
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD : 24 JANUARY 2022
DELIVERED : 10 FEBRUARY 2022
FILE NO/S : CORC 881 of 2019
DECEASED : YAN, NAING AUNG

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Senior Constable C Robertson assisted the Coroner.

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Sarah Helen Linton, Deputy State Coroner, having investigated the disappearance of Naing Aung YAN with an inquest held at the Perth Coroner’s Court, Court 85, CLC Building, 501 Hay Street, Perth on 24 January 2022, find that the death of Naing Aung YAN has been established beyond all reasonable doubt and that the identity of the deceased person was Naing Aung YAN and that death occurred on or about 4 February 2019 in the waters of the Indian Ocean, approximately eight nautical miles from the coast of Cape Preston as a result of an unknown cause in the following circumstances:

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INTRODUCTION

1. On 28 January 2019, the Hong Kong registered iron vessel *Magsenger 9* (the vessel) arrived in waters off Cape Preston, which is located in the Pilbara region of Western Australia. The vessel had travelled to Western Australia from Singapore. It anchored at the outer harbour anchorage, at mooring location CP2, which was within the Cape Preston Port but approximately eight nautical miles from the Cape Preston facility. The vessel was anchored while awaiting a load of iron ore. The vessel was due to depart the port on 11 February 2019.
2. Naing Aung Yan was one of 23 crew members aboard the vessel. He was employed as an oiler by the vessel's operator. Mr Yan failed to report to work at midnight on 5 February 2019. When a crew member went to his cabin to check on him about an hour later, he was not present in his cabin. A search of the vessel was conducted, but no sign of Mr Yan was found. A resultant search of his cabin found a letter inside the cabin addressed to Mr Yan's wife and son, which indicated he had an intention to self-harm at the time he wrote the letter.
3. A search of the waters around the anchorage was conducted, initially by other vessels in the area, and then later as part of a full marine search and rescue coordinated by the WA Water Police. The search continued for three days and included a search of the seabed by police divers and nearby foreshore, in case he had washed ashore. No sign of Mr Yan was found.
4. On the basis of the information provided by the WA Police in relation to Mr Yan's disappearance, Acting State Coroner King determined that pursuant to s 23 of the *Coroners Act 1996* (WA), there was reasonable cause to suspect that Mr Yan had died and that his death was a reportable death. He therefore made a direction that a coroner hold an inquest into the circumstances of the suspected death.¹
5. I held an inquest at the Perth Coroner's Court on 24 January 2022. The inquest consisted of the tendering of documentary evidence compiled through the police investigation conducted into Mr Yan's disappearance, as well as hearing evidence from Sergeant Paul World, who was the Police Incident Commander for the search for Mr Yan.

DISCOVERY THAT MR YAN WAS MISSING

6. Mr Yan was born in Myanmar (formerly known as Burma) on 19 December 1990. He was married and had one son. It appears his family remained living in Myanmar while he travelled the world as a crew oiler on the vessel. It is not known when Mr Yan last had contact with his family.
7. The vessel came in to anchor off Cape Preston on 28 January 2019. Mr Yan was said to have last been seen at 9.15 pm on 4 February 2019 by another crew member. At that time he was in his cabin aboard the vessel.²

¹ Section 23 *Coroners Act* Direction of Acting State Coroner King dated 5 July 2019.

² Exhibit 1, Tab 3.

8. Mr Yan failed to report to work for his next shift at midnight on 5 February 2019. A crew member was sent to his cabin to check on him at 12.50 am and find out why he had not reported to duty. Mr Yan was not in his cabin. A thorough search of the vessel was conducted by crew members, but they failed to locate Mr Yan. During the search of the upper deck area, a crew member did find a packet of cigarettes and lighter on a bench metres from the railing and an open gate that provided direct access to the ocean. The brands of lighter and cigarette packet were consistent with lighters and cigarettes located in Mr Yan's cabin.³
9. At 1.35 am the vessel's captain, Captain Deng Tao, and other crew members conducted a thorough search of Mr Yan's cabin. During the search they found a letter on the desk in his cabin that was written in Mr Yan's native language of Burmese and addressed to his wife and son. The pages of the letter appeared to have been torn from a notebook that was also located in the cabin. The letter expressed his love for his wife and son and made references to seeing them in the 'next life', which suggested Mr Yan had an intention to end his life at the time of writing the note. There were no signs of a disturbance in the cabin or anything to suggest that he had met with foul play.⁴
10. At 3.35 am Captain Tao contacted the vessel's shipping operator and alerted them to Mr Yan's disappearance and requested help with search and rescue. The shipping operator then alerted Cape Preston Port Operations and the Australian Border Force.⁵
11. At 4.01 am the Port Operations staff commenced an initial search of the waters around the anchorage location by utilising a total of seven local tug boats and crew transfer vessels. Captain Tao also asked the crew of the vessel to conduct another thorough search of the vessel, including opening all hatch covers.⁶
12. At 4.36 am the Australian Border Force contacted the Joint Rescue Coordination Centre (JRCC) in Canberra and then later advised the local WA Police at Dampier Police Station of Mr Yan's disappearance.⁷

MARINE SEARCH AND RESCUE OPERATION

13. The JRCC made contact with the WA Water Police branch at 5.00 am and they immediately commenced a Marine Search and Rescue incident. Senior Constable Trist from Water Police was initially appointed as the Search and Rescue Mission Controller, but this role was handed over a few hours later to the local Officer in Charge of Dampier Police Station, Sergeant World. Sergeant World had only just taken up the posting at the station, but he is a very experienced police officer who also has extensive marine industry experience. Sergeant World is a qualified marine search and rescue officer and he had already been involved in a large number of marine searches prior to this incident.⁸

³ Exhibit 1, Tabs 3, 7 and 10.

⁴ Exhibit 1, Tabs 3, 7, 10 and 19 – 22.

⁵ Exhibit 1, Tab 3.

⁶ Exhibit 1, Tab 3.

⁷ Exhibit 1, Tab 3.

⁸ T 4.

14. JRCC advised they had already deployed an airplane and two helicopters to commence an air search of the area.⁹ The Cape Preston port authority had also already voluntarily closed the port and diverted its resources to searching the surface of the water.¹⁰
15. Coordinated by Sergeant World, a search plan was formulated, which included personnel from WA Police, Department of Fire and Emergency Services, Volunteer Marine Vessels, Cape Preston Port Operations, Department of Marine and Harbours and private aircraft companies.¹¹ Information was provided about what areas had already been searched and then a further sea search area was formulated. The sea search was commenced at 9.00 am. Sergeant World recalled the weather was quite good and the surface of the water was quite clear, so it was easy to search.¹²
16. In addition to the sea search, WA Police officers boarded the vessel and conducted their own search of Mr Yan's cabin and relevant other parts of the vessel.¹³
17. During the afternoon of the first day of the search, an estimated time frame for survival was obtained from a doctor with expertise in search and rescues and survival times, Dr Paul Luckin, who provided his expert opinion that Mr Yan's time frame for survival in the water would be the end of daylight on 5 February 2019. The sea search concluded at 6.00 pm that day, as light faded, with no sign of Mr Yan being discovered.¹⁴
18. Mr Yan's father, Mr Naing Win, was contacted in Myanmar through the vessel's manning agents and advised that day that Mr Yan was missing from the vessel and could not be located.¹⁵
19. The search recommenced at 6.00 am on 6 February 2019, with a focus primarily on aircraft through the use of a police air wing plane and a helicopter. The search also included some land searches of the Cape Preston shoreline in areas where Mr Yan's body might have drifted. Again, no sign of Mr Yan was found at the time the day's search concluded at 5.00 pm.¹⁶
20. The search recommenced for a third day on 7 February 2019. WA Police officers from the dive squad had flown up from Perth and they commenced dive operations in the waters beneath the vessel in case Mr Yan's body was located on the seabed. The divers continued to search the seabeds on 8 February 2019, but no sign of Mr Yan was discovered.¹⁷
21. During the later afternoon of 8 February 2019, almost four full days after Mr Yan had been discovered missing, Sergeant World sought approval to formally suspend the search due to no further viable avenues for investigation being identified.

⁹ Exhibit 1, Tab 3.

¹⁰ T 5.

¹¹ Exhibit 1, Tab 3.

¹² T 5; Exhibit 1, Tab 3.

¹³ Exhibit 1, Tab 3.

¹⁴ T 5; Exhibit 1, Tab 3.

¹⁵ Exhibit 1, Tabs 3, 4 and 23.

¹⁶ T 5; Exhibit 1, Tab 3.

¹⁷ Exhibit 1, Tab 3.

Approval to suspend the search was granted by the Police Commander at 4.05 pm that day.¹⁸

22. Sergeant World made contact with Mr Yan's father via the shipping agency to advise that the marine search had been concluded without Mr Yan being located, and that the investigation would be referred to the WA Police Missing Persons Team for further investigation.¹⁹ Sergeant World gave evidence that he believed the search was thorough, with good cooperation from the local community in terms of the provision of extra resources to assist with the search, but sadly Mr Yan could not be found despite their best endeavours.

MISSING PERSONS TEAM REVIEW

23. The investigating police officers could not identify any possible way that Mr Yan might have left the ship between when he was last seen and when the search was conducted for him by the crew. The ship was moored in water reaching depths of 21.8 metres, eight nautical miles from the nearest port, and no flotation devices were missing from the vessel.²⁰
24. Subsequent inquiries by WA Police have failed to identify any interactions between Mr Yan and any Australian institutions, such as the Department of Immigration and Border Force, any Western Australian hospitals or the Department of Justice. Mr Yan's passport had been located in his cabin, along with his other personal items. He had not contacted any family members or friends, which was said to be very unusual for him.²¹
25. The note left by Mr Yan was strongly suggestive that Mr Yan had planned to commit suicide, and the discovery of cigarettes and a lighter matching the type he was known to use on the deck near an open gate strongly supports the conclusion that Mr Yan entered the sea at that location.²²
26. Sergeant World gave evidence that he had considered the possibility that there may have been some mistreatment of Mr Yan, as a lower ranking crew member, and had sent an AMSA officer on board with the police detectives to interview the crew and rule out any possibility of the involvement of another person in Mr Yan's death. Based upon the information that was obtained, Sergeant World felt comfortable ruling out any criminality in Mr Yan's death and considered the evidence supported a finding of suicide. Sergeant World explained that, from his knowledge of the industry, he is aware that working conditions for a crew member of Mr Yan's background and position can be very difficult, and they spend very long periods of time at sea, which can have a very negative effect on a person's mental health in those circumstances.²³

¹⁸T 6; Exhibit 1, Tab 3.

¹⁹ Exhibit 1, Tabs 3 and 24.

²⁰ Exhibit 1, Tabs 3 and 9.

²¹ Exhibit 1, Tab 3.

²² Exhibit 1, Tab 3.

²³ T 10.

27. Expert medical opinion suggested that in the event Mr Yan did enter the water in that way, there was a 50 per cent chance he died at the time, or within minutes, of entering the water due to the 13 metre drop from the ship to the water, and the trauma this impact would have caused to his small frame. If he had survived the fall into the water, his maximum time for survival in the water was estimated to be between 14 and 19 hours before he succumbed to drowning, exposure to the elements or the intervention of marine predators. Since commercial shark fishing has been banned, it is known that there are a lot of predatory sharks in the local area, which increased the likelihood that there might be predation on Mr Yan's remains that would prevent successful recovery of his body.²⁴
28. Detective First Class Constable Christopher Marston from the Missing Persons Team, which falls within the Homicide Squad, also reviewed all of the evidence obtained in the investigation and concluded there was no evidence found to suggest any criminality surrounding Mr Yan's disappearance.²⁵ A recent review by the police has found no new evidence to contradict this conclusion.

CONCLUSION

29. I indicated at the conclusion of the inquest that I am satisfied beyond reasonable doubt that Mr Yan died on or about 4 February 2019. I am satisfied Mr Yan deliberately entered the sea, with the intention of taking his life, sometime between when he was last seen at 9.15 pm on 4 February 2019 and midnight. He may have died immediately or soon after due to the impact of the fall, or else he died in the hours that followed on 5 February 2019. I am unable, on the information that is before me, to determine the actual cause of death, as there are a number of possibilities open, so the cause of death must remain unascertained. I am, however, satisfied that his death occurred by manner of suicide.

S H Linton
Deputy State Coroner
10 February 2022

²⁴ T 7 – 11; Exhibit 1, Tabs 3 and 8.

²⁵ Exhibit 1, Tab 3.