

Public Prosecutor v Khor Kok Soon
[2005] SGHC 125

Case Number : CC 33/2004
Decision Date : 15 July 2005
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Liew Thiam Leng and Woo Ka Wai (Deputy Public Prosecutors) for the Prosecution; Edmond Pereira (Edmond Pereira and Partners) and Chia Boon Teck (Chia Yeo Partnership) for the accused
Parties : Public Prosecutor — Khor Kok Soon

Criminal Law – Statutory offences – Arms Offences Act 1973 (No 61 of 1973) – Use of firearm with intent to injure – Whether charge proved beyond reasonable doubt – Section 4 Arms Offences Act 1973 (No 61 of 1973)

15 July 2005

Kan Ting Chiu J:

1 The accused, Khor Kok Soon, stood trial before me on the charge that he:

on or about the 30th day of July 1984, at about 2.40 p.m., at Shenton Way, Singapore, did use an arm, by discharging bullets from a gun with intent to cause physical injury to one Detective Sergeant Lim Kiah Chin, and [he had] thereby committed an offence punishable under section 4 of the Arms Offences Act, 1973 (No. 61 of 1973).

2 Section 4 of the Arms Offences Act 1973 (Act 61 of 1973) provided that:

Subject to any exception referred to in Chapter IV of the Penal Code which may be applicable, any person who uses or attempts to use any arm shall on conviction be punished with death.

3 “Use” had a narrower meaning than “discharge”. As defined in s 2:

“use”, with its grammatical variations, means —

(a) in relation to a firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted — to cause such shot, bullet or other missile to be discharged or such noxious liquid, flame or fumes to be emitted with intent to cause physical injury to any person; ...

4 A presumption was added to s 4 by Act 30 of 1993 to the effect that:

In any proceedings for an offence under this section, any person who uses or attempts to use any arm shall, until the contrary is proved, be presumed to have used or attempted to use the arm with the intention to cause physical injury to any person or property.

5 That presumption does not apply in this case because the incident which gave rise to the charge took place before the presumption was added. The accused did not stand trial till 2004 because he absconded from Singapore and was at large till his arrest on 23 December 2003 in Johor.

The facts

6 Some of the basic facts were common to the prosecution and defence cases, whereas the others were facts raised by one side and not contradicted or disputed by the other side.

7 It was not disputed that the accused, Khor Kok Soon, had set out with an accomplice to commit robbery that day and he was armed with a pistol for that purpose. He went to several banks to look out for someone who had withdrawn a large sum of money whom he could rob but did not find any likely target. His accomplice was there with a stolen motorcycle to enable them to make their getaway.

8 It was also not disputed that Detective Sergeant Lim Kiah Chin ("Sgt Lim"), his partner Detective Corporal Quek Chek Kwang ("Cpl Quek") and other police officers were deployed that day to look out for two persons suspected to be involved in robberies. Cpl Quek was of a big build while Sgt Lim was slim. They spotted the motorcycle in front of Shing Kwan House along Shenton Way and saw a male Chinese (later established to be the accused) walking along the road. Their suspicion was aroused and an attempt was made to arrest him.

9 The prosecution case was that Sgt Lim had grabbed the accused, but the defence case was that it was a large person, probably Cpl Quek, who attempted to arrest the accused. There was a struggle. The accused broke free and fired his gun, ran to a lorry which was passing along the road, climbed up and forced the lorry driver to drive off. The unfortunate driver was subsequently found dead in his lorry with a gunshot wound at Teo Hong Road, a few kilometres away.

10 The main areas of dispute between the Prosecution and the Defence were:

- (a) whether Sgt Lim grabbed the accused;
- (b) whether the accused took aim at Sgt Lim when he fired the shot before boarding the lorry; and
- (c) whether the accused fired at Sgt Lim again after he boarded the lorry.

The prosecution case

11 The Prosecution relied on the evidence of Sgt Lim and Senior Detective Inspector Cyril Sta Maria ("Snr Insp Sta Maria"). Both officers had retired from the police force by the time they gave evidence at the trial. Cpl Quek was not called as a witness. He had also retired from the police force and had suffered a stroke. A neurologist who had examined him was concerned that he might not be able to take the stress of giving evidence in court, and could suffer a breakdown. The Prosecution did not call him as a witness and offered him to the Defence, but defence counsel also decided not to call him.

12 Cpl Quek had made a statement in the course of the investigations after the events. There were some discussions whether his statement could be admitted under s 32(b) of the Evidence Act (Cap 97, 1997 Rev Ed) which provides that:

32. Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

...

(b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

13 The admission of the statement is governed by the Evidence Act and the Criminal Procedure Code (Cap 68, 1985 Rev Ed). The case of *Abdul Rahim bin Ali v PP* [1997] 2 SLR 249 dealt with the effect of ss 122(1) and 122(3) of the Criminal Procedure Code on s 32. Sections 122(1) and 122(3) read:

122.—(1) Except as provided in this section, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence other than a statement that is a written statement admissible under section 141.

...

(3) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or 32 (a) of the Evidence Act.

Yong Pung How CJ ruled at [28] of that case:

Section 122(3) makes a specific exception only for evidence admissible under s 32(a) of the Evidence Act. It was therefore beyond argument that the exception did not cover evidence admissible only under s 32(c).

14 There is no doubt that as the law stands, s 122(3) makes an exception only of dying declarations under s 32(a). I think there may be a case for extending the exception to s 32(b) so that evidence material to a party in a criminal case does not become unavailable through no fault of its own. If such evidence is admitted, its weight may be affected by the fact that it is not subject to cross-examination, but that alone should not render such evidence inadmissible, as dying declarations are also not open to cross-examination.

Evidence of Sgt Lim

15 In his statement of evidence or conditioned statement, Sgt Lim recounted the events thus:

6 When we were just in front one of the banks along Shing Kwang [*sic*] House, I crossed the road and intercepted the male Chinese to detain him. I grabbed hold of him and ensured that his hands were beside his body. The male Chinese pulled out his right hand and took out a gun from his waist. I tried to grab his gun but I could not. He kept struggling to free himself. When I realised that he was going to break free from my grip, I caught hold of his shirt. During the struggle, D/Cpl Quek assisted me but the male Chinese managed to free himself from us and I was pushed backwards. The male Chinese tried to strike me with his gun but I managed to duck by squatting down. At that time, I had no time to draw my gun and things were happening very fast. I tried to grab him again and caught hold of his shirt. His shirt came apart and realising that I might lose him again, I pushed him to the ground. He fell and knocked into a passing by motor-cycle. The male Chinese however managed to get up and ran along the road, weaving in between

the moving cars. While running, he kept pointing the gun at me. D/Cpl Quek and I continued to chase after him.

6A The male Chinese tried to get into one of the cars on the road, but he was not able to do so. He then tried to open the passenger door of a moving lorry on the road, but he could not do so. When he saw me moving close to him, he turned around and fired at me using his gun. The shot missed me.

7 The male Chinese then jumped onto the back of the lorry from the left side. The male Chinese went to the driver and I saw him pointing his gun at the driver. I heard him telling the driver to drive faster in Hokkien and he repeated this several times. When I tried to board the lorry, he opened fire at me. I immediately ducked and the shots missed me. He fired about 2 shots. I got up and returned fire. He appeared to fall to the floor of the lorry, but he got up. Again, I heard him telling the driver to move faster. The lorry began to move faster.[\[1\]](#)

(There were two paras 6 in the statement. The second of them was numbered 6A during the trial to differentiate them.)

16 Sgt Lim gave evidence on two occasions, once during the first tranche of the trial when the accused was defended by Mr Foo Cheow Meng and Mr Christopher Yap, and the second time during the second tranche when the accused was defended by Mr Edmond Pereira and Mr Chia Boon Teck.

17 During his first period as witness, he elaborated on his conditioned statement. In response to the prosecutor's questions, he clarified that the accused fired the first shot at him after failing to open the left door of the lorry. At the time, they were about 12ft apart.

18 Sgt Lim went on to elaborate that when the accused tried to climb onto the back cargo deck of the lorry, he returned fire at the accused. The accused then climbed up the back of the lorry, went to the front, pointed his gun at the driver, and ordered him to drive off. When Sgt Lim tried to get onto the back cargo deck as well,[\[2\]](#) the accused ran towards him and fired another two rounds at him.

19 In response to cross-examination by Mr Foo, Sgt Lim clarified that he identified himself as a police or government officer when he grabbed hold of the accused. During the struggle, he saw the accused take out a silver palm-sized gun, but he was unable to say whether it was a .22 Browning pistol.

20 Mr Foo put to Sgt Lim that when he saw the gun for the first time, the accused was holding it up vertically to show that he had a gun and fired four to five shots into the air. Sgt Lim disagreed with that.[\[3\]](#) It was also put to Sgt Lim that while the accused was on the lorry's cargo deck, the accused held the gun up into the air again and attempted but failed to fire it. Sgt Lim disagreed with that too.[\[4\]](#) It was then put specifically to Sgt Lim that the accused never fired at him or in his direction. That was met again with the same negative response.[\[5\]](#)

21 When Mr Pereira and Mr Chia took over the conduct of the defence, Sgt Lim was cross-examined further on the struggle with the accused. He said that he did not see the accused pull a gun from his waist. He felt the accused take something metallic from his waist, which he suspected to be a gun.[\[6\]](#) When the accused fired the first shot at him from the side of the lorry, he was about 10ft away[\[7\]](#) and was in front and to the left of the lorry. The lorry which was moving slowly came to a stop, but started to move again after the accused had climbed on board and ordered the driver to drive away.[\[8\]](#)

22 When Sgt Lim tried to get onto left side of the lorry, the accused, who was behind the cab of the lorry, turned around and fired at him.[\[9\]](#) Sgt Lim stopped trying to board the lorry and fell to the road. The accused moved towards him and fired again[\[10\]](#) and Sgt Lim returned fire with two rounds of his own.[\[11\]](#)

23 Mr Pereira put to Sgt Lim that the accused did not fire the three shots at him and that Sgt Lim had not fired back or tried to board the lorry, but Sgt Lim disagreed with these suggestions.[\[12\]](#)

Evidence of Snr Insp Sta Maria

24 Snr Insp Sta Maria was not involved in the operation with Sgt Lim and Cpl Quek. He was driving his car along Shenton Way on his way to the hospital when he got caught up in the events.

25 In his conditioned statement, he recounted:

2 ... I noticed two male Chinese weaving in and out of traffic ahead of me. One of them was thin built. I later came to know that he was Police Detective Sergeant Lim Kiah Chin (D/Sgt Lim) attached to the then Organised Crime Branch. The other male Chinese was wearing a dark shirt and was armed with a gun (hereafter referred to as the 'gunman'). Following that, the gunman went to the front passenger door of a passing blue motor lorry and he shot at D/Sgt Lim, who fell onto the ground. The gunman then jumped onto the back of the said lorry. At that time, I saw Police Detective Corporal Quek Chek Kuang (D/Cpl Quek), who was also from the Organised Crime Branch, fire at the gunman. I alighted from my car and drew out my service revolver.

3 After boarding the back of the motor lorry, the gunman opened fire once more towards the direction of D/Sgt Lim. D/Cpl Quek fired once at the gunman. Thereafter, the gunman went towards the driver's cabin by the side of the driver's door and entered the cabin by the driver's door.[\[13\]](#)

26 In answer to questions from the Prosecution, he confirmed that the gunman, ie, the accused, pointed his gun at Sgt Lim when he fired from near the passenger door of the lorry, and he also pointed his gun at Sgt Lim when he fired after boarding the lorry. He remembered that both shots were fired in the direction of Sgt Lim,[\[14\]](#) and all this took place when the lorry was about 16ft away from him.[\[15\]](#) He also said that he had, at the time, an unobstructed view of the scene.

27 During the first session of cross-examination by Mr Foo, Snr Insp Sta Maria said that he could not remember there being any vehicles between his car and the lorry.[\[16\]](#) He also confirmed that he heard two shots from the accused and one from Cpl Quek.[\[17\]](#)

28 When Mr Foo asked him if he could have been mistaken about the accused pointing his gun at Sgt Lim, he said he did not think he was mistaken and added that the accused had definitely pointed his gun at Sgt Lim. He did not remember whether the accused held the gun close to his body or with a straightened arm, or was holding it in one hand or both hands,[\[18\]](#) but he confirmed that the accused did not point the gun straight up or at an angle to the sky.[\[19\]](#) He was sure that a shot was fired at Sgt Lim[\[20\]](#) because he saw the accused turn around, point the gun at Sgt Lim and shoot.[\[21\]](#) Sgt Lim fell or ducked onto the ground[\[22\]](#) and Cpl Quek fired at the accused.[\[23\]](#) When the accused was on the cargo deck of the lorry, he fired again at Sgt Lim. The accused was described as standing with an outstretched arm pointed at Sgt Lim[\[24\]](#) who was on the road where he had fallen.[\[25\]](#)

29 Mr Foo put to Snr Insp Sta Maria that the first time the accused used the gun, he pointed his pistol straight up into the air and fired four to five times to warn his pursuers off, but Sgt Lim disagreed. Counsel also put to him that the accused had never approached the left side of the cab of the lorry, but had jumped onto the cargo deck, had pointed his pistol again straight up into the air and had attempted to fire a warning shot but that he could not do so as there were by then no rounds left.[\[26\]](#) Snr Insp Sta Maria also disagreed with that.

30 He gave a fuller account of the events when he was cross-examined by Mr Pereira. He confirmed that his view of the struggle between Sgt Lim and the accused was unobstructed.[\[27\]](#) He was on the extreme right of the six lanes of Shenton Way when the accused first shot at Sgt Lim, the former was at the second left lane of Shenton Way,[\[28\]](#) and the latter was on the left lane.[\[29\]](#) The accused was running towards Keppel Road and Sgt Lim was chasing him 15–20ft behind. When the accused turned round and opened fire, Sgt Lim went into a crouching position with his legs bent.[\[30\]](#) At that time, the accused was on the left side of the lorry.[\[31\]](#) The accused then ran towards the lorry and tried to open the left door.[\[32\]](#) After the accused had boarded the lorry, Snr Insp Sta Maria's evidence was that he did not see Sgt Lim or anyone trying to board the lorry.[\[33\]](#)

31 There were some additional points of clarification and elaboration. Pertaining to his evidence that he saw Cpl Quek take a shot at the accused, Snr Insp Sta Maria clarified that that was the only time and only shot Cpl Quek fired, and that his conditioned statement was not correct when it stated that Cpl Quek fired two shots. He also explained that he had returned to his car after the accused fired the second shot. Cpl Quek then joined him in the car and they pursued the lorry along Shenton Way, then Keppel Road and Tanjong Pagar Road.[\[34\]](#)

32 Mr Pereira put to Snr Insp Sta Maria that when the accused boarded the lorry, he was "brandishing his gun and firing shots perhaps to ward off pursuers and he was firing the shots, shooting in the air at 45-degrees at least" but he disagreed.[\[35\]](#)

The accused's evidence

33 The accused made a series of statements in the course of investigations. No objections were raised over the admissibility of these statements. The first statement was an investigation statement recorded on 23 December 2003 by Station Inspector Soh Eng Seng ("SI Soh") where he stated:

On that day, I went to Shenton Way with the intention of committing robbery. I was with 'Toh Huay Seow'. He was riding a motor cycle waiting along the main road. I was armed with a .22 pistol at that time. It was an automatic pistol and was loaded with four bullets. I kept the pistol in my right pants pocket. I entered into a bank and tried to look for a target. However, I could not find any target. I then came out of the bank and went to another bank nearby. I went into few banks on that day because I could not find any target. I was all the while alone while 'Toh Huay Seow' was waiting for me on his motor cycle. The last bank I entered was ICB bank. Similarly, I could not find a target. I then left and walked across the road. I wanted to go into a bank there. I could not remember the name of the bank now. Before I entered the bank, a male Chinese came and grabbed me from behind. I was panicked and wanted to break free. I then pulled out my pistol and fired in the sky. I think I fired all the four bullets in the air. I wanted to warn the person who grabbed me to release me. After the shot, the person released his grip. At the same time, I saw a lorry drove passed. I then ran towards it and boarded the back of the lorry. I pointed the pistol at the lorry driver and told him to drive off. As the lorry was moving for about 200 to 300 meters, I managed to climb to the front passenger seat and sat on the left side of the lorry driver. I saw there were cars chasing after us. The lorry drove to 'Kim Wah' cinema and stopped at the traffic light junction. I then heard the sound of gun shots coming from behind.

I got a shot at the right back of my body. I noticed that lorry driver was sitting still at his seat and not moving. I presumed that he was shot too. When the traffic light turned green, I used my right leg to step on the accelerator and drove off the lorry to the left. I then turned right into a small lane opposite 'Chang Jiang'. I stopped the lorry at the roadside. I abandoned the lorry and took off my shirt. I threw away my pistol and the shirt at the grass verge nearby.[\[36\]](#)

("Kim Wah" is the Metropole cinema and "Chang Jiang" is the Yangtze cinema).

34 The second statement was a cautioned statement recorded later on the same day by Assistant Superintendent of Police Wee Hun Leong ("ASP Wee") where he said:

I admit that I did opened fire. However, I had no intention of causing injury to anyone. A fat man who I believed to be a government officer caught hold of my body. He was not aware that I had a firearm in my possession. I opened fire was to bring the attention to him that I had an arm with me so that he will let go his hand. If I had the intention of causing injury to him, he would have been shot by me. I really have no intention causing hurt to anyone.

35 Another investigation statement was then recorded by Assistant Superintendent of Police Bahar bin Bakar ("ASP Bahar") on 26 December 2003 in which he stated:

I cannot remember the exact date. I can only say that the incident took place on one of the afternoon in the month of July 1984. I cannot remember some of the details as I had a stroke about 4 months ago and am currently recovering.

2 On that day, a friend of mine with a nickname "Toh Huay Seow" plan to commit robbery in a bank. So we were not actually robbing the bank but we intending to rob some customers of the bank. My friend and I went round a few banks in Shenton Way looking for potential target to rob. My friend was riding a motorcycle while I was the pillion rider. To my best recollection, we went to a few banks namely Hongkong and Shanghai Bank, American Bank, DBS and Industrial and Commercial Bank (ICB). My friend waited on the motorcycle along the street while I went on foot into those banks to look for target. Before going to Shenton Way, I met "Toh Huay Seow" in the carpark near to Sultan Centre at Beach Road. The motorcycle that we were using had been stolen and a false number plate was displayed. I could not remember the number now. I can only say that it was a Honda motorcycle with 4 exhaust pipes.

3 The first bank we went to was Hongkong and Shanghai Bank. "Toh Huay Seow" parked the motorcycle beside Hongkong and Shanghai Bank building and waited at the motorcycle while I went into the bank to look for prospective target. I stood there and waited for anyone who would draw a large sum of money. I waited for about half an hour but was unable to see anyone withdrawing large sum of money. I then left the bank and went over to the American Bank, which was just next door. I entered American Bank and kept surveillance for about 15 to 20 minutes and left after failing to see anyone withdrawing large sum of money.

4 I went back to "Toh Huay Seow" and we left the carpark and proceeded to another bank next to Neptune Theatre. I could not recall the name of the bank. "Toh Huay Seow" parked the motorcycle in front of the bank. He waited there while I went into the bank to scout for potential target. After a short while, I left without seeing any target. Both of us then left for DBS Bank behind CID. I had an account with DBS and wrote out a cheque. I joined the long queue for withdrawal but at the same time kept looking for target. When I was about to reach the counter, I noticed that there was still no one withdrawing a large sum of money, so I left. From DBS, we went round the bend in front of CID on the same motorcycle and went to ICB. "Toh Huay Seow"

parked the motorcycle along the street in front of ICB while I walked into ICB to look out for target. I stayed inside the bank for about 5 minutes and left without seeing any target.

5 After I had left the bank, I told "Toh Huay Seow" that I would be going to the bank that was directly opposite ICB and asked him to ride his motorcycle across the road and to wait for me there. I took a walk across the road to the bank opposite ICB. When I reached the passage way in front of the bank, someone with a big size grabbed me from behind. I got the strong feeling that the person must be a "government" man, meaning detectives. I was excited and scared as I was armed with browning .22 automatic pistol. I struggled and managed to free myself from his grab. I withdrew my pistol from my right trousers pocket and fired a few shots into the air as warning shots. As that was an automatic pistol, I was unable to tell how many shots that I have fired. It could be four or five. I wanted to reserve one shot for myself but was unable to control the shots. I did not have any more bullets with me then. After the shots, I started running and at the same time looking out for "Toh Huay Seow". I was unable to see him anywhere. I then noticed a lorry travelling at a slow speed and I jumped onto the load deck of the said lorry. I did not pay attention whether the detective was chasing after me. While I was running, I did not hear any gun shot. After boarding the load deck of the lorry, I moved towards the front portion of the lorry and pointed my pistol at the left side of the lorry driver through an opening in the centre. The driver was Chinese and I told the driver to drive faster and faster in Hokkien. During this period, I did not hear any gun shot. When the lorry reached DBS Bank, I quickly jumped into the passenger seat from the left window of the lorry. The window was wound down then and the lorry was still moving. I continued to point the pistol at the lorry driver and asked him drive faster. The lorry travelled along Maxwell Road towards Metropol Theatre. When it was about to reach Metropol Theatre, traffic was quite slow in front and the lorry slowed down to. I then heard a few gunshots from behind and I was shot once in the region of my right shoulder blade. The lorry was still moving slowly but I noticed that the lorry driver appeared to have been injured. He was motionless and his head was leaning towards his right. I quickly took over the steering wheel and stepped onto the accelerator of the lorry. I moved closer to the driver, extend my right leg onto the accelerator of the lorry and took over the steering wheel. At that time, the lorry was somewhere near the junction of Maxwell Road and Neil Road. When I maneuvered [*sic*] the lorry towards the direction of Cantonment Road, the lorry grazed onto a few vehicles on both sides. I did not know whether I was being followed. When the lorry reached Teo Hong Road, I made a right turn into Teo Hong Road and I lost control of the lorry. It landed in a drain. I noticed that the driver was still motionless. He was still leaning against the driver door and I did not make any attempt to talk to him. I quickly got down from the lorry ...[\[37\]](#)

36 A further statement was taken on 30 December 2003 which dealt with events after the shooting. On 3 January 2004, the accused gave further information on the gun as such:

Q: How did you know that the arm you were in possession was a browning .22 automatic pistol?

A: The word "browning" was engraved on the pistol and I was told by "Ah Long" that it was .22 bullet.[\[38\]](#)

This question was probably asked because no gun was recovered during the investigations.

37 In his evidence in court, he added that when he came out of the ICB, his partner was not outside waiting for him:

So I crossed the road. And when I was walking along the five-foot-way, suddenly someone

grabbed me from behind. I got a feeling that this person was a government officer. I struggled and tried to break free. I managed to free myself from his grasp and ran to the road. When I was running on the road, I withdrew my gun from my right trousers pocket. I opened fire into the air with the intention to let this person know that I had a gun.[\[39\]](#)

...

After opening fire, I ran a few more steps. Suddenly, I saw a motorcycle in front of me and I collided into it. I fell down. I quickly stood up. I turned around and see whether that person was chasing me. I saw a big sized man standing behind. He was not chasing me. He was about seven to eight feet away from me. On seeing that he was not chasing me, I went round behind the motorcycle ... and boarded a lorry which was moving very slowly. When I was on the lorry, I was afraid that the person would give chase, so I fired another shot. But I found that my gun was not vibrating, so I believed that there was no more round in my gun. So I went to the front of the lorry and pointed the gun at the lorry driver. I told him to drive faster. The driver was cooperative and drove very fast.[\[40\]](#)

...

At that point in time, no one else was chasing me. When the lorry came in front of DBS, there was a traffic light. I believe it was red light, so the lorry has stopped. I then opened the door and jumped into the cabin from the left side. At that point of time, I was still pointing my gun at the lorry driver and asked him to help me by driving faster. After the traffic light, I told the driver to turn right into Maxwell Road.[\[41\]](#)

38 He specifically denied Sgt Lim's evidence that he had fired one shot, then attempted to open the passenger door of the lorry, and that Sgt Lim fired at him when he climbed onto the cargo deck.[\[42\]](#) He did not see Sgt Lim throughout the whole incident and recalled that only one person of big build was trying to apprehend him.[\[43\]](#)

39 In summary, the accused's evidence was that:

- (a) when he was on board the lorry, no one chased him or fired at him;
- (b) he did not shoot at anyone because he knew he did not have any bullets left since when he attempted to fire a shot after boarding the lorry, he did not feel the gun vibrate ("recoil" is probably the correct term); and
- (c) he tried to fire because "I wanted them to know that I had a gun so that they dare not chase me."[\[44\]](#)

40 The reference to the plural "them" and "they" caught my attention, and the interpreter confirmed that the plural forms were used by the accused. When his counsel asked him who he meant by those persons, the accused replied that he was referring to the person who grabbed him.[\[45\]](#)

41 Defence counsel then went through the investigation statement of 23 December 2003 with the accused. He denied having said that a male Chinese grabbed him from behind.[\[46\]](#) He also denied saying that he fired four bullets into the air when he tried to break free.[\[47\]](#)

42 The accused was asked to reconcile his cautioned statement, where he said he fired his gun so that the person grabbing him would release him, with his evidence in court that he fired after he

broke free. His response was that his statement might have been wrongly recorded[48] and that he had said that he broke free, ran away, then opened fire.[49]

43 He was also asked why he stated in the investigation statement of 23 December 2003 that he saw cars chasing after the lorry, but said in court that no one was chasing him. His reply was that he did not say that there were cars chasing after the lorry.[50]

44 Defence counsel then referred to his investigation statement of 26 December 2003 and had paragraph 5 thereof interpreted to him before obtaining his confirmation that he agreed with the contents of the paragraph[51] and that the account that he fired after he had broken free was true.[52] When his attention was drawn to the part of the statement where he stated that he had lost control of the lorry which landed in a drain, he acknowledged that the lorry did not land in a drain.[53] He claimed that he did not say that the lorry landed in a drain[54] and had told the interpreter that he had parked the lorry.[55]

45 When he was cross-examined, he essentially stuck to his oral evidence-in-chief. Nevertheless, new matters came up. When the prosecutor referred him to his cautioned statement, his statement to SI Soh both of 23 December 2003 and his statement to ASP Bahar of 26 December 2003, he said that only the last-mentioned statement had been interpreted and read back to him.[56]

46 It was put to him that he had used a .25-inch calibre gun because a .25-inch cartridge was recovered from the cargo deck of the lorry. The accused's reply was that he did not fire any rounds from the cargo deck.[57]

47 In re-examination, defence counsel brought him back to the time when he broke free from the person grabbing him. He was asked whether he then fired or attempted to fire the gun. He remembered that he pulled the trigger, but he was not aware if there was any response from the gun.[58] However, he then changed his evidence and said that he could not recall if he squeezed the trigger.[59] Subsequently, he changed his evidence a third time and said that he pulled the trigger but did not hear any gun shot.[60] When his counsel asked if he felt any reaction when he squeezed the trigger, he said his hand shook a bit.[61] This was significant because he had said that when a round was discharged, the gun would shake a bit.[62]

The defence

48 The defence case was defined in three paragraphs of its closing submissions, to wit:

The Accused does not deny that:

(a) he had possession of a firearm on 30th July 1984, to wit, a .22 Browning automatic pistol; and

(b) he did discharge his firearm;

but, it is his Defence that when he discharged his firearm, he did so pointing skywards, without intention of causing physical injury to PW3 or anyone else.[63]

...

It is the Defence case that when the Accused was grabbed from behind by the male Officer (whom the Accused described as a "Government man"), the Accused managed to free himself,

took his gun from his right trouser pocket and fired in the air skywards to warn off his pursuer. He got onto a passing lorry and again tried to fire the gun to warn off the pursuer, but the gun did not discharge. He made good his escape after he commandeered the lorry driver to drive off.[\[64\]](#)

...

[T]he Prosecution has not proven beyond reasonable doubt that the Accused had used a firearm with intent to cause physical injury to PW3 or to anyone else and it is unsafe to convict the Accused under section 4 of the Armed Offences Act, 1973 as charged.[\[65\]](#)

Review of the evidence

49 This is an exceptional case where an accused person is tried for an act committed more than 20 years ago. The exceptional time lapse had its effects on the case. The original investigation officer, Insp Raj Kumar, has since passed away. Cpl Quek has suffered poor health and is unable to give evidence. Even for those who are available and are able to give evidence, their recollection of the events must have diminished with time. This applies equally to the prosecution witnesses and the accused, and due allowance must be given. On the day in question, they had no forewarning of the tense and fast-moving events that took place and probably did not have the time to note events clearly as they had unfolded suddenly. When comparing their evidence, allowance should be made for differences because each witness may have focused his attention on different parts of the events.

50 There were discrepancies in the Prosecution's evidence. In his conditioned statement, Snr Insp Sta Maria referred to the chase involving Sgt Lim and the accused, but made no mention of the grabbing, the struggle and escape that both Sgt Lim and the accused referred to, despite their disagreement over the identity of the grabbing party.

51 Sgt Lim's evidence that he was trying to climb the lorry when the accused fired at him the second time was contradicted by Snr Insp Sta Maria's evidence that Sgt Lim was still where he was on the road after the first shot. Snr Insp Sta Maria also recalled Cpl Quek as the person who fired at the accused, and made no mention of Sgt Lim returning fire.

52 The inconsistencies and contradictions in the defence case were more pervasive. The accused's evidence was that when he broke free from the person who grabbed him, he took out his gun and:

- (a) pulled the trigger but was not aware of any response;
- (b) could not remember if he squeezed the trigger;
- (c) pulled the trigger, did not hear any gunshot, but his hand shook a little.

53 The accused's account of his attempt to fire the gun when he was on the cargo deck of the lorry was not in the statements he made to SI Soh, ASP Wee and ASP Bahar. This raised doubts over his recollection of those events.

54 But there were also troubling questions about the veracity of his evidence on the statements he had made. He denied parts of the statements he had made, and claimed that the statements were wrongly recorded or wrongly read back to him, or were not read back at all. None of the complaints were raised with the officers and interpreters involved in recording the statements when they gave evidence.

55 Another disturbing question arose with regard to para 5 of his statement of 26 December 2003 where he said he lost control of the lorry in Teo Hong Road and it landed in a drain. When he was confronted with photographs which showed that the lorry was not in a drain, he claimed that he had not said that the lorry was in a drain even though he had earlier confirmed that he agreed with the contents of that paragraph.

56 These dubious complaints over the recording and the contents of his statements raised doubts about his credibility on calmer and much more recent events. They show that he is apt to change his position and deny what he had expressly agreed to if it did not suit him.

57 All the statements were recorded less than a year and a half before the trial. The accused's memory of the recording of the statements could not have been diminished by time, as compared with his recollection of the events of 1984. This puts into question his memory and the veracity of his evidence.

58 On the other hand, there was nothing that raised any questions over the veracity of Sgt Lim and Snr Insp Sta Maria. They appeared to be making their best efforts to remember and retell the events of 1984. The discrepancies in their evidence were within the margins of allowance for evidence of this nature.

59 The Defence had referred to a contemporaneous newspaper report that stated that Cpl Quek was the person who grabbed the accused. The source of that information was not disclosed in the article. Without evidence from the source of the information, the article was inadmissible hearsay evidence.

60 I also accepted the evidence of Sgt Lim and Snr Insp Sta Maria that the accused had fired his gun at Sgt Lim before and after he boarded the lorry. I did not believe the accused's claim that on each occasion, he had pointed and fired his gun into the air. His explanation that he tried to fire into the air when he was on the lorry to warn off pursuers was hard to believe since he said that there were no pursuers. If he raised his arm skywards to fire, the two officers would have seen it. They had no reason to lie and say that the gun was pointed at Sgt Lim.

61 I could not accept the accused's evidence that the gun did not discharge when he tried to fire it the second time because of the accused's own evidence about the recoil, and because both Sgt Lim and Snr Insp Sta Maria gave evidence to the contrary.

62 My findings on the disputed issues were that:

- (a) Sgt Lim was the person who grabbed the accused;
- (b) the accused took aim at Sgt Lim when he fired the shot before boarding the lorry; and
- (c) he fired again at Sgt Lim after he boarded the lorry.

63 I was mindful that neither the gun that the accused carried nor any bullets or cartridges that could be linked to the gun were produced in evidence. However, the admissions of the accused, and in particular the admission that he was carrying a loaded .22 Browning pistol, made up for it. Taking the admissions and the other evidence together, I found that he had discharged a loaded pistol and all the elements of the charge were fulfilled.

64 In the circumstances, I found that the Prosecution had proved the charge against the

accused beyond a reasonable doubt, and I convicted and sentenced him accordingly.

[\[1\]](#)PS1

[\[2\]](#)Notes of Evidence page 28

[\[3\]](#)Notes of Evidence pages 68 and 73

[\[4\]](#)Notes of Evidence page 76

[\[5\]](#)Notes of Evidence page 77

[\[6\]](#)Notes of Evidence page 246

[\[7\]](#)Notes of Evidence page 256

[\[8\]](#)Notes of Evidence 267

[\[9\]](#)Notes of Evidence page 275

[\[10\]](#)Notes of Evidence page 278

[\[11\]](#)Notes of Evidence page 279

[\[12\]](#)Notes of Evidence pages 286 and 287

[\[13\]](#)PS2A

[\[14\]](#)Notes of Evidence page 85

[\[15\]](#)Notes of Evidence page 86

[\[16\]](#)Notes of Evidence page 87

[\[17\]](#)Notes of Evidence page 88

[\[18\]](#)Notes of Evidence pages 92-93

[\[19\]](#)Notes of Evidence pages 92-93

[\[20\]](#)Notes of Evidence page 96

[\[21\]](#)Notes of Evidence pages 96-97

[\[22\]](#)Notes of Evidence page 96

[\[23\]](#)Notes of Evidence page 97

[\[24\]](#)Notes of Evidence page 101

[\[25\]](#)Notes of Evidence page 100

[\[26\]](#)Notes of Evidence pages 106-107

[\[27\]](#)Notes of Evidence pages 299-300

[\[28\]](#)Notes of Evidence page 308

[\[29\]](#)Notes of Evidence page 305

[\[30\]](#)Notes of Evidence page 312

[\[31\]](#)Notes of Evidence page 317

[\[32\]](#)Notes of Evidence page 318

[\[33\]](#)Notes of Evidence pages 333-334

[\[34\]](#)Notes of Evidence pages 342-343

[\[35\]](#)Notes of Evidence page 344

[\[36\]](#)P68

[\[37\]](#)P69

[\[38\]](#)P74

[\[39\]](#)Notes of Evidence page 425

[\[40\]](#)Notes of Evidence pages 426-427

[\[41\]](#)Notes of Evidence page 428

[\[42\]](#)Notes of Evidence page 453

[\[43\]](#)Notes of Evidence pages 456-457

[\[44\]](#)Notes of Evidence pages 460-461

[\[45\]](#)Notes of Evidence page 462

[\[46\]](#)Notes of Evidence page 474

[\[47\]](#)Notes of Evidence page 475

[\[48\]](#)Notes of Evidence pages 476-477

[\[49\]](#)Notes of Evidence page 482

[\[50\]](#)Notes of Evidence page 477

[\[51\]](#)Notes of Evidence page 483

[\[52\]](#)Notes of Evidence page 487

[\[53\]](#)see photographs P10 and P11

[\[54\]](#)Notes of Evidence page 493

[\[55\]](#)Notes of Evidence page 648

[\[56\]](#)Notes of Evidence page 611

[\[57\]](#)Notes of Evidence page 643

[\[58\]](#)Notes of Evidence page 659-660

[\[59\]](#)Notes of Evidence page 661

[\[60\]](#)Notes of Evidence page 666

[\[61\]](#)Notes of Evidence page 667

[\[62\]](#)Notes of Evidence page 661

[\[63\]](#)Closing Submissions of Defence, para 15

[\[64\]](#)Closing Submissions of Defence, para 5

[\[65\]](#)Closing Submissions of Defence, para 43

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