

CANADA / JUDGMENT

R. v. Chen

2022 BCSC 2096

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Supreme Court of British Columbia

DECIDED

3 November 2022

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chen,

2022 BCSC 2096

Date: 20221103

Docket: 82756-3

Registry: New Westminster

Rex

v.

Pen Jung Tracy Chen

Before: The Honourable Mr. Justice Brundrett

Oral Reasons for Judgment

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Place and Date of Trial:

New Westminster, B.C.

November 3, 2022

Place and Date of Judgment:

New Westminster, B.C.

November 3, 2022

THE COURT: These reasons were delivered orally. They have since been edited for publication.

Introduction

- [1] This case arises from the tragic killing of a woman in Port Coquitlam by the accused, her twin sister, who by all accounts was suffering from a mental disorder at the time of the offence.
- [2] The accused, Pen Jung Tracy Chen ("T. Chen") is charged on Count 1 with the first degree murder of Pen Yun Ivy Chen ("I. Chen") from March 6 to 10, 2020, inclusive, contrary to s. 235 of the Criminal Code; and on Count 2 with improperly or indecently interfering with or offering an indignity to I. Chen's remains on or about March 10, 2020, contrary to s. 182(b) of the Code.
- [3] There is no dispute that on March 8, 2020, T. Chen stabbed I. Chen at the residence they shared in Port Coquitlam. Two days later, T. Chen undertook efforts, which were unsuccessful, to dispose of her sister's body at Minnekhada Park in Port Coquitlam.
- [4] There is also no dispute that, on the basis of the admissions filed, and but for the issue of whether the accused is not criminally responsible by reason of a mental disorder ("NCRMD") pursuant to s. 16 of the Criminal Code, the physical and mental requirements for findings of guilt on the two charges before the Court have been made out. I would therefore direct that the accused be found guilty of the offences in question, although a conviction will not yet be entered before the NCRMD issue is addressed, consistent with the procedure in *R. v. Swain*, [1991] 1 S.C.R. 933, 1991 CanLII 104 and s. 672.34 of the Code.
- [5] Turning to the NCRMD issue, T. Chen clearly has a mental condition that is relevant to this proceeding. Counsel have jointly raised the issue of whether the accused is responsible for her actions by reason of a mental disorder. As stated in *Winko v. British Columbia*, [1999] 2 S.C.R. 625 at 637-38, 1999 CanLII 694:

In every society there are those who commit criminal acts because of mental illness. The criminal law must find a way to deal with these people fairly, while protecting the public against further harms. The task is not an easy one.

- [6] The evidence establishes that T. Chen has a history of mental health difficulties, and her emotional problems progressively worsened from 2012 and onwards, leading up to the time of the offence. In particular, I. Chen reported that her sister, T. Chen, had wanted to harm her since around 2014. T. Chen's mother confirmed the deteriorating nature of T. Chen's mental state in the years prior to the offences.
- [7] Two well-qualified psychiatrists have assessed the accused, T. Chen, as suffering from schizophrenia at the time of the murder. They concluded that it impacted her knowledge of the wrongfulness of her actions. Counsel for the Crown and the accused are in agreement that the appropriate disposition, based on the evidence of those experts, is a finding that the accused is not criminally responsible by reason of a mental disorder.
- [8] I have been the case management justice on this case for a lengthy period of time. It is apparent to me that the position counsel jointly urge on me today was arrived at only after assessment of the psychiatric evidence, thorough research, and careful reflection of all the circumstances including the gravity of the allegations.

Circumstances

- [9] The circumstances are set out in detail in an agreed statement of facts filed at trial. In summary, T. Chen and I. Chen were born on May 5, 1983. They moved to Canada with their parents in 1993 when the twins were nine years old. Their parents returned to Taiwan after the twins graduated from university. In much of 2020, the twin sisters resided in an apartment in Port Coquitlam on Shaughnessy Street that I. Chen had purchased in 2016. I. Chen was a registered massage therapist. T. Chen worked for her as a contractor doing administrative and personal assistant work.
- [10] The tenant downstairs from the Chens reported hearing frequent arguments upstairs. For instance, one night in December of 2019 she reported overhearing a verbal dispute at the accused's residence. Members of the police attended, but the Chens reported that there was no physical altercation, only arguing.
- [11] In the days leading up to the murder, T. Chen conducted research on the internet, including researching murder weapons and purchasing dismembering tools, and ways to dispose of and burn a body.
- [12] T. Chen was observed in a Canadian Tire store in Port Coquitlam on March 6, 2020 purchasing a face shield, a life jacket, a rope, and a helmet. Later the same day, she returned to the store with I. Chen to purchase boxes.
- [13] On Sunday, March 8, 2020, between 7:00 and 8:00 a.m., the downstairs tenant heard loud noises from the Chen residence that woke her and her boyfriend up. The noise was of a female wailing in despair.

- [14] The murder occurred that same day. The cause of I. Chen's death, according to the forensic pathologist, was multiple sharp-force injuries. The pathologist also noted the presence of additional post-mortem injuries, including thermal injuries and dismemberment of I. Chen's body.
- [15] After I. Chen's death, T. Chen purchased supplies to dispose of I. Chen's body. She dismembered the corpse using items that included a large bladed saw. She tried to dissolve parts of the corpse at the residence but was unsuccessful.
- [16] Early in the morning on March 10, 2020, T. Chen loaded the parts of the corpse, as well as a red jerry can, some large metal pots, and other items into I. Chen's vehicle. She drove to a spot in Minnekhada Park on Quarry Road in Port Coquitlam. There she proceeded to a spot in a nearby forest where she placed parts of the corpse in the metal pots and set them on fire.
- [17] At 6:16 a.m., the Port Coquitlam Fire Department ("PCFD") received a report of a suspicious fire in the area. The PCFD members and police officers attended the scene. T. Chen was discovered near the scene and admitted to a firefighter that she was trying to "get rid of this"--"this" being the remains of I. Chen.
- [18] T. Chen was observed to be distant and withdrawn. She told the police that she was taking eight medications daily, but the last time she took her medications was at least 48 hours earlier.
- [19] Investigators found items of interest inside I. Chen's vehicle at the scene, including gloves, four plastic bags with blood, three shovels, cooking pots, safety goggles, and a headlamp with blood on it. Police also found two full 25-litre gas cans and a folding saw in its packaging in the vehicle. Outside I. Chen's car, police found another jerry can of gasoline. The remains of I. Chen were recovered from pots found along a pathway that enters a nearby forest.
- [20] T. Chen was arrested, read her Charter rights, and transported to the Port Coquitlam RCMP detachment. There she provided two warned statements to the police. The voluntariness of those statements was admitted at trial.
- [21] During a search of the Chen apartment, police found various tools and implements T. Chen used in her attempts to dispose of I. Chen's body. A blood pattern expert who examined the scene opined that I. Chen was killed in one of the bedrooms, and her body was later removed from that location.

Expert evidence

- [22] The Crown retained Dr. Rakesh Lamba, an experienced forensic psychiatrist, to provide expert evidence to the court on the issue of whether T. Chen suffered from a mental disorder at the time of the incident.

[23] In the analysis and opinion section of his report, Dr. Lamba wrote as follows:

161. Ms. Chen suffers from paranoid schizophrenia, a chronic, progressive, neuro-degenerative brain disease. She experienced an onset of symptoms of the disorder in the form of auditory hallucinations and paranoid delusions around when she was 20 years old and has experienced these symptoms on an ongoing basis for many years. The onset of symptoms that Ms. Chen describes is typical for the condition - slow and infrequent at first with progressive increase in intensity, frequency, and expansion of scope of the symptoms over time. Also, her description of her own reaction to the symptoms over time is typical or understandable in the context of the nature of the symptoms she has experienced. Her symptoms have not remitted fully to treatment consisting of combination of oral and long-acting injectable anti-psychotic medications, which was started after her incarceration.
162. Ms. Chen has suffered from Somatic Symptom Disorder with predominant pain (previously known as Chronic pain disorder) since suffering a head injury in 2004 or 2005. She has experienced chronic headaches of intensity varying with day-to-day stressors and periods of insomnia. Chronic insomnia and depressed mood are common concomitant symptoms with chronic pain. Ms. Chen has received aggressive and continuous treatment with combination of anti-depressant and anti-convulsant medications for her chronic pain disorder, with varying degrees of benefit and limited by significant side effects to the medications. Significant side effects have been drowsiness, periods of confusion and problems with short term memory.
163. Clinical depressive disorder is a common co-occurring condition with chronic pain and though Ms. Chen has not been so diagnosed in the past, since her current incarceration, she has been known to suffer significant depressive symptoms and likely suffers from major depression, for which she is receiving treatment with anti-depressant medications separate from those used to treat chronic pain/ insomnia and at doses used to treat major depressive disorder.
164. Ms. Chen did not receive a diagnosis or treatment for schizophrenia prior to the alleged index offence, likely due to a combination of many factors. . . .
165. Both schizophrenia and chronic pain are by definition and by their natural course, chronic persistent conditions. These were both likely present in Ms. Chen at the time of the alleged murder ('on or about March 10, 2020').
166. Schizophrenia is a major mental disorder and from a medical standpoint, certainly [qualifies] generally for a legal finding of 'mental disorder' defined as 'disease of the mind.' The finding that a disorder as medically diagnosed and put forward, in general and in the specific circumstance of the accused, is a mental disorder, if of course the purview of the fact finder.

. . .

176. Upon considering Ms. Chen's self report at various junctures, I am of the opinion that Ms. Chen was driven by her delusions and hallucinations in her actions between March 6th and 10th, 2020. These include the actions involving research conducted into the murder weapons, stealing the murder weapon along with other purchases she made on March 6, 2020, leading up and the actual attack on her sister, killing her as well as her actions thereafter- research in to and purchase of items to cut up and burn the body and her carrying out these actions.
177. Ms. Chen's core belief system was that her sister, not being her real sister but having been taken over by [another] entity or forces, was involved in a conspiracy by the Canadian Government to kill her and use her body for research as she had special powers. She believed that she was going to be killed on her birthday, May 5, 2020. She believed her only solution was to kill her sister. Her delusions and hallucinations created a set of circumstances for Ms. Chen which led to the planning for and actually committing the act of killing her sister. In committing these acts, she was not only driven by her delusions and hallucinations directly, but at the very moment she would not have the ability to consider, let alone know the moral wrongfulness of her actions. She saw killing her sister as something justified and necessary, something she had to do to save her own life, even though her own life was not in imminent danger on that very date; she had to kill her sister before May 5, 2020 and there was no other way for her to avoid her own death at the hands of her sister.
178. Ms. Chen clearly had the capability of understanding the physical consequences of her acts at the very time of attacking her sister- that her sister would die; which in fact, was her goal and purpose in committing the act while driven by her psychosis (delusions and hallucinations).
179. Similarly, her actions in cutting and attempting to burn the body of her sister after the killing were driven by the delusional belief that her sister would come back alive if she did not do so. She was once again responding to delusional beliefs and auditory hallucinations directing her to do so. While she knew the physical nature and consequences of these acts, she was unable to consider the moral wrongfulness of these actions.
180. It is thus my opinion, that from a psychiatric point of view, Ms. Chen's mental state at the time of both acts- the killing of her sister and desecrating the body, was impaired to the extent that the court could make a finding exempting her from criminal responsibility.

[Emphasis added.]

- [24] Dr. Lamba placed reliance on Ms. Chen's self-report and pointed out several consistencies in her narrative. He also considered inconsistencies between her self-report and the theory that she was suffering from a mental disorder at the time of the offence. Having done so, his psychiatric opinion remained unchanged:

186. In summary, considering the apparent inconsistencies, my psychiatric opinion is unchanged, that more likely than not, Ms. Chen's mental state at the time of the incidents that led to the two charges against her was impaired such that she would not be able to know the moral wrongfulness of her acts, or that these were acts she ought not to do.

[Emphasis in original.]

- [25] Hence, Dr. Lamba's opinion is that it is more likely than not that T. Chen was impaired by schizophrenia, delusional thinking, and hallucinations at the time of the incidents that led to the charges against her, and she would not have been able to know the moral wrongfulness of her actions.
- [26] Dr. Lamba fairly noted that much of his information was based on self-reporting by T. Chen of her thinking and mental history. However, in a follow-up report produced after information from the accused's mother was made available, Dr. Lamba confirmed that the mother's information was corroborative of his findings. His follow-up report provides as follows:

Overall, the collateral information from Ms. Chen's mother is helpful to the extent that it corroborates independently, the presence of illness and symptoms of psychosis in Ms. Chen for some years prior to the illness and corroborates the worsening course of the illness leading up to the alleged index offence. It also corroborates presence of significant symptoms of depressed mood and possibly negative symptoms of psychotic illness since before the alleged offence. It corroborates some aspects (though not all) of the specific symptoms (ideas of persecution and auditory hallucinations) that Ms. Chen reported to assessors and clinicians after the alleged offence, even though the exact timelines and order of such symptoms may not exactly match her reports now. The reports of symptoms prior to the offence involving Ivy as the person who was going to harm her specifically is consistent with her reports post-offence of her paranoia being fixated upon her sister, the victim.

- [27] Hence, Dr. Lamba's opinion again remained unchanged after receiving collateral information from the mother that corroborated his findings.
- [28] The defence retained Dr. Andrew Kolchak, another experienced forensic psychiatrist, to provide an opinion on the accused's mental condition at the time of the offence. Dr. Kolchak noted the progression of psychotic symptoms in T. Chen prior to the offence, beginning around year three of her university years. T. Chen's symptoms, as reported by the mother to Dr. Kolchak, included paranoid perceptions of the world around her, hearing voices that gave her commands to perform activities, and feelings that others were spying upon her. I. Chen became one of the main characters in T. Chen's paranoid perception of the world around her. T. Chen eventually became convinced that her sister was placed in her life, either by aliens or the Canadian government, to kill her.
- [29] Dr. Kolchak noted that T. Chen's symptoms had intensified over time since 2012. Dr. Kolchak wrote as follows in this regard:

In my clinical opinion, Ms. Chen was acutely ill in the context of Schizophrenia manifesting by psychosis overarching on her daily functioning, life in general and furthermore causing her to fear for her safety. She perceived her sister Ivy (victim) to be the pinnacle of the danger which may befall on her. Firstly, Ms. Chan harbored long-standing delusion that her sister is trying to harm her. This dates back to at least 2012 and according to her own account supported by collateral from mother intensified in 2017. She expressed her beliefs outwardly to her mother and her sister by "confronting" her.

Ms. Chen believed her sister was working for Canadian Government who are actually "aliens" who in turn are trying to kill Ms. Chen to study her body because she is a fraternal twin. Consequently, they invaded her sister's body to try to achieve their goal. Furthermore, she received long-standing communications from "God" and messages from other sources telling her to kill her sister. She resisted the commands for a long time, but "knew" she was going to have to do it at some point. Ms. Chen believed that other people were involved such as neighbors, police and doctors who all worked for Canadian Government which intensified her beliefs and ultimately fears.

More proximally to the offense, Ms. Chen received clear messages to kill her sister and when to do it. She began to believe that it was her only chance because if she [didn't] succeed her sister [would] kill her. This was also intensified by her sister actively planning to go to Taiwan. Hence, Ms. Chen took the initiative planning and finally killed her sister by stabbing her to "protect herself". She then made significant efforts to dispose of the body. However, her actions clearly were poorly planned according to my interpretation of the evidence and her reports.

However, there is also a possibility that Ms. Chen harbored animosity towards her sister based in non-psychotic beliefs. They argued continuously which is also supported by Ms. Chen's report and somewhat supported by her mother's collateral. There may have been non-psychotic reasons for their arguments. It appears that Ivy may have been somewhat harsh on Tracy and this clearly affected Ms. Chen. Hence, at the time of the offense, Ms. Chen may have been angry at the victim and harmed her in the heat of her anger.

Nevertheless, taking into account the totality of the information available, depth, breadth and intensity of psychotic experiences Ms. Chen and her mother disclosed as well as medical/psychiatric reports post-offense and my own observations, it is my clinical opinion that on the balance of probabilities Ms. Chen likely misperceived her environment at the time of the offense. She acted rationally in the context of psychotic perception of the world around her to protect herself from danger befalling on her from her sister Ivy whom Ms. Chen believed was an impostor. Unfortunately, her actions were irrational in the context of the reality.

Ms. Chen, according to her own report, postulated that "it was okay to kill a person if the person is trying to kill her". In general, she didn't think it was okay to harm others, but over the period of years "she (victim) was trying to poison and kill me, I believe it's okay because I was defending myself". Ms. Chen "didn't think of any other way to save herself". In addition, she "got a message from God to kill her". She felt "it was the only way to go forward". She was "sure that it was God because she knew the voice" which was "always there".

[Emphasis added.]

[30] Dr. Kolchak concluded as follows:

Hence, it is my clinical opinion, that on the balance of probabilities, Ms. [Chen] firstly qualifies for a presence of mental disorder at the time of the offense, namely Schizophrenia. Secondly, the symptoms of this disorder were manifesting by psychosis which was active at the time of the offense. Thirdly, the victim was the main figure which Ms. Chen perceived was endangering her life acutely at the time of the offense. On the balance of probabilities, Ms. Chen, in my clinical opinion, was deprived from the ability to know that her actions were morally wrong at the time of the offense by the presence of active mental disorder namely Schizophrenia.

[Emphasis added.]

[31] Overall then, I have two detailed opinions from experienced forensic psychiatrists that both conclude that the accused suffered from a mental disorder at the time of the offence that deprived her of the ability to know that her actions were morally wrong. These opinions reached the same conclusion, and there is no substantial evidence that contradicts these conclusions.

Applicable legal principles

[32] The defence of NCRMD is set out in s. 16 of the Code, which provides as follows:

Defence of mental disorder

16 (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

Presumption

(2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

Burden of proof

(3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue.

[33] "Mental disorder" is defined in s. 2 of the Criminal Code as a disease of the mind. In *R. v. Cooper*, [1980] 1 S.C.R. 1149 at 1159, 1979 CanLII 63, the Court commented on the meaning of the term and stated as follows:

"disease of the mind" embraces any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion.

[34] Here the parties rely on the second branch of s. 16 for a finding that the accused is not criminally responsible on the basis that she was incapable of knowing that her act was wrong.

[35] In *R. v. Chaulk*, [1990] 3 S.C.R. 1303, 1990 CanLII 34, the Court interpreted "wrong" as morally wrong, not legally wrong. At 1324-25, the Court stated as follows:

[I]f an accused makes a claim of insanity under the "second branch" of [what was then] s. 16(2), he is challenging the assumption that he is capable of distinguishing between right and wrong. If it is proved that his mental condition brought about such incapacity, he will be excused from criminal liability despite the elements of actus reus and mens rea being established in the particular case. Thus, while a claim of insanity under the "second branch" is based on the same basic denial of criminal capacity upon which a claim under the "first branch" is based, it is manifested not as a denial of actus reus or mens rea, but rather as a claim to be excused for what would otherwise be criminal behaviour.

[Emphasis in original.]

[36] And further at 1354-55:

Viewed from this perspective, it is plain to me that the term "wrong" as used in s. 16(2) must mean more than simply "legally wrong". In considering the capacity of a person to know whether an act is one that he ought or ought not to do, the inquiry cannot terminate with the discovery that the accused knew that the act was contrary to the formal law. A person may well be aware that an act is contrary to law but, by reason of "natural imbecility" or disease of the mind, is at the same time incapable of knowing that the act is morally wrong in the circumstances according to the moral standards of society. This would be the case, for example, if the person suffered from a disease of the mind to such a degree as to know that it is legally wrong to kill but, as described by Dickson J. in *Schwartz*, kills "in the belief that it is in response to a divine order and therefore not morally wrong".

[37] As noted in *R. v. Oommen*, [1994] 2 S.C.R. 507 at 517, 1994 CanLII 101, the focus of s. 16(1) is not on a general capacity to understand that the act of killing is wrong, but whether the particular act at issue in the proceedings is wrong. At 518, the Court stated that:

The crux of the inquiry is whether the accused lacks the capacity to rationally decide whether the act is right or wrong and hence to make a rational choice about whether to do it or not.

Conclusion

[38] I return to the Winko decision at 670:

Every humane system of justice must provide for the disposition of cases where the perpetrator of the alleged crime is not criminally responsible.

[39] Our system of justice engages s. 16 of the Criminal Code in these circumstances. Here the Crown and defence agree:

1. that the accused has established on a balance of probabilities that she is not criminally responsible for the offences charged on account of mental disorder under s. 16(1) of the Code; and
2. that the Court should decline to hold a disposition hearing under ss. 672.45(1) and (2) of the Code, but should remit the matter to the Review Board for a hearing pursuant to s. 672.47(1).

[40] The evidence that the accused was suffering from a serious mental disorder, namely schizophrenia, is well established on the balance of probabilities by the two opinions from two highly-qualified experts and the factual basis upon which their opinions are founded, as set out in their reports, which bases I accept.

[41] The record also includes corroborating evidence from the mother of T. Chen and I. Chen that the accused had a history of mental health symptoms including paranoia, hallucinations, and negative emotions.

[42] Faced with this compelling evidence, I conclude that T. Chen was not capable of knowing that what she was doing was morally wrong at the time she committed the murder and subsequent disposal of her sister's body. I find that her mental state rendered her unable to assess the moral wrongfulness of her actions. In the tragic circumstances of this case, I accept the position urged upon me by both Crown and defence that T. Chen was not criminally responsible for her actions under s. 16(1) of the Code.

[43] I further agree that it is appropriate to defer disposition to the Review Board, which has the expertise to further assess the circumstances of T. Chen's troubled history, consider additional evidence, and assess any risk she presents to the public.

[44] The case is therefore referred to the Review Board under s. 672.47(1) of the Criminal Code for a disposition hearing to be held. Normally such a hearing would be held within 45 days of the verdict. In light of the exceptional circumstances here, I would extend that time to 90 days from today: s. 672.47(2).

[45] Section 672.46(1) mandates that the custodial status of T. Chen will remain in place without the need for a further court order until the Review Board makes a disposition.

[46] Pursuant to s. 672.45, I would direct the following be sent to the Review Board for their consideration, that being a copy of the exhibits including the agreed statement of facts, addendums, and expert reports filed today, and a transcript of the submissions and proceedings today, which will be ordered on an expedited basis with a second copy to both Crown and defence.

[47] I wish to extend my appreciation to counsel for their cooperation in their conduct of this difficult matter.

"Brundrett J."

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Prepared on 27 October 2026 · Esheria