

Public Prosecutor v Rosli bin Yassin
[2012] SGHC 129

Case Number : Criminal Case No 29 of 2010
Decision Date : 25 June 2012
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Lau Wing Yum, Luke Tan and Toh Puay San for the Public Prosecutor; Wong Siew Hong (Infinitus Law Corporation) and Daniel Koh (Eldan Law LLP) for the accused.
Parties : Public Prosecutor — Rosli bin Yassin

Criminal Procedure and Sentencing – Sentencing – Preventive Detention

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 5 of 2012 was allowed by the Court of Appeal on 15 January 2013. See [\[2013\] SGCA 21.](#)]

25 June 2012

Woo Bih Li J:

Introduction

1 The accused person, Rosli Bin Yassin (“Rosli”), who is 52 years old, faced 19 charges. A copy of the charge sheet is annexed hereto as “Annex A”. The Prosecution proceeded with eight charges to which Rosli pleaded guilty. I accepted his plea of guilt and convicted him accordingly. He agreed to the other charges being taken into account for the purpose of sentencing. Unfortunately for Rosli, he had a history of convictions which brought him within s 12(2)(b) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (“CPC”).

[LawNet Admin Note: Annex A is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

2 The Defence argued against the imposition of preventive detention and alternatively, for less than ten years’ preventive detention. The Prosecution pressed for the maximum of 20 years’ preventive detention. On 11 May 2012, I sentenced Rosli to 12 years’ preventive detention commencing from the date of my order. Rosli and the Public Prosecutor have each filed an appeal against my decision on sentence.

The eight charges

3 I set out below in chronological order, the eight charges which Rosli pleaded guilty to:

- 10th charge - This was a charge of cheating with common intention under s 420 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed) (“Penal Code”). The victim was Sunarti. The maximum imprisonment term was ten years.
- 11th charge - This charge was similar to the 10th charge. The victim was Sunarti.

- 16th charge - This was a charge of criminal breach of trust under s 406 of the Penal Code. The victim was Zubaidah Binte Ali ("Zubaidah"). The maximum imprisonment term was seven years.
- 5th charge - This was a charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code. The victim was Choo Xue Ying ("Ying"). The maximum imprisonment term was for life.
- 3rd charge - This was a charge of theft under s 379 of the Penal Code. The theft was of items belonging to Ying. The maximum imprisonment term was three years.
- 6th charge - This was a charge of abetment of forgery for the purpose of cheating under s 468 read with s 109 of the Penal Code. The intended victim was Overseas-Chinese Banking Corporation Limited ("OCBC"). The maximum imprisonment term was ten years.
- 1st charge - This was a charge of cheating with common intention under s 420 read with s 34 of the Penal Code. The victim was Adros Bin Syed Omar ("Adros"). The maximum imprisonment term was ten years.
- 2nd charge - This charge was similar to the 1st charge. The victim was Adros.

4 I will now set out the facts relating to the eight charges. The facts are derived from the Statement of Facts which Rosli agreed to.

Facts relating to the 10th and 11th charges

5 The victim was Sunarti. She is 40 years old and holds an Indonesian passport. Rosli used an accomplice by the name of Jelly, an Indonesian who overstayed. She is 34 years old. Rosli and Jelly were staying at various places in Singapore at the material time.

6 On 15 August 2008, Jelly approached Sunarti who was having a meal in a coffee shop at Lorong 20 Geylang. Rosli was standing near Jelly. Jelly told Sunarti that Rosli had \$300,000 in a bank but needed a bank book to withdraw the money. She asked Sunarti to lend her \$150 to buy a bank book in order to withdraw the money and promised to give Sunarti \$1,000 after the money was withdrawn.

7 Sunarti agreed. Thereafter, both of them walked to the POSB bank located at Lorong 25 Geylang with Rosli following behind. Upon their arrival at the bank, Sunarti saw Rosli handing over a piece of paper which looked like a bank paper to Jelly. Jelly then placed her passport on a counter and also took Sunarti's passport and asked her for the \$150. She handed the money to Jelly. Following that, Jelly wrote both her name and Sunarti's name on the piece of bank paper. Thereafter, Sunarti was told to wait outside the bank and she did so. When Rosli and Jelly came out of the bank, they told Sunarti that the bank book would only be ready for collection the next day.

8 The trio then walked along Geylang Road and subsequently checked into Min Hwa Hotel. Jelly registered for the room using her passport and the trio stayed there.

9 The following morning (16 August 2008), pursuant to the same promise that Sunarti would be given \$1,000 upon the successful withdrawal of money from the bank and in furtherance of the common intention of both Jelly and Rosli, Jelly asked Sunarti for another \$100 to pay the hotel charges, which the latter gave. The trio then went to Lorong 25 Geylang to have their meal. Thereafter, they proceeded to the same POSB bank again.

10 While there, Sunarti was again told to wait outside the bank by Jelly. Rosli and Jelly then went into the bank. A short while later, both of them came out of the bank and told Sunarti that the money still could not be withdrawn. They subsequently returned to the hotel and stayed there for the next few days.

11 On 26 August 2008, Rosli told Sunarti to proceed to the POSB bank first and that he and Jelly would meet up with her there later. Rosli also said that they would be getting the money from the bank on that day. Before leaving the hotel, Sunarti lent Rosli her Nokia N80 handphone.

12 Sunarti went to the bank alone and waited for Rosli and Jelly. However, after an hour, there was still no sign of them. Sensing that something was wrong, she immediately called her own mobile number, using a public phone. Rosli answered and said that they were at Lorong 18 Geylang.

13 Sunarti then ran to Lorong 18 Geylang where she met Rosli and Jelly. The trio then took a taxi to the Immigration and Checkpoints Authority ("ICA") Building.

14 On their arrival at the ICA Building, both Jelly and Sunarti were told by Rosli to wait at the second level waiting area. After a few hours, Rosli still did not return. They tried to look for him but to no avail.

15 Jelly and Sunarti subsequently left the ICA Building. Along the way, Sunarti approached a man at a bus stop and sought his help. He then called the police.

Facts relating to the 16th charge

16 The victim was Zubaidah. She is 50 years old. At the material time, she was working as a cleaner at an MRT station.

17 On 12 October 2008 at about 9am, Zubaidah was carrying out her cleaning duty at an MRT station. Rosli approached her, introduced himself as "Ali" and claimed that he was working as a cleaner at the Geylang area. He told Zubaidah that his company was looking for cleaners and that he could get jobs at his company for her friends. In response, she told Rosli that she might introduce her friend to him. Thereafter, they exchanged contact numbers.

18 On the following morning (13 October 2008) at about 9am, Rosli called Zubaidah and told her to meet him at the coffeeshop located at the junction of Aljunied Road and Sims Avenue to discuss the job offer.

19 On the same day, at about 10am, both Zubaidah and her friend, one Mariam Bte Ahmad, arrived at the said coffeeshop. They met Rosli and started to discuss the job offer. At one juncture, Rosli told Zubaidah that he needed her handphone to contact his boss and further told her that he needed to see his boss at Tuas.

20 Zubaidah handed her silver Nokia handphone to Rosli. Both Zubaidah and her friend were then asked to wait for Rosli at the coffeeshop. However, after a few hours, he did not return. Zubaidah then tried calling the contact number which was given to her by Rosli but to no avail. Zubaidah lodged a police report on 16 October 2008.

Facts relating to the 5th charge

21 The victim was Ying. She is 47 years old. Prior to her demise, she was single and worked as a property agent.

22 Investigations revealed that Rosli became acquainted with Ying sometime in July 2008. Rosli and Ying had business dealings with each other shortly after that.

23 On 14 October 2008, Rosli introduced Ying to Jelly. Thereafter, Jelly and Rosli were driven by Ying in her car on several occasions. Rosli told Jelly that he and Ying were embarking on some business venture.

24 On 16 October 2008, sometime in the morning, Jelly went to the Geylang East Community Library with Rosli and Rosli told her that he was expecting to meet Ying there. On the same day, at about 2pm, Rosli told Jelly that he was leaving the library with Ying for some business. He told Jelly to wait for him at the library.

25 Rosli and Ying then travelled in Ying's car to Lorong Sesuai. Only Rosli and Ying were in the car when Ying stopped the car at Lorong Sesuai to discuss the money which Rosli alleged was owed to him by Ying.

26 An argument broke out between them while they were in the car. During the argument, Rosli punched Ying's head and face many times. Rosli also kicked Ying's left thigh area.

27 Rosli then suggested that they discuss the matter outside the car. Both Rosli and Ying alighted from the vehicle to discuss the matter further. At that time, Ying said that she would call the police. On hearing this, Rosli snatched Ying's mobile phone away from her. He then struck Ying on her head several times and also punched and kicked her. She fell down.

28 Rosli carried Ying's body to the base of a slope at Lorong Sesuai. She subsequently died from the head injuries caused by Rosli.

29 Rosli then drove away in Ying's car but collided the car into a tree while doing so. He then drove the car from Lorong Sesuai to Jalan Kubor and removed Ying's laptop and her handbag and its contents from the car which he abandoned. The contents were as stated in the 3rd charge.

30 On the same day, at or about 4pm, while Jelly was still at the library, she received a call from Rosli. Rosli told Jelly to meet him at a coffee shop located at Sungei Road. When she arrived at Sungei Road, Rosli was seen with some of Ying's belongings. The belongings included a laptop and a brown handbag. Rosli subsequently sold the laptop for \$300 and kept some of the credit cards and cheques that were found in Ying's handbag.

31 Ying's body was discovered a few days later on 20 October 2008 by a man who detected a strong stench when he was jogging along Lorong Sesuai.

Facts relating to the 6th charge

32 The intended victim was OCBC. As will be recalled from the events set out above in respect of Ying, Rosli had taken her handbag. One of the items in the handbag was Ying's cheque book for her account with OCBC.

33 On 18 October 2008 at about 1pm before meeting Adros, Rosli instigated Jelly to forge Ying's signature on various cheques, including one in respect of Ying's account with OCBC bearing number

449312. For reasons which will be elaborated below, Adros wrote the sum of \$500,000 and his name as payee onto the cheque. Adros subsequently banked the cheque into his POSB account.

34 The purpose of Jelly's forgery was to deceive OCBC into believing that the cheque was signed by Ying and to credit Adros' account with the sum in question.

Facts relating to the 1st and 2nd charges

35 The victim was Adros. He is 46 years old. He had known Rosli before the commission of the offences.

36 On 18 October 2008 at or about 1pm, Adros met with Rosli and Jelly at Marine Parade Food Centre. Rosli introduced Jelly as his wife.

37 Rosli told Adros that he had recently inherited his father's property worth a few million dollars and asked Adros if he was interested in setting up a business venture involving a coffeeshop with him. Rosli further said that he would help Adros by giving him money to set up the business. Adros was interested in the proposal. Thereafter, Rosli showed Adros a few blank but signed blank cheques and claimed that they had been issued by his lawyer to him. In actual fact, the cheques belonged to Ying and Rosli had asked Jelly to sign three of the cheques earlier, before the meeting with Adros.

38 Rosli told Adros that he could not withdraw the money himself as he did not have a bank book and asked Adros to put his own name on one of the cheques. He further told Adros that he wished to borrow some money from Adros and that when the cheque was encashed and honoured by the bank, Adros could deduct the money that was borrowed from him from the amount obtained and he would also give Adros some money for helping him. Rosli then gave Adros one of the signed cheques (OCBC cheque number 449312 bearing the name of Ying) and told Adros to fill in the amount of \$500,000. Adros agreed to the arrangement and did as he was told by Rosli.

39 Thereafter, the trio proceeded to a POSB bank located at Suntec City where Adros deposited the cheque into his bank account.

40 Later, on the same day at or about 3pm, the trio went to Haig Road. While there, Rosli and Jelly asked Adros to advance them a sum of \$1,400 pending the clearance of the cheque as per their previous arrangement and he did so. Rosli kept \$400 while \$1,000 was handed to Jelly.

41 On 20 October 2008 at or about 4pm at Haig Road Food Centre, Rosli again asked Adros for another loan, this time for a sum of \$10,000. This was pursuant to the arrangement previously agreed to by the trio whereby Adros would be repaid when the cheque for the sum of \$500,000 had been honoured by OCBC. Adros accordingly issued and delivered a POSB cash cheque for \$10,000 (cheque number 522082) to Rosli.

42 On 21 October 2008 at or about 9.04am, Jelly obtained \$10,000 from Adros' POSB cash cheque using her Indonesia passport at DBS Bank, Marine Parade branch.

43 On 21 October 2008, Adros received a call from POSB informing him that the OCBC cheque bearing number 449312 for \$500,000 which had been banked into his bank account had been rejected as the signature was different from the authorised one. When this happened, Adros tried to contact Rosli but he was unsuccessful. The following day (22 October 2008), Adros received a Returned Cheque Advice (B080280). He then tried to locate both Rosli and Jelly again, but to no avail. Hence, Adros decided to lodge a police report.

Memorandum of Certified Previous Convictions

44 A copy of the Memorandum of Certified Previous Convictions ("MCPC") of Rosli is annexed hereto as Annex B.

[LawNet Admin Note: Annex B is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

Submissions on sentencing

45 It was common ground that, in view of the MCPC, Rosli qualified for preventive detention under s 12(2)(b) of the CPC. Once its requirements are met, that provision stipulates that, "if the Court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time ..., the Court, unless it has special reasons for not so doing, shall pass, in lieu of any sentence of imprisonment, a sentence of preventive detention" of between 7 to 20 years.

46 If I was not minded to impose a sentence of preventive detention, then under s 18 of the CPC, I was obliged to impose at least two consecutive sentences of imprisonment for the offences for which Rosli had been convicted.

47 The Defence stressed that all of Rosli's previous and present convictions were for petty offences save for the one where he killed Ying. They submitted that that violent offence was uncharacteristic of him and that it was his first violent offence. They submitted that the attack on Ying was not premeditated. They also submitted that he was not beyond redemption or too recalcitrant for reformation, and that a prolonged period of incarceration would not help him to integrate into society after serving his sentence. For that last point, they relied on a report dated 27 February 2012 by Dr Tommy Tan, a clinical psychiatrist. The report stated at p 2:

There are various factors that contributed to his high risk of offending:

- a. Mental retardation,
- b. Lack of occupational skills,
- c. Lack of social support,
- d. Lack of family support,
- e. Impulsive behaviour,
- f. Lack of remorse.

As to whether Mr Rosli is suitable for treatment and rehabilitation, the answer is yes. His low IQ is inherent and there is nothing that can be done about it. Occupational and social skills training, medication and psychotherapy can resolved [*sic*] some of these factors. Social support can be met by external agencies such as a halfway house or a nursing home.

The factors that cause Mr Rosli to be at high risk of re-offending cannot be address [*sic*] by psychiatry alone. I am of the view [that] unless these are adequately and suitably addressed, Mr Rosli will remain a significant risk of offending after he is released. If he is sentenced to a lengthy period of preventive detention, his risk can only be increased because he will become

institutionalised and lose any minimal skills and supports he now possesses.

48 I add that in an earlier report dated 3 October 2011, Dr Tan had referred to Rosli's mental retardation as mild. There was also no suggestion by any medical expert that Rosli was not suitable for preventive detention by reason of his physical or mental condition.

49 If preventive detention was to be ordered, the Defence submitted that ten years was an appropriate starting point. They also submitted that Rosli's period of remand since 1 November 2008 should be taken into account. Accordingly, any sentence for preventive detention should be for less than ten years.

50 The Defence relied in particular on *Public Prosecutor v Perumal s/o Suppiah* [2000] 2 SLR(R) 145 ("*Perumal*"). The first paragraph of the headnote states:

The respondent pleaded guilty and was convicted on a charge of voluntarily causing hurt with a dangerous weapon and a charge of drug consumption. The respondent had a lengthy history of previous convictions since 1979. He had a total of 17 convictions for a variety of assault offences, including an offence of culpable homicide not amounting to murder, theft offences and drug related offences. He was also admitted to drug rehabilitation centres on three occasions and had been placed under drug supervision on four previous occasions.

51 The district judge there declined to impose preventive detention and imposed a sentence of seven years' imprisonment and six strokes of the cane for the two charges. On appeal by the prosecution, the High Court imposed preventive detention for ten years. As mentioned above, the Defence had submitted that Rosli's history did not involve any violent crime, unlike that of the accused person in *Perumal*.

52 The Defence acknowledged that in *Public Prosecutor v Raffi Bin Jelani and another* [2004] SGHC 120, the High Court had imposed 20 years' preventive detention, but they submitted that the facts there were different and, in particular, the court there had concluded that the accused was incapable of being rehabilitated, which they submitted is not the case for Rosli.

53 The Prosecution stressed that there was a high risk of re-offending as Rosli lacked remorse, a point not disputed by the Defence. It is worth noting, however, that the Defence submitted that the risk of re-offending is confined to non-violent crimes.

54 The Prosecution submitted that once Rosli turned to crime, he did not stop. From 1991 to 2008, he had been convicted of about 16 offences including cheating, theft and forgery. As can be seen from the MCPC, he had even been sentenced to eight years of preventive detention in April 1999 on charges of cheating and dishonestly inducing the delivery of property. The Prosecution elaborated that even then, he escaped in the last stage of serving that sentence. After being caught, he served the rest of that sentence and another sentence for his escape. After his release, he continued to cheat and was sentenced in April 2008 to 12 months' imprisonment on two charges of cheating and dishonestly inducing the delivery of property. He was released on 12 June 2008 but, within less than two months, he began to commit a series of offences which resulted in the current 19 charges being pressed against him.

55 The Prosecution submitted that Rosli had engaged in a career of crime since 1991 which escalated to causing the death of an innocent woman whom he left to die and whose cheques he stole in order to commit a further offence.

56 The Prosecution submitted that Rosli is a menace to society. Relying on [40]-[41] of the judgment in *Perumal*, they also submitted that once the court was satisfied that the public ought to be protected from Rosli, then the court must impose preventive detention unless it has special reasons not to do so. There were no special reasons in Rosli's case.

57 They also referred to [38] of the judgment in *Perumal* where Yong Pung How CJ ("Yong CJ") stressed that preventive detention is "essentially aimed at the protection of the public while [imprisonment] reflects the traditional policies of prevention, deterrence, rehabilitation and retribution".

58 They submitted that 20 years' preventive detention was appropriate and no discount should be given for Rosli's remand since 1 November 2008.

59 The Prosecution tendered a table of precedents for sentences of preventive detention for which I am grateful. *Perumal* is one of the cases included in the table. It will be recalled that *Perumal* was a case in which the accused person had committed a violent crime before.

60 However, in the earlier case of *Heng Jong Cheng v Public Prosecutor* [1999] 1 SLR(R) 769, there was no antecedent of a violent crime. The antecedents involved housebreaking and theft by night and concealment or disposal of stolen property. The accused person there was then facing 23 charges of abetment of cheating, one charge of abetment of attempted cheating and one charge of affray. Yong CJ imposed a sentence of 20 years' preventive detention.

The court's reasons

61 There is no rule to say that preventive detention is restricted to cases where the antecedents or current offences involve a violent crime. However, naturally, if violence was involved in the past or present offences, the argument for preventive detention becomes stronger than where no violence had been committed.

62 Similar considerations apply when one is considering whether to impose the maximum preventive detention of 20 years.

63 In Rosli's case, there was no violent offence in the past but his proclivity for crime has escalated and culminated in a violent crime which resulted in the death of an innocent person. True, that appears to be uncharacteristic of him. It is also true that he was not trying to cheat Ying and so the background leading to her death was not connected to his cheating habits.

64 On the other hand, I was satisfied that his proclivity to cheat others made him a menace and made it expedient to protect the public. The facts surrounding the present offences for which he was convicted, other than the offence under the 5th charge, showed that he was a cunning predator of naive members of the public. Furthermore, he lacked remorse and was incorrigible.

65 While it was uncharacteristic of him to resort to violence, the fact that he did do so was worrying, especially when it resulted in death. His callous conduct in dumping Ying's body and stealing her cheques to cheat yet again once more illustrated his lack of remorse.

66 As for Dr Tommy Tan's opinion that the risk of offending will increase under preventive detention, I was of the view that this was not a special reason to persuade me to withhold preventive detention.

67 This did not mean that we should give up entirely on Rosli. The programme under preventive detention does also try to assist Rosli to fit into society. The Prosecution set out the following stages of preventive detention in para 21 of their Further Supplementary Submissions on Sentence:

21. In any event, it is submitted that the accused's needs will still be catered for even if preventive detention is imposed. Regulation 15 of the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010 states that "[a] sentence of preventive detention shall be served in three stages in Changi Prison".

(a) During the first stage, a prisoner will be treated like prisoners serving a sentence of imprisonment.

(b) As for the second stage, Regulation 18 provides that "[p]risoners serving sentences of preventive detention shall be accommodated in a separate part of the prison, and shall not be allowed to associate with prisoners serving a sentence of imprisonment, except in approved cases in the course of industrial employment". During the second stage, a prisoner may become eligible to earn privileges similar to those allowed to a prisoner serving a sentence of imprisonment.

(c) As for the third stage, Regulation 22 provides that "[d]uring the third stage every effort shall be made, by special industrial and social training and otherwise, to fit a person to take his place in normal social life on discharge". Thus, the third stage essentially serves as a prelude (although not a necessity) and as preparation for the offender to possibly be released on licence ..., subject to his "character, conduct and prospects" being considered to determine his suitability for such release.

68 The Prosecution informed me that the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010 would be applied in Rosli's case and, in any event, such regulations were similar in substance to their predecessors.

69 I was of the view that I should impose a sentence of preventive detention. The remaining issue was the length of the sentence.

70 In my view, the Prosecution's call for 20 years was clearly excessive in the circumstances, especially bearing in mind that there was no history of violence and no premeditation in causing Ying's death. The Defence's submission of ten years as a starting point was on the low side bearing in mind Rosli's past and present offences and the sentences Rosli had served. I was of the view that, on the facts before me, 15 years would be appropriate as a starting point without taking into account any period of remand.

71 The question which I then considered was whether the court was precluded from giving a discount by taking the period of remand into consideration. Strictly speaking, this is not the same as imposing a sentence of preventive detention with retrospective effect although one may argue that the outcome is substantially the same in both cases.

72 In *Public Prosecutor v Rahim bin Basron* [2010] 3 SLR 278, the Prosecution argued that a court could not impose a sentence of preventive detention with retrospective effect. The Prosecution also argued that, in any event, the backdating of a sentence was not a matter of right for the accused person and that since the objective of preventive detention is to protect the public from menaces, the accused person should not be given a discount. Tay Yong Kwang J did not appear to favour the latter argument. He said at [57]:

... I am not sure there is a difference in principle in the treatment of the period spent in remand when imposing preventive detention on the one hand and when ordering imprisonment on the other since, in both cases, the public is protected and the accused has his liberty curtailed while he is in remand.

73 However, on the facts of that case, Tay J decided to impose the maximum 20 years of preventive detention. Tay J did not decide whether a court is precluded from imposing preventive detention retrospectively.

74 I was of the view that even if a court was so precluded, there was nothing to preclude a court from taking into account the period of remand. The court has a discretion whether to take the remand into account or not and, if it does take the remand into account, a discretion to determine the amount of discount. I was also of the view that there was no reason in principle to ignore a period of remand although in the present case, the Prosecution submitted that no discount should be given for the remand.

75 Neither side was to be blamed for the length of remand because, apparently, Rosli initially faced a charge of murder for which there was a trial before another court until the charge was reduced. In all the circumstances, I was of the view that it was just to take into account the fact that Rosli had been held in remand since 1 November 2008.

76 Accordingly, I imposed a sentence of 12 years' preventive detention from the date of my order.