Chan Choon Wai v Public Prosecutor
[2000] SGCA 32

Case Number	: Cr App 3/2000
Decision Date	: 03 July 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: Edmund Pereira, Vinit Chhabra (Edmund Pereira & Partners) (both briefed) with Christopher Yap (Christopher Yap & Co) (assigned) for the appellant; Amarjit Singh with Karen Loh (Deputy Public Prosecutors) for the respondent
Parties	: Chan Choon Wai — Public Prosecutor

JUDGMENT:

Grounds of Judgment

1. The appellant was charged and convicted of murder for having caused the death of one Koh Mew Chin (the deceased) on 25 March 1999 at Block 145 Pasir Ris Street 11, #05-75, Singapore (the flat). He appealed. The only point taken on appeal before us was the defence of grave and sudden provocation. Having heard his counsel we dismissed the appeal and now give our reasons.

The Facts

2. The facts giving rise to the crime were largely not in dispute. At the date of the offence the parties were two young lovers, the appellant was aged 19 and the deceased, 18. They first met about six months before the date of the incident and very soon became intimate. They were both Malaysians.

3. The appellant worked as a wireman. He shared a room in the flat with two other female persons, Lim Siew Foung (Siew Foung) and Goh Lee Lee (Lily). The flat was owned by one Tay Puay Chin (Ah Chin). Some several weeks before the incident, the deceased came to live with the appellant in the same room. In short, four persons were sharing the room.

4. Some two weeks before the incident, the deceased came to know one Hooi Seau Ching (Sam) through the introduction of Lim Geok Mui (Wendy). The deceased took a liking to Sam. Thereafter, much to the consternation of the appellant, she kept late nights and sometimes did not even return to the flat. She saw a great deal of Sam and even went up to Genting Highlands with him. Wendy was invited to go along on that trip. So anxious was the appellant that, a few days prior to the incident, he trailed the deceased to various places. It was clear that since Sam came into their lives, the relationship between the appellant and the deceased deteriorated.

5. On 22 March 1999, Lily informed the appellant about the deceaseds association with Sam and that the deceased had met Sams family. In addition, Lily also informed the appellant that Sam had given the deceased $250. The appellant was upset that the deceased was not truthful to him. The appellant told Lily that in view of the deteriorating relationship with the deceased, he wished to end it.

6. It was evident that during the few days before the fateful day, the appellant was in considerable pain. He was angry because of the intrusion of Sam, and yet sad because he realised that he might be losing the deceased.

7. On 24 March 1999, sometime after 7.00pm, the appellant spoke to the deceased on Sams handphone, during which the deceased conveyed to the appellant her sentiments on their relationship as follows:-

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

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

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

"You better not look for Ah Sam."

8. After that conversation with the deceased, the appellant called and spoke to Sam on the latters handphone. The appellant wanted to meet Sam. That night, 24 March, the deceased did not return to the flat. As a result the next day, the appellant paged for the deceased a total of 82 times. Eventually when the deceased did respond to the appellant, she was reluctant to return to the flat as requested by the appellant so much so that the appellant threatened that he would commit suicide. Only then did she relent and agree to return to the flat. She did so between 2.00pm and 3.00pm.

9. At about 4.15pm to 4.30pm Wendy tried to contact the deceased at the flat but was informed by the appellant that the deceased had left for dinner with her elder sister. Later, the appellant paged for Wendy and he conveyed to Wendy the message that the deceased wanted her to wait at the bus stop at Bedok South. Still later, the appellant paged for Wendy and informed her that the deceased had gone to Johore Bahru to attend a wedding dinner.

10. At about 11.00pm that day, Quah Chin Aun (Ah Aun), an occupier of another room, on returning to the flat, noticed a trail of blood droplets on the floor extending from the appellants room to the kitchen sink. He did not notice any blood droplet on the floor of the kitchen or the hall earlier when he left the flat after 7.00pm. In this regard, we ought to mention one other piece of evidence. Between 5.30pm and 6.00pm, as the appellant came out of his bedroom, Ah Chin looked into the room and saw the deceased lying on the mattress, covered by a white blanket. When Ah Chin left the flat at about 9.10pm, he did not notice any blood droplet on the floor of the kitchen or the hall either.

11. As the appellants bedroom door was closed, Ah Aun waited for the return of the owner, Ah Chin, and duly informed the latter. Upon entering the room, Ah Chin saw the deceased lying motionless on a mattress with the appellant lying next to her. He also noticed blood on the appellants body. The appellant tried to wake up the deceased as requested by Ah Chin, but there was no response from the deceased. The appellant told Ah Chin that nothing had happened. The ambulance was summoned. At 11.50pm the ambulance officer, on arrival at the scene, pronounced the deceased dead. The ambulance officer noticed a light brown mark on the neck of the deceased.

12. The appellant had a cut on the inner side of both wrists. Bleeding had stopped. He was examined by Dr Gan Yu Unn of the Changi General Hospital at 12.35am the next morning and was found to be fully conscious. The cut on each wrist, which measured approximately 5 cm each, was superficial in nature involving the skin and subcuteaneous tissues, but not the deep arteries, veins or nerves. The range of movement and sensory functions of both hands were in no way affected. Dr Gan opined that the cut was consistent with being caused by a knife. The appellant was reluctant to tell Dr Gan how he sustained those lacerations.

13. The blood found at the scene, including those on the deceaseds body and on the knife, was established by DNA analysis to have come from the appellant.

Cause of death

14. The body of the deceased was examined by the Forensic Pathologist, the late Prof Chao Tzee Cheng, at about 3.30am on 26 March 1999, who estimated that death would have occurred at 8 to 10 hours before the examination, i.e., between 5.30pm to 7.30pm on the day before. He also said that an allowance of error would be between 2 and 4 hours. In short, the earliest death would have occurred was at 1.30pm. Rigor mortis had already set in.

15. Prof Chao certified the cause of death to be asphyxia from strangulation. There were petechiae haemorrhages on the skin of the deceaseds face around the eyes, haemorrhages in the conjunctiva of her eyes, and ligature and fingertip marks on the deceaseds neck, all of which were signs of strangulation. In his view, ligature and manual strangulation at the neck, either in combination or separately, was sufficient in the ordinary course of nature to cause death. He did not think that the ligature injury or fingertip injury were caused simultaneously. They were likely to be caused within a short time of each other. However, he was not able to say which was caused first. But he was of the opinion that they could not be caused accidentally. The victim would have lost consciousness within a minute and death would have occurred within 2 4 minutes, as the brain was deprived of oxygen.

16. The external injuries found on the body of the deceased, including those on the neck, were the following:-

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

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

3. Small bruises at right jaw.

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

5. Below that a crescentic abrasion 1 cm.

6. Abrasion 1.5 cm on left side of neck.

7. Below that a crescentic abrasion 1 cm.

8. Bruise above left elbow 3 x 2cm.

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

17. Prof Chao opined that injury 1 was caused by pressure from a string-like object applied from the front of the deceaseds neck when the deceased was lying down. The ligature injury caused haemorrhages to the underlying muscles in the centre of the neck.

18. Injuries 2, 3, 4 and 6 were pressure marks caused by the fingertips of the assailant. Considerable manual force was applied when inflicting those injuries. There were deep haemorrhages on the neck, jaws as well as the larynx and the oesophagus (food passage) at the back of the neck. Due to the pressure on the voice box, it was unlikely that the deceased could have shouted out or screamed when she was being strangled. Prof Chao maintained that considerable force was used even though the hyoid bone and thyroid cartilage remained intact as they were more pliable in young persons and not easily fractured.

19. Injuries 5 and 7 were, according to Prof Chao, scratches caused by the deceaseds fingernails when she was attempting to pull off the assailants hands to lift the stranglehold on her indicating the existence of a struggle. Injuries 8 and 9 were found on the outer side of both elbows and were consistent with a blow or hit against some hard object or with pressure being applied on that side of the elbows by the assailant straddling across the deceaseds body and gripping her elbows and body with his knees.

20. Due to the absence of blood on the deceaseds neck, Prof Chao testified that it was unlikely that the assailant had cut his wrists before strangling the deceased. He opined that the blood found on the deceaseds clothes, thighs and legs were direct blood drops i.e., a perpendicular drop pattern, indicating that the deceased was not moving when the blood fell on her. The blood was not hers. There were no open wounds on the deceased.

Statements made by the appellant

21. Following the discovery of the death of the deceased, the appellant was arrested. He made altogether seven statements to the police. The admissibility of these statements were not in issue. It was not asserted that the statements were not voluntarily given. The prosecution tendered the statements in evidence. We will now recite the pertinent parts of those statements:-

Statement given at 3.30am on 26 March 1999

"

On 25/3/99 (Thu) midnight I paged for Ah May 92305967 several times until 10 plus in the morning.

On 25/3/99 (Thu) between 11.00am to 12 noon, she responded to my page. She called back at our rental flat (5847190). I questioned her as to why she did not come home. She told me that she would be coming back soon

I asked Ah May to come back as I might be going back to my hometown - Ipoh. I wish to state that I lied to her if not, she would not come back.

On 25/3/99 (Thu) @ 3 plus in the afternoon, Ah May came back. We talked. After a while, Ah May went to take a shower in the toilet next to the kitchen.

Ah May friend Wendy called and asked me to go downstairs. Before leaving the rented flat, Ah May told me not to bring Wendy to our place. Ah May asked me to lie to Wendy that she would paged for her @ 15 minutes later and when Ah May is free and to meet somewhere.

I then left our rented flat and went downstairs to meet Wendy. I told Wendy what I was asked to do so by Ah May.

On 25/3/99 (Thu) @ 4.00pm, Wendy called our place and I answered the phone. Ah May who was sitting next to me told me to lie to Wendy that she had gone to J.B. with her elder brother and sister for wedding dinner.

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

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

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

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

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

I then leave the bedroom and went to the kitchen to take a knife (approximately 6 to 7 inches long) from the sink and cut my wrists. After that I went to the bedroom and used my hands to strangle Ah May neck until she fainted.

I wish to state that earlier Ah May told me not to dirty other peoples place. I was to pack the things in the room nicely.

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Cautioned statement under s.122(6) at 11.27am the same day

"I have nothing to say."

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Statement given on 20 April 1999

"8. On the morning of 25 March 1999, when Ah May had failed to return home to sleep, I paged for her. I paged for her many times and she returned the call at about 11.00am odd. Over the telephone, she told me that she would be home later in the afternoon at about 2 to 3 pm.

10 On her return home at about 3.00pm plus,

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

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

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

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

21. My blood spurted onto the floor and stained the bedsheet and two pillows. I proceeded to wipe away the blood on the floor with my own bath towel and face towel. After that, I put the soiled knife, newspaper and bloodstained bedsheet into a drawer of the wardrobe in the room.

22 After cleaning up the bedroom, I went to sleep beside Ah May "

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Statement given on 21 April 1999

"27. I do not have any amendments to be made to my statement recorded yesterday i.e., dated 20 April 99.

Q8 - A week before the incident on 25 March 1999, did you have any argument with Ah May?

A8 - No.

Q9 - Did Ah May or you initiate the breaking off of the relationship?

A9 - No.

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

A10 - No. However I have spoken to a person by the name of Sam over the telephone I did not telephone Sam to speak to him at all.

Q11 - What is the relationship between Sam and Ah May?

A11 - They are friends-ordinary friends.

Q18 - On the afternoon of 25 March 1999, did you talk to Ah May over Sams hand phone?

A18 - I cannot remember.

Q19 - On the same day i.e., 25 March 1999, did you inform Ah May over Sams handphone that you would commit suicide if she did not return to the house i.e., Block 145 Pasir Ris Street 11 #05-75 immediately?

A:19 - No.

"

Oral Statement given on 28 April 1999

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

Statement given on 30 December 1999

"31. On the day in question, what happened was that I paged Ah May numerous times before she responded by calling me back. I asked her to come back home but she refused to. She hung up on me. After that, I kept paging for her again numerous times. I again asked her to come back and she maintained that she was not coming home

32. Since she kept insisting on not coming home, I told her that, if she did not come back home immediately, I would commit suicide. She told me not to be silly and said that she would be home soon.

33. At about 3.00pm, she arrived home in Pasir Ris. I was then alone at home. Upon returning home, she took some clothes and went to the bathroom to have her bath. By the time she had finished her bath and washed her soiled clothing, Ah Seng had come home she and I went into the bedrooom.

34. In the bedroom, I told Ah May not to leave me. I kept pleading with her for a while. Subsequently, she agreed. We then made love.

35. 10 to 15 minutes after we have made love, Ah May again mentioned that she was going to leave me. *She told me that she*

was more fond of the other person. I gathered that the person referred to was Ah Sam because I have heard from Lily that Ah May had got to know a guy named Ah Sam. I was sad on hearing what Ah May had said. *I became furious and it pained me to hear that she was leaving me because she was more fond of another guy. At that time the thought crossed my mind that I wanted to die with her because I could not bear to have her leave me.* I love her very much.

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

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

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

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It would be noted that in his last statement (of 30 December 1999) the appellant gave a version of the events quite different from what he gave in his earlier statements.

Psychiatrist evidence

22. Dr Stephen Phang, a consultant psychiatrist at the Institute of Mental Health, who had examined the appellant on six occasions, from 27 March to 12 April 1999, reported that the appellant told him that it was the deceased who requested him to end her life by strangling her. He told Dr Phang that the deceased had, in that week, mentioned to him on several occasions of committing suicide. He denied strangling her in anger in the heat of a quarrel, either because of the existence of a third party or of any other reason. When queried, she did not say what her problems were. That day after they had sexual intercourse, she requested that they commit suicide together. He succumbed to her request, obtained a fruit knife from the kitchen, cut both his wrists and then strangled her as requested.

23. In Dr Phangs opinion the appellant was not suffering from any form of mental illness. He was neither depressed nor psychotic at or around the material time of the strangulation or during the week preceding. From the account of the events given by the appellant, he was fully aware of the nature of his actions. He was not of unsound mind at the material time.

24. Following the appellants last statement given on 30 December 1999, Dr Phang saw the appellant again, at which meeting he told Dr Phang that he had changed the story given in his earlier statements. He now admitted to being angry with the deceased for saying that she wished to leave him for another man after they had just made love during which she said she would not leave him. He squeezed her neck to prevent her from saying she wanted to leave him. He admitted that he reacted to the act of betrayal by the deceased and wanted to prevent her from being with any other man. He said that even though he felt agitated, he was still aware of the nature of his actions. Notwithstanding the new version of the events given by the appellant, Dr Phang in his second report as well as in his evidence in court still concluded that the appellant was not at the material time suffering from any mental illness.

Prima Facie case

25. In the light of all the evidence enumerated above, including the last statement which the appellant gave, it was clear that a prima facie case had been made out against him. The appellant did not make a submission of no case to answer at the close of the prosecutions case. Accordingly, the trial judge quite rightly called upon the appellant to enter his defence.

Defence

26. The appellants main defence was that of grave and sudden provocation. In his evidence he basically restated what he earlier said in his statement given on 30 December 1999 (exhibit P147): that he suspected that the deceased had a new boyfriend; that he had trailed her as she had been coming back to the flat late at night; that she did not return at all on the night of 24 March 1999; that in the morning and early afternoon of 25 March 1999 he repeatedly paged for the deceased but she did not respond; that when she eventually responded he had to threaten her that unless she returned he would commit suicide but he at no time intended to do that; that later the deceased did return to the flat; that after she had a bath, they talked about their relationship and he told her that he really loved her and because of that he did not take to heart that she had lied to him or had hidden things from him previously; that as a result of what he said she became teary and agreed to return to him; that thereafter they made love; that soon after, she told him she was fond of Sam; that he squeezed her neck with his hands to prevent her from talking about Sam and about leaving him; that a while later she was motionless and thinking that she had fainted, he let her sleep and covered her with a blanket and laid beside her; that later he took a knife from the kitchen and cut his own wrists to prove his love for the deceased; that there was no suicide pact between them.

27. The appellant admitted that what he stated in his earlier statements, that the deceased had asked him to cut his wrists and then strangle her, was not true. He made that up because he could not accept the fact that he had caused the death of the deceased with his own hands. Thus, he gave the same untrue story to Dr Phang. However, he said that he was not aware that the deceased had died after he had strangled her. He had no intention to commit suicide when he cut his wrists and never lost consciousness. He said the deceased did struggle when he was strangling her and that he did not strangle the deceased in a fit of jealousy but could not bear the deceased lying to him. He wanted to stop her from talking about Sam.

Decision below

28. The trial judge below accepted the events enumerated in the appellants statement of 30 December 1999, and which he substantially repeated in his evidence in court, to be true. The trial judge accepted that the deceased did tell the appellant that she was fond of the other man (Sam) and that Sam had better career prospects than the appellant, and that the appellant felt that the deceased had hidden many things from him. However, the trial judge did not think these constituted "grave and sudden" provocation within exception 1 to s 300 of the Penal Code. There was nothing sudden in the utterances made by the deceased. The appellant knew that the deceased was seeing and was interested in Sam.

Our Judgment

29. The arguments canvassed before us were essentially the same as those advanced before the court below, namely, that the appellant had acted under grave and sudden provocation within exception 1 to s 300. It is settled law that for a charge under s 300(c) it is not necessary to show that the accused intended to cause the death; all that must be proved is that the accused intended to inflict the particular bodily injury and that injury was sufficient in the ordinary course of nature to cause death: see *Virsa Singh v State of Punjab* (1958) AIR SC 465 and *Tan Jo Cheng v PP* [1992] 1 SLR 620.

30. Both his statement of 30 December 1999, as well as his evidence in court, showed that the appellant intended to strangle the deceased though his object was to stop her from talking about Sam. But the purpose of his strangulation is wholly

irrelevant. There was no question of the strangulation being accidental. More importantly, the forensic evidence established that two distinct methods of strangulation was used by the appellant, i.e., manual as well as ligature strangulation. Though the appellant denied using a ligature, he could not explain away the objective evidence which was present. The trial judge found he did use a ligature and there was no basis at all for us to disturb that finding. The use of a ligature overwhelmingly demonstrated the appellants deliberateness in what he did.

31. In this regard we bore in mind the evidence of Prof Chao that considerable force was applied to the deceaseds neck by the two distinct modes, though he was not able to say which of the two modes was applied first. That much force was used could be inferred from the deep haemorrhages on the neck, jaws as well as the larynx and the oesophagus.

32. The burden was on the appellant to prove, on a balance of probabilities, that his case fell within exception 1: see *Koh Swee Beng v PP* [1991] 3 MLJ 401. It is settled law that in order for an accused to successfully plead the defence of provocation, two elements must be proved. First, the subjective requirement that he was in fact deprived of his self-control by the provocation. Second, the objective requirement that the provocation is "grave and sudden": see *PP v Kwan Cin Cheng* [1998] 2 SLR 345 and *Lau Lee Peng v PP* [2000] 2 SLR 628. The trial judge did not specifically find that the appellant did in fact lose his self-control. What he found was that what the deceased said "constituted at the highest only a very *mild* form of provocation." He held that:-

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

33. In the appellants counsels submission before us, he argued that the trial judge was wrong to hold that the utterances of the deceased in those circumstances did not constitute grave and sudden provocation. He put the point as follows:-

> "At the material time, when the Appellant strangled the Deceased it was because she said the hurtful remarks that he did not want to hear and it came rushing back to him how she had lied to him in previous days and had kept from him all the things that she was then saying to him, namely that she loved another man and that her feelings for that other man were stronger than her feelings for the Appellant, despite the fact that she had only minutes earlier been having sex with him. Indeed, it is our humble submission that these remarks, at that time, soon after sexual intercourse, were especially scathing to the Appellant, and constituted the requisite provocation which caused the Appellant to want to stop her from saying what she was saying, i.e., to stop her from verbalising that she wanted to leave him and thereby effectively causing him to lose his self-control."

34. Counsel emphasised the fact that the appellant did not grasp the consequences of his action and he did not at any time intend to cause the death of the deceased, or wish her to die. He did not know she had died. This explained why he did not flee from the scene nor try to hide the evidence of her death. Thus he laid next to the deceased. His cutting his wrists also indicated that he thought the deceased was asleep. When requested by Ah Chin, the appellant even sought to wake the deceased up.

35. We must reiterate that for the purposes of s 300(c) of the Penal Code, it is wholly unnecessary to prove an intention on the part of the accused to cause death. It is sufficient, if he intended to cause the particular injury (as opposed to an injury accidentally caused) and which injury was sufficient in the ordinary course of nature to cause death.

36. As we see it, the only factor upon which the appellants counsel anchored his arguments on grave and sudden provocation was really the fact that the deceased changed her mind about going back to him after they had sexual intimacy. But this must be viewed in context. For a few days before, the appellant already knew that the deceaseds heart was with Sam. He trailed her. She did not return to the flat. Then on the fateful day, after umpteen times of paging by him and his threat that he would kill himself if she did not come back to the flat to see him, she finally returned. They talked. He must have persuaded her. Then she relented. They made love. After that, she said she still preferred Sam. To his question why, she said Sam had better career prospects. It seemed to us clear that at that point what happened was that her head had again taken control over from her heart. Viewed in the light of the events that had taken place in the several days before, her change of mind to return to him upon persuasion followed by an act of sexual intimacy and then a further change of mind soon thereafter, could hardly constitute grave and sudden provocation. The deceased did not make any callous or belittling remark about the appellant. She did not insult him. In fact, she had been quite sensitive to his feelings by telling him the previous night and on the afternoon of that very day that she was not suitable for him and hoped he would find someone better. These problems of the heart had not only troubled him but also her.

37. Considerable reliance was placed by the appellant on the case *Kwan Cin Cheng* (supra). While there is undoubtedly some apparent resemblance between the facts in that case and the present, there are also important differences. There, the deceased and the accused were also lovers. The deceaseds father objected to their relationship. So the deceased broke off the relationship and found someone else. The accused could not put her out of his mind. On the fateful day by the use of a pretext, he persuaded her to meet him. He wanted to beg her to resume their relationship. He brought a knife with him to the meeting, intending to kill himself if she should reject him. When they met, the accused beseeched the deceased to return to him and showed the knife to her saying he intended to kill himself, as life would be meaningless without her. She taunted him saying: "You are useless. You are good for nothing. I dont think you dare to kill yourself." To add further insult she told him: "Anyway, I already had a new boyfriend and I am very happy. Your death would have nothing to do with me." Upon hearing that, he lost his senses, took out the knife and stabbed her. He did not know how many times he stabbed her. Then someone hit him on the head, and he fell. When he recovered, he realised he must have injured the deceased and became frightened. He ran towards a block of flats and up its staircase. He threw away the knife before reaching the stairs. At the fifth or sixth storey, he climbed on top a parapet and wanted to jump down and kill himself. But he saw the roof of the NTUC supermarket a short distance below. So he ran all the way up to the 21st storey. He wanted to stay there until he plucked up enough courage to jump off and kill himself. He climbed up the water-tank of Block 66 as he felt thirsty, but could not reach the water inside. He then climbed up the water-tank of Block 65. The water looked deep; he jumped in thinking he would be drowned, but the water reached only up to his chest. In the darkness he felt a bolt on the roof of the tank and attempted to hang himself with his belt after attaching the belt buckle to the bolt; he felt giddy and lost consciousness, but the belt broke and he fell into the water. He climbed back out of the tank and attempted to hang himself with his shirt after tying it to a metal beam above, but after he lost consciousness he again fell and was awakened by the pain of hitting the ground. He then hid below some concrete slabs as he was frightened and did not dare to jump off the building. When the police found him he told them they did not have to arrest him as he wished to kill himself.

38. It will be seen that the circumstances between our case and those in *Kwan Cin Cheng* are far from similar in the crucial respects. There was taunting in *Kwan Cin Cheng*, not in our case. The conduct of the accused there, after the stabbing, was consistent with that of a person who had lost his head. Not so in the present case. In fact, there the prosecution on appeal accepted the trial judges findings of fact and did not dispute that the appellant had lost his mind after being provoked by the appellant. The following points are worth noting. First, the deceased said she preferred Sam to the appellant because Sam had better career prospects in answer to his query. It was not a statement uttered callously or unnecessarily. Second, the appellant strangled the deceased not only with his bare hands but also with the use of a ligature; thus denoting deliberateness. Third, it was clear that he strangled her out of jealousy and anger that she preferred Sam to him. Fourth, having strangled the deceased he remained cool and calm throughout; there was nothing to suggest that he really lost his head. In his cautioned statement, he merely stated that he had nothing to say. There was no mention of provocation or that he lost his head because of what the deceased said. Fifth, for a period of some nine months he spun a story that he strangled the deceased pursuant to a suicide

pact. It was only when the trial was about to commence that he gave the version set out in his statement of 30 December 1999. The evidence indicated that the appellant did not cut his wrists before or immediately after he strangled the deceased. He did so sometime later, obviously an afterthought with a view to substantiating his claim of a suicide pact. Even then, he only cut his wrists superficially.

39. In our judgment, all these factors pointed irresistibly to the fact that the appellant did not really lose control of himself. He knew what he was doing, brought about largely by jealousy and anger. He was very conscious of what he did. His behaviour was consistent with that of someone who felt that if he could not have the deceased, nobody should. In the light of what we have set out above, we also agreed with the trial judge that what had been advanced as "provocation" was really something very "mild", hardly something which could amount to "grave and sudden."

40. Thus, we found that the appellant had not proven both the requisite elements to raise the defence of grave and sudden provocation. In the result, we dismissed the appeal.

Yong Pung How	L P Thean	Chao Hick Tin
Chief Justice	Judge of Appeal	Judge of Appeal

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