

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 30

Criminal Appeal No 14 of 2021

Between

Daryati

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

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

[Criminal Law] — [Special exceptions] — [Diminished responsibility]

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Daryati
v
Public Prosecutor

[2022] SGCA 30

Court of Appeal — Criminal Appeal No 14 of 2021
Andrew Phang Boon Leong JCA, Steven Chong JCA and Chao Hick Tin SJ
31 March 2022

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Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 This is the appellant's appeal against her conviction under s 300(c) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for the murder of Mdm Seow Kim Choo ("the deceased"). The appellant is an Indonesian national who worked as a domestic helper for the deceased and her family at the material time. We will not repeat the undisputed background facts as well as the trial Judge's ("Judge") decision, which are fully set out at *Public Prosecutor v Daryati* [2021] SGHC 135 ("Judgment").

2 This appeal turns on whether the appellant is entitled to the defence of diminished responsibility (Exception 7 to s 300 of the Penal Code (Cap 224, 2008 Rev Ed)), and in particular, whether the appellant was suffering from persistent depressive disorder with intermittent depressive disorder at the time

of the murder.

Our decision

3 The three elements of the defence of diminished responsibility are as follows (see the decision of this court in *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 at [21]): (a) first, the accused was suffering from an abnormality of mind (“the first limb”); (b) second, the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury (“the second limb”); and (c) third, the abnormality of mind substantially impaired her mental responsibility for her acts and omissions in relation to the offence (“the third limb”).

4 The appellant makes three points in relation to the first limb. First, she argues that she had experienced an abnormally reduced mental capacity to exercise self-control after the deceased screamed and the appellant realised that her plan had gone wrong. As evidence of this loss of self-control, the appellant points to her testimony at trial, the sheer number of wounds and the amount of force exerted in causing those injuries. Secondly, even if there was premeditation to commit murder, her actions flowed from a disordered mind. Emphasis is then placed on how she had acted irrationally in the circumstances. Finally, the appellant urges this court to take into account the common circumstances faced by other migrant domestic workers when considering whether the appellant was labouring under an abnormality of mind.

5 As for the second limb, the appellant submits that the Judge should have preferred Dr Tommy Tan’s (“Dr Tan”) evidence that she was suffering from persistent depressive disorder with intermittent depressive disorder. She makes three points in this respect. First, the fact that her emotions were not objectively

observed by other people and the late disclosure of her mental state are in line with Dr Jaydip Sarkar's ("Dr Sarkar") opinion that she is a very closed-off individual who needed time and courage to seek help for her declining mental health. Subjective reporting is also sufficient for a diagnosis of persistent depressive disorder pursuant to the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5"). Secondly, Dr Sarkar was wrong to infer from the appellant's diary entry on 27 April 2016 that she was feeling hopeful about her future. Thirdly, there is "no great difference" in the symptoms required by the DSM-5 criteria used by Dr Tan, and the symptoms required by *ICD-10: international statistical classification of diseases and related health problems: tenth revision* (World Health Organisation, 2nd Ed, 2014) used by Dr Sarkar. The appellant asserts that, in any event, both criteria were fulfilled.

6 In relation to the third limb, the appellant relies on Dr Tan's opinion that her mental responsibility was substantially impaired due to her persistent depressive disorder, which placed her in a heightened state of arousal and increased her propensity to violence.

7 Having considered the evidence before us as well as the appellant's submissions on appeal, we find that there is no merit in the appellant's defence. The Judge had rightly rejected Dr Tan's evidence, and as a result, the second limb of the defence of diminished responsibility remains unproven. We also agree with the Judge that the first and third limbs of this defence are not satisfied.

8 We first set out Dr Tan's expert evidence before explaining why we are unable to accept it. Using the DSM-5 diagnostic criteria, Dr Tan opined that the appellant had persistent depressive disorder even before she came to Singapore

and continued to have persistent depressive disorder after she came to Singapore. He also opined that she had a relapse of a major depressive disorder episode when she started work in Singapore, and in this regard, the criteria for major depressive disorder in DSM-5 applied. His diagnosis was based on a number of symptoms the appellant allegedly displayed during her employment with the deceased, namely: (a) depressed mood, (b) eating less, (c) loss of weight, (d) difficulty sleeping at night and crying to herself at night, (e) lethargic during the day, (f) many thoughts of missing her girlfriend, her mother and not wanting to work in Singapore, and (g) thoughts of dying.

9 Dr Tan's report, however, conveniently omits to account for a symptom which he himself acknowledged is important for a diagnosis of persistent depressive disorder or major depressive disorder, namely, functional impairment. In this regard, there is clear, objective evidence as well as evidence from the appellant herself indicating that she did not experience any functional impairment be it in Indonesia or in Singapore. As for the symptoms which Dr Tan relied on in arriving at his diagnosis, they were largely derived from the appellant's self-reported account, which was not verified against the objective evidence that would have been available to him. In fact, four of these symptoms, namely, depressed mood, eating less, loss of weight and suicidal thoughts, sit at odds with the objective evidence as well as the appellant's own testimony on the stand. When Dr Tan was confronted at trial with evidence of the appellant's lack of functional impairment as well as evidence which negated what she had told him in relation to these four symptoms, he steadfastly maintained his diagnosis without much justification. None of these concerns was adequately addressed by counsel for the appellant. In these circumstances, we have no hesitation rejecting Dr Tan's evidence given the lack of the requisite factual substratum and want of sound reasons proffered for his opinion.

10 We elaborate. The objective evidence as well as the appellant's own evidence clearly demonstrate that there was no functional impairment throughout the appellant's time in Singapore. Don Hayati BT Warsa Samud ("Don Hayati"), her co-worker, as well as the deceased's husband ("Mr Ong") and her eldest son ("Wei Yang"), who were her employers, did not report any changes in the appellant's work performance to Dr Sarkar. This is corroborated by the appellant's own evidence in court that during the course of her employment, she could handle her job scope and was able to complete her assigned chores *every day*, notwithstanding the fact that she had difficulty focusing on her work. She also told Dr Sarkar that she was able to perform her occupational chores appropriately and did not make any errors at work. In addition, the substantial degree of plotting on the part of the appellant displayed her ability to plan ahead and reason clearly. In the course of formulating her plan to steal money, retrieve her passport and escape, she drew a map detailing a layout of the House, enlisted the help of Don Hayati and put much thought into choosing the most opportune moment to strike. Socially, the appellant was also able to connect and form relationships with others, as evidenced by how she befriended another Indonesian maid and a Bangladeshi national, both of whom gave her a spare handphone each.

11 Similarly, the evidence also indicates that the appellant did not suffer from functional impairment back in Indonesia. According to the appellant's own testimony, she had finished high school and passed all her subjects, and thereafter worked at a prawn factory for approximately two years before attending a training centre in preparation for her employment as a domestic helper. At the factory, she had no problems with her work and was able to make friends as well as form a romantic relationship with a woman named "Desi". After she left the prawn factory for the training centre, she met "Indah", her

lover, and made other friends at the training centre too. She was also able to fulfil the training requirements at the training centre.

12 Pertinently, Dr Tan admitted in the course of cross-examination that the appellant did not suffer from any functional impairment back when she was in Indonesia in view of her ability to work, make friends and have a lover. He also accepted that based on what the appellant said in court, she did not show signs of functional impairment when she was in Singapore.

13 Quite apart from the absence of functional impairment on the part of the appellant, there is also insufficient evidence for four of the symptoms that Dr Tan relied on for his diagnosis, namely, depressed mood, eating less, loss of appetite and suicidal thoughts. The appellant's self-reported account to Dr Tan in relation to these four symptoms is negated by her own account at trial as well as the objective evidence.

14 Beginning with the first symptom of depressed mood, we accept the appellant's submission that she is a closed-off individual, which may explain why Mr Ong, Wei Yang and Don Hayati did not observe any changes in the appellant's mood. Nevertheless, there remains a large discrepancy between her testimony in court and the account she gave Dr Tan. Her account to Dr Tan also failed to provide a full picture of her mental state after she moved to Singapore, as contemporaneously documented in her diary entries.

15 Dr Tan summarised what the appellant had told him in his report as follows:

Psychiatric symptoms described by Daryati

33. When Daryati was 14 to 15 years old, she was raped several times by her older brother. ...

34. Daryati was depressed in mood because of the rapes. ...

...

36. Even after her brother stopped abusing her, she was still frightened of her brother. She felt sad whenever she recalled what her brother did to her. She felt sad when she saw her brother.

37. *She had been feeling sad since her high school. ...*

...

44. Daryati said that she had ***always felt sad*** since high school. *After coming to Singapore and working for her employer, she felt much sadder in mood.*

...

52. Daryati ask the deceased to allow her to return home. She was “disappointed”, “sad”, “depressed” and “angry” and she “felt like dying” when the deceased refused to let her return home.

53. She said that the feeling was even worse when she asked the deceased the second time and was not allowed to return home.

54. After that, she felt even more depressed in mood for the whole day... her mood was much worse at night because she did not have work to distract her...

[emphasis added in italics and bold italics]

16 The appellant’s testimony in court reveals that she had significantly overstated how depressed she felt when Dr Tan interviewed her. She testified that after she left school, she worked happily at a prawn factory and at the training centre thereafter. Her mood was only impacted the next day when she had nightmares (about the rape) the previous night. Before she came to Singapore, these nightmares occurred approximately once a week.

17 The appellant testified that after she came to Singapore, she would have no problems with her mood for six days of the week. The only day when this was not the case was when she had her weekly nightmare the night before. This situation persisted until 22 May 2016, which was the day when she tried to call

her mother but there was no response. After 22 May 2016, the appellant started feeling worried, sad and frustrated. Between 22 May and 7 June 2016, she sought permission from the deceased to go home on two occasions, and both times, her requests were denied. This left the appellant feeling angry. In sum, based on the appellant's testimony in court, her sadness and anger only really set in after 22 May 2016, which is approximately two weeks before the murder.

18 We acknowledge that the appellant's diary entries indicate that she was filled with longing for her lover and homesickness in the first two weeks after she commenced work in Singapore. Nevertheless, as noted by Dr Sarkar, these emotions are not beyond the realm of what is ordinarily experienced by most migrant workers in similar circumstances. We also agree with Dr Sarkar that the appellant's diary entry on 27 April 2016 shows that there was an uplift in her mood as she began to accept the situation that she was in, and by 12 May 2016, she started planning and strategising. The appellant submits that Dr Sarkar should not have read a hopeful tone into the appellant's diary entry on 27 April 2016, but we are unable to accept such a submission as it goes against the plain text of that diary entry. At its highest, therefore, the appellant's diary entries only indicate that the appellant was experiencing some measure of distress for a relatively short period of time when she first moved to Singapore.

19 Having examined the appellant's diary entries alongside the evidence she gave in court, we come to the view that they militate against the appellant's report to Dr Tan that she was feeling depressed *ever since high school* and that this *persisted even after she moved to Singapore*. This is so even if we accept, in the appellant's favour and contrary to what the Judge had found, that she had recurrent weekly nightmares of the rape, since the nightmares only impacted her mood the very next day. The most that can be said is that the appellant had two relatively short periods when she was feeling distressed in Singapore: (a) the

first was when she first came to Singapore, and (b) the second was when she was unable to contact her mother and her requests to head back to Indonesia were denied by the deceased. These compromise the factual basis underlying Dr Tan’s opinion (see at [15] above) that the appellant had persistent depressive disorder before she came to Singapore and continued to have persistent depressive disorder even after she came to Singapore.

20 We also agree with the Judge’s findings that the symptoms of eating less, loss of weight and suicidal thoughts are unsupported by evidence. In the first place, it is unclear how Dr Tan came to the view that the appellant “ate less” when what the appellant told Dr Tan was that her appetite remained unchanged in Singapore. The appellant also gave evidence in court that she had a normal appetite until 22 May 2016, except when she had her weekly nightmares the night before. Even after 22 May 2016, the appellant claimed that her appetite was “not much lesser, but slightly lesser”. More tellingly, the objective evidence shows that the appellant only lost 0.5kg between the time she arrived in Singapore and the time she was assessed at Changi General Hospital a day after the offence. As for suicidal thoughts, the appellant admitted on the stand that she did not feel suicidal and had instead been willing to die to try and go back home.

21 Curiously, when Dr Tan was told that there was evidence from the appellant that she had no problem at work, had a normal appetite, was not depressed for most of the week, and had no suicidal thoughts during the course of her employment in Singapore, he acknowledged that these were different from what the appellant had told him, but nevertheless maintained his stance that the appellant was suffering from persistent depressive disorder, and only went so far as to concede that it was “less likely” that she had major depressive disorder.

22 With respect, Dr Tan’s position at trial is indefensible. Given that Dr Tan used the DSM-5 criteria for his diagnosis and accepted that the presence of functional impairment was important for such a diagnosis, it is somewhat inexplicable that he maintained his opinion in spite of the non-satisfaction of these criteria, along with the absence of other symptoms, the key of which was depressed mood.

23 Dr Tan attempted to shore up his position by referencing the appellant’s “past” without further elaboration, but that merely added to the flaws in his reasoning. In so far as the “past” referred to the appellant’s episode of major depressive disorder when she was 14 years old, which was the result of her being repeatedly raped by her brother, he did not properly explain why he was of the view that the appellant continued to suffer from persistent depressive disorder ever since that episode. In particular, he failed to take into account and analyse how the clear evidence to the contrary nonetheless supported his original conclusion. In re-examination, Dr Tan explained that people with persistent depressive disorder have periods when they can feel a lot better, and that the effects of the rapes by her own brother would very likely have remained with her for eight years from the time she was raped to the time she came to Singapore. But the evidence he was presented with in court was the appellant’s *own testimony* that she was *generally* not functionally impaired and did not have persistent depressed mood *for eight years* – there is therefore no evidential basis for Dr Tan to claim that the appellant fell within the category of persons who have persistent depressive disorder but had pockets of time when they felt better.

24 We also observe that Dr Tan repeatedly stressed that the DSM-5 criteria constitute merely a guideline that need not be strictly adhered to (or in Dr Tan’s words, the DSM-5 criteria is not a “cookbook”). He also reiterated that he exercised his clinical judgment in arriving at his diagnosis. We accept that in

some circumstances, psychiatrists such as Dr Tan do need to use their clinical judgment. However, a psychiatrist's clinical judgment cannot be a panacea, without more, to make up for the want of factual and logical cogency. As the Judge had rightly observed, clinical judgment must still be based on medical analysis and explanation, and Dr Tan's diagnosis is unfortunately lacking in this regard.

25 In stark contrast to Dr Tan's evidence, Dr Sarkar's evidence is well-reasoned and premised on a holistic consideration of other sources of information apart from the appellant's self-reports. In particular, we accept Dr Sarkar's assessment that the feelings of longing and homesickness harboured by the appellant are not beyond the realm of what is ordinarily experienced by most migrant workers in similar circumstances.

26 We therefore find no reason to disagree with the Judge's decision in rejecting Dr Tan's evidence and preferring Dr Sarkar's. As the appellant was not suffering from any medical condition as diagnosed by Dr Tan, it follows that the second limb of the defence of diminished responsibility is not satisfied. Although this point on its own is sufficient to dispose of this appeal, we will nevertheless explain why we are also unpersuaded by the appellant's submissions that the first and third limbs of this defence are satisfied.

27 As against the Judge's finding that the appellant was not labouring under an abnormality of mind, the appellant submits that she lost self-control after the deceased screamed and she realised that her plan had gone awry. Even if we accept this submission, however, the appellant has not pointed us to any evidence suggesting that the Judge had erred in finding that the loss of control was because the appellant was angry, and not because she suffered from an abnormality of mind (see the Judgment at [58]). Instead, the appellant urges this

court to infer from the circumstances that her state of anger made no rational sense. However, such an inference, if drawn, would not take the appellant very far as there is nothing abnormal or extraordinary about the absence of rationality driving a state of rage – emotions can, and are usually, irrationally formed. Finally, the appellant also asks this court to consider the circumstances faced by other migrant domestic workers when analysing whether the appellant suffered from an abnormality of mind. We fail to see the relevance of this when the inquiry at this stage is whether the *appellant's* ability to exercise self-control at the time of the murder is so different from that of ordinary human beings that the reasonable man would term it abnormal (see the English Court of Appeal decision of *R v Byrne* [1960] 2 QB 396 at 403). This is a *fact-specific* inquiry that turns on the appellant's *specific characteristics* and *specific circumstances* which are to be *borne out on the evidence before us*. While counsel for the appellant points out that the appellant was homesick at the material time and was disallowed from returning to Indonesia, we are unable to see how that bears a rational relation to the issue of whether she had an abnormally reduced mental capacity to exercise self-control at the material time.

28 Regarding the third limb of the defence, the appellant's submission that her mental responsibility was substantially impaired hinges on Dr Tan's opinion that her persistent depressive disorder caused her to be in a heightened state of arousal and increased her propensity to violence. This submission fails given that we had earlier rejected Dr Tan's evidence that the appellant was suffering from persistent depressive disorder with intermittent depressive disorder.

29 For all these reasons, we are satisfied that the Judge did not err in finding that the appellant is not entitled to the defence of diminished responsibility. We are also satisfied that the elements of the s 300(c) Penal Code offence as stated in the charge had been proven beyond a reasonable doubt. We therefore affirm

the appellant's conviction. As neither party has appealed against the sentence imposed, we also affirm the term of life imprisonment as meted out by the Judge. We would also like to thank counsel for their submissions, in particular, Mr Leon Koh, who represented the appellant on a *pro bono* basis.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Koh Weijin Leon and Elsie Lim Yan (N.S. Kang) for the appellant;
Wong Kok Weng, Lim Shin Hui and Phoebe Tan Hern Hwei
(Attorney-General's Chambers) for the respondent.
