

Public Prosecutor v Thamayanthi
[2001] SGHC 374

Case Number : CC 56/2001
Decision Date : 14 December 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Chan Wang Ho and Glenn Seah Kim Ming [Attorney-General's Chambers] for the prosecution; N K Rajarh [Rajah Velu & Co] and Jeeva Joethy [Choo & Joethy] for the accused
Parties : Public Prosecutor — Thamayanthi

Judgment

GROUND OF DECISION

1. The accused was 26 years old and first came to Singapore in 1992 to work as a maid. She returned after a couple of years when her work permit expired. Her mother refused to let her leave India again after that and kept her passport. She then used her sister, Kanagi's passport to leave India for Singapore. This second journey here was made in 1998. She worked as a maid with a family until about August 1999 when she left her employers on account of ill-treatment. She then worked as a part-time help and one of those who employed her as such was 67-year old Anjella Nagalingam who lived at Block 121 Teck Whye Lane #05-830 with one of her sons, Leslie Joseph and his wife Catherine Tan Poh Gek.

2. In the evening of 26 March 2001 Anjella Nagalingam was found dead in her bedroom by Catherine Tan. It was not in dispute that Anjella Nagalingam was assaulted and consequently collapsed in her room sometime after 2pm that day. The accused was charged with her murder. The facts of that day as are largely undisputed by the accused were as follows.

3. Sometime before Christmas of 1998 the accused was introduced to work for Anjella Nagalingam on a part-time basis, cleaning her flat. She would be paid about \$10 an hour, but when she worked for Anjella Nagalingam she was paid \$20 an hour. She usually worked in the morning. On 26 March 2001 the accused arrived at the flat about 10 am. Catherine Tan had already left for work that morning at 8.40am. Leslie Joseph, however, was still at home that day although he would normally have left for work and would not see the maid. That morning, he was awakened by the family dog barking at the arrival of the accused to the flat. He emerged from his room at 11am and saw the accused and Anjella Nagalingam in conversation which he did not intrude. Instead, he had his lunch. He remembered the accused leaving the flat about 11.45am. He left for work about 12.30pm.

4. The accused testified that before she left the flat that morning Anjella Nagalingam had sold her a pair of ear studs for \$80. She also asked the accused to stay but she said she had work elsewhere, but agreed to return later. She returned to the flat about 2 o'clock in the afternoon after a vain attempt to get work in Bukit Batok. Anjella Nagalingam let her in and invited her into her (Anjella Nagalingam's) bedroom where they sat down, she on a stool and Anjella Nagalingam on her bed, eating fruit and watching television. The accused testified that Anjella Nagalingam bemoaned the conduct of her daughters-in-law as well as her brother-in-law who she said was reluctant to buy her jewellery. She told the accused that in those circumstances she might as well sell the jewellery to her maid, meaning the accused. At some point in the course of that conversation the accused felt ill and went to the kitchen where she vomited. Upon her returning to the bedroom, Anjella Nagalingam asked if she was pregnant. The accused said that she could not be. She told Anjella Nagalingam that she

should banish such thoughts because if she could be heard to utter them what, the accused enquired, would others think. Anjella Nagalingam then retorted severely by referring to the accused as "thevadiyah" a Tamil word, used derogatorily for prostitute. This quickly led to a fight between the two women. The accused said that Anjella Nagalingam pushed her and she (the accused) pushed her (Anjella Nagalingam) in retaliation. Anjella Nagalingam then slapped her, and in the course of the fight, the accused fell but got up again; Anjella Nagalingam also fell and pulled at the leg of the accused. Anjella Nagalingam then tried to hit the accused with a telephone which the accused wrestled from her and hit her instead. The accused admitted that she had hit Anjella Nagalingam about four or five times but cannot remember the details as to how many blows actually landed, where they landed, how hard they landed and where the two protagonists' respective positions were at that time although the prosecuting DPP persisted in trying to extract clear and definite answers from her on those points. The accused also admitted that she had used the stool to hit Anjella Nagalingam in the course of the fight, which in response to the DPP in cross-examination, she estimated to be about two to three minutes, steadfastly rejecting the DPP's suggestion that the fight itself took between 30 to 45 minutes.

5. The accused testified that in the course of the fight Anjella Nagalingam grabbed a telephone and tried to hit her with it. This telephone was subsequently thrown into a canal near Sim's Drive. However, the prosecution procured a telephone at trial which Leslie Joseph identified as being similar to the one in Anjella Nagalingam's room - only the colour was different. The accused admitted in court that she had hit Anjella Nagalingam about four to five times with it; but she was frightened and trembling and could not remember more. The pathologist Dr. Teo testified that the eight laceration wounds found on Anjella Nagalingam's scalp at the autopsy were consistent with injuries caused by a blunt object, such as the telephone, delivered with moderate to severe force. One of the eight lacerations also resulted in a fracture of the skull. This particular injury was, in Dr. Teo's opinion, the one that caused the subdural haemorrhage at the back of the skull. It was probably delivered with a severe force. In his opinion, death was caused by this subdural haemorrhage. In addition to the injuries to the head, Anjella Nagalingam suffered fractures to her left middle finger and right ring finger. These injuries were described as defensive injuries. The defence does not challenge the assertion that these injuries were caused by the accused with the telephone set. Dr. Teo also found compression injuries in the oral cavity. He was of the view that these injuries were consistent with someone trying to suffocate the deceased with the palm of a hand. He testified that the force used could have lasted "a few seconds or a few minutes". The accused admitted under cross-examination that she had used her palm to push against the face of the deceased but denied that she tried to suffocate her.

6. The prosecution's case was based on s 300(c) of the Penal Code, Ch 224, namely that the culpable homicide was "done with the intention of causing bodily injury and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death". Dr. Teo accepted that, first, blunt force of moderate to severe strength may not necessarily cause fractures; secondly, fractures may not necessarily result in subdural haemorrhage; thirdly, subdural haemorrhage may not necessarily result in death. When asked what he understood by the term "injury sufficient in the ordinary course of nature to cause death" he gave the following answer:

"If the subdural haemorrhage was left untreated it is potentially fatal in the ordinary course of events. How soon it is fatal may range from minutes to hours and it depends to a large extent on the size and location of the subdural haemorrhage; and whether vital centres in the brain were also affected by the same force that caused the subdural haemorrhage in this case, the injuries, that is the subdural haemorrhage, would have been [of] sufficient severity to cause death in the ordinary course of events".

That is, of course, the expert medical evidence, and it must be blended with the legal requirements under s.299 and s.300 of the Penal Code. When a doctor certifies that any given wound, whether treated or not, would be sufficient to lead to death he is stating a medical fact, and although he or indeed anyone else, might conclude that whoever causes that wound causes the death, only the court may determine whether that death was inflicted with the requisite intention under ss 299 and 300. Otherwise, these solemn and onerous provisions will be reduced to the simple effect that once medical evidence attributes a death to the injury caused by an accused, murder is, by that fact alone, established. That is, in my view, not the purport of the homicide and murder provisions in the Penal Code.

7. In every case concerning a charge of murder it is most pertinent to start with the definition of culpable homicide because there is no offence of murder unless culpable homicide is proved. That definition is set out in s 299 of the Penal Code in the following words: "Whoever causes death by doing an act with an intention of causing death, or with an intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such an act to cause death, commits the offence of culpable homicide." It was not the prosecution case that the accused intended to cause death. The prosecution proceeded on its case throughout the trial on the basis of s 300(c). But there is a significant difference between the legal ingredients under s 300(c) and s 299; that is, the difference between "causing an injury which is sufficient in the ordinary course to cause death" and causing an injury which is likely to cause death.

8. Whether a particular injury is likely to cause death is a question of fact which the court will have to make with such assistance as it may get from the experts such as Dr. Teo the pathologist. Dr. Teo was not asked whether the injuries caused were "likely to cause death" but he has given some illuminating evidence which has greatly assisted me in my conclusion that the injuries caused by the accused were not likely to cause death. In the course of the trial, I am satisfied that Anjella Nagalingam was struck with about eight blows on the head with a plastic telephone set. The weight of the set was not given but handling the replica myself it felt no heavier than one would expect a plastic telephone set to weigh; and no expert is required to opine that anyone would think that a person was likely to be killed when struck with it. Being seriously hurt, perhaps, but not killed. It will be appropriate at this point to recall that the certified cause of death was a subdural haemorrhage, as Dr. Teo testified. But more importantly, although there were eight lacerations on the skull of Anjella Nagalingam, Dr. Teo was able to focus on one in particular, that resulted in a fracture and which he believes caused the subdural haemorrhage. Given this evidence and the use of the telephone as the instrument of death, I am not satisfied that the injury was sufficient in the ordinary course of nature to cause death. But more importantly, before this aspect is to be considered, the prosecution must satisfy the court under s 299, as the prosecution's stated case here, that the intention of the accused was to cause an injury that was likely to cause death. I need not restate what has been so clearly pronounced in *Virsa Singh v State of Punjab* (1958) Sup Ct Report 1495 as well as the numerous occasions in our courts in cases such as *Tan Chee Hwee v PP* [1993] 2 SLR 657, from the Court of Appeal, as to what is required to be proved in a case under s 300(c) of the Penal Code.

9. I am satisfied that the accused had no intention of killing the deceased. The choice of instrument largely indicates this, but more so, the evidence shows that there were a number of kitchen knives on a counter in the kitchen nearby. Whatever might have happened in the bedroom of the deceased, it is abundantly clear that something happened which threw the accused into an uncontrollable rage. Notwithstanding the number of eight blows delivered with the telephone set, which upon examination, felt lighter in my hands than a copy of the Chambers Dictionary, I am of the view that the accused did not intend the injury which resulted in the death of Anjella Nagalingam. She clearly had an intention to hurt Anjella Nagalingam with the telephone set, but is a different matter from an intention to cause the injury which caused death within the meaning of ss 299 and 300. The DPP Mr. Chan

submitted that the motive of the accused was robbery, but this is a red herring considering that the prosecution case was not dependent on motive. Nonetheless, the evidence suggests very strongly that although the accused clearly misappropriated some of Anjella Nagalingam's personal effects including jewellery, I accept her explanation that she did so initially to get rid of incriminating items which might have her blood stained prints. It is important not to overlook the fact that no other item elsewhere (save a bottle of Calvin Klein perfume) was missing from the flat. In addition to necklace, and bracelets the deceased had two rings on each hand (four rings in all). These not insubstantial jewellery were also untouched. If any intention to rob had been formed by the accused, I am satisfied that it was formed after the death of Anjella Nagalingam.

10. Weighing the evidence of Dr. Teo Eng Swee the pathologist, with the selection by the accused of a lightweight plastic telephone set as the weapon of choice I form the view that the vital element under s 299 was not proved beyond reasonable doubt. In forming this view I had studied the written statements as well as the oral evidence of the accused, especially the aspect concerning the fight with Anjella Nagalingam. While I respect the able submission of the DPP, I gave the benefit of doubt to the accused on her testimony, without forgetting that Anjella Nagalingam's side of the story was not told. The law requires only that the accused raises a reasonable doubt in her defence. I accept that in a traumatic event some portions will appear in abject clarity and indelible from the mind of the participants while other portions will vanish without trace or recall. I therefore do not exact upon the accused the onus of proving or recalling the entire episode comprehensively, blow by blow. Evidence of this nature must not be evaluated too scientifically or technically; but simply by being aware of the wide range of human reaction under extraordinary circumstances.

11. The two taxi drivers called to rebut the evidence of the accused but succeeded only in rebutting each other. Ganesan Arunasalam testified that on the occasion when he was with the other taxi driver Sahul Hameed and the accused, he and Hameed spoke in Malay so that the accused would not know what they were discussing. When Hameed took the stand he said that they spoke only in Tamil and was adamant that not once did they speak in Malay. On the other hand, Hameed denied any knowledge that Ganesan was occupying a flat at Kempas Road only to be promptly contradicted by Ganesan. I find neither witnesses reliable, and in particular, the facetious and flippant manner that punctuated his testimony.

12. Mr. Rajarh raised various defences including self-defence, provocation, exceeding private defence, and sudden fight. Had any of these defences succeeded the charge ought to be reduced to culpable homicide not amounting to murder. Hence, in view of my finding and judgment I need not review the law on these defences, but so far as the facts that may be relevant to these defences, I will set out my findings as follows. So far as the oral testimonies of the crucial witnesses of fact are concerned, and in this case, there was only the accused, I find her to be a forthright witness. Some parts of her evidence under cross-examination were patchy, but in this case, I am of the view that they were not intentional or affect in any way the substance of her integrity. She was not well educated and spoke through an interpreter, recalling an event that left her trembling and in fear. In these circumstances, her testimony was remarkable for its consistency, not only in court, but also against her police statements. Finally, it will be seen from the photographs that there were signs of a struggle if not a fight in the deceased's bedroom.

13. For the above reasons, I found the accused not guilty of murder, but I am satisfied that the prosecution had proved beyond reasonable doubt that the accused had committed the offence under s 322 of the Penal Code, namely causing grievous hurt. After taking into account the fact that she was genuinely remorseful, having asked her counsel to plead forgiveness from the family of Anjella Nagalingam whatever the outcome of the trial, the fact that she had no previous antecedents, and that the crime was committed without premeditation; and weighing all that against the fatal

consequences of her act, I sentenced her to four and a half years' imprisonment with effect from 14 December 2001.

Sgd:

Choo Han Teck
Judicial Commissioner

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