Public Prosecutor v Lim Poh Lye and Another
[2005] SGCA 31

Case Number : Cr App 2/2005

Decision Date : 15 July 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Tay Yong Kwang J

Counsel Name(s) : Lawrence Ang (Principal Senior State Counsel), Francis Ng and Jason Chan (Deputy Public Prosecutors) for the Prosecution; Ismail Hamid and Alan Moh (Ismail Hamid and Co) for the first respondent; Loo Ngan Chor and Julian Tay Wei Loong (Lee and Lee) (assigned) for the second respondent

Parties : Public Prosecutor — Lim Poh Lye; Koh Zhan Quan Tony

Criminal Law – Offences – Murder – Interpretation of s 300(c) Penal Code – Accused intending to inflict injury found on victim – Accused not aware injury sufficient in course of nature to cause victim's death – Whether injury inflicted accidentally – Section 300(c) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Law – Complicity – Common intention – Knives brought by accused to frighten victim but eventually used to injure victim – Whether use of knives in furtherance of common intention to rob – s 34 Penal Code (Cap 224, 1985 Rev Ed)

15 July 2005

Chao Hick Tin JA (delivering the judgment of the court):

1 This is an appeal by the Public Prosecutor against an order of acquittal made by Choo Han Teck J at the conclusion of a trial, at which a charge of murder under s 302, read with s 34, of the Penal Code ("the PC") (Cap 224, 1985 Rev Ed), was preferred against the two respondents, Lim Poh Lye ("Lim") and Tony Koh Zhan Quan ("Koh"). Instead, the judge convicted the respondents on a lesser charge of robbery with hurt punishable under s 394 of the PC, with Lim being sentenced to 20 years' imprisonment and 24 strokes of the cane and Koh, 15 years' imprisonment and 20 strokes of the cane.

2 The original charge of murder preferred against the respondents read:

> That you, (1) Lim Poh Lye (2) Tony Koh Zhan Quan, on or about the 2nd day of April 2004, between 11.00 am and 1.47 pm, in Singapore, together with one Ng Kim Soon and in furtherance of the common intention of you all, committed murder by causing the death of one Bock Tuan Thong, male/56 years old, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

The facts

3 The facts giving rise to the charge brought against the respondents are largely undisputed. Sometime from mid to end March 2004, the respondents and one other person, Ng Kim Soon ("Ng"), planned to rob a second-hand car dealer, Bock Thuan Thong ("Bock"), who eventually died at their hands, giving rise to the murder charge. Ng left the country soon after the crime had been committed and is presently still at large. Koh also left Singapore for Malaysia with Ng but he later surrendered to the Malaysian police and was repatriated to Singapore. Lim remained in Singapore all the while and surrendered himself to the police a few days after the crime.

4 The plan hatched by the trio was that they would, on 2 April 2004, abduct the deceased and force him to sign cheques of up to $600,000. A knife would be used to frighten Bock if he should prove to be difficult. Koh would also bring some chemical to be applied to the deceased's eyes to prevent him from recognising them afterwards. After the cheques had been obtained from Bock, the latter would be drugged with Diazepam (valium).

5 On the appointed day, the trio met up at a coffee shop. They purchased a bottle of Coca Cola and dropped a tablet of valium into the bottle. Koh handed to Lim a small knife. In addition, Koh had also brought along two big knives in a sling bag which he was carrying. Ng, who was acquainted with Bock, had, pursuant to the plan, made an arrangement to meet Bock at the Automobile Megamart at Ubi ("the Auto Mart").

6 The trio proceeded to the Auto Mart in Koh's car. When the deceased arrived and saw Ng, he alighted from his car. But he was quickly bundled by Lim and Koh into the backseat of his car, a Mercedez Benz bearing registration number SBU 6920. They then drove off in the Mercedez Benz, with Ng as the driver. The car belonged to Bock's brother, as Bock's own car was under repair. Lim was seated behind the driver's seat and Koh behind the front passenger seat. Bock was sandwiched between the two.

7 In the car, notwithstanding Bock's denial, Koh managed to find Bock's cheque book in the bag which Bock was carrying. Ng then stopped the car and changed places with Koh, who then took over as the driver. Ng wrote out several cheques and made Bock sign them, one of which was for the sum of $10,000. However, instead of just writing "$10,000", Bock wrote "one ten thousand dollars" in Chinese characters. Bock was asked to correct that. Koh drove to a spot near to the MacPherson branch of the United Overseas Bank ("UOB"), where Ng alighted. Koh drove the car off and turned into Siang Kuang Avenue and waited there.

8 At the UOB branch, Ng sought to encash the $10,000 cheque. However, the bank officer wanted to verify with Bock, the account holder. As Ng was then holding Bock's handphone, Ng managed to contact Koh to ask him to come round to pick up Bock's handphone. When the bank officer eventually called, Koh did not answer it, his explanation being, as he said at the trial, that he was angry with Ng for not adhering to the original plan of writing a cheque for $100,000.

9 Back at the car, which was stationary at Siang Kuang Avenue, Bock tried to escape. The first attempt was made by him when Koh was waiting for the bank officer to call. Bock was caught and brought back into the car and beaten. Koh then drove the car into Jalan Wangi, a one way crescent road. At a certain location, when Koh stopped the car, Bock made his second attempt to escape. Bock tried to draw attention by shouting for help and waving his hands. This was witnessed by several persons who also saw Lim and Koh assaulting Bock. Two persons (Yuen Siew Kwan and his daughter, Audrey) were in a car behind the car Koh was driving. They saw Bock struggling to get out of the car and Lim kicking and punching him in an effort to prevent his escape. They also saw Koh getting out of the driver's seat and going into the rear nearside of the car to punch and push Bock back into the car. They also witnessed Koh slamming the car door repeatedly against Bock's leg. However, they did not see any knife being used. As Bock was getting increasingly difficult to handle, Ng was asked to come back from the bank.

10 Before long, Ng came back to the car without having had the $10,000 cheque encashed. He took over the driving of the car and Koh returned to the back seat of the car.

11 The trio drove from Jalan Wangi into MacPherson Road, Upper Aljunied Road and Upper Serangoon Road and, throughout the journey, Bock put up a violent struggle. At a traffic light

junction below the Woodsville Flyover, one Daniel Sin, a member of the public, who was driving next to the trio's vehicle saw the man sitting behind the driver repeatedly punching the man sitting in the middle of the backseat, with the man sitting behind the front passenger seat holding down the victim. At a certain point, Sin saw the man on the right of Bock placing his hand on the driver's seat headrest and when he removed his hand, bloodstains were seen on the headrest. When the traffic lights at the junction changed, Sin followed the trio's car along Boon Keng Road up to the point where the trio turned into Block 6A, a multi-storey car park. Sin then went on his own way.

12 At level B4 of the car park, Bock was brought out of the car by the trio and placed in the boot of the car. At that stage, it would appear that Bock did not put up any struggle. Moreover, along the way to deck B4, Koh had put the chemical into Bock's eyelids with the intention of blinding him so that he would not be able to identify Lim and Koh. There was no evidence whether the chemical did cause any permanent injury to Bock's eyes, as the police did not investigate that aspect, being essentially concerned, which they must, with the apprehension of the culprits to the killing.

13 The trio left Bock in the trunk of the car, and Koh returned to his own car, a Hyundai which was parked at the other end of the car park. Ng requested that Koh drive him back to the MacPherson branch of UOB as he had left his identity card there. His presence at the UOB branch on this second occasion was recorded by the bank's video camera. After dropping Ng, Koh and Lim proceeded, as instructed by Ng, to Mount Vernon where they burnt various articles taken from Bock. We should mention that a bundle of $11,000 in cash which was in Bock's back trouser pocket was not discovered by the trio. Soon, Ng joined them, having come by taxi. Subsequently, Ng and Koh fled in Koh's car to Malaysia to avoid arrest. However, Lim stayed behind and surrendered to the police on 5 April 2004. On the trip to Malaysia, Koh was accompanied by a lady friend, Yeo Seok Leng ("Yeo"), who thought that they were just visiting relatives in Kuala Lumpur. The next day, Koh and Ng went their separate ways. On some pretext, Koh also left Yeo to go to Ipoh. Later, Yeo learnt that Koh was wanted by the Singapore police. She returned to Singapore on 1 May 2004. Before long, Koh surrendered to the Malaysian police on 20 May 2004 and was brought back to Singapore on 22 May 2004.

Cause of death

14 The forensic pathologist, Dr Clarence Tan, who performed an autopsy on Bock, found a whole host of bruises or injuries on Bock's head and body, including seven stab wounds to the legs of Bock, five on the right leg and two on the left. Dr Tan was of the opinion that stab wound No 2, which penetrated a major blood vessel, the right femoral vein, had caused uncontrolled and continuous bleeding which caused death. The depth of that stab wound was about eight to ten centimetres. Dr Tan also opined that stab wound No 1 "would have contributed to the effects of haemorrhage". The head injury, in his view, would also have compromised the cerebral integrity and "contributed to the mechanism of death".

Murder under s 300(c) generally

15 Section 300 of the PC provides that culpable homicide would amount to murder in the following instances:

(a) if the act by which the death is caused is done with the intention of causing death;

(b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

16 At the trial below, and now on appeal, the Prosecution submitted that both the respondents are guilty of murder under s 300(c) read with s 34 of the PC.

17 The time-honoured pronouncement on s 300(c) is to be found in the decision of the Indian Supreme Court in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") where it was held (at [12]) that four elements must be proved to establish murder under s 300(c):

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

18 In further explaining the third element, Bose J said (at [16]):

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

19 An interesting point relating to the third element is whether the reference to "or that some other kind of injury was intended" is a mere elaboration of the earlier exclusion of an "accidental or unintentional" injury. We are inclined to think that, in most instances, such as where the accused intended to cause a different (lesser) injury than what he actually inflicted, that reference is merely an elaboration of what was "accidental or unintentional", as a little later in the judgment in *Virsa Singh* (at [13]), Bose J went on to say:

No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of

that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

There is no reference in this passage to the phrase "or that some other kind of injury was intended". However, for the purposes of the present case, nothing turns on the meaning or scope of the phrase as it was not alleged that the stab wounds at the thighs or legs of Bock, were injuries that were unintended or were caused accidentally.

20 The law as enunciated in Virsa Singh has been adopted and applied by the courts here (both in the High Court and the Court of Appeal) in numerous cases *eg*, *PP v Visuvanathan* [1975–1977] SLR 564 ("*Visuvanathan*"), *Tan Cheow Bock v PP* [1991] SLR 293 ("*Tan Cheow Bock*"), *Tan Joo Cheng v PP* [1992] 1 SLR 620 ("*Tan Joo Cheng*") and *Tan Chee Wee v PP* [2004] 1 SLR 479 ("*Tan Chee Wee*").

21 Very often, as is also the case here, the difficulties or contentions relate to the third element, namely, whether there was an intention on the part of the accused to inflict the particular bodily injury. At this juncture, we ought to point out that there is a passage in *Tan Joo Cheng* (at 625, [18]) which, in our view, needs clarification. It reads:

> The prosecution does not under cl(c)of s 300 have to establish that the accused intended to cause an injury at a vital spot or injury of a type that would be sufficient in the ordinary course of nature to cause death. It is sufficient for the prosecution to establish that the accused intended to cause the injury actually found on the deceased, and as a separate item it must be established that that injury found on the accused was an injury that was sufficient in the ordinary course of nature to cause death. *Even if an accused intended to inflict only a relatively minor injury, if the injury that he in fact inflicted pursuant to that intention was an injury sufficient in the ordinary course of nature to cause death, the provisions of cl(c) of s 300 would be attracted.* [emphasis added]

22 As stated in *Virsa Singh*, for an injury to fall within s 300(c), it must be one which, in the normal course of nature, would cause death and must not be an injury that was accidental or unintended, or that some other kind of injury was intended. Whether a particular injury was accidental or unintended is a question of fact which has to be determined by the court in the light of the evidence adduced and taking into account all the surrounding circumstances of the case. If the court should at the end of the day find that the accused only intended to cause a particular "minor injury", to use the term of the court in *Tan Joo Cheng*, which injury would not, in the normal course of nature, cause death, but, in fact caused a different injury sufficient in the ordinary course of nature to cause death, cl (c) would not be attracted.

23 It would be different, if the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury. Thus, if the offender intended to inflict what, in his view, was an inconsequential injury, where, in fact, that injury is proved to be fatal, the offender would be caught by s 300(c) for murder. The statement in *Tan Joo Cheng* quoted above at [21] does not appear to differentiate between this situation and that described in [22] above.

24 In this connection, we ought also to clarify another statement made by this court in *Tan Cheow Bock* at 301, [30], namely, "It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict". However, it is important to note the context in which that sentence appears and here we quote:

> Under cl (c), once that intention to cause bodily injury was actually found to be proved, the rest

of the enquiry ceased to be subjective and became purely objective, and the only question was: whether the injury was sufficient in the ordinary course of nature to cause death. 'It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental'.

25 We recognise that that sentence, viewed in isolation, could give rise to a misunderstanding as if to suggest that what injury the accused intended to inflict is wholly irrelevant. That would not be correct. Clearly, what injury the accused intended to inflict would be relevant in determining whether the actual injury caused was intended to be caused, or whether it was caused accidentally or was unintended. However, viewed in that context, it seems to us that what the court was seeking to convey was that it was immaterial whether the accused appreciated the true nature of the harm his act would cause so long as the physical injury caused was intended.

Tan Chee Hwee v PP

26 At the outset, the trial judge stated (*PP v Lim Poh Lye* [2005] 2 SLR 130 at [12]):

> From Dr Tan we know that the injury known as "Stab Wound No 2" was sufficient in the ordinary course of nature to cause death. The person who intentionally caused Stab Wound No 2 must, therefore, be guilty of murder.

27 However, the trial judge felt that that would be too simplistic an approach. In this regard he relied very much on the case of *Tan Chee Hwee v PP* [1993] 2 SLR 657 ("*Tan Chee Hwee*") which seemed to him to have added a new element to the interpretation of s 300(c). We ought to point out that this case, *Tan Chee Hwee*, is different from the case cited at [20] above with a similar name, *Tan Chee Wee*. The trial judge said *Tan Chee Hwee* drew a distinction between an intention to do an act involving a specific injury and an intention to cause the specific injury actually inflicted. He seemed therefore to have suggested that the court is required to determine and have regard to the subjective intention as to the purpose of the act. It is therefore necessary for us to examine the facts and issues in *Tan Chee Hwee*. There, the two accused, Tan and Soon, who were in debt, together with two other friends of theirs (including one Chris Tang) hatched a plan to steal from the parents of Chris Tang ("CT"). Surprisingly, the idea for this came from CT. CT knew that at a certain period in the day, no one would be in his home, including the maid who would be bringing his younger brother to the kindergarten. Pursuant to the plan, CT gave the key to his home to the other three persons and told them that the best time to gain entry into the house would be after 12.00 noon, when the maid would leave the house to take his younger brother to the kindergarten.

28 On the morning of 20 September 1989, CT went to school as usual. The two accused and their friend, Mok, gained entry into the house after seeing the maid leave the house with CT's younger brother. While the two accused were ransacking the place, the maid returned to the house sooner than they had expected. In the process of subduing and tying up the maid and stopping her from screaming, the maid was strangled to death. The forensic pathologist opined that the cause of death of the maid was by asphyxia due to strangulation by the cord of an electric iron and that the injury was sufficient in the ordinary course of nature to cause death. The trial judge found the two accused guilty of murder under s 300(c) because they intended to strangle the maid in order to silence her forever.

29 However, the Court of Appeal in that case overturned this finding because, in its view, there was no intention on the part of the two accused to strangle the maid, and the resulting fatal neck injury "in all probability, was not intentionally but accidentally or unintentionally caused". In order to properly appreciate the reasoning why the court in that case held that there had been no intention to

strangle the maid, and consequently, that the resulting fatal neck injury had been accidentally or unintentionally caused, it is necessary that we quote at some length from the judgment to show the full circumstances that led the court to that conclusion (at 666–669, [38]–[47]):

> 38 … The plan as originally conceived was to burgle the house when the maid was out taking Chris Tang's younger brother to school around noon. In fact Tan, Soon and Mok entered the house by letting themselves in only after the maid had left the house with Chris Tang's younger brother. … Tan's first reaction on being told that the maid had returned was 'to tie her up' … Even after he had armed himself with a knife Tan's intention was not to cause hurt to the maid but to frighten her into submission … It was only when she would not submit to his threats 'to keep quiet' and ran towards her room screaming that the first thought of causing hurt to the maid may have entered Tan's head. It is clear from the statements of Tan and Soon that they were both in a state of panic. They did not know how to handle the situation. Even at this stage it cannot be safely said that Tan had formed any intention to cause hurt to the maid because he was still trying to tie her up but the string broke. Tan then tried to wrestle with the maid and both fell to the ground. All this time Tan's intention was to stop the maid from screaming and to subdue her. Soon's part in all this was to place his hand over the maid's mouth. It is clear to us that Soon's role was secondary to Tan's and it was to help Tan to muffle the maid's screaming. The absence of evidence of manual strangulation, in our view, is testimony of the fact that up to the time Tan and the maid fell to the floor neither Tan nor Soon had formed any intention to cause hurt to the maid.
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> 39 In our view that intention, if it was formed at all, was formed by Tan alone when … 'looking around the room by turning my head looking for another piece of rope', he saw 'an electric iron with a cable on the floor and it was within my reach and I took it'. Tan then describes what he intended to do with the cord of the electric iron. It was to slide it under her body from the face towards the waist and tie her up. According to Tan, he and the maid were sprawled on the floor and she was 'still struggling violently'; he and Soon were unable to bring the cable to her waist level.
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> 40 The statements are mixed statements containing incriminating as well as exculpating parts. The learned judicial commissioner made only a passing reference to this fact in saying that he 'considered the exculpating parts of the statements of both accused persons' and concluded that the evidence:
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> > was so overwhelming to warrant the conclusions that they (Tan and Soon) intended to strangle and did strangle the deceased (the maid) when she was conscious …
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> …
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> 42 On [9 March 1990] in a s 122(6) statement, Tan said:
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> > I don't have any intention of murdering the victim on 20 September 1989. I accidentally killed her with the help of Joseph.
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> 43 The last and final statement made by Tan was the long statement on 20 March 1990. In it he said:
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> > … I tried to tie her with the piece of rope I found but somehow the rope broke into two pieces. …. We then got into a very violent struggle and I did not expect the maid was so strong. During the struggle, we fell onto the floor. Joseph Soon was still holding her mouth

with both hands. Her body was facing downwards and I was pressing her against the floor from her back. At the same time, I was looking around the room by turning my head looking for another piece of rope. I then saw an electric iron with a cable on the floor and it was within my reach and I took it. As one end of the cable was attached to the iron and the other to the plug, I handed the other end which was attached to the plug to Joseph Soon. I told Joseph to slip in the cable from the face of the maid and slip it down to her waist so that we can tie her up. She was still struggling violently and we were unable to bring the cable to her waist level. I cannot remember exactly what happened and all I know is that I was trying very hard to press her against the floor. During the act, she stopped struggling and I thought that she was unconscious.

…

46 In our view, far from being overwhelming, it would be totally unsafe to disregard the s 122(6) statement of Tan as well as the explanations given in his long statement and conclude that when Tan with the help of Soon placed the cord of the electric iron around the body of the violently struggling maid it was not to tie her up around the waist but to strangle her with it around the neck. Taken as a whole and giving such weight to the exculpatory portions of the statements as one must, short of disregarding them altogether, *the evidence is in our view equally consistent with an intention to tie the maid up without any intention of causing her bodily injury. If Tan's intention was 'to silence her forever'* as the learned judicial commissioner found, when Tan lay hold of the electric iron cable with the iron attached to one end and a plug to the other *surely he would have hit her with the iron to silence her rather than to tie up a violently struggling maid or even to strangle her with it.* This strongly suggests to us that even at that critical moment Tan could not have formed an intention to strangle the maid with the cord of the electric iron as a means of 'silencing her forever'. *In the circumstances we are driven to the conclusion that the injury which was in fact caused to the maid around her neck, in all probability, was not intentionally but accidentally or unintentionally caused.*

47 The charge against Soon is even weaker. We have observed that Soon played a secondary role. Without doubt the principal actor was Tan. …

[emphasis added]

30 As for what was the true determination of the court in *Tan Chee Hwee*, that question was considered by this court in the later case of *Yacob s/o Rusmatullah v PP* [1994] SGCA 51 where the court stated at [19]:

[In *Tan Chee Hwee*] the accused were not out to commit robbery. In fact, they took every effort to ensure that they entered the house when the maid was not at home. Her early return was unexpected and led to a situation of panic. In any event, what the Court of Criminal Appeal found was that the injuries at the neck were unintentional. That being so the conviction for murder clearly could not stand and so the appeal was allowed.

31 In another later case, *Mohd Iskandar bin Mohd Ali v PP* [1995] SGCA 86, this court stated that in *Tan Chee Hwee* there was a reasonable doubt that the two accused there had only intended to tie up the maid and had no intention to cause her any bodily injury at all, much less the injuries that resulted.

32 We would affirm what was decided in *Tan Chee Hwee* as set out above. We do not think the court had in *Tan Chee Hwee* added any new element to the interpretation of s 300(c) nor drawn any

of the fine distinctions which the trial judge seemed to think it had.

33 The trial judge also said that there was a distinction between the injury caused and the means by which it was caused and that the intention under cl (c) relates only to the former and not the latter. He then went on to observe that the court in *Tan Chee Hwee* "did not say that the strangulation was accidental. It was the nature of the injury, leading to death, that was accidentally caused." With respect, we are unable to agree with that. It would be noted that the court in *Tan Chee Hwee* took pains in the above quoted passages (see [29] above) to examine the evidence and explain why it came to that conclusion and we would set out again the critical passage:

> [T]he evidence is in our view equally consistent with an intention to tie the maid up without any intention of causing her bodily injury. If Tan's intention was 'to silence her forever' … he would have hit her with the iron to silence her rather than to tie up a violently struggling maid or even to strangle her with it. … In the circumstances, we are driven to the conclusion that the injury which was in fact caused to the maid around her neck, in all probability, was not intentionally but accidentally or unintentionally caused.

34 We do not think the court there was in any way trying to distinguish between the injury caused and the means by which the injury was caused. The court was saying, in all probability, that the two accused there had no intention to strangle the maid. Strangulation was never in the mind of Tan, who had taken hold of the electric iron cable only with a view to using it to tie up the maid. The resulting fatal neck injury was, therefore, not intentionally but accidentally or unintentionally caused.

35 The trial judge quite rightly observed that the court in *Tan Chee Hwee* cited *Virsa Singh* without disapproval. It seems to us that, as a matter of logic, if the court there had intended to qualify *Virsa Singh* in any respect, it would have examined why the test enunciated in *Virsa Singh* was inadequate and stated the need for further refinement. The court did not do that.

36 The trial judge also remarked (at [14] of his judgment) that "if *Virsa Singh* were strictly applied, the court [in *Tan Chee Hwee*] would have to ascertain whether the accused intended to cause injury by strangulation with the cable. If they did, the next question would be whether death resulted from that injury, that is, the strangulation". In *Tan Chee Hwee*, the second question was not in dispute. The strangulation caused asphyxia, which was the cause of death. It was in relation to the first question that the court, after examining the evidence, came to the conclusion that the fatal neck injury was not intentionally but accidentally or unintentionally caused, a ground which would take the case out of s 300(c). What was decided in *Tan Chee Hwee*e was that Tan and Soon did not intend to strangle the victim. It was equally plausible that the two accused only sought to tie the maid up. From the way the court described it, strangulation was furthest from the minds of Tan and Soon. We would agree with the trial judge's remark at [15] that *Tan Chee Hwee* "ameliorate[d] an accidental specific injury (asphyxia) if the intended act (strangulation) was inflicted without an intention to cause mortal injury", only if he meant to say that death brought about by asphyxia would not come within s 300(c) if the strangulation, and therefore the resulting neck injury, was never intended. We would not agree if he meant to suggest that even if the strangulation was intended, and death was caused as a result, the case would fall outside s 300(c) because the offender did not intend the strangulation to cause death. At best, the offender cannot be held liable under s 300(a) which requires such an intention. However, such intention, or the lack thereof, is totally irrelevant as far as s 300(c) is concerned.

37 It seems to us that the trial judge read too much into *Tan Chee Hwee* when he said at [16] that "I find it difficult to regard death by asphyxia in *Tan Chee Hwee*'s case as accidental without forming a similar conclusion in the present case in respect of death from loss of blood". Asphyxia is

the medical term describing death by suffocation. The cause of the asphyxia in *Tan Chee Hwee* was the act of strangulation. Of course, not every strangulation gives rise to death. It really depends on how long or how severe the strangulation is. What the court found in *Tan Chee Hwee* was that there was no intention to strangle, and that the resulting fatal injury was not intentionally but accidentally or unintentionally caused. Here, the trial judge did specifically find that Lim (and indeed Ng too) intended to stab Bock and, in particular, cause stab wounds to his legs/thigh. We accept that Lim (and Ng) did not know that there was a main artery running through the leg and that the bleeding, if unattended to, would, in the normal course of nature, cause death; however, under the *Virsa Singh* principle, it is never a requirement that the accused must realise the full gravity of his act. What is essential is that the particular injury which eventually caused death in the normal course of nature was inflicted by the accused intentionally and not accidentally. To the extent that the trial judge seemed to think that the loss of blood was the "injury", he had fallen into error; the loss of blood was a consequence of the stab wounds which finally caused death. The trial judge's entire thesis would appear to be that as there was no intention to sever Bock's femoral vein, a case under s 300(c) was not made out. However, it is quite plain that, under *Virsa Singh*, for a case under s 300(c) to be made out, it is the particular and not the precise injury that must be intended. It must also not be forgotten that here, as between Lim and Ng, they had inflicted a total of seven stab wounds, not just one. It was a very determined effort to immobilize Bock.

38 In finding that the severing of Bock's femoral vein was accidental, the trial judge relied on the Indian case of *Harjinder Singh v Delhi Administration* AIR 1968 SC 867 ("*Harjinder Singh*") where the accused had stabbed the victim in the thigh and severed an artery. It seems to us that in *Harjinder Singh*, the Supreme Court, which acquitted the accused of murder, was not concerned with the question of whether the accused intended to sever the artery but whether he intended to cause the particular injuries that were actually found on the victim. The court said (at [9]):

> In our opinion, the circumstances justify the inference that the accused did not intend to cause an injury on this particular portion of the thigh. … In these circumstances, it cannot be said that it has been proved that it was the intention of the [accused] to inflict this particular injury on this particular place.

39 In contrast, here Lim (and Ng too) intended to stab Bock's thigh to prevent him from struggling and escaping and, in the case of Ng, to teach Bock a lesson. That was not the case in *Harjinder Singh*. Furthermore, there was evidence of a fight in *Harjinder Singh* and this was alluded to in the following portion of the judgment (at [9]):

> It may be observed that the [accused] had not used the knife while he was engaged in the fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife.

40 It is true that the fatal stab wound was caused to a part of the body which is not commonly known to be a vulnerable region of the body. However, that is not a consideration that affects the operation of s 300 (c). As the forensic pathologist had emphasised, the thigh is a less vital region of the body only from the strictly lay perspective. The crucial question to ask is whether the wounds that were caused were in fact wounds which Lim and Ng intended to cause. Whether they knew the seriousness of the wounds is neither here nor there: see [18] above. As this court stated in *Tan Chee Wee* (at [42]):

> Section 300 (c) thus envisions that the accused subjectively intends to cause a bodily injury that is objectively likely to cause death in the ordinary course of nature. There is no necessity for the accused to have considered whether or not the injury to be inflicted would have such a result. It

is in fact irrelevant whether or not the accused did intend to cause death, so long as death ensues from the bodily injury or injuries intentionally caused.

41 One of the cases the respondents relied upon is *Mohamed Yasin bin Hussin v PP* [1975–1977] SLR 34 ("*Mohamed Yasin*") where the accused committed burglary in the victim's hut and upon seeing the victim, a 58-year old woman, threw her on the floor and raped her. After raping her, he discovered she was dead. The cause of death was established to be cardiac arrest, brought about by the accused forcibly sitting on the victim's chest during the struggle. On appeal to the Privy Council the accused's conviction for murder was set aside. The Privy Council held (at 37, [9]) that the prosecution had failed to prove that when the accused sat forcibly on the victim's chest during the struggle he "intended to inflict upon her the kind of bodily injury which, as a matter of scientific fact, was sufficiently grave to cause the death of a normal human being of the victim's apparent age and build". This case in fact came within the exception alluded to in *Virsa Singh*, *ie*, that the internal injury which caused cardiac arrest was accidental and unintended.

42 However, there appears to be an earlier passage in the Privy Council's judgment which could be construed to suggest that the accused must know the nature of the injury he caused. After referring to the accused's act of sitting forcibly on the victim being an intentional act, the Board also said (at 36, [8]):

> [T]he prosecution must also prove that the accused intended, by doing it, to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death.

43 This passage of the Privy Council came up for consideration in *Visuvanathan* where a two-judge High Court held (at 567–568, [13]–[14]):

> 13 The language used by Lord Diplock in the passage already cited from his judgment is perhaps unfortunate … Lord Diplock's speech must be read in full. Clearly, it has to be shown that the accused intended to cause bodily injury – that is subjective, but we do not think that Lord Diplock meant that the second limb of cl (c), the sufficiency to cause death, was also subjective. This is clear from other parts of his judgment. At p 37, Lord Diplock states:
>
> > To establish that an offence had been committed under s 300(c) or under s 299, it would not have been necessary for the trial judges in the instant case to enter an inquiry whether the appellant intended to cause the precise injuries which in fact resulted or had sufficient knowledge of anatomy to know that the internal injury which might result from his act would take the form of fracture of the ribs, followed by cardiac arrest. As was said by the Supreme Court of India when dealing with the identical provisions of the Indian Penal Code in *Virsa Singh v State of Punjab*, at p 467:
> >
> > > 'that is not the kind of enquiry. It is broad based and simple and based on commonsense.'
> > >
> > > It was, however, essential for the prosecution to prove, at very least, that the appellant did intend by sitting on the victim's chest to inflict up on her some internal, as distinct from mere superficial, injuries or temporary pain …
>
> 14 The dictum of Lord Diplock relied upon by counsel for the defence was factually appropriate in *Mohamed Yasin*'s case but it is not, in our opinion, of universal application. When considered in isolation it gives a different meaning to the third limb of s 300 but it is clear from a reading of the whole judgment in *Mohamed Yasin's* case that the Privy Council has not differed

from the views of the Supreme Court of India in *Virsa Singh's* case.

44 We agree with the above analysis given by the High Court on the passage of the Privy Council in *Mohamed Yasin*. It is also clear to us that the Privy Council in *Mohamed Yasin* did not intend to depart from the interpretation given to s 300(c) in *Virsa Singh*.

45 With *Tan Chee Hwee* out of the way, s 300(c) should simply be construed in the manner enunciated in *Virsa Singh*. The trial judge would have so applied *Virsa Singh* but for what he thought was an exception created in *Tan Chee Hwee* where "the intended action (strangulation in [*Tan Chee Hwee*], stabbing in this case) was inflicted for a specific non-fatal purpose".

46 The above effectively disposes of the s 300(c) issue. In passing, we would note that the theory of a so-called "qualified subjective approach" to interpreting s 300(c) has been advanced: see Victor V Ramraj, "Murder Without an Intention to Kill" [2000] Sing JLS 560. On this approach, liability under s 300(c) will be attracted only if the accused intended to inflict a serious bodily injury. There are two main features to this approach. First, the accused must be aware of the seriousness of the injury. Second, while the accused may not have specifically intended to kill, the accused must have some subjective awareness that the injury was of a sort that might kill.

47 This theory was not raised in the course of the appeal and we would not say more other than to point out that it runs counter to what was expressly stated in *Virsa Singh* which we have quoted in [18] above, and we need only repeat the following:

> Whether [the accused] knew of its seriousness or intended serious consequences is neither here nor there. The question, so far as the intention is concerned, is not whether [the accused] intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question.

Who caused the fatal wound?

48 Lim admitted that he stabbed Bock in the thigh. However, he claimed that it was Ng who had turned around from the driver's seat of the car and inflicted the fatal stab wound No 2. Lim's assertion on this was contradicted by Koh who, in his statement recorded on 28 May 2004, as well as in his evidence in court, denied that at some point during his driving, after returning from the UOB branch, Ng turned back and used a big knife to stab Bock's legs. Stab wound No 2 was a wound that was horizontally across the thigh rather than longtitudinal from the top towards the foot and according to the pathologist such a wound would be difficult for a person sitting on the driver's seat and turning back to inflict. However, Lim explained that it could be because at the time, Bock was seated at an angle and moving his legs violently.

49 Moreover, even if we accept Lim's version that it was Ng who had turned around from the driver's seat and stabbed Bock, causing stab wound No 2, on Lim's evidence, Ng did that deliberately. According to Lim, Ng was very angry with Bock for struggling and kicking and when Ng turned around facing Bock, he told Bock to the effect that "you want to play with me, now I play with you" and took the knife and stabbed Bock in the thigh. Lim said that Ng stabbed Bock at that place because it was not a spot likely to cause death. In Lim's words, the stabbing was "to stop him from struggling, not to take his life".

50 The trial judge, while finding that Lim had inflicted some of the stab wounds in the thigh of Bock, could not say for sure who, as between Lim and Ng, had inflicted the fatal stab wound No 2. He explained at [18] of his judgment:

> Forensic evidence might provide some indications as to the direction of the strike, but it is not sufficient in this case for me to make a finding on it on the basis of proof beyond reasonable doubt. No one was able to say or show how, if at all, the struggle by Bock had an impact on the way the stab wounds were caused.

51 As we shall see in a moment, it does not really matter, as far as the charge preferred against the two respondents is concerned, whether the fatal wound was caused by Lim or Ng.

Common intention

52 We now turn to consider the question of common intention under s 34 of the PC. The trial judge accepted Koh's evidence that the knives were "brought along only to threaten or frighten Bock". He found that Lim formed the intention to stab Bock "on the spur of the moment" although Koh did physically assault Bock on the head and face. There was no evidence at all that Koh had used any knife on Bock. Not even Lim alleged that against Koh. In the result, the judge held that (at [18] of his judgment):

> [T]he gang did not have the common intention to use the knives for injuring Bock, but merely to frighten him. It appears to me that the decision to stab Bock was formed by Lim on his own and not in concert with the others. I had said that it might be possible that Ng had also stabbed Bock, but *if* he had done so, it did not appear, on the evidence before me, to have been committed pursuant to any common intention of the trio. The common intention of the gang was to abduct and rob Bock.

53 Before us the Prosecution submitted that the trial judge did not correctly apply s 34. The question to be considered is not whether the trio had agreed beforehand to stab Bock but whether the stabbing of Bock, by either Lim or Ng, was carried out in *furtherance* of a common intention of the trio to rob Bock with knives.

54 On the authority of *Wong Mimi v PP* [1972–1974] SLR 73 ("*Wong Mimi*") and *PP v Neoh Bean Chye* [1972–1974] SLR 213 ("*Neoh Bean Chye*"), it is clear that the prosecution does not have to prove that there exists, between the participants who are charged with an offence read with s 34, a common intention to commit the crime actually committed. *Neoh Bean Chye* also disapproved of the other line of authority such as *R v Vincent Banka* [1936] MLJ 53 which held that the common intention should refer to the crime actually committed and that it was not sufficient that there should be merely a common intention to "behave criminally".

55 What was decided in *Wong Mimi* and *Neoh Bean Chye* was wholly in line with earlier authorities. For example, in *Mahbub Shah v Emperor* AIR 1945 PC 118, the Privy Council in referring to an identical provision in the Indian Penal Code said (at 120):

> Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say 'the common intentions of all' nor does it say 'an intention common to all'. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of s 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all. If this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.

56 Thus, what s 34 means is that where the actual crime committed is not what the participants

had planned, then for the other participants to be vicariously liable for the act of the actual doer the actual offence must be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer would not be in furtherance of the common intention.

57 A case which is very apposite to illustrate the application of s 34 is *Too Yin Sheong v PP* [1999] 1 SLR 682 ("*Too Yin Sheong*") where the appellant was a member of a group of three persons whose object was to rob the deceased. In the course of the robbery, the deceased was strangled to death by one of them who was never apprehended. At the conclusion of the trial, the appellant was convicted of murder. At the appeal it was contended that there was no evidence to show that the act of strangling the deceased was in furtherance of the trio's intention to rob as the agreement was only to rob and not to harm the deceased. This court rejected the argument. There this court declared (at [28]):

> [I]t is not incumbent upon the prosecution to show that the common intention of the accused was to commit the crime for which they are charged. It is the intention of the doer of the criminal offence charged that is in issue, and when s 34 applies, the others will be vicariously or constructively liable for the same offence. In other words, the participants need only have the mens rea for the offence commonly intended. It was not necessary for them to also possess the mens rea for the offence for which they are actually charged.

58 In *Shaiful Edham bin Adam v PP* [1999] 2 SLR 57 ("*Shaiful Edham*"), this court further explained (at [57]) that "the participants must have some knowledge that an act may be committed which is consistent with or would be in furtherance of, the common intention".

59 Accordingly, the decisive question to ask in each case is what nature of criminal acts could be considered to have been committed in furtherance of the common intention. *Ratanlal & Dhirajlal's Law of Crimes* vol 1 (Bharat Law House, 25th Ed, 2004 Reprint) ("*Ratanlal*") identifies three categories of such criminal acts, namely:

> (a) acts directly intended by all the confederates;
>
> (b) acts which the circumstances leave no doubt that they are to be taken as included in the common intention, although they are not directly intended by all the confederates; and
>
> (c) acts which are committed by any of the confederates in order to avoid or remove any obstruction or resistance put up in the way of the proper execution of the common intention.

This threefold categorisation was referred to and adopted by this court in *Too Yin Sheong* and *Shaiful Edham*.

60 In the present case, the plot of the trio was to abduct and rob Bock. At their meeting on 31 March 2003, the trio had discussed using a knife during the robbery to threaten Bock. In fact, Koh brought two big knives and a small one on the day of the crime. Koh said that the knives were brought to frighten Bock just in case Bock was uncooperative or difficult. The trial judge found that there was no common intention on the part of the trio to kill Bock or to use the knives to injure Bock. The prosecution never suggested that the trio intended to kill Bock with the knives. While it may well be that the knives were brought to frighten Bock, it must have been within the contemplation of the trio to use them if Bock should turn out to be difficult which was, in fact, the case. In any event, we do not see how it could be seriously argued that using the knife to inflict physical injury, either by Lim or Ng, would not be in furtherance of the common intention to rob. In Lim's statement of 12 May 2004, he stated:

> Earlier we had already punched him at MacPherson to make him quieten down. However, that did not stop him from shouting again when we were at Potong Pasir. That was why a knife was used instead.

61 The situation here clearly falls within the third category identified in *Ratanlal*, if not the second (see [59] above). If nothing was done to prevent Bock from escaping or attracting attention, the group's robbery plan would inevitably have been foiled. The trial judge had failed to ask if the use of the knives by Lim and Ng to stab Bock in the thigh or leg was in furtherance of the common intention to rob. He seemed to be concerned more with the fact that it was not the common intention of the trio to use the knives to injure Bock.

62 The fact that the trial judge could not positively decide who, as between Lim and Ng, had in fact inflicted the fatal stab wound is not at all critical: see *Shaiful Edham* at [69], where this court also cited the following passage of SK Das J of the Indian Supreme Court in *Bharwad Mepa Dana v State of Bombay* (1960) Cri LJ 424 at 430:

> What then is the difficulty in applying s 34, Indian Penal Code? Learned counsel says: 'We do not know who gave the fatal blows.' We accept the position that we do not know which particular person or persons gave the fatal blows; but once it is found that a criminal act was done in furtherance of the common intention of all, each of such persons is liable for the criminal act as if it were done by him alone. The section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some action with the common intention of committing a crime; once such participation is established, s 34 is at once attracted. In the circumstances, we fail to see what difficulty there is in applying s 34, Indian Penal Code in the present case.

63 In the result, following from our finding that the trial judge was clearly wrong in his appreciation of the decision in *Tan Chee Hwee*, and for the reasons set out above, we set aside the conviction of the respondents of the lesser charge of robbery. Instead, we convict the respondents on the original charge of murder under s 302, read with s 34, of the PC which carries with it the mandatory death penalty.

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