Public Prosector v Chan Choon Wai
[2000] SGHC 41

Case Number	: CC 4/2000
Decision Date	: 15 March 2000
Tribunal/Court	: High Court
Coram	: Amarjeet Singh JC
Counsel Name(s)	: Amarjit Singh assisted by Karen Loh and Adriel Loh (Attorney-General's Chambers) for the prosecution; Tan Teow Yeow assisted by James Chai (AC) (Both Assigned) for the accused
Parties	: Public Prosector — Chan Choon Wai

JUDGMENT:

GROUNDS OF JUDGMENT

Charge

1. At about 11.50pm on 25th March 1999, Koh Mew Chin ('the Deceased') an unemployed Malaysian, was found and pronounced dead in a rented room at apartment Blk 145 Pasir Ris Street 11 #05-75 ('the said apartment').

2. On 26th March 1999 at about 4.25am, the Accused, also an unemployed Malaysian, was arrested and subsequently charged for murdering the deceased between 4.00pm and 11.00pm on 25th March 1999 in the said apartment. At the conclusion of the Prosecution case the time of the offence was amended to 'between 3.00pm and 11.00pm' on the application of the Prosecution and without objection by the Defence.

Prosecution Case

Discovery of Deceased Body

3. The relevant evidence adduced by the Prosecution in support of the charge was that the Accused who had befriended the Deceased sometime in September/October 1998, invited the Deceased to come and reside with him in a room at the said apartment which he was already sharing with another Malaysian worker, Lim Sew Foung, PW11, ('Seow Feng'). Seow Feng had rented the said room from its owner one Tan Puay Chin ('Ah Chin') at a monthly rental of $150/-. Later a fourth Malaysian Goh Lee Lee, PW17, ('Lily') also moved into the said room. Ah Chin also rented other rooms in his flat to a few other Malaysian workers namely, Quah Chin Aun ('Ah Aun'), Lai Chee Choong ('Ah Choong') and Tan Yeap Shion ('Ah Seng').

4. The Prosecution adduced evidence from Ah Aun that when he returned to the flat on the 25th of March 1999 at about **11pm**, he noticed droplets of blood on the floor outside the Accused's bedroom and extending to the kitchen sink. Ah Aun informed Ah Chin the owner of the flat about the droplets of blood. Ah Chin then entered the Accused's room and discovered the Deceased lying on a mattress. The Accused lay next to her. The Deceased was "motionless".. He saw blood on the Accused's body and upon query by Ah Chin as to what had happened, the Accused informed him that nothing had happened. He immediately called for an ambulance. He further requested the Accused to wake the

Deceased up. The Accused used his hands to wake the Deceased but there was no response from her. An ambulance followed by the police arrived soon afterwards.

Medical Evidence

Ambulance Officer

5. The ambulance officer Norbayah Bte Md Yasin on arrival pronounced the Deceased as dead. She noted lacerations on each wrist of the Accused. The bleeding from the lacerations had dried up. She found the Accused fully conscious in accordance with the Glasgow-Coma Scale which she noted in *Exh. P94*.

Medical Officer, Changi Hospital

6. The Accused was taken to the Changi General Hospital. Dr Gan Yu Unn, Medical Officer, Accident and Emergency Department, Changi General Hospital, clinically examined the Accused at 12.35am, confirmed the evidence of the ambulance officer that the Accused was fully conscious. Dr Gan testified that the Accused had told him that the wrist injuries he had were self-inflicted as he was feeling sad. However, the Accused did not appear sad to him. He found the Accused somewhat reluctant to speak to him. Dr Gan's evidence was that the laceration to each wrist measured approximately 5cm in length. Both lacerations were superficial and involved only skin and subcutaneous tissues but not the deep arteries, veins or nerves. Both hands had full range of movement, full sensory function and no evidence of tendon damage. Dr Gan's further testimony was that the bleeding of the lacerations would have stopped within an hour. It would have stopped within half an hour if pressure had been applied on the wound soon thereafter. The lacerations he said were consistent with having been caused by a knife such as Exh. P146 which the Prosecution had recovered from a drawer in the cupboard of the Accused's room where the Deceased and Accused were found.

Pathologist

7. It was the evidence of Prof Chao Tzee Cheng, PW21 ('Prof Chao'), Senior Pathologist from the Department of Science and Forensic Medicine, Ministry of Health that he tentatively examined the Deceased's body in the area where she was found at about 3.30am on 26th March 1999. Rigor Mortis was setting in. He estimated death to have occurred between 8 to 10 hours before his arrival i.e. effectively between 3 to 11pm on 25th March 1999 giving allowance for an error of 2 to 4 hours. He later carried out a post mortem on the Deceased and certified the cause of death in his Autopsy Report Exh. P87, to be:

'Asphyxia from Strangulation'.

Prof Chao found the following external injuries:

Neck

1. A thin linear abrasion 8 cm long in the centre of the neck at thyroid region.

2. Roundish bruise 1.5cm at right side of chin.

3. Small bruises at right jaw.

4. Oval shaped bruise 3 cm with a 1cm abrasion in the centre on the left side of neck below jaw.

5. Below that a crescentic abrasion 1 cm.

6. Abrasion 1.5cm on left side of neck.

7. Below that a crescentic abrasion 1 cm.

Elbows

8. Bruise above left elbow 3 x 2cm

9. Bruises around right elbow 2 x 2 cm and 5 x 2 cm.

Prof Chao also found petichae haemorrhages on the skin of the Deceased's face around the eyes as well as haemorrhages in the conjunctiva of the Deceased's eyes. These he said were signs of strangulation. In addition, there were strangulation marks on the Deceased's neck with a ligature and by fingertip marks.

According to Prof Chao, injury 1 above was caused by pressure from a string-like object pressed against the Deceased's neck from the front. A dissection of the neck in a bloodless field revealed the ligature injury to have caused haemorrhage over the muscles in the centre of the neck.

As for injuries 2, 3, 4 and 6, Prof Chao testified that these injuries were made by fingertips of the assailant. It was Prof Chao's evidence that the assailant had also applied considerable amount of force manually by his hands as internal underlying examination revealed injuries 2, 3, 4 and 6 had caused deep haemorrhages on the underlying tissue of the neck as well as on the larynx and the food passage (oesophagus) at the back of the neck.

Prof Chao was of the opinion that the ligature mark and the marks caused by the finger tips under the neck structure either independently or collectively were sufficient in the ordinary course of nature to cause death and that these injuries had not been accidentally caused. Neither were they self-inflicted. The Deceased's death would have taken between 2 to 4 minutes with the oxygen cut off from the brain resulting in brain death.

As for injuries 5 and 7 above, i.e. the crescentic abrasions of 1cm, Prof Chao stated that they were caused by the Deceased's finger nails which left scratch marks on her face. They resulted because she was attempting to pull off the assailant's hands to lift the stranglehold on her.

Prof Chao also found haemorrhages on the outside of both elbows of the Deceased and he was of the opinion that the injuries were consistent with pressure having been applied on the outside of the elbows by the assailant gripping the Deceased's elbows and body by his having straddled across the Deceased's body in such a way that the Deceased's elbows were gripped by the assailant's knees at some point during the strangulation.

Prof Chao went on to testify that there was an absence of blood on the Deceased's neck and this made it unlikely that the assailant had cut his wrists before strangling her. He further said that as considerable force had been applied on her larynx and food passage, it was unlikely that the Deceased could have shouted out or screamed. As for part of the Deceased's clothes, thighs and legs being covered with blood, his opinion was that she was not moving when the blood fell on her body. There were no open wounds on the Deceased's body and the blood was not hers. The blood he suggested could have come from the assailant's bleeding hands when he moved her body or lay next to her later.

Scientific Officer

8. DNA profiles of all the blood stains and other exhibits in the room matched that of the Accused including the knife *Exh. P146* according to Scientific Officer Mrs Tan Wai Fun of the Department of Scientific Services. Semen stains were also detected on the bedsheet and on the Deceased's shorts which she wore. DNA profiles of the semen stains on the said bedsheet and on the Deceased's shorts matched the DNA profile of the Accused.

Other Prosecution Witnesses

Wendy, Lily, Seow Feng and Sam

9. Prosecution witnesses, the Accused's roommates Lily and Seow Feng and one Lim Geok Mui ('Wendy') testified that the Accused had become suspicious about the activities of the Deceased and he had been following the Deceased for some days i.e. from about 18th March 1999 to 24th March 1999 in places such as Tampines Central, Marina Square, East Coast Food Centre and City Plaza and calling her on the mobile phone she carried.

Wendy

9.1 It was Wendy's evidence that she had seen the Accused and talked to him at several of these places when she saw him following the Deceased. The Accused had denied following the Deceased. Wendy went on to testify that she had introduced the Deceased in early March to one Hooi Sau Ching ('Sam')'and they became friends. Soon afterwards the Deceased, she and Sam met regularly three to four times a week. On 20th March 1999 Wendy accompanied the Deceased to Johore Bahru in a car driven by Sam to obtain a new Social Visit Pass by exiting Singapore. There the Deceased informed her that she and Sam were going to Genting Highlands she invited Wendy to come along with them as well. She did so. All 3 slept in Sam's car that night after arriving in Genting Highlands as there was no accommodation available there. They returned home the next day on 21st March 1999 at about 7pm. Her evidence was that the Deceased thereafter began looking for a job, attending one or two interviews but was unsuccessful. They began going out daily.

Wendy testified that some time after 7 pm on 24 March 1999 the Deceased received a phone call on Sam's handphone [97948719] when the trio were together. The caller was the Accused. Sam handed the mobile phone to the Deceased to speak. Wendy who was in the car heard the Deceased telling

the Accused, in Mandarin:-

"I have made it clear to you, it is impossible between us. I told you clearly."

"A woman like me is not suitable for you".

"You better not accept a woman like me, I hope that you will find a better one."

"You better not look for Ah Sam."

After the call ended, the telephone rang again and this time, the Accused spoke to Sam and asked him to meet him. Wendy testified that her impression during these several days was that the Accused appeared upset at the relationship of the Deceased with Sam.

Wendy further stated that on the 25th March 1999 she had lunch with the Deceased and Sam at about noon. Thereafter both she and the Deceased took a bus to Jurong where the Deceased went for a job interview whilst Sam went back to work. The Deceased was carrying Sam's handphone. She received a call from the Accused on Sam's handphone. After the Deceased spoke to the Accused, Wendy said that the Deceased had told her that the Accused had threatened her that if she did not return, he would commit suicide and she was to watch the news that night on television. The Deceased thereafter returned to the flat by taxi sometime between 2.00pm and 3.00pm.

Wendy went on to say that as soon as she returned home, she called the Deceased at the flat. The Deceased answered the call and told her to meet her at the flat. They intended to go out. Wendy then arrived at the void deck of the flat where the Deceased lived and called the Deceased from there. However, the Accused answered the phone this time. He informed her that the Deceased had left for dinner with her elder sister. The Accused soon afterwards again spoke to Wendy after paging her. This time he told her that the Deceased had left a message for Wendy that she should wait for the Deceased at the bus stop at Bedok South. Subsequently, the Accused spoke to Wendy a third time, after paging her and told her that the Deceased had gone to Johore Bahru to attend a wedding dinner and would call her the following day. He then asked her to meet him at the void deck of the flat as the Deceased had given him $50/- which the Deceased had requested him to give to her to pay for her taxi fare back to Bedok South. He accordingly met her at the void deck where she had been waiting and gave her $50/-. Wendy thereafter left.

Lily

10. Lily testified that on 22nd March 1999, the Deceased revealed to her that Sam had treated her very well and had also given her $250/-. She realised that there were differences between the Deceased and the Accused. The Deceased had further revealed to her that she had an argument with the Accused as he had kept questioning her about Sam. Although the Deceased had told her not to tell the Accused about the money given to her by Sam, Lily had however revealed to the Accused at his insistence to confide in him that a sum of $250/- was given by Sam to the Deceased. The Accused had checked the Deceased's wallet in the room and seen that the sum of money was inside. The Accused had remarked to her that the Deceased had lied to him that she had returned the money to Sam. The Accused then told her that he had intended to go out with the Deceased and suggest to her to end their relationship. Lily also testified that on 22nd March 1999 at 11 pm when the Deceased had still not returned to the room, the Accused had told her that Sam and she were only casual friends. The Accused had admitted following the Deceased as he wanted to see what Sam looked like.

He also spoke to her about the Deceased having changed her feelings towards him. Lily said she advised the Accused to take things easy.

As to the events on the afternoon of 25th of March 1999 i.e. the day of the incident, the Prosecution adduced evidence that the Accused had used the telephone in the flat and had continuously paged for the Deceased prior to the Accused'' return to the flat. Lily testified that the Accused had also called her several times earlier that afternoon telling her that the Deceased had not returned to the flat and had requested her help to page for the Deceased.

Sam

11. Sam testifying, confirmed the events as narrated earlier by Lily and Wendy concerning his friendly relationship with the Deceased and the trip to Genting Highlands and his giving the Deceased $250/-.

Psychiatric Evidence

12. Dr Stephen Phang, Psychiatric Consultant attached to the Institute of Mental Health who examined the Accused on six occasions from 27th March to 12th April 1999 put up a Psychiatric Report dated 13th April 1999 Exh. P91. He also put up a supplementary report dated 4th January 2000 after he had been requested to review the Accused at the Queenstown Remand Prison after he had voluntarily given a further statement to the police as evidenced by Exh. P147.

In Exh. P91, Dr Stephen Phang stated that the Accused had told him that he had strangled the Deceased to death. He denied strangling her as a result of anger or of a third party in their relationship. He had also denied any intention on his part to kill her.

Briefly, Dr Phang stated that the Accused had informed him that it was the Deceased who requested him to end her life by strangling her. He denied any intention on his part to kill her. The Accused had stated to him that the Deceased had even casually mentioned committing suicide on several occasions in that week to him. He claimed that she refused to divulge her problems to him even though he had queried her. He had denied that they had any dispute or conflict prior to the killing taking place. He emphatically denied strangling her in anger in the context of a quarrel, either as a result of a third party in their relationship or any other reason. She had requested that they commit suicide together after they had sexual intercourse. He succumbed to her request, obtained a fruit knife in the kitchen and cut both his wrists whereupon she asked him to strangle her as dying by the knife was too painful and he did so. Dr Phang noted in his report that "at no time did he feel depressed or suicidal himself. He stated that he had felt 'a little troubled and uneasy' in the course of the week preceding the killing, but explained that this was due to his awareness of the fact that his girlfriend was upset and not confiding in him. Even so, he denied feeling depressed in his mood, and was able to go about his daily activities without any apparent difficulty."

It was Dr Phang's opinion that the Accused did not suffer from any form of mental illness. He was neither depressed nor psychotic at or around the material time of the killing, or in the week preceding, when he claimed he first noticed that the deceased appeared miserable. The Accused also stated that he attempted to kill himself, but was 'rescued' by the intervention of the flat owner. He said that he cut his wrist as felt that he had 'lived long enough'. However, he denied feeling depressed at the

time and described even tidying the area around the bed so that they could "die in a neat surrounding".

Dr Phang was also of the opinion that the Accused was fully aware of the nature of his actions at and around the material time of the killing from the detailed and consistent account of the events he gave. The Accused, Dr Phang stated, retained the ability to differentiate between right and wrong, and is therefore not considered to have been of unsound mind at the material time.

In Court Dr Phang added that the Accused did not come within any criteria under DSM IV (DSM III previously) or any ICD and was not suffering from diminished responsibility under S 300 Exception 7 of the Penal Code.

In his further report dated 4th January 2000, in an interview, the Accused admitted to him that he changed his original statements and that he had no wish to die. He had admitted to him (Dr Phang) that he was angry with the Deceased for insulting him by communicating her desire to leave him for another man after they had sex which was the reverse of what he had promised prior to their lovemaking. The Accused stated that his reason for squeezing the neck of the Deceased was to prevent her from verbalizing that she wanted to leave him. He admitted that his action was therefore motivated by (and reactive to) what he perceived as a betrayal by the Deceased as well as a desire to prevent her from being together with any other man. The Accused admitted to him that he was still unaware of the nature of his actions at and around the material time.

Dr Phang again concluded that the Accused had not suffered from any mental illness at the time of the killing of the Deceased.

The Police Statements of the Accused

13. The Prosecution adduced evidence of seven statements made by the Accused after his arrest. These were admitted in evidence as Counsel for the Accused informed the Court that the Defence was not objecting to their admission as he was not raising any issue as to the lack of their voluntariness. Nevertheless, on my direction, the Prosecution adduced *prima facie* evidence that all the statements were voluntarily made. The evidence was unchallenged. The Accused was also invited to testify after *prima facie* evidence had been adduced showing that the statements were voluntarily made. The Accused declined to do so. I was in the end satisfied that all the statements were voluntarily made by the Accused. I admitted them in evidence as such. The statements admitted and marked as *Exhibits P99, P101, P102, P103, P104, P105* and *P147* were made as follows:

(i) *Exh. P99* (*Exh. P99A*, a typed copy) - on 26th March 1999 at 3.30am recorded by Benjamin Oh at Changi Hospital.

(ii) *Exh. P101* - on 26th March 1999 at 11.27am at CID.

(iii) *Exh. P102* (S 122(6) of CPC) on 20th April 1999 at 11.16am at CID.

(iv) *Exh. P103* on 21st April 1999 at 3.01pm at CID.

(v) *Exh. P104* (*Exh. P104A* a typed copy) on 28th April 1999 at 3.43pm at CID

(vi) *Exh. P105* on 28th April 1999 at 4.32pm at CID.

(vii) *Exh. P147* on 30th December 1999 at 3.05pm at Queenstown Remand Prison.

Exhibits P101 to P105

and *P147* were recorded by the Investigating Officer.

The relevant contents extracted from the statements are as follows:-

Exh. P99A:

"……..On 25/3/99 (Thu) @ 3 plus in the afternoon, 'Ah May' came back. We talked. ……

…….

Suddenly, in the midst of our conversation, 'Ah May' started to cry. I asked her what had happened but she refused to tell me. A short while later, her mood changed for the better.

'Ah May' told me that she wanted to make love. We then proceed to make love.

After making love, 'Ah May' started to cry. She told me that she has done me wrong.

I asked 'Ah May' what happened. She refused to tell me and suggested that both of us kill ourselves. I again asked her what happened and she still refused to tell me.

As I was very confused and I waited for her the whole night. 'Ah May' suggested that I cut my wrists first, then I strangle her neck using my hands.

I then leave the bedroom and went to the kitchen to take a knife (approximate 6 to 7 inches long) from the sink and cut my wrists.

After that, I went to the bedroom and used my hands to strangle 'Ah May' neck until she fainted."

Exh. P101:

"I have nothing to say."

Exh. P102:

> "8. On the morning of 25 March 99, when "Ah May" had failed to return home to sleep, I paged for her. ……Over the telephone, she told me that she would be home later in the afternoon at about 2 to 3 p.m. ……

10. On her return home at about 3:00 p.m. …..

> ……

17. We engaged in chatting. However, "Ah May" started crying shortly afterwards. I asked her why she was crying and she refused to say. Later, she asked me to make lover to her. I complied and we made love.

18. Ten to fifteen minutes later, "Ah may" told me that she wanted to commit suicide. I asked her why she wanted to commit suicide and again she refused to say anything. She asked me to die with her, saying that if I did not do so, she would still commit suicide when she moved out. She said that when that happened, I would suffer from guilty conscience all my life.

19. After what she had said, I somehow went to the kitchen to get a knife. She told me that even though we were going to die, we should not dirty other people's place. I then proceeded to cut both my wrists once with the knife. At the sight of me cutting my wrists, "Ah May" indicated that she was afraid of the pain. She then asked me to strangle her.

20. After that time, "Ah May" was lying on a mattress. I was sitting beside her. I proceeded to put my hands around her neck and squeezed it. Shortly after that, when she appeared to have fallen asleep, I stopped in my tracks. I took the knife again and cut my own wrists two times more on each side. …… ……."

Exh. P103:

"Q10 - Do you know anyone by the name of "Sam"?

A10 - No. However I have spoken to a person by the name of "Sam" over the telephone. ….

Q19 - On the same day i.e. 25 March 99, did you inform "Ah May" over "Sam's" handphone that you would commit suicide if she did not return to the house i.e. Block 145 Pasir Ris Street 11 #05-75, immediately?

A19 - No "

Exh. P104:

"I sat cross-legged on the mattress close to her head. I put my hands on her neck with my fingers spread at the side and my thumbs pointing inward. At that time she had closed her eyes to let me strangle her. Some 5-6 minutes later she seemed to have fallen asleep. I let go of my hands and cut both my wrists with a knife. In all, I cut myself a total of 3 times on each wrist."

Exh. P147:

"33. At about 3:00 p.m., she arrived home in Pasir Ris. …

34. In the bedroom, I told 'Ah May' not to leave me. I kept pleading with her for a while.

Subsequently, she agreed. We then made love.

35. 10 to 15 minutes after we have made love, 'Ah May' again mentioned that she was going to leave me. She told me that she was more found of the other person. I gathered that the person referred to was 'Ah Sam' because I have heard from 'Lily' that 'Ah May' had got to know a guy named 'Ah Sam'. I was sad on hearing what 'Ah May' had said. I became furious and it pained me to hear that she was leaving me because she was more found of another guy. At that time the thought crossed my mind that I wanted to die with her because I could not bear to have her leave me. I love her very much.

36. During that time, 'ah May' kept saying that she had fallen in love with another guy. I was fearful that she would leave me for the other guy. I was in agony. While she kept saying that, I told her not to say anymore as I was not going to listen to her further. I put my hands around her neck and squeezed it. As I was squeezing her neck, I kept telling her not to leave me or we would die together. When I was squeezing her neck, she clenched her fists and tried to struggle. I kept squeezing her neck until she became still.

37. When I saw her lying still on the bed, I went to the kitchen to get a knife. Thereafter, I went back to the bedroom and cut my wrist. I cut both my wrists three times each. The knife I used was actually a fruit knife that was not sharp. Therefore, I cut both my wrists three times each on the same site.

> 38. After this, I took a face towel and wiped away the blood on the floor. Thereafter, I put the bloodstained towel into a drawer together with the knife. I lay beside 'Ah May' and waited for death to come upon me. ……"

Prima Facie Case

14. It was evident from the Accused's voluntary statements to the police especially ***Exh. P147*** and inferences therefrom and the medical evidence which I have narrated that the Accused killed the Deceased by strangling her. The Pathologist's evidence showed as has been narrated earlier that the assailant i.e. the Accused had both strangled the Deceased with his hands by applying considerable amount of manual force and also by a ligature causing her to die from asphyxiation as is evident from the underlying internal injuries found on the neck. The Pathologist had also categorically stated that the injuries to the Deceased's neck were not accidental or self-inflicted and that the injuries were sufficient in the ordinary course of nature to cause death.

Each element of the murder charge had been *prima facie* proved by the primary evidence, the bodily injuries present on the neck, that the same were not accidental or self-inflicted but intentionally inflicted. The Accused's intention in inflicting the fatal injuries were clear in view of the Pathologist's evidence that a considerable amount of manual force was used in pressing the neck of the Deceased as evidenced by the Deceased's haemorrhages in the underlying tissue of the neck, larynx and food passage and also by a string-like object i.e. a ligature pressed against the Deceased's neck from the front resulting in the Deceased's death from asphyxiation. As the Accused's intention was *prima facie* proved, the sufficiency of the injuries was for the Court a purely objective inference to draw. I was *prima facie* satisfied on all the evidence that the injuries caused by the manual strangulation and those caused by ligature independently or collectively, were sufficient in the ordinary course of nature to cause death and had caused the death of the Accused.

Psychiatric evidence further showed that the Deceased was not of unsound mind at the time of the offence. It was for the Accused to establish any of the exceptions to s 300 of the Penal Code which provide formal mitigation and reduce the offence of murder to simple culpable homicide.

I therefore called upon the Accused to enter upon his Defence.

The Accused elected to give evidence on oath.

Defence

15. The Accused testified that he had come to know the Deceased some 9 months earlier. They became intimate lovers soon afterwards. Some time in early March, he invited her to stay with him in a room which he was occupying with the two other Malaysian females Seow Feng and Lily.

16. On the 22nd of March he learnt from Lily that the Deceased had gone to Genting Highlands with another youth. He was angry when he heard the news from Lily. He had earlier suspected her of having a new boyfriend and had been following her. He said the Deceased had started coming home late at night and on the night of the 24th March she had altogether failed to return to his room despite his having paged for her and sought the assistance of Lily to do the same.

16.1 On the afternoon of the 25th of March 1999 he paged for her repeatedly and finally spoke to her on the telephone a few times, eventually informing her to come back to the flat and told her that if she refused to come back, she could read from the newspapers and find out from the news on the television about his having committed suicide. However when asked by his Counsel , *"Did you intend to do what you said?"* his answer was "No". His purpose he said was to use the 'suicide' as a 'pretext' to make her return to the flat. Thereafter the Deceased returned to the flat at 3pm. He was very happy. However, shortly later he learnt from Wendy that both of them would be going out again. As he wanted to talk to the Deceased, he asked her whether she was going out again but she did not answer his question. He did not want her go go out as he wanted to talk to her about their relationship which they started to do after she had a bath. He told her to think about the matter carefully. He told her that he loved her genuinely and that it did not matter if she had lied to him or had hidden things from him previously as long as she came back to him. The Deceased began to cry. He wiped the tears off her eyes and she apologised to him. She then nodded her head when he asked her if she would come back to him. They then had sexual intercourse. He believed he ejaculated outside her body.

16.3 However, after the intercourse when he was about to go out and take a bath, the Deceased said that she was fond of the other man whom he knew was Sam. She told him that he had a more successful career than he did. Upon hearing that he squeezed her neck with his hands to prevent her from speaking about the other man. He kept asking her why she had wanted to lie to him. After some time, she became motionless. He though she had fainted and he let her sleep covering her with a blanket and thereafter lying beside her.

16.4 He got up a little later and went to the hall as he was very troubled. He then entered the kitchen and saw a knife on the kitchen sink. He returned with it to the room. He thought he had to prove his love to the Deceased. So he cut his wrists pacing the room. He thought that if the Deceased knew what he did, she would come back to him. He again stated that he had intended to kill himself by cutting his wrists.

Asked further by his Counsel as to whether the contents of his police statements *Exhs. P99, P101-102* were true where he stated that the Deceased had asked him to cut his wrists and then to kill her, he stated that the statements in that version were untrue. He did not state the truth because he was afraid as he could not accept the facts. Asked to elaborate by Prosecuting Counsel later as to what he meant by "could not accept the facts" he stated that he could not accept the fact that he had caused the death of the Deceased with his hands. When asked specifically by his Counsel whether his further statement in *Exh. P104* was true that the Deceased had let him strangle her, he again stated that the statement was not true.

16.5 The Accused also went on to state that the statements he had made to the Psychiatrist and reported by the Psychiatrist in his report were not a true account of what he had stated and he had made them because he was following his earlier police statements. The Accused thereafter revealed that the statements he made in *Exh. P147* were the true and correct version of the events that had transpired leading to his strangling the Deceased and the cutting of his own wrists.

17. In *Cross-Examination* by the Prosecution, the Accused stated that after he had found that the Deceased had fainted from his strangulation it did not occur to him to wake her up or call for help; that he was unaware that she was dead after he had strangled her; that he had no intention to commit suicide when he cut his hands; that he had not applied pressure on his wrists to stop them from bleeding; that he had not felt as if he was losing consciousness; that he did not try to wake up the Deceased to show her that he had cut his wrists which should have indicated to her that he loved her. He did not do this because he was worried for her if she saw blood on his hands; that he agreed that there was no suicide pact between the Deceased and himself and that the Deceased did not consent to be strangled by him; that the Deceased had no knowledge that he was cutting his wrists as she had already fainted; that he had strangled her because he did not want to hear her affairs with the other man of whom he learnt she was found of and he had to stop her from saying further; that the Deceased did struggle when he was strangling her; that the injuries to the Deceased's outer elbow were caused when he squeezed at her elbows and her body when sitting or straddling over her; that he had previously told Lily that he would break off his relationship with the Deceased because of the other man; that he had not killed the Deceased in a fit of jealousy, but had done so because he could not bear the Deceased's lying to him on numerous occasions and also wanted her to stop mentioning things about the other man; he disagreed that there was nothing new the Deceased had told him which he did not already know just before he strangled her; he disagreed that he had cut his wrists to support his version of a suicide pact as narrated in his earlier police statements.

Evaluation and Findings

18. I considered the entire history of the events from the intimate relationship of the Deceased and the Accused over some 8 or 9 months to her attraction for another boy known as Sam which attraction had fatal consequences for her at the hands of the Accused.

19. After his arrest, the Accused had in his statements *Exhs. P99A, P102 and P104* stated to the police to the effect that the Deceased had told him on 25 March 1999 that they should both end their lives although she did not say why. He said she had asked the Accused to cut his wrists and then to strangle her neck. Accordingly, he then cut his wrists and strangled. The clear impression from his statements was that it was a suicide pact between lovers although he later survived. However, shortly before the Preliminary Inquiry some months later, the Accused volunteered a new statement *Exh. P147* retracting the earlier statements as to how the Deceased's death resulted. In the new

statement he said she had told him that she was *fond* of the other person and had fallen in love with him. This had made him angry and furious as he believed she would leave him. He thereupon told her to say no more and that he was not going to listen to her and had thereafter strangled her. In the new statement, he said he had neither consented to being strangled nor had asked him to cut his wrists.

20. Essentially the Accused's defence in Court was not very different from that put forward in *Exh. P147*. He stated in Court that during a discussion on 25 March 1999 to resolve their relationship the Deceased had agreed to remain his girlfriend. They then had sexual intercourse. However, shortly afterwards, the Deceased told him that:

(i) *she was fond of the other man (Sam) and did not want to hear anymore about it;*

(ii) *that the other man had better career prospects than him and*

(iii) *further that he was angry as she had lied previously to him which included her hiding many things from him.*

. The Accused's defence was that all this amounted to provocation and he reacted to the provocation by squeezing her by the neck with his hands to prevent her speaking about the other man. He had squeezed her neck until she became motionless.

21. I accepted as probable and true the version of events as narrated by the Accused in Court and in the new statement *Exh. P147. Exh. P147* had not been sought by the police but the Accused had taken the initiative and called for the Investigating Officer when in remand to make the statement to him shortly before the Preliminary Inquiry and when the investigations were long completed. It was admitted without objection as being voluntarily made and thus substantially ensured its truth.

22. I found that the Accused had realised that his earlier accounts in *Exhs. P99A, P102 and P104* did not fit in with the expert forensic evidence. Otherwise, there was no reason for the Accused to recant his earlier statements and to admit that there was no suicide pact and to go and admit that he had strangled her because she was in effect dumping him for Sam whose qualities she preferred, all of which he could not bear to hear. There was no reason for the Accused finally to make these admissions in *Exh. P147* and in his evidence in Court unless they were true. The Accused was entitled to ground his defence of provocation on these facts as he did. I shall now consider the law and the evidence in its totality in assessing his defence on his evidence in Court and the relevant facts narrated in *Exh. P147.*

23. Under S 300, Exception 1 of the Penal Code, for the defence of provocation to succeed so as to reduce an offence of murder to culpable homicide, an offender's power of self-control must be deprived by grave and sudden provocation.

24. I accepted the Accused's account that the Deceased made the utterances complained of by the Accused on the afternoon of the 25 March 1999 in view of the corroborating evidence of the deteriorated relationship between the Accused and the Deceased as expressed by Wendy, Lily and Seow Feng her roommates as set out earlier. The Deceased's utterances, however, constituted at the highest only a very a *mild* form of provocation and not a *grave* provocation as envisaged by the Penal Code. Again there was nothing *sudden* in the utterances made or intimations given to the Accused. The Accused had already known that the Deceased had started to go out with Sam as testified to by the Deceased's roommates The Deceased had specifically told the Accused about two days earlier over the phone as appears from the evidence of Wendy, which fact the Accused

admitted, that the Deceased had made it clear to him that their relationship was impossible, that she was not suitable for him and not to accept her and that he should find a better one and that he further had better not look for Sam. Further, Lily a mutual friend, had testified that previously the Accused had told her he contemplated suggesting to the Deceased that they end their relationship. This evidence had not been challenged by the Accused. The Accused had therefore plenty of time to reflect coolly over his relationship with the Deceased. Lily had also advised him earlier to take things easy.

25. The Accused had in my opinion therefore plainly overacted to the words of the Deceased declaring her intention to leave him for Sam on that fateful afternoon. In my opinion, he further failed to display the level of self-control expected of an ordinary person when the Deceased made the utterances complained of. There was nothing to suggest in the evidence that the Deceased had mocked the Accused or had insulted him or otherwise subjected him to indignity by her conduct in making known to him her fondness for Sam. The severity of degree of loss of self-control was simply not commensurate with the mild provocation. The law is that the defence of provocation is not available to those who over-react because they are exceptionally pugnacious, bad-tempered or over-sensitive. I find the Deceased was over-sensitive and had grossly over-reacted out of jealousy although he denied the same in intentionally injuring the Deceased fatally.

26. Finally, I would add that the Accused had also throughout his evidence testified that the Deceased had only fainted as a result of his strangling her and that she was only asleep. He admittedly did nothing to try to wake her up or seek help if that was so. His explanation was that he did not do so as she would have been frightened by the blood on his hands and on her body. This was a feeble explanation and I rejected it. I was satisfied that the Accused knew he had strangled the Deceased to death. The Accused not only applied considerable *manual* force but also went on to apply pressure on her neck by a *ligature* thereby independently or collectively causing serious injuries to the neck structure and causing her to die from asphyxiation. The Accused's denial that he had used a ligature to strangle her was a lie as it went against the established evidence which showed such a ligature was used as can clearly be discerned from the photographs taken during the post mortem (*Exhs. P57 –59, P61 and P62*) and the exposed underlying injury in *Exh. P73.* In his earlier version of events as stated in his recanted statements he had tried to give a false impression that there was a suicide pact between him and the Deceased to dupe the police in case he was apprehended. His new version *Exh. P147* as amplified in Court that he had cut his wrists as he wanted to die anyway after he found the Deceased motionless was totally unconvincing and I rejected it.

27. Further, I accepted the evidence of the psychiatrist that the Accused was fully aware of the nature of his actions all the time and was neither of unsound mind nor suffering from diminished responsibility at or about the time he committed the offence in as much as the defences were not raised.

Conclusion

28. In the circumstances, I found the Accused guilty on the amended charge of murder, convicted him and sentenced him according to law.

Dated this 15th day of March 2000

AMARJEET SINGH

JUDICIAL COMMISSIONER

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