

Public Prosecutor v Leong Siew Chor
[2006] SGHC 81

Case Number : CC 4/2006
Decision Date : 19 May 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Lau Wing Yum, Alvin Koh and Loke Shiu Meng (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan and Sunil Sudheesan (Harry Elias & Partners) for the accused
Parties : Public Prosecutor — Leong Siew Chor

Criminal Law – Special exceptions – Consent to death – Accused charged with murder of deceased – Accused admitting to killing deceased but alleging that deceased had consented to death as part of suicide pact made with accused – Whether deceased unconditionally and unequivocally consenting to death – Sections 300(a), 300 Exception 5 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Statements – Accused charged with murder and pleading exception of consent to death as defence – Prosecution seeking to rely on accused's earlier statement contradicting defence of consent to death – Whether statement made by accused inadmissible due to breach of accused's constitutional right to counsel, non-compliance with procedure or lack of voluntariness – Article 9(3) Constitution of the Republic of Singapore (1999 Rev Ed), s 121 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

19 May 2006

Judgment reserved.

Tay Yong Kwang J:

1 In this case, aptly called the “Kallang body parts murder trial” by the local media, the accused was tried on the following charge which carries the mandatory death penalty:

[Y]ou, **LEONG SIEW CHOR**, between the 15th day of June 2005 at or about 9.30 a.m. and the 16th day of June 2005 at or about 9.15 a.m., at Block 114 Lorong 3 Geylang, #09-53, Singapore, did commit murder by causing the death of one Liu Hong Mei, Chinese National, female aged 22 years, Passport No. G04885744, and you have thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224.

2 From the start of the trial, defence counsel indicated that the accused was not disputing that he had caused the death of Liu Hong Mei (“the deceased”) but was relying on Exception 5 in s 300 of the Penal Code (Cap 224, 1985 Rev Ed) (“Exception 5”) which would reduce the charge of murder to one of culpable homicide. Exception 5 provides:

Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under 18 years of age, to commit suicide. Here, on account of Z’s youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

3 As a result of the stand taken by the accused, both the Prosecution and the Defence were able to agree on most of the material facts which were compendiously set out in three sets of agreed statements of facts. These agreed statements of facts were admitted into evidence pursuant to s 376 of the Criminal Procedure Code ("CPC") (Cap 68, 1985 Rev Ed), thereby reducing the original number of prosecution witnesses to be called from 40 to only ten.

The agreed facts

4 The following facts are compiled from the agreed statements of facts and the undisputed evidence adduced during the trial. The accused is now 51 years old. Prior to his arrest in this matter, he was residing at the address stated in the charge ("the Geylang flat"). He is married with three grown-up children. He completed his pre-university education and National Service and then became an employee in what is now Singtel for some 20 years between 1976 and 1996. During the said employment, he took up a course in Singapore Polytechnic and obtained a diploma in Electronics and Communication Engineering in 1983. In February 1996, he decided to set up his own business. Unfortunately, it did not do well.

5 In April 1997, the accused joined Lucent Technologies Microelectronics Pte Ltd as a production supervisor. The company was restructured and became known as Agere Systems Singapore Pte Ltd ("Agere"). The accused was deployed in Team 3 at Agere's factory in Serangoon North Avenue 5 and worked the permanent night shift from 7.00pm to 7.00am the next day. In May 2005, his gross monthly salary amounted to \$3,743 (including his shift allowance).

6 The deceased was a Chinese National who had come from the People's Republic of China ("China") to work here as a work permit holder. She was residing in a rented room in a flat in a public housing estate in Ang Mo Kio Avenue 3. She started working as a production operator in Team 4 in Agere in November 2002. Like the accused, she worked the permanent night shift. She was a diligent and motivated worker who always turned up for work and on time. For this, she was paid a monthly "perfect attendance" allowance of \$30 from January to May 2005. Half of her monthly basic salary would be credited into her account with the Post Office Savings Bank ("POSB") in the middle of the month while the remaining remuneration would be credited on the last day of the month. In May 2005, her total remuneration (inclusive of allowances and overtime pay) amounted to \$1,400.60.

7 In January 2004, the accused was transferred from Team 3 to Team 4. He thus became the immediate supervisor of the deceased. In June 2004, upon the recommendation of the accused, the deceased was promoted and given greater supervisory duties, accompanied by a pay rise.

8 At about that time, the accused and the deceased began an intimate relationship. A fellow employee at Agere chanced upon the accused kissing the deceased once on her cheek in his office. An anonymous letter was then sent to Agere's management. This resulted in both the accused and the deceased receiving a verbal warning from their employer. While the deceased acknowledged in writing the warning given, the accused refused to do so. Instead, he wrote a letter denying the allegation and appealing for further investigations to be conducted by the management. Further investigations were conducted but the management remained convinced that the allegation was true. However, as the rumours about the intimacy between the accused and the deceased had ceased by then, no further action was taken.

9 As will appear in the accused's statement to the police, his off-days were Monday and Tuesday. On Monday, 13 June 2005, at about 10.30am, the accused and the deceased checked into Hotel 81 Gold in Geylang and the accused paid for four hours' use of a room. They had sex twice. When the deceased was taking her shower later, the accused looked through her bag, hoping to find

a comb. He saw her POSB Automated Teller Machine ("ATM") card in her wallet. As he was aware of the deceased's personal identification number ("PIN") for the card, he decided to take the card without informing her. They checked out of the hotel at about 3.00pm.

10 Sometime after 5.00pm that day, the accused rode his bicycle from the Geylang flat to Tanjong Katong Complex. He was wearing a green sweater, a pair of blue shorts and a baseball cap. At a POSB ATM there, he used the deceased's ATM card to withdraw \$1,000 from her account. He then cycled to Joo Chiat Complex and withdrew another \$100 from her account. He next cycled to Haig Road and attempted to withdraw another \$1,000 from an ATM there. He was not successful.

11 The accused then cycled to Beach Road. At an ATM there, he attempted again to withdraw \$1,000 from the deceased's account. He was again unsuccessful. He then went across the road to Golden Mile Complex and used the deceased's ATM card to make a purchase of some items amounting to \$11.40 by means of electronic transaction. He then left for the Geylang flat.

12 The next morning, Tuesday, 14 June 2005, he put on the same attire as the one he wore the evening before and cycled again to the ATM at Haig Road. This time, he managed to withdraw \$960 from the deceased's account. He thus withdrew, without the knowledge or consent of the deceased, a total of \$2,071.40 from her POSB account, using the ATM card that he had stolen from her at the hotel the day before.

13 Sometime in the afternoon that day, the deceased discovered that her ATM card was missing from her wallet. She called the accused and told him about it. When she went to update her bank book, she realised that unauthorised withdrawals had been made from her account. That evening, she went to make a police report about the loss of her ATM card. She also informed the police about the unauthorised withdrawals made over the two days. She was advised to notify the POSB about the said withdrawals as the bank might be able to help trace the culprit from the tapes of the closed circuit television ("CCTV") located at its ATMs. Later that evening, the deceased informed the accused over the telephone about her police report and the advice of the police regarding the CCTV tapes.

14 Subsequently, the police requested the bank to produce the transaction histories of both the accused's and the deceased's POSB accounts for the month of June 2005. The bank also extracted the relevant portions of the tapes recorded by the CCTVs at the ATMs mentioned earlier. The relevant footage was transferred into a CD-ROM which was played in court. It showed the accused dressed in the manner described earlier. His face was not discernible as the CCTVs were all located above the ATMs and his cap's visor was shielding his face. The Defence accepted that the man in the tape recording was the accused but pointed out the fact that he could not be identified by someone looking at the tape recording only.

15 It was not disputed that the accused asked the deceased to go to the Geylang flat in the morning of Wednesday, 15 June 2005 and that she did go there as requested. They were alone in the flat as the accused's wife and eldest child were holidaying in Thailand, the second child was then staying in a hostel and the youngest child would not be home until past 6.00pm. At some point in time, while they were in the master bedroom of the flat, the accused strangled the deceased to death with a bath towel. The events that led to the strangulation were the focus of the contentious matters at the trial and will be dealt with later in this judgment.

16 After the deceased had become motionless and her face had turned a deathly bluish-black in colour, the accused laid her upper body on the bed. He then pulled her by the legs and dragged her lifeless body from the master bedroom into the kitchen. Outside the toilet in the kitchen, he stripped

the deceased who was clothed in a white blouse, jeans, socks and undergarments. He then pulled her by the arms and dragged her naked body into the toilet. After that, he gathered her clothes and placed them in a plastic bag.

17 The accused then took a chopper which was in the kitchen and proceeded to dismember the deceased's body, starting with the feet just above the ankles as they were the smallest parts. When he had difficulty cutting through the bones, he went to get a rubber mallet from the kitchen and used it to pound on the blunt side of the chopper until the bones broke. After cutting off both her feet, he went to get some newspapers from the living room. He used these to wrap up the feet and then placed them in a plastic bag.

18 The accused next proceeded to cut off the deceased's legs just above the knee joints. After doing that, he wrapped them in newspapers and placed them in a plastic bag.

19 The accused had to decide how to cut up the deceased's torso and head next. He made a few incisions at her private parts intending to cut upwards towards the chest. He then thought it was not a good idea and decided to cut across the waist instead. When he succeeded in doing so using the same chopper and rubber mallet, some of the entrails fell out. He threw them into the toilet bowl and flushed them away. After washing the blood off himself, he went out to get more plastic bags, some masking tape and a couple of carton boxes that used to contain computer components. He then returned to the toilet where he placed the lower torso into a plastic bag, put it into one of the carton boxes and sealed the box with masking tape.

20 The accused then proceeded to cut off the deceased's head using the same instruments as before. He wrapped the severed head in newspapers and placed it in another plastic bag. He washed the blood off the upper torso, wrapped it in some newspapers and placed it in a plastic bag, which was in turn placed in another carton box. He then sealed the box with masking tape.

21 By the time the accused had completed the gruelling and gruesome task of hacking the deceased's body into seven parts and packing them into five packages, it was past noontime. He cleaned up the toilet and washed his hands and legs. As the blood spots on his t-shirt and shorts were not very obvious, he did not change his clothes. He then took the plastic bag containing the deceased's clothing and the plastic bag containing her severed feet and put them in the front basket of his bicycle which was kept in the Geylang flat. As he pushed his bicycle out of the flat, he saw the deceased's shoes just outside the entrance. He placed the shoes in the basket as well.

22 The accused cycled a distance away and threw the deceased's clothing into a rubbish bin at a road junction. He then cycled on and threw the deceased's shoes into a rubbish bin at a bus stop. At the next bus stop, he dumped the plastic bag containing her feet into the rubbish bin there and then returned to the Geylang flat.

23 Back home, he thought about how he was going to dispose of the other parts of the body. He recalled some Chinese belief that ashes of the dead should be thrown into the sea in order to set the spirit free. He then took the plastic bag containing the lower legs, left the flat and took a taxi to Clarke Quay where he threw the plastic bag with its contents into Singapore River. He then took another taxi home.

24 His next task was to dispose of the plastic bag containing the deceased's head. He took a taxi back to Singapore River and alighted near Boat Quay. He then walked to the river and dropped the said plastic bag into the water. Without looking back, he went to take a taxi home.

25 As the two carton boxes containing the torso were heavy, the accused decided to use his bicycle again. He placed the box containing the lower torso into the basket of the bicycle and cycled to Kallang River near Beach Road. There, he dropped the box into the river. He then cycled home, brought out the last box containing the upper torso and returned to the other bank of Kallang River, opposite where he was not too long ago. He then pushed the said box into the water towards the sea.

26 The accused got home at about 5.00pm. He did another cleaning of the kitchen toilet by using a brush and some green scouring pad to remove whatever bloodstains there were on the walls and the floor. He also washed the rubber mallet. He then used a sharpening stone to polish off the bloodstains on the chopper before washing the chopper. He next took the bed sheet and the pillow case from his bed and washed them in the washing machine. He claimed that the bed sheet was due for washing. The second reason for washing it was that one or two drops of blood from the deceased's nostrils dripped onto it while he was moving her body to the kitchen.

27 Without taking a shower, the accused changed his clothes to prepare to go to his usual night shift work which began at 7.00pm. Before he left, he saw the deceased's handbag on the floor of the master bedroom. He placed the handbag in a plastic bag and left for work. He took the Mass Rapid Transit train from Kallang station to Ang Mo Kio station. There, he threw the said plastic bag into a rubbish bin. He then took a bus, arriving at his workplace punctually at about 6.45pm.

28 At about 7.30pm, he walked to the operators' section to take attendance, noting that two out of some 15 were absent from work, one of whom was the deceased. When Chen Jian Hua ("Chen"), one of the operators, remarked later that the deceased was not at work, the accused replied casually, "Don't know". At about midnight, he asked Chen to call the deceased in the morning to find out why she was absent from work since Chen was enquiring about the deceased.

29 When his shift was over the next morning (16 June 2005), the accused left for home, took his breakfast and then went to sleep in the master bedroom. He awoke at about 3.00pm, took out the washed bed sheet from the washing machine and hung it up to dry. He also claimed that he tried to repair a leak in the pipes of the kitchen sink. Towards the evening, he got ready for work again and arrived at his workplace at close to 7.00pm.

30 In the meantime, during the morning of 16 June 2005, a worker cleaning the bank of Kallang River found the waterlogged box containing the lower torso lying on the sand. When he tried to lift it, the contents broke through the bottom of the box. The police was notified of the find. When a police officer was combing the surrounding area on the opposite bank, he chanced upon the other box containing the upper torso. The police took fingerprint impressions from the hands of the upper torso. A check with existing records revealed that the upper torso was the deceased's.

31 In the evening of 16 June 2005, shortly after the accused had started his night shift, he was asked to go to the conference room of his workplace. There, a few men identified themselves as police officers from the Criminal Investigation Department ("CID"). The accused began to fear that they already knew what he had done to the deceased. He denied knowing much about the deceased. After that interview, the police officers brought the accused to the Geylang flat and questioned him further there. They also searched the flat while the accused sat in the living room hoping that nothing relating to the deceased would be discovered in the flat. One of his children returned home then but he was not permitted to speak to her. Sometime after midnight, ie, in the early hours of 17 June 2005, the accused and his child were asked to go to the CID for a further interview.

32 At 4.40am on 17 June 2005, Assistant Superintendent of Police ("ASP") Abdul Halim Osman

recorded a statement from the accused (exhibit D2) about the events in the Geylang flat on 15 June 2005. This is what the accused said in relation to the strangulation:

... She came to my house alone around 9 something to 10am. We spent our time together when she came. There was no sexual activity. There was no one else at home at that time. We then talked about our relationship. Sometime at about 11am, she proposed to me that, I leave my family and follow her back to China. I told her that I cannot leave my family. My family have not done anything wrong. I told her that for my age it is quite difficult to start a new life in China. It is going to be something new to me, new place and new environment. She told me that we can stay somewhere far from her hometown and she is willing to support me. I was reluctant and worry. She proposed to me that we die together. I told her that I dared not. I asked her if she is joking. She suggested that she 'go' first to show her sincerity. She made me promise to follow her after she 'go'. I took a towel from my room and wrapped it around her neck. At that time she was sitting on my bed facing the door. I pulled both ends of the towels [*sic*] with my hands. I was facing her when I pulled both ends of the towel. As I pulled both ends of the towel, I observed her face, I asked her if she was OK. She told me a bit pain. She said, OK, can ... can ... I applied more force. I then did not let go. Her face turned blue. Not so nice already. When I looked at her face turned blue, I dare not do to myself. I gave empty promise. She did not struggle at all. She let me do. When I realized she died already, I think how to settle and handle this. ...

33 At about 5.55am, the accused was placed under arrest. At about 3.00pm that day, ASP Joseph Wee read out the murder charge to the accused and then proceeded with the recording of a statement pursuant to s 122(6) of the CPC from the accused (exhibit D1). This statement, written by the accused himself, was in the following terms:

From the 1st proposal from Hong Mei that we cannot come to the conclusion, she suggest that we die together. To show her sincerity, she was willing to die first. However, she told me to ensure I must following her to "go". When I started kill her by using a towel on to her neck, she only felt a little bit pain, but ask to go ahead. Since then I apply more force till she really no more breathing. However, when I look at face turn blue and so ugly, I dare not do the same to myself but just think of how to dispose her body, so I cut her into pieces and clear from my house.

34 Later that day, the accused was brought out for scene investigation. At about 7.40pm, while they were in the Geylang flat, Acting Inspector Roy Lim, the investigating officer for this case, asked the accused about the events of the morning of 15 June 2005. The accused's narration was recorded by the investigating officer in his field book (exhibit D3), the relevant portions of which read:

After she came inside the house, I showed her around my house because this is the first time she came here. She was wearing a white long sleeve blouse tucked out and blue faded jeans. I cannot recall how long later, but we talked in my room (master bedroom), while sitting on the bed. We had a disagreement about me going back to China with her for good. At this age, I just couldn't leave my family. Hong Mei brought up the subject about dying together and to show her sincerity, she will die first and I have to follow suit. Just then, I saw my towel and I used it to strangle her. I was sitting at the corner of the bed nearest to the door. Hong Mei was sitting on my left. I held the towel at both ends and looped it on the back of her neck. I then crossed the towel and pulled at both ends. She then lie down on her back and I continued to strangle her until she stop breathing about 10 to 15 minutes later. After seeing her state, I decided not to do it on myself. Immediately, I thought of ideas to dispose the body. I was in a state of panic. ...

35 These three statements (exhibits D1, D2 and D3) were adduced by the Defence through the

investigating officer when he was testifying in court.

36 On 18 June 2005, further investigations revealed that parts of the deceased's body might be at the Tuas South Incineration Plant. Police officers proceeded to the said plant and managed to retrieve a plastic bag containing the decomposed head while sieving through rubbish collected from Singapore River. Further searches among the heaps of rubbish uncovered a pair of lower limbs. Despite the efforts of the police, the severed feet and the personal belongings of the deceased could not be found.

37 Subsequent exhaustive DNA and other laboratory tests conducted by various sections in the Health Sciences Authority confirmed that all the dismembered parts that had been found were from the same body and that the packaging materials used to dispose of the body parts matched those found in the Geylang flat and the traces of evidence found on the accused's clothes.

The Prosecution's witnesses

38 Liu Hong Wei, the deceased's elder sister, is married and living in Singapore. She came to Singapore about one and a half years later than the deceased. She was close to the deceased who would confide in her whenever she had problems. They would meet to go out together at least twice a week. The deceased moved to a rented room in the Ang Mo Kio public housing estate in April 2005 because the rental was lower and it was nearer to where her sister was living. The deceased was frugal and managed to remit about \$2,000 to their parents in China once every three months.

39 When the deceased's sister first arrived in Singapore, the deceased told her that her supervisor (the accused) was good and cared for her. The deceased also said that she liked this sort of person. The deceased's sister met the accused a few times. The first time was when the three of them had a meal together in early 2004. The second occasion was when the accused brought a few carton boxes to help the deceased shift to her new rented flat in early 2005. The third time was during her marriage registration day on 24 April 2005 and the final occasion was at Agere's Family Day festivities on Sunday, 12 June 2005, at Pasir Ris. The deceased, her sister and her sister's husband had a lot of fun during Agere's Family Day. That was also the last time that the sister saw the deceased alive.

40 The day before the deceased died, her sister spoke to her over the telephone several times. They were having their usual casual chat as it was the deceased's day off from work. The deceased, who had been attending English classes for one and a half years, told her that she was going for an English class in Chinatown. The sister learnt on the night of 17 June 2005 from the deceased's colleague that the deceased had not reported for work for two days. Subsequently, she learnt that the deceased had been killed.

41 The deceased's sister testified further that they were from a traditional family and she objected to the deceased having a relationship with a married man, although she did not know that the deceased and the accused were already lovers. She suggested to the deceased to go to a matchmaking agency to look for a prospective husband as the deceased had planned to remain in Singapore. The sister's customary wedding was held in Singapore in September 2005. The deceased had been looking forward to being her bridesmaid.

42 Chen, a Chinese National, was the deceased's colleague in Agere. She was the closest to the deceased among the operators in the team that they were in. As the deceased had been promoted rather rapidly, the relationship between the deceased and some of the operators cooled somewhat but there was no discord among them. Chen and the deceased would often have breakfast together

after their night shift work. They had also gone shopping together on a few occasions. When the accused asked Chen to call the deceased to find out why she had not reported for work, Chen asked him whether the deceased had changed her mobile phone number as Chen was away from Singapore for the past few weeks. The accused claimed that he did not know. When Chen called the deceased, her mobile phone did not appear to be switched on.

43 Chaw Jaw Shing, one of the occupants sharing the rented room with the deceased, testified that at about 9.00pm on 14 June 2005, she saw the deceased talking on her mobile phone, sounding frustrated. She asked the deceased why she was angry but was told by her that she was not angry. She last saw the deceased alive at about 7.00am on 15 June 2005 in the rented flat.

44 John Puah is an education consultant with Cambridge Educational Services Pte Ltd, a private school located in Chinatown. On 20 May 2003, the deceased went to the said school to sign up for a course in English language. She paid a total of \$1,288 as the course fee. On 14 June 2005, the deceased went to meet him at the school to discuss her plans to further her studies in order to obtain an international diploma in travel and tourism as she was confident of passing the English language examinations that she had recently taken. She enquired about the cost and the duration of the course and said she would consider the matter and revert. She did not indicate that she was thinking of working in the tourism industry in China or elsewhere.

45 Sethu Nair, a production supervisor in Agere who also worked permanent night shifts, found the deceased to be a diligent and determined person who always carried out her tasks quickly and well. The deceased would often volunteer to work overtime. He also testified that the accused, his colleague, was a responsible man who could communicate well in English. The last time he saw the accused was on 15 June 2005 at work. He noticed that the accused looked tired. However, the accused was still able to carry out his duties.

46 Lee Kian Hua ("Lee") is a director of Goodluck Friends Centre, a matchmaking agency. On 27 March 2004, the deceased signed up for the agency's services and paid the registration fee of \$788. She also had to pay \$25 before each meeting with a prospective life partner. The deceased told Lee that she found Singapore to be a clean and nice place where she hoped to get married and settle down. She indicated that she would like to meet, in order of preference, Singaporean men, followed by Malaysians living here and Chinese nationals with permanent residency status here. The deceased attended a total of five introduction sessions, the last being sometime after 24 April 2005.

47 Although the agency had some 14,000 members, Lee remembered the deceased because she was always very polite and very cheerful. After the fifth session of introduction, the deceased told Lee to stop the sessions for the time being while she developed her relationships. Lee was unable to tell whether the previous introduction sessions were unfruitful because of the deceased's lack of interest in meeting a life partner.

48 Dr Cuthbert Teo, the forensic pathologist who examined the various body parts of the deceased, testified that he could not ascertain the cause of death because the body had been dismembered and was decomposed. He added, however, that there was no evidence to suggest that the deceased had died of natural causes. He opined that the dismembering of the deceased was done post-mortem. He was of the view that strangulation with a towel would leave little or no injury to the victim's neck and consciousness could be lost very quickly, in some cases, within half a minute or even almost immediately. Death would then occur within two to four minutes.

49 Dr Cuthbert Teo was not able to find any typical defensive injuries on the deceased. In his opinion, this could happen if the victim was taken by surprise (for instance if she was attacked from

behind) or if she was unable to respond (for example, because she was drunk or unconscious). It could also be due to a mismatch in size between the attacker and the victim. It was also possible that the victim consented to being strangled. In the latter scenario, however, because strangulation was painful, the victim would possibly put up a weak struggle.

50 Dr Ian Jay Basiao Tan of Alexandra Hospital examined the accused on 17 June 2005 at 12.59pm. He noted a one-centimetre linear, vertical abrasion on the accused's right lower ribcage and several nicks and abrasions on both hands, particularly the left hand. The accused told the doctor that he got these minor injuries while attempting to repair some water pipes in his kitchen.

51 Dr Stephen Phang, Consultant Forensic Psychiatrist and Deputy Chief, Department of Forensic Psychiatry in the Institute of Mental Health and Woodbridge Hospital, examined the accused on six occasions, four between 11 and 22 July 2005 and two in early August 2005. He also interviewed the accused's wife and two of his children on 18 July 2005. On 22 July 2005, he received a summary of the facts of the case from the investigating officer, para 6.9 of which stated:

Investigations also revealed that the deceased arrived at the [Geylang flat] at about 9.50am. While both were alone in the house, the accused alleged that he had wanted to tell the truth to the deceased about the theft and unauthorised withdrawals but could not find the courage. Leaving him in a desperate stage, he took a towel and strangled the deceased while she was sitting on her bed, until she died.

52 Dr Stephen Phang's practice, before interviewing his patients, was to explain to them the purpose of the psychiatric evaluation and to inform them that what they were going to say would be taken down and might potentially be used in court. He did so with the accused in this case just before the first interview, which was conducted in English with an occasional smattering of Mandarin. The accused was aware that he was facing a murder charge and five other charges relating to the theft of the deceased's ATM card and the unauthorised withdrawals from her account. The accused said that his intention in inviting the deceased to the Geylang flat on 15 June 2005 was to talk about the stolen ATM card in the hope of finding an alternative resolution of the issue other than the deceased proceeding through the police. However, he did not broach the topic eventually. Dr Stephen Phang, in para 6 of his report dated 12 August 2005, recorded:

Whilst in the master bedroom of his flat on the day in question, he claimed that he did not broach the issue of her stolen ATM card, as he had originally intended to, as a consequence of "*my pride, or maybe I in her heart is so sweet, so perfect, so this sort of thing happen, I don't know how to tell her. I totally did not bring it up at all*". While he described initially suggesting to the deceased that "*we die together*", he stated that he subsequently concluded in his own thoughts that "*why should we go together, if one die, then the (ATM) case can settle. One die, rather both. The fear is there, mean, don't want to die*". In the course of my third interview with him, the accused categorically stated that he did not wish to die so as to 'settle' the issue of the stolen ATM card and money, further stating that "*I scared to die*". He suggested that he was "*selfish*" in killing the other party, whilst sparing his own life. He stated that his intention at the material time was to kill the deceased. He admitted to strangling the deceased with a towel, "*until I tired*", and she had passed away. He further described that the deceased's face had turned "*blue and dark, very ugly*", which then led him to consider options with respect to "*how to dispose it*".

The words in italics were those spoken by the accused.

53 The accused was consistently relevant and rational in all his responses to questions posed to

him in the course of the psychiatric examination and his accounts were consistent throughout the six sessions. Dr Stephen Phang was of the opinion that the accused was not of unsound mind at or around the material time of the alleged offences. He added that it was not the duty of a psychiatrist to ascertain the truth or otherwise of an accused's statement and he did not correlate the summary of facts given by the investigating officer to him on 22 July 2005 with what the accused was telling him at the interviews. He relied on clinical evidence.

54 The investigating officer's evidence was by and large unchallenged by the Defence. The accused acknowledged that his statements given to the investigating officer under s 121 of the CPC on 21 and 25 June 2005 were made voluntarily. They were therefore duly admitted in evidence.

55 In the 21 June 2005 statement, the accused narrated the events of the morning of 15 June 2005 from the time he invited the deceased to go to the Geylang flat. He was aware that the deceased had made a police report the day before regarding the loss of her ATM card. He told her to go to the Geylang flat first so that he could accompany her to the POSB, where she was going to report the loss of her ATM card. When the deceased arrived, he showed her around as that was the first time she was at the Geylang flat. They then chatted, hugged and kissed in the master bedroom for about 20 minutes. The accused went on to state as follows:

4.4 While this was going on, she said something serious about our relationship. By this time, both of us were already sitting on the bed. Hong Mei asked me to follow her back to China for good. I was surprised and reluctant to go to China with her to start a new life because of my age and my family did not do anything wrong for me to just leave them like this. She did mention that when we go back to China, we definitely cannot stay with her parents and live somewhere else. I then said that due to the new environment, I might not be able to cope. Hong Mei then said that she can work and support me. I was very reluctant and I told her that it was very difficult for me to do this.

4.5 She looked moody and was not smiling as compared to how she was when she just arrived in my house. She gave another suggestion that we die together. At that moment I was shocked to hear her saying this. She continued saying that we already love each other for so long and so I should be able to accept this suggestion. She also said since she could do it why not me. I remember her also saying that unless I do not want her anymore, she see no reasons for me to say 'no'. Following this, Hong Mei said that in order to show her sincerity, she is willing to die first. However, she made me promise that I must do the same after she dies. I then said 'Ok lor, zhe yang ke yi, kan kan lor' (*said in mandarin meaning 'OK, this will do, let's do it without fear'*).

4.6 We were sitting on the edge of the bed with our legs on the floor, but facing each other. She did not say anything after this. I then walked to the chair in my room nearest to the toilet and took my towel. With the towel, I returned to the bed and sat down on the same position. While I was facing her, I put the towel around her neck and with both hands at the each end of the towel, I tugged a little. This was the gesture as if to strangle someone with a towel on the neck. I then said in Mandarin "Zhe yang la" (*meaning 'This way la'*). She then said it was hurting her neck a little, but she could still take it (recorder's note: at this time, accused, Leong Siew Chor was asked to draw a diagram of his room to show where he was sitting, where Hong Mei was sitting and where he took the towel from).

4.7 I apply more force slowly. Pulling the towel tighter and tighter around her neck. Her eyes were closed. She was still in a sitting position and her hands were just resting on her laps by her side. She did not struggle to fight me off, but she made some noise however, I do not know how

to describe it now.

4.8 I saw her face turning bluish and looked ugly. There was also blood coming out from the left side of her nostrils and it looked lumpy as if the blood was very thick. I continued to hold the towel very tightly. In all, I think I strangled her with the towel for about 20 minutes. By then, my hands were also tired. I then release my strength on the towel slowly and she was beginning to fall backwards on the bed. I then released my grip on the towel and she was laid down on my bed. Her legs were still at the edge of the bed and still touching the floor. She was motionless. Seeing her motionless, I took it that she was already dead. I did not check her pulse neither did I check whether was she still breathing. I did observe the stomach and there was no moving, which means there was not any breathing. I then stood at the foot of the bed and looked at Hong Mei for a short while. It was the look of her face that made me decided not to strangle myself. Hong Mei's face was really turning dark in colour, like 'blue-black'.

4.9 While looking at motionless Hong Mei, the first thing that came to my mind was how am I going to dispose off [sic] the body. It was only a short while before I pulled her leg slowly until her upper body was on the floor. I remember that there was thud when her head hit the floor.

56 In the rest of the 21 June 2005 statement and in the 25 June 2005 statement, the accused told the story of how he went about dismembering the deceased and then dispersing the body parts.

57 The investigating officer found out from the records of the matchmaking agency that the deceased was 1.6m tall and weighed 48kg as at 26 March 2004. The only portion of the investigating officer's evidence that was disputed related to the circumstances under which the accused's statement under s 121 of the CPC was taken on 26 June 2005 ("the 26 June 2005 statement"). As a result, a trial-within-a-trial was conducted to ascertain the issue of admissibility of that statement.

The trial-within-a-trial

The Prosecution's evidence in the trial-within-a-trial

58 The investigating officer testified that the accused was brought out from the lock-up of the CID in the afternoon of 26 June 2005 to an interview room. There, the statement recorded the day before was handed over for him to read. The recording then started at about 4.10pm. Only the investigating officer and the accused were in the interview room. At about 7.45pm, there was a half-hour dinner break. At 8.15pm, before the recording resumed, the investigating officer asked the accused whether he needed to rest. The accused said that "he wished to continue with the statement to release his guilt".

59 The recording was completed at about 9.15pm. The statement was printed out and handed over to the accused for him to read. He made some amendments and initialled against them. He then affirmed it was true and correct by signing on every page of the statement.

60 In cross-examination, the investigating officer said he did not warn the accused that he did not have to say anything that would incriminate him. Form B, which was used for suspects, did not contain such a warning. The investigating officer also confirmed that he did not read the statement over to the accused as the accused was conversant in English.

61 The investigating officer was asked why the Prosecution objected to defence counsel seeing the accused to advise him of his rights at the second mention in the Subordinate Courts on 24 June 2005 despite the concession by defence counsel that he would see his client in the presence of the

deputy public prosecutor and the investigating officer. The investigating officer explained that, at that time, he had new leads on the retrieval of evidence from the accused's mobile phone and it was pertinent for him to know what messages had been transmitted between the accused and the deceased. Further, as the accused had been co-operative and was forthcoming with the facts, he did not want to take a chance with external parties impeding the investigations and resulting in the accused shutting up. There were many exhibits to collect and only the accused could help the police to do so.

62 The investigating officer agreed that he and the accused had a casual conversation during the dinner break but it had nothing to do with the case. He did tell the accused that, compared to other murderers in other parts of the world, he was not that kind of murderer. That was because the accused kept saying he was a murderer and no one would believe him. The investigating officer denied that he told the accused that his statement should be changed because no one would believe the earlier version and that he would help the accused to make the necessary changes. He also disagreed that the accused then asked to see his counsel, to which request he allegedly told the accused that he could see his counsel after giving a statement to his (the investigating officer's) satisfaction. He also denied that he promised to reduce the charge if the accused co-operated and changed his statement as no one would believe that the deceased had consented to dying and that it was therefore better to say that he intended to kill her.

63 The investigating officer believed that the accused changed his story after he realised that he had contradicted himself in the statement about the ATM card and the withdrawal of the money. The accused had stated earlier that the deceased had given him her ATM card on 13 June 2005, asked him to withdraw money from her account for the fun of it and to return her the card and the money the next day. He said that he met the deceased the next day and handed over the withdrawn money and the card to her. The accused then said that when she "carried the game a bit too far" by reporting the loss to the police, he offered to return her the money. When asked by the investigating officer why he needed to offer to pay her back when he had already done so, the accused then admitted that he had actually stolen her card and her money and had not returned them to her.

The accused's evidence in the trial-within-a-trial

64 The accused testified that he chatted with the investigating officer during the dinner break and was told that his earlier statements were not believable. The investigating officer suggested that if the accused wanted people to believe him, he should make two basic corrections, namely, he should state that he was the one who had suggested that he and the deceased die together and that he should delete the part about going to China to settle down. The investigating officer then told him that he only needed to co-operate with him as he guided him through the rest of the statement. The investigating officer remarked that the accused was "not a real murderer, at the spur of time [*sic*], you do it". He promised to reduce the charge to a non-capital one. When the accused asked if he could see a lawyer for advice, the investigating officer told him he could do so once he had completed giving the statement.

65 The accused trusted the investigating officer because he was very nice towards the accused. When the accused had a sore throat, the investigating officer got him some Chinese herbal drink. When the accused told him that someone owed him money, he offered to help him demand payment. As a result, the accused agreed to co-operate with him. The investigating officer would say something to him during the recording process and, if he had no objections to it, the investigating officer would then proceed to the next paragraph. It was done very fast as the accused would merely "follow" the investigating officer, even if what was being recorded was not correct.

66 After the statement was recorded, the accused read through it very quickly and then signed it because he had decided to take the investigating officer's advice. This was despite the fact that he realised that the 26 June 2005 statement contradicted his earlier ones.

67 In cross-examination, the accused said that the 26 June 2005 statement was a voluntary one up to the time of the dinner break. He did not know what the punishment for theft was but he was aware of the death penalty for murder. He was very worried about the punishment for theft of the deceased's ATM card. He did not know why making the two suggested amendments would make his statement more believable. He just trusted the investigating officer completely. The accused said that although he was educated up to pre-university level, he was a very straight-forward person. In further statements given after 26 June 2005, he gave the same version as that in the 26 June 2005 statement because he had been told by the investigating officer to be consistent.

68 The accused wanted very much to see his lawyer but the Prosecution again objected to it at the third mention in court on 1 July 2005. It was only on 7 July 2005 that his family and his counsel were allowed to visit him. At the next mention on 8 July 2005 and at all subsequent court appearances, neither he nor his counsel informed the court about the alleged inducement by the investigating officer.

69 The accused continued to co-operate with the investigating officer after 1 July 2005 although the murder charge was not reduced as the investigating officer had not said when it would be done.

The recall of the investigating officer in the trial-within-a-trial

70 The investigating officer was recalled to respond to the accused's allegations about the debt collection and the herbal drinks. The investigating officer denied that he had offered to collect a debt on behalf of the accused. He explained that during one of their conversations, the accused said he was the sole breadwinner for his family but could no longer provide for his family. He told the investigating officer that a colleague had borrowed money from him and he did not know how he was going to get it back. The investigating officer then informed Agere's management and his family about this and took no further part in this matter.

71 As for the herbal drinks, the investigating officer explained that he and a colleague brought the accused out for scene investigation on 5 July 2005. As they were returning to CID, the accused informed him that he was feeling "heaty". The investigating officer therefore stopped by Smith Street in Chinatown and purchased two bottles of herbal tea which he allowed the accused to drink before returning him to the lock-up.

The decision of the court in the trial-within-a-trial

72 For reasons which I shall elaborate on later in this judgment, I ruled that the 26 June 2005 statement was admissible in evidence.

The trial proper

73 The relevant portion of the 26 June 2005 statement that was objected to reads:

When I say everything will be gone, I meant that I took her money will be exposed, it also refers to my employment, my family and it also tarnish my personality, my future, everything will be gone.

...

10.2 So when I was in the bedroom on the bed with her, I needed to know how much she loved me. I also needed to find out whether she would die for me. So I asked her why she loves me. She replied that I was a good husband, a good father, I took care of my family and she was happy being with me. From her answers, I could sense that more or less, maybe she might die for me. That was when I continued with my next question and told Hong Mei "*Bu Ran, wo man yi zhi shi*" (spoken in Mandarin, meaning "Or else, why don't we die together"). I know that I dare not kill myself neither was I going to kill myself. I just wanted to hear whether Hong Mei was willing to die for me. So since I asked her the question and she did not say 'no', I took it that she was willing to die together with me. However, Liu Hong Mei does not know that my intention was actually for her to die and not we die together. Knowing the fact that she was willing to die for me, I know that she will not struggle or fight me when I decided to kill her. I actually have not even thought of the method to kill her, like I said, I just wanted to find out how she feels about it first.

10.3 That was when I looked around my room and I saw my towel. That was when the thought came to my mind to use the towel to strangle her. All the while, she was sitting on the bed. She did not even say a word. What I have described here actually happened very quickly. Not as long as it seems that I have describe.

10.4 I walked to the chair, took the towel and I just immediately put the towel around her neck, with the ends of the towel in front of her. I crossed the ends of the towel at the front Area of her neck and pulled the towel apart.

10.5 At first I heard her say it was a little pain. That was when I applied all the strength I could to tightened [*sic*] the towel around her neck. I do not think she had the chance to react. That is why she did not struggle. I held on the towel until I was tired. It was about 15 to 20 minutes. ...

10.6 The reason why I did not tell accurately what happened is because I was afraid what was going to happen to me if I admitted that I had the intention to kill Liu Hong Mei so that she would not expose me to have stolen money from her account. I feel guilty and I just want to tell the truth. I do not want to hide anything anymore.

The accused's evidence in the trial proper

74 The accused, who is about 1.67m tall, testified in his own defence. Much of his evidence has already been covered in the undisputed facts set out earlier. His narration of the events of 15 June 2005 mirrored the version given in his statements before 26 June 2005. He denied the matters stated in the 26 June 2005 statement in so far as they contradicted his earlier statements. He explained that he had to deny the kissing incident at work because the deceased and he had agreed to keep their relationship a secret. In the hotel room on 13 June 2005, after they had had sex twice, he took the deceased's ATM card out of curiosity and greed. He was not in need of money. He had savings of more than \$5,000 and always paid for the expenses when they were together. He did not know what the exact amount of savings in the deceased's account was but she had told him before that there was more than \$2,000 in the account. He did not know whether the deceased had been remitting money to her parents in China but she did lend a large sum to her elder sister to assist her to come to Singapore.

75 He admitted in court that he had worn his baseball cap very low over his face when he went

to make the withdrawals because he wanted to avoid his face being captured by the CCTVs. After taking the deceased's money, he intended to return it to her but thought it would be alright to return it at a later date. On 14 June 2005, they arranged to meet and he returned her \$50 and helped her to top-up the value in her EZLink card. Unfortunately, she went to report the loss to the police and he was too embarrassed to admit the theft. He claimed that he left the remaining amount withdrawn by him on top of the wardrobe in his bedroom in the Geylang flat. However, it could not be located by the investigating officer. The accused surmised that either someone took the money or he threw it away with the rest of the deceased's belongings on 15 June 2005 in his confusion.

76 The accused intended to have a face-to-face talk with the deceased at the Geylang flat on 15 June 2005 and confess to her that he had taken her card and her money. It was convenient to meet there because his family was not around. Going to a hotel would incur expenses. It was not convenient to talk at the deceased's rented flat because there were other tenants there.

77 In the Geylang flat that fateful morning, after he had rejected the deceased's suggestion to go back to China with her, the deceased brought up the subject of dying together. The accused asked her whether she was joking. He was not prepared to leave his family nor the deceased because he loved them both. He was confused and thought that the best solution was for them to die together. The deceased was willing to die first to show her sincerity but wanted him to promise her that he would do likewise. He gave his promise. She did not suggest the method of suicide. He saw the towel in his bedroom and so thought of using it to strangle her. He would then follow by hanging himself although he did not think about how exactly to do that. Alternatively, he would jump off from the Geylang flat which was on the ninth level. He changed his mind about dying after he saw the deceased's face after the strangulation.

78 He repeated what he had said in the trial-within-a-trial as to the circumstances under which he made the 26 June 2005 statement. He was afraid to tell the truth about the theft of the ATM card and the money at the beginning as he did not know what the punishment for theft was. He therefore portrayed the incident as a prank by the deceased.

79 The accused said he told Dr Stephen Phang the things that were recorded in the psychiatrist's report because the investigating officer had reminded him that he had already corrected his statements and whatever he said to the psychiatrist should be consistent with the 26 June 2005 statement. He maintained in court that his intention in asking the deceased to go to the Geylang flat on 15 June 2005 was to discuss the issue about the theft. He never had any intention to kill anyone and certainly would not have killed the deceased but for her suggestion to die together.

80 Under cross-examination, the accused said that his family mattered a lot to him. If his family should find out about his relationship with the deceased, he was confident that he would be able to handle the situation without major difficulty. He was aware that the deceased was taking English language courses. When she stopped doing so, he encouraged her to resume the classes. He also knew that she was interested in doing a course in tourism but did not know that she had signed up with the matchmaking agency. He agreed that the deceased was interested in settling down in Singapore although she did not specify her preference of her prospective husband's nationality.

81 Their conversation about committing suicide together was the first time that they discussed such a topic. Although the deceased did not tell him to kill her there and then, he knew what she meant as they had known each other for a long time. They did not discuss the method of killing themselves. He saw the towel in the bedroom and hinted to her by his action of looping it round her neck. He did not tell her that he was going to strangle her. She said it was a bit painful. He had the impression that he could continue with the strangulation and so he did without looking at the

deceased's face although they were turned towards each other while seated on the bed. He was sad as it would be his turn to die after her. He continued with the strangulation until he was exhausted. When he realised that she was no longer breathing, he said, "Don't die, don't die, I don't want to hang myself". He was very frightened and felt guilty. He did not know what to do as he was alone at home. He did not try to revive her or even feel her pulse. He was anxious to dispose of the body swiftly. It was as if he had lost his mind. There was no struggle and hence he did not suffer any injuries. The minor abrasions on his body were possibly caused while he was trying to repair the water pipes or while he was cutting up the deceased.

82 When he was initially questioned by the police, he lied about his relationship with the deceased as he was afraid of the death sentence. After he was arrested on 17 June 2005, he felt he had to tell the truth about the suicide pact. He maintained that the 26 June 2005 statement was voluntary only up to the time of the dinner break. Similarly, the facts in para 6 of the psychiatric report were given by him to Dr Stephen Phang according to the investigating officer's instructions.

83 The accused added, in answer to questions by the court, that the deceased was the third child in a family of four siblings. She was educated up to senior middle school level and did not have a skills certificate. They were happy while together on 13 June 2005 and remained so even on the morning of 15 June 2005, when they first talked about suicide. The deceased had never asked him to marry her as she was aware of his marital status. She had only mentioned once how happy she would have been if the deceased did not have a family already. That fateful morning, he did not think of committing suicide together by leaping off a building. Everything was very confusing after he rejected her suggestion to go live in China with her. He thought there was no more future in their relationship and believed that the deceased felt the same way.

The decision of the court

The trial-within-a-trial

84 It was not in dispute that the Prosecution bears the burden of proving that an accused's statement was made voluntarily and in compliance with law. The Defence challenged the admissibility of the 26 June 2005 statement on three grounds:

- (a) that the accused's constitutional rights under Art 9(3) of the Constitution of the Republic of Singapore (1999 Rev Ed) had been breached;
- (b) that the procedure set out in s 121 of the CPC had not been complied with; and
- (c) that the statement was not voluntary because of the promise and inducement made by the investigating officer.

85 Article 9(3) of the Constitution provides:

Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

Defence counsel referred me to *Halsbury's Laws of Singapore*, vol 1, (Administrative and Constitutional Law) (Butterworths Asia, 1999), where the following passage appears under the heading "Commencement of right to counsel" (at para 10.136):

... Such right starts from the day of his arrest but it cannot be exercised immediately after arrest

if it impedes police investigation or the administration of justice. An arrested person is to be allowed to consult counsel with all convenient speed or within a reasonable time after his arrest.
...

The said passage also states in the footnotes that the onus of proving to the satisfaction of the court that giving effect to the right to counsel would impede police investigation or the administration of justice is on the police (citing the Federal Court of Malaysia's decision in *Hashim bin Saud v Yahaya bin Hashim* [1977] 2 MLJ 116).

86 Our then Court of Criminal Appeal in *Jasbir Singh v PP* [1994] 2 SLR 18 ("*Jasbir Singh*"), a case involving trafficking in a controlled drug, had occasion to consider Art 9(3). The court said (at 32, [45]–[49]):

... In the first appellant's case, he was allowed access to his lawyer two weeks after his arrest. Counsel argued that the right of access to counsel was an *immediate* one, and further contended that, in particular, the first appellant should have been allowed to consult a lawyer before making his s 122(6) statement.

We could find no statutory basis for such a contention. Counsel cited to us several Malaysian cases ... An examination of the ratio of these authorities failed to reveal any real support for counsel's argument that the first appellant should have been allowed access to a lawyer before making his s 122(6) statement. Essentially, the Malaysian cases, in construing the identical provision in their Constitution, lay down the principle that the right of an arrested person to consult his lawyer begins from the moment of his arrest, but (and it is important to note this) that the exercise of that right must be subject to a balance between the arrested person's right to legal advice and the duty of the police to protect the public by carrying out effective investigations.

We had regard also to the only relevant Singapore authority on this issue, *Lee Mau Seng v Minister for Home Affairs, Singapore & Anor.* All that was said of the constitutional right of access to counsel in that case was:

If a person who is arrested wishes to consult a legal practitioner of his choice, he is, beyond a shadow of a doubt, entitled to have his constitutional right granted to him by the authority who has custody of him after his arrest and this right must be granted to him *within a reasonable time after his arrest*. The only exception ... is if there is provision in an enactment, which enactment is not ultra vires the Constitution, depriving him of this right. [Emphasis added.]

Wee Chong Jin CJ, in giving the above judgment, did not elaborate on what he considered a 'reasonable time' to be. However, since the only exception he allowed was that categorically enacted by statute, it may be surmised that he intended the element of allowance for police investigations and procedure to be already built into the 'reasonable time' time-frame. In short, the *Lee Mau Seng* criterion really led to the same practical result as that set by the Malaysian courts in the above-mentioned cases. In fact, this court preferred the *Lee Mau Seng* criterion ...

... There is a world of difference between 'within a reasonable time' and 'immediately'; and, in our view, two weeks in the present case was a reasonable period of time. In any case, as pointed out by the deputy public prosecutor, the recording of a statement under s 122(6) of the CPC does not compel an accused person to make any statement which incriminates him. The notice given under s 122(6) states only that he has to state any fact which he intends to rely on in his

defence in court, and informs him of the consequences of any omission to do so.

87 Applying the principles in *Jasbir Singh*, there is similarly no legal requirement that an accused person should have access to counsel before making a statement to the police under s 121 of the CPC. The period of non-access to counsel in this case was 19 days after arrest, five days longer than the situation in *Jasbir Singh*, but it was justifiable in the circumstances, bearing in mind the duty of the police to follow up on new leads quickly and to gather swiftly whatever evidence was available lest it disappears or is destroyed. This is not an indictment against the integrity of counsel, generally or specifically. It is a question of balancing an accused person's rights against the public interest that crime be effectively investigated.

88 In any event, even if the accused person's right under Art 9 had been breached as a result of not having access to counsel for 19 days, it could not be said that that had a material bearing on the 26 June 2005 statement, which was taken some nine days after his arrest, a period less than that in *Jasbir Singh*. I also did not accept the accused's evidence that he wanted to speak to counsel before proceeding with his statement in the manner alleged by him because I did not believe his allegations about the investigating officer's inducement or promise. He was co-operative with the investigating officer from the very start of investigations and there was no need to persuade him to be forthcoming in his statements.

89 There was clearly no breach of s 121(2) of the CPC because the investigating officer was not obliged to inform the accused that he might decline to answer any question that might incriminate him (see the Court of Appeal's decision in *Lim Thian Lai v PP* [2006] 1 SLR 319 at [17] and [18], where, coincidentally, the same investigating officer was involved). Further, the investigating officer did not even tell the accused that he was obliged to tell the truth. Section 121 of the CPC provides:

(1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to state truly the facts and circumstances with which he is acquainted concerning the case except only that he may decline to make with regard to any fact or circumstance a statement which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) A statement made by any person under this section shall be read over to him and shall, after correction if necessary, be signed by him.

90 Where s 121(3) was concerned, the investigating officer candidly admitted that he did not read the statement to the accused but left it to him to read through it himself. This was a technical breach of the provision but the legislative intent was fulfilled in that the maker of the statement should be given the opportunity and time to go through what was recorded and to correct it if necessary. The accused had no difficulty reading the statement himself. He was literate in English. The statement was a typewritten one and there was therefore no question of it being indecipherable in certain areas. Indeed, it is probably easier for the accused to read the statement himself at his own pace rather than to listen to the investigating officer reading it. There was no procedural impropriety that would render the statement inadmissible. Failure to comply literally with s 121 of the CPC would not render a statement inadmissible (see *Lim Thian Lai v PP* at [17] and [18]).

91 As stated earlier, I did not believe that the investigating officer made the alleged inducement or promise to the accused and that the accused then went along with whatever the investigating

officer wanted to record in the statement. The accused could not explain why changing his statement in the way described by him would make it more believable. He knew what the penalty for murder was but yet was willing to admit to cold-blooded murder to make his story more believable. He could not be so utterly naïve. If he had been promised that he could see his counsel after completing his statement, when he was not permitted to do so at the next mention in court on 1 July 2005, surely he would have asked the investigating officer about the alleged promise. After all, as acknowledged by him, the investigating officer was amiable and kind towards him.

92 The investigating officer's helpfulness and kindness could not have endeared him to the accused so much that the accused was willing to let him practically dictate a statement to him. The purchase of the herbal drinks, as recorded by the investigating officer in his field diary, was on 5 July 2005 anyway and therefore could not have influenced the accused to trust him on 26 June 2005. There was no allegation that the accused had been compelled by threat to make a statement against his wishes.

93 Defence counsel submitted that I should take the cumulative effect of all the three grounds canvassed by him in considering whether the 26 June 2005 statement had been made voluntarily. In the light of my findings, other than the technical breach of s 121(3) of the CPC, there was nothing else on which the objection to admissibility could stand. I was satisfied beyond reasonable doubt that the 26 June 2005 statement was made voluntarily and therefore admitted it in evidence.

The trial proper

94 While it is the duty of the Prosecution to prove the charge of murder beyond reasonable doubt, it is the duty of the Defence to prove, on a balance of probabilities, the facts necessary for it to rely on Exception 5 in s 300 of the Penal Code (see s 107 of the Evidence Act (Cap 97, 1997 Rev Ed). On the undisputed facts, the Prosecution has proved that the accused caused the death of the deceased by strangling her and that he did so with the intention of causing death, thereby bringing the case within s 300(a) of the Penal Code. The single issue in the trial proper upon which the defence hinges is therefore the question whether the deceased and the accused made a spontaneous suicide pact on 15 June 2005 in which the deceased would die first, followed by the accused, with the deceased thereby suffering death with her own consent.

95 In a Full Bench Reference in the Indian decision of *Queen-Empress v Nayamuddin* (1891) ILR 18 Cal 484, Pigot J, with whom two of the other four judges concurred, had this to say about Exception 5:

It is not easy to construe the 5th exception: the wholly anomalous rule which it lays down is expressed but in few words, unaided by definitions: but I think it is not going too far to say that it should receive a strict and not a liberal construction; I mean that it should only be applied to cases which quite clearly fall within it.

I think the exception should be considered in applying it, first, with reference to the act consented to or authorised, and next with reference to the person or persons authorised. And I think that as to each of these, some degree of particularity at least should appear upon the facts proved, before the exception can be said to apply. I cannot read it as referring to anything short of suffering the infliction of death, or running the risk of having death inflicted, under some definite circumstances not merely of time, but of mode of inflicting it, specifically consented to, as for instance in the case of *suttee*, or of duelling, which were, no doubt, chiefly in the minds of the framers of the Code.

... I do not doubt, that the consent may be inferred from circumstances and does not absolutely need to be established by actual proof of express consent.

The consent envisaged must also be unequivocal and unconditional. It must not involve the choice of alternatives to which the person taking the life has driven another, such as the latter saying, "if you make me do this, then you might as well kill me" (*In re: Ambalathil Assainar, Accused, Appellant* 1956 Cri LJ 244). I agree that Exception 5 ought to be read strictly since consent to one's death is not a matter that should be taken lightly. There should be the clearest indication that such consent has been given, especially where implied consent is alleged. In the present case, the alleged consent is said to be express and totally unsolicited. The Defence must also prove that the alleged suicide pact existed before and right up to the time of the killing.

96 According to the accused, the turning point in the otherwise optimistic and happy disposition of the deceased was when he rejected her suggestion that they elope to go and live in China. I find it extremely hard to believe that the deceased would suddenly think of eloping with the accused to her homeland with the hope of supporting him financially there. She had never before discussed the prospect of living with him as spouses as she was fully aware that he was married. She came here to seek a living and to earn enough to support her family back home. After living here frugally and making the regular remittances to China, she had only a few thousand dollars in her POSB account. It is highly unlikely that she would be able to support a 50-year-old husband, who probably has quite a few more years to live. There was also no discussion as to how she was going to support the accused financially in the years ahead, bearing in mind that she did not possess any high-paying skills. Her career in Agere was progressing fabulously and she was a model worker, always punctual and maintaining a perfect attendance record. There was absolutely no reason for the deceased to capriciously abandon her rewarding job, particularly when she had not even accumulated anything remotely resembling a small fortune.

97 Her elder sister was in Singapore and they were communicating regularly with each other, even up to the day before her life was wrung out of her. There was not an iota of a hint that something was brewing in her mind. She had recently attended her sister's marriage registration and was looking forward to being her bridesmaid in a few months' time at the traditional wedding ceremony. She had moved to another rental flat in order to live near her sister who was about to settle down here. All these facts point clearly to a person happy and keen to remain in Singapore for the foreseeable future. I do accept, however, that it was possible that the deceased had gone to the matchmaking agency to please her sister and perhaps to quell any suspicions that she was having a relationship with the accused. Nevertheless, it was not disputed that the deceased had the desire to settle down here with a life partner.

98 The days leading up to her terrible and tragic death on 15 June 2005 also show unequivocally that the deceased was in extremely high spirits. On 12 June 2005, she enjoyed herself thoroughly with her sister and her sister's husband at Agere's Family Day festivities. The next day, she had a four-hour sexual liaison with the accused in a hotel room. She had been attending English language classes and was apparently becoming proficient in the language. One day before she lost her life, she had gone to enquire about the tourism-related course and seemed keen to take it up. She could have experienced some frustration upon discovering the loss of her ATM card and the theft from her account but she was resourceful and was not forlorn in the least. She immediately made a police report in the evening, without even consulting the accused. She made plans to go to the POSB herself the following morning to report the loss and, hopefully, to identify the culprit from the CCTV recordings. When she was invited to and arrived at the Geylang flat in the morning of 15 June 2005, she was her usual bright and cheery self and obviously pleased to be with the accused and with his offer to accompany her to the bank. There was also no evidence whatsoever that the minor

disciplinary action taken against her and the accused in 2004 affected her in any significant way.

99 This is certainly not a portrait of a person given to mood swings and suicidal thoughts. I disbelieve entirely the accused's story about the deceased's sudden sullenness and her incomprehensible desire to end her life there and then. The deceased was a lively, young woman in the vernal stage of her life and everything around her appeared verdant and rosy. It was just not possible that she would metamorphose so morbidly in a matter of seconds from a state of constant animation to one possessed by a desire for instant decimation.

100 Even if the deceased had made the suggestion to end their lives, why was the accused, who was afraid to die, so compliant? He was reluctant to elope and leave his family as he loved them and wanted to provide for them. Yet, at a suggestion which he had at first thought could be a joke, within a short space of time, he was willing to leave his family forever. That seems to me highly incongruous behaviour for a mature family man. He could not have been so utterly confused by the deceased's words. He did not appear to see it fit that he should try to mollify the deceased who, he claimed, was upset by his rejection of her proposal. He made the supposed suicide pact sound like it was a casual decision by two adults on whether to go for a movie or not. Even if he had casually asked the deceased whether she was willing to die for him, her reaction, according to the 26 June 2005 statement, was one of silence. That would fall far short of the requirements to bring this case within Exception 5, applying the principles stated in the Indian authorities cited earlier.

101 It is incredible that the accused would proceed immediately to execute the alleged suicide pact on the deceased without even planning for his own death. He said in court that he would either hang himself or jump off a building. It is interesting to note that in his statement of 21 June 2005, he said that the look of the deceased's face made him decide "not to strangle myself". Strangling himself, of course, would be a virtual impossibility as he would lose consciousness at some stage and not be able to kill himself even if he wanted to. He did not even look at the deceased's face as he was strangling her. It was not as if he did not dare to. He just did not look, he said. In my view, he did not look at her face because, in all likelihood, he was strangling her from behind and she therefore did not have "the chance to react", as recorded in the 26 June 2005 statement that was challenged by him (see [73] above). This would also explain why there were no defensive injuries on the deceased. The absence of such injuries was not because she sat passively facing the accused while he squeezed the life out of her using the towel without so much as glancing at her, a highly improbable scenario. I find, however, that the minor injuries found on the accused were not sufficient to indicate that a struggle had taken place during the strangulation. They could have been caused by the water pipe repair work he was attempting to do in the kitchen or during the process of dismembering the deceased. There was a total absence of remorse. The accused did not even bother to check her pulse after he released his grip on the towel of death. He did not need to as he had held on with all his strength until he was exhausted more than ten minutes later and was sure that she was dead. I do not believe his claim in court that he cried out to the deceased, begging her not to die. His actions after her death were swift and sure and did not present a picture of a man who was agonising over a lover whom he had just helped to commit suicide.

102 Why did the accused kill his lover? The simple but sad truth is that he was afraid he would be identified by the deceased from the bank's CCTV recordings as the thief. He did not know what exactly would be shown in the tapes but common sense would have told him that there was every possibility that the deceased would recognise him even with his baseball cap pulled low over his face. A police report had already been lodged and there was every likelihood that he would be prosecuted. That would not only be the end of his relationship with the deceased, it would also herald his downfall. Upon his conviction, he would lose his job and the respect of his family and friends. When he could not muster the courage to tell her that he was the thief, he decided to silence her forever and

save himself. He had to kill her that morning because she would otherwise have proceeded to the bank.

103 I accept defence counsel's submissions that the court should still assess the weight to be given to a statement admitted after a challenge as to its admissibility. While I do not necessarily accept everything that the accused said in the 26 June 2005 statement, his assertion about his intention to kill was consonant with what he told Dr Stephen Phang and with the other relevant facts of this case. I do not accept of course that he was told by the investigating officer to tell the psychiatrist a story that would be consistent with the 26 June 2005 statement. Dr Stephen Phang's report was not affected by whatever inadequacies there may be in the summary of facts given by the investigating officer. His duties were to record what the accused wanted to say and to make a clinical assessment, not to find out the truth. In any event, I am not relying on only the 26 June 2005 statement and the accused's words to Dr Stephen Phang to arrive at my findings.

104 The accused's earlier statements may be consistent about the alleged suicide pact but I find them, in so far as the purported mutual suicide pact is concerned and in the light of my earlier findings, to be nothing more than consistent lies when teste]d against the other facts surrounding this case. I have no doubt in my mind that the accused had the intention to kill the deceased on 15 June 2005 and that the deceased never intended to leave Singapore and most certainly never intended to leave this world.

105 The Prosecution submitted that the accused lied in four instances and that these persistent lies on his relationship with the deceased and the motive for killing her were corroborative of his guilt according to the guiding principles spelt out in *Regina v Lucas* [1981] QB 720, which was followed by our Court of Appeal in *PP v Yeo Choon Poh* [1994] 2 SLR 867 and other cases. The first lie was to the management of Agere about the kissing incident. The second was to Chen on the night of 15 June 2005 when he claimed that he did not know why the deceased had not reported for work. The third occasion was when he lied to the police officers on 16 June 2005 about his relationship with the deceased. The final lie was when he claimed in his statement that the withdrawal of money from the deceased's account was only a prank. In my view, the first lie, which took place way back in 2004, could have no bearing on his guilt in this case. The second and third lies are corroborative evidence only as to the fact that he killed the deceased. They do not necessarily destroy his allegation that he killed her because of the purported suicide pact. The fourth lie is corroborative evidence as to his true motive in the killing, *ie*, that he had committed theft and wanted to make sure that the deceased would not have the opportunity to identify him. However, it is of little significance in my findings.

106 In the classic tragic tale of ill-fated love, the luckless lovers committed suicide. Here, Romeo killed Juliet. The accused stole the deceased's heart, then pilfered her card and hard-earned savings and finally robbed her of her life. He butchered her after her death and took her apart. The deceased's demise in the Geylang flat on 15 June 2005 was no spontaneous suicide. It was a horrific homicide. It was a most disgusting and despicable murder. Liu Hong Mei died a very cruel, heartbreaking death.

This truly is a sad riddle
How could one savagely strangle
And so unfeeling mangle
The woman one had just cuddled?

107 Clearly, the accused has failed to make out a case within Exception 5. I find the accused guilty as charged and convict him of murder. Under s 302 of the Penal Code, whoever commits murder shall be punished with death. The mandatory death sentence will now be passed on him.

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