

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 225

Criminal Case No 23 of 2020

Between

Public Prosecutor

... Plaintiff

And

Tan Kok Meng

... Defendant

JUDGMENT

[Criminal law] — [Offences] — [Murder]

[Criminal law] — [General exceptions] — [Unsoundness of mind]

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Public Prosecutor

v

Tan Kok Meng

[2020] SGHC 225

High Court — Criminal Case No 23 of 2020

Valerie Thean J

11 – 14 Aug, 5 Oct 2020

3 November 2020

Valerie Thean J:

Introduction

1 On 13 November 2015, the accused, Tan Kok Meng (“Kok Meng”) and his father, Tan Ah Hin (“Mr Tan”), were locked in together at home from 2.30 pm. Upon her return shortly after 5 pm, Toh Meow Siang (“Mdm Toh”), Mr Tan’s wife, discovered her husband lying on the floor in a pool of blood, with her son sitting on a sofa with his clothes, arms and legs covered in dried blood.

2 Kok Meng is charged with murder under s 300(a) of the Penal Code (Cap 224, 2008 Rev Ed). It is undisputed that Kok Meng was of unsound mind at the material time. The Prosecution sought a finding that Kok Meng had committed the act, and following such a finding, for an order under s 252 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) to be made for Kok Meng.

Facts

3 Kok Meng, who was 42 at the material time, lived with his girlfriend¹ Chenny Besueno Amahan (“Chenny”) in his parents’ HDB flat in Bedok (“the Flat”).

4 Prior to the day of the incident, Kok Meng had been observed by Mdm Toh to be looking dazed and hallucinating at home.² On the day of the offence, 13 November 2015, Chenny noted that Kok Meng was “talking with words that made no sense”.³ She left the apartment at 8 am in the morning. Mdm Toh also observed Kok Meng pacing up and down the flat.⁴ As Kok Meng “was not in a good state”,⁵ Mdm Toh did not want him to leave the house and therefore kept the house keys from him, buying his cigarettes for him instead of allowing him to leave the Flat.⁶

Mr Tan’s demise

5 Mdm Toh had a medical appointment that afternoon, and she left at around 2.30 pm.⁷ Prior to her departure, she told Mr Tan, who was 75 years old at the material time, to keep watch over Kok Meng and not to let him leave the Flat. The gate to the Flat was padlocked before she left.⁸

¹ AB 146 at para 11.

² AB 139 at paras 2 – 3.

³ P313 at para 12.

⁴ AB 139 at para 2.

⁵ AB 139 at para 3.

⁶ AB 139 at para 4.

⁷ AB 140 at para 4.

⁸ AB 139 at para 5.

6 Upon Mdm Toh’s return at about 5.30 pm, the gate was still padlocked.⁹ She saw Mr Tan lying supine on the floor, with his head in a pool of blood and blood on his face. She also heard “heavy breathing sounds”. Kok Meng’s clothes were covered in dried blood and he was seated on the sofa facing Mr Tan’s body. Mdm Toh asked Kok Meng what happened but he did not reply.¹⁰ Mdm Toh left the flat to seek help from neighbours. Two, Mr Chua Kee Pau (“Chua”) and Mr Mohamad Zin bin Abdul Karim (“Zin”), came to her aid. They similarly saw blood on Kok Meng’s hands and body.¹¹ Zin called for an ambulance.¹² Mdm Toh returned to the flat and shouted at Kok Meng, asking why he had killed his father. At that point, Kok Meng walked towards Mr Tan. He straddled Mr Tan, “placed both his hands on the deceased’s upper chest, just below the throat area and at the collar bone area”, and said he would save Mr Tan, in Chinese.¹³ Zin, who saw Kok Meng sitting on Mr Ng’s stomach, pulled Mdm Toh away and escorted her to the corridor outside her flat.¹⁴ There, Chua and Zin stayed with Mdm Toh as they waited for help to arrive.¹⁵

7 Three paramedics arrived at the Flat around 5.19 pm.¹⁶ They were Zaneta Lee (“Zaneta”), Muhammad Farhan Bin Kasim (“Farhan”) and Muhammad Farid Bin Abdol Rahim (“Farid”). Upon arrival, Zaneta ascertained Mr Tan to be a ‘3’ on the Glasgow Coma Scale. The Glasgow Coma Scale measures a

⁹ AB 139 at para 5.

¹⁰ AB 139 at para 5.

¹¹ AB 157 at para 4; AB 152 at para 5.

¹² AB 157 at para 3.

¹³ AB 139 at para 7.

¹⁴ AB 157 at para 6.

¹⁵ AB 153 at para 6; AB 157 at para 6.

¹⁶ AB 161 at para 1.

subject's responsiveness. A score of '15' is the highest score and a score of '3' is the lowest on the scale.¹⁷ Mr Tan's heartbeat was also "slow and weak",¹⁸ which in turn signified an "issue with [the] heart".¹⁹ As the team required assistance from the police, Farid was sent downstairs to the ambulance to retrieve the communication set, as well as additional incontinence sheets and wound dressings.²⁰

8 Mr Tan's face was "quite battered up", with "puffy puffy eyes".²¹ His head was fairly "swollen".²² Mr Tan was also making a "snoring-like" sound. This was a sign of obstruction in his airway. Zaneta therefore inserted an Oral Pharyngeal Airway device ("OPA"), and the sound stopped thereafter.²³

9 When Mr Tan was being attended to, Zaneta, Farhan, Kok Meng and Mr Tan were the only people in the Flat.²⁴ While inserting the OPA, Zaneta asked Kok Meng what had happened.²⁵ Kok Meng suddenly stood up from the sofa and moved towards Mr Tan. Both Zaneta and Farhan testified that the accused sat on Mr Tan's abdominal region and placed his hands on Mr Tan's throat.²⁶ In keeping with their protocols on safety, Zaneta and Farhan stepped backwards,

¹⁷ NE 11 August 2020, p 45 lines 11 – 23.

¹⁸ NE 11 August 2020, p 45 lines 30 – 31.

¹⁹ NE 11 August 2020, p 46 lines 3 – 5.

²⁰ AB 161 at para 4.

²¹ NE 11 August 2020, p 103 lines 22 – 23.

²² AB 161 at para 4.

²³ AB 162 at para 5.

²⁴ NE 11 August 2020 p 47 lines 13 – 16.

²⁵ AB 162 at para 7; AB 171 at para 6.

²⁶ AB 171 at para 7; AB 163 at para 9.

away from Mr Tan and Kok Meng.²⁷ Zaneta shouted at Kok Meng to stop and to move away, and eventually, Kok Meng returned to the sofa.²⁸

10 Shortly after, Farid returned. Police officers arrived at the scene. One of the police officers assisted the paramedics to move Mr Tan to the ambulance.²⁹ The ambulance departed for the hospital at about 5.45 pm.³⁰ Around 5.51 pm, Mr Tan stopped breathing and his pulse was faint at around 36 beats per minute.³¹ His pulse weakened to about 24 beats per minute around the time of arrival at Changi General Hospital.³²

11 Mr Tan arrived at the hospital around 5.55 pm.³³ Dr Paul Yow Zhi Wen (“Dr Yow”) was the doctor who attended to him and reported that Mr Tan had no vital signs.³⁴ Chest compression was immediately applied and a video laryngoscope inserted.³⁵ Dr Yow observed that there was a large amount of accumulated blood inside Mr Tan’s mouth and in his throat.³⁶ The doctors attempted to suction this blood out.³⁷ Dr Yow also observed a “transverse

²⁷ AB 171 at para 7; AB 163 at para 8; NE 11 August 2020, p 104 lines 26 – 27.

²⁸ AB 171 para 8; AB 163 at para 10.

²⁹ AB 163 at para 12.

³⁰ AB 165 at para 16.

³¹ AB 165 at para 18.

³² AB 165 at para 19.

³³ AB 165 at para 20.

³⁴ NE 12 August, p6 line 3 – 5.

³⁵ AB 118.

³⁶ AB 118; NE 12 August 2020 p 43 lines 25 – 30; p 44 lines 8 – 13.

³⁷ NE 12 August 2020, p 7 lines 18 – 21.

laceration of tongue” measuring about one centimetre in length.³⁸ Finally, he noted bruising and swelling over Mr Tan’s neck, and assorted injuries on the face, eyes and chin. Despite the best efforts of Dr Yow and his team, Mr Tan could not be resuscitated. Mr Tan was pronounced dead at 6.37 pm on 13 November 2015.³⁹

12 Subsequently, Associate Professor Teo Eng Swee (“A/Prof Teo”) conducted an autopsy and concluded that Mr Tan’s cause of death was “strangulation and aspiration of blood”.⁴⁰

Kok Meng’s arrest, statements and psychiatric condition

13 Kok Meng was arrested by the police who arrived at the Flat shortly after Farid returned. He made various statements to Sergeant Khor Jia Yi,⁴¹ Staff Sergeant Travinder Jit Singh⁴² and Senior Staff Sergeant Koh Mun Gek.⁴³ He was interviewed subsequently by Assistant Superintendent Tan Boon Kok at the premises of the Criminal Investigation Department at 7.20 pm.⁴⁴ Dr Raymond Lim (“Dr Lim”) conducted a physical examination of Kok Meng before Kok Meng’s s 23 CPC statement was recorded and Dr Kong Jun Cheong (“Dr Kong”) examined Kok Meng him after the statement was taken.

³⁸ NE 12 August 2020 p 10 lines 13 – 32; AB 118.

³⁹ AB 118.

⁴⁰ AB 78 Autopsy Report at p 13.

⁴¹ AB 181 at para 7.

⁴² AB 185 at para 6.

⁴³ AB 194 at para 6.

⁴⁴ AB 211 at para 5

14 In respect of his psychiatric state, Kok Meng was seen by Dr Subhash Gupta (“Dr Gupta”), then-Consultant with the Department of General and Forensic Psychiatry, Institute of Mental Health, and Dr Cheow Enquan (“Dr Cheow”), Associate Consultant at the Department of Forensic Psychiatry. Dr Gupta and Dr Cheow shared the same opinion that Kok Meng had been of unsound mind at the time of the alleged offence.⁴⁵ While Dr Cheow’s report originally suggested that Kok Meng’s methamphetamine consumption could have contributed to his “disorganised behaviour”,⁴⁶ Dr Cheow confirmed at trial his view that Kok Meng would have been of unsound mind, with or without the consumption of methamphetamine.⁴⁷ At trial, being presented with evidence that Kok Meng had tested negative for amphetamine after his arrest,⁴⁸ Dr Cheow reconsidered his original view (that the accused was in a state of acute drug intoxication at the time of offence). The joint finding of Dr Gupta and Dr Cheow that Kok Meng had been of unsound mind at the time of the alleged offence was accepted by both the Prosecution and the Defence.

Context and issues

15 Kok Meng’s charge reads:

That you, **TAN KOK MENG**,

on the 13 November 2015 at Block 416 Bedok North Avenue 2 #04-35, Singapore 460416, did commit murder, to wit, by strangling one Tan Ah Hin (75 years old/male) and inflicting multiple blows on his face, with the intention of causing his death, and you have thereby committed an offence under

⁴⁵ AB 133 Dr Cheow’s Psychiatric Report dated 24 June 2018 at para 14; AB 124 Dr Gupta’s Medical Report dated 11 March 2016 at paras 19 – 20.

⁴⁶ AB 133 at para 14

⁴⁷ NE 13 August 2020, p 53 lines 15 – 17

⁴⁸ NE 13 August 2020, p 52 lines 9 – 19

section 300(a) punishable under Section 302(1) of the Penal Code, Chapter 224.

16 Section 300(a) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) states:

Murder

300. Except in the cases hereinafter excepted culpable homicide is murder —

(a) if the act by which the death is caused is done with the intention of causing death;

...

17 It is not disputed that Kok Meng was of unsound mind at the time of the incident. An acquittal would follow from s 84 of the Penal Code. Accordingly, a finding under s 251 of the CPC as to whether Kok Meng committed the act was necessary. Section 251 of the CPC reads:

Acquittal on ground of unsound mind

251. If an accused is acquitted on the ground that at the time at which he is alleged to have committed an offence he was by reason of unsoundness of mind incapable of knowing the nature of the act as constituting the offence or that it was wrong or contrary to law, the finding must state specifically whether he committed the act or not.

18 The Prosecution sought a finding that Kok Meng committed the act and prayed for an order under 252 of the CPC. Section 252 of the CPC reads:

Safe custody of person acquitted

252. —(1) Whenever the finding states that the accused committed the act alleged, the court before which the trial has been held shall, if that act would but for the incapacity found have constituted an offence, order that person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the orders of the Minister.

(2) The Minister may order that person to be confined in a psychiatric institution, prison or other suitable place of safe custody during the President’s pleasure.

19 I should clarify an issue arising from the Prosecution’s submission. Owing to the words “if that act would *but for* the incapacity found have constituted an offence” (emphasis added) within s 252(1) of the CPC, the Prosecution submitted that I should make a finding that but for his unsoundness of mind, Kok Meng had the intention to kill, and invited me to infer this intent from the surrounding circumstances. Such a reading, based on the words of the subsection, could, however, lead to legal absurdity. It would necessitate that the court make an assessment of Kok Meng’s mental state in the hypothetical; conversely, Kok Meng’s unsoundness of mind is that which makes the assessment impossible.

20 In my view, in the present case, s 252(1) of the CPC should be construed with close regard to its context (see *Tan Cheng Bock v Attorney General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”) at [37(a)]). Section 252 of the CPC complements s 251 of the CPC. Sections 251 and 252 have historically been sister provisions in successive versions of the Criminal Procedure Code since its first enactment in 1955. Both provisions operate in tandem to secure safe custody for those of unsound mind. The object of s 251 of the CPC is to consider whether an accused who has been found of unsound mind has committed the *actus reus* of the offence. *Mens rea* is not relevant in s 251 because its premise is that the accused is of unsound mind. The function of s 252(1), which follows after, is to enable a relevant order to be made for a person for whom s 251 of the CPC applies. The use, then, of the words “but for the incapacity would have constituted an offence” within s 252(1) was draughting shorthand to refer to the particular finding of *actus reas* made in s 251, not to introduce what would then be a new requirement of *mens rea*, which s 251 did not necessitate. I approach this judgment, therefore, from the premise that the only issue is whether the

Prosecution has proven beyond reasonable doubt that Kok Meng had caused the death of Mr Tan.

21 The Prosecution’s case rested on circumstantial evidence. Where this is the case, the cumulative effect of all the evidence in the case must lead irresistibly to the conclusion that Kok Meng caused the death of Mr Tan: *Ang Sunny v Public Prosecutor* [1965] SGFC 8 at [13] (“*Sunny Ang*”). As was explained by V K Rajah J (as he then was) in *Public Prosecutor v Chee Cheong Hin Constance* [2006] SGHC 9 at [85] (“*Constance Chee*”):

The various links in the interlocking chain of evidence must establish a complete chain that rules out any reasonable likelihood of an accused’s innocence. Guilt must be the only rational inference and conclusion to be drawn from the complete chain of evidence. In assessing the circumstances, the court should discount fanciful or speculative possibilities. However, if more than one reasonable inference can be elicited from the factual matrix, the inference most sympathetic to the accused ought to be accepted.

22 The relevant issues for the present case are therefore the following:

- (a) what was the cause of Mr Tan’s death; and
- (b) whether Kok Meng’s actions are the only rational explanation for Mr Tan’s death.

23 The Defence approached the case from the stance that the Prosecution must prove, beyond a reasonable doubt that Kok Meng caused Mr Tan’s death by strangling him and inflicting multiple blows his face.⁴⁹ The following were asserted, in particular:

⁴⁹ DWS para 23.

- (a) reasonable doubt whether Kok Meng strangled Mr Tan;
- (b) reasonable doubt whether strangulation caused death;
- (c) reasonable doubt whether Kok Meng inflicted multiple blows on the deceased's face;
- (d) reasonable doubt whether the alleged multiple blows caused death;
- (e) reasonable doubt as to the aspiration of blood; and
- (f) delay caused the death of Mr Tan.

24 I deal with these various contentions in the context of the two relevant issues.

Cause of Mr Tan's death

25 A/Prof Teo's autopsy report concluded that the cause of Mr Tan's death was aspiration of blood, which was explained as the flow of blood into the lungs, and strangulation. There was "no direct cause-effect relationship" between the two causes. Both independently could have caused death.⁵⁰

26 With regard to strangulation, the autopsy report identified multiple bruises and abrasions on the neck.⁵¹ This was coupled together with extensive haemorrhaging on multiple regions of subcutaneous soft tissue and muscles in

⁵⁰ AB 85, Letter dated 21 January 2019 at p 1.

⁵¹ AB 70, Autopsy Report at p 5.

the neck.⁵² With regard to aspiration of blood, the main source of the aspirated blood was the deep laceration of the tongue.⁵³ A/Prof Teo pointed to a transmural rupture of the tongue with the following communicating superior and inferior lacerations: first, a laceration 2 cm long over the midline inferior aspect of the tongue, 1cm from the tip of the tongue and second, a laceration shaped like the Mercedes-Benz logo, measuring 2.5cm x 2.5cm x 2.5cm over the anterior part of the superior aspect of the tongue.⁵⁴ The two lacerations (collectively, “the Tongue Laceration”), upon forensic autopsy, were discovered to be connected⁵⁵, hence the single “transmural rupture of the tongue. For clarity, “trans-mural rupture” means “the entire wall of the tongue was penetrated”,⁵⁶ much like the sort of puncturing seen in tongue piercings which “go all the way through”.⁵⁷

27 Professor Teo explained in a clarification report that tongue lacerations are commonly caused when the tongue is between the teeth, and a fall on the face or a blow to the face occurs. The shape and pattern of the Tongue Laceration in this case was consistent with a punch to a face. If Mr Tan was wearing his dentures, the dentures could have become dislodged within the mouth, and further punching could have caused the dentures to lacerate the tongue. Alternatively, the tongue could have been lacerated during punching of the face, when the tongue was between the dentures. The transmural nature was

⁵² AB 74, Autopsy Report at p 9.

⁵³ AB 85, Letter dated 21 January 2019 at p 1.

⁵⁴ AB 76, Autopsy Report at p 11.

⁵⁵ NE 12 August 2020, p 76 lines 9 – 11.

⁵⁶ NE 12 Aug 2020, p 28 lines 8 – 10.

⁵⁷ NE 12 Aug 2020, p 28 lines 13 – 15.

consistent with the tongue laceration being due to a punch to the face.⁵⁸ It was unlikely that the Tongue Laceration was caused by the insertion of the OPA.

28 The Defence did not adduce any medical evidence. They raised by way of cross-examination and submissions the following contentions:

- (a) delay by the paramedics contributed to Mr Tan’s death;
- (b) aspiration of blood was not a cause of death; and
- (c) there was reasonable doubt that strangulation was a cause of death.

I deal with these in turn.

Delay

29 The Defence argued that the delay in the Flat by the paramedics affected Mr Tan’s chance of survival.⁵⁹

30 This contention is answered by explanation 2 of s 299 of the Penal Code:

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

31 In any event, there was no evidence that any delay affected Mr Tan’s chances of survival. Questioned on this, Farid agreed that “delay would have

⁵⁸ AB 85, Letter dated 21 January 2019 at p 2.

⁵⁹ Defendant’s Closing Submissions (“DCS”) at paras 211 – 214.

affected the victim's chance of obtaining A&E treatment swiftly"⁶⁰, and Dr Yow stated: "the earlier a patient gets to us, definitely increases the chance of survival".⁶¹ But these were generic truisms rather than a concession that there was any material delay. Further, Kok Meng himself interrupted Mr Tan's treatment by sitting on him and strangling him. The paramedics were only able to resume treatment after Kok Meng moved away.

Aspiration as a cause of death

Absence of the Tongue Laceration

32 The Defence submitted that since neither the Tongue Laceration nor blood resulting from such lacerations was seen, the Tongue Laceration was not present when the paramedics arrived at the Flat⁶² and not present when the deceased arrived at the hospital either.⁶³

33 I start with the assertion relating to the absence of any tongue laceration when Mr Tan was treated by the paramedics. Zaneta did not see the particular lacerations described in the autopsy report.⁶⁴ Zaneta explained that she could have missed the laceration, because the tongue was stained with blood.⁶⁵ This explanation makes sense, especially considering that Zaneta was providing emergency services in a stressful environment where Kok Meng had attempted to strangle Mr Tan in her presence.

⁶⁰ NE 11 August 2020, p 130 lines 11 – 12.

⁶¹ NE 12 August 2020, p 41 lines 22 – 31.

⁶² DCS at paras 125 – 137

⁶³ DCS at paras 138 – 153

⁶⁴ NE 11 August 2020 p 71 lines 1 – 6; p 72 lines 12 – 20.

⁶⁵ NE 11 August 2020, p 98 lines 9 – 10.

34 Dr Yow, on the other hand, did see a laceration. However, the laceration he noted was only about one centimetre in length.⁶⁶ Related to this, the Defence asserted that the laceration which Dr Yow noted was not the one reflected in the autopsy report. The Defence relied on the size of the laceration measured by Dr Yow. The “Mercedes-Benz-type shaped laceration”⁶⁷ (one of the two lacerations that comprised the Tongue Laceration) was 2.5 centimetres in diameter. The transverse linear laceration described by Dr Yow was one centimetre in length. The doctors acknowledged that a two-centimetre laceration was different from a one-centimetre laceration.⁶⁸ But this did not necessarily mean that they were describing different lacerations. Dr Yow commented that the tongue was extremely swollen,⁶⁹ and the “exact shape or dimension of the laceration would have been difficult to make out on account of the swelling of the tongue.”⁷⁰ A/Prof Teo explained, “the tongue is a muscle [...] so it’s like making a cut into a piece of beef. If we – if we make a cut into a piece of beef and we move the knife around and you take the knife out, the meat just closes back on itself and all you may see is a small cut but you don’t see the true extent of the cut until you actually open the meat up.”⁷¹ It was Professor Teo’s testimony that he himself did not appreciate the true extent of the injury until he had “pulled the tongue apart”.⁷² The tongue, being a muscular organ, “can collapse especially

⁶⁶ AB 118.

⁶⁷ P248, AB 76 Autopsy Report at p 11.

⁶⁸ NE 13 August 2020, p 8 lines 11 – 12; NE 12 August p 28 lines 28 – 29.

⁶⁹ NE 12 August 2020, p 11 lines 3 – 6.

⁷⁰ NE 12 August 2020 p 11 lines 9 – 14.

⁷¹ NE 12 August 2020, p 76 lines 1 – 5

⁷² NE 12 August 2020, p 76 lines 9 – 14

after a person has died”.⁷³ Though “differently described, it could refer to the same laceration because the laceration has changed shape”.⁷⁴

Absence of blood loss associated with tongue laceration

35 The Defence further contended that there was insufficient evidence of the substantial blood loss expected of a tongue laceration. Zaneta did not notice any “visible secretion of blood” and therefore did not perform any suctioning.⁷⁵ She testified that the mouth was clear and that there was no accumulation of blood, fluids, or active bleeding.⁷⁶ Farid and Farhan, similarly, confirmed that there was no accumulation of blood inside the mouth and neither was there any blood “gushing out of the mouth”.⁷⁷ There was nothing in Dr Yow’s report about “blood oozing from the tongue”,⁷⁸ “congealed blood on the tongue”,⁷⁹ “blood clotting up on that tongue”⁸⁰ or any other form of “blood secretion from the tongue”.⁸¹

36 This argument did not take account of the relevant factual context. Mr Tan was found with a large pool of blood around his head. A/Prof Teo was of the opinion that only the Tongue Laceration could have caused the massive

⁷³ NE 13 August 2020, p 8 lines 6 – 7

⁷⁴ NE 13 August 2020, p 8 lines 5 – 6

⁷⁵ AB 162 at para 6.

⁷⁶ NE 11 August 2020 p 67 lines 31 – 32, p 68 lines 17 – 25.

⁷⁷ AB 171 at para 6; NE 11 August 2020, p 111 lines 22 – 23; p 129 lines 17 – 21.

⁷⁸ NE 12 August 2020, p 34 lines 5 – 7.

⁷⁹ NE 12 August 2020, p 34 lines 8 – 9.

⁸⁰ NE 12 August 2020, p 34 lines 10 – 11.

⁸¹ NE 12 August 2020, p 34 lines 12 – 13.

bleeding that was responsible for the large pool of blood.⁸² Mr Tan could have fallen on his face or side (causing the blood to spill out to form the pool of blood) and then turned or been turned to face the ceiling.⁸³

37 Coming to the paramedics' failure to see accumulation of blood in the mouth, A/Prof Teo explained that "if a person is moribund where the blood pressure is very low, where the heart is not beating properly to have enough blood circulation or when the person is in the process of dying [...] the wound itself, there may be no active bleeding at that point in time from the wound".⁸⁴ I accept this explanation. It was plausible and consistent with the rest of the medical narrative. In particular, it coheres with A/Prof Teo's observations that Mr Tan would have already been in the process of dying (see [46] below).

38 Finally, albeit after chest compressions, Dr Yow did observe blood in the mouth and throat. The doctors first suctioned out any blood they could see and then inserted the video laryngoscope, through which they saw accumulation of blood were seen "past the tongue" and in the throat.⁸⁵ Defence counsel's cross-examination focused on whether there was bleeding from the tongue.⁸⁶ This was rather narrow. Accumulated blood at the scene and seen in Mr Tan's throat at hospital reflected that there was substantial blood loss typical of the tongue laceration observed, and that such laceration and blood loss occurred before Mr Tan got to the hospital.

⁸² NE 12 August 2020, p 81 lines 27 – 28.

⁸³ NE 12 August 2020, p 82 lines 1 – 15.

⁸⁴ NE 12 August 2020, p 82 lines 21 – 25.

⁸⁵ NE 12 August 2020, p 9 lines 21-28, p 12 lines 6 – 10.

⁸⁶ NE 12 August 2020, p 35 line 5

Any other cause of tongue laceration

39 The Defence made a final argument that the Tongue Laceration had been caused by either the laryngoscope⁸⁷ or the insertion of the OPA. As I have found above, the laceration and blood loss occurred prior to the arrival of the paramedics and was observed by Dr Yow at hospital. Professor Teo testified that the OPA was relatively soft, “not like a piece of metal that has an – a hard edge to it that can be pushed through muscle [...] it’s [...] possible but unlikely to have caused [the Tongue Laceration].”⁸⁸ The practice was to insert the OPA with the tip of the OPA pointed upwards and would not have been able to cause the Tongue Laceration.⁸⁹ More fundamentally, the Tongue Laceration was a perforation of the tongue from the bottom up:⁹⁰ both the OPA and laryngoscope were inserted above the tongue.⁹¹

No evidence of aspiration of blood (into the lungs)

40 The Defence’s assertion that blood had not been aspirated into the lungs was not supported by any medical evidence. A/Prof Teo explained that Mr Tan’s airways contained blood and cut sections of the lungs showed lower lobe congestion with blood expressed from the cut surfaces.⁹² The Defence made much of fact that there were no post-mortem photographs of blood in the airways. However, this was not an evidential deficiency. As A/Prof Teo explained, “[if] there is something in the trachea, like fluid, as [he opens] the

⁸⁷ NE 12 August 2020, p 41 lines 7 - 12

⁸⁸ NE 12 August 2020, p 81 lines 16 – 17

⁸⁹ NE 11 August 2020, p 93 lines 7 – 9; p 55 line 28 – p 56 line 11; p 56 line 21 - 31

⁹⁰ NE 12 August 2020, p 79 lines 13 – 16; p 79 lines 17 – 26.

⁹¹ NE 12 August 2020 at p 80, lines 18-23.

⁹² P248, AB 76, Autopsy Report at p 11.

tube it flows out. There's no way for [him] to capture [an image of the fluid in the trachea] unless the entire autopsy is being videoed.”⁹³

41 Defence counsel also took issue with the fact that there was no blood in the oesophagus. His theory was that any blood resulting from the Tongue Laceration would have flowed into both the oesophagus and the trachea. This is because the “[trachea and the oesophagus] are next to each other”⁹⁴ and “[t]he blood cannot choose whether or not it flows into the oesophagus or the trachea”.⁹⁵ Since the oesophagus and the stomach were found to be grossly unremarkable,⁹⁶ his suggestion was that there had actually been no blood in the airways either.

42 A/Prof Teo explained why this hypothesis was not viable.⁹⁷ It was entirely possible for blood in the mouth to “enter the [trachea] without entering the oesophagus”. Though they are both tubes, the trachea is held up in shape by cartilage like the laryngeal and tracheal cartilages while the oesophagus is “just a tube of muscle”. This meant that “when a person is moribund or is dying or is lying down, the oesophagus being just a tube that is not held up in shape by any cartilage can collapse and close in on itself whereas the airway cannot.”⁹⁸ The breathing mechanism was also complemented by a breathing reflex. By contrast, for the oesophagus, the blood would have had to be “propelled down the oesophagus because [the oesophagus was] not held open by all this

⁹³ NE 13 August 2020, p 12 lines 7 – 10.

⁹⁴ NE 12 August 2020, p 40 lines 13 – 23.

⁹⁵ NE 13 August 2020, p 16 lines 10 – 13.

⁹⁶ AB 76, Autopsy Report at p 11.

⁹⁷ NE 13 August 2020, p 22 line 23 - p 24 line 12.

⁹⁸ NE 13 August 2020, p 23 lines 5 – 8.

cartilage”.⁹⁹ This would usually be accomplished by swallowing,¹⁰⁰ an action that an unconscious person would be unable to do.¹⁰¹

Strangulation as cause of death

43 Prof Teo’s evidence was that both strangulation and aspiration were separate causes of death that were sufficient in themselves to cause death.

44 The Defence contended there was reasonable doubt that strangulation could be a cause of death for two reasons. First, there was a suggestion that Kok Meng’s strangulation was too short. Strangulation required approximately four minutes of continuous pressure to cause death,¹⁰² and the paramedics reported that the strangulation incident was either between one to two minutes, or less than a minute, depending on whose account of events is accepted (see [56] below). But this contention did not take into account the possibility that strangulation could have occurred prior to Mdm Toh’s return. Mr Tan’s Glasgow score was 3 when the paramedics arrived. His injuries certainly appeared to be very severe to the first person who saw Mr Tan in his fatally wounded state: Mdm Toh likely was of the view the injuries were fatal when she queried Kok Meng as to why he killed his father.

45 Second, defence counsel pointed to the fact that Mr Tan was still breathing after the strangulation,¹⁰³ continued to do so as he was brought out of

⁹⁹ NE 13 August 2020, p 23 lines 23 – 24.

¹⁰⁰ NE 13 August 2020, p 23 lines 18 – 22.

¹⁰¹ NE 13 August 2020, p 13 – 14.

¹⁰² NE 12 August p 101 lines 1 – 5; p 101 lines 8 – 11; p 103 lines 11 – 13 – 103.

¹⁰³ NE 11 August 2020, p 49 lines 7 – 9; p 116 lines 10 – 11; AB 163 at para 11.

the Flat,¹⁰⁴ and even as he entered the ambulance,¹⁰⁵ and was only declared dead by Dr Yow at 6.37 pm on 13 November 2015.¹⁰⁶

46 This argument could not be maintained in the light of A/Prof Teo's explanation that even though there was no clinical death, "the compression of the airway [had] started a process of death which [was] ongoing and, in this case, obviously [...] irreversible leading to then eventual death".¹⁰⁷ During this process, breathing could have been observed, but such "sounds of breathing [...] gasping [...] gurgling" were not necessarily *effective* breathing.¹⁰⁸ Such breathing, known as agonal breathing, would occur as someone is "in the process of dying [...] there is no movement of air, effective movement of air going into the lungs for oxygen to be exchanged with the blood."¹⁰⁹ A/Prof Teo's explanation corresponds with the account of the paramedics. "[A]gonal breathing" was precisely the term used by Farhan in describing Mr Tan's breathing pattern when the paramedics first arrived at the Flat.¹¹⁰ In that regard, I found that the Defence contention that strangulation had not occurred was a spurious one.

¹⁰⁴ NE 11 August 2020 p 129 lines 10 – 11.

¹⁰⁵ NE 11 August 2020 p 76 lines 23 – 26; p 118 lines 22 – 23; p 129 lines 27 – 28.

¹⁰⁶ AB 118.

¹⁰⁷ NE 12 August 2020, p 87 lines 17 – 20.

¹⁰⁸ NE 12 August 2020, p 87 lines 26 – 27.

¹⁰⁹ NE 12 August 2020, p 111 lines 1 – 5.

¹¹⁰ NE 11 August 2020, p 109 lines 15 – 21.

Conclusion on cause of death

47 In this case, A/Prof Teo's evidence as to the cause of death was drawn from an autopsy performed on Mr Tan. Defence counsel did not adduce any evidence to the contrary and in closing oral response, took the position that A/Prof Teo could not be sure of the cause of death since he had not been there when Mr Tan died and argued, on that basis, that the "foundational facts" were not established. This misunderstood A/Prof Teo's role as a forensic pathologist, the object of an autopsy in a case of unnatural death, and the circumstances in which autopsies are performed. The role of a forensic pathologist is to ascertain the cause of death from an examination of a dead body. From the autopsy conducted, A/Prof Teo, in the light of his medical knowledge and having performed the necessary procedures, ascertained two causes of death.

48 Defence counsel's attempt to deride A/Prof Teo's report by querying an absence of "foundational facts" was misplaced. A forensic pathologist's foundational premise is the dead body presented. Further, it is inappropriate for defence counsel to make assertions of a medical nature in written submissions without first establishing or even putting the relevant medical facts to the medical expert at trial. An example was defence counsel's submission that A/Prof Teo's evidence that Mr Tan's oesophagus was collapsed as he lay on the floor and A/Prof Teo's finding in the autopsy report of a "grossly unremarkable" oesophagus were incompatible.¹¹¹ There was no premise for the contended inconsistency. To the contrary, A/Prof Teo's explanation for the collapsed oesophagus, that there was no cartilage keeping the tube open absent a swallowing action, could, as a matter of logic, hold true in a dead person,

¹¹¹ DCS para 205.

making such a state “grossly unremarkable”. I find that there is no reasonable doubt about the veracity of the autopsy report or that the cause of Mr Tan’s death could be other than from strangulation and aspiration of blood.

49 A second, albeit related, aspect of the Prosecution’s reliance on A/Prof Teo’s evidence was how such causes of death could, in his medical experience, be consistent with possible narratives arising from the given facts. That is a matter of medical opinion relevant to the second issue, which I deal with below at [64].

Whether there is only one explanation for Mr Tan’s injuries

Kok Meng’s involvement as a rational explanation

50 An inference that Kok Meng is responsible for the acts of strangulation and aspiration arises from the following circumstances, taken together:

(a) Mr Tan was injured while Mdm Toh was out of the house. During this time, both men were locked in at home. The gate was still padlocked when Mdm Toh returned from her medical appointment.¹¹² There was no sign of forced entry or any other person’s entry.¹¹³ Kok Meng was the only person who had access to Mr Tan.

(b) When Mdm Toh returned home, Mr Tan was lying motionless on the floor. The medical evidence indicates that he was already fatally injured by this time. Kok Meng, on the other hand, was covered in blood.

¹¹² AB 139, para 5.

¹¹³ NE 14 August 2020 at p 15 lines 6 – 7.

(c) Kok Meng was suffering a relapse of schizophrenia¹¹⁴ and experiencing severe psychotic symptoms. At the same time, Mr Tan's injuries were consistent with being punched and strangled, and Kok Meng's psychotic state could explain the injuries found on Mr Tan and the blood on his own body. In addition, two intermittent acts of strangulation were witnessed by Mdm Toh and the paramedics.

(d) No one else could have been responsible for Mr Tan's injuries, which were not accidental.

51 I also find that the following circumstances (which I do not rely on) were consistent with the evidence and did not detract from or raise doubts about my conclusions above:

(a) Kok Meng admitted to the police officers that he had attacked and hit Mr Tan with his bare hands.¹¹⁵ Dr Cheow's evidence was that although Kok Meng's mental state appeared to be fluctuating, those parts of his accounts that were relatively coherent, consistent and plausible demonstrated that he had partial awareness of his actions and could not be discounted.¹¹⁶ I observe that these admissions are consonant with and do not raise doubt on the Prosecution case, although it would be unsafe to rely on them to convict Kok Meng.

¹¹⁴ AB 124, p 5 of Dr Subhash Gupta's report.

¹¹⁵ AB 181, para 7; AB 185, para 6; AB 194, para 6.

¹¹⁶ AB 133, paras 13 – 15.

(b) Kok Meng had a strained relationship with Mr Tan, who “nagged and scolded” him for taking money from his parents.¹¹⁷ Kok Meng told Chenny that he found Mr Tan “irritating and annoying”. I would emphasise in this case that such sentiment does not reflect intent in any way. I mention it for its consistency with Kok Meng’s account to SSgt Koh that he had been angry with Mr Tan and had punched him for calling him a “good for nothing”.¹¹⁸ Dr Cheow’s evidence was that the basis for Kok Meng’s anger would have been psychotic.¹¹⁹ In that sense it was consistent with and did not raise any doubt on the Prosecution’s explanation for Mr Tan’s injuries.

52 I also make clear that I do not draw any inferences from Kok Meng not giving evidence. As he was of unsound mind at the time of the incident, his testimony would not be reliable.

53 The issue, then, is whether there is any other explanation for Mr Tan’s death, or whether there is any doubt that renders the explanation no longer rational.

Is there reasonable doubt?

54 The Defence was of the view that there was a reasonable doubt that Kok Meng strangled or punched his father. I deal with each contention in turn.

¹¹⁷ AB 139, para 12; AB 146, para 10.

¹¹⁸ AB 194, para 6.

¹¹⁹ AB 133, para 14.

Whether there is doubt that Kok Meng strangled Mr Tan

55 The Defence contended that Kok Meng did not strangle Mr Tan for two reasons. The first is that during the incident witnessed by Mdm Toh, Mdm Toh’s evidence was that Kok Meng stated that he wished to save Mr Tan. While that was what Kok Meng said he was doing, Mdm Toh plainly did not see the situation the same way. Her response was to pull Kok Meng off.¹²⁰

56 Coming to the strangulation incident witnessed by Zaneta, the Defence’s second contention was that the testimonies of the witnesses are inconsistent and there was therefore reasonable doubt as to whether Kok Meng strangled Mr Tan. These inconsistencies were the following:

- (a) Zaneta’s evidence was that Kok Meng’s hands were entirely on Mr Tan’s throat.¹²¹ Farid, however, suggested that Kok Meng’s thumbs were fondling Mr Tan’s lower lip.¹²²
- (b) Zaneta testified that Kok Meng had muttered “*wo yao ta shi*” (Mandarin for “I want him to die”) a few times. Farid testified that Kok Meng had said nothing at all.
- (c) Zaneta said that the whole incident lasted about one to two minutes¹²³ while Farid said the entire episode was over in less than a minute.¹²⁴

¹²⁰ AB 140, para 7.

¹²¹ AB 163, para 9.

¹²² AB 171, para 7.

¹²³ NE 11 August 2020 p 89 lines 12 – 17.

¹²⁴ NE 11 August 2020 p 115 lines 20 – 21.

57 With regard to the thumb placement, I did not think it mattered whether the thumb was placed on the lips or not. The fact remained that there was still strangulation. Indeed, Farhan himself clarified that when he described Kok Meng as “grabbing the sides of the deceased’s neck with both hands”,¹²⁵ it was “a form of strangulation, trying to strangle his father.”¹²⁶ The Defence suggested that “without the thumb and the index finger on the neck [...] it [would have been] difficult to exert force”.¹²⁷ But that suggestion took the Defence nowhere. It only went to showing that the strangulation may have been harder, but not disproving the fact of strangulation itself. In any case, as Farhan rightly pointed out, the strangulation could have been effective, notwithstanding the placement of the thumbs on the lips, as the strangulation could have been caused by Kok Meng using his palm to exert force on Mr Tan’s neck towards the floor.¹²⁸

58 More to the point, the Prosecution’s case was that Kok Meng strangled his father at any point after 2.30 pm. This strangulation could have occurred prior to Mdm Toh’s return, or been of intermittent nature (as A/Prof Teo’s testimony also allows)¹²⁹ coupled with the incidents witnessed by Mdm Toh and Zaneta. Mr Tan’s Glasgow Coma Scale reading was at the lowest possible reading before the strangulation witnessed by Zaneta and Farhan. When queried on the same, defence counsel conceded that his submissions only related to the last instance of strangulation. The fundamental question, however, was whether there was any other reason for the effects of strangulation shown on Mr Tan’s

¹²⁵ AB 171, para 7.

¹²⁶ NE 11 August 2020, p 104 line 21.

¹²⁷ NE 11 August 2020, p 115 line 14 – 15.

¹²⁸ NE 11 August 2020, p 115 lines 10 – 16.

¹²⁹ NE 12 August 2020, p 86 lines 3 – 4.

body? This was an independent cause of death. There was no possibility of anyone else having strangled Mr Tan prior to Mdm Toh's return, and no assertion that any of the paramedics, policemen or doctors who attended at the scene and in the hospital effected strangulation of any kind. In my view, the evidence pointed to the strangulation having been caused by Kok Meng.

Whether there is doubt that Kok Meng punched Mr Tan

59 The Defence premised this aspect of their case on the contention that it was unusual for an assailant to have no injuries on his hands after inflicting “multiple blows of severe force”.¹³⁰

60 Reliance was placed on the two physical examinations made by Dr Lim and Dr Kong on the evening of 13 November. Dr Lim's physical examination took about eight minutes.¹³¹ He reported “small abrasions and scratches [*sic*] marks measuring 1 cm [...] on both the patient's hands”, together with “[d]iffuse bloodstains [...] over both the patient's forearms and hands”.¹³² During cross-examination, Dr Lim was unable to identify exactly where those abrasions had been.¹³³ Dr Kong, who examined Kok Meng for about 20 minutes after his statement was taken, made no mention of any scratches or abrasions on Kok Meng's hands in his report.¹³⁴ The Defence also pointed to Kok Meng's long fingernails on his smallest fingers on both hands, which were intact, even

¹³⁰ DCS at para 94 – 95; NE 12 August 2020, p 99 lines 8 – 15.

¹³¹ AB 110, para 2.

¹³² AB 113.

¹³³ NE 14 August 2020, p 25 line 26 – p 26 line 5.

¹³⁴ AB 115.

after inflicting “multiple blows of severe force”.¹³⁵ These facts, the Defence submitted, raised reasonable doubt as to whether Kok Meng had indeed inflicted multiple blows to Mr Tan’s face.¹³⁶

61 Dr Kong explained that he could have simply missed the scratches and abrasions on Kok Meng’s hands when he was examining Kok Meng.¹³⁷ As for Dr Lim, the photos he was shown were pictures of Kok Meng’s bloodstained hands.¹³⁸ The bloodstains on Kok Meng’s hands made it difficult to identify, at least from the photos shown, whether Kok Meng had injuries on his hands on the day of the incident. This was an opinion shared by not just Dr Lim and Dr Kong, but A/Prof Teo as well.¹³⁹ This explained why Dr Lim could not pinpoint exactly where the abrasions or scratches had been. I found these explanations entirely believable. Indeed, Dr Lim’s medical notes – contemporaneous records of his physical examination of Kok Meng – included Kok Meng’s account of events (“murder/struggle”) and described “the pattern of injury [as being] consistent with the account that [Kok Meng] had given to [Dr Lim]”.¹⁴⁰

62 Regarding the Defence assertion that it was “implausible for Kok Meng to have inflicted “multiple blows of severe force” without breaking his long fingernails”,¹⁴¹ these were fingernails on the last finger of each hand and would

¹³⁵ DCS at para 97.

¹³⁶ DCS at para 93 – 99.

¹³⁷ NE 14 August 2020, p 9 lines 17 – 20.

¹³⁸ NE 14 August 2020, p 29 lines 17 – 20.

¹³⁹ NE 14 August 2020, p 7 lines 6 – 12; p 29 lines 9 – 12; 12 August 2020, p 99 lines 25 – 27.

¹⁴⁰ NE 14 August 2020, p 24 lines 9 – 13

¹⁴¹ DCS at para 97.

not have impeded Kok Meng's ability to punch or otherwise grab or injure. These bare and unsubstantiated assertions did not take into account the context. The assailant, being 42 and of unsound mind, would have been far stronger than the victim of 75. More fundamentally, only Kok Meng had the opportunity to inflict the blows.

No other rational explanation for Mr Tan's death

63 The Defence did not suggest another explanation for Mr Tan's injuries. Their emphasis was that there was a reasonable doubt with the prosecution case. As explained by V K Rajah JA (as he then was) in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [54]–[55] ("*Jagatheesan*"), a reasonable doubt is not "a mere doubt", but one which is "capable of distinct expression and articulation and has support and foundation in the evidence submitted which in the circumstances is essential to a conviction".

64 I return to the point I mentioned at [49], which is the Prosecution's reliance on A/Prof Teo's evidence on how Mr Tan's death could, in his medical experience, be consistent with various scenarios that the scene and setting offered. Where evidence rests on circumstantial evidence and medical evidence is available, this is a necessary component of interpreting the surrounding circumstances. The court must consider whether Kok Meng's involvement was the only rational explanation for Mr Tan's demise, or whether there might be any other rational explanation. On relevant matters of medical opinion, it cannot be an answer to submit, as defence counsel did, that expert opinion should be summarily dismissed because the expert "was not there" at the scene of death. In closing response, defence counsel attempted to draw a distinction between "cause of death" and "causation of death", and yet may have conflated the two issues by his argument. In considering whether there is doubt, it is pertinent to

note that in cases where reliance is placed on circumstantial evidence, it is the very fact that there is no witness to the act causing death that causes circumstantial evidence to become pivotal. The question is always answered by cumulative reference to all available evidence, taking into consideration the injuries, the special access the accused had to the victim, and any other relevant fact that illumines the context. In such cases, the *Jagatheesan* guidance that any doubt must be capable of distinct expression and grounded in the evidence remains; it is but another way of saying that the proposed cause must be the ineluctable conclusion from all the evidence.

65 The Court of Appeal explained in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [127] (“*GCK*”), reiterating *Jagatheesan* at [55], that in both cases of acquittal and conviction, reasonable doubt is to be understood as “a *reasoned* doubt” (emphasis in original). This may arise either from a weakness within the Prosecution’s case, or from an issue which, on a holistic assessment of the totality of the evidence, creates doubt that death was caused in the manner suggested: *GCK* at [134]–[135].

66 In the present case, the witnesses who were cross-examined were able to give sensible reasons for their actions and observations. No material weaknesses in the Prosecution’s case were articulated, nor was an alternative construct suggested. The issue is the rational inference to be drawn: was there any other possible explanation for Mr Tan’s severe injuries when found? In light of Kok Meng’s psychiatric condition, the circumstances of Mr Tan’s death, the access those circumstances afforded only to Kok Meng, and the events from the time of discovery by Mdm Toh up to the time death was pronounced, the inescapable legal conclusion is that there is no reasonable doubt that Kok Meng caused the injuries while having a psychotic episode.

Conclusion

67 I acquit Kok Meng of the charge under s 300(a) of the Penal Code on the basis of s 84 of the Penal Code. He was of unsound mind at the material time. Pursuant to s 251 of the CPC, I make a finding that Kok Meng committed the act of causing Mr Tan's death.

68 I therefore make an order under s 252(1) of the CPC. This is grief twice over for the family and I would emphasise that this order is made in the context that Kok Meng has been acquitted of the offence charged. The object the law seeks to fulfil by this order is the protection of society, and by the same means, the safety of the accused and his family. It is hoped these reasons bring some measure of closure to what I am sure is a painful chapter for the family.

Valerie Thean
Judge

Daphne Lim, and Yan Jiakang (Attorney General's Chambers) for
the Prosecution;
Favian Kang (Peter Low & Choo LLC) and Nichol Yeo (Solitaire
LLP) for the accused
