

Edgar Puzone. E @ Ibrahim Bin Abdullah Puzone

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 1 of 2005)**

Power, P.; Mortimer, and Litton JJ.A.
24th May, 2007.

Criminal Law. Murder conviction. Diminished responsibility under s. 303(1) Criminal Code, Cap. 22. Question of degree for the trial court. Application under s. 435(1)(c) Criminal Procedure Code, Cap. 7, to receive further evidence on appeal. Appeal dismissed.

Mr Shazale Salleh of Messrs. Mohd Shazale Salleh Advocates & Solicitors for the Appellant.
DPP Suhana Hj Sudin of Public Prosecutor for the Respondent.

Litton, J.A.:

Introduction

On 3 February 2005 the appellant was convicted of murder by the trial court (Mohammed Saied CJ and Chong J) and sentenced to death. He now appeals to this court against his conviction.

The Background Facts

The appellant is a Philippino migrant worker, aged 48 at the time of the crime, married, with a wife, three daughters and two grandsons, all living in the Philippines. The offence took place at about 2.45 p.m. on 27 May 2003 at a restaurant at Jalan Tutong called The Senja Rasa Restaurant, where the victim Vilma Taalal Misal (Vilma) worked as a waitress. She was 25 years old when she died. The appellant had stabbed her to death with a knife which he had brought along to the restaurant that afternoon.

Prior to the date of the killing, the appellant and Vilma had been lovers but Vilma wanted to end the relationship.

According to the appellant's first statement to the police, written by him in Tagalog, he discovered that Vilma had begun a relationship with another man. And when he was in the Philippines in mid-May 2003, he received a text message from her which turned out to be a heartless joke. He returned to Brunei on 20 May and went straight to the restaurant, but was received by Vilma as if he was a stranger. In his statement he claimed that Vilma had "committed herself first" to him but, after one month, to another man named "Ahmad". Vilma called the appellant names and said he was "a dog and a snake". The appellant wanted a meeting between the three of them so that Vilma could decide between the two men, but Ahmad did not show up. The statement went on to say: "*I could no longer endure what she was doing to me*", so he went to the restaurant on the day in question. The appellant ordered coffee from Vilma but she ignored him. He asked another waitress for coffee and was likewise ignored. The appellant approached Vilma and asked for his coffee. She replied there was no coffee. The statement then went on to say:

"My mind blacked out and the unexpected incident...happened. I inflicted wounds on myself to end my problems and miseries, but I survived. Maybe this is our fate..."

In his second statement the appellant elaborated upon his earlier statement. He said that Vilma had told him that, if he did not have a job in Brunei, it was better for him to go back to the Philippines. Because of this, he investigated and discovered she had another boyfriend. He saw them together in a room on 23 May 2003, with the zipper of Vilma's trousers open: This was in Kampong Ayer. Before this Vilma had told him she would be somewhere else that day. When later he asked her why she was doing that to him her answer was "*I don't like your mad dog attitude*".

27 May 2003

There were a number of eye witnesses to the killing. The appellant was seen on the afternoon of 27 May 2003 to enter the restaurant with a black bag. Later, when the bag was examined, there was found inside a knife cover (Exhibit P13) which fitted the knife the appellant had used to stab Vilma.

The trial court in its judgment has set out fully the evidence of the eye witnesses. That evidence needs no repetition here. In essence what occurred at the restaurant was this. When Vilma refused to serve him coffee, the appellant got up and followed Vilma to the area of the restaurant where the staff prepared drinks. The appellant was then seen to "hug" Vilma from behind and immediately began stabbing her in the chest with a knife held in his right hand. The cashier who saw the "scuffle" went to separate them. Vilma staggered to the smoking section of the restaurant and collapsed. The appellant then started stabbing himself with the knife. The cashier pushed the appellant to the floor and kicked the knife away. The appellant was seen lying still on the floor for a while. He then got up and walked towards Vilma but was stopped by the cashier. The appellant then used a paper cutter to slash at his own throat; he then went to the kitchen and took an ice pick to stab his own chest and neck.

When the police arrived at the restaurant, the appellant was sitting on the kitchen floor holding a knife with a broken tip (not the knife used to stab Vilma). The ice pick was on the floor beside him. When the police asked the appellant to surrender the knife he refused and held the knife to his own neck. Eventually officials from the Philippines Embassy persuaded the appellant to surrender himself.

Apart from the knife cover inside the black bag the police also found letters in the appellant's handwriting addressed to various persons. In relation to Vilma this is what he wrote:

“Vilma – why did you do this to me? We should not have met so that we will not reach this stage of problem. Now, you will suffer forever and we see each other in hell if you die. Let us have our wedding there, no need for a dowry and Satan will take care of the expenses if he has money to spend...”

Forensic Evidence

The forensic medical evidence indicated that there were four stab wounds inflicted by a sharp cutting instrument to Vilma's chest. They were inflicted with heavy force. One of them cut a rib and entered the left upper lobe of the lung. Another penetrated the right atrium, one of the chambers of the heart. There were other incised wounds and cut wounds in other parts of the body. The victim died in hospital at 4.30 p.m. on the same day.

The Trial Court's Finding

The trial court's finding that the appellant had inflicted the fatal wounds is unimpeachable. The prosecution evidence was overwhelming and virtually unchallenged. Nothing more needs be said.

The Only Real Issue

The only real question at trial was whether the appellant should be convicted of culpable homicide not amounting to murder on account of diminished responsibility. The trial court, after a painstaking analysis of all the evidence, including the opinion evidence of Dr Esther Jesudason, a psychiatric specialist, came to the conclusion that the defence of diminished responsibility was not made out. Hence the appellant was convicted of murder.

Diminished Responsibility

Section 303 of the Penal Code provides:

“(1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any

inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts or omissions in doing or being a party to the killing.”

The appellant was examined on several occasions by Dr Esther Jesudason in April 2004 and evaluated as to his mental state. She came to the conclusion that the appellant was suffering from a psychiatric illness and prescribed medication to treat his condition. As to his mental state in May 2003 she said:

“I only saw him a year later. I can only assume he may have been suffering from a long standing psychiatric illness.”

In cross-examination she said:

“I cannot say [the appellant] planned the incident. All I can say is that he was a person suffering from a defective state of mind with overwhelming stresses and he could have decompensated into a psychiatric state. Again this is an assumption. Even with defective reasoning a person could still decide to carry weapons along with him but not any particular intention.”

As the trial court correctly stated, the evidential burden fell on the appellant to establish the defence of diminished responsibility, on a balance of probabilities, having regard to the whole of the evidence. Whether there was such mental abnormality as substantially to impair the appellant’s responsibility for his acts, was a question of degree for the trial court.

In the course of his examination by the psychiatrist in April 2004 the appellant claimed that, at the time of the stabbing, he had seen “creepy black figures” on Vilma’s face and “heard chanting in his ears”. But, as the trial court noted, there was no such suggestion in the appellant’s two statements to the police: On the contrary, those statements, and the letter found in the black bag, revealed according to the trial court, “*an embittered man who felt he had been betrayed, cheated and rejected by a woman whom he loved and intended to marry, that he could ‘no longer endure’ what she had done to him and that she had to be punished*”. The trial court also noted that the appellant had gone to the restaurant with the knife concealed in the black bag, thereby indicating a prior intention to inflict at least very serious harm.

Application to Adduce Fresh Evidence

Prior to the date fixed for hearing this appeal, counsel appeared before this court and applied for an order under s. 435(1)(c) of the Criminal Procedure Code, Cap 7, that this court should receive the opinion evidence of another expert Dr. Maria Consuelo Salazar-Aleta bearing upon the mental condition of the appellant. This was supported by a report dated 18 April 2007 from which it is apparent that Dr Salazar-Aleta had, between 23 March and 11 April 2006, interviewed the appellant for a total of 12 hours. She had also interviewed seven members of the appellant’s family in the Philippines and many

other persons here in Brunei. She had, in addition, the statements made by the appellant to the police, the notes of proceedings at trial, the copies of the letters found in the black bag and, we were told by counsel, the judgment of the trial court in which the psychiatric report of Dr Esther Jesudason is set out in full. We have read Dr Salazar-Aleta's report with care. In some respects, this report undermines Dr Esther Jesudason's tentative opinion that the appellant was "suffering from a long standing psychiatric illness". Dr Salazar-Aleta's opinion as expressed in the report was that, in the weeks prior to the killing, the appellant was "coping adequately. He did not exhibit any sign or symptom of psychiatric disorder". Quite apart from the provisions of s. 435(2)(b) – requiring some explanation for failure to have the appellant examined *before* trial so that Dr Salazar-Aleta's opinion evidence might be adduced *at* trial – the question we had to address was simply this: Might the evidence assist in anyway to resolve the only issue on the appeal: Whether, at the time of the killing, the appellant was suffering from such abnormality of mind as substantially to have impaired his mental responsibility for his act. We concluded that it did not and accordingly dismissed the application.

The Appeal

The matter therefore boils down to this: Having regard to Dr Esther Jesudason's opinion evidence that the appellant might have been suffering from a long-standing psychiatric illness, is the finding of murder by the trial court unsafe or unsatisfactory?

It is of course common ground that the burden rested on the defence to establish, on a balance of probabilities, that there was such mental abnormality as substantially to impair the appellant's responsibility for his act. This could only be arrived at by considering the whole of the evidence.

Mr Shazale, in his able submissions to this court, emphasized this point: There was nothing to rebut Dr Esther's expert opinion that on the day of the killing the appellant might have been suffering from a psychiatric illness.

As to whether the appellant's reasoning was, in Dr Esther's words, "defective, impairing his ability to think and act in a rational manner" at that time, Mr Shazale argued thus: The trial court placed far too much weight upon the fact that in his two police statements the appellant never mentioned "creepy black figures" on Vilma's face nor did he say he had heard "chanting in his ears". Mr Shazale made this point: This omission could, admittedly, lead to the conclusion that the appellant had simply made up this story. But it could just as easily be explained by the fact that neither his own counsel nor the prosecutor had asked him about it. We have given anxious consideration to Mr Shazale's point. Standing alone, it might have some substance. But, as the trial court emphasized, the conclusion on the ultimate issue under s. 303(1) could only be reached by a consideration of the totality of the evidence. There was sufficient evidence for the trial court to conclude that the appellant was motivated by jealousy to kill: The letter in the black bag suggested that Vilma had, in the words of the trial court, "to be punished for what she had done". The appellant went to the restaurant that afternoon armed with a lethal weapon.

Conclusion

The trial court's evaluation of the evidence was painstaking. It directed itself accurately on the law. Its conclusion was as follows: *"Considering the evidence in totality, we are not persuaded on a balance of probabilities that the defendant was suffering from such abnormality of mind as substantially impaired his mental responsibility for his act. We are satisfied beyond reasonable doubt that this was a premeditated and brutal murder and the defendant is convicted of the charge accordingly."*

In our judgment the trial court's finding cannot be faulted in any way and the appeal must stand dismissed.