

Public Prosecutor v Took Leng How
[2005] SGHC 154

Case Number : CC 12/2005
Decision Date : 26 August 2005
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Lawrence Ang, David Khoo and Shawn Ho (Deputy Public Prosecutors) for the Prosecution; Subhas Anandan, Chung Ping Shen, Anand Nalachandran and Sunil Sudheesan (Harry Elias Partnership) for the accused
Parties : Public Prosecutor — Took Leng How

Criminal Law – Special exceptions – Diminished responsibility – Accused charged with murder of eight-year-old girl – Whether accused suffering from schizophrenia amounting to abnormality of mind causing substantial impairment of mind at time of offence – Section 300 Exception 7 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Trials – Whether court entitled to draw adverse inference from accused's election not to testify – Section 196(2) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

26 August 2005

Judgment reserved.

Lai Kew Chai J:

1 The accused, Took Leng How, was charged with the offence of murder under s 300 of the Penal Code (Cap 224, 1985 Rev Ed), by causing the death of one Huang Na ("the deceased"), an eight-year-old girl from China.

Background

2 The accused, a 22-year-old Malaysian, was working as a vegetable packer at a shop in Block 7 of the Pasir Panjang Wholesale Centre ("the Wholesale Centre"). The deceased first came to Singapore together with her mother, Huang Shuying, on 5 May 2003. They stayed in a rented flat in Clementi ("the Clementi flat"). Huang Shuying worked for one Eng Chow Meng ("Kelvin Eng"), who was the sole proprietor of M/s All Seasons Fruits and Vegetables Supplier. Kelvin Eng was also the employer of the accused.

3 Sometime in September 2003, Kelvin Eng sublet a room from Huang Shuying for the accused to stay. Subsequently in February 2004, Huang Shuying and the deceased moved out to Block 8 of the Wholesale Centre to stay with a few other Chinese nationals. Not long after that, the accused also moved out of the Clementi flat and Kelvin Eng rented another room for him to stay at Telok Blangah Heights ("the Telok Blangah flat").

4 On 27 September 2004, Huang Shuying left for China, leaving the deceased in the care of her housemate Li Xiu Qin ("Li"). On 10 October 2004 at about 1.00pm, the deceased informed Li that she wanted to make a long distance call to her mother in China. The little girl then left the house alone and failed to return. At about 10.02pm, Li reported her disappearance to the police.

Police investigations

5 The police focused their investigations on the Wholesale Centre because that was the place where the deceased lived and played. The accused was subjected to intensive questioning as the police had information that the deceased was last seen with him. On 19 October 2004, the accused told the police that he had met the deceased on 10 October 2004 after she had made a call to her mother. He then volunteered to show the police Block 13 of the Wholesale Centre, the location where he allegedly had advised the deceased to return home before parting company with her. He also said that he had gone over to a storeroom (owned by his employer Kelvin Eng) located at Block 15 after that.

6 On 20 October 2004, the accused told the police for the first time that he had actually seen the deceased being abducted. He said that the missing girl's mother had grievances with some of the traders at the Wholesale Centre and the motive of the abduction was to teach her a lesson. He further claimed that he was in a position to arrange for the girl to be released, but he needed to collect his two mobile phones because the relevant contact number was stored therein. On the same day, the accused was informed about a polygraph test. He agreed to take the test the next morning.

7 On 21 October 2004 at about 1.15am, the accused together with the police went to his Telok Blangah flat to collect his mobile phone. After that, they left for the Wholesale Centre, where the accused picked up his second mobile phone. He then showed the police the location where he saw the deceased being abducted.

8 Although given a choice to report back to the Criminal Investigation Department ("CID") in the morning for the polygraph test, the accused chose to follow the police officers because he claimed that he would not be able to wake up on time. On their way back to CID, at the request of the accused, they stopped at a restaurant. While eating, the accused excused himself to go to the toilet. He left via the back door of the restaurant and did not return.

9 The accused thereafter managed to make his way to Malaysia where he hid in Penang for the next few days. On 30 October 2004, the accused surrendered to the Malaysian police. A team of Singapore police officers then brought the accused back to Singapore.

10 The next day, the accused led the police to locate the deceased's body, which had been stuffed into a cardboard box by the accused and thrown down a slope in Telok Blangah Hill Park.

The accused's statements and video re-enactment

11 In his statements to the police, the accused said that in the afternoon of the fateful day, the deceased had insisted on going with him to the storeroom at Block 15, despite the fact that he had repeatedly asked her to go home. The accused then unlocked the storeroom and brought the deceased into an office which was inside the storeroom. The two of them decided to play a game of hide-and-seek, with all the lights turned off and with the deceased's ankles tied together. The accused claimed that they often played games where he would tie up her hands or legs and she would try to untie herself.

12 A short time after leaving the deceased to hide in the office, the accused went back into the office. The accused in his statements described what happened after that:

After a short time I went back into the office. It was still in darkness as the lights were off. I started beating on the table with my hand and calling her name at the same time. While I was beating on the table I suddenly heard a loud thud. I knew that the thud did not come from my beating on the table. It clearly came from within the office. I immediately went to switch on the

lights in the office. I saw her lying on the floor. She did not seem alright. Something was amiss. She seemed to have vomited blood because blood was trickling out from the right corner of her mouth. She seemed to be going into a spasm. Her eyes were wide open and there was urine all over the floor. I immediately went over to call her name but she did not reply and she was still having her spasm. I did not know what to do. I wanted to untie her ankles but I did not know how to undo the knots. I sat on the chair in a daze and looked at her...

... To my mind the police would not believe that such a thing happened. There was no grudge between Huang Na and myself and I loved her as a kid ...

... When I was seated there my mind went blank. Her body was shaking and on seeing her in that position, I suddenly recalled some scenes that I have seen on television. I recalled that people who were given a chop on the neck with the back of one's hand would lose consciousness momentarily and then come to again. I immediately tried it out on her by *chopping at the back of her neck with the back of my left hand*. After the first chop there was no reaction. I tried again the second time with a bit more force – again no reaction. I then tried the third time with more force than the second. This time when I looked at her I saw that she had vomited more blood ... I was at a loss. My mind was totally blank. I did not know why but *I put both my hands round her neck and pressed it*. I pressed it momentarily with my eyes closed. I let go of my hands and looked at her. She looked no different. I put my hands round her neck again and closed my eyes. I pressed her neck harder this time. After sometime, I relaxed my hands. I opened my eyes and looked at her. This time I noticed her face was greyish white although her eyes were still open.

Thereafter, I moved her position so that her head was resting on the opposite side to the original position. I sat down on the floor and watched her again. This time she was hiccupping ("urg"). This went on for very long and it scared me. I stood up and *stamped on her neck about three times with my foot*. She continued to hiccup and each time she hiccupped I would become very scared because her face would be ashen grey and her eyes would still be open. I took off the jacket that she was wearing and covered her face. I did not dare look at the face. She was wearing only a jacket and no other tops then. I think she was wearing some kind of pants. I could not take it off since her ankles were bound. I really did not know why I was *trying to strip off her pants* at the time ... *I put my right hand on her backside and inserted my third finger into an opening*. I am not sure whether it was the anus or the vagina. To my mind that must be the anus. I did not know why I inserted my finger into it ...

[emphasis added]

13 The accused then locked the storeroom and subsequently rode a motorcycle back to the Telok Blangah flat where he took a bath and watched television. At about 8.30pm, the accused returned to the Wholesale Centre to dispose of the body. He cut the string binding her ankles and removed her clothes. He wrapped her up in many layers of plastic bags, before stuffing her into a carton box which was then sealed with scotch tape. Thereafter, he disposed of the deceased's clothing at the rubbish dump in Block 16, knowing that there were cameras that could capture the rubbish at Block 15.

14 The accused then used his motorcycle to transport the box containing the deceased's body to Telok Blangah Hill Park, where he threw the box downhill into a forested area.

15 The accused said that he had deliberately packed the body in many layers of plastic bags because he wanted to prevent the police from recovering only a decomposed body. In addition, he chose a particular spot at Telok Blangah Hill Park (the top of a hill where there was a lamppost with a

triangular sign) to dispose of the body because he wanted to be able to remember where it was and to subsequently bring the police to recover it.

16 During the trial, the Prosecution showed a video containing a re-enactment by the accused (recorded by the police in November 2004) of what he had done to the deceased in the storeroom, and how he had subsequently packed her up in the box.

The Prosecution's witnesses

Traders at the Wholesale Centre

17 Most of these witnesses testified as to the whereabouts and movements of the deceased and the accused on the day of the tragedy. The accused was seen at the Wholesale Centre together with the deceased at about 1.00pm in the afternoon of 10 October 2004, even though it was a Sunday and the accused would have finished work by 9.00am. The accused's employer, Kelvin Eng, also saw the accused going in and out of the shop in Block 7 at about 5.00pm that day, through the closed-circuit cameras installed at the shop.

18 There was also evidence given as to the behaviour of the accused, both more generally as well as during the period just before and after the death of the deceased. The accused's colleague and roommate, Shum Kui Choy ("Ah Kwai"), gave evidence that the accused's behaviour was generally normal, and he had not seen the accused smiling or talking to himself. Another friend of the accused, Yap Teong Huat ("Ah Huat"), as well as Kelvin Eng, testified to the same effect. Nor had the accused ever complained to them that he was possessed by spirits. The accused had only told Ah Kwai, during the seventh lunar month, that the shop they were working in was not "clean" and that he had seen a shadow.

19 Ah Kwai and Ah Huat both testified that they had gone to a temple in Kulai, Malaysia, together with the accused at the end of September 2004 to consult a fortune teller. Although they were not sure of the content of what the accused had asked the fortune teller, the accused was the one who had requested to go to the temple and who had said that he wanted to pray to the deity for wealth. On the day before the deceased's death, Ah Huat and the accused went to consult a medium in Geylang. Again, Ah Huat was not aware of the content of the accused's consultation.

20 In relation to the accused's work performance, Kelvin Eng testified that the accused was a fast and effective worker and had not given him any problems during the three years or so that the accused had worked for him. The accused was also in a very good state of health. Ah Kwai gave evidence that the accused had criticised him before about missing some of the orders when packing vegetables. More specifically, Kelvin Eng said that the accused was working normally on the morning of 10 October 2004.

21 According to Kelvin Eng, Ah Huat and Ah Kwai, the accused started to drink much more alcohol after the disappearance of the deceased. In particular, Ah Kwai testified that the accused during this period was more easily agitated and disturbed. Another of the accused's fellow employee, Song Yee Meng, also gave evidence that the accused was angered when he jokingly suggested that the accused must be responsible for the deceased's disappearance.

22 Some of the witnesses' testimonies and statements shed light on the relationship between the accused and the deceased. The general picture appeared to be that they were rather close and got along very well. They were also seen to play games together. The deceased's mother, however, testified to the effect that they were not close, and that there was an occasion where the accused

had actually hit the deceased.

Forensic evidence

23 The pathologist, Dr Paul Chui, conducted the autopsy and certified the cause of death as acute airway occlusion. This referred to the blockage of the deceased's air passage, which Dr Chui opined could have been caused by covering the mouth and nose of the deceased. Five injuries were found on the face near the mouth area and these could be consistent with the occlusion of the face by an object such as a person's hand. Dr Chui further testified that such obstruction of the air passages of the nose and mouth was sufficient in the ordinary course of nature to cause death.

24 On cross-examination by defence counsel, Dr Chui accepted the possibilities that airway occlusion could result through suffocation such as when a person was put into plastic bags while he or she was alive, or where there was a swelling in the throat that blocked the airway, such as where a person choked on his or her own blood or vomit.

25 There was also the question of whether the deceased could have been suffering from fits or seizures at the material time. Dr Chui commented that children usually did not develop fits without any medical or family history. As regards whether the bumping or knocking of the deceased's head against a hard object like a table could have triggered an onset of fits, Dr Chui regarded this as unlikely. Moreover, the autopsy findings did not reveal any fracture of the skull or bleeding underneath it. He however accepted during cross-examination that trauma that could lead to fits need not have resulted in a fracture of the skull, and any bleeding in the brain might not have been detected by him because the brain was already liquefied due to decomposition.

26 During cross-examination, Dr Chui further accepted that the accused's description in his police statements of what had happened to the deceased in the storeroom at the material time (such as the spasms, urinating, and hiccupping) coincided with the symptoms of a person having a fit or seizure. In addition, the bruising of the tongue that was revealed during the autopsy could potentially have been caused by the deceased's biting of her own tongue during an episode of fits. Dr Chui also accepted as possible that the deceased's tongue could have slipped backwards due to a seizure to cause airway obstruction. The autopsy showed signs of vomit as well, which could again be a symptom of seizure. But Dr Chui also clarified that vomit could result from post-mortem decomposition as well.

27 Upon re-examination, Dr Chui explained that the phenomenon of seizure could also arise when a person was dying, *ie*, the seizure or fit was not the cause of the death, but merely a manifestation of a dying event. According to Dr Chui, a seizure basically meant that there was an abnormal discharge of electrical patterns in the brain, which could well take place in a dying brain.

28 In his autopsy report, Dr Chui noted injuries to the scalp, which were caused either by the head banging against some flat hard object or something heavy hitting against the head. He said that someone kicking and stomping the deceased's head could have caused these injuries as well. There were also injuries to the deceased's right arm and left thigh.

29 At trial, Dr Chui was shown the video re-enactment of what the accused had allegedly done to the deceased. He explained that there were no neck injuries corroborating the act of strangulation as demonstrated in the video. But if the accused had strangled the deceased after she had already died from suffocation, the strangulation might not have left any marks. As for the chopping action and stomping on the neck, this might potentially have led to the area of bleeding at the back of the head if the blows actually landed slightly higher than in the re-enactment.

30 With regards to the question of sexual assault, Dr Chui in his report stated that there was no physical evidence to indicate as such. In particular, there was no injury or interference to the deceased's vagina or anus based on the physical evidence on the body at the time of autopsy. However, Dr Chui explained at trial that this did not automatically mean that no sexual assault had in fact taken place. This was because the negative finding could mean a few things. First, it could mean that there was no sexual assault. Second, there might have been sexual assault but it left no evidence. In particular, no damage might have been caused to the hymen even if the accused had in fact used his finger to penetrate the deceased's vagina, due to the inherent elasticity of the hymen. The same could be said of penetration to the anus. Third, the negative finding could mean that there was sexual assault but the indicators that were initially present had been removed or destroyed due to deterioration. For instance, any discharged semen, which is biological material, might have deteriorated with time and hence became undetectable.

The Prosecution's case

31 The Prosecution's case was that the accused on 10 October 2004 had deliberately stayed behind at the Wholesale Centre to lure the deceased into the storeroom at Block 15 by coaxing her to play hide-and-seek with him. While alone with the deceased in the storeroom, the accused then stripped off her clothes, bound her limbs with raffia strings, and sexually assaulted her. To prevent her from reporting what he did to her, the accused decided to silence her. He smothered her by covering her mouth and nose with his bare hands, as well as strangling her until her body was limp. He further stamped and kicked her to make sure that she was dead. He then packed her naked body into plastic bags before stuffing the bundle into a cardboard box. Knowing that it was too risky to dispose of the box in broad daylight, the accused waited until about 8.00pm before transporting the box to Telok Blangah Hill Park and throwing it down a slope into the undergrowth.

32 In these circumstances, the Prosecution submitted that the accused had clearly committed the offence of murder within the meaning of limbs (a) and (c) of s 300 of the Penal Code.

The Defence's case

Submission of no case to answer

33 At the close of the Prosecution's case, counsel for the Defence, Mr Subhas Anandan, submitted that there was no case to answer. He said that the Prosecution had not proved the cause of death as there were alternative ways in which the deceased could have died. The Prosecution's own witness, Dr Chui, had accepted that the deceased could have died from fits or of suffocation after being wrapped up in the plastic bags. Mr Anandan contended that, accordingly, the Prosecution had not established an essential ingredient of the charge of murder under s 300(a) or (c) of the Penal Code. He further argued that it was not sufficient for the Prosecution to simply say that it was *possible* for the deceased to have died from being smothered by the accused; in a criminal case, the Prosecution must prove its case *beyond a reasonable doubt*.

34 Mr Anandan misinterpreted the nature of the burden on the Prosecution at the close of its case. The Prosecution only needs to adduce some evidence (not inherently incredible) which, if were to be accepted as accurate, would establish each essential element in the alleged offence: *Haw Tua Tau v PP* [1980–1981] SLR 73. Based on the evidence tendered by the Prosecution (including in particular the accused's own admissions in his police statements and the forensic findings, which were clearly not inherently incredible), I was of the firm view that the Prosecution had led evidence which, if it were to be accepted as accurate, would be capable of establishing each element of the charge of murder. Accordingly, I rejected defence counsel's submission of no case to answer and I called on the

Defence.

Diminished responsibility

35 The accused elected to remain silent. Other than the argument on causation, the main thrust of the defence was that the accused was suffering from schizophrenia at the time of the offence, and that this qualified him for the defence of diminished responsibility. The Defence called only one witness, Dr Nagulendran, a psychiatrist in private practice.

36 Dr Nagulendran examined the accused at the prison on 22 June 2005, 29 June 2005 and 1 July 2005. He also interviewed the accused's parents. In his psychiatric report, the doctor concluded that the accused was suffering from schizophrenia, a mental abnormality, which at the time of the offence substantially impaired his mental responsibility for his acts.

37 Dr Nagulendran said that the accused suffered from an acute onset of the mental disease on 10 October 2004. Prior to that, the accused was already exhibiting background symptoms, such as the weird behaviour that was observed by his mother in the past two years. Such behaviour included smiling to himself and talking to spirits. In addition, he consulted mediums.

38 Dr Nagulendran then explained the diagnostic criteria of schizophrenia. At least two out of five characteristic symptoms would suffice to establish the mental illness. It was the doctor's view that the accused in fact satisfied three of such symptoms. The first symptom was that of grossly disorganised or catatonic behaviour. The very act of killing on 10 October 2004, which Dr Nagulendran described as irrational, motiveless and unplanned, itself amounted to the grossly disorganised behaviour.

39 The second symptom was "blunting of affect" or emotional flattening. This referred to sustained emotional indifference where the expressed mood was incongruous with the situation the patient was in. According to Dr Nagulendran, during his interviews with the accused, the latter expressed no feelings of remorse, regret or even sympathy, despite having killed a little girl who was close to him. The evidence of some of the witnesses also indicated the accused's inappropriate mood shortly after the death of the deceased. For instance, one of the traders at the Wholesale Centre, Weng Renshun, who met the accused at about 9.00pm on 10 October 2004 itself, said that the accused was behaving normally as if nothing unusual had happened when he questioned the accused if he had seen the deceased. The accused gave the impression that he was not bothered at all. Yet another crucial indication was that the accused had been constantly smiling to himself for no reason despite the gravity of the charge against him. Dr Nagulendran was of the view that these facts clearly showed that from the time of the tragic incident until now, the accused's mood was inappropriate to what he had done and the circumstances he was in. Dr Nagulendran therefore concluded that the accused was suffering from blunting of affect.

40 According to Dr Nagulendran, the accused also had a third symptom – that of primary delusions. In the accused's statements to the police after he was arrested, and in his interviews with the Prosecution's psychiatrist, Dr Sathyadevan, from November to December 2004, the accused had consistently admitted to using his hands to chop the deceased's neck, pressing her neck with his fingers, and inserting his finger into her private parts during the time he was alone with her in the storeroom in the afternoon of 10 October 2004. However, the accused gave a completely different account of what had happened when he was interviewed for the fifth time by Dr Sathyadevan on 21 December 2004. During the fifth interview, the accused described how three Chinese men had entered the storeroom and they were the ones who had tied the deceased up and strangled her. A similar version of events was recounted by the accused during the three interviews that the accused

subsequently had with Dr Nagulendran in June and July 2005. It was Dr Nagulendran's opinion that this new account of events was in fact a primary delusion of the accused, such primary delusions being known to appear suddenly, be fully developed and immediately and firmly believed by a patient.

41 Dr Nagulendran further explained that the behaviour of the accused was actually consistent with two defence mechanisms known in psychotic illnesses, namely denial and projection. During the period after the killing until the accused eventually surrendered in Penang, he was in a state of denial. Subsequently, when the accused came up with his new version of facts involving the three Chinese men, he was projecting what he did to someone else.

42 Schizophrenics are also known to display social and occupational dysfunction. During the period after 10 October 2004 and prior to his escape to Malaysia, the accused was observed by witnesses at the Wholesale Centre to be drinking more, and was more quiet and withdrawn. He also absented himself from work a few days consecutively. To Dr Nagulendran, all these were signs of affected work performance and social interaction, which were consistent with the mental illness.

43 Finally, Dr Nagulendran was at pains to explain that the intellect of a patient suffering from schizophrenia is not affected. Therefore, the fact that the accused was able to go about disposing the body in a carefully planned way was not inconsistent with a finding that he was schizophrenic.

The Prosecution's rebuttal medical evidence

44 The Prosecution called Dr Sathyadevan, a Senior Consultant Psychiatrist at the Institute of Mental Health, as a rebuttal witness. Dr Sathyadevan emphasised that it was important to analyse the conduct of the accused before, at the time of, and after the alleged offence in deciding if he was suffering from schizophrenia. The doctor had never seen a case where the patient became mentally ill suddenly at the time of the offence; the patient would normally display some signs of disturbance, such as social or occupational dysfunction, before the commission of the offence. In this case, the accused's job history and interpersonal relationships were largely in order before the alleged offence took place. The only instance where a patient could become acutely ill at the time of the offence was when the illness was triggered by some organic cause like brain dysfunction, which was not the case for the accused. His behaviour after the commission of the alleged offence was also normal, as reflected in the nursing notes recorded during the period of six weeks when the accused was under examination at the medical centre of the prison. Dr Sathyadevan further highlighted that there was no indication of auditory hallucinations or thought disorder, both of which are common in schizophrenics and the latter symptom being the least likely to be malingered.

45 Dr Sathyadevan also dealt with the symptoms of schizophrenia which Dr Nagulendran had considered were displayed by the accused. Firstly, in relation to grossly disorganised or catatonic behaviour, Dr Sathyadevan said that there was no basis for Dr Nagulendran to conclude that the accused's acts on 10 October 2004 were irrational, motiveless and inexplicable. It followed that Dr Nagulendran could not rely on that finding as a basis to in turn say that there was grossly disorganised behaviour. In any event, Dr Sathyadevan explained that a patient suffering from such grossly disorganised behaviour must be seriously disturbed, to the extent of assuming funny postures. Such behaviour was certainly not exhibited by the accused.

46 Secondly, with regards to the blunting of affect, Dr Sathyadevan said that there was no evidence of that during his interviews with the accused. The accused was engaging, had excellent eye contact and was not looking down. Although it was true that the accused had not described any feelings of remorse or sadness at the death of the deceased, he, however, was clearly emotional when talking about his relationship with his wife and family. If indeed there was emotional blunting,

one would expect such flattened mood to be consistent throughout all the matters that he was describing, and not only with respect to the deceased's death. Having observed the accused during his interviews with him, and subsequently in court, Dr Sathyadevan was also of the view that the accused in fact displayed signs of anxiety, as seen from his nervous smiles and biting of nails. Dr Sathyadevan added that an onset of blunting of affect was insidious and usually took place over a year or two; it could never appear acutely on a certain day all of a sudden, as was contended by Dr Nagulendran. There was no evidence of any inappropriate mood expressed by the accused prior to 10 October 2004.

47 Thirdly, on the issue of delusions, Dr Sathyadevan was of the opinion that the accused's story of the three Chinese men who assaulted the deceased was not the product of a delusion, but was in fact a lie. The accused was being selective in telling the story only to the two psychiatrists that examined him. If indeed it were a delusion, Dr Sathyadevan would have expected the accused to tell more people, such as his colleagues at the Wholesale Centre, the nurses observing him, and the investigating officer who saw him after being informed about his new account of events. Instead, the accused refused to say anything to the investigating officer until he saw his lawyer. Moreover, while a delusion must be a firmly held and fixed belief, there were variations in the content of the accused's version of what had happened. In particular, in his accounts to Dr Nagulendran, the accused made reference to how he was asked by the three Chinese men to strangle the deceased. This aspect of what had happened was noticeably absent in his account to Dr Sathyadevan. According to Dr Sathyadevan, the lack of fixity in his accounts suggested that he was malingering and not suffering from a delusion, as malingerers were likely to have contradictions in their accounts of what had taken place. Dr Sathyadevan further opined that it was very odd to have a delusion that was centred only around how the death was caused. He had never seen a schizophrenic with just one simple delusion, which was so specific as to only explain the patient's behaviour at the time of the alleged offence.

48 Another observation by Dr Sathyadevan was the way the accused was able to carefully plan, not only in respect of the disposal of the body, but also as regards his escape to Malaysia. This, according to the doctor, was inconsistent with the condition of schizophrenia, where the patient's state of mind would be disorganised.

49 Based on the above findings, Dr Sathyadevan was of the opinion that the accused did not suffer from any mental abnormality at all at the time of the alleged offence.

Findings

Whether the accused assaulted the deceased and caused her death

50 Mr Anandan contended that the Prosecution had not proved, beyond a reasonable doubt, that the accused had caused the death of the deceased by the various acts of assault in the storeroom on 10 October 2004. This was because it was established at trial that there could be other possible causes of death, such as the deceased dying of suffocation that resulted from an episode of fits or as a result of being wrapped up in the plastic bags while still alive. As the Prosecution's case was that the accused had sexually assaulted the deceased and thereafter killed her to prevent identification, Mr Anandan further pointed out that there was no physical evidence of sexual assault.

51 It must be borne in mind that the accused himself had admitted, in his police statements as well as video re-enactment, to chopping and pressing the deceased's neck, covering her face, and stamping her neck with his foot. Of course, this was prior to the retraction of his admissions on 21 December 2004 when he gave a new account about how it was the three Chinese men who killed

the deceased. But it was the Defence's own case that this new account of events was either a lie or a result of delusion. In any event, it is settled law that an accused can be convicted on his own confession, even if it was retracted, as long as the court is satisfied that the statement was made voluntarily: *PP v Rozman bin Jusoh* [1995] 3 SLR 317. In the present case, the voluntariness of the accused's police statements was never challenged.

52 The forensic evidence supported the Prosecution's case. The five injuries on the deceased's face supported the Prosecution's submission that the accused had smothered the deceased by covering her mouth and nose. While the injuries found might not be entirely on all fours with the accused's admitted acts in his police statements and video re-enactment, they were largely consistent. In particular, the accused's chopping actions and his kicking of the deceased were supported by the injuries at the back of the deceased's head.

53 In contrast, although Dr Chui accepted that the injuries present and the accused's descriptions in his police statements about how the deceased was in spasms were not necessarily inconsistent with a finding that the deceased was suffering from fits at the material time, he was clearly of the view that it was unlikely for the deceased to have developed fits without any prior medical history. It was equally unlikely that she had developed fits as a result of knocking her head against some hard object while in the storeroom. In addition, the deceased could have displayed the symptoms of seizure simply because these are also the signs known to be displayed by a person in his or her dying moments.

54 The accused and the deceased were the only ones in the storeroom on that tragic afternoon of 10 October 2004. Only the two of them would know what had happened. The little girl is no longer around. Only the accused can come forward to explain what had transpired. But he had chosen not to take the stand and give evidence. He could have come forth to describe, for instance, how the deceased had actually died by choking on her own vomit, or how she had suffocated on her own while in a state of seizure. But he did not. The inference that can be drawn, pursuant to s 196(2) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"), is that it was his acts of assault on the deceased that led to her death.

55 The Defence, in its closing submissions, contended that an adverse inference should not be drawn from the accused's election to remain silent, since the plea was one of diminished responsibility. In this regard, I am mindful of s 196(5) of the CPC, which states that the court may not draw any inferences from the accused's silence if "it appears to the court that his physical or mental condition makes it undesirable for him to be called upon to give evidence". However, I am of the view that it was not undesirable for the accused to give evidence. Even if the accused was indeed suffering from schizophrenia, I gather from the medical evidence presented that he would still be aware of what had happened and what he was doing at the time of the offence, and could give evidence in that regard. The Defence also contended that the accused would be unable to contribute to the defence by giving oral evidence, since the defence on causation was based on expert testimony. It was argued that, accordingly, an adverse inference should not be drawn from the accused's refusal to testify. Without examining in detail the soundness of such an argument, it would suffice to point out that while a pathologist's expert evidence is undoubtedly important in determining the cause of death, any description by a lay witness who saw how the deceased died would obviously be helpful as well.

56 After assessing the evidence in totality, I am convinced beyond a reasonable doubt that the accused had caused the death of the deceased. I find that the Prosecution has made out its murder charge under ss 300(a) and 300(c) of the Penal Code, subject to the possible defence of diminished responsibility. In reaching such a conclusion, I make no finding with regards to whether the accused

had in fact sexually assaulted the deceased. Discovering the motive of the killing is not essential to a finding that the accused had indeed caused the death of the deceased and had committed murder: *Lau Lee Peng v PP* [2000] 2 SLR 628.

Whether the accused is entitled to the defence of diminished responsibility

57 The defence of diminished responsibility is found in Exception 7 to s 300 of the Penal Code. It states:

Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

58 In *Tengku Jonaris Badlishah v PP* [1999] 2 SLR 260, the Court of Appeal held at [35] that in order to establish the defence of diminished responsibility, the Defence must prove, on a balance of probabilities, the following elements:

- (i) [the accused] was suffering from an abnormality of mind at the time he caused the victim's death;
- (ii) his abnormality of mind arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury; and
- (iii) his abnormality of mind substantially impaired his mental responsibility for his acts and omissions in causing the death.

59 In *Regina v Byrne* [1960] 2 QB 396 at 403–404, the English Court of Criminal Appeal set out the law as follows (accepted by the Court of Appeal in *Zailani bin Ahmad v PP* [2005] 1 SLR 356 and *Chua Hwa Soon Jimmy v PP* [1998] 2 SLR 22):

Whether the accused was at the time of the killing suffering from any “abnormality of mind” in the broad sense which we have indicated above is a question for the jury. On this question *medical evidence is no doubt important, but the jury are entitled to take into consideration all the evidence, including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence* if there is other material before them which, in their good judgment, conflicts with it and outweighs it.

The aetiology of the abnormality of mind (namely, whether it arose from a condition of arrested or retarded development of mind or any inherent causes, or was induced by disease or injury) does, however, seem to be a matter to be determined on expert evidence.

Assuming that the jury are satisfied on a balance of probabilities that the accused was suffering from “abnormality of mind” from one of the causes specified in the parenthesis of the subsection, the crucial question nevertheless arises: was the abnormality such as substantially impaired his mental responsibility for his acts in doing or being a party to the killing? This is a question of degree and essentially one for the jury. Medical evidence is, of course, relevant, but the question involves a decision not merely as to whether there was some impairment of the mental responsibility of the accused for his acts but whether such impairment can properly be called “substantial,” a matter upon which juries may quite legitimately differ from doctors.

Furthermore, in a case where the abnormality of mind is one which affects the accused's self-control the step between "he did not resist his impulse" and "he could not resist his impulse" is ... one which is incapable of scientific proof. A fortiori there is no scientific measurement of the degree of difficulty which an abnormal person finds in controlling his impulses. These problems which in the present state of medical knowledge are scientifically insoluble, the jury can only approach in a *broad, common-sense way*.

[emphasis added]

60 The Privy Council in *Walton v The Queen* [1978] AC 788 stated at 793 (approved by the Court of Appeal in *Chua Hwa Soon Jimmy v PP* and *Zainul Abidin bin Malik v PP* [1996] 1 SLR 654):

[U]pon an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence upon the whole facts and circumstances of the case. These include *the nature of the killing, the conduct of the defendant before, at the time of and after it and any history of mental abnormality*. ... [W]hat the jury are essentially seeking to ascertain is whether at the time of the killing the defendant was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a *broad common sense way*. [emphasis added]

61 From the above authorities, the principles of the law on diminished responsibility are clear. The first and third elements of the defence are essentially questions of fact, to be decided by the court (trier of fact) with the assistance of medical evidence; the court is however not bound by the medical evidence. The court can rely on other non-medical evidence in coming to its conclusion. Only the second element concerning the cause of the abnormality of mind is to be determined in accordance with expert medical evidence. In deciding the issue of diminished responsibility, the court must examine the conduct of the accused before, at the time of, and after the killing. In considering all the evidence, the court is to adopt a broad common-sense approach.

62 With these broad principles in mind, I turn to consider whether the first element of the offence, that of abnormality of mind of the accused at the time of the offence, had been proved by the Defence on a balance of probabilities in the present case.

Abnormality of mind

63 "Abnormality of mind" is defined by Lord Parker CJ in *Regina v Byrne* ([59] *supra*) at 403 (as accepted in *Tengku Jonaris Badlishah v PP* ([58] *supra*)) as:

... a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears ... to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the *ability to exercise will power to control physical acts in accordance with that rational judgment*. [emphasis added]

The last aspect of Lord Parker's description appears to be crucial. In a case of diminished responsibility, the accused may well be aware of what he is doing and possess the knowledge that what he is doing is wrong, unlike the case where an accused is suffering from unsoundness of mind. However, the accused suffering from diminished responsibility may be unable to exercise self-control over his physical acts in accordance with his rational judgment. Indeed, in the present case, it was the Defence's position that the accused at the time of the alleged offence knew what he was doing and that what he did was wrong, but could not control his actions as a result of schizophrenia.

64 It does not appear that the accused had any history of mental abnormality. The only evidence of any kind of mental disturbance relied on by the Defence was from the accused's own mother, who told Dr Nagulendran that she observed him smiling to himself in the past two years. Not only is such conduct not necessarily abnormal, her evidence is also in contradiction with the observations made by the accused's employer, colleagues and roommates, who spent much more time with the accused since he was here in Singapore most of the time in the past two years and only occasionally in Penang. These witnesses testified that the accused behaved normally. I am aware that the nursing notes taken during the accused's six weeks' observation period showed that the accused had claimed to have seen flashes of human form for the past two years which intensified in recent months. He had further claimed that he had problems of insomnia, including instances where he was unable to sleep for four days at a stretch. However, the flashes he saw could have been a result of tension headaches that he was suffering from, while the sleeping problems could be attributed to the nature of his job which involved working in shifts.

65 Nor are there any indications of any abnormal behaviour in the period leading up to 10 October 2004. The Defence made reference to the evidence that the accused had intensified his drinking, lost weight and was unhappy at work. That, however, is quite a stretch from factors that may suggest mental abnormality. As for his consultation of mediums, this is not an uncommon cultural practice among the Chinese. Moreover, there was evidence to suggest that his trip to Kulai to consult the fortune teller was for good luck in his punting, while his visit to the medium in Geylang was likely as a result of his repeated failures in his driving tests.

66 Moving on to the time of the alleged offence, the Defence's expert, Dr Nagulendran, claimed that the very act of killing, which was irrational and senseless, showed that the accused was suffering from disorganised and catatonic behaviour, a key characteristic of schizophrenia. The difficulty with Dr Nagulendran's finding in this respect is that it pre-supposed the killing to be motiveless and unplanned. I am unsure of what the accused's motives might be, but that does not mean that his acts were motiveless. Bearing in mind that the burden is on the Defence to prove diminished responsibility, if the Defence so wishes to rely on the lack of motive as an indication that the accused was mentally abnormal, it follows that the Defence must positively prove the lack of motive. This it had not done. In fact, there are indications to the contrary from the evidence. Although I make no positive finding as to the existence of sexual assault, there was at least some evidence that pointed to that possibility, such as the accused's own admission in his police statements that he had poked the deceased's private parts, and the fact that the body was naked when found. Coupled with the carefully planned disposal of the body, it is difficult to maintain an argument that the killing was motiveless.

67 The accused had wrapped the deceased's body in nine plastic bags, deliberately selected the rubbish bin at Block 16 because he knew that there were no cameras there, and waited until it was dark at night before disposing of the body in a secluded area. His conduct after the killing was clearly the product of a cool and calculated mind. Although I accept Dr Nagulendran's evidence that the intellect of a person suffering from schizophrenia may remain unaffected, I would expect the accused's state of mind to be at least disorganised to a certain extent shortly after the killing, if indeed he had sustained an acute onset of the mental illness.

68 Dr Nagulendran's opinion was that from the time of the killing until his latest examination of the accused in July this year, the accused was suffering from blunting of affect, another key diagnostic criterion for schizophrenia. In particular, the accused's mood appeared to be inappropriate in that he smiled and appeared nonchalant despite the gravity of the charge against him, as observed in the nursing notes and the interviews by both psychiatrists. But I agree with the Prosecution that this diagnosis is inconsistent with the variety of feelings expressed by the accused at the time of and

after the killing. In his police statements, the accused described how he was frantic and in a state of panic at the time of killing, and how he subsequently felt fear and therefore lied to the police. He expressed remorse when he stated in his statements that he realised his mistake and asked for leniency. Some of the testimonies of the witnesses at the Wholesale Centre also showed that the accused was capable of feelings of anger and frustration when questioned about the missing girl. Furthermore, according to Dr Sathyadevan, the accused was expressive and emotional during the interview when he talked about his wife and family. Dr Nagulendran's explanation for the discrepancies was that emotional blunting only applies in relation to the event of the killing, and not to other matters unrelated to the death of the deceased. This appears to me to be an artificial distinction that is in any event apparently unsupported by authorities.

69 Finally, I consider the issue of primary delusions. The Prosecution contended that if the accused was indeed suffering from delusions, this ought to have been exhibited before, during and after the killing of the deceased. This contention misses the point because Dr Nagulendran's opinion quite clearly was that the delusion suddenly surfaced only subsequently, around 21 December 2004, when the accused first revealed his new account of events involving the three Chinese men to Dr Sathyadevan. Nevertheless, it remains necessary to determine whether this new version by the accused was in fact a lie or a delusion.

70 Firstly, it must be borne in mind that the accused had proved to be a frequent liar, having given at least four different versions to the police of what had happened to the deceased. He initially denied his involvement completely, and then came up with the story that the deceased was actually abducted. Following his arrest, he described how he had killed the deceased and poked her vagina in order to make it look like a rape. In a subsequent police statement, he said he did not know why he poked the deceased's anus or vagina. Secondly, the Prosecution adduced authorities which stated that malingering should be suspected if claims of delusion suddenly appeared or disappeared. Thirdly, as pointed out by the Prosecution, there are some critical points of distinction between the accused's account to Dr Sathyadevan on 21 December 2004 and his subsequent accounts to Dr Nagulendran in June and July 2005. Notably, in one version he participated in the acts of assault but in the other he did not. This suggests that what the accused said might not be his fixed and firmly held belief. In addition, if indeed it was a delusion, it is unlikely that the accused would actually be selective as to whom he tells the story. The accused even made the telling of his new account conditional upon seeing his lawyer. I also accept Dr Sathyadevan's opinion that it is very odd to have a delusion that was centred only around how the death was caused, a delusion so specific as to only explain his behaviour at the time of the killing. Therefore, to my mind, it is more likely than not that the accused was actually lying when he told the story about the three Chinese men.

71 Based on the above evaluation of the evidence (in particular the conflicting expert medical evidence), I find that the Defence has failed to prove on a balance of probabilities that the accused was suffering from schizophrenia, or indeed mental disorder of any kind. After examining the evidence of his conduct before, during and after the act of killing, and applying a common-sense approach, I am convinced that the accused could not be said to have been at the time of killing in a state of mind so different from that of ordinary human beings that a reasonable man would term it abnormal. Accordingly, I find that he was not suffering from an abnormality of mind at the time of the alleged offence. Given that the first element of the defence of diminished responsibility has not been established, there is no need to go into the further questions of the cause of the abnormality of mind and whether there was substantial impairment of mental responsibility.

Conclusion

72 I find the accused guilty as charged and impose the mandatory death penalty on him.

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