Public Prosecutor v Eu Lim Hoklai
[2009] SGHC 151

Case Number : CC 1/2008

Decision Date : 30 June 2009

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Winston Cheng Howe Ming, Stella Tan and Siva Shammugam (Deputy Public Prosecutors) for the prosecution; Subhas Anandan and Sunil Sudheesan (KhattarWong) for the accused

Parties : Public Prosecutor — Eu Lim Hoklai

Criminal Law

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 14 of 2009 was allowed by the Court of Appeal on 12 April 2011. See [2011] SGCA 16.]

30 June 2009

Kan Ting Chiu J:

1 The accused Eu Lim Hoklai is charged with the murder of Yu Hongjin ("the deceased") on Sunday, 18 June 2006 at Feng Ye Beauty and Healthcare Centre, a massage parlour located at Blk 416 Ang Mo Kio Avenue 10, #01-985, Singapore.

2 When the police arrived at the scene, they found the accused and the deceased in the third of three massage cubicles. The deceased was lying on a massage table (also referred to as the massage table or the massage couch) in a massage cubicle, and the accused was lying on the floor next to the bed.

3 The police were alerted by the accused's daughter, Eu Sui Lin. She received a telephone call from him at about 10.56 am telling her to go to the massage parlour quickly as he was in danger. She went to the massage parlour where she was joined by her mother, her sister and the police. When paramedics arrived at the scene, they examined the deceased and pronounced her dead at 11.41am. The accused, who was in a semi-conscious state, was conveyed to Tan Tock Seng Hospital.

Injuries on the deceased

4 Consultant Forensic Pathologist, Dr Wee Keng Poh went to the massage parlour at 2.35 pm and conducted an autopsy on the deceased on 19 June after she was taken to the mortuary. In his autopsy report, Dr Wee noted the position of the deceased's body that:

> The body was lying on its back on the black massage couch with the head in the gap between the wall and the couch and the body across the distal part of the couch. The right upper limb was abducted at the shoulder and flexed at the elbow with the right hand placed across the right chest. There was a kitchen knife loosely held by the right hand at the handle with the blade pointing downwards. The left upper arm was extended at the elbow and slightly abducted at the shoulder. The left lower limb was lying free on the right side of the massage couch; the right lower limb was over the right side of the couch with the right foot in contact with the carpet.

Both lower limbs were slightly abducted at the hips and flexed at the knees.

(The knife in the deceased's hand was the only knife involved. It was examined for DNA and the DNA of the accused and the deceased were found on the handle of the knife, and the DNA of the accused was found on the blade.)

Further, Dr Wee recorded that:

> The body was fully clothed. There were blood spots on the right side of the anterolateral aspect of the brown shorts, right side of crotch of panties and blood smudges over the whole of the right posterior upper forearm, right wrist and front and back of right hand. There were smudges of blood over the right anteromedial aspect of the upper thigh and dried droplets of blood over the right anterior and posteromedial mid thigh, right knee, upper posterolateral calf and left anterior thigh. There were a group of droplets of dried blood over the top of the right foot.

(Photographs of the body were taken and produced; see P10-11, P24-27, P32-39 and P45-54).

5 Dr Wee examined the body at the scene and found that it was cool to touch and that rigor mortis was setting in. He estimated the time of death to be 6-12 hours before the time of examination, consistent with the history of a fight at about 9-10 am that morning.

6 When Dr Wee conducted the autopsy the following day, he noted the following external injuries to the head and neck:

1. There is marked congestion of the face above the level of the mid neck and with multiple petechial haemorrhages of the skin, mainly of the forehead, cheeks and chin. There are scleral haemorrhages in both eyes.

2. There is a group of three small scratch marks, measuring 2 x 1 mm, 3 x 2 mm and 3 x 1 mm on the anterior neck region just to the left of the midline and at the laryngeal prominence.

3. There are three superficial bruises roughly parallel to one another over the left anterolateral neck slightly below the scratch marks measuring 3 x 0.5 cm, 2 x 0.4 cm and 3 x 0.2 cm.

which on internal examination showed:

> The anterior neck structures were explored in a bloodless field after the removal of the brain and the internal thoraco-abdominal organs. There are no haemorrhages in both sternomastoid muscles. There are thin haemorrhages over the right submandibular salivary gland, over left larygno-hyoid membrane and over the external surfaces of both ala of larynx and between the muscle and membrane between hyoid and cricoid cartilage. There is haemorrhage over the right hyoid bone with underlying fracture. The common carotid arteries and the internal jugular veins are intact with no evidence of intimal tears. They thyroid and oesophagus appear normal.

7 Dr Wee also found two fatal stab wounds on the chest:

> 5. **Fatal stab wound** right lower anterolateral chest wall, 37 cm below the level of the level of the right shoulder tip, 105 cm from the level of the heel and 4 cm to the right of the midline. The stab wound is near horizontal, measures 2.3 cm along the long axis and 0.5 cm at its widest point. The medial tip is sharp and the lateral tip tapers for 1.3 cm superficially. The medial tip shows bruised edges.

Penetration: Through and through obliquely through the full thickness of the right lower chest through the right 9th intercostal space anterolaterally, into the right lobe of the liver superiorly, emerging at the inferior surface of the right lobe. There is no penetration of the pancreas, stomach or small intestines.

Direction: From right to left, downwards and medially.

Depth: 9 cm.

6. **Fatal stab wound** right lower chest wall, lateral to wound (5) above, measuring about 6.5 cm from the midpoint to midpoint of the above wound to this wound. The wound is ellipitical in shape with sharp edges and pointed tips. The edges of the wound appear abraided with pointed tips. The long axis of the wound is oblique, measuring 2.5 cm along the long axis and 1 cm at its widest point. The wound is located 105 cm from the level of the heel, 10.5 cm to the right of the midline along the mid clavicular line and 38 cm below the level of the right shoulder tip.

Penetration: Through and through stab wound running obliquely through the full thickness of the right upper anterior abdominal wall (3.5 cm in thickness), into the right lobe of the liver superiorly, emerging inferior surface of the right lobe just lateral to the insertion of the falciform ligament and cutting into the capsule and the mid section of the posterior right kidney. There is no penetration of the pancreas, stomach or small intestines.

Direction: From right to left, downwards and medially.

Depth: 9 cm.

and he certified the cause of death as "acute haemorrhage due to stab wounds of abdomen and asphyxia due to manual strangulation" with the comment that the deceased had "died as a result of two different modes of injuries – that of being stabbed in the abdomen and strangulated (compression of the neck) by the assailant's hands."

8 In his evidence in court, Dr Wee added to his autopsy findings. He said that the deceased would have died from the stab wounds in the abdomen within one to two hours[note: 1] and that it would take three to five minutes of strangulation to cause her death.[note: 2]

9 He was also of the opinion that **the strangulation had occurred before the stabbing**[note: 3] because (a) there were very marked changes around the face and internal neck structures; (b) there were minimal defensive injuries on the deceased; and (c) there was minimal blood spillage outside her abdomen.[note: 4]

10 From a photograph of the deceased which showed a mucus flow from the mouth[note: 5], Dr Wee concluded that **the deceased was strangled in an upright position**[note: 6] and not in the position she was found in.

11 Dr Wee also thought it was very likely that **the deceased was lying on her back when she was stabbed in the abdomen**.[note: 7] He explained that if she was stabbed before she got onto the massage table, more of the about 400 cc of blood that was found in the peritoneal space would have flowed out of the stab wounds onto the surrounding areas than the minimal amount smudged on the wall of the cubicle.[note: 8]

12 Mr Subhas, counsel for the accused, did not question Dr Wee on the conclusions. Dr Johan Duflou, the forensic pathologist who gave evidence on behalf of the defence, had prepared his report[note: 9] before he heard Dr Wee give evidence on his conclusions. However, he was in court and he heard Dr Wee's evidence, and he did not comment or refute those conclusions when he gave evidence himself.

13 In the closing submissions, the defence contended:

> 21. Dr Wee suggested that the strangulation of the Deceased occurred first because he expected more injuries as a reaction to the struggle and there was minimal amount of spilled blood. Further, Dr Wee confirmed that the Deceased was still alive when she was stabbed in the stomach because there was a substantial amount of blood found in the Deceased's peritoneal space (this is of course accepted by the Defence).
>
> 22. However, with due respect, Dr Wee is not an expert on natural responses. It is humbly submitted that different people react in different ways in a struggle. Further, Dr Wee agreed that the lack of defensive injuries does not mean that there was no struggle. In fact, in this particular case, there were injuries that can be classified as defensive type injuries sustained by both the Accused and the Deceased, namely the respective cuts on the fingers and the abrasions found on the Accused's face.
>
> 23. Next, Dr Wee agreed that the Deceased's stab wounds could possibly be self-inflicted. For the record, it is admitted that the Deceased self-infliction of injuries on herself is a fanciful possibility. However, it was raised to demonstrate how by parity of reasoning, the postulation that the Accused had self-inflicted injuries is similarly fanciful.
>
> 24. More importantly, Dr Wee agreed that the stab wounds on the Deceased could have been caused in the struggle. To be fair, Dr Wee did say that this was unlikely, however he agreed that there are various possibilities of how the Deceased's wounds were caused.
>
> 25. Ultimately, it is humbly submitted that Dr Wee's evidence cannot be used to support any particular finding of fact with the certitude needed for the establishment of scenario sought to be proven by the Prosecution beyond a reasonable doubt.

Injuries on the accused

14 After the accused was brought to Tan Tock Seng Hospital, he was found to have nine stab wounds over the abdomen,[note: 10] four of which penetrated into the peritoneal cavity.

15 The accused was subsequently examined by Senior Consultant Forensic Pathologist, Dr Paul Chui. He examined the accused to determine whether the accused's injuries could be self-inflicted and to look for defensive injuries.[note: 11]

16 Dr Chui listed amongst his findings in his written opinion[note: 12]:

> 6a. Two dried scratch abrasions measuring between 1 cm to 1.5cm long each roughly parallel, over the right check region, about 1 cm apart.
>
> …

6k. There appear to be a lack of defense injuries over the forearms exposed during the examination, except for two short scratch abrasions over the interphalangeal joint, palmar aspect of the left thumb, about 3 mm to 4 mm long each.

and he gave the following comments:

8. The two scratch abrasions on the face may be the result of fingernail scratches.

9. The abdominal wounds are consistent with stab wounds resulting from a knife blade penetration. These could all be caused by a single weapon such as a knife. The wounds are consistent with that having been caused by the putative weapon [P137] shown in the photographs [P55] that were sent.

10. That the abdominal wounds (4 of 9 recorded in the clinical notes) penetrated the abdominal cavity and damaged no other major organs (including the gut) would mean that the weapon did not proceed much further than the thickness of abdominal wall. This would imply that the blade probably did not go beyond a depth of 5cm to 6cm into the body.

11. There are no scratches or trailing abrasions extending from end of the skin such as in slashing actions.

12. The position and nature of the non-surgical abdominal wounds *do not preclude self-infliction* as a cause of the injuries.

[Emphasis added]

17 In the course of the investigations, the accused made seven statements to the police. They were admitted at the trial without any objections from him.

Statement of 19 June 2006 at 10.20 am

18 The first statement was recorded by Senior Station Inspector Yam Tong Loon on the morning of 19 June 2006 at Tan Tock Seng Hospital soon after he received surgical treatment for his wounds. In this statement[note: 13] the accused stated:

Yesterday (18.6.06) at 10 am, 'Sio Hong' [the deceased] opened the shop for business. I was parking my car at the car park. Thereafter I went into the shop. She then asked me did I bring the S$30,000/- for our separation fee. I told her I have no money. I also told her I did not want the S$5000/- for giving up the shop and will never come to the shop again. After hearing that, suddenly she pushed me from the front and told me it is not easy to separate with her. I turned back and intended to walk away. Suddenly she used her left arm to grab my neck from behind. At the same time she used her right hand which was holding a *knife* and pocked my stomach four times. *I shouted at her* why she treat me like that. I turned around and pushed her neck against the wall. I put up a struggle with her and was trying to grab the knife. During the struggle, I think I pocked her with the knife on her stomach on two to three times. I then used my right arm to grab her neck from behind & pushed her onto the massage bed. At this juncture, I used my both hands to strangle her neck. At the same time, I still felt that she is still using the knife to pock my stomach about three to four times. I thought that I will die and continued to strangle her. I saw my stomach was bleeding profusely and I continued to strangle her. While in the midst of strangling her, I could hear my handphone was ringing several times. There was one occasion I used my left hand to answer the call and my right hand still strangling her. I heard the caller was

my daughter and I spoke to her in Mandarin "Ah Ling", come and help me". Thereafter my handphone still ringing but I did not answer. I would like to say that after answering the call, I used my both hands to continue to strangle her. A short while later, I fainted.

[Emphasis added]

Cautioned statement recorded on 19 June 2006 at 2.55 pm

19 After the first statement was recorded, Acting Inspector Kwok Charn Kong recorded a cautioned statement from the accused in the afternoon at Tan Tock Seng Hospital. In this statement, the accused said:

Xiao Hong [the deceased] was trying to stab me with a knife first. She stabbed me a few times. I squeezed her neck trying to stop her from stabbing me further. I was unable to snatch the knife away from her. I did not intend to kill her. That's all.

Statement of 22 June 2006

20 This statement[note: 14] was recorded by the Investigation Officer Insp Roy Lim after the accused was released from hospital and was remanded in the custody of the police in the Police Cantonment Complex ("PCC"). In this statement, the accused was asked to give an account on the incident of 18 June between him and the deceased, and he stated:

4.1 Then about 10am, left my house and drove my car, a Mercedes Benz, SCH 2875 to Ang Mo Kio Avenue 10 to meet 'Xiao Hong' [the deceased] at her shop at Blk 416 Ang Mo Kio Avenue 10. When I arrived, I stopped at the carpark and saw her hanging some towels in front of her shop. I then parked my car and walked over to her. She walked into the shop and I followed her into the shop. I asked 'Xiao Hong' in Mandarin, why was not her son with her. She replied that her son was not free. There was no one else inside the shop besides 'Xiao Hong' and me. We were inside her shop then when I noticed that she was about to carry a pail full of towels to the rear portion of the shop. I wanted to help her, but she rejected by saying 'bu yong ni guan'. She then asked me whether I had the money for compensating our separation with me. She had asked for the money in order to have a separation with me a few days ago. She asked for S$30,000/-. I told her that I did not have that much money. She said that since I do not have that amount of money, she would not be prepared to settle the matter relating to our separation. She had earlier [sic] that if the matter between us could not be settled, she would create trouble for my family. She is a 'Pei Du Ma Ma' (recorder's note: referring to study mama). 'Xiao Hong' and I had a intimate relationship which started at the time that she was working in a massage parlour in Serangoon sometime in March or April 2005.

…

4.3 At the shop, I told her that I had no money to settle the matter with her. In order to compensate her, I would not claim the sum of S$8500/- that I had paid on her behalf to acquire the tenancy of the massage parlour that she operated. The massage parlour's name is 'Feng Ye'. I then told her that I would severe the relationship with her there and then. We were standing face to face.

4.4 After saying that, I turn around and was about to walk towards the front door of the shop, all of a sudden, she lifted up the front portion of my shirt from behind though under my left armpit with her left hand, exposing my stomach and started stabbing me in my stomach with a knife. I

felt a sharp pain in the region of my stomach and *shouted* to her to stop. Thereafter, I turned around and pushed her towards the wall with my right hand on her neck. *While she was pinned to the wall*, I tried to snatch the knife away from her but was unsuccessful. During the struggle, she *screamed in pain*. I sensed that she might have been injured by the knife. I then grabbed her neck with both my hands and *pulled her towards the massage bed* and pinned her to the bed. *She was still able to scream*. [Emphasis added]

4.5 All of a sudden, I felt a stabbing pain again. That was when I noticed that I was stabbed again by 'Xiao Hong'. I noticed that I was bleeding profusely on my stomach and was thinking that I was going to die soon. So I exerted more strength on her neck with an intention of making 'Xiao Hong' loose her consciousness. A while later, she was still able to struggle by kicking her legs and *scream*. At that time, my handphone kept ringing but I did not answer the call. Her hands were still moving about. I released my left hand from her neck and retrieved the handphone from the left pocket of my shorts to check the 'missed calls'. [Emphasis added]

…

4.7 My 2nd daughter did not ask me where I was when I called her from the shop. I would hear her shouting that something had happened to me and she hung up. I left my handphone on the massage bed when I noticed that 'Xiao Hong' was about to get up, and squeezed her neck again with both my hands. While I was still squeezing her neck, I felt so giddy and became unconscious. I remember falling on to the ground.

Statement of 23 June 2006

21 In this statement[note: 15], also recorded at the PCC, the accused narrated his liaison with the deceased. They first met in March 2005 and their relationship developed so that in June 2006:

6.4 … We started going to hotels about once a month. I would usually go to the hotel at Lor 17 Geylang. Whenever she was short of money, I would give her whatever amount money she asked for. All in all, I would have already given her more than S$30,000/-, before the incident on Sunday. I would visit her shop at Blk 416 Ang Mo Kio Avenue 10 practically on alternate days. I would help her to open up the shop or do housekeeping chores and buy her breakfast.

6.5 Initially, I took her as a very good friend, after sometime and after spending quite a lot of money on her, which includes the buying of air-ticket for her to return to China and also acting as a guarantor for her stay in Singapore, I took her as my mistress. She confides quite a lot of her personal matters to me. I did not reveal this relationship I had with her to anyone.

6.6 On 14 June 2006 at about 7am, I caught 'Xiao Hong' bringing a man to her house to spend a night. When I confronted her at her home, she became annoyed and denied that she had slept with the man. We argued and she slapped me and punched my head. I did not lay my hands on her. In fact, she had ever hit me on two other occasions after I had advised her not to go to the karaoke lounge and not to get herself drunk. The man who had spent a night in 'Xiao Hong's' flat had parked his blue lorry at the carpark of her house. I can still remember that the license plate is 7880. However, I cannot remember the prefix or suffix.

6.7 During this confrontation, I told 'Xiao Hong' that since she does not want to leave the man, I will go. I then told her that I wanted to end the relationship. I also told her that I would transfer the massage parlour at Blk 416 Ang Mo Kio Avenue 10 to someone else and also that she had to return me S$5000/-. She disagreed and became angry. She then said that she would not

end the relationship so easily and if I really wanted to end it that way, I would have to compensate her by giving her a sum of money which was not mentioned at that time. She also said that she would not let me go and would cause troubles to my family if I ended our relationship without any form of compensation. This confrontation lasted for about 2 hours.

6.8 From then, she seemed very unhappy every time she saw me when I visited her at the shop, practically everyday. I told her to leave the man who had spent a night in her flat. She told me that I should not interfere with her freedom. She said that she cannot be tied down. Although there was an argument, I gave in to her. She still continued to show me a long face whenever I visited her in her shop. Practically everyday, we would argue about the man who had spent a night at her flat. During one of the visits at her shop, she demanded a sum of S$30,000/- to be given to her as compensation for ending our relationship.

…

6.10 On Saturday morning (17 June 2006), I still brought 'Xiao Hong' and her son to the market. During this trip, she asked me to meet her on the following morning at about 10am to settle our matter once and for all. That was how I ended up at her shop on Sunday morning.

Statement of 24 June 2006

22 This statement[note: 16] was recorded when the accused was brought back to the scene. He told the investigation officer what happened there on 18 June:

She was drying towels outside the shop. She walked into the shop. I followed and went into shop. When I opened the door, then she knew I was here. She walked until the 3rd cubicle. I offered to carry some more towels for her, but she said 'Don't need' in an angry tone. She carried the towels until the back of the shop to the washing machine. I just followed her. She then walked back into her shop to take her 'Bao Bao' (accused said 'Bao Bao' means handbag in China's language). I waited at the rear door. She walked back to the 3rd cubicle. I stood facing the 3rd cubicle. We were facing each other. She then asked me whether I brought the money. I replied "I don't have the money". She said if I don't have the money, she'll not separate with me so easily. I then told her "wo men yi dao laing duan". She was angry and *shouted* she'll cause trouble between me and family. I then walked closer to her. I told her to let me go since I've spent so much on her. I told her we will go our separate ways. She then walked closer to me. I then told her I'm leaving. I turned around to leave. That's when she grabbed me from behind. That's when I saw the *knife in her right hand* and I was stabbed by her. I saw blood. I then turned to face her. I used my right hand and held her neck and *pushed her against the wall*. With my left hand, I tried to snatch the knife from her. She did not let go of the knife. We struggled. That's when I heard her *scream in pain loudly*. I do not know whether the knife stabbed her or just cut her. I then used both my hands to grab her neck and *pushed her to the bed* which was on my left. As she laid on the bed, I was still holding her neck. My hands were shaking, so I did not use a lot of strength. I heard her make noise as if she wanted to talk or say something. Her legs were kicking on my right leg. I then used more strength to her neck with my both hands as she was kicking me. I wanted to make her unconscious as I was also in pain. I do not know which hand she used, but I felt pain on my left side stomach. She was stabbing me with the same knife. I thought to myself that I was going to die. I saw a lot of blood coming out from my stomach. That's when my mobile rang many times. I know it's from my house. Her neck was big. I had trouble holding her neck with both hands. I also do not know if it was because of the blood. I wanted to call for help, so I release the grip of my left hand, took the phone from my left pocket and called my

daughter. I pressed the number on the key pad one by one … She was still struggling but did not shout while I was on the phone. I then put my phone on the bed and continued holding her neck with both my hands. That was when I felt giddy and fainted. My legs were near the wall and my head was near the curtain. Later, the ambulance came.

[Emphasis added]

Statements of 26 June 2006

23 Two statements were recorded at the PCC on this date. The investigation officer had wanted the accused to elaborate on his previous narration of the struggle between him and the deceased. In the first of the statements[note: 17] taken in the morning, it was recorded:

Question 16 : During the time you were struggling with Yu Hongjin, did you anyone of you shouted or screamed for help?

Ans : I recalled one time that when I was holding her neck, she *screamed 'Ah….'* loudly. I did not shout for help or scream at all during the struggle. [emphasis added]

Question 17 : How long did you strangle her neck while you pinned her against the wall?

Ans : Not long, not more than 2 minutes.

Question 18 : How long did you strangle her neck while you pinned her on the massage bed?

Ans : Longer time, about 3 or 4 minutes.

Question 19 : While you were pinning Yu Hongjin on the massage bed, did she struggle to free herself?

Ans : Yes, but she could not free herself because *my body was leaning on her*. Her head was tilted back in the gap between the wall and the bed. Difficult for her to break free. [emphasis added]

Question 20 : What were her hands doing while you were pressing her neck?

Ans : Her left hand was dangling at the edged of the bed and her right hand was near my stomach. She tried to raise her hands. I do not know whether was she trying to get herself up or push me away.

Question 21 : When you released your left hand from Yu Hongjin's neck to call your 2nd daughter, did she struggle to free herself? What were her hands doing and where was the knife?

Ans : While I was calling my daughter, she did not struggle. However, I heard her breathing heavily. The knife was still held in her right hand. She did not attack me.

…

Question 29 : In the [statement of 19 June 2006], in line 11, you said that Yu Hongjin used her left arm and grabbed your neck from behind. In your statement recorded by me on 22 June 2006, in line 2 of para 4.4, you said that Yu Hongjin lifted the front portion of your shirt from behind

through under your left armpit with her left hand, exposing your stomach and started stabbing you with a knife. Would you like to clarify on this?

Ans : The statement recorded by you on 22 June 2006 is correct. The one recorded in the hospital could be a misunderstanding. I was confused that day at the hospital.

Question 30 : Referring to the same statement [of 19 June 2006] you stated in line 19 that you then used your right arm to grab her neck from behind and pushed her onto the massage bed. However, in your statement recorded by me on 22 June 2006, in line 8 of para 4.4, you stated that you grabbed her neck with both your hands and pulled her towards the massage bed and pinned her to the bed. Would you wish to clarify on this point?

Ans : Same. The statement recorded by you is correct. She was facing me when I grabbed her neck with both my hands and pulled her to the bed. What I said in the hospital is not correct because I was still in pain.

The accused's evidence

24 The accused gave evidence in the trial. He recounted that he went to the massage parlour sometime between 9 am and 10 am that morning with the intention of ending their relationship. The deceased demanded $30,000 from him but he was not willing to pay.

25 When he wanted to leave the massage parlour, the deceased came from behind him, lifted the front of his shirt and stabbed him in the abdomen.[note: 18] He shouted to her in Mandarin "Xiao Hong, why are you treating me like this."[note: 19] He placed his hand on her neck and pushed her against the wall. He saw that she was holding a knife and he wanted to snatch it from her, and they struggled. In the course of the struggle, the deceased shouted "Ah", and he realised that the knife had stabbed her stomach.[note: 20] He then placed both his hands on her neck and pushed her onto the massage table. He pressed her neck, and then his cell phone rang, but he did not answer the call. He realised that he was bleeding, and he used one hand to lift up his shirt to check his wounds. When he did that the deceased stabbed him a few more times. He felt pain in his abdomen, and he pressed her neck tighter so that she lost consciousness. At that stage, he used his cellphone to call his daughter and told her to rescue him. After making that call, he pressed the deceased's neck again, and then he tried to run away, only to lose consciousness himself.[note: 21]

26 The accused explained that when he grabbed the deceased's hand, the knife was pointing downwards,[note: 22] and there was a struggle and the knife landed on her abdomen.[note: 23] However, when he demonstrated the grabbing and the struggle, it was noted that the knife pointed downwards at all times.[note: 24]

Shouts and screams

27 From the accused's statements and his evidence in court of the events in the cubicle, he had shouted at the deceased when she stabbed him, and the deceased had shouted at him and screamed in pain when she was stabbed by the knife during the struggle.

28 The massage parlour in which the events took place was in fact a half-unit of a shop unit. It shared the unit with a hair saloon operated by Wong Choon Mee, and the massage parlour and the hair saloon was separated by a partition wall. This partition which is made of a series of aluminium

doors with glass panels[note: 25] is not an effective sound barrier.

29 According to Ms Wong, if someone spoke loudly in the massage parlour, that can be heard in her hair saloon.[note: 26] On 18 June 2006, she was at her hair saloon at about 10.15 am and she was attending to a client. Subsequently, a female Chinese (the accused's daughter Eu Sui Lin) came to her shop and asked to gain access to the massage parlour. She told the person that there was no access and that person left. Subsequently, she heard a woman screaming from inside the massage parlour, followed by someone crying. However, she stated that "I did not hear anyone fighting or anyone shouting before the female Chinese came knocking on my door earlier."[note: 27]

30 In cross-examination, the witness agreed with counsel that it is possible that she did not hear what was happening in the massage parlour because she was preoccupied with cutting her customer's hair[note: 28] but in re-examination, she reiterated that if someone in the massage parlour spoke loudly, she can hear that even if she was attending on clients.[note: 29]

Evidence of Ms Lim Chin Chin

31 Ms Lim Chin Chin, Deputy Head and Senior Forensic Scientist of the Criminalistics Laboratory, Centre for Forensic Science, Health Sciences Authority, who undertakes bloodstream pattern and crime scene examination and reconstruction, was also involved in the investigations.

32 She had attended at the scene on the day of the event and noted that the furniture and items in the cubicle appeared to be intact and undisturbed. She subsequently presented three reports. The first report[note: 30] dated 30 January 2007 dealt with the layout of the massage parlour and positions of the accused and the deceased, and the bloodstains that were found. The second report[note: 31] also dated 30 January 2007 dealt with exhibits submitted by the investigation officer Insp Roy Lim for examination. They included items found at the scene and items of clothing worn by the accused and the deceased.

33 The third report[note: 32] was the most significant. It was dated 31 January 2007 and prepared to provide information on:

1. The location of the stabbing and strangulation scene.

2. The manner in which the deceased was stabbed and strangled, and the manner in which the accused was stabbed.

3. Movement of the deceased and the accused during and after the stabbing and strangulation.

34 In this report, Ms Lim referred to her two other reports, two DNA profiling reports on exhibits recovered in the investigations, medical report on the accused's injuries, Dr Wee's autopsy report and Dr Chui's written opinion.

35 She went over those materials, the exhibits and the photographs and arrived at her findings. Her principal findings relating to the stabbing of the deceased were:

4 . <u>The findings suggest that the deceased was not in an upright position when and after she was stabbed. She was likely to be in a supine position</u>.

(a) There were no vertical blood flow patterns (downwards, in the direction of her feet) from the two stab wounds in the deceased's abdomen.

(b) The two localized and undisturbed bloodstained areas on the front of deceased's camisole corresponded in location to the two stab wounds on her body. There were no vertical blood flow patterns at the front of her camisole.

(c) There were no secondary transfers from the bloodstains on her camisole to her blouse, suggesting that the position of the blouse (blouse lifted/pushed up higher than camisole) remained unchanged and hardly came/did not come in contact with blood from her wounds or blood on her camisole.

5. The findings suggest little or no violent struggle from the deceased when she was stabbed.

(a) There was a lack of wounds on the deceased's forearms except for a superficial cut on her right third finger and three small scratch marks on her anterior neck region.

(b) Although the deceased was found holding the knife, there was a lack of wounds on the accused's forearms except for two scratch abrasions at his left thumb.

(c) The deceased's left hand was relatively free from bloodstains, suggesting that it did not come in contact with the accused's blood as he was bleeding.

(d) The deceased's clothing was undamaged and not in disarray. The bow on the deceased's blouse was neatly tied and all the buttons were intact and buttoned.

6. The deceased did not appear to have been significantly moved from the massage table after she was stabbed.

(a) There were no blood flow patterns from her stab wounds except for those that flowed sideways across her abdomen to her right side and downwards to the massage table.

(b) Relatively undisturbed stains/smudges containing only the DNA profile of the deceased were found on the massage table, beneath the deceased's upper torso corresponding in position to the bloodstained areas located at the back of her camisole and blouse.

(c) The deceased's blood was not present in significant amount on other areas of the massage table.

and her principal findings on the stabbing of the accused were:

1. The findings suggest little or no violent struggle from the accused when he was stabbed.

(a) There was a lack of defense wounds on the accused's forearms except for two scratch abrasions at his left thumb.

(b) Slash-wounds from the sharp knife were not found on the accused's abdomen.

(c) If the deceased had been stabbed before the accused, not finding her blood on the accused's apparel would suggest that he did not come in contact with the deceased's blood.

(d) Impact spatter expected from her stabbing him multiple times was not found on the deceased's apparel.

36 At the end of the report, Ms Lim stated that the findings were consistent with a number of conclusions, the principal ones being:

Manner in which the deceased was strangled and stabbed

2. The accused strangled the deceased with his hands. Assuming the deceased was holding the knife with her right hand when she was strangled, the findings suggest little or no violent struggle from her when she was being strangled.

…

4. The deceased was unlikely to be holding the knife … when she was strangled.

…

6. The deceased was unlikely to be in an upright position when and after she was stabbed twice in her abdominal region, likely by the knife … Her clothing were undamaged and not in disarray, and she had no defense injuries on her forearms apart from a single superficial cut on her right third finger, suggesting that she put up little or no struggle when she was stabbed. She could have been caught by surprise and quickly overwhelmed during the stabbing and/or she was in a weak state and could not resist.

7. After the stabbing, the deceased did not move significantly on the massage table. The lack of movement after stabbing suggests that she could be in an unconscious or weak state or she could have died. This further suggests that it was unlikely for her to stab the accused after she was stabbed.

Manner in which the accused was stabbed

…

9. The lack of struggle, the clustering of the nine wounds within the accused's right flank and the left front abdominal region of his abdomen, the absence of slash-wounds on his abdomen and the lack of defense injuries on his forearms suggest he attempted little or no avoidance of the multiple stabbing actions. Hence, it could be that some if not all of his nine wounds have been self-inflicted.

Evidence of Dr Johan Duflou

37 The defence had consulted Dr Johan Duflou, Chief Forensic Pathologist, Department of Forensic Medicine, Glebe, Sydney South West Area Health Service and Associate Professor, University of New South Wales.

38 Dr Duflou was supplied with a comprehensive set of the material relating to the case, including the reports of Dr Wee, Dr Chui and Ms Lim, and the photographs taken in the course of investigation. Significantly, he did not receive the accused's police statements where he described the altercation and the ensuing events between him and the deceased. The only account of those events that Dr Duflou had was a psychiatrist's report on the accused by Dr Kenneth Koh[note: 33] in which the

account was recorded as:

> On 18 June 2006, Mr Eu [the accused] had gone over to the massage parlour, as the deceased had demanded that he do so the previous day. On arrival, she told him to wait in one of the massage rooms, which he says was dimly lit. She soon entered and a quarrel broke out between them. She threatened to blackmail him with disclosure of their relationship to his wife, if he didn't give her the money that she had demanded for.
>
> Mr Eu says that he decided to leave and as he turned, he describes that the deceased used her left hand to lift up his shirt, whereupon, she stabbed him on the abdomen with a knife which, till that moment, he had been unaware that she had had with her.
>
> Mr Eu says that he was extremely shocked and asked her why she had done that. He says that he turned back and held onto her neck with his right hand, trying to disarm her with his left hand.
>
> In the ensuing struggle, Mr Eu says that she must have been stabbed or slashed because she screamed out. He forced her onto the massage bed and then used both hands to strangle her. As he was doing so, he called his daughter on his handphone to come help him as he felt increasingly weakened. He also recalled that she also stabbed him a few more times on the abdomen.
>
> Soon after, he lost consciousness and was woken up by someone slapping his face and calling him "uncle".

On the basis of the material, Dr Duflou produced his report dated 25 March 2008[note: 34], in which he referred and responded to the findings of Dr Wee, Dr Chui and Ms Lim.

39 With respect to Dr Wee's autopsy report, Dr Duflou agreed with Dr Wee that the deceased died from acute haemorrhage due to stab wounds in the abdomen and asphyxia due to manual strangulation.[note: 35]

40 Dr Duflou agreed with Dr Chui that the accused's wounds were consistent with having been caused by the knife and that the wounds may have been self-inflicted, but in his opinion "it remains an entirely reasonable possibility, and in my opinion a preferred likelihood that the abdominal stab wounds are not self-inflicted."[note: 36]

41 With regard to Ms Lim's findings, Dr Duflou did not state any disagreement with her finding that the deceased was not in an upright position when and after she was stabbed (Dr Wee made a similar finding). He in fact stated:

> **Was there a struggle?** I agree with Lim Chin Chin that the death scene is relatively undisturbed, and it appears that the degree of struggle observable is relatively minor compared with many homicide scenes I have attended. It should be noted though that the room is small, has very few loose objects in it, and the massage table is unlikely to have moved significantly during a struggle, even if violent. However, there appears to have been significant blood smearing on the clothes and bodies of both the deceased and the accused, and there has obviously been a violent interaction between the two persons. I agree that it is likely that the majority of the struggle occurred on or in very close proximity to the massage table, and that the deceased was predominantly in a supine position during the altercation.[note: 37]

and he continued with:

> In conclusion, I am of the view that Lim Chin Chin's report of 31 January 2007 provides a possible reconstruction of the events leading to the death of [the deceased] and the wounding of [the accused]. However, I do not believe the report considers whether it was reasonably possible for the circumstances described by [the accused] to have taken place. In my opinion, the injuries to both persons and the scene evidence are consistent with the circumstances described by [the accused] and I am unable to identify any inconsistencies between his description of events and the physical evidence available to me. I conclude that it is reasonably possible for the death of [the deceased] to have occurred in the way described by [the accused].[note: 38]

It is to be noted that Dr Duflou only had knowledge of the accused's brief account of the events recorded in the psychiatrist's report.

42 Essentially, Dr Duflou disagreed with the prosecution experts in that he found:

> (i) that it was an entirely reasonable possibility that the accused's wounds were not self-inflicted, and
>
> (ii) that it was reasonably possible that the deceased's death occurred in the way described by the accused in the psychiatrists' report.

Review of the evidence

43 The accused's admissions in his statements made in the course of the investigations, and his evidence in court are the only direct evidence of the events that led to his injuries and the deceased's death. By his accounts, he had not stabbed her, and he had strangled her because she had stabbed him in the abdomen.

44 His admissions and evidence have to be examined and tested against all other available evidence. For this purpose, it is important to bear in mind that in his narrative, there was a noisy confrontation between him and the deceased. The deceased shouted that she would cause trouble to him and his family.[note: 39] He had shouted at the deceased when she stabbed his stomach.[note: 40] When he pinned the deceased against the wall of the cubicle and tried to snatch the knife from her, the deceased screamed in pain,[note: 41] and she also screamed when she was pushed onto the massage table.[note: 42]

45 The massage parlour was actually within the same shop unit as the adjacent hair saloon. The unit was subdivided into two by a thin partition through which sound can pass. Ms Wong, the operator of the hair saloon who can hear loud talking in the massage parlour gave evidence that she did not hear anything that morning before the accused's daughter spoke to her, and that she then heard a woman scream inside the massage parlour and then heard someone crying.

46 Ms Wong was an independent witness. It was not disputed that she was in her saloon at the material time, and there was no suggestion that she had any reason to give false evidence against the accused. Against that background, and having observed her when she gave evidence, I accept her as an honest and reliable witness. Her evidence raised a serious doubt over the accused's description of the events.

47 Besides the absence of shouts and screams, the accused's evidence is also inconsistent with Dr Wee's findings that the strangulation had occurred before the stabbing, that she was strangled in an upright position, and that it was very likely that she was lying on her back when she was stabbed

in the abdomen,[note: 43] and Ms Lim's finding that the deceased was not in an upright position when she was stabbed and Dr Duflou's agreement that it was likely that the deceased was predominantly in a supine position during the altercation.

48 Proceeding on the basis that the deceased was strangled before she was stabbed, the deceased could not have been stabbed before she was pushed onto the massage table as the accused alleged. Furthermore, if the deceased was strangled in an upright position, she was not strangled when she was pushed down onto the massage table as described and demonstrated by the accused. Finally, Dr Wee's finding that the deceased was very likely to be lying on her back when she was stabbed in the abdomen taken together with Ms Lim's finding that the deceased was not in an upright position when she was stabbed, and Dr Duflou's agreement that she was predominantly in a supine position during the altercation meant that it was unlikely that she was pinned against the wall when that happened, as the accused had described.

49 There was something else that contradicted the accused's version of the events. I have referred to this in [26], that when the accused demonstrated how he had grabbed the deceased's wrist, the knife pointed downwards to the floor, not towards the deceased's abdomen.

50 What is the effect of Dr Duflou's conclusions summarised in [41]? On the issue of whether the accused's wounds were self-inflicted, Dr Chui stated in his opinion that "The position and nature of the non-surgical abdominal wounds do not preclude self-infliction as a cause of the injuries" [note: 44], whereas Dr Duflou stated in his opinion[note: 45] that "it remains an entirely reasonable possibility, and in my opinion a preferred likelihood that the abdominal wounds were not self-inflicted." Dr Duflou had formed his opinion without reading the accused's police statements, and without knowledge of Ms Wong's evidence. He was not asked if he would maintain or modify his opinion if the accused's full narrative and Ms Wong's evidence are taken into consideration. In any event, both experts chose their words carefully, and did not take a firm position on whether the wounds were self-inflicted. The state of the pathological evidence is that the wounds may have been inflicted by the accused or the deceased.

The defence

51 The accused accepted that he strangled the deceased. The defence admitted that it is a "fanciful possibility" that the deceased inflicted the wounds on herself.[note: 46] Since he denied that he stabbed, his position must be that she was accidentally stabbed when she was pushed against the wall, and they were struggling. He raised five defences:

(i) that he did not intentionally cause the deceased's death;

(ii) that he was exercising a right of private defence under s 96 of the Penal Code (Cap 224, 1985 Rev Ed);

(iii) that he came within Exception 2 of s 300 of the Penal Code, that he had in good faith exceeded the right of private defence when he caused the deceased's death;

(iv) that he came within Exception 4 of s 300 in that he had acted during a sudden fight; and

(v) that he came within Exception 1 of s 300 in that he had acted under grave and sudden provocation.

and I shall evaluate them in the same order.

First defence – No intention to cause the deceased's death

52 Under s 300, the offence of murder is committed:

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

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

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

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

53 The intention to cause death is an ingredient only in limb (a), and not to the other three limbs. Thus, the lack of intention to cause death is not a defence to murder, while the intention to cause death, coupled with the causation of death, constitutes murder.

Second defence – right of private defence

54 The applicable provisions are:

96. Nothing is an offence which is done in the exercise of the right of private defence.

99(4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

100. The right of private defence of the body extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right is of any of the following descriptions:

(a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

(c) an assault with the intention of committing rape;

(d) an assault with the intention of gratifying unnatural lust;

(e) an assault with the intention of kidnapping or abducting;

(f) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

55 The accused had said "If I did not struggle her to make her faint, then if I were to turn my back and run away, she could have stabbed me on my back.[note: 47] On that basis, his defence came under limb (a) and limb (b).

56 The rest of the defences are applicable when an act under s 300 has been committed. These defences are restricted defences which do not exculpate the accused from all culpability. If the accused can bring himself under any of these defences, he is still guilty of culpable homicide not amounting to murder under s 304.

Third defence – Exception 2 to section 300

57 Exception 2 reads:

> Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Fourth defence – Exception 4 to section 300

58 Exception 4 reads:

> Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Fifth defence – Exception 1 to section 300

59 Exception 1 reads:

> Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

Evaluation of the defences

Whether the accused had strangled and stabbed the deceased

60 The accused admitted that he strangled her to cause her to lose consciousness.[note: 48] With regard to the stab wounds on the deceased, he denied that he inflicted them, and suggested they were inflicted when he pushed her against the wall and they struggled.

61 The accused's account was contradicted by Dr Wee's finding that it was very likely that she

was lying on her back when she was stabbed, Ms Lim's finding that the deceased was likely to be in a supine position when she was stabbed, and Dr Dublou's agreement with Ms Lim that the deceased was predominantly in a supine position during the altercation.

62 While these findings contradict the accused's account of the stabbing, they do not show that the accused had inflicted the wounds, whether they were inflicted during the struggle against the wall, or while the deceased was on the massage table.

63 Consequently, I will proceed on the basis that the accused had strangled the deceased and had thereby done an act under s 300(c).

Whether private defence applies

64 The accused said that he strangled the deceased to make her faint so that she would not stab him on the back.[note: 49] The critical question is whether he had proved that on a balance of probabilities.

65 The review of the evidence at [43] to [50] showed up substantial doubts on and questions to the accused's description of the events in the confrontation. I find that the accused had not proved that the deceased had inflicted the wounds on his abdomen in the manner he described, or that he had acted in exercise of his right of private defence.

Whether Exception 2 applies

66 As I find that there is no right of private defence, the third defence does not apply.

Whether Exception 4 applies

67 By raising this defence, the accused is saying that even if he was not attacked and did not have a right of private defence, there was a sudden fight. This defence is grounded on the same events recounted by the accused. However his narrative was contradicted by the evidence of the other witnesses. As I have rejected the accused's account of the events, and as the accused has not proved that there was a sudden fight, this defence also fails.

Whether Exception 1 applies

68 This defence can only be invoked when a grave and sudden provocation had caused the person provoked to lose self-control. The accused had not said that he was provoked by the deceased or that he had lost self-control when he strangled her, and there was nothing in his account of the events which indicate that he had lost self-control. This defence does not apply because the essential ingredients are absent.

Conclusion

69 After reviewing the evidence and considering the law relating to the defences raised, I find that the accused had committed an act under s 300(c) when he strangled the deceased, and that he has failed to bring himself under any of the defences he raised. I therefore find him guilty of the murder of the deceased and I impose the mandatory death sentence on him.

[note: 1]Notes of Evidence page 239 ll 8–9

[note: 2]Notes of Evidence page 244 ll 14–15

[note: 3]Notes of Evidence page 239 l 31

[note: 4]Notes of Evidence page 240 ll 1–15

[note: 5]see P45

[note: 6]Notes of Evidence page 249 l 5 to page250 ll 18

[note: 7]Notes of Evidence page 254 ll 14–15

[note: 8]Notes of Evidence page 264 l 5 to p 265 l 25

[note: 9]D1

[note: 10]P125

[note: 11]Notes of Evidence page 204 ll 4–25

[note: 12]P124

[note: 13]P134

[note: 14]P143

[note: 15]P144

[note: 16]P145

[note: 17]P146

[note: 18]Notes of Evidence page 747 l 26 – page 748 l 25, page 762 ll 13–26

[note: 19]Notes of Evidence page 763 ll 2–19

[note: 20]Notes of Evidence page 667 ll 1–5

[note: 21]Notes of Evidence pages 666–669, and re-enactment photographs P197(1)–P197(15)

[note: 22]Notes of Evidence page 785 ll 30–31

[note: 23]Notes of Evidence page 786 ll 1–3

[note: 24]Notes of Evidence page 786 ll 30 to page 787 l 14. The words "the accused" in lines 4 and 7 actually referred to the deceased

[note: 25]Notes of Evidence page 641 ll 1–16, see P5

[note: 26]Notes of Evidence page 48 ll 26–28

[note: 27]PS25 paras 4–6

[note: 28]Notes of Evidence page 51 ll 11–13

[note: 29]Notes of Evidence page 52 ll 3–8

[note: 30]P126

[note: 31]P128

[note: 32]P127

[note: 33]P133

[note: 34]D1

[note: 35]D1 paras 11–12

[note: 36]D1 paras 19 & 20

[note: 37]D1 para 22(d)

[note: 38]D1 para 23

[note: 39]See [21] and P145

[note: 40]See [17] and [19] & Notes of Evidence page 763 ll 13–19

[note: 41]See [19], [21]–[22] & Answer to Q15, [24] & Notes of Evidence page 773 ll 19–23

[note: 42]See [19] and P143 para 4.4

[note: 43]see [8] to [10]

[note: 44]P124 para 12

[note: 45]D1 para 20

[note: 46]Defence Skeletal Closing Submissions para 23

[note: 47]Notes of Evidence page 678 ll 15–16

[note: 48]P143 para 4.5, P145, Notes of Evidence page 668 ll 27–29, page 169 ll 12–14, page 819 l 21, page 877 l 11

[note: 49]Notes of Evidence page 678 ll 15–16

Copyright © Government of Singapore.