

Public Prosecutor v Lim Thian Lai
[2005] SGHC 122

Case Number : CC 7/2005

Decision Date : 13 July 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : Imran Abdul Hamid and Adam Nakhoda (Deputy Public Prosecutors) for the prosecution; Lim Tse Haw (Harry Elias Partnership) and Andy Yeo (Allen and Gledhill) for the accused

Parties : Public Prosecutor — Lim Thian Lai

Criminal Law – Statutory offences – Arms Offences Act – Using or attempting to use an arm – Whether accused guilty of shooting and killing deceased – Section 4(1) Arms Offences Act (Cap 14, 1998 Rev Ed)

Criminal Procedure and Sentencing – Statements – Admissibility – No caution administered to accused prior to recording of statement – Whether statement admissible – Sections 121, 122(5) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Statements – Voluntariness – Whether accused making statements under threat, inducement or promise – Section 122(5) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Evidence – Proof of evidence – Confessions – Accused retracting confessions – Whether confessions true and reliable – Whether corroboration required

13 July 2005

V K Rajah J:

1 On 12 March 1997 at about 9.00pm, a loud bang was heard in the vicinity of Ban Seng Eating House ("Ban Seng") at Block 4, Beach Road. At about 9.11pm, the police were notified that a man had been found lying in a pool of blood at the car park located at Block 4, Beach Road. A police team was immediately dispatched to the scene. No signs of life were detected in the body when it was examined by an ambulance officer at 9.25pm. The police later established the identity of the dead man as Tan Tiong Huat ("the deceased"), a rather notorious illegal moneylender who practised his trade in the Golden Mile area primarily amongst Thai nationals and those having business dealings with them.

2 An autopsy performed on the following day by Associate Professor Gilbert Lau ("AP Lau") revealed that the cause of death was a disruptive intracranial injury with consequential severe haemorrhaging. AP Lau was of the view that the injury was caused by a low calibre gunshot fired from a slightly elevated position. This opinion was predicated on the slightly descending trajectory of the bullet, which passed right through the deceased's skull. Neither the bullet nor the revolver employed in the incident has been recovered.

3 Soon after the incident, the police received information that the accused was involved in the incident. All efforts to track down the accused proved to be unsuccessful. Investigations revealed that the accused had left Singapore for Thailand on 31 March 1997. The police nevertheless proceeded to finalise their investigations.

4 One witness had particularly relevant information. At the request of the prosecution, I have

directed that the name of this witness be concealed. I shall refer to him only as "PW21". PW21 had met the accused at the car park next to the Immigration & Checkpoints Authority Building ("ICA Building") on either 9 or 10 March 1997. During this meeting, the accused disclosed to PW21 his intention to kill the deceased within the next seven to ten days. The accused expressed his anger and deep distress over the deceased's conduct towards him; he felt the deceased had treated him as "a nobody". The accused had earlier borrowed a few thousand dollars from the deceased. Their relationship had soured badly as a consequence of the deceased's allegedly unreasonable and persistent harassment in seeking repayment of this loan. PW21 also stated that the accused showed him what appeared to be the butt of a gun tucked at the right side of the accused's waist. According to PW21, the accused had called him about a week after the incident claiming that the police already knew that he was the one who killed the deceased.

5 Shortly after the accused met PW21, he had a separate conversation on the very afternoon of the fateful 12 March 1997 with a certain Tham Boon Hua ("Tham") at Ban Seng. Tham was a casual acquaintance of the accused and conversed with the accused from time to time when they ate meals at Ban Seng. Again the accused bitterly complained about his displeasure over the deceased's conduct towards him after the accused had obtained loans from him. The accused asserted he could "not tolerate ... anymore" the harassment of the deceased. He stated in a matter-of-fact manner that he intended to "rob" the deceased. As the accused did not appear to Tham to be his "usual self", Tham advised him not to do anything foolish. The accused also lifted his shirt when he said he had "something" to rob the deceased with. Tham, however, did not observe what was under the shirt.

6 The accused is the last known person to have met the deceased. He acknowledges that he arranged to meet the deceased on 12 March 1997 at a coffee shop in Block 4, Beach Road. He had arrived at the coffee shop between about 8.00pm and 8.30pm that night. The accused states that he arranged for the meeting to effect repayment of the loans he had taken from the deceased in order to open a garment shop at City Plaza.

7 The accused waited for the deceased for a while near the entrance to the car park at Block 4, Beach Road, The deceased arrived at the car park at about 9.00pm.

8 The accused admits that he had in his possession a 0.38 calibre revolver, smuggled in from Thailand, until about two to three days before the incident. He claims however that the revolver was lost shortly before the incident. He asserts that while he was with the deceased, a mystery gunman suddenly emerged. He maintains that this mystery gunman shot the deceased and promptly fled the scene. While he denies having killed the deceased, he claims to have left Singapore nevertheless to avoid trouble; he had received news that the police were looking for him in connection with the killing.

9 The accused maintains that all inculpatory statements he had earlier made to the police acknowledging his solitary role in the killing of the deceased were involuntarily given. He claims that though he was present when the deceased was shot, he was not responsible for killing the deceased, who was his "best friend" and "financial supporter".

The police statements

10 Upon leaving Singapore in 1997, the accused proceeded to Thailand. Soon after arriving in Thailand, he ran afoul of Thai law and was incarcerated until 30 September 2004, when the Thai authorities handed him over to a police team from the Singapore Criminal Investigations Department ("CID").

11 The accused was accompanied from Bangkok by a team of four CID officers headed by Senior Station Inspector Zainal Abidin ("SSI Zainal"). They arrived at Changi International Airport at 5.00pm and thereafter proceeded to the Police Cantonment Complex ("PCC"). They arrived at the PCC at 5.50pm. SSI Zainal thereafter directed Station Inspector Roy Lim ("SI Roy") and Station Inspector Han Khoe Juan ("SI Han"), who were both part of the investigating team, to interview the accused. The fourth member of the team, Senior Station Inspector Shen Yen Ek ("SSI Shen") was not present during the interview. In the course of the interview, the accused informed SI Roy and SI Han that he was prepared to make a statement. At about 7.25pm, SI Han left the interview room and SI Roy alone recorded the accused's statement. It is undisputed that no caution pursuant to the provisions of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") was administered to the accused prior to the recording of this statement.

12 SI Roy reduced the accused's statement into writing, after which he read the statement back to the accused. The statement was both recorded and read back to the accused in English. That the accused has an adequate command of English was amply illustrated by his verbal exchanges with others, as well as comments he delivered from time to time in court in English during his testimony. All the accused's subsequent statements were however made in Hokkien through interpreters. Nothing critical turns on his linguistic abilities, as the defence has not complained of any impediments or confusion created by linguistic difficulties. For good measure, however, I find as a fact that he has the ability to effectively communicate his thoughts, and understood all communications he had with the CID officers, in English.

13 SI Roy and SI Han have asserted that no threat, inducement or promise was made to the accused by them or anyone else before the initial statement was recorded. According to SI Roy, the recording of the statement concluded at about 8.25pm. The accused signed the statement, affirming that it was "true and correct". He has however sought to retract it. As this particular statement takes centre stage in the prosecution's case and is now refuted by the accused, it would be helpful to reproduce the statement in full ("the original statement"):

I am the one who do it. I am the one who shot him with a 0.38 revolver.

Before 1997, as I always go to Golden Mile Complex at Beach Road and I go to know him. We became friends. I later also found out that he was "Ah Long" (term used for illegal money lenders). At that time, I was having money problem and I borrowed S\$8000/- to open a shop to sell clothing at City Plaza, #03-07. I had to pay him back S\$9600/- including interest. As we were friends, I only paid him in instalments when I have the money.

I think I remember about 1 or 2 weeks after I borrowed the money from him, I returned him about a thousand dollars. I do not remember was it the 2nd or 3rd instalment that I could not return him money because I got no money. Due to this, he called my shop everyday to ask for money. There was once, my wife happen to answer the phone and he shouting and scolded my wife because I did not give him money.

I saw my wife crying and asked her what happened. My wife told me about 'Ah Seng's' call and after hearing that 'Ah Seng' scolded my wife in bad word, I got angry. A few days later, I contacted 'Ah Seng' and asked him to wait me at Blk 4 Beach Road. I will give him money. I cannot remember what day was that. I think I told him to meet me at 8.30pm.

I cannot remember when I bought the revolver, but I bought it from Thailand for 15000 baht. I put the revolver in raw sticky rice bag and brought it through the checkpoint in Singapore by bus. I also don't know what I bought the gun.

So after hearing that he used 'four languages' on my wife, I decided to use the gun on him. I reached Blk 4 Beach Road earlier than 8.30pm and I placed the gun on the grass near a tree to hide it. This was just opposite the [K]allang [R]iver. The gun was wrapped in newspaper.

Ah Seng only came at about 9pm. *The moment he arrived, we quarrelled and he scolded my parents.* I then gave him S\$2300/- but he still not satisfied and scolded my parents. *I get angry because he scolded my parents.* I then tell him to wait for me there and I will go get more money in 5 minutes time.

I walked to where I hide the gun and took it. It was very near Ah Seng. I just took the gun in my right hand and walked towards Ah Seng. His back was facing me. I did not care so much whether people see or not because I am angry already. When I was right behind him, I pointed the gun at the back of his head and fired one shot. Immediately, he fell forward on the cement pavement and I saw that he was not moving. It was very dark there. I then tucked the gun in between my pants and stomach and walked to my bicycle which was parked at the same place. I cycled just to the main road and from there, I abandoned my bicycle and took a taxi to [W]aterloo [S]treet. I did not even look back to see whether any people heard or saw anything.

At [W]aterloo [S]treet, I took the Malaysian taxi and went straight to Johore [B]ahru. As the checkpoint does not check passengers in the taxi, I went through woodlands checkpoint without any problem with the gun on me. At Johore Bahru, near Wong Ah Fook [S]treet, I threw the gun in a small river near a small carpark. The water in the river was full.

At about 1am or so, I came back to Singapore and returned home to my wife at Geylang. I then went to the toilet and flush all the bullets into the drainage pipe in the bathroom.

I still stayed in Singapore for sometime until I heard rumors (sic) that the Police was looking for me regarding Ah Seng's death. Immediately, [I] decided to leave the country and I took a bus to Thailand. I have been in Thailand since then until I was sent back to Singapore today.

I feel regret for him for what I've done to him. After my confessing and now the truth is out, I feel more comfortable. It's not stuck inside me anymore.

[emphasis added]

14 Three points ought to be emphasised in relation to the original statement. First of all, the entire interview process lasted only about two and a half hours from the time the accused arrived at the PCC. Secondly, it is undisputed that the accused was not shown any photographs, site plan, autopsy report or other materials prepared in relation to the incident prior to the recording of the original statement. Thirdly, the original statement was made in relation to an incident which took place some six years earlier. The level of detail in relation to the incident itself is striking for its unaffected prose and familiarity with pertinent facts.

15 The next day, the accused was officially charged with the murder of the deceased pursuant to s 302 of the Penal Code (Cap 224, 1985 Rev Ed) ("PC"). He declined to make any statement after the statutory caution was read out to him. Instead, he informed Assistant Superintendent Christopher Jacob ("ASP Jacob") and the police interpreter that he would "explain it in court only" and inscribed the following cryptic message in Mandarin on the written caution: "shui luo shi chu". This literally means "when the water subsides, the rock will emerge". I shall refer to this document as "the cautioned statement". The police interpreter stated in evidence that the words were intended to

convey that "there will come a day when the facts will be revealed" but could also be interpreted to mean "the truth will come to light later".

16 Subsequently, the accused made several further statements in Hokkien, translated to SSI Zainal with the aid of another police interpreter, both clarifying and expanding on matters raised in the original statement ("subsequent statements"). He accompanied police officers on site visits to the scene of the incident, as well as on a side trip to Johore Bahru to indicate the spot where he "threw" away the revolver. The last of these subsequent statements was recorded on 13 October 2004. In that statement, the accused concluded by expressing remorse. He said:

I regret killing him. It was never my intention to kill him. *I had only wanted to teach him a lesson.* That is all. [emphasis added]

17 Shortly after this, from 22 October 2004 to 12 November 2004, the accused was remanded at the Changi Prison Complex Medical Centre for a psychiatric evaluation. Dr Stephen Phang ("Dr Phang"), Deputy Chief of the Department of Forensic Psychiatry, interviewed the accused in English on three occasions while he was there. Dr Phang noted that the accused experienced no difficulty in recounting what transpired seven years ago in 1997. At this point, however, the accused denied "gunning down this man" (the accused's own words are set within quotation marks in this paragraph). Instead, he claimed that a mystery gunman had appeared while he was with the deceased. This mystery gunman alone had shot the deceased. The accused claimed that "I was so astonished, that I don't know how to scream out". He also asserted that he had lost his revolver two to three days prior to the incident. After the incident, he left for Thailand only because he heard "rumours" that the police were seeking him in connection with the case and not because he had done anything improper.

18 The defence has relied on the statements made by the accused to Dr Phang to demonstrate that he had consistently maintained his innocence after leaving the PCC. The accused claims that *all* the statements made by him to the police ("the police statements") while he was held at the PCC were involuntarily made.

The *voir dire*

19 At the hearing, the accused alleged that several CID police officers had made various threats and offered various inducements and promises, both in the course of his return flight from Bangkok to Singapore as well as during the interview held on 30 September 2004 on the 18th floor of the PCC. Defence counsel has maintained that as a result of oppressive conduct on the part of the CID officers *prior* to the original statement, all subsequent police statements were involuntarily made as well, and ought to be deemed inadmissible.

Alleged oppressive conduct

20 The accused asserts that when he was about 15 years old, he had his first unpleasant encounter with police officers. He claims that having been "falsely accused" of stealing a motorcycle, he was assaulted while in custody. As a consequence of this incident and other unpleasant brushes with the law, he professes an apprehension and mistrust of CID officers. The accused insists that he was very tired before the interview took place. Anxiety had robbed him of sleep when he remained incarcerated in Thailand pending the handover to the CID officers.

21 The accused claims that on the flight from Bangkok to Singapore SI Han had asked him, "Ang Kong Ngee, what did you do seven years ago, did you kill this person?" When the accused denied that

he had, SI Han had allegedly said, "you better tell your father (meaning SI Han) the truth" and "if you were to co-operate with us and tell us what actually went on and how it happened we will help you back during your court case". Finally, SI Han is supposed to have stated that if the accused did not "tell ... the truth ... don't complain if we don't treat you like a human being".

22 The accused claims that SI Han spoke very softly out of fear that the other passengers might hear him. The accused claims SI Roy then came up to him and unbuttoned three buttons on his shirt, looked at the accused's tattoos and said "he is the one". The accused further maintains that SI Roy's actions signalled to him that the officers had ascertained that he was responsible for the murder and that he would definitely be hanged as a result.

23 Upon arriving at the PCC, he was purportedly brought to an office on the 18th floor. The escorting officers then placed their luggage in their cabinets, after which the accused was taken to the interview room. In the room, there were five officers: SSI Zainal, SSI Shen, Station Inspector Erulandy Guruthevan ("SI Guru"), SI Han and SI Roy. The accused claims that shortly after this, SI Guru, followed by SSI Shen, left the room. SSI Zainal then spoke to the accused.

24 According to the accused, SSI Zainal said that he "better tell the truth, you killed this person". The accused denied that he had killed the deceased. SSI Zainal then told him, "if you didn't kill then who else would have done it". The accused asserts he once again denied killing the deceased, saying he did not know who did it. SSI Zainal allegedly responded by saying he had to "handover the gunman". When the accused said he was unable to do so, SSI Zainal purportedly said, "if you did not know and if you are unable to hand over the one who fired the gun, then you would have to eat this piece of shit", meaning he would have to take responsibility for killing the deceased. The accused says that he repeatedly denied to the CID officers that he had shot the deceased.

25 SSI Zainal then allegedly stated that if the accused admitted to the murder, the charge would be reduced from murder to manslaughter and the accused would then only have to serve a few years in prison. The accused asserts that neither SI Roy nor SI Han said anything at this point.

26 According to the accused, SI Roy also reiterated a number of times that they were on the 18th floor of the PCC. The accused took this to imply that SI Roy would throw the accused from the 18th floor if he did not admit to the killing. SI Roy also informed him that the CID officers would not be able to sleep if they accused someone wrongly. The accused claims that though he initially maintained his innocence, eventually he decided that it was futile to continue denying "responsibility". He therefore accepted SSI Zainal's deal and confessed. The accused also asserts that the "threat" by SI Roy to throw him down from the 18th floor played a part in persuading him to "confess" in the original statement.

27 The accused also adds that he never mentioned the existence of the mystery gunman wearing the Thai hat to the CID officers because he mistrusted them and "knew" that they would not believe him.

28 It is also contended by defence counsel that the statements recorded after 30 September 2004 (including the cautioned statement) were made by the accused under the inducement of the deal that SSI Zainal had offered. The accused adds that on 18 October 2004, SSI Zainal scolded him whilst asking him to identify the gun that he had used. SSI Zainal then allegedly directed him on how he ought to identify similar looking revolvers from a chart. The accused says that on 19 October 2004, he took SSI Zainal on a "wild goose chase" to Johore Bahru, believing that if he told SSI Zainal that he had in fact lost the gun as opposed to throwing it away in Johore Bahru, then SSI Zainal would have "beat the living daylights out of me".

29 It is pertinent to point out that a good number of the accused's allegations are founded on suppositions and assumptions that were not inspired by any threat of harm, direct or indirect, to his well-being or person. Nor has he complained of any physical abuse while he was at the PCC. Indeed, when he mentioned to ASP Jacob that he had not had a bath, arrangements for him to have a bath were promptly made.

Applicable principles in relation to "voluntariness"

30 When a statement given pursuant to the provisions of the CPC is challenged on the issue of its voluntariness, the burden is on the prosecution to prove beyond reasonable doubt that it has indeed been voluntarily obtained: see *Koh Aik Siew v PP* [1993] 2 SLR 599, *Tan Too Kia v PP* [1980] 2 MLJ 187. In *Panya Martmontree v PP* [1995] 3 SLR 341 ("Panya Martmontree") at 349, [29], Karthigesu JA succinctly summarised the position thus:

What, in our view, is required of a trial judge in a voir dire is to decide whether the evidence of the accused alleging inducements, threats, promises or assaults, taken together with the prosecution's evidence *has raised a reasonable doubt* in his mind that the accused was thus influenced into making the statement ... [emphasis added]

and at 350, [32]:

The fourth appellant, it seems to us, goes too far when he submits that the *slightest suspicion of an inducement*, threat or promise or of an assault is sufficient to rule out a statement under s 122(5) of the CPC. [emphasis added]

31 It is axiomatic that the essence of voluntariness is a question of fact; see *DPP v Ping Lin* [1976] AC 574 at 600.

32 It is also settled law that the test of voluntariness comprises elements of both objectivity and subjectivity. An actual threat, inducement or promise must be found to factually exist. Having established that, the facts must be carefully scrutinised to determine whether the threat, inducement or promise operated on the mind of the accused during the material period, inspiring either the hope of escape (whether partial or full) or fear of punishment in relation to the actual or prospective charge; see *Chai Chien Kelvin v PP* [1999] 1 SLR 25; *Sharom bin Ahmad v PP* [2000] 3 SLR 565. In the final analysis, the court will review all the circumstances of the case in determining whether there were any reasonable grounds for the accused to assume that he would receive any benefit or avoid any punishment: see *Tan Boon Tat v PP* [1992] 2 SLR 1. If a threat or inducement is indeed found to have been made, then the prosecution must prove beyond any reasonable doubt that the original threat or inducement had effectively dissipated when the statement(s) in question were made: see *Lim Sing Hiaw v PP* [1965] 1 MLJ 85. It is not incumbent on the prosecution, however, to prove that there is no lurking shadow of doubt or minute vestiges of fear in the mind of the accused before a statement is recorded: *Panya Martmontree* at 349 and see s 24 of the Evidence Act (Cap 97, 1997 Rev Ed).

Evaluation of allegations

The incidents on the plane

33 I have rejected the accused's allegations of oppressive conduct and inducement that were levelled against the CID officers. I shall deal with each of the main allegations now; first, the accused's version of what transpired on the plane is inconsistent. Indeed, defence counsel had to concede "my client is not very clear, it is in the plane" in response to my query as to when the

incident took place. Earlier in the hearing, defence counsel had unhesitatingly stated that SI Roy's act of unbuttoning the accused's shirt occurred "in flight". I find it most implausible that SI Roy could have done this, as such an act would have been easily observed by the flight crew and even perhaps passengers. It is also most unlikely that any of the CID officers would have sought to upset the accused during the flight as this might have culminated in an unnecessary commotion on the plane. In any event, the accused admitted that he did not feel threatened by this alleged act of unbuttoning. He had supposedly felt "insulted". Secondly, his complaint apropos SI Han underwent some serious modifications in the course of the hearing. He seemed to suggest that SI Han had also said that "he was the one". This was not put to SI Han. During his examination-in-chief, the accused claimed that SI Han had threatened him in a "soft voice". This was said perhaps to rationalise why the others present did not hear the threats. This rather important point was again not put to SI Roy, SI Han and SSI Shen to elicit their response as to its veracity and foundation.

The interview on 30 September 2004 at the PCC

34 Apart from these brief incidents, the defence contended that the other acts of intimidation took place primarily before or in the course of the interview at the PCC on 30 September 2004. The accused had confirmed with Dr Phang that he was not physically attacked, manhandled or threatened by the CID officers. He had said that the officers had intimidated him verbally and "they force me to admit, they, four, five mouths, I one mouth how to fight".

35 It is plain that SI Guru and SSI Shen had very little meaningful contact with the accused. Defence counsel, to his credit, did not pursue any unfounded allegations against them. It also emerged during cross-examination that SSI Zainal and SI Han did not take the lead in interviewing the accused. The principal interviewer was SI Roy. The assertion to Dr Phang that he was "forced to admit" by "four, five mouths" was entirely without foundation or substance.

36 In the course of cross-examination, SSI Zainal was asked to produce his field diary. The defence appeared to be attempting to establish an evidential beachhead to undermine SSI Zainal's claim that he did not interview the accused and/or was not present during the interview. In so doing, the defence was hoist by its own petard. SSI Zainal's field diary corroborated his version of events.

37 In the course of cross-examination, the accused acknowledged, albeit reluctantly, that the alleged threat to throw him off the 18th floor of the PCC building by SI Roy was pure speculation on his part. This allegation against SI Roy is without substance, both in law and in fact. First, it is settled law that a self-perceived threat without a reasonable basis does not amount to a threat within the rubric of s 122(5) of the CPC: *Lu Lai Heng v PP* [1994] 2 SLR 251. Secondly, I am not persuaded that there was any legitimate basis for this rather fanciful flight of imagination even if the accused's version of events was correct. Thirdly, and most importantly, I am inclined to accept the contrary testimony proffered by SI Han and SI Roy on this and the other relevant issues. They gave their evidence throughout the proceedings in a forthright and consistent manner and were unshaken in cross-examination.

Interaction with SSI Zainal

38 The accused repeatedly asserted that he mistrusted all police officers. He also confirmed that he mistrusted SSI Zainal right at the outset. In light of this, I cannot see how any purported promise made by SSI Zainal could have influenced him in any material or meaningful sense. The accused further admitted during cross-examination that when he supposedly agreed to the purported deal with SSI Zainal to confess in return for a reduction of the sentence, he "never believed" that SSI Zainal would keep his word. Finally, he also conceded during cross-examination that even before the

recording of the statement by SI Roy, he "was alert and conscious to the trickery of SSI Zainal".

39 It bears mention that on the very next day after the accused had made his original statement, ASP Jacob charged him with the capital offence of murder. Despite this, the accused continued to give a number of statements until 13 October 2004. ASP Jacob noted that the accused was composed during their time together. He did not detect any signs of fear or intimidation on the part of the accused. No complaints were made by the accused to the reviewing medical officers during his pre- and post-statement medical examinations on 1 October 2004. The accused concedes that there were no further threats or inducements made after 30 September 2004. It is also most significant that he made no mention of any "deal" to any third party – not even to Dr Phang with whom he appeared to be completely at ease. I have also taken into account the evidence of Ms Toh Bee Choon ("Ms Toh"), the police interpreter who accompanied the accused on his field trip to the site of the incident and interpreted all his subsequent statements. She testified that the accused appeared to be relaxed and made "small talk" with her on a number of occasions. I have concluded without any diffidence that there was no "deal" made with SSI Zainal that he would arrange to have the charge reduced. I have also accepted SSI Zainal's evidence as being truthful.

40 I conclude my review of the accused's allegations of improper conduct against the police officers with a final observation. The accused can hardly be described as a babe in the woods who might easily succumb to fear or intimidation. He is an experienced street operator used to the rough and tumble of life. As such, I do not think that he would have made the original statement so soon after he returned to Singapore, virtually at the commencement of the interview, unless he had voluntarily intended to do so. This by his own admission was not his first encounter with police officers and he did not strike me as a man who could or would be easily broken.

Legal objections to admissibility of accused's police statement

41 Aside from the issue of *de facto* voluntariness, the defence also raised legal objections in relation to the admissibility of the original statement. Defence counsel asserted that prior to the recording of the original statement on 30 September 2004, a "warning" pursuant to s 121(2) of the CPC was not administered to the accused. Additionally, it was alleged that while ASP Jacob administered a caution pursuant to s 122(6) of the CPC to the accused when he was charged on 1 October 2004, SSI Zainal failed to administer any warning or caution to the accused when all subsequent statements were recorded. It was also argued that SI Roy failed to record in writing in the original statement that there was "no threat, inducement or promise" made before and/or during the recording of the statement. The prosecution contended that while these contentions were factually correct, they were legally irrelevant to the issue of the admissibility of the statements.

42 I agree with the prosecution. First of all, it is now settled law that a statement of an accused will not be rendered inadmissible on the basis that s 121 of the CPC has not been literally adhered to: see *PP v Mazlan bin Maidun* [1993] 1 SLR 512 at 518, [23]. The Court of Appeal has also held in *Mohamed Bachu Miah v PP* [1993] 1 SLR 249 at 266, [50] that the only circumstance where a statement made by an accused "whether in police custody or not, may not be admitted in evidence is where it is tainted by inducement, threat or promise". Section 121 of the CPC does not address the issue of admissibility of statements made in the course of police investigations. The admissibility of statements to the police is broadly addressed by s 122 of the CPC. In my view, s 121(2) of the CPC does not impose a positive obligation on the police to inform suspects or accused persons that they may decline to answer a question that may incriminate them. Section 121 of the CPC purely imposes an obligation on the person being questioned to tell the truth subject to the proviso permitting him to maintain his silence on matters that may be personally incriminating. The Attorney-General, Mr Chan Sek Keong, has correctly observed in *The Criminal Process – The Singapore Model* (17 Sing L Rev 433

at 488) that:

The privilege can exist as a constitutional right without a separate duty to inform. The right to counsel exists as a constitutional right, but no one has suggested that this right is infringed if the police fails to inform an arrestee of such a right. Indeed, section 29 [Evidence Act] provides that a confession if relevant does not become irrelevant merely because he has not been warned that he was not bound to make such an answer.

I should perhaps add, for completeness, that the bundle of legal rights relating to the questioning of suspects enunciated in *Miranda v Arizona* 384 US 436 (1966), that defence counsel was inarticulately relying on, is not part of our legal jurisprudence; see also *Rajeevan Edakalavan v PP* [1988] 1 SLR 815 at [16]. That said, it would of course be quite improper for a police officer to inform a person being questioned that he is obliged to tell the truth without concurrently informing him of the effect and purport of the proviso. If a police officer misleads a suspect or an accused as to his legal obligations, and this has a material bearing on the making of a statement, the court has an overriding discretion in determining the admissibility of such a statement: see *Cheng Swee Tiang v PP* [1964] MLJ 291 and *PP v Dahalan bin Ladaewa* [1996] 1 SLR 783. This is not the case here. I am satisfied after evaluating the evidence that the police officers neither threatened the accused that he *had* to tell the truth nor misstated his legal obligations.

43 Secondly, I agree with the prosecution's contention that the failure to specify expressly in writing in a statement that it has been procured without any improper threat or inducement does not in itself render the statement *ipso facto* inadmissible. The presence or absence of such words is not conclusive or even *prima facie* evidence of what had actually transpired during the interview phase of the police investigations. In the ultimate analysis, regardless of any verbal or linguistic formulae adopted in the police statements, it is for the court to determine *factually* whether the statement in question was voluntarily obtained. The burden remains with the prosecution, irrespective of the presence or absence of any words testifying to the voluntariness of the statement, to prove beyond reasonable doubt that such statement was indeed voluntarily obtained without any inducement, threat or promise apropos the accused.

Analysis of evidence pertaining to the incident

44 All the police statements were therefore duly admitted in evidence. In the statements, the accused had with unwavering clarity and convincing detail acknowledged killing the deceased on the evening of 12 March 1997 at the car park of Blocks 3/4 Beach Road, Singapore. The statements also supply a wealth of information relating to the reasons precipitating the accused's decision to discharge a firearm at the deceased.

45 Most of the factual issues in these proceedings are incontrovertible. It is undisputed that:

- (a) the deceased was an illegal moneylender;
- (b) the accused had borrowed money from the deceased which the deceased was vigorously pressing him to repay;
- (c) the deceased had used profanities on at least one occasion on the Thai common-law wife of the accused, reducing her to tears. The accused was deeply upset by this;
- (d) the deceased made it next to impossible for the accused to carry on with his new business and effectively caused him to sell it off. The accused suffered a substantial financial

loss as a consequence;

- (e) the accused made unequivocal threats in relation to the deceased to two witnesses – PW21 and Tham. Indeed, the accused acknowledges that he informed PW21 that he intended to kill the deceased. This happened just two to three days before the incident;
- (f) the accused had a revolver with bullets which he had illegally smuggled into Singapore from Thailand;
- (g) the accused invited the deceased to meet him at the site of the killing; and
- (h) the accused was the last person known to have seen the deceased alive.

46 The defence contends that PW21's evidence was equivocal as he could not confirm whether the gun was real or fake. The accused also claims that after he lost his gun, he had bought a fake plastic gun and this was what PW21 had seen; he maintains that he intended PW21 to see the fake gun in order to convey the impression that it was "real" to the deceased. He claims the purport and intent of this "charade" was to intimidate both PW21 and the deceased. This is a rather remarkable concoction. First of all, the accused had no reason to believe that PW21 and the deceased were in regular communication. Secondly, the accused did not ask PW21 to convey such a message to the deceased. Indeed, he conceded in cross-examination that he would not know if PW21 ever conveyed any such message as he had intended. My impression of the accused is that he would not, in any event, have picked such a roundabout method to convey such a message. He would have either expressly informed PW21 to convey the message or informed the deceased directly. If the intention was to merely intimidate the deceased, why did he not simply show him the fake gun when they met on the evening of 12 March 1997? Indeed, his brief discussion with Tham on the afternoon of 12 March 1997 reinforces my view that he was determined to harm the deceased. While he had told Tham he wanted to "rob" the deceased, it is pertinent that Tham observed that the deceased was not his "usual self". There was no suggestion from defence counsel that the accused had also "intended" Tham to convey the purport of the discussion to the deceased. I should also add that as both Tham and PW21 are in my assessment forthright witnesses who were unshaken in cross-examination on all material issues, I have accepted their evidence. In so far as PW21's evidence differed from the accused's recollection of what happened at the ICA car park (see [4]), I have chosen to accept PW21's evidence over the accused's.

The subsequent police statements

47 I now deal with the subsequent statements – the series of police statements which the accused made after the original statement. With the exception of the cautioned statement, that is to say the brief reservation made when the accused was officially charged (see [15] above), these were all made either at the scene of the incident or after visiting it. The subsequent statements essentially expanded or clarified what was stated in the original statement. It is pertinent to point out that while there are indeed some differences between these statements and the original statement, such discrepancies are in my view neither fundamental nor critical.

48 In an attempt to accentuate and play up these differences, the defence contends that these "inconsistencies" were "silent cries for help" deliberately planted by the accused in order to demonstrate in court that the various acknowledgements of responsibility for the killing were, intrinsically, involuntary and incorrect. In response to a query from the court, defence counsel confirmed that the contents of the police statements were the result of a "measured thought process" and were "accurately recorded". Notwithstanding such a stance by his counsel, the accused

in cross-examination took the incongruous position that he did not know if the police statements accurately recorded what he had stated.

49 After considering the various allegations made by the accused, I unequivocally rejected such a belated attempt on his part to resile from his statements. On the contrary, the converse is true. The various statements demonstrably pointed to the truth, rather than the falsity, of the confession. It is neither surprising nor disquieting that the accused made a number of clarificatory statements after he visited the scene. It appears that he took some time to re-orientate himself before clarifying matters. I am satisfied that there was no attempt by the relevant officers to dictate to him what was recorded in the various statements. What is particularly significant is that the defence accepted, once the police statements were admitted, the veracity and accuracy of almost all the material contents of the various statements. Indeed, the evidence given by Ms Toh about several corrections to the statements made in consultation with the accused was unchallenged by defence counsel. These corrections were endorsed by the accused and he appended his initials to indicate his acceptance. The police statements correctly articulated the position of the accused at the relevant points of time. After I admitted these police statements, the only two issues that defence counsel disputed were the facts in the statements acknowledging his possession of the gun around the time of the incident and the account of what happened in the Beach Road car park at the material time in so far as it related to the retrieval and use of the gun.

50 I pause here to deal with a rather conspicuous discrepancy in the accused's new version of events as proffered during the hearing. The defence had at the outset resolutely maintained that the accused did not tell the police of the existence of the mystery gunman because he felt they would not believe him; furthermore, he insists he had been pressurised into accepting responsibility for the killing. Annexed to a statement he made on 6 October 2004 after the site visit is a sketch plan drawn by the accused. In this sketch plan, the accused indicated where he had hidden the gun and the path he had taken in order to retrieve the gun before he shot the deceased. He also drew two figures. The larger figure was referred to as "Ah Seng" (the deceased's nickname) and the smaller figure as "I" (himself). When he was initially cross-examined, he insisted that the smaller figure was the mystery gunman:

Q: ... So the letter "I", the alphabet "I" is in relation to the small figure of a man?

A: They are not related. On the day when I wrote the letter "I", what I meant was that I actually took the path as indicated by the dotted lines on this sketch.

Q: All right. So as far as this diagram is concerned, the big figure is the deceased, "Ah Seng"?

A: Yes.

Q: The small figure is the shooter?

A: Yes.

Q: And the "I" refers to the dotted path---the path you took?

A: Yes.

After intensive cross-examination he appears to have realised, albeit a little tardily, that his responses were both inconsistent and implausible. He then resiled from this new position, asserting that "there

are so many things in the statement, it is impossible to recall every detail". In my view, he changed his evidence yet again because it struck him subsequently that this new unrehearsed assertion in court blatantly contradicted his primary assertion that there was a mystery gunman which he had deliberately not disclosed to the police. The accused is clearly not a credible witness on the material portions of the police statements which he later attempted to retract.

The alleged loss of the gun

51 The accused also admits that he had possessed a gun which he had obtained in Thailand and brought into Singapore illegally by concealing it in a sack of glutinous rice. In the course of the trial, he related how he had allegedly lost his gun. He had purportedly left the gun and the bullets under his folded hammock in a storage box at the back of his bicycle ("storage box"). He parked the bicycle at Golden Mile Complex two to three days before the fatal shooting. He was not sure whether he had locked the storage box. He then went up to Golden Mile Complex to make some purchases to sell to his customers. When he came back, he placed the purchases into his storage box and he proceeded to distribute them at Geylang. He only realised that his gun was stolen later that night when he took out his hammock to lie on it. He claims he felt "frustrated" when he discovered the loss.

52 This is yet another incredible invention. Apparently, neither the bullets, cash nor any other item was removed! Unfazed by the loss of a real firearm, the accused then allegedly proceeded to purchase shortly thereafter a fake firearm. If the accused is to be believed, it follows that he purchased a fake firearm with the sole intention of showing it to PW21 to intimidate him and the deceased and to deter them from harassing him for the repayment of his outstanding loans. It is odd, to say the least, that he never showed this fake firearm to the deceased. Indeed, the accused was remarkably silent as to what became of this fake firearm and exactly how he intended to employ it when he met the deceased.

53 He also unguardedly conceded in cross-examination that the storage box was easy to "pry open" and as there was money in it "wherever I go, whenever I park my bicycle, I would definitely be around there to keep a lookout on my bicycle". Completely contradicting his confounding tale of the "sudden" disappearance of the revolver, he unwittingly acknowledged how he always maintained careful scrutiny over his valuables in the following exchange:

Q: But, Mr Lim, you can't always be near your bicycle to prevent people from stealing your merchandise, your goods and all that, right?

A : *No, if I were to leave my – walk off from my bicycle, I would bring along my moneys. I'll bring along my money and the gun.*

Q: And the gun. I think I remember you saying that when you stayed overnight at Dah's place, you would leave the gun in your jeans and hang it in the cupboard, is that what you did?

A: Yes.

Q: So you did take precautions?

A: Yes. When I'm in the room, I would keep the gun in my jeans and hang it inside the cupboard.

[emphasis added]

I am satisfied that the accused took adequate precautions to ensure the safety of his valuables and the revolver. I have concluded that he had not lost the revolver shortly before the incident as he claimed, but that he had possession of the revolver at the material time.

The mystery gunman

54 The defence's present version of what transpired on the evening of 12 March 1997 surfaced after the accused resiled from his original statement: see [17] above. The deceased was angry and abusive when they met. He grabbed the accused's shirt but did not assault him. He hurled vulgarities at the accused. The accused returned \$2,300 to him. The deceased was not placated and continued to mouth obscenities at not only the accused but his parents as well. The accused then asked the deceased to wait while he retrieved a further \$1,000 from the storage box. At that point, someone emerged from behind the deceased and shot him in the back of his head. This "big sized" man was wearing a dark shirt and, on his head, a Thai straw hat. The man ran off quickly after shooting the deceased. The accused explains that he did not assist the deceased as he was afraid of being implicated in the shooting. This was despite the fact that the deceased was in his books his "best friend" and "financial supporter"!

Observations on the defence

55 I have carefully scrutinised the evidence as well as the contentions of the prosecution and the defence. I have no hesitation in rejecting the accused's wholly unmeritorious attempt to retract material portions of his unequivocal police statements acknowledging responsibility for the killing of the deceased. His current account of how he lost his revolver and how the mystery gunman suddenly materialised is not just implausible – it is utterly illogical. It is wrapped around an illusive edifice wholly fabricated by desperation. One need not only to stretch one's imagination but to suspend disbelief altogether to accept the accused's tale of how he lost his revolver. I dismiss this version of events as being not only improbable but wholly concocted as an afterthought. Why would anyone remove a revolver from the accused's bicycle box and yet leave bullets and other valuables intact? Why did the accused keep the bullets after "losing" the revolver? How would the mystery gunman have fortuitously learnt of the private meeting that the accused had arranged with the deceased? These are just some of the numerous inherent and irreconcilable inconsistencies in the altered version of events proffered by the accused at the trial.

56 The defence has accepted that the police statements constituted a confession to the offence on which the accused was being tried. Counsel however submitted that the police statements should be accorded little weight because they were inconsistent on material facts. There was furthermore no "strong" corroborative evidence of the confessions. Such a submission is without merit. It would be helpful at this juncture to briefly state the legal position in relation to retracted confessions. It has been authoritatively stated in *Yap Sow Keong v PP* [1947] MLJ 90 at 91 (approved by the Singapore Court of Criminal Appeal in *Ismail bin U K Abdul Rahman v PP* [1972–1974] SLR 232 at 236, [18]) that:

... the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it".

57 The court need only be satisfied that first, the confession was voluntarily made, and secondly, that it was true and reliable: *PP v Huang Rong Tai* [2003] 2 SLR 43 at [22]. It is therefore

incorrect for the defence to contend that "strong" corroborative evidence of the retracted confession is an essential prerequisite to a conviction of the accused. In any event, quite apart from being satisfied beyond reasonable doubt that the police statements truthfully recorded the essence of what transpired during the incident, I am persuaded that PW21's and Tham's evidence as to the accused's intention to harm the deceased constitutes cogent corroborative evidence of portentous significance.

58 I accept what the accused stated in the original statement as reflecting the essential truth as to what transpired on that fateful night on 12 March 1997. I have concluded that the accused had the gun with him just before he met the deceased. He hid the gun. It is acknowledged by the defence that the deceased abused him verbally when they met. That is not all – the deceased also pulled his shirt aggressively. His festering resentment and deep anger towards the accused for having earlier insulted his common-law wife, for causing him severe business loss and for treating him like a "nobody" culminated and exploded in incandescent rage. He resolved to deal with the deceased once and for all. He stealthily sought his gun and shot the deceased in the back of his head. When he shot the deceased, he was standing behind him in a slightly elevated position.

59 While there are some wrinkles in the slightly different accounts the accused had given as to what happened on that fateful night, it is crystal clear that he was deeply upset with the deceased even before they met that evening. The verbal abuse heaped upon him by the deceased, compounded by the rough physical handling dished out to him, became the proverbial nail that literally nailed the deceased's coffin. I categorically reject the defence that the alleged discrepancies in the police statements were inarticulate "cries for help". Indeed, the different nuances and level of detail in the various statements serve to fortify the prosecution's case that the police officers were at pains to accurately record the accused's version of events, rather than to inflict upon him their hypothesis of what transpired. While the accused's confession in the original statement took centre stage in the prosecution's case, all the police statements bore the hallmarks of truth and reason. In the original statement as well as in the last of his subsequent statements, the accused expressed remorse over killing the deceased. At the hearing however, the accused claimed that these words were not his words but were inserted by SI Roy and SSI Zainal. Inexplicably, this rather important point was once again not put to the two CID officers.

60 In the circumstances, I conclude that there was no mystery gunman. I find that the bullet that killed the deceased came from the accused's revolver. I find that the accused fired the revolver. The revolver was fired at the deceased with the intent to cause physical injury to him.

61 I am satisfied beyond any reasonable doubt that the prosecution has made out against the accused the charge pursuant to s 4(1) of the Arms Offences Act (Cap 14, 1998 Rev Ed) and I accordingly convict the accused of this charge. I impose on the accused the sentence of capital punishment which is mandatorily prescribed for this offence.

Accused convicted.

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