

Public Prosecutor v Chan Soi Peng
[2007] SGHC 184

Case Number : CC 27/2007
Decision Date : 24 October 2007
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Francis Ng and Jean Kua (Deputy Public Prosecutors) for the Prosecution;
Francis Ow (Archilex Law Corporation) for the accused
Parties : Public Prosecutor — Chan Soi Peng

*Criminal Procedure and Sentencing – Sentencing – Principles – Accused provoked by deceased
– Deceased was stabbed by a knife – Accused pleading guilty to culpable homicide not amounting to
murder – Accused remained at large for ten years before surrendering – Appropriate Sentence
– Section 304(b) Penal Code (Cap 224, 1985 Rev Ed)*

24 October 2007

Woo Bih Li J

1 The accused Chan Soi Peng (“Chan”) faced a charge of culpable homicide not amounting to murder. The charge stated:

That you, CHAN SOI PENG

On or about the 20th day of December 1996, sometime between 8.50pm and 9.38pm, at Block 78 Yong Siak Street #02-04, Singapore, did cause the death of one Tiew Yit Heng, to wit, by stabbing the said Tiew Yit Heng in the chest with a knife, which act was done with the knowledge that it was likely to cause death to the said Tiew Yit Heng, and you have thereby committed an offence punishable under section 304(b) of the Penal Code, Chapter 224.

2 Chan entered a plea of guilt to the charge. After considering a statement of facts which he accepted, I accepted his plea and convicted him accordingly. The offence carries a penalty of imprisonment for up to ten years or a fine or both.

3 Chan was about 31 years of age at the time of the offence. The circumstances in which the offence was committed were found in the statement of facts which stated the following:

THE ACCUSED

The accused is one Chan Soi Peng, a 41 year-old male Malaysian national, Malaysian Identity Card No. 651231-08-5769. At the time of the offence, he was working in Singapore as a freelance tile-layer.

THE DECEASED

2 The deceased is one Tiew Yit Heng, a male Malaysian national, Malaysian Identity Card No. 720212-08-5075, aged 24 at the time of his death. At the material time, the deceased was working in Singapore as a freelance plasterer and occupied rented premises at Blk 78 Yong Siak

Street #02-04 ("the flat") together with the accused and other tenants.

EVENTS LEADING TO THE DISCOVERY OF THE DECEASED'S BODY

3 On 20 December 1996 at about 9:38 p.m., the Police received a '999' call from one Tang Song Kooi ("Tang"), stating: "Occupant are fighting someone is injured. They used knife (*sic*)". The location of the incident was given as Blk 78 Yong Saik Street #02-04. Police and Civil Defence resources attended to the call and proceeded to the flat. The deceased was discovered lying on a blood soaked mattress beside a pool of blood in one of the flat's three bedrooms. At about 9:52 p.m., Miss Lisa Wee Eng Cheng of Ambulance No. 16 pronounced the deceased dead. At about 1:10 a.m. on 21 December 1996, Forensic Pathologist Dr Teo Eng Swee ("Dr Teo") conducted an external examination of the deceased at the scene and found a stab wound on the upper chest of the deceased, over the region of the sternal notch.

SUBSEQUENT INVESTIGATIONS

4 Investigations revealed that the flat's owner, one Thia Boon Teck, had rented out the entire premises to some 20 Malaysians working in Singapore at the material time, including the accused, the deceased, Tang and his wife. The flat had 3 bedrooms (Room 1, Room 2 & Room 3), a balcony, a living room, a toilet, a bathroom and a kitchen with a rear door. The deceased slept in Room 3 together with several other tenants while the accused shared Room 2 with another group of tenants. The deceased and the accused were not close and seldom spoke to each other.

5 On 20 December 1996 at about 8:50 p.m., around a dozen or so of the flat's Malaysian tenants, including the accused, the deceased, Tang and his wife, were inside the flat. Tang and his wife were inside Room 1 while the rest of the tenants were watching a television programme in the living room. The accused was seated under the windows in the living room while the deceased was seated closer to the television set, which was placed against the wall opposite the windows. In the midst of the programme, the deceased, who was carrying a bottle of liniment and smelt of alcohol, walked over to where the accused was seated and stood beside him, looking out of the windows. All of a sudden, and for no apparent reason, the deceased lightly pushed the accused's head twice.

6 The accused ignored the deceased, as he had previously been told by one of the other tenants that the deceased was "not so normal", and moved away from the deceased by shifting to the side. The deceased then told the accused in Cantonese that he was "stuck up" and "arrogant". The accused replied by explaining to the deceased that he was not being arrogant by ignoring him. After this exchange, the accused stood up and prepared to leave the flat for his dinner. It was at this point in time that the deceased struck the accused in the face with the bottle of liniment he was carrying.

7 The accused retaliated with his fists and a fight ensued. The accused and deceased struggled with each other from the living room of the flat into Room 2 before pausing briefly. The deceased then emerged from Room 2 with bloodstains on his right hand and sat at the entrance of Room 3. Seconds later, the accused emerged from Room 2 with blood all over his face. The accused then walked across the living room towards the rear of the flat where the toilet, bathroom and kitchen were located. The deceased went after the accused and both were embroiled in another scuffle moments later. In the course of the scuffle, the accused punched the deceased twice at his stomach region

8 Following this, the accused walked to the kitchen of the flat and returned to the living room with a fruit knife in his right hand. He advanced towards the deceased, who had moved to stand in front of Room 3. On seeing the accused approaching with the knife, the deceased picked up a mattress that was on the floor and held it in front of him.

9 The accused proceeded to thrust the knife at the deceased, who managed to fend off the blow with the mattress while simultaneously retreating into Room 3. The accused followed the deceased into Room 3 and thrust the knife towards the deceased's chest, with knowledge that this act was likely to cause death but without any intention to cause death or to cause bodily injury as is likely to cause death. The knife penetrated the deceased's chest and the accused then pulled the knife out of the deceased's chest. The deceased immediately began spitting out blood and eventually collapsed in Room 3, whilst the accused returned to his own room (Room 2).

10 The accused soon emerged from Room 2 and left the flat with the knife via the flat's rear door. As the accused was leaving the flat, he walked past Tang, who had just emerged from Room 1. Tang saw bloodstains in the flat and followed the trail of blood into Room 3 where he saw the deceased's body. He panicked and immediately left the flat together with his wife to call the Police from a nearby coffee shop.

11 Investigations revealed that the accused subsequently disposed of the knife at an unknown location and proceeded to seek out his friend, one 'Fei Kay Hoong'. He obtained some money from 'Fei Kay Hoong' which he then used to travel to Woodlands by taxi. The accused then boarded a private taxi and left Singapore for Malaysia at about 11.38pm that night through the Woodlands Checkpoint.

FORENSIC FINDINGS

12 A post mortem conducted by Dr Teo on 21 December 1996 revealed the presence of an incised wound over the deceased's sternal notch, as well as five other superficial incised wounds and various other bruises and abrasions on the deceased's body. Dr Teo further certified the cause of death as "Haemorrhage due to stab wound to the neck". ...

13 ...

ARREST OF THE ACCUSED

14 After becoming aware of the accused's involvement in the killing of the deceased, the Police sought the assistance of the Royal Malaysian Police in locating the accused. The Royal Malaysian Police eventually managed to establish that the accused had a younger brother working in Kuala Lumpur. The Royal Malaysian Police subsequently trailed the accused's younger brother and ascertained from him the accused's place of abode in Kuala Lumpur. The accused's younger brother later informed the accused and their elder sister that the Royal Malaysian Police were trying to locate the accused. Following this, the accused decided to surrender himself to the Royal Malaysian Police and did so on or about 11 January 2007. He was placed under arrest and was extradited to Singapore from Malaysia on 16 January 2007. On 18 January 2007, the accused was charged with the murder of the deceased.

PSYCHIATRIC REPORT

15 Following his return to Singapore, the accused was also sent for psychiatric assessment. In a report dated 5 March 2007 (Ref 2007-357-0), Dr Kenneth GWW Koh, Associate Consultant

Forensic Psychiatrist with the Institute of Mental Health, has indicated his opinion that the accused was not of unsound mind at the time of the offence and is fit to plead. ...

4 In *Public Prosecutor v Miguel Estella Bayos*, Criminal Case No. 27 of 1999, the accused and the deceased were Filipino seamen aboard a vessel. An argument broke out between them over some remarks and the deceased pushed the accused on the chest who almost fell. The two were separated by other crew members. The accused left and obtained a bearing scraper and returned with the scraper strapped to his waist and hidden. A while later, another argument broke out between the accused and the deceased. In the struggle which ensued, the accused took out the bearing scraper and stabbed the deceased twice in the chest. The accused was charged with having committed an offence under s 304(b) of the Penal Code. He pleaded guilty and was sentenced to imprisonment for five years.

5 In *Public Prosecutor v Katun Bee Binte S Ibrahim* [2004] SGHC 46, the accused was a woman charged with an offence also under s 304(b). She had stabbed her lover in the abdomen with a knife after a quarrel and after both of them had been drinking. She did not plead guilty and after a trial, I convicted her and sentenced her to imprisonment of three and a half years. In that case, the accused had had a very difficult life. She had raised her five children practically single-handedly. She had failed relationships with two men and was then involved in a relationship with the deceased. That relationship also did not turn out well. It was a frustrating one to her as he was spending money which she had earned on drinks and he was also abusive to her when drunk. Although I found that she was the one who took a knife from the kitchen and stabbed the deceased, I was also of the view that all her frustrations had come to a head when she did so. It was in those particular circumstances that I exercised compassion on her.

6 In *PP v Lim Boon Seng* [2004] SGHC 113, the accused had borrowed money from the deceased who was his friend. On 5 November 2003, the accused telephoned the deceased to ask for time to pay a debt of \$1,800. The deceased was unhappy and told the accused to wait for him at the accused's durian stall. When the deceased arrived, he shouted vulgarities at the accused and started hitting him with his fists. The accused tried to block the blows with his arms and backed away but the deceased continued to attack him. After retreating a short distance, the accused saw a knife and used it to stab the deceased once in the chest. The deceased collapsed and the accused threw the knife onto a grass verge. The accused then used a towel to press on the deceased's wound and shouted for help. The accused recovered the knife and told his wife to throw it away which she did. The accused pleaded guilty. In these circumstances, the court sentenced him to imprisonment for three years and six months.

7 In *PP v Oon Oon Sang Tee*, Criminal Case No. 11 of 2006, the accused was charged also under s 304(b). In that case, the deceased had been having an affair and her husband, the accused, was distraught by this. About ten days later and in the midst of an attempted reconciliation, the deceased told the accused she could not change the way he felt. In a fit of rage, the accused strangled the deceased to death. Apparently, the accused's mental responsibility was impaired. The court sentenced him to imprisonment for four years and six months.

8 In *PP v Lim Ah Seng* [2006] SGHC 122, the accused was also charged under s 304(b). The accused had been estranged from his wife, the deceased. He had been subjected to repeated physical and psychological abuse by the deceased. On the day of the offence, the deceased informed the accused that she wanted to go to the house of the accused's mother to see their six year old daughter. He told her to proceed on her own. In the evening, the accused returned to his own home. A short while later, the deceased arrived saying she did not have the keys to his mother's home. The deceased said she wanted to bring the daughter to Jakarta which the accused did not agree to. They

quarrelled. They then engaged in sexual intercourse at the invitation of the deceased. Thereafter, the deceased again raised the subject of taking the daughter to Jakarta. She said that if the accused refused, she would lodge a police report that he had raped her. They had another argument and she slapped him. She also told him she had a record with the Institute of Mental Health and it would be alright for her to kill him. She then rushed into the kitchen and tried to grab a knife but was stopped by the accused. She ran back into the bedroom and he followed her to stop her from throwing things around. The deceased slapped the accused again and strangled him. The accused retaliated by strangling her. After a while, her grip on his neck weakened and she fell. The accused tried to wake her up but to no avail. The accused then called his mother. When the police and other officers arrived, the accused was in the living room. He went to the kitchen and returned with two knives. There, he apparently stabbed himself in the thighs. Eventually, he surrendered himself.

9 Judicial Commissioner Sundaresh Menon said that that case was outside the precedents he was considering in view of the particular combination of extenuating circumstances. He sentenced the accused to imprisonment for two years and six months.

10 In *PP v Ng Say Hong*, Criminal Case No. 49 of 1997, a fight had broken out between the deceased and a friend of the accused in a KTV room at a lounge at Liang Court. The accused sought to intervene but stopped doing so when he was told it was a one-to-one fight. He walked out of the KTV room and was passed a penknife which he kept. Later, the deceased emerged from the KTV room and approached the accused. Upon seeing the deceased, the accused took out the penknife and pushed out the blade. The deceased threw a punch at the accused's face but missed and the accused swung the penknife to the deceased's head. The accused left the lounge and Singapore for Malaysia. He was subsequently arrested. He had an antecedent and was sentenced to imprisonment for seven years.

11 In the case before me, the defence stressed the provocative acts of the deceased and the fact that Chan had tried to avoid a confrontation with the deceased. This was one single fatal wound inflicted without premeditation. Chan's action in throwing away the knife was a knee jerk reaction of fear and panic. He had fled Singapore to go to Kuala Lumpur where he spoke to a sister. She in turn consulted a lawyer on the probable sentence he would receive and was told that murder attracted a mandatory capital sentence. She was also advised on legal fees should the accused claim trial. The accused's family was not able to raise the fees and he also saw it as a lost cause. He did not live with his family for the next ten years. Eventually, the sister sought advice from another lawyer who advised her of the possibility of a culpable homicide charge which does not attract a capital sentence. She suggested and he agreed to surrender to the Malaysian police. At about that time, his younger brother had also informed him that the police were inquiring about his whereabouts.

12 Chan had come to Singapore from Malaysia to look for work before he returned home to marry. The incident occurred in less than a week after his arrival. Chan had no antecedents.

13 The defence relied on *PP v Lim Boon Seng* as a precedent because there the accused was also not the aggressor. It was submitted that the only difference was the conduct of the accused in that case after the stabbing.

14 The defence also relied on what Menon JC said in *PP v Lim Ah Seng* at para 33:

I am unable to accept this submission. The superficial dissimilarity between the case at hand and the stabbing cases and the superficial similarity on the other hand with *Oon Oon* should not be allowed to obscure the search for justice in the case at hand. That search requires a consideration of every fact and circumstance which might help explain the seemingly inexplicable.

That includes such factors as whether the accused was a victim, whether he was provoked, whether he was being attacked, whether he was the aggressor and whether he used a weapon. The fact that no weapon was used in the present case is in my view an ameliorating factor compared to the stabbing cases and unless there are other circumstances in those cases that render them irrelevant, I consider that I should have regard to those cases and examine how the courts there approached their sentencing responsibility.

15 On the other hand, the prosecution stressed that although the deceased began the fight, the deceased was unarmed. The prosecution also stressed the conduct of Chan who had left the flat and disposed of the knife. He had remained at large for ten years and his surrender might have been brought about by the realization that the police were closing in.

16 The prosecution sought a custodial sentence approaching or on par with the sentences imposed in *PP v Ng Say Hong* (sentence of seven years) and *PP v Miguel Estella Bayos* (sentence of five years). The prosecution distinguished *PP v Lim Ah Seng* (sentence of two years and six months) as well as *PP v Katun Bee Binte S Ibrahim* (sentence of three years and six months) on the basis that there was a history of abuse in each of these cases.

17 Obviously no two cases are exactly the same. I agreed that there was a long history of abuse by the deceased in *PP v Lim Ah Seng*. Furthermore, it was the deceased who had come to the accused's residence, made a demand of him to bring their daughter to Jakarta, threatened him with a rape accusation and attacked him. The circumstances there were exceptional. In *PP v Katun Bee Binte S Ibrahim*, the accused was the aggressor and had not pleaded guilty but I had particular compassion on her for the reasons stated in [5] above.

18 In *PP v Oon Oon Sang Tee*, the accused was the aggressor but was mentally impaired.

19 I was of the view that *PP v Ng Say Hong* was a poor precedent for the prosecution to rely on. The accused there had armed himself before the deceased had approached him. Also, there was no provocation of the kind in the case before me. The accused did not surrender himself and also had an antecedent.

20 In *PP v Miguel Estella Bayos*, there was also no provocation of the kind in the case before me.

21 In *PP v Lim Boon Seng*, the accused was not the aggressor as in the case before me. The "commendable" conduct of the accused there was after the incident when he tried to stop the bleeding of the deceased and called out for help.

22 I was of the view that while an accused person's conduct after the event was relevant in the consideration of the appropriate sentence, the circumstances which led to the commission of the offence carried more weight. In the case before me, Chan was provoked not once but three times with the last provocation being a blow to his face before he retaliated. It was common ground that notwithstanding the first act of provocation, he had tried to avoid the deceased. It was the deceased who would not leave him alone. Even after the initial fight, it was the deceased who went after Chan. These circumstances carried the most weight in my mind. As for Chan's conduct after the fatal blow was inflicted, it would be unfair to focus on his disposal of the knife and his flight from Singapore and disregard his surrender after ten years on the run and his plea of guilt.

23 In the circumstances, I sentenced Chan to imprisonment for a term of three years and nine months from 16 January 2007 which was the date he was brought back to Singapore and was in remand.

