Public Prosecutor v Wan Kamil bin Md Shafian and Others
[2001] SGHC 357

Case Number : CC 31/2001

Decision Date : 28 November 2001

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Lawrence Ang, Toh Yung Cheong and April Phang (Deputy Public Prosecutors) for the prosecution; Ahmad Khalis (Wong Khalis & Partners) and Shah Bhavini (Bhabini & Co) (AC) (both assigned) for the first accused; Luke Lee (Luke Lee & Co) and Johan Ismail (Johan Ismail & Partners) (AC) (both assigned) for the second accused; David Rasif (David Rasif & Partners) and Sadari Musari (Sadari Musari & Partners) (AC) (both assigned) for the third acccused

Parties : Public Prosecutor — Wan Kamil bin Md Shafian; Ibrahim bin Mohd; Rosli bin Ahmat

Judgment

GROUNDS OF DECISION

1 Wan Kamil Bin Md Shafian ('the first accused') born on 1 May 1967, Ibrahim Bin Mohd ('the second accused') born on 18 November 1965 and Rosli Bin Ahmat ('the third accused') born on 20 July 1970, all three from Singapore, were jointly charged and tried before me for an offence of murder. The charge against them was that on or about 8 August 2000 at about 11.45am, in furtherance of the common intention of all, they committed murder by causing the death of a 42-year-old taxi driver by name Koh Ngiap Yong, along Chestnut Avenue, Singapore, an offence punishable under s 302 read with s 34 of the Penal Code (Cap 224).

2 The prosecution evidence was that on 8 August 2000 at about 6.10am, the victim left home, first to take his daughter to school and later to drive his taxi-cab bearing registration No SHB 540C for hire. He did not return home that evening or the next day. Alarmed by his disappearance, his family members lodged a missing person report with the police. On the morning of 9 August 2000, the police were informed by a member of the public that a body of a person was found in the bushes along Chestnut Avenue. The body was reportedly first noticed by one of the three young school boys who were cycling along that road.

3 A police fast response car was despatched to the scene. The first batch of police officers at the scene were not able at first to locate the body of the victim. But a little later they came across three school boys and with their help the body of the victim was located in the bushes in a supine position with a number of stab wounds to his chest and at the left neck. A handcuff key with a metal ring was also recovered by the police officers at the scene. Ambulance officer, Sylvia Ho who arrived at the scene examined the victim at about 11.30am on 9 August 2000 and found him dead.

4 Forensic examination revealed that the victim had suffered a host of injuries including four fatal stab wounds to his chest. According to Dr Teo Eng Swee, the forensic pathologist, death of the victim was caused by the stab wounds inflicted on his chest. Dr Teo further testified that each stab wound on the chest of the victim by itself would have been sufficient in the ordinary course of nature to cause his death. Dr Teo did not find any defensive injuries on the victim. His conclusion was that the victim was either unconscious or immobilized at the time the injuries were inflicted. The estimated time of death was about 12 to 24 hours before the discovery of the corpse.

5 On 10 August 2000 at about 4.55pm, the taxi of the victim was spotted at a multi-storey car park

at Block 628A Bukit Batok Central at car park lot No 53, level D.

6 On 15 October 2000, following information all three accused persons were arrested at various times and places in Singapore. The first accused was apprehended at about 9.15am when he was stepping out of a lift of his block of flats at Block 790 Choa Chu Kang North 6, Singapore. The second accused was arrested at about 10.30am on 15 October 2000 while he was making his way through the rear entrance of a house at 25 Jalan Pelapah, Singapore. The third accused was also arrested on the same day at about 12.30pm at Block 236 Bangkit Road, #02-243.

7 Following the arrests, several statements were recorded from all three accused on various dates by the police. Consequently, 16 statements, five from the first accused, four from the second accused and seven from the third accused were admitted in evidence without any objection from the defence, upon the court being satisfied that they were made voluntarily without any threat, inducement or promise from any-one in authority before or during their recording. The statements thus admitted, after expunging portions therein which were considered to be irrelevant and prejudicial, were as follows:

A. *From the first accused*

1. Exhibit P-240: An oral statement recorded by way of an interview, by ASP Lim Beng Gee at CID on 15 October 2000.

2. Exhibit P-245: A statement recorded under s 122(6) CPC by Insp Tony Siu at CID on 27 October 2000.

3. Exhibit P-261: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 30 October 2000.

4. Exhibit P-262: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 3 November 2000.

5. Exhibit P-263: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 5 November 2000.

B. From the second accused

1. Exhibit P-244: An oral statement recorded by SSSgt Kamaruzaman at CID on 15 October 2000.

2. Exhibit P-242: A statement recorded under s 122(6) CPC by A/Insp David Ang at CID on 27 October 2000.

3. Exhibit P-250: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 1 November 2000.

4. Exhibit P-251: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 2 November 2000..

C. From the third accused

1. Exhibit P-243: An oral statement recorded by SSSgt Kamaruzaman at CID on 15 October 2000.

2. Exhibit P-241: A statement recorded under s 122(6) CPC by A/Insp David Ang at CID on 16 October 2000.

3. Exhibit P-256: A statement recorded under s 121 by SSI Zainal Abidin at CID on 23 October 2000.

4. Exhibit P-257: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 25 October 2000.

5. Exhibit P-258: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 27 October 2000.

6. Exhibit P-259: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 3 November 2000.

7. Exhibit P-260: A statement recorded under s 121 CPC by SSI Zainal Abidin at CID on 5 November 2000.

8 Segments of the statements from each accused, insofar as they were considered to be significant or material, are reproduced below:

First accused

(1) Oral statement by the first accused by way of an interview by ASP Lim Beng Gee at SIS/CID on 15 October 2000 at 1525 hours (exh P-240)

Q6. Can you tell me how the three of you committed the taxi robbery along Chestnut Ave?

A6. Actually the three of us had agreed to commit robbery on money changer or people leaving the bank and gold-smith shop. Ibrahim and Rosli suggested to get a getaway car. Ibrahim said we could steal a car from any car park or parked along the road side. I agreed to it. Rosli said it may be problem because if the car owner make a police report, the police might trace it to us easily. Rosli then suggested we boarded a taxi and thereafter make use of the taxi to use it as a getaway car in committing a robbery.

So, on that day, I remember it was a day before the Singapore National Day, i.e. 9 August 2000, we stopped a taxi along Bukit Batok Ave 6. Ibrahim sat in front. Rosli sat behind the taxi driver and I sat behind Rosli. Ibrahim told the taxi driver to drive to Chestnut Ave. When the taxi driver stopped along Chestnut Ave, along a quiet place, I told Ibrahim that we could ask the taxi-driver to stop there. Ibrahim then told the taxi driver to stop the taxi. As the taxi-driver stopped the taxi, I alighted. Ibrahim told the taxi-driver to get out, Ibrahim then walked round the front of the taxi towards the driver's side. Rosli alighted and brought the taxi driver to the bushes. Ibrahim and I remained near the taxi. Shortly I heard the taxi driver cried out in pain. Rosli came to us later with a knife. I notice the knife has some blood stains on its blade. This knife is an army bayonet which I had bought it together with the 2 guns in the town of Songkla,

Thailand. That day, I had carried along a Colt 45 automatic Pistol, it was kept in my waist pouch. The Smith & Wesson revolver and a pair of handcuff were kept in my Timberland bag. Earlier when I met Ibrahim and Rosli at Bukit Batok, I had already handed the bag, with the revolver and handcuff and bayonet, to Ibrahim.

After Rosli came out from the bushes with the knife in his hand, the three of us left the scene in the taxi. Ibrahim drove the taxi. I sat in front. Rosli sat at the back. I remember the taxi was a TIB taxi and its registration nos started with '5'.

Ibrahim drove the taxi to Bukit Panjang and then out to Woodlands. We stopped at the bus-interchange in Woodlands. We parked the taxi in the car park and walked to the shops where Rosli and I bought a shirt each. After buying the shirt, Rosli and I wore the new shirts and threw away the old shirts into the Rubbish bins. We walked around the money-changer shops, three goldsmith shops. Though there were opportunity for us to rob the money-changer and the goldsmith shops, I was half-hearted as my mind was still thinking the taxi-driver at Chestnut Ave. I told Ibrahim and Rosli to call off the robbery. Thereafter, the three of us got into the taxi. Ibrahim again drove the taxi. I cannot recall how we subsequently arrived at Jurong East later.

At Jurong East, I recall we parked the taxi around St 21 near to a block Nos 25? We then walked around the shops separately. I saw there were two gold-smith shops. I subsequently went to a void deck of a block and sat there to wait for Rosli and Ibrahim. Here I wish to add that while driving from Woodlands to Jurong East, Rosli and Ibrahim had already planned to cut their hair because, while we were along Chestnut Avenue, we saw two cars driving past the taxi while Rosli brought the taxi driver to the bushes. Rosli and Ibrahim were worried that the two car drivers might be able to recognize their faces and hairstyles, so they decided to cut their hairs. Abot half an hours later, Rosli and Ibrahim came to join me at the void deck. The three of us the got into the taxi and Ibrahim drove to Bukit Batok. On arrival at the front of West Mall, Rosli and I alighted. Ibrahim drove the taxi to a nearby multi-storey carpark. A while later, Ibrahim came to join Rosli and I in front of the Bukit Batok MRT Station. We decided to go our own ways from there.

I took a cab and went home. I brought along the timberland bag which contained the Smith and Wesson revolver and the pair of handcuff. The knife which Rosli had used on the taxi driver was also in the timberland bag. Rosli took a separate taxi and left. Ibrahim took a MRT train ride. I arrived home at about 5.00 pm.

On arrival at home, I took a bath. Thereafter, I left home with the pair of jeans which I was wearing earlier and the knife which Rosli had used earlier. On arrival at the common rubbish-chute on the 4th floor of my block. I threw the pair of jeans and the knife into the chute. Both the jeans and the knife were kept in the same bag. When I threw them into the chute. After throwing the 2 items I went home. That's all about the Chestnut's case.

(2) *Statement of the first accused recorded by SSI Zainal Abidin bin Ismail on 30 October 2000 at 3.30pm (exh P-261)*

…

2 At about 10.00 am, I left home to West Mall by taxi. I had brought along with me a "Adidas" sports bag black in colour containing a 'Timberland' bag and wore a blue waist pouch which was blue in colour around my waist. I put the loaded 'Smith & Wesson' revolver with six rounds and a bayonet with its sheath in the 'Timberland' bag. At the side pocket of the said bag, a pair of handcuff was always there. The Colt 45 was placed in the waist pouch around my waist. It was loaded with 6 live rounds too. I was attired in a black round neck a t-shirt and blue jean with brown leather boots.

3 At about 20 minutes later, I arrived at West Mall and proceeded straight to the coffee shop. Rosli and Ibrahim were not there yet and I waited for them. About 10 to 15 minutes later, Rosli arrived and not long after that Ibrahim arrived too. Ibrahim was attired in a long-sleeved beige colour shirt and faded jeans. I could not remember the shoe he was wearing. Rosli was attired in black jeans and I could not remember the shirt and shoe he was wearing. Both of them knew that I had brought along the 2 guns when I carried the 'Adidas' sports bag. I presumed that both of them also knew that I had brought a bayonet and handcuffs since this was not the first time we had met to commit robbery. Both of them had seen the weapons before. All of sat at the coffee shop and ordered some food whilst we discussed about committing robbery. We do not have a specific target to rob but amongst other plans we discussed were robbing moneychangers, goldsmith shops and people coming out of the banks. During the discussions, Rosli and Ibrahim suggested that it would be best if we could get a getaway vehicle in our plans. My idea was to just run and stopped a taxi after committing the robbery but they disagreed by saying that the likely-hood of getting arrested is greater without a getaway vehicle. On hearing this, I tend to agree with them. Ibrahim suggested that the only way of getting a vehicle was to loiter around the car park and roadside, to steal vehicle where the owner who had left their vehicles unattended with ignition keys. Ibrahim and I agreed to this idea but Rosli had different views. He said that getting a taxi would be easier. Subsequently all of us and left the coffee shop. We loitered around the car park and roadside at West Mall particularly looking for such vehicle that we had discussed. About hour later, we could not find such vehicle. Whilst still searching for such vehicle, Rosli began to give up and further suggested that it would be better to use a taxi rather than to steal unattended vehicles. He added that the owner of the unattended vehicle would always report to the police and we might be caught. He added further that we should stop a taxi, tied up the driver somewhere, and used the taxi as a getaway vehicle. At first, I was quite hesitant to agree with him since we need a place to secure the taxi driver. At this juncture, Ibrahim and I were still observing vehicles parked along the road. Suddenly, Rosli crossed the road and flagged down a TIBS taxi passing by. He called the both of us and all of us boarded the taxi. Ibrahim was seated next to the taxi driver. I was seated behind Ibrahim and Rosli was seated next to my right behind the taxi driver. The taxi driver was a male Chinese. Once we were in the taxi, I was not comfortable about Rosli's plan and was rather half hearted to go with it. I told the taxi driver to go to Woodlands. On hearing this, Rosli and Ibrahim were looking at me in disagreement since that was not the plan we had discussed. Before we boarded the taxi, I have told them that I know of a secluded place at Chestnut Avenue, which was my former kampong and that would be an ideal place to tie the taxi driver. Quickly, I changed my mind and told Ibrahim to tell the taxi driver to go to Chestnut Avenue. Ibrahim then told

the taxi driver to go to Chestnut Avenue and the taxi obliged. It was about 11.30 am when we boarded the taxi.

4 Based on my recollection, the taxi driver travelled along Bt Batok East towards Hillview Road and came out to Upper Bt Timah Road after the Chartered Bank. He travelled along Upp Bt Timah Road and turned right into Chestnut Drive. He seemed to know the route to Chestnut Avenue without anyone of us directing him. Once the taxi turned into Chestnut Drive, I told him in English to proceed deeper into Chestnut Avenue and we past the private housing followed by a vacant land under construction. I told him to proceed further until we past a deserted road with undergrowth along both sides of the road. We reached the end of the road where the PUB Waterworks is situated. I know the place very well since it was my former kampong. The taxi stopped. We did not want to do it there since there is a guardhouse at the gate and I told the taxi driver to make a 'U' turn and he complied. As the taxi moved just after the bicycle trek to Bt Timah Nature Reserve Park, Ibrahim told the taxi driver to stop and he did.

5 Once the taxi stopped, Ibrahim told the taxi driver in English to get out. The driver was in a daze and just remained seated in the driver's seat. Subsequently, he complied and got out of the taxi. At this juncture, Rosli got out and held the taxi driver as he appeared to run. Ibrahim got out too and took over the wheels whilst the engine was still running. I got out and stood near the front passenger door of the taxi. I saw Rosli was holding the taxi driver's shoulder and pulling him to the bushes by the roadside on the left. I did not see Rosli handcuffed the driver but when he pulled him to the bushes, the driver's hands were already handcuffed behind his back. Rosli was holding a bayonet in his right hand. I did not see when he took out the bayonet from the 'Timberland' bag.

6 I saw Rosli pulling the taxi driver into the bushes and there were movements there. I did not have a good view since it was blocked by the tall lallang. I could hear the taxi driver groaning soon after that. As this was happening, a car past by towards PUB Waterworks. I shouted to Rosli to hurry up. About a minute later, Rosli came out of the bushes. The bayonet in his hands was stained with blood and I believed that he had stab the taxi driver. I was shocked to see this since it was not part of our plan. What Rosli did was his own action and it was neither me or Ibrahim told him to harm the taxi driver. He boarded the taxi and seated behind Ibrahim who was driving the taxi. I sat next to Ibrahim.

7 I directed Ibrahim the route out of Chestnut Avenue. I directed Ibrahim to travel along a private housing estate leading to Petir Road. Once at Petir Road, I led him to Woodlands Road and travelled up to Marsiling Housing Estate and stopped at Woodlands, a place where there are several moneychangers, goldsmith shops, DBS/POSB bank and shops. …

…

15 Q1: Did you cock the pistol and pointed it at the taxi driver when he refused to get out of the taxi?

16 A1: No. I just pulled out the pistol halfway from my pouch and showed the taxi driver. On seeing the gun, he got out of his taxi.

17 Q2: Was it your idea to 'finish off' the taxi driver and instructed Rosli to do so?

18 A2: No. Ibrahim also did not give any instruction to Rosli to do so.

19 Q3: Did you plan to rob Cisco officers escorting cash to the ATM machines at West Mall on 8th Aug 2000?

20 A3: No. Actually our main plan that day was to rob the goldsmith shop at Jurong East and that was when the idea of getting a getaway vehicle came about. However, after the unexpected stabbing of the taxi driver by Rosli, we did not stick to the plans. The reason being, I was never involved in a violent crime before, I felt uncomfortable about it, and feared of the uncertainties. The idea of robbing of Cisco officers escorting cash was just one of the plan but I was not serious about it.

…

(3) ***Further statement of the first accused recorded by SSI Zainal Abidin Ismail on 3 November 2000 at 11.05am (exh P-262)***

…

49 Q14: Did you show Ibrahim a Colt 45 pistol on the day you first met Ibrahim at Newton Food Centre and later adjourned to a pub at Tg Pagar?

50 A15: Yes. I showed Ibrahim the gun twice on that same day. Once, on the way to the pub in the taxi and the other time inside the toilet of the pub.

51 Q16: Can you describe further the bayonet that you bought in Thailand which was used by Rosli?

52 A16: Like I said it is a standard military bayonet. There is a clip at the handle that can be fixed to a rifle. The handle is black. It is a double edge blade about 13 cm in length. One side of the blade is partially jagged. I now draw the bayonet and its green plastic sheath with a green canvas strap.

53 Q17: Anything else you want to add, delete or amend in your statement?

54 A17: I have no intention to hurt or kill the deceased. Our intention was only to use the taxi to rob. The actual plan was to tie up the deceased at a secluded place and later inform the police of his whereabouts after we have committed robbery at the goldsmith shop at Jurong East. The goldsmith shop was our target on that day. After what had happened at Chestnut Avenue, I was confused and worried and ended up at Woodlands. I regret what had happened that day. I do not want the society to think that we intentionally killed the taxi driver.

…

(4) ***Further statement of the first accused recorded by SSI Zainal Abidin Ismail on 5 November 2000 at 4.20pm (exh P-263)***

…

61 Q19: Is the bayonet found in your locker the same one that Rosli used to stab the taxi driver at Chestnut Avenue on 8th August 2000?

62 A19: I am not sure. In fact I had two bayonets that look similar to each other. I do not know the make, model and its serial number of both bayonets. I bought one of it in Thailand and the other one I acquire it a long time ago. I have forgotten how I acquire it. I would like to say that on 8th August 2000, the bayonet that Rosli had used was the one that I recently bought in Thailand. I brought it home and washed it. He told me that there was some bloodstains on it knife and reminded me to wash it clean. Whilst at home, I washed the bayonet and applied anti-rust oil on it. I remember I washed it thoroughly. I also cleaned the sheath. When it dried, I wiped it with tissue paper and sprayed anti-rust oil again. I then kept the bayonet in its sheath and wrapped it with a newspaper. I was thinking at that time to throw it away but had the second thought of keeping it since it was such a waste to throw it away. Not long after that, I took the other bayonet from my room's cupboard and wrapped it with some newspaper too. I then placed both bayonets together in the said cupboard. During that same night, I thought it over, and decided to throw the bayonet that Rosli had used since it might be evidence against us if we were arrested by the police. Secondly, it had been used to stab someone so it not good to keep it. Subsequently, I took one of the bayonets from the cupboard and threw it into the common rubbish chute outside my house. I do not know whether I had thrown the correct one since both bayonets looked similar and both were wrapped in newspaper.

…

Second accused

(1) Statement of the second accused recorded by SSSgt Kamaruzaman on 15 October 2000 at 4.05pm (exh P-244)

Sometime in Jul 2000, when the coffeeshop where I worked as a coffee-shop assistant close for renovation, I have no income. At this time, my friend Rosli contacted me to join him at Newton Hawker Centre for a drink. When I went there, Rosli introduced me to Wan Kamil.

In August 2000, I went to Jurong East coffee shop to meet Rosli and Wan. During the meeting, we thought of committing robbery since we do not have income. Initially, we agreed to rob individual but if we fail, we intend to rob taxi driver. My role will be to drive the taxi since I am the only person who have a licence. Thereafter, we took a taxi after failing to find any other victim. In the taxi, I sat at the front seat while Wan and Rosli sat at the back. Wan directed the taxi where to go since I do not know the area that well. When the taxi driver stop the taxi, I asked the taxi driver to get out of the taxi. When he alighted I took over the driver seat. I saw Rosli and Wan pulling the taxi driver to the bushes after handcuffing him. Rosli brought the taxi driver inside the bushes and

Wan just stood outside. After that, they both returned to the taxi.

I drove them to Marsiling where we distribute the money. The wallet and coin box we threw it at the dustbin in Marsiling. After that, we went to Bukit Batok where I alight them at West Mall. I abandoned the taxi at the multi-storey carpark beside West Mall and joined them at West Mall. At West Mall, Rosli distribute the balance of the money, where I got a total of $100 plus. From there, we went back home.

[Emphasis added.]

(2) Cautioned statement of the second accused recorded by Insp David Ang on 27 October 2000 at 11.40am (exh P-242)

The deceased was not supposed to die. I did not know what happen on that day. The deceased was behind the bushes with Rosli while Kamil was standing behind the taxi. I sat at the taxi driver's seat and I did not kill the deceased. I plead for leniency. That's all

(3) Statement of the second accused recorded by SSI Zainal Abidin Ismail on 1 November 2000 at 10.00am (exh P-250)

…

2 On 8th Aug 2000 at about 9.15 am, I left my Filipino girlfriend's home at No 25 Jln Pelepah to West Mall by bus service number 51 …

3 I arrived at the coffee-shop at about 10.15am, and Wan and Rosli were already there. We had breakfast and discussed about committing robbery that day. We did not have a specific target but discussed on how to commit the robbery. There were general discussion of robbing goldsmith shops, Toto booth, moneychanger shops and Cisco officers escorting cash to ATM machines. I would like to say here that Wan had a waist pouch worn around his waist, Rosli had a black sling bag, and another black sling bag was on the table. Soon, when I sat with them, Rosli pushed the bag to me. I took the bag and put it beside me. The bag was heavy and I knew it contained a revolver because of the shape when I touched the outside of the bag. I did not take it out to look at it but Wan ever told me that he had 2 guns. One is a pistol and the other is a revolver. I knew that the pouch that Wan was wearing contained a pistol and I have seen it personally. He had showed it to me the first time we met at Newton Food Centre when Rosli introduced him to me. This was about 2 weeks ago. I did not know what were the contents in Rosli's bag but I knew it contained some weapons.

4 In the discussion we agreed to rob a goldsmith shop but did not have a specific place yet. We realised that we needed a getaway vehicle. We came with an idea of stealing unattended cars with their ignition key in it. We decided that if we could not get any unattended cars, we would go for a taxi. We intended to tie the taxi driver in a secluded place so we would be able to use the taxi. There was no discussion about hurting or harming the taxi driver.

5 About 45 minutes later the three of us left the coffee shop and walked along the road side and car parks near West Mall to look for unattended cars. As we were walking along the road, we saw a police car coming out from the car park. On seeing the police car, we panicked since we were armed. I told Wan that we should not waste time looking for unattended cars and choose for the 2nd option of

getting a taxi and he agreed. Just as we were standing along the roadside, I saw TIBS taxi coming towards us and I flagged it down. The taxi stopped and all of us boarded it. I sat in front next to the taxi driver, Wan was seated at the rear seat behind me and Rosli was seated next to him behind the taxi driver. The taxi driver was a male Chinese in his 40's. By then it was about 11.15 am.

6 Wan told the taxi driver in English to proceed to Chestnut Avenue and he complied. The taxi driver drove off and he seemed to know the route to Chestnut Avenue without Wan giving directions. When we reached Chestnut Drive, Wan the directed the driver to proceed deeper to Chestnut Avenue. I do not know the place since it was my first time there and Wan seemed to know the place well. We travelled past private housing and later came to a deserted road with undergrowth along side it. We came to a road end and there is a PUB or PWD main gate. The taxi stopped and the driver asked us where we actually wanted to go. Wan told the driver to make a 'U' turn. At this time, Rosli and I were carrying a sling bag and Wan was wearing the waist pouch that I had mentioned earlier. The taxi driver complied and made a 'U' turn. About 200 metres away, just after the bend, Wan told the driver to stop.

7 The taxi stopped and I ordered him to get out by saying "Uncle go down". By then the taxi driver thought we wanted to rob him. He wanted to give me his money but I kept telling him to get out. He was in a daze and remained seated in the driver's seat. At that moment, I heard a cocking sound and when I turned, I saw Wan pointing the pistol at the taxi driver. On seeing the pistol, the taxi driver got out and I got out too and took over the wheel. By then Wan and Rosli had also got out and Rosli held the taxi driver. Whilst seated in the driver's seat, I turned around and saw Rosli was forcing the taxi driver to the bushes of tall lalang on my left side of the road. The taxi was facing Chestnut Drive. Wan was standing behind the taxi.

8 I waited in the taxi and heard the taxi driver pleading from the bushes. I could not make out what the driver was pleading about. About 7 to 8 minutes later, Rosli came out from the bushes and boarded the taxi. I saw him holding a bayonet that was stained with blood. He was also holding a pair of handcuffs. The bayonet that Rosli was holding was a standard military bayonet. I know about bayonet as I was in the army before during my national service. Wan also boarded the taxi and I drove off. Rosli said to us that he had dropped the handcuff key and could not find it. Wan directed me the route out of Chestnut Avenue. As I was driving, Rosli told us that the taxi driver might have died as he had stabbed him about 5 or 6 times at his chest. I just kept quiet and so did Wan.

9 During the journey, Rosli took out a brown wallet and he told us that he took it from the taxi driver. Wan told him to count the cash in it. Rosli counted cash about $500 plus in $50 notes. Rosli also cleaned the bayonet and his hands in the taxi by using a bottle of water and a piece of cloth. I asked Wan where we should go next. Wan told me to find a place to park and directed me the route to take. Although I have a driving licence, I seldom drive and do not know the roads well.

10 I drove around for about 40 minutes and finally reached a car park. I realised that we have reached Woodlands. I have been there before and I know that is a shopping area with many shop houses, coffee shops and food centre. I parked the taxi and all of us alighted. Wan and Rosli proceeded to a coffee shop nearby whilst I cleaned the taxi when told by Wan. The reason being, we wanted to clean off our fingerprints in the taxi. After cleaning the taxi, I called Rosli's mobile telephone by using a public telephone. Rosli's mobile phone number was 97450847. He answered and I asked him where he was and he told me to meet him at the coffee shop where I had parked the taxi. I went to the said coffee shop and waited for them. A short while later, Rosli and Wan came. I noticed that Wan had changed to a new black round neck t-shirt. Before that he was wearing a blue round neck t-shirt. Wan told Rosli to dispose off the taxi driver's wallet and he did by throwing them separately in 2 different dustbins at the coffee shop.

11 Having done so, Rosli gave me $50/- and we left the coffee shop to the nearby food centre. We sat at the food centre and we ordered 2 bottles of Guinness' stout that Rosli paid them. A moment later, Rosli left us and he came back later wearing a new white t-shirt. He wore a black round neck t-shirt before that. I do not know why Wan and Rosli changed to new attires. As we sat drinking, Wan told Rosli that it was not part of the plan to stab the taxi driver but since it had happened that way, then it must be his fate. I think Wan said this to comfort Rosli because I noticed that Rosli became quiet and looked worried.

…

Third Accused

(1) Statement of the third accused recorded by SSgt Kamaruzaman on 15 October 2000 at 2.55pm (exh P-243)

> Sometime in Dec 99, … I befriended … Wan Kamil … We did not get in touch with each other until end of Jun or early July 2000. I met Kamil at Choa Chu Kang MRT Station. Thereafter, we exchanged telephone no. and contact each other. We met each other for drinking session (beer). During one of the session, my friend, Ibrahim, joined us and I introduced him to Wan Kamil.
>
> Sometime in early Aug 2000, I together with Wan Kamil and Ibrahim met at a coffee shop near to Bt Batok MRT Station. During the meeting, which was in the afternoon, we decided to look for a victim to rob since the 3 of us have no money. Wan Kamil told me that he brought along a knife and a handcuff inside a black TIMBERLAND haversack. He then passed the haversack to me. After that, we walked around Bt Batok to look for potential victim to rob but there was none that suit us. At this juncture all of us agreed that we rob a taxi driver and at least we can get a couple of hundred dollars.
>
> We then flagged a taxi, a cream coloured taxi, at Bt Batok. Ibrahim sat at the front seat while I and Wan Kamil sat at the back. Inside the taxi, Wan Kamil told the taxi, Chinese man, to proceed to Chestnut Avenue.
>
> When we almost arrived at Chestnut Avenue, I took out the knife from the haversack, which is a bayonet. At the same time, I saw the handcuff with the key attached to it. Wan Kamil told me to use it. When the taxi driver stopped along Chestnut Avenue, I pointed the bayonet on the left side of his body telling him in Malay to get out of the taxi. He plead with me not to hurt him.
>
> When the taxi driver came out, Ibrahim took over the wheel while myself and Wan Kamil came out of the taxi. I approached the taxi driver and handcuffed him at the back. He plead with me not to hurt him. I did not bother and brought him to the bushes while my two friend remained with the taxi.
>
> While at the bushes, the taxi driver fell on the ground and during this time, I stabbed him about 4 to 5 times at the chest area. I was scared and some of the blood splattered on my shirt. After that, I took out the handcuff and search for his wallet. I found the wallet at his right front trousers pocket and took it with me. I did not search his shirt pocket. I kept the bayonet and handcuff inside the haversack and returned back to the taxi. Thereafter, all the three of us left in

the taxi and Ibrahim drove to Marsiling. At Marsiling we split the share, where I got about $200/- and the wallet together with the coin box in the taxi, we throw it at the dustbin in Marsiling. We went back to Bt Batok where Ibrahim alight us at West Mall Shopping Centre. He abandoned the taxi on its own and join us. Thereafter, the three of us took the MRT home. Wan Kamil took the haversack containing the bayonet and handcuff home.

…

(2) Cautioned statement of the third accused recorded by Insp David Ang on 16 October 2000 at 12.05pm (exh P-241)

… By August 2000, I was in great need for money. So I planned to rob the taxi driver mentioned in the charge. Unfortunately, he did during the robbery. I have no intention to kill him or to cause his death. That's all.

(3) Statement of the third accused recorded by SSI Zainal Abidin Ismail on 23 October 2000 at 11.05am (exh P-256)

…

On 8 August 2000 at about 9.30 am, I was at Jurong East Central buying a present for my nephew's birthday. …

…

3 At about 11.00 am, I met Wan at the entrance of West Mall that is facing the MRT Station . …

4 About half an hour later, Ibrahim arrived and met both of us. Ibrahim was attired in a white long sleeve shirt worn over a singlet. He was wearing a greenish coloured slack and sports shoes. The three of us adjourned to a nearby coffee shop and we discussed about our plan to do 'lobang' that day. We sat at the coffee shop and Wan suggested robbing Cisco officers escorting cash that to be loaded to the POSB ATM machines near the entrance of West Mall. He told us that he was a Cisco officer before and he knew about the timing when cash is loaded to the ATM machines. Wan then unzipped the black sports bag and took out two black sling bags. He gave one of the bags to Ibrahim and the other to me. He told us that the bag that was with Ibrahim contained a gun and the bag he passed to me contained a knife and a pair of handcuffs. Wan also told us that he had another gun with him. I opened the bag and I saw a bayonet with it sheath. It was a standard military bayonet. I know about bayonet since I had served my national service with the SAF. Ialso saw a pair of handcuffs and a key attached to it secured by a ring in the bag too.

5 Wan discussed further on our individual role in the robbery. I was told to go for the money whilst Ibrahim and him would shoot it out with the Cisco officers if the need arise since they were armed with guns. Not long, the three of us walked to West Mall.

6 We sat close together and waited at the circular cemented area opposite the

entrance of West Mall. There are … ATM machines booth just next to the entrance and we kept observing for the right moment to strike. As we sat and observed, I noticed that there were many people around and it was not feasible to escape after the robbery without a getaway vehicle. I brought this up to Wan and Ibrahim. I told them what were our plans to escape from the place after the robbery. I told them that we could simply flee on foot. With so many people around, members of public might arrest us. I suggested getting a getaway vehicle for the robbery. After some thought, both of them agreed to my suggestion. Ibrahim suggested stealing a vehicle first. Either Ibrahim or Wan suggested we go to a petrol kiosk and drive away a vehicle when the owner leaves his vehicle unattended to pay for the bills. The three of us then left to look for a nearby petrol kiosk at the vicinity.

7 As we were walking across a car-park, towards the main road from West Mall, we saw a police car stopped and saw 3 policemen alighted. I became nervous and signalled the rest to quickly walk away from there. We walked to the main road to take a taxi. As we waited for a taxi, Wan suggested that it would be a good idea robbing a taxi and 'finish off' the driver in order to use the taxi for the getaway vehicle in the robbery that we planned earlier. Ibrahim and I just kept quiet when Wan suggested about robbing a taxi and 'finish off' the driver. I knew and was aware what he meant by saying that.

Statement stopped at 12.30 pm for the accused to take his lunch.

Statement continues at 2.05 pm

8 Wan asked both of us if we know of any place quiet and secluded and I replied that I did not know. Wan then said that we go to Chestnut Avenue since he knows the place well. Not long after, at about noon, we saw a cream coloured taxi coming towards us. Ibrahim flagged the taxi and it stopped. All of us boarded. I sat behind the taxi driver with Wan beside me. Ibrahim was seated in-front next to the driver. The taxi driver was a male Chinese in his 40s. I was still holding the sling bag containing the bayonet and a pair of handcuffs that Wan gave me. Wan directed the taxi driver to go to Chestnut Avenue and most of the time giving him directions to go there. I was not paying attention the route taken to Chestnut Avenue. En-route to Chestnut Avenue, only Wan was talking to the taxi driver in English whilst Ibrahim and I kept quiet.

9 At about 10 to 15 minutes later, I saw the taxi turned into Chestnut Avenue from Bt Timah Road. Wan directed the driver further into Chestnut Avenue and soon after we past the private housing estate, I noticed there are thick undergrowth along the road. It was the first time that I had been there. We came to an end of the road and there is a gate. The taxi stopped and the driver asked us where actually we would want to alight. Wan himself was not sure and told the driver to make a 'U' turn. By this time, I noticed that the driver began to suspect that we were up to something and he was nervous. He hit the taxi against the road kerb when making the turn. Wan directed the driver to move on. Just a short distant after the bend, Wan told the driver to stop and he complied. Ibrahim ordered him to get out of the taxi in English and I took out the bayonet from my sling bag. The driver was in a daze and remained seated. I tapped the bayonet at his left waist, ordered him out, and spoke to him in

English. He just said "I pay, I pay" but did not want to go out of his taxi. At this juncture, Wan took a black coloured pistol from his sports bag and cocked it. He pointed it at the driver and ordered him out. On seeing the pistol, the driver unfastened his seat belt and got out. I could see that he wanted to run. I immediately got out of the taxi and held his shoulder. I told him to keep quiet and he complied. Wan took out a pair of handcuffs from the sling back I was carrying earlier and I handcuffed the taxi driver with his hands behind his back. Wan got out of the taxi and Ibrahim took over the wheel whilst the engine was still running. Wan told me to take the taxi driver to the bushes and 'finish him off'. I held the taxi driver by his left arm and I held the bayonet on my left hand. I pulled him into the bushes of tall lallang along the road and he was just meekly resisting. He pleaded to me not to harm him and said that he has a family. As I was pulling him towards the bushes, he slipped into the drain but I managed to pull him before he could fall. I pulled him into the tall lallang and he lost his balance. He fell onto the ground facing upwards. I pulled him to get up since I intended to go deeper into the bushes. He told me that he could not get up and I was unable to pull him up. One of his legs was entangled with roots of the lallang on the ground. He was still pleading not to harm him.

10 Wan was standing behind the taxi and watching me. He told me to hurry up. By this time, I was holding the bayonet in my right hand. I used my left palm to cover his mouth and I stabbed the taxi driver 4 to 5 times at his left chest whilst he was lying facing up. I noticed that he was grasping for breath and became motionless soon after. Blood was all over his white long sleeve shirt. I took out the handcuff and Wan told me to take his wallet. I would like to say that whilst I was stabbing the deceased, a car and a motor van past by travelling towards the road end. However, they did not stop. Subsequently, I took the deceased's wallet from his right trousers pocket. It was a brown colour leather wallet. Having done so, Wan and I boarded that taxi with Ibrahim behind the wheel and he drove off. It all happened in about 5 minutes. Wan was seated in-front next to Ibrahim and I sat at the rear seat. I gave the deceased's wallet to Wan and he took out the cash found therein. Wan counted it and the amount was $700/- all in denominations of $50/- except 5 pieces in denomination of $10/-. Wan told me to keep the money and he kept the wallet. I then noticed my hands and shirt were stained with blood. I used a bottle of water in the taxi and cleaned my hands and the bayonet. I then kept the bayonet in the bag. Whilst in the taxi, I realised that the handcuff key that I used was missing. I told Wan about this and he told me not to worry. I do not know where I dropped it. Whilst in the taxi, I would like to say that I also took all the coins placed in a bowl in the taxi.

...

(4) Statement of the third accused recorded by SSI Zainal Abidin Ismail on 27 October 2000 at 4.10pm (exh P-258)

47 I would like to amend part of my statement when I stated that I have not seen the long barrel revolver before. Actually, about 2 days after Wan had showed me the black coloured pistol at his house, I went to his house again. On that day, I was at home. I called his mobile phone and asked him where he was. He told me that he was bowling with his friends and told me to meet him later at his house. At about 2.00 pm, I went to his house. Only his maid and 2 children

were at home. Wan brought me to his children's room. He took out the sling bag that I saw the last time he showed me the black coloured pistol. This time, he took out and showed me a long barrel revolver. I held it too and realised that it was a real gun. Wan had taken out the 6 rounds from the revolver before handing it to me. He told me it was a Magnum revolver, used in the movie 'Dirty Harry'.

(5) Further statement of the third accused recorded by SSI Zainal Abidin Ismail on 3 November 2000 at 4.50pm (exh P-259)

54 Q11: Did you assault the taxi driver besides stabbing him at Chestnut Avenue?

55 A11: No. I only stab him with the bayonet. I do not know about other injuries that he could have sustained. Probably these were caused when he fell into the drain before I managed to pull him into the bushes. When he fell, his head and body might have hit the side of the drain but I manage to puled him out.

…

58 Q13: Do you still maintain the fact that Wan was the person who told you to 'finish off' the taxi driver?

59 A13: Yes. We have no choice because we wanted his taxi. Furthermore, there was no rope to tie the deceased.

60 Q14: What about the handcuff? Can you secure him with the handcuff?

61 A14: We do not want our fingerprints to be found on the handcuff used on him in case we left him behind. In addition to this, I was in a hurry when we saw a car drove past us at Chestnut Avenue.

…

(6) Further statement of the third accused recorded by SSI Zainal Abidin Ismail on 5 November 2000 at 2.40 pm (exh P-260)

73 Q19: You are now shown a bayonet with its sheath wrapped in newspaper. Is this the batonet that you referred to in your statement?

74 A19: Yes. I confirm that this is the bayonet. I had used it to stab the taxi driver. I can recognise it from its handle, the metal ring and the canvas strap. I remember when I stab the deceased with it, the whole blade and the metal ring between the blade and the handle were stained with blood. I would like to say that Wan had told me that he had thrown away the bayonet that I had used and I am quite surprise to see it again.

…

9 Following information, police searched the locker of the first accused at Cathay Bowl in a shopping centre at Chua Chu Kang and seized a bayonet wrapped in newspaper. The first accused admitted that the bayonet belonged to him. Another development was that after the arrest of the first

accused, a team of CID officers led by Ag Inspector David Ang also seized a long-barrelled Smith & Wesson revolver, a Colt semi-automatic pistol, three pairs of handcuffs and a bunch of five handcuffs attached to a small metal ring from the flat of the first accused. Another pair of handcuffs was seized from the second accused.

10 Tests carried out by Mrs Tan Wai Fun, a scientific officer from the Singapore Health Sciences Authority (HSA) confirmed that the bayonet recovered from the locker of the first accused had traces of bloodstains inside the covering of the handle and the analysis of the bloodstains through DNA profiling established that the blood was that of the deceased.

11 The prosecution also established through the evidence of another HSA officer, Dr Tay Ming Kiong, that the handcuff key recovered from the scene of crime was similar in composition, make-up, design and dimension to the handcuff keys seized from the residence of the first accused. The investigating officer, Insp Zainal for his part averred that the handcuff keys seized from the first accused could unlock all the handcuffs seized.

12 At the close of the prosecution's case defence counsel did not make any submissions. Having however considered the evidence adduced including the statements made by the accused persons as well as forensic evidence, I was satisfied that the prosecution had made out a case against all the accused persons which if unrebutted would warrant their conviction. Consequently, I called on them to enter upon their defences and explained the courses open to them. In the event all of them elected to give evidence on affirmation and their respective testimonies in their defence can be summarised as follows.

Evidence of the first accused

13 On 8 August 2000 at or about 10.45am, the first accused met the second and third accused, as earlier arranged, at a coffee shop known as S-11 at Bukit Batok Central. They then planned to rob a goldsmith shop in Jurong East known as Boon Lay Gems Store. The first accused had been to that shop before and had surveyed the area. During the discussion the second and third accused felt the need for a getaway vehicle. The options discussed were either to steal an unattended vehicle or to seize a taxi from a taxi driver.

14 Their search to find an unattended vehicle was fruitless. Having spent 30 to 45 minutes in this enterprise in vain, the third accused commented that it was troublesome to search for an unattended vehicle and they should not waste any further time on finding an unattended vehicle. The third accused soon hailed a taxi and all of them instantly boarded it. The first accused claimed that he was initially hesitant to board it because he felt that if the taxi were to be stolen, they would have to tie up the driver at a lonely spot which, in his view, was rather cumbersome as compared to stealing an unattended vehicle. He boarded the taxi, nevertheless. Once inside the taxi he told the taxi driver to proceed to Woodlands as he was intending to abort the plan to rob the taxi driver of his vehicle but both the second and third accused immediately gave him a look of disapproval. He then directed the taxi driver to proceed to Chestnut Avenue.

15 According to the first accused, in the original plan discussed by them earlier, the second accused's role was to drive the taxi, his role was that of a lookout and the third accused's role was to take the driver to the bushes and restrain him by handcuffing him to some trees in the bushes. There was no discussion however as to what should be done if the taxi driver tried to escape.

16 The first accused added that their actual plan also included the aspect that after they had carried

out their robbery plan at the goldsmith's shop at Jurong East, they would inform the police of the whereabouts of the secluded place where the taxi driver had been handcuffed and held.

17 In the event, the taxi driver drove the taxi to Chestnut Avenue as directed. The second accused was in the front passenger seat; the first accused was at the rear behind the second accused and the third accused just behind the driver. After the taxi had reached the end of Chestnut Avenue where the Public Utilities Board's Works Depot was situated, the first accused instructed the taxi driver to make a 'U' turn. Later, just about 200 metres or so after the driver made the turn, the first accused told the driver to stop the vehicle. The taxi driver obeyed and stopped. There were trees and bushes on both sides of the road where the taxi had stopped.

18 Presently, the second accused told the taxi driver to get out of the vehicle. The first accused saw the third accused taking out a bayonet from the bag given to him earlier and tapping the taxi-driver's shoulders. The taxi driver who looked dumbfounded, immediately uttered the words: 'I pay, I pay'. He did not however, get out of the taxi.

19 In order to make the taxi driver dismount from his vehicle, the first accused drew out his pistol from his waist bag. This made the taxi driver comply and leave the taxi. At about this time, the third accused opened the vehicle door to his right, got out and arrived at the driver's door to block the driver from fleeing. The third accused was then holding a bayonet in one hand and gripping the right arm of the taxi driver in the other. At about this time, the second accused also got out from the front passenger seat, swiftly crossed in front and took the vacated seat of the taxi driver. The third accused then propelled the taxi driver towards the bushes about seven to eight metres from the rear of the taxi.

20 As the taxi driver was being led into the bushes by the third accused, the first accused noticed that the former had been handcuffed with hands behind. The first accused could not see what was happening inside the bushes except for the fact that he saw both the third accused and the taxi driver jump over a drain which ran along the bush edge. The first accused then re-entered the taxi and sat inside. Moments later he saw an oncoming motor car and at about this time he also heard a voice crying out in pain. He immediately wound down the window – the first accused demonstrated the winding down motion by making circular movements with his hand and shouted to the third accused 'Cepat sikit Li' ('Hurry up Rosli').

21 A minute or two later, the third accused re-emerged from the bushes carrying in his hands the blood-stained bayonet and a pair of handcuffs. The third accused told the first and second accused that he had stabbed the taxi driver.

22 Both the first and second accused kept quiet. The first accused was taken aback by the unexpected turn of events. He was shocked. He did not expect the stabbing of the taxi driver. It was not in their scheme of things.

23 The first accused immediately told the second accused to leave the area and directed him to go to Woodlands. On the way to Woodlands, the third accused informed them that he had pocketed the wallet of the taxi driver.

24 The first accused admitted that the bayonet used by the third accused on that day was given to the latter by the first accused. He said that in order for them to carry out their robbery plan, he had prepared three bags: the bag prepared and given to the third accused contained a bayonet, a pair of handcuffs, a ski-mask and a pair of gloves; the bag prepared and given to the second accused contained a long-barrelled Smith & Wesson revolver, a pair of handcuffs and a ski mask; and the first

accused had with him a pair of handcuffs, a ski mask, a pair of gloves, a hammer and a pistol.

25 During the journey from Chestnut Avenue to Woodlands, the third accused told him that he had taken the taxi driver's wallet which contained about $500. The third accused then passed that wallet to the first accused for him to have a look. There was no cash inside the wallet except for some personal items of the taxi driver such as the taxi driver's automated teller machine (ATM) card and his National Registration Identity Card. During the journey, the first accused also observed the third accused cleaning the bayonet with a piece of cloth and water from a bottle that were found inside the taxi. The third accused also told them that he had stabbed the taxi driver five to six times and that the taxi driver was still alive when he left him.

26 The first accused was perturbed over what had transpired at Chestnut Avenue. He decided to cancel all robbery plans for that day but did not convey this thought to anyone.

27 On the way to Woodlands, they stopped by at Marsiling with a view to purchasing some T-shirts. They could not find any shops at Marsiling selling T-shirts so they drove to Woodlands. There the first accused bought a new T-shirt changed into it and threw away the one he was wearing at a public toilet. The third accused suggested to the others that they consume Guinness Stout to take his mind off the killing that had taken place and so they did. The third accused paid for the drinks and gave the first accused $20.

28 Soon, they left Woodlands for Jurong East where they had earlier intended to rob a goldsmith's shop. Although the first accused was not intending to commit any robbery after the incident at Chestnut Avenue, he nonetheless, accompanied the others to survey the goldsmith's shop at Jurong East whilst the other two went for their haircut. Later, he told the third accused that there was a closed circuit television camera at the goldsmith's shop, the place was crowded and therefore it was not advisable to proceed with the robbery plan. They then, abandoned the plan. The first accused claimed that the stabbing of the taxi driver was still on his mind and he therefore, decided to abort the plans for that day. The first accused then asked the second accused to drive all of them to West Mall at Bukit Batok to take the MRT home. There, the first accused collected the bags of weapons from the other two and took a taxi home. Before all of them parted company, the third accused distributed to each $120. When he reached home, he washed the bayonet and took his shower. As he was not feeling too good, he threw one of the bayonets, a pair of handcuffs, his trousers and a T-shirt into the dustbin chute.

29 In sum, his defence was that there was no plan either by him or by any of his companions on that day to stab the taxi driver. He also denied an averment by the third accused that the first accused threatened the third accused by pointing the pistol in the direction of the third accused uttering the words 'finish him off', when the third accused and the taxi driver were inside the bushes.

Evidence of the second accused

30 The second accused first met the third accused when the latter used to frequent his mother's coffee stall at Telok Blangah Crescent. Later, the first accused was introduced to the second accused by the third accused. The third accused had told the second accused that the first accused had a job which required the second accused to drive a vehicle. The second accused exhibited an interest in the offer made. Consequently, the third accused arranged for the second accused to meet the first accused at the Newton Hawker Centre one night. This was about two weeks before 8 August 2000. When both the second and third accused were walking from Far East Plaza to Newton Hawker Centre to meet the first accused, the third accused mentioned to the second accused that the job

the second accused was required to do was something illegal and not normal.

31 At the meeting at Newton Hawker Centre, the first accused talked about robbery and told the second accused that he would be required to drive a Cabstar van of CISCO officers escorting cash for delivery to ATM machines. The first accused also mentioned goldsmith shops, money changers and Toto booths as the other targets. The second accused was not impressed. He told the first accused that it was not easy to commit robbery with knives. Upon hearing this, the first accused placed a bullet on the palm of the second accused. The second accused was still sceptical and wryly commented that anyone could make a locket from a bullet.

32 Later that night, when all of them were at a pub, the first accused showed the second accused a pistol to further convince him. The pistol was shown to him again whilst the first and second accused were in the toilet of the pub. The first accused also told the second accused on this occasion that he had another firearm at home. They parted company after the first accused informed the second accused that they would meet again.

33 On 7 August 2000, the third accused contacted the second accused and told him to meet him at the S-11 coffee shop at West Mall between 9.30 and 10.00am the next day. When the second accused arrived at the appointed place, he found the first and third accused seated at a table. He saw two bags on the table. The third accused instantly slid a bag to the second accused without saying anything. The second accused touched the bag passed to him and felt the shape of a revolver. The first accused told them that the robbery target that day was a goldsmith's shop. They all then decided to secure a getaway car. Two options were floated: the first was to look around for vehicles left unattended at petrol filling stations or by people buying Toto tickets and the next option was to get hold of a taxi, tie up the driver in a quiet place and use that taxi. The seized vehicle was to be driven by the second accused.

34 They then left their meeting place and went around scouting for an unattended vehicle. The search was in vain. Moreover, after they came across a police vehicle nearby, they decided to abandon their plan to spirit an unattended vehicle. Soon, the second accused flagged down a taxi driven by the victim and all three boarded it. The first accused instructed the taxi driver to proceed to Chestnut Avenue.

35 The second accused added that when all of them discussed the second option at the S-11 coffee shop, the plan was to tie up the taxi driver in a quiet place and use the taxi. No decision was however, made as to who would tie up the taxi driver or who would be the lookout. His role had already been determined, that was, to drive the vehicle.

36 When all of them boarded the taxi the second accused occupied the front passenger seat. The first accused took his seat at the rear behind the second accused and the third accused behind the taxi driver.

37 The second accused denied the first accused's claim that the latter initially instructed the taxi driver to go to Woodlands. According to him, the first accused was the one who directed the taxi driver to proceed to Chestnut Avenue. The second accused did not know at that time where Chestnut Avenue was.

38 In the event, the taxi reached the end of Chestnut Avenue. There the first accused told the taxi driver to make a 'U' turn. About some distance away from where the taxi made the 'U' turn, still at Chestnut Avenue, the first accused asked the taxi driver to stop. The second accused did not know why the first accused had asked the taxi driver to stop. All the same, the second accused said to the

taxi driver: 'Uncle, go down.' The taxi driver did not budge. Suddenly the first accused took out his pistol, cocked it and pointed it close to the face of the taxi driver.

39 The taxi driver offered to give them the money he had with him. The offer was declined and the first accused ordered the taxi driver to get out. As soon as the taxi driver got out of the taxi, the second accused swiftly exited from his seat, crossed the vehicle in front and occupied the driver's seat.

40 The first and third accused were then close to the taxi driver. The third accused was holding him. As the second accused was about to adjust the rear view mirror of the vehicle, he happened to turn back and observed that the third accused and the taxi driver close to the bushes. The first accused was somewhere behind the taxi holding his pistol in his right hand. The second accused saw nothing else.

41 The second accused then started playing with the gear of the vehicle and adjusted the seat. He also opened the bag which was given to him at the S-11 coffee shop earlier, took out the revolver inside and looked at it. Just about this time, there was a motor vehicle approaching them from the opposite direction and was heading towards the PUB Waterworks situated at the end of Chestnut Avenue. After the vehicle had passed the taxi he was in, the first and the third accused were seen returning to the taxi, the first accused seated himself in front and the third accused behind.

42 When the third accused re-entered the taxi the second accused noticed that he was holding a handcuff and the bayonet. At this point of his testimony, the second accused was asked to clarify a segment in his statement to the police (P-244, para 2 at page 237 of the PI notes) where he had stated: 'I saw Rosli and Wan pulling the taxi driver to bushes.' as against his present testimony in court. The second accused declared that he did not actually see both of them pulling the taxi driver and going into the bushes (see pages 812 to 818 of the NE).

43 The second accused observed that the bayonet the third accused was holding was stained with blood. A little later, the third accused, after mentioning that he had dropped the handcuff key, told the others that he had stabbed the taxi driver five or six times and that the latter may die. The second accused thought to himself then that they hadn't even started to commit the planned robbery yet they had already committed a murder (page 822 of the NE).

44 The first accused told the third accused not to worry about the handcuff key. The third accused also told the others that he had taken the wallet of the victim and that it contained about $500 to $600. Presently, the second accused was directed by the first accused to drive on and the second accused complied with the direction. The first accused directed him along Chestnut Avenue through Marsiling and thence to Woodlands. On the way, the first accused also showed the second accused how to use the revolver which had been given to him earlier.

45 Once they were at Woodlands, as directed by the first accused, the second accused cleaned the taxi to remove the fingerprints left inside. The second accused said that the claim of the first accused that the latter called out to the second accused to hurry up whilst being seated inside the vehicle was not true.

46 The rest of the account narrated by the second accused was by and large similar to that of the first accused except perhaps in relation to some minor aspects. At Woodlands despite the three of them combing the area, no particular target was found appropriate for the robbery. There, the first and the third accused had a change of clothes. Later, all of them left for Jurong East. At Jurong East, once again the first accused instructed the second accused to clean the taxi of fingerprints. After

cleaning the taxi and parking it close by, when the second accused arrived near a goldsmith's shop, the first accused told him that he was aborting the robbery plan as there were surveillance cameras in that shop.

47 Later, the second and third accused had a haircut at Jurong East. Soon, they left Jurong East for West Mall. There again, the second accused was told to clean the taxi thoroughly of the fingerprints. The second accused parked the taxi in a multi-storey car park nearby and did the cleaning. Subsequently, all of them decided to watch a movie and once it was over the second accused handed over to the third accused the bag of weapons which was provided to him earlier. He then left the place. The second accused confirmed that he received altogether $120 from the monies found in the wallet of the deceased driver: $50 whilst they were in Woodlands and $70 just about the time he was leaving West Mall for home.

48 In essence, the defence of the second accused was that his role on that day was only to act as a driver of the getaway vehicle in the planned robbery and he would not have used and did not have the intention to use the firearm in his possession to cause injury to anyone. He never intended to cause any physical injury to the taxi driver. The plan of that day was only to tie up the taxi driver and relieve him of his taxi and nothing more.

Evidence of the third accused

49 The third accused who was a forklift driver first met the first accused sometime at the end of June or early July 2000 at Chua Chu Kang MRT Station. Subsequently they met for drinks on three occasions. The third accused also visited the house of the first accused for the first time in July 2000.

50 On that occasion the first accused showed him two toy gun lighters and a while later, the first accused showed him a Colt 45 pistol and a short sword. The third accused was shocked on seeing them. The first accused told him at that stage: 'this thing' referring to the firearm 'can make money' (page 1047 of the NE). The third accused responded to that by saying: 'Are you a mad pig or what?' The first accused retorted: 'You have tatoos on your body, why should you be afraid?' The first accused informed the third accused that he had obtained the pistol from Thailand.

51 The first accused further took out a magazine with bullets and requested the third accused to hold it in his hands to convince him that the objects were genuine. The first accused also cocked the pistol and demonstrated the use of the pistol.

52 There was a second visit by the third accused to the first accused's house two days after his first visit. This time, the third accused was shown a revolver. The first accused told him that the Colt 45 was for his use whereas the third accused could use the revolver if he were to accompany him to commit robbery. The revolver shown to him was one of the weapons produced at the trial ie, the Smith & Wesson long barrelled revolver.

53 The third accused met the first accused again about two or three days later at a coffee shop at Jurong East. The first accused in fact wanted the third accused to accompany him to survey Boon Lay Gems Pte Ltd, a goldsmith shop at Jurong East with a view to committing robbery.

54 The third accused was not prepared to join in the robbery. He explained to the first accused that it would be difficult to run away from the scene as there was no getaway vehicle. He reasoned that if one were to rob a jewellery shop, the loot was bound to be heavy and without a getaway vehicle it

would be difficult to carry it. The first accused did not persist in his plans that day although he had brought with him two bags – one Adidas sports bag and another Timberland sling bag. These were produced at the trial and shown to be containing weapons.

55 The third accused had become acquainted with the second accused since about 1999. He used to go to the coffee shop where the latter worked. Later, both of them became drinking companions. The third accused claimed that two or three days after he had been out with the first accused at Jurong East, the first accused telephoned the third accused and asked him whether he was ready to commit robbery. The third accused did not respond and remained silent. The first accused then remarked that the third accused should think carefully before anything happened to him. The third accused construed those words as a threat. He became apprehensive since the first accused abruptly put down the receiver of the telephone after those remarks.

56 Two days later, the first accused called the third accused again and inquired where the latter was. The third accused replied that he was at home. Soon, the first accused appeared at his doorstep. The third accused was frightened by this sudden appearance. Eventually, both of them repaired to a coffee shop where the third accused asked the first accused whether he had made a decision to join the first accused in his plans to commit robbery. This time too, the third accused remained silent.

57 The first accused asked the third accused whether he knew any person with driving skills, in great need of money and would be interested in joining them. The third accused thought of the second accused as the latter's coffee shop had been closed for refurbishment. The third accused mentioned the second accused to the first accused. In the event, the third accused contacted the second accused and told him that there was work to be done and the work involved driving. Subsequently, arrangements were made by the third accused to introduce the second accused to the first accused.

58 Not long after the three of them met at Newton Hawker Centre for an introductory meeting. On the day, when the third and the second accused were on their way to Newton Hawker Centre, the third accused already told the second accused that the work cut out for him entailed going against the law, that the first accused possessed a pistol and was planning to commit robbery (page 1065 of the NE).

59 At the meeting at the Newton Hawker Centre, the first accused asked the second accused that if the latter were to be given an opportunity would he take it. The second accused's response was: 'If you want to commit this by using knife or parang, you might as well forget it.' (page 1067 of the NE). To convince the second accused that the first accused meant business, the latter held the hand of the second accused and gave him something which the third accused could not see. The second accused immediately intoned that: 'this thing anybody could have … and make [it] into a locket.' The purported reply of the first accused was that it was for real: 'I truly have it.' (page 1068 of the NE).

60 They then went on to discuss possible targets including CISCO cash delivery vehicles, jewellery shops, money changers and even illegal bookies at the turf club. When the first accused mentioned that they would be able to rake in about S$5 million from their operation, the third accused agreed to join in the enterprise. The third accused was aware that the first accused was a former CISCO officer. Later, they left the Newton Hawker Centre to a pub called Kamasutra for drinks.

61 The third accused met the first accused again a week before 8 August 2000 at a coffee shop. The first accused again mentioned the subject of robbery. On this occasion, the first accused told the third accused that he had just taken a look at a Toto booth at Yew Tee MRT Station as one of their targets. The third accused warned him immediately that there were many people at the Toto booth and worse still, the booth was located inside the supermarket. Nothing eventful transpired and both of

them left the area thereafter.

62 The next occasion they met was on 8 August 2000. The previous night the first accused telephoned the third accused and told him to be at West Mall at 10.00am. and also to inform the second accused to be there. The first accused's message was that he was going to 'make a lobang', meaning that he wanted to commit robbery. The third accused got in touch with the second accused and told him to be at West Mall at the appointed time. The third accused did not however tell the second accused the purpose of the meeting.

63 On the morning of 8 August 2000, after being reminded of the appointment by the first accused, the third accused met the latter at the entrance of West Mall. The second accused had yet to arrive. The first accused in the meantime took the third accused to a cash-on-line booth where the Cabstar van was likely to be parked, a jewellery shop and a moneychanger at the West Mall, telling him that those were the possible targets. They then sauntered around and eventually seated themselves at the S-11 coffee shop where they awaited the arrival of the second accused.

64 Whilst waiting for the second accused, the first accused opened the Adidas sports bag that was with with him and took out two sling bags from it. He indicated that one of the two bags was for the second accused and the other for the third accused. The first accused told him that the bag meant for the third accused contained a bayonet and a pair of handcuffs, a ski-cap and a pair of gloves. The third accused then opened the bag to look at its contents.

65 About 20 to 30 minutes later, the second accused arrived. The third accused then pushed the bag which was meant for the second accused towards him. The first accused then talked about the targets he had shown the third accused earlier. The first accused also mentioned the target at Jurong East which the first and the third accused had surveyed previously. The first accused intimated to the other two that the target for that day would be the CISCO Cabstar van or the jewellery shop at Jurong East.

66 Then their discussion turned towards their escape plan. They all agreed to secure a getaway vehicle. The second accused suggested stealing an unattended vehicle from a petrol kiosk, failing which they would hail a taxi and dispossess the driver.

67 Their search for an unattended vehicle was unsuccessful. Further, when they observed a passing police vehicle they started to panic. At this juncture, the third accused noticed that the first and second accused were engaged in a brief conversation after which the second accused was seen crossing the road and stopping a taxi. It was then the first accused told the third accused: 'Li, you have to finish the taxi driver.' (page 1090 of the NE). The third accused was confused by this remark. He was wondering whether the first accused was joking or serious. But he did not seek any clarification from the first accused and remained silent.

68 In the event, all of them boarded the taxi. The first accused gave directions to the taxi driver to take them to Chestnut Avenue. When they arrived at the end of Chestnut Avenue, there was a bit of confusion. Presently, the first accused told the taxi driver to make a 'U' turn. About 200 metres from where the taxi driver made the 'U' turn, the first accused asked the taxi driver to stop. The second accused said something to the taxi driver at this stage but the third accused could not quite make out what it was. At that juncture, the third accused took out the bayonet from his bag, unsheathed it and tapped the taxi driver's left waist in order to make the taxi driver get out of the taxi. The taxi driver did not leave the taxi. Instead he said: 'I pay, I pay.' Suddenly, the first accused drew out his pistol, cocked it, pointed it at the taxi driver and ordered him to get out.

69 In the meantime, the first accused also nudged the third accused with his knee, signalling the third accused to get down and prevent the taxi driver from escaping. The scared taxi driver unfastened his seat belt and alighted from his taxi. The third accused was frightened by the developments. He felt that it was unnecessary for the first accused to point the pistol at the taxi driver for after all the third accused had already taken out his bayonet.

70 The third accused quickly came out of the taxi and held on to the taxi driver whilst the second accused came out of the vehicle and occupied the driver's seat. The first accused handed a pair of handcuffs to the third accused and asked him to handcuff the taxi driver. He also instructed the third accused to take the taxi driver into the bushes.

71 The third accused followed the instructions and led the taxi driver into the bushes about two metres away from the rear of the taxi whilst the first accused stood on the road holding the pistol in his hand. When the third accused led the taxi driver into the bushes, his intention was to tie him up although the first accused did not provide him with any rope for that purpose. He thought of handcuffing the taxi driver to a tree (pages 1102 to 1103 of the NE).

72 As the third accused was propelling the taxi driver into the thicket, the taxi driver tripped and fell into a ditch. The first accused came to the assistance of the third accused to help pull the taxi driver out of the ditch so that the third accused could take him farther into the bushes with the taxi driver. Whilst in the bushes, the taxi driver tripped and fell again. The third accused asked him to get up. The taxi driver replied that he could not get up. Since the third accused could not raise the fallen taxi driver by himself, he thought of asking the first accused for help.

73 The third accused instantly turned around and asked the first accused to assist him in raising the taxi driver. Instead of coming to his assistance, the first accused pointed his pistol at the third accused and told him to finish the taxi driver off (pages 1107 and 1108 of the NE).

74 The third accused did not know what to do. He was wondering why the first accused had asked him to kill the taxi driver. He looked at the first accused's face. The first accused looked serious. The third accused was afraid that the first accused would shoot him if he did not comply. In that state of fear, he covered the mouth of the taxi driver and stabbed him five to six times in the region of his chest.

75 At that moment, a motor car passed by. Presently, the first accused, after concealing his pistol, shouted to the third accused to be quick and to retrieve the wallet of the taxi driver. The third accused thereafter pulled out the taxi driver's wallet from his front trouser pocket and also removed the handcuffs from the taxi driver. Another vehicle passed by whilst he was doing this.

76 The taxi driver was motionless when the third accused re-emerged from the bushes. Once outside, he asked the first accused: 'How is that this thing can happen this way?' (page 1112 of the NE). The first accused's explanation was that the taxi driver had seen his firearm. The third accused asked him why he had taken out his firearm in the first instance. The answer was that it was because the taxi driver did not want to come out of the taxi when asked. The first accused also commented that it was the taxi driver's fate. The third accused was at that stage somewhat fearful of the first accused since the latter did not appear to be normal.

77 After both of them had re-boarded the taxi, the first accused instructed the second accused to drive to Woodlands. During the journey, the third accused handed the wallet of the taxi driver to the first accused. After counting the money inside, the first accused returned all the cash to the third accused whilst retaining the wallet. The first accused then gave him a bottle of water which was

inside the taxi and asked the third accused to wash the bayonet as well as the third accused's hands. He told the first accused that he had lost the key to the handcuff. The third accused then announced to the other two that he had stabbed the taxi driver four to five times and it was possible that the taxi driver had 'gone' (page 1118 of the NE).

78 The third accused claimed that there was altogether $700 in cash in the wallet of the taxi driver. Initially, he retained the money but later he gave the others $200 each and used the balance to pay for the food and drinks they had consumed that day.

79 At Woodlands, the first accused instructed the second accused to clean the taxi of fingerprints. All three later went to survey several money changers before having some Guinness Stout. There was further discussion concerning robbery targets. The third accused claimed that he felt confused at that stage and remained quiet when the first accused asked him why the third accused had stabbed the taxi driver. The third accused and the first accused had also changed their shirts.

80 All three subsequently went to Jurong East. There the first and the third accused went to look at the jewellery shops which they had observed earlier on whilst the second accused went to rid the taxi of fingerprints. However, they later aborted their plans to rob the jewellery shop as it was noticed that the shop had been fitted with a closed circuit television camera. The first accused then asked the second and third accused to have their haircut at a barber shop so that it would not be possible for anyone to identify them. Soon they proceeded to a movie theatre to watch a film. Thereafter the second and the third accused returned the bags containing the weapons to the first accused and departed for their respective destinations.

81 In the main, the testimony of the third accused appeared to be that, if not for the first accused pointing the pistol at him and instructing him to finish off the fallen taxi driver, he would not have stabbed him as he did. His intention at all relevant times was merely to restrain the taxi driver by handcuffing him to a tree in the thicket.

Closing speeches

82 Substantial and lengthy addresses were made both by the defence and the prosecution at the close of the case. Suffice it if I highlighted only the salients in the said submissions.

The first accused

83 As regards the first accused, his counsel submitted that he had no intention to harm the taxi driver in any way; that intention belonged to the third accused alone and at any rate the prosecution had failed to prove the requisite ingredients of s 34 (common intention provision) of the Penal Code which formed part of the charge. Insofar as is material, paras 3, 19, 20 and 68 of counsel's submission read as follows:

Paras 3, 19, 20 and 68 of the submission:

> 3. The Prosecution sought to adduce evidence that:-
>
> > (1) the three accused persons had a common intention to rob the deceased; and/or

(2) the three accused persons had a common intention to rob the deceased of his taxi; and

(3) Rosli murdered the taxi driver in furtherance of that common intention.

19. From the above it is submitted that there is preponderance of evidence that

(a) the common intention of the three accused persons was to steal a taxi from the taxi driver;

(b) there was a common intention to 'tie-up' i.e. immobilise the taxi driver while the taxi was to be used in a robbery

(c) there was no common intention nor discussion to hurt the taxi driver

(d) Wan had the intention to inform the Police of the whereabouts of the taxi driver after the execution of the intended robbery.

20. It is further submitted that there was no intention to physically harm the taxi driver other than to tie him up. If ever there was any intention to harm the taxi driver in any way, that intention was contemplated by and belonged to Rosli, and Rosli alone.

68. It is humbly submitted that there is a reasonable doubt as to whether the necessary ingredients of Section 34 have been satisfied as regards Wan. As such we humbly pray that Wan be acquitted.

84 Counsel for the first accused suggested that the offence committed by the first accused on the day in question was only that of robbery of the taxi and if at all, he could be punished only under ss 392, 394 or 397 of the Penal Code and nothing else.

The second accused

85 The arguments advanced on behalf of the second accused was that the second accused did not share nor did he have the common intention ascribed to him by the prosecution. Counsel argued that the second accused's role was to act as a getaway driver in the robbery planned for that day and the killing of the taxi driver was never in the equation. It was further submitted that he did not know that the third accused was armed with a bayonet nor was he aware of any plan to cause hurt to the taxi driver; the plan was merely to tie up the taxi driver in a secluded place, take his taxi and use it as an escape vehicle after the proposed robbery planned at Jurong East.

86 In this connection, the following segments of counsel's submission are relevant:

Paras 8, 9, 19, 25, 32, 33 and 34 of the submission:

8. The Second Accused denies that he intended the death of the victim, or

realised that either the First Accused or the Third Accused would cause his death. The Second Accused denies that he knew about the presence of the bayonet or realised it would be used in committing robbery of the taxi or to stab the deceased.

9. The Second Accused gave evidence that although he joined with the First Accused and the Third Accused to commit robbery of the taxi, his role was only to drive the getaway vehicle.

19. The Second Accused told the deceased to leave the taxi with the words "*Uncle, go down*", very polite words, devoid of aggression. It is submitted that the words used convey and confirm the Second Accused's thoughts that the deceased was to be safely tied up only, and not hurt or harmed.

25. The Second Accused was surprised because so far as he knew the deceased was not supposed to die. Had he realised that eventuality he would not even have flagged down the taxi along Bukit Batok West Avenue 6.

32. The common intention was the pre-arranged plan of the First Accused, the Second Accused and the Third Accused to rob the deceased of his taxi.

33. Here, the criminal act was the murder by stabbing with a bayonet, of the deceased by the Third Accused. For section 34 to apply, it is incumbent for the Prosecution to prove that the Third Accused's intention which was to be imputed to the Second Accused (and the First Accused) must not be inconsistent with the carrying out of the common intention.

34. But for common intention to apply, it is necessary to prove that the accused had knowledge of all the essential elements to constitute common intention. Here, the Second Accused testified that he did not know that the Third Accused carried or was armed with a bayonet. He only became aware of the existence of the bayonet after the Third Accused had used it to commit the murder of the deceased: ***PP v Lee Chin Guan [1992] 1 SLR 320 at page 327 B-D.***

35. The testimony of the Second Accused of his absence of the knowledge of the bayonet is supported by his Police statements. There is no mention of the bayonet in P244 (his oral statement to Senior Staff Sergeant Kamaruzaman). In his long-statement P250, the Second Accused gave a detailed account of events. At paragraph 3 thereof (page 369 of the PI notes) he frankly admitted knowledge of 2 guns : he frankly admitted he knew the slingbag given to him at the "S-11" restaurant contained a revolver, and that the First Accused wore a waist pouch with the pistol. Of the Third Accused's slingbag the Second Accused said :

> "I did not know what were the contents in Rosli's bag but I knew it contained some weapons."

45. The Second Accused did not see what the Third Accused did to the deceased in the bushes, nor could he have seen anything from his position in the driver's seat of the taxi, there being vegetation of some height standing between the Third Accused/the deceased and the Second Accused.

50. Participation in the criminal act is necessary for an accused to be liable under section 34 of the Penal Code: PP v Geraldine Andrew [1998] 3 SLR 736. The Second Accused cannot be said to have participated in the criminal act if he did not know about the presence of the knife before it was used to stab the deceased.

51. It is humbly submitted that the Prosecution has failed to prove the common intention in respect of the Second Accused and therefore he must be acquitted.

The third accused

87 The mainstay of counsel's submission on behalf of the third accused was that the third accused would not have stabbed the deceased taxi driver if not for the sudden intimidating instructions from the first accused to finish off the taxi driver whilst a pistol was being pointed at the third accused. His plan, his counsel submitted, was merely to take the taxi driver into the secondary jungle and tie him up. But since no rope was made available to him, his intention was to handcuff him to a tree. Counsel invited the court to accept the evidence of the third accused in court as the truth. Counsel however made it explicit that the General Exception defence contemplated under s 94 of the Penal Code in relation to acts which a person was compelled to do by threats did not apply and was not available to the third accused. Counsel's arguments insofar as material are reproduced below:

Paras 18 to 31 and 48 of the submission:

18. When the vehicle stopped, Ibrahim told the taxi driver to get out from the vehicle. The taxi driver did not. Rosli then tapped the taxi driver's left waist with the bayonet but he refused to come out of the taxi. Instead, the taxi driver said "I pay, I pay". At this juncture, Wan took out his pistol. Rosli watched as Wan cocked the pistol and pointed it at the taxi driver. Wan told the taxi driver to get out of the taxi, whilst pointing the pistol at the head of the taxi driver. Rosli was not sure from where Wan took out the pistol.

19. The taxi driver appeared frightened by this and unfastened his seat belt. The taxi driver got out of the taxi.

20. Rosli did not expect Wan to use his revolver in that manner. Rosli himself was frightened. When the taxi driver alighted from the taxi, Wan used his right knee to nudge Rosli's left knee. Rosli understood this to mean that Rosli was to get out of the taxi to restrain the taxi driver. Rosli came out of the taxi and Wan then told Rosli to hold on to the taxi driver so that the taxi driver would not run away. Rosli approached the driver and Wan told the taxi driver not to run. At this time, Ibrahim had already occupied the taxi driver's seat.

21. Rosli held the unsheathed bayonet in his left hand. Wan then handed Rosli a pair of handcuffs. Wan instructed Rosli to handcuff the taxi driver which Rosli did. Rosli's evidence was that there was only a plan to tie-up the taxi driver. Wan then instructed Rosli to take the taxi driver inside the bushes that was along the side of the Chestnut Avenue. Rosli complied with Wan's instructions as he thought that he was to tie-up the taxi driver. Rosli then took the taxi driver to the bushes. Wan did not offer any rope or string to tie-up the taxi driver.

22. On his own accord, Rosli thought of handcuffing the taxi driver to a tree. Rosli lead the taxi driver to the bushes. Rosli saw Wan holding the pistol before he crossed the drain that ran along the side of the road.

23. While Rosli was crossing the drain, the taxi driver slipped and fell into it. As Rosli was pulling the taxi driver from the drain, Wan came towards them and assisted Rosli to pull the taxi driver out from the drain.

24. Rosli and the taxi driver then proceeded for about 2 to 3 metres into the bushes. Wan was at that time between to 1 metre away from the kerb.

25. As Rosli pulled the taxi driver into the bushes, the taxi driver fell again. Rosli told him to get up but the taxi driver replied that he could not. Rosli decided to ask Wan to help raise the taxi driver as he could not raise him alone.

26. As Rosli turned around and called for Wan's assistance, Wan pointed the pistol at Rosli. Wan then told Rosli to "finish him". Rosli understood Wan to mean that Rosli should "kill the taxi driver". Rosli did not know what to do and looked at Wan's face. Wan looked serious and Rosli saw that the pistol was now being aimed at Rosli. Rosli was afraid and believed that Wan would shoot him.

27. In this state of fear, Rosli covered the taxi driver's mouth with his left hand. Rosli again turned to look at Wan. Wan then gestured with his pistol. Rosli understood that gesture to mean that Rosli was to "finish off the taxi driver". Rosli then stabbed the taxi driver 5 or 6 times.

28. Rosli believed that he would have been shot by Wan if he did not follow Wan instructions to kill the taxi driver. Rosli could only remember that he had stabbed the taxi driver in the chest region, as he was not looking at the taxi driver at that time. Rosli's evidence was that he was looking at Wan who was pointing the pistol at him. A car passed by and Wan put down his pistol so that the passing car could not see what was happening.

29. Rosli neither hit, punch nor kick the taxi driver. Wan shouted at Rosli to take the wallet from the taxi driver. Rosli followed his instructions and as Rosli was taking off the handcuff, a green van passed by. Rosli squatted down. Rosli noticed that the taxi driver was already motionless.

30. Rosli gave evidence that Wan did not stick to the agreed plan which was to tie-up the taxi driver and to use the stolen taxi as a getaway vehicle.

31. Rosli insisted that it was never his intention to kill the taxi driver.

48. Rosli asks that this Court accept his oral testimony in Court as the truth. To a question from this Court, Rosli answered:

"I want everyone to know the truth".

Prosecution

88 The final speech by the learned DPP was comprehensive and detailed. In the main, the learned DPP after making extensive references to the testimonies of all three accused urged the court not to give any credence to their repeated claims that their scheme on that day was merely to tie up the taxi driver and speed off with the stolen taxi to their main criminal enterprise at Jurong East. The learned DPP urged the court to hold that these men would not have - given the fact they were equipped with ski-masks to cover their faces during the proposed armed robbery - allowed the taxi driver who had seen their faces in daylight to be around to identify them later. The learned DPP submitted that in the circumstances of this case, the irresistible inference was that the killing of the taxi driver by the third accused was indeed part of the common intention. Insofar as is relevant the following segments of the prosecution submission require reproduction:

> ***Paras 100, 102, 103, 104, 105, 106, 127, 128, 137, 138, 139, 140, 141, 142, 179, 180, 181, 185, 186, 187, 205, 206, 216, 217, 221, 223, 224, 225, 226, 234 of the submission:***
>
> 100. The three of them set out on 8 Aug 00 on a highly dangerous mission: to rob a goldsmith's shop which was likely to be guarded by CISCO officers. They were armed to the teeth and violence was expected. They were out to commit 2 robberies: the robbery of the taxi-driver of his taxi and then the robbery of the goldsmith's shop. The 1st accused, had, at great risk to himself, smuggled a Colt automatic pistol, a Smith & Wesson revolver, and a bayonet, through the Woodlands checkpoint as he needed them for the grand robbery he had in mind. He provided the weapons to the 2nd and 3rd accused for their use and they readily agreed to it.
>
> 102. From the evidence adduced, it is clear that all 3 persons had a great fear of being identified. This will be dealt with in greater detail later. At this stage, the prosecution would emphasise the following:
>
> > 102.1. The taxi-driver had seen the faces of all 3 accused persons.
> >
> > 102.2. The taxi-driver had seen the 1st accused brandishing a pistol (according to the 3rd accused, when the 3rd accused asked the 1st accused why the taxi-driver had to die, the 1st accused replied that it was because the taxi-driver had seen his firearm)
> >
> > 102.3 While the 3rd accused was in the bushes at Chestnut Avenue, 2 vehicles had passed by (with no evidence as to whether the motorists saw their faces).
> >
> > 102.4 Their subsequent conduct after the killing:
> >
> > > i The 3rd accused removed the handcuffs from the deceased after stabbing the taxi-driver as he was afraid that fingerprints may have been left on the handcuffs.

ii The 1st and 3rd accused changing T-shirts after the killing.

iii The 2nd accused and the 3rd accused going for haircuts after the killing.

iv The constant cleaning of the taxi to remove fingerprints

v The plan to use ski-caps when committing the robbery of CISCO officers or of the goldsmith's shop.

103. Given the fact that the three accused persons were so afraid of being recognised by the motorists that drove by Chestnut Avenue even though there is no certainty that the motorists had seen their faces, they must have been positively terrified of the fact that the taxi-driver had seen their faces and could identify them. If they were afraid of being identified by a passing motorist, they would have been more afraid of being picked out at an identification parade by the taxi-driver. The 3rd accused had only one obvious choice when he led the taxi-driver to the bushes: to finish him off.

The 1st accused Wan Kamil

104. The 1st accused is clearly culpable under section 34 of the Penal Code for the following reasons:

104.1. He had supplied the weapons. In particular, he gave the 2nd accused a Smith & Wesson revolver and the 3rd accused a bayonet. He must have anticipated that they would be used, otherwise, why did he procure them from Thailand and why did he provide them to the other 2 accused persons: see Neoh Bean Chye's case, where the 1st accused provided the 2nd accused with the revolver used in the shooting.

104.2. He was the one who chose Chestnut Avenue as the scene for the robbery.

104.3. He told the 3rd accused to '*habis khan*' or 'finish off' the deceased before even boarding the taxi.

104.4. He stood guard along the road, holding his pistol to provide cover for the 3rd accused before returning to the taxi.

104.5. He gave orders to the 2nd accused to clean the taxi so that they would not leave fingerprints in it.

105. The prosecution submits that the account given by the 1st accused vis--vis how they were going to execute the 2nd option (of robbing a taxi-driver of his taxi) is inherently incredible. The 2nd option would entail:

> 105.1 robbing the taxi-driver of his taxi;
>
> 105.2. tying the taxi-driver to a suitable tree;
>
> 105.3. leaving the scene;
>
> 105.4. staging the robbery at the Boon Lay Gem Store successfully; and
>
> 105.5. alerting the police to rescue the taxi-driver.

106. This sounds comical and ludicrous and cannot be taken seriously by this Court.

2nd accused

127. His defence is two-fold:

> 127.1. That he had no part in the killing and that he did not know that the 3rd accused had intended to kill the driver-driver.
>
> 127.2. That his role in the robbery of the taxi-driver was that of a driver and he had remained in the driver's seat when the taxi was parked along Chestnut Avenue, waiting for the 3rd accused to return to the taxi.

128. The 2nd accused has attempted to distance himself from the killing of the taxi-driver by selectively highlighting certain factors that are apparently favourable to him such as the fact that he remained in the taxi when the killing occurred. However, it is clear from the caselaw that the totality of the circumstances must be taken into consideration when assessing whether the 2nd accused has the requisite intention. When the evidence is assessed *in toto*, it becomes clear that the 2nd accused, as the driver, remained in the taxi in order to make a quick getaway after the 3rd accused had dealt with the taxi-driver.

Further Evidence from the 2nd accused's own statements:

137. The second accused, in his handwritten statement recorded on 15 Oct 00 (exhibit P244) at the 2nd paragraph states:

> "I **saw** the 3rd accused and Wan **pulling** the taxi-driver to the bushes after handcuffing him." (emphasis added)

138. The 2nd accused, in his statement recorded on 1 Nov 00 (exhibit P250 at page 370) at paragraph 7, stated:

> "Whilst seated in the driver's seat, I **turned around and saw** the 3rd accused was **forcing** the taxi-driver to the bushes of tall lalang on my left side of the road …" (emphasis added)

139. The 2nd accused, in his evidence in court denied ever seeing this but he could not give any good or reasonable explanation why he mentioned this in his statement. His explanation that he was subsequently informed of this still does not explain why he said he 'saw' the 3rd accused forcing the taxi-driver into the bushes not once but twice. During his evidence in chief, he was asked by his own Counsel:

> Q: Why did you say that you did?
>
> A: I do not know why I said.

140. There was no reason for the recorder to be putting words in the 2nd accused's mouth and forcing him to agree to it. For example, SSgt Karmaruzam, who recorded the statement from the 2nd accused on 15 Oct 00 (P244) also recorded a statement from the 3rd accused on the same day. In the 3rd accused's statement (exhibit P243 page 234), it is stated that:

> "I did not bother and brought him to the bushes …"
>
> (emphasis added)

141. The significance of this is that if SSgt Kamaruzam was simply putting words into the 3rd accused's mouth and forcing the accused to agree to it, he would have, for the 3rd accused's statement, inserted the word 'forced' instead of the word 'brought'.

142. Given that the second accused has failed to give an explanation why he said those words in his statements, the only inference is that he did in fact say those words to the recorder as that was **what actually happened**.

Amazing failure of the 2nd accused to notice the 3rd accused brandishing a bayonet.

179. One of the most incredible aspects of the 2nd accused's evidence was his failure to notice the 3rd accused's bayonet when he brandished it in the close confines of the taxi and also outside the taxi. The undisputed evidence is that the 2nd accused, seated at the front passenger seat, was trying to order the taxi-driver out of the taxi. When the taxi-driver refused to get out, the 3rd accused took out his bayonet and tapped the taxi-driver on his left waist with it

several times. The 2nd accused, despite being mere centimetres away from the bayonet, claimed that he did not see the bayonet!

180. Even after the 3rd accused had got out of the car and held onto the taxi-driver to bring him to the bushes, the 2nd accused said he noticed the 3rd accused but failed to see his bayonet. In his police statements, the 2nd accused said that he saw the 3rd accused 'pulling' and 'forcing' the taxi-driver but in court, he changed his evidence on this aspect. Bearing in mind what he said in his police statement that the 3rd accused's bag contained weapons, it is clear that the 2nd accused's evidence in Court cannot be believed.

181. It is submitted that the 2nd accused is lying to downplay his role and to portray himself as the least culpable of the three of them, in that he played no part in the killing. That may well be so on the facts but in law, he is still caught by section 34.

185. At this juncture, it should be highlighted that the 2nd accused did in fact admit that he did contemplate that in the robbery of a goldsmith's shop that was to take place after they robbed the taxi-driver, the 1st accused might use firearms if there was resistance.

186. What was the qualitative difference between robbing a taxi-driver and a goldsmith's shop that prevented the contemplation of the use of weapons in the former? It is submitted that there is none. If the accused persons were prepared to use weapons to carry out the robbery of a goldsmith's shop, it is submitted that they must have been equally prepared to use weapons to rob the taxi-driver since obtaining a getaway car was an essential prerequisite to the success of the robbery of the goldsmith's shop. It is also reasonable to expect that the taxi-driver, like any victim of crime, would resist and that would easily provoke the use of the weapons.

187. As such, any defence that the weapons were supposed to have been used only in the subsequent robbery and not for the robbery of the taxi-driver should be rejected outright. Such a submission would be unsustainable in law.

Liability of the 2nd accused under s.302 r/w s.34

205. It is submitted that the second accused is guilty of an offence under s.302 r/w s.34 of the Penal Code as:

> 205.1. there was a common intention to commit armed robbery of a taxi-driver of his taxi;
>
> 205.2. the 2nd accused has satisfied the requirement of 'presence' and 'participation' by:
>
> > i. flagging down the taxi and boarding it together with the other 2 accused;

ii shortly later, at Chestnut Avenue, instructing the taxi-drive to get out of the taxi; and

iii by waiting in the taxi as a getaway car driver while the taxi-driver was led to the buses by the 3rd accused;

205.3. the killing of the taxi-driver was in furtherance of the common intention to commit robbery.

206. Furthermore, there was never, at any stage, any objection by the 2nd accused to the plan and he also did not withdraw from the plan to commit armed robbery.

216. The main objective of this exercise was to obtain the taxi as a getaway car. In addition, to make sure that the taxi could be used as a getaway car, they had to prevent the taxi-driver from raising the alarm. Otherwise, they would obviously not be able to use the taxi as the police would be hot on their heels.

217. Even if they had initially intended to tie up the taxi-driver, such plans are not cast in stone and there may be a change in plans. A simple analogy would be the case of a robber armed with a gun together with his unarmed accomplice. Both may claim that there was no intention to use the gun, but if the robber armed with the gun encounters resistance and shoots and kills the person offering resistance, it clearly cannot lie in the mouth of the accomplice to say there was 'no plan' to use the gun.

221. The defence of the 2nd accused seems to be that he did not know what happened in the bushes and he was under the impression that the taxi-driver was to be tied up and not to be killed. In law, even if this Court believes him, such a defence fails *in limine*. Supposing, after the taxi-driver refused to get out of the taxi on the first order by the 2nd accused and the 3rd accused had stabbed the taxi-driver while all of them were still in the taxi, would the 1st and 2nd accused not be caught by section 34 of the Penal Code? Alternatively, suppose the 1st accused had shot the taxi-driver inside the taxi after cocking the pistol (because the taxi-driver had refused to obey the commands of the 2nd and 3rd accused to get out of the taxi). Would the 2nd and 3rd accused not be caught by section 34? Of course they would in both instances, because it is clear that the killing was in furtherance of the common intention to commit robbery.

223. The 3rd accused's actions clearly satisfy both the *mens rea* and *actus reas* elements under section 300(a), (b) or (c) of the Penal Code. He has admitted both in court and in his statements that he stabbed the taxi-driver with the bayonet in the chest region between 4-5 times. Each of the stab wounds was in itself sufficient to cause the death of the taxi-driver.

224. The 3rd accused had unsheathed the bayonet and led the handcuffed and defenceless taxi-driver into the bushes like a lamb to the slaughterhouse. The poor taxi-driver had pleaded for his life continuously, on at least 3 occasions:

> a) When the accused persons tried to force him out of the taxi, he pleaded with them by offering them money and saying '*I pay, I pay*';
>
> b) When he was pulled by the 3rd accused into the bushes o f tall lallang along the road meekly resisting, he had '*pleaded to me not to harm him and said that he has a family*'. [the 3rd accused's statement, P256, paragraph 9 at page 382]; and
>
> c) After he had fallen on the ground with one of his legs entangled with roots of the lallang on the ground, he '*was still pleading not to harm him*'. (P256, same paragraph)

Yet, the 3rd accused ignored the futile pleas of the taxi-driver and even told him to shut up. Just before the stabbing, he had covered the taxi-driver's mouth to prevent him from pleading further. Under cross-examination by the prosecution, the 3rd accused testified that 'The taxi-driver keep talking to me not to do anything and **again and again, so I close his mouth to prevent him from talking**'. He then went on to kill the taxi-driver 4 times over.

225. After the stabbing, the 3rd accused went further and took the dead taxi-driver's wallet from the trousers pocket and even had the presence of mind to remove the handcuffs as he was afraid that his fingerprints would be left on them. He then emerged from the bushes with the bloodstained bayonet and handcuffs. Together with the 1st accused, they proceeded to the taxi where the 2nd accused was waiting at the wheel, ready to make the getaway from the scene of crime. The 3rd accused then announced to the others that he had stabbed the taxi-driver and that he thought the taxi-driver had died.

226. In light of his conduct and the extreme cruelty that he displayed to the taxi-driver moments before his death, the statement made by him to the police under the provisions of section 122(6) of the CPC that "… I have no intention to kill him or to cause his death" is ludicrous.

234. It is respectfully submitted that the prosecution has proven beyond a reasonable doubt that the three accused persons committed the offence in circumstances which amount to murder under section 302 read with section 34 of the Penal Code. We urge this Honourable Court to convict all three accused persons as charged.

Conclusion

89 The primary facts that (a) the three accused tricked the taxi driver to take them to a desolate

spot along Chestnut Avenue; (b) there in that place, one amongst them namely the third accused stabbed him several times; and (c) the hapless victim died as a result of the wounds suffered by him were not in dispute. What was put in issue was in relation to their common intention. The charge of murder on which they were being tried necessarily hinged on a finding by the court whether such a common intention could be attributed to all three of them. In this, reference must first be made to s 34 of the Penal Code which was an integral ingredient of the charge. The section reads:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

90 This section, as stated by the learned authors of Ratanlal (see Ratanlal and Dhirajlal's Law of Crimes, 23rd Edn, Vol 1, page 85) lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention (***Mahbub Shah v Emperor*** (1945) 47 Bom LR 941). It deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of common intention, each person is liable for the result of them all as if he had done them himself; 'that act' and 'the act' in the latter part of the section must include the whole action covered by a 'criminal act' in the first part, because they refer to it (***Barendra Kumar Ghosh v Emperor*** AIR 1925 PC 1).

91 The most celebrated exposition on this subject which is frequently quoted and oft-repeated is contained in the advice of Sir Madhavan Nair in ***Mahbub Shah*** (*supra*) at page 943. It reads:

> Attention has already been drawn to the words of the section. As it originally stood, the section was in the following terms :-
>
> > "When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone."
>
> In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each" so as to make the object of the section clear. Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all" nor does it say "an intention common to all." Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of s. 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

92 The subject came up for discussion in another Indian case of ***Bashir v State of Allahabad*** (1953) AIR All 668 at 671 where the court (per Desai J) observed:

> (13) What is meant by "common intention" is the "community of purpose" or "common design" or "common intent". Section 34 lays down a principle of Common Law and it has been pointed out by Lord Sumner in the case of ***Barendra Kumar Ghosh v Emperor*** AIR 1925 PC 1 (C) (ubi supra), at page 8 that the Indian Penal Code must not be assumed to have sought to introduce differences from the prior law and it must not be suppposed that, because it ceases to use the terms "principal in the first degree" and "principal in the second degree" it does not intend to provide for the ideas which those terms, however imperfectly expressed. Therefore it will not be wrong to interpret the words "common intention" to mean "community of purpose", "common design" or "common enterprise" which are the words used in the English Common Law. In – 'Mahboob Shah (sic) v. Emperor', AIR 1945 PC 118 (D), "common intention" was held to imply a "pre-arranged plan". This does not mean either that there should be confabulation, discussion and agreement in writing or by word, nor that the plan should be arranged for a considerable time before the doing of the criminal act. The Judicial Committee in the 'case of Mahboob Shah (sic) (D)', did not lay down that a certain interval should elapse between the formation of a pre-arranged plan and the doing of the criminal act and did not negative the formation of a pre-arranged plan just a moment before the doing of the criminal act. …

93 Another principle to be borne in mind is that before any accused can be convicted of an offence read with s 34, the court must arrive at a finding as to which of the accused took what part, if any, in furtherance of the common intention. A conviction without such a finding would be illegal (see ***Fazoo Khan v Jatoo Khan*** AIR (1931) Cal 643)

94 The law as to common intention came up for discussion before the Singapore Court of Criminal Appeal on several occasions. In ***Mimi Wong & Anor v Public Prosecutor*** [1972] 2 MLJ 75 as well as in ***Public Prosecutor v Neoh Bean Chye & Anor*** [1975] 1 MLJ 3, the Court of Criminal Appeal affirmed the principles articulated in ***Mahbub Shah*** as well as ***Barendra Kumar Ghosh***.

95 In ***Mimi Wong***, Wee Chong Jin CJ delivering the opinion of the appellate court, rejected a contention by the second accused (who did not inflict the fatal blow but played a role in throwing toilet cleansing liquid into the eyes of the victim just as the first accused was about to stab the victim) that s 34 could only be applied if the common intention of the persons accused of an offence was to commit the offence with which they were charged, and said:

> … The Privy Council in *Mahboob Shah* (sic*)* v*. Emperor* said this of section 34:
>
> "Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say 'the common intentions of all' nor does it say 'an intention common to all'. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all. If this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done

by him alone".

In an earlier case, *Barendra Kumar Ghosh* v. *Emperor* the Privy Council said:

"Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for 'that act' and 'the act' in the latter part of the section must include the whole action covered by 'a criminal act' in the first part because they refer to it:

…

In other words, 'a criminal act' means that unity of criminal behaviour, which results in something for which an individual would be punishable if it were done by himself alone, that is a criminal offence."

It is clear from the Privy Council's interpretation of the words "criminal act" that it is the result of a criminal act which is a criminal offence. It then remains, in any particular case, to find out the actual offence constituted by the "criminal act." If the nature of the offence depends on a particular intention the intention of the actual doer of the criminal act has to be considered. What this intention is will decide the offence committed by him and then section 34 applies to make the others vicariously or collectively liable for the same offence. The intention that is an ingredient of the offence constituted by the criminal act is the intention of the actual doer and must be distinguished from the common intention of the doer and his confederates. It may be identical with the common intention or it may not. Where it is not identical with the common intention, it must nevertheless be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer wold not be in furtherance of the common intention. …

96 In ***Neoh Bean Chye***, the facts as could be gathered from the headnotes of the case were as follows.

97 The first accused Neoh, and the second accused Lim, were jointly tried for murder in furtherance of a common intetnion. Lim carried a loaded revolver and both accused entered a 'wine shop' in order to rob the proprietor. When the proprietor was about to close the shop, they attempted to rob him, but when he resisted, Lim shot him and both accused ran out. When Neoh was arrested and charged with the murder of the proprietor, he made a cautioned statement to the police and another statement to a magistrate. When Lim was arrested and charged some months later, he also made a cautioned statement to the police. The accused were separately represented by counsel at the trial. The second accused Lim contended (a) that a separate trial was desirable as Neoh had blamed him for the proprietor's death in his earlier statements and he would therefore be prejudiced and embarassed in his defence; (b) that his own statement to a police inspector was inadmissible because Neoh's cautioned statement had not been furnished to him before his own statement was taken from him, but only some time afterwards and accordingly there had been a breach of rule 9 of Schedule E of the Criminal Procedure Code; and (c) that his gun had gone off accidentally during a struggle with the deceased proprietor. The first accused Neoh contended (a) that there was no case to answer at the end of the prosecution case as there was no evidence of a common intention to cause the death of the proprietor; and (b) that the proprietor's death was in any event accidental.

98 Counsel for Neoh referred to the court the headnotes of ***R v Vincent Banka & Anor*** [1936] V MLJ 66, a decision by the Straits Settlements Court of Criminal Appeal, and argued that Neoh could not be found guilty of murder unless the prosecution proved that there was common intention on the part of both accused to commit murder. In ***Vincent Banka***, the headnotes said that '[before] a jury can find an accused person guilty of murder by reason of the provisions of s 34 of the Penal Code, they must be satisfied on the evidence that *there existed between the participants a common intention to not only rob but also to kill the deceased*. [Emphasis added]

99 Choor Singh J who tried the case together with D'Cotta J in the first instance, gave short shrift to the foregoing argument. In rejecting it, he observed:

> In our judgment the head note of the report of the decision in *Rex* v. *Vincent Banka and another* does not contain a correct statement of the law. In a criminal prosecution where section 34 of the Penal Code is invoked, it is not incumbent on the prosecution to prove that there existed between the participants a common intention to commit the crime actually committed. For section 34 to apply it is sufficient if the prosecution prove that there was in existence a common intention between all the persons who committed the criminal act and that the act which constituted the offence charged was done in furtherance of that common intention. This is clear from the decisions of the Privy Council in *Barendra Kumar Ghosh* v. *Emperor*, and *Mahboob Shah* (sic) v. *Emperor*, and also from the recent decision of the Court of Criminal Appeal of Singapore in *Mimi Wong and another* v. *Public Prosecutor*.

100 The Court of Criminal Appeal upheld the decision of the High Court and Wee Chong Jin CJ delivering the judgment of the appeal court said that the trial judges were plainly justified in finding the appellant guilty of murder under s 302 read with section 34 of the Penal Code.

101 Both in ***Mimi Wong*** and ***Neoh Bean Chye***, the Singapore Courts have unambiguously approved the principles enunciated in ***Barendra Kumar Ghosh***. An important segment in the judgment of the Singapore Court of Criminal Appeal in ***Mimi Wong*** making reference to ***Barendra Kumar Ghosh*** highlights the principle that *'s 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if had done them himself, for 'that act' and the 'act' in the latter part of the section must include the whole action covered by a 'criminal act' in the first part, because they refer to it'* (see ***Mimi Wong*** (*supra*) at page 79C-D, left column and ***Barendra Kumar Ghosh*** AIR 1925 PC 1).

102 The learning on the common intention provisions of the Penal Code is legion. I need however refer to a few other decisions of the Singapore Court of Appeal.

103 In ***Lim Heng Soon & Anor v Public Prosecutor*** [1970] 1 MLJ 166 at 170E-I, (right column) the Federal Court, Criminal Appeal from Singapore (per Wee Chong Jin CJ) approved a direction given by the trial judge to the jury in relation to common intention in the following terms:

> … *every person who participates* in the commission of the criminal act *would be liable* as if he [had] committed the act all by himself, *irrespective of the fact he had only played a small role* in the commission of the act. [Emphasis added]

104 In ***Too Yin Sheong v Public Prosecutor*** [1999] 1 SLR 682, the Court of Appeal at page 693-I re-affirmed what was stated by Wee Chong Jin CJ in ***Lim Heng Soon*** (*supra*). In ***Shaiful Edham bin Adam & Anor v Public Prosecutor*** (Criminal Appeal No 13 of 1998 at para 61) the Court of Appeal

emphasised the aspect that passive participation by one accused would suffice to satisfy the requirements of s 34 of the Penal Code. In ***Too Yin Sheong*** the Court of Appeal also re-affirmed (see p 694, para 37) what was stated by Mookerjee J in ***King- Emperor v Barendra Kumar Ghos[e]*** (sic) (AIR 1924 Cal 257 at 280), as follows:

> It is the expectation of aid, in case it is necessary to the
>
> completion of the crime and the belief that his associate is near and ready to render it, which encourage and embolden the chief perpetrator, and incite him to accomplish the act. By the countenance and assistance which the accomplice thus renders, he participates in the commission of the offence.
>
> It is therefore sufficient to hold a party as principal, if it is made to appear that he acted with another in pursuance of a common design; that he operated at one and the same time for fulfilment of the same pre-concerted end, and was so situated as to be able to furnish aid to his associates with a view to insure success in the accomplishment of the common enterprise.

105 In ***Public Prosecutor v Gerardine Andrew*** [1998] 3 SLR 736, the Court of Appeal re-affirmed what was stated by the Privy Council in ***Barendra Kumar Ghosh*** that before a person could be made liable under s 34, there had to be physical presence at the actual commission of the offence. However, physical presence did not require the offender to be at the exact spot where the crime was committed. It would be useful at this stage to refer to what Yong Pung How CJ observed at page 752 of the decision. He said:

> 36 The question whether an accused person must be physically present at the actual commission of the offence is therefore answered in the affirmative. The next question which arises for this appeal is whether Gerardine was physically present for the purposes of s 34 when the stabbing took place. The requirement here is physical presence at the actual commission of the offence, not physical presence at the immediate site when the commision of the offence occurred. In *Barendra Kumar Ghosh v Emperor* AIR 1925 PC 1, a post-master was shot and killed inside a post office. The accused said that he was outside the post-office at the time of the shooting. *Lord Sumner in delivering the judgment of the court observed at p 6, 'Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait'* ". It was also noted by Bose J in *Shreekantiah Ramayya Munipalli v State of Bombay* AIR 1955 SC 287 that an accused need not be present in the actual room. He can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape. What is crucial is that he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually committed. …
>
> [Emphasis added]

106 So much for an overview of the law and reasoning relating to s 34 of the Penal Code. Returning to the contentions before the court, it is proposed to deal with the role and actions of the **third accused** first for he was the one who led the taxi driver into the bushes and stabbed him several times and caused his death.

Third accused

107 The third accused had admitted both in his statements and in court that he was the man who plunged the bayonet a number of times into the chest of his handcuffed quarry. It was clear from his statements (in particular para 9 of exh P-256, page 382 of the PI notes) that despite the pleas and entreaties of the taxi driver not to cause him harm and his further doleful declaration that he had a family, the third accused still mercilessly stabbed the victim.

108 Forensic evidence on which there was no dispute had further conclusively established that each stab wound inflicted on the taxi driver was by itself sufficient to cause his death.

109 Section 300 of the Penal Code insofar as relevant reads:

> 300. Except in the cases hereinafter excepted culpable homicide is murder –
>
> > (a) if the act by which the death is caused is done with the intention of causing death;
> >
> > (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
> >
> > (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
> >
> > (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

110 In my view, the first accused's acts in stabbing a completely helpless and beseeching victim fell in all fours with either limb (a), (b) or (c) of s 300. The actions of the accused clearly in my mind satisfied both the *mens rea* and *actus reus* elements in the said section. The accused's perfunctory explanation in his s 122(6) statement that he had no intention to kill the taxi driver or cause his death was found by me to be void of any substance.

111 In the course of his testimony, the third accused obliquely attempted to raise the defence of duress. He claimed that whilst he was looking to the first accused for assistance to help lift the taxi driver who tripped and fell in the bushes, the first accused raised his pistol, pointed it at the third accused and in a manner commanded him to 'finish off' the taxi driver. He implied that if not for such a life-threatening sign from the first accused, he would not have stabbed the taxi driver for at all times his intention was merely to tie up the taxi driver and at that time to handcuff him to a tree in the thicket.

112 In my determination, if his claim that he stabbed the victim because of a vile threat by the first accused, this would have most certainly featured in his statements. Further, if what he did was indeed upon threat of violence to his life, he would not have, in my view, gone about searching for

the victim's wallet and recovering it from the victim's trouser pocket, after he had stabbed him. Still further, his reaction when he re-entered the taxi would be one of disgust, frustration and revulsion and not one of quietitude and silence. In my finding, his story that he committed the act under threat and duress did not appear to have any semblance of truth.

113 In any event, the defence of duress which the third accused was trying to set up was no defence to the charge of murder. Section 94 of the Penal Code provides:

> 94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:
>
> Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
>
> *Explanation*
>
> 1. – A person who, of his own accord, or by reason of a threat being beaten, joins gang-robbers knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.
>
> Explanation 2. – A person seized by gang-robbers, and forced by threat of instant death to do a thing which is an offence by law – for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and plunder it – is entitled to the benefit of this exception.

114 In ***Killikyatara Bomma & Others v Emperor*** (1913) 14 Cr L J 207 (Madras), the Madras High Court held that a person who by threat of death was induced to do an act in order to facilitate the commission of a murder, could not claim the benefit of s 94 of the Penal Code.

115 It would not be necessary for me to delve further into the law of duress for in my view I found the claim of the first accused that he stabbed the victim four to five times in his chest because of an impending danger to his life or person to be nothing but a hoax, conceived belatedly to escape the consequences of his mindless and cruel deeds. He was found by me to be spinning tales and distorting facts as to what made him commit the heinous acts admitted to have been committed by him.

116 He claimed that he was an unwilling entrant to the robbery scheme. He said that when the first accused tried to get him involved with his robbery plans, he initially remained silent but he caved in only after a chillingly veiled intimidation as to what could befall the third accused if he did not join in the robbery plan and the mention of a possible booty of about 5 million dollars dangled by the first accused.

117 The third accused's account that he never entertained any thought to cause any bodily injury to the taxi driver was in my view an improbable story. If he, as he said, was a reluctant recruit to the robbery scheme and that the plan as respects the taxi driver was merely to tie him up in the bushes, would he not have halted in his tracks and either rebuked or counseled the first accused, when the latter reportedly surprised him with an inexplicable and cruel instruction to finish off the taxi driver, a few moments before he and the first accused were about to board the taxi hailed by the second accused that day. In my view, he was trying to distance himself from the horrible and mindless crime

committed by him.

118 In my determination, the suggestion by the third accused that he had little choice but to finish off the fallen driver because there was an imminent threat of harm to his life from the first accused, was a belated fabrication concocted to evade the consequences of his mindless and cruel deed committed by him on 8 August 2000.

First accused

119 Let me next deal with the defence of the first accused. The first accused's defence was one of denial. He claimed that the killing of the taxi driver was never in the scheme of things. He said that their plan when they opted to seize a taxi from its driver was merely to restrain him in a secluded spot; use the taxi and once the robbery was over, inform the police of the whereabouts of the taxi driver. He further averred that initially he was unwilling to go to Chestnut Avenue but gave directions to proceed there only when he encountered some cold and disapproving looks from his companions.

120 He denied ever having mentioned to the third accused to finish off the taxi driver either before they boarded the taxi or whilst at Chestnut Avenue. He claimed that he was totally unaware of what in fact the third accused did to the taxi driver inside the bushes. He claimed that he was seated inside the taxi and only when he saw an oncoming car, he wound down the window of the taxi and shouted to the third accused to hurry up. He heard some crying voices from inside the bushes and a little later learnt from the third accused that the taxi driver had been stabbed.

121 Notwithstanding the aspect that the account narrated by the first accused that the third accused threatened him with the pistol when instructing him to finish off the taxi driver lacked substantiation, I still found the story of the first accused that he was in fact inside the taxi when the third accused hurt the taxi driver in the bushes, to be unworthy of belief. The first accused's evidence in this regard, in examination-in-chief, was at variance with what he had said in cross-examination. In examination-in-chief his evidence was that after the third accused and the taxi driver had gone into the bushes after jumping over a drain, he went and sat inside the taxi. He then saw an oncoming car. Then he heard a sound 'crying in pain'. He then shouted to the third accused to hurry up. But during cross-examination, his story was different. He said when cross-examined that whilst he was standing next to the taxi, he saw an oncoming car. He then went and sat inside the taxi. He wound the window down (he demonstrated to court how he wound down the windows by using his hands and showing a rotating movement) and shouted to the third accused to hurry up. He then heard the cry of pain from the bushes after he had shouted.

122 Although the details as to sequence can blur from one's memory after a few months, the lack of consistency was not the only feature to belie his claims. The taxi in question, the court was shown with reference to the photographs produced, did not have a manual handle to lower the windows. The taxi in fact was proven to have power windows.

123 In my evaluation, the first accused was endeavouring in vain to distance himself from the murder committed by the third accused. He did not want to admit that he was either standing guard, rendering assistance or watching the third accused mercilessly stabbing the victim for obvious reasons. His claim that he was inside the taxi when the cruel felling of the taxi driver was being carried out by the third accused was also dashed by the evidence of the second accused who said that the first accused was some distance behind the taxi for sometime and that both the first accused and the third accused re-entered the taxi at about the same time – albeit the first accused stepped into the taxi first - before they left Chestnut Avenue for Woodlands. In my finding, the first

accused was deliberately being untruthful as regards his location when the third accused stabbed the taxi driver.

124 The other aspect I must mention is in regard to his claim that he was reluctant initially to take the taxi driver to Chestnut Avenue. He claimed that he was in a way bulldozed into it by the cold and disapproving looks of the other two. This story again was found by me to be an improbable one. First of all, this claim went against his own claim that the plan was to take the taxi driver to a secluded spot to tie him up. If so, what difference would it have made to the other two whether the taxi-driver was taken to Woodlands or Chestnut Avenue to be tied up. Why would the others give a displeased look when the first accused mentioned Woodlands and withdraw their disapproval when he changed the direction to Chestnut Avenue, when it was common ground the other two were not at all familiar with the Chestnut Avenue area?

125 In fact, if the first accused's claim was true, why did it not feature in his lengthy voluntary statements. Its absence in those statements led me to conclude that the claim by the first accused was also an untruth.

126 As can be gathered from his own testimony, the first accused was the architect of the entire evil enterprise planned for the 8 August 2000. He was the master-mind and purveyor of the deadly weapons. In order to commit robberies, that too in public places and in broad daylight, he had taken pains to secure firearms from Thailand. He was the one who had pre-packed the bags of weapons and caused them to be handed over to the other two hoods. He was prepared and geared to confront even the armed CISCO details and for which purpose he enlisted the help of the second accused to be the getaway driver. Yet he tried to portray himself to the court as a person of care, concern and extreme public-spiritedness and wanted the court to believe that he would have called the police to inform them of the whereabouts of the restrained taxi driver once they had completed the robbery planned for that day. In my finding, his explanations were nothing but untruths and as submitted by the prosecution, made out to escape liability for his cowardly acts.

127 More would be said in relation to the defence of the first accused after the defence raised by the second accused had been dealt with.

Second accused

128 The defence of the second accused was that he had no part in the killing of the taxi driver; he did not know that the third accused intended to kill the victim; he did not know that the third accused was armed with a bayonet or knife; and his role in the robbery of the taxi driver was to act as a driver of the vehicle and nothing more.

129 He claimed that he was paying very little attention to what the first and the third accused did after both of them left the taxi with the driver. His story was that whilst he was in the driver's seat he could only recall seeing, that too for a fleeting few moments, the third accused taking the taxi driver into the bushes whilst the first accused was standing some distance away (about 14 to 15 ft) from the rear of the taxi with pistol in his hand and apart from that nothing significant happened until the first and third accused re-entered the taxi (see page 907 of the NE). He was remarkably evasive about what he heard when the third accused and the taxi driver were inside the bush (see page 988 to 989 of the NE).

130 There was, in my evaluation, a clear attempt on his part to dissociate himself from the harm done to the taxi driver. He wanted the court to believe that he was somewhat a greenhorn who would

never entertain even a thought of shooting anyone with his firearm even during the robbery planned to be carried out in Jurong East. He seemed to suggest that his firearm was just a showpiece and in the event of any fracas, he would simply take to his heels (page 928 of the NE). I found him to be entirely unpersuasive.

131 He was also found by me to be prevaricating on numerous occasions in the course of his testimony. His statements to the police admitted in evidence as being made voluntarily plainly contradicted his evidence in court, as could be seen from the following.

132 The second accused in his handwritten statement recorded on 15 October 2000 (exh P-244) at para 2:

> I *saw* the third accused and Wan *pulling* the taxi-driver to the bushes after handcuffing him. [Emphasis added]

133 Later, the second accused in his statement recorded on 1 November 2000 (exh P-250 at page 370) at para 7 stated:

> Whilst seated in the driver's seat, I *turned around and saw* the third accused was *forcing* the taxi-driver to the bushes of tall lalang on my left side of the road … [Emphasis added]

134 However, the second accused in his evidence in court denied ever seeing such incidents and could not come up with any reasonable explanation as to why he mentioned such matters in his statements.

135 The following segment as appears at pages 812 to 814 of his testimony would illustrate an attempt on his part at prevarication:

> His Honour: The only point I want you to clarify in this statement is this. You look at this statement, somewhere in the middle, (reads), "I asked the taxi driver to get out and the taxi. When he alighted I took over the driver seat." Can you see it?
>
> Witness: Yes.
>
> His Honour: After that you said, "I saw Rosli and Wan pulling the taxi driver to the bushes."
>
> Witness: Yes.
>
> His Honour: Is that correct?
>
> Witness: Yes.
>
> His Honour: You saw both of them pulling the taxi-driver?
>
> Witness: No, this is after the incident, then I know they actually go into the bushes.
>
> His Honour: Just a moment.

Witness: It's actually after the incident, then I know that they actually go into the bushes.

His Honour: I don't understand you?

Witness: It's because they told me after the incident happened that what is actually happening. Then I know that it's exactly that they are going into the bushes.

His Honour: No, here you say, "I saw Rosli and Wan pulling the taxi driver to the bushes." You say, "I saw Rosli and Wan pulling the taxi driver to the bushes."

Witness: Yah.

His Honour: Did you see?

Witness: I only see what they are standing there, but I didn't actually see they go into the bushes, your Honour.

His Honour: No, did you see both of them pulling the taxi driver?

Witness: No, your Honour.

His Honour: Then you say, "Rosli brought the taxi driver inside the bushes and Wan just stood outside."

Witness: Yes.

His Honour: Is it right?

Witness: Yes, it's right, is that---that is what I really what I saw and the first sentence is what I really heard what they are doing.

Mr Lee: OK.

Q You said in your statement, "I saw Rosli and Wan pulling the taxi driver to the bushes after handcuffing him."

A Yes.

Q Now, can you clarify one more time. In the sentence I just read, you said, "I saw Rosli and Wan"?

A Maybe I say the wrong word, but it's actually after the whole story then I make this statement---then I just give a rough statement.

Q You said after the incident you learnt this, that Rosli and Wan pulled the taxi driver into the bushes?

A Yes.

Q Where did you learn this from?

A After somebody conversation after the incident.

Q Conversation with who?

A With Rosli.

Q Anyone else?

A No.

Q And what did Rosli tell you.

A He said actually Wan needs to help him when the taxi driver fall.

Q You said Rosli told you, Wan helped Rosli when the taxi driver was falling?

A Yes.

Q Did you learn what was Wan helping him about.

A He told me that the driver fall to the drain.

Q And what happened?

136 One other aspect that attracted the attention of the court was his claim that all of them that day intended to rob the taxi driver only of his taxi and use it for the purpose of the planned robbery later at Jurong East. However in his handwritten statement (exh P-244), the second accused had this to say:

> In Aug 2000, I went to *Jurong East coffee shop* (corrected by the 2nd accused at the trial to read as the S11 coffee shop at Bukit Batok) to meet Rosli and Wan. During the meeting, we thought of committing robbery since we do not (sic) have income. Initially, we *agreed to rob individual but if we fail we intend (sic) to rob [a] taxi driver* … [Emphasis added].

137 From the foregoing admission, it could be clearly deduced that there was also a plan on that day by all of them even to rob an individual. Consequently, the claim by the second accused as well as the others that their intention was only to rob the taxi driver of his taxi, tie him up in a deserted spot and use his taxi and that the retrieval of the taxi driver's wallet was just an afterthought by the third accused and was not part of the plan, was found by me to be yet another lie. In my finding, the second accused was there not only to act as a passive driver but also to play out whatever role required of him in the commission of every offence to be carried out for that day. In my determination, the second accused's claim that he was an unwitting knave who never entertained any thought of harm or hurt anyone, let alone the taxi driver, was not worthy of any credit.

138 Another incredible facet in the testimony of the second accused was his total ignorance about the third accused's bayonet although the third accused brandished it in the close confines of the taxi as well as outside the taxi. The undisputed evidence was that the second accused who was seated at the front passenger seat was trying to order the taxi-driver out of the taxi and when the taxi driver declined to dismount, the third accused took out his bayonet and tapped the taxi driver on his left waist or shoulder with it. Yet the second accused, albeit being only inches away from the taxi

driver as well as from the menacing bayonet, did not see the bayonet himself.

139 Even after the third accused had alighted from the vehicle and held onto the taxi driver to lead him into the bushes, the second accused claimed that he was not aware of the third accused's bayonet. In his police statements, the second accused said that he saw the third accused 'pulling' and 'forcing' the taxi driver but in court he changed his evidence on this aspect. In my finding he was not stating the truth in court. In any event there was an admission on his part in one of his statements (exh P-250, para 3) that he knew that the bag carried by the second accused contained weapons.

140 In my finding, the second accused's claim that he was just a pawn in the grand game plan of the other two, was void of substance.

141 Having set out my findings and evaluations on the roles played by the three accused persons in the offence, let me now return to the issue of common intention. The law as pronounced in ***Barendra Kumar Ghosh*** and approved in ***Neoh Bean Chye*** (*supra*) is well settled in that 's 34 deals with the doing of separate acts, similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, …'

142 The Singapore Court of Appeal re-affirmed in ***Too Yin Sheong*** that for s 34, every person who participates in the commission of that criminal act would be liable as if he had committed that act all by himself, irrespective of the fact that he might have only played a small role in the commission of the act. The said case also seemed to regard the subsequent conduct of the accused persons and their lack of remorse after the commission of the offence as an indicia to infer common intention.

143 It is also now well settled that although common intention implied a pre-arranged plan and acting in concert, it would however be difficult, if not impossible to procure direct evidence to prove the intention of the individual and in most cases it had to be inferred from the act, conduct and the relevant circumstances of the case (see ***Mahbub Shah***, *supra*).

144 Above all, it was also approved in ***Too Yin Sheong*** that it was not incumbent upon the prosecution to show that the common intention of the accused was to commit the crime for which he was charged, for it was the intention of the doer of the criminal offence charged that was in issue (see [1999] 1 SLR 692, paras 28 to 30).

145 Returning to the facts of the present case, the third accused was found by me to be demonstrably wicked. He was the one who cold-bloodedly plunged the deadly bayonet into the chest area of the luckless taxi driver. Such an action on his part is a clear proof of his intention to snuff out the life of the taxi driver. He was squarely caught within all fours of the limbs (a), (b) and (c) of s 300 of the Penal Code.

146 As regards the first accused, he was found by me to be a consummate prevaricator. A former Cisco man who guided all of them to the secluded Chestnut Avenue area and supplied the very bayonet which the third accused used to cause the death of the taxi driver could not now be heard to say that he did not think nor know that the third accused would stab the taxi driver with that bayonet. He was in my view fully responsible, vicariously or otherwise for the dastardly act of the third accused on that day. Whilst there was no corroboration as to his alleged utterance to the third accused to finish off the taxi driver, in my finding he was indeed standing close to the bushes, witnessing the daylight killing of a defenceless taxi driver.

147 As respects the second accused, his protestations of innocence, in my finding, were nothing but

a conceived ploy. He was neither naive nor a serving boy as he portrayed himself to be in court. His steeliness could be inferred from his dismissive remark at the first meeting with the first accused when he proclaimed: forget the whole thing if the robbery was going to be planned with only knives. In my finding he was in the thick of the plot to rob the taxi driver not only of his taxi but also of his monies. The fact he and his companions shared the cash taken from the taxi driver's wallet further reinforced my view that he was equally a hard-hearted brigand whose object on that day was to partake not only in all aspects of whatever robberies planned but also for the ensuing violence regardless of the consequences. His claim that he did not see the bayonet the third accused was holding when he led the taxi driver into the bushes was nothing but pure falsehood.

148 In my determination, the three thugs who were out to enrich themselves that day at the expense of others were not out for a light-hearted frolic but for armed robbery regardless of victims or consequences. The fact they were prepared to even confront and deal with the armed CISCO personnel, was a clear indication of their mental make-up and that they were doubtless ready for any ensuing blood bath in their encounters that day.

149 Inured to violence, consumed by greed and plainly indifferent to consequences, these three unfeeling thugs united in a common purpose and design snuffed out the life of a chanceless victim whose misfortune was to be plying around Bukit Batok and meeting these wicked men on that fateful day. These three tried their best to pass the poisoned chalice from one to the other. Their gambit however did not succeed. The defence of each one that there was no plan to hurt the taxi driver but the intention was only to restrain him in the bushes was rejected by me as being improbable and untrue.

150 The common intention of the three accused persons to rob the taxi driver of his taxi was not disputed by the defence. Reviewing all the evidence, in my determination, the compelling inference was that there was clearly a common intention by all three of them not only to rob the taxi driver of his taxi but also his monies and in that process to put the taxi driver away for good so that he would not be around to tell the police what happened and eventually identify them.

151 In my finding, the prosecution had proven its case against all the accused beyond a reasonable doubt and that the accused persons had not established their defence on balance of probabilities. In the circumstances, I found all three of them guilty as charged, convicted them and imposed the mandatory sentence for murder.

Sgd:

MPH RUBIN
Judge

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