Public Prosecutor v Raffi Bin Jelan and Another
[2004] SGHC 120

Case Number : CC 17/2004

Decision Date : 07 June 2004

Tribunal/Court : High Court

Coram : V K Rajah JC

Counsel Name(s) : David Khoo and Shirani Alfreds (Deputy Public Prosecutors) for prosecution; First accused in person; Ahmad Nizam for second accused

Parties : Public Prosecutor — Raffi Bin Jelan; Badariah Binte Mastor

Criminal Law – Offences – Culpable homicide not amounting to murder – Penal Code (Cap 224, 1985 Rev Ed) s 304(b).

Criminal Law – Offences – Property – Robbery and gang-robbery – Robbery with hurt – Penal Code (Cap 224, 1985 Rev Ed) s 394.

Criminal Law – Statutory offences – Films Act – Possession of obscene films – Films Act (Cap 107, 1998 Rev Ed) s 30(1).

Criminal Law – Statutory offences – Films Act – Possession of uncertified films – Films Act (Cap 107, 1998 Rev Ed) s 21(1)(a).

Criminal Law – Statutory offences – Misuse of Drugs Act – Consumption of controlled drugs – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) s 33(4).

Criminal Procedure and Sentencing – Sentencing – Persistent offenders – Whether sentence of preventive detention ought to be imposed on accused – Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 12(2).

7 June 2004

V K Rajah JC:

1 Ahmad bin Yang Besar ("the deceased") led a lonely life. He was estranged from his family. He collected and sold cardboard for a living. At night, he slept in the void decks of Housing and Development Board flats in the vicinity of Tekka market along Serangoon Road. This had been his pattern of living for a decade or so. He had a very limited number of acquaintances. He was regarded by those who knew him as absorbed in nothing more than benignly making it through his hand-to-mouth existence, one day at a time. At the material time, on 31 August 2003, he was 74 years old.

2 The accused, Raffi bin Jelan, is now 37 years old. He is married to Badariah bte Mastor ("the co-accused") who is 28 years old. On 30 August 2003, at about 11.30pm, they were both at home when the accused suggested that they proceed to Orchard Road for an outing. The co-accused readily agreed.

3 Upon reaching Orchard Road, the accused purchased four bottles of "Long Island Tea" ("Tea"), an alcoholic cocktail. They leisurely consumed a bottle each while the co-accused kept the remaining two bottles in her handbag. Wandering aimlessly, they eventually found themselves in Serangoon Road and then ultimately at Tekka Market, by which point the remaining two bottles of Tea had also been consumed.

4 At about 2.00am, upon reaching a small garden near Block 663 Buffalo Road, the accused and

co-accused decided to head home. However, realising that he had only $3 and that it was too late to return home by means of public transport, the accused informed the co-accused that he would try and find money to pay for the taxi ride home.

5 The accused looked around and by chance spotted the deceased sleeping near a staircase at the ground floor of Block 664, Buffalo Road. He informed the co-accused that he would obtain the money from the deceased and proceeded to approach the deceased with the co-accused in tow.

6 Shaik Uduman, an illegal immigrant, was sleeping beside the deceased when he was rudely awakened by shouting. He saw the accused and co-accused standing directly in front of the deceased, who was now awake and sitting. He heard the accused yelling in Malay, ordering the deceased to, "*keluar duit, keluar duit*" ("take out your money, take out your money"). The accused also yelled some Malay expletives at the deceased and slapped him on both cheeks. The co-accused did not participate in this aspect of the deceased's ordeal. The deceased pleaded with them to leave him alone and asserted that he had no money. Angrily dismissing this and slapping the deceased again on both cheeks, the accused proceeded to forcibly remove the deceased's wallet and stole a few dollar notes. He then slapped the deceased wrathfully, yet again, after which he and the co-accused then abruptly walked away.

7 As they walked away, the deceased loudly and plaintively declared to Shaik Uduman in Malay, "You see this Malay, I am old already and he still wants to take my money. After that he also beat me." These words were the proverbial red flag that most unfortunately sealed the deceased's fate. He could neither have imagined nor anticipated the violence that would ensue. The accused and the co-accused were furious when they heard the deceased's remarks and turned incandescent. In an uncontrollable frenzy, they both commenced a vicious attack on the deceased, kicking him repeatedly without restraint. The deceased remained prostrate throughout this attack, and yet not content with kicking him, the accused started raining punches on the deceased as well. The deceased's repeated entreaties and pleas for mercy fell on deaf ears. Shaik Uduman's imploration was to no avail either; indeed, he was warned by the accused not to interfere.

8 As Shaik Uduman left the scene to secure assistance, he noted the co-accused retrieving a bottle from her handbag and smashing it against a wall. She gave half of the broken bottle to the accused and held on to the other half. There is no indication however that the broken bottle was subsequently used to inflict injury on the deceased. It appears that the bottle was broken in a move to further intimidate the deceased.

9 Police investigations subsequently revealed that the accused used a penknife belonging to the deceased to repeatedly slash his face. In addition, the accused stole another bundle of dollar notes that fell from the deceased's right trouser pocket while he was being assaulted.

10 A passer-by later attempted to restrain the accused. With the help of another passer-by, the accused and co-accused were detained at the scene until the police arrived.

11 When the police arrived at the scene, the deceased was observed to be lying motionless and face down, bathed in a pool of blood. His face was covered with multiple bloody lacerations. The accused was searched and a bundle of blood-smeared dollar notes was found on him. Nothing incriminating was found on the co-accused. A broken penknife and glass fragments from a broken bottle were also found at the scene.

The medical reports

12 On being admitted to hospital, the deceased remained unconscious. He was observed to have:

(a) multiple facial lacerations;

(b) fracture of occipital bone (skull); and

(c) head injuries with bleeding around the brain.

The deceased remained in a comatose state until his demise some two weeks later, on 13 September 2003. A pathologist certified the case of death as "pneumonic consolidation due to extensive intra-cranial injuries". He assessed that the injuries to the brain were the direct consequence of the external injuries sustained by the deceased and that those injuries were sufficient in the ordinary course of nature to cause death.

13 The accused and co-accused were sent for medical tests shortly after they were apprehended. The accused was found to have some alcohol in his blood sample and his urine tested positive for cannabinol derivatives. No trace of alcohol or drugs was found in the co-accused's blood and urine samples.

The charges and the pleas

14 The accused was charged with:

(a) Culpable homicide not amounting to murder (s 304(b), read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC"));

(b) Consumption of controlled drugs (s 33(4) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA"));

(c) Robbery with voluntarily causing hurt (s 394 of PC);

(d) Possession of uncertified films (s 21(1)(a) of the Films Act (Cap 107, 1998 Rev Ed) ("FA"));

(e) Possession of obscene films (s 30(1) of FA).

The co-accused was charged solely with having committed culpable homicide not amounting to murder pursuant to s 304(b) read with s 34 of the PC.

15 The co-accused pleaded guilty at the first available opportunity on 3 May 2004. The accused initially claimed trial on 3 May 2004 and informed the court he required legal representation. He claimed that the deceased had cut him on the cheek with his penknife and that the deceased had provoked the attack. He also alleged that at the material time he was intoxicated and under the influence of cannabis. I allowed him an adjournment to seek legal representation.

16 Soon after the adjournment, he changed his mind and pleaded guilty to the first three charges on 14 May 2004. The Prosecution and the accused have agreed that the remaining two charges be taken into consideration. The accused now accepts the Prosecution's factual account of

what happened in the early hours of that unhappy morning.

The antecedents

17 The co-accused has had only a single brush with the law, in 1994. She was detained for the purpose of drug rehabilitation between 1994 and 1995.

18 The accused, on the other hand, embarked on a life of crime when he was 22 years old. His first conviction was for theft from a dwelling house under s 380 of the PC, for which he served a three-week sentence of imprisonment. In 1989, he was admitted to a drug rehabilitation centre ("DRC") for a period of six months for being found to have consumed a controlled drug. On his release, he was required to subject himself to a regime of drug supervision for a period of 24 months. In 1991, he was again admitted to a DRC for a period of six months, subject to another regime of 24 months of drug supervision, upon his release.

19 In 1993, he was convicted of house-breaking and theft pursuant to s 454 read with s 34 of the PC and was sentenced to 24 months' imprisonment. A few months after his release in 1995, he was convicted of consuming a controlled drug, punishable under s 8(b) of the MDA. He was sentenced to one week's imprisonment and fined $2,000, in default of which he would serve three weeks' imprisonment. He served the three-week term of imprisonment. In 1996, he was convicted of a series of offences and was sentenced to a total of six years' imprisonment and 24 strokes of the cane. The offences were:

(a) two charges of robbery, punishable under s 392 of the PC;

(b) a charge of snatch theft, punishable under s 356 of the PC; and

(c) three charges of failure to report for a urine test, punishable under reg 12(3)(f) of the Misuse of Drugs (Approved Institutions and Treatment and Rehabilitation) Regulations (Cap 185, Rg 3, 1990 Rev Ed).

Sentencing

20 The Prosecution has rightly pointed out that there are a number of aggravating factors pertinent to this fatal assault of the deceased by the accused. It has submitted that the need to protect vulnerable and defenceless victims is an important consideration that should affect the severity of any sentence imposed. I accept this. Sentencing policy dictates that an offender who commits an offence against a vulnerable victim (this embraces the handicapped, incapacitated, children and the elderly) ought to be more severely dealt with by the court: *R v Allen and Bennett* (1988) 10 Cr App R (S) 466, *R v Boswell* (1982) 4 Cr App R (S) 317. It is apparent from the established facts that the accused singled out the deceased for the robbery because of the latter's overwhelming and evident vulnerability. He did not pick on Shaik Uduman, who was sleeping next to the deceased. He took advantage of the deceased's frailty both in robbing him and thereafter in raining blows and kicks on him. He heartlessly brushed aside the deceased's repeated entreaties to cease the attack. The total inability of the deceased to ward off the attack, respond or retaliate in any significant way did little if anything to temper or quell the viciousness of the assault on him. It was a wholly senseless and savage attack completely bereft of any mitigating features.

21 The savage use of the deceased's penknife is yet another aggravating factor that must be taken into account. Where a weapon has been utilised in the commission of an offence, the sentence

imposed must necessarily carry a deterrent message. It is completely immaterial that the accused did not bring the penknife with him with a view to committing a robbery. The fact remains that he found a weapon, at the scene of the crime, and did not hesitate to use it mercilessly and relentlessly to inflict grievous harm on the deceased. The numerous lacerations found on the face of the deceased are a deeply troubling feature of this violent and vicious assault, patently demonstrating that the accused is capable of uncontrollable rage and brutal violence. Wholly gratuitous violence over and above the violence intrinsically involved in the commission of an offence must, without exception, be treated with an altogether more severe and deterrent sentence; *cf R v Roberts and Roberts* (1982) 4 Cr App R (S) 8.

22 The accused and the co-accused kicked the deceased repeatedly. It must also be emphasised that the accused repeatedly punched the deceased despite his pleas and cries for mercy. In fact, it would seem that the deceased's sheer inability to defend himself was taken by the accused as an open invitation to exacerbate the viciousness of the attack. The accused behaved mercilessly and savagely. While he may have had, to some extent, an unquantifiable measure of "Dutch courage" conferred through drug and alcohol consumption, the fact remains that he knew what he was doing and must be attributed responsibility for his brutal conduct and the savage injuries he inflicted. While he attempted, in his mitigation plea, to express regret for the incident, he did not appear to be genuinely contrite and to accept responsibility for his conduct that morning. Until he decided to enter a plea of guilty, he continued to assert that the deceased had provoked him. Given the deceased's frailty and Shaik Uduman's evidence, I find such an assertion wholly implausible and categorically reject it.

Preventive detention

23 The Prosecution has submitted that this is an appropriate case for preventive detention in view of the accused's antecedents. In *PP v Wong Wing Hung* [1999] 4 SLR 329 at [9], Yong Pung How CJ succinctly summarised the underlying rationale for imposing preventive detention:

> [T]he purpose of imposing preventive detention is in order to protect the public. If the offender in question proved by his history of criminal behaviour to be a menace to the society, he should and must be put away for the protection and safety of the community at large.

In *PP v Perumal s/o Suppiah* [2000] 3 SLR 308 at [40] and [41], the learned Chief Justice further observed that the issue to be considered is:

> … whether the offender poses such a menace to society that it would be expedient for the protection of the public to subject him to a substantial period of incarceration. This stage of the enquiry should simply focus on the danger which the offender poses to the community at large. Whether he should be incarcerated under the regime of imprisonment or preventive detention is not the subject of the enquiry at this stage. …
>
> Once that threshold is met, s 12(2) [of the Criminal Procedure Code] stipulates that the offender shall be sentenced to preventive detention unless there are special reasons for not doing so.

24 It is clear from the statutory scheme in the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") that a sentence of preventive detention is an extreme measure that is prescribed for certain classes of habitual offenders and/or potential recidivists who are viewed as being beyond the reach of conventional sentencing and its underlying *raison d'etre*. Preventive detention has a wholly different

penological objective. The rationale for preventive sentencing is preventive control that extends beyond the parameters of conventional sentencing which requires the sentence to fit the crime. The overwhelming consideration is whether the court is satisfied in the circumstances that it is "expedient for the protection of the public" that an offender be incarcerated for a protracted period. If the court forms the view that such a repeat offender by virtue of his propensity to offend may yet again do so if unchecked, there would be a compelling case for the imposition of a sentence of preventive detention. Such an offender by reason of his past conduct and anticipated future conduct will be viewed as having forfeited his right to be accorded the considerations and attributes peculiar to conventional sentencing.

25 The goal of preventive detention is primarily to ensure that in instances where there is an appreciable and justifiable concern that a dangerous offender will commit an offence again, he ought not to be "afforded even the slightest opportunity to give sway to his criminal tendencies again": *Tan Ngin Hai v PP* [2001] 3 SLR 161 at [8]. Criminals who repeatedly eschew the norms of civilised behaviour cannot complain if harsh measures are taken to isolate them.

26 It is incontrovertible that the accused has a long, chequered and deeply disturbing history of criminal proclivity and behaviour. He has graduated radically and dramatically from an early apprenticeship in petty crime involving property to very serious criminal acts of robbery and, most recently, a brutal assault that claimed a life. He has been incarcerated in a DRC on at least two occasions, served out sentences for different periods in different prisons and received 24 strokes of the cane. His criminal record stretches over a period of almost two decades; the punishment the law has meted out to him in the past has neither inhibited him nor made any appreciable impact on his behaviour. He appears incapable of being rehabilitated either from his recidivist tendencies for crime or his propensity for drug consumption.

27 The accused has been unable to hold a steady job for the last two decades. His recent respites outside the confines of the prison walls have been short-lived. There appears to be a distinct correlation between his inability to be gainfully employed and the current history of offending. The pattern of stealing and robbing amply illustrated by the facts, in these charges, now appear to have crystallised into an almost instinctive one, resorted to without compunction or consideration being given to the consequences that may be visited upon his victims, the public, his family or even himself. An insouciant attitude to crime combined with a proneness to violence and a tendency towards drug and alcohol consumption can only result in a potent cocktail portending a disturbing capacity for further serious crime and mischief. This is a matter of grave concern. There appears to be every likelihood that as long as he is physically able, he will continue to engage in this senseless pattern of robbery and violence, exacerbated by his consumption of drugs and alcohol. I have anxiously reviewed the facts and antecedents to see if they reveal any legitimate mitigating or redeeming factors in favour of the accused. I can find none. This is by any definition a savage crime with several aggravating and disconcerting features. The accused's perturbing history of antecedents precludes any basis for applying conventional sentencing norms.

28 In my judgment, the Prosecution has made out a compelling case that inexorably necessitates a protracted sentence of preventive detention. The accused will clearly continue to be an unpredictable, uncontrollable and dangerous threat to the public at large if he is not incarcerated for a very substantial period. Indeed, in addition, he will also have a disturbing influence and a negative impact on all those who might associate themselves or live with him, including his wife, children and family members. I cannot also ignore the fact that but for the robbery he so callously and flagrantly initiated, the co-accused might have kept out of harm's way. The pre-sentencing report submitted to me classifies the accused as falling into the "high risk" category of criminal re-

offending. I am satisfied that this assessment has been conducted fairly and objectively.

29 The brutality of the accused's attack on the deceased is the most singular and disturbing feature of the charges. The accused's repeated and contumacious transgressions of the law, increasing in their severity with the passage of time, warrant the most severe sentence of preventive detention sanctioned by law. It is with certitude that I conclude that his criminal past will inevitably darkly mirror his future conduct if he is not incarcerated for a protracted period.

30 In the circumstances, I sentence the accused to a period of 20 years of preventive detention in lieu of any other sentence(s) of imprisonment. This sentence is to take effect from today. Section 12(2) of the CPC mandates that the sentence of preventive detention is only "in lieu of any sentence of *imprisonment*" [emphasis added] – it does not deprive the court of the power to concurrently impose a sentence of caning. Furthermore, in this case, s 394 of the PC dictates the mandatory imposition of a sentence of caning upon a conviction. Accordingly, I therefore also sentence the accused to 21 strokes of caning for having committed the offence of robbery, with the voluntary causing of hurt, pursuant to s 394 of the PC. I have made a minor adjustment to the number of strokes to be administered to take into account the plea of guilty; the aggravating features of the crimes preclude a more substantial reduction.

31 In so far as the co-accused is concerned, I had, on 3 May 2004, sentenced her to a sentence of imprisonment of five years backdated to the date of her arrest, 31 August 2003. I took into account the fact that she had no history of any violence or indeed crime, save for a spell of detention in a DRC; that she pleaded guilty at the very first opportunity and expressed genuine and perceptible remorse for her conduct were further mitigating factors. Her actions, while inexcusable, were not the primary cause of the demise of the deceased and she was, in the final analysis, essentially a supporting participant in this entirely senseless and unforgivable attack on an innocent and helpless old man.