

Public Prosecutor v Rasheed Muhammad and another
[2017] SGHC 29

Case Number : Criminal Case No 60 of 2016
Decision Date : 17 February 2017
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ong Luan Tze, Houston Johannus and Kong Kuek Foo (Attorney-General's Chambers) for prosecution; Wong Siew Hong (Eldan Law LLP), N Sudha Nair (Lexcompass LLC) and Favian Kang Kok Boon (Eldan Law LLP) for first accused; Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co), Dhanaraj James Selvaraj (James Selvaraj LLC) and Jerrie Tan (Eugene Thuraisingam LLP) for second accused.
Parties : Public Prosecutor — Rasheed Muhammad — Ramzan Rizwan

Criminal Law – Offences – Murder

[LawNet Editorial Note: The appeals to this decision in Criminal Appeal Nos 7 and 8 of 2017 were dismissed by the Court of Appeal on 28 September 2017 with no written grounds of decision rendered.]

17 February 2017

Judgment reserved.

Choo Han Teck J:

1 On 11 June 2014, an 81-year-old man, Tan Tin Loke, struggled to move a brown and grey luggage bag (under the Swiss Polo brand) along Syed Alwi Road. Some other men tried to help him. They were told that there was a dead body inside the bag. A man's torso, without his lower limbs, was later found to have been stuffed into the luggage bag. That torso has been identified as that of one Muhammad Noor's.

2 From camera footage taken from the Mustafa Centre nearby, the police saw two men leaving the store with a jig-saw and two luggage bags. Further investigations led the police to 6 Rowell Road where they interviewed one Neeraj Chandna, one of the owners of the lodging house, and he identified one Rasheed Muhammad and one Ramzan Rizwan as his tenants. Both men were arrested at about 3pm on 12 June 2014. Following his arrest, Rasheed led the police to the Muslim cemetery at Jalan Kubor where Rasheed and Ramzan had abandoned a black Swiss Polo luggage bag containing Muhammad Noor's legs.

3 Rasheed, the first accused, is 46 years old. He is from Pakistan and has a wife and eight children there. He arrived in Singapore on 19 May 2014 to earn money to get his daughters married. Ramzan, the second accused, is 28 years old and is also from Pakistan. He too is married, and he has three children. He too came to Singapore in May 2014 although he cannot remember the exact date. They are friends and are also distantly related. Rasheed stayed in Room 44 at 6 Rowell Road together with one Muhammad Noor, 59 years old at that time. Ramzan stayed in the same house but in either Room 24 or 42 on the ground level.

4 Both Rasheed and Ramzan face a charge of committing murder with common intention under s 302(1) read with s 34 of the Penal Code (Cap. 224, 2008 Rev. Ed), by causing the death of

Muhammad Noor on 11 June 2014 at Room 44, 6 Rowell Road, Singapore. The prosecution's case is that they killed Muhammad Noor with the intention of causing his death (s 300(a) of the Penal Code).

5 Associate Professor Gilbert Lau ("A/P Lau"), a forensic pathologist, examined Muhammad Noor's corpse and concluded that the death was "consistent with smothering". He found various other injuries on the body. These included abrasions across the neck and a fracture at the base of the thyroid cartilage, but he believed that these injuries might have been caused after Muhammad Noor had already died, or when he was "practically dead". The reason lies in the conspicuous absence of haemorrhage in those areas.

6 Rasheed and Ramzan do not dispute that they were in Muhammad Noor's room at the time of the attack, although Ramzan claimed in his oral testimony that he ran out of Room 44 whilst Muhammad Noor was still alive. They blamed each other for Muhammad Noor's death. Rasheed claimed that although he gambled with Muhammad Noor, he did make a small profit of \$200 to \$300 overall. He said it was Ramzan who lost money, and that it was Ramzan who wanted to kill Muhammad Noor. Rasheed claimed that he helped Ramzan in the murder because Ramzan was a drug addict and dangerous. He (Ramzan) had threatened harm to Rasheed's family if he refused to help. Rasheed claimed that he was thus terrified into helping Ramzan kill Muhammad Noor.

7 Ramzan, on the other hand, testified that he lost \$1,100 to Muhammad Noor gambling with him on 9 June 2014. He and two of his aunts as well as another man (also named Rasheed, but not the first accused) went to implore Muhammad Noor to return the money to Ramzan. Muhammad Noor did not return the money, and on 11 June 2014, Ramzan joined Rasheed to gamble with Muhammad Noor again. Midway through this session, which was in Room 44, Ramzan pleaded with Muhammad Noor to return his money. Muhammad Noor refused and Rasheed suddenly reached across Muhammad Noor's body and smothered him with his (Rasheed's) shirt. He instructed Ramzan to hold the shirt over Muhammad Noor's mouth, and as Ramzan was doing so, Rasheed strangled the accused with a string, described in court as a 'nara' or the string that comes with Punjabi pants. Rasheed had also testified that it was Ramzan who took his (Rasheed's) shirt and covered Muhammad Noor's face.

8 A/P Lau testified that the marks on Muhammad Noor's neck may have been caused by strangulation with the *nara*. But he said that death was not caused by that strangulation, but by asphyxia caused by the smothering of Muhammad Noor's face with the shirt. Muhammad Noor had most likely already stopped breathing by the time he was strangled.

9 The incontrovertible fact is that Muhammad Noor was asphyxiated to death by either Rasheed or Ramzan. From the evidence of both men, I find that it was Ramzan who smothered Muhammad Noor, and Rasheed strangled him with his hands and the *nara*. The question is whether the two men had formed the intention to kill Muhammad Noor before they attacked him.

10 Call screening records showed that two calls were exchanged between Rasheed and Ramzan on 11 June 2014 before the attack. Rasheed had called Ramzan at 1:01am for 13 seconds, and Ramzan had called Rasheed at 1:46am for 10 seconds. Rasheed and Ramzan admitted to calling each other that night in their oral testimony. However, Rasheed claimed that he had called Ramzan to tell Ramzan that he would not help him attack Muhammad Noor. Ramzan claimed that the phone calls were only about coming up to Room 44 to gamble.

11 Rasheed and Ramzan denied any intention to kill. Ramzan testified that as far as he was concerned, they were only scaring Muhammad Noor. He had hoped to snatch Muhammad Noor's money and then run away. But when he saw Rasheed taking out the *nara*, he (Ramzan) became frightened and ran out of the room without taking any of Muhammad Noor's money. He testified that

when he ran out, Rasheed was left alone in the room with Muhammad Noor.

12 Although Ramzan claimed that he lost all his money to Muhammad Noor and that he had fled Muhammad Noor's room in fright without taking any of Muhammad Noor's money, the police found \$3,318 in Ramzan's possession after his arrest.

13 What really happened in Muhammad Noor's room no one may know for certain, except that Muhammad Noor was killed by either Rasheed or Ramzan, with the other assisting in the homicide. Both men now blame each other and both have given contradictory statements, not only to the police, but in court. There is no clear or direct evidence as to who smothered Muhammad Noor's face with a shirt till his death.

14 I accept A/P Lau's evidence that Muhammad Noor was killed by asphyxiation. He was also strangled by the *nara* that belonged to Rasheed. Rasheed claimed that he used his hands and the *nara* to strangle Muhammad Noor. Ramzan claimed that when Rasheed took out the *nara*, he (Ramzan) got frightened and ran out of the room. But Muhammad Noor was not killed by the *nara*. He was killed by the smothering of his face. Ramzan admitted to this, perhaps not knowing A/P Lau's evidence pins the direct cause to the person who smothered Muhammad Noor. Without A/P Lau's evidence, it might have been understandable for them to think that the man who strangled Muhammad Noor with the *nara* was the one who killed him.

15 But the prosecution's case does not depend on which man smothered Muhammad Noor. The charge was one of committing murder by both men having formed the common intention to kill. What is the evidence concerning the intention of the two men? Neither man denied that they were both present in Muhammad Noor's room the night he was killed. From then on, Rasheed and Ramzan disassociated themselves from the killing. Rasheed claimed that Ramzan took over the act of smothering Muhammad Noor while Rasheed used the *nara*. His testimony in court differed from his statement to the police made on 15 June 2014, where he claimed that he was sleeping when Ramzan charged into the room and used his (Rasheed's) shirt to smother Muhammad Noor. Ramzan admitted only to covering Muhammad Noor's mouth for only a few seconds, before running away from the room. Muhammad Noor was still "perfectly all right".

16 The prosecution's case depends largely on this court drawing the inference of an intention to kill. That inference has to be drawn from facts, some of which are disputed, and some of which dubious and implausible. Short of a clear confession, the inference of intention has to be drawn from the facts that form the clearest picture, and if from that, the inference of an intention to kill is clear without any residual doubt, then the court is bound to find that the intention to kill has been proved.

17 I do not believe that Rasheed was threatened and frightened into helping Ramzan. He is senior to Ramzan by 18 years. They are at the ages in which the younger man is less likely to lead. Ramzan is only 28 now and had known Rasheed since he was young, by which it was clear that he meant from his boyhood days. I am reinforced in my view that Rasheed was the leader by the manner and appearance of both men in court, particularly when they were being cross-examined.

18 The threat itself was also not credible. Rasheed's family was in Pakistan and would therefore have not been easily reachable by Ramzan. Further, Rasheed testified that prior to the attack, he called Ramzan to tell Ramzan that he would not support him. He had therefore made a conscious choice not to submit to Ramzan's threat. Yet upon receiving Ramzan's call to inform him that Ramzan was heading up to Room 44, Rasheed immediately chose to return to the room. If Rasheed did not wish to interfere with Ramzan's plan out of fear, and thus neither warned Muhammad Noor nor locked the door, and that if he had wanted no part in the plan, he could have simply chosen to walk away

from the room. Instead, after going out of the room to take the call, he promptly went back into the room to wait for Ramzan after the call, chatting with Muhammad Noor in the meantime. It is far likelier that Rasheed had called Ramzan to come up to Room 44, and Ramzan had later called Rasheed to come out of Room 44, in pursuit of their plan to attack Muhammad Noor.

19 I also do not believe that Ramzan was outside the room when Muhammad Noor was killed, as he claimed. The plan, as it appears from the evidence, did not require a weapon that could have been wielded by a lone assailant. The plan was to strangle Muhammad Noor with the *nara*. To prevent him from raising the alarm, they would use Rasheed's shirt to cover his mouth so that he could not scream for help. Ironically, the smothering killed Muhammad Noor before the *nara* could do its job. Ramzan's account that he left the room while Muhammad Noor was "perfectly all right" and shouting is also inconsistent with the lack of any defensive injury found on Muhammad Noor. A/P Lau testified that this implied that he was probably not in a position to have put up any significant resistance against any assailant(s). Had Rasheed been left alone with Muhammad Noor, it is unlikely that Muhammad Noor would not have fought back. At the very least, someone would have heard the commotion.

20 It seems clear that robbery was the motive to kill, as the money found on both accused persons shows. If there had been no intention to kill, it is unlikely that they took Muhammad Noor's money on an afterthought. Stealing the victim's money is an unlikely thought if one had just unintentionally killed another. If robbery was planned, as I find was the case, could they have left Muhammad Noor alive to identify them? Rasheed was Muhammad Noor's roommate and both of them knew Ramzan and where he lived. There is no doubt that the only option was to kill Muhammad Noor. Smothering and strangling are not actions one associates with the mere intention to frighten a victim.

21 Rasheed and Ramzan's actions following Muhammad Noor's death are also telling. They went together to purchase the luggage bags and saws that were used to dismember Muhammad Noor and stuff his remains into the luggage bags. The video footages and photographs show the two men acting as a team. Not many who have just killed another can be free of internal turmoil or frenzy, but if Rasheed and Ramzan were nervous, that was not apparent.

22 Ramzan also claimed that he speaks only Urdu and that he had been badly served by an interpreter (Kailash Nath Rai) and a doctor (Dr Jaydip Sarkar) because they were not native Urdu speakers. Kailash Rai was the interpreter for the officers who interviewed Ramzan. Dr Jaydip was the psychiatrist who interviewed Ramzan. Both testified that while Hindi was their native language, spoken Hindi and Urdu are similar and Urdu and Hindi speakers are able to understand each other. They had no difficulty communicating with Ramzan in a mixture of northern Indian languages, mainly Hindi.

23 Ramzan's main complaint was that his statement of 18 June 2014 was not made voluntarily, and that he did not understand Hindi. He was not able to persuade me that he had made this statement under coercion or inducement, and I also do not accept his claim that he did not understand Hindi. He had given several statements and there is no record anywhere that he had difficulty understanding the questions. More importantly, if he was unable to communicate in Hindi it can only mean that the lengthy recorded statements by Kailash Rai and Dr Jaydip were created by them. That would be a serious allegation and there is no indication that this was the case.

24 But I am not relying on the disputed statements to draw the inference of the common intention of both men to kill Muhammad Noor. The motives were common; the plan required two persons. It was not an act that one man could safely and competently execute. I do not think that one man alone could have carried out the dismemberment of Muhammad Noor's body. As the photographs and evidence of the discarded limbs and torso show, both Rasheed and Ramzan acted in concert after the

murder as they did before and during it. The disputed statements merely provide some corroboration of the prosecution's case that Rasheed and Ramzan carried out their intention to kill Muhammad Noor and rob him of his money.

25 For the reasons above, I am satisfied that the prosecution has proven its case beyond reasonable doubt that Rasheed and Ramzan intended and did kill Muhammad Noor as charged. I therefore find both accused guilty and convict them accordingly.

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