Public Prosecutor v Tan Chee Wee
[2003] SGHC 227

Case Number : Cr C 32/2003

Decision Date : 02 October 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Hay Hung Chun, Shirani Alfreds and Jane Tan (Attorney-General's Chambers) for the prosecution; Wee Pan Lee (Wee Tay & Lim) [briefed] and Teo Choo Kee (CK Teo & Co) [assigned] for the accused

Parties : Public Prosecutor — Tan Chee Wee

Criminal Law – Murder – Defences – Self defence – The victim grabbed the knife used by the accused and looked threateningly at the accused – Whether the accused was acting in self defence.

Criminal Law – Murder – Defences – Sudden fight – The victim struggled with the accused during the robbery- Whether the circumstances amount to the defence of sudden fight.

1 The Accused Tan Chee Wee was charged with having committed murder by causing the death of Thabun Pranee ("the Victim") on 9 January 2003 between 10.42am and 12.25pm at the Victim's flat at Block 45 Chai Chee Street #09-168 ("the Flat"), an offence punishable under s 302 of the Penal Code with the death penalty.

2 The Accused also faced other charges which were stood down as the Prosecution proceeded on the murder charge.

3 The offence of murder is defined in s 300 of the Penal Code which states:

> **Murder.**
>
> 300. Except in the cases hereinafter excepted culpable homicide is murder -
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> (a) if the act by which the death is caused is done with the intention of causing death;
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> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
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> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
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> (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

4 In its written submission, the Prosecution submitted that the evidence clearly satisfied at least two of the limbs under s 300, namely limbs (a) and (c).

Evidence for the Prosecution

5 The Accused, a Malaysian was 29 years of age on the date of the alleged offence. He is a Malaysian and is married to another Malaysian Goh Ai Hoon. At the material time, he and his wife were working in Polycore Optical (Pte) Limited ("Polycore"), a Singapore company located at 12

Kallang Sector and living separately in male and female quarters provided by Polycore at Block 316 Hougang Ave 7 #11-93 and Block 315 Hougang Ave 5 #04-121 respectively. They have a child who resides in Muar, Malaysia, with the wife's sister who looks after the child.

6 On 9 January 2003, the Accused, who was not feeling well, went to see the company doctor at Loh Clinic in the same vicinity of Polycore. He was given medical leave for one day. He then went to Polycore to hand over the medical certificate and to give some work instructions. Thereafter, he boarded a taxi for the Flat. He reached the vicinity of the Flat at past 10am.

7 Ler Lee Mong and the Victim, who was Ler's wife, resided at the Flat. The Accused had been to the Flat two to three times a week, on most weeks, from about October 2002 to 9 January 2003 to play mahjong with Ler and two other friends Seow Chiak Kwang and Alveen Ong Siang Heen. The mahjong sessions shifted to the Flat after Seow sold his own flat in which the mahjong games used to be held. Also, after Seow sold his flat, Alveen and he (Seow) rented a room in the Flat until 7 January 2003 when both of them moved to Seow's new flat.

8 On 9 January 2003, only the Victim was at home. The Accused managed to gain access to the Flat and robbed the Victim.

9 Ler had left the Flat at about 8am that day. At about 5.50pm after work, he telephoned the Victim because he wanted to send her to the doctor as she had come down with a cough and slight fever. No one answered his telephone call and he made his way home. At about 6.10pm, he reached the entrance to the Flat. The left side of the iron grille gate was open. The padlock to the gate was on a hinge with a set of keys dangling from the padlock. The main wooden door was wide open. Puzzled, he walked into the Flat and into its master bedroom. There he found the Victim lying in a pool of blood. She was lying on her left side with her face facing down. Her head was pointing towards a small side table near the bed. She was wearing a black T-shirt and a panty. When he had left home earlier in the day, she had been dressed in a yellow sleeping gown. That evening, when Ler went to try and wake the Victim, there was no response. He immediately ran out to the hall or living room to call the police.

10 Ler noticed that the drawers in the wardrobe had been forced open. A jewellery box of the Victim was empty. Her wallet was empty. After the police arrived, he noticed various items missing, such as:

(a) a gold Rolex watch,

(b) some gold chains and bracelets,

(c) cash of about $120 in a red packet, together with cash of $300 to $400 from the Victim's wallet.

(d) some gold rings which the Victim had worn.

11 A paramedic Diyana Binte Adam attached to Changi Fire Station arrived at the Flat at about 6.31pm. At about 6.38pm, she pronounced the Victim dead.

12 The Investigation Officer of the case ASP Christopher Jacob said that after he arrived at about 8.07pm at the scene, he proceeded to conduct investigations. One of the steps he took was to activate a caller-ID display screen of the telephone in the master bedroom. He noted two incoming calls that day. One was from mobile phone number 98773531 at 10.42am and the other was

from the Victim's husband at about 5.59pm. Investigations revealed that the Accused was using the mobile phone with the number 98773521 although he was not the registered subscriber thereof. It was about 11.55pm of 9 January 2003 that police officers from CID went to the Accused's quarters and invited him back to CID's office for an interview. At about 9.30am of 10 January 2003, a statement was recorded from him. This concluded at 11.15am. The Accused was placed under arrest for murder at about 11.20am.

13 The Accused was then brought to his quarters where he led the police to a black haversack bag covered with a stack of newspapers. Its second compartment was found to contain various items of jewellery which had been taken by him in the robbery. The police also found a hammer, a spanner, a screwdriver and a test-pen in the third compartment of this haversack.

14 The Accused then led the police to recover some items which he had thrown away.

15 The Accused told the police that he had thrown away the grey T-shirt he had been wearing during the crime and the blue Polycore T-shirt (which he had worn earlier before changing to the grey T-shirt), a pair of sports shoes and a pair of black socks into a dustbin at Blk 2 Hougang Ave 3, which was some distance away from his quarters at Blk 316 Hougang Ave 7 #11-93. The two T-shirts were located by the police at a rubbish collecting centre at Blk 3 Hougang Ave 3. A cleaner had probably brought the rubbish from Blk 2 to that collecting centre. A sports shoe was also located at that centre but the accused said that that was not his.

16 The Accused had also told the police that he had thrown away a black and grey OP haversack and a knife, a white glove and some strings which were wrapped in newspaper at a different location ie Blk 308 Hougang Ave 5 but the items were not found there. He then told the police he had thrown them into a dustbin at Blk 304 Hougang Ave 5 but the dustbin was found empty. These items were later found at Senoko Incinerator, before incineration. The police had learned that rubbish from Blk 304 and 308 Hougang Ave 5 were brought to Senoko Incinerator for disposal.

17 The forensic pathologist was Dr Gilbert Lau. He arrived at the Flat at about 9.15pm of the same day ie 9 January 2003. After the Forensic Management Branch had completed its documentation of the scene, he conducted a preliminary examination of the Victim's body at about 11pm. Rigor mortis and anterior hypostasis were established. He estimated the post-mortem interval to be between 6 to 12 hours. He conducted an autopsy the next day.

18 Dr Lau found many injuries:

(a) Scalp lacerations

There were 18 scalp lacerations, of varying dimensions, with bruised and abraded margins. The most significant was Injury No 1 which was a gaping, deep, stellate laceration, measuring 6 x 4 cm across the lower central and right occipital regions at a horizontal distance of approximately 7 cm from the right ear. It showed irregular and ragged margins and exposed an underlying right occipital fracture (see photo P108). This was an almost circular fracture measuring 3 x 3 cm from which a linear fracture measuring 6 cm in length radiated inferiorly. There were also bruises of the front portion of the brain which were described as cortical contusions in the autopsy report.

(b) Stab wound

There was a stab wound across the lower anterior aspect of the neck, astride the midline. There was

a pair of fine scratch marks and a further three similar scratch marks, with two superficial incised wounds, just above the stab wound.

(c) Other injuries

There were various injuries on other parts of the body comprising bruises, abrasions and a superficial incised wound across the ventral aspect of the right thumb.

One of the bruises was around the inner canthus of the left eye ie a black eye (see photo P89). Another bruise was on the lower lip with a small abrasion on the upper lip (see photo P90 and P91).

There was also an abraded ligature mark on the left wrist with a small bruise just proximal to it and a faint ligature mark on the right wrist with a small bruise and abrasion just proximal to it.

Some of the other bruises and abrasions as well as the superficial incised wound were consistent with defensive injuries.

19 Dr Lau was of the view that death was due to blunt force trauma of the head with resultant bilateral, diffuse, acute subdural and subarachnoid haemorrhage (see para 3 of his autopsy report, at p 37 of PI Bundle). He was also of the view that the injuries to the head were consistent with having been caused by the hammer (Exhibit P264 and see photo P207) which the Accused had used in the robbery (NE 179 line 20 to NE 180 line 10, NE 182 line 15 to NE 183 line 16).

20 Dr Lau elaborated that as regards Injury No 1, the underlying fracture was almost circular (see photo P110) and this was consistent with the injury having been inflicted with the flat round end of the hammer, as opposed to the other end which was a clawed end (NE 180 and 181). Very considerable force must have been used to cause this injury (NE 183 line 26) which was unlikely to have been caused by a single blow only. It could have been two, three or four blows (NE 194 line 3 to 7).

21 As for the other 17 scalp lacerations, Dr Lau was of the view that it was likely that most of them were also caused by the hammer although some might have been caused by the clawed end of the hammer instead of the round end (NE 196 to 198). A number of these lacerations were crescent-shaped which were consistent with infliction by the circular edge of the hammer and not the spanner (NE 198 to 201). He accepted that in theory it was possible for one or two of these scalp lacerations to have been caused by the Victim's head hitting the spanner (if left on the bed) although then the Victim would have fallen or been pushed with considerable force. However, this would not account for the wide splatter of blood and bloodstains found on the bed ie the bedsheet covering the mattress, the headboard of the bed, the floor and the areas round the dressing table (and the side table) and the attached bathroom (NE 204).

22 The blood splatters all over the master bedroom and in its attached bathroom suggested to him that repeated blows were inflicted on the head of the Victim by up and down movements of the blood-stained instrument at various locations. The generally low disposition of the splatters suggested that most of the blows were probably inflicted with the Victim lying on the floor or in a stooping position (NE 184 and 185). The stab wound on the neck and the superficial incised wound on the right thumb might have cause some of the splatters but could not have accounted for the widespread splatters. Accordingly most of the splatters were caused by repeated applications of the instrument used to inflict the head injuries (NE 184, 185, 205, 212 and 213).

23 The bruises on the front portion of the brain suggested that forces from the blows to the

back of the head had been transmitted towards the front with the Victim in a face down position. Under such circumstances, the skull would have undergone temporary deformation, back to front direction, resulting in the distribution of the bruises to the front of the brain. This would be so even if there was a pillow between the head and a hard surface like the floor.

24 Dr Lau did not think that some of the 18 scalp lacerations were caused by the Victim's head striking a corner of a side table or of a dressing table, both of which were to the left of the bed, when the Victim was falling or rolling off the bed. The side table was of a similar height as the mattress and there was quite a gap between the two. At the scene, there was also a bolster in between the side table and the mattress. As for the dressing table, this was higher than the mattress and he could not see how the Victim could have hit one of its corners while falling off the bed unless she was thrown forcibly against it (NE 208).

25 Dr Lau also elaborated that it was not the lacerations per se that were fatal but the injuries to the brain caused by the blows to the head (NE 192).

26 Dr Lau was also of the view that the ligature marks on both the wrists of the Victim were consistent with the application of some form of ligature with a string or rope although he could not say whether the Victim was effectively bound or not (NE 188 and 211). Strings such as those shown in Photo P212 could have caused the ligature marks. Those strings were actually found wrapped in newspaper with other items at Senoko Incinerator as I have mentioned in para 16 above. Dr Lau was of the view that the ligature marks were not caused by the tearing away of any bracelet from the Victim's wrists as each bracelet had a distinctive pattern and imprints of part of a bracelet would have been found on her skin if any of them had been torn away forcefully (NE 209 to 211).

27 Evidence from Dr Christopher K C Syn, an analyst with the DNA Profiling Laboratory of the Centre for Forensic Science, Health Sciences Authority, disclosed that human blood was detected on two areas of the hammer and the blood was that of the Victim (see PI Bundle p 63 and 64). The DNA profile extracted from blood on the glove recovered by the police was that of the Accused's (see PI Bundle p 69 and 94. The photo of the glove is P211).

Evidence of the Accused

28 The Accused said his income was $1,155 per month. However, this was not enough to pay all his expenses which included maintaining a car at Johore Bahru which he and his wife used to drive to Muar to visit their child. There was no evidence about his wife's income. He had been gambling on football matches and at mahjong and had been borrowing money from moneylenders, friends and his colleagues at work. As at January 2003, his debts totalled $11,000. He had to pay certain debts by 15 January 2003, in particular, a debt of $1,000 owing to a colleague. Prior to 9 January 2003, he considered committing robbery at the Flat because on one occasion there, he saw Ler taking $1,000 cash to lend someone else. He concluded that there would be money at the Flat.

29 On 8 January 2003, the Accused had diarrhoea and abdominal discomfort. He then resolved to commit the robbery the next day if he could get medical leave from the company doctor the next day. In the morning of 9 January 2003, he left the male quarters where he stayed with a knife. He also brought various implements which he thought he might need for the robbery ie the hammer (Exhibit P264 and see photo P207), the spanner, the screwdriver and the test-pen together with some strings and a pair of gloves. He said he intended to use the knife only for intimidation. The hammer was to break open the lock. The spanner, screwdriver and test-pen were to break locks or force open cupboards. None of them were intended to be used as weapons. The string was to be used to tie anyone in the Flat and the gloves were to avoid leaving his fingerprints at the scene of

the crime. He also brought a change of clothing ie a grey T-shirt and a pair of shorts so that if he was given medical leave, he could change out of the blue Polycore T-shirt and his pants. He put these implements and the change of clothing into a black and grey OP haversack. As I have mentioned, he did get medical leave on 9 January 2003 and after returning to Polycore's premises, he then left for the Flat. By then, he had changed from the blue Polycore T-shirt and his pants to the grey T-shirt and shorts he had brought along. He had also cut some pieces of tape while at Polycore's premises and brought them along. The length of the pieces was just sufficient to cover a mouth (NE 402).

30 The Accused took a taxi and alighted at Block 44 Chai Chee Street, instead of Block 45. This was to check whether Ler's car was parked near Block 44. After some previous mahjong sessions at Seow's flat, before the sessions moved to the Flat, the Accused had come to learn which car Ler was driving. That morning of 9 January 2003, the Accused noted that Ler's car was not around. He then took a lift to the 11th floor of Block 45 and walked to a staircase landing on the ninth floor. The Accused said he thought that the Victim would have gone to a flat of Ler's elder sister (NE 404). Nevertheless, the Accused telephoned the residential fixed line number of the Flat, which number was stored in his handphone, to see if anyone was home. On the first two attempts, no one in the Flat picked up the telephone. On the third attempt, the Victim picked up the telephone and said "Hello, hello". The Accused said he was surprised and quickly discontinued the call.

31 The Accused said that he realised that if he continued with his plan of robbery, the Victim would recognise him. Nevertheless, he decided to go ahead as he would suggest to the Victim to tell her husband, Ler, that she was on her way out to buy things and someone came and knocked her as a result of which she lost consciousness and when she recovered consciousness, things had happened. However, he was not certain whether she would agree, and if she did not, then at the most he would go to jail for the robbery. The Accused said he intended to communicate with the Victim in Hokkien as she spoke a little of that dialect.

32 The Accused then went to the Flat, and knocked on its wooden door. When the Victim opened the door, he said, "Toilet, toilet" in English and pointed inside and she let him in. In the toilet, he took out the knife and put it at the back of his waistband. When he came out of the toilet, he took out the knife and told the Victim that he was committing robbery. He brought the Victim into the master bedroom and asked her for money. She pointed to the drawers in the cupboard in the master bedroom. She looked for the keys to the drawers but could not find them. She gave the Accused money from her wallet.

33 The Accused alleged that he had intended to tie the hands of the Victim, tape her mouth and tell her his plan that she should just inform Ler that she had been knocked unconsciousness as she was on her way out. However, as she went about looking for the keys to the drawers, he forgot that plan.

34 In the meantime, the Accused removed the spanner, screwdriver and test-pen from his bag and put them on the bed. He was between the bed and the cupboard and drawers. His knife was also on the bed. The Victim was by then seated on the bed almost at a right angle to where he was.

35 As the Accused was prising open the drawers with the screwdriver, the Victim ran out and the Accused dropped the screwdriver, took his knife and went after her. He caught up with her in the hall. He told her to go back to the master bedroom and she did. He then remembered he had brought strings and tape. He took out some strings from his bag but found them knotted. He then used the knife to cut the strings. At that point, the Victim said in Hokkien, "Give you once and you go". When the Accused turned to look at the Victim, she had pulled her shorts and panty down to

her ankle. He then had sexual intercourse with the Victim and ejaculated onto his hand. As he could not find any tissue, he took a glove from his bag to wipe his hands. While he did so, the Victim ran out again. He put the glove down, took his knife and went after her. He caught up with her at the entrance to the master bedroom. His left hand grabbed her right arm and he pointed the knife at her throat. She struggled and somehow the knife cut her throat. Blood was oozing out from her throat. Suddenly she became "like motionless" (NE 476) and he helped her back into the master bedroom and laid her on the bed. After a while, he noticed her moving so he climbed onto the bed and pressed both her hands down. He claimed that he did so because he was concerned that she might get hold of one of the implements on the bed and injure herself with it (NE 491 line 18). She struggled and somehow she managed to get hold of his knife which he had dropped on the bed (NE 417). However, in cross-examination, he said the knife was in one of his hands as he pressed down on her hands or wrists (NE 488). The Accused retreated and jumped off the bed when he realised that the Victim had got hold of the knife. The Victim was sitting up on the bed and with the knife in her hand, she looked in a threatening manner at him. He then saw and grabbed hold of the handle of the hammer which was still in the OP haversack and wielded the hammer at her. He claimed he hit her once or twice (only) on the head. He did not intend to kill her. She fell back onto the bed and rolled off onto the floor on the left of the bed. He did not know whether she struck her head on the edge of the side table near the bed or the edge of the dressing table also near the bed. He said he went to see how she was but in cross-examination, he said he had forgotten what her condition was (NE 499 line 17). Then, he said it did not occur to him to check how serious her injuries were (NE 500 line 17).

36 After the Accused had hit the Victim with the hammer, he placed the hammer onto the floor, took the knife which the Victim had dropped onto the bed and walked out to the hall. He took a few sheets of newspaper and wrapped the knife, glove, tape and some strings in the newspaper and put them into his bag. He then went into the kitchen sink and washed his hands which were bloodied. As he was about to leave the Flat, he noticed a movement or shadow in the master bedroom. He looked through the doorway of the master bedroom and saw the Victim sitting up and looking at him (NE 420, 434 and 503). He thought the Victim had just sustained light injuries (NE 503 line 3). He then took the keys to the Flat which were on a coffee table, opened the wooden door, used one of the keys to open the padlock to the iron gate and left. The Accused said he left the door and gate open as he was hoping that any neighbour who passed by the Flat would enter and render assistance to the Victim. He also said he did not know whether the Victim's injuries were serious or light (NE 441).

37 The Accused then went back to his quarters. He washed the tools ie the hammer, the spanner, the screwdriver and the test-pen and had a shower. He then threw away various items which were recovered by the police as I have elaborated in paras 15 to 16 above.

38 The Accused also called his wife at midday (of 9 January 2003) and Alveen at 3pm. He went to buy 4-D and met his wife at a bus stop after she finished work. They had dinner together and thereafter he took her back to her quarters (NE 436 and 502).

39 It was the position of the Accused that he did not realise he had caused any serious or fatal injury on the Victim and that is why he did not flee Singapore. As the Victim had sat up and looked at him before he had left the Flat, he did expect to be arrested for robbery (NE 437 and 440).

My conclusion and reasons

40 In his evidence-in-chief, the Accused had said he thought the Victim would be at Ler's elder sister's flat that morning. Yet he did not volunteer any reason for thinking so, other than the fact that Ler's elder sister had a flat at Bedok Centre (NE 404).

41 Moreover, if he had really believed this, there was no reason for him to call the Flat three times that morning.

42 At this juncture, I should mention that the Prosecution had adduced evidence from one Loong Han Leong Charles, an executive with MobileOne Ltd. He produced a call tracing record of the telephone number of the mobile phone which the Accused had used that day. The record showed that only one call was made from that mobile phone to the fixed line number in the Flat on 9 January 2003. According to Mr Loong, even unanswered calls made from this phone would be reflected in the record which was also for billing purposes. If Mr Loong was right, this would mean that the subscriber would be billed for both answered and unanswered calls made from the mobile phone. On the other hand, the Accused was quite emphatic that he had made three calls that morning to the Flat and there was really no reason for him to lie on this. I therefore accepted the Accused's evidence that he had made three calls that morning to the Flat, the first two of which were not successful.

43 The Defence submitted that the Accused had called the Flat three times to ensure that it was vacant but I did not accept this submission. I am of the view that the Accused had called three times because he believed that the Victim would be in and he wanted to establish this so that he was prepared for her. That is why he called a few times until she finally picked up the telephone.

44 The Accused had also said in his evidence-in-chief that he had thought of the idea about asking the Victim to lie as to how the robbery was committed only after she had picked up the third of his calls to the Flat that morning. He repeated this in cross-examination (NE 513 line 9). However, in his statement to the police on 27 January 2003 at about 2.35pm (PI Bundle p 343), Question 13 and his answer were:

> Q13 You mentioned that you have idea to commit robbery *a few days* before the incident in answer 8? Can you elaborate on this and how you intend to do it?
>
> A13 *I had it in mind to rob his wife*. However since the wife was acquainted with me, I intended to ask her not to expose me as the robber. *I have thought it over in my mind* to ask her to relate that she had been hit when she opened the door and was coming out of the house. She was supposed to say that she had fainted while the robbery took place, and that by the time she woke up, the robbery was over and she did not know who the robber was. I did not expect the events to turn out so serious as this. I had been prepared to go to jail for 2 or 3 years if she exposed me as the robber.
>
> [Emphasis added]

45 This answer, even if true, demonstrated that:

(a) he knew the Victim was likely to be in the Flat, contrary to his assertion in evidence-in-chief,

(b) he had thought of the idea of asking her to lie about the robbery even before he made the three calls that day on 9 January 2003.

46 In any event, I did not accept the Accused's evidence that he was hoping to persuade the Victim to tell a lie to her own husband about the robbery. There was absolutely no reason for him to believe that she would help him to cover up his crime when she would be the victim of the robbery. After all, he himself admitted that, in the past, he hardly spoke to her although he was good friends with Ler. I also did not accept his explanation that he was prepared to go to jail for two or three years if she were to expose him. The Accused was not such a simpleton.

47 The Accused also said in cross-examination that he did not threaten to kill the Victim. Neither did she ask him not to kill her (NE 456 line 18 to NE 457 line 6). However, in his statement to the police on 10 January 2003 at about 9.30am (PI Bundle p 247), he said that she had asked him not to kill her and she had kept telling him not to kill her. This contradicted part of his oral evidence. I did not accept the Accused's explanation that when he gave this statement, he was emotionally at a very low point to the extent that he did not know what he was saying or was confused (NE 458). Staff Sergeant Chia Lai Heng who recorded this statement was not questioned on this point when he gave evidence.

48 As regards the Accused's evidence that the Victim had also offered herself to him without any threat, I do not accept this evidence. There was no reason for her to offer herself to him unless he had threatened her or in fact there was no offer. It seemed to me that he had raped her.

49 I also did not accept the Accused's evidence that he had ejaculated onto his hand after having sexual intercourse with the Victim, looked around for tissue paper, found none and then used a glove to wipe his hand. At that moment, the attached bathroom to the master bedroom was nearer to his location (as deduced from his oral testimony, see NE 468 to 469) than his haversack from which he allegedly took the glove. If he had really wanted to clean his hand, the natural reaction would be to consider the attached toilet, rather than to walk round the bed to his haversack. I was of the view that the Accused was wearing gloves at the time and he had forced himself on the Victim. Indeed in the Accused's statement of 10 January 2003 at about 9.30am (PI Bundle p 247), he said he did not wash his hands after ejaculation "as I was wearing a pair of white cotton gloves". It was only in the Accused's subsequent statement to the police on 21 January 2003 at about 9.55am that he said that he ejaculated onto his own hand.

50 I also did not accept the Accused's explanation that he did not know how his knife had come to stab or cut the Victim's neck. She was obviously stabbed or cut by him while she was struggling with him.

51 Furthermore, I did not accept the Accused's explanation that after the Victim was stabbed or cut, the Victim suddenly went motionless and he then helped her back to the master bedroom and onto the bed therein. I also do not accept that, after a while, she then began to move again while on the bed. These assertions of the Accused were contradicted by three of his statements to the police on 10, 21 and 28 January 2003. The statement on 10 January 2003 was recorded by Staff Sergeant Chia Lai Heng and the other two were recorded by ASP Christopher Jacob. In each of these three statements, the Accused had said that after the Victim was hurt with the knife, he had pushed her onto the bed (in the master bedroom) and she was still struggling with him. In my view, the Accused was not the helpful robber he had been portraying himself to be.

52 As for the Accused's explanation that he had tried to hold the Victim's hands or wrists down because he was concerned that she might injure herself with his tools, I found such an explanation absurd. I also did not accept his evidence that as he was holding her hands or wrists, she had somehow managed to get hold of the knife, which he had dropped on the bed or which was in his hand, and he retreated. By his own evidence, he was above her body and holding her hands or wrists down. His body weight was over her and she was already hurt by the knife earlier. I did not see how in that state she could have wrestled the knife from him. Moreover, if she had tried to get the knife, he would have slapped or hit her and that would have ended her attempt. I also did not accept that somehow during the struggle, she had managed to get the knife either from the bed or from his hand.

53 Most importantly, I did not accept the Accused's explanation that he had hit the Victim only once or twice on the head with the hammer without intending to kill her and that she then fell back

and rolled over the bed onto the floor.

54 In the Accused's statement on 10 January 2003 at about 9.30am, he said that after he had used the hammer on the Victim, "she was then in great pain". In his statement on 21 January 2003 at about 9.55am, he said he had hit her "a few times" on the head with the hammer. In his statement on 28 January 2003 at about 3.05pm, he said, "I cannot remember how many times I hit her with the hammer".

55 According to the Accused's elaboration in cross-examination (NE 492 to 498), the Victim was seated near the right side of the bed and facing him and he was in the space between the right side of the bed and the cupboard. In order for the Victim to fall back and roll over to the left side of the bed, and then down onto the floor, her body would have to turn at a right angle, after falling back onto the bed, and then roll to the left side of the bed before rolling down onto the floor. The Accused's evidence when he went to see how the Victim was, was also contradictory. First, he had forgotten what her condition was. Then, he said it did not occur to him to check how serious her injuries were (see para 35 above).

56 The Defence also submitted that because the Accused had left the Flat leaving the wooden door and the iron gate open, someone else could have come into the Flat between the time the Accused had left and Ler had returned to the Flat. The suggestion was that it was someone else who had inflicted the other blows to the head of the Victim which caused her death. The Defence supported this suggestion with a number of reasons but I need only deal with the relatively more significant ones:

(a) There was a long fingernail (TP 24/03) found on the bed in the master bedroom of the Flat. This fingernail did not belong to either the Victim or the Accused. However traces of the Victim's blood was found on it.

(b) There was a stain on the Victim's shorts (TP 14/03) but the stain did not belong to the Accused, the Victim or her husband Ler.

(c) There was a blood stain on a string (TP 23/03) in the master bedroom which belonged to an unknown male, not the Accused.

(d) The blood stains on the keys to the padlock could not be the Accused's because he had washed his hands before leaving the Flat.

57 As regards the Defence's submission about the long broken fingernail (TP 24/03), the report from Dr Christopher Syn stated that there was trace amount of stain but this was insufficient to identify it as blood. The DNA profile was obtained by amplification of DNA extracted from the stain. The DNA profile linked the stain to the Victim (see PI Bundle p 68 and 79). Furthermore, it was not quite accurate for the Defence to submit that the fingernail did not belong to either the Victim or the Accused. The evidence from the Investigation Officer ASP Christopher Jacob was that he did not ascertain whether this fingernail came from the Victim, the Accused or even Ler (NE 360 line 22). He also did not explicitly ask for a DNA profile to be done on the fingernail or the stain on it. He had just sent in the fingernail for DNA profiling. As it turned out from the report and evidence of Dr Christopher Syn, DNA profiling was done only in respect of the stain but not the fingernail.

58 As regards the Defence's submission about a stain on the Victim's (blue) shorts (TP 14/03), this was a blood stain. The DNA profile obtained from the stain was a mixture comprising a major and a minor component (see p 68 and 95 of PI Bundle). The major component came from the Accused

and the minor one from an unknown person. In my view, the latter was neither here nor there, as neither the age nor the nature of the latter was established.

59 As regards the Defence's submission about the string (TP 23/03), the report of Dr Syn revealed that the DNA profile obtained from blood on the string was found to be a mixture also (see p 68 and 88 of PI Bundle). However the report did not elaborate whether the mixture was of blood from the Victim and the blood of the unknown male or something else from the unknown male. Although Dr Syn was not asked by the Prosecution or the Defence to elaborate specifically on this mixture, Dr Syn did explain, although in the context of a different exhibit ie another nail clipping (PT/L-5/03), that when there is a mixture of two persons' DNA profiles, this can arise from blood and blood of the two persons or blood plus something else "like skin scraping, tissue, saliva, anything" (NE 138).

60 According to a report from Dr Tay Ming Kiong, an analyst with the Criminalistics Laboratory of the Centre for Forensic Science, HSA, the string (TP 23/03) had the same chemical structure and hence common origin as four strings (TP 31/03) which were found by the police in newspaper after the accused had told them that he had thrown some items away in a dustbin (see para 16 above and Photo P212). In my view, this suggested that the string (TP 23/03) had also been brought by the Accused together with the four strings (TP 31/03) from his quarters and anyone who had been to the quarters could have touched or handled the string (TP 23/03).

61 Ultimately, I considered the following regarding the Victim's consciousness when the Accused had left the Flat. If she was conscious, she would have called the police or Ler for help or sought help from neighbours. If not conscious, there would be no reason for an unknown person to attempt to tie her with the string (TP 23/03) or leave his DNA on her shorts (TP 14/03) which were found loose away from her body or break his own fingernail (TP 24/03) or assault her. There was also no evidence of some other robbery which might have resulted in some unknown person assaulting the Victim with some unknown weapon.

62 As for the Defence's submission that there was blood on the padlock which must have come from someone else other than the Accused as he had washed his hands before leaving the Flat, this submission assumed that the Accused was telling the truth when he said in oral testimony that he had washed his hands before leaving. As I have mentioned in para 49 above, the Accused had said in his statement (given on 10 January 2003 at about 9.30am) that he did not wash his hands after sexual intercourse as he was wearing gloves. The one glove recovered by the police was bloodied and the DNA profile from the blood on the glove was the Accused's. In my view, the Accused had left the blood on the padlock either from the gloves or from his hands which were also stained with his blood through the cotton gloves, after taking off the gloves. In my view, the Accused did not stay on in the Flat to wash his hands but left in a hurry. I was also of the view that the assertion by the Accused that he had washed his hands before leaving the Flat was an attempt to lend credence to the suggestion that someone else had come into the Flat and killed the Victim, in the interval before Ler returned.

63 Likewise, I was of the view that the Accused's assertion that he had ejaculated onto his hand and used a glove to wipe his hand was an attempt to explain away the blood found on the glove. The act of sexual intercourse allegedly took place before the Victim ran out of the master bedroom the second time, was caught by the Accused and was cut or stabbed with a knife. Also, the injury to the right thumb and the one or two blows admittedly inflicted on the Victim's head by the Accused were all subsequent to the act of sexual intercourse and the alleged wiping of the Accused's hand with the glove. Hence if the glove was used only to wipe his hand after ejaculation then there should not be blood or so much blood found on it as seen in Photo P211.

64 I will also deal with two other submissions of the Defence.

65 It was submitted that there were no bloodied foot-prints in the master bedroom and only bloodied foot-prints outside this bedroom. Secondly, if the Accused had inflicted all the blows to the Victim's head, which caused all the blood splatters, then his T-shirt would be more bloodied. It was submitted that there was only one spot of blood stain (para 12 of Defence's submission) or "little" blood stains (para 49c of Defence's submission) on the grey T-shirt he had been wearing at the time.

66 As regards the absence of bloodied foot-prints in the master bedroom, Dr Lau was of the view that they could have been smudged or absorbed by the bedding (NE 214 to 216). In my view, the absence of clear bloodied foot-prints in the master bedroom was neither here nor there. If it could exonerate the Accused, then, by parity of reasoning, it would also exonerate any other assailant. Yet, it was not suggested that the Victim had inflicted blows on her own head.

67 As regards the one stain or "little" stains on the Accused's grey T-shirt, Photo P184 already disclosed some fairly large stains and various other stains on the front and at the bottom of his T-shirt. Indeed, as the Prosecution pointed out to me, the Accused himself had said that there were four blood stains on the front of his T-shirt (NE 523 and 524). A visual inspection of the T-shirt itself disclosed more stains than were clearly visible from the photo and there were also stains in splatters on the back of his T-shirt as well. The Defence then submitted that there was no scientific evidence that these were all blood stains. Although this was true, they looked like blood stains to me and there was no suggestion as to what else they could be. Furthermore, it was the Defence itself which had initially submitted that the one stain or "little" stains on the T-shirt were blood when there was no scientific evidence asserting this.

68 I would add that even the Accused's blue Polycore T-shirt had stains on it which appeared to me to be blood stains (see Photo P185).

69 Furthermore, I did not accept that the Accused was hoping that someone would come to the aid of the Victim through the open door and gate. If he was really nurturing such a hope, he could and would have easily made an anonymous call from a public phone to the police. In any event, he was not the thoughtful robber he had been portraying himself to be. I also found it telling that the Accused had said that when he left the Flat, he did not know how serious or light the Victim's injury was (NE 441). If he did no know, how could he assume that he had committed nothing more serious than robbery, with slight injuries. Furthermore, this evidence contradicted his subsequent evidence that he thought she had just sustained light injuries (NE 503 line 3).

70 In the circumstances, I also did not accept the Accused's evidence that the Victim had sat up and looked at him as the Accused was leaving the Flat. If she had done so, it would mean that she was still conscious. As I have said, she would then have called the police or Ler for help after the Accused had left. She did not. Neither did she seek help from neighbours even though, on the Accused's own evidence, she had been robbed and hurt. In my view, the Victim did not call for or seek help because she was already dead.

71 Besides, the Accused's conduct after he left the Flat belied his assertion that the Victim had sat up before he left the Flat. If the Victim had sat up, it would mean that she was alive and conscious and would in all likelihood identify him as the culprit. Indeed, as I have said, he expected to be arrested for robbery. Yet he did not flee Singapore or go into hiding. I did not believe that he was prepared to go to jail. That is why he took the trouble to dispose of some of the incriminating evidence at different locations away from his quarters, as I have elaborated above. True, he did not dispose of the implements like the hammer and screwdriver but he washed them before keeping them.

The Accused's conduct was consistent with a person who believed he would get away with the crime of robbery as he had killed the only eye-witness.

72 The conduct of the Accused for the rest of the day, which ironically the Defence had relied on, also demonstrated that he believed he would get away with the crime. He had called his wife at about lunch time and then Alveen at around 3pm. He met his wife at a bus stop after she had finished work. They had dinner together and thereafter he took her back to her quarters. There was no evidence of his having expressed his concern to her about the likelihood of his going to jail or his having made plans for that eventuality.

73 Accordingly, I did not accept the Accused's position that he did not run away because he knew that he did not commit any serious crime beyond robbery with some hurt. I also did not accept the suggestion that the Accused would have run away if he knew he had committed murder. There are many criminals who commit murder, or other serious crimes, who do not run away precisely for the same reason as the Accused did not ie they do not believe they will be caught.

74 In the circumstances, after considering the evidence and submissions, I had no reasonable doubt in my mind that the Accused inflicted the blows with the hammer which caused the 18 scalp lacerations and some fractures which led to blunt force trauma which caused the Victim's death. As I have said, he did this to silence her. It is irrelevant whether the intention to silence her arose before or during the robbery so long as it was present when he inflicted the blows to the Victim's head. The Accused was no helpful or thoughtful robber but a violent and merciless one. The number of large pools of blood all over the master bedroom and in the attached bathroom and on a pillow on the floor and on the floor below the Victim's head, as well as the blood splatters which I have mentioned, have convinced me that the Accused used the hammer to hit the Victim on the head several times over various locations.

75 It may be that the Victim had also been struggling with the Accused but that did not detract from the fact that he had intended to kill her. It was no act of self-defence or self-preservation which the Accused had conjured up when he claimed that he had used the hammer only after the Victim allegedly got hold of his knife and looked threateningly at him. Indeed such a suggestion when a victim was responding to a robbery was described as "almost ludicrous" by Karthigesu JA in *Mohd Sulaiman v PP* [1994] 2 SLR 465. This was also not a case of sudden fight which the Defence had sought to rely on. The facts in *Rosdi v PP* [1994] 3 SLR 282, where a defence of sudden fight succeeded on appeal, were different from those before me.

76 It was not disputed that should I find that the Accused had inflicted all the blows to the Victim's head, the Prosecution would have made out its case of murder. I did so find. Accordingly, the Accused was convicted on the charge of murder and sentenced according to the law.

Accused convicted and sentenced to suffer death.

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