

Public Prosecutor v Md Mosharaf and Others
[2009] SGHC 163

Case Number : CC 26/2009
Decision Date : 10 July 2009
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Tan Kiat Pheng and Diane Tan (Attorney-General's Chambers) for the prosecution; Edmond Pereira and S Balamurugan (Edmond Pereira & Partners) for the accused persons
Parties : Public Prosecutor — Md Mosharaf; Shamim Ahmed; Sobuj Miah; Mamun

Criminal Procedure and Sentencing

10 July 2009

Lee Seiu Kin J:

1 The four accused persons are Bangladeshi nationals who have entered or remained in Singapore illegally to seek work. They face a joint charge, that on 9 December 2007 between 10pm and 11pm at Block 18 Ghim Moh Road #03-123, together with one another and in furtherance of their common intention, they caused the death of Mohamad Azanil bin Aman ("the deceased") by applying a ligature to the deceased's neck with a towel, occluding the deceased's nostrils and mouth with another towel, and wrapping around the deceased's head a bed sheet, with the knowledge that such acts were likely to cause the deceased's death by strangulation and suffocation, thereby committing an offence of culpable homicide not amounting to murder punishable under s 304(b) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed)("the Act").

2 Three of them, namely Md Mosharaf ("Mosharaf"), Shamim Ahmed ("Shamim") and Sobuj Miah ("Sobuj") also faced a second charge of entering Singapore without a valid pass under s 6(1)(c) of the Immigration Act (Cap 133, 2008 Rev Ed)("IA"). The fourth accused, Mamun, faced a second charge of remaining unlawfully in Singapore after expiry of a special pass under s 15(3)(b) of the IA.

Statement of Facts

3 On 29 May 2009, the four accused persons pleaded guilty before me of the two charges faced by each of them. The statement of facts tendered by the prosecution, to which they all admitted without reservation, read as follows:

Accused Persons

1 The four accused persons are all Bangladesh nationals.

They are :-

- a) Md Mosharaf ("Mosharaf"), Fin No G 9043309T, male 21 years old;
- b) Shamim Ahmed ("Shamim"), Fin No F 9070248M, male 37 years old;
- c) Sobuj Miah ("Sobuj"), Fin No G 9043308W, male 21 years old; and

d) Mamun, Fin No G 9036244K, male 34 years old.

Informant

2 The informant is Shahreezan ("the Informant") NRIC No. : S 8635521-C, male 22 years old, residing at Blk 15 Ghim Moh Road #05-09, Singapore.

Complainant

3 The complainant is Masmi Binte Osman ("the Complainant") NRIC No. : S 1218375-E, female, 53 years old, residing at Blk 18 Ghim Moh Road #03-123, Singapore ("the Flat"). She is unemployed and the registered resident of the Flat.

Deceased

4 The deceased is Mohamad Azanil Bin Aman ("the Deceased") NRIC No. : S 7048682-B, male, 37 years old at the time of his death.

5 At the time of his demise, the Deceased was employed as a security guard. He was a divorcee and was cohabiting with the Complainant in the Flat.

First Information Report

6 On 12 December 2007, at about 9.45 p.m., the Complainant returned to the Flat and discovered the Deceased lying motionless on the floor in the bedroom. She quickly approached the Informant and requested him to call for the police. The Informant then called the police and requested for assistance.

7 On the same day, at 10.08 p.m., Senior Staff Sergeant Lim Yen Teck ("SSSgt Lim") and his partner arrived at the scene. SSSgt Lim found the Complainant at the ground floor of Blk 18 Ghim Moh Road and he went up to the Flat.

8 Upon entering the bedroom of the Flat, SSSgt Lim found that the room had been ransacked and he saw the Deceased lying motionless on the floor. The Deceased was lying face down. The Deceased's head was wrapped with a bed sheet, his hands were tied crisscrossed to the back, and his legs were bound together with cloth materials. There appeared to be no sign of life in the Deceased. SSSgt Lim also did not see any visible wound on the Deceased. The Deceased's legs were nearer to the entrance of the bedroom while the Deceased's head was nearer to the wall next to the bedroom door. The rear pocket of the Deceased's trousers was also turned inside out.

9 At 10.21 p.m., Staff Sergeant Tay, a paramedic with the Singapore Civil Defence Force, arrived at the scene. He confirmed that the Deceased was dead but could not provide a time of death as the Deceased's body was in a state of decomposition.

Facts relating to the charges against the four accused persons under section 304(b) read with section 34 of the Penal Code

10 Sometime in September or October 2007, the Deceased rented out the only bedroom of the Flat to the four accused persons, Shamim, Mosharaf, Sobuj and Mamun. Each of the accused persons had to pay rent of S\$150 per month. Although each accused person paid the rent to the

Deceased on time, the Deceased had on many other occasions demanded 'pocket-money' from the four accused persons. Being immigration offenders, the four accused persons felt compelled to give tens of dollars to the Deceased each time, sometimes even up to hundreds of dollars. The Deceased never repaid any of the 'pocket-moneys' to the four accused persons.

11 On occasions when the four accused persons refused to give money to the Deceased when he demanded from them, the Deceased would hurl profanities at them until late into the night. There were also occasions where the Deceased threatened to call the Police if he did not receive any money from the four accused persons. The Deceased also resorted to threatening the four accused persons by saying that he would get his son who was a 'gangster' to beat them up if they did not give him (the Deceased) any money.

12 On 9 December 2007, at around 10 p.m., when all four accused persons were in the Flat, the Deceased demanded money from them again. Mosharaf and Mamun had each already given S\$50 to the Deceased the day before when he demanded money from them. Thus, the four accused persons refused to give anymore money to the Deceased on 9 December 2007. The Deceased got angry and he picked up his mobile phone from the table and threatened to call the Police.

13 Shamim snatched the mobile phone from the Deceased and handed it to Mosharaf. The Deceased then began to hurl profanities at them, shouting and kicking the furniture in the living room of the Flat to show his dissatisfaction. The Deceased then lost his balance and fell backwards onto a chair.

14 As the main door of the Flat was left open, the four accused persons were worried that the commotion would draw the attention of the neighbours who might then call the police. Mamun then used his right hand to grab the Deceased's neck. Sobuj used his right hand to cover the Deceased's mouth to muffle his shouts.

15 As the Deceased was trying to free himself from Mamun and Sobuj, Shamim and Mosharaf each held onto the Deceased's hands to his back. They pushed the Deceased into the bedroom of the Flat.

16 The Deceased struggled as the four accused persons pushed him into the bedroom. In the bedroom, the four accused persons forced the Deceased to lie face downwards on the floor beside the bed.

17 In order to prevent the Deceased from making more noise, Mamun used a 'gamcha', which is a multi-coloured towel used by Bangladeshis, to gag the Deceased's mouth. Shamim and Mosharaf assisted Mamun by holding the Deceased's head down. Mamun secured the gag by tying a knot on the left side [of] the Deceased's neck. As the Deceased was still making noise, a pink-and-white towel was wrapped around the lower part of the Deceased's face and it was secured with a knot on the left side of the Deceased's nose.

18 Shamim then used another 'gamcha' to tie the Deceased's wrists behind his back while Sobuj held the Deceased's hands.

19 Thereafter, Sobuj moved towards the Deceased's legs and held the Deceased's legs together. Shamim then used another towel to tie the Deceased's shins together. In order to secure the legs firmly together, Shamim further used a T-shirt to tie the Deceased's legs together just above the shins.

20 While Sobuj was holding down the Deceased, the Deceased was still struggling and trying to make noise, albeit his shouts were muffled by the cloth covering his mouth. The rest of the accused persons went about packing their personal belongings as they planned to leave the Flat permanently. When Mamun was done with his packing, he took over from Sobuj and held the Deceased down while Sobuj went to pack his belongings.

21 Before the four accused persons left the Flat, Mamun used a bed sheet to wrap around the Deceased's head and secured the bed sheet with a knot on the left side of the Deceased's face as the towel around the Deceased's mouth had become loose such that the Deceased was able to scream and shout.

22 Sobuj then took the Deceased's wallet out from the rear pocket of the Deceased's trousers and handed it over to Mamun who took about \$4 out of the wallet. Thereafter, Shamim told Mosharaf to leave the Flat first with the personal belongings of the four accused persons and to go to Kranji MRT Station. Mosharaf then left the Flat first followed by Mamun. Shamim then closed the bedroom door and left the Flat together with Sobuj after they closed the main door of the Flat and locked the padlock on the main gate of the Flat. Mamun waited for Sobuj and Shamim at the ground floor of Blk 15 Ghim Moh Road and when Sobuj and Shamim came down from the Flat, the three of them took a taxi to Kranji MRT Station.

23 At about 11:30 p.m., Mamun, Sobuj and Shamim met Mosharaf at Kranji MRT Station. They spent a night at a monsoon drain next to the MRT Station. The next morning, the four accused persons left the drain and went their separate ways.

24 On 10 December 2007, at about 4 p.m., the Complainant's sister Maimoon Bte Osman ("Maimoon") received a phone call from Shamim. The Complainant was with Maimoon at that time. Shamim informed that when he returned to the Flat, he saw the Deceased's hands and legs were tied up and he asked the Complainant to return to the Flat. The Complainant thought that it was a ruse instigated by the Deceased to trick her into returning to the Flat after her quarrel with him a few days earlier. Maimoon told Shamim to call for the Police and he hung up the phone.

25 On 11 December 2007, at about 5 p.m., the Complainant returned to the Flat with Maimoon. Upon arrival at the main gate of the Flat, the Complainant realised that she had forgotten to bring the keys to the Flat. Thus, she was unable to gain entry into the Flat. She knocked on the main door of the Flat but there was no one in the Flat. The padlock on the main gate was locked but she managed to open the faulty wooden main door to look into the Flat. The Complainant saw the bedroom door was closed and there was no response from the Deceased when she called out for him. She waited outside the Flat for awhile but no one returned to the Flat. The Complainant then left the Flat.

26 On 12 December 2007, the Complainant found her keys to the Flat. She returned to the Flat on the same day at about 9.45 p.m. and found the Deceased's body in the bedroom.

Arrests

27 On 14 December 2007, at about 7.45 a.m., Shamim was arrested at Blk 552 Ang Mo Kio Avenue 10, Singapore. On the same day, at about 3.40 p.m., Mosharaf was arrested at a construction site located at Outram Road. At the point of arrest, Mosharaf was found to be in possession of the mobile phone 'Singtel' SIM card which belonged to the Deceased.

28 On 18 December 2007, at about 7.45 a.m., Sobuj was arrested in a warehouse at Defu

Lane. Later on that day, at about 10 a.m., at the same warehouse, Mamun was arrested.

Pathologist's Medical Examination

29 On 13 December 2007, at about 2.15 a.m., Senior Consultant Forensic Pathologist Associate Professor Gilbert Lau conducted a preliminary examination of the Deceased's body at the Flat. He estimated that the post-mortem interval was approximately a day, meaning that the Deceased had been dead approximately since the early hours of 12 December 2007.

30 On 13 December 2007, at about 9.50 a.m., Associate Professor Gilbert Lau conducted a post-mortem autopsy on the Deceased.

31 Associate Professor Gilbert Lau found on the Deceased's body bruising of the sternomastoid, sternohyoid and sternothyroid muscles, accompanied by fractures of both greater cornua of the hyoid bone and the right superior horn of the thyroid cartilage, corresponding to the ligature around the neck.

32 Associate Professor Gilbert Lau also found a bed sheet firmly enwrapped around the head of the Deceased almost in its entirety, and secured by means of a partial knot on the left side of the face. Beneath the bed sheet, a pink-and-white towel was firmly wrapped around the lower part of the face, occluding both nostrils and the mouth of the Deceased. The towel was twisted over the posterior aspect of the neck and secured by a partial knot on the left side of the nose. A multi-coloured piece of thin cloth rolled upon itself was firmly applied as a circumferential, double-looped, ligature to the neck and it was secured with a partial knot on the left side of the neck.

33 There were also fractures of the Deceased's right 6th and 7th ribs, anterolaterally, associated with bruising of the pectoral muscles bilaterally.

34 The medical findings of Associate Professor Gilbert Lau show that the Deceased's death would have been consistent with asphyxia due to strangulation by ligature and suffocation. There was no morphological evidence of any natural disease which could have caused or contributed to the death. A copy of Associate Professor Gilbert Lau's autopsy report is enclosed in Annex 'A'.

35 The acts were done by the accused persons with the knowledge that they were likely to cause the death of the Deceased but without any intention to cause death. Thus, on 9 December 2007, between 10.00 p.m. and 11.00 p.m., at the Flat, the four accused persons had, in furtherance of the common intention of all, committed the offence of culpable homicide not amounting to murder by causing the death of the Deceased under Section 304(b) read with Section 34 of the Penal Code.

Facts relating to the charge against Mosharaf under section 6(3)(a) of the Immigration Act

36 Sometime in July 2007, Mosharaf entered Singapore illegally without a valid passport. On 14 December 2007, Mosharaf was arrested at a construction site at Outram Road.

37 Thus, Mosharaf has committed an offence of entering Singapore illegally under Section 6(1) (c) of the Immigration Act (Cap. 133) and punishable under Section 6(3)(a) of the said Act.

Facts relating to the charge against Shamim under section 6(3)(a) of the Immigration Act

Act

38 In November 2006, Shamim entered Singapore without a valid passport. On 14 December 2007, Shamim was arrested at Blk 552 Ang Mo Kio Avenue 10.

39 Thus, Shamim has committed an offence of entering Singapore illegally under Section 6(1)(c) of the Immigration Act (Cap. 133) and punishable under Section 6(3)(a) of the said Act.

Facts relating to the charge against Sobuj under section 6(3)(a) of the Immigration Act

40 On 10 December 2006, Sobuj entered Singapore illegally without a valid passport. On 18 December 2007, Sobuj was arrested at a warehouse at Defu Lane.

41 Thus, Sobuj has committed an offence of entering Singapore illegally under Section 6(1)(c) of the Immigration Act (Cap. 133) and punishable under Section 6(3)(a) of the said Act.

Facts relating to the charge against Mamun under section 15(3)(b) of the Immigration Act

42 The Controller of Immigration of the Immigration & Checkpoints Authority of Singapore ("ICA") had issued a special pass to Mamun that was valid until 16 September 2007. Upon expiry of the special pass, Mamun failed to report to ICA and he remained in Singapore unlawfully. He was arrested on 18 December 2007 at a warehouse at Defu Lane.

43 Thus, Mamun has committed an offence of overstaying in Singapore unlawfully for a period of 93 days under Section 15(3)(b) of the Immigration Act (Cap. 133).

Mitigation Plea

4 In mitigation, Mr Edmond Pereira ("Mr Pereira"), who acted for all four of them, provided their respective backgrounds which were strikingly similar. They were all young men, aged from 20 to 30 years, who came from impoverished families with many children. They all paid to agents what to them were substantial sums of money – the equivalent of \$2,500 to \$7,500 in Bangladeshi currency – to be smuggled into Singapore. When they got here they found work in various construction sites. Mr Pereira did not suggest that the slight variations in their individual circumstances warranted any difference in the sentences for the joint charge of culpable homicide. In view of the facts of the case, in particular the similar roles that each played in the commission of the offence, I would consider that they deserve the same sentence for the joint charge.

5 Mr Pereira said that the four accused persons, who had come from poor families, were promised employment in Singapore by agents who absconded with their money without landing them jobs. The four accused persons had harboured hopes of a decent income in Singapore with the objective of providing a future for themselves and their families back home. Instead, after raising a hefty sum of money, they had been cheated and left in the lurch in Singapore. However, there was no turning back as they had no money to return home and also needed to recoup the money their families had raised to get them here.

6 In terms of the events surrounding the commission of the offence, Mr Pereira pointed out that the four accused persons had cooperated fully with the Police after their arrest. They had provided full details of the events and readily admitted to their roles. This had expedited the investigation and they had shown their remorse by agreeing to plead guilty at the earliest opportunity. Mr Pereira's

mitigation plea in respect of the events leading to the offence is found in paras 23 to 41 of his written mitigation and I reproduce them below:

23 Your Honour, we submit that our Clients did not plan the offence nor were they armed with any dangerous weapons on the fateful day. The offence was committed on the spur of the moment.

24 It was not our Clients' intention to kill the Deceased. The Deceased chose to confront our Clients, constantly demanding more moneys for their stay in the flat. The Deceased also resorted to vulgarities and threatened violence on our Clients. The Deceased had always been the aggressor and on several occasions demanded moneys from our Clients. This continued for a period of about four and a half months. On one occasion the Deceased even took \$1.00 from Shamim, when he had only that amount with him at the material time.

25 Each of the accused persons had to pay rental of S\$150.00 per month. Although each Accused person paid the rent to the Deceased on time, the Deceased had on many other occasions demanded 'pocket-money' from the four Accused persons. Being immigration offenders, the four Accused persons felt compelled to give moneys to the Deceased each time, sometimes even up to hundreds of dollars. The Deceased never repaid any of the 'pocket-moneys' to the four Accused persons.

26 On occasions when the four Accused persons refused or were unable to give money to the Deceased when he demanded from them, the Deceased would hurl profanities at them until late into the night. There were also occasions where the Deceased threatened to call the Police if he did not receive any money from the four Accused persons. The Deceased also resorted to threatening the four Accused persons by saying that he would get his son who was a 'gangster' to beat them up if they did not give him (the Deceased) any money.

27 Mosharaf and Mamun had each already given S\$50.00 to the Deceased the day before the incident when he demanded money from them. This time around (9 December 2007), the four Accused persons refused to give any more money to the Deceased. The Deceased got angry and threatened to call the Police. The Deceased then began to hurl profanities at them, shouting and kicking the furniture in the living room of the flat to show his dissatisfaction. The four Accused persons were worried that the commotion would draw the attention of the neighbours who might then call the police. It was in these unfortunate circumstances, that the 4 Accuseds decided to gag the Deceased's mouth, to keep him quiet.

28 It is humbly submitted that the Accused persons had endured a period of psychological abuse from the Deceased. It is clear the Deceased was the aggressor in the events that led to his death.

29 We are instructed that the Accused persons were worried about the Deceased after they left the flat. The following day on 10 December 2007, Shamim made a call to the Complainant's sister, Maimoon. Shamim informed her that when he returned to the Flat, he saw the Deceased's hands and legs were tied up and he asked the Complainant to return to the flat. We are instructed that they wanted to alert the Complainant so that she could render help to the Deceased as soon as possible. Our Clients were truly concerned.

30 It is humbly submitted that our Clients had endured a period of psychological abuse from the Deceased. The Deceased would direct the vulgarities on our Clients and their families as well. It was very insulting.

31 We are instructed that the verbal abuse our Clients suffered at the hand of the Deceased went for about four months (September/October 2007 to 9 December 2007). As such, our Clients were victims of sustained verbal abuse from the Deceased.

32 It is pertinent to note that our Clients did not use any weapons to inflict injuries on the Deceased although there were weapons such as knives in the flat. It is humbly submitted that this fact is an ameliorating factor compared to those cases where death resulted from stabbing of the victims with weapons.

33 Our Clients do not have any antecedents of any violent nature both in Singapore or Bangladesh. As such, it is submitted that there is no real likelihood of recurrence of similar offence(s) in the future.

34 In our Clients' 122(6) statements, they have stated that they felt very tortured by the Deceased and that it was not their intention to kill the Deceased. Our Clients only wanted to stop the Deceased from shouting. In **Md Mosharaf's statement** he has stated as follows:

"The Deceased always tortured us and scolded vulgarities at us. He always drunk and threw things at us. We cannot tolerate him. He always asked us for money. Four of us were in the house and we wanted to beat him. I pulled the Deceased's forearm and pulled him into the bedroom. While I was pulling the Deceased, my other three friends were pushing him into the bedroom. When we were in the bedroom, one of my friends asked me to pack my belongings and to leave the house. I packed my belongings and I left the house. That is all."

In **Shamim Ahmed's statement** he has stated as follows:

"He used to beat and torture us because of money. To protect ourselves, we had to push him and save ourselves. He used to scold vulgarities and shout at us. As he was shouting, all of us went inside the room and he also followed us into the room. We then caught hold of him. All of us tied him up and covered his mouth by a cloth. We tied the cloth around his mouth so that he will not shout at us as we are all illegal immigrants. We were afraid that Police might come. We had no intention of doing such an act. We walked out of the room. We didn't expect all this will happen. That's all."

In **Sobuj Miah's statement** he has stated as follows:

"I had no intention to beat 'uncle' in such a manner. I am an illegal here. I followed my friends to stay there and this 'uncle' used to ask money everyday. He used to drink and come and beat us and scold us vulgarities. It was beyond our tolerance and that's why all this happened. I have not got involved in such a thing before, this was due to the misunderstanding and beating I am very sorry for what I have done. I just want the Singapore Police to help us in which ever way they can. That's all."

In **Mamun's statement** he has stated as follows:

"Deep from my heart, I have no intention to do such a thing on him. He used to torture us by scolding vulgarities and beating us. Everyday he used to ask for money. We were tolerating him a lot. We had no intention to beat him up. I am deeply sorry. I regret for what I have done and what had happened. I did not expect the person to

pass away in this manner.”

35 We are instructed that it was not the intention of the Accused persons to kill the Deceased. They acted on impulse and their collective act of gagging the Deceased and wrapping him to prevent him from moving, led to the unfortunate death of the Deceased. Admittedly, their action collectively would in the ordinary course of nature cause death. But it was not the intention then, to kill the Deceased. Our Clients are deeply saddened by the death and genuinely regret committing the offence.

36 Our Clients realize that the offences for which they are charged have very serious consequences and state that they have learnt a very painful lesson from the unfortunate episode.

37 Our Clients do not wish to downplay the seriousness of their wrong doing and accepts responsibility for the offences committed. Our Clients have gone through the photographs depicting the injuries sustained by the Deceased and couldn't bear to look at the pictures. Our Clients sincerely apologize to the Deceased's family including the Complainant.

38 Our Clients deeply regret their actions and are genuinely contrite for their actions. Our Clients do not possess grave killer instincts. They are willing to make amends and learn from their mistakes. Our Clients have a decent family background and are not individuals with history of violence. Being away from their family, having been cheated of their jobs and money, being illegal immigrants and now facing a culpable homicide charge, all in a foreign country have been a living nightmare for the four (4) young men.

39 This entire episode has been a difficult pill for their respective families to swallow. Their families had built high hopes on their sons that they would help ease their financial hardships. With the promise and hope of a brighter future for all instead, they are in a bad situation and are struggling to make ends meet, straddling with debts, which they incurred to send their sons for a promising future ahead.

40 Our Clients plead for leniency and some compassion for the wrong the[y] have done. They know that if they were given a last chance, they would do something good with their life.

41 Our Clients have expressed deep remorse and regret for their involvement in the attack on the Deceased and his untimely death. They know that they will be forever haunted by the death of the Deceased.

[emphasis in original]

Submissions on Sentence

7 Mr Pereira relied on the following cases to support his contention that the term of imprisonment should be on the low end of the scale:

(a) *Public Prosecutor v Jamal anak Nyalau* [2002] 3 SLR 66: The three accused persons were charged with culpable homicide not amounting to murder in furtherance of their common intention, an offence under s 304(b) read with s 34 of the Act. The second accused had introduced the deceased to a prostitute who provided sexual services to the deceased. The deceased subsequently called on the prostitute for sexual services again and offered her \$20. However she demanded \$150. The first accused asked the deceased if he wanted her services

for \$150, but the deceased declined. The first accused then punched the deceased repeatedly. The deceased, who did not retaliate, collapsed on the ground. The other two accused also attacked him. The second accused took \$15 from the deceased's wallet. They carried and left the deceased a short distance away along the back lane, where he was later found, dead. All three accused persons pleaded guilty and were sentenced to six years and six months' imprisonment.

(b) *Public Prosecutor v Katun Bee Binte S Ibrahim* [2004] SGHC 46: The accused, a woman, claimed trial to a charge of culpable homicide not amounting to murder under s 304(b) of the Act. She had stabbed her lover in the abdomen with a knife after a quarrel and after both of them had been drinking. In mitigation, the accused pleaded that she had had a very difficult life. She had raised her five children practically single-handedly. She had failed relationships with two men before becoming involved with the deceased. That relationship also did not turn out well. It was a frustrating one to her as he was spending her hard-earned money on drink and was abusive to her when drunk. Although the trial judge found that the accused was the one who took a knife from the kitchen and stabbed the deceased, he was also of the view that all her frustrations had come to a head when she committed the act. The accused was sentenced to three and a half years' imprisonment.

(c) *Public Prosecutor v Lim Boon Seng* [2004] SGHC 113: The accused pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(b) of the Act. The accused was indebted to the deceased in the sum of \$1,800. The deceased, on being told that an instalment that was to have been paid would be delayed, confronted the accused at his fruit stall. The deceased shouted vulgarities at the accused and started fisting him. The accused retreated a short distance when he was hit and noticed a knife nearby. He grabbed it and used it, killing the deceased with a single stab. The accused was sentenced to three years and six months' imprisonment.

(d) *Public Prosecutor v Lim Ah Seng* [2006] SGHC 122: The accused pleaded guilty to a charge of culpable homicide not amounting to murder under s 304(b) of the Act. The accused had been estranged from his wife, the deceased. He had been subjected to repeated physical and psychological abuse by the deceased. On the day of the offence, the deceased informed the accused that she wanted to go to the house of the accused's mother to see their six-year-old daughter. He told her to go there on her own. In the evening, while the accused was at home, the deceased arrived and said that she did not have the keys to his mother's home. The deceased said she wanted to bring the daughter to Jakarta to which the accused objected and a quarrel ensued. They then engaged in sexual intercourse at the invitation of the deceased. Thereafter, the deceased again raised the subject of her taking the daughter to Jakarta. She said that if the accused refused, she would lodge a police report that he had raped her. They had another argument and she slapped him. She also told him she had a record with the Institute of Mental Health and it would be alright for her to kill him. She then rushed into the kitchen and tried to grab a knife but was stopped by the accused. She ran back into the bedroom and he followed her to stop her from throwing things around. The deceased slapped the accused again and tried to strangle him. The accused retaliated by strangling her instead. After a while, her grip on his neck weakened and she fell. The accused tried to wake her up but to no avail. The accused then called his mother. When the police and other officers arrived, the accused was in the living room. He went to the kitchen and returned with two knives. There, he apparently stabbed himself in the thighs. Eventually, he surrendered himself. The accused was sentenced to two years and six months' imprisonment.

(e) *Public Prosecutor v Chan Soi Peng* [2007] SGHC 184: The accused pleaded guilty to a

charge of culpable homicide not amounting to murder under s 304(b) of the Act. The accused was earlier provoked by the deceased and had tried to avoid him. The deceased later struck the accused in the face with a bottle of liniment that he was carrying. The accused retaliated with his fists and a violent fight ensued. Following this, the accused went to get a knife from the kitchen, and in the subsequent fight, he stabbed the deceased in the chest. The accused pleaded guilty and was sentenced to three years and nine months' imprisonment.

8 The prosecution on the other hand submitted that this merited a term of imprisonment on the high end of the scale and cited the following precedents:

(a) *Public Prosecutor v Yan Haibing* (CC 7 of 2007, unreported) ("*Yan Haibing*"): The accused pleaded guilty to a charge under s 304(b) of the Act for causing the death of a prostitute. He had engaged her sexual services but was unhappy with it. He decided to teach her a lesson. A struggle ensued in the course of which the accused punched her head twice. To prevent her from shouting and struggling, the accused placed his hand on her throat and stuffed a towel into her mouth. He then wrapped her head with a towel and secured it with adhesive tape. Finally, he tied her wrists and ankles together with adhesive tape. The cause of death was certified as "cerebral anoxia, due to mechanical asphyxia". The accused was sentenced to seven years' imprisonment.

(b) *Tan Chee Hwee v Public Prosecutor* [1993] 2 SLR 657 ("*Tan Chee Hwee*"): This case involved a bungled burglary of a house, resulting in the death of the domestic maid. She had returned early to the house and chanced upon the burglary in progress. A struggle ensued between the maid and the appellants. In their attempt to subdue her and to stop her from screaming, the maid was strangled to death by an electrical cord. The trial court convicted them of murder but this was overturned by the Court of Appeal which accepted that the appellants had acted out of "*fear that the maid's screaming would alert the neighbours who might send for the police and not the fear that they would be recognised by the maid.*" The Court of Appeal convicted them instead of a reduced charge under s 304(b) of the Act. Each appellant was sentenced to eight years' imprisonment.

(c) *Public Prosecutor v Budiman Bin Hassan* [1994] SGHC 28 ("*Budiman*"): The accused was charged with murder for killing a prostitute by strangling her with a lanyard in order to keep her quiet when she shouted and struggled with him during a heated dispute. The trial judge found that the accused did not intend to cause serious injury to the prostitute and that he had only intended to stop her from struggling and shouting. The trial judge then convicted the accused of a lesser charge of culpable homicide not amounting to murder under s 304(b) of the Act. The trial judge sentenced the accused to six years' imprisonment. In determining the appropriate sentence, the trial judge noted that the accused was "*in a state of panic when the deceased started to shout and struggle with him.*" Upon the prosecution's appeal, the sentence was enhanced by the Court of Appeal to nine years' imprisonment.

9 The prosecution pointed out the following aggravating circumstances of the case. The four accused persons clearly outnumbered the deceased. They had resorted to excessive force to immobilise the deceased in order to facilitate their escape. There was no way the deceased could have put up any resistance against them. Furthermore, the nature of the injuries suffered as highlighted in paras 31 and 33 of the statement of facts and the manner in which the four accused persons had sought to immobilise the helpless deceased showed the degree of cruelty of the four accused persons and the extent to which the deceased suffered. In fact, he suffered in this painful and contorted position for more than two days before dying. The prosecution highlighted that the four accused persons had perpetuated the offence against the deceased for fear of being caught by the police as immigration offenders. It was for this self-serving purpose of evading possible apprehension

that they had caused the death of the deceased. This was similar to the reason for which the two appellants in *Tan Chee Hwee's* case had caused the death of the deceased in that case. This showed the length that immigration offenders would go to avoid detection and due punishment. It was therefore an aggravating factor that the offence was committed in order to avoid punishment for immigration offences. Taking into account the sentences imposed in the three cases cited, the prosecution submitted that the facts of the present case merited an imprisonment term of not less than eight years for each of the accused persons.

My Decision

10 In this written grounds of decision I shall only set out my considerations in respect of the sentence for the offence of culpable homicide. The sentences for the immigration offences did not deviate from the norm and it is therefore not necessary to deal with them.

11 The four accused persons were charged with culpable homicide not amounting to murder, punishable under the limb (b) of s 304 of the Act, which provides for imprisonment for a term which may extend to ten years, or with fine, or with caning, or with any combination of such punishments. Under this limb, the act was done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. In *PP v Wan Chin Hon* [2005] SGHC 121, Choo Han Teck J ("Choo J") said at [5]:

The punishment for culpable homicide not amounting to murder under s 304(b) is a range of imprisonment that may extend to ten years, or a fine, or both imprisonment and fine. The sentencing of an offender requires a steadfast devotion to two broad principles – the principle that like cases must be treated alike, and that each case must be assessed on its own merits. These principles are more easily stated than applied. In the case of the act of causing death, the law discriminates a number of categories of culpability, and the range of sentences prescribed varies accordingly. The sentence in each case must be assessed according to such considerations as are right, proper, and fair ...

12 In the precedents cited to me by the prosecution and the defence the sentences range from two and a half years to nine years, affirming the view of Choo J that the courts consider each case on its own merits. In relation to the cases cited by the prosecution in which the imprisonment terms ranged from seven to nine years, I noted that the circumstances under which the deaths were caused were rather aggravating. In *Yan Haibing*, the accused, after punching the victim twice on her head, placed his hand on her throat when she continued to struggle. He pressed her throat forcefully to prevent her from shouting and this succeeded in making her stop. However he maintained the chokehold even as the victim's arms were flailing. He then stuffed a towel in her mouth, wrapped another towel around her head and used adhesive tape to secure the second towel. He also used tape to tie the victim's wrists and ankles. The victim had by this time stopped struggling. In *Tan Chee Hwee*, the two accused persons were trying to subdue the hapless maid and stop her from screaming. During this struggle she was strangled until she lost consciousness and stopped resisting. In the event, she had died from strangulation. In *Budiman*, the accused had looped a lanyard around the deceased's neck and pulled it back until she stopped struggling. In all three cases, the accused persons had maintained their chokehold on the victims until they stopped struggling. The cause of death was asphyxiation. In those circumstances, in all probability, the victims stopped struggling because they had died.

13 In the present case, according to the pathologist, the time of death was estimated to be the early hours of 12 December 2007. The four accused persons had tied the deceased up and left him in the flat between 10pm and 11pm on 9 December 2007. This meant that the deceased had remained

alive for at least 48 hours before he died of asphyxiation. This indicated that the deceased was not tied so tightly around the neck, mouth and nose as would cause asphyxiation within minutes or even hours. Instead he had remained alive for more than two days. One can only surmise that by then he was so weak from hunger and perhaps from his struggles to free himself that he became unable to continue with his efforts to breathe through the restraints around his nose and mouth. The present case is therefore different from the cases cited to me by the prosecution in which the accused persons had virtually strangled the deceased until they died. Further, the four accused persons were also concerned enough about the deceased being abandoned to call his estranged girlfriend to induce her to return to the flat to free him. This meant that their frame of mind was that he was alive and only needed to be freed. It may be inferred from this that they did not think that the manner in which the deceased was tied up posed an immediate danger to his life. Unfortunately for him and for the four accused persons, the deceased's girlfriend thought it was a ruse and did not return immediately. And when she finally decided to do so, she forgot to bring the key. These delays turned out to be fatal to the deceased.

14 I took into account the mitigating factors submitted by Mr Pereira. Although the four accused persons had entered or remained in Singapore illegally, they were nevertheless here on account of economic reasons, in the hope of earning and saving enough money to help out their impoverished families back in Bangladesh. Apart from their immigration offences and the culpable homicide offence, they were otherwise law abiding and simply wanted to work for money to send home. They had paid what to them were enormous sums of money to come to Singapore to find work and were cheated by their agents when they got here. The deceased had exploited their situation and had repeatedly extorted money from them. When they did not pay him, he abused them to the extent of threatening to report them to the authorities and getting gangsters to beat them up. The four accused persons endured this psychological abuse for some four months. I took into account the fact that the act was not planned and it was committed on the spur of the moment.

15 Be that as it may, a life has been lost. I cannot ignore the fact that the four of them had ganged up on the deceased and the manner in which they restrained the deceased went beyond the immediate need to keep him quiet and immobile. Instead of merely tying the deceased's hands and feet to immobilise him and gagging him to keep him quiet, they tied a cloth around his nose and another around his neck, as well as covering his head. Death was by asphyxiation, caused by a combination blockage of the nose and strangulation of the neck. Furthermore, their motive in restraining the deceased was to escape apprehension and subsequent punishment for their immigration offences. The deceased must have spent the last 48 hours of his life in terror and agony as he struggled to breathe against the obstructions in his nose and mouth.

16 Taking into account the circumstances of the offence set out above, I considered that the appropriate sentence for each of the four accused persons on the joint charge of culpable homicide was four years' imprisonment and sentenced them accordingly.

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