Public Prosecutor v Seah Kok Meng
[2001] SGHC 25

Case Number	: CC 62/2000
Decision Date	: 05 February 2001
Tribunal/Court	: High Court
Coram	: Kan Ting Chiu J
Counsel Name(s)	: David Khoo and Raymond Fong for the prosecution; Surian Sidambaram (Surian & Partners) and M Mahendran (Mahen & Associates) for the accused
Parties	: Public Prosecutor — Seah Kok Meng

JUDGMENT:

Grounds of Decision

1. The accused was charged that he

> on or about the 2nd day of May 1999, between 4.00 am and 5.19 am, outside Nikmath Restaurant located at 24 Sims Avenue, Singapore, committed murder by causing the death of one S Salim Bin Ahmad, and (he had) thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224.

The incident

2. The events leading to the deceased's death can be set out in three stages on the undisputed evidence adduced at the trial.

3. The first stage is a quarrel between the accused and his girl friend Bok Swee Hoon on the night of 1 May 1999 at a hawker centre at Lorong 2, Geylang while Chan Kam Seong was with them. After the quarrel the accused and Chan Kam Seong left the hawker centre without Bok Swee Hoon.

4. The second stage was when Bok Swee Hoon attempted to look for the accused at a coffeeshop at the corner of Sims Avenue and Lorong 5, Geylang. While she made her way from the hawker centre to the coffeeshop on foot in the early hours of 2 May she was accosted by S Salim Bin Ahmad, the deceased, who touched her and followed her to the coffeeshop. Bok Swee Hoon was upset at him, and telephoned the accused to tell him of her plight.

5. The last stage of the events was when the accused went with Chan Kam Seong to the coffeeshop. The accused assaulted the deceased with a wooden pole he picked up behind the coffeeshop.

6. The accused fled to Malaysia and remained there till he was arrested and brought back to Singapore on 12 May 2000.

The medical evidence

7. The deceased died at 9.55 am on 2 May. Pathologist Dr Paul Chui who conducted the autopsy put up a report. Dr Chui found three principal injuries -

> (1) a fracture of the skull over the right forehead with fragmentation of the nasal

bones and fractures over the cheek area and injury to the brain with bleeding,

(2) a fracture of the skull beneath the occipital scalp with bleeding over the surface of the brain, and

(3) a fracture of the base of the skull,

each of which would cause death in the ordinary course of nature. There were injuries over his right shoulder, chest, right forearm, right thigh and right ankle

8. Dr Chui was of the opinion that the principal injuries were caused by the blunt force of an object that did not penetrate the body, and they could have been caused by a stick with a square or rectangular cross-section applied with a moderately severe force.

9. The pathologist was of the view that injuries (1) and (3) were very unlikely to have been sustained by the deceased falling onto a kerb, that it was possible but unlikely for injury (2) to be caused in that way. He went further to say that while it is possible that injury (2) only became life-threatening after a fall against a kerb, that did not apply to injuries (1) and (3). In other words those two injuries were not contributed to by a fall. (The deceased fell and was lying on the floor with his head on the higher level while his body was at a lower level below a kerb) There was no dispute that only the accused had assaulted the deceased.

The witnesses

10. There were three witnesses to the incident. Assinar s/o Mammu was the owner of the coffeeshop/restaurant where the incident took place. He remembered that between 4.30 am to 4.45 am on 2 May the deceased and a female Chinese were seated at a table outside the restaurant. The deceased ordered a packet of cigarettes and a can of soft drink, and he brought them to him and returned to his counter in the restaurant. Subsequently the deceased went to one of the coinaphones at the front corner of the restaurant. He saw another man come up to the deceased and then he heard someone being hit. He came out from the counter and saw a male Chinese hitting the deceased two or three times with a wooden pole. He said "jangan, jangan, jangan" and telephoned for the police.

11. Under cross-examination he said that the female Chinese was seated at the table when the assault took place. Further cross-examination revealed that although he gave a more detailed account of the incident in his conditioned statement tendered at the preliminary inquiry, he cannot remember clearly what happened that morning.

12. The female Chinese that Assinar saw was Bok Swee Hoon or Ah Hoon. She was the accused's girlfriend who had been cohabiting with him two to three years.

13. At about 9 to 10 pm on 1 May she joined the accused at a hawker centre at Lorong 2 Geylang. The accused was drinking beer with Chan Kam Seong, who was also known as Ah Siang. After she was with them for a while, she and the accused had a quarrel. The accused left the hawker centre, then Chan Kam Seong also left, and she was there by herself. Subsequently, she set off for a coffeeshop at the junction of Sims Avenue and Lorong 5 that the accused patronised, hoping to find him there. As she walked from Lorong 2 to Lorong 5, the deceased followed her, then he touched her chest and put his hand on her shoulder. She told him not to bother her, but he persisted and followed her to the coffeeshop.

14. The accused was not at the coffeeshop, and to compound her disappointment, the deceased continued to pester her. When she sat at a table outside the coffeeshop he joined her and kept asking her to go home with him. She decided to seek help. She used the telephone at the coffeeshop to call the flat she shared with the accused but no one answered the call. She then called the accused on his handphone. When she reached him she told him that she was at Lorong 5 and was being harassed by a

person and could not go home. The accused told her he would be going there and instructed her to wait for him.

15. About 10 to 15 minutes later, the accused arrived at the coffeeshop. He asked her who harassed her, and she pointed to the deceased. The next thing she knew was that the accused was hitting the deceased with something which could be a pole. After the accused hit him twice the deceased fell down, and the accused continued hitting him twice. When he stopped hitting the accused, he pulled her, and they left the coffee shop.

16. From her recollection, neither the deceased nor the accused said anything before or during the assault.

17. When she was cross-examined by defence counsel, she agreed that she was on the telephone when the accused arrived at the coffeeshop. She was about to call him again when he arrived. She also agreed that after the accused arrived at the coffeeshop, he left for a short while and then returned before the assault took place, although she was adamant earlier during the cross-examination that he did not do that. In re-examination, she could not say for sure if he had left the shop.

18. The last witness of the assault was Chan Kam Seong. He and the accused were friends since the end of 1998 and they became partners in undertaking tiling works.

19. According to him, the accused invited him to the hawker centre at Lorong 2 on 1 May. When he arrived there the accused and Bok Swee Hoon were there together. They drank beer, then the accused and Bok Swee Hoon quarrelled, and she left them. Subsequently they also left the hawker centre and went wandering from Lorong 2 to Lorong 12. When they were at Lorong 12, the accused received a call on his handphone and told him that something had happened to his girlfriend, that a Malay man had touched her.

20. They stopped wandering, boarded a taxi and proceeded to Lorong 5. While they were in the taxi the accused told him that his girlfriend had been touched by a Malay man, and he wanted to beat up that man.

21. The taxi stopped along Lorong 5 near a back lane leading to a temple. When the accused got off the taxi, he walked into the back lane and walked out carrying a wooden pole about 2 feet long with a cross-section of two inches square. The accused then walked quickly to the front right corner of the shop where the deceased and Bok Swee Hoon were. He heard the accused ask Bok Swee Hoon who it was, but he did not hear Bok Swee Hoon's reply. He then saw the accused hit the deceased. When the deceased fell onto the ground, the accused continued to hit him, kicked him and said "pergi mati". The deceased did not say anything throughout the incident.

22. When defence counsel cross-examined him, he denied that he had borrowed $10,000 from the accused in January 1999 and was owing him a total of $17,000 on 1 May being the unpaid loan, interest accruing thereon, and unpaid profits from the partnership.

23. When counsel questioned him on the events immediately preceding the assault, he recounted that the accused asked Bok Swee Hoon "Si toa lok chi kow" (which is the one?) and she replied "Tau cheng chi kow" (the one in front), contradicting his evidence in examination-in-chief that he did not hear her reply.

24. Counsel also referred to discrepancies between his evidence and his conditioned statement that was admitted in evidence in the preliminary inquiry but not at the trial. (The conditioned statement was not admitted at the trial because the defence wanted his evidence to be given orally.) He was asked why in the account of the assault in the conditioned statement, there was no reference to the accused kicking the deceased, or saying "pergi mati". He agreed with counsel that although the recording officer had interviewed him and recorded a detailed statement from him, and that he did not tell the recording officer that the accused kicked the deceased and said "pergi mati".

25. It also came out during cross-examination that he had been arrested at the Woodlands Customs Checkpoint in November 1999 in connection with the incident Evidently no action was taken against him eventually.

The accused's statements

26. In the course of the investigations several statements were recorded from the accused. The prosecution sought to admit three of them. The statements were admitted without objection from the accused.

27. Two of these statements were particularly relevant to the issues at the trial. In his first investigation statement recorded on 15 May 2000, three days after his arrest he gave an account of the events -

> One day before the incident (Recorder's note:- refers to 1 May 99), I was working at my friend's brothel located at No 32D Lor 22 Geylang. I was then laying mosaic at the back of the brothel. My friend is known as 'Ah Boy'.
>
> 2. Sometime past 8.00 p.m. my partner, 'Ah Xiang' came to see me at the brothel. 'Ah Xiang' is a Malaysian. He told me that he had managed to clinch a new contract for mosaic laying. However, I could not recall the place. He also told me to move over to the new place once I have completed the works at the brothel.
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> 3. At about 9.00 p.m. whilst I was about to leave my friend's brothel with 'Ah Xiang', my girlfriend, 'Ah Hoon' (Recorder's note:- refers to Bok Swee Hoon) called me on my handphone. She told me that she wanted to come to my working place (refers to No 32D Lor 22 Geylang) to meet me. I told her not to come as I was still working.
>
> 4. Sometime past 9.00 p.m. 'Ah Xiang' and I took a taxi to Lor 2 Geylang. We arrived at a hawker centre located opposite a Malay nite-club about 10 minutes later. Both of us sat at a table located at the centre of the hawker centre and started drinking Tiger beer.
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> 5. About half an hour later, my girlfriend, 'Ah Hoon' (Bok Swee Hoon) again called me on my handphone. She told me that she could not find me at my working place, that is No 32 D Lor 22 Geylang. I told her that I had already left. I also told her that 'Ah Xiang' and I were drinking beer at the hawker at Lor 2 Geylang. She told me that she wanted to come over to the hawker centre to meet me and I agreed.
>
> 6. About 5 minutes later, my girlfriend arrived in a taxi. I noticed that she was behaving unsteadily and I suspected that she had consumed some Upjohn tablets. She started talking nonsense very loudly. She was talking as if she wanted to quarrel. I felt very embarrassing and angry by her behaviour. In order to get rid of my girlfriend, 'Ah Xiang' and I left the hawker centre without telling my girlfriend. Both of us then went to a coffeeshop at Lor 12 Geylang to continue drinking. At that time, I switched off my handphone as I did not want to receive any call from my girlfriend.
>
> 7. About one hour later, I switched on my handphone as I was worried about my girlfriend's safety. Soon after I switched on my handphone, my girlfriend called me. She told me that she was unable to find me at Lor 2 Geylang hawker centre. She also asked me where I was. I did not tell her where I was as I did not want

her to create a scene. However, I advised her to return home and I go back later. After that, I ended the call. At that time, I was staying with my girlfriend at her flat at Blk 318 Ang Mo Kio St 31 #03-1445. After the call, 'Ah Xiang' and I continued drinking at the coffeeshop.

8. About 15 minutes later, my girlfriend again called me on my handphone. She told me that she had gone to a 24-hour coffeeshop at Lor 5 Geylang (Recorder's note:- refers to Nikmath Restaurant) to look for me. As she could not find me at the said coffeeshop, she called me to find out my whereabouts. She had gone to the coffeeshop as she knew that I used to be there with my friends. She also told me that a Malay man (Recorder's note:- refers to the deceased), who appeared to be drunk, had followed her from Lor 2 to Lor 5. On the way, the Malay man (deceased) had also touched her shoulder. She further told me that the Malay man (deceased) was standing in front of her as she was talking to me on the phone. As such, she requested me to meet her at the 24-hour coffeeshop to bring her home.

9. After receiving the call from my girlfriend, I told 'Ah Xiang' about the matter. After that, 'Ah Xiang' and I stopped drinking. We then hailed a taxi from Lor 12 and proceeded to Lor 5. By then, both of us had consumed a lot of beer and we were quite tipsy.

10. After 'Ah Xiang' and I alighted from the taxi along Lor 5 Geylang, I told 'Ah Xiang' to go back as I could bring my girlfriend back by myself. After that, I saw him walked away towards the direction of Lor 3. I then walked to the 24-hour coffeeshop. As I was walking to the coffeeshop, I saw my girlfriend was on a silver colour public phone and she was facing the main road (Recorder's note:- refers to Sims Ave). She did not see me as I came from the back of the coffeeshop. At the same time, I also saw a Malay man standing infront of my girlfriend. Both of them were about 2 feet away from each other. The Malay man (deceased) was alone.

11. I hurried my girlfriend to put down the phone so that we could go back home. I was then rather unhappy with her behaviour and my tone also sounded unhappy. The Malay man (deceased) mistook me that I had passed remarks against him while I was talking to my girlfriend. As such, he uttered something at me in Malay which I could not understand. I wish to say that I do not either understand or speak Malay language. The Malay man's (deceased) tone sounded angry just like me. When the Malay man (deceased) stopped talking, we started staring at each other for a short while. He appeared to be very fierce and I became frightened. I then walked away to the back of the coffeeshop. At that time, my girlfriend was still talking on the phone. While at the back of the coffeeshop, I saw a square-shaped wooden plank lying on the cemented floor. The wooden plank measures about 1 feet long. I then picked it up and walked back to where my girlfriend was. I held the wooden plank in my right hand. I wish to say that I picked up the wooden plank for self defence in case there is a fight between the Malay man and me.

12. On my return, the Malay man (deceased) remained standing infront of my girlfriend. He stared hard at me as if he was going to hit me. Before the Malay man (deceased) could make any move, I immediately hit him with the wooden

plank. I first hit him on one of his arms about one to two time. After that, he fell sideway onto the ground. I continued to hit him a few times with the wooden plank on his legs, shoulder and head. I believed I had hit the Malay man (deceased) on the side of his head as he was then lying sideway on the ground. The Malay man (deceased) did not retaliate at all as he was lying on the ground. I wish to say that I could not recall how many times I had hit the Malay man (deceased) with the wooden plank while he was lying on the ground.

13. When I saw the Malay man (deceased) was unable to stand up and he did not retaliate, I stopped hitting him. At the same time, my girlfriend also urged me to stop hitting the Malay man (deceased). As I was frightened, my girlfriend and I immediately left the coffeeshop. I wish to say that I did not see any blood on the floor and the Malay man (deceased) was not bleeding when I left the coffeeshop. Both of us walked to the back of the coffeeshop and I threw the wooden plank on the ground behind one of the shops. After that, both of us walked to a small road from Lor 5 Geylang which leads to Lor 7 Geylang where we boarded a taxi. We proceeded back to my girlfriend's flat at Ang Mo Kio.

28. The second statement was a follow-up on the statement, recorded on 17 May, and it reads -

19. I wish to say that I do not require my statement recorded on 15 May 2000 at about 2.43 p.m. and 16 May 2000 at about 2.40 p.m. to be read back to me as I can remember the contents.

20. The following questions were posed to me by SSSgt David Ang and interpreted to me in Hokkien dialect by the interpreter:-

Q1: On the day of the murder, what was your reaction when your girlfriend, 'Ah Hoon' (refers to Bok Swee Hoon) informed you that a Malay man had asked her to follow him home and also that the Malay man had touched her body?

A1: Upon hearing the news from my girlfriend, I felt angry with the Malay man why he had done such a thing to her. I also immediately thought of going to meet her and bring her home.

Q2: When you were at Nikmath Restaurant located at 24 Sims Ave, why did you want to arm yourself with a wooden plank?

A2: The Malay man kept staring at me as if he was going to start a fight. As such, I walked to the back of the restaurant and by chance, I saw a piece of wooden plank lying on the ground and I picked it up. I took the wooden plank for self-defence in case a fight erupted between the Malay man and me.

Q3: Did the Malay man whom you referred to in your statement (Recorder's note:- refers to the deceased) pose any threat or harm to you at Nikmath Restaurant located at

24 Sims Ave?

A3: His behaviour towards my girlfriend and the way he stared hard at me made me felt frightened. As a result, I must get myself prepared and to protect myself.

Q4: Was the Malay man whom you referred to in your statement (Recorder's note:- refers to the deceased) armed with any weapon in his hand before you hit him with the wooden plank?

A4: No. He was not armed with any weapon.

Q5: Can you describe to me the wooden plank which you had used to hit the Malay man whom you referred to in your statement (Recorder's note:- refers to the deceased)?

A5: It is square shaped and measured slightly more than 1 foot long. I felt that it was quite heavy when I held it in my hand. (Recorder's note:- accused also drew a picture of the wooden plank signed by him and it is marked Annex 'A').

Q6: Do you know that the wooden plank as described by you in Q5 can cause serious injury to a person when it is used as a weapon?

A6: I only know that it can cause serious injury. However, I have never thought that it could cause death. This is the first time that I have used a wooden plank in a fight. If I know it can cause death, I would not have used it.

Q7: Did the Malay man whom you referred to in your statement (Recorder's note:- refers to the deceased) retaliate while you were hitting him with the wooden plank?

A7: The Malay man fell onto the floor after I had hit him once or twice on one of his arms with the wooden plank. He did not retaliate at all.

Q8: Why did you continue to hit the Malay man whom you referred to in your statement (Recorder's note:-refers to the deceased) after he had fallen onto the ground?

A8: I was afraid that he would stand up and hit me back.

Q9: Prior to the murder at Nikmath Restaurant located at 24 Sims Ave, beside consuming alcohol, did you consume any drugs?

A9: No. I did not consume any drugs.

Q10: Can you tell me how was your relationship with your

girlfriend, 'Ah Hoon' (Bok Swee Hoon) prior and after the murder at Nikmath Restaurant located at 24 Sims Ave?

A10: I loved her but she is a person who cannot take care of herself. She also consumed tablets like Upjohn. Whenever she consumed these tablets, she always created a scene and made a fool of herself. I have to rush down and bring her back home. I broke off with her after I had committed the murder because I wanted to go into hiding.

Q11: After the murder at Nikmath Restaurant located at 24 Sims Ave, did 'Ah Siang' (recorder's note:- refers to Chan Kam Seong) and you go to a brothel at No 32D Lor 22 Geylang?

A11: I think 'Ah Siang' and I did not go to the brothel after that.

Q12: Can you describe to me the Malay man whom you referred to in your statement (Recorder's note:- refers to the deceased)?

A12: He had short, slightly curly and greyish hair. He also had beard that made his appearance looked fierce. He was about my height and my built. As far as I can remember, he wore a T-shirt and a pair of jeans.

Q13: In front of you is a photograph of a Malay man (Recorder's note:- refers to the deceased). Do you know him?

A13: I recognised him to be the Malay man who I had hit with a wooden plank.

Q14: Do you have anything else to say?

A14: I wish to say that I do not have any intention to cause the deceased's death. I do not know him and bear no grudge against him. I just wanted to teach him a lesson. I never expected that it would cause his death. I beg for leniency and hope the judge would give me a chance.

The defence

29. On 1 May he was laying tiles at a brothel at 32D Lorong 22, Geylang. Chan Kam Seong was also there. At about 9 p.m. he and Chan Kam Seong went for food and drinks at a hawker centre at Lorong 2. While they were there, his girlfriend Bok Swee Hoon joined them. She appeared to have consumed Upjohn or Erimin tablets, and was being loud and quarrelsome. At about 10 to 11 pm he and Chan Kam Seong decided to leave the hawker centre without her. They went to a coffeeshop at

Lorong 12. He switched off his handphone at that time so that Bok Swee Hoon could not contact him. After they drank beer for a time at the coffeeshop, he switched on his handphone. Soon after he received a call from Bok Swee Hoon. She complained that she was unable to find him at the hawker centre and asked where he was. He did not tell her and told her to go home and that he would join her later.

30. A short while later he received another call from her. She sounded frightened and nervous and told him that she was at a coffeeshop in Lorong 5, but on her way there to look for him a Malay man followed her and touched her, and refused to leave her and she asked him to go and bring her back.

31. He was furious when he heard that. At that time he was "a bit high" on beer. He and Chan Kam Seong left the coffeeshop and took a taxi to Lorong 5. The taxi stopped along Lorong 5 near the back lane leading to the temple. He left the taxi and walked to the coffeeshop. He saw Bok Swee Hoon speaking on the telephone at the front right corner of the coffeeshop and the deceased was standing near another telephone a little distance away. He approached her, told her to hang up the phone and go back with him, and asked who had harassed her. She replied it was the person in front and carried on talking. He chided her and told her to hang up the telephone. The deceased reacted as though he was being chided and became unhappy and said something in Malay he did not understand. The deceased became angry and stared at him, and he stared back. He became frightened and asked Bok Swee Hoon to wait and he went to look for something to protect himself. He found a wooden pole one foot or more in length with a square cross-section at the rear of the coffeeshop and returned to the coffeeshop.

32. On his return, Bok Swee Hoon was still talking on the telephone, and he instructed her to hurry up and go back. The deceased became fiercer as if he did not like him to approach her. The deceased moved his hand as if to beat him (during cross-examination he explained that the deceased raised his right hand to shoulder level.) Before the deceased hit him, he hit the deceased on the shoulder. He was feeling high and frightened and did not know how many times he hit the deceased. He heard a Malay or Indian shout, and his girlfriend shouted for him to stop. He stopped hitting the deceased, and left with her. They went to the rear of the coffeeshop, rested a while, then threw away the pole. They made their way to Lorong 7 where they boarded a taxi and returned to the flat they shared at Ang Mo Kio.

33. Counsel asked him why he said in paragraph 12 of his investigation statement of 15 May that he hit the deceased a few times on his legs, shoulder when he only said in court that he hit the shoulder. His explanation was that the recording officer had pressed him to describe what happened, so "I gave them a story". This was not put to Ag Inspector David Ang who recorded the statement or the interpreter who assisted in the recording.

34. He was then referred to the statement of 17 May where he said (in answer to the sixth question whether he knew the wooden pole can cause serious injury to a person when used as a weapon) that "I only know that it can cause serious injury". His reply to counsel was "At that point of time, I did not speak clearly. I did not know that it would cause injury." Counsel had not raised this with the recording officer or the interpreter, and did not refer him to his confirmation at the conclusion of the statement that after it was read and explained to him, he affirmed it to be true and correct.

35. In answer to another question from counsel, the accused said that it was not his intention to beat up the deceased or to cause him serious injury.

36. The prosecutor clarified parts of the evidence with him during cross-examination. First, he asked if he was drunk when he received Bok Swee Hoon' first call at the coffeeshop at Lorong 12. His reply

was "I was not completely drunk. I was a bit high. My gait was not steady". He confirmed that he knew what the time was, where he was, and what he was doing.

37. The prosecutor also referred him to Chan Kam Seong's evidence that he said that he wanted to beat up the Malay man. He denied telling Chan Kam Seong that. He also disputed Chan Kam Seong's evidence that he went to the back lane leading to the temple before going to the coffeeshop.

38. With regard to the events inside the coffeeshop, he elaborated that when he saw Bok Swee Hoon, she was talking on the telephone to a friend, and when he told her to hang up, she said "Wait, wait, I am going to finish it."

39. The prosecutor asked him why he did not leave the coffeeshop with his girlfriend when the deceased stared at him and frightened him. His explanation was that Bok Swee Hoon did not want to hang up the telephone and the deceased also did not leave. He confirmed that at that time, he knew what was going on.

40. The prosecutor referred him to his statement of 15 May where he said in paragraph 12 "Before the Malay man (deceased) could make any move, I immediately hit him with the wooden plank". His explanation was that "Maybe I did not speak clearly at that point of time", or that what he said was not recorded (this was not put to the recording officer or the interpreter), or that he could have omitted it when he made the statement.

41. He was also referred to his answer to question 14 in the statement of 17 May where he said "I wish to say I do not have any intention to cause the deceased's death. I do not know him and bear no grudge against him. I just wanted to teach him a lesson. I never expected that it would cause his death " He explained that he made the statement because it was said to him during the recording that if he had no intention of causing the deceased's death, he wanted to teach him a lesson, so he agreed, although he actually did not have the intention to teach him a lesson. That was not put to the recording officer or interpreter.

42. Tan Boon Keat gave evidence on behalf of the accused. He was not with the accused, Chan Kam Seong or Bok Swee Hoon at the hawker centre at Lorong 2, the coffeeshop at Lorong 12 or the coffeeshop at the junction of Lorong 5 and Sims Ave. His evidence did not touch on the events in the coffeeshop or the accused's state of mind at that time.

Evaluation of the evidence

43. Assinar s/o Mammu was an earnest witness. However the differences in his conditioned statement and his evidence in court showed that he did not have a very clear recollection of the incident of that night. His evidence that Bok Swee Hoon was seated at a table during the incident was at odds with the prosecution and defence case. Little weight can be put on his evidence.

44. Bok Swee Hoon's evidence should be considered against the fact that she may be under the influence of Erimin or Upjohn tablets and her evidence showed that her recollection of some of the events was unclear, e.g. whether the accused left the coffeeshop for a short while before the assault began. However, portions of her evidence were not disputed by the prosecution and the defence, e.g. her use of the telephones at the coffeeshop.

45. Chan Kam Seong was a complex witness. He appeared to be hostile towards the accused although

he was his friend and partner. I was unable to determine the reason - perhaps it was the disputed $17000 loan, or the fact that he himself had been arrested in connection to the incident. His contradictory evidence whether he heard Bok Swee Hoon reply to the accused at the coffee shop and the differences between his evidence and his conditioned statement made it unsafe to act on his evidence without corroboration.

46. Then there were the accused's statements and evidence. The statements were admitted without objection. Both statements had been read back to the accused and confirmed to be true and correct when they were recorded. It was not put to the recording officer and the interpreter that any part of the statements were incorrectly or incompletely recorded, or that the accused was induced to make them.

47. I did not accept his explanations for the divergences between his statements and his testimony. I found the statements to be true and accurate records of what the accused had stated. Insofar as his oral evidence differed from his statements, I accepted the statements as his honest account of the events.

The defence

48. Two lines of defence were raised, first that he had acted under grave and sudden provocation and second that the accused did not have the requisite intention to commit the offence of murder.

Evaluation of the defence

Grave and sudden provocation

49. Exception 1 to section 300 of the Penal Code provides that

> Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

50. In the closing submissions counsel identified the provocation as

> i the victim had molested the Accused's girlfriend earlier;
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> ii confronted the Accused in a threatening manner;
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> iii the victim exhibited a hostile persona towards the Accused when the Accused wanted to fetch his girlfriend back home;
>
> iv the victim's physical presence, gestures and stares at the Accused

51. I considered them individually and collectively. The alleged molestation had ceased before the accused arrived at the coffee shop. The accused said that the deceased stared at him, and he stared back at the deceased. The act that precipitated the assault was the deceased raising his hand as though to hit him. This was not consistent with the accused's statement that "Before the

Malay man (deceased) could make any move, I immediately hit him with the wooden plank", and his answer when asked whether the deceased posed any harm or threat to him, that "His behaviour towards my girlfriend and the way he stared hard at me made me felt frightened" with no mention of any gestures, hand or arm movements. The defence had not shown that there was a grave and sudden provocation.

52. The evidence showed that he was angry with the deceased for accosting his girlfriend and annoyed at her for not leaving the coffee shop with him immediately. He did not say that he was so provoked that he had lost his self-control when he attacked the deceased. The defence had also not shown that the accused had lost self-control.

53. Counsel submitted not only that there was provocation, but also that it is unnecessary to consider the provocation against the accused's actions. Counsel cited *PP v Kwan Cin Cheng* [1998] 2 SLR 345 for that purpose. In that case, the court considered the "proportionality" requirement stated in *Vijayan v PP* [1975] 2 MLJ 8, [1975-1977] SLR 100. It recognised that there are degrees of loss of self-control, then went on to state at paragraph 69 that

> Nonetheless, it must be recognised that *where the provocation defence in Exception 1 to s 300 is concerned, the accused's loss of self-control would ex hypothesi always have been of an extreme degree, resulting in the killing of another person*. In practice, an inquiry into 'proportionality' does little to answer the essential question of whether an ordinary person would, upon receiving the provocation in question, have lost his self control to this extent and reacted as the accused did. (Emphasis added)

54. *Kwan Cin Cheng* and the provocation defence were discussed in *Lau Lee Peng v PP* [2000] 2 SLR 628, where it was said at paragraph 31 -

> (The) proportionality test suggests that the retaliation taken must be commensurate with the provocation offered which caused the accused to lose his self-control: *N Govindasamy v PP* [1975-1977] SLR 165; [1976] 2 MLJ 49; *Wo Yok Ling v PP* [1978-1979] SLR 78; [1979] 1 MLJ 101 and *Koh Swee Beng v PP* [1991] SLR 319; [1991] 3 MLJ 401. In the light of the discussion in *Kwan Cin Cheng*, the test of proportionality is probably not a distinct requirement for raising the defence of provocation. It is a factor to be taken into account in determining whether the objective test of gravity and suddenness is fulfilled. Therefore, *the fact that the retaliatory acts may have been out of proportion to the provocation offered does not necessarily mean that the defence must fail. This is because where the provocation defence in Exception 1 to s 300 is raised, the accused's acts of retaliation would ex hypothesi always have been of an extreme degree, resulting in the death of another person.* An inquiry into 'proportionality' does little to answer the essential question of whether an ordinary person would, upon receiving the provocation in question, have reacted in the same way the accused did. (Emphasis added)

55. The notion of self-control of an extreme degree in the context of Exception 1 merits further consideration. While Exception 1 applies only to the offence of murder, the offence covers not one, but four classes of acts.

56. Section 300 provides that

> 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 or incurring the risk of causing death, or such injury as aforesaid.

57. A person commits murder if he (a) causes death with the intention to cause death (b) causes death by intentionally causing such bodily injury as he knows to be likely to cause death, (c) causes death by intentionally causing bodily injury which is sufficient in the ordinary course of nature to cause death, or (d) does an act which he knows is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, with no requirement for any intention on his part to cause death or bodily injury.

58. When a person is faced with a grave and sudden provocation and is deprived of self-control, the degree of his loss of self-control would vary according to the provocation. An extreme provocation may cause him to lose all self-control. A less severe provocation may cause him to lose some, but not all self-control. In the first case the defence under Exception 1 may be available if he intentionally killed the person provoking him. In the second situation, that defence may not be available if he killed intentionally, but it may be available if death was caused by a dangerous act coming within s 300(d).

59. Even if the response to a provocation in a case of murder is *ex hypothesi* always of an extreme degree, it is still necessary to determine whether it is commensurate with the provocation. As noted in *Kwan Cin Cheng* at paragraph 44,

> > there are two distinct requirements for the provocation defence to apply: first, a 'subjective' requirement that the accused was deprived of his self-control by provocation; and secondly, an 'objective' requirement that the provocation should have been 'grave and sudden'.

A subjective evaluation should be made taking into account the provocation the person received, his condition and circumstances, and his response. The defence will not succeed if the response is found to be excessive to the provocation.

60. I found that even if there was provocation, the accused's actions were out of all proportion to it and did not come within Exception 1 as the deceased had not quarrelled with him or laid a finger on him.

Lack of intention

61. Defence counsel relied on s 86(2) of the Penal Code which provides that

> Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

62. The accused testified that he was not completely drunk and was aware of the surroundings. Nothing in the evidence indicated that he was so drunk that he could not have the intention to commit an offence under s 300. He was in control of his faculties - he asked Bok Swee Hoon to leave with him, he looked for and armed himself with a pole and used it to teach the deceased a lesson.

63. Counsel referred to *PP v Teo Heng Chye* [1989] SLR 659 where the accused who was charged with murder was convicted on a reduced charge of culpable homicide not amounting to murder. In that case the trial judges held at p 663 " we decided that the degree of intoxication was such that (the accused) could not have formed any of the intentions for murder." That finding on the facts of that case has no application to the present case, and does not assist the accused.

64. After considering the evidence and the injuries inflicted on the defenceless deceased, I found that intention under s 300(c) was established.

65. I therefore convicted the accused on the charge he faced.

Kan Ting Chiu

Judge

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