Leong Siew Chor v Public Prosecutor
[2006] SGCA 38

Case Number : Cr App 3/2006

Decision Date : 06 October 2006

Tribunal/Court : Court of Appeal

Coram : Choo Han Teck J; V K Rajah J; Woo Bih Li J

Counsel Name(s) : Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the appellant; Lau Wing Yum and Christina Koh (Deputy Public Prosecutors) for the respondent

Parties : Leong Siew Chor — Public Prosecutor

Criminal Procedure and Sentencing – Statements – Admissibility – Whether further investigation statements inadmissible if breach of Art 9(3) of the Constitution of the Republic of Singapore (1999 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Findings of Fact – Assessment of witness' veracity and credibility – Whether appellate court should disturb findings of fact based on witness' veracity and credibility

6 October 2006

Choo Han Teck J (delivering the grounds of decision of the court):

1 The appellant was convicted for the murder of Liu Hong Mei ("Liu") and was duly sentenced to suffer death. The facts found by the trial judge and upon which he convicted the appellant were as follows. The appellant, aged 51, was a factory supervisor earning $3,743 a month at a company called Agere Systems Singapore Pte Ltd ("Agere"). He was married with three grown-up children. He lived with his wife and two of his children in the flat known as Block 114, Lorong 3 Geylang, #09-53. One of the children was at the time staying in hostel. He became intimate with a production worker, Liu, in his team at Agere. Liu was 22 years old and came from the People's Republic of China to work in Singapore. Her last drawn pay was $1,400.60. The appellant worked in the night shift from 7.00pm to 7.00am the following day on a permanent basis and was Liu's immediate supervisor. Liu was promoted and given a pay rise in June 2004 on the recommendation of the appellant. It was also about this time that she became intimate with the appellant. However, they became discreet after an anonymous complaint was made that resulted in a warning being given to them by the management.

2 About a year later, on 13 June 2005, the appellant and Liu checked into Hotel 81 Gold in Geylang for a sexual tryst. While Liu was having her shower later on, the appellant searched her bag for a comb in the course of which he found Liu's bank Automated Teller Machine ("ATM") card, and he stole it from her. It was also undisputed that he knew Liu's personal identification number that was required to activate any transaction using the card. The couple checked out of the hotel at 3.00pm. From 5.00pm onwards, the accused proceeded to make a number of attempts to withdraw money from Liu's bank account. The appellant put on a baseball cap and cycled to ATMs variously at Tanjong Katong Complex, Joo Chiat Complex, Haig Road and Beach Road on 13 June 2005, and to Haig Road again on 14 June 2005, to withdraw money from Liu's account. The baseball cap prevented the appellant from being identified by the face. Three of those attempts were successful and he withdrew a total of $2,071.40. The appellant also purchased some sundry goods on 13 June 2005 using Liu's ATM card.

3 On 14 June 2005, Liu discovered that her card was missing and telephoned the appellant to tell him about it. She went to the police to lodge a report later that evening when she discovered that unauthorised withdrawals had been made from her account. The police advised her to notify her

bank and to ask that the bank gave her footage from the closed circuit television cameras covering the ATMs for viewing. She did that and then telephoned the appellant to tell him so. The next morning, 15 June 2005, the appellant asked Liu to go to his flat. His wife and eldest child were in Thailand on holiday, and the youngest child was out and was not to return until 6.00pm that day. The second child was at the hostel; hence, there was no one home for the greater part of the day. Liu had never been to the appellant's flat before. Sometime that morning, the appellant strangled Liu to death with a towel. He then took her body to the toilet in the kitchen and proceeded to dismember it. Thereafter, he wrapped the parts in newspapers and put them into plastic bags and cardboard boxes. He then disposed of the bags and boxes at various locations. It was the discovery of one of these bags by a public cleaner at the Kallang River that led to the swift identification of the body and detention of the appellant in the evening of 16 June 2005 for questioning. The appellant was charged on 17 June 2005. Eventually, all the bags were recovered save for the one containing Liu's feet. Forensic evidence was led to show that all the different parts belonged to the body of Liu Hong Mei. No defensive injuries were found on her, and Dr Cuthbert Teo, a forensic pathologist, testified that he could not ascertain the cause of death because of the dismemberment of the body and the decomposed head (that was the last piece to be found). He was of the opinion that the absence of defensive injuries could be attributed to the victim being taken by surprise, or to a mismatch in size between the attacker and victim, or that the victim consented to being strangled. At 4.40am on 17 June 2005, the appellant gave a statement to the police that was to be the basis of his defence. The relevant part of that statement as set out by the trial judge in the grounds of his decision (*PP v Leong Siew Chor* [2006] 3 SLR 290) at [32] is as follows:

> … She came to my house alone around 9 something to 10am. We spent our time together when she came. There was no sexual activity. There was no one else at home at that time. We then talked about our relationship. Sometime at about 11am, she proposed to me that, I leave my family and follow her back to China. I told her that I cannot leave my family. My family have not done anything wrong. I told her that for my age it is quite difficult to start a new life in China. It is going to be something new to me, new place and new environment. She told me that we can stay somewhere far from her hometown and she is willing to support me. I was reluctant and worry. She proposed to me that we die together. I told her that I dared not. I asked her if she is joking. She suggested that she 'go' first to show her sincerity. She made me promise to follow her after she 'go'. I took a towel from my room and wrapped it around her neck. At that time she was sitting on my bed facing the door. I pulled both ends of the towels [*sic*] with my hands. I was facing her when I pulled both ends of the towel. As I pulled both ends of the towel, I observed her face, I asked her if she was OK. She told me a bit pain. She said, OK, can…can.. I applied more force. I then did not let go. Her face turned blue. Not so nice already. When I looked at her face turned blue, I dare not do to myself. I gave empty promise. She did not struggle at all. She let me do. When I realized she died already, I think how to settle and handle this. …

4 The appellant was formally arrested at 5.55am that same morning and charged with the murder of Liu. A statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) was recorded from him. This is commonly known as the "cautioned statement" in that the accused person would be asked to state the facts that he wishes to rely on in his defence and that should he not so do, his defence may be less likely to be believed at trial. Consequently, the appellant made the following statement:

> From the 1st proposal from [Liu] that we cannot come to the conclusion, she suggest that we die together. To show her sincerity, she was willing to die first. However, she told me to ensure I must following her to "go". When I started kill her by using a towel on her neck, she only felt a little pain, but ask to go ahead. Since then I apply more force till she really no more breathing. However, when I look at the face turn blue and so ugly, I dare not do the same to myself but

just think how to dispose her body, so I cut her into pieces and clear from my house.

The appellant was taken back to his flat at Geylang later that evening and there a further statement was recorded from him. The trial judge had set out the relevant portions at [34] of his grounds of decision as follows:

> After she came inside the house, I showed her around my house because this is the first time she came here. She was wearing a white long sleeve blouse tucked out and blue faded jeans. I cannot recall how long later, but we talked in my room (master bedroom), while sitting on the bed. We had disagreement about me going back to China with her for good. At this age, I just couldn't leave my family. [Liu] brought up the subject about dying together and show her sincerity, she will die first and I have to follow suit. Just then, I saw my towel and I used it to strangle her. I was sitting at the corner of the bed nearest to the door. [Liu] was sitting on my left. I held the towel at both ends and looped it on the back of her neck. I then crossed the towel and pulled at both ends. She then lie down on her back and I continued to strangle her until she stop breathing about 10 to 15 minutes later. After seeing her state, I decided not to do on myself. Immediately, I thought of ideas to dispose the body. I was in a state of panic. …

All these statements, if accepted by the court, would have brought the appellant within Exception 5 of s 300 of the Penal Code (Cap 224, 1985 Rev Ed) which provides as follows:

> Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.

The appellant made two more statements, one on 21 June 2005 and another on 25 June 2005. These statements were admitted into evidence without challenge from the appellant. However, a statement recorded on 26 June 2005 was challenged by the appellant on the ground that it was not a voluntary statement because it was induced from him by a promise from the investigating officer that he would reduce the charge to a non-capital charge if the accused agreed to change two parts of his previous statements, namely, to now say that he (the appellant) was the one who suggested the suicide pact, and that he should delete the part about the idea of going to live with Liu in China. A *voir dire* was conducted and after which the trial judge was satisfied that the statement was a voluntary one, and so admitted it into evidence.

5 More statements were recorded from the accused on 28 June 2005, 30 June 2005, and 3 July 2005. These statements were not challenged by the accused including the one of 30 June 2005 in which he affirmed that his statement of 26 June 2005 was correct and accurate. The appellant challenged the admissibility of the statement of 26 June 2005 because in it, he contradicted himself and the basis for his Exception 5 defence when he stated:

> So when I was in the bedroom on the bed with her, I needed to know how much she loved me. I also needed to find out whether she would die for me. So I asked her why she loves me. She replied that I was a good husband, a good father, I took care of my family and she was happy being with me. From her answers, I could sense that more or less, maybe she might die for me. That was when I continued with my next question and told [Liu] "*Bu ran, wo man yi zhi shi*" (spoken Mandarin, meaning "Or else, why don't we die together"). I know that I dare not kill myself neither was I going to kill myself. I just wanted to hear whether [Liu] was willing to die for me. So since I asked her the question and she did not say 'no', I took it that she was willing to die together with me. However, Liu Hong Mei does not know my intention was actually for her to die and not we die together. Knowing the fact that she was willing to die for me, I know that she will not struggle or fight me when I decided to kill her. I actually have not even thought of the

method to kill her, like I said, I just wanted to find out how she feels about it first.

The appellant also stated in the first part of his statement of 26 June 2005 that Liu had given her ATM card to him and had freely told him her personal identification number so that he could withdraw $2,000 from her account for her. His statements to Dr Stephen Phang were consistent with the second part of his 26 June 2005 statement, which was inconsistent with his first part, and he thus repudiated the second part as well as his statements to Dr Phang. His evidence at trial was that he was told by the investigating officer to be consistent with the second part of his 26 June 2005 statement since his earlier statements were so incredible that no one would believe them.

6 The appellant's testimony in the witness stand was the same as that stated in his statements to the police made prior to 26 June 2005, *ie*, that he had made a suicide pact with Liu, but after killing her, he was unable to go through with his part of the agreement. The trial judge rightly summed up the burden on the appellant, when relying on the defence under Exception 5, to prove on a balance of probabilities, Liu's "express and … unsolicited" consent to be killed and that the "alleged suicide pact existed before and right up to the time of the killing" ([3] *supra* at [94] and [95]). The trial judge disbelieved the appellant's evidence that Liu made a suicide pact with him. Accordingly, the defence under Exception 5 failed, and the appellant was convicted of murder. The appellant appealed against this conviction.

7 In the appeal before us, Mr Subhas Anandan, counsel for the appellant, conceded that the appellant had taken Liu's ATM card and made the unauthorised withdrawals as stated at [2] above. He said that the appellant wished to confess to Liu at his flat on 15 June 2005, but before he could do so, Liu and he engaged in a discussion about their future together. She wanted the appellant to go back to China with her, but the appellant was torn between her and his family and ultimately rejected Liu's proposal. Counsel submitted that Liu then suggested that the two commit suicide together, and as a sign of her sincerity, offered to die first. The appellant agreed that their joint suicide would be "the best solution to their fate as star-crossed lovers". He then killed her by strangling her with a towel but lost his nerve before he could kill himself. Counsel's basis for this appeal was that the trial judge erred in admitting the statement of 26 June 2006. At the trial, counsel had argued that this statement should not be admitted because the appellant was induced to make it by the investigating officer and, further, that the appellant's constitutional right of access to counsel under Art 9(3) of the Constitution of the Republic of Singapore (1999 Rev Ed) had been breached. Article 9(3) provides that, "Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice." The trial judge did not accept Mr Subhas's argument that Art 9(3) had been breached. Consequently, counsel invited this court to review the judge's decision. His arguments before us were the same as that submitted before the trial judge.

8 In his argument here and below, counsel relied on *Jasbir Singh v PP* [1994] 2 SLR 18 ("*Jasbir*") and an earlier authority *Lee Mau Seng v Minister for Home Affairs, Singapore* [1969–1971] SLR 508 and accepted that these authorities have held that "the right to counsel is not an immediate one but one that would be granted within a reasonable time after the accused is arrested". His real argument was that by the time the 26 June 2005 statement was recorded from the appellant, he had not been given access to counsel. (The appellant was given access to counsel on 7 July 2005, but the alleged damage was already done by his making of the 26 June 2005 statement). Narrowing counsel's arguments further, it was held in *Jasbir* that it was not unreasonable to deny access to counsel for 14 days if the police had not completed its investigations. In the present case, the 26 June 2005 statement was made on the ninth day. Hence, Mr Subhas sought to distinguish the context between *Jasbir* and the present case. In this case, counsel argued that once an application was made to the subordinate court on 24 June 2005 (as was the case) then any further denial of a right to counsel

would be unreasonable. Secondly, counsel argued that because speedy access to counsel was granted in two previous cases it ought to have been granted in the case of this appellant. Counsel had accepted, and even advocated, that every such case must be treated on its own facts. On this point we agree with him and, therefore, found it unnecessary to dwell on this second argument.

9 We revert to Mr Subhas's first argument that on the present facts, it was unreasonable to deny the appellant a right to counsel. Contrary to counsel's submission, we are of the view that the fact that an accused had been fully co-operative with the police in the course of its investigations is, by itself, no basis for granting access, and more might be said on either side of such an argument. Neither do we see any crucial distinction between *Jasbir* and the present case. The application in *Jasbir* for access before the recording of the cautioned statement as opposed to the recording of a further investigation statement in the present case, without more, has no impact on the question of access. And more, indeed, is required, for a comparison of the two situations which cannot be adequately considered without arguments as to the role each of those statements play, and the effect of remaining silent in each case. It is not enough merely to say that this accused was denied access to counsel on the grounds given in this case. Counsel was inviting this court to make an important ruling on a constitutional point without sufficient material in law and evidence to sustain any cogent question of law. It may be that the police ought not deny a right to counsel in the narrow form of receiving advice on the right to remain silent, to the broadest form possible, but this is not the case to advance any such argument. It is too thinly supported on the facts; this is not the right case for the points of law alluded to. Perhaps counsel sensed that a major legal point needed to be expounded by this court, but unless the issues arise clearly from the evidence, and are fully argued, this court would not engage in issues of purely academic interest – that is not the function of this, or any court. The court's duty is not only to protect the rights of the accused, it has an equally strong duty to protect the rights of the public and the state.

10 Shorn of the issues that await to be decided elsewhere, this was, in effect, an appeal against a finding of fact by the trial judge that the statement of 26 June 2005 was wrongly admitted. In this regard, the trial judge rejected the contention that the appellant was induced to change his statement to the form in the 26 June 2005 version. He did so after considering the testimonies of the investigating officer and the appellant, and was satisfied that no such inducement was made. Without more, there is no basis for this court to say that the judge was wrong. It was his judgment, formed from evaluating the voice of accusation and the voice of denial. The appeal court has the transcript of the evidence, but the trial judge has more. He has the facial expressions and body movements, the nuances, the timing, and the direct view of how the evidence was being adduced. All that is as important as the silence between musical notes – that silence is part of the music. Irrespective of how many statements had been recorded or how many of such statements were contradictory, or incriminating, the ultimate test is the performance of the accused person in the witness stand. If he can explain the contradictions and the incriminating parts, and convinces the trial judge to accept his oral testimony, then the statements would be inconsequential. The appellant failed to achieve that in this case. The arguments presented before us did not indicate any reason why we ought to interfere in any of the findings of the judge below.

11 The entire case depended on whether the appellant could persuade the judge on a balance of probabilities (since he was relying on a specific statutory defence) that Liu and he had made a suicide pact, pursuant to which he killed her. The judge recounted the various instances and evidence that pointed to the implausibility of such a story and rejected it. The court did not find any indication that Liu was depressed enough to want to kill herself, or that there was any reason why she would have brought up the idea of asking the appellant to go to China. All that coincided with the appellant having been told by Liu that she was going to the bank to help identify the person who stole her money. By all accounts, the way the suicide pact was made seemed most unlikely. Having asked if

she would die for him, and claiming that she said she would, he promptly went ahead. There was no reconsideration, no discussion as to when they should do it, no discussion about getting their affairs in order – especially for the appellant who claimed to love his family so dearly; which was another point as to whether he had even thought of joining Liu in death at all. If not, there can be no pact at all, and it appears quite clearly that the trial judge did not believe that the appellant had any such intention. The trial judge did not believe that Liu had formed any intention of dying – whether by herself or with the appellant. Reviewing the evidence, even if only in print, and even disregarding the 26 June 2005 statement of the appellant, we would agree entirely with the trial judge's conclusions. Mr Subhas asked why should the more innocuous interpretation not be given to his client's story. We need answer that by reminding him that the burden in the specific instance was on his client once the fact of his killing Liu with a towel was not disputed. It was a burden that required him to make credible the many parts of an unusual and unlikely story; and he had also to convince the court that killing Liu to prevent the discovery of his theft of her money was not the motive for the crime. Counsel asked why anyone would commit a more onerous crime just to cover up a lesser one. The record shows that even that question did not escape the trial judge's consideration when he asked ([3] *supra* at [102]), "Why did the [appellant] kill his lover?" The learned judge concluded that the appellant felt he had too much to lose if Liu had gone to the bank and the thief's identity was subsequently revealed. So it was perhaps a mix of various factors, the thought of immediate safety coupled with a belief that he could get away with it. These are matters that the court process leaves to the trial judge. It is a matter for his judgment whether the question such as that posed by Mr Subhas sufficiently affects the verdict.

12 Accordingly, for the reasons above, we unanimously dismissed the appeal.

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