dazed and dissociative state; he was fully conscious of what he was doing. In preferring Dr Tans testimony to Dr Kongs, the judge found Dr Kongs evidence to be inconsistent and replete with over-generalisation, while Dr Tans was both objective and consistent. As for the appellants own assertions as to his prior mental illness, the judge was of the view that they could not lend weight to the appellants case as they were unsupported by evidence and the appellant had had ample opportunity to procure evidence of it from Thailand, but had not done so. The judge also found that the defence based on lack of requisite intention was plainly unsustainable, as the appellant was not suffering from any abnormality of mind at the time he committed the offence and instead, he carried it out in a cold-blooded manner.

The appeal

23. Before us, there were only two issues. The first was whether on the balance of probabilities the appellant had made out a case of diminished responsibility, and the second was whether, on the evidence, the case against the appellant had been proved beyond reasonable doubt.

Diminished responsibility

24. We turn first to the defence of diminished responsibility. In this defence, the evidence in support primarily came from two sources, namely the appellant himself, and his expert, Dr Kong. In relation to the appellants own evidence of his mental illness in Thailand, the judge did not accept it on the ground that there was nothing to corroborate or confirm what he said. Turning to his evidence of his mental illness while he was in Singapore, the judge found that it was totally inconsistent with the evidence given by his workmates and the work records produced. The judge said at 104:

> [T]he accuseds claim was that during the months of May to June 2000, he was unable to concentrate on his work; he had frequent headaches; his brain was not functioning properly; he was suffering from extreme stress and as a result his work hours diminished. But the evidence of his colleagues and the work records produced . . . . . narrated a different story. It appeared from his work records that in the months of May and June he was working as usual. His records established that he had clocked three days overtime in June. However, it should be noted that he stopped work on 9 June 2000. His fellow workers at the worksite also testified that they did not notice that there was anything wrong with the accused either in relation to his work or in relation to his general disposition. The accuseds claim that he suffered from lack of concentration also did not tie up with his gambling success when the accused asserted that he was in fact netting about $4,000 to $5,000 a month from gambling alone and that he had lost only once on 9 June 2000.

25. These findings of the judge were fully justified. We for our part did not find the appellants evidence of his mental illness whether in Thailand or here credible. Like the judge, we found that the evidence adduced by the prosecution showed that the appellant was not in a depressed state and was able to go about in his daily routine no different than others and maintained the normal social ties with his co-workers and his girlfriend. In particular, his girlfriend did not notice that the appellant was in low and depressed mood most of the time. He was able to enjoy her company whenever they were together.

26. As for the medical evidence given by Dr Kong, the judge found that there were major

inconsistencies in what Dr Kong said. The judge said:

> 105 Returning to Dr Kongs evidence, with respect, I must say that it contained some major inconsistencies. First of all Dr Kong who had earlier reported that the accused had been suffering from a major depression "*since the beginning of 2000*" modified it during cross-examination to read that the accused had been suffering from a major depression "which had its beginnings from January/February 2000.". Secondly, in his written report he did not mention that the accused was suffering from "dissociative amnesia", a clinical term which is quite distinct from the "dissociative state" he had mentioned in the report. Another notable inconsistency was in relation to the clinical term: Paranoid Reaction. Dr Kong said that although he had used the term Paranoid Reaction in his report, what he really meant was Brief Psychotic Disorder.

27. The judge found that Dr Kong relied only on the subjective account given by the appellant himself and paid no attention to the objective facts that were before the court. The appellant did not appear to have suffered any fatigue or loss of energy in carrying out his work. His supervisor, Noordin bin Mohd Amin, testified that the appellant worked like any other workers and was able to carry out his work and was not found to be lethargic.

28. The judge found that despite Dr Kongs claims, the DSV-IV criteria for Major Depressive Episode were not supported by evidence. The judge said at 106:

> [F]rom the evidence proffered by witnesses, such an opinion was not founded on any credible evidence. None of the witnesses had come across the accused being in a depressed mood nearly every day (symptom 1 of Major Depressive Episode in DSM-IV) nor did he appear to have suffered from a markedly diminished interest in all or almost all activities nearly every day (symptom 2). On the contrary, the evidence of his girlfriend, the accuseds colleagues and friends was that the accused was behaving no differently from the others. There was also no credible evidence to support the defendants assertion that the accused had a decrease or increase in his appetite nearly everyday (symptom 3), nor was there any evidence to suggest that he was suffering from any psychomotor retardation (symptom 5). In fact the facts pointed to the contrary since all his colleagues testified that they had not noticed anything abnormal about the accused and that there was nothing to suggest that his reflexes were slow.

29. Referring to Dr Tans evidence, the judge found that Dr Tan took into account the objective facts in assessing whether a person was suffering from any depressive episodes. Dr Tan said that for the appellant to qualify as suffering from Major Depression, he had to satisfy five or more of the criteria stated in DSM-IV within the same two week period. In his opinion, the appellant qualified only for symptom 4 which is insomnia; he did not satisfy any other criteria as set out in the DSM-IV for Major Depressive Episode. Dr Tan was unable to find any objective or independent evidence to support the appellants claim. Like the judge, we also accepted Dr Tans evidence, which was far more objective than that of Dr Kong.

30. There was also the evidence given by the appellant himself that he did not work on 9 June 2000 onwards until the date of the offence, because he was busy helping his friend, Wanchai, to look for employment. With reference to this evidence, Dr Tan pointed out that if the appellants mental illness had come to a head on 15 June 2000, the appellant would himself be in a poor state of health on 9 June 2000, and would have no will or capacity to help actively his friend to look for a job one week

before the incident.

31. The judges final evaluation of the evidence on the diminished responsibility was summed up by him at 121 as follows:

> 121 Reviewing the totality of the evidence, in my determination, the defence of diminished responsibility had not been made out on balance of probabilities. In this regard, I found the accused had not been truthful in his assertions. His claim in the witness box that he removed the metal object from his waist and hit the driver at the back of his head about two to three times in his statement of 15 June 2000 was not something reconstructed as claimed by Dr Kong. In my opinion, he appeared to be fully conscious and was in possession of all his mental faculties throughout the entire taxi journey to the extent that he could give the driver very clear instructions as to the path as well as the turnings to be taken throughout the entire journey. In my determination, the injuries inflicted on the accused were not something done in a moment of daze and dissociative state but in a moment of full clarity and consciousness. Dr Kongs evidence in my view suffered from lack of consistency and appeared to be replete with over-generalisation. In my opinion, Dr Tans analysis appeared to possess both objectivity and consistency. In the event, I accepted the evidence of Dr Tan that the accused was not suffering from any abnormality of mind as substantially impaired his mental responsibility that the time of the commission of the offence although he suffered a post-arrest depressive episode.

We could find no reason to disagree with the judges conclusion, which was amply supported by evidence. In our judgment, the defence of diminished responsibility failed.

Reasonable doubt

32. The appellants second ground of appeal was that due to the depression from which he was suffering at the time of the offence, he could not have formed the requisite intention to commit murder. The short answer is that there was no evidence that the appellant was suffering from any depression at the time. Dr Tans evidence was that the appellant was not suffering from any delusion or any grossly disorganised behaviour, and that the appellant exhibited a purposive behaviour and knew what he was doing.

33. In this case, the appellant admitted that he used a metal object to hit the deceased two or three times on the head. It was the evidence of the forensic pathologist, Dr Teo, that the four injuries as described in 3 above were inflicted on the deceased, and it was not disputed that these injuries were inflicted by the appellant. The evidence of Dr Teo was that, inter alia, two of the injuries inflicted on the deceased, namely, the laceration and the bruise described as injuries (i) and (iv), in 3 above, were sufficient in the ordinary course of nature to cause death. It was therefore proved beyond reasonable doubt that the appellant was the one who inflicted the injuries on the deceaseds head intentionally, and not accidentally; that two of the injuries were sufficient in the ordinary course of nature to cause death; and that they did cause the death of the deceased. Thus, the requirements of s 300(c) of the Penal Code on which the prosecution relied had been satisfied: *Virsa Singh v State of Punjab* AIR 1958 SC 465 at 467; *Mimi Wong and Anor v Public Prosecutor* [1972] 2 MLJ 75 at 78; and *Public Prosecutor v Visuvanathan* [1978] 1 MLJ 159 at 169.

The requisite intention

34. We found that the appellants contention that he lacked the requisite intent to inflict the relevant injuries on the deceased to be plainly untenable. In light of the whole circumstances in which the attack on the deceased was carried out, we had no hesitation in agreeing with the following conclusion of the judge:

> 122 In my determination, the prosecution had discharged its ultimate burden in proving the case against the accused beyond a reasonable doubt and that the defence of diminished responsibility as well as the defence based on lack of requisite intention raised on behalf of the accused were plainly unsustainable. There was no evidence that the accused was suffering from any abnormality of mind prior to or at the time of the commission of the offence. In my view, the offence committed was willed and carried out in a cold-blooded manner. In the end, I was satisfied that the prosecution had indeed proven its case against him beyond a reasonable doubt and that he had not, on a balance of probabilities established his defence.

Conclusion

35. For the foregoing reasons, we dismissed the appeal.

Sgd:	Sgd:	Sgd:
YONG PUNG HOW	L P THEAN	CHAO HICK TIN
Chief Justice	Judge of Appeal	Judge of Appeal