Public Prosecutor v Zailani bin Ahmad
[2004] SGHC 202

Case Number : CC 8/2004

Decision Date : 13 September 2004

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Han Ming Kuang, Deborah Tan Ek Jin and Christopher James De Souza (Deputy Public Prosecutors) for prosecution; Ismail bin Hamid (Ismail Hamid and Co) and Sadari bin Musari (Sadari Musari and Partners) for accused

Parties : Public Prosecutor — Zailani bin Ahmad

Criminal Law – Complicity – Common intention – Common intention to commit murder – Penal Code (Cap 224, 1985 Rev Ed) ss 302, 34

Criminal Law – General exceptions – Unsoundness of mind

Criminal Law – Offences – Murder – Common intention to commit murder – Penal Code (Cap 224, 1985 Rev Ed) ss 302, 34

Criminal Law – Special exceptions – Diminished responsibility – Penal Code (Cap 224, 1985 Rev Ed) Exception 7 to s 300

Evidence – Proof of evidence – Confessions – Whether statement to police was voluntarily made

13 September 2004

Kan Ting Chiu J:

1 The accused person, Zailani bin Ahmad, was found guilty and convicted by me on the charge that:

> on or about the 28th day of June 2003, between 1.00 pm and 6.00 pm, at No 39B Lorong 28 Geylang, Singapore, together with one Rachel alias Fatimah alias Leni, in furtherance of the common intention of [he] and Rachel alias Fatimah alias Leni (as amended), did commit murder by causing the death of one Chi Tue Tiong, male/68 years old, and [he] has] thereby committed an offence under section 302 read with section 34 of the Penal Code, Chapter 224.

Background

2 The deceased, Chi Tue Tiong, who was also known as "Ah Pek", was employed as a caretaker of apartments 37C and 39B within one apartment block. The rooms in both apartments were rented out individually. The deceased, whose duties included the collection of rent from the occupants, stayed in apartment 39B, where he had his bed and a chest of drawers. His quarters were not one of the rooms in the apartment, but were an area at the landing of the stairs leading to two rooms on the upper level of the two-level unit.

3 In the afternoon of 28 June 2003, Tan Poh Geat, the deceased's employer, realised that she had not seen him as she normally would, and she decided to look for him. She went to apartment 39B but could not gain access as the metal gate to the apartment was locked. She called for assistance from other persons who removed the gate from its hinges, and they gained entry into the apartment.

4 When they went to the deceased's quarters, they found him lying on the floor.[1] There was

a lot of blood at the region of his head and the bed and another area of blood at the area of his feet and the chest of drawers.

5 The deceased was dead. Dr Teo Eng Swee, consultant forensic pathologist, saw the body at 11.45pm that day. Dr Teo concluded from his study of the pattern of the blood splatters that the deceased was lying on the bed with his head on the pillow when he was first injured by at least two strikes on the head,[2] and other blows were delivered on the deceased while he was near or on the floor.[3]

6 In his autopsy examination, Dr Teo found injuries to the head, the upper limbs, thorax and lower limbs. The most serious injuries were eight fractures on the head, and indications of at least nine separate blows delivered with force to the head.[4] He estimated that death had occurred eight to 16 hours earlier,[5] within minutes of the injuries.[6]

7 Dr Teo was of the opinion that the fractures and the underlying brain injuries the deceased suffered were not due to a fall.[7] He found that the brain injuries were consistent with being caused by multiple blunt force trauma to the sides and back of the head[8] and were of sufficient severity to cause death.[9] When he was shown the instruments recovered by the police from the scene, namely a pestle, an axe, a spanner and a hammer, he gave his opinion that the injuries could have been caused by the pestle or the handle of the axe or the hammer.[10]

8 The injuries to the upper limbs were concentrated on the hands and fingers and were also caused by blunt force trauma and were defensive injuries. Dr Teo certified the cause of death as "intracranial haemorrhage and cerebral contusions with fractured skull".

The scene of the crime

9 When the police were alerted, they went to the apartment and found the body of the deceased where it lay.

10 The investigation officer, Inspector David Ang Yeoh Tee, ("Insp Ang"), found the chest of drawers smeared with blood. There were signs of tampering of the hinges of the two top drawers. The single drawer on the second row was pulled out. A bloodstained wooden pestle and a spanner were inside the drawer. The pestle was identified by Itsariya Jinakarn, the tenant of a room in apartment 37C, as a part of a pounder and pestle that she kept in the kitchen area of apartment 37C. A hammer and an axe with bloodstains were found under the chest of drawers. A fruit peeler was found about two metres from the body. These items were recovered. Insp Ang also saw two bloodstained shoeprints on the floor, and arranged for photographs to be taken of them.

The accused and Rachel

11 The accused was renting a room in apartment 37C up to the time of the deceased's death. He was staying in the room with his Indonesian girlfriend Rachel alias Fatimah alias Leni ("Rachel") and paid rent to the deceased. He and Rachel vacated the room on 28 June 2003.

12 The accused was arrested by the police on 30 June. Rachel was not arrested. Police investigations revealed that she left Singapore for Batam on 29 June. The police interviewed her in Batam on 30 June, took a photograph of her, which was tendered in evidence, and obtained information from her which led the police to the flat where they recovered the accused's shoes.

Recovery of the accused's shoes

13 Acting on the information obtained from Rachel, Insp Ang and another officer went to a flat at Block 76 Telok Blangah Drive #05-282 on 30 June at about 11.45am, the home of Kassim bin Rabu and his wife Supiah bte Awang. Supiah told the officers that the accused had visited the flat on 28 June with his Indonesian girlfriend. He borrowed a pair of shoes from Supiah and left his "Pazzo" brand shoes and a slingbag at her flat. Insp Ang took possession of these items.

14 Dr Tay Ming Kiong of the Centre for Forensic Science examined the shoes against the photographs of the bloodstained shoeprints, and concluded that the shoeprints photographed were consistent with having been made by the shoes recovered.[11] Ang Hwee Chen, an analyst at the same Centre, found that the DNA profile of the blood on the left shoe matched the DNA profile of the deceased's blood.

Disclosure of Rachel's address

15 A question arose with regard to Rachel that merits mention here. As I had stated, the Prosecution adduced evidence about her and tendered her photograph in evidence. Through the information obtained from her, the Prosecution recovered the accused's shoes.

16 The Prosecution did not call her as a witness. The Prosecutor explained that she was not prepared to come to court as she was named in the charge and would be arrested if she entered Singapore, and there were no extradition arrangements by which she could be compelled to come.

17 No criticism can be made for not producing her as a witness. However, it transpired that the Prosecution had not disclosed her Indonesian address to the Defence. That was done only when the issue was brought up in the course of the trial.

18 It would have been better if that were done earlier, when the Prosecution decided to rely on information obtained from her. This would give the Defence the same opportunity to communicate with her and obtain any information from her which may assist the defence. As the accused's defence was that he could not recall much of the confrontation with the deceased, and Rachel was present, she could have supplied information relevant to the Defence even if she did not come to court.

Statement of the accused

19 The accused's statement was recorded after he was interviewed. Senior Station Inspector Han Khoe Juan ("SSI Han") was the first officer to interview the accused, although he did not record any statement from him. SSI Han's evidence was that he took over the custody of the accused at his room at Police Cantonment Complex. After he took over the custody of the accused from Assistant Superintendent of Police Bernard Wee, he brought the accused to interview room "B". He maintained that he himself brought the accused to the room without the assistance of other officers.

20 He conducted a physical examination on the accused and had him put on his clothing again. He then interviewed the accused but found that the accused had difficulty understanding English, and Station Inspector Mazlan bin Shariff ("SI Mazlan") took over the interview.

21 Defence counsel put to SSI Han that after the physical examination, the accused only had his underwear on. When he was in that state, SI Mazlan entered the room and spoke to the accused and SSI Han and the other officers left. SSI Han denied that.

22 SI Mazlan took over the interview from SSI Han. A statement was given by the accused in

Malay and was recorded in English in SI Mazlan's field investigation diary and was read back to the accused and was signed by him.

23 As the Defence contended that it was obtained through a threat,[12] a *voir dire* was conducted.

24 The accused's account of the recording of the statement was put to SI Mazlan by his counsel. The accused was in interview room "B" with some officers. He was wearing only his underwear and his T-shirt and jeans were on the floor, and the room was very cold. SI Mazlan went into the room and said to the accused in Malay words to the effect, "If you do not co-operate with me, I will let them in and beat you. But if you help me, I will ask them to go out, and they will not beat you." SI Mazlan denied all that, and only agreed that there were pauses in the course of the recording of the statement.

25 The accused's evidence was that on the day he was arrested, five or six police officers brought him to a room. He was made to undress and was allowed only to put his underwear back on. He was instructed to sit on a chair with the air-conditioner in front of him. When SI Mazlan entered the room and told him that if he did not want to be beaten by the officers, he should give a statement to him; if he did not, SI Mazlan would leave him there and let them beat him up. In the course of cross-examination (but not in examination-in-chief) he alleged SI Mazlan made the threat two to three times.

26 He was frightened, and told SI Mazlan that he agreed, and SI Mazlan asked the officers to leave the room. After they left, SI Mazlan recorded his statement in a book. He was feeling dizzy from some tablets he took, and was also cold from the air-conditioning. During cross-examination, he said he was quite high and was between being conscious and not conscious. (He added that even at the time he was giving evidence, he did not know what was happening to him.[13]) In the course of the recording, he smoked several cigarettes he took from a box of cigarettes placed in front of him. When he told SI Mazlan he could not remember some events, SI Mazlan refused to listen, made those parts himself and forced him to agree to them.

27 In the course of the cross-examination, the accused identified Senior Staff Sergeant Martin Low ("SSSgt Low") as one of the police officers in the interview room. He also said that the other officers in the interview room were the officers who arrested him.

28 As a result of these allegations, SSSgt Low was called to give evidence. He stated he was not a member of the party of officers who had arrested the accused and was not in the interview room when the accused's statement was being recorded.[14]

29 The Prosecution arranged for all the officers in the party which arrested the accused to attend court. Of the four officers presented, the accused identified Station Inspector Yeow Kia Seng ("SI Yeow") as a member of the arresting party, but he could not recognise the other three of them.[15]

30 When I reviewed the evidence, I found serious shortcomings in the accused's case. His counsel put to SI Mazlan that he issued the threat once, while the accused said that it was made two or three times. Was it the accused's case that he was threatened once, as his counsel put to SI Mazlan and he said in examination-in-chief, or was it his case that it happened two or three times? The accused alleged that when he came to parts he could not remember, SI Mazlan made them up for him. If that were so, it should be grounds for a serious complaint that not only was the statement not made voluntarily, but some parts of it were not made by the accused at all. But this was never put to

SI Mazlan. The accused alleged that SI Mazlan threatened to let the officers who were in the interview room beat him up. However SSSgt Low, who he alleged was in the interview room, was not a member of the arresting party. On the other hand, he could not remember if SI Yeow, a member of the arresting party, was in the interview room.[16]

31 In contrast to him, SSI Han and SI Mazlan were consistent in their evidence that there were no other officers in the interview room when the former handed custody of the accused to the latter.

32 I found that the accused's version of the events could not be believed. He did not create any doubt that his statement might have been procured by the alleged threat. I ruled that the statement was voluntary and admitted it in evidence.

33 The statement read:[17]

> I have no money. I was arrested earlier for selling illegal VCD but I did not get any money for selling it. My family could not give me any money. On about two days ago, I could not remember the date, I could not remember the place but I was at a room in Geylang Road. I could be able to show the place. I was together with my girlfriend 'Racal' who is a female Indonesia [*sic*] in that room. Both of us have no money to pay the rent for staying at that room. We had been staying in that room for about one month plus. Racal suggested we rob the old male Chinese who looked after the rooms there. Racal told me the old Chinese man lived a room below our floor. I was drunk. Two of us went down. Racal opened the door. Two of us went inside. Actually Racal had retrieved a wooden pole from our room. I do not know where she retrieved this wooden pole from in our room. She handed the said pole to me before we went down. I beat up the old Chinese man inside with the pole and after that I could not remember what happened. Racal pulled my hand out from the room. We left the place but I could not remember where we went to.

(The accused confirmed that "Racal" referred to Rachel.)

34 On the basis of the admissions in the statement, as corroborated by the shoeprints, the recovered shoes and the blood thereon, I called on the accused to make his defence to the charge.

The defence

35 The accused was 35 years old at the time of the trial. He is a divorcee with a son. He is educated up to GCE "N" level. He was working as an air-conditioner technician, and was also selling illegal VCDs on the side.

36 He had a history of insomnia, and also claimed he heard voices. He had seen a general practitioner in private practice, Dr John Heng, on 29 April and 27 June 2003. Dr Heng remembered that on both occasions he complained of insomnia, and he was prescribed 30 nitrazepam tablets sold under the trade name "Dima", and he was told to take two tablets a night. He did not tell Dr Heng that he heard voices.[18]

37 Apart from the Dima tablets he obtained, he also consumed Roche 15 and Subutex tablets and "Ice" during the period of April to June 2003.

38 He was staying in a room in apartment 37C with Rachel since 19 June 2003 when he returned from a visit to Pengkalis in Indonesia.

39 On 27 June 2003, he went to see Dr Heng because he was depressed. He was depressed

because he had lost his job as an air-conditioner technician and was arrested for selling illegal VCDs. That night, he took two Dima tablets and three big bottles of beer.

40 On the next morning, he took another 12 tablets of Dima at about 10.00am because he was still feeling depressed and his funds were running low.

41 His evidence was that:

> After I took 12 tablets of Dima, I was unconscious of what is happening around me. When I regained consciousness, I was ransacking Ah Pek's locker. I do not know what I was looking for actually. I think I was looking for money. I only realised when Rachel called me saying "Abang, watch your back, Ah Pek wants to beat you up.
>
> When I turned around I saw Ah Pek swinging spanner at my head and I managed to avoid the spanner; I ducked my head. I stood up and I beat him up.
>
> Yes, I remember. When I regained consciousness, I was ransacking the Ah Pek's drawer.[19]

42 However, he did not recall going with Rachel from their room to the deceased's room.[20]

43 In answer to his counsel, he said:

> I think I was looking for money. When I opened up the drawer, I was … my vision was blur. My vision was blur. I couldn't see what was inside the drawer. I had a blackout.
>
> … when I was opening the drawer, I had a key with me. … one bundle of keys with me.
>
> I tried to open the drawer but I can't open. Then Rachel shouted to watch my back. Ah Pek wanted to beat me up with the spanner. I managed to duck and then I stood up. Then I beat him up. He …
>
> I remembered he fell down and I took the spanner from him. I took the spanner to open the drawer. I remembered damaging the locker, trying to open the locker.
>
> I recall Rachel asked me to get out of the room because there's someone pressing the door bell.
>
> So I quickly get out of the room to return to my room. I can't remember where I go to but I got out of Ah Pek's room. I returned to my room to take my things, then I ran away. That's all.[21]

44 The next thing he remembered was that he was alone at a coffee shop in Kallang. Then he remembered being in the flat of Kassim bin Abu, and sleeping in the forest at Marsiling with an Indonesian man. He and the Indonesian man went to Changi because the Indonesian man said he had a sampan there. He was sleeping on the way to Changi. He woke up at Changi, alighted from the bus and he was arrested.

45 He admitted that he had intended to steal the deceased's money.[22] He formed this intention to steal when he was feeling drowsy and high from the tablets he took, but he did not intend to kill the deceased. (He detracted from this in re-examination when he said he was not sure if he had the intention to steal.[23])

46 He remembered that Rachel took a wooden pole from outside their room and brought it into the room, but he did not remember beating the deceased with a pole or pestle.[24] He described the

pole to be about one metre long, with a square cross-section.[25]

47 He was not sure if he had used the pole to beat the deceased,[26] but remembered that while he was ransacking the drawer, the deceased wanted to attack him, and he beat up the deceased, although he could not remember if he beat him up with his hand or a pole.[27]

48 When the Prosecutor cross-examined him, he confirmed that he remembered that he tried to open the top drawers of the chest of drawers with keys, but was unable to do that. While he was doing that, the deceased swung a spanner at him, but he ducked and hit the deceased on the head in return. He took the deceased's spanner to prise open the locked drawers, which he thought might contain valuables, but he did not take anything. After that he went back to his room, packed his things, and left with Rachel.

49 When the Prosecutor asked him how he felt after taking the 12 Dima tablets, his response was ambivalent. He said that he felt sleepy but resisted the sleepiness, then he said that he wanted to sleep but could not sleep. He had a headache and was mumbling to himself. He felt a little aggressive, but did not have feelings of hostility.[28] He only felt aggressive when the deceased tried to hit him, but not after the attack.[29]

The accused's mental capacity

50 The mental capacity of the accused was a principal issue of the case. The accused was first examined by Dr Tommy Tan, consultant psychiatrist from Woodbridge Hospital, in July when he was remanded in Changi Prison Hospital. Dr Tan had recorded his findings in his report[30] that:

> There was no abnormal behaviour observed by the nurses during the remand in Changi Prison Hospital.
>
> When I examined Mr Zailani, he had psychomotor retardation, ie his mental processes and movements were slowed down. He complained of auditory hallucinations, which were vague and inconsistent.
>
> The mental state examination was inconsistent with the observations made by the nurses in the Prison Hospital.
>
> With regard to the alleged offence of murder, Mr Zailani said that he had been taking many tablets of sleeping pills that day. He said that he had wanted to rob the deceased. He said he could not fully remember what happened.
>
> In my opinion, the accused has a history of Dependence Syndrome of multiple drugs (F19.21, International Classification of Diseases). This is characterised by the harmful use of drugs, drug seeking behaviour and difficulties in controlling the use of drugs.
>
> He had acute intoxication with hypnotics (F13.0, International Classification of Diseases) at the time of the alleged offence of murder.
>
> He was not of unsound mind at the time of the alleged offences as he knew what he was doing and what he was doing was wrong. He is fit to plead and is capable of making his defence. He knows the charges that he is facing and the consequence of pleading guilty. He will be able to follow the proceedings in Court. He will be able to instruct his counsel.

51 Dr Tan expanded on his findings when he gave evidence. He explained that the auditory hallucinations the accused complained of were very vague and changed from interview to interview, and were not consistent with any psychiatric disorder. Dr Tan thought that the accused was malingering and had made the complaints in order to get medication.

52 Dr Tan also explained that while the accused's mental processes and movement were slow when he examined him, the nurses and warders who observed him noted him to be very cheerful when he talked to other prisoners. This led him to think that the show of mental and physical slowness was put on, and that the accused was not really depressed.

53 Dr Tan found no signs of psychiatric illness, disorder or disease. His diagnosis was that the accused suffered from acute intoxication with hypnotics (*ie* sleeping pills) at the time of the offence. The accused had said that he felt "high" on sleeping pills, which Dr Tan described as a floating feeling. In that state, the accused's judgment might be impaired, but he would probably know what he was doing and was probably fully conscious, and he was not of unsound mind and he also did not have an abnormality of mind which substantially impaired his mental responsibility.

54 Dr Tan agreed with defence counsel that one of the signs of acute intoxication with hypnotics is disinhibition, and a person may become aggressive. He also agreed that the person may experience dissociation, *ie* he cannot control what he is doing or feeling, as in a case of epilepsy.

55 Counsel also brought up the phenomenon called paradoxical stimulant effect. Dr Tan said that it was not common, but it meant having a reversed effect, *eg* where after taking sleeping tablets, a person instead of getting sleepy becomes more alert and more disinhibited,[31] active, hostile and aggressive.[32]

56 The Defence relied on the findings of Dr Lim Yun Chin, consultant psychiatrist to Raffles Hospital. Dr Lim conducted a mental state examination on the accused and put up a report on 1 March 2004[33] where he stated:

> The accused admitted that after his return from Indonesia, he succumbed to the craving for drugs and used ice and subutex randomly. Because he started consuming illicit drugs, he decided to stay away from home and rented a room in Geylang with his girl partner. However, he had difficulty in sleeping and consulted Dr Heng who prescribed him Nitrazepam, a benzodiazepine drug for the treatment of insomnia. Initially, he used two tablets to help him sleep. However, on the eve the alleged offence, he was arrested for selling pirated VCDs.
>
> He felt very "depressed" after his arrest and just before the commission of the alleged offence, he decided to indiscriminately swallow large amount of the Nitrazepam. He remembered swallowing 12 tablets of the Nitrazepam tablets in order to sleep and forget his "problems."
>
> Instead of feeling sleepy, he remembered feeling more excitable and irritable. He claimed that his female partner suggested that they robbed the "old man" living below as they have no money to pay their rent. He agreed.
>
> He remembered feeling "drunk" at the time when they went into the room of the house owner. He said that he was given a pole by his partner. Inside the owner's room, he claimed he was physically attacked by the owner when he tried to open the drawer. He remembered reacting to the owner's attack by beating him back. His recall after the violence in the owner's room appeared patchy and he was unable to give a coherent and reliable account of events that led to his arrest.

[Note the absence of any reference to any feeling of aggression.]

and he gave his opinion that:

> I agree with Dr Tommy Tan that he suffers from Dependence Syndrome of multiple drugs (F 19:21, ICD 10). I also agreed with Dr Tan that at the time of the alleged offence, his behaviour suggested that he was suffering from acute intoxication with hypnotics (Nitrazepam) (F 13.0, ICD 10). It is also my opinion that he was not of unsound mind at the time of the offence. He is mentally fit to plead and is capable of making his defence.
>
> However, I am of the opinion that *he was suffering from diminished responsibility at the time of the offence because of the acute intoxication caused by the hypnotic, Nitrazepam*. Although benzodiazepine as a class of drugs generally causes sedation when consumed, *one of the known serious adverse effects* is the development of Paradoxical stimulant effects particularly when consumed in excess to the point of intoxication. *The characteristics of Paradoxical stimulant effects included irritability, hyperactive or aggressive behaviour. It is common to observe rage and violent behaviour*, including assault and homicide because of the paradoxical stimulant effect. Such reactions are similar to those sometimes provoked by alcohol. The psychiatric literature mentioned cases of "baby-battering, wife-beating and grandma bashing" that have been attributed to the consumption of benzodiazepines.
>
> [emphasis added]

57 The psychiatric literature referred to was Prof Heather Ashton's *Benzodiazepines: How They Work And How To Withdraw*, which states:

> **Paradoxical stimulant effects.** Benzodiazepines occasionally cause paradoxical excitement with increased anxiety, insomnia, nightmares, hallucinations at the onset of sleep, irritability, hyperactive or aggressive behaviour, and exacerbation of seizures in epileptics. Attacks of rage and violent behaviour, including assault (and even homicide), have been reported, particularly after intravenous administration but also after oral administration. Less dramatic increases in irritability and argumentativeness are much more common and are frequently remarked upon by patients or by their families. Such reactions are similar to those sometimes provoked by alcohol. They are most frequent in anxious and aggressive individuals, children, and the elderly. They may be due to release or inhibition of behavioural tendencies normally suppressed by social restraints. Cases of "baby-battering", wife-beating and "grandma-bashing" have been attributed to benzodiazepines.

58 Dr Lim elaborated on his findings in court. He explained that a Dependence Syndrome is a psychiatric disorder where a person has the tendency to abuse a wide range of drugs to satisfy his craving[34] and he develops a low threshold to frustration and becomes more prone to disinhibited behaviour and aggression.

59 He explained that in arriving at the conclusion that the accused was suffering from diminished responsibility at the time of the alleged offence, he took into account the fact that after the accused consumed the 12 tablets of nitrazepam, his mind, motivation and behaviour were impaired and he had inadequate control of his mental faculties.[35] He added that paradoxical stimulant effects could cause a person to be disorientated, disorganised, bizarre and unpredictable.[36]

60 Defence counsel got him to comment on specific episodes of the accused starting just before the assault. He said:

> At that time when he was in the process of taking the keys from the drawer, [trying] to open the drawer and then the deceased came upon him, if *he was not intoxicated*, I would think that he has full control of his faculty. …
>
> He would have full control of his faculty. I believe he was intoxicated at that time and I believe the common wisdom is, never provoke an intoxicated person. Their response is unpredictable and it's unlikely it could be measured. So, in that sense, I believe his mental faculty was impaired.[37]
>
> [emphasis added]

61 Dr Lim did not explain his conclusion. It appeared to me that instead of suggesting impairment of thought, the accused's action indicated that he was in full control of his faculties. By his own evidence, he wanted to open the locked drawers because he thought there might be valuables in them and he tried to unlock the padlocks with the keys which were on the top of the chest of drawers. This showed that he can rationalise that valuables were more likely to be kept in the locked drawers rather than the unlocked drawers, and that he realised that the keys might fit the locks. The conclusion should be that he was in control of his faculties even if he was intoxicated.

62 The accused's actions when the deceased came upon him also did not suggest impaired mental faculties. He understood Rachel's warning, avoided the deceased's strike, and struck back at him. His levels of awareness and reaction were quick and sharp. There was nothing in his actions that was unpredictable or unmeasured.

63 After the confrontation, he resumed his efforts to open the drawers, using the deceased's spanner. All this showed a high degree of control and composure during that eventful period. In addition to that, the accused only mentioned that he felt a little aggression, but not of irritability or hyperactivity which Dr Lim described as characteristics of paradoxical stimulant effects.

64 Diminished responsibility is an exception to the offence of murder under Exception 7 to s 300 of the Penal Code (Cap 224, 1985 Rev Ed). It operates when a person commits culpable homicide when his mental responsibility is substantially impaired. When Dr Lim was asked whether there was impairment or substantial impairment in the accused's case, he said "it fluctuates, so it is very difficult in a way to make a judgment for me on this case".[38]

65 He then said that there was substantial impairment because:

> When I made that assessment that he was substantially impaired, I am referring to his state of mind at that time of the offence. And I would, basing on my understanding of the clinical picture of somebody who suffers from paradoxical stimulant effect, all his behaviour and motivation would invariably be influenced by that impaired state, whether it is perceived as sensible, logical from the layman's side, this is something that is not my position to take[39].

As I understand him, he was saying that paradoxical stimulant effects could cause substantial impairment of a person's behaviour and motivation, without addressing the question whether the accused's mental responsibility was substantially impaired.

66 When the Prosecutor pressed further into the issue by examining each episode of the accused's actions from the time he and Rachel went with the intention to steal or rob to the time they fled, Dr Lim narrowed down the period of substantial impairment to have started at the time that the accused was aggressive and attacked the deceased and to have ended immediately after the attack.[40]

67 Dr Tan was recalled after Dr Lim to give his evidence on the matters raised by the latter. He disagreed with Dr Lim's opinion that the accused's mental responsibility was substantially impaired for the brief moment identified by Dr Lim. He found that improbable because the intoxicant which affected the accused's mental state was carried in his blood, and it was unlikely that there was a sudden peak in the intoxicant followed by a sudden drop[41] to bring about a short and sharp moment of substantial impairment.

Evaluation of the evidence

68 The accused was a poor and unsatisfactory witness. His selective memory and his inconsistent evidence lead me to agree with Dr Tan that he was prone to malingering.

69 I found the statement recorded by SI Mazlan to be a voluntary statement by the accused setting out the events on his own as he remembered them, and that no parts of the statement were added by SI Mazlan on his own initiative.

70 The accused admitted that he and Rachel went to rob or steal from the deceased and they took with them a wooden pole which he used on the deceased. They were not robbing or stealing from a stranger, but from someone who knew who they were even if they ran away. They could not have brought the pole with them to brandish it at the deceased if he saw them. They must have intended to use it on him if he confronted them.

71 The evidence is that the fatal injuries were caused by the accused, or Rachel, or the both of them. As the charge was that the offence was committed in furtherance of their common intention, it was not necessary for the Prosecution to establish whether the accused, Rachel or the both of them inflicted the fatal injuries.

72 The defence of diminished responsibility was raised against the background of the accused's evidence that he could not remember what he did after he punched the deceased and Dr Lim's opinion that he was suffering from diminished responsibility at the time of the offence. Dr Lim's opinion was grounded on the assumption that the accused inflicted the injuries. If Rachel had inflicted them in furtherance of their common intention, the defence of diminished responsibility would not be available to the accused. Nevertheless the defence of diminished responsibility must be considered because the accused might have inflicted the injuries, and if he did, the defence could apply.

73 Dr Lim found that the accused was suffering from diminished responsibility because he had acute intoxication with hypnotics which may bring about paradoxical stimulant effects, including irritability, hyperactivity or aggressive behaviour.

74 It was significant that when the accused's actions were examined a stage at a time, there were no signs of irritability, hyperactivity or aggressive behaviour for virtually the whole time. On the contrary, he was able to decide to rob or steal, to choose the drawers to steal from and to use the keys he found to try to unlock them. Even when that was interrupted by the deceased, he returned to the task of trying to open the drawers after he had disarmed the deceased.

75 The only show of aggression or hostility was his striking back at the deceased, and perhaps the subsequent blows inflicted on the deceased when he said he had "blacked out".

76 It is not exceptional for a thief or robber to fight back when he is confronted by a victim who knows him. I did not regard that as evidence of aggression borne out of paradoxical stimulant effects. His turning his attention back to the drawers was also inconsistent with paradoxical stimulant effects

or substantial impairment of the mental faculties.

77 In the circumstances, I found that he had not established on a balance of probabilities that he was suffering from diminished responsibility, and that the Prosecution had proved its case against him beyond a reasonable doubt.

78 I therefore found the accused guilty and imposed the mandatory death sentence on him.

---

[1]See P22

[2]Notes of Evidence pages 151, 155

[3]Notes of Evidence page 162

[4]Notes of Evidence page 178

[5]Notes of Evidence page 162

[6]Notes of Evidence page 196

[7]Notes of Evidence page 180

[8]Notes of Evidence pages 181-182

[9]Notes of Evidence page 192

[10]Notes of Evidence page 184

[11]P149

[12]Notes of Evidence pages 5 and 543

[13]Notes of Evidence page 478

[14]Notes of Evidence page 528

[15]Notes of Evidence page 489

[16]Notes of Evidence page 490

[17]P158

[18]Notes of Evidence page 761

[19]Notes of Evidence pages 744-745

[20]The term "room" is used loosely, as the area occupied by the deceased was not really a room

[21]Notes of Evidence pages 745-747

[22]Notes of Evidence page 748

[23]Notes of Evidence pages 799 & 802

[24]Notes of Evidence pages 749-750

[25]Notes of Evidence page 800

[26]Notes of Evidence page 753

[27]Notes of Evidence page 755

[28]Notes of Evidence page 783

[29]Notes of Evidence page 784

[30]P156

[31]Notes of Evidence page 643

[32]Notes of Evidence page 704

[33]D1

[34]Notes of Evidence page 816

[35]Notes of Evidence page 827

[36]Notes of Evidence pages 831-832

[37]Notes of Evidence pages 839-840

[38]Notes of Evidence page 871

[39]Notes of Evidence page 873

[40]Notes of Evidence page 888

[41]Notes of Evidence page 902

Copyright © Government of Singapore.