Public Prosecutor v Lim Poh Lye and Another
[2005] SGHC 13

Case Number : CC 35/2004

Decision Date : 24 January 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Amarjit Singh and Wayne Koh (Deputy Public Prosecutors) for the prosecution; Ismail Hamid (Ismail Hamid and Co) and Alan Moh (Solomon Richard and Co) for the first accused; Loo Ngan Chor (Loo Ngan Chor and Co) and Julian Tay Wei Loong (Lee and Lee) for the second accused

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

Criminal Law – Complicity – Common intention – Accused charged with culpable homicide amounting to murder – Co-accused not causing injury causing death – Whether co-accused implicated in murder through common intention to kill

Criminal Law – Offences – Murder – Accused charged with culpable homicide amounting to murder – Whether accused intending to cause fatal injury – Whether injury caused by accident – Meaning of "bodily injury" in s 300(c) Penal Code – Section 300(c) Penal Code(Cap 224, 1985 Rev Ed)

24 January 2005 *Judgment reserved.*

Choo Han Teck J:

The crime

1 A 56-year-old car trader named Bock Thuan Thong ("Bock") was found dead in the boot of his brother's car (SBU 6920 X) on 2 April 2004 about 1.30pm. The car was parked at level 6A of the Boon Keng Road multi-storey car park. Bock was pronounced dead by a paramedic, Lee Chun Yuan, from the Singapore Civil Defence Force, at 1.47pm. Two men were charged for Bock's murder. The first accused is Lim Poh Lye ("Lim"), a 45-year-old coffee shop assistant, and the second accused is Tony Koh Zhan Quan ("Koh"), a 37-year-old Taoist priest. Another accomplice, Ng Kim Soon ("Ng"), is still at large. Lim surrendered himself to the police on 5 April 2004 and Koh, who was on the run in Malaysia, surrendered himself on 18 May 2004 to the Royal Malaysian Police and was subsequently brought back to Singapore. The forensic pathologist, Dr Clarence Tan, testified that he performed the autopsy and found various injuries on Bock. There were blunt injuries, namely bruises and lacerations, on his head and face as well as on his hands and legs. Several teeth were also fractured or had broken off in the violent assault on Bock. However, these were not fatal injuries. Dr Tan testified that he found seven stab wounds to the legs. Of these, he was of the view that "Stab Wound No 2", as he classified it, was the fatal injury because that was the injury in which Bock's femoral vein was cut. Consequently, Bock bled to death. Dr Tan was also of the opinion that an injury of this nature would result in death within 30 minutes. The two accused were charged with murder punishable under s 302 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed).

The plan

2 The background facts are largely undisputed although the two accused have slightly different perspectives on some minor points that have no bearing on either their defences or the prosecution case. The facts come mostly from the two accused because Ng is still at large, and the only other

person in the main story (Bock) is dead. There were various neutral witnesses but they saw only unconnected pieces of the action, that is, they saw parts of the morning's events at different places and times. Nonetheless, some of that evidence is important, and I shall revert to them shortly. The narration of the facts by the accused persons themselves left gaps concerning the idea and planning of the crime, but that does not seem to be material. The plan appears to have been hatched sometime in mid-March of 2004 when Koh went to Ng's home to collect a debt of $3,000 from him. Instead of paying, Ng suggested a plan to rob a second-hand car dealer (Bock), and invited Koh to join in the crime. Koh would be required to be the driver in the robbery, but Ng needed one more person to guard Bock. Koh recommended Lim, and eventually the three met on 31 March 2004 to discuss the details. The simple plan was to lure Bock on 2 April 2004 to some place where he would be abducted and forced to sign cheques up to a sum of $600,000. They would get the first cheque to be made out in the sum of $90,000 or $100,000 as a test, and then the other cheques would be for $150,000 to $200,000. The gang of three would then encash the cheques, drug Bock and leave him in his car while they flee in Koh's car. Ng and Koh planned to leave Singapore, but not Lim. In furtherance of their plan, Ng obtained some diazepam (valium), a sedative, from a medical clinic. Ng suggested that they would use "a small knife" to threaten or coerce Bock. According to Koh, he and Lim made a slight variation to the plan which they did not discuss with Ng, and that was, to pour some strong detergent liquid into Bock's eyes to blind him so that he would not be able to recognise them. It appears that they were afraid of being recognised because Bock did not know either of them. He only knew Ng. The agreement reached among the three, so far as the sharing of the loot was concerned, was that Ng would keep half of what they took, and Koh would share the other half with Lim.

Morning of 2 April 2004

3 Ng and Koh met Lim at a bus stop at Ubi about 10.00am. They stopped for refreshment at a coffee shop and after that, Koh went to purchase two bottles of Coca Cola from a 7-Eleven store. He then dropped three tablets of sedative into one of the bottles and it began to froth and overflow, discharging about half the contents of the bottle. Koh cleaned up the bottle and recapped it. According to Koh, Lim then went to buy "a rope" with the view of tying Bock with it. Lim denied this. The three of them then went to the sixth level of the Automobile Megamart at Ubi where Ng used to meet Bock. Ng had called Bock earlier in the morning and arranged to meet him there. When Bock arrived, he alighted from his car upon seeing Ng, but was quickly bundled back in. The car he drove belonged to his brother; his own car was under repair. Ng then drove the car with Koh behind the front passenger seat and Lim behind Ng. Bock sat between Koh and Lim. Whilst in the car, Ng asked Bock for his chequebook, and, in reply, Bock said he did not have it. Ng instructed Koh to check the bag that Bock had carried with him. Koh found a chequebook in the bag. Ng then stopped the car and changed places with Koh after taking over the chequebook. He wrote out several cheques and asked Bock to sign them. One of the cheques was for $10,000, contrary to the plan that the first cheque was to be $90,000 to $100,000. Writing out this reduced amount irked Koh somewhat, but it was largely unimportant to the case. It was relevant, however, that instead of writing $10,000, Bock wrote "One ten thousand dollars" in Chinese. This was spotted just before they reached the bank and Bock was made to correct the words. According to Koh, after getting into the back seat, Ng took away all of Bock's belongings including his Rolex watch, wallet and mobile telephone. However, it was subsequently discovered by the police that a sum of $11,000.00 in cash, apparently overlooked by the robbers, was still in Bock's back pocket.

At MacPherson

4 Koh drove the car to MacPherson and let Ng out near the United Overseas Bank ("UOB") before turning the car into Siang Kwang Avenue. In the bank, Ng presented the cheque but the bank

officer wanted to check with the drawer. Ng then realised that Bock's mobile telephone was with him (Ng); so he called Koh and told him to pick it up from him at the street corner. After that was done, Koh returned to Siang Kwang Avenue and parked the car, waiting for the bank officer to call. Ng had instructed Koh to answer the call and impersonate Bock. However, when the telephone rang Koh did not answer. He testified in court that he was angry that Ng did not stick to the original plan of writing a $100,000 cheque.

5 From this point on, Bock made at least two attempts to escape from the car. He first tried to get out of the car when it was parked at Siang Kwang Avenue and Koh was waiting for the bank officer to call. Bock was beaten and dragged back into the car by Lim and possibly also by Koh. The evidence on this point was not very coherent. What was clear was that after Bock's attempted escape failed, Koh drove the car along Jalan Wangi towards MacPherson Road. Jalan Wangi is a one-way crescent road. There is also a short side road running parallel to MacPherson Road, linking the ingress and egress of Jalan Wangi. Bock made another attempt to escape when Koh's car stopped just before the side road. In panic, Koh drove into the side road and stopped. Bock was making a strong and determined attempt to get out. From the time Koh stopped his car before driving into the side road and during the short time they were in the short road, several witnesses saw Bock's struggle to escape, and also the gang's assault on him.

6 Two witnesses, namely Yuen Siew Kwan and his daughter, Audrey Yuen, were in their car directly behind the car driven by Koh at Jalan Wangi. They saw Bock struggling to get out of the car, and Lim kicking and punching him in an effort to prevent his escape. They saw Koh driving into the side road where Bock continued to struggle. These two witnesses saw Koh getting out of the driver's seat and going to the rear nearside of the car to punch and push Bock back into the car. They also saw him slamming the car door repeatedly against Bock's leg. Neither of them saw the use of knives in the assault. However, another witness, Daniel Sin, had pulled up his car alongside Bock's car at Upper Serangoon Road. Bock's car was now driven by Ng who had taken over the wheel after he came back from UOB and Koh had got into the rear passenger seat. Daniel Sin saw two men assaulting Bock. He saw that there was blood on the back of the driver's headrest after the man in the right, rear passenger seat had placed his palm there. Daniel Sin also testified that the man on the right (Lim) was trying to tie Bock down with the cable of a mobile telephone earpiece while the one on the left (Koh) was holding Bock down. However, his description of the age and the black-rimmed spectacles on the man in the left (Koh) more accurately described Lim than Koh. Neither accused persons disputed the prosecution case that at the material time from Jalan Wangi to the multi-story car park at Boon Keng Road, Lim was seated behind the driver's seat and Koh behind the front passenger seat.

7 Reverting to the scene at Jalan Wangi, Koh testified that after he stopped the car in the side road he went to assist Lim in restraining Bock. He said that Lim had assaulted Bock badly in the face. He also saw Lim stab Bock with the small knife that Koh had handed to him earlier. He said that the knife broke and he saw the broken blade planted in Bock's thigh. However, Bock was still struggling and his leg was out of the car so Koh slammed the door on him. When they finally got Bock entirely back into the car, Koh saw Lim place a big knife on the floorboard (Koh had testified that when they met in the morning, Ng had given him a small knife and two big ones). At that point, Ng came out from the bank, got into the driver's seat, and drove off. All this time, Bock put up a spirited and violent struggle in his effort to escape. This drew an even more violent response from the two accused. There was one important difference between the evidence of the two accused on this point. So far as Koh was concerned, Ng never laid hands on Bock nor hurt him in any way. Lim, on the other hand, testified that after leaving Jalan Wangi, the car stopped at a bus bay opposite the Woodleigh Mass Rapid Transit station along Upper Serangoon Road, where Ng turned and stabbed Bock in the thigh. According to Lim, Ng stopped the car and said angrily to Bock, "You want to play with me, now I play with you"; after which he stabbed Bock a few times on the thigh. According to Koh's version, Lim

stabbed Bock when they were at Jalan Wangi. He said that after he saw the broken blade of the small knife embedded in Bock's thigh, he saw Lim put down a bigger knife on the floorboard. There was no evidence that a broken blade was found embedded in Bock's thigh when his body was found.

At the Boon Keng car park

8 The three men drove Bock from Jalan Wangi into MacPherson Road, then into Upper Serangoon Road through Upper Aljunied Road. It was at this point, when they were at a traffic light junction beneath the Woodsville Flyover, that prosecution witness, Daniel Sin, saw the man behind the driver's seat (the man on the right) repeatedly punching the man in the middle of the back seat of the car (driven by Ng) and the man behind the front passenger seat was holding down the man in the middle. Daniel Sin saw the man on the right place his hands on the driver's headrest and when he removed his hand, bloodstains were seen on the headrest. Daniel Sin followed the car until it turned into a multi-storey car park at Block 6A, Boon Keng Road. The car was parked at deck B4 and Bock was taken out from the rear passenger seat and put into the boot of the car. The evidence was hazy as to who were involved in moving Bock. Koh said that he did not help in that act because he was peeved and walked to his own car, a Hyundai Traject, which was parked at the other end of the car park. There was no evidence as to whether Bock was alive or dead when he was put into the boot. However, no one mentioned any struggle and it appears that Bock, if not dead, was very much weakened and did not put up any resistance at that stage. It is pertinent to note that Koh admitted that on the way to deck B4 he had put some liquid detergent into Bock's eyelids. He said that he had put the detergent in a disused eye-lotion bottle, and intended to use the chemical to blind Bock so that he would not be able to identify Lim and himself. However, he testified that he was not certain whether the detergent actually seeped into the eyes. No forensic test was carried out to establish whether this was so because the police were not looking for such injury to the eyes. Bock's wallet, mobile telephone and Rolex watch were taken from him, but it was not very clear at which stage they were taken, or which of the three took them, although Lim and Koh's evidence indicated that Ng had taken them. The three men, however, did not discover the $11,000 in cash in Bock's back trouser pocket.

Flight and surrender

9 Ng instructed Lim and Koh to drive him back to UOB because he had left his identity card behind. The bank's video camera recorded Ng's presence on this second occasion as it had done for the first. The only significance of the second recording was that no bloodstains were seen on Ng's clothing. Hence, it was suggested that Ng could not have stabbed Bock because if he did there would have been bloodstains on his clothing. I think that it was probably true that there was no blood stains on Ng's clothing, but that may not mean that he did not stab Bock.

10 After dropping Ng at the bank, Koh drove Lim to the Mount Vernon crematorium on Ng's instructions, and there, burnt various articles belonging to Bock as Ng had instructed. Shortly after that, Ng arrived by taxi and left with the two accused in Koh's car. Thereafter, the events were largely inconsequential to the case and may be briefly summarised. Lim remained in Singapore while Ng and Koh fled to Malaysia together with a woman called Yeo Seok Leng ("Yeo") with whom Koh had bought his car, the Hyundai Traject. Koh deceived Yeo into thinking that they were going to Kuala Lumpur to visit their relatives. The party of three stopped over at Genting Highlands for the night, and in the morning, Ng and Koh parted company. Shortly after that, Koh left Yeo in Kuala Lumpur telling her that he was going to see his friends in Ipoh. On 7 April 2004, Yeo became suspicious when her mother called her to say that the police in Singapore were looking for her. She returned to Singapore on 1 May 2004. In the meanwhile, Lim surrendered himself to the police in Singapore on 5 April 2004. Subsequently, Koh notified the Singapore police from Kuala Lumpur, and offered to surrender himself.

By arrangement, he surrendered to the Royal Malaysian Police on 18 May 2004 and was brought back to Singapore.

Forensic evidence

11 Dr Clarence Tan performed the autopsy on Bock and testified in court as to his findings and opinion in respect of Bock's injuries and death. He found bruises to the head and neck, some small lacerations, a chipped tooth and two teeth freshly avulsed from their sockets. Broken teeth were subsequently found in Bock's car. There were three small, superficial incisions to the upper abdominal region. Bruises were also found on Bock's hands, but all these injuries were non-fatal. The significant injuries were seven stab wounds to the legs. Five of these stab wounds were found in the right leg and two in the left leg. In his post-mortem report, Dr Tan was firmly of the opinion that it was Stab Wound No 2 that caused Bock's death "because it had penetrated through a major blood vessel, the right femoral vein and this injury would have resulted in uncontrolled and continuous bleeding." Dr Tan added, "The resulting haemorrhage would be severe enough, as it is in my opinion, to cause death." In his report, Dr Tan described Stab Wound No 2 as follows:

> **Stab Wound No 2** was situated at the antero-medial aspect of the right lower thigh region below and slightly lateral to Stab Wound No 1 measuring 3.2 cm in length when lax and 3.5 cm with the margins approximated. The long axis of the wound was slanting downwards from right to left at an angle of about 20 degrees below the horizontal axis. Both edges were pointed, the margins were regular and the upper edge was about 7 cm above the level of the upper margin of the right patella.
>
> Track: The track proceeded inwards obliquely upwards and towards the left penetrating into the muscles of the right lower thigh region medial to the right femur and traversing the right femoral vein which showed an entry wound anteriorly measuring 0.6 cm in length and an exit wound posteriorly measuring 0.3 cm in length. The track terminated in the muscle layer posterior to the right femoral vein.
>
> Depth: Depth of the track was estimated to be about 8 to 10 cm.

Dr Tan was also of the opinion that Stab Wound No 1 "would have contributed to the effects of haemorrhage". So far as the head injury was concerned, Dr Tan testified that it would have compromised the cerebral integrity and "contributed to the mechanism of death". Dr Tan is an experienced forensic pathologist, and neither his report nor his testimony in court showed the slightest exaggeration or understatement. His opinion in this case was typically clinical – precise and accurate. I have no difficulty accepting his evidence in totality, and in particular, his opinion as to the cause of death. Once he had identified the critical wound, the cause became plain and obvious. Consequently, that had helped immeasurably towards reducing the areas of factual dispute and enabled counsel to shape the crucial legal issue.

Murder under s 300(c) of the Penal Code

12 Culpable homicide is an offence with two broad categories of culpability, that is to say, the greater one amounting to murder, and a lesser one that does not amount to murder. The latter, being wider in form, largely covers the same elements as the former, and is expressed in s 299 of the Penal Code as follows:

> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by

such act to cause death, commits the offence of culpable homicide.

Section 300 provides that:

> Except in the cases hereinafter excepted culpable homicide is murder —
>
> (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.

The learned Deputy Public Prosecutor, Mr Amarjit Singh, presented his case on the basis of s 300(c). The evidence does not seem to suggest otherwise. 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. But the case is not that simple. Section 300(c) is concerned with an intention to cause "bodily injury" and Dr Tan referred to the injury in question as Stab Wound No 2, which, apart from ripping through skin and muscle layers, severed the right femoral vein. The question for this court is to determine how the phrase "bodily injury" is to be interpreted. Superficially, it seems only logical to ask whether the deceased died from the injury inflicted (intentionally) by the accused, and if so, then the accused is guilty of murder. The details of the injury would therefore not be relevant if this strict and conventional approach is taken, as it ought to be in the ordinary case. In this case, the injury would therefore be Stab Wound No 2. If this approach is taken, I need not examine the nature of the incision, the depth of the injury, the track of the blade and what tissues were cut along its path. Nor need I be troubled by the question of what the precise intention of the accused might be. The Indian court in *Virsa Singh v State of Punjab* AIR 1958 SC 465 ("*Virsa Singh*") in a famous judgment (at [16]) seemed to lean in favour of this approach:

> 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*. [emphasis added]

Surely, then, the injury that is proved to be present must be the *entire* injury. In the present case before me, it must mean, therefore, the whole of Stab Wound No 2; not just the cut skin, or the lacerated muscle layers – however many there might have been – or the femoral vein or any other blood vessel. There is nothing in the language of this provision that invites the court to draw distinctions between such details. The proper meaning of "bodily injury" must, therefore, relate to the injury resulting from the blow or strike intended by the accused. It is a forensic affair as to whether the injury or injuries present resulted from the blow or strike in question. In the present case before me, I am satisfied beyond reasonable doubt that the entire injury comprising Stab Wound No 2 was caused by a single stabbing motion. Who caused that wound, is a separate question that I shall revert to shortly. But we are not done with s 300(c).

Version No 0: 24 Jan 2005 (00:00 hrs)

1 3 *Virsa Singh* is a case much respected by prosecution and defence counsel alike, and the Court of Appeal has often approved of it in its own judgments. The *Virsa Singh* interpretation of "bodily injury" has been accepted because of its sensible reasoning. In *Tan Chee Hwee v PP* [1993] 2 SLR 657 ("*Tan Chee Hwee*") the Court of Appeal appears to draw a distinction between an intention to do an act involving a specific injury and an intention to cause the specific injury actually inflicted. Tan Chee Hwee and his co-accused, Soon Kin Liang, were students at the Ngee Ann Polytechnic. One Chris Tang, who was then also a polytechnic student, and another youth, Mok Swee Kok, were friends of the two accused. They hoped to help Tan Chee Hwee, who was in debt, by stealing money from Chris Tang's parents. They too had a simple plan. Chris Tang knew that his parents would not be home in the morning, and he also knew the daily routine in which his parents' maid would fetch his younger brother from kindergarten. He gave the other three a key to his home and told them the time during which there would be no one at home. On the morning in question, Chris Tang went to school as usual, but the other three entered his home to commit burglary. Unfortunately, the maid returned home sooner than expected and surprised the young burglars. Mok Swee Kok, who acted as the lookout, sounded the alarm, but they could not get out in time. Tan Chee Hwee and Soon Kin Liang caught hold of the maid to prevent her from calling for help. They used the cable from an electric iron to tie the maid. The cable was wound round her neck. The defence was that they intended only to keep her from struggling and screaming. They had no intention to kill her. However, the maid died from strangulation. The court accepted that there was no intention to kill, and the main issue was whether the two accused intended to cause injury by strangulation, and if so, whether that would amount to murder if the victim died from it. Chris Tang and Mok Swee Kok were separately dealt with under non-capital charges, but the two accused were charged with murder and convicted. On appeal, the convictions were quashed. The issue was narrowed even more when the case came before the Court of Appeal. The entire case then turned on whether the defence that there was no intention "to silence [the maid] forever" could be accepted. The trial judge did not accept it, but the Court of Appeal did.

14 *Tan Chee Hwee* seems to have added a new element into s 300(c) that appears to contradict *Virsa Singh* even though the latter was cited without disapproval. If *Virsa Singh* were strictly applied, the court 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. The forensic evidence answered this question affirmatively when the forensic pathologist testified that death was caused by "asphyxia due to strangulation". The Court of Appeal held, however, that since an inquiry under s 300(c) is subjective, the court had to determine and, in this case, have regard to, the subjective intention or purpose of the act – in *Tan Chee Hwee*'s case, it was the act of strangulation. The Court of Appeal found (as a fact) that the accused only intended to stop the maid from screaming and struggling, and did not intend to silence her forever. The important passage is found at 668, [46] of the judgment in *Tan Chee Hwee*:

> This strongly suggests to us that even at that critical moment Tan could not have formed the 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 the neck, in all probability, was not intentionally but accidentally or unintentionally caused*. [emphasis added]

On that basis, the conviction of murder under s 300(c) was set aside and substituted with a conviction for culpable homicide not amounting to murder. There is a distinction, of course, between the injury caused and the means whereby that injury was caused. The relevant "intention" under s 300(c) relates to the injury caused and not to the means by which it was caused. Thus, it would not matter whether a knife or a piece of sharp wood caused the fatal wound, and thus, resulted in different kinds of injury. That is to say, one might result in bruises and another, cuts or lacerations.

The relevant enquiry would be whether such an injury was sufficient in the ordinary course of nature to cause death, and if so, whether the accused intended to inflict that injury. In *Tan Chee Hwee*, Karthigesu J (as he then was) did not say that the strangulation was accidental. It was the nature of the injury, leading to death, that was accidentally caused.

15 I must now examine the facts to determine whether there is any distinction between *Tan Chee Hwee*'s defence and that of Lim in the present case. I refer only to Lim, but it is important to state that on the evidence, I find that Koh did not cause any of the stab wounds. Whether he would be culpable by reason of a common intention is a separate issue that I shall deal with shortly. There is dispute as to whether Ng had also inflicted some of the stab wounds, but that point can be dealt with later. Lim's defence was that he did not intend to kill Bock and he stabbed the latter only to stop him from struggling and escaping. I am satisfied that there was no intention by any of the three to kill Bock. Although there were several stab wounds, all of them were inflicted on the lower limbs, where such injuries are not normally expected to be fatal. But the crucial question was whether Lim intended to cause those injuries, that is, the stab wounds, and not whether he intended to kill. Following *Virsa Singh*, the answer would certainly be "yes", and consequently, the accused would be guilty of murder should his victim die from that intended injury. *Tan Chee Hwee*, however, ameliorates an accidental specific injury (asphyxia) if the intended act (strangulation) was inflicted without an intention to cause mortal injury. That does seem like a fine line to draw. One need only consider the situation in which a man stabs another with the intention of causing hurt, and not death, but his victim died because the injury caused was sufficient in the ordinary course of nature to cause death. In such a situation, that man would be guilty of murder. It would not have mattered that the assailant, like Lim in the present case before me, did not know that he had cut the femoral vein, or that he did not know what or where the femoral vein was. *Tan Chee Hwee*, therefore, applies only in very special circumstances, namely, that the intended action (strangulation in that case, stabbing in this) was inflicted for a specific non-fatal purpose. In either case, the resulting injury, although of a different nature, might have varying degrees of severity. In one there might be bruising or a discomfort of choking of a transient nature, and in the other, varying degrees of puncture with bleeding and pain. But the expanded version of *Virsa Singh* by the Court of Appeal would not, in my view (an opinion expressed solely for noting the limits of *Tan Chee Hwee* and reconciling that decision with cases decided on the basis of *Virsa Singh*), apply where an assailant stabs another in a vulnerable or sensitive region of the body, such as the chest, and claims that he did so to prevent escape.

Lim's culpability

16 Each court, therefore, has to determine whether *Tan Chee Hwee* applies to the specific facts of its case. In this case I find that the general act intended by Lim was to cause stab wounds to Bock's legs to prevent him from escaping. The evidence of witnesses amply showed that Bock had made at least two determined attempts to escape. The principle enunciated in *Tan Chee Hwee* seems applicable to the facts before me. Suffice to say that it is not necessary to draw distinctions on the broad facts between *Tan Chee Hwee* and the present, for example, that the act of strangulation and the act of stabbing caused injuries of a completely different nature. I do not think that the court in *Tan Chee Hwee* intended to create exceptions on such fine points. The use of a cable in one case and a knife in the other is, therefore, an obvious but not significant difference. Other dissimilarities might be found in this pair of cases, but no significance ought to be attached to them unless the differences are sufficiently important in that they would have an impact on the principles of law. The legal adage that every case is different on the facts should not be regarded as an invitation to create more and more exceptions to the rule or, more so, to create exceptions to exceptions. The result might be chaotic. Constancy and consistency are virtues in the administration of the law. Reverting to the facts, 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. The

two causes of death (asphyxia and haemorrhage) could, of course, be the result of murder. But, as *Tan Chee Hwee* shows, in certain factual circumstances, they might not be. The intended act of strangulation in one case, and the intended act of stabbing in the other, were found (as a finding of fact) to accompany the intention of preventing the victim from crying for help or escaping, and no more. If any difference can be ascertained, it would be an extremely fine one, and I would be loath to attach any significance to such in a capital case. I find, therefore, that the severing of Bock's femoral vein was not intentional, but, in the language of *Tan Chee Hwee*, accidental. In the Indian case of *Harjinder Singh Alias Jinda v Delhi Administration* [1968] 2 SCR 246, the accused was convicted of murder when he stabbed the deceased in the thigh, and in so doing, severed the artery. On appeal, the Supreme Court of India accepted that when the accused stabbed the deceased in that case, he (the accused) did not aim "the blow at this particular part of the thigh knowing that it would cut the artery" (at 250). The present case before me is similar in that respect, but it is the rare and special circumstances (inflicting harm to prevent escape) similar to *Tan Chee Hwee* that has the greater significance. I find therefore that Lim was not guilty of murder as charged.

Koh's culpability and common intention

17 The findings I made in regard to Lim, would, therefore, also absolve Koh. But, in any event, the case against Koh was based on common intention, and on this point, the evidence showed that although Koh was aware that knives might be used against Bock, there was no evidence to show that the gang had intended to use the knives to cause injury. It could be a natural inference depending on the facts and circumstances of the case. Here, I accept Koh's evidence that the knives were brought along only to threaten or frighten Bock. I find that Lim formed the intention to stab Bock on the spur of the moment. There was no evidence before me to suggest that Koh had anything to do with Lim's use of the knives. However, the evidence, including Koh's own testimony, showed that Koh was responsible for several blows struck with some force on Bock, especially about the head and face. Lim tried to suggest that it was Ng who caused the fatal wounds. I find that although there was insufficient evidence to indicate that Ng had stabbed Bock, it is possible that he might have done so. Koh seemed to me to be closer to Ng and might have given his own evidence a slight slant so as to exculpate Ng from the stab wounds on Bock.

18 I had also taken into account the evidence that blood was seen on the headrest of the driver's seat. The point Mr Amarjit Singh made was that this suggested that the stab wounds were inflicted much earlier, namely at Jalan Wangi, and not when the car stopped at Upper Serangoon Road. But that does not mean that the blood came from the fatal stab wound. Bock was by that time already severely assaulted and bloodied. But there is no doubt in my mind that Lim inflicted *some* of the stab wounds. Lim himself accepted that Koh did not use the knives. On the other hand, Koh testified that Ng did not use the knives. It is possible that all three, or perhaps at least two of them, had used the knives, but that is not enough; and possibility is not the test that I should apply. I am also mindful that in cases involving multiple accused persons, the granting of the benefit of doubt to one accused might result in the incrimination of another. In such cases, the court may first have to consider the overall picture, and might in so doing, have to make some findings on the basis of reasonable probabilities so that such doubts as it might entertain specifically to the accused's guilt would not be unjustifiably or unreasonably found. So far as the question whether it was Ng or Lim who caused the fatal Stab Wound No 2 was concerned, I am left with some doubt as to who that might be. 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. This point would be significant only because I am of the view that the common intention of the trio was to rob Bock, and to that end, the plan was to drug their victim, and threaten him with knives if it became necessary to do so. I am satisfied that there was no common

intention to kill, and I would give the benefit of doubt to Lim that the 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.

19 I am, therefore, of the view that the charge of murder ought to be reduced to a charge under s 394 of the Penal Code, that is, for the offence of robbery with hurt, and in regard to which both accused were, in my view, independently guilty. I thus find both accused guilty of an offence under s 394 of the Penal Code, and convict them accordingly. I shall hear counsel on sentencing when they are ready.

Copyright © Government of Singapore.