

Public Prosecutor v Tan Chun Seng
[2003] SGHC 44

Case Number : CC 3/2003
Decision Date : 28 February 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ng Cheng Thiam, Benjamin Yim and Jared E. Pereira (Deputy Public Prosecutors) for the Public Prosecutor; Luke Lee (Luke Lee & Co) (assigned) and Wong Seow Pin (S.P. Wong & Co) (assigned) for the Accused
Parties : Public Prosecutor — Tan Chun Seng

Criminal Law – Special exceptions – Provocation – Whether ingredients for defence of grave and sudden provocation met – Penal Code (Cap 224, 1985 Rev Ed) s 300(c) Exception 1

1 The accused is 28 years old and was working as a driver at the time of arrest. He was arrested at the Changi Airport Cargo Terminal on 16 April 2002 and charged with the murder of a 44-year old deaf-mute called Krishnan s/o Sengal Rajah on 30 June 2001. Krishnan was battered to death at 10.40pm at the junction of Perak Road and Dunlop Street that evening. Statements made by the accused to the police in the course of their investigation were admitted in evidence without challenge. The accused admitted hitting Krishnan with a metre-long wooden pole that looked like a baseball bat. It appears in fact to be the wooden handle of a gardening implement known colloquially as a "changkul". His defence was called and he elected to testify. The evidence of the case is as follows.

2 Muni Rajander, who was the owner of a bar called 'Rajini Wines' at 134 Dunlop Street testified that Krishnan (who was known to him as 'Bisu') went to his bar at 8.30pm of 30 June 2001, and there drank several small bottles of gin which he shared with his companion (Chandrasegaran). The two men left his bar at 10.30pm. Chandrasegaran testified that after leaving Rajini Wines, Krishnan and he went to the 'Back Alley Pub' nearby for another drink. Shortly thereafter, the two men left the Back Alley Pub together with Chandrasegaran walking ahead. At one point he (Chandrasegaran) turned and saw Krishnan talking to some Chinese men. He said he saw nothing else. He went home and only learned that Krishnan had died the following day. He appears to me to know more than he had testified, and on several occasions, he deflected questions from the DPP as well as Mr. Luke Lee, counsel for the accused by either claiming that he did not know or that the evidence suggested to him was not true.

3 There were two young Chinese men, Eric Chew, a naval officer and Wilfred Chen, then a student at the Temasek Polytechnic, who witnessed part of the incident. They were having supper at a coffeeshop at the corner of Perak Road and Dunlop Street when Eric Chew heard a noise, sounding like a thud, and then some 'Hokkien' vulgarities. He turned and saw a Chinese man with a wooden pole in his hands and a man lying on the road next to him. He saw the Chinese man hitting the other man at least three times as he lay on the ground. He also noticed another Chinese man with a crash helmet in his hand standing about a metre and a half away from the first Chinese man. After the attack, which ended in less than a minute, the two Chinese men were seen walking away together. Wilfred Chen gave a similar account of the incident. Both men were taken to attend an identification parade after the accused was arrested some ten months later. They were not able to identify the accused positively, but were able to say that two of the men in the line-up, including the accused, looked similar to the assailant. Since identity is not crucial in the case of either prosecution or defence, this aspect of Eric Chew and Wilfred Chen's evidence has little significance. On the whole, I find the evidence of both men to be accurate and reliable.

4 Lyn Pereira, a paramedic with Singapore Civil Defence Force received instruction at 10.49pm to go to the scene. He arrived at 10.58pm and after examining the body, pronounced Krishnan dead at 11.03pm. Dr. Paul Chui the forensic pathologist testified that Krishnan died from severe head injuries. These injuries were sufficient in the ordinary course of nature to cause death. He thinks that the injury to the head was caused by a single blow, but could not be certain if other blows had been struck.

5 The accused admitted that he was the person who attacked Krishnan and killed him. However, he claimed to have done so on a grave and sudden provocation. His account of the events was as follows. On the night in question, he drove his newly purchased car to Dunlop Street intending to have supper before going to Malaysia. Two Indian men, one in a white T-shirt and one in a black T-shirt, walked towards his car. As they passed him, the one in the black T-shirt hit the front window of the car on the passenger side. The accused turned to look at the man who did it and the latter glared at the accused and challenged him to get out of the car. The accused was infuriated. At the trial the accused referred to Krishnan as the man in the white T-shirt. The inescapable conclusion must be that the one in the black T-shirt must be Chandrasegaran. However, the latter denied that he was wearing black T-shirt that evening. He claimed that he always wore the kind of shirt he wore at the trial, which was a short sleeved shirt with patterns. Nothing significant turns on the evidence of Chandrasegaran, a witness I find to be unreliable.

6 The accused continued with his account as follows. He stopped his car and rushed to confront the man who hit his car, but he could not see him and concluded that he must have run into a side lane to hide. The accused then shouted vulgarities at Krishnan who was still walking along Dunlop Street and did not respond. The accused stated that he did not know that Krishnan, whom he had never met before, was a deaf-mute. When he caught up with Krishnan he asked why his friend had hit his car, but Krishnan continued to walk and the accused was further enraged and abused Krishnan with vulgarities. Krishnan pushed the accused on the chest and the accused fell. Realising that he was no match for the much larger Krishnan in an unarmed fight, the accused picked up a wooden pole nearby that he had spied as he fell. He went forward with the pole and started hitting Krishnan with it. He said that he did not intend to kill and merely wanted to teach him a lesson. He thought that Krishnan had only fainted when he fell to the ground. He also claimed that he acted alone.

7 Before continuing, I should mention that there are three unsolved mysteries that emerged from the evidence. The first is that the police had seized another wooden pole from the car of a man whom that had asked to provide information in relation to the present case. According to the investigating officer, the man told him that he had bought the pole for personal protection. The pole was identical in all respects to the one used by the accused on Krishnan, but that pole was found on the ground near the scene of crime. No further information was offered as to why the second man was called for investigation save that no one else was charged. Secondly, the evidence of Eric Chew and Wilfred Chen suggests that the second man they saw was a companion of the accused although he did not participate in the attack. It is unlikely that a stranger would have either reason or courage to be in such close proximity where curiosity itself may be offensive to the assailant. But nothing more is known about this second man. The third is the reluctance of Chandrasegaran to tell more than what I think he knows. One can speculate a number of reasons for his reticence, but that is not the function of the court. Therefore, I am bound to ignore these three incomplete aspects of the evidence.

8 I come to the defence proper. It must first be mentioned that the accused had not specifically explained exactly which was the incident that provoked him. It will be recalled that the initiating moment was the provocation by the man in the black T-shirt; but that man disappeared from view thereafter and the accused went on to confront the other man, Krishnan. The accused told

essentially the same story in his statements to the police although these were given ten months after the event. His wife was called as a prosecution witness and she testified that the accused had called her from Johor Bahru on 1 July 2001, that is the day after the crime, and told her the same story. There was a small difference in that he had told her that the Indian man kicked his car - which differs from his version to the police and in court where he maintained that the Indian man hit the window of his car with his fist. I am prepared to put this difference down as a misunderstanding by his wife. She was wholly uninvolved, and although she and the accused had separated, it appears to me from her evidence that she was still concerned for his well-being at the material time. In the circumstances, it is not improbable that her recollection of the exact words may have been impaired.

9 On the evidence as presented, I find that there is no doubt that Krishnan was dealt a fatal blow by the accused and that blow was sufficient in the ordinary course of nature to cause death. It is also beyond any doubt that the accused intended to strike the said blow at Krishnan. The requirements in law of the offence of murder has *prima facie* therefore been made out by the prosecution against the accused. What remains is to consider whether the defence under exception one to s 300 of the Penal Code applies. A provocation sufficient in law to excuse murder must be grave and sudden, emanating from the deceased, and it must itself not be provoked by the offender. Mr Ng the DPP drew my attention to the Hong Kong Court of Appeal case *Ho Chun Yuen v R* [1961] HKLR 433 in which the court accepted that the conduct from persons other than the deceased may be included as part of provocation from the deceased. Mr Ng submitted that this case followed the principle of provocation as set out in the UK Homicide Act although the law applicable in Hong Kong at the material time was the common law. The position in Hong Kong today is the same as that in the UK. Counsel argued that the common law position is the same as our Exception 1, namely, that the provocation must come from the deceased alone. I agree with Mr Ng only in my finding that no provocation emanated from the deceased that could justifiably be considered grave and sudden. The provocation by Chandrasegaran was, in my view, was also not grave and sudden. But I would not disagree with the reasoning of the Hong Kong Court of Appeal. The principle enunciated was that acts by others closely associated with the deceased and the deceased's actions that the deceased can be considered, in effect, to have adopted and joined in the said acts. This statement was further explained by the court with the following example:

"... merely to put my hands over the eyes of a man from behind might not in itself appear to be provocation, but if you do that when he is engaged in a fight with another and trying to ward off the latter's blows then the significance of your action is very different." Ibid at page 441

Hence, the true test when a third person is involved, is whether the provocative act of that third person may be regarded in the circumstances of the case to have been adopted or form part of the provocation of the deceased.

10 It can be annoying when a stranger taps on one's car window for no reason, and even more so if he did it angrily and follows the act with a challenge to fight. But that cannot count as a grave and sudden provocation sufficient to justify a violent attack with a deadly weapon since the person who was attacked was not the person who offered this provocation. The accused was fully aware of that. The only provocation that emanated from Krishnan was his pushing of the accused with such force that he fell. But that was an act, in my view, provoked by the accused himself. From the point of view of a person in Krishnan's position, that is to say, to have someone rush at him angrily shouting vulgarities and behaving belligerently, it is not surprising if that person responded with either fear or annoyance. In either case, pushing the accused away may not be an unreasonable response, but whether that may amount to anything more would depend on a more thorough investigation of the facts. That is out of the scope of this trial and in any event, Krishnan is dead and there were no witnesses to help us. In these circumstances, I will assume, without casting blame on Krishnan, that he did push the accused a little harder than he ought to. But a shove or a push in those

circumstances, no matter how violent or unrestrained, cannot extenuate murder. Very little is known about the accused. There is no known illness or special circumstances to explain how, if at all, he could have magnified the relatively mild action of the man who hit his car and Krishnan's push, or even both taken one after the other cumulatively, until he became seized with such an uncontrollable rage that expressed itself in the ferocity of the attack. I am thus bound to hold that there was no grave or sudden provocation to excuse the offence. I hold therefore that the prosecution had proved its case against the accused beyond any reasonable doubt.

For the reasons above, I convicted the accused and sentenced him to suffer death.

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