

Public Prosecutor v Ong Pang Siew
[2009] SGHC 173

Case Number : CC 25/2008
Decision Date : 30 July 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Amarjit Singh and Diane Tan (Attorney-General's Chambers) for the Prosecution;
Subhas Anandan and Sunil Sudheesan (KhattarWong) for the accused
Parties : Public Prosecutor — Ong Pang Siew

Criminal Law – Offences – Culpable homicide – Whether accused intended to cause death of his step-daughter

Criminal Law – Special exceptions – Diminished responsibility – Whether accused at time of killing suffered from major depressive episode which substantially impaired his mental responsibility for his acts

30 July 2009

Tay Yong Kwang J:

Introduction

1 The accused, born on 17 August 1962, is now 46 years old. He was tried and convicted on the following capital charge of murder of his step-daughter:

That you, Ong Pang Siew, on the 20th day of October 2007 between 10.00pm and 10.30pm at Block 24 Marsiling Drive #08-175, Singapore, did commit murder by causing the death of one Ong Pan Hui, and you have thereby committed an offence punishable under Section 302 of the Penal Code, Chapter 224.

After the trial had progressed for five days in 2008, it was adjourned as defence counsel, Mr Subhas Anandan, became ill and had to go on medical leave for five days. The trial resumed in early 2009.

The prosecution's case

2 The deceased was 15 years old at the time of her death in 2007. She and her mother, Xiu Yanhong ("Xiu"), a divorcee, came from China. Xiu first came here to work in 1997. She got to know the accused as he was then driving a bus providing transport for Xiu and her fellow workers. She returned to China in 1999 and decided to divorce the deceased's father. After that, the accused went to China to meet her and their relationship blossomed. He proposed marriage and made arrangements for her to return here to be his wife. The accused and Xiu married in July 2002. The accused thus became the deceased's step-father and arrangements were made for the deceased to come here for her studies. The deceased adopted the accused's surname.

3 In 2003, Xiu bore the accused a son. Unfortunately, there was marital discord and Xiu moved out of the matrimonial home to the rented flat specified in the charge ("Xiu's flat") together with the deceased and the son. In May 2007, Xiu started divorce proceedings. The divorce was made final in October 2007. In the meanwhile, Xiu obtained Singapore citizenship in August 2007. Xiu was granted

sole custody of the deceased and joint custody of the son. The accused was granted access to his son from 9 am on Saturday to 9 pm on Sunday.

4 The accused lived in a flat not too far away from Xiu's flat. He worked as a bus-driver for a transport company.

5 The facts adduced by the prosecution were largely not disputed by the defence. Sometime in the afternoon of 20 October 2007 (a Saturday), the accused was at a coffee shop near his home drinking beer with some friends. He remembered talking with them about work and women. The beer drinking session went on until about 9 pm that night. The accused then informed his friends that he was returning home.

6 Upon leaving the said coffee shop, the accused called Xiu on her mobile phone to ask her where their son was. Xiu told him that the son was with her at her massage shop in East Coast and explained that she was busy in the past few weeks and therefore could not send the son to his home. She also told him that he did not call her about wanting to see the son anyway. A quarrel ensued with Xiu telling the accused that if he was sincere, he could go to her shop to fetch the son to his home. The accused was incensed and started using vulgarities on her. She then terminated the call and refused to take any more calls from him. The mobile phone records showed that seven calls were made by him to Xiu's mobile phone between 8.39 pm and 9.53 pm that night.

7 The accused went to get his bicycle which was chained up at the void deck of the block where his home was. He rode the bicycle to Xiu's flat, secured the bicycle at the void deck there and then took the lift up to Xiu's flat located on the eighth level. He had no difficulty locating the flat although he was not aware of its specific unit number.

8 The deceased opened the door and let the accused into the flat. There were two other girls from China living in the flat at that time. They were the sub-tenants, Zhao Jing ("Zhao") and Liu Qiao Xiao ("Liu"), occupying one of the two bedrooms at that time. Liu has since gone back to China and is apparently uncontactable.

9 At about 10 pm, Zhao went out of her room to take a shower in the bathroom located in the kitchen. In the living room, she saw the accused sitting beside the deceased who was sitting on a swivel chair in front of her computer. They were then having a conversation. About ten minutes later, Zhao heard the accused talking in a tone that sounded like he was laughing. She saw the accused pacing up and down in the living room. While she was returning to her bedroom, the accused and the deceased were again seated near the computer table.

10 After a while, Zhao heard a loud scream and came out of her bedroom when she heard the deceased calling loudly for her. She saw the deceased lying on the floor with the swivel chair toppled over. The accused was squatting beside the deceased with one hand holding her ear and the other holding her hair. He was banging her head repeatedly against the floor and kept shouting in Mandarin, "Who am I?". Zhao told the accused not to fight and to release his hands. The accused stopped his action without releasing his hands from the deceased's ear and hair and told Zhao in an agitated manner that he was the deceased's father and that her mother had abandoned him. The deceased asked Zhao in a weak voice to call "999".

11 Zhao returned to her bedroom and decided against calling the police as she thought it was a case of family violence. She decided to call Xiu using the deceased's mobile phone which contained Xiu's number. She went out to the living room again to get the deceased's mobile phone which was on the computer table. By then, there was no sound from the deceased. Zhao then rushed back into the

bedroom to make the call. She told Xiu that the accused was strangling the deceased in the flat. Xiu, who was with the son in a taxi on the way home, then quickly called the police and started rushing home. The accused called her while she was on the way. He told her that he had strangled the deceased to death and would die with the deceased by jumping to his death. After that, Xiu called the police again.

12 When Zhao went out into the living room again, she saw one of his hands on the deceased's neck but he was not applying any pressure then. She tried persuading him to let go of her but he merely continued to say that Xiu had abandoned him and that she was a very bad woman. As he appeared very agitated, Zhao did not dare to say anything more. As she ran back to the bedroom, she saw a knife handle with no blade beside the accused.

13 Fearing that the blade was in the deceased's body, Zhao told Liu she was going to the police post to seek help and that Liu should close the bedroom door if she was afraid. The police post was closed at that time and Zhao returned to Xiu's flat. Upon opening the grille gate and the main door, she saw the accused sitting on top of the deceased while making a call on his mobile phone. She left the flat again to call the police but met some police officers who had arrived. When she brought them to Xiu's flat, the accused was still sitting on top of the deceased. She asked him why he did that to his daughter and he started to scold Xiu and Chinese women in general. At 10.36 pm, paramedics, who had arrived at the scene in an ambulance, examined the deceased and pronounced her dead.

14 At the scene that night, the accused made an oral statement to the police which was taken down on a piece of paper and subsequently recorded in the patrol log sheet. In that statement, the accused said that when he arrived at Xiu's flat, he had no intention of killing at all. However, after making a call to Xiu in the flat to enquire about the whereabouts of their son, a quarrel between him and Xiu started and that provoked him into thinking of killing his step-daughter. He then used his hands to strangle her, apologizing to her in the process and saying that he had no choice but to kill her because he wanted Xiu to feel the pain he suffered when she divorced him and to feel the pain of losing a loved one. He also told a senior officer (ASP Tan Yi Chun) that he knew how serious his actions were and that he would pay with his own life. In the course of investigations, five other statements were recorded from the accused. All these statements were admitted into evidence without objection.

15 Dr Cuthbert Teo Eng Swee, a consultant forensic pathologist at the Health Sciences Authority, certified that the deceased's death was caused by strangulation. He noted that at least a moderate to severe degree of pressure had been applied to her neck. The deceased's neck also had a Y-shaped incision which was extremely superficial with hardly any bleeding. There were also three superficial puncture wounds on the body, two of which were located just below the breast bone with the remaining one at the right front portion of the abdomen. All these wounds found on the deceased were consistent with having been caused by a broken blade found at the scene. The superficial nature of these wounds indicated that they had been applied very lightly in a controlled manner and were not the result of a struggle.

16 The accused's employer was a family-owned transport business which provided bus services. The sales manager, Loh Kian Choon ("Loh"), testified that the accused started work with the company in April 2007. He was a hardworking and responsible driver who had no problem with punctuality. On weekdays, he would normally start work from about 5.40 am driving workers from Jurong to Loyang and then drive a shuttle bus between 7.30 am and 10 am between City Hall MRT station and Millenia Walk. At 4.30 pm, he would drive workers from Loyang to Ang Mo Kio housing estate. He would then return to perform the said shuttle bus service from 6 pm to about 8.30 pm (or 10 pm on Mondays, Wednesdays and Fridays) . For Saturdays, the accused requested that he work

only until no later than 1 pm as he wanted to spend time with his son. His employers tried to accommodate his request as far as possible. The accused did tell his employers about his divorce, occasionally asking for advance pay to settle his legal fees. He did not look unhappy and seemed resigned to the fact of divorce. He also told Loh he was reducing his weight for health reasons.

17 At about 8 pm on 20 October 2007, Loh's wife called the accused to ask whether he was willing to work the next day (a Sunday). The accused accepted the one-way trip assignment. Later that night, at about 10.30 pm, Loh received a call from the accused telling him that he had killed his wife's daughter and apologizing for not being able to perform the one-way trip the next day. Loh was shocked and remained silent. The accused then terminated the call.

18 Loh told his mother about the telephone call from the accused. His mother decided to call the accused on his mobile phone to find out what had happened. After speaking to the accused, Loh's mother suggested that they proceed to Block 24 in Marsiling Drive. When they arrived at Xiu's flat, the police was already there and they were not permitted to speak to the accused.

The case for the accused

19 The accused testified that he went to Xiu's flat that night in order to ask the deceased why she caned his son and also to find out whether she was happy to have obtained her Singapore identity card. He also wanted to know her school results. He also went to the flat to wait for his son so that he could bring him home. He harboured no intention of killing the deceased.

20 When a dispute broke out between him and the deceased, she grabbed something from the computer table and he therefore pushed her to the floor. He then turned her over to face him and pressed her neck without intending to strangle her. He wanted to speak to her. He was not aware of the amount of pressure applied on her neck.

21 The accused denied that he used the knife that was found at the scene to threaten the deceased or to inflict any of the wounds found on her. He claimed that he had consumed too much alcohol before the incident.

22 Dr Tommy Tan, a psychiatrist now in private practice, opined that the accused was suffering from a major depressive disorder at the material time and that the said disorder was an abnormality of mind that substantially impaired his mental responsibility for his actions on the night of 20 October 2007.

23 In his report dated 25 August 2008, Dr Tommy Tan stated that he examined the accused in the remand prison on three occasions in August 2008 and interviewed three of the accused's siblings. He came to know that the accused was the sixth child among 12 siblings in his family. His parents and two of the siblings have already passed away. There was a strong family history of mental disorder because the accused's mother had depression and so do his brother and his sister, both of whom are still receiving treatment. His family members told Dr Tommy Tan that the accused used to be a happy person who cared for his children. He was not aggressive and had become less hot-tempered after his marriage.

24 The accused has diabetes and hypertension. He used to be obese. Prior to this case, he had not seen a psychiatrist before. After their marriage in 2002, Xiu began to work as a masseuse in order to send money to her parents in China. The accused was not happy with her line of work as she began to return home late at night and there were rumours in 2004 or 2005 that men were sending her home. He began to feel depressed and chased her out of the matrimonial flat in 2005 and she

went to stay in his brother's home for several months. After that, he allowed her to return to the matrimonial flat.

25 Soon thereafter, Xiu began to work again. In 2006, she opened her first massage shop. When she wanted to open her second massage shop, she asked the accused for \$5000. She started three such shops. Their relationship was bad. He had to sleep early because he had to drive a bus early the next morning. He would take care of the two children while Xiu worked until late at night.

26 The accused continued to feel depressed and frustrated after Xiu left the matrimonial flat and filed divorce proceedings. He was in no mood to work but had to carry on. He also had no interest in anything and would just while away his time at home when not driving a bus. He ate less and started to lose weight from 2005. He had suicidal thoughts but could not bring himself to commit suicide for the sake of his very young son. He would drink one to two bottles of beer every night and more on weekends when he did not have to work. He drank out of depression as he was alone at home, confused and thinking of his son.

27 The accused's family told Dr Tommy Tan that they met the accused four or five times a year. The accused told his elder brother, who met him in the three months before October 2007, that life had no meaning for him. The brother told Dr Tommy Tan that the accused said that he was very depressed as he could not see his son. A sister who met the accused in April 2007 noticed that he looked sad.

28 The accused was able to give an account of the events of 20 October 2007 to Dr Tommy Tan. He said his wife did not hand over their son to him at 9 am but brought him to her place of work instead. He went to a coffee shop at about 3.15 pm and drank more than 20 large bottles of beer with several friends. They did not consume food together with the beer and he felt tipsy after the drinks.

29 The accused called Xiu at about 9 pm that night. He asked her why their son was not with the deceased and told her that the son had said that the deceased beat him. After that, he decided to go to Xiu's flat although he could not remember the reason for going there. There, he asked the deceased why she beat the son. She denied having done that and they began shouting at each other. He also asked her why Xiu had so many mobile phones but she told him not to trouble her with adult problems. She then turned off the computer and took a knife from the computer table. He grabbed the knife from her and pushed her down and kept her down when she tried to get up. He used his right hand to hold her neck while his left hand pushed her forehead and asked her why she and Xiu were treating him that way.

30 When the deceased passed away, the accused felt something fly before his eyes and he became very scared and wanted to die. He called his elder brother who told him not to commit suicide. He also called his employers to tell them that he could not work anymore. He felt controlled by something at the time of the alleged offence. He could not understand what had come over him and felt completely lost. He then sat at the foot of the deceased's body until the ambulance arrived.

31 Dr Tommy Tan gave the following diagnosis and opinion in his report:

(The accused) has major depressive disorder, single episode of moderate severity, chronic (296.22, Diagnostic and Statistical Manual IV-TR) or moderate depressive episode without somatic syndrome (F32.10, International Classification of Diseases, edition 10) at the time of the alleged offence.

It is characterised by a moderately severe depressed mood, feelings of frustration, irritability, lethargy, insomnia, loss of appetite, loss of weight, difficulty coping with work, negative thoughts and thoughts of dying. He drank alcohol to help him to sleep and to cope with his depressed mood.

He has depressed mood since 2005 or earlier. His mental disorder was exacerbated by the divorce and the difficulties of having access to his son.

He had acute alcohol intoxication (303.00 DSM, IV-TR; F10.0, ICD 10) at the time of the alleged offence. He and his companions had drunk more than twenty bottles of beer from afternoon until evening. He was tipsy after drinking.

...

He satisfies the criteria for the defence of diminished responsibility. He had an abnormality of mind, caused by major depressive disorder, which substantially impaired his mental responsibility for his acts in causing the death of his daughter.

He was not of unsound mind according to McNaughton (*sic*) Rules.

He is fit to plead and is capable of making his defence. He knows the charge that he is facing and the consequences of pleading guilty. He will be able to instruct his counsel. He will be able to follow the proceedings in Court.

The prosecution's expert evidence in rebuttal

32 The prosecution called Dr Jerome Goh, an associate consultant psychiatrist at the Institute of Mental Health, to rebut Dr Tommy Tan's opinion. Dr Jerome Goh made two reports dated 21 November 2007 and 15 September 2008. He examined the accused on three occasions in November 2007. He also spoke to one of the brothers and of the sisters.

33 Dr Jerome Goh stated that he was told by the accused that he and his friend consumed 10 bottles of beer between 3 pm and 9 pm on 20 October 2007. When he called Xiu at about 9 pm, they had an argument as he was unhappy that Xiu had been late again in handing over their son to him. Xiu, on the other hand, accused him of disturbing and harassing her. He then cycled to Xiu's flat because he wanted to ask the deceased about the son's allegations that she had used the cane to beat him. He was a bit wobbly during the journey there but did not fall nor get into any accident.

34 He could not remember what precipitated the quarrel between him and the deceased. When he asked the deceased what Xiu was up to, she shouted at him and told him not to ask her about her mother anymore. Both of them raised their voices at each other. When she moved to take something from the table, he thought that she wanted to use it to hit him and therefore pushed her to the floor. He pushed her down again when she tried to crawl away. He then turned her around and pressed on her neck using his right hand. There was a struggle. He asked her, "What do you take me as now?" and she replied, "I still call you father". He then asked her why she was treating him in the same disrespectful manner as her mother. When he squeezed her neck, she cried for help. Suddenly, she stopped struggling and became motionless. He then asked the tenant in Xiu's flat to call for an ambulance and waited by the deceased's side.

35 The first person that the accused called was his employer. He told the employer that he could not work for him anymore as he had strangled his daughter to death. He also told him that the keys

to the bus were in his home. He next called his brother and told him that he wanted to leap to his death from the kitchen window. His brother dissuaded him from doing that. He then received a call from his employer's mother to ask him about the killing. The police arrived shortly thereafter.

36 The accused also told Dr Jerome Goh that his emotions were very chaotic during the struggle. He was crying as he was strangling her as he was very hurt by the way she was treating him. When informed by the paramedics that the deceased had died, he cried again. He told Dr Jerome Goh repeatedly that he regretted his actions that day and was surprised that he had been so agitated. He felt very guilty for having caused a wrongful death and said that the deceased should not have to die as it was an adults' problem.

37 Dr Jerome Goh noted in his report that one of the accused's brothers was being treated for depression. The accused was in a low mood before the killing because of the marital difficulties but he was able to function at work. He did not drink alcohol daily and there was no increase in alcohol intake prior to the killing. He narrated essentially the same story about how his marital woes started with his wife working as a masseuse. He was not depressed during the interviews with Dr Jerome Goh. The nurses did not observe any psychotic or agitated behaviour during the period of his remand.

38 Dr Jerome Goh was of the opinion that the accused had no mental illness although the effects of his recent ingestion of alcohol and the heightened emotions during the altercations with Xiu and the deceased that night, in a background of severe and longstanding marital and family problems, had contributed to his actions leading to the killing. He was not of unsound mind and was fit to plead in court.

39 In his second report prepared after reading Dr Tommy Tan's report, Dr Jerome Goh said that when he interviewed the accused several weeks after the incident of 20 October 2007, the accused did say that he was experiencing low mood prior to the killing, contributed by his marital problems and difficulty having access to his son. However, the accused said that his appetite was normal. He was not suicidal and had no psychotic symptoms although he said that he had depressive symptoms such as lethargy, guilt and poor sleep which surfaced after the death of the deceased. No persistent depressive symptom was observed in him.

40 Dr Jerome Goh opined that having a major depressive episode would have impacted significantly on the accused's functioning. However, he was still able to fulfil his tasks as a bus driver satisfactorily before the killing. Dr Jerome Goh was therefore of the view that the accused did not have a major depressive disorder around the time of the incident.

The decision of the court

41 As the fact of the killing was not disputed by the accused, the only issue that remained was that of *mens rea* - whether the accused intended to cause the death of his step-daughter and whether he was entitled to the benefit of Exception 7 in s 300 of the Penal Code which states:

Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

Defence counsel confirmed that he was not relying on the defence of intoxication but submitted that the accused's state of intoxication pointed to a lack of intention to commit murder.

42 One of the reasons proffered by the accused for going to Xiu's flat that night was that he wanted to wait for his son. His own evidence showed that he was free the whole day that Saturday but chose to spend his time doing household chores and then with friends drinking beer for five to six hours. It was obvious from his conduct that access to his son was not foremost in his mind that day as it was only sometime past 8 pm that day that he thought of calling Xiu about their son's whereabouts. Even when he found out where Xiu had brought the son to, he did not arrange to go there but chose instead to go and wait for him at Xiu's flat when he did not even know what time she was returning to the flat or whether she was going home that night at all. Seeing his son therefore could not have been one of the purposes of cycling to Xiu's flat after the beer drinking session.

43 The evidence, particularly what the accused told the police at the scene immediately after the killing (see [\[13\]](#) above), showed clearly that the accused intended to cause death when he was pressing the deceased's neck while she lay on the floor overpowered by his strength and pinned down by his body. He felt betrayed by Xiu after having given her and her daughter a new life (as it were) here. He was angry after the quarrel over the phone with Xiu regarding access to their son and was ranting against her even while assaulting the deceased. He wanted the deceased to die in order that Xiu could experience the pain of losing a loved one in the same way that he did after the family broke up.

44 Even if the deceased was reaching out for something to attack him, once she was down on the floor and overpowered by him, what reasons could he have for hitting her head against the floor continuously? She was still acknowledging him as her father even while gasping for breath. Why was there a need to sit on top of her and strangle her? The answers lie in his intention to kill her. The accused was lucid and knew what he was doing. He was able to respond coherently to Zhao Jing's pleas to let the step-daughter go.

45 Despite his denial, the accused obviously used the knife's blade to make controlled and deliberate cuts on the deceased's body. The wounds found on her were not caused as a result of a struggle. They could not have been self-inflicted by the deceased as there was nothing to indicate that the deceased was suicidal or in the habit of self-mutilation. Whether he inflicted the wounds before or after her death makes no material difference since they were intentional. They showed that the accused was in complete control of his actions in Xiu's flat that night.

46 The accused's conduct after the killing also showed his clarity of mind. He remembered that he had agreed to do a transport assignment the next day and was so conscientious towards his employers that he called them to tell them he could not work anymore as he had killed his step-daughter. He even told them where the keys to the bus were. When he called Xiu to inform her about the killing, he demonstrated the same clarity and coolness of mind. According to Xiu, he did not sound remorseful. Instead, he spoke like he was the victor and indeed, he was victorious in his own mind since he had exacted vengeance on Xiu. In addition, he had no difficulty communicating with the police officers who had arrived at Xiu's flat. He could even ask for permission to go to the toilet but was denied his request as to allow him to do so would mean having to step across the body of the deceased (which was lying in the path leading to the toilet in the kitchen) and possibly disturbing the scene of crime. He could also reply to ASP Tan Yi Chun that he knew how serious his actions were and that he would pay with his own life.

47 There could therefore be no doubt that the accused was rational even after the beer drinking session and was aware of what he wanted to do and what he did. Clearly, he intended to kill.

48 In considering the applicability of Exception 7 in s 300 of the Penal Code, the court considers not only the medical evidence but also the evidence upon the whole facts and circumstances of the

case (*Took Leng How v PP* [2006] 2 SLR 70 at [46] of the majority judgment). This defence is to be discharged on a balance of probabilities (*Chua Hwa Soon Jimmy v PP* [1998] 2 SLR 22 at [8]).

49 Dr Tommy Tan's interviews and opinion were rendered in August 2008, some 10 months after the killing. His findings regarding the accused's lethargy, insomnia and difficulty in coping with his work ran contrary to the evidence adduced in court. On 20 October 2007, the accused was walking about the housing estate where he lived, talking and having drinks with friends and performing daily chores like ironing of clothes. On his own testimony, the beer drinking session in the afternoon lasted five or six hours until nightfall.

50 His sleeping problems only arose after the incident, as told to Dr Jerome Goh within a few weeks after 20 October 2007. That, in the light of the evidence regarding his work, would hold a lot more truth than what the accused asserted to Dr Tommy Tan. The accused was a responsible driver who had good rapport with his employers and his fellow workers. There was no complaint about his punctuality even though his daily trips began at 5.40 am and lasted until past 8 pm. His employers thought highly of him and he showed that he deserved their accolade when one of the first things he did after killing his step-daughter was to inform them of his inability to carry out the task he had agreed to earlier.

51 Similarly, the accused's loss of weight would appear to be deliberate on his part for health reasons especially since he has diabetes and hypertension. He has said as much to Loh, his employer. Although there was a history of depression in the accused's family, the accused has shown quite unequivocally that he had no problems whatsoever in the social and occupational aspects of his daily life on or before 20 October 2007. As pointed out by Dr Jerome Goh, diagnosis must be made predominantly on the person being examined and not be derived from statistical probability based on family history.

52 Dr Jerome Goh was able to communicate with the accused in Mandarin without difficulty. The accused must have been conversant in Mandarin despite his claim about a language barrier between him and Dr Jerome Goh and that he would have preferred to speak to the psychiatrist in Hokkien. After all, Xiu, the woman he courted and later married, is from China and speaks Mandarin.

53 It is true that psychiatrists often have to work on information supplied by the patient and his family members. Nevertheless, such information must be tested against other evidence adduced in court and commonsense. Dr Jerome Goh's opinion accords with the evidence adduced and tested in court while Dr Tommy Tan's departs materially from such. I therefore found Dr Jerome Goh's opinion more reliable and was not able to accept Dr Tommy Tan's views that the accused was suffering from a major depressive episode at the material time.

54 Even if the accused was suffering from a major depressive episode at the time of the killing, it must still be shown to have substantially impaired his mental responsibility for his acts that night. This is of course a question of degree and is to be approached in a commonsensical way. As discussed earlier, the accused's conduct before, during and immediately after the incident pointed clearly to a rational person in possession of all his senses even if he had become somewhat bolder and brasher as a result of the alcohol from the beer.

55 I therefore found that the prosecution had made out its case against the accused beyond reasonable doubt and that the defence of diminished responsibility failed on a balance of probabilities. Accordingly, I found him guilty and convicted him on the charge of murder. The mandatory death sentence was passed on him.