Public Prosecutor v Daniel Vijay s/o Katherasan and Others
[2008] SGHC 120

Case Number : CC 16/2007

Decision Date : 28 July 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Amarjit Singh, Lee Cheow Han and Kok Pin Chin Stanley (Deputy Public Prosecutors) for the Prosecution; Singa Retnam (Kertar & Co) and K Jayakumar Naidu for the first accused; Subhas Anandan and Sunil Sudheesan (Khattar Wong) for the second accused; Mohd Muzammil (Muzammil Nizam & Partners) and Allagarsamy s/o Palaniyappan (Allagarsamy & Co) for the third accused

Parties : Public Prosecutor — Daniel Vijay s/o Katherasan; Christopher Samson s/o Anpalagan; Nakamuthu Balakrishnan

Criminal Law

Criminal Procedure and Sentencing

Evidence

28 July 2008

Tay Yong Kwang J:

1 The first accused is Daniel Vijay s/o Katherasan, aged 24. The second accused is Christopher Samson s/o Anpalagan, aged 25. The third accused is Nakamuthu Balakrishnan, aged 49. All three accused were committed to stand trial in the High Court on the following joint charge:

> [O]n 30 May 2006, between 7.09 a.m. and 8.52 a.m., along Changi Coast Road, between lamp posts number 113 and 115, Singapore, in furtherance of the common intention of you all, did commit murder by causing the death of one Wan Cheon Kem, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code, Chapter 224.

Due to scheduling difficulties, the trial took place over two blocks of dates.

2 The deceased Wan Cheon Kem ("Wan") was a driver employed by Sterling Agencies Pte Ltd. On the morning of 30 May 2006, Wan was tasked with delivering 10 pallets comprising 2,700 Sony Ericsson W700i handphones, valued at about US$823,500, from Changi Airfreight Centre ("CAC") to a location near Henderson Road. Wan left CAC in his 24-footer lorry bearing registration number YM815 B ("lorry 815") with the consignment of handphones at around 6.50 a.m.

3 At around 8.52 a.m., a member of the public informed the police that he had seen a bloodied man inside a vehicle at Pasir Ris Carpark A. The police arrived soon thereafter at about 9.00 a.m. At that point in time, Wan was still conscious and managed to alight from the lorry on his own and to lie down on the grass verge next to his lorry. The police at the scene however noted that Wan was verbally unresponsive. He was then conveyed to hospital, where he later lost consciousness. Emergency surgery was performed on Wan but despite the surgery and the medical treatment rendered, he never regained consciousness and passed away on 5 June 2006.

The autopsy findings

4 The autopsy was performed by Dr Teo Eng Swee, a Consultant Forensic Pathologist with the Centre for Forensic Medicine, Health Sciences Authority. In Dr Teo's autopsy report, the cause of death was recorded as "intracranial haemorrhage and cerebral contusions with fractured skull". The report also noted a multitude of external injuries to the deceased head and limbs which Dr Teo attributed to being caused by blunt force trauma. On his internal examination of Wan's head, Dr Teo found the following (amongst others):

Skull	Left frontal-parietal-temporal craniectomy.
	Underlying lobes of the cerebral hemisphere herniated out through the craniectomy.
	Haemorrhage into the ethmoid and sphenoidal air sinuses.
	Fracture from the right antero-lateral aspect of the craniectomy defect extending postero-laterally across the right side of the frontal bone to a point on the coronal suture and extending posteriorly to the right mastoid process.
	Linear fracture of the base of the skull, extending from the left postero-lateral aspect of the foramen magnum to the internal occipital protuberance.
	Linear fracture extending to the left transverse groove to the left of the midline.
Meninges	There was an open durotomy underlying the craniectomy
	There was a thin left subdural haemorrhage.
	There were thin subtentorial subdural haemorrhages bilaterally.
	There were thin diffuse subarachnoid haemorrhages bilaterally.
Brain	The brain was severely oedematous, with a midline shift to the right. There was bilateral uncal subtentorial herniation.
	There were extensive severe contusions of the left frontal and temporal lobes. Cut sections showed extensive haemorrhagic necrosis in the grey and white matter in these lobes, and of the left basal ganglia.

There was a contusion at the inferior surface of the region of the left temporal and occipital lobes. Cut sections showed haemorrhage into the underlying grey matter.

The cerebrospinal fluid was bloodstained.

Cut sections of the rest of the cerebrum showed scattered petechial haemorrhages with patchy pale infarction.

Cut sections of the cerebellum, pons and medulla showed scattered petechial haemorrhages with patchy pale infarction.

5 Based on the injuries found on Wan, Dr Teo opined that at least 15 blows had been inflicted on him. With regards to the three skull fractures, Dr Teo stated that it would require "quite [a] severe force to cause fractures of the skull like this". As for the fractures found on the knuckles of both the deceased's hands, Dr Teo opined that they were consistent with defensive injuries and "the force [used] must have been quite severe".

The Prosecution's case

Events before and after the robbery

6 Sometime in May 2006, one Ragu a/l Ramajayam ("Ragu") was introduced to one Arsan s/o Krishnasamy Govindarajoo ("Arsan" a.k.a. "Babu") by a mutual acquaintance. Arsan and Ragu then conspired to commit robbery of expensive cargo that was transported by drivers employed by Raju's employer, Sterling Agencies Pte Ltd. Ragu's role was to provide to Arsan inside information on the cargo being transported by the company's drivers.

7 Arsan later recruited the third accused to carry out the robbery. The third accused in turn recruited the first and second accused to assist him in executing the robbery. It is undisputed that prior to the robbery, the first accused along with the second and third accused had gone to a car workshop to collect the first accused's car which had been sent there for repairs earlier. A baseball bat was taken from the said workshop without the workshop owner's consent and that was subsequently used to assault Wan along Changi Coast Road.

8 On 30 May 2006 at around 5.30 a.m., Ragu contacted Arsan to inform him that a lorry would be carrying 10 pallets of handphones that morning out from CAC. Arsan relayed this information to the third accused, who was in his residence together with the first and second accused. The three accused persons thereafter proceeded to CAC in a rented 10-footer lorry bearing registration number GM9520 E ("lorry 9520"). At the pass office just outside CAC, they met up with Arsan, who told them that the registration number of the lorry carrying the consignment of handphones was YM815 B.

9 At about 7.00 a.m., lorry 815 was seen emerging from CAC. For some unknown reason, the driver of lorry 815 did not stop at the pass office to surrender his entry pass, which was the normal procedure for those leaving CAC. The three accused persons then followed lorry 815 in their own lorry while Arsan drove off separately in another lorry. Somewhere along Changi Coast Road, between lamp posts number 113 and 115, the first accused staged an accident by cutting into the path of lorry 815 and then braking hard. Both lorry 815 and lorry 9520 came to a stop by the side of the road. After Wan had alighted from his lorry, he spoke to the second accused, who in turn told him to go speak to

the third accused. When Wan approached the third accused who was standing near the passenger door of lorry 9520, he was repeatedly assaulted with a baseball bat held by the third accused. The unconscious victim was then carried into the cabin of lorry 815 by the three accused persons and dumped onto the floorboard in front of the passenger seat.

10 The first accused then drove lorry 815 to Pasir Ris Car Park A with the second accused and Wan on board while the third accused trailed them in lorry 9520. At the said Carpark A, the first and third accused transferred two pallets, comprising 540 pieces of handphones, from lorry 815 to lorry 9520. The third accused then instructed the second accused to drive lorry 9520 with the two pallets on board to the first accused's rented flat in Ang Mo Kio housing estate.

11 Shortly thereafter, Arsan arrived at Car Park A in his lorry. The remaining eight pallets of handphones were transferred onto Arsan's lorry. Arsan then left the carpark in his lorry with the first and third accused on board, while the injured Wan was left in the passenger cabin of lorry 815. None of the accused persons or Arsan summoned aid for Wan at any point of time. The first and third accused subsequently alighted from Arsan's lorry and met up with the second accused at Ang Mo Kio, where they proceeded to transfer the two pallets on board lorry 9520 to the first accused's rented flat.

12 That same afternoon, the third accused suggested to the first and second accused to sell their cache of stolen handphones (i.e. the two pallets) and they agreed. The third accused then sold 20 of the handphones to an acquaintance for $5,000. Out of the sale proceeds, an amount of $1,500 was handed over to the first accused that night. The second accused was given $500. The next day, the third accused sold another 20 handphones to a different acquaintance for $5,600. He was arrested by the police that same evening. Thereafter, the other participants to the robbery were swiftly taken into police custody. Ragu and Arsan were arrested separately on 1 June 2006, while the first and second accused surrendered to the police separately on the morning of 5 June 2006. Ragu and Arsan have since been dealt with in court for their respective roles in the robbery and so have those who were involved in the black market sale and purchase of the illegally obtained handphones.

The 121 and s 122(6) statements

13 Following their arrest and/or surrender, the accused persons each made several statements pursuant to the Criminal Procedure Code (Cap 68, 1985 Rev Ed). During the trial, the Prosecution sought to introduce these statements in evidence. The first accused mounted a challenge to the admissibility of four of his statements. Save for these statements, the remaining statements made by the three accused were not challenged as to their admissibility and were accordingly admitted as evidence. As for the four challenged statements, a trial-within-a-trial was conducted to determine their admissibility.

The trial-within-a-trial

14 The first accused challenged the admissibility of the following statements recorded from him:

(a) the first contemporaneous statement dated 5 June 2006 ("first disputed statement") recorded by SI Ray Ang;

(b) the second contemporaneous statement dated 6 June 2006 ("second disputed statement") recorded by SI Ray Ang;

(c) the first investigation statement dated 9 June 2006 ("third disputed statement") recorded

by SI Noorma'at Sawab; and

(d) the second investigation statement dated 10 June 2006 ("fourth disputed statement") recorded by SI Noorma'at Sawab.

15 It is trite law that the Prosecution bears the burden of proving beyond reasonable doubt that an accused's statement was voluntarily made and in compliance with the law. The only requirement on the Defence in this regard is to bring to light the alleged offending conduct of the recording officers or the untoward circumstances under which the statement was made. If the issues raised by the Defence give rise to an inference or a nagging suspicion that the statement was not made voluntarily, then the statement must be held to be inadmissible: see *Zailani bin Ahmad v Public Prosecutor* [2005] 1 SLR 356 at [43].

16 The admissibility of the first disputed statement was challenged on the ground that the first accused did not know the contents of the statement as he was drunk at the time the statement was recorded. He also claimed that a friend of his cousin had told him to cooperate with the police and that the recording officer wrote the statement but did not read it back to him (the first accused). It was further alleged that prior to the recording of the second statement, the first accused was threatened with a murder charge if he did not cooperate with the recording officer. The first accused said that he thought what the recording officer had recorded was the truth and he therefore signed the statement although it was not read back to him. As for the third disputed statement, it was alleged that the recording officer had told the first accused that the murder charge would be reduced to one of robbery if he agreed with the officer's version of events. The first accused signed the statement because he thought that the officer was helping him. Further, the first accused claimed that he was not given the full opportunity to amend the said statement. Similarly, for the fourth disputed statement, the recording officer promised to reduce the charge of murder to one of robbery if he cooperated. It was further alleged that another accused person was being assaulted in the room next to the one that the first accused was in and the recording officer threatened the first accused with the same treatment if he refused to cooperate.

17 The fact that an accused had consumed alcohol prior to the making of a statement would not in itself render the statement involuntary unless he was in a state of near delirium such that his mind did not go with the statements that he was making. This follows logically from *Garnam Singh v PP* [1994] 2 SLR 243, where the Court of Appeal held that in order for drug withdrawal symptoms to render a statement involuntary, the person must be in a state of near delirium when the statement was made. In this regard, the officer who recorded the first and second disputed statements ("the first recording officer") candidly admitted that the first accused smelled of alcohol when the first disputed statement was being recorded. He however maintained that the first accused did not appear to be either drunk or drowsy and was in fact able to give coherent answers. Further, the Prosecution submitted that the court ought to draw an adverse inference in relation to the first accused's failure to call any witnesses who could give evidence on the first accused's mental state prior to his surrender to the police. These witnesses would include the first accused's cousin and younger brother, who were with him up to the time of his surrender to the police. I agreed with the Prosecution's submission on this point. In my view, the first accused could not have been so drunk or drowsy that he did not know the contents of the first disputed statement.

18 As for the alleged non-compliance with s 121(3) of the CPC, the first recording officer stated that the first accused was allowed to read his own statements and was given the opportunity to make alterations and additions to the said statements. Earlier in *PP v Leong Siew Chor* [2006] 3 SLR 290, I stated at [90] that the failure to read back a statement would not render the statement inadmissible so long as the maker of the statement was given the opportunity and time to

go through what was recorded and to made amendments to the statement if necessary. I added that it was probably easier for the accused to read the statement himself at his own pace rather than to listen to the recording officer reading it. As the first accused was literate in English and the two disputed statements were clearly legible, I was of the view that a technical breach of s 121(3) did not amount to a procedural impropriety that would render the two statements inadmissible. I also rejected the allegation that the first accused was threatened with a murder charge by the first recording officer prior to the recording of the second disputed statement for the following reasons. First, this particular allegation was not put to the said recording officer when he was on the witness stand and second, even if such a threat had indeed been made, the first accused would have known that it was an empty threat as he had already been charged with murder a day earlier: see *Tan Yew Lee v PP* [1995] 2 SLR 121 at [20]. He could not therefore have been influenced by any such threat at any rate.

19 The alleged advice from the first accused's cousin's friend, not any of the recording officers, that he should cooperate with the police could not be sufficient to give the first accused any hope that he would gain some advantage or avoid some ill by making the first disputed statement. The third and fourth disputed statements were recorded by a different officer. The first accused's evidence in court showed that no threat, inducement or promise was made when the third disputed statement was recorded. This is apparent from the responses he gave to his own counsel during his examination in chief:

> Q Why did you not correct him if you say that what he said was not correct or whatever it is?
>
> A I thought he was helping me.
>
> Q Why do you think that he was helping you?
>
> A Because he was---because my brother's friend is the one who handed me over to the police and I was told that they would help me. I thought he was helping me in my---how to answer in the statement.

That being the case, I did not think it was open to the first accused to suggest that the third disputed statement was tainted by an offer of a lesser charge as such a suggestion would be inconsistent with his own testimony in court.

20 As for the allegation that the first accused was not given the full opportunity to amend the third disputed statement, I note that at the start of the recording of the fourth disputed statement, the third disputed statement was read back to the first accused and he was asked if he wished to make any addition, correction, deletion or amendments to the said statement. As can be seen, clarifications to the third disputed statement were in fact made in the later statement. Further, on 17 June 2006 when a further investigation statement was recorded from the first accused, the third disputed statement was again read back to the first accused and he was asked again if he wished to make any amendments to that statement. In this 17 June 2006 statement, admissibility of which was not disputed by the defence, the first accused again made several clarifications to the third disputed statement. The first accused was therefore given not one but two opportunities to amend the third disputed statement and on both occasions, amendments were in fact made. In the premises, I was satisfied that the first accused had been given the full opportunity to amend the third disputed statement.

21 This leaves us with the fourth disputed statement which was challenged on the ground that

during the recording of the statement, an inducement or promise was made to the first accused by way of an offer to reduce the charge of murder to one of robbery. It was further alleged that another accused person was being assaulted in the room next to the one that the first accused was in and the recording officer threatened the first accused with the same treatment if he refused to cooperate. The first accused's credibility was again called into question by his failure to put these allegations to the recording officer. I had no hesitation in accepting the evidence of the recording officer that no such inducement, promise or threat took place.

22 In the circumstances, I was satisfied beyond reasonable doubt that the four disputed statements made by the first accused were made voluntarily and I accordingly admitted them as evidence.

Statements made by the first accused

23 Apart from the four statements made by the accused admitted at the conclusion of the trial-within-a-trial, two other statements were admitted unchallenged. The material portions of the first accused's written statements are reproduced below:

Contemporaneous Statement – 6 June 2006

About one week before the robbery, I came home about 5 – 6 am after clubbing. At home, I saw Bala and Christopher watching TV in the hall. I asked them why they were not sleeping. Bala told me he was waiting for Babu to call. Bala also told me that Babu gave a "lobang" to take the truck from Cargo Complex. The truck got handphones. Bala asked me to drive the 24 footer containing the handphones and I agreed. I then lie down on the sofa waiting for Babu's call. At about 6 am plus, Babu called the house. Bala answered the phone and Babu said the truck carried laptop so we 'don't do that day'.

After that, we have all been awake around the same timing, waiting at home for Babu's call.

About 2 days after I get to know about the 'lobang', on one afternoon, Bala, Christopher and I were at a workshop in Changi to repair a rented lorry from my uncle Chinnasamy Raman. At the workshop, Bala took a wooden stick and passed it to me. The wooden stick was about the length of my leg. Bala told me to keep the stick in the lorry. I then put the stick under the floor mat of the Passenger seat. After the lorry was being repaired, the 3 of us went back home. On the way back to Toa Payoh from the workshop, I asked Bala what the wooden stick was for, Bala said it can be used for the 'lobang'. I understood that the wooden stick will be use to hit the driver of the 24 footer truck.

When I first knew about the 'lobang', I already knew we were going to hit the driver of the 24 footer truck. Bala was the one telling me and Christopher about the plan. This was on the same day I saw them in the living room after I came back from clubbing.

Investigation Statement - 9 June 2006

8 On 30 May 2006 at about 5.00am to 5.30am, I came back home. I knocked on the door and Bala opened the door. When I entered the flat, Christopher was sleeping in the hall. I sat down in the hall and Bala told me to get ready to leave. Bala woke Christopher up and told him to get ready. On that day, I was wearing a pair of jeans. I just change my shirt. At about 5.45am, we left the flat and got into the same lorry that we used to go to the workshop. Bala and I sat behind the lorry. Christopher drove the lorry. Before we moved off, Bala told Christopher to

proceed to Cargo Complex. When we were along the PIE near to Upper Serangoon Exit, I felt like vomiting because I was drinking too much earlier. I slapped the driver side door several times and told Christopher to stop the lorry. Christopher stopped the lorry at the side of the PIE. I got down and sat in the front passenger seat with him. Bala sat behind.

9 We arrived at Cargo Complex at about 6.15am to 6.20am. Bala from behind told Christopher to park the lorry at the parking lot near to the place where the people change their pass to go into Cargo Complex. I think there were no cars in the parking lots. I saw lorry drivers coming out from Cargo Complex, the drivers would stop near to the pass office to change their passes before leaving the complex.

10 After we parked the lorry, I got down from the lorry and walked over to the driver side. I told Christopher that I will drive and told him to move over. He move over to the passenger seat. I got into the driver seat. Shortly after that, Bala came down from the lorry and sat at the front passenger seat.

11 About 10 minutes later at about 6.30am, Babu came in his lorry. I do not know the number. It was a grey colour aluminium cover behind lorry and the front was white colour. He parked his lorry beside near to the passenger side. He wind down the window and told us that the truck number is "815" and said that the company name was "Sterling". At this point, a lorry passed by and the driver pressed the horn and waved at Babu. Babu also waved his hand at the driver. Babu told us that the truck will be like this.

13 A few minutes later, the truck he mentioned came out of cargo complex. Babu said "this is the truck". I saw the company name "Sterling" on the front of the lorry. The lorry number was 815. I cannot remember the letters on the licence plate. The lorry 815 came out and stopped at the traffic light. Immediately, I drove the lorry following the lorry 815. I saw the lorry turn right into the main road outside Cargo Complex travelling the opposite direction of Changi Village. I do not know where the road will lead to. I just followed the lorry. I remembered along the way, Bala was talking to someone over the handphone. I think he was talking to Babu. I heard Bala said we all were following the lorry already.

15 The lorry driver was travelling slowly about 50 to 60km per hour. I followed him very closely, about one lorry length behind the said lorry 815. We followed for quite a distance from Cargo Complex. We followed the lorry for about 5 to 10 minutes when Bala told me to overtake the lorry and parked infront of him. Immediately I swerve the lorry to the right and overtake the lorry. After I passed the lorry, I cut into his path and stepped on the brakes. The lorry I drove stopped. The other lorry 815 also stopped. We stopped at the left side of the road. There were two lanes on the said road.

16 Bala immediately opened the passenger door and got down from the lorry. Bala stood on the grass verge near to the road kerb. Christopher also got down and went around the front of our lorry and stood behind near to the rear right side of the lorry. I still sat in the driver seat looking at the side view mirror to see whether there were any vehicles coming our way. From the right side mirror, I could see the driver of lorry 815 came down and walked towards Christopher. The driver was Chinese. I saw Christopher was pretending to check our vehicle and the lorry for damages. I saw the driver bending down and Christopher was also bending down. They were saying something which I do not know and pointing at certain part of the vehicles. I then heard Bala calling the driver to come over to him to change particulars. I think at this point, by looking at the left mirror, I saw Bala standing on the left side of our lorry somewhere in the middle. I saw him holding the same wooden stick which we got from the workshop in his left hand. He was

trying to hide the wooden stick behind his left leg.

17 Through the mirror, I saw that when the driver walked to Bala, Bala suddenly pulled the front part of the driver's shirt and pulled him. When Bala did this, the driver fell to the ground on the grass verge. I saw that when the driver fell, he was facing the ground and used his hand to stop the fall. The driver then turned around to get up. While he was sitting on the ground about to get up, I saw Bala swing the wooden stick towards the driver. I could not remember whether Bala swing the wooden stick from the left or right side but he was holding the wooden stick with both his hands when he swing it at the driver. The wooden stick hit the driver on the face. I do not know how many times Bala hit the driver as I concentrated myself to look around to see whether any car are passing by, About one or two minutes later, Bala shouted at me to come down from the lorry. I came out of the lorry and walked over to where Bala was with the driver. I saw that the driver was lying down on the ground facing the sky. His legs were nearer to his lorry. I saw a lot of blood on his face. The driver was mumbling something and moving his body from slightly side to side. Bala told me and Christopher to carry the driver and put him inside the cabin of the 24 footer. I carried his left leg using my left hand because my right hand was injured. I cannot remember clearly but Bala and Christopher were on either side of the driver. One of them was carrying the driver by his hand and right leg while the other was carrying him up by holding the driver's left hand and back. We carried him up and put him on the floor of the passenger seat of the 24 footer. I do not remember who had opened the door first before we carried the driver. We then pushed him onto the floor of the passenger seat head first and his knees were bent. I do not remember who closed the passenger door. Christopher and I then went around to the driver seat of the 24 footer. Christopher entered the lorry first and sat on the centre part of the front cabin. I also got into the lorry and sat on the driver seat. As I wanted to drive the lorry, I saw that the same wooden stick was on the floor of the 24 footer near to my leg. I drove off the lorry. Before I drove off, I saw Bala got into the driver side of our lorry. I had to put the right signal and overtake the white lorry on the right and moved off. As I was driving, the wooden stick was rolling on the floor, I picked it up and put it standing beside me on my left. As I was driving, the driver wanted to get up. I hit him lightly with my left hand on the head about 4 to 5 times, on and off as he wanted to get up. After I hit him the last time. He did not try to get up anymore but he was moaning all the way. I drove the 24 footer to Pasir Ris Park near to Costa Sands. I went there because I knew about this place as I had been there several times before at the Chalet nearby.

[Note: There are no paragraphs 12 and 14]

Further Investigation Statement – 10 June 2006

18 I wish to say now that in the past Bala and I had asked "Babu" for financial help. We were short of cash and needed money urgently. When we spoke to him, he also told us that he was in a very bad position and needed money. "Babu" then told us that he would try to find something for us to do so that all of us can settle our money problem. I wish to clarify that I usually asked Bala to lend me money whenever I had money problems. Bala would then call Babu for help and this was usually the reply we get from Babu. I had also received some money from Bala.

19 About one to two weeks before 23rd or 24th May 2006, Bala told me about this "lobang". Bala told me that we can beat up the driver of the lorry carrying handphones from Cargo Complex and then robbed the goods. We did not talk about this anymore.

20 A few days after 23rd or 24th May 2006, at about 9.00pm, Bala, Christopher and I went to the coffeeshop at Blk 125 Lorong 1 Toa Payoh to have some drinks. My friend Povaneswaran was

also sitting with us. While we were there, Bala called Babu and asked him to come and meet us at Blk 125 Toa Payoh Coffeeshop to talk about what we are going to do.

21 About 30 minutes later, Babu came to the same coffeeshop and sat with us. We continued drinking beers at the coffeeshop. Shortly after that, Povaneswaran left.

22 Babu then told us how we would carry out the robbery. He told us that we will have to follow the truck from Cargo Complex and stop the driver in between somewhere. We must beat up the driver until he cannot wake p and do not know what is happening. After that we will take his truck. He wanted to know from us, who among us can drive and who were going to do what in the picture. After that Babu said that he will leave it to us on what we need to do in the robbery. Bala replied to Babu to leave it to him on what to do. Bala said that he will tell me and Christopher what to do. Babu told us that the truck is a 24 footer canopy truck carrying handphones. He said that the truck will carry full truckload of handphones and we can sell them for a lot of money. He did not say the amount. Bala then pointed his finger and me and told Babu that I will be the one driving the 24 footer lorry. Bala said that he will be the one to whack the driver.

23 Later, Bala said that after the driver cannot wake up, all of us will carry the driver into the 24 footer lorry. Bala said that he wants me to drive the 24 footer lorry and will get Christopher to assist me in the 24 footer in case the driver woke up. Babu then suggested a place to drive the 24 footer to. It was somewhere in Changi. Bala then tried to explain the location to me. I told them that I do not know the place they were talking about. I said I will think about a place to drive the 24 footer to and will tell them later.

24 After that, we continued drinking.

25 At about 11.00pm plus, Christopher and I left the coffeeshop leaving Bala and Babu to continue drinking. Christopher dropped me off at my flat at Blk 179 Toa Payoh and left. I think he went back to join Bala and Babu. I got changed and went to Boat Quay.

Further Investigation Statement – 17 June 2006

71 With regards to paragraph 19, I wish to clarify that this was the first time that I got to know from Bala about the "lobang" or plan to rob the lorry drivers carrying handphones. In the beginning, Bala told me about a plan to just steal the truck carrying handphones when the driver stopped their truck and alight from his lorry to walk to the Pass office to change his pass before going out of Cargo complex. However, this plan was changed just before the incident when Bala, Babu, Christopher and I met at the coffeeshop at Blk 125 Toa Payoh. It was during this meeting that Babu changed the plan and wanted us to beat up the driver of the lorry until he cannot wake up and do not know what was happening. He said that he wanted us to do this because he does not want the driver to recognize us.

Statements made by the second accused

24 The material portions of the second accused's written statements are:

122(6) Cautioned Statement – 5 June 2006

My role was a driver and I went there to drive the rented lorry. However, I knew that the others would be committing robbery at the place but I have no knowledge that they would beat the

person up so badly. I was not with the others who beats the person. I did not even talk to the driver. After everything was over, I drove the lorry with only two pallets of goods to Ang Mo Kio as directed by Bala.

Contemporaneous Statement – 5 June 2006

1 On Monday night, Daniel, Bala and I went to drink beer at a Toa Payoh coffeeshop. About an hour or two, Babu came to join us. At that time he told us that on Tuesday morning, there is a lorry from Cargo Complex bringing handphones. Bala asked Babu for the exact timing. Babu told us to meet at 6.30am and he would tell us the vehicle number. Daniel asked Babu what should we do. He told us that we have no choice but to hammer the driver to make him not know what happening. Babu said he would give us cash once the handphones are loaded on his lorry. We drank till 2.00am plus and left the coffeeshop.

Investigation Statement – 12 June 2006

4 On Monday, 29 May 2006 at about 5.00pm plus, I went to Daniel mother's house at Blk 179 Toa Payoh Central. Daniel and Bala were there. At about 8.00pm, Bala suggested that we go to the coffeeshop at Blk 125 Toa Payoh to have some drinks. We drove to the said coffeeshop. Along the way, Bala told me and Daniel that Babu is coming to the same coffeeshop to meet us. We arrived there not long after 8.30pm. We started drinking.

5 Sometime around 9.00pm to 10.00pm, Babu came. While we were having drinks, Babu told Bala that handphones are being taken out from Cargo Complex. Bala then asked Babu how Babu wanted it to be done. At this point I do not understand what they were talking about. I think they must have discussed this earlier. Babu instructed Bala saying "*Tomorrow morning, handphones is being delivered from the lorry from Cargo Complex. We should somehow take the phones. If we take it, there is good money*". Bala replied "*how is it to be done*". Babu replied "*Come at 6.30 in the morning at Cargo Complex. I will come there, I will show the lorry to you. Once the lorry leaves the place, tail him from behind, see a good spot and to knock his lorry on the side. He will then stop the lorry. He will then alight from the lorry and inspect the damage. When he is inspecting the damage, beat him up until he becomes unconscious*". Bala then asked Babu, "*Why the driver has to be beaten up until he was unconscious. Why can't we just blindfold, gagged and tie him up*". Babu replied "*This is risky. He should not know what is happening to him. There will be a lot of vehicles passing by. Once he becomes unconscious, put him back into the lorry and drive him to the spot where I will mention in the morning.*"

6 Bala then asked Babu that if we were to carry out what he said how much money we are going to get. Babu replied that he does not know what kind of handphones is being delivered. He said that if Bala were to take the handphones and passed them to Babu, Babu would give him a certain amount of money the following day. Babu said that at the spot which he will mention later, the pallets have to be transferred into his (Babu's) lorry and after that, we can leave. After that, all of us continued drinking. We were at the coffeeshop until about 1.00am. Before we left the place, Bala told Babu to meet at Cargo Complex at 6.30am that same morning. Daniel, Bala and I then went back to Blk 179 Toa Payoh and slept there for the night. Babu went home.

7 While we were in the flat, I told Bala that I was not comfortable about joining them to commit the robbery. Bala told me that I do not have to do anything. He told me that I would just have to drive the rented lorry from Changi to Blk 645 Ang Mo Kio and wait for him there. He did not tell me anything more. After that, Bala told Daniel saying "*What you are going to do is, you will drive the lorry from Cargo Complex and tail the lorry. I will tell you at a certain spot to*

knock the lorry. You will then knock the lorry. When he (the driver) is inspecting the damage, I will hit him. He (the driver) will fall down immediately, carry the driver and put him in the lorry. After that, you drive the lorry carrying the phones and drive the lorry to the spot where Babu mentions. Bala then told me "*You then drive the rented lorry from the spot mentioned by Babu and drive it to Ang Mo Kio.*" I agreed to follow them since my role is only to drive the rented lorry as directed by Bala.

8 At about 6.00am, Daniel woke me up from sleep. He told me that it was 6.00am. I washed my face and after that, together with Bala and Daniel, we went downstairs to the lorry that was parked at the side main road. I went to the driver seat and at this point, I noticed a baseball bat tucked behind the passenger seat. It looks like dark brown or black in colour. This is the first time that I notice the baseball bat in the lorry. I drove the lorry. Daniel and Bala sat behind the lorry.

9 While I was driving along the PIE just after the Kallang Way Exit, Daniel used his can of beer and knocked on the side of the lorry. He told me to stop the lorry. I parked the lorry at the side of the PIE. He came down from the lorry and sat at the passenger seat. After that, I continued driving. I then asked Daniel "*what is this*" and pointing to the baseball bat. He pulled up the baseball bat and just replied "*Baseball bat*". I asked him "*Why, to beat up the man or what*?" and he replied "*Yes*". I asked him where he took the baseball bat from. Daniel told me that he got the baseball bat from the workshop at Upper Changi Road. Bala had taken it and put it inside the lorry. The baseball bat was about 1 meter in length (about the height of this table). One end of the bat was slim and about half the length of a computer diskette in diameter. The diameter for the other end was bigger, slightly more than the length of a computer diskette.

...

53 I only knew that we are going to commit robbery. My family is having financial difficulties. My father had just suffered a stroke. I needed money. I did not beat up the Chinese man. What I told the man was just go and speak to my "uncle", Bala. I did not know that he would be beaten up to this extent.

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56 With regards to paragraph 9, I wish to delete the sentence "I asked him "Why, to beat up the man or what?" and he replied "yes".

...

Q7 Do you know what is going to happen to the driver when you asked the driver of YM 815 to go over to Bala?

Ans7 I know that he was going to be beaten up by Bala. However, I did not think that he would be beaten up at that spot.

...

Q16 Is there anything else you wish to say?

Ans16 What I wanted to say is that, when I followed them and even when I was at Pasir Ris Carpark, I did not know that I was going to take the two pallets to Ang Mo Kio. Earlier on, what they told me was to take the lorry to Ang Mo Kio. They did not tell me that I will be carrying

stolen goods. I thought that I would be just sending them there and come back. Just for driving the vehicle, I am now facing a murder charge. I did not get anything from the robbery. I feel very sorry about what happened to the victim. It was just to beat him unconscious. I did not expect that he would be beaten to the extent that he would die. I feel sorry that this incident had taken place.

Statements made by the third accused

25 The material portions of the third accused's written statements are:

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10 A week after this session, in May 2006, Babu asked me to meet him at the coffeeshop at Blk 73 Toa Payoh Lorong 4. I then brought along Daniel with me. I had told Daniel that Babu would be giving me the full details and how much each of us would get from the loots. I had already informed Daniel as to what items we were going to steal. We met Babu around 4.00 pm at the coffeeshop and we have 'Guinness' stout drinks. During the drinks, Babu told us that it was a very good 'lobang' and each of us could make about S$50,000/=. He also told us that when the driver was changing his pass, we should drive away his lorry and unload the cargo onto Babu's lorry at a deserted place. Daniel then told Babu to give all the details to me and left the place. He said he would find out all the details from me. After Daniel left, Babu told me that both he and I would go to Changi cargo complex to view and survey the place regarding the movements of the vehicles. Before we left the coffeeshop, Babu had also told me that during the theft should the driver try to stop our driver, then we should push the driver away or punch him. Around 7.00 pm, Babu and I left the coffeeshop. The following morning Babu picked me up in his lorry bearing registration number something like GM 3452 or GM 3542 from the carpark at Blk 73 Toa Payoh. As I was leaving the house, Daniel's friend Christopher asked me as to where I was going. The previous night, he came to stay at Blk 179 Toa Payoh after the church session along with Daniel. I told Christopher that I was going towards Changi and he came along. I did not mention anything to Daniel since he was sleeping after some drinks the previous day.

11 When I met Babu at 5.30 am, I introduced Christopher to him as Daniel's friend. Babu did not mention anything. Whilst travelling to Changi midway, I told Christopher that we were going to Changi cargo complex to survey the place. When Christopher asked me as to why we were going there to survey, I told him we were going there to do the surveying as we were planning to commit theft later from the lorry. I told him because I trusted him that he would not tell anyone. At that time, Babu and I did not have the intention to include Christopher in our group to commit the theft. We reached the cargo complex at about 6.00 am and Babu had parked his lorry at the parking bay about 40-feet from the pass office. Babu showed me the three yellow coloured lorries with the logo of 'Sterling' company leaving the cargo complex at intervals of about 20 minutes. He then pointed to the first lorry and told me that I cannot do anything to that lorry with an attendant. The driver of the first lorry was a male Indian and his lorry attendant was a male Chinese. They changed their passes at the checkpoint and left. When the second lorry arrived to change the pass, I noticed the driver was a male Chinese and there was no attendant to this lorry. Babu then told me that perhaps the second lorry may carry goods and one of us could drive the lorry from the pass-office and go away with the goods. When the third lorry came, I noticed the driver was a male Indian and there was no attendant also in that lorry. Babu said that perhaps this lorry may also carry goods and one of us could drive the lorry from the pass-office and go away with the goods. I did not notice the registration number for all the three lorries. Babu had told me only out of these three lorries, that either the second or third would be our target and that we would have to look for. He did not mention about any other lorries. All these

while, Christopher was beside us watching as to what we were doing. He did not mention anything. Babu and I did the survey until 7.00 am. Babu then drove us back to Blk 73 Toa Payoh coffeeshop. Babu said he would contact me later and let me know when to do.

12 Christopher did not utter anything until at night when we were having a drinking session with Daniel at home. Daniel asked me as to what happened about the survey and I told him everything was 'ok'. Christopher then told Daniel that everything so simple and that he wished to participate. I then told Christopher that only Daniel and I were sharing at $50,000/= each. I also told Christopher that I would first find out from Babu as to how much the entire loot would work out to before we could include Christopher in the matter. Christopher then told me to find out and let him know later. The same night at about 11.00 pm, I called Babu from Christopher's handphone to find out whether we could really make money out of the loot, or otherwise I did not want to get involved. Babu then replied saying that the minimum sum all three of us, meaning Daniel, Christopher and myself could make would be a minimum sum of S$150,000/=, if not more. Babu was not bothered as to how many of us were involved in doing it and that he would pay a minimum of S$150,000/=. He also said that he would pay more if he could get more. I did not mention to Babu that I was going to involve Christopher in the matter. At about midnight, we never talked about the matter again since Daniel's mother Rachael came home.

…

15 After we had done this survey at the Changi cargo complex, Daniel sent his car to Changi Road. We followed him in our lorry GM 9520 and Christopher was driving the lorry. After giving the car for servicing, Daniel picked up a discarded pole, in the size of a cricket bat, from the workshop and brought to the lorry. He placed the pole underneath the passenger's seat, beside the driver. Christopher and I saw this. I asked him why he needed that and he said it could be of use one day. Christopher then drove us back home.

16 On 29 May 2006 at about 9.30 pm, Christopher called me at home and told me that Babu wanted to meet all of us at the coffeeshop at Blk 125 Toa Payoh Lorong 1 around 10.00 pm. Christopher also said that Daniel, his friend Shanker and Christopher were already there and asked me to join them. When I arrived at the coffeeshop, Babu had not come yet. Daniel's friend Shanker who was at the coffeeshop earlier left the coffeeshop when his mother passed by. This was before Babu arrived at the coffeeshop. At the coffeeshop, we had 'Guinness' stout and 'Heineken' beer. Babu gave me S$300/= from which I paid for the drinks. During our drinking session, Babu told us that we can do the loot on the following morning at 5.30. Babu said he would call us again the following morning to confirm and asked us to be ready. Babu said he already knew one of the yellow coloured lorries was carrying either handphones or laptops. He further said he wanted to confirm which lorry was carrying these items before he could confirm with us. He also further told us that we could go with it if the lorry was either carrying handphones or laptops. After this, Daniel left with an Indian girl who had just come there to see Daniel. After Daniel left, Babu asked me should we fail in our attempt to drive away the lorry, what would I do. I then told him I had no idea. Babu then suggested that we block his lorry and ask the driver of the lorry whether he had borrowed money from the moneylender 'ah long'. When the driver comes down from the lorry to answer, we should then scotch-tape his mouth, both his hands and legs, and take him along in the lorry in the front cabin, and drive away his lorry. Babu then said he would follow us in his lorry and after the unloading had been done, we could leave the lorry and driver somewhere and go away. All these serious matters were discussed during the drinking session that night after Daniel left. Christopher was with me during the discussion.

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Q3 Reference to paragraph 10 of your previous statement, you mentioned in the said statement 'Before we left the coffeeshop, Babu had also told me that during the theft should the driver try to stop our driver, then we should push the driver away or punch him'. Could you tell me more about this incident?

Ans3 Babu told me to push the driver away or punch him if the driver tried to stop us. Later, I told Daniel and Christopher the same as what Babu said.

Q4 Reference to paragraph 15 of your previous statement, you mentioned in the said statement 'After giving the car for servicing, Daniel picked up a discarded pole, in the size of a cricket bat, from the workshop and brought to the lorry. He placed the pole underneath the passenger's seat, beside the driver. Christopher and I saw this. I asked him why he needed that and he said it could be of use one day'. Could you tell me more about this incident?

Ans4 When Daniel told me that the wooden pole could be of use one day, I knew that he wanted to use it during the handphone theft.

The issues raised by the accused persons

The first accused

26 The first accused stated in court that sometime in May 2006, the third accused told him of a plan to "take away" a lorry carrying handphones and laptops out from CAC. He agreed to be part of the plan as he was then in financial straits. The first accused testified that the original plan was to simply steal the lorry while the lorry driver was changing his pass at the CAC pass office. This plan however failed when lorry 815 did not stop at the pass-office.

27 According to the first accused, after lorry 815 failed to stop at the pass-office, the third accused instructed him to tail the lorry. Somewhere along Changi Coast Road, the third accused told him to overtake and intercept lorry 815. The first accused complied. After both lorry 815 and lorry 9520 had come to a stop, the first accused remained in his lorry while the second and third accused alighted. It was through the left side mirror that the first accused saw the third accused holding a baseball bat and then striking the deceased once on the face using the bat. The first accused stated that he did not question the third accused when he was told to tail the 24-footer from the Cargo Complex as the third accused was elder to him and that he did not do anything to stop the third accused's assault on the deceased as he was shocked.

28 The first accused's counsel submitted that the only plan the first accused was privy to was the plan to snatch the deceased's lorry at the CAC pass-office and "there was no pre-arranged plan to beat up the victim till he was unconscious". It was further submitted that the Prosecution had adduced no evidence to show that the first accused had a common intention with the second and third accused persons to cause grievous bodily harm to the deceased. Thus, counsel's written submissions concluded with the suggestion that the 1st Accused "be found guilty of the lower charge of robbery, if not, manslaughter".

The second accused

29 The second accused testified that he was not privy to the plan to rob the lorry carrying the handphones and that he was merely an ignorant replacement driver. This assertion was corroborated somewhat by the third accused who testified in court that the second accused was a last minute replacement for one "Shankar" who was supposed to be involved in the plan but who could not wake

up that particular morning. The third accused added that the second accused's role was only to send the first and third accused to CAC and nothing more. The reason why the second accused made the various incriminating police statements was because during their time in police custody, the first accused had disclosed to the second accused the contents of his police statements and in his confused statement of mind, the second accused decided to give an account that tallied with the first accused's.

The third accused

30 The third accused admitted that he struck the deceased with the baseball bat. Counsel submitted that the defence of the third accused was as follows:

> (a) there was no intention to commit murder and to cause the death of the victim as the plan was to rob the victim of the 2,700 handphones;
>
> (b) there was a sudden fight between him and the victim near the grass verge of Changi Coast Road which arose when the victim provoked the Accused with abusive and expletives which led to the Accused in assaulting the victim which are within the Exceptions 1 and 4 of Section 300 of the Penal Code (Cap. 224).

The defence also contended that it was not within the contemplation of all three accused persons to use the baseball bat to assault Wan and to cause him serious injury. It was also submitted that certain police statements (exhibits 251, 255 and 257) made by the third accused ought to be disregarded as: the statements were not verified by the third accused; the statements were not recorded with the assistance of an interpreter; the statements were paraphrased by the recording officer and in some instances, the recorder even used words of his own; and/or the recorder did not administer a warning that the statements were recorded in the course of a murder investigation. Counsel urged the court to acquit the third accused.

The decision of the court

31 Counsel for the first accused urged the court to give no weight to the statement of facts which Arsan admitted to earlier as part of his plea of guilt to a charge under Section 394 read with Section 397 of the Penal Code (Cap 224), as it was said that Arsan admitted to the statement of facts in order to escape a charge of murder. In view of Arsan's testimony in court and the circumstances in which the said statement of facts was admitted to, I was of the view that it would be prudent to accord little or no weight to it.

32 I am mindful of the fact that in the course of their court testimony, all three accused persons retracted various incriminating portions of their statements. The law on retracted statements has been expounded upon extensively in *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR 45 at [84] – [86].

> 84 The retraction of his own statement by a witness may or may not be treated with circumspection by the court depending on the circumstances. For instance, it is settled law that an accused can be convicted solely upon his own confession even though that statement is subsequently retracted: *Lim Thian Lai v PP* [2006] 1 SLR 319 ("*Lim Thian Lai*") at [43]. It has also been held by the Court of Appeal that a retracted confession of a co-accused implicating the accused in the offence may also be relied upon to establish the accused's guilt: *Panya Martmontree v PP* [1995] 3 SLR 341 ("*Panya Martmontree*") at 354, [50]. By parity of reasoning, the fact that a witness (in this case, an accomplice) may have retracted his statement inculpating the accused does not, *ipso facto*, render the statement of little

evidential weight.

85 However, both *Lim Thian Lai* and *Panya Martmontree* have cautioned that the evidential weight to be assigned to the retracted statement should be assiduously and scrupulously assessed by the courts. In particular, I would add, if the retracted statement forms the only evidence upon which the Prosecution's case rests, such statements should attract painstaking if not relentless scrutiny. Therefore, in *Lim Thian Lai* at [43], it was held that it was necessary for the court to be satisfied that the retracted confession is voluntary, *true* and reliable. In fact, the court in *Lim Thian Lai* cited *Taw Cheng Kong v PP* [1998] 1 SLR 943 as an example of where it was correct for the court to have accorded precious little weight to the accused's statements because of how he had changed his story repeatedly.

86 I pause here only to emphasise that the requirements of the proviso to the general principle that a retracted statement may still be relied upon as being true, *viz*, that the statement should *be voluntary and objectively reliable* should be required conjunctively. Therefore, it is not sufficient for the Prosecution merely to prove beyond reasonable doubt that the statement was made voluntarily. A statement by a witness (or even an accused) even if it was given voluntarily may or may not be reliable depending on the circumstances of the case and the cogency of the statement itself and may to that extent, be dubious.

The first accused

33 In the course of the investigations, the first accused made several statements which incriminated him as being privy to a plan to assault and rob Wan. He however denied in court that there was such a plan. According to him, the plan was simply to hijack Wan's lorry at the pass-office. Thus, the first accused sought to retract portions of his statements which evinced that he was privy to a plan to assault and rob the deceased. His reason for doing so is as follows:

Q Please explain to the Court how is the IO assisting you when he is asking you to change your statement from one where you want to take the lorry, to one where you want to beat up the driver carrying the handphones? How does that help you?

A Earlier I did not say anything about beating up. Subsequently, he told me to say this, then I said.

Q Yes, why? Why did you agree to this?

A Because he was the one who's recording the statement, maybe I thought the other---others involved were also saying that.

Q Yes. So why---why would that make you agree to what the IO is saying if that is not the truth?

A That's what I'm saying. I thought IO was helping.

34 While I was satisfied that there was some discussion among the accused persons in relation to hijacking Wan's lorry at the pass-office, the evidence showed that the plan among the three accused persons and Babu had changed by the time of the evening before the crime. The new plan was to forcibly take over the goods-laden lorry while making sure that the driver thereof would be unable to stop them or recognize them. In any event, it was clear among all three accused persons that the new plan had to be executed when lorry 815 did not stop at the pass-office and when the third

accused directed the first accused to tail the said lorry.

35 As for the first accused's assertion that the assault on Wan was unexpected, one has to be conscious of the fact that the first accused was in control of lorry 9520 when the three accused persons tailed Wan's lorry. He was also the one who staged the near accident along Changi Coast Road. While the first accused stated in court that he was shocked and put in fear by the third accused's assault on Wan, this crucial fact was not mentioned in any of his written statements. Instead, the police statements showed that the first accused knew of the assault beforehand.

> Q6 What did you do when you saw Bala attacking the said driver.
>
> Ans6 I just remained in the lorry as instructed by Bala and looked around for any vehicles coming. I did not do anything to stop Bala from assaulting the driver. This was the plan that we intend to carry out.

36 If the first accused had indeed been shocked by the allegedly unexpected turn of events, one would expect him to be even more shocked by the sight of a badly wounded and bloodied victim. The first accused's subsequent actions however negated the assertion of shock. Instead of asking the third accused why he did what he did to Wan, the first accused helped to lift Wan into lorry 815, pushed Wan's head down at least a couple of times when he seemed to have recovered consciousness, drove the said lorry to Pasir Ris Carpark A and then helped transfer the handphones onto both lorry 9520 and Arsan's lorry. The fact that he subsequently went clubbing and drinking that same evening should also be borne in mind in determining what his state of mind was that morning. In the circumstances, I disbelieved the first accused's assertion that he made the incriminating statements as he thought that the recorders of the statements were helping him. I was of the view that what he told the police was the truth, that he was privy to the robbery plan and that he knew that the victim would be assaulted as part of the plan.

The second accused

37 The second accused's statements implicated him as being part of the robbery plan. This was corroborated by the statements made by the first and third accused persons. Indeed, the third accused had told the police that the second accused was aware of a plan to steal handphones on the day he drove Arsan and the third accused to CAC to survey the location. Similarly, the first accused's testimony in court contradicted the second accused's contention that he was an ignorant last minute replacement.

> Q Right. And about a week before the robbery, did you, Christopher Samson and Bala standby at your house in order to wait for a signal from Arsan to carry out this robbery, for a period of about a week before the 30th of May?
>
> A Yes.
>
> Q So everyday you would return home and you all will be waiting for a telephone call from Arsan whether the robbery is on or not; correct?
>
> A Yes.

38 Further, the second accused was present at the Toa Payoh coffeeshop on the night prior to the robbery where, according to the statements made by all three accused persons, the robbery plans were discussed. The second accused's oral evidence that he was talking on his phone to his

girlfriend for an hour on his pre-paid line on the night prior to the robbery was likewise unconvincing. Also, if the second accused's role was to simply chauffeur the first and third accused to CAC, why then did he remain with the rest after his task was done and why did he put on the pair of gloves handed to him by the third accused? Further, why did the second accused only seek to retract paragraph 9 of his 12 June 2006 statement but not the remaining alleged fabricated parts of his statements?

39 I found the second accused's assertion that he had made the incriminating portions of his statements so as to tally his statements with that of the first accused's to be inherently unbelievable. In my view, while I accepted that the second accused's role in the heist was that of a driver, the evidence showed that he was clearly privy to the robbery plan. This was evident from the oral testimony of the first and third accused and corroborated by the second accused's continued presence at CAC and his conduct during and after the encounter with the victim.

The third accused

40 While the third accused admitted that he had struck the deceased with the baseball bat, his counsel submitted that he had no intention to commit murder and to cause the death of the victim. While I accepted that none of the three accused persons intended to cause Wan's death, this did not mean that they will not be guilty under s 300(c) of the Penal Code. In *PP v Lim Poh Lye* [2005] 4 SLR 582 at [17], the Court of Appeal reaffirmed the seminal decision of *Virsa Singh v State of Punjab* AIR 1958 SC 465, which held that four elements must be proved to establish liability under s 300(c). They are:

> First, it must establish, quite objectively, that a bodily injury is present;
>
> Secondly, the nature of the injury must be proved; These are purely objective investigations.
>
> Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and,
>
> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

41 The third accused admitted that he hit Wan twice. He also agreed that whatever injuries that were found on Wan's body were caused by his assault. In this regard, the pathologist Dr Teo testified that, in his view, at least fifteen blows were inflicted on Wan and that the injuries to Wan's head were sufficient in the ordinary course of nature to cause death. As it was clear from the evidence that the injuries found on Wan were intentionally inflicted, the requirements under s 300(c) of the Penal Code were therefore satisfied.

42 This brings us to the defences raised by the third accused. With regard the statutory defence of sudden fight under Exception 4 to s 300, the Court of Appeal in *Tan Chun Seng v PP* [2003] 2 SLR 506 stated at [16] that while it was immaterial as to which party offered the provocation or committed the first assault, three main ingredients must be present to invoke the defence. They are: (a) sudden fight, heat of passion, sudden quarrel; (b) absence of premeditation;

and (c) no undue advantage or cruel or unusual acts.

43 On the evidence, the interception of Wan's lorry and the subsequent assault on him by the third accused were clearly premeditated. The third accused was well aware of the circumstances leading to his encounter with Wan. He directed the first accused to follow Wan's lorry and somewhere along Changi Coast Road, told the first accused to stage an accident between the two lorries. These actions were all done with the ultimate aim of forcibly taking away the cargo of handphones.

44 In any event, the first accused told the police that prior to any contact between the third accused and Wan, the third accused had already taken the baseball bat from the lorry and was trying to hide the bat behind his left leg. It is pertinent to note that the first accused did not retract this portion of his statement in his oral testimony. Instead, when cross-examined by the Prosecution on this point, the first accused maintained that he saw the third accused holding the bat but did not know whether the third accused was actually going to use the bat on Wan or whether it would be used to merely threaten Wan. Similarly, the second accused told the police that he knew the victim would be beaten up by the third accused when he told him to go to where the third accused was.

45 The fact that the third accused was pre-armed with the baseball bat left no doubt that the assault on Wan was a premeditated one. Likewise, the multiple forceful blows inflicted on the unarmed and defenceless victim showed that the assault was nothing short of being cruel. On these two scores, the defence of sudden fight was clearly not available to the third accused.

46 I shall consider the issue of whether there was in fact a sudden fight in conjunction with the defence of grave and sudden provocation under Exception 1 to s 300. In this regard, the third accused testified in court that just before the assault took place, Wan provoked him by abusing his (the third accused's) mother using Hokkien vulgarities and pushing him on his left shoulder.

47 In *PP v Kwan Cin Cheng* [1998] 2 SLR 345, the Court of Appeal held that there are two distinct requirements for the defence to apply: first, a subjective requirement that the accused was deprived of his self-control by provocation; secondly, an objective requirement that the provocation should have been "grave and sudden". On the second criterion, the court cautioned at [65] that:

> The objective test demands only that the accused should have exercised the same degree of self-control as an ordinary person. It does not require that his act of killing must be somehow capable of being viewed as 'reasonable'. In applying the test, care must be taken not to peg the standard of self-control and the degree of provocation required at an unrealistically high level.

48 As noted earlier, the attack on Wan by the third accused was clearly a premeditated one as the third accused had every intention to assault him the moment he got off the lorry along Changi Coast Road. Wan was the only impediment to the robbery and had to be overpowered quickly as the lorries were on a public road in clear daylight. It was evident that the third accused did not assault Wan as a result of being deprived of his self-control by Wan's alleged aggression. It was highly unlikely that Wan had behaved in a provocative manner. First, he was out-numbered. Second, the allegation that Wan was aggressive was not mentioned in the statements of any of the accused persons. Third, the allegedly provocative behaviour of Wan was not corroborated by the first or the second accused. It is pertinent to note that the second accused did not even allude to any aggression on the part of Wan during his examination-in-chief:

> Q So when you went to inspect the damage in the driver's side of the 24-foot lorry, what did the deceased do?

A The deceased alighted and talked to me.

Q What did he say to you?

A I can't recall the exact words. Whilst we were talking, Bala called for him and I told to the Chinese man to talk to Bala.

Q Bala. While you were talking initially to the deceased, Bala called for the deceased correct?

A Yes.

Q And they you asked him to talk to Bala?

A Yes.

It was only when the second accused was subsequently cross-examined by counsel for the third accused that he added that Wan was shouting at him and behaving in an aggressive manner. This later evidence did not fit well with what the second accused had told the court earlier. There was, in any event, no mention that Wan was uttering vulgarities. In the circumstances, I disbelieved the evidence of the third accused that Wan was the aggressor during their encounter that fateful morning. There was no sudden fight. Wan was attacked and rendered unconscious even before he knew what was coming. The third accused therefore failed in his defences of sudden fight and of grave and sudden provocation.

49 Are the first and the second accused liable in law for the acts of the third accused? Section 34 of the Penal Code reads:

> Where a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

50 In *Lee Chez Kee v PP* [2008] SGCA 20, a decision handed down by the Court of Appeal after the conclusion of the present trial, the court said (at [253]):

> Thus, I can now summarise what I regard as the correct interpretation of s 34 of the Penal Code, taking into account the typical requirements to make s 34 of the Penal Code applicable, *viz*, (a) a criminal act; (b) participation in the doing of the act; (c) a common intention between the parties; and (d) an act done in furtherance of the common intention of the parties:
>
> (a) Criminal act: Section 34 does not refer to the actual crime committed only. It is essential to realise that the expression "criminal act" is not synonymous with "offence" as defined in s 40 of the Penal Code.
>
> (b) Participation: Presence at the scene of the criminal act, primary or collateral, need no longer be rigidly insisted on for s 34 of the Penal Code to apply. In a "twin crime" situation, there is no need for participation in the collateral criminal act as well as the primary criminal act; participation in the primary criminal act would be sufficient for liability to fix on all subsequent secondary offenders. The crux of the section is participation, and presence may or may not provide the evidence for participation; this is a question of fact to be decided in each case.
>
> (c) Proving the common intention: To prove the common intention between the parties,

inferences must be made from the circumstances of the case to show that the criminal act was committed in furtherance of a pre-arranged plan such as the conduct of the parties, the weapons used and the nature of the wounds inflicted. However, such inferences should never be made unless it was a necessary inference deducible from the circumstances of the case. All the circumstances, including antecedent and subsequent conduct, are relevant in inferring the common intention of all involved.

(d) In furtherance of the common intention: There is no need for the common intention of the parties to be to commit the offence actually committed in a "twin crime" situation, otherwise the words "in furtherance" would be superfluous. The *Mimi Wong* approach to the interpretation of s 34 of the Penal Code is justified by the historical underpinnings of the Indian Penal Code and the doctrine of common purpose in English law. The additional *mens rea* required of the secondary offenders is that of a subjective knowledge on the part of the secondary offender in relation to the likelihood of the collateral offence happening. To be more precise, the secondary offender must subjectively know that one in his party *may likely* commit the criminal act constituting the collateral offence in furtherance of the common intention of carrying out the primary offence. There is no need to have known of the actual method of execution in a murder situation.

51 The evidence before me more than sufficed to impute liability of the third accused's actions to the first and the second accused. There was clearly a common intention among all three accused persons to commit robbery. The three accused persons knew that violence would be necessary to overpower and incapacitate Wan (to the extent he would not be able to resist and to identify them) in order to facilitate the commission of the robbery, even if the first and the second accused were not aware of the third accused's "actual method of execution". The brutal assault was undoubtedly in furtherance of their common intention to commit robbery of the goods in lorry 815.

52 In *Too Yin Sheong v PP* [1999] 1 SLR 682, the Court of Appeal astutely noted at [27] that "[t]he reason why all are deemed guilty in such cases is, the presence of accomplices gives encouragement, support and protection to the person actually committing the act." The first and the second accused were no doubt participants in the robbery: the first accused staged the accident and was acting as a look out while Wan was being assaulted; the second accused directed Wan to the third accused with full knowledge of the robbery plan and the fact that Wan would be assaulted by the third accused. There was no expression of horror or surprise on their part after Wan was battered brutally by the third accused. The first and the second accused were calm and purposeful in their actions. They helped to bundle Wan into his lorry before bringing it to the intended destination. The first accused was able to drive a stranger's lorry and yet retained the presence of mind to push Wan's head down at least twice when he tried to get up. He was also able to help offload two pallets from lorry 815 onto their own lorry at Pasir Ris Carpark A before Babu arrived. The second accused was then able to drive away their lorry with the two pallets to their planned destination. There was no talk about what was going to happen to Wan if they left the badly wounded man in his lorry. Clearly, Wan was just someone they had to get rid of although they did not plan to kill him. Once they had got hold of the goods, they were completely nonchalant about the fate of the obviously badly injured Wan.

53 In the circumstances, I was of the view that pursuant to s 34 of the Penal Code, the first and second accused persons were liable for the actions of the third accused in the same manner as if the acts were done by them and that all three accused persons were equally culpable.

54 For all the foregoing reasons, I held that all three accused persons were guilty as charged. Accordingly, I convicted them and passed the mandatory death sentence on them.

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