

CITATION: *Inquest into the death of Yong Lam Chai*
[2012] NTMC 038

TITLE OF COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D0110/2011

DELIVERED ON: 16 November 2012

DELIVERED AT: Darwin

HEARING DATE(s): 9 November 2012

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: **Death in Custody; Prison care and treatment; Natural Cause Death**

REPRESENTATION:

Counsel Assisting: Ms Sally Ozolins

Correctional Services and
Department of Health:

Mr Greg MacDonald

Judgment category classification: A

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0110/2011

In the matter of an Inquest into the death of

YONG LAM CHAI

ON 10 JULY 2011

AT ROYAL DARWIN HOSPITAL

FINDINGS

Mr Greg Cavanagh SM:

Introduction

1. The deceased is a Malaysian national born on 27 April 1959. He died at the Palliative Care Hospice at Royal Darwin Hospital (RDH) on 10 July 2011. At the time of his death, the deceased was a prisoner serving a life sentence for drug offences committed in 1994.
2. It is a reportable death as the deceased was a person in custody as defined by section 12(1)(a)(iii) of the *Coroners Act* (the Act) at the time of his death. Consequently and pursuant to section 15(1)(a) of the Act, the holding of an inquest was mandatory.
3. Deputy Coroner Sally Ozolins appeared as Counsel Assisting. Mr Greg MacDonald appeared on behalf of Correctional Services and the Department of Health. The death was investigated by Detective Senior Constable Timothy Kingston. I received into evidence his detailed investigation brief in addition to medical files relating to the deceased and files relating to the deceased's imprisonment from Correctional Services.
4. Pursuant to section 34 of the Act, I am required to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

(i) the identity of the deceased person;

(ii) the time and place of death;

(iii) the cause of death;

(iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act;

5. Section 34(2) of the Act operates to extend my function as follows:

“A coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.”

6. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

7. Where there has been a death in custody, pursuant to section 26 (1) and (2) of the Act a coroner:

“(1) Must investigate and report on the care, supervision, and treatment of the person being held in custody; and

- (2) May investigate or report on a matter connected with public health or safety or the administration of justice that is relevant to the death.”

Background

8. On 12 July 1994 the deceased was aboard a vessel known as “Bahari 314” which had been located by Customs Coastwatch approximately 60 nautical miles north of Darwin whilst conducting aerial surveillance patrols over the Tiwi Islands.
9. At about 8:45am the vessel was boarded by authorities and eight people were located on board, one of whom was the deceased. Evidence gathered in the course of the ensuing criminal investigation suggested that the vessel had travelled from Thailand via Singapore and through the Wetar and Timor Straights to Australia.
10. The Bahari 314 was directed to proceed to Darwin where it was secured at the Quarantine Buoy in Darwin Harbour. The vessel was kept under observation at anchor and after a period an object was observed floating in the water near the anchored vessel. The floating object was later found to be a container containing 42 kilograms of heroin. All eight people on board the vessel were subsequently arrested by Police and a further 78 kilograms of heroin located on the vessel.
11. Five of the people arrested aboard the vessel were later exonerated of any criminal misconduct and deported to Thailand. Sanan Wangsaimas, Somphon Leevanit and the deceased, then known as Phonchai Tansakun were convicted of offences relating to the importation of heroin and all were sentenced to life imprisonment. A non-parole period of 25 years was imposed in relation to the deceased and Mr Leevanit. A non-parole period of 22 years was imposed on Mr Wangsaimas.
12. All three remained in custody in the Northern Territory since their arrest. Mr Leevanit and Mr Wangsaimas are still serving prisoners.

13. Throughout the period of his incarceration the deceased attended at and was reviewed by staff at the prison medical clinic, both in Alice Springs and Darwin regularly. He received assistance with and/or treatment for minor unremarkable ailments and also specialist attention in regard to orthodontic and optometry needs. He was regularly reviewed in relation to diabetes and it appears from about 1996 he was regularly assessed in regard to complaints of chest pain. It was noted throughout his records that the deceased was a heavy smoker of cigarettes and was encouraged numerous times to cease smoking.
14. The deceased was described by witnesses – predominantly prison officials – as a quiet person who worked hard at whatever job he was given throughout his time in prison. He was reportedly a compliant prisoner who got along well with prison guards and other prisoners. The deceased established relationships with some of the prison guards of such a nature that they visited him in hospital in the final weeks of his life, bringing him books and food. The deceased was said to be a happy, compliant, hard-working courteous person. He engaged in courses and employment that was available to him throughout the period of his incarceration.

Identity of the deceased

15. Prior to the voyage to Australia, Mr Wangsaimas who was the captain of the Bahari 314 was instructed by his superiors in the importation scheme to make all necessary arrangements for the voyage. This included navigation planning, gathering a crew and obtaining maritime identity documents known as “seaman’s books” for the crew.
16. Mr Wangsaimas was provided with identification documents and a photograph of each crew member to obtain these documents. The evidence suggests that he inadvertently mixed up the photos provided for Mr Leevanit and the deceased such that their seaman’s books were issued with the wrong photo attached to each of the identity documents. This error later lead

Customs officers and Police to believe that the deceased was Somphon Leevanit and that Mr Leevanit was Phonchai Tansakun.

17. No identification documents other than the seaman's books were located by officials when searching the vessel. Evidence gathered in the course of the criminal investigation indicating that crew members had deliberately destroyed identifying documents on board the vessel when it was first stopped by Australian officials.
18. In any event, when the deceased and others were interviewed and later charged with offences Police relied on the seaman's books as the primary method of identification. Consequently, the deceased was charged and fingerprinted under the name Somphon Leevanit. Mr Leevanit was charged under the name Phonchai Tansakun.
19. Evidence obtained from prison authorities suggests that upon being processed at the prison for the first time, it is likely that Leevanit and the deceased simply answered to their own name when called upon at the prison. Simply put, Mr Leevanit answered when the name Somphon Leevanit was called out and the deceased responded when the name Phonchai Tansakun was called out. Prison officials told coronial investigators that photo or fingerprint checks did not form part of the normal procedure for checking in new prisoners at the time.
20. Thereafter it was accepted that the deceased was Phonchai Tansakun and Mr Leevanit was Somphon Leevanit. A lawyer who acted for the deceased and others in relation to the criminal proceedings remembered the name mix up and indicated to coronial investigators that she was made aware of the error by the prisoners themselves early in proceedings. In the course of the coronial investigation the lawyer was shown photographs of both the deceased and Mr Leevanit and clearly identified the deceased as Phonchai Tansakun. She noted however that the deceased told her at that time that his real name was Lee Anchai.

21. The Court of Criminal Appeal noted that from the evidence given by the prisoners, it dealt with the matter on the basis that the deceased was about 36 years old at the time of the appeal and accepted that:

“He was born on the border of Burma and South Thailand. The land where he was born then constituted part of Burma; it is now part of Thailand. He had little formal education. Throughout his teen years and early 20s he worked for his uncles in a field. He subsequently became a small time trader in trinkets, artefacts and cloth, trading across the border between Burma and Thailand. This involved working in Bangkok, partaking in local and tourist trade. He is married and has one child of 18 months. He was recruited to the voyage by Thep and, like the prisoner Lee Vanit, knew no-one of the crew before 16 June 1994. No prior criminal conduct is alleged against him.”

22. This summary was corroborated by evidence which indicated that the deceased spoke Burmese, Chinese and Malaysian languages.
23. Although it appears that neither Police nor officials at the prison formally noted or otherwise amended records to indicate that there had been a mix-up, that a mix-up had occurred was clearly referred to and acknowledged in both the Supreme Court and in the Court of Criminal Appeal in the course of sentencing proceedings.
24. The Police fingerprint data-base was not ever updated following the detection of an identity mix-up and the fingerprints of the deceased remained under the name “Somphon Leevanit”. However, in 2000 when a sample of the deceased’s DNA was taken and recorded in the national DNA data-base, it was recorded under the name “Tansakun”.
25. After his death, the deceased’s fingerprints were taken by coronial investigators. As Police had originally charged and processed the deceased as Somphon Leevanit and records were not updated, the post mortem fingerprints did not match those that were recorded in Police records for the name by which he had been known since 1995, Phonchai Tansakun.

26. Little information is available about the deceased's background or the circumstances of his life leading up to the voyage to Australia.
27. Prison records indicate that in about May 2010 the deceased sought a prisoner transfer such that he could return to Thailand. However, Thai authorities would not accept the deceased without sufficient evidence of his nationality. Valid identity documents did not exist and it was determined that information provided by the deceased was vague and unable to be verified or corroborated.
28. Whilst it was rumoured at that time that the deceased had a wife and child in Thailand, when given the opportunity to contact a person in Thailand to assist in verifying his nationality he nominated a person named Shanai Mollimun who was not known to be a family member and in fact was reportedly a friend with whom the deceased had not had contact since leaving Thailand in 1994. Interpol officers attended at the person's nominated address who apparently reported that they did not know and had never heard of Phonchai Tansakun.
29. The deceased was reportedly extremely reluctant to provide any details of his family and even in relation to his requested repatriation in 2010 he, and co offenders Mr Leevanit and Mr Wangsaimas appeared to have concerns about family and friends in Thailand being identified and/or contacted by authorities.
30. In relation to the requested transfer an officer of the Department of Immigration and Citizenship, Lee Dutton reported that he interviewed the deceased on a number of occasions in June 2011. The deceased advised Mr Dutton at their second meeting that he was born in China and had travelled with an uncle from the age of about seven, living in Burma, Thailand and Laos. The deceased acknowledged that the seaman's books seized by Police were false and stated that his real name was "Lee Anchai". He used the nick-name "Chai". The deceased advised Mr Dutton that he had a wife and

two daughters who he believed were living in a village south of Bangkok however, noted that he had not spoken to them since leaving Thailand in 1994. That the deceased had a wife and at least one child is corroborated in part by Wangsaimas in his 2011 statement to Police. Prison records indicate that the deceased's wife was named Argung Tansakun and his daughter Ma Ling Tansakun however; efforts made by Detective Kingston to identify and locate these people with the assistance of Interpol did not produce any results.

31. Prison records indicate that the deceased did not ever receive visits or other communication from friends or relatives from overseas which might have assisted in establishing his true identity.
32. The deceased passed away before the transfer options were fully investigated.
33. Following extensive co-operative investigations conducted through Interpol in a number of Asian countries, Malaysian authorities provided confirmation on 3 July 2012 that the deceased's post-mortem fingerprints matched those of Yong Lam Chai, born on 27 April 1959 in Malaysia. Subsequently, the deceased's next of kin was identified as his brother Yong Nam Cheong.
34. The deceased's brother spoke with Superintendent Gan Tack Guan, Assistant Director of Interpol, Malaysia in relation to his brother and by letter dated 14 August 2012 Superintendent Guan advised Detective Kingston that the information obtained from the deceased's brother indicated that the deceased was born on 27 April 1959 in Banting, Selangor, Malaysia to parents Yong Han Chin (father) and Kok Ah Nga (mother). The deceased was one of 10 children and grew up in Banting, Selangor, Malaysia. The deceased left school after primary school and did odd jobs until leaving Malaysia in about 1992. He apparently married however, the brother reported that the deceased's wife died in 1991 and the couple had no children.

Report to the Coroner

35. The death was reported to the Coroner on 11 July 2011 by Dr Johanna Mayer of Royal Darwin Hospital.
36. Dr Myat Thander Win certified death at 4:28 am on 10 July 2011.

Cause of death

37. The cause of death is not in issue. The autopsy report indicates the disease or condition directly leading to the deceased's death was:
 - I(a) Left upper lobe collapse/bronchopneumonia and haemorrhagic pleural effusion.
 - I(b) Locally advanced and metastatic left upper lobe bronchial non-small cell carcinoma.
 - II Severe coronary atherosclerosis and old anterior myocardial infarct
38. A full medical report was provided by Dr Tony Falconer summarising the medical history of the deceased.
39. A statement was also provided by Dr Meena Okera of RD detailing the history of and treatment provided to the deceased.
40. In January 2011 a chest x-ray conduct on the deceased indicated signs consistent with lung cancer. He was subsequently diagnosed with the disease in February 2011. In March 2011 a formal diagnosis of non-small cell lung cancer was made. At that time the deceased's prognosis was indicated to be poor. The deceased subsequently underwent radiation and chemotherapy. The deceased was admitted to RDH on 17 May 2011 following an episode of shortness of breath. He was found to have a pleural effusion and bowel obstruction. Following treatment, he was returned to Berrimah prison.

41. The deceased was again admitted to RDH on 3 June 2011 following episodes of shortness of breath. He remained under the care of the Acute Care Team until 8 July 2011 when he was moved to the palliative care hospice for end of life treatment.
42. The deceased passed away as a result of his illnesses at 4:38am on 10 July 2011.

Summary

43. The evidence compiled in the course of the coronial investigation indicates that the treatment and care the deceased received from both the Department of Health and Correctional Services was proper and appropriate.
44. The only matter of controversy initially identified was the true identity of the deceased.
45. A number of theories in relation to the deceased's identity and possible motivations to maintain a false identity were recorded by coronial investigators. However, the issue of the true identity of the deceased has been resolved by way of the Interpol investigations, confirming that the deceased is Yong Lam Chai.

Recommendations

46. There are no recommendations arising from this inquest.

Formal Findings

47. On the basis of the tendered material and oral evidence given at this inquest, I am able to make the following formal findings in relation to the death of the deceased as required by the Act:
 - i. The deceased was born on 27 April 1959 in Banting, Selangor, Malaysia.

- ii. The time and place of death was at approximately 4:38 am on 10 July 2011 at the Royal Darwin Hospital.
- iii. The cause of death was a left upper lobe collapse/bronchopneumonia and haemorrhagic pleural effusion, as a consequence of locally advanced and metastatic left upper lobe bronchial non-small cell carcinoma. Severe coronary atherosclerosis and old anterior myocardial infarct were conditions contributing to but not causative of death.
- iv. Particulars required to register the death:
 - a. The deceased was male.
 - b. The deceased's name was Yong Lam Chai.
 - c. The deceased was of Asian descent.
 - d. The cause of death was reported to the Coroner.
 - e. The cause of death was confirmed by Pathologist; Dr Eric Donaldson after an autopsy was performed on 3 August 2011.
 - f. The deceased's mother was Kok Ah Nga and his father was Yong Han Chin.
 - g. The deceased lived at the Berrimah Correctional facility at Berrimah where he was a prisoner.
 - h. The deceased was unemployed.

Dated this 16th day of November 2012.

GREG CAVANAGH
TERRITORY CORONER