Toh Sia Guan *v* Public Prosecutor
[2021] SGCA 7

Case Number	: Criminal Appeal No 9 of 2020
Decision Date	: 02 February 2021
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JCA; Tay Yong Kwang JCA; Belinda Ang Saw Ean JAD
Counsel Name(s)	: The appellant in person; Eugene Lee, Claire Poh and Senthilkumaran Sabapathy (Attorney-General's Chambers) for the respondent.
Parties	: Toh Sia Guan — Public Prosecutor

Criminal Law – Offences – Murder

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2020] SGHC 92.]

2 February 2021

Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Public Prosecutor v Toh Sia Guan* [2020] SGHC 92, convicting the Appellant of one charge of murder under s 300(*c*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and sentencing him to life imprisonment.

Facts

2 The facts of the case are straightforward. On 9 July 2016, the Appellant and the deceased were involved in a fight which resulted in the Appellant running away. The Appellant then purchased a knife. Returning to the scene of the fight, the Appellant encountered the deceased and engaged in a second fight in the course of which multiple stab wounds on the scalp, chest and arm, among other injuries, were inflicted on the deceased and culminated in his death. The fatal wound was a stab wound to the deceased's upper right arm which caused heavy bleeding and was sufficient in the ordinary course of nature to cause death.

Our decision

3 In order for the Appellant to be convicted of murder under s 300(*c*) of the Penal Code, it must be shown that a bodily injury sufficient in the ordinary course of nature to cause death must be present on the deceased, and that the Appellant intended to inflict that injury. The Judge found beyond a reasonable doubt that the former requirement was satisfied on the objective facts. The Judge was also satisfied beyond a reasonable doubt that the latter requirement was made out on the basis of the following factual findings: the fatal stab wound was inflicted in the course of the second fight; the number, location and manner of the stab injuries found on the deceased's scalp, chest and arm, the lack of knife injuries suffered by the Appellant and the Appellant's conduct in purchasing the knife as well as the way in which he encountered and engaged the deceased in the second fight, taken together, indicated that the fatal injury was intentionally inflicted by the Appellant. The Judge also noted that the Appellant's version of the facts did not square with the objective evidence and

weakened his credibility as a whole. Finally, the Judge considered potentially available legal defences, even though it did not form part of the Appellant's case, and held that they did not apply since the Appellant was found to be the aggressor in the second fight which he initiated some time after the first fight.

4 On appeal, the Appellant reiterated his position in the proceedings below that the fatal stab injury was inflicted accidentally in the course of a struggle for control over the knife and that it was the deceased who had initiated the second fight, and the Judge had purportedly erred in determining that he had intentionally inflicted the fatal stab injury and that he had initiated the second fight. In our judgment, however, the Judge was correct in making these findings of fact and in concluding that the Appellant intended to inflict the fatal injury on the deceased. We observe further that the fatal wound found on the deceased was a stab wound which could only be caused in one of three ways: first, that the deceased impaled himself on the knife, which we consider a remote possibility; second, that the Appellant forcefully overcame the deceased's resistance to inflict the fatal wound; or third, that the Appellant inflicted the fatal wound without encountering any resistance from the deceased. In both the second and third scenarios the Appellant would have had the requisite intention to inflict the fatal injury. We are satisfied that this was the case and we accordingly dismiss the Appellant's appeal against his conviction for murder under s 300(*c*) of the Penal Code.

5 The Judge noted that there was some controversy over whether the requisite mental element of that offence, namely, the intention to inflict an injury sufficient in the ordinary course of nature to cause death, could be satisfied (in the situation where the accused person and deceased were involved in a fight) merely by the Prosecution proving beyond a reasonable doubt that the Appellant had intended to attack the a wider part of the body on which the fatal injury was found (in this case, the deceased's upper arm torso area), instead of having to prove that the Appellant intended to inflict the particular fatal injury on the specific part of the limb in question (in this case, the deceased's right upper arm). The Judge took the view that it was not necessary to decide the controversy on the facts of this case since the Appellant's intention to stab the deceased's right upper arm was established on the facts.

6 We agree with the Judge's conclusion that it is not necessary to decide the controversy referred to in the preceding paragraph here for the reasons he stated, in particular, since it involves deciding whether or not to add a further normative gloss on what is essentially a factual inquiry. We will express a conclusive view on this issue only when it is next directly before us.

7 The Appellant also appealed against the sentence of life imprisonment, contending that it was too harsh. We do not think that there is any merit in this. Under s 302(2) of the Penal Code, there are only two available sentencing options for s 300(*c*) murder: the death penalty or life imprisonment. The Judge accordingly could not have imposed a more lenient sentence and we therefore dismiss the Appellant's appeal against the sentence of life imprisonment.

8 Finally, the Appellant alleged that a "judge" had on four occasions given him the opportunity to be charged for culpable homicide not amounting to murder under s 304 of the Penal Code instead, but he had not accepted these purported chances as his former counsel, Mr Wong Seow Pin ("Mr Wong"), had "misled" him as to the length of the imprisonment term under s 304 of the Penal Code. There was, however, no evidential basis for the Appellant's claim that he had been misled by his former counsel. We accept Mr Wong's explanation as to the advice he had given the Appellant and are entirely satisfied that he had fulfilled his duty as Defence Counsel, provided proper legal advice to the Appellant and did not mislead the Appellant in his advice in any way. Indeed, it appears to us that Mr Wong had acted throughout in the best traditions of the Bar.

9 In any case, the Appellant's allegations had no bearing on the correctness of the Judge's decision or on the case the Appellant ran on appeal, which was identical to the one he advanced at trial. In our view, these allegations lack merit and are irrelevant to the appeal. We take the opportunity, once again, to emphasise that appellants will not get very far by making unwarranted allegations about counsel after proceedings have concluded if they do not have a sound basis grounded in relevant evidence (see also similar observations by this court in *Lim Ghim Peow v Public Prosecutor* [2020] SGCA 104 at [11]).

Conclusion

10 For the reasons set out above, we agree with the Judge's decision on conviction and sentence and therefore dismiss this appeal.

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