

Public Prosecutor v Sufian bin Nordin and others
[2010] SGHC 74

Case Number : Criminal Case No 9 of 2010
Decision Date : 10 March 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Amarjit Singh, Tan Boon Khai and Stella Tan (Deputy Public Prosecutors) for the Prosecution; Boon Khoo Lim and Dora Chua (Dora Boon & Co) for the first accused; Foo Cheow Ming (KhattarWong) and Balvir Singh Gill (B S Gill & Co) for the second accused; John Tay (John Tay & Co) and Peter Ong (Peter Ong & Raymond Tan) for the third accused; Mohan Das Naidu (Mohan Das Naidu & Partners) and Rajendran Kumaresan (Central Chambers Law Corpn) for the fourth accused; Singa Retnam (Kerta & Co) and Ranadhir Gupta (A Zamzam & Co) for the fifth accused; Amarick Gill (Amarick Gill & Co) and Adrian Chong (Low Yeap Toh & Goon) for the sixth accused; Ahmad Nizam Abbas (Straits Law Practice LLC) and Chung Ting Fai (Chung Ting Fai & Co) for the seventh accused.
Parties : Public Prosecutor — Sufian bin Nordin and others

Criminal Procedure and Sentencing

10 March 2010

Judgment reserved.

Woo Bih Li J:

Introduction

1 There are seven accused persons before me. They are:

1. Sufian Bin Nordin @ AF ("B1") (Male/24 years old) Date of Birth : 14 July 1985
2. Suhardi Bin Ali @ "Baby Boy" ("B2") (Male/30 years old) Date of Birth : 25 July 1979
3. Muhammad Haziq Bin Mohamed ("B3") (Male/20 years old) Date of Birth : 6 October 1989
4. Luo Weiqiang Jason @ "Ah Seow" or "Bogeh" ("B4") (Male/22 years old) Date of Birth : 4 February 1988
5. Muhammad Syukur Bin Mohamed Salleh @ "Achok" ("B5") (Male/19 years old) Date of Birth : 11 June 1990
6. Toh Huang Shee Adrian ("B6") (Male/19 years old) Date of Birth : 15 January 1991
7. Ahmad Suhaimi Bin Ismail @ "Hustler" or "Small Boy" ("B7") (Male/17 years old) Date of Birth : 20 May 1992

2 They are charged with an offence under s 304(a) read with s 149 of the Penal Code (Cap 224, 2008 Rev Ed). The charge reads that:

on the 23rd day of February 2008 at or about 6.30 a.m., at Lorong 10 Geylang, Singapore,

together with one Mohamad Najiman Bin Abdull Aziz, male, aged 31 years and one [C], female, aged 15 years, were members of an unlawful assembly, whose common object was to cause grievous hurt to one Seah Boon Lye, male, aged 26 years, and while you were members of the said assembly, one or more of you, in the prosecution of the common object of the said assembly, caused the death of the said Seah Boon Lye by stabbing and slashing him numerous times on the head, neck, limbs and other parts of the body with knives causing multiple incised and other wounds, with the intention of causing such bodily injury as was likely to cause death, an offence which you all knew to be likely to be committed in the prosecution of the common object of that said assembly, and you have, by virtue of section 149 of the Penal Code, Chapter 224, committed an offence of culpable homicide not amounting to murder, punishable under section 304(a) of the same Code.

3 Sections 304(a) and 149 of the Penal Code state:

304. Whoever commits culpable homicide not amounting to murder shall be punished —

(a) with imprisonment for life, or imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

...

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.

4 Section 141(c) designates an unlawful assembly as follows:

141. An assembly of 5 or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is —

...

(c) to commit any offence;

...

Circumstances leading to the offence

5 The circumstances leading to the offence were slightly convoluted. The circumstances, arrest and other relevant information were set out in the agreed statement of facts (“SOF”) as follows:

The Accused Persons

There are seven accused persons in this case, ...

2 Prior to their arrest, all the seven accused persons were working at or operating illegal gambling stalls at the back lanes between Lorong 16 and Lorong 18 in Geylang. Consequently most of the accused persons knew each other.

The Accomplice Not Dealt With

3 Together with the above seven accused persons, there is an accomplice who has not been dealt with at the present moment. He is Mohamad Najiman Bin Abdull Aziz ["Mohamad Najiman"] @ "Mann", male/31 years old, NRIC No. [xxx] [DOB: 12 February 1979].

The Accomplices Already Dealt With

4 In addition to the seven accused persons and Mohamad Najiman, there were two other accomplices who were arrested in connection with this case. They have since been dealt with. They are:

(i) [C], female/17 years old, NRIC No. [xxx] [DOB: 8 September 1992]; and,

(ii) Nur Azimah Binte Razale ["Nur Azimah"] @ "Sepet", female/21 years old, NRIC No. [xxx] [DOB: 8 October 1988]

5 On 30 September 2008, [C] was convicted in the Juvenile Court on an amended charge of Rioting with a Dangerous Weapon, punishable under Section 148 of the Penal Code, Chapter 224 (2008 Rev. Edn.) ["Penal Code"]. She was sentenced to two years' detention at the Singapore Girls' Home. On the same day, Nur Azimah, who was then the 2nd accused's girlfriend, was also convicted in Subordinate Court No. 18 on an amended charge of Being a Member of an Unlawful Assembly punishable under Section 143 of the Penal Code. She was sentenced to undergo reformatory training.

6 Like the seven accused persons, Mohamad Najiman, [C] and Nur Azimah too were earning their livelihood by working at the illegal back-lane makeshift gambling stalls.

The Deceased

7 The deceased is one Seah Boon Lye @ "Ah Lye", male/26 years old, NRIC No. [xxx] [DOB: 2 September 1981]. Prior to his demise, he was staying at Blk 232 Serangoon Avenue 3 #11-64, Singapore, with his father Seah Eng Kwang, wife Ng Lay Pheng and their two children, aged five and four years old. The deceased's wife was expecting their third child at the time of the offence.

Material Witness

8 The material witness to this killing is the deceased's younger brother Seah Boon Heng ["Seah"] @ "Ah Heng", male/24 years old, NRIC No. [xxx] [DOB: 12 October 1985]. He was present with the deceased at the time of the incident. Both the deceased and Seah were then involved in various illegal trades such as illegal money-lending and dealing in illegal drugs in the Geylang area.

The First Information Report

9 On 23 February 2008 at about 6.31 am, the police received information routed by the Singapore Civil Defence Force ["SCDF"] Operations Room reporting a case of fighting at Lorong 10 or Lorong 12, Geylang, Singapore.

Response by the SCDF

10 Following this report, paramedics from the SCDF arrived at Lorong 10 Geylang at about 6.33 am. They attended immediately to the deceased, who was seen lying in a pool of blood in the middle of road at Lorong 10 Geylang, between two coffee shops. As the deceased had no pulse and was not breathing, the paramedics proceeded to commence Cardio Respiratory Resuscitation on him, before conveying him to the hospital in the ambulance. At 6.50 am, the ambulance arrived at Tan Tock Seng Hospital ["TTSH"] and the deceased was referred to Accident and Emergency Department. Efforts to revive the deceased proved futile, and he was pronounced dead at 6.59 am.

Police Investigations

11 A massive police investigation was immediately launched into the killing of the deceased, leading to the arrest of some of the accused persons the following day (i.e. 24 February 2008). The remaining accused persons were arrested in the following days thereafter. Police investigations then revealed that the deceased was killed by the accused persons following differences over two major issues the details of which are as follows.

A. The Circumstances Leading to the Attack on and the Death of the Deceased

(i) Purchase of Illicit Drugs by the Deceased from the 2nd accused

12 On 18 February 2008, the deceased and his brother, Seah, agreed to purchase 2.5 grams of "ICE" ["methamphetamine"] for \$800 from the 2nd accused, Suhardi, from whom they had previously purchased such drugs.

13 The 2nd accused promised the deceased and Seah that he would deliver the methamphetamine to them within 45 minutes. The 2nd accused then apparently contacted the 7th accused, Ahmad Suhaimi, who in turn made arrangements to obtain the methamphetamine from an unknown drugs supplier. The 2nd accused however failed to deliver the drugs to the deceased and Seah as promised. The deceased and Seah therefore attempted to find out the whereabouts of the 2nd accused from his friends and acquaintances in the Geylang, including some of the accused persons as well as the two accomplices, Nur Azimah (the 2nd accused's girlfriend) and [C].

14 On the early morning of the next day, 19 February 2008, when the deceased and Seah eventually managed to meet up with the 2nd accused and the methamphetamine was passed over to them, they rejected the methamphetamine as the quantity handed over was substantially less than what they had paid for. The deceased and Seah then asked the 2nd accused to pay back the \$800, but the 2nd accused refused. Instead, the 2nd accused called the 7th accused to explain the discrepancy in the amount of methamphetamine delivered. Eventually the 2nd accused took back the methamphetamine and assured both the deceased and Seah that he would deliver the correct quantity of methamphetamine to them later. After the 2nd accused left, the 7th accused informed the deceased and Seah that he knew some drugs suppliers and there was therefore no need for the deceased and Seah to worry about the delivery of the methamphetamine. Both the deceased and Seah however did not take kindly to what they perceived was the 7th accused's boasting and making of empty assurances, as they saw that he was merely a young boy then about 15 years of age, and who was attempting to trivialise the

issue of the failure to deliver the drugs. Seah admonished the 7th accused and told him not to interfere in the affair. The 7th accused felt slighted by the deceased and Seah's retort to him.

15 Despite his promise to deliver the correct amount of drugs, the 2nd accused failed to deliver the methamphetamine to the deceased and Seah and remained uncontactable for the next two days. This again caused the deceased and Seah to look for some of the accused persons and the accomplices to get them to reveal the whereabouts of the 2nd accused. When the deceased and Seah subsequently bumped into the 2nd accused's girlfriend, Nur Azimah, the deceased and Seah pestered her about the whereabouts of the 2nd accused. However, Nur Azimah told the deceased and Seah that she did not know the whereabouts of the 2nd accused. She further told them to "fuck off from Geylang". Seah became angry with Nur Azimah, and scolded her, given that the 2nd accused, who was her boyfriend, was the party at fault for failing to deliver the requisite amount of methamphetamine.

16 On an occasion, in the course of looking for the 2nd accused, the deceased and Seah drove past Lorong 18 Geylang and chanced upon a group of persons that included the 3rd and 7th accused. When the deceased queried them about the whereabouts of the 2nd accused, the group turned hostile. Seeing that they were outnumbered, the deceased told Seah to get a watermelon knife, and thereafter brandished the knife at the group. The deceased also told them to find the 2nd accused, who had now apparently disappeared with their \$800.

17 On the same day, the deceased and Seah approached Nur Azimah again in her hotel room to ask her where the 2nd accused was. When she again replied that she did not know, the deceased and Seah decided to take some items from Nur Azimah's room that they suspected belonged to the 2nd accused, as collateral for the return of the \$800. The deceased then took an amplifier in the hotel room. Nur Azimah resisted attempts by the deceased and Seah to take the amplifier resulting in a scuffle between her and the deceased. In the midst of the scuffle, Nur Azimah claimed that the deceased had slapped her, although this was denied by Seah.

18 The following day, when Nur Azimah called the 2nd accused, she told him that she was beaten up by the deceased and Seah. When Nur Azimah subsequently met the 2nd accused in their hotel room, the latter assured her that he was going to "settle things out" with the deceased and Seah.

19 Investigations by the police also revealed that about two or three days before the commission of this offence, while they were trying to ascertain the whereabouts of the 2nd accused, the deceased and Seah met with the 1st accused, Sufian, and they proceeded to consume some drugs in the 1st accused's hotel room. When the 1st accused fell asleep thereafter, Seah took away the 1st accused's handphone, MP4 player and portable DVD player. When the 1st accused discovered that his belongings were missing, he became angry with the deceased and Seah and told the 7th accused in Malay "*Aku kalau jumpa dorang mati lah dorang. Aku dah standby untuk gantung*" (meaning, "If I meet them they will die. I am ready to be hanged").

20 Police investigations also revealed that in that same week, the deceased and Seah had

helped the 1st accused to collect his outstanding salary of \$50 from the 1st accused's former illegal gambling stall boss nicknamed "Max". However, Seah failed to pass the money to the 1st accused.

21 Police investigations further revealed that about two days before the commission of the offence, the 7th accused and the 2nd accused started talking to some of the other accused persons, including the 1st and 3rd accused persons, Sufian and Haziq, and Mohamad Najiman, about their troubles with the deceased and Seah. The 7th accused told Mohamed Najiman, who was employed as a bouncer to maintain order at the gambling stalls in the back lanes, that the deceased and Seah were giving them problems. The 2nd accused also related to Mohamad Najiman about the amplifier that the deceased and Seah had taken from his room and that the deceased had pushed his girlfriend, Nur Azimah. Mohamad Najiman, who was then with the 5th accused, Muhammad Syukur, told them "if anything happened, to call me".

22 On 21 February 2008, the deceased and Seah finally located the 2nd accused. The 2nd accused claimed that he had already handed over the \$800 that they gave him to the 7th accused who was not able to obtain the correct amount of drugs. However, the deceased and Seah did not believe him, and believed that the 2nd accused had cheated them.

(ii) Missing S\$200 handed to the 7th accused, Ahmad Suhaimi

23 Police investigations further revealed that on 20 February 2008 at about 8.10 pm, one Muhammad Hafiq ["Hafiq"], a worker at one of the illegal gambling stalls and who was known to the deceased, Seah and most of the accused persons, was arrested in Geylang for offences of promoting public gaming and possession of contraband cigarettes. Hafiq was closest to the 7th accused. Later that day, Hafiq called the 7th accused and asked him to raise \$200 to pay for the composition fine for the possession of the contraband cigarettes and also to post bail for him.

24 The 7th accused approached one Tan Boon Kiam ["Tan"] for help as Hafiq had worked at his illegal gambling stall. Tan worked for one Ng Kum Seng ["Ng"], who operated several gambling stalls in Geylang, and was also regarded as a senior member of the "Sio Loh Kuan" secret society group. With Ng's agreement, Tan handed over \$200 to the 7th accused in the presence of Seah. It was intended that this \$200 would be used to pay Hafiq's composition fine and that he would be bailed out. However, it later transpired that Hafiq's composition fine was not paid and neither was he bailed out. When Tan and Ng subsequently queried the 7th accused about what happened to the S\$200 handed over to him, the 7th accused alleged that he had given the \$200 to Seah. Seah however denied receiving the \$200 from the 7th accused. As a result, Tan and Ng arranged for a "settlement talk" involving themselves, the 7th accused and Seah at Lorong 19 Geylang in the early morning of 23 February 2008 to resolve this matter.

25 The 4th accused, Jason Luo, who was previously acquainted with 1st, 2nd, 3rd accused persons and Mohamad Najiman, as they were all involved in the operation of illegal gambling stalls in Geylang, learnt from them about the 2nd accused's dispute with the deceased and Seah. He was also acquainted with the deceased and Seah, as he had previously borrowed money from them, and the deceased and Seah had periodically demanded the return of this money from him.

26 News of this "settlement talk" spread, and soon all accused persons became aware of this. Some of the accused persons started to ready knives to be brought along for the "settlement talk" or any other eventuality that may result.

(iii) Weapons prepared to be brought for the "settlement talk"

27 The 1st accused prepared a kitchen knife, the handle of which he wrapped with a white cloth as he did not want to leave his fingerprints on it. The 3rd and 7th accused also each purchased a watermelon knife to be brought for the "settlement talk".

28 The 4th accused asked the 6th accused, Adrian, who had just started working for him a few days earlier at the illegal gambling stall, to accompany him to buy two knives. The 6th accused agreed. The 6th accused also agreed to the 4th accused's request for him to join in the fight with the deceased and Seah, if the need arose.

29 Just before 5 am on 23 February 2008, the 1st, 3rd, 4th, 6th and 7th accused, armed with knives, made their way to Lorong 19 Geylang for the "settlement talk". They were joined by the 2nd accused, who claimed that he wanted to resolve the issue of non-delivery of the methamphetamine and why the deceased had slapped his girlfriend, Nur Azimah. The accomplices Nur Azimah and [C] also joined the accused persons and proceeded towards the location of the "settlement talk".

B. The "settlement talk"

30 At about 5.00 am, Tan and Ng called Seah and the 7th accused to meet them at Lorong 19 Geylang for the "settlement talk". The deceased and Seah arrived at the location soon thereafter. The deceased was armed with a metal rod that he concealed under his shirt's sleeve, while Seah wore a metal belt. Shortly thereafter, a group comprising the 2nd, 3rd, 4th, 6th and 7th accused who were together with [C] and Nur Azimah also arrived at Lorong 19 Geylang. At around the same time, the 5th accused and Mohamad Najiman also arrived at the scene. Upon their arrival, the 5th accused approached the 7th accused and told him that he did not have any weapon with him, whereupon the 7th accused handed over his watermelon knife to the 5th accused. This was witnessed by the 6th accused, who was himself armed. Soon thereafter, the 1st accused also arrived, armed with his own knife.

31 Facilitated by Tan and Ng, the initial issue discussed was between the 7th accused and Seah about the \$200 that Tan passed to the 7th accused to pay the composition fine, and which money was now unaccounted for. The 7th accused denied that he had pocketed the money, while Seah insisted that the 7th accused did not hand over the money to him. This issue ended with the 7th accused stating that if he had taken this money, he would pay it back to Tan. The deceased and Seah then claimed that they had been cheated by the 2nd accused of \$800, which they had handed over to the 2nd accused for the purchase of methamphetamine. The 2nd accused claimed that out of the \$800, he had kept \$200 as a reward for procuring the methamphetamine, while the remaining \$600 was passed to the 7th accused as he was the one liaising with the drugs supplier for the supply of the methamphetamine.

32 Upon hearing this, Seah grabbed the neck of the 7th accused, and stated that all the misunderstandings were created by him. The deceased and Seah then asked the 7th accused to repay them \$50 every day in order to repay the full \$800. Before they left Lorong 19 Geylang, the deceased took the 7th accused's handphone away, and passed it to Seah, stating that the handphone would be kept as collateral until the 7th accused had repaid the money. Both the deceased and Seah then walked away towards Lorong 10 Geylang. Tan and Ng also left the scene.

C. The Pursuit of and the Attack on the Deceased and Seah

33 As the deceased and Seah walked away from Lorong 19 Geylang, Mohamad Najiman felt that the deceased should not be let off without getting back the 7th accused's handphone. Addressing the 2nd accused, Mohamad Najiman asked him whether he was going to allow the deceased and Seah to go just like that. According to the 2nd accused, he also heard someone ask him whether he wanted to ask the deceased about the matter concerning "Sepet" (i.e. Nur Azimah). The 1st accused also queried loudly where the deceased and Seah were going. The 1st accused then drew out his knife, and all the accused persons left Lorong 19 Geylang to confront the deceased and Seah.

34 In the meantime, the deceased and Seah went into the coffee-shop located at No. 232 Geylang Road, at the vicinity of Lorong 10 Geylang, to have breakfast. As they were about to order their food, they were suddenly confronted by a group of persons led by the 2nd accused, with the 3rd accused standing on his left. The 2nd accused shouted, "Who slapped Sepet (i.e. Nur Azimah)?" before landing a punch on the deceased's face. This was quickly followed by some of the accused persons, who unleashed their knives to attack the deceased. Before the 2nd accused could do anything else, he realised that his right hand was slashed deeply by someone from his back and he retreated backwards out of the coffee shop to tend to his injury.

35 In the meantime, seeing that they were vastly outnumbered, Seah threw a chair and pushed a table aside. Both Seah and the deceased then ran out of the coffee shop to the road at Lorong 10 Geylang where they were chased by the accused persons. While Seah managed to run away, the deceased was confronted by the 7th accused in the middle of the road between the two coffee shops. The deceased was floored by a kick delivered by the 7th accused, who claimed that he saw the deceased charging at him with a metal rod raised.

D. Assault on the Deceased

36 As the deceased fell to the ground, he was surrounded and attacked. Seah had, by then, managed to run further down the road along Lorong 10 Geylang, and the accused persons gave up chasing him.

37 Police investigations revealed that while the deceased was lying on the road, he was viciously attacked by all the accused persons, except the 2nd accused (whose hand had been accidentally slashed by one of his accomplices) and Mohamad Najiman, who was with other accused persons at the scene but did not himself attack the deceased. In particular, the 1st accused was particularly vicious in the assault on the deceased as the accomplice [C] and others witnessed him:

- (i) using his knife to slash and then stabbed the deceased's neck, shoulder and head region; and,
- (ii) hold up the deceased's right hand and slash the deceased's lower right arm.

38 The 1st accused also admitted in his statement to the police that he was so angry with the deceased that "I took out my knife and stabbed Ah Lye (i.e. the deceased) once on his back somewhere near the left side of his shoulder and neck region".

39 In his statement to the police, the 3rd accused admitted that after seeing the 1st accused person slash the deceased on his neck region, he slashed the deceased on his right shoulder, right elbow and right leg with his knife.

40 The 4th accused admitted in his statements that he was present at the settlement talk and had subsequently followed the deceased and Seah to Lorong 10 Geylang with the others. When he saw the deceased being attacked, he took out his knife and "sliced the deceased on his [right] upper arm and the deceased dropped to the floor".

41 In his statements to the police, the 5th accused admitted that he was recruited by Mohamad Najiman to assist him in his work as a bouncer at the gambling stalls. On the morning of the incident, he stated that Mohamad Najiman had told him that the 2nd and the 7th accused were "surrounded" by Chinese people and suggested that they go over to take a look. On arriving at Lorong 19 Geylang, they saw the 7th accused arguing with the deceased and Seah. The 5th accused stated that "he felt a sudden surge of aggressiveness". He approached the 7th accused and asked him if he had a knife. Later the 7th accused passed a watermelon knife to him, which he then concealed under his waist and his T-shirt. He too followed the others when they went to confront the deceased and Seah at Lorong 10 Geylang. On the road, he saw that the deceased was surrounded by at least five or six male subjects. They were punching and kicking the deceased. The 5th accused stated that he found a space for himself and sliced the deceased once on his right arm with his watermelon knife and another time on his leg.

42 In his statements, the 6th accused admitted that when the deceased was lying on the road at Lorong 10 Geylang, he slashed his lower arm and back about three to four times. However, there was no blood on his knife as he had slashed the deceased "lightly". The 6th accused also stated that thereafter, when Seah ran back towards the deceased with the iron rod that was with the deceased earlier, he took out his knife and challenged Seah to come forward. However, Seah fled and he (i.e. the 6th accused) also left the scene.

43 After the assault, Mohamad Najiman, who had himself not assaulted the deceased, shouted "cukup" (meaning enough) in Malay and all the accused persons fled the scene. After the accused persons had left, Seah returned to the scene and approached the deceased, who was lying in a pool of blood on the road. He noticed that the deceased's lips had turned pale, and that the deceased did not respond to his calls.

44 Meanwhile, the 1st, 2nd, 3rd, 4th, and 7th accused together with [C] ran into Nur Azimah near Lorong 12 Geylang, and all of them returned to the 2nd accused's hotel room nearby, where

the 2nd accused's injured hand was dressed.

45 Police investigations further reveal that after the assault on the deceased, while they were leaving the scene, the 1st accused told the 6th accused that the deceased "confirmed will die". Along the way near Lorong 14 Geylang, the 1st accused also met one Fareed Bin Serlan, a friend who was also working at the illegal gambling stalls in the back lanes of Geylang, and told him that he had stabbed the deceased in the neck, and that the deceased was going to die. The 1st accused also subsequently told Mak Kian Chye, another co-worker at the illegal gambling stalls, and Nur Azimah, that he had stabbed the deceased in the neck.

46 While fleeing from the scene, the 4th and 6th accused separately hid their knives in an incense burning pit at the back-lane of Lorong 16 Geylang. The 1st accused also handed over his knife to the 4th accused, who similarly hid the knife in the same pit. Later the 7th accused handed over another knife to the 4th accused at the said place. These knives were subsequently recovered by the police (see paragraph 51 below) in the course of police investigations and sent to the Health Sciences Authority ["HSA"] for examination. The 3rd accused claimed that he threw his watermelon knife into a drain opposite Hotel 81 Palace, along Lorong 16 Geylang. The 5th accused claimed that he threw his watermelon knife into the Kallang River near his residence. These knives were not recovered.

Medical Report on the Deceased

47 A medical report submitted by Dr. Ooi Chee Kheong of the Emergency Department at TTSH revealed that the deceased was found with the following injuries upon his arrival to the hospital:

- (i) Bruises and abrasions over the right eyebrow and forehead;
- (ii) Wound over the right side of the head measuring 20 cm with underlying skull fracture;
- (iii) Wound extending from the right ear to the base of neck measuring 30 cm;
- (iv) Wound over the base of the neck measuring 3 cm;
- (v) Laceration of right ear;
- (vi) Bruise over the right maxilla (cheek);
- (vii) Wound over the right side of the back measuring 10 cm;
- (viii) Wound over the left side of the back measuring 5 cm;
- (ix) Multiple abrasions over the back;
- (x) Right wrist near amputation; and,
- (xi) Wound over the right calf measuring 10cm.

Autopsy Report on the Deceased

48 On 24 February 2008 at about 10.15 am, an autopsy was performed on the deceased by Senior Consultant Forensic Pathologist Dr Teo Eng Swee. The following injuries were recorded:

- (i) An incised 10 cm long wound on the scalp over the left parietal region;
- (ii) An incised 9 cm long wound over the right back of the head, over the right superior occipital and right posterior parietal region;
- (iii) An incised wound over the back of the neck extending from the left trapezius region to the right mastoid region;
- (iv) Two superficial incised wounds over the middle of the back of the pinna of the right ear
- (v) A superficial incised wound 0.5 cm long over the upper back of the pinna of the right ear
- (vi) An incised wound of the lower part of the pinna of the right ear, with an incised ear lobe;
- (vii) Two incised wounds over the right mastoid process involving the dermis, each 0.5 cm long,
- (viii) An incised stab wound over the right trapezius region measuring 2.1 cm in length, resulting in haemopericardium and right haemothorax;
- (ix) A group of three injuries of the lower right side of the back consisting of a superficial incised wound of 13 x 0.2 cm, an intra-dermal bruise of 11 x 0.2 cm and an abrasion of 2.5 cm in length;
- (x) A superficial incised wound of 0.6 cm long over the upper back part of the left arm;
- (xi) An incised wound of 3 cm long over the dorsum of the knuckle and the dorsum of the proximal phalanx, of the left little finger;
- (xii) A gaping incised wound of 7.5 x 3 cm, over the dorsal and lateral aspects of the right wrist;
- (xiii) A group of incised wounds forming a gaping wound over the dorsum of the right hand and over the lateral aspect of the knuckle of the right thumb;
- (xiv) A gaping incised wound over the upper part of the calf of the left leg measuring 8 x 5 cm; and,
- (xv) Numerous abrasions and bruises on the face, chest, and right lower limb and left lower limb.

49 The cause of death was certified as "(1a) Hemorrhage due to (1b) Multiple Incised Wounds". In his interviews with the Prosecution, Dr Teo Eng Swee further stated that he was of the opinion that injuries (viii) [injury No. 8 at page 5 of the Autopsy Report] and (xii) above [injury No. 13 at page 6 of the Autopsy Report] were sufficient to cause death in the ordinary course of nature.

Arrest of the Accused Persons

50 On the day after the offence (i.e. 24 February 2008), following successful ambushes, the 1st, 2nd, 3rd and 7th accused were arrested at various locations in Singapore.

51 The following day, on 25 February 2008, the 4th accused was arrested at the back-lane of Lorong 16 Geylang. He subsequently led the police to an incense burning pit at the immediate vicinity to recover four knives which were subsequently confirmed to have been used to attack the deceased. The descriptions of the knives are as follows:

- (i) One kitchen knife with a blade measuring 22.5 cm [*marked "GLT-04"*]
- (ii) One kitchen knife with a blade measuring 20 cm [*marked "GLT-05"*]
- (iii) One kitchen knife with a blade measuring 22.5 cm [*marked "GLT-06"*]
- (iv) One kitchen knife with a blade measuring 19 cm [*marked "GLT-07"*]

52 On 12 March 2008, Mohamad Najiman was apprehended at his residence. Following an ambush, the 5th accused was arrested at Ang Mo Kio Avenue 5 on 13 March 2008. On 15 March 2008, the 6th accused was arrested pursuant to a warrant of arrest issued against him in connection to the deceased's death by Ang Mo Kio Police Division patrol officers, who were attending to a case of noise pollution at Yishun Street 11.

Reports from HSA

(i) Lab No. CR-2008-00075 dated 22 August 2008

53 The Criminalistics Laboratory Report prepared by Kee Koh Kheng, a scientist with the HSA, stated that fibres similar to the deceased's shirt were found on the knives marked "GLT-05", "GLT-06" and "GLT-07". The report also stated that the tears and damage consisting of a combination of cuts and tears found on the shirt and shorts worn by the deceased at the time of the offence, and the damage and cut found on the deceased's shoes could have been made by a tool with a sharp or blunt cutting edge, such as the knives marked "GLT-04", "GLT-05", "GLT-06" and "GLT-07".

(ii) Lab No. DN-2008-00403 dated 1 Sep 2008

54 The DNA Report prepared by Ang Hwee Chen, a forensic scientist with the HSA, stated that the 1st accused's DNA, alongside the DNA of the deceased and others unknown, was found on the knife marked "GLT-05". The report further stated that the 6th accused's DNA was found on the knife marked "GLT-06".

(iii) Lab No. DN-2008-00453 dated 8 Sep 2008

55 Another DNA Report prepared by Ang Hwee Chen stated that the deceased's DNA was found on the 3rd accused's right slipper, which he wore at the time of the offence. The report further stated that the deceased's DNA was also found on the 7th accused's black T-shirt and right slipper, which he wore at the time of the offence.

Conclusion

56 The accused persons were members of an unlawful assembly, whose common object was to cause grievous hurt to the deceased and Seah. While being members of the said unlawful assembly the 1st, 3rd, 4th, 5th, and 6th accused persons were armed with knives that were intended to cause grievous injuries to the deceased and Seah.

57 In furtherance of the common object of the said unlawful assembly, Mohamad Najiman and the 1st accused instigated the other accused persons to attack the deceased and Seah at Lorong 10 Geylang. The 2nd accused started the assault by punching the deceased while the 7th accused kicked the deceased, causing him to fall onto the road. Thereafter, the deceased was attacked with knives by the 1st, 3rd, 4th, 5th, and 6th accused persons. Blows and kicks were also inflicted on the deceased as he lay on the road. The deceased died from the injuries inflicted on him as a consequence, which injuries the accused persons knew to be likely to be inflicted in the prosecution of the common object of that assembly.

Reasons for sentencing

6 Counsel for B3 sought probation or reformatory training. Counsel for B5, B6 and B7 submitted that reformatory training was appropriate. Counsel for B1 submitted that the sentence should not be life imprisonment. Counsel for B2 submitted that the custodial sentence should not be more than ten years and that B2 should receive the least severe of the sentences. Counsel for B4 submitted that a sentence of less than ten years would be appropriate.

7 The prosecution submitted that the principles of retribution, deterrence and prevention should prevail. The prosecution sought a custodial sentence towards the upper end of 20 years' imprisonment for B3 to B7 and life imprisonment for B1 and B2.

8 I have considered whether rehabilitation should be the dominant consideration especially for each of those accused persons below the age of 21 years of age.

9 In *Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63, the Court of Appeal said at [26] to [28] and [31]:

26 In this genre of group violence, the two most pressing sentencing considerations are the principles of general deterrence and retribution. In *PP v Law Aik Meng* [2007] 2 SLR(R) 814, the High Court emphatically underscored the particular relevance of general deterrence in cases involving group offences. The court noted at [25(b)]:

Examples of particular circumstances of an offence which may attract general deterrence include:

...

(b) Group/syndicate offences: The fact that an offence was committed by two or more persons may be regarded as an aggravating factor (see *Sentencing Practice* at p 84). Group offences generally result in greater harm. Another significant factor is that the victim is likely to be in greater fear in cases where physical intimidation is exerted. Further, group pressure to perpetuate such offences may add to their persistency, and group dynamics necessarily imply greater harm or damage: see Professor Andrew Ashworth in *Sentencing and Criminal Justice* (Cambridge University Press, 2005, 4th Ed) ('*Sentencing and Criminal Justice*') at p 157. ...

[emphasis in original]

27 Furthermore, the court noted (at [25(c)]), that gratuitous violence would fall under the broad category of public disquiet, which would also invoke the principle of general deterrence. As was said in PP v V Murugesan [2005] SGHC 160 (at [55]), "[violent] [p]erpetrators are punished not just for the physical harm they inflict but also for the life-long trauma, debilitating emotional distress and anguish they callously and cruelly inflict and sentence their victims to suffer in silence". To this, we need only add that the traumatic effect of a violent crime on a victim's family and loved ones ought not to be forgotten.

28 This is not to say that other sentencing considerations such as specific deterrence and rehabilitation are invariably irrelevant in cases such as this. Their relevance and the weightage to be given will have to be assessed carefully in the light of the circumstances prevailing in each matter.

...

31 In our view, relevant considerations in sentencing (some of which may be aggravating factors) for group violence include facts such as:

(a) the actual train of events leading to the attack. It will be relevant to take into account the level of pre-meditation or planning involved. This is not to say, however, that incidents that erupt suddenly are to be evaluated more benignly;

(b) the number of offenders involved;

(c) whether weapons were used. This factor is usually connected with the level of planning that precedes an incident: see (a) above. The use of a weapon is often an aggravating circumstance although the absence of one is at best a neutral consideration. A fist can also be a lethal instrument of harm;

(d) the response of the victim to the attack. Assaulting a defenceless and vulnerable victim who offers no resistance can never be viewed lightly. This, of course, does not mean that the response of a victim who seeks to protect himself can ever justify an attack or the continuation thereof;

(e) the duration of the attack;

(f) the extent and nature of the injuries inflicted on the victim;

(g) the role and participation of each of the offender(s) in the sequence of events leading to as well as during the attack, assuming this can be clearly delineated;

(h) the reasons for the assault including the existence of "provocation" by the victim. Here, we should add that any manner of retaliatory conduct by the accused, short of what is permissible under the PC, ought not to be condoned;

(i) the level of public fear or alarm generated by the incident;

(j) the nature of violence involved;

- (k) whether gratuitous violence was involved;
- (l) the commission of any other offence by the offender(s) during the course of the attack;
- (m) the prevalence of the particular offence; and
- (n) whether the violence was directed against a vulnerable victim.

[emphasis in original]

10 In the circumstances before me, there was some pre-meditation and planning. The group was planning to act violently and that was why some of them armed themselves before going for the "settlement talk". Even then, the attack did not occur at the talk but only after the talk ended and the deceased and Seah had gone away. They were having breakfast when the group set upon them. The group comprised seven or more persons and knives were used. The attack was not confined to the coffee shop. The group continued to chase the deceased and Seah as they ran out of the coffee shop. Seah managed to run away but the deceased was confronted again in the middle of the road between two coffee shops and was floored by a kick. The group then surrounded and attacked him, except that B2 and Mohamed Najiman did not personally attack the deceased then. Multiple serious and vicious injuries were inflicted on the deceased. The attacks took place in a public place and must have caused alarm and fear to innocent bystanders. Indeed, they were at risk of serious injury as can be seen by the fact that B2 was himself injured, probably by one of the attackers.

11 B2 and Mohamed Najiman appeared to be the leaders. B2 was also the one who signalled the attack by landing the first blow on the deceased although he himself was not armed.

12 B2 and B7 were the most responsible, among the accused persons, for the matters that gave rise to the tension with the deceased and Seah, although B7 was the youngest among the accused persons. B7 was not armed during the attacks but that was because he had handed his weapon to B5.

13 B1 did query loudly where the deceased and Seah were going. Presumably, this was the instigation by B1 which the prosecution was referring to (see paras 33 and 57 of the agreed SOF). However, the person who led the group to go after Seah and the deceased was B2 (see para 34 of the agreed SOF). B1 also had reasons to be angry as his personal belongings were taken by Seah. He did make a statement to suggest that he would kill the deceased and Seah (see para 19 of the agreed SOF) but that could have been his instantaneous response upon discovering that items were missing. He also did make a statement after the group was leaving the scene that the deceased "confirmed will die" (see para 45 of the agreed SOF) but it is not clear whether that was a boast or not.

14 B1 was said to be particularly vicious (see para 37 of the agreed SOF which also states that the deceased was viciously attacked by all the accused persons).

15 B6's knife did not have any blood but, in my view, that was fortuitous. There was no suggestion that he deliberately missed his target.

16 On the other hand, the deceased and his brother were partly to blame for the tension which arose and which led to the attacks. The deceased was also armed with a metal rod.

17 Having considered all the circumstances, including the seriousness of the nature of the offence,

I am of the view that deterrence and retribution are the more pressing considerations. A strong signal must be sent to those who are minded to group or gang together to attack others in a public place that such attacks will be treated severely. Accordingly, I am of the view that reformatory training is not appropriate for those accused persons below the age of 21. I would however mention that I am not saying that reformatory training is never appropriate in a case including s 304(a) read with s 149. It depends on the circumstances.

18 As for all the accused persons, I am of the view that they should all be treated similarly except for B2. I do not accept the prosecution's submission that B1 should be treated more harshly and be placed in the same category as B2 because he had attacked more vigorously than the others and because of the statements he had made before and after the attacks. Considering the totality of all the evidence and his role in the matter, I am of the view that the points mentioned by the prosecution did not justify treating B1 more harshly.

19 As for B2, he is the oldest of the accused persons. He and B7 were the most responsible among the accused persons for the tension which arose. He was also a leader among the accused persons. He led them to the coffee shop and landed the first blow which signalled the attack. Although he stopped participating in the attacks, this was not due to an act of restraint on his part but because he had been inadvertently injured.

20 In addition, B2 has an antecedent of a violent crime whilst being a member of an unlawful assembly which resulted in the death of the victim. On 29 January 2004, he was convicted in DAC No 51846 of 2003 on a charge under s 325 read with s 149 of the Penal Code of voluntarily causing grievous hurt and was sentenced by a District Court to six years and 12 strokes of the cane. There was a fatality in this incident.

21 He was also on the same day convicted and sentenced as follows:

(a) in DAC No 23998 of 2003 on a charge under s 147 of the Penal Code – three years' imprisonment and six strokes of the cane (the sentence of imprisonment to run concurrently with DAC 51846 of 2003). Apparently, there were two persons who were injured in this incident;

(b) in DAC No 23999 of 2003 on a charge under s 379 of the Penal Code – nine months' imprisonment (the sentence to run consecutively with DAC No 51846 of 2003).

He was released from prison on 5 December 2007 and committed the present offence within a few months, *ie*, on 23 February 2008.

22 On the other hand, I have taken into account the following as well:

(a) All the accused persons pleaded guilty;

(b) B3 to B7 were below 21 years of age when the crime was committed and B1 was 22 years of age;

(c) B1, B3, B5 to B7 were first time offenders in respect of a violent crime. In this regard, I did not single out B4 for harsher sentence in the totality of the circumstances even though he had been convicted and sentenced to one month's imprisonment for a charge under s 332 of the Penal Code, which involved voluntarily causing hurt to a public servant. Neither did the prosecution press for a harsher sentence for him.

(d) The deceased and Seah were not entirely innocent victims. They had contributed to the events which led to the attacks. The deceased himself was armed with a metal rod. However, I did not accept the submissions of various defence counsel that those accused persons who were armed, were armed solely for the purpose of defence as a result of past incidents and in view of the "settlement talk".

23 I have also considered sentencing precedents for s 304(a) offences. In doing so, I took into account the fact that under the previous s 304(a), the permissible custodial sentence was life imprisonment or imprisonment for up to ten years whereas under the present s 304(a), it is life imprisonment or imprisonment for up to 20 years. The liability in principle for fine or caning remains the same.

24 In the circumstances, I sentence the first and third to seventh accused persons as follows:

- (a) B1 - 12 years' imprisonment from 26 February 2008 (being the date of first arraignment) and ten strokes of the cane.
- (b) B3 - 12 years' imprisonment from 26 February 2008 (being the date of first arraignment) and ten strokes of the cane.
- (c) B4 - 12 years' imprisonment from 27 February 2008 (being the date of first arraignment) and ten strokes of the cane.
- (d) B5 - 12 years' imprisonment from 14 March 2008 (being the date of first arraignment) and ten strokes of the cane.
- (e) B6 - 12 years' imprisonment from 16 March 2008 (being the date of first arraignment) and ten strokes of the cane.
- (f) B7 - 12 years' imprisonment from 26 February 2008 (being the date of first arraignment) and ten strokes of the cane.

25 I sentence B2 to 20 years' imprisonment from 26 February 2008 (being the date of first arraignment) and 18 strokes of the cane.

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