
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : MICHAEL ANDREW GLIDDON JENKIN
HEARD : 27 FEBRUARY 2020
DELIVERED : 9 MARCH 2020
FILE NO/S : CORC 1519 of 2017
DECEASED : ZHANG, QIANFANG

Catchwords:

Nil

Legislation:

Constitutional Powers (Coastal Waters) Act 1979 (WA)
Industrial Relations Act 1979 (WA)
Seas and Submerged Lands Act 1973 (Cth)

Counsel Appearing:

Sergeant L. Housiaux assisted the Coroner

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

Nil

Coroners Act 1996

(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the suspected death of **Qianfang ZHANG** with an inquest held at Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth, on 27 February 2020 find that the death of **Qianfang ZHANG** has been established beyond all reasonable doubt, and the identity of the deceased person was **Qianfang ZHANG** and that death occurred on or about 16 September 2017 in the waters of the Indian Ocean off Cape Lambert, Western Australia, in the following circumstances:*

Table of Contents

INTRODUCTION	3
BACKGROUND	3
MR ZHANG'S MOVEMENTS BEFORE HE DISAPPEARED	5
16 September 2017	5
17 September 2017	6
THE SEARCH FOR MR ZHANG	6
Time Frame for Survival.....	7
The search is called off	7
POLICE INVESTIGATION	7
HAS DEATH BEEN ESTABLISHED?	9
CAUSE AND MANNER OF DEATH	10
PLACE OF DEATH	11
JURISDICTIONAL ISSUE	12
Basis for investigating Mr Zhang's death.....	12
Was Mr Zhang's death a Western Australian death?	12
CONCLUSION	14

INTRODUCTION

1. On the basis of the evidence contained in a police report with respect to the disappearance of Qianfang Zhang (Mr Zhang), the State Coroner determined that she had reasonable cause to suspect that Mr Zhang had died and that his death was a “reportable death”.¹
2. Accordingly, on 26 August 2019, pursuant to section 23(2) of the *Coroners Act 1996* (WA) (the Act), the State Coroner directed that the suspected death of Mr Zhang be investigated.² In accordance with that direction, I held an inquest on 27 February 2020.
3. Senior Constable K Le Prevost-Shepherd gave evidence at the inquest and the documentary evidence adduced consisted of one volume.
4. The inquest focused on the circumstances of Mr Zhang’s disappearance, the question of whether his death had been established beyond all reasonable doubt and the question of whether I had jurisdiction to make findings with respect to the manner and cause of Mr Zhang’s death.

BACKGROUND³

5. Mr Zhang was born in the People’s Republic of China (China), on 1 May 1995. His Chinese passport was issued on 26 August 2016 and was valid until 25 August 2026.⁴
6. At the time of his disappearance, Mr Zhang was employed as an ordinary seaman on board a ship called the *Stella Anita*. His role on the ship was described as “mess boy” and he commenced his employment on 3 February 2017.^{5,6}

¹ Sections 3 and 23(1), *Coroners Act 1996* (WA)

² See also: Direction by State Coroner, contained in letter to Commissioner of Police (26.08.19)

³ † 27.02.20 (Le Prevost-Shepherd), pp4-5

⁴ Exhibit 1, Tab 9, Mr Zhang’s passport, p2

⁵ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p1 & p8

⁶ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p3

7. The *Stella Anita* is a large “capesize” bulk iron ore carrier with a deadweight of 180,355 tonnes. It is 295 metres long, 46 metres wide and the distance from the surface of its deck to the ocean is about 18 metres. The vessel was chartered by Rio Tinto Limited and regularly carried iron ore from Port Walcott in the north-west of Western Australia to ports in China.^{7,8,9}
8. The *Stella Anita* departed from Qindao Port located in Shadong Province in the north-west of China, on 7 September 2017. The ship was expected to arrive at its destination, namely Port Walcott near Cape Lambert in Western Australia, on 17 September 2017.¹⁰
9. Mr Zhang was last known to have been alive at about 8.00 pm on 16 September 2017. He was discovered missing by the captain of the *Stella Anita*, Captain Lingsuo Kong (Captain Kong), during a routine inspection of the ship at about 7.00 am on 17 September 2017.^{11,12}
10. Several thorough searches of the ship failed to find any sign of Mr Zhang and Captain Kong reported Mr Zhang’s disappearance to the Australian authorities. The *Stella Anita* reversed course and with assistance from other ships in the general area, began a search for Mr Zhang. Meanwhile, two search aircraft were deployed from Western Australia and they conducted an aerial search of a vast area of the Indian Ocean. The sea and air searches failed to find any sign of Mr Zhang.^{13,14}
11. A Police investigation concluded that it was unclear how Mr Zhang had disappeared, but that it was likely he had been lost overboard, “*either by accident or of his own volition.*”^{15,16,17,18}

⁷ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p3

⁸ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, pp1-2

⁹ Exhibit 1, Tab 19, Photographs of the *Stella Anita*, photos 1-4

¹⁰ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p2

¹¹ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp3-4

¹² Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p3

¹³ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp4-5

¹⁴ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, pp3-4

¹⁵ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p7

¹⁶ See also: Tab 3A, Statement - Sen. Const. K Le Prevost-Shepherd, para 27

¹⁷ Exhibit 1, Tab 3B, Form: At risk person assessment - missing person

¹⁸ t 27.02.20 (Le Prevost-Shepherd), p8 & p10

12. A similar conclusion was reached by Captain B. Hughes, a marine surveyor engaged by Aus Ship Lawyers who acted for the ship's master and owners. He conducted an investigation into Mr Zhang's disappearance and concluded that:

Given that the vessel was searched thoroughly and extensively a number of times and Mr Zhang was not found it must be assumed that Mr Zhang was tragically lost overboard sometime between 2000 hrs on the 16th September [2017] and 0700 hrs on 17 September [2017].¹⁹

MR ZHANG'S MOVEMENTS BEFORE HE DISAPPEARED

16 September 2017^{20,21,22}

13. Mr Zhang was known to have been playing cards with other crew members in the galley area of the *Stella Anita* between about 3.00 pm and about 7.00 pm on 16 September 2017. He was said to have been in good spirits when he left the card game at about 7.00 pm. At about 7.15 pm, he was seen walking between the galley and his cabin.
14. At about 7.30 pm, the *Stella Anita's* second mate went to Mr Zhang's cabin to ask for some toiletries. It appears that supplying these items to crew members formed part of Mr Zhang's duties. Mr Zhang was in the shower at the time and reportedly said he would bring the requested items to the second mate's cabin after his shower.
15. At about 8.00 pm, Mr Zhang went to the second mate's cabin with the requested supplies. Mr Zhang was shirtless and wearing a purple towel. Mr Zhang was described as being in good spirits at this time. This appears to be the last occasion on which Mr Zhang is known to have been alive. The purple towel Mr Zhang was seen wearing when he went to the second mate's cabin was subsequently found in Mr Zhang's cabin. On the basis of this evidence, it appears that Mr Zhang returned to his cabin after speaking with the second mate.²³

¹⁹ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p4

²⁰ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp3-4

²¹ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p3

²² † 27.02.20 (Le Prevost-Shepherd), pp5-6

²³ See also: Exhibit 1, Volume 1, Tab 13, Photos of Mr Zhang's cabin, showing purple towel, (photo 23)

17 September 2017^{24,25,26}

16. At about 7.00 am on 17 September 2017, during his routine daily inspection of the ship, Captain Kong became aware that Mr Zhang was missing. Captain Kong made enquires with crew members and then ordered the first of several systematic searches of the ship. Mr Zhang could not be located and the captain notified the Joint Rescue Coordination Centre (JRCC) of the Australian Maritime Safety Authority and made an emergency broadcast to nearby shipping.
17. At the time Mr Zhang was noted to be missing, the *Stella Anita* was about 208 nautical miles (approximately 385 kilometres) north of Cape Walcott. The weather and sea conditions were mild and the vessel was not pitching or rolling.
18. Captain Kong ordered that Mr Zhang's cabin be sealed²⁷ and the *Stella Anita* reversed course and began searching for him. All life jackets on the vessel were accounted for, meaning that if Mr Zhang had gone overboard, he would not have been wearing one.

THE SEARCH FOR MR ZHANG^{28,29,30}

19. After receiving notification from the *Stella Anita*, the JRCC deployed a Challenger Jet and a Dash 8 Turboprop aircraft.³¹ The aircraft conducted an aerial search for Mr Zhang from about 11.00 am to about 6.00 pm on 17 September 2017. Approximately 944 square nautical miles (about 3,237 square kilometres) of the Indian Ocean was searched, but no trace of Mr Zhang was found.

²⁴ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p2 & pp4-5

²⁵ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, pp2-4

²⁶ † 27.02.20 (Le Prevost-Shepherd), p6

²⁷ See; Exhibit 1, Tab 13, Police photos of the deceased's cabin, photos 1-3

²⁸ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp4-5

²⁹ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, pp3-6 & attached Statement of Capt. L Kong

³⁰ † 27.02.20 (Le Prevost-Shepherd), pp6-7

³¹ Exhibit 1, Tab 20, Photographs of the Challenger Jet and the Dash 8 Turboprop aircraft

20. Meanwhile, three ships in the area near where Mr Zhang was thought to be missing (the *Star Angie*, the *Maritime Putri* and the *Aqua Charm*) assisted the *Stella Anita* with the search. The search was unsuccessful and was called off at about 6.00 pm on 17 September 2017, when the light faded.

Time Frame for Survival

21. Dr Paul Luckin, a consultant anaesthetist based in Queensland and an expert in search and rescue operations, advised that the likelihood of Mr Zhang surviving a fall of about 18 metres from the deck of the *Stella Anita* into the ocean was about 20-30%, assuming the ship was travelling at slow speed at the time. Dr Luckin also said that Mr Zhang's "time frame for survival", assuming immersion in the ocean, was no more than 24 hours.³²

The search is called off

22. The JRCC search for Mr Zhang was called off at last light on 17 September 2017. By that time, Dr Luckin had advised that there was no prospect that Mr Zhang was still alive if he had fallen into the sea. Meanwhile, the *Stella Anita*, which had been joined by its companion ship the *Stella Ada*, continued searching for Mr Zhang until 12.48 pm on 18 September 2017. At that time, the owners of the ships directed them both to proceed to port.

POLICE INVESTIGATION^{33,34}

23. The *Stella Anita* arrived at Port Walcott at about 12.06 pm on 20 September 2017. Shortly afterwards, Captain B. Hughes boarded the ship and began conducting enquiries. He was joined by officers from Roebourne Police, Karratha Detectives and Border Force Australia (the officers) at about 3.00 pm.

³² Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p5

³³ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp2-7

³⁴ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p2 & p4

24. After boarding the *Stella Anita*, the officers examined Mr Zhang's cabin and took a series of photographs. With the assistance of Captain Kong, the officers interviewed a number of crew members. The captain said that Mr Zhang was a respected crew member and that the ship's crew were a "friendly bunch". The captain said he was unaware of any issues between any of the crew.^{35,36,37}
25. After conducting enquiries, the officers concluded that there were no obvious signs of any violent act or self-harm incident involving Mr Zhang. Further, nothing in Mr Zhang's cabin gave any clue as to his whereabouts.³⁸
26. The officers noted that there was no guardrail around the deck of the *Stella Anita* and that instead, the edge of the deck was protected by metal chains suspended between posts. In places, the chain was only knee-high. At the inquest, Senior Constable Le Prevost-Shepherd, agreed that it was possible that the deceased may have fallen from the deck of the *Stella Anita* whilst standing near the edge.³⁹
27. The officers noted that there were no CCTV cameras on board the *Stella Anita* and that crew members, other than the captain, had limited proficiency in English. Given the size of the ship, and as a result of safety concerns, although the officers conducted a detailed search of Mr Zhang's cabin, they did not search the remainder of the ship.⁴⁰
28. A journal written by Mr Zhang was found in his cabin. The journal appears to have been used by him to practice writing in English. Mr Zhang was reportedly learning English and undertaking other studies in order to secure promotion.⁴¹ An entry in the journal dated 3 February 2017 (Mr Zhang's first day on the *Stella Anita*), contained Chinese characters.⁴²

³⁵ † 27.02.20 (Le Prevost-Shepherd), p5, pp7-8 & p11

³⁶ see also: Exhibit 1, Tab 3, Statement - Sen. Const. K Le Prevost-Shepherd, para 9

³⁷ † 27.02.20 (Le Prevost-Shepherd), p11

³⁸ † 27.02.20 (Le Prevost-Shepherd), p5 & p7

³⁹ † 27.02.20 (Le Prevost-Shepherd), p10

⁴⁰ † 27.02.20 (Le Prevost-Shepherd), p6, p8 & p9

⁴¹ † 27.02.20 (Le Prevost-Shepherd), p5 & pp8-9

⁴² † 27.02.20 (Le Prevost-Shepherd), pp8-9

29. The journal entry for this day was translated as follows:

Today, it was my first [day] to board a boat. I was excited and nervous in the beginning. But with the time goes by, I dragged my exhausted body back to my tiny room and I started to miss home, miss her...feeling lonely and depressed.⁴³

30. The officers did not identify the involvement of any third party in the disappearance of Mr Zhang and concluded that he had been lost in “*international waters*”. There is no evidence that Mr Zhang has made contact with any person or has been seen since his disappearance on 17 September 2017.^{44,45}

HAS DEATH BEEN ESTABLISHED?

31. In my view, the evidence establishes beyond all reasonable doubt that Mr Zhang died on or about 16 September 2017, being the date on which he was last known to have been alive. In reaching that conclusion, I have relied on the following facts:

- i. Mr Zhang was last known to be alive at about 8.00 pm on 16 September 2017. Several thorough searches of the *Stella Anita* by the ship’s crew and an extensive sea and air search failed to find any trace of Mr Zhang;
- ii. Mr Zhang’s timeframe for survival, assuming immersion in the sea, had expired by the time the JRCC search was called off on 17 September 2017;
- iii. A Police investigation found no signs of third party involvement in Mr Zhang’s disappearance nor was there any no sign of any violent act or self-harm incident in his cabin; and
- iv. There is no evidence that since Mr Zhang’s disappearance, he has been seen by any person or has made contact with any member of his family.

⁴³ Exhibit 1, Tab 14B, Translation of page from Deceased’s journal (translated on 31.10.19)

⁴⁴ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, pp6-7

⁴⁵ t 27.02.20 (Le Prevost-Shepherd), p8

CAUSE AND MANNER OF DEATH

32. In circumstances where Mr Zhang's body has not been located, I am obliged to find that the cause of his death is unascertained.
33. However, the available evidence strongly suggests that the most likely explanation for Mr Zhang's death is that he died from immersion after falling or jumping into the sea from the deck of the *Stella Anita*. In canvassing this possibility, I am mindful of the following facts:
- i. Mr Zhang was last seen alive at about 8.00 pm on 16 September 2017 and was reported to be in good spirits;
 - ii. Several extensive searches of the *Stella Anita*, ordered after it was realised that Mr Zhang was missing, failed to find any sign of him;
 - iii. After Mr Zhang's disappearance, all of the lifejackets on board the *Stella Anita* were accounted for, meaning that if Mr Zhang did enter the sea, he was not wearing one;
 - iv. The likelihood of Mr Zhang resurfacing unharmed after a fall of about 18 metres from the deck of the *Stella Anita* into the sea was said to be 20-30% whilst his chance of surviving for in the sea for more than 24 hours was nil; and
 - v. An extensive sea and air search, that encompassed approximately 3,400 square kilometres of the ocean, failed to find any sign of Mr Zhang.
34. After carefully considering all of the available evidence, I have been unable to determine whether Mr Zhang deliberately took his life. In an entry in his journal dated 3 February 2017, Mr Zhang did express feeling lonely and depressed and said he was missing "home" and "her", which may have been a reference to a family member or a girlfriend.
35. However, that journal entry appears to have been written by Mr Zhang on his first day on board the *Stella Anita* and in my view, it is reasonable to assume that there would be some initial homesickness on his part.

36. Mr Zhang was said to be in good spirits during an extended card game on 16 September 2017 and also when he was seen by the ship's second mate at about 8.00 pm that night.
37. There was nothing in Mr Zhang's cabin to indicate his intentions, but I note that he had been on board the *Stella Anita* since 3 February 2017, apparently without incident. This might suggest it was less likely that Mr Zhang fell overboard accidentally, although as I have noted, the ship's decks were not protected by a handrail.
38. In this case, there are a range of possibilities with respect to Mr Zhang's death, but on the basis of the available evidence, I have been unable to arrive at any conclusion as to how Mr Zhang died. Accordingly, I make an open finding as to the manner of Mr Zhang's death.

PLACE OF DEATH

39. Mr Zhang was last seen alive at about 8.00 pm on 16 September 2017, at which time the *Stella Anita* was located approximately 363 nautical miles (672 kilometres) off the north-west coast of Western Australia. When Mr Zhang was discovered missing, the vessel was approximately 208 nautical miles (385 kilometres) offshore.^{46,47}
40. In my view, for the reasons set out above, it is most likely that Mr Zhang fell or jumped into the sea from the deck of the *Stella Anita*. Given the evidence of when Mr Zhang was last seen and when he was discovered missing, I find that the place of his death was the waters of the Indian Ocean between 208 and 363 nautical miles off the coast of Western Australia.
41. Therefore, Mr Zhang's death occurred outside the territorial seas adjacent to Western Australia, the limit of which is 12 nautical miles from the coast.^{48,49}

⁴⁶ Exhibit 1, Tab 2, Report - Sen. Const. K Le Prevost-Shepherd, p1

⁴⁷ Exhibit 1, Tab 18, Report - Australis Maritime Consultancy, p4

⁴⁸ See: section 6 of the *Seas and Submerged Lands Act 1973* (Cth)

⁴⁹ See: section 3 of the *Constitutional Powers (Coastal Waters) Act 1979* (WA)

JURISDICTIONAL ISSUE

Basis for investigating Mr Zhang's death

42. My investigation into Mr Zhang's suspected death was conducted under the authority of section 23 of the Act. As noted, at the time of Mr Zhang's disappearance, the State Coroner had reasonable cause to suspect that Mr Zhang had died and that his death was a reportable death. Accordingly, pursuant to section 23(1) of the Act, the State Coroner made a direction on 26 August 2019, that Mr Zhang's death be investigated.
43. Once that direction had been made, I was obliged to hold an inquest into the circumstances of the suspected death of Mr Zhang. Section 23(2) of the Act provides that if, as in this case, a coroner finds that Mr Zhang's death has been established beyond all reasonable doubt, then an inquest must be held into how the death occurred and the cause of the death.

Was Mr Zhang's death a Western Australian death?

44. Outside of section 23 of the Act, a coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a "reportable death".⁵⁰ A reportable death is a "Western Australian death" that occurs in one of the circumstances set out in section 3 of the Act.
45. A *Western Australian death* is defined in section 3 of the Act to mean a death:
- (a) that occurred in Western Australia; or
 - (b) where the body is in Western Australia; or
 - (c) the cause of which occurred in Western Australia; or
 - (d) of a person who was ordinarily residing in Western Australia at the time of death; or
 - (e) of a person who, at the time of death, was in an industry to and in relation to which the Industrial Relations Act 1979 applies due to the operation of section 3 of the Act.

⁵⁰ Section 19(1), *Coroners Act 1996* (WA)

46. Sub-paragraphs (a) to (d) inclusive of the definition of *Western Australian death* in section 3 of the Act do not apply in this case, because of the findings I have made about the place of Mr Zhang’s death. In short, Mr Zhang’s death did not occur in Western Australia, his body was never located and at the time of his disappearance, he was a Chinese national who did not ordinarily reside in Western Australia.
47. However, in my view Mr Zhang’s death is a “*Western Australian death*” because at the time of his death, Mr Zhang was a person who was involved in an industry (namely shipping) to which section 3 of the *Industrial Relations Act 1979 (WA)* (the IRA) applies.
48. The term “*industry*” is defined in section 7 of the IRA to include: “*any business, trade, manufacture, undertaking, or calling of employers*”, whilst the term “*employers*” is defined in the same section to include: “*persons, firms, companies and corporations...employing one or more employees*”.
49. The final piece of the puzzle is that section 3 of the IRA applies to any industry carried on partly within the State and partly within an area to which section 3(1) of the IRA applies, namely:
- (a) that area situate west of 129° of east longitude reckoning from the meridian of Greenwich, that is part of the areas known as and comprised within:
 - (i) the Australian fishing zone as defined by the *Commonwealth Fisheries Act 1952*²; or
 - (ii) the continental shelf, within the meaning of the Convention on the Continental Shelf a copy of which in the English language is set out in Schedule 1 to the *Commonwealth Petroleum (Submerged Lands) Act 1967*³;
 - (b) any other area seaward of the State to which from time to time the laws of the State apply or, by a law of the Commonwealth, are applied.⁵¹

⁵¹ See: section 3(3), *Industrial Relations Act 1979 (WA)*

50. In this case, the “industry” Mr Zhang was employed in at the time of his death, namely shipping, necessarily involved the ship he was working on travelling within all of the areas referred to above. In my view, it follows that Mr Zhang’s death is a Western Australian death pursuant to sub-paragraph (e) of the definition of that term in section 3 of the *Coroners Act 1996* (WA).
51. Given that I have found that Mr Zhang’s death has been established beyond all reasonable doubt, his death would satisfy the definition of a “reportable death” because it appears to have been unexpected.⁵²
52. It follows that I have jurisdiction to make findings about the cause and manner of Mr Zhang’s death. However, even if I am wrong about the jurisdictional question, I was still empowered to investigate Mr Zhang’s suspected death and, as I have done, to make a finding as to whether his death was established beyond all reasonable doubt.⁵³

CONCLUSION

53. There were no eye witnesses to Mr Zhang’s final moments. However, it is my view that, when considered as a whole, the evidence leads to the inescapable conclusion that Mr Zhang died on or about 16 September 2017 in the waters of the Indian Ocean off the coast of Western Australia.
54. The most likely explanation for Mr Zhang’s death is that he died from immersion after he fell or jumped into the sea from the deck of *Stella Anita*. For the reasons I have set out above, the cause of Mr Zhang’s death is unascertained and I have made an open finding as to the manner of his death.

⁵² Section 3, *Coroners Act 1996* (WA)

⁵³ Section 23, *Coroners Act 1996* (WA)

55. I cannot begin to imagine the grief and sadness that Mr Zhang's family have endured since his disappearance. I can only hope that my finding that Mr Zhang has died, may offer his family some sense of finality, as they continue to cope with their terrible loss.

M A G Jenkin
Coroner

9 March 2020