

Public Prosecutor v Ismail Bin Abdul Rahman
[2003] SGHC 285

Case Number : CC 40/2003

Decision Date : 19 November 2003

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Eugene Lee, Lee Cheow Han and Christopher Tan, DPPs (Attorney-General's Chambers) for the prosecution; Peter Keith Fernando and Amarick Gill (Leo Fernando) for the accused

Parties : Public Prosecutor — Ismail Bin Abdul Rahman

Criminal Law – Statutory offences – Arms Offences Act

Criminal Law – General exceptions – Accident – Whether made out

Criminal Procedure and Sentencing – Statements – Voluntariness – Whether threat or inducement

1 The accused is 37 years old. He was tried on the following charge:

'That you, Ismail Bin Abdul Rahman, on the 7th day of March 2003, sometime between 5.30 am and 6.00 am, at Bukit Panjang Telecoms Exchange, located at 40 Woodlands Road, Singapore, did use an arm, namely, a .38 inch Calibre Special Smith & Wesson revolver, by discharging three rounds from the said revolver, with intent to cause physical injury to one Rahim Bin Othman and you have thereby committed an offence punishable under section 4(1) of the Arms Offences Act, Chapter 14.'

Rahim died subsequently in hospital.

2 Section 4 of the Arms Offences Act provides:

'4(1) Subject to any exception referred to in Chapter IV of the Penal Code (Cap. 224) which may be applicable (other than section 95), any person who uses or attempts to use any arm shall be guilty of an offence and shall on conviction be punished with death.

(2) In any proceedings for an offence under this section, any person who uses or attempts to use any arm shall, until the contrary is proved, be presumed to have used or attempted to use the arm with the intention to cause physical injury to any person or property.'

3 Section 2 of the same Act defines 'use' as follows:

'..... 'use', with its grammatical variations, means –

(a) in relation to a firearm, air-gun, air-pistol, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted – to cause such shot, bullet or other missile to be discharged or such noxious liquid, flame or fumes to be emitted with intent to cause physical injury to any person;'

4 Chapter IV of the Penal Code (referred to in section 4(1) of the Arms Offences Act) deals with the general exceptions available as defences to a charge. Section 95 of the Penal Code, excluded by the said section 4(1) from applying, is the provision embodying the *de minimis non curat lex* maxim. Section 80, which appears in Chapter IV of the Penal Code and is therefore an applicable defence, provides that:

‘Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution’.

Relying on this exception, the accused claimed trial, testifying that the whole shooting incident that early morning was an accident. At the conclusion of the trial, I found him guilty and convicted him on the charge.

THE PROSECUTION’S CASE

5 On 6 March 2003, Rahim, a CISCO officer, reported for duty at CISCO’s Jurong Base Headquarters and was issued a .38 calibre Special Smith and Wesson revolver and ten rounds of ammunition. At about 9.15 pm, Rahim left for his official duties at Bukit Panjang Telecoms Exchange (‘the exchange’). He brought with him his revolver and the ammunition. He was the sole guard at the exchange.

6 At about 6 am on 7 March 2003, his superior, SGT Chandrasaharan, stationed at the above headquarters, received a telephone call from Rahim saying he had been shot twice by ‘Mail’ and asked the SGT to call for an ambulance. The SGT drove immediately to the exchange, informing the police and the ambulance services about the shooting along the way. He knew that ‘Mail’ was a nickname for the accused, a former CISCO officer known to him for about ten years. The accused’s services were terminated in early 2003 after he was found to have been absent from official duty.

7 At about the same time, Rahim’s wife, who was in bed at home, also received a telephone call from Rahim informing her that he had been shot. She woke their 19 year old son up and asked him to call his father using his mobile phone. When the son spoke to his father, Rahim sounded breathless and kept uttering some prayers. Rahim’s wife then called the police. The son telephoned Rahim again but the latter still uttered prayers without telling him what had happened. The son then called the ambulance services to say that a CISCO guard had been shot at the exchange.

8 When SGT Chandrasaharan arrived at the exchange about ten minutes later, the electronically controlled main gate was opened. He found Rahim lying in a supine position on the floor in the guardhouse. Rahim asked him to call for an ambulance. He told the SGT that the accused had wanted to use the toilet in the exchange and that the accused shot him twice and then ran away with the revolver. He pointed to his thighs as the part of his body that had been shot at.

9 Shortly thereafter, police officers arrived at the exchange. The SGT related to them what Rahim had told him. He also told them the accused was a male Malay aged thirty plus, was bald and had a stout build. The information was relayed by the police officers to their Division Operations Room.

10 The ambulance then arrived at the exchange and the female paramedic attended to Rahim who was still conscious. She removed the Nokia mobile phone that was on Rahim’s chest. She noted three gaping wounds at the front of Rahim’s body and another one at his rear right waist area. Rahim

was then placed on a stretcher and brought into the ambulance. Along the way to the National University Hospital, he became unconscious. The ambulance arrived at the hospital at close to 7 am and Rahim was brought immediately into the emergency room.

11 Emergency surgery was performed on Rahim but he went into cardiac arrest and passed away at about 12.30 pm.

12 The accused's wife, a canteen helper, testified that the accused returned to their Bukit Batok housing estate flat on 7 March 2003 at about 6.30 am. He was perspiring and removed his shirt while at the main door. He helped their youngest son, aged nine, to prepare for school and then left with him, returning to the flat at around 7 am. He sat in the kitchen, smoked and had his breakfast. He appeared to his wife to be disturbed about something. She found out from him that he took a ferry at 10.30 pm the night before from Batam and arrived in Singapore at about 1 am on 7 March 2003. After breakfast, the accused went to lie down on their bed.

13 At about 8.15 am, he put on a dark-coloured long sleeve sweater and a pair of jeans. Fifteen minutes later, he left the flat with a white helmet and a helmet bag.

14 When she was getting ready to leave home for work, she received a telephone call from the accused saying he was at the opposite block of flats waiting for a friend. He had a mobile phone but the line had been terminated. Nothing much was said between them. After that call ended, her sister called to tell her there was something in the news about the accused.

15 At around 9 am, the accused called her at home again. She asked him about what her sister had said. He told her he was in a police post opposite the Bukit Gombak MRT station and asked her not to go there. Nevertheless, she left their flat for the said police post. When she arrived there, the accused had already been placed under arrest.

16 She added that they did not have any financial problems during the earlier years of their marriage. The accused used to give her \$1,000 each month for their household expenses. However, in the middle of 2002 or so, he owed banks money because of his spending using credit cards. He did not own a car or a motorcycle.

17 ASP Abdul Halim bin Osman from the Criminal Investigation Department testified that at about 8.50 am, he received information that the accused had been spotted at the 7-Eleven store at Bukit Batok Central. ASP Halim and his team of officers arrived at the vicinity and observed the accused leaving the men's toilet at the bus interchange there. When the accused boarded a bus, the officers followed. He alighted near Bukit Gombak and walked towards the Hong Kah North Neighbourhood Police Post ('NPP').

18 The accused entered the police post. He was carrying a bag in one hand and was perspiring and panting. He paced up and down in front of the counter, looking out of the glass door. The officer on duty asked him what had happened but he merely continued his pacing. When asked again, he told the officer that someone was chasing him. The officer realised then that he fit the description of the person wanted in connection with the shooting earlier that day.

19 With the permission of the officer, the accused made a call to his wife from the telephone there. After the short conversation with his wife, he sat down and told the officer, 'I confess to what happened earlier at Panjang. Here are all the things'. He then raised the bag towards the officer who noticed the butt of a revolver sticking out. The officer took the bag away from the accused and was about to continue the conversation when ASP Halim and his officers entered and arrested the

accused.

20 ASP Halim opened the accused's helmet bag in his presence and recovered the revolver, seven rounds of ammunition and three cartridges. He then contacted the investigating officer in charge of the case, SI Roy Lim. The accused was brought into a room.

21 While waiting for the investigating officer to arrive, ASP Halim interviewed the accused who agreed to write out a statement for him. This statement was not used by the Prosecution at the trial.

22 After the investigating officer arrived and had been briefed, the police officers went with the accused to the men's toilet at the Bukit Batok bus interchange, arriving there at about 10.55 am. The investigating officer interviewed the accused in the toilet and wrote down what he said in his field book. This statement was admitted after a trial within a trial. The accused's sweater, which was left in one of the cubicles in the toilet by him, was seized.

23 At about 12.15 pm, the officers brought the accused to his flat. There the accused led the investigating officer to the storeroom of the flat and showed him a plastic bag, telling him that the CCTV videotapes which he had taken from the guardhouse at the Bukit Panjang Telecoms Exchange were in the bag. He also told the officer that the clothes he wore during the shooting incident had been washed by his wife and were hanging on the bamboo poles outside the flat to dry. On the way back to the police vehicle, the accused also said he had removed a cup and an ashtray from the said guardhouse and had discarded the items in the rubbish chute. The cup and the ashtray were recovered from the rubbish chute.

24 Three slugs were recovered from Rahim's body. The autopsy report by Dr Paul Chui stated that Rahim's death was due to multiple gunshot wounds to the abdomen. There were three gunshot wounds and one exit wound. Each gunshot wound was sufficient by itself to cause death in the ordinary course of nature but it was not possible to determine the chronological order in which they had been inflicted. One of the wounds entered Rahim's anterior abdominal wall at an angle of about 45 degrees. The consultant forensic pathologist did not notice any gunpowder or soot near the wounds. He could not examine Rahim's clothing as it had already been removed when the body was sent for autopsy.

25 Dr Tay Ming Kiong, an analyst with the Centre for Forensic Science, examined the clothes worn by the accused and by Rahim at the time of the shooting incident and found gunshot residue on them. Gunshot residue would normally be found if the object in question was within one to two metres of the firearm when it was discharged. His findings meant that the clothes examined were within one to two metres of the firearm at the time of discharge or were in close contact with things with gunshot residue particles.

26 Another analyst, Vicky Chow Yuen San, examined the revolver, the slugs and the cartridges in question and Rahim's shirt worn during the shooting incident. She found that the gunpowder pattern around the hole nearer to the front placket of the shirt was consistent with that of a shot fired from a distance of between 50 and 100 cm and that the gunpowder pattern around the hole further from the front placket was consistent with that of a shot fired from a distance of less than 30 cm. Similarly, the gunpowder pattern around the hole on the back of the shirt was consistent with that of a shot fired from a distance of less than 30 cm. She was of the opinion that the slugs and the cartridges were fired from the revolver in question.

27 SGT Kwek Tze Wei of the Armament and Ops Equipment Division examined the revolver in question and found nothing faulty with the trigger and the safety mechanism. Test firing of the

weapon indicated it was in a fully serviceable condition. A finger pressure of 5.91 kg or 13 pounds was required to pull the trigger at double action. Only 1.38 kg or 3.5 pounds of finger pressure was required at single action where the hammer was in a fully cocked position. There would be a recoil diagonally upwards and backwards every time the weapon was fired. He was of the opinion it would be very unlikely for the weapon to be discharged accidentally more than once due to the recoil and the fact that the trigger finger has to be released in order to pull the trigger again. The revolver was not able to discharge two rounds one after the other, even with the hammer cocked, when the trigger was pulled only once

28 Dr Tommy Tan, a consultant with the Woodbridge Hospital, examined the accused on 25 March 2003 and on 4 April 2003 and interviewed his wife once. He was of the opinion that the accused had been suffering from a prolonged depressive reaction for at least a few months. Such a disorder was caused by his debts and was characterised by a low mood, decreased appetite and poor sleep. However, the accused was not of unsound mind at the time of the shooting incident.

THE TRIAL WITHIN A TRIAL

29 The prosecution sought to admit the following four statements made by the accused and recorded by the investigating officer:

- (1) in his field book on 7 March 2003 at about 11 am at the Bukit Batok bus interchange;
- (2) in his field book on 9 March 2003 at about 6.20 pm at the CID;
- (3) in his computer on 13 March 2003 at about 2.30 pm at the CID; and
- (4) in his computer on 20 March 2003 at about 3.55 pm at the CID.

As their admissibility as evidence was challenged by the defence on the ground that they had been made involuntarily, a trial within a trial was conducted.

30 On 7 March 2003, after the accused had completed a self-written statement at the NPP, he was brought by a team of police officers to the bus interchange. The investigating officer and ASP Halim went there in a different vehicle. The investigating officer testified that he recorded a statement from the accused in the men's toilet outside one of the cubicles used by the accused earlier that morning. The escorting officers were standing near the entrance to the toilet while the recording was going on. That was the first time the investigating officer spoke to the accused.

31 He asked the accused to relate to him what had happened in the toilet earlier that morning. The accused spoke in English and everything that he said was recorded. The recorded statement was then read back to the accused and he was invited to alter or to add to it. He declined to do so. He was then asked by the investigating officer to sign on the statement and he complied.

32 The investigating officer was the only one who asked the accused questions. He denied that one of the police officers offered the accused a cigarette and allowed him to smoke in the men's toilet. He asked the accused why the revolver was loaded with five rounds. He denied that the accused said he did not reload the revolver or that they disbelieved him and accused him of lying. He did not say to the accused, 'You better tell me everything'. He also denied that one of the police officers threatened the accused by adding that the government was spending thousands of dollars to train the police in the detection of lies. While the police may inform witnesses that they did not need to say things which incriminate themselves, it was not the practice to similarly inform accused

persons.

33 For the 9 March 2003 statement, the investigating officer began by saying to the accused, 'Tell me what actually happened'. The statement was recorded in the field book as his computer could not function that day and he was not able to access the other computers in the office as they were password-protected. The accused spoke in English. He did not request that an interpreter be present. When the recording was completed, the accused signed the statement.

34 The investigating officer testified under cross-examination that he did not bring the accused to the pantry before proceeding to his office. He did not offer the accused a drink or a cigarette. He denied that the accused told him in the pantry, while sipping his drink, that there had been a misfire. He did not ask for the accused's co-operation or promise that he would speak to the judge to get the accused a lighter sentence.

35 On 13 March 2003, the investigating officer brought the accused out of the lockup and informed him that he was going to record another statement and that whatever he wanted to say would be recorded in the computer. Although the accused chose to speak in English again, the investigating officer called for an interpreter to be present but none was available then. He proceeded to record the things said by the accused. He then printed out the statement recorded. The interpreter arrived at that moment and was asked to interpret the statement to the accused. He did so in Malay. The interpreter and the accused then signed on the statement.

36 On 20 March 2003, the investigating officer brought the accused to his office. A Malay interpreter was present. The investigating officer informed the accused he would be posing questions to him to clarify certain matters. His earlier statement made on 19 March 2003 (which was not adduced in evidence) was read back to him by the interpreter.

37 The accused spoke in English assisted by the interpreter whenever necessary. At the end of the recording, the statement was printed out from the computer and read back to the accused. The interpreter and the accused then signed on the statement.

38 The accused did not complain to the investigating officer at any time about any threats made by any police officer against him. He was co-operative during the investigations. The investigating officer maintained that all the statements were made by the accused voluntarily.

39 ASP Christopher Jacobs was one of the officers in the vehicle who escorted the accused from the NPP to the bus interchange on 7 March 2003. SSG Simon Lee was the driver and ASP Ng Poh Lai was the front seat passenger. At the rear, the accused, who was handcuffed, sat in the middle between SSSG Lee Yok Joo on his right and ASP Jacobs on his left. During the journey to the bus interchange, ASP Ng asked the accused for directions. No one in the vehicle made any threats, inducement or promise to the accused. In particular, ASP Ng did not tell the accused that he had better not lie as he (ASP Ng) had attended courses on interrogation.

40 At the bus interchange, ASP Jacobs walked in and out of the men's toilet and did not hear the conversation between the investigating officer and the accused inside the toilet. He did not communicate with the accused.

41 ASP Ng Poh Lai denied that he had, at the NPP, dismissed the accused's statement to ASP Halim that the shooting was an accident. He also denied having told the accused along the way to the bus interchange that he had attended courses on interrogation and that the accused had better not lie to him. He was standing guard outside the said toilet most of the time and did not know what

was said inside. The questioning was left to the investigating officer and ASP Halim. The accused was not given a cigarette to smoke in the toilet. He denied having asked the accused why the revolver was loaded with five rounds or accusing him of lying when he said he did not reload the revolver.

42 SSSG Lee Yok Joo testified that no one in the vehicle threatened the accused on the way to the bus interchange. When the accused was being interviewed inside the toilet, he did not listen to the conversation as his role was merely to escort the accused. No one said the accused was lying. ASP Ng did not tell the accused the government had spent thousands of dollars sending him for courses to detect lies. The accused was not offered a cigarette and did not smoke in the toilet.

43 ASP Halim and the driver of the vehicle were not called in the trial within a trial as the accused confirmed they had nothing to do with the threats.

44 In his testimony, the accused said while he was in the vehicle heading for the bus interchange, ASP Ng told him not to tell lies as the government had spent thousands of dollars to send him for courses and he was able to determine if a person was lying. The accused felt very demoralised as he had told them the truth about what happened earlier that day but no one believed him.

45 Inside the toilet at the bus interchange, ASP Ng kept asking him to tell the truth although the accused had told him it was a misfire. ASP Ng and SSSG Lee Yok Joo took turns to question him. SSSG Lee then offered him a few cigarettes and he smoked them with SSSG Lee placing one cigarette at a time inside his mouth as his hands were handcuffed behind him. ASP Ng asked him what he was doing in the toilet earlier that morning. He replied he went there to urinate and to wash his face. As he was feeling very hot, he removed his sweater and left it inside one of the cubicles as he did not want it anymore. He showed the officer where he hung the sweater.

46 When ASP Ng asked him who loaded the revolver with five rounds, he replied he did not load it. ASP Ng accused him of lying again and he felt very disappointed and hopeless as no one wanted to believe him. As he was feeling like 'zero', he made up a story for the investigating officer and put his signature to the false story.

47 Later that day, he was charged with having committed murder and he made a cautioned statement under section 122 (6) Criminal Procedure Code.

48 On 9 March 2003, the investigating officer brought him out of the lockup. They went to the pantry before proceeding to the investigating officer's office. No one else was in the pantry. He was offered a cup of coffee and some cigarettes to smoke. The investigating officer removed the handcuffs. They had a casual conversation. The investigating officer asked him to co-operate with him and tell the truth. The accused asked him for his handwritten statement made at the NPP on 7 March 2003 but was not given a copy of it. His story was as written in that first statement but the investigating officer did not believe him. The investigating officer told him if he co-operated and told him everything, he would speak to the judge and try to get a lesser sentence for him. He therefore had no choice and made up a story for the investigating officer.

49 The other statements recorded on 13, 19 (which was not adduced in evidence) and 20 March 2003 were also made up and untrue because of the promise made to him by the investigating officer on 9 March 2003. He simply carried on with the false story.

50 In cross-examination, the accused said the investigating officer also questioned him about what he was doing inside the toilet earlier that morning and told him to tell the truth. He said he did

not believe the story that it had been an accident.

THE DECISION OF THE COURT IN THE TRIAL WITHIN A TRIAL

51 It was the prosecution's duty to prove beyond reasonable doubt that all the statements of the accused were made voluntarily. I accepted the evidence of the prosecution's witnesses that there was never any need to threaten or to induce the accused into making any of the statements as he was co-operative throughout. After all, it was he who walked into the NPP himself and subsequently volunteered to write out a statement for ASP Halim. They did not even have to use force to arrest him.

52 Even if the alleged words had been uttered by ASP Ng or anyone else, I did not think the accused would have abandoned hope and his senses so completely that he would concoct a story for the investigating officer. It was not his case that the so-called made-up story was suggested to him by any of the officers or that they told him what they wanted to hear from him.

53 Similarly, at the CID on 9 March 2003, there was no need to offer any inducement to him before asking him to make a further statement as he remained co-operative. I believed the investigating officer's testimony that he did not bring the accused to the pantry before proceeding to his office.

54 Since there were no threats or inducement on 7 and 9 March 2003, it followed that the accused could not have been under such influence on 13 and 20 March 2003. Accordingly, I found that all his statements were made voluntarily and admitted them as evidence.

THE PROSECUTION'S CASE (CONTINUED)

55 In his statement of 7 March 2003, the accused explained that when he was in the 7-Eleven store earlier that morning, he noticed a few men chasing him. Knowing that there would be a 'big shoot out', he went into the men's toilet at the bus interchange and reloaded the revolver with five rounds of bullets from the strip loader. He then put the extra two rounds and the three spent ones back into the strip loader. After placing the revolver in his helmet, he walked out of the toilet and then boarded a bus. He noticed a man followed him and boarded the bus too. When the bus reached the Bukit Gombak MRT station, he knew that there was a NPP in the vicinity and decided to proceed there to surrender himself 'so things won't get worst'.

56 In the 9 March 2003 statement, the accused told the investigating officer his intention was merely to obtain a firearm and not to kill anyone. He had some financial difficulties. On 6 March 2003 at about 11 pm, he decided to go to the exchange 'as that was a(n) easy place to get a gun'. He knew there was only one CISCO guard on duty there.

57 Rahim let him in and they had a casual conversation. He was thinking of a way of getting the revolver without hurting Rahim. The opportunity arrived when they were talking about marksmanship. Rahim asked him to teach him the correct way to shoot and took out his revolver. The accused demonstrated the proper technique with the revolver.

58 At about 5.35 am, Rahim, seated in a chair, was falling asleep. Time was running out for the accused as his intention was to rob the DBS bank at Bukit Batok Central at about 8.50 am because that was the best time to do so. He could not afford to wait any longer. He used the revolver to fire two shots at the left side of Rahim's body. Rahim thought the accused had misfired and asked him to help lower him down to the floor. He asked the accused to leave. He then changed his mind and told

the accused they should answer to CISCO together. The accused helped Rahim to remove his belt as requested. Rahim then asked him to telephone his (Rahim's) wife. The accused could not allow him to do so because that would foil his plan to rob the bank. While standing up, the accused discharged one more bullet at Rahim's stomach. Rahim turned pale and did not move anymore.

59 The accused then took the revolver, the cup he was drinking out of, the ashtray and the videotapes from the exchange's CCTV system and left for home after hailing a taxi.

60 Later that morning, he headed for the bank which he intended to rob but noticed people following him. After thinking the matter through, he knew things would get worse and therefore decided to surrender himself at the NPP.

61 The statement made on 13 March 2003 elaborated on the events that occurred on 6 and 7 March 2003. The accused stated that he went to the exchange at Bukit Panjang at about 11 pm on 6 March 2003 and told Rahim he needed to use the toilet. After that, Rahim asked him whom he was waiting for at the main road and the accused replied that he was waiting for a friend to go to Johor Baru with. He made up that story in order to remain in the guardhouse of the exchange a bit longer.

62 Rahim made him some coffee and they had a long conversation about the way to achieve marksmanship during which Rahim handed his revolver to the accused so that he could demonstrate the finer points to Rahim. At about 2.30 am on 7 March 2003, the accused returned the revolver to Rahim as he had to patrol the grounds.

63 About ten minutes later, Rahim returned to the guardhouse and they resumed their conversation about marksmanship. Rahim made the accused another drink and handed him his revolver again as he did not understand the correct shooting technique.

64 By about 5.30 am, Rahim was dozing off with the left side of his body facing the accused. Intending to gain possession of the weapon, the accused fired two shots at the left side of Rahim's body. Rahim leant to the right and shouted to the accused to turn off the circuit breaker as he thought there was an electrical short circuit. When Rahim realised there was blood on his body, he said 'Eh... misfire apa'. The accused replied, 'Ya ... misfire'.

65 Rahim asked him to help him down to the floor and to get him some water. The accused complied with the requests. Rahim then asked the accused to leave the premises and he would be responsible for the misfire. He changed his mind almost immediately and said they should both answer to CISCO. The accused helped Rahim to unbuckle his belt and his holster and to untie his shoelaces. Rahim then asked for the telephone in order to call his wife and to call for an ambulance. The accused could not let him call because it would spoil his plans. He then fired one more shot at the stomach region of Rahim's body.

66 Thinking Rahim was dead, the accused took his bullet pouch containing five bullets and tucked the revolver into the waist of his jeans. He packed up all the videotapes of the CCTV, the ashtray and the cup. He then took seven dollars from Rahim's wallet and used the money for his taxi fare home.

67 He returned home at about 6.15 am. He did not respond when his wife asked him why he was so late. He kept his helmet outside the flat in a cupboard and kept the CCTV videotapes in the storeroom. He placed the revolver and the bullets in a drawer in the master bedroom. He took a shower, had breakfast, walked his son to school and then returned home.

68 At about 8.25 am, wearing a long sleeved sweater over a short sleeved T-shirt, he left the flat with the revolver and the bullets inside his white helmet which he carried in a helmet bag. He arrived in Bukit Batok Central and stopped by at a mini-mart to buy some cigarettes. He then proceeded to the DBS bank there. He had only one and a half hours to leave Singapore after the intended robbery.

69 He was surprised to see no CISCO officer patrolling near the bank, contrary to the normal routine. He looked around and saw the CISCO officers at the 4-D outlet, apparently looking for someone. He also noticed several persons watching him. He therefore decided not to rob the bank.

70 At the bus interchange, he made a telephone call home and asked his wife whether anyone had called him. After she replied that no one had called him, he went to the men's toilet and removed his long sleeved sweater in order to change his appearance. He unloaded the bullets and the cartridges in the revolver and reloaded it with five rounds because he felt the situation would be very bad as he had realised there were a number of police officers waiting for him outside.

71 The accused walked out of the toilet and seeing a bus about to leave the interchange quickly got on board. A man in a yellow T-shirt followed him. He recognised that man as the one observing him earlier at the interchange. He then took the revolver out of the helmet and slipped it into the waist of his jeans. He contemplated firing one shot at that man and taking a passenger hostage. Upon further reflection about his family and what he had already done, he decided not to do so. He decided to alight near the Bukit Gombak MRT station in order to take a train and to change his plans.

72 As he was crossing the road towards the MRT station, he still wanted to rob any bank. However, three men were walking closer and closer to him. He thought about shooting them before they could shoot him. Seeing he was being tailed by policemen, he knew he could no longer rob a bank. Recalling a NPP nearby, he slipped away from them and walked towards the NPP while placing the revolver back into the helmet.

73 He told the police officer on duty at the NPP that he was the one involved in the shooting of the CISCO officer. He surrendered the weapon and the bullets to him. He did this 'in order not to injure anyone and also my plan to rob the bank had failed and I could not leave the country'.

74 In the statement of 20 March 2003, the accused answered various questions posed to him by the investigating officer. He explained he boarded the bus at the interchange to see if anyone was following him and also to slip away from anyone following him. He finally surrendered because all his plans had failed. He had intended to have a shoot-out with the police officers, confident he could take down six of them, leaving the last bullet for himself. As there were members of the public in the vicinity, he decided not to do so because there could be loss of innocent lives. He confirmed he achieved the status of marksman annually between 1998 and 2002 when he was employed by CISCO. He was a CISCO officer from 1991 to 2002. He also said the barrel of the revolver was about one foot away from Rahim when he fired the first two shots at him. There was no pause between the two shots. He fired the third shot when Rahim was lying on the floor and he was standing near Rahim's feet and extending his arms to shoot. He was right-handed. He was aware the revolver was loaded with live rounds when he pulled the trigger and was conscious that discharging a firearm at someone could have fatal consequences. He concluded by saying he did not deny the murder charge (which he faced originally) and he was sorry for Rahim and family. He said he had no intention to kill but was not able to think clearly at the material time.

THE ACCUSED'S CASE

75 The 37 year old accused testified in his own defence. He said he was also known as 'Mail' or 'Is'. He worked as a CISCO officer between March 1991 and December 2002. He stopped working in CISCO after he was disciplined for being absent without leave. His salary in December 2002 was about \$2,000.

76 He was also working as a commercial diver in Batam, Bintang and elsewhere in Indonesia while he was still employed by CISCO. That brought him extra income. He continued working as a diver after he left CISCO. For his last assignment in February 2003, he was supposed to have been paid \$35,000 but was not. For the assignment in March 2003, he received \$35,000 but lost the money to robbers in Batam.

77 On 4 March 2003, he returned to Batam to collect another \$35,000 as his share of profits from a friend but was unable to meet him despite waiting until 6 March 2003. As a result, he missed an appointment he had made with Rahim to meet between 4 and 5 pm on 6 March 2003 at Bukit Batok Central. He returned to Singapore at about 9.30 pm that day. He would usually carry the helmet to and from Batam because his neighbour sometimes gave him a lift on his motorcycle.

78 Upon his arrival here, he immediately went by bus to the exchange where Rahim was on duty. He had been there on supervisory rounds while in CISCO but had not performed guard duties there. The main gates were closed when he arrived there. He did not telephone Rahim to say he was going there to meet him as he had misplaced Rahim's mobile phone number. He had to wait about twenty minutes before Rahim realised he was at the gates and let him in. He told Rahim he needed to use the toilet.

79 Later, they sat in the guardhouse and talked. Rahim said he was waiting for his call and the accused apologised for not calling earlier and for missing the appointment. Rahim was supposed to lend the accused \$2,000 at that appointment so that he could go and look for the friend in Batam to collect the \$35,000 and to pay his debts. Rahim said he could not bring so much money to the exchange as he was not allowed to do so while on duty. He said he would go and withdraw the money in the morning. The accused therefore remained in the guardhouse.

80 Rahim made the accused a drink. They then talked about shooting with Rahim asking the accused for advice on how to achieve marksmanship. Rahim handed his revolver to the accused with the cylinder opened and with no bullets inside the chambers. The accused showed Rahim how to grip the revolver and to pull the trigger properly. At about 2.30 am, Rahim took his revolver and went out to patrol the grounds of the exchange. The accused did not see him loading the weapon.

81 Rahim returned to the guardhouse about ten minutes later. They continued their casual conversation until about 5.30 am when Rahim asked the accused to teach him shooting techniques again. The accused was feeling somewhat sleepy but Rahim was not. Rahim handed him the revolver, this time with the cylinder closed. The accused thought it was not loaded. He pointed the revolver at Rahim and told him to observe the fast clicking action. The accused then pulled the trigger twice.

82 Rahim looked up and exclaimed, 'Mail, short circuit'. The accused also looked up. He did not realise his finger was still inside the trigger guard. Rahim wanted to get up from the chair. The accused's hand holding the revolver was lowered. Somehow, he accidentally pulled the trigger and another shot hit Rahim. Rahim asked the accused whether it was a misfire and the accused then realised it was. Rahim asked for the revolver and the accused handed it back to him. He helped Rahim down to the floor as requested. Rahim told him to run away, saying he would answer for the shooting. However, he immediately changed his mind and said they would answer for it together.

83 Rahim asked for some water but the accused told him, 'Later'. He helped him to remove his belt and holster. The accused was panicky and took whatever he could find to cover Rahim's wounds. From his bag, he took his gloves, used for diving, to cover the wounds. He helped Rahim to remove his shoes and then saw that the revolver was loaded with five rounds placed in a disorderly manner. He went to get water for Rahim, bringing the revolver with him as he was afraid that someone might enter the guardhouse in the meantime.

84 When he returned with the water, he was shocked to see Rahim's pale face. He tried to wake him up but Rahim remained motionless. The accused thought Rahim was dead. He did not know what to do. He then took the cup, the ashtray, his gloves, the CCTV videotapes and \$7 from Rahim's wallet. His mind was confused and he took whatever came into his mind. He did not call for the police or an ambulance because he thought that Rahim was dead. He merely wanted to get away from the exchange and return home to see his family. He left in a confused state of mind with all those items.

85 At his flat in Bukit Batok, he kept the helmet in a cupboard outside the main door and placed the videotapes in the storeroom. He kept the revolver and the bullets in a drawer in the master bedroom. He then woke his son up and prepared him for school. When he returned home after walking his son to school, he had breakfast with his wife. He was still worried. After that, he threw the ashtray and the cup into the rubbish chute without knowing why. His intention at that time was to return the revolver. He then went to rest in bed.

86 At about 8 am, he left his flat, intending to go to the NPP at Bukit Batok Central to return the revolver and to surrender himself as he had seen his family already. He did not tell them about the shooting incident. His mind was still muddled and he was perspiring profusely. He bought cigarettes along the way and smoked while walking. He passed by a 7-Eleven store and went in to cool himself. He then went to use the men's toilet at the bus interchange. As he was still feeling very hot, he removed the long sleeved sweater he was wearing and hung it up in one of the cubicles as he did not want it anymore. He smoked another one or two cigarettes while in the toilet. He did not reload the revolver at all since leaving the guardhouse at the exchange. He also did not remove it from the helmet at any time since he left his flat.

87 It then occurred to him that there was no NPP there. He recalled there was one at Bukit Gombak. He made a call to his wife from a public telephone, intending to tell her the truth. However, he did not do so when she answered the call. He then took a bus to go to Bukit Gombak NPP to surrender the revolver and himself.

88 At the said NPP, he was still in a confused state of mind. He wondered whether to call his wife from there or outside the NPP. That was why he kept looking outside the glass door. He asked the duty officer for permission to use the telephone and made a call to his wife. He told her where he was and instructed her not to go there. He then surrendered the revolver to the duty officer.

89 When the team of police officers went into the NPP to arrest him, he did not put up any struggle. He co-operated with them during the arrest. ASP Halim brought him into a room, handed him a piece of paper and told him to think and to state what had happened in the shooting incident. ASP Halim merely kept watch while he was writing. The statement, admitted in evidence by the defence, stated in essence that the shooting, involving two bullets on the first occasion and one bullet on the next, was accidental.

90 However, as there were police officers walking in and out of the room asking him questions now and then, he became confused and wrote certain things which were not accurate. The version he gave in Court was the correct one.

91 The statement of 7 March 2003 made under section 122 (6) Criminal Procedure Code was also adduced in evidence by the defence. There, in reply to the original charge of murder, the accused said to INSP David Ang:

'I did not mean to kill my colleague. I am surprised that he has passed away, when the charge was read to me. That's all'.

92 In cross-examination, the accused said the last time he met Rahim before 6 March 2003 was on 2 March 2003 at Bukit Batok Central. They met by chance. The accused brought up the topic of a loan of \$2,000. Rahim said he would try to lend the money to him on 6 March 2003. Rahim told the accused to call him to ascertain whether he could get the money for him and to meet him between 4 and 5 pm on 6 March 2003. Rahim also told him he would be on the night shift that night at the exchange, which was his permanent post. The accused did not call him that day as he was waiting for his friend to bring him the \$35,000. He had also misplaced Rahim's telephone number. He went to the exchange after returning from Batam with the hope of obtaining the loan from Rahim.

93 The accused was aware that a CISCO guard on duty would be carrying a loaded weapon. When Rahim handed him the revolver the second time, the accused was feeling sleepy and the lighting was dim. He did not notice that there were live rounds in the cylinder. The first two shots were fired one immediately after the other as he pulled the trigger twice rapidly using double-action firing. When Rahim stood up, the revolver was still in the accused's hand. The third round was fired when Rahim stood up and the accused's hand holding the weapon also went up in shock and his finger pulled the trigger accidentally. The accused was seated then. The accused had never misfired a revolver during the decade he was working in CISCO.

94 After he helped Rahim remove his shoes, he turned around and saw five rounds in the cylinder of the revolver. They were not arranged properly, with some jutting out. He also saw three empty cartridges on the floor and two rounds in the strip loader. He did not have the chance to ask Rahim why he reloaded the weapon. The accused picked up the cartridges and placed them into the strip loader. He took the \$7 from Rahim's wallet as he needed money for the taxi fare home.

THE DECISION OF THE COURT

95 I found the accused's version of the shooting incident totally illogical and incredible. Rahim was on official duty at a guard post and the revolver could not have been unloaded. If Rahim decided later to load the weapon, he would surely have informed the accused about it when handing it to him. He could not have been so foolish as to allow the accused to point a loaded weapon at him, knowing that the accused was going to demonstrate by pulling the trigger.

96 The accused was a CISCO officer for about ten years and a marksman. He was adept at handling revolvers. The noise and the recoil from firing one shot in that confined guardhouse would have awakened the most sleepy of persons. However, the accused fired two shots in rapid succession at Rahim and still claimed he did not realise what he had done. Anyone in his position would have been so horrified that he would have put the revolver down immediately or perhaps even dropped it in utter shock and horror. The accused not only held onto the revolver firmly, he pulled the trigger a third time soon thereafter. His actions showed clearly he intended to fire at Rahim in cold blood. When Rahim remained conscious and wanted to call his wife, the accused had to fire the third shot to silence him.

97 His evidence about wanting a loan from Rahim was mentioned for the first time during his testimony in Court. None of his statements alluded to that. It was obviously concocted to give the impression that he had a legitimate reason for wanting to visit Rahim so late at night at a guard post

located far from the ferry terminal and immediately after arriving from Batam. Waiting till the next morning would not have made one bit of difference.

98 His evidence about Rahim having reloaded the revolver with five rounds after the shooting was nothing short of bizarre. Rahim had absolutely no reason to do so even if he could and it requires no great intellect to know that a person with three gunshot wounds in his body would not be able to do that.

99 The accused claimed many times in his testimony that he was confused after the 'accidental' shooting. However, the things he removed from the guardhouse were all things that could point to his presence there. Quite clearly, he was removing all incriminating evidence in a cool-headed and calculated way.

100 If the shooting was indeed an accident, the accused would have called for medical help from the guardhouse using the telephone there or Rahim's mobile phone. Instead, he left the poor man on the floor to die. Even if he believed Rahim was dead, he would surely have called for the police since there was a weapon and live bullets to take care of. Instead, he took the dying man's money for his taxi fare home.

101 Further, if it was such a horrific accident, he would have told his wife so immediately upon arriving home or soon thereafter. Instead, he behaved as if nothing had happened and even had the presence of mind to keep the CCTV videotapes in the storeroom and to get rid of the cup and the ashtray.

102 I had no doubt that the truth was in his statements and not in his oral testimony in Court. There was no accident at all that fateful morning. He went to see Rahim at a quiet guard post late at night with the clear intention of taking possession of the revolver to solve his financial problems by robbing a bank.

103 The shooting incident could only be explained in the way he had described in his various voluntary statements to the investigating officer. He was not going out to surrender himself that morning. He was headed for the bank to commit robbery. He gave himself up only when he realised he had been found out and was cornered. Fortunately, he retained the good sense not to have a shoot out with the police. The statements were consistent and coherent and could not have been made up.

104 The facts of this case did not even require the application of the presumption in section 4 (2) Arms Offences Act. The facts showed clearly that the accused fired the first two shots at Rahim with intent to cause physical injury to him at the very least. The third shot was undoubtedly fired not only to cause physical injury but death as well. As testified by the forensic pathologist, each of the three shots was capable of causing death in the ordinary course of nature. I had no doubt that the accused was guilty as charged and convicted him accordingly. The mandatory death sentence was passed on him.

Accused found guilty and convicted as charged.

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