

~~RC~~
~~GM482~~

Judgment
23, 1966

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

38 OF 1965

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :
CHUNG KUM MOEY @ AH NGAR Appellant
- and -
PUBLIC PROSECUTOR FOR SINGAPORE Respondent

10

CASE FOR RESPONDENT

RECORD

1. This is an appeal by special leave from the Judgment of the Federal Court of Malaysia (Appellate Jurisdiction) (Syed Sheh Barakbah, C.J. Malaya, Wylie, C.J. Borneo, Tan Ah Tah F.J.) dated the 22nd day of February 1965 dismissing the Appellant's appeal against his conviction on the 11th day of November 1964 in the High Court in Singapore (Ambrose J. and a Jury) of the offence of murder, upon which conviction he was sentenced to death.

p. 103
p. 100

p. 89
p. 88

20

2. The principal questions that arise in this appeal are

(a) Whether the learned trial Judge correctly directed the jury in terms of section 300 of the Penal Code, chapter 119, as to the state of mind required for the offence of murder.

30

(b) Whether, if he did not, the misdirection occasioned any miscarriage of justice and whether, upon the evidence in the case, a reasonable Jury properly directed must necessarily have arrived at the same verdict.

3. The Appellant was charged as follows:-

GM4.G-2

RECORD

p. 1

"That you, Chung Kum Moey @ Ah Ngar, on or about 7.15 p.m. at No. 374 Tanjong Katong Road, Singapore, committed murder by causing the death of one Chia Mui Song, and thereby committed an offence punishable under Section 302 of the Penal Code, Chapter 119."

4. The following sections of the Penal Code are relevant to this appeal.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. 10

300.culpable homicide is murder -

Firstly - if the act by which the death is caused is done with the intention of causing death; or 20

Secondly - if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

Thirdly - if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or 30

Fourthly - if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid. 40

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

24 APR 1957

25 RUSSELL SQUARE
LONDON, W.C.1.

5. The case for the prosecution was as follows:-

10 Tan Peng Puan testified that he was a shop assistant and had been employed by the deceased Chia Mui Song, who was his uncle, at the shop at 374 Tanjong Katong Road. On the 9th November 1963 at about 6.50 p.m. he went to the back door of the shop intending to go to his home at 9 Bournemouth Road. There were then in the shop the deceased, two girls named Goh Ah Hong and Goh Ah Eng, a servant girl named Bay Kim Geok, and two little children of the deceased. He was about to walk out of the back door when he was confronted by three men. The one in front took out a revolver and, speaking in Cantonese, ordered him to walk back in the shop, at the same time using one hand to twist the witness's left forearm behind his back. This man the witness identified as the Appellant. The other two intruders were armed with knives. The witness was made to walk right back into the shop, which was well lit, and up to the counter, near which the deceased was sitting. The Appellant's two companions guarded the three girls and ordered them not to move. The Appellant ordered the deceased to come out from the counter, which he did, and also told him not to move or he would open fire. The Appellant asked the deceased for the keys, but was not given them, and then went up to the deceased and tried to search him. The deceased brushed the Appellant's hands away and thereupon the Appellant opened fire on the deceased, hitting him on the right arm. A tussle then took place between one of the other two intruders and the deceased over a chair, during which time the Appellant stood behind the witness pointing the revolver at his back. The deceased and the man he was struggling with both let go of the chair and the deceased went to the telephone. As he touched the telephone, the Appellant opened fire a second time and the deceased collapsed, holding his chest.

20

30

40

Whereupon the Appellant and his two companions ran through the back door and along the back lane, chased by the witness. In the chase that ensued the Appellant and one of the men got away in a taxi, but the other man, who had separated from his companions, was detained by the witness and others and handed over to the police.

50 6. Goh Ah Hong and Goh Ah Eng, who were nieces of the deceased and Bay Kim Geok, a servant girl employed by him, gave a similar account of what happened.

RECORD

p. 35

Goh Ah Hong identified the Appellant as the intruder who had the gun. She heard but did not see the first shot, but did see the Appellant shoot her uncle when his hand touched the telephone.

p. 42

Goh Ah Eng could not identify any of the three intruders, as she was short-sighted and without her spectacles at the time.

p. 48

Bay Kim Geok identified the Appellant as the person who fired the gun at her employer, although the learned trial Judge, in his summing-up to the Jury, expressed the view that her identification could not be relied on.

10

7. Liew Kiat Sheong, a taxi-driver, testified that he took the Appellant and his two companions in his taxi to the vicinity of the shop shortly before the incident and was asked to wait for them. Three or four minutes later the Appellant and one of his companions came running to his taxi. The Appellant had a gun and his companion a knife. His engine was running and he wanted to drive off but the Appellant shouted at him "Don't run away or else I will shoot you." He was frightened. The Appellant and his companion got into the taxi. Inside the taxi the Appellant warned him not to make a report otherwise he would kill him. He drove them away and later they left the taxi.

20

It was suggested by the Defence that this witness was an accomplice. In summing-up to the Jury the learned trial Judge warned them not to accept his evidence in the absence of corroboration and expressed the view that his evidence that the Appellant carried a gun and threatened him with it should be rejected.

30

p. 2-6
27-29

8. Dr. Aaron, a pathologist, testified that on the morning of the 10th November 1963 he carried out a postmortem examination of the body of the deceased. He found, in addition to gun-shot wounds in the right fore-arm, two gun-shot wounds of the chest and abdomen, either of which would have been fatal. At least three shots had been fired, apparently from a distance of a yard or more.

40

Three bullets were in fact recovered - one from the body of the deceased where it was found to be lodged by Dr. Aaron in the course of his

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
24 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

examination, and two spent bullets which were found at the scene of the shooting by Tan Eng Bok, the police inspector who searched the premises.

10 9. The Appellant gave evidence in his own defence, denying that he knew anything of the shooting or that he was at the shop at 374 Tanjong Katong Road at all on the day of the incident, and called witnesses in support of his case. p. 60-73

10. The learned trial Judge, in summing-up to the Jury, directed them as to the state of mind required for the offences of murder in the following passages: p. 73-87

20 (a.) "A person commits murder if he causes the death of another person by doing an act with the intention of causing death. But that is not the only way of committing murder. For murder may be committed without any intention of causing death. If a person intends only to cause bodily injury, and commits an act which causes death, he commits murder if the injury intended to be inflicted by him is sufficient in the ordinary course of nature to cause death. In other words, he commits murder if the intended injury will most probably result in death. It does not matter if he does not know that the intended injury will most probably result in death. If the intended injury is not sufficient to cause death, what is the position? In such a case, the person committing the act which causes death commits murder if two conditions are fulfilled. First, he must know that the act is so imminently dangerous that it must in all probability cause death or bodily injury likely to cause death. Secondly, he must commit the act without any excuse for incurring the risk of causing death or bodily injury likely to cause death." p. 73

30

40

(b.) "Now the first question you have to decide in connection with the state of mind of the accused is this: Did he intend to cause the death of the deceased? It seems to me a reasonable possibility that when he fired the first shot he was merely trying to intimidate the deceased and make him hand over p. 85

RECORD

the keys. It also seems to me a reasonable possibility that when he fired the second and third shots he was aiming at the deceased's right forearm which had altogether four injuries and that his intention was only to prevent the deceased from telephoning the police. If you take the same view as myself, you will decide that there was no intention to cause death. For the rule is this: when a particular intention is an element of an offence, the burden of proving that intention lies on the prosecution, and if on the whole of the evidence there is room for more than one view as to the intention of the accused, the accused must get the benefit of the doubt.

10

Secondly, you have to consider the question whether the accused intentionally inflicted the bullet wound which penetrated the chest and also the bullet wound which penetrated the abdomen. Here again it seems to me a reasonable possibility that the accused was aiming at the forearm of the deceased to prevent the deceased from telephoning the police and that the bullets penetrated the chest and abdomen of the deceased either after passing through or without passing through his right forearm. If you take the same view as myself, you will decide that the injuries to the chest and abdomen were not intentionally inflicted by the accused. As I said earlier, if on the whole of the evidence there is room for more than one view as to the intention of the accused, the accused must get the benefit of the doubt.

20

30

Thirdly, you have to consider the question whether the accused had the knowledge that his act in aiming at the forearm was so imminently dangerous that it must in all probability cause death or bodily injury likely to cause death. To my mind it seems impossible to believe that the accused did not have such knowledge. It seems that one cannot possibly entertain any doubt as to the existence of such knowledge in the mind of the accused. You have also to consider the question whether the accused committed the act of shooting at the deceased's forearm

40

without any excuse for incurring the risk of causing death or bodily injury likely to cause death. It seems to me that if the accused's excuse for incurring the risk was that he only wished to prevent the deceased from telephoning the police, then I must tell you that that is no excuse for incurring the risk, as far as the law is concerned. As far as the state of mind of the accused is concerned the irresistible inference is that he had the knowledge that the act of shooting at the deceased's forearm was so imminently dangerous that it must in all probability cause death or bodily injury likely to cause death. It is clear to me beyond doubt that he had no excuse in law for incurring the risk of causing death or bodily injury likely to cause death. It seems to me, therefore, that the prosecution has established beyond reasonable doubt one of the states of mind required for the offence of murder.

Your main task is, therefore, to decide whether you fully accept the evidence of Tan Peng Puan and Goh Ah Hong that it was the accused who fired the bullets which penetrated the deceased's chest and abdomen. If you are fully satisfied on this point, that is, satisfied beyond reasonable doubt, you will find the accused guilty of murder. If you are left in reasonable doubt as to this point you will find the accused not guilty."

11. The Appellant was convicted by a majority verdict of five to two, in which verdict the learned trial Judge concurred, and was sentenced to death. p. 88

12. The Appellant appealed against his conviction and sentence to the Federal Court of Malaysia (Appellate Jurisdiction), which on the 22nd day of February 1965 dismissed the appeal. p. 100

40 13. Syed Shed Barakbah C.J. Malaya, delivering the Judgment of the Federal Court, said that there was no doubt that the murder was committed in the shop and the only question was whether the accused was the person who committed the murder. There was no misdirection or non-direction by the learned trial Judge and the appeal should be dismissed.

14. It is conceded that the learned trial Judge made no reference in his summing-up to a possible

RECORD

verdict of culpable homicide. This does not appear to have been a matter raised at the trial on behalf of the Appellant, whose defence was that he was not there, and, it is submitted, a verdict of culpable homicide was not a possible verdict upon any view of the evidence which the jury might reasonably have taken. It is submitted that the circumstances of the shooting and in particular the nature of the deceased's wounds, which were inflicted deliberately, at short range, in a well lit room and by more than one shot, do not raise, but on the contrary negative, any possible inference as to the Appellant's state of mind consistent with the lesser offence of culpable homicide. Accordingly, it was not incumbent upon the learned trial Judge to direct the Jury in terms of Section 299 of the Penal Code.

10

15. In directing the Jury as to the state of mind required for murder the learned trial Judge, it is submitted, correctly put before them the substance of section 300 of the Penal Code, in so far as it was relevant to the case. The effect of the fourth sub-section is that knowledge that the shooting was so imminently dangerous that it must in all probability cause death or bodily injury likely to cause death would make the shooting murder. It is submitted that this was the issue which the learned trial Judge invited the Jury to consider. It is further respectfully submitted that, assuming in favour of the Appellant, that the act by which the deceased's death was caused was not done with the intention of causing death, the learned trial Judge was fully justified in suggesting to the Jury that the circumstances raised an irresistible inference that it was done with knowledge of its danger, of the injury that would in all probability be caused and of its likely fatal consequence. In the result, there was no misdirection by the learned trial Judge, or, if there was, such misdirection was of no substance or materiality.

20

30

40

16. If, contrary to the Respondent's submission, there was any substantial or material misdirection or non-direction by the learned trial Judge, it is submitted that no miscarriage of justice occurred. Upon the evidence in the case, a reasonable Jury, properly directed, must necessarily have arrived at the same verdict and the Federal Court would have been entitled and bound by reason of the

50

proviso to section 60(1) of the Malaysia Courts of Judicature Act 1964 to have upheld the conviction, despite such misdirection or non-direction.

17. The Respondent respectfully submits that this Appeal should be dismissed and the Judgment of the Federal Court of Malaysia of the 22nd day of February 1965 affirmed for the following amongst other

10

R E A S O N S

1. BECAUSE the learned trial Judge correctly directed the Jury as to the state of mind required for the offence of murder and as to the law applicable to such offence.
2. BECAUSE a verdict of culpable homicide was not a possible verdict upon any view of the evidence which the Jury might reasonably have taken, and it was not incumbent upon the learned trial Judge to direct the Jury with regard thereto.
- 20 3. BECAUSE if there was any misdirection by the learned trial Judge, the Jury, properly directed, must necessarily have arrived at the same verdict.
4. BECAUSE no miscarriage of justice occurred in the conviction of the Appellant.
5. BECAUSE the Federal Court's said Judgment was right for the reasons therein stated.

MONTAGUE SOLOMON.

38 OF 1965

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

CHUNG KUM MOEY
@ AH NGAR Appellant

- and -

PUBLIC PROSECUTOR
FOR SINGAPORE Respondent

CASE FOR RESPONDENT

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside, E.C.2.

Respondent's Solicitors.