Kamrul Hasan Abdul Quddus *v* Public Prosecutor
[2011] SGCA 52

Case Number	: Criminal Appeal No 1 of 2010
Decision Date	: 13 October 2011
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Ismail Hamid (Ismail Hamid & Co) and James Chai (James Chai & Partners) for the appellant; Winston Cheng and Samuel Chua (Attorney-General's Chambers) for the respondent.
Parties	: Kamrul Hasan Abdul Quddus — Public Prosecutor

Criminal law – Murder

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2010] SGHC 7.]

13 October 2011

Chan Sek Keong CJ (delivering the grounds of decision of the court):

1 This was an appeal against the decision of the trial judge ("the Judge") in *Public Prosecutor v Kamrul Hasan Abdul Quddus* [2010] SGHC 7 *("Kamrul")* convicting the appellant, Kamrul Hasan Abdul Quddus ("the Appellant"), of the charge of committing murder by causing the death of one Yulia Afriyanti ("the deceased"). We dismissed the Appellant's appeal, and now give our reasons.

Facts

2 The Appellant was a construction worker and Bangladeshi national. He was the lover of the deceased, a domestic helper and Indonesian national. The personal relationship between the Appellant and the deceased was tumultuous. They first became lovers in January 2007, and by September 2007, they had made plans to marry. The Appellant then returned home to Bangladesh on vacation. In early October 2007, the deceased broke off the relationship when she discovered that the Appellant was already married and had a wife in Bangladesh. Two weeks later, the deceased began a new relationship with one Joseph Guerzon Corpuz ("Corpuz").

3 When the Appellant returned to Singapore in November 2007, he called the deceased's hand-phone when she was with Corpuz. Corpuz answered the call as the deceased did not wish to answer it, and identified himself as the deceased's boyfriend. The Appellant reacted in anger, proclaimed that he was the deceased's real boyfriend and swore at Corpuz and Corpuz's family. The deceased told the Appellant not to disturb her as she was in a relationship with Corpuz, and the Appellant responded by insisting that the deceased was still his girlfriend. However, despite their arguments, the Appellant and the deceased resumed their relationship sometime in late November 2007. On 2 December 2007, the deceased met a friend, Listiyana, who testified at the trial that the deceased had told her that the Appellant would kill the deceased if she broke up with him. On 9 December 2007, the deceased met Corpuz to terminate her relationship with him and told him that she would marry the Appellant in January 2008. However, the deceased and Corpuz continued to send each other intimate SMS messages by hand-phone at the same frequency as they did before the break-up. (The hand-phone that the deceased used to communicate with Corpuz belonged to Corpuz, but he asked the deceased

to keep it so that they could still communicate with each other.)

4 Despite the deceased's break-up with Corpuz, her relationship with the Appellant remained tempestuous – they continued to argue in the course of their SMS messages to each other. In an SMS message sent on 12 December 2007, she told the Appellant that it would be better if they broke up. However, on 15 December 2007, the deceased told three witnesses (who testified at the trial) that she was going to the airport with the Appellant the following morning to pick up his mother and his sister, who were coming to Singapore to meet her to discuss the wedding plans. The three witnesses were: (a) her sister, Leni Apriyana; (b) her mother, Yulismawati; and (c) Corpuz. The deceased also sent an SMS message to another witness, her friend Nausatar, giving her the same information and inviting her to a party at the Appellant's house on 20 December 2007.

5 At 1.48am on 16 December 2007, the morning of the deceased's death, the Appellant sent the deceased an SMS message asking her to wake up quickly: "Lia, pls fts [faster] wake up ok." He did not receive a reply from her. The Appellant then made a total of five consecutive missed calls to her hand-phone in an attempt to wake her up at, respectively, 1.55am, 1.57am, 2.00am, 2.03am and 2.07am. At 2.09am, the deceased replied with an SMS to the Appellant stating thus: "Ray edy bkg [barking] how?" Ray was one of the names the deceased used to refer to the Appellant and Edy was the deceased's employer's family dog. This was the last documented communication between the deceased and the Appellant.

6 The deceased's body was found at 9.50am later that morning in a box left in the storeroom of unit #03-10, Block 3 ("the Unit") at the construction site of Viz@Holland ("the Site"). The forensic pathologist, Associate Professor Gilbert Lau, testified at the trial that the deceased was killed by strangulation at approximately 4.12am that morning. The Appellant was arrested later in the morning when he was working at the Site. After he was arrested, the Appellant claimed in his statements to the police that he did not kill the deceased. He further claimed that he had been asleep in his dormitory throughout the early morning on 16 December 2007, and that the deceased had told him that she was going to the airport with Corpuz to fetch Corpuz's family.

The decision below

7 At the trial, the Prosecution adduced various pieces of evidence in the form of both direct evidence and witness testimony. The direct evidence included the pathological findings and forensic report for the autopsy conducted on the deceased's body, items recovered from the Appellant's person and locker at his dormitory after he was arrested, the call and SMS records of the Appellant's and the deceased's respective hand-phones, as well as the ten investigation statements made by the Appellant to the police after his arrest ("the Investigation Statements"), which were admitted with the Appellant's consent. At the close of the Prosecution's case, counsel for the Appellant made a submission that there was no case to answer.

8 The Judge rejected the submission and called on the Appellant to enter his defence. However, the Appellant elected to remain silent, and did not call any witnesses to give evidence on his behalf.

9 After examining the evidence before him, the Judge held that the Prosecution had discharged its burden of proving beyond a reasonable doubt that the Appellant had murdered the deceased. The Judge also drew an adverse inference against the Appellant from his decision to remain silent. He further held that the lies and inconsistencies in the Investigation Statements satisfied the *Regina v Lucas (Ruth)* [1981] QB 720 ("*Lucas*") test as they were deliberate lies on material issues indicating a consciousness of guilt, such that they amounted to corroboration of the circumstantial evidence that the Appellant had killed the deceased. The Judge thus convicted the Appellant of murder and

sentenced him to the mandatory death sentence.

Issues that arose on appeal

10 The following issues were raised by the Appellant on appeal:

(a) whether, on the evidence, a *prima facie* case had been made out against the Appellant at the close of the Prosecution's case, such that the Judge was correct in calling upon the Appellant to enter his defence;

(b) whether the Judge properly drew an adverse inference from the Appellant's election to remain silent;

(c) whether the Appellant's lies satisfied the *Lucas* test, such that they could be used to corroborate the circumstantial evidence that the Appellant had killed the deceased; and

(d) whether the Judge rightly held that the Prosecution had proved its case against the Appellant beyond a reasonable doubt.

We found that none of the Appellant's grounds of appeal had merit, and thus dismissed the appeal accordingly. The reasons for our findings on each ground will be elaborated in turn in the discussion which follows.

Whether a *prima facie* case had been made out against the Appellant at the close of the Prosecution's case

1 1 *Haw Tua Tau and others v Public Prosecutor* [1981–1982] SLR(R) 133 ("*Haw Tua Tau*") laid down the test to be applied at the close of the Prosecution's case to determine whether a *prima facie* case against the accused had been made out which, if unrebutted, would warrant his conviction. *Haw Tua Tau* at [15] stated:

> The Prosecution makes out a case against the accused by adducing evidence of primary facts. It is to such evidence that the words "if unrebutted" refer. What they mean is that for the purpose of reaching the decision called for by s 188(1) [of the Criminal Procedure Code (Cap 113, 1970 Rev Ed)] the court must act on the presumptions: (a) that all such evidence of primary fact is true, unless it is inherently so incredible that no reasonable person would accept it as being true; and (b) that there will be nothing to displace those inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of any further explanation.

12 This test was applied in *Tan Siew Chay and others v Public Prosecutor* [1993] 1 SLR(R) 267, where this court emphasized at [67] that the same test is to be applied regardless of whether the evidence is direct or circumstantial. The Prosecution's evidence must be considered in its totality, and "[a]ll that is required at this stage of the proceedings is a minimum evaluation of the evidence as a whole" (see *Public Prosecutor v IC Automation (S) Pte Ltd* [1996] 2 SLR(R) 799 at [17]).

13 Applying these principles, we were of the view that the Judge was correct in calling for the defence on the basis of the primary facts found by him and summarised at [37] of *Kamrul* as follows:

(i) the deceased's death on 16 December 2007 was caused by asphyxia due to strangulation,

(ii) the deceased had informed her family and friends on 15 December 2007 that she would be

going with the [Appellant] to the airport to meet his mother,

(iii) the [Appellant] was at the [Site] where the deceased's body was discovered on 16 December 2007,

(iv) the [Appellant's] EZ Link card shows that a trip was made on SBS bus service No 93 to a bus stop near the [Site] at 12.05 am on 16 December 2007,

(v) although the [Appellant] knew of the body in the box and suspected that it was the deceased, he kept silent about the deceased, [Corpuz] and the box until after his arrest,

(vi) swabs taken from the deceased's groin, vagina and external genitalia yielded DNA that matched the [Appellant's] DNA. (Of particular significance is that DNA from a swab of the deceased's rectum which tested positive for semen under the presumptive acid phosphatase test matched the [Appellant's] DNA),

(vii) items belonging to the deceased were recovered from the [Appellant]'s locker,

(viii) the deceased's torn work permit was in his possession, and

(ix) the [Appellant] lied

(a) that he and the deceased had never thought of marriage,

(b) that the deceased was planning to go to the airport with [Corpuz] on 16 December 2007 (see [24] & [28]),

(c) that he had bought the watch recovered from his locker for his wife (see [32]),

(d) that he had possession of the deceased's mobile phone when they parted company on the night of 15 December 2007. (The call tracing records of his telephone number 826XXXXX record calls between this telephone number and the deceased's telephone number between 10.50 pm on 15 December 2007 and 2.10 am on 16 December 2007). This shows that he was not in possession of both phones at the same time), and

(e) that he received a call from the deceased on 16 December 2007 at about 4.30 am on his telephone 902XXXXX while he was in his room in the dormitory. (The call tracing records of telephone number 902XXXXX have no record of such a call.)

14 Additionally, we agreed that the evidence adduced by the Prosecution to support the primary facts was cogent and corroborated by both the accounts of the Prosecution's witnesses and the physical evidence. One example of such corroboration was the fact that there were three witnesses who all testified that the deceased told them that she was going to the airport to meet the Appellant's family, and there was a text message saying the same thing sent by the deceased to a fourth witness, Nausatar.

15 Although the evidence against the Appellant was circumstantial in character, we agreed with the Judge that having regard to the physical evidence linking the Appellant to the deceased, coupled with the witnesses' testimonies and the various untruths told by the Appellant, the inference was irresistible that the Appellant had sex with the deceased and had strangled her.

Whether the court below properly drew an adverse inference from the Appellant's election to

remain silent

16 Section 196(2) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) provides that the court may draw such inferences from the accused's silence as appear proper:

> (2) If the accused —
>
> (a) after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or
>
> (b) having been sworn or affirmed, without good cause refuses to answer any question,
>
> the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

17 In the present case, there were no eyewitnesses to the deceased's death. As the person whose DNA was found on the deceased's corpse in the Unit at the Site and who was the last person to have seen the deceased alive, the Appellant was the best and only person to explain what happened to the deceased on the day of her death. His refusal to testify in his own defence to explain the incriminating evidence against him meant that he could not offer any credible explanation. Hence, the Judge was justified in drawing an adverse inference from the Appellant's decision to remain silent. The inference was not being used as a makeweight, but rather to reinforce strong circumstantial evidence adduced at the close of the Prosecution's case. To adopt the words of this court in *Oh Laye Koh v Public Prosecutor* [1994] SGCA 102 ("*Oh Laye Koh*") at [15], "[t]he circumstantial evidence stacked up against the [Appellant] … had been so damning in nature as to demand that he proffered some explanation for the death of the [deceased]."

Whether the Appellant's lies satisfied the *Lucas* test, such that they could be used to corroborate the circumstantial evidence that the Appellant had killed the deceased

18 After the Appellant elected to remain silent and decided not to call any witnesses, the Judge re-examined and re-evaluated the reliability of the evidence against the Appellant and concluded at [47]–[56] of *Kamrul*:

> 47 In addition to that, the lies listed in [37] may also be taken into consideration. The applicable rules were set out by the English Court of Appeal in *Regina v Lucas (Ruth)* [1981] QB 720 ("*Lucas*") where Lord Lane CJ ruled at p 724 that:
>
> > Statements made out of court, for example, statements to the police, which are proved or admitted to be false may in certain circumstances amount to corroboration.
> >
> > …
> >
> > To be capable of amounting to corroboration the lie told out of court must *first* of all be deliberate. *Secondly* it must relate to a material issue. *Thirdly* the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. *Fourthly* the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent

witness.

[emphasis added]

For convenience, I will refer to a lie which satisfies the four conditions as a *Lucas* lie.

48 In *PP v Yeo Choon Poh* [1994] 2 SLR 867 ("*Yeo Choon Poh*"), our Court of Appeal endorsed and applied those rules (substituting "the judge" for "the jury") and explained at 876 that:

> the mere fact that an accused tells lies should not be taken as evidence of his guilt, but that lies can in certain circumstances amount to corroboration because it indicates a consciousness of guilt.

49 In *Lucas*, the court was dealing with a case where the prosecution had relied on the evidence of an accomplice. In England an accomplice's evidence requires corroboration, and the Court of Appeal held that the accused's lies can constitute corroboration.

50 Corroboration is required or is considered desirable for some forms of evidence, e.g. evidence of victims of sexual offences and children, and evidence on identification. However, any form of evidence can be strengthened by corroboration.

51 For any lie to be taken as corroborative evidence, the four conditions in *Lucas* must be met, whether or not corroboration is required. However, there is a statement in *PP v Lau Boon Huat* [1997] SGHC 148 at [53] that:

> In R v. Lucas, Lord Lane CJ laid down 4 tests to decide whether a lying statement amounted to corroboration. These tests were laid down in a case where corroboration was a special requirement in that the nature of that case made it incumbent to make a special effort to look for corroboration or consider the lack of corroboration. In the present case there is no special requirement for corroboration of the accused's guilt. I have already considered the effect of all the lies of the accused on the rest of his evidence and came to the conclusion that because of the lies he could not be believed and that some of them demolished his own case. The lying statements of the accused did not call for a special consideration.

This should not be taken to mean that the tests only apply in situations where there is a special requirement for corroboration. The tests have been applied in cases where there were no special requirements for corroboration eg, *Yeo Choon Poh*. Lies which satisfy the tests may amount to corroboration in any sort of case.

52 When a lie offers corroboration, it does that by corroborating some existing evidence, as was made clear in *PP v Chee Cheong Hin Constance* [2006] 2 SLR 24 at [92] that:

> An accused's deliberate lies on material issues can corroborate *other evidence* against him.
>
> [emphasis added]

53 Statements appear in some judgments that lies can corroborate guilt. In *PP* v *Manogaran s/o R Ramu (No. 2)* [1997] SGHC 121 at [62], the court held that person's lie "can amount to corroboration of his guilt". In *Bala Murugan a/l Krishnan v PP* [2002] 4 SLR 289, it was ruled at [22] that an accused person's lies "could be relied on as corroborating evidence of his guilt". In *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR 45 at [83], it was stated that a "lie may very

well be used by the Prosecution as corroboration of the [accused] witness's guilt".

54 These statements were not intended to be extensions of or departures from *Lucas*, which was cited as authority in each case. In all three cases, the court acted on evidence (other than the lies) that the lies corroborated. *Lucas* is not to be construed to mean that an accused person can be convicted because he had lied. The true effect of *Lucas* is that a person's lies may corroborate other evidence against him, and the corroborated evidence may establish his guilt. Lies are not evidence of guilt.

55 Reverting to the present case, the question remains whether the [Appellant's] lies are *Lucas* lies. The five lies identified in [37] satisfied the four conditions in *Lucas*. All five lies were deliberate. They have been contradicted by clear evidence. They related to material issues in the investigation, ie, his relationship with the deceased, whether they were in each other's company on the morning of 16 December 2007, how the deceased's belongings came to be in his possession, and his whereabouts at about 4.30 am on 16 December 2007. When he told these lies, he must have realised that if he told the truth, it would link him to the deceased's death.

56 The result is then that the lies corroborated the circumstantial evidence that the [Appellant] had killed the deceased.

19 We agreed with the Judge's finding that the Appellant had lied in the manner described by the Judge (the Appellant's lies were clearly shown to be such by the testimony of the Prosecution's witnesses as well as by the deceased's things found in the Appellant's possession), and with the Judge's conclusion on the corroborative effect of the lies. However, we would also add that the circumstantial evidence adduced by the Prosecution was so strong that, even if the Appellant had kept silent on the matters on which he was found to have lied, it would have been sufficient to prove his guilt beyond a reasonable doubt – the next issue which we will examine.

Whether the Prosecution proved its case against the Appellant beyond a reasonable doubt

20 In cases where the Prosecution's case is based wholly on circumstantial evidence, the various strands of circumstantial evidence are to be considered cumulatively at the end of the trial to see if the Prosecution has proved the guilt of the accused beyond a reasonable doubt. In this regard, "[w]hilst each piece of evidence of a circumstantial nature may be insufficient of itself for the purpose, the various strands of evidence considered together in totality may be strong enough to prove the guilt of the accused beyond a reasonable doubt" (see *Oh Laye Koh* at [16]).

21 In the present case, the direct evidence produced by the Prosecution incriminated the Appellant. DNA samples examined from swabs taken from the following areas of the deceased's body, *viz*, the left groin, right thigh, perineum, vagina, rectum and external genitalia, were found to contain the Appellant's DNA and seminal fluids. The Appellant's fingerprints were also found in the Unit where the deceased's body was discovered, specifically, on the glass door of the shower screen in the master bedroom bathroom. A piece of chewing gum containing the Appellant's DNA was also found in the room. The cleaner who had cleaned the room earlier on the day of the murder testified that he had not seen any chewing gum then.

22 A watch and other items belonging to the deceased were recovered from the Appellant's locker when the police went to search it after his arrest. Additionally, two torn pieces of the deceased's work permit were recovered from a plastic bag found in the Appellant's trouser pocket.

23 Furthermore, the travel records on one of two EZ-link cards seized from the Appellant suggest

that he was in the vicinity of the Site around the time of the murder. The records on that EZ-link card showed that it had been used for a journey on SBS bus service No 93 which started at 11.35pm on 15 December 2007 from the bus stop opposite Eunos Link, which was next to the Appellant's dormitory. The user had alighted from the bus at about 12.05am on 16 December 2007 at either the bus stop opposite Tulip Garden at Farrer Road or the bus stop opposite Holland Hill Lodge at Queensway, both of which were a short walking distance from the Site. The fact that the Appellant was found with that EZ-link card in his possession strongly suggests that he made the aforesaid trip and was thus present in the vicinity of the Site at 12.05am on the morning of the killing. This inference is strongly supported by the fact that the earlier travel patterns recorded on both of the EZ-link cards seized from the Appellant were consistent with the Appellant's account of the various bus and train journeys he had been making up till the 11.35pm trip on 15 December 2007 in terms of sequence, mode of transport, location and time.

24 We accordingly agreed with the finding of the Judge that the composite picture presented when the circumstantial evidence was considered cumulatively was sufficient to prove the case against the Appellant beyond a reasonable doubt.

Conclusion

25 For the above reasons, we dismissed the appeal and affirmed the conviction and the sentence imposed by the Judge.