SUDDEN FIGHT: EXCEPTION 4 TO SECTION 300 OF THE PENAL CODE[1]

P.P. v. *Seow Khoon Kwee*[2]

THERE are not many decisions in Singapore that deal with the principles relating to the special exception to section 300 of "sudden fight". The only noteworthy decision is the Privy Council decision of *Mohamed Kunjo* v. *P.P.*[3] in which their Lordships made some observations on certain aspects of the defence. However, there remained lingering doubts about the ambit of the defence. The local courts, when they have had occasion to deal with cases on exception 4, have usually dismissed the plea summarily without really giving reasons why the plea of sudden fight has failed.[4] Therefore, the recent decision of the High Court of Singapore in *P.P.* v. *Seow Khoon Kwee* is a welcome respite. The case provides some guidance to the ambit of exception 4 to section 300.[5]

The Facts[6]

The accused was a detainee at the Medium Security Prison, Changi, Singapore, under the Criminal Law (Temporary Provisions) Act 1955,[7] as was the deceased.

The chain of events which ended in the deceased's death, began on the 18th of March 1986. While the detainees of the prison were gathered in the enclosure of the prison, a disagreement broke out between the

1 Exception 4 of section 300 of the Penal Code, Cap. 224, 1985 Rev. Ed., hereafter referred to as "the Code": "Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner". The provisions mentioned below refer to the Penal Code unless otherwise stated.

2 [1989] 2 M.L.J. 100.

3 [1978] 1 M.L.J. 51.

4 Take for example two recent cases of *P.P.* v. *Chan Kim Choi* [1989] 1 M.L.J. 404 and *Teo Boon Ann* v. *P.P.* [1989] 2 M.L.J. 321, where the judgments of the courts in both cases dismissed the defence in words that were similar - the fight was not a sudden fight in the accepted legal sense, and even if there was, the accused had taken advantage of his victim and had acted in a cruel and unusual manner. It will be immediately noticed by any reader of the two judgments that there is, interestingly, no explanation of what is meant by "sudden fight" in the accepted legal sense or of when an accused is deemed to "have taken advantage of his victim or acted cruelly or unusually".

5 See *supra* note 1.

6 The full facts of the case appear in the judgement of the High Court delivered by Thean J.

7 Cap. 67, 1985 Rev. Ed.

accused and the deceased. The accused challenged the deceased to a fight. The two were restrained from so doing by the other detainees. When the prison warder looked into the enclosure to investigate the commotion, he found the deceased standing and appearing to be angry. The deceased refused to answer when the warder enquired as to what had happened.

The warder informed the rehabilitation officer of his suspicion that the deceased had been involved in a fight. The deceased was put in an isolation ward and was interviewed in turn by the assistant superintendent and the rehabilitation officer. He was released later in the day, on the condition that he would co-operate in identifying the parties involved in the fight. No further events ensued the same day.

The next day, the accused was seen talking to the deceased, while holding a piece of glass. The deceased suddenly struck the accused who was thrown back by the force of the punch to his face. Upon this, the deceased rushed forward at the accused and they fought. The deceased then stepped back, clutching his chest which was bleeding heavily, and collapsed. The deceased was rushed to hospital and resuscitation was carried out without success. The deceased was then pronounced dead.

The accused later admitted that he was involved in the fight with the deceased.

The accused was charged with the murder of the deceased under section 300 of the Penal Code.

The defence put forward a few defences. First, there was no evidence to prove that the accused had inflicted the fatal injury in question though the defence did accept that the injury was sustained by the deceased in the course of his fight with the accused. Secondly, the prosecution had failed to discharge the burden of proof on it to show beyond a reasonable doubt that the accused had the requisite *mens rea* as required under section 299. Thirdly, the accused was entitled to be acquitted because he had inflicted the fatal injury in the exercise of the right of private defence. Lastly, failing all of the above defences, it was submitted by the defence that the case fell within exceptions 1, 2 and 4 of section 300 of the Code, thereby the accused should not be convicted for the offence of murder but rather for the offence of culpable homocide not amounting to murder.

The Decision

The court accepted only the last defence, *i.e.* the accused could rely on exception 4 of section 300.[8] The court was satisfied that there was no premeditation on the part of the accused. The court ruled that the inference

[8] For the purposes of this note, it is not necessary to lay out the reasons why the other defences failed.

of premeditation, from the fact the accused had cut and shaped the piece of glass into a primitive knife, was displaced by his explanation that he had prepared the weapon for his own protection against the deceased. The court accepted the testimony of the accused that he was afraid that the deceased would assault him for being the cause of his detention and interrogation, and that this fear was compounded by the fact that the deceased was of a bigger size than he was and that the deceased had a propensity for assaulting fellow prisoners.

The court also found that the circumstances of the case pointed to the conclusion that the fight in question was a sudden fight. The court was also satisfied that the accused did not take undue advantage in using the weapon nor did he act in a cruel or unusual manner having regard to the fact that the accused did not follow up and attack the deceased after the latter had disengaged from the fight.

The court therefore found that the defence had made out a case under exception 4 of section 300 on a balance of probabilities and the court accordingly found the accused guilty of culpable homocide not amounting to murder.

Comments

Exception 4 to section 300 was envisaged by the drafters of the Code to apply to cases where, irrespective of the cause of the fight, the subsequent conduct of both parties put them on a equal footing with respect to blameworthiness. This is because there will be blows on each side. Each subsequent blow becomes a fresh provocation, however slight the initial insult or blow may have been. With each blow, the blood boils over and the voice of reason is heard by neither. As such, it is impossible to discriminate between the respective degrees of guilt with reference to the initial state of affairs.[9]

That is why the Indian courts have always held that where a mutual fight occurs and there is no reliable evidence who started it or how it began, the case is more appropriately dealt with under this exception and not under private defence.[10] However, this does not mean that the exception is a means of resolving doubt or avoiding a definite decision where it is possible.[11]

To bring a case within the exception of sudden fight, three facts have to be proved:

(1) sudden fight;

9 M. & M. 261, as quoted in Ratanlal & Dhirajlal, *Law of Crimes* (23rd ed.) Vol. 2, at p. 1110.

10 *Jumman v. The State of Punjab,* A.I.R. [1957] S.C. 469; *Ram Koran* v. *The State of Uttar Pradesh,* A.I.R. [1982] S.C. 1185.

11 *Mangat* v. State, A.I.R. [1967] All 204.

(2) absence of premeditation; and

(3) absence of undue advantage or cruelty.[12]

Notice that the requirements of the exception reflect the intention of the drafters and the nature of the defence. All of them point to a situation where it is impossible to say that one party is more guilty than the other. If any of the above elements are not proved, the defence should fail because the accused cannot then say that he was on an equal footing with the deceased in terms of blameworthiness.

Sudden Fight

The word "sudden" connotes a fight that is not prearranged. This would necessarily mean that there should not be a lapse of time between the quarrel and the fight. The intervention of such a period would mean that reason would have overcome passion and the fight is not "sudden".

The word "fight" is not defined in the Penal Code. The Indian courts have defined it to mean "a bilateral transaction in which blows are exchanged".[13] It is not necessary for weapons to be used and it may still be a fight if only one party succeeds in landing a blow. What is important is that blows must be exchanged even if they do not find their target.[14]

The case of *Jusab Usman* v. *State*.[15] has been taken as authority for a more lax definition of "sudden fight".[16] This arises because the court described a "fight" as being where there is "at least an offer of violence on both sides".[17] It is submitted that the case does not stand for such a proposition, *i.e.* a wider definition. This statement has to be read in its context. What the court was pointing out is that both parties should at least be willing to fight when the affray broke out, distinguishing this from a situation where one party takes the blows of the other without attempting to reply. This would then be a one-sided attack and not a "fight".[18] It must be noted that his Lordship still contemplates that the fight be sudden. This must go to show that the court did not mean to include situations of planned violence within exception 4.

12 See *supra* note 1.
13 *Bhagwan Munjaji Pawade* v. *State of Maharashtra,* A.I.R. [1979] S.C. 133, *per* Sarkaria J. at p. 134.
14 *Sis* v. *State of Punjab,* (1973) 75 Punj. L.R. 25; *Atma Singh* v. *The State,* A.I.R. [1955] Punj. 191.
15 (1983) Vol. XXIV(2) Gujarat Law Reporter 1148.
16 Koh, Clarkson and Morgan, *Criminal Law in Singapore and Malaysia, Text and Materials* (1989) at p. 458.
17 See *supra* note 15, at p. 1151, where Talati J., delivering the judgment of the court said: "So far as the sudden fight is concerned, we may say that the most important element of this Exception is that there should be a fight, *i.e. at least an offer of violence on both sides.* The word "fight" as used in Exception 4 does not necessarily mean a fight with weapons. A fight is a "combat between two or more persons", whether with or without weapons. *The act must be a sudden act."* (emphasis added).
18 Gour, H.S., *Penal Law of India* (10th ed., 1983), Vol. III, at p. 2370.

The evidence tendered in court in the present case clearly showed that the fight broke out when the deceased punched the accused. There was also evidence that the two were grappling with each other, in the course of which the fatal wound was inflicted. The court accepted that this was a sudden fight.

It must be correct to say that there was a fight as blows were exchanged between the two protagonists. It was not a case of a one-sided attack. Had the deceased been attacked, and had he not offered any retaliation and he was killed, then it would not have been open to the accused to say that there was a fight.

The court did not seem too concerned with the fact that the initial quarrel had occurred the day before. However, this is acceptable in view of the evidence that there was a fresh quarrel on the day of the killing. This is a sound approach to take. Although it may be that the passions aroused by the previous quarrel had cooled, the fight in question was the result of a fresh inflammation of passions on a new quarrel. As long as the fight can be traced to a sudden quarrel occurring just before that, there is no danger of the fight being considered as having been pre-arranged.

Premeditation

Exception 4 comes into play only if there was no premeditation in causing death. To constitute a premeditated killing, it is necessary that the accused should have reflected with a view to determine whether he would kill or not.[19] This means that there ought not to be an element of design or prior planning.[20] The killing should be sudden *i.e.* under the momentary excitement and impulse of passion upon provocation given at the time or so recently as not to allow time for reflection.[21]

Premeditation is proved by direct or by circumstantial evidence. Premeditation is proved not just from the fact of the use of a deadly weapon but also from the manner of the killing and circumstances under which it was done or from other evidence.[22] This approach was accepted by the court in the present case.

The court admitted that the conduct of the accused prior to the killing.[23] did give rise to a *prima facie* inference that there was premeditation on

19 *Kirpal Singh* v. *The State* A.I.R. [1951] Punj. 137, at p. 140 per Bhandari J; approved and adopted by the Privy Council in *Mohamed Kunjo* (see *supra* note 3) and the High Court in *Seow Khoon Kwee* (see *supra* note 2).
20 See *supra* note 3, at p. 54 per Lord Scarman.
21 *Kirpal Singh* (see supra note 19), at p. 140; adopted by the court in *Seow Khoon Kwee* (see *supra* note 2).
22 *Ibid*; in fact Bhandari J. gave some illustrations, at p. 140: "Evidence of premeditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows and other acts of violence are sufficient of premeditation."
23 The accused had obtained a piece of glass and fashioned it into a knife. He armed himself with this weapon before the fight.

his part. However, the court was able to hold that this inference was displaced in the light of the other evidence in the case, *viz.* the accused was afraid that the deceased would assault him for his part in causing the deceased to suffer solitary confinement; the deceased was bigger and stronger than the accused; the deceased had previously shown a propensity for violence on fellow prisoners; the accused was thus afraid for his own safety and had thus armed himself accordingly. The court accepted the accused's explanation as to why he had armed himself and was thus satisfied that the accused had done so purely for self-protection.

It would appear that from the approach taken by the court that local courts in dealing with this defence would consider the evidence in its entirety. Thus, some sort of preparation may give rise to an inference of premeditation - unless this inference can be displaced by other evidence or the circumstances of the case. The accused would thus have an opportunity to explain away conduct which may raise a rebuttable presumption that the killing was premeditated.

This approach of the court is to be applauded, not just because it is consistent with what has been laid down by the Indian courts, but also because it accords with common sense as in such cases there is often more than meets the eye. This way the court does not fall into the trap of taking the direct evidence at face value. It allows the court some measure of flexibility to take into account all the circumstances of the case.

Undue advantage or acting in a cruel or unusual manner

Even if the fight is unpremeditated and sudden, if the weapon used or the manner of retaliation is greatly out of proportion to the conduct of the opponent, and cruel in nature, the accused will not be able to rely on the exception.[24] "Undue advantage" has been judicially defined as an unfair advantage.[25]

In this case, the court found that the accused had not acted in a cruel or unusual manner. The court seemed particularly influenced by the fact that on the withdrawal of the deceased the accused did not follow up and attack the deceased who was defenceless. Contrast this with the conduct of the accused in *Mohamed Kunjo*,[26] where upon the victim falling to the ground defenceless, the accused ran off and returned with an exhaust pipe and surprised the victim with a savage attack.

The court did not seem disturbed by the fact that the accused had entered the fight armed with a deadly weapon.[27] It is possible that the

24 See *supra* note 3.
25 *Ibid,* at p. 54.
26 *Ibid.*
27 See *UmarKhushal* v. *Emperor,* A.I.R. [1940] Pesh. 1 , where it was held that when a man attacks an unarmed man with with a dagger, he would be in a position of undue advantage and is acting in a cruel manner.

court felt that it had adequately dealt with this when considering the element of premeditation. Since the reason why the accused armed himself was because the deceased was bigger and stronger than he was, the court must have felt that the possession of a piece of glass did not put the accused in a position of undue advantage.

Conclusion

The case is significant because it clarifies the principles relating to the special exception of sudden fight. It does offer valuable guidance, together with the decision of *Mohamed Kunjo*,[28] to local courts as to the principles that ought to be applied when exception 4 to section 300 is raised as a "mitigating" defence in murder cases.

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[28] See *supra* note 3.

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