Public Prosecutor v Jin Yugang
[2003] SGHC 37

Case Number : CC 61/2002

Decision Date : 24 February 2003

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Eddy Tham and Tan Hee Joek (Attorney-GeneralÂ's Chambers) for the Public Prosecutor

Parties : Public Prosecutor — Jin Yugang

Criminal Law – Charge of murder – Defence of intoxication – Exceptions 1 and 4 in section 300 Penal Code – Whether murder could be reduced to culpable homicide not amounting to murder.

1. The Accused, born on 14 February 1967, is a national of the People's Republic of China. In May 2001, he came to work in Singapore. He was tried and convicted on the following charge:

> "That you, Jin Yugang, on the 4th day of February 2002, between 12.00 am and 12.48 am, in front of Rangoon Eating House, located at No. 83 Rangoon Road, Singapore, did commit murder by causing the death of one Wang Hong, male/32 years old, and you have thereby committed an offence punishable under section 302 of the Penal Code, Chapter 224".

The Prosecution's Case

2. The Accused, the deceased, Zhao Zhi Yuan and one other Chinese national (who was not at the scene at the material time) shared a rented room in No. 81B Rangoon Road. Zhao, the Accused and the deceased were employed by Crusade Cleaning Services.

3. On 3 February 2002, a Sunday, the three workers, together with other colleagues, were working in a building in Orchard Road. Just before they completed their work at around 3.30 pm, a fellow worker, Wang Bao Chun, told the deceased and Zhao that he and Gan Xin Lian would be going to 81B Rangoon Road that evening to have dinner and drinks with them. The Accused left the place of work earlier than the rest of them. The deceased and Zhao left later to return to their place of residence together.

4. When they arrived at 81B Rangoon Road, the Accused was about to go out to distribute pamphlets. The deceased also took some pamphlets and the two of them left together, saying they were going to a location near Serangoon Road to distribute the pamphlets. Zhao went to take his shower.

5. Later, the landlady approached Zhao and handed him 20 telephone cards with a pre-paid value of $10 each, asking him to pass the cards to the Accused and the deceased to sell. Wang and Gan had arrived and were preparing some food in the kitchen. Zhao then left with the telephone cards to look for the Accused and the deceased. He located them not too far away and handed the cards to them. He then returned to the flat where he had dinner and drinks with Wang and Gan. They were sharing two bottles of Kao Liang Chinese wine and some beer.

6. The Accused and the deceased returned to the flat subsequently. At about 10 pm, Tang Huan Ling, a female friend of Zhao, also went to the flat to return a pair of pants she had altered for Zhao. The Accused and the deceased then joined the rest for dinner. By then, only slightly more than half a bottle of the Chinese wine remained. Gan went out to buy some Tiger beer, returning with six to ten large bottles. Tang did not drink alcohol.

7. After they had been drinking for some time and it was past midnight, an argument broke out between the Accused and the deceased. Zhao could not recall what the argument was about except that it was the deceased who started it by scolding the Accused. The two of them then used vulgar language on each other repeatedly. It seemed to Zhao they were quarrelling because they could not get along with each other. The two of them had quarrelled before but they did not end up fighting.

8. Zhao pulled the Accused away and brought him from the flat, which was on the third level, to the ground floor, urging him not to quarrel with the deceased. After a while, the two of them went back up to the flat. Within a minute, the Accused and the deceased started quarrelling again. The deceased then stood up and lit a cigarette. Wang Bao Chun went to restrain the deceased. Zhao could not recall whether the deceased was holding anything in his hands. The Accused moved towards his own bed on the lower deck of a double-decker. Suddenly, Zhao saw a knife in the Accused's hand. He did not know where he had taken it from. Zhao and Gan rushed over to restrain the Accused by blocking his way while Wang continued in his attempt to restrain the deceased. The room was rather small and everything was very chaotic then. Zhao did not see what the Accused was doing with the knife.

9. The landlady, also a Chinese national, went over to the room with her son and an elderly man to see what the commotion was about. Suddenly, the deceased ran out of the room chased by the Accused holding a knife. As Gan's hands were injured and bleeding badly as a result of trying to restrain the Accused earlier, Zhao attended to him and they did not run after the two fighting parties.

10. When Zhao and Gan went downstairs about a minute later, they saw the deceased lying on the ground while the Accused, with a knife still in one hand, was standing and looking at the deceased. Zhao, Wang and Gan then tried to stop passing vehicles to ask them for help in sending the deceased to a hospital. None of the vehicles stopped.

11. About 20 minutes later, police officers arrived at the scene, followed by an ambulance shortly thereafter.

12. In cross-examination, Zhao agreed that the deceased was not the Accused's supervisor at work. All the men mentioned earlier did maintenance work. None of them needed a knife in the course of their work. Their salary was reduced by their employers from $1,500 to $750 per month in December 2001.

13. Zhao also agreed that the Accused was not a violent or aggressive person while the deceased could be considered a rather aggressive and scheming sort of person. The Accused was impulsive.

14. Zhao said he drank one glass of Chinese wine and some two bottles of beer that night and was quite drunk. He conceded that he might not have remembered a lot of things as a result of that. He agreed that Tang decided to leave after the quarrel broke out and he walked her to the door of the room. He was certain he brought the Accused downstairs to advise him not to quarrel with the deceased as they were all in Singapore to earn a living. The Accused told him that what the deceased had said made him very angry. The deceased did utter vulgarities against the Accused's mother but the Accused responded in kind. They were out of the room for a few minutes. He believed that the deceased hit an empty beer bottle against the table in the midst of the shouting although he could not be sure about this. He did not recall hearing a loud clanging noise after the bottle hit the table. There was a threat by the deceased during the quarrel to hit the Accused with the empty beer bottle but Zhao did not see the deceased hitting the Accused with it.

15. Asked whether the deceased said to the Accused, "I will send you back", Zhao replied that what the deceased said was, "Worst comes to the worst, both of us can go back together". He agreed that the Accused had gone back to his bed after the shouting started and sat down. He could not recall the deceased holding an empty beer bottle then.

16. Wang Bao Chun's testimony about the events earlier that evening was essentially the same as Zhao's. He said Gan bought five large bottles of beer. The men present in the room drank a lot of alcohol. Wang also consumed a lot of alcohol and could not recall the events in detail. He could not recall whether the deceased was holding a beer bottle during the quarrel. He remembered the deceased running out of the room chased by the Accused. He ran down the stairs after them and when he was some distance away from them, he saw the Accused holding a knife. The deceased was already lying on the road, shouting the Accused's name several times. The Accused was standing next to the deceased. Later, the Accused walked upstairs. Wang did not see the Accused stabbing the deceased.

17. Wang did not walk over to where the deceased lay as he looked terrible and the surrounding was bloody. He tried to call his manager from a public telephone but could not reach him. By the time he went back to the scene, the police had arrived.

18. Wang agreed that the Accused, whom he knew from June 2001, was not a violent or aggressive person. He could not recall whether Zhao had brought the Accused downstairs after the quarrel erupted. He remembered the deceased speaking in a loud voice but could not recall whether vulgarities were uttered. He recalled vaguely that the deceased could have said to the Accused, "I can send you back".

19. Gan Xin Lian did not need to work on 3 February 2002. Sometime after 5 pm, he and Wang brought some vegetables and two bottles of Kao Liang Chinese wine to the flat. The Accused and the deceased returned to the flat at about 10 pm and joined the rest in the meal. When they ran out of Chinese wine, Gan went to purchase six bottles of beer. He also bought a can of drink for Tang Huan Ling.

20. Close to midnight, the Accused and the deceased began to quarrel. The deceased challenged the Accused to a fight, stating that they would both be sent back to China if they were arrested. The

Accused asked the deceased what he wanted him to do before he was satisfied. The deceased retorted by saying in Mandarin, "So what if I were to bully you?". The Accused then replied that he had gone too far. As they were speaking loudly, the landlady went to their room to tell them not to cause trouble or she would evict them.

21. When the two parties stood up and were about to fight, Gan separated them but they continued to stand close to each other. The deceased continued to try to move towards the Accused but Gan pushed him away. Suddenly, Gan saw drops of blood on the floor and realized they were dripping from his hands. He panicked and left the two quarrelling parties on their own. As he let go of the deceased, he ran out of the room. The Accused gave chase.

22. Gan used a towel to bandage his left hand which was cut more badly than his right. After doing so, he realized the rest of the group had gone downstairs. As he was going down the stairs, he noticed bloodstains on the banister. At ground level, he saw the deceased lying on the road next to a car. There was blood all over his body. He also saw the Accused throwing a small knife to the ground near the rear of the car and then walking back up towards the flat.

23. When the ambulance arrived later, a nurse examined the deceased and informed Gan he was dead. Gan's cuts on his hands were bandaged. He was then brought to Tan Tock Seng Hospital in the ambulance.

24. In cross-examination, Gan said the group had consumed alcohol together on several previous occasions. They usually drank one bottle of beer and a small amount of Kao Liang Chinese wine. The amount they consumed on the night of the incident was more than their usual intake. They were not celebrating any occasion on 3 February 2002. The next day was a day of rest for them.

25. Gan agreed that the deceased was a more aggressive person than the Accused. He did not know whether the two of them were good friends or not. He recalled Zhao bringing the Accused downstairs to let the situation cool down. He believed the deceased did pick up an empty beer bottle at one stage and hit it against the table. He heard the sound of a bottle being broken although the evidence showed there was no broken beer bottle at the scene. He also heard the deceased shouting vulgarities at the Accused, including words like "Fuck your mother". The two of them were quarrelling but the Accused did not retort with vulgarities. The deceased also told the Accused that he would send him back. He agreed the words could mean a threat to kill the Accused. Later, Gan said the deceased told the Accused that if they were arrested for fighting, both of them would have to leave and return to China. In his view, the deceased was the aggressor that night. He did not see the Accused using the knife.

26. Tang Yan, the landlady of 81B Rangoon Road, returned home to the flat between 9 pm and 10 pm that night with her then 19 year old son and her male friend. When she heard noises coming from one of the other three bedrooms in the flat, all tenanted to Chinese nationals, she went to take a look. When she opened the door of the room, she saw the two men quarrelling. She was frightened by their looks and ran back to her bedroom. After discussing with her friend and her son, they decided to call the police. Her son saw some bloodstains on the floor of the living room. He then called the police and told them to send an ambulance as someone could have been injured. When she returned to that

room again, the occupants were still there but there was blood on the floor. She ran back to her room again to wait for the police to arrive.

27. While they were waiting, someone knocked on the main door of the flat and asked them to open it. They did not do so and remained in their room. The son then saw a police car on the ground below and some police officers walking towards a bloodied body. He shouted to the police officers to inform them that the person he suspected was responsible for the act was outside their flat and told them to go up to the flat quickly.

28. Three men saw the Accused and the deceased after they had run downstairs to Rangoon Road. Kee Lian Huat, who was then living in Mergui Road, was travelling home in a taxi that night. As the taxi moved along Rangoon Road near a coffee shop, the taxi driver said there was a fight going on. Although the coffee shop was then closed, the lights outside were turned on. Kee saw a bare-bodied man standing with a knife in his hand while another lay on the road. The one standing had blood on his body and appeared to be communicating with the one on the ground. He was swinging the knife at the one on the ground who was trying to ward off the attack but Kee did not see the stabbing. Kee arrived home about ten minutes later and called the police.

29. Thangarasan s/o Nadarajan lived in a house behind the said coffee shop. In the early hours of 4 February 2002, as he was about to go to bed, he heard shouting and arguments coming from the direction of the coffee shop. The people involved seemed to be running as they made the noise. He went out to the coffee shop to see what was happening. There he saw a slim and tall man wearing only a pair of shorts chasing another man dressed the same way. The second man stumbled and fell to the ground in front of the coffee shop and the first man started stabbing him with a knife held in his right hand. Thangarasan shouted at the attacker "Ay, stop!" in English from some distance away "but he continued stabbing in an uncontrollable state". The one on the ground was using his hands to try to ward off the knife and, after a while, he became motionless. However the attacker continued to stab him for a short while before stopping. The stabbing was in an up-down motion. He then threw the knife onto the ground and walked back into the building.

30. Thangarasan's wife approached and he shouted to her to bring his mobile telephone to him. He turned away from the scene as he did not want his wife to see it. He then called the police. When he went closer to take a look at the man on the ground, he was shocked to see part of the stomach protruding out. There were many stab wounds on his body. He then called the police again. He saw two or three Chinese men trying unsuccessfully to stop a blue van. He then returned home.

31. Png Tiong San, a deliveryman, was driving a lorry along Rangoon Road at about 12.45 am on 4 February 2002. He was delivering foodstuff to various markets. He saw two bare-bodied men fighting and shouting at each other in Mandarin outside the coffee shop. He slowed down his lorry. The one with a knife in his right hand stabbed the other man a few times and the latter fell to the ground. The attacker continued stabbing him in an up-down motion. When the one on the ground tried to ward off the attack with his hands, the attacker used his left hand to punch his face and then stabbed him repeatedly in the abdomen. Png shouted "Oi!" twice from his lorry but the attacker did not seem to care. Png stopped his lorry opposite the two men and called the police using his mobile telephone. The attacker then threw the knife onto the ground, gave a few kicks to the one lying motionless and walked away. He turned back after walking a few steps and gave a few more kicks to that man.

32. CPL Ong Chee Keong was on patrol duty with another police officer when they were directed to go to Rangoon Road to attend to a case involving a fight. They arrived there at about 12.51 am on 4 February 2002. As they were walking towards a crowd, they heard someone shouting from a third floor flat. It was the landlady's son. He pointed them towards the coffee shop where they saw the deceased lying in a pool of blood with part of his stomach protruding from his abdomen. They then called for an ambulance and for reinforcement.

33. CPL Ong then looked back up at the landlady's son and asked him in Mandarin where the culprit was. He was told that man had run up to 81B and was now knocking on the main door. Two more police officers arrived. One of them was SGT Koh Chong Kok. CPL Ong asked his partner and SGT Koh's partner to attend to the deceased while he and SGT Koh went up to 81B.

34. There were blood trails at the staircase from the ground floor to the third level. The two police officers ran up and saw the Accused outside 81B, the only unit on that level. The door was shut. His body and his hands were stained with blood. When he saw the police officers approaching from the staircase, he became aggressive and started gesticulating and telling them in Mandarin not to go near him. They told him to squat and face the wall but he refused to do so. Instead, he stood in a way that appeared as if he wanted to charge at them. He also swung his legs in the air as if to kick them. The police officers then contacted their operations room for more back-up officers.

35. In the meantime, CPL Ong asked the Accused whether he knew the man lying on the ground floor. Their entire conversation was in Mandarin. The Accused replied that that man was his friend and that he wanted to beat the Accused to death. CPL Ong then followed up by asking him whether that was the reason the Accused did that to him. The Accused replied, "Yes". CPL Ong then asked him again to squat and to co-operate with them but he remain aggressive and refused. He again shouted that they should not go near him.

36. When two other police officers arrived, CPL Ong and SGT Koh moved in to arrest the Accused. He shouted at them and tried to kick them. CPL Ong had to draw his baton and hit the Accused three times on his right leg to stop his kicking. During the commotion, the Accused's shorts dropped down as they were a loose pair.

37. The Accused was then arrested and brought to the ground level. When they wanted to place him in the police vehicle, he refused to get in by keeping his body stiff and not bending down. They had to use force to push him into the vehicle. There, SGT Koh interviewed the Accused while CPL Ong went back up to 81B to interview the landlady and her son. He saw some food on the table in the room in question and drops of blood beside the table.

38. Asked whether the police officers identified themselves to the Accused when they saw him at the staircase landing, CPL Ong said he could not remember whether they did but they were in police uniform. The Accused smelled of alcohol. CPL Ong could not understand some of the words said by the Accused because of his accent. He did not recall the Accused using his hand, like a pistol, to point at his temple and asking the police officers to shoot him.

39. SGT Koh Chong Kok added that the Accused told them, during the confrontation at the staircase, that he wanted to go into 81B to put on a shirt. When the police officers told him to squat, he pointed his right hand, as if it were a pistol, at his temple and asked them to shoot him there. When they moved in to arrest him after the back-up officers arrived, the Accused was very aggressive and put up a struggle.

40. After subduing him and bringing him to the ground level, they had to push him into the police vehicle. With the two back-up officers watching over the Accused, SGT Koh interviewed him in Mandarin. He asked him what happened earlier and was told that the Accused and the deceased were having a drinking session at about 10.40 pm when a dispute broke out regarding their work relationship. He also told SGT Koh that the deceased was his supervisor and that during the arguments, the deceased wanted to use a beer bottle to kill him. He therefore used the knife to stab the deceased. When asked where the knife came from, the Accused said it was under the bed in the room. Asked why he kept a knife there, the Accused said the knife was for his work. SGT Koh then asked him whether he stabbed the deceased and he admitted he killed his friend. The Accused added that the deceased ran out of the room after the stabbing.

41. The above interview was subsequently recorded in the Patrol Log Sheet by SGT Koh's partner, CPL Muhammad Nasir bin Jamil, after SGT Koh had interpreted the conversation to him in English.

42. SGT Koh agreed that during the conversation at the staircase, it was never specifically said to the Accused that he had killed his friend. The Accused spoke very loudly and had slurred speech. He appeared extremely intoxicated but knew what was going on. They had identified themselves to him as police officers but they did not draw out their firearms.

43. About seven months after the incident, SGT Koh prepared his statement for the Preliminary Inquiry by referring to some parts of the said Patrol Log Sheet. The Patrol Log Sheet, however, had no record of the Accused telling him that the deceased was his supervisor or that the knife was for his work. However, SGT Koh did make another statement at the Criminal Investigation Department (CID) earlier in February 2002 in which he mentioned that the Accused said those things.

44. SGT Chng Wee Boon and CPL Gideon Manaseh were the two officers who arrived as back-up during the confrontation with the Accused at the staircase of 81B. SGT Chng said he heard CPL Ong Chee Keong asking the Accused in Mandarin to go down the stairs to them several times. He also said the Accused looked confused or stunned and was using his hands to rub his face. However, he was aggressive in talking and shouted at the officers to move back. He also swung his legs in the air as if to kick the officers although they were too far away from him for him to do that. CPL Manaseh's evidence was essentially the same as SGT Chng's. Although he could not understand Mandarin, he could perceive what was being said by CPL Ong and the Accused by their gestures.

45. CPL Muhammad Nasir bin Jamil was the partner of SGT Koh Chong Kok that night. After the interview conducted in the police vehicle, SGT Koh interpreted the contents of the interview to CPL Muhammad Nasir who took them down in the Patrol Log Sheet. No mention was made in the Patrol Log Sheet about the Accused saying the deceased was his supervisor or that the knife in question was for his work. CPL Muhammad Nasir could not recall whether SGT Koh told him about these that day. At

about 4.50 am on 4 February 2002, CPL Muhammad Nasir and CPL Manaseh escorted the deceased's body to the mortuary at the Singapore General Hospital.

46. ASP Kit Hong Seng was the Senior Investigation Officer on duty at the Tanglin Police Division that night. He arrived at the scene and was briefed by SGT Koh and CPL Ong on what had transpired. At about 2.45 am, he activated the CID.

47. SSSGT Pavia Roy Nicholas of the Special Investigation Section of the CID arrived at the scene at about 1.15am on 4 February 2002 and was briefed by ASP Kit. He found the bloodied body of the deceased lying on its left clad only in a pair of shorts. A kitchen knife was found on the ground near the deceased's feet. When he saw the Accused, the latter was dressed only in a bloodstained pair of underwear and smelled strongly of alcohol. He had some injuries on his chest, stomach and right hand.

48. When SSSGT Pavia went up to 81B, he found the Accused's bloodstained shorts outside the main door. The room in question was in a mess and there were bloodstains on the floor, the wall, the entrance curtain and the bed. He found three Tiger beer bottles and a plastic bottle of water beside the table on which food was placed. There was also one Tiger beer bottle beside a bed. Two Kao Liang Chinese wine bottles were found near the refrigerator in the room. No glass splinters were found.

49. At about 4 am, he directed that the Accused be escorted to Alexandra Hospital for a pre-statement medical examination. Later, he directed that the deceased be brought to the mortuary. He left the scene at about 7.30 am for the CID.

50. At about 8.30 am on 4 February 2002, SSSGT Pavia requested ASP Lim Beng Gee to record a statement from the Accused who had been arrested for the murder of the deceased. At about noontime, ASP Lim began the process of recording a statement from the Accused pursuant to section 122(6) Criminal Procedure Code with the help of a Mandarin interpreter. The Accused chose to write his own statement in the Chinese language. The whole process ended at 1.10 pm. The translation of the Accused's written statement was in the following terms:

> "On 03.02.2002, I was drinking with my fellow countrymen Wang Hong, Wang Baochun, Gan Xinlian and Zhao Zhiyuan in the bedroom. For no obvious reasons, Wang Hong suddenly smashed a bottle and used it to stab me, saying that he wanted to kill me. I have drunk a lot and under the influence of alcohol, I accidentally injured Wang Hong and killed him".

This statement was admitted in evidence without objection from the Defence.

51. Subsequently, five other statements were recorded by SSSGT Pavia from the Accused on 7, 14, 15 and 16 February 2002. Two statements were taken on 14 February, one during the scene-of-crime investigations at 81B Rangoon Road and another back at the Police Cantonment Complex. All five statements were taken with the help of a Mandarin interpreter and were admitted without objection.

52. In those statements, the Accused said he and the deceased had about half a bottle of Kao Liang

(which had 62% alcohol content) each. He said when they were about to finish the two bottles of Kao Liang, he asked Gan to go and buy beer. Gan went out and returned with six to seven bottles of beer. After drinking for sometime, the deceased held a bottle of beer in his hands and smashed it on the table. He then began to use abusive words without directing them at anyone in particular. As the Accused was quite drunk then, having drunk with an empty stomach, he could not recall the words used. He believed he could have asked the deceased what happened. He remembered the deceased suddenly dashed towards him causing him to be quite scared. The Accused then ran towards his own bed and took out a knife which was beneath his pillow and started to fight with the deceased in the room. He stabbed the deceased because the latter had hit him with the bottle. He did not know why they fought and why he stabbed the deceased. He could not recall the events thereafter and how they both ended up on the ground level. The Accused claimed the deceased was his friend and that they were from the same town in China. They were colleagues for ten years back home and had never quarrelled before. There was no reason for him to kill the deceased.

53. In a later statement, he said he went to his own bed (on the lower deck) and hid inside. When the deceased dashed towards him, he took out the knife beneath his pillow and stabbed him. In yet another statement, he said he believed the deceased hit him with the beer bottle. He was afraid when the deceased charged at him and he turned and moved backwards to the corner of his bed near his pillow. He panicked and tried to take something to block the deceased's attack. When he grabbed his pillow, his hands touched the knife and he then grabbed it and stabbed the deceased although he did not have any intention of doing so. At one point, the deceased also threatened to kill him. Later on, the Accused confirmed that the deceased stabbed him with the broken bottle.

54. When asked by SSSGT Pavia how the knife came to be under his pillow, the Accused replied that he usually kept his belongings under his bed or under his pillow as he did not like others to use his things. The knife was for cutting vegetables and meat when he prepared food in the kitchen. He would return it to underneath his pillow after using it. He could not recall what happened to the knife after the fight with the deceased.

55. The distribution of pamphlets at $5 an hour was initiated by the deceased. They did not have any argument while they were doing the distribution. He even bought a drink for the deceased when they were out doing that.

56. The Accused also said in the statements he would drink alcohol once or twice a week alone or with his room mates. They would drink Kao Liang. That was to help them forget their worries.

57 . Blood samples were also taken from the Accused and from Gan Xin Lian for analysis. It was subsequently found that the blood drops in the room in 81B came from the deceased and Gan Xin Lian.

58. Dr Soo Kian Hing, who examined the Accused on 4 February 2002 at 5.05am, testified that the Accused told him in Mandarin his room mate assaulted him. He found the Accused "conscious and alert". The doctor noted a number of bruises, abrasions and scratches on various parts of the Accused's body. The Accused said he had tenderness over his right upper chest and his left wrist. There were no rib fractures but x-ray of the left wrist showed a defect likely to be a fracture of the

Hamate bone. The Accused had alcoholic breath, injected conjunctiva and incoherent speech. He did not have flushing of the face, slurring of speech or verboseness. His straight line walking was fair and his gait was steady. His blood sample was found to contain 137 mg of ethanol per 100 ml of blood. He was treated with analgesic and a backslab was done for his left wrist. He was referred to the Changi General Hospital orthopaedic specialist for a review of his wrist.

59. Questioned by the Defence whether photograph P17 showed a bruise and abrasions on the Accused's right chest, the doctor said there could have been mild bruising although it could not be said to be a definite bruise. He agreed that tenderness at that area would be consistent with having been hit by an object there. He could not remember what led him to tick "yes" in the medical examination form provided by the police on whether there was incoherent speech. He conceded it could have been a lapse in judgment when he did that because the Accused was able to answer his questions about how he got his injuries and whether he had any pain.

60. On 28 February 2002, the Accused was treated by Dr William Verhoeven of the Changi General Hospital. He was found to have a fracture of the Hamate bone in his left wrist. A cast was put in place and that was removed one month later.

61. The deceased's blood sample was analysed and found to contain 142 mg of ethanol per 100 ml of blood.

62. Dr Paul Chui of the Centre for Forensic Medicine conducted an autopsy on the deceased at 10 am on 4 February 2002. He certified the cause of death as "Multiple stab wounds". He found seven stab wounds and 15 incised wounds on the body. Three of the stab wounds would be sufficient to cause death. The first made a hole in a large vein that led from the neck towards the heart causing massive bleeding. The second one penetrated the abdominal cavity and punctured right through the stomach to the pancreas causing bleeding and infection. The final fatal stab wound was the one that went into the chest wall from the back and through the right lung causing massive bleeding and collapse of the lung, thereby impairing breathing.

63. Asked whether it was possible that the Accused was holding the knife in his right hand and was using that same hand to fist the deceased in a fight, pointing therefore to the fact that he did not deliberately stab the deceased, Dr Paul Chui replied that in those circumstances, it would be difficult to create the depth of the wounds seen on the body.

64. Dr Stephen Phang, a consultant psychiatrist at the Institute of Mental Health, examined the Accused on 21 February, 26 February and 2 March 2002. On 2 March 2002, he received the summary of facts prepared by the police, just before his last interview with the Accused. This included the statement given by SGT Koh Chong Kok. He found the Accused amply able to furnish an account of himself in Mandarin. The Accused said he did not commit murder as he did not have the intention to kill. He claimed that the deceased started scolding him for no discernible reason and then attempted to attack him with an empty beer bottle. He admitted grabbing a knife and fighting back but emphasized that it was in self defence, using the knife to block the attack. While he said he had consumed a considerable amount of Chinese wine and of beer, he was nevertheless able to give a reasonably detailed and consistent account of himself and of the events that transpired at and

around the material time. He could recall subsequently fighting next to the main road, the deceased lying on the ground and two policemen arriving at the scene and handcuffing him.

65. By the third interview, Dr Stephen Phang added, the Accused became somewhat uncooperative, evasive and irritable. This was because he had realized that the psychiatrist was not there to help him but merely to be a neutral party in reporting to the Court. However, he was consistent in his account at all three interviews.

66. Dr Stephen Phang concluded :

> "The Accused does not suffer from any psychiatric illness. It is evident from his consistent recollection and account of the events that transpired at and around the material time of the alleged killing that he was not of unsound mind then. In fact, he even indicated his awareness of the difference between murder and manslaughter, attempting to exonerate himself from the former, which he is currently charged with, by stating that he did not have any intention to kill, nor was the incident preceded by any planning on his part. Although intoxicated, I do not believe he was so intoxicated that he could not appreciate the nature of his acts at the time. His ability to recollect and recount the events at the time essentially, in my opinion, eliminates this possibility. He presently understands the nature of the charge against him, as well as the potential consequences in the event of conviction. He is fit to plead to the charge and take his trial".

67. In cross-examination, Dr Stephen Phang said he specialized in forensic psychiatry and not alcohol or drug addiction. He opined that the Accused was likely to have a degree of fragmentary memory loss, which is a partial loss of memory producing a partial or imperfect recall of events, rather than en bloc memory loss. For instance, the Accused was able to recall that the deceased scolded him but could not recall the words used and yet distinctly remembered they were vulgarities.

68. Where intoxication was concerned, it would require very severe intoxication to cause a person not to know what was going on. That again depended on the individual's tolerance for alcohol. He did not think the Accused's judgment was severely impaired as he could still talk of hiding from the deceased and taking a knife to defend himself. He could also recount logically the confrontation with the police. Judging from the alcohol level in his blood at 5 am on 4 February 2002 (137 mg per 100 ml), he worked backwards at the accepted decrease rate of 15 mg every hour and estimated the alcohol level at about 200 mg per 100 ml at the material time. Despite that level, the Accused did not appear to have impairment of judgment. That would indicate a very high level of tolerance for alcohol.

69. To the suggestion that the Accused did not flee from the scene because he did not realize what he had done, Dr Stephen Phang disagreed and said the precise reason would only be known by the Accused. However, his ability to recount what happened just before and after the killing, including the fact that two policemen handcuffed him, indicated he was aware of the nature of his action.

The Case For The Defence

70. The Accused testified that he had been working in a chemical factory in China since 1983. He got to know the deceased as a colleague in 1987 or 1988 and they became very good friends. In early

2001, the Accused managed to secure employment in Singapore. When he learnt subsequently that the deceased would also be coming here to work, he was very happy. The Accused left China before the deceased but promised he would call him about the working environment here.

71. After his arrival here, he found the situation was not as rosy as promised by the employment agency. As promised, he telephoned the deceased to discourage him from coming here to work. However, about a couple of months later, the deceased came over as he could not get a refund from the agency. Nevertheless, the Accused was glad at being able to meet his old friend again.

72. When their employers reduced their salary by half in December 2001, the Accused felt the financial strain as he had borrowed money in order to come here to work. Around the end of January 2002, the deceased introduced him to work as a distributor of pamphlets for which they would be paid $5 per hour. The first assignment was on 3 February 2002.

73. On 3 February 2002, they were doing their regular jobs in Orchard Road. The Accused left for their rented room at around 3 pm. He could not find the pamphlets when he went home. Later, Zhao Zhi Yuan and the deceased also returned home. With their help, the pamphlets were found.

74. The Accused and the deceased then left between 4 and 5 pm to do the distribution along Serangoon Road. They did not stop to eat dinner. Instead, the Accused bought two bottles of soya bean drink and gave one to the deceased.

75. The two of them returned to 81B Rangoon Road sometime after 10 pm. They joined the three men who were there for dinner and for drinks. Seeing a bottle of Kao Liang Chinese wine, the Accused consumed half a bottle. The deceased also drank about half a bottle. They ate some food. Tang Huan Ling then joined the group. Later, the Accused asked Gan to go and buy some beer. Gan returned after making the purchase but the Accused could not recall the number of bottles he bought.

76. The Accused could not recall whether he drank beer in addition to the Kao Liang wine. He consumed a lot of alcohol and could not remember in great detail the happenings that night. He recalled the deceased raising his voice and scolding someone. He also recalled seeing him pick up a beer bottle and hit the table with it. From the sound that ensued, he believed the bottle broke. Someone then tried to restrain the deceased.

77. The Accused asked the deceased why he was so angry when nobody had offended him. The deceased then shouted vulgarities at him, including the words, "Fuck your mother", and threatened to beat the Accused to death and send him home. The Accused was upset and angry as he was very close to his deceased mother, being an only son. His mother died some twenty years ago but he still missed her. He then shouted back at the deceased and they started quarrelling. He did not recall Zhao bringing him to the ground level to cool off.

78. He could not recall whether anybody intervened but remembered someone pushing the deceased away towards one of the beds. The Accused then went to his bed and sat down. The deceased and

Wang were near the single bed opposite him. The Accused and the deceased were still quarrelling. The deceased then said to the Accused, "I will send you home", and lunged at him with what he believed was a broken beer bottle. When he retreated and hid in his bed, he touched some object which he took to try and block the attack. He did not know it was a knife at that time. He then came out of his bed and fought with the deceased, holding the object in his right hand and hitting wildly with both fists. The deceased then walked out of the room. The Accused followed him down the staircase, still fighting with him.

79. He could not recall whether the deceased was bleeding. He had no intention to kill. He also could not remember throwing away the object which he had used in the fight. He believed he returned to the flat and asked that the main door be opened. Later, he saw some police officers but could not recall any conversation between them and himself. He did not remember much else after that. He asserted that the deceased was never his supervisor and that he did not need a knife for his work, contrary to what SGT Koh testified earlier. At some point after his arrest, he did ask the policemen about his friend and one of them told him that his friend was dead. When one of the policemen told him, "Nee shar ser da" ("You killed him"), what was in the Accused's mind was that he had a knife because in China, the Chinese word "shar" would be used only when killing was done with a sharp weapon. He was so drunk he did not even know he was using a knife to stab the deceased. If he had known that, he would have fled because he had committed a crime. He did not know and therefore simply returned to the flat, intending to go in and shower and then go to bed.

80. In cross-examination, the Accused said he had drinking sessions two or three times a week on average. He would consume one bottle of beer and a very small amount of Kao Liang wine. He said he recalled the deceased holding the beer bottle by the neck but could not recall whether the bottle was upright or not.

81. Asked why he did not mention in his statement of 7 February 2002 the abusive words used against his mother, the Accused replied that when he was making that statement, he could not give a clear account as he could not remember certain details.

82. He explained that his pillow, unlike the kind usually used here, was foldable. The knife was kept between the folds. It was a new knife and he did not want others to use it. He also kept his wallet between the folds. The knife could have slipped out when he took his wallet to get money for Gan to buy beer. During the fight, he did not realize he had injured the deceased and Gan with the knife. He also did not know whether the beer bottle had been taken away from the deceased by the time he went out of the room.

83. Where Dr Stephen Phang was concerned, the Accused testified that he thought he was going to be executed when he was being brought to the psychiatrist. When Dr Stephen Phang told him he was the only person who could help him, that gave him hope. He thought that what he told the psychiatrist could cover up part of his mistake. However, at the third interview, the psychiatrist said he was uncooperative and asked him whether he remembered what he had said in the first two interviews. The Accused replied that he could not recall all the questions. Dr Stephen Phang then told him he had said that the deceased hit him on the right hand with a beer bottle. The Accused replied that he only said he did not know where the deceased hit him. The psychiatrist then got angry with him.

The Decision of the Court

84. There was no dispute that the multiple wounds on the body of the deceased were inflicted by the Accused with the knife and that the multiple stab wounds were the cause of death. The facts of this case would fall within section 300(c) Penal Code if the Accused possessed the intention specified therein. The only issues therefore are whether the Accused had the requisite intention to commit murder and whether he could rely on exceptions 1 and 4 in section 300 Penal Code, which would reduce murder to culpable homicide if successfully invoked.

85. Sections 85 and 86 Penal Code state:

> "85(1) Except as provided in this section and in section 86, intoxication shall not constitute a defence to any criminal charge.
>
> (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and –
>
> > (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
> >
> > (b) the person charged was, by reason of intoxication, insane, temporarily or otherwise, at the time of such act or omission.
>
> 86(1) Where the defence under section 85 is established, then in a case falling under section 85(2)(a) the accused person shall be acquitted, and in a case falling under section 85(2)(b), section 84 of this Code and sections 314 and 315 of the Criminal Procedure Code shall apply.
>
> (2) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
>
> (3) For the purposes of this section and section 85 'intoxication' shall be deemed to include a state produced by narcotics or drugs".

86. Section 85(2)(a) is clearly irrelevant in the circumstances of this case. Where section 85(2)(b) is concerned, the Accused adduced no expert evidence of any sort to contradict the clear opinion of Dr Stephen Phang which I found to be based on sound grounds and supported by basic facts. On the authority of *Saeng-Un Udom v PP* [2001] 3 SLR 1, I accepted Dr Stephen Phang's finding that the Accused was not suffering from unsoundness of mind at the material time. The Accused's accounts at the interviews had internal consistency and external corroboration. What the Accused alleged about the third interview was not put to the psychiatrist when the latter testified in Court and appeared to be nothing more than an afterthought.

87. It was also the opinion of Dr Stephen Phang that the Accused had a high level of tolerance for alcohol. I note the psychiatrist did not claim any expertise on alcohol addiction but his opinion was borne out by the evidence adduced in any event. There was no special occasion on 3 or 4 February 2002 that the Accused should be drinking much more Kao Liang wine than he was accustomed to. If indeed he poured out half a bottle of it into his glass when he joined the group, knowing its high alcohol content and having consumed it before, the only logical inference must be that he was used to consuming such a quantity.

88. The Accused was quite capable of carrying on a logical conversation at the staircase when the police officers were trying to apprehend him. He could resist arrest and even refuse to go into the police vehicle by deliberately not bending his body. He could give coherent answers to SGT Koh's questions in the police vehicle. Photographs taken of him at about 3.20 am that day (P 14 and P 15) showed a man who was in control of his senses and able to stand in an upright position. His response to the deceased while they were in the room was to reach for his knife kept within his folded pillow. I disbelieved his assertions that he was merely looking for something to fend off the attacks. Even if he was, that would show he was still well in control of his senses. It was not possible that a man who could instinctively defend himself by grabbing some object and then fighting ferociously was not at all conscious that he was wielding a dangerous weapon in his hand. He could chase the fleeing deceased from the third level to ground level and overtake him. The many stab wounds were deliberately and forcefully inflicted.

89. The Accused was incensed but he was certainly not insane. He had the requisite intention to commit murder.

90. Exception 1 in section 300 Penal Code concerns grave and sudden provocation. To succeed in this defence, the Accused must show the subjective element that he was deprived of his self-control by provocation and the objective element that such provocation was grave and sudden in the circumstances (*Seah Kok Meng v PP* [2001] 3 SLR 135).

91. The Accused was given a cooling down period by being brought downstairs by Zhao. The effects of any quarrel before that would have worn off or at least would have lost the character of being sudden. When they returned to the room, the quarrels did resume. However, any provocation could hardly be sudden then. At any rate, it could not have been grave if the Accused could hardly recall what the altercation was about in the first place. The Accused's version of what was going through his mind in the room was self-contradictory. If he was merely trying to defend himself when he retreated into his bed, then he could not have lost his self-control.

92. I disbelieved the Accused's evidence that the deceased was threatening to kill him when he uttered words to the effect that he would send him home. The words taken in their context obviously meant that they would be deported if found to be breaking the law by fighting with each other. Even if the deceased was holding on to a beer bottle at some stage, it was apparent that he no longer had the bottle during the confrontation between the beds. At any rate, the bottle was not a broken one with sharp edges. I also disbelieved the Accused's assertions that the vulgarities uttered against his long deceased mother caused him to erupt, as it were. Such alleged vulgarities were not even alluded to in his statements. When the deceased fled unarmed and injured from the room, it was certainly not a challenge to fight downstairs. Finally, the reaction of the Accused to any alleged provocation was

totally disproportionate.

93. Any reliance on the said exception 1 must therefore fail.

94. Exception 4 in section 300 Penal Code concerns the sudden fight defence. It is immaterial in such cases which party offers the provocation or commits the first assault.

95. The evidence showed that the deceased and the Accused were engaged in loud quarrels rather than a fight even if there was some physical posturing. However, assuming there was a fight, it could not be said to have arisen "upon a sudden quarrel" as there was a cooling down period after the initial altercation. In any event, any reliance on exception 4 was bound to fail as the Accused, the clear victor in the fight, had "taken undue advantage or acted in a cruel or unusual manner" by inflicting fatal injuries on the vanquished deceased who was attempting to escape (*Soosay v PP* [1993] 3 SLR 272). He had a dangerous weapon with him and had already wounded the deceased in the room. The deceased fled from the room unarmed but the Accused seemed bent on vengeance. Some of the many wounds were obviously inflicted from the back and that meant the deceased was not even facing him and posing a threat to him. When the deceased was already lying on the ground, the Accused continued his relentless stabbing and slashing. He went to the extent of practically disembowelling the deceased.

96. The Defence quite rightly did not seek to argue that exception 2 in section 300 Penal Code (exceeding the right of private defence) applied to the facts of this case. Even if the right of private defence of his person had arisen here, the Accused would not be able to show that there was no 'intention of doing more harm than is necessary for the purpose of such defence'.

97. I therefore found the Accused guilty of murder and sentenced him to suffer the mandatory death penalty.

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