Public Prosecutor v Soosainathan s/o Dass Saminathan
[2003] SGHC 153

Case Number : CC 15/2003

Decision Date : 17 July 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Ng Cheng Thiam (Attorney-GeneralÂ's Chambers) for the prosecution

Parties : Public Prosecutor — Soosainathan s/o Dass Saminathan

Criminal Law – Offences – Murder – Infant victim sexually abused and dropped down rubbish chute of accused's flat – Penal Code (Cap 224), ss 300(b), 300(d) & 302.

Criminal Procedure and Sentencing – Statements – Accused's statements not used by prosecution to impeach his credit – Whether court should draw an inference that the accused's statements were consistent with his oral evidence.

Criminal Procedure and Sentencing – Statements – Accused's access to his statements – Whether defence's application for an accused's statements should be granted.

1 The accused Soosainathan s/o Dass Saminathan ("the accused") was charged with the offence of murder. Under s 302 of the Penal Code, this is a capital offence. The murder was allegedly committed between 12am and 6.14am of 5 August 2002 at the accused's flat at Blk 629 Hougang Avenue 8 #09-82 ("the Flat"). The victim was a six-month old Indonesian female infant by the name of Anjeli Elisaputri ("the baby"). The time of 6.14am was the time the police had sent a patrol car in response to a telephone call. The patrol call arrived at Blk 629 at 6.24am.

2 It was not disputed that the baby's body was found by the police at about 7.40am of 5 August 2002 in a bin at the bottom of a rubbish chute connected to the Flat and that it was the baby's mother Widiyarti Binte Kartanom ("Widiyarti") who had called the police.

EVIDENCE FOR THE PROSECUTION

3 The prosecution relied on several witnesses including Widiyarti and her boyfriend Jalil Bin Hameed. I will first summarise the general lay evidence for the prosecution.

General lay evidence

4 Jalil, an Indian national, came to Singapore illegally in 2001 (NE 459). In Singapore, he came to know Widiyarti when he was working at a Malay foodstall in Hougang (NE 460). Widiyarti, an Indonesian, was then working as a domestic maid.

5 Jalil and Widiyarti fell in love, and Widiyarti became pregnant with Jalil's baby. This was the baby. Widiyarti stopped working and returned to Jakarta on 24 August 2001.

6 Widiyarti returned to Singapore on 1 September 2001 to meet Jalil. After Jalil was arrested by the police for an immigration offence a few days later, Widiyarti went to Batam, Indonesia (NE 172). Widiyarti gave birth to the baby on 22 January 2002.

7 Although they never went through any marriage ceremony, Jalil and Widiyarti regarded each other as husband and wife. Widiyarti even obtained a false marriage certificate in Batam stating that she is married to Jalil.

8 In April 2002, when the baby was about three months old, Widiyarti brought the baby to visit Jalil in Singapore, who was then released on a special pass after having served a sentence for his

immigration offence. He did not have any money to go back to India and was provided a job. Widiyarti brought the baby to Singapore to visit Jalil on four other occasions between April and August 2002, including 4 August 2002 (NE 273).

9 In order to maintain Widiyarti and the baby in Batam, Jalil breached the conditions of the special pass and ran away to look for other jobs that could give him a higher income. Jalil would then forward some of the money he had earned to Widiyarti through his landlady and later through the accused whom he had come to know. Jalil would pay the accused for his travel expenses to Batam. Jalil's last place of work up to the time of the death of the baby was a roti prata stall in C Place Food Court at No 2 Corporation Road.

10 On 4 August 2002, at about 11am, Widiyarti and the baby arrived at the World Trade Centre, Singapore. Widiyarti took a taxi and brought the baby to Blk 629 Hougang Ave 8. At the void deck of the block, Widiyarti contacted the accused.

11 Subsequently, Widiyarti met up with the accused and he brought Widiyarti and the baby to the Flat. Widiyarti and the baby would stay at the Flat or the flat of a friend of the accused whenever they came to Singapore to visit Jalil (NE 176). Up to 4 August 2002, the accused was very fond of the baby having bought Pampers, diapers and toys for her and taking her for walks.

12 On 4 August 2002, at 3.26pm, the accused called the handphone of another person by the name of Joseph to reach Jalil. The accused informed Jalil that Widiyarti and the baby were at the Flat. Jalil told the accused to let them stay at the Flat and he would go over to the Flat later that night. Jalil said he then spoke to Widiyarti and told her that he would meet her and the baby later that night (NE 472). Jalil's intention was to collect the salary that Joseph owed him first and then meet up with Widiyarti and the baby. Widiyarti denied that she had spoken to Jalil at about that time (NE 399).

13 According to Jalil, when he approached Joseph for his salary, Joseph said he could only pay him on the following day. So Jalil changed his plan about going to the Flat that night.

14 At about 7pm and/or 8pm, Jalil called the accused's handphone and informed him and Widiyarti that he was not going over to the Flat that night i.e 4 August 2002. Both Jalil and Widiyarti denied that they had quarrelled that night over money or over his not caring for Widiyarti and the baby.

15 At about 11.30pm, while Widiyarti and the baby were sleeping in the guestroom of the Flat, the accused unlocked and opened the door of the guestroom. He took the baby away from Widiyarti who was taken by surprise. Before Widiyarti could do anything, the accused took the baby to his bedroom and closed his bedroom door but Widiyarti did not attempt to open the accused's bedroom door. The key to the guestroom was subsequently found by the police in a storeroom of the Flat.

16 Soon after, Widiyarti heard the baby crying loudly in the accused's bedroom. She knocked on the accused's bedroom door and asked for the return of the baby. However, the accused did not open his bedroom door or respond to Widiyarti's plea.

17 Soon thereafter, the baby's cries stopped and Widiyarti heard the sound of toys in the accused's bedroom and the sound of patting like the accused trying to put the baby to sleep. Widiyarti also heard the baby making some sound like she was playing with her saliva.

18 On 5 August 2002, between 12am and 5am, Widiyarti waited in the living room outside the accused's bedroom. At about 2 plus or 3am, she knocked again on the door of the accused's bedroom but there was no response. She then tried to peep into the accused's bedroom from the kitchen toilet but could only see the light in the bedroom. At about 3am, Widiyarti heard the opening

and closing of the accused's bedroom door once. She presumed that the accused had opened the door to check on whether she was asleep or not. She said she had dozed off until about 5am (NE 205). She did not notice the accused leaving the Flat or anyone else coming into the Flat between 12am and 5am.

19 At about 5 plus in the morning, Widiyarti opened the main door of the Flat. She stood outside and brought along a newspaper as she was bored. She saw a female neighbour leaving for work and wanted to speak to her but this neighbour had left. At about 6am, Widiyarti then returned into the Flat. She knocked on the door of the accused's bedroom.

20 When the accused opened the door, Widiyarti asked the accused for the baby and the accused said that the baby was sleeping. However, Widiyarti did not see the baby on the bed in his bedroom. Instead, she saw the mattress of the bed covered with a brown bed-sheet and two pillows with blue pillow slips. She also noticed a black haversack placed on top of a stool in front of the bedroom toilet. The bag appeared bulky. Widiyarti continued to ask for the baby and eventually the accused replied that someone had taken the baby away. Widiyarti then scolded the accused and became panicky and the accused then suggested that they go and make a police report. He came out of his bedroom, locked the door to his bedroom and left the Flat.

21 Widiyarti did not follow the accused because she knew he could not be trusted. She shouted the baby's name and went to a flat next door to seek help.

22 Gan Ai Lan (PW 16), a tenant staying in unit #09-84 testified that she was awakened at past 6am on 5 August 2002 by the sound of the ringing doorbell to her flat. When she opened the door, she saw Widiyarti. She testified that Widiyarti told her in Malay words to the effect, 'Help, help, my child is missing'. She observed Widiyarti rubbing her hands appearing nervous. However, Gan Ai Lan told Widiyarti that she could not help and she closed the door on Widiyarti.

23 Widiyarti then returned to the Flat. She took her passport, the baby's photo and an Indonesian passport (Exhibits P255 and P256) with her. The Indonesian passport bore the name and particulars of one "Sifenies Simon" ("the smuggled passport"). Widiyarti had brought the smuggled passport from Batam to Singapore to see if Jalil could use it to go to Batam.

24 Widiyarti then went to the void deck of Blk 629, Hougang Ave 8 and called the police from a public telephone. Thereafter, she tore and threw the smuggled passport into a blue rubbish bin as she feared the police would question her about it. While waiting for the police to arrive, Widiyarti saw the accused coming down from another staircase of Blk 629, Hougang Ave 8, and walking away from the block. She called the police a second time as she was getting impatient.

25 When the police arrived at about 6.24am, Widiyarti informed Cpl Siti (PW 17) about what had happened. Widiyarti then brought Cpl Siti and other officers to the Flat. When they reached the Flat, they noticed that the metal grille gate was locked with a padlock. Widiyarti recalled that when she left the Flat earlier, she did not lock the metal grille gate with the padlock. Widiyarti unlocked the padlock as she had the key to it.

26 Upon entering the Flat, the police officers searched for the baby. The police officers could not search the accused's bedroom because his bedroom door was locked and Widiyarti did not have the key to the accused's bedroom door. Widiyarti then provided the police officers with the accused's handphone number. Sgt Pek then used his handphone to call the accused, but there was no response. However, a short while later, the accused called Sgt Pek on his handphone, and Sgt Pek identified himself and told the accused to return to the Flat.

27 Shortly after, at about 6.45am, the accused came back to the Flat. There was some inconsistency between the evidence of Widiyarti, Cpl Siti and Station Inspector ("SI") Varen Chew

Hwee Huan (PW 20) as to whether Widiyarti had asked the accused about the baby when he came back and his reply.

28 The accused was told to unlock and open the door of his bedroom and he did. The police officers searched his bedroom. They could not find the baby. Neither did they find the brown bed-sheet on the accused's bed which Widiyarti had seen earlier. However a blue bed-sheet was lying loose on top of the bed. When the police asked for the black haversack that Widiyarti had previously seen, the accused took out an empty black haversack from the wardrobe in his bedroom. Widiyarti noticed that the stool on which the haversack had been placed had been moved.

29 At about 7.10am, SI R Venubalan (PW 22) arrived at the Flat with SC N. Bashiruddeen (PW 21). SI Venubalan searched the accused's bedroom and found a blood stain (marked "D" and seen in Photo P47), on the wall near the bedroom window and a crumpled black adhesive tape (marked 'HA 43' [Exhibit P214]), on the compressor of the air-conditioner just outside the window of the bedroom. SI Venubalan noticed that there were some blood stains on the crumpled black adhesive tape (marked 'HA 43' [Exhibit P214]). He suspected that the baby might have been injured or already dead. He thus gave instructions to his officers to search for the baby, and the search included looking at the rubbish chute serving the Flat. Other blood stains were also found in the accused's bedroom (marked "A" and "B", see Photo P44 and P45).

30 At about 7.40am, SC Bashiruddeen found the baby in a rubbish bin below a rubbish chute that was connected to the Flat. The baby was wrapped in a green towel (marked 'HA 32' [Exhibit P203]) and covered in the brown bed-sheet (marked 'HA 31' [Exhibit P202]) which Widiyarti claimed to have seen earlier at about 6am before she went down to call the police and throw away the smuggled passport. I would elaborate that the brown bed-sheet, which is seen in Photo P17, is a bed-sheet with a reddish brown criss-cross pattern with a green floral design. Widiyarti denied that the brown bed-sheet was given to her by the accused on 4 August 2002 (NE 427 and 428).

31 The baby was pronounced dead at the scene by paramedic, Goh Li Huang (PW 9) at 8.08am. At about 10.55am, Dr Gilbert Lau (PW 23), a Forensic Pathologist, conducted a preliminary examination of the body of the baby at the scene i.e below the block of flats at Blk 629.

Evidence on Jalil's whereabouts in the night of 4 August and early morning of 5 August 2002

32 Jalil's evidence was that he and two others Raghavan and Joseph left the roti prata stall where he worked and went to Boon Lay at past 7pm of 4 August 2002. Joseph is the same person mentioned in paras 12 and 13 above. Raghavan also worked at the same roti prata stall. They returned from Boon Lay to their stall at about 11pm (NE 473 to 475). Shortly thereafter, another co-worker Manikandan also came back to their stall. They then bought chicken rice at a stall next to theirs and ate. Thereafter Raghavan and Manikandan prepared curry for their stall while Joseph and he were watching television. Manikandan then went to sleep followed by Raghavan. Joseph and Jalil were playing video games till about 2.30am when they went to sleep (NE 483). At 5.30am, Manikandan and Jalil woke up to begin operating their stall.

33 Jalil's evidence was corroborated to a large extent by Raghavan (PW 31) who had given evidence earlier. Raghavan confirmed that he, Joseph and Manikandan were working at the same roti prata stall. On 4 August 2002, he, Jalil and Joseph went to Boon Lay from the stall, which was not operating that day, which was a Sunday. They returned to the stall at about 10 or 10.30pm. They, together with Manikandan then ate at the stall next to their stall. Thereafter, at about midnight, Raghavan prepared curry for their stall. Then Jalil, Joseph and Manikandan were playing games at a coin machine nearby. He joined them and subsequently went to sleep at about 1am at a staircase landing nearby. The other three persons joined him at the sleeping area about half an hour later. When he woke up at about 8.30am or 9am, the other three persons were already awake and working

at the stall.

34 Jalil's evidence was also corroborated to a large extent by another witness Mdm Khatijah Beevee d/o Mohamed Hussain (PW 40). She and her husband operated a Malay food stall at C Place Food Court. She referred to one "Khalil" but identified Jalil as "Khalil" (NE 541). According to Mdm Khatijah, Jalil come to her stall at about midnight of 4 August 2002 to buy four plates of chicken rice. After serving him, she and her husband left their stall and returned at about 1.30am. She saw Jalil, and the other three persons I have mentioned, watching VCD at their stall. At about 2am, she saw all four of them going over to the game machine section of the food court. She then saw them again at about 3am at the same section. Thereafter, she presumed they had gone to sleep. At about 6am, she saw Jalil and one of his co-workers starting to prepare their stall for business.

Toxicology examination

35 Dr Danny Lo Siaw Teck (PW 8) of the Health Sciences Authority found chlorpheniramine 0.45 µg/ml i.e microgrammes per millilitre and traces of diphenhydramine in the blood of the baby. A sample of liver tissue of the baby was found to contain chlorpheniramine 1.7 µg/ml.

36 According to him, chlorpheniramine is an antihistamine obtainable through prescription. It is an active ingredient in many cold remedies such as Contact, Decolgen, Milidon and Panaflu. The therapeutic level of chlorpheniramine was reported to be 0.017 µg/ml of either serum or blood for adults (NE 27) and the toxic level was reported to be 20 to 30 µg/ml. The side effects of chlorpheniramine include drowsiness and dizziness. He was unable to say what the effect of 30 times the normal adult therapeutic level in a six-month old baby would be although he accepted it was possible that it could kill such a baby (NE 28).

37 Diphenhydramine is also an antihistamine obtainable through prescription. It is found in many cough and cold remedies such as Benadryl and Allerin.

38 Dr Singam S B (PW 14) was a medical officer at Hougang Polyclinic. Her evidence was that the accused had gone to Hougang Polyclinic for consultation on three occasions. On the third occasion on 17 June 2002, he had consulted her for cough and cold lasting two days. He was prescribed, inter alia:

(a) Tablet Chlorpheneramine 4mg three times a day,

(b) Diphenhydramine 10ml three times a day.

39 Dr Azman Bin Osman (PW 24) was a medical officer with Life-Link Clinic & Surgery in Serangoon North Avenue 1. He said that he had seen the baby on 9 June 2002. She had had a fever, cough and running nose for one day. She was treated symptomatically with paracetamol and promethazine.

40 Widiyarti's evidence was that she did not give the baby any medicine on 4 August 2002.

Deoxyribonucleic Acid ("DNA") Evidence

41 Dr Jasmine Heng (PW 35) of the Health Sciences Authority gave DNA evidence.

42 The baby's DNA profile was found on the crumpled adhesive tape, marked 'HA 43' (Exhibit P214), recovered from the compressor of the air-conditioner outside the window of the accused's bedroom. However, no DNA profile of the accused was found on that crumpled tape.

43 A light brown towel, marked 'HA 33' (Exhibit P204), hung near the window of the accused's bedroom, contained blood stains of the baby (in two areas) and of the accused (in one of the two

areas).

44 The two pillows recovered from the accused's bedroom, marked 'HA 40' and 'HA 41' (Exhibits P211 and P212), contained blood stains. There were blood stains on two areas of 'HA 40'. The baby's blood was found in both areas and the accused's blood was found in one of the two areas. The baby's blood was also found on 'HA 41'.

45 In Dr Heng's report, she said she was not able to confirm that the four stains found in the accused's bedroom and marked 'A', 'B' and 'D' ('A' having two stains, see Photo P44) were blood. In her oral evidence at NE 292, she said the exhibits showed very little stain and while they showed positive in the screening test for blood, she was not able to do a confirmatory test. She went ahead with DNA extraction from these stains but the amount was insufficient to obtain a DNA profile.

Evidence on various items

46 Dr Tay Ming Kiong (PW 35) an analyst with the Health Sciences Authority also gave evidence.

47 From his report and evidence:

(a) The crumpled black adhesive tape ("the crumpled tape") found on the compressor of the air-conditioner outside the accused's bedroom, marked 'HA 43' (Exhibit P214), matched a roll of black adhesive tape ("the roll of tape"), marked 'HA 50' (Exhibit P221), found on the first shelf of a row of shelves in the accused's bedroom. It also matched black particles found on a pair of foldable scissors, marked 'HA 52' (Exhibit P223), on the said first shelf. It was therefore consistent to say that the foldable scissors had been used to cut the roll of tape and/or the crumpled tape.

(b) Two red fibres and a white fibre found on the crumpled tape were consistent with having come from the baby's red dress which was found in the bin with the baby's body.

(c) The material of an off-white glove on the said first shelf, marked 'HA 51' (Exhibit P222), was similar to the material of another off-white glove on the second shelf of the same row of shelves, marked 'HA 55' (Exhibit P226).

(d) Metallic particles found on each glove were found to contain similar elemental composition to metallic particles found on the other glove and on the crumpled tape. Furthermore, the metallic particles from the crumpled tape and the two gloves were found to have similar surface textures.

48 Thus, the prosecution submitted that the evidence of Dr Tay would lead to the conclusion that the pair of foldable scissors was used to cut the crumpled tape and the roll of tape. The two gloves were worn and used in the cutting. The crumpled tape had come into contact with the red dress of the baby either directly or indirectly as might occur if gloves were used to touch the red dress and then the crumpled tape.

49 According to Dr Tay, a yellow earring, marked 'HA 53' (Exhibit P224), which was found on the top of the row of shelves in the accused's bedroom was similar in material, density and design to a earring, marked 'HA 54' (Exhibit P225), found on the baby's right ear.

Evidence on knots

50 Lim Chin Chin (PW 38), an analyst from the Health Sciences Authority, gave evidence on the knots which tied the baby and knots found in the Flat. She was of the view that the overall manner in which the baby was tied, as shown in Photo P65 to 67, suggested that the person who tied the baby was experienced in tying (NE 373).

Evidence of Operation Manager of previous employer of the accused

51 The accused was previously employed by Mammoet Singapore Pte Ltd ("Mammoet") as a rigger in October 1997. Mammoet dealt with crane rental, engineered heavy lifting and multi-modal transport. According to Mr Lee Hoong Cheong (PW 26), an Operation Manager of Mammoet, the accused's duties involved lashing and tying the lattice boom of cranes. The accused was required to climb and not be afraid of heights and the accused would have gained knowledge in various methods of tying and slinging ropes. In 1998, the accused was involved in an industrial accident and sustained fractured ribs after which he was given light duty till he resigned.

Forensic Evidence

52 As I have mentioned, Dr Gilbert Lau was the Forensic Pathologist who had conducted a preliminary examination of the baby's body at the scene. He estimated the time of death to be between 3am and 5am of 5 August 2002 (NE 113). However, he accepted that the time of death could have been at about 6am of 5 August 2002 (NE 114). He also conducted an autopsy subsequently on the next day.

53 He found the wrists and ankles of the baby bound together in a hogtie behind her back, with a white ligature, with multiple discoid bruises on her forehead, face and chest. Her lips were also bruised and the frenulum of the upper lip was lacerated. The hymen was completely torn down to the fourchette and there was some bruising in the lower part of the vagina just above the torn hymen.

54 In Dr Lau's opinion, the baby had been sexually abused. As for the suggestion by Defence Counsel, Mr Subhas Anandan, that when Widiyarti had been bathing the baby, her hand and fingers could have slipped so that her fingers penetrated into the baby's vagina sufficiently to completely tear the hymen, this drew a strong response of disbelief from Dr Lau who described the suggestion as "really preposterous" (NE 108). Furthermore, when Widiyarti was on the witness stand, Mr Anandan did not ask her whether such an incident had occurred. Neither did the defence call any expert to refute Dr Lau's views.

55 I would add that Dr Lau's opinion of sexual abuse was based both on the vaginal penetration and the hogtying of the baby. Although the case before me was his only experience in examining a six-month old infant hogtied in the same manner which the baby was, I did not think it diluted the weight to be given to his evidence. He had done about ten autopsies of victims who had been hogtied, although not in exactly the same manner and not of the same age. I would not have expected to find many victims in Singapore of the same tender age as the baby hogtied in the same manner.

56 In the circumstances, I concluded that the baby had been sexually abused.

57 In Dr Lau's opinion, the discoid bruises on the forehead, face and chest of the baby were consistent with the application of fingertip pressure to these parts of the body. These, together with the conjunctival, infraorbital and pulmonary petechial haemorrhages suggested an element of mechanical asphyxia, possibly by way of smothering. However, this was not the cause of death although it might have rendered the baby unconscious (NE 98 to 99).

58 In Dr Lau's opinion, death was due to a severe head injury caused by a fall from a height, with primary impact upon the top of the head. In his view, the fall was more likely to have been caused by the baby having been thrown down a rubbish chute from a height like the nineth floor of a block of flats rather than having been dropped from an unknown height within the Flat (NE 93 to 96).

59 In the course of the trial, the prosecution elaborated that it was relying on s 300(b) or (d) of the Penal Code for the offence of murder. Section 300(b) and (d) state:

300. Except in the cases hereinafter excepted culpable homicide is murder -

(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;

(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.

60 It was not disputed that should I find that the accused had dropped the baby's body down the rubbish chute from the Flat, the prosecution would have proved its case.

EVIDENCE OF THE ACCUSED

61 The Defence made a submission of no case to answer. After I had ruled that there was a case to answer, the accused elected to give evidence. He was the only witness for the defence. I summarise his evidence below.

62 He said his relationship with Widiyarti was like brother and sister (NE 630). He said that there was no quarrel or animosity between Widiyarti and him or Jalil and him.

63 However, he also said that on 4 August 2002 when Widiyarti came with the baby to Singapore, he had asked her and she had told him that she had come with another male person. She had asked him to allow this man to stay at his flat but he had refused and she was a little angry (NE 635, 639).

64 The accused claimed that the brown bed-sheet (seen in Photo P17 and in which the baby was found wrapped) was provided by him to Widiyarti on 4 August 2002. He had also provided her with a white bed-sheet with blue lines and coloured boxes (see NE 640, para 8 of SI Varen Chew's statement and Photo P51). Likewise a towel found hanging on a raffia string in his bedroom (seen in Photo P35) and black tape was also given to Widiyarti that day (NE 640, 735 and 736).

65 He said Jalil called twice in the evening of 4 August 2002. For the first call at around 7pm, Jalil told him that he was not able to come to the Flat and asked him to pass the message to Widiyarti but he asked Jalil to speak to her himself. He then passed Jalil's call to Widiyarti and it appeared as though there was some misunderstanding between them as Widiyarti raised her voice and appeared irritated (NE 642 and 643). The accused said Widiyarti told him that she had already brought a passport for Jalil to go to Indonesia.

66 For the second call at around 8pm, the accused simply passed Jalil's call to Widiyarti. Widiyarti spoke angrily and after that she asked him (the accused) whether Jalil had a girlfriend (NE 643).

67 At about 11pm, Widiyarti went to the guestroom to feed the baby. Thereafter, he went into the guestroom and took the baby with Widiyarti's permission. The door to the guestroom was open (NE 713) and the baby was sleeping (NE 645). He said he took the baby away to his bedroom because Widiyarti was depressed and angry and he told her to calm down and to watch TV (which was in the living room). He would take the baby with him and did so (NE 645). The accused said he did not lock his bedroom door and he went to sleep at around 11.45pm.

68 Then at around 12.30am (of 5 August 2002), Widiyarti and a man came and took the baby. The man looked like Jalil (NE 648). I will refer to this alleged man as "Mr X". The accused claimed he had told the police that Mr X looked like Jalil (NE 661 and 669). In cross-examination, he said that he initially thought Jalil was Mr X but, by the time Widiyarti and Mr X had brought the baby to the

guestroom, he had concluded that Jalil was not Mr X because Jalil would wake him up even if he was sleeping (NE 721 to 724).

69 According to the accused, the baby was sleeping on one of the pillows in his bedroom and Widiyarti took the baby along with the pillow. The accused was feeling sleepy and tipsy. The baby started to cry and he saw the baby being taken to the guestroom and the door thereof was then closed. As the baby was still crying, he got up, went to the door of the guestroom and told Widiyarti that the baby was still crying. He was concerned that the police would come if the crying did not abate. Widiyarti replied, "All right, all right". The TV in the living room was still switched on and the main door to the Flat was open. He closed the main door and switched off the TV. He heard the noise of the baby being pacified and about 20 minutes later, the baby stopped crying.

70 At about 1.30am or 1.45am, Widiyarti came in and switched on the light of the toilet attached to the accused's bedroom. She took the towel that was hanging on the raffia string in his bedroom and put it in a pail. She hung a green towel back in its place. She then opened the window in his bedroom and looked out. Then she meddled with things which were on shelves in his bedroom although he did not know what she did exactly. Her things were also on the shelves in his bedroom (NE 738). She then proceeded to his wardrobe, pulled out a drawer and did something. Lastly, she took away a towel on the floor near his bed which he had used to wipe his feet. She had asked him whether she could take away the towel and he had agreed.

71 At about 2.30am, the accused heard the sound of the lock to the metal grille gate of the Flat being opened. He got up, came out of his bedroom and saw Widiyarti leaving the Flat with Mr X. He did not get a good look at Mr X. Widiyarti was carrying the baby and told him that she was just going down for a short while. The accused then went to the guestroom because he wanted to know whether Mr X's belongings were there as he had not given any permission for Mr X to stay in the Flat. He saw Widiyarti's bag and the baby's bag in the guestroom. He then closed the main gate and main door to the Flat and went back to his bedroom to sleep. He said he did not lock or close the door to his bedroom (NE 657).

72 At about 5am, he heard knocking at his door. He said he got up and opened the door, although he had earlier said he had not closed it (NE 657). When he opened the door, Widiyarti was there and asked for the baby. He told her that she and Mr X had taken the baby and asked why she was then asking for the baby. Widiyarti repeated her question and he told her not to get agitated and suggested that both of them go and report the matter of the missing baby to the police. As Widiyarti appeared to be looking for her slippers, he went out of the Flat first and told her that he would wait for her at the sixth floor which had a lift landing. In the meantime, Widiyarti kept calling out the name of the baby. When he was at the sixth floor, a lift came and he let it pass without going in. He then went into the next lift which came, after calling out for Widiyarti twice. When the lift reached the first floor he sat on the steps of a staircase nearby. After waiting for about 20 minutes, he went back up to the Flat. He saw the gate was opened but did not go in. He called out to Widiyarti but received no response. He then locked the gate and went down again. He said that when he went down again, he did not see Widiyarti although he was looking for her. He then headed towards a police station and on the way there, he received a call on his handphone from the police. When he answered the call, the police told him to return to the Flat.

73 When the accused returned to the Flat, he was questioned by the police. He said he told the police that someone who looked like Jalil had come with Widiyarti and taken the baby (NE 661 and 669). The police asked him to open the door to his bedroom and he said it was open. However, when the police tried to open the door, it was locked. He then opened it. Once the door was open, Inspector Venubalan went straight to the accused's bed, threw the two pillows that were on it onto the floor, lifted the mattress and looked underneath it. The police also overturned the mattress (NE 661 and 667). There were two pillows in his bedroom but he said one of them came from the

guestroom. He claimed that when he left his bedroom to go to the police, there was only one pillow left in his bedroom (NE 662). He said there was a bloodstain on one pillow and the police took it and asked him why there was a blood stain on it. He asserted that the pillow which had been taken by Widiyarti earlier was the one which had the bloodstain (NE 664). He also asserted that he was surprised when he saw the pillow which Widiyarti had taken was back in his bedroom and he told the police about it (NE 664).

74 The accused said that the police also overturned a pail with clothes in it and there was a towel with bloodstains on it. He told the police about the bloodstains. The police also opened the window in his bedroom and found a scotch tape behind the air-conditioner. This was the crumpled tape that I referred to earlier. The police then told him to put the clothes back into the pail. He said he told the police that he wanted to wash his hands but they refused to let him do so.

75 The accused added that he had learned about the tying of knots not only when he was working at Mammoet but also when he was working at PSA before that (NE 705).

SUBMISSION FOR THE DEFENCE

76 The closing submission for the defence focussed on the law regarding circumstantial evidence with some submission on the facts. However, Mr Anandan said that he was also relying on his submission regarding no case to answer in so far as it was still applicable to his closing submission.

77 The defence stressed that Widiyarti was the prosecution's main witness and her evidence should not be believed. This was a person who had admittedly smuggled a passport into Singapore for Jalil to leave Singapore for Batam and who had obtained a false marriage certificate in Batam. The defence also submitted that Widiyarti had used a second passport for herself in order to deceive Singapore Immigration because she had to leave Singapore, using her first passport, when she became pregnant with the baby. It seemed to me that even if, for the sake of argument, Widiyarti had sought to deceive Singapore Immigration by the use of her second passport, this did not add anything material to the case before me in view of the other matters mentioned above. It was already clear that Widiyarti was prepared to commit an offence or offences for the sake of Jalil or the baby, a point which the defence sought to exploit. She had also become pregnant while working in Singapore as a maid, contrary to the conditions of her work permit.

78 The defence also submitted that Widiyarti was a scheming person in view of the above matters and also the fact that she had not told Jalil that she had had another child in Jakarta and had not intended to disclose this to him until he arrived in Batam. It surmised that when he went to Batam, using the smuggled passport she had brought for him, he would feel indebted to her.

79 The defence submitted that Widiyarti had not been on good terms with her landlord in Batam and had left the landlord's house there.

80 Also, Widiyarti was no longer using a handphone and the defence submitted that her explanation that it had been sent for repair should not be believed. It submitted that she was already in a financially tight situation and that was why she was no longer using a handphone. I did not accept the submission about the handphone because Jalil corroborated Widiyarti's evidence that her handphone had been spoilt. There was no reason for him to lie about this small point.

81 The defence pointed out that the accused was supposed to bring money to Widiyarti from Jalil before 4 August 2002 but did not leave Singapore on the advice of his lawyers in Singapore as he had made a claim for his industrial accident. The money was then handed over to Jalil's friend one Amir, who, however, did not go to Batam. The defence submitted that when Widiyarti came to Singapore on 4 August 2002, this must have been for the purpose of getting money from Jalil. Thus, when Jalil had said he was not coming to see Widiyarti on the same night of her arrival, she was angry

and upset.

82 The defence submitted that Widiyarti's evidence was not credible because when the accused took the baby away at about 11.30pm on 4 August 2002, she

> "(a) did not immediately seek help from the neighbours or the police,
>
> (b) continued to wait outside the room. She was "bored", opened the front door of the house, sat in front of the corridor, was reading a newspaper and was watching television,
>
> (c) at no point was alarmed or worried."

(see para 30 of Defence Submission at Close of Prosecution Case.)

83 The defence also submitted that the time when Widiyarti and Mr X left the Flat at about 2.30am of 5 August 2002 with the baby coincided with Dr Gilbert Lau's estimate of the time of death (see para 23 of Defence Submission at Close of Prosecution Case).

84 Furthermore, on the morning of 5 August 2002, the accused had suggested seeking the help of the police when he was questioned about the baby. Instead of following the accused, Widiyarti returned to the Flat to take the false passport with her, and went downstairs to destroy it, before seeking the help of the police.

85 The defence also suggested in submission that Widiyarti might have been suffering from post-natal depression (see para 22 of Defence Submission at Close of Prosecution Case). However, I disregarded that submission as it was made as an afterthought. No such suggestion was made to Widiyarti nor did the accused allude to that.

86 The defence then sought to rely on Widiyarti's evidence that the accused had asked her whether she had come to Singapore (on 4 August 2002) with a man because the accused had said he had been informed that she had been seen with a man then. This was to bolster the accused's version that in the middle of the night, Widiyarti had come to the accused's bedroom with a man and taken the baby away.

87 The defence also sought to make much out of paragraph 5 of a statement by SI R Venubalan. In the first sentence of para 5, SI Venubalan said:

> 5. At about 7.30 am, *based on some information provided by the complainant* [i.e Widiyarti], I gave instruction to SC Bashiruddeen and Cpl Teh through the radio set to search all the rubbish chutes of Blk 629, Hougang Ave 8, especially the rubbish chute that is shared by units number 82 and 84. …
>
> [Emphasis added]

88 In cross-examination, Mr Anandan suggested that the information provided by Widiyarti to the police must have included a suggestion from her that the police search the rubbish chute from the Flat. The implication was that she made this suggestion because she knew that the baby's body was there. However, SI Venubalan denied that she had told him to search the rubbish chute of the Flat (NE 83 and 85). Widiyarti also denied she had told the police to check the rubbish chute (NE 431). Notwithstanding the denials, Mr Anandan pursued this suggestion in his closing submission.

89 Indeed, Mr Anandan went one step further in his closing submission. He submitted that Widiyarti did not throw the smuggled passport into the rubbish chute of the Flat because she knew that the baby's body was there and would be eventually found. He urged me to take this into account although he did not cross-examine Widiyarti on this. Having considered this submission, I did

not give much weight to it as there could have been other possibilities. For example, it was clear that Widiyarti did not want the smuggled passport to be found and linked to her. She knew she was going to report the matter of the missing baby to the police and if there was a search, she would not have wanted the smuggled passport to be found at the end of the rubbish chute connected to the Flat. Alternatively, while she remembered the smuggled passport, her evidence and that of the neighbour Gan Ai Lan demonstrated that she was in an anxious frame of mind. It might not have occurred to her to throw the smuggled passport down the rubbish chute. Also, she had then decided she was going down to the first floor to call the police from a public phone and she could have similarly decided then that she might as well dispose of the smuggled passport when she was at the first floor.

90 Furthermore, while Widiyarti may have reason to lie as to whether she had told the police to search the rubbish chute, I saw no reason to disbelieve SI Venubalan on this point. Besides, even if Widiyarti had told the police to search the rubbish chute, this would have been equivocal. It did not necessarily mean that she knew that the baby had been thrown into the chute. I was of the view that the defence was making too much out of the first sentence of para 5 of SI Venubalan's statement.

91 The defence stressed that there was no reason for the accused to kill the baby. He had in the past played with her and bought things for her. However, the defence accepted that the absence of a motive was not a defence in law. The defence also submitted that even if, for the sake of argument, the accused had sexually abused the baby, there was no reason to kill her as she was too young to tell on him.

SUBMISSION FOR THE PROSECUTION

92 The prosecution accepted that there was no direct evidence of the crime and that Widiyarti was its main witness. The prosecution submitted that as between Widiyarti and the accused, the former's evidence was credible whereas the accused's was not. For example, the accused's evidence as to how the police had thrown items about in his bedroom was not credible. More importantly, the accused had lied about the identity of Mr X in various statements he had given the police, a point which I will come back to later. Furthermore, there was other evidence.

93 The prosecution submitted that the baby's blood contained two types of medicine or drugs which Dr Singam had prescribed to the accused about one and a half months before the death of the baby (see para 38 above). Although the accused claimed that he had given one of the drugs to Widiyarti to use and she had put this into an Eye-Mo bottle, he conceded during cross-examination that he had never seen Widiyarti giving the baby the medicine from the Eye-Mo bottle (NE 703 and 704). It was submitted that this contradicted Mr Anandan's suggestion to Widiyarti during cross-examination that there were times when she would give the medicine to the baby (NE 414). It was further submitted that there was no evidence of any Eye-Mo bottle on the day in question (NE 845).

94 In addition, the medicine in the Eye-Mo bottle must have been diphenhydramine which was in liquid form. The accused's evidence about how he had give one of the drugs to Widiyarti still did not explain how the other drug chlorpheniramine came to be found in the baby's blood.

95 There was DNA evidence that the blood of the accused and/or of the baby was found on various articles in the accused's room and on the crumpled tape on the air-conditioner outside. The prosecution stressed that there was also evidence of other bloodstains marked A, B and D in the accused's bedroom, while, on the other hand, there was no evidence of any bloodstain in the guestroom (see para 60 and 61 of Prosecution's Closing Submission).

96 The prosecution also relied on the evidence of Dr Tay Ming Kiong as I have set out in paras

47 to 49 above.

97 There was also evidence of the accused's knowledge and experience with knots and the tying of things.

MY CONCLUSION AND REASONS

98 It is not necessary for me to regurgitate the various cases cited to me regarding circumstantial evidence. The principles expressed were not disputed. However, each case must depend on its own facts.

99 From the telephone records and other evidence before me, it appeared that there was one telephone conversation between the accused and Jalil in the afternoon of 4 August 2002 and two telephone conversations between the accused and Jalil in the evening of 4 August 2002. In all the three calls, Jalil spoke to Widiyarti also. To this extent, the evidence of Widiyarti about having spoken to Jalil once only in the evening of 4 August 2002 was not correct.

100 As for the allegation that Widiyarti was unhappy with Jalil for not planning to come to the Flat that night, I accepted that she was unhappy about this but not to the extent that they quarrelled over it. Both of them denied any quarrel and they had hardly any time to discuss their evidence before the trial as Jalil was arrested on 5 August 2002 (NE 457) and thereafter did not speak to Widiyarti (NE 488 to 489).

101 As for the presence of Widiyarti in the guestroom at the time the accused took the baby away, this was not disputed when Widiyarti was giving evidence. The accused gave similar evidence to this effect in evidence-in-chief (NE 645 line 4). However, when he was cross-examined, he said that Widiyarti was in the living room watching TV at the material time (NE 713 to 714). I did not know why the accused gave different evidence at this time. Suffice it for me to say that I was of the view that Widiyarti was in the guestroom when the accused took the baby. However, the baby was already sleeping. There was no bona fide reason for the accused to take the baby at such a late hour. Initially he suggested that the reason for taking the baby was that he wanted Widiyarti to calm down (NE 715 line 8). Then, he said it was his habit to bring the baby to his bedroom (NE 715 line 12). I did not accept those reasons because it was not as though the baby was crying and Widiyarti was becoming more and more upset because of Jalil and the baby or the baby was awake and the accused wanted to play with the baby.

102 On the other hand, I did find part of Widiyarti's evidence, if it was to be believed, unusual. Although she was surprised to see the accused taking the baby away to his bedroom, she did not object and did not try to open the door of the accused's bedroom. She was also prepared to wait for the baby in the living room for five to six hours without insisting for the baby to be returned to her.

103 Be that as it may, what was more significant was that the accused did take the baby into his bedroom at about 11.30pm of 4 August 2002. This was not disputed. Therefore, the evidential burden shifted to the accused to establish that at about 12.30am of 5 August 2002, Widiyarti and Mr X came to his bedroom whereupon Widiyarti took the baby away, although the legal burden remained always with the prosecution to prove its case beyond a reasonable doubt. The accused's position and evidence as to the identity of Mr X was therefore important.

104 As I have mentioned, when the accused was giving evidence, his position was that Jalil was not Mr X and he had already reached this conclusion when the baby was allegedly taken from his bedroom to the guestroom. However, this was not his position prior to his giving evidence.

105 SI Venubalan had interviewed the accused twice. The second time was also in the morning of 5 August 2002, but after the baby's body had been found. Paragraph 12 of SI Venubalan's

statement stated:

> Subsequently, I returned to Soosainathan's unit and conducted a further interview of Soosainathan. Soosainathan admitted that he had taken the baby from the mother (i.e. the complainant), who was staying in the next room, the previous night, and has placed the baby on his bed. He claimed that he used to do that often. He further added that in the middle of the night, he heard some noises and when he opened his eyes, he vaguely saw the complainant with another male person taking the baby away. He said that he did not bother as *he thought the male person was the complainant's husband*. Moreover, he claimed that he had been drinking earlier and was too tired to get up.
>
> [Emphasis added]

106 When the penultimate sentence was drawn to the accused's attention during cross-examination, he denied that he had informed SI Venubalan that he had thought that Jalil was Mr X. He also denied that SI Venubalan had asked him who Mr X was (NE 757). Yet SI Venubalan was not challenged about this sentence when he was cross-examined. Secondly, it was unlikely that SI Venubalan would have failed to ask about the identity of Mr X when the accused had mentioned that Widiyarti and a man had taken the baby away from his bedroom.

107 The accused also gave a statement pursuant to s 122(6) of the Criminal Procedure Code to ASP Ang Bee Chin in the evening of 6 August 2002 after a charge of murder was read out to him. ASP Ang was assisted by an interpreter. The accused's s 122(6) statement read:

> I did not commit this offence at all. There was a quarrel between the husband and wife over the phone. I spoke to the husband Jalil over the phone and he said that he would either come back in the evening or at night or the next morning. He wanted me to tell this to his wife. I told him to tell this to his wife directly. I passed the phone to his wife and there was a quarrel. It was regarding some money problems. I overhead the wife saying that if he did not want to look after the baby, then she would. At about 12.50 a.m on 6 August 2002, the wife came into my bedroom and took the baby away. *Jalil came together with her. Jalil comes to my house without anyone knowing whenever his wife comes here. Jalil is an overstayer*.
>
> [Emphasis added]

108 When the first of the last three sentences I have emphasized were drawn to the accused's attention, he said that when he had mentioned Jalil's name, he was confused. However, at trial, he was initially unable to give a satisfactory answer for his confusion. Eventually he said that he made that assertion because he was in a hurry. He claimed he was suffering from diabetes and was sleepy and the police had informed him to respond quickly and he did so. Yet, he accepted that when the police asked him who took the baby away, the question was asked in a calm manner (NE 682 to 685). Secondly, when the prosecution took the accused through each of the sentences in his s 122(6) statement, which sentences were prior to his assertion about Jalil, the accused accepted that those sentences/responses were not given in confusion. Thirdly, the accused had not simply mentioned Jalil's name. In his s 122(6) statement, he went on to elaborate as to how Jalil had at times come to the Flat without anyone knowing and that Jalil was an overstayer. He said he was in a hurry when he gave such elaboration so that he could go and sleep (NE 686 to 688). Yet, it was not suggested to ASP Ang or the interpreter that the accused had given any of his responses in the statement in a hurry. In my view, the accused's identification of Jalil was not a slip of the tongue or given in confusion or in a hurry. It was a deliberate assertion to defend himself.

109 It was not disputed that the reference to "12.50am on 6 August 2002" in the s 122(6) statement was to a wrong date as the accused's reference was intended to be 5 August 2002. The interpreter who interpreted his statement to ASP Ang said that the accused mentioned the date of 6

August 2002. I accepted this evidence because the interpreter was unlikely to know whether the date should be 5 or 6 August 2002 and since the accused was giving his statement on 6 August 2002, he probably inadvertently mentioned 6 August 2002. Be that as it may, that inadvertent error did not mean that the accused was confused when he identified Jalil as the man who had come with Widiyarti to take the baby away i.e Mr X.

110 I would add that when evidence was being given for the prosecution, the questions from Mr Anandan were consistent with the position that Jalil was Mr X or might be Mr X. For example, after it had been earlier established through Raghavan's evidence that Jalil had been with his co-workers during the night of 4 August 2002 until about 2.30am of 5 August 2002, Mr Anandan was still suggesting to Jalil, during cross-examination, that he could have taken a taxi to the Flat after 2.30am and then subsequently returned to his place of rest before 5.30am (NE 533 to 534).

111 It was clear to me that after the close of the prosecution case, the accused realised that the evidence was against any suggestion that Jalil was or might be Mr X and so when the accused took the stand, he changed his position. Mr X became someone who looked like Jalil, but was not Jalil.

112 I also found it implausible that while the accused claimed that he had refused an earlier request from Widiyarti to allow a man to stay at the Flat, the accused did not bother to find out the identity of Mr X when Mr X came to his bedroom and returned to the guestroom in the middle of the night. The accused's evidence was only that thereafter he went to the guestroom to tell Widiyarti that the baby was crying as he was afraid that someone would complain to the police about the noise. He did not ask Widiyarti who Mr X was (NE 734).

113 Moreover, although the defence submitted that the time when Widiyarti and Mr X left the Flat with the baby, i.e 2.30am, coincided with Dr Gilbert Lau's estimated time of death, the defence did not elaborate as to how the baby's body ended up in a rubbish bin at the end of the chute connected to the Flat. There was no evidence that the baby was brought back to the Flat after 2.30am. True, Widiyarti or Mr X could have gone to the rubbish bin on the first floor and dumped the baby's body there, assuming that the rubbish bin was not kept in a locked enclosure at the bottom of the block of flats. However, it was Dr Lau's evidence that the cause of death was the impact on the baby's head and it was more likely that the baby had been dropped from the nineth floor down the rubbish chute rather than merely having been dropped from an unknown height somewhere in the Flat (NE 96). To my mind, this suggested that the baby's head injuries were not likely to have been caused by the baby having been simply dumped into the rubbish bin while the assailant was at the first floor.

114 In the circumstances, I did not accept the accused's evidence that Widiyarti and a man had come to his bedroom at about 12.30am and taken the baby away. I was also of the view that the accused had fabricated this evidence because he was guilty. In any event, there was other evidence pointing to the guilt of the accused.

115 The baby's blood contained two types of medicine which were among the medicine given to the accused one and a half month's earlier. As the prosecution had submitted, the accused's evidence did not satisfactorily explain how these two types of medicine, especially the chlorpheniramine, came to be found in the baby's blood (and liver) if the accused had not administered them to the baby. I would add that as regards the chlorpheniramine, the accused had initially said that Widiyarti had taken some of his medicine (NE 702) but then said he was not sure whether she had taken the tablets (NE 703). Furthermore, the large doses of chlorpheniramine found in the baby's blood and liver also demonstrated that whoever had fed the baby the medicine did so for some reason other than to address some illness which the baby was suffering from. It was clear to me that the large doses were administered to keep the baby quiet for a sinister reason.

116 Thirdly, there was the evidence of the baby's blood found on articles and some blood on

places in the accused's bedroom. As regards the latter, I disregarded the evidence from the police and Dr Jasmine Heng regarding A, B and D in the accused's bedroom because, ultimately, Dr Heng could not confirm that they were spots of blood and, more importantly, whose blood they were.

117 As regards the evidence of the baby's blood on the pillows in the accused's bedroom, the accused had said that Widiyarti had taken one of the pillows to the guestroom. When he returned to the Flat in the morning of 5 August 2002, after responding to a call from the police, his bedroom was not supposed to be locked but he had to open it for the police as it was in fact locked. He then saw two pillows in his bedroom and he noticed a blood stain on one of the pillows. The impression given from his evidence was that Widiyarti had cleverly returned the pillow she had taken from his bedroom, while he went down to wait for her to go to the police with him. However, the baby's blood was found on both pillows, not just one. The accused's evidence could not explain why this was so, unless the baby had been assaulted in his bedroom.

118 I also noted that in his evidence-in-chief, the accused had asserted that the blood stain he had noticed on one pillow was on the pillow which Widiyarti had taken (NE 664). However, in cross-examination, he could not identify which pillow it was (NE 753). He tried to cover this up by alleging that the police threw the pillows and the mattress onto the floor when they came into the bedroom (NE 752 to 754). I did not believe that the police had done so. They would not have tampered with a potential crime scene. Moreover, this point was never pursued by Mr Anandan when various police officers were on the witness stand. In my view, the accused had belatedly fabricated this evidence. For the same reasons, I was also of the view that the accused had fabricated his evidence as to how the police had allegedly overturned a pail with clothes in it and then told him to put the clothes back into the pail.

119 Furthermore, the accused's blood was also on one of the two pillows as I have mentioned (see para 44 above).

120 Moreover, the towel found hanging on a raffia string in the accused's bedroom i.e 'HA 33' (Exhibit 204) was stained with blood in two areas. The DNA evidence showed the blood on one area to be from the baby and the accused and the blood on the other area to be that of the baby's (see para 43 above). Although the accused said that Widiyarti had thrown a towel on the raffia string into a pail and replaced it with another in the middle of the night, his evidence did not explain why his blood was found on the towel which Widiyarti had purportedly placed on the raffia string. I would add that the accused had said that Widiyarti had placed a green towel on the raffia string but the towel found hanging there was beige in colour (or light brown) but not green. When this was pointed out to him, he said it was light green (NE 691 and 692).

121 It was clear to me that the accused's evidence as to how Widiyarti had come into his bedroom and replaced the towel on the raffia string, meddled with items on the shelves in his bedroom and took away a towel lying near his bed were also fabricated this time to address the DNA evidence and the evidence of Dr Tay Ming Kiong which I have set out in paras 47 to 49 above.

122 There is, however, one observation I should make. The prosecution had stressed that while there was evidence of blood stains in the accused's bedroom, there was no such evidence in the guestroom. This was not entirely accurate. Dr Jasmine Heng's report revealed that a foldable mattress marked 'HA 59' (Photo P51) which was in the guestroom had blood and semen stains from Widiyarti and Jalil respectively (see p 8 and 12 of her report which are p 78 and 82 of the PI Bundle). However, as she was not questioned about them and no submission was made about them, I need say no more about these stains. It remained true that no blood stain from the baby was found in the guestroom.

123 As for the brown bed-sheet which the baby's body was found to be wrapped in, the

accused's evidence was that he had given this bed-sheet to Widiyarti as well as a white bed-sheet with blue lines and coloured boxes (see again NE 640, para 8 of SI Varen Chew's statement and Photo P51). However, the photographs of the accused's bedroom showed that his mattress did not have a bed-sheet covering it although the pillows had pillow slips. There was only a light blue bed-sheet lying loose on top of the mattress (see Photo P25). The accused had informed SI Varen Chew that the light blue bed-sheet was used by him as a blanket (see para 8 of SI Varen Chew's statement) but during the trial he did not explain why his mattress had no bed-sheet covering it when he had bed-sheets in his Flat or why he had provided Widiyarti with two bed-sheets.

124 The accused's experience in tying was another factor which corroborated the other evidence for the prosecution.

125 As regards the argument that the accused's suggestion to report the matter to the police demonstrated his innocence, I accepted the prosecution's submission that the accused's suggestion was a ploy to get Widiyarti out of the Flat so that he could return and throw the baby away.

126 First, if the accused had really wanted the police to investigate the matter, he and Widiyarti would not have needed to go to a police post or station. A single telephone call would have sufficed. Indeed that was what Widiyarti did. Secondly, if the accused had really wanted to go with Widiyarti to report the matter, he would have waited for her instead of leaving the Flat alone.

127 I also accepted Widiyarti's evidence that when she asked the accused for the baby at about 6am of 5 August 2002, he had told her that the baby was sleeping and then that she had taken the baby away (with Mr X). When she kept on asking for the baby, he had simply suggested that they report the matter to the police. Her evidence on his responses was consistent. In any event, even on the accused's evidence, there was no suggestion that he was even slightly alarmed that her questions were implicating him.

128 In the circumstances, I accepted the prosecution's submission that after Widiyarti had left the Flat to call the police and to dispose of the smuggled passport, after failing to get help from a neighbour, the accused had returned to the Flat and thrown the baby down the rubbish chute. That was why the brown bed-sheet on the mattress in the accused's bedroom which Widiyarti had noticed at about 6am was missing when the accused later opened the door to his bedroom on the instructions of the police. I was aware that the above conclusion would mean that the baby was killed at about 6am of 5 August 2002 which is outside the period of 3am to 5am which Dr Gilbert Lau had estimated to be the time of death. However, as I have said in para 52 above, Dr Lau accepted that the time of death could be about 6am.

129 As for the argument that the accused had no reason to kill the baby even if he had sexually assaulted her, I did not find this argument persuasive. There were bruises on the head, face and chest of the baby which were quite visible even from the photographic evidence. The accused must have known that questions would be asked about the bruises and it was likely that eventually the sexual abuse would be discovered.

130 There is one other matter I should deal with. The defence submitted that I should draw an inference that various statements given by the accused to the police on 15, 16, 17, 19 and 26 August and 2 September 2002 i.e after his s 122(6) statement was recorded, were consistent with his oral evidence because the prosecution did not use any of such statements to impeach the accused's credit or to show that he was inconsistent. On the other hand, the prosecution submitted that I should not draw such an inference because the contents of the statements were not before me and the defence's submission was mere conjecture. The prosecution submitted that there were possibilities other than that advocated by the defence:

(a) first, the statements contained an admission by the accused but the prosecution

chose not to use it, or

(b) second, the statements did not contain such an admission but were sufficient to impeach the credit of the accused but the prosecution chose not to impeach, or

(c) third, the statements did not contain such an admission and also could not be used to impeach the credit of the accused and so the prosecution could not use them.

131 I found the views of Justice Kan Ting Chiu in CC 47 of 2002, PP v Ng Beng Siang & others helpful, although that was a case under the Misuse of Drugs Act. At paras 45 to 56, Kan J said:

> 45. All the statements were admitted in evidence in the course of the prosecution's case. There were other statements of the accused which the prosecution did not tender in evidence. Defence counsel informed me that they did not have them. The prosecutor confirmed that they were not supplied. Several reasons were given, (i) that there was no obligation to do so, (ii) that the statements were retained so that they could be used to impeach an accused's credit if he were to depart from them, (iii) that they are not furnished because an accused may tailor his defence according to his statements, and (iv) that the statements may be supplied if an accused disclosed his defence first.
>
> 46. In the end, counsel for the prosecution and the defence resolved the matter between themselves and the statements were supplied. The circumstances of the resolution were not disclosed to me.
>
> 47. An accused person's access to his statements is a matter of some importance. When the issue is raised the same authorities are usually cited in argument - *Kulwant v PP* [1986] SLR 239 which dealt with an application for pre-trial discovery of statements rather than disclosure in the course of a trial, and *Tay Kok Poh Ronnie v PP* [1996] 1 SLR 185 where it was held that such statements should be furnished to an accused person after he has given his evidence. Having dealt with this issue on several occasions I believe that there is room for further consideration in this matter.
>
> 48. The statements requested for were the accused's own statements, not statements of the prosecution witnesses or of his co-accused. An accused person is obliged under s 32 of the Misuse of Drugs Act and s 121 of the Criminal Procedure Code to make them. These statements are often referred to as "investigation statements", "s 121 statements" or "long statements". If an accused person has a good memory and if he is aware of the importance of such statements, there is nothing to prevent him from making a note from memory of the statements taken from him. He can recount at his trial what he remembers of his statements.
>
> 49. An accused has a legitimate interest to know and be reminded of what he has told in his statements, so that he can obtain proper advice thereon as to the course of action he should take, or he may wish to refer to them in his evidence.
>
> 50. Should he be refused the statements so that they can be used to impeach his credit? In many cases where an accused who is refused his statements makes his defence no action is taken to impeach his credit. In my experience, impeachment applications are made in a small minority of such cases. Thus in the majority of cases, this reason for refusing the statements eventually does not stand.
>
> 51. That reason is also not applied consistently. In practice, the prosecution would furnish an accused person with cautioned statements recorded from him. Cautioned statements may be used for impeachment in the same way as investigation statements. If the former is furnished, there is no reason why the latter should not.

52. Likewise, an accused may tailor his defence to his cautioned statements as he would his investigation statements, and if that is not a ground for refusing to furnish cautioned statements, it should not be a ground for refusing to furnish the investigation statements.

53. There is another point to be considered. This is that when a reasonable request is made, it should be considered with an open mind. Unless there are reasons to believe that granting of a request will lead to abuse, it would be unreasonable to deny it on the ground that it may lead to abuse.

54. I am also uncomfortable about the requirement that the accused discloses his defence to the prosecution first if he wants to have his investigation statements. There is no obligation for an accused to disclose his defence to the prosecution. That position was abridged slightly by s 122 of the Criminal Procedure Code whereby an accused is warned and advised to state his defence after he has been charged, lest his defence be less likely to be believed if he withheld it till his trial. This was a limited change as the accused is not compelled to make a statement, and he is not liable to punishment if he elects not to give one.

55. Against this background, the request that an accused discloses his defence is a radical step which must be given serious consideration. Where is the authority for it? How is the defence to be disclosed - by counsel or a signed statement by the accused? How detailed must it be? What is the evidential nature of such a disclosure? If such requests are to become part of the prosecution practice, they should be clearly provided for by law, in the way that s 122 was enacted to enable cautioned statements to be recorded. It should not be left to be dealt with on an *ad hoc* basis.

56. Another issue was raised, whether statements should be admitted in evidence when they are supplied. Such statements would be admitted if the accused or the prosecution wants them to be admitted. If no one wants them, there is no necessity for such statements to be admitted in evidence for no purpose. This is how cautioned statements are dealt with, and the same practice should apply to investigation statements. If an accused who had received his statements decides not to introduce them in evidence, there is no reason to make him do it.

132 So, before me, the prosecution had decided not to use the statements in question. If the defence had considered that those statements might have been helpful to the accused, then the defence should have requested the statements from the prosecution. If the prosecution should refuse the request, then the defence should have applied to the court to direct that such statements be made available to it. If the court should give such a direction, then it was for the defence to decide whether to use the statements or not after it received them. If the court should decline to give such a direction but left it to the prosecution to decide whether to let the defence have those statements, then it would be open to the defence to submit that an inference favourable to the accused should be drawn, although a bare submission like that would probably carry little weight.

133 Here, the defence did not ask the prosecution for the statements or apply to court for them. On my part, I would be inclined to encourage and, if necessary, direct any prosecution to let the defence have such statements in response to such a request or application unless, as Kan J said, there are reasons to believe that to do so would lead to abuse.

134 I was also of the view that in the case before me, the prosecution should have responded positively to the defence's submission by offering to let the defence have the statements, even though there was no specific request for them, and, if the defence wanted them, then leaving it to the defence to decide what use, if any, it would make of them, and then respond thereto. This would be preferable to relying on the three possibilities advocated to me.

135 Be that as it may, the defence's submission was a bare one, even if I were to put aside the

point that it did not request or apply for the statements. The accused did not say which part of his oral evidence had been earlier disclosed by him in those statements and neither did his counsel. I was of the view that it would be unsafe for me to infer that every material aspect of his oral evidence could be found in those statements in the circumstances, especially since his oral evidence about Mr X had already contradicted his earlier statements to the police and his 122(6) statement as well as his position before he gave evidence, as demonstrated through his counsel's questions to the prosecution witnesses, including Jalil.

136 Moreover, even if, for the sake of argument, those statements contained the same allegations as the rest of the accused's oral evidence on other matters aside from Mr X, they were not necessarily true. They had to be considered in the light of the evidence for the prosecution. As I have said, the prosecution did not rely solely on Widiyarti's evidence. There was other evidence which I have set out above. To recapitulate briefly, there was evidence of the chlorpheniramine in the baby's blood and liver, the DNA evidence of the accused's blood on one pillow and, more importantly, the baby's blood on both pillows, as well as the accused's and the baby's blood on the beige towel on the raffia string in his bedroom. There was the accused's mattress without a bed-sheet covering it and the brown bed-sheet wrapped round the baby. There was evidence about the accused's experience in tying.

137 In the circumstances, I was drawn irresistibly to the conclusion that the accused had committed the crime for which he was charged. Accordingly, I found that the prosecution had proved its case beyond a reasonable doubt and I convicted and sentenced the accused accordingly.

Accused convicted.