

Public Prosecutor v Vijayakumar s/o Veeriah
[2005] SGHC 221

Case Number : CC 14/2005
Decision Date : 30 November 2005
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Cheng Howe Ming, Jason Chan and Stanley Kok (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan and Anand Nalachandran (Harry Elias and Partners) for the accused
Parties : Public Prosecutor — Vijayakumar s/o Veeriah

Criminal Law – General exceptions – Accused charged with murder of close friend – Whether right of private defence made out – Section 96 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Exceeding private defence – Accused charged with murder of close friend – Whether exception of exceeding private defence applied to reduce charge from murder to culpable homicide – Exception 2 to s 300 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Special exceptions – Sudden fight – Accused charged with murder of close friend – Whether exception of sudden fight applied to reduce charge from murder to culpable homicide – Exception 4 to s 300 Penal Code (Cap 224, 1985 Rev Ed)

30 November 2005

Tay Yong Kwang J:

1 The accused was tried and convicted on the following capital charge:

That you, Vijayakumar s/o Veeriah, between the 3rd day of September 2004 at about 11.15 p.m. and the 4th day of September 2004 at about 12.55 a.m., at Block 504 Bukit Batok Street 52 #08-33, Singapore, did commit murder by causing the death of one Suthagar s/o Raja Ram Thomas, male, 24 years old, and you have thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224.

2 A second charge of voluntarily causing grievous hurt to one Kamarun Nisha Begum d/o Sheik Davood ("Nisha"), the girlfriend of Suthagar s/o Raja Ram Thomas ("the deceased"), by stabbing her back twice with a knife at the void deck of the same block of flats was stood down. This second charge was withdrawn after the accused was convicted on the murder charge and he was therefore given a discharge amounting to an acquittal in respect of this second charge.

The case for the Prosecution

3 The deceased and Nisha decided to rent Block 504 Bukit Batok Street 52 #08-33 ("the flat") in March 2004. There were two bedrooms in the flat but one was used by the landlord to store his belongings. Their arrangement was that each would contribute \$300 towards the monthly rent of \$600. Unfortunately, the deceased became unemployed in May 2004 and was thus unable to make the contribution towards the rent.

4 The accused, who was the deceased's childhood friend, started going to the flat in August 2004. Eventually, he moved in and stayed in the flat together with the deceased and Nisha. Although he volunteered to contribute towards the rental, there was no real evidence to support his claim of

having given money for this purpose.

5 On 24 August 2004, while Nisha was talking on her mobile phone in the flat, the accused punched her twice on the nose after accusing her of using vulgarities against his mother. The incident was reported to the police, but when police officers went to the flat to investigate, they were told by the deceased and Nisha that her injury was accidental. While the police were at the flat, the accused hid in the toilet as he was absent without official leave ("AWOL") from his National Service duties and would be arrested if his identity was checked.

6 The next day, the accused asked Nisha for forgiveness over the punching incident. Nisha told the deceased she was no longer keen to stay in the flat and would be moving out.

7 In late August 2004, the rental was in arrears for three months. The rental was paid to the landlord by depositing the money into his bank account as he was frequently out of Singapore. When the landlord realised there were arrears, he asked for payment of the \$1,800 that was owing to him. The deceased and Nisha decided that they would pay up \$1,000 first and pay the balance of \$800 in early September 2004.

8 To help solve the financial difficulties that the deceased and Nisha were in, the accused decided on his own accord to approach Umarani d/o Krishnasamy ("Umarani"), who was Nisha's sister-in-law. The accused persuaded Umarani to pawn her jewellery, promising her that he would redeem and return it to her on 1 September 2004. Umarani agreed to help and, on 25 August 2004, pawned her jewellery to raise \$1,100. Nisha used \$1,000 out of this amount to pay the landlord. The remaining \$100, together with the pawn ticket for the jewellery, was taken by the accused.

9 On 1 September 2004, the jewellery was not returned to Umarani. She managed to contact the accused after some difficulty and was told by him to get the money to pay the pawnshop from the deceased and Nisha as they were the tenants of the flat. On 2 September 2004, Umarani told Nisha what the accused had told her the day before. Nisha then told the deceased that she would hand over \$1,000 of her own money (out of which \$800 was intended for the payment of the balance of the arrears of rental) to Umarani so that she could redeem her jewellery. The deceased and Nisha then decided that they would vacate the rented flat by 5 September 2004 as they could no longer afford to pay the rental.

10 The deceased and Nisha subsequently discovered that their identity cards and Nisha's passport were missing from the flat. Nisha lodged a police report about the loss but the deceased did not do likewise.

11 On 3 September 2004, the deceased informed Nisha that her identity card and her passport had been found but that his identity card was still missing. In the evening that day, while walking to the flat, Nisha saw the accused and the deceased at a nearby coffee shop. At around 11.15pm, the deceased asked her to meet him at the void deck of the block, telling her he had something important to discuss with her. Nisha therefore went down from the flat to the void deck to meet the deceased. Siti Saleha d/o Sheik Davood ("Siti"), her sister, also arrived at the void deck after alighting from a vehicle. Siti was staying in the flat at that time.

12 As the three of them were at the void deck, the accused walked towards them from the coffee shop. He looked angry. The deceased then told Nisha that the accused was approaching and asked the two sisters to follow him (the deceased) to his mother's flat which was within walking distance. As the three of them started walking away, the accused turned back towards the coffee shop.

13 At the block in which the deceased's mother's flat was located, the deceased went upstairs by himself to have a change of clothing. In his mother's flat, the deceased told his mother that he needed to speak to the family about something on a later date. At this time, the accused called the deceased on his mobile phone repeatedly, asking him to go clubbing with him. When the deceased went downstairs to rejoin Nisha and Siti, the accused called him again and told him that if he was not at the coffee shop within the next 15 minutes, he would leave with the only set of keys to the flat. The deceased moved away from the two sisters and continued talking to the accused over the mobile phone. When the deceased went back to the two sisters a little later, he looked worried and told Nisha that there was some trouble between him and the accused.

14 The deceased and the two sisters then walked back to the void deck of Block 504. It was around midnight then. The deceased told Nisha and Siti to wait for him at the void deck while he went to take the keys to the flat from the accused. The deceased returned to the void deck about half an hour later and told Nisha to wait for him at the stone seats at the back of the block of flats while he and the accused went up to the flat as the accused had indicated that he needed to speak to the deceased about something. The two sisters went to sit on the stone seats and Nisha rested her head on the table.

15 While the two men were in the flat, the accused used a knife to stab the deceased several times. The deceased had a stab wound on the right side of his face, several incised wounds at the top and the left side of his head and three stab wounds on the right side of his back. The accused then took the knife and left the flat.

16 At the void deck below, he approached Nisha from behind and stabbed her twice in the back with that knife. This was the subject of the second charge which was stood down at the beginning of the trial. He then uttered something to Nisha in Tamil, translated as, "Go and see what kind of situation your boyfriend is in now".

17 The accused then left the scene, took a taxi to Jurong Park and threw the knife into the lake there. The knife was not recovered by the police. He then telephoned his mother who was living in a flat nearby to get some fresh clothes ready for him. He next went to meet his mother at the void deck of Block 152 Yung Ho Road. His mother noticed that the left lower leg area of the accused's jeans was stained with blood. The accused changed into the new set of clothes brought to him by his mother and threw away the clothes he had been wearing. He then contacted a friend to ask if he had any money as he needed it urgently. The accused and that friend met on a number of occasions over the next few days, with the friend providing him food and drinks at times. On the night of 7 September 2004, the accused was arrested by the police while he was talking with another friend at a staircase landing in a block of flats in Jurong.

18 In the meantime, on 4 September 2004 at 12.55am, the police received a telephone call informing them about Nisha having been stabbed. Two police officers responded to the call and arrived at the void deck of Block 504 Bukit Batok Street 52 within the next ten minutes. There, they met two other police officers who had arrived before they did and who were attending to Nisha and Siti. The sisters informed the police officers to check on the deceased who had gone up to the flat earlier.

19 Two of the officers then went up to the flat. As they proceeded up from the lift lobby on the sixth level, they noticed shoeprints and blood stains at the staircase landing between the seventh and eighth levels. Upon reaching the flat, they saw blood on the floor just outside the grille gates. The wooden main door was closed but not locked. When the police officers opened the main door, they found the deceased lying supine on the floor in a pool of blood just behind the main door. His

head was near the main door and his body was lying at an angle to the main door.

20 Umarani was informed by Siti about the stabbing of Nisha and that both of them were in an ambulance on the way to hospital. Umarani then called the accused on his mobile phone to ask him what had happened to Nisha. They spoke in Tamil. She claimed that the accused said in an angry tone words to the effect of, "Now you go up and see. Then you bundle him and her, then call for casket". After Umarani and her husband had arrived at the hospital, she called the accused again and told him that he had better surrender to the police. He told her not to give his contact number or say anything about him to the police and then ended the call. The accused in his testimony denied having said all the words attributed to him. A short while later, the accused called Umarani and told her he did not know what had happened. She shouted at him that the deceased had passed away and that "now you feel happy, right?". The accused shouted back, "Don't play, lah!" On this last utterance, the accused claimed in court that he merely told her not to lie to him.

21 Dr Gilbert Lau, a senior consultant forensic pathologist at the Health Sciences Authority, performed an autopsy on the deceased. He stated that the deceased was of slim build, measuring 167cm in height and weighing 52kg. He concluded that the deceased died as a result of acute haemorrhage primarily caused by two of the stab wounds in his back, both of which had deeply penetrated the lower lobe of the right lung. In addition, one of these stab wounds also incised the right pulmonary artery at the hilum of the right lung. These two stab wounds were sufficient in the ordinary course of nature to cause death. The pathologist found no defensive injury on the deceased. By this, he meant that there were no cuts, abrasions or bruises on the deceased's forearms, such as would have been expected if the deceased were fending off an attack. Given the location of the wounds, they would have to be inflicted with the back of the deceased facing the front of the assailant. The pathologist opined that the wounds were inflicted after the deceased was taken by surprise or after he had been overpowered or otherwise rendered incapable of defending himself. He was of the view that the group of parallel, linear scars across the deceased's buttocks suggested that he had undergone caning as a punishment.

22 Statements made by the accused to the police between 8 and 21 September 2004 were admitted without objection from defence counsel.

The case for the accused

23 It was not disputed by the accused that it was he who inflicted the injuries on the deceased and that the said injuries caused the death of the deceased. Most of the background facts adduced by the Prosecution were also not in dispute. The crux of the defence was that:

(a) The accused was exercising his right of private defence and the killing of the deceased was not an offence by virtue of s 96 of the Penal Code (Cap 224, 1985 Rev Ed) which states:

Nothing is an offence which is done in the exercise of the right of private defence.

(b) If the accused had exceeded the power given to him under the said right of private defence, he was nevertheless entitled to the benefit of Exception 2 in s 300 of the Penal Code which states:

Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the

purpose of such defence.

(c) There was a sudden fight within the meaning of Exception 4 in s 300 of the Penal Code which provides:

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation — It is immaterial in such cases which party offers the provocation or commits the first assault.

24 The accused, 24 years of age, was a schoolmate of the deceased in secondary school. They became friends. The accused was sent to a reformatory training centre when he was 16 years old because he had committed the offence of housebreaking. The deceased was also sent there because he had committed the offence of possession of an offensive weapon (the Prosecution pointed out that the offence was one of consorting with a person who was in possession of an offensive weapon). Both of them got into more trouble at the reformatory training centre. The accused was involved in a fight with a fellow inmate while the deceased was involved in rioting and in an assault on a fellow inmate. As a result, the deceased was caned by the authorities.

25 After their stint in reformatory training, the accused and the deceased met socially. One day, the accused brought the deceased home to the flat as the latter was drunk. The next day, he was introduced to Nisha. After that, the accused moved into the flat with the deceased and Nisha. The two men were like brothers.

26 The accused said his relationship with Nisha was like that of a brother and a sister. He admitted that he assaulted Nisha in the flat on one occasion. That happened when the deceased and Nisha were quarrelling because of her unhappiness over the two men bringing another male friend to stay in the flat. When the accused tried to explain to Nisha, she called him "mother fucker" and that was when he slapped her face twice. He denied punching her on the nose.

27 In mid-August 2004, the accused and the deceased found out that Nisha was having an affair with one Vengeat but did not confront her about the matter. However, they spoke to Vengeat about it. As a result, Vengeat went to the flat where he told the two men that he was going steady with Nisha. There was a quarrel involving the deceased, Nisha and Vengeat. After that visit, the relationship between the accused and Nisha deteriorated because she blamed him for exposing her relationship with Vengeat.

28 The arrangement for payment of the rent for the flat was that each of them (the accused, the deceased and Nisha) would contribute \$200 per month. The three of them would also contribute equally towards payment of the utility bills. The accused was not obliged to help the deceased and Nisha pay the arrears in rent. However, a week after he moved into the flat, Nisha asked him to approach Umarani for financial help. The accused therefore spoke to Umarani regarding the pawning of her jewellery. \$1,000 out of the \$1,100 obtained from the pawnshop went towards paying the arrears in rent. The accused took \$80 and gave \$20 to Nisha.

29 The accused testified that he had given \$300 to the deceased in July or August 2004 for household expenses and for food but the deceased squandered it in his typical irresponsible way. He also gave the deceased small amounts after that for the same purpose. He claimed that the deceased was also an arrogant man who would not heed advice nor show respect to others. However, the

accused put up with all this because they had known each other for a long time. They met frequently with other men at a neighbourhood coffee shop. They also went clubbing together.

30 On 2 September 2004, the accused advised the deceased to change his attitude towards the others at the coffee shop but the deceased did not appear too happy about it. The accused then told him to go to bed as both of them had to attend a job interview the next morning. The deceased did not go to sleep immediately. Instead, he took a key chain which was a cross with a blade and placed it in the wardrobe in the bedroom. Although the deceased had not attacked anyone with it, he would keep it as a standby weapon.

31 On 3 September 2004, the two of them went to the bus interchange at Boon Lay for the job interview. The accused was the one who told the deceased about the interview. They were engaged as odd job labourers at \$37 per day and were supposed to start work at a factory the following Monday, 6 September 2004. When they returned from the job interview, they went to the usual coffee shop for beverages and to meet the usual group of friends. The accused and the deceased planned to go clubbing at Lucky Plaza later that night.

32 The deceased then told the accused that he was going to his mother's flat to change his clothes. When the accused saw the deceased going towards the flat instead, he followed him. That was when he saw Nisha and her sister, Siti. The accused also saw a van which had stopped at a car park nearby. The deceased gestured to the accused to wait and he also put a finger to his lips. The accused did not know what the deceased meant but wondered why he was wasting time. He told the deceased that if he did not return in 15 minutes, he would not give him the only set of keys to the flat. He said this because the deceased was never punctual. It was almost midnight already by then and if they delayed further, they would have to pay extra taxi fare. The deceased went to change his clothes at his mother's flat and he then returned to the coffee shop.

33 The accused asked the deceased, since the latter and Nisha were vacating the flat, whether the arrears in rent of \$1,800 would be "on my head". When he found out that the deceased and Nisha were really vacating the flat, he asked the deceased not to spoil his mood as he was going clubbing. Both men then went up to the flat. The accused's intention in going up was to take a shower before going to town. He did not take a shower earlier while the deceased was at his mother's flat as the deceased had said he would return soon. He did not know why the deceased followed him upstairs to the flat but they would usually go to places together.

34 In the flat, while the accused was looking for a towel, the deceased sat on the sofa in the living room staring at him. The deceased then asked him when he was going to pay the \$1,000 (to be returned to Umarani) and abused the accused's mother, calling her a prostitute. Although the accused was no stranger to vulgarities, he could not take that insult, particularly from someone he regarded as his brother because that was tantamount to the deceased insulting his own mother. When the deceased stood up, the accused punched him on the right side of his jaw. The deceased responded with a "cross punch" to the back of the accused's head (which the accused demonstrated in court as a swinging, circular movement of the arm). The two men struggled with each other. The deceased reached for a knife which was kept at the console. The accused had seen that knife before. It was given to the deceased by a girl. The deceased's right arm, holding the knife, swung backwards towards the accused's waist. The accused, with his left hand on the deceased's hip, intercepted the attack and used his right hand to take the knife away from the deceased. Using his left hand, he pushed the deceased away. He held the knife in his right hand, with the blade pointing downwards. However, the deceased lunged for the knife in a crouching position, with his body leaning forward. The accused, holding the knife in his right hand, stabbed the deceased's head, the right side of his face and all over his back. The accused has long arms. The deceased did not manage to get hold of

the knife again. Everything happened very quickly. The accused had gone up to the flat not expecting a fight to break out and that was why he was shocked when all this happened. He did not intend to hurt the deceased at all. He was angry and could not think properly. He had also consumed two bottles of Baron beer earlier.

35 After the stabbing, the deceased squatted down and fell to the floor facing upwards. They were standing close to each other and that was why the deceased did not fall forward although he was bent about 30° forward.

36 The accused then panicked and dashed out of the flat. The deceased called out the accused's name (Vijay) twice. The accused entered the flat again but he was in great fear. He had consumed alcohol earlier and was not himself. The deceased was lying on the floor. The accused panicked and ran out of the flat with the knife. Instead of calling "995" (for an ambulance) on his mobile phone, he dialled "996" instead. The police subsequently confirmed that there was a record in his mobile phone indicating that the number "996" had been dialled at 12.06am but could not determine the date of that call. The accused did not know what he was doing. He then tried to call two of his friends, Siva and Dixon, to go to the flat to help the deceased but could not get through to them. He did not know what to do as he was not in his normal state of mind and was very frightened.

37 On the way to take a taxi, he saw Nisha and her sister at the void deck on the ground level. He was angry with Nisha because he believed that she had "poked fire" and caused the deceased, his childhood friend who was like a brother to him, to abuse his mother and to attack him. He therefore stabbed Nisha and told her to go up to the flat quickly to see her boyfriend in order to help him.

38 The accused then took a taxi to Taman Jurong where he threw the aforesaid knife away in a lake. He then went to his mother, who was living there, for a change of clothes as those he was wearing were stained with blood. He then threw away those stained clothes into a rubbish bin. His mobile phone rang while he was with his mother. Umarani was on the line, cursing and scolding the accused. She told him that the deceased had passed away. The accused was shocked and did not believe her. He then spoke to Umarani's husband, who asked him why he had stabbed the deceased. The accused cried and told him that he did not know what he was doing. The accused's former girlfriend was also at Taman Jurong as he had called her to meet him there. He told her to take care of his mother and he then left them as he wanted to surrender himself to the police. His former girlfriend testified that the accused told her he was going to Malaysia. The accused denied this.

39 In cross-examination, the accused said he had been AWOL from his National Service duties since May 2004 and, being a wanted man, could not stay with his mother at her flat in Taman Jurong. The deceased and Nisha were not aware of his AWOL status. When the police went to the flat on 24 August 2004 (see [5] above), the deceased protected the accused because he knew that the accused had slapped Nisha. It was not because he knew that the accused was a wanted man for being AWOL. Nisha threatened the accused and the deceased during that incident by saying that her father was the headman of a secret society. The accused claimed that Nisha was a vengeful person.

40 The accused had gone AWOL because of financial problems. He did whatever work came his way when he was AWOL. Both the deceased and he also did freelance tattooing in the flat. Their interview on 3 September 2004 was for work in a company called Amtech Engineering, the location of which he did not know.

41 The accused maintained that he must have been drunk during the incident, although he stated in one of his statements that he was not drunk and was stable then and that there was a sad

Indian song playing loudly on the radio in the living room of the flat, which was why he turned off the radio. He also said in that statement that he took his wallet and the scabbard of the knife from the console and dashed out of the flat as he could not bear to see the deceased covered in blood. In court, he said he could not remember whether he had done all these things. He ran away from the flat because he was confused by all the events.

42 In his statements to the police, he said that when he saw Nisha and her sister, Siti, at the void deck, he became "more panicked" because he thought that they were planning to attack him. He had also seen the van which brought the said sister there earlier. Because of all this, he stabbed Nisha twice on her back. In court, he explained that all this was due to his confused state of mind or what he termed "cross thinking". He stabbed Nisha but not her sister because Nisha was the cause of the rift between him and the deceased. Asked how he expected Nisha to help the deceased after he had stabbed her, he said Siti could assist Nisha.

The decision of the court

43 The event that purportedly triggered the punch-up between the accused and the deceased was the alleged utterance by the deceased insulting the accused's mother as a prostitute. It was significant that this event did not feature in the accused's handwritten statement made at about 12.15am on 8 September 2004 at the Police Cantonment Complex and in his cautioned statement recorded in the afternoon of 8 September 2004. The accused claimed that during the recording of the statements, he was confused by all the events that had happened and so he omitted certain facts. The allegation about the insult to the accused's mother (that she was a prostitute) first surfaced in the accused's long statement made in the afternoon of 10 September 2004 when he was being interviewed by the investigating officer.

44 I did not accept this explanation. The stabbing incident took place some four days before he was arrested. He could not still be so confused after that intervening period that he forgot what sparked off the fight. He had several days to think about the stabbing incident. He was sufficiently clear-minded to want to write the statement about the incident himself. About 12 hours later, he was charged with murder and was asked to mention any fact which he intended to rely on in his defence. He accepted that this cautioned statement was made voluntarily. The entire recording process took about one and a half hours to complete. He recalled the deceased asking him rudely about the \$1,000. He recalled becoming angry and punching the deceased. How then could he have forgotten about the insulting words uttered by the deceased that incensed him so much and caused him to hit his "brother"? I accepted the Defence's submissions that a cautioned statement only needed to set out the material facts and did not need to set out all the fine details. For instance, it would have sufficed if the accused had said in his earlier statements that the deceased insulted his mother without specifying the exact words. In this case, there was no hint at all of an insult directed against his mother. In my view, the accused was concocting the insulting words in order to set up an excuse for his violent outburst.

45 The accused was obviously upset that the deceased and Nisha were moving out of the flat, leaving him, already a fugitive, with no place of abode as he could not afford the rent, which was already in arrears. He also could not come up with the \$1,000 still owed to Umarani. Even if he had contributed some money earlier towards the household expenses, as he alleged, it was clear that his income was inconsistent and meagre.

46 It appeared from his statements that he, not the deceased, was the aggressor that fateful night. He delivered the first blow to the deceased. As I have indicated above, I disbelieved the accused's explanation that it was provoked by the deceased's insulting words. He insinuated that the

deceased was a violent person by raising his conviction and his conduct and punishment in the reformatory training centre. However, Nisha informed the court that the deceased was a changed person after his misdeeds during his teenage years. I believed her. He treated the accused kindly by offering him shelter and shielding him from the law when the police went to the flat to investigate the complaint about the assault on Nisha. The deceased certainly did not lose his temper after finding out that the accused had assaulted Nisha. The evidence showed that it was the accused who was prone to strike others whenever he felt angry.

47 The accused's voluntary statement to the police stated plainly that he was not drunk and was stable even after the stabbing despite having consumed two bottles of beer. He was a clubbing man, accustomed to drinking alcohol. Indeed, he had intended to go drinking in town that night. He gave a fairly detailed account of the struggle in the flat. He remembered turning off the radio because it was playing a sad Indian song loudly. He remembered taking his wallet and the scabbard with him. He remembered the sequence of events after stabbing Nisha. He had the presence of mind to dispose of the weapon and to get rid of his incriminating, blood-stained clothes. Clearly, his mental faculties were not clouded by alcohol that night.

48 The many wounds found on the deceased, including the two fatal ones, indicated that the accused had attacked the deceased from behind and had surprised the deceased. There were no defensive wounds on the deceased. The accused is a tall man with long arms. However, the way the stabbing took place, as recounted by him, was so unnatural and improbable that it should be disregarded as another concoction by him. If things had been happening so fast and he had merely been defending himself against the deceased's forward charge, one would have expected the knife in his right hand to cause wounds mainly on the left side of the deceased's body or, at the most, near the centre of it. Yet, the wounds were on the right side of the deceased's face and his body. This pointed to an attack from behind. It would be extremely unnatural for the accused to reach over the deceased's head and body to stab his right side. The forensic pathologist's explanation was entirely logical and I accepted it. I found that it was the raging accused who attacked the defenceless deceased mercilessly and that it was the accused who was in possession of the knife in the flat during the material time. If he had to wrest it away from the deceased in the course of a struggle, and, according to him, it was a rather long knife, it was a wonder that he could do so without the slightest injury to himself.

49 If the accused was merely exercising his right of private defence, s 96 of the Penal Code would provide him with a complete defence to the murder charge and he would be entitled to an acquittal. Under ss 100(a) and 100(b) of the Penal Code, the right of private defence of the body extends, subject to the restrictions in s 99, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right is an assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. Section 99(4) provides that "[t]he right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence". Under s 102, the said right commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and the right continues as long as such apprehension of danger to the body continues.

50 However, all the facts pointed to the accused as the assailant. He was not fighting for his life. He was fighting to take a life. I am fortified in this finding by the events on the ground level after the stabbing in the flat on the eighth level. A man who had stabbed his close friend several times in self-defence would be in a state of shock. In all likelihood, he would drop the knife after finding the assailant completely subdued, as the deceased obviously was. Even if he took the knife away with him, he would not use it to stab someone who was merely resting her head on the table at the void

deck. The words uttered by the accused to Nisha after he had stabbed her twice were clearly to taunt and to mock her and the deceased. It was absurd to suggest that they were words showing concern for the deceased lying in his own blood upstairs. One does not intentionally injure a caregiver and then request that caregiver to go and look after another badly injured person. If the accused was indeed concerned for his friend, he would have remained at the scene and called for an ambulance (not just dialled a number and then terminated the call). The fact that he continued his rampage downstairs showed that he was still furious even after having attacked the deceased. There was therefore no question of the accused exercising his right of private defence against the deceased.

51 Assuming the accused was exercising his right of private defence but exceeded the power given to him by law and assuming his version of the events in the flat were true, Exception 2 of s 300 of the Penal Code would not apply in his case anyway to reduce the charge from murder to one of culpable homicide not amounting to murder. The accused is a lot taller (he is 182cm in height) and heavier (he was 75kg in weight) than the deceased (167cm and 52kg respectively). After wresting the knife away from the deceased (quite easily, it seemed, as the accused was not even cut in the process), when the deceased lunged at him to take back the knife, the accused could have easily put the knife out of the deceased's reach by pulling his (the accused's) right arm backwards. After all, as he said, he had long arms. He also did not appear to have had any difficulty pushing the deceased away with his left arm earlier. Instead, he went into a stabbing frenzy.

52 I appreciate that one should bear in mind the difficult circumstances during a struggle and that there would not be the luxury of time and calmness to think about the possible courses of action to take. In other words, one should not weigh the proportionality of the accused's response on golden scales. However, in the present case, the first stab to the deceased's head would surely have stopped the deceased in his tracks already. There could be no justification whatsoever for continuing to stab the deceased all over, thereby inflicting the fatal wounds. Although the accused mentioned in his statements that the deceased had a key chain in the shape of a crucifix with a folding blade and that the deceased had used this in fights before and had taken it out on the night before the stabbing incident to scare him, this key chain was not found in the living room but in a wardrobe in the bedroom. In the circumstances, it could not be said that the accused had no intention of doing more harm than was necessary for the purpose of exercising his right of private defence. It was as if he felt indignant that the deceased dared to attack him (according to his version) and he therefore decided to finish the deceased off.

53 For Exception 4 of s 300 of the Penal Code to apply, the accused would have to prove on a balance of probabilities that:

- (a) there was a sudden fight in the heat of passion upon a sudden quarrel;
- (b) the killing was done without premeditation; and
- (c) he did not take undue advantage or act in a cruel or unusual manner.

(See *Tan Chun Seng v PP* [2003] 2 SLR 506 at [16]). In discussing this defence raised on behalf of the accused, I shall assume that there was a sudden fight according to the accused's version and accept that there was no premeditation on the part of the accused. It is also immaterial in such cases which party offers the provocation or commits the first assault (see the Explanation in the said Exception 4).

54 It was said in *Tan Chee Wee v PP* [2004] 1 SLR 479 that the disparity in size between the assailant and the victim was a factor to consider when determining whether there was reason to

resort to a weapon and hence, whether there was undue advantage taken. The court there also noted at [74] that in most of the cases where the defence of sudden fight succeeded, the victim was larger or stronger than the accused person although the latter was armed. In the present case, as stated earlier, there was a clear disparity in size and weight between the accused and the deceased. The knife was also indisputably and completely in the accused's control at the time the deceased tried to take it back (unlike the situation in *Soosay v PP* [1993] 3 SLR 272). In addition, the stabbing was persistent and brutal. The wounds were inflicted mercilessly on vulnerable parts of the deceased's body. The accused clearly took undue advantage and acted in a cruel and unusual manner. The defence of sudden fight therefore failed.

55 I therefore found that the charge of murder was made out against the accused beyond reasonable doubt. Accordingly, I convicted him and sentenced him to death as provided in s 302 of the Penal Code.

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