

Public Prosecutor v Gopinathan Nair Remadevi Bijukumar
[2012] SGHC 59

Case Number : Criminal Case No 40 of 2011
Decision Date : 21 March 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Andre Darius Jumabhoy and Eunice Ng (Attorney-General's Chambers) for the Public Prosecutor; Shashi Nathan, Tania Chin (Inca Law LLC) and Raphael Louis (Teo Keng Siang & Partners) for the accused.
Parties : Public Prosecutor — Gopinathan Nair Remadevi Bijukumar

Criminal Law – Murder

Criminal Law – Special exceptions – Provocation

Criminal Law – Special exceptions – Sudden fight

21 March 2012

Judgment reserved.

Choo Han Teck J:

1 On 14 March 2010 the accused stabbed a 30-year old Filipino woman, Roselyn Reyes Pascua ("Roselyn Pascua"), to death. The offence was committed between 7pm and 8pm in #05-46 Peony Mansion. Roselyn Pascua, a foreigner in Singapore on a social visit pass, rented a small room there. Dr Wee Keng Poh, the pathologist who examined her corpse, testified that he found various injuries. There was a bruise on the bridge of her nose that, in his view, was caused by a blunt force. There were abrasions to the right cheek and lips, consistent with injuries from slaps or punches. There were also a bruise on the right mandibular region of the neck and a haematoma over the left upper and lower eyelid. These injuries were consistent with that caused by a slap or a punch. There were two stab wounds in the chest which penetrated the left lung. These two wounds were 10cm deep and were the fatal stab wounds in the opinion of Dr Wee. There were three more stab wounds, one in the right abdominal wall and two in the vagina. There were also several cuts and puncture wounds on the midsection of Roselyn Pascua's body. There were, however, no defensive injuries found on her, which meant that she neither attempted nor had the chance to defend herself.

2 The above facts were not disputed by the accused. He came from Trivandrum, India less than two years prior to March 2010. He came from a farming family and was married with no children. He incurred a debt of \$1,803 representing expenses arising from his wife's miscarriage. He also incurred a debt of \$3,600 which were fees he had to pay to procure his job in Singapore. After deductions for meals and expenses, his net monthly income from his salary as an unskilled worker was \$300. These facts were not challenged by the prosecution. The defence was called and the accused elected to testify. In his evidence-in-chief the accused claimed that he did not intend to kill Roselyn Pascua and had stabbed her in a sudden fight using a knife that he found in her room. His counsel, Mr Shashi Nathan ("Mr Nathan"), also submitted, alternatively, that the homicide was not murder because it was committed under a grave and sudden provocation. The version of the story that the accused relied on in his defence was as follows. He was on his way to Tekka to remit money to India when he met a woman (Roselyn Pascua) who approached him and, after asking for his name, asked if he would go to

her room. A brief exchange made it clear that she was soliciting for sex, and the accused accepted her offer. She showed him where Peony Mansion was and asked him to walk by the back of the building and meet her there. When he was near the building he saw that Roselyn Pascua was at the bus stop. He went up to her and she told him to go to the "front side" of Peony Mansion. He saw a lift lobby and waited there. Roselyn Pascua appeared five minutes later and they went up to her room on the fourth floor without exchanging a word.

3 When they were in the room, Roselyn Pascua asked the accused for \$100 as "the charge for one hour service". The accused handed her two \$50 notes from his wallet. At that point, Roselyn Pascua noticed that the accused had some more money and so she asked him for another \$100. When he refused, she snatched the wallet from him and punched him above his left eye, causing him to fall, before kicking him in the groin. He got up and pushed her onto her bed. According to the accused, Roselyn Pascua got up and used her own wallet to hit him. He snatched the wallet from her and flung it away. He saw the wallet land behind the dressing table. Roselyn Pascua then slapped the accused, who retaliated by slapping her. His slap caused her to fall back on the bed again. This time the accused took a shawl, wrapped it round her neck and asked for the return of his \$100. Roselyn Pascua refused to return his money and kicked him twice in the groin. The accused then saw a knife on some rolls of toilet paper stacked near the door. He cut himself as he grabbed the knife, and he used the knife to threaten her so that she would return his money, but she still refused. She kicked him in the groin again, as well as on his chest. He then stabbed her in anger, twice in her neck and twice in her abdomen.

4 After stabbing Roselyn Pascua, the accused cleaned the blood from his own wound with tissue paper. He then placed the knife in his pocket, took the two \$50 notes from Roselyn Pascua's hand, wiped the blood from the notes, and used some clothing to cover the blood on the floor. He also recovered his own wallet and while doing so, he heard Roselyn Pascua's cell phone ring. He panicked and switched off the cell phone. He then took the cell phone and left the room. He left the building and threw the knife into a dustbin near the bus stop. He returned to his quarters at 8 Enterprise Road at about 9pm. He took his dinner before going to bed. He went to work the next day, uneventfully. On 16 March 2010, he remitted \$777.08 to India through the Western Union Remittance Agency. On 17 March 2010, he went to register himself for a test to get his driver's licence. He also paid his food caterer \$130, and repaired his cell phone for \$25. He made three calls to India using Roselyn Pascua's cell phone, which, upon examining its SIM card, he discovered had \$20 remaining in stored value (before he used it to make the calls). He was at Farrer Road, sitting by the road and making the calls, when he was arrested.

5 Deputy Public Prosecutor Mr Andre Jumabhoy ("Mr Jumabhoy") submitted that the accused killed Roselyn Pascua with the intention to kill her and the intention to inflict such injuries that were "sufficient in the ordinary course of nature to cause death". So in either case, murder under the Penal Code (Cap 224, 2008 Rev Ed) had been proved. The evidence of Dr Wee was that three of the stab wounds, namely the stab wounds in front of the neck, in the left anterior chest wall and in the lower anterolateral chest wall, were fatal wounds. The direct cause of death was attributed to the second wound but either of the other two was sufficient in the ordinary course of nature to cause death. In spite of the description by the accused in court concerning the fight between him and Roselyn Pascua, the physical evidence did not support his account. The Roselyn Pascua's clothing was not torn. She was found with multiple stab wounds, bruises, abrasions and pointed incisions. The scene of the room did not indicate signs of a fight. The clothing over Roselyn Pascua's body was flung over her by the accused after she had lain dying on the floor. These evidence, individually considered, were not critical, but were all crucial when considered as a whole in determining the accused's intention at the material time.

6 The oral testimony of the accused must be considered against the versions of the events as narrated by him in various statements to the police. These were admitted at trial without objection. The accused admitted that the accounts in those statements were untrue. He explained at trial that he made the false statements because he was "scared" as he was a married man and was afraid that his "shameful act" of visiting a prostitute might become known. He also explained that he gave misleading accounts because he did not want the police to find out what happened. The cautioned statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") was recorded from him on 18 March 2010 at 6.50pm. After reading the usual caution to him that any fact which he relies on in his defence should be mentioned and, if he did not, his evidence may be less likely to be believed, the accused stated:

I did not kill her, I saw one Malay man stabbing her neck twice when I open her room door. I saw personally with my own eyes that she was murdered. In fear I ran out of the place.

The long statements recorded under s 121 of the CPC contained elaborate accounts of the accused visiting Roselyn Pascua's room and seeing a Malay man stabbing her, giving a very detailed and incredible account of what the Malay man did. It was incredible because what the accused saw must have taken some time – he saw the Malay man use a cloth to cover Roselyn Pascua's mouth, empty her handbag and causing her passport to fall to the ground, pick up the passport and place it on the dressing table, before stabbing her twice in the throat, throwing a small bag behind the dressing table, throwing her clothes on the floor and over her body, and wiping his face with his shirt sleeve. All that was supposed to have happened right in front of the accused when he opened the door to the very small room. I do not believe that the Malay man would have gone on doing what he did completely oblivious of the accused standing right at the door. The concocted story went even further by saying that after the Malay man had stabbed Roselyn Pascua, the accused actually went into the room and saw the knife stuck in her throat. The accused also told the police that the Malay man warned him not to tell anyone what he saw, and even managed to get the accused to help him search Roselyn Pascua's handbag. Later, outside the building, he gave the accused US\$200 (which the accused declined) and then made an appointment to meet the accused again. I need not review every detail of the accused's statements, except to say that they would be incredible even if the accused had not admitted that the statements were false.

7 The accounts were also incredibly similar to the accused's account in his testimony of what he himself did in the room with Roselyn Pascua. I agree with Mr Jumabhoy's view that when the accused described what the Malay man did, he was in fact describing what he did himself. The accused gave a different account in his evidence-in-chief which he patched and varied under cross-examination. The accused was making up evidence so often and in almost every aspect of the case, including how he got to Roselyn Pascua's room and what he did when he left, that I have no hesitation in coming to the conclusion that he was a totally untrustworthy witness. From the forensic evidence and the objective evidence of what the accused did after he left Roselyn Pascua's room, namely returning to his quarters, paying the food caterer, using the Roselyn Pascua's cellphone and possessing the amount of money he had at his arrest, lead me to accept the prosecution's case that the accused intended to kill Roselyn Pascua and, in any event, intended to inflict injuries on Roselyn Pascua that were sufficient in the ordinary course of nature to cause death

8 It is always difficult to prove that a person had an intention to kill, but establishing intention in a criminal trial is not a neurological or scientific test conducted on the accused's mind. It is often, as in this case, a matter of whether the overall evidence sufficiently supports the appropriate inference beyond reasonable doubt. In this regard, I am obliged to consider whether the explanations and alternative circumstances suggested by the defence could reasonably be possible. If so, the accused must be given the benefit of the doubt. I accept Mr Nathan's submission that one should not

conclude that a witness could not be telling the truth just because he had lied in some aspects of his testimony. In this case, the accused was not challenging his statements to the police. On the contrary, it was the prosecution which is challenging them. This was not a case where the accused was too muddled or frightened such that he said things that were self-incriminating. It seemed that he was sufficiently calm and alert to be able to create a detailed but false account of what happened. The critical question before me was whether this lucid but false account was created out of fear. Mr Nathan submitted that that was so. I am of the view that it was probably true that the accused was in fear, but he was in fear because he had killed someone. That is surely a possibility in the context of the evidence before me, and in the light of the evidence against him, especially the account of the events prior to and at the time of Roselyn Pascua's death – before the accused could (if he had) have time to be overcome by fear.

9 There was only one reason for the false accounts – the accused wanted to put the police on the wrong trail. He wanted to exculpate himself. If the account in the statements was false, then what was the truth? Mr Nathan submitted that the accused never had the intention to kill Roselyn Pascua. He went to her for sex but she was greedy and wanted more money than they had agreed. She seized his money and attacked him. He fought to defend himself and to get his money back. It was a sudden fight and he killed Roselyn Pascua under a grave and sudden provocation. I am of the view that this submission fails when tested against the evidence. The evidence showed that Roselyn Pascua was assaulted and stabbed in numerous places with three of the stab wounds sufficient individually to have caused death. The accused had only a minor cut on his finger, which on his evidence was accidental and not caused by Roselyn Pascua. Even if I were to believe the accused's account that he was provoked – and I do not believe him – the alleged conduct of Roselyn Pascua was not sufficient, in my view, to have been a grave and sudden provocation. Even if I were to believe the accused – and again, I do not – the defence of sudden fight does not absolve him because Roselyn Pascua was unarmed and there was no basis for the accused to stab her so many times with a knife.

10 It is therefore not crucial whether the knife belonged to Roselyn Pascua or was brought there by the accused. But having considered the evidence, I am of the view that it was brought there by the accused. I considered his evidence especially to see if it would have led me to find that the accused person's testimony in court that he grabbed the knife in the course of the fight might possibly be true. I do not believe his testimony in court and I do not believe that he found the knife in Roselyn Pascua's room. I am satisfied that the prosecution had proved beyond reasonable doubt that the accused went to Roselyn Pascua's room with the intention of robbing and killing her. The accused succeeded in both intentions. Even if he did not intend to kill, I am satisfied that he intended to inflict the injuries that were sufficient in the ordinary course of nature to cause and did lead to Roselyn Pascua's death. I therefore find the accused guilty as charged and convict him accordingly. He is sentenced to suffer death.

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