Public Prosecutor v Lee Chez Kee
[2007] SGHC 4

Case Number : CC 25/2006

Decision Date : 15 January 2007

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Lee Cheow Han and Tan Wee Soon (Deputy Public Prosecutors) for the Prosecution; Rupert Seah Eng Chee (Rupert Seah & Co) and Wendell Wong (Drew & Napier LLC) for the accused

Parties : Public Prosecutor — Lee Chez Kee

Criminal Law – Statements – Admissibility – Whether out-of-court confessions of co-accused not party to proceedings falling within general prohibition against hearsay evidence – Whether out-of-court confessions of co-accused not party to proceedings admissible under s 378(1)(b)(i) Criminal Procedure Code (Cap 68, 1985 Rev Ed) – Sections 378(1)(b)(i) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Proof of evidence – Onus of proof – Accused standing trial on charge for murder in furtherance of common intention to commit robbery – Whether Prosecution discharging its burden beyond reasonable doubt – Whether evidence giving rise to prima facie inference accused involved in deceased's death – Section 116 Evidence Act (Cap 97, 1997 Rev Ed)

15 January 2007

Tay Yong Kwang J:

1 The accused, one Lee Chez Kee, was committed to stand trial in the High Court on the following charge:

> You, Lee Chez Kee (Male 37 years old)…are charged that you between 12.00 noon on the 12th day of December 1993 and 7.03 a.m. on the 14th day of December 1993, at 20 Greenleaf Place, Singapore, together with one Too Yin Sheong and one Ng Chek Siong, in furtherance of the common intention of you all, did commit murder by causing the death of one Lee Kok Cheong (Male/then 54 years old) and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

2 This trial represented the final chapter in the trilogy of cases that had ensued from the events occurring at 20 Greenleaf Place ("the deceased's house") more than a decade ago. The accused's two other alleged accomplices, one Too Yin Sheong ("Too") and one Ng Chek Siong ("Ng"), had already been convicted and sentenced in 1998 for their involvement in the events on that fateful day. Too was convicted of murder and sentenced to the mandatory death penalty (see *Public Prosecutor v Too Yin Sheong* [1998] SGHC 286; *Too Yin Sheong v Public Prosecutor* [1999] 1 SLR 682), whilst Ng was convicted and sentenced to a total of eight years' imprisonment and 10 strokes of the cane for one count of robbery, five counts of theft and 11 counts of cheating, all with common intention.

3 The considerable lapse of time which had ensued since the deceased's death in 1993 presented this Court with the somewhat unusual prospect of trying the accused for a charge of common intention when both his alleged accomplices were not available as witnesses. The prosecution was unable to locate Ng, who had already served his sentence and been repatriated to Malaysia in

October 2003. Though a summons had been served at Ng's registered address in Malaysia requiring him to appear as a witness, Ng's father informed the officer who served the summons that Ng had not been home for the past six months. Too, in turn, has had his sentence of death carried out in April 1999. The trial of the accused therefore proceeded without the oral testimony of either Too or Ng.

4 At the conclusion of the trial, I found the accused guilty of murder and accordingly convicted and sentenced him to the mandatory death penalty. The absence of oral evidence from Too and Ng did not materially prejudice the prosecution's case since the rest of the evidence, considered in its totality, sufficed to prove the accused's guilt beyond a reasonable doubt. I now give my written grounds for this decision.

The Prosecution's Case

The discovery of the deceased's body

5 On the morning of 14 December 1993, two police officers found one Lee Kok Cheong ("the deceased") lying dead in the master bedroom of his house. The two police officers had been instructed by their Operations Room to proceed to the deceased's house following a call received from the deceased's neighbour at about 7.00 a.m. that morning. The deceased's neighbour had contacted the police when she noticed that something was amiss at the deceased's house. The lights on the ground floor were switched on, the main sliding door and main gate of the house were ajar and the interior light of the car parked at the porch had also been left on.

6 According to the two police officers who first discovered the deceased's body, they noticed on their way into the house that the glove compartment of the deceased's car, a red Honda Concerto, was opened and appeared to have been ransacked. Upon entering the deceased's house, they also observed that the hall in the first storey and two rooms on the second storey had been ransacked. The deceased's body was found in the third and last room on the second storey, in a supine position, with a pillow placed over his face. His hands were above his head and his wrists tied together with a white electrical cord. His feet were bound at the ankles with a black belt. When the pillow was lifted up, the two officers observed that the deceased's denture was protruding out of his mouth.

7 Deputy Superintendent Low Hock Peng ("DSP Low"), who was then a Senior Investigating Officer attached to the Criminal Investigation Department, attended at the scene shortly thereafter. DSP Low found a bent knife with a length of about 18 centimetres from its tip to its hilt ("P154") beneath the deceased's body. A chopper ("P153") was also found underneath some papers on the study table in the first storey hall.

8 The pathologist, Dr Paul Chui, gave evidence that a black electrical cord was found across the front of the deceased's neck. The cord was not knotted and was not wound completely around the back of his neck. A stab wound was observed in the left side of the deceased's neck. Bruising to the right side of the deceased's face was also noted.

9 Dr Chui estimated death to have occurred about 1 to 2 days before the 14th December 1993, when the deceased's body was found. The post mortem examination revealed that the cause of death was asphyxia due to strangulation, which had been effected using the black electrical cord found around the deceased's neck. The stab wound sustained to the deceased's left anterior neck was not an acutely fatal injury, and was more consistent with an injury caused by P154, which was smaller and narrower than P153. Though P154 was bent when it was found, Dr Chui's evidence was that he would not have expected this bending to have been occurred in the course of causing the stab wound to the deceased's neck. The force required to bend the knife would have been considerably

greater than the force that would have been required to inflict the stab wound that was found. According to Dr Chui, it was possible for the stab and strangulation wounds to have been inflicted by one person.

Events before and after the robbery

10 The deceased's brother, one Lee Kok Fatt ("Lee"), gave evidence that he and his family had gone to the deceased's house on the morning of 12 December 1993 ("the material date"), at about 10.00 am. The purpose of their visit was to collect Chinese red packets from the deceased to distribute on the deceased's behalf to Lee's children and their other relatives during the Chinese New Year as the deceased would be away in England.

11 According to Lee, the deceased had specifically instructed Lee's wife to visit him *between 10.00 am and 11.00 am* on the material date as he was expecting friends later that evening. When they met on the morning of the material date, Lee asked the deceased which friends he was expecting, to which the deceased replied that it would be pointless to tell him who "his *two* friends" were since Lee would not know them. Lee and his family left the deceased's house sometime before 12 noon. That was the last time Lee saw or spoke to his brother.

12 On the next day, *i.e.*, 13 December 1993, a number of Network Electronic Transfer System ("NETS") transactions were executed using the deceased's Cash-On-Line ("COL") card. The accused was linked to a number of these transactions.

13 The deceased's COL card was first used to purchase a number of items at Parkway Parade Shopping Centre ("Parkway"). The first transaction took place at M/s Jay Gee Enterprise Pte Ltd ("Jay Gee Enterprise"), where the deceased's card was used to buy three pairs of Levi's jeans, a T-shirt and a belt. One of the sales assistants who was on duty at Jay Gee Enterprise ("Ms Lim") gave evidence in court that these purchases were made by *three* male Chinese. From their speech, Ms Lim assumed that the three males were Malaysians. The store records also documented that a sale had been made to a male Malaysian of about 20 years of age.

14 Ms Lim had, in March 1994, positively identified a picture of the accused ("picture B") as one of the three men in question. However, she had been unable to remember if Too or Ng were the other two persons present with the accused on that day. According to Ms Lim, though she had spoken to all three persons, she remembered the person in picture B, *i.e.*, the accused, particularly vividly as she had spoken "quite a lot" with him. Ms Lim also gave evidence that the male in picture B was the person who had handed her the COL card with which the purchases were made and was also the person who keyed in the Personal Identification Number ("PIN") for the card.

15 Ms Lim additionally testified that the person shown in picture B and the two other Chinese males he was with had returned to the store again the next day, on 14 December 1993, to exchange some of the purchases they had made. Though Ms Lim admitted that she was no longer able to affirmatively identify any of the three Chinese men who were present at the store on those two occasions, she affirmed on re-examination that on the date when she identified the accused in 1994, she clearly remembered that the Chinese male she identified had been present at the shop on two dates, 13 and 14 December 1993. Ms Lim further testified that she had, in the course of identifying the photographs in 1994, informed the investigating officer, DSP Low, that the accused and his two companions returned to the shop again on 14 December.

16 Ms Lim's evidence regarding the accused's return to the shop on 14 December 1993 was contradicted by the evidence of DSP Low. According to DSP Low, Ms Lim did not mention this

additional fact when she identified the accused as the user of the deceased's COL card on 13 December.

17 Apart from Ms Lim, the prosecution also called one of her colleagues at that time, one See Ching Li Veronica, who had also supposedly attended to the three Chinese customers on 13 December. Unfortunately, this witness was unable to recall the identities or the number of persons who were present when those purchases were made.

18 Apart from the purchases made at Ms Lim's shop, one pair of black men's "Balene" brand shoes and three pairs of "Dr Marten" brand shoes were then respectively purchased from two other shops in Parkway. The sales assistant from the latter shop where the "Dr Marten" shoes were purchased ("Yeo") gave evidence that three Chinese men entered the shop and tried on each of the three pairs of shoes. Payment was made by a male Chinese whom Yeo subsequently identified as Too. Yeo was unable to identify the other two Chinese men who were together with Too.

19 Apart from the purchases at Parkway, the deceased's COL card was also used to purchase a pair of Reebok sports shoes and three pairs of socks at a store in City Plaza. The shop attendant was unable to remember who effected the NETS transaction or whether that person was alone or, if accompanied, by how many people.

20 On the following day, *i.e.*, 14 December 1993, further purchases were made using the deceased's COL card. Four T-shirts were purchased from a shop in Peoples' Park Complex. The shop assistant ("Irene Tan") gave evidence that two male Chinese went into the shop, and that one of the male Chinese picked out the relevant items and paid for them by NETS using the deceased's COL card. Irene Tan, in June 1994, identified Too as the person who had made the payment and Ng as Too's companion on that day.

21 Though the records of the deceased's accounts documented a number of other NETS transactions that were executed on 13 and 14 December 1993, no witnesses were called to give evidence regarding those transactions. The prosecution informed the court in the course of the trial that they would not be seeking to rely on those transactions. I therefore paid no regard to the additional NETS transactions exhibited in the statement for the deceased's POSB bank account during the course of those two days.

The accused's s 121 and s 122(6) statements

22 Following his arrest in Malaysia and extradition to Singapore, the accused made a total of four written statements. During the trial, the prosecution sought to introduce these statements in evidence. No challenge to admissibility was mounted by the defence and I accordingly admitted these four statements, which were as follows:

(a) Section 122(6) statement of the accused dated 18 February 2006 ("the accused's cautioned statement");

(b) Section 121 statement of the accused dated 21 February 2006 ("the accused's first long statement");

(c) Section 121 statement of the accused dated 22 February 2006 ("the accused's second long statement"); and

(d) Section 121 statement of the accused dated 27 February 2006 ("the accused's third long

statement").

23 The material portions of each of these statements were to the following effect, with Too referred to as "Nelson" and Ng referred to as "Koo Neng" or "Koo Nerng" (tortoise egg):

The accused's cautioned statement

I went there with Nelson and Koo Neng. I was asked by Nelson to join him to rob his relative. I did not know what place was that. Nelson and I tied up a man on the second floor. After that, Nelson and I searched the house for valuables. I cannot recall what did I take. After taking the valuables, I went to the hall on the ground floor to wait for Nelson. I did not know the man died. I also cannot recall what I was given after the robbery.

The accused's first long statement

Question:- What do you know about the death of Prof Lee Kok Cheong, which occurred between 3.00 p.m. on 12 December 93 and 7.03 a.m. on 14 December 93 at No. 20 Greenleaf Place, Singapore?

Answer :-

At the beginning of 1993, I came to know the two friends, 'Koo Nerng' and 'Nelson'. These two came to visit me before the present case took place. We went for tea, during which time 'Nelson' told me that he was going to a 'relative's place to move something. Actually, 'Nelson' revealed that he was going to rob this 'relative'.

2 The very next day, 'Koo Nerng', 'Nelson' and myself went to the place which I was not familiar with. I am not sure of the date now. On arrival, 'Nelson' and I entered a terrace house. It was a residence of Nelson's so-called 'relative'. We went in and chatted. The victim served us tea. During the chat, 'Nelson' told me that the victim had a lot of antiques. Thereafter, I requested the victim to take me upstairs to view his stuff. However, he told me to wait downstairs and did not bring me up. Earlier on, before my request and while we were still chatting, 'Nelson' had gone to the kitchen to get hold of a knife. 'Nelson' was more familiar with the place and when he emerged from the kitchen he went to confront the victim with a knife. The victim was taken up to the second storey. Together with 'Nelson', the two of us took him upstairs. He was rather big sized. Next, I bound his hands with something. I cannot remember what I had used to bind him. After this, 'Nelson' and myself searched his bedroom. After searching the premises upstairs, I went downstairs and searched the place downstairs. After I had finished, I called out 'Nelson' to leave. He was still upstairs. He came downstairs and we left together.

3 From there, we went straight to Katong, at which time, 'Nelson' suddenly produced a cash withdrawal card. There were two automatic cash machines at that place outside the Katong Shopping Complex. 'Nelson' slotted in the card he had shown me and he proceeded to withdraw a sum of either $1000/- or $200/-. The cash was withdrawn successfully. When he was pressing the buttons at a machine, I asked him what he was doing. He replied that the card belonged to the victim and he was withdrawing money with the card. After the cash withdrawal, the money was split among the three of us, namely, 'Nelson', myself and 'Koo Nerng'. I think the money was divided equally among us. After this, I went back to my residence in the Joo Chiat area. The other two went back to their respective residences.

4 The following day, I telephoned 'Nelson' and asked him to meet me. 'Nelson' and 'Koo Nerng'

came and met me at Joo Chiat. After this, we went shopping using the card which was still with 'Nelson'. We went to this shopping place in Marine Parade. I cannot remember what the place is called. We bought garments and shoes. After the shopping, we split the stuff and went separate ways….After we parted ways, I did not make contact with them. I continued my work as usual in the days that followed…

The accused's second long statement

Q3. You are now shown two photographs numbered '1' and '2' of male persons. Do you know any of them?

A3. Photograph number 1 shows 'Nelson' (Recorder's note: refers to Too Yin Sheong). The person in photograph 2 is 'Koo Nerng' (Recorder's note: refers to Ng Chek Siong).

Q4. You have mentioned in paragraph 1 of your statement recorded on 21 Feb 2006 that 'Nelson' revealed that he was going to rob his 'relative'. How long have you known 'Nelson' already when he revealed that to you and did he reveal to you how he was going to carry out the robbery?

A4. I have known him for a few months then. During our discussion about the robbery, I said that we would tie up the victim before getting his things.

…

Q10. You have mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that you requested the victim to take you upstairs to view his stuff. Can you elaborate why and what you meant by 'stuff'?

A10. I meant his antiques. The intention was to bind or tie him up when he goes upstairs so that we could rob him.

Q11. You have mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that 'Nelson' had gone to the kitchen to get hold of a knife. Can you describe the knife?

A11. It is a fruit knife. The knife is small, about half a foot long. It has a small handle.

…

Q13. You have mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that 'Nelson' and you searched the victim's bedroom and the premises upstairs. Can you elaborate where were the premises that you and 'Nelson' searched and was there anything taken either by you or 'Nelson'?

A13. Besides the bedroom, 'Nelson' and I have also searched another bedroom upstairs. We took some valuables from both the bedrooms. I cannot recall what the valuables are.

Q14. You have mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that after searching the premises upstairs, you went downstairs and searched the place downstairs. Can you elaborate on the victim's condition when you left?

A14. He was still moving when I came downstairs. 'Nelson' had asked him questions in English and he had replied to him.

…

Q17. You have mentioned in paragraph 3 of your statement recorded on 21 Feb 2006 that 'Nelson' withdrew some money from the automatic cash machines at Katong using a cash withdrawal card belonging to the victim. Can you elaborate how many times the victim's cash withdrawal card was used to withdraw money and how did you all know the card PIN number?

A17. All in, I think the card was used to withdraw cash three to four times. 'Nelson' had asked the victim for his PIN number. I had not known that 'Nelson' have got hold of the victim's card until then.

Q18. You have mentioned in paragraph 4 of your statement recorded on 21 Feb 2006 that you telephoned 'Nelson' the following day and asked him to meet you. Can you elaborate why you asked 'Nelson' to meet you?

A18. I had asked him to meet me for tea at Joo Chiat, the place where I was residing. My idea was to have tea with him and during the chat, I have asked him whether the victim's card could still be used. I think he said that he was not sure but then he suggested that we could try it out. I do not remember much about it but we later went shopping. We managed to buy things with the card.

…

Q21. Besides 'Nelson', who got hold of a knife in the kitchen, I put it to you that you also got hold of a knife from the kitchen. What have you got to say?

A21. Actually, soon after 'Nelson' got hold of a knife from the kitchen, he had gone into the hall and passed the knife to me. With this knife, I confronted the victim with 'Nelson' looking on close by.

Q22. You have mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that 'Nelson' confronted the victim with a knife when he emerged from the kitchen. Your answer for Q21 states that you confronted the victim with 'Nelson' looking on close by. Can you explain the difference?

A22. Actually, after I took the knife from 'Nelson', I have pointed it at the victim's stomach region. I pushed him and told him to go upstairs. 'Nelson' was looking on then.

Q23. Can you explain how the victim sustained the injuries on his body?

A23. I have landed a few punches on him. I cannot remember exactly on which part of his body I had hit. When we were downstairs, that was what I did. 'Nelson' did not hit him then. When we were upstairs, I bound his hands. We did not hit him when we were upstairs.

…

Q25. Did the victim put up any struggle during the hold-up?

A25. Yes. He did. He put up a struggle before and after I tied him up.

The accused's third long statement

Q28. Your answer for Q6 relates to the arrangement made between 'Nelson', 'Koo Nerng' and you to rob 'Nelson's relative. You have also mentioned in paragraph 2 of your statement recorded on 21 Feb 2006 that 'Nelson' had gone to the kitchen to get hold of a knife. Was this also part of the arrangement?

A28. Yes. I believe so. I think 'Nelson' mentioned about getting a knife. We had gone there empty-handed. Either 'Nelson' or myself have mentioned about threatening the victim with a knife.

…

Q30. Your answer for Q25 states that the victim put up a struggle before and after you tied him up. What did you and 'Nelson' do when the victim was struggling?

A30. When he was struggling, he was also talking to 'Nelson' in English. I told him to keep quiet and to stop moving. 'Nelson' was beside us at that time. I cannot recall what 'Nelson' was doing then.

Q31. You have mentioned in your statement recorded on 21 Feb 2006 that you bound the victim's hands with something. Besides the hands, did you or 'Nelson' tie up other parts of the victim's body?

A31. Perhaps the legs. I cannot remember what was used by 'Nelson'. After I had tied the victim's hands, I put him on the bed and I proceeded to search the bedroom. 'Nelson' also searched the room. After the search, I went downstairs.

…

Q34. Do you have anything else to say?

A34. I now recall that 'Nelson' seemed to have taken something to cover the victim's face. It was during the search of the victim's bedroom that 'Nelson' did so. No force was exerted. The thing was merely put on his face. It was something taken from the bed itself, something that was light. After the search, I went downstairs. When I was downstairs, I think I have called out to 'Koo Nerng' and asked him to enter the house. I do remember now that I have indeed asked 'Koo Nerng' to enter the premises. I told him to help in searching the premises downstairs and to move things. 'Koo Nerng' came in for a short time. He stayed downstairs and did not go up. He looked around the place and asked where the victim was. I then called out to 'Nelson' to leave. That was roughly what happened and then we left. That's all.

Q35. You have mentioned in A34 that 'Nelson' covered the victim's face with something light taken from the bed. Was this part of the arrangement?

A35. This was not part of the arrangement. I do not know why 'Nelson' had done this. Perhaps because the victim kept talking and it disturbed him.

The admissibility of Too's statements

24 As part of its case, the prosecution additionally sought to admit four written and two oral statements which Too had previously made to the police. In the prosecution's submission, these six

statements were admissible under s 378(1)(b)(i) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"). Section 378(1)(b)(i) states that:

> **Admissibility of out-of-court statements as evidence of facts stated.**
>
> **378**.—(1) In any criminal proceedings a statement made, whether orally or in a document or otherwise, by any person shall, *subject to this section and section 379 and to the rules of law governing the admissibility of confessions*, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible, if—
>
> …
>
> (b) it is shown with respect to him—
>
> (i) *that he is dead*, or is unfit by reason of his bodily or mental condition to attend as a witness;
>
> …
>
> [emphasis added]

25 The defence took issue with the prosecution's attempt to admit Too's statements. Counsel for the accused submitted that Too's statements were out-of-court confessions which amounted to hearsay evidence inadmissible against the accused. This argument was said to rest on the following six propositions:

a. Hearsay evidence may only be admitted under recognised exceptions and the court has no discretion to otherwise include hearsay evidence.

b. Confessions made by a co-accused are, in general, hearsay evidence which is inadmissible against an accused. In the present case, Too qualified as a "co-accused" as he was named as such in the charge against the accused. His out-of-court confessions which implicated the accused therefore fell within the ambit of the hearsay rule.

c. There are only three recognised exceptions to the rule against admitting a co-accused's confession against an accused: (i) where the accused adopts the co-accused's confession and makes them his own; (ii) where the accused is tried together with the co-accused in question: see s 30 of the Evidence Act (Cap 97, 1997 Rev Ed); and (iii) where the statements were made by the co-accused in reference to their common intention: see s 10 of the Evidence Act. None of these exceptions applied to allow this Court to admit Too's confessions in evidence against the accused.

d. In addition, the exceptions to the hearsay rule under s 32 of the Evidence Act did not apply to Too's statements. Though this exception applied to statements made by, among others, persons who are dead, Too's statements did not fall within any of the categories stipulated in this section.

e. Section 378 of the CPC is made expressly subject to the rules governing the admissibility of confessions. The section therefore does not operate to render an otherwise inadmissible confession admissible. As Too's statements were inadmissible as evidence against the accused under the general rules governing confessions, s 378(1)(b)(i) of the CPC did nothing to change

this position.

f. Too's confessions could not be re-categorised as witness statements and admitted "through the back-door" under s 378(1)(b)(i) of the CPC. To do so would be to ignore the express qualifier in s 378(1) of the CPC which precludes the section from being used to expand the categories of admissible confessions.

26 The admissibility of Too's statements ultimately turned on the proper interpretation of s 378(1) of the CPC. For the reasons set out below, the defence had rightly contended that: (a) Too's statements fell within the general prohibition against hearsay evidence; and (b) none of the other established exceptions to the hearsay rule was applicable. His statements would therefore be inadmissible unless s 378 had the effect of rendering them admissible.

Hearsay and confessions

27 To begin with, it was incontrovertible that Too's out-of-court statements fell within the general purview of the hearsay rule. It is trite law that out-of-court statements, whether made by an accused or otherwise, fall within the ambit of the exclusionary rule regarding hearsay evidence. According to *Phipson on Evidence*, 14th ed. (1990) at 557:

> Former statements of any person whether or not he is a witness in the proceedings, may not be given in evidence if the purpose is to tender them as evidence of the truth of the matters asserted in them. The rule at common law applies strictly to all classes of proceedings, and there is no special dispensation for the defendant in a criminal case.

28 This exclusionary rule has been restated statutorily in an inclusionary form by s 377 of the CPC. According to this section:

> **Hearsay evidence to be admissible only by virtue of this Code and other written law.**
>
> **377.** In any criminal proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Code or any other written law, but not otherwise.

Given Too's absence from these proceedings, his six statements clearly fell within the purview of s 377. These statements would hence only be admissible if one of the statutory exceptions under either the CPC or the Evidence Act could be shown to apply.

29 As I have already observed – and leaving s 378 of the CPC aside for the moment – none of the other potentially relevant statutory exceptions applied to Too's statements. Significantly, the prosecution itself expressly conceded in the course of oral submissions that it was not relying on either ss 10 or 30 of the Evidence Act to admit Too's statements. In particular, whilst counsel appeared to be generally agreed that Too's statements amounted to confessions, as Too was not an accused in the present proceedings, the exception to the hearsay rule created under s 30 of the Evidence Act was clearly inapplicable. In a similar vein, his statements failed to fall within any of the categories set out under s 32 of the Evidence Act.

30 The general inadmissibility of out-of-court confessions made by non-accused persons is illustrated by the English Court of Appeal decision in *R v Bryan James Turner and others* (1975) 61 Cr. App. R. 67 ("*Turner*"). In that case, counsel for one of the accused ("Barrett") sought to adduce

statements made by one Saunders who, it was said, had committed the offence rather than Barrett. Saunders was not called as a witness during the trial. The trial judge ruled that Saunders' statements were not admissible as they amounted to hearsay evidence. This was affirmed on appeal. According to Milmo J in the Court of Appeal (at 87 and 88):

> This Court is of the opinion that the ruling of the learned judge in refusing to admit in evidence the statement made to a third party by a person not himself called as a witness in the trial was clearly correct...*It would have been hearsay evidence which did not come within any of the well settled exceptions to the general rule that hearsay evidence is not admissible*.
>
> …
>
> *This Court does not find in any of these cases [cited] any authority for the proposition advanced in this case that hearsay evidence is admissible in a criminal case to show that a third party who has not been called as a witness in the case has admitted committing the offence charged*. The idea, which may be gaining prevalence in some quarters, that in a criminal trial the defence is entitled to adduce hearsay evidence to establish facts, which if proved would remain relevant and would assist the defence, is wholly erroneous.
>
> [emphasis added]

31 More recently, in *R v Blastland* [1986] AC 41 ("*Blastland*"), the accused sought leave to appeal to the House of Lords on two questions of law, the first of which was "[w]hether the confession by a person other than the defendant to the offence with which the defendant is charged is admissible in evidence where that person is not called as a witness": see *Blastland* at 52. Though leave was eventually refused on this first point, Lord Bridge of Harwich observed (at 52-53), during the hearing regarding the second point, that "[t]o admit in criminal trials statements confessing to the crime for which the defendant is being tried made by third parties not called as witnesses would be to create a very significant and, many might, think, a dangerous *new exception*" (emphasis added).

32 In my view, the decisions in *Blastland* and *Turner* mirror the position generally obtaining under Singapore law. Notwithstanding the admissibility of out-of-court confessions made by an accused to the proceedings (see s 122(5) of the CPC), there is no similar exception under either the CPC or the Evidence Act which applies to confessions made by other persons. The defence was therefore correct insofar as it had submitted that confessions made by a so-called "co-accused" who is not party to the proceedings are not generally the subject of any exception to the hearsay rule. While such inculpatory statements would presumably be more reliable than other categories of hearsay evidence insofar as they are made against the interest of their makers, the law has not thus far seen this as being an adequate safeguard so as to warrant the general admissibility of such extra-curial statements. Where a confession by a person other than an accused is in contention, the party seeking to rely on the statement should rightly admit this evidence by calling the maker of the confession as a witness. In such cases, the maker of the confession would generally be a competent and compellable witness for both the prosecution and the defence. The difficulties involved where the maker is an accused in the proceedings in question, and hence not a competent witness for the prosecution and a competent but not compellable witness for the co-accused being jointly tried (if any), would not arise.

33 Given this general position, the exception enshrined in s 378(1)(b)(i) represented the only avenue for admitting Too's statements. As the following discussion will show, the central issue arising in this regard was whether Too's statements' particular status as confessions precluded the exception under this section from applying.

The scope of s 378(1) of the CPC

34 The applicability of s 378(1)(b)(i) to the present facts hinged upon the proper construction of the phrase "subject…to the rules of law governing the admissibility of confessions" ("the qualifying phrase"). In the prosecution's submission, this phrase merely had the effect of importing the requirements of voluntariness. Since there was no challenge to the voluntariness of Too's statements, these statements were therefore admissible under the exception contained in s 378(1)(b)(i) of the CPC. In contrast, the defence contended that this phrase imported the general common law prohibition against confessions, and therefore rendered s 378(1) incapable of rendering admissible confessions that were otherwise inadmissible. Since the prosecution was unable to prove the applicability of any other exception to the hearsay rule, Too's confessions remained inadmissible.

35 In my view, the defence's construction of the qualifying phrase was not only inconsistent with the legislative intent behind s 378(1) itself, but would also lead to manifest absurdity in the application of the subsection.

36 Section 378(1) of our CPC first appeared as s 371C(1)(b)(i) within clause 23 of the Criminal Procedure Code (Amendment) Bill (Bill No. 35/75) ("the CPC Bill"). The proposed s 371C(1)(b)(i) was adapted from clause 31(1) of the Draft Criminal Evidence Bill ("the UK Bill") proposed by the UK Criminal Law Revision Committee: see Comparative Table to the CPC Bill; see also, Criminal Law Revision Committee, *Eleventh Report: Evidence (General)*, Cmnd 4991 (1972) ("*Eleventh Report*") at 190.

37 Clause 31(1) of the UK Bill provided:

> **Admissibility of out-of-court statements as evidence of facts stated.**
>
> **31.**—(1) In any proceedings a statement made, whether orally or in a document or otherwise, by any person shall, *subject to this and the next following section and to section 2 of this Act*, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible, if—
>
> …
>
> (c) it is shown with respect to him—
>
> (i) that he is dead, or is unfit by reason of his bodily or mental condition to attend as a witness;
>
> …
>
> [emphasis added]

38 Notably, the qualifying phrase that is currently present in s 378(1) of the CPC and which was also present in the proposed s 371C(1)(b)(i) of the CPC Bill was absent from clause 31(1) of the UK Bill. In place of the qualifying phrase appeared the words "subject…to section 2 of this Act". Clause 2 of the UK Bill provided as follows:

> **Confessions**
>
> 2.—(1) In any proceedings a confession made by the accused may be given in evidence by the

prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of subsection (2) or (3) below.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by the accused, it is represented to the court that *the confession was or may have been made in consequence of oppressive treatment of the accused or in consequence of any threat or inducement*, the court shall not allow the confession to be given in evidence by the prosecution (whether by virtue of this section or otherwise) except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true)—

(a) was not obtained by oppressive treatment of the accused; and

(b) *was not made in consequence of any threat or inducement of a sort likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused in consequence thereof.*

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by the accused, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove with respect to the confession the matters mentioned in paragraphs (a) and (b) of subsection (2) above.

(4) Where in any proceedings a confession is received in evidence by virtue of the foregoing provisions of this section, *it shall by virtue of this subsection be admissible as evidence of any fact stated therein and of any matter dealt with in any opinion expressed therein*, including any fact or matter favourable to the accused:

Provided that at the trial of any person for an offence the court shall not be required to treat an issue as having been raised with respect to any matter by reason only of evidence favourable to the accused which is admissible by virtue of this subsection.

(5) The fact that a confession is wholly or partly excluded in pursuance of subsection (2) or (3) above shall not affect the admissibility in evidence—

(a) of any facts discovered as a result of the confession; or

(b) as regards any fact so discovered, of the fact that it was discovered as a result of a statement made by the accused; or

(c) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show this about him.

(6) In this section "confession" includes any statement wholly or partly adverse to the accused, whether made to a person in authority or not and whether made in words or otherwise.

[emphasis added]

39 Though no explanation was expressly furnished in either the parliamentary debates or the Select Committee discussions on the CPC Bill, given its lineage, the qualifying phrase in the proposed s 371C(1) of the CPC Bill - and subsequently in s 378(1) of the CPC - was presumably intended as a

substitute for the reference in clause 31(1) of the UK Bill to clause 2 of the same Bill. The equation of the qualifying phrase and clause 2 of the UK Bill would also comport with the close coincidence that otherwise exists between s 378(1) of the CPC and clause 31(1) of the UK Bill. Significantly, the other provisos to s 378(1) of our CPC appear to mirror those in clause 31(1) of the UK Bill. Apart from the qualifying phrase, s 378(1) additionally provides that it is "subject to this section and *section 379*" (emphasis added). Clause 31(1) was in turn expressed as being "subject to this and *the next following section*" (emphasis added). Notwithstanding the apparent disparity in language, "the next following section" to s 378 of our CPC, *i.e.*, s 379, was in fact adopted from clause 32 of the UK Bill, which was itself "the next following section" to clause 31: see Comparative Table to the CPC Bill. This general coincidence of the respective provisos to s 378(1) and clause 31(1) leads clearly to the conclusion that the current qualifying phrase in the former was intended to correspond with the reference to clause 2 in the latter.

40 Given the genesis behind the qualifying phrase, clause 2 of the UK Bill is therefore of considerable assistance in shedding light on the appropriate interpretation to be placed on the qualifying phrase in s 378(1) of our CPC. In light of the ambit of clause 2 as set out above - in particular clauses 2(2) and 2(3) - it is evident that the qualifying phrase was intended to have the limited effect of importing the requirement of voluntariness. This interpretation of the qualifying phrase is augmented by the UK Criminal Law Revision Committee's commentary to clause 31(1) of the UK Bill. According to the Committee (see *Eleventh Report* at 236):

> **Clause 31 (Admissibility of Out-of-Court Statements as Evidence of Facts Stated)**
>
> Clause 31 makes a first-hand out-of-court statement admissible as evidence of the facts stated in it provided that the maker of the statement is called as a witness or the party desiring to give the statement in evidence is unable for a reason specified in the clause to call the maker…
>
> Subsection (1) contains the main provision that an out-of-court statement made by a person, whether orally or in a document or otherwise, shall, if certain conditions are fulfilled, be admissible as evidence of any fact stated in it of which direct oral evidence by that person would be admissible. The conditions are that the maker has been, or is to be, called as a witness (paragraph (a)), that he is compellable as a witness but refuses (in court) to be sworn (paragraph (b)) or that it is shown that he is dead or cannot be called for any of the reasons specified in paragraph (c)…The principle is that the party desiring to give the statement in evidence should either call the maker or show why he cannot call him…Admissibility is to be subject to the provisions in the later subsections of the clause, *to the provisions of clause 2 preventing the prosecution from giving in evidence a confession obtained in the ways mentioned in that clause* and to the restrictions imposed by clause 32.
>
> [emphasis added]

41 Given the reference in clause 2 of the UK Bill to "*the prosecution* [proposing] to give in evidence a confession *made by the accused*", it is not entirely clear whether the requirement of voluntariness in the qualifying phrase applies exclusively to situations where *the prosecution* seeks to admit the confessions made by *an accused to the proceedings*. If one were to take the UK Criminal Law Revision Committee's commentary on clause 31(1) of the UK Bill at face value, it would appear that the requirement of voluntariness should at least be limited to situations where *the prosecution* is the party seeking to admit the confession under s 378(1). Fortunately, this ambiguity did not fall to be resolved in the present case. For present purposes, it sufficed to note that the qualifying phrase was not intended to exclude confessions by a non-accused from the ambit of the exceptions in s 378(1). The applicability – or inapplicability, as it may be – of the "voluntariness" requirement to

Too's statements was of no moment since it was neither contended by the defence nor did an objective survey of the facts suggest that these statements had been obtained as a result of any threat, inducement or oppression.

42 Apart from comporting with the original drafters' intention behind clause 31(1) of the UK Bill, this more limited interpretation of the qualifying phrase to import a "voluntariness" requirement would also be consistent with Parliament's declared intention behind s 378 of the CPC and its related provisions. According to the Minister (see *Singapore Parliamentary Debates*, *Official Reports* (19 August 1975) vol 34 at cols 1222 to 1223):

> Clause 23 of the Bill [of which the current ss 378 and 379 formed part] seeks to make *radical changes* to the rule against hearsay evidence…
>
> The present law has caused a great deal of trouble owing to the difficulty of deciding whether a statement is hearsay and, if so, whether it is admissible under any of the exceptions to the rule. The difficulty is further compounded by the differences between the English law of evidence and our law which is based on the Indian Evidence Act.
>
> The scheme that the Bill proposes has the following purposes:-
>
> (1) to admit all hearsay evidence likely to be valuable to the greatest extent possible without undue complication or delay to the proceedings;
>
> (2) to ensure that evidence should continue to be given for the most part orally by allowing hearsay evidence *only if the maker of the statement cannot be called* or it is desirable to supplement his oral evidence; and
>
> (3) to include necessary safeguards against the danger of manufactured hearsay evidence.
>
> [emphasis added]

43 Parliament's intention to "admit all hearsay evidence…*to the greatest extent possible*" clearly accords with a more limited interpretation to the qualifying phrase. The dangers of manufactured or unreliable out-of-court confessions being admitted under s 378(1) would also be sufficiently protected against by the requirement of voluntariness.

44 A blanket exclusion of *all* out-of-court confessions from the sphere of s 378(1) of the CPC would not only be unnecessary, but would additionally lead to manifest absurdity and inconsistency in the application of the sub-section. As I highlighted during the course of counsels' oral submissions, the defence's interpretation of the qualifying phrase would turn the concern regarding manufactured or unreliable hearsay evidence on its head. *Inculpatory* out-of-court statements would be excluded from the purview of s 378(1), whilst *exculpatory* out-of-court statements would remain potentially admissible under the exceptions to hearsay enshrined therein. This result would be unjustifiable given that confessions, which *implicate* their makers, are generally regarded as being *more* reliable since they are against the makers' interests. In contrast, statements which purport to *exculpate* their makers would perceivably be less reliable since they would be more likely to be manufactured evidence. To permit the admission of the latter, but not the former, through the exceptions to hearsay under s 378(1) would therefore be absurd and irrational to say the least.

45 These considerations led me to the conclusion that the qualifying phrase merely had the effect

of excluding involuntary confessions from the ambit of s 378(1) of the CPC. Contrary to the defence's submissions, s 378(1) was indeed capable of rendering admissible voluntary out-of-court confessions that would otherwise have been inadmissible by virtue of the hearsay rule. As no objection to voluntariness arose regarding Too's statements, I therefore ruled that Too's statements were admissible in evidence by virtue of the statutory exception to hearsay evidence enshrined in s 378(1)(b)(i) of the CPC.

The general purport of Too's statements

46 The six statements made by Too which the prosecution admitted through s 378(1)(b)(i) of the CPC were variously as follows:

(a) Section 122(6) cautioned written statement made on 23 December 1997 ("Too's first statement") at the Criminal Investigation Department ("the CID");

(b) Section 121 written statement made on 31 December 1997 at the CID ("Too's second statement");

(c) Section 121 written statement made on 23 January 1998 at the CID ("Too's third statement");

(d) Oral statement made on 24 January 1998 at 10.45 am at the deceased's house ("Too's fourth statement"), reduced into writing by ASP Lim;

(e) Oral statement made on 24 January 1998 at 12.20 pm at the junction of Joo Chiat Road and Dunman Road ("Too's fifth statement"); and

(f) Oral statement made on 24 January 1998 at 12.40 pm at East Coast Road in front of Min Seng Pawnshop ("Too's sixth statement").

47 Whilst Too's fourth statement had been made orally and subsequently reduced into writing by ASP Lim in his field diary, s 378(2) of the CPC permitted ASP Lim's written records to be treated and hence admitted under s 378(1)(b)(i) as though it were a document made by Too. The material portions of Too's four written statements are reproduced hereunder (with the accused referred to as "Kim Beh"):

Too's first statement

How could it be said to be murder? In the beginning, when we first talked about holding up the person at his home, I told them that we should not cause any harm. There were three of us and we had agreed to just rob the person and leave him unharmed. However, at the time of the hold up itself, one member of my group was afraid that he would be recognised. In fact, "Kim Beh" was so afraid that he took a knife and stabbed the person. Apparently, the knife could not penetrate the person well and so he went to get some electrical cord and looped it around the person's neck. At the time he was doing so, Kim Beh asked me to catch hold of the person's hands and I complied. I vaguely remember that when the person was frothing at the mouth, Kim Beh got hold of some object and hit him on the head until he died.

Too's second statement

Question:- What do you know about the death of Lee Kok Cheong, male 54 years, which

occurred between 3.00 p.m. on 12 December 93 and 7.03 a.m. on 14 December 93 at No. 20 Greenleaf Place, Singapore?

Answer :-

1 On that evening, 'Kim Beh', 'Koo Nerng' and myself arrived at the Holland Road neighbourhood area. We had arranged to meet earlier at a coffeeshop in Joo Chiat Road before proceeding to the place. It was arranged that I would introduce Kim Beh to Mr Lee. Before this, I had informed Mr Lee that I would bring a friend to his place for a visit. From the coffeeshop, Koo Nerng drove us to the said neighbourhood in a Malaysian registered car MAA 3542.

2 Somewhere near to Mr Lee's house, Kim Beh and I alighted. We walked a short distance to Mr Lee's house and I called out to him. Mr Lee came to open the gate to us. I introduced Kim Beh to Mr Lee before we entered the compound. Kim Beh and I then followed Mr Lee into his house. We sat in the hall and chatted with him. Mr Lee then gave us drinks.

3 While we were chatting, Kim Beh stood up and requested Mr Lee to show us around. He pretended to have an interest in the furnishing. Mr Lee more or less showed us around and explained to us where he got certain souvenirs. Once, when Mr Lee walked away from us, Kim Beh came close to me and told me to go to the kitchen to get a knife. At this point, Mr Lee came into the hall and sat down. Kim Beh then proceeded to the kitchen. When Kim Beh was away, Mr Lee continued chatting with me.

4 Shortly, Kim Beh joined us again in the hall and winked at me. I had the impression that he had already got the knife. When Mr Lee was chatting with Kim Beh, I took the opportunity to slip into the kitchen. I quickly got hold a knife there and returned to the hall. I tucked the knife at the left side of my waist. Thereafter I was at a loss about what to do and I looked towards Kim Beh for direction. Kim Beh beckoned with his head and I got the impression that he wanted me to hold up Mr Lee. However, I was still not sure what to do at that point. Somehow, Kim Beh became impatient and he got up and pulled out a knife to hold up Mr Lee. On seeing that, I did likewise. Mr Lee was shocked and he demanded to know what we intended to do. We told him that we wanted money and asked him to tell us where to get it. Mr Lee told us that the money was upstairs.

5 We took Mr Lee up to the second storey where the latter led us into his room. It was at this time that we tied Mr Lee up. Thereafter, we searched Mr Lee's room. Inside a briefcase, we found a wallet containing cash and some cards. There were credit cards and bank withdrawal cards. There was a small slip of paper with some numbers on it. This paper was placed next to a 'Post Office' bank card. That very moment, Kim Beh proceeded to ask Mr Lee if the numbers written on the paper was the code number for the bank withdrawal card. Mr Lee replied 'yes'.

6 We continued to search the room and found some jewellery. There was a solid gold chain and some gold bangles. We pocketed the jewellery and continued our search in the other two rooms but nothing else was found. Thereafter, Kim Beh and I went back to Mr Lee's room where Kim Beh asked Mr Lee if there were other valuables around. Mr Lee replied that there was no more other than what we had found.

7 Before we left, Kim Beh stabbed Mr Lee with the knife he was holding. However, the knife could not penetrate. At that juncture, I did not know what to do. Kim Beh then got hold of some cord to strangle Mr Lee's neck. I saw Mr Lee frothing at the mouth and there was some kind of bloodlike fluid flowing out at the corner of his mouth. Kim Beh then let go of Mr Lee. I could see

that Mr Lee was still writhing. We then continued to search the room for valuables. However, we found nothing else.

8 Before we left the room, Kim Beh took an object and hit Mr Lee's head. The next instant, I noticed Mr Lee becoming still. After this, we went downstairs to search the premises. Nothing valuable was found. We did not remove any big item from the house. At this point, Koo Nerng appeared at the entrance of the house. By then Kim Beh and I had finished our search. Koo Nerng stepped into the hall intending to help us. However, at that point, Kim Beh and I were about to leave. The three of us then left together.

9 We got into Koo Nerng's car. Koo Nerng drove us back to the Joo Chiat area where we looked around for a 'Post Office' bank withdrawal machine. We found one and the three of us got out of the car. As we were walking to the machine, Kim Beh handed me the 'Post Office' bank withdrawal card and asked me to proceed to make a withdrawal. Both Koo Nerng and Kim Beh claimed that they were not sure about how to operate the machine. However, I recalled that this kind of machine had some sort of camera attached to it. It then occurred to me that I should insist on Kim Beh and Koo Nerng coming along with me to make the withdrawal at the machine. Actually Kim Beh and Koo Nerng were trying to convince me that the so-called camera was for show only. It was at my insistence that they accompanied me to make a cash withdrawal. I then pressed the buttons according to the numbers written on the small piece of paper. I pressed the button for the maximum of $2,000/- to be withdrawn and succeeded in getting the money. I then kept the money with me. I was aware of the maximum withdrawal amount as I myself had a Post Office bank card previously. As we wanted to withdraw more money, another attempt was made. However, this was unsuccessful. After this we decided to try again at another withdrawal machine.

10 Koo Nerng drove around the vicinity and we found another such machine. The three of us again went to make another withdrawal. Several attempts were made but we were unable to withdraw money as we had apparently exceeded the maximum withdrawal amount that day. We then decided to share out the money and jewellery.

11 The three of us headed for Katong area to look for a money changer. We landed at a building near to City Plaza. There we found a money changer where we managed to change the foreign currencies found inside Mr Lee's wallet. Much earlier, when Kim Beh and I found the wallet in Mr Lee's room, we had noticed it contained some foreign currencies. We changed the foreign currencies into Singapore currency. In all there were US currency amounting to hundred odd, Singapore dollar amounting to 3 to 4 hundred over dollars and some red-colour currency bills. I am not sure if the red-colour currency bills were Hongkong dollar or Renminbi. I remember that the total amount of Singapore currency, after the change, was less than $1,000/-. This was made up of the 3 to 4 hundred Singapore dollars we had found in the wallet, and the amount we actually obtained from the money changer after changing the foreign currencies. After changing the foreign currencies, we proceeded to Kim Beh's rented room.

12 At Kim Beh's room, we split out the $2,000/- which I obtained from the cash machine, in this manner. Kim Beh and I took an equal share of S$750/- while Koo Nerng, who had not done much in Mr Lee's premises, got the balance of S$500/-. As for the cash amounting to less than Singapore S$1,000/-, the three of us got an equal share of about S$300/-. Kim Beh took the solid gold chain while Koo Nerng and I shared the gold bangles. I recall there were about 4 or 5 gold bangles.

13 We subsequently left to have some dinner in the vicinity. After some discussion among

ourselves, we decided to make another cash withdrawal with the card. We knew that we could only do so after midnight as that would be considered another day. We proceeded to our friends' rented premises located in the same vicinity and whiled away the time by watching people gambling. I am not very sure if we actually tried to make a cash withdrawal at a machine just after midnight.

14 However, I do remember that we successful made a withdrawal in the day time on the following day. The same amount of S$2,000/- was successfully withdrawn at one of the machines in the Joo Chiat vicinity. During that time, we shopped in the area and made several purchases through NETS by using the 'Post Office' bank card. Our idea then was to try out to see if there was a limit in the amount of purchases made for the merchandise in a single day. The reason was that there was a cash withdrawal limit of S$2,000/- with the bank card each day whereas if there was no limit to the amount of purchases through NETS, we might as well do our shopping and get more out of the bank card. As a test to see if there was a limit of S$2,000/- for NETS purchases, we first bought a jewellery item for about S$1,500/- to S$1,800/-, leaving the balance for other shopping. We then gathered some other items totalling an amount that would exceed the S$2,000/- limit and tried to make a NETS purchase. It was at this juncture that we found out that there was indeed a limit of S$2,000/- for NETS purchase in a single day. It was then that we decided to simply obtain cash through the cash withdrawal machine rather than to make purchases.

15 As far as I could remember, we bought clothing, shoes and gold jewellery through NETS using the said bank card. We had only made purchases with the bank card on that day.

16 A day after that, we successfully made another cash withdrawal of S$2,000/- from a cash machine with the same bank card. I cannot remember the exact number of times we made the cash withdrawal in this manner but I am sure that there were at least 3 times. In all these instances, the cash were shared out in the same proportion, i.e., an equal share of S$750/- for Kim Beh and myself and the balance of S$500/- for Koo Nerng.

…

18 On the fourth or fifth day of the hold-up, Kim Beh told us that he was going to return home to Pasang, Malaysia to attend to some matter…

Too's third statement

Q6. Can you elaborate the circumstances how you came to know the deceased Mr Lee?

A6. I recall that about two or three months prior to the hold-up incident, while I was at the coffeeshop at Blk 25 Dover Crescent, I used to see him visiting the same coffeeshop. On one occasion, he came to my table and chatted with me. He introduced himself to me to be a teacher at the university. He wanted to make friend with me. He invited me to visit him at his residence. He then gave me his address and telephone number. I remember I did not give him my contact number. After that meeting, I used to see him again in the vicinity of the Dover Crescent. During these meetings, he again invited me to visit him at his house. About three weeks later, one evening, I telephoned him to chat with him. During the conversation, he again invited me to go over to his place. As I was free then, I agreed. Shortly, I arrived at his residence at Holland Road area on my younger brother's motor cycle. On arrival at his residence, there was no one else at home. We chatted in the living room. He showed me around and explained to me where he got his souvenirs. During the follow-up conversations, Mr Lee started to get close to me. He sat very

close to me and touched my body and thighs. I felt very uneasy. I then realised that he was a gay. About half an hour later, I excused myself that I have to return the motor cycle to my younger brother and left. That was my first time I had gone to Mr Lee's house.

Q7. After the first visit to the deceased's house, did you visit him again before the hold-up incident?

A7. No. I wish to add that I did not contact Mr Lee after that.

Q8 How was the arrangement made between Kim Beh, Koo Nerng and yourself to rob the deceased?

A8 About two or three weeks after my first visit to Mr Lee's house, I went to meet Kim Beh at our usual meeting at a coffeeshop at Joo Chiat. Kim Beh was in the company of Koo Nerng. It was a casual meeting. During the conversation, I brought the subject about my visit to Mr Lee's house. I told Kim Beh and Koo Nerng that Mr Lee was a gay. I also told them that Mr Lee had a lot of souvenirs in his house and he appeared to be very rich. About a month after this, while Kim Beh, Koo Nerng and I met at the same coffeeshop at Joo Chiat; Kim Beh suggested to Koo Nerng and I go to Mr Lee's house to have a look around. His idea was to see if it was suitable for a hold-up. Kim Beh further suggested to us that I was to call Mr Lee to inform him that I would be introducing a friend to him. I immediately made a telephone call to Mr Lee through a public telephone with Kim Beh and Koo Nerng beside me. I told Mr Lee that I was going to introduce a friend of mine to him and asked him if he was free. Since he replied that he was free, I told him that I would take my friend to his house directly. Kim Beh, Koo Nerng and I then proceeded to Mr Lee's house in Koo Nerng's motor car.

Too's fourth statement

1045 Arrived along Greenleaf Place. The accused, Too Yin Sheong, looked at No. 20 Greenleaf Place and said that was the house of Mr Lee. I asked the accused as to where his accomplice Koo Nerng had parked the motorcar MAA 3542. Accused pointed at the direction of the front of No. 24 Greenleaf Place and said that was the location the car was parked. I then asked the accused, Too Yin Sheong, to led the way into the house and reconstruct to me the events that took place on 12 December 93.

...

The accused pointed at the arm chair facing the main door and said:

> "Mr Lee was sitting when Kim Beh and I held him up. Moments before that Kim Beh winked at me to take my knife out. However, I did not do anything. So, Kim Beh made the first move by taking out the knife and holding up Mr Lee. Mr Lee was shocked and demanded to know what we wanted. We told him that we were going to rob him and that we only wanted his money."

The accused led the way up the staircase to the first level and pointed to the room nearer to the staircase and said:

> "I think this is the room. We asked him where his money was. Mr Lee pointed out a briefcase placed in front of a wardrobe. While I held him up, Kim Beh went to the briefcase to get the money. Thereafter, we tied him up in the same room. We continued our search in the other rooms. We came back to the same room. Just as Kim Beh and I were getting out of the room,

> Kim Beh stabbed Mr Lee with the knife he was still holding. Actually, I'm not sure if Mr Lee was stabbed when he was still in this room or when we had stepped out of the room. I could see that Kim Beh's knife had become bent as it could not penetrate Mr Lee well. That moment, I became frightened at the sight. Mr Lee was then strangled with either a strip of cloth or some kind of wire by Kim Beh. However, Mr Lee was still alive, and he was still breathing. There were something flowing out of his mouth. At this Kim Beh got hold of something and struck Mr Lee on the head. Mr Lee became motionless. I was then at the top of the stairs. Kim Beh and I went down the staircase."

As the accused was at the mid-point staircase landing on the way down to the ground floor, he pointed out some souvenirs placed at the corner of the said landing and said that:

> "Kim Beh had got hold of something to strike Mr Lee from that particular spot while Kim Beh and I were still engaged in the search at the living area on the ground level. Koo Nerng came to the door way and called us. He had to call out to us because the glass sliding door was closed. When we opened the glass door, Koo Nerng took a step in and we told him that we were leaving. Thereafter, the three of us left the house."

48 Too's two oral statements, *i.e.*, his fifth and sixth statements, were in turn made in the hearing of ASP Lim. According to ASP Lim, Too had in his fifth statement pointed out a coffeeshop called "Tin Yeang Restaurant" and said in Mandarin that on the material date, *i.e.*, on 12 December 1993, he, Ng and the accused had met there and formulated their plan to rob the deceased. In his sixth statement, Too had pointed to a shop called "Min Seng Pawnshop" located at East Coast Road and said in Mandarin that on 13 December 1993, he, Ng and the accused had pawned the bangles taken from the deceased's house there.

The Defence's Case

49 At the close of the prosecution's case, counsel for the accused did not make a submission of "no case to answer". As I was satisfied that the evidence adduced by the prosecution had established a *prima facie* case against the accused, I called upon the accused to enter his defence. The accused elected to give evidence, and was the only witness for the defence. Notably, he did not, in the course of his oral testimony, dispute his presence at the deceased's house on 12 December 1993 and admitted that he had gone to the deceased's house with the intention of committing robbery. The key area of contention surrounded his specific involvement in the stabbing and asphyxiation of the deceased.

50 According to the accused, he had first become acquainted with Too when he was working in Apollo Nightclub in or about 1990. He had in turn met Ng when they sold durians together. The accused claimed that Too and Ng were closer friends as they often spent time together whilst the accused spent his time with his girlfriend.

51 In the accused's testimony, Too had asked the accused out to a coffee shop near the latter's house and asked him if he was interested in robbing Too's wealthy relative. In the course of giving his evidence, the accused clarified that whilst he had initially stated in his first long statement that Too had asked him out to the coffee shop on the day preceding the robbery, Too's invitation had in fact occurred on the same day as the robbery. In the course of examination by his counsel, the accused initially claimed that no details or plans about the robbery were discussed, and that Too had merely mentioned that they would rob his relative. However, he subsequently conceded during cross-examination that he had in fact asked Too and Ng about his role in carrying out the robbery. Nevertheless, he maintained that they had not talked in detail as to how they were going to rob.

Again, while he initially testified during cross-examination that there was no discussion about either tying the deceased up, using a knife to threaten the deceased, or even about what they were to do if the deceased resisted or retaliated, he subsequently conceded upon being shown his first long statement that there was indeed a pre-arranged plan to tie up the deceased and to threaten him with a knife.

52 According to the accused, he had also asked Too whether he was worried that his 'relative' would be able to recognise him. Too had supposedly been very confident, and had told the accused "to believe him". The three then got into a car driven by Ng and proceeded to the deceased's house. The accused further gave evidence that he had quarrelled with Too during the journey to the deceased's house. On his own admission, the quarrel had probably arisen because he, rather than Too, was afraid of being recognised. However, as Too was confident, the accused trusted him. During this quarrel, Ng mentioned that he did not want to go in. They did not bring any weapons with them in the car.

53 When they arrived at the deceased's house, it was still sometime in the afternoon. Ng dropped the accused and Too off a few houses away from the deceased's house, and remained in the car. When they arrived at the front gate to the deceased's house, Too rang the doorbell. The deceased came out to meet them, following which Too conversed with the deceased in English and the three then went into the house. It was only after they had entered the house that Too introduced the accused to the deceased. The accused claimed that he was unable to understand how Too had introduced him as the entire introduction had gone on in English, a language which the accused had only a fairly rudimentary grasp of.

54 The deceased then brought Too and the accused into the living room and served them drinks. The accused claimed that Too then passed him a knife which Too had taken from the kitchen, which the accused then used to threaten the deceased. Upon hearing that he was being robbed, the deceased put up a struggle. On the accused's own account, he then stabbed the deceased's left abdominal region twice, but the knife did not penetrate. He also rained a few blows on the deceased. The accused confirmed that the knife he had used was P154, *i.e.*, the bent fruit knife which was subsequently found under the deceased's body.

55 After that, the accused and Too led the deceased upstairs into the master bedroom. Too and the accused then respectively tied his legs and hands. According to the accused, the deceased became "very obedient" once he had been tied up. The accused then let the deceased lie on the bed and went on to search the house for valuables. Too remained in the vicinity of the room talking to the deceased in English.

56 After searching upstairs for what the accused claimed was a "few minutes", he went downstairs. On his way downstairs, the accused saw the deceased for the last time before he left the house. According to the accused, the deceased was still alive at that time. He did however recall seeing Too covering the deceased's face with a pillow when he was going downstairs. The accused then got Ng into the house to help in the search for items. After they searched the deceased's car, they called for Too and left the deceased's house. Too was upstairs throughout this entire duration.

57 According to the accused, once they left the deceased's house, Ng drove them back to Katong, where Too then alighted by an automated teller machine. It was only when the accused followed Too and Ng that he realised that Too had taken the deceased's COL card. Too used the deceased's card to make a withdrawal, and the three of them split the money among themselves. On the next day, the accused called Too to ask him whether the deceased's COL card could still be used. The three of them then met up and made some purchases using the deceased's COL card. The

accused did not meet either Too or Ng again after that day. In the accused's evidence, he continued travelling between Singapore and Malaysia using his passport until Too first accused him of killing the deceased.

58 Notably, though the accused claimed that he had thought that the deceased was still alive, he conceded during cross-examination that he did not, at any point after leaving the deceased's house, ask Too what happened to the deceased. Nor had they discussed what they would do when the deceased freed himself and went to make a police report. Notwithstanding his belief that the deceased was still alive, it had not occurred to the accused that the deceased might have, between the material date and the next day, reported the theft of his COL card to the authorities. According to the accused, it had not occurred to him that the deceased could, after they left, have escaped from his house or shouted for help since his mouth was not gagged and that he could have hopped downstairs even though his legs and hands were tied.

The decision of the court

59 At the conclusion of the trial, I found that the evidence, considered in its totality, gave rise to the irresistible inference that the deceased had been murdered in furtherance of the common intention among Too, the accused and Ng to commit robbery. To begin with, the prosecution had established beyond a reasonable doubt that the deceased had died as a result of asphyxiation from the black cord and further that the event of strangulation had occurred in the course of the robbery committed on the material date. Though counsel for the accused attempted to contend, at one juncture, that the deceased may have been fatally attacked by a third-party intruder who came into his house after Too and the accused had left, there was not a scintilla of evidence which could support such a conclusion. Any attempt at such a suggestion was hence wholly without merit and amounted to an exercise in baseless conjecture.

60 In the course of the trial before me, counsel for the accused repeatedly emphasized the lack of positive forensic evidence linking the accused with the fatal injuries sustained by the deceased. In this regard, whilst the evidence adduced by the prosecution did not directly establish the accused's involvement in the deceased's strangulation and stabbing, I was of the view that there was no rigid or indispensable legal requirement for the prosecution to adduce evidence to this effect. The sequence of events taking place during the course of an offence is often a matter within the exclusive knowledge of the perpetrator and his victim. In addition, forensic science - particularly given that this offence took place more than a decade ago – may not always be able to conclusively establish the identity of the offender. In light of these practical limitations, conclusions as to an accused's guilt may often have to be founded on inferences arising from circumstantial evidence. Regardless of the nature of the evidence involved - whether circumstantial or direct - the court's task remains throughout to consider the evidence in its totality in order to assess whether the prosecution has discharged its burden beyond a reasonable doubt. Evidence which, when considered in isolation may appear to be little more than gossamer threads, when added together may be capable of establishing a coherent and irresistible inference that the accused in question was guilty of the offence.

61 On the present facts, I found that the circumstances surrounding the robbery on the material date were of precisely such a nature. To begin with, the events which occurred after the robbery created an indelible link between the accused and the tragic events which had occurred at the deceased's house. Apart from the accused's own admission that he shared in the spoils of the robbery, the independent evidence adduced by the prosecution also identified the accused as having been party to the subsequent usage of the deceased's COL card. Notwithstanding the seeming inconsistency in Ms Lim's evidence regarding the events that took place on 14 December 1993 (see above at [15] and [16]), I nevertheless found her to be a truthful witness and did not find the rest of

her evidence to be in doubt. Hence, whilst I discounted her assertion that the accused returned to the store on 14 December, I nevertheless accepted the rest of her evidence that the accused had in fact been present in the store on 13 December 1993 and used the deceased's COL card to make the relevant purchases.

62 The evidence linking the accused with the robbery at the deceased's house, coupled with my concordant finding that the deceased's death had occurred in the course of this robbery, gave rise to a *prima facie* inference that the accused had been involved in the deceased's death. Notwithstanding the commonsensical nature of such an inference, I also noted that the Evidence Act expressly permitted this inference to be drawn. According to s 116 of this Act:

> **Court may presume existence of certain fact**
>
> 116. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The court may presume—
>
> (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, *unless he can account for his possession*;
>
> …
>
> [emphasis added]

63 In *PP v Krishna Rao a/l Gurumurthi and others* [2000] 1 MLJ 274, the deceased was found dead following a robbery. The High Court of Ipoh inferred that the accused's custody of the deceased's personal possessions was sufficient to warrant an inference under the Malaysian equivalent of our s 116 that the accused had been party to the murder of the deceased. According to Kang J:

> [I]n assessing the case for the prosecution the court is obliged to apply deductive reasoning to draw such inferences or to arrive at such factual presumptions as necessary from these information. The power to do so has always been an integral tool of trade of a court of law. Nevertheless, in our jurisdiction, the power has been written into our law of evidence in the form of s 114 of the Evidence Act 1950 [the equivalent of s 116 of our Evidence Act]…
>
> To provide the necessary persuasive authority to make my point…I have to rely on a series of Indian authorities with respect to their interpretation of s 114 of the Indian Evidence Act 1872 which is *in pari materia* with the same section of our own Evidence Act 1950.
>
> In *Re Madgula Jermiah* (1957) AIR Andhra Pradesh 611 (Subra Rao CJ and Bhimasankaram J) the Supreme Court of India said that:
>
> > Section 114 deals with presumptions of fact. The section enables a judge to infer one fact from the existence of another proved fact having regard to the common course of natural events or human conduct. The illustrations given to the section are not exhaustive. The court may always rely on the main section in regard to a different set of acts or combination of acts to draw the presumption embodied in that section. As the section only enables a rule

> of guidance evolved out of human experience, it gives an option to the judge whether to draw such a presumption or not having regard to the circumstances of each case.

Having said this, the Supreme Court went on to hold that:

> *It is an established rule that, if murder and robbery form parts of the same transaction, a presumption may be drawn against the accused for murder if he is found to be in possession of the jewels worn by the deceased in the absence of a reasonable explanation by him.*

The ruling was however predicated by a strong caution, for the court went on to say:

> But as the presumption is one of fact, great care must be taken before drawing a presumption particularly in the case of a serious offence on slender material for it would be a leap in the dark with disastrous consequences. *Unless, therefore, some definite fact connecting the accused with the murder is established, the courts should be chary to draw the presumption of murder from the mere fact of possession of the articles worn or in the possession of the deceased.*

The rationale for drawing such a presumption however was explained in another case—in the judgment of Devadoss J (in a panel of three) in the Madras High Court case of *Sogaimuthu Padayachi v King Emperor* ILR 50 Mad 274 (AIR 1926 Mad 638) where he said:

> If a person who retires to bed in a normal state of health is found next morning lying dead and his safe rifled and his valuables stolen and if it comes to light that the man did not die a natural death, but was murdered and that if the property which was in the safe shortly before the murder is found in the possession of persons who are unable to account for them *the jury is entitled to draw the inference and the law requires them to draw the inference that the persons in possession of such property are not only the thieves but also the murderers. If the persons with whom the stolen property is found have an explanation to offer which explanation if accepted would prove them to be innocent, it is for them to offer it*.

Another Indian case of high authority that may serve to illustrate the point further is *Wasim Khan v State of Uttar Pradesh* [1956] SCR 191…[T]he Supreme Court of India…ruled that:

> Recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery *would similarly be evidence against him on the charge of murder*.
>
> …

In dealing with a similar factual situation in Queen-Empress v Sami and another [1890] ILR 13 Mad 426, the learned judges of the High Court observed that:

> *Under these circumstances, and in the absence of any explanation, the presumption arises that anyone who took part in a robbery also took part in the murder*. In cases in which murder and robbery have been shown to form parts of one transaction, it has been held that recent and unexplained possession of the stolen property while it would be presumptive evidence against the prisoner against the charge of robbery would similarly be evidence against him on a charge of murder. *All the facts which tell against the appellant, especially*

his conduct indicating a consciousness of guilt, point equally to the conclusion that he was guilty as well of the murder as of the robbery…

64 In my view, the conclusion as to the accused's guilt fell outside the caution in *Re Madgula Jermiah* (1957) AIR Andhra Pradesh 611 regarding situations where there is slender material connecting the accused with the offence in question. On the facts, this *prima facie* inference was in fact supported by the rest of the evidence adduced.

65 On the accused's own admission, he was, prior to the robbery, afraid of being recognised by the deceased. After all, he was with Too and Too was well-known to the deceased. Identifying Too would inevitably lead to the identification of the accused. These fears were sufficiently compelling to cause the accused to get into a quarrel with Too during the journey to the deceased's house. Whilst the accused contended that his fears were quelled by Too's confidence, I found this assertion to be little more than an artificial construct manufactured by the accused to remove his otherwise undeniable motive for killing the deceased. On the accused's own admission, he was not particularly well acquainted with Too or Ng. His seeming trust in Too, and his sanguine expectation that Too would not implicate him if arrested, was wholly inconsistent with the admittedly superficial nature of their acquaintance.

66 In my view, the accused's conduct following the robbery augmented this compelling inference that he had been party to the fatal injuries afflicted on the deceased. The complete lack of any discussion regarding what would happen when the deceased was freed, coupled with the calm and calculated manner in which they went about repeatedly exploiting the deceased's COL card in the day following the robbery and the accused's continued travel between Singapore and Malaysia in the years following the robbery, could only support the conclusion that the accused and his accomplices were not worried about being identified because they knew that the deceased was dead. Without the knowledge that the deceased had died, the likelihood of their identification and arrest would have appeared particularly imminent since the deceased knew Too personally and would hence have been able to positively identify him. Given these circumstances, it was wholly incredible that the accused would have had no regard whatsoever to the possibility – or indeed, the certainty – of the deceased making a report against Too when he was freed. The accused's attempt to portray himself as a passive follower of Too was directly rebutted by his own admission that he had argued with Too because of his fear of being recognised. This, coupled with the accused's proactive involvement in clarifying the *modus operandi* of the robbery prior to its occurrence, could only lead one to conclude that the accused was not a mere robber but someone prepared to annihilate his victim.

67 After listening to the accused and considering his evidence in its totality, I found that his unequivocal disavowal of the events which had taken place upstairs amounted to little more than a blatant and calculated attempt to dissociate himself from the stabbing and strangulation of the deceased. His evidence at trial, that he had merely observed Too placing the pillow on the deceased's face from a distance while he was going downstairs, was clearly inconsistent with his prior evidence in his third long statement. According to the accused's third long statement, he had only left the master bedroom and gone on to search the other rooms *after* Too had done so. Based on Dr Chui's expert evidence, the act of placing the pillow on the deceased's face was an event which occurred *after* the deceased had been strangled to death. The accused's provision of this information was hence further evidence that he was present in the room when the deceased's life was brutally ended.

68 The accused's involvement in the deceased's death was further supported by Too's statements. In this regard, while I had ruled that these statements were admissible under the exception to hearsay under s 378(1)(b)(i) of the CPC, I nevertheless bore in mind the potential danger on placing too much weight on Too's statements given his considerable interest in incriminating the accused in

order to exculpate himself and the unavailability of cross-examination of Too. Too's statements, when considered together with the rest of the independent evidence which the prosecution had adduced, served the limited function of reinforcing the already compelling inference which the latter had given rise to. In this respect, Too's positive and consistent assertion that the accused was the one who strangled the deceased gave further credence to the conclusion that the accused was inextricably involved in the deceased's death.

The Common Intention of the Parties

69 These considerations together established a sufficient degree of involvement by the accused so as to render him liable for murder under the common intention provision. While only Too's statements established that the accused strangled the deceased, proof of this event was not a condition precedent to the accused's conviction.

70 There are three requirements for establishing liability under s 34 of the Penal Code (Cap 224, 1985 Rev Ed): (a) the existence of a common intention among all the persons who committed the criminal act; (b) the furtherance of the common intention by the criminal act; and (c) the participation in the criminal act by those sharing the common intention: see, for example, *PP v Gerardine Andrew* [1998] 3 SLR 736 ("*Gerardine Andrew*") at [19] to [23]. Once the elements of s 34 are satisfied, the fact that a trial court is unable to positively decide who, as between two (or more) accomplices, in fact inflicted the fatal injuries is "not at all critical": see *PP v Lim Poh Lye and another* [2005] 4 SLR 582 ("*Lim Poh Lye*") at [62]; see also *Shaiful Edham bin Adam and another v PP* [1999] 2 SLR 57 at [69]. In *Too Yin Sheong v PP* [1999] 1 SLR 682, the Court of Appeal expounded on the legislative intent behind s 34 of the Penal Code. According to the Court (at [27]):

> Section 34 was framed to meet a case in which it may be difficult to distinguish between the act of individual members of a party or to prove exactly what part was played by each of them. The reason why all are deemed guilty in such cases is, the presence of accomplices gives encouragement, support and protection to the person actually committing the act. In Bashir v State of Allahabad (1953) Cri LJ 1505, it was said that the limb 'in furtherance of a common intention' was added to make persons acting in concert liable for an act, though not exactly intended by them, but has been done in furtherance of their common intention.
>
> [emphasis added]

71 The evidence before me more than sufficed to cross this threshold. Even on the accused's own evidence, the existence of a common intention to rob was established through the discussions which had taken place between him and Too at the coffee shop before they proceeded to the deceased's house. In addition, the requirement of participation was sufficiently made out given his presence at the deceased's house when the murder occurred. As the Court of Appeal held in *Gerardine Andrew* (at [36]), "[w]hat is crucial is that he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually committed". The accused's positive conduct in subduing the deceased and then ransacking the deceased's house and taking his valuables clearly fell within the ambit of this dictum.

72 Finally, *even if* one were to accept – which I did not – that it was Too, and not the accused, who was solely responsible for the deceased's death, the rest of the evidence showed that Too's conduct to this effect was in furtherance of their common intention to rob the deceased. The accused himself conceded that he had, when the deceased initially protested downstairs, attempted to stab the deceased in order to quell his acts of resistance. According to the accused, at the time when he used the knife to threaten the deceased, he was prepared to use the knife on the deceased

if he had struggled or retaliated. This admission by the accused himself amounted to positive evidence that it would not have been inconsistent with or extraneous to his common intention with Too to cause harm to the deceased. According to the Court of Appeal in *Lim Poh Lye* at [54] to [56]:

> On the authority of Wong Mimi v PP [1972-1974] SLR 73 ("Wong Mimi") and PP v Neoh Bean Chye [1972-1974] SLR 213 ("Neoh Bean Chye"), it is clear that the prosecution does not have to prove that there exists, between the participants who are charged with an offence read with s 34, a common intention to commit the crime actually committed. Neoh Bean Chye also disapproved of the other line of authority such as R v Vincent Banka [1936] MLJ 53 which held that the common intention should refer to the crime actually committed and that it was not sufficient that there should be merely a common intention to "behave criminally".
>
> What was decided in *Wong Mimi* and *Neoh Bean Chye* was wholly in line with earlier authorities…
>
> Thus, what s 34 means is that where the actual crime committed is not what the participants had planned, then for the other participants to be vicariously liable for the act of the actual doer the actual offence must be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer would not be in furtherance of the common intention.
>
> [emphasis added]

73 In light of the findings made above, the evidence before me in fact went much further and established the accused's involvement in the infliction of the injuries which subsequently led to the deceased's death. Considered against all the other facts, the accused's averment that he was wholly unaware of the deceased's demise when he left the latter's house was inherently unbelievable. While a conviction would have been warranted even if the accused did not know of the deceased's demise, the added factor that he was complicitous, at least to some degree, in the stabbing and strangulation of the deceased, gave further impetus to the prosecution's case against him.

74 For all the foregoing reasons, I held that the accused was guilty of the offence as charged. Accordingly, I convicted him and passed the mandatory death sentence on him.